



Economic, Social and Cultural Rights

*A Compilation of
Essential Documents*

International Commission of Jurists

November 1997

The ICJ permits free reproduction of extracts from any of its publications provided that due acknowledgement is given and a copy of the publication carrying the extract is sent to its headquarters at the following address:

International Commission of Jurists - P.O. Box 216
81 A, avenue de Châtelaine, CH-1219 Châtelaine/Geneva
Switzerland
tel (41 22) 979 38 00 - fax (41 22) 979 38 01 - email: info@icj.org

© copyright, 1997

Imp. Abrax 213000 Chénôve



Economic, Social and Cultural Rights

*A Compilation of
Essential Documents*

International Commission of Jurists

November 1997

Table of Contents

- 7 Introduction
- 11 International Covenant on Economic, Social and Cultural Rights
- 55 Draft optional protocol to the International Covenant on Economic, Social and Cultural Rights
- 63 The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights
- 79 The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights
- 93 Bangalore Declaration and Plan of Action

Introduction

The essential mission of the International Commission of Jurists (ICJ) is to universally promote the Rule of Law and the legal protection of all human rights, whether they are economic, social, cultural, civil or political. Since its creation in 1952, the ICJ has always been involved in standard-setting; elaborating universal and regional human rights instruments and securing their adoption and implementation by governments, including in the sphere of economic, social and cultural rights. In the last decades, a special focus of the ICJ has been to promote the interdependence and interrelation of economic, social, cultural, civil and political rights under the Rule of Law, without which there certainly can be no meaningful human development.

The conferences organised by the ICJ in New Delhi in 1959, Lagos in 1961, and Rio in 1962, which were instrumental in shaping and defining the Rule of Law, emphasised the use of law in the advancement of human rights and the establishment of economic, social and cultural conditions under which individuals may achieve their dignity and realise their legitimate aspirations.

The Congress of Rio adopted principles relating to the role of Lawyers in a changing world. Conceptually, the Rio principles established that lawyers have a social obligation to concern themselves with the prevalence of poverty, ignorance and inequality in the world and to play a leading role in the eradication of those evils, for while they exist, civil and political rights cannot of themselves ensure the full dignity of man. The lawyer today [...] cannot remain a stranger to important developments in economic and social affairs if he is to fulfil his vocation as a lawyer: he should take an active part in the process of change.

Such a statement makes it imperative for lawyers to be involved in the global campaign for the protection of economic, social and cultural rights.

More recently, the ICJ in collaboration with the Urban Morgan Institute on Human Rights (Cincinnati, Ohio, USA) and the Centre for Human Rights of the Faculty of Law of the University of Limburg (Maastricht, the Netherlands), organised a meeting of experts in Maastricht in 1986, to dispel the erroneous notion that the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by the UN General Assembly in 1966, places no real or legal obligations on States and that the instrument is merely a statement of aspirations. The Limburg Principles which emerged from this meeting identified the nature and scope of State obligations, the role of the implementing mechanism - the United Nations Committee on Economic,

Social and Cultural Rights - and set out possible guidelines for the consideration of States Parties' reports by the Committee.

In 1993, the UN World Conference on Human Rights, held in Vienna, again enhanced the status of economic, social and cultural rights - alongside *civil and political rights* - by restating the universality, indivisibility, interdependence and interrelatedness of human rights.

However, in spite of these encouraging statements, the implementation and monitoring of economic, social and cultural rights as enunciated in the ICESCR and other instruments have been hampered by a certain lack of intellectual precision as to the definition and scope of these rights and the obligation of State Parties to the Covenant. Indeed, the very nature of economic, social, and cultural rights, the vagueness of many of the norms, the absence of national institutions specifically committed to the promotion of these rights as human rights, and the type of information required to monitor compliance effectively all present near insurmountable challenges.

In 1995, the ICJ convened a conference on economic, social and cultural rights and the role of lawyers in Bangalore, India, which recalled the long-standing commitment of the ICJ to the indivisibility of human rights - economic, social, cultural, civil and political. The Conference examined, discussed and formulated recommendations on the justiciability of economic, social and cultural rights and what should be done at the international, national and individual level, particularly, by lawyers to achieve justiciability in this domain.

Thus it became clearly apparent that the issue of justiciability or lack of justiciability of these rights was the main problem affecting the enjoyment of economic, social and cultural rights in the world today.

To enhance the use of the Covenant and elevate it from its tacit second-class status, the Committee, as well as the ICJ, have been calling upon the UN to consider drafting an optional protocol to the Covenant which will make it possible for individual and group complaints alleging violations of these rights to be submitted for examination by the Committee, hence enhancing the justiciability of these rights.

The Commission on Human Rights considered this proposal during its session in 1997, but it did not receive the support which it deserves. There was a general concern as to whether an individual or group petition procedure is the most logical approach towards strengthening the use of the instrument. The issue of justiciability was again raised as a problem and the Committee was urged to develop its existing powers further in relation to the effective examination of State reports.

In 1997, on the occasion of the 10th anniversary of the Limburg Principles, experts met in Maastricht in January 1997 at the invitation of the ICJ, the Urban Morgan Institute on Human Rights, and the Centre for Human Rights of the Faculty of Law of Maastricht University. The objective was to elaborate on the Limburg Principles with regard to the nature and scope of violations of economic, social and cultural rights and appropriate responses and remedies.

The participants unanimously agreed on guidelines which they understand to reflect the evolution of international law since 1986. These guidelines are designed to be of use to all who are concerned with understanding and determining violations of economic, social and cultural rights and in providing remedies thereto, in particular monitoring and adjudicating bodies at the national, regional and international levels.

The purpose of this compilation of essential documents of economic, social and cultural rights, is to provide lawyers, inter-governmental organisations, non-governmental organisations, governments and academics with a ready reference tool when tackling problems in the field of economic, social and cultural rights.

Reproduced *in extenso* in this compilation, is the International Covenant on Economic, Social and Cultural Rights - together with States' reservations and dates of accession -, the current draft optional protocol to the International Covenant on Economic, Social and Cultural Rights, the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, and the Bangalore Declaration and Plan of Action.

Adama Dieng
Secretary-General

International Covenant on Economic, Social & Cultural Rights

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL & CULTURAL RIGHTS

THE UNITED NATIONS GENERAL ASSEMBLY
RESOLUTION 2200 A(XXI) OF 16 DECEMBER 1966

Date of entry into force: 3 January 1976

States Parties
Declarations and Reservations
Objections
Territorial Application

PREAMBLE

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, 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,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing 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,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that 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 present Covenant,

Agree upon the following articles:

PART I

Article 1

1. 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.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. 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 by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights

and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant 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 or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.
2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

- (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 8

1. The States Parties to the present Covenant undertake to ensure:
 - (a) 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. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
 - (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant 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. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
 - (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

- (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
 - (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
 4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:
 - (a) To take part in cultural life;
 - (b) To enjoy the benefits of scientific progress and its applications;
 - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.
2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;
- (b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.
2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.
3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a Conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 26;
- (b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Adopted by the General Assembly of the United Nations on 16 december 1966

Entry into Force: 03 January 1976, in accordance with article 27¹

Total Number of States Parties: 137 (November 1997)

Note: The Covenant was opened for signature at New York on 19 December 1966.

The dates indicated are the dates the Covenant enters into force for the respective States Parties which, according to its article 27 (2), falls three months after the date of deposit of the instrument of ratification, accession or succession by States Parties.

Countries	Signature	Ratification	(r)
		accession succession	(a) (s)
Afghanistan		24 Jan 1983	a
Albania		04 Oct 1991	a
Algeria	10 Dec 1968	12 Sep 1989	
Angola		10 Jan 1992	a
Argentina	19 Feb 1968	08 Aug 1986	
Armenia		13 Sep 1993	a
Australia	18 Dec 1972	10 Dec 1975	
Austria	10 Dec 1973	10 Sep 1978	
Azerbaijan		13 Aug 1992	a
Barbados		05 Jan 1973	a
Belarus	19 Mar 1968	12 Nov 1973	
Belgium	10 Dec 1968	21 Apr 1983	
Benin		12 Mar 1992	a
Bolivia		12 Aug 1982	a
Bosnia and Herzegovina		01 Sep 1993	s
Brazil		24 Jan 1992	a
Bulgaria	08 Oct 1968	21 Sep 1970	
Burundi		09 May 1990	a
Cambodia ^{2,3}	17 Oct 1980	26 May 1992	a
Cameroon		27 Jun 1984	a
Canada		19 May 1976	a
Cape Verde		06 Aug 1993	a

Central African Republic		08 May 1981	a
Chile	16 Sep 1969	10 Feb 1972	
China ^{4,18}		27 Oct 1997	
Chad		09 Jun 1995	
Colombia	21 Dec 1966	29 Oct 1969	
Congo		05 Oct 1983	a
Costa Rica	19 Dec 1966	29 Nov 1968	
Côte d'Ivoire		26 Mar 1992	a
Croatia		12 Oct 1992	s
Cyprus	09 Jan 1976	02 Apr 1969	
Czech Republic ⁵		22 Feb 1993	s
Denmark	20 Mar 1968	06 Jan 1972	r
Dominica		17 Jun 1993	a
Dominican Republic		04 Jan 1978	a
Ecuador	29 Sep 1967	06 Mar 1969	
Egypt	04 Aug 1967	14 Jan 1982	r
El Salvador	21 Sep 1967	30 Nov 1979	
Equatorial Guinea		25 Sep 1987	a
Estonia		21 Oct 1991	a
Ethiopia		11 Jun 1993	a
Finland	11 Oct 1967	19 Aug 1975	
France		04 Nov 1980	a
The former Yugoslav Republic of Macedonia		18 Jan 1994	s
Gabon		21 Jan 1983	a
Gambia		29 Dec 1978	a
Georgia		03 May 1994	a
Germany ^{6,7}	09 Oct 1968	17 Dec 1973	
Greece		16 May 1985	a
Grenada		06 Sep 1991	a
Guatemala		19 May 1988	a
Guinea	28 Feb 1967	24 Jan 1978	r
Guinea-Bissau		02 Jul 1992	a
Guyana	22 Aug 1968	15 Feb 1977	
Honduras	19 Dec 1966	17 Feb 1981	
Hungary	25 Mar 1969	17 Jan 1974	
Iceland	30 Dec 1968	22 Aug 1979	r
India		10 Apr 1979	a
Iran (Islamic Republic of)	04 Apr 1968	24 Jun 1975	
Iraq	18 Feb 1969	25 Jan 1971	
Ireland	01 Oct 1973	08 Dec 1989	
Israel	19 Dec 1966	03 Oct 1991	

Italy	18 Jan 1967	15 Sep 1978	
Jamaica	19 Dec 1966	03 Oct 1975	
Japan	30 May 1978	21 Jun 1979	
Jordan	30 Jun 1972	28 May 1975	
Kenya		01 May 1972	a
Korea,			
Democratic Republic of Korea,		14 Sep 1981	a
Republic of Kuwait		10 Apr 1990	a
21 May 1996 a			
Kyrgyzstan		07 Oct 1994	a
Latvia		14 Apr 1992	a
Lebanon		03 Nov 1972	a
Lesotho		09 Sep 1992	a
Liberia	18 Apr 1967		
Libyan Arab Jamahiriya		15 May 1970	a
Lithuania		20 Nov 1991	a
Luxembourg	26 Nov 1974	18 Aug 1983	
Madagascar	14 Apr 1970	22 Sep 1971	
Malawi		22 Dec 1993	a
Mali		16 Jul 1974a	
Malta	22 Oct 1968	13 Sep 1990	
Mauritius		12 Dec 1973	a
Mexico		23 Mar 1981	a
Moldova Republic of		26 Jan 1993	a
Mongolia	05 Jun 1968	18 Nov 1974	
Morocco	19 Jan 1977	03 May 1979	
Namibia		28 Nov 1994	a
Nepal		14 May 1991	a
Netherlands	25 Jun 1969	11 Dec 1978	
New Zealand	12 Nov 1968	28 Dec 1978	
Nicaragua		12 Mar 1980	a
Niger		07 Mar 1986	a
Nigeria		29 Jul 1993	a
Norway	20 Mar 1968	13 Sep 1972	
Panama	27 Jul 1976	08 Mar 1977	
Paraguay		10 Jun 1992	a
Peru	11 Aug 1977	28 Apr 1978	
Philippines	19 Dec 1966	07 Jun 1974	
Poland	02 Mar 1967	18 Mar 1977	
Portugal	07 Oct 1976	31 Jul 1978	
Romania	27 Jun 1968	09 Dec 1974	
Russian Fed.	18 Mar 1968	16 Oct 1973	

Rwanda		16 Apr 1975	a
Saint Vincent and the Grenadines		09 Nov 1981	a
San Marino		18 Oct 1985	a
Sao Tome and Principe	31 Oct 1995		
Senegal	06 Jul 1970	13 Feb 1978	
Seychelles		05 May 1992	a
Sierra Leone		23 Aug 1996	a
Slovakia ^{7,5}		28 May 1993	s
Slovenia		06 Jul 1992	a
Solomon Islands ⁸		17 Mar 1982	s
Somalia		24 Jan 1990	a
South Africa	03 Oct 1994		
Spain	28 Sep 1976	27 Apr 1977	
Sri Lanka		11 Jun 1980	a
Sudan		18 Mar 1986	a
Suriname		28 Dec 1976	a
Sweden	29 Sep 1967	06 Dec 1971	
Switzerland		18 Jun 1992	a
Syria		21 Apr 1969	a
Tanzania		11 Jun 1976	a
Togo		24 May 1984	a
Trinidad and Tobago		08 Dec 1978	a
Tunisia	30 Apr 1968	18 Mar 1969	
Turkmenistan		01 May 1997	a
Uganda		21 Jan 1987	a
Ukraine	20 Mar 1968	12 Nov 1973	
United Kingdom	16 Sep 1968	20 May 1976	
Uruguay	21 Feb 1967	01 Apr 1970	
USA	05 Oct 1977		
Uzbekistan		28 Sep 1995	
Venezuela	24 Jun 1969	10 May 1978	
Viet Nam		24 Sep 1982	a
Yemen ⁹		09 Feb 1987	a
Yugoslavia	08 Aug 1967	02 Jun 1971	
Zaire		01 Nov 1976	
Zambia		10 Apr 1984	a
Zimbabwe		13 May 1991	a

Declarations and Reservations

(Unless otherwise indicated, the declarations and reservations were made upon ratification, accession or succession. For objections thereto and territorial applications see hereinafter)

Afghanistan

Declaration:

The presiding body of the Revolutionary Council of the Democratic Republic of Afghanistan declares that the provisions of paragraphs 1 and 3 of article 48 of the International Covenant on Civil and Political Rights and provisions of paragraphs 1 and 3 of article 26 of the International Covenant on Economic, Social and Cultural Rights, according to which some countries cannot join the aforesaid Covenants, contradicts the International character of the aforesaid Treaties. Therefore, according to the equal rights to all States to sovereignty, both Covenants should be left open for the purpose of the participation of all States.

Algeria¹⁰

Interpretative declarations:

- 1 The Algerian Government interprets article 1, which is common to the two Covenants, as in no case impairing the inalienable right of all peoples to self-determination and to control over their natural wealth and resources.
It further considers that the maintenance of the State of dependence of certain territories referred to in article 1, paragraph 3, of the two Covenants and in article 14 of the Covenant on Economic, Social and Cultural Rights is contrary to the purposes and principles of the United Nations, to the Charter of the Organization and to the Declaration on the Granting of Independence to Colonial Countries and Peoples [General Assembly resolution 1514 (XV)].
2. The Algerian Government interprets the provisions of article 8 of the Covenant on Economic, Social and Cultural Rights and article 22 of the Covenant on Civil and Political Rights as making the law the framework for action by the State with respect to the organization and exercise of the right to organize.
3. The Algerian Government considers that the provisions of article 13, paragraphs 3 and 4, of the Covenant on Economic, Social and Cultural Rights can in no case impair its right freely to organize its educational system.

