Chapter 6

Economic, Social, and Cultural Rights in The Third World: Human Rights Law and Human Needs Programs* 1

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I. Legal and Policy Considerations

A. INTRODUCTION

International human rights law recognizes a distinction between political and civil rights, on the one hand, and economic, social, and cultural rights, on the other. This essay deals with rights classified as economic, social, and cultural. Its principal purpose is to explore the nature of such 'rights' and to determine how the international community seeks to 'protect' them.

I shall refer to this set of rights collectively, as 'social welfare rights'. This label is my own, and is not widely used in the literature. I adopt it not merely to avoid constant repetition of the phrase 'economic, social, and cultural rights', or the use of such barbarisms as 'ESC rights'. Rather, I employ this term because I think it evokes what is most basic and universal about this sphere of international law. Behind all the specific rights enshrined in international documents and supported by international activity lies a social view of individual welfare. That is, the idea of protecting these rights rests on the belief that individual welfare results in part from the economic, social, and cultural conditions in which all of us live, and the view that government has an obligation to ensure the adequacy of such conditions for all citizens. The idea that welfare is a social construct, and the conditions of welfare in part a governmental responsibility, lies behind the separate 'rights' articulated by numerous international instruments. It also expresses what is universal in this area. It is an idea held, at least at the


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most general level, by all nations, even though there is great disagreement on the appropriate scope of governmental action and responsibility, and the extent to which social welfare can be reached within particular economic and political systems. It is because proponents of the liberal welfare state and the socialist state, as well as variations and permutations of these structures, agree on the importance of state action for the promotion of individual welfare that these rights have been accepted in international law.

1. Purpose of the Chapter

Note that 'rights' and 'protection' have been placed in quotation marks. I do this to stress that what is most problematic in this area is the meaning of these two terms. What are we speaking of when we describe an international 'right' to social welfare? What does 'international protection' of social welfare entail? The terms 'rights' and 'protection' are taken from municipal jurisprudence where there is, relatively speaking, a common core of meaning that surrounds them. In municipal parlance, we have some idea of what we refer to when we speak of 'protecting rights'. But when we speak of the process by which the international community engages in a collective effort to ensure that individuals have a 'right to work', 'fair wages', 'to form trade unions', 'social security', 'to an adequate standard of living', 'health', and to 'education',—to mention a few dimensions of social welfare that are covered by the principal U.N. documents—then terms like 'rights' and 'protection' lose the core of meaning drawn from their origins in municipal law and must be redefined. To speak, without qualification and clarification, of the international protection of social welfare rights, is to employ a metaphor whose power to evoke images of law and law enforcement drawn from the municipal setting is, unfortunately, matched by its capacity to obscure what is really at stake. The goal of this chapter is to clarify what is obscured by the metaphor, so that the quotation marks may be removed and the reader will understand these terms in a new and more meaningful fashion.

The real topic of this chapter, therefore, is how to think about what I shall call the international law of social welfare. It is my view that we cannot teach in this area until we know better what we are talking about when we refer to international 'rights' of this type. This chapter shall put forth a concept of international social welfare law and illustrate that concept with several concrete examples.

2. The Approach Taken

The central feature of the approach I take to this subject is the concept of programmatic obligations. I believe that international law is moving towards the creation of obligations which bind states to undertake programs to guarantee minimum levels of economic, social, and cultural well-being to all citizens of this planet, and progressively to increase such well-being. These obligations affect all members of the United Nations. The International Bill of Rights places duties on all member states to provide such programs for the benefit of their own citizens and to participate in international efforts to foster social welfare throughout the world. These obligations apply equally to all states, regardless of their economic systems, political arrangements, or level of economic development. The United Nations and its specialized agencies perform a key role in the system of elaborating and implementing such programs but international social welfare law must, perform, deal with national as well as international programs and include all international efforts to promote individual well-being, whether through the United Nations or otherwise. While this concept gives the topic a scope that might seem audacious at best, and totally unbounded at worst, there is a core set of concepts, programs, and institutions which form the central subject matter and problematic of the area. This chapter seeks to identify that core.

