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THE NEW INTERNATIONAL ECONOMIC ORDER AND
THE PROMOTION OF HUMAN RIGHTS

Realization of Economic, Social and Cultural Rights

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INTRODUCTION

1. In its resolution 1988/33 of 1 September 1988, the Sub-Commission on Prevention of Discrimination and Protection of Minorities decided to entrust the author of this preliminary report with the task of preparing a study of problems, policies and progressive measures relating to the more effective realization of economic, social and cultural rights. In the same resolution, it recommended that the Special Rapporteur take into account the guidelines and issues contained in its resolution 1987/29 A.

2. At its forty-fifth session, the Commission on Human Rights adopted two resolutions relating to the realization of economic, social and cultural rights (resolutions 1989/12 and 1989/13), in both of which it welcomed the appointment of a Special Rapporteur on questions relating to the realization of economic, social and cultural rights. In its resolution 1989/13, the Commission also requested that "in the above-mentioned study priority be given to identifying practical strategies to promote for everyone the economic, social and cultural rights contained in the [International] Covenant [on Economic, Social and Cultural Rights], paying particular attention to the most vulnerable and disadvantaged".

3. The purpose of this preliminary report is to outline the main questions to be analysed in the study and thus to provide a basis for discussion by the Sub-Commission at its forty-first session. It is expected that this discussion will assist the Special Rapporteur in finalizing the framework of the study and identifying the questions to be analysed. Consequently, this preliminary report is to be understood as a set of hypotheses requiring further thought and refinement.

4. Before embarking upon the essential task of this preliminary report, a few references should be made to the historical background of the present study.

5. After the publication, in 1975, of the study entitled The Realization of Economic, Social and Cultural Rights: Problems, Policies, Progress, 1/ the Commission on Human Rights adopted a series of resolutions relating to the realization of economic, social and cultural rights. 2/ In those resolutions it referred to a number of problems which will be dealt with in appropriate parts of this study.

6. Since 1985, the Commission has entertained the idea of entrusting the Sub-Commission with the task of preparing a new study relating to the overall questions of the realization of economic, social and cultural rights. In its resolutions 1985/42, 1986/15 and 1987/19, the Commission requested the Sub-Commission to examine and update the conclusions and recommendations of the aforementioned 1975 report. In its resolution 1987/20 of 10 March 1987, the Commission made an additional request: that the Sub-Commission "take stock of its various studies on economic, social and cultural rights and, taking into account the results of the first meeting of the Committee on Economic, Social and Cultural Rights, to make recommendations to the Commission at its forty-fourth session on how to promote more effectively the implementation of the provisions of the International Covenant on Economic, Social and Cultural Rights through United Nations development and other activities".

7. The Sub-Commission responded to those requests by its resolution 1987/29 of 3 September 1987, in which it recommended that the Special Rapporteur, in carrying out his mandate, take into account:

(a) The report of the Commission on Human Rights entitled The Realization of Economic, Social and Cultural Rights: Problems, Policies, Progress;

(b) The reports of the Special Rapporteurs of the Sub-Commission on the New International Economic Order and the promotion of human rights and on the right to adequate food as a human right;

(c) Other relevant studies and reports, including the United Nations reports on the world social situation, the reports of the Secretary-General on the international, regional and national dimensions of the right to development, the report of the World Commission on Environment and Development, entitled Our Common Future, 3/ and the UNICEF study entitled Adjustment with a Human Face: Protecting the Vulnerable and Promoting Growth, 4/ the relevant reports of IMF and the World Bank, and the relevant United Nations studies relating to the relationship between disarmament and development;

(d) The materials relating to the implementation of the International Covenants on human rights;

(e) Issues relating to the integration of human rights concerns in the policies of United Nations development and financial agencies and institutions and of the specialized agencies;

(f) The impact on human rights of the policies and practices of international financial institutions, notably IMF and the World Bank.

8. The Special Rapporteur was also requested, by the same resolution, to pay special attention to the human rights aspects of such problems as the interrelationship between structural adjustment and food security, employment, health care, education and cultural development.

9. Finally, the Special Rapporteur was requested to elaborate on the concept of the indivisibility and interdependence of all human rights in the light of the problems and needs of people living in extreme poverty, both in industrialized and in developing countries.

10. By its resolution 1988/22 of 7 March 1988, the Commission invited the Sub-Commission to appoint from among its members a special rapporteur to study problems, policies and progressive measures relating to a more effective realization of economic, social and cultural rights, taking into account all documents and issues listed in Sub-Commission resolution 1987/29. In addition, by its resolution 1988/23, the Commission requested the Sub-Commission to give priority to identifying practical strategies to promote for everyone the economic, social and cultural rights contained in the Covenant, paying particular attention to the most vulnerable and disadvantaged.

11. The resolutions mentioned in the preceding paragraphs contain a number of ideas as to the scope and content of the present study. The purpose of this preliminary report is to attempt to outline the framework of the study, to identify possible priorities and to indicate the methods to be used. This approach also requires a brief consideration of certain conceptual questions which are relevant to the realization of economic, social and cultural rights.

I. SOME FUNDAMENTAL CONCEPTUAL QUESTIONS: IS THERE A
POSSIBILLITY FOR A UNIFIED UNITED NATIONS APPROACH
TO ECONOMIC, SOCIAL AND CULTURAL RIGHTS?

12. Economic, social and cultural rights constitute a part of the body of what is considered as "universally recognized human rights". However, in the world of economic, social, cultural, political and other diversities this universal recognition can be only a very general one. The interpretations of the actual basis, content and methods of implementation vary - simply because the realities within which such interpretations are made vary considerably. In addition, much of the discourse and action relating to human rights, including the discourse and action within the United Nations, has been characterized by a dichotomy - expressed most clearly in the fact that the rights originally embodied in the Universal Declaration of Human Rights were subsequently divided into two covenants. This division has influenced international activities in the field of human rights. However, interpretations of the causes of this division vary. In the opinion of one author:

"Western States fought for, and obtained, a division into two covenants, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. The two Covenants recognize the difference in the character of rights in various subtle ways. For example, the Covenant on Civil and Political Rights is drafted in terms of the individual's rights: e.g. 'Every human being has the inherent right to life'; 'No one shall be held in slavery'; 'All persons shall be equal before the courts and tribunals'. The Covenant on Economic, Social and Cultural Rights, on the other hand, speaks only to the States, not the individual: 'The States Parties to the present Covenant recognize the right to work'; 'The States Parties ... undertake to ensure the right of everyone to form trade unions'; 'The States Parties recognize the right of everyone to education'; There was a wide agreement and clear recognition that the means required to induce compliance with social-economic undertakings were different from those required for civil-political rights". 5/ (Emphasis added)

13. This passage illustrates one of the traditional approaches to the question of the difference between the two main groups of human rights. The question of "difference in the character of rights" is an interesting one and merits further discussion. It can be seen from the quotation that two of the three rights mentioned are formulated in terms of the individual's rights (the right to form trade unions, the right of everyone to education). Some other rights in this category are also phrased as the individual's rights: the right of everyone to the enjoyment of just and favourable conditions of work, the right of everyone to social security, the right of everyone to the

enjoyment of the highest attainable standard of physical and mental health and the right of everyone to take part in cultural life, to enjoy the benefits of scientific progress and its applications and to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

14. References to States' action regarding the clearly established rights of everyone (i.e. of individuals' rights) speak of States' duties vis-à-vis certain rights (the nature of these duties varies) rather than of the nature of the rights themselves. In most cases, economic, social and cultural rights require positive action by States rather than mere recognition of individuals' rights and corresponding non-interference by States. The question here is whether the difference in the nature of the corresponding duties of States influences the very nature of the right involved or whether it relates only to the mode of implementation of this right. In contrast with the opinion quoted above, another author states:

"Although the General Assembly decided upon adoption of two distinct Covenants ... it did so essentially because of the different nature of the implementing measures which would generally be involved, and not so as to imply any divisibility or hierarchy among the rights concerned." 6/
(Emphasis added)

15. This seemingly theoretical difference of opinion has a profound conceptual basis and an important bearing upon the implementation of economic, social and cultural rights. It has been expressed in various ways in United Nations forums and is reflected in a number of United Nations documents relating to human rights, and has therefore to be looked into in the course of the present study. The questions involved can be divided into three subsidiary questions:

(a) Is there a real difference in nature between civil and political rights on the one hand and economic, social and cultural rights on the other hand?

