

# The Declaration on the Right to Development in the context of United Nations standard-setting<sup>1</sup>

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## I. Introduction

The Declaration on the Right to Development was adopted by the General Assembly in its resolution 41/128 of 4 December 1986.

The Declaration defines development in its preamble as "a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom."

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<sup>1</sup> This chapter consists of extracts from a background paper entitled "Annotations to the Declaration on the Right to Development and related United Nations system instruments, resolutions and reports" (HR/RD/1990/CONF.1), which the author prepared for the former United Nations Centre for Human Rights as input to the Global Consultation on the Realization of the Right to Development as a Human Right held in January 1990. It contains a summary of 25 out of 36 United Nations documents issued since 1944. Documents not included in these extracts purely for reasons of space, but which are no less pertinent to understanding the background to the Declaration on the Right to Development are: Freedom of Association and Protection of the Right to Organize Convention, 1948 (Convention No. 87) of the International Labour Organization (ILO); Declaration on the Rights of the Child; Final Act of the first United Nations Conference on Trade and Development; report of the Seminar on the Promotion and Protection of the Human Rights of National, Ethnic and other Minorities; Universal Declaration on the Eradication of Hunger and Malnutrition; ILO Rural Workers' Organizations Convention (No. 141) and Recommendation (No. 149), 1975; report of the World Conference on Agrarian Reform and Rural Development; Convention on the Elimination of All Forms of Discrimination against Women; report of the Seminar on the Relations that Exist Between Human Rights, Peace, and Development. The extracts and analysis have been edited as appropriate for this publication.

Its article 9 (1) stipulates that "[a]ll the aspects of the right to development set forth in the present Declaration are indivisible and interdependent and each of them should be considered in the context of the whole".

In view of the complex definition of the right to development, its multiple actors, and the corresponding duties that it imposes upon States, individuals and collectivities, as well as the imperative reflected in article 9 (1), it is essential that the multiple dimensions of this complex process be correctly identified, along with the principles upon which they are based, so as to ensure full implementation of the Declaration and the realization of the right to development.

Key concepts reflected in the Declaration include its recognition of development as a dynamic process that requires enabling structures and systems; the interrelationship and interdependence between human rights, development and peace; human beings and peoples as subjects of development; the essential role of participation, individually and collectively, in the process; the indivisibility and interdependence of civil, economic, cultural, political and social rights; the indivisibility of the material and non-material aspects of development; the interdependence and interrelationship between the individual and the collective dimensions, individual rights being ordinarily exercised by associating in collective entities; and the interrelationship and interdependence between national justice

and international justice, between national and international conditions.

The various dimensions of the right to development, as reflected in the Declaration, draw their legitimacy from principles that appear in authoritative United Nations law and policy, which are restated and further developed in the Declaration. These include respect for the principles of equality, non-discrimination, social justice and solidarity at all levels; the realization of the right of peoples to self-determination in all its dimensions—political, economic, social and cultural—as prerequisite for the realization of all human rights and fundamental freedoms; the corresponding right and duty of States to create the national conditions for their realization; their duty of international cooperation and solidarity to create an international order conducive to that process, based on equality and self-determination of all peoples, permanent sovereignty over their natural wealth and resources, non-interference in the internal affairs of States, and national sovereignty and territorial integrity. The sources of these basic principles can be traced back to various studies and legal instruments adopted by United Nations bodies, the League of Nations and the Philadelphia Convention of the General Conference of the International Labour Organization of 1944.

The historical development of the principles gathered in the Declaration reflects the gradual evolution of greater democracy in international relations, as part of the decolonization process and the emergence of the Non-Aligned Movement. The Declaration recognizes that political independence of States cannot be ensured in the absence of economic independence.<sup>2</sup> It also reflects a rethinking of development strategies<sup>3</sup> in the wake of the widespread failure of traditional growth-centred development policies towards one that is human-centred, encompassing a multidimensional and dynamic process that takes into account the structural and the systemic, the individual and the collective, the national and the international.

As indicated, the present chapter contains extracts or summaries of the arguments presented in the background paper prepared by the author for the Global Consultation on the Realization of the Right to Development as a Human Right, held in Geneva

in January 1990. That paper sought to trace the concepts incorporated in the Declaration and the evolution of the principles on which they are based, focusing on the substantive relationship between the Declaration and other instruments, resolutions and reports of the United Nations system. Detailed references to the manner in which the principles and concepts are reflected in the Declaration have been removed from the present chapter for want of space and can be found in the original document.

## II. Evolution of principles in the Declaration on the Right to Development

### A. Declaration of Philadelphia, General Conference of the International Labour Organization (1944)

The Declaration of Philadelphia, adopted in 1944 and incorporated into the ILO Constitution in 1946, clearly expressed the concept implicit in the notion of the right to development and defines some of the basic principles subsequently reflected in the Declaration. It considered as fundamental the objective that "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual freedom in conditions of freedom and dignity, of economic security and equal opportunity", recognizing that the individual has the right not only to the material but also to the non-material aspects of development. The Declaration is unequivocal in reaffirming the fundamental principle that "labour is not a commodity".

Such development must be based on principles of non-discrimination, equality and social justice. Development, peace and respect for human rights are interdependent. Freedom and dignity should be both conditions, and ends, of development.

Recognizing that individual rights cannot be disassociated from collective rights, the Declaration acknowledges that individual development must take place within the framework of development in general, which alone can provide the individual with economic security. It also implicitly recognizes the essential role of participation by reaffirming the principle of "freedom of expression and of association" as "essential to sustained progress", thus acknowledging that, although an individual right, it must ordinarily be exercised through collective entities, requiring the democratization of institutions and decision-making processes.

<sup>2</sup> Aureliu Cristescu, *The Right to Self-Determination: Historical and Current Development on the Basis of United Nations Instruments* (United Nations publication, Sales No. E.80.XIV.3).

<sup>3</sup> Development and international cooperation: preparation of the International Development Strategy for the Fourth United Nations Development Decade: note by the Secretary-General transmitting the report of the Administrative Committee on Coordination (ACC) Task Force on Long-Term Development Objectives (E/1989/80).

The creation of national and international conditions in which such human development is possible is the primary responsibility of States, including also their duty to cooperate with each other, and must constitute the central aim of national and international policy. Hence, the Declaration requires that all national and international policies, in particular those of an economic and financial character, are judged in this light and accepted only insofar as they may be held to promote and not hinder its achievement.

### B. Charter of the United Nations (1945)

The right to development is in full conformity with the letter and spirit of the Charter of the United Nations, adopted in San Francisco on 25 June 1945 by the United Nations Conference on International Organization, which is a definite statement on the interrelationship and interdependence between peace, development and human rights, between the individual and collective dimensions, between the national and the international and, hence, the duty of States to cooperate with each other to create the international conditions necessary to support national efforts for their promotion and realization.

Chapter I of the Charter defines the purposes and principles of the United Nations, the vital clauses and the unique basis upon which friendly relations among nations can develop. It is the principal source of the Declaration and its multidimensional and structural approach to the realization of the right to development.

Article 1 on the purposes of the United Nations provides, *inter alia*, for (a) the adoption of collective measures for the maintenance of international peace and security, including prevention and removal of threats to the peace, suppression of acts of aggression or other breaches of the peace, and the peaceful settlement of international disputes or situations which might lead to a breach of the peace, "in conformity with the principles of justice and international law"; (b) the achievement of international cooperation in resolving international problems of an economic, social, cultural or humanitarian nature, and in promoting and encouraging respect for human rights and fundamental freedoms "for all without distinction as to race, sex, language, or religion"; and (c) the development of friendly relations among nations "based on respect for the principle of equal rights and self-determination of peoples".

Article 2 specifies the principles upon which the duty of international cooperation must be based, including, *inter alia*, the principle of sovereign equality of States, a corollary of the right of peoples to self-determination; the peaceful settlement of international disputes; the duty to refrain from threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations; and non-intervention in the internal affairs of States.

Thus, in order to promote international peace and stability through the realization of development, human rights and peace, Chapter I requires States to cooperate with each other and develop friendly relations, "based on respect for the principle of equal rights and self-determination of peoples" and its corollary, the principle of sovereign equality.

Article 55 of the Charter is more precise and expands upon the problems that need to be addressed through international economic and social cooperation and the manner in which the United Nations would achieve the purposes defined:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- (a) higher standards of living, full employment, and conditions of economic and social progress and development;
- (b) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Based on the principles of equal rights and the self-determination of peoples, Articles 55 and 56 of the Charter emphasize the fundamental legal principle of solidarity between nations, which is necessary for the achievement of development, human rights and peace. Under the terms of Article 56, "Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55." In accordance with these two articles, the realization of human rights and development are binding legal obligations on Member States and the basis of all future action in this field.

The duty of international solidarity and its result, the right to development, is reiterated in articles 3, 4, 5 and 7 of the Declaration on the Right to Development, which are based on the principles of sovereign equality and international justice. In its article 2 (2), the Declaration also clearly stipulates the duty of solidarity of the individual toward the community: "All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development."

The individual and collective dimensions of the principles defined in the Charter are reaffirmed in the Declaration. The principles of non-discrimination, equality and social justice are applicable equally to individuals and peoples, to collective entities that represent them within States or as States, the entity through which they interact in their international relations with other States. Their application to individuals is expressed, *inter alia*, in Articles 1 (3), 8, 13 (1), 55, 67 (1), and 76 (c) of the Charter, which require respect for, promotion and realization of "human rights and fundamental freedoms for all without distinction as to race, sex, language or religion"; their application to nations and States is reflected in the preamble, which reaffirms faith in the equal rights of nations "large and small", and in Articles 1 (2), 2 (1), 18 (1), 55, 76 (d), 78 and 109, referring to sovereign equality of States, and others concerning Non-Self-Governing Territories and the International Trusteeship System.

Participation is an essential factor in the achievement of development, peace and human rights. Related to the principles of self-determination, equality, non-discrimination and social justice, the concept recognizes that individuals and peoples are the central subjects of their own history. Whereas in the Charter the concept, as expressed in the articles concerning Non-Self-Governing Territories and the International Trusteeship System, relates to the actual self-determination procedure and self-government taking into account "political aspirations" (Articles 73 (b) and 76 (b)), the Declaration recognizes the right of peoples also to freely pursue their economic, social and cultural development. Article 1 (2) specifies that the right to development implies "the full [emphasis added] realization of the right of peoples to self-determina-

tion", which also includes "their full sovereignty over all their natural wealth and resources", its realization being a prerequisite for the realization of all human rights, including the right to development. Articles 1 (1), 2 (1) and 8 (2) recognize the right to participate in all spheres of development—political, economic, social and cultural. By focusing the two paragraphs of its first article on participation and self-determination, the Declaration recognizes that these are related, though distinct, concepts.

### C. Universal Declaration of Human Rights (1948)

The Universal Declaration of Human Rights was proclaimed as a "common standard of achievement for all peoples and all nations" by the General Assembly in its resolution 217 A (111) of 10 December 1948, to be promoted by progressive measures, national and international. Articles 1 and 2 reaffirm the basic principles defined in the Declaration of Philadelphia—equality, non-discrimination and social justice—upon which the rights and freedoms it proclaims must be based. Article 1 declares, "All human beings are born free and equal in dignity and rights" and article 2, "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Articles 22 and 28 of the Universal Declaration provide the conceptual basis for the right to development as a human right as defined in article 1 of the Declaration, which extends the right to "all peoples". Article 1 (1) provides that "[t]he right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized". Article 1 (2) states: "The human right to development also implies the full realization of the right of peoples to self-determination."

Article 28 of the Universal Declaration recognizes, for the first time, the need for a structural approach to human rights, at both national and international levels. It also makes a clear statement on the link between the global order and the realization of human rights; and that an enabling international environment is indispensable for the realization of human rights. This general principle is reflected in article 22,

which emphasizes the importance of national effort and international cooperation, thus recognizing the importance of structural transformation at the international level to accompany national reform.

Promoting development and human rights is the shared concern and responsibility of individuals and groups within societies, States and the international community. The obligation to demonstrate solidarity is reflected in articles 1 and 28 of the Universal Declaration. Article 1 states, "All human beings are ... endowed with reason and conscience and should act towards one another in a spirit of brotherhood" and article 28, "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised."

The Universal Declaration defines an entire range of rights—civil, cultural, economic, political and social—reflecting the material and the non-material, the individual and the collective, development and human rights, and their interrelatedness and indivisibility. These dimensions were subsequently incorporated and further developed in the Declaration on the Right to Development.

That the human person has the right not only to the material but also to the non-material aspects of development are reflected in the articles of the Universal Declaration that refer to the full development of the human personality. Article 29 (1), for instance, provides that "[e]veryone has duties to the community in which alone the free and full development of his personality is possible". Article 26 (2) relates to the objectives of education. The second preambular paragraph establishes the fundamental link between the two sets of rights: "the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people."