Although the approach set forth here draws on the work of many scholars, to an extent I am proposing a new way to think about this subject. For this reason, this chapter is somewhat different from some of the others in this book. Unlike the field of economic, social, and cultural rights, substantial prior work has been done on other aspects of the international law of human rights, providing students and teachers with an overview of a set of norms in those areas. Part of my goal has been to indicate the aspects of economic, social, and cultural rights which need further consideration so that a synthesis equal in scope, power, and reality to that currently feasible in more 'well-worked' domains of human rights law may be achieved for international social welfare rights. My aim has been to provide some of the tools future teachers and students in this field will need to carry out the task of elaboration and synthesis.


3. The Scope of the Chapter

Because of the goals I set for this chapter, I have had to restrict its scope. I have focused exclusively on social welfare rights in the Third World. To illustrate the meaning of a ‘programmatic obligation’, one must examine details of actual welfare programs. While welfare obligations are universal, programs to realize welfare vary with the economic, social, and cultural conditions prevailing in specific states or group of states. The problems of realizing welfare obligations in the Third World are, therefore, different than those entailed in realizing welfare obligations in developed market economies or the Socialist bloc. I chose to focus on the Third World rather than other parts of the world because Third World development is a priority goal of the United Nations and its specialized agencies, and the current focus of U.N. social welfare rights work is on the Third World. While this choice precludes analysis of crucial aspects of the meaning and impact of international social welfare law, it allows me to develop and demonstrate an approach which ultimately can be adapted to problems in other parts of the world.

The second restriction in scope is the need to focus on a very limited number of the many economic, social, and cultural rights included in the International Bill of Rights. Once again, this restriction is imposed by my conception of the subject and the purpose of the chapter. The obligations which form the basis of international law in this area principally are state obligations to conduct programs at the national level, as well as possible obligations of other states to assist them. International efforts to ‘implement’ these obligations consist, largely, of international programs designed to support and complement national efforts, as well as international machinery to monitor national progress. Thus to understand how the international system works—or might come to work—in this area one must enter deeply into the details of specific programs. To do this requires selection of a few illustrative areas.

Therefore, while this chapter deals principally with the role of the international system in establishing and supporting programmatic welfare obligations for Third World countries in the areas of work and health, its real goal is to demonstrate, by detailed analysis of these specific areas, the general process by which an international law of social welfare is evolving.

B. THE CORE LEGAL DOCUMENTS AND THEIR MEANING

International social welfare law embraces a wide variety of materials ranging from U.N. General Assembly resolutions to programmatic documents issued by international conferences and specialized agencies. To understand the assertion that there is an international law of social welfare, the student must be aware of the entire gamut of relevant materials and see how resolutions, covenants, declarations, and programs relate to one another. In addition, the student must grasp the overall social, economic, and political system within which these normative sources are embedded and through which they take on meaning.

1. The Charter and the Universal Declaration

The central core of this body of normative material is the International Bill of Human Rights. The U.N. Charter, the Universal Declaration of Human Rights, and the International Covenant on Economic, Social, and Cultural Rights are the fundamental sources of international social welfare law and the basis for the concept of programmatic obligations under international law. They provide the starting point for all analysis in this area and the framework within which the broader corpus of pertinent materials must be viewed.

The earliest and most basic of these documents is the U.N. Charter, specifically articles 55 and 56. Article 55 commits the United Nations to promote:

- higher standards of living, employment, and development; solutions to international economic, social, and health problems; international cultural and educational cooperation; and respect for human rights.

