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Day of general discussion

INTERNATIONAL CONSULTATION ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN DEVELOPMENT ACTIVITIES OF INTERNATIONAL INSTITUTIONS ORGANIZED IN COOPERATION WITH THE HIGH COUNCIL FOR INTERNATIONAL COOPERATION (FRANCE)

A. Introduction

958. At its twenty-fifth session, on 7 May 2001, the Committee held an international consultation, organized in cooperation with the *Haut conseil de la coopération internationale* (High Council for International Cooperation, or HCCI), on economic, social and cultural rights in relation to the development activities of international institutions. The Committee decided to have this international consultation, in the light of its efforts to engage United Nations specialized agencies, programmes and funds, and other international and regional organizations, in a dialogue and relationship of cooperation.

959. Speakers and panel discussants at the international consultation were the following: Mr. Jean-Louis Bianco and Ms. Catherine Lalumière (HCCI), Mr. François Gianviti (IMF), Mr. Hoe Lim (WTO), Mr. Omar Noman and Mr. Simon Munzu (UNDP), Mr. Bertrand Ramcharan (Office of the High Commissioner for Human Rights), Mr. Rubens Ricupero (UNCTAD), Mr. Alfredo Sfeir-Younis (World Bank), Mr. Juan Somavía and Mr. Lee Swepston (ILO), Mr. Jean-Claude Faure (Development Assistance Committee, OECD), Mr. Carlo Trojan (European Commission, European Union), Ms. Patricia Feeney (Oxfam GB), and Mr. Nyameko Barney Pityana (South African Human Rights Commission). Mr. Paul Hunt, Rapporteur of the Committee, and Mr. Philippe Texier made interventions as members of the Committee. Mr. Gustave Massiah (HCCI) and Mr. Kenneth Osborne Rattray were responsible for the synthesis of the day.

960. The following documents were submitted to the Committee for the purpose of the international consultation:

(a) Background paper submitted by Mr. Fantu Cheru (American University, Washington, D.C.): “Gender equality and globalization: understanding complex dimensions of opportunity and challenge” (E/C.12/2001/4);

(b) Background paper submitted by Ms. Isabelle Daugareilh (Centre national de la recherche scientifique, Bordeaux, France) and Ms. Alice Sindzingre (Centre national de la recherche scientifique, Paris): “Strategies for development and revival of economic and social rights” (E/C.12/2001/5);

(c) Background paper submitted by Mr. Hamish Jenkins (Non-Governmental Liaison Service): “Global economic governance and national policy autonomy in the pursuit of economic, social and cultural rights” (E/C.12/2001/6);

(d) Background paper submitted by Mr. Nuri Albala (International Association of Democratic Lawyers, founding member of the Observatoire de la mondialisation, Paris): “The citizen and the State: the duty to ensure the primacy of human rights in any international negotiation” (E/C.12/2001/7);

(e) Background paper submitted by Mr. Alfredo Sfeir-Younis (Special Representative of the World Bank to the United Nations and WTO, Geneva): “Economic, social and cultural rights in development activities: Human rights economics in international relations” (E/C.12/2001/8);

(f) Background paper submitted by Mr. Michel Dispersyn (Free University of Brussels, Universities of Bordeaux and Nantes): “The social dimension of the European Union’s Generalized System of Preferences (GSP)” (E/C.12/2001/9);

(g) Working paper submitted by Mr. Fantu Cheru (American University, Washington, D.C.): “The African renaissance and the challenge of globalization”;

(h) Working paper submitted by Mr. Hoe Lim (External Relations Officer, External Relations Division, WTO, Geneva): “Trade and human rights: What’s at issue?”;

(i) Working paper submitted by Mr. Dinesh Mohan (Transportation Research and Injury Prevention Programme, Indian Institute of Technology, New Delhi, India): “Safety as a human right”;

(j) Working paper submitted by Mr. Ernst-Ulrich Petersmann (Professor of International and European Law, University of Geneva and the Graduate Institute for International Studies, Geneva): “Time for a United Nations action program for integrating human rights into the law of worldwide organizations: Lessons from European integration law for global integration law”;

(k) Working paper submitted by Mr. François Gianviti (General Counsel, IMF): “Economic, social and cultural human rights and the International Monetary Fund”.

B. Opening remarks

961. After the Chairperson of the Committee, Ms. Bonoan-Dandan, opened the meeting, the Deputy High Commissioner for Human Rights, Mr. Ramcharan, introduced the international consultation by referring to the twenty-fifth anniversary of the entry into force of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Mr. Ramcharan pointed out the historic role of specialized agencies in shaping the International Covenant on Economic, Social and Cultural Rights, and their crucial present-day role in helping to implement the Covenant and the rights contained therein. Mr. Ramcharan called for partnerships between the Committee and the relevant international organizations. He made the following propositions on the role of economic, social and cultural rights in the activities of agencies:

(a) The objectives of the Covenant must become the goals of development activities and economic, social and cultural rights must have a prominent role, as they constitute the basis of a rights-based approach to development;

(b) There should be more focus on developing national implementation arrangements for economic, social and cultural rights;

(c) The Common Country Assessment/United Nations Development Assistance Framework process should take into consideration the national implementation of economic, social and cultural rights, and in particular there should be an assessment about the extent a particular State has actually embraced a rights-based approach;

(d) More attention should be paid to gross and systematic patterns of violations of economic, social and cultural rights, which have hitherto not been sufficiently addressed;

(e) There should be more resort to judicial arbitration of economic, social and cultural rights;

(f) The principle of equality and non-discrimination must be one of the foundations of all activities concerning economic, social and cultural rights.

