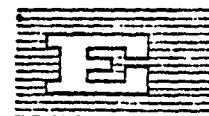


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QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND STUDY OF SPECIAL PROBLEMS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

THE INTERNATIONAL DIMENSIONS OF THE RIGHT TO DEVELOPMENT AS A HUMAN RIGHT IN RELATION WITH OTHER HUMAN RIGHTS BASED ON INTERNATIONAL CO-OPERATION, INCLUDING THE RIGHT TO PEACE, TAKING INTO ACCOUNT THE REQUIREMENTS OF THE NEW INTERNATIONAL ECONOMIC ORDER AND THE FUNDAMENTAL HUMAN NEEDS

Report of the Secretary-General

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INTRODUCTION

1. In its resolution 2 (XXXI) of 10 February 1975 the Commission on Human Rights, considering the importance for the international community of the realization of economic, social and cultural rights, decided to inscribe on its agenda, as a standing item with high priority, the "question of the realization of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems relating to human rights in developing countries".

2. On 21 February 1977 the Commission adopted, without a vote, resolution 4 (XXXIII). In the resolution the Commission stressed the responsibility and duty of all members of the international community to create the necessary conditions for the full realization of economic, social and cultural rights as an essential means of ensuring the real and meaningful enjoyment of civil and political rights and fundamental freedoms. It called upon all States to take prompt and effective measures, both on the national and on the international level, to remove all obstacles to the full realization of economic, social and cultural rights and to promote all actions that would secure the enjoyment of the said rights. In addition the Commission decided that the concepts contained in the resolution would guide its future work on this item. Accordingly, it decided to pay special attention to the consideration of the obstacles hindering the full realization of economic, social and cultural rights, particularly in the developing countries, as well as of the actions taken on the national and international levels to secure the enjoyment of the said rights.

3. In paragraph 4 of the resolution the Commission recommended that the Economic and Social Council should invite the Secretary-General, in co-operation with the United Nations Educational, Scientific and Cultural Organization and the other competent specialized agencies, to undertake a study of "the international dimensions of the right to development as a human right in relation with other

human rights based on international co-operation, including the right to peace, taking into account the requirements of the New International Economic Order and the fundamental human needs", and to make this study available for consideration by the Commission on Human Rights at its thirty-fifth session. The Council endorsed the decision of the Commission in its decision 229 (LXII) of 13 May 1977.

4. Paragraph 5 of resolution 4 (XXIII) of the Commission on Human Rights requested the Secretary-General to bring the resolution to the attention of the competent economic organs of the United Nations and to ask for their views and comments in order to transmit them to the Commission on Human Rights at its thirty-fourth session.

5. Appropriate requests were sent by the Secretary-General, in accordance with resolution 4 (XXIII), to the following organs: the Department of Economic and Social Affairs; the Economic Commission for Western Asia; the Economic Commission for Latin America; the Economic Commission for Europe; the Economic Commission for Africa; the Economic and Social Commission for Asia and the Pacific; the United Nations Children's Fund; the United Nations Environment Programme; the Food and Agriculture Organization of the United Nations; the International Finance Corporation; the World Intellectual Property Organization; the International Telecommunication Union; the United Nations Commission on International Trade Law; the United Nations Conference on Trade and Development; the United Nations Development Programme; the United Nations Fund for Population Activities; the United Nations Industrial Development Organization; the World Food Council; the General Agreement on Tariffs and Trade; the International Bank for Reconstruction and Development; the International Labour Organisation; the International Monetary Fund; the United Nations Educational, Scientific and Cultural Organization, the World Health Organization; and the World Meteorological Organization.

6. As of 15 December 1977 eight replies containing views and comments on the resolution had been received. The text of these replies was reproduced in E/CN.4/1272. The eight replies were from: the Department of Economic and Social

Affairs; the Economic Commission for Western Asia; the United Nations Commission on International Trade Law; the United Nations Conference on Trade and Development, the United Nations Development Programme, the United Nations Fund for Population Activities; the United Nations Industrial Development Organization; and the World Food Council.

7. Replies have also been received from the following competent specialized agencies: United Nations Educational, Scientific and Cultural Organization, International Labour Organisation, International Monetary Fund, World Health Organization, World Meteorological Organization and the World Bank. These replies are reproduced in annex 1 to the present document.

8. In preparing this study the Secretary-General has taken into consideration the views expressed during the debates in the Commission on Human Rights prior to the adoption of resolution 4 (XXIII).

9. The Secretary-General has further taken fully into account a wide range of United Nations resolutions, declarations and conventions on matters of relevance to the subject of the present study.

10. In the preparation of the study the Secretary-General has also utilized published material and written statements from the following sources:

(i) Governments of States Members of both the United Nations and of the specialized agencies; (ii) non-governmental organizations in consultative status; (iii) the writings of recognized scholars; and (iv) the reports of various international conferences, seminars and other meetings on relevant subjects held in recent years.

11. In this connexion the Secretary-General received, in connexion with the present study, a written joint statement submitted by the following non-governmental organizations in consultative status:

International Alliance of Women, International Council of Women,

International Youth and Student Movement for the United Nations (category I);

All-India Women's Conference, Anti-Slavery Society, International Commission

of Jurists, International Council of Jewish Women, International Federation for Human Rights, International Federation of University Women, International Federation of Women Lawyers, International Union of Child Welfare, International University Exchange Fund, Pax Romana, Women's International League for Peace and Freedom, World Alliance of Young Men's Christian Associations, World Association of World Federalists, World University Service (category II).

The statement has been circulated in document E/CN.4/NGO/214 and Corr.1 in accordance with paragraphs 29 and 30 of Economic and Social Council resolution 1296 (XLIV).

12. The papers presented to the UNESCO Experts Meeting on Human Rights, Human Needs and the Establishment of a New International Economic Order held in Paris from 19 to 23 June 1978 have been taken into account. However, as of 20 November 1978 the official report of that meeting was not available to the Secretary-General.

13. In addition, some informal consultations took place with a number of persons competent in fields relevant to the subject-matter of the study.

I.. GENERAL OBSERVATIONS

A. Observations on the core concept of "development"

14. The concept of "development" is fundamental to the present study. Yet few terms have been used to convey so many different notions or been subject to as many successive revisions in interpretation. Growing awareness of the complexity of the development process has served to underline the difficulty of describing it within the confines of a single definition. It is possible, nevertheless, to discern the emergence in recent years of a strong consensus as to the principal elements of the term.

15. At least until the mid-1960s the terms "development", "economic development" and "growth" were generally considered to be synonymous and were used interchangeably. It was thought possible to measure development in terms of an increase in gross national product, the benefits of which were assumed to flow throughout a society on the basis of a "trickle down" pattern.^{1/} Thus the programme for the first United Nations Development Decade, while recognizing the undertaking in the Charter of the United Nations "to promote social progress and better standards of life in larger freedom",^{2/} dealt largely with the measures required to "accelerate progress towards self-sustaining growth of the economy of the individual nations and their social advancement so as to attain in each under-developed country a substantial increase in the rate of growth".^{3/}

16. The need for economic growth and social and cultural development to be concurrent and complementary was accorded greater emphasis in subsequent

^{1/} See, for example, W.W. Rostow, The Stages of Economic Growth 2nd ed. (Cambridge, Cambridge University Press, 1971).

^{2/} Preamble.

^{3/} General Assembly resolution 1710 (XVI), para. 1.

formulations of the objectives of development,^{4/} Promotion of respect for human rights was also seen to be a fundamental ingredient in the process. Indicative of these developments was the warning contained in a report which appraised the prospects for progress during the Development Decade:

"One of the greatest dangers in development policy lies in the tendency to give to the more material aspects of growth an overriding and disproportionate emphasis. The end may be forgotten in preoccupation with the means. Human rights may be submerged and human beings seen only as instruments of production rather than as free entities for whose welfare and cultural advance the increased production is intended".^{5/}

17. In recent years, perceptions of development problems, needs and priorities have evolved towards a far broader concept of "development" than that of economic growth. The General Assembly in resolution 2027 (XX) recognized the need to devote special attention, on both the national and the international levels, to the promotion of respect for human rights within the context of the Development Decade. The same point was stressed again in the Declaration on Social Progress and Development. In article 2 the Assembly proclaimed that "social progress and development shall be founded on respect for the dignity and value of the human person and shall ensure the promotion of human rights and social justice ...".^{6/}

18. At its following session, in 1970, the Assembly adopted the International Development Strategy for the Second United Nations Development Decade.^{7/} The

^{4/} François Perroux, L'économie du XXe siècle (Paris, Presses Universitaires de France, 1961); David Morawetz, Twenty-five Years of Economic Development 1950-1975 (Washington D.C., The World Bank, 1977) especially Chap. 1 on "The Changing Objectives of Development".

^{5/} E/34.7/Rev.1, para. 90.

^{6/} Resolution 2542 (XXIV).

^{7/} Resolution 2626 (XXV).

Strategy was a major step in the process of reformulating views about development objectives which is still in progress. In its Preamble it states that "the ultimate objective of development must be to bring about sustained improvement in the well-being of the individual and bestow benefits on all. If undue privileges, extremes of wealth and social injustices persist, then development fails in its essential purpose".^{8/}

19. In 1970, the Committee for Development Planning emphasized that "what development implies for developing countries is not simply an increase in productive capacity but major transformations in their social and economic structures".^{9/}

The ultimate objective of this structural transformation is creation of conditions conducive to individual and collective self-realization. Thus, at a seminar on the realization of economic and social rights contained in the Universal Declaration of Human Rights, held in Warsaw, Poland in 1967, several participants considered that development would have no meaning unless man was considered as its centre and purpose.^{10/} Satisfying both the spiritual and material needs of man was considered by a number of participants to be the primary aim of development.

20. During the 1970s a series of international conferences on such subjects as environment, food, population, habitat and employment have demonstrated strong support for a broad-based concept of development to guide both national and international endeavours.

^{8/} Ibid., para.7.

^{9/} Towards Accelerated Development: Proposals for the Second United Nations Development Decade (United Nations publication, Sales No. E.70.II.A.2), p.5.

^{10/} Report of the Seminar on the Realization of Economic and Social Rights contained in the Universal Declaration of Human Rights, held at Warsaw, Poland, 15-28 August 1967 (ST/TAO/HR/31), para.87.

"The overall principle that the ultimate end of development is to achieve a better quality of life for all, which means not only the development of economic and other material resources but also the physical, moral, intellectual and cultural growth of the human person, was emphasized in most of the declarations of principles".^{11/}

21. In a written submission to the Commission on Human Rights in connexion with the present study, a group of non-governmental organizations proposed that "development can be seen as a dynamic process involving a greater realization of the potential of each individual, community and nation to fulfil its political, social, economic and cultural capabilities".^{12/}

22. In addition to analysing what is meant by the fundamental objective of development it is necessary to give consideration to the process by which this objective is to be achieved. The significance of this process was underlined by the United Nations Director-General for Development and International Economic Co-operation in his address to the Governing Council of the UNDP in June 1978:

"Development is increasingly seen as a process that should be geared to the human factor both as the agent and the beneficiary of development; should be endogenous, involving the autonomous definition by each society of its own values and goals; should rely primarily on the strength and resources of each country; should encompass the transformation of obstructive structures, both national and international; should be in harmony with the environment and respect ecological constraints".^{13/}

^{11/} "Social Development and a New International Development Strategy: Common Elements of Decisions of World Conferences held in the 1970s", E/6056/Add.1, para. 21.

^{12/} E/CN.4/NGO/214, para. 2.

^{13/} United Nations, Press Release DEV/205 (Geneva, 1978), p.2.

23. As noted by participants in the 1967 Warsaw seminar on the realization of economic and social rights contained in the Universal Declaration of Human Rights, growth should be designed to benefit the entire population without discrimination.^{14/} Indeed, the fundamental principle of non-discrimination is a recurring theme in the Charter and is repeated in Article 2 of both the International Covenants on human rights. The process of development will inevitably be severely impeded by discriminatory practices. Such practices tend to have a strong reinforcement effect so that discrimination in one area is reinforced in another area.^{15/}

24. Just as implementation of the universal principles embodied in the International Bill of Human Rights may reflect the different perceptions and experience of each nation and each community,^{16/} so too the complexity and organic character of the development process means that there is no universally applicable model for the process of development.^{17/} At the same time, it is clear that an effective development strategy, whether at the national or international level, must be based on respect for human rights and incorporate measures to promote the realization of such rights if it is to be effective in fostering development in the most meaningful way. Thus, in resolution 334 (XXV) the Economic Commission for Latin America has stated that "the fundamental objective of development is to secure the collective and simultaneous enjoyment by all men of all civil, political, economic, social and cultural rights."^{18/}

^{14/} Op. cit., note 11 supra.

^{15/} See generally, Racial Discrimination, Study by Hernán Santa Cruz, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Revised and updated version, 1976 (United Nations publication, Sales No. E.76.XIV.2).

^{16/} The Realization of Economic, Social and Cultural Rights: Problems, Policies, Progress - by Manouchehr Ganji, Special Rapporteur of the Commission on Human Rights, (United Nations publication, Sales No. E.75.XIV.2).

^{17/} E/CN.4/SR.1391, para. 39.

^{18/} E/CN.4/1148, annex, p.1.

25. Development being considered as fulfilment of the human person in harmony with the community is a matter of universal relevance. It should not be considered relevant only to the countries traditionally termed "developing". Once development is no longer viewed in terms of growth in national income or even per capita income, but in the larger sense of the creation of conditions conducive to the full realization of the individual in every aspect of his being, it is an aspiration which should be pursued in all countries.^{19/} In the developed countries, for example, some of the following issues might be considered to warrant attention because of their bearing on the development process: the relationship between economic growth and the well-being of the individual; problems of alienation, over-consumption, non-participation in decision-making; and environmentally unsound policies. The need for all people to work together in promoting realization of the right to development is reflected in paragraph 1 (d) of resolution 32/130 in which the General Assembly decided that "human rights questions should be examined globally, taking into account both the overall context of the various societies in which they present themselves as well as the need for the promotion of the full dignity of the human person and the development and well-being of the society".

26. Nevertheless, in the present study it is proposed to devote special attention to those issues which are of major importance in the context of the creation of conditions conducive to the fulfilment of the human person in the developing countries. This approach also requires the consideration of certain problems which might be considered to present the major impediments to the development process. For example, at the individual level, the satisfaction of certain basic material needs might be considered a prerequisite for the creation of conditions conducive to self-realization. Similarly at the international level the existence of

^{19/} Kwasi Wiredu, "Human Solidarity: A Philosophical Exposition", paper presented to UNESCO Experts' meeting on human rights, human needs and the establishment of a New International Economic Order, Paris, 19-23 June 1978 (Paper 55-78/CONF.630/4), p.12.

inequitable power structures is a major impediment to the achievement of the development of peoples and States. The present study will thus place particular emphasis on these and related aspects of the right to development.

27. The foregoing analysis, based on major United Nations instruments and debates, indicates the existence of a general consensus as to the need for the following elements to be part of the concept of development:^{20/}

- (i) The realization of the potentialities of the human person^{21/} in harmony with the community should be seen as the central purpose of development;
- (ii) The human person should be regarded as the subject and not the object of the development process;
- (iii) Development requires the satisfaction of both material and non-material basic needs;
- (iv) Respect for human rights is fundamental to the development process;
- (v) The human person must be able to participate fully in shaping his own reality;
- (vi) Respect for the principles of equality and non-discrimination is essential; and
- (vii) The achievement of a degree of individual and collective self-reliance must be an integral part of the process.

^{20/} In addition to materials already cited, this consensus is reflected in the following: UNESCO, Medium-Term Plan (1977-1982) Doc.19 C/4; United Nations Asian Development Institute, "Towards a Theory of Rural Development" (1975, reprinted in Development Dialogue 1977:2, pp. 15-19; What Now? Another Development, The 1975 Dag Hammarskjöld Report on Development and International Co-operation (Uppsala, Dag Hammarskjöld Foundation, 1975); and Reshaping the International Order - A Report to the Club of Rome, co-ordinated by Jan Tinbergen (London, Hutchinson, 1977), pp. 61-71.

^{21/} The term "human person" is used in this context as a substitute for the term "man" which has undesirable, discriminatory connotations. Unfortunately, neither "human person" nor any of the other alternatives ("human beings", "persons", "mankind", "people", "humankind") express exactly the same notion of man plus woman in both their individual and collective capacities.

B. Observations on the term "international dimensions"
as understood in the context of this study

28. The present study is concerned with "the international dimensions" of the right to development. During the debates of the Commission on Human Rights at its thirty-third session "it was recognized by a number of speakers that problems relating to the realization of economic, social and cultural rights had international as well as national dimensions".^{22/}

29. In this regard it should be noted that the international dimensions of action required for the realization of human rights are consistently recognized in major United Nations instruments in the field of human rights. In the preamble to the Charter, the peoples of the United Nations have reaffirmed their "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small" and have undertaken for these ends, inter alia, "to employ international machinery for the promotion of the economic and social advancement of all peoples". Article 1(3) of the Charter indicates that one of the purposes of the United Nations is:

"To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion".

30. Similarly, in accordance with Article 55 of the Charter, the United Nations have the duty to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion". In Article 56, all Members of the United Nations "pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55".

^{22/} Official Records of the Economic and Social Council, Sixty-second Session, Supplement No. 6 (E/5927), para. 39.

31. The importance of international co-operation for the promotion and protection of human rights is further spelled out in the Universal Declaration of Human Rights (General Assembly resolution 217 (III)). In the preamble to the Declaration, the Assembly proclaims the need for "progressive measures, national and international" in order to secure the universal and effective recognition and observance of human rights. Moreover, article 22 states that:

"Everyone is entitled to realization, through national effort and international co-operation of the economic, social and cultural rights indispensable for his dignity and the free development of his personality".

32. In addition to references to international co-operation (article 11(2)) and international action (article 22), the International Covenant on Economic Social and Cultural Rights provides in article 2(1) that:

"Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant ..."

33. In broad terms then, it might be said that the specifically "international" dimensions of the right to development are of major and increasing significance for the following reasons:

- (i) The fabric of development in any country consists of many threads which are both national and international in origin. It is therefore impossible to consider development without regard for the international context in which it takes place.^{23/}
- (ii) There is increasing recognition of the fundamental interdependence of societies which is coupled with the interdependence of the problems which mankind is now facing. Thus account must be taken of a broad range of transnational contacts in the form of the movement of people and ideas, involving individuals, corporations and other private groups. Rapid technological progress in fields such as communications and transport has facilitated the dissemination of information and ideas on an unprecedented scale. On the philosophical level it has been noted that:

"for contemporary thought the world forms a whole, a unity of interrelated parts; a global approach to world problems is manifestly the only approach which comes to terms with their real nature".^{24/}

Similarly, the World Development Report, 1978 has emphasized the importance of fully recognizing the structural and other implications and benefits of global economic interdependence.^{25/}

^{23/} "While, ultimately, it is for the developing countries themselves to do their utmost to accelerate their economic and social progress, their efforts will be frustrated if the necessary international policies are not adopted to create an environment conducive to supplementary and strengthening these efforts". Towards Accelerated Development. Proposals for the Second United Nations Development Decade - Report of the Committee for Development Planning (United Nations publication, Sales No. E.70.II.A.2), p. 22.

^{24/} Ibid., introduction, para. 25.

^{25/} World Development Report, 1978 (Washington, D.C., World Bank, 1978), p. 68.

- (iii) The global development process faces many obstacles which are of a largely transnational character. In the economic sphere these obstacles include continuing patterns of domination and dependency, unequal trade relations and restrictions from external sources on the right of every nation to exercise full sovereignty over its national wealth. Thus, underdevelopment has been said to be the "consequence of plunging a society and its economy into a world whose structures condemn them to a subordinate status and stagnation or internal imbalance".^{26/} Specifically, some major transnational obstacles have been listed in the fifth preambular paragraph of resolution 4 (XXXIII) of the Commission on Human Rights, as follows:

"the persistence of colonialism, aggression and threats against national sovereignty, national unity and territorial integrity, of foreign occupation, apartheid and all forms of discrimination and domination".

- (iv) Both the Charter of the United Nations and the International Bill of Human Rights stress the need for international co-operation with a view to achieving universal respect for human rights. The economic crisis which began in late 1973 has significantly increased awareness of the need for international action to implement the main policy recommendations both of the Development Decade strategy and the Programme for a New International Economic Order.^{27/}

34. A study of the international dimensions of the right to development also requires consideration of certain issues which arise not only in connexion with

^{26/} UNESCO, Medium-Term Plan (1977-1982), Doc. 19 C/4, para. (f), p. 57.

^{27/} TD/B/642 and TD/B/642/Add.2.

international issues but also with national development and human rights strategies. In this regard a recent report by the Secretary-General of UNCTAD lists three basic elements which are essential ingredients in a reshaped global development strategy: (i) the national development strategies of individual countries; (ii) the international measures required to provide support for national development efforts; and (iii) the strengthening and acceleration of the development process on the basis of the collective self-reliance of Third World countries.^{28/} In the same vein, the 1978 report of the Committee for Development Planning proposes that the strategy for the Third United Nations Development Decade should be "explicitly and comprehensively global, covering domestic as well as international aspects of development and aspects related to changes and policy within the developed countries as well as within the Third World".^{29/}

35. The international community's concern with measures taken at the national level is emphasized by the reference in Article 28 of the Universal Declaration of Human Rights to, inter alia, the "social order" to which everyone is entitled; it is one "in which the rights and freedoms set forth in this Declaration can be fully realized". While respecting national sovereignty and the right of self-determination and maintaining the principle of non-intervention in the internal affairs of countries, it is clear that at least in certain circumstances, international concern for human rights cannot cease arbitrarily at national borders.

^{28/} TD/B/642, paras. 54-58.

^{29/} Economic and Social Council, Official Records, 1978, Supplement No. 6 (E/1978/46), para. 35 (b).

36. In any analysis of the right to development the well-being of individuals in areas such as the availability of food, access to health care and education facilities, population policies, the availability of meaningful employment, the achievement of an equitable rural/urban balance, and environmental factors must be considered. Many of these issues have become the subject of standard-setting instruments drawn up by the United Nations and its specialized agencies such as ILO and UNESCO and can thus no longer be considered to be exclusively within the domestic jurisdiction of Member States that are parties to such instruments.

37. In view of the growing inter-relationship between "national" and "international" aspects of development it may not always be possible to draw a workable distinction between what constitutes the "international" as opposed to the "national" dimensions of particular issues. In some cases the influence of activities at one level on those at the other level may be decisive, and it is thus not feasible to consider any one side of the coin in total isolation from the other. Nevertheless, in keeping with the Commission's intention, as expressed in the relevant debates, the present study endeavours to focus as directly as possible on the international dimensions of relevant issues.

II. HUMAN RIGHT TO DEVELOPMENT

38. In this chapter of the report consideration will be given to the ethical aspects and the legal norms which are relevant to the right to development. The subjects and beneficiaries of the right, as well as the duties flowing from it, will then be considered.

A. Ethical aspects of the right to development

39. Consideration of the ethical aspects of the human right to development raises a variety of issues which were referred to during the relevant debates of the thirty-third session of the Commission on Human Rights. These range from the relatively pragmatic view that it is in the best interests of all States to promote the universal realization of the right to the view that there are fundamental philosophical values which can be said to underlie the right to development in its broadest sense. These issues encompass in particular the following arguments:

- (i) the promotion of development is a fundamental concern of every human endeavour;
- (ii) in international relations there exists a duty of solidarity which is solemnly recognized in the Charter;
- (iii) the increasing interdependence of all peoples underlines the necessity of sharing responsibility for the promotion of development;
- (iv) it is in the economic best interests of all States to promote universal realization of the right to development;
- (v) existing economic and other disparities are inconsistent with the maintenance of world peace and stability;
- (vi) the industrialized countries, former colonial powers and some others have a moral duty of reparation to make up for past exploitation.

Each of these arguments was raised in one form or another by speakers in the debates at the thirty-third session of the Commission on Human Rights and each will now be briefly considered.

(i) Fundamental character of development

40. The central role of the obligation to promote development as an ethical concept which should guide all human endeavours is outlined in the following analysis:

"Development is not, then, an aim that our societies are free to adopt or reject; it is their very substance and the link between past, present and future generations. If rightly understood, it is not just one particular social duty amongst others, nor even the primary duty: development is the condition of all social life and therefore an inherent requirement of every obligation. Individuals and nations can only be united with each other if they first exist. And, as we have just seen, individual existences and the existence of human societies are a function of progress, in other words of the expansion of human potentialities and of a corresponding increase in material goods. To reject development as a primary obligation would be to reject the humanization of man and therefore to deny the very possibility of a moral system." ^{1/}

This approach is considered and further elaborated, in particular, by Domenach in his article entitled "Our Moral Involvement in Development". ^{2/}

41. Similarly, in a report on reshaping the international order, the fundamental aim of the world community in promoting development is said to be the achievement of a life of dignity and well-being for all human beings. ^{3/} The fundamental character of development is further reflected in the notion that "development in its universality and diversity is a process which is found everywhere, but its centre is nowhere". ^{4/}

^{1/} Jean-Marie Domenach, "Our Moral Involvement in Development", in United Nations Centre for Economic and Social Information, The case for Development: Six Studies (New York, Praeger, 1973), p. 131 and 134.

^{2/} Ibid.

^{3/} Op.cit., p. 61.

^{4/} UNESCO Medium-Term plan (1977-1982), op. cit., introduction, para. 75. Library

(ii) The international duty of solidarity for development

42. The fundamental principles of sharing and of helping those who are unable to help themselves apply no less at the international level than at other levels.^{5/}

Thus in addressing the opening session of the International Conference on Human Rights at Teheran in 1968, the then Secretary-General of the United Nations expressed his "profound belief that real and effective international co-operation can only be achieved if there is an awareness at all levels that no man can save himself or his country or his people unless he consciously identifies himself with, and deliberately works for, the whole of mankind".^{6/} In a subsequent resolution the Conference recognized the collective responsibility of the international community to ensure the attainment of the minimum standard of living necessary for the enjoyment of human rights and fundamental freedoms by all persons throughout the world and called upon all countries to assume their full responsibility accordingly.^{7/}

43. More recently, the Commission on Human Rights in resolution 4(KXXIII) stressed the responsibility and duty of all members of the international community to promote the realization of human rights and expressed its belief that they should

^{5/} See also generally, Kéba M'Baye, "Le droit au développement comme un droit de l'homme", Revue des droits de l'homme, vol. V., No. 2-3, (1972), p. 502 at 523-525; K. Vasak, "A 30-year struggle. The sustained efforts to give force of law to the Universal Declaration of Human Rights", UNESCO, Courrier, November 1977, p. 29, in which the promotion of a group of "solidarity rights" is proposed; Albert Tovoédjé, La pauvreté: richesse des peuples (Paris, Editions Economie et Humanism, Les Editions Ouvrières, 1978) in which the author discusses the notion of "solidarity contracts" which would give practical expression to the ethical concept of solidarity; and Kwasi Wiredu, "Human Solidarity: A Philosophical Exposition" op. cit.

^{6/} Final Act of the International Conference on Human Rights, (United Nations publication, Sales No. E.68.XIV.2), annex II.B, p. 57.

^{7/} Ibid., resolution XVII entitled "Economic Development and Human Rights".

contribute to putting an end to the disparity in living conditions and income levels between the developed and developing countries. In the debates leading to the adoption of the resolution, several speakers emphasized that only through acceptance of the duty of international solidarity and co-operation could real progress in the realization of human rights be achieved.^{8/}

44. The duty of solidarity also finds support in the Strategy for the Second United Nations Development Decade which stated that:

"Every country has the right and duty to develop its human and natural resources, but the full benefit of its efforts can be realized only with concomitant and effective international action".^{9/}

In its 1978 report the Committee for Development Planning expressed its view that "the elimination of mass poverty from the face of the earth is the joint responsibility of all nations, rich and poor alike".^{10/} In many ways, international acceptance of this responsibility is implicit in the widespread endorsement of the concept that international development strategies should be aimed at meeting the fundamental human needs of the poorest people. As one report points out, unless a spirit of solidarity prevails it will be impossible to utilize the capacity for imagination and to achieve the real will required to share society's resources.^{11/}

^{8/} E/CN.4/SR.1391, paras. 8 and 18; E/CN.4/SR.1393, paras. 18 and 23. See also the Report of the Seminar on Human Rights in Developing Countries, held in Dakar, Senegal, 8-22 February 1966 (ST/TAG/HR/25), para. 102.

^{9/} General Assembly resolution 2626 (XXV), para. 10.

^{10/} Economic and Social Council, Official Records, 1978, Supplement No. 6 (E/1978/46), para. 49.

^{11/} Reshaping the International Order, op. cit., p. 62.