4. The Algerian Government interprets the provisions of article 23, paragraph 4, of the Covenant on Civil and Political Rights regarding the rights and responsibilities of spouses as to marriage, during marriage and at its dissolution as in no way impairing the essential foundations of the Algerian legal system.

Barbados

- "The Government of Barbados states that it reserves the right to postpone
- "(a) The application of sub-paragraph (a) (1) of article 7 of the Covenant in so far as it concerns the provision of equal pay to men and women for equal work;
 - "(b) The application of article 10 (2) in so far as it relates to the special protection to be accorded mothers during a reasonable period during and after childbirth; and
 - "(c) The application of article 13 (2) (a) of the Covenant, in so far as it relates to primary education; since, while the Barbados Government fully accepts the principles embodied in the same articles and undertakes to take the necessary steps to apply them in their entirety, the problems of implementation are such that full application of the principles in question cannot be guaranteed at this stage."

*Belarus*¹¹

Belgium

Interpretative declarations:

1. With respect to article 2, paragraph 2, the Belgian Government interprets non-discrimination as to national origin as not necessarily implying an obligation on States automatically to guarantee to foreigners the same rights as to their nationals. The term should be understood to refer to the elimination of any arbitrary behaviour but not of differences in treatment based on objective and reasonable considerations, in conformity with the principles prevailing in democratic societies.
2. With respect to article 2, paragraph 3, the Belgian Government understands that this provision cannot infringe the principle of fair compensation in the event of expropriation or nationalization.

Bulgaria

"The People's Republic of Bulgaria deems it necessary to underline that the provisions of article 48, paragraphs 1 and 3, of the International Covenant on

Civil and Political Rights, and article 26, paragraphs 1 and 3, of the International Covenant on Economic, Social and Cultural Rights, under which a number of States are deprived of the opportunity to become parties to the Covenants, are of a discriminatory nature. These provisions are inconsistent with the very nature of the Covenants, which are universal in character and should be open for accession by all States. In accordance with the principle of sovereign equality, no State has the right to bar other States from becoming parties to a covenant of this kind."

Congo

Reservation:

The Government of the People's Republic of the Congo declares that it does not consider itself bound by the provisions of article 13, paragraphs 3 and 4 . . . Paragraphs 3 and 4 of article 13 of the International Covenant on Economic, Social and Cultural Rights embody the principle of freedom of education by allowing parents the liberty to choose for their children schools other than those established by the public authorities. Those provisions also authorize individuals to establish and direct educational institutions. In our country, such provisions are inconsistent with the principle of nationalization of education and with the monopoly granted to the State in that area.

*Czech Republic*⁵

*Denmark*¹²

"The Government of Denmark cannot, for the time being, undertake to comply entirely with the provisions of article 7 (d) on remuneration for public holidays."

Egypt

Declaration:

... Taking into consideration the provisions of the Islamic Sharia and the fact that they do not conflict with the text annexed to the instrument, we accept, support and ratify it ...

France

Declarations:

- (1) The Government of the Republic considers that, in accordance with Article 103 of the Charter of the United Nations, in case of conflict between its obligations under the Covenant and its obligations under the Charter (especially Articles 1 and 2 thereof), its obligations under the Charter will prevail.

- (2) The Government of the Republic declares that articles 6, 9, 11 and 13 are not to be interpreted as derogating from provisions governing the access of aliens to employment or as establishing residence requirements for the allocation of certain social benefits.
- (3) The Government of the Republic declares that it will implement the provisions of article 8 in respect of the right to strike in conformity with article 6, paragraph 4, of the European Social Charter according to the interpretation thereof given in the annex to that Charter.

Guinea

In accordance with the principle whereby all States whose policies are guided by the purposes and principles of the Charter of the United Nations are entitled to become parties to covenants affecting the interests of the international community, the Government of the Republic of Guinea considers that the provisions of article 26, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights are contrary to the principle of the universality of international treaties and the democratization of international relations. The Government of the Republic of Guinea likewise considers that article 1, paragraph 3, and the provisions of article 14 of that instrument are contrary to the provisions of the Charter of the United Nations, in general, and United Nations resolutions on the granting of independence to colonial countries and peoples, in particular.

The above provisions are contrary to the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States contained in General Assembly resolution 2625 (XXV), pursuant to which every State has the duty to promote realization of the principle of equal rights and self-determination of peoples in order to put an end to colonialism.

Hungary

Upon signature:

"The Government of the Hungarian People's Republic declares that paragraph 1 of article 26 of the International Covenant on Economic, Social and Cultural Rights and paragraph 1 of article 48 of the International Covenant on Civil and Political Rights according to which certain States may not become signatories to the said Covenants are of a discriminatory nature and are contrary to the basic principle of international law that all States are entitled to become signatories to general multilateral treaties. These discriminatory provisions are incompatible with the objectives and purposes of the Covenants."

Upon ratification:

"The Presidential Council of the Hungarian People's Republic declares that the provisions of article 48, paragraphs 1 and 3, of [...] the International Covenant on Civil and Political Rights, and article 26, paragraphs 1 and 3, of the International Covenant on Economic, Social and Cultural Rights are inconsistent with the universal character of the Covenants. It follows from the principle of sovereign equality of States that the Covenants should be open for participation by all States without any discrimination or limitation."

India

Declarations:

"I. With reference to article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, the Government of the Republic of India declares that the words 'the right of self-determination' appearing in [this article] apply only to the peoples under foreign domination and that these words do not apply to sovereign independent States or to a section of a people or nation—which is the essence of national integrity.

"II. With reference to article 9 of the International Covenant on Civil and Political Rights, the Government of the Republic of India takes the position that the provisions of the article shall be so applied as to be in consonance with the provisions of clauses (3) to (7) of article 22 of the Constitution of India. Further under the Indian Legal System, there is no enforceable right to compensation for persons claiming to be victims of unlawful arrest or detention against the State.

"III. With respect to article 13 of the International Covenant on Civil and Political Rights, the Government of the Republic of India reserves its right to apply its law relating to foreigners.

"IV. With reference to articles 4 and 8 of the International Covenant on Economic, Social and Cultural Rights, the Government of the Republic of India declares that the provisions of the said [article] shall be so applied as to be in conformity with the provisions of article 19 of the Constitution of India.

"V. With reference to article 7 (c) of the International Covenant on Economic, Social and Cultural Rights, the Government of the Republic of India declares that the provisions of the said article shall be so applied as to be in conformity with the provisions of article 16(4) of the Constitution of India."

*Iraq*¹³

Upon signature and confirmed upon ratification: "The entry of the Republic of Iraq as a party to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights shall in no way signify recognition of Israel nor shall it entail any obligation towards Israel under the said two Covenants."

"The entry of the Republic of Iraq as a party to the above two Covenants shall not constitute entry by it as a party to the Optional Protocol to the International Covenant on Civil and Political Rights."

Upon ratification:

"Ratification by Iraq . . . shall in no way signify recognition of Israel nor shall it be conducive to entry with her into such dealings as are regulated by the said [Covenant]."

Ireland

Reservations:

"Article 2, paragraph 2

In the context of Government policy to foster, promote and encourage the use of the Irish language by all appropriate means, Ireland reserves the right to require, or give favourable consideration to, a knowledge of the Irish language for certain occupations.

Article 13, paragraph 2 (a)

Ireland recognises the inalienable right and duty of parents to provide for the education of children, and, while recognising the State's obligations to provide for free primary education and requiring that children receive a certain minimum education, nevertheless reserves the right to allow parents to provide for the education of their children in their homes provided that these minimum standards are observed."

Japan

Reservations and declarations made upon signature and confirmed upon ratification:

"1. In applying the provisions of paragraph (d) of article 7 of the International Covenant on Economic, Social and Cultural Rights, Japan reserves the right not to be bound by 'remuneration for public holidays' referred to in the said provisions.

- “2. Japan reserves the right not to be bound by the provisions of sub-paragraph (d) of paragraph 1 of article 8 of the International Covenant on Economic, Social and Cultural Rights, except in relation to the sectors in which the right referred to in the said provisions is accorded in accordance with the laws and regulations of Japan at the time of ratification of the Covenant by the Government of Japan.
- “3. In applying the provisions of sub-paragraphs (b) and (c) of paragraph 2 of article 13 of the International Covenant on Economic, Social and Cultural Rights, Japan reserves the right not to be bound by ‘in particular by the progressive introduction of free education’ referred to in the said provisions.
- “4. Recalling the position taken by the Government of Japan, when ratifying the Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organise, that ‘the police’ referred to in article 9 of the said Convention be interpreted to include the fire service of Japan, the Government of Japan declares that ‘members of the police’ referred to in paragraph 2 of article 8 of the International Covenant on Economic, Social and Cultural Rights as well as in paragraph 2 of article 22 of the International Covenant on Civil and Political Rights be interpreted to include fire service personnel of Japan.”

Kenya

“While the Kenya Government recognizes and endorses the principles laid down in paragraph 2 of article 10 of the Covenant, the present circumstances obtaining in Kenya do not render necessary or expedient the imposition of those principles by legislation.”

Kuwait

Interpretative declaration regarding article 2, paragraph 2, and article 3:

Although the Government of Kuwait endorses the worthy principles embodied in article 2, paragraph 2, and article 3 as consistent with the provisions of the Kuwait Constitution in general and of its article 29 in particular, it declares that the rights to which the articles refer must be exercised within the limits set by Kuwaiti law.

Interpretative declaration regarding article 9:

The Government of Kuwait declares that while Kuwaiti legislation safeguards the rights of all Kuwaiti and non-Kuwaiti workers, social security provisions apply only to Kuwaitis.

Reservation concerning article 8, paragraph 1 (d):

The Government of Kuwait reserves the right not to apply the provisions of article 8, paragraph 1 (d).

*Libyan Arab Jamahiriya*¹³

"The acceptance and the accession to this Covenant by the Libyan Arab Republic shall in no way signify a recognition of Israel or be conducive to entry by the Libyan Arab Republic into such dealings with Israel as are regulated by the Covenant."

Madagascar

The Government of Madagascar states that it reserves the right to postpone the application of article 13, paragraph 2, of the Covenant, more particularly in so far as relates to primary education, since, while the Malagasy Government fully accepts the principles embodied in the said paragraph and undertakes to take the necessary steps to apply them in their entirety at the earliest possible date, the problems of implementation, and particularly the financial implications, are such that full application of the principles in question cannot be guaranteed at this stage.

*Malta*¹⁴

"Article 13 - The Government of Malta declares that it is in favour of upholding the principle affirmed in the words" and to ensure the religious and moral education of their children in conformity with their own convictions". However, having regard to the fact that the population of Malta is overwhelmingly Roman Catholic, it is difficult also in view of limited financial and human resources, to provide such education in accordance with a particular religious or moral belief in cases of small groups, which cases are very exceptional in Malta."

Mexico

Interpretative statement:

The Government of Mexico accedes to the International Covenant on Economic, Social and Cultural Rights with the understanding that article 8 of the Covenant shall be applied in the Mexican Republic under the conditions and in conformity with the procedure established in the applicable provisions of the Political Constitution of the United Mexican States and the relevant implementing legislation.

Monaco

Interpretative declarations and reservations made upon signature and confirmed upon ratification:

The Princely Government declares that it interprets the principle of non-discrimination on the grounds of national origin, embodied in article 2, paragraph 2, as not necessarily implying an automatic obligation on the part of States to guarantee foreigners the same rights as their nationals.

The Princely Government declares that articles 6, 9, 11 and 13 should not be constituting an impediment to provisions governing access to work by foreigners or fixing conditions of residence for the granting of certain social benefits.

The Princely Government declares that it considers article 8, paragraph 1, subparagraphs (a), (b) and (c) on the exercise of trade union rights to be compatible with the appropriate legislative provisions regarding the formalities, conditions and procedures designed to ensure effective trade union representation and to promote harmonious labour relations.

The Princely Government declares that in implementing the provisions of article 8 relating to the exercise of the right to strike, it will take into account the requirements, conditions, limitations and restrictions which are prescribed by law and which are necessary in a democratic society in order to guarantee the rights and freedoms of others or to protect public order (ordre public), national security, public health or morals.

Article 8, paragraph 2, should be interpreted as applying to the members of the police force and agents of the State, the Commune and public enterprises.

Mongolia

Declaration made upon signature and confirmed upon ratification:

The Mongolian People's Republic declares that the provisions of paragraph 1 of article 26 of the International Covenant on Economic, Social and Cultural Rights and of paragraph 1 of article 48 of the International Covenant on Civil and Political Rights, under which a number of States cannot become parties to these Covenants, are of a discriminatory nature and considers that the Covenants, in accordance with the principle of sovereign equality of States, should be open for participation by all States concerned without any discrimination or limitation.

Netherlands

Reservation with respect to Article 8, paragraph 1 (d)

"The Kingdom of the Netherlands does not accept this provision in the case of the Netherlands Antilles with regard to the latter's central and local government bodies." [The Kingdom of the Netherlands] clarify that although it is not certain whether the reservation [. . .] is necessary, [it] has preferred the form of a reservation to that of a declaration. In this way the Kingdom of the Netherlands wishes to ensure that the relevant obligation under the Covenant does not apply to the Kingdom as far as the Netherlands Antilles is concerned."

New Zealand

"The Government of New Zealand reserves the right not apply article 8 to the extent that existing legislative measures, enacted to ensure effective trade union representation and encourage orderly industrial relations, may not be fully compatible with that article.

"The Government of New Zealand reserves the right to postpone, in the economic circumstances foreseeable at the present time, the implementation of article 10 (2) as it relates to paid maternity leave or leave with adequate social security benefits."

Norway

Subject to reservations to article 8, paragraph 1 (d) "to the effect that the current Norwegian practice of referring labour conflicts to the State Wages Board (a permanent tripartite arbitral commission in matters of wages) by Act of Parliament for the particular conflict, shall not be considered incompatible with the right to strike, this right being fully recognised in Norway."

Romania

Upon signature:

The Government of the Socialist Republic of Romania declares that the provisions of article 26, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights are at variance with the principle that all States have the right to become parties to multilateral treaties governing matters of general interest.

Upon ratification:

(a) The State Council of the Socialist Republic of Romania considers that the provisions of article 26 (1) of the International Covenant on Economic, Social and Cultural Rights are inconsistent with the principle that multilateral

international treaties whose purposes concern the international community as a whole must be open to universal participation.

(b) The State Council of the Socialist Republic of Romania considers that the maintenance in a state of dependence of certain territories referred to in articles 1 (3) and 14 of the International Covenant on Economic, Social and Cultural Rights is inconsistent with the Charter of the United Nations and the instruments adopted by the Organization on the granting of independence to colonial countries and peoples, including the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted unanimously by the United Nations General Assembly in its resolution 2625 (XXV) of 1970, which solemnly proclaims the duty of States to promote the realization of the principle of equal rights and self-determination of peoples in order to bring a speedy end to colonialism.

Russian Federation

Declaration made upon signature and confirmed upon ratification:

The Union of Soviet Socialist Republics declares that the provisions of paragraph 1 of article 26 of the International Covenant on Economic, Social and Cultural Rights and of paragraph 1 of article 48 of the International Covenant on Civil and Political Rights, under which a number of States cannot become parties to these Covenants, are of a discriminatory nature and considers that the Covenants, in accordance with the principle of sovereign equality of States, should be open for participation by all States concerned without any discrimination or limitation.

Rwanda

The Rwandese Republic [is] bound, however, in respect of education, only by the provisions of its Constitution.