962. Mr. Somavía (Director-General, ILO), after thanking the Committee and HCCI for organizing such an important event, emphasized that the ILO's relationship with the International Covenant on Economic, Social and Cultural Rights and the Committee has always been one of symbiosis, based on the same values and beliefs. In the world of today, the international community must confront three challenges. The first challenge for the international system as a whole is unregulated globalization, which is governed only by economic rules. The second challenge is its seemingly schizophrenic nature, as a result of countries doing contradictory things, e.g. conflicts between policies in the fields of international economics and trade on the one hand, and economic, social and cultural rights on the other. The third challenge is to develop the capacity of the multilateral system as a whole to connect with people, and to become aware of the different perspectives on reality. According to Mr. Somavía, the United Nations system of human rights protection and promotion will always be fragile if there are no standards. This has been clear for ILO from its inception in 1919. He mentioned the efforts of ILO to advance the concept of "decent work", reflected in, inter alia, the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up - adopted in 1998 by the International Labour Conference - and the ILO programme on decent work.

963. Mr. Ricupero (Secretary-General, UNCTAD) recognized the increasing centrality of economic, social and cultural rights in the international forums, and in particular in the Commission on Human Rights, and commended the Office of the United Nations High Commissioner for Human Rights for contributing to the advancement of these rights. The results may not yet be so tangible, but there is no doubt that human rights are an essential part of the international network, in which everything relates to each other. He acknowledged the need to find practical ways of reconciling points of conflict, with regard to which he made the following comments. First, with regard to the question of the extent to which international organizations are bound by international human rights instruments, Mr. Ricupero expressed his view that these organizations are not abstract entities, but are formed by States, which are often the same States parties to the human rights instruments. These organizations should therefore aim to have more coherence in their activities. Secondly, on the statement that globalization is affecting economic, social and cultural rights, it must be borne in mind that the phenomenon of globalization is a continuation of trends in the past, and therefore not entirely new, notwithstanding the exacerbation of particular existing

problems - such as poverty and inequality - and the creation of new problems. It is therefore appropriate to keep a balance in the discourse in order to be effective. Thirdly and lastly, he pointed to the mobilization of civil society, which has contributed to advancing human rights issues and linking them to other international issues, such as transnational corporations, international trade, finance and investment. Mr. Ricupero referred to the Millennium Declaration, adopted by the General Assembly on 8 September 2000, and supported by almost all States, as a clear mandate to mobilize civil society, with its concrete goals, such as halving poverty, doubling the number of children in primary schools, and reducing child mortality by two thirds by 2015. Finally, he brought to the attention of the meeting the Third United Nations Conference on the Least Developed Countries, in Brussels from 14 to 20 May, 2001.

964. On behalf of HCCI, Mr. Bianco (President, HCCI) expressed the view that the world needed new rules for globalization, especially to protect the most vulnerable groups of society. He also mentioned the important role of civil society in keeping human rights on the international agenda. Mr. Bianco also referred to the relevance of including the business community in the intergovernmental dialogue. Mr. Bianco said that, in France, HCCI was representative of civil society as a whole and had entered into a frank and productive dialogue with the Government on their respective roles and common goals. With the positive development of organizations similar to HCCI springing up in other European countries, he suggested that a “global compact of international organizations” could be created, along the lines of the United Nations Secretary-General’s Global Compact for business, and that these organizations should place human rights at the heart of their activities. The international organizations needed to explore new avenues and to share their experiences and analyses to ensure that they acted consistently. The only way to restore the public’s confidence in the legitimate forms of global governance aimed at putting people first was through discussion and a reaffirmation of the basic values they shared, Mr. Bianco concluded.

965. Referring to earlier calls for partnership and an integrated approach, Mr. Sadi emphasized that it was crucial that the international organizations take into account the Covenant and its provisions in their work, in order to be able to assist States in implementing human rights, and in particular economic, social and cultural rights at the national level. States could not comply with international human rights obligations at the national level without the cooperation and assistance of those international organizations with whom they are working.

966. Mr. Somavía (Director-General, ILO) responded that there were limitations to inter-agency cooperation. Ultimately, the Governments - and especially the donor countries - are the actors to take the initiative and to take political responsibility. Problems continue to persist due to a lack of political will. Granted, there is a need for an integrated approach at the international level, but members of civil society will have to continue their work to effect change at the national level.

967. Mr. Ricupero (Secretary-General, UNCTAD) commented that the problem was not the absence of principles, but the practical application of these principles to concrete situations. With respect to trade and WTO, he pointed out that there would often be a trade-off between efficiency gains and justice, and that it would be difficult to make justice or human rights prevail, as long as consensus prevailed as a decisive criterion for decision-making within WTO. As for debt relief, despite the over-optimistic prognoses, UNCTAD has been convinced for many years that even with the Heavily Indebted Poor Countries

Initiative, these indebted countries would not be able to sustain their debt servicing. Mr. Ricupero quoted the World Bank as having said that it would require the entire Bank capital to eradicate the total debt of 60 developing countries. According to Mr. Ricupero, the bottom line was that political will was needed and that this would require the mobilization of civil society.

