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## ECONOMIC AND SOCIAL HUMAN RIGHTS AND THE NEW INTERNATIONAL ECONOMIC ORDER

Seymour J. Rubin\*

A necessitous man is not a free man.

—Oliver Wendell Holmes, Jr.

At a 1981 Strasbourg Conference on Economic and Social Rights, Professor Louis Henkin, a distinguished American teacher and scholar, said, "Human rights is the idea of our time." As authority for that statement Professor Henkin noted the fact that the Universal Declaration of Human Rights<sup>1</sup> incorporated the civil and political human rights concepts of Western democracies with the economic and social rights which he associated with socialism or the welfare state.<sup>2</sup> Moreover, Professor Henkin suggested that the Universal Declaration of Human Rights is finally universal, having been accepted by virtually all governments.

It is difficult for me to denigrate the idealist or to suggest that one's objective should not be beyond the easily attainable. As the artist said in Robert Browning's *Andrea del Sarto*, "[A] man's reach should exceed man's grasp or what's a heaven for?" But perhaps those who rec-

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1. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. 810 (1948).

2. See A. ROBERTSON, *HUMAN RIGHTS IN THE WORLD* 27-28 (1982). Since its adoption, the Declaration has not only established a "common standard of achievement" as originally intended but has acquired authority as customary international law in the preservation of human rights. *Id.*; see also *THE UNITED NATIONS AS A PROTECTOR OF HUMAN RIGHTS* 514-22 (L. Sohn & T. Buergenthal eds. 1973) (discussing the Universal Declaration and its legal effect); International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A, 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966); International Covenant on Civil and Political Rights and Optional Protocol, G.A. Res. 2200A, 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6136 (1966) [hereinafter *Optional Protocol*].

ognize reality can more readily attain their ideal, if only because their realism makes their actions more relevant to the attainment of that ideal. And, for even the most idealistic advocate of human rights, looking at the Universal Declaration and its application in practice, it is difficult to believe that respect for human rights is in fact the idea of our time.<sup>3</sup>

Certainly there is no dearth of earnest statements to which the most insistent violators of the most fundamental human rights readily subscribe. Clearly there is no shortage of conferences dealing with numerous aspects of the subject from definition to application or enforcement.<sup>4</sup> The attention given to human rights is both deserved and, in some situations, effective in achieving or contributing to beneficial results. It has resulted in the establishment of several international and many national institutions which have exposed human rights violations to public scrutiny.<sup>5</sup> While lacking enforcement authority, these institu-

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3. See T. Buergenthal, Remarks at the Seventy-fifth Anniversary Convocation of the American Society of International Law, *reprinted in* 75 AM. SOC'Y INT'L L. PROC. 94 (1981) (noting that the commitment of many governments to respect internationally recognized human rights and their compliance with the norms established by international treaties and other agreements is acknowledged to be minimal).

4. See United Nations Action in the Field of Human Rights, U.N. Doc. ST/HR/2/Rev.2 (1983) (describing conventions, treaties, declarations, resolutions and measures taken to establish norms that promote and protect human rights since the foundation of the United Nations); see also Human Rights: A Compilation of International Instruments, U.N. Doc. ST/HR/1/Rev.2 (1983); HUMAN RIGHTS: INTERNATIONAL DOCUMENTS (J. Joyce ed. 1978) (discussing documents and treaties related to human rights enforcement).

5. See Human Rights Committee: Selected Decisions under the Optional Protocol, U.N. Doc. CCPR/C/OP/1 (1985) (presenting decisions of the Human Rights Committee concerning complaints of violations of internationally-recognized human rights). International institutions include the Commission on Human Rights, a sub-body of the Economic and Social Council of the General Assembly, and the more recently created Human Rights Committee, established pursuant to the International Covenant on Civil and Political Rights and Optional Protocol, *supra* note 2, at art. 28; see also *infra* notes 8-12 and accompanying text; REGIONAL CONVENTIONS ON PROTECTION OF HUMAN RIGHTS (L. Sohn & T. Buergenthal eds. 1973); 6 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW: REGIONAL COOPERATION, ORGANIZATIONS AND PROBLEMS (1983) (discussing regional institutions working for the promotion of human rights); Weissbrodt & McCarthy, *Fact-Finding by International Nongovernmental Human Rights Organizations*, 22 VA. J. INT'L L. 1 (1981) (discussing investigative activities of nongovernmental human rights organizations). See generally E. McWHINNEY, THE WORLD COURT AND THE CONTEMPORARY INTERNATIONAL LAW-MAKING PROCESS (1979) (discussing the influence of the International Court of Justice on international law); Abranches, *The Inter-American Court of Human Rights*, 30 AM. U.L. REV. 65 (1980) (discussing development and influence of the Inter-American Court of Justice); L. BROWN & F. JACOBS, THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES (1983) (discussing the European forum for complaints of human rights violations); J. ZUIJDWIJK, PETITIONING THE UNITED NATIONS: A STUDY IN HUMAN RIGHTS (1982) (examining procedures for petitioning various United Nations human rights bodies); M. TARDU, HUMAN RIGHTS: THE INTERNATIONAL PETITION SYSTEM (1985); GUIDE TO

tions are still reasonably effective.<sup>6</sup> For example, by exposing violations, the United Nations Commission on Human Rights,<sup>7</sup> the Inter-American Commission on Human Rights,<sup>8</sup> and Amnesty International<sup>9</sup> have clearly helped to rectify many injustices and to prevent more. And, although their scope and authority may be limited, one should also remember such institutions as the European<sup>10</sup> and Inter-American<sup>11</sup> Courts of Human Rights. Their effort is worthwhile and needs to be expanded and intensified. Even the Helsinki process has demonstrated its worth, and in all probability has prevented further abuses.<sup>12</sup>

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INTERNATIONAL HUMAN RIGHTS PRACTICE (H. Hannum ed. 1984).

6. UNITAR, TOWARD WIDER ACCEPTANCE OF U.N. TREATIES (1971); B. FERENCZ, ENFORCING INTERNATIONAL LAW: A WAY TO WORLD PEACE: A DOCUMENTARY HISTORY AND ANALYSIS (1983). Enforcement of human rights principles is frequently dependent upon world public opinion and attention to particular violations as a means of bringing pressure to bear on governments and others who violate human rights. See Note, *Economic Sanctions Against South Africa: Problems and Prospects for Enforcement of Human Rights Norms*, 22 VA. J. INT'L L. 345 (1982); WASHINGTON NOTES ON AFRICA (Washington Office on Africa ed. 1985) (proposing that economic and other sanctions, if conducted on a sufficiently broad basis, may help deter violations of human rights).

7. The United Nations Commission on Human Rights, a sub-body of the United Nations Economic and Social Council, has investigated abuses of human rights throughout the world since the founding of the United Nations in 1945. See THE UNITED NATIONS AS A PROTECTOR OF HUMAN RIGHTS (L. Sohn & T. Buergenthal eds. 1973); 8 ENCYCLOPEDIA OF INTERNATIONAL LAW 274-85 (1985) (presenting an overview of the United Nations Commission on Human Rights).

8. The Inter-American Commission on Human Rights was founded in 1960 to further the observance of human rights throughout the Western Hemisphere. See INTER-AMERICAN COMM'N ON HUMAN RIGHTS, ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS AND REGIONAL CONVENTIONS ON THE PROTECTION OF HUMAN RIGHTS 1284-374 (L. Sohn & T. Buergenthal eds. 1973).

9. Amnesty International, founded in 1961, investigates the plight of what it terms "prisoners of conscience," i.e., individuals imprisoned for their political, religious or other beliefs. 8 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 27-29 (1985).

10. See European Convention for the Protection of Human Rights and Fundamental Freedoms, *opened for signature* Nov. 4, 1950, 156 B.F.S.P. 915, 213 U.N.T.S. 221. The European Convention on Human Rights created the European Court of Human Rights, which hears inter-state and individual applications charging violations of the Convention; see also K. LASOK, THE EUROPEAN COURT OF JUSTICE: PRACTICE AND PROCEDURE (1984); Kolbert, *Decisions on the European Convention on Human Rights during 1981*, 52 BRIT. Y. B. INT'L L. 335 (1981); *Directorate of Human Rights*, 1981 Y.B. EUR. CONV. ON HUMAN RIGHTS (Council of Europe Annual Publication).

11. American Convention on Human Rights, *opened for signature* Nov. 22, 1969, O.A.S. Official Records O.E.A./Ser.K/XVI/1.1 Document 65, Rev. 1 (Jan. 7, 1970). The American Convention on Human Rights established the Inter-American Court of Human Rights which has jurisdiction over human rights controversies brought before it by states party to the convention, as well as advisory jurisdiction. See HUMAN RIGHTS: THE INTER-AMERICAN SYSTEM (T. Buergenthal & R. Norris eds. 1983); *Symposium: The American Convention on Human Rights*, 30 AM. U.L. REV. 1-189 (1980); 8 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 321-26 (1985) (presenting an overview of the work of the Inter-American Court of Human Rights).

12. Although the effectiveness of the Helsinki accords has been criticized, they have

Nonetheless, the more or less impartial observer finds it hard to believe that human rights is the idea of our time. Even if one defines "our time" as the period after World War II, there remains a ghastly list of instances of wholesale slaughter as well as somewhat less devastating human rights violations. For example, the current investigations in Argentina,<sup>13</sup> the madness of the Bokassas and the Idi Amins,<sup>14</sup> the continuing outrage of apartheid,<sup>15</sup> the transformation of Cambodia into a killing ground,<sup>16</sup> and the relatively recent era of the Colonels in Greece<sup>17</sup> attest to the gross human rights violations of "our time." It may be that humanity has gone through worse periods with regard to respect for human rights, but comparison would be odious. Despite numerous state declarations and United Nations' votes,<sup>18</sup> observance of human rights has not been a characteristic of my lifetime.

The picture is, of course, a mixed one. Perhaps those of us who were educated in the traditions of rationalism, equity and justice—traditions

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focused attention on the issues of the individual freedom of movement, the free flow of information and ideas, and other fundamental human rights. See HUMAN RIGHTS, INTERNATIONAL LAW AND THE HELSINKI ACCORD (T. Buergenthal ed. 1977); *Symposium: Human Rights and the Helsinki Accord—A Five-Year Road to Madrid*, 13 VAND. J. TRANSNAT'L L. 247 (1980).