As for the relationship between the individual and the collective, while the Universal Declaration may seem to emphasize the individual, several articles imply that individual development and fulfilment can be achieved only through the satisfaction of collective prerequisites. In various articles in addition to article 29, the collective dimension is reflected in the importance given to participation, reaffirming the principle, reflected in the ILO Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87, that individual rights are often expressed through collective institutions. Article 20

provides for freedom of peaceful assembly and association, article 21, to participate "in the government of his country, directly or through freely chosen representatives", article 23 (4), to form and to join trade unions and article 27, to take part "in the cultural life of the community".

The collective dimension is also expressed through the corresponding duties towards the community to which the rights of individuals set forth in the Universal Declaration give rise. The eighth preambular paragraph calls on every individual and every organ of society to promote respect for the rights and freedoms proclaimed in the Declaration and to undertake measures, at the national and international levels, to secure their recognition and observance, both among the peoples of Member States and among the peoples of territories under their jurisdiction. Article 29 (1) refers to the duties of the individual towards the community. The duties of the individual are further reinforced by the provision in article 30 that "[n]othing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein". The duties of individuals towards the community are placed within the broader context of development in the Declaration on the Right to Development (art. 2 (2)), and is reinforced in article 9 (2).

At the international level, this collective dimension is discussed above with reference to articles 22 and 28 of the Universal Declaration.

The Universal Declaration recognizes the need to democratize institutions and decision-making processes for the realization of human rights, both at the national and international levels, a recognition that is explicit in the Declaration on the Right to Development.

The Declaration is unequivocal that all human rights and fundamental freedoms are "indivisible and interdependent" and must be given equal attention (art. 6 (2)). Article 1 provides for the right of human beings and peoples to both material and non-material aspects of development—to "economic, social, cultural and political development". The principles of equality, non-discrimination and social justice are applied equally to individuals and nations. Articles 2 (3), 6 and 8 stipulate the manner in which States must formulate national development policies and the measures they should undertake to ensure development within their countries. Articles 2 (3) and 8 (1) refer to non-discrimination in terms of fair

distribution and equality of opportunity and access. Article 8 (1) requires States to take positive measures in favour of non-discrimination of women. Articles 3, 4 and 5 refer to appropriate international development policies and measures that States and the international community must undertake in a manner that respects these principles.

A crucial dimension of United Nations efforts in the field of human rights, which is provided for in the Declaration, refers to the obligation of States, individually and collectively, to create the conditions necessary, at the national and international levels, for the exercise of the fundamental right of peoples to self-determination, without which individual rights cannot be realized. States have the primary responsibility to create an appropriate national and international environment for the realization of the right to development (art. 3 (1)). At the national level, States have a duty to undertake appropriate economic and social reforms to eradicate all social injustices (art. 8 (1)); at the international level, States should, *inter alia*, promote a new international economic order (art. 3 (3)), formulate appropriate international development policies (art. 4), eliminate massive and flagrant violations of the human rights of peoples and human beings (art. 5) and promote the establishment, maintenance and strengthening of international peace and security (art. 7). Articles 4, 5 and 7 propose further measures to be adopted by States and the international community.

#### **D. Declaration on the Granting of Independence to Colonial Countries and Peoples (1960)**

In many respects the right to development as the logical next step in the programme of decolonization was placed on the table at the United Nations in 1960, when the General Assembly adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples in resolution 1514 (XV). The Declaration amplified and extended the Charter of the United Nations to take into account the emerging reality of newly independent States.

The General Assembly solemnly proclaimed "the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations", declaring its conviction that "the continued existence of colonialism prevents the development of international economic cooperation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations

ideal of universal peace"; that the increasing conflicts resulting from the denial of their freedom or obstacles placed in their way constitute a serious threat to world peace; and that "all peoples have an inalienable right to complete freedom and to the exercise of their sovereignty and territorial integrity".

The Declaration is a document of historical importance. Its paragraphs outline what may be described as ordering principles, intended to guide the progressive development of international law in accordance with the General Assembly's own explicit mandate under Article 13 (1) (a) of the Charter. It was followed by a series of resolutions, of which the most important are resolution 1515 (XV) on the sovereign right of States to dispose of their own wealth and natural resources; resolution 1803 (XVII) on States' permanent sovereignty over those natural resources; the 1974 Declaration on the Establishment of a New International Economic Order and the Programme of Action (resolutions 3201 (S-VI) and 3202 (S-VI)); and the Charter of Economic Rights and Duties of States (resolution 3281 (XXIX)), which demonstrate the visionary quality of the 1960 Declaration.

In condemning colonialism and other forms of subjection of peoples to foreign domination, subjugation and exploitation and actively promoting decolonization, the Declaration is one of the most significant contributions of the United Nations to the concept of self-determination. It declares that "[t]he subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation" (art. 1) and that "[a]ll peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development" (art. 2).

The General Assembly is explicit in its recognition of the link between the international order and the realization of human rights and development, establishing at the same time the relationship between development, human rights and peace, and the realization of the right of peoples to self-determination as a prerequisite for their achievement.

By affirming that all forms of alien subjugation, domination and exploitation are incompatible with human rights, legally as well as philosophically, and that they should be eliminated, the General Assembly recognizes that the realization of effective national

sovereignty and territorial integrity, notably the right of peoples to associate as nations to exercise their right to self-determination, is a prerequisite for the realization of individual freedoms in whatever form, thus also recognizing that individual rights can only be achieved through the realization of collective rights.

The Declaration unequivocally establishes the interrelation between individual and collective rights; between the national and international dimensions; and between development, human rights and peace. It also validates the multidimensional aspect of the right of peoples to self-determination—political, economic, social and cultural; the recognition that its realization, including the exercise of national sovereignty and territorial integrity, is a prerequisite for the realization of all other rights and freedoms; and the duty of States to cooperate internationally to eliminate obstacles to the realization of rights on the basis of equality and self-determination of all peoples, non-interference in the internal affairs of States, and respect for national sovereignty and territorial integrity.

In a warning against possible attempts to sabotage the decolonization process, the General Assembly established that with the granting of independence, the abolition of domination must be complete; attempts to restore foreign influence should end forever; independence should mean not only political independence but also economic and cultural independence free from any kind of interference or pressures, direct or indirect, on whatever pretext, exercised over peoples or nations. It also provided that the principles contained in the Declaration must be applied to all peoples, universally, not only at the time of obtaining independence—which must be complete and absolute—but also in ensuring the preservation of that independence; that should depend on the free will and determination of the people themselves and not be subjected to any other influence.<sup>4</sup> Relations between the dominant and subject peoples must give way to relations between free peoples, based on an equal footing and on trust. Cooperation and peace could thus also replace antagonism and war.<sup>5</sup>

The logical corollary of the right of peoples to self-determination, reaffirmed by the Declaration, is the duty of States to create the international conditions of stability and well-being and peaceful and friendly relations, based on respect for the principles of equal rights and self-determination of all peoples. States are

required to cease “[a]ll armed action or repressive measures of all kinds directed against dependent peoples ... in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected” (art. 4). The Declaration also states that “[a]ny attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations” (art. 6) and that all States have the obligation to observe the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States and respect for the sovereign rights of all peoples and their territorial integrity (art. 7).

These concepts were subsequently reaffirmed and further developed in the Declaration on the Right to Development. However, the Declaration goes further by underlining the indivisibility of the individual and collective aspects of the right to development, given that it must ordinarily be exercised through collective economic, social and cultural institutions.<sup>6</sup>

#### E. Programme for the First United Nations Development Decade (1961)

In its resolution 1710 (XVI) of 19 December 1961, the General Assembly designated the 1960s as the United Nations Development Decade, calling on all States to “intensify their efforts to mobilize and to sustain” measures to achieve “self-sustaining growth of nations and their social advancement,” with the objective of a minimum annual growth rate in national income of 5 per cent by the end of the Decade.

While the principal aim of the first Development Decade was to increase international financial aid and stimulate growth, the General Assembly also recognized the important link between social conditions and economic growth and, hence, the need to address human needs. The resolution is the first expression of collective awareness of the widespread failure of traditional growth-centred development policies and the need to reconsider these development strategies<sup>7</sup> and move towards one that was more human-centred, encompassing a multidimensional approach. In its resolution, the Assembly requested, *inter alia*, international agencies to adopt measures to “accelerate the

<sup>4</sup> Official Records of the General Assembly, Fifteenth Session, 935th meeting (A/PV.935), paras. 81, 93, 104 and 105.

<sup>5</sup> Ibid., 945th meeting (A/PV.945), paras. 87 and 187.

<sup>6</sup> “Report of the Working Group on governmental experts on the right to development” (E/CN.4/148) (1982).

<sup>7</sup> See footnote 3 above.

elimination of illiteracy, hunger and disease, which seriously affect the productivity of the people of the less developed countries".

The Declaration further defined the concept of development as a process based on the principles of non-discrimination, equality, social justice and solidarity in which the human person, individually and collectively, is the central subject, rather than the object, the active participant and beneficiary of the right to development.

Appealing for more "equitable" and "mutually acceptable" economic relations between developed and developing countries, the General Assembly reaffirmed the duty of States to cooperate internationally and act in solidarity to create the conditions necessary to achieve the target set. It called upon developed countries to transfer annually a minimum net amount of 1 per cent of their gross national product to developing countries. Thus, the responsibility of States to promote the development efforts of other States in terms of a quantitative target for the net transfer of resources from developed to developing countries became an integral element of international development strategy.

#### F. Declaration on permanent sovereignty over natural resources (1962)

The General Assembly, in its resolution 1803 (XVII) of December 1962, reaffirming that political independence can only be assured by economic independence, which can be guaranteed only if people have the right to possess and develop their wealth and natural resources, proclaimed the inalienable right of peoples and nations to permanent sovereignty over their natural wealth and resources, and that such sovereignty was a basic constituent of the sovereign and inalienable right of peoples to self-determination, including development.

The Declaration reaffirms the right of peoples to self-determination, including their inalienable right to full sovereignty over all their natural wealth and resources (art. 1 (2)), as a prerequisite for the realization of the human right to development, thus recognizing that individual rights can be achieved only through the realization of collective rights.

Attaching particular importance to the promotion of economic development of developing countries and securing their economic independence, and

noting that the creation and strengthening of the inalienable sovereignty of States over their natural wealth and resources reinforces their economic independence, the General Assembly declared that the violation of the right to sovereignty over natural resources "is contrary to the spirit and principles of the Charter of the United Nations and hinders the development of international cooperation and the maintenance of peace" (art. 7), and stipulated that this right must be respected "strictly and conscientiously" by States and international organizations (art. 8).

The Declaration explicitly recognizes the State as subject of the right "freely to dispose of their natural wealth and resources", with the corresponding duty to exercise the right in the national interest and for the well-being of its people. The General Assembly, "[c]onsidering that any measure in this respect must be based on the recognition of the inalienable right of all States freely to dispose of their natural wealth and resources in accordance with their national interests, and on respect for the economic independence of States", and noting that "the creation and strengthening of the inalienable sovereignty of States over their natural wealth and resources reinforces their economic independence", declared that this right "must be exercised in the interest of their national development and of the well-being of the people of the State concerned" (art. 1). Respect for the right is, therefore, a precondition for the realization of the rights of individuals within the State.

At the international level, the logical corollary of the right to permanent sovereignty is the duty of States to further this right "by the mutual respect of States based on their sovereign equality" (art. 5).

Considering that it is desirable to promote international cooperation for the economic development of developing countries, and that economic and financial agreements between the developed and the developing countries must be based on the principles of equality and of the right of peoples and nations to self-determination, and that the provision of economic and technical assistance, loans and increased foreign investment must not be subject to conditions which conflict with the interests of the recipient State, the Declaration goes on to apply this principle to exploration, development and disposition of the natural wealth and resources; to the import of foreign capital required for these purpose; to the profits derived therefrom; to the nationalization, expropriation or requisitioning of such wealth and resources; and to

foreign investment agreements freely entered into by or between sovereign States. Article 6 provides that "[i]nternational cooperation for the economic development of developing countries, whether in the form of public or private capital investments, exchange of goods and services, technical assistance, or exchange of scientific information, shall be such as to further their independent national development and shall be based upon respect for their sovereignty over their natural wealth and resources".

Article 1 (2) of the Declaration reaffirms the right of peoples to self-determination, including their inalienable right to full sovereignty over all their natural wealth and resources, and asserts that the realization of that right is a prerequisite for the realization of the human right to development, thus also recognizing that individual rights can only be achieved through the realization of collective rights. It is part of the sovereign and inalienable right of every State to choose its economic, political, social and cultural system in accordance with the will of its people.

The General Assembly reaffirmed the existence of a universal right of all States to pursue their own development in an international environment conducive to that process and based on the principles of equality and of the right of peoples and nations to self-determination. This right provides the basis of article 3 (1) of the Declaration on the Right to Development, which states that States have the primary responsibility to create national and international environment conditions favourable for the realization of the right to development.

#### **G. International Convention on the Elimination of All Forms of Racial Discrimination (1965)**

The International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly in 1965 by resolution 2106 (XX), condemned all forms of racial discrimination against individuals and groups, further defined some of the basic principles on which the right to development is based—non-discrimination, equality and social justice—and adopted a multidimensional approach to human rights subsequently reflected in the Declaration on the Right to Development.

