

MASTER



Development and the Rule of Law

**Prevention Versus Cure
as a Human Rights Strategy**

by Philip Alston

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DEVELOPMENT AND THE RULE OF LAW :
PREVENTION VERSUS CURE AS A HUMAN RIGHTS STRATEGY

by

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Introduction

Until very recently the pursuit of human rights objectives has been undertaken in relative isolation from the massive efforts which have been devoted to the elusive quest for development. The loss has been twofold. On the one hand human rights initiatives have foundered because they have sought to treat the symptoms of repression without paying adequate regard to the deeper structural problems which gave rise to the symptoms in the first place. In many instances these problems are rooted in underdevelopment or maldevelopment. On the other hand development programmes have made only very limited headway, due in large part to their overriding preoccupation with growth in macro-economic terms and their consequent neglect of the human factor. Even today the vast majority of economists and development planners look upon human rights issues as extraneous and largely irrelevant matters, the consideration of which can only hinder efficiency and provoke political controversy.

Since 1977, United Nations human rights organs have been engaged in a major effort to relate their specific concerns to a range of broader structural issues and to bring human rights endeavours closer to the mainstream of international social and economic concerns. Over the same period the International Commission of Jurists, in cooperation with other bodies, has organized a series of regional or sub-regional seminars around the broad theme

of human rights and development. Seminars have been held in Dar-es-Salaam (1976), Barbados (1977), Dakar (1978), and Bogota (1979), and others are planned.

The present paper is designed to provide an overview of some of the main development issues with which the international human rights community has been attempting to grapple in recent years. While the treatment provided is by no means comprehensive, an effort has been made to describe as well as provide an objective assessment of progress to date in this field.

P A R T I

Redressing the Curative Imbalance in the UN's Approach to
Human Rights : The Past and Future Role of Lawyers

Lawyers, with all their professional predilections, specialist experience and limitations, and disciplinary and other biases, have played a central role in determining the shape and parameters of the existing approach to human rights within the United Nations as well as in most of the major regional organizations. The role of philosophers, social scientists and exponents of other disciplines has been largely peripheral, although not entirely irrelevant, in the processes of drafting international instruments, shaping institutional policy approaches and supervising compliance with international standards. These processes have thus carried the strong imprint of the legal profession which, by virtue of its training and nature, has a tendency to be blind to the structures which support or even cause the problems with which they are dealing ^{1/}. In some respects it may be argued that such structure blindness is appropriate and that it is simply a sociological way of describing the traditional mandate of lawyers to work on a case-by-case basis and to apply the law as it is rather than as they think it should be.

However, even at the national level, this narrow conception of the lawyer's role is becoming less and less

in accord with reality as is illustrated by the increasingly important contribution of both permanent and ad hoc law reform commissions. Such bodies serve not only to expedite the process of translating social developments into legal form but also to provoke discussion and analysis within both the legal profession and the community at large of pressing social issues. At the international level such a conception is even less appropriate in view of the fact that law and politics are even more closely intermeshed than they are at the national level. Internationally, lawyers frequently exercise quasi-legislative and executive functions as well as their more traditional functions of advisers and legislative draftsmen. Thus, for example, the major characteristic which distinguishes the Commission on Human Rights from other bodies such as the Commission on Social Development and even its parent body, the Economic and Social Council, is that its deliberations are to a very large extent based upon specific international legal standards. Its distinctive contribution is that it purports to approach different issues within a framework consecrated by international law. While in practice the political factor (as opposed to the legal or human one) all too often predominates, the overall work and the specific resolutions and decisions of the Commission on Human Rights are generally clothed in the garb of international law, although some of the garments used are clearly more transparent and fashion-conscious than is appropriate for such wardrobes.

The four phases of UN human rights action

The extent to which international lawyers in the human rights field have left their distinctive mark is best illustrated by a review of the four broad phases through which United Nations action (and inaction) in the field of human rights has passed. Writing in 1975, one scholar ^{2/}discerned the first three of these to have been: (1) the phase of standard-setting (1945 - 55); (2) the phase of promotion (1955 - 65); and (3) the phase of protection (1965 - 75). Since 1977 a fourth phase, embodying a structural approach, has emerged.

The development of the first phase was a process in which international lawyers were instrumental. In a relatively short period of time the UN achieved a great deal, including the adoption of the Universal Declaration of Human Rights (1948), the completion of the major part of the drafting of the two Human Rights Covenants (1955), the adoption of Conventions on the Prevention and Punishment of the Crime of Genocide (1948), the Status of Refugees (1951), the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949), the International Right of Correction (1952), the Political Rights of Women (1952), and the Status of Stateless Persons (1954), and the adoption of the Standard Minimum Rules for the Treatment of Prisoners (1955). Since 1955 this legal drafting work has continued at a sometimes impressive pace, with efforts

currently being devoted to drafting conventions on the rights of the child, and the rights of minorities, and conventions against torture, and religious and other forms of intolerance. In stark contrast to this impressive feat of standard-setting the UN, during both its first and second phases, was unable or unwilling to devise any procedure whatsoever for responding to the thousands of complaints ('communications') and pleas for help in human rights matters which it acknowledged receiving every year.

In the second phase of UN action, involving an emphasis on the 'promotion' of human rights, some of the shortcomings of an unduly legalistic approach were recognized and remedies were sought. During this stage : a system of periodic reports on "developments and the progress achieved ... in the field of human rights, and measures taken to safeguard human liberty" was instituted; a programme of advisory services, consisting of the provision of expert advice, the holding of seminars and training courses, and the awarding of fellowships, was established; and a variety of studies was undertaken, mainly by rapporteurs, and particularly in the field of non-discrimination. According to one observer, "a great deal of time and energy was invested in these promotional activities, but generally speaking they failed to grasp the interest and the imagination of the UN membership and of the public at large. Moreover, they were too far removed from the main political currents in the world organization. The human rights programme was functioning in isolation, and it

seemed to lack the political relevance and impetus which is needed for dynamic evolution" ^{3/}.

However, the response to these problems was only partially effective. In its third phase the UN became concerned with international protection or, in effect, with responding to gross violations of human rights. It was a natural transition for lawyers to move from law-making to enforcement. They had been ill equipped to deal with 'promotion' in its broadest sense and were in any event constrained by the reluctance of governments to tackle the complex and far-reaching problems of promotion. By contrast, responding to violations involved legal and political issues of interpreting and applying the provisions of the UN Charter and relevant human rights instruments and the devising of formal legal procedures all of which tasks lent themselves to a legalistic approach.

During this third phase, the Commission adopted more of a selective criminological approach and prescribed various measures which were alternately designed to punish, to deter or, less often, to reform. In an area characterized by enormous governmental sensitivity and wariness lest precedents be set, significant breakthroughs have been achieved in recent years both as regards general procedures for more prompt and effective action to combat specific violations and as regards individual 'problem' States. Nevertheless, the UN's response has been somewhat haphazard and there is

some justification for criticism of the substantial discrepancies which exist in the type and extent of action taken in different but comparable cases. By contrast to the preference of many such critics, however, the need is not to soften (or abandon) the approach taken to date in particular instances but rather to work to make the overall level of response more comprehensive, balanced and, above all, effective. In this endeavour the central role to be played by the application of traditional legal skills is self-evident.

While the task of adequately responding to gross violations is a particularly important and pressing one, it constitutes only one facet of the overall challenge of promoting and protecting human rights. The third phase of UN action saw relatively few efforts to enhance the ability of potential victims, primarily the poor, to resist their oppressors, to promote economic, social and cultural rights as full-fledged human rights, or to create structural conditions which are simply less conducive to human rights violations. The transition from standard-setting to protection took the UN from one extreme to the other along the spectrum of approaches to human rights implementation. The second or promotional phase was one in which the actors were ill at ease and the efforts undertaken were accordingly weak and poorly defined and directed. Moreover, most of the 'promotional' measures taken were not of an essentially preventive nature. Above all, they did not, in general,

address the wider economic and social issues that were of paramount concern to the Third World which was, by 1974, relentlessly pursuing in other fora its demands for a new international economic order.

The fourth, or 'structural' phase of UN action has its origins in a growing awareness that it is at least as important to identify and seek to remove structural obstacles that lie at the root of many an injustice as it is to deal with their symptoms in the form of particular violations. Thus the removal of inequities, such as those which deny the right of individuals and nations to participate in making decisions which affect them and which have in many instances become entrenched features of national and international society, holds out a better long-term prospect of enabling individuals and collectivities to ensure respect for their own rights. In many respects such an approach amounts to emphasizing a preventive rather than a curative strategy for improving enjoyment of human rights.

The seeds of this structural phase were sown at the International Conference on Human Rights held in Teheran in 1968. The harvest, however, was minuscule until 1977 when the Commission on Human Rights initiated its deliberations on the concept of the right to development and the General Assembly extended its NIEO work into the human rights field by adopting resolution 32/130. The right to development is dealt with later in this paper but it is important at this

point to note the provisions of resolution 32/130 which has since served as the springboard for a variety of initiatives designed to change very substantially, for better or worse, the nature and direction of UN action in the human rights field.

General Assembly Resolution 32/130

The eight "concepts" which the first paragraph of the resolution provides should be taken into account in the approach to the future work within the United Nations system which with respect to human rights questions are delicately balanced propositions which represent much more than a mere consolidation of previously agreed principles. In some respects the list is as significant for the concepts that it excludes as for those which it includes. For these reasons it is inadvisable to try to condense or summarize the concepts, which are as follows :

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

(b) "The full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible; the achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development", as recognized by the Proclamation of Teheran of 1968;

(c) All human rights and fundamental freedoms of the human person and of peoples are inalienable;

(d) Consequently, human rights questions should be examined globally, taking into account both the overall context of the various societies in which they present themselves, as well as the need for the promotion of the full dignity of the human person and the development and well-being of the society;

(e) In approaching human rights questions within the United Nations system, the international community should accord, or continue to accord, priority to the search for solutions to the mass and flagrant violations of human rights of peoples and persons affected by situations such as those resulting from apartheid, from all forms of racial discrimination, from colonialism, from foreign domination and occupation, from aggression and threats against national sovereignty, national unity and territorial integrity, as well as from the refusal to recognize the fundamental rights of peoples to self-determination and of every nation to the exercise of full sovereignty over its wealth and natural resources;

(f) The realization of the new international economic order is an essential element for the effective promotion of human rights and fundamental freedoms and should also be accorded priority;

(g) It is of paramount importance for the promotion of human rights and fundamental freedoms that Member States undertake specific obligations through accession to or ratification of international instruments in this field; consequently, the standard-setting work within the United Nations system in the field of human rights and the universal acceptance and implementation of the relevant international instruments

should be encouraged;

(h) The experience and contribution of both developed and developing countries should be taken into account by all organs of the United Nations system in their work related to human rights and fundamental freedoms.

Other commentators have analysed these provisions from different perspectives and it is not proposed to add yet another interpretation of a resolution, the significance of which is still evolving in the practice of UN organs. Suffice it to say in the present context that :

(i) the resolution reaffirmed the theoretical indivisibility of the two sets of rights while at the same time seeking to place substantially more emphasis than in the past on economic, social and cultural rights;

(ii) while its omissions seem to play down the priority to be accorded to responding to situations which do not involve "mass and flagrant violations", its provisions clearly do respond more specifically than had previously been the case to the plight of the masses of humanity living in absolute poverty; and

(iii) certain provisions (notably sub-paragraphs (d) and (h) go a long way towards countering suggestions that UN human rights standards are per se eurocentric and thus not appropriate for much of the world.

The Contribution of the International Commission of Jurists

The need to adopt a balanced preventive approach has long been acknowledged in the work of the ICJ in connexion with the development of the principle of the Rule of Law. Moreover, two ICJ-sponsored seminars, held in 1976 and 1977, contributed significantly to an understanding of some of the concerns which were subsequently to surface within the UN in the context of resolution 32/130. It is appropriate at this point to briefly review the broad thrust of these two seminars and to underline the preventive orientation to which they pointed. The results of two subsequent ICJ seminars on the theme of human rights and development, held in Dakar and Bogota, are considered later in this paper.

Seminar on Human Rights in a One-party State 4/

The first seminar, held in Dar-es-Salaam in September 1976, was devoted to the issue of "human rights in a one-party state". The participants came from Sudan, Tanzania and Zambia, all proclaimed one-party states, as well as from Botswana, Lesotho and Swaziland. At its April 1977 meeting the International Commission of Jurists reviewed the findings of the seminar and adopted the following conclusions :

The Commission was of the view that there were dangers of abuse of power inherent in one-party systems which were less likely to arise if there existed an effective multi-party system. Human rights could, however, be endangered by ineffective attempts to duplicate multi-party systems without due regard to cultural traditions

and the historical development of particular countries.

The Commission was pleased to note the real concern shown by all delegates at the seminar that the rule of law and human rights should be preserved in the countries from which they had come and agreed that the achievement of this goal would be facilitated if the following principles propounded at the seminar were actually observed :

1. Electoral freedom of choice is essential to any democratic form of society. The party should guarantee genuine popular choice among alternative candidates.
2. Everyone should be free to join the party or to abstain from party membership or membership in any other organization without penalty or deprivation of his or her civil rights.
3. The party must maintain effective channels of popular criticism, review, and consultation. The party must be responsive to the people and make it clear to them that this is party policy.
4. In a one-party state it is particularly important that
 - (a) the policy-forming bodies of the party utilize all sources of information and advice, and
 - (b) that within the party members should be completely free to discuss all aspects of party policy.
5. The independence of the judiciary in the exercise of its judicial functions and its security of tenure is essential to any society which has a respect for the rule of the law. Members of the judiciary at all levels should be free to dispense impartial justice, without fear, in conformity with the rule of law.
6. The independence of the legal profession being essential to the administration of justice, the duty of lawyers to be ready to represent fearlessly any client, however unpopular, should be understood

- guaranteed. They should enjoy complete immunity for actions taken within the law in defence of their clients.
7. Facilities for speedy legal redress of grievances against administrative action in both party and government should be readily available to the individual.
 8. The absence of an opposition makes it essential to provide mechanisms for continuous, impartial, and independent review and investigation of administrative activities and procedures. In this respect such institutions as the ombudsman and médiateur with powers to initiate action can be usefully adopted.
 9. In a one-party state, criticism and freedom of access to information should be permitted and encouraged.
 10. The right to organize special interest associations such as trade unions, professional, social, religious or other organizations, should be encouraged and protected. Such organizations should be free to affiliate or not with established political parties.
 11. All members of the so-iety must be made aware of their human rights to ensure their effective exercise, and for that reason education in human rights at all levels should be a matter of high priority. In particular, officials of the party and government should be made to understand the limits on the exercise of power which derive from the recognition of fundamental human rights and the rule of law.

In a Preface to the report of the Dar-es-Salaam seminar the Commonwealth Secretary-General, Shridath Ramphal, emphasized the importance of appropriate structures for the promotion of human rights. He noted that "there must be a consciousness in

developing world of the need and capacity to accommodate these rights ... in the new political structures. If not, it will become all too easy to acquiesce in their denial as an incident of valid structural change".

