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STUDY OF THE IMPACT OF FOREIGN ECONOMIC AID  
AND ASSISTANCE ON RESPECT FOR HUMAN RIGHTS IN CHILE

Report prepared by Mr. Antonio Cassese, Rapporteur\*

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\* For technical reasons, the report will be distributed in four volumes.  
Volume I contains the table of contents and the introduction; volume II contains  
chapter I; volume III contains chapters II and III; volume IV contains chapter IV  
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## INTRODUCTION

### A. Origin of the study

1. On 31 August 1976, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted resolution 3 (XXIX), which in part B, paragraph 6, invited the Commission on Human Rights "to consider the adverse consequences for the enjoyment of human rights of the various forms of aid and assistance being given to the Chilean régime."
2. On 16 December 1976, the General Assembly, in resolution 31/164, inter alia, invited the Commission on Human Rights to consider "the consequences of the various forms of foreign aid to the Chilean authorities".
3. The Commission on Human Rights, in paragraph 6 of its resolution 9 (XXXIII) of 9 March 1977, requested the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its thirtieth session "to undertake a study on the consequences of the various forms of aid extended to the Chilean authorities and to present a progress report thereon to the Commission at its thirty-fourth session".
4. At its thirtieth session, the Sub-Commission adopted resolution 11 (XXX) of 31 August 1977, entitled "Study of certain questions relating to the situation of human rights in Chile" in part I of which it decided to undertake a study on "the impact of foreign economic aid and assistance on respect for human rights in Chile", appointed Mr. Antonio Cassese Rapporteur to prepare such a study, and requested the Rapporteur to submit a progress report on his work to the Commission on Human Rights at its thirty-fourth session. By the same resolution, the Secretary-General was requested to give the Rapporteur all the assistance he might require in his work, including relevant information from reliable sources.
5. At its thirty-fourth session, the Commission on Human Rights, which had before it a progress report by the Rapporteur (E/CN.4/1267), adopted resolution 12 (XXXIV), paragraph 13 of which welcomed the decision by the Sub-Commission, in its resolution 11 (XXX), to undertake a study on the consequences of the various forms of aid extended to the Chilean authorities and the subsequent initiation of the study by a specially appointed Rapporteur; invited the Rapporteur to present his study to the Sub-Commission at its thirty-first session; and instructed the Sub-Commission to transmit the study to the General Assembly at its thirty-third session.

B. The question of domestic jurisdiction

1. Introduction

6. In the debates which took place in the Sub-Commission before the adoption of resolution 11 (XXX), the observer for Chile stated that the proposed report on the impact of foreign economic assistance on respect for human rights in Chile constituted unwarranted and unacceptable interference in the internal affairs of his country. 1/ A similar view was also expressed by some members of the Sub-Commission. 2/

7. The Government of Chile reiterated its objections to the undertaking of the present report in the reply it sent on 5 December 1977 to the Secretary-General's request for information concerning the present report (see annex II). The same stand was taken in 1978 by the Observer for Chile in the United Nations Commission on Human Rights. 3/

8. On 27 February 1978, in the Commission on Human Rights, the representative of France voiced doubts as to whether the subject of the report was in keeping with Article 2, paragraph 7, of the Charter of the United Nations. 4/ The same doubts had already been expressed by the French Government in the reply it had sent, on 9 January 1977, to the Secretary-General's request for information concerning the matters covered by the present report.

9. With respect to the plea of domestic jurisdiction the Rapporteur will confine himself to pointing out that three United Nations bodies, i.e. the General Assembly, the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, have already rejected it implicitly. The mere fact of discussing the advisability of undertaking a report on the matter under consideration, and of adopting resolutions thereon, shows that the aforementioned United Nations organs consider that it is proper for them and in full compliance with the United Nations Charter to decide that such a report should be undertaken.

10. Although the above considerations would be sufficient to bar any objection raised by the Chilean Government based on domestic jurisdiction, the Rapporteur deems it appropriate to dwell on the question, in order to spell out why in his opinion the present report is not at odds with the United Nations Charter. Dealing at some length with this matter seems to him apposite for at least three reasons.

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1/ E/CN.4/Sub.2/SR.797, para. 32.

2/ E/CN.4/Sub.2/SR.781, para. 7.

3/ E/CN.4/SR.1454, paras. 23-25; and E/CN.4/SR.1458, para. 33.

4/ E/CN.4/SR.1458, para. 4.

11. First, whenever a State Member of the United Nations objects to action being taken by United Nations bodies, by pointing out that that action would be contrary to the domestic jurisdiction clause of the Charter, those bodies should not dismiss the plea out of hand. They can reject it only after giving it careful consideration and solely if they reach the conclusion that the objection is not in order. For, Article 2, paragraph 7, of the Charter is intended to lay down a basic principle protecting the sovereignty of Member States from illegitimate encroachments on the part of the Organization, and should not, therefore, be treated lightly.

12. Secondly, the tasks entrusted by the Sub-Commission to the Rapporteur are to some extent new. There is in fact only one precedent in this area, namely, the study on the adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to the colonial and racist régimes in southern Africa, entrusted by the Sub-Commission to Mr. A.M. Khalifa and carried out by him in 1977 (E/CN.4/Sub.2/383). Both Mr. Khalifa's study and the present report unquestionably reflect a new approach to human rights, an approach which does not content itself with focusing on whether violations of human rights have occurred or are occurring in a certain country, but seeks to widen the area of concern of the United Nations, by concentrating on the roots of those violations and on the general surrounding conditions that might permit or facilitate - or in any event are attendant upon - those violations. Under this approach, human rights are no longer considered per se but in their multiple connexions with social and economic conditions. It is therefore opportune to determine whether studies and reports undertaken in this new perspective by United Nations bodies or persons appointed by them are in keeping with the relevant principles of the Charter.

13. There is a third reason for dealing with this issue at some length. When the progress report submitted by the Rapporteur was discussed by the Commission on Human Rights, the representative of France said that the Rapporteur "should first place the study in the context of the Charter in order to determine which specific principles and articles were involved. Many delegations had often pointed out to the Commission the specific nature of Article 2, paragraph 7, of the Charter ... In fact, efforts should be made to prevent a study covering the whole of Chile's economic life from being felt as a flagrant intrusion in the internal affairs of the country". <sup>5/</sup> The Rapporteur believes that it would be improper for him not to heed that request.

14. On close scrutiny, the objections expressed by the Chilean Government can be summed up as follows: (i) the report constitutes unwarranted interference in the domestic affairs of a sovereign State Member of the United Nations and therefore runs counter to the basic principles of the United Nations Charter; (ii) more specifically, it is illegitimate because it deals with economic and social matters which by definition belong to the domestic jurisdiction of Member States; (iii) it is designed to "fulfil the unconcealed objective of the enemies of Chile, i.e. the overthrow of the present Government" and therefore amounts to "unacceptable interference in the internal affairs" of Chile. The Rapporteur will briefly consider each of these three points separately.

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<sup>5/</sup> E/CN.4/SR.1458, para. 4.

15. As to the first objection, which has general character and purport, the Rapporteur will endeavour to meet it by referring first to the United Nations Charter and, secondly, to the practice of the competent United Nations bodies. In the opinion of the Rapporteur, examination of both the Charter and the subsequent practice point to the same conclusion: that the United Nations is fully competent to deal with alleged violations of human rights occurring in a certain country - and hence to discuss human rights issues concerning that country, pass resolutions on them or undertake studies or reports - whenever there is reliable and convincing evidence of a consistent pattern of gross violations of human rights in that country.

2. The principles of the Charter of the United Nations concerning domestic jurisdiction

16. Article 2, paragraph 7, of the Charter has been the subject of voluminous research. The Rapporteur need not, therefore, dwell too much on the subject. He will only underscore some points that have been neglected and indicate some generally accepted conclusions.

