

# REVITALISING UNITED NATIONS WORK ON HUMAN RIGHTS AND DEVELOPMENT

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*[The dramatic moves towards democracy in many countries in the wake of the Cold War have served to reinvigorate the debate over the relationship between respect for international human rights standards and the promotion of economic and social development. While the 1980s witnessed a sometimes rather sterile international legal debate over the concept of the right to development, especially within the UN Commission on Human Rights, recent institutional initiatives elsewhere in the United Nations system have been far more productive. The challenge for the 1990s is to see if, and how, these two parallel debates can be brought together.]*

The revolutionary changes that have swept through Eastern and Central Europe in the past few years have brought with them potentially dramatic implications for the international community's human rights agenda, as well as for its approach to development issues. In many areas, yesterday's received wisdom has become today's discredited dogma. More importantly, many of the issues that were the subject of yesterday's political and ideological stalemates have been placed on today's agenda in the expectation that consensus solutions can be found. Nowhere is this more the case than in the area in which human rights and development concerns intersect. For almost twenty years that range of concerns has been debated within the framework of United Nations human rights activities, primarily under the rubric of the right to development.

Assessments of the value of those endeavours vary. The United States representative told the Commission on Human Rights in February 1991 that they 'had led to nothing'.<sup>1</sup> Indeed, to the contrary, 'the explanations given had not fed one child or created one job, nor had they enlightened the Commission or the outside world . . .'.<sup>2</sup> Representatives of other states put forward rather more favourable evaluations.<sup>3</sup> Australia took a middle course and 'wondered why the Commission had not been able to accomplish as much' in relation to the right to development as it had 'in other areas of the human rights programme'.<sup>4</sup>

But, modest as the results to date might have been, recent shifts in development policy at the international level indicate that a far wider range of construc-

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<sup>1</sup> U.N. doc. E/CN.4/1991/SR.19, para. 12 (Mr Abram, U.S.A.).

<sup>2</sup> *Ibid.*

<sup>3</sup> See, e.g., the views expressed by Mr Hessel (France) U.N. doc. E/CN.4/1991/SR.19, paras 29-34, and Mr Sene (Senegal), *ibid.*, paras 47-58.

<sup>4</sup> U.N. doc. E/CN.4/1991/SR.18, para. 2 (Mr Stuart).

tive and feasible policy options might now be available for furthering the goals promoted in the original human rights and development debates than was previously the case. Perhaps the most clearly articulated of these new initiatives is the United Nations Development Programme's *Human Development Report 1991*,<sup>5</sup> which is very much a product of the new winds that are blowing in the international development debate. It is therefore timely to revisit the debate over the right to development with a view to taking stock of the achievements and shortcomings of the work of the past two decades. A review of that record can shed considerable light, not only on some of the reasons for the relatively unproductive nature of much of that debate, but more constructively, on the approaches which might most profitably be pursued in the future. Indeed, the international political climate has changed so dramatically over the past three years that there are now many more possibilities open for implementing the right to development than would ever have been foreseen or considered feasible when the U.N.'s major policy statement on the subject — the Declaration on the Right to Development<sup>6</sup> — was adopted by the U.N. General Assembly in 1986.

In brief, this article argues that the United Nations Commission on Human Rights has expended an enormous amount of time and energy on matters of marginal importance, while the core concerns that provided the impetus for the emergence of the concept of the right to development in the first place have remained largely unaddressed. By contrast, and somewhat paradoxically, international organizations outside the human rights framework have made major progress towards acceptance of much of the right to development's agenda, although not of its terminology. These developments point to the need for the Commission on Human Rights to pursue a very different agenda in the 1990s from that which occupied so much of its attention throughout the 1970s and 1980s.

In the analysis that follows, the origins of the right to development debate are briefly surveyed and the implications of recent events in Eastern and Central Europe are considered. In looking ahead, encouragement is derived from the fact that the proposed agenda for the World Conference on Human Rights, to be held in mid-1993, has identified the relationship between human rights and development as a priority issue.<sup>7</sup> But in shaping the agenda for the future it is essential to bear in mind the arguments that have dogged the right to development debate in the past and that threaten to continue doing so unless a deliberate effort is made to ensure that the debate is henceforth more constructively focused. In order to determine how the latter might be achieved, the policy proposals contained in several major recent international statements of development policy are examined and, in light of those approaches, consideration is given to the role that the Commission might play in the future.

<sup>5</sup> United Nations Development Programme, *Human Development Report 1991*.

<sup>6</sup> G.A. Res. 41/128 (1976), Annex.

<sup>7</sup> G.A. Res. 45/155, para 1(b).

A. THE EVOLUTION OF THE RIGHT TO DEVELOPMENT DEBATE<sup>8</sup>

In many respects, the significance of the claims originally put forward under the rubric of the right to development by Third World states in the mid-1970s, and supported by a few Western states, can really only be understood by reference to the general state of human rights doctrine and practice within the United Nations at that time.

The chronology is simple enough. The concept was first mooted in 1972. It was another five years before serious and sustained debate began in the Commission on Human Rights. But by 1981, the topic had become so entrenched that the debate was 'institutionalized' through the establishment of a separate Working Group of Governmental Experts on the Right to Development which was charged with responsibility for drafting a Declaration on the subject and for advising the Commission on further initiatives.<sup>9</sup> Five years after the Working Group's creation, the General Assembly adopted the Declaration on the Right to Development and left the Commission to work out what procedures or institutional arrangements ought to be put in place to follow up on the Declaration. Another five years later, and more than a decade after the serious debate first began, the Commission has been unable to resolve those issues. This is so, despite the fact that there appears to be near-unanimous agreement on the continuing central importance of the human rights and development debate, not only in the Commission, but within the international community at large.

But while the chronology is simple, the political currents influencing the evolution of the concept are much less so. Briefly stated, the emergence of a numerically dominant group of developing countries, as a result of the wave of decolonization that peaked in the late 1960s, led to the elevation of economic development goals to the top of the international agenda. Given the level of resentment over the negative consequences of the colonial experience and the reticence of the former colonial powers to recognize continuing obligations towards the peoples concerned, the assumption that reparations were payable was never far below the surface. In terms of the U.N.'s human rights debate, these concerns translated into demands that greater attention be paid to economic and social rights (cultural rights being largely neglected in this setting), that colonialism and neo-colonialism be recognized as gross violations of international

<sup>8</sup> The analysis that follows draws upon a range of published works including: M'Baye, K., 'Le droit de développement comme un droit de l'homme' (1972) 5 *Revue des droits de l'homme* 503; Dupuy, R. J., *The Right to Development at the International Level* (1980); Gros Espiell, H., 'The Right of Development as a Human Right' (1981) 16 *Texas International Law Journal* 189; Donnelly, J., 'In Search of the Unicorn: The Jurisprudence and Politics of the Right to Development' (1985) 15 *California Western International Law Journal* 473; Pellet, A., *Le droit international du développement* (2nd ed. 1987); Bedjaoui, M., 'Propos libres sur le droit au développement' in *Le droit international à l'heure de sa codification: études en l'honneur de Roberto Ago* (1987) Vol. II, 15; Kiwanuka, R., 'Developing Rights: The U.N. Declaration on the Right to Development' (1988) 35 *Netherlands International Law Review* 257; Brownlie, I., *The Human Right to Development* (1989); Forsythe, D. (ed.), *Human Rights and Development: International Views* (1989); and Barsh, R., 'The Right to Development as a Human Right: Results of the Global Consultation' (1991) 13 *Human Rights Quarterly* 322.

<sup>9</sup> The Group first met in 1982 and for the last time in 1989. Its reports have been printed in the following documents: U.N. docs. E/CN.4/1489 (1982), E/CN.4/1983/11, E/CN.4/1984/14, E/CN.4/1985/11, E/CN.4/1987/10, E/CN.4/1988/10, and E/CN.4/1989/10.

law and that some forms of development co-operation should be seen as entitlements rather than as acts of welfare or charity.

The Eastern Europeans provided significant and enthusiastic political support for all of these demands, but they did so on the basis of several rather convenient understandings: that the pursuit of centrally-planned socialism was the best and perhaps the only effective guarantee of economic and social rights; that they themselves had never been involved in colonialism or the denial of self-determination to any peoples; and that large-scale aid transfers were owed only by the former colonizers to their victims and not by the industrialized countries in general. Thus understood, the issues involved in the right to development enjoyed the enthusiastic support of the Eastern Europeans and their allies in their collective struggle against the capitalist West.

The West, for its part, presented a less than united front, but in general there was significant support for the proposition that economic and social rights had been accorded insufficient attention by the United Nations. Moreover, the obligation to co-operate to promote Third World development was accepted by many Western states in general terms, although by no means in the form of a legally binding obligation to provide specific transfers of capital, technology or other goods and services. Even the United States, which from 1981 onwards was to become an implacable opponent of the right to development, was, under President Carter, open to many of the goals and even some of the means contained in the demands for the establishment of a new international economic order.

But the West, supported by a reasonable number of Third World states, also had other concerns, at least in terms of human rights doctrine in the United Nations context, if not in terms of their own practice. Issues of equity and distribution, which manifested themselves in the development debate of the 1970s, under the guise of the 'basic needs strategy' (promoted vigorously for a time by the International Labour Organisation (ILO), the World Bank and other agencies), translated into support for a particular vision of economic and social rights which did not necessarily coincide with that of some of the Third World proponents of those rights. Similarly, the view that respect for civil and political rights was indispensable for the achievement of human development, as appropriately defined, was firmly held by virtually all Western states.

The result, in the context of debate in the Commission on Human Rights, was that the different geo-political groupings felt strongly enough about the range of issues as a whole, and shared a sufficient number of overlapping concerns, so as to provide an adequate basis for negotiations to take place. Ironically, however, negotiations began at what in retrospect might be seen as the worst possible moment. The Working Group on the Right to Development held its first session in July 1981,<sup>10</sup> some six months after the Reagan Administration had taken office. The latter immediately adopted a hard line towards the Third World's log of development-related claims, insisting that all human rights attached exclusively to individuals and opposing the very concept of economic and social

<sup>10</sup> U.N. doc. E/CN.4/1489 (1982), para. 3.

rights.<sup>11</sup> These positions, combined with a strong (and generally reciprocated) antipathy to several of the Governments represented in the Working Group,<sup>12</sup> all served to ensure that the negotiations would be protracted, antagonistic at times, and unlikely to lead to any consensual outcome.

While it would be both inaccurate and unfair to lay all of the blame for the controversy that surrounded the Working Group's negotiations at the door of the Reagan Administration, its coming to office was nevertheless one of the key factors in shaping the 1980s debate over the right to development. Other factors were also important. They included: the enthusiasm with which the Eastern Europeans embraced the concept — thus adding an overlay of East-West rivalry to existing North-South tensions; the increased East-West antipathy in response to the suppression of the Solidarity trade union movement in Poland; the worldwide recession of the early 1980s; the escalating Third World debt crisis; and the generally poor international relations climate, in which human rights initiatives were, almost by definition, contentious.

In addition, neither the North nor the South (in so far as such general descriptive terms are analytically valid) were prepared to accept the logical conclusions which could reasonably be drawn from their general negotiating positions in the debate. The North, for its part, was anxious to insist that the development process should be predicated upon full respect for human rights and that economic and social rights should be taken seriously, but was not prepared to accept that these positions might have direct implications for its own policies towards Third World countries, especially in terms of aid and trade. The South, on the other hand, was anxious to demand concessions from the North and to constrain it in respect of various of its policy options, but was unprepared to accept any constraints on its own freedom of action. While these positions, even in their extreme forms, were hardly surprising, they also helped to ensure a relatively unproductive debate within the Commission on Human Rights.

There are several conclusions to be drawn from this sketch of the historical origins of the right to development. In the first place, it shows that it is not (or was never permitted to be) a concept that was shaped and promoted exclusively by one particular group of states as a vehicle for pursuing their own hobby horses. Second, the right did not simply emerge out of nothing, nor was it just a product of its times, as a formal depiction of its pedigree might suggest. Rather it provided the framework within which many of the claims that had been emerging since the late 1950s could be brought together and pursued in a more integrated and appealing fashion.

Third, it is essential that the right to development should not be seen as a fixed 'log of claims', chiselled into marble tablets, in the form of the Declaration. While any 'declaration' has considerable persuasive weight within the family of

<sup>11</sup> See generally Alston, P., 'U.S. Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for an Entirely New Strategy', (1990) 84 *American Journal of International Law* 365.

<sup>12</sup> Initially the Working Group's Third World contingent consisted of 'Governmental Experts' from: Algeria, Cuba, Ethiopia, India, Iraq, Panama, Peru, Senegal and Syria. The Eastern European group was represented by: Poland, Yugoslavia and the Soviet Union, and the Western members were France, the Netherlands and the U.S.A: *supra* n. 10, Annex I.

international instruments, the Declaration in question is (as its critics are all too anxious to emphasize) unusually open-ended and indeterminate in some of its provisions. This is an inevitable result of the conflicting interests and perspectives of its drafters and perhaps also of the range and complexity of the interests which it sought to address. But rather than being seen as a weakness, it should be welcomed as a strength which enables the concept to evolve with the times and to be interpreted and applied with the degree of flexibility that is indispensable in such an area.

**B. THE IMPACT OF EVENTS IN EASTERN EUROPE<sup>13</sup>**

The events culminating in the collapse of Communism, the embrace of the free market, the acceptance (for the time being at least) of diversity and dissent and the dramatic movement towards democracy within Central and Eastern Europe since 1989 have had consequences extending far beyond that region itself. While it would be an over-simplification to attribute too much significance in this specific context to the impact of those events, it would equally be misleading to downplay their vital role as a catalyst in loosening up previously entrenched positions on a wide range of issues which lie at the heart of the U.N.'s right to development debate.