Seminar on Human Rights and Development 5/

The second seminar, organized together with the Organization of Commonwealth Caribbean Bar Associations, was held in Barbados in September 1977. In his introduction to the report of the seminar, entitled Human Rights and Development, the ICJ Secretary-General, Niall MacDermot, indicated that it was one of a proposed series of ICJ regional or sub-regional seminars designed to "study how best to promote human rights in the context of the current structures and problems of neighbouring countries having perhaps a similar background and history and common features in their societies". In its final conclusions and recommendations the Barbados seminar, inter alia, affirmed that all fundamental rights and freedoms are whole and inseparable and stressed that the effective realization of economic, social and cultural rights is necessary for the full attainment of civil and political rights. Perhaps more significant in the present context is the fact that the seminar virtually predicted the orientation to be adopted by the UN General Assembly in resolution 32/130 when it recognized in its conclusions "that the full realization of the economic and social rights of the peoples of the region,

while primarily dependent on the action of individual governments, will also require radical transformation of international economic and social relations in accordance with the United Nations' Declaration and Programme of Action on the Establishment of the New International Economic Order and Charter of the Economic Rights and Duties of States".

Prospects and Pitfalls of Structuralism

The major advantages of a structural approach appeal to be threefold. First it offers the opportunity to tackle human rights problems on a far broader basis by emphasizing the relevance of human rights to a wide range of previously neglected issues and by facilitating the taking of preventive action before massive problems arise. Secondly, it reflects a number of the changes which have taken place in the international community since the adoption of the Universal Declaration in 1948 and makes possible, but does not ensure, a more effective response to the pressing problems facing the bulk of humanity. Thirdly, it offers the possibility of forging a more effective consensus among the various geopolitical and ideological blocs, thereby improving the prospects for a degree of genuine international cooperation in the pursuit of certain human rights goals. Thus a structural approach, if pursued hand-in-hand with a greater determination to respond effectively and promptly to human rights violations wherever they occur, can be viewed as a potentially major breakthrough. However, it is still too early yet to predict

whether or not such a balanced approach will in fact prevail within the UN. Thus, for example, relatively little progress appears to have been made by the Commission on Human Rights under its confidential procedures (notably under Economic and Social Council resolution 1503 of 1970) for responding to "situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights". More rewarding, perhaps, have been the Commission's activities in connexion with its public consideration of human rights violations. In this regard its actions with respect to Equatorial Guinea, the Central African Empire and Uganda are of particular significance and are noted in Part IV of the present paper.

In addition to, if not always complementary to, these efforts to secure the protection of human rights, a number of important structurally-oriented initiatives have been taken in recent years, including : the initiation of steps towards the codification of the right to development; endorsement of the notion that there exists a right to peace or the right for societies to live in peace; discussion of the concept of a third generation of solidarity rights, and the preparation of studies on subjects such as : the new international economic order and the promotion of human rights; the impact of present international conditions on the realization of human rights; the adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to colonial and racist régimes in Southern Africa; the

impact of foreign economic aid and assistance on respect for human rights in Chile; and the human rights impact of the declaration of states of emergency.

Of the potential pitfalls of the structural approach, two in particular warrant attention. The first is the temptation to pursue it only in connexion with international or 'external' structures, thereby neglecting the equally important dimension of equitable domestic structures which are conducive to the realization of human rights. While the General Assembly has, on two occasions, affirmed that the right to development "is as much a prerogative of nations as of individuals within nations" the elaboration of the structural approach by UN human rights organs has yet to be linked specifically to domestic structural issues such as : the militarization of many societies; the pursuit of economic elitism as a purported remedy for inflation; repression of the participatory rights of individuals and economic and social interest groups; the forced assimilation or cultural destruction of indigenous populations and minority groups; and the maintenance of structures which effectively prevent the realization by large numbers of people of their rights to food, clothing, shelter and health care.

The second potential danger is that the structural approach will become identified with a sweepingly broad, non-legal, economically or sociologically-oriented approach. Its impact then would be to downplay the importance of other,

specifically legal, approaches to human rights issues, to move the focus of UN human rights activities away from specifics towards global economic problems, and generally "to disappear into the clouds of a universality that leaves the larger world stranded far below". There is a touch of irony in the fact that, on the one hand an unduly legalistic approach gave rise to the need for a radical departure from existing approaches to the promotion of human rights, while on the other hand the adoption of a preventive approach to human rights serves to emphasize the need not to lose sight of the firm legal foundations of the modern concept of human rights. For without constant reference to the various legal standards that have been painstakingly negotiated, adopted and ratified, we are no further along the road to human dignity that were our ancestors when they theorized about different versions of natural law notions which often reflected little more than abstractions of specific community-bound moral standards.

Future Directions

The emergence of a structural approach to the promotion of respect for human rights has far-reaching implications for the nature and direction of the activities of many groups in the human rights field whether they be non-governmental, governmental or inter-governmental. For those whose primary role is to respond post facto to specific violations of human rights, the emergence of a structural approach is unlikely

to make a great difference. The work of such groups is of enormous value in individual cases and provides an essential complement to the undertaking of initiatives of a structural nature.

However, it is to be regretted that in practice, work focused on specific violations is too often restricted to civil and political rights and even then is directed only at a limited number of those rights rather than at the broader structural rights of political participation. Until this focus is enlarged the experience of many groups is likely to be one of continuing frustration, interspersed by short-lived, even spectacular, successes, but with a limited impact on the overall human rights situation in the longer term. The pursuit of a structurally-oriented approach entails recognition of the reality that human rights problems do not arise in a vacuum and that lasting solutions must be sought through a variety of measures extending across the spectrum of societal activities. The fact is that most torturers are not psychopaths but, in addition to being victims of their own greed and weakness are instruments of more powerful economic and political forces. Similarly, those whose actions contribute most to the perpetuation of starvation and malnutrition are rarely acting with the express intention of violating the rights of others to food but rather are acting in accordance with inequitable and exploitative social, economic and political structures.

It is of course useful for human rights groups to seek to combat such practice wherever possible but the achievement of more comprehensive, longer term, solutions also requires them to reach out and to seek to foster awareness of human rights issues among a wide range of groups which lie outside their more traditional spheres of influence and action. Until programmes of human rights education are promoted at all levels, until economists, planners and government officials become convinced of the inherent worth of promoting human rights objectives and until religious, development, and other specialist NGO groups are persuaded of the value of promoting respect for human rights in the context of their own activities, many of the efforts made to protect human rights will continue to touch only indirectly, if at all, the wellsprings from which flow the conditions conducive to human rights violations.

FOOTNOTES

Notes to Part I

- 1/ See Johan Galtung, Is the Legal Perspective Structure-Blind ? Oslo, Working Paper of Chair in Conflict and Peace Research, 1977.
- 2/ Jean-Bernard Marie, La Commission des droits de l'homme de l'ONU (Paris, Pédone, 1975).
- 3/ T.C. van Boven, "The United Nations and Human Rights : A Critical Appraisal", Bulletin of Peace Proposals, Vol. 8, 1977, p. 201.
- 4/ Human Rights in a One-Party State, International Seminar on Human Rights, their Protection and the Rule of Law in a One-Party State, convened by the ICJ (London, Search Press, 1978).
- 5/ Human Rights and Development, Report of a Seminar on Human Rights and their Promotion in the Caribbean, organized by the ICJ and the Organization of Commonwealth Caribbean Bar Associations (Bridgetown, The Cedar Press, 1978).
- 6/ This formulation was subsequently adopted as Article 1 of both the International Human Rights Covenants.

P A R T II

The relationship between the two sets of rights: civil and political rights, and economic, social and cultural rights

U doctrine on this crucial issue is simple and straightforward: "all human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights". But the practical issues flowing from this doctrine are complex, and ambiguous and inevitably involve conflicting means and goals. Moreover the present practice of the vast majority of states is shewed strongly in favour of one set of rights at the expense of the other. For these reasons there are, as Richard Claude has written, "few problems as difficult to manage satisfactorily in philosophical discourse and legal analysis as that of rights in conflict with other rights".

These many issues of theory and practice warrant much more intensive consideration than they have so far been accorded either within or outside the UN system. In the present brief paper it is proposed only to deal with the historical origins of the dichotomy and the differences between the obligations assumed under each of the two International Covenants and then to offer a rather cryptic critique of the received wisdom on the relationship between the two sets of rights in the hope of stimulating further analysis based on a reconsideration of traditional approaches.

Origins of the dichotomy

Soon after the adoption of the Universal Declaration, in 1948, the question arose as to whether the proposed single Covenant on Human Rights should include economic, social and cultural rights, in addition to civil and political rights.

The United States and the United Kingdom were opposed to the inclusion of the former category of rights on the basis that they were inappropriate for judicial enforcement and went beyond the rights contained in existing national constitutions. For entirely different reasons this approach was supported by the largest of the UN's specialized agencies, the International Labour Organisation (ILO). The latter's Governing Body originally expressed the view that economic and social rights should be excluded on the basis that responsibility for their implementation rested primarily with the agencies. The ILO was concerned that any more detailed elaboration, in a general Covenant, of the rights included in the Universal Declaration would inevitably involve overlapping with existing and proposed International Labour Conventions. Once this position became untenable the ILO changed its stance and it played a central role in the drafting of the economic rights provisions. After prolonged debate in the General Assembly it was finally decided, in 1952, to include both categories of rights but to draft two separate covenants. The Commission on Human Rights concluded its work on the drafting of the two covenants in 1954. However, it was not until 1966 that they were adopted by the General Assembly and opened for signature, accession and ratification by states ⁽¹⁾.

Obligations assumed under each Covenant

Each of the Covenants imposes a different legal obligation on ratifying states. A state which becomes a party to the International Covenant on Civil and Political Rights (CPR) is under an immediate obligation to comply with its provisions. It undertakes "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant ...". By comparison, a state party to the International Covenant on Economic, Social and Cultural Rights (ESCR) "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 recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures".

It is also relevant to note the extent to which limitations on human rights are permitted under the terms of each Covenant. The only limitations to which the rights included in the ESCR Covenant may be subjected are those which:

- (i) are determined by law;
- (ii) are compatible with the nature of these rights; and
- (iii) are solely for the purpose of promoting the general welfare in a democratic society.

Under the CPR Covenant, States Parties may only take measures derogating from their obligations

- (i) in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed;
 - (ii) provided that such measures are not inconsistent with their other obligations under international law;
 - (iii) do not involve discrimination based solely on the ground of race, colour, sex, language, religion or social origin.
- (art. 4(1))

It should be noted, however, that under article 4(2) this provision does not permit any derogation from articles 6 (right to life), 7 (right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment), 8(1) and (2) (right not to be held in slavery or servitude), 11 (right not to be imprisoned merely on the grounds of inability to fulfil a contractual obligation), 15 (right not to be convicted under a retrospective law), 16 (right to recognition everywhere as a person before the law) and 18 (right to freedom of thought, conscience and religion). In addition, the CPR Covenant permits restrictions to be placed on the exercise of certain rights in particular circumstances ⁽²⁾. Thus, for example, no restrictions may be placed on the exercise of the right of peaceful assembly "other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order

(ordre public), the protection of public health or morals or the protection of the rights and freedoms of others" (art. 21).

A critique of the received wisdom

The received wisdom concerning the relationship between the two sets of rights goes something like this.

- (1) Historically, human rights norms emerged in two phases. The first, brought about as a result of the French and American revolutions of the late eighteenth century, produced the concept of civil and political rights. The second was a result of the Mexican and Russian revolutions of the early twentieth century and introduced the notion of economic, social and cultural rights. The differences between the two sets of rights are enormous and are reflected in the following propositions:
- (2) whereas ESCR requires positive state action for their realization, CPR require only abstention by the state;
- (3) whereas CPR can therefore be fully implemented immediately the promotion of ESCR depends entirely on the stage of economic development which a particular state has attained;
- (4) whereas the context of CPR is clear, the content of the obligations assumed under the ESCR Covenant are vague and indeterminate;
- (5) whereas CPR are readily enforceable through the courts ESCR are, with only very minor exceptions, not justiciable; and
- (6) the completely different implementation procedures provided for under the two Covenants attests to the totally different nature of the obligations assumed by states.
- (7) In general terms then it can be said that ESCR are in fact co-terminous with the broad aspiration to development itself.
- (8) In an effort to give immediate effect to human rights

guarantees in so far as they relate to the many millions living in absolute poverty it is therefore necessary to give priority to a small core of subsistence or welfare rights.

(9) The notion of the interdependence of rights, along with many of the actual rights formulated in UN instruments, are in fact eurocentric and both the notion and some of the rights are inappropriate to the conditions in many developing countries.

In seeking to refute the main thrust of each of the foregoing nine propositions in the space of a few paragraphs it is inevitable that full justice will not be done either to the arguments of their proponents or to the grounds for refutation. Thus the following analysis is designed to provoke thought rather than to present an authoritative revision of the accepted wisdom

(1) Historical development

Relating the two sets of rights to specific historical events is useful for purposes of illustrating some of the forces which supported the emergence of different rights. It is, however, totally inadequate in historical terms since it fails to take account of: the philosophical development of natural law and rights concepts dating at least from Aristotle; the influence of many other historical events including for example the Magna Carta, the industrial revolution, and a diversity of socialist movements; and tends to observe the dynamic nature of rights theory which is much more in the nature of a continuum than an isolated number of dramatic leaps forward.

(2) Abstention versus action

This proposition reflects the historical approach to particular rights rather than present day realities. Thus, in today's world, ensuring the free exercise of civil and political rights will often involve significant State intervention and the incurring of considerable public expenditure in order

to establish a system of courts, to train police and other public officials, and to establish a system of safeguards against potential abuses of rights by state officials themselves. Conversely, it is relatively easy to make the case that abstention by the state from certain activities would greatly enhance the prospects for realization of some ESCR such as the right to food and the right to cultural identity.

(3) Immediate versus progressive

The implementation of ESCR depends far more, in practice, on the type of development strategy adopted rather than on the stage of economic development achieved. While there is, of course, some validity in the general proposition it requires very careful qualification. For example, a country with a relatively high GNP per capita and thus at an advanced stage of economic development, but which persists in a growth-at-all-costs approach, will not satisfy the ESCR of the poorer segments of the community.

(4) Precision versus vagueness

First of all, some CPR are far from precise. Thus the right to participate can either be interpreted in a formalistic way which renders it devoid of all significance or it can be given an expansive interpretation which requires appropriate action on a broad range of fronts. Secondly, some ESCR can be given precision although it is true (and regrettable) that few efforts have yet been made in this regard. Moreover, in particular circumstances, it is often not difficult to give specific content to ESCR guarantees. As the President of the Inter-American Commission on Human Rights, Tom Farer has noted, "there is neither a moral nor practical difference between a government executing innocent people or one which tolerates their death by sickness or starvation when it has the means to obtain the food or health care that could save them".

(5) Justiciability

Contrary to the arguments of some commentators, it is submitted that justiciability, in the full traditional sense, is not an indispensable characteristic of human rights. Moreover, a number of ESCR have, in fact, already been made justiciable in certain legal systems.

(6) Implementation procedures

While the procedures for implementation are substantially different, this of itself does not diminish the nature of states' obligations to their citizens. It is, however, to be regretted that very little serious effort has been made by the international community to establish a meaningful framework for monitoring states compliance with their obligations under the ESCR Covenant.

(7) Development and ESCR are co-terminous

"Development" is much more than having enough food to eat and water to drink. Any 'progressive' interpretation of the term must include CPR such as the right to association and to participation. Moreover, as noted in point 8 below the right to food etc. is unlikely to be enjoyed on any sustained basis without political power, protected by respect for political rights.