Reiterating the principles of non-discrimination, equality and social justice established in the Charter of the United Nations and proclaimed in the Universal

Declaration of Human Rights, the Convention outlines the measures that States have a duty to adopt, nationally and internationally, towards the speedy elimination of racial discrimination throughout the world in all its forms and manifestations and securing understanding of and respect for the dignity of the human person.

The structural and systemic character of this Convention is expressed throughout the text, in its condemnation of "colonialism and all practices of segregation and discrimination associated therewith, in whatever form", including apartheid; its condemnation of doctrines of racial superiority and all propaganda and organizations based on such ideas or theories or which attempt to justify or promote racial hatred and discrimination in any form; its recognition that these often result from Government policy and legislation, or promotion or incitement by public authorities or institutions or by non-governmental entities; its enumeration of the measures States parties have the duty to adopt in this regard; and in its acknowledgement of the essential role of participation through collective entities.

The Convention recognizes that individual rights are ordinarily exercised through the realization of collective rights, acknowledging in its article 1 (4) the need for special measures in favour of certain racial or ethnic groups "to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms..." To that end, the Convention requires States parties to "encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division" (art. 2 (1) (e)); to take special and concrete measures, under certain circumstances, in the social, economic, cultural and other fields "to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms" (art. 2 (2)); to guarantee the right of everyone "without distinction as to race, colour, or national or ethnic origin, to equality before the law" in the enjoyment of, inter alia, "[t]he right to freedom of peaceful assembly and association" and "the right to form and join trade unions" (art. 5 (d) (ix) and (e) (ii)). Participation requires the establishment of equitable and appropriate structures through which it can be exercised.

The link between the national and the international is most clearly expressed in the Convention's preamble, which refers to the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples; doctrines of racial superiority being an obstacle to friendly and peaceful relations among nations and a threat to international peace and security; the resolve of States parties to adopt measures for the speedy elimination of racial discrimination and related practices "in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination", and the duty of States to cooperate internationally in this regard, as provided for in the Charter of the United Nations.

#### H. International Covenants on Human Rights (1966)

Although adopted by the General Assembly only in 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) were largely drafted in the 1950s, reflecting the climate of the time. Their provisions are of considerable significance to the Declaration on the Right to Development.

Deriving from the Universal Declaration of Human Rights, both International Covenants recognize that the necessary conditions are a prerequisite for the realization of human rights: "... the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights" (third preambular paragraph). The common paragraph implicitly recognizes that the two sets of rights are interconnected and interdependent.

Common article 1 has special significance for the right to development as a prerogative also of peoples and States, with national and international ramifications.<sup>8</sup> Article 1 (1) proclaims: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Article 1 (2) provides for the achievement

of economic independence by which sovereignty and political independence can be ensured: "All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence."

The International Covenants thus underline the political, legal, economic, social and cultural dimensions of the right to self-determination and its continuing character based on the "free disposal" principle, which implies a continuing process of economic relations with other States. Its equivalent in the Covenants is the principle of solidarity, expressed in article 1 (2) as "without prejudice to any obligations". Article 1, in effect, says that States may dispose of their wealth in whatever way they wish, except refuse to contribute to international cooperation for development. The "obligations" are those contained in Articles 55 and 56 of the Charter.

The principle of self-determination requires the establishment of democratic structures based on the principles of non-discrimination, equality, social justice and solidarity through which people can exercise this right. At the national level, it entails a corresponding obligation of States to respect the rights of people under their jurisdiction. However, the Covenants, in their common fifth preambular paragraph, also recall that individuals not only have rights, but also corresponding duties towards their community: "... the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized". At the international level, States have a duty to cooperate in accordance with Articles 55 and 56 of the Charter. Article 2 (1) of ICESCR, recognizing that the realization of these rights greatly depends on international cooperation, imposes upon States a legal obligation to "take steps, individually and through international assistance and cooperation", further strengthening the legal basis to cooperate in achieving economic and social development. Article 11 underlines "the essential importance of international cooperation" to realize the right of everyone "to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions". Part IV of the Covenant places considerable emphasis on the role of specialized agencies in the realization of the rights enumerated therein.

<sup>8</sup> Article 1 (1) of the Declaration on the Right to Development provides: "The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized." Article 1 (2) states: "The human right to development also implies the full realization of the right of peoples to self-determination ..."

Hence, respect for the principle of self-determination and the related solidarity principle gains recognition as a prerequisite for the realization of the rights set forth in both International Covenants and becomes the basis for the right to development. The Declaration on the Right to Development reaffirms the right to self-determination as a multidimensional and continuing right. Article 1 (2) indicates that the full realization of the right to self-determination is a prerequisite for the realization of the human right to development. Articles 2 (3) and 8 (1) reiterate the universal right of all States to formulate their own development policies and spell out their corresponding duty towards the people under their jurisdiction. States not only have a duty to take concrete steps to improve economic, social, political and cultural conditions, but to do so in a manner that is democratic in its formulation and equitable in its results. At the international level, States have a duty to cooperate to create international conditions conducive to the realization of the right to development (art. 3). Specific measures that States have a duty to undertake in this regard are elaborated in articles 3, 4, 5 and 7 of the Declaration.

The principle of non-discrimination is an essential component in the concept of human rights enunciated in both International Covenants, and is of fundamental relevance to the right to development. Article 2 of each of the Covenants provides that States must guarantee respect for the rights enunciated "without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The Declaration explores the complementary principles of equality and non-discrimination and applies them to individuals (art. 2 (3), 6 (1) and 8 (1)) and States (arts. 1 (2), 3 and 5).

Both Covenants recognize the essential role of participation, individually and collectively, for the promotion of their interests and, hence, the right to create equitable and appropriate structures through which it can be exercised. Reaffirming that individual rights are ordinarily exercised through participation in collective entities, which in turn must be guaranteed, they both reaffirm the right of peoples to self-determination in their common article 1, which provides the framework for the rights subsequently enumerated. Articles 8 and 10 of ICESCR and articles 22, 23 and 27 of ICCPR refer to at least three kinds of groups: families, trade unions, and ethnic, religious and linguistic minorities. In terms of participation at the national level, both Covenants provide for the right of everyone to form

and join trade unions for the promotion of their interests (ICESCR, art. 8 (1) (a) and ICCPR, art. 22 (1)). ICESCR is more specific in that it refers to "the promotion and protection of [everyone's] economic and social interests". ICCPR enumerates additional participatory rights of a collective nature, including the right to peaceful assembly (art. 21) and to "take part in the conduct of public affairs, directly or through freely chosen representatives" (art. 25). Article 27 stipulates that persons belonging to ethnic, religious and linguistic minorities, "in community with the other members of their group", have the right to enjoy their own culture, to profess and practise their own religion and to use their own language. Although these rights are expressed in terms of individual rights, they are based on the interests of a collectivity and, consequently, it is the individual as member of a minority group—not just any individual—who is the intended beneficiary of the protection guaranteed by article 27.

The individual and collective aspects of these rights may in fact be indivisible, as in the case of the right to self-determination, the right to form trade unions and the rights of persons belonging to minorities, because they can only be satisfied through collective action; this also recognizes the crucial importance of democratizing institutions and decision-making processes at all levels.

## I. Final Act of the International Conference on Human Rights, Teheran (1968)

The Final Act of the International Conference on Human Rights was adopted on 13 May 1968 as "The Proclamation of Teheran". It was a clear departure from the traditional approach which gave priority to civil and political rights over economic, social and cultural rights. The realization of economic, social and cultural rights was now recognized as the condition for the realization of civil and political rights: "Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible. The achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international development policies of economic and social development" (para. 13). In situations where a lack of resources or other constraints, especially those which are externally imposed, prevent the enjoyment of human rights, States and the international community have a duty to render assistance according to their

abilities. This duty of solidarity arises from the fundamental principle that economic and social progress and development are the common and shared concern and responsibility of the international community.

Almost two decades later, the Declaration on the Right to Development affirmed that the two sets of rights are indivisible and interdependent and should be given equal attention (art. 6 (2)), reflecting the desire of the General Assembly to adopt a balanced approach. However, the Declaration reaffirmed the duty of States to cooperate with each other to create the international conditions conducive to the realization of the right to development and further specified the measures to be adopted, including the duty to formulate appropriate national and international development policies (arts. 2 (3) and 4 (1)), assist developing countries with appropriate means and facilities to foster their comprehensive development (art. 4 (2)), and utilize the resources released through disarmament for comprehensive development, particularly of developing countries (art. 7). The Declaration went further in identifying additional measures to be adopted by States to create an international order conducive to the realization of the right to development (arts. 3 (1), (2) and (3), 5 and 6 (1)).

The Proclamation of Teheran acknowledged the importance of participation in relation to the process of development. Declaring that the primary aim of the United Nations is the achievement by each individual of maximum freedom and dignity, paragraph 5 provided that, for this purpose, "the laws of every country should grant each individual, irrespective of race, language, religion or political belief ... the right to participate in the political, economic, cultural and social life of his country". This is the clearest enunciation of a global right to participation in an international instrument. Paragraph 17 underlined the importance of participation by youth in decision-making, thus recognizing that popular participation can take place in a variety of specific institutional settings and focus on a number of specific groups within the community. The International Conference thus expanded the concept, limited in the International Covenants to public affairs and cultural life, to include all economic, social and cultural decision-making. An approach to development which emphasizes the central role of participation also serves to underline the importance of implementing appropriate structural changes conducive to full popular participation. The Declaration, in several of its articles, reiterates the importance of participation in all aspects of development (arts. 1 (1),

2 (1) and (3), and 8 (2)). Article 8 provides that States must take positive measures to ensure this right.

The Conference reaffirmed the fundamental importance of the principle of non-discrimination—an essential component of human rights—as being of central relevance to the right to development. Paragraph 1 of the Proclamation proclaimed that it is imperative that members of the international community fulfil their duties to promote and encourage respect for human rights and fundamental freedoms "without distinctions of any kind such as race, colour, sex, language, religion, political or other opinions". Respect for this principle is also emphasized in the context of the rights to freedom of expression, of information, of conscience, of religion and of participation (para. 5). Moreover, the preamble to resolution IX adopted by the Conference stated that, "in accordance with the United Nations Charter and the Universal Declaration of Human Rights, women should be recognized as having a right to the development of their full potentialities ..." .<sup>9</sup>

Paragraph 12 of the Proclamation of Teheran recognizes the interdependence between international justice and human rights: "The widening gap between the economically developed and developing countries impedes the realization of human rights in the international community." The interdependence between the international economic order and human rights and development was also acknowledged in resolution XVII entitled "Economic Development and Human Rights".<sup>10</sup> The resolution reaffirmed the existence of the principle of international solidarity, solemnly recognized in the Charter. More specifically, it recognized the collective responsibility of the international community to ensure the attainment of the minimum standard of living necessary for the enjoyment of human rights and fundamental freedoms by all persons throughout the world, and called upon all States to discharge this responsibility fully. Paragraph 12 of the Proclamation affirmed that the failure to reach the objectives of the first Development Decade made it all the more imperative for every nation, "according to its capacities", to make the maximum possible effort to close the widening gap between the economically developed and developing countries.

The Declaration on the Right to Development reiterates this fundamental principle and sets out measures which States have a duty to adopt to create inter-

<sup>9</sup> See United Nations, *Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968* (United Nations publication, Sales No. E.68.XIV.2), chap. III.

<sup>10</sup> Ibid.

national conditions conducive to the full realization of human rights.

### J. Study by Manouchehr Ganji (1969)

The 1969 study, *The Realization of Economic, Social and Cultural Rights: Problems, Policies, Progress* by Manouchehr Ganji, Special Rapporteur of the Commission on Human Rights on the Right to Development,<sup>11</sup> is significant in that it in many ways anticipates the definition of "development" reflected in the Declaration.

In the wake of widespread failure of traditional growth-centred development strategies, the Special Rapporteur argues in favour of a new concept of development, one that is human-centred and that takes into account its multiple dimensions, without which it will not be possible to achieve a more equal and just society and eliminate underdevelopment and poverty.

Economic growth by itself cannot resolve the problems of poverty and human degradation and ensure social justice. Rather, social justice is a prerequisite for integrated and sustained national development. The use of macroeconomic models and easily quantifiable variables tends to favour the omission of important social and cultural factors of development such as nutrition, income distribution and popular participation in the decision-making process. It is therefore necessary to adopt a unified concept of development planning which gives special attention to the realization of economic, social and cultural rights.<sup>12</sup> An important place must be given to human and social objectives, which essentially means responding to the needs of the entire population and ensuring that the development process primarily aims at achieving greater equality and justice.<sup>13</sup>

A development strategy should give high priority to social justice and consider the human person as the subject of development,<sup>14</sup> not as an object, a factor of production with education, a mere tool for developing narrowly defined skills and meeting the manpower needs of the economy. Development should aim at the realization of the totality of human potential. Such an approach would no longer view education as an

activity limited to a definite period, but as a permanent process embracing the entire lifetime.<sup>15</sup>

This human-centred approach to development was subsequently incorporated in the Declaration on the Right to Development. The second preambular paragraph describes it as "a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom". Article 1 declares that the right to development is an inalienable human right to be enjoyed by individuals and peoples alike; article 2 (1) declares that the human person is the central subject of development.

