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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED
NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF
HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Respect for the right of everyone to own property alone as
well as in association with others and its contribution to
the economic and social development of Member States

Report of the Secretary-General

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I. INTRODUCTION

1. The General Assembly, in paragraph 5 of resolution 41/132 of 4 December 1986, requested the Secretary-General to prepare a report, taking into account the views of Member States, specialised agencies and other competent bodies of the United Nations system within existing resources, on (a) the relationship between the full enjoyment by individuals of human rights and fundamental freedoms, in particular the right of everyone to own property alone as well as in association with others, as set forth in article 17 of the Universal Declaration of Human Rights (resolution 217 A (III)), and the economic and social development of Member States, and (b) the role of the right to everyone to own property alone as well as in association with others, as set forth in article 17 of the Universal Declaration, in ensuring the full and free participation of individuals in the economic and social systems of States.
2. In paragraphs 8 and 9 of the resolution the Assembly requested the Secretary-General to report his findings, through the Economic and Social Council to the Assembly at its forty-third session, and to submit a preliminary oral report on the question to the Assembly at its forty-second session. Subsequently, the Assembly, in paragraph 4 of resolution 42/114 of 7 December 1987, again requested the Secretary-General to report his findings to the Assembly at its forty-third session.
3. By resolution 42/115 of the same date, on the impact of property on the enjoyment of human rights and fundamental freedoms, the Assembly requested the Secretary-General, in preparing his report on this subject, to take into account Commission on Human Rights resolution 1987/18. That request to the Secretary-General was renewed by Commission resolution 1988/19.
4. The General Assembly and the Commission on Human Rights have adopted a number of resolutions in which important issues were brought forward for consideration by the Secretary-General in drafting his report. Both the Assembly and the Commission have recognized that there exist in Member States many forms of legal property ownership, including private, communal, social and State forms, each of which should contribute to ensuring effective developments and utilization of human resources through the establishment of sound bases for political, economic and social justice. They have also recognized that the right to property may play an influential role in fostering widespread enjoyment of other human rights and contribute to securing the goals of economic and social development.
5. The principal focus of Assembly resolutions 41/132 and 42/115 and Commission resolutions 1987/17 and 1988/18 is on the legal protection of the right to property as a human right and its relationship to the economic and social development of the individual, within his socio-economic system. In those resolutions, the Assembly and the Commission emphasized the right not to be deprived of one's property arbitrarily (article 17 of the Universal Declaration of Human Rights), and recognized that the right to property should be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements

of morality, public order and general welfare in a democratic society (article 29 of the Universal Declaration), that no State, group or person should be engaged in any activity or perform any act aimed at the destruction of, *inter alia*, the right to property (article 30 of the Universal Declaration) and that States should establish national legislation to protect the right of everyone to own property alone as well as in association with others. They also stressed the role of individual initiative as a valuable resource in promoting economic and social development.

6. In Assembly resolution 42/115 and Commission resolutions 1987/18 and 1988/19, other elements were brought forward relating to the links between the right to own property and the right to self-determination, the right to sovereignty over all natural wealth and resources and the establishment of a new international economic order. Referring to article 6 of the Declaration on Social Progress and Development (resolution 2542 (XXIV)), the Assembly and the Commission reaffirmed that social progress and development require the establishment, in conformity with human rights and fundamental freedoms and with the principles of justice and the social function of property, of forms of ownership of land and of the means of production which preclude any kind of human exploitation, ensure equal rights to property for all and create conditions leading to genuine equality among people.

7. The Assembly and the Commission in those resolutions also emphasised the role of the public sector in promoting the economic development of developing countries, expressed their conviction that social justice is a prerequisite for lasting peace and that man can achieve complete fulfilment of his aspirations only within a just social order and called upon States to ensure that their national legislation with regard to all forms of property precludes any impairment of the enjoyment of human rights and fundamental freedoms, without prejudice to their right freely to choose and develop their political, social, economic and cultural systems. Finally, those resolutions dealt with the specific issues of transnational corporations and urged them to ensure that their activities do not adversely affect the process of implementing the human rights in developing countries.

8. Pursuant to the request of the Assembly in its resolution 41/132, the Secretary-General in May 1987 requested information and views from Governments, specialised agencies, other United Nations bodies and relevant non-governmental organisations in consultative status. In April 1988, the Secretary-General renewed his request to Governments, specialised agencies and other United Nations bodies.

9. Pursuant to those invitations, information of a substantive nature has been received from the following Governments: Algeria, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Cuba, Dominica, German Democratic Republic, Germany, Federal Republic of, Haiti, Iraq, Luxembourg, Madagascar, Mexico, Morocco, Nepal, Qatar, Syrian Arab Republic, Sudan, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela.

10. In addition, information and views have been received from the United Nations Development Programme, the United Nations Population Fund, the Centre for Social Development and Humanitarian Affairs of the United Nations Office at Vienna, the United Nations Centre for Human Settlements (Habitat), the International Labour

Organisation, the Food and Agriculture Organisation of the United Nations and the World Intellectual Property Organisation. In addition, the following non-governmental organizations in consultative status with the Economic and Social Council have forwarded substantive contributions to this report: Christian Democratic International, Four Directions Council, General Arab Women Federation, International Association of Democratic Lawyers, International Organisation of Employers and Socialist International Women.

11. The present report is submitted to the Assembly pursuant to the request contained in resolution 41/132.

II. INTERNATIONAL DIMENSION OF THE RIGHT TO PROPERTY

A. United Nations instruments relating to the right to property

12. Within the United Nations system the right to property is recognized in several instruments already adopted and reference is also made to that right in the draft text of instruments under preparation, such as the draft international convention on the protection of the rights of all migrant workers and their families, the draft convention on the rights of the child and the draft declaration on the rights of indigenous populations.

Universal Declaration of Human Rights

13. The first mention of this right is in article 17 of the Universal Declaration of Human Rights, which reads:

"1. Everyone has the right to own property alone as well as in association with others.

"2. No one shall be arbitrarily deprived of his property."

The complexity of the issues underlining the right to property was evidenced during the drafting of this article. The first session of the Commission on Human Rights produced a draft reading: Everyone has the right to own personal property. No one shall be deprived of his property except for public welfare and with just compensation (E/CN.4/21, pp. 76-77). At the Commission's second session a working group proposed to add "in conformity with the laws of the State in which such property is located", after "everyone has the right to own property" (E/CN.4/57, p. 10). This text was subsequently included in the draft International Declaration on Human Rights, submitted by the Commission to the Economic and Social Council in 1947 (E/600, p. 16). The Working Group in 1948 put the right to property in a broader context: "Everyone has the right to own such property as meets the essential needs of decent living, that helps to maintain the dignity of the individual and of the home, and shall not be arbitrarily deprived of it" (E/CN.4/95, p. 8). However, this amendment did not survive subsequent debates in the Commission, the Economic and Social Council and the Third Committee of the General Assembly and the final text does not refer to conformity with State laws, personal property or essential needs of a decent living.

14. Article 17 of the Universal Declaration of Human Rights should be read in conjunction with paragraph 1 of article 2 of the Declaration, which prohibits distinction in the enjoyment of human rights by reason, inter alia, of "property". In this regard, it may be noted that the Special Rapporteur of the Sub-Commission, Mr. Herman Cruz, in his study of discrimination in the matter of political rights, rejected distinctions and preferential treatment of property holders. 1/

15. Neither the International Covenant on Economic, Social and Cultural Rights nor the Covenant on Civil and Political Rights contains an explicit reference to the right to property. The travaux préparatoires of an article on the right to property for eventual insertion into the Covenants on Human Rights reflected the diversity of opinions and difficulties of drafting a text that could find common acceptance. While no one questioned the right of the individual to own property, there have been considerable differences of opinion with regard to the concept of property, its role and functions, and the restriction to which the right to property should be subjected. 2/

Convention relating to the Status of Refugees of 1951

16. Article 13 of the Convention relating to the Status of Refugees of 1951 1/ provides that refugees shall receive treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property. As regards industrial property of refugees, article 14 of the Convention provides that "in respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country".

Convention relating to the Status of Stateless Persons

17. The Convention relating to the Status of Stateless Persons, 4/ adopted in 1954, in its article 13 provides that a stateless person shall be accorded treatment as favourable as that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

International Convention on the Elimination of All Forms of Racial Discrimination

18. Under article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (resolution 2106 A (XX), annex), States parties undertake to guarantee the right of everyone, without distinction as to race, colour or national or ethnic origin, to equality before the law, notably in the enjoyment of a number of rights, including "the right to own property alone as well as in association with others" and "the right to inherit".

Convention on the Elimination of All Forms of Discrimination against Women

19. The Convention on the Elimination of All Forms of Discrimination against Women (resolution 34/180, annex) in its article 16, provides, inter alia, for women "the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration".

Declaration on the Rights of Disabled Persons

20. The Declaration on the Rights of Disabled Persons of 1975 (resolution 3447 (XXX)) in its paragraph 11 provides that disabled persons shall be able to avail themselves of qualified legal aid when such aid proves indispensable for the protection of their persons and property.

Declaration on Social Progress and Development

21. The Declaration on Social Progress and Development of 1969 (resolution 2542 (XXIV)), deals with the role of property in development. Article 6 of that Declaration reads, in part: "Social progress and development require the participation of all members of society in productive and socially useful labour and the establishment, in conformity with human rights and fundamental freedoms and with the principles of justice and the social function of property, of forms of ownership of land and of the means of production which preclude any kind of exploitation of man, ensure equal rights to property for all and create conditions leading to genuine equality among people".

22. To the extent that it deals with nationalisation, expropriation and requisitioning, the Declaration on Permanent Sovereignty over Natural Resources of 1962 5/ deals with the aspects of the right to own property against the background of the right of peoples and nations to permanent sovereignty over their natural wealth and resources. Further, aspects on the right to property have repeatedly been considered and dealt with by the General Assembly and the Economic and Social Council in connection with the problem of land reform. 6/

B. Regional instruments relating to the right to property

African Charter of Human and Peoples' Rights

23. The African Charter of Human and People's Rights, adopted by the eighteenth Assembly of Heads of State and Government of the Organisation of African Unity, in June 1981, at Nairobi, provides in paragraph 3 of article 13: "Every individual shall have the right of access to public property and services in strict equality of all persons before the law". Further, in article 14 the Charter states that "the right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws".

American Declaration on the Rights and Duties of Man

24. The American Declaration of the Rights and Duties of Man, adopted by the Ninth International Conference of American States in 1948, contains a number of provisions relating to economic and social rights, including that of property. Article XXIII of the Declaration states that "every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home".

American Convention of Human Rights

25. Article 21 of the American Convention of Human Rights, signed at the Inter-American Specialised Conference on Human Rights in 1969, reads as follows: "1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law. 3. Usury and any other form of exploitation of man by man shall be prohibited by law".

European Convention for the Protection of Human Rights and Fundamental Freedoms

26. The European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 contains no reference to the right to property. However, article 1 of Protocol No. 1 (of 20 March 1950) provides that every "natural or legal person is entitled to the peaceful enjoyment of his possessions" and that no one "shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law". Under the second paragraph of that article, the "preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties".

III. NATIONAL DIMENSION OF THE RIGHT TO PROPERTY

27. Almost all Governments responding to the request for information referred to the national dimensions of the right to property in the legal recognition or protection given to property by national law and in some cases regarding the types of ownership. In addition, certain replies referred to the role the right to property plays in national development and some touch on the international dimensions of this right. The following texts are extracted from the relevant government replies.

ALGERIA

1. The right of everyone to own property alone as well as in association with others is guaranteed by law. As defined by law, this right must be exercised in the interests of society and must contribute to its social and economic development.

The right to property

2. National legislation recognizes and respects the rights to property of any person, whether alone or in association with others. The National Charter provides for the rights to property and stipulates "that it extends to everything relating to personal and family use, and also the means of production and services ...". Article 16 of the Algerian Constitution defines the right to property as "an integral part of the [new] social organisation" and as protected "within the framework of law".

Exercise of the right to property

3. The exercise of this right is subject to certain conditions contained in national legislation. While recognizing the principle of the right to property, the National Charter stipulates that the exercise of this right "must not become a source of social domination". It also recognizes "non-exploitative private property". Similarly, the Constitution states in article 16 that "private property ... must ... have social usefulness".

The contribution of the right to property to social and economic development

4. National legislation recognizes the right to individual and collective property and its role in national economic development.

5. This role is affirmed by the National Charter, which regards the exercise of this right as a "contribution to global development and to the consolidation of national independence".

6. In article 16, the Constitution accords an important place to private property as "an integral part of the new social organization" and states that "in economic activity, in particular, it must assist the country's developmental process and be useful for society. It is protected within the framework of law".

BULGARIA

1. In accordance with the Constitution of the People's Republic of Bulgaria (article 14), the forms of ownership in the country are as follows: State (public) property, co-operative property, property of the public organizations and personal property. Furthermore, the national legislation and operative international treaties regulate and guarantee the right to property of foreign physical and juridical persons.

2. As is the case in other socialist countries, the means of production are public property. No private ownership of means of production is allowed which would lead to exploiting the labour of other people. This ban, a natural one for socialism, is the result of the historic choice made by the Bulgarian people in favour of humanism and social justice. Furthermore, it is precisely the socialist public ownership of means of production which is the basic material guarantee for the entire system of human rights and freedoms, for the enjoyment of economic, social and cultural, and thence, civil and political rights.

3. Private property under socialism does not run counter to public forms of property. It is interrelated with them and has primarily a labour character. The Constitution (article 21, para. 4) stipulates that "the State protects private property acquired through labour and by other legitimate means".