45. The status of the duty of solidarity as the corollary of a right (that of "the poorest to share in the world's wealth") rather than as a notion based solely on humanitarian considerations, was emphasised in a 1976 report by the Director-General of UNESCO.^{12/} The duty of solidarity also finds expression in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States.^{13/}

(iii) Moral interdependence

46. Increasing international economic co-operation and inter-dependence also reinforces the need for international morality. In the realm of morality, as in other spheres, it is clear that no nation is able to completely and effectively dissociate its external from its internal policies and principles. The complex inter-relationships which today characterize the programmes for development policy at all levels bring with them an increasing responsibility for the pursuit of morality in relations between peoples.

47. Gross inconsistencies in the morality espoused at one level with that applied at another level cannot comfortably persist. The Pearson Report on development put the point clearly:

"If the rich countries ... concentrate on the elimination of poverty and backwardness at home and ignore them abroad, what would happen to the principles by which they seek to live? Could the moral and social foundations of their own societies remain firm and steady if they washed their hands of the plight of others?"^{14/}

^{12/} UNESCO, Moving Towards Change - Some Thoughts on the New International Economic Order (Paris, UNESCO, 1976), p. 25.

^{13/} General Assembly resolution 2625 (XXV).

^{14/} Lester B. Pearson et al, Partners in Development: Report of the Commission on International Development (New York, Praeger, 1969) p. 3.

Thus where a State's national and international policies are not motivated by a consistent sense of moral responsibility, one will soon undermine the other. The State which proclaims the right of all its residents to enjoy social security can only deny that right to others at the risk of losing its credibility both at home and abroad.

(iv) Economic interdependence

48. The relationship between the human right to development and the New International Economic Order is considered below. It is sufficient to note at this point that there appears to be general agreement that it is in the best economic interests of both the industrialized and the developing countries to promote universal realization of the right to development. Thus an increase in the net transfer of resources from the rich to the poor countries is in the common interest of all people. An expansion of the volume of financial assistance provided to the developing countries could also contribute to the easing of tensions in world trade and payments.^{15/}

49. The Committee for Development Planning has pointed to the opportunities for fuller employment in the industrialized countries which would accompany an expansion in the provision of assistance to the poor countries.^{16/} In terms of trade, one country has recently suggested the following link:

"The perpetuation of under-development and existing disparities affects the development of the world economy as a whole, since it leads to a contraction in the international market by limiting the ability of the developing countries to be viable partners of the developed countries in the process of developing trade and co-operation".^{17/}

^{15/} Renewing the Development Priority, op. cit., p. 18.

^{16/} International Finance, Depressed Regions and Needed Progress (United Nations publication, Sales No. E.76.II.A.8), p. 5.

^{17/} A/AC.191/5, para. 5. See similarly A/AC.191/9, p. 2. The validity of this proposition has also been supported by the Committee for Development Planning in its 1978 report, op. cit., para. 12.

(v) The maintenance of world peace

50. The Preamble to the Universal Declaration of Human Rights proclaims that "it is essential if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law". This principle applies equally to the right to development as to other human rights. Thus the existing, and growing, disparities in income levels and in access to conditions which are conducive to realization of the right to development, are inconsistent with the maintenance of world peace.^{18/} As the Committee for Development Planning expressed it:

"Unavoided, such a polarization [of the rich and the poor] is bound to produce violent reactions that are against the best interests of mankind."^{19/}

51. Similarly, in 1968, in an address delivered in commemoration of the twentieth anniversary of the adoption of the Universal Declaration of Human Rights the then Secretary-General stated that:

"The impact of inferior status, of lack of opportunity to attain adequate standards of living, of permanent humiliation of the individuals concerned, is clear to all. The consequences for humanity as a whole are no less obvious. In an address to the Algerian House of Assembly which I made four years ago I said 'There is the clear prospect that racial conflict, if we cannot curb and finally eliminate it, will grow into a destructive monster compared to which the religious or ideological conflicts of the past and present will seem like small family quarrels. Such a conflict will eat away the possibilities of good of all that mankind has hitherto achieved and reduce men to the lowest and most bestial levels of intolerance and hatred. This for the sake of all our children, whatever their race and colour, must not be permitted to happen.' "^{20/}

^{18/} E/CN.4/SR.1393, para. 42.

^{19/} Renewing the Development Priority, op. cit., p. 22.

^{20/} Final Act of the International Conference on Human Rights, op. cit. annex II.B, pp. 36-37.

Therefore the interests of world stability and the pursuit of a lasting peace require universal respect for the right to development. As the Proclamation of Teheran noted, the fact of human interdependence and the need for human solidarity are more evident than ever before "in an age when conflict and violence prevail in many parts of the world."^{21/}

(vi) The moral duty of reparation

52. During the debates in the Commission the view was expressed by a number of speakers that underdevelopment was basically the sequel of colonial domination and that, even after political independence, developing countries too often remained subjected to neo-colonialist exploitation of their natural resources.^{22/} Similar views have been expressed in seminars on human rights in developing countries.^{23/} A moral duty of reparation has been inferred from these views; as for instance in the report of the 1970 Lusaka seminar:

"Some participants emphasized that the wealth of ex-colonial countries was derived in large measure on (sic) centuries of exploitation and now that independence had been achieved by developing countries, it was appropriate that part of this wealth be returned to its source".^{24/}

The secondary involvement of other countries which either benefited or suffered from the process of colonial exploitation, but which were not themselves either colonizers or colonized, might also be considered in this context.

^{21/} Final Act of the International Conference on Human Rights, op. cit., pp. 3-4.

^{22/} Official Records of the Economic and Social Council, Sixty-second session, Supplement No. 6 (E/5927), para. 39. In a similar vein, the Member Countries of the Council for Mutual Economic Assistance have emphasised their view "that the entire responsibility for the backwardness of the developing nations rests with the imperialist powers and their colonialist and neo-colonialist policy of plundering the national riches of those countries". CMEA, Collected Reports on Various Activities of Bodies of the CMEA in 1977 (Moscow, 1977), p. 233.

^{23/} Report of the Seminar on Special Problems Relating to Human Rights of Developing Countries, held in Nicosia, Cyprus, 26 June-9 July 1969 (ST/TAO/HR/36), para. 71.

^{24/} Report of the Seminar on the Realization of Economic and Social Rights with Particular Reference to Developing Countries, held in Lusaka, Zambia, 23 June-4 July 1970 (ST/TAO/HR/40), para. 22.

53. While the view that there exists a duty of reparation to make up for past exploitation by the colonial powers and some others has been maintained in various fora, it should be noted that its acceptance is by no means universal. Thus, for example, one scholar has argued recently that "the contentions that the economic growth of the industrialized countries rests upon colonial exploitations or that the industrial countries cannot maintain high levels of prosperity without continuing to exploit the poor countries cannot be sustained".^{25/}

54. From the foregoing analysis it can be seen that there are a variety of ethical arguments which may be considered to support the existence, in ethical terms, of a right to development. It is now proposed to consider the legal norms of relevance to the right to development.

^{25/} Robert L. Rothstein, The Weak in the World of the Strong: The Developing Countries in the International System (New York, Columbia University Press, 1977), p. 7. Compare André Gunder Frank, On Capitalist Underdevelopment, (Bombay, Oxford University Press, 1975).

B. Legal norms relevant to the right to development

55. Speaking in the debates at the thirty-third session of the Commission on Human Rights, several representatives stressed that, in their view, action to promote development was a legal obligation of the international community, and in particular of the industrialized countries. This legal duty was based upon, in particular, Articles 55 and 56 of the Charter of the United Nations, which emphasized the fundamental legal principle of solidarity between nations. In their view the recent entry into force of the International Covenant on Economic, Social and Cultural Rights had greatly strengthened the legal basis of the obligation of States to co-operate in achieving economic and social development. On this basis, several speakers deduced the existence of a specific right to development.^{26/} However, some reservations were expressed by other speakers. Thus one speaker questioned whether it was really necessary to add to existing declarations another on the right to development and the right to peace.^{27/}

56. In resolution 4 (XXXIII) relating to the present study, reference is made to the right to development.^{28/} Recognition of the right would thus appear to be implied by the resolution. One scholar has expressed his view of the implications of this resolution as follows:

"Thus, a new right is being elaborated before our eyes - the right to development."^{29/}

^{26/} Official Records of the Economic and Social Council, Sixty-second Session, Supplement No. 6 (E/5927), para. 41.

^{27/} E/CN.4/SR.1397, para. 42.

^{28/} Para. 4.

^{29/} Kéba M'Baye, "Le développement et les droits de l'homme", paper presented to Colloque sur le développement et les droits de l'homme, 7-12 Septembre 1978, organisé par La Commission Internationale des Juristes et l'Association Sénégalaise d'Etudes et de Recherches Juridiques, p. 25.

57. Both the debates in the Commission on Human Rights prior to the adoption of resolution 4 (XXXIII) and subsequent scholarly analyses of the right cast considerable light on the legal norms relevant to the right to development. As noted above particular emphasis has been placed upon Articles 55 and 56 of the Charter in this connexion. Article 55 states as follows:

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

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

Under the terms of Article 56:

"All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55."

On this basis one scholar has stated that "the right to development is already embodied in international law. It is established unequivocally in the Charter of the United Nations as a consequence of the renunciations of the normal attributes of conventional sovereignty and as an extension of the duty of co-operation".^{30/} In the same paper,^{31/} the author notes that the duty of the international community

^{30/} Ibid., p. 49.

^{31/} Ibid., p. 50.

to co-operate in this way has been reinforced by the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States.^{32/} The Declaration proclaims the duty of States to co-operate with one another in order to promote international economic stability and progress and the general welfare of nations.

58. In addition to the provisions of the Charter, which are of fundamental importance, legal norms relevant to the right to development are also to be found in the provisions of the International Bill of Human Rights. Article 22 of the Universal Declaration of Human Rights^{33/} provides that "everyone, as a member of

^{32/} General Assembly resolution 2625 (XXV).

^{33/} It is relevant to recall in this regard the relevant provisions of a memorandum prepared in 1962 by the United Nations Office of Legal Affairs and submitted to the Commission on Human Rights at its eighteenth session, in which the use of terms "declaration" and "recommendation" was described as follows:

"3. In United Nations practice, a 'declaration' is a formal and solemn instrument, suitable for rare occasions when principles of great and lasting importance are being enunciated, such as the Declaration of Human Rights. A recommendation is less formal.

4. Apart from the distinction just indicated, there is probably no difference between a 'recommendation' and a 'declaration' in United Nations practice as far as strict legal principle is concerned. A 'declaration' or 'recommendation' is adopted by resolution of a United Nations organ. As such it cannot be made binding upon Member States, in the sense that a treaty or convention is binding upon the parties to it, purely by the device of terming it a 'declaration' rather than a 'recommendation'. However, in view of the greater solemnity and significance of a 'declaration', it may be considered to impart, on behalf of the organ adopting it, a strong expectation that Members of the international community will abide by it. Consequently, in so far as the expectation is gradually justified by State practice, a declaration may by custom become recognized as laying down rules binding upon States.

5. In conclusion, it may be said that in United Nations practice, a 'declaration' is a solemn instrument resorted to only in very rare cases relating to matters of major and lasting importance where maximum compliance is expected." (Official Records of the Economic and Social Council, Thirty-fourth Session, Supplement No. 8, para. 105.)

society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality". The reference to international co-operation in this respect is further emphasized in article 28 which states that "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized". Further references to the full development of the human personality are contained in article 26 (2) relating to the objectives of education and in article 29 (1) which provides that "everyone has duties to the community in which alone the free and full development of his personality is possible".

59. The provisions of the International Covenants on Human Rights are of special considerable significance in the present context. In particular, article 1 (1) of both Covenants proclaims that "all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". In this regard, it may be noted that, in the view of some scholars, the principle of self-determination is the foundation of the right to development.^{34/}

60. Article 2 (1) of the International Covenant on Economic, Social and Cultural Rights imposes upon the States Parties a legal obligation to:

"take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

^{34/} Alain Pellet, Le droit international du développement (Paris, Presses Universitaires de France, Que Sais-je?, 1978), p. 11.

Several of the individual rights recognized in that Covenant appear, implicitly or explicitly, to be components of the human right to development.

61. Another provision of the International Covenant on Economic, Social and Cultural Rights, article 11, was said by one of the speakers to contain the best definition of the right to development.^{35/} It may be recalled that this Article provides, inter alia, that the States Parties "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions" (para. 1).

62. The right to life, which is recognized in article 3 of the Universal Declaration and article 6 of the International Covenant on Civil and Political Rights, has also been referred to as one of the foundations of the right to development. Thus, during the debates in the thirty-third session of the Commission on Human Rights it was said that the right to a decent life, as distinct merely from the right to exist, necessarily involved the realization of economic, social and cultural rights, which were essential for the physical and intellectual well-being of the individual.^{36/} The link between the right to development and the right to life in association with certain other rights has also been noted elsewhere:

"As regards the right to development as an individual right, in general it is not classified as an independent and separate right, but stems from or is the consequence of the recognition, both internally and

^{35/} E/CN.4/SR.1391, para. 18.

^{36/} E/CN.4/SR.1396, para. 36.

internationally, of the economic, social and cultural rights of man and, in particular, of the right to life which necessarily implies the right to live a full and complete life."^{37/}

63. The foregoing analysis demonstrates that the legal norms relevant to the right to development are to be found primarily in the Charter of the United Nations and the International Bill of Human Rights. In addition, a variety of other binding international instruments may be considered.

64. The Declaration of Philadelphia, adopted in 1944 and incorporated into the Constitution of the ILO in 1946, deems fundamental the objective that "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity."^{38/} The Declaration further states that all national and international policies, in particular those of an economic and financial character, should be judged in this light and accepted only in so far as they may be held to promote and not to hinder the achievement of this fundamental objective.^{39/} Reference to the Declaration of Philadelphia is contained in the Preamble of many of the international labour conventions drawn up by the ILO. These include, for example, the Employment Policy Convention (No.122) of 1964 and the Migrant Workers (Supplementary Provisions) Convention (No.143) of 1975. Under the terms of the Convention against Discrimination in Education the

^{37/} Hector Gros Espiell, "El Derecho al Desarrollo Como un Derecho de la Persona Humana", paper presented to Seminario sobre Protección y Promoción Internacional de los Derechos Humanos, Universalismo y Regionalismo, Caracas, Venezuela, 31 July-4 August 1978, under the auspices of the Government of Venezuela, the Inter-American Commission on Human Rights and UNESCO, p. 11.

^{38/} Declaration concerning the Aims and Purposes of the International Labour Organisation, Annex to the Constitution of the ILO, principle II (a).

^{39/} Ibid., principle II (c).

States Parties agree that "education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms".^{40/} Similarly, in defining the crime of apartheid, the International Convention on the Suppression and Punishment of the Crime of Apartheid specifically proscribes any legislative and other measures "calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms..."^{41/}

65. The approach by which the right to development is viewed as a synthesis of a large number of human rights has found favour with a number of commentators. In a paper presented to the UNESCO sponsored meeting of experts on human rights, human needs and the establishment of a New International Economic Order, held in Paris in June 1978 the view was expressed that:

"Development appears less as a separate right than as the totality of the means which will make economic and social rights effective for the masses of people who are grievously deprived of them."^{42/}

^{40/} Adopted by the General Conference of UNESCO on 14 December 1960, article 5 (a). The convention had been ratified by 66 States as of 1 May 1978. UNESCO Doc. 20 C/14, Annex III, p. 3.

^{41/} General Assembly resolution 3068 (XXVIII). The Convention had been ratified by 46 States as of 30 September 1978. ST/HR/4 as updated.

^{42/} Jean Rivero, "Sur le droit au développement" (paper SS-78/CONF.630/2), p. 3.

Similarly, another scholar has stated that:

"Recognition of the existence of the human right to development may follow from a systematic interpretation of the international instruments which have been cited, insofar as they proclaim and protect the economic and social rights of individuals."^{43/}

In the same vein, another commentator has expressed the view that juridically, almost all of the elements that constitute the right to development are the subject of existing declarations, resolutions, conventions or covenants.^{44/} This view has been endorsed by the first commission of the conference on development and human rights held in Dakar in September 1978. Among the conclusions of the first commission is the following:

"10. There exists a right to development. The essential content of this right is derived from the need for justice, both at the national and the international levels. The right to development draws its strength from the duty of solidarity which is reflected in international co-operation. It is both collective and individual. It is clearly established by the various instruments of the United Nations and its specialized agencies."^{45/}

66. In one of the papers considered during the conference the issue was raised as to whether the elaboration of the right to development served any particular purpose if its constituent elements were already part of international law in

^{43/} Hector Gros Espiell, "El Derecho al Desarrollo como un Derecho de la Persona Humana", *op.cit.*, p. 18.

^{44/} Kéba M'Baye, at Dakar Conference, *op.cit.*, p. 29.

^{45/} Commission I, Conclusions and Recommendations, (Mimeo, Dakar, September 1978), para. 10.

their own right.^{46/} According to the author the need for separate elaboration of the right arises out of the lack of respect for some existing rights and the need to reiterate and reinforce them.^{47/} It may also be considered that the elaboration of the right to development enables attention to be drawn to an important dimension of existing rights which has tended to be overlooked in the past.

67. A number of declarations and resolutions which have been adopted by the General Assembly are also of considerable relevance in the present context. It is not proposed to review here the extensive legal debate relating to the status in international law of resolutions of the General Assembly. Nevertheless, it may be noted briefly that a large range of declarations and resolutions has supported and reaffirmed the principles which may be considered to provide the legal foundations of the human right to development. In particular, mention may be made of the following declarations which have been formally adopted by the General Assembly. The Declaration of the Rights of the Child provides that "the child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity".^{48/}

68. In the Declaration on the Granting of Independence to Colonial Countries and Peoples the General Assembly declares that it is "convinced that the continued existence of colonialism prevents the development of international economic co-operation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace".^{49/}

^{46/} Kéba M'Baye, at Dakar Conference, op.cit., p. 29.

^{47/} Ibid.

^{48/} General Assembly resolution 1386 (XIV), principle 2.

^{49/} General Assembly resolution 1514 (XV), preamble.

69. The Declaration of the Principles of International Cultural Co-operation, proclaimed by the General Conference of UNESCO rather than by the General Assembly, states that "every people has the right and the duty to develop its culture".^{50/}

70. In the preamble to the Declaration on the Elimination of Discrimination against Women it is declared that "discrimination against women... is an obstacle to the full development of the potentialities of women in the service of their countries and of humanity".^{51/} In the same spirit the International Conference on Human Rights held in Teheran in 1968 resolved that "in accordance with the United Nations Charter and the Universal Declaration of Human Rights, women should be recognized as having a right to the development of their full potentialities..."^{52/}

71. Article 2 of the Declaration on the Rights of Mentally Retarded Persons states that the mentally retarded person has a right to such services "as will enable him to develop his ability and maximum potential".^{53/}

72. The Universal Declaration on the Eradication of Hunger and Malnutrition, adopted by the World Food Conference and subsequently endorsed by the General Assembly proclaims that "every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully..."^{54/}

73. Side by side with these declarations which proclaim in one form or another the right of individuals to develop their human potential there is a considerable body of declarations and resolutions which contribute to the establishment of the legal norms relating to the right to development of peoples and States. Thus one scholar has indicated that, in his view:

^{50/} Proclaimed on 4 November 1966, article 1 (2).

^{51/} General Assembly resolution 2263 (XXII).

^{52/} Final Act of the International Conference on Human Rights, *op.cit.*, resolution IX, preamble.

^{53/} General Assembly resolution 2856 (XXVI).

^{54/} General Assembly resolution 3348 (XXIX), article 1.

"In international law, the existence of the right to development as an individual right is derived from the texts which we have just quoted, namely, the Universal Declaration of Human Rights, the International Covenants and the relevant General Assembly resolutions, especially those relating to the New International Economic Order and the Charter of Economic Rights and Duties of States."^{55/}

The deep significance, in this connexion, of the Declaration on the Establishment of a New International Economic Order^{56/} and the Charter of Economic Rights and Duties of States^{57/} has been stressed by various scholars.^{58/} Paragraph 3 of the Declaration proclaims that "international co-operation for development is the shared goal and common duty of all countries". The Charter of Economic Rights and Duties of States is more specific in stating the obligations and responsibilities of States in this regard. Its Article 9 stresses that all States have the responsibility to co-operate for the promotion of economic and social progress throughout the world, especially that of the developing countries. In Article 17 the general obligation of States to co-operate for development is supplemented by the duty of every State "to co-operate with the efforts of developing countries to accelerate their economic and social development by providing favourable external conditions and by extending active assistance to them, consistent with their development needs and objectives, with strict respect for the sovereign equality of States and free of any conditions derogating from their sovereignty." A

^{55/} Hector Gros Espiell, "El Derecho al Desarrollo como un Derecho de la Persona Humana", *op.cit.*, p. 19.

^{56/} General Assembly resolution 3201 (S-VI).

^{57/} General Assembly resolution 3281 (XXIX).

^{58/} Kéba M'Baye, at Dakar Conference, *op.cit.*, pp. 51-52.

similar obligation of all States to "respond to the generally recognized or mutually agreed development needs and objectives of developing countries" is contained in Article 22. Article 25 states that "in furtherance of world economic development, the international community, especially its developed members, shall pay special attention to the particular needs and problems of the least developed among the developing countries." In Article 31 it is stressed that "all States have the duty to contribute to the balanced expansion of the world economy, taking duly into account the close relationship between the well-being of the developed countries and the growth and development of the developing countries, and the fact that the prosperity of the international community as a whole depends upon the prosperity of its constituent parts".

74. The documents which constitute the basis for the establishment of a New International Economic Order might be interpreted as indicating a trend towards recognition of the developing countries as a specific group of subjects of international economic law.^{59/} The Declaration on the Establishment of a New International Economic Order calls, inter alia, for the implementation of obligations and commitments assumed by the international community concerning the "imperative development needs of developing countries."^{60/} Thus, it may be considered that the idea of a right to development originates, in part, from a new conception of the redistribution of power and decision-making and sharing of the world resources based on needs.

^{59/} Wil D. Verwey, Economic Development, Peace and International Law (Royal VanGorcum Ltd., Assen, The Netherlands, 1972) p. 265.

^{60/} General Assembly resolution 3201 (S-VI), para. 5.

75. In the view of some scholars, this idea of need as a basis for entitlement is the central feature of the contemporary international law of development.^{61/}
The opinion was expressed that

"international law has reached the point where it must become a law of co-operation, which implies the development of a law of assistance to and protection of the weak, if it is to survive as a common value."^{62/}

In the view of one scholar the conception of international entitlement to aid and preferences based on need is either expressed or implied throughout the entire range of international decision-making pertaining to development: in many of the agreements relating to trade preferences, investment, and resources; in the bilateral and multilateral programmes of aid; and in the broad normative resolutions adopted by United Nations bodies on commodities, relocation of industry, the oceans, international liquidity, and numerous related matters.^{63/}

76. The legal norms relevant to the right to development also derive support from key instruments of international organizations other than the United Nations system. It is not proposed in the present study to undertake an exhaustive analysis of these documents. However, the following examples may be considered to be particularly significant. The Charter of the Organization of American States, adopted on 30 April 1948, notes in the first preambular paragraph that "the historic mission of America is to offer to man a land of liberty, and a favorable environment for the development of his personality and the realization of his just

^{61/} Oscar Schachter, "The evolving law of international development", Colombia Journal of Transnational Law, Vol. 15, No.1 (1976), p. 10.

^{62/} Wil D. Verwey, op.cit., p. 252.

^{63/} Oscar Schachter, "The evolving law of international development", op.cit., p. 9.

aspirations". As a reflection of this view one of the essential purposes of the Organization of American States is "to promote, by co-operative action, their economic, social and cultural development."^{64/} In the chapter entitled "Fundamental rights and duties of States" the Charter provides that each State has the right to develop its cultural, political and economic life freely and naturally. In this free development, the State shall respect the rights of the individual and the principles of universal morality".^{65/} In the American Declaration of the Rights and Duties of Man, chapter two, relating to duties, states that "it is the duty of the individual so to conduct himself in relation to others that each and every one may fully form and develop his personality".^{66/}

77. The European Social Charter, adopted by the Council of Europe in 1961 also contains provisions which are of relevance to the right to development. Pursuant to article 14 which relates to the right to benefit from social welfare services, the Contracting Parties undertake, inter alia, "to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community..."^{67/} In addition, article 16 stipulates specific measures which are to be undertaken with a view to ensuring the necessary conditions for the full development of the family.

78. In conclusion the analysis of legal norms undertaken in this section of the present study indicates that there is a very substantial body of principles based on the Charter of the United Nations and the International Bill of Human Rights and reinforced by a range of conventions, declarations and resolutions which demonstrate the existence of a human right to development in international law.

^{64/} Article 4 (c).

^{65/} Chapter III, article 13.

^{66/} Resolution XXX adopted by the Ninth International Conference of American States, held at Bogotá, Colombia, 30 March-2 May 1948, article XXIX.

^{67/} Article 14 (1).

C. The subjects and beneficiaries of the right to development

79. The preceding analysis of the ethical and legal aspects of the right to development clearly indicates the extent to which it is a multi-dimensional right. In this and the following section of the study an endeavour is made to list the subjects and beneficiaries of the right on the one hand, and those for whom the right implies duties on the other hand. Nevertheless, it must be recognized that it is not possible within the confines of the present limited study to provide an exhaustive description of all the subjects, beneficiaries and duty-bearers which relate to the right to development.

80. It is necessary at this point to touch briefly upon the distinction between "subjects" and "beneficiaries" of rights. The distinction is of considerable jurisprudential significance ^{68/} and arises in connexion with an issue on which a clear world-wide consensus does not yet exist - the status of individuals under international law.

81. The significance of the distinction between "subject of law" and "beneficiary", in all sectors of jurisprudence (domestic or international, family, civil or commercial law) is essentially related to the concept of "legal claim". A subject of law, ipso jure, may formulate a legitimate personal demand or "claim" against the duty-bearers. A mere "beneficiary" does not have such a personal legal claim, although his interests - direct or indirect - in the implementation of a given right may be great. If the individual or collective entities are "subjects" of the human right to development, it follows that they

^{68/} The distinction is considered in some detail, and a list of references provided in D.P. O'Connell, International Law (2nd ed., London, Stevens, 1970), vol.1, pp.106-12.

may invoke a legal claim ~~against the duty-bearers~~ local community, the State, the regional and global international community - for the pursuit in good faith of efforts to promote their development.

82. Confusion often occurs between the concept of "legal claim" and that of "procedural capacity". As was pointed out for instance by Sir Hersch Lauterpacht,^{69/} there are several examples in various legal spheres of subjects of law, being thereby possessors of legal claims, but not enjoying the procedural capacity themselves to initiate legal action for the implementation of their rights. Let us mention, for instance, in municipal law, infants and weak-minded persons: they are subjects of law and have claims, but they may not actuate their claims themselves. For a long time, the individual, even if he was regarded as a direct subject of international law, had no procedural capacity on the international level.

83. As regards the human right to development, many scholars now maintain that both the individual, states and possibly other collective entities are direct subjects of international law especially under certain articles of the International Covenants on Human Rights and under some ILO Conventions. Furthermore, it is no longer true that the subjects of the right to development lack international procedural capacity. The individual, for example, may complain of a violation of any of his rights laid down in the International Covenant on Civil and Political Rights, under the procedure contained in the

^{69/} H. Lauterpacht, International Law and Human Rights (London, Stevens, 1950), p. 6; see also, International Law: Being the Collected Papers of Hersch Lauterpacht, ed. by E. Lauterpacht (Cambridge, Cambridge University Press, 1975) vol. 2, p. 510.

Optional Protocol to that Covenant.^{70/} Trade unions or employers' organizations may invoke the "representation" procedure of article 24 of the ILO Constitution in case of non-observance of the provisions of relevant Conventions. States may have recourse to various remedial procedures against other States.^{71/}

84. Another issue which is of major significance in both this and the following section of the study is the question of whether it is appropriate to describe the right to development as one attaching to individuals or to collectivities or to both. Attention was briefly focused on this issue during the debates of the thirty-third session of the Commission on Human Rights.^{72/} However, it is probably unnecessary to pose the issue as one involving the choice of mutually exclusive alternatives. The strategy for the Second United Nations Development Decade commits Member States to the proposition that "equality of opportunity should be as much a prerogative of nations as of individuals within a nation".^{73/} This position is reflected in the diversity of sources that contribute to the substance of the right to development. Some of these, such as the Charter of Economic Rights and Duties of States, are clearly directed towards States; the Declaration on the

^{70/} See also article 44 of the American Convention on Human Rights, Organization of American States, Treaty Series No. 36, pp. 1-21. Note however that while the States Parties to the Optional Protocol have thereby acknowledged the status of the individual as a subject of international law, some commentators hold the view that instruments such as the various "conventions on human rights do not grant rights directly to individuals, but establish mutual obligations of States to grant such rights to individuals." G.I. Tunkin, Theory of International Law, translated by V.E. Butler (London, George Allen and Unwin, 1974), p. 83.

^{71/} See, for example: International Covenant on Civil and Political Rights, article 41; American Convention on Human Rights, article 45.

^{72/} E/CN.4/SR.1397 para. 42.

^{73/} General Assembly resolution 2626 (XXV) para. 12.