The Special Rapporteur proceeds to elaborate on the principles upon which a human-centred multidimensional approach to development should be based. A fundamental prerequisite is recognition of the principle of self-determination, with its national and international dimensions, according to which all peoples have the right to freely determine their political status and to freely pursue their economic, social and cultural development. Thus, each State has the right to formulate its own policies to implement the economic, social and cultural rights of its inhabitants, adapted to its particular conditions and needs and without any external interference.<sup>16</sup> Respect for their independence, territorial integrity and national sovereignty are, therefore, preconditions for the effective exercise of all human rights, without which no efforts to promote economic or social development can lead to the creation of a more equal and just society.<sup>17</sup>

This fundamental principle is reiterated in article 1 (2) of the Declaration on the Right to Development and is the basis for the provision that States have the right and duty to formulate appropriate national development policies (art. 2 (3)) and have the primary responsibility to create favourable national and international conditions (art. 3 (1)) and to take resolute steps to eliminate "massive and flagrant violations of the human rights of peoples and human beings ... resulting from apartheid, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and refusal to

<sup>11</sup> United Nations publication, Sales No. E.75.XIV.2.

<sup>12</sup> Ibid., Part six (Observations, conclusions and recommendations), chap. II, paras. 55-56.

<sup>13</sup> Ibid., para. 57.

<sup>14</sup> Ibid., para. 63.

<sup>15</sup> Ibid., para. 95.

<sup>16</sup> Ibid., para. 35.

<sup>17</sup> Ibid., para. 36.

recognize the fundamental right of peoples to self-determination” (art. 5). The Declaration thus also recognizes that the rights of individuals and of peoples are indivisible and that the right to development is as much a right of individuals as it is of peoples.

The Special Rapporteur advocated that the new concept of development must recognize the interdependence and indivisibility of civil, cultural, economic, political and social rights, and of development and democracy. Emphasizing the essential role of participation in fostering human rights, the Special Rapporteur pointed to the urgency of strengthening popular participation in politics, planning and development.<sup>18</sup> “The basic principle governing the question of human rights in development should be the participation of the people in deciding their style of individual and corporate life in general, and in particular their participation in decision-making in connection with development programmes, in the implementation of those programmes and in the benefits derived from them.”<sup>19</sup> Collective discipline and the participation of all sectors of society are indispensable for the success of any economic and social development plan aimed at hastening the implementation of economic, social and cultural rights,<sup>20</sup> the just distribution of income and consumption goods, and the well-being of all. Otherwise, those who control power will be in a position to change the projects to suit their own interests.<sup>21</sup>

Democratization of political structures is a precondition without which the desired level of economic and social progress cannot be reached, either in terms of quantity or quality.<sup>22</sup> The Special Rapporteur thus acknowledged not only the nexus between the individual and the collective, but also the need to satisfy collective prerequisites, in this case the creation of democratic structures through which individuals can exercise their rights. Underlining the need for a broad development strategy that includes the creation of a series of institutions that enable the less privileged to participate in the decision-making processes, he elaborated on three essential elements they should contain.<sup>23</sup>

The fundamental importance of participation in the development process and in the full realization of human rights is underlined in various articles of the

Declaration on the Right to Development. It is notable that the Declaration dedicates its first article, defining the right to development, to the related but distinct concepts—participation and self-determination—that are prerequisites for the realization of the right to development.

Reiterating the importance of the principles of social justice, equality, non-discrimination, national cohesion and solidarity, the Special Rapporteur further elaborated on certain fundamental and general reforms to be adopted by developing countries, including, in particular, agrarian reform, without which inequalities within the rural sector and between the countryside and cities will increase;<sup>24</sup> equal and unrestricted participation of women in all aspects of life; equal distribution of income, wealth and services; harmonization of living standards in the countryside and cities; increased respect for manual labour; and decentralization of decision-making power and administration within the framework of a strong central government and a unified national development plan.<sup>25</sup> The Special Rapporteur stressed the need to give priority to non-discrimination and the prohibition of all forms of de facto and de jure discrimination. He argued that ensuring economic and social progress for all layers of the population, without distinction as to sex, race or ethnic origin, religion, language, place of birth or national or social origin, provides the basis for national integration and consolidation, which in turn are the very basis of national independence and development.<sup>26</sup>

The notion of unified national development implies a multidimensional process encompassing economic, social, political and cultural aspects, and it takes place within the framework of a State with its specific conditions and realities.

## K. Declaration on Social Progress and Development (1969)

Preliminary elaboration of the right to development was achieved in the Declaration on Social Progress and Development, which was proclaimed by the General Assembly in resolution 2542 (XXIV) of 11 December 1969, and which can be seen as its predecessor.

<sup>18</sup> Ibid., para. 42.

<sup>19</sup> Ibid., para. 122.

<sup>20</sup> Ibid., para. 50.

<sup>21</sup> Ibid., para. 43.

<sup>22</sup> Ibid., para. 45.

<sup>23</sup> Ibid., para. 58.

<sup>24</sup> Ibid., para. 49.

<sup>25</sup> Ibid., para. 50.

<sup>26</sup> Ibid., para. 75.

It declares that the aim of social progress and development is "the continuous raising of the material and spiritual standards of living of all members of society, with respect for and in compliance with human rights and fundamental freedoms" (Part II, Objectives). This is a dynamic process that places the human person, individually and collectively, at the centre of development and is based on the principles of equality, non-discrimination and social justice, encompassing both material and non-material well-being, and in which development and human rights are closely intertwined. These concepts are central to the right to development.

Part I defines the principles on which social progress and development must be based (these were subsequently incorporated in the Declaration on the Right to Development). Articles 1 and 2 contain the first, most explicit and detailed affirmation of social progress and development as a human right and the interrelationship between human rights and development. They affirm that while development should be based on respect for human rights—which is as much a prerogative of individuals as of peoples—it is also the process by which human rights and social justice can be achieved.

Article 1 declares: "All peoples and all human beings, without distinction as to race, colour, sex, language, religion, nationality, ethnic origin, family or social status, or political or other conviction, shall have the right to live in dignity and freedom and to enjoy the fruits of social progress and should, on their part, contribute to it." Article 2 states: "Social progress and development shall be founded on respect for the dignity and value of the human person and shall ensure the promotion of human rights and social justice, which requires: (a) the immediate and final elimination of all forms of inequality, exploitation of peoples and individuals, colonialism and racism, including nazism and apartheid, and all other policies and ideologies opposed to the purposes and principles of the United Nations; (b) the recognition and effective implementation of civil and political rights as well as of economic, social and cultural rights without any discrimination." Development is not mere economic growth. It is the right of all peoples and individuals to live in dignity and freedom and to benefit from social progress. The right to benefit from society's progress is accompanied by a duty to contribute towards it. Article 2 expresses the interrelationship between development and human rights, the indivisibility of human rights, and the relationship between national justice and international justice. Aimed at achieving

social progress and development, the process must be based on the principles of equality, non-discrimination, social justice and solidarity.

Article 3 specifies the primary conditions of social progress and development. Its first subparagraph emphasizes the fundamental importance of "[n]ational independence based on the right of peoples to self-determination" a primary condition of social progress and development, thus acknowledging the social dimension of the right to self-determination. This condition is made more specific in subparagraph (e), which states: "The right and responsibility of each State and, as far as they are concerned, each nation and people to determine freely its own objectives of social development, to set its own priorities and to decide in conformity with the principles of the Charter of the United Nations the means and methods of their achievement without any external interference." Article 3 spells out further conditions of social progress and development that also reflect the corresponding duties of States; these include respect for the principles of "non-interference in the internal affairs of States" (art. 3 (b)); "sovereignty and territorial integrity" (art. 3 (c)); permanent sovereignty and control of each State over its natural wealth and resources (art. 3 (d)); and "[p]eaceful coexistence, peace, friendly relations and cooperation among States irrespective of differences in their social, economic or political systems" (art. 3 (f)). Articles 2 and 3 recognize the universal right of all States to pursue their own development in an international environment conducive to that process, and the corresponding duty of States to cooperate with each other to create such an environment.

In subsequent articles, the Declaration spells out corresponding duties of States at the national and international levels, underlining the human factor in development and reaffirming the interdependence between individual and collective rights and the need to create an enabling national and international environment, including through structural reform.

Articles 4 and 5 (c) recognize that individual development and fulfilment can be achieved only through the satisfaction of collective prerequisites, in the case of the former through the family and in the latter through associations. Article 4 states that the family is "a basic unit of society and the natural environment for the growth and well-being of all its members, particularly children and youth" and as such "should be assisted and protected so that it may fully assume its responsibilities within the community". Article 5 (c) recognizes the principle that social

progress and development requires "the full utilization of human resources", including the "active participation of all elements of society, individually or through associations, in defining and in achieving the common goals of development". The central role of participation is emphasized throughout the text. Parts II and III highlight the importance of promoting collective structures or institutions through which individuals can exercise this right. Unlike the Declaration on the Right to Development, the Declaration on Social Progress and Development explicitly refers to trade unions and workers' associations (arts. 10 (a) and 15 (b)), non-governmental organizations, cooperatives, rural associations, workers' and employers' organizations, and women's and youth organizations (art. 15 (b)). It also places emphasis on the important role played by the family (arts. 4 and 22). Article 15 (b) requires States to adopt measures "for an increasing rate of popular participation in the economic, social, cultural and political life of countries ... with a view to achieving a fully integrated national society, accelerating the process of social mobility and consolidating the democratic system".

The principles of equality and social justice formulated in articles 5, 6 and 7 lay the basis for reforms in national and international justice, reflecting the structural approach adopted by the Declaration on the Right to Development. The primary and ultimate responsibility for the development of developing countries lies within those countries themselves. However, given the urgent need to narrow and close the gap between the advanced and developing countries, States have the duty to pursue internal and external policies designed to promote social development throughout the world and, in particular, to assist developing countries in this regard (tenth preambular paragraph).

At the national level, the State, which has the primary role and ultimate responsibility of ensuring the social progress and well-being of its own people, also has the duty to introduce, *inter alia*, "necessary changes in the social structure" (art. 8), including the adoption of legislative, administrative, institutional and other measures to ensure the participation of all sectors of society in defining and achieving the common goals of development (art. 5 (c)); the realization by all of all human rights, thus also recognizing the indivisibility of human rights (arts. 18 (a) and 19 (a), (b), (c) and (d)); forms of ownership of land and the means of production, based on the principles of justice, equality and the social function of property (arts. 6 and 18 (b) and (c)); full democratic freedoms

for trade unions; freedom of association and the right to form other organizations of working people (art. 20); just and equitable distribution of income and wealth as a major goal and means of development (arts. 7, 10 (c), (e) and (f), 11, 16, 17 and 21 (a)). The Declaration also requires that, in planning social development measures, as an integrated part of balanced overall development planning States must take into due account "the diversity of the needs of developing and developed areas, and of urban and rural areas, within each country" (art. 8), as well as "differing regional conditions and needs, particularly the development of regions which are less favoured or underdeveloped by comparison with the rest of the country" (arts. 14 and 17), indicating the importance of comparing conditions prevailing in different regions and among different sociocultural groups.

The interrelationship between national and international justice is reflected throughout the text of the 1969 Declaration. Respect for the principle of self-determination entails the corresponding duty of States to cooperate with each other to create the international conditions in which that right can be exercised, without which national justice cannot be achieved.

In its fifth preambular paragraph, the Declaration reaffirms the relationship between individual rights and a just international order, acknowledging also the relationship between development, human rights and peace: "...[M]an can achieve complete fulfilment of his aspirations only within a just social order and ... it is consequently of cardinal importance to accelerate social and economic progress everywhere, thus contributing to international peace and solidarity." The sixth and seventh preambular paragraphs recognize the interdependence between international and national justice. The former states that "international peace and security ... and social progress and economic development ... are closely interdependent and influence each other", and the latter that "social development can be promoted by peaceful coexistence, friendly relations and cooperation among States".

In view of this interdependence, the Declaration spells out the rights and duties of States to create an enabling international order and the principles on which they should be based, including the establishment of "new and effective methods of international cooperation in which equality of opportunity should be as much a prerogative of nations as of individuals within a nation" (art. 12 (a)). Reference has been made above to the principles defined in article 3,

based on the fundamental right to self-determination and the principle of international solidarity. In addition, article 7 requires improvement in the position of developing countries in international trade to increase national income and advance social development; article 9, concerted international action to supplement national efforts; and article 10, the exploration, conservation, use and exploitation—exclusively for peaceful purposes and in the interests of all mankind—of areas beyond the limits of national jurisdiction, such as outer space, the seabed and ocean floor and the subsoil thereof.

The main goals include the creation of conditions for rapid and sustained social and economic development, particularly in the developing countries; change in international economic relations; the establishment of international cooperation, based on equality of opportunity (art. 12 (a)); the elimination of all forms of discrimination and exploitation and all other practices and ideologies contrary to the purposes and principles of the Charter of the United Nations (art. 12 (b)); the elimination of all forms of foreign economic exploitation (art. 12 (c)); and the equitable sharing of scientific and technological advances and a steady increase in their use for social development (art. 13 (a)).