4. The concrete methods of administration and management of public property and interrelated social relations develop and change in accordance with the development of productive societal forces. Under socialism this process is a smooth one, in the interest of society as a whole. This is so because of the absence of acute, often irreconcilable contradictions inherent to private property which is, itself, linked with exploitation of human labour.

5. The implementation in 1987 in the People's Republic of Bulgaria of certain radical changes in the realm of ownership is an expression of this ongoing process of social restructuring. They reflect the processes of societal development, its democratization on the basis of self-management and constitute, at the same time, a material basis for deepening these processes in the future. The country's parliament - the National Assembly - granted, through its Declarations of 5 May and 14 July 1987, the ownership of the means of production and the other elements of production directly to the collectives working with them to administer and manage, whereas the territories of the basic administrative units - the municipalities - are to be administered by their inhabitants. Relevant changes are taking place currently within the society's political structures.

6. The changes described above enrich substantially the very notion of "right to property". They afford the individual working person and citizen, i.e. each individual, the right and real possibility to administer directly and democratically the economic projects where he/she works and the territory where he/she lives. A decisive step was also made to switch over from government in the name of the people to government of the people.

7. The process of democratization and restructuring will continue in the future as well; under preparation presently are specific amendments to the Constitution and national legislation which would reflect the recurring changes in the methods of administration of public property and which would, in their turn, become a basis for a further promotion of that process.

8. The People's Republic of Bulgaria builds its position on the issue of the right to property on the basis of the understanding set forth above, to the effect that property and its specific forms constitute a determining element of the socio-economic system of every society and, thence, of its political structure.

9. Nowadays there coexist, on the one hand, States whose social system is defined by private ownership of the means of production and, on the other hand, States where ownership of these means is predominantly public. The realities of our interdependent world, the interests of man and humankind, require this coexistence to be a peaceful one: they require constructiveness and mutual respect in relations, co-operation and understanding among peoples.

10. These principles are enshrined in the foundations of the co-operation among members of the United Nations, including on the issues of human rights. The Charter recognizes the fundamental right of peoples to self-determination, pursuant to which they determine their socio-economic system and ways of development. The principal international instruments on human rights - the International Covenants, emphasize that (article 1):

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

11. Article 2 of the Declaration on the Granting of Independence to Colonial Countries and Peoples has an identical content.

12. Proceeding from the imperatives of equitable international co-operation, the instruments adopted by the United Nations in that field do not prejudice and do not restrict the right of peoples freely to choose one or another form of property as basis of their society. The Universal Declaration of Human Rights (article 17) contains the general provision stipulating that:

"1. Everyone has the right to own property alone as well as in association with others.

"2. No one shall be arbitrarily deprived of his property."

This general provision is complemented by the International Covenants on Human Rights (article 1, para. 2):

"All peoples may, for their own ends, freely dispose of their natural wealth and resources. ... In no case may a people be deprived of its own means of subsistence."

13. The requirements to be met in the enjoyment of the right to property in a democratic, humane and just world are laid out, most lucidly perhaps, in the Declaration on Social Progress and Development (article 6):

"Social progress and development require ... the establishment ... of forms of ownership of land and of means of production which preclude any kind of exploitation of man, ensure equal rights to property for all and create conditions leading to genuine equality among people."

14. It is obvious that the fundamental instruments adopted by the United Nations guarantee the right of peoples freely to choose the forms of property, within

sensible and natural limits for a democratic society, and require that this right should not lead to exploitation of other peoples or nations.

15. This approach is fully shared by the People's Republic of Bulgaria. It is paramount in its attitude towards the right to property at the United Nations. This is why the Bulgarian delegates at the past forty-first session of the General Assembly were not in a position to endorse the United States draft resolution on this matter and abstained in the vote. Despite the efforts exerted by both parties to bring their positions to agreement, as well as the sincere and open-minded approach of the Bulgarian delegation and other delegations of socialist countries, no solution was reached which would reflect to an equal degree the views of the parties and the respect for the right of each nation independently to choose the avenues of its development, without outside pressure and interference.

16. General Assembly resolution 41/132, adopted as described, does not contain a number of major elements which must be taken into account when elaborating the issue of property at the United Nations, for it is not possible today to deal with the right to property without considering it in its relationship to such fundamental and inalienable human rights as the right of peoples to self-determination, sovereignty over natural resources, the right to development and its closely linked necessity of new international economic order and the solution to the issue of developing countries' foreign indebtedness.

17. It is impossible to reaffirm the right to property as opposed to the central right for every human person to work, to be educated, to medical security, to participate individually in management, including in the management of his/her country's economy. Resolution 41/132 makes no mention whatsoever of the negative impact of certain forms of property over human rights: exploitation of human labour, social inequality, unemployment, role of private capital in military production in escalating the arms race on the Earth and the plans to extend it to outer space. The resolution does not condemn the pretensions of the South African white minority to own the major part of the territory, the natural resources and the means of production in that country and in Namibia; it does not single out the unseemly role of transnational corporations and their property in the exploitation of developing countries.

18. Bulgaria is firmly convinced that the future work on the issue of the right to property ought to take into consideration all elements, identified herein, in their intricacy. This is particularly necessary in preparing the Secretary-General's report, as requested in paragraph 5 of resolution 41/132, as well as in the case of eventual forthcoming initiatives on the same matter. Otherwise, the unintentional impression created to date would be substantiated, to the effect that the aim in raising this issue at the United Nations is not to strengthen the co-operation among States on human rights matters, or to expand the realm of comprehension among them, but to oppose one group of countries of another and to justify the violation of one group of human rights at the expense of others.

19. The People's Republic of Bulgaria endorses an approach that sincerely aims at promoting co-operation among States, at dealing openly and fairly with all issues, and is directed to reach a just and lasting solution. In terms of human rights

this approach means a desire to solve the genuine problems confronting mankind and the individual person today, to guarantee the primary components of human dignity - peace, freedom, security, development, equality, social justice, work. It is on this basis that the People's Republic of Bulgaria will co-operate, now and in the future, with all its partners at the United Nations to solve human rights issues, including property issues.

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

1. The approach adopted in the Byelorussian SSR to the right of everyone to own property alone as well as in association with others has been and continues to be that the State determines those forms of property that exclude any exploitation of man by man, ensure equal rights to property for all and create conditions leading to the genuine equality of individuals. These matters are decided on the basis of and with full regard for the principles of social justice, and also for human rights and fundamental freedoms. Such an approach to this matter is in full accord with the progressive standards and principles embodied in international legal documents, especially the Declaration on Social Progress and Development. Thus, article 6 of that Declaration requires the establishment, in conformity with human rights and fundamental freedoms and with the principles of justice and the social function of property, of forms of ownership of land and of the means of production which preclude any kind of exploitation of man, ensure equal rights to property for all and create conditions leading to genuine equality among people.

2. Among the many legal forms of property existing in different countries there are the private, social and State forms. Three kinds of property exist in the Byelorussian SSR, and in the Union of Soviet Socialist Republics as a whole: State property, collective farm and co-operative property, and personal property. The economic system of the Byelorussian SSR is based on socialist property for the factors of production, taking the form of State (public) property and collective farm and co-operative property. No one has the right to use socialist property for personal gain or for other mercenary purposes.

3. State property is the general property of the Soviet people as a whole, the basic form of socialist property. The State enjoys exclusive ownership of the land, its mineral resources, waters and forests. The State owns the basic means of production in industry, constructional engineering and agriculture, means of transport and communications, the banks, the property of State-organized trading enterprises, public utilities and other undertakings, the urban housing stock, and other property essential for fulfilment of the purposes of the State.

4. The property of collective farms and other co-operative organisations and groups of organisations consists of the means of production and other property needed by them to carry out their statutory duties. The land occupied by collective farms is allotted to them for their use without payment in perpetuity. The State promotes the development of collective farm and co-operative property and its approximation to State property.

5. The basis for the personal property of citizens of the Byelorussian SSR is earned income. Personal property may include household articles, consumer goods, luxury items and home-produced items, a dwelling and savings from earnings. The State protects the personal property of citizens and the right to inherit it. Citizens may have the use of plots of land legally made available to them for subsidiary works, for fruit and vegetable growing, and also for the erection of an individual dwelling. The State and the collective farms assist citizens in the running of their subsidiary plots. Property in personal ownership or in use by citizens must not serve as a source of unearned income or be used to the detriment of the public interest.

6. Article 17 of the Constitution of the Byelorussian SSR states that individual activity based solely on the personal work of citizens and members of their families is permitted in the Republic. The law on individual work, which came into force throughout the USSR on 1 May 1987, raised the legal regulation of this work to a qualitatively new level, providing it with a firm legal basis that will be obligatory on all organisations, establishments, enterprises, officials and citizens. The purpose of the law is to ensure that individual work should be so organised as to satisfy more fully the social need for goods and services, and to increase the level of occupation of citizens on socially useful work, and their receipt from it of additional income corresponding to the labour expended.

7. The problem of the relationship between what is collective and what is individual has a special place in the implementation of the strategy for the accelerated socio-economic development of the country worked out by the Twenty-seventh Congress of the Soviet Communist Party. Socialist collectivism is an alliance of individuals for whom the form of the social bond that unites them ceases to be external to the individuals themselves, to their personal aspirations, needs and interests. The essence of socialist collectivism consists in the adoption of this thesis, since what is social here is not merely perceived as being personal, but really becomes a deeply personal theme, an aspiration, an interest and a concern.

8. The socialist collective is the unit in which the social relations of co-operation, comradeship and mutual assistance are developed, the unit in which the principle of "one for all and all for one" begins to operate. The measure of socialist collectivism is that, in uniting individuals through a common social interest and an interest in production, it adopts as its highest aim the creation of conditions in which the individuality of every member of society may flourish. It not merely creates these conditions, but is responsible for realisation of the full potential of the personality throughout the working population. The result of this process is the development of the socialist collective itself: the clearer and richer is the expression given to individuality, and the higher is the level of development reached by every member of the collective, the more effective and socially humane will the whole collective be. Only in the collective is man able to exhibit his gifts and capabilities. Socialism has afforded the individual great scope for development - not merely the select few, but all workers - by the thorough stimulation of this process, in a practical manifestation of concern for the creative development of the talents and capabilities of every worker. The material and legal guarantees for the fundamental socio-economic rights of man are being constantly extended in the Byelorussian SSR.

9. As is acknowledged in the Charter of the United Nations, States have the responsibility for promoting higher standards of living, full employment, and conditions of economic and social progress and development, and for solving economic, social, health, housing and related problems. Considering that the right of peoples to self-determination includes the implementation of their inalienable right to complete sovereignty over their natural wealth and resources, it is quite natural that every State should have the right to regulate and control foreign investment within its own national jurisdiction in accordance with its own laws and regulations and in conformity with its national objectives and priority tasks, and also the right to nationalize and expropriate foreign property. The creation of a State sector and other progressive forms of management, and the use of planning methods help to speed socio-economic development and consolidate national independence, and offer effective resistance to adverse external factors such as, for example, the activity of transnational corporations.

10. In that context the Byelorussian SSR roundly condemns those transnational corporations which are supporting the racist régime of South Africa or continuing to expand their co-operation with it. By so doing they encourage that régime in its inhuman and criminal policy of harsh repression of the peoples of southern Africa, who are deprived of elementary human rights, and they become accomplices of the inhuman practice of racial discrimination, colonialism and apartheid.

11. Stable peace, peaceful coexistence, friendly relations and co-operation between States having different social, economic and political systems are essential conditions for the socio-economic development of any State.

CANADA

Canada supports General Assembly resolution 41/132 on respect for the right of everyone to own property alone as well as in association with others and its contribution to the economic and social development of Member States. Property rights are fundamental to the Canadian legal system, subject only to limitations in the public interest. In this context, property rights, together with the other rights set out in the Universal Declaration of Human Rights and the two International Covenants, are recognized in Canada as contributing to the dignity and worth of the human person and the principles of freedom and justice affirmed by the International Bill of Rights.

CUBA

1. Although the United Nations has made great progress in developing standards of human rights, no agreement has been reached on the right to own property, since private and public ownership of the means of production coexist in the modern world and some States have mixed systems. It is essential for States to ensure that their national legislation on all forms of property ownership does not impede in any way the full enjoyment of human rights and fundamental freedoms. Policies of that kind will prevent the abuse of economic power by the transnational corporations that operate in the developing countries and will prevent the rights

and interests of private owners of the means of production from taking precedence over the rights of working people.

2. International co-operation in defence of human rights can be effective only if there is no attempt to impose social systems on other States. The basis for the implementation of all human rights is the right of peoples to self-determination and the right of States freely to determine their own political system and to pursue their own economic, social and cultural development.

3. A complete analysis of the right of everyone to own property requires a careful comparison of all the relevant legal provisions of the various United Nations instruments. Only a detailed examination of this and other human rights questions can prevent conflict between States or violation of the principle of the indivisibility and interdependence of human rights. To this end, it is important also to bear in mind the provisions of General Assembly resolution 42/115 and resolutions 1987/18 and 1988/19 of the Commission on Human Rights.

4. Our Basic Law, the Constitution of the Republic of Cuba, defines both individual and collective property ownership in articles 20 to 24 of chapter I.

5. Under article 20 the State recognizes the right of small farmers to own their lands and other means and instruments of production in accordance with the law. It also authorizes the organization of agricultural co-operatives in the cases specified and forms provided by law. Ownership by a co-operative is a form of collective ownership by the peasants belonging to it.

