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THE ROLE OF INTERNATIONAL LAW AND INSTITUTIONS TOWARD DEVELOPING A GLOBAL PLAN OF ACTION ON POPULATION

Ved P. Nanda*

I. THE PROBLEM

There is considerable difficulty in defining and assessing the precise nature of the population problem, for even basic demographic statistics designed to measure levels and trends of fertility still are highly unsatisfactory. Additionally, estimates of future population growth usually suffer from inaccuracy, needing periodic revisions, for there is no agreement on how to choose and what weight to give the intervening economic, social, and cultural variables which influence family size limitations.

However, the observation is inescapable that there is a problem, for the overwhelming rise in the world's population during the 1960's has had considerable negative impact on the efforts of many developing countries to improve their standards

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1 See, e.g., Demographic Yearbook, 1969 (21st ed. 1970) [hereinafter cited as 1969 Demographic Yearbook] at 1, "At present, only a minority, roughly one third of the world's population, is covered by adequate demographic statistics, and these inhabitants live for the most part in developed countries." See also U.N. Doc. E/5107, at 40 (1972); Demographic Yearbook, 1971, at 7-12 (23d ed. 1972)


of living. The challenge posed is succinctly outlined in a recent report of the Commission on International Development:

No other phenomenon casts a darker shadow over the prospects for international development than the staggering growth of population. It is evident that it is a major cause of the large discrepancy between rates of economic improvement in rich and poor countries. On the other hand, the likelihood of a rapid slowing down of population growth is not great, although some countries are in a far more favorable position than others in this respect.

To meet the challenge, the Commission has urged the world community to take appropriate measures to slow down population growth.

For analytical and prescriptive purposes, the discussion of the population situation in terms of either absolute numbers or man-area ratio is likely to lead to inaccurate conclusions, for at least two reasons: (1) many parts of the world are still sparsely populated, and (2) resource depletion and environmental degradation are not caused solely by population growth. But it might be useful to identify an area as a population problem area if therein the population is too large in proportion to available resources and effective institutional arrangements to utilize them effectively, thereby causing low per capita output, low per capita real income and consequent loss of well-being. The problem was recognized in a recent recommendation of an African Seminar on Application of Demographic Data and Analysis to Development Planning, that

Though population densities are generally low in Africa, this should not be over-emphasized in dealing with African populations problems. Simple measures of density in terms of total land area are misleading, since they do not take into account non-arable land and development potential.
Accordingly, to comprehend fully and to appreciate the nature and intensity of the population problem, it seems desirable to study it in a broader perspective by reviewing its component parts which include: (a) food and nutrition; (b) resources, energy, and environment; (c) economic and social aspects; and (d) global fertility trends and family planning programs.

A. Food and Nutrition

The initial success of the Green Revolution has created guarded optimism that the world can avert the feared "catastrophic collision" between growing population and limited food supply. However, the suggestion still is being made that we may already have permanently impaired the carrying capacity of the planet to support human life and that mass famines lie ahead in the years to come. Since total world supply of arable land is limited, and "almost all the land that can be cultivated under today's economic circumstances is now under cultivation," the future needs might necessitate the utilization of

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13 P. Ehrlich & A. Ehrlich, supra note 10, at 91. See generally id. at 91-96; THE LIMITS TO GROWTH, at 48-54.
potentially arable land for food production. However, the feasibility of using such land which suffers from poor quality of soil in tropical areas such as the jungles of Central America and from the lack of available supplies of water in dry interiors such as the grasslands of Africa and Australia will necessarily depend upon factors such as the availability of sufficient capital and labor and the capability of science and technology to overcome these handicaps. And even if it were correct that "the technical capability exists, or can be brought into being, to produce the kinds and quantities of food that will be demanded" in the next decade or two, our ability to meet the food and nutrition demands of an unrestrained population growth still is uncertain.

To illustrate, 1970 Nobel Peace Prize winner, Dr. Norman Borlaug, who was honored for his contribution in realizing the Green Revolution, aptly stated in his acceptance address that:

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\text{[t]he green revolution has won a temporary success in man's war against hunger and deprivation; it has given man a breathing space. If fully implemented, the revolution can provide sufficient food for sustenance during the next three decades. But the frightening power of human reproduction must also be curbed; otherwise, the success of the green revolution will be ephemeral only.}
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Earlier, in 1967, the President's Science Advisory Committee reported that unless population growth could be sharply diminished, "all efforts to augment agricultural production will merely postpone the time of mass starvation, and increase its agony when it inevitably occurs." And even if starvation could be averted by overcoming the quantitative calorie deficiencies, protein deficiency and malnutrition will continue to be critical problems.

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14 But see C. Wilson, The Fight Against Hunger (1969); Freire, Popula-tion Growth and Food Supply (Abstract), International Develop-ment—1968, supra note 9, at 78-79.
15 Borlaug, supra note 9, at 8.
17 See, e.g., Report to the Economic and Social Council of the Advisory Committee on the Application of Science and Technology to Development, International Action to Avert The Impending Protein Crisis, U.N.
B. **Resources, Energy and Environment**

The needs of a growing population, the demands of industry in developed countries and the process of industrialization in the developing world are causing concern among the environmentalists who fear that "exponential increase in resource consumption can rapidly diminish a fixed store of resources . . . ." However, even if the environmentalists were to be criticized for being unduly pessimistic, there is no gain-saying that the increasing demands on water and some minerals such as lead, zinc, platinum, tin and uranium can be met only by "new discoveries, new substitution possibilities, and new technological developments." Moreover, as the environmentalists warn their critics, needed technological advances may face major constraints because of the impending energy crisis, for they argue that fuels which produce energy are in short supply. This includes not only fossil fuels—coal, natural gas and oil—hydroelectric power, and geothermal power, but even uranium and thorium based nuclear power.

Assuming, however, that unlimited resources were available, and man's future energy needs were to be met by a combination of coal, nuclear power, solar energy and "the use of technologies not yet known to be feasible, let alone economic," there might still be limits on the capacity of these resources and energy to support unrestrained population growth. Furthermore, limits on technology and growth may

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18 See generally *The Limits to Growth* at 55. See generally id. at 54-69. See also P. Ehrlich & A. Ehrlich, supra note 10, at 58-63.


23 See, e.g., G. Taylor, supra note 8, at 201-10. See also NATIONAL ACADEMY OF SCIENCES AND NATIONAL RESEARCH COUNCIL, RESOURCES AND MAN: A STUDY AND RECOMMENDATION BY THE COMMITTEE ON RESOURCES AND MAN (1969); B. Skinner, *Earth Resources* (1969); C. Park, Jr., *Afflu-
be imposed "by rising pollution," for compounding the limitations mentioned earlier is the correlation between industrialization and pollution. Not only are the industrially advanced countries disproportionately consuming the world's available resources—more than 50 percent are estimated to be consumed by 7½ percent of the world's population in North America—but they are also causing immense environmental problems, the nature and extent of which may not even be comprehended at present.

C. Economic and Social Aspects

The relationship between population growth and economic development has been a subject of intensive study. One such study shows that while a representative sample of developing countries devoted 65 percent of total investment to maintaining per capita income at a constant level, the corresponding figure for a sample of developed countries was less than 25 percent. This difference in spending on maintenance of the status quo (40 percent more investment by developing nations) reflects in part the increase in rate of population growth in developing countries, and if the current rate of population growth is not significantly slowed, it will be impossible to achieve the goal

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28 G. Zaidan, supra note 27, at 1.
set in the Second United Nations Development Decade, of an average annual growth rate of "at least 6 percent in the gross product of developing countries." In another recent study, an economist uses a new demographic model to compare the "costs and requirement of an effective program to reduce fertility with the costs and requirements of additional health, education, transportation and other public services demanded by unchecked population increase." He concludes that the "high fertility rates which accompany high growth rates result in a large portion of the population being too young to be in the labor force. . . . With slower growth, there is a larger capital stock, more capital per labor (meaning higher wages per worker), a smaller population, a higher savings from GNP rate, and a smaller fraction of children by the time the population goal has been achieved."

Adequate housing, transportation, health facilities, productive and remunerative employment and decent education are but a few of the essentials that presently are in short supply, especially in developing countries, and are affected directly by the population increase as well as the trend toward urbanization. René Dubos graphically describes that even if technology could feed and clothe further increases in population, because of overcrowding,
nobody would be able to move without impediment and irritating interference. Eventually half of the population would have to be doctors, nurses, or psychiatrists tending to the physical ailments and neuroses of the other half. To this future population, the bomb may no longer be a threat but a temptation: it may appear as the salvation from all evil.