(8) Subsistence or welfare rights

From time to time attempts are made to mobilize international and national action by emphasizing the urgency of at least satisfying 'subsistence', 'existence', 'welfare' or 'absolutely basic' rights. As a device for stimulating action in general terms such an approach has much to offer. As a specific policy it is dangerous and perhaps counter-productive. Even in the event emergencies, food and other aid for those stricken is frequently siphoned off by powerful elites and

used for their own purposes. Examples of such action abound. In times of calm and relative stability such aid is siphoned off or diverted even more readily unless it is accompanied by measures of a structural nature. Attempts to fight poverty by attacking the most obvious symptoms but not the underlying causes are in vain. An attack on poverty in its broadest sense thus requires more than the injection of funds which will bring all individuals up to subsistence level in terms of specific commodities. Poverty reflects a relationship between people and between socio-economic groups. Thus, the objective must be seen not merely in terms of feeding, clothing and sheltering each individual today and perhaps tomorrow, but in terms of an endeavour to enable all people to ensure their own well-being in the years to come.

(9) Eurocentricity

While this is a complex issue it is submitted that the argument has more validity in relation to the means of implementation which are sometimes proposed than to the rights themselves. The following views of a former Senator from the Philippines are of considerable relevance to the broader issue:

"Two justifications for authoritarianism in Asian developing countries are currently fashionable.

One is that Asian societies are authoritarian and paternalistic and so need governments that are also authoritarian and paternalistic; that Asia's hungry masses are too concerned with providing their families with food, clothing, and shelter, to concern themselves with civil liberties and political freedoms; that the Asian conception of freedom differs from that of the West; that, in short, Asians are not fit for democracy.

Another is that developing countries must sacrifice freedom temporarily to achieve the rapid economic development that their exploding populations and rising expectations demand; that, in short, government must be authoritarian to promote development.

The first justification is racist nonsense. The second is a lie: authoritarianism is not needed for developing; it is needed to perpetuate the status quo.

Development is not just providing people with adequate food, clothing, and shelter; many prisons do as much. Development is also people deciding what food, clothing and shelter are adequate, and how they are to be provided." (3)

In conclusion three points may be noted. The first is that both in practice and in theory there is a degree of conflict between the two sets of rights (4). The management of such conflict requires a careful balancing of interests in the light of all prevailing circumstances. Thus attempts to formulate universally applicable solutions to conflict situations are generally doomed to failure. The second is that the concept of ESCR and its implications is at present poorly understood and much work needs to be done if a better appreciation of that set of rights and its relationship to CPR is to emerge in the near future. The third is that many, if not most, of the hard and fast distinctions which are made between one set of rights and the other are of dubious validity or usefulness.

FOOTNOTES

Notes to Part II

- (1) For the drafting history see generally UN doc. A/2929 (1955)
- (2) See Articles 12, 14(1), 18(3), 19(3), 21 and 22(2).
- (3) Jose W. Diokno, untitled lecture, International Council of Amnesty International, Cambridge, September 21, 1978, pp. 11-12, mimeo.
- (4) A useful survey of such conflicts is contained in Robert H. Kapp, "Some Preliminary views on the Relationship between Civil and Political Rights and Economic, Social and Cultural Rights in the Context of Development, and on the Right to Development", Geneva, International Commission of Jurists, 1978, mimeo, 21 p.

P A R T I I I

Participation in the development process

Few rights serve to demonstrate better the indivisibility and interdependence of economic and political rights than the right to participate. Popular participation in the context of economic and social development has been defined in a UN report as "active and meaningful involvement of the masses of people at the different levels in (a) the decision-making process for the determination of societal goals and the allocation of resources to achieve them; and (b) the voluntary execution of resulting programmes and projects" ⁽¹⁾. By way of illustration, participation as an essential element of a basic needs approach to development has been said to contribute in the following ways:

- (i) by playing a part in the definition of basic needs;
- (ii) by enhancing the generation of resources to meet basic needs;
- (iii) by improving the distribution of goods and services; and
- (iv) by satisfying the psychological desire to participate in decisions which affect peoples lives ⁽²⁾.

In recent years a considerable amount of effort has been devoted to defining and elaborating concepts of participation, while rather less work has been done on the concrete issues that are involved in operationalizing the concept. It is a fact that traditional development strategies have either ignored the need for popular participation in decision-making or have heavily discounted it in practice. This is a function both of the inconvenience of involving local populations in the planning process and of the belief of many development planners and officials that their client populations are neither able to diagnose their own problems nor to formulate the corresponding needs.

The link between human rights and participation has long been recognized. As Fromm has written:

"The only criterion for the realization of freedom is whether or not the individual actively participates in determining his life and that of society, and this not only by the formal act of voting but in his daily activity, in his work and in his relations to others".

This link was also given prominence in the report of the ILO Director General to the World Employment Conference:

"A basic-needs oriented policy implies the participation of the people in making the decisions which affect them. ... The satisfaction of an absolute level of basic needs as so defined should be placed within a broader framework - namely the fulfilment of basic human rights, which are not only ends in themselves but also contribute to the attainment of other goals" (3).

In the same vein, the Unesco General Conference in 1980 recognized that participation should be "regarded both as a human right and as a means for the exercise of human rights" (4).

These two dimensions are best illustrated by a brief review of the provisions of the International Human Rights Covenants. As a human right, per se, participation is acknowledged in the International Covenant on Civil and Political Rights in the form of guarantees of the rights to freedom of thought, conscience and religion (art. 18), to hold opinions (art. 19(1)), to freedom of expression (art. 19(2)), to peaceful assembly (art. 21), to freedom of association (art. 22) and, most significantly, "to take part in the conduct of public affairs, directly or through freely chosen representatives" and "to vote and to be elected at genuine periodic elections" which freely express the will of the electors (art. 25). In the International Covenant on Economic, Social and Cultural Rights the right to participate is included per se in the right to education (in art. 13(1) States "agree that education shall

enable all persons to participate effectively in a free society") and in the rights to take part in cultural life and to enjoy the benefits of scientific progress (art. 15).

As a means for the exercise of human rights participation is of fundamental importance. It is possible to demonstrate a strong and direct link between participation and the enjoyment of almost any particular right. For example, unless an individual in an agricultural society is able to participate effectively in the shaping of the structures which govern the production, processing and distribution of food within his local community he is unlikely to be assured of the realization of his right to food. Thus participation is an economic as much as a social and political right.

The relationship between the suppression of political participation and the non-realization of economic and social rights was recognized by the Inter-American Commission on Human Rights in its 1980 report. The approach adopted by the Commission is a significant departure from its previous practice and is worth quoting at length, particularly in view of the prevailing situation in many Latin American states, and the use which is made of the problem of terrorism.

"When examining the situation of human rights in the various countries, the Commission has had to establish the organic relationship between the violation of the rights to physical safety on the one hand, and neglect of economic and social rights and suppression of political participation, on the other. That relationship, as has been shown, is in large measure one of cause and effect. In other words, neglect of economic and social rights, especially when political participation has been suppressed, produces the kind of social polarization that then leads to acts of terrorism by and against the government.

The right to political participation leaves room for a wide variety of forms of government; there are many consti-

tutional alternatives as regards the degree of centralization of the powers of the state or the election and attributes of the organs responsible for the exercise of those powers. However, a democratic framework is an essential element for establishment of a political society where human values can be fully realized. The right to political participation makes possible the right to organize parties and political associations, which through open discussion and ideological struggle, can improve the social level and economic circumstances of the masses and prevent a monopoly on power by any one group or individual. At the same time it can be said that democracy is a unifying link among the nations of this hemisphere" (5).

Since the present paper cannot even pretend to deal adequately with the many issues of interpretation and application to which the concept of participation gives rise, it is proposed to develop two further points. The first relates to the superfluosness of participation under benign dictatorship and the second to participation and the rule of law.

Participation and benign dictators

In discussions about participation, reference is often made, explicitly or implicitly, to the possibility of having a truly benign dictator who acts constantly in the best interests of his people, but who brooks no opposition to his quest for equity. In such circumstances the right to participate, at least in its political dimension, is clearly the first right to suffer. Nevertheless, it is sometimes suggested that such a situation might not be "all that bad". But in practice the image of a benevolent dictator is a false one, for three major reasons. The first is illustrated by the application of Lord Acton's dictum that power corrupts and absolute power corrupts absolutely. Thus, even enlightened dictators soon become unenlightened. The second is that the right to participate cannot be suppressed in isolation - its

effective suppression inevitably requires the violation of a range of other rights as well. The third is that even the most enlightened dictator cannot guarantee that the minimum subsistence rights of each individual are ensured.

Participation and the Rule of Law

There is a strong correlation between participation and effective enjoyment of the Rule of Law. In the absence of the right to participate in the formulation of laws and in the design and administration of structures to implement them, the Rule of Law becomes, at least in practice if not in terms of pure theory, a fraudulent concept. The classic example of this is the South African system in which the Rule of Law is vigorously promoted but is at the same time used to preserve and strengthen the structures which are directly responsible for the denial of the rights of the majority of the population, which plays no part either in the framing of the laws or in the choice of legal structures. While South Africa is an extreme example, the point deserves to be emphasized in general terms because of the potential dangers in any field in which the dominance of experts or professionals, be they lawyers, economists or others, reduces participatory mechanisms to the level of mere formalities. The challenge then for jurists is to devise means by which to ensure that laws and legal procedures reflect and facilitate full and effective participation by all those affected.

F O O T N O T E S

Notes to Part III

- (1) Popular Participation in Decision-Making for Development
(UN Sales No. E.75.IV.10 (1975)) p. 4
- (2) Donald Curtis et al, Popular Participation in Decision-Making and the Basic Needs Approach to Development: Methods, Issues and Experiences, WEP Working Paper
(WEP 2-32/WP 12) (Geneva, ILO, 1978) p. 1
- (3) ILO, Employment, Growth and Basic Needs: A One-World Problem (Geneva, ILO, 1976) p. 32
- (4) Resolution 3/01.3, para. (e) (1980)
- (5) OAS doc. OEA/Ser. G, CP/doc. 1110/80 (1980), p. 142

P A R T IV

Agrarian reform, labour legislation and legal resources for the rural and urban poor

In recent years the central importance of agrarian reform for the solution of problems of landlessness, poverty and unemployment has gained growing recognition. The present paper does not attempt to provide an outline of recent initiatives in this field. Rather the nature and scope of some of the issues is illustrated by reference to the principal conclusions and recommendations of the 1979 seminar on Human Rights in the Rural Areas of the Andes Region which was sponsored by the International Commission of Jurists and the Latin American Council for Law and Development.

The seminar addressed six major themes (1).

(1) Agrarian reform

Agrarian reform as a goal has been abandoned throughout the Andean region. Peasants and indians are being openly deprived of their lands, while their organisations and trade unions face a system of repression.

Agrarian reform should include not only a change in the pattern of land tenure, but also technical assistance, credit and basic services. It should be accompanied by freedom of association and allow for peasant participation in the discussion and implementation of land reform policies.

It was concluded that full observance of human rights in rural areas would be achieved only following the structural transformation of Andean societies.

(2) Labour legislation and trade union rights

The relatively progressive labour laws in effect within the Andean region are not being implemented by governments. This is an effect of the restrictions imposed by the socio-economic system on popular peasant movements. Until the 1960's, any organising effort met with repression. Peasant movements were first recognized when an attempt at social reform was made in the 1960's. After a few years, increasingly authoritarian regimes - both civilian and military - reversed the reformist trend and crushed campesinos organisations. The goal of economic growth has replaced social policies. Land-owners and employers are using the armed forces to preserve the structures of social and political privilege.

If rural labour unions deviate from the apolitical, conformist line accepted by governments, they are accused of political subversion. Trade unions should defend the rights of all rural workers, including migrants, occasional and seasonal workers. ILO conventions on the right of association, the right to organise, on collective bargaining and rural workers organisations (conventions 11, 87, 98 and 141) are purposely not ratified or otherwise violated.

(3) Rights of indigenous populations

The right of indigenous populations to their ancestral lands is not protected. There is no freedom of association for indigenous groups. Indian leaders are victims of abuse and repression. Forced integration into "western" or "national" societies is destroying indigenous cultures. Education does not reflect the actual interests and needs of indigenous populations. The right to health is not guaranteed. Social security is insufficient and subject to political manipulation. Indigenous medicine is not recognized and sometimes it is even forcibly suppressed.

Religious institutions are having an increasingly negative influence on the way of life of indigenous groups, sometimes with the aid or support of governments. The exploitation of natural resources in tropical forests is destroying the environment where indigenous populations live and work. The respect for human rights depends on the capacity of indigenous peoples to fight for their rights and on their effective participation in the political process.

(4) Agricultural and economic policies

Agricultural policies are part of global development strategies that work against the interests of peasants. These strategies involve an increasing restriction of human rights in the region.

Current agricultural policies contain these elements:

- concentration of land ownership, with the result that the problem of access to the land for peasants has not been solved;
- absence of a food production policy, caused in part by the emphasis placed on crops for export or for industrial use;
- increasing presence of multinational corporations;
- unjust allocation of productive resources in the rural areas;
- lack of participation by peasants in agricultural policies;
- violent infringement of human rights in the rural areas.

The seminar recommended that:

- access to the land be guaranteed;
- priority be given to food crops;
- a fair prices policy for food crops should be adopted;

- freedom of association and other democratic rights should be enforced;
- peasant participation in making agricultural policy should be assured.

(5) Agrarian justice and access to legal services

The seminar stressed the importance of an autonomous system of agrarian courts to protect actively the rights of peasants in agrarian conflicts. The reversal of agrarian reform policies has resulted in limitations on the autonomy of agrarian judges and obstructive tactics in cases filed to protect peasants' rights.

The legal forum is not the only one where agrarian conflicts are discussed and resolved. Serious conflicts are also resolved through the use of force, political domination or deception. Consequently the creation of effective political and peasant organisations is by far the most urgent and important method of securing peasant rights. Lawyers can, however, make a useful contribution to their struggle by providing them with legal services.

A lawyer's training does not give him an understanding of social conflicts that affect the campesinos, thus making relations with lawyers difficult. Also unethical and disloyal practices on the part of some lawyers have worsened these relations. Access to adequate defence services and the inviolability of defence rights should be supported by effective constitutional guarantees.

(6) Social services in the rural areas

Social security and social services for rural workers are incompatible with national security laws and capitalist economic systems established by force in some countries of the region.

Social services, including housing, health care and education, are generally lacking, or improvised, or subject to political and official manipulation.

F O O T N O T E S

Notes to Part IV

- (1) Derechos Humanos en las Zonas Rurales, Bogota, Sociedad Ediciones Internacionales S.R.L., 1979, 306 p.