Establishment of a New International Economic Order is directed to the international community as well as individual States and other entities; the right to self-determination is usually understood as applying mostly to peoples;^{74/} the right of everyone to a just social and international order^{75/} is supplemented by a range of rights in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights which are vested in the individual. An example of the interaction between the collective and individual aspects of these rights is the right to form trade unions, which, while applying to the individual, can only be satisfied through collective action.

85. Therefore the enjoyment of the right to development necessarily involves a careful balancing between the interests of the collectivity on one hand, and those of the individual on the other. It would be a mistake, however, to view the right to development as necessarily attaching only at one level or the other. Indeed there seems no reason to assume that the interests of the individual and those of the collectivity will necessarily be in conflict. A healthy regard for the right of the individual to pursue his self-realization, manifested by respect for this right within collective decision-making procedures which permit the full participation of the individual, will contribute to, rather than weaken, the efforts of the collectivity to pursue its right to development. In addition, individual development and fulfilment can be achieved only through the satisfaction of collective prerequisites. These include, for example:

^{74/} See article 1 of each of the International Covenants on Human Rights; and E/CN.4/Sub.2/L.6.1, chapter I.E.

^{75/} Universal Declaration of Human Rights, article 28.

self-determination and independence of nations, liberation of peoples from colonialism, neo-colonialism and alien economic and political domination; and action by the international community, States, communities and other groups to provide access to necessary resources and services. As is made clear in article 29 of the Universal Declaration of Human Rights, the individual's right necessarily implies respect for the right of others to develop, each in his own way, without unwarranted interference.

86. As was pointed out in the Commission, it is difficult to draw a rigid line of demarcation between the rights of the individual and those of the collectivity to development.^{76/} For example, on the one hand, the provision of development assistance, the regulation of trade, and co-operation on a multiplicity of other issues is conducted, to a great extent, on a State to State basis within the international community. On the other hand, in so far as it is possible to devise and apply indicators which can assess the extent of realization of the right to development, these usually utilize the individual as the relevant unit of measurement (e.g. schools per capita etc.).^{77/}

States

87. It is clear that there is a universal right for all States to pursue their own development in an international environment which is conducive to that process. In addition to the right and duty to eliminate colonialism, apartheid, racial and other forms of discrimination, neo-colonialism and all forms of

^{76/} E/CN.4/SR.1398, para. 30.

^{77/} Keba M'Baye, "Emergence du 'droit au développement' en tant que droit de l'homme dans le contexte de nouvel ordre économique international", paper presented to UNESCO Expert meeting on human rights, human needs and the establishment of a New International Economic Order, Paris, 19-23 June 1978 (Paper SS-78/CONF.630/8) p.5.

foreign oppression and domination, every State has the sovereign and inalienable right to choose its economic, political, social and cultural system in accordance with the will of its people.^{78/} This right includes sovereign and permanent control of every State over its natural resources, wealth and economic activities. Similarly, every State has the sovereign right to rule and exercise effective control over foreign investments. These rights are based on article 1 of each of the International Covenants on Human Rights and have been reaffirmed and supplemented by a number of General Assembly resolutions^{79/} and the declarations and resolutions of international conferences dealing with particular subjects.^{80/} Thus for example the United Nations Conference on Human Settlements declared that the use, possession, disposal and preservation of land is an additional right of States.^{81/} The United Nations World Population Conference declared that every State has the right to formulate and implement its own population policy.^{82/}

83. Without prejudice to the right of any State to pursue its right to development, it would appear that, in view of the ethical and legal foundations of the right, it is appropriate to lay particular emphasis upon those States which have been subject to external constraints in the pursuit of their rights. In general terms, the General Assembly has placed such States in two

^{78/} Maurice Flory, "Souveraineté des états et coopération pour le développement", Recueil des cours 1974 vol. 141 (I), p. 255, especially pp. 292-302.

^{79/} See, for example, resolution 1803 (XVII); resolution 2626 (XXV); and resolution 31/84.

^{80/} These are reviewed in E/6056/Add.1.

^{81/} A/CONF.70/15.

^{82/} E/CONF.60/19.

categories.^{83/} The first includes all developing countries and particularly those among them that are "the least developed, land-locked and island countries, and those most seriously affected by economic crises and natural disasters".^{84/} The second category includes those States "which are under foreign occupation, alien and colonial domination or apartheid".^{85/} Under the provisions of the Declaration on the Establishment of a New International Economic Order the latter category are entitled to restitution and full compensation for the exploitation and depletion of, and damages to, their natural and all other resources.^{86/}

Peoples

39. Just as peoples are entitled to self-determination so too are they among the subjects and beneficiaries of the right to development.^{87/} In determining what constitutes a "people" in the context of self-determination the following criteria have been proposed:

- (i) The term "people" denotes a social entity possessing a clear identity and its own characteristics;
- (ii) It implies a relationship with a territory, even if the people in question has been wrongfully expelled from it and artificially replaced by another population;

^{83/} Resolution 3281 (XXIX), preamble.

^{84/} Resolution 3201 (S-VI), para. 4 (c).

^{85/} Ibid., para. 4 (h) and (i).

^{86/} Ibid.

^{87/} In the view of one author the right to development attaches primarily to peoples: "The right to development is for a people what human rights are for an individual. It represents the transposition of human rights to the level of the international community." Société Française Pour le Droit International, Rapport du Colloque d'Aix-en-Provence, 24-26 mai 1973, p. 28.

- (iii) A people should not be confused with ethnic, religious or linguistic minorities, whose existence and rights are recognized in Article 27 of the International Covenant on Civil and Political Rights.^{88/}

At the 1945 San Francisco Conference it was stated that "the principle of equal rights of peoples and that of self-determination are two component elements of one norm".^{89/} One scholar has stated that, in virtue of that principle, a people and its State should be placed on an equal footing with other peoples and States and should enjoy legal status and true freedom of choice with regard to their political, economic, social and cultural development.^{90/} The right of peoples to develop so as to give expression to themselves and to their culture is considered later in this study.^{91/}

90. The rights possessed by peoples are further spelled out in article 3 (e) of the Declaration on Social Progress and Development which affirms:

"The right and responsibility of each State and, as far as they are concerned, each nation and people to determine freely its own objective of social development, to set its own priorities and to decide in conformity with the principles of the Charter of the United Nations the means and methods of their achievement without any external interference".^{92/}

Minorities

91. Minority groups and their members are also among the subjects and beneficiaries of the right to development. In his "Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities" the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection

^{88/} E/CN.4/Sub.2/L.641, para. 139.

^{89/} Ibid., para. 197.

^{90/} Ibid., para. 201.

^{91/} Chapter IV, infra.

^{92/} General Assembly resolution 2542 (XXIV); reaffirmed in resolution 31/84.

of Minorities proposes the following interpretation of the term "minority":

"A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language".^{23/}

Participants in a Seminar on the Promotion and Protection of the Human Rights of National, Ethnic and Other Minorities held in Ohrid, Yugoslavia concluded that members of minority groups are entitled to preserve their identity and to enjoy and develop their own culture and traditions in conditions of full equality with the majority while making their own distinctive contribution in all respects to the life and development of the country in which they live.^{24/} They are also entitled to enjoy equality before the law, the right to practise their own religion and the right to use their own language.^{25/} It may be said, therefore, that minority groups and their members have a right to share in the development of the whole community, without discrimination.

Individuals

92. The preceding analysis has shown that the individual is a subject of the right to development in so far as the entire process of development must be

^{23/} E/CN.4/Sub.2/384/Add.5, para. 10. The Special Rapporteur notes that this definition is drawn up solely with the application of article 27 of the International Covenant on Civil and Political Rights in mind.

^{24/} See Report of the Seminar, held at Ohrid, Yugoslavia, 25 June-3 July 1974 (ST/IAO/HR/49), para. 130.

^{25/} Ibid., paras. 61 and 71.

aimed at the spiritual, moral and material advancement of the whole human being, both as a member of society and from the point of view of individual fulfilment.

93. The individual's right to development includes realization of the entire range of rights specified in the International Bill of Human Rights.^{96/} These rights have also been elaborated on in a variety of resolutions and declarations adopted by United Nations conferences on specific subjects.^{97/} Thus for example in 1972 the Conference on the Human Environment proclaimed that man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and wellbeing. The right to equality mentioned therein has been elaborated upon by a number of declarations as regards equality between men and women. It means equality in dignity and worth as human beings as well as equality in rights, opportunities and responsibilities (Women, Population, Habitat, Industrial Development). In other contexts the notion of equality leads to a rejection of all forms of racism and racial discrimination. For example, it is stressed that development requires recognition of the dignity of the individual, appreciation for the human person and his self-determination as well as the elimination of discrimination in all its forms, and that respect for human life is basic to all human societies (Population).

^{96/} It is unnecessary to enumerate all those rights in this context. The International Bill of Human Rights comprises the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the latter.

^{97/} See generally E/6056/Add.1, paras. 8-12. Specific Conferences are referred to only in general terms in brackets; the full titles are to be found in footnote 1 of the aforementioned document.

D. Duties flowing from the right to development

94. In the previous section of this study, the subjects and beneficiaries of the right to development were considered. In this section the focus is on the nature of the corresponding duties and the entities on which they fall. The earlier analysis of the individual and collective characteristics of the right under examination is also applicable in the context of the duties correlative to the right. In addition, it must again be noted that it is not possible within the confines of the present study to provide an exhaustive statement of all the duties arising from the right.

The international community

95. It is a basic principle of international law that States have the duty to co-operate with one another in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international co-operation free from discrimination.^{98/} Among the purposes of the United Nations listed in Article 1 of the Charter is the achievement of "international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion". Moreover by virtue of Article 56 "all Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55" which relates to, inter alia, the promotion of development and human rights. In addition to the Charter, this principle is based on the principles of equal rights of peoples and self-determination which "are two component elements of one norm".^{99/} In a study on the right of

^{98/} See, in addition to the United Nations Charter, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, General Assembly resolution 2625 (XXV), annex.

^{99/} See note 89 supra.

self-determination one scholar has emphasized that equal rights are essential for all peoples and all States.^{100/} In his view, in the field of economic development "equality should be complemented by the notion of fairness, in virtue of which the international community should lend its support to the efforts of the developing countries".^{101/} The duty of the international community to promote co-operation for development^{102/} includes both the duty to remove the diverse restraints which continue to obstruct the attainment of development objectives^{103/} and the duty to provide positive assistance to promote the universal achievement of the human right to development. The objectives of international co-operation for this purpose are unequivocally stated in the Declaration on the Establishment of a New International Economic Order in which Member States of the United Nations have proclaimed their united determination to work urgently for the establishment of such an order "based on equity, sovereign equality, interdependence, common interest and co-operation among all States, irrespective of their economic and social systems which shall correct inequalities and redress existing injustices, make it possible to eliminate the widening gap between the developed and the developing countries and ensure steadily accelerating economic and social development and peace and justice for present and future generations".^{104/}

96. The duty of all members of the international community to create the necessary conditions for the full realization of economic, social and cultural rights has found its most recent expression in paragraph 1 of resolution 4 (XXXIII) of the Commission on Human Rights. The Commission called upon all States to take prompt and effective measures, both on the national and on the international level, to remove all obstacles

^{100/} E/CN.4/Sub.2/L.641, paras.197-200.

^{101/} *Ibid.*, para.201.

^{102/} General Assembly resolution 3201 (S-VI), para.3, resolution 2542 (XXIV) article 9, and resolution 32/150, preamble.

^{103/} E/AC.54/L.98, p.74.

^{104/} General Assembly resolution 3201 (S-VI), preamble.

to the full realization of economic, social and cultural rights and to promote all actions that will secure the enjoyment of those rights.

International organizations

97. The specialized agencies of the United Nations must also be considered to have a duty to promote the realization of the right to development. The International Court of Justice has indicated that the rights and duties of entities such as the United Nations Organization and the specialized agencies "must depend upon (their) purposes and functions as specified or implied in (their) constituent documents and developed in practice".^{105/} The relationship between the United Nations and each agency is governed by an agreement concluded in accordance with Article 65 of the Charter. The human rights objectives of the United Nations as specified in the Charter are clearly applicable to the agencies.^{106/} In addition, the constitutional instruments of agencies such as ILO, UNESCO and WHO all refer to the promotion of human rights and that of FAO speaks of promotion of the "common welfare".

States

98. The duties of States in promoting the human right to development have two dimensions, both with international implications.

99. The first aspect of the duty of States relates to the peoples living under the jurisdiction.^{107/} The right to self-determination, which is stated in article 1 of both the International Covenants on Human Rights, imposes on States the obligation to respect the rights of peoples under their jurisdiction to freely choose their political

^{105/} Reparations for Injuries Suffered in the Service of the United Nations case, I.C.J. Rep. 1949, p.180.

^{106/} See in this connexion the reports presented by some of the agencies to the International Conference on Human Rights held in Teheran 22 April to 13 May 1968: A/CONF.32/8 (WHO); A/CONF.32/9 (ILO); A/CONF.32/10 (UNESCO); A/CONF.32/11 (UNICEF); and A/CONF.32/16 (FAO).

^{107/} In a nineteenth century treatise on the Sphere and Duties of Government, Wilhelm von Humboldt emphasized the role of governments in fostering development:

"The grand, leading principle towards which every argument unfolded in these pages directly converges, is the absolute and essential importance of human development in its richest diversity."

Quoted by J.S. Mill, On Liberty (London, John W. Parker and Son, 1859) p.I.

status and freely to pursue their economic, social and cultural development without discrimination on grounds of race, religion or colour. Secondly, in their relations with other States, States have the duty to co-operate to promote universal realization of the right to development. The Proclamation of Teheran affirmed that the failure to reach the objectives of the first Development Decade made it all the more imperative for every nation, "according to its capacities" to make the maximum possible effort to close the widening gap between the economically developed and developing countries. countries.^{108/}

100. The duties of States are spelled out even more precisely in other documents. Thus, in the Strategy for the United Nations Development Decade, the General Assembly has affirmed the duty, and right, of every country to develop its human and natural resources.^{109/} Paragraph 4. (r) of the Declaration on the Establishment of a New International Economic Order declares the need for developing countries to concentrate all their resources for the cause of development.^{110/} Similarly, the Charter of Economic Rights and Duties of States, in article 7, provides that "every State has the primary responsibility to promote the economic, social and cultural development of its people. To this end, each State has the right and the responsibility to choose the means and goals of development, fully to mobilize and use its resources, to implement progressive economic and social reforms and to ensure the full participation of the people in the process and benefits of development."^{111/}

101. An even more specific statement of the responsibilities of States is to be found in the Declaration on Social Progress and Development.^{112/} Article 7 requires that

^{108/} Op. cit., para. 12.

^{109/} General Assembly resolution 2626 (XXV), para.10.

^{110/} General Assembly resolution 3201 (S-VI).

^{111/} General Assembly resolution 3281 (XXIX).

^{112/} General Assembly resolution 2542 (XXIV).

the equitable distribution of national income and wealth among all members of society should be a major goal of States. Article 8 refers to the responsibility of Governments in planning social development measures to ensure the progress and well-being of their peoples. In this regard, the responsibility of the governments of developing countries to utilize development assistance in such a way as to promote the right to development could also be mentioned. In 1970 the Committee for Development Planning expressed the view that an effective international development strategy requires "pervasive reforms and institutional changes" in developing countries in order to create an environment conducive to rapid development.^{115/} Thus in the Commission it was said that "It was not enough simply to say that the richer countries had an obligation to assist the poorer countries; the question of what that assistance was used for should also be examined."^{116/}

102. A further duty which attaches to States relates to the rights of national, ethnic, cultural, religious and other recognizable minority groups.^{115/} The participants in a seminar on the promotion and protection of the human rights of national, ethnic and other minorities held at Ohrid, Yugoslavia in 1974 concluded that the promotion of the human rights and of the equal participation of members of such minorities in the political, economic, social and cultural life of a country, in accordance with the principles contained in the International Covenants on Human Rights, is an important responsibility of every State.^{116/} Participants also emphasized that it is incumbent on all States to ensure that members of minority groups enjoy all the

^{113/} Towards Accelerated Development: Proposals for the Second United Nations Development Decade (United Nations publication, Sales No. E.70.II.A.2), p.5.

^{114/} E/CN.4/SR.1525, para.18.

^{115/} The concept of a "minority" is discussed above, in para.7B. See also Article 27 of the International Covenant on Civil and Political Rights.

^{116/} Report of the Seminar on the Promotion and Protection of the Human Rights of National, Ethnic and Other Minorities, op.cit., para.158. The duties of States in this regard are considered in detail in the Special Rapporteur's "Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities", op.cit.

human rights that are enjoyed by the majority and stated that any discrimination against them is contrary to the purposes and principles of the Charter of the United Nations, to conventions or to customary international law. In the view of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities the provision in article 27 of the International Covenant on Civil and Political Rights to the effect that "persons belonging to such minorities shall not be denied the right ... to enjoy their own culture ..." requires active and sustained measures from States.^{117/}

103. In conclusion, it can be noted that the changing role of the State in the development process has led to a growing emphasis in recent years upon the duty of the State to promote and establish conditions under which the individual could seek self-fulfilment and the realization of his right to development.^{118/} The significance of the role of the public sector in the promotion of economic development, with particular reference to developing countries, has been considered in a recent report by the Secretary-General.^{119/}

Industrialized States and former colonial powers

104. To the extent that it may be applicable to these States the Charter of Economic Rights and Duties of States provides that relations among States shall be governed by a number of principles among which is the "remedying of injustices which have been brought about by force and which deprive a nation of the natural means necessary for its normal development".^{120/} In this regard, it was stated at a seminar held in Lusaka, Zambia, in 1970, that the economically developed countries, and in particular ex-colonial countries, had a duty to furnish assistance to the developing countries.^{121/}

[This view was endorsed by speakers during the debate of the thirty-third session of the

^{117/} Ibid., Add.5, paras.29-30.

^{118/} E/CN.4/SR.1591, paras.30-31.

^{119/} E/5985.

^{120/} General Assembly resolution 5281 (XXIX), chapter I, principle (i).

^{121/} Report of Seminar on the Realization of Economic and Social Rights with Particular Reference to Developing Countries, op.cit. para.22.

Commission on Human Rights on agenda item 7.^{122/} A similar responsibility would appear to be borne by those States which, although not themselves colonizers, have enjoyed the fruits of colonial exploitation.

105. It may also be considered that, by accepting and promoting their pre-eminent role in international trade and financial institutions as well as by exercising strong influence over the international transfer of social and cultural mores, the industrialized countries should be expected to accept the concomitant responsibility of promoting the realization of the right to development.^{123/}

Regional and sub-regional State groupings

106. The same considerations which apply in relation to the international community in general and to the industrialized States and former colonial States are equally applicable in determining the duties of regional State groupings. This is in line with the undertaking in Article 56 of the Charter under which all States Members of the United Nations pledge to take "joint and separate" action. Thus the duties attaching to States in their individual capacities are in no way diminished when they act jointly in the framework of a regional or subregional grouping.

107. It may be noted in the context that the Programme of Action on the Establishment of a New International Economic Order called upon the developed countries to support initiatives for necessary co-operation among developing countries through the extension of financial and technical assistance. At the same time the Programme encouraged the development of regional and subregional co-operation among developing countries.^{124/}

108. Similarly the Declaration of Principles adopted by the World Employment Conference reconfirmed:

"The importance of regional and subregional co-operation as a major instrument to achieve the expansion of domestic markets, to facilitate

^{122/} E/CN.4/SR.1391, para.48; E/CN.4/SR.1395, paras.18, 22 and 39; and E/CN.4/SR.1394, para.25.

^{123/} E/CN.4/SR.1391, para.13. See also Keba M'Baye, "Emergence du 'droit au développement' en tant que droit de l'homme dans le contexte de nouvel ordre économique international", *op.cit.*, pp.15-17 and 21-22.

^{124/} General Assembly resolution 3202 (S-VI), chapter VII.

the use of modern technologies, efficient industrialization, better integration into the world economy, and to give greater weight to the positions of developing countries in international relations, with a view to accelerating the development of Third World countries."^{125/}

Other transnational entities

109. The duties which attach to other transnational entities in respect of the right to development are considered in subsequent sections of this study. It can be stated at this point that international pronouncements on the subject make it clear that the duty to promote the right to development is of general application, and thus applies to entities such as transnational corporations, producers associations, trade unions and others. While it appears to be generally accepted that some form of international regulation of the activities of transnational corporations is desirable, it remains the case that a form of regulation "which could make them more acceptable instruments of international prosperity and co-operation has yet to be devised".^{126/}

Individuals^{127/}

110. The duties of the individual, both to other individuals and to the community to which he belongs, require him to strive for the promotion and observance of all human rights, including the right to development. These duties are based in part on the provisions of the Universal Declaration of Human Rights. Article 29 (1) of the Declaration provides that "everyone has duties to the community in which alone the free and full development of his personality is possible". Moreover, the eighth preambular paragraph states that "every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote

^{125/} E/5857.

^{126/} Committee for Development Planning, Report on the Fourteenth Session (1978), op.cit., para.27, p.7.

^{127/} On the general question of the role of individuals in the promotion of human rights, see Th. C. van Boven, "Partners in the Promotion and Protection of Human Rights", Netherlands International Law Review, vol. 24, Special Issue 1/2 (1977), p.55.

respect for these rights and freedoms ...". The duties of the individual are further reinforced by the provision in article 30 that "nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein".

111. In accordance with preambular paragraph 5 of both the International Covenants on Human Rights "the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized" in the Covenants.

112. The Declaration on Social Progress and Development states that the right of all peoples to live in dignity and freedom and to enjoy the fruits of social progress is accompanied by the duty on their part to contribute to it.^{128/} Thus at a seminar on special problems relating to human rights in developing countries, held in 1969, some participants pointed out that national development could not take place without the requisite efforts of the population in implementing development plans.^{129/} It was noted, at the same time, that such efforts were not likely to be forthcoming unless the individual saw in them a promise of dignity and respect for his rights as a human being.

113. In this connexion, the view has been expressed by a Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities that:

"Every capable individual as a basic element of the society, has the duty to participate actively in defining and achieving the common goals of social progress and development of the community. These goals include,

^{128/} General Assembly resolution 2542 (XXIV), article 1.

^{129/} Op. cit., para.22.

among others, the establishment of a harmonious balance between scientific, technological and material progress and the intellectual, spiritual, cultural and moral advancement of humanity."^{130/}

114. Individuals might also be considered to have a further duty. It is generally recognized that efforts to promote the universal realization of the right to development must include endeavours to ensure the prudent use of the world's limited resources. In this connexion, a report by a Commonwealth Experts' Group has noted that a part of these endeavours must be the quest for greater simplicity in life styles, "especially in those developing countries where conspicuous consumption by the few, puts at risk the basic well-being, sometimes even the survival, of the many".^{131/} Accordingly, the report urges peoples in all countries to adopt the necessary measures of restraint that would allow for the progressive elimination of poverty, a prerequisite for realization of the right to development, throughout the world.

^{130/} "Study of the individual's duties to the community and the limitations on human rights and freedoms under article 29 of the Universal Declaration of Human Rights", by Mrs. Erica-Irene A. Dues, E/CN.4/Sub.2/413, para.560.

^{131/} Towards a New International Economic Order: A Final Report by a Commonwealth Experts' Group (London, Commonwealth Secretariat, 1977), para.1-34.

III. THE RELATIONSHIP BETWEEN THE HUMAN RIGHT TO DEVELOPMENT IN ITS INTERNATIONAL DIMENSIONS, AND SOME OTHER RELEVANT CONCEPTS

A. The relationship between the human right to development in its international dimensions and "other human rights based on international co-operation"

115. An analysis of the relationship between the human right to development and other human rights based on international co-operation requires consideration of how the quest for development could be fully harmonized with the protection of human rights. This issue is of major importance, and arises particularly in the context of economic development. If a balanced and comprehensive approach to development is adopted, then respect for the entire spectrum of human rights should theoretically be assured. It may be, however, that a country possesses inadequate economic resources to enable it to guarantee the enjoyment of human rights such as the rights to food, education, and health to all and must, therefore, emphasize the need for rapid economic growth. Under such circumstances it could happen that policies be pursued which are not entirely compatible with respect for human rights and fundamental freedoms. Thus the right to development which straddles both the categories of economic, social and cultural rights and civil and political rights, forms part of the debate as to whether one category of rights or the other might be accorded priority, especially in the context of the quest for economic development.^{1/}

116. In general terms the answer is clear. The Preamble to both International Covenants on Human Rights states that "in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights". The Proclamation of Teheran reaffirmed the notion that human rights and individual freedoms are indivisible. At its thirty-third session, the Commission on Human Rights

^{1/} In this regard see for example International Commission of Jurists, Human Rights and Development: Report of a Seminar on Human Rights and their Promotion in the Caribbean, Barbados, September 1977 (Bridgetown, The Cedar Press, 1978).

reasserted the interdependence of all human rights and fundamental freedoms and, in the context of that interdependence, noted that the full implementation of economic, social and cultural rights is of crucial importance for the real and meaningful enjoyment of civil and political rights. More recently, the General Assembly, in resolution 32/130 decided that the concept of the indivisibility and interdependence of all human rights and fundamental freedoms should guide future work within the United Nations system with respect to human rights questions. In the same context, the Assembly stated that equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights.

117. Thus, as one writer expressed it: "Human rights can therefore not be regarded as separate entities to be arranged in a certain order in accordance with the importance attached to them. They constitute, as it were, an indivisible whole and are a reflection of the fundamental unity and uniqueness of the human being".^{2/}

118. The right to development is therefore to be seen as interdependent with, and indivisible from all other human rights. Indeed, the central importance of the notion of development as the right of man to his own unfolding as an individual personality ensures that the enjoyment of one set of rights at the expense of the other would be completely unsatisfactory and that the two sets of rights must be achieved simultaneously if there is to be progress.^{3/}

119. Nevertheless, despite general acceptance of the indivisibility of all human rights there remains a tendency on the part of some economists and politicians to place a high priority on the need to achieve rapid overall economic growth and a very much lower priority on the need to respect human rights.

120. Thus, participants in a number of seminars on Human Rights in Developing Countries have pointed to the difficulties which may arise in the course of

^{2/} Van Boven, *op. cit.*, p. 387.

^{3/} E/CN.4/SR.1393, para. 34.

attempting to reconcile the objectives of planned national development on the one hand, and the maintenance of human rights and fundamental freedoms on the other.^{4/}

121. The relationship between the human right to development and other human rights was also the subject of considerable discussion at the thirty-third session of the Commission on Human Rights.^{5/} While it was generally agreed that human rights were indivisible, several speakers stated that the governments of many developing countries had of necessity to give priority to economic and social development and to the strengthening of their political institutions. In their view criticism of the occasional curtailment of certain liberties in such countries could be considered an unfair oversimplification, since it did not take into account the nature and dimensions of the problems they had to face.

122. Other representatives voiced reservations regarding the concept of economic development as a prerequisite for the exercise of civil and political rights. They maintained that certain fundamental rights - such as the right to life, to protection against torture and to safeguards against arbitrary arrest - should and could be implemented in all countries, regardless of their level of economic development. The view was also expressed that at least one of the civil and political rights - the right to freedom of opinion and expression - was essential for the realization of economic, social and cultural rights.

123. It is relevant at this point to note the extent to which limitations on human rights are permitted under the terms of the International Human Rights Covenants.^{6/} The only limitations to which the rights included in the International Covenant on Economic, Social and Cultural Rights may be subjected are those which: (i) are determined by law; (ii) are compatible with the nature of these rights; and

^{4/} Reports of the Seminars on Human Rights in Developing Countries, held in Kabul, 1964, op. cit., and in Dakar, 1966, op. cit. The issues raised at the latter Seminar are also dealt with by M. Tardu, "L'individu et l'état en Afrique tropicale", McGill Law Journal, Vol. 13, No. 2 (1967).

^{5/} Official Records of the Economic and Social Council, Sixty-second Session, Supplement No. 6 (E/5927), paras. 38-42.

^{6/} See generally Stephen Marks, "La notion de période d'exception en matière des droits de l'homme", Revue des droits de l'homme, Vol. VIII, No. 4, p. 321.

(iii) are solely for the purpose of promoting the general welfare in a democratic society.^{7/} Under the International Covenant on Civil and Political Rights, States Parties may only take measures derogating from their obligations (i) in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed; (ii) provided that such measures are not inconsistent with their other obligations under international law; and (iii) do not involve discrimination based solely on the ground of race, colour, sex, language, religion or social origin.^{8/} It should be noted, however, that under article 4(2) this provision does not permit any derogation from articles 6 (right to life), 7 (right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment), 8(1) and (2) (right not to be held in slavery or servitude), 11 (right not to be imprisoned merely on the grounds of inability to fulfil a contractual obligation), 15 (right not to be convicted under a retrospective law), 16 (right to recognition everywhere as a person before the law) and 18 (right to freedom of thought, conscience and religion). In addition, the International Covenant on Civil and Political Rights permits restrictions to be placed on the exercise of certain rights in particular circumstances.^{9/} Thus, for example, no restrictions may be placed on the exercise of the right of peaceful assembly "other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others".^{10/}

124. The conclusions which emerged from a detailed discussion of the question of limitations on the enjoyment of human rights during a seminar on special problems relating to human rights in developing countries were summarized as follows by one participant:

^{7/} Article 4.