*Slovakia*⁵

Sweden

Sweden enters a reservation in connexion with article 7 (d) of the Covenant in the matter of the right to remuneration for public holidays.

*Syrian Arab Republic*¹³

1. The accession of the Syrian Arab Republic to these two Covenants shall in no way signify recognition of Israel or entry into a relationship with it

regarding any matter regulated by the said two Covenants. 2. The Syrian Arab Republic considers that paragraph 1 of article 26 of the Covenant on Economic, Social and Cultural Rights and paragraph 1 of article 48 of the Covenant on Civil and Political Rights are incompatible with the purposes and objectives of the said Covenants, inasmuch as they do not allow all States, without distinction or discrimination, the opportunity to become parties to the said Covenants.

Trinidad and Tobago

In respect to article 8 (1) (d) and 8 (2):

"The Government of Trinidad and Tobago reserves the right to impose lawful and or reasonable restrictions on the exercise of the aforementioned rights by personnel engaged in essential services under the Industrial Relations Act or under any Statute replacing same which has been passed in accordance with the provisions of the Trinidad and Tobago Constitution.

Ukraine

Declaration made upon signature and confirmed upon ratification:

The Ukrainian Soviet Socialist Republic declares that the provisions of paragraph 1 of article 26 of the International Covenant on Economic, Social and Cultural Rights and of paragraph 1 of article 48 of the International Covenant on Civil and Political Rights, under which a number of States cannot become parties to these Covenants, are of a discriminatory nature and considers that the Covenants, in accordance with the principle of sovereign equality of States, should be open for participation by all States concerned without any discrimination or limitation.

United Kingdom of Great Britain and Northern Ireland

Upon signature:

"First, the Government of the United Kingdom declare their understanding that, by virtue of article 103 of the Charter of the United Nations, in the event of any conflict between their obligations under article 1 of the Covenant and their obligations under the Charter (in particular, under articles 1, 2 and 73 thereof) their obligations under the Charter shall prevail.

"Secondly, the Government of the United Kingdom declare that they must reserve the right to postpone the application of sub-paragraph (a) (i) of article 7 of the Covenant in so far as it concerns the provision of equal pay to men and women for equal work, since, while they fully accept this principle and are

pledged to work towards its complete application at the earliest possible time, the problems of implementation are such that complete application cannot be guaranteed at present.

"Thirdly, the Government of the United Kingdom declare that, in relation to article 8 of the Covenant, they must reserve the right not to apply sub-paragraph (b) of paragraph 1 in Hong Kong, in so far as it may involve the right of trade unions not engaged in the same trade or industry to establish federations or confederations.

"Lastly, the Government of the United Kingdom declare that the provisions of the Covenant shall not apply to Southern Rhodesia unless and until they inform the Secretary-General of the United Nations that they are in a position to ensure that the obligations imposed by the Covenant in respect of that territory can be fully implemented."

Upon ratification:

"Firstly, the Government of the United Kingdom maintain their declaration in respect of article 1 made at the time of signature of the Covenant.

"The Government of the United Kingdom declare that for the purposes of article 2 (3) the British Virgin Islands, the Cayman Islands, the Gilbert Islands, the Pitcairn Islands Group, St. Helena and Dependencies, the Turks and Caicos Islands and Tuvalu are developing countries.

"The Government of the United Kingdom reserve the right to interpret article 6 as not precluding the imposition of restrictions, based on place of birth or residence qualifications, on the taking of employment in any particular region or territory for the purpose of safeguarding the employment opportunities of workers in that region or territory.

"The Government of the United Kingdom reserve the right to postpone the application of sub-paragraph (i) of paragraph (a) of article 7, in so far as it concerns the provision of equal pay to men and women for equal work in the private sector in Jersey, Guernsey, the Isle of Man, Bermuda, Hong Kong and the Solomon Islands.

"The Government of the United Kingdom reserve the right not to apply sub-paragraph 1(b) of article 8 in Hong Kong.

"The Government of the United Kingdom while recognising the right of everyone to social security in accordance with article 9 reserve the right to postpone implementation of the right in the Cayman Islands and the Falkland Islands because of shortage of resources in these territories.

"The Government of the United Kingdom reserve the right to postpone the application of paragraph 1 of article 10 in regard to a small number

of customary marriages in the Solomon Islands and the application of paragraph 2 of article 10 in so far as it concerns paid maternity leave in Bermuda and the Falkland Islands.

"The Government of the United Kingdom maintain the right to postpone the application of sub-paragraph (a) of paragraph 2 of article 13, and article 14, in so far as they require compulsory primary education, in the Gilbert Islands, the Solomon Islands and Tuvalu.

"Lastly the Government of the United Kingdom declare that the provisions of the Covenant shall not apply to Southern Rhodesia unless and until they inform the Secretary-General of the United Nations that they are in a position to ensure that the obligations imposed by the Covenant in respect of that territory can be fully implemented."

Viet nam

Declaration:

That the provisions of article 48, paragraph 1, of the International Covenant on Civil and Political Rights, and article 26, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, under which a number of States are deprived of the opportunity to become parties to the Covenants, are of a discriminatory nature. The Government of the Socialist Republic of Viet Nam considers that the Covenants, in accordance with the principle of sovereign equality of States, should be open for participation by all States without any discrimination or limitation.

Yemen⁹

The accession of the People's Democratic Republic of Yemen to this Covenant shall in no way signify recognition of Israel or serve as grounds for the establishment of relations of any sort with Israel.

Zambia

Reservation:

The Government of the Republic of Zambia states that it reserves the right to postpone the application of article 13 (2) (a) of the Covenant, in so far as it relates to primary education; since, while the Government of the Republic of Zambia fully accepts the principles embodied in the same article and undertakes to take the necessary steps to apply them in their entirety, the problems of implementation, and particularly the financial implications, are such that full application of the principles in question cannot be guaranteed at this stage.

Objections

(Unless otherwise indicated, the objections were made upon ratification, accession or succession.)

Finland

With regard to the interpretative declarations and reservations made by Kuwait:

25 July 1997

"The Government of Finland notes that according to the interpretative declaration regarding article 2, paragraph 2, and article 3 the application of these articles of the Covenant is in a general way subjected to national law. The Government of Finland considers this interpretative declaration as a reservation of a general kind. The Government of Finland is of the view that such a general reservation arise doubts as to the commitment of Kuwait to the object and purpose of the Covenant and would recall that a reservation incompatible with the object and purpose of the Covenant shall not be permitted.

The Government of Finland also considers the interpretative declaration to article 9 as a reservation and regards this reservation as well as the reservation to article 8, paragraph 1 (d), as problematic in view of the object and purpose of the Covenant.

It is in the common interests of States that Treaties to which they have chosen to become parties are respected, as to their object and purpose, by all parties and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Finland is further of the view that general reservations of the kind made by the Government of Kuwait, which do not clearly specify the extent of the derogation from the provisions of the Covenant, contribute to undermining the basis of international treaty law.

The Government of Finland therefore objects to the aforesaid reservations made by the Government of Kuwait to the [said Covenant].

This objection does not preclude the entry into force of the Covenant between Kuwait and Finland."

France

The Government of the Republic takes objection to the reservation entered by the Government of India to article 1 of the International Covenant on Economic, Social and Cultural Rights, as this reservation attaches conditions

not provided for by the Charter of the United Nations to the exercise of the right of self-determination. The present declaration will not be deemed to be an obstacle to the entry into force of the Covenant between the French Republic and the Republic of India.

*Germany*⁶

15 August 1980

"The Government of the Federal Republic of Germany strongly objects, . . . to the declaration made by the Republic of India in respect of article 1 of the International Covenant on Economic, Social and Cultural Rights and of article 1 of the International Covenant on Civil and Political Rights.

"The right of self-determination as enshrined in the Charter of the United Nations and as embodied in the Covenants applies to all peoples and not only to those under foreign domination. All peoples, therefore, have the inalienable right freely to determine their political status and freely to pursue their economic, social and cultural development. The Federal Government cannot consider as valid any interpretation of the right of self-determination which is contrary to the clear language of the provisions in question. It moreover considers that any limitation of their applicability to all nations is incompatible with the object and purpose of the Covenants."

Italy

With regard to the interpretative declarations made by Kuwait:

25 July 1997

"The Government of Italy considers these reservations to be contrary to the object and the purpose of this International Covenant. The Government of Italy notes that the said reservations include a reservation of a general kind in respect of the provisions on the internal law.

The Government of Italy therefore objects to the aforesaid reservations made by the Government of Kuwait to the [said Covenant].

This objection does not preclude the entry into force in its entirety of the Covenant between the State of Kuwait and the Italian Republic."

Netherlands

12 January 1981

"The Government of the Kingdom of the Netherlands objects to the declaration made by the Government of the Republic of India in relation to

article 1 of the International Covenant on Civil and Political Rights and article 1 of the International Covenant on Economic, Social and Cultural Rights, since the right of self determination as embodied in the Covenants is conferred upon all peoples. This follows not only from the very language of article 1 common to the two Covenants but as well from the most authoritative statement of the law concerned, i.e. the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Any attempt to limit the scope of this right or to attach conditions not provided for in the relevant instruments would undermine the concept of self-determination itself and would thereby seriously weaken its universally acceptable character."

18 March 1991

With regard to the interpretative declaration made by Algeria concerning article 13, paragraphs 3 and 4:

"In the opinion of the Government of the Kingdom of the Netherlands, the interpretative declaration concerning article 13, paragraphs 3 and 4 of the International Covenant on Economic, Social and Cultural Rights must be regarded as a reservation to the Covenant. From the text and history of the Covenant it follows that the reservation with respect to article 13, paragraphs 3 and 4 made by the Government of Algeria is incompatible with the object and purpose of the Covenant. The Government of the Kingdom of the Netherlands therefore considers the reservation unacceptable and formally raises an objection to it.

[This objection is] not an obstacle to the entry into force of [the Covenant] between the Kingdom of the Netherlands and Algeria."

22 July 1997

With regard to the interpretative declarations made by Kuwait:

[Same objection identical in essence, mutatis mutandis, as the one made for Algeria].

Norway

With regard to the interpretative declarations and reservations made by Kuwait:

22 July 1997

"In the view of the Government of Norway, a statement by which a State Party purports to limit its responsibilities by invoking general principles of internal law may create doubts about the commitment of the reserving State to

the objective and purpose of the Convention and, moreover, contribute to undermining the basis of international treaty law. Under well-established treaty law, a State is not permitted to invoke internal law as justification for its failure to perform its treaty obligations. Furthermore, the Government of Norway finds the reservations made to article 8, paragraph 1 (d) and article 9 as being problematic in view of the object and purpose of the Covenant. For these reasons, the Government of Norway objects to the said reservations made by the Government of Kuwait.

The Government of Norway does not consider this objection to preclude the entry into force of the Covenant between the Kingdom of Norway and the State Kuwait.

"The Government of Norway does not consider this objection to preclude the entry into force of the Covenant between the Kingdom of Norway and the State of Kuwait."

Portugal

26 October 1990

"The Government of Portugal hereby presents its formal objection to the interpretative declarations made by the Government of Algeria upon ratification of the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. The Government of Portugal having examined the contents of the said declarations reached the conclusion that they can be regarded as reservations and therefore should be considered invalid as well as incompatible with the purposes and object of the Covenants.

This objection shall not preclude the entry into force of the Covenants between Portugal and Algeria."

Sweden

With regard to the interpretative declarations and reservation made by Kuwait:

23 July 1997

"The Government of Sweden is of the view that these general reservations may raise doubts as to the commitment of Kuwait to the object and purpose of the Covenant.

The Government of Sweden regards the reservation concerning article 8 (1) (d), in which the Government of Kuwait reserves the right not to apply the right to strike expressly stated in the Covenant, as well as the interpretative declaration regarding article 9, according to which the right to social security would only apply to Kuwaitis, as being problematic in view of the object and purpose of the Covenant. It particularly considers the declaration regarding article 9, as a result of which the many foreigners working on Kuwaiti territory would, in principle, be totally excluded from social security protection, cannot be based on article 2(3) of the Covenant.

It is in the common interest of all parties that a treaty should be respected, as to its object and purpose, by all parties.

The Government of Sweden therefore objects to the above-mentioned general reservations and interpretative declarations.

This objection does not preclude the entry into force of the Covenant between Kuwait and Sweden in its entirety."

Territorial Application		
Participant	Date of receipt of the notification	Territories
Netherlands ¹⁵	11 Dec 1978	Netherlands Antilles
Portugal ¹⁶	27 Apr 1993	Macau
United Kingdom ^{17,18}	20 May 1976	Bailiwick of Guernsey, the Bailiwick of Jersey, the Isle of Man, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, the Falkland Islands and Dependencies, Gibraltar, the Gilbert Islands, Hong Kong, Montserrat, the Pitcairn Group, St. Helena and Dependencies, the Solomon Islands, the Turks and Caicos Islands and Tuvalu.

Notes:

- 1 The thirty-fifth instrument of ratification or accession was deposited with the Secretary-General on 3 October 1975. The Contracting States did not object to having those instruments accompanied with reservations taken into account under article 27 (1) for the purpose of determining the date of general entry into force of the Covenant.
- 2 The signature was effected by Democratic Kampuchea. In this regard the Secretary-General received, on 5 November 1980, the following communication from the Government of Mongolia:

"The Government of the Mongolian People's Republic considers that only the People's Revolutionary Council of Kampuchea as the sole authentic and lawful representative of the Kampuchean people has the right to assume international obligations on behalf of the Kampuchean people. Therefore the Government of the Mongolian People's Republic considers that the signature of the Human Rights Covenants by the representative of the so-called Democratic Kampuchea, a regime that ceased to exist as a result of the people's revolution in Kampuchea, is null and void.

"The signing of the Human Rights Covenants by an individual, whose regime during its short period of reign in Kampuchea had exterminated about 3 million people and had thus grossly violated the elementary norms of human rights, each and every provision of the Human Rights Covenants is a regrettable precedence, which discredits the noble aims and lofty principles of the United Nations Charter, the very spirit of the above-mentioned Covenants, gravely impairs the prestige of the United Nations."

Thereafter, similar communications were received from the Government of the following States on the dates indicated and their texts were circulated as depositary notifications or, at the request, of the States concerned, as official documents of the General Assembly (A/33/781 and A/35/784):

State	Date of receipt
German Democratic Republic*	11 Dec 1980
Poland	12 Dec 1980
Ukraine	16 Dec 1980
Hungary	19 Jan 1981
Bulgaria	29 Jan 1981
Belarus	18 Feb 1981
Russian Federation	18 Feb 1981
Czechoslovakia**	10 Mar 1981

*See note 6 below.

**See note 5 below.

- 3 Although Democratic Kampuchea had signed both [the International Covenant on Economic, Social and Political rights and the International Covenant on Civil and Political Rights] on 17 October 1980 (see note 2 above), the Government of Cambodia deposited an instrument of accession to the said Covenants.

- 4 Signed on behalf of the Republic of China on 5 October 1967. See note concerning signatures, ratifications, accessions, etc., on behalf of China (note in chapter I.1).

With reference to the above-mentioned signature, communications have been addressed to the Secretary-General by the Permanent Representatives of Permanent Missions to the United Nations of Bulgaria, Byelorussian SSR, Czechoslovakia, Mongolia, Romania, the Ukrainian SSR, the Union of Soviet Socialist Republics and Yugoslavia, stating that their Governments did not recognize the said signature as valid since the only Government authorized to represent China and to assume obligations on its behalf was the Government of the People's Republic of China.