P A R T V

Human Rights and the Formulation and Application of
Development Policies

Some brief observations on human rights and development

The assumption that "development" is co-terminous with economic growth as measured in terms of an increase in the gross national product is now too discredited to warrant elaborate refutation. Thus the International Development Strategy adopted by the UN General Assembly in 1980 states that "the ultimate aim of development is the constant improvement of the well-being of the entire population on the basis of its full participation in the process of development and a fair distribution of the benefits therefrom". Nevertheless, it is instructive to briefly review the historical and institutional processes by which the interpretation of "development" moved from macro-economic growth to human development. Within the setting of the UN, human rights and development issues began from the same starting point. Post-war economists were strongly aware of the broader social and cultural implications of their work and were concerned with a range of objectives which was considerably wider than growth per se. Similarly, the human rights activists of the UN manifested a breadth of scope which resulted in the incorporation, on a more or less equal footing, of economic, social, cultural, civil and political rights in the Universal Declaration of Human Rights of 1948. However, this auspicious debut was soon spoilt by the substantial narrowing of these two streams of endeavour, which by the mid-1950s were flowing in parallel courses with one

isolated almost entirely from the other. Growth came to dominate development thinking, and concern with civil and political rights issues came to dominate human rights endeavours. It was not until the late 1970s that tributaries started to flow, albeit hesitantly, from one stream to the other. Today the process of reunification is only just beginning and all too often it is occurring with little appreciation of the communality of interest that should inform and motivate it.

The Trade-off Between Equity and Growth

At the risk of unjustly offending a handful of enlightened economists, it can confidently be stated that the dominant strand of economic thought still assumes, either explicitly or implicitly, that in the short term it is impossible to reconcile the need for growth with the aspiration for equity. Thus the goal of growth is accorded precedence, with the proviso that "full account must be taken" of promoting equity "in the longer term". The problem is that the longer term never eventuates and, in the continuing short term, various elites move to consolidate their power and wealth. There are, nevertheless, encouraging signs that some economists are becoming more sensitive to issues of equity and justice both in terms of these objectives' specific economic impact and of their broader significance as the ultimate goals of development. (Ironically, these signs are now coming at a time when British, American and other national governments are moving rapidly to a position in which the revival of economic growth is an over-

riding priority goal which must, in part, be achieved through large-scale transfers of funds from the poor to the rich).

Many volumes have already been written about the growth versus equity debate. In the present paper it is possible only to point to a few of the approaches that have been put forward. Thus, for example, in one recent attempt to fight economists on their own ground, the following arguments were singled out for refutation from a human rights perspective :^{1/}

1. Economic rights directly, and political rights indirectly, tend to shift resources from more to less well-off members of the community. The less well-off have a higher propensity to consume than do the more well-off individuals. Therefore, shifting resources from the more to the less well-off individuals reduces savings, investment, and aggregate capital accumulation generally in the community. Capital accumulation contributes importantly to economic growth. Therefore, economic and political rights hamper economic growth.
2. Certain social rights must be restricted in order to curb population growth, which is everywhere a great threat to economic development.
3. Electoral pressures force rulers to introduce periodic distortions into the economy, heating it up for the election and cooling it off afterwards. Electoral competition, and political rights more generally, must be curtailed to eliminate such distortions.

4. Resources are diverted from their most productive use in consequence of local pressures on politicians for public works projects in their home constituencies. By curtailing political rights these pressures and the consequent distortions could be eliminated.

5. Labour unrest significantly slows economic growth. Curtailing the freedom of workers to associate through trade unions can therefore reduce economically harmful union agitation.

6. The constant threat of criminal violence introduces uncertainties which discourage investors as well as demoralise workers, thereby reducing labour productivity. Limiting civil liberties can help reduce the crime rate and its economic costs.

7. Political instability discourages foreign investment, which is crucial to a developing economy. Instability can be reduced by curtailing political rights and the competitive democracy their free exercise produces.

A United Nations' report on "aspects of social development in the 1980s", after reviewing some of the data on income distribution and related issues, discerned the following "practical principles" which could guide policy in the present decade :^{2/} (1) Many social injustices, cumulatively oppressive, could be avoided without prejudice to economic efficiency; (2) Experience suggests that many ideals and measures that are consonant with the promotion of greater equity and social justice are also generally favourable to economic efficiency

and expansion; (3) The production and distribution of public services remains an essential instrument to promote more equity, in spite of its as yet limited role in most developing countries; (4) Income inequality differs from country to country, and certainly among developing countries. Each country's circumstances are unique, and social justice, in income distribution as in other areas, can be pursued most effectively in the context of the country's over-all circumstances and priorities; but this is not to say that quite radical changes may not be possible; (5) A growing emphasis is to be expected in lower-income countries on policies seeking to promote equity through economic improvement for broad groups of the population, such as industrial workers and farmers, as opposed to a concern for individual welfare, especially in favour of the weak; (6) There is the ever present danger that economic setbacks can strain beyond breaking point the tensions already found in a society undergoing rapid growth and social change. Ingrained in rapid growth is a potential for undermining social consensus and social cohesion.

Finally, it is appropriate to note the importance of the approach advocated in the World Bank's World Development Report 1980. ^{3/} The Report begins by acknowledging that human development is an end as well as a means of economic progress. While it goes on to state that the solution to poverty in poor countries is economic growth :

"Whether absolute poverty is measured by low income, low life expectancy or illiteracy, there is a strong correlation between the extent of poverty in a country and its GNP per person."

However, the report offers the following qualifications to its growth advocacy. First it concedes that the correlation between the extent of absolute poverty and the level of GNP per person in different countries is far from perfect. Second, looking at changes over time within particular countries, the connection between growth and poverty reduction over periods of a decade or two appears inexact. Third, the report notes that "the connection between economic growth and poverty reduction goes both ways. Few would dispute that the health, education and well-being of the mass of people in industrialized countries are a cause, as well as a result, of national prosperity. Similarly, people who are unskilled and sick make little contribution to a country's economic growth. Development strategies that bypass large numbers of people may not be the most effective way for developing countries to raise their long-run growth rates." The relevant section of the Report concludes by stressing the contribution (over long periods) of social, political and cultural factors to the poverty of particular countries and groups.

The significance of this approach lies more in the source of its advocacy than in its novelty or insight. The World Bank has long been criticized for being oblivious to human rights concerns and has responded mainly by arguing that its Articles of Agreement prevent it from considering the human rights implications of its loan operations. It has, however, left the door open far enough to permit itself to take account of various issues insofar as they have direct economic

consequences. The logical corollary of its human resource development approach is that policies of oppression should

be considered to be clearly incompatible with development programmes. While it would be naive to expect the Bank to openly embrace this corollary, it is to be hoped that its logic might come to receive stronger implicit acknowledgement. At the same time it must be said that the Bank's approach is not primarily, if at all, inspired by the ethical imperative to take account of the human factor or by the legal or normal weight of international human rights standards, but by the fact that its economists are now convinced that economic efficiency can be increased by doing so.

In general terms all that may be concluded from this brief survey is that attempts to produce clear-cut empirical evidence in favour of either a growth or an equity orientation are virtually assured of failure. There are no easy answers and in the last resort it is possible to say only that while each State is free to choose its own path of development, it must do so in full recognition of its human rights obligations.

Development and the Rule of Law

The present paper is primarily devoted to the promotion of human rights, and the role of lawyers therein, at the international level. Yet this emphasis must not be permitted to obscure the fact that in the vast majority of cases international efforts can do no more than complement national

endeavours : (1) by helping to remove some of the external constraints which limit possibilities for, and the scope of, internal reforms; and (2) by presenting an external, and ideally objective, frame of reference against which internal efforts may be judged. The central role of the Rule of Law is noted in the Preamble to the Universal Declaration of Human Rights which states that "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the Rule of Law". As Sir Hersch Lauterpacht wrote in 1950, only two years after the adoption of the Universal Declaration, "preoccupation with the enforcement of the Bill of Rights ought not to conceal the fact that the most effective way of giving reality to it is through the normal activity of national courts and other organs applying the law of the land" ^{4/}. While this prescription is primarily aimed at the enforcement of civil and political rights it can readily be expanded to encompass the implementation of economic, social and cultural rights through national and local institutions. Thus it must be emphasized that, just as true development can only be achieved from within each society, so too can the realization of human rights. No amount of international pressure and no number of international development or other assistance programmes can serve to promote or protect human rights unless the community itself is convinced of their importance and is prepared to assert and defend them. As Julius Nyerere stated in 1962, "The ultimate safeguard of a peoples' rights, the peoples' freedom, and all those things which they value ... is the ethic of the

nation ... The ultimate safeguard is the peoples' ability to say 'no' to the official, the ability to say to him : 'no you cannot do that, that is un-Tanganyikan and we cannot accept it from anybody'." 5/

Nevertheless, international efforts to promote awareness of human rights issues can play an important role in developing people's awareness of their rights and in mobilizing them for action. Thus, in his book on the social bases of obedience and revolt, Barrington Moore surveyed a variety of cases in which people have shown a degree of tolerance in situations of oppression and concluded that "people are evidently inclined to grant legitimacy to anything that is or seems inevitable no matter how painful it may be ... The conquest of this sense of inevitability is essential to the development of politically effective moral outrage. For this to happen, people must perceive and define their situation as the consequence of human injustice : a situation that they need not, cannot and ought not to endure" 6/. Yet the development and expression of this moral outrage is suppressed by constant national and international propogation of theories of economic development which take the view that "transitional" suffering is unavoidable if the goal of "development" is to be achieved. (There is usually a similar psychology involved in the declaration of states of siege or emergency). Thus, international human rights standards, by presenting an objective frame of reference for defining justice versus injustice, can thus serve to stimulate a sense of injustice and the consequent outrage which can lead

people to assert the obligation of others to respect their rights. This role for international standards is strengthened by the process of ratification of instruments by States and the subsequent widespread dissemination of the relevant texts.

In general terms, respect for the Rule of Law in accordance with international human rights standards can play an important role in harnessing the energy and turbulence which is inevitably generated both by emphasis on the need to respect human rights and by a range of development initiatives such as land reform, income redistribution schemes and the promotion of broader popular participation.

The work of the International Commission of Jurists since the early 1950s has recognized the value of this approach, first of all by seeking to define and develop an appreciation of the requirements of the Rule of Law, secondly by relating that concept to the provisions of the major international instruments which lay down the accepted standards for the application of the Rule of Law and the protection of human rights and thirdly, by emphasizing the role of lawyers in promoting respect for the Rule of Law. In this respect, it is appropriate to recall the following principles, relating to "the role of lawyers in a changing world", contained in The Rule of Law and Human Rights : Principles and Definitions ^{7/} :

"1. In a changing and interdependent world, lawyers should give guidance and leadership in the creation of new legal concepts, institutions and techniques to enable man to meet the challenge and the dangers of the times

and to realize the aspirations of all people.

The lawyer today should not content himself with the conduct of his practice and the administration of justice. He 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. He will do this by inspiring and promoting economic development and social justice. The skill and knowledge of lawyers are not to be employed solely for the benefits of clients, but should be regarded as held in trust for society.

2. It is the duty of lawyers in every country, both in the conduct of their practice and in public life, to help ensure the existence of a responsible legislature elected by democratic process and an independent, adequately remunerated judiciary, and to be always vigilant in the protection of civil liberties and human rights.

3. Lawyers should refuse to collaborate with any authority in any action which violates the Rule of Law.

4. Lawyers should be anxiously concerned with the prevalence of poverty, ignorance and inequality in human society and should take a leading part in promoting measures which will help eradicate those evils, for while they continue to exist, civil and political rights cannot of themselves ensure the full dignity of man.

5. Lawyers have a duty to be active in law reform. Especially where public understanding is slight and the knowledge of lawyers is of importance, they should review proposed legislation and present to the appropriate authorities programmes of reform.

6. Lawyers should endeavour to promote knowledge of and to inspire respect for the Rule of Law, and an appreciation by all people of their rights under the law.

....

12. In an interdependent world, the lawyer's responsibilities extend beyond national boundaries. They require his deep concern for peace, and support for the principles of the United Nations and the strengthening and development of international law and organizations ..."

Human Rights and National Development Plans

At the national as much as at the international level the most significant innovation in development planning in the late 1970s was the emphasis placed upon meeting basic needs.

In June 1976 the ILO World Employment Conference proclaimed as a fundamental principle that

"Strategies and national development plans should include explicitly as a priority objective the promotion of employment and the satisfaction of the basic needs of each country's population".

Basic needs were defined as including, first, certain minimum requirements of a family for private consumption : adequate food, shelter and clothing, as well as certain household equipment and furniture; and, second, essential services provided for and by the community at large, such as safe drinking water, sanitation, public transport and health, educational and cultural facilities. "A basic needs-oriented

strategy", the Conference emphasized, "implies the participation of the people in making the decisions which affect them through organizations of their own choice". ^{8/}

A number of the international agencies, including notably the World Bank, also endorsed this general concept. But while different versions of the basic needs approach were proliferating at a fast rate many developing countries began to express concern that the slogan of basic needs was being used : to distract attention from NIEO issues; to play down the importance of promoting economic growth in the Third World; and to facilitate unwarranted and unwelcome interference in the domestic affairs of developing countries. Since these allegations were far from being unfounded, one of the effects of Third World opposition to the concept was to give it a much lower profile internationally.

It is therefore somewhat paradoxical that the international suppression of debate on the basic needs concept was not paralleled at the national level. On the contrary, a survey of recently adopted national development plans indicates that basic needs and/or similar objectives have been accorded consistently high priority. The paradox is well-illustrated by the case of India. In 1978, India indicated to the UN General Assembly that it was "strongly against any attempt to direct the attention of the international community to alternative approaches to development cooperation, such as the basic needs approach". ^{9/} Yet at the same time the Indian

Planning Commission adopted a new Draft Five Year Plan for 1978 - 83 which listed three principal objectives : the removal of unemployment and underemployment; a rise in the standard of living of the poor; and action by the State to meet certain "basic needs" such as drinking water, literacy, elementary education, health care, rural roads, rural housing and minimum services in urban slums. 10/

However, the incorporation of basic needs goals into national development plans does not necessarily amount to the promotion of human rights. In the first place, it is clear that rhetoric embodied in development plans does not per se constitute a serious commitment, let alone ensure the implementation of the stated objectives. Secondly, and more importantly from the present perspective, most basic needs lists are confined in practice to 'material' needs such as food, clothing, shelter and health care. It is true that studies of the concept of basic needs undertaken by UN agencies usually include certain non-material needs, notably participation, but in practice such aspects have been neglected if not entirely ignored. 11/. Thus the espousal of a basic needs goal needs to be complemented by a commitment to the promotion of respect for human rights in the broad sense which extends well beyond the satisfaction of a minimum level of certain economic rights.

As noted in Part I of this paper, such a commitment must take account not only of the need to respond to specific rights violations but of the need to change those structures

which give rise to and perpetuate such violations. This may be exemplified by reference to the right to food which is presently denied to hundreds of millions of people. It is clear that the problem of world hunger derives not from the inadequacy of world food supplies but from the existence of a grossly unequal distribution of purchasing power and control over productive assets, of massive rural and urban unemployment, of discrimination against various minority and indigenous groups, of the failure of land reform programmes, and of international factors which may introduce a variety of distortions and frustrate the achievement of local and national food self-reliance.

Human Rights and International Development Planning

This section is divided into four parts : (1) human rights and international development strategies; (2) human rights and development cooperation; (3) a structural approach to human rights in international relations and, (4) a case study of the preventive approach in action.

(1) Human rights and international development strategies

The major policy instrument in UN development planning has become the strategy for the UN Development Decade. To date three such strategies have been adopted by the UN General Assembly, the last two of which were preceded by prolonged and detailed negotiations. The strategy for the

first development decade (DD1) was adopted in 1961, DD2 in 1970, and DD3 in December 1980 12/.

