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## Development as an Emerging Human Right under International Law

### Keywords

Human Rights Law, International Law: History, Economics

# Development as an Emerging Human Right Under International Law\*

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## I. INTRODUCTION

A number of recent studies have linked development, human rights and international law.<sup>1</sup> The United Nations has been the leading initiator of these studies,<sup>2</sup> but some nongovernmental organizations such as the International Commission of Jurists and a few publicists have also contributed to the ongoing dialogue on the nature of the evolving right to development.<sup>3</sup> This article will survey the major issues in the development-human rights discussion, especially as they relate to the needs of developing countries. Additional questions will be raised and recommendations offered for further study.

## II. DEVELOPMENT AND ITS STATUS TODAY

Development theory and practice continue to generate intense debate. Although it no longer is fashionable to equate development with economic growth or economic development,<sup>4</sup> most development projects

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\* This article is an adapted version of a chapter by the author entitled, "Development and Human Rights: The Role of International Law and Organizations," from a forthcoming book HUMAN RIGHTS AND THIRD WORLD DEVELOPMENT (G. Shepherd and V. Nanda eds. 1985).

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1. See, e.g., Report of the Secretary-General, *The International Dimensions of the Right to Development as a Human Right*, U.N. Doc. E/CN.4/1334 (1979), Study by the Secretary-General, *The Regional and National Dimensions of the Right to Development as a Human Right*, U.N. Docs. E/CN.4/1421, 1980 and E/CN.4/1488, (1981); INTERNATIONAL COMMISSION OF JURISTS, *DEVELOPMENT, HUMAN RIGHTS, AND THE RULE OF LAW* (1981); Espiell, *The Right of Development as a Human Right*, 16 TEX. INT'L L. J. 189 (1981); Van Boven, *The Right to Development and Human Rights*, 28 INT'L COMM'N JURISTS REV. June 1982, at 49; de Vey Mestdag, *The Right to Development*, NETH. INT'L L. REV. 30 (1981); Rich, *The Right to Development as an Emerging Human Right*, 23 VA. J. INT'L L. 287 (1983). For earlier writing, see M'Bay, *Le Droit au développement comme un droit de l'homme*, 1972 R. DR. L'HOMME 503; Schachter, *The Evolving International Law of Development*, 15 COLUM. J. TRANSNAT'L L. 1 (1976).

2. See *supra* note 1.

3. See *supra* note 1.

4. See, e.g., I. Adelman and C. Morris, *Economic Growth and Social Equity in Developing Countries*, (1973); I. ADELMAN AND S. ROBINSON, *Income Distribution Policy in Developing Countries*, (1979); G. FIELDS, *Poverty, Inequality, and Development*, (1980); INCOME DISTRIBUTION AND GROWTH IN THE LESS-DEVELOPED COUNTRIES, (C. Frank Jr. & R. Webb ed. 1977); W. LOEHR AND J. POWELSON, *The Economics of Development and Distribution* (1981), FROM DEPENDENCY TO DEVELOPMENT, (H. Munoz ed. 1981); Cline, *Distribution and*

still are designed to accomplish economic goals. However, one critic, Claude Alvares, recently observed that:

[f]or the first time since the onset of the industrial age, it [is now] becoming possible to describe subsistence values and their positive qualities without being scorned or dismissed as regressive. The established dichotomies —backward-forward, traditional-modern, primitive-sophisticated, developing-advanced, inferior-superior, — [have] lost the sharp dividing lines that once separated them.<sup>5</sup>

He even questions whether economic development is a desirable objective in itself.<sup>6</sup> The term "development," as used in this article, is defined not by reference to the goals of economic growth and economic development alone. Rather, it refers to the development of human beings, an end towards which economic development may be but a singular means.<sup>7</sup> As a working definition, Johan Galtung's conceptual framework of development is accepted here. Galtung's proposition is that development

stands for the development of human beings and not for the development of countries, the production of things, their distribution within social systems or the transformation of social structures. These may be means towards the end but they should not be confused with the end, which is that of developing the entire human being and all human beings.<sup>8</sup>

Thus, although the focus is on the satisfaction of human needs, this concept of a needs-oriented development "should not be identified with the satisfaction of 'minimum needs,' for what is wanted is more than a minimum level of satisfaction."<sup>9</sup>

The need to emphasize the element of human development was recently recognized by the United Nations General Assembly when, at its 35th session, it adopted the International Development Strategy, declar-

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*Development: A Survey of the Literature*, 1 J. DEV. ECON. 359 (1975); HEWLETT, *Human Rights and Economic Realities: Tradeoffs in Historical Perspective*, 94 POL. SCI. Q. 453 (1979); AND RANIS, *Equity and Growth: New Dimensions of Development*, 19 J. CONFLICT RESOLUTION 558 (1975). As an illustration of the position before the shift, see, e.g., H. JOHNSON, *Money, Trade and Economic Growth*, (1962), cited in Hewlett, *Human Rights and Economic Realities: Tradeoffs in Historical Perspective*, 94 POL. SCI. Q. 453, 456 (197): "[T]here is likely to be a conflict between rapid growth and an equitable distribution of income; and a poor country anxious to develop would probably be well advised not to worry too much about the distribution of income."

5. Alvares, *Deadly Development*, 11 DEV. F., Oct. 1983, at 3.4.

6. *Id.* at 4. Alvares asserts: "Unless the case against development is taken up in earnest before it is too late, the elite will solve it in the manner they have always preferred, at the expense of the rest."

7. See *infra* notes 105-20 and accompanying text.

8. U.N. CONFERENCE ON TRADE AND DEVELOPMENT, *Development, Environment and Technology—Towards a Technology for Self-Reliance*, 3 (1979) (footnote omitted).