In letters addressed to the Secretary-General in regard to the above-mentioned communications, the Permanent Representative of China to the United Nations stated that the Republic of China, a sovereign State and Member of the United Nations, had attended the twenty-first regular session of the General Assembly of the United Nations and contributed to the formulation of, and signed the Covenants and the Optional Protocol concerned, and that "any statements or reservations relating to the above-mentioned Covenants and Optional Protocol that are incompatible with or derogatory to the legitimate position of the Government of the Republic of China shall in no way affect the rights and obligations of the Republic of China under these Covenants and Optional Protocol".

- 5 Czechoslovakia had signed and ratified the Covenant on 7 October 1968 and 23 December 1975 respectively, with declarations. For the text of the declarations, see United Nations, Treaty Series, vol. 993, pp.78 and 85. See also note 2 above and note in chapter I.2.
- 6 The German Democratic Republic had signed and ratified the Convention with reservations on 27 March 1973 and 8 November 1973, respectively. For the text of the reservations, see United Nations, Treaty Series, vol. 993. p. 83.
- 7 With the following declaration: "... The said Covenant shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany except as far as Allied rights and responsibilities are affected."

In this connection, the Secretary-General received on 5 July 1974, a communication from the Government of the Union of Soviet Socialist Republics which states in part as follows:

By reason of their material content, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 19 December 1966 directly affect matters of security and status. With this in mind the Soviet Union considers the statement made by the Federal Republic of Germany concerning the extension of the operation of these Covenants to Berlin (West) to be illegal and to have no force in law, since, under the Quadripartite Agreement of 3 September 1971, the treaty obligations of the Federal Republic of Germany affecting matters of security and status may not be extended to the Western Sectors of Berlin.

Communications identical in essence, *mutatis mutandis*, were received from the Governments of the German Democratic Republic (12 August 1974) and of the Ukrainian Soviet Socialist Republic (16 August 1974).

In this regard, the Governments of France, the United Kingdom and the United States of America, in a communication received on 5 November 1974, made the following declaration:

"The Governments of France, the United Kingdom of Great Britain and Northern

Ireland and the United States of America wish to bring to the attention of the States Parties to the Covenants that the extension of the Covenants to the Western Sectors of Berlin received the prior authorization, under established procedures, of the authorities of France, the United Kingdom and the United States on the basis of their supreme authority in those Sectors.

"The Governments of France, the United Kingdom and the United States wish to point out that the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, the primary purpose of both of which is the protection of the rights of the individual, are not treaties which by reason of their material content, directly affect matters of security and status'.

"As for the references to the Quadripartite Agreement of 3 September 1971 which are contained in the communication made by the Government of the Union of Soviet Socialist Republics referred to in the Legal Counsel's Note, the Governments of France, the United Kingdom and the United States wish to point out that, in a communication to the Government of the Union of Soviet Socialist Republics which is an integral part (Annex IV A) of the Quadripartite Agreement, they reaffirmed that, provided that matters of security and status are not affected, international agreements and arrangements entered into by the Federal Republic of Germany may be extended to the Western Sectors of Berlin. For its part the Government of the Union of Soviet Socialist Republics, in a communication to the Governments of France, the United Kingdom and the United States which is similarly an integral part (Annex IV B) of the Quadripartite Agreement, affirmed that it would raise no objection to such extension.

"In authorizing the extension of the Covenants to the Western Sectors of Berlin, as mentioned above, the authorities of France, the United Kingdom and the United States took all necessary measures to ensure that the Covenants cannot be applied in the Western Sectors of Berlin in such a way as to affect matters of security and status. Accordingly, the application of the Covenants to the Western Sectors of Berlin continues in full force and effect."

In a communication received on 6 December 1974, the Government of the Federal Republic of Germany stated in part:

"By their note of 4 November 1974, circulated to all States Parties to either of the Covenants on 19 November 1974, the Governments of France, the United Kingdom and the United States answered the assertions made in the communication of the Government of the Union of Soviet Socialist Republics referred to above. The Government of the Federal Republic of Germany shares the position set out in the note of the Three Powers. The extension of the Covenants to Berlin (West) continues in full force and effect."

On the same subject, the Secretary-General received the following communications: Union of Soviet Socialist Republics (13 February 1975):

The Soviet Union deems it essential to reassert its view that the extension by the Federal Republic of Germany of the operation of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 19 December 1966 to Berlin (West) is illegal as stated in the note dated 4 July 1974 addressed to the Secretary-General (circulated on 5 August 1974).

France, United Kingdom of Great Britain and Northern Ireland and United States of America (8 July 1975--in relation to the declarations by the German Democratic

Republic and by the Ukrainian Soviet Socialist Republic received on 12 and 16 August 1974, respectively):

"The communications mentioned in the notes listed above refer to the Quadripartite Agreement of 3 September 1971. This Agreement was concluded in Berlin between the Governments of the French Republic, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America. The Governments sending these communications are not parties to the Quadripartite Agreement and are therefore not competent to make authoritative comments on its provisions.

The Governments of France, the United Kingdom and the United States wish to bring the following to the attention of the States Parties to the instruments referred to in the above-mentioned communications. When authorising the extension of these instruments to the Western Sectors of Berlin, the authorities of the Three Powers, acting in the exercise of their supreme authority, ensured in accordance with established procedures that those instruments are applied in the Western Sectors of Berlin in such a way as not to affect matters of security and status.

Accordingly, the application of these instruments to the Western Sectors of Berlin continues in full force and effect.

The Governments of France, the United Kingdom and the United States do not consider it necessary to respond to any further communications of a similar nature by States which are not signatories to the Quadripartite Agreement. This should not be taken to imply any change in the position of those Governments in this matter."

Federal Republic of Germany (19 September 1975--in relation to the declarations by the German Democratic Republic and the Ukrainian Soviet Socialist Republic received on 12 and 16 August 1974, respectively):

"By their note of 8 July 1975, disseminated on 13 August 1975, the Governments of France, the United Kingdom and the United States answered the assertions made in the communications referred to above. The Government of the Federal Republic of Germany, on the basis of the legal situation set out in the Note of the Three Powers, wishes to confirm that the application in Berlin (West) of the above-mentioned instruments extended by it under the established procedures continues in full force and effect.

The Government of the Federal Republic of Germany wishes to point out that the absence of a response to further communications of a similar nature should not be taken to imply any change of its position in this matter."

See also note 6 above.

- 8 In a communication received on 10 May 1982, the Government of Solomon Islands declared that Solomon Islands maintains the reservations entered by the United Kingdom save in so far as the same cannot apply to Solomon Islands.
- 9 The formality was effected by the Yemen Arab Republic.
- 10 With respect to the interpretative declarations made by Algeria the Secretary-General received, on 25 October 1990, from the Government of Germany the following declaration:

[The Federal Republic of Germany] interprets the declaration under paragraph 2 to mean that the latter is not intended to eliminate the obligation of Algeria to ensure that the rights guaranteed in article 8, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights and in article 22 of the

International Covenant on Civil and Political Rights may be restricted only for the reasons mentioned in the said articles and that such restrictions shall be prescribed by law.

It interprets the declaration under paragraph 4 to mean that Algeria, by referring to its domestic legal system, does not intend to restrict its obligation to ensure through appropriate steps equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.

- 11 On 30 September 1992, the Government of Belarus notified the Secretary-General its decision to withdraw the reservation made upon signature and confirmed upon ratification. For the text of the reservation, see United Nations, Treaty Series, 993, p. 78.
 - 12 In a communication received on 14 January 1976, the Government of Denmark notified the Secretary-General that it withdraws its reservation made prior with regard to article 7 (a)(i) on equal pay for equal work.
 - 13 In two communications received by the Secretary-General on 10 July 1969 and 23 March 1971 respectively, the Government of Israel declared that it "has noted the political character of the declaration made by the Government of Iraq on signing and ratifying the above Covenants. In the view of the Government of Israel, these two Covenants are not the proper place for making such political pronouncements. The Government of Israel will, in so far as concerns the substance of the matter, adopt towards the Government of Iraq an attitude of complete reciprocity.
- Identical communications, *mutatis mutandis*, were received by the Secretary-General from the Government of Israel on 9 July 1969 in respect of the declaration made upon accession by the Government of Syria, and on 29 June 1970 in respect of the declaration made upon accession by the Government of Libya. In the latter communication, the Government of Israel moreover stated that the declaration concerned "cannot in any way affect the obligations of the Libyan Arab Republic already existing under general international law".
- 14 Upon ratification, the Government of Malta indicated that it had decided to withdraw its reservation made upon signature to paragraph 2, article 10. For the text of the said reservation, see United Nations, Treaty Series, vol. 993, p. 80.
 - 15 See note in United Nations, Treaty Series, chapter I.1.
 - 16 In its notification of territorial application to Macau, the Government of Portugal stated the following:

...The Covenants are confirmed and proclaimed binding and valid, and they shall have effect and be implemented and observed without exception, bearing in mind that:

Article 1. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, ratified, respectively, by Act No. 29/78 of 12 June, and By Act No. 45/78 of 11 July, shall be applicable in the territory of Macau.

Article 2.

1. The applicability in Macau of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and in particular of article 1 in both Covenants, shall in no way effect the status of Macau as defined in the Constitution of the Portuguese Republic and in the Organic Statute of Macau.

2. The applicability of the Covenants in Macau shall in no way affect the provisions of the Joint Declaration of the Government of the Portuguese Republic and the Government of the People's Republic of China on the Question of Macau, signed on 13 April 1987, especially with respect to the provision specifying that Macau forms part of Chinese territory and that the Government of the People's Republic of China will resume the exercise of sovereignty over Macau with effect from 20 December 1999, and that Portugal will be responsible for the administration until 19 December 1999.

Article 3. Article 25 (b) of the International Covenant on Civil and Political Rights shall not apply to Macau with respect to the composition of elected bodies and the method of choosing and electing their officials as defined in the Constitution of the Portuguese Republic, the Organic Statute of Macau and provisions of the Joint Declaration on the Question of Macau.

Article 4. Article 12 (4) and article 13 of the International Covenant on Civil and Political Rights shall not apply to Macau with respect to the entry and exit of individuals and the expulsion of foreigners from the territory. These matters shall continue to be regulated by the Organic Statute of Macau and other applicable legislation, and also by the Joint Declaration on the Question of Macau.

Article 5.

1. The provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights that are applicable to Macau shall be implemented in Macau, in particular through specific legal documents issued by the organs of government of the territory.

2. The restrictions of the fundamental rights in Macau shall be confined to those cases prescribed by law and shall not exceed the limits permitted by the applicable provisions of the aforementioned Covenants.

- 17 On 3 October 1983 the Secretary-General received from the Government of Argentina the following objection:

[The Government of Argentina makes a] formal objection to the [declaration] of territorial extension issued by the United Kingdom with regard to the Malvinas Islands (and dependencies), which that country is illegally occupying and refers to as the "Falkland Islands".

The Argentine Republic rejects and considers null and void the [said declaration] of territorial extension.

With reference to the above-mentioned objection the Secretary-General received, on 28 February 1985, from the Government of the United Kingdom of Great Britain and Northern Ireland the following declaration:

[For the text of the declaration see note in U.N., Treaty Series, chapter IV. 1.]

Upon ratification, the Government of Argentina made the following declaration with regard to the above-mentioned declaration made by the United Kingdom of Great Britain and Northern Ireland:

The Argentine Republic rejects the extension, notified to the Secretary-General of the United Nations on 20 May 1976 by the United Kingdom of Great Britain and Northern Ireland, of the application of the International Covenant on Economic, Social and Cultural Rights, adopted by the General Assembly of the United Nations

on 16 December 1966, to the Malvinas, South Georgia and South Sandwich Islands, and reaffirms its sovereign rights to those archipelagos, which form an integral part of its national territory.

The General Assembly of the United Nations had adopted resolutions 2065 (XX), 3160 (XXVIII), 31/49, 37/19, 38/12, 39/6 and 40/21 in which it recognizes the existence of a sovereignty dispute regarding the question of the Falkland Islands (Malvinas) and urges the Argentine Republic and the United Kingdom of Great Britain and Northern Ireland to pursue negotiations in order to find as soon as possible a peaceful and definitive solution to the dispute, through the good offices of the Secretary-General of the United Nations, who shall inform the General Assembly of the progress made."

With reference to the above-mentioned declaration by the Government of Argentina, the Secretary-General received, on 13 January 1988, from the Government of the United Kingdom of Great Britain and Northern Ireland the following communication:

"The Government of the United Kingdom of Great Britain and Northern Ireland rejects the statements made by the Argentine Republic, regarding the Falkland Islands and South Georgia and the South Sandwich Islands, when ratifying [the said Covenants and acceding to the said Protocol].

The Government of the United Kingdom of Great Britain and Northern Ireland has no doubt as to British sovereignty over the Falkland Islands and South Georgia and the South Sandwich Islands and its consequent right to extend treaties to those territories."

- 18 With regard to the application of the Covenant to Hong Kong, on 10 June 1997, the Government of the United Kingdom of Great Britain and Northern Ireland notified the Secretary-General of the following:

[Same notification as the one made under note in United Nations, Treaty Series, chapter IV.1.]

Draft optional protocol
to the
International Covenant
on
Economic, Social
& Cultural Rights

*The proposed text
As of 18 December 1996*

PREAMBLE

The States Parties to the present Protocol

Emphasizing that social justice and development, including the realization of economic, social and cultural rights, are essential elements in the construction of a just and equitable national and international order,

Recalling that the Vienna Declaration and Programme of Action recognized that 'all human rights are universal, indivisible and interdependent and interrelated',

Emphasizing the role of the Economic and Social Council, and through it the Committee on Economic, Social and Cultural Rights (hereinafter referred to as the Committee) in developing a better understanding of the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as the Covenant) and in promoting the realization of the rights recognized therein,

Recalling the provision of article 2 (1) of the Covenant pursuant to which 'Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, 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',

Noting that the possibility for the subjects of economic, social and cultural rights to submit complaints of alleged violations of those rights is a necessary means of recourse to guarantee the full enjoyment of the rights,

Considering that, in order further to achieve the purposes of the Covenant and the implementation of its provisions, it is appropriate to enable the Committee to receive and examine, in accordance with the provisions of this Protocol, communications alleging violations of the Covenant,

Have agreed as follows:

Article 1

A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and examine communications from any individuals or groups subject to its jurisdiction in accordance with the provisions of this Protocol.

Article 2

1. Any individual or group claiming to be a victim of a violation by the State party concerned of any of the economic, social or cultural rights recognized in the Covenant, or any individual or group acting on behalf of such claimant(s), may submit a written communication to the Committee for examination.
2. States Parties to this Protocol undertake not to hinder in any way the effective exercise of the right to submit a communication and to take all steps necessary to prevent any persecution or sanctioning of any person or group submitting or seeking to submit a communication under this Protocol.

Article 3

1. No communication shall be received by the Committee if it is anonymous or is directed at a State which is not a party to this Protocol.
2. The Committee shall declare a communication inadmissible if
 - (a) does not contain allegations which, if substantiated, would constitute a violation of rights recognized in the Covenant;
 - (b) constitutes an abuse of the right to submit a communication; or
 - (c) relates to acts and omissions which occurred before the entry into force of this Protocol for the State Party concerned, unless those acts or omissions:
 - (i) continue to constitute a violation of the Covenant after the entry into force of the Protocol for that State party; or
 - (ii) have effects which continue beyond the entry into force of this Protocol and those effects themselves appear to constitute a violation of a right recognized in the Covenant.
3. The Committee shall not declare a communication admissible unless it has ascertained:
 - (a) that all available domestic remedies have been exhausted; and
 - (b) that a communication submitted by or on behalf of the alleged victim which raises essentially the same issues of fact and law is not being examined under another procedure of international investigation or settlement. The Committee may, however, examine such a communication where the procedure of international investigation or settlement is unreasonably prolonged.