13. See 11 LATIN AMERICA UPDATE (Washington Office on Latin America ed. 1986) (reporting on the current government of Argentina's investigation into the role of the previous military regime in the wave of disappearances and other widespread human rights abuses that occurred in that country in the 1970's); see also INTER-AMERICAN COMM'N ON HUMAN RIGHTS, REPORT ON THE SITUATION OF HUMAN RIGHTS IN ARGENTINA (1980) (presenting an overview and case studies on human rights in Argentina).

14. See Kuper, *Genocide and Mass Killings: Illusion and Reality*, in THE RIGHT TO LIFE IN INTERNATIONAL LAW 118 (B. Ramcharan ed. 1985) (reporting the mass killing of certain ethnic groups in Uganda under Idi Amin as documented by human rights observers).

15. See Gormley, *The Right to Life and the Rule of Non-derogability: Preemptory Norms of Jus Cogens*, in THE RIGHT TO LIFE IN INTERNATIONAL LAW 131-32 (B. Ramcharan ed. 1985) (discussing apartheid as violating both customary and international law); see also Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), 1971 I.C.J. 16, at 79 (Advisory Opinion of June 21, 1971) (Ammoun, J., dissenting) (stating that in the international community the violation of human rights by the practice of apartheid is no less punishable than crimes against humanity and war).

16. See United Nations Action in the Field of Human Rights, U.N. Doc. ST/HR/2/Rev.2, at 229-31 (1983) (discussing the human rights situation in Kampuchea).

17. See REGIONAL CONVENTIONS ON PROTECTION OF HUMAN RIGHTS 1063-90 (L. Sohn & T. Buergenthal eds. 1973) (describing several cases and petitions brought by Western European governments before the European Commission on Human Rights and Council of Europe concerning alleged torture, detention of political prisoners and other violations of human rights by the military regime in Greece in the mid-1960's).

18. See E. McWHINNEY, UNITED NATIONS LAW MAKING 208 (1984) (discussing United Nations' votes on human rights issues).

that have come down through the ages and to which the French political philosophers of the eighteenth century gave eloquent expression—have had an overly optimistic view of the nature of man and of the efficacy of reason. We have thus been badly disappointed in the events of this century. The state of human rights—I might say the state of humanity itself—seems bleak. It may be true that extremism in defense of the truth is no vice. But concepts of truth differ sharply. No one who has admired the Greek contribution to moral philosophy and to clarity of thought, as exemplified in the Socratic dialogues, can be indifferent to the extremism of a Khomeini or a Pinochet or a Pol Pot or, no doubt, to exemplars closer to home. These are, unfortunately, merely exemplars, and perhaps extreme ones, of what seem to be tendencies of our times. This suggests that for a large part of humanity, including a large part of what we generally call the “Western” world, observance of human rights is presently a dream of things to come.

As I have said, the picture is blurred. One notable advance very close to the heart of this American who has for years been a member of the Inter-American Juridicial Committee, is the advance in democratization of the countries of Latin America.<sup>19</sup> That area, of course, has its problems. The last few years, however, have seen notable progress in the replacement of dictatorships and military rule in many countries of Latin America, sometimes, encouragingly, with the help of the military themselves. In this sense, one has the option that divides pessimist and optimist, i.e., whether to regard the glass as half-full or half-empty.

When one turns away from civil and political rights to economic and social rights, the picture is also mixed. Clearly, in some countries, there have been major advances in economic and social well being. In some situations, one can say that these advances have in fact been universal, as witness the elimination, in our time, of that one-time scourge of mankind, smallpox. But in many areas the economic and social conditions, far from being bettered, have drastically, sometimes intolerably, worsened. In some parts of the world famine now seems endemic.<sup>20</sup> If the predictions of experts in population and resources can be believed,

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19. Argentina, Uruguay, and Brazil are all examples of Latin American nations which have made strides towards democratization after the failure of their military regimes. See Schumacher, *Argentina and Democracy*, 62 FOREIGN AFF. 1070-95 (1984) (presenting an overview of the cases of Argentina, Uruguay, and Brazil).

20. See PRESIDENTIAL COMM'N ON WORLD HUNGER, THE NATURE AND EXTENT OF WORLD HUNGER 17 (1980) (noting that more than three-fourths of the world's inadequately nourished people live on the Indian subcontinent, in Southeast Asia, and in the sub-Saharan Africa).

and unfortunately they are all too believable, worse is yet to come.<sup>21</sup> There are less dramatic and less depressing instances, to which I shall immediately turn, but one cannot help but be struck by the enormity of the gulf between what Roosevelt defined as one of the essential Four Freedoms of the post-World War II world,<sup>22</sup> Freedom from Want, and the present and prospective human condition. What has been called the International Bill of Human Rights—the Universal Declaration of Human Rights,<sup>23</sup> the International Covenant on Economic, Social and Cultural Rights,<sup>24</sup> the International Covenant on Civil and Political Rights,<sup>25</sup> and the Optional Protocol<sup>26</sup>—have all been endorsed by the United Nations General Assembly as long ago as 1966, with the Universal Declaration dating back to 1948. Yet the vast majority of mankind exists under conditions which fall far short of even the minimal standards adopted in these principles. For example, the 1977 reports of the World Food Council stated that two-thirds of the population of the world does not have an adequate standard of living, and that an estimated 500 million persons are denied Freedom from Want in the extreme form of not having enough to eat.<sup>27</sup> The Brandt Report, written in the 1980s, moreover, states that one-fifth or more of all the people in the southern half of the world suffer from hunger and malnutrition,<sup>28</sup> and that at least fifty percent have no chance of becoming literate.<sup>29</sup>

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21. See PRESIDENTIAL COMM'N ON WORLD HUNGER, PROSPECTS FOR OVERCOMING WORLD HUNGER: THE CHALLENGE AHEAD 44 (1980) (stating that the problems of world hunger will worsen unless the indifference of many national leaders is replaced by concern and commitment).

22. The Four Freedoms were described as freedom from want, freedom of information, freedom of religion, and freedom of trade. The Four Freedoms were first enunciated by President Franklin D. Roosevelt. State of the Union Message on January 6, 1941, *reprinted in* 87 CONG. REC. 44, 46 (1941).

23. Universal Declaration of Human Rights, *supra* note 1.

24. International Covenant on Economic, Social, and Cultural Rights, *opened for signature* Dec. 19, 1966, G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3.

25. International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171.

26. Optional Protocol, *supra* note 2.

27. See *Report of the World Food Council*, U.N. CHRONICLE 14-37 (July 1977) (discussing the problem of world hunger); see also *supra* notes 20-21 and accompanying text.

28. HANDBOOK OF WORLD DEVELOPMENT: THE GUIDE TO THE BRANDT REPORT 31 (GJW Government Relations & P. Stephenson eds. 1981).

29. THE BRANDT COMM'N (INDEPENDANT COMM'N ON INT'L DEVELOPMENT ISSUES), THE BRANDT COMMISSION PAPERS: SELECTED BACKGROUND PAPERS PREPARED FOR THE INDEPENDANT COMMISSION ON INTERNATIONAL DEVELOPMENT ISSUES (1978-1979) 58 (1981); see also UNITAR, THE NEW INTERNATIONAL ECONOMIC ORDER: INTERNATIONAL LAW IN THE MAKING 4, 5 (1982). Furthermore, this number is a result of the widening gap between the incomes of developing nations and industrial-

You will have noted my reference to the southern half of the world. Certainly there are many in the so-called developed nations, in current terminology the "North," who suffer from hunger and lack of shelter,<sup>30</sup> and even less immediate fundamentals such as education.<sup>31</sup> But denial of these basic human needs, and of human rights, is most egregious in what that same terminology calls the "South," where lack of development is extensive. Here in particular, the broad sweep and glorious rhetoric of the United Nations Resolutions of 1948 and 1966 seems to have had little practical effect.<sup>32</sup> As with all other broad generalizations, this one needs modification.

A number of United Nations institutions, some pre-dating the establishment of the United Nations itself, like the International Labor Organization (ILO),<sup>33</sup> have had and continue to have important effects, just as, in the case of civil and political rights, the various human rights commissions or courts achieve some results. Bodies like the ILO, the

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ized nations. *Id.* Industrialized nations, with twenty percent of the world population, receive about two-thirds of the world income. *Id.* Developing nations, with almost fifty percent of the world's population, have just one-eighth of the world's income. *Id.* See generally THE BRANDT COMM'N (INDEPENDENT COMM'N ON INT'L DEVELOPMENT ISSUES), COMMON CRISIS: NORTH-SOUTH COOPERATION FOR WORLD RECOVERY 119-33 (1983).

30. See PRESIDENTIAL COMM'N ON WORLD HUNGER, DOMESTIC HUNGER AND MALNUTRITION: OVERCOMING HUNGER AT HOME 154-56 (1980); STAFF OF HOUSE COMM. ON FOREIGN AFFAIRS, 98TH CONG., 2D SESS., FEEDING THE WORLD'S POPULATION, DEVELOPMENTS IN THE DECADE FOLLOWING THE WORLD FOOD CONFERENCE OF 1984 (Comm. Print 1984).

31. See ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, REVIEWS OF NATIONAL POLICIES FOR EDUCATION (1979); J. MEYER & M. HANNAN, NATIONAL DEVELOPMENT AND THE WORLD SYSTEM (1979) (presenting overviews of the status of education in various nations).

32. G.A. Res. 217A, U.N. Doc. A/810, at 71-77 (1948). The Universal Declaration of Human Rights has been criticized in that it does not impose any duty of immediate implementation of its provisions but merely expresses the hope that enforcement of the norms of human rights articulated will be secured "by progressive measures, national and international." *Id.* The Covenant does contain provisions for the implementation of human rights norms but some are optional. Further, the Convention binds only those who ratify it; see also Comment, *The International Human Rights Treaties: Some Problems of Policy and Interpretation*, 126 U. PA. L. REV. 886 (1978).