17. Indisputably, protection of the domestic jurisdiction of Member States from unwarranted interference of the Organization constitutes one of the basic tenets of the Charter. But also the promotion of respect for human rights represents one of the principal purposes of the Organization, so much so that - as was rightly pointed out by the representative of Lebanon in 1951 <sup>6/</sup> - the four purposes of the United Nations set forth in Article 1 could really be reduced to two: promotion of respect for, and observance of, human rights and fundamental freedoms, and maintenance of international peace and security.

18. There naturally arises the question of the co-ordination between each of these purposes and the principle of domestic jurisdiction. While this co-ordination is relatively easy as far as the purpose of the maintenance of peace and security is concerned (Article 2, paragraph 7, in fine, itself settles this problem, by giving priority to the need to maintain or restore peace, to the extent that enforcement measures are called for), it appears rather difficult to co-ordinate the principle of respect for human rights with the clause protecting the domestic jurisdiction of Member States.

19. Although the Charter does not give a clear-cut answer to the question whether and to what extent human rights issues are covered by the domestic jurisdiction clause, there are elements that point clearly in a certain direction. It seems appropriate to recall in this connexion an important statement made at the San Francisco Conference by the representative of Uruguay, a statement that is usually passed over in silence. On 14 May 1945, in Committee I of Commission I, which dealt with the preamble and the principles of the Charter, he said:

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<sup>6/</sup> See Official Records of the General Assembly, Eighth Session, Ad Hoc Political Committee, pp. 93-94.

"Uruguay desires that these human rights be guaranteed ... but who is to be responsible for that guarantee? Each country is responsible for the maintenance and guarantee of these rights of man within the country. But where one government, lacking in juridical culture, fails to respect these rights of man, who then will stand as a guarantee for these rights of man? ... whoever breaks these rights of man within his own home is thereby rupturing the international respect for the rights of man and is affecting the universal heritage of all. He is affecting the universal conscience which moves us to obtain a universal respect for the rights of man.

"In the face of this our viewpoint we bring up this doctrine of non-intervention. We realize how sad has been the emphasis that it has brought in some circumstances... If in Uruguay a Government were to lose its democratic conscience and begin to violate the rights of man and imprisoning people and shooting down human beings, the conscience of the people of Uruguay would not resent an intervention on the part of the community of nations to correct such a situation. There is a type of intervention which is resented, that is intervention of one State in the affairs of another State. There is another type of intervention which is healthy intervention of the conscience of the community of nations in a situation where the rights of man are being violated....

"If we only emphasize the doctrine of non-intervention, then we would have ... made some diplomatic use of time but we would not have advanced very much toward the liberation of man and the establishment of man's rights." 7/

20. It should be stressed that these views of the representative of Uruguay were supported by other delegates, inter alia those of Belgium 8/ and of Egypt. 9/

7/ United Nations Conference on International Organization, San Francisco, 1945, Verbatim Minutes of the Technical Committees, UNCIO/Role 1/P, 14 May 1945, p.7 (emphasis-added).

8/ Ibid., pp. 13-14.

9/ Ibid., p. 25. Cf. also the statement of the representative of Haiti (ibid., 15 May 1945).

In plenary the Minister of Foreign Affairs of Uruguay stressed on 28 April 1945 the importance that his country attached to respect for human rights, by requesting that admission to the Organization should be made conditional on such respect. He said:

"... In order to be a member of international society, it is not enough in its opinion to present the titles of 'peace-loving nations', but it is also necessary to be a freedom-loving nation. For this reason, restating a thought in which it believes, Uruguay puts forward a formula according to which it would be required that the States aspiring to admission to the community of nations effectively respect the essential liberties inherent in the human being. Without this condition, admission should be refused". (United Nations Conference on International Organization, vol. I, p. 304).



21. It is also worth recalling a passage from the report made by Sub-Committee I/I/A of the San Francisco Conference. This passage, albeit in terms less forceful and sweeping than the Uruguayan statement quoted above, clearly reflects the same trend to regard cases of exceptionally grave violations of human rights as being of international concern. The said Sub-Committee held that, while the protection of human rights is primarily the concern of each State, if "such rights and freedoms were grievously outraged so as to create conditions which threaten peace or to obstruct the application of the principles of the Charter, then they cease to be the sole concern of each State". 10/

22. Despite the importance of this and other similar statements, the view expressed in them was not eventually reflected in the Charter in clear and unambiguous terms. Yet, it seems that, on the basis of a careful examination of the Charter and its travaux préparatoires and according to most authorities, two conclusions can be reached:

(1) While admittedly one cannot consider any issue affecting human rights as removed from the sphere of domestic jurisdiction of Member States, nevertheless glaring and large-scale instances of violations of human rights are to be regarded as issues of international concern. 11/

(2) The competence to determine whether or not a question comes within the purview of the internal affairs of a State belongs to the United Nations bodies. 12/

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10/ United Nations Conference on International Organization, vol. VI, p.705.

11/ Several authors maintain that a correct interpretation of the Charter leads to the conclusion that human rights issues do not fall within the domestic jurisdiction of States. See e.g. G. Sperduti, Il dominio riservato (Milan, 1970), pp. 54 ff. Other scholars stress that this conclusion is corroborated by the United Nations practice, or that it can be reached only in the light of such practice. See inter alia E. Jimenez de Arechaga, Derecho constitucional de las Naciones Unidas (Madrid, 1958), p. 119; Ch. Tomuschat, "Menschenrechtsschutz durch die Vereinten Nationen", Vereinte Nationen, 1976, p. 163; A. Ross, "The provisions concerning domestic jurisdiction in Article 2 (7) of the Charter of the United Nations", Oesterreichische Zeitschrift des Oeffentlichen Rechts, 1950, pp. 562-570.

12/ As was stated by a great authority, who undertook a careful examination of the preparatory work: "The discussions in Committee I/1 clearly show that the supporters of the Sponsoring Governments' amendment did not intend that the omission of a specific reference to an organ authorized to determine the applicability of the domestic jurisdiction clause should have the effect of leaving to the individual State the power of determining with legal finality whether or not a matter was essentially within its domestic jurisdiction. They assumed throughout that the several organs of the United Nations would be competent to determine the extent to which Article 2 (7) was applicable in the consideration of any questions with which they were dealing. The problem was viewed as a particular application of the general problem of the interpretation of the Charter, governed by the principles set forth in the report of Committee IV/2, where it was stated that: 'In the course of the operations from day to day of the various organs of the Organization, it is inevitable that each organ will interpret such parts of the Charter as are applicable to its particular functions. This process is inherent in the functioning of any body which operates under an instrument defining its

5. The practice of United Nations organs in the field of domestic jurisdiction; the competence of the United Nations to deal with gross and massive violations of human rights

23. The subsequent practice of the United Nations bodies fully bears out this interpretation of the Charter. Close consideration of this practice makes it clear that whenever the United Nations has been confronted with large-scale and gross violations of human rights it has considered itself vested with authority to "intervene", i.e. to discuss the issue, to pass resolutions on it, or to examine the situation (without, however, having the power to make on-the-spot inquiries if the State concerned has not granted its consent).

24. To be more specific, the United Nations practice can be divided into two phases. In the first stage (1946-1966), the United Nations bodies have tended to justify their authority to deal with the aforementioned situations by stressing that gross disregard for human rights is likely to have adverse consequences for international peace, by causing frictions, tensions or conflicts which could prove prejudicial to peace. As was authoritatively stated by a learned American scholar,

"In every case, the competence of the United Nations, in situations involving the charge of violations of human rights, has been based, not on the proposition that observance of those rights has become a legal obligation, but upon the fact that any flagrant, widespread and systematic disregard of human rights tends to impair the friendly relations among nations and to endanger the maintenance of international peace and security". 13/

25. Since 1967 a general practice has evolved in the United Nations to the effect that the Organization is competent to deal with situations revealing "a consistent pattern of gross violations of human rights" (a phrase used for the first time in 1967 in resolution 8 (XXIII) of the Commission on Human Rights). An indisputable proof that the United Nations has authority to act in this area can be

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functions and powers. It will be manifested in the functioning of such a body as the General Assembly, the Security Council or the International Court of Justice. Accordingly, it is not necessary to include in the Charter a provision either authorizing or approving the normal operation of this principle". (L. Preuss, "Article 2, para. 7 of the Charter of the UN and matters of domestic jurisdiction", Recueil des Cours de l'Académie de Droit International de La Haye, 1949-I, pp. 596-597.