^{8/} Article 4(1).

^{9/} See articles 12, 14 (1), 13 (3), 19 (3), 21 and 22 (2).

^{10/} Article 21.

"(a) Limitations or restrictions on human rights should be defined by law;

(b) Constitutional or other legal provisions authorizing limitations or restrictions on human rights should be interpreted strictly and in accordance with the letter and the spirit of those provisions;

(c) Limitations and restrictions upon human rights may be necessary for certain specific reasons but in each case the onus of proving the need for such restrictions should be on the authorities seeking to impose them and the actions of the authorities should be subject to scrutiny by an independent judicial organ or similar body;

(d) The principle of reserving certain norms to enactment by means of a law only, was intended to restrict administrative interference with human rights;

(e) Although some limitations and restrictions on human rights are provided for in the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenants on Human Rights, there might be need for a better formulated system of restrictions without legislative lacunae".^{11/}

125. In a recent study prepared for the International Labour Office the relationship between the right to freedom of association and the quest for economic development was considered.^{12/} The report considered whether freedom of association constituted a hindrance to economic development, especially in developing countries, and if so, whether there was sufficient justification for restricting or even abolishing that freedom in order to meet the requirements of development. The attitude of the ILO is clearly stated in a foreword to the report:

^{11/} Seminar held in Nicosia, Cyprus, from 26 June to 9 July 1969 (ST/TAO/HR/36), para. 141.

^{12/} Guy Caire, Freedom of Association and Economic Development (Geneva, ILO, 1977).

"For the ILO, there can be no justification for sacrificing either economic development or freedom of association. Sustained economic development has always been considered an important factor of social progress, but is not an end in itself: rather it is a means towards achievement of social and humanitarian aims, which should not be lost in sight".^{13/}

126. The report concludes that inter alia, "instead of branding trade unionism as a hindrance to development, it would seem wiser to regard the absence of development as a barrier to the exercise of freedom of association".^{14/} It also endorsed the approach adopted in an earlier ILO report which considered the connexion between trade unionism and social discontent. That analysis is also relevant in the present context:

"Social discontent is perhaps inevitable in any society and there may be no possibility of entirely eliminating it. The real problem is to prevent it from leading to serious social unrest and grave labour troubles, which can threaten the political order or the stability of government and cause enormous economic losses. So long as workers can believe that their trade unions are doing a creditable job of defending and promoting their interests, they will depend on the unions for airing their desires, aspirations and grievances and for obtaining satisfaction, justice or redress through normal trade union methods. In this way, trade unions can be said to perform a vital role in preventing the danger of serious social unrest and in contributing to stable development and 'sustained progress'".^{15/}

^{13/} Ibid, page vi.

^{14/} Ibid, page 131.

^{15/} ILO, Freedom of Association for Workers' and Employers' Organizations and their Role in Social and Economic Development, Report III, Seventh Asian Regional Conference, Tcheran 1971, p. 34.

127. Two other aspects of the relationship between the human right to development and other human rights should briefly be noted. The first of these relates to the responsibility of certain entities to take measures to promote the realization of the right to development. In situations where a lack of resources or other constraints, and especially those constraints which are externally imposed, prevent the enjoyment of human rights, there is an obligation on the international community in general and States in particular, according to their abilities, to render assistance. In this regard the Proclamation of Teheran states that the achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international development policies.^{16/} The nature and foundations of the obligations of the international community and of other entities have been considered in Chapter II above.

128. The second aspect relates to the relationship between the right to development and other specific rights included in the Universal Declaration of Human Rights and the International Covenants on Human Rights. For the most part, it is proposed to analyse this relationship within the context of Chapter IV below, in which specific issues are analysed in light of the right to development. These issues include: the right to self-determination; the importance of participation; the right to adequate food and health care; the rights to education and culture, etc. It is sufficient to note at this point that the parameters of the right to development are determined, at least in part, by reference to a number of other human rights, both economic, social and cultural and civil and political. Of these, perhaps the most central is the right to self-determination which is considered in detail below in Chapter IV.A. It is not proposed in this study to duplicate the ground covered by the Commission's Special Rapporteur in his report on The Realization of Economic, Social and Cultural Rights: Problems, Policies and Progress.^{17/} In that report the Special Rapporteur gives considerable attention to the relationship between economic, social and cultural rights and the question of development.

^{16/} Op. cit., para. 13.

^{17/} Op. cit.

129. In summary, the relationship between the right to development and other human rights is a fundamental one. The key to its understanding lies in not losing sight of the end through a preoccupation with the means. A development strategy based on political repression and the denial of human rights could perhaps appear to succeed in terms of specific overall economic objectives, but full and genuine development would never be achieved. The relationship may be illustrated by reference to the following analogy made by President Julius Nyerere:

"Freedom and development are as completely linked together as are chickens and eggs. Without chickens you get no eggs; and without eggs you soon have no chickens. Similarly, without freedom you get no development, and without development you very soon lose your freedom."^{18/}

^{18/} Julius K. Nyerere, "Freedom and Development" in Freedom and Development: A Selection from Writings and Speeches 1968-1973. (London, Oxford University Press, 1973), p. 58.

B. The relationship between the human right to development
in its international dimensions and the right to peace

130. Speaking in the debates at the thirty-third session of the Commission on Human Rights, several representatives expressed the view that the right to development was closely linked to the right to peace.^{19/} In the view of one representative, "the right to development [is] the new symbol of peace".^{20/}

131. The maintenance of peace, the achievement of development and the promotion of respect for human rights are the central themes of all United Nations endeavours. These objectives are clearly stated in the Charter of the United Nations. It may be recalled that in the Preamble to the Charter, the peoples of the United Nations expressed their determination to, inter alia, "reaffirm faith in fundamental human rights, ... promote social progress and better standards of life in larger freedom, ... and to unite our strength to maintain international peace and security ...". The same themes are reflected in Article 1 of the Charter which states the purposes of the United Nations, and in Article 55 relating to international economic and social co-operation.

132. The fundamental link between the maintenance of peace and the realization of respect for human rights is reaffirmed in the opening paragraph of the Preamble to the Universal Declaration of Human Rights and of both International Covenants on Human Rights:

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

^{19/} Official Records of the Economic and Social Council, Sixty-second Session, Supplement No. 6, (E/5927) para. 42.

^{20/} E/CN.4/SR.1394, para. 23.

Similarly, the preamble to the Proclamation of Teheran states that "peace is the universal aspiration of mankind and that peace and justice are indispensable to the full realization of human rights and fundamental freedoms".^{21/}

133. Violations of human rights frequently pose a threat to the enjoyment of world peace. This may often be the case, for example, with respect to denials of the right to self-determination, the widespread occurrence of discriminatory practices, and the practice of racial discrimination and racism.^{22/} Paragraph 1 of the Declaration on the Granting of Independence to Colonial Countries and Peoples states that:

"The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation."^{23/}

The Preamble to the International Convention on the Elimination of All Forms of Racial Discrimination reaffirms that "discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State".^{24/}

^{21/} Op. cit., preambular para. 7.

^{22/} See generally the Proclamation of Teheran, op. cit., paras. 7 and 11; International Convention on the Suppression and Punishment of the Crime of Apartheid (General Assembly resolution 3068 (XXVIII), article 1 (1); United Nations Declaration on the Elimination of All Forms of Racial Discrimination (General Assembly resolution 1904 (XVIII), article 1; Declaration adopted by the World Conference to Combat Racism and Racial Discrimination held in Geneva 14-25 August 1978 (A/CONF.92/L.2; and A/33/262), paras. 3 and 4.

^{23/} General Assembly resolution 1514 (XV).

^{24/} General Assembly resolution 2106A (XX).

134. The General Assembly further emphasized the link between peace, development and human rights in its Declaration on the Deepening and Consolidation of International Détente.^{25/} In the Declaration, States Members of the United Nations declare their determination:

"To adhere firmly to and promote the implementation of the provisions of the Charter of the United Nations, as well as the universally accepted principles and declarations aimed at enhancing world peace and security and the development of friendly and co-operative relations among States, and to fulfil their obligations arising from multilateral treaties and agreements serving the achievement of these objectives."^{26/}

...

To work towards the establishment and development of just and balanced economic relations among States and to strive to narrow the gap between the developed and developing nations, in accordance with the consensus resolutions adopted by the General Assembly at its sixth and seventh special sessions on the establishment of the new international economic order."^{27/}

To encourage and promote respect for human rights and fundamental freedoms for all in conformity with the Universal Declaration of Human Rights and other relevant international treaties and instruments, including the International Covenants on Human Rights."^{28/}

^{25/} General Assembly resolution 32/155.

^{26/} *Ibid.*, para. 1.

^{27/} *Ibid.*, para. 7.

^{28/} *Ibid.*, para. 8.

The concept of peace

135. In recent years the concept of peace^{29/} has formed the subject of a considerable number of studies in which peace has been viewed in terms of a "world without war", "world justice", "world order" etc.^{30/} The trend in almost all of these studies is to view peace as a broad and comprehensive concept. Thus a UNESCO Panel of Counsellors stated in its "Report on major world problems and UNESCO's contribution to solving them" that peace "is to be understood as a just and democratic system of international relations based on the principles of peaceful co-existence and not simply as absence of war."^{31/}

136. Another commentator has expressed the view that "the establishment of peace no longer means simply creating the political conditions in which states can conclude trade agreements; it entails setting up the structures and providing the means which will allow all states--and in the first instance the most backward--to intensify the utilization of their resources with the help of other

^{29/} See generally, L. Gunnar Johnson, Conflicting Concepts of Peace in Contemporary Peace Studies, (Beverly Hills/London, Sage Publications, 1976).

^{30/} See Kenneth F. Boulding, "Peace Research", UNESCO, International Social Science Journal, Vol. 29, No. 4, 1977, p. ; and see the following papers, presented to a UNESCO meeting of experts on the elements for a peace based on respect for human rights, Paris, 10-12 October 1977: "A study of the notion of a just, lasting and constructive peace based on respect for human rights" (SS-77/CONF.602/1); "Study on the use and value of the words 'peace' and 'freedom' in France from 1750 to the beginning of the 20th century: a linguistic survey" (SS-77/CONF.602/2); "Study of human rights: philosophical and sociological aspects, with special reference to Latin America" (SS-77/CONF.602/3); and "Valeurs linguistiques des termes 'paix' et 'égalité' en acceptions internationales" (SS-77/CONF.602/4).

^{31/} "Moving Towards Change: Some thoughts on the new international economic order" (UNESCO, Paris, 1976), Appendix, para. 5.

states. Peace is no longer, then, a negative demand that there should be no war, but a positive demand resulting from the harmonization of the ambitions of the various states, each of which is pursuing its development in its own way".^{32/}

The interdependence of peace and development

137. Just as individuals are unable to achieve the full realization of their potential in isolation from the individuals and the community around them, so too are peoples and countries becoming increasingly interdependent. Thus, particular world problems cannot be considered in isolation, but are closely bound up with each other. The fundamental interdependence of peace and development was noted in a paper presented to the International Conference on Human Rights in Teheran in 1968 which concluded that: "peace will help development.

Development will engender peace. They are both causes and effects. They strengthen each other. Their common goal is the reign of human rights".^{33/} Similarly, another commentator has noted that "peace is progress, peace is growth and development. Peace is welfare and dignity for all people."^{34/}

138. In a number of international instruments adopted by the United Nations, the emphasis is placed on the idea that the maintenance of international peace is one of the prerequisites for the promotion of development. Thus, in the Declaration on Social Progress and Development peaceful co-existence and peace are considered as being among the "primary conditions of social progress and development".^{35/} Similarly, in its resolution 3176 (XXVIII) the General Assembly has stated that international peace and security "are necessary conditions for the social and economic progress of all countries."^{36/}

^{32/} Jean-Marie Domenach, Our Moral Involvement in Development, *op. cit.*, p. 141.

^{33/} "Some Economic Foundations of Human Rights", A/CONF.32/L.2, para. 148.

^{34/} Lester B. Pearson, (1968), quoted in Reshaping the International Order - A Report to the Club of Rome, *op. cit.*, p. 59.

^{35/} General Assembly, resolution 2542 (XXIV), article 3(b).

^{36/} Para. 6.

139. The converse of this proposition is equally true. Without the achievement of the right to development entailing respect for all human rights, there can be no peace. The notion of development as a prerequisite for peace has been emphasized in the UNESCO Medium-Term Plan (1977-1982):

"The flagrant and continuously aggravated inequality among nations, the persistence of international injustice in regard to the distribution and disposal of resources, the perpetuation of overt or covert relations of dominance, corrupting the nation's very life, have emerged increasingly clearly as factors giving rise to serious tensions and grave disorders, whose long-term effect is to jeopardize the achievement of a true and world-wide peace. However hampered it may be by the constant pressures of self-interest, however inadequate its results may still be, the joint quest for development constitutes a positive response to this situation, an essential contribution to the work of building peace."^{27/}

Thus, as the Director-General of UNESCO observed in his introduction to the Medium Term Plan, "peace itself can only be conceived on a basis of justice, that is to say on the basis of respect for human rights and the right of self-determination of peoples. Peace is more than simply a matter of refraining from war; there can be no lasting peace if individuals are deprived of their rights and liberties, if peoples are oppressed by other peoples, if populations are beset by poverty or suffering from malnutrition and sickness."^{38/}

140. The links between peace, human rights and development have long been given prominent recognition in the activities of the United Nations. In 1950, for

^{27/} UNESCO doc. 19 C/4 (1977), para. 208.

^{38/} Ibid., para. 29. See also Stephen Marks, "Development and Human Rights: Some Reflections on the study of development, human rights, and peace", Bulletin of Peace Proposals, vol. 8, no. 3, (1977), p. 236.

example, the then Secretary-General presented a "memorandum of points for consideration in the development of a twenty-year programme for achieving peace through the United Nations"^{39/} in which are included the following proposals:

"A sound and active programme of technical assistance for economic development and encouragement of broad scale capital investment, using all appropriate private, governmental and inter-governmental resources."^{40/}

More vigorous use by all Member Governments of the specialized agencies of the United Nations to promote, in the words of the Charter, 'higher standards of living, full employment and conditions of economic and social progress.'^{41/}

Vigorous and continued development of the work of the United Nations for wider observance and respect for human rights and fundamental freedoms throughout the world."^{42/}

141. In the strategy for the first United Nations Development Decade, adopted in 1961, the General Assembly stated that "the economic and social development of the economically less developed countries is ... basic to the attainment of international peace and security".^{43/} Similarly, in the International Development Strategy for the Second United Nations Development Decade, adopted in 1970, the Assembly expressed its "conviction that development is the essential path to peace and justice".^{44/}

^{39/} A/1304, p. 8.

^{40/} *Ibid.*, point 6.

^{41/} *Ibid.*, point 7.

^{42/} *Ibid.*, point 8.

^{43/} General Assembly resolution 1710 (XVI), preamble.

^{44/} General Assembly resolution 2626 (XXV), para. 6.

142. Emphasis has also been placed on the link which exists between the promotion of peace and the establishment of a new international economic order. In the Declaration on the Establishment of a New International Economic Order^{45/} the determination of the Member States is proclaimed to work for the establishment of a new international economic order which shall, inter alia, "ensure steadily accelerating economic and social development and peace and justice for present and future generations". In the book "Moving Towards Change" published by UNESCO, the view was expressed that "the will to peace must necessarily accompany the establishment of a new international economic order, of which it is a determining factor and a fundamental aim".^{46/} And further: "The establishment of a new international economic order is an opportunity to establish peace which we must not let slip".^{47/}

The right to peace

143. In resolution 5 (XXXII) the Commission on Human Rights specifically recalled that "everyone has the right to live in conditions of international peace and security ..."^{48/} The Commission noted that respect for human rights is an essential factor for the peace, justice and well-being which are necessary to ensure the development of friendly relations and co-operation among States.^{49/} Conversely, it expressed its firm conviction that "unqualified respect for and the promotion of human rights and fundamental freedoms require the existence of international peace and security".^{50/}

^{45/} General Assembly resolution 3201 (S-VI).

^{46/} "Moving Towards Change: Some thoughts on the new international economic order", op. cit., p. 33.

^{47/} Ibid., p. 100.

^{48/} Para. 1.

^{49/} Ibid., preambular para. 5.

^{50/} Ibid., para. 2.

144. During the debates in the Commission prior to the adoption of this resolution, the view was expressed by a number of representatives that the Commission should pay urgent attention to measures that would strengthen international peace and security, for only in such conditions could all problems of economic and social development be resolved and the full enjoyment of all fundamental human rights and freedoms realized. They said that policies of aggression, suppression of liberation movements, colonialism, racism and apartheid were among the most flagrant violations of human rights and that war of aggression was the worst kind of violation of all fundamental rights and freedoms and, above all, of the right to life itself.^{51/} Some other representatives, however, considered that the Commission on Human Rights would not be justified if it singled out the right to life as being of paramount importance over and above all other human rights. They felt that the primary responsibility of the Commission was in the field of promotion and protection of human rights and fundamental freedoms and not in the field of international peace and security.^{52/}

145. In supporting the existence of the right to peace, reference is often made to the Charter of the United Nations. Thus, in a written statement submitted to the thirty-fourth session of the Commission on Human Rights in connexion with the present study, a group of 16 non-governmental organizations suggested that:

"the United Nations Charter can be regarded as the legal embodiment of the right to peace. It runs consistently throughout the Charter from its Preamble and the purposes set out in Chapter I. It is enlarged in Chapter V (on the functions of the Security Council), and it goes into operational details in Chapter VI on peaceful procedures."^{53/}

^{51/} Official Records of the Economic and Social Council, Sixtieth session, Supplement No. 3, p. 23.

^{52/} Ibid., p. 24.

^{53/} E/CN.4/NGO/214, para. 22.

146. At the UNESCO symposium of experts on "Human Rights, Human Needs and the Establishment of a New International Economic Order", held at Paris in June 1978, the view was expressed that:

"by proclaiming the principle of respect for human rights and freedoms and by declaring as unlawful the use of force, the Charter of the United Nations had consecrated in international law one of the fundamental rights of every person: the right to peace."^{54/}

147. The importance of the link between human rights and peace is further emphasized in the view of a distinguished international lawyer, that:

"Contemporary international law proceeds from the fact, and this is exceedingly important, that a close link exists between a state's ensuring basic human rights and freedoms and the maintenance of international peace and security. This link is stressed in many international conventions."^{55/}

148. In resolution 4 (XXXVI) in which the Commission on Human Rights recommended to the Economic and Social Council that the Secretary-General be invited to undertake the present study, reference is made to the right to peace.^{56/}

Recognition of the right would thus appear to be implied by the resolution.

During the debates in the Commission prior to the adoption of the resolution several speakers expressed the opinion that the right to development was closely linked to the right to peace.^{57/} However, some representatives questioned

whether an individual right to peace was yet established in international law.^{58/}

^{54/} Alexandre Tichonov, "Le droit à la paix", Réunion d'experts sur les droits de l'homme, les besoins humains et l'instauration d'un nouvel ordre économique international, Paris, UNESCO, 19-23 juin 1978 (SS-78/CONF.630/10), p. 3.

^{55/} G.I. Tunkin, Theory of International Law, translated by W.F. Butler; (London. George Allen and Unwin, 1974), p. 81.

^{56/} Para. 4.

^{57/} Official Records of the Economic and Social Council, Sixty-second session, Supplement No. 6 (E/5927) para. 42.

^{58/} Ibid.

149. The right to peace is reinforced by the "right to life, liberty and the security of person" proclaimed in Article 3 of the Universal Declaration of Human Rights and the "inherent right to life" laid down in Article 6 of the International Covenant on Civil and Political Rights and further recalled in the above-mentioned resolution 5 (XXXII) of the Commission on Human Rights.

150. In considering the duties of the individual to the community the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities expresses the view that the first international duty of the individual should be to unite with others to maintain international peace and security.^{59/}

If it is accepted that the individual has a duty to contribute to the maintenance of international peace and security the corollary of such a duty would be the right of the individual to live in conditions of international peace and security. It might also be considered that the right to peace, like the right to development, has both collective and individual aspects which are closely linked and interdependent. Thus, as with the right to development, it may be unnecessary to pose the issue with respect to individual or collective rights as one involving the choice of mutually exclusive alternatives.^{60/}

151. The foregoing analysis indicates that the concept of the right to peace as a legal right in international law finds growing support in international fora.

^{59/} "Study of the individual's duties to the community and the limitations on human rights and freedoms under Article 29 of the Universal Declaration of Human Rights" by Mrs. Erica-Irene A. Daes, E/CN.4/Sub.2/413, para. 520.

^{60/} See paras. 84-85 supra.

C. The relationship between the right to development and
"the requirements of the New International Economic Order"

152. The elements which may be considered essential to the establishment of the New International Economic Order, as called for by the General Assembly, are to be found principally, although not exclusively, in the following documents:
the Declaration on the Establishment of a New International Economic Order,^{61/}
the Programme of Action on the Establishment of a New International Economic Order,^{62/}
the Charter of Economic Rights and Duties of States,^{63/} and the Resolution on Development and International Economic Co-operation.^{64/} These four documents are specifically referred to in the fourth preambular paragraph of Commission on Human Rights resolution 4 (XXIII). The documents have already been the subject of extensive analyses both within^{65/} and without^{66/} the United Nations system and it is unnecessary to duplicate that work here. It is, however, essential to note that the concept of a New International Economic Order is not a static one and cannot be understood solely by reference to these documents. Rather, the concept is an evolving one and its content must be interpreted in the light of recent General Assembly resolutions and the writing of eminent publicists. In particular, recent developments have tended to emphasise the human significance of the new order rather than its strictly economic dimensions. It is in this light that the

^{61/} General Assembly resolution 3201 (S-VI).

^{62/} General Assembly resolution 3202 (S-VI).

^{63/} General Assembly resolution 3281 (XXIX).

^{64/} General Assembly resolution 3362 (S-VII).

^{65/} See for example Economic and Social Progress in the Development Decade - "Assessment of progress made in the implementation of the International Development Strategy for the Second United Nations Development Decade, the Programme of Action on the Establishment of a New International Economic Order, the Charter of Economic Rights and Duties of States, and development and international economic co-operation". (United Nations publication, Sales No. E.77.II.A.11).

^{66/} Geneviève Frank et Maryse Caudier, Les Implications Sociales d'un Nouvel Ordre Economique International - Bibliographie Sélective, (Genève, Institut International d'Etudes Sociales, 1976).

relationship between the New International Economic Order and the human right to development assumes its fullest significance.

153. As stated in the preamble of General Assembly resolution 3362 (S-VII), the overall objective of the New International Economic Order is to increase the capacity of developing countries, individually and collectively, to pursue their development. On the basis of the resolutions of the Assembly and of subsequent discussions held and reports adopted in a wide variety of United Nations and other international fora, it is clear that the term "development" in this context refers to much more than the isolated quest for economic development. Indeed, it seems accurate to say that the proposals which comprise the call for a New International Economic Order constitute in effect the basis for a new international human order.^{67/} According to the Director-General of the ILO "the ultimate purpose of a new world economic order must be the eradication of mass poverty and the fulfilment of basic human rights."^{68/} In the same vein, the General Conference of UNESCO has declared that the establishment of a New International Economic Order depends not only on political and economic factors, but also on socio-cultural factors, the role of which in development is constantly growing and which are crucial in the struggle of peoples against all forms of domination.^{69/}

154. Perhaps the extent to which the achievement of a New International Economic Order is fundamentally linked to the realization of the human right to development has been best expressed in a recent UNESCO report:

The very purpose of a 'new international economic order' thus goes beyond the economic sphere proper; it is directed not only to making the best use of things and sharing them out more fairly, but to developing all men and women,

^{67/} E/CN.4/SR.1449, para. 23.

^{68/} Francis Blanchard, "The Social Purposes of a New World Economic Order", Review of International Co-operation, Vol. 70 (1977), p. 14 and 19.

^{69/} UNESCO Doc. 18 C/Res.12.11.

and every aspect of the individual, in a comprehensive cultural process, deeply permeated with values, and embracing the national environment, social relationships, education and welfare. It is also concerned with providing a basis for the development of the international community itself.^{70/}

155. The long-term implementation of the New International Economic Order was considered at length during the thirty-second session of the General Assembly. In resolution 32/173 the Assembly expressed its deep concern at the deteriorating economic situation of developing countries and at negative trends in international economic developments. It recognized the concern that the negotiations conducted so far had produced only limited results and decided to convene a special session of the General Assembly in 1980 to discuss and assess the progress made. In a separate decision the Assembly decided to consider at its thirty-third session a draft resolution which provides that the preparations for a new international development strategy should take into account a number of specific issues, many of which have been prominent in the negotiations for the establishment of the new order.^{71/}

156. The relationship between human rights, including the right to development, and the existing and future international economic orders was the subject of considerable discussion during the thirty-third session of the Commission on Human Rights.^{72/} The views expressed at the Commission were consistent with the approach adopted in a subsequent resolution of the General Assembly. In resolution 32/130 the Assembly expressed its deep concern at the "continuing existence of an unjust international economic order which constitutes a major obstacle to the realization of economic,

^{70/} UNESCO, Moving Towards Change: Some Thoughts on the New International Economic Order. (Paris, UNESCO, 1976), p. 19.

^{71/} General Assembly, decision 32/463 C, adopted on the recommendation of the Second Committee.

^{72/} E/CN.4/SR.1789, para. 10; E/CN.4/SR.1371, paras. 16, 20, 23, 33, 42 and 49; E/CN.4/SR.1393, paras. 9, 12, 15, 21, 22, 26, 35 and 40; E/CN.4/SR.1394, paras. 10, 16, 24 and 27.

social and cultural rights in developing countries".^{73/} In consequence the Assembly decided that the future human rights activities of the United Nations would be guided by, inter alia, the concept that realization of the New International Economic Order is an essential element for the effective promotion of human rights and fundamental freedoms and should thus be accorded priority.^{74/}

157. The crucial importance of achieving a New International Economic Order for the realization of the right to development is underlined by the fact that in recent years the gap between the rich and poor countries has been widening.^{75/} Moreover, a recent United Nations study on The Future of the World Economy has pointed out that, even if the minimum targets of growth for the developing countries, as set by the International Development Strategy, were implemented throughout the remaining decades of this century, and if the growth rates prevailing in the developed countries during the past two decades were to be retained in the future, then the gap in per capita gross product between these two groups of countries would not start diminishing even by the year 2000.^{76/} As the study concluded, "this outcome is clearly contrary to the spirit of the International Development Strategy and the Declaration on the Establishment of a New International Economic Order".^{77/}

158. In the context of the present study, two particular aspects of the relationship between the human right to development and the New International Order warrant further attention. The first of these is the significance of "patterns of dominance and dependence"^{78/} which characterize the existing international economic order.^{79/}

^{73/} General Assembly resolution 32/130, preamble.

^{74/} Ibid., para. 1(B).

^{75/} "Development Trends since 1960 and their Implications for a New International Development Strategy". E/AC.54/L.98, pp. 7-18.

^{76/} The Future of the World Economy, A United Nations Study by Wassily Leontief et al. (New York, Oxford University Press, 1977). p. 30.

^{77/} Ibid., p. 3.

^{78/} Towards a New International Economic Order: A Final Report by a Commonwealth Experts' Group, op.cit. para. 1-28.

^{79/} See also E/CN.4/SR.1391, para. 42.

The right to development cannot be fully realized without the emergence of a new power structure based on: the right and responsibility of each State and people to freely determine its own development objectives; fundamental reform of an economic order which generates permanent economic disequilibrium and resource wastage;^{30/} and recognition of the obligation of all States to co-operate for the common good in a spirit of global solidarity. The proposals for the New International Economic Order rely heavily on the creation of a new institutional framework and, in this regard, they may be contrasted with the approach adopted in the strategy for the Second Development Decade which attempted to achieve its objectives within the constraints of existing institutional structures.^{31/}

159. The second aspect is the need for the progressive realization of the right to development within States to accompany and complement the implementation of a New International Economic Order. In this regard, the "basic needs strategy" adopted by the World Employment Conference was specifically stated to be a contribution towards the establishment of a more equitable international economic order.^{32/} A UNESCO report has stated that it would be illusory to seek to meet the legitimate aspirations of the respective peoples by proceeding to change only

^{30/} The Evolution of a Viable International Development Strategy - Report by the Secretary-General of UNCTAD. TD/B/642, para. 16.

^{31/} Ibid., paras. 14-15.