Under such conditions "the type of human beings more likely to prosper will be those willing to accept a regimented and

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32 See, e.g., 1970 World Population Situation, at 25–31 and the sources cited there. Former President of the World Bank, Eugene R. Black, has recently stated, "If the maturing population is considered en masse as a labor force, much higher rates of growth, more like 10 per cent than 5 per cent, will be needed in the 1970's just to keep the percentage of employment about where it was in the 1960's." Black, Development Revisited, 47 VIRGINIA QUARTERLY REV. No. 1, at 1, 2 (1970). Urban unemployment is considered as "one of Latin America's most urgent problems over the next decade," 23 AMERICAS, No. 1-2, at 42 (1971).
34 Dubos, supra note 23, at 59.
sheltered way of life in a teeming and polluted world. . . ."\(^{35}\)

Philip Handler, President, National Academy of Sciences, has succinctly stated the problem recently as follows:

> Many of the most tragic ills of human existence find their origin in population growth. Hunger; pollution; crime; despoilation of the natural beauty of the planet; extermination of countless species of plants and animals; overlarge, dirty, overcrowded cities with their paradoxical loneliness; continual erosion of limited natural resources, and the seething unrest which engenders the political instability that leads to international conflicts and wars — all these derive from the unbridled growth of populations.\(^{36}\)

D. Global Fertility Trends and Family Planning Programs

Global fertility trends show a continuous downward trend in the more developed countries, the average crude birth rate having declined from 21 per 1,000 population in 1960 to 18 in 1965, and the corresponding gross reproduction rate from 1.4 to 1.2.\(^{37}\) But in the developing countries recent trends are mixed, with increases occurring in some countries and decreases in others, resulting in an average crude birth rate in 1965 of 40-41 per 1,000 population and the gross reproduction rate of 2.5-2.7.\(^{38}\) Based upon the available data for the developing countries, which are considered generally poor, the U.N. prediction is for a continuance of the recent trends: “[f]or the near future at least, fertility will increase in some countries, and not in others, while remaining stable in most of them.”\(^{39}\)

National programs of family planning and population control in developing countries vary in the scope and effectiveness of their efforts. Also, significant differences relating to the proportion of the population reached and the quality of services rendered occur not only among countries but within countries as well. Specifically, birth rates have declined considerably in a few Asian countries, notably Taiwan, Hong Kong, Republic of Korea, Singapore, and Ryuku Islands, according to the 1969 Demographic Yearbook.\(^{40}\) It also reports that the “changing-at-

\(^{35}\) Id. at 58.

\(^{36}\) Quoted in 5 War on Hunger Report No. 1, at 18 (1971). Compare a recent statement by Dr. Hendrick Houthakker, a member of the Council of Economic Advisors: “What is, of course, more serious [than the feared shortage of food supply] is that overpopulation may lead to a degradation of the social and physical environment, but this appears to be more a matter of the proper distribution of population than of total numbers. Much can be done to improve the environment without attempting to influence population trends.” Quoted in 4 id. No. 6, at 6 (1970). See also N. Chamberlain, Beyond Malthus (1970).


\(^{38}\) Id.

\(^{39}\) Id.

\(^{40}\) Id. at 3.
itudes and official national policies toward family size and adoption of fertility regulation methods is probably having some effect in this region."

The decline has been marked in Hong Kong (from 36.0 per 1,000 in 1960 to 24.6 in 1967) and in Taiwan (from 39.5 in 1960 to 28.5 in 1967). Some decreases in birth rates have also occurred in Latin America.

Although for a variety of reasons it is still not possible to assess the demographic impact of family planning programs upon crude birth rates, it is considered "unlikely that in the smaller countries, particularly, these schemes will not eventually influence national reproductive performances."

However, with regard to the larger countries, "the prospective future changes of birth rates and the conditions that may precipitate them are considerably more problematic."

An illustration of the impact of official national policy is, however, provided by Romania's 1966 law, under which abortions were rendered illegal. The crude birth rate there is reported to have almost doubled in one year: from 14.3 per 1,000 population in 1966 to 27.4 in 1967. The figure is reported "only slightly lower" in 1968.

A recent U.N. report evaluating the family planning program in India has concluded that "the rapid and encouraging decline in death rates in India over the last 20 years... has not been matched by a similar reduction in birth rates." In a comment on the report, a pertinent question is posed in a recent issue of Population Bulletin: "If that is the result of two decades of the world's most elaborate family planning program, what can be expected from less energetic efforts in other developing countries?"

II. POLICY CONSIDERATIONS

Given the interdependent nature of today's world, the first essential step toward the slowing of population growth would

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41 Id. In 1969 the Population Council and the International Institute for the Study of Human Reproduction started publishing a series on the family planning programs of various countries. The series, "Country Profiles," has covered among others the following states: Hong Kong, Taiwan, Korea, Thailand, Turkey, Pakistan, Iran, Sierra Leone and United Arab Republic. Reports on various countries are also contained in Nos. 31, 32, 35, 38 and 39 Supp., 40-50.

42 1969 Demographic Yearbook, at 3.

43 Id.

44 Id.

45 Id.

46 Id.


48 Id.
be to formulate a population policy, international in scope and consisting of global population strategies and programs. Ideally, the policy should provide answers to such controversial questions as whether or not the proposed global population plan of action should consist entirely of voluntary family planning programs; if it should include state encouragement of family planning, international organizational encouragement of family planning (despite state indifference or state opposition); and if consideration should be given even to mandatory population control measures devised and implemented by the state and/or international bodies. Also, it should settle upon what institutional measures, including the necessary changes in the existing institutional structures, would be needed to affect the proposed programs. For the international lawyer, however, there are no precise or easy answers to these and other questions; first, because nation states remain uncompromisingly stubborn concerning their sovereignty, and second, because religious, ideological, cultural, economic, ethical, and moral considerations strongly influence family habits. These factors may vary even within national boundaries, thus further confounding the problem.

However, as a first step, the need is evident to encourage low fertility rates, especially in developing countries with a relatively high rate of population growth, for an increase in the mortality rate is not a desirable alternative, nor does the answer lie in large scale immigration, or abstention. Necessary

prerequisites, both on national and international levels to induce voluntary efforts toward that end include:

1. gathering and disseminating reliable data on the dimensions and consequences of national and global population pressure and population programs;
2. research on the determinants of family size and research concerning inexpensive, safe and convenient contraceptives;
3. initiating and promoting family planning programs in addition to and as a part of adequate national health service programs; and
4. modifying, refining and strengthening institutions, procedures, and norms.

This might necessitate the repeal of old legislation and the enactment in its place of new laws on abortion, adoption, and sterilization, and prescription of control measures such as incentives, penalties and other rewards and deprivations.

It is equally important that national family planning programs should not be restricted in the scope of their activities to just imparting the dissemination of contraceptive techniques. Such technical emphasis is likely to overshadow the all-embracing need to study population in the broader context of socio-economic environment, for, after all, it is eventually through the manipulation of this environment that the objective of low fertility will be realized. Issues related to population such as urban and regional planning and development, the development of human resources, improvement in the standard of living, and various economic, social and political ramifications of high fertility should be explored.

And finally, the desired objective should be stated: to formulate a global population policy, the implementation of which would eventually lead to an optimum size of the world population, living in an ecological balance and enjoying what Professors McDougal and Lasswell call "a universal order of human dignity." Since the overriding goal is postulated as a world order which promotes the widest shaping and sharing of values, the proposed population policy will take into account the following considerations among others:

1. the size, composition, and distribution of population in each country;
2. the relative per capita consumption of resources, the per

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52 Id. at 11-13.
capita pollution and degradation of the environment viewed in terms of the minimization of environmental hazards and eventual maximization and equitable distribution of resources; and

3. the relative economic and technological development of a country and its people, which implies an evaluation of the current international machinery for aid, trade, investment, and development and the need of the developing countries for economic growth, development and well-being.

It is the purpose of this paper to clarify and aid in the formulation of such a global population policy. Toward this end, the following discussion will highlight some selected measures already undertaken nationally and internationally to slow population growth and it will conclude, after briefly evaluating these measures, with a set of recommendations for further action.

III. TRENDS

In this section, governmental and nongovernmental activities related to population will be briefly reviewed under the following headings: (a) U.N. General Assembly's involvement; (b) U.N. Fund for Population Activities; (c) Activities of the U.N. Economic and Social Council, U.N. Specialized Agencies, U.N. Secretariat and regional organizations; (d) Changing national policies on family planning and bilateral assistance; and (e) Nongovernmental activities. This review will be followed by a brief discussion of the arguments against any international action on population under the following headings: (a) Article 2(7) of the U.N. charter; and (b) Ideological and religious opposition.