The same view is taken, inter alia, by A. Ross, "The proviso concerning 'domestic jurisdiction' in Article 2 (7) of the Charter of the United Nations", Oesterreichische Zeitschrift des Oeffentlichen Rechts, 1950, pp. 562-570; H.S. Rajan, United Nations and Domestic Jurisdiction (London, 1962), pp. 33-39; R. Higgins, The Development of International Law through the Political Organs of the United Nations (London, 1963), p. 67; A.A. Cançado Trindado, "The domestic jurisdiction of States in the practice of the United Nations and regional organizations", International and Comparative Law Quarterly, 1976, pp. 719-720.

A contrary view is taken by J.S. Watson, "Autointerpretation, competence, and the continuing validity of Article 2 (7) of the UN Charter", American Journal of International Law, 1977, p. 60 ff.

13/ L. Preuss, op. cit., pp. 641-642.

seen in the adoption by bodies such as the General Assembly, the Economic and Social Council and the Commission on Human Rights of resolutions specifically envisaging the possibility of United Nations action with respect to large-scale violations. Reference may be made to such resolutions as Commission on Human Rights resolution 8 (XXIII) of 1967 and Economic and Social Council resolutions 1235 (XLII) of 1967 and 1503 (XLVIII) of 1970; under the latter resolution the Commission of Human Rights and the Sub-Commission are authorized to consider any "consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms", and to take action thereon, that is to say either to make a thorough study, or to undertake an investigation with the consent of the State concerned. In compliance with these resolutions the competent United Nations bodies have so far discussed the situation of human rights of a few Member States, without there being any objection to their competence to do so.

26. In this connexion, attention must be drawn to the fact that before resolution 1503 (XLVIII) was adopted a few States objected to it, claiming that the procedure it set up for dealing with gross violations ran contrary to the domestic jurisdiction clause of the Charter. To be sure, the objection of some Governments to the proposed procedure was basically motivated by the fact that this procedure could be set in motion by complaints of individuals. Some States claimed that granting such a right to individuals ran contrary to Article 2, paragraph 7, and in addition was at odds with the general principle whereby **only** States are subjects of international law. Nevertheless, it appears that in a few instances the plea of domestic jurisdiction was also based on the fact that the procedure envisaged could lead to discussion, and to the undertaking of at least a "thorough study", of gross and large-scale violations of human rights.

27. Thus, the representative of the United Republic of Tanzania pointed out in the Economic and Social Council that

"The investigations of situations which appeared to reveal a consistent pattern of gross violations of human rights which had been undertaken without the prior consent of the Governments concerned had related to South Africa and Southern Rhodesia, cases which were exceptions to the principle of non-intervention in the domestic affairs of States". 14/

It must be stressed that the United Nations investigations into the human rights situation of South Africa and Southern Rhodesia did not involve an on-the-spot inquiry, because those countries did not allow the competent United Nations bodies to enter their territory. In the opinion of the Tanzanian representative, except in the case of South Africa and Southern Rhodesia, the prior consent of a Government was required merely to study gross violations of human rights allegedly perpetrated by a certain State. In other words, he took the view that Article 2, paragraph 7, of the Charter barred the United Nations from considering and studying gross violations of human rights purportedly committed by a specific Member State; the cases of South Africa and Southern Rhodesia were to be regarded as exceptions to this principle.

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14/ E/AC.7/SR.622, pp. 189-190.

28. The Ukrainian SSR, commenting on the draft resolution prepared by the Commission on Human Rights for the Economic and Social Council and entitled "Procedure for dealing with communications relating to violations of human rights and fundamental freedoms", stated that this draft "runs counter to the provisions of Article 2 of the United Nations Charter, which provides that the United Nations shall not have the right to intervene in matters within the domestic jurisdiction of Member States". 15/ The same view was expressed by the Soviet Union 16/ and by several other States. 17/

29. Yet, once resolution 1503 (XLVIII) had been adopted, those States no longer insisted on their objection and actually co-operated in the implementation of the resolution. In the opinion of the Rapporteur, this shows conclusively, inter alia, that even those States which in 1969 considered United Nations action concerning gross violations to be contrary to Article 2, paragraph 7, of the Charter, have subsequently come to accept and acquiesce in the United Nations competence to look into and pass judgment on those gross violations.

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15/ E/CN.4/1014, p. 17.

16/ This State raised in addition a number of objections more specifically related to the fact that the proposed procedure, by granting individuals the right to petition United Nations bodies, "would actually result in the establishment of permanent machinery intended to take the place of the national bodies having competence to examine" complaints from private individuals (ibid., p. 18).

17/ The representative of Bulgaria pointed out in the Economic and Social Council that a question of principle was involved: the United Nations, as an international organization, had no right to interfere in the internal affairs of States, let alone in private matters which came within national jurisdiction. (E/AC.7/SR.621, p. 167). Romania stated: "The Socialist Republic of Romania does not agree with the concept underlying the procedure for the examination of communications relating to violations of human rights and fundamental freedoms contained in draft resolution IX, submitted by the Commission on Human Rights at its twenty-fifth session, because it is inconsistent with the provisions of Article 2, paragraph 7, of the Charter of the United Nations which state that the United Nations is not authorized to intervene in matters which are essentially within the domestic jurisdiction of any State. In certain situations the application of this procedure might lead to violations of the principles of sovereignty and non-intervention in the domestic affairs of States, under which only States are entitled to decide all human rights matters in respect of their own citizens" (E/CN.4/1014/Add.1, p.5). Poland held that the procedure envisaged in the draft resolution went contrary "to the recognized principle of international law and obviously exceeds the competence of both the Sub-Commission and the Commission. The adoption of this procedure might give rise to conflict with Article 2 of the Charter of the United Nations, which prohibits any undue intervention by the United Nations in matters which are essentially within a State's domestic jurisdiction". (E/CN.4/1014/Add.2, p.4). The same stand was taken by the Byelorussian SSR (E/CN.4/1014/Add.3, p.4) and Czechoslovakia (E/CN.4/1014/Add.4, pp. 1-2).

30. This view is also confirmed by prominent authorities in the field of human rights. Thus, for instance, Professor Ermacora has pointed out that "if it is possible to establish gross violations or a consistent pattern of violation, the United Nations takes competence to act". <sup>18/</sup> The same view has been taken by another outstanding scholar, Professor L. Henkin. <sup>19/</sup>

31. In the case of Chile, various United Nations organs, and first and foremost the General Assembly, have repeatedly maintained that large-scale violations of human rights occur in that country. An Ad Hoc Working Group was set up by the Commission on Human Rights in 1975 to investigate these violations; it has so far submitted a number of reports substantiating allegations concerning the existence of gross violations of human rights. It seems therefore that all the requirements are met for rendering legitimate United Nations action on questions relating to respect for human rights in Chile.

32. As stated above (see para. 9), three United Nations bodies, i.e. the General Assembly, the Commission on Human Rights and the Sub-Commission, have already implicitly rejected the objection that the present report is contrary to article 2, paragraph 7, of the Charter. It stands to reason that the mere fact of discussing the advisability of undertaking such a report, and of adopting resolutions thereon, shows that the aforementioned United Nations organs consider that it is proper for them and in full compliance with the Charter to decide upon the making of a report on the impact of foreign economic assistance on respect for human rights in Chile.