Article 4

1. The Committee may decline to continue to examine a communication if the author, after being given a reasonable opportunity to do so, fails to provide information which would sufficiently substantiate the allegations contained in the communication.
2. The Committee may, upon the request of the author of the complaint, recommence examination of a communication which it has declared inadmissible under article 3 if the circumstances which led to its decision have changed.

Article 5

If at any time after the receipt of a communication, and before a determination on the merits has been reached, a preliminary study gives rise to a reasonable apprehension that the allegations, if substantiated, could lead to irreparable harm, the Committee may request the State Party concerned to take such interim measures as may be necessary to avoid such irreparable harm.

Article 6

1. Unless the Committee considers that a communication should be declared inadmissible without reference to the State party concerned, the Committee shall confidentially bring to the attention of the State party any communication referred to it under this Protocol.
2. Within six months, the receiving State shall submit to the Committee explanations or statements and the remedy, if any, that may have been afforded by that State.
3. During its examination of a communication, the Committee shall place itself at the disposal of the parties concerned with a view to facilitating settlement of the matter on the basis of respect for the rights and obligations set forth in the Covenant.
4. If a settlement is reached, the Committee shall prepare a report containing a statement of the facts and of the solution reached.

Article 7

1. The Committee shall examine communications received under this Protocol in the light of all information made available to it by or on behalf of the author in accordance with paragraph 2, and by the State party concerned. The Committee may also take into account information obtained from other sources, provided that this information is transmitted to the parties concerned for comment.

2. The Committee may adopt such procedures as will enable it to ascertain the facts and to assess the extent to which the State party concerned has fulfilled its obligations under the Covenant.
3. As part of its examination of a communication, the Committee may, with the agreement of the State Party concerned, visit the territory of that State Party.
4. The Committee shall hold closed meetings when examining communications under this Protocol.
5. After examining a communication, the Committee shall adopt its views on the claims made in the communication and shall transmit these to the State party and to the author, together with any recommendations it considers appropriate. The views shall be made public at the same time.

Article 8

1. Where the Committee is of the view that a State Party has violated its obligations under the Covenant, the Committee may recommend that the State Party take specific measures to remedy the violation and to prevent its recurrence.
2. The State Party concerned shall, within six months of receiving notice of the decision of the Committee under paragraph 1, or such longer period as may be specified by the Committee, provide the Committee with details of the measures which it has taken in accordance with paragraph 1 above.

Article 9

1. The Committee may invite a State Party to discuss with it, at a mutually convenient time, the measures which the State Party has taken to give effect to the views or recommendations of the Committee.
2. The Committee may invite the State Party concerned to include in its reports under article 17 of the Covenant details of any measures taken in response to the Committee's views and recommendations.
3. The Committee shall include in its annual report an account of the substance of the communication and its examination of the matter, a summary of the explanations and statements of the State Party concerned, of its own views and recommendations, and the response of the State Party concerned to those views and recommendations.

Article 10

The Committee may make rules of procedure prescribing the procedure to be followed when it is exercising the functions conferred on it by this Protocol.

Article 11

1. The Committee shall meet for such period as is necessary to carry out its functions under this Protocol.
2. The Secretary-General of the United Nations shall provide the Committee with the necessary staff, facilities and finances for the performance of its functions under this Protocol, and in particular shall ensure that expert legal advice is available to the Committee for this purpose.

Article 12

1. This Protocol is open for signature by any State Party to the Covenant.
2. This Protocol is subject to ratification or accession by any State Party to the Covenant. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

Article 13

1. This Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the fifth instrument of ratification or accession.
2. For each State ratifying this Protocol or acceding to it after its entry into force, this Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

Article 14

1. This Protocol will be binding upon each State Party in respect of all territories subject to its jurisdiction.
2. The provisions of this Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 15

1. Any State Party to this Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to this Protocol with the request that they notify him or her whether they favour a conference of State Parties for the purpose of considering and voting upon the proposal. If within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene such a conference under the

auspices of the United Nations. Any amendment adopted by majority of the State parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to this Protocol in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Protocol and any earlier amendment which they have accepted.

Article 16

1. Any State Party may denounce this Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Denunciations shall be without prejudice to the continued application of the provisions of this Protocol to any communication submitted before the effective date of denunciation.
3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matters regarding that State.

Article 17

This Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

**The Limburg Principles
on the Implementation
of the International Covenant on
Economic, Social
& Cultural Rights**

INTRODUCTION

- (i) A group of distinguished experts in international law, convened by the International Commission of Jurists, the Faculty of Law of the University of Limburg (Maastricht, the Netherlands) and the Urban Morgan Institute for Human Rights, University of Cincinnati (Ohio, United States of America), met in Maastricht on 2-6 June 1986 to consider the nature and scope of the obligations of States parties to the International Covenant on Economic, Social and Cultural Rights, the consideration of States parties Reports by the newly constituted ECOSOC Committee on Economic, Social and Cultural Rights, and international cooperation under Part IV of the Covenant.
- (ii) The 29 participants came from Australia, the Federal Republic of Germany, Hungary, Ireland, Mexico, Netherlands, Norway, Senegal, Spain, United Kingdom, United States of America, Yugoslavia, the United Nations Centre for Human Rights, the International Labour Organisation (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the Commonwealth Secretariat, and the sponsoring organizations. Four of the participants were members of the ECOSOC Committee on Economic, Social and Cultural Rights.
- (iii) The participants agreed unanimously upon the following principles which they believe reflect the present state of international law, with the exception of certain recommendations indicated by the use of the verb "should" instead of "shall".

PART I: THE NATURE AND SCOPE OF STATES PARTIES' OBLIGATIONS

A. General Observations

1. Economic, social and cultural rights are an integral part of international human rights law. They are the subject of specific treaty obligations in various international instruments, notably the International Covenant on Economic, Social and Cultural Rights.
2. The International Covenant on Economic, Social and Cultural Rights, together with the International Covenant on Civil and Political Rights and the Optional Protocol, entered into force in 1976. The Covenants serve to elaborate the Universal Declaration of Human Rights: these instruments constitute the International Bill of Human Rights.

3. As human rights and fundamental freedoms are indivisible and interdependent, equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights.
4. The International Covenant on Economic, Social and Cultural Rights (hereafter the Covenant) should, in accordance with the Vienna Convention on the Law of Treaties (Vienna 1969), be interpreted in good faith, taking into account the object and purpose, the ordinary meaning, the preparatory work and the relevant practice.
5. The experience of the relevant specialized agencies as well as of United Nations bodies and intergovernmental organizations, including the United Nations working groups and special rapporteurs in the field of human rights, should be taken into account in the implementation of the Covenant and in monitoring States parties' achievements.
6. The achievement of economic, social and cultural rights may be realized in a variety of political settings. There is no single road to their full realization. Successes and failures have been registered in both market and non-market economies, in both centralized and decentralized political structures.
7. States Parties must at all times act in good faith to fulfil the obligations they have accepted under the Covenant.
8. Although the full realization of the rights recognized in the Covenant is to be attained progressively, the application of some rights can be made justiciable immediately while other rights can become justiciable over time.
9. Non-governmental organizations can play an important role in promoting the implementation of the Covenant. This role should accordingly be facilitated at the national as well as the international level.
10. States Parties are accountable both to the international community and to their own people for their compliance with the obligations under the Covenant.
11. A concerted national effort to invoke the full participation of all sectors of society is, therefore, indispensable to achieving progress in realizing economic, social and cultural rights. Popular participation is required at all stages, including the formulation, application and review of national policies.
12. The supervision of compliance with the Covenant should be approached in a spirit of cooperation and dialogue. To this end, in considering the reports of States parties, the Committee on Economic, Social and Cultural Rights, hereinafter called "the Committee", should analyze the causes and factors

impeding the realization of the rights covered under the Covenant and, where possible, indicate solutions. This approach should not preclude a finding, where the information available warrants such a conclusion, that a State party has failed to comply with its obligations under the Covenant.

13. All organs monitoring the Covenant should pay special attention to the principles of non-discrimination and equality before the law when assessing States parties' compliance with the Covenant.
14. Given the significance for development of the progressive realization of the rights set forth in the Covenant, particular attention should be given to measures to improve the standard of living of the poor and other disadvantaged groups, taking into account that special measures may be required to protect cultural rights of indigenous peoples and minorities.
15. Trends in international economic relations should be taken into account in assessing the efforts of the international community to achieve the Covenant's objectives.

B. Interpretative Principles specifically relating to Part II of the Covenant

Article 2(1): "to take steps... by all appropriate means, including particularly the adoption of legislation"

16. All States parties have an obligation to begin immediately to take steps towards full realization of the rights contained in the Covenant.
17. At the national level States parties shall use all appropriate means, including legislative, administrative, judicial, economic, social and educational measures, consistent with the nature of the rights in order to fulfil their obligations under the Covenant.
18. Legislative measures alone are not sufficient to fulfil the obligations of the Covenant. It should be noted, however, that article 2(1) would often require legislative action to be taken in cases where existing legislation is in violation of the obligations assumed under the Covenant.
19. States parties shall provide for effective remedies including, where appropriate, judicial remedies.
20. The appropriateness of the means to be applied in a particular State shall be determined by that State party, and shall be subject to review by the United Nations Economic and Social Council, with the assistance of the Committee. Such review shall be without prejudice to the competence of the other organs established pursuant to the Charter of the United Nations.

"to achieve progressively the full realization of the rights"

21. The obligation "to achieve progressively the full realization of the rights" requires States parties to move as expeditiously as possible towards the realization of the rights. Under no circumstances shall this be interpreted as implying for States the right to deter indefinitely efforts to ensure full realization. On the contrary all States parties have the obligation to begin immediately to take steps to fulfil their obligations under the Covenant.
22. Some obligations under the Covenant require immediate implementation in full by all States parties, such as the prohibition of discrimination in article 2(2) of the Covenant.
23. The obligation of progressive achievement exists independently of the increase in resources; it requires effective use of resources available.
24. Progressive implementation can be effected not only by increasing resources, but also by the development of societal resources necessary for the realization by everyone of the rights recognized in the Covenant.

"to the maximum of its available resources"

25. States parties are obligated, regardless of the level of economic development, to ensure respect for minimum subsistence rights for all.
26. "Its available resources" refers to both the resources within a State and those available from the international community through international cooperation and assistance.
27. In determining whether adequate measures have been taken for the realization of the rights recognized in the Covenant attention shall be paid to equitable and effective use of and access to the available resources.
28. In the use of the available resources due priority shall be given to the realization of rights recognized in the Covenant, mindful of the need to assure to everyone the satisfaction of subsistence requirements as well as the provision of essential services.

"individually and through international assistance and cooperation especially economic and technical"

29. International cooperation and assistance pursuant to the Charter of the United Nations (arts. 55 and 56) and the Covenant shall have in view as a matter of priority the realization of all human rights and fundamental freedoms, economic, social and cultural as well as civil and political.

30. International cooperation and assistance must be directed towards the establishment of a social and international order in which the rights and freedoms set forth in the Covenant can be fully realized (cf. article 28 Universal Declaration of Human Rights).
31. Irrespective of differences in their political, economic and social systems, States shall cooperate with one another to promote international social, economic and cultural progress, in particular the economic growth of developing countries, free from discrimination based on such differences.
32. States parties shall take steps by international means to assist and cooperate in the realization of the rights recognized by the Covenant.
33. International cooperation and assistance shall be based on the sovereign equality of States and be aimed at the realization of the rights contained in the Covenant.
34. In undertaking international cooperation and assistance pursuant to article 2(1) the role of international organizations and the contribution of non-governmental organizations shall be kept in mind.

Article 2(2): Non-discrimination

35. Article 2(2) calls for immediate application and involves an explicit guarantee on behalf of the States parties. It should, therefore, be made subject to judicial review and other recourse procedures.
36. The grounds of discrimination mentioned in article 2(2) are not exhaustive.
37. Upon becoming a party to the Covenant States shall eliminate de jure discrimination by abolishing without delay any discriminatory laws, regulations and practices (including acts of omission as well as commission) affecting the enjoyment of economic, social and cultural rights.
38. De facto discrimination occurring as a result of the unequal enjoyment of economic, social and cultural rights, on account of a lack of resources or otherwise, should be brought to an end as speedily as possible.
39. Special measures taken for the sole purpose of securing adequate advancement of certain groups or individuals requiring such protection as may be necessary in order to ensure to such groups or individuals equal enjoyment of economic, social and cultural rights shall not be deemed discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different groups and that such measures shall not be continued after their intended objectives have been achieved.

40. Article 2(2) demands from States parties that they prohibit private persons and bodies from practising discrimination in any field of public life.
41. In the application of article 2(2) due regard should be paid to all relevant international instruments including the Declaration and Convention on the Elimination of all Forms of Racial Discrimination as well as to the activities of the supervisory committee (CERD) under the said Convention.

Article 2(3): Non-nationals in developing countries

42. As a general rule the Covenant applies equally to nationals and non-nationals.
43. The purpose of article 2(3) was to end the domination of certain economic groups of non-nationals during colonial times. In the light of this the exception in article 2(3) should be interpreted narrowly.
44. This narrow interpretation of article 2(3) refers in particular to the notion of economic rights and to the notion of developing countries. The latter notion refers to those countries which have gained independence and which fall within the appropriate United Nations classifications of developing countries.

Article 3: Equal rights for men and women

45. In the application of article 3 due regard should be paid to the Declaration and Convention on the Elimination of All Forms of Discrimination against Women and other relevant instruments and the activities of the supervisory committee (CEDAW) under the said Convention.

Article 4: Limitations

46. Article 4 was primarily intended to be protective of the rights of individuals rather than permissive of the imposition of limitations by the State.
47. The article was not meant to introduce limitations on rights affecting the subsistence or survival of the individual or integrity of the person.

"determined by law"¹

48. No limitation on the exercise of economic, social and cultural rights shall be made unless provided for by national law of general application which is consistent with the Covenant and is in force at the time the limitation is applied.
49. Laws imposing limitations on the exercise of economic, social and cultural rights shall not be arbitrary or unreasonable or discriminatory.

50. Legal rules limiting the exercise of economic, social and cultural rights shall be clear and accessible to everyone.
51. Adequate safeguards and effective remedies shall be provided by law against illegal or abusive imposition on application of limitations on economic, social and cultural rights.

"promoting the general welfare"

52. This term shall be construed to mean furthering the well-being of the people as a whole .

"in a democratic society"²

53. The expression "in a democratic society" shall be interpreted as imposing a further restriction on the application of limitations.
54. The burden is upon a State imposing limitations to demonstrate that the limitations do not impair the democratic functioning of the society.
55. While there is no single model of a democratic society, a society which recognizes and respects the human rights set forth in the United Nations Charter and the Universal Declaration of Human Rights may be viewed as meeting this definition.

"compatible with the nature of these rights"

56. The restriction "compatible with the nature of these rights" requires that a limitation shall not be interpreted or applied so as to jeopardize the essence of the right concerned.
57. Article 5 (1) underlines the fact that there is no general, implied or residual right for a State to impose limitations beyond those which are specifically provided for in the law. None of the provisions in the law may be interpreted in such a way as to destroy "any of the rights or freedoms recognized". In addition article 5 is intended to ensure that nothing in the Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

Article 5

58. The purpose of article 5 (2) is to ensure that no provision in the Covenant shall be interpreted to prejudice the provisions of domestic law or any bilateral or multilateral treaties, conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected. Neither shall

article 5 (2) be interpreted to restrict the exercise of any human right protected to a greater extent by national or international obligations accepted by the State party .

C. Interpretative Principles specifically relating to Part III of the Covenant

Article 8: "prescribed by law"³

59. See the interpretative principles under the synonymous term "determined by law" in article 4.

"necessary in a democratic society"

60. In addition to the interpretative principles listed under article 4 concerning the phrase "in a democratic society", article 8 imposes a greater restraint upon a State party which is exercising limitations on trade union rights. It requires that such a limitation is indeed necessary. The term "necessary" implies that the limitation:
- (a) responds to a pressing public or social need;
 - (b) pursues a legitimate aim; and
 - (c) is proportional to that aim.
61. Any assessment as to the necessity of a limitation shall be based upon objective considerations.