It is worth recalling briefly some of the principal ways in which these events have changed the background against which the right to development debate can be pursued in the future. Major changes can be identified in both the overall global context and the specific United Nations context. At the global level, the pursuit of peace, development and respect for human rights, defined for the first time in broadly consensual terms, have emerged as goals shared by all of the major powers. Where, previously, competing ideological and strategic interests which were super-imposed upon any given issue often created incentives for the continuation of conflicts, recent developments have led to a situation in which 'co-operation to resolve outstanding regional conflicts and concerted action to counter aggressive behaviour in developing regions are beginning to emerge as norms of major power behaviour.'<sup>14</sup>

Another major consequence in the global setting is the emergence of very strong concern among the countries of the South that their plight will become a major casualty of the desire to provide the massive financial and technical aid required to facilitate the full integration of the countries of Central and Eastern Europe into the free market North. The very real threat of those countries receiving aid at the expense of resources otherwise destined for North-South co-operation has encouraged, or even obliged, the South to adopt a much more open position on various issues including human rights. Linked to this aspect is the emergence of political liberalization as a largely non-contentious issue on the global agenda. This point is examined in more detail below.

<sup>13</sup> See generally Mastny, V. and Zielonka, J. (eds), *Human Rights and Security: Europe on the Eve of a New Era* (1991); and Rosas, A. and Hegesen, J. (eds), *Human Rights in a Changing East/West Perspective* (1990).

<sup>14</sup> Alagappa, M., 'Regional Arrangements and International Security in Southeast Asia: Going Beyond Z.O.P.F.A.N.' (1991) 12 *Contemporary Southeast Asia* 269.

Closely related global developments have occurred in the area of arms control and expenditures. Recent years have witnessed, for instance, an increased willingness on the part of the major powers to undertake obligations to promote disarmament, closer scrutiny of, and control over, the arms trade, diminished levels of military assistance from the North to the South and increasing pressure on governments to justify the proportion of the national budget devoted to military rather than social expenditures.

In the United Nations context generally these changes have also had a major impact in terms of a renewed faith in multilateralism and a new openness in terms of the ways in which issues can be discussed. The changes have also enhanced standing of many of the principal international institutions and led to an extended conception of the types of activities the United Nations agencies might be mandated to undertake. More specifically, in the human rights context, the East-West tensions that plagued the supervisory activities undertaken by the I.L.O. and by U.N. bodies such as the Commission on Human Rights and the treaty-based monitoring committees, have largely disappeared. Despite predictions to the contrary,<sup>15</sup> they have not yet been replaced by comparable North-South tensions. Similarly, institutions such as the World Bank and the International Monetary Fund (IMF) are no longer under attack as the tools of would-be global capitalist hegemony and, as a result, seem to be more open to new ideas and approaches than before. This is particularly relevant in relation to human rights matters which have hitherto been considered largely off-limits.

Recent changes are also of potentially major importance in terms of the U.N.'s human rights agenda. In general the possibility now exists for substantially less contentious and ideologically-fraught, more open and more sophisticated debate on development-related issues. In particular, that part of the Commission on Human Rights' agenda which is not subject to automatic disagreement could be significantly enlarged. Issues such as the holding of free elections, the creation and nurturing of democratic institutions, freedom of expression, freedom of association, the role of human rights defenders and tolerance of dissent should all be susceptible of more sustained, constructive and ultimately productive debate than has been the case until recently.

### C. *THE AGENDA FOR THE WORLD HUMAN RIGHTS CONFERENCE: AN IMPORTANT OPPORTUNITY*

The possibilities thus created are of particular relevance to the debate about human rights and development. This fact has, at least implicitly, been acknowledged by the approach adopted in planning for the World Conference on Human Rights to be held in 1993. As the Secretary-General noted in his analysis of comments by governments, international agencies and non-governmental organizations (N.G.O.s) relating to the potential scope and focus of the Conference, 'recent favourable changes in international conditions' have opened 'new per-

<sup>15</sup> Brody, R., Parker, P. and Weissbrodt, D., 'Major Developments in 1990 at the U.N. Commission on Human Rights', (1990) 12 *Human Rights Quarterly* 559, 587.

spectives ... for the protection and promotion of human rights'.<sup>16</sup> In its comments in that context, Australia observed that the Conference should 'produce action-orientated proposals for the integration of human rights into strategies for development, peace and security'.<sup>17</sup> While Australia made no mention of the right to development *per se*, the suggested agenda put forward by the Sub-Commission on Prevention of Discrimination and Protection of Minorities included an item entitled 'Implementation of the Recommendations of the Global Consultation on the Right to Development as a Human Right'.<sup>18</sup> The latter proposal would have put the right to development squarely on the Conference agenda.

In the event, the General Assembly, in order to ensure consensus support for the resolution authorizing the holding of the Conference, adopted language which avoided reference to the right to development but apparently sought to capture its essence in another formulation. It thus listed as the second of six specific objectives for the Conference:

To examine the relation between development and the enjoyment by everyone of economic, social and cultural rights as well as civil and political rights recognizing the importance of creating the conditions whereby everyone may enjoy these rights as set out in the International Covenants on Human Rights.<sup>19</sup>

This formulation, despite its rather convoluted language, clearly signals that there is broad-based support for tackling the human rights and development issue and for according it a high priority. Taken in conjunction with the other objectives listed in the same resolution and with other recent right to development-related initiatives, the formulation indicates that the Conference discussions will need to address a number of specific issues. They include:

- (1) What should be the future role of the Declaration on the Right to Development in view of recent developments?
- (2) To what extent has the agenda reflected in the right to development debates been taken into account within the United Nations system as a whole?
- (3) How can greater specificity be achieved in what has hitherto been an unduly theoretical and abstract debate?
- (4) Given that institutional arrangements for promotion and supervision of human rights standards are to be a major focus of the World Conference, where do development issues fit into the broader framework?
- (5) Is it possible to develop a meaningful and productive role for the Commission on Human Rights in promoting the practical implementation of the right to development's underlying principles?

These questions are addressed in the analysis that follows, with particular emphasis on the issues raised and policies proposed in the *Human Development Report 1991*. Before looking at that report, however, it is appropriate to take note of the issues that helped to prevent the right to development debate from addressing with any sophistication many of the matters taken up in the report.

<sup>16</sup> U.N. doc. A/45/564 (1990), para. 7.

<sup>17</sup> *Ibid.* p. 5.

<sup>18</sup> *Ibid.* p. 23. The Report of the Global Consultation referred to is contained in U.N. doc. E/CN.4/1990/9.

<sup>19</sup> G.A. Res. 45/155 (1990), para. 1(b).



D. *THE MARGINAL ISSUES THAT DISTRACTED THE DEBATE IN THE 1970S AND 1980S*

It is difficult to escape the conclusion that the issues that have so far consumed the lion's share of attention in the Commission's right to development debates have been of secondary or marginal importance by comparison with those that gave rise to the concept in the first place. Since the United Nations first began the debate in earnest, a wholly disproportionate amount of time has been taken up, as much in the work of the Commission and of the General Assembly as in that of the Working Group itself, with issues of considerable academic and theoretical interest but rather little practical import.

Without attempting a comprehensive review of almost twenty years of debate, it will suffice for present purposes to take as reasonably representative the set of arguments put forward by Morris Abram, the U.S. Permanent Representative to the U.N. in Geneva, in a detailed attack on the right to development delivered during the 1991 session on the Commission on Human Rights.<sup>20</sup> The United States is of particular importance in this context, not only because of its enhanced role in world affairs, but because it was the only State that voted against the adoption of the Declaration and is one of the very few to have since maintained an unyielding opposition to it. Ambassador Abram's arguments can be divided into three parts: those relating to the theory and ideology of human rights; those based on issues of institutional competence within the United Nations; and those concerned with empirical arguments over the dynamics of the development process.

The latter go far beyond the scope of the present analysis and will not be dealt with here.<sup>21</sup> The argument about institutional competence, to which we shall return below, is premised on the assumption that all development-related issues should be dealt with by the economic, financial and technical co-operation agencies and that the Commission on Human Rights is neither authorized by its mandate, nor competent in terms of its composition, expertise, procedures and priorities to address such issues. The arguments relating to the theory and ideology of human rights are those that have been most frequently and, some might add, most repetitively and unproductively rehearsed over the past two decades. In essence, Ambassador Abram's arguments in this regard can be divided into three strands.

(1) *'Rights Should be Seen Solely as Limitations on State Action and Never as Providing Material Entitlements.'*

This argument, which is also reflected in a Presidential Commission chaired by Mr Abram for the Reagan administration that declared access to health care

<sup>20</sup> Most of these arguments were further developed at about the same time by Abram, M. B., 'Human Rights and the United Nations: Past as Prologue', (1991) 4 *Harvard Human Rights Journal*, 69-83.

<sup>21</sup> For example, the proposition that where civil liberties are respected an economy will prosper and where they are systematically denied an economy will fail, as put by Mr Abram, U.N. doc. E/CN.4/1991/SR.19, para. 6.

not to be a human rights matter,<sup>22</sup> effectively precludes virtually all economic, social and cultural rights from qualifying as human rights.<sup>23</sup> As a corollary, it is argued that ensuring respect for civil and political rights is largely cost-free (since it requires only abstention from governmental interference) so that 'even the poorest societies' can be expected to ensure the right to vote ('it cost[s] not one penny to give people the right to vote'), to freedom from torture and arbitrary imprisonment and to freedom from discrimination.<sup>24</sup>

Innumerable analyses have been presented to refute these arguments, both in terms of U.S. domestic politics and of the international human rights system.<sup>25</sup> It is unnecessary to repeat them here. The important point for present purposes, however, is that acceptance of Mr Abram's arguments would destroy the agreed basis on which all international human rights endeavours are based. The Universal Declaration of Human Rights proclaims both sets of rights; each of the two International Covenants is said to be of equal and parallel importance to the other; and the interdependence of all rights has always been insisted upon by the United Nations and all other international organizations. It is thus rather odd that such fundamental philosophical objections are raised primarily, if not exclusively, in the context of the right to development rather than as an attack, which by implication they are, on the entire United Nations and international human rights frameworks.

(2) *'Human Rights Attach Exclusively to Individuals as Such and Never to Collectivities.'*

In so far as this argument purports to respond to those who would present the right to development as a 'human' right belonging directly to States,<sup>26</sup> it addresses a matter that has long since been resolved.<sup>27</sup> The Declaration on the Right to Development, on the basis of almost interminable debates over drafting nuances, sought to balance the rights of 'every human person' and those of 'all

<sup>22</sup> Washington D.C., *Securing Access to Health Care*, Report of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research (1983) Vol. 1, 4: According to the Report,

In 1952, the President's Commission on the Health Needs of the Nation concluded that "access to the means for the attainment and preservation of health is a basic human right". Instead of speaking in terms of "rights", however, the current Commission believes its conclusions are better expressed in terms of "ethical obligations".

(Footnote omitted.)

<sup>23</sup> Mr Abram has also observed elsewhere that '[w]hile free education, adequate medical care, and social security are worthy goals, they are qualitatively different from fundamental freedoms and political liberties. Promoting an equivalence between these social welfare goals and political and civil rights . . . tends to dilute the meaning of rights and distract attention from human rights abuses'. Abram, *supra* n. 20, 77-78.

<sup>24</sup> U.N. doc. E/CN.4/1991/SR.19, para. 14 (Mr Abram, U.S.A.).

<sup>25</sup> See generally Danziger, S. and Weinberg D. (eds), *Fighting Poverty: What Works and What Doesn't* (1986); and Sunstein, C., *After the Rights Revolution: Reconceiving the Regulatory State* (1990).

<sup>26</sup> E.g. Bedjaoui, *supra* n. 8.

<sup>27</sup> Although in fairness it must be noted that some observers continue, without apparent justification, to characterize the right in this way. See e.g. Commonwealth Secretariat, *Put Our World to Rights: Towards a Commonwealth Human Rights Policy* (1991) 51: 'The right to development is different from other kinds of rights. It does not belong only to individuals, but also to states.'

peoples' 'to participate in, contribute to, and enjoy' development (Article 1(1)). It affirmed that 'the human person is the central subject of development' (Article 2(1)). 'States' are referred to solely in terms of their various duties and responsibilities. Of course, many neo-classical economists and their allies might well object to the latter approach as placing undue emphasis on the role of the State, but that is not the argument that is addressed (at least not overtly) by Ambassador Abrams's comments.

In so far as the argument is focused not upon the State as a holder of human rights, but upon any 'collectivities' whatsoever as holders, it is inconsistent with the right to self-determination and with various other rights (cultural rights, indigenous people's rights, minority rights) that the great majority of States would accept as attaching to peoples, provided only that such rights are defined and interpreted so as to be able to be reconciled with individual human rights.<sup>28</sup> Thus, once again, this particular attack on the right to development appears more as a surrogate for attacking other firmly entrenched approaches to human rights at the international level than as a useful contribution to the human rights and development debate.

(3) *'The Entire Right to Development Debate is Fatally Flawed as a Result of its Vagueness.'*

More specifically, it is objected that the right to development cannot be defined in precise terms, that its realization cannot accurately be measured and that there is no direct correlation between rights and duties and those who hold them. To quote Ambassador Abram's speech to the Commission in 1991:

By whom was it granted and by whom was it exercised? . . . If development was a right, what body owed the duty of protecting it? Could each individual and each State claim equal benefit by virtue of that right? And by what measure could the extent of its realization be calculated? Compliance with civil and political rights could be measured by the degree to which States refrained from committing certain acts.<sup>29</sup>

But this approach ignores both the actual content of the Declaration (to which we return below) and the specific reference therein to the need to eliminate obstacles to development resulting from failure to observe 'civil and political rights as well as economic, social and cultural rights'. (Article 6(3)). It reflects a determination to focus on the imprecise and to ignore the readily identifiable specific issues. In philosophical terms, insistence upon the need for rights and duties to be directly correlated is not only at odds with much of the U.N.'s approach to human rights, but also with many strands of contemporary philosophical thought. This argument also assumes that precision and measurability are hallmarks of all other human rights, a contention which no self-respecting theorist would endorse and which the great majority of human rights advocates would also reject.<sup>30</sup> Thus, for example, while the right to freedom from physical torture is susceptible of

<sup>28</sup> See generally Crawford, J. (ed.), *The Rights of Peoples* (1987).