(b) Is there a hierarchy between these two groups of rights?

(c) Which specific features characterize the legally defined means of implementation of economic, social and cultural rights?

16. The three subsidiary questions relating to the nature of economic, social and cultural rights are not equally important for the implementation of those rights. However, they are all relevant in this context. It is therefore proposed that at subsequent stages of preparation of the present study an analysis be made of all three of them, in their theoretical as well as practical dimensions. In the present preliminary report, however, a few remarks will be made concerning the hierarchy of rights and the specific features of legally defined means of implementation of economic, social and cultural rights. This seems to be necessary given the immediate relevance of these questions (and the answers thereto) to the realization of economic, social and cultural rights.

17. The traditional theories of human rights as natural rights and the practical approaches based upon such theories have given preference to civil and political rights and considered them as being of primary importance. This approach has largely characterized what has been called "the Western doctrine of human rights" 7/ and described as proceeding from the assumption that "although it is not really possible to rank human rights in order of preference, civil and political rights appear to be of primary importance". 8/ The preference of socialist States and of most developing States has clearly been for economic, social and cultural rights. 9/

18. These divisions have found their expression in a number of United Nations documents. Despite the fact that most United Nations activities in the field of human rights have related to civil and political rights, some major human rights documents adopted within the United Nations have defined the realization of economic, social and cultural rights as a condition for the full realization of civil and political rights. This approach was most clearly expressed in the proclamation of Teheran:

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

19. The same logic characterized General Assembly resolution 32/130 of 16 December 1977 and subsequent resolutions on "Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms". There seems therefore to have been a strongly held view among the majority of the Members of the United Nations in favour of considering economic, social and cultural rights as the priority, or as rights which should be placed in a higher position in the "hierarchy" of rights than civil and political rights. It may be assumed that there have been both practical (economic and political) as well as ideological and philosophical reasons for this approach. 10/

20. The interesting question here is whether this and other similar general approaches are here to stay or whether they are likely to change. There seems to be no valid reason suggesting the immutability of such approaches, which have been largely motivated by ideological and practical concerns. For many of their proponents, economic, social and cultural rights have been seen primarily as something requiring State action, i.e. a "strong State". Therefore these rights have been seen as complementary or contributing to the build-up of State structures, which has been a priority for many States in recent decades. It has to be recognized that action by the State is necessary for the implementation of economic, social and cultural rights, which, in turn, creates conditions for the full realization of civil and political rights. However, it is becoming increasingly apparent that, if the State is to fulfil this task, the people should be able to control the State, and that this is possible only if civil and political rights are respected. Strong reliance on the State as the guarantor and provider of rights - however necessary for the realization of economic, social and cultural rights - may in

reality prove to be an illusion, since the State need not necessarily use its power for the realization of those rights. Strong States may turn into "big spenders" (on armaments, huge and unproductive "development" projects, etc.) rather than into providers of welfare. Therefore it seems to be essential that support for economic, social and cultural rights be complemented by full respect for and observance of civil and political rights, which give people the possibility to control the State.

21. This somewhat simplified schema is offered in an attempt to point to the changing attitudes which are reflected both in United Nations documents and in the practice of some States.

22. As regards United Nations documents, mention should be made of the Declaration on the Right to Development adopted by the General Assembly in its resolution 41/128 of 4 December 1986. Article 6, paragraph 2, of that Declaration provides:

"All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights."

This Declaration, which represents one of the major recent initiatives of developing countries in United Nations activities relating to human rights, makes no reference to the idea of priority to be accorded to economic, social and cultural rights. Thus it represents a departure from the approach taken in the proclamation of Teheran. Moreover, its tenth preambular paragraph contains a phrase which puts the idea of the indivisibility and interdependence of human rights in a clear light by emphasizing that "the promotion of, respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms". These formulations suggest that a certain change is taking place in the approach to human rights.

23. The correctness of this conclusion depends on changes in the practical attitudes of States. ^{11/} However, it would be wrong to overlook the evolution which is taking place at the level of General Assembly documents and in the practice of some socialist and developing States. Some of these changes directly relate to the strengthening of respect for civil and political rights and hence to a more balanced and less hierarchical approach to the two groups of rights: increased emphasis on freedom of expression, changes in restrictions on freedom of movement, expanded scope of freedom of assembly and of association and moves towards more pluralistically conceived elections testify to the emergence of a very real change in a number of States. In at least one socialist State, freedom of trade unions and trade union pluralism has already become a major feature of social and political change - and of the change in approach to human rights. One of the possible directions for further study - in the framework of subsequent reports - could be precisely an analysis of the nature and effects of such changes on economic, social and cultural rights.

24. The other type of "hierarchization" of human rights, i.e. giving preference to civil and political rights, is expressed differently, essentially by means of legal or legalistic arguments. The traditional Western approach to human rights has favoured the values embodied in civil and political rights, and the fact that these rights - as a rule - more easily lend themselves to precise legal regulation; this approach is reflected in the statement: "International treaties laying down obligations in the field of human rights should be as clear and precise as possible". 12/

25. It is interesting, however, that the charge of alleged vagueness of formulation of economic, social and cultural rights has not until recently been accompanied by an effort to devise more precise rules on or a clearer interpretation of those rights. There are, of course, exceptions, essentially in ILO conventions and standards. However, the areas of economic, social and cultural rights outside those covered by ILO standards seem to have been largely neglected by commentators. / As will be seen later, this approach has also started to change. The legal nature of economic, social and cultural rights and the legal aspects of the means of implementing them are discussed below (paras. 28 et seq.).

26. It is the opinion of the Special Rapporteur that the era of the hierarchization of human rights is more or less over and that a unified approach is to be sought in the interpretation of the relationship between the two major sets of human rights. The conceptual basis is already there - it has always been there - and it is embodied in the core concept of human dignity. Article 1 of the Universal Declaration of Human Rights starts with the words: "All human beings are born free and equal in dignity and rights." The concept of human dignity is referred to in the preamble of both Covenants on human rights and in a number of their operative provisions.

27. This very abstract and very general, but also very fundamental concept has its normative significance in the field of human rights, at least in so far as it suggests that all forms of deprivation of human dignity, whether in the civil and political field or in the economic, social and cultural field, are unacceptable. Moreover, it suggests that human rights are not given by authority and may therefore not be taken away by it. 13/ The protection or realization of human dignity need not always require legal action and assertion of rights. On the other hand, all human rights, including economic, social and cultural rights, can be traced back to this basic value, which should be seen as the common denominator in the interpretation and application of human rights. Denial of human dignity may and indeed does take place through denial of both civil and political rights and economic, social and cultural rights. Conversely, respect for all these rights and, where necessary, positive action for their realization are the necessary elements for guaranteeing human dignity. Giving a general preference to this or that group of rights may become a way of departing from their very basis. Equal attention should therefore be paid to both groups of human rights.

28. Proceeding from this idea, it is now necessary to put the question: what are the specific legal features of economic, social and cultural rights and of the means of their realization? This question is relevant not only because of the different approaches to human rights referred to above but also because

the specific nature of their implementation is generally recognized, inter alia in the provisions of article 2, paragraph 1, of the International Covenant of Economic, Social and Cultural Rights, which stipulates that States shall take steps with a view to achieving progressively the full realization of the rights contained in that Covenant. This provision differs significantly from the corresponding provision in article 2, paragraph 1, of the International Covenant on Civil and Political Rights, which clearly establishes the duty of States parties to "respect and ensure" civil and political rights. Nevertheless,

"... the Covenant on Economic, Social and Cultural Rights is law, not merely exhortation and aspiration. The rights it recognizes are as 'human', universal and fundamental as are those of the Civil and Political Rights Covenant ...". 14/

29. Given this general recognition of economic, social and cultural rights as human rights, authors place different interpretations on the actual content of those rights and on the scope of the corresponding obligations of States. Thus Vladimir Kartashkin holds that the international standards of economic, social and cultural rights "establish a minimum level of social protection and welfare whose attainment should be sought by all States, whatever their system or circumstances, even if ... the full realization of the rights concerned is envisaged as a result of the progressive development of national policies, legislation and practical action". 15/

30. Philip Alston goes even further by asserting that there is an identifiable "minimum core content of each right that cannot be diminished under the pretext of permitted 'reasonable differences'." 16/ He continues:

"The fact that there must exist such a core (which to a limited extent might nevertheless be potentially subject to derogation or limitations in accordance with the relevant provisions of the Covenant) would seem to be a logical implication of the use of the terminology of rights. In other words, there would be no justification for elevating a 'claim' to the status of a right (with all the connotations that concept is usually assumed to have) if its normative content could be so indeterminate as to allow for the possibility that the rightholders possess no particular entitlement to anything. Each right must therefore give rise to an absolute minimum entitlement, in the absence of which a State party is to be considered to be in violation of its obligations." 17/

31. This approach certainly merits support, as well as a great deal of further elaboration of the "minimum core content" of each economic, social or cultural right. In the framework of the United Nations, the main work of this kind should be done by the Committee on Economic, Social and Cultural Rights. However, the Sub-Commission could also try to help in this process in the framework of the present and possible subsequent studies in the field of economic, social and cultural rights. The minimum core content of each right which would thus be identified might also help the Commission on Human Rights and other United Nations bodies to identify problems of realization of economic, social and cultural rights more clearly and to suggest appropriate policies for the solution of such problems.