Prior to the adoption of DD1, a comprehensive report on UN development activities, prepared by the Committee on Programme Appraisals, strongly emphasized the human rights and development link :

"One of the greatest dangers in development policy lies in the tendency to give to the more material aspects of growth an overriding and disproportionate emphasis. The end may be forgotten in preoccupation with the means. Human rights may be submerged, and human beings seen only as instruments of production rather than as free entities for whose welfare and cultural advance the increased production is intended. The recognition of this issue has a profound bearing upon the formulation of the objectives of economic development and the methods employed in attaining them. Even where there is recognition of the fact that the end of all economic development is a social objective, i.e. the growth and well-being of the individual in larger freedom, methods of development may be used which are a denial of basic human rights." 13/

Nevertheless, the strategy for DD1, adopted in the following year, was concerned only with increasing the rate of economic growth in order to expedite 'the economic and social development of the economically less-developed countries'. Apart from a passing preambular reference to the Charter's objective of promoting 'social progress and better standards of life in larger freedom' the strategy made no reference at all to general social objectives, let alone to the promotion of human

rights in the development process. The latter concern was taken care of, symbolically at least, in 1965 when the General Assembly adopted a general resolution recognizing the need to devote special attention, on both the national and international levels, to the promotion of respect for human rights within the context of the Development Decade.

The adoption of the strategy for DD2 was preceded by the International Conference on Human Rights in Teheran in 1968 which, in a resolution of major significance, linked the realization of human rights to "economic development" at the national level and to the "collective responsibility of the international community". ^{14/} In the following year : (a) the Commission on Human Rights adopted a resolution affirming that the universal enjoyment of human rights "depends to a very large degree on the rapid economic and social development of the developing countries" ^{15/}, (b) a Meeting of Experts on Social Policy and Planning, held in Stockholm, produced a lengthy report on the theme that "the economic approach to development analysis and planning had to be integrated with a social approach that was different in nature and would be more relevant to the problems of developing countries in the coming decade" ^{16/}, and (c) the General Assembly proclaimed the Declaration on Social Progress and Development which links human rights and development issues more explicitly and at greater length than any other UN instrument. Article 2 of the Declaration, for example, provides that "social progress and development shall be founded on respect for the dignity and

value of the human person and shall ensure the promotion of human rights and social justice ... " 17/.

Despite this lead-up, the strategy for DD2 did not refer at any point to the concept of human rights although heed was paid to some social development issues by acknowledging the need to "bring about a more equitable distribution of income and wealth for promoting social justice and efficiency of production ... " But such references to social justice and equity were interpreted narrowly to imply a more equitable distribution of goods and services to meet basic human needs. The vagueness of the DD2 strategy in human rights-related spheres stood in sharp contrast to the specific targets for economic growth and financial resource transfers and the statement of policy measures to be taken in the realm of international trade. Promotion of the enjoyment of civil and political human rights remained an extraneous element and, in some respects, the new approach amounted to little more than a grudging technocratic recognition of the effectiveness of broader-based development efforts unhampered by the discontent and non-productivity of the poverty-stricken masses.

During the 1970s, the General Assembly adopted a number of resolutions relating to DD2 and in which note was taken of international obstacles to development including foreign aggression and occupation, apartheid, racial discrimination and colonial and neo-colonial domination. In 1979 a UN report suggested "that promotion of respect for human rights in

general, including the human right to development, should be prominent among the states' objectives of a new international development strategy" 18/. In the following year, the Commission on Human Rights invited the Preparatory Committee for DD33 "to pay due attention to the integration of human rights in the development process" 19/. The suggestion was reiterated by a UN human rights seminar in July 1980 20/.

In development terms, DD3 has been distinguished from DD2 on the grounds that it emphasizes the need for structural change at all levels, whereas DD2 had adopted only a mildly reformist approach. Nevertheless, among its nearly 20'000 words, DD3 does not number the two words "human rights". However, the final seven of the 117 paragraphs dealing with the specific policy measures to be taken, relate to social development.

Thus, neither DD1, nor DD2, nor DD3, contain any specific mention of the concept of human rights.

(2) Human Rights and Development Cooperation

The relationship between development cooperation and human rights has been considered by the principal specialist human rights organs of the UN - the Commission on Human Rights and its Sub-Commission - in three separate contexts. In two of these, relating to the provision of assistance to the white minority government in South Africa and to the

present régime in Chile, the emphasis has been upon the consideration of trade and other economic sanctions. In the third context, the Commission, in the course of discussions on the right to development, placed on record its wariness of the concept of linking trade and human rights.

(i) South Africa

The racial policies of South Africa have been under discussion in the United Nations since 1946, when India complained that South Africa had enacted legislation against South Africans of Indian origin. The broader question of the system apartheid was first discussed by the General Assembly in 1952. Since that time the General Assembly has adopted a large number of resolutions, many of which urge the cessation of all forms of economic collaboration, including trade.

The question of trade with South Africa has been subjected to more detailed scrutiny by the Human Rights Sub-Commission which, in 1974, appointed a Special Rapporteur to prepare a report on "the adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to colonial and racist regimes in Southern Africa". The resulting report thoroughly documents the extent of foreign trade and assistance with South Africa, as well as with Namibia and Southern Rhodesia, and notes the network of repression

by which the policy of apartheid is enforced. The report notes that "far from exerting leverage for changed policies, foreign funds are building up South Africa's Economy so that it will be better able to resist any challenge to apartheid from the international community" and concludes that "a mandatory arms embargo, a complete withdrawal of economic interests and the severing of economic relationships are the minimum pressures required to bring about drastic change" 21/.

(ii) Chile

In the overall context of UN action in response to the gross violations of human rights in Chile which followed the overthrow of the Allende government in 1973 no explicit reference was made by either the Commission on Human Rights or the General Assembly to the question of cutting off trade or other economic links with the Chilean government. However, the resolution adopted by the Assembly in 1976 left open the possibility of unilateral action of this nature. In 1977 in response to a suggestion by the General Assembly, the Sub-Commission appointed an Italian professor, Antonio Cassese, as its Rapporteur to prepare a "study of the impact of foreign economic aid and assistance on respect for human rights in Chile". In interpreting this mandate the Rapporteur concluded that it called for a comprehensive discussion of all foreign investments in Chile.

In his final report, the Rapporteur concluded that the gross violations of human rights were related to economic assistance in two respects ^{22/}. The first "is that the bulk of this assistance helps to strengthen and maintain in power a system which pursues a policy of large-scale violations of these rights". The second is that in order to obtain foreign assistance including investment "credit-worthiness" must be achieved. This is achieved by a redistribution of income in favour of the rich and is helped by the availability of cheap labour encouraged to work by low levels of social welfare and widespread poverty. For a variety of reasons, the response to the report by governments and others concerned was highly unfavourable and very little action was taken on the basis of its recommendations.

(iii) The Right to Development

The relationship between realization of the right to development and the provision of official development assistance was analysed in the 1979 UN report on the right to development. The report noted that there was "widespread international interest" in the concept of forging closer links between human rights and aid and lamented the fact that no comprehensive analysis of the issues had yet been undertaken ^{23/}. However, the proposal in the report that the Commission should "consider undertaking a more detailed study of the relevant

issues with a view to formulating general principles and criteria which might guide future bilateral and multilateral assistance arrangements, insofar as they seek to promote human rights in general, and the human right to development in particular" met with significant opposition in the Commission. Proposals to link human rights and development assistance were termed a "distortion of the concept of cooperation". It was said that any attempt to devise generalized criteria in the matter must be made with caution, since it could be used to evade responsibility for the establishment of a New International Economic Order and could be used as a weapon in trade relations. In the event, the Commission adopted a resolution expressing its concern that "qualitative and human rights conditions are being imposed in bilateral and multilateral trade policies with the intention and effect of perpetuating the existing structure of world trade" ^{24/}.

Other Initiatives to Link Human Rights and Aid and Trade

Efforts by the United States and other Western States to link human rights considerations to their bilateral, and even on occasion multilateral, aid and trade relationships have been analysed extensively elsewhere. In the present context, however, it is useful to note a summing up of the present position of Western aid donors by the Chairman of the Development Assistance Committee of the Organization for

Economic Cooperation and Development (OECD) :

"On the one hand, most donors, having been through their first baptism of reforming zeal, now are inclined to favour a sense of balance in this aspect of aid design. They note that basic human needs are not the only development needs that need addressing. They admit 'trickle-down' does sometimes work. They recognise there is little scope in sovereign-to-sovereign relations for imposing a donor's notions of what a recipient's distributional and political values should be on an unwilling partner. And where they encounter trade-offs between promoting economic human rights and withholding aid on political-rights grounds, most are inclined to favour the former.

With such nuances in place, however, donors are disposed now to turn down or turn off aid to régimes that persist in severe and systematic repression. In their allocations of aid between countries most tend, other things being equal, to favour régimes demonstrating strong internal commitments to social justice, and to accord such recipients greater discretion in their uses of aid resources. Most DAC donors are interested in specifically targeting assistance on particular disadvantaged groups" 25/.

Mention should also be made of an abortive proposal by the Commission of the European Communities to link trade liberalization concessions by the EEC to compliance with fair labour standards by the ACP States in the context of the second Lomé Convention. Regardless of the general merits or demerits of such a concept, the actual scheme proposed was so flawed and so open to manipulation for protectionist purposes that its exclusion was a foregone conclusion 26/.

In conclusion, it is appropriate to list some of the arguments that may be made for and against the linking of human rights and development cooperation programmes. Arguments in favour include the following :

(a) Under the United Nations Charter all Member States have pledged to take joint and separate action to promote inter alia, universal respect for, and observance of, human rights. Development cooperation activities should thus seek to promote these objectives.

(b) By virtue of having ratified the international human rights Covenants and of having subscribed to a range of ILO and Unesco sponsored human rights conventions and regional human rights charters, many States having undertaken specific obligations in international law with respect to the promotion of respect for human rights. Development assistance should be neither provided nor used in such a way as to facilitate violations of these human rights commitments.

(c) From a moral point of view, any form of complicity in human rights violations should be avoided.

(d) From an economic viewpoint, broad-based economic and social development cannot be achieved in an environment of repression and development assistance to repressive governments is therefore wasted.

(e) Development aid can be used to encourage or even make possible the development of more equitable and participatory structures.

But while all of these arguments are persuasive in varying degrees, the practical difficulties of designing and implementing an appropriate policy are not to be underestimated. A variety of criticisms is likely to be levelled against any such scheme both by its proponents in donor countries and by those in the recipient countries whom it might adversely affect. The former might claim : that it is inadequate; that it does not go to the root of the problem; that it is unlikely to be evenly and impartially applied; and that it adversely affects rather than improves the enjoyment of human rights in recipient countries. The latter might argue : that criticism of specific human rights violations constitutes interference in the internal political affairs of a state; that withdrawal of funds committed under an international agreement would be an act of bad faith; that such withdrawal would amount to interference in the determination of domestic economic priorities; that there are so many human rights standards that the selective promotion of a handful of them violates the essential indivisibility of all rights; that economic, social and cultural rights formulations are so vague as to be unenforceable; and that it is hypocritical for countries with acknowledged human rights problems of their own to be 'penalizing' other States for their respective problems.

(3) A Structural Approach to Human Rights in International Relations

The ramifications at the international level, of a structural approach to the promotion of respect for human rights are immense. While many of the initiatives noted above have been of a primarily sanctionary nature, the pursuit of a structural approach requires a far greater emphasis on the removal of obstacles which stand in the way of societies seeking to achieve respect for human rights within their own boundaries. Thus at the international level, as much as at the national level, the human rights approach must go beyond providing a right of access to remedial institutions (e.g. food shipments, emergency medical services) and encompass the right not to be subject to structures which prevent the self-realization of human rights. All too often the remedial or curative approach serves into obscure the continuation of structural violations. In formulating many demands upon the international community in terms of positive assistance programmes (e.g. 0.7% of GNP in development aid), it is easy to lose sight of a general demand that the international order should not create new impediments and should remove existing obstacles which hinder the realization of human rights objectives.

By way of example, reference may be made to the rights to food and health. The international obstacles which hinder food self-reliance have been analysed in depth elsewhere ^{27/}. In the area of health, the provision of vast quantities of

medical supplies will have far less impact on health in the longer term than the reduction of pollution, the control of exports of hazardous products and substances, and the cessation of inappropriate or misleading advertising practices. National and international action on issues such as these could do more to promote respect for human rights than many of the more spectacular sanctionary initiatives adopted in recent year.

(4) A case study of the preventive approach in action

The 1979 decision by the UN Human Rights Commission to transfer its consideration of human rights problems in Equatorial Guinea from the framework of its confidential procedure to its public sessions was hailed as a very significant procedural development ^{28/}. Even more important however was the manner in which the Commission decided to tackle the issue from that point onwards. In 1979 it appointed a Special Rapporteur to study the situation in Equatorial Guinea thoroughly and to report to it the following year. Before that report was prepared President Macias was deposed ^{29/} and the new government invited the Rapporteur to visit the country. In a detailed and constructive report the Rapporteur made a number of recommendations relating to the requirements for future action both at the national and international levels. Subsequently, the Commission, in response to a request by the Government of Equatorial Guinea, requested the Secretary-General to appoint an expert "with wide experience of the situation in Equatorial Guinea, in particular with a view to assisting the Government of that country in taking the action necessary for the full restoration of human rights and fundamental freedoms keeping in mind ... the economic, political and social realities of that country".

In his report, the Expert, who was the same person as the Special Rapporteur, made a series of recommendations designed to establish equitable and participatory structures which would

promote respect for human rights. Among his recommendations were the following: promote adoption of legislation to establish an appropriate legal system; an increase in the number of lawyers; full support for an existing programme of popular legal education; special measures to promote the legal equality of women; the provision of greater incentives for agricultural workers; the improvement of plantation working conditions and an increase in the number of labour inspectors; high priority for the training of teachers and for the training of citizens in the values of representative democracy; the adoption of a new Constitution with the adoption of the Universal Declaration of Human Rights as an interim national law; ratification of the International Human Rights Covenants; membership of the ILO and ratification of its principal conventions; adoption of a law on associations and encouragement of the formation of co-operatives and other groups; and the restoration of a traditional system of popular election of town council members. The Expert also recommended that the UN should make expert services available in a variety of fields.

Thus the action taken by the UN in response to gross violations of human rights amounts to the adoption of a forward-looking structural approach and as such represents a very significant departure from previous practice. In confirming the value of such an approach the Commission on Human Rights in March 1981:

- (a) recommended that the Economic and Social Council should extend the mandate of the Expert on Equatorial Guinea and request the Secretary-General to draw up a draft plan of action for implementing the Expert's recommendations (Res. 31 (XXXVII));
- (b) requested "the Secretary-General to provide advisory services and other forms of appropriate assistance to help the Government of the Central African Republic to continue to guarantee the exercise of human rights

and fundamental freedoms in that country" (Res. 15 (XXXVII)); and

- (c) requested "the Secretary-General to provide advisory services and other forms of appropriate assistance to the Government of Uganda in its efforts to guarantee the enjoyment of human rights and fundamental freedoms" (Res. 30 (XXXVII)).