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<sup>18/</sup> F. Ermacora, "Human rights and domestic jurisdiction", Recueil des Cours de l'Académie de droit international de La Haye, 1968, II, pp. 436-457. See also F. Ermacora in: International Law Association, Report of the Fifty-fifth Conference, held at New York, August 21st to August 26th, 1972 (London, 1974), p. 609; and "Procedure to deal with human rights violations: a hopeful start in the United Nations?", Human Rights Journal, 1974, pp. 670 ff.

<sup>19/</sup> He has recently stated:

"The generality of States have supported the view that 'a consistent pattern of gross violations of human rights' is now a violation of international law and obligation if practised by any party to the United Nations Charter and even, perhaps, by non-members. Such violations surely are not a matter of domestic jurisdiction. Whether an alleged infringement is a violation is a question of international law, not one for an accused State to determine finally." (L. Henkin, "Human rights and 'domestic jurisdiction'", in T. Buergenthal, ed., Human Rights, International Law and the Helsinki Accord (Montclair, N.J., Allenheld, Osmun, 1977), pp. 27-28.

4. Domestic jurisdiction and the social and economic policies  
of Member States

33. It is necessary to consider now the second and more specific point made by the Chilean authorities in objecting to the carrying out of the present report. The Chilean Government, in explaining why in its view the undertaking of the report amounts to unwarranted interference in Chilean domestic affairs, points out that the report deals with the economic affairs of Chile and therefore lies outside the competence of United Nations bodies concerned with human rights. In its letter of 5 December 1977 (see annex II) the Chilean Government stated:

"The national budget of Chile, its foreign debt both public and private, the amounts, sources and objectives of the budget and the volume of foreign investment and aid are matters which fall exclusively within its domestic sovereignty and no one can claim that they should be subjected to international investigation by political organs that have no competence, whatever their intentions and purposes may be."

The same point was made by the observer for Chile in the statement he made before the Commission on Human Rights on 27 February 1978. Commenting on the progress report submitted by the present Rapporteur, he said, inter alia, that it was "dangerous, not only for Chile but also for the whole international community, for certain people to consider that they were entitled to investigate sectors that were within the exclusive competence of States, such as establishment of the budget or the use to which foreign investments should be put in the country".<sup>20/</sup>

34. This view, it is submitted, is not correct. Actually, the report is not intended to consider the economic situation of Chile per se, nor is it designed merely to focus on the attitude taken in the field of economic relations by the international community vis-à-vis Chile. The study is not aimed at scrutinizing from a merely economic viewpoint the economic policy decided upon by the Chilean authorities. The study centres instead on human rights. Its gist is consideration of whether and how human rights are protected or violated in Chile. Its distinguishing trait is its intent to draw correlations between foreign economic assistance and respect for human rights in Chile, as well as its emphasis on the link between, and the interreaction of, economic, social and cultural rights, on the one hand, and civil and political rights, on the other. Therefore, in the study, foreign economic assistance is considered not as such or in its merely economic dimension, but only insofar as it interferes with, or furthers respect for, human rights. In other words, the analysis of the economic situation of Chile is part and parcel of the investigation of the human rights situation in Chile; it is a means of better ascertaining whether and to what extent human rights are violated in Chile. The United Nations is therefore fully competent to undertake this analysis or to authorize a Rapporteur to make it.

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<sup>20/</sup> E/CN.4/SR.1458, para. 33.

35. It would be improper to claim that the United Nations is precluded from going into the economic situation of a country even from the viewpoint of the relation between that situation and the situation of human rights in that country, or from the viewpoint of the extent to which that situation has a positive or adverse impact on respect for human rights. In fact, the United Nations, being competent - for the reasons stated above - to deal with gross and massive violations of human rights in specific countries, has consequently authority to consider both these violations per se and their general context, i.e. the general economic and social circumstances that may be at the root of those violations or can constitute their effects.

36. It would be unfounded to claim that this competence of the United Nations can lead to unwarranted interference of the Organization in the domestic sphere of Member States because the Organization - on the pretext of wishing to consider why human rights are violated in a given country - could start intruding in such delicate and typically exclusive matters as domestic economic policy-making, distribution of income, etc. This claim is unjustified and States Members of the United Nations should not fear illegitimate encroachments on the part of the Organization in their domestic affairs. Actually, the United Nations can proceed to examine the social and economic context of human rights violations in a given country only on two conditions: (i) that this examination is directly related to the situation of human rights in that country and proves necessary to clarify the origin, the historical and social motivations or the social and economic consequences of those violations; (ii) that a United Nations body such as the General Assembly has previously made a finding, in a resolution adopted by the prescribed majority, to the effect that a certain State grossly and systematically violates human rights. In the view of the Rapporteur, United Nations bodies are not authorized to look into the economic or social situation of a Member State (or, for that matter, of any State), unless the two aforementioned conditions are fulfilled.

37. The existence of the above conditions constitutes a sufficient safeguard for States that the Organization will not go beyond the powers and the authority which it derives from the Charter as interpreted and clarified by the subsequent practice.

38. The Rapporteur wishes to stress a point which he believes is very important. The report on Chile is part and parcel of the new United Nations strategy on human rights, of the need - so rightly emphasized by the General Assembly in its resolution 32/130 - to examine human rights "globally". Indeed, the resolutions providing for the present report start from the assumption that the United Nations should not confine itself to pinpointing instances of gross violations of human rights but should also concern itself with the general context - national and international - of such violations, in an effort to identify the social, economic and political roots - both national and international - of such violations.<sup>21/</sup>

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<sup>21/</sup> In para. 1 (d) of resolution 32/130 the General Assembly stated that "human rights question 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" (emphasis added).

Another reason behind the report on Chile was spelled out, in general terms, by the General Assembly, in its aforementioned resolution 32/130, where the Assembly stated that "the achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development, as recognized by the Proclamation of Teheran". The General Assembly rightly emphasized the close link between the promotion of human rights and the national and international economic context.

39. It is worth recalling in this connexion that before resolution 32/130 was adopted by the General Assembly, several States stressed the need to investigate inter alia the causes of gross violations of human rights as well as their international setting. Thus, the representative of Cuba said that during "the new phase which the Third Committee [of the General Assembly] was about to enter, the competent organs of the United Nations responsible for human rights questions should give priority attention to the causes which made the enjoyment of economic, social and cultural rights impossible, and especially the issue connected with the prompt establishment of a new international economic order".22/

40. The statement made by the representative of Iran is of particular importance, both because she approached the whole matter of human rights and because she was one of the main sponsors of the draft resolution which was subsequently adopted as resolution 32/130. She stated:

"It was essential to redefine those concepts, broadening them so as to create the conditions of confidence and co-operation required for effective action to promote all human rights throughout the world. For that purpose, it was necessary first of all to avoid treating questions concerning human rights in isolation from all other human problems, in particular economic ones. The internationalization of those questions went hand in hand with the increasingly close interdependence between nations. There could be no real co-operation in the implementation of individual rights and civil and political rights if no such co-operation was forthcoming for the implementation of the rights of peoples and economic, social and cultural rights. Secondly, while it was true that swift action had to be taken in the case of massive and flagrant violations, human rights could not be effectively promoted if people considered only the effects and refused to ponder the underlying causes of the problems involved, causes which should be considered in their true - international as well as national - perspective".23/

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22/ A/C.3/32/SR.43, para. 10.

23/ A/C.3/32/SR.43, para. 27.



41. The Rapporteur believes that the report on Chile must be viewed in this perspective. The same approach lies behind the aforementioned report submitted in 1977 by Mr. Khalifa on the adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to the colonial and racist régimes in southern Africa.<sup>24/</sup> It may be noted in passing that no one has raised any objection to this report on the grounds that it was contrary to the domestic jurisdiction of a Member State of the United Nations. It is not the intention to say here that the human rights situation in Chile is similar to that obtaining in South Africa. The Rapporteur wishes only to point out that the United Nations decided in 1974 to make a study of the foreign economic assistance to a Member State, and that no objection of principle has been made, neither at that time nor later, to the carrying out of such a study. This precedent should therefore constitute a further reason for rejecting the Chilean objections.