C. Panel discussion on “International institutions and the International Covenant on Economic, Social and Cultural Rights”

968. In his introductory statement, Mr. Hunt, the Rapporteur of the Committee, made reference to Commission on Human Rights resolution 2001/30 of 20 April 2001 entitled “Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration on Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights”. From this resolution, Mr. Hunt highlighted three issues relevant to this international consultation. First, the resolution called upon States parties to the Covenant to “ensure that the Covenant is taken into account in all of their relevant national and international policy-making processes”. Secondly, it encouraged the Committee to enhance “its cooperation with United Nations specialized agencies, programmes and other bodies working on issues that bear upon the Covenant”. Thirdly, it encouraged “all United Nations specialized agencies and programmes [...] and other United Nations bodies [...] whose activities bear upon economic, social and cultural rights to enhance their cooperation and increase coordination with [the Committee] in a manner that respects their distinctive mandates and promotes their policies, programmes and projects”.

969. Mr. Hunt continued by stating the willingness of the Committee to develop closer links with the World Bank and IMF, and that some correspondence has taken place between the Chairperson of the Committee and the President of the World Bank and the Managing Director of IMF concerning human rights and the evolution of the Heavily Indebted Poor Countries Initiative, and in particular the Poverty Reduction Strategy Papers. He also referred to the adoption by the Committee on 4 May 2001 of the Statement on poverty and the International Covenant on Economic, Social and Cultural Rights (see annex VII below), which was designed to demonstrate in abstract terms the “value-added” of human rights to the poverty discourse, to form a basis for the further development of operational anti-poverty strategies, and to establish explicitly that international human rights provide a framework of legal norms or rules voluntarily entered into by States parties. These norms entailed legal obligations that demanded the accountability of all duty-holders, otherwise they could be regarded as “mere window-dressing”.

970. Mr. Hunt made three proposals for further action. First, the Office of the United Nations High Commissioner for Human Rights, in conjunction with the Committee, should organize a small workshop to identify in practical terms how human rights, and in particular economic, social and cultural rights, could be integrated into Poverty Reduction Strategy Papers. His second proposal was that the Office of the High Commissioner and the Committee should encourage heavily indebted poor countries to seek technical advice and assistance regarding the integration of human rights into their Poverty Reduction Strategy Papers, which are “country-owned” documents. The third proposal was that the Committee should continue the dialogue established with the World Bank and IMF by following up on the letters from the President of the World Bank and from the Director-General of IMF, and

that the Office of the High Commissioner, in conjunction with the Committee, should be prepared to visit these institutions to further discuss the integration of human rights into Poverty Reduction Strategy Papers. Mr. Hunt stressed the Committee's view that "anti-poverty policies are more likely to be effective, sustainable, inclusive, equitable and meaningful to those living in poverty if they are based on international human rights" (see Statement on poverty and the International Covenant on Economic, Social and Cultural Rights, para. 13). In closing, Mr. Hunt made reference to the ongoing cooperation between the Committee and UNESCO, which particularly focused on the relationship between the implementation of the Dakar Framework for Action, adopted at the World Education Forum in April 2000, and the realization of articles 13 and 14 of the Covenant.

971. In presenting his paper on the meeting point of economic, social and cultural rights and development strategies (para. 960 (e) above) for the purpose of the first panel discussion, Mr. Sfeir-Younis (World Bank) brought forward the question whether law and jurisprudence should be the only or principal "entrance point" to the debate, given that, at its own level, the World Bank had assumed that economic, social and cultural dimensions were important in many ways. Furthermore, he stated that experience in development planning processes and implementation often showed that the debate on human rights remained very separate from that of the economic development aspects of the same processes, and that it was necessary to have a full understanding of the implications of any economic policy or programme for the assignment of rights. Mr. Sfeir-Younis also said that the Committee often advocated that human rights values must have precedence over economic values and decision-making rules. However, the major question posed by that assertion was one of relativity, particularly when functioning in a world of "trade-offs", a world where resources are limited and the efficiency in the allocation of these resources does matter. Notwithstanding that the traditional sectoral approach to development strategies is neither the best nor the most comprehensive way to address economic, social and cultural rights, Mr. Sfeir-Younis argued that in practice this approach has led to advances in such sectors as education, health, food and housing.

972. As to the first important question of whether development strategies mainstream economic, social and cultural rights, Mr. Sfeir-Younis stated that many plans did include an overall strategy to implement all human rights, even where that was not explicitly stated. As to whether it would be possible to mainstream human rights into development, he said that it was, but that many of the political, social, institutional and human conditions required for such mainstreaming had not yet been met.

973. The answer to the second question of whether globalization tends to violate or foreclose options to the attainment of economic, social and cultural rights, depended on the standpoint adopted, according to Mr. Sfeir-Younis. Before a consensus could be reached, it was essential to recognize the major advances that had been achieved as a result of the globalization process, for example in the field of new technologies such as informatics and transport. Several conditions - such as the creation of a new global social contract - would have to be met before social globalization could be attained, which was one of the major constraints both developed and developing countries faced in the fulfilment of human rights at all levels.