<sup>29</sup> *Supra* n. 24, para. 11.

<sup>30</sup> By contrast, Abram argues that 'political rights . . . are realized the moment the government stops infringing them'. On the other hand 'it is never clear when, if ever, governments will "realize" the right to education, the right to social security, or the right to development'. Abram, *supra* n. 21, 76.

reasonably precise definition and (within considerable limits) may be measured, those attributes rapidly disappear once the concept is extended to include mental and other forms of torture as well as inhuman or degrading treatment or punishment. But problems of imprecision are not used to justify inaction.

This very brief, and inevitably rather cryptic, review of the type of arguments that continue to occur in the context of the right to development debate is not designed to suggest that the United States has got it wrong on every count, or that its adversaries at the other end of the ideological spectrum are any more balanced in their positions. Nor does the analysis seek to suggest that the issues raised by the U.S. criticisms are unimportant. On the contrary, many of them are of major and enduring significance in the broader international debate over the theoretical foundations of human rights. The points sought to be made here are first, that most of these issues do not need to be resolved for the right to development to move forward and, second, that they constitute only a small part of the totality of issues which the right to development debate should be addressing. It is submitted that it is possible, and indeed essential, to look beyond these inherently contentious issues and to concentrate instead upon an agenda on which progress should now be possible. In many respects, that agenda has been persuasively articulated in the *Human Development Report 1991*, to which I now turn.

#### E. THE U.N.D.P. HUMAN DEVELOPMENT REPORT 1991

In 1990 the United Nations Development Programme (U.N.D.P.) published its first *Human Development Report* (hereafter *H.D.R.*). The deeper roots of U.N.D.P.'s initiative can be traced to the annual *World Development Report*, first produced by the World Bank in 1978.<sup>31</sup> That report was to become the proto-type to be followed by various other international agencies, none with greater success than the World Bank and some with far less. The United Nations Children's Fund (U.N.I.C.E.F.) produces the *State of the World's Children Report*, the Food and Agriculture Organization (F.A.O.) publishes the *State of Food and Agriculture*, the International Labour Organization (I.L.O.) brings out the *World Labour Report*, the United Nations Conference on Trade and Development (U.N.C.T.A.D.) publishes the *Trade and Development Report* and so on. In format, most of these bear a striking resemblance to the model first developed by the World Bank.

The attractions of an annual, thematically-focused report of this nature are manifold. In the first place, the focus can change from year to year to reflect current developments and concerns and the approach adopted can be up-dated or even radically revised if necessary. Second, the report is able to integrate materials from a wide variety of sources, including academic publications and the work of other organizations. It thus makes a significant departure from the exclusively in-house diet that so significantly reduces the likelihood of other analyses being of great interest. The reports are usually accompanied by

<sup>31</sup> World Bank, *World Development Report 1978*.

extensive tables listing different statistical indicators of development and are given many of the trappings of scholarly undertakings such as bibliographies, notes on sources and methodology and technical notes of various descriptions.

Third, such reports provide an unequalled opportunity for the organization to communicate with a far broader constituency than would normally be reached by its publications. This is achieved through the use of an attractive format, readable prose, in some cases a commercial publisher, concrete case studies and a preparedness not to fudge policy prescriptions — all of which serve to distinguish this report from virtually all others produced by the World Bank.

But the fourth attraction may well be the most appealing. Since these reports are generally produced with the caveat that they do not necessarily reflect the policy views of the organization's governing body, responsibility for their preparation can thus be taken entirely by the officials of the organization rather than by their political masters. There is thus much greater scope for wide-ranging analysis, for the expression of controversial opinions, for the acknowledgement of failings on the part of governments and for the formulation of policy prescriptions, none of which would be likely to survive the need to achieve either consensus or clear majority support from governmental representatives.

The *H.D.R. 1991* reflects all of these advantages, especially the latter. Responsibility for the content of the report is carefully vested in the editorial team that produced it. 'The views expressed . . . are those of the team, and are not necessarily shared by U.N.D.P., or its Governing Council, or other member governments of U.N.D.P.'<sup>32</sup> writes U.N.D.P.'s Administrator, William H. Draper III, in his Foreword. On the very next page, the editorial team in its turn, thanks the Administrator for his 'determination to protect the intellectual independence of this Report'.<sup>33</sup>

The 1990 Report made clear that political changes emanating from Eastern Europe had created the climate in which it was possible to produce an analysis going far beyond the rather dull traditional fare of U.N.D.P. reports. It noted that '[a]n irresistible wave of human freedom is sweeping across many lands. Not only political systems but economic structures are beginning to change in countries where democratic forces had long been suppressed.'<sup>34</sup> The same theme was echoed in the 1991 Report which noted that in the 1990s a 'new era of human rights and political freedom seemed to be dawning'.<sup>35</sup> Thus the report as a whole was said to be, variously, 'about the sensible reallocation of resources to serve humanity better'; 'about participatory development'; 'about human freedom'; and 'about the process of human development whose main aim is to develop and use all human capabilities'.<sup>36</sup>

The significance of the *H.D.R. 1991* derives both from its content and from the identity and past record of its sponsor. While the former aspect is dealt with below, the latter warrants explanation at this point. U.N.D.P. is the largest of the

<sup>32</sup> *Supra* n. 5, iv.

<sup>33</sup> *Ibid.* v.

<sup>34</sup> United Nations Development Programme, *Human Development Report 1990*, iii.

<sup>35</sup> *Supra* n. 5, iii.

<sup>36</sup> *Ibid.*

U.N. development agencies (leaving aside the World Bank)<sup>37</sup> and has added clout because of its Representative's role in most developing countries as the resident coordinator for most U.N. activities. Its policy announcements are thus important. By the same token, however, the U.N.'s overall role in long-term development activities is diminishing due to 'relative stagnation of resources, fragmentation of efforts and marginalization of relevance', as a recent major Nordic study of *The United Nations in Development* put it.<sup>38</sup> In this setting the *H.D.R.* is seen to represent 'a new and refreshing initiative by the U.N. system.'<sup>39</sup>

Another reason why the views expressed in the *H.D.R.* assume much greater significance simply by virtue of their sponsor's identity is that the U.N.D.P. has, until the last couple of years, studiously avoided addressing human rights issues or having anything to do with the U.N.'s human rights programme or the relevant bodies. Indeed, it is unlikely that more than a handful of specific references to the concept, let alone practice, of human rights could be found in U.N.D.P. publications in the twenty-five year period between its creation in 1965 and the publication of the first *H.D.R.* in 1990. Thus, in historical terms, U.N.D.P.'s embrace of the idea that respect for human rights is an indispensable ingredient in the development process is truly path-breaking and of major significance for the U.N. system as a whole. As noted below, however, it remains to be seen whether this new approach will endure and, if so, in what form.

#### F. A COMPARISON OF RECENT INTERNATIONAL DEVELOPMENT POLICY STATEMENTS WITH THE RIGHT TO DEVELOPMENT AGENDA

It must be conceded from the outset that neither the Commission on Human Rights nor any other U.N. human rights body has ever identified unequivocally a single 'right to development agenda'. Nevertheless, through all of the claims and counterclaims that have been made, and despite the divisive ideological elements that have intruded, a number of core right to development concerns have remained constant since the mid-1970s. Those concerns were clearly identified and analysed in the two reports of the Secretary-General prepared in 1979<sup>40</sup> and 1980-81<sup>41</sup> respectively which provided the only sustained, carefully researched and specifically focused analyses on the basis of which the debates were able to proceed. They are the same concerns, which to a considerable extent, are

<sup>37</sup> For a detailed breakdown of the relative importance, in financial terms, of the role of the different agencies see 'Comprehensive Statistical Data on Operational Activities for Development for the Year 2000: Note by the Secretary-General', U.N. doc. A/46/206/Add.4 (1991).

<sup>38</sup> *The United Nations in Development: Reform Issues in the Economic and Social Fields, A Nordic Perspective*, Final Report by the Nordic U.N. Project (1991) 71.

<sup>39</sup> *Ibid.*

<sup>40</sup> *The international dimensions of the right to development as a human right in relation with other human rights based on international co-operation, including the right to peace, taking into account the requirements of the New International Economic Order and the fundamental human needs: Report of the Secretary General*: U.N. doc. E/CN.4/1334 (1979).

<sup>41</sup> *The regional and national dimensions of the right to development as a human right: Study by the Secretary-General*, U.N. docs. E/CN.4/1421 (1980) (containing the first part of the study) and E/CN.4/1488 (1981).

reflected in the Declaration on the Right to Development, although in that context some are not spelt out with as much precision because of the quest to achieve consensus which, while ultimately unsuccessful, nevertheless had a major influence on the final outcome.

It is submitted that seven specific practical objectives can be identified as central to the right to development enterprise.<sup>42</sup> (This listing deliberately omits the most contentious aspects of the ideological agenda which have consistently been attributed to the right's proponents.) The seven practical objectives are:

- (1) formal international recognition of the role of human rights in the development process;
- (2) recognition of the indivisibility of the two sets of rights;
- (3) recognition of the essential human rights dimension of the concept of participation;
- (4) shaping an effective international role in promoting the integration of human rights and development activities at the national level;
- (5) relating human rights to the policies and programmes of the international financial institutions;
- (6) increasing international co-operation in respect to aid flows and other technological and resource transfers from North to South; and
- (7) promotion of the principle that a 'peace dividend' should flow from disarmament to development activities.

In the overview that follows, particular emphasis is placed upon the policies espoused or proposed in the *H.D.R. 1991*, and to a lesser extent upon some relevant recent policy statements adopted by other major United Nation agencies.<sup>43</sup> It must be conceded that in this regard there is often an enormous gap between the official rhetoric and the practical reality. Indeed, in the case of U.N.D.P., it seems likely that many years will pass before its programme activities are entirely consonant with the policies contained in the *H.D.R. 1991*. Nevertheless, this is a study of ideas and policies, rather than an empirical analysis of programmes. While the nature of the relationship between the two realms is a complex and fascinating topic, it is one which must remain to be treated elsewhere. Moreover, since the Commission on Human Rights is not an operational agency *per se*, and since its consideration of the right to development is concerned almost exclusively with policy matters, such a focus is entirely appropriate in the present context.

<sup>42</sup> It should be noted that the view presented here runs contrary to much of the common wisdom on this issue. Thus for example Abram, *supra* n. 20, 77, describes the right to development as 'an intellectually amorphous concept' while an Advisory Group to the Commonwealth Secretariat, *supra* n. 27, 51, has suggested that the concept contains 'many . . . points that are ambiguous or obscure' and that its importance is therefore 'largely political'. In general, it seems to the present writer that such evaluations have tended to reflect the rhetoric surrounding the concept rather than a careful reading of the content of the Declaration.

<sup>43</sup> A useful institutional overview of the 'new development thinking' within the United Nations context is contained in *Developing Human Resources for Development: Report of the Secretary-General*, U.N. doc. A/46/461 (1991).

(1) *Formal International Recognition of the Role of Human Rights in the Development Process*

This was clearly a central part of the right to development agenda from the outset. The Secretary-General's reports addressed the issue in considerable detail<sup>44</sup> and the Declaration contains several specific provisions along the same lines.<sup>45</sup> In principle, at least, the *H.D.R. 1991* takes up on this theme. It declares a central tenet of the Report to be 'that human development is incomplete if it does not incorporate freedom'.<sup>46</sup> This dimension of the Report is further dealt with below.<sup>47</sup>

To a neophyte in the development field, the suggestion that the *H.D.R. 1991*'s recognition of the role of human rights in the development process is novel and path-breaking must surely seem extraordinary. Yet the reality is that until the end of the 1980s international development agencies and policy-makers were only very rarely prepared to address themselves directly to human rights questions.<sup>48</sup> While the importance of such questions was sometimes grudgingly acknowledged, that recognition almost invariably was accompanied by the assumption that human rights matters were appropriately dealt with by other bodies or agencies. As one report has noted, '[g]overnments have sought to confine humanitarian concerns to the periphery of international relations . . .'.<sup>49</sup>

Perhaps the best illustrations from a policy perspective of the mentality that prevailed throughout the Cold War period are the International Development Decade strategies adopted, with great fanfare and after lengthy negotiation, by the U.N. General Assembly in 1961,<sup>50</sup> 1970,<sup>51</sup> 1980<sup>52</sup> and, most recently, in 1990.<sup>53</sup> The first two strategies contained no reference whatsoever to human rights and the omission seemed hardly to be noticed by anyone at the time. By the late 1970s, when the third strategy was being negotiated, various bodies, including the Commission on Human Rights,<sup>54</sup> called for the omission to be remedied. Again, recognition of the linkage between human rights and development was studiously avoided, although some significant surrogate phrases (such as 'human dignity')<sup>55</sup> were included. It was not until 1990 that the issue was

<sup>44</sup> E.g., U.N. doc. E/CN.4/1488 (1981) paras 139-81.

<sup>45</sup> In addition to Articles 2(1), 5 and 10 of the Declaration on the Right to Development, specific reference can be made to Article 4(1): 'States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development.'

<sup>46</sup> *Supra* n. 5, 21.

<sup>47</sup> *Infra* n. 103-16.

<sup>48</sup> The I.L.O. is a consistent exception to this principle but, in practice, the integration of its approach to both sides of the human rights and development equation has left a great deal to be desired. For a strong internal critique to this effect see Aboughanem, A., 'Etude sur les relations entre les normes internationales du travail et la coopération technique' (1985).

<sup>49</sup> *Winning the Human Race: The Report of the International Commission on International Humanitarian Issues* (1988) 189.

<sup>50</sup> G.A. Res. 1710 (XVI) (1961).

<sup>51</sup> G.A. Res. 2626 (1970).

<sup>52</sup> G.A. Res. 35/56 (1980).

<sup>53</sup> G.A. Res. 45/199 (1990).

<sup>54</sup> C.H.R. Res. 4 (XXXV) (1979).

