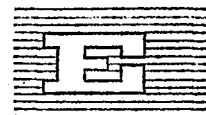


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SUMMARY RECORD OF THE 20th MEETING

Held at the Palais des Nations, Geneva,  
on Monday, 14 February 1983, at 3 p.m.

Chairman

Mr. BARAKAT

(Jordan)

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The meeting was called to order at 3.05 p.m.

QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS, INCLUDING:

- (a) PROBLEMS RELATED TO THE RIGHT TO ENJOY AN ADEQUATE STANDARD OF LIVING; THE RIGHT TO DEVELOPMENT
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- (c) THE RIGHT OF POPULAR PARTICIPATION IN ITS VARIOUS FORMS AS AN IMPORTANT FACTOR IN DEVELOPMENT AND IN THE REALIZATION OF HUMAN RIGHTS (agenda item 8) (E/CN.4/1983/11; E/CN.4/1334; E/CN.4/1421; E/CN.4/1489; A/37/442) (continued)

STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS (agenda item 19) (E/CN.4/1983/29; A/C.3/35/L.75; A/C.3/35/SR.77; A/36/441 and Add.1 and 2; A/37/407 and Add.1) (continued)

1. Mr. BHAGAT (India) said that the Commission was nearer than it had been the previous year to dispelling doubts about the question of the right to development. It would be no **easy** task for the Working Group to prepare a draft declaration, but, given sincerity and sufficient political will, it would undoubtedly be possible to overcome divergences with regard to the individual or collective and national or international aspects of that right. It was inaccurate to say that the right to development belonged to what had been termed the "third generation" of human rights. Nor was it simply a moral norm, as some delegations had claimed. It was also not a "new arrival". It derived from the United Nations Charter (Article 55), the Universal Declaration of Human Rights and the two International Covenants. In support of his statements, he referred, in particular, to the fifth preambular paragraph and articles 26, 28 and 29 of the Universal Declaration of Human Rights and to articles 1, 2, 3, 6, 11, 22 and 23 of the International Covenant on Economic, Social and Cultural Rights.

2. His delegation did not consider it justified to establish a hierarchy between economic, social and cultural rights, on the one hand, and civil and political rights, on the other, or to make the realization of one category of rights dependent on the realization of the other. Like many others, his delegation wished to reaffirm its faith in the indivisibility and interdependence of all human rights, as recognized in General Assembly resolution 32/130. Civil and political rights were meaningless unless basic material needs were satisfied, and vice versa. One of the greatest Indian philosophers, Gautam Budha, had said that there could be no freedom and happiness for a person whose stomach was empty. The beneficiaries of the right to development were individuals, communities and nations. The framework for the realization of that right was the nation and the framework for the realization of the rights of nations the international community. Within that structure, socio-economic reforms in the developing world were necessary concomitants to the establishment of a new international economic order.

3. The Commission could not turn a blind eye to the unequal development of nations and peoples. The developed countries accounted for some 30 per cent of the world's population and were expected to account for no more than 10 per cent in the next century; yet they controlled more than two-thirds of the world's wealth, possessed 95 per cent of its scientific and technological research and development facilities, consumed about 40 per cent of its non-renewable resources and were primarily responsible for the pollution of the Earth. They adopted growth policies that often took no account of the basic needs of the developing world. Although 40 per cent of the world's population was undernourished, the food surpluses of the industrialized countries could not, because of existing structures, be made available to those who needed them to survive. Between 1952 and 1972, the per capita income of the developing countries had fallen from 9 to 8 per cent of that of the developed countries and, since then, the gap had widened still further. The present economic order had recently proved to be even more inadequate, since the recession in the developed countries was threatening to become a permanent depression, while most third world countries were on the verge of bankruptcy.

4. The Programme of Action on the Establishment of a New International Economic Order and the Charter of Economic Rights and Duties of States, adopted by the General Assembly in 1974 and 1975, respectively, reflected many of the concepts which were part of the right to development. The Programme of Action was based essentially on the principles of self-determination, the sovereignty of countries over their natural resources, individual and collective self-reliance, greater participation in decision-making, international co-operation, assistance and preferential, non-reciprocal treatment for developing countries. In setting standards for the right to development, the Commission must therefore take account of the elements outlined in the new international economic order, which would replace the current situation of dependence by interdependence between developing and developed countries based both on North-South and on South-South co-operation.

5. As far as the realization of the right to development was concerned, however, international action was not a substitute for action at the national level. Programmes of social and economic reform must be implemented at the national level and that was the responsibility of Governments, as well as of peoples and individuals. His own country had implemented a development programme combining democratic rights with the promotion of social and economic justice. Popular participation was considered essential for the realization of the right to development and development plans were geared to ensure such participation at all levels.

6. In preparing a draft declaration, the Working Group should be able to benefit from the views not only of the Commission, but also of each individual State represented in it. The Commission, for its part, must neither be daunted by the problems involved nor yield to expediency; it must chart a course for the development of the entire human community, so as to meet the challenges of the times and the needs of future generations.

7. Mr. HEREDIA PEREZ (Cuba) said he deplored the fact that most of the rights proclaimed in international instruments remained a dead letter in many respects and that so many human beings continued to suffer from hunger, poverty, illiteracy and oppression. That situation in developing countries was known to have been caused by colonialism, neo-colonialism, imperialism, racism and apartheid. Helping those who had been and still were exposed to such evils was an obligation for all mankind.

8. A just and equitable international economic order must be established to put an end to inequalities, remove obstacles to the expansion of the developing countries' trade; transform the international monetary system, ensure a massive flow of financial resources for development, transfer technologies on less onerous and more acceptable terms, help the least developed countries and promote economic, scientific and technical co-operation among States. All those conditions were, moreover, necessary for a just and lasting peace. The egoism of the imperialists prevented them from understanding that peoples could no longer passively agree to be subject to an unjust economic order which had now precipitated an economic crisis of international proportions. Only by establishing global international co-operation would it be possible to surmount that crisis. However, the developing countries must realize that they would have to rely primarily on their own efforts. Those countries themselves must work out programmes that focused on men and women, who were both the protagonists and the *raison d'être* of development.