974. As far as the question of whether poverty strategies support the attainment of economic, social and cultural rights, Mr. Sfeir-Younis was more optimistic. Most development strategies and institutions are currently focusing on the complex and multidimensional process of poverty eradication, and the Committee should also focus more

on the link between rights and poverty strategies. He indicated that the views of the World Bank on poverty have changed, and for the better. However, if a consensus on attacking poverty were reached, there would be a need for a common communication strategy among international organizations to inform the public at large that a poverty eradication strategy was essential to the implementation of all human rights and that absolute poverty was probably one of the main underlying causes of human rights violations.

975. The final question of whether there was a need to move towards new development strategies, in the light of the indivisibility and hierarchy of human rights, was answered in the affirmative by Mr. Sfeir-Younis, pointing to the Committee's Statement on poverty and the International Covenant on Economic, Social and Cultural Rights as an important contribution towards defining possible characteristics, focusing on people, social conditions, immediate action and solidarity with the poor, the voiceless and the powerless. However, societies seemed unable to maintain the holistic nature of human rights values in the implementation process of development. He deemed it important to identify the point of breakdown, as having new development strategies without resolving the causes of this breakdown would simply result in more documentation and declarations of intent rather than in respect for human rights.

976. Mr. Faure (Development Assistance Committee, OECD) observed that just as democracy and development were said to be mutually dependent, the same could apply to human rights and development strategies. Integration of human rights was becoming a condition for the very success of development and poverty reduction strategies. Strategies depended on the ability not only of the State, but also of citizens and economic actors to take free and independent decisions in a secure legal and judicial environment. The much-vaunted partnership between North and South must become more equal, assisted by development cooperation policies. Industrialized countries and international organizations could, through their development policies, encourage the implementation of human rights, without which there could be no poverty reduction. That process was, however, in the early stages and the challenges were real. It would assume a change of behaviour and attitude on the part of bilateral and multilateral donors to a new approach based on acceptance of their responsibility.

977. Similarly, the approach should be coherent and consistent, not only in Washington or Geneva, but also in the strategy implementation on the ground. At this point, Mr. Faure doubted whether conditions for ensuring consistency yet existed, given that some multilateral agencies and bilateral donors were not yet sufficiently involved in the local process of strategy formulation and implementation. Development policy through strategy support meant setting objectives towards which donors and recipient could progress together, which implied not so much a priori conditionality, as joint action and joint progress. Finally, an approach based on operationalizing human rights, though undoubtedly desirable, would not lead far if limited to multilateral organizations and bilateral donors. The private sector, which would finance most of the development, and civil society, should also be associated with the process. Further meetings should therefore include representatives of both.

978. Mr. Noman (UNDP) focused on issues in the specific context of his own country, Pakistan. After 50 years of independence and US\$ 50 billion of aid, the country had a 40 per cent literacy rate and had undergone rapid deterioration during the 1990s. While the responsibility lay clearly with the Government, the past record of international institutions in Pakistan had been fairly appalling. There had been a rapid increase in poverty between 1989

and 1999; development expenditure, which in 1992 had been higher than defence spending, had declined and was now considerably lower; debt servicing obligations had risen rapidly; and spending on education and health had declined from an already low level to the current 2.7 per cent of GNP. In that context, what did economic, social and cultural rights mean?

979. The more expensive the rights in terms of a country's resources, the more difficult it was to meet the obligation, Mr. Noman said. Once the national process of priority setting and sequencing of rights had been established, a degree of budgetary accountability was necessary. The implementation of a rights-based approach was also relevant to horizontal inequality in the areas of gender, ethnicity and race. It was important not to regard the rights-based approach as inefficient. For example, the privatization of State-owned enterprises should not be assumed to be in contravention of the right to employment, as those enterprises might be a major drain on public resources, leading to high inflation. It was the Government's obligation to ensure that distortions, which led to growth without employment, were removed.

980. Mr. Swepston (ILO) said that ILO warmly supported rights-based development initiatives by international organizations. ILO standards were closely integrated into the Covenant. ILO had been in discussion with the international financial institutions on how to better align their programmes. Human rights were a system-wide concern based not just on one individual instrument but on the complex of instruments that made up the collective consciousness and conscience of the system.

981. There was no contradiction between a common commitment to a core set of values and country-owned development strategies. Focusing assistance on the values and rights, which had found common expression in such instruments as the Covenant and ILO standards, did not amount to conditionality; international human rights instruments had been adopted as a development priority by the developing countries themselves through ratification. Mr. Swepston agreed with the representative of the Development Assistance Committee of OECD on the need to go beyond the international institutions. The ILO was in the process of setting up a project with the Asian Development Bank to explore the implications of the integration into their work of three basic human rights issues: child labour, gender, and occupational safety and health. Mr. Swepston agreed on the need to extend the debate well beyond the institutions represented at the international consultation, which had a diminishing share in development assistance.

982. Ms. Feeney (Oxfam GB) said that since the 1993 World Conference on Human Rights in Vienna, she derived some satisfaction from the seriousness with which all rights were being treated by civil society, Governments and even institutions such as the World Bank and the IMF. However, there was still a long way to go. Ms. Feeney was heartened to hear the World Bank representative, Mr. Sfeir-Younis, recognize the World Bank's obligation to respect economic, social and cultural rights in its programmes and policies. Whether it was doing so successfully was a moot point. According to Ms. Feeney, there was a simple yardstick by which the international community should judge all types of international development assistance, namely whether it contributed to the effective realization of the rights recognized by the Covenant. Too often, that had not been the case. The most flagrant illustration, echoed in the statements by the Secretary-General of UNCTAD and others, had been the failure of industrialized countries to achieve more equitable forms of globalization.