<sup>55</sup> G.A. Res. 35/56 (1980), para. 8. See also para. 42:

The final aim of development must be the continuing increase in the well-being of the entire population on the basis of its full participation in the process of development and a fair distribution of the benefits therefrom.



squarily addressed and, even then the relevant references are neither as substantial nor as substantive as they could and should have been.<sup>56</sup>

The various Lomé agreements, negotiated between the European Community and its African, Caribbean and Pacific partners reflect a similar history. The first agreement, adopted in 1975,<sup>57</sup> contained no reference to human rights and while the negotiations over both Lomé II<sup>58</sup> and III<sup>59</sup> involved extensive discussions over proposed human rights provisions, only very general references were deemed acceptable.<sup>60</sup> It was only with the adoption of Lomé IV in 1990 that the linkage was definitively established. Article 5 of the agreement notes that 'development policy and co-operation are closely linked with the respect for and enjoyment of fundamental human rights' and also contains other detailed provisions relating to human rights.<sup>61</sup>

The evolution of the term 'human rights' from the status of being virtually unmentionable in direct relationship to development policy, to a status of (almost) general acceptability is also well illustrated by the approach taken in the major reports prepared during this period by the various 'independent commissions'. In 1980, for example, the Brandt Commission report could hardly bring itself to mention the words 'human rights'. Its themes of 'solidarity' abroad and 'social justice' at home were as close as it wanted to get to that concept.<sup>62</sup> Even the Independent Commission on International Humanitarian Issues, in its 1988 report, showed extraordinary self-restraint in talking about human rights despite their apparent centrality to its overall mandate.<sup>63</sup> Yet by 1990 the Report of the South Commission had overcome most of these inhibitions and recognized first that democratic issues are 'essential to genuine development'<sup>64</sup> and second that '[r]espect for human rights, the rule of law, and the possibility to change governments through peaceful means are among the basic constituents of a democratic polity'.<sup>65</sup>

<sup>56</sup> G.A. Res. 45/199 (1990), para. 13:

The strategy should help provide an environment that supports the evolution everywhere of political systems based on consent and respect for human rights, as well as social and economic rights [sic], and of systems of justice that protect all citizens.

and para. 94: 'Human rights and human development are ends in themselves.'

<sup>57</sup> (1975) 14 *International Legal Materials* 595.

<sup>58</sup> (1980) 19 *International Legal Materials* 327.

<sup>59</sup> (1985) 24 *International Legal Materials* 571.

<sup>60</sup> See generally Young-Anawaty, A., 'Human Rights and the African-Caribbean-Pacific (A.C.P.)-European Economic Community (E.E.C.) Lomé II Convention: Business As Usual at the European Community', (1980) 13 *New York University Journal of International Law and Politics* 63.

<sup>61</sup> (1990) 29 *International Legal Materials* 783, 814.

<sup>62</sup> *North-South: A Programme for Survival, Report of the Independent Commission on International Development Issues* (known, after its Chairman, as the 'Brandt Commission') (1980). The only direct references to human rights are contained in the Introduction written by Willy Brandt in his own name: 'Strong efforts should be made to further a growing recognition of human rights and of the rights of labour and international conventions for protecting them.' *Ibid.* 25. Exactly the same was true of the Commission's follow-up report: *Common Crisis, North-South: Co-operation for World Recovery* (1983) 9: 'The basis of any world order — or any national or regional order — must be respect for individual people and their essential rights, as defined in the Universal Declaration of Human Rights.'

<sup>63</sup> *Supra* n. 49, 195: 'We recognize that most humanitarian problems would become less acute if fundamental human rights were respected. Although the field of human rights has its own specificity and has been only indirectly a part of our work, we consider it of utmost importance to strengthen human rights at the national, regional and international level' (emphasis added).

<sup>64</sup> *The Challenge to the South: The Report of the South Commission* (1990) 11.

<sup>65</sup> *Ibid.* 12.

While many other examples could also be cited, the relevant point is that a major item on the right to development agenda had come to be generally accepted by the early 1990s. By the same token, there continue to be many contexts in which this has not yet occurred.<sup>66</sup>

## (2) Recognition of the Indivisibility of the Two Sets of Rights

Among the principal intellectual progenitors of the right to development was the claim that economic, social and cultural rights had been largely neglected by the U.N.'s human rights organs. It was a criticism which found strong expression in the Final Act adopted by the (first) World Conference on Human Rights held in Teheran in 1968<sup>67</sup> and was taken up again (with a vengeance, some observers would say)<sup>68</sup> in an important resolution adopted by the General Assembly in 1977,<sup>69</sup> only nine months after the Commission had first recognized the right to development. The validity of the original claim is unlikely to be contested by any objective observer, although there would be many who would argue that the 'ambit claim' put forward within the framework of the right to development was much too broad and was actually designed to conceal an effort to accord absolute priority to economic rights at the expense of civil and political rights. While this was almost certainly part of the agenda of a small number of its proponents, the fact of the matter is that the Secretary-General's reports, the text of the Declaration itself and the great majority of the relevant resolutions adopted by the Assembly and the Commission all reflected an entirely balanced approach to this issue.

Thus, for example, Article 6(2) of the Declaration provides specifically that:

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

This is consistent with the 1981 study by the Secretary-General which referred to this principle as 'a fundamental tenet of the right to development'<sup>70</sup> and devoted a lengthy analysis to its implications.<sup>71</sup>

Since the beginning of the right to development debate the 'indivisibility' principle has been accorded significantly more than the lip service that it drew in earlier times. In the human rights context, the most important development was the establishment of the Committee on Economic, Social and Cultural Rights,<sup>72</sup> a rather unexpected initiative which was agreed to one year before the Declaration on the Right to Development was adopted. Since 1988 the Commission on

<sup>66</sup> A good example is provided by the 'Manila Declaration on a Social Development Strategy for the E.S.C.A.P. [The U.N.'s Economic and Social Commission for Asia and the Pacific] Region towards the Year 2000 and Beyond', U.N. doc. A/46/581 (1991) which, apart from referring to the Universal Declaration of Human Rights in passing in the Preamble, contains no other mention of human rights in 34 pages of text.

<sup>67</sup> *Final Act of the International Conference on Human Rights*, U.N. doc. A/CONF.32/41 (1968), Res. XXI, para. 6.

<sup>68</sup> For competing perspectives on the role of G.A. Res. 32/130 see generally Ramcharan, B. G. (ed.), *Human Rights: Thirty Years after the Universal Declaration* (1979).

<sup>69</sup> G.A. Res. 32/130 (1977).

<sup>70</sup> U.N. doc. E/CN.4/1488 (1981), sub-heading preceding para. 125.

<sup>71</sup> *Ibid.* paras 125-38.

<sup>72</sup> E.S.C. Res. 1985/17.

Human Rights has begun to adopt substantive and constructive resolutions dealing with issues related to the Committee's work, although its actual debates on the item have been somewhat superficial.

The *H.D.R. 1991* does not, however, use the phrase 'economic, social and cultural rights', although it does list 'education, health, nutrition, housing, water, sanitation, and other basic social services' as high priority items for any development programmes.<sup>73</sup> Proposals which have gained considerable donor and agency support in recent months would serve to move this approach considerably closer to that advocated by the U.N. Committee on Economic, Social and Cultural Rights.<sup>74</sup> They would involve, for example, the regular preparation and publication of data showing the extent to which development assistance provided by international donors, as well as each country's national budget, are devoted to expenditures on 'priority aspects of human development'. The latter are defined to coincide largely with basic economic and social rights. It is estimated that, at present, only 8 per cent of international aid is devoted to such purposes.<sup>75</sup>

But despite these developments and the fact that it is once again fashionable in development thinking to accord priority to poverty alleviation, this by no means constitutes unqualified acceptance of the view that development strategies should be premised upon respect for economic, social and cultural rights. Both international human rights policies and development theory have a very long way to go with respect to that particular dimension of the right to development.

### (3) *Recognition of the Essential Human Rights Dimension of the Concept of Participation*

The Declaration on the Right to Development attaches major importance to the concept of participation. Indeed, the right itself is defined in Article 1(1) as a right by virtue of which individuals and peoples 'are entitled to participate in . . . development . . .'. In addressing the issue of obligations flowing from the right, Article 8(2) of the Declaration provides that 'States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights'. In some respects, however, the Declaration, rather than breaking new ground, might be said to have been doing little more than echoing the sentiments that had much earlier begun to appear with monotonous regularity in international development policy documents. The I.L.O.'s 1976 Basic Needs Strategy, for example, had emphasized that 'a basic-needs-oriented policy implies the participation of the people in making the

<sup>73</sup> *Supra* n. 5, 77. Similarly, many of the conclusions reached in the *H.D.R. 1990* find direct counterparts in the Secretariat analyses prepared in 1979 and 1981 on the right to development. These include the propositions that: (a) 'fairly respectable levels of human development are possible even at fairly modest levels of income'; (b) 'the link between economic growth and human progress is not automatic'; (c) 'social subsidies are absolutely necessary for poorer income groups'; and (d) 'developing countries are not too poor to pay for human development and take care of economic growth'. *Supra* n. 30, 2-4 (emphasis in original).

<sup>74</sup> See *General Comment No. 2* (1990), Committee on Economic, Social and Cultural Rights, Report on the Fourth Session, U.N. doc. E/1990/23, Annex III.

<sup>75</sup> *H.D.R. 1991, supra* n. 5, 53.

decisions which affect them through organisations of their own choice'.<sup>76</sup> Innumerable other examples of United Nations-sponsored documents could also be cited to demonstrate the great popularity of references to participation in the context of development policies.<sup>77</sup>

The major question, then, is what contribution, if any, did the right to development make by taking up the slogan of participation? The brief answer is that it underlined the human rights dimension which, although being indispensable to a meaningful concept of participation, had nevertheless been steadfastly played down or ignored in the overwhelming majority of contexts in which it had been acknowledged by development agencies.

Participation in decision-making is an important idea but hardly one that is particularly new or threatening to entrenched elites. In the development context it has all too often been translated into the desirability of formalistic consultations being held before a village well is built or discussions taking place over whether a well or a pipeline is preferable. In other words, it was an incantation to seek popular endorsement for, or participation in implementing, policies and programmes that the relevant authorities had already decided upon anyway. It was very rarely equated with the right to participate in government in the most basic sense, the right to free elections, the right to dissent, the right to freedom of information or the right to freedom of assembly. Yet it was these latter means of achieving genuine participation which were inevitably brought into the picture once the human rights dimension was acknowledged.

Recent events have brought about two significant policy shifts in this domain. In the first place, discussions of the means of promoting participation are now far more likely to look beyond the micro level and to focus on the political system as a whole and on the need for democratic practices and procedures. Thus, for example, the *H.D.R. 1991* notes that 'restructuring for human development is likely only with a workable political strategy' and that 'democracy is a valuable ally of all'.<sup>78</sup> Similarly, a report by a Commonwealth Advisory Group has recently observed that '[a] democratic public life is not only in itself constitutive of civil and political rights, but also a pre-condition for other rights'.<sup>79</sup>

Second, the focus of the preferred rhetoric of many development agencies has shifted from participation to 'governance'. While this term has been used for some years by United States agencies,<sup>80</sup> it is only in the past couple of years that organizations such as the World Bank, the International Monetary Fund and the

<sup>76</sup> International Labour Organisation, *Meeting Basic Needs: Strategies for Eradicating Mass Poverty and Unemployment* (1977), Programme of Action, para. 3. For other references to participation see also paras 5, 11, 13, 18, 19, 20 and 40.

<sup>77</sup> Hill, D., *Human Rights and 'Participatory Development'* (1989).

<sup>78</sup> *Supra* n. 5, 9.

<sup>79</sup> *Put Our World to Rights: Towards a Commonwealth Human Rights Policy* (1991), 14. See also Commonwealth Heads of Government Meeting, Harare, 16-21 October 1991, *Communique 5*, which states that the 'fundamental political values of the Commonwealth' include: 'democracy, democratic processes and institutions which reflect national circumstances, the rule of law and the independence of the judiciary, just and honest government' and 'fundamental human rights . . . '.

<sup>80</sup> See, e.g., Green, J., 'U.S.A.I.D.'s Democratic Pluralism Initiative: Pragmatism or Altruism?', (1991) *5 Ethics and International Affairs* 215, 217: 'Among the stated rationales for the initiative are the fact that democracy and development are complementary, and the recognition that while development may lead to desires for democratization, democratization can promote development.'

Organization for Economic Co-operation and Development (O.E.C.D.) have begun to explore the policy and programme implications of the term in any systematic fashion. Within the World Bank, views have begun to be expressed in favour of taking account of governance-related issues in the context of the World Bank's development lending.<sup>81</sup> Thus, for example, an important recent analysis by the two World Bank researchers defined the term 'governance' as 'the use of political authority and exercise of control over a society and the management of its resources for social and economic development'.<sup>82</sup> The authors suggest that it is possible to 'specify a minimal core of characteristics [of good governance] which, if not universally accepted, are nonetheless widely agreed' and that 'in large measure, these derive from, or are related to, the Universal Declaration of Human Rights'.<sup>83</sup> They concluded that the process of fostering good governance requires that 'credible arrangements' be in place for the following: political accountability (to be achieved, *inter alia*, through elections); freedom of association and organization; an objective and efficient judiciary; bureaucratic accountability; freedom of information and expression; and efficiency within public institutions.<sup>84</sup>

But such an approach would still seem to be far from the mainstream of World Bank thinking, as made clear by the World Bank's legal adviser (who combines the offices of General Counsel and Vice-President) in a lengthy Memorandum written at about the same time. It concludes that 'not all issues related to "governance" of its borrowing members fall within the World Bank's mandate and that such governance becomes an issue of concern to the World Bank only in its strict sense of the good order required for a positive investment climate and for the efficient use of resources'.<sup>85</sup> This is consistent with longstanding arguments by the same and other Bank officials to the effect that the World Bank's Articles of Agreement prevent it from taking account of human rights issues except in a very marginal sense.<sup>86</sup> There is clearly a very significant risk that, at the end of the day, the World Bank will define good governance solely in terms of efficient and non-corrupt public sector management, and the rule of law as requiring freedom of contract and enterprise and predictability in the outcome of legal disputes over investment. To the extent that such approaches do prevail, the World Bank's conformity with the key tenets of the right to development will remain in question. Nevertheless, the fact that the debate is occurring at all must be taken as an encouraging sign.