33. Final Articles Revision Convention of the International Labor Organization, opened for signature Oct. 10, 1946, 62 Stat. 1672, T.I.A.S. No. 1810, 38 U.N.T.S. 3. The International Labor Organization (ILO) was established in 1919 by the Treaty of Versailles and was affiliated with the League of Nations before it became a specialized agency associated with the United Nations in 1946. A primary objective of the ILO is progress through economic cooperation; see also Instrument for the Amendment of the Constitution of the International Labor Organization, opened for signature Oct. 9, 1946, 62 Stat. 3485, T.I.A.S. No. 1868, 15 U.N.T.S. 35; A. ALCOCK, HISTORY OF THE INTERNATIONAL LABOR ORGANIZATION (1971); D. JOHNSTON, THE INTERNATIONAL LABOR ORGANIZATION (1970); D. MORSE, THE ORIGIN AND EVOLUTION OF THE I.L.O. AND ITS ROLE IN THE WORLD COMMUNITY (1969) (presenting background information on the International Labor Organization).



World Health Organization,<sup>34</sup> the Food and Agriculture Organization,<sup>35</sup> and possibly even UNESCO,<sup>36</sup> also achieve something. The ILO, for example, has not only promulgated and gained acceptance of numerous specific conventions,<sup>37</sup> but has been able, through its network of investigatory commissions, to bring about a measure of compliance with those conventions.<sup>38</sup> Institutions like the World Bank<sup>39</sup> have turned their attention to basic human needs as a fundamental aspect of economic and social development.<sup>40</sup> UNICEF<sup>41</sup> has an enviable record,

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34. Constitution for the World Health Organization, *opened for signature* July 22, 1946, 62 Stat. 2679, T.I.A.S. No. 1808, 14 U.N.T.S. 185.

35. Constitution of the Food and Agriculture Organization, *opened for signature* Oct. 16, 1945, 12 U.S.T. 980, T.I.A.S. No. 4803 (composite text as amended to 1957).

36. Constitution of the United Nations Educational, Scientific, and Cultural Organization (UNESCO), *opened for signature* Nov. 16, 1945, 61 Stat. 2495, T.I.A.S. No. 1580, 4 U.N.T.S. 275.

37. *See, e.g.*, Convention (ILO No. 74) Concerning the Certification of Seamen, June 29, 1946, 5 U.S.T. 605, T.I.A.S. No. 2949, 94 U.N.T.S. 11; Convention (ILO No. 58) Fixing the Minimum Age for the Admission of Children to Employment at Sea, Oct. 24, 1936, 54 Stat. 1705, T.S. No. 952, 40 U.N.T.S. 205; Convention (ILO No. 55) Concerning the Liability of the Shipowner in Case of Sickness, Injury, or Death of Seamen, Oct. 24, 1936, 54 Stat. 1693, T.S. No. 951, 40 U.N.T.S. 169.

38. E. LANDY, *THE EFFECTIVENESS OF INTERNATIONAL SUPERVISION: THIRTY YEARS OF EXPERIENCE 16-50* (1966). The creation of special machinery was necessary to supervise compliance because existing organs were unable to do so. *Id.* A special committee of experts examines annual reports submitted by the member states and reviews measures taken by members to strengthen the conventions to which they are parties. *Id.*

39. The World Bank Group is comprised of the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), and the International Finance Corporation (IFC). *See* Articles of Agreement of the International Bank for Reconstruction and Development, *opened for signature* Dec. 27, 1945, 60 Stat. 1440, T.I.A.S. No. 1502, 2 U.N.T.S. 134; Articles of Agreement of the International Development Association, *done* Jan. 26, 1960, 11 U.S.T. 2284, T.I.A.S. No. 4607, 439 U.N.T.S. 249; Articles of Agreement on the International Finance Corporation, *done* May 25, 1955, 7 U.S.T. 2197, T.I.A.S. No. 3620, 264 U.N.T.S. 117.

40. It is plausibly argued, however, that this approach has achieved limited, sometimes counterproductive results. The critical food situation in Africa, for example, may be caused in part by the international trade system which tends to encourage the production by African farmers of export crops, such as rubber and cocoa, at the expense of subsistence crops (such as wheat and corn). *See* Shepard, *The Denial of the Right to Food: Development and Intervention in Africa*, 15 CAL. W. INT'L L.J. 528 (1985). The World Bank is moving towards the perspective that the improvement of the quality of human life constitutes the ultimate objective of the efforts for economic development. Therefore, the fulfillment of the social aspects of development is believed to be a necessary condition for extension of international assistance for development. *See* Abu-Akeel, *World Bank Perspective*, 15 CAL. W. INT'L L.J. 552 (1985); Note, *Financing Urbanization in Developing Countries* 10 GA. J. INT'L & COMP. L. 579 (1980); Ascher, *New Development Approaches and the Adaptability of International Agencies: the Case of the World Bank*, 37 INT'L ORG. 415-39 (1983).

41. United Nations International Children's Emergency Fund (UNICEF), G.A. Res. 57, U.N. Doc. A/230 (1946).

as do several other organizations that are operational.<sup>42</sup>

Nevertheless, figures such as those of life expectancy give emphasis to the basic disparities. In the North, life expectancy exceeds seventy years; in the South, the average is fifty years. In those areas now afflicted with famine and consequent disease, moreover, the expectancy of life is shockingly less than that.<sup>43</sup>

In these circumstances, it is hardly surprising that there has been a widespread demand, not merely for global economic and social human rights, but also for what may be called economic justice.<sup>44</sup> Noting that the North, with one-quarter of the world's population,<sup>45</sup> enjoys four-fifths of the world's income,<sup>46</sup> and that the South, including China for this purpose, has the remaining one fifth,<sup>47</sup> it is far from surprising that the South, expressing itself largely through the Group of 77<sup>48</sup> has

42. UNICEF was created to provide massive emergency relief to the destitute young victims of World War II. *Basic Facts About the United Nations*, United Nations Dep't of Public Information, United Nations Sales No. E.80.I.S (1980). By 1953, when the Assembly extended UNICEF's mandate indefinitely and the words "International" and "Emergency" were dropped from its name, the Fund began to focus its attention on the widespread malnutrition, disease and illiteracy afflicting millions of children throughout the developing world. *Id.* In addition to some of the organizations heretofore mentioned, the United Nations Research Institute for Social Development (UNRISD), created in 1963, conducts research into problems and policies of social development. *Id.* Its research activities are based on two themes: improving the livelihood of the world's poor and increasing their participation in development. *Id.* The United Nations Development Programme (UNDP) is the world's largest channel for multilateral technical and pre-investment cooperation. *Id.* It is active in 150 developing countries and territories and in virtually every economic and social sector. *Id.*

43. BUREAU OF CENSUS, U.S. DEP'T COMMERCE, PUB. NO. 1477 URBAN POPULATION, GROWTH, BIRTH AND DEATH RATES AND LIFE-EXPECTANCY: SELECTED COUNTRIES (1985).

44. See Bienen & Gersovitz, *Economic Stabilization, Conditionality, and Political Stability*, 39 INT'L ORG. 729 (1985); Sarna, *International Guidelines for Industrial Adjustment Policies*, 15 J. WORLD TRADE L.; Flory, *The International Development Strategy for the Third United Nations Development Decade*, 26 J. AFR. L. 68-73 (1982); Tetreault, *Measuring Interdependence: A Response*, 35 INT'L ORG. 429 (1981).

45. Statistical Office, *STATISTICAL YEARBOOK*, Dep't of International Economic and Social Affairs, Sales No. E/F.84.XVII.1, 6-7 (1982); see also *THE WORLD IN FIGURES* 50 (The Economist Newspaper Limited ed. 1981).

46. U.N. *STATISTICAL YEARBOOK*, at 14-15, U.N. Sales No. E/F.84.XVII.1 (1982).

47. *Id.*

48. The name "Group of 77" refers to the original 77 developing countries which met in 1974 and decided to pursue their economic interests within the United Nations Conference on Trade and Development (UNCTAD) which now operates within the United Nations system. B. RIVERO, *NEW ECONOMIC ORDER AND INTERNATIONAL DEVELOPMENT LAW* (1980). Except for Yugoslavia, an old member, and Malta and Rumania which were admitted to the Group in 1976, all other members come from Africa, Asia and Latin America. *Id.* Although there are now more than 120 countries, the original name has been retained. *Id.* For additional information on the activities of the Group of 77, see generally Adede, *The Group of 77 and the Establishment of the International Seabed Authority*, 7 OCEAN DEV. & INT'L L. 31 (1979); THE CHAL-

mounted a major effort to restructure the world's economy. The Group of 77 has attempted to achieve this reorganization through efforts to obtain general acceptance of a new set of norms based on those United Nations declarations and resolutions previously mentioned. More importantly, however, a whole new set of standards has been proposed, and new institutions, focusing on economic and social issues, have been established to put these norms into effect.<sup>49</sup> The effort has manifested itself in a number of ways and is intended to go beyond mere relief measures. Even special programs promoting education, health, or new and enlarged development institutions and resources to assist the development process are regarded as inadequate unless they become parts of a "new international economic order."<sup>50</sup> The thesis is that economic and social human rights will not be realized without a deep and wide restructuring of the current international economic arrangements.

The basic tenets of the restructuring were set out in 1973, although many of the proposals and ideas that form its substantive content have much earlier roots. They have of course been elaborated upon since then. In 1973, the Non-Aligned Summit Conference<sup>51</sup> developed an action program for a New International Economic Order (NIEO). Thereafter, the Sixth and Seventh Special Sessions of the United Nations General Assembly formulated a series of objectives that are currently a major part of the North-South dialogue.<sup>52</sup> In 1974, the Charter of Eco-

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LENCE OF THE NEW INTERNATIONAL ECONOMIC ORDER (E. Reubens ed. 1981).

49. See *THE CHALLENGE OF THE NEW INTERNATIONAL ORDER* (E. Reubens ed. 1981) (discussing recent proposals in the United Nations and elsewhere for restructuring the economic relations among less developed and more developed countries).

50. Declaration on the Establishment of a New International Economic Order, G.A. Res. 3201, U.N. GAOR, 6th Special Sess., Supp. (No. 1), U.N. Doc. A/9559 (1974); B. RIVERO, *NEW ECONOMIC ORDER AND INTERNATIONAL DEVELOPMENT LAW* 94 (1980); see also DEP'T OF PUBLIC INFORMATION, *EVERYONE'S UNITED NATIONS* 122 (1979); *THE CHALLENGE OF THE NEW ECONOMIC ORDER*, *supra* note 48; K. WALDHEIM, *BUILDING THE FUTURE ORDER* (1980); *THE RICH AND THE POOR* (A. Gauhar ed. 1983); *Global Negotiations and Economic Development*, Report of the 11th Annual Conference in United Nations Procedures 35 (1980); Garcia-Amador, *The Proposed New International Economic Order: A New Approach to the Law Governing Nationalization and Compensation*, 12 *LAW OF THE AMS.* 1 (1980).