983. In the early 1990s, the received wisdom promulgated by the World Bank and IMF had been that globalization and the liberalization of trade and finance would spur growth in the poorest countries, diminishing income disparities within the global economy in the process. However, the widening gap between the developed and the developing countries and the increasing number of least developed countries were a clear indication of the inadequacies of the system over the previous 20 years. The failure of international cooperation was particularly apparent in the field of trade. In many countries, the benefits of trade liberalization and privatization had been grossly overstated by the international community. For example, many least developed countries had introduced trade liberalization programmes, often under the auspices of the World Bank and IMF, but those programmes, unlike those in the framework of WTO, had not been reciprocated, locking those countries in an unequal bargain. In the case of privatization of State-owned assets, there had often been a lack of concern about inequality, a lack of transparency, and neglect of the social impacts on the retrenched workforce.

984. While there were some moves to make the development and planning process more transparent - particularly the Common Country Assessment/United Nations Development Assistance Framework process, the Comprehensive Development Framework of the World Bank and the new Poverty Reduction Strategy Papers - some concerns remained. With regard to the Poverty Reduction Strategy Papers, the initial conclusions were not promising and many civil society organizations were dissatisfied with the extent of public involvement. Similarly, there was concern that the policy content did not constitute a significant change from past adjustment programmes, with too much focus on economic growth and a reduced role for the State, and without the all-important impact assessment. Ms. Feeney concluded by citing some important changes, such as civil society becoming more organized and sophisticated, and by emphasizing the possible pay-off for the promotion and protection of human rights if and when the United Nations system would work together.

985. Mr. Allmand (Rights and Democracy) said that a basis of the obligation of international institutions to take into account human rights could be found in numerous documents of the United Nations, such as the Charter of the United Nations, human rights instruments, outcome documents of conferences, and declarations. There are sufficient legal arguments to support the primacy of human rights. What is required at present is the political recognition of and support for human rights. It may be worthwhile to seek a formal interpretation of the aforementioned instruments and documents by a domestic or even an international court of law, such as the International Court of Justice.

986. Mr. Windführ (FIAN - Foodfirst Information and Action Network) stated that there was a need for clarity on how intergovernmental organizations could assist Governments, particularly on ensuring that these intergovernmental organizations act in conformity with States' human rights obligations. There are two aspects to the role of intergovernmental organizations. On the one hand, they should provide active assistance in cash or kind. On the other hand, these organizations have to ensure that their policies do not obstruct States in their efforts to implement human rights - such as the right to food or other economic, social and cultural rights - nor contribute to the violations of these rights.

D. Panel discussion on "Possible advances in economic, social and cultural rights"

987. In his presentation, Mr. Texier underlined the importance attached to human rights in relation to activities in the field of international cooperation, development and international

finance by referring to Commission on Human Rights resolution 2001/27 of 20 April 2001 on the effects of structural adjustment programmes and foreign debt on the full enjoyment of human rights, which stated that the exercise of fundamental rights by citizens of debtor countries could not be made subordinate to the implementation of debt-servicing policies. Mr. Texier also expressed support for the proposals made earlier by Mr. Hunt concerning the relationship between the international financial institutions and the Committee, and on integrating human rights in poverty reduction strategies.

988. Mr. Gianviti (IMF) pointed out that at the time of the drafting of the Covenant, by contrast to other specialized agencies whose mandates explicitly or implicitly included the promotion of human rights, IMF took the position that the questions raised in the elaboration of the Covenant were outside its own mandate, for a variety of reasons. First, IMF and the World Bank saw themselves as international organizations separate from their members, governed by their respective charters and aimed at achieving a set of limited objectives. Furthermore, IMF and the World Bank saw themselves as purely technical and financial organizations, which were to provide economic assistance, not to dictate political changes. In addition, decision-making power in IMF and the World Bank, unlike the United Nations, was vested in organs whose decisions were taken by weighted voting, rather than on a one-country, one-vote basis. Mr. Gianviti also stressed the fact that IMF was not a project lender, nor was it involved in sectoral activities, such as health or education, as it was a monetary agency, and not a development agency.

989. Since the 1950s, the purposes of IMF had not changed, but its practice and its mandate under the Articles of Agreement had evolved to meet the changing needs of its members. IMF still provided only balance of payments support, although the concept of balance of payments was now more flexible than in the past. Also, IMF now exercised surveillance over certain policies of its members, and the special needs of developing countries, particularly the poorest of them, had received recognition. Therefore, it could be said that the cumulative effect of changes in its practice and in its Articles of Agreement had introduced new elements of a relationship between IMF and the Covenant. The questions that arose were whether IMF is legally bound to give effect to the provisions of the Covenant in its decisions; and whether, and to what extent, IMF's own Articles of Agreement allowed or required IMF to achieve objectives that were similar to those of the Covenant.