32. Another question in this connection relates to the nature of States' obligations corresponding to the individual's economic, social and cultural rights and to the legally definable means of their implementation. The process of building up a more precise and legally convincing interpretation of the relevant provisions of the International Covenant on Economic, Social and Cultural Rights started relatively recently, after the Economic and Social Council had decided to establish the Expert Committee. This generated an increase in interest for economic, social and cultural rights, resulting inter alia in the Limburg principles on the implementation of the International Covenant on Economic, Social and Cultural Rights. 18/ These principles, which are the result of work of "a group of distinguished experts in international law", 19/ offer the following interpretation of the core obligation of States parties to the Covenant "to achieve progressively the full realization of the rights":

"21. The obligation 'to achieve progressively the full realization of the rights' requires States parties to move as expeditiously as possible towards the realization of the rights. Under no circumstances shall this be interpreted as implying for States the right to defer indefinitely efforts to ensure full realization. On the contrary, all States parties have the obligation to begin immediately to take steps to fulfil their obligations under the Covenant.

"22. Some obligations under the Covenant require immediate implementation in full by all States parties, such as the prohibition of discrimination in article 2, paragraph 2, of the the Covenant.

"23. The obligation of progressive achievement exists independently of the increase of resources; it requires effective use of resources available.

"24. Progressive implementation can be effected not only by increasing resources but also by the development of societal resources necessary for the realization by everyone of the rights recognized in the Covenant." 20/

33. This interpretation contains a far-reaching and ambitious programme. The practice of the Committee on Economic, Social and Cultural Rights will show how much of it can be made a generally accepted interpretation of the relevant duties of States parties to the Covenant.

34. The present section of this preliminary report started with the question whether there is a possibility for a unified United Nations approach to economic, social and cultural rights. The answer seems to be that there are some grounds for believing that the gradual creation of such an approach is not impossible. An encouraging element is the fact that recent developments in the United Nations show a certain diminution of differences in the recognition of economic, social and cultural rights as rights and a decrease in the traditional practice of giving one group of human rights priority over the other. In addition, recognition of the legal obligation of States to ensure the implementation of economic, social and cultural rights also seems to be on the increase (at least in words). On this basis, the Committee on

Economic, Social and Cultural Rights has started to build a coherent interpretation of the relevant Covenant, thereby creating the necessary basis for an appropriate United Nations approach.

35. The Special Rapporteur suggests that a more thorough analysis of the issues outline above be made in the subsequent phases of this study.

II. SOME PROBLEMS IN THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS AT THE NATIONAL LEVEL

36. Discussion of the problems relating to the realization of economic, social and cultural rights has to take into account the realities of a given country. To embark upon a general discussion of these problems at the global level is impossible in the framework of this study and will therefore not be attempted. Apart from the enormous diversity among countries - in economic conditions, social structures, cultures, religions, standards of living, resources, etc. - it should be kept in mind that the 1975 study, The Realization of Economic, Social and Cultural Rights: Problems, Policies, Progress (see footnote 1/ below), provided instructive material in that regard. Instead, it is suggested that the analysis of the present study in its subsequent phases should focus on two selected sets of problems: the problem of extreme poverty, and the problem of structural adjustment.

37. Both these problems are directly relevant to the realization of economic, social and cultural rights and both are of general importance: problems of extreme poverty and problems of structural adjustment are apparent today in all types of societies, although their scope and nature vary. It is suggested that these two sets of problems be dealt with on the basis of the sources referred to in Sub-Commission resolution 1987/29 A, and keeping in mind the request of the Commission and the Sub-Commission that the study should focus on major problems of realization of economic, social and cultural rights and that it should point to relevant practical strategies.

A. The question of extreme poverty

38. Any discussion of the problems relating to the realization of economic, social and cultural rights must start with a discussion of poverty - since it is the poor whose rights are most adversely affected. However, it is not easy to translate the harsh reality of poverty and a legitimate moral aspiration towards the eradication of poverty into meaningful categories of human rights.

39. Discussions on poverty in United Nations human rights bodies usually start and end with statistical data on the number of people living below the poverty line, the increase in the number of unemployed, the falling standard of living, the increase in infant mortality and above all the devastating effect of hunger, malnutrition and famine. In a recent study prepared by the staff members of the World Bank and IMF entitled "Strengthening efforts to reduce poverty", 21/ the authors note that roughly 950 million people live in absolute poverty world-wide - more than a half in Asia and about one third in sub-Saharan Africa. Most of the remainder are divided about equally between North Africa and the Middle East and Latin America. According to that study, the poor suffer from malnutrition and high incidence of disease; include a disproportionate share of female-headed households; and lack sufficient land and other assets. The question which has so far remained without a convincing

answer is whether there is a possibility for United Nations bodies in the field of human rights to make a meaningful contribution to the efforts at the national level for the social change which is necessary if the problem of poverty is to be overcome.

40. There are essentially two approaches which may lead to such a meaningful contribution. One is to continue with the topical studies on specific economic, social and cultural rights, such as the study on the right to adequate food prepared by Asbjorn Eide, the Special Rapporteur of the Sub-Commission. Another (complementary) approach might be to analyse how exactly to place the problem of poverty within the context of the human rights activities of the United Nations. Is this feasible? Is it possible to speak of State and non-State actors in terms of subjects responsible for the phenomenon of poverty and violators of specific human rights? How can United Nations human rights bodies deal with the fact that "the poor" represent a very heterogeneous population? At a later stage of preparation of the present study an attempt will be made to analyse these and other relevant problems. At this stage only a few preliminary remarks can be made.

41. The first remark relates to the fact that the Commission on Human Rights, in its resolution 1989/10 of 2 March 1989 entitled "Human rights and extreme poverty", recognized the fact that the adoption of effective measures to promote the enjoyment of all human rights required a better understanding of the causes of extreme poverty, including the causes connected with the problems of development and their interaction with the enjoyment of human rights. The Commission also requested the Sub-Commission "to give particular attention to the question of extreme poverty and exclusion from society and to examine the feasibility of a study of this question". Thus the question of extreme poverty and exclusion from society gained serious attention in the Commission.

42. An important part of the activities which led to that resolution was due to International Movement ATD-Fourth World and to its founder, Father Joseph Wresinski. Without at this stage going any deeper into the problem as presented by ATD-Fourth World, it is necessary to mention two of its major findings. The first is that the situations of people living in extreme poverty show the indivisible character of all human rights - and the absence of enjoyment of any of those rights in such situations. Poverty means not only unemployment, inadequate housing and health care, etc., but also the difficulty of sending children to school regularly and the inability to exercise civil and political rights. Therefore human rights should be regarded as an indivisible whole requiring simultaneous pursuit. 22/

43. The other major finding of ATD-Fourth World, which was recognized inter alia by the Commission on Human Rights, is that the problem of extreme poverty affects not only developing countries but the developed countries as well. An in-depth study of the problems involved was prepared by ATD-Fourth World in France, at the request of the French Economic and Social Council. 23/ On the basis of that study, the Council recognized that extreme poverty was a human rights matter and affirmed that activities aimed at the eradication of that phenomenon must be conducted simultaneously in the areas of civil and political rights and in the areas of economic, social and cultural rights. 24/

44. Without going into the problem of poverty in depth, it might be useful at this stage to point out some of the essential difficulties in analysing this phenomenon.