6. Article 21 provides that small farmers have the right to sell their lands subject to the prior authorization of the agencies defined by law.

7. Article 22 guarantees the personal ownership of earnings and savings derived from one's own work, of the dwelling to which one has legal title and of other goods and objects that satisfy the material and cultural needs of the individual. It also guarantees ownership of the means and instruments of individual or family labour not used to exploit the work of others.

8. In article 23 of the Constitution the State recognizes the ownership by political, social and other mass organizations of property intended for the fulfilment of their purposes.

9. Article 24 provides that the right to inherit a dwelling or other personal property owned by a private individual is regulated by law. It also enumerates the conditions under which the lands of small farmers and property forming part of a co-operative may be inherited.

10. In volume two, entitled "Right of ownership and other rights over property", Law No. 59, the Civil Code, establishes the "right of ownership" in its articles 128.1 to 135.1, "forms of ownership" in articles 136 to 160 of chapter II, and "co-ownership" in chapter III. A copy of the Civil Code is attached to this reply for your consultation.

11. Article 293 of the Penal Code now in force contains the following example of a violation of the right of ownership: "Any public official who orders the expropriation of the property or rights of any person without legal authority or without complying with the necessary formalities shall be liable to a penalty of imprisonment for three months to one year or a fine payable in 100 to 300 instalments, or both". A copy of the present Penal Code is attached for your consultation.

DOMINICA

1. The Government of Dominica has consistently followed the principles enshrined in the Universal Declaration of Human Rights and has always respected the right of everyone to own property alone as well as in association with others and recognized its contribution to the economic and social development of Member States.

2. The policies of the Government of Dominica have always been directed at increasing growth and investment in private ownership, because it believes that the role of the Government is to give direction for growth and to create the right kind of economic environment. The following measures have been taken:

(a) Enactment of legislation on the right to own property;

(b) Enactment of constitutional protection against deprivation of property without compensation;

(c) Provision of facilities for survey and valuation of properties;

(d) Provision of land and property title;

(e) Provision of proper fiscal incentives;

(f) Encouragement to private enterprises in agriculture, industry and tourism;

(g) By following strategic investment in social and economic infrastructure as well as by planning and implementing balanced growth of the sectors and utilization of fiscal policies to support these efforts.

3. Recent measures indicated by the Government of Dominica such as the formulation of Public Sector Investment Policy (1986-1990) and revision of taxation policy are in line with this direction.

GERMAN DEMOCRATIC REPUBLIC

1. The German Democratic Republic regards the Universal Declaration of Human Rights as an instrument of fundamental significance for the co-operation of States in promoting human rights. Since its adoption, further progress has been achieved in elaborating and developing international human rights norms. This is borne out, inter alia, by the two human rights covenants adopted in 1966.

2. Pursuant to these human rights covenants and other human rights standards, the enjoyment of human rights is based on the peoples' right to self-determination; all peoples have the right to determine their political status and pursue their economic, social and cultural development freely and without external interference. The peoples' right to self-determination is also the foundation upon which rests the co-operation among States with different social systems, i.e. States with different social structures and forms of property ownership.

3. Exercising its right to self-determination, the people of the German Democratic Republic has changed the forms of property ownership in such a way that, as a result of the abolition of the exploitation of man by man (article 2 (3) of the Constitution), the free development of man and the protection of human dignity are guaranteed in this country (article 4 of the Constitution). The national economy of the German Democratic Republic is based upon the socialist ownership of the means of production (article 9 (1) of the Constitution). Socialist property exists in the forms of nationally owned property of society as a whole, joint co-operative property of collectives of working people, and property of social organisations of citizens (article 10 (1) of the Constitution). Mineral resources, mines, power stations, barrages and large bodies of water, the natural resources of the continental shelf, the industrial enterprises, banks and insurance companies, nationally owned farms, traffic routes, the means of transport of the railways, ocean shipping and civil aviation, post and telecommunication installations are nationally owned property. Private ownership thereof is inadmissible (article 12 (2) of the Constitution). Likewise, private economic associations for the establishment of economic power are not permitted (article 14 (1) of the Constitution).

4. The bitter historical experience of the European peoples tells that the concentration of power in the hands of a few monopolies gave birth to and bolstered German fascism with its characteristic contempt for the human being and denial of any human rights. Representatives of German monopolies were found among the major war criminals of the Second World War. Mindful of such dangers to the enjoyment of human rights, it has been ensured in the German Democratic Republic that no political or economic power can be amassed on the basis of private property ownership. Given these conditions, the personal property of citizens and the right of inheritance are guaranteed in the German Democratic Republic (article 11 (1) of the Constitution), and there exist some 30,000 private shops, workshops and small businesses, which contribute essentially to further enhancing the material and cultural standards of living of the people.

5. The forms of property existing in the German Democratic Republic are commensurate with the demands for non-discrimination as spelled out in terms of international law in article 2 of each of the two human rights covenants of 1966, pursuant to which the States parties undertake to guarantee that the human rights 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". Moreover, the German Democratic Republic's practice is fully in line with the provision of article 6 of the Declaration on Social Progress and Development (General Assembly resolution 2542 (XXIV)), according to which "social progress and development require ... the establishment ... of forms of ownership of land and of the means of production which preclude any

kind of exploitation of man, ensure equal rights to property for all and create conditions leading to genuine equality among people".

6. The concentration of private property always holds the danger of that property being used for denial of the enjoyment of human rights. This has been borne out by the practices pursued by influential corporations operating on the basis of private property ownership, which cut back fundamental political and social rights of broad strata of the population not in possession of private means of production. In this context, reference should be made to rampant unemployment and the restriction of democratic rights practised in a large number of capitalist countries.

Transnational corporations and their activities in developing countries should also be mentioned in this regard.

7. Moreover, the African and Latin American countries face a crushing debt burden which also results from private property being concentrated in the hands of, and being misused by, a few powerful corporations.

8. The transnational corporations reap particularly high profits from dealings in racist South Africa. Thus, they help sustain the apartheid régime which can only survive thanks to their backing. In its resolution 41/95, the General Assembly called upon the Governments of the countries where such corporations are based to take effective action to put a stop to their trading, manufacturing and investing activities in the territory of South Africa as well as in the Territory of Namibia, illegally occupied by the racist Pretoria régime. Countries that do not comply with this demand obviously place the rights of private owners above those of the oppressed peoples in southern Africa, who are deprived of their fundamental human rights.

9. In view of the negative effects that have become apparent in numerous non-socialist countries as a result of political and economic power being exercised on the basis of private ownership of the means of production, the German Democratic Republic opposes any attempts designed to enhance the status of private property in international legal terms under the guise of ensuring the full enjoyment of human rights. Pursuant to resolution 1987/18 adopted by the Commission on Human Rights at its forty-third session, the States should rather see to it that all forms of property ownership "contribute to ensuring the effective development and utilization of human resources through the establishment of sound bases for political, economic and social justice".

GERMANY, FEDERAL REPUBLIC OF

Introduction

1. When the Federal Republic of Germany was founded, the decision was taken to set up the "social market economy". In the opinion of the Government of the Federal Republic of Germany, a social market economy is better suited than any other system to achieve simultaneously equal opportunities, property formation, prosperity and social progress. A social market economy is not only the most effective economic order, but also corresponds to human needs: it places demands on the individual, but does not control him; instead it grants him greater personal freedom.

2. By abandoning the bureaucratically controlled economy of the immediate post-war period, the Federal Republic of Germany paved the way at an early stage for the "economic miracle", i.e. the reconstruction of Western Germany at a pace scarcely imagined at the time. The present Federal Government has reaffirmed its adherence to the social market economy. Only in this economic and social order can personal freedom and responsibility be experienced on a basis of solidarity with others and in consonance with the public weal.

3. The social market economy in the Federal Republic of Germany permits all forms of acquisition of property. It only imposes constraints on the acquisition and ownership of property where the public wealth would otherwise be impaired. The acquisition and ownership of property are protected as basic rights. The national economy and the public at large profit from the incentive resulting from the possibility open to the individual of acquiring property and gaining prosperity - this is safeguarded by the guarantee of property enshrined in the constitution, the Basic Law.

4. The social element of this economic order includes in particular the social security network comprising old-age pension insurance, health insurance, unemployment insurance, child allowances and other important benefits. Where claims to benefits arise from the payment of contributions, these claims are also protected by the guarantee of property contained in the Basic Law.

Provisions governing the right to own property

5. The legal system of the Federal Republic of Germany contains numerous provisions protecting private property. The most important provisions are to be found in the Basic Law. Article 14 contains a guarantee of property. Article 15 permits the nationalisation of private property; in actual fact, this provision plays only a minor role in legal affairs in the Federal Republic of Germany. Articles 73 to 75 lay down the distribution of legislative powers in respect of property. Apart from the Basic Law, the main provisions are to be found in the Civil Law Code, the laws on intellectual property and company law.

6. The Basic Law of the Federal Republic of Germany guarantees private property as both a legal institution and a basic right. The guarantee of property as a legal institution, also known as an institutional guarantee, safeguards private property as an element of the legal system. The guarantee of property as a basic right is closely connected with freedom of the individual, which is likewise enshrined in the Basic Law. It protects the individual from State intervention in his private sphere.

7. Article 14 of the Basic Law reads as follows:

"Article 14

"(1) Property and the right of inheritance are guaranteed. Their content and limits shall be determined by the laws.

"(2) Property imposes duties. Its use should also serve the public weal.

"(3) Expropriation shall be permitted only in the public weal. It may be effected only by or pursuant to a law which shall provide for the nature and extent of the compensation. Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those affected. In case of dispute regarding the amount of compensation, recourse may be had to the ordinary courts."

8. Property within the meaning of Article 14 of the Basic Law embraces all private property rights accruing to an individual. Apart from movable property and real estate, this includes, for example, all kinds of rights in rem, membership and partnership rights, pecuniary claims arising from lease, rental or other obligations and intellectual property. Everyone is therefore entitled to acquire and own as his property such items as household effects, clothing, cars, land, houses or factories. The Government is not entitled to confiscate them. The purpose of the guarantee of property is to ensure a measure of freedom enabling the individual to shape his life at his own responsibility. At the same time the individual is guaranteed the right to participate, at his own responsibility and on the basis of private use, in shaping the country's legal and social order. According to decisions by the Federal Constitutional Court, the protection afforded by the guarantee of property also covers entitlements under public law in certain circumstances.

9. As a basic right, the right to own property enjoys special protection under the Basic Law. Basic rights bind public authorities as directly enforceable law (Article 1 (3) of the Basic Law). If anyone's rights are violated by a public authority, recourse to the courts is open to him (Article 19 (4) of the Basic Law).

10. The guarantee of property is limited by the "public weal", which is determined by general statutes with due regard for the purpose of property as a basic right of the individual (social relevance of property). The legislators thus have the task of shaping the property régime in accordance with the requirements of social justice. In so doing, the legislators enjoy considerable scope, whose limits are determined by the question of which general restrictions on property are socially compatible, can be reasonably imposed without compensation and do not impinge on the very essence of property. According to decisions by the Federal Constitutional Court, the guarantee of property and its social relevance are inextricably interconnected. The more the item of property has a social relevance and function, the greater the regulatory powers of the legislators in this respect. For example, the Federal Constitutional Court expressly recognized the right of employees to co-determination on the supervisory boards of large companies as a concrete expression of this social relevance.

11. Expropriation is permitted only in the public weal. In accordance with the principle of commensurability, the benefit for the public at large must outweigh the interests of the individual encumbered by the expropriation. Expropriation may be effected only on the basis of a law that also regulates the compensation. The individual may challenge the expropriation before an administrative court, and the amount of compensation before a regular court. Sovereign acts that do not represent expropriation but, by their nature, are equivalent to expropriation because of their impingement on a property right have been placed on a par with

expropriation in the rulings of the highest courts (doctrine of intervention equivalent to expropriation).

12. Furthermore, under Article 15 of the Basic Law, land, natural resources and means of production may for the purpose of nationalisation be transferred to public ownership or other forms of publicly controlled economy by a law which provides for the nature and extent of compensation. However, in the legal system of the Federal Republic of Germany this provision is an actual fact of little significance.

Significance of the guarantee of property for economic developments

13. The Basic Law does not advocate a specific economic order and is thus neutral in this respect. In its interpretation of the guarantee of property, the Federal Court of Justice, the highest court of the Federal Republic of Germany in civil and criminal matters, is guided by the principle of a liberal market economy and by the criterion of the owner's freedom of disposition under Section 903 of the Civil Law Code. When dealing with complaints of unconstitutionality based on Article 14 of the Basic Law, the Federal Constitutional Court has reaffirmed that the Basic Law establishes a fundamental commitment to private property in the traditional sense. Since shares in companies are also protected property rights, the court decisions helped free enterprise to evolve in the Federal Republic of Germany, which made a decisive contribution to the country's economic reconstruction. The extensive protection of property afforded by the decisions of the Federal Court of Justice fosters achievement, initiative and risk-taking by entrepreneurs to the benefit of the entire economy. In its rulings the Federal Court of Justice goes beyond the Basic Law and invokes natural law: "The individual incorporated in a State needs a property sphere that is strongly protected in legal terms so that he can live among his fellow citizens as an individual, i.e. freely and bearing responsibility for himself, and does not become a mere pawn of excessively powerful State authority."

14. The Federal Court of Justice has thus established the doctrine of property as the prerequisite for freedom.

Social developments

15. The social State ruled by law, as enshrined in the Basic Law, not only guarantees human dignity and free personal development as well as private property, but also permits social progress and justice. The Basic Law gives the legislators sufficient scope for enacting statutes needed for the public weal and for the protection of third persons. Article 14 (1) of the Basic Law expressly states that the content and limits of property are to be determined by laws. Article 14 (2) contains specific provisions on the obligations resulting from property and stipulates in particular that the use of property should also serve the public weal.