NOTES TO PART V

- 1/ Robert E. Goodin, "The Development-Rights Trade-Off : Some Unwarranted Economic and Political Assumptions", Universal Human Rights. Vol. 1 (1979), pp 31 - 42.
- 2/ UN doc. E/cN.5/585 (1981).
- 3/ Washington D.C., World Bank, 1980, pp 32 - 82.
- 4/ International Law and Human Rights (London, Stevens and Son, 1950) p 356.
- 5/ Quoted in Human Rights in a One-Party State, op.cit. pp 28 - 29.
- 6/ Barrington Moore, Jr., Injustice : The Social Bases of Obedience and Revolt (London, Macmillan, 1978), p 459.
- 7/ Geneva, International Commission of Jurists, 1966, pp 34 - 35.
- 8/ ILO, Meeting Basic Needs : Strategies for Eradicating Mass Poverty and Unemployment (Geneva, ILO, 1977).
- 9/ UN doc. A/AC.191/21 (1978), p 4.
- 10/ Government of India, Planning Commission, Draft Five Year Plan 1978 - 83, Vol. 1, p 8.
- 11/ See Philip Alston, "Human Rights and Basic Needs : A Critical Assessment", Revue des droits de l'homme, Vol. XII, 1979, pp 19 - 67.
- 12/ DD1 was adopted by the General Assembly in resolution 1710 (XVI) (1961), DD2 in resolution 2626 (XXV) (1970) and DD3 in resolution 35/56 (1980).

- 13/ UN doc. E/3347/Rev.1 (1960), para 90.
- 14/ UN Sales No. E.68.XIV.2 (1968), resolution XVII.
- 15/ Resolution 15 (XXV) (1969).
- 16/ UN, International Social Development Review, Vol 3, 1971, pp 4 - 14.
- 17/ Resolution 2542 (XXIV) (1969).
- 18/ UN Doc E/CN.4/1334 (1979), para 303.
- 19/ Resolution 7 (XXXVI) (1980).
- 20/ UN doc. ST/HR/SER.A/8 (1980).
- 21/ UN Sales no. E.79.XIV.3.
- 22/ UN doc. E/CN.4/Sub.2/412 (1978), paras 496 - 97.
- 23/ UN doc. E/CN.4/1334 (1979), para 312.
- 24/ Resolution 5 (XXXV) (1979).
- 25/ Development Cooperation, 1980 Review (Paris, OECD, 1980, p 61.
- 26/ The proposal is analysed in detail in P. Alston, "Sinking Trade and Human Rights", German Yearbook of International Law 1980, vol 23.
- 27/ See Lappé, Collins and Kinley, Aid as Obstacle : Twenty Questions about our Foreign Aid and the Hungry (San Francisco, Institute for Food and Development Policy, 1980).

- 28/ Full details of the UN's handling of the situation in Equatorial Guinea are contained in UN docs. E/CN.4/1371 (1980) and E/CN.4/1439 (1980) and Add. (1981)
- 29/ See generally Alejandro Artucio, The Trial of Macias in Equatorial Guinea - The Story of a Dictatorship, (Geneva, International Commission of Jurists, 1980)

P A R T V I

Human Rights and the New International Economic Order

"Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."

Universal Declaration of Human Rights (1948), article 28

"What is impossible in so heterogeneous an environment (as the United Nations) is to transform such economic human rights into rules of a living international economic order."

G. Schwarzenberger (1970)

"The realization of the New International Economic Order is an essential element for the effective promotion of human rights and fundamental freedoms."

General Assembly resolution
32/130 (1977)

In 1974 and 1975 the UN General Assembly adopted a series of resolutions which, in general terms, embodied a comprehensive strategy for the achievement of a new international economic order (NIEO). The Assembly called for the replacement of the existing order which, in its view, was characterized by inequality, domination, dependence, narrow self-interest and segmentation by a new order based on sovereign equality, interdependence, common interest and

cooperation among States. The term human rights appears only once in the four seminal NIEO resolutions and the Assembly has not, in any subsequent resolution, specifically acknowledged that the promotion of respect for human rights is an important, let alone essential, ingredient of efforts to establish a NIEO. It has, however, affirmed this proposition in the reverse. In its landmark conceptual resolution in the area of human rights (res. 32/130 of 1977) the Assembly affirmed that "the realization of the New International Economic Order is an essential element for the effective promotion of human rights and fundamental freedoms and should be accorded priority". Comparable propositions have also been endorsed by UN conferences in fields closely linked to human rights such as the 1980 Copenhagen Conference on Women and the 1980 Caracas Congress on the Prevention of Crime and the Treatment of Offenders.

It is possible to discern three main areas of concern which must be addressed in the present context :

1. Is the debate on the relationship between human rights and the NIEO capable of producing any significant practical results by giving impetus to the attainment of the goals sought or is it doomed to remain forever at the level of abstraction ? In this regard, does the linking of issues such as human rights, including women's rights, with the NIEO have the effect of emphasizing the fundamental importance of structural factors which underlie human rights violations or does it carry an

undue risk of submerging the identity of specific rights problems and issues in an amorphous and ill-focused debate on a wide range of technical economic and other questions ?

2. Have UN organs in fact dealt with these two issues in a non-compartmentalized and integrated fashion or is the connexion mainly a rhetorical one which has been promoted for particular ideological purposes ?

3. Is it possible to devise means by which the two issues can be effectively linked so that parallel progress can be achieved on both fronts without on the one hand interfering in matters which are essentially within the jurisdiction of any state or on the other hand providing an excuse for States which might wish to exploit the issue of domestic injustices and inequities in order to avoid the shared responsibility for the promotion of international equity ?

Before considering the human rights-related origins of current NIEO demands and the link between human rights and the existing international economic order one preliminary point should be made. There is a temptation, particularly on the part of human rights specialists, first of all to assume that the NIEO relates largely to technical economic issues and then, as a consequence, to question how and why it can be of other than indirect relevance to human rights. This reasoning can be challenged at two levels. On the first, it is possible to demonstrate that in certain areas international

economic factors have a direct and decisive impact on the enjoyment or otherwise of human rights. On the second level, it must be acknowledged that the NIEO is far and away the single most dominant issue on the agenda of the international community and that no other issue, including human rights, can be, or is being, discussed in isolation from the NIEO debate. Thus, for example, recent world conferences on issues as diverse as science and technology for development, the role of women and the prevention of crime have all placed their concerns squarely in the context of the need to achieve a NIEO. The same trend is strongly apparent in the field of human rights. Given the strong trend in one direction, it is appropriate to question whether it is, or should be, a two-way process. In that regard, the question which arises is whether the mainstream of the NIEO debate is being conducted in isolation from the other issues to which it is so centrally important.

The Human Rights Origins of the NIEO Programme

Despite its lack of prominence in the NIEO debates in the 1970s and early 80s, the evolving concept of human rights played a strong, even catalytic, role in the post-war emergence of the demands for a NIEO. The seeds of the NIEO were clearly planted in the UN Charter provisions affirming the importance of "respect for the principle of equal rights and self-determination of peoples". Between 1945 and 1950 the developing countries (primarily the long-independent nations

of Latin America) sought in various international fora to draw attention to their economic problems. However, the successes which they achieved were substantially outweighed by their disappointments. Of particular significance was their failure to secure the adoption by the General Assembly in the late 1940s of a "Declaration on Rights and Duties of States". Nevertheless, the result of such initiatives was that by the end of the 1940s many of the measures which were later to constitute the NIEO demands had already been proposed by the developing countries and discussed in international fora. Subsequently, starting in 1950, a number of these concerns were crystallized or subsumed under the rubric of the human right of self-determination, a principle which was steadily expanded in scope and significance.

Although the Universal Declaration of Human Rights of 1948 did not contain any explicit reference to self-determination it did include an Article to the effect that "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized" (Article 28). By 1950 the General Assembly had expressly recognized "the right of peoples and nations to self-determination" as a fundamental human right. While this coalescence of human rights and economic development issues was in many respects a natural and appropriate process it is also evident that the human rights approach offered a convenient and ready-made vehicle for the pursuit of demands which had generated little positive response elsewhere. In

terms of the progressive development of international law including international human rights law, this approach proved to be immensely successful. In economic terms, however, progress was to be achieved rather more slowly.

Following its 1950 resolution, the General Assembly took only five years to finalize its formulation of the right to self-determination. By 1952 the Assembly had extended its interpretation of the right to include the concept of economic self-determination. In 1955 its Third Committee, after considerable debate as to the legal or political nature of the right, adopted a provision for inclusion in both the draft covenants on human rights which stated that :

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

The people may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence." 1/

Thenceforth, the progressive development of international law centred around the twin human rights principles of the right of self-determination and what was perhaps illusorily seen as its corollary, the right to permanent sovereignty over natural resources. The first of these principles was enshrined in the 1960 Declaration on the Granting of Indepen-

dence to Colonial Countries and Peoples. By the following year the process of decolonization had been so successful that the balance of voting power in the General Assembly had shifted in favour of the Third World. Yet despite the fact that self-determination was recognized as a complex, multi-faceted concept, its political aspects rapidly assumed an overriding importance during the struggles of the 1950s and 60s to achieve freedom from colonial rule. Although many newly-independent States subscribed to the conventional wisdom of the time relating to the need to achieve economic take-off, the economic, social and cultural dimensions of self-determination were largely neglected. Indeed, the concept of economic take-off, as least as interpreted by its principal proponent, Walt Rostow, was highly compatible with a large degree of economic dependence and was not at all associated with the broad notion of self-determination. Thus, for example, the first "stage of growth" as discerned by Rostow was "the transitional period when the preconditions for take-off are created generally in response to the intrusion of a foreign power, converging with certain domestic forces making for modernization". Thus although de jure political independence was achieved it was accompanied by continuing de facto economic, and often cultural, dependence.

Within the UN the right to permanent sovereignty over natural resources was the only element of economic self-determination which was pursued with any zeal. In 1958 the General Assembly established a Commission on Permanent

Sovereignty over Natural Resources and charged it with the conduct of "a full survey of the status of this basic element of the right to self-determination". Thus while the human rights link was re-affirmed, responsibility for the further development of the right was given to a body other than the Commission on Human Rights and of equal status.

In 1962 the Assembly adopted the Declaration on Permanent Sovereignty over Natural Resources ^{2/} in which it declared that

"The rights of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned"; that "The exploration, development and disposition of such resources", as well as the imported capital, "should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable ..."; that "Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest ..."; and that "International cooperation for the economic development of developing countries ... shall be such as to further their independent national development and shall be based upon respect for their sovereignty over their natural wealth and resources".

But while the importance of the right of permanent sovereignty over natural resources is undisputed, despite the ability of publicists to agree on its precise implications, it can, at best, only be viewed as one of a number of elements which together constitute the right to economic self-

determination. Thus, although the immediate origins of the demands for a NIEO may be attributed to the 1973 oil embargo and its accompanying price rises, they are more appropriately seen in historical perspective as the logical, if belated, articulation of the various elements which inhere in the human rights principle of economic self-determination. The question remains, however, to what extent, if at all, the NIEO demands are still linked with or reflect their longer term origins in the progressive development of the international law of human rights.

The Impact of the Existing International Economic Order on Human Rights

It appears to be generally accepted that the existing international economic order is in a state of crisis which is more severe than any since the Great Depression and that all regions of the world are affected albeit to varying degrees. The impact of a malfunctioning and inequitable international economic order on the enjoyment of human rights can be examined at two separate levels.

The first level is represented by statistics showing the dimensions of absolute poverty - defined by the World Bank as "a condition of life so characterized by malnutrition, illiteracy and disease as to be beneath any reasonable definition of human decency" ^{3/}. According to the World Development Report, 1980, the number of people in absolute poverty in developing countries (excluding China and other

centrally planned economies) is estimated at around 780 million. In the low-income countries people on average live 24 years less than they do in the industrialized countries. Some 600 million adults in developing countries are illiterate, and one-third of the primary school-age children (including nearly half of the girls) are not going to school. In terms of economic and social human rights alone these figures represent massive and persistent violations.

While the primary responsibility for alleviating these conditions rests with national governments, their prospects for success depend not only on equitable domestic policies but on major changes in the international order. Without the support provided by more equitable patterns of world production, trade, financial flows and resource transfers, and in the absence of efforts to reverse the worst features of mal-development including growing militarization, the pursuit of inappropriate lifestyles and the erosion of cultural identity in both the North and the South, the outlook for the improved enjoyment of human rights is, at best, bleak.

The second level at which the existing international economic order can be shown to be detrimental to the enjoyment of human rights involves a consideration of specific policies and structures which impinge directly, rather than indirectly, on human rights. It is not possible within the confines of this paper to give more than a couple of brief examples of such factors. One is the pursuit of militarization. According

to certain currently fashionable perceptions, the protection of international peace and security, which must by definition include the reliable functioning of the international economic order, is dependent upon vastly increased arms expenditure and the further militarization, both from endogenous and exogenous sources, of national societies. Yet it requires neither detailed statistics nor any great insights to appreciate the magnitude of the adverse impact on human rights which will inevitably flow directly from the massive increases in proposed expenditures and in export goals announced by the developed countries alone since the beginning of 1981.

A second example is provided by the pursuit of economic policies which rely primarily upon the encouragement of dramatic increases in foreign capital inflows by offering cheap and abundant supplies of labour. The latter is assured by large-scale unemployment, the maintenance of low-wage levels, the repression of trade unions and other potentially "troublesome" groups, and the curbing of government welfare expenditures in order to reduce costs and increase the attractiveness of poorly paid jobs. While such policies are pursued by national governments they are encouraged and facilitated by a number of the characteristics of the present international economic order.

A variety of other examples could be given of the way in which present international economic policies and structures often run contrary to the attainment of human

rights objectives. It is clear therefore that efforts to establish a just and equitable international economic order must go hand in hand with endeavours to ensure the promotion of full respect for human rights. By the same token, it cannot be assumed that the achievement of a NIEO will be accompanied by full respect for human rights or even that it would per se significantly enhance the enjoyment of human rights. On the one hand, it is not difficult to conceive of the future existence of a NIEO characterized by automatic and greatly increased North-South resource transfers, higher and more stable prices for primary commodities, democratically run international financial institutions, more equitable arrangements for the transfer of technology, the location of a much higher proportion of the world's industrial capacity in the South, and the achievement of more effective control by host countries over the activities of transnational corporations but which is nevertheless not accompanied by a significant improvement in the human rights situation. As Johan Galtung has written :

"In the NIEO there is a potential for more economic surplus to accumulate in the Third World countries. But the far more important question is whether it is used to meet the basic needs of those most in need. Economic surplus, it is well-known, can be used in several ways, depending on where in the society it is generated, who decides how it will be disposed of, and what kind of decision is made. To take it for granted that it will necessarily be used to meet basic needs is extremely naive. A more realistic understanding is that most people in control of the economy will tend to use it

for what they see as the pressing needs - be they 'national needs', non-basic needs, or the needs of those less in need." 4/

In the most pessimistic outcome the major domestic impact of such international reforms as are envisaged in the NIEO programme would be the further enrichment of local elites and the reinforcement (and modernization) of repressive mechanisms for the control of the society. A much more optimistic outcome has been assumed in all the resolutions relating to the NIEO which have been adopted by UN human rights organs. The challenge remains, however, to devise policies which could conceivably facilitate the achievement of the optimistic scenario.

Before considering possibly policy options it is proposed to consider the extent to which the major UN NIEO documents reflect a commitment to the promotion of human rights. For this purpose, the Charter of Economic Rights and Duties of States is singled out for analysis on the grounds that it is reasonably representative of the major documents and that it is the only one of the relevant General Assembly NIEO resolutions which contains a specific reference to human rights.