45. The problem with poverty seems to be that people other than the poor get used to it and that the very notion of poverty conveys a certain idea of passivity. The words "poverty" and "poor" tend to normalize what ought to be essentially problematic. ^{25/} These words neither summon action for the eradication of poverty nor indicate the causes or sources of poverty. It has therefore been suggested that the word "poverty" be replaced by the word "impoverishment", denoting "a dynamic process of public decision-making in which it is considered just, right and fair that some people may become or stay impoverished". ^{26/}

46. The words "poverty" and "poor" also suggest the passivity of the poor; they justify paternalistic approaches in anti-poverty planning, policy and social action and give rise to sympathy with the poor rather than to serious commitment for change. Thus the "poor" might be made objects of proposed change rather than human beings capable (potentially at least) to master their own destiny. This is an additional reason why the proposals of ATD-Fourth World relating to the indivisibility and interdependence of all human rights in situations of extreme poverty are particularly valuable. "The industrialized-country families living in extreme poverty showed that, without socio-economic security, liberty was threatened while, without exercise of one's liberties, socio-economic security was not assured either." ^{27/} (Emphasis added). It seems that recognition of the relevance of action on the basis of civil and political rights - in addition to action based upon economic, social and cultural rights - is necessary. However, such recognition is far from enough. What is needed is action both by States and by the people concerned and their organizations.

47. The problem of poverty is often considered as primarily an economic phenomenon. As a result, the concepts of "basic needs" and "poverty line" have become central in much of the thinking about poverty. In this connection, the following observation may be noted:

"... all good economists would agree in saying that the core problems are those of achieving income distribution to satisfy 'basic needs'. However, no sensible economist will claim that this way of articulating 'impoverishment' is the best or the most comprehensively adequate. By the same token, no sensible sociologist or political theorist would deny the relevance of satisfaction of basic needs. But all good sociologists and political theorists would want to suggest that the approach is too limited." ^{28/}

Sociologists may suggest that the satisfaction of basic needs is only the first step which must be taken in the liberation from the "culture of poverty", i.e. from the culture of multiple disabilities and lacks in many situations transmitted across generations. ^{29/} The sociological analysis of poverty may discover a diversity of groupings having different histories and ecologies of suffering. Finally, the political analysis of situations of poverty may indicate a variety of causes of poverty resulting from power structures which either create or maintain poverty.

48. The complexity of the problems referred to in the preceding paragraph indicates some of the difficulties in dealing with the problem of poverty in the context of human rights. An additional difficulty lies in the fact - which has to be clearly recognized - that in some situations poverty results from adverse natural circumstances (e.g. floods, droughts, etc.) or from a population growth that makes the problem virtually unsolvable. Human rights action (let alone human rights rhetoric) in such situations is of little use. It seems therefore that it would be wise to accept the fact that human rights action cannot help to resolve all the problems and that disaster relief and development planning, together with related grass-root activities, is all that can be done. The attempt to define "the minimum core content" of economic, social and cultural rights will in such situations have to be made with a great deal of realism.

49. Finally, the question arises whether there is a need to undertake perhaps after this study is completed, a detailed analysis of economic, social, political and other aspects of certain types of practical questions which are beyond doubt of importance for the eradication of poverty and for the realization of economic, social and cultural rights. One such type of question relates to the issue of land rights and agrarian reform, which was dealt with briefly in the 1975 study (see para. 5 above).

50. The reasons for such a study - to be undertaken, perhaps, at a later stage - are not only the relevance of land rights and land reform to (successful or unsuccessful) solutions of the problem of rural poverty but also their relevance to the realization of economic, social and cultural rights. Land reform measures, for instance, are taken by means of legislation, and their economic effects can be measured. The minimum core entitlement to land can be ascertained in the context of a particular country and considered in relation to the realization of such rights as the right to adequate food, the right to an adequate standard of living, etc. The cultural aspects of changes resulting from land reform are usually important both for the maintenance of existing cultural patterns and for cultural change. The patterns of land tenure and specific problems of human rights of persons belonging to minorities or to indigenous peoples might be studied in this context, as well as the related issues of civil and political rights, particularly those relating to freedom of assembly and of association.

51. At this stage, the question can be raised only in very general terms. However, it can be studied in some detail at later stages, and a separate study on land reform in the context of the realization of economic, social and cultural rights could be made after the present study is completed.

B. The question of structural adjustment and realization of economic, social and cultural rights

52. The problem of poverty discussed in the preceding section does not take place in an economic vacuum. It is a part of broader socio-economic realities. These realities and changing dimensions and forms of poverty have to be seen in close connection with major economic changes at a given time. Undoubtedly, this may not be equally true in all situations, some of which can be fully understood only if they are studied on an individual basis. However, the assumption may be advanced as a hypothesis, that modern changes in the nature and forms of poverty have to be studied in close connection with the

major economic and social developments of our time. It may thus be assumed that the phenomenon of extreme poverty in the highly developed countries of Western Europe, which was "discovered" by ATD-Fourth World, probably has to be seen in conjunction with the phenomenon of current structural change and resulting unemployment, which in 1989 reached the figure of 17 million unemployed in the countries members of EEC. ^{30/} The phenomenon of unemployment, in turn, may be seen as a part of broader socio-economic realities characterized by changing modes of production (new technologies) and contemporary economic policies pursued by most of the developed market-economy countries. However, the preceding assumptions do not imply that the figures on unemployment are to be equated with the phenomenon of extreme poverty. ^{31/} As mentioned earlier, the exact nature of the relationship between these phenomena should be studied individually before general conclusions can be drawn.

53. In the framework of the present study on the realization of economic, social and cultural rights, it will have to be determined which of the broad socio-economic phenomena generate the most adverse effects on the realization of these rights. It is suggested in this context that particular attention be paid to the economic position of the heavily indebted developing countries which are facing the problems of structural adjustment. The reasons for such a choice are the following:

(a) The indebted developing countries have since the late 1970s gone through a painful process of rising debt servicing accompanied by severe austerity measures, which in turn have resulted in reduced spending in those sectors that are of particular importance for the realization of economic, social and cultural rights, particularly in health care, education, housing and other basic social services;

(b) These policies are only in part a matter of domestic decision-making; they depend to an important extent on decisions taken internationally, including decisions taken within certain specialized agencies of the United Nations;

(c) The question of the "minimum core content of economic, social and cultural rights" (see para. 30 above) has to be considered in the light of the reality of those States that face the greatest difficulties in fulfilling their obligations relating to the realization of economic, social and cultural rights.

54. The key word to the economic position of these countries is "adjustment", which in most cases implies the need for structural changes; this section of the present preliminary report therefore refers to the term "structural adjustment". Adjustment policies seem to be the dominating economic preoccupation of many countries in setting the frame within which all other economic and development issues can be considered.

55. An additional reason for this choice is that an impressive economic analysis of this aspect of contemporary economic, social and cultural rights has already been made in the framework of a recent UNICEF study entitled Adjustment with a Human Face. ^{32/} The authors of this study have developed an

interesting approach to economic analysis and decision-making which is aptly reflected in the title of the study and which is highly relevant to any discussion on the realization of economic, social and cultural rights.