9. In preparing a draft declaration, the Working Group had encountered a number of obstacles. First, the United States of America was known to have stated, both in the Commission and in the General Assembly, that it was opposed to the concept of the right to development; the United States representative had, however, subsequently informed the Working Group that his Government had changed its mind and now recognized the existence of that right. It was therefore to be hoped that the United States would match its words with deeds and that, through genuine political will, the Working Group would be able to complete its mandate at an early date. Second, with regard to objections concerning the distinction between the individual dimension and the collective dimension of the right to development, he noted that the effects of the existing unjust economic order were now beyond the control of the developing nations and of the individuals who made up those nations. Clearly, when Governments were anti-democratic and merely served local oligarchies, the injustice of the international economic order made injustice at the internal level even worse. The Commission and the Working Group, which did not deal specifically with economic matters, must nevertheless refer to those questions in so far as they affected social conditions and had a decisive influence on human rights. The Working Group should, however, not lose time in restating, in connection with civil and political rights, concepts already recognized in the relevant international instruments.

10. Although the absence of democracy in a country did, admittedly, prevent the people of that country from achieving development, that did not relieve the developed world of responsibility for contributing to the elimination of underdevelopment. Nor should the most highly developed countries set themselves up as the judges of less developed countries and refuse to assist them on the pretext that they did not respect civil and political rights; that could lead to a large part of mankind being kept in poverty and under the yoke of capitalist exploitation. International co-operation must, moreover, not be regarded merely as a charitable gesture; in fact, it actually helped to revive capitalist markets, thereby benefiting tens of millions of unemployed in the countries concerned. Finally, he pointed out that the link between the individual dimension and the collective dimension of the right to development had already established in the text of article 28 of the Universal Declaration of Human Rights, which he quoted.

11. Mr. SERGIWA (Libyan Arab Jamahiriya) said that his delegation was in favour of extending the Working Group's mandate so that it could complete the draft declaration on the right to development. That right was both collective and individual; it concerned peoples and citizens. Each people had the right to realize its development, in economic independence and with the political regime that suited its own interests. However, the present economic order prevented peoples from

achieving that objective, for it was based on the superiority of the developed countries and threatened the very existence of the developing countries. The multinational corporations, in particular, were exploiting those countries' resources to the point of depletion and condemning them to economic chaos, malnutrition and starvation. At the same time, inflation and unemployment were rife in the developed countries.

12. A new international economic order must be established so that solutions could be found to the acute problems faced by the developing countries, in particular, with regard to the balance of payments and the external debt. More generally, such a change was necessary in order to ensure respect for the dignity of man and for his most basic rights to food, work and security. At present, the right to development was being shamefully violated by colonialism, racism and apartheid. Peoples in the Middle East and South Africa, in particular, were suffering the adverse effects of those phenomena. The Arab countries were forced to spend considerable sums on weapons in order to be able to hold out against the Zionist entity, which considerably hampered their development.

13. His country, which had ratified the two International Covenants on Human Rights, was pleased to see that a growing number of countries were doing likewise, but it regretted the fact that countries claiming to respect human rights had so far failed to take that step. Referring to document A/C.3/35/L.75 on the death penalty, he said that, in his country, that penalty was applied in a few specific cases, including cases of wilful homicide and crimes against humanity. It was provided for in Libyan legislation, in accordance with Islamic precepts. With regard to popular participation in development, his country had a popular regime and committees appointed by the people participated in political decision-making and monitored the observance of human rights. Workers took an active part in economic and social management and thus had a role to play in improving their own living standards. His delegation was satisfied with the results of the International Seminar on Popular Participation, which had been held in Yugoslavia in May 1982. It also supported the suggestion that a comprehensive study should be devoted to that question.

14. Mrs. OGATA (Japan), noting that the preparation of a draft declaration on the right to development was of great importance for the welfare of future generations, said that the report by the Working Group of Governmental Experts E/CN.4/1983/11 was essentially a compilation of the proposals submitted by those experts. It would not be easy and it might take some time to arrive at an integrated text. The Working Group would have to take account of the full range of different views expressed so that the final text would truly reflect the consensus opinion of all the Member States of the United Nations. Her delegation would therefore like the mandate of the Working Group to be extended so that it could complete the task assigned to it.

15. Her delegation was of the opinion that the right to development concerned the individual, who was the ultimate beneficiary of the fruits of development. It did, however, not deny the fact that that right might have certain collective aspects, for collective action was needed to ensure its full enjoyment. Referring to her country's development experience, she said that the Japanese Constitution guaranteed the individual's right to education, to work and to an adequate standard of living for the enjoyment of health and culture, as well as his civil and political rights. Her country's development owed much to the spread of education; generally

speaking, it attached a great deal of importance to the development of human resources ("hito-zukuri"). In the past 10 years, it had also been placing greater emphasis on the incorporation of the environmental factor in the development process and had taken steps not only to combat pollution, but also to achieve better management of its natural resources.

16. Turning to item 19, she said her delegation was gratified to see that a growing number of States were acceding to the International Covenants on Human Rights. It hoped that that trend would rapidly lead to universal acceptance of those instruments. However, as the Chairman of the Human Rights Committee had pointed out, it was also indispensable that those instruments should be faithfully implemented. In that connection, she said that her delegation was concerned over delays in the submission of reports required under the two Covenants. If that situation continued, the credibility of United Nations human rights instruments would be impaired. She hoped that situation would be remedied as soon as possible and that initial reports at least would be submitted promptly.

17. In resolution 37/192, the General Assembly had requested the Commission to consider the question of the death penalty. It was to be hoped that discussions on the possibility of limiting or even abolishing the death penalty would have a salutary effect on certain sectors of the international community and help curtail excessive applications of that penalty, particularly in the form of mass executions. Her delegation shared the concern of other delegations that the existence of the death penalty might serve as a pretext for arbitrary executions in some countries. It was, however, for each country to choose the best means of preventing such acts, in accordance with its own customs and legal system and taking account of public opinion.