The Charter of Economic Rights and Duties of States
from a Human Rights Perspective

The Charter of Economic Rights and Duties of States was adopted by the General Assembly on December 12, 1974.^{5/} Unlike the Declaration and Programme of Action on the Establishment of a New International Economic Order, it was adopted not by consensus but by vote, with 120 States in favour, 6 against, and 10 abstaining. Also, unlike those two instruments, the Charter was conceived by its initiators as a means for the codification and progressive development of international law. It was, in the view of its proponents, an effort to "take economic cooperation out of the realms of goodwill and put it into the realm of law".^{6/} The extent to which it has succeeded in this endeavour is a matter for debate. Nevertheless, it remains, at the very least, a clear and important statement of the developing countries position and provides an overview of the general thrust of the demands for a NIEO. Thus the approach of the Charter to human rights issues is an important indicator in the context of the present inquiry.

When the drafting of such a Charter was first proposed, at the third session of UNCTAD in 1972 in Santiago, the representative of the Group of 77 stated that "it should be a counterpart in the economic field to the Universal Declaration of Human Rights and the International Covenants on Human Rights".^{7/} Subsequently, the link between the NIEO and human rights was expressly recognized by the Conference

in its resolution establishing a Working Group to draw up the text of a draft charter. In the Preamble to the resolution the Conference recalled that the Universal Declaration and the Covenants "make the full exercise of those rights dependent on the existence of a just international order and respect for the principle of self-determination of peoples and of the free disposition of their wealth and natural resources". ^{8/} Nevertheless, in the four drafting sessions held by the Working Group between February 1973 and June 1974, the subject of human rights was conspicuous only by the paucity of discussion devoted to it. ^{9/}

The final version of the Charter as adopted by the General Assembly contains only one reference to human rights per se. It appears in Chapter I which enumerates a list of 15 principles by which economic as well as political and other relations among States are to be governed. Principle (k) is "respect for human rights and fundamental freedoms". The other principles in this Chapter range from "non-intervention" and "non-aggression" to "no attempt to seek hegemony and spheres of influence" and "international cooperation for development". For the most part the list is a reiteration of generally accepted and oft-repeated principles taken from a variety of UN instruments. Yet this derivation raises the question of why no specific reference was made in the Charter to those instruments and especially to the elaborate Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance

with the Charter of the United Nations (General Assembly Resolution 2625 (XXV) of 1970). Such a reference would have provided a more scientific basis for the Charter's principles but by the same token would perhaps have made it more difficult to justify the inclusion of several 'coded' principles which were inserted to satisfy the demands of particular voting constituencies.

But even if we accept Bedjaoui's view that the Charter "is without doubt directly linked with Declaration 2625 (XXV) on the seven principles of international law, from which it draws the economic consequences" ^{10/}, the human rights foundations of the Charter are not thereby significantly strengthened. This is due to the fact that the two formal references contained in the Declaration are both set squarely in the context of international cooperation and respect for the principle of equal rights and self-determination of peoples. Both the vagueness and brevity of these references and their failure to spell out the individual as well as the collective dimensions of human rights were subject to criticism at the time of the drafting of the Declaration ^{11/}. An assessment of the validity of such criticisms requires an examination of the other facets of the Charter which are also of relevance to the present inquiry.

In general terms, the Charter addresses human rights-related issues in separate contexts. They are : (a) the specific reference to human rights in principle (k) of

Chapter I; (b) in relation to the right to self-determination; (c) with respect to the concepts of equity and social justice; and (d) in affirming the responsibility of each State to promote the development of its people.

(a) Principle (k)

As noted above, this principle is not further developed either in the text of the Charter itself or by reference to other instruments such as the Universal Declaration, the International Covenants on Human Rights or even the Declaration on Principles of International Law. It thus stands on its own, adding little, if anything, to the qualitative aspects of the Charter and not going beyond a ritual reaffirmation of the vague and formal commitment contained in the United Nations Charter itself.

(b) Self-determination

In essence, the Charter is predicated upon the conviction that the establishment of a NIEO requires implementation of the right of peoples to self-determination and to permanent sovereignty over their natural wealth and resources. This is demonstrated by the inclusion in Chapter I entitled "Fundamentals of International Economic Relations" of the following principles, inter alia : (a) sovereignty, territorial integrity and political independence of States; (b) sovereign equality of all States" and (g) equal rights and self-determination of peoples". In Chapter II, on the Economic Rights and Duties of States, Article 1 and Article 2(1) are derived directly from the right of

self-determination contained in the first Article of both the International Human Rights Covenants. In addition, Article 16 provides that it is the right and duty of all States, individually and collectively, to eliminate specified obstacles to the enjoyment of that right. Specifically, the article refers to "colonialism, apartheid, racial discrimination, neo-colonialism and all forms of foreign aggression, occupation and domination, and the economic and social consequences thereof".

Thus, the question arises, in view of the emphasis placed on the right to self-determination, as to whether we should conclude that the Charter attaches adequate importance to general human rights considerations. It is submitted that the answer must be in the negative since the individual dimensions of the human rights tradition, which are at least as important as its collective dimensions, are not referred to at all. While some commentators have viewed the right to self-determination as a bridge between those two dimensions and have posited an individual right of self-determination, even that right cannot be viewed as a substitute for the range of human rights oriented towards the individual and proclaimed in the Covenants. Moreover, in the context of the Charter, all references to the right of self-determination, perhaps not surprisingly, refer specifically and exclusively to the rights of States, not of peoples and certainly not of individuals. While

endorsing the statement in a recent Unesco report that "the right of peoples to self-determination and to permanent sovereignty over natural resources is the very foundation upon which a new international economic order can be built"^{12/} it must also be said that the right to self-determination is not, in itself, sufficient to ensure that such an order will also encompass a new social or human order.

(c) Equity and Social Justice

In what has now become a long-standing tradition of UN resolutions in the economic domain, the provisions which come closest to expressing human rights-related sentiments are those which use such terms as equity and social justice. In this respect, the Charter is no exception. Its preamble declares that its fundamental purpose is to promote establishment of the new international economic order, based on equity, among other principles. While the Charter also uses formulations such as "equitable benefit" and "social progress" its most significant provision in this respect is contained in Chapter I which provides that among the principles which "shall" govern economic, political and other relations among States is the "promotion of international social justice". This provision was included in the draft at the request of Venezuela and its adoption was not preceded by any significant discussion.

The general significance in international law of terms such as equity and social justice has been dealt with elsewhere and it must suffice in the present analysis to note that they are not adequate or effective surrogates for the term "human rights". Furthermore, in the context of the Charter, such terms invariably refer only to equity in relations among States and it would be exceedingly difficult to interpret "international social justice" as used in the Charter to include questions of social justice within States.

(d) Promotion of Development By Each State

Article 7 of the Charter is one of three provisions which provoked no controversy and was adopted unanimously. It is surprising then that it comes closer than any other provision to relating human rights concerns to the demands for a NIEO. It provides that :

"Every State has the primary responsibility to promote the economic, social and cultural development of its people. To this end, each State has the right and the responsibility to choose its means and goals of development, fully to mobilize and use its resources, to implement progressive economic and social reforms and to ensure the full participation of its people in the process and benefits of development. All States have the duty, individually and collectively, to cooperate in eliminating obstacles that hinder such mobilization and use."

While none of this was in the least bit novel, especially when compared with the provisions of the Declaration on Social Progress and Development which was adopted five years earlier, it is nevertheless highly significant in the context of a Charter which otherwise deals almost exclusively with the rights and duties of States vis-à-vis the rest of the international community. It thus represents an important acknowledgement that the right of States to equitable treatment in NIEO-related matters cannot be considered in a vacuum, but must be related to the promotion of domestic equity. It is perhaps worthy of note that the use of the term 'responsibility' rather than 'duty' comports a slightly lesser degree of obligation on States but this would not seem to detract significantly from the importance of the provision. Once again, however, Article 7 avoids the use of specific human rights terminology. Nevertheless, by referring to participation in the process and benefits of development it does focus in a more balanced fashion than is often the case on the civil and political rights aspects of the human rights equation.

In conclusion, therefore, it can be said that while the Charter of Economic Rights and Duties of States contains several human rights-related provisions it does not accord adequate recognition to the fact that the enjoyment of the full range of human rights by all individuals

must be seen as the ultimate rationale for the establishment of a NIEO. The Charter avoids specific references to human rights per se with the sole exception of the brief principle contained in the heterogeneous section on "fundamentals of economic relations", a principle which does not sit easily with either the overall scheme of the Charter or with its internal logic. Finally, it is appropriate to question the extent to which the reaffirmation and reinforcement of the dominant role of the nation State, which is probably the major accomplishment of the Charter, is conducive to the promotion of greater respect for the rights of individuals, a process which inevitably requires some degree of limitation upon the power of the State and some recognition of the State's accountability both to its inhabitants and to the international community.

Other NIEO Sources

Much of the foregoing analysis is directly applicable to the other major NIEO documents. The major exceptions are the programmes of action and specific resolutions adopted by subject-specific world conferences. Thus it can be argued that the NIEO does in fact have a distinctly human face by pointing to the linking of specific human rights issues with the NIEO in the context of conferences such as the Copenhagen World Conference of the United Nations Decade for Women : Equality, Development and Peace. Yet the reality is that the programme and resolutions of this and other such conferences, although giving their imprimatur to progressive policies in their respective fields, fall clearly outside the mainstream of NIEO negotiations and discussions. While they have played an important role in buttressing or reinforcing the case for a NIEO, they have not significantly affected the form which such an order will take. Moreover, the linkage is usually discerned to be a one-way rather than a two-way affair, in so far as the indispensability of a NIEO for the full realization of human rights is emphasized but the reverse of that proposition is rarely endorsed. Yet the corollary is important, since without improved respect for both the concept of human rights and for the rights themselves in practice, in both North and South, the achievement of a NIEO is unlikely.

Conclusion

The linking of human rights and NIEO objectives has much to recommend it. In general terms it is clear that the real bargaining power of the developing countries is primarily political rather than economic. By framing their economic demands in terms of human rights issues their political power assumes an added ethical dimension, which, as the Brandt report has pointed out, is an indispensable element in the mobilization of widespread support for an NIEO programme. Thus, extension of the NIEO debate to the UN's human rights fora serves to highlight its ethical content. Moreover, the juxtaposition of human rights and NIEO issues also provides a means by which to highlight the many inconsistencies which characterize state policies in these areas. Thus, to give just one example, calls for developing countries to desist from particular practices which are detrimental to the enjoyment of human rights are rarely accompanied by efforts on the part of the appellants to change those of their own international policies and activities which encourage or facilitate such practices. As Shridath Ramphal has noted :

" For a rich industrialized society to confirm its vested interest in the world's present disparities, is to acquiesce in, indeed even to promote, denial of the most basic of human rights - the right to life itself at a tolerable level of existence. It does the cause of human rights no good to inveigh against civil and political rights to deviations while helping to perpetuate illiteracy, malnutrition, disease, infant mortality, and a low life expectancy among millions of human beings. All the dictators and all the aggressors

throughout history, however ruthless, have not succeeded in creating as much misery and suffering as the disparities between the world's rich and poor sustain today."^{13/}

To those who seek watertight guarantees that the benefits of the NIEO will be directly reaped by those most in need, the only response is that no such guarantees can ever be devised. The simple reality is that in the South, as much as in the North, a sense of equity and justice can never really be imposed from outside but must develop from within. The promotion of human rights standards by the international community can serve to strengthen and encourage the resolve of internal elements, be they leaders, the masses or both, to work towards the achievement of social justice. In this sense the content of human rights standards is potentially revolutionary. At the same time international measures can go a long way towards the creation of conditions which are conducive to the success of domestic endeavours to promote the realization of human rights. The key is that both national and international efforts must go hand in hand and lack of progress at either level should not be invoked as an excuse for doing nothing at the other level.

Finally, those who genuinely wish to see concurrent progress achieved at both levels are inevitably tempted to try to formulate hard and fast linkages whereby concessions made at one level are matched by concessions at the other. For example : more development assistance in return for more

resources being devoted to the meeting of basic needs; or, trade concessions in return for undertakings to improve domestic labour conditions. As note in Part V (b) above, such proposals are usually unacceptable either because they are in fact designed to achieve other than their stated objective; because they are so specific as to amount to interference in domestic affairs; because, in reality, their benefits are illusory; or simply because they smack of paternalism and double standards. That is not to say that linkages should never be sought, but that any such proposals must be of a positive (e.g. increased trade or aid) rather than negative (sanctions) nature and should be openly and freely negotiated by all sides concerned.

FOOTNOTES

Notes to Part VI

- 1/ W.W. Rostow, The Stages of Economic Growth (Cambridge, Cambridge University Press, 2nd ed., 1971) p. 12
- 2/ GA Resolution 1803 (XVII) (1962)
- 3/ World Bank, World Development Report 1980 (Washington, D.C. 1980) p. 32. See also "Towards a NIEO Characterized by Equitable Structures at All Levels and the Absence of Absolute Poverty", Working Paper by P.J.I.M. de Waart, representing the International Commission of Jurists, UN doc HR/GENEVA/1980/WP4.
- 4/ J. Galtung, "The New International Economic Order and the Basic Needs Approach", Alternatives, Vol. IV, 1978-79, pp. 458-9
- 5/ GA Resolution 3281 (XXIX)
- 6/ Mexican President Echeverria, quoted in UN Monthly Chronicle, Vol. XI, No. 9, May 1972, p. 4
- 7/ UNCTAD Proceedings, Third Session, UN doc TD/180 (1973) Vol. 1, para. 210
- 8/ Ibid., Resolution 45 III, 6th preambular para
- 9/ See UN docs TD/B/AC.12/1 and TD/B/AC.12/2 and Add
- 10/ Mohammed Bejaoui, Towards a New International Economic Order (Paris, Unesco, 1979) p. 185

11/ E.g. UN doc A/AC/.125/12 (1970)

12/ Unesco doc SS. 78/CONF.630/12 (1978) p. 41

13/ "Banners that Buy No Bread: The Legal Profession into the Eighties", Commonwealth Law Bulletin, Vol 6, No. 4, 1980, p. 1459

P A R T V I I

The Right to Development

The single most important element in the launching of a structural approach to human rights at the international level has been the concept of the right to development. The notion that "equality of opportunity for development is as much a prerogative of nations as of individuals within nations" and that there exists a human right to development is now firmly entrenched in United Nations human rights doctrine. The UN General Assembly has twice confirmed the existence of the right and the Commission on Human Rights has done so regularly since 1977. In March 1981 the latter body agreed by consensus to establish a Working Group of 15 governmental experts charged primarily with the task of submitting concrete proposals for a draft international instrument on the right to development. The Group has been requested to present its report in February 1982. A number of the sponsors of the Commission's resolution indicated that the eventual outcome of the Group's work is expected to be the adoption of a Charter or a Declaration on the right to development. It is worth recalling in this context that, in United Nations practice, a Declaration, which is lower in the hierarchy than a Charter, has been described as "a solemn instrument resorted to only in very rare cases relating to matters of major and lasting importance where maximum compliance is expected" ¹/.