5. Domestic jurisdiction and the motivations behind  
United Nations resolutions

42. In objecting to the competence of the United Nations to undertake the present report, the observer for Chile advanced in 1977 a specific argument. He pointed out that "the draft resolution [which was subsequently adopted as resolution 11 (XXX)] envisaged measures which were designed, whether intentionally or not, to fulfil the unconcealed objective of the enemies of Chile, i.e. the overthrow of the present Government. It therefore constituted unacceptable interference in the internal affairs of his country".<sup>25/</sup> The Rapporteur considers that the attribution of this objective either to the framers of resolution 11 (XXX) or to the majority of the Sub-Commission that adopted it, or even to the Rapporteur himself, is not corroborated by any evidence whatsoever. In particular, it finds no support in the statements made in the Sub-Commission. Therefore, it cannot but be regarded as sheer speculation. Of course, representatives of Member States are free to advance conjectures about what they consider to be the real intention behind, or the main purpose of, resolutions adopted by United Nations bodies or to express their own anticipation of the action that will be taken by the United Nations. In that case, however, their statements will of necessity have a merely political significance, without any bearing on the legal question whether the plea of domestic jurisdiction is rightly relied upon.

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<sup>24/</sup> E/CN.4/Sub.2/383

<sup>25/</sup> E/CN.4/Sub.2/SR.797, para. 32. ✓

C. Scope of the study

43. The terms of reference of this study are laid down in Sub-Commission resolution 11 (XXX), which requested the Rapporteur "to analyse the volume, origins, development and significance of the assistance given to the present régime in Chile and to study whether a quantitative or qualitative change in the aid now being given might contribute to restoring respect for human rights in Chile".

44. In order to identify his exact mandate the Rapporteur considered it necessary to examine the debates that preceded the adoption of Commission on Human Rights resolution 9 (XXXIII) - from which the Sub-Commission derives its authority in this specific area - the discussion which took place in 1977 in the Sub-Commission on the occasion of the adoption of the aforementioned resolution 11 (XXX), and the comments and suggestions made at the thirty-fourth session of the Commission on Human Rights during the consideration of the Rapporteur's progress report (E/CN.4/1267). On the basis of those debates and of the text of Sub-Commission resolution 11 (XXX), the Rapporteur concluded that the report entrusted to him should have the scope and purpose set forth in the following paragraphs.

45. First, the study deals with the impact that foreign economic assistance may have on all human rights, be they civil and political or economic, social and cultural. Naturally, economic, social and cultural rights should receive primary emphasis in the study, because it is on these rights that foreign economic assistance may have a more direct bearing. This was stressed by the Sub-Commission itself. In setting forth the reasons behind the undertaking of the present study, it stated, in the fourth preambular paragraph of resolution 11 (XXX), that it was "deeply concerned at the indications contained in the report [of the Ad Hoc Working Group on Chile] that constant and flagrant violations of human rights in Chile continue to occur and in particular that the economic, social and cultural rights of the vast majority of the Chilean people are grossly disregarded". The report will therefore focus on whether economic assistance granted by States and foreign institutions goes to the needy people. In other words, a main purpose of the study is to see whether such assistance is used to promote employment, to provide better housing and nutrition and to make education accessible to large segments of the population.

46. Despite this special emphasis, the Rapporteur feels, however, that consideration of the possible impact of foreign economic aid on civil and political rights also forms part of his mandate. The Rapporteur strongly believes that the Sub-Commission requested him to look into this area of human rights as well. The link between foreign economic assistance and the promotion, or disregard, of civil and political rights is not direct and manifest but complex and multifaceted. In addition, for the reasons stated below (see para.75 ff.), the Rapporteur has not had direct evidence available, nor has he had the opportunity to verify in loco how this link takes shape in Chile. The analysis on this subject has therefore proven particularly difficult.

47. Secondly, as stated in paragraph 35 above, the study is not intended to consider the economic situation of Chile per se, nor is it meant to pass judgement on whether the assistance given by States or international institutions to Chile is economically viable or effective. The study centres instead on human rights. It is designed to draw correlations between foreign economic assistance and respect for human rights in Chile. Foreign economic assistance will be considered only in so far as it interferes with, or furthers respect for, human rights.

48. Thirdly, the report focuses on the assistance being given to the present Government of Chile and does not attempt a systematic comparison with any prior period. Nevertheless, to the extent that it has proved useful for shedding light on the present situation, or explaining specific features of it, reference to pre-1973 conditions has been regarded as warranted.

49. Fourthly, the study examines the flow of foreign capital to Chile, including commercial loans, private loans, loans from States, loans from international organizations, as well as foreign investments. The question whether foreign investments in Chile should also be dealt with in the report has been answered in the affirmative by the Rapporteur for the following reasons. Sub-Commission resolution 11 (XXX), which sets forth the terms of reference of the Rapporteur, uses broad and flexible terminology to indicate the scope and purpose of the study. In the fifth preambular paragraph, reference is made to "foreign aid, assistance and investments in Chile from governmental, intergovernmental and private sources". In the preambular paragraph of section I of the resolution mention is made of "economic aid and assistance" whereas in operative paragraph 1 of section I reference is made to "the various forms of aid extended to the Chilean authorities" and in operative paragraph 3 of the same section mention is made first of "assistance" and then of "aid" without any qualifying adjectives. In the opinion of the Rapporteur, this use of a variety of terms is indicative of an intention not to confine the scope of the study to one specific category of foreign aid; otherwise the framers of the resolution would have always used a single term with a single meaning. It is therefore apparent from the very text of the resolution that the Sub-Commission intended to give the study the widest possible scope. In addition, the debates that preceded the adoption of the resolution made it clear that the Sub-Commission expected the Rapporteur to consider all contributions to the Chilean economy coming from abroad. The philosophy behind the resolution is to have a study undertaken which will reveal whether the present situation of human rights in Chile draws benefit from, or is instead worsened by, the granting of foreign loans or capital. In other words, the study is designed to ascertain whether the flow of foreign capital into Chile helps to improve the situation of human rights there, or whether it is instead instrumental in causing a deterioration of that situation. In the light of this general goal, it seems to the Rapporteur that a discussion of foreign investments in Chile must perforce come within the province of his study.

50. Fifthly, the provisions of Sub-Commission resolution 11 (XXX) seem to exclude from the scope of the study any economic or commercial relation with Chile that does not take the form of assistance or aid. In the opinion of the Rapporteur, normal bilateral trade should not be regarded as a form of assistance to a Government. Consequently, he will not consider normal commercial exchanges in the present report. The Rapporteur wishes to point out that he set forth this

delimitation of the scope of the report in the Commission on Human Rights 26/ following a request for clarification made by a member of the Commission. 27/ No member of the Commission expressed doubts or reservations about the above delimitation, and the Rapporteur therefore considers that the Commission approved it.

51. Sixthly, operative paragraph 1 of section I of Sub-Commission resolution 11 (XXX) requests the Rapporteur to study the consequences of the various forms of aid extended "to the Chilean authorities"; and operative paragraph 3 goes on to provide that he should inquire into the foreign economic assistance given "to the present régime in Chile". It follows that in principle the report should focus only on the assistance granted to the present Government authorities, thus leaving aside the aid given by Governments, agencies or institutions to private bodies operating in Chile without the support, or outside the "umbrella", of the Government.