18. Mr. HERDOCIA ORTEGA (Nicaragua) said that a consensus was beginning to emerge on the main components of the concept of development. As early as 1970, at the time of the adoption of the International Development Strategy for the Second United Nations Development Decade, the General Assembly had begun to take a different approach to development objectives than it had during the First United Nations Development Decade. New ideas on the environment, nutrition, population questions, housing and employment had then emerged and had given rise to a broader conception of development.

19. His delegation considered the present economic and social order to be unjust; it violated, or inhibited the exercise of, individual and collective human rights, which were universal, interdependent and indivisible. The Commission, like some seminars which had dealt with the question, considered that there was an urgent need to prepare an international strategy to promote the exercise of human rights, development and peace; it recognized that development meant more than mere economic growth and must take account of other aspects and, in particular, the quality of life. In that connection, he noted that the acceptance by a growing number of countries of international human rights standards could also contribute to the establishment of an equitable international order.

20. In his delegation's view, the right to development included the right of all peoples freely to choose their political, economic and social systems and to permanent sovereignty over their natural resources. It required the participation of the people in the decision-making process and the solution of internal and international structural problems; that was yet another reason for the need to establish a new international economic order. The right to development was the synthesis of all the rights proclaimed in the Universal Declaration and the Covenants. It was a collective right, in so far as development and the development of the individual stemmed, *inter alia*, from the self-determination and independence of peoples, from the possibility for peoples to rid themselves of colonialism, neo-colonialism and foreign political and economic domination and from the elimination of *apartheid*, racial discrimination and all forms of oppression. Balanced general development must guarantee respect for all human rights, including the right to peace. Unfortunately, in January 1983, the non-aligned countries had been forced to express their deep concern at the alarming deterioration of the international economic situation and at the lack of progress in establishing a new international economic order.

21. The realization of the right to development must be encouraged at the national, regional and international levels. At the national level, the promotion of popular participation was one means of guaranteeing the enjoyment of that right. Popular participation was a basic human right and an essential condition both for the transfer of political power to underprivileged groups and for economic and social development.

22. The General Assembly had affirmed in forthright terms the indivisibility and interdependence of human rights and fundamental freedoms and the need to pay equal attention to civil and political rights as to economic, social and cultural rights. The Universal Declaration and the International Covenants established a link between those two sets of rights. No one denied that a development strategy based on repression and the negation of either or both of those categories of rights would not only infringe international standards relating to human rights, but would also be contrary to the concept of development.

23. An important aspect of the right to development was its promotion at the regional and international levels. In that connection, he referred to the Programme adopted by the United Nations Conference on the Least Developed Countries and to the appeal made in the International Development Strategy for the Third United Nations Development Decade for efforts to accelerate the development of developing countries within the framework of a new international economic order. He pointed out that the international dimensions of the right to development were reflected in the principal United Nations human rights instruments, and, in particular, in the Charter.

24. Consideration of the moral aspects of the right to development raised a number of questions that had been discussed at the Commission's thirty-third session. It had been agreed that the adoption of measures to promote development constituted a joint obligation of the international community and, in particular, of the industrialized countries, in conformity with the basic legal principle enunciated in Articles 55 and 56 of the Charter. Other rules concerning the right to development derived from articles 22 and 28 of the Universal Declaration and from the International Covenants. It had also been recognized that the right to development was based on the right to self-determination and on the right to peace.

25. The adverse effects of the existing international economic order on the economies of the developing countries and the obstacle that that represented for the implementation of human rights and fundamental freedoms explained, in particular, why the General Assembly had stressed the need to establish just and equitable relationships between the prices of those countries' exports and those of their imports and why it had adopted a programme of action identifying measures to be taken to overcome the developing countries' chronic trade balance deficit. He referred in that connection to the Charter of Economic Rights and Duties of States.

26. His delegation's conception of human rights as a means of achieving individual and national freedom was closely linked to its idea of development, which called for the building of a new type of society and radical changes in countries and in international structures.

27. His delegation welcomed the work carried out by the International Seminar on Popular Participation and was following with interest the activities of the Working Group of Governmental Experts on the Right to Development, whose mandate should be extended.

28. Turning to agenda item 19, he noted that he was a member of the Human Rights Committee; he associated himself with the statement made by its Chairman at a previous meeting and described the basic features of the Committee's task. His delegation supported the idea of preparing a second optional protocol to the International Covenant on Civil and Political Rights, as a new instrument aiming at the abolition of the death penalty. The first act of the Government which had taken office in July 1979 in Nicaragua had been to promulgate a basic statute. The statute of the rights and guarantees of Nicaraguans affirmed that the right to life was inherent in the human being and that the death penalty did not exist in Nicaragua. His delegation would therefore do everything in its power to urge States to give their early approval to the proposed second protocol, while, at the same time, respecting the right of States not to share its views. It fully endorsed the statement made in that connection on 11 February 1983 by the representative of the Federal Republic of Germany.

29. Mr. O'DONOVAN (Ireland) said that development policy issues were being widely discussed in other bodies. The Commission must therefore confine itself to speaking of development as a human right. It must clearly establish the immediate character of that right as an individual right and define its broad scope. The right to development, as applied to the development of the individual, involved not only physical and economic well-being, but also the capacity for intellectual, spiritual, cultural and social development or, in other words, for the development of the full potential of the human person.

30. In view of those considerations, his delegation considered that there was some cause for concern. For some time, it had noted that, in human rights discussions, greater emphasis was being placed on collective rights than on individual rights. In that connection, he referred to provisions of the Universal Declaration of Human Rights, the Proclamation of Teheran and the International Development Strategy for the Second United Nations Development Decade, to a study on social development and a new international development strategy and to the Declaration on Social Progress and Development. Those texts, which had nearly all come into being as a result of a consensus, showed that the ultimate end of development was to achieve better quality of life for all, which meant not only the development of economic and other material resources, but also the physical, moral, intellectual and cultural growth of the human person.