<sup>81</sup> See generally World Bank, *Sub-Saharan Africa: From Crisis to Sustainable Growth, A Long-Term Perspective Study* (1989).

<sup>82</sup> Serageldin, I. and Landell-Mills, P., 'Governance and the External Factor' (1991) 2, unpublished paper presented to the World Bank's Annual Conference on Development Economics, 25-26 April 1991.

<sup>83</sup> *Ibid.* 5.

<sup>84</sup> *Ibid.* 12-3.

<sup>85</sup> 'Issues of "Governance" in Borrowing Members: The Extent of Their Relevance under the Bank's Articles of Agreement', (1990) 54, Memorandum of the Vice-President and General Counsel, World Bank, Washington D.C., 21 December 1990.

<sup>86</sup> Shihata, I., 'The World Bank and Human Rights: An Analysis of the Legal Issues and the Record of Achievements' (1989) 17 *Denver Journal of International Law and Policy* 39: 'The Bank does not interfere in the political affairs of its members, including their position on political rights because it falls outside the scope of the Bank's authority as an international financial institution' (footnote omitted).

By contrast, the O.E.C.D.'s influential Development Assistance Committee would seem to have undergone a rapid and somewhat more far-reaching conversion on this score. In a major review of twenty-five years of development policy, published in 1985, the Committee made no mention whatsoever of human rights or democracy and endorsed only a rather indirect and instrumental role for participation.<sup>87</sup> A mere five years later the Committee began its 1990 Report by observing that 'with breathtaking speed the vocabulary of the development dialogue has shifted over the past year. . . . The connection between accountability, rule by law, transparency in decision-making, democratic practice in general and opportunities for economic efficiency has become more and more apparent.'<sup>88</sup> Other examples, including that of the International Monetary Fund,<sup>89</sup> could also be cited of renewed interest, or more accurately in many cases, initial stirrings of interest, in democracy and good governance as essential elements of development policy.<sup>90</sup> It might be noted, however, that not all international agencies have yet made this transition.<sup>91</sup>

The same is true at the national level. And even among those governments that have committed themselves to moving towards democracy, the implications have not always been fully grasped. Thus, for example, the Government of Zaire recently reported to the U.N. that 'the wind of political reform — let us call it the wind of *'perestroika'*<sup>92</sup> — . . . has been blowing since the end of [1989], not only in the countries of Eastern Europe, dominated hitherto by one party, but also in the countries of the third world, African countries in particular'.<sup>93</sup> The defence of human rights and the introduction of multi-party democracy were thus said to be very high on the Government's new agenda. The implications of this commitment were, however, somewhat qualified by the comment that followed to the effect that 'the human rights situation throughout the world cannot be improved by criticism — no matter now useful — or by lengthy reports and so forth, but only by concrete material and financial co-operation'.<sup>94</sup>

Without speculating on either the probable life-span or the likely consequences of this growing recognition of the importance of governance and democracy issues, the conclusion to emerge from the present analysis is that the term

<sup>87</sup> O.E.C.D., *Twenty-five Years of Development Co-operation: A Review* (1985) 34:

In a developing country, serious political commitment to development is essential to inculcate in traditional communities the belief that material progress is attainable, to mobilise popular energies, to evoke good performance from public agencies, to obtain and sustain adequate public funding, and to encourage private entrepreneurship.

<sup>88</sup> O.E.C.D., *Development Co-operation: 1990 Report* (1990) 11.

<sup>89</sup> Tingle, L., 'The Potent Shift from Aid to the Freeing-Up of Trade', *The Australian*, 16 Oct. 1991, quoting Mr M. Camdessus, the I.M.F.'s Managing Director, as advocating 'the concept of "good governance", whose key principles include transparency, accountability and the "Rule of Law".'

<sup>90</sup> E.g. Van Hoek, F. J., 'Some Thoughts on Governance and Democratisation' (1991) 128 *The Courier* 82.

<sup>91</sup> Recent debates within the Council of the Food and Agriculture Organisation, for example, have continued to use language which is more attuned to the mainstream of early 1980s thinking rather than that of a decade later. See the debate over a proposed 'Plan of Action for People's Participation in Rural Development', in *Report of the Council of F.A.O.*, 99th session, Rome, 10-21 June 1991, paras 66-74.

<sup>92</sup> Since the Russian-language term *perestroika* refers to restructuring, while *glasnost* refers to political openness, it may well be the latter to which the comment should have referred.

<sup>93</sup> U.N. doc. A/45/564 (1990), p. 17.

<sup>94</sup> *Ibid.*

'participation' has at last been given some more tangible and significant content and has become increasingly, and perhaps more inextricably, linked to respect for the full range of human rights. If that is the case, this new awareness has, at least in policy terms, given substance to a particularly important aspect of the original right to development agenda.

(4) *Shaping an Effective International Role in Promoting the Integration of Human Rights and Development Activities at the National Level*

One of the major legacies of the human rights policies promoted by President Carter in the late 1970s was a tendency to assume that the imposition of sanctions or other punitive measures was among the most effective means by which to encourage governments to respect human rights. That approach, which was often applied selectively, unevenly and unilaterally, inevitably gave rise to a backlash against any form of conditionality which sought to link development assistance or other concessions with respect for human rights. Unsurprisingly therefore, the Commission on Human Rights adopted a resolution in 1979 that expressed 'concern that qualitative and human rights conditions are being imposed in bilateral and multilateral trade policies with the intention of perpetuating the existing structure of world trade'.<sup>95</sup> While such fears were not entirely unfounded, it was not so much trade distortion as conditionality in general that developing countries wished to avoid.

But neither the Secretariat reports nor the Declaration on the Right to Development provided any satisfaction to those governments which wished to ignore or downplay the proposition that violations of human rights are incompatible with realization of the right to development. The Declaration squarely addressed both strands of the argument implicit in the negative position of some developing countries. The first of those strands was the assumption that the principles of respect for national sovereignty and non-interference in domestic affairs precluded the placing of any constraints upon the freedom of action of national authorities in their quest for development. The second, and related, strand was the argument that only 'massive and flagrant' violations of human rights could constitute a legitimate concern on the part of the international community in the context of its development policies and programmes. But the Declaration, in acknowledging the right and duty of states 'to formulate appropriate national development policies' (Article 2(3)), also prescribes a range of conditions that must be satisfied if a policy is to be deemed 'appropriate'. In particular, the Declaration requires that 'States should take steps to eliminate obstacles to development resulting from failure to observe' human rights. (Article 6(3)).

While these provisions are relatively non-specific, the Secretariat reports produced before the Declaration's adoption contained a number of very precise proposals for action by the international community to give effect to the right to development in this respect. The measures proposed included: (a) accepting

<sup>95</sup> C.H.R. Res. 5 (XXXV) (1979), para. 5.

respect for international human rights standards as a valid criterion for U.N. development activities; (b) the preparation of 'human rights impact statements' in connection with all major development projects; (c) the use of technical co-operation programmes specifically designed to promote respect for the right to development; and (d) the inclusion of respect for human rights as a factor in reports assessing developing progress.<sup>96</sup> Each of these proposals has, in the intervening period, been reflected in the policies adopted by various international development agencies.

(a) *Promoting Human Rights Through U.N. Development Cooperation Activities*

Thus, for example, the *H.D.R. 1991* proposes that each country should draw up a 'human development profile' and set realistic targets for the achievement of specified goals relating to each of the key priority areas of development.<sup>97</sup> Similarly U.N.I.C.E.F. has opted to use the comprehensive framework provided by the Convention on the Rights of the Child<sup>98</sup> as the basis for the preparation of each country's 'situation analysis', which is the document on the basis of which U.N.I.C.E.F. assistance programmes for the country concerned are determined.<sup>99</sup>

The I.L.O. has pioneered efforts to integrate respect for its own human rights standards (international labour standards) into its technical co-operation activities. The conclusions of a major internal review of these efforts, undertaken in 1985, are of particular utility for those seeking to identify future directions for right to development policies with the U.N. The review concluded that while much had been achieved, the situation was 'far from being as satisfactory as one might wish'.<sup>100</sup> It noted that human rights standards can, and should, be taken into account in many different ways within a technical co-operation programme. These ways include: in the formulation of objectives and the general guidelines given to the individual officials and experts involved; in the briefing of I.L.O.'s partners in the financing and administration of technical co-operation programmes; in briefing the I.L.O.'s partners in the countries receiving technical assistance; in training headquarters and field office staff; in procedures for preparing project documents and project execution and evaluation papers; and in internal networks of information on standard-setting and technical co-operation activities.<sup>101</sup> A wide range of specific recommendations was made in respect to

<sup>96</sup> U.N. doc. E/CN.4/1488 (1981), paras 185-91.

<sup>97</sup> *Supra* n. 5, 77.

<sup>98</sup> G.A. Res. 44/25 (1989).

<sup>99</sup> U.N.I.C.E.F. Executive Board Decision 1991/9. While U.N.I.C.E.F. has never indicated that it would withdraw its assistance in response to violations of human rights in the country concerned, sentiments along these lines have been expressed by some members of U.N.I.C.E.F.'s Executive Board. See *United Nations Children's Fund, Report of the Executive Board (22 April-3 May 1991)*, U.N. doc. E/1991/3, para. 28, which reads

[I]n countries where the Governments had been widely criticized for failing to respect the rights and dignity of their citizens . . . UNICEF should . . . exercise considerable care regarding the channels through which its assistance was delivered in order to ensure that this assistance reached the people for whom it was intended. It was also stressed that programme expenditure might have to be less ambitious in the absence of a suitable government infrastructure.

<sup>100</sup> *Supra* n. 48, 110.

<sup>101</sup> *Ibid.* 112-3.



each of these activities.<sup>102</sup> While the details would take us far beyond the scope of the present article, the principles underlying the analysis are entirely consistent with the import of the right to development. But the fact that, apart from U.N.I.C.E.F., the I.L.O. is virtually alone among the major U.N. agencies in seeking to achieve these objectives means that much concerted work remains to be done to encourage an appropriately integrated approach to human rights and development by the other agencies.

(b) *Taking Human Rights Into Account in Assessing Development Progress: The 'Human Freedom Index'*

The last of the specific proposals put forward by the Secretariat in 1981 was that human rights performance should be included as a factor in reports assessing development progress. This recommendation has been adopted unequivocally in the framework put forward in the *H.D.R. 1991*. The *H.D.R. 1990* had broken new ground by constructing a Human Development Index<sup>103</sup> for measuring progress in a less economic fashion than other indicators such as Gross National Product *per capita*. But the 1990 Report specifically acknowledged that since '[h]uman development is incomplete without human freedom', the Index needed to be expanded in the future. The aspects of human freedom identified for possible future reflection in the Index were: 'free elections, multiparty political systems, uncensored press, adherence to the rule of law, guarantees of free speech and so on'.<sup>104</sup>

The Report noted the absence of any such available indicators and called for 'considerable empirical work' to be undertaken 'to quantify various indicators of human freedom and to explore the link between human freedom and human development'.<sup>105</sup> In doing so, U.N.D.P. was suggesting that the technical reasons which had often been cited in the past by development economists as deterrents to the preparation of such indicators<sup>106</sup> could be overcome. It was also implicitly rejecting the strongly defended approach of Amnesty International that cross-country comparisons of human rights performance were neither feasible nor desirable and were open to abuse and manipulation.<sup>107</sup> While the issue has

<sup>102</sup> *Ibid.* 1215-28.

<sup>103</sup> The Human Development Index is a composite figure reflecting life expectancy, adult literacy rates and 'purchasing power to buy commodities for satisfying basic needs' *supra* n. 34, 13. The methodology used for calculating the index is complex and is explained in detail in the Report *ibid.* 104-13.

<sup>104</sup> *Ibid.* 16.

<sup>105</sup> *Ibid.*

<sup>106</sup> *E.g.* International Labour Organisation, *The Basic Needs Approach to Development: Some Issues Regarding Concepts and Methodology* (1977). In debating whether human rights concerns could and should be included in an operationally useful concept of basic human needs, the report identifies a number of negative factors: (a) the concept of basic material needs would thereby be rendered 'vague, elastic and even more arbitrary'; (b) it is 'virtually impossible to reach a consensus on ethical and moral absolutes' since interpretations of, and the weight attached to, fundamental rights differs from one individual to another; (c) 'ethical absolutes like "freedom" [should not be] treated in the same way as a commodity, thereby giving the impression that it is something to be dispensed with at the discretion of a government'. The authors' conclusion is that while human rights issues should not be included in the actual basic needs matrix, their importance should be emphasized in a prefatory note outlining the 'underpinnings' of a basic needs strategy: Ghai, D. P. and Alifthan, T., 'On the Principles of Quantifying and Satisfying Basic Needs', *ibid.* 19, 22-4.