Co-determination

16. An important step in social progress made in the Federal Republic of Germany is co-determination exercised by employees through works council and their representatives on company boards. Co-determination is practised in various forms in all types of companies, except for those with less than five employees. It

constitutes a constraint on the scope for entrepreneurial action by companies necessitated by the social relevance of property.

Social entitlements as property rights

17. The drafters of the Basic Law decided in Article 20 in favour of a social State ruled by law. This is the foundation for the favourable economic and social development of the Federal Republic of Germany, for progress and justice.
18. The great importance attached to property in the Federal Republic of Germany is illustrated by the fact that the Government provides tax relief or financial assistance to promote asset formation and savings by the public, especially savings for the purchase of housing and for life assurance. Since the war, the Government has spent a total of approximately DM 140 billion on promoting asset formation through social and redistribution and has thus assisted savings totalling between DM 500 and 600 billion.
19. Employees receive additional support for asset formation: if their taxable income does not exceed certain limits, they are granted a savings premium in the form of so-called asset-formation benefits of collective wage agreements, and are invested on the employee's behalf in certain ways prescribed by law. These methods of investment include in particular savings contracts with banks or building societies, life assurance policies and certain forms of participation in the assets of the employer's company or other companies. Until the end of 1983 approximately 98 per cent of asset-formation benefits were placed in savings accounts and only 2 per cent took the form of participation in company assets, but since 1984 the ratio has shifted considerably in favour of participation in company assets. The Federal Government assumes that at present between 5 and 10 per cent of asset-formation benefits are used for investment in company assets. The assistance provided by the savings premium is the largest when the asset-formation benefits are used for such participation in company assets. This assistance presupposes that the invested funds are not disposed of for a specified period. Participation in company assets by employees is also tax-favoured in cases where the employer grants the shares at no or reduced charge and where the invested funds are not disposed of for a specified period. The shares that the employee receives are exempted from income tax and social security contributions up to certain limits.
20. The Basic Law imposes on the legislators the task of determining by means of statutes not only the limits, but also the content of property, with due regard for its nature as a basic right, and thus of defining the rights and duties connected with property vis-à-vis public authorities and private individuals. The legislators also have this task in connection with the protection of social entitlements as private property. This permits social entitlements to be adjusted as necessary in line with changed social and economic conditions. Safeguarding the livelihood of the individual, not least the self-employed, is no longer achieved solely by means of private property, but also increasingly through entitlements under the public social insurance system. For this reason, the Federal Constitutional Court has held that the individual's social entitlements are also covered by the protection of private property pursuant to the Basic Law when they derive from contributions made by the individual. In its decisions, the Federal

Constitutional Court has ruled that above all claims under the statutory pension and unemployment insurance schemes are subject to protection as private property; the same applies to prospective benefits.

21. The Federal Constitutional Court developed further its rulings on the protection of social insurance entitlements as private property by deciding on 12 February 1987 that the claim to unemployment benefits is covered by the protection of property in accordance with Article 14 of the Basic Law. Thus statutory intervention in arrangements governing unemployment benefits is only possible under the stringent conditions under which legislators are authorized pursuant to Article 14 of the Basic Law to determine the content and limits of private property.

22. Finally, it should be pointed out that the envisaged reform of guardianship and curatorship law is intended to create conditions that do greater justice to the skills and needs of the mentally handicapped by opening up opportunities for them to acquire or dispose of property, thus facilitating their economic and social integration.

HAITI

1. All these problems, especially those referred to in paragraphs 5 (a) and (b) of Assembly resolution 41/132, are given serious consideration in the 1987 Constitution, ratified by referendum on 30 March 1987. Article 19 of this Constitution states that it is the absolute obligation of the State to safeguard the right to life, health and respect for the human person, of all citizens without discrimination of any kind, as proclaimed in the Universal Declaration of Human Rights. The Constitution also recognizes the right of all citizens to decent housing, education, food and social security.

2. In addition, the right to own property is recognized and guaranteed, subject to the provisions of the law regarding its acquisition and enjoyment. It should be noted that henceforward the nationalization and confiscation of movable property and real estate for political reasons is prohibited.

IRAQ

The following observations were made on the constitution of Iraq now in force, as amended:

- (a) Iraq is a sovereign, democratic, people's republic whose aims include the establishment of a socialist system;
- (b) Ownership is a social function exercised in conformity with the objectives of society and the policy of the State subject to the provisions of the law;

- (c) Private ownership and individual economic freedom are both guaranteed within the limits prescribed by the law, provided that they are not used in any way inconsistent with, or damaging to, general economic planning;
- (d) Private property may not be confiscated, except where the public interest requires otherwise and in return for fair compensation in accordance with the principles laid down by the law;
- (e) The law prescribes the maximum amount of agricultural property that can be owned, and anything exceeding that limit is regarded as the property of the people;
- (f) There are tax laws and financial regulations.

LUXEMBOURG

1. General Assembly resolution 41/132, on respect for the right of everyone to own property alone as well as in association with others and its contribution to the economic and social development of Member States also has special significance for the Grand Duchy of Luxembourg. First of all, it forms part of the body of civil rights accorded to citizens in their private relations with each other by the national law and by international instruments, including those of the United Nations. All citizens of Luxembourg enjoy civil rights. The same is true of foreigners authorised by the Grand Duke to establish residence in the Grand Duchy of Luxembourg.

2. Article 16 of the Constitution provides that "No one may be deprived of his property save on grounds of public interest, in the cases and in the form prescribed by law, and in consideration of just and prior compensation". Article 544 of the Civil Code defines ownership as "the right to enjoy and to dispose of property in absolute freedom, provided such use is not prohibited by law".

3. In the view of the Grand Duchy of Luxembourg, private ownership is justified by the following:

- (a) It stimulates, maintains and rewards activity;
- (b) It is one of the essential conditions for individual freedom and the development of society;
- (c) It plays an important role in the organisation of family life.

4. The Constitution protects the ownership of property, as a sacred and inviolable right, against seizure by the public authorities, just as the Civil Code and the Criminal Code protect that right against violation by private individuals. However, in its definition of ownership, article 544 of the Civil Code reserves the right of the State, through its laws and regulations, to restrict the use of property in the general interest of society. This covers the instance of

expropriation in the public weal, as being justified by the general interest of society. The text of the Constitution itself and the specific legislation set forth the substantive and formal requirements under which a citizen may be deprived of his property in the public weal. Finally, it should be noted that the Constitution imposes no ban on the special confiscation of certain property that has been involved in an offence against the law.

5. The new article 11 of the Constitution states: "The law guarantees freedom of trade and industry, the exercise of the liberal professions and agricultural labour, save for any restrictions that may be imposed by the legislative body". According to the text adopted by the Constituent Assembly of 1948, the Constitution protects not only paid work but, generally speaking, all human occupations, trade, industry, the liberal professions and farming.

6. The Commercial Companies Act of 10 August 1915 defines commercial companies as those engaged in acts of commerce. Such companies are governed by agreements between the parties, by the particular laws and usage pertaining to commerce and by the civil law. They are divided into commercial companies proper and trading partnerships. Each has a legal personality separate from that of its partners. Civil companies may also own property, subject to the conditions laid down by the legislative body.

MADAGASCAR

1. General Assembly resolution 41/132 emphasized not only the necessity of promoting a higher standard of living, full employment and the conditions for the economic and social development of Member States, but also the equally pressing need to respect the right of everyone to own property alone as well as in association with others and its contribution to the economic and social development of those States.

2. In the view of the General Assembly, these two needs, rather than conflicting, should be complementary. In other words, the right to own property embodied in article 17 of the Universal Declaration of Human Rights ("Everyone has the right to own property alone as well as in association with others") must be reconciled with the right of peoples (States) to freely determine their political status and freely pursue their economic, social and cultural development, established in article 1 of the International Covenant on Civil and Political Rights, and with the duties of the individual to the community in which alone the free and full development of his personality is possible (see article 29 of the Universal Declaration of Human Rights).

3. In this connection, the Democratic Republic of Madagascar, having opted for the socialist route, guarantees in article 30 of its Constitution, the right of individuals to own property:

"The law shall guarantee the right of individuals to own property, including the family residence, customary property, items which contribute to comfort and physical well-being and commercial or family enterprises ...".

4. Within this socialist context, the right to own property, as one of the fundamental rights and freedoms, is defined as follows in article 14 of the Constitution:

"Fundamental rights and freedoms are the expression of the socialist and democratic relationships within which citizens shall free themselves from all exploitation and arbitrary treatment and shall, by individual and collective labour, create the conditions necessary for the development of the individual in freedom and dignity ...".

5. The right to own property thus has an economic and social function, which in no way conflicts with article 29 of the Universal Declaration of Human Rights.

6. In the same vein, article 31 of the Constitution stipulates: "The right to personal property may not be exercised in a manner contrary to the interest of the community, but must contribute to the common welfare", thereby also establishing the limits of that right".

7. All these principles are equally valid for the right to own property in association with others. Indeed, more than any other legal form of ownership - including private ownership - community or State ownership is justified for its own sake and by virtue of its effective contribution to economic and social development.

8. While the role of individual initiative as an invaluable resource for the promotion of economic and social development should not be forgotten, such initiative can flourish only if the citizen is protected against all exploitation and arbitrary treatment by his fellows, the community or the State. This guarantee is established in the following principle: "From each according to his ability, to each according to his need".

9. In short, the individual as a human person must, to attain fulfilment, be protected by a system of law guaranteeing his dignity and worth and the genuine observance of fundamental rights and freedoms, including the right to own property. However, as a social being, he can attain full development only in the community in which he lives and towards which he also has duties and obligations to meet the just requirements of morality, public order and the general welfare in a democratic society.

10. With regard to paragraph 5 of resolution 41/132:

(a) The relationship between the full enjoyment by individuals of human rights and fundamental freedoms, in particular the right of everyone to own property alone as well as in association with others;

Article 543 of the Civil Code states:

"It is possible to have a right of ownership over property or a simple right of use, or merely a claim to certain services".

Articles 7, 30, 31, 32 and 37 of the Malagasy Constitution of 1975 provide for coexistence of ownership of producer and consumer goods.

(b) The role of the right of everyone to own property alone as well as in association with others.

This right, set forth in article 17 of the Universal Declaration of Human Rights and reaffirmed in article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, is one of the fundamental rights and duties of the Malagasy citizen. However, the Constitution of the Democratic Republic of Madagascar enacted in 1975 imposes a number of restrictions on the right to personal property. According to the socialist ethic concerning the development of every individual and of the whole individual, as proclaimed in the Constitution, the right to personal property is limited by the interests of the community. The Constitution sets forth this right in articles 30, 31 and 32:

"Article 30

The law shall guarantee the right of individuals to own property, including the family residence, customary property, items which contribute to comfort and physical well-being and commercial or family enterprises, subject to the limits imposed by community property, the requirements of nationalisation and expropriation for public use.

Article 31

The right to personal property may not be exercised in a manner contrary to the interest of the community, but must contribute to the common good.

Article 32

In order to achieve rational land use, to increase national production and to establish equitable social and economic relationships among members of the community, the law may impose obligations and restrictions on the private ownership of land."

Thus, the right to private property cannot under any circumstances be used by a minority as a means of exploiting the majority - as in the case, for example, of private control of the means of production - but must contribute to national socio-economic development.

Malagasy law imposes no restrictions on the exercise of the right to own property by women, since women are regarded as full citizens enjoying all rights and subject to the fundamental duties of the citizen. This is true regardless of marital status, since women are entitled to possess, manage and administer, sell, purchase or give away personal property without hindrance from anyone.

11. While the Constitution of 1987, based on socialist principles, establishes a right to personal property which is limited as to its extent and exercise, this right is in all cases subordinated to the economic and social needs of the community. Nor is it an absolute right, although it may have been so in the past.

Ordinance No. 62-110 of 1 October 1962 establishing penalties for abuse of the right to own property and providing for transfer of unexploited properties to the State, as amended by Ordinance No. 74-021.

"Article 1

Any landowner shall be obligated to exploit, maintain and use the lands in his possession."

Act No. 66-025 of 19 December 1966 providing for the cultivation of agricultural land.

"Article 1

Every landowner shall be obligated to cultivate agricultural land in his possession, failing which, any person who cultivates the land in question in accordance with the conditions set out below shall be entitled to the protection of the law."

12. Under Malagasy law, whereby failure to cultivate agricultural land entitles the State to revoke the right of ownership and to transfer ownership, it is logical that a person exploiting abandoned land should enjoy the full fruits and benefits of his labour.

13. While every landowner is obligated to exploit, maintain and use the lands in his possession (article 1), Ordinance No. 74-021 stipulates:

"Article 2

Failure to comply with the obligations referred to in article 1 shall constitute abuse of the right of ownership and the present Ordinance shall be applied to both rural and urban land appropriated under any statute, notwithstanding any legal provisions to the contrary.

For the purposes of this Ordinance, urban land shall be considered to be:

Land situated within the perimeter of urban areas;

Land situated in any other built-up area with a population of more than 3,000;

Land situated within the urban perimeters of subprefectoral administrative centres.

Rural land

Article 3

Where it is established that a rural property of more than five hectares in area has not been exploited either by the owner, or by his representatives,

in person or at their expense, for a period of five years up to the day of the finding, the full title to such property shall be transferred to the State regardless of its nature.