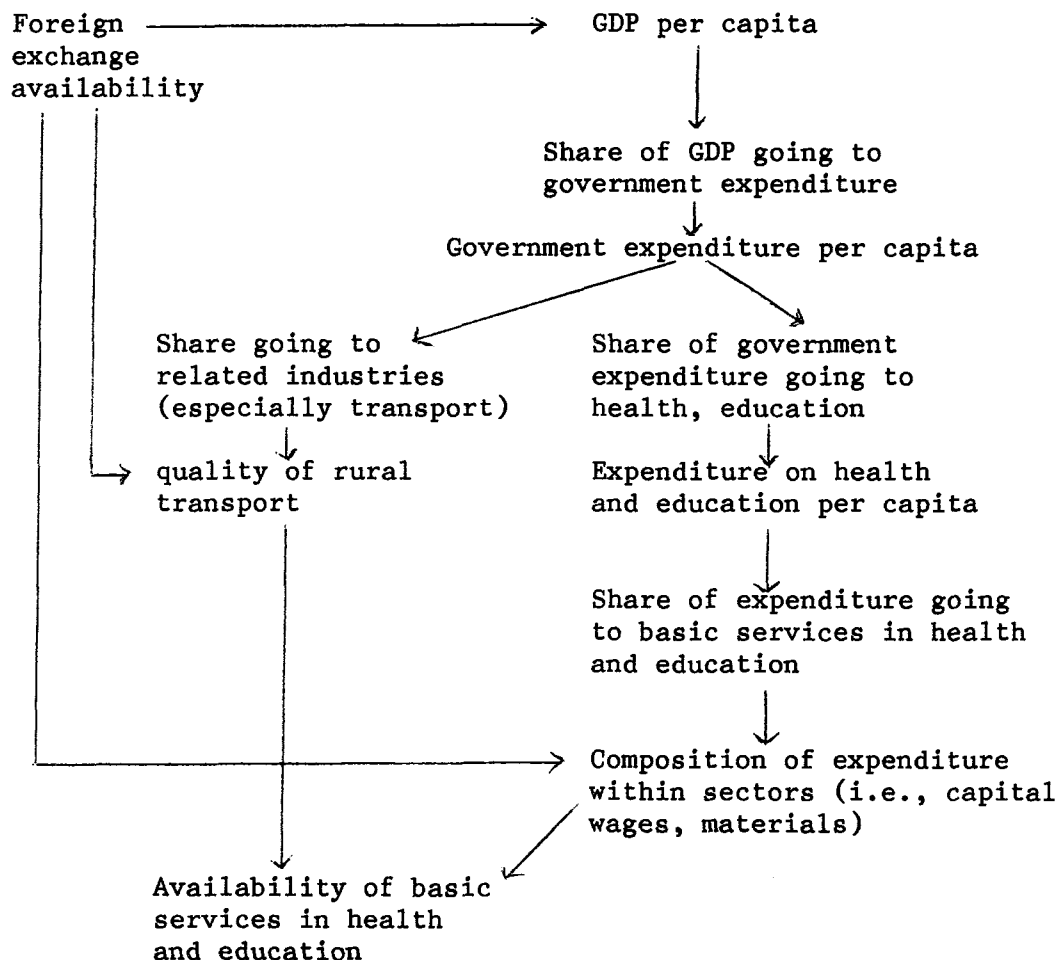
56. This study, in contrast to earlier economic approaches characterized by such concepts as "growth" and "trickle-down effect" (the assumption being that high growth rates will automatically "trickle down" and that the poor will benefit) or "development" and "satisfaction of basic needs", which complemented the concept of growth with the non-economic aspects of development and with poverty-alleviation, may be described as adding the dimension of poverty alleviation to that of adjustment. This has been done in much the same way as "redistribution with growth" and "satisfaction of basic needs" added such a dimension to growth. 33/

57. For a number of reasons, the findings of the UNICEF study may be useful in the context of the consideration of the problems relating to the realization of economic, social and cultural rights. The first reason is that the study is very correctly based on the major economic preoccupation of a large number of developing countries, a preoccupation that directly affects the realization of economic, social and cultural rights and their actually attainable "core content". The second reason is that the study provides very valuable material based upon in-depth empirical research. The case studies thus made 34/ could be of great help in the debates on economic, social and cultural rights, which very often lack a solid empirical basis. Finally, some of the general conclusions arrived at in the course of the UNICEF study are of particular relevance to the debate on the realization of economic, social and cultural rights.

58. A single example may be cited at this stage. As was pointed out in paragraph 32 above, the authors of the Limburg principles, a group of experts in international law, maintained that the obligations of States, under article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, "to achieve progressively the full realization of these rights", required "States parties to move as expeditiously as possible towards the realization of the rights". According to the same opinion, this obligation "exists independently of the increase of resources available".

59. It can be easily understood that there is a link between "available resources" and the realization of economic, social and cultural rights. The difficult question here relates to the nature of this relationship, particularly in times of a decrease in "available resources" (for instance because of low or "negative" growth of GDP or/and the increased outflow of resources necessary for debt servicing). In such situations, expenditures on public health and education as well as on food subsidization are usually decreased and access by vulnerable groups to health and education services is therefore adversely affected. However, this does not happen automatically but rather through a "chain of events linking per capita GDP to basic services. The many links in this chain show that there is no inevitability about the connection between declining GDP per capita to basic services. At each stage of the chain the effects may be countered or magnified". 35/ The following figure, reproduced in the UNICEF study, describes the links between economic crisis and basic services.

Andersen, Jaramillo and Stewart



60. The authors of the UNICEF study reached the following conclusion:

Governments can greatly improve basic social services even at times of great financial stringency by restructuring government expenditures away from costly services mainly servicing the elite towards low-cost interventions such as primary health care, basic education and self-help housing, and by better targeting and better management." 36/

However, it has to be added, as the authors of the study themselves have observed in a slightly different context, that, "although targeted programmes can protect the vulnerable during adjustment, there are limits to what this approach can achieve over the medium run when growth becomes essential." 37/

61. In the IBRD-IMF staff study, "Strengthening efforts to reduce poverty" (see footnote 21 below), the authors took note of the new developments of policies pursued by the World Bank requiring that growth-oriented aspects of these policies be supplemented by clearly defined objectives and programmes for the reduction of poverty. The complementarity of these two types of efforts thus seems to be gaining recognition and support. The same probably applies to the restructuring of government expenditures for basic social

services: there are limits to what such restructuring can achieve over the medium run when growth becomes essential. Restructuring should therefore not be seen as the replacement for growth but rather as its complement.

62. These conclusions concur with the opinion expressed by the experts in international law (see para. 32 above) that the duty of States to achieve progressively the full realization of economic, social and cultural rights exists independently of the increase of resources and that it requires effective use of resources available. However, in the context of medium-term and long-term policies, growth of available resources becomes a necessary element of the realization of economic, social and cultural rights. The real difficulty here seems to be in the method of ascertaining the quantitative proportions of available resources and of assessing States' policies. The solution of these problems may greatly help in defining the "core content of economic, social and cultural rights". It seems that the Committee on Economic, Social and Cultural Rights, which will gradually have to develop methods to assess effectively the progress made by States parties to the International Covenant on Economic, Social and Cultural Rights, will have to find such a solution. However, it would be wrong to conclude from this that these problems relate only to the States parties of the Covenant and to the Committee on Economic, Social and Cultural Rights. It has to be borne in mind that economic, social and cultural rights are universally accepted and that the problems of their implementation, such as those discussed above, are of general relevance for all States.

63. The Sub-Commission should therefore try to make its own contribution, inter alia through this study which might, at subsequent stages, focus on the problem of those countries that face serious problems resulting from adjustment policies and actual utilization of resources. The analysis could concentrate on the experience of a selected number of countries in balancing their economic - i.e., growth-oriented - policies and restructuring their expenditures on basic social services. The results of such an analysis could be useful in the broader framework of the discussion on the realization of economic, social and cultural rights and, indirectly, on the core content of each of these rights in the context of the socio-economic conditions of different States.

III. INTERNATIONAL CO-OPERATION IN THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

64. The realization of economic, social and cultural rights will greatly depend on international co-operation. This has been recognized in the International Covenant on Economic, Social and Cultural Rights (article 2, para. 1, of which refers to "international assistance and co-operation" in the context of the duties of States relating to the realization of rights, and article 18 of which refers to the role of the specialized agencies in the realization of rights), as well as in a number of other United Nations instruments. Moreover, if the broader context of development is understood as being important for the realization of economic, social and cultural rights, as suggested in the preceding section, reference may also be made to such instruments as the Declaration on the Right to Development (see para. 22 above), which stresses, in its article 4, paragraph 1: "States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development." (Emphasis added.) In the opinion of the

Special Rapporteur, future efforts to formulate international development policies should be conducted in such a way as to incorporate the realization of economic, social and cultural rights, as well as of other human rights in the policy objectives.

A. Areas of co-operation with specialized agencies in the realization of economic, social and cultural rights

65. International co-operation for the realization of economic, social and cultural rights is by its nature closely linked to the work of the principal specialized agencies, notably ILO, FAO, WHO and UNESCO. The importance of the work of the agencies in the realization of these human rights remains very significant whatever the difference in their respective methodologies in approaching the problems involved and despite the critique, expressed by commentators, regarding their alleged "lack of interest" in contributing to the implementation of the International Covenant on Economic, Social and Cultural rights. 38/

66. For the Commission and the Sub-Commission, co-operation with the specialized agencies will remain interesting, particularly if activities in respect of economic, social and cultural rights are to have a more important place on their agenda.