A. Governmental and Nongovernmental Activities

1. The U.N. General Assembly's Involvement

Although the United Nations was urged at its inception to "face and at least partly solve world population problems," and a United Nations Population Commission was established by the U.N. Economic and Social Council (ECOSOC) as early as October 1946, the first General Assembly resolution actually dealing with the subject was not adopted until its 12th session in December 1957. It was then that the Assembly recognized

the close relationship between “economic problems and population problems, especially with regard to countries which are in the process of economic development,” and invited its member states “to follow as closely as possible the interrelationships existing between economic and population changes.”

Five years later in December 1962, the Assembly adopted a resolution entitled “Population Growth and Economic Development.”56 Still recognizing the existence of the close relationship between economic development and population growth, and acknowledging “the responsibility of each Government to decide on its own policies and devise its own programmes of action for dealing with the problems of population and economic and social progress,” the General Assembly asked the United Nations to “encourage and assist Governments, especially those of the less developed countries, in obtaining basic data and in carrying out essential studies of the demographic aspects, as well as other aspects, of their economic and social development problems.” However, on an oral roll-call vote, the General Assembly rejected a provision under which the United Nations would have been asked to “give technical assistance as requested by governments for national projects and programmes dealing with the problems of population.”57

During the next four years following 1962, several major developments necessitated the involvement of the United Nations in the population field. One such development was the alarming rate of population growth as shown in several demographic studies, including the Provisional Report on World Population Prospects, as Assessed in 1963,58 the reports of the Economic Commission for Asia and the Far East (ECAFE) and of the 1963 Asian Population Conference,59 and the summary report of the 1965 World Population Conference, entitled “World Population: Challenge to Development.”60 A second cause was the recommendation in 1964 of an ad hoc committee convened to advise the Secretary-General on long range population planning that the U.N. and its specialized agencies should extend

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57 17 U.N. GAOR 1178 (1962). For the views of the delegates opposing this provision see id. at 1171-79.
the scope of their work on the subject, including the intensification of their work on demographic statistics, and the study of relationships between trends of population and economic and social factors. Finally, the disappointing trends in the food production in the 1950's and 1960's as evidenced by the rise in net imports of grains into the less developed countries from about 3 million tons a year in the 1948-52 period to about 17 million tons in 1965, was causing serious concern among the developing countries, a concern voiced by many governments in response to a U.N. inquiry on problems arising from the interaction between economic development and population changes.

In the meantime, this growing concern had caused several U.N. agencies such as the World Health Organization (WHO), United National Educational, Scientific, and Cultural Organization (UNESCO), and the United Nations Children Fund (UNICEF) to appraise the possibilities of providing assistance in population planning to requesting governments. Also, the U.N. Population Commission, at its 13th session, set forth a work program for the period 1965 to 1980, which consisted of research and technical work on fertility, mortality and immigration, and on demographic aspects of economic and social developments. Endorsing the program, the Economic and Social Council invited the regional economic commissions and specialized agencies to consider “modifying and expanding their activities in the population fields” in accordance with the Population Commission’s recommended program. It also requested that the Secretary-General provide “advisory services and training” on action programs in the population field to the governments requesting such assistance.

Thus, in December 1966, the stage was set for the unanimous adoption of General Assembly Resolution 2211 (XXI), entitled

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"Population Growth and Economic Development." Former Secretary-General U Thant has called this action a "turning point" in the United Nations attitude toward population questions, since in his words, "there was recognition of the gravity of population problems and the necessity for accelerated action to implement the expanded programme recommended by the Population Commission." In the operational part of Resolution 2211(XXI), the General Assembly requested the Secretary-General to pursue "the implementation of the work programmes [recommended earlier by the Population Commission] covering training, research, information and advisory services in the field of population" and also called upon the Economic and Social Council, the Population Commission, the regional economic commissions, the U.N. Economic and Social Office in Beirut (UNESOB) and the specialized agencies to "assist, when requested, in further developing and strengthening national and regional facilities for training, research, information and advisory services in the field of population." Of course, the General Assembly recognized in an introductory paragraph "the sovereignty of nations in formulating and promoting their own population policies, with due regard to the principle that the size of the family should be the choice of each individual family."

In December 1966, the Heads of State of 12 countries issued a statement (later signed by 18 more Heads of State or Government) on family planning. Recognizing the seriousness of the problem caused by unrestrained population growth and the common interest of both nation and family in family planning, they expressed their belief that "the great majority of parents desire to have the knowledge and means to plan their families," and that "the opportunity to decide the number and spacing of children is a basic human right."
Subsequently, two international conferences recognized the urgency of the problem: the 1968 Teheran Conference on Human Rights and the 1970 World Youth Assembly which met in New York. While observing that “the present rapid rate of population growth in some areas of the world hampers the struggle against hunger and poverty,” and considering that “couples have a basic human right to decide freely and responsibly on the number and spacing of their children and a right to adequate education and information in this respect,” the Teheran Conference urged the United Nations and its member states to “give close attention to the implications for the exercise of human rights of the present rapid increase in world population.”

The commission established by the Youth Assembly to discuss the item on population considered “the long term need to control population expansion,” recommended that “a zero growth rate for natural population increase be adopted as an immediate objective for the world population as a whole.” It also recommended that

[Further research be urgently undertaken to determine the concept of optimum population, taking into account not only the relation of population numbers to economic development, resource availability or space, but for the maintenance of a high quality environment and the requirements for personal human happiness.]

On family planning, the Commission expressed its belief that

[The adoption of family planning should be a matter for personal conscience and be readily available to each individual without economic, political, social, educational or cultural limitations . . . .]

The Commission stated its “wish to recommend: (a) an intensification and expansion of all the present programs to limit the growth of world population as a matter of absolute urgency for mankind . . . . (c) that contraceptive methods and information on family planning be available without cost to all people regardless of social or marital status.”

During its 24th and 25th Sessions, the General Assembly adopted several resolutions of special significance on the sub-
ject of population. For instance, in December 1969 the Assembly adopted a "Declaration on Social Development," proclaiming that families should have "the knowledge and means necessary to enable them to exercise their right to determine freely and responsibly the number and spacing of their children." This declaration, calling for "national and international action for its use as a common basis for social development policies," is the first explicit utterance by the general Assembly sanctioning family planning.

In December 1970, the General Assembly adopted two additional resolutions that have a bearing on population. On December 11, it designated 1974 as "World Population Year," with a view to focusing international attention on the population problem so that "Member States and international organizations [would devote the year especially] to appropriate efforts and undertakings in the field of population in the context of their respective needs and areas of competence." It acknowledged national competence to formulate and implement population policies and programs, consequently stating that "international action in the population sphere should be responsive to the varied needs and requests of the individual Member States." In another operative paragraph, the resolution stressed that

assistance from organizations of the United Nations system and interested Member States should continue to be available upon request for evolving and implementing a dynamic population policy to cope with all problems emanating from different population levels, characteristics and trends, including assistance in developing a comprehensive demographic research and studies program, training programs and providing advisory services in this field.

Earlier, on October 24, the General Assembly had adopted a resolution on the International Development Strategy for the second United Nations Development Decade, which contained the following provision:

Those developing countries which consider that their rate of population growth hampers their development will adopt measures which they deem necessary in accordance with their concept of development. Developed countries, consistent with their national policies, will upon request provide support through the

80 Id.
supply of means for family planning and further research. International organizations concerned will continue to provide, when appropriate, the assistance that may be requested by interested Governments. Such support or assistance will not be a substitute for other forms of development assistance.\(^{82}\)

It should, however, be noted that the text suggested by the U.N. Economic and Social Council (on the recommendation of the Population Commission)\(^ {83}\) was much stronger than the one adopted. The proposed text read:

In parts of the world, efforts during the Second United Nations Development Decade to promote long-term economic and social development adequate to improve the quality of life could be frustrated by the continuance of present high rates of population growth. In such cases, for countries which consider it appropriate and in accordance with the special needs of each country, national policies aimed at the achievement of more desirable rates of population growth and at the acceptance by parents of a voluntary basis of smaller families should be regarded as among the essential aspects of development strategy for the eventual achievement of satisfactory per capita economic growth, which would promote human welfare and dignity.\(^ {84}\)

In its resolution of December 15, 1970,\(^ {85}\) the General Assembly identified, as a minimum target for the second U.N. Development Decade, the availability of all necessary information and advice to all persons who so desire it to enable them to decide freely and responsibly on the number and spacing of their children and to prepare them for responsible parenthood.

The General Assembly activities at its 26th and 27th sessions will be briefly discussed in the review of the activities of the

\(^{82}\) Id. at 47.