52. The Rapporteur feels, however, that this narrowing of the scope of the study would leave out of the general picture of the outside aid to Chile an important form of foreign assistance, namely, that which is channelled to private humanitarian institutions operating in Chile to help needy people. This category of foreign economic assistance is relevant to the present report in two respects. Firstly, it is granted by Governments which have decided to withhold economic assistance to the Chilean authorities because of the gross violations of human rights committed by those authorities. This attitude is indicative of the reaction of Governments and foreign institutions to gross disregard of human rights in Chile. The examination of the form of economic assistance in question can therefore enable the Rapporteur to show to what extent Governments and foreign institutions have taken this attitude vis-à-vis Chile. Secondly, this kind of assistance is undoubtedly one of the forms of foreign economic aid which are designed to contribute to the realization of economic, social and cultural rights in Chile. Its consideration and assessment could therefore provide useful suggestions for the action to be taken by the international community vis-à-vis Chile.

53. The Rapporteur believes that, although a literal interpretation of operative paragraphs 1 and 3 of section I of Sub-Commission resolution 11 (XXX) seems to exclude examination of this form of assistance, such examination is warranted by the whole spirit of the resolution. Furthermore, the preambular paragraph of section I of the resolution uses a very broad terminology ("Considering that it is important to study the impact of foreign economic aid and assistance on respect for human rights in Chile"), which no doubt can be interpreted as making allowance for the above form of assistance as well.

54. The Rapporteur is, however, aware that the main focus of his study should be on the assistance provided to the Chilean authorities. He will therefore deal with the assistance channelled through private humanitarian institutions only very briefly.

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26/ E/CN.4/SR.1458, para.25.

27/ E/CN.4/SR.1454, para.10.

#### D. Methodology

55. Before starting to explore the impact of foreign economic assistance on respect for human rights in Chile, it is appropriate to deal with three general questions of method.

##### 1. Models of connexions between human rights and foreign economic assistance

56. First, it seems useful, for the purposes of research, to establish a kind of general and abstract model of the possible correlations between foreign economic assistance and respect for human rights in countries where civil, political, economic, social and cultural rights are indisputably violated. The establishing of general patterns, unrelated to the concrete situation of the country under consideration - Chile -, can furnish some general and preliminary points of reference for the specific investigation of how that correlation takes shape in the specific country that we have to consider. Assuming (1) that a country undeniably violates human rights on a large scale and (2) that it is granted foreign economic assistance by other States and by international organizations, the following abstract situations could be visualized.

57. First, there can be a situation characterized by the lack of any direct or indirect relationship between foreign economic assistance and respect for, or disregard of, human rights. It could turn out that foreign economic assistance has no bearing whatsoever on the human rights situation in a given country, in that it neither favours respect for human rights nor proves detrimental to their realization. Clearly, this hypothetical absence of any nexus between foreign economic assistance and human rights is not easy to establish in concreto. Arguably, this situation takes place whenever it can be proved that the cessation of the flow of economic aid from abroad is, or would be, immaterial to respect for human rights in a given country.

58. Secondly, if, by contrast, a correlation between foreign economic assistance and human rights can be established, there could be ex hypothesi two general situations:

(a) Foreign economic assistance does not benefit the needy people. It does not help reduce unemployment; it does not help improve the health services nor does it promote better or more widespread education. It is only used by the government authorities to bolster the State apparatus, to buy weapons and military equipment to be used for internal or external security, and to enhance the conditions of a small social élite (that sustaining the ruling group). In this case, foreign economic assistance is directly detrimental to human rights in that country, in that (i) it does not have beneficial effects for the living conditions of the large majority of the people; (ii) instead, it strengthens the oppressive government by lending it economic support. Foreign economic assistance thus helps to perpetuate disregard for human rights in that country.

(b) Foreign economic assistance helps to restore respect for human rights in that country. It serves the following purposes: (i) it enhances the efforts of the government authorities to raise the standard of living of the whole population and proves to be additional to the endeavours of the State authorities to implement social, economic and cultural rights; (ii) in some areas, it

improves directly the lot of destitute people, e.g. by helping to provide housing, education, employment, health care etc. to groups of people who otherwise - without such economic assistance - could not better their living conditions; (iii) it directly creates conditions favourable to the restoration of respect for civil and political rights. Thanks inter alia to foreign economic assistance, the authorities abolish previous curtailments of civil and political rights and bring the country back to the rule of law and to respect for the basic principles concerning human dignity agreed upon by the international community.

59. The general and abstract categories outlined above serve only a cognitive purpose. They are conceptual tools that can prove useful for analytical purposes. They are "ideal types" (Idealtypen) - to use the terminology of Max Weber 28/ - namely, logical constructions which do not reflect the reality in all its multiplicity of forms and attitudes but serve to orient the inquiry into the concrete historical phenomena. Of course, these phenomena never correspond in toto to one of the two above categories. "The infinite manifold of the reality" shows a wide spectrum of individual situations, a whole gamut of unique and prismatic conditions which do not fit into the abstract models. 29/ In the actual reality we can find a whole series of diverse situations, each of them showing distinct and unique features but each partaking, to a greater or to a lesser degree, of the characteristics of either abstract model.

60. Thus, for instance, intermediate between the two aforementioned extremes one can visualize a situation that may be described as follows: the inflow of some forms of foreign economic assistance is beneficial to some segments of the population of a given country (e.g. categories of persons with a very low income, unemployed, certain categories of people who could not otherwise afford to receive medical care, etc.). In such a case, foreign economic assistance favours the implementation of some basic human rights of certain categories of persons (e.g. the right to physical and mental health, the right to work, the right to an adequate standard of living, the right to education etc.). At the same time, however, there exist forms of foreign economic assistance which have negative effects. Thus, in some respects, the flow of capital goods can

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28/ See M. Weber, Gesammelte Aufsätze zur Wissenschaftslehre, 2nd ed. (Tübingen, 1951), pp. 191 ff., 396-397. See also A. Schweitzer, "Vom Idealtypus zum Prototyp", Zeitschrift für die gesamte Staatswissenschaft, 1964, p. 13 ff. A concise analysis of the concept of "ideal types" is made by, among others, P. Rossi, Lo storicismo tedesco contemporaneo (Turin, 1956), pp. 328-330, and by K. Jaspers, Max Weber - Politiker, Forscher, Philosoph (Munich, 1958), p. 53. A critical view is taken by W.G. Runciman, A Critique of Max Weber's Philosophy of Social Science (Cambridge, 1972), pp. 33-37.

29/ As was pointed out by H.H. Gerth and C. Wright Mills (Introduction to From M. Weber: Essays in Sociology (London, 1970), p. 60), "the real meat of history would usually fall in between such extreme types [i.e. the extreme and 'pure cases' which "became 'crucial instances' and controlled the level of abstraction that he used in connexion with any particular problem"]; hence Weber would approximate the multiplicity of specific historical situations by bringing various type concepts to bear upon the specific case under focus".

help prop up the repressive system, by making it economically viable: in this way, economic assistance becomes instrumental in maintaining and prolonging in time disregard for civil and political freedoms. Furthermore, it may happen that some categories of foreign economic assistance are used by the recipient authorities in such a way as to consolidate an economic and social policy designed to favour some social categories while disregarding the fundamental economic, social and cultural rights of the vast majority of the population. If this is the case, foreign assistance proves to produce adverse effects on the conditions of the largest part of the recipient State's population.

61. Although the multifarious phenomenology never shows a full identity with the abstract typology, the latter can greatly help in pinpointing the unique features of a given situation: this can be achieved by ideally approaching that situation to the various "ideal types" and thereby seeing to which of them it comes closer ("ideal types" have rightly been termed "bench-mark concepts"). <sup>30/</sup> With particular reference to the issues to be considered in this report, it is submitted that on the basis of the aforementioned twofold categorization one can better identify the various relationships between two basic phenomena (foreign economic assistance; human rights) existing in the context of Chile. That classification should enable us to better indicate to which of the two abstract categories referred to above the concrete situation of Chile is closer.