990. According to Mr. Gianviti, there were objections to recognizing the applicability of the Covenant to IMF. First, IMF was not a party to the Covenant. Secondly, the Covenant only addressed States and not agencies. Thirdly, article 24 of the Covenant stipulated that it was not to impair the Charter of the United Nations or the constitutions of other agencies. Mr. Gianviti proceeded to explore various possibilities for finding a legal basis for the Covenant's binding force on IMF. As to the relationship of IMF with the United Nations as the legal basis for the applicability of the Covenant to IMF, he stated that IMF was not a United Nations agency, but an intergovernmental agency which was brought into relationship with the United Nations, in accordance with Article 57 of the Charter, by the 1947 Agreement between the United Nations and the International Monetary Fund in which the United Nations recognized that "by reason of the nature of its international responsibilities and the terms of its Articles of Agreement, the Fund is, and is required to function as, an independent organization". Therefore, there was no obligation on the part of IMF to give effect to United Nations resolutions or international agreements, such as the Covenant. With regard to general principles of international law, obligations *erga omnes* and *jus cogens*, Mr. Gianviti contended that the Covenant and its provisions constituted none of these categories

of international law, particularly in the light of the aforementioned article 24 of the Covenant. His conclusion was, therefore, that the Covenant is not binding upon IMF, nor does it have direct effect.

991. In conclusion, Mr. Gianviti said that the fact that the Covenant does not apply to IMF does not mean that IMF does not contribute to the objectives of the Covenant. IMF's contribution to economic and social human rights is essential but indirect, as it contributes to providing the economic conditions that are a precondition for the achievement of the rights set out in the Covenant. IMF is not free to disregard its own legal structure for the sake of pursuing goals that are not within its own mandated purposes, and if the members of IMF believe that it should adopt a more direct approach to the integration of human rights considerations in its decisions, they may propose an amendment to IMF's Articles of Agreement. According to the working paper submitted by Mr. Gianviti, IMF already contributes significantly to the achievement of the objectives of the Covenant, while discharging all of its responsibilities towards all of its members.

992. Mr. Trojan (European Commission, European Union) stressed the need for coherence and consistency of policies, both at the national and international levels, which would require international cooperation and coordination, as well as an increased dialogue with members of civil society and non-governmental organizations specializing in development. There was no doubt about the existing links between trade, development and human rights, be they civil, cultural, economic, political or social. Understanding the global responsibility for the enjoyment of human rights and in particular the right to development, the European Union - the model for the most developed regional integration in the world - has been applying the concept of "controlled liberalization", which required political leadership, common objectives, coherent policies, a strong sense of solidarity and a solid system of governance.

993. Mr. Trojan pointed out that the discussion on the negative impacts of globalization, as well as on the imbalances and potential conflicts with human rights, was centred on WTO, and WTO had been the subject of conflicting pressure from all parts of civil society. For some, WTO should be more actively involved in issues of norms concerning labour, the environment and health, and should even impose sanctions in this regard. On the other hand, others were of the opinion that the interference of WTO in national legislation represented all that was negative in the world. However, neither position was correct, according to Mr. Trojan. Controlling globalization was a much more complex challenge requiring more than a simple action on the part of WTO, which had had success in generating growth and employment.

994. Mr. Trojan said that despite its reputation of being an efficient organization dominated by rich countries, WTO was less powerful and less efficient than some other United Nations organizations, particularly the Bretton Woods institutions, as WTO was a "member-driven" organization and its efficiency depended largely upon the Dispute Settlement Understanding (annex 2 to the Marrakesh Agreement establishing the World Trade Organization) to enforce WTO rules. The case law of the WTO Appellate Body did not demonstrate that trade law was given primacy over imperatives of health and environment. So, although WTO could do more to contribute to the full realization of human rights, and particularly the right to development, it could not eradicate poverty or create conditions for sustainable development on its own, nor was WTO the appropriate organization to deal with larger questions of governance.

995. Mr. Trojan concluded by saying that in the context of the European Union, a mechanism to provide leadership, coherence and arbitration, could be found in the Council of the European Union. In this light, the idea of a summit on globalization, as had been suggested by Mr. Sutherland, former Director-General of WTO, and others, could prove to be interesting. In the meantime, it would be necessary for international organizations and Governments to engage in concerted action, as the realization of the right to development required a more structured effort at the global level.

996. Mr. Munzu (UNDP) stressed that economic, social and cultural rights were at the heart of UNDP's mandate and of its endeavours in favour of sustainable human development throughout the world. The concept of sustainable human development places people at the centre and regards them as both the principal actors and beneficiaries of development in any given society. It seeks to expand choices for men, women and children, today and in future generations, and to protect the natural environment and ecosystems on which all life depends. The interconnection between sustainable human development and human rights was forcefully articulated in the UNDP *Human Development Report, 2000*, which stated that "human rights and human development share a common vision and a common purpose - to secure, for every human being, freedom, well-being and dignity". UNDP country offices contributed, through their sustainable human development projects, to the reduction of poverty, providing or facilitating access to food, education, health care, housing, employment, social services, social security, favourable conditions at the work place and participation in cultural life. However, until 1998, when UNDP adopted its policy of integrating human rights explicitly with sustainable human development, UNDP country offices were promoting human rights without knowing it.