\(^{84}\) Population Commission, supra note 83 at 50-51. Opposition by some states prevented the Preparatory Committee for the second U.N. Development Decade from adopting this text. For example, the Brazilian representative stated in the preparatory committee that underdevelopment should be attacked rather than overpopulation which is a symptom of underdevelopment. U.N. Doc. A/AC.141/SR. 19-33, at 90-91 (1969). The preparatory committee's draft which was finally adopted by the General Assembly as paragraph 65 in Res. 2626 is contained in U.N. Doc. A/7982, at 15 (para. 62) (1970).


2. The United Nations Fund for Population Activities

In response to the 1966 General Assembly resolution 2211 (XXI), which called upon the United Nations system to provide assistance to government-sponsored population programs, the Secretary-General established in 1967 the United Nations Fund for Population Activities (the Fund) and invited voluntary contributions. The Fund was designed to provide systematic and sustained assistance to countries desiring it to assess and cope with their population problems — and thus to develop competence and institutional capacity in those countries; to enable the United Nations and its related agencies to respond effectively to the needs of member States for assistance with population problems; and to help in coordinating population programs among the various organizations of the United Nations system in so far as they are supported by the Fund.

It is encouraging that as of December 1972, the Fund received contributions and pledges from 52 countries which include a number of low-income states in Asia, Africa and Latin America as well. The Secretary-General has recently reported a rise in the annual contributions to the Fund: $15.3 million in 1970; $28.6 million in 1971, and $36 million in 1972, compared with a total of $5.1 million for the years 1967 to 1969. At present, the Fund (administered since 1969 by the Administrator of the United Nations Development Programme (UNDP), is supporting population projects and programs “in 75 Member countries, in addition to research projects and other activities of a regional or global character.” Since the Fund has grown in size and is undertaking a range of activities, the Secretary-General has recommended that the “character of the Fund [be changed] from a trust fund of the Secretary-General into a fund established under the authority of the General Assembly, to be called the United Nations Population Fund (UNPF).”

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80 Supra note 69.
81 For a short report see Introduction to the Report of the Secretary-General on the Organization, supra note 68, at 8.
82 POPULATION NEWSLETTER No. 8, March 1970, at 10.
84 Note by the Secretary-General, U.N. Doc. A/8899, at 1 (1972).
85 Id.
86 Id. at 2.
He has further recommended that the Fund "should report to the Governing Council of UNDP and be guided by it."  


ECOSOC's concern with various aspects of population arises in part from the activities of its Committee for Programme and Co-ordination, and in part from its supervision of the United Nations Population Commission which it had established in 1946. Its active interest in recent years in population activities reflects its endorsement of the leadership role of the Population Commission initially in recommending to hold a world Population Conference in 1974 and subsequently in taking a leading role in proposing programs and arrangements for the Conference and for the World Population Year, 1974. However, ECOSOC's most far-reaching resolution to date is the one it adopted in June 1972, which after expressing concern "with the immediate and long-range economic and social implications of rapid population growth as revealed in the projections of the United Nations" urges U.N. members: (a) to "give full attention to their demographic objectives and measures"—and to take steps to improve demographic statistics, research and planning machinery needed for development of population policies and programs; (b) to "cooperate in achieving a substantial reduction of the rate of population growth in those countries which consider their present rate of growth is too high and in exploring the possibility for the setting of targets for such a reduction in those countries"; and (c) to "ensure, in accordance with their national policies and needs, that information and education about family planning, as well as the means to practice family planning effectively, are made available to all individuals by the end of the Second United Nations Develop-

93 Id. at 3.  
94 See generally R. Symonds & M. Carfer, THE UNITED NATIONS AND THE POPULATION QUESTION, Part VI (1973) [this work was not consulted for the writing of this paper].  
95 Res. 3 (III) of ECOSOC (1946).  
ment Decade.” The resolution also calls upon all countries to give further assistance to the Fund, and calls upon the developed countries to provide assistance in the population field. It should also be noted that during the period January 1, 1969 to June 30, 1971 the Population Division of the Department of Economic and Social Affairs, U.N. Secretariat “had made arrangements for 282 projects of technical co-operation for the benefit of all the regions of the world, including direct assistance to some 80 countries.” The Population Commission has recently adopted extensive work programs for 1972-73 and 1972-76. The proposed projects fall into five broad categories: (1) Continuing Service Functions; (2) Technical Cooperation; (3) Research and Technical Work; (4) Population Policies; (5) Conferences; (6) Improvement of Demographic Statistics; and (7) Proposals for Establishing a United Nations World Population Training Institute.

In addition to the General Assembly, the Fund, the Population Commission, and ECOSOC, several other U.N. policy-making bodies have been actively interested in various aspects of population. They include the Statistical Commission, the Commission for Social Development, the Commission on the Status of Women, the Committee on Development Planning, the Advisory Committee on the Application of Science and Technology to Development, the United Nations Development Program, the United Nations Industrial Development Organization, and the regional economic commissions.

Similarly, various U.N. specialized agencies are actively associated with population activities. To illustrate, the Preparatory Committee for the World Population Conference is composed of representatives of the United Nations including the regional economic commissions for Europe, Asia and Far East, Latin America, Africa and the United Nations Economic and Social Office in Beirut (UNESOB); UNDP, Fund, International

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101 Id. at 27-42.
102 Id. at 29-30.
103 Id. at 30-33.
104 Id. at 33-39.
105 Id. at 39-40.
106 Id. at 41.
107 Id.
Labor Organization (ILO), Food and Agriculture Organization (FAO), United Nations Educational, Scientific and Cultural Organization (UNESCO), World Health Organization (WHO), International Bank for Reconstruction and Development (World Bank) and the United Nations Children's Fund (UNICEF); and two non-governmental organizations—International Planned Parenthood Federation (IPPF) and International Union for the Scientific Study of Population (IUSSP). A similar broad range of involvement by various U.N. specialized agencies is evident by their participation in the work of the Subcommittee on Population of the Administrative Committee of Coordination and the Interagency Consultative Committee of the Fund. Several agencies are involved in the Fund's projects of providing assistance in government-sponsored family planning programs. Finally, a recent report prepared for the U.N. Advisory Committee on the Application of Science and Technology to Development illustrates the nature and scope of interest by the U.N. specialized agencies in the population field. The report, _Human Fertility and National Development_, was coordinated by a staff member of the Fund, with contributions from the UN, UNICEF, ILO, FAO, UNESCO, and WHO.

A notable event was the World Bank's loan in June 1970 to Jamaica to support the government's family planning program. This is the first loan the World Bank had granted to assist a national effort in slowing the growth rate of a country's population. Since then, it has made two more loans— to Tunisia and Trinidad and Tobago. In September 1968, 1970, at 22.


113 For instance, in August 1970, an agreement was reached between the Government of Pakistan and the Fund concerning the Fund's assistance in Pakistan's family planning program. Besides assistance from the U.N., the agreement provides for the assistance of UNICEF, ILO, UNESCO, WHO and other appropriate organizations in the U.N. system in procuring consultants and advisors; training, research and evaluation; clinical and medical research; supplies and equipment; and post-partum programs. The Pakistan government aims at reducing the birth rate in Pakistan from 43 to 33.2 per 1,000. Reported in _Population Newsletter_, No. 10, Sept. 1970, at 3.


World Bank President Robert MacNamara already had stated that the control of population growth was "yet another area where the Bank needs to take new initiatives." Acknowledging that it was a "thorny subject which it would be very much more convenient to leave alone," MacNamara said that he could not do so because "the World Bank is concerned above all with economic development, and the rapid growth of population is one of the greatest barriers to the economic growth and social well-being of our member states." In 1971, he reported that over the past three years

"the World Bank has organized and expanded its capability to serve its member developing countries in the population field. We have established a wholly new department: a Population Projects Department, and are staffing it with the most qualified and experienced international personnel we can find.

Further, we have added population analysis as an integral part of our Country Economic Reports, and are assisting governments in assessing the implications of population policy on their overall development plans."

In actuality, it is only during the last five years that the World Bank and several of the specialized agencies mentioned above have seriously discussed population problems and received mandates from their governing boards to play an active role within their areas of competence. For example, the Executive Director of UNICEF, in his March, 1971 General Progress Report, explained that UNICEF was principally concerned with family planning in the context of maternal and child health services because "the health, welfare and development of children is deeply affected by responsible parenthood and family size." He reports: "The countries receiving some form of UNICEF assistance have a child population of 793 million; more than half of these children, 573 million, live in countries which either have official family planning programs or support non-governmental family planning activities." He has urged more bilateral and international support and resources to reach national goals for providing maternal and child health services.