^{32/} E/5357.

international economic structures.^{83/} "Parallel with the trend favourable to the establishment of a New International Economic Order, and with each country's acceptance of it, it is necessary to create a current of thought which would be conducive to a change in the social and economic structures of each country so as to provide for a more equitable internal distribution of resources".^{84/} The relevance of the "basic needs strategy" to this endeavour has been made clear in a recent ILO report:

"It is clear that the basic-needs approach and the improvement of the position of the developing countries in international economic relations are not, in any sense, alternatives or in opposition to each other, but that they are complementary. Indeed, they are inspired by the same spirit. Thus, the considerable improvements in economic opportunities and in their involvement in political and economic decision-taking which the developing countries are seeking in international affairs have their analogies in the improved access to productive resources by the poor and their organized participation in policy-making at the national level, which are key elements of the basic-needs strategy."^{85/}

The need for complementary action at both the national and international levels has also been endorsed, in general terms, by the General Assembly.^{86/}

^{83/} UNESCO, op.cit., p. 38.

^{84/} Ibid.

^{85/} ILO, A Basic Needs Strategy for Africa: Report of the Director-General, Part I, Fifth African Regional Conference, Abidjan 1977 (Geneva, ILO, 1977), p. 3.

^{86/} General Assembly resolution 31/84.

D. The relationship between the right to development
and "fundamental human needs"

(1) Introduction

160. The phrase "fundamental human needs" is one of a number which have been used to describe those material and non-material needs the fulfilment of which can be viewed as a prerequisite to self-realization. A similar notion is conveyed by the terms "basic services" used by UNICEF, "basic needs" which appears in the documents of the ILO and the World Bank and "basic human needs" used by the Development Assistance Committee of the Organization for Economic Co-operation and Development (OECD).

161. We have noted earlier that development strategies which were concerned primarily with the achievement of rapid economic growth have had little positive impact on the position of poorer groups in society.^{87/} The position of these groups is well illustrated by World Bank statistics which are also of major relevance in the present context as indicators of the extent to which economic and social rights are denied:

"1.2 billion do not have access to safe drinking water or to a public health facility. 700 million are seriously malnourished. 550 million are unable to read or write. 250 million living in urban areas do not have adequate shelter. Hundreds of millions are without sufficient employment."^{88/}

As the Bank's President noted:

"These are not simply large rounded numbers. They are individual human beings".^{89/}

^{87/} See chapter I, *supra*.

^{88/} Address to the Board of Governors by Robert S. McNamara, President, World Bank. (Washington D.C., World Bank, 1977). p. 11.

^{89/} Ibid.

He might have added that they are all the subjects of internationally recognized human rights and that they are all being denied those rights. Viewed in that light, the relationship between the right to development and a development strategy which seeks to satisfy fundamental human needs is apparent.

162. This section will briefly consider the relationship between needs and rights, and will trace the evolution of basic-needs type strategies both within and without the framework of the United Nations system. The content of a broadly representative version of the strategy will then be considered with a view to ascertaining its relationship to human rights in general, and the right to development in particular.

(2) The relationship between "needs" and "rights"

163. The philosophical and jurisprudential relationships between needs and rights are matters of considerable complexity. In this section it is proposed to briefly survey some of the theoretical issues which arise in this area. The following section is concerned with the practical aspects of the relationships between internationally endorsed human rights norms and the so-called "basic needs" approach to development.

164. Increased consideration of the relationship between needs and rights has not resulted in the emergence of a clear consensus.^{90/} The relevant issues were considered at some length in papers presented to the UNESCO-sponsored experts' meeting on human rights, human needs and the establishment of a new international economic order, held in Paris in June 1973.

^{90/} See generally: John Rawls, A Theory of Justice, (Cambridge, Mass. Harvard University Press, 1972). Ronald Dworkin, Taking Rights Seriously (London, Duckworth, 1977). More specific consideration of the relevant theoretical issues can be found in Johan Galtung and Anders Wirak, "Human Needs, Human Rights and the Theories of Development" in UNESCO Reports and Papers in the Social Services, No. 37. Indicators of Social and Economic Change and Their Applications. (Paris, UNESCO, 1977) p. 7; also, J. Galtung and A. Wirak, "Human Needs and Human Rights - A Theoretical Approach", Bulletin of Peace Research Proposals. (Oslo) Vol. 3, No. 3 (1977), p. 251.

165. In a paper "On the relationship between human rights and human needs"^{91/} prepared in connexion with the work of the United Nations University project on the "goals, processes and indicators of development" the authors reject the notion that human rights can be seen as a special type of human needs and suggest that human rights and human needs should be seen as two different concepts. The first section of the paper considers the needs/rights interface and concludes that "there are needs that may be said to have rights counterparts; there are needs without rights counterparts leading to the idea of an extended concept of human rights; there are rights that do not have needs counterparts leading to the idea of certain cultural and class biases underlying the production of human rights; and there are no doubt items that have not surfaced and become formulated explicitly at all, neither as needs, nor as rights".^{92/} Moreover, the authors state that the relationship between known needs and known rights is a complex one and is not a one-one relation. Thus, one identifiable need may be satisfied, wholly or partly, through the implementation of several rights. Similarly, one right may be instrumental to the implementation of several needs.

166. In comparing formulations of rights (the authors focus on the Universal Declaration) and needs, the authors propose a list of needs under the headings of security needs, welfare needs, identity needs, and freedom needs. Following a comparison of these formulations, the authors propose a list of needs "that might be considered as important candidates on the world waiting list for processing into rights".^{93/}

^{91/} Johan Galtung and Anders Wirak, "On the Relationship between Human Rights and Human Needs", paper presented to UNESCO Experts' meeting on human rights, human needs and the establishment of a New International Economic Order, Paris 19-23 June 1978. (Paper SS-78/CONF.630/4) p.1.

^{92/} *Ibid.*, p. 15.

^{93/} *Ibid.*, p. 48.

167. A major project is presently being conducted by the United Nations University (UNU) which is devoted, in part, to an analysis of these issues. According to a recent progress report on the UNU "Goals, Processes and Indicators of Development" project, two types of questions will be addressed: "do particular rights or sets of rights correspond to actual or postulated needs? And what rights are required to ensure the satisfaction of given needs or sets of needs?".^{94/}

(3). The origins of the basic needs approach to development

168. As noted previously, in the past decade many studies have concluded that large segments of society tend to lose ground in relative and even absolute terms during the process of economic development.^{95/} These studies have prompted a thorough reassessment of traditional development goals by a number of groups and organizations at both the national and international levels. Prominent amongst these were:

(i) The Cocoyoc Declaration (1974) by a group of economists and social and natural scientists;^{96/} (ii) the 1973 Dag Hammarskjöld Report on Development and International Co-operation, entitled What Now - Another Development;^{97/} (iii) The Bariloche Foundation report entitled Catastrophe or New Society? A Latin American World Model;^{98/} and (iv) the study prepared for the Club of Rome on the subject of Reshaping the International Order.^{99/} The Development Assistance Committee of the

^{94/} J. Galtung, Goals, Processes and Indicators of Development - A Progress Report. (Mimeo, Geneva, 1977), p. 11.

^{95/} See for example, G. Myrdal, Asian Drama: An Inquiry into the Poverty of Nations (New York, Twentieth Century Fund, 1968); I. Adelman and C.T. Morris, Economic Growth and Social Equity in Developing Countries (Stanford, Stanford University Press, 1973); H. Chenery, M. Abluwalla, C. Bell, J. Dulory and R. Jolly, Redistribution with Growth (Oxford, Oxford University Press, 1974).

^{96/} A/C.2/292.

^{97/} Stockholm, Dag Hammarskjöld Foundation, 1975.

^{98/} Ottawa, International Development Research Centre, 1976.

^{99/} Jan Tinbergen, Co-ordinator (London, Hutchinson and Co., 1977).

Organization for Economic Co-operation and Development also adopted, in October 1977, a "Statement by DAC Members on Development Co-operation for Economic Growth and Meeting Basic Human Needs".^{100/} At the national level a number of development assistance and technical co-operation agencies have adopted basic needs policies.^{101/}

169. Within the framework of the United Nations the significance attached to the satisfaction of basic needs first emerged in the context of the resolutions and decisions of a number of world conferences on issues such as environment, food, population, habitat and employment. The objectives of justice, the realization of human rights and the equitable distribution of income, wealth and services were persistent themes in the resolutions adopted by the international community.^{102/}

In some cases these resolutions also made reference to the human rights dimension of the relevant issues. The approach adopted towards the satisfaction of fundamental human needs by selected organs of the United Nations will now be briefly considered.

(a) International Labour Organisation:

170. The work of the ILO's World Employment Programme, which commenced in the late 1960s, led to the convening in June 1976 of the Tripartite World Conference on Employment, Income Distribution and Social Progress and the International Division of Labour. The Conference adopted a Declaration of Principles and Programmes of Action, the basic elements of which are analysed in the following sub-section of this report.^{103/}

^{100/} OECD, Development Co-operation - Efforts and Policies of the Members of the Development Assistance Committee - 1977 Review (Paris, OECD, 1977) p. 149.

^{101/} Ibid., chapters IV and V.

^{102/} "Social Development and a New International Development Strategy: Common Elements of Decisions of World Conferences held in the 1970s." E/6056/Add.1.

^{103/} E/5857, also reproduced in ILO, Meeting Basic Needs, Strategies for Eradicating Mass Poverty and Unemployment. (Geneva, ILO, 1977).

(b) United Nations Children's Fund:

171. In 1977 UNICEF adopted a strategy whereby village or community residents are trained to become an integral part of a system designed to provide basic services.^{104/} The strategy was based in part on a joint UNICEF/WHO study of Alternative Approaches to Meeting Basic Health Needs in Developing Countries.^{105/}

(c) The World Bank:

172. The President of the World Bank has, on several occasions, endorsed in general terms the basic needs strategy. For example, in his September, 1977 Address to the Board of Governors he stated that:

"For hundreds of millions, development has failed. It will continue to fail unless the dynamics of absolute poverty are dealt with directly, and reversed.

There are two essential things that must be done. The rate of economic growth of the developing nations must be accelerated. And more of the benefits of that growth must be channeled towards helping the absolute poor meet their basic human needs."^{106/}

The Bank has produced a number of working papers on issues relevant to the strategy.^{107/}

(d) United Nations Development Programme

173. The activities undertaken by the UNDP include many in the developing world which are supportive of the efforts of individual countries to provide for the basic

^{104/} UNICEF. A Strategy for Basic Services. (New York, UNICEF, 1977).

^{105/} Edited by V. Djukanovic and E.P. Mach (Geneva, WHO, 1975).

^{106/} Address to the Board of Governors by Robert S. McNamara, President, World Bank. (Washington D.C., World Bank, 1977) p. 34.

^{107/} Basic Needs: A Progress Report (1977); The Distinctive Features of a Basic Needs Approach to Development (1977); Global Estimates for Meeting Basic Needs; Background Paper (1977); International Implications for Donor Countries and Agencies of Meeting Basic Human Needs (1977). Each working paper is in mimeo Washington D.C., World Bank.

needs of their populations.^{108/} At the same time, however, the Programme's Administrator has recently expressed his view that "the growing emphasis among some donor sources on anti-poverty activities ... should not obscure the over-riding need for self-sustained economic growth among the poorer nations".^{109/}

174. The foregoing survey serves to illustrate the extent to which basic needs or fundamental human needs-type strategies have been endorsed, both within and outside the United Nations system. At the same time, it should be noted that the Committee for Development Planning has expressed concern that 'basic needs' "may already be getting too sloganized".^{110/} The Committee has indicated its view that such an approach can help only if it promotes greater determination to implement the required institutional changes at the national and international levels, "and does not merely replace old slogans with new ones, as a matter of political expediency".^{111/}

175. The characteristics of the various basic-needs-oriented programmes are by no means homogeneous and it is not possible in the present report to undertake a comparative survey.^{112/} It is therefore proposed by way of illustration to consider the version adopted by the World Employment Conference (WEC) as one of these strategies and then to consider the relevance of such a programme to realization of the right to development. There are a number of considerations which favour the use of the WEC version in this context:

- (i) it has been more comprehensively defined than any other and has subsequently been elaborated upon in a number of analyses;

^{108/} "UNDP Co-operation in Support of Anti-Poverty Activities" DP/319 Add.2. See also, UNDP, Report of the Administrator for 1977, DP/321, paras. 25-28.

^{109/} United Nations Press Release DEV/193 (22 May 1970) p.1.

^{110/} Changing Development Perceptions, op.cit., p.1.

^{111/} Ibid., p. 21.

^{112/} A number of these proposals are considered in D.F. Chai, "What is a Basic Needs Approach to Development All About?" in ILO. The Basic Needs Approach to Development, Some Issues Regarding Concepts and Methodology (Geneva, ILO, 1977).

- (ii) it has been endorsed by a large number of both developing and developed countries, in the context of a major international conference; and
 - (iii) it has also been endorsed in very broad terms by the General Assembly.^{113/}
- (4) Essential features of the World Employment Conference's "basic needs strategy" ^{114/}

176. At its thirty-first session the General Assembly noted with satisfaction the Declaration of Principles and Programme of Action adopted by the World Employment Conference.^{115/} It also requested the Secretary-General to take appropriate steps, through the Administrative Committee on Co-ordination, with a view to promoting and co-ordinating active participation by the various specialized agencies and other bodies of the United Nations system in the implementation of the Programme of Action of Action.^{116/}

177. In the Declaration of Principles the Conference noted that past development strategies had failed to eradicate poverty and unemployment and stated its commitment to the attainment of an equitable distribution of income and wealth. The Conference recalled the Universal Declaration of Human Rights and considered that only productive work and gainful employment, without discrimination, enable man to fulfil himself socially and as an individual. It also noted that integrated development of developing countries can be achieved only in so far as equal priority is attached to the social, economic and political aspects of development.

178. The Programme of Action specifies that "strategies and national development plans and policies should include explicitly as a priority objective the promotion of employment and the satisfaction of the basic needs of each country's population" (Article 1 of the Programme of Action).

^{113/} Resolution 31/176.

^{114/} The Declaration of Principles and Programme of Action are contained in: ILO/REC/CW/E.I; ILO/GB.201/3/2, annex 1; E/5857; and are reprinted in ILO, Meeting Basic Needs-Strategies for Eradicating Mass Poverty and Unemployment (Geneva, ILO, 1977).

^{115/} Resolution 31/176.

^{116/} The measures which have been taken towards the implementation of the programme are described in a "Note by the Secretary-General" (E/1978/88).

179. The strategy first of all aims at meeting the requirements of the poor for minimum consumption and essential services. In the words of the Programme of Action, "Basic Needs include two elements: first, certain minimum requirements of a family for private consumption: adequate food, shelter and clothing, as well as certain household equipment and furniture. Second, they include essential services provided by and for the community at large, such as safe drinking water, sanitation, public transport and cultural facilities" (article 2).

180. The strategy requires the democratic participation of the people in decision-making. Article 3 specifies that "a basic-needs-oriented policy implies the participation of the people in making the decisions which affect them through organizations of their own choice".

181. It also emphasizes the employment aspect of development. "In all countries freely chosen employment enters into a basic needs policy both as a means and as an end. Employment yields an output. It provides an income to the employed, and gives the individual a feeling of self-respect, dignity and of being a worthy member of society" (article 4).

182. Basic Needs as defined in the strategy are not globally and rigidly defined, nor limited to providing the subsistence minimum. "It is important to recognize that the concept of basic needs is a country-specific and dynamic concept. The concept of basic needs should be placed within a context of a nation's overall economic and social development. In no circumstances should it be taken to mean merely the minimum necessary for subsistence; it should be placed within a context of national independence, the dignity of individuals and peoples and their freedom to chart their destiny without hindrance" (article 5).

183. One of the essential features is that it reconciles concern with economic growth with the objective of meeting the basic needs of the poor. It does not emphasize welfare transfers, but aims at providing the means for the poor to meet

their requirements through productive employment. Article 6 states that "in developing countries satisfaction of basic needs cannot be achieved without both acceleration in their economic growth and measures aimed at changing the pattern of growth and access to use of productive resources by the lowest income groups".

(5) The relationship between human rights objectives and those of the basic needs strategy

184. As a preliminary point, it is necessary to note that there is no comparison to be made either in terms of the international standing of the two sets of objectives or of the status of the commitments which flow from them. The basic needs strategy was endorsed only in very general terms by the WEC, whereas the component parts of the International Bill of Human Rights were adopted, without dissent, by the General Assembly. Similarly, in contrast to the firm legal obligations which attach to ratification of the International Human Rights Covenants, States have not formally subscribed to either the Declaration or the Programme embodying the basic needs strategy.

185. The strongest statement on the relevance of human rights to the basic needs strategy is to be found in the report presented by the ILO Director-General to the World Employment Conference:

"The satisfaction of an absolute level of basic needs as so defined should be placed within a broader framework - namely the fulfilment of basic human rights, which are not only ends in themselves but also contribute to the attainment of other goals".^{117/}

However, neither the Declaration nor the Programme specifically acknowledges this "broader framework". It is thus proposed to select specific human rights themes and consider the relevance to them of the basic needs strategy.^{118/}

^{117/} ILO, Employment, Growth and Basic Needs - A One-World Problem, Report of the Director-General of the ILO (Geneva, ILO, 1976) pp. 7 and 32.

^{118/} In the analysis The Declaration of Principles is referred to as "DP"; the Programme of Action as "PA"; the International Covenant on Economic, Social and Cultural Rights as "ESCR"; and the International Covenant on Civil and Political Rights as "CPR".

(a) Guiding principles

186. There are many similarities between the principles underlying the two sets of objectives. The Preamble to both Covenants refers to the inherent dignity of the human person while the DP also refers to human dignity and the PA to the dignity of individuals and peoples. While the basic thrust of the ESCR Covenant requires an equitable distribution of resources in order to guarantee a variety of rights to "everyone", the strategy is more explicit in the emphasis it places upon the need for an equitable distribution of wealth and income.

187. Both sets of objectives advocate a comprehensive and balanced approach. The Covenants state that freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights. The DP emphasizes that the integrated development of developing countries can be achieved only in so far as equal priority is attached to the social, economic and political aspects of development.

(b) Non-discrimination

188. The Covenants require that the rights therein be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or racial origin, property, birth or other status. The strategy does not contain a broad anti-discrimination provision but is concerned with the avoidance of discrimination against particular groups such as women and migrant workers.

(c) Self-determination

189. Both Covenants state that all peoples have the right to self-determination. The DP recognizes this principle and the PA states that each country must democratically and independently decide its policies in accordance with its needs and objectives.

(d) The right to work

190. The ESCR Covenant lists the right to work as the first of the substantive rights. Similarly, the basic needs strategy is predicated on the importance of employment and, in addition to recalling the relevant article of the Universal Declaration (Article 23), the DP specifically states that the assured opportunity to work is a basic human right and freedom. In its conception of "work" the Cocoyoc Declaration presents an interesting point of comparison with the approach adopted in the Programme. The latter makes frequent reference to the need for "productive employment" but pays less attention to other qualitative characteristics of "work". In contrast, the Cocoyoc Declaration emphasizes that the right to work means "not simply having a job, but finding self-realization in work, the right not to be alienated through production processes that use human beings simply as tools."^{119/}

(e) The right to freedom of association

191. Both Covenants provide for the right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. The ESCR Covenant also provides for the right of trade unions to function freely and prohibits States Parties to the ILO's freedom of association convention^{120/} from taking measures which would prejudice the convention's guarantees.

192. The DP specifically recalls the ILO's responsibility for ensuring respect for the freedoms and rights of association and collective bargaining laid down in certain ILO Conventions. The PA also refers to Convention No. 141 relating to

^{119/} The Cocoyoc Declaration, adopted on 12 October 1974, is reprinted in A/C.2/292.

^{120/} Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

rural workers' organizations and emphasizes the role of trade unions and organizations of employers, rural workers and producers in relation to participation in decision-making and implementation procedures at all levels.

(f) The right to food

193. The ESCR Covenant recognizes the right to food and to be free from hunger. The PA lists "adequate food" as first among its list of basic needs.

(g) The right to clothing and housing

194. Both the ESCR Covenant and the PA refer to the need for shelter ("housing" in the Covenant) and clothing.

(h) The right to social security

195. The ESCR Covenant provides that everyone has the right to social security, including social insurance. The basic needs strategy does not include any such general principle but refers to the need to provide adequate social services to migrant workers and social security benefits for their families.

(i) The right to health

196. The ESCR Covenant recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The PA includes health as an essential service to be provided by and for the community at large.

(j) The right to education

197. Both the ESCR Covenant and the PA emphasize the importance of education and both note its significance in facilitating participation in community life.

(k) Participation

198. Immediately following the two paragraphs of the PA which define the aim and content of the strategy it is stated that "a basic-needs-oriented policy implies the participation of the people in making the decisions which affect them through organizations of their own choice". This emphasis on participation is also repeated elsewhere in the strategy. The concept of participation is also basic

to international human rights guarantees. Its importance is recognized in the ESCR Covenant in relation to education and to cultural life and it could be said to constitute one of the primary concerns, both directly and indirectly, of the CPR covenant.^{121/}

(1) The right to culture

199. The ESCR Covenant recognizes the right of everyone to take part in cultural life. The PA includes cultural facilities as one of the essential services to be provided by and for the community at large and urges the promotion of equality for migrant workers in respect of cultural rights.

(6) Conclusions

200. The contribution of the basic needs strategy to realization of the right to development can be briefly summarized thus:

(i) Economic and social rights. The strategy places a positive emphasis on the achievement of equity and social justice, which are conditions precedent to the realization of these rights. In addition, the specific objectives of the basic needs strategy overlap to a considerable extent with certain economic and social rights such as those relating to food, health care, housing, clothing, work and education.

(ii) Cultural rights. The strategy lists cultural facilities as an essential service to be provided by and for the community at large. If implementation of the strategy is confined to the provision of facilities there is a risk that it could place insufficient emphasis on the broader aspects of cultural rights. These are considered in a subsequent chapter of this paper.

(iii) Civil and political rights. There has to date been insufficient analysis of issues relating to the promotion of civil and political rights

^{121/} See chapter IV.K, Infra.

within the context of the basic needs strategy.^{122/} Both the Programme of Action and subsequent analyses have emphasized the need for participation and progress toward self-reliance. While these issues are of major importance in human rights terms, they do not of themselves necessarily ensure respect for other civil and political rights such as the right to freedom from discrimination, the right to liberty and security of person, and the right not to be required to perform forced or compulsory labour. As the Cocoyoc Declaration emphasized, "development should not be limited to the satisfaction of basic needs. There are other needs, other goals, and other values. Development includes freedom of expression and impression, the right to give and receive ideas and stimulus".^{123/} It is thus important that the strategy should clearly spell out the need to respect civil and political rights in the development process. As one writer has noted "a development strategy based on political repression could perhaps succeed in meeting basic needs in a narrow quantitative sense but this would clearly be an unacceptable option". It is therefore to be hoped that, in applying the basic needs strategy to particular situations, adequate recognition will be accorded to the indivisibility of human rights.

201. In addition to the foregoing analysis, two significant distinctions between basic needs objectives and human rights must be noted. The first relates to flexibility. The implementation of both sets of objectives, as they relate to economic, social and cultural matters, must take full account of the "prevailing political, economic, social, cultural, legal and ideological setting, which is

^{122/} For a country-specific analysis see Patricia Weiss Fagen "The Links between Human Rights and Basic Needs" in Background (Washington, D.C., Center for International Policy, 1978).

^{123/} The Cocoyoc Declaration, adopted on 12 October 1974, is reprinted in A/C.2/292.

not the same in any two countries in the world".^{124/} However, as we have noted earlier,^{125/} there are a number of civil and political human rights from which no derogation is permitted. The basic needs strategy contains no equivalent of this hard core of rights which must be protected under all circumstances.

202. The second distinction relates to the levels of achievement to which each set of objectives aspires. The basic needs strategy is not entirely clear in this regard. Article 2 of the Programme of Action indicates that basic needs includes certain minimum requirements for private consumption and certain essential services provided by and for the community at large. Article 5 indicates that "in no circumstances should (the concept) be taken to mean merely the minimum necessary for subsistence". The realization of human rights, on the other hand, requires, for example, the continuous improvement of living standards^{126/} and achievement of the highest attainable standard of physical and mental health.^{127/}

203. It may be noted that the basic needs strategy has been subjected to criticism by a number of commentators. Thus one scholar has pointed out that the strategy.

"may be for some a convenient excuse for asserting that obtaining the minimum necessary for subsistence is the only real problem for developing countries. This view, which is beginning to be expressed in international circles, is reminiscent of certain racist and colonialist arguments advanced in the past, to the effect that for certain peoples providing them with enough to eat should be the only objective to be pursued".^{128/}

^{124/} The Realization of Economic, Social and Cultural Rights: Problems, Policies, Progress, op.cit., p. 295, para. 35.

^{125/} Chapter III.A., supra.

^{126/} International Covenant on Economic, Social and Cultural Rights, art.11 (1).

^{127/} Ibid., art. 12.

^{128/} Kéba M'Baye, "Le développement et les droits de l'homme", paper presented to Colloque sur le développement et les droits de l'homme, 7-12 septembre 1978, organisé par La Commission Internationale des Juristes et l'Association Sénégalaise d'Etudes et de Recherches Juridiques, pp. 29-30.

Commenting on the debates in the Third Committee of the General Assembly prior to the adoption of resolution 32/130 another commentator has indicated that "one cannot reduce the guarantee of economic and social rights to mere satisfaction of needs without deforming their very essence".^{129/}

204. On the other hand the basic needs strategy could be considered to provide an opportunity to strengthen the effectiveness of existing procedures for the assessment of compliance with human rights undertakings. Thus the collection of statistical and other information as envisaged in the Programme of Action could be of assistance in consideration of States' reports under the International Covenant on Economic, Social and Cultural Rights and could also facilitate international monitoring as regards other international human rights standards. The development of standard setting mechanisms, as envisaged by article 23 of the Covenant could be linked to efforts to promote the adoption of basic needs-oriented objectives. Even outside the context of standard setting, the moral and legal force of the Covenant could be used to support and strengthen efforts to implement a basic needs strategy.

205. Thus the contribution of the basic needs strategy to realization of the right to development could be of considerable significance. The strategy's concern with the basic well-being of every individual can be considered to represent a major advance over previous development strategies which were concerned primarily with aggregate levels of economic growth. At the same time, the limited scope of the strategy's objectives indicates that it cannot replace respect for human rights as the major criterion for the evaluation of progress towards realization of the right to development.

^{129/} B. Graefrath, "Against Cold War - for Promotion of Human Rights", G.D.R. Committee for Human Rights, Bulletin, No. 3/1978, p.3 at 15.

IV. SOME SPECIFIC ISSUES RELATING TO THE REALIZATION OF THE HUMAN RIGHT
TO DEVELOPMENT IN ITS INTERNATIONAL DIMENSIONS

206. In the preceding three chapters of this report consideration has been given to the ethical aspects and the legal norms relevant to the right to development, to the subjects and beneficiaries of the right as well as to the duties which flow from it, and to the relationship between the right in its international dimensions and some other concepts of major relevance.

207. In the present chapter it is proposed to examine several specific issues which are of particular significance in terms of realization of the human right to development in its international dimensions. In selecting these issues the Secretary-General has been guided by the views expressed at the thirty-third session of the Commission on Human Rights in the course of the debates leading to the adoption of resolution 4 (XXXIII), pursuant to which the present study has been undertaken. It must be recognized that the issues treated here are by no means exhaustive of the wide range of matters of international concern which are relevant to promotion of the right to development.

208. Other issues which could have been considered, but for the need to limit the length and scope of this study, include: international aspects of health care in relation to the right to development; international dimensions of the achievement of ecologically-sound development; the significance of achieving a proper balance between rural and urban development in relation to the right to development; international educational, cultural and scientific co-operation for development; technical co-operation among developing countries and the right to development; and implications for the right to development of transnational trade and financial policies, practices and institutions.

A. Self-determination as a prerequisite for realization of the right to development

209. The right of peoples to self-determination is enshrined in the Charter of the United Nations, 1/ in the International Covenants on Human Rights and in a large number of declarations and resolutions of the General Assembly. 2/ As is stated in article 1 of the International Covenant on Economic, Social and Cultural Rights and in the corresponding article of the International Covenant on Civil and Political Rights: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." The Covenants thus emphasize the fact that the right to self-determination has political, legal, economic, social and cultural dimensions. In the view of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in his report on "Implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination", "for the right to be fully effective, the existence of all these elements are required." 3/

1/ Article 1 (2) and Article 55.

2/ See the Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly resolution 1514 (XV); the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, General Assembly resolution 2131 (XX); the Declaration on the Strengthening of International Security, General Assembly resolution 2734 (XXV); the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, General Assembly resolution 2625 (XXV); and the resolutions referring to permanent sovereignty over natural resources including General Assembly resolutions 533 (VI), 626 (VII), 1214 (XIII), 1803 (XVII), 2158 (XXI), 2356 (XXIII), 2625 (XXV), 2692 (XXV), 3016 (XXVII), 3171 (XXVIII), 3336 (XXIX), 3516 (XXX) and 32/35.

3/ E/CN.4/Sub.2/405, para. 44.