9. *Id.*

ing that the "development process must promote human dignity."<sup>10</sup> Acknowledging that development embodies both economic and social objectives, it added: "The final aim of development must be the continuing increase in 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."<sup>11</sup> And it mandated that, in providing technical and financial support to accomplish these objectives, the international community is to pay "due respect to the cultural identities of nations and peoples."<sup>12</sup>

Granting that macro issues such as economic growth and capital formation are likely to remain the focal point of developmental efforts in many developing countries, one cannot escape noting that developing countries' economic situations have been rather bleak in the recent past, and their future prospects do not look bright. To illustrate, when the United Nations Conference on Trade and Development (UNCTAD VI) met in Belgrade from June 6 to July 3, 1983, it concluded with no reported significant progress for developing countries on the items discussed there — the world economic crisis and recovery measures, commodities and trade, money and finance.<sup>13</sup>

The lack of progress at UNCTAD VI, compounded with sluggish growth during the 1970s, has resulted in worsening economic conditions for the low-income countries. The World Bank reported in 1981 that for most low-income countries, slower growth was the rule during the 1970s. Without capital to cover current account deficits, and with little capacity to increase exports in the short run, they found the tighter external environment difficult. The African countries had the slowest growth, most frequently as a result of domestic rather than external causes; their GNP per person rose by only 0.5 percent a year in the 1970s. In several countries per capita income and food production actually fell.<sup>14</sup> In its next report in 1982, the World Bank was not hopeful for their long-term prospects either, stressing the worldwide "concern with the growing gap between rich and poor."<sup>15</sup>

One advisor to the Secretary-General of UNCTAD and a participant

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10. See U.N. Gen. Ass. Res. 35/56 (1980), para. 8. See G.A. Res. 35/56, para. 8 (1980).

11. *Id.* para. 42. See also *id.* para. 8.

12. *Id.* para. 42.

13. See UNCTAD Trade and Development Report, *The Current World Economic Crisis*, U.N. Doc. UNCTAD/TDR/3, pt. I (1983); Editorial, 17 J. WORLD TRADE L. 375 (1983): "It was not expected that a great deal would emerge from the Conference, but it was at least assumed that the continuation of the North-South dialogue would result in some general conclusions being arrived at as to the diagnosis of the present economic situation and some assessment made of measures that would have to be taken in the long or short term by governments. But no such diagnosis could be agreed." See also C. Lawson, *The Future of East-South Trade after UNCTAD VI*, 6 *Third World Q.* 145 (1984).

14. WORLD BANK, *World Development Report 1981* 112-13 (1981).

15. WORLD BANK, *World Development Report 1982* 30 (1982).

in the Brandt Commission,<sup>16</sup> D. Avramovic, commented in early 1983:

[T]he present pressure on the balances of payments of developing countries is no less than during the great depression of the 1930s: their export commodity prices other than oil are in real terms almost as low; the interest rates on their debts are in real terms as high; and the proportion of their exports absorbed by debt service is even higher than in the 1930s in a sample of countries for which a long-run comparison can be made. Currency devaluation, difficulties of maintaining debt service payments, and import and exchange restrictions are on the increase. Major deflation is now underway in many developing countries.<sup>17</sup>

The World Bank's annual report, *World Development Report 1983*,<sup>18</sup> notes that not since the end of World War II has Third World development experienced such a setback as in 1982.<sup>19</sup> The United States under the Reagan administration, however, has recently decided to reduce its contribution to the IDA [International Development Agency], the World Bank affiliate which lends money to 40 of the world's poorest countries—whose per capita income average is about one dollar a day — at no interest and with fifty years to repay.<sup>20</sup> The United States contribution to the IDA is required to be kept at 750 million dollars a year for three years as of July 1, 1984. Secretary of State George Schultz had urged the United States to contribute 950 million dollars, while the World Bank had hoped for a sum of one billion dollars.<sup>21</sup> In 1983 the U.S. Congress had appropriated 950 million dollars to the IDA as the United States' contribution. In total, the IDA will have 9 billion dollars, rather than the 12 billion dollars sought by the other donor nations, to spend over the next three years in its development projects.<sup>22</sup> The following two statements highlight the impact of such an action. The World Bank's 1983 report estimates that

even with an annual GDP [Gross Domestic Product] growth rate of 5 to 6 percent between 1975 and 2000, more than 600 million people will remain below the poverty line in developing countries in the year 2000, unless the pattern of growth is modified to put more emphasis on poverty alleviation. The current projections clearly suggest more moderate growth prospects and thus reinforce the need for policies not only for stimulating growth but also for curbing population

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16. For the report, see Independent Commission on International Development Issues, *North-South: A Programme for Survival* (1980). For the second report of the Brandt Commission, see *Common Crisis, North-South: Co-operation for World Recovery*, (1983).

17. D. Avramovic, *Development Policies for Today*, 17 J. WORLD TRADE L. 189, 192 (1983) (footnote omitted).

18. WORLD BANK, *World Development Report* (1983).

19. *Id.* at 125.

20. Francis, *U.S. reduces aid to World Bank, sending ripples around the globe*, Christian Science Monitor, January 16, 1984, at 9.

21. *Id.*

22. *Id.*

growth and meeting basic needs.<sup>23</sup>

The President of the World Bank, A.W. Clausen, remarked on January 26, 1984:

The low income countries of Africa have been suffering steady declines in per capita income for 10 years! Per capita food production has been falling over the past 20 years, and the cost of food imports is now equivalent to a quarter of all the development assistance that Africa receives. Rising commodity prices may give Africa a bit of relief in 1984, but we still expect no growth in per capita income. In most African countries, political conditions are fragile, institutions and human resources are already strained, and population is expected to more than double by the end of the century. Some developing countries in other regions also face bleak prospects.<sup>24</sup>

### III. THE RELATIONSHIP BETWEEN DEVELOPMENT AND HUMAN RIGHTS

The linkage between development and human rights is unambiguously reflected in the recent United Nations General Assembly resolution adopted at its 37th session in December 1982, in which the Assembly declared that the right to development "is an inalienable human right," and emphasized that "the United Nations should give attention not only to the human rights aspects of development but also the development aspects of human rights."<sup>25</sup> The Assembly requested the Commission on Human Rights to take necessary measures to promote the right to development and welcomed the decision of the Commission that the Working Group of Governmental Experts on the Right to Development should continue its work with the aim of presenting as soon as possible a draft resolution on the right to development.<sup>26</sup> Earlier, the U.N. Economic and Social Council had approved the decision of the U.N. Commission on Human Rights to establish a group of experts<sup>27</sup> and had asked the group to pay particular attention to the obstacles encountered by developing countries in their efforts to secure the enjoyment of human rights.<sup>28</sup>

The United Nations has explicitly enunciated and reiterated the notion of an inseparable link between human rights and development only recently. However, the close relationship between the two concepts has been acknowledged in U.N. deliberations regarding development ever

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23. World Bank Report, *supra* note 18, at 39.