Similarly, in the context of health services, WHO is ex-

\[118\] Id.
\[119\] \textit{McNamara, supra} note 107, at 14.
\[121\] For his statements on population see \textit{id.} at 16-17, 37-39.
\[122\] \textit{Id.} at 37.
\[123\] \textit{Id.} at 39.
tending assistance in the development of family planning projects by providing advisory, training and evaluation services. According to the report of the Director-General of WHO for 1969, the organization had actively assisted various countries "in the health aspects of human reproduction, family planning and population dynamics.""\textsuperscript{124} He added:

All the resources available to the Organization within the related fields of maternal and child health, human reproduction and human genetics will have to be combined if we are to bring effective assistance to the growing number of countries that want to carry out family planning programmes within the framework of their general health services.\textsuperscript{125}

The Governing Body of the International Labor Office (ILO) has favorably considered action "to induce and help developing countries to moderate their rate of population growth in appropriate cases."\textsuperscript{126} In particular, ILO could assist social security institutions in extending family planning services to workers' families protected by them in accordance with the wishes of the workers and the varying national conditions.\textsuperscript{127}

While the General Conference of UNESCO has described its competence in the field of education, social sciences, and communication to provide assistance in family planning programs "within the over-all activities of the United Nations family,"\textsuperscript{128} UNESCO has, thus far, confined its activities to undertaking studies on different aspects of population. The World Food Program (WFP), jointly administered by FAO and ECOSOC, is planning "to make available its global food distribution system in support of family planning programs by channeling contraceptives and educational materials to such programs."\textsuperscript{129}

The emphasis on more regional and national action is indicated in a resolution adopted in an ECAFE meeting in April 1970,\textsuperscript{130} in the operative part of which ECAFE invited the Administrator of the United Nations Development Programme

\textsuperscript{125} Id. at 16.
\textsuperscript{127} Id. at 21.
\textsuperscript{128} Id. at 23. At the 49th session of the Economic and Social Council, the UNESCO representative responded to criticism that UNESCO was "not doing enough in the matter of family planning," but what further action would be taken was not indicated. For his comments, see 49 U.N. ECOSOC, Coordination Committee, Vol. 1, meetings held in Geneva, from 9 to 20 July 1970, U.N. Doc. E/AC. 24/SR. 387-398, at 34 (1970).
in allocating its resources and those of the United Nations Fund for Population Activities, to attach importance to collaborative efforts in the field of population at the regional, sub-regional and national levels, through which ECAFE co-operates in the application of the combined skills and knowledge of several agencies within the United Nations system.\textsuperscript{131}

The activities of the Commission include holding regional population conferences and seminars, directing population studies, and coordinating the activities of several agencies in assisting national efforts.\textsuperscript{132} Other regional commissions are equally interested in regional and national population programs and policies.\textsuperscript{133}

Advisory services are available to requesting governments in the form of special U.N. missions, composed jointly of experts from the United Nations and appropriate specialized agencies. These missions provide assistance in setting up family planning programs, assisting the personnel and financial needs of establishing such a program, and clarifying the relationship between demographic conditions and economic development.\textsuperscript{134}

The U.N. population program officers are equally active. U Thant reported that during June 1969 to June 1970 they "continued their task of promoting the development of programs and projects in the forty-six countries they covered—in collaboration with Governments, the specialized agencies and the Resident Representatives of UNDP—and of implementing them with assistance from the United Nations system."\textsuperscript{135} The Population Commission at its 16th Session noted that during 1970 and 1971 the population program officers had visited 84 countries and had actively cooperated with governments in designing projects.\textsuperscript{136}

A 1970 study\textsuperscript{137} undertaken by the United Nations Secre-

\textsuperscript{131} Id.
\textsuperscript{132} For various reports on regional commissions see e.g., id. No. 10, at 19-24; id. No. 9, at 3-13; id. No. 8, at 14-21; id. No. 7, at 21-22; id. No. 6, at 16-17; id. No. 5, at 3-11, 22-24; Report of the Economic and Social Council, 9 August 1969-31 July 1970, supra note 83, at 44.
tariat on the effects of various family planning programs illustrates the secretariat's involvement in the field now that there is heightened appreciation and wider acceptance of national efforts to moderate fertility. Also, the study was intended to examine how social and cultural conditions, as well as the level of science and technology affect the implementation and effectiveness of fertility-oriented policies. The report, entitled *Measures, Policies and Programmes Affecting Fertility, with Particular Reference to National Family Planning Programmes*, covered the following areas:

(a) social, economic and demographic measures that affect fertility;
(b) types of official policies in respect to population matters, with emphasis upon their formulation and objectives;
(c) health aspects of programs and methods of fertility regulation;
(d) the communications strategy for motivating a population to accept and practice fertility regulation;
(e) social, cultural and political factors influencing family size limitation; and
(f) the organization, structure and evaluation of national family planning programs.\(^{138}\)

The results "dramatized the wide gaps in knowledge of the subjects that it addressed and focused on the pressing need for additional information."\(^{139}\) For instance we know very little about why individuals do not regulate family size, that is, under what conditions will individuals adjust their behavior in order to reduce fertility. "[V]ery few scholarly efforts seem to have been devoted to studying the ways in which a culture influences decisions as to whether and how fertility should be regulated."\(^{140}\) Research is also needed to develop safe, inexpensive, effective and uncomplicated methods of fertility regulation.\(^{141}\) Also, techniques of abortion and sterilization need to be perfected. Only then will methods of fertility control be effective in terms of their acceptance in different parts of the world.\(^{142}\)

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\(^{138}\) Id. at 4.
\(^{139}\) Id.
\(^{140}\) Id. at 10.
\(^{141}\) Id. at 13.
The report identified several factors which seem to have facilitated the acceptance of family planning programs as official government policy:

the general climate of increased awareness with regard to population problems; improvements in contraceptive technology; results of surveys on knowledge, attitude and practice (KAP) with respect to methods of family limitation; and an increase in the reservoir of technical competence and in resources for bilateral and multilateral technical assistance in this field.\(^\text{143}\)

It also noted that government measures, which favor high fertility or declining fertility, essentially fall into four categories:

(a) measures related to the family, such as family allowance programs, systems of taxation on income, aid to maternity and rewards to mothers;

(b) measures of social reform, including compulsory education and child health laws, social security programs, and laws and programs intended to improve the status of women;

(c) laws relating to abortion, contraception and sterilization; and

(d) laws relating to marriage and divorce.\(^\text{144}\)

Also outlined were various factors which might either facilitate or hamper the progress of these programs: economic, social and cultural factors such as socio-economic status: "religious beliefs and institutions, various mores and superstitions and the role of women in society,"\(^\text{145}\) levels of literacy; rural-urban residence; the education of husband and wife; the type of family organization; customs on marriage, divorce and widowhood; and the organization, structure and administration of these programs.

It concluded that:

Among the activities most crucial for the success of family planning programmes are those aimed directly at motivating individuals to regulate fertility. The effectiveness of these communication schemes depends upon the extent to which administrators are able to adjust their information program to conditions of literacy, the educational level of the population, the status of women and other related factors. Apart from consistent recognition of the need to make some adjustments to distinctively local conditions, there have not as yet been developed any guidelines or general principles in this field. If satisfactory standards could be developed, their application would reduce the amount


\(^{144}\) Id. at 4.

\(^{145}\) Id. at 10.
of trial and error experienced in national programmes of communication for motivation in family planning and the attendant loss of time and waste of resources, while at the same time allowing for adjustments required in view of certain national and cultural characteristics. Advancements of this order would greatly enhance the quality and efficiency of family planning programmes.146

Finally, just to mention one regional governmental effort, the Organization for Economic Cooperation and Development (OECD) has since 1968 set up a Population Unit within its Development Center. The purpose of the Unit is to promote awareness, among donor and recipient countries, of the importance of the population factor in economic development and to disseminate information on latest developments, foster coordination among aid programs, and enhance the dialogue between developed and developing countries in aid problems in the population field.147

4. Changing National Policies on Family Planning and Bilateral Assistance

Until recently, nation states were hesitant in undertaking foreign assistance programs in family planning. Their hesitation may have stemmed in part from the lack of a defined internal policy to slow down their own population growth. Also, these donor states might have been afraid of possible adverse reactions in the recipient countries caused by the offer of assistance for controlling populations in developing countries, for such assistance could perhaps be construed as a neo-imperialist racial design to curb non-white population growth. To illustrate, until 1965 the United States was not actively pursuing an official population policy either at home or abroad. President Eisenhower stated in 1959 that population was not considered a fit subject for "political or governmental activity or function or responsibility."148 However, since the mid-sixties, a major shift has occurred in U.S. policy, and family planning services are now provided both within the country and abroad. Various presidential statements, messages and reports to Congress —

146 Id. at 12
147 Reported in A.I.D., BUREAU FOR TECHNICAL ASSISTANCE, OFFICE OF POPULATION, POPULATION PROGRAM ASSISTANCE 46 (October 1970). [Hereinafter cited as POPULATION PROGRAM ASSISTANCE REPORT].
148 N.Y. Times, Dec. 3, 1959, at 18, cited in GARDNER supra note 49, at 346-47; P. APPLEMAN, THE SILENT EXPLOSION 112 (1965). Later, President Eisenhower changed his mind. See R. THOMLINSON, DEMOGRAPHIC PROBLEMS: CONTROVERSY OVER POPULATION CONTROL 110-11 (1967). However, President Eisenhower's statement of 1965 was not necessarily reflective of national opinion, for as early as 1960, a survey showed that 81 percent of white and 76 percent of non-white couples had used or expected to use contraception. For this report see P. WHELPON, A. CAMPBELL & J. PATTERSON, FERTILITY AND FAMILY PLANNING IN THE UNITED STATES 353-54 (1966).
both by Presidents Johnson\(^{149}\) and Nixon\(^{51}\) have stressed the need for such a shift. And as the following discussion shows, legislature measures have accompanied the executive initiatives.