Article 4

For the purposes of this Ordinance, lands considered as exploited shall include:

Lands placed under cultivation or reafforested according to normal conditions of maintenance or continuous exploitation or developed as tourist sites;

Land at least two thirds of the area of which has been prepared to receive new crops;

Land left fallow in accordance with local practices and in keeping with the normal period of rotation for the type of crop in question.

Urban land

Article 5

Where it is established that an urban property exceeding 1,000 square metres in area has not been exploited by either the owner or his representatives, in person or at their expense, for a period of five years up to the day of the finding, full title to such property shall be transferred to the State.

Article 6

Properties considered to be exploited shall include:

Properties comprising one or more structures, or developed as green areas or provided with services with a view to erecting a structure;

Land which has not been built on but has been drained or replanted at the expense of the owner or which has been equipped with permanent amenities;

Properties developed at the expense of the owner for sale in parcels with official authorisation;

Areas adjoining houses regardless of their area, if they have been developed as lawns, vegetable gardens, orchards, or ornamental gardens, or if they have been reforested.

Article 17

Where a property referred to in this Ordinance has been transferred in whole or in part by an instrument the date of which clearly precedes the

publication of this text, the new owner shall have a period of five years from the date of purchase in which to exploit the portion thus acquired.

During this period, upon registration of the title, the property shall remain immobilized. The new owner may not transfer it again until exploitation has been duly verified.

Furthermore, transfers against payment or free of charge of properties referred to in this Ordinance and the subject of instruments drawn up following the publication of this Ordinance shall become final only upon the completion of the full procedure laid down herein:

Protection granted to the de facto occupant, see article 3 of Act No. 66-025 of 19 December 1966;

Right to remain in situ;

Rent regulations (real and commercial properties);

Ordinance No. 62-100 of 1 October 1962 (residential leases);

Ordinance No. 60-050 of 20 June 1960, amended by Ordinance No. 62-112 of 1 October 1962 and supplemented by Ordinance No. 60-292 of 26 August 1960 (commercial, small scale industrial or professional leases)."

MEXICO

1. Article 27 of the Political Constitution of the United Mexican States lays down that "Ownership of the lands and waters within the boundaries of the national territory is vested originally in the Nation, which has had, and has, the right to transfer title thereof to private persons, thereby constituting private property". The Mexican constitutional system establishes the principle of the subordination of private property to the criterion of social usefulness and grants the nation the capacity to impose on property such arrangements as are dictated by the public interest.

2. This concept, which originated in the social movement that began in 1910, provides the basis for the nation's economic development, in which the public sector, the social sector and the private sector participate with social responsibility, without prejudice to other forms of economic activity which contribute to the nation's development. Mexican legislation encourages and protects the economic activity of private individuals, in accordance with the guarantees established by the Political Constitution.

3. Mexico believes in the political and moral force of the Declaration on Social Progress and Development and the Declaration on the Right to Development, which, by assigning a role to property, both individual and collective, in the exercise of human rights, also express essential aspects of the economic content of the right to self-determination, which includes the exercise of the inalienable rights of

peoples to full sovereignty over their natural wealth and resources and to aspire freely to their economic and social development.

MOROCCO

1. Article 15 of the Moroccan Constitution lays down that: "The right to own property shall be guaranteed. The law may limit the scope and the exercise of this right if the requirements of the planned economic and social development of the Nation so dictate. There shall be no expropriation except in the cases and according to the procedures prescribed by law."

2. The Moroccan legislature laid down the modalities for expropriation in the public interest in the Dahir of 3 April 1951, amended and supplemented by several subsequent legal texts. Under article 1 of that text, "expropriation in the public interest shall be operated by judicial authority". Article 2 stipulates that "the courts may pronounce an expropriation only where the public interest thereof has been declared and the procedure laid down in this Dahir has been followed".

3. The law applicable in matters of property and possession is Islamic law:

"Possession is holding as peaceable and undisputed owner for a minimum period of 10 months. The claim of the rightful owner to ownership shall be admitted so long as the possession uniting these conditions has not continued for a duration of at least 10 years. After this period, the action of the rightful owner shall be without effect. However, long possession does not confer ownership on the possessor. If the possessor were dispossessed, he could not assert his right to ownership."

4. In the matter of succession, ownership originating in the right of succession is not deemed to be proven until the decease of the *de cuius* has been established and the act of inheritance submitted in the authentic form.

5. The heirs are:

(a) "Fard", namely, those who cannot be totally disinherited, who are entitled to a fixed share in the succession: spouse, daughter, full sister, half sister on the father's side, father, and mother (articles 233 and 235 of the Code of Personal Status and of Successions);

(b) "Aceb", who are entitled only to what remains after the Fard heirs have taken their share: the son, father, paternal grandfather, full brother, and half-brother on the father's side (articles 232, 234 and 235 of the Code of Personal Status and of Successions).

6. To guarantee the rights of minors, under law guardianship rests with the father or the testamentary guardian appointed by the father, and, where there is no father, legal guardian or testamentary guardian, guardianship is exercised by the judge (Code of Personal Status and of Successions - Book IV).

7. Regarding the right of married women to ownership, they have complete freedom to administer and dispose of their goods without any control by the husband, who has no power over his wife's goods (chapter 4, article 35, paragraph 4 of the Code of Personal Status and of Successions).

8. Collective property: collective lands are cultivated lands and pasture lands whose tribes, fractions, douars (villages) or other groups have communal tenure thereof (article 1, Dahir of 27 January 1919). These lands are inalienable, not detachable and inalienable. They are administered by the imaâs who have legal personality and who, in that capacity, are empowered to refuse the registration requested by third parties; and they are placed under the supervision of the State (Dahirs of 27 April 1919, 28 July 1956 and 6 February 1963).

NEPAL

His Majesty's Government of Nepal has, in full conformity with the Universal Declaration of Human Rights, fully protected the right of everyone to own property and has placed everybody in a position not to be arbitrarily deprived of his property in accordance with the Constitution of Nepal. In Nepal, right to property is a fundamental right guaranteed by the Constitution. According to article 11 (2) (e) of the Constitution of Nepal, all citizens have the "freedom to acquire and enjoy property or to dispose of it by sale or otherwise". Article 15 provides that "no person shall be deprived of his property save in accordance with the law". In Nepal, the right to property can be enjoyed alone as well as in association with others. There is no constitutional or other legal restriction on the joint ownership of property. According to article 17 of the Constitution, the right to property, as other fundamental rights, may be restricted only in exceptional circumstances, i.e. restrictions on the exercise of fundamental rights can be made only by making laws for the sake of public good.

QATAR

1. The State of Qatar believes that human freedom and security cannot be guaranteed without property rights, even if such rights are restricted to the basic elements of personal property. Accordingly, the right to own property falls within the sphere of civil and political rights.

2. The State of Qatar also believes that the right to own property is not confined to individuals in view of the need to protect the property of the people and the nation, as is specifically stated in article 47 of the International Covenant on Civil and Political Rights, which stipulates that nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their national wealth and resources.

3. The State of Qatar regards individual and collective property as inviolable. This principle constitutes one of the fundamental attributes of a society characterized by its belief in individual freedom, in the equality of rights of all

citizens and in their right to contribute, through free and democratic institutions, to the preservation of the form of their society, by its rejection of racial discrimination, segregation and colonialism, by its commitment to overcome poverty, ignorance and disease and by its belief in international co-operation to eliminate the causes of war, promote tolerance and combat all forms of injustice and exploitation.

4. This is emphasized in article 6 of the Amended Provisional Constitution of the State of Qatar, which stipulates that:

(a) Private ownership, capital and labour are basic constituents of the social structure of the State. They are all individual rights with a social function prescribed by law;

(b) The State shall guarantee freedom of economic activity within the limits of the public interest. The State shall also have the right to supervise the national economy in order to guide and protect it for the good of the country. The regulations governing the various forms of this supervision shall be prescribed by law in accordance with the requirements of the public interest;

(c) The State shall direct economic development through scientific planning and technical co-operation with specialized international organizations in a manner conducive to the prosperity of the country in order to ensure a decent life for its citizens.

5. Article 16 of the above-mentioned Constitution stipulates that individual and collective ownership of property shall be inviolable and that such property shall not be expropriated except in the public interest and in accordance with the law.

6. The State of Qatar respects the Universal Declaration of Human Rights and all the relevant international instruments that confirm the right of every individual to own property under a social system and an international order within which he can fully exercise his economic, social, cultural and civil rights.

SYRIAN ARAB REPUBLIC

1. The Constitution and all the laws and legislation in force in the Syrian Arab Republic are fully consistent with the principles contained in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. They confirm that every person is fully entitled to own property alone as well as in association with others, in such a way as to help to ensure the achievement of socio-economic development objectives, as stipulated in article 17 of the Universal Declaration of Human Rights and again in article 11 of the Declaration on the Rights of Disabled Persons.

2. This is illustrated by the following articles of the Constitution of the Syrian Arab Republic:

Article 13 (1): The State's economy is a planned socialist economy designed to eliminate all forms of exploitation.

Article 14: The law regulates the right to own property, which is of three types:

(a) Public property (including natural resources, public utilities and installations and institutions that have been nationalised or established by the State, which develops them and supervises their management in the interests of the people as a whole, which has a duty to protect them);

(b) Collective property (including property owned by popular and professional organisations, production units, co-operative associations and other social institutions, which is safeguarded and protected by law);

(c) Private property (including property owned by individuals, the legally defined social function of which promotes the national economy within the framework of the development plan and which must be used in a manner compatible with the interests of the people).

Article 15 (1): Private property shall not be expropriated except in the public interest and subject to equitable compensation, in accordance with the law.

Article 15 (2): General expropriation of property is prohibited.

Article 15 (3): Special expropriation can be effected only on the basis of a court order.

Article 15 (4): Special expropriation is permitted by law, subject to equitable compensation.

Article 16: The law specifies the maximum agricultural land holding in order to protect farmers and agricultural labourers from exploitation and ensure increased production.

Article 17: The right to inherit is guaranteed by law.

Article 18: Saving is a national duty and is protected, encouraged and regulated by the State.

Article 19: Taxes shall be imposed on an equitable and incremental basis in keeping with the principles of equality and social justice.

Article 20: The aim of the operation of private and joint economic institutions shall be to meet social needs, increase national income and achieve prosperity for the people.

Article 24 (2): The State shall protect the rights of authors and inventors, which serve the interests of the people.

SUDAN

1. Throughout its legislative history, and particularly after achieving independence, the Sudan has consistently promoted the principles of tolerance and justice in its territory. These endeavours are reflected in a number of legislative acts governing all spheres, including the rights and obligations of individuals, as can be seen from the following.

2. With regard to the right to own property, article 25 of the Transitional Constitution of 1985 stipulates that:

"The right of individuals and groups to own property is guaranteed and regulated by law. Property cannot be confiscated or seized except in the public interest and in return for compensation".

3. The text of the above article shows that the right to own property is guaranteed to all citizens, without any restriction other than attainment of an appropriate age, good intentions and any other factors required by the regulations and procedures governing that right.

4. Article 19 of the Promotion of Investment Act of 1981 stipulates that:

"Notwithstanding the provisions of any other law, capital invested in the Sudan shall enjoy the following guarantees:

"(a) It shall not be subject to nationalization, unless such is required in the public interest in accordance with a law, in which case the following principles shall be observed:

"(i) The investor shall be granted fair compensation after his property has been assessed at its current value at the time of nationalization;

"(ii) Its value shall be assessed within a period of six months from the proclamation of the decision to nationalize it. The compensation shall be paid outside the Sudan in instalments to be agreed upon and payment shall be made in the same currency or currencies as those in which the capital was brought into the Sudan, unless otherwise agreed;

"(b) It shall not be seized, sequestered or confiscated except by order of a competent court and in accordance with the laws in force."

5. Accordingly, the legislature has laid down principles for dealings with investors and has provided further safeguards to protect their rights in the event of nationalization.

6. With regard to ownership of real estate and utilities, paragraphs 1, 2 and 4 of article 516 of the 1984 Code of Civil Procedure stipulate that:

"The right of ownership gives the owner full financial power to use, exploit and dispose of his property;

"Only the owner is entitled to benefit from his property to enjoy its yield, proceeds and fruits, and to dispose of it, in any legally permissible manner;

"The owner of land also owns what is above or below it to the extent needed to enjoy it, unless otherwise stipulated or agreed."

It is noteworthy that paragraph 4 of article 516 of the Code defines the limits of enjoyment of the land as being "to the extent needed".

7. Section II of the Code of Civil Procedure of 1984 places limitations on the right of ownership, which it defines as the right to dispose of the property in a manner that is not prejudicial to the interests of others. Article 518 stipulates:

"The owner may dispose of his property in any way he wishes, provided that such disposal is not blatantly prejudicial to, or incompatible with, the laws concerning public health or public or private interests and provided that it is not subject to the rights or approval of others."

8. Accordingly, with regard to paragraph 5 (a) of resolution 41/132, adopted by the General Assembly of the United Nations on 4 December 1986, which requested the Secretary-General to submit to the Assembly a report on the relationship between the full enjoyment by individuals of human rights and fundamental freedoms, in particular the right of everyone to own property alone as well as in association with others, as set forth in article 17 of the Universal Declaration of Human Rights, and the economic and social development of Member States, it is evident that, as in the case of other States, the laws in force in the Sudan contain specific regulations and procedures concerning the ownership of property alone as well as in association with others.