210. In the fifth preambular paragraph of resolution 32/14 the General Assembly recently reaffirmed the importance of the universal realization of the right of peoples to self-determination, national sovereignty and territorial integrity and of the speedy granting of independence to colonial countries and peoples as "imperatives for the enjoyment of human rights". Self-determination is therefore also a prerequisite for realization of the right to development. The fundamental importance of self-determination in this context is underlined in the declarations and resolutions of the General Assembly relating to the establishment of a New International Economic Order and in the Declaration on Social Progress and Development. The latter declaration states that the achievement of "national independence based on the right of peoples to self-determination is a primary condition of social progress and development".^{4/}

211. The Declaration on the Establishment of a New International Economic Order, adopted by the General Assembly in 1974, asserts that such an order must be founded on full respect for, inter alia: the principle of self-determination of all peoples; the right of every country to adopt the economic and social system that it deems the most appropriate for its own development and not to be subjected to discrimination of any kind as a result; and full permanent sovereignty of every State over its natural resources and all economic activities.^{5/}

212. The Charter of Economic Rights and Duties of States also declares that "equal rights and self-determination of peoples" and "respect for human rights and fundamental freedoms" are among the principles which shall govern the

^{4/} General Assembly resolution 2542 (XXIV), article 3 (a).

^{5/} General Assembly resolution 3201 (S-VI), para. 4 (a), (d) and (e).

economic, political and other relations among States. 6/ Article 1 of the Charter proclaims the sovereign and inalienable right of every State to choose its economic system as well as its political, social and cultural systems in accordance with the will of its people, without outside interference, coercion or threats. In article 2 it recognizes that every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities.

213. At the UNESCO experts meeting on human rights, human needs and the establishment of a New International Economic Order, held in Paris in June 1978 one scholar indicated that in his view the right to self-determination is the foundation on which it will be possible to construct a New International Economic Order. 7/ During the debates in the Commission on Human Rights, prior to the adoption of resolution 4 (XXXIII) the same view was expressed in connexion with the conditions necessary for realization of the right to development. 8/ The view was also expressed that the right to self-determination was "a sine qua non for the effective enjoyment of all other rights." 9/

6/ General Assembly resolution 3281 (XXIX), chapter I, paras. (g) and (k).

7/ François Rigaux, "Le droit des peuples à l'autodétermination et la souveraineté permanente sur les ressources naturelles dans le contexte de l'établissement d'un nouvel ordre économique international" (UNESCO paper SS-78/CONF.630/5), para. 25.

8/ E/CN.4/SR.1389, para. 10; E/CN.4/SR.139, paras. 43 and 44.

9/ E/CN.4/SR.1389, para. 10.

214. It is not proposed to analyse in detail within the confines of the present report the various ways in which self-determination is a prerequisite to realization of the right to development. To a very large extent such analyses have already been undertaken elsewhere and, in particular, in the reports on different aspects of self-determination by the two Special Rapporteurs of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. 10/

215. In the study prepared by the Special Rapporteur, Mr. A. Cristescu, the view is expressed that the fundamental element of the right to development and of the right of peoples to self-determination is permanent sovereignty over natural resources. 11/ e

"Respect for and promotion of the right of peoples to permanent sovereignty over their wealth and natural resources are prerequisites for achievement of the right to development and the right to self-determination of peoples, and they are essential for the strengthening of co-operation and universal peace." 12/

The report of the Special Rapporteur also emphasizes the importance of realization of the right of peoples to self-determination as an essential means of achieving a new international order and a better, more just and equitable world. 13/

10/ "The historical and current development of the right to self-determination on the basis of the Charter of the United Nations and other instruments adopted by United Nations organs, with particular reference to the promotion and protection of human rights and fundamental freedoms", study by Mr. Aureliu Cristescu, E/CN.4/Sub.2/404; and "Implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination", study by Mr. Héctor Gros Espiell, E/CN.4/Sub.2/405.

11/ E/CN.4/Sub.2/404, para. 709.

12/ Ibid.

13/ Ibid., para. 713.

216. In a similar vein, the Special Rapporteur, Mr. H. Gros Espiell, has stated that the full recognition and effective exercise of the right of peoples to self-determination and the elimination of colonialism and neo-colonialism are prerequisites for development. 14/

"The legal acceptance and truly effective exercise of the right to complete development of peoples struggling for their self-determination - a right which is, of course, also held by States, especially the developing States - can be achieved only if the right of peoples to self-determination is recognized and implemented". 15/

The Special Rapporteur also indicates that implementation of the right of peoples to self-determination involves not only the completion of the process of Achieving independence or other appropriate legal status by the peoples under colonial and alien domination, but also the recognition of their right to maintain, assure and perfect their full legal, political, economic, social and cultural sovereignty. 16/ In this regard the Special Rapporteur states that the right of peoples to self-determination has lasting force, does not lapse once it has been exercised to secure political self-determination, and extends to all fields including economic, social and cultural affairs. 17/

217. The importance of the relationship between the right to development and realization of the right to self-determination, particularly in the economic sphere, has recently been underlined in the Buenos Aires Plan of Action for

14/ E/CN.4/Sub.2/405, para. 139.

15/ Ibid.

16/ Ibid., para. 45.

17/ Ibid.

Promoting and Implementing Technical Co-operation among Developing Countries, adopted in September 1978.^{18/} Technical co-operation among developing countries (TCDC) is defined in the plan of action as a means of building communication and of promoting wider and more effective co-operation among developing countries and also as "a vital force for initiating, designing, organizing and promoting co-operation among developing countries so that they can create, acquire, adapt, transfer and pool knowledge and experience for their mutual benefit and for achieving national and collective self-reliance".^{19/} In this respect, self-reliance can be seen as an essential means by which countries are able to promote realization of their right to self-determination and thus also of their right to development.

218. The fundamental role of self-determination in promoting the enjoyment of all human rights, including the right to development, was further recognized by the General Assembly at its thirty-second session. In paragraph (e) of resolution 32/130 the Assembly decided that:

"In approaching human rights questions within the United Nations system, the international community should accord, or continue to accord, priority to the search for solutions to the mass and flagrant violations of human rights of peoples and persons affected by situations such as ... the refusal to recognize the fundamental rights of peoples to self-determination and of every nation to the exercise of full sovereignty over its wealth and natural resources."

^{18/} Report of the United Nations Conference on Technical Co-operation among Developing Countries, Buenos Aires, 30 August to 12 September 1978 (United Nations Publication, Sales No. E.78.II.A.11).

^{19/} Ibid., para. 5.

B. The role of disarmament in promoting realization
of the right to development

219. Disarmament and development have been two of the major themes of United Nations endeavour since the creation of the Organization.^{20/} The achievement of each objective is intimately linked to that of the other. As the report of the Secretary-General on the "economic and social consequences of the arms race and of military expenditures" points out, "development at an acceptable rate would be hard if not impossible to reconcile with a continuation of the arms race".^{21/} Conversely, substantial progress in the field of development is increasingly understood to be essential for the preservation of world peace and security. For these reasons the increasingly harmful consequences of the arms race for the exercise of economic, social and cultural, as well as civil and political rights have frequently been stressed in the Commission on Human Rights.^{22/} Thus the view was expressed by one speaker during the debates at the Commission's thirty-third session that general and complete disarmament and the cessation of the arms race were the two prerequisites for the realization of human rights.^{23/}

220. The decade of the 1970s was declared by the General Assembly to be both the Disarmament Decade^{24/} and the Second United Nations Development Decade.^{25/} The strategy for the first Development Decade had included a proposal that the

^{20/} See generally, "Resolutions on disarmament adopted by the General Assembly: background papers prepared by the Secretariat". A/AC.187/29; and Disarmament and Development, Report of the Group of Experts on the Economic and Social Consequences of Disarmament, (United Nations publication, Sales No. E.73.IX.1).

^{21/} United Nations publication, Sales No. E.78.IX.1, para. 172.

^{22/} E/CN.4/SR.1392, para. 17; E/CN.4/SR.1393, paras. 19 and 29-30, E/CN.4/SR.1394 paras. 6, 22 and 28; E/CN.4/SR.1451, para. 60; and E/CN.4/SR.1453, para. 11.

^{23/} E/CN.4/SR.1397, para. 39.

^{24/} General Assembly resolution 2602 E (XXIV).

^{25/} General Assembly resolution 2626 (XXV).

resources released by disarmament be utilized for the purposes of economic and social development and particularly that of the developing countries.^{26/} The Declaration on Social Progress and Development also directly linked the need to mobilize the resources necessary for development with the achievement of general and complete disarmament.^{27/}

221. The relationship between disarmament and development has two major aspects which are of relevance in the present context. The first aspect relates to the volume of resources expended on the arms race and the socially constructive alternative uses to which it could be put. As the Secretary-General has noted elsewhere, world military expenditure has now stood for a number of years at about \$US 350 billion per year at 1978 prices.^{28/} Thus, for example, military activities throughout the world absorb a volume of resources equivalent to about two-thirds of the aggregate gross national product of those countries which together are inhabited by the poorest half of the world's population.^{29/} But this is far from representing the full cost of the arms race:

"There are domestic and international, social and political costs which military expenditure figures omit altogether, not to speak of the costs of war. Even apart from this, the material resources and the human efforts absorbed by the arms race and the sacrifice of other opportunities this entails, is only very imperfectly measured by the allocations on which global military expenditure figures are mostly based".^{30/}

^{26/} General Assembly resolution 1710 (XVI) para. 4 (i).

^{27/} General Assembly resolution 2542 (XXIV) Art. 27 (a).

^{28/} Economic and Social Consequences of the Arms Race and of Military Expenditures, op. cit., para. 59.

^{29/} Ibid.

^{30/} Ibid., para. 75.

222. The arms race and the accompanying waste of resources also significantly affect the amount and direction of development assistance funds which are made available to the developing countries. Thus the Committee for Development Planning at its twelfth session held in March-April 1976 pointed to the high level of world-wide military expenditures as "the single most important reason for the failure of the international community to provide adequate development support".^{31/} During the first half of the Second Development Decade (1971-1975) official development assistance from the developed market economies amounted to 0.32 per cent of their combined gross national product, or less than half of the Development Decade strategy's target of 0.7 per cent. The target would have been fully met if the equivalent of 5 per cent of those countries' current military expenditures had been devoted instead to development assistance.^{32/}

223. A report by the Secretary-General has described this aspect of the affects of the arms race in the following terms:

"The flow of trade and aid is distorted, in some cases, very markedly, by interference from political and strategic considerations, resulting in the misallocation of resources on a global scale. The arms race thereby contributes to maintaining and widening the gap between and within developed and developing countries ..."^{33/}

^{31/} Official Records of the Economic and Social Council, Sixty-first session, Supplement No. 6, (E/5743), para. 21.

^{32/} Ibid., para. 34. The report notes that the absence of adequate data precludes a similar analysis in relation to the centrally planned economies. See also Barry M. Blechman and Edward R. Fried "Disarmament and Development: Some Specific Proposals". Journal of Development Planning, No. 12, (United Nations publication, Sales No. E.78.II.A.1), p. 137.

^{33/} Economic and Social Consequences of the Arms Race and of Military Expenditures, op. cit., para. 131.

224. In the Final Document of the Tenth Special Session of the General Assembly, the Assembly has renewed its call that resources released as a result of the implementation of disarmament measures should be devoted to the economic and social development of all nations and contribute to the bridging of the economic gap between developed and developing countries.^{34/}

225. The second aspect of the relationship between development and disarmament relates to "the social, political, economic and institutional processes, both domestic and international, whereby changes in military policies affect the future course of development in other fields and are themselves affected by it".^{35/} In this context militarization has been defined as "the process whereby military values, ideology and patterns of behaviour achieve a dominating influence on the political, social, economic and external affairs of the State, and as a consequence the structural, ideological and behavioural patterns of both the society and the government are 'militarized'".^{36/} Such a process is often characterized by the general erosion of civil liberties and a diminution in respect for the whole range of human rights. Thus the report by the Secretary-General on the economic and social consequences of the arms race points out that:

"Contemporary military institutions are often such powerful and pervasive parts of society that they can have a considerable impact on political and social conditions and perceptions and can place important constraints on the

^{34/} General Assembly resolution S-10/2, para. 35.

^{35/} Economic and Social Consequences of the Arms Race and of Military Expenditures, op. cit., para. 170.

^{36/} Commission of the Churches on International Affairs, Report of the Consultation on Militarism held at Glion, Switzerland, 13-18 November 1977. (World Council of Churches, Geneva, 1978), p.3.

evolution of societies. In this sense they can represent a major social force, influencing the social, political and ideological development of a country".^{37/}

In this way the arms race and the trend towards militarization which accompanies it may pose a considerable threat to democratic processes within society.^{38/}

226. It has been noted in an earlier section of the present report that the achievement of a New International Economic Order is closely linked to the realization of the human right to development.^{39/} The link between disarmament and the New International Economic Order is equally fundamental.^{40/} In this regard the Final Document of the Tenth Special Session of the General Assembly states that "the economic and social consequences of the arms race are so detrimental that its continuation is obviously incompatible with the implementation of the new international economic order based on justice, equity and co-operation".^{41/} In resolution 32/75 the General Assembly had previously declared that "the ever-spiralling arms race is not compatible with the efforts aimed at establishing a new international economic order".^{42/} In the same vein, a report by the Secretary-General has pointed out that:

"As long as the arms race continues it is hard to imagine that a new international division of labour and new international commercial, monetary and

^{37/} Op. cit., para. 117.

^{38/} See generally, Richard A. Falk, "Militarization and Human Rights in the Third World", Bulletin of Peace Proposals, Vol. 8, No. 3, 1977, p.220, and Mary Kaldor, "The Military in Development", World Development, Vol. 4, No. 6, 1976, p.459.

^{39/} Supra, chapter III.c, paras. 152-159.

^{40/} See generally M. Lumsden, "Military Systems and the New International Economic Order", Bulletin of Peace Proposals, Vol. 9, No. 1, 1978, p.30.

^{41/} General Assembly resolution 5-10/2, para. 16.

^{42/} Fourth preambular paragraph. See also General Assembly resolution 3462 (XXX) and 32/80.

financial order could be instituted in which all countries, without discrimination on military-strategic grounds, would have equal access to credit markets, raw materials and other means of economic development and co-operation".^{43/}

227. In view of the relationship between disarmament, the promotion of development and the achievement of a New International Economic Order, the Secretary-General is at present undertaking a further report on the relationship between disarmament and development. In accordance with paragraph 95 of resolution S-10/2 of the General Assembly the study is to consider how disarmament can contribute to the establishment of the New International Economic Order.

228. The general negative effects of resource diversion to military uses tend to be aggravated in developing countries because, as the report by the Secretary-General points out, modern armed forces make heavy demands on many of the resources which are most needed for development and which constitute severe bottle-necks in many cases. These include: foreign exchange, skilled technical and managerial manpower and maintenance, and repair and industrial production capacity.^{44/}

229. In addition to its detrimental impact on many of the international dimensions of the right to development, the arms race is equally counter-productive at the national level. It represents a "waste of resources, a diversion of the economy away from the humanitarian purposes, a hindrance to national development efforts and a threat to democratic processes".^{45/} It can be seen therefore that disarmament is crucial to realization of the right to development as it is to realization of the right to peace, the achievement of a New International Economic Order, and the promotion of respect for all human rights.

^{43/} Economic and Social Consequences of the Arms Race and of Military Expenditures, op. cit., para. 147.

^{44/} Ibid., para. 109.

^{45/} Ibid., para. 126.

C. Participation as a central factor in realization
of the right to development

I. The concept of participation

230. Popular participation as an integral part of the development process has long been accepted as an ideal at the international level and is increasingly being incorporated into national development strategies.^{46/} Similarly, the role of participation in fostering respect for human rights is emphasized in international human rights instruments. The report of a Special Rapporteur to the Commission on Human Rights concluded that "the basic principle governing the question of human rights in development should be the participation of the people in deciding their own style of individual and corporate life in general, and in particular their participation in decision-making in connexion with development programmes, in the implementation of those programmes and in the benefits derived from them."^{47/} Participation should be viewed both as a means to an end and as an end in itself. As a prerequisite for realization of the right to development it is required at all levels ranging from the local through the regional and national to the international.

231. The concept of participation is of fundamental importance in the context of international human rights instruments. Its importance in relation to education and to cultural life is recognized in the International Covenant on Economic, Social and Cultural Rights (articles 13 (1) and 15 (1) respectively). Participation is also one of the objectives of the International Covenant on Civil and Political Rights. The Covenant includes guarantees of the rights to hold opinions (article 19 (1)), to freedom of expression (article 19 (2)), to peaceful assembly (article 21), to freedom of association (article 22), and "to take part in the

^{46/} See generally Popular Participation in Decision Making for Development (United Nations publication, Sales No. E.75.IV.10, 1975); and E/CN.5/532 entitled "Popular Participation and its Practical Implications for Development".

^{47/} The Realization of Economic, Social and Cultural Rights: Problems, Policies, Progress, *op. cit.*, p. 304, para. 122.

conduct of public affairs, directly or through freely chosen representatives" and "to vote and to be elected at genuine periodic elections" which freely express the will of the electors (article 25).

232. The importance of participation in relation to the process of development was acknowledged in the Proclamation of Teheran which stated that the primary aim of the United Nations in the sphere of human rights is the achievement by each individual of the maximum freedom and dignity.^{48/} "For the realization of this objective, the laws of every country should grant each individual, irrespective of race, language, religion or political belief ... the right to participate in the political, economic, cultural and social life of his country".^{49/} In the same spirit, the Declaration of Social Progress and Development, adopted by the General Assembly in 1969^{50/} and endorsed again in 1977,^{51/} states that social progress and development require the full utilization of human resources, including in particular:

...

"(c) The active participation of all elements of society, individually or through associations, in defining and in achieving the common goals of development with full respect for the fundamental freedoms embodied in the Universal Declaration of Human Rights."^{52/}

233. The significance of popular participation as an element in the realization of the right to development is also evident throughout the International Development Strategy for the Second United Nations Development Decade, which includes such statements as: "Every effort will be made to secure the active support and participation of all segments of the population in the development process".^{53/}

^{48/} Final Act of the International Conference on Human Rights, op. cit.,
para. 3.

^{49/} Ibid.

^{50/} General Assembly resolution 2542 (XXIV).

^{51/} General Assembly resolution 32/117.

^{52/} Ibid., article 5.

^{53/} General Assembly resolution 2626 (XXV), para. 78.

234. With specific reference to popular participation, a resolution of the Economic and Social Council relating to national experience in achieving far-reaching social and economic changes for the purpose of social progress recommends:

"that appropriate measures should be taken at all levels to ensure more active participation by the entire population, including the working force, in the production, preparation and execution of economic and social development policies and programmes designed to achieve far-reaching social and economic changes for the purpose of social progress, taking into account the experience of other Governments in this field".^{54/}

235. The need for participation is also a consistent theme in the declarations, recommendations, resolutions and plans of action of a number of recent United Nations world conferences on subjects such as population, food, habitat, environment, women, and employment.^{55/} For example, the Programme of Action adopted by the World Employment Conference indicates that popular participation can contribute to implementation of the "basic needs strategy":

- (i) by playing a part in the definition of basic needs;
- (ii) by enhancing the generation of resources to meet basic needs;
- (iii) by improving the distribution of goods and sources, and
- (iv) by satisfying the psychological desire to participate in decisions which affect people's lives.^{56/}

236. The role of participation in realization of the right to development has also been acknowledged in the reports of seminars on the subject of human rights in developing countries. At the seminar in Dakar, Senegal, in 1966 considerable attention was devoted to the right to participate in political activities,

^{54/} Economic and Social Council resolution 1746 (LIV).

^{55/} The approach adopted by these conferences is analysed in E/6056/Add.1, Chapter IV.F, entitled "Participation in the development process", p. 18, paras. 62-64.

^{56/} Donald Curtis et al., Popular Participation in Decision-Making and the Basic Needs Approach to Development: Methods, Issues and Emergencies, World Employment Programme Working Paper (WEP 2-32/WP 12) (Geneva, ILO, 1978), p. 5, para. 14.

particularly in relation to freedom of association, including trade union rights.^{57/} Some participants stated that the individual's fundamental right to take part in political activities should be regarded as his right to participate in the efforts of society to achieve development.^{58/} At the seminar in Lusaka, Zambia in 1970 it was stressed that participation in the decision-making processes should encompass much more than participation in the political processes and that institutions, both public and private, local and national, that affected the lives of individuals must be concerned with development.^{59/} During the thirty-third session of the Commission on Human Rights it was stated that the only criterion to determine whether there was political democracy was the extent to which a political system invited, encouraged and succeeded in achieving the participation of the people and the expression of their views and preferences.^{60/}

2. Levels of participation

237. A United Nations study has concluded that there is little evidence to indicate that popular participation on a sustained basis emerges spontaneously.^{61/} On the other hand, a study prepared for the ILO suggests that participation is more effective where it is endogenous - where it has been demanded and achieved by the

^{57/} Report of the Seminar on Human Rights in Developing Countries held at Dakar, Senegal, 8-22 February 1966 (ST/TAO/HR/25) paras. 150-179.

^{58/} Ibid, para. 153.

^{59/} Report of the Seminar on the Realization of Economic and Social Rights with Particular reference to Developing Countries, held at Lusaka, Zambia, 23 June - 4 July 1970. (ST/TAO/HR/40) para. 36.

^{60/} E/CN.4/SR.1389, para. 15.

^{61/} Popular Participation in Decision Making for Development, op cit., p. 63.

participants, perhaps with a struggle, rather than conferred from above^{62/}.

These propositions do not conflict with one another. The needs which emerge are for the fostering of conditions which are conducive to the emergence of participation and for the provision of strong and sustained support for institutions once they have emerged. Participation is required at all levels and consideration will now be given to some of these.

238. Local or community level.^{63/} The existence or establishment of local institutions around which participation can be mobilized, is an essential condition for achieving citizen involvement. The nature of these institutions will vary considerably depending on the economic, social and cultural needs and traditions of the community.

239. Regional level. This is of particular significance in planning for development and has two major functions: creating a link between the macro and micro levels of development; and integrating resources within the region.^{64/}

240. National level. The report prepared for the ILO concludes that participation is critically dependent upon the attitude of government - dependent for legal sanction or enforcement, for political tolerance or encouragement, for access to resources of land, capital, information and skill.^{65/} Support and encouragement of participation to facilitate realization

^{62/} Donald Curtis, et. al., op. cit., p.149, para. 8.

^{63/} Popular Participation in Development: Emerging Trends in Community Development (United Nations publication, Sales No. E.71.IV.2, 1971).

^{64/} See Popular Participation in Decision Making for Development, op. cit., pp.56-61 and P. 64.

^{65/} Donald Curtis, et al., op. cit., p. 130, para. 11.

of the right to development involves the removal of legal obstacles to participation and, in many instances, the institution of basic structural reforms.^{66/} Some of the mechanisms which might be used for these purposes are considered below.

241. International level. It has been noted in chapter II of this Study that the right to development is of major significance in the context of transnational relationships between peoples, States and other entities. During the thirty-third session of the Commission on Human Rights reference was made to the "necessity of participation by all countries in the common effort to ensure decent living conditions for everyone".^{67/} One of the principles included in the Declaration on the Establishment of a New International Economic Order is that there should be "full and effective participation on the basis of equality of all countries in the solving of world economic problems in the common interest of all countries".^{68/} Similarly, the Charter of Economic Rights and Duties of States provides that all States have the right to

^{66/} A recent ILO report considers, *inter alia*, the possibility of decentralizing public administration and the implications of such changes for public resource allocation functions. Jean Majeras, Popular Participation in Planning and Decision-Making for Basic Needs Fulfilment: An Institutional Approach, World Employment Programme Working Paper (WEP 2-32/VP.4) (Geneva, ILO, 1977).

^{67/} E/CN.4/SR.1391, para. 10.

^{68/} General Assembly resolution 3201 (S-VI), para. 4(c). See also para. 2.

participate fully and effectively in the international decision-making process in the solution of world economic, financial and monetary problems, inter alia, through the appropriate international organizations.^{69/} As the Committee for Development Planning observed in its 1978 Report, "the demand for greater equality among nations has become a demand, not only for narrowing gaps in levels of living but, even more important, for a fairer sharing of power and decision-making."^{70/} Participation is thus a prerequisite for realization of the right to development at the international level, as much as at other levels.

3. Specific contexts for the promotion of participation

242. In addition to the democratic participation of all citizens through elected authorities and the established political and institutional channels, the promotion of popular participation can take place in a variety of specific institutional settings and can focus on a number of specific groups within the community.

243. The role of employers' and workers' organizations in promoting community participation has been the subject of a number of international instruments adopted by the International Labour Conference.^{71/} The ILO has also prepared

^{69/} General Assembly resolution 3281 (XXIX), article 10. Details of progress achieved in this regard are listed in E/5991, paras. 130-142.

^{70/} Committee for Development Planning, Report on the Fourteenth Session, op. cit., para. 12.

^{71/} These instruments are listed in ILO, Employers' and Workers' Participation in Planning (ILO, Geneva, 1971), Appendix 1, p. 225.

several major reports on this subject.^{72/} A related issue is the question of participation in the labour force. A recent ILO report states that "for all practical purposes, the satisfaction of basic needs depends on labour force participation, even if it is also dependent on non-economic activities of one sort or another. As such, developmental policy should be such as to ensure that the economic and social structure facilitates the economic activity of those willing and able to participate in labour force activities."^{73/}

244. The participation of women in development was a major theme of the World Plan of Action adopted by the World Conference of the International Women's Year. Among a number of relevant principles promulgated by the Conference, is the following:

"Necessary resources should be made available in order that women may be able to participate in the political life of their countries and of the international community since their active participation in national and world affairs at decision-making and other levels in the political field is a prerequisite of women's full exercise of equal rights as well as of their further development and of the national well-being."^{74/}

^{72/} Some of these reports are listed in ibid., p.2, n.1. See also the bibliography provided in Donald Curtis, et al. op. cit.

^{73/} Guy Standing, Labour Force Participation and Development (Geneva, ILO, 1978), p.224; see also Labour Force Participation in Low-Income Countries, eds. Guy Standing and Glen Shaehon (Geneva, ILO, 1978).

^{74/} Report of the World Conference of the International Women's Year, Mexico City, 19 June - 2 July 1975 (United Nations publication, Sales No. E.76. IV.1.), p.5. See also paras. 57-66 of the Plan of Action, pp.19-20.

The necessity for women to participate in the formulation and execution of national development plans was also emphasized by the International Conference on Human Rights in Teheran.^{75/}

245. The participation of youth in the development of society, in the promotion of human rights, in the establishment of social justice and in other pursuits was the subject of a resolution adopted by the Commission on Human Rights at its thirty-second session.^{76/}

246. The role of education in facilitating effective participation by all members of society is crucial. The acquisition of a minimum level of skills and knowledge is essential for full participation. In this context a recent ILO report recommends that: education and training have to be democratized by making them accessible to all the people without discrimination; education has to be seen as a life-long process; and education must be made relevant to the needs of the country and to the world requirements.^{77/}

247. Active participation in the design and implementation of rural development programmes has also been recognized as an important objective.^{78/} Among other advantages such participation has been linked with improving

^{75/} Op. cit. resolution IX.

^{76/} Resolution 1 (XXXII). See also E/CN.5/541 and para. 17 of the Proclamation of Teheran, op. cit.

^{77/} ILO, Education for Development, Report III, Fifth African Regional Conference, Abidjan, 1977, p.13.

^{78/} See generally Kamla Bhassin, Participatory Training for Development, Report of the Freedom from Hunger Campaign/Action for Development. Regional Change Agents Programme, April-May 1976 (Bangkok, FAO, 1976).

living standards and bringing about a more equitable distribution of income.^{79/}

The creation of rural participatory schemes has also been stated to be a prerequisite for expanded food production.^{80/}

248. The establishment of co-operatives has also facilitated broadly based participation in a variety of endeavours such as the provision and use of housing, the design and implementation of programmes for land and agrarian reform, and the equitable sharing of profits in enterprises.^{81/}

249. Participation in health care programmes has been emphasized by both WHO and UNICEF. A WHO report on Promoting Health in the Human Environment^{82/} recognizes participation as a major component in the approach to the whole system of health care and lists six advantages which flow from it: (i) man's social existence is dependent on a certain altruism and a need to succour his fellows; voluntary service to the community gives expression to this need; (ii) voluntary services are a very effective response to limitations of finance and personnel; (iii) local citizens are best able to determine their own needs and priorities; (iv) neighbourly interaction offers a quality of human contact and rapport that it would be difficult for a stranger to attain; (v) citizen participation can strengthen the community's bonds, and (vi) a local population which is partly responsible for its own health care will be better fitted to accept and live with its less fortunate fellow citizens. Another report indicates that participation usually guarantees a community's motivation to accept and use health services.^{83/}

^{79/} Report of the World Food Conference, op. cit., resolution II.

^{80/} E/CN.5/537.

^{81/} E/1978/15.

^{82/} (Geneva, WHO, 1975), pp. 49-50.