31. He was surprised that the general consensus on the elements which should form part of the right to development had not found much expression in the Commission, where many speakers had tended to emphasize not the human factor in development, but, rather, the right to development of States. In concerning itself with the material aspects of development, the Commission had tended to neglect other factors to which it might have been expected to pay more attention, since its task was inextricably linked to human rights. In the report entitled "Five-year Perspective, 1960-1964" (E/3347/Rev.1, para. 90), States had been warned about the dangers inherent in development policy: "One of the greatest dangers in development policy lies in the tendency to give to the more material aspects of growth an overriding and disproportionate emphasis. The end may be forgotten in preoccupation with the means. Human rights may be submerged and human beings seen only as instruments of production rather than as free entities for whose welfare and cultural advance the increased production is intended". In view of those dangers, efforts had been made in several United Nations declarations to base the development process on the dignity and worth of the human person.

32. The Commission's approach to the issue had been rather different. A seminar organized in 1967 on the realization of economic and social rights had recommended that growth should be designed to benefit "the entire population", a term that was later to replace the reference to the individual in the international development strategies. After outlining the studies that had been carried out on the right to development, he referred to the work of the Working Group of Governmental Experts, noting with regret that some members of the Commission and the Working Group no longer accepted the elements of the development process which had previously been the subject of a consensus and that recent Commission resolutions and, in particular, resolution 1982/17 included no reference to the human person as being at the centre of the development process, to the right to development as an individual as well as a collective right or to the intellectual, moral or cultural aspects of that right. That resolution, in its operative part at any rate, referred either to collective rights or to certain economic and social rights, but nowhere to the right to life, the right not to be tortured, the right to liberty and security of person, etc. Yet the rights solemnly proclaimed in the International Covenant on Civil and Political Rights surely had a place in any list of rights which should be considered worth selecting in the context of development.

33. It was sometimes suggested that it was wrong to distinguish between human rights as being individual or collective or as being civil, political, economic, etc. and that emphasis should, rather, be placed on the indivisibility and interdependence of all human rights. But, although the different human rights were interrelated, they were not altogether interdependent. The right to life and the right not to be tortured should not depend on any other right, even though the promotion of other rights might indeed serve to protect those two basic rights. The Commission should therefore endeavour to secure recognition by States that no development policy could be justified if it involved the deliberate infliction of death or torture.

34. The idea of individual rights, which was the mainspring of the Universal Declaration and most international instruments, had the advantage of legal clarity: the claims of the individual and the responsibility of the State were clear. Some commentators, even in the United Nations, had expressed concern that the increasing emphasis on collective rights was diluting the concept of human rights and, in particular, the idea of responsibility for very specific human rights violations. The notion of human rights was gradually being

extended to States and, since States could exercise rights only vis-à-vis other States or vis-à-vis an international entity, it could be asked whether the affirmation of the human right to development being sought as a means of establishing for some States and some international organizations a legal obligation to transfer wealth and resources and to alter existing financial and trading conditions in favour of other countries.

35. The idea of "basic" or "imperative" needs, the idea of a new international order in the economic or information fields, for example, the idea of the common heritage of mankind and similar ideas all presupposed that existing international relations and international organizations constituted an identifiable "order" with a decisive influence on all decision-making. His delegation agreed that some features of an international order were discernible and that that order was inadequate and unjust, for it failed to provide food for the millions of people throughout the world who were dying of starvation. It was also clear that the deprivation and suffering of millions of people in developing countries were linked to infrastructural underdevelopment, which imposed a moral responsibility on all those who had the means and the power to change such conditions.

36. Something more than moral responsibility or humanitarian concern was, however, involved. No State was immune to the dangers of war or to economic and social collapse. That fact, more than anything else, might help to prompt international action to solve existing economic and social problems. Perhaps a new economic order was emerging, although a major group of industrialized countries continued to stand aloof, acting only bilaterally and on the basis of obviously political principles. Those States should participate more actively and more generously in the solution of problems, while others should adopt a more far-sighted policy. The emerging new order was, moreover, upsetting some of the oldest beliefs of East, West, North and South. The internal affairs of States were no longer completely internal.

37. A development somewhat similar to that of human rights within States was now apparent at the international level. As a well-known author had stated, international law had reached the point where, if it was to survive as a common value, it must become a law of co-operation, which implied the development of a law of assistance to and protection of the weak. Therein lay the essential difficulty. How did the international order decide who was most in need of protection or assistance? What were the criteria for determining aid, loans and tariff adjustments? Those criteria must include humanitarian factors - and the Commission should see that they did. How were tyrannical or corrupt regimes to be dealt with? Was it better to withhold assistance from those regimes for fear of perpetuating the agonies of their peoples? Or was it better to help them in the hope of some positive result? What were the possibilities of direct aid through international institutions and non-governmental organizations? Those factors, together with the co-operative aspect of economic relations between donors and recipients had stretched existing norms of international law. The promotion of the right to development as a human right rather than a right of States would further that process. His delegation had voted in favour of General Assembly resolution 36/133, which declared the right to development to be an inalienable human right, in order to demonstrate its support for the moral obligation to assist the less fortunate. Thus, despite serious financial difficulties, his Government was continuing to expand its aid programme, even though it still had doubts about the scope and content of the right to development.

38. The gradual emergence at the international level of a politico-moral obligation to ensure respect for human rights might in time also lead to the acceptance of legal rights and responsibilities. That obligation had been felt for some time in many countries in connection not only with economic and social rights, but also with civil and political rights. General Assembly resolution 37/200 had strengthened that obligation, as well as, it was to be hoped at any rate, the ability of the international community to act in cases of violations of human rights. More must be done to strengthen that ability and to enhance the legal rights and procedural capacity of the individual as a subject of international law. General Assembly resolution 37/200 sought to focus the international obligation in question more on the human person than on the structures which should serve him, but sometimes oppressed him. The evolution of the right to development as a human right might well further strengthen the central purpose of all development and of all co-operation between peoples, which was, as stated in that resolution, "the realization of the potentialities of the human person in harmony with the community". That should be the particular focus of the Commission's work. A number of statements had been made along those lines and his delegation hoped that any resolutions adopted by the Commission would duly reflect that trend. In conclusion, he said that his delegation would give full consideration to the Yugoslav initiative concerning the right of popular participation and hoped to have an opportunity to comment on that question at a later stage.