"national security"

62. National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.
63. National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order.
64. National security cannot be used as a pretext for imposing vague or arbitrary limitations and may be invoked only when there exist adequate safeguards and effective remedies against abuse.
65. The systematic violation of economic, social and cultural rights undermines true national security and may jeopardize international peace and security. A State responsible for such violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive practices against its population.

"public order (ordre public)"

66. The expression "public order (ordre public)" as used in the Covenant may be defined as the sum of rules which ensures the functioning of society or the set of fundamental principles on which a society is founded. Respect for economic, social and cultural rights is part of public order (ordre public).
67. Public order (ordre public) shall be interpreted in the context of the purpose of the particular economic, social and cultural rights which are limited on this ground.
68. State organs or agents responsible for the maintenance of public order (ordre public) shall be subject to controls in the exercise of their power through the parliament, courts, or other competent independent bodies.

"rights and freedoms of others"

69. The scope of the rights and freedoms of others that may act as a limitation upon rights in the Covenant extends beyond the rights and freedoms recognized in the Covenant.

D. Violations of Economic, Social and Cultural Rights

70. A failure by a State party to comply with an obligation contained in the Covenant is, under international law, a violation of the Covenant.
71. In determining what amounts to a failure to comply, it must be borne in mind that the Covenant affords to a State party a margin of discretion in selecting the means for carrying out its objects, and that factors beyond its reasonable control may adversely affect its capacity to implement particular rights.
72. A State party will be in violation of the Covenant, inter alia, if:
- it fails to take a step which it is required to take by the Covenant;
 - it fails to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfilment of a right;
 - it fails to implement without delay a right which it is required by the Covenant to provide immediately;
 - it wilfully fails to meet a generally accepted international minimum standard of achievement, which is within its powers to meet;
 - it applies a limitation to a right recognized in the Covenant other than in accordance with the Covenant;

- it deliberately retards or halts the progressive realization of a right, unless it is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or force majeure;
 - it fails to submit reports as required under the Covenant.
73. In accordance with international law each State party to the Covenant has the right to express the view that another State party is not complying with its obligations under the Covenant and to bring this to the attention of that State party. Any dispute that may thus arise shall be settled in accordance with the relevant rules of international law relating to the peaceful settlement of disputes.

PART II - CONSIDERATION OF STATES PARTIES' REPORTS AND INTERNATIONAL COOPERATION UNDER PART IV OF THE COVENANT

A. Preparation and submission of reports by States parties

74. The effectiveness of the supervisory machinery provided in Part IV of the Covenant depends largely upon the quality and timeliness of reports by States parties. Governments are therefore urged to make their reports as meaningful as possible. For this purpose they should develop adequate internal procedures for consultations with the competent government departments and agencies, compilation of relevant data, training of staff, acquisition of background documentation, and consultation with relevant non-governmental and international institutions.
75. The preparation of reports under article 16 of the Covenant could be facilitated by the implementation of elements of the programme of advisory services and technical assistance as proposed by the chairmen of the main human rights supervisory organs in their 1984 report to the General Assembly (United Nations Doc. A39/484).
76. States parties should view their reporting obligations as an opportunity for broad public discussion on goals and policies designed to realize economic, social and cultural rights. For this purpose wide publicity should be given to the reports, if possible in draft. The preparation of reports should also be an occasion to review the extent to which relevant national policies adequately reflect the scope and content of each right, and to specify the means by which it is to be realized.
77. States parties are encouraged to examine the possibility of involving non-governmental organizations in the preparation of their reports.

78. In reporting on legal steps taken to give effect to the Covenant, States parties should not merely describe any relevant legislative provisions. They should specify, as appropriate, the judicial remedies, administrative procedures and other measures they have adopted for enforcing those rights and the practice under those remedies and procedures.
79. Quantitative information should be included in the reports of States parties in order to indicate the extent to which the rights are protected in fact. Statistical information and information on budgetary allocations and expenditures should be presented in such a way as to facilitate the assessment of the compliance with Covenant obligations. States parties should, where possible, adopt clearly defined targets and indicators in implementing the Covenant. Such targets and indicators should, as appropriate, be based on criteria established through international cooperation in order to increase the relevance and comparability of data submitted by States parties in their reports.
80. Where necessary, governments should conduct or commission studies to enable them to fill gaps in information regarding progress made and difficulties encountered in achieving the observance of the Covenant rights.
81. Reports by States parties should indicate the areas where more progress could be achieved through international cooperation and suggest economic and technical cooperation programmes that might be helpful toward that end.
82. In order to ensure a meaningful dialogue between the States parties and the organs assessing their compliance with the provisions of the Covenant, States parties should designate representatives who are fully familiar with the issues raised in the report.

B. Role of the Committee on Economic, Social and Cultural Rights

83. The Committee has been entrusted with assisting the Economic and Social Council in the substantive tasks assigned to it by the Covenant. In particular, its role is to consider States parties reports and to make suggestions and recommendations of a general nature, including suggestions and recommendations as to fuller compliance with the Covenant by States parties. The decision of the Economic and Social Council to replace its sessional Working Group by a Committee of independent experts should lead to a more effective supervision of the implementation by States Parties.
84. In order to enable it to discharge fully its responsibilities the Economic and Social Council should ensure that sufficient sessions are provided to the

Committee. It is imperative that the necessary staff and facilities for the effective performance of the Committee's functions be provided, in accordance with ECOSOC resolution 1985/17.

85. In order to address the complexity of the substantive issues covered by the Covenant, the Committee might consider delegating certain tasks to its members. For example, drafting groups could be established to prepare preliminary formulations or recommendations of a general nature or summaries of the information received. Rapporteurs could be appointed to assist the work of the Committee in particular to prepare reports on specific topics and for that purpose consult States parties, specialized agencies and relevant experts and to draw up proposals regarding economic and technical assistance projects that could help overcome difficulties States parties have encountered in fulfilling their Covenant obligations.
86. The Committee should, pursuant to articles 22 and 23 of the Covenant, explore with other organs of the United Nations, specialized agencies and other concerned organizations, the possibilities of taking additional international measures likely to contribute to the progressive implementation of the Covenant.
87. The Committee should reconsider the current six-year cycle of reporting in view of the delays which have led to simultaneous consideration of reports submitted under different phases of the cycle. The Committee should also review the guidelines for States parties to assist them in preparing reports and propose any necessary modifications.
88. The Committee should consider inviting States parties to comment on selected topics leading to a direct and sustained dialogue with the Committee.
89. The Committee should devote adequate attention to the methodological issues involved in assessing compliance with the obligations contained in the Covenant. Reference to indicators, in so far as they may help measure progress made in the achievement of certain rights, may be useful in evaluating reports submitted under the Covenant. The Committee should take due account of the indicators selected by or in the framework of the specialized agencies and draw upon or promote additional research, in consultation with the specialized agencies concerned, where gaps have been identified.
90. Whenever the Committee is not satisfied that the information provided by a State party is adequate for a meaningful assessment of progress achieved and difficulties encountered it should request supplementary information, specifying as necessary the precise issues or questions it would like the State Party to address.

91. In preparing its reports under ECOSOC resolution 1985/17, the Committee should consider, in addition to the "summary of its consideration of the reports", highlighting thematic issues raised during its deliberations.

C. Relations between the Committee and Specialized Agencies, and other international organs

92. The establishment of the Committee should be seen as an opportunity to develop a positive and mutually beneficial relationship between the Committee and the specialized agencies and other international organs.
93. New arrangements under article 180 of the Covenant should be considered where they could enhance the contribution of the specialized agencies to the work of the Committee. Given that the working methods with regard to the implementation of economic, social and cultural rights vary from one specialized agency to another, flexibility is appropriate in making such arrangements under article 18.
94. It is essential for the proper supervision of the implementation of the Covenant under Part IV that a dialogue be developed between the specialized agencies and the Committee with respect to matters of common interest. In particular consultations should address the need for developing indicators for assessing compliance with the Covenant; drafting guidelines for the submission of reports by States parties; making arrangements for submission of reports by the specialized agencies under article 18. Consideration should also be given to any relevant procedures adopted in the agencies. Participation of their representatives in meetings of the Committee would be very valuable.
95. It would be useful if Committee members could visit specialized agencies concerned, learn through personal contact about programmes of the agencies relevant to the realization of the rights contained in the Covenant and discuss the possible areas of collaboration with those agencies.
96. Consultations should be initiated between the Committee and international financial institutions and development agencies to exchange information and share ideas on the distribution of available resources in relation to the realization of the rights recognized in the Covenant. These exchanges should consider the impact of international economic assistance on efforts by States parties to implement the Covenant and possibilities of technical and economic cooperation under article 22 of the Covenant.
97. The Commission on Human Rights, in addition to its responsibilities under article 19 of the Covenant, should take into account the work of the

Committee in its consideration of items on its agenda relating to economic, social and cultural rights.

98. The Covenant on Economic, Social and Cultural Rights is related to the Covenant on Civil and Political Rights. Although most rights can clearly be delineated as falling within the framework of one or other Covenant, there are several rights and provisions referred to in both instruments which are not susceptible to clear differentiation. Both Covenants moreover share common provisions and articles. It is important that consultative arrangements be established between the Economic, Social and Cultural Rights Committee and the Human Rights Committee.
99. Given the relevance of other international legal instruments to the Covenant, early consideration should be given by the Economic and Social Council to the need for developing effective consultative arrangements between the various supervisory bodies.
100. International and regional intergovernmental organizations concerned with the realization of economic, social and cultural rights are urged to develop measures, as appropriate, to promote the implementation of the Covenant.
101. As the Committee is a subsidiary organ of the Economic and Social Council, non-governmental organizations enjoying consultative status with the Economic and Social Council are urged to attend and follow the meetings of the Committee and, when appropriate, to submit information in accordance with ECOSOC resolution 1296 (XLIV).
102. The Committee should develop, in cooperation with intergovernmental organizations and non-governmental organizations as well as research institutes an agreed system for recording, storing and making accessible case law and other interpretative material relating to international instruments on economic, social and cultural rights.
103. As one of the measures recommended in article 23 it is recommended that seminars be held periodically to review the work of the Committee and the progress made in the realization of economic, social and cultural rights by States parties.

-
- 1 The Limburg Principles 48-51 are derived from the Siracusa Principles 15-18, United Nations Doc. E/CN.4/1984/4, 28 September 1984 and 7 Human Rights Quarterly 3 (1985), at p.5.
 - 2 Compare Siracusa Principles 19-21, *ibid.*, at p. 5.
 - 3 The Limburg Principles 59-69 are derived from the Siracusa Principles 10, 15-26, 29-32 and 35-37, *ibid.*, at pp. 4-7.

**The Maastricht Guidelines
on Violations
of Economic, Social
& Cultural Rights**

INTRODUCTION

On the occasion of the 10th anniversary of the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (hereinafter 'the Limburg Principles'), a group of more than thirty experts met in Maastricht from 22-26 January 1997 at the invitation of the International Commission of Jurists (Geneva, Switzerland), the Urban Morgan Institute on Human Rights (Cincinnati, Ohio, USA) and the Centre for Human Rights of the Faculty of Law of Maastricht University (the Netherlands). The objective of this meeting was to elaborate on the Limburg Principles as regards the nature and scope of violations of economic, social and cultural rights and appropriate responses and remedies.

The participants unanimously agreed on the following guidelines which they understand to reflect the evolution of international law since 1986. These guidelines are designed to be of use to all who are concerned with understanding and determining violations of economic, social and cultural rights and in providing remedies thereto, in particular monitoring and adjudicating bodies at the national, regional and international levels.

I - THE SIGNIFICANCE OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

1. Since the Limburg Principles were adopted in 1986, the economic and social conditions have declined at alarming rates for over 1.6 billion people, while they have advanced also at a dramatic pace for more than a quarter of the world's population.¹ The gap between rich and poor has doubled in the last three decades, with the poorest fifth of the world's population receiving 1.4% of the global income and the richest fifth 85%. The impact of these disparities on the lives of people - especially the poor - is dramatic and renders the enjoyment of economic, social and cultural rights illusory for a significant portion of humanity.
2. Since the end of the Cold War, there has been a trend in all regions of the world to reduce the role of the State and to rely on the market to resolve problems of human welfare, often in response to conditions generated by international and national financial markets and institutions and in an effort to attract investments from the multinational enterprises whose wealth and power exceed that of many States. It is no longer taken for granted that the realization of economic, social and cultural rights depends significantly on action by the State, although, as a matter of international law, the State remains ultimately responsible for guaranteeing the realization of these rights. While the challenge of addressing violations of economic, social and cultural rights is rendered more complicated by these trends, it is more

urgent than ever to take these rights seriously and, therefore, to deal with the accountability of governments for failure to meet their obligations in this area.

3. There have also been significant legal developments enhancing economic, social and cultural rights since 1986, including the emerging jurisprudence of the Committee on Economic, Social and Cultural Rights and the adoption of instruments, such as the revised European Social Charter of 1996 and the Additional Protocol to the European Charter Providing for a System of Collective Complaints, and the San Salvador Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988. Governments have made firm commitments to address more effectively economic, social and cultural rights within the framework of seven UN World Summits conferences (1992-1996). Moreover, the potential exists for improved accountability for violations of economic, social and cultural rights through the proposed Optional Protocols to the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination Against Women. Significant developments within national civil society movements and regional and international NGOs in the field of economic, social and cultural rights have taken place.
4. It is now undisputed that all human rights are indivisible, interdependent, interrelated and of equal importance for human dignity. Therefore, states are as responsible for violations of economic, social and cultural rights as they are for violations of civil and political rights.
5. As in the case of civil and political rights, the failure by a State Party to comply with a treaty obligation concerning economic, social and cultural rights is, under international law, a violation of that treaty. Building upon the Limburg Principles², the considerations below relate primarily to the International Covenant on Economic, Social and Cultural Rights (hereinafter "the Covenant"). They are equally relevant, however, to the interpretation and application of other norms of international and domestic law in the field of economic, social and cultural rights.

II - THE MEANING OF VIOLATIONS OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Obligations to respect, protect and fulfil

6. Like civil and political rights, economic, social and cultural rights impose three different types of obligations on States: the obligations to respect,

protect and fulfil. Failure to perform any one of these three obligations constitutes a violation of such rights. The obligation to respect requires States to refrain from interfering with the enjoyment of economic, social and cultural rights. Thus, the right to housing is violated if the State engages in arbitrary forced evictions. The obligation to protect requires States to prevent violations of such rights by third parties. Thus, the failure to ensure that private employers comply with basic labour standards may amount to a violation of the right to work or the right to just and favourable conditions of work. The obligation to fulfil requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights. Thus, the failure of States to provide essential primary health care to those in need may amount to a violation .

Obligations of conduct and of result

7. The obligations to respect, protect and fulfil each contain elements of obligation of conduct and obligation of result. The obligation of conduct requires action reasonably calculated to realize the enjoyment of a particular right. In the case of the right to health, for example, the obligation of conduct could involve the adoption and implementation of a plan of action to reduce maternal mortality. The obligation of result requires States to achieve specific targets to satisfy a detailed substantive standard. With respect to the right to health, for example, the obligation of result requires the reduction of maternal mortality to levels agreed at the 1994 Cairo International Conference on Population and Development and the 1995 Beijing Fourth World Conference on Women.