^{83/} Alternative Approaches to Meeting Health Needs in Developing Countries,
A joint UNICEF/WHO Study, edited by V. Djukanovic and E.P. Mach. (Geneva, WHO, 1975).

250. The "Strategy for Basic Services" adopted by UNICEF^{84/} is, according to one commentator, based on the proposition that the lack of participation by the poor themselves has so far been the "missing link" which has broken the chain between the international development effort and the poorest 40 per cent of the Third World's people.^{85/}

251. The formulation of a Strategy for the Third United Nations Development Decade provides an opportunity at the international level for participation in decision-making. Thus one non-governmental organization has recently established a project, the objective of which is "to promote and facilitate the participation of institutions, groups and individuals outside the United Nations intergovernmental system in the elaboration and implementation of the United Nations Development Strategy to be adopted by a Special Session of the General Assembly in 1980."^{86/}

4. Conclusion

252. The central importance of participation at all levels in order to promote realization of the right to development has thus been widely acknowledged. But a recent UNDP report has indicated that "although there is increasing recognition of the necessity for active participation by the poorer groups in activities aimed

^{84/} A strategy for Basic Services, (New York, UNICEF, 1976)

^{85/} Peter Adamson, "First things first - at last". Development Forum, Vol. V. No. 6, August/September 1977, p.5.

^{86/} International Foundation for Development Alternatives, "A United Nations Development Strategy for the 80s and Beyond: Participation of the 'Third System' in its Elaboration and Implementation." Development Dialogue 1978 : 1, pp. 106-117.

at improving their living conditions, progress has been slow."^{87/} Efforts to promote participation are thus crucial to the development process as well as being an essential element in the promotion of human rights.

253. The international community has an important role to play in fostering the development of participatory institutions at all levels. In addition to setting an example by ensuring that the structure of the international community itself facilitates full and equal participation, the community can provide assistance and encourage the exchange of information between nations and groups. At the same time, it must be recognized that participatory institutions cannot be imported from abroad but must reflect the needs, traditions and experiences of the local population:

"Greater equality and social justice require a greater measure of popular participation. Development based on models, structures and technologies imported from abroad has no roots in the population; and development that has no roots in the population merely because development by an élite for an élite."^{88/}

^{87/} DP/319/Add.2, para. 64 (i).

^{88/} ILO, Human Dignity, Economic Growth and Social Justice in a Changing Africa - An ILO Agenda for Africa, Report of the Director-General to the Fourth African Regional Conference, Nairobi 1973 (Geneva, ILO, 1973) p. 41.

D. Implications of the right to development for
"official development assistance"

1. Introduction

254. The need for increased levels of official development assistance to the developing countries has long been acknowledged. At its fifth session, in 1950, the General Assembly recognized that:

"although the economic development of under-developed countries depends primarily upon the efforts of the people of those countries, the necessary acceleration of that development, on the basis of their own plans and programmes, requires not only technical but also financial assistance from abroad, and particularly from the more developed countries".^{89/}

More recently, a 1977 report by the Secretary-General of UNCTAD concluded that "a very substantial increase in the flow of resources to the least developed countries is now essential, with emphasis on grants and concessional loans, as part of a comprehensive attack on their development problems".^{90/} Similarly, the World Economic Survey for 1977 has indicated that an increased flow of official development assistance is particularly essential for the many low-income countries that are unable to borrow on private capital markets.^{91/}

2. The concept of "official development assistance"

255. The term "official development assistance" has not been specifically defined in any of the relevant United Nations resolutions including UNCTAD resolution 61 (iii) and the resolutions of the General Assembly pertaining to the two International Development Decade Strategies. However, in the recommendation on terms and conditions of aid, adopted by the Development Assistance Committee (DAC) of the OECD on 17 October 1972 official development assistance was defined as:

^{89/} General Assembly resolution 400 (v)

^{90/} TD/B/642 p.14, para. 45.

^{91/} World Economic Survey 1977, E/1978/70 p.8.

" ... those flows to developing countries and multilateral institutions provided by official agencies, including state and local governments, or by their executive agencies, each transaction of which meets the following tests:

- (a) it is administered with the promotion of the economic development and welfare of developing countries as its main objective, and
- (b) it is concessional in character and contains a grant element of at least 25 per cent.^{92/}

3. The role of official development assistance

256. The transfer of resources in real terms to developing countries, of which official development assistance is an important element, has been said to be a major ingredient in the determination of the world community to work urgently for the establishment of a New International Economic Order based on equity, sovereign equality, interdependence, common interest and co-operation among all States.^{93/} The analysis, earlier in this report, of the legal norms relevant to the right to development^{94/} has highlighted the fundamental principle that economic and social progress and development are the common and shared concern and responsibility of the international community. This principle is based on the Charter of the United Nations and has been reiterated in the Universal Declaration of Human Rights, the International Human Rights Covenants, the International Development Strategy for the Second United Nations Development Strategy, and a variety of other resolutions adopted by the General Assembly including the Declaration on Social Progress and Development. Thus, for example, article 17 of the Charter of Economic

^{92/} OECD, Development Co-operation 1972 Review, (Paris, OECD, 1972) annex III, para. 1. DAC member countries have drawn up a list of specific types of transactions that may not be included in official development assistance. The list includes:
(a) all military transactions, whether in the form of grants or of loans;
(b) official export credits or official funds for discounting export credits;
(c) the non-official part of joint official/private transactions; (d) transactions in the securities of multilateral development agencies and institutions undertaken for exchange reserve purposes; (e) pensions and similar payments to experts, except where such payments are made in pursuance of the provisions of an intergovernmental agreement; (f) flows primarily for strengthening the cultural ties between donor and recipient countries. (*Ibid*)

^{93/} "Note by the bureau" of the Committee established under General Assembly resolution 32/174, A/AC.191/L.2, para. 3.

^{94/} See Chapter II. B. supra.

Rights and Duties of States provides that "International co-operation for development is the shared goal and common duty of all States. Every State should co-operate with the efforts of developing countries to accelerate their economic and social development by providing favourable external conditions and by extending active assistance to them, consistent with their development needs and objectives, with strict respect for the sovereign equality of States and free of any conditions derogating from their sovereignty".^{25/}

257. The responsibility of States to promote the development efforts of other States was first expressed in terms of a quantitative target for the net transfer of resources from developed to developing countries in General Assembly resolution 1522 (XV) of 1960. This target was refined and reiterated by the world community at the first United Nations Conference on Trade and Development in 1964, further endorsed by the International Conference on Human Rights in Teheran in 1968,^{26/} and became an integral element in the International Development Strategy adopted by the General Assembly in 1970.

The Strategy calls upon each economically advanced country to:

- (a) " ... endeavour to provide by 1972 annually to developing countries financial resource transfers of a minimum net amount of 1 per cent of its gross national product at market prices in terms of actual disbursements ..." (para. 42).
- (b) " ... progressively increase its official development assistance to the developing countries and ... exert its best efforts to reach a minimum net amount of 0.7 per cent of its gross national product at market prices by the middle of the Decade" (para.43).^{27/}

^{25/} General Assembly resolution 3281 (XXIX).

^{26/} *Op. cit.*, resolution XVII, para. 3.

^{27/} General Assembly resolution 2626 (XXV).

258. The importance of meeting these targets has been reiterated by the General Assembly during its Sixth Special Session,^{98/} and more recently at the thirty-first^{99/} and thirty-second sessions^{100/}. In resolution 3362 (5-VII) on development and international economic co-operation the Assembly called for an increased, predictable, continuous and increasingly assured flow of concessional financial resources for development on more favourable terms and conditions. In resolution 31/181 the Assembly urged developed countries to give consideration to proposals made at the Conference on International Economic Co-operation, including measures such as: increasing annually the ODA budgets of donor countries "by a specific percentage on a multiyear basis", setting aside at least 1 per cent of annual gross national product increase expected to accrue in donor countries to augment ODA flows; and inclusion of aid volume targets in the economic planning of the donor countries.^{101/}

259. In November 1977 a meeting of multilateral and bilateral financial and technical assistance institutions with representatives of the least developed countries recommended that donors, in co-operation with the least developed countries should actively seek ways to increase the flow of official development assistance to these countries effectively and substantially, and if possible to double it.^{102/} This recommendation was subsequently endorsed, in July 1978 by the Intergovernmental Group on the Least Developed Countries.^{103/}

^{98/} General Assembly resolutions 3201 (S-VI) and 3202 (S-VI).

^{99/} General Assembly resolution 31/174.

^{100/} General Assembly resolution 32/181.

^{101/} These proposals are outlined in "Acceleration of the transfer of real resources to developing countries: report of the Secretary-General", A/32/149, paras. 1-29. See also the "Note by the bureau" of the Committee established under General Assembly resolution 32/174, A/AC.191/L.2, para. 12.

^{102/} TD/B/681, p.20, para. 4(c).

^{103/} TD/B/AC.17/L.10, p.4, para. 2.

4. The relationship between the right to development
and official development assistance

260. In recent years the role of official development assistance in the promotion of human rights has become the subject of considerable analysis.^{104/} The importance, for the achievement of lasting progress in the implementation of human rights, of sound and effective policies of economic and social development at both the national and international levels was recognized in the Proclamation of Teheran^{105/} and reiterated by the General Assembly in resolution 32/130^{106/}. In the same resolution, the Assembly indicated that "human rights questions should be examined globally, taking into account both the over-all context of the various societies in which they present themselves as well as the need for the promotion of the full dignity of the human person and the development and well-being of the society".^{107/}

261. In considering the relationship between official development assistance and realization of the right to development it is useful to recall the approach adopted by the Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in his "Study of the impact of foreign economic aid and assistance on respect for human rights in Chile".^{108/} The Rapporteur interpreted the term "foreign economic aid" to include commercial loans, private loans, loans from States, loans from International Organizations, and foreign investments.^{109/} His study thus goes beyond consideration of the effects of official development assistance but the principles which he considers remain of relevance to this and several subsequent sections of the present study.^{110/}

^{104/} See "Civil and Political Rights in the Context of Development Assistance", Study prepared by Mr. Walter H.C. Laves, presented to the International Conference on Human Rights, Teheran, 1968, A/CONF.32/L.6; and Douglas Williams, "Human Rights, Economic Development and Aid to the Third World: an Analysis and Proposal for Action", Overseas Development Institute Review, No.1, 1978, p.14.

^{105/} Op. cit., p.3.

^{106/} Para. 1(b).

^{107/} Para. 1(d).

^{108/} E/CN.4/Sub.2/412, Vols. I-IV.

^{109/} E/CN.4/1267, p.5, para. 15.

^{110/} For example, sections dealing with transnational corporations and with transnational trade and financial policies, practices and institutions.

262. The Rapporteur proposes a classification based on the possible extent of impact of foreign economic assistance on human rights.^{111/} He discerns three categories:

(i) Aid directly related to the enjoyment of human rights.^{112/} This category includes economic assistance which is "designed to benefit immediately and directly certain social groups".^{113/} The Rapporteur emphasizes that, while in abstracto such aid is instrumental in implementing human rights "a correct assessment of its real impact on human rights cannot be made unless two factors are taken into account:

(i) the magnitude of this form of aid in relation to other categories of foreign economic assistance; and (ii) the overall socio-economic policy adopted by the State".^{114/}

(ii) Assistance geared to development. This category includes technical assistance in the widest sense, loans or grants to help finance infrastructure projects, productive investments in socially relevant areas, etc.^{115/} In the view of the Rapporteur such assistance has an indirect potential for benefiting economic, social and cultural rights, to the extent that the latter may be improved through any economic development induced.^{116/}

(iii) Assistance which is not directly concerned either with human rights or with development. "This sort of assistance can take the form of credits or loans not targeted to socially relevant areas, of investments guided by purely commercial criteria, of debt rescheduling etc..."^{117/}

^{111/} E/CN.4/Sub.2/412, Vol. 1, para. 62.

^{112/} Ibid., para. 63.

^{113/} Ibid.

^{114/} Ibid., para. 65.

^{115/} Ibid., para. 66.

^{116/} Ibid.

^{117/} Ibid., para. 67.

263. The Rapporteur notes that, in principle, all of the three categories can turn out to have direct positive consequences for the economic, social and cultural rights of the population.^{118/} He also observes that foreign assistance, even if specifically directed towards assisting the poorest sections of the population may be ineffective as a result of government action to reduce domestic investment in those sectors.^{119/} The funds thus diverted, in addition to foreign economic assistance may be used to strengthen and maintain in power a repressive regime, thereby perpetuating or maintaining a situation characterized by gross violations of human rights.^{120/}

264. The role which may be played by foreign economic assistance in facilitating the continuing denial of the right to development of a suppressed people has also been analysed in the report of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the subject of "the adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to the colonial and racist regimes in Southern Africa".^{121/}

265. Member countries of the Development Assistance Committee (DAC) of the OECD have recently affirmed the necessity for development assistance to address directly the problems of meeting basic human needs, as expressed in the Declaration of Principles and Programme of Action of the World Employment Conference.^{122/}

^{118/} Ibid., Vol. IV, para.475.

^{119/} Ibid., para. 476-482.

^{120/} Ibid., paras. 496-499.

^{121/} E/CN.4/Sub.2/383.

^{122/} "Statement by DAC Members on Development Co-operation for Economic Growth and Meeting Basic Human Needs", adopted by the DAC High-Level Meeting on 27 October, 1977, OECD, Development Co-operation, 1977 Review (Paris, OECD, 1977), Annex II, pp.149-150.

The DAC Members have indicated that "the concept of basic human needs must be country-specific and dynamic, for it is up to the individual developing country to choose and define its own objectives and policies in the light of its circumstances".^{123/}

266. In the United States a number of general amendments to the Foreign Assistance Act have urged the executive branch of government to give greater cognizance to human rights when deciding upon the level and nature of bilateral assistance to individual countries.^{124/} Section 32 of the Foreign Assistance Act, which was adopted in 1973, provided that:

"It is the sense of Congress that the President should deny any economic or military assistance to the government of any foreign country which practices the internment or imprisonment of that country's citizens for political purposes."

267. In 1975 an amendment to the International Development and Food Assistance Act added section 116 to the Foreign Assistance Act.^{125/} This section concerns non-military economic assistance and provides that:

"Sec.116. HUMAN RIGHTS - (a). No assistance may be provided under this part to the government of any country which engages in a consistent pattern of gross violations of internationally recognized human rights, including torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charge, or other flagrant denial of the right to life, liberty, and the security of person, unless such assistance will directly benefit the needy people in such country.

...

^{123/} Ibid., para.4.

^{124/} John Salzberg and Donald D. Young, "The Parliamentary Role in Implementing International Human Rights: A U.S. Example", Texas International Law Journal, Vol. 12, pp. 251-278.

^{125/} This legislation is analysed briefly by the Rapporteur, Mr. A. Cassese, in E/CN.4/Sub.2/412, Vol.IV, paras. 505-507.

(c) In determining whether or not a government falls within the provisions of subsection (a), consideration shall be given to the extent of co-operation of such government in permitting an unimpeded investigation of alleged violations of internationally recognized human rights by appropriate international organizations, including the International Committee of the Red Cross, or groups or persons acting under the authority of the United Nations or of the Organization of American States".

268. The official Netherlands Development Policy^{126/} places considerable emphasis on the role of official development assistance in the promotion of human rights. The Policy states that "the need to give practical expression to human rights underlies and illuminates the whole development policy".^{127/} It defines the aim of development as "the promotion of welfare in the widest sense, the satisfaction of basic human needs and the granting of basic human rights: life, security, work, food, health and shelter". The Policy relies upon the United Nations human rights instruments to define what is meant by "human rights". In this regard, emphasis is placed upon those elements which promote realization of the right to development: "these agreements clearly state that political freedom and social justice are indissolubly bound up with one another, and must be so if people and communities are to achieve their full potential".^{128/}

^{126/} Netherlands Development Policy 1977, (The Hague, Ministry of Foreign Affairs, 1977).

^{127/} All quotations from the Policy are taken from ibid., p.16.

^{128/} The rationale behind the Policy is discussed in J.P. Pronk, "Human Rights and Development Aid". Review of the International Commission of Jurists, No. 18, June 1977, pp. 33-39. See also the analysis in E/CN.4/Sub.2/412, Vol. IV, para. 508.

269. The Netherlands Policy also acknowledges the incompatibility of various forms of repression with the achievement of development:

"Our development co-operation work must not strengthen the forces of political repression nor those which stand in the way of social justice. Repression usually manifests itself in persecution, often accompanied by torture and the suppression of those who are working to build a different political system; more generally, repression means the exclusion of large sections of the society from the processes of development and decision-making."

270. The Policy lays stress on the role of human rights criteria in the selection of countries, groups and institutions which receive assistance:

"Those in most need of help, no less as regards the recognition of their human rights than in other ways, are deprived groups, deprived for reasons of race, religion or social status. The Government therefore takes account of social as well as individual rights, in the conviction that both political freedom and social justice must be developed to the full."

271. In allocating its official development assistance the Norwegian Government also applies criteria which are of relevance to the promotion of the right to development. The policy states that:

"When evaluating any development project or programme a decisive criterion will be whether it will contribute towards promoting the development and well-being of the broad mass of the population and in particular those who suffer most from poverty and need."^{129/}

^{129/} Norwegian Agency for International Development (NORAD), Norway's Economic Relations with Developing Countries (2nd ed., Oslo, NORAD, 1977), p.39, para.-8.

5. The status in international law of the entitlement to receive and the obligation to provide development assistance

272. Reference has already been made to the view that "the idea of need as a basis for entitlement ... is ... the central feature of the contemporary international law of development."^{130/} Such a proposition is not new, but it remains difficult to assess the extent to which it reflects the present state of international law.

273. In a report entitled "Measures for the Economic Development of Under Developed Countries" by a group of experts appointed by the Secretary-General of the United Nations, and published in May 1951, it is stated:

"The principle that the better off should help to pay for the education, the medical services and other public services received by the poorer classes of the community is now well established within every Member nation of the United Nations. The idea that this principle should be applied as between rich and poor countries is relatively new. It has, however been put into practice on several occasions."^{131/}

274. More recently, it was suggested during the twentieth session of the International Law Commission that a study should be made of the legal principles of reciprocal assistance between States. A member of the Commission pointed to a number of precedents which he considered were "all expressions of the duty of States to render assistance to one another in economic matters". In his view:

"The time had now come to consider the question whether there was a legal obligation on the richly endowed countries to render assistance to those countries which needed it and if so, what was the scope of

^{130/} Oscar Schachter, "The Evolving International Law of Development", Columbia Journal of Transnational Law, Vol.15, 1976, p.1, 10.

^{131/} United Nations publication, Sales No.1951.II.B.2. p.84, para.272.

that obligation. Simultaneously, the parallel question should be considered of the corresponding obligations of States and peoples whom it was intended to help, particularly the obligation to carry out the structural changes which were essential if they were to benefit from the assistance of the wealthier countries."^{132/}

275. In a subsequent survey of international law prepared by the Secretary-General, consideration was given as to whether such an obligation could be said to have been accepted in positive law.^{133/} The conclusion was that:

"no such obligation as that suggested has been accepted in positive law; ... at the most there is an imperfect obligation to take certain actions toward certain objectives within particular institutional and procedural arrangements. Moreover, it might be thought that these arrangements -- and any resulting substantive obligation -- are still at an early stage of their development, and that the time is not yet fit for any attempt to spell out an obligation in concrete legal terms."^{134/}

276. In view of the large number of resolutions relating to development assistance which have been adopted by the General Assembly and by international conferences since 1971, when the survey quoted above was prepared, the time may now be ripe for a re-consideration of the situation. The Special Rapporteur of the Commission on Human Rights in his study on The Realization of Economic Social and Cultural Rights: Problems, Policies, Progress has already proposed that the Commission on Human Rights might recommend that the question of the

^{132/} Yearbook of the International Law Commission, 1968, vol.I, 977th meeting, para. 27. See also A/CN.4/230, pp.59-60, para.142.

^{133/} "Survey of international law: Working paper prepared by the Secretary-General in the light of the decision of the Commission to review its programme of work." A/CN.4/245.

^{134/} Ibid., p.83, para.167.

obligations of the international community with respect to the world-wide problem of mass poverty and human degradation be placed on the agenda of the International Law Commission with the priority that it deserves.^{135/} Consideration of the obligations and entitlements of States in regard to official development assistance would be fully in accord with recognition by the international community of the right to development.

6. Conclusion

277. It is not possible within the confines of the present study to analyse in detail all the issues which arise out of the relationship between the right to development and the transfer of official development assistance. Some of these issues have been discussed by participants in seminars on human rights in developing countries.^{136/} Other issues such as the need to respect the right of peoples to self-determination and to avoid interference in the domestic affairs of States have been considered in other studies and it is not necessary to duplicate that work in the present study.^{137/}

278. A report by the Secretary-General of UNCTAD has emphasized the need for increased flows of official development assistance on terms and conditions which are more appropriate than those applied hitherto.^{138/}

"To achieve this objective it may well be necessary to create new mechanisms designed to provide a dependable flow of development assistance, and on a much larger scale than in the past".^{139/}

^{135/} Op.cit., p. 309, para. 160.

^{136/} See, for example ST/TAC/HR/36, p. 19, para. 32; and ST/TAO/HR/40, p. 11, para. 50.

^{137/} See, for example, E/CN.4/Sub.2/412, Vol.I; and E/CN.4/Sub.2/405, Vol.I.

^{138/} TD/B/642, p. 19, para. 75.

^{139/} Ibid.

The possibility of establishing a "world solidarity contribution" as a form of taxation has been raised on a number of occasions by the Committee for Development Planning^{140/} and has been endorsed in general terms in a number of other reports both within and outside the United Nations system.^{141/} The ramifications of the existence of a right to development are of major importance in this regard. As the Committee for Development Planning has stated: "the elimination of mass poverty from the face of the earth is the joint responsibility of all nations, rich and poor alike".^{142/}

279. The foregoing analysis indicates that there is widespread international interest in the concept of forging closer links between the promotion of human rights and the provision of official development assistance. Nevertheless, such analyses of the relevant issues as have been undertaken to date are not, and generally do not purport to be, comprehensive. As a result it is not yet possible to formulate conclusions, and much less recommendations, which adequately reflect the need to promote realization of the right to development. For this reason, the Commission on Human Rights may wish to consider undertaking a more detailed study of the relevant issues with a view to formulating general principles and criteria which might guide future bilateral and multilateral assistance arrangements, in so far as they seek to promote human rights in general, and the human right to development in particular.

^{140/} Towards Accelerated Development: Proposals for the Second United Nations Development Decade (1970), op.cit., p. 27; and Renewing the Development Priority (1973) op.cit., p. 20. At its 1978 meeting the Committee requested the Secretariat to prepare for consideration at its next meeting "a paper on possibilities of international taxation for promoting economic and social development". Committee for Development Planning, Report on the Fourteenth Session, op.cit., p. 24, para. (g).

^{141/} TD/B/642, p. 19, para. 75: The Cocoyoc Declaration, op.cit.; and Reshaping the International Order, op.cit., p. 132, para. 10.2 (c). The reaction of some States to the proposed tax is recorded in A/32/149.

^{142/} Committee for Development Planning, Report on the Fourteenth Session, op.cit., p. 13, para. 49.

E. The role of transnational corporations in promotion
of realization of the right to development

280. Transnational corporations^{143/} are important actors on the world stage.

Because of the significance of their existing and potential impact in relation to world development, the enjoyment of human rights and the achievement of a New International Economic Order, the role of transnational corporations in promotion of realization of the right to development is of major importance.

281. In 1974 a United Nations report indicated that the total value of international production controlled by such corporations exceeded that of international trade.^{144/} Since that time transnational corporations have continued to expand.^{145/}

282. While the potentially beneficial impact of the activities of transnational corporations has been widely acknowledged within the United Nations system^{146/}, a number of reports has also drawn attention to the problems associated with certain aspects of their operations. Thus, for example, the 1974 report of the United Nations noted that "multinational corporations, although powerful engines of growth, tend to accentuate rather than reduce irregularities in the absence of proper government policies and where necessary, social reforms". But despite an

^{143/} The United Nations Commission on Transnational Corporations has not yet reached a decision on a precise definition of "transnational corporations". E/C.10/35, para. 101. The issues have been discussed at several sessions of the Commission: E/5782 paras. 33-34; and E/5986, paras. 62-63. A recent ILO policy statement notes that "multinational enterprises includes enterprises, whether they are of public, mixed or private ownership which own or control production, distribution services, or other facilities outside the country in which they are based". Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. (Geneva, ILO, 1978), p. 3, para. 6.

^{144/} The Impact of Multinational Corporations on Development and on International Relations (United Nations publication, Sales No. E.74.II.A.5) p.25.

^{145/} Transnational Corporations in World Development: A Re-examination (United Nations publication, Sales No. E.78.II.A.5), chap. III.

^{146/} See generally, The Impact of Multinational Corporations on Development and on International Relations, op.cit.; and ILO, The Impact of Multinational Enterprises on Employment and Training, (Geneva, ILO, 1977).

unprecedented expansion in research activities devoted to the role of transnational corporations,^{147/} and the attempts of many countries to control, structure or regulate the corporations' activities,^{148/} the Committee for Development Planning in its 1978 report has expressed the view that:

"The effective regulation of multinational corporations which could make them more acceptable instruments of international prosperity and co-operation has yet to be devised".^{149/}

283. The responsibility of transnational corporations in terms of promotion of respect for human rights appears to be generally acknowledged. Thus in its "annotated outline of a code of conduct" a working group of the United Nations Commission on Transnational Corporations included "respect for human rights and fundamental freedoms" among the major principles relevant to the activities of transnational corporations.^{150/} In addition the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy adopted by the Governing Body of the ILO in 1977 states that all parties concerned by the Tripartite Declaration "should respect the Universal Declaration of Human Rights and the corresponding International Covenants ... as well as the Constitution of the International Labour Organisation ... "^{151/} A similar approach has also been adopted in business circles. One business executive has answered the question "What contribution can a multinational ... make to human rights?" in the following terms:

^{147/} See Survey of Research on Transnational Corporations (United Nations publication, Sales No. E.77.II.A.16), and Bibliography on Transnational Corporations (United Nations publication, Sales No. E.78.II.A.4).

^{148/} Transnational Corporations in World Development: A Re-examination, op.cit., chap. II.

^{149/} Official Records of the Economic and Social Council, 1978, Supplement No. 6, para. 27.

^{150/} E/C.10/31, paras. 4 and 16.

^{151/} Op.cit., para. 8.

"First, it can recognize it is unavoidably involved in the question - and, hopefully, in the answer.

The businessman who says that business affairs and human rights are separate subjects simply hasn't thought very deeply about the system of which he's a part ...

Secondly, a company ... ought to stand for high human rights standards wherever it is located."^{152/}

284. The role of transnational corporations in the promotion of respect for human rights,^{153/} including the right to development, has been considered by the Commission on Human Rights in two separate contexts. The first of these relates to the activities of transnational corporations and others in relation to the racist régimes in southern Africa and, in more general terms, in relation to the position in Chile.

285. Following consideration of the report of the Special Rapporteur on the adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to the colonialist and racist régimes in southern Africa^{154/} the Commission on Human Rights, at its thirty-third session, reaffirmed "that arms sales, nuclear co-operation agreements and the economic activities of national and multinational companies in South Africa, Namibia and Southern Rhodesia constitute blatant acts of complicity in the crime of apartheid (a crime against humanity) and encouragement of the continuation of the policy of racial discrimination and colonialism ..."^{155/} The Declaration adopted in 1978 by the World Conference to Combat Racism and Racial Discrimination states that:

^{152/} Improving the Human Condition; and what Role for the Multinationals? - an address by the Chairman of the Board of Caterpillar Tractor Co., at Bradley University, Peoria, Illinois, 5 April 1978, p.10 (emphasis in original).

^{153/} See generally Thomas E. McCarthy, "Transnational Corporations and Human Rights" in A. Cassese (ed.), Modern International Law: Problems and Prospects (Leydon, Sijthoff, 1978) (forthcoming).

^{154/} E/CN.4/Sub.2/371; subsequently expanded and revised in E/CN.4/Sub.2/383/Rev.1; see also E/CN.4/Sub.2/415.

^{155/} Resolution 7 (XXXIII), para. 3.

"it is an obligation of Governments to create the necessary conditions in order that the transnational corporations cease:

- (a) To grant any assistance and support to the racist régimes of Pretoria and Salisbury;
- (b) To exploit the peoples of southern Africa and the natural resources in their countries".^{156/}

286. In the case of Chile, the Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in his study of the impact of foreign economic aid and assistance on respect for human rights in Chile, briefly considered the role of transnational corporations and other entities. In the opinion of the Rapporteur "resort to foreign private financing has turned out to be a means of circumventing the human rights-oriented policy of some foreign public institutions".^{157/} In his view it would be "useful and appropriate to explore means of establishing, at the international or at the national level, a 'code of conduct' for private enterprises operating in Chile".^{158/}

287. The second context in which the Commission on Human Rights has considered the role of transnational corporations is in relation to the right to development. In the debates prior to the adoption of resolution 4 (XXXIII), pursuant to paragraph 4 of which the present study has been prepared, several representatives made reference to the negative influence of transnational corporations in developing countries.^{159/} One representative considered that the problem deserved some priority as a matter for consideration by the Commission.^{160/}

^{156/} A/33/262, para. 6 of the Declaration. See generally, Transnational Corporations: Activities of Transnational Corporations in Southern Africa: Impact on Financial and Social Situations (United Nations publication, Sales No. E.78.II.A.6).