States are required to adopt concrete measures to further these aims, including through formulation of international policies and measures and establishment of a just international order, based on equality, mutual advantage and strict observance of and respect for national sovereignty. Concrete measures to be adopted include provisions concerning technical, financial and material assistance to developing countries, based strictly on socioeconomic criteria free of any political considerations (art. 23 (b) and (c)); technical, financial and material assistance for the direct exploitation of their national resources and natural wealth (art. 23 (d)); the establishment of a just international trading system (art. 23 (e)); technical, scientific and cultural cooperation and reciprocal utilization of the experience of countries with different economic and social systems and different levels of development (art. 24 (b)); utilization of science and technology and their transfer and exchange, including know-how and patents, to developing countries (art. 24 (c)); protection and improvement of the human environment (art. 25 (a)); compensation for damages resulting from aggression and illegal occupation of territory (art. 26); general and complete disarmament and the use of the resources released thereby for eco-

nomic and social progress, particularly for the benefit of developing countries (art. 27 (a) and (b)).

#### **L. Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (1970)**

The Declaration, adopted by the General Assembly in resolution 2625 (XXV) of 24 October 1970, reaffirms and elaborates upon the principle of equal rights and self-determination contained in the Charter of the United Nations, reaffirmed in common article 1 of the two International Covenants on Human Rights as the framework for the realization of the individual rights contained therein, and subsequently incorporated in article 1 of the Declaration on the Right to Development which, in its fifth preambular paragraph, recalls United Nations instruments concerning "further promotion of friendly relations and cooperation among States in accordance with the Charter".

The 1970 Declaration is essential to understanding this fundamental principle and its international corollary, the duty of international cooperation and solidarity incumbent upon States, in accordance with Articles 1, 55 and 56 of the Charter, which constitutes the international dimension of the right to development as defined in the Declaration. The principle is recognized as having multiple dimensions, by virtue of which "all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter".

Politically, the expression of this principle may take the form of sovereign and independent States, the free association or integration with an independent State, or the emergence into any other political status that is freely determined by the people themselves. The State is thus also endowed with "an inalienable right" to freely choose and develop "its political, economic, social and cultural systems, without interference in any form by another State". All States "enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature."

The foregoing implies that the right of peoples to self-determination involves not only the completion

of the process of achieving independence, but a continuing right that requires recognition of their right to maintain, assure and perfect their full legal, political, economic, social and cultural sovereignty.

This right of peoples gives rise to the corresponding duty of States to recognize and promote it, through international cooperation and solidarity. States are required to bear in mind that "subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter". Every State has the duty to cooperate with other States; to promote, through joint and separate action, universal respect for and observance of human rights and fundamental freedoms, including the self-determination of peoples; to bring a speedy end to colonialism; and to render assistance to the United Nations in carrying out its responsibilities to promote friendly relations and cooperation among States. In recognition of the relationship between peace, development and human rights, the Declaration also requires States to cooperate with one another to maintain international peace and security and to promote international economic stability and progress and the general welfare of nations through, *inter alia*, the promotion of economic growth everywhere, but with special emphasis on developing countries.

States have a legal duty to refrain from opposing and impeding the exercise of the right to self-determination and any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country. However, the duty to protect sovereign and independent States does not apply wherever colonial or alien domination exists under the guise of national unity; it is conditional on the extent to which the State is "possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour". The Declaration also prohibits using or encouraging use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind.

In its final clauses, the Declaration stipulates that the interpretation and application of the principles relating to equal rights and self-determination, the use of threat or use of force against the territorial integrity or political independence of any State, the peaceful settlement of international disputes and non-intervention in the internal affairs of States are interrelated, without prejudice to the provisions of the Charter or

the rights and duties of States or of peoples under the Charter, and further declares that the principles of the Charter, which are embodied in the Declaration, constitute basic principles of international law.

#### **M. International Development Strategy for the Second United Nations Development Decade (1970)**

The International Development Strategy proclaimed by the General Assembly in resolution 2626 (XXV) for the Second United Nations Development Decade went beyond its predecessor in explicitly recognizing the interdependence of development and human rights, including the right of peoples to self-determination and the related concept of popular participation: "The success of international development activities will depend in large measure on [inter alia] ... the elimination of colonialism, racial discrimination, apartheid and occupation of territories of any State and on the promotion of equal political, economic, social and cultural rights for all members of society" (preamble, para. 5). Paragraph 78 underlines the importance of popular participation and, hence, also the need for structural reform: "Every effort will be made to secure the active support and participation of all segments of the population in the development process."

The importance of promoting national and international justice is implicit in this acknowledgement of the social content of development, reflecting also a widespread perception of the failure of traditional growth-oriented development strategies. However, their interdependence is clearly stated in paragraph 12, which stipulates that "equality of opportunities should be as much a prerogative of nations as of individuals within a nation", echoing the Declaration on Social Progress and Development, which underlined the need for new and more effective international cooperation.

The Strategy recognizes the universal right of States to pursue their development in an enabling international environment and the realization of the right to self-determination as a prerequisite, including to develop their own human and natural resources (para. 10). However, the exercise of this right and duty of States with respect to their peoples will require as a precondition "concomitant and effective international action", without which the country's efforts cannot be realized. The duty of international cooperation and solidarity is further recognized in the Strategy's

reaffirmation of the responsibility of economically advanced countries to promote the development efforts of developing countries in terms of a quantitative target for the net transfer of resources (paras. 42 and 43).

#### N. Declaration on the Establishment of a New International Economic Order (1974)

The Declaration, adopted by the General Assembly in its resolution 3201(S-VI), "one of the most important bases of economic relations between all peoples and all nations" (para. 7), is of significance for the establishment of legal norms relating to the right to development of peoples and States and the trend towards recognition of developing countries as a specific group of subjects of international economic law. The objectives for international cooperation defined in the Declaration and the principles upon which it should be based are clearly reflected therein. Paragraph 3 requires States to realize their rights and fulfil their duties in "such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and cooperation among all States".

In the early days of the United Nations, concerns about development in international law resembled attempts by metropolitan Powers to manage and control colonial territories. They had claimed the right to colonize overseas territories on the basis of the latter's "underdevelopment"; in the terms of the Covenant of the League of Nations, "peoples not yet able to stand by themselves under the strenuous conditions of the modern world" should be placed under tutelage, their development a "sacred trust of civilization".

At a special session of the General Assembly convened to study, for the first time, the problems of raw materials and development, devoted to the consideration of the most important economic problems facing the world community, Member States proclaimed their united determination to work urgently for the establishment of a new international economic order that would correct inequalities and redress existing injustices, enable elimination of the widening gap between developed and developing countries, and ensure steadily accelerating economic and social development and peace and justice for present and future generations (third preambular paragraph), thereby defining the objectives of international cooperation for development.

The 1974 Declaration reflects the aspirations of newly independent States and their emergence as a powerful factor in all fields of international activity through their association in the Non-Aligned Movement and the Group of Seventy-Seven (G77), enabling them to advance the interests of the peoples they represented by challenging the prevailing normative framework of international economic relations and its attendant legal and political doctrines, proposing a restructuring of the existing system that was "established at a time when most of the developing countries did not even exist as independent States and which perpetuates inequality" (para.1). The widening gap between developing and developed countries; the "vestiges of alien and colonial domination, foreign occupation, racial discrimination, apartheid and neo-colonialism in all its forms", which continued to be "among the greatest obstacles to the full emancipation and progress of the developing countries"; and the negative impact on developing countries of global economic crises, particularly since 1970 (para.1), had brought into prominence the close interrelationship and interdependence between the prosperity of developed countries and the development of developing countries (para. 2) and made it clear that political independence can be meaningful only if it is accompanied by economic self-determination, implying the right and duty of States to determine their own social, political and economic goals, policies and systems, without any external interference. Their capacity to do so implied their enjoyment of permanent sovereignty to control and develop their natural wealth and resources. It had also become clear that the well-being of present and future generations had become more dependent on international cooperation based on sovereign equality and the removal of the disequilibrium between developed and developing countries (para. 3).

The Declaration spells out the principles upon which the new international economic order should be founded, emphasizing respect for the right of peoples to self-determination and the related principles of sovereign equality of States, inadmissibility of the acquisition of territories by force, territorial integrity and non-interference in the internal affairs of other States (para. 4 (a)). The right to self-determination and the related principle of full permanent sovereignty are defined in subparagraphs 4 (d) and (e) respectively as "[t]he right of every country to adopt the economic and social system that it deems the most appropriate for its own development and not to be subjected to discrimination of any kind as a result", and "[f]ull

permanent sovereignty of every State over its natural resources and all economic activities”, which includes “effective control over them and their exploitation with means suitable to its own situation, including the right to nationalization or transfer of ownership to its nationals ... No State may be subjected to economic, political or any other type of coercion to prevent the free and full exercise of this inalienable right”.

The 1974 Declaration also spells out the corresponding duties of States, which has two dimensions, both with international implications. Firstly, it imposes on States the obligation to respect the rights of peoples under their jurisdiction to freely choose their political status and freely pursue their economic, social and cultural development. Paragraph 4 (r) declares the need for developing countries to concentrate all their resources for the cause of development. To this end, the Declaration proceeds to identify principles that reflect attempts to redress historical injustices by asserting the right to permanent sovereignty over natural resources, challenging the validity of concessions and contracts concluded prior to independence and denouncing the governance of the existing international economic order. Secondly, it reaffirms the duty of States to cooperate with each other to promote universal realization of the right to development. Paragraph 3 reaffirms the duty of the international community to promote cooperation for development, stating: “International cooperation for development is the shared goal and common duty of all countries.” Paragraph 6 evokes the need for a genuinely multilateral United Nations capable of promoting a new international order, based on sovereign equality and international justice.

The Declaration also requires States to apply the principles of equality, non-discrimination and social justice in their international relations. Paragraph 4 (c) emphasizes the importance of participation at the international level as a prerequisite for applying the concept of participation in international relations to States: “The new international economic order should be founded ... [on] full and effective participation on the basis of equality of all countries in the solving of world economic problems in the common interest of all countries.” There is an implicit recognition of the social content of development and the social aspects of the right to self-determination. The Declaration reiterates the notion that the realization of development and human rights is inconceivable without effective respect for the right of peoples to self-determination and the establishment of an enabling international

order. Accordingly, paragraph 6 provides that implementation of the Declaration “is one of the principal guarantees for the creation of better conditions for all peoples to reach a life worthy of human dignity”.

Throughout the text, the Declaration defines the rights of a group of States identified as “developing countries”, indicating recognition of the developing countries as a specific group of subjects of international economic law. In paragraph 5, it calls for the implementation of obligations and commitments assumed by the international community concerning the “imperative development needs of developing countries”. Paragraph 4 (c) requires particular attention to adoption of special measures for “the least developed, land-locked and island countries, and those most seriously affected by economic crises and natural disasters”, and subparagraphs (h) and (i) of the same article refer to States “which are under foreign occupation, alien and colonial domination or apartheid”. The Declaration reaffirms the rights of developing countries (arts. 4 (2) and 7) and of peoples affected by, inter alia, “colonialism, foreign domination and occupation” (art. 5) as specific groups of subjects of international law.

## O. Charter of Economic Rights and Duties of States (1974)

The fundamental purpose of the Charter of Economic Rights and Duties of States, adopted by the General Assembly on 12 December 1974 in resolution 3281(XXIX), was to promote the establishment of a new international economic order based on equity, sovereign equality, interdependence, common interest and cooperation among all States, irrespective of their economic and social systems, and to contribute to the creation of conditions for the eradication of injustices and inequalities, for social and economic progress of the developing countries and of other countries, and for the strengthening of world peace and security.

It is among the legal instruments that give content to article 28 of the Universal Declaration of Human Rights, anticipating also provisions contained in the Declaration on the Right to Development. Acknowledging the interrelationship between human rights and development, individual and collective rights, and national and international justice, the 1974 Charter declares that “equal rights and self-determination of peoples”, “respect for human rights and fundamental freedoms” and “promotion of international social

justice" are among the principles which shall govern the economic, political and other relations among States (chap. I, subparas. (g), (k) and (m)). Chapter II, article 7, explicitly recognizes the interrelationship between the duty of States to promote development and human rights, including the right to development, at the national level and their right to a just and equitable international order, and, hence, the corresponding duty of all States, individually and collectively, to cooperate in eliminating obstacles to the fulfilment of their primary responsibilities towards their peoples.

Based on the fundamental importance of self-determination as a prerequisite for the realization of the right to development, the 1974 Charter recognizes the State as a subject of international law and lays the legal foundation of the new international economic order on which bilateral and multilateral cooperation among States in trade, finance, industry, science and technology, as well as economic matters, should be based and should develop. Article 1 proclaims the sovereign and inalienable right of every State to choose its economic system as well as its political, social and cultural systems in accordance with the will of its people, without outside interference, coercion or threats; and article 2, its right to freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities. Based on the principle of sovereign equality, the 1974 Charter also recognizes their right to participate internationally, as a prerequisite for the realization of the right to development: "All States are juridically equal and, as equal members of the international community, have the right to participate fully and effectively in the international decision-making process in the solution of world economic, financial and monetary problems, *inter alia*, through the appropriate international organizations in accordance with their existing and evolving rules, and to share in the benefits resulting therefrom (art. 10).