9. With regard to paragraph 5 (b) of the same resolution, article 532 of the Code of Civil Procedure of 1984 stipulates:

"Without prejudice to the rules of inheritance, if two or more persons have ownership rights, for any reason whatsoever, to any property and their respective shares therein are not specified, they shall be regarded as joint owners with equal shares in the said property, unless there is proof to the contrary."

10. In short, the laws of the Sudan, as set forth in the above articles, safeguard the rights of all individuals, including their right to own property, taking into consideration the public interest and stipulating all the requisite procedures governing property transactions in a manner consistent with the provisions of article 17 of the Universal Declaration of Human Rights, which states that:

1. Everyone has the right to own property alone as well as in association with others;

2. No one shall be arbitrarily deprived of his property.

11. With regard to the role of individuals in economic and social development, the incentives offered in the Promotion of Investment Act of 1981 are helping to further the development process, as stipulated in article 19 of that Act, which has been quoted above.

TURKEY

1. The Turkish Constitution of 1982 guarantees the right of everyone to own property as a fundamental individual right. According to constitutional provisions, the right to own property may be limited by law only in view of the public interest. Chapter III of the Constitution, dealing with economic and social rights, contains provisions which protect the right to own property against unilateral acts of the Administration. Under the system provided for in article 46 of the Constitution, derogations from the full exercise of the right to own property, such as the expropriation of privately owned real estate or the imposition of administrative servitudes thereon, shall be in accordance with the rules and procedures prescribed by law. The text of the constitutional provisions concerning the right to own property is enclosed herewith.

2. The right to own property, which is recognised by the Constitution as a fundamental economic and social right, is protected as such by the Constitution itself. The legal framework for the exercise of this right is defined in book IV of the Turkish Civil Code, entitled "Rights In Rem", which governs the exercise of the right to own property individually or in association with others. The Turkish Civil Code, which sets out detailed regulations concerning the right to own property, has been in force since 1926.

"THE TURKISH CONSTITUTION OF 1982

"ARTICLE 35: Everyone has the right to own and inherit property.

"These rights may be limited by law only in view of the public interest.

"The exercise of the right to own property shall not be in contravention of the public interest.

"ARTICLE 46: The State and public corporations shall be entitled, whenever the public interest so requires, to expropriate privately owned real estate holdings wholly or in part or to impose administrative servitudes thereon, in accordance with the rules and procedures prescribed by law, provided that compensation is paid in advance.

"The methods and procedures for calculating the compensation for expropriation shall be prescribed by law. In determining the amount of compensation, the law shall take into account tax declarations, estimates of value established by official assessment at the time of expropriation, unit

prices of real estate and calculations of construction costs, and other objective criteria. The law shall determine how the difference between this amount and the value declared to the fiscal authorities shall be taxed.

"Compensation shall be paid in cash and in advance. However, the method of payment of sums due for land expropriated pursuant to the implementation of agrarian reform, large-scale energy and irrigation projects, and projects for housing, afforestation, the protection of coastal areas and the building of tourist facilities shall be prescribed by law. In such cases, the law may allow payment in instalments, but the payment period shall not exceed five years; payment shall be made in equal instalments, and the portion not paid in advance shall bear interest at the highest rate provided for interest on the public debt.

"Compensation for land expropriated from small farmers who cultivate their own land shall, in all cases, be paid in advance."

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

1. In the United Kingdom the right of ownership is one of the oldest rights known to law. Every person has the right to use and dispose of his own property, subject only to the overriding interest of the community as a whole. Appropriation by the State is only possible with the authority of an Act of Parliament or an order under an Act; this may take the form of taxation (for meeting the expenses of government), nationalisation (of certain industries and services vital to the public welfare), or requisition or compulsory purchase of land, fixed equipment and buildings (for such public purposes as housing, health, education, road building, defence, postal and telephone services, public utility undertakings, civil aviation, open spaces, distribution of industry and the redevelopment of decayed and badly planned areas). Compensation is paid for losses suffered through nationalisation, requisition or compulsory purchase, or the deterioration of property as a result of activities of public authorities.

2. Deliberate or reckless damage of someone else's property and unlawful gain at the expense of another - whether by theft, robbery, deception, blackmail, handling stolen goods or forgery - are criminal offences. The criminal courts have power to make a compensation order against a convicted defendant. Alternatively, the victim may recover compensation for loss or damage in civil proceedings.

UNITED STATES OF AMERICA

1. The national and historical experience of the United States, along with that of many other countries, supports the conclusion that property ownership has been at the core of the development of civil and political rights. Yet, the right to own property either individually or in association with others, and the concomitant right not to be arbitrarily deprived of property, are often overlooked in discussions of basic human rights in most forums. These rights provide a basic mechanism for social organisation and for wide participation in society. At the

level of individual freedom, property provides the wherewithal to withstand undue exercise of governmental power and protects the power of the governed freely to replace their Government. Finally, property ownership promotes economic efficiency and the wide distribution of wealth.

2. The United States believes that there is enough evidence at hand from the record of development in various countries and regions of the world to demonstrate the close relationship between the right to own property and economic performance and social integration.

The rationale for private ownership and property rights

3. Private ownership and property rights arrangements are important elements in determining the extent of an individual's participation in society and the economic system. In recent years, a growing consensus has appeared in favour of private ownership as a vital factor in economic growth and development. Private ownership has come to be viewed by many as a necessary, although not sufficient, requirement for long-term, international competitive viability.

4. When a society protects private property rights, individuals have the confidence to use and derive the income that their assets or resources generate, to transfer the assets or resources voluntarily to others, and to be assured that contracts of exchange are enforceable. Conversely, the failure to protect these rights makes it difficult for private enterprises and individuals to participate in the economic system. The more precisely these rights are defined, allocated and enforced, the more closely linked will be an individual's decisions and the individual's own welfare. Consequently, when taking decisions affecting such rights, the decision-maker (the business owner or individual) has the greatest incentive to take all benefits and costs into account, since the results will ultimately rebound to the resource owner.

5. Modern property rights theory reflects themes contained in Adam Smith's Wealth of Nations. For Smith, "No two characters seem more inconsistent than those of trader and sovereign" (book V, chap. II, part I). Smith observed that this was the case because people are more prodigal with the wealth of others than with their own, noting, for example, that the productivity of public lands was only 25 per cent that of comparable private lands. Consequently, he recommended that the remaining public commons be privatized. If this occurred, the owners would have the incentive to monitor activities, eliminate waste and maximize the present value of their assets. As Smith put it, "The attention of the sovereign can be at best very general and vague consideration of what is likely to contribute to the better cultivation of the greater part of his dominions. The attention of the landlord is particular and minute in consideration of what is likely to be the most advantageous application of every inch of ground upon his estate." (book V, chap. II, part II, art. I.)

United States experience and law in protection of property rights

6. The evolution of the United States legal system, which was heavily influenced and greatly enriched by English common and constitutional law, was impelled chiefly

by a parallel extension of property rights and of political rights. This section briefly describes the most salient provisions of United States law in the protection of the right to own property.

7. Although the United States Constitution does not explicitly confer upon individuals the right to own property alone or in association with others, several provisions of the Constitution implicitly assume the existence of this right and limit the power of the Government to interfere with individuals in the exercise of this right.

8. Protecting citizens against the taking of private property by Government: the Fifth Amendment to the United States Constitution provides in the pertinent part that "Private property (shall not be) taken for public use, without just compensation". This provision implicitly recognizes the right of individuals to own property and protects private property owners against uncompensated deprivations of their property by the Federal Government. The United States Supreme Court has held that by virtue of the Fourteenth Amendment to the Constitution, the same prohibition against uncompensated takings also applies to state and local governments.

9. Courts will generally find that a taking of property has occurred where the Government assumes title to privately held property, physically occupies private property for any substantial time, or sufficiently impedes upon the exercise of individual property rights through certain types of regulation. In this regard, courts have declared certain zoning ordinances and other forms of governmental regulation to have sufficiently infringed upon such rights, thereby triggering the obligation to pay just compensation.

10. It is important to note that the Government may always take private property for public use, so long as it pays just compensation to the former owner. The general measure of just compensation is the fair market value of the property taken.

11. Protecting citizens against the use of private property by the Government: several other provisions of the Constitution also protect private property rights, though in less direct ways. The Third Amendment prohibits the Government from quartering troops in private homes without the consent of the owner. The Fourth Amendment protects the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures. Finally, the Fifth and Fourteenth Amendments prohibit the Government from depriving persons of life, liberty, and property without due process of law.

12. State and local private property protection: in the United States Federal system, the regulation of private property rights falls chiefly to state and local governments. As a result, the laws pertaining to the acquisition, use, and disposition of property vary from location to location. The common law developed and applied by state and local courts also figures prominently in this field. In general, however, all jurisdictions within the United States recognize and protect the right of individuals to own property alone and in association with others.

Pursuing the protection of private property through aid programmes

13. Although the United States enjoys a well-developed (yet still evolving) set of rules governing property rights, it recognises that such rights are not universally recognised. In some developing countries, for example, property rights exist for men but not for women. Women work in the markets and fields along with men but cannot invest their earnings as men do. If a woman does put her money in a bank, the men in her family are free to withdraw it without the woman's consent. Even in those countries in which property rights are protected Governments still nationalise and expropriate private property without adequate compensation. Without secure property rights, there is little incentive for people to work hard and to save and invest.

14. Many aspects of the United States' foreign aid programme involve the promotion of private property rights and the adoption of policies that encourage the expansion of popular participation in economic growth and development and broaden the base for sustained economic growth in developing countries. Critical to promoting broad-based economic growth at all levels in a society is the adoption of policies that let market forces - and individual initiative - work to generate growth.

15. The United States also seeks to spread business ownership more widely among the public, which increases the probability that business ownership will not be confined to a small number of wealthy families or to big industrial-financing conglomerates. A larger number of citizens in a developing country will thereby have an opportunity to participate in, and enjoy the benefits derived from, the growth of their country's economy.

16. The expanded capital ownership approach is one technique, among others, that illustrates the principles and concepts through which democracy can build a firm social foundation for economic co-operation and growth. The experiments in expanded capital ownership taking place in some parts of Latin America demonstrate the importance of private ownership and property rights. Through profit-sharing in the form of stock distribution, employees in industrial and agricultural enterprises gain a stake in the success of their economic system, which in turn leads to increased productivity. Through expanded capital ownership schemes, economic leaders break down rigid patterns of economic activity that restrict ownership to a small group or class of the people. This is done in a manner that respects and strengthens the principle of ownership, of private property, and individual responsibility. Instead of narrowing the economy's base of support to an unstable few or concentrating its power unproductively in the state bureaucracy, this approach broadens the economic foundations and diffuses economic power throughout the system.

VENEZUELA

1. Venezuelan legislation protects the right to own property in all its forms; domestic legislation deals with both the individual and collective aspect of ownership and its provisions are intended to protect ownership. Moreover, the prevailing economic and social system is designed accordingly, providing for free ownership of the means of production, duly monitored by State mechanisms, in order to guarantee the social function of ownership.
2. Thus, article 95 of the Constitution lays down that the economic system of the Republic shall be based on principles of social justice that ensure a dignified and useful existence to the inhabitants of the country. To that end, the State shall promote economic development and the diversification of production, in order to create new sources of wealth, increase the income level of the population and strengthen the economic sovereignty of the country. The Constitution also guarantees the right to own property and, by virtue of its social function, property shall be subject to the taxes, restrictions and obligations imposed by law for purposes of public benefit or the general interest (article 99).
3. One of the ways in which Venezuelan law protects the right to own property is reflected in the regulations concerning expropriation. This may only be carried out on grounds of public benefit or social interest, provided that fair compensation is paid. Another way of contributing to the social function of ownership is by eliminating the latifundias. Article 105 of the Constitution lays down that the system of latifundia is contrary to the social interest. It should therefore be eliminated and norms should be established for providing land to landless tenant farmers and rural workers. The purpose of the Agrarian Reform Law is to safeguard and regulate the right to private land ownership, in accordance with the criterion of social usefulness. The aim is to uphold the right of any individual or population group able to perform agricultural work and possessing inadequate land or none at all to own land which can be farmed economically (article 2 of the Agrarian Reform Law).
4. The same Law lays down a series of provisions governing the system of allocating collective or individual lands. The allocation may be free of charge whenever the economic status of the recipient justifies the aim of integrating him into the economically productive life of the country.
5. Lastly, there are other regulations in Venezuela for recognizing and safeguarding individuals' rights to inventions, trademarks, patents and literary, artistic and cultural creations. They are laid down in such specific laws as the Industrial Property Law and the Copyright Law. Together with the other regulations concerning the protection of the right to individual and collective property ownership referred to, such laws contribute to the economic and social development of the country and to the free participation of individuals in the Venezuelan economic and social system.
6. The Government of Venezuela considers that, notwithstanding the right of each State to develop the political, economic and social system most suitable to it and to choose for itself the body of laws governing property ownership and the

implementation of development policies, it is important to safeguard the enjoyment of human rights and the principles of equality and social justice.

IV. THE RELATIONSHIP BETWEEN THE RIGHT TO PROPERTY AND OTHER HUMAN RIGHTS AND ITS IMPACT ON THE ECONOMIC AND SOCIAL DEVELOPMENT OF STATES

28. The information provided by Governments and set out above in section III relates to the topics of the present chapter: the relationship between the right to property and other human rights and its impact on the economic and social development of a society. Responses from United Nations organs and bodies, the specialised agencies and non-governmental organisations also contain information on these issues.