39. Mr. CHOWDHURY (Bangladesh) said that the right to development could be exercised only where there was freedom and that, although many countries had acceded to independence in the past 30 years, that did not mean that their peoples participated in the restructuring of their national economies or of the world economy. It was a well-known fact that the wealthy industrialized countries continued to control the production and distribution of world resources and that they were ill-disposed to the idea of a new international economic order. Wealth must nevertheless be distributed more equitably among States. To enable developing countries to achieve their various objectives, including self-reliance and economic development, the economic inequalities between the Northern and the Southern hemispheres must be eliminated. Consequently, the right to development was second in importance only to the right to self-determination, of which it was the extension. For the least developed countries, such as his own, the right to development offered the prospect of integration in the world economic system.

40. In addition to a climate of freedom, the right to development presupposed a climate of peace. No one could, moreover, fail to be struck by the contrast between poverty in the world and the arms race, particularly since the amount spent on armaments in 10 days could be used to feed the hungry of the world for a year. His Government had decided to pay particular attention to the fate of the least privileged sector, namely, the rural population, which, despite its very low standard of living, was all too often neglected.

41. The right to development would remain a dead letter for the least developed countries if the international community did not fulfil its duties, one of which was to respect the commitment it had freely undertaken in adopting the Substantial New Programme of Action on behalf of those countries. In his delegation's view, the Commission on Human Rights should monitor the implementation of that Programme. The other obligations that went hand in hand with the right to development included those which were embodied in the Charter of Economic Rights and Duties of States and which were of vital importance for the exercise of the right to development and for the establishment of the new international economic order. In that sense, they were directly related to the Commission's work.

42. In conclusion, he congratulated the Working Group of Governmental Experts on having brought together the elements of a draft declaration on the right to development (E/CN.4/1983/11). In his opinion, the Group's mandate should be extended.

43. Mr. OULD-ROUIS (Observer for Algeria) said that the right to development no longer appeared to be in question. It was generally recognized as the "synthesis" right, as it represented the entire complex of conditions and obligations necessary for the effective realization of the other basic human rights, such as civil, political, economic, social and cultural rights. It derived from the moral and legal obligations contained in the many international instruments which had defined its scope and content at the time when the claims of the newly-independent States had been taking shape; that had led to a complete updating of international law, in which the right to development was now assuming its rightful place.

44. The reason the right to development had not received the same recognition as civil and political, economic, social and cultural rights was that it had been some time before positive international law had taken account of the changes brought about by the process of decolonialization and of demands for the establishment of a new international economic order. The so-called "third generation of rights" could, however, no longer be overlooked in international instruments, since all categories of rights were complementary, indivisible and interdependent and had a collective and international dimension.

45. Article 28 of the Universal Declaration of Human Rights provided that "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized". Clearly, it referred to the right of individuals and nations to a just and equitable international order which would enable them fully to enjoy all their fundamental rights. That right also gave rise to a formal obligation by the international community towards the individual and the community, both national and international. That obligation was reflected in international solidarity based on equality and in respect for sovereignty and for the right to self-determination. Furthermore, article 29, paragraph 3 of the Declaration stated that: "These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations".

46. The right to development thus existed and was recognized as a human right. Although the concept of the right to development had assumed increasing importance in the past 20 years, the international solidarity from which its realization should stem had not yet been established and the realization of that right was beset by all kinds of difficulties, including obstacles of a structural nature caused by the unjust international order that characterized international relations and co-operation.

47. The right to development was above all the right to life, health, education, security, employment, housing, the enjoyment of an adequate standard of living and the development of the human personality. Those rights could not be realized in every country until a new international economic order had been established. Their promotion also presupposed respect for the right of peoples to self-determination and to rid themselves of colonialism, foreign domination, racism and all forms of discrimination, effectively to exercise sovereignty over their national resources and to benefit from technological progress. The right to development could not be realized unless the arms race was halted and international relations were democratized, thereby enabling the developing countries to participate on an equal footing in the adoption of decisions affecting the world community.

48. Although development was primarily the responsibility of the countries concerned, the entire international community must supplement national efforts by international action based on dialogue, solidarity and respect for the equality and sovereignty of States. Through such concerted efforts, the international community might then trigger off a process of genuine development that would ensure respect for human dignity; the prime objective of all development was a steady increase in the well-being of the entire population, based on its full participation in the development process and on the equitable distribution of the benefits accruing therefrom. In that connection, he said his delegation was gratified that, on Yugoslavia's initiative, the question of popular participation in the development process had been included in the Commission's agenda as item 8.

49. In conclusion, he expressed his delegation's appreciation to the Working Group of Governmental Experts on the Right to Development for the efforts it had made to fulfil its mandate. It nevertheless regretted the fact that the Working Group had not managed to submit a draft declaration on the right to development. The Commission should extend the Working Group's mandate so that it could complete a process that would make a further contribution to the promotion of human rights.

50. Mr. OGURTSOV (Observer for the Byelorussian Soviet Socialist Republic) said that social and economic rights, namely, the rights to work, leisure, education, health, social security and housing were essential for the development of the human personality and the exercise of civil and political rights. Man could not be politically free if he was economically enslaved or had no access to culture. A mere proclamation was not enough to guarantee the enjoyment of civil and political rights. Without work, man did not exist. In that respect, the State played a central role, for it was the State that had the means of, and bore responsibility for, ensuring the exercise of human rights. That was, moreover, the principle behind the co-operation established by the international community with a view to ensuring respect for human rights and fundamental freedoms.

51. The documents submitted to the Commission showed that, as far as the right to development was concerned, the possibilities of many developing countries were limited owing to the unjust system of production which characterized capitalism and that their economic difficulties were due, in particular, to the arms race, the policies of transnational corporations and the trade and monetary practices of the capitalist countries, which created imbalances. The socialist countries therefore supported the developing countries' demands for a new international economic order.

52. His delegation regarded the right to development as a set of rights aimed at satisfying basic needs (food, clothing, housing), but it also included the right to work, to education and to social security, as well as civil and political rights, and aimed at satisfying cultural needs. The right to development belonged to sovereign States or peoples struggling for their independence; it therefore presupposed the elimination of the after-effects of colonialism and was incompatible with any interference in internal affairs.