A dimension of the right to self-determination is reflected in the duty of States to respect the rights of people under its jurisdiction to freely pursue all aspects of their development. In anticipation of provisions reflected in the Declaration on the Right to Development, article 7 of the 1974 Charter provides that the primary responsibility of the State is "to promote the economic, social and cultural development of its people". To this end, each State has not only the right, but also the duty "to choose its means and goals of development, fully to mobilize and use its resources, to implement progressive economic and social reforms

and to ensure the full participation of its people in the process and benefits of development".

Another aspect of the duties of States in promoting the human right to development has to do with their relations with other States. The 1974 Charter reiterates the fundamental principle that economic and social progress and development are the common and shared concern and responsibility of the international community. Thus, States have a duty to cooperate to promote universal realization of the right to development. In this regard, the 1974 Charter is more specific about the obligations and responsibilities than the Declaration on the Establishment of a New International Order of the same year. It lays particular emphasis on States that have been subject to external constraints in the pursuit of their rights. Chapter I provides that relations among States shall be governed by a number of principles, including "[r]emedying of injustices which have been brought about by force and which deprive a nation of the natural means necessary for its normal development" (subpara. (i)). Article 16 (2) has an important bearing on the question of the right of self-determination and on the realization of the right to development, stipulating: "No State has the right to promote or encourage investments that may constitute an obstacle to the liberation of a territory occupied by force."

The 1974 Charter recognizes developing countries as a specific group of subjects of international economic law. Article 9 underlines the duty of all States to cooperate for the promotion of economic and social progress throughout the world, especially of developing countries. Article 17 supplements the general obligation of States to cooperate for development with the duty of every State to cooperate with developing countries' efforts by providing favourable external conditions and extending active assistance "consistent with their development needs and objectives, with strict respect for the sovereign equality of States and free of any conditions derogating from their sovereignty". A similar obligation of all States is contained in article 22. Articles 25 and 31 make special reference to the duty of the "developed members" of the international community to cooperate, given "the close interrelationship between the well-being of the developed countries and the growth and development of the developing countries, and the fact that the prosperity of the international community as a whole depends upon the prosperity of its constituent parts" (art. 31).

## P. General Assembly resolution 32/130 (1977)

General Assembly resolution 32/130, entitled "Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms", was adopted on 16 December 1977. It defined the concepts that should be taken into account in approaching human rights questions within the United Nations, including the indivisibility and interdependence of all human rights and fundamental freedoms and the requirement that equal attention and urgent consideration be given to the implementation, promotion and protection of both sets of rights (para. 1 (a)).

Acknowledging the relationship between human rights and development, between individual and collective rights, and between national and international justice, the resolution also decided that lasting progress in the implementation of human rights depended on sound and effective national and international policies of economic and social development (para. 1 (b)); that priority should be given to finding solutions to the mass and flagrant violations of human rights of peoples and persons affected by situations such as colonialism, domination and occupation, aggression and threats against national sovereignty, national unity and territory integrity, and to the refusal to recognize the fundamental rights of peoples to self-determination and of every nation to the exercise of full sovereignty over its wealth and natural resources (para. 1 (e)); and that future activities of the United Nations would be guided by, *inter alia*, the concept that realization of the new international economic order was an essential element for the effective promotion of human rights and fundamental freedoms, which should be accorded priority (para. 1 (f)). In its preamble, the General Assembly expressed deep concern at the "continuing existence of an unjust international economic order which constitutes a major obstacle to the realization of the economic, social and cultural rights in developing countries".

## Q. Report of the Secretary-General on the international dimensions of the right to development as a human right (1979)<sup>27</sup>

The Commission on Human Rights, in resolution 4 (XXXIII) of 21 February 1977, recommended that the Economic and Social Council invite the Secretary-General, in cooperation with the United Nations

Educational, Scientific and Cultural Organization (UNESCO) and other competent organs, to undertake a study of the international dimensions of the right to development as a human right in relation to other human rights based on international cooperation, including the right to peace, taking into account the requirements of the New International Economic Order and the fundamental human needs. The report (E/CN.4/1334) points out that the reference to the right to development made in the resolution appeared to imply the recognition of that right.

The Secretary-General's report points to the existence of a consensus on the view that the development process requires not only economic growth but the realization of human potentialities, requiring satisfaction of both the material and non-material aspects of development, based on equality and non-discrimination. The development process should be directed fundamentally at the human person as the subject, not object, of development and, hence, the ability to participate fully in shaping his/her own reality. There is also consensus that individual rights can only be realized in harmony with the community, individual and collective self-reliance being part of the process (para. 27).

The study adopts a broad and comprehensive approach to defining development and asserts that respect for human rights is fundamental to the development process, being both the condition and aim of development (para. 129). Underlining the importance of participation, self-reliance, equality and non-discrimination, it places considerable emphasis on the ethical aspects of the right to development: the promotion of development is a fundamental concern of every human endeavour; the Charter of the United Nations recognizes the existence of a duty of international solidarity; the increasing interdependence of all peoples underlines the necessity of shared responsibility to promote development; promotion of the universal realization of the right to development is in the economic best interest of all States; economic and other disparities are inconsistent with the maintenance of world peace and stability; industrialized countries, former colonial Powers and some others have a moral duty of reparation to make up for past exploitation (para. 38).

The study concludes, stating that "there is a very substantial body of principles based on the Charter of the United Nations and the International Bill of Human Rights and reinforced by a range of conventions, declarations and resolutions which demonstrates the existence of a human right to development in international law" (para. 305). In addition to individuals, peoples

<sup>27</sup> This section is abbreviated as the study in question is reproduced, in condensed form, in chapter 1 of the present publication.

and States, groups such as minorities are also the subjects and beneficiaries of the right to development: "Minority groups and their members have a right to share in the development of the whole community, without discrimination" (para. 91), thus recognizing that a number of individual rights must ordinarily be exercised through collective institutions. "An example of the interaction between the collective and individual aspects of those rights is the right to form trade unions, which, while applying to the individual, can only be satisfied through collective action" (para. 84). Entities that have duties to promote realization of the right to development include the international community, specialized agencies of the United Nations, States, industrialized States and former colonial Powers, regional and subregional State groupings, transnational corporations, producers associations, trade unions and individuals.

Reaffirming the interdependence between national justice and international justice, the report states that individual development can be achieved only through satisfaction of collective prerequisites, including "self-determination and independence of nations, liberation of peoples from colonialism, neocolonialism and alien economic and political domination; and action by the international community, States, communities and other groups to provide access to necessary resources and services" (para. 85).

The study emphasizes the central importance of participation at all levels—local, regional, national and international—as a prerequisite for the realization of the right to development, and the reciprocal relationship between participation, on the one hand, and human rights and economic and social development, on the other (para. 230), and, hence, the need to democratize institutions and decision-making processes not only at the national level, but also at the international level (para. 241).

## R. International Development Strategy for the Third United Nations Development Decade (1980)

The International Development Strategy for the Third United Nations Development Decade, adopted by the General Assembly in resolution 35/56 of 5 December 1980 reaffirms that developing countries are subjects of international law and underlines the relationship between human rights and development, the individual and the collective, national and international justice, and the need for a new international economic order and structural changes at the national

and international levels aimed at the democratization of institutions and decision-making processes.

The relationship between development and human rights is reflected throughout the text. Anticipating language subsequently incorporated in the Declaration on the Right to Development, paragraph 8 defines development as a process that must promote human dignity and states that its ultimate aim is "the constant improvement of the well-being of the entire population on the basis of its full participation in the process of development and a fair distribution of the benefits therefrom", thereby recognizing the multidimensional, dynamic and people-centred character of development based on the principles of equality and justice rather than on economic growth. Hence, participation is given a central role in the development process, paragraphs 8 and 51 emphasizing the need to ensure the effective participation of the entire population at all stages and, hence, the need for structural change to democratize institutions and decision-making processes.

The Strategy recognizes the interrelationship between the international economic order and human rights and development, and between national and international justice, applying the principles of equality and justice also to States. The Strategy aims at "the promotion of the economic and social development of the developing countries with a view to reducing significantly the current disparities between the developed and developing countries, as well as the early eradication of poverty and dependency, which, in turn, would contribute to the solution of international economic problems and sustained global economic development, and would also be supported by such development on the basis of justice, equality and mutual benefit" (para. 7). However, it also recognizes that if the ultimate beneficiaries are to be the people themselves, the drive for a new world order must be accompanied by greater internal distributional justice.

## S. Study by the Secretary-General on the regional and national dimensions of the right to development as a human right (1980, 1981)

The Secretary-General's study<sup>28</sup> analyses the general concept of a structural approach and certain

<sup>28</sup> The Introduction and Part one, Impact of some international factors on realization of the right to development at the national and regional levels, were issued as document E/CN.4/1421 in 1980; Part two, Promotion of the right to development at the national level, and Part three, Promotion of the right to development at the regional level (and containing concluding observations), were issued as document E/CN.4/1488 in 1981. The paragraph references in this section refer to the latter document.

structures and problems at the national level which constitute obstacles to the realization of the right to development, especially in developing countries. It is based on the principle that it is the right and responsibility of each State and, as far as they are concerned, each nation and people to determine freely its own objectives of social development, to set its own priorities and to decide in conformity with the principles of the Charter of the United Nations the means and methods of their achievement without any external interference.

The structural approach helps demonstrate the relationship between human rights violations, in particular the right to development, and the structures that give rise to them. Human rights violations do not occur in a vacuum. They are the "natural consequences of systems rooted in injustice and inequality and which are often created and reinforced by a range of consciously pursued political, social and economic policies" (para. 13). Such policies are inconsistent with the right to development; hence, those formulated to promote realization of the right to development at the national level must "focus as much on the democratic transformation of existing political power structures as on the quest for achieving more equitable economic and social policies and structures" (para. 27).

Structures that facilitate realization of the right to development at the national level are "those which enable people to control their own destinies and to realize their full potentials" (para. 15). States must not only take concrete steps to improve economic, social and cultural conditions, but do so in a manner that is democratic in its formulation and equitable in its results. The study emphasizes the fundamental relevance of participation and equity. For instance, land reform and related measures must be "undertaken democratically and in such a way that both the resources and the consciousness of the people are mobilized. In particular, land reform measures should be accompanied by respect for the right to freedom of association and should provide for full peasant participation in the discussion and implementation of land-related policies" (para. 37). Non-discrimination is also an essential component of human rights and, hence, of the right to development; in the case of the latter, the concept has been linked to the principle of equality of opportunity (para. 195). However, since formal equality of opportunity is not sufficient for effective development, the promotion of the right to development at the national level "requires positive and unceasing efforts to eradicate racially discriminatory practices and to promote social harmony and well-being" (para. 198).

The report also highlights the interrelationship between participation and human rights: "The full and enduring realization of all human rights must be predicated upon the ability of people to participate in making the decisions which can control or alter the conditions of their very existence. In the absence of genuinely participatory structures and mechanisms a true spirit of respect for human rights cannot prevail" (*ibid.*). Component rights of participation include the right to hold opinions, the right to freedom of expression and information, freedom of association and the right to take part in the conduct of public affairs, which are fundamental to realization of the right to development. Effective development requires not only absence of repression but also affirmative action by States to introduce structural changes "conducive to full popular participation" (para. 112).

The study furthermore reaffirms and underlines the indivisibility and interdependence between civil and political rights and economic, social and cultural rights for realization of the right to development. While the exercise of the various rights to participate is crucial to ensuring satisfaction of the right to food (para. 98), the "enjoyment of rights such as the rights to food, health care and education, to mention only a few, is essential for the effective exercise of civil and political rights relating to participation" (para. 109).

The report also highlights the interdependence between the right to development and the rights enumerated in the two International Covenants: "A development strategy based on repression and the denial of either civil and political rights or economic, social and cultural rights, or both sets of rights, not only violates international human rights standards but is a negation of the concept of development" (para. 139). An approach which gives priority to economic growth over human development objectives (which include concepts such as equity, non-discrimination, social justice, self-reliance) is incompatible with the human rights obligations of States, in particular the right to development (chap. IX). In this regard, the report is unequivocal: "Any consciously designed development strategy which directly involves the denial of fundamental human rights, in whatever name or cause it may be undertaken, must be deemed to be a systematic violation of the right to development" (para. 159). Moreover, "the persistence of conditions of underdevelopment, in which millions of human beings are denied access to sufficient food, water, clothing, shelter and medicines and are forced to live in conditions which are incompatible with their inherent human

dignity, clearly represents a gross and massive violation of human rights" (para. 160).

#### T. Study by Héctor Gros Espiell on the right to self-determination (1980)

The study, entitled *The Right to Self-Determination: Implementation of United Nations Resolutions*,<sup>29</sup> was prepared by Héctor Gros Espiell, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. It focuses on the right of peoples to self-determination as a prerequisite for the realization of the right to development and as the basis for recognition of the right to development as encompassing economic, social, cultural and political dimensions.