Margin of discretion

8. As in the case of civil and political rights, States enjoy a margin of discretion in selecting the means for implementing their respective obligations. State practice and the application of legal norms to concrete cases and situations by international treaty monitoring bodies as well as by domestic courts have contributed to the development of universal minimum standards and the common understanding of the scope, nature and limitation of economic, social and cultural rights. The fact that the full realization of most economic, social and cultural rights can only be achieved progressively, which in fact also applies to most civil and political rights, does not alter the nature of the legal obligation of States which requires that certain steps be taken immediately and others as soon as possible. Therefore, the burden is on the State to demonstrate that it is making measurable progress toward

the full realization of the rights in question. The State cannot use the "progressive realization" provisions in article 2 of the Covenant as a pretext for non-compliance. Nor can the State justify derogations or limitations of rights recognized in the Covenant because of different social, religious and cultural backgrounds.

Minimum core obligations

9. Violations of the Covenant occur when a State fails to satisfy what the Committee on Economic, Social and Cultural Rights has referred to as "a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights [...]. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, violating the Covenant."³ Such minimum core obligations apply irrespective of the availability of resources of the country concerned or any other factors and difficulties.

Availability of resources

10. In many cases, compliance with such obligations may be undertaken by most States with relative ease, and without significant resource implications. In other cases, however, full realization of the rights may depend upon the availability of adequate financial and material resources. Nonetheless, as established by Limburg Principles 25-28, and confirmed by the developing jurisprudence of the Committee on Economic, Social and Cultural Rights, resource scarcity does not relieve States of certain minimum obligations in respect of the implementation of economic, social and cultural rights.

State policies

11. A violation of economic, social and cultural rights occurs when a State pursues, by action or omission, a policy or practice which deliberately contravenes or ignores obligations of the Covenant, or fails to achieve the required standard of conduct or result. Furthermore, any discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of economic, social and cultural rights constitutes a violation of the Covenant.

Gender discrimination

12. Discrimination against women in relation to the rights recognized in the Covenant, is understood in light of the standard of equality for women under the Convention on the Elimination of All Forms of Discrimination Against Women. That standard requires the elimination of all forms of discrimination against women including gender discrimination arising out of social, cultural and other structural disadvantages.

Inability to comply

13. In determining which actions or omissions amount to a violation of an economic, social or cultural right, it is important to distinguish the inability from the unwillingness of a State to comply with its treaty obligations. A State claiming that it is unable to carry out its obligation for reasons beyond its control has the burden of proving that this is the case. A temporary closure of an educational institution due to an earthquake, for instance, would be a circumstance beyond the control of the State, while the elimination of a social security scheme without an adequate replacement programme could be an example of unwillingness by the State to fulfil its obligations.

Violations through acts of commission

14. Violations of economic, social and cultural rights can occur through the direct action of States or other entities insufficiently regulated by States. Examples of such violations include:
 - (a) The formal removal or suspension of legislation necessary for the continued enjoyment of an economic, social and cultural right that is currently enjoyed;
 - (b) The active denial of such rights to particular individuals or groups, whether through legislated or enforced discrimination;
 - (c) The active support for measures adopted by third parties which are inconsistent with economic, social and cultural rights;
 - (d) The adoption of legislation or policies which are manifestly incompatible with preexisting legal obligations relating to these rights, unless it is done with the purpose and effect of increasing equality and improving the realization of economic, social and cultural rights for the most vulnerable groups;
 - (e) The adoption of any deliberately retrogressive measure that reduces the extent to which any such right is guaranteed;

- (f) The calculated obstruction of, or halt to, the progressive realization of a right protected by the Covenant, unless the State is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or force majeure;
- (g) The reduction or diversion of specific public expenditure, when such reduction or diversion results in the non-enjoyment of such rights and is not accompanied by adequate measures to ensure minimum subsistence rights for everyone.

Violations through acts of omission

15. Violations of economic, social, cultural rights can also occur through the omission or failure of States to take necessary measures stemming from legal obligations. Examples of such violations include:
- (a) The failure to take appropriate steps as required under the Covenant;
 - (b) The failure to reform or repeal legislation which is manifestly inconsistent with an obligation of the Covenant;
 - (c) The failure to enforce legislation or put into effect policies designed to implement provisions of the Covenant;
 - (d) The failure to regulate activities of individuals or groups so as to prevent them from violating economic, social and cultural rights;
 - (e) The failure to utilize the maximum of available resources towards the full realization of the Covenant;
 - (f) The failure to monitor the realization of economic, social and cultural rights, including the development and application of criteria and indicators for assessing compliance;
 - (g) The failure to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfilment of a right guaranteed by the Covenant;
 - (h) The failure to implement without delay a right which it is required by the Covenant to provide immediately;
 - (i) The failure to meet a generally accepted international minimum standard of achievement, which is within its powers to meet;
 - (j) The failure of a State to take into account its international legal obligations in the field of economic, social and cultural rights when entering into bilateral or multilateral agreements with other States, international organizations or multinational corporations.

III - RESPONSIBILITY FOR VIOLATIONS

State responsibility

16. The violations referred to in section II are in principle imputable to the State within whose jurisdiction they occur. As a consequence, the State responsible must establish mechanisms to correct such violations, including monitoring investigation, prosecution, and remedies for victims.

Alien domination or occupation

17. Under circumstances of alien domination, deprivations of economic, social and cultural rights may be imputable to the conduct of the State exercising effective control over the territory in question. This is true under conditions of colonialism, other forms of alien domination and military occupation. The dominating or occupying power bears responsibility for violations of economic, social and cultural rights. There are also circumstances in which States acting in concert violate economic, social and cultural rights.

Acts by non-State entities

18. The obligation to protect includes the State's responsibility to ensure that private entities or individuals, including transnational corporations over which they exercise jurisdiction, do not deprive individuals of their economic, social and cultural rights. States are responsible for violations of economic, social and cultural rights that result from their failure to exercise due diligence in controlling the behaviour of such non-State actors.

Acts by international organizations

19. The obligations of States to protect economic, social and cultural rights extend also to their participation in international organizations, where they act collectively. It is particularly important for States to use their influence to ensure that violations do not result from the programmes and policies of the organizations of which they are members. It is crucial for the elimination of violations of economic, social and cultural rights for international organizations, including international financial institutions, to correct their policies and practices so that they do not result in deprivation of economic, social and cultural rights. Member States of such organizations, individually or through the governing bodies, as well as the secretariat and nongovernmental organizations should encourage and generalize the trend of several such organizations to revise their policies and programmes to take into account issues of economic, social and cultural

rights, especially when these policies and programmes are implemented in countries that lack the resources to resist the pressure brought by international institutions on their decision-making affecting economic, social and cultural rights.

IV - VICTIMS OF VIOLATIONS

Individuals and groups

20. As is the case with civil and political rights, both individuals and groups can be victims of violations of economic, social and cultural rights. Certain groups suffer disproportionate harm in this respect such as lower-income groups, women, indigenous and tribal peoples, occupied populations, asylum seekers, refugees and internally displaced persons, minorities, the elderly, children, landless peasants, persons with disabilities and the homeless.

Criminal sanctions

21. Victims of violations of economic, social and cultural rights should not face criminal sanctions purely because of their status as victims, for example, through laws criminalizing persons for being homeless. Nor should anyone be penalized for claiming their economic, social and cultural rights.

V - REMEDIES AND OTHER RESPONSES TO VIOLATIONS

Access to remedies

22. Any person or group who is a victim of a violation of an economic, social or cultural right should have access to effective judicial or other appropriate remedies at both national and international levels.

Adequate reparation

23. All victims of violations of economic, social and cultural rights are entitled to adequate reparation, which may take the form of restitution, compensation, rehabilitation and satisfaction or guarantees of non-repetition.

No official sanctioning of violations

24. National judicial and other organs must ensure that any pronouncements they may make do not result in the official sanctioning of a violation of an international obligation of the State concerned. At a minimum, national judiciaries should consider the relevant provisions of international and regional human rights law as an interpretative aide in formulating any decisions relating to violations of economic, social and cultural rights.

National institutions

25. Promotional and monitoring bodies such as national ombudsman institutions and human rights commissions, should address violations of economic, social and cultural rights as vigorously as they address violations of civil and political rights.

Domestic application of international instruments

26. The direct incorporation or application of international instruments recognizing economic, social and cultural rights within the domestic legal order can significantly enhance the scope and effectiveness of remedial measures and should be encouraged in all cases.

Impunity

27. States should develop effective measures to preclude the possibility of impunity of any violation of economic, social and cultural rights and to ensure that no person who may be responsible for violations of such rights has immunity from liability for their actions.

Role of the legal professions

28. In order to achieve effective judicial and other remedies for victims of violations of economic, social and cultural rights, lawyers, judges, adjudicators, bar associations and the legal community generally should pay far greater attention to these violations in the exercise of their professions, as recommended by the International Commission of Jurists in the Bangalore Declaration and Plan of Action of 1995.

Special rapporteurs

29. In order to further strengthen international mechanisms with respect to preventing, early warning, monitoring and redressing violations of

economic, social and cultural rights, the UN Commission on Human Rights should appoint thematic Special Rapporteurs in this field.

New standards

30. In order to further clarify the contents of States obligations to respect, protect and fulfil economic, social and cultural rights, States and appropriate international bodies should actively pursue the adoption of new standards on specific economic, social and cultural rights, in particular the right to work, to food, to housing and to health.

Optional protocols

31. The optional protocol providing for individual and group complaints in relation to the rights recognized in the Covenant should be adopted and ratified without delay. The proposed optional protocol to the Convention on the Elimination of All Forms of Discrimination Against Women should ensure that equal attention is paid to violations of economic, social and cultural rights. In addition, consideration should be given to the drafting of an optional complaints procedure under the Convention on the Rights of the Child.

Documenting and monitoring

32. Documenting and monitoring violations of economic, social and cultural rights should be carried out by all relevant actors, including NGOs, national governments and international organizations. It is indispensable that the relevant international organizations provide the support necessary for the implementation of international instruments in this field. The mandate of the United Nations High Commissioner for Human Rights includes the promotion of economic, social and cultural rights and it is essential that effective steps be taken urgently and that adequate staff and financial resources be devoted to this objective. Specialized agencies and other international organizations working in the economic and social spheres should also place appropriate emphasis upon economic, social and cultural rights as rights and, where they do not already do so, should contribute to efforts to respond to violations of these rights.

1 UNDP, Human Development Report 1996, para 29.

- 2 The relevant Limburg Principles are the following:
 70. A failure by a State party to comply with an obligation contained in the Covenant is, under international law, a violation of the Covenant.
 71. In determining what amounts to a failure to comply, it must be borne in mind that the Covenant affords to a State party a margin of discretion in selecting the means for carrying out its objects, and that factors beyond its reasonable control may adversely affect its capacity to implement particular rights.
 72. A State party will be in violation of the Covenant, *inter alia*, if:
 - it fails to take a step which it is required to take by the Covenant;
 - it fails to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfilment of a right;
 - it fails to implement without delay a right which it is required by the Covenant to provide immediately;
 - it wilfully fails to meet a generally accepted international minimum standard of achievement, which is within its powers to meet;
 - it applies a limitation to a right recognized in the Covenant other than in accordance with the Covenant;
 - it deliberately retards or halts the progressive realization of a right, unless it is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or force majeure;
 - it fails to submit reports as required under the Covenant.
 73. In accordance with international law each State party to the Covenant has the right to express the view that another State party is not complying with its obligations under the Covenant and to bring this to the attention of that State party. Any dispute that may thus arise shall be settled in accordance with the relevant rules of international law relating to the peaceful settlement of disputes.
- 3 See Committee on Economic, Social and Cultural Rights, General Comment No. 3, (Fifth session, 1990), UN doc. E/1991/23, Annex III para. 10.

Bangalore Declaration & Plan of Action

I. BANGALORE DECLARATION

Conference in Bangalore

1. Between 23-25 October 1995, the International Commission of Jurists (ICJ), in conjunction with the Commission's triennial meeting, convened in Bangalore, India, a conference on economic, social and cultural rights and the role of lawyers.
2. The Conference was inaugurated by the Chief Justice of India (The Honourable A.M. Ahmadi) and the Minister of State for External Affairs (The Honourable S. Kurseed, MP).
3. The Conference recalled the long-standing commitment of the ICJ to the indivisibility of human rights - economic, social, cultural, civil and political. That commitment has been evidenced over the years by the Declaration of Delhi 1959, the Law of Lagos 1961, the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights 1986, and the paper for the World Summit on Social Development 1995, amongst many other ICJ activities concerned with the promotion and protection of human rights for the attainment of the Rule of Law.

Reaffirming the Limburg Principles

4. The Conference reaffirmed the Limburg Principles. It considered regional perspectives on the realisation of economic, social and cultural rights. It examined the means of monitoring the attainment of such rights, including the observance of States' obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR). It considered the issues relating to the implementation and justiciability of those rights. It reviewed the steps which might be taken to achieve global endorsement of ICESCR in a way which promoted, at once, universal ratification of the Covenant and its genuine application as an influence upon the conduct of States and others.

The Conference reflected upon the need for an Optional Protocol to the ICESCR, to provide an individual and group complaint procedure similar to the First Optional Protocol to the International Covenant on 'Civil and Political Rights (ICCPR). This would provide a complaints mechanism to permit international monitoring of complaints of departures from the rights expressed in the ICESCR. In this regard, the Conference considered the several drafts for such a Protocol, including the 1994 draft prepared by the Chairperson of the Committee on Economic, Social and Cultural Rights, the 1994 draft for CEDAW prepared in Maastricht and the 1995 draft

prepared by a group of experts in Utrecht. The advantages of the several drafts were studied.

The role and responsibility of international financial institutions, in the promotion and protection of economic, social, and cultural rights were recognised. The recent concern about issues of economic, social and cultural rights on the part of the World Bank was welcomed.

5. The participants in the Conference reminded themselves that, in the words of the Limburg Principles :
 - Economic, social and cultural rights are an integral part of international human rights law;
 - The ICESCR is part of the International Bill of Rights;
 - As human rights and fundamental freedoms are indivisible and interdependent, equal attention and urgent consideration should be given to the implementation, promotion and protection of economic, social and cultural rights as well as civil and political rights;
 - The achievement of economic, social and cultural rights may be realised in a variety of political settings. There is no single road to their full attainment;
 - Non-Governmental Organizations (NGOs), all sectors of society, Specialised Agencies and officers of the United Nations and individuals have an important part to play, in addition to the role of governments in attaining economic, social and cultural rights to their full measure.
 - Trends in international and economic relations should be taken into account in assessing the efforts of the international community, to achieve the objectives of the ICESCR.
6. In particular, the participants noted that since the Limburg Principles were adopted, the centrally planned economies in a number of countries of Central and Eastern Europe and of Asia have collapsed. The economic arrangements of many countries had altered in ways which were then unpredictable.
7. The Conference recalled that the 1993 World Conference on Human Rights in Vienna had reaffirmed the universality, interdependence and indivisibility of economic, social, cultural, civil and political rights and stressed the need for elaborating an Optional Protocol to the ICESCR aimed at establishing an international complaints system to monitor States compliance with their obligations in this field. By stressing both the human Right to Development and the importance of all human rights in achieving the goal of sustainable development, the Vienna Declaration and

Programme of Action made an important contribution to linking the human rights discourse with development.

8. The Conference recalled the reaffirmation by the United Nations World Summit on Social Development Copenhagen, 1995, of the universality, indivisibility, interdependence, and inter-relation of all human rights, including the right to development of people such that human rights, whether economic, social and cultural or civil and political, are a legitimate concern of the international community. The participants also recalled that the Copenhagen Summit's Final Declaration encouraged the ratification and implementation by States of the ICESCR.
9. The Conference called attention to the acute disadvantages of women in the areas of economic, social and cultural rights and to the need for taking steps to overcome obstacles facing women's full realisation of those rights. Jurists should co-operate with women and grass-roots organisations to formulate concrete measures to protect and promote economic, social and cultural rights of women, bearing in mind the Platform for Action adopted by the 1995 United Nations World Conference on Women held in Beijing.
10. Consideration was given to the extent, variety, and sometimes apparent incompatibility of reservations entered by States' at the time of ratifying the ICESCR and other relevant treaties. The need for the development of a procedure for reviewing reservations or limiting their duration was discussed and supported. The Conference was reminded of the general principles of the law of treaties limiting the operation of incompatible reservations and of a recent general comment of the Committee on Human Rights that such reservations would be disregarded as inconsistent with the act of ratification.