24. Address by A. W. Clausen, *Priority Issues for 1984* (Remarks before the European Management Forum, Davos, Switzerland, Jan. 26, 1984, mimeo World Bank), 3.

25. See G. A. Res. 37/199 (December 1982).

26. See *id.* paras. 6, 7, 8 and 12. It should be noted that the Commission on Human Rights, at its 39th session, held from January 31 to March 11, 1983, decided to renew the mandate of the Working Group of Experts with the task of preparing a draft declaration on the right to development. See U.N. Comm'n Hum. Rts., Res. 1983/15, U.N. Doc. E/1983/13, E/CN.4/1983/60, 1983, at 139.

27. See ECOSOC Decision, 1981/149, of May 8, 1981.

28. *Id.* See also U.N. Comm'n Hum. Rts., Res. 36/XXXVII, of March 11, 1981.

since the development planning efforts were being formulated and crystallized in the late 1950s. In order to analyze a few selected issues of this relationship in an historical context, this section is divided into six parts: (1) The Relationship between Civil and Political Rights and Economic, Social and Cultural Rights; (2) Trade-Offs between Economic Development and Human Rights; (3) Human Rights and International Development Planning Policies and Practices; (4) The Basic Needs Approach to Development; (5) Participation as an Important Factor in the Development Process; and (6) Human Rights and Individual and Collective Aspects of Development.

1. *The Relationship Between Civil and Political Rights and Economic, Social and Cultural Rights*

Although historical antecedents of these rights provide us with rich source material to enhance our understanding of the evolutionary processes at work,<sup>29</sup> they fail to explain the dynamics of their interrelationships in the recent past. Though two separate covenants were drafted by the UN embodying civil and political rights and economic, social and cultural rights,<sup>30</sup> empirical data do not support the assertion that either set of rights is a prerequisite to the enjoyment of the other. Additionally, it can be persuasively argued that neither set of rights is to be accorded a priority by states, for neither by itself will suffice to accomplish the goal of providing an individual the opportunity to realize his or her potential as a human being.

A state party to the International Covenant on Civil and Political Rights (CPR) is under the obligation "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the . . . Covenant."<sup>31</sup> Further, it undertakes to adopt such legislative measures as may be necessary to give effect to the rights recognized in the Covenant.

On the other hand, a state party to the International Covenant on Economic, Social and Cultural Rights (ESCR) is obliged to "take steps . . . to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means."<sup>32</sup> Similarly a state party to the CPR may not derogate from its obligations unless measures it takes are "[i]n time of public emergency which threatens the life of the nation and the

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29. See, e.g., D'Amato, *The Concept of Human Rights in International Law*, 82 COLUM. L. REV. 110 (1982); Henkin, *Rights: Here and There*, 81 COLUM. L. REV., 1582 (1981).

30. For the texts of the covenants, see 21 U.N. G.A.O.R. Supp. 16, at 49-60, U.N. Doc. A/6316 (1966). See generally Humphrey, *The Implementation of International Human Rights Law*, 24 N.Y.L.SCH.L.REV. 31 (1980); Nanda, *Implementation of Human Rights by the United Nations and Regional Organizations*, 21 DE PAUL L. REV. 307 (1971).

31. *Id.* at art. 2(1), pp. 52, 53.

32. Covenant on Economic, Social and Cultural Rights, art. 2, p. 49.



existence of which is officially proclaimed,"<sup>33</sup> and such measures are not discriminatory nor inconsistent with their other obligations under international law.<sup>34</sup> In contrast to the stringent mandatory duties set forth in the CPR, the standards for derogation under the ESCR are rather vague. The Covenant provides that a state party "may subject such rights only to such limitations" which are determined by law, are compatible with the nature of the rights accorded under the Covenant, and which are solely for the purpose of promoting the general welfare in a democratic society.<sup>35</sup>

Thus it can be argued that the nature and scope of civil liberties accorded under the CPR<sup>36</sup> (e.g., the right to life and freedom of expression; the right to freedom of thought, conscience and religion; the right of peaceful assembly; prohibitions of torture or cruel, inhuman or degrading treatment or punishment; prohibition of slavery, arbitrary arrest and detention; and retroactive criminal legislation) are at variance with the guarantees provided under the ESCR<sup>37</sup> (e.g., the right to work and social security; the protection of the family; the right to an adequate standard of living; the right to health, education and cultural life). The rights under the former are tangible and meaningful, for they are precise, immediate and readily enforceable. The rights under the latter, however, with a few exceptions, are amorphous and contingent, and non-enforceable by legal procedures. These social and economic guarantees are to be progressively realized, awaiting their realization and implementation upon the happening of certain events, including the availability of "international assistance and co-operation" and national resources.<sup>38</sup> Consequently, it can be argued that the ESCR embodies long-term aspirations which are not ripe for immediate implementation and which, in the near future, could not be realized owing to the lack of resources and legal procedures necessary for their enforcement.<sup>39</sup>

Although, for a number of years, the implementation of economic, social and cultural rights did not receive the same kind of attention at the U.N. as was accorded to the implementation of civil and political rights, it is noteworthy that in 1977 the United Nations General Assembly adopted a resolution which succinctly states that both civil and political and economic, social, and cultural rights are indivisible, interdependent and inalienable, and which recognizes the urgency of implementing and protecting all rights included within the two categories of fundamental rights.<sup>40</sup>

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33. Covenant on Civil and Political Rights, art. 4 (1).