Mention must also be made of two further sources of multilateral endorsement of the right to development. The first is the Conference of Heads of State and Government of Non-Aligned Countries at its Sixth Conference in Havana in 1979 ^{2/}. The second source is the Organization of African Unity. In addition to a 1979 decision of the Assembly of Heads of State and Government of the OAU endorsing the concept ^{3/}, the OAU Ministers of Justice, meeting in January 1981, approved a draft Charter of Human and Peoples' Rights which gives formal recognition to the right to development as a right of peoples. The Charter, which is expected to be adopted in mid-1981 by the Conference of Heads of State and Government of the OAU, states in the preamble that : "it is henceforth essential to pay a particular attention to the right to development, and that the promotion of this right implies respect for other fundamental human rights recognized and guaranteed by conventions, laws, regulations and customs in force in States" ^{4/}. Accordingly, Article 22 of the draft Charter provides that :

"1. All peoples shall have the right to their economic social and cultural development in strict respect of their freedom and identity and in the equal enjoyment of the common heritage of mankind.

2. States shall have the duty, separately or in cooperation with others to ensure the exercise of the right to development."

But either despite or because of the rapidity with which it has acquired its now almost impeccable pedigree, the right

to development is distinguished from other human rights not only by its novelty but by the vagueness and imprecision with which it has been formulated, by the lack of clarity as to its content or implications, by significant doubts as to its usefulness, and by uncertainty as to whether it will prove acceptable to a significant number of Member States of the UN. Before turning to these issues it is appropriate to briefly note the origins of the right to development and to consider the broader categorization of third generation human rights, or solidarity rights, among which the right to development has been placed.

Origins of the Right to Development

The concept implicit in the notion of a right to development was clearly stated in the Declaration of Philadelphia, adopted by the General Conference of the International Labour Organization in May 1944. In the Declaration, the Conference affirmed that :

"all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual freedom in conditions of freedom and dignity, of economic security and equal opportunity".

However, it was not until 1972 that the right to development surfaced at the international level in its present form. In that year the Chief Justice of Senegal (and present President of the International Commission of Jurists), Kéba M'Baye, entitled his inaugural lecture to the study session

of the International Institute of Human Rights in Strasbourg "the right to development as a human right" ^{5/}. At about the same time, the Institute's Director, Karel Vasak, launched his theory that a third generation of human rights had evolved. Both M'Baye and Vasak subsequently played important roles in securing the adoption of a resolution by the Commission on Human Rights in 1977 calling for a study on the international dimensions of the right to development. The study was not to consider whether the right actually existed, as its existence was implicit in the resolution. Two years later, having considered the Secretary-General's study, the Commission reaffirmed the existence of the right. In the intervening period, the Declaration on Race and Racial Prejudice adopted in 1978 by Unesco's General Conference made reference to "the right of every human being and group to full development". According to the Declaration the right to full development implies "equal access to the means of personal and collective advancement and fulfilment in a climate of respect for the values of civilizations and culture, both national and worldwide". Also in 1978 the General Assembly in the context of its "Declaration on the Preparation of Societies for Life in Peace" stated that all peoples have the right "to determine the road of their development" ^{6/}. This process was 'consummated' by the General Assembly in 1979 in its resolution 34/46 in which it emphasized "that the right to development is a human right and that equality of opportunity for development is as much a prerogative of nations as of individuals within nations".

The Content of the Right to Development

It must be stated at the outset that no precise formulation or definition of the right to development exists. The closest approximation is the very general formulation adopted by the Commission on Human Rights and the General Assembly which, as noted above, provides that "equality of opportunity for development is as much a prerogative of nations as of individuals within nations".

The only vaguely comprehensive study of the right to development which has been undertaken to date is a 1979 report by the UN Secretary-General, prepared at the request of the Commission on Human Rights ^{7/}. Its cumbersome title gives some indication of the political currents which were prominent in 1977 when the study was requested. It is : "the international dimensions of the right to development as a human right in relation with other human rights based on international cooperation, including the right to peace, taking into account the requirements of the new international economic order and the fundamental human needs".

Having noted the diversity of interpretations which over the years have been applied to the concept of 'development', the UN report begins by noting "the existence of a general consensus" that the following elements are part of the concept : the central purpose of development is the realization of the potentialities of the human person in

harmony with the community; the human person is the subject and not the object of development; both material and non-material needs must be satisfied; respect for human rights is fundamental; the opportunity for full participation must be accorded; the principles of equality and non-discrimination must be respected; and a degree of individual and collective self-reliance must be achieved.

In seeking to establish the foundations of the right to development the report places ethical considerations before relevant legal norms although it fails to elaborate upon the link between the two themes. The six separate ethical arguments outlined in the report reflect a mixed bag of ideas ranging from a general notion of justice and fairness, through solidarity, interdependence and the maintenance of peace to reparation for past exploitation. The report's analysis of legal norms relevant to the right to development is eclectic and catholic but lacks a degree of legal rigour. Considerable reliance is placed upon the right of peoples to self-determination. Reference is also made, inter alia, to the right of life and the right to an adequate standard of living. The United Nations study also emphasizes the importance of General Assembly resolutions relating to the need to establish a New International Economic Order, the constituent instruments of certain United Nations specialized agencies and relevant instruments of regional organizations such as the Charter of the Organization of American States and the European Social Charter. The report concludes that : "there is a very sub-

stantial body of principles based on the Charter of the United Nations and the International Bill of Human Rights and reinforced by a range of conventions, declarations and resolutions which demonstrate the existence of a human right to development in international law". The report does not attempt to undertake a synthesis of the various norms to which it refers and nor does it differentiate between the different legal weighting which is appropriately accorded to the different instruments relied upon. The same, relatively haphazard, approach has been reflected in the subsequent debates in the Commission on Human Rights between 1979 and 1981.

On the basis of its analysis of the ethical and legal foundations of the right to development the report then proceeds to list a number of subjects and beneficiaries of the right on one hand, and those for who the right implies duties on the other hand. Amongst the former are states, peoples, minorities and individuals, while the duty-bearers include the international community, international organizations, states, industrialized states and former colonial powers, regional and sub-regional state groupings, other transnational entities such as transnational corporations, producers' associations and unions and individuals. The report plays down the potentially divisive ideological debate over whether the right to development is an individual right or a collective right by suggesting that it is both. It notes, however, that the enjoyment of the right "necessarily involves

a careful balancing between the interests of the collectivity on one hand, and those of the individual on the other". While some academic commentators have argued that the right to development makes sense only as a collective right, the formulation adopted by the General Assembly would appear to imply endorsement of the analysis contained in the Secretary-General's report.

The remainder of the report is devoted to the consideration of the relationship between the right to development and a number of specific issues such as the right to peace, the new international economic order and the basic needs approach to development. Considerable emphasis is also attached to the need to ensure that the promotion of respect for human rights is an integral element in all development-related activities. In his concluding observations the Secretary-General makes it clear that his analysis does not purport to be exhaustive and predicts that "a more detailed appreciation of the implications of the right ... can be expected to emerge in the course of the next few years". He also emphasizes that the right to development is an evolving rather than a static concept.

The major response of the Commission on Human Rights was to request the preparation of a follow-up study on "the regional and national dimensions of the right to development". However, a number of the guidelines proposed in 1980 by the Commission to assist the Secretary-General in the preparation of that report again related to international issues. In

general terms it may be said that the debates on the right to development in the Third Committee of the General Assembly and in the Human Rights Commission have been inconclusive and have not served to shed much light on the precise content and implications of the right.

Nevertheless, despite the vagueness and uncertainty which continue to characterize discussions of the right, and despite some not entirely unwarranted fears that the right may be misused so as to distract attention from specific human rights issues, it is important to acknowledge the potential usefulness of the concept. In this regard it is relevant to note one of the major criticisms which has been levelled at the right to development as a concept. It has been argued that the demonstration of a "synthesis" right adds nothing to that which is already contained in existing human rights instruments. However, this objection overlooks three factors. The first is that a synthetic approach helps to emphasize the dynamism of existing rights. The second is that the process of interpretation involves reference not only to the text of the International Bill of Human Rights but also to a variety of other sources which authoritatively express the relevant values and goals of the international community. Thus, by taking account of the development objectives expressed in documents such as the international development strategy or the resolutions relating to the establishment of a New International Economic Order, the "aggregate" of rights assumes an added dimension. The third factor is that a

synthesis of rights, such as the right to development, assumes dimensions which are greater than the mere sum of its constituent parts. Through a process of cross-fertilization the sum of the various component norms forms a holistic entity. However, it must be conceded that in the final analysis, the question of whether solidarity rights are "new" or "synthetic" is unlikely to be of much practical significance since the outcome will be much the same regardless of the preferred methodology adopted by the international community.

The Dakar Colloquium on Human Rights and Development

Before looking at what the future might hold for the right to development it is appropriate to note that several major international meetings in recent years have considered the concept of the right in some depth. They include :

(1) a Unesco "expert meeting on human rights, human needs and the establishment of a new international economic order" held in Paris in June 1978 ^{8/}; (2) a Colloquium organised by the Hague Academy of International Law in conjunction with the United Nations University on the subject of "the right to development at the international level" ^{9/}; (3) a United Nations seminar on "the effects of the existing unjust international economic order on the economies of the developing countries and the obstacle that this represents for the implementation of human rights and fundamental freedoms" held in Geneva in 1980 ^{10/}; and (4) the Dakar Colloquium on

Human Rights and Development, organized in September 1978 by the International Commission of Jurists and the Association Sénégalaise d'Etudes et de Recherches Juridiques 11.

The Dakar colloquium concluded, inter alia, that human rights are an essential component of development, and that the requirements of development and political stability cannot be taken as a pretext either to violate them or, in an areas such as Africa, to rehabilitate practices which have been unanimously condemned during the colonial period. Furthermore, every development policy must take into account the needs of the population and its right freely to choose its model of development. Whatever the régime, the free, active and genuine participation of everyone in preparing and implementing a development policy for the general good is essential. The basic content of the right to development is the need for justice, both nationally and internationally. It is a right which derives its strength from solidarity and international cooperation and is both collective and individual. On the international level, it means peace, a satisfactory environment and the establishment of a more just economic order so that all can profit from the common heritage of mankind and so tht the efforts of all strata of the population can be justly rewarded.

With respect to regional organizations, the seminar pointed out that human rights violations in Africa have been passed over in silence and requested the Organization of

African Unity and all African States to ensure the implementation of human rights there through the conclusion of a regional human rights convention and the establishment of subregional institutes to promote human rights through information, research and education, inter-African commissions to hear complaints regarding human rights violations and mass organizations to defend human rights.

As to participation of the people, the seminar found that the primary task of development is to satisfy fundamental human needs, and that should any individuals impede that task the people could authorize their leaders to exert reasonable restrictions under carefully defined conditions; moreover, the people should make their leaders accountable for their actions and monitor them so that those leaders could enjoy the confidence and respect traditionally due to them.

It was also suggested that the African States should adopt a statute for migrant workers, non-national minorities and refugees and introduce an institution of the ombudsman type to make useful recommendations to the competent authorities.

In connexion with the judiciary, the seminar noted the existence of a number of obstacles to the effectiveness of judicial action in Africa and recommended : the establishment of a genuinely independent judiciary; the adoption of laws and regulations in conformity with the Constitution; the

provision of guarantees to protect defendants and ensure execution of court decisions, especially those directed against the administration; the suppression of emergency courts; and the establishment of an association of African magistrates under the aegis of OAU.

Future Action on the Right to Development

It is appropriate to acknowledge that, as a general proposition in terms of international human rights law, the existence of the right to development is a fait accompli. Whatever reservations different groups may have as to its legitimacy, viability or usefulness, such doubts are now better left behind and replaced by efforts to ensure that the formal process of elaborating the content of the right is a productive and constructive exercise.

The procedure to be employed in this undertaking was outlined by the Commission on Human Rights in a resolution adopted in March 1981. The Commission decided "to establish a working group of 15 governmental experts appointed by the Chairman of the Commission, taking into account the need for equitable geographic distribution, to study the scope and content of the right to development and the most effective means to ensure the realization, in all countries, of the economic, social and cultural rights enshrined in various international instruments, paying particular attention to the obstacles encountered by developing countries in their efforts

to secure the enjoyment of human rights." The working group is to meet three times for a total of five weeks before the beginning of the thirty-eighth session of the Commission (February 1982). At that session the group is to submit to the Commission a report based on its work "with concrete proposals for implementation of the right to development and for a draft international instrument on this subject". At the same session the Commission is to accord high priority to its consideration of the question "with a view to adopting concrete measures on the basis of the recommendations of the working group". The emphasis therefore is on rapid progress and concrete measures. In many respects the work of the group will bring a time of reckoning for a concept which to date has been characterized by a concreteness akin to that of the right to happiness.

The challenges which will confront the drafters of an instrument on the right to development are two-fold. The first is to produce a text which will be acceptable to a substantial majority of UN members and which is capable of drawing strong support from within all ideological and geopolitical blocs. At the same time they must achieve a delicately balanced package of principles which gives equal weight to the national and international dimensions of the right, and which acknowledges the indivisibility and interdependence of all the rights contained in the International Bill of Human Rights. Unless these challenges are met the final product is unlikely to achieve any degree of consensus

or to have any significant impact either on the promotion of respect for human rights or on the goal of establishing a new international order.

If the working group is to succeed in its task it will have to address itself to the following goals inter alia :

- (1) achieving agreement upon a general, humanistically-oriented, definition of development;
- (2) emphasizing the importance of respect for human rights as an essential ingredient in the development process;
- (3) reiterating that all human rights, including the right to development, are interdependent and indivisible;
- (4) framing a broad definition of the right to development which makes clear that it is :
 - a dynamic and not a static concept;
 - a synthesis of existing rights given an extra dimension by reference to a number of interrelated goals;
 - a balanced package consisting of equally important national and international dimensions; and
 - a right which is as much as prerogative of nations as of individuals within nations;
- (5) affirming that a development strategy based on repression and the denial of either civil and political rights or economic, social and cultural rights or both not only violates international human rights standards but is a negation of the concept of development;

- (6) emphasizing the fundamental links between disarmament, demilitarization, peace, security and development;
- (7) reflecting the concepts contained in General Assembly 32/130;
- (8) encouraging Member States to give substance, through increased international cooperation for development, to their pledge "to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms";
- (9) ensuring that negotiations for the establishment of a new international economic order pay appropriate regard to their ultimate objective of enhancing respect for and the realization of human rights; and
- (10) relating promotion of the right to development to the implementation procedures provided for under the two International Human Rights Covenants.

FOOTNOTES

Notes to Part VII

- 1/ United Nations Action in the Field of Human Rights
(New York, UN, 1980) p. 310
- 2/ UN doc A/34/542 (1979) Annex, para. 266
- 3/ UN doc. A/34/552 (1979) Annex II, pp. 92-93, Preamble
and para. 1 of Decision 115 (XVI)
- 4/ OAU doc CAB/LEG/67/3/Rev. 1 (1979)
- 5/ K. MBaye, "Le droit au développement comme un droit de
l'homme", Revue des droits de l'homme/Human Rights
Journal, Vol. V, No. 2-3, 1972, pp. 503-534
- 6/ GA Resolution 33/73 (1978)
- 7/ UN doc E/CN.4/1334 (1979). See also E/CN.4/1421 (1980)
- 8/ Unesco doc SS.78/CONF.630/12 61978)
- 9/ Papers and proceedings published by the Hague Academy of
International Law (Alphen aan den Rijn, Sijthoff and
Noordhoff, 1981)
- 10/ UN doc ST/HR/SER.A/8 (1980)
- 11) Revue Sénégalaise de droit, No. 22, December 1977

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