53. The enjoyment of human rights and the establishment of the new international economic order were also bound up with international détente, the cessation of the arms race and the strengthening of international peace and security. It was on the basis of such a comprehensive approach that social, political and other reforms should be undertaken, an idea which was reflected in the principal United Nations

instruments dealing with the question, namely, the Charter of Economic Rights and Duties of States and the draft declaration on the right to development.

54. His own country's history showed that control over resources and production was one means of accelerating development. Even before their adoption, the two Covenants on Human Rights were already being applied in Byelorussia, where the structure of society was based on the collective ownership of means of production, thereby creating the necessary conditions for the development of the human personality. Byelorussian workers had now completed the tenth five-year plan and were embarking on the implementation of the eleventh five-year plan, one of whose objectives was to raise the cultural level of the population and to create more favourable conditions for the development of the human personality.

55. In conclusion, he said that his country which observed United Nations legal instruments in the field of human rights, supported efforts to ensure respect for the Charter and the other relevant United Nations instruments; it was in favour of co-operation in that area and believed that one way of strengthening such co-operation was to ensure that a larger number of States acceded to and implemented those legal instruments.

56. Mr. BIKOU-M'BYS (Observer for the Congo) said that the question of the effective enjoyment of economic, social and cultural rights was all the more interesting in that it raised the fundamental problem of the right to development, namely, the right of everyone to benefit, at all levels, from an order that would ensure that civil and political rights, as well as economic, social and cultural rights, could be fully implemented. That right was closely related to the establishment of a new international economic order aimed at reducing the gap between industrialized countries and developing countries and at applying a policy based on equal rights and respect for the interests of all countries. The principle of the new international economic order had been proclaimed by the General Assembly, in particular, in the Declaration and Programme of Action on the Establishment of a New International Economic Order, in the Charter of Economic Rights and Duties of States and in resolution 3362 (S-VII) on development and international economic co-operation.

57. For third world countries, the effective enjoyment of the right to development required the elimination of underdevelopment. Yet the developed countries remained indifferent to the steady deterioration of living conditions in the poorer countries. In some of the latter, 60 per cent of children died of malnutrition before the age of five. Since 1950, the number of illiterates had risen from 100 to 800 million. One-quarter of the world's population possessed 80 per cent of its wealth and trade, 90 per cent of its industry and services and nearly all research institutes. Three-quarters of the world's population had no access to medical care and nine-tenths suffered from hunger, malnutrition and a high mortality rate.

58. International trade mechanisms were such that third-world producing countries had little control over the prices of the raw materials they sold to the industrialized countries, which in turn, sold them manufactures at exorbitant prices. All-powerful multinational corporations made and unmade Governments in the developing countries where they were established. The industrialization of the developing countries was also hampered by the developed countries' persistent refusal to encourage

transfers of technology, as strikingly demonstrated by the stalemate reached in the Diplomatic Conference on the Revision of the Paris Convention for the Protection of Industrial Property and in the negotiations on a code of conduct on the transfer of technology.

59. Enormous amounts were being spent on arms and, in the past several years, world military expenditures had amounted to some \$350 billion annually, at 1978 prices. The arms race and the squandering of resources to which it led were unlikely to be conducive to the establishment of the new international economic order, which was nevertheless essential for the realization of the right to development. The establishment of that order was vital both for the North and for the South: the North would be unable to resolve its contradictions without the parallel and harmonious development of the South. The developed countries must therefore encourage the establishment of that new order, in accordance with the Charter of Economic Rights and Duties of States and various other international legal instruments.

60. The right to development was also linked to the establishment of a new national order, for which the developing countries must rely primarily on their own resources. His delegation appreciated the final resolution of the North-South Round Table, which had been held at Rome in May 1978 and had emphasized that one of the priorities of the new international economic order was to satisfy basic needs. At the national level, that meant feeding the population by expanding and diversifying agricultural production, combating disease and lowering the death rate through appropriate nutrition and rational medical treatment, developing the economy and promoting vocational training in order to increase output. To achieve those goals, it was first necessary to know what form of society was to be established.

61. His country, which had opted for the socialist way of life, was endeavouring to establish a more equitable society. The 1982-1986 five-year plan was aimed at establishing a self-reliant, dynamic economy involving the opening-up of the interior, measures to combat the flight from the land and the development of agriculture and social and cultural services. He pointed out that his country had the highest school-attendance rate in Africa and that education was free at all levels. Popular participation was recognized as a human right which enabled citizens to take part in the adoption of decisions concerning the country's future. The Constitution of 8 July 1979 had granted that right to the people, who elected its representatives at the local level. In enterprises and administrations, joint management, problem identification and decision-making enabled the representatives of parties, the administration, trade unions and other organizations to participate in major decisions.

62. His delegation was convinced that it was urgently necessary to codify the right to development in order to promote man's well-being. It therefore hoped that the mandate of the Working Group of Governmental Experts would be extended.

63. His country attached great importance to international legal instruments relating to human rights. It had therefore decided to accede to the International Convention on the Suppression and Punishment of the Crime of Apartheid, to the International Covenant on Economic, Social and Cultural Rights, to the International Covenant on Civil and Political Rights and to its Optional Protocol. At the regional level, it was the third country to have ratified the African Charter of Human and Peoples' Rights, adopted in 1981 by the Heads of State and Government of the Organization of African Unity.