51. At the Fourth Summit Conference on Heads of State or Governments of Non-Aligned Countries in Algiers in September, 1973, debate centered on the possibilities of supply control and price boosts for commodities produced by lesser developed countries, and on broad suggestions for new structures of economic organization and power for the Third World. *THE CHALLENGE OF THE NEW ECONOMIC ORDER*, *supra* note 48, at 5.

52. Ramphal, *North-South Cooperation: Why and How the South Must Persist*, in *THE RICH AND THE POOR* 101, 102 (A. Gauhar ed. 1983). The North-South dialogue was activated in the early 1970's when countries of the southern hemisphere presented to the United Nations their demands for a New International Economic Order. *Id.* The South's proposals for negotiations and necessary action were first discussed in 1974 at

conomic Rights and Duties of States (CERDS)<sup>53</sup> became a doctrinal capstone for these sessions.

December, 1974 also brought the formation of the United Nations Commission on Transnational Corporations (TNCs)<sup>54</sup> and the establishment of a competent Secretariat, the Centre on Transnational Corporations.<sup>55</sup> Other initiatives emerged as well. For example, the "integrated program for commodities" focused on the now largely ignored Common Fund.<sup>56</sup> The 1977 Conference on International Economic Cooperation was a major effort to bring developed and developing countries together.<sup>57</sup> The United Nations Commission on Trade and Development (UNCTAD),<sup>58</sup> the United Nations International Development Organization (UNIDO),<sup>59</sup> the General Agreement on Tariffs and

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the Sixth Special Session of the United Nations General Assembly. *Id.* Two resolutions at the conclusion of this session transformed the North-South agenda and initiated a process of negotiations. *Id.*

53. Charter of Economic Rights and Duties of States, G.A. Res. 3281, 29 U.N. GAOR Supp. (No. 31) at 51, U.N. Doc. A/9946 (1974). *See generally* THE CHALLENGE OF THE NEW ECONOMIC ORDER, *supra* note 48, at 33 (stating that the Charter "shall constitute an effective instrument towards establishment of a new system of international economic relations based on equity, sovereign equality, and interdependence of the interests of developed and developing countries").

54. The United Nations Commission on Transnational Corporations was established pursuant to ECOSOC Res. 1913, 57 U.N. ESCOR Supp. (No. 1A) at 31, U.N. Doc. 5570/Add.1 (1975). *See generally* THE CHALLENGE OF THE NEW ECONOMIC ORDER, *supra* note 48, at 170-71.

55. *See* ECOSOC Res. 1908, 57 U.N. ESCOR Supp. (No. 1) at 13, U.N. Doc. E/5570 (1974). The Centre on Transnational Corporations and the Information and Research Center were created in the mid-1970's with the object of studying controls on multinational corporations and preparing a code of conduct for TNC's which would encourage them to operate according to the developmental goals of the countries in which they do business. *Id.*; WERNERFELD, MULTINATIONAL CORPORATIONS AND UNITED NATIONS POLITICS: THE QUEST FOR CODES OF CONDUCT (1980).

56. K. WALDHEIM, *supra* note 50, at 249. The Common Fund is the primary mechanism of a far-reaching program to improve and control commodity trade throughout the world. *Id.* Its functions are to coordinate individual agreements between producers and consumers of certain commodities so as to create buffer stocks and regulate prices, and develop new markets for the commodities it oversees. *Id.*

57. *See* K. GREWLICH, TRANSNATIONAL ENTERPRISES IN A NEW INTERNATIONAL SYSTEM 148 (1980) (noting that the 1977 Conference on International Economic Cooperation, was viewed by some as a trilateral conference of industrial countries, oil producers, and developing countries, and viewed by others as a bilateral discussion between the developing countries and the industrial states).

58. *See* G.A. Res. 1955, 19 U.N. GAOR Supp. (No. 15), U.N. Doc. A/5815 (1964) (United Nations Conference on Trade and Development (UNCTAD) established by the General Assembly to promote international trade, with the specific goal of advancing economic development); *see also* B. RIVERO, NEW ECONOMIC ORDER AND INTERNATIONAL DEVELOPMENT LAW 17 (1980) (presenting an overview of the objectives and functioning of the UNCTAD).

59. *See* G.A. Res. 2089, 20 U.N. GAOR Supp. (No. 14), U.N. Doc. A/6014 (1965) (stating that the purpose of the United Nations Industrial Development Organization (UNIDO) was to create a new worldwide industrial pattern to promote an improved

Trade (GATT)<sup>60</sup> and many others have had a direct or indirect interest in achieving the goals of the Universal Declaration and the United Nations Convention on Economic and Social Human Rights and have perhaps had some effect. But the emphasis must be on the word "perhaps."

The limited success of these worthy organizations is largely because there are two discrete universes of discourse insofar as economic and social human rights are concerned. One universe, with which all of us are all too familiar, is that of norm-formulation. It is a universe of conferences that work through broad declarations to find agreed formulas designed to remedy the misfortune of those who lack the fundamentals of human dignity. These declarations, however, are statements of principle based on noble concepts such as equity and justice which inevitably run into difficulties of formulation<sup>61</sup> that make the theologies of the Congress of Nicaea<sup>62</sup> look simple. Moreover, many of the forums are strongly politicized. Despite the fine work often done in their Secretariats, I tend to put UNCTAD and such regional bodies as the Latin American Economic System (SELA) into this category,<sup>63</sup> whereas the United Nations Commission on TNCs falls into a somewhat different category, halfway between the institutions primarily concerned with doctrine and those more directly involved in operations.

Doctrinal disputes may, of course, result in agreements that lead to progress. I would hope that the process of norm-formulation would have that effect. Often, however, neither side is prepared to compromise on issues of broad doctrine, even though, leaving doctrine intact, much practical achievement might be attainable. The result of such

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international division of resources, technology, capital and labor); *see also* K. WALDHEIM, *supra* note 50, at 144 (presenting an overview of the objectives and functioning of the UNIDO).

60. *See* General Agreement on Tariffs and Trade, *opened for signature* Oct. 30, 1947, 61 Stat. (5), (6), T.I.A.S. No. 1700, 55-61 U.N.T.S. (noting that the General Agreement on Tariffs and Trade (GATT) is a multilateral treaty containing reciprocal rights and obligations designed to facilitate trade and trade relations through the limitation of tariffs); *see also* 4 GENERAL AGREEMENT ON TARIFFS AND TRADE: BASIC INSTRUMENT AND SELECTED DOCUMENTS (amended version 1969).

61. *See* K. GREWLICH, *TRANSNATIONAL ENTERPRISES IN A NEW INTERNATIONAL SYSTEM* 203 (1980) (presenting a brief summary of the slow progress of negotiations).

62. *See* W. STUBBS, *LECTURES IN EARLY ENGLISH HISTORY* 240 (1980) (stating that in 325 A.D., the First Council of Nicaea formulated a doctrine of Christian faith in opposition to the doctrine of Arianism).

63. *See* Urquidí, *Major Problems Affecting the Process of Development, with Special Reference to Latin America*, in *THE RICH AND THE POOR* (A. Gauhar ed. 1983) arguing that countries that pioneered Latin American economic integration never became fully committed. Political obstacles arose and integration never went beyond a system of reciprocal tariff concessions. *Id.*

attempts to achieve doctrinal concessions may well be a melange of bitter feeling, charges of broken promises or unfilled commitments, and a resultant further, perhaps redundant, obstacle to useful cooperation. For example, in 1975, I chaired a panel session of the American Society of International Law discussing the then new United Nations Charter of Economic Duties and Rights of States.<sup>64</sup> One of its principal participants was Garcia Robles, the Mexican Ambassador to the United Nations, an extraordinarily intelligent and articulate man. Mexico was the chief sponsor of the CERDS and Garcia Robles was a principal spokesman for it. Both he and an equally articulate Jamaican diplomat spoke persuasively of CERDS' merits. Opposing CERDS were two Americans, one a lawyer and one a businessman, both with a deep and sympathetic interest in issues of economic and social human rights. Despite what seemed to my undoubtedly prejudiced eye an extraordinarily balanced and knowledgeable panel, I doubt that much in the way of objectively perceptible results emerged because of the deep doctrinal differences of the panelists. One perceptive observer, C. Fred Bergsten,<sup>65</sup> has suggested that the measurable benefits of such efforts as the CERDS is close to zero. Yet, in practice, cooperation has been possible.

I do not want to be misunderstood. Work on what I sometimes irreverently call the theological aspects of international economic law is important. It not only provides an opportunity and a requirement for thinking in an international context about important issues, but also tends to push the more thoughtful and well-intentioned participants toward cooperative efforts which, although by-products of the discussion of doctrine, have important and objectively demonstrable effects.<sup>66</sup> The aggregation of achievement is in fact enormous. The fact that this achievement comes largely in the domain of particularized or specialized institutions, rather than in such bodies as human rights commissions, is irrelevant to those whose lives are thereby improved. In fact, human rights commissions or courts have had little to do with what is universally considered in these modern and realistic times an essential element of economic and social human rights. Better health conditions, relief of famine, and improved economic opportunities tend to be af-

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64. *Panel on The Charter of Economic Rights and Duties of States*, 69 AM. SOC'Y INT'L L. PROC. 225 (1975).

65. C. Fred Bergsten is Director of the Institute of International Economics, Washington, D.C., a private, nonprofit research center founded in 1981 for the study of international economic policy.

66. K. WALDHEIM, *supra* note 50, at 175-76. Non-governmental organizations play a key role by initiating programs of information and education to advance the cause of social justice and have indirect effects by mobilizing public opinion and furthering the ends of human rights advocates. *Id.*

fectured by international organizations other than those denominated in human rights terms.<sup>67</sup> Nonetheless, the more generalized discussion, frustrating and difficult as it often seems to be, can give a powerful impetus to the more specific and result-oriented work of the specialized agencies.

In one sense, we are really discussing whether documents like the Covenant on Economic and Social Human Rights, and the international apparatus that describes itself as human rights organizations, are effective in delivering economic and social improvements to those most in need of them. In other words, these broad declarations of principle are useful in setting ultimate goals and in establishing more or less agreed standards. Both the principles and the organizations involved in economic and social human rights seem more remote from achievement than those in the civil and political human rights area. From what I have already said, you will appreciate that I hold no great sense of satisfaction in the area of civil and political rights, but in this area, the declarations and the implementing structures do have some perceptible effects,<sup>68</sup> and *faut de mieux*, they are what we have. On the economic and social side, the general formulations of principle seem to bring about as much disagreement as agreement. There exist numerous better ways of achieving the desired results.