67. Among the more recent initiatives in that regard, mention should be made of Commission resolution 1985/42, by which the Commission invited the Directors-General of those agencies to draw up a concise report on the state of implementation of the rights to work, food, education and health, respectively, so that the Commission could undertake a global assessment of the progress being made and the problems being encountered in the implementation of those human rights. The concise reports prepared by the Directors-General of those agencies 39/ were discussed by the Commission at its subsequent session, albeit without specific decisions as to follow-up activities. The reports were confined to factual statements on the relevant activities pursued by the four agencies and did not refer to the possible evolution of their co-operation with the Commission on Human Rights. Only FAO mentioned that it maintained contact and collaborated with the Commission and other bodies concerned with the drafting of international instruments relating to the right to food, while UNESCO mentioned that information on its relevant activities would be regularly submitted to the Sub-Commission. 40/

68. A question that might be discussed in the framework of the present study (at a subsequent stage) is which kinds of activities could contribute to the strengthening of co-operation between the Commission and the Sub-Commission and the specialized agencies. In discussing this question, the Sub-Commission should take into account the relevant experience of the Committee on Economic, Social and Cultural Rights. At the time of the creation of that Committee, a number of ideas relating to the development of dialogue between the Committee and the principal specialized agencies were advanced. They included the idea that such dialogue should aim at developing indicators for assessing compliance with the Covenant, drafting guidelines for the submission of reports by States parties, arranging for the submission of reports by the specialized agencies under article 18 of the Covenant, etc. 41/ The first two sessions of the Committee showed that progress in that respect was possible and that it was likely to take place. 42/

69. As regards the co-operation between the Commission and the Sub-Commission on the one hand and ILO, UNESCO, WHO and FAO on the other, new methods should be sought in addition to the methods developed in the past, i.e., participation of the representatives of these agencies at meetings of the Commission and the Sub-Commission and occasional consideration of reports by the agencies on the implementation of the rights to food, health, education and work.

70. One of the purposes of the present study could be to analyse the possibility of developing such new approaches. By way of example, the possibility of discussing indicators for assessing progress in the realization of economic, social and cultural rights may be mentioned. The question here is whether it is feasible to try to suggest which of the existing indicators could be considered as appropriate for the assessment of progress in this field. It is assumed that the realization of economic, social and cultural rights is a universally relevant task and could not be limited to the States parties to the Covenant only. If the Commission and the Sub-Commission wish to develop their activities relating to economic, social and cultural rights in a meaningful way, and move farther from the present-day level of generality in consideration of the issues involved, appropriate indicators should be devised and agreed to. Admittedly, such a task could be seen as overlapping with the tasks of the Committee on Economic, Social and Cultural Rights. However, the Committee may need time in fully developing appropriate indicators, while the Commission and Sub-Commission could proceed with discussion on indicators (on the basis of the ones used in different parts of the United Nations system), and thus indirectly help the Committee in its deliberations.

71. The other type of question that could be dealt with in the context of the present study concerns the further development of international standards relating to economic, social and cultural rights. In this connection, it should be recalled that article 23 of the International Covenant on Economic, Social and Cultural rights envisages further standard-setting, including the adoption of recommendations and the conclusion of conventions.

72. The need for development of more precise standards in some of the relevant areas is being increasingly recognized. Thus, the Commission on Human Rights, in its resolution 1989/11 on non-discrimination in the field of health, invited the Sub-Commission to examine the possibility of studying various kinds of discrimination against sick and disabled persons in consultation with WHO and giving Governments that wished to express their views an opportunity to do so. This request was indirectly connected with the study by the Sub-Commission on discrimination against persons with HIV virus or suffering from AIDS envisaged in its decision 1988/111. It is certainly not the Special Rapporteur's wish to enter into a problem dealt with by another member of the Sub-Commission. On the other hand, it is interesting to note that the Commission expressed the need for further elaboration of internationally recognized standards in the field of health (the right to the highest attainable standard of physical and mental health and the right to non-discrimination in this connection) which might be explored further.

73. Rendering existing human rights standards in the field of economic, social and cultural rights more specific may be seen as necessary in some other areas as well. An example is the right to housing, which is a part of a broader right to an adequate standard of living. The right to housing, which had been largely neglected by human rights commentators, gained a degree of prominence in 1987 in the framework of the International Year of Shelter for the Homeless. However, the rights relating to housing remain without clear indication as to their substance, and there is a need to develop clearer standards in this area - taking into account the complex nature of the problem and the very different situations in which it occurs. ^{43/} The development of such standards will be impossible without co-operation with the United Nations Centre on Human Settlements and - possibly - other United Nations organs and agencies. While it has to be recognized that such elaboration of standards could be pursued in the framework of reporting to the Committee on Economic, Social and Cultural Rights, it may also be assumed that the analytical work which could be done by the Sub-Commission would help in this process. Finally, it must be stressed that the elaboration of clearer standards would have to be linked to the question of indicators, discussed above, and to the determination of the core content of the right concerned.

74. Another area in which a certain standard-setting activity might be useful relates to the right to education. In addition to the activities already pursued by UNESCO, consideration might be given to formulating more precise standards relating to specific questions such as that of academic freedom. The importance of strengthening academic freedom as a means of ensuring the full realization of the right to education has been recognized. ^{44/} Recently, the World University Service adopted the Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education, which emphasizes that academic freedom is "an essential pre-condition for those educational, research, administrative and service functions with which universities and other institutions of higher education are entrusted". Academic freedom is defined as "the freedom of members of the academic community, individually or collectively, in the pursuit, development and transmission of knowledge, through research, study, discussion, documentation, production, creation, teaching, lecturing and writing". In the opinion of the Special Rapporteur, the concept of academic freedom is to be seen in close connection with the right to education or as a concept derived from that right. Moreover, it also represents an important aspect of the right to freedom of thought and the right to freedom of opinion and expression. Thus it can be seen as one of the areas of human rights within which the interdependence of both major groups of human rights becomes apparent. It has already been suggested that the Lima Declaration should be brought to the attention of UNESCO and the United Nations with a view to discussing the question of a possible process of standard-setting in this area.

75. Finally, as regards the question of standard-setting, it only has to be mentioned that in the area covered by ILO there are already accepted standards which need not be dealt with in the framework of the present study.

76. In addition to the question of indicators and the development of standards, the Sub-Commission might wish to address the question of further development of the role of the specialized agencies in the framework of the realization of economic, social and cultural rights and of strengthening the

co-ordinating role of the Economic and Social Council and the Commission on Human Rights in that regard. However, such questions could be dealt with at a later stage of the preparation of this study.

B. Impact of activities of the international financial institutions on the realization of economic, social and cultural rights

77. The resolutions of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities which led to the present report require that one of the areas to be studied is "the impact on human rights of the policies and practices of international financial institutions, notably the International Monetary Fund and the World Bank". In the present preliminary report, only a few remarks will be made relating to some of the essential problems in this field. These remarks are made on the assumption that the priority area to be looked into in some depth at later stages should be the impact of IMF-sponsored stabilization and adjustment programmes on the realization of economic, social and cultural rights. The choice of this priority area is based upon the question of structural adjustments which was discussed in section II, B, of this preliminary report.

78. An additional argument for this choice is the fact that the Commission in its resolution 1989/15 decided to include in its agenda a specific point entitled "Foreign debt, economic adjustment policies and their effects on the full enjoyment of human rights and, in particular, on the implementation of the Declaration on the Right to Development". In the understanding of the Special Rapporteur, this decision inevitably raises the question of the impact of foreign debt and economic adjustment policies on the realization of economic, social and cultural rights. Given the central role of IMF in international decision-making on the debt problem, it is necessary to discuss the impact of IMF-sponsored adjustment policies in this context.

79. In this preliminary report, only some preliminary remarks regarding this issue can be made. The members of the Sub-Commission are invited to make their comments on the proposed basic approach as well as on the question of the method to be pursued in the analysis of the pertinent problems.