34. *Id.*

35. Covenant on Economic, Social and Cultural Rights, art. 4.

36. See Covenant on Civil and Political Rights, arts. 6-27.

37. See Covenant on Economic, Social and Cultural Rights, arts. 6-15.

38. *Id.*, art. 2(1).

39. See, e.g., the discussion at the 67th annual meeting of the American Society of International Law on *Economic Development and Human Rights: Brazil, Chile, and Cuba*, 67 AM. SOC'Y INT'L L. PROC. 198 (1973).

40. Gen. Ass. Res. 32/130 of Dec. 16, 1977, para. 1.

Since the late 1970s, efforts to attain implementation of ESCR rights have included discussion by the U.N. Commission on Human Rights of an agenda item which addresses the attainment of rights contained within the Universal Declaration of Human Rights and the ESCR, and the inherent problems faced in their implementation.<sup>41</sup> The U.N. Economic and Social Council (ECOSOC) has accorded special attention to the subject by designating a 15-member Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights. The working group studies the subject and seeks reports from states parties and U.N. specialized agencies. Its assigned task is to make suggestions and recommendations to the ECOSOC.<sup>42</sup>

## 2. *Trade-Offs between Economic Development and Human Rights*

The emerging development strategies, with their emphasis on the human dimension of development, reflect a shift from earlier development strategies. Those schemes assumed that there are unavoidable trade-offs between economic development and human rights, and that, consequently, the sacrifice of civil liberties, equity and distributive justice at the altar of economic growth is a necessary evil for developing countries, at least during a transitional stage of development. The case of Brazil is often cited as a primary example of this former development ideology in action. Sylvia Ann Hewlett commented that, in Brazil

it seems that an exclusionary and repressive regime was a necessary condition for successful stabilization . . . , and that, in its turn, successful stabilization was an essential prerequisite for a new cycle of capitalist growth within this Third World nation. . . .<sup>43</sup> [Because] there is no natural affinity among economic growth, political freedom, and social justice in development processes,<sup>44</sup> . . . [t]he great majority of governments have pursued developmental strategies that have permitted very little filtering down of the fruits of economic growth to the bulk of the population. Available evidence points overwhelmingly to the fact that in capitalist Third World nations growth has been accompanied by a massive concentration of wealth and a drastic increase in inequality; thus, 'millions of desperately poor people throughout the world have been hurt rather than helped by economic development.'<sup>45</sup>

Another commentator at the American Society of International Law in 1973 observed that:

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41. For the discussion of this agenda item, agenda item 8, at the 39th session of the U.N. Commission on Human Rights, see Report of the 39th Session of the Commission on Human Rights, ESCOR Supp. (No. 3) at 33, U.N. Doc. E/1983/13, E/CN.4/1983/60 (1983).

42. U.N. Doc. E/CN.4/1983/SR. 17, at 3 (1983).

43. Hewlett, *Human Rights and Economic Realities: Tradeoffs in Historical Perspective* 94 POL. SCI. Q. 453, 471 (1979).

44. *Id.*, at 453 (footnote omitted).

45. *Id.* at 471.

the Brazilian army has, perhaps unwittingly and unknowingly, been made the guardian for a dynamic but highly exploitative economic system, favoring a small minority of the nation. Political repression and economic exploitation thus go hand in hand. Brazil is creating a Scandinavian-sized consumer economy superimposed on an Indonesian-sized pauperized mass, presided over by a cruel and increasingly isolated army.<sup>46</sup>

Another observer has reached a similar conclusion after comparing data from Brazil, Chile and Cuba. He notes that while sacrifices of human rights does not appear to jeopardize rapid growth, rapid growth does not "necessarily foster human rights."<sup>47</sup> He finds no historical justification for the assumption that one gain must be sacrificed to achieve another.<sup>48</sup>

Similarly, Robert Goodin challenges economists who presume that rapid economic growth is incompatible with fundamental human rights.<sup>49</sup> Goodin illustrates "reasons internal to economic theory itself for doubting that repression produces economic miracles,"<sup>50</sup> and suggests that the assumptions underlying the assertions that deprivation of human rights would speed economic development "look fairly implausible for the general case."<sup>51</sup> These assertions are that such deprivations would further capital accumulation, curb population growth, eliminate periodic distortions in the economy through the curtailment of electoral competition and political rights, reduce economically harmful trade union agitations and unrest, reduce the crime rate and its economic costs by limiting civil liberties, and encourage foreign investment by curtailing political rights and therefore curbing political instability.<sup>52</sup>

To illustrate his theory, Goodin challenges the argument that capital accumulation would be speeded by deprivation of civil liberties and distributive justice by suggesting that the argument is at best of limited value, applying only, if at all, in those nations which have chosen to pursue a capital-intensive development strategy. Moreover, Goodin states that the argument is most likely based on fallacious assumptions. He questions the proposition that the well-off have a lower propensity to consume, and urges that with respect to the consumption activities of the poor, these activities should be counted as an investment in "human capital."<sup>53</sup> Finally, he observes that "assuming that the wealthy were more inclined to save, the capital accumulation argument for restricting rights

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46. Tyson, *Economic Growth and Human Rights in Brazil: The First Nine Years of Military Tutelage*, 67 AM. SOC'Y INT'L L. PROC. 208, 213 (1973).

47. Trubek, *When is an Omelet? What is an Egg? Some Thought on Economic Development and Human Rights in Latin America*, 67 AM. SOC'Y INT'L L. PROC. 198, 200 (1973).

48. *Id.*, at 226.

49. Goodin, *The Development-Rights Trade-Off: Some Unwarranted Economic and Political Assumptions*, 1 UNIVERSAL HUM. RTS. 31 (1979).

50. *Id.*, at 31-32.

51. *Id.*, at 32.

52. *Id.*, at 33-41.