## 2. Categories of foreign economic assistance

62. For the purposes of this report, it is useful to identify, in general terms, the main categories of foreign economic assistance. There are, of course, some obvious classifications, such as that based on the forms and modalities of assistance (loans, credits, investments, rescheduling of debts, etc.), or the classification based on the source of the assistance (States, intergovernmental organizations, private companies, etc.). Although these categorizations can be useful also for the purposes of the present study, the Rapporteur believes that it is particularly relevant to the question of whether and to what extent foreign economic assistance is advantageous to human rights to establish a classification based on the possible extent of impact of that assistance on human rights. From this vantage point, the Rapporteur believes that three categories can be identified which will prove useful for this study.

63. A first category (covering the aid directly related to the enjoyment of human rights) includes those forms of economic assistance which are designed to benefit immediately and directly certain social groups. Mention can be made, for instance, of the supply of food to poor segments of the population, of loans for improving the housing conditions of marginal urban communities, of credits for small farmers, of projects for the building of hospitals in underprivileged areas, of allocation of funds for the medical education of students coming from the poor strata of the population, etc.

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<sup>30/</sup> R. Bendix, "M. Weber", International Encyclopaedia of the Social Sciences, vol. 15, New York-London, 1972, p. 499.

64. It must be underscored that this form of assistance can benefit not only economic, social or cultural rights but also civil and political rights. Mention can be made of certain cases where foreign Governments, instead of granting economic aid to a Government or to enterprises, provide assistance to rural co-operatives (in the form of loans, of grants of equipment, seeds, etc.) or give assistance for the urbanization (electricity, roads, etc.) of the rural areas where the communities live. This assistance is designed inter alia to help small communities to develop their own values and, more than that, to promote political development through democratic participation, at the communal level, in the decision-making process. In these cases foreign economic assistance can have an impact on civil and political rights in that it promotes the enjoyment of some of these rights, e.g. the election of representatives of the community. More generally, it promotes the participation of the whole community, through their representatives, in the decisions affecting the economic, social and cultural life of the community itself. As instances of this form of economic assistance geared to enhancing both the socio-economic life of rural areas and their democratic development, reference can be made to the well-known experiences of Peru, Bolivia and Ecuador. 31/

65. The economic assistance falling under this first category is, on the face of it, exclusively and immediately geared to the realization of some basic human rights (the right to food, to health, to education, etc.). Though in abstracto it 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; (ii) the over-all socio-economic policy adopted by the recipient State (this State could use the foreign assistance to bolster and increase the social schemes it carries out in the same area, or, on the contrary, it could use it only to cut back its own spending, thus replacing national resources and taking advantage of foreign exchange).

66. A second category is the assistance geared to development. It includes such forms of aid as projects for technical assistance in the widest sense (planning schemes, technical training programmes, provision of administrators, teachers, technicians, projects for the improvement and modernization of agricultural techniques and productivity, etc.), loans or grants to help finance infrastructure projects, productive investments in socially relevant areas, etc. 32/ This form of assistance has an indirect potential for benefiting

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31/ Generally, the link between socio-economic progress and civil and political rights has been pointed out in the following terms: "A basic-needs oriented policy implies the participation of the people in making the decisions which affect them. Participation interacts with the two main elements of a basic-needs strategy. For example, education and good health will facilitate participation, and participation in turn will strengthen the claim for the material basic needs" (Employment, Growth and Basic Needs - A One-World Problem (Geneva, ILO, 1976), p. 32).

32/ The Rapporteur is aware that the concept of "development" is very complex and controversial and that there exist many definitions of "development" (see, for example, F. Perroux, L'économie du XX<sup>e</sup> siècle, (Paris, 1961), p. 155 ff.; G. Caire, Liberté syndicale et développement économique (Genève, BIT, 1976), pp. 27-32; D. Morawetz, Twenty-five years of economic development 1950-1975 (Washington, The World Bank, 1977), chap. I). However, for the purposes of the present study, he has chosen a concept of development which is not geared to economic growth but is basic-needs oriented (see infra, paras. 69-71 and notes 34 and 35).



economic, social and cultural rights, to the extent that the latter may be improved through any economic development induced. To evaluate whether this assistance has any positive impact on the realization of human rights, it is, however, necessary - as for the previous category - to take account of the allocation of national resources made by the recipient State, of the policy it carries out in the social field, etc.

67. A third category is the 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. It is mainly aimed at promoting the economic growth of the recipient country, besides of course serving the commercial or financial interests of the donor State, institution or private body. This kind of assistance can turn out to be beneficial to human rights (e.g. by promoting employment, or through the side effects caused by the productive activities that it may enable, further or stimulate). It can, by contrast, prove immaterial - or even detrimental - to the promotion of human rights, if it is used by the authorities of the recipient State in order to implement an economic policy which is not beneficial (or is relatively not beneficial) to the vast majority of the population. Thus, for instance, the recipient State can use it to replace the monetary resources earmarked in the national budget for social expenditures, thereby diverting those resources to other items (national defence and other military expenditures, building of infrastructure or dwellings for privileged strata of the population, etc.).

68. The Rapporteur is aware that some authorities have taken the view that this kind of assistance, in the end, is always beneficial to the whole population of the beneficiary State, in that it promotes economic growth, which in turn results in social advantages accruing to the whole population. There has been a great deal of discussion on this matter both among scholars and in official bodies. It is not, of course, the purpose of the Rapporteur to go into any elaborate analysis of this complicated matter. He will confine himself to quoting a few authorities who have questioned the validity of the aforementioned view.

69. The President of the World Bank, Mr. McNamara, in his last address to the Bank's Board of Governors, said:

"In retrospect, it is clear that too much confidence was based on the belief that rapid economic growth would automatically result in the reduction of poverty - the so-called 'trickle-down theory'. ...

"...

"Economic growth is a necessary condition of development in any society, but in itself it is never a sufficient condition. And the reason is clear. Economic growth cannot assist the poor if it does not reach the poor.

"...

"It always comes down to a question of priorities: more foreign exchange for importing private automobiles; or an extended bus fleet. Elaborate government offices; or squatter settlement upgrading. A new generation of jet fighters for the air force; or a new generation of infants who will live beyond their fifth birthday." 33/

70. The fact that the unparalleled economic growth rates achieved by many developing countries during the 1960s did little or nothing to improve the lot of the majority of their populations, which continued to live in desperate poverty, has led to what the late Senator Hubert Humphrey described as "a veritable intellectual revolt among scholars of development who are turning against the long-held view that growth alone is the answer that will trickle benefits to the poorest majority". 34/

71. Even more important than these views expressed by prominent United States figures, or than the similar views held by scholars, 35/ is the fact that the same stand has been taken by the United Nations General Assembly. In its resolution 2626 (XXV), "International Development Strategy for the Second United Nations Development Decade", adopted on 24 October 1970, the Assembly stated that:

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33/ R.S. McNanara, Address to the Board of Governors (Washington, D.C., 26 September 1977), pp. 9, 11 and 27.

34/ Quoted by J.P. Grant, "Development: the end of trickle down?", Foreign Policy, No. 12, 1973, p. 43.

C. Adelman and C. Taft Morris, in Economic Growth and Social Equity in Developing Countries (Stanford, Calif., 1973), p. 189, state the following:

"An even more disturbing implication of our findings is that development is accompanied by an absolute as well as a relative decline in the average income of the very poor. Indeed, an initial spurt of dualistic growth may cause such a decline for as much as 60 per cent of the population. The absolute position of the poorest 40 per cent apparently continues to worsen as countries move toward less dualistic growth patterns unless major efforts are made to improve and expand human resources.

Thus our findings strongly suggest that there is no automatic, or even likely, trickling down of the benefits of economic growth to the poorest segments of the population in low-income countries. On the contrary, the absolute position of the poor tends to deteriorate as a consequence of economic growth. We have seen in Chapter 4 that this unhappy phenomenon probably has its roots in the complex of structural changes that typically accompany the early and middle stages of economic development."