997. Admittedly, there were challenges, constraints and limitations, Mr. Munzu said. Situated within the overall commitment of the United Nations as a whole to treat human rights as a "cross-cutting issue" to be mainstreamed into the work of all agencies, the corporate will of UNDP to integrate human rights, including economic, social and cultural rights, with sustainable development, was clearly manifest. While there could be no doubt about UNDP's political commitment, or its conceptual and policy framework for integrating human rights with sustainable human development, the challenge for both UNDP headquarters and the organization's field offices remained how to achieve the practical implementation of the rights-based approach to development programming. One of the primary challenges was the need to build human rights expertise within the organization, through knowledge-sharing and training, and through the development of analytical tools required for applying a rights-based approach. In this regard, Mr. Munzu referred to the recently completed *Training Manual on Human Rights and Sustainable Human Development* and *Human Rights Resource Manual*.

998. A further constraint was the specificity of United Nations agency mandates. In the view of Mr. Munzu, while UNDP was firmly committed to full cooperation with other agencies in the field of human rights, notably with the Office of the United Nations High Commissioner for Human Rights, it could not take on the roles and functions inherent to specific mandates of its sister agencies, as opposed to supporting them in the performance of those roles and functions. Mr. Munzu also mentioned inadequate funding as a major limitation on the practical implementation of UNDP's human rights policy, creating for the organization a corresponding obligation to forge strategic relationships and to step-up its resource mobilization activities. Mr. Munzu further pointed to advances in economic, social

and cultural rights being inherent in the execution of UNDP's specific mandate, having traditionally been at the heart of the organization's corporate mission, programmes and projects. UNDP had opted for a policy of integrating human rights in its sustainable human development programming and programme delivery, and this had created a major challenge for the organization, namely that of practically implementing the rights-based approach to development. Commendable progress had been made in the face of formidable constraints and limitations. Nevertheless, a great deal remained to be done, Mr. Munzu concluded.

999. Ms. Lalumière (HCCI) emphasized the importance of improving coordination between all relevant actors, not only agencies and Governments, but also the business sector, non-governmental organizations and members of civil society. There was a need for all these actors, including the political entities and the international financial institutions, to internalize human rights and to adapt to the changing needs of the world. Furthermore, without watering down the significance of all human rights, there was a need to prioritize among the long list of rights. Also a balance should be found between economic policies and human rights.

1000. Ms. Lalumière pointed out that the struggle for economic, social and cultural rights has not been concluded, and with regard to the draft optional protocol to the Covenant, she said that it should be considered in conjunction with the issue of prioritizing and the other issues brought up during the consultation.

1001. Mr. Lim (WTO) referred to the fact that there was little incongruence between the overarching objectives of WTO and those of the Covenant, but there was still much thinking to be done on how to integrate economic, social and cultural rights into international economic law. WTO was not a development organization, although its activities had development dimensions, as WTO provided for a regulatory framework for international trade, for negotiating multilateral trade agreements, as well as a forum for negotiating market access and for settling trade disputes.

1002. The task faced by WTO at present was how to conceptualize human rights in the existing WTO framework, Mr. Lim stated. For example, he raised the issue of bargaining on market access: What did economic and social rights mean in this regard? This could mean that there should be more equitable and better market access for disadvantaged countries. Furthermore, he referred to the argument in the human rights literature that economic values had to be balanced with other, non-economic values in the drafting of WTO rules. However, Mr. Lim argued that this was already being done by WTO, as concepts like non-discrimination were already discussed in the context of WTO. Mr. Lim asked whether these terms would need to be defined better. He emphasized the need to find a common language, as the human rights community and the international trade community could be using the same words, but not with the same meaning.

1003. Mr. Lim was of the opinion that it was the Governments and not WTO that needed to be convinced of the value-added of having a rights-based approach in trade negotiations. He also doubted whether one could succeed easily in doing this, in the context of WTO. Ultimately, according to Mr. Lim, WTO was a weak organization with strong agreements, and if human rights, and in particular economic, social and cultural rights, were to be integrated in international trade agreements, this should result from political will and from a strong sense of ownership of States. Mr. Lim concluded by saying that there should be more cooperation on the positive links between WTO and organizations working on economic, social and cultural rights, as they were too often overshadowed by the negative aspects.

1004. Mr. Singh (UNESCO) welcomed the Statement on poverty and the International Covenant on Economic, Social and Cultural Rights that the Committee adopted. He further mentioned the ongoing dialogue between the Committee and UNESCO, which was based on a common understanding of the right to education as a fundamental human right, as set forth in articles 13 and 14 of the Covenant. The human rights-based approach to education gave support to one of UNESCO's main objectives, namely to make education accessible for all, as also reflected in the Dakar Framework of Action adopted at the World Education Forum in April 2000. In this regard, Mr. Singh welcomed the Committee's willingness to follow-up in the context of the Committee's reporting procedure, on the implementation of the Dakar Framework of Action by the States parties to the Covenant.

1005. Mr. Pityana (South African Human Rights Commission) stated that 50 years of international standard-setting activity had given the world a framework of conduct consisting of moral and legal principles, standards and values, which was to be applied by States vis-à-vis their own citizens and other States. Globalization had ensured the inextricable links between the fate and destiny of all States, groups and individuals, and the realization that the essence of the international normative framework of human rights is universal values, shared in common by all humanity. Mr. Pityana therefore denounced the phenomenon of "schizophrenia" that seemed to ail the world of today, in proclaiming one thing but doing another when it came to human rights.