80. The central role of IMF in international decision-making on the debt problem is, in the Special Rapporteur's opinion, beyond question. IMF has become not only a major factor in decision-making on the economic policies of indebted countries but also a decisive factor in international decision-making relating to certain loans and to private foreign investment. 45/

81. In discussion of the impact of its policies on the social costs of adjustment programmes, IMF is often "accused" of being co-responsible for the deterioration in standards of living and for further worsening the lot of the poor. 46/ The Fund's reply to such allegations is usually twofold: First, IMF does not and cannot interfere in the social and political decision-making of its members, i.e., sovereign States; secondly, the purpose of the Fund is the regulation of short-term balance-of-payments questions, while long-term development decisions (which are necessary for improvement of social services) are, according to this interpretation, outside its scope. Both these arguments are based on the interpretation of the purposes of the Fund embodied in article I of its Articles of Agreement. 47/

82. Neither of these two arguments is completely acceptable. By the very nature of things, the Fund's decisions affect the economic policies of indebted countries, and consequently their social and political policies. The attempt to divorce "economic policies" from "social" and "political" policies amounts to turning a blind eye on the harsh realities of most indebted countries. Moreover, article I (ii) of the Articles of Agreement includes, among the Fund's purposes, that of facilitating the expansion and balanced growth of international trade and "to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy". To this, another purpose is added, in article I (v), which refers to making the general resources of the Fund available to the members "thus ... providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity". These references point to the intrinsic link between economic policy and social stability - the latter being easily translatable into concepts of economic, social and cultural rights. Thus a certain degree of concern of IMF for the human rights impact of policies sponsored by it should be considered legitimate under the provisions of article I of the Articles of Agreement defining the purposes of the Fund.

83. The other argument (i.e., that IMF is not a development agency) is equally problematic. Borrowing by the now indebted countries took place to finance a certain type of development which was encouraged by the World Bank and accepted by IMF. Subsequently, the indebted developing countries were expected to service the debt (at a time of historically high interest rates) and to follow the same developmental models now supported by the adjustment programme.

84. In both situations, the short-term financial activities (i.e., borrowing and servicing the debt) have had a profound impact on the development of a great number of developing countries and, consequently on the human rights of their citizens. At present, it is becoming clearer than ever that application of short-term IMF formulas gives rise to serious problems in a number of developing countries and that possibilities for the realization of economic, social and cultural rights are thus in many cases adversely affected.

85. Although the IMF formulas might be considered as unobjectionable from a technical standpoint, they do not take into account the realities of the countries in which they are to be implemented. Recently, this became clear in the tragic experience of Venezuela. In his letter dated 4 March 1989 to Mr. Michel Camdessus, the Managing Director of IMF, the President of Venezuela, Mr. Carlos Andrés Pérez, described the pertinent IMF policies as "tantamount to giving medicine to a patient without taking into account his physical condition or capacity to withstand it, and without taking other steps to strengthen his ability to tolerate the dose". He continued:

"No consideration is given to the possibilities for economic growth or to halting the serious deterioration of the society's health provoked by the adjustment measures; there is thus a serious impact on the poorest sectors of our countries, which explode with despair, fostered by injustice, in the appalling violence we have seen in the streets of Caracas, and which we are sure to see and experience again in cities elsewhere in the developing world." 48/

86. The present serious consequences of the debt problem have prompted efforts to find new solutions. Various proposals have been made, including those presented by France and Japan and, more recently, by the United States. Discussions on those proposals took place at the April 1989 meetings of a number of bodies of IMF and the World Bank. 49/

87. The communiqué of the Interim Committee of the Boards of Governors on the international monetary system shows that a coherent policy that would fully take into account the realities of the indebted developing countries has not yet been formulated. 50/

88. The communiqué of the Group of 24, on the other hand, shows that developing countries have presented a clear assessment of the nature of the debt problem and of the main types of activities to be undertaken. Thus the Group pointed out that "the overall external debt situation is critical. Debt service ratios remain high and unsustainable, and massive negative net resource transfers, aggravated by high and rising international interest rates, constitute a major constraint on the development prospects of developing countries". 51/ With respect to the problems of structural adjustment, the Group of 24 emphasized "that the principal responsibility for designing and implementing structural adjustment programmes remains with the national authorities" and that "social, political and economic realities as well as development priorities of the adjusting country must be central elements in the design and implementation of adjustment programmes". 52/ (Emphasis added.) Furthermore, the Group "welcomed the stepped-up efforts of the World Bank to help Governments design programmes that mitigate the adverse impact on the poor. Ministers urged that measures to deal with negative social aspects of adjustment should be an integral part of all adjustment operations. Ministers called on the international community to provide additional support, including concessional financing to programmes targeted to the poor". 53/ (Emphasis added.) Finally, the Group of 24 "urged the Bretton Woods institutions to be more flexible and realistic in helping countries design and implement adjustment programmes that take due account of economic, social and political constraints in order to ensure the sustainability of these programmes". 54/

89. The concerns expressed by the developing countries, referred to in the preceding paragraph, were reflected in the communiqué adopted by the Development Committee of IMF and the World Bank. The Committee agreed on the "essential ingredients for successful structural adjustment programmes" which include:

"(c) the integration of poverty reduction objectives and environmental considerations into the design of programmes as well as ways of mitigating the adverse effects on the most vulnerable groups, preferably by income-generating programmes." 55/

90. The passages quoted from recent IMF-World Bank documents show that there is a growing awareness of the need to improve the policies formulated or sponsored by the Bretton Woods institutions in order to meet the needs of the heavily indebted developing countries, and more specifically of the most vulnerable groups of people of those countries. It remains to be seen whether this will lead to formulation and implementation of coherent and efficient policies.

91. The question which should be discussed within the United Nations human rights bodies, notably the Commission and the Sub-Commission, is whether these processes deserve attention and whether the human rights bodies have a contribution to make in this context. In the opinion of the Special Rapporteur, the answer to this question should be a positive one.

92. It is clear that the United Nations human rights bodies are not in a position to give advice on matters that are of a purely economic or financial nature. On the other hand, they are entitled to express their opinion on matters that relate to the realization of economic, social and cultural rights. It would therefore be necessary to start devising a methodology which would help to develop a meaningful dialogue with the international financial institutions. The present study on the problems of the realization of economic, social and cultural rights may provide an appropriate framework for starting this process. Since this study is now at its initial stage, it is necessary to discuss the method to be developed. For the purpose of such discussion, the following elements are suggested for consideration by the Sub-Commission:

(a) The existing specialized literature and the relevant reports prepared within the United Nations system should be studied with the aim of obtaining a picture of current thinking on the impact of the policies of the international financial institutions on human rights and, more specifically, on the realization of economic, social and cultural rights;

(b) The discussion on indicators for the assessment of the realization of economic, social and cultural rights should be complemented by an exchange of views with IMF and the World Bank on the phenomenon of poverty in heavily indebted countries. This exchange of views should be accompanied by a discussion of the efforts to mitigate the adverse effects of adjustment programmes on the most vulnerable groups;

(c) An exchange of views with IMF and the World Bank should be initiated with a view to stimulating the integration of poverty-reduction objectives in structural adjustment programmes as well as to developing the methodology of human rights impact statements to be drawn up in the framework of the formulation of adjustment programmes;

(d) It is necessary to explore whether the Governments of heavily indebted countries which face major difficulties in the adjustment process are willing to co-operate with the Sub-Commission, particularly in presenting their experience and views on the integration of objectives on poverty reduction and objectives relating to the realization of economic, social and cultural rights into structural adjustment programmes and on the methodology of preparation of human rights impact statements as a part of adjustment programmes. It is clear that only on the basis of practical experience can useful policy conclusions and recommendations be developed as to the role which human rights considerations should play in the context of adjustment policies.

93. In suggesting the ideas expressed in the preceding paragraphs, the Special Rapporteur is fully aware of the complexity of the issues involved. However, this should not prevent the Sub-Commission and the Commission from trying to develop a meaningful activity in such a major problem area as the realization of economic, social and cultural rights.