Jurists' Doubts and Neglect

11. Much time was devoted, as befitted a Conference of jurists, to examining the extent to which and means by which, in domestic jurisdiction the human rights recognised in ICESCR and other relevant international instruments are, or may become, justiciable. The Conference sought to analyse the reasons, often myths, why jurists had been less involved in the pursuit of the attainment of economic, social and cultural rights. Amongst other reasons, the participants identified and considered, the beliefs of some jurists that:
 - Economic, social and cultural rights are not really rights of a legally enforceable kind;
 - Such rights are variable in content, altering over time and resistant to precise legal enforcement;

- Such rights, however important, are not really the specific domain of lawyers;
 - Such rights, for their attainment typically involve large expenditures of money and other resources the determination of which should better be left to government which is, or should be, accountable to the people rather than to the courts whose members may have neither expertise nor the information with which to make decisions having a large economic or social significance;
 - Whilst realisation of civil and political rights have clear economic costs, the attainment of the "right to work", "right to housing" and other economic, social and cultural rights is much more likely to involve large issues of social and political policy in which lawyers have a role to play as politicians and citizens but much lesser role to play as legal professionals. Several participants warned against the tendency of the law, its institutions and professionals, to overstretch their proper function and expertise and to "legalise" issues which are more properly decided in a context, and according to considerations, larger than typically found in courts of law.
12. The Conference acknowledged the foregoing concerns and opinions which, amongst others, help to explain the reluctance of jurists to become directly concerned in the realisation of economic, social and cultural rights by means of the techniques of the law and using the courts and other instruments of legal practice. The widespread ignorance of the ICESCR, not only amongst judges and lawyers but also amongst governments and in the community was a matter of concern.

The Conference however,

- reaffirmed the fact that economic, social and cultural rights are an essential part of the global mosaic of human rights;
- noted the important role of lawyers and judges in countries, such as India, in applying and judicially enforcing economic, social and cultural rights in the context of the right to life, fair trial, equality before the law, equal protection of the law and other civil and political rights;
- resolved that jurists in the future should play a greater part in the realisation of such rights, than they have in the past, without in any way diminishing the vital work of lawyers in the attainment of civil and political rights;
- affirmed that the realisation of economic, social and cultural rights is often of wider application and more pressing urgency, affecting every day, as such rights do, all members of society. For lawyers to exclude

themselves from a proper and constructive role in the realisation of such rights would be to deny themselves a function in a vital area of human rights;

The task of the Conference was, therefore, one of defining those activities in support of the realisation of these rights in which lawyers qua lawyers might have a legitimate and constructive function and to promote within the judiciary and the legal profession, in every land, a realisation of the opportunities and obligations which fall to lawyers in this regard.

13. The Conference affirmed that impunity of perpetrators of grave and systematic violations of economic, social and cultural rights, including corruption by State officials is an obstacle to the enjoyment of economic, social and cultural rights which must be combated.
14. An independent Judiciary is indispensable to the effective implementation of economic, social and cultural rights. Whilst the judiciary is not the only means of securing the realisation of such rights, the existence of an independent judiciary is an essential requirement for the effective involvement of jurists in the enforcement, by law, of such rights, given that they are often sensitive, controversial and such as to require the balancing of competing and conflicting interests and values. The Conference accordingly recalled existing principles such as the Bangalore Principles on the Domestic Application of International Human Rights Norms and urged that it be promoted at a universal level, with particular emphasis on economic, social and cultural rights.

Follow-up to the Conference

15. The participants resolved to request the ICJ to publish and disseminate the proceedings of the Conference and to ensure that the papers and the record of the reflections of the participants be widely distributed and publicised. The aim should be to enlarge awareness amongst jurists throughout the world of their proper and legitimate functions in promoting and securing the attainment of the economic, social and cultural rights which belong to humanity. The record of the Conference will reflect the sense of urgency and sometimes of professional failure and indifference, which has often marked, in the past, the response of lawyers to this area of human rights.
16. The Conference also recommended that the ICJ publish and disseminate for widespread discussion and action, some of the suggestions which were made during the Conference. Other such suggestions appear in the papers and record of the Conference. Together, such proposals constitute the Bangalore Plan of Action for the better attainment of economic, social and cultural rights in every land. To that end, all agreed that the Plan of Action which

follows should be placed before jurists everywhere as a contribution to further reflection upon the role which they can play in the attainment of such rights. Jurists have a vital role in such attainment as stated in the United Nations Basic Principles on the Role of Lawyers. Lack of involvement of jurists in the realisation of more than half of the field of human rights, vital to humanity, is no longer acceptable.

II - PLAN OF ACTION

At the International Level

17. The following actions for the full realisation of economic, social and cultural rights at an international level should be adopted :
 - 17.1. The ICJ and other international and national human rights NGOs, should embark upon fresh action to attain universal ratification of the ICESCR.
 - 17.2. Specific pressure should be applied to obtain more ratifications by countries in the Asia Pacific and other regions where ratifications of treaties are few. It should be supplemented by renewed consideration of the establishment of effective regional or sub-regional mechanisms for dealing with complaints about derogation from fundamental human rights (including economic, social and cultural rights);
 - 17.3. Renewed efforts should be directed towards the adoption of an Optional Protocol to the ICESCR. The ICJ should take a leading role and ensure that such a Protocol is adopted without further delay;
 - 17.4. The ICJ and other international human rights organisations should redouble their efforts to monitor and report upon departures in the realisation of economic, social and cultural rights. Where necessary, such NGOs should consider issuing alternative reports, to supplement the reports of Members States under the ICESCR. They should also create awareness in the communities affected about the Governments' reports to the Committee so as to stimulate the political, legal and other action necessary to redress wrongs;
 - 17.5. Treaty bodies of the United Nations need to develop mechanisms to allow NGOs to contribute and assist in their work. Pending such institutional reforms, NGOs should be imaginative and innovative to assist Treaty bodies even where not granted consultative or observer status.

- 17.6. NGOs should develop a strategy for drawing attention to defaults in reporting under the relevant treaties including by use of the national and international media;
- 17.7. The Inspection panel created by the World Bank should be supported to carry out its mandate effectively. Complaints and suggestions for the better attainment of the principles of the ICESCR should be made to the Panel by NGOs and jurists.
- 17.8. The attainment of economic, social and cultural rights in the international context in relation to other international initiatives requires a number of steps. Accordingly the ICJ and the NGO community should urgently develop steps to:
 - (i) monitor progressive compliance of State obligations under the ICESCR, and examine critically the spending of resources devoted to arms purchases and debt repayment;
 - (ii) ensure control of the international trade in arms and the huge burden of military expenditures;
 - (iii) control and redress corruption and offshore placement of corruptly obtained funds;
 - (iv) achieve an increase in the empowerment of women, including by general education and in particular by promoting the reproductive rights of women;
 - (v) bring about the reform of agricultural policies of certain developed countries arising from the uneconomic subsidisation of local agricultural production to the exclusion of markets for agricultural producers in developing countries; and
 - (vi) improve and make more efficient the functioning of the regional systems and bodies with respect to the attainment of economic, social and cultural rights.

At the National Level

18. The following action, amongst others should be taken at a national level:-
 - 18.1. An increase in the sensitisation of judges, lawyers, government officials and all those concerned with legal institutions as to the terms and objectives of the ICESCR, its mechanism, other relevant treaties and the vital importance for individuals of these aspects of human rights as well as the legitimate role of jurists in attaining them. Universities, law colleges, judicial training courses and the general media also have a responsibility to promote greater awareness of such

rights and their legal content; they should therefore be encouraged to assume this responsibility.

- 18.2. Specifying those aspects of economic, social and cultural rights which are more readily susceptible to legal enforcement requires legal skills and imagination. It is necessary to define legal obligations with precision, to define clearly what constitutes a violation; to specify the conditions to be taken as to complaints; to develop strategies for dealing with abuses or failures and to provide legal vehicles, in appropriate cases, for securing the attainment of the objectives deemed desirable;
- 18.3. Amongst specific actions to be taken where appropriate, the following were endorsed :
 - 18.3.1 Reform of constitutional provisions, where necessary, to incorporate references to economic, social and cultural rights.
 - 18.3.2 Revision of other municipal law to state in precise and justiciable terms, economic, social and cultural rights in a way susceptible to legal enforcement;
 - 18.3.3 Reform of the law of standing and encouragement of public interest litigation (such as has occurred in India) by test cases, to further and stimulate the political process into attention to economic, social and cultural rights and to afford priority to the hearing of such cases.
 - 18.3.4 Establishment and enhancement of the functions and powers of the Ombudsman or of specialised Ombudsmen, to provide accessible and independent agencies for receiving complaints against government and others concerning departures from the obligations to ensure the attainment of economic, social and cultural rights.
- 18.4. The growth and sustenance of an independent judiciary should be encouraged. Steps should be taken to ensure the continuous sensitisation of the judiciary on their role in promoting and protecting these rights.
- 18.5. Other steps necessary to ensure real progress in the attainment of these ends, include :
 - 18.5.1 The adoption of effective means of independent public legal aid and like assistance in appropriate cases;
 - 18.5.2 The provision by Bar Associations and Law Societies of pro bono services and the enlargement of their agendas in the field of human rights to involve the services of their members in this regard;

- 18.5.3 Empowerment of disadvantaged groups, including women, minorities, indigenous peoples and others lacking legal experience and confidence in the legal system, to encourage them to come forward to claim and secure their rights and the need for court procedure, to adapt to these ends;
- 18.5.4 Judges should apply domestically international human rights norms in the field of economic, social, and cultural rights. Where there is ambiguity in a local constitution or statute or an apparent gap in the law, or inconsistency with international standards, judges, should resolve the ambiguity or inconsistency or fill the gap by reference to the jurisprudence of international human rights bodies. Renewed efforts should be made, including by the ICJ, to promote the existing principles such as the Bangalore Principles, on the universal level with particular emphasis on economic, social and cultural rights.

Action by Individuals

19. Jurists as individuals should take the following action :

- 19.1 Action within Bar Associations and Law Societies to add a focus upon economic, social and cultural rights to their agenda for the attainment of human rights in full measure;
- 19.2 As legislators, community leaders and as citizens to enlarge governmental and community knowledge about, and understanding of, social, economic and cultural rights, so that the obligations of the ICESCR and other relevant treaties will become better known; and
- 19.3 Use by jurists, in addition to the courts and tribunals, of other independent organs such as the Ombudsman, independent Human Rights Commissions, as well as national, regional and international bodies to promote the attainment of the standards of relevant treaties. In States in which such institutions have not been established, jurists should promote their establishment. Jurists should work closely with the institutions of civil society to help promote and attain the objectives of the ICESCR and other relevant treaties in full measure.

*Adopted in Bangalore,
India, 25 October 1995.*

President

Michael D. Kirby, AC, CMG

Judge, High Court of Australia

Vice - Presidents

Dalmo de Abreu Dallari
Enoch Dumbutshena
Desmond Fernando

Lennart Groll
Ewa Letowska

Claire l'Heureux-Dubé

Professor of Law, São Paulo, Brazil
Former Chief Justice of Zimbabwe
Barrister; former President, International Bar Association, Sri Lanka
Former Judge, Stockholm Court of Appeal, Sweden
Professor, Institute of Juridical Sciences, Polish Academy of Sciences, Poland
Judge of the Supreme Court of Canada

Members of the Executive Committee

Fali S. Nariman, India (Chairman)
Vera V. de Melo Duarte Martins
Diego García-Sayán
Lord Goodhart, Q.C.
Asma Khader
Kofi Kumado
Theo C. van Boven

Advocate; former Solicitor-General of India
Judge at the Supreme Court, Cape Verde
Executive Director, Andean Commission of Jurists, Peru
Member, House of Lords, United Kingdom
Advocate, Jordan
Professor of Law, University of Ghana
Professor of Law, Maastricht University, Netherlands

Members of the Commission

Mohammed Bedjaoui
Antonio Cassese

Arthur Chaskalson
Lord Cooke of Thorndon

Marie José Crespín
Dato' Param Kumaraswamy

Ruth Gavison

Gladys V. Li, Q.C.
Daniel Henri Marchand
J.R.W.S. Mawalla
Florence N. Mumba
Zambia
Adnan Buyung Nasution
Pedro Nikken

Manfred Nowak

Elisabeth Odio Benito

Bertrand G. Ramcharan

Margarita Retuerto Buades
Hipólito Solari Yrigoyen

László Sólyom
Daniel Thürer
Yozo Yokota

José Zalaquett, Chile

Judge, President International Court of Justice, Algeria
Judge, President, International Tribunal for the former Yugoslavia, Italy
Judge, President Constitutional Court of the Republic of South Africa
Privy Councillor; former President of the Court of Appeal, New Zealand
Member of the Constitutional Council, Senegal
Advocate; UN Special Rapporteur on the Independence of Judges, Jurors and Lawyers, Malaysia
Professor of Law, Hebrew University, Jerusalem; President, Association for Civil Liberties, Israel
Former Deputy High Court Judge, Hong Kong
Professor of Social Law, France
Advocate at the High Court, Tanzania
Judge at the International Tribunal for the former Yugoslavia,

Advocate; former Member of Parliament, Indonesia
Former Judge at the Interamerican Court of Human Rights; Professor of international law, Venezuela
Professor of Public Administration; Expert for the UN Working Group on Enforced Disappearances, Austria
Judge at the International Tribunal for the former Yugoslavia, Costa Rica
UN Coordinator, Regional, Political & Security Cooperation; Adjunct Professor, Columbia University School of International Affairs (New York), Guyana
First Deputy Ombudsman, Spain
Former Senator; President of the Organization New Human Rights, Argentina
Judge, President Constitutional Court of the Republic of Hungary
Professor of International Law, Switzerland
Professor of Law; Member of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Japan
Advocate; Professor of Law, Chile

Honorary Members

Arturo A. Alafritz, Philippines
Boutros Boutros-Ghali, Egypt
William J. Butler, United States of America
Haim H. Cohn, Israel
Alfredo Etcheberry, Chile
Jean Flavien Lalive, Switzerland
Tai-Young Lee, Republic of Korea
P. Telford Georges, Bahamas
Hans-Heinrich Jescheck, Germany
P.J.G. Kapteyn, Netherlands

Rudolf Machacek, Austria
Norman S. Marsh, United Kingdom
Keba Mbaye, Senegal
Sir Shridath S. Ramphal, Guyana
Joaquín Ruiz-Giménez, Spain
Lord Shawcross, United Kingdom
Tun Mohamed Suffian, Malaysia
Christian Tomuschat, Germany
Michael A. Triantafyllides, Cyprus

Secretary-General

Adama Dieng

The International Commission of Jurists (ICJ), headquartered in Geneva, is a non-governmental organization in consultative status with the United Nations Economic and Social Council, UNESCO, the Council of Europe and the OAU. Founded in 1952, its task is to defend the Rule of Law throughout the world and to work towards the full observance of the provisions in the Universal Declaration of Human Rights.



International Commission of Jurists

P.O. Box 216

81 A, avenue de Châtelaine

CH-1219 – Châtelaine/Geneva

Switzerland

Tel (41 22) 979 38 00 - fax (41 22) 979 38 01

email: info@icj.org