<sup>107</sup> Amnesty International, *Amnesty International Report 1984* (1984) 4.

been addressed by academic human rights specialists, it is safe to say that views have varied considerably and no consensus has emerged.<sup>108</sup>

The 1991 Report made several changes to the methodology used for calculating the Human Development Index but by far the most important innovation was the addition of a Human Freedom Index. Given the difficulties encountered and the objections raised in connection with previous attempts, U.N.D.P.'s 'solution' was eagerly awaited. But, while acknowledging the 'urgent need for more systematic work' on the issue of data availability, the concept of human freedom and the methods for measuring its enjoyment,<sup>109</sup> the Report sought to avoid the truly difficult decisions by simply basing itself upon a pre-existing, privately-authored, and clearly out-dated, evaluation of countries' comparative performances in human rights matters. The methodology and ratings adopted by Charles Humana in the *World Human Rights Guide*, first published in 1983 and revised in 1985, were thus adopted almost in their entirety. Humana's approach purports to be based upon the principal rights enshrined in the Universal Declaration of Human Rights and the International Covenants on Human Rights, from which he distilled 40 'distinct criteria for judging freedom. These include freedom of movement, the rights of assembly and free speech, the rights to ethnic and gender equality, the rule of law, and other democratic freedoms.'<sup>110</sup>

Perhaps inevitably, the reliance upon the Humana approach (which had already been the subject of criticism by academics and activists),<sup>111</sup> combined with the fact that specific aggregate performance ratings were listed for each of 88 countries, provoked considerable criticism at the U.N.D.P.'s annual Governing Council session in June 1991. The Group of 77 (developing countries) voiced several objections, of both a general and a specific nature. They included: (a) '[f]reedom is a value laden concept that finds expression in different shapes and forms from society to society'; (b) Humana's work is an emanation of Western culture which is 'seen by many in recent human history as linked to the oppression and exploitation of a vast part of our world'; the inclusion as one of the criteria of 'the right to homosexuality between consenting adults' (referred to by the G77 representative as 'a certain conduct') is of very questionable validity; (d) the U.N. human rights instruments themselves should have been 'the central resource' for developing such an index; and (e) such issues should, in any event, be dealt with not by U.N.D.P. but by the Commission on Human Rights.<sup>112</sup>

The conservative U.S. think-tank, the Heritage Foundation, was also critical

<sup>108</sup> E.g. Claude, R. P. and Jabine, T. (eds), *Human Rights and Statistics: Setting the Record Straight* (1991); Cingranelli, D. (ed.), *Human Rights: Theory and Measurement* (1988); and 'Symposium: Statistical Issues in the Field of Human Rights' (1986) 8 *Human Rights Quarterly* 551.

<sup>109</sup> *Supra* n. 5, 98.

<sup>110</sup> *Ibid.* 18.

<sup>111</sup> E.g. Goldstein, R. 'The Limitations of Using Quantitative Data in Studying Human Rights Abuses' in Jabine and Claude (eds), *op. cit.* n. 108. They state that,

[I]n the absence of any theoretical justification for creating formulas which equate one type of repression in terms of another, it is difficult to understand how Humana has now concluded that being subjected to indefinite detention without charge is three times worse than reading censored newspapers but no worse than being subjected to state torture.

(Quote taken from manuscript version).

<sup>112</sup> 'Statement by H. E. Dr Kofi Awoonor, Ambassador and Permanent Representative of Ghana and Chairman of the Group of 77 in the general debate of the U.N.D.P. Governing Council, 11th June 1991' (hereafter 'G77 Statement'), 2-3.

to two aspects of the report, although it warmly welcomed its general approach. Its problems were with the categorization of capital punishment as a violation of human rights,<sup>113</sup> and with the Index's failure to 'explicitly measure economic freedom'. In the Foundation's view, countries should also be evaluated on the basis of 'whether they protect the right freely to enter commercial contracts, the right of property against state interests and the freedom from seizure of property without a compelling government need, and whether they impose confiscatory taxes'.<sup>114</sup> In response to these criticisms the U.N.D.P. Administrator indicated that the Human Freedom Index would be reviewed prior to the publication of *H.D.R. 1992*, that an attempt might be made to identify a more limited range of universally agreed political indicators and that 'some basic economic and social freedoms' might also be considered.<sup>115</sup>

For present purposes two conclusions may be drawn from this episode. The first is that the general principle of taking human rights performance into account in assessing development progress has been put into practice for the first time by an international development agency. This is a development that is to be warmly welcomed although it must be acknowledged that U.N.D.P. was particularly ill-advised to base itself solely upon an index prepared for an entirely different purpose and which was open to serious criticism on several grounds.<sup>116</sup> Second, the very notion of the Human Freedom Index, and the debates over it in the U.N.D.P. Governing Council, identified a variety of important issues which warrant further careful consideration within the U.N. system. While the identification of an appropriate and acceptable methodology will be difficult, it is by no means unfeasible. Ultimately, it is likely that any index will need to reflect information contained in a diverse range of sources, beginning with all available information from the U.N.'s political and treaty-based human rights organs and including also reports by all of the major N.G.O.s such as Amnesty International, Article 19, the Lawyers Committee for Human Rights, Human Rights Watch and the International Commission of Jurists. While a Western bias will inevitably be attributed to N.G.O. reports, such shortcomings are limited and can be significantly mitigated by the inclusion of a variety of sources, with all of the divergent approaches inevitably reflected therein. While it may be regrettable that the Commission on Human Rights has never turned its attention to such matters, the fact that the initiative has been seized by U.N.D.P. could potentially facilitate the achievement of better results, provided that the latter is prepared to invest the resources and political will required. The human rights organs, by contrast, seem unlikely to engage in any sustained focus on the challenges thus identified.

<sup>113</sup> Heritage Foundation, 'U.N. Report Links World Poverty to Lack of Freedom' (1991) 164 *Backgrounder* 2: '[P]utting criminals to death for heinous crimes like murder in no way detracts from the political liberties enjoyed by all citizens.'

<sup>114</sup> *Ibid.*

<sup>115</sup> 'Concluding statement on Agenda Item 2 by Mr William H. Draper III, Administrator of U.N.D.P., to the Governing Council' 14 June 1991, 5-6.

<sup>116</sup> *Supra* n. 111.

(c) *Conditioning Development Assistance on Human Rights*

It is the principle of conditionality, albeit usually presented under another name or in a different guise, that has gained the most striking degree of acceptance in the years since the right to development debate first began. While the direct conditioning of aid on human rights performance, and particularly the overt withdrawal of aid in response to specific incidents, continues to be the object of harsh criticism by the leaders of some developing countries,<sup>117</sup> a somewhat more sophisticated and nuanced linkage has gained considerable *de facto* acceptance. Indeed, it is now generally accepted that the gesture of rather suddenly and ostentatiously cutting off all but humanitarian aid, which came to be widely practised at the bilateral level in the 1970s and early 1980s, will frequently be both less appropriate and less effective than a more nuanced approach which relies primarily on focused representations, multilateral negotiations and reliance upon internationally accepted standards.<sup>118</sup>

Significantly, endorsement of the latter approach has come not only from the North but also from some (but by no means all) of the countries and representatives of the South as well. Among the former, reference may be made to the Economic Declaration adopted by the seven major industrial democracies at their London Summit in July 1991, which took note of the fact that many developing countries have introduced radical policy reforms and are adopting the following principles:

- (a) respect for human rights and for the law, which encourages individuals to contribute to development;
- (b) democratic pluralism and open systems of administration, accountable to the public; [and]
- (c) sound, market-based economic policies to sustain development and bring people out of poverty.<sup>119</sup>

The Declaration went on to relate the pursuit of these policies to the prospects of assistance by noting that '[g]ood governance not only promotes development at home, but helps to attract external finance and investment from all sources'.<sup>120</sup> The Development Assistance Committee of the O.E.C.D. has been even more forthright. In its 1990 Report it observed that aid 'allocation decisions henceforth will be more influenced than in the past by a country's record on human rights and democratic practice'.<sup>121</sup> The Committee had clearly been encouraged to make such a statement by the approach taken in the Report of the South Commission which was chaired by Julius Nyerere of Tanzania and consisted of 28 eminent figures from developing countries. The Report concluded by conceding that:

<sup>117</sup> See, e.g., a report on the recent Commonwealth Heads of Government Meeting: Shanahan, D., 'Attempt to Tie Aid to Human Rights Stalls', *The Australian* 16 Oct. 1991. The Report stated that 'any suggestions of tying Commonwealth aid to human rights have been bluntly and publicly rejected by the leaders of Malaysia and the host nation Zimbabwe'.

<sup>118</sup> For a review of some bilateral approaches see 'Developing Human Resources for Development: Report of the Secretary-General', U.N. doc. A/46/461 (1991), 5-9.

<sup>119</sup> 'Economic Declaration: Building World Partnership'. Text reproduced in U.S. Information Services for East Asia and the Pacific, Wireless File, 17 July 1991, 27; document provided by U.S. Embassy, Canberra.

<sup>120</sup> *Ibid.*

<sup>121</sup> *Supra* n. 38, 12.

the South's plea for justice cannot be dissociated from its pursuit of these goals within its own societies. Commitment to democratic values, respect for fundamental rights — particularly the right to dissent — fair treatment for minorities, concern for the poor and underprivileged, probity in public life, willingness to settle disputes without recourse to war — all these cannot but influence world opinion and increase the South's chances of securing a new world order.<sup>122</sup>

Building upon that work, representatives of that Commission, as well as of the Brandt,<sup>123</sup> Palme<sup>124</sup> and Brundtland<sup>125</sup> Commissions, gathered together in April 1991 to issue yet another global communiqué on Global Security and Governance. The group stated that '[d]emocracy and human rights are essential to the prospects of development'.<sup>126</sup> In particular, it singled out the following 'requisites' as being essential in order to sustain development: 'respect for human rights, constitutional government and the rule of law, transparency in the wielding of power, and accountability for those who exercise power'.<sup>127</sup>

Thus a central tenet of the right to development — recognition of the intrinsic link between development and human rights — has gone from being highly controversial in the early 1980s to being widely accepted, at least in principle, a decade later. While welcoming the recognition of this link, it must nevertheless be observed that it carries with it significant risks of abuse. These risks include: the possibility that concern for human rights will be used to justify measures that are, in fact, motivated very largely by other concerns; the prevalence of double standards from one situation to another; and the imposition of more demanding standards upon developing countries than are observed by some of the donors themselves. The latter point is especially important and it is incumbent upon all concerned to ensure that the standards to which developed countries are held are at least as high, and preferably higher.

#### (5) *Relating Human Rights to the Policies and Programmes of the International Financial Institutions*

In purporting to dismiss the notion that the right to development could be relevant to the activities of the International Financial Institutions (hereafter 'I.F.I.s'), and in particular the World Bank and the International Monetary Fund, the U.S. Representative to the Commission on Human Rights in 1991 asked rhetorically: 'Would such a right oblige the World Bank . . . to lend money in order to build a tunnel, for example?' His immediate response was that '[t]hat seemed absurd, yet it was precisely what the report [on the Global Consultation on the Right to Development] implied . . .'.<sup>128</sup> Curiously, this portrayal of the relevance of the right to development to the work of the I.F.I.s reveals either a

<sup>122</sup> *Supra* n. 64, 287.

<sup>123</sup> *Supra* n. 62.

<sup>124</sup> *Common Security: A Programme for Disarmament*, The Report of the Independent Commission on Disarmament and Security Issues Under the Chairmanship of Olof Palme (1982).

<sup>125</sup> *Our Common Future*, Report of the World Commission on Environment and Development (1987) (hereafter 'Brundtland Commission').

<sup>126</sup> 'Common Responsibility in the 1990's: The Stockholm Initiative on Global Security and Governance', 22 April 1991, 27.

<sup>127</sup> *Ibid.*

<sup>128</sup> E/CN.4/1991/SR.19, para. 10 (Mr Abram, U.S.A.).

wilful misrepresentation of the proposals that have been put forward<sup>129</sup> or an extraordinary lack of awareness of the debates that have taken place within and around those institutions for well over a decade.

The Declaration on the Right to Development provides only that 'States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development' (Article 4(1)). Although the Declaration did not address the role of the I.F.I.s specifically, much of the work that has been done on the right to development has reflected the fact that the World Bank is now the single most important of all of the international development agencies<sup>130</sup> and that the I.M.F. was a central actor in all development debates in the 1980s because of the consequences of the international debt crisis.<sup>131</sup>

It is beyond the scope of the present Article to review the changes that have taken place in the policies of the I.F.I.s in recent years, which have in any event been comprehensively described in a recent United Nations study.<sup>132</sup> Suffice it to note that there has been a very considerable literature devoted to the desirability of the I.F.I.s taking much greater account of the impact of their policies on the enjoyment of economic and social rights by the poorest sectors in society and factoring selected civil and political rights issues into their analyses.<sup>133</sup> As noted above,<sup>134</sup> some of these issues are currently under review within the World Bank in the context of exploring the relationship between good 'governance' and the capacity and inclination to develop.

But while the I.F.I.s have adopted some limited policy shifts in these respects, it would be unwarranted to suggest that these could be considered to constitute a satisfactory response to the proposals put forward in the context of debates over the right to development. For example, the World Bank's latest *World Development Report* (not to be confused with the *H.D.R.*), while conceding that the favourable development consequences often attributed in the 1970s and 1980s to benevolent-authoritarian regimes may have been over-stated,<sup>135</sup> stops well short of an unequivocal endorsement of democracy (as being conducive to development). It also manifests a continuing aversion to the use of the term human

<sup>129</sup> See Cornia, G. A., Jolly, R. and Stewart, F., *Adjustment With a Human Face: Protecting the Vulnerable and Promoting Growth* (1987); and 'Realization of Economic, Social and Cultural Rights: Second Progress Report by Mr Danilo Turk, Special Rapporteur', U.N. doc. E/CN.4/Sub.2/1991/17, paras 49-228.

<sup>130</sup> For a detailed analysis to this effect see generally *The United Nations in Development, op. cit.* n. 38.

<sup>131</sup> E.g. U.N. doc. E/CN.4/1488 (1981), para. 189; U.N. doc. E/CN.4/1991/9/Rev.1, paras 165-7.

<sup>132</sup> U.N. doc. E/CN.4/Sub.2/1991/17, paras 49-228.

<sup>133</sup> Cornia, G. A. and Sipos, S., *Children and Transition to the Market Economy: Safety Nets and Social Policies in Central and Eastern Europe* (1991). It is also relevant to note that the Articles of Agreement of the European Bank for Reconstruction and Development, which began operations in April 1991, formally commit it to work with those countries of Eastern and Central Europe which are 'committed to and applying the principles of multiparty democracy, pluralism and market economics.' (1990) 29 *International Legal Materials* 1077, Article 1. It has been reported that, in order to make such a determination, the standards under the European Convention on Human Rights 'are being considered by the Bank as a benchmark': Sands, P., 'Current Developments', (1991) 40 *International and Comparative Law Quarterly* 717, 733.

<sup>134</sup> See text at *supra* nn. 81-86.