In 1968, President Johnson appointed a Committee on Population and Family Planning to "make a careful review of Federal policies and programs in relation to world-wide and domestic needs in the area of population and family planning."\(^{151}\) In its report,\(^{152}\) the Committee proposed specific action by the Federal Government to "rapidly expand family planning programs [domestically] to make information and services available by 1973 on a voluntary basis to all American women who want but cannot afford them."\(^{153}\) On the international front, it recommended that the United States "continue to expand its programs of international assistance in population and family planning as rapidly as funds can be properly allocated by the U.S. and effectively utilized by recipient countries and agencies."\(^{154}\) It also recommended that by act of Congress, the Center for Population Research be expanded into a National Institute for Population Research,\(^{155}\) and that the Federal Government provide "basic support for population studies centers."\(^{156}\) It also proposed that


\ldots But aside from peace, no problem is more important than the problem of rising population.

Indeed, even peace itself, I don't think, will ever come to us unless this problem of population control is solved. Looking back to where we were just a few years ago, I am very happy to observe this afternoon that I believe this Nation has made some real progress forward.

In 1964, my first year in the Presidency, our budget contained an investment of $6 million from the Federal Government in population and family planning activities. In fiscal 1969, that figure will rise to about $115 million.

During this same period, private organizations and groups concerned with population and family planning have themselves more than doubled their own expenditures. Most important, I think that all of you will agree that there is today a very new and growing awareness of both the magnitude, as well as the danger of this problem that concerns us all.

What I am especially proud of this afternoon is that it is now possible for your President to speak frankly to the people about this matter. \ldots

\(^{150}\) See, e.g., 5 id. No. 29, July 22, 1968, at 1113.


\(^{152}\) \textit{Report of the President's Committee on Population and Family Planning, Population and Family Planning: The Transition from Concern to Action (Nov. 1968).}

\(^{153}\) Id. at 9-10.

\(^{154}\) Id. at 10.

\(^{155}\) Id. at 11.

\(^{156}\) Id. at 12.
"Congress authorize and the President appoint a Commission on Population."\textsuperscript{157}

The following year President Nixon proposed in his message to the Congress that a Commission on Population Growth and the American Future be established\textsuperscript{158} to study the economic, social and political ramifications of population expansion. In his message, the President also proposed a national goal of providing "adequate family planning services within the next five years to all [American women] who want them but cannot afford them."\textsuperscript{159} On international cooperation, he said: "It is our belief that the United Nations, its specialized agencies, and other international bodies should take the leadership in responding to world population growth. The United States will cooperate fully with their programs."\textsuperscript{160}

Congress responded to President Nixon's suggestion by establishing in March 1970, through enactment of Pub. L. No. 91-213,\textsuperscript{161} the Commission on Population Growth and the American Future. After two years of research and deliberations, the 24-member panel, headed by John D. Rockefeller III, submitted a three-part report to President Nixon and the Congress.\textsuperscript{162} In part one, the report\textsuperscript{163} focused on the national impact of population growth and distribution upon government services,\textsuperscript{164} social aspects,\textsuperscript{165} the economy,\textsuperscript{166} the environment and natural resources.\textsuperscript{167} The Commission noted the desirability "for a slower rate of growth"\textsuperscript{168} and concluded that "continued population growth — beyond that to which we are already committed by the legacy of the baby boom — is definitely not in the interest of promoting the quality of life in the nation."\textsuperscript{169} In part two of

\begin{footnotes}
\textsuperscript{157}Id.
\textsuperscript{158} 5 Presidential Documents 1000, 1004 (1969).
\textsuperscript{159} Id. at 1007.
\textsuperscript{160} Id. at 1001.
\textsuperscript{161} 42 U.C.S. § 4331 (1970).
\textsuperscript{163} First eight chapters of the report, comprising pages 1-78 of Population and the American Future, were released as part one.
\textsuperscript{164} Id. at 54-61.
\textsuperscript{165} Id. at 62-74.
\textsuperscript{166} Id. at 38-41.
\textsuperscript{167} Id. at 42-53.
\textsuperscript{168} Id. at 76.
\textsuperscript{169} Id.
\end{footnotes}
DEVELOPING GLOBAL ACTION ON POPULATION

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the report[177] the Commission specifically recommended “enactment of a Population Education Act to assist school systems in establishing well-planned population education programs,"[178] liberalization of restrictive abortion statutes,[179] and availability of expanded family planning services for all Americans.[180] Part three of the report[181] contained recommendations on immigration,[182] internal migration[183] and research on population.[184] The overall conclusion of the Report is that the United States should plan for a stabilized population.[185]

Meanwhile, on December 24, 1970 Congress enacted the Family Planning Services and Population Research Act of 1970[186] which established an Office of Population Affairs in the Department of Health, Education and Welfare.[187] A Deputy Assistant Secretary for Population Affairs is to direct the office.[188] The Act is to “assist in making comprehensive voluntary family planning services readily available to all persons desiring such services [and] to coordinate domestic population and family planning research with the present and future needs of family planning programs.”[189] The Office of Population Affairs is to constitute the main agency within the Federal system on all matters concerned with family planning, population services and research,[190] and is to act as “a clearinghouse for information pertaining to domestic and international population research and family planning programs for use by all interested persons and public and private entities.”[191]

Congressional hearings[192] leading to the passage of Pub. L.

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[170] Chapters nine to eleven of the report, id. at 79-109, were released as part two.
[171] Id. at 80.
[172] Id. at 104.
[173] Id. at 109-109.
[174] Chapters twelve to sixteen of the report, id. at 110-40.
[175] Id. at 114-17.
[176] Id. at 118-28.
[177] Id. at 129-35.
[178] Id. at 110. For compilation of the Commission's recommendations see id. at 141-47.
[180] Id. § 3.
[181] Id.
[182] Id. § 2(1) and (2).
[183] Id. § 4.
[184] Id. § 4(3).
[185] These hearings were held on S.2108, S.3219, H.R.15159 and H.R.19318. Earlier hearings were held by the House Committee on Conservation and National Resources of the House Government Operations Committee. For a representative sampling see Hearings on S.2108 and S.3219 Before the Subcommittee on Health of the Senate Committee on Labor and Public Welfare, 91st Cong., 1st & 2nd Sess., (1970); H.R. Rep. No.
No. 91-572 indicate the nature and amount of national concern on the subject of population. Recent judicial decisions have also recognized the right of the individual to have access to information on family planning.\(^{186}\)

Official national policies on family planning have undergone a remarkable change during the last decade. At present, concern with the rate of population growth is being shared equally by several developing and developed countries; family planning has acquired respectability. For instance, at mid-1969 about 30 developing countries were officially supporting family planning programs.\(^{167}\) In addition, seven states were supporting privately organized and sponsored programs though they had not proclaimed any official policy, while in twelve more states, privately sponsored programs were being carried out without either government support or opposition.\(^{188}\) It is reported in a recent U.N. report that "over the next five years some twenty-five Governments may decide to embark freshly on such programmes."\(^{189}\) It may be noted that the combined populations of the countries with national family planning programs (including mainland China)\(^{190}\) comprises more than 70 percent of the total for developing countries.\(^{191}\) Several states including the United States, Sweden, Denmark, the United Kingdom, the Netherlands, Norway, Japan, West Germany and Canada are providing assistance in national family planning programs.\(^{192}\)

5. Activities of Nongovernmental Organizations

Several nongovernmental organizations are also active in the population field. Their activities range from conducting demographic research and studies to providing assistance in national family planning efforts. The following are notable among such organizations: the International Planned Parenthood


\(^{191}\) For a recent report see The Victor Bostrum Fund & The Population Crisis Committee, Population and Family Planning in the People's Republic of China (1971).