64. Miss SINEGIORGIS (Observer for Ethiopia) said that, in her view, the right to development was a fundamental human right whose realization would enable everyone to enjoy the whole range of rights and, in particular, economic and social rights required for the development of the personality. It was therefore incumbent upon the international community to recognize that the right to development was a human right and that equality of opportunity for development was the prerogative both of nations and of individuals.
65. A development strategy based on colonialism, racism, discrimination and exploitation was a denial of the right to self-determination, under which all peoples had the right to choose their own political status, freely to pursue their development and to exercise sovereignty over their natural resources. The existing unjust international economic order was the main obstacle to the realization of fundamental human rights. The rich countries, with only one-quarter of the world's population, accounted for four-fifths of its income, while millions of people continued to live in abject poverty. The existing economic order had helped to widen the gap between rich and poor. It was the responsibility of the international community to establish a system of world-wide co-operation that would remove those grave disparities.
66. By pillaging the resources of the developing countries, interfering in those countries' internal affairs and collaborating with the racist South African regime, the transnational corporations had also played a detrimental role throughout the developing world. That problem required an immediate solution.
67. There was a close link between disarmament and development. So long as the arms race continued, international peace and security would continue to be precarious. The achievement of general and complete disarmament was of paramount importance for the enjoyment of economic, social and cultural rights and any progress on disarmament would promote progress in development. The resources thereby released must be used for the economic and social development of all nations. Without peace, there could be no real development. Peace and development would, moreover, be impossible without a system of co-operation between all countries based on the principles of sovereignty, independence and self-determination.
68. As a member of the Working Group of Governmental Experts on the Right to Development, she could not comment on that body's report (E/CN.4/1983/11). At its fourth and fifth sessions, the Working Group had endeavoured to prepare a draft declaration on the right to development, but had been unable to complete it, owing to the lack of time. It had nevertheless compiled numerous proposals for the preamble and had begun to consider proposals for the operative part. Since it would be unable to complete such a complex task at an early date, it should, as many delegations had proposed, be given more time. The draft declaration would serve as a basis for the preparation of an international instrument aimed at promoting the right to development of all peoples.
69. The right to development must not be interpreted too narrowly as a means of meeting basic needs. Although needs and rights were related, they were definitely two different things. The right to development went far beyond economic growth, capital accumulation and economic restructuring. It also comprised moral, political, ethical, social and cultural elements. If it was recognized that the problem of development was decisive for the promotion of human rights as a whole, a way had to be found of strengthening international co-operation in order to create the most favourable conditions for development. The key to success lay in mutual trust and, above all, political will on the part of all the parties concerned.



QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF  
DETENTION OR IMPRISONMENT, IN PARTICULAR:

- (b) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES (agenda item 10)  
(E/CN.4/1983/14; E/CN.4/1285; E/CN.4/1409; E/CN.4/1427; E/CN.4/1493;  
E/CN.4/NGO/213; E/CN.4/Sub.2/1982/15; E/CN.4/WG.1/WP.1)

70. Mr. HERNDL (Assistant Secretary-General, Director of the Centre for Human Rights) recalled that the human rights of all persons subjected to any form of detention or imprisonment were provided for in articles 3 and 9 of the Universal Declaration of Human Rights in articles 6 and 9 of the International Covenant on Civil and Political Rights. Human rights organs approached that question from various angles. Under the Commission's auspices, two important studies had already been prepared, one on the right to be free from arbitrary arrest or detention and the other on the right of persons in custody to communicate with counsel of their choice.

71. Concern to secure the rights of all persons subjected to any form of detention or imprisonment had led to the inclusion of that question as a regular item in the agenda of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The information communicated each year on that subject by Governments, inter-governmental organizations and non-governmental organizations in consultative status was transmitted to the Sub-Commission (in analytical summary form in the case of non-governmental organizations). On the basis of the work of the sessional working group set up to examine that information, the Sub-Commission had, at its previous session, adopted resolution 1982/10 proposing a number of measures to enhance the protection of the human rights of persons subjected to any form of detention or imprisonment. It had, for example, considered it desirable that the law should set out clearly the grounds for detention - whether on suspicion of criminal activities or for security reasons - and require that the grounds be made known to the persons concerned in terms as specific as possible at the time of arrest. The Sub-Commission had requested the Secretary-General to submit to it, at its thirty-sixth session, a preliminary survey of maximum detention periods under existing national laws and decisions of international organs of investigation and settlement and to invite Governments, United Nations bodies and other organizations, when providing information on the question of the human rights of persons subject to any form of detention, or imprisonment, as requested by the Sub-Commission in its resolution 7 (XXVII), to submit information concerning arrest and detention on vague grounds or no grounds at all, the duration of pre-trial detention, procedural guarantees, practices of incommunicado detention, the question of extra-territorial abduction and the question of "suicides" in detention under suspicious circumstances. In its resolution 1982/13, the Sub-Commission had expressed its deep concern at the increasing number of summary or arbitrary executions. In that connection, mention might also be made of the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders and subsequently approved by the Economic and Social Council.

72. At its last session, the Sub-Commission had had before it the study by Mrs. Questiaux on the implications, for human rights, of recent developments concerning situations known as states of siege or emergency (E/CN.4/Sub.2/1982/15). In its resolution 1982/32, the Sub-Commission had decided to transmit to the Commission that important study, whose conclusions and recommendations it wholeheartedly endorsed.

73. In the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in 1975, the General Assembly had stated that such practices should be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of human rights and fundamental freedoms and that no State could permit such treatment or punishment, in any circumstances. The Assembly had then turned its attention to the implementation of the Declaration and had requested Member States and international organizations to submit reports on the measures taken to give effect to it. The information received by the General Assembly had also been communicated to the Sub-Commission and other human rights bodies. The Chairman/Rapporteur of the Working Group on a draft convention against torture and other cruel, inhuman or degrading treatment or punishment would submit the Group's report on the question.

74. In its resolution 33/173, the General Assembly had expressed its deep concern about reports from various parts of the world relating to enforced or involuntary disappearances of persons. At its last session, the Assembly had adopted resolution 37/180 on that question, as well as resolution 37/181 on missing persons in Cyprus. It would further be recalled that, at its thirty-sixth session, the Commission had established a Working Group consisting of five of its members to serve as experts in their individual capacities for the examination of that problem. The Working Group's latest report (E/CN.4/1983/14) would be introduced by its Chairman/Rapporteur. The Sub-Commission on Prevention of Discrimination and Protection of Minorities had also considered that question at its last three sessions. At its most recent session, it had adopted resolution 1982/12, itself containing a draft resolution under which the Commission would recommend that the Economic and Social Council should request the General Assembly to invite the International Law Commission to take into account, when elaborating the draft code of offences against the peace and security of mankind, the opinions expressed and the comments made by the members of the Sub-Commission on the question of missing and disappeared persons with a view to declaring as a crime against humanity the practice of persons being rendered "missing and disappeared" involuntarily. The Sub-Commission had also adopted resolution 1982/5 on that question.