<sup>135</sup> World Bank, *World Development Report 1991*, 132-4.

rights, thus underlining a major difference between it and the policy analysis contained in the *H.D.R. 1991*.

There is an informative contrast to be drawn in this regard between the World Bank's relatively recent conversion to the cause of environmental protection and its continuing refusal to address human right issues in any sophisticated or sustained fashion. Reluctance to respond effectively to all such 'non-economic' or unquantifiable concerns has long been a characteristic of the World Bank and its staff.<sup>136</sup> Thus, when the Brundtland Commission on Environment and Development urged that the I.F.I.s in general, and the World Bank in particular, should become much more sensitive to environmental concerns, it presciently observed that a formal policy commitment to the environment by the World Bank was worth little unless it was also accompanied by 'the transformation of its internal structure and processes so as to ensure its capacity to carry' out the policy.<sup>137</sup> Subsequent developments, as a result of which basic institutional changes have been made, have demonstrated the wisdom of this insistence. Recent World Bank statements of environmental policy have even emphasized the importance of ascertaining the 'international environmental law obligations of a particular borrower'<sup>138</sup> and 'reviewing details of particular treaty obligations and their implications for proposed projects'<sup>139</sup> If a comparable approach were to be adopted with respect to human rights obligations a dramatic transformation of the World Bank's currently negative position would be achieved. The Commission on Human Rights, by commissioning a detailed technical study to explain how this might be effected in practice, could play the role of catalyst in much the same way as the Brundtland Commission did in relation to the environment.

(6) *Increasing International Cooperation in Respect to Aid Flows and Other Technological and Resource Transfers from North to South*

This was one of the major themes of the demands for a New International Economic Order that were put forward by developing countries in the early 1970s and that remained high on the international agenda until the early 1980s. Its inclusion on the right to development agenda was clearly an important motivating factor in persuading some developing countries to support the right. As a result, it was accorded some prominence in the Declaration on the Right to Development, although nowhere near as much as its principal proponents would have wished.<sup>140</sup> Article 3(3) indicates that 'States should realize their rights and fulfill their duties in such a manner as to promote a new international economic order . . .'. Article 4(2) provides that, '[a]s a complement to the efforts of developing countries, effective international co-operation is essential in provid-

<sup>136</sup> For a detailed study to this effect see Ascher, W., 'New Development Approaches and the Adaptability of International Agencies: the Case of the World Bank', (1983) 37 *International Organizations* 415.

<sup>137</sup> Brundtland Commission, *op. cit.* n. 125, para. 103.

<sup>138</sup> World Bank, *Environmental Assessment Sourcebook* (1991) Vol. 1, para. 6: Policies, Procedures and Cross-Sectoral Issues, Technical Paper No. 139.

<sup>139</sup> *Ibid.* para. 10.

<sup>140</sup> *Supra* n. 8.

ing these countries with appropriate means and facilities to foster their comprehensive development’.

But efforts to impose a formal obligation upon the North to transfer resources to the South have failed dismally. In this regard, it would seem difficult to argue that the right to development, despite its aspiration to add a compelling moral dimension to arguments for increased aid, has succeeded even in changing the terms of the debate. The only glimmer of hope for movement in this general direction relates to the prospects of package deals, based on some form of *quid pro quo*, being negotiated. Thus, for example, the *H.D.R. 1991* proposes a ‘global compact’ according to which the countries of the North would strengthen their ‘commitment to improving the lives of all people’, while those in the South would draw up ‘national development compacts and . . . budgetary plans’ involving, *inter alia*, increased spending on social priorities.<sup>141</sup>

(7) *Promotion of the Principle that a ‘Peace Dividend’ Should Flow from Disarmament Activities*

The Declaration on the Right to Development is quite explicit in advocating moves towards ‘general and complete disarmament under effective international control’. The Declaration also urges that ‘the resources released by effective disarmament measures [be] used for comprehensive development, in particular that of the developing countries’. (Article 7). Although the expression of such views had not previously been commonly undertaken by the U.N.’s human rights organs, both principles have frequently been endorsed by the General Assembly in other contexts.<sup>142</sup> This was not sufficient, however, to prevent the argument being made that they were not issues that should have been addressed in the human rights context.

But, such resistance notwithstanding, the linkage between development, human rights and peace/disarmament issues is now gaining widespread international respectability. In its 1990 Report the O.E.C.D.’s Development Assistance Committee lamented that ‘[i]t is part of today’s conventional wisdom that the end of the Cold War does not mean there will be a peace dividend available for development’. But, the report asked, ‘is this a tenable assessment?’<sup>143</sup> Its suggested answer was no.

Subsequently, both the I.M.F. and the *H.D.R.* have made important statements on the matter. The I.M.F., in a study of the costs of military spending, concluded that ‘military outlays above the basic threshold of security can be designated as “unproductive expenditure”’ and noted that military spending was very often undertaken at the direct expense of action in response to more pressing development needs.<sup>144</sup> In a thinly veiled reference to conditionality the report

<sup>141</sup> *Supra* n. 5, 84.

<sup>142</sup> *E.g.* the Conclusions adopted by the Twelfth Special Session of the General Assembly in June 1982, U.N. doc. A/S-12/32 (1982), 22-4.

<sup>143</sup> *Supra* n. 88, 13.

<sup>144</sup> ‘I.M.F. Study Examines Costs of Military Spending’, (1991) *I.M.F. Survey* 193, 205 (24 June 1991).



concluded that dialogue should be strengthened 'among donors to ensure productive use of aid in recipient countries'.<sup>145</sup> Similarly, it has been indicated in another I.M.F. forum that despite the constitutional inability of the I.F.I.s to take political criteria into account in lending there are a number of ways in which the linkage could legitimately be made. Thus, the I.F.I.s could play a role 'by determining the true level of military expenditures; incorporating these data into discussion with borrowing countries; facilitating donor coordination so that countries do not receive mixed signals; and reducing assistance if military expenditures interfere with projects or programs in these countries'.<sup>146</sup> The *H.D.R. 1991* was even more explicit. It argues that Third World peace processes must be encouraged much more actively and that '[i]f a government chooses to spend more on its army than on its people, it cannot be regarded as committed to human development, and this bias should certainly count against it in aid negotiations'.<sup>147</sup> This approach was specifically endorsed by the Group of 7 major industrialized countries at their July 1991 London Summit. The Group also commended 'recent decisions by several donor countries to take account of military expenditure [in relation to aid] where it is disproportionate' and urged 'all other donor countries to take similar action . . .'.<sup>148</sup>

Without going into this issue in any more depth, it is clear that, in this area, the relevant principles included in the Declaration on the Right to Development, and spelled out in much greater detail in the relevant Secretariat reports,<sup>149</sup> have now begun to gain a degree of acceptance among international development policy-makers. It should also be noted, however, that there continues to be some resistance to this development. Thus at the 1991 Annual Meeting of the I.M.F. and World Bank the Group of 24 (representing developing countries) arguments based on appropriate institutional competences were used to suggest that the Fund and the Bank should have no involvement in such matters.<sup>150</sup>

Nevertheless, the raising of this issue provides a useful example of the opportunity provided to the Commission by the right to development debate to focus on broad general issues of major importance which would be most unlikely to be addressed productively in the context of debates over specific violations. In this manner, some of the structural causes underlying human rights violations can be addressed.<sup>151</sup>

<sup>145</sup> *Ibid.*

<sup>146</sup> 'Experts Discuss Implications of Reducing Military Expenditure', *I.M.F. Survey*, 30 Sept. 1991, 282, 283.

<sup>147</sup> *Supra* n. 5, 83.

<sup>148</sup> *Supra* n. 104, 24.

<sup>149</sup> See the section entitled 'The impact of militarization upon realization of the right to development at the national level' in U.N. doc. E/CN.4/1488 (1981), paras 63-93.

<sup>150</sup> 'Developing Countries Reject Call to Reduce Arms', *Canberra Times* 13 Oct. 1991.

<sup>151</sup> The reports of the Secretary-General placed considerable emphasis on this aspect. See the discussion of structural impediments to realization of the right to development in U.N. doc. E/CN.4/1488 (1981), paras 1-18.

G. CONCLUSIONS

(1) *The Enduring Relevance of the Right to Development Agenda in the 1990s*

The foregoing analysis has demonstrated that, apart from the controversial theoretical issues raised, many of the specific practical matters addressed by the right to development have actually gained significant and increasing acceptance within the framework of international development policy in the post-Cold War era. At this level, the efforts begun in the early 1970s can be said to have borne fruit to an extent that their proponents could hardly have dreamt possible. Human rights considerations have begun to be integrated far more systematically into development policies and programmes. The interdependence of the two sets of rights has begun to receive more than lip service. The World Bank and the International Monetary Fund have been forced into internal discussions, at the very least, of the means by which social safety nets can protect economic rights and political rights can be promoted. And consideration of the anti-development consequences of militarization is no longer the exclusive domain of those derisively thought of as 'peaceniks'. Rather, all of these issues have entered the mainstream of the international development policy dialogue to a degree that seemed inconceivable only a decade ago.

This is not to say that the Commission on Human Rights played *the* central, or perhaps even *a* marginal, role in achieving that success. That is an issue to which I return below.

(2) *The Need for In-Depth Research and Informed Debate*

Despite this success, it is clear that an enormous amount of work remains to be done in order to extend and capitalize upon the achievements to date. In the first place, the shifts in policy perceptions noted above are by no means universally accepted by all international, let alone national, institutions in the area. Moreover, the translation of well-meaning policy goals into operational programmes is often very difficult.

The real challenge for the remainder of the 1990s is going to be to deepen the understanding and appreciation of the changes in policy and practice which will be required to give effect to the principles reflected in the right to development. The analysis above has indicated not only the extent to which those principles have already received policy endorsement, especially in the *H.D.R. 1991* and other recent initiatives, but also (at least by implication) the extent to which much more remains to be done. It may suffice at this point to take two such examples.

The first relates to the discussions within and around the international financial institutions. There would seem to be enormous scope for devising policy approaches which would serve to ensure a much more effective promotion of human rights concerns by these institutions while at the same time remaining within the bounds of what officials of those institutions might deem politically

and technically feasible. Much of the past debate on this issue has been sterile and unproductive because of an undue emphasis by one group on sanctions and by another group on formalistic and unhelpful interpretations of the Articles of Agreement. Recent studies have demonstrated the enormous potential that exists to break through yesterday's tired wisdom and begin to use the enormous influence of the I.F.I.s as a force for progress in terms of both human rights and development objectives. But that will not happen in the absence of a systematic examination of the ways in which human rights concerns can be factored into the institutions' policy-making and programme-execution functions. The World Bank has already demonstrated its capacity to undertake such an examination, and has set some very important precedents in relation to the environment. The time has long since arrived for a comparable change of attitude towards human rights. But rather than waiting for the World Bank to take the initiative (a somewhat unlikely prospect) the Commission on Human Rights should show the way by preparing an expert study on the options that are available and the possible methodologies that might be adopted.

The second example relates to participation. The analysis above indicated that the 'participation' component of the right to development agenda has been 'taken on board' to a very significant extent by a wide range of development agencies, especially under the heading of 'governance'. It is clear, however, that this represents only the first, albeit in some ways the most important, step towards implementation in this regard. There is much work that remains to be done in the human rights context to give more precise content to many of the norms that are being invoked, sometimes with little regard to their substance. One commentator has suggested that a 'major substantive achievement of the [U.N.'s December 1990] Global Constitution [on the right to development] was refining the concept of "participation" in human rights law.'<sup>152</sup> In support of that proposition he cited the following passage from the report of the Consultation:

Fundamental to democratic participation is the right of individuals, groups and people to make decisions collectively and to choose their own representative organizations, and to have freedom of democratic action, free from interference.<sup>153</sup>

While such a statement may constitute a useful affirmation of a general principle, at an operational level it raises many more questions than it answers. The choice of who is entitled to take a given decision (the individual, a narrowly defined group, or a broad-based collectivity), the means by which such 'collective' decisions are to be arrived at, the criteria for determining whether an organization is representative, the extent to which protection from interference is sufficient to facilitate 'democratic action', and the circumstances under which collective decision-making can trump individual or small group preferences are all questions left unresolved by such vague and open-ended formulation. While none of them is susceptible of ready answers, they all raise issues that require further analysis within a human rights framework and that will rapidly begin to dominate the international agenda once the first taste of freedom in many

<sup>152</sup> Barsh, R., *supra* n. 8, 329.

<sup>153</sup> U.N. doc. E/CN.4/1991/9/Rev.1, para. 147.

countries begins to turn sour.<sup>154</sup> In addition, there is a pressing need for the work already being done elsewhere within the U.N. system on topics such as free elections, popular participation, entrepreneurship, *etc.* to be integrated much more systematically into any right to development programme which aspires to practical relevance.

Another example relates to the ubiquitous technical co-operation programmes undertaken by a wide range of U.N. agencies in developing countries. We have seen that the I.L.O. and U.N.I.C.E.F. have begun to tackle the challenge of giving operational significance to relevant human rights standards. In the case of each of them, it would be readily conceded by the officials involved that much remains to be done. But in the case of the vast majority of the other agencies the work has not even begun. It will be for the human rights specialists to take the initiative and reach out to those agencies in a bid to convince them that such an effort is not only desirable, but is feasible and potentially acceptable to their clients. Incantations by the policy-making organs such as the Commission, unless followed up with sophisticated and tailored courses for officials at various levels, will not achieve much.

A final example relates to the challenge that the U.N.D.P. Human Freedom Index seeks to address. The agency is to be admired for its preparedness to contemplate putting into practice a principle that others have long purported to accept but have been unwilling to act upon for fear of losing popularity among governments. By the same token, however, it is clearly unacceptable for subjective judgments of a single individual to form the basis for U.N.D.P.'s formal human rights evaluations. There is thus considerable room for constructive and creative thinking about how best such an index might be constructed, drawing in part upon the standards, reports and expertise available within the U.N. on human rights matters. Trial and error will almost certainly be the order of the day in the first phases, but it is time for the U.N. to abandon its inaction on the grounds that an imperfect result, or one that is not acceptable to every government, might result.