1006. Mr. Pityana referred to earlier remarks about the lack of political will of States, stating that if they applied the same principles in the international financial institutions as they applied in the context of UNDP or ILO, they would have a better understanding of the effect of their decisions on the lives of people. He argued that a narrow conception of law and the legal application or interpretation of mandates should not be the only factors determining the direction of the World Bank or IMF, as it was a combination of legal applicability and moral authority that guided the affairs of the present world. The principles of human dignity, equality and social justice were values enshrined in the Constitution of South Africa and were to be taken into account by the South African Minister of Finance in dialogues with IMF. For their part, the independent national institutions, such as the South African Human Rights Commission, have the responsibility, endowed by the Constitution, to monitor compliance with the Constitution, to raise public awareness, to receive complaints of human rights violations, investigate them and provide redress as appropriate. Mr. Pityana also mentioned an annual report that the South African Human Rights Commission published, which was a public document that had proved influential in the development of public policy.

1007. He referred to the Constitutional Court of South Africa, which had been developing jurisprudence on the South African Constitution and which had delivered a number of landmark decisions on constitutionally guaranteed economic and social rights, which demonstrated the development of a significant body of case law on these rights. According to Mr. Pityana, the actions of the South African Human Rights Commission and other national human rights organizations had been influential in this development. In conclusion, he said that one could not purely rely on legal instruments or on advocacy to produce the desired results. He gave the example of the recent victory of the South African Government over a cartel of transnational pharmaceutical companies on access to HIV/AIDS drugs, which was not due solely to a legal judgement, but also to the engagement and moral pressure of civil society, both in South Africa and abroad. Increasingly, the moral voice of civil society was compelling international institutions and agencies to revisit their principles.

1008. Mr. Cheru (Independent expert on the effects of structural adjustment policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights) responded to the statement by the representative of IMF, by stating that IMF did fall within the field of development, as macroeconomics were not an aim in themselves, but an instrument to attain more lofty goals enshrined in the articles of IMF, such as the upholding of human dignity. The disconnect that was being maintained by IMF, between macroeconomic policy and social policy, was anathema to the general consensus today that structural adjustment programmes were having a negative effect on social aspects of individuals' lives.

1009. Mr. Kothari (Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination) agreed with the independent expert on structural adjustment and foreign debt that World Bank and IMF policies were having very negative effects on human rights. He pointed out that the need for trade-offs, as mentioned by the representative of the World Bank, meaning that not everyone could get what they need, reinforced the importance of international minimum thresholds, as referred to in the Statement on poverty and the International Covenant on Economic, Social and Cultural Rights adopted by the Committee. Mr. Kothari also supported the point made earlier that the provisions in the Covenant on international cooperation merited further and closer attention.

1010. Mr. Sadi stressed that the Covenant did not come into being in a vacuum, but was based on the Charter of the United Nations and the Universal Declaration on Human Rights. It could therefore not be considered as entirely without significance for IMF. With regard to the reference made by the representative of IMF to the fact that article 24 of the Covenant prohibits it from impairing the Charter and the constitutions of specialized agencies, Mr. Sadi argued that the present situation was rather the other way around, namely that the realization of the provisions of the Covenant was being impeded by the way some institutions were interpreting their constitutions.

1011. Mr. Hunt wished to emphasize the Committee's view that a State party to the Covenant could not, and should not, jettison its legal human rights obligations under the Covenant when operating within, or negotiating with, international financial institutions.

1012. Mr. Gianviti (IMF) replied that he did not dispute States obligations to cooperate in accordance with articles 2 and 24 of the Covenant, nor that States could take into account their Covenant obligations in negotiations with IMF or the World Bank. The main question he had addressed in his intervention was whether the Covenant superseded the constitutions of international financial institutions.

1013. In his synthesis of the consultation, Mr. Rattray said that this meeting had to be seen as a point of departure in a continuing dialogue which must be continued in order to mainstream economic, social and cultural rights more effectively into development activities. He argued that these rights contained core obligations from which no derogation was possible and which constituted minimum standards, and that the international community should strive for more consensus on the fact that the Covenant was a source of these core obligations and standards. Mr. Rattray discerned some points of convergence on the issue of poverty, judging from the statements by the special representative of the World Bank and Mr. Hunt, and that this should be further developed.

1014. Mr. Massiah (HCCI) noted the need to reflect on how to advance the dialogue that was started today. An international discussion on economic, social and cultural rights should be organized, which could be focused on issues that were raised at this consultation. First of all, States were to look for support on integrating human rights into poverty reduction strategy papers. Furthermore, Mr. Massiah suggested that specialized agencies should be more alert and attentive to how civil society is evolving. For their part, members of civil society should be more aware of economic, social and cultural rights issues, as they can make a real difference. He also affirmed earlier statements on the importance of a rights-based approach to poverty reduction, thereby referring to the possible “sanctuarization” of health and education expenditures. Finally, with regard to the draft optional protocol to the Covenant that would provide for a complaints procedure for alleged violations of economic, social and cultural rights, Mr. Massiah argued that pressure should be exerted on Governments to move this issue forward, which has been under consideration of the Commission on Human Rights since 1997. He concluded by indicating the willingness of HCCI to contribute to the promotion of these issues, and mentioned that a seminar on global public property and strategies for cooperation was being organized by HCCI for 3 to 5 September 2001.

1015. Following the consultation, HCCI prepared a report which identifies topics for possible future work in relation to economic, social and cultural rights and the development activities of international institutions (see annex XVII below).