A. Information from United Nations bodies

29. Short comments or statements of policy were provided by the United Nations Development Programme (UNDP) and the United Nations Population Fund (UNFPA). UNDP stated that it was in full agreement with the spirit of General Assembly resolution 41/132 and believed that full enjoyment of human rights, fundamental freedoms and the right to property ownership have important significance for economic and social development. UNDP was therefore prepared to provide technical co-operation to any of their recipient developing countries in preparing legislation or other measures to achieve this important objective.

30. UNFPA stated that, while not directly involved in activities related to the right to own property alone as well as in association with others, the Fund recognized the humanitarian aspects of questions that centre on concerns for the enjoyment of the fundamental freedoms, human welfare and the well-being of the people. Policies and programmes of UNFPA uphold humanitarian principles, respect the rights of the population concerned and in concert with other development activities have implications for the enjoyment of full and free participation of individuals in the economic and social system of States.

1. Centre for Social Development and Humanitarian Affairs: the right to property and disadvantaged groups and the advancement of women

31. The Centre for Social Development and Humanitarian Affairs of the United Nations Office at Vienna provided information on the relationship of the right to property to the work of that Centre in general and in relation to disadvantaged groups and the advancement of women. The preambular paragraphs of General Assembly resolution 41/132 refer to several basic documents related to the work of the Centre. International instruments monitored by the Centre and in functions regarding overview of social issues, operations and advocacy for women in specific social groups, such as the aging, disabled persons, migrant workers and youth, in particular the most disadvantaged among them, also relate to property rights in some ways.

32. The Declaration on Social Progress and Development emphasizes the need for full utilisation of human resources and entails the assurance to disadvantaged or marginal sectors of the population equal opportunities for social and economic advancement. The International Development Strategy for the Third United Nations Development Decade (resolution 35/56, annex) states that all countries should pursue the objectives of the reduction of poverty, promotion of employment opportunities and the provision of the right to work through enhanced economic growth and measures to ensure a fair distribution of the benefits of development and institutional reforms. From this perspective, property rights may be considered as one of the means for enhancing people's participation in order to achieve an effectively integrated society with members who can better contribute to and gain equitably from the development process. There could be a significant impact on the acceleration of social and economic development through more active participation of all population groups.

33. For countries with market economies, policies focus on private enterprise as the primary method of people to acquire and own private property. In centrally planned economies, the major way of improving the people's standard of living and increasing their personal property is their active participation in management and productive utilisation of the State and co-operative property. There is increasing recognition in those countries also of private property as part of social relations.

Disadvantaged population groups

34. Within the context of the objectives of the documents mentioned above, for less advantaged population groups, proclamation of the right to own property would be inadequate if isolated from considerations of the general social condition of the individuals. It should take fully into account all principles of the Charter of the United Nations, as well as other United Nations declarations and conventions. A concept to be included in proclaiming property rights is that they carry with them social responsibility both in cases of private acquisition or collective management. A balance must be struck between the right to hold property and the need for some guarantee that holding property will not increase social discrimination, create new obstacles to social integration or increase exploitation of the already disadvantaged. Proclaiming the right to own property alone, without eliminating mass poverty, unemployment, social discrimination and inequality, would not make this right a reality for all population groups.

35. A main question is to find and guarantee effective methods of enabling disadvantaged people to have access to different forms of legal property ownership, including private, communal and State forms. Relevant national policies must be taken into account in the development of these methods, including, as appropriate, distribution and redistribution policies as well as land and other social and economic reforms. Without concurrent social and institutional changes, it would be unrealistic to advance the social integration of disadvantaged people and involve them into the mainstream of development on the basis of social justice and equality with full respect to their rights, including the right to own property.

36. Respect for the right of everyone to own property also entails the elimination of all forms of discrimination against specific population groups. For example,

disabled persons should be able to avail themselves of qualified legal aid when such aid proves indispensable for the protection of their persons and property in accordance with the Declaration on the Rights of Disabled Persons.

Advancement of women

37. With specific regard to issues concerning the advancement of women, the full enjoyment of all human beings without distinction as to race, colour or sex of human rights and fundamental freedoms, including the right of everyone to own property, constitutes an essential prerequisite for the economic and social development of Member States.

38. This has also been recognized in the Convention on the Elimination of All Forms of Discrimination Against Women (1979) (resolution 34/180, annex). The preamble, *inter alia*, underlines that discrimination against women "is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries and hampers the growth of the prosperity of society and the family and makes more difficult the full development of potentialities of women in the service of their countries and humanity". The Convention calls for equal rights for women, regardless of their marital status, in the political, economic, social, cultural and civil fields. In article 15, paragraphs 1 and 2, and article 16, paragraph 1 (h), States parties to the Convention recognize the same rights for all women with respect to the acquisition of ownership and disposition of property.

39. The inclusion of those rights into the Convention resulted from the fact that restrictions concerning property rights have been among the most widespread discriminatory aspects of national laws and practices. Upon marrying, in various legal systems, women lost their right to own and deal with property. This right was assumed by the husband as the head of the household. The Commission on the Status of Women has continuously initiated recommendations to establish conditions in law and in practice to eliminate discrimination against women in all fields of life. Article 6 of the Declaration on the Elimination of Discrimination Against Women (1967) (resolution 2263 (XXII)) provides, *inter alia*, for the equality of women and men in the field of private law, for the exercise by women of their legal capacity on equal terms with men and for the equal rights and responsibilities of husband and wife during marriage.

40. The World Conference on the International Women's Year held in 1975 highlighted the difficulties faced by women in achieving equality, including obtaining property. At the end of the United Nations Decade for Women these difficulties had still not been abolished entirely. The Forward-looking Strategies for the Advancement of Women 7/ adopted at the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, held at Nairobi in 1985 state in paragraph 50 that "in some countries, discriminatory legislative provisions in the social, economic and political spheres still exist" and recommend studying civil codes for the purpose of "repealing those laws that still discriminate against women and for determining, on the basis of equality, the legal capacity and status of women, married women in particular, in terms of ... inheritance, ownership and control of property ..." and

(para. 68) "to review the legal capacity of married women in order to grant them equal rights and duties".

41. The realization of equal rights of women and men depends primarily on the observance of the international instruments and their enforcement by Governments. The Committee on the Elimination of Discrimination Against Women, established in 1982, reviews annually reports to be submitted in four-year intervals by States parties to the Convention on the Elimination of All Forms of Discrimination Against Women. The national reports show that most countries have enacted provisions to allow women to gain rights over property that has been acquired during marriage. However, there are still customary laws that restrict women's legal capacity and make mercantile acts of wives subject to the husband's agreement to become legally valid in order to prohibit women from inheriting or owning land.

2. United Nations Centre for Human Settlements (Habitat): the right to property and human settlements development

42. The Centre for Human Settlements reported that the topic of land and its functions for human settlements development is being dealt with in the medium-term plan and biennial work programmes of the Centre. The intergovernmental objective of this programme is to develop and use land for human settlements in a manner consistent with the interest of the society as a whole. The Centre stated that the allocation of adequate and affordable land, with secure legal provisions, had been identified as a main factor in human settlements development, particularly as regards the needs of the poor, and it drew attention to decision 6/15 adopted by the Commission on Human Settlements in May 1983 entitled "Land for housing the poor". 8/

43. The revised medium-term plan for the period 1990-1995 of the Commission on Human Settlements contains subprogramme 5 dealing, inter alia, with land management, land policy, land supply and land instruments.

Land management

44. Efficient management of land is considered to be the single greatest stumbling block to the implementation of human settlements plans and programmes aimed at achieving the development potential of settlements and at ensuring an adequate supply of serviced land to satisfy the needs of the weakest members of society, including special groups, such as women. Few developing countries have functioning land-management systems, including all the supporting administrative instruments necessary for matching supply and demand in the land market.

Land policy

45. The formulation and implementation of land policies that are consistent with policies for economic planning, human settlements development, shelter production and resource allocation are essential to the achievement of intersectoral coherence between programmes. Policy options must be selected in the light of the political, cultural, social, economic and legal context particular to each country. Policies

must also be designed to redress inequities that affect special groups, such as women, the poor and disadvantaged.

Land supply

46. As land supply is considered a serious bottleneck for settlements development, work on this element will cover, inter alia, the identification and application of procedures that will improve the operation of land markets so as to provide land access for the poor. It is especially important to remove constraints to women's access to land. Emphasis will be on promoting land-supply systems which are capable of meeting the large-scale needs of present and future human settlements. A crucial issue will be the division of responsibilities and roles between public and private-market sectors. Here, the options to be looked into will range from private land supply guided by public administrative and management measures, through regularisation of existing informal settlements and procurement of inefficiently used land, to land supply through governmental intervention.

Land instruments

47. Legislative and administrative instruments will be required for the management of the land-supply system. In addition, land-registration and land-transaction procedures will have to be introduced in most developing countries to speed up land distribution and secure tenure for shelter producers. Linked to this is the production of cadastres, which are essential for any introduction of property taxation as a local revenue-generation measure.

B. Information from specialized agencies

1. International Labour Organisation: the right to property and trade union rights

48. The International Labour Organisation (ILO) in its reply stated that, generally speaking, the full enjoyment by individuals of human rights and fundamental freedoms as a condition and incentive to a balanced process of economic and social development is a principle that underlies ILO action, in particular its standard-setting in areas falling within its competence. These include numerous rights and freedoms established in the Universal Declaration and the International Covenants on Human Rights, of which three are especially stressed as fundamental to ILO objectives: freedom of association, freedom from discrimination and freedom of labour. Firstly, for ILO the normal exercise of these freedoms implies the enjoyment of other rights, including the following civil liberties:

(a) The right to freedom and security of person and freedom from arbitrary arrest and detention;

(b) Freedom of opinion and expression and, in particular, freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers;

- (c) Freedom of assembly;
- (d) The right to a fair trial by an independent and impartial tribunal;
- (e) The right to protection of the property of trade union organisations.

49. ILO drew attention to Convention (No. 95) and Recommendation (No. 85) on the Protection of Wages, 1949, which lay down standards concerning an essential aspect of the right of workers to own property, in this case their remuneration for work done or service rendered; the protection includes the right to be paid their wages in legal tender and directly, freedom to dispose of their wages and protection against deductions, attachment or assignment and in case of bankruptcy or judicial liquidation of an undertaking. It was also stated that the right of ownership, collective or individual, over the lands occupied by the populations concerned, and the question of underground wealth, are dealt with in part II of ILO Convention (No. 107) and Recommendation (No. 104) on Indigenous and Tribal Populations, 1957; in the revision of these instruments now being undertaken, additional provisions to strengthen and effectively protect such rights are envisaged. Finally, the ILO reported that home ownership by workers and access to land by tenants and share-croppers are envisaged respectively by the Workers' Housing Recommendation, 1969 (No. 115), and the Tenant and Share-croppers Recommendation, 1968 (No. 132).

2. Food and Agriculture Organisation of the United Nations:
the right to property and agricultural development

50. The Food and Agriculture Organisation of the United Nations (FAO) stated that it shared the view that the right to own property alone as well as in association with others contributes to securing the goals of economic and social development enshrined in the Charter of the United Nations. It is evident, however, that on a world-wide basis a small share of the people own a large share of the property. A situation of special concern to FAO is the relatively small share of property owned by women that live in rural areas. While many with limited or even no tangible property make an important contribution to economic and social development and are full participants in the economic and social systems of States, in general their contribution and participation has tended to be less than for those who own adequate property.

51. As economic and social development proceeds the value of property changes. In general, the amount of property that must be controlled by a person to maintain and improve social welfare and to be able to fully and freely participate in society increases. In some cases the amount of property is fixed, or expands more slowly than population, and the increase in value adds to the difficulties in obtaining ownership of an amount necessary for economic and social progress. In general, those without access to property are more likely to be bypassed by progress. In support of the goal of growth with equity it is these that are the priority of FAO programmes of assistance.

52. At least so far as food and agriculture are concerned, less and less in the future will it be possible to think in terms of "property" as an absolute, or of

one right in isolation from other rights. Rapid population growth and intensification of production create unprecedented demand for scarce space and resources. Unrestricted use of property in a manner that benefits a particular group at a particular time is very likely to have negative effects on other groups' future well-being and the national or international common good. Gains with respect to one property right have to be balanced against economic costs and losses of other kinds of rights. For example, the share of the population that will own enough land to be full participants in society will be smaller in the future; those unable to obtain adequate land will have to own other forms of property or have full access to rights other than property. An important role of FAO and other United Nations agencies may increasingly be to provide specialised services to help member countries to assess these trade-offs, to anticipate and minimise conflicts, and to evolve workable means for arriving at a consensus about property rights that are consistent with the ever-changing socio-economic setting.

53. The relationship between the right to own land and economic and social development and the role of land ownership in ensuring the full and free participation of individuals in the economic and social systems of States are matters that have been addressed by FAO for more than 30 years. A definition of terms is first necessary in order to appreciate the value and importance of landownership as such. Tenure of land in any of its forms refers to the bundle of rights that are associated with each piece of land, governing the conditions of access to it, whether these are for land use and/or ownership. It is therefore necessary to make a distinction between de jure and de facto tenurial rights to land.

54. The specific effects of land tenure (as opposed to the effects of other factors in the agrarian structure) in determining economic and social progress should be given greater emphasis, particularly in dealing with the application of the resolution in rural/agricultural areas. This is necessary since in many cases, although all the land could be owned by the state or by the community (as in Africa), it may be operated individually, or by production co-operatives or by state farms. It should be noted also that mere ownership of land does not, in most cases, attribute any value to the owner unless the utilization of land is complemented by supporting services, such as credit, marketing, input supply, processing, storage etc. Without these, ownership of land may, in some cases, have even negative consequences. It should, therefore, be clarified that, in assessing the application of the resolution, landownership should not be separated from other factors which make such ownership of value. Likewise, land tenure rights may have no meaning without water rights in many countries - as in the Near East.