Federation (IPPF), the Population Council, the Ford Foundation, the Rockefeller Foundation, Population Reference Bureau, Population Crisis Committee, the Pathfinder Fund, Care, Oxfam (Great Britain), Oxfam of Canada and Milbank Memorial Fund.

B. Likely Opposition to International Action on Population

The earlier discussion in the paper shows that both national and international concern with population is of such recent origin that it is only in the last decade or so that some states have translated this concern into the formulation of national population policies. Also there has been a distinct movement toward the expression of this concern in international declarations and some action by various international, regional and national governmental and non-governmental organizations. But the fact remains that the concept of state sovereignty and political and ideological considerations are likely to affect, influence, and perhaps even direct proposed international action, especially if the proposed action might at some stage even smack of mandatory controls to effectuate national compliance with proposed international policy and action programs. For instance, it will be fruitless to discuss the subject of international policy and plan of action without eventually facing the question of state sovereignty, for it could be argued that a state's formulation of its population policy falls within the scope of the domestic jurisdiction clause of the United Nations Charter (Article 2(7)) which prohibits intervention in the internal affairs of a member state. Similarly, opposition to international policy and planning on ideological and political grounds might render proposed international programs ineffective. A brief discussion of these two issues follows here.

The U.N. proposals, recommendations and actions on population show a keen awareness of national sensitivity to this question. To illustrate, resolutions on population adopted in the recent past by the General Assembly, ECOSOC and the Population Commission have not departed from the tone of the first major resolution on the subject, Resolution 2211 of De-

193 Id., at 38-44.
194 For discussion see id., at § III(A) (4).
195 For discussion see id., at § III(A) (1,2,3,5).
196 Article 2, paragraph 7 reads: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII."
in which the Assembly “recognized the sovereignty of nations in formulating and promoting their own population policies.” Member states are usually urged to take action if they are “interested” or if they consider it “appropriate and in accordance with the special needs of each country” to act; to make such efforts in the field of population as may be considered “consistent with their respective needs”; to ensure “in accordance with their national population policies and needs,” that information and education about family planning, and the means to practice family planning effectively are made available to all individuals; to provide assistance in the population field to other states “upon request” and to cooperate “in achieving a substantial reduction of the rate of population growth in those countries which consider that their present rate of growth is too high and in exploring the possibility for the setting of targets for such a reduction in those countries.” Even the U.N. agencies and the Secretary-General are asked to act in response to requests from member states. However, the principles also state that the size of the family should be the free choice of each individual family. Also, the need for improved demographic statistics, technical cooperation and further research on various issues related to population are accepted as necessary and valid subjects of concern for the U.N. system, causing no infringement upon national sovereignty. Similarly, in broad terms, reference is being made in various recent resolutions to the close relationship between population growth and economic and social development and to the need for formulating national population policies and programs. Finally, in connection with the proposed activities for

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197 Supra note 67.
202 Id.
203 Id.
205 This principle was first referred to in G.A. Res. 2211, supra note 67.
the 1974 World Population Conference and the 1974 World Population Year, the United Nations is discussing a global population strategy and a world population plan of action.208

Notwithstanding the United Nations concern with national sovereignty, it could be argued that every state is required to make family planning information and services available to all individuals, for it is a basic human right to have access to such information and services.209 This right has been reiterated in the 1967 Declaration of the Heads of States,210 the 1968 Thiran Conference on Human Rights,211 and subsequent U.N. resolutions.212 However, if voluntary measures are available but are ineffective in handling the problem and the state concerned is unwilling to take stronger measures to moderate fertility, it is submitted that the question can no longer be considered to fall within the reserved domain of a nation state under Article 2(7). There are substantial reasons why the population problem must not be considered to be under the umbrella of Article 2(7). The subject of population is now a matter of international concern, because of the expectations created by several occurrences over the past decade.

A substantial majority of the United Nations members has either gone on record at U.N. deliberations and those of U.N. specialized agencies and regional economic commissions in favor of concerted international, regional and national action to lower fertility rates, or has undertaken unilateral or bilateral means to do so. Secretary-General Kurt Waldheim and former Secretary-General U Thant have repeatedly expressed concern over the international nature of the problems arising out of rapid population growth. To illustrate, U Thant stated in 1970: "World attention has now been focused on the realities of the demographic situation and it remains for the United Nations, the specialized agencies and other international bodies to exert the leadership required."213 Similarly, Kurt Waldheim said on September 20, 1972:

"It is my hope that the World Population Year and Conference will rank in the history of the United Nations among the great events of the seventies and that they will bring us appreciably closer to the day when the world can say that the

208 See, e.g., ECOSOC Res. 1672 B (LII), supra note 198.
209 See supra notes 204, 205 and the accompanying text.
210 See supra notes 70-72 and the accompanying text.
211 Supra note 73.
212 See supra notes 78, 85, 201 and the accompanying text.
demographic problems facing us are understood, and actions to solve them are under way.

Population, development and environment make up an important element in the construction of a new economic and social order which, along with the maintenance of peace, constitutes the principal challenge of our generation. The United Nations is again taking the leadership. . . .”

Appeals for population control have been made by the executive authorities of the FAO, the World Bank, and the UNICEF, and various U.N. organs and bodies have undertaken programs to assist national family planning efforts.

Pressures of population in a state or region are likely to lead to political instability, social unrest, and internal disorders which might endanger international peace and security either by involving or affecting neighboring states, or by involving outside powers especially major powers, in internal conflict. Pressures of population are likely to encroach upon the right of the individual by restricting his freedom by the likely imposition of stricter regulations, and by impeding the attainment of the quality of life as enunciated in the U.N. Human Rights Program, especially in the International Covenant on Economic, Social and Cultural Rights.

It is evident from the past experience that Article 2(7) is to be interpreted in a contextual setting. For example, its interpretation at the United Nations has varied over time on the issues of human rights, especially apartheid and colonialism. While in the early discussions at the United Nations on these questions there was a strong support among the membership to deny the organization a right to intervene, thus treating the matter as one of domestic jurisdiction, a marked shift seems to have occurred, especially during the 1970s. Hence, these human rights issues are no longer considered to fall within the ambit of Article 2(7), and have been transformed into matters of international concern.

C. Ideological and Religious Opposition

The suggestion of treating the population problem as one of “international concern” may well face the opposition of some member states for ideological or religious reasons. The Soviet Union and other Communist states’ dismiss the Western-sponsored population programs as tools of “neo-imperialism.” The Catholic Church opposes artificial birth control measures.

214 Population Newsletter, No. 16/17, Summer 1972, at 41.
It should, however, be noted that the Communist states seem to be no longer vehemently opposed to population control.\textsuperscript{216} Also, while many Third World states were initially suspicious of the motives of the population programs, they are increasingly subscribing to the need for some coordinated action.\textsuperscript{217} And finally, though the church's stand on birth control remains dogmatic, the trend among Catholics is toward non-conformity. In a recent study, Professor Westoff of Princeton and Professor Ryder of the University of Wisconsin indicate such a trend in the United States,\textsuperscript{218} a trend which has apparently not been arrested by the Papal Encyclical of July 1968, which continued condemnation of artificial birth control. And it seems that this trend is not confined only to the United States,\textsuperscript{219} Hopefully, the changing attitudes of Catholic laity will soon be matched by changes in the traditional Roman stand.\textsuperscript{220}

IV. APPRAISAL AND RECOMMENDATION

The preceding discussion shows the enormity of the challenge posed by the rising rate of population growth. It also shows the dramatic change in attitude internationally during the last decade, bestowing respectability on family planning programs and offering prospects that the recent heightened awareness evidenced at the United Nations, as well as regionally and nationally, on the ecological orientation of all human activities\textsuperscript{221} will be translated into action programs and that the


\textsuperscript{217} Any number of the recent reports of the U.N. economic commissions for Asia, Africa, and Latin America show this concern.


\textsuperscript{219} For the international reaction to the Papal Encyclical see \textit{50 Studies in Family Planning} 8-12 (1970).