(3) *The Allocation of Institutional Responsibility for Pursuing Implementation of the Right to Development*

(a) *Passing the Buck*

It is almost inevitably the case in international diplomacy, as elsewhere, that when it proves impossible to sustain objections to a particular policy those who remain opposed to it seek to change the terms or the *locus* of the debate itself. Such diversionary tactics are often transparent and able to be readily overcome. But that is not always the case, as the debate over the right to development attests. The diversionary tactic used in this instance has been to suggest that while the principle of an integrated approach to human rights and development

<sup>154</sup> For a particularly challenging analysis of the types of issues that the international and national communities are going to confront increasingly in this context see Offe, C. and Preuss, U. K., 'Democratic Institutions and Moral Resources', in Held, D. (ed.), *Political Theory Today* (1991) 143.

policy is acceptable, the suggested choice of forum in which to pursue the debate is inappropriate.

Thus, in the setting of the Commission on Human Rights, proponents of the right to development have always argued that human rights issues need to be seen and addressed in their broader context if significant progress is to be made. But their arguments have long been countered by those who contend that development issues should not be dealt with at all by the Commission. This objection has been put by a number of industrialized countries, but its most forceful proponent has been the United States which expressed its long-held view once again at the Commission's 1991 session.<sup>155</sup>

Ironically, the representative of the Group of 77 developing countries in the 1991 U.N.D.P. Governing Council discussion took virtually the opposite position in the debate over the human rights references contained in the *H.D.R. 1991*. He indicated that the 'considered view' of the Group was that human rights matters should be dealt with by the Commission on Human Rights and not by U.N.D.P. He observed that when the latter 'elects to make this subject one of its principal concerns, it runs the risk of opening itself to serious questions as to whether it is not veering away from the mandate given it by the United Nations.' He warned that '[i]ts neutrality, one of the cherished characteristics of the U.N.D.P. would be thereby compromised'. By way of clarification he added that while 'the Group of 77 . . . uphold [sic] and cherish human rights, . . . we do not think that [they] should become a central concern of the U.N.D.P.'<sup>156</sup>

It goes without saying, as a postscript to this exercise in passing the buck, that the industrialized countries have not sought to introduce human rights discussions into the heart of the work of the development agencies, and the Group of 77 countries have not sought to pursue in the Commission on Human Rights the type of issues that they argue belong exclusively there. But in general, neither position would appear to be justifiable unless the United Nations were to adopt an approach of seeking to quarantine different issues within the relevant organizations, thereby failing to learn the lessons that should have emerged from many decades of artificial and unproductive compartmentalization. The suggestion that the consideration of human rights issues in the context of development policy debates amounts to the abdication of a position of 'neutrality' amounts to a complete negation of the principles underlying the right to development. Similarly, to suggest that development matters have no place on the Commission's agenda is to seek to isolate human rights discussions from the real world context in which they occur. It is moreover an attempt to ensure that human rights will only be promoted by forums and agencies which are devoid of all economic influence and clout.

### (b) *Assessing the Commission's Performance*

As noted in the introduction to this article, views differ considerably as to the value or worth of the Commission on Human Rights' contribution to the human

<sup>155</sup> U.N. doc. E/CN.4/1991/SR.19, paras 9-10.

<sup>156</sup> *Supra* n. 112, 3.

rights and development debate. It would seem justified to conclude that the Commission has not so far proven to be an effective forum in which to pursue many of the issues raised under the rubric of the right to development. This is so despite the fact that the impetus for the debate derived initially from the conviction that the other potential forums, including the major development agencies, would never address the human rights dimensions of their work of their own volition. Ironically, recent experience demonstrates that this wisdom has, to some extent at least, been stood on its head. While the Commission on Human Rights has been bogged down in abstract, sterile and unproductive debates, many of the development agencies have been making major strides in the direction of integrating human rights and development. Curiously, the Commission itself has taken little notice of these developments and, as a result, no strategy has been proposed, let alone adopted, for moving the right to development debate into the 1990s. Instead it remains in something of a time-warp: too often unable to move beyond the perceptions, ideological battles and preferred solutions of the early 1970s.

By the same token, it would be extremely difficult to conclude that the Commission has not made some important contributions to the human rights and development debate as it has unfolded over the past twenty years. From the mid-1970s until the late 1980s there was very little sustained consideration of human rights issues in any of the principal development forums. By contrast, the Commission's debates, however unsatisfactory, succeeded in keeping the issues constantly on the international agenda, provided a focal point for N.G.O.s and other interested parties and, from time to time, forced one agency or another to address the relationship between the two sets of concerns. In brief, the Commission's role in the recent resurgence of interest in the nexus between human rights and development has been neither indispensable nor negligible. In designing an agenda for the future it should be inconceivable to suggest that the Commission's work has been completed or that such work can be better done elsewhere. The only reasonable approach is to pursue the integration of the objectives from both sides at the same time.

### *(c) Improving the Commission's Performance*

The question then is whether, and if so how, the Commission's performance can be improved. One vital ingredient which has generally been missing from the Commission's debate is information on current policy approaches being pursued by international development agencies and on the human rights-related problems being identified by development experts in other contexts. The need for such expert input into the debate is crucial, yet with the exception of the initial Secretariat reports of 1979 and 1981, the Commission has been fed a diet of unhelpful bureaucratic formalism as the intellectual basis on which its debates might proceed. There is therefore a clear and pressing need for regular surveys of current trends in development thinking and practice to be made available to the Commission. For such surveys to be useful they need to be tailored for the purpose for which they are to be used and to be prepared with a view to

facilitating the identification of constructive measures which the Commission might take.

It has been suggested that the appointment of a full-time development specialist to the U.N. Centre for Human Rights would be the best way of achieving such a result.<sup>157</sup> This may or may not be an effective approach. It certainly will not be until such time as the Commission is prepared to issue clear instructions to the Secretariat as to the need for it to obtain genuinely analytical materials as opposed to the often superficial, formalistic, and somewhat self-censored materials that it currently receives. It may well be that the preparation of technical input into the debate by an expert external consultant would offer a greater likelihood of the Commission being given the information it needs to embark upon a substantive and constructive debate in this area. Alternatively, if neither the Commission nor the Secretariat are prepared to take such measures to ensure a solid technical basis for policy debates, then non-governmental organizations will have to seek to fill the void. They are certainly not doing so at present.

The analysis in this article has suggested that there is a wide range of technically manageable, politically feasible and empirically useful areas in which the Commission could work in the future. It remains only to consider the desirability or otherwise of devoting significant time and resources to the task of monitoring respect by governments for the right to development.

For the past couple of years this issue has been actively debated, partly it seems for want of any other specific ideas as to how to move beyond the present impasse over the right to development. The most elaborate such proposal has been put forward in the report of the U.N.'s Global Consultation on the Right to Development as a Human Right, held in January 1990. It recommended appointment by the Secretary-General of 'a high level committee of independent experts', representing specific regions, to report annually on 'progress made in the implementation of the Declaration at the national as well as international levels . . .'.<sup>158</sup>

Although the creation of new expert committees would hardly seem to be a priority, given the continuing proliferation of human rights treaty supervisory bodies and the problems of overlapping and duplication this causes, the proposal has apparently achieved sufficient political support as to warrant careful examination.<sup>159</sup> In essence, the desirability or otherwise of setting up such a committee will depend very much on the type of functions that it might perform. The Report of the Global Consultation was quite specific in that regard and listed the following tasks:

- (1) — the formulation of criteria for the assessment of progress in the realization of the right to development;
- (2) — recommendations for a global strategy to achieve progress in the enjoyment of this right;

<sup>157</sup> Report on the 'Global Consultation on the Right to Development as a Human Right', U.N. doc. E/CN.4/1990/9/Rev.1, para. 191.

<sup>158</sup> U.N. doc. E/CN.4/1990/9/Rev.1, para. 194.

<sup>159</sup> Barsh, *supra* n. 8, 333-5.

- (3) — examination of reports and information regarding internal and external obstacles to its enjoyment;
- (4) — the identification of activities which may be incompatible with the right to development; and
- (5) — promoting wider knowledge and understanding of the right.<sup>160</sup>

One of the participants in the Global Consultation has noted that while the intent of these recommendations was not to establish yet another system for examining regular reports submitted by states, the committee 'could evolve into a kind of human rights "mega-committee", since the D.R.D. [Declaration on the Right to Development] incorporates all other human rights instruments'.<sup>161</sup>

But both the latter comments and the Global Consultation's list of proposed tasks to be accomplished by the 'mega-committee' rest on a fundamental misconception of the nature of the right to development. It is true that, in at least some respects, the concept of a right to development amounts to more than merely the sum of its parts. In particular, it has succeeded in bringing together a diverse range of concerns and emphasizing the need to address them in relation to one another, rather than in isolation. Moreover, as a slogan, the right to development has generated considerably more enthusiasm than similar talk about human rights and development seems likely to have achieved. But these advantages should not be permitted to conceal the fact that the right to development as a concept in itself cannot usefully be separated from the various component parts that make it up. In other words, in the vast majority of cases, those who use the phrase are doing so to refer not to any inherently holistic concept but rather to one or more of the specific concerns that have been identified earlier in this Article.<sup>152</sup> The validity of this assessment has consistently been borne out by virtually all of the serious efforts that have been undertaken to analyse the content of the right. These include the various in-depth reports on the subject by the Secretary-General, the reports of each session of the Working Group that drafted the Declaration and the content and structure of the Declaration itself. Thus for both analytical and policy purposes a focus on the right to development *per se*, without specific reference to each of its parts, is often misleading and is rarely ever going to be conducive to the achievement of concrete results.

This is perhaps best illustrated by examining the actual content of several of the suggested functions. The first is to formulate criteria for assessment of progress made in realizing the right. Yet this cannot possibly be done in the abstract. No simple, comprehensive criteria could do justice to the task. Any serious attempt to do so would inevitably concentrate on disaggregating the Declaration into its component parts and would then end up using virtually the same criteria as are already used in connection with civil and political rights and with economic, social and cultural rights. It is true that certain topics would need to be given particular emphasis and more attention would need to be paid to various inter-relationships among different rights. But these later implications

<sup>160</sup> U.N. doc. E/CN.4/1990/9/Rev.1, para. 195.

<sup>161</sup> Barsh, *supra* n. 8, 332.



would not fundamentally change the nature of the exercise already being performed elsewhere within the U.N. human rights system. The creation of a new mega-committee to perform many of the same tasks would simply add to the already major problems caused by the existence of too many different supervisory bodies.

Other functions are to recommend a 'global strategy' for the achievement of the right and to identify activities which are incompatible with the right. Once again, these proposed functions, if performed in relation to every one of the many component parts of the right, would yield an entirely unmanageable, inevitably duplicative and almost certainly unproductive list of likes and dislikes. By contrast, if one or more of the component parts were to be specified as the particular focus it might well be possible to devise a meaningful strategy.

One of the principal stumbling blocks to the adoption of this disaggregated approach to the right to development would seem to be a fear on the part of some of its proponents that the acceptance of any such disaggregation would be tantamount to conceding that the right to development is no more than an artificial packaging device. But that is to attach more importance to the means used than to the goals sought to be achieved. A constant focus on the right to development for its own sake is not a meaningful goal. What matters is the achievement of each of the specific goals identified by the right to development.

Seen in this light, can anything constructive then be achieved by setting up a committee of experts? Such a committee might be designed to undertake any of three different roles. The first is to provide a forum in which various interested governments and non-governmental organizations might discuss relevant issues. If the model is anything like that of the existing expert committees, however, it is difficult to see the new committee attracting much of a following. On the other hand, if the model is closer to that of the Working Group on Indigenous Populations then it might be more appropriate for the Sub-Commission to be responsible for the new group.

The second role is that of monitoring. But in this case it would seem both more effective and more efficient to focus on ways in which existing human rights reporting and supervisory functions can be extended, if necessary, to embrace the relevant concerns. In addition, it is important to bear in mind in this regard that various other monitoring mechanisms and processes are currently being set up in the context of development policy initiatives. Account should be taken, for example, of the detailed initiatives listed under the heading of 'follow up actions and monitoring' in the Plan for Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s.<sup>163</sup> Similarly, the International Development Strategy for the Fourth United Nations Development Decade also contains elaborate proposals for reviewing and appraising progress every two years.<sup>164</sup> The *H.D.R. 1991* also emphasizes the importance of enhanced monitoring arrangements.<sup>165</sup> The addition of yet another

<sup>162</sup> See text accompanying n. 42 *supra*.

<sup>163</sup> U.N.I.C.E.F., *The State of the World's Children 1991* (1990) 59, 69-72.

<sup>164</sup> G.A. Res. 45/199, paras 108-12.

<sup>165</sup> *E.g. supra* n. 5, 77-9.

layer of monitoring arrangements would thus need to be very strongly justified.

The third role is to provide expert advice to the Commission and the General Assembly in the way that the Committee for Development Planning does for the Assembly in the general development field. This would seem to be by far the most useful role given that it is one that is not currently being filled by anyone and that the provision of such advice has already been identified as a pressing need if the human rights and development debate is to mature further and assume greater practical relevance. However, if the analogy with the Committee for Development Planning is to be pursued the key attributes of that model need to be recognized, and where appropriate, replicated. They include: a genuinely expert membership nominated by the Secretary-General; a significant level of technically qualified Secretariat assistance; the presentation of an annual report which is based on substantial technical research; and a focus on specific issues which differ from year to year.<sup>166</sup>

Only on such a basis would the creation of an expert committee to focus on specified dimensions of the right to development seem viable and worthwhile. Whether or not it would be politically acceptable remains to be seen. The preceding analysis also indicates, however, that there is much that can be done by the United Nations to promote the more effective integration of human rights and development even without the creation of any such formal institutional arrangements.

<sup>166</sup> The Committee was set up pursuant to E.S.C. Res. 1079 (XXXIX) (1964). See 'Subsidiary Bodies of the Economic and Social Council and the General Assembly in the Economic, Social and Related Fields', U.N. doc. A/46/578 (1991), 55-57.