In the effort to improve the economies of the developing countries, or more accurately, to raise the excruciatingly low standards of life which characterize all too large a part of the population of all too many of these countries, to what extent has the Covenant on Economic and Social Rights been thought to be relevant? How many times, in discussions of famine relief, or provision of minimal housing, or standards of health care, or the right to form labor unions, or the methodology of economic development, has it been the Covenant which was central to international discussion, or even to the claims of developing countries?<sup>69</sup> It is the specialized agencies, operating under their special

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67. The organizations with the allegedly best record for human rights achievement in the international arena, the IMF, the FAO, and ILO, have charters that quantify their specific objectives on economic improvement. See *infra* notes 70-72.

68. See Zamudi, *Global Survey of Government Instruments to Protect Civil and Political Rights*, 13 DEN. J. INT'L L. & POL'Y 17 (1983) (presenting a critical analysis of the structures and effects of civil and political rights organizations).

69. This inquiry is central to the thesis that it is the establishment of a new international economic order that will elevate the human rights and standard of living of developing countries. See R. ROTHSTEIN, *GLOBAL BARGAINING AND THE QUEST FOR A NEW INTERNATIONAL ECONOMIC ORDER* ix-xiii, 17-27 (1979) (demanding major reforms for institutions, procedures, and concepts for the achievement of internationally acceptable agreements); T. FRANCK & M. MUNANSANGU, *THE NEW INTERNATIONAL ECONOMIC ORDER: INTERNATIONAL LAW IN THE MAKING* 5 (1982) (analyzing the

mandates, which have taken the lead: the FAO,<sup>70</sup> the WHO,<sup>71</sup> the World Bank and regional development lenders, and that much-maligned but essential institution, the IMF.<sup>72</sup> On the basis of this simple inquiry, it becomes clear that while the Covenant represents an aspiration, it can hardly be regarded as a chart of how to get there from here.

In meeting after meeting at which there is serious discussion of the issues dealt with in the Covenant, the Covenant itself is scarcely mentioned. Perhaps this is because its generalities are unchallenged. Perhaps it is because other types of agreements or modes of conduct which can be regarded as implementing the broad objectives of the Covenant are seen as more immediately relevant.<sup>73</sup> There is no need to cite the Covenant, for example, to agree on the urgency of food relief in the Sahel.<sup>74</sup> Moreover, the North-South dialogue and the New International Economic Order have been the focus of the demand for equity and justice in the international economic system.<sup>75</sup> The prescriptions cast in terms of human rights are what one might call the theology of NIEO, but like fundamental church dogma, it does not call for much attention when such practical issues as concessional aid or regulation of transnational corporations are the matters at hand.<sup>76</sup>

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themes underlying the demands of developing countries on the issue of economic development).

70. See Constitution of the Food and Agricultural Organization, Oct. 16, 1945, 12 U.S.T. 980, T.I.A.S. No. 4803. The Preamble to the Constitution of the Food and Agricultural Organization of the United Nations (FAO), includes no mention of human rights, but rather emphasizes the economic aid and development it will undertake. *Id.*

71. See Constitution of the World Health Organization, opened for signature July 22, 1946, 62 Stat. 2679, T.I.A.S. No. 1808, 14 U.N.T.S. 185.

72. The Purposes Clause of the Articles of Agreement of the International Monetary Fund outlines its economic and structural objectives, but does not mention human rights. Articles of Agreement of the International Monetary Fund, opened for signature Dec. 27, 1945, 60 Stat. 1401, T.I.A.S. No. 1501, 2 U.N.T.S. 39.

73. See T. FRANCK & M. MUNANSANGU, *supra* note 69, at 6 (emphasizing that the objectives written into the Covenant have not proven satisfactory to the developing nations); see generally Rozental, *The Charter of Economic Rights and Duties of States and the New International Economic Order*, 16 VA. J. INT'L L. 309 (1975-76).

74. In February, 1972, the FAO sent World Food Programme resources to the Sahel in order to relieve a famine. See G.A. Res. 3153, 28 U.N. GAOR Supp. (No. 30) at 89, U.N. Doc. A/9030 (1974).

75. The New International Economic Order is the subject of hundreds of articles and studies by the United Nations Secretariat and organs such as the International Labor Organization (ILO), the International Monetary Fund (IMF), the United Nations Conference on Trade and Development (UNCTAD), and United Nations Educational, Scientific, and Cultural Organization (UNESCO). See *The New International Economic Order: A Select Bibliography*, U.N. Sales No. E/F.80.I.15 (1981).

76. See Akinsanya & Davies, *The Third World Quest for a New International Economic Order: An Overview*, 33 INT'L & COMP. L.Q. 208-17 (1984) (reviewing the



Human rights, in the civil and political arenas, are central to much serious work. The fact that economic and social human rights are in the background is partially, though perhaps most importantly, due to the existence of much effective work achieved by operating institutions like the World Bank and the FAO. There is another factor, however, that is often overlooked, but one that emphasizes the differences between the two fields. In considering civil and political human rights, one generally is talking about *restraints* on governmental action, not *prescriptions* for such action. Agreement to refrain from impairing liberty comes, as a practical matter, more easily than agreement to guarantee the enjoyment of liberty. Civil and political human rights are, after all, mainly a recital of what a government should not do, not what it is mandated to do. Governments can generally agree that there is a right to liberty, a right to free association, and a right to freedom of religion.<sup>77</sup> These restraints on oppression are almost always admonitions addressed to governments, directing or exhorting those governments to *refrain* from practices limiting the freedom of individuals. The thesis of the CERDS,<sup>78</sup> on the other hand, like much of the norms of the NIEO, is that social and economic rights are to be achieved by effective governmental *actions*,<sup>79</sup> and that civil and political rights are robbed of significance unless there pre-exist social and economic human rights. The fundamental thesis is, to a considerable extent, well taken, and is the point of Holmes' quotation that precedes this talk: "A necessitous man is not a free man." Although the point is valid, it is easier to tell governments that they shall *not* throw persons into jail without a fair trial than that they *shall* guarantee a minimal standard of living. Except in the most extraordinary circumstances, governments need only their own volition to abstain from denial of social and political rights. To provide a decent living for all, however, may be beyond their

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prevalent themes in Third World claims for a new international economic order).

77. See Universal Declaration of Human Rights, *supra* note 1, arts. 9-10, 12-13, 18 (recognizing the right to liberty, free association, and religion).

78. Charter of Economic Rights and Duties of States (CERDS), arts. 6, 14, G.A. Res. 3281, 29 U.N. GAOR Supp. (No. 21) at 60, U.N. Doc. A/9631 (1974) [hereinafter cited as CERDS].

79. *Id.* Although the CERDS contains negative norms such as the principle of non-aggression articulated in chapter 1(e), it primarily demands affirmative governmental action for the fulfillment of its objectives. *Id.* Article 3 requires that "In the exploitation of mutual resources . . . each state must cooperate . . . ." Article 14 requires that "Every State has the duty to cooperate in promoting a steady and increasing expansion and liberalization of world trade . . . ." *Id.* Unlike the civil and political rights area, where the emphasis is on governmental abstention from action (e.g., with regard to torture, denial of free speech, etc.), the NIEO demands not merely abstention from certain action but moreover requires affirmative action to rectify alleged existing injustice. *Id.*

capabilities, or may require major societal readjustments involving conflicts within national societies, as well as among nations.

The American Declaration of Independence thus bases itself on life, liberty and the *pursuit* of happiness. Life and liberty are absolute standards. Happiness, the economic and social equivalent of a minimal standard of living, is a goal that one is free to pursue. The difference is substantial. Liberty, not to say life, inheres mainly in the absence of governmental—or other—denials of liberty. The ability of governments—or others—to guarantee “Freedom from Want,” is quite another matter. There are passionately held and divergent views regarding the economic policies that should or could constitute a New International Economic Order, or that would in fact contribute to attainment of basic human needs or to economic and social human rights.

It is essentially this disagreement which makes the Covenant on Economic and Social Rights little more than a global preamble to the many efforts that take place in the field of economic and social progress. The broader the statement of aspirations, the less specific may be the operational aspects. To a considerable extent, the same may be said of a document like the Charter of Economic Rights and Duties of States, despite the specificity of that document.<sup>80</sup> The central issue is how to achieve economic and social human rights. This issue is complicated by the divergences between those who, like most Western states, insist on primary stress for civil and political rights, and those who argue that without economic and social rights, civil and political rights are at best irrelevant and at worst a distraction from the real issues.<sup>81</sup> The considerable validity of this ultimate position should not obscure the fact that government policy can generally enhance, if not guarantee, political and civil rights by policies of mere abstention. The distinction is illustrated in the American Bill of Rights—the first ten amendments to the Constitution of the United States, adopted as an integral part of the Constitution itself—which is a list of prohibitions of certain types of governmental action, guaranteeing that certain rights, thought to antedate the Constitution, should not be taken from the citizens of the then-fledgling republic. *Per contra*, how to achieve higher levels of living, and how to assure that benefits of increasing resource availability will be equitably distributed, involves more complicated and controversial, albeit not more important, considerations.

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80. See T. FRANCK & M. MUNANSANGU, *supra* note 69, at 15-16 (analyzing the effects of assertions of broad theoretical rights).

81. See R. ROTHSTEIN, *GLOBAL BARGAINING: UNCTAD AND THE QUEST FOR A NEW INTERNATIONAL ECONOMIC ORDER* 15, 240-80 (1979) (defining this dispute in the context of the positions of the developing countries and the developed countries).

It is largely because of the different kinds of governmental involvement in the areas of (a) civil and political and (b) economic and social rights, that most civil and political rights activists are generally happy with governmental abstention from action, while most economic and social rights activists demand more governmental action. There is, therefore, a world of difference in international doctrine and institutional arrangements in the two areas.<sup>82</sup> The same reason makes the dogma of The New International Economic Order, more than that of the United Nations Covenant, the relevant text in international discussion when economic and social justice is the agenda.