The right to self-determination is a continuing right, its implementation involving not only the completion of the process of achieving independence or other appropriate legal status by the peoples under colonial and alien domination, but also their right to maintain, assure and perfect their full legal, political, economic, social and cultural sovereignty (para. 47). It has lasting force, does not lapse once it has been exercised to secure political self-determination, and extends to all fields, including economic, social and cultural affairs. The political, economic, social and cultural aspects of the right are interdependent and indivisible: "each of them can only be fully realized through the complete recognition and implementation of the others" (para. 113).

Its economic content is expressed, firstly, "in the right of peoples to determine, in freedom and sovereignty, the economic system or regime under which they are to live". It will be "of lasting efficacy and will continue to take effect in the future ... in view of all the neocolonialistic and neo-imperialistic schemes, whatever form they may take, to dominate the new States which have come into being as a result of the exercise of the right to political self-determination, through their power or unlawful intervention in the economic field" (para. 135). The economic content of this right also finds expression in the right to permanent sovereignty over natural resources, which includes "problems raised by nationalizations and the harmful activities that may be undertaken in this area by transnational or multinational enterprises" (para. 136). The economic content applies equally to peoples who have not yet achieved independence and those who have formed independent States (para. 137).

As for the social aspect of the right to self-determination, "every people has the right to choose and determine the social system under which it is to live, in accordance with its free and sovereign will and with due respect for its traditions and special characteristics" (para. 152). It is based, particularly, on the principle of social justice, which contains both individual and collective dimensions that are interdependent and indivisible. All people are entitled to social justice which, "in its broadest sense, implies the right to the effective enjoyment by all the individual members of a particular people of their economic and social rights without any discrimination whatsoever" (para. 153). Since the right to development is based on the right to self-determination, which includes social aspects, development cannot be seen merely as economic growth. Therefore, "development, which is not the same as mere economic growth, is inconceivable without effective respect for the right of peoples to self-determination" (para. 155).

As for its cultural aspects, "Every people ... has the right to determine and establish the cultural regime or system under which it is to live; this implies recognition of its right to regain, enjoy and enrich its cultural heritage, and the affirmation of the right of all its members to education and culture" (para. 158). The right applies equally to peoples subject to colonial or alien domination and those who have achieved independence. The cultural aspects are essential for effective participation "in order that a people may be aware of its rights and consequently be fully capable of fighting for their recognition and implementation" (para. 160). Implicit in this affirmation is the idea that all aspects of development are interdependent and indivisible.

The study reaffirms that the realization of the collective right to self-determination is a prerequisite for the enjoyment of individual rights: "The effective exercise of a people's right to self-determination is an essential condition or prerequisite ... for the genuine existence of other human rights and freedoms. Only when self-determination has been achieved can a people take the measures necessary to ensure human dignity, the social and cultural progress of all human beings, without any form of discrimination" (para. 59).

Concerning its importance for the realization of the right to development, the study states that the full recognition and effective exercise of the right of peoples to self-determination and the elimination of colonialism and neocolonialism are prerequisites for

<sup>29</sup> United Nations publication, Sales No. E.79.XIV.5.

development: "The legal acceptance and truly effective exercise of the right to complete development of peoples struggling for their self-determination—a right which is, of course, also held by States, especially the developing States—can be achieved only if the right of peoples to self-determination is recognized and implemented" (para. 144).

The right to development has individual and collective dimensions: "[The] right to the full development of the individual—which has made it possible to describe the right to development very properly as a fundamental human right—is a basic one which at the same time conditions and implies the right to development of developing States and peoples. The progress of the latter is justified inasmuch as development serves to improve the economic, social and cultural circumstances of every human being" (para. 42). At the same time it demonstrates that the individual and collective aspects of the right to development may be indivisible. Individual rights must often be exercised through collectivities.

The right to self-determination entails the corresponding duty of States and the international community to recognize and promote it. States have a duty to cooperate not only to ensure the right of peoples under foreign domination to political independence, but also to ensure that "those peoples which have already become independent ... achieve their complete sovereignty and full development" (para. 61).

#### **U. Study by Aureliu Cristescu on the right to self-determination (1981)**

In May 1974, the Economic and Social Council, on the recommendation of the Commission on Human Rights, authorized the Sub-Commission to designate a special rapporteur to carry out the above study, previously approved by the General Assembly in resolution 3070 (XXXVIII).

The study, undertaken by Aureliu Cristescu as Special Rapporteur and entitled *The Right to Self-Determination: Historical and Current Development on the Basis of United Nations Instruments*,<sup>30</sup> underlines the central importance of the right to self-determination as a prerequisite for the realization of the right to development, permanent sovereignty over natural wealth and resources constituting the basic element of both: "Responsibility for development lies primarily with the developing countries themselves, which must

mobilize to this end all their wealth and resources, but their permanent sovereignty over their wealth and resources must be respected and strengthened, permanent sovereignty being also a basic factor for their economic and social development and their political independence" (para. 699). Hence, respect for permanent sovereignty is a prerequisite for the realization of the right to development and the right to self-determination (para. 709), as reflected also in article 1 (2) of the Declaration on the Right to Development.

The study further underlines the interrelationship and interdependence between the right to self-determination and human rights: States have an obligation to respect the right of peoples freely to determine their political status and to pursue their economic, social and cultural development as the enjoyment of the right to self-determination is essential to the exercise of all individual rights and freedoms. However, since the right to self-determination also implies "that Governments owe their existence and powers to the assent of their people", its realization also requires respect for human rights (para. 692).

Anticipating the provisions of the Declaration, the study goes on to define and elaborate the various concepts incorporated in the right to development. It defines development as a concept going beyond economic growth and the mere raising of material standards of living—the human person being the central subject of the right to development—and focuses on how national and international decisions are made, who reaps the benefits of socioeconomic change, and external constraints on a country's freedom to direct the course of its own socioeconomic change:

The real purpose of the new international economic order is not the material growth of nations, but the development of all men and women in every way, in a comprehensive cultural process involving profound values and embracing the national environment, social relations, education and welfare; in other words, the achievement of man's economic, social and cultural rights, or human development, for the benefit of man, must be the central factor in the development process. He is the key factor in economic and social development, which must be directed towards fulfilling the needs of an evolving and constantly diversifying human existence, and the unhampered affirmation, at all levels, of the human personality (para. 708).

The right to development is "a means of ensuring social justice at the national and international levels, a better distribution of income, wealth and social services, the elimination of poverty and the improvement of living conditions for the whole population" (para. 707). To do this, there must be an expansion

<sup>30</sup> See footnote 2 above.

sion of the national product and social and economic policies aimed at equal distribution of income and wealth. However, income redistribution through transfers and social services are merely corrective measures. The establishment of democratic structures will be necessary for the achievement of greater equality since, "the initial organization of the distribution of income is a determining factor in its structure and the principal instrument for the achievement of greater equality, having direct impact on the level of income and wealth of individuals and groups" (*ibid.*).

The driving force of development being peoples and nations themselves, development must be defined within each specific context, based on popular participation: "Development can be neither exported nor imported ... it implies the taking into account of many economic, technical and social parameters and a choice of priorities and growth rates on the basis of a knowledge of specific needs, conditions and possibilities, and the participation of the whole community, animated by a common ideal and by individual and collective creativity, in the search for the solutions which are best adapted to the local conditions, needs and aspirations" (para. 711). It will be necessary to create structures and institutions to "ensure the creative participation of the people, fairness in the distribution of the fruits of development and the focusing of all efforts on the main directions of development" (*ibid.*).

Changes in international structures will also be necessary as social justice at the national level is closely linked to social justice at the international level: for the "genuine promotion of fundamental human rights and ... economic, social and cultural development, it is imperative to establish a new international economic order based on the sovereign equality of States and respect for the equal rights of all peoples, an order that also guarantees the integrated economic, social and cultural development of every people and every State, in accordance with its aspirations to progress and well-being" (para. 701). However, because of the close correlation between the prosperity of developed countries and the growth and development of developing countries, the development and well-being of individuals and peoples will depend "on the existence among all the members of the international community of a spirit of cooperation based on sovereign equality and the elimination of the imbalance between them, on the realization of their aspirations and on the right of all peoples to ensure their political, economic, social and cultural development" (para. 707).

The study emphasizes that the realization of the right of peoples to self-determination is essential to achieving a more just and equitable international order (para. 713): "The right of peoples to self-determination has acquired importance as an essential pillar in the construction of the new international economic and political order, since the political, economic, social and cultural problems of mankind are intimately linked and call for concerted action and because economic emancipation is an essential factor for the elimination of political domination" (para. 696). The democratization of international structures, i.e., a new international political order, will be necessary to ensure effective participation of developing countries in the preparation and adoption of decisions concerning the international community (para. 698).

## V. Study by Raúl Ferrero of the new international economic order and the promotion of human rights (1983)

The major objective of *The New International Economic Order and the Promotion of Human Rights*<sup>31</sup> by Raúl Ferrero, Special Rapporteur on the Sub-Commission, was to demonstrate the fundamental links which exist between the achievement of full respect for human rights and the establishment of an equitable international economic order, and to lay the basic groundwork for the future examination of specific issues, such as the study on the right to food as a human right.

The study reaffirms the link between human rights and development: "Development is a concept which ought to focus on the human element, on people, who must be both its agents and its beneficiaries, and it should be based on the individual definition which each society forms of it, founded on its own values and objectives" (para. 293). It also reiterates the material and non-material aspects of development: "'[D]evelopment' should not be interpreted solely in terms of economic and material well-being but in much broader terms covering the physical, moral, intellectual and cultural growth of human beings" (para. 292).

Pointing out that the existing unjust international economic order is an obstacle to realization of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights (para. 142), the study underlines the importance of establishing, as a prerequisite, a new international

<sup>31</sup> United Nations publication, Sales No. E.85.XIV.6.

economic order centred on the human being, the ultimate goal of which is respect for human rights and fundamental freedoms (para. 286). Its objective "is not only the reassessment of things and their more equitable distribution, but also the development of all men and of all aspects of man, in a global cultural process which embodies values and encompasses the national context, social relations, education and well-being" (para. 284).

The study reaffirms the principle, contained in the Charter of the United Nations, that economic and social progress and development are the shared concern and responsibility of all States. Based on the universally recognized right of peoples to freely determine their political status and freely pursue their economic, social and cultural development in an environment which is conducive to that process, States have a duty of solidarity to establish a new order based on two important sets of principles: "(i) sovereign equality of States, self-determination of all peoples, inadmissibility of the acquisition of territories by force, and territorial integrity; and (ii) the right of the developing countries and the peoples of territories under colonial and racial domination and occupation to achieve their liberation and to regain effective control over their natural resources and economic activities" (para. 148). It is implicit in the right to development that States should agree to assist one another when external factors obstruct the effective implementation of human rights (para. 287). One of the most important recommendations of the study concerns the impact on human rights of the policies and practices of the major international financial institutions, notably the World Bank and the International Monetary Fund (IMF), in which developing countries do not have the right to equal participation.

Realization of the right to development requires that democratization of international structures is accompanied by democratization of national structures: "greater internal distributional justice must be achieved in the developing countries so that the ultimate beneficiaries of the drive for a new world order will be the people themselves" (para. 152). The concept linking structural change at both levels—and, hence, the central element and prerequisite for realization of the right to development—is participation. At the national level, "one method whereby human rights can be truly and effectively safeguarded internally is through fair participation in which the people can express their own will in a free and responsible manner, thus enabling all the members of the com-

munity to fulfil themselves and exercise conscious freedom of choice. Workers and their organizations should participate not only in the management of public, economic, social and cultural affairs as part of the democratization of the State, but also in the decision-making processes of economic, labour and social planning, in the determination of social development goals and in the creation of conditions for achieving those goals" (para. 288). The principle must similarly apply to participation of developing countries at the international level (para. 160).

#### **W. Report of the Working Group of Governmental Experts on the Right to Development (1982)**

Reflecting the growing international recognition of development as a people-centred multidimensional process, the 1982 report of the Working Group (E/CN.4/1489) defines development as "a concept going beyond economic growth or development per se", and is not satisfied merely by raising material standards of living (paras. 18 and 27).

It emphasizes the role of individuals as subjects of development: "all individuals must be accorded by States the guarantees necessary to the exercise of civil and political rights [and] ... equality of opportunity in their access to the means and resources necessary for [their] development" (para. 28). At the same time, the Working Group recognizes the collective aspects of the right to development and points out that the individual and collective aspects of the right to development may in fact be indivisible, as in the case of the right to self-determination, because the right must ordinarily be exercised through economic, social and cultural institutions (para. 15). It indicates that the right to development might also be exercised by "village bodies and cooperatives and other mediating structures" at the local level (para. 17).

The Working Group provides a broader meaning to the right to participate (para. 35) than that in either article 25 of ICCPR ("take part in the conduct of public affairs, directly or through freely chosen representatives") or article 21 of the Universal Declaration of Human Rights ("take part in the government of his country, directly or through freely chosen representatives"). The right to participate is extended to include collective entities and to economic, social and cultural affairs. Unless "all segments" of the national population are included in the process on equal terms, socio-

economic change will simply result in new inequalities and further violations of human rights (para. 42).