75. Viscount COLVILLE OF CUIROSS (Chairman/Rapporteur of the Working Group on Enforced or Involuntary Disappearances) said that, although the Working Group's latest report (E/CN.4/1983/14) had been presented in a new format, that did not mean that the Group was offering judgements. It did, admittedly, exercise its judgement, but only to select cases for transmission to Governments and to decide whether the replies received were conclusive. For the first time, the report also included statistics, which had to be considered in conjunction with the text relating to each country if they were to provide a true picture of the situation.

76. It was sometimes very difficult to clarify cases of disappearances which had occurred some 10 years previously: officials and, indeed, Governments might have changed and it was hard to trace police and military personnel who might shed some light on events. The statistics had been prepared on the basis of criteria that were applied uniformly to all countries. Those in category III - answers received - related only to cases which had actually been solved or, in other words, cases in which it had been established that the person in question had been detained, had been released or was dead. The Group had included in that category only those replies which it had considered to be reasonably acceptable to the families of the

persons concerned. It would be seen that the Group had received a wide range of other useful information. Fuller details were available to members of the Commission and he was ready to provide explanations, if necessary.

77. The statistics for Argentina in paragraph 37 looked disappointing. The seven cases that had been solved had been reported in the past two years. With regard to cases which had occurred in the 1970s, the Argentine Government had notified the Working Group that it had informed only the families. So far, however, no family had confirmed to the Working Group that it had received a reply which meant that its case had been solved. Perhaps the Argentine representative could shed further light on the progress of investigations in his country and on the results in general.

78. The Working Group had accepted the comments made by the Commission's Special Envoy on the human rights situation in Bolivia (E/CN.4/1983/22, paras. 29, 78 and 93). The Working Group would obviously be unlikely to reject clear-cut answers provided by a special envoy to cases in its files. In Bolivia's case, that reaction had been reinforced by the information the Working Group had also received about the efforts of the present Bolivian Government to clear up those cases.

79. With regard to El Salvador, the Government's position had been set out in paragraphs 53 to 55 of the report. The representative of El Salvador had recently given the Working Group replies relating to 109 cases, thus bringing the total number of cases settled to 198. The Working Group had been assured that the Government of El Salvador was continuing to give that matter its full attention.

80. As to Mexico, the Commission would note that the Working Group did not propose to take any further action on the cases considered (E/CN.4/1983/14, para. 80). The Mexican Government had continued to co-operate with the Working Group during the past year and its representative had attended the Group's meetings in Geneva. The Mexican cases did not really fit into the pattern of the report. It would be recalled that, even before any complaints had been made, the Mexican Government had sent the Working Group information about cases of alleged disappearances known to it. There had thus been more answers than complaints. In such circumstances and in view of the criteria selected for the preparation of "answers", the situation was not the easiest to follow. He hoped that the Mexican Government and its representative, and, of course, the families concerned, would understand what the Working Group had done.

81. To avoid any misunderstanding about the cases concerning Nicaragua (Ibid., para. 85), it should be explained that, during its meeting with the Nicaraguan representative, the Working Group had agreed to seek further information from the Government of El Salvador on the cases of the missing fishermen. If more information was forthcoming, the Nicaraguan Government would co-operate with the Working Group in an attempt to clarify those cases.

82. Cases of disappearances also occurred in many other countries. In that connection, he drew particular attention to paragraphs 87 to 90 of the report, which dealt with the Philippines and contained information and statistics relating to cases of disappearances.

83. The question of missing persons in Cyprus (Ibid., paras. 43-46) was a particularly difficult one. Although it recognized the primary role of the Committee on Missing Persons in Cyprus, the Working Group had offered to give it any help it could if the Committee invited it to do so. Resolution 37/181, which had been adopted by the General Assembly since the Working Group had prepared its report, did not appear to be inconsistent with that offer. If the Working Group's mandate was renewed, it would have to study the wording of that resolution carefully in order to take the proper action.

84. It had been on the strength of the Cyprus precedent that the Iranian Government had also approached the Working Group (Ibid., paras. 118-120), which had informed that Government that there was some doubt as to whether its mandate extended to persons reported missing in the course of an international armed conflict. It had also seemed entirely inappropriate at that stage to involve the Government of Iraq. Consequently, Iraq had first heard of the situation when the report had been published. Since then, he had held in-depth discussions with two of its representatives. He had also kept in touch with the representative of Iran. It was essential that the Group's activities should be, and should be seen to be, solely of a humanitarian nature. No selectivity could be tolerated. Prisoners-of-war and civilians might be missing at present, but, at the current stage, the Working Group would reserve its judgement on the matter.

85. There were some similarities between the situations in Cyprus and Iran. Under the third and fourth Geneva Conventions, all Iranian and Iraqi nationals captured or missing in the conflict fell directly within the mandate of the International Committee of the Red Cross, which was already operating in both countries. No doubt it would be thought essential that it should be given free access to all persons held in those countries, as required by those Conventions. If, however, the Commission wished to give the Working Group a role in the matter, the principles embodied in United Nations General Assembly resolution 37/181 on the Cyprus situation could be applied, with the necessary adaptations. If the Working Group's mandate was renewed for a year, it could again follow developments and co-operate with the parties concerned. Thus, without interfering in ICRC's work, it could provide the necessary channels of communication and demonstrate the Commission's active desire to ensure that its Working Group was equipped to take positive steps to bring about a solution to that purely humanitarian problem. There might well, of course, be other solutions, but the Working Group considered that the suggestion it had made was at least a consistent and constructive one.

86. In the statement, he had made at the opening of the session, Mr. Herndl had stressed that the aim of the United Nations should be to create a climate of opinion in which all those in authority would come to perceive that they had much more to lose than to gain by disregarding basic human rights. The Working Group hoped that those in authority in most of the countries with which it had been concerned had realized that they had more to gain than to lose by co-operating with it. The primary aim was, of course, to shed light on the fate of missing persons, but it was equally important to create a climate of opinion in which Governments did not feel threatened if they communicated such information as they possessed, in order to help solve the cases referred to the Working Group.

The meeting rose at 6.20 p.m.