Achievement of improved economic and social rights is one of the major aspirations of our time. Economic and social human rights and the concepts of the New International Economic Order come together in this area. Indeed, much of the rhetoric is interchangeable. The Brandt Report was not specifically designated as a human rights report. But the Brandt Report nevertheless addresses the fact that one quarter of those born in the poorest countries of the world die before the age of five. The Brandt Report also addresses economic and social remedies, such as increasing resource availability and achieving more equitable distribution of resources.<sup>83</sup> It follows that achievement of human rights in an economic and social context requires discovering the economic circumstances of the world.

With regard to international arrangements, there are two principal avenues. One is the often overlooked work of such organizations as the International Labor Organization (ILO). The ILO is a widely respected international organization (despite a past crisis occasioned by the United States' dissatisfaction)<sup>84</sup> that predates the Covenants and has been able for many years to set quite reasonable standards and to devise acceptable means of obtaining reasonable compliance with those standards.<sup>85</sup> These standards, of course, are not uniformly or even generally applied. The novels of Solzhenitsyn, as well as more mundane

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82. See R. ROTHSTEIN, *supra* note 81, at 27-36 (reporting in part on the differing demands of groups with political or economic interests in developing countries).

83. See THE BRANDT COMM'N (INDEPENDENT COMM'N ON INT'L DEVELOPMENT ISSUES), COMMON CRISIS: NORTH-SOUTH COOPERATION FOR WORLD RECOVERY 260-83 (1983).

84. See W. GALENSON, THE INTERNATIONAL LABOR ORGANIZATION (1981) (explaining the reasons for which the United States withdrew from the ILO in November 1977 and rejoined in February 1980, and evaluating the two principle purposes of the ILO: (1) the promulgation of international labor standards, and (2) the administration of technical assistance to less developed countries).

85. See E. LANDY, *supra* note 38, at 50 (discussing acceptable means of obtaining compliance with standards); see also *infra* note 91 and accompanying text (discussing standards of practice in labor).

reports of numerous agencies, attest to the degraded condition of labor in many parts of the world.<sup>86</sup> The ILO, however, has achieved at least verbal consensus on some standards, and in many instances, monitored application of those standards.<sup>87</sup> There are other specialized organizations addressing famine, the plight of refugees from civil or international conflict, and health issues. Specialized agencies have performed well in such situations, and to this extent have contributed more than is perhaps acknowledged in achievement of some measure of economic human rights.

Conceding that these efforts are commendable and important, many claim that they do not reach the true causes, and fail to provide adequate relief for maldescription of resources, particularly between the developed and the developing nations of the world. Instead, some critics maintain that these efforts toward amelioration only guarantee that overall conditions of poverty and want will not be alleviated since they detract from the root causes.<sup>88</sup> It is argued that the current world economic situation makes it almost inevitable that conditions of want and misery among a majority of the peoples of the world will not merely continue, but are likely to worsen.<sup>89</sup> It is thus natural that attention focus on the organization of the world economic situation. What has emerged is: (1) a search for a new international economic order in which enhancement of resources will go together with more equitable distribution of those resources,<sup>90</sup> and (2) proposals to revise the way in

86. See 1 INT'L LABOR ORGANIZATION, *THE WORLD LABOR REPORT* (1984); 2 INT'L LABOR ORGANIZATION, *THE WORLD LABOR REPORT* (1985) (discussing labor conditions around the world).

87. See INT'L LABOR ORGANIZATION, *INTERNATIONAL LABOR STANDARDS, A WORKER'S EDUCATION MANUAL* (2d ed. 1982) (introducing the formulation, adoption and application of internationally agreed standards of good practice in labor).

88. See R. BARNET & R. MULLER, *GLOBAL REACH* (1974); N. Sengupta, Opening Statement of the 8th Session of the U.N. Commission on Transnational Corporations II, reprinted in U.N. COMM'N ON TRANSNAT'L CORP. REP. No. 7 (1983) (discussing successes of past efforts and the need for change in an approach to economic development); see also O. SCHACHTER, *SHARING THE WORLD'S RESOURCES* 88-144 (1977) (discussing controversies over distribution of the world's product).

89. See N. Sengupta, *supra* note 89, at 9 (discussing the need for change in the "value system and its motivations" in the economic world since the industrial revolution); see also C. MICHALET, *LE CAPITALISM MONDIAL* (1976); ANGELOPOLOUS, *FOR A NEW POLICY OF INTERNATIONAL DEVELOPMENT* (1977) (discussing the shortcomings of the present order to provide economic equality in international development and the need for a new order).

90. See *supra* notes 49-51 (discussing the background of the New International Economic Order); see also S. RUBIN & G. HUFBAUER, *EMERGING STANDARDS OF INTERNATIONAL TRADE AND INVESTMENT* (1983); Rubin, *Symposium: Codes of Conduct for Transnational Corporations, Transnational Corporation and International Codes of Conduct: A Study of the Relationship Between International Legal Cooperation And Economic Development* 30 AM. U.L. REV. 903, 914 (1980-81) [hereinafter cited as

which the world economy is organized, in order to eliminate the inequities.<sup>91</sup> Development and equity are the key aspects of these efforts.<sup>92</sup>

A recurrent theme in the efforts to assist developing countries of the South is that their economic hardships are largely the result of the North's exploitation.<sup>93</sup> The fact that many developing nations have emerged only recently from the status of colonial territories gives rise to a demand for reparation as an aspect of equity. The former colonial powers, as well as the developed nations which have had no great colonial empires, like the United States, are accused of having systematically exploited the poorer and weaker nations, thus placing them, all but permanently, in the impoverished condition under which they now exist.<sup>94</sup> Moreover, that exploitation is considered to have created a situation that perpetuates the economic plight of the developing world.<sup>95</sup> The demand for economic justice, therefore, not only looks to the present but also looks to the future.<sup>96</sup> There is thus a demand for the transfer of resources in order to rectify past injustices, and for the transfer of technology, to encourage future progress.<sup>97</sup> There is, therefore, a demand not only for rectification of past wrongs, but also for equality of future opportunity.<sup>98</sup> Transfer of resources and transfer of technology are key elements in obtaining a new and better international economic order in which the developing nations will not be relegated to permanent inferiority, dependent on the dubious whims and generosity

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*Symposium*]. The impetus toward negotiation arose out of a perception that changed circumstances necessitated a new set of rules to govern the way in which trade and investment flowed across national boundaries. *Id.* Nations perceived that existing rules or standards that regulated, directly or indirectly, the international flow of trade in goods, services, investment capital and technology were unsatisfactory, and that the consequent organizational structure was deficient. *Id.*

91. See Rubin, *Developments In the Law and Institutions of International Economic Relations, Reflections Concerning the United Nations Commission On Transnational Corporations*, 30 AM. U.L. REV. 903, 914 (1980-81); see also S. RUBIN & G. HUFBAUER, *EMERGING STANDARDS OF INTERNATIONAL TRADE AND INVESTMENT* (1983).

92. See Rubin, *Symposium*, *supra* note 91, at 914.

93. See Rubin, *Most Favored Nation Treatment and the Multilateral Trade Negotiations: A Quiet Revolution*, 6 INT'L TRADE L.J. 221, 225 (1980-81) (presenting the developing nations' argument that special treatment is needed for their weakened economies due to long periods of dependency and the effects of colonialism).

94. *Id.* at 225; see also O. SCHACTER, *supra* note 88, at 29 (noting, for example, that in such areas as ocean resources and the global environment, the developed nations have dominated and exploited resources disregarding equitable principles).

95. See *supra* note 94 (discussing the exploitation of the developing countries).

96. See Rubin, *Symposium*, *supra* note 91, at 905.

97. *Id.* at 908, 917.

98. See S. RUBIN & G. HUFBAUER, *EMERGING STANDARDS OF INTERNATIONAL TRADE AND INVESTMENT* (1983) (presenting an overview of the development and promotion of equality for future opportunity).

of developed nations. Concessional aid from the rich, often demanded as a matter of right, is regarded by developing nations as an inadequate recompense for past injuries. As noted, a major thesis of the underlying philosophy is that the ills of the developing nations resulted from their exploitation.<sup>99</sup> There may be considerable truth in these charges. Neither rich nations nor rich individuals regard their poorer relations as *entitled* to equal shares. Whether in the society of individuals or of nations, power has generally been used for the benefit of the powerful. Whether the subject is rich and powerful nations, or great transnational enterprises, benefits usually go to those who have the ability to decide on allocation of those benefits, with crumbs from the tables of the rich being the lot of the poor. There is even some theological argumentation that this is not only inevitable but right. It was said that God must have loved the poor people, He created so many of them! To balance the advantages of riches in this world, there is the Biblical reminder of the difficulties a rich man will encounter trying to enter the Kingdom of Heaven.<sup>100</sup>

One need not dismiss all this as rubbish in order to question the merits of the "exploitation-reparation" thesis as a valid basis for a new international economic order. First, there is the question of just how to define exploitation. Admiral Perry is said to have exploited the Japanese by forcibly opening the doors of Japan to Western commerce and influence; certainly, his motivations had little to do with benefitting Japan. American automobile producers and high technology companies, however, might argue now that the results are different from those expected or intended.<sup>101</sup> Among transnational corporations, the British East India Company was often cited as one of the early and most successful of exploiters. Interestingly, there exists an early letter from one whom in this context may be considered as an expert source. In 1859, Karl Marx, hardly regarded as an advocate of capitalism, wrote a letter to Engels discussing British colonialism in India. I recall that Marx wrote that India had nothing from the affair but the honor of paying the English capitalists five percent on their capital; John Bull, however, really had been cheated by his own capitalists because while India paid

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99. See THE BRANDT COMM'N (INDEPENDENT COMM'N ON INT'L DEVELOPMENT ISSUES), NORTH-SOUTH: A PROGRAM FOR SURVIVAL (1980) (assessing the thesis that the ills of the developing nations stem from their exploitation by developed nations).

100. "Further I tell you that it is easier for a camel to go through the eye of a needle than for a rich man to enter God's Kingdom of Heaven." *Matthew* 19:24.