The report emphasizes the important link between the right to development and international solidarity. It states that, in the view of several experts, the right to development "is a human right which creates specific obligations and, in particular, entails a duty for all States in the international community to practice solidarity with each other" (para. 27).

#### **X. Report of the Working Group of Governmental Experts on the Right to Development (1985)**

In 1985, at the forty-first session of the Commission on Human Rights, the Working Group continued its work on the draft declaration on the right to development. In its report to the Commission (E/CN.4/1985/11), it was stated that within the group "the general view was that the right to development has both an individual and a collective dimension" (para. 20). The Working Group had before it a proposed draft declaration submitted by the experts from the non-aligned countries containing a more forceful definition of the right to participate, which not only suggested that popular participation should be recognized as a right but also that it relates to both development and human rights. According to article 10, paragraph 1, of the proposal (annex II to the report), "States should take appropriate action to provide a comprehensive framework for popular participation in development and for the full exercise of the right to popular participation in its various forms which is an important factor of development and of the full realization of civil and political rights as well as economic, social and cultural rights."

The proposal was also more explicit about State responsibility with regard to the role of groups and minorities in the realization of the right to development. It stated that "particular attention should be paid to the interests, needs and aspirations of discriminated and disadvantaged groups" (art. 9 (2)).

A comparison of the non-aligned proposal on the new international economic order and a joint proposal contained in the draft declaration submitted by the experts from the Netherlands and France (annex III) on the subject are of interest to the manner in which article 3 (3) of the Declaration was formulated. Article 8 of the non-aligned proposal stated that "it is necessary to take as a matter of priority adequate mea-

sures towards the establishment of a new international economic order", whereas the Dutch/French proposal makes no specific reference to the new international economic order, referring only to "international instruments which reflect a consensus among States with different economic and social and political systems" (art. 10).

The non-aligned proposal contained a more robust clause on State responsibility for development than that reflected in the Declaration. Both proposals make fairly strong statements with regard to national Governments having primary responsibility for development. The Dutch/French proposal states that national governments have the primary responsibility to see that development takes place (art. 7), but does not refer to international responsibility. The non-aligned proposal refers to international responsibility, but establishes a hierarchy by providing that it is each State that has primary responsibility: "Each State has the primary responsibility to ensure the full realization of the right to development within its territory" (art. 9 (1)).

The non-aligned proposal was also concrete with regard to implementation of the Declaration within international organizations and agencies. Article 13 states: "In the formulation of strategies and programmes designed to promote development, international organizations and agencies should take this Declaration into account."

#### **Y. Study by the Secretary-General on popular participation (1985)**

The study, "Popular participation in its various forms as an important factor in development and in the full realization of all human rights" (E/CN.4/1985/10), uses the term "participation" more broadly than either article 25 of ICCPR or article 21 of the Universal Declaration of Human Rights. It states that it relates to all aspects of social, political, economic and cultural affairs affecting individuals and includes the whole process of decision-making concerning development, as well as evaluation and the sharing of benefits (para. 25 (e) and (f) (i) and (ii)). Moreover, participation should take place with full respect for human rights, without any discrimination and giving special attention to groups, which have so far been kept apart from genuine participation (para. 25 (d)).

The study also points to the interrelationship between participation and human rights, including

the right to self-determination. Popular participation is an essential means of promoting development and ensuring full exercise of human rights, and is an end in itself (para. 25 (b)): "... the relationship between popular participation and human rights is more often than not reciprocal: respect for certain rights is indispensable if genuine participation is to develop; and reciprocally, the more participation is organized, the more the awareness of fundamental rights is accentuated and the stronger the demand for institutional safeguards designed to protect them" (para. 61). It emphasizes the importance of the continued association of people in the exercise of the right to self-determination even after gaining political independence (para. 70). Civil and political rights such as freedom of expression and information, and freedom of assembly and association are closely related to popular participation: "The very motivation to participate in public affairs can develop only through exposure to seminal information and ideas concerning the dignity of the human person within his community and his fundamental human rights" (para. 74).

Moreover, "participatory aspirations express themselves, at first, in assemblies, large or small, which lead normally to more permanent groupings and associations" (para. 82). The same is true for economic, social and cultural rights and participation. The exercise of rights such as the rights to employment and work, social security, housing, environmental protection, health and culture are ordinarily exercised through institutions which ensure participation of various social and economic sectors, other groups and indigenous peoples. Effective participation thus often takes place through collective institutions, and individual rights are exercised through the realization of collective rights such as the right to self-determination, the right to form and join trade unions, and the rights to assembly and association.

### III. Conclusions

The Declaration on the Right to Development continues to retain its relevance and validity. Today's global reality is fundamentally no different from the one faced by the authors of the Declaration which inspired the drafting of the text, and which was characterized by Cristescu and Ferrero in 1981 and 1983. International relations continue to be based on unequal power relationships, and economic and financial globalization, based on the same growth-oriented economic model, instead of bringing about the promised well-being for all, has intensified disparities,

provoking at the same time the unprecedented systemic global crisis that we are witnessing today.

Within the United Nations, the right to development is an extension of the decolonization debate. The Declaration reflects the aspirations of its principal architects, the newly independent States that had entered the international scene as a result of the decolonization process, to consolidate their newly won political independence with economic independence.

The concept first affirmed itself in the context of global economic crises, with their negative consequences for developing countries, the widening economic and other disparities between them and the developed world—bringing into prominence the interdependence between the poverty of the one and the prosperity of the other—and the widespread failure of traditional growth-centred, profit-oriented development strategies to achieve social well-being. At the same time, the emergence of the newly independent States as a powerful factor in all fields of international affairs enabled them to challenge the prevailing normative framework of international economic relations and its attendant legal and political doctrines and to propose the restructuring of a system that was established prior to their existence as independent States and which perpetuated multiple inequalities.

The transformation of the global political landscape manifested itself in the work of the United Nations in the 1960s and 1970s, through diverse initiatives by the Non-Aligned Movement and its supporters to define the norms and principles that should govern relations between States and ensure that their concerns are reflected within the United Nations. The objective was to further define the norms and principles contained in the Charter and to incorporate them in international instruments. They would subsequently constitute the legal foundation of the Declaration, but would also form the basis for a different kind of international cooperation, one that would operate in a way that would promote the development of peoples and countries emerging from centuries of colonial domination, external aggression and apartheid.

The language of the Declaration, which draws heavily upon documents adopted by the United Nations, underlines this continuity and coherence. It is inspired by the indigenous, cultural and historic heritage of newly independent peoples, their traditions, know-how and technology, and reflects their rejection of an alien—and alienating—ideology of a "single model" of development and an international division

of labour that responds to the material needs of an economic system developed in Europe and imposed on developing countries by former colonial Powers, Powers that emerged after the Second World War, and the international institutions that they continued to dominate.

The Declaration defines development in broad and comprehensive terms, as a complex, subjective, multidimensional, integrated, and dynamic process, which, through multiple interactions in the economic, social, cultural and political spheres generates continuous progress in terms of social justice, equality, well-being and respect for the fundamental dignity of all individuals, groups and peoples. Based on the principles of equality of rights and self-determination of peoples, the human person and all peoples are recognized as central subjects—rather than objects—of development, its driving force and its architect. Such development cannot be exported or imported, but must be based on popular participation, on the basis of equality, in a process of integrated economic, social and cultural development, in accordance with peoples' aspirations to progress and well-being.

While self-determination is generally thought of as a single, indivisible and inalienable right of peoples, it has many aspects. It is not only the culmination of the process of achieving independence and establishing a State, but a continuing process that requires recognition of those States' right and duty to maintain, assure and perfect their full legal, political, economic, social and cultural sovereignty, without external interference. However, the capacity to do this depends on their enjoyment of permanent sovereignty to control and develop their natural wealth and resources for the well-being of their own peoples. If any of these elements is missing, the right to self-determination has not been realized, in legal or practical terms. The mere formation of a State does not, in itself, lead to the full realization of this right unless the State enjoys genuine and continuing freedom of choice, within the bounds of international law.

The Declaration on the Right to Development is founded first and foremost on the Charter of the United Nations, upon which it draws for its fundamental principle: equal rights and the right of peoples to self-determination and its international corollary, sovereign equality. These are vital concepts, since they constitute the unique basis upon which friendly relations and cooperation between States can develop; a requisite for resolving problems of an economic, social, cultural and humanitarian nature and promoting respect for

human rights and fundamental freedoms for all, without discrimination. The narrow correlation established during the debate between the right to development and these two vital elements reflects recognition of the need for a just and equitable international order in order for all peoples to be able to fully exercise their human rights, including the right to development, in accordance with their own aspirations and realities.

Since the era of decolonization, there has been growing appreciation within the United Nations system of the critical role of genuine equality in international economic relations for ensuring continuing freedom of choice, and growing recognition of developing countries as a specific group of subjects of international economic law. Discrimination against States and peoples at the international level has the same adverse effect as discrimination against individuals and groups within States: it perpetuates inequalities of wealth and power, and constitutes an obstacle to addressing inequalities through the process of development. Although discrimination against States is, in strict legal terms, an issue of self-determination, friendly relations and solidarity, rather than a human rights question, discrimination at the national and the international levels is inextricably linked owing to its effects on individual human beings.

Given the continuing unequal power relationship between developed and developing countries, the duty of international cooperation and solidarity is a shared responsibility of States, without which development and social well-being for all, without discrimination, will remain unattainable. Respect for the principle of sovereign equality of States continues to be relevant today for the democratization of international structures and institutions and the elimination of political domination. Globalization led by transnational corporations and financial institutions from the rich industrialized countries has accentuated existing disparities between developed and developing countries, at the same time increasing social inequalities within countries. Because of their weak and vulnerable position within the global order, the serious systemic crisis we are experiencing today, with its global implications, is having an unequal impact on developing countries in the same way that it is affecting the weakest and most vulnerable social sectors within countries. Cristescu's words continue to be relevant to today's reality: "If all nations were equal in size and power, the principle of the sovereign equality of States would be less important than it is ... Through the application of the principle of sovereign equality, international law should

protect these new States and their peoples from any arbitrary action and afford them genuine equality.<sup>32</sup>

In the understanding of the States that championed the Declaration, international cooperation cannot be summarized merely as "public development aid". The Declaration requires all States, individually and collectively, to adopt, as a priority, international policies aimed at human-centred development; there is no mention of "conquering markets" or victory in "economic wars". It draws upon the fundamentals of international law and pursues humanistic and egalitarian priorities which, in principle and in law, are—or should be—an integral part of development. The duty of international cooperation as applied to the right to development is multifaceted. It not only requires systematization, but further development and codification. The Declaration provides that States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development, as well as the duty to cooperate with each other to ensure development and eliminate the obstacles to development, and to exercise their rights and duties in a manner that promotes a new international economic order and encourages the observance and realization of human rights (art. 3).

The normative character of the Declaration on the Right to Development is clearly linked to aspects that render it legally binding, although it is not a multilateral treaty. Apart from the numerous sources of international law, certain aspects of the right have become part of customary law, evidenced by intergovernmental and multilateral agreements in the area of development cooperation including, *inter alia*, United Nations strategies and programmes for development, the establishment and development of an entire system of centralized multilateral organs and auxiliary organs, and specialized agencies. Even though the controversy on the Declaration's legal validity continues, the principles at the core of the right to development remain current and, in multiple ways, continue to inspire the actions of numerous States and social organizations. In fact, the principles contained in the Declaration assume new relevance in the contemporary context of globalization.

In its preamble, the Declaration recalls the legal sources upon which it is founded, with the Charter of the United Nations at its core, but also relevant international accords, conventions, treaties, declarations, resolutions, recommendations and other instruments of the United Nations and its specialized agencies, some of which have been examined in the present paper. The sources are, therefore, numerous, belonging to both "positive" and "soft" law. It would be an error to erect an impermeable barrier between these two important orders of international law. The major sources of the principles upon which the Declaration is based were solemnly adopted by an overwhelming majority of States Members of the United Nations, with rare opposition and/or few abstentions.

The Declaration is, hence, the result of a complex process: (a) the aspiration of newly established States to be free and independent and to establish democracy in international relations in which they enjoy equality with other States; (b) the international recognition of the impossibility of separating political independence from sovereign economic, social and cultural independence; (c) the failure of an alien, growth-centred, profit-oriented development strategy based on an unequal and unjust international division of labour to eliminate inequalities and promote social well-being, which has been clearly demonstrated in the light of the widespread systemic crisis of today with its multiple economic, financial, social and ecological dimensions; (d) the recognition that the human person, and all peoples, are subjects, not objects, of development and, consequently, the indigenous, multidimensional, structural and dynamic character of development; and (e) the recognition of the interrelationship and interdependence between development, human rights and peace.

As a framework for the development of a society based on equality and social justice, which reflects the aspirations of the human person and all peoples, the Declaration on the Right to Development continues to retain its pertinence and validity.

<sup>32</sup> Cristescu, *The Right to Self-Determination* (see footnote 2), pp. 165-166.