53. *See id.*, at 33-34.

presupposes that they would save within their own country."<sup>54</sup> Since a typical developing country does not usually have "very secure futures markets," and is full of uncertainties, he argues that the rich might be driven to spend "'as though there were no tomorrow' or to stash the cash under their beds."<sup>55</sup> Goodin continues to question some economists assumptions<sup>56</sup> by noting that a developing nation which pursues economic growth by restricting fundamental rights probably incurs stiff costs of oppression, wiping out any marginal gains.<sup>57</sup> Whether such costs outweigh the economic benefits is a question that he would leave for empirical determination in each particular case, but he cautions that we "must not simply assume them away if we want to make sound policy recommendations."<sup>58</sup>

Finally, based on evidence from a number of English-speaking countries in Sub-Saharan Africa, Rhoda Howard suggests:

The 'right to development,' touted by African elites as a prerequisite to the more traditional human rights, may well be merely a cover for denial of those basic civil and political liberties which will allow the dispossessed masses to act in their own interests. To wait for economic development, including a 'basic needs' oriented redistribution of wealth, to occur before allowing for civil and political liberties is to invite the possibility that such redistribution will never occur. Even in socialist societies, elites entrench and perpetuate themselves. Without human rights, the evidence suggests, economic growth may occur but economic development will not. 'Full bellies' require political participation and civil liberties.<sup>59</sup>

It is submitted that although the debate on the human rights-economic development tradeoffs will continue, it seems fair to observe that the proponents of economic growth at the cost of civil and political liberties have failed to prove the soundness of their position.

### 3. *Human Rights and International Development Planning Policies and Practices*

In 1961 the U.N. General Assembly designated the 1960s as the United Nations Development Decade.<sup>60</sup> In articulating the strategy for the development decade, the Assembly recognized the undertaking contained in the U.N. Charter "to promote a social progress and better standards of life in larger freedom."<sup>61</sup> However, no mention of human rights was made, and it was only four years later that the General Assembly

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54. *Id.*, at 34.

55. *Id.*

56. *Id.*, at 41-42.

57. *Id.*

58. *Id.*

59. Howard, *The Full-Belly Thesis: Should Economic Rights Take Priority Over Civil and Political Rights? Evidence from Sub-Saharan Africa*, 5 HUM. RTS. Q. 467, 478 (1983).

60. G. A. Res. 1710 (XVI) (1961).

61. *Id.*, G. A. Res. 2027 (XX) (1965).

adopted a resolution recognizing the need to devote special attention, on both the national and international levels, to the promotion of human rights within the context of the development decade. Earlier, however, a 1960 U.N. Report on development activities<sup>62</sup> clearly identified the link between human rights and development:

One of the greatest dangers in development policy lies in the tendency to give to the more materials aspects of growth an overriding and disproportionate emphasis. The end may be forgotten in preoccupation of 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 obtaining them. Even where there is recognition of the fact that the end of all economic development is . . . the growth and well-being of the individual and larger freedom, methods of development may be used which are a denial of basic human rights.<sup>63</sup>

Before the U.N. adopted its strategy for the Second Development Decade in 1970,<sup>64</sup> the General Assembly proclaimed the Declaration on Social Progress and Development (DSPD).<sup>65</sup> The DSPD linked human rights and development issues directly, stating that "[s]ocial 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."<sup>66</sup> However, while the strategy acknowledged the need to distribute wealth equitably and recognized that "the success of international development activities will depend in large measure on . . . the promotion of human rights for all members of society,"<sup>67</sup> it paid no specific attention to the issue of civil and political rights. Subsequently, in preparation for the strategy for the Third Development Decade, a 1979 study by the U.N. Secretary-General<sup>68</sup> stated that "promotion of respect for human rights in general, including the human right to development, should be prominent among the stated objectives of a new international development strategy."<sup>69</sup>

In 1980, the U.N. Commission on Human Rights invited the preparatory committee for the Third Development Decade "to pay due attention to the integration of human rights in the development process."<sup>70</sup> The General Assembly took on this challenge by responding in the Interna-

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62. See U.N. Doc. E/3347/Rev. 1 (1960).

63. *Id.*, para. 90.

64. G. A. Res. 2626 (XXV) of Oct. 24, 1970.

65. G. A. Res. 2542 (XXIV), 1969.

66. *Id.*, art. 2.

67. *Supra* note 64, para. 5.

68. Report of the Secretary-General, *The International Discussions of the Right to Development as a Human Right*, U.N. Doc. E/CN.4/1334 (1979).

69. *Id.*, para. 303.

70. Pursuant to Res. 7 (XXXVI) (1980).

tional Development Strategy for the Third Development Decade<sup>71</sup> that human dignity must be promoted by the development process.<sup>72</sup> Earlier, in fact, the U.N. General Assembly had adopted a resolution stating that "human rights questions should be examined globally, taking into account both the over-all context of the various societies in which they present themselves as well as the need for the promotion of the full dignity of the human person and the development and well-being of the society."<sup>73</sup>

The pre-eminent question remains: what role has official development assistance played in the promotion of human rights? The 1979 study by the U.N. Secretary-General<sup>74</sup> attempted to analyze such a role and concluded that "there is widespread international interest in the concept of forging closer links between the promotion of human rights and the provision of official development assistance."<sup>75</sup> The study, however, acknowledged that its analysis of the relevant issues was not comprehensive. It recommended that the U.N. Commission on Human Rights undertake "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."<sup>76</sup>

#### 4. *The Basic Needs Approach to Development*

The International Labor Organization (ILO) and the World Bank have been in the forefront of articulating the "basic needs" approach.<sup>78</sup> The basic needs concept encompasses all those needs, both material and non-material, the fulfillment of which is essential for self-realization. However, it is imperative that the basic needs approach to development not be used as an excuse for defining development objectives as meeting merely the minimum needs for subsistence of the people in developing countries.<sup>79</sup> This concern was succinctly stated in the Programme of Ac-

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71. G. A. Res. 35/56 (1980).

72. *Id.*, para. 8.

73. G. A. Res. 32/130, para. 1(d) (1977).

74. *See supra* note 68.

75. *Id.*, para. 279.