101. See E. BARROWS, THE GREAT COMMODORE 262-355 (1935); S. MORISON, "OLD BRUIN" COMMODORE MATTHEW C. PERRY 357-82 (1967) (presenting a detailed analysis of Commodore Perry's exploitation of the Japanese and the motivations behind this exploitation).

only nominally, it was John Bull who paid in fact. As it turns out, the British East India Company had to be bailed out periodically by the British Government.<sup>102</sup> Modern economists suggest that the economic effects of colonialism were far less a net transfer to the metropole than transfers from one to another group within the metropole. High profits, moreover, tend to encourage foreign investment, rather than the reverse.<sup>103</sup> And a late 1970's study done by the Brookings Institution suggests that a major effect of foreign investment is to limit competition in the home country; exploitation may be more a problem for consumers in the home country than for nationals of the host nation.

Because this is not intended to be a dissertation on the mysterious workings of international economics or economic theory, I allude to these matters largely because the terminology of international protection and promotion of economic and human rights is increasingly intertwined with that of the new international economic order. The claims of the developing countries are based on two major premises: (1) that there is a legitimate international interest in the economic and social circumstances of humanity; and (2) that to achieve equity demands a restructuring of the present world economic circumstances.<sup>104</sup> Both of these premises meet with general international agreement despite the reluctance of developed nations to recognize the "reparations" thesis, or to acknowledge that the plight of the poor is based on the sins of colonialism or of multinational corporations, or some other indication of their guilt and consequent obligation to make good the damage they have done. The problem is to come to agreement regarding what needs to be done and how to do it. An additional problem is that tying the acquisition of fundamental human rights to a demand for reparations from those who are reluctant, right or wrong, to confess their guilt, is to guarantee that conferences will be long and frequent, but barren of substantial result.

This is, of course, not to say that General Assembly or UNCTAD resolutions will not be adopted, or that committees will not be created, each of which has an amoeba-like ability to proliferate. I once wrote, not entirely in jest, that the first task of every international meeting was to reconsider the matters which had been conclusively decided at the prior meeting, and that the second task was to create at least two

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102. See B. GARDNER, *THE EAST INDIA COMPANY* 106 (1971).

103. See N.Y. Times, Jan. 14, 1985, at 20, col. 3 (suggesting that profits from assistance to developing nations benefit rich nations).

104. See Mills, *Introduction*, in *CHANGING PRIORITIES ON THE INTERNATIONAL AGENDA: THE NEW INTERNATIONAL ECONOMIC ORDER* 2 (K. Sauvart ed. 1981) (describing the need for a new international economic order).

additional committees or working groups for every one now in existence. However, I believe that international bodies can and often do make a contribution to achievement of that better world that is encompassed in the phrase "human rights." One must take at face value neither the broad generalities and complacent assumptions of all sides nor the prescriptions based on attribution of guilt or an assertion of unblemished virtue. Neither contains a useful formula for advancing the cause of either human rights or of the NIEO. For example, consider the simplistic suggestion that the debt problems of the developing nations and presumably, the obstacles to their attainment of economies both prosperous and equitable, could be solved by the simple cancellation by the industrialized nations of all debt owed to them by developing nations. Based on the exploitation-reparation thesis, this unrealistic proposal has a certain populist appeal.<sup>105</sup> It ignores the fact that most developing nations would like to retain some shreds of credit availability for the future; it ignores the fact that a very large part of the debt involved was incurred in response to the successive oil crises of the 1970's, and involved the recycling by Western banks of OPEC deposits;<sup>106</sup> it ignores that no responsible developing country has made such a request and that, looking to the future, few if any would desire to make it. It does, however, have a simplicity in its view of causes and solutions that has attracted some attention. To think about it, however, emphasizes the interdependence of developed and developing nations and their mutual interest in a cooperative effort toward the goal of human rights.

I do not mention debt cancellation as a typical or even serious exemplar of internationally-sponsored proposals for attainment of a regime of equity and justice in advancement of economic human rights, but as an extreme example of the difficulty of arriving at practical and acceptable solutions to problems of economic human rights by reordering the world economic system. The problem is not one of morality or of the "duty" owed by the North to the South. On that basis, indeed, there is general assent that help should be given not only in the particular circumstances of urgency and distress, but toward permanent solutions, not dependent on external acts of generosity or even of enlightened self-interest. One of the recent catch-phrases of United States foreign economic policy is that aid should be so directed that its recipients could attain self-sustaining economic growth.<sup>107</sup> That is both a moral and a

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105. See THE BRANDT COMM'N, *supra* note 99 and accompanying text (stating the thesis that the ills of developing countries were caused by their exploitation).

106. See U.N. COMM'N ON TRANSNAT'L CORP. REP. NO. 10 (1981) (commenting on the recycling capabilities of commercial banks).

107. See S. RUBIN & G. HUFBAUER, *EMERGING STANDARDS OF INTERNATIONAL*



pragmatic objective. Were it to be attained, it would contribute greatly to the achievement of economic and social human rights. The issue thus is not the desirability of the objective, but how to achieve it. As Robert Osgood wrote some 30 years ago, the American people are faced with the moral task of fixing their eyes upon ultimate ideals without losing their footing on the solid ground of reality.

It is important to examine not only the basic tenets but also the operative thesis of the New International Economic Order. Again, there is no dispute that something different, some remedial measures at the least, is needed. Although analysis of the past is surely relevant to both a moral judgment and to sound prescription of remedies, the point is not to fix blame but to find a remedy that will work. It is on this basis that I propose to devote a few comments to the work of the United Nations in an area in which it is argued that remedial measures will not only make some reparation for past damage, but will also establish standards for a new and effective working relationship. This area is that of the transnational corporation.

The United Nations Commission on Transnational Corporations (UNTNC)<sup>108</sup> was established in December, 1974 along with the adoption by the United Nations General Assembly (UNGA) of the Charter of Economic Rights and Duties of States.<sup>109</sup> The preamble to Resolution 3281 (XXIX), adopting the Charter, stressed that it "shall institute an effective instrument toward the establishment of a new system of international economic relations based on equity, sovereign equality, and interdependence of the interests of developed and developing countries."<sup>110</sup> The first two statements of the desiderata for the Charter are: (a) the attainment of wider prosperity among all countries and of higher standards of living for all peoples, and (b) the promotion by the entire international community of economic and social progress of all countries, especially developing countries.<sup>111</sup>

The first annual meeting of the United Nations Commission on TNCs<sup>112</sup> demonstrated that so far as the developing countries were

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TRADE AND INVESTMENT 7 (1984) (describing the basis for the United States foreign economic policy promoting economic growth).

108. See *supra* notes 54-55 and accompanying text (discussing the United Nations Commission on Transnational Corporations and the Centre on Transnational Corporations); see also Rubin, *Reflections Concerning the United Nations Commission on TNCs*, 70 AM. J. INT'L L. 73 (1976) (presenting background on the Commission).

109. See Charter of Economic Rights and Duties of States, *supra* note 53 and accompanying text.

110. *Id.* at 52.

111. *Id.*

112. The United Nations Commission on Transnational Corporations held its first annual meeting March 17-28, 1975. See U.N. Doc. E/5655; U.N. Doc. E/C.10/6

concerned, the NIEO was to be *the* guiding principle of the new Commission and its work.<sup>113</sup> The massive resistance on the part of developed nations to committing the Commission to full endorsement of the NIEO arose first, because most of them had either voted against adoption of the CERDS or had abstained;<sup>114</sup> and second, because the generalities of the CERDS, like those of the United Nations Declaration and Programme of Action of the Sixth Special Session of the UNGA, were open to a wide range of interpretations, some of which foreshadowed great difficulties for those who, correctly, considered themselves its targets. To aim to "correct inequalities and reduce existing injustices" is a commendable moral principle, but what it may require in new regulations, new supervisory mechanisms, and new contributions is, for many, uncomfortably vague and ominous. This is especially so when a wag can, with some justification, describe the CERDS as "a Charter of their rights and our duties."<sup>115</sup> In contrast, Mabooolal Haq, a leader in the formulation of NIEO principles, has maintained that "[t]he essence of the new deal lies in [the developing countries] obtaining greater equality of opportunity . . . No massive redistribution of wealth and income is being demanded . . . What is really required . . . is a redistribution of future growth opportunities."<sup>116</sup> Continued condemnatory rhetoric, however, has caused many to remain apprehensive regarding the extent of NIEO aspirations.

To agree on the specifics of Haq's formulation is difficult because the felicity of expression somewhat obscures the issue. Growth opportunities are not easily obtained nor, as many sectors of the United States industry have painfully learned, easily retained. A favorite and plausible demand, for example, is that research and development be increasingly located in the developing countries themselves.<sup>117</sup> But research

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(reporting on the first annual meeting).

113. *Id.*

114. See 14 I.L.M. 252, 265 (1975) (noting that the six developed nations voting against the adoption of the CERDS were Belgium, Denmark, Federal Republic of Germany, Luxembourg, United Kingdom, and United States).

115. See Brower, *Remarks at the 1975 Annual Meeting of the American Society of International Law*, reprinted in 69 AM. SOC'Y INT'L L. PROC. 231 (1975).

116. Haq, *Basic Needs and the New International Economic Order*, in *DIALOGUE FOR A NEW ORDER* 232 (K. Haq ed. 1980). The developing nations seek to end their dependency on the developed world through fundamental structural changes in international institutions and political power structures. See generally Ellis, *The New Industrial Economic Order and General Assembly Resolutions: The Debate over the Legal Effects of General Assembly Resolutions Revisited*, 15 CAL. W. INT'L L. J. 647, 648 (1985) (discussing the South's attempt to structurally change international organizations).

117. See U.N. Doc. E/C.10/1982/2 (discussing the demand that research and development be located in the developing countries).

and development is, more often than not, a product of an environment rather than of an individual laboratory. The resources, as well as the needs, of an entire community enter into the feasibility of a successful and responsive research and development program. If opportunity is lacking to utilize effectively the results of research and development, the establishment of an elaborate, and generally very costly, research and development facility becomes a counter-productive use of resources needed elsewhere.

The dispute at the first UNTNC session was only partially a matter of principle. It was largely based on differing perceptions of how TNCs could in fact contribute to economic growth and thus to attainment of the goals of the NIEO.<sup>118</sup> There is, for example, a current perception that the development tactics of the 1960s, focusing as they did on capital appreciation and increased economic productivity, neglected the distributional objectives of a proper development program.<sup>119</sup> Demonstrably, countries have in fact achieved reasonably satisfactory growth rates without at the same time attaining reasonably satisfactory living standards for the majority of the population.<sup>120</sup> This fact has led to questioning the thesis that the emphasis should be more on economic growth than on distributional equity. But the popularity of the equity thesis is already on the wane. Even in the developing countries, many

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118. The preamble to the NIEO Declaration reflects its basic philosophy by proclaiming that the "widening gap between the developed and developing countries" is unjust. See G.A. Res. 3201, U.N. GAOR, 6th Special Sess., Supp. (No. 1) at 3, U.N. Doc. A/9559 (1974); U.N. CHARTER, preamble (noting that the goals of the NIEO are in the preamble to the Charter of the United Nations where members expressed their determination to "promote social progress" and to "employ international machinery for the promotion of the economic and social advancement of all peoples").