\textsuperscript{220} But see N.Y. Times, April 11, 1971 § 1, at 21, col. 1.

population will be treated in a broader socio-economic context.\textsuperscript{222}

It seems necessary and desirable that the United Nations continue to assume leadership,\textsuperscript{223} giving top priority\textsuperscript{224} to (1) improving demographic statistics; (2) further studying relationships between population change and economic and social development; population, resources and environment; and population, family and family well-being;\textsuperscript{225} (3) providing information to governments, nongovernmental organizations and the people on the nature and dimension of the demographic problem as evidenced by recent population trends and future prospects with a view to sharpening awareness of the problem; (4) strengthening international assistance for national policy-formulation on population; (5) improving birth planning techniques; (6) encouraging and promoting family planning and population education and making family planning services available to all, and studying legal provisions on abortion and voluntary sterilization; (7) supporting and strengthening further research on matters related to fertility control,\textsuperscript{226} especially studying the effectiveness of various means of reducing fertility, including the use of economic incentives and social-psychological support for smaller families, encouraging later marriages, and as a last resort, even coercive measures; and (8) appraising the effectiveness of the existing international and national institutions and norms dealing with population and related issues, including the appraisal of the machinery for providing technical assistance.

It is realized that even if the population issues were to be treated as one of "international concern," prior U.N. experience on other issues so treated warns that this characterization in itself would not solve the problem. South Africa, for example, has flouted all U.N. resolutions on apartheid, and sanc-

\textsuperscript{222} I am grateful to Professor Myres McDougal for stressing the importance of treating the population problem in a contextual setting, in his comment on my presentation at an Association of American Law Schools panel session in Chicago on Dec. 29, 1970.

\textsuperscript{223} The 1974 World Population Year and World Population Conference and the increasing range of population activities at the United Nations indicate that the United Nations will continue to assume leadership. See, e.g., supra § III A (1,2,3).


\textsuperscript{225} The Population Commission has at its special session in August 1972, recommended the study of these relationships as provisional agenda items for the 1974 World Population Conference. 53 U.N. ECOSOC, Supp. 12, at 6, U.N. Doc. E/5212 (1972).

\textsuperscript{226} See supra notes 137-42 and the accompanying text.
tions against South Africa and Rhodesia have not been effective. However, the lack of effective sanctioning process in the past should not deter essential preliminary action: to enhance the awareness on a world-wide basis; to treat population as a problem of international concern; to prescribe a global population policy, and to encourage development of national policies and programs.

Although the U.N. system offers the best prospect for dealing with the global issues of population, the U.N. machinery should be strengthened and the United Nations and its specialized agencies should expand their activities and capability in their respective spheres to relate them to population and family planning. The need is obvious for adequate funding and the pooling of all available international resources in the population field. In fact, several suggestions are at present being considered at the United Nations to improve its existing machinery in order to effectively deal with various aspects of the problem.\textsuperscript{227} The following institutional changes are offered to effectuate further improvement in and strengthening of the existing machinery:

1. The establishment of a global population agency, headed by a U.N. High Commissioner on population.
2. The proposed population agency should be closely related to the newly established U.N. environmental agency.
3. The proposed agency should coordinate all current U.N. efforts of demographic and family planning research and assistance, with primary emphasis on:
   a. initiating and promoting practical research on population, especially focusing on the need of the developing countries and coordinating its activities with the U.N. development efforts and other efforts in dealing with environmental problems;
   b. providing training to personnel within the U.N. system and personnel selected from those engaged in national population programs on various aspects related to the population field, such as health, development of human resources, and urban and rural development planning;
   c. acting as an advisor to the various U.N. regional and national agencies in formulating population policies, programs, projects and strategies; and

\textsuperscript{227} See also The Advisory Committee Report, at 36-48.
4. The proposed agency should establish a set of priorities in research and action programs and should benefit from the prior work of the Population Commission in this regard.

5. The population agency should organize periodic world population conferences on the pattern of the two earlier world conferences and the forthcoming 1974 conference, and should encourage the holding of regional conferences to formulate a world population policy and regional policies in conformance therewith.

6. Regional and national population agencies should be established to effectuate the global population strategy.

7. A U.N. World Population Institute should be established.

The institutional measures recommended here would need to be supplemented by effective sanctioning procedures in order to deal with problematic situations. For instance, a state or a number of states might refuse to become a part of this global venture. Or, population growth in a state or a number of states in one or more regions might continue on its upward spiral despite the encouragement and active assistance of global and regional institutions. In such situations, the High Commissioner should be required to bring the matter to the attention of the U.N. General Assembly, the specialized agencies, and the regional and national entities established to deal with the problem.

Among other measures which could be taken to effectuate the compliance of a recalcitrant state, the World Bank, WHO, and donor countries could use their aid programs as a leverage to bring about changes in recipients’ population policies. Initially, recipients’ attention should be directed to the danger of population growth and to the need for identifying national population goals in the context of national economic and social development goals, of course with the offer of appropriate assistance to the existing national programs and for the development of new programs to slow down the rate of growth. But the question is whether coercion should be involved to the

228 It is gratifying that the 23-nation Second Asian Population Conference held in Tokyo from Nov. 1-13, 1972, adopted the Declaration of Population Strategy for Development, recommending efforts “to raise living standards, to widen the benefits of economic and social change, and to head off environmental threats through integrated national planning and coordination,” and urging governments to consider establishing goals and programs “to control effectively the growth of population conditions and policies.” 9 U.N. MONTHLY CHRONICLE, No. 11, Dec. 1972, at 105.
extent of refusing aid. Initially, "encouragement" is the proper step, accompanied by widespread dissemination of information, but other means might have to be resorted to if active persuasion did not succeed. It might even become necessary to recognize that parenthood is no longer a right but a privilege, and henceforth the traditional unrestricted freedom to procreate will have to be curbed by involuntary methods if voluntary means do not succeed.

The discussion of compulsory measures presupposes that the adoption of such measures nationally and internationally will be the last resort, preceded by every effort to encourage voluntary measures and to make them effective. However, if such compulsory measures are to be resorted to, the basic policy issue is the delicate balancing of individual freedom versus societal need. And, within each state, it will be the lawyer's task to work on setting standards and criteria which are reasonable and justifiable to the public. Lawyers' skills will be needed to devise a machinery which will hopefully minimize administrative intricacies, provide a system of appropriate checks and balances, and institute the judicial and extra-judicial procedures necessary to protect the interests of the individual. Social satirists such as George Orwell and Aldous Huxley, have given us ample warnings about the possible misuse and abuse of power by a totalitarian regime.

Ideally, the entire global ecosystem should be managed as a unit. The formulation of a global population policy and plan of action are necessary first steps to reach that ideal and indeed appear essential to our quest for survival.
TABLE 1. Estimates of past and future population of the world during 1750-2000 (in millions). ["Medium Variant" is used to arrive at these estimates].

<table>
<thead>
<tr>
<th>Year</th>
<th>World Total</th>
<th>More Developed Regions</th>
<th>Percentage of the Total</th>
<th>Less Developed Regions</th>
<th>Percentage of the Total</th>
</tr>
</thead>
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<td>791</td>
<td>201</td>
<td>25.7</td>
<td>590</td>
<td>74.3</td>
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<tr>
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*a The table is compiled from the following sources:
(1) 1969 Demographic Yearbook, supra note 1, at 115.
(2) 1969 World Population Situation, supra note 3, at 10, 44, 117.

b The distinction between the "more developed" and "less developed" regions is based on current economic, social and demographic criteria. Presently, "more developed" regions comprise of Europe, the Soviet Union, the United States and Canada, Japan, Temperate South America and Australia and New Zealand, while the rest of the world is combined in the "less developed region."


TABLE 2. Average annual crude birth, death rates, and rates of national increase (per. 1,000 population per year), as projected by regions, 1965-1985.

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<tr>
<th></th>
<th>Crude birth rate</th>
<th>Crude death rate</th>
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<td>World total</td>
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<td>14.0 12.7 11.6 10.5</td>
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<td>14.0 12.4 11.0 10.0</td>
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<td>10.2 10.3 10.4 10.6</td>
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<td>7.7 8.0 8.3 8.7</td>
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<td>9.4 9.4 9.4 9.2</td>
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<td>10.1 8.7 7.9 7.1</td>
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<tr>
<td>Oceania</td>
<td>24.5 25.6 25.9 26.3</td>
<td>10.0 9.3 8.9 8.5</td>
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</table>

TABLE 3. Estimated and projected annual crude birth rates, death rates, and rates of national increase for “more developed” and “less developed” regions for selected periods.

<table>
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<th>Period</th>
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<th>Less-developed regions</th>
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<tr>
<td>Decadesb</td>
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<td></td>
<td>1910-1920</td>
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<td>1920-1930</td>
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<td>1930-1940</td>
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<td></td>
<td>1990-2000</td>
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a Demographic Yearbook, 1967 (United Nations publication, Sales No. E/F.68. XIII.1.).

b World Population Prospects as Assessed in 1963. The long-range population projections beginning 1965 are being revised.

<table>
<thead>
<tr>
<th></th>
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<th>Birth rate</th>
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