76. *Id.*

78. *See generally* ILO, MEETING BASIC NEEDS, STRATEGIES FOR ERADICATING MASS POVERTY AND UNEMPLOYMENT, (1977); World Bank's working papers produced in mimeo form in 1977, entitled BASIC NEEDS: A PROGRESS REPORT: THE DISTINCTIVE FEATURES OF A BASIC NEEDS APPROACH TO DEVELOPMENT; GLOBAL ESTIMATES FOR MEETING BASIC NEEDS; INTERNATIONAL IMPLICATIONS FROM DONOR COUNTRIES AND AGENCIES OF MEETING BASIC NEEDS, cited in U.N. Doc. E/CN.4/1334, para. 172, footnote 107 (1979).

79. *See, e.g.*, a criticism of the approach in Gauhar, *What is Wrong with Basic Needs?* 4 THIRD WORLD Q. xxi (1982); "What is wrong with 'Basic Needs'? It is a diversion and a cold-blooded strategem. It carves people into layers of poverty-relative and absolute, sets up arbitrary statistical criteria of judging levels of growth and, in the end, aims at amelioration rather than the eradication of poverty."

tion adopted in 1976 by the ILO.<sup>80</sup> "The concept of basic needs should be placed within a context of a nation's overall economic and social development . . . ; it should be placed within a context of national independence, the dignity of individuals and peoples and their freedom to chart their destiny without hindrance."<sup>81</sup> Earlier, a group of economists and social and natural scientists emphasized in the Cocoyoc Declaration that "development should not be limited to the satisfaction of basic needs. There are other needs, other goals, and other values. Development includes freedom of expression and impression, the right to give and receive ideas and stimulus."<sup>82</sup>

In defining basic rights and basic needs, Article 2 of the ILO's Programme of Action includes certain minimum requirements for private consumption and certain essential services provided by and for the community at large as part of such material needs.<sup>83</sup> However, Johan Galtung and Anders Wirak suggest that human rights and human needs should be seen as two different concepts.<sup>84</sup> They list needs under the headings of security needs, welfare needs, identity needs, and freedom needs,<sup>85</sup> and proposes a set of needs "that might be considered as important candidates on the world waiting list for processing into rights."<sup>86</sup>

Even if a development strategy based on political repression could perhaps succeed in meeting basic needs in a narrow quantitative sense, there is a sound basis for arguing that this would be an unacceptable option. The point was forcefully made by Jose Diokno, a Filipino leader who criticized one of the justifications given for authoritarianism in Asian developing nations. Diokno blatantly cited as a falsehood the notion that "developing countries must sacrifice freedom temporarily to achieve the rapid economic development that their exploding populations and rising expectations demand."<sup>87</sup> Instead, he proposed

"[A]uthoritarianism 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 ad-

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80. See G. A. Res. 31/176 (1976), in which the Programme of Action was endorsed by the U.N. General Assembly. The Programme of Action is contained in U.N. Doc. E/5857 (1976).

81. U.N. Doc. E/5857, art. 5 (1976).

82. The Cocoyoc Declaration adopted on October 12, 1974, is reprinted in U.N. Doc. A/C.2/292 (1974).

83. U.N. Doc. E/5857, art. 2 (1976).

84. Galtung and Wirak, *On the Relationship between Human Rights and Human Needs*, Paper 5578/CONF. 630/4, 1978 at 1, cited in U.N. Doc. E/CN.4/1334, 1979, para. 165, footnote 91).

85. Cited in U.N. Doc. E/CN.4/1334, 1979, para. 166, footnote 71.

86. *Id.*

87. Remarks of Jose W. Diokno, cited in Alston, *Development and the Rule of Law: Prevention versus Cure as a Human Rights Strategy*, in INTERNATIONAL COMMISSION OF JURISTS, HUMAN RIGHTS AND THE RULE OF LAW 31, 57 (1981).

equate, and how they are to be provided."<sup>88</sup>

Thus, it seems essential that recognition be accorded to the indivisibility of human rights and the protection of civil and political rights guaranteed in the development process.

##### 5. *Participation and the Development Process*

The recognition of the importance of popular participation in the development process and in the realization of human rights is reflected by the attention the subject has received at the United Nations in recent years. The U.N. Commission on Human Rights discussed the topic as an agenda item in February 1983.<sup>89</sup> Earlier, in May 1982, an international seminar on the subject was held in Yugoslavia, which concluded that popular participation was essential for the development and realization of human rights.<sup>90</sup> The U.N.'s interest can be traced back to 1975 when it issued a report<sup>91</sup> and ECOSOC passed a resolution.<sup>92</sup> The U.N. report emphasized the importance of "active and meaningful involvement of the masses of people" in the developmental decision-making process and in the implementation of resulting programs and projects.<sup>93</sup> The ECOSOC resolution emphasized the importance of the governments' role in promoting and effectuating popular participation. Such promotion must include both full recognition of civil, political, social, economic and cultural rights and, through innovative measures, structural and institutional changes, reform and development. Also, governments should endeavor to involve actively all segments of society through educational activities. Since the ECOSOC resolution, the U.N. General Assembly has adopted several resolutions.<sup>94</sup> The most recent requests the U.N. Secretary-General to undertake a comprehensive analytical study on the subject, to be submitted to the U.N. Commission on Human Rights.<sup>95</sup>

The link between human rights and participation has been recognized in several U.N. instruments. The Proclamation of Teheran,<sup>96</sup> the Declaration of Social Progress and Development,<sup>97</sup> the International Cov-

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88. *Id.*, at 53-54.

89. See Report of the 39th Session of the Commission on Human Rights, ESCOR Supp. (No. 3) at 23, U.N. Doc. E/1983/13, E/CN.4/1983/60 (1983).

90. See U.N. Doc. A/37/442 eSTP°(1982).

91. See POPULAR PARTICIPATION IN DECISION-MAKING FOR DEVELOPMENT, U.N. Sales No. E. 75. IV. 10, 1975. See also U.N. Doc. E/CN.5/532, entitled, *Popular Participation and its Practical Implications for Development*.