35/ In addition to the scholars quoted in the foregoing note, one can mention the following: K. M'Baye, "Le droit au développement comme un droit de l'homme", Human Rights Journal, 1972, p. 512; J.P. Grant, op. cit., p. 43 ff.; G. Caire, op. cit., pp. 27-34. See also J.K. Nyerere, Freedom and Development: A Selection from Writings and Speeches 1968-1973 (London, 1973), p. 58; and Employment, Growth and Basic Needs - A One-World Problem (Geneva, ILO, 1976), p. 15 ff.

"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". 36/

72. Although the Rapporteur shares the latter view, he is aware that the matter is very complex. In this study he neither wishes nor is able to embark upon a discussion of these issues. He believes that, for the purposes of the present study, it is enough to say the following. The forms of foreign economic assistance coming under the various categories under discussion must always be the subject of close scrutiny, to verify in concreto if they are eventually beneficial or detrimental to the human rights of the population.

73. It should be pointed out that the above-mentioned three categories should of course be used cum grano salis. Like the typology of relationship between human rights and foreign economic assistance, set forth in section 1, these categories are merely cognitive instruments. Actual reality is more complex and multifarious than logical classifications. It may therefore occur that in a given case a certain form of economic assistance shows features which prevent it from fitting precisely into one of the categories.

74. Despite this possible shortcoming, the Rapporteur believes that the above categorization can be of some help, and he will therefore endeavour to use it in the course of this study.

### 3. The question of evidence

75. A second general observation of a methodological nature is called for before entering into the merits of the matter to be considered in this report.

76. No one will dispute that the question of the impact of foreign economic assistance on human rights in Chile is both complex and delicate. For one thing, this whole area of problems (i.e. the multifaceted relations between human rights and outside economic aid) has been little studied so far: the novelty of this kind of examination makes it necessary to proceed with extreme caution and to devise new and imaginative tools of research. For another thing, the nexus between the two classes of phenomena that are to be considered is very subtle and multifaceted. In addition, the whole set of questions that require to be looked into are difficult to establish on a factual basis.

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### 36/ Paragraph (7) of the International Development Strategy.

It must be stressed that, according to a United Nations report which appraised the prospects for progress during the first 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" (E/3447/Rev.1, para. 90).

77. It obviously follows that, in order to carry out an exhaustive and fully satisfactory investigation of the impact of foreign economic assistance on human rights in Chile, it would be necessary to rely on "hard" and undisputed evidence. This evidence can only be gathered if one can verify on the spot how foreign economic assistance is utilized in that country. Indisputably, one of the best means of ascertaining whether the flow of foreign money into Chile is beneficial or detrimental to human rights would consist in interviewing the beneficiaries or recipients of foreign economic assistance about the actual use of that assistance. In addition to questioning the people concerned, one could approach the Chilean officials responsible for requesting, obtaining and administering foreign aid, in order to obtain statistics, official information and all other relevant data.

78. Regretfully, as stated elsewhere in this study (see para. 6 ff. and annex II), the Government of Chile has refused to co-operate in the undertaking of the present report. It has explicitly stated that it would in no way furnish assistance useful for the fulfilment of the tasks assigned by the Sub-Commission to the Rapporteur. Implicit in this refusal is the decision not to provide statistical and other official information, much less authorize the Rapporteur to enter Chile to make an on-the-spot investigation. As a consequence of the Chilean Government's refusal to co-operate, the Rapporteur has not been in a position to use the two best kinds of evidence: direct investigation of the situation in Chile; interviewing of the Chilean people concerned.

79. Being in this predicament, the Rapporteur has found himself obliged to rely on other sorts of evidence: those official publications of the Chilean authorities available abroad, Chilean press reports, statements made by the representatives of Chile to the United Nations, documents or statements of other States Members of the United Nations and documents of NGOs. In a few cases he has been able to obtain written testimonials from people living in Chile or people who have been there for a long time and who, in the considered opinion of the Rapporteur, can be regarded as reliable and bona fide witnesses. Furthermore, the Rapporteur has found himself constrained to make great use of the Chilean press, from which he has drawn both official information (statistics, reports on specific facts and similar data) and comments on the Chilean situation.

80. In many instances, the Rapporteur has been confronted with conflicting factual information coming from the Government authorities on the one hand, and from other official sources (such as Chilean State bodies other than the Government) or from the Chilean press, on the other hand. Of course, in these cases, the Rapporteur has not been able to verify directly which data were correct, nor has he been in a position to determine the veracity of the data by speaking with the people concerned (e.g. by inquiring into how the information had been obtained, how the statistics had been drawn up, by what method the figures had been elaborated, etc.).

81. On these occasions, the Rapporteur has chosen the following path: he has sought to draw indirect confirmation of the data produced either by the Government or by other sources from other reports which in some way touched upon the subject. As indirect but reliable proof that the figures given by either party were accurate, comments in the Chilean press have sometimes been used.

82. The non-co-operative attitude of the Chilean Government, with all its consequences for collecting sound evidence, has made it necessary for the Rapporteur to take the following two steps.

83. First, in some instances where he was not able to find factual evidence to prove or disprove the affirmations of the Chilean Government, he has felt obliged to make use of comments in the Chilean press (such as the pro-Government newspaper El Mercurio, the magazine Mensaje, which is issued by Jesuits, the bulletin of the Vicaría de la Solidaridad, entitled Solidaridad, the weekly Hoy, issued by Christian Democrats, or the magazine Ercilla, issued by financial groups which are close to the Government). The Rapporteur has endeavoured, to the best of his ability, to check the accuracy and soundness of these comments. But in some cases he has of course had to rely on the authoritative character of the source and proceed from the assumption that the information or comments it gave were trustworthy. The Rapporteur has also felt it fitting to take account of statements made by trade union leaders living in Chile, the Catholic Episcopate, and similar sources.

84. On the whole, one can say that on many occasions the Rapporteur, because of the refusal of the Chilean Government to co-operate, has had to use logical inferences, or logical presumptions or circumstantial evidence rather than relying on direct or testimonial evidence.

85. In the second place, the Rapporteur, not having means available for scrutinizing in concreto whether and to what extent specific instances of foreign economic assistance benefit human rights in Chile, has found himself constrained to take a different approach from that which he would have chosen had he been in a position to use other means of inquiry, as well as direct evidence. The approach he has taken is global. It is, in fact, wider than that consisting in directly verifying, on the spot, whether a certain form of foreign economic assistance proves advantageous to human rights or has instead an adverse impact on them. Proceeding under the approach eventually selected, he has endeavoured to look into the whole economic and social situation now obtaining in Chile. In particular, he has considered whether and to what extent the economic policy currently carried out by the Chilean authorities is actually implementing economic, social and cultural rights. The purpose of this investigation is to see whether one can draw a correlation between the improvement or the deterioration of the human rights situation in Chile, on one side, and foreign economic assistance, on the other.

86. It must be underscored, however, that this approach is in line with the view expressed above (para. 65 ff.) that the real impact of foreign economic assistance can be effectively gauged mainly by looking into the general socio-economic context of the recipient State, as well as into the way such assistance is actually used. It is therefore submitted that this approach possesses an autonomous validity and should be applied, in principle, also in cases where the State under examination is ready and willing to co-operate. In such cases this approach could usefully supplement the method consisting in conducting specific and direct investigations into the impact on human rights of individual forms of economic assistance.

87. The Rapporteur has endeavoured, to the best of his ability, to remedy the shortcomings referred to above. He hopes that the Government of Chile may be willing in the future to take a co-operative attitude, thus allowing the undertaking of investigations in loco. He also trusts that all those who have direct access to further accurate and reliable information will communicate it to him as soon as the report can be widely circulated. This may enable him to fill the gaps - which are inevitable, in view of the difficulties with which he has been confronted because of the unco-operative attitude of the Chilean authorities - or to correct any part of the analysis or any assessment that may prove to be unsound.

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