119. Much of the boom in economic growth since World War II is due largely to the international operations of developed country transnational corporations and other large enterprises that have provided capital, technology and managerial skills. The sentiment prevails, however, that the TNCs gain disproportionately from their operations in the underdeveloped countries, taking all of the benefits and leaving nothing for the host country in return. See J. KUUSI, *THE HOST STATE AND THE TRANSNATIONAL CORPORATION* (1979); see also Nanda, *The Right to Development Under International Law—Challenges Ahead*, 15 CAL. W. INT'L L.J. 432 (1985) (discussing the shifting emphasis in development planning from strategies geared toward accelerating economic growth to strategies focusing on the distributional aspects of growth).

120. G.A. Res. 1710, 16 U.N. GAOR Supp. (No. 17) at 17, U.N. Doc. A/5100 (1961). A 1961 General Assembly Resolution set forth the need to "accelerate progress towards self-sustaining growth of the economy of the individual nations and their social advancement so as to attain in each underdeveloped country a substantial increase in the rate of growth . . . ." *Id.* But an earlier United Nations study warned of the danger of focusing on economic growth in development: "Human rights may be submerged and human beings seen only as instruments of production rather than as free entities for whose welfare and cultural advance the increased production is intended." U.N. Doc. E/3347/Rev.1, para. 90 (1960).

are skeptical as to its results. The current literature of development shows reassertion of the thesis that growth is essential, since re-allocation of the fruits of poverty does little to satisfy even basic human needs.<sup>121</sup>

Taking at face value the United Nations' commitment to international protection or better, promotion of economic and social rights, it is obvious that there is a vast discrepancy between objective and attainment. This is not solely a consequence of the substantial philosophic differences between developed and developing countries or between market and Socialist economies, or of the tendency of some to focus on fixing blame rather than remedial action. The problem is that what can be done is for the present more important than either the attribution of blame or the broad definition of objectives. And it is very difficult to work out effective programs.

There is little disagreement, for example, that in today's world of international business, both trade and investment are major factors and that the TNC is itself an important part of such international business.<sup>122</sup> This is conceded—or argued—by all, developed or developing, socialist or capitalist, although differing consequences are deduced.<sup>123</sup> All would agree that international enterprises such as the TNCs *should* contribute to economic development and consequently to social and economic progress and even more consequentially to the achievement of social and economic human rights.<sup>124</sup> But, to quote T.S. Eliot, "Between the idea / and the reality / Between the motion / and the act / Falls the shadow."<sup>125</sup> The work of the Commission on TNCs vividly illustrates the difficulties, if not the dilemma. There is in fact little argument about the proposition that TNCs, as a major channel of world trade and investment, should contribute to economic development and

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121. See S. Yolah, Opening Statement made at the Ninth Session of the United Nations Commission on TNCs, *reprinted in* U.N. COMMISSION ON TRANSNAT'L CORP. REP. NO. 16 (1983).

122. See Tiewul, *The Work of the U.N. on a Code of Conduct on TNCs*, 3A PUB. L.F. 61, 62 (1984) (discussing the role of the international community).

123. Developing nations have expressed concern over the practices of TNCs conducting business in their countries. See Kuusi, *supra* note 119 (discussing that the benefits of TNC operations flow to the developed, not developing countries).

124. G.A. Res. 36, 35 U.N. GAOR Supp. (No. 48), at 106, U.N. Doc. A/35/48 (1980). In the 35th Session of the United Nations General Assembly in the International Development Strategy for the Third U.N. Development Decade, the General Assembly stated that "development embodies both economic and social objectives and that its ultimate aim is the constant improvement of the well being of the entire population on the basis of full participation in the process of development and a fair distribution of the benefits therefrom." *Id.*

125. T.S. Eliot, *The Hollow Men*, in AMERICAN POETRY, 1671-1928, 512 (C. Aiken ed. 1929).

should further social and economic human rights.<sup>126</sup> The argument centers on how this may be accomplished. In this regard, the developed nations tend to focus on the pragmatic aspects while the developing nations tend to focus on the objectives. The result in any case is that after ten years of negotiation, a code of conduct, stated by all to be highly desirable and a priority in the agenda of the UNTNC, is still as elusive as ever.<sup>127</sup> True, a number of clauses have been agreed to subject to later review in the context of a completed document.<sup>128</sup> But the considerable number of such clauses tends to cloak the unpleasant fact that the major points of controversy are still unresolved and until the document is complete, nothing is final.<sup>129</sup>

Work on the TNC Code seems to illustrate a pervasive problem that arises when issues of economic and social human rights are considered, especially within a global forum like the United Nations. The Code suffers because nations fundamentally disagree about what those rights are, or should be, or, even more, how they should be attained. In the Code, as elsewhere, the definition of an affirmative goal is a stumbling block once one progresses beyond simplicities. One cannot mandate increased productivity and equitable distribution without considering the means to achieve those goals, and bothersome problems intrude—problems of efficiency versus equity, and capital formation versus capital distribution, for example. That a TNC should not pollute is a reasonably easy formulation—although it also requires qualification. A more difficult issue is whether TNC's should contribute to an improved balance of payments. The TNC and its problems are a part of the issue of progress toward economic and social human rights. Disputes such as these tend to induce skepticism in the most fervent believer in an international regime for economic and social rights.

History seems to show that exhortation is not very effective. In 1977, a General Assembly Resolution coupled human rights and development, stating that human rights issues should "be examined globally, taking into account . . . the need for the promotion of the full dignity of the human person and the development and well-being of the society."<sup>130</sup> A 1979 study of the United Nations Secretary General for the

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126. See *supra* note 119 and accompanying text (discussing how TNCs could contribute to the goals of the new international economic order).

127. See Commission on TNCs: Report on the First Session, 59 U.N. ESCOR Supp. (No. 12) at 2, U.N. Doc. E/5655 E/C.10/6 (1975) (noting that the Commission decided that the formulation of a code of conduct would receive priority).

128. See Fatouros, *At the Crossroads*, in U.N. COMMISSION ON TRANSNAT'L CORP. REP. NO. 16 (1983) (discussing the status of the code).

129. *Id.*

130. G.A. Res. 130, 32 U.N. GAOR Supp. (No. 45) at 150-51, U.N. Doc. A/32/45

Third Development Decade stated that "promotion of . . . the human right to development should be prominent among the stated objectives of a new international development strategy."<sup>131</sup> In 1980 the United Nations Commission on Human Rights suggested that work on the Third Development Decade "pay due attention to the integration of human rights in the development process."<sup>132</sup> An ECOSOC Working Group<sup>133</sup> has arrived at broad agreement that the right to development should be considered to be a comprehensive right.<sup>134</sup> None of these have lessened the divergence between those states which emphasize the *individual* nature of the right to development, and those which stress the *collective* nature of that right.

In terms of a body such as the United Nations Commission on TNCs, this means that consensual agreements will be difficult to reach if they contain anything of substance and, once reached, will be susceptible to varying interpretations. This conclusion is discouraging. Complete discouragement, however, would be wrong, or at least premature. The fact is that the very process of formulating criteria for economic and social human rights is a valuable step toward their attainment. Certainly, in the case of the proposed code of conduct relating to TNCs, discussion over the years has resulted in a greater degree of awareness, not only by governments but also by individuals and groups. This awareness has had a major effect on the actual conduct of TNCs.<sup>135</sup> Once the human rights aspect has been raised, it can no longer be ignored. Difficult though it may be to formulate a rule, the result is likely to be movement toward human rights observance.

In this process, therefore, there is a valuable role to be played by

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(1977).

131. U.N. Doc. E/CN.4 4/1334 (1979).

132. Comm'n on Human Rights Res. 7/36, 65 U.N. ESCOR Supp. (No. 3) at 164-66, U.N. Doc. E/CN.4/1408 (1980).

133. Since 1981, a 15 member working group of governmental experts established by the Economic and Social Council has been working on a draft declaration on the right to development. See U.N. Doc. E/CN.4/1983/11, Dec. 9, 1982; U.N. Doc. E/CN.4/1984/13, Nov. 14, 1983; U.N. Doc. E/CN.4/1985/11, Jan. 24, 1985.

134. The emerging consensus is that the right to the development of economic and social human rights should be a comprehensive right for all members of society without discrimination. See U.N. Doc. E/CN.4/1983/11 (Dec. 9, 1982); U.N. Doc. E/CN.4/1983/S.R. 17-20 (Feb. 1983); U.N. Doc. E/CN.4/1984/13 (Nov. 14, 1983); U.N. Doc. E/CN.4/1985/11 (Jan. 24, 1985).

135. See S. RUBIN & G. HUFBAUER, *EMERGING STANDARDS OF INTERNATIONAL TRADE AND INVESTMENT — MULTINATIONAL CODES AND CORPORATE CONDUCT* 178 (1984) (noting that by the early 1960's, despite the absence of international agreement, "a fairly well-established pattern of standards of conduct" had begun to develop); see also A. Fatouros, Comments at the Ninth Session of the United Nations Commission on Transnational Corporations, *reprinted in* U.N. COMM'N ON TRANSNAT'L CORP. REP. No. 16 (1983).

formulation of general and rather sweeping standards. Such standards do influence conduct and often lead to specific and workable rules. Indeed, the rules need not be internationally mandated for them to be effective, the more useful course is often their adoption by national rule-making authorities.<sup>136</sup>

Whatever the process, progress, albeit erratic, is steady, at least with regard to recognized economic and social rights. It is true that blame for non-attainment of a satisfactory situation is usually fixed on others and general rules cannot be easily agreed upon. But a sufficient consensus does exist so that one can be reasonably hopeful, and it is possible to envisage a general improvement rather than deterioration in the human condition.

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136. See generally Brietzke, *Consorting With the Chameleon, Or Realizing the Right to Development*, 15 CAL. W. INT'L L.J. 560, 567 (1985) (discussing the role of rule making authorities in the realization of development).