92. G. A. Res. 1929 (LVIII) of May 6, 1975.

93. Popular Participation in Decision-Making for Development, *supra* note 91, at 4.

94. These include G. A. Resolutions 32/130 of Dec. 16, 1977; 34/46 of Nov. 23, 1979; and 37/55 of Dec. 3, 1982.

95. See Draft Res. 1, *supra* note 41, at 1.

96. See *Final Act of the International Conference on Human Rights*, U.N. Doc. A/CONF. 32/41, 1968, U.N. Sales No. E. 68. XIV. 2 (1968).

97. The Declaration was adopted by G. A. Res. 2542 (XXIV) (1969) and endorsed again in G. A. Res. 32/117 (1977). Article 5 states that social progress and development require the full utilization of human resources, including especially, "(c) The active partici-



enant on Economic, Social and Cultural Rights<sup>98</sup>, the International Covenant on Civil and Political Rights,<sup>99</sup> and the International Development Strategy for the Third United Nations Development Decade<sup>100</sup> all refer to and recognize participation in development as a human right. In 1980, the UNESCO general conference referred to participation in a resolution as to be "regarded both as a human right and a means for the exercise of human rights."<sup>101</sup> Similarly, the Inter-American Commission on Human Rights noted in its 1980 report that "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."<sup>102</sup>

The Yugoslavian representative at the U.N. Commission on Human Rights discussed the Yugoslavian seminar on popular participation and made a distinction between the right to participate and actual participation by all citizens:

Citizens at the grass-roots level could not be expected to participate actively unless there were concrete advantages in doing so and their experience in the course of participatory activities confirmed their hopes. As long as people felt that they were agents in control of their own destiny rather than objects of manipulation or passive recipients of development, they could accept sacrifices and disruption of their way of life.<sup>103</sup>

Popular participation, as a basic human right, is a precondition for economic and social development. It is an essential component of the right to development. Since it is such an important component, the right must not be illusory. For meaningful participation, and hence meaningful development, the participation must allow the individual to meaningfully contribute to, rather than being manipulated by, the participating process. Because the individual should be the principal beneficiary of societal development, the individual should have the opportunity to participate in the national development decision-making process and in the implementation and monitoring of such plans.

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pation of all elements of society . . . in defining and in achieving the common goals of development with full respect for the fundamental freedoms embodied in the Universal Declaration of Human Rights."

98. Covenant on Economic, Social and Cultural Rights, arts. 8 (right to form trade unions), 13 (right to education), and 15 (right to enjoy the benefits of science and culture).

99. Covenant on Civil and Political Right, arts. 19(1) (right to hold opinions); 19(2) (right to freedom of expression); 21 (right to peaceful assembly); 22 (right to freedom of association); and 25 (right to participate in the electoral process).

100. See *supra* note 10, para. 82.

101. G. A. Res. 3/01.3, para. (e) 1980, see also ILO, *Employment, Growth and Basic Needs: A One-World Problem*, (1976).

102. OAS Doc. OEA/Ser. G, CP/Doc. 1110/80, at 142 (1980).

103. U.N. Doc., E/CN.4/1983/SR.18, at 5 (1983).

6. *Human Rights and Individual and Collective Aspects of Development*

The discussion on the relationship between human rights and individual and collective aspects of development has centered around the right to development. Since voluminous literature already exists on the subject,<sup>104</sup> this discussion is confined to selected aspects of the relationship, especially the recent deliberations at the U.N. Commission on Human Rights.

The right to development has been characterized as a right to the "realization of the potentialities of the human person in harmony with the community."<sup>105</sup> It has also been understood as a process designed to create conditions in which every person can enjoy and exercise all his or her human rights, including economic, social, cultural, civil, and political rights.<sup>106</sup> As we shall see, there is a clear implication that everyone has the right under international law to participate in and benefit from development to improve the quality of his or her life.

The right to development has evolved from the right of political communities, states, and peoples subjugated to foreign and colonial domination, and it is articulated in the demands of the NIEO and the Charter of Economic Progress.<sup>107</sup> The right to development is now considered to be integrated into an economic, social, cultural and political context which includes and transcends economic growth and has both individual and collective dimensions. This has no doubt been the result of several U.N. initiatives. To illustrate, in 1977 the U.N. Commission on Human Rights recommended to ECOSOC that, in cooperation with UNESCO and other institutions, the Secretary-General should investigate the right to development.<sup>108</sup> This was followed by the 1979 report of the U.N. Secretary-General which contains perhaps the most thorough and detailed explanation of the right to development.<sup>109</sup> In addition, a 15 member working group of governmental experts continues to work on a draft declaration on the right to development.<sup>110</sup>

While the working group continues its efforts toward finding a consensus on the content of the draft declaration,<sup>111</sup> it is useful to recall that support for the right to development can be found in several existing in-

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104. See the authorities cited in note 1, *supra*.

105. U.N. Doc. E/CN.4/1334, para. 27 (1979).

106. See generally *Seminar on the Relations that Exist Between Human Rights, Peace and Development*, U.N. Doc. ST/HR/SER.A/10 (1981).

107. See Charter of Economic Rights and Duties of States, art. 16, G. A. Res. 3281 (XXIX) (1974).

108. U.N. Commission on Human Rights, Res. 4 (XXXIII) (1977).

109. See Report of the Secretary General, *supra* note 68.

110. See Report of the Working Group of Governmental Experts on the Right to Development, U.N. Doc. E/CN.4/1983/11 (1982).

111. Universal Declaration of Human Rights, G. A. Res. 217 (III), arts. 1, 22, 26, 28, and 29 (1948).

ternational instruments—the Universal Declaration of Human Rights,<sup>112</sup> the International Covenant on Economic, Social and Cultural Rights,<sup>113</sup> the U.N. Charter,<sup>114</sup> the African Charter on Human and People's Rights,<sup>115</sup> and several resolutions and declarations adopted at the United Nations and in other U.N. bodies.<sup>116</sup>

The discussion on the draft declaration at the 1983 session of the U.N. Commission on Human Rights showed convergence on certain issues although there remained divergent viewpoints on several others.<sup>117</sup> Several delegates described the right to development as a “synthesis right,” encompassing the sum of the conditions and obligations which would allow the effective realization of other fundamental human rights. Some called it a new right. Some defined it as “a right of solidarity,” while others called it a right belonging to a “third generation of human rights,” which includes the right to peace, environmental protection, and the common heritage of mankind.