^{157/} E/CN.4/Sub.2/412, para. 375.

^{158/} Ibid., para. 538.

^{159/} E/CN.4/SR.1391, para. 44; E/CN.4/SR.1392, para. 16; E/CN.4/SR.1393, paras. 8 and 31-32.

^{160/} E/CN.4/SR.1392, para. 16.

288. In connexion with issues relevant to the right to development certain activities of transnational corporations have been the subject of criticism. Thus a report prepared by the Secretary-General of UNCTAD has indicated that, in certain ways "transnational corporations tend to impose inappropriate patterns of development in the Third World".^{161/} Another commentator has argued that the approach generally adopted by such corporations is "incompatible with basic needs development regardless of particular policy measures adopted by governments".^{162/} A detailed case study of the international market power of transnational corporations in the electrical industry, published in 1978 by UNCTAD, has concluded that market forces in that industry, left to themselves, do not work for the best of all but to the advantage of transnational conglomerates.^{163/} The study advocates the need for "assertive and considered public policy in developed and developing countries alike" to ensure a more equitable approach.^{164/}

289. The role of transnational corporations in relation to the right to food has also been subject to criticism. The right to food is a key element in the right to development of the individual as well as in the quest for self-reliance which is of major importance in relation to the right to development of peoples and of States. Agricultural transnational corporations have spread very rapidly throughout the world during the last decade. These corporations are involved in a wide range of activities covering food production, processing and marketing. One of the basic characteristics of multinational farming is the unification of the world farm economy, that is, the interlocking at every level from farm to market. Proponents of this transnational approach to farming maintain that only through the efforts of

^{161/} TD/B/642, paras. 8 and 9.

^{162/} Keith Griffin, "Multinational Corporation and Basic Needs Development", Development and Change, Vol. 8, 1977, p.63.

^{163/} UNCTAD/ST/MD/13, para. VI, 44.

^{164/} Ibid.

such corporations will agriculture be modernized with sufficient speed in developing countries and agricultural production increased sufficiently to feed the under-nourished and improve the standard of living. The transnationals, it is argued, will greatly facilitate the transfer of resources (especially technological and managerial skills) and will facilitate the organization of unified transnational economic activities in agriculture and related fields.^{165/}

290. However, according to a report prepared jointly by the United Nations, FAO and ILO, "in the developing countries ... there are serious reservations concerning the role of multinational corporations."^{166/} The report indicates that criticism has focused upon the loss of national control over critical elements of the economy, the problems which result from "growing unemployment and under-employment because of the substitution of machines for labour, greater demands for foreign capital, the modification of the ecosystems, the export of most of the produce obtained instead of its use by the local population, and the large remittance of foreign exchange back to the home country for amortization of investment, dividends, high salaries, royalties, use of patents for processed foods etc."^{167/}

291. The impact of the activities of agricultural transnational corporations on realization of the right to food, and thus of the right to development, has been examined critically by a number of commentators.^{168/} The relationship is a complex one and may be considered to warrant future consideration by the Commission on Human

^{165/} See for example the provisional guidelines relating to the establishment of the United Nations Industry Co-operative Programme, DP/347, Annex II, p.1. paras. A and B.

^{166/} Progress in Land Reform: Sixth Report, United Nations publication, Sales No. E.76.IV.5, p. 157.

^{167/} Ibid.

^{168/} See Susan George, How the Other Half Dies: The Real Reasons for World Hunger (Harmondsworth, Penguin Books, 1976); Frances Moore Lappé and Joseph Collins, Food First: Beyond the Myth of Scarcity (Boston, Houghton Mifflin Co., 1977); The Right to be Free from Hunger: A Struggle for Self-Reliance (Geneva, International Youth and Student Movement for the United Nations, 1978) and Pierre Vellas, "Pouvoir Alimentaire et Droits de l'Homme", Le Monde, 10-11 September 1978, p.2.

Rights. It was suggested at the thirty-third session of the Commission that the Secretary-General could prepare a report on the links between starvation and violations of human rights.^{169/}

292. A recent United Nations report has indicated that the main objectives of countries in seeking to regulate the activities of transnational corporations "are to ensure that their developmental goals, as well as national identity and purpose, are not distorted by the global strategies of transnational corporations, and to obtain a better share of the benefits".^{170/} During the debates at the thirty-first session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities several speakers suggested that there is a need to develop human rights criteria in relation to foreign economic investments.^{171/} In a similar vein another commentator has suggested that periodic reports might be requested from governments and transnational corporations in the form of "human rights impact statements" detailing the impact on human rights of the overall activities of individual transnational corporations and in relation to particular projects.^{172/}

293. In conclusion it is clear that the potential role of transnational corporations in promoting realization of the right to development is a major one. While a number of organs within the United Nations system are presently working on the elaboration of aspects of a code of conduct for transnational corporations^{173/} much more remains

^{169/} E/CN.4/SR.1393, para. 4. See also E/CN.4/SR.1342, para. 2.

^{170/} Transnational Corporations in World Development: A Re-examination, op.cit., para. 17.

^{171/} E/CN.4/1296, para. 212; and E/CN.4/Sub.2/SR.817, para. 39.

^{172/} Thomas E. McCarthy, "Transnational Corporations and Human Rights", op.cit.

^{173/} See "Transnational corporations: aspects of possible relationships between the work on a code of conduct and related work in UNCTAD and ILO". E/C.10/AC.2/5; and G.D. de Bernis "Codes of Conduct Compared". Development Forum, Vol. VI, No.2 (1978), p.4.

to be done in order to clarify the specifically human rights-related obligations of the corporations both in general terms and in particular situations such as, for example, southern Africa and in relation to the right to food. Further consideration of these issues could also help to ensure that adequate attention is paid to human rights matters in the elaboration and application of a code of conduct.

F. Implication of the right to development for
a new international development strategy

294. Many of the development related deliberations presently taking place within the United Nations system are geared towards the elaboration of a new international development strategy for the 1980s and beyond. In paragraph 2 of resolution 32/174 the General Assembly decided to convene a special session of the General Assembly in 1980 in order "to assess the progress made in the various forums of the United Nations system in the establishment of the new international economic order and, on the basis of that assessment, to take appropriate action for the promotion of the development of developing countries and international co-operation, including the adoption of the new international development strategy for the 1980s". It is appropriate therefore to consider the implications of the right to development in the context of the framing of a new development strategy.

295. In 1961 the General Assembly adopted resolution 1710 (XVI) by which it designated the 1960s as the United Nations Development Decade. While the strategy for the decade recognized the undertaking embodied in the Charter of the United Nations "to promote social progress and better standards of life in larger freedom", no specific mention was made of the commitment of the United Nations to promote "universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion." 174/ Subsequently, in 1965, the General Assembly recognized the need to devote special attention, on both the national and international levels, to the promotion of respect for human rights within the context of the Development Decade. 175/

174/ Charter of the United Nations, Article 55 (c).

175/ General Assembly, resolution 2027 (XX).

296. In its resolution on economic development and human rights the International Conference on Human Rights held in Teheran in 1968 noted that there is a "profound inter-connexion between the realization of human rights and economic development" 176/ and called urgently for the preparation of a global strategy of development by the United Nations. 177/ In the following year the General Assembly considered that, in the elaboration of the strategy for the second United Nations Development Decade, the final aim must be the attainment of a rapid and sustained rate of economic and social development, especially in developing countries, and also the well-being, freedom and dignity of all human beings, and the enjoyment of all the rights recognized in the Universal Declaration of Human Rights. 178/

297. In 1970 the General Assembly adopted the International Development Strategy for the Second United Nations Development Decade. 179/ In the fifth preambular paragraph the strategy recognizes that "the success of international development activities will depend in large measure on [inter alia] ... the elimination of colonialism, racial discrimination, apartheid and occupation of territories of any State and on the promotion of equal political, economic, social and cultural rights for all members of society." The strategy states development objectives in general terms, sets specific growth targets, and provides for a variety of policy measures relating to international trade, development assistance, the transfer of science and technology, and human development. It also provides for periodic reviews and appraisals of objectives and achievements.

176/ Final Act of the International Conference on Human Rights, op. cit., resolution VII, first preambular paragraph.

177/ Ibid, para. 6.

178/ General Assembly resolution 2586 (XXIV).

179/ General Assembly resolution 2626 (XXV).

298. Assessments of the strategy's effectiveness vary but it appears to be generally considered that the objectives of the Second Development Decade have not been realized to a satisfactory extent. Thus a report by the Secretary-General of UNCTAD states that:

"There is now widespread recognition that existing international development policies have largely failed to achieve their stated objectives. The hopes that were placed on the International Development Strategy for the Second United Nations Decade ... have been essentially frustrated ... It now appears evident that the policy measures envisaged in the Strategy, even had they been fully implemented, would not have provided an adequate basis for the long-term development of the developing countries." 180/

299. Similarly, another observer has commented that, fairly soon after its launching, the Strategy "lost its relevance as the central policy document guiding action in the field of development policy". 181/

300. In preparing for a new international development strategy the relevant organs of the United Nations system are able to take account of such analyses of the shortcomings of the previous strategies, as well as of the new concepts and emphasis which have emerged from a variety of international conferences devoted to specific issues. 182/ As noted above, 183/ many of these conferences have referred specifically to the human rights aspects of the issues under consideration.

180/ "The evolution of a viable international development strategy", TD/B/642, para. 1.

181/ H.C. Bos, "Lessons from DD2 for a New International Development Strategy", in Partners in Tomorrow: Strategies for a New International Order, A.J. Dolman and J. van Ettinger eds. (New York, E.P. Dutton, 1978), p.21.

182/ The results of these conferences are analyzed in "Social development and a new international development strategy; common elements of decisions of world conferences in the 1970s", E/6056/Add.1.

183/ Para. 93, supra.

Thus, for example, the Conference on the Human Environment proclaimed that man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being. 184/

Similarly, the World Food Conference adopted the Universal Declaration on the Eradication of Hunger and Malnutrition in which it declared that "every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties". 185/
In reflecting the outcome of these and other conferences held during the 1970s the new international development strategy should thus take similar cognizance of the importance of the promotion of respect for human rights.

301. In addition, the organs of the United Nations system which are involved in the preparation of the new strategy have attached very considerable significance to the need to establish a new international economic order. 186/ In his opening statement to the Committee established under General Assembly resolution 32/174 the Secretary-General stated that:

"The sixth and seventh special sessions of the General Assembly have provided a clear direction to what needs to be done. Certain fundamental tenets are now accepted: that global interdependence is a reality and a matter of shared concern; that peace and prosperity are the basic rights of all human beings; that a new world order has to be created to promote economic equity and social justice. The crucial need now is to reflect these tenets in concrete measures." 187/

184/ Report of the United Nations Conference on the Human Environment (United Nations publication, Sales No. E.73 II.A.14), chap. 1, principle 1.

185/ Report of the World Food Conference (United Nations publication, Sales No. E.75, II.A.3), chap. 1, para. 1.

186/ In addition to General Assembly resolution 32/174 and the draft resolution contained in General Assembly decision 32/443 C, see for example the approach adopted by the Administrative Committee on Co-ordination's Task Force on Long-Term Development Objectives, E/1978/93, para. 9. See also E/1978/43 and Add.1.

187/ "Report of the committee established under General Assembly resolution 32/174", Volume 1, Official Records of the General Assembly, Thirty-third session, Supplement No. 34, Annex 1, para. 2.

302. The fundamental relationship between the right to development and the achievement of a New International Economic Order has been considered in detail above. 188/ It is sufficient to recall in the present context that "realization of the New International Economic Order is an essential element for the effective promotion of human rights and fundamental freedoms". 189/

303. The extent to which achievement of the New International Economic Order and the many other development objectives adopted within the United Nations system are inter-related with respect for human rights serves to underline the conclusion that promotion of respect for human rights in general, including the human right to development, should be prominent among the stated objectives of a new international development strategy. This conclusion is in keeping with paragraph 4 of resolution 4(XXX) in which the Commission on Human Rights requested the Committee on Development Planning, the Commission for Social Development and the Committee on Review and Appraisal to give due attention during the mid-term review of the International Development Strategy to early realization of economic, social and cultural rights in the process of development as set forth in the Universal Declaration of Human Rights and the International Covenants on Human Rights.

188/ Chapter III.C. supra.

189/ General Assembly resolution 32/130, para. 1 (f).

V. CONCLUDING OBSERVATIONS

304. The foregoing analysis has outlined a number of issues relating to the international dimensions of the right to development and has indicated the extent to which respect for human rights is fundamental to the process of development in its broadest and most meaningful sense.

305. The report has considered the ethical aspects of the right to development which range from the relatively pragmatic view that it is in the best interests of all States to promote the universal realization of the right, to the view that there are fundamental philosophical values which can be said to underlie the right to development. In addition, the analysis of legal norms relevant to the right has indicated that there is a very substantial body of principles based on the Charter of the United Nations and the International Bill of Human Rights and reinforced by a range of conventions, declarations and resolutions which demonstrate the existence of a human right to development in international law.

306. The report has also considered some of the subjects and beneficiaries of the right on the one hand, and those for whom the right implies duties on the other hand. The analysis undertaken cannot purport to be exhaustive nor does it seem likely to be the last analysis to be undertaken of the full implications of the existence of the right.

307. The right to development is, like other human rights, not to be considered as a static concept but as an evolving one. Changing perceptions of the development process and the emergence of strong recognition of the need to achieve a new international order in social, economic, political and cultural terms have added an extra dimension to the significance of the right to development. A more comprehensive appreciation of the implications of the right and a more detailed elaboration of the rights and duties which attach to it can be expected to emerge in the course of the next few years.

308. The report has also drawn attention to the fundamental interdependence of objectives such as achievement of a New International Economic Order, satisfaction of fundamental human needs and realization of the right to development. In particular, the report has emphasized the central importance of achieving disarmament and the cessation of the arms race as a prerequisite not only for realization of the right to peace but also of the right to development. In addition, it has pointed to a number of specific issues in relation to which the Commission on Human Rights might consider undertaking further study and analysis. Some of these are outlined below.

309. While this study has examined the broad outlines of the human right to development, the precise content of the right can only be determined by a thorough and comprehensive analysis of the diverse sources upon which the right is based. Such an analysis is especially important in the context of identifying, in more specific terms, those entities which are the subjects, beneficiaries and duty-holders of the right to development. Thus, in order to clarify further the concept of the right to development and to accord it greater practical significance, further analysis could be directed towards identifying and elaborating some of the specific rights and duties which, on the basis of existing and evolving international instruments pertaining to the right, are to be attributed to all relevant entities, including the international community as a whole, States, peoples, transnational corporations and individuals. Some materials for an analysis of this type may be found in the survey by the Secretary-General of the "principles, directives and guidelines for action in the field of development" presented to the Economic and Social Council in 1968.^{1/}

^{1/} E/4996.

310. The present report shows that there is a close relationship between the establishment of a New International Economic Order and realization of the right to development. In this connexion a variety of issues relating to the need to create more equitable and participatory power structures warrant further consideration. Some of these issues may be considered in connexion with the item entitled "The New International Economic Order and the promotion of human rights" which has been included in the provisional agenda for the thirty-second session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.^{2/}

311. In the context of programmes designed to satisfy fundamental human needs, the report has examined the relationship between the right to development and the "basic needs strategy". While the strategy is potentially important in the promotion of certain economic and social rights, there has to date been insufficient analysis of issues relating to the promotion of civil and political rights within the context of the strategy.

312. The analysis of the implications of the right to development for official development assistance has indicated that there is considerable international interest in the concept of forging closer links between the promotion of human rights and the provision of official development assistance. In view of the fact that there appears to be no existing comprehensive analysis of the complex issues which arise in this connexion, the Commission on Human Rights may wish to consider undertaking a more detailed study of the relevant issues with a view to formulating general principles and criteria which might guide future bilateral and multilateral assistance arrangements, in so far as they seek to promote human rights in general, and the human right to development in particular.

^{2/} Decision 6 (XXXI) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

313. This report has noted that the potentially beneficial impact of the activities of transnational corporations is substantial. Nevertheless, certain aspects of their operations have given rise to serious concern. While a number of organs within the United Nations system are at present working on the elaboration of aspects of a code of conduct for transnational corporations the analysis in the present report has indicated that much remains to be done in order to clarify the specifically human rights-related obligations of these corporations both in general terms and in particular situations.

314. One of the most significant conclusions to emerge from the present report is the need to ensure that the promotion of respect for human rights is an integral element in all development-related activities. In this regard, the Commission may wish to consider the most effective ways and means by which the promotion of human rights, including the right to development, might be more fully integrated into the entire range of United Nations development activities. Among the issues of major importance in terms of the right to development which could be considered are: the ways in which human rights, including the right to development, could be given more specific consideration in the context of reports relating to all aspects of development, including for example the review of progress in achieving the objectives of the international development strategy for the 1980s; the need for improved co-ordination of the human rights-related activities of the United Nations system in order to better promote realization of the right to development; the feasibility of establishing a periodic general review or survey by the Secretary-General of trends concerning the implementation of the concept of development as a human right and the integration of human rights standards into the formulation and application of development plans; and the practicability of requiring a "human rights impact statement", which might be similar in concept to an environmental impact statement, to be undertaken prior to the commencement of specific development projects or in connexion with the preparation of an overall development plan or programme.

315. The Commission may wish to consider that a series of inter-disciplinary, action-oriented seminars be organized on various aspects of the human right to development such as the integration of human rights standards into the formulation and application of development plans. Similarly, workshops could be held with the objective of involving the existing United Nations regional economic and social commissions in discussions of relevant issues with a view to formulating practical proposals for promotion of the human right to development.

316. The emergence of the human right to development as a concept of major importance is a reflection of its dynamic character. The continuing evolution of the concept and its translation into a notion capable of providing practical guidance and inspiration, based on international human rights standards, in the context of development activities will depend significantly on the future course of action adopted by the Commission on Human Rights. This report has outlined some of the major issues in relation to which the Commission may wish to consider taking action.

ANNEX

Replies of UNESCO and of the other competent specialized agencies of the United Nations received in connexion with paragraph 4 of Commission on Human Rights resolution 4 (XXXIII)

In paragraph 4 of resolution 4 (XXXIII) the Commission on Human Rights recommended that the Economic and Social Council should invite the Secretary-General, in co-operation with the United Nations Educational, Scientific and Cultural Organization and the other competent specialized agencies, to undertake the present study.

On 27 June 1977 the appropriate requests were sent by the Secretary-General to UNESCO and the other competent specialized agencies. As of 1 December 1978 the following replies had been received.

United Nations Educational, Scientific and Cultural Organization

On 12 August 1977 the Assistant Director-General, Co-operation for Development and External Relations Sector of UNESCO, informed the Secretary-General that:

"the proposed measures and activities related to the implementation of this resolution by UNESCO will be brought to the attention of the UNESCO Executive Board at its 103rd session (Paris, 12 September - 7 October 1977) under item 6.1 of the agenda, entitled "Recent decisions and activities of the organizations of the United Nations system of relevance to the work of UNESCO". Subject to approval of the Executive Board of these proposals, we will send you our suggestions and observations as soon as possible after the Executive Board discussion on this subject.

For your information, I have pleasure in sending you, under separate cover, a copy of the UNESCO publication "Moving towards change" - "some thoughts on the New international economic order", Paris, 1976. Please find attached the text of resolution 19 C/2.1 adopted by the General Conference at its 19th session and the text of the relevant paragraph of the Approved Programme and Budget for 1977-78 (19 C/5 - para. 3134)."

Subsequently, on 19 June 1978, the Assistant Director-General of UNESCO indicated that:

UNESCO is convening a meeting on human rights and the new international economic order, from 19 to 24 June 1978. One of the principal elements of the agenda is the right to development as a human right.

In view of the above, I would appreciate it if you could extend your deadline to the end of June in order to include in UNESCO's document the results of the above-mentioned meeting.

On 18 November 1978 the Assistant Director-General indicated that for technical reasons the report referred to in his earlier letter would not be ready until the end of November, but would be forwarded as soon as possible so as to be made available to the thirty-fifth session of the Commission on Human Rights.

International Labour Organisation

The principles embodied in the above-mentioned resolution underlie the whole activity of the International Labour Organisation, in accordance with its constitutional objectives, as more particularly restated in Part II of the Declaration concerning the Aims and Purposes of the International Labour Organisation, adopted in Philadelphia in 1944, as follows:

"Believing that experience has fully demonstrated the truth of the statement in the Constitution of the International Labour Organisation that lasting peace can be established only if it is based on social justice, the Conference affirms that:

(a) all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity;

(b) the attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy;

(c) all national and international policies and measures, in particular those of an economic and financial character, should be judged in this light and accepted only in so far as they may be held to promote and not to hinder the achievement of this fundamental objective;

(d) it is a responsibility of the International Labour Organisation to examine and consider all international economic and financial policies and measures in the light of this fundamental objective;

(e) in discharging the tasks entrusted to it the International Labour Organisation, having considered all relevant economic and financial factors, may include in its decisions and recommendations any provisions which it considers appropriate."

Among the large body of publications which show how the above-mentioned principles have found expression in the activities of the International Labour Organisation, it might be appropriate to refer to the report of the Director-General on "The ILO and Human Rights" presented to the International Labour Conference at its 52nd Session in 1968 and also to the International Conference on Human Rights convened by the United Nations in Teheran in the same year. The report presented to the International Labour Conference at its 54th Session (1970) entitled "The ILO and the United Nations: Twenty-five Years of a Partnership of Service" (Report I (Part 2), Supplement) also sought to outline the common efforts made "to build a peaceful, just and prosperous world community."

As you know, the ILO has in recent times given particular attention to employment problems, within the framework of the World Employment Programme launched in 1969 as the Organisation's main contribution to the Second Development Decade. Following the Tripartite World Conference on Employment, Income Distribution and Social Progress, held in June 1976, the Organisation is now seeking to develop a strategy for eradicating poverty and unemployment oriented towards the satisfaction of basic needs. The basic needs concept, as defined in the conclusions of the above-mentioned Conference, corresponds very closely to the satisfaction of economic,

social and cultural rights as defined in the Universal Declaration of Human Rights and the Covenant on Economic, Social and Cultural Rights. It would accordingly appear appropriate, in the study to be undertaken in pursuance of Economic and Social Council resolution 329 (LXII), to give particular attention to the basic-needs approach to development. In this connexion, reference might be made in particular to the following ILO publications:

Employment, Growth and Basic Needs: A One-World Problem. Report of the Director-General to the Tripartite World Conference on Employment, Income Distribution and Social Progress and the International Division of Labour, Geneva, 1976.

Meeting Basic Needs. Strategies for Eradicating Mass Poverty and Unemployment. Conclusions of the World Employment Conference, 1976.

The Basic-Needs Approach to Development. Some Issues Regarding Concepts and Methodology, 1977.

The World Bank

The World Bank does not claim to possess any particular degree of expertise in the general field of human rights. However, as the main multilateral agency dealing with development financing, having committed for example over \$7 billion in the year ending 30 June 1977 in loans and credits to support development projects in its developing member countries, the World Bank holds as a fundamental principle that the enjoyment of human rights generally has little, if any, true significance unless basic human needs are fulfilled.

In his 1973 address to the World Bank's Board of Governors in Nairobi, copy of which we will send you by separate mail, Mr. McNamara, President of the Bank, made the following observations:

"... absolute poverty is a condition of life so degraded by disease, illiteracy, malnutrition, and squalor as to deny its victims basic human necessities.

... millions lead impeded lives because their brains have been damaged, their bodies stunted, and their vitality sapped by nutritional deficiencies.

This is absolute poverty: a condition of life so limited as to prevent realization of the potential of the genes with which one is born; a condition of life so degrading as to insult human dignity - and yet a condition of life so common as to be the lot of some 40 per cent of the peoples of the developing countries."

Mr. McNamara went on to say that the World Bank's activities were designed "to attack the absolute poverty which exists to a totally unacceptable degree in almost all of our developing member countries: a poverty so extreme that it degrades the lives of individuals below the minimal norms of human decency.

"We should strive," he said, "to eradicate absolute poverty by the end of this century. That means in practice the elimination of malnutrition and illiteracy, the reduction of infant mortality and the raising of life-expectancy standards to those of the developed nations."

Since 1973, the World Bank's policies as then proposed by Mr. McNamara have been put into effect. Today, the Bank's policies and operations aim systematically at improving the living conditions of the poorest 40 per cent of the people in the developing countries. The Bank's resolve in pursuing this target has been strengthened by the consensus which has formed in recent years and according to which the fulfilment of basic human needs is the key to development.

A recent illustration of this consensus which has come to our attention is provided by the conclusions of the Conference on Africa and the Problematics of the Future which met in Dakar in July last. Referring to the fact that 80 per cent of the African population still live in abject poverty, the conference made the point

that these people are denied their basic human rights - the right to shelter, food, clothing, education and medical facilities. Poverty, the conference concluded, is a violation of human rights. This is precisely the World Bank's long-held view.

The Bank's most recent annual report, for the financial year 1977, states that "extreme poverty in the developing countries is the most pressing problem of development". The report contains several examples of projects designed to help governments meet basic human needs. Let me cite two of these.

A \$13 million World Bank loan to Indonesia will support a nutrition project which, inter alia, will finance a pilot scheme in about 180 villages to provide supplementary feeding to some 30,000 malnourished children under three years of age and about 17,000 pregnant and lactating women, immunization of about 100,000 children against infectious diseases, nutrition education to mothers, etc.

In El Salvador, a \$12.7 million project aims at providing access to shelter, credit and technical training to the lowest income families in the major urban areas. The project is expected to help relieve the severe shortage of low income urban shelter. Nearly 80 per cent of the housing units will be affordable by families earning the equivalent of \$90 or less per month (representing about the lower third on the income distribution scale). The project will also encourage the inclusion of adequate community facilities (schools, public markets, health clinics, etc.) as an integral part of low-cost housing.

Concerning your request for documentation, we will be pleased to send you by separate mail the Bank's 1977 Annual Report, cited above, in which you will find a summary of all loans and credits extended by the World Bank this year. Should you not have access to earlier Bank annual reports, we would be pleased to send you those documents also as well as a copy of the Nairobi speech mentioned earlier in this letter and a copy of Mr. McNamara's speech to the Bank's Annual Meeting this year.

In addition we shall send a sample of Bank sector policy or sector working papers dealing with sectors such as Housing and Water Supply which relate directly to basic human needs. Another paper on Education may be issued later and we could send it, if you wish.

To sum up, it would be our suggestion that the study be arranged to cover those sectors (nutrition, shelter, health, education, etc.) which are relevant to the basic human needs concept and that the study then proceed to analyse how the fulfilment of those needs and the enjoyment of other human rights are intimately linked.

International Monetary Fund

We have noted the proposed study to be undertaken by the Secretary-General in co-operation with UNESCO and other competent specialized agencies on "The international dimensions of the right to development as a human right in relation with other human rights based on international co-operation, including the right to peace, taking into account the requirements of the New International Economic Order and the fundamental human needs". Since a study of this nature is outside the International Monetary Fund's area of competence, we are unable to make a contribution to it.

World Health Organization

We shall be pleased to collaborate with the Division of Human Rights in the preparation of this project through the contribution of a study on health aspects of the right to development.

Health as a basic human right, and as a vital element in the growth and development of individuals and thus as a prerequisite to development, should be considered in the proposed study. The long-term objective of the World Health Organization, which is "Health for all by the year 2000", is particularly relevant to the subject of the study. This objective has been defined as the enjoyment by all of a level of health that will be conducive to a high social and economic productivity. This is a basic human need and a fundamental human right, in keeping with the very principles of WHO's Constitution, which states:

"The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition";

and

"The health of all peoples is fundamental to the attainment of peace and security and is dependent upon the fullest co-operation of individuals and States".

WHO's primary health care programme is one approach to the attainment of the social goal set by the Organization for the year 2000. An International Conference on Primary Health Care will be held in 1978, and the documentation in preparation for this Conference, as well as the reports of the Conference, will provide elements for WHO's contribution to the Secretary-General's study. In the meantime, I am forwarding to you, under separate cover, some publications which outline the philosophy of the Organization's efforts related to the broad aspect of human rights.

World Meteorological Organization

In view of the essentially scientific and technical nature of the work of the World Meteorological Organization, I do not consider that we can contribute very much to the study which is being undertaken by the Secretary-General, nor do I feel that any of our documents would be particularly relevant to this study.

Under these circumstances, I am sure that you will appreciate our decision not to take an active part in the study. I wish to assure you that this does not represent any lack of interest on our part in the question of human rights. We will always be ready to respond to any specific questions which you care to address to the WMO.