IV. PRELIMINARY CONCLUSIONS

94. The study on the realization of economic, social and cultural rights should be focused on the problem areas indicated below:

(a) The question of the evolution of a unified approach to the interpretation and realization of economic, social and cultural rights should be further discussed. This study should contribute to a more balanced approach to both major sets of human rights and to further elaboration of the concept of the interdependence and indivisibility of human rights;

(b) As regards the problem of the realization of economic, social and cultural rights at the national level, the study should focus on two questions: first, the question of extreme poverty and, secondly, the question of the effects of structural adjustment policies on the realization of economic, social and cultural rights. The basic reasons supporting this choice are explained in this preliminary report, while the analytical work will be done at subsequent stages;

(c) International co-operation constitutes a vital element in the realization of economic, social and cultural rights. Further analysis will focus on, first, questions relating to the future work of the specialized agencies which operate in the areas of economic, social and cultural rights (ILO, FAO, UNESCO and WHO) and, secondly, questions relating to the impact of the activities of the international financial institutions (notably IMF and IBRD) on the realization of economic, social and cultural rights;

(d) In the present preliminary report, the question of the possible role of United Nations development agencies, including UNDP, in the realization of economic, social and cultural rights has not been discussed. It is undeniable that this question should be addressed at an appropriate stage. However, it should be dealt with only after completion of the first round of analysis of the problems discussed in the present preliminary report. The same preliminary conclusion applies to the question of strengthening the co-ordinating role of the Economic and Social Council and the Commission on Human Rights in the field of realization of economic, social and cultural rights;

(e) The subsequent phase of preparation of the study on the realization of economic, social and cultural rights will be devoted to an analysis of the problems referred to in this preliminary report. The primary sources of information will be the relevant studies, reports and other documents prepared within the United Nations system as well as the relevant specialized literature and the information provided by non-governmental organizations. A further source of information will be the replies by States on the realization of economic, social and cultural rights under the relevant resolutions of the Commission on Human Rights and the reports of States under article 16 of the International Covenant on Economic, Social and Cultural Rights. The members of the Sub-Commission are invited to make their suggestions to the Special Rapporteur regarding the sources of information to be consulted;

(f) An additional method to be used at subsequent stages might be the attempt to collect information and to study particular experiences in the realization of economic, social and cultural rights in different States,

particularly in those States that are experiencing the problems of implementation of structural adjustment programmes. The Special Rapporteur is ready to consult with the Governments that so wish in order to present their experience in subsequent reports on the realization of economic, social and cultural rights;

(g) Finally, the Special Rapporteur would appreciate it if the Sub-Commission would discuss, at its forty-first session, the possibility of considering the question of realization of economic, social and cultural rights under a separate item of its agenda. Consideration and a possible decision on this question will be important for the formulation of the methodology and timing of subsequent reports by the Special Rapporteur on the realization of economic, social and cultural rights.

Notes

1/ Study prepared by Manouchehr Ganji, Special Rapporteur of the Commission on Human Rights (United Nations publication, Sales No. E.75.XIV.2).

2/ Resolutions 2 (XXXI) of 10 February 1975, 4 (XXXIII) of 21 February 1977, 4 (XXXV) and 5 (XXXV) of 2 March 1979, 6 (XXXVI) and 7 (XXXVI) of 21 February 1980, 36 (XXXVIII) of 11 March 1981, 1982/17 of 9 March 1982, 1983/15 of 22 February 1983; 1984/16 of 6 March 1984, 1985/42 of 14 March 1985, 1986/13 and 1986/15 of 10 March 1986, 1987/19 and 1987/20 of 10 March 1987, 1988/22 and 1988/23 of 7 March 1988 and 1989/12 and 1989/13 of 2 March 1989.

3/ London, Oxford University Press, 1987 (also issued as document A/42/427).

4/ See footnote 32 below.

5/ Louis Henkin, Introduction to "The International Bill of Rights", Louis Henkin ed., New York, Columbia University Press, 1981, p. 10.

6/ Vladimir Kartashkin, "Economic, Social and Cultural Rights", in The International Dimensions of Human Rights, Karel Vasak and Philip Alston, ed., vol. I, Paris, UNESCO, 1982, p. 112;

7/ The term used by Antonio Cassese in International Law in a Divided World, Oxford, Clarendon Press, 1986, p. 297.

8/ Ibid.

9/ Ibid. pp. 301 and 307-308.

10/ For references to the theoretical interpretation and practical reasons, see Cassese, op. cit., pp. 300-311.

11/ However, the importance of words should not be underestimated: words carry meanings and meanings may lead to action.

12/ Cassese, op. cit., p. 297.

Notes (continued)

13/ Oscar Schachter, "Human dignity as a normative concept", American Journal of International Law, vol. 77, No. 6 (editorial comment).

14/ Henkin, op. cit., p. 113.

15/ Kartashkin, op. cit., p. 113.

16/ Philip Alston, "Out of the Abyss: the challenges confronting the new United Nations Committee on Economic, Social and Cultural Rights", Human Rights Quarterly, vol. 9, No. 2 (1987), p. 352.

17/ Ibid., pp. 352-353.

18/ Document E/CN.4/1987/17, annex.

19/ The group was convened by the International Commission of Jurists, the Faculty of Law of the University of Limburg (Maastricht, Netherlands) and the Urban Morgan Institute for Human Rights, University of Cincinnati (Ohio, USA) in Maastricht on 2-6 June 1986. See Human Rights Quarterly, vol. 9, No. 2 (1987), pp. 121 et seq.

20/ Ibid.

21/ IMF survey, 3 April 1989, pp. 97, 108-110.

22/ Statement by Father Wresinski at the forty-third session of the Commission on Human Rights (E/CN.4/1987/SR.29, paras. 62-72).

23/ "Grande pauvreté et précarité économique et sociale", rapport présenté au nom du Conseil économique et social par M. Joseph Wresinski, Journal officiel de la République française, Avis et rapports du Conseil économique et social, annexe 1987 - No. 6, 28 février 1987.

24/ Ibid. pp. 99-102.

25/ Upendra Baxi, Law and Poverty, Critical Essays, Upendra Baxi, ed., Bombay, 1988, Introduction, p. V.

26/ Ibid.

27/ Statement by Father Wresinski (see footnote 22 above), para. 65.

28/ Baxi, op. cit., p. xi.

29/ Ibid.

30/ Figure given by Giorgio Rosetti, Member of the European Parliament at a lecture on European integration, Trieste, Italy, 15 April 1989.

31/ It need not be stressed that only a part of the unemployed should be considered as "poor", particularly if interregional comparisons of poverty are made.

Notes (continued)

32/ For a more elaborate argumentation, see UNICEF Adjustment with a Human Face, Protecting and Vulnerable and Promoting Growth, G.A. Cornia, R. Jolly and F. Stewart, ed., Oxford, Clarendon Press, 1987, p. 5.

33/ Ibid., p. 7.

34/ Ibid., pp. 105-131.

35/ Ibid., pp. 80-83.

36/ Ibid., p. 293.

37/ Ibid., p. 289.

38/ Alston, op. cit., pp. 362-367.

39/ Document E/CN.4/1986/38 and Corr.1 and Add.1-3.

40/ Document E/CN.4/1986/38/Add.2 and 3.

41/ Document E/CN.4/1987/17, annex (the Limburg principles), para. 94.

42/ Philip Alston and Bruno Simm, "First session of the United Nations Committee on Economic, Social and Cultural Rights", American Journal of International Law, 1987, pp. 747-756; and idem., "Second session of the United Nations Committee on Economic, Social and Cultural Rights", American Journal of International Law, 1988, pp. 603-615.

43/ For a discussion of these questions, see Scott Lackie, The United Nations Committee on Economic, Social and Cultural Rights and the Right to Adequate Housing: Towards an Appropriate Approach, University of British Columbia, Centre for Human Settlements, November 1988.

44/ See for example the Magna Carta of European Universities adopted by the Rectors of European Universities in Bologna on 18 September 1988, which describes the university as "an autonomous institution" and emphasizes that "freedom of research and training is the fundamental principle of university life".

45/ For a case study on the subject, see Margaret Conklin and Daphne Davidson, "The IMF and economic and social human rights: a case study of Argentina, 1958-1985", Human Rights Quarterly, vol. 8 (1986), No. 2, pp. 227-269.

46/ Ibid., pp. 250-257.

47/ Article I of the Articles of Agreement provides:

"The purposes of the International Monetary Fund are:

"(i) To promote international monetary co-operation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems.

- "(ii) To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy.
- "(iii) To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation.
- "(iv) To assist in the establishment of a multilateral system of payments in respect of current transactions between members and in the elimination of foreign exchange restrictions which hamper the growth of world trade.
- "(v) To give confidence to members by making the Fund's resources temporarily available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international property.
- "(vi) In accordance with the above, to shorten the duration and lessen the degree of disequilibrium in the international balances of payments of members.

"The Fund shall be guided in all its policies and decisions by the purposes set forth in this article."

48/ IMF Survey, 20 March 1989, pp. 82-83.

49/ See the communiqués adopted by the Interim Committee of IMF and the World Bank, the Development Committee of IMF and the World Bank, as well as the communiqués of the Group of 7, Group of 10 and Group of 24, IMF Survey, 17 April 1989.

50/ Ibid., pp. 118-119.

51/ Ibid., p. 124, para. 10. The communiqué was adopted on 10 April 1989.

52/ Ibid., pp. 124-125, para. 34.

53/ Ibid., p. 125, para. 39.

54/ Ibid., p. 125, para. 41.

55/ Ibid., p. 120. The communiqué was adopted on 4 April 1989.

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