While the point was repeatedly made that respect for human rights is a prerequisite for development of the human personality, the individual dimension of the right to development was emphasized by several delegates. Others, however, focused their attention on the collective aspects of the right. According to the former, the right to development means the right of each individual to have the opportunity to develop his or her full potential. The latter, however, stresses the right of each state, irrespective of its economic and political system or its level of development, to have an equal opportunity to attain a level of development at which the full and free development of the full potential of the human person is possible. Accordingly, genuine development and personal fulfillment can only be achieved in a social context and through the attainment by the people of rights such as the right to self-determination, and to permanent sovereignty over natural resources. Reference thus would be primarily to anti-

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112. For example, the Covenant on Economic, Social and Cultural Rights refers to the relationship between human rights and development by recognizing the human right to an adequate standard of living and to the continuous improvement of living conditions. It also recognizes, in art. 11, the importance of international cooperation to implement this human right. *See generally id.*, arts. 1, 2, 3, 6, 11, 22, and 23.

113. Preamble, art. 22, OAU Doc. CAB/LEG/67/3/Rev. 5, *reprinted in* 28 I.L.M. 58 (1982).

114. U.N. Charter, arts. 1(1), 2(1), 55 and 56.

115. *See, e.g.*, G. A. Resolutions 3201 and 3202 (SVI) of May 1, 1974; 3281 (XXIX) of Dec. 12, 1974; 3362 (S-VII) of Sept. 16, 1975; 32/150 of Dec. 16, 1977; 34/46 of Nov. 23, 1979; 35/56 of Dec. 5, 1980; and 37/55 of Dec. 3, 1982. For the appropriate resolutions of the U.N. Commission on Human Rights, *see* Resolutions 2 (XXXI) of Feb. 10, 1975; 4 (XXXIII) of Feb. 21, 1977; 4 and 5 (XXXV) of March 2, 1979; 6 and 7 (XXXVI) of Feb. 21, 1980; 36 (XXXVII) of March 11, 1981; 1982/17 of March 9, 1982; and 1983/14 and 1983/15 of Feb. 22, 1983. For the activities of other U.N. bodies, *see* U.N. Doc. E/CN.4/1334, 1979, Annex 1, at 1-8.

116. Report of the Independent Commission of International Development Issues, *North-South: A Programme for Survival* (1980).

117. For a report on their work, *see supra* note 110.

cle 28 of the Universal Declaration of Human Rights, which provides that everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration could be fully realized.

Notwithstanding different approaches inherent in developing the right, there seems to be wide agreement that the right to development must be considered a comprehensive right: one which includes the material as well as the moral and intellectual dimensions for individuals, societies, and the international community. Similarly, notwithstanding different viewpoints on whether the right to development should be considered as a synthesis of all human rights proclaimed in the Universal Declaration and the Covenants or as a new human right, there seems to be consensus that it has both quantitative and qualitative aspects. Moreover, the consensus is that the development process should be seen as a dynamic and continuous one, encompassing the realization of all human rights and designed to benefit all members of society without discrimination. Thus, the ultimate objective of development is to provide a maximum degree of freedom and dignity for human beings and to secure the development and well-being of societies to achieve a better quality of life for all.

It seems desirable that both international and national aspects of development be given equal attention and that it be recognized that, in the last analysis, it is the development of the individual which is a prerequisite to the development of every society and the world community. Thus, the right of development can best be viewed as the right of everyone to benefit from an order that ensures that both sets of rights — economic, social and cultural, and civil and political — are fully implemented.

#### IV. APPRAISAL AND RECOMMENDATIONS

The preceding discussion has illustrated the wide range of issues related to the relationship between development and human rights which are currently being addressed in the international arena. A consensus seems to be emerging that all human rights are interdependent, indivisible and of equal importance. There is an enhanced recognition that respect for human rights is a prerequisite for the development of the human personality. Consequently, an individual's right to development places a concomitant duty on the state to ensure to each individual the full and free right of participation and benefit from the development process of the society as a whole.

In order that the enjoyment of human rights be fully realized by all peoples, both internal and external conditions must be accorded equal importance. If development is to be considered in terms of "the pursuit of happiness," it is essential that the focus be on the human person and not on the structures which should serve him or her. This implies that realization of one set of rights is not to be made dependent upon the realization of the other, for civil and political rights have no meaning unless the satisfaction of basic material needs is ensured, and vice versa. Thus the right to life, health, education, security, and employment, housing and

the enjoyment of an adequate standard of living and the development of the human personality are all of equal weight. In this context, a warning contained in a U.N. report of two decades ago,<sup>118</sup> about the dangers inherent in development policy, is pertinent even today:

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.<sup>119</sup>

The U.N. Commission on Human Rights is the proper body to seek assurances from states that no development policy shall be established or implemented which involves violations of the civil and political or economic, social and cultural rights of its population or individuals. Appropriate monitoring mechanisms to ensure that states comply with this norm should also be established.<sup>120</sup>

High on the agenda for international action should be the realization of equity and justice both domestically and in the international arena. Thus, on the international plane, the need is to promote national and collective self-reliance of the developing countries, to abolish old and new forms of domination, and to offer special assistance to the developing countries. Nationally, it is essential that programs of social and economic reform are instituted so that the right of each individual to have the opportunity to develop his or her full potential becomes a reality. It is imperative that further studies and action focused on the effective means to implement these objectives be undertaken not only by the United Nations and regional intergovernmental organizations but by nongovernmental organizations as well.

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118. For discussions on the draft, see U.N. Doc. E/CN.4/1983/SR.17, 18, 19, 20 (1983). The following discussion is based on the comments of the delegates, reported therein.

119. *Five-year Perspective, 1960-1964*, U.N. Doc. E/3347/Res. 1.

120. *Id.*, para. 90.