55. Over the years there have been significant transitions taking place in member countries and at international levels that relate to the right to own property other than land. These include not only natural resource attributes besides land par se, such as the right to water, forests and fish, but also the right to own intellectual property (knowledge and technology) or even the right to own financial property (foreign exchange, markets, credit, income transfers etc.) that become essential means to sustained improvement of the human condition.

56. Among the many important property rights issues related to food and agriculture, in addition to the rights to own land and water, are the following:

(a) The right to own parent genetic materials from which improved plant varieties and animal breeds are based, and to what extent the sources of these materials (often low-income countries) should be compensated. This important right is being given attention in high-level FAO forums;

(b) The exclusive right to make, use and sell one's invention (patent) has become a matter of greater importance with recent advances in genetic manipulation and in biotechnology generally, especially since these rights tend to be increasingly owned by a few, more advanced firms and countries. The implications of these developments, including those concerning the free exchange of agricultural research information and the lack of adequate access to the benefits by small farmers in poorer countries, need to be fully explored;

(c) The right to own and use tropical forests is an issue of major concern. Each year some 11.5 million hectares are being lost in developing countries, and forest degradation covers an even wider area. The consequences often are floods, local fuelwood shortages, soil and water degradation and reduced agricultural production, and may include world-wide effects on water availability, climate and wildlife. The international community has joined FAO in launching the Tropical Forestry Action Plan directed at stimulating a much higher level of commitment and action in tropical countries to slow down uncontrolled deforestation and to increase the contribution of forestry to economic development in a country's approach to conservation and development;

(d) Many of the world's people who depend on fishing for a living are poor. Definitions of international marine fishing rights and regulations have important bearing on abilities of disadvantaged rural communities to sustain and improve their well-being;

(e) In many arid areas, such as the African Sahel, creation of new wells, small reservoirs, and other water sources bring about competition for use that traditional codes cannot cope with. Nomadic herders tend to settle there with high concentrations of livestock. The same water sources tend also to attract crop producers;

(f) Commodity and input subsidies, export and import licences and marketing rights have become very valuable, sought-after forms of property in many developed and developing countries. Once granted, such rights are difficult to take away. Decisions about how far to go in creating this form of property and how to distribute it are increasingly critical;

(g) Not only technical knowledge but also timely information about emerging economic trends, patterns and relationships has become an increasingly important "property" of food producers, consumers, marketing agents, and policy makers in developing countries. It is essential in both market-oriented and centrally planned systems, especially now that most nations have or seek strong international economic linkages.

3. World Intellectual Property Organisation: intellectual property and economic, social and cultural development

57. The World Intellectual Property Organisation (WIPO) stated that in order to encourage creativity in the fields of science, technology, literature and arts, most Governments have legal systems whereby creators are accorded property rights relating to the results of their intellectual activity. Those kinds of rights are known as intellectual property. The activities of WIPO are directed towards the objective of promoting the protection of intellectual property throughout the world through co-operation among States.

58. In promoting the protection of intellectual property the activities of WIPO encourage the respect for the right to property of every person, whether alone or in association with others. The respect for intellectual property rights contributes to the fuller participation of persons in the economic, social and cultural development of their respective countries.

C. Relevant information from non-governmental organisations in consultative status

1. Christian Democratic International

59. Christian Democratic International stated that article 17 of the Universal Declaration of Human Rights is of particular importance for interpreting the notion of property and the implications thereof. The right to own property provides for the freedom to acquire, alter and use that property, on the basis of a contract between living persons or through a testament, and the right to derive profit from it. Article 17 cannot be misconstrued to mean that it only guarantees ownership without usufruct.

60. Deriving profit from property means the right to exercise a free economic activity, whether agricultural, commercial, non-industrial or industrial, alone or in association with others.

61. The logical implications of article 17 are of paramount importance for economic development, because neither the Universal Declaration of Human Rights nor the international human rights covenants contain provisions proclaiming the innate right of individuals to exercise the free economic activity that has enabled them to reach their current level of progress. This freedom is the essential basis for the right to development, because there can be no development unless people can engage in economic activity, unless their talents can flourish, and unless individuals can work diligently in a State which gives its entire support to the integral development of the nation.

2. Four Directions Council

62. The Four Directions Council stated that the concept of a "right to own property" is inherently ambiguous, and should be clarified to avoid implying anything that is unique to particular social or economic systems. One must first distinguish carefully between productive property such as land, machinery, financial capital and technology ("intellectual property"), and other forms of property that are intended purely for personal consumption. All contemporary economic systems recognise the right to acquire and enjoy personal property. The right to control productive property is a separate and more controversial question. This requires a second clarification. What do we mean by "ownership"? There is no such thing as absolute private ownership of productive property in any economic system we know. In those national systems in which productive property is not State-managed or controlled, the private use of productive property is none the less regulated to a greater or lesser degree by the State. Regulation affects not only the range of permissible uses of the property, but also requires the sharing of its value or product, through taxation. The real difference between State and private systems of property ownership is therefore a matter of the degree of centralisation of management, and the proportion of the product which is redistributed.

63. It would be of greatest use to begin with whatever form of property rights are recognised by the State, and then focus attention on the question of the State's power to redistribute these rights, and therefore redistribute relative economic power among different individuals or groups within national society. Some States assert the power to redistribute property for any reason of public policy, some place constitutional limitations on the purposes for which redistribution is permitted, and some condition any redistribution on the payment of compensation to the former owners.

64. While the International Covenant on Economic, Social and Cultural Rights does not forbid the redistribution of property as a means of achieving greater overall enjoyment of these rights, it does prohibit any action which selectively affects the enjoyment of rights by particular groups. Impoverishing blacks to benefit whites, Buddhists to enrich Hindus, or women to advance the power of men, would violate the anti-discrimination principle which is so central to both of the International Covenants on Human Rights, as well as the Universal Declaration of Human Rights and the Charter itself - and it would of course not meet the definition of "development" contained in the 1986 Declaration on the Right to Development. Redistributing property from wealthy individuals or organisations to poorer ones does not in itself violate this principle, however, and it is in fact what every economic system today - capitalist or socialist - does by one administrative means or another.

65. The fundamental question behind "the right to own prop . ." then, should not be whether the State shares, or even assumes entirely the role of managing productive property, but whether the opportunity to use, enjoy and benefit from property is enjoyed equally by all. Favouritism or discrimination based upon race, ethnicity or sex are clearly prohibited.

66. This brings us to a consideration of the special concerns of indigenous peoples. It will be useful at the outset to summarise some of the differences between indigenous peoples' characteristic property-management (or land-tenure) systems and those which characterize industrial societies, whether capitalist or socialist.

67. Most indigenous land-tenure systems are neither State nor individual in character. Rather, the basic economic and land-management unit is a co-residential extended kinship group, i.e. a community made up of a number of households related by blood and marriage. This community takes collective decisions on the use of land and wildlife, and on the distribution of the product. Even where communities have confederated into much larger tribal or national groupings they retain their essential economic autonomy. It is important to recognise two complementary social features of this system of economic organisation: (a) the basic unit of production and economic co-operation is the same as the land-holding unit; and (b) basic social and economic institutions, including kinship, religion, social services and social security, are essentially combined. As a consequence, any interference with indigenous land-tenure, such as individualising it, nationalising the land, or confiscating the land outright, is immediately destructive of the whole system of social and cultural, as well as economic relations in the society.

68. As the Special Rapporteur, Mr. José R. Martínez Cobo, explained in his study of discrimination against indigenous populations (E/CN.4/Sub.2/1986/7/Add.3, para. 227), "land tenure and the attribution of the use of land to groups, families or individuals affects the most fundamental elements of the existence of indigenous communities. It is therefore particularly important for States to allow indigenous peoples to plan and control the development of any changes they may wish to make in their own land-tenure systems. However beneficial any other changes may seem, in the eyes of outsiders, experience shows that they usually result in loss of the community's land, culture, and self-sufficiency".

69. It is also important to recognize that "modernizing" indigenous peoples' land-tenure system has frequently been used as a mere pretext to confiscate their resources for the benefit of others. Involuntary reorganisation of indigenous land-tenure systems, although sometimes purporting to strengthen rather than destroy indigenous land rights, had destructive effects in a number of other countries as well according to Mr. Martínez Cobo's report (para. 228).

70. States should recognize the urgency of respecting and protecting indigenous peoples' systems of land tenure, since they are forms of social and cultural as well as economic organisation. Depriving indigenous communities of the right to manage and control the use of their traditional lands collectively not only impoverishes them materially, by dismantling their system of economic production, but also deprives them of their ability to maintain and develop their own social and cultural institutions. As such, it constitutes a very sweeping and categorical denial of the entire range of rights guaranteed by the International Covenant on Economic, Social and Cultural Rights.

3. General Arab Women's Federation

71. The General Arab Women's Federation stated that the human rights principles mentioned in the request for information are all included in the constitution and laws of the Arab countries, which are inspired from the Islamic laws (Shariat); the only exception is the Palestinian people, in occupied Palestine, who have been deprived of their right to property since 1948. The Federation expressed the hope that the Centre for Human Rights will contribute to the United Nations efforts to ensure their rights including the basic right to property.

4. International Association of Democratic Lawyers

72. The International Association of Democratic Lawyers (IADL) stated that the question seems to be whether the right to own property, either privately or in association with others, promotes the economic and social development of States and helps involve individuals in the economic and social life of States. The IADL is somewhat uncertain about the role and competence of lawyers with regard to this problem. The relation between the private and/or associative right to own property and the economic and social development of States is hardly regulated by international law or the domestic law of States. At most, international legislation on nationalisation or expropriation stipulates that such measures must be carried out in the interest of national development and the well-being of the population of the State concerned. Alternatively, it must be based on reasons of public utility or of national interest or security, which are recognised as taking precedence over simple individual or private interests, whether national or foreign. Domestic legislation also contains provisions that are based on the same assumption. Hence, the role of the lawyer in this area, bearing in mind the questions raised by General Assembly resolution 41/132, is to ponder the meaning of such notions as public utility, national interest etc. Generally, that will lead to the conclusion that, regardless of the relevant legal precedents, in the final analysis, these criteria merge with the will of the public authorities.

73. Looking beyond this inevitably simplistic statement, however, the question is still whether property owned privately or in association with others, or certain of its forms, promotes the economic and social development of a State or helps involve individuals in the economic and social life of that State. In other words, at issue is not legal implementation or interpretation, but political, economic and social choice, which is more a concern for the economic, political and social sciences than for law. Determining to what extent property owned privately or in association with others furthers economic and social development is the task of an economist or a political scientist and not of a lawyer. None the less, the question is complex and interesting, particularly at a time when, in a number of countries, a tendency has been observed towards denationalisation in the name of a belief in the greater competitiveness of the private sector.

74. For its part, the IADL is of the opinion that, regardless of the solutions proposed, economic progress cannot be made at the expense of social progress, and that the former must always remain in the service of the latter.

5. International Organisation of Employers

75. The International Organisation of Employers called attention to the Basic Principles of the International Organisation of Employers adopted in June 1964 which contained numerous elements relating to the issues raised in the General Assembly's resolution. Those Basic Principles state, inter alia, that private enterprise is in many countries, and can become in others, one of the most decisive factors of economic progress and of improvement of living standards founded in the respect of the human being. It was further stated that private enterprise is able to play an essential role in mobilising efforts against underdevelopment and poverty. Further, those Basic Principles stated that any form of economic organisation must have the ultimate aim of improving human living standards without distinction as to race, creed or sex within a socio-political order which guarantees human freedom.

76. In addition, it was stated that an economic and social system based on free enterprise is that which best corresponds to fundamental human aspirations. The Basic Principles laid down responsibilities of private enterprise towards workers, consumers and with regard to education and training. A copy of these Basic Principles is available for consultation in the Secretariat.

6. Socialist International Women

77. The Socialist International Women stated that as social democratic women, they support the right of individuals to own property as well as in association with others, because democracy in the economy is as important for society and the social development of all its members as is democracy in other areas. They further believed that the theoretical legal right for individuals to own property is meaningless unless there also exist facilities to encourage such ownership by ordinary individuals, and in particular to encourage the establishment of small and medium-sized enterprises. They also believed in the co-operative ideal, which promotes the democratic process, but also allows the creation of property and wealth in spirit of co-operation and mutual assistance. Finally, the SIW most strongly emphasized the importance of the right of women, irrespective of their marital status, to own property - a right which is still denied to women in a number of countries, including States Members of the United Nations.

Notes

- 1/ United Nations publication, Sales No. 63.XIV.2.
- 2/ See Official Records of the General Assembly, Tenth Session, Annexes, agenda item 28 (part II), document A/2929, chap. VI, paras. 195-212, and Official Records of the Economic and Social Council, Eighteenth Session, Supplement No. 7 (E/2573), paras. 40-71.
- 3/ United Nations, Treaty Series, vol. 189, No. 2545, p. 137.
- 4/ Ibid., vol. 360, No. 5158, p. 117.
- 5/ See, for example, General Assembly resolutions 1426 (XIV) of 5 December 1959 and 1828 (XVII) of 18 December 1962, and Economic and Social Council resolution 887 (XXXIV) of 24 July 1962.
- 6/ See General Assembly resolution 1803 (XVII) of 14 December 1962.
- 7/ Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, Nairobi, 15-26 July 1985 (United Nations publication, Sales No. E.85.IV.10), chap. I, sect. A.
- 8/ See Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 8 (A/38/8), annex I, sect. A.