Article 56 constitutes a pledge by all members to achieve these purposes separately and jointly in cooperation with the United Nations. These very general purposes and obligations were given more

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4 See generally, Schachter, supra note 2; The International Dimensions of the Right to Development as a Human Right, U.N. Doc. E/CN.4/1334, at 29-43 (1979) [hereinafter cited as Right to Development]. Historically, the sources and evidence of international law as such have included treaties and conventions, custom, general principles of law recognized by civilized nations, and, as subsidiary sources, judicial decisions and teachings of qualified publicists and academics. See art. 38, Statute of the International Court of Justice.

specificity in the Universal Declaration of Human Rights, \(^6\) approved without dissent by the U.N. General Assembly in 1948. Article 22 of the Universal Declaration states that ‘[e]veryone . . . is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality’. Furthermore, the Universal Declaration states that everyone has rights to social security, \(^7\) to work and to join trade unions, \(^8\) to rest, \(^9\) to an adequate standard of living (including medical care), \(^10\) to education, \(^11\) and to participate freely in cultural life. \(^12\)

2. The International Covenant on Economic, Social, and Cultural Rights

The most detailed and specific document that deals with the entire field of international social welfare law is the Economic Covenant, which was adopted by the U.N. General Assembly in 1966 and came into effect in 1976. It is a principal source of international social welfare obligations for those states which have ratified it. For those which have yet to do so, it has value as a detailed interpretation of the Charter’s obligations. \(^13\) The Economic Covenant provides normative guidance for all states and provides an explicit system of international monitoring of progress toward its goals for those states which are parties to it. To understand the meaning of social welfare rights and to gain insight into actual and potential systems of international protection of such rights, three interrelated features of the Economic Covenant must be examined. These are: (i) the form of the rights which are specifically guaranteed by this convention; (ii) the principle of progressive realization; and (iii) the system of generic implementation.

(i) Background. The Universal Declaration sets forth a wide range of rights, including rights relating to political participation, individual liberty, and social welfare. In order to give greater specificity to the principles established by the Universal Declaration and to provide an instrument which individual states could ratify, the United Nations proceeded to develop a Covenant on Human Rights. \(^14\) The original concept was a single covenant covering all the rights set forth in the Universal Declaration. \(^15\) However, in the course of drafting the decision was made to divide the Human Rights Covenant into two separate instruments: \(^16\) one covering political and civil rights—the Political Covenant; and one dealing with economic, social, and cultural rights—the Economic Covenant.

The reasons for this important decision were complex and have been little researched. \(^17\) However, several factors seem to have been influential, among which was a belief that it was impossible to develop a single system of implementation for both the political-civil and the social welfare rights. \(^18\) This problem itself had two aspects. It was obvious to some states that some rights, e.g., the right to a fair trial, could be enacted into law immediately, while other rights, e.g., the right to health, would require programs of action over time before they could be realized. \(^19\) Appropriate national responses would vary with the 'nature' of the right. Protecting political and civil rights meant passing laws and revising constitutions, while guaranteeing social rights meant the establishment of programs as well. The second aspect of the objections to a single human rights implementation system was that the distinction between civil-political and social welfare rights suggested substantial differences in possible international measures to implement these rights. \(^20\) It seemed that some form of international tribunal could and should be created to deal with alleged violations of political and civil rights, but that no court-like structure could be

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\(^7\) See Eighteenth Report, supra note 14, at 11.


\(^12\) See Report of the Third Committee, supra note 17, at 40; Plenary Meetings, supra note 18, at 504, 514; Annotations, supra note 18, at 8, 9.
created at the international level to supervise the rights to work, health, etc. Whether these views are objectively correct or not, they seem to have influenced the decisions of the delegates considering a Human Rights Covenant.

The other factor which was influential in the division of the proposed Covenant was more political. There was substantial disagreement over the desirability of a covenant which dealt with social welfare at all. Some states which were prepared to support a covenant guaranteeing political and civil rights were not willing to agree to a document that would commit them to social welfare rights and thus to specific social welfare programs. This led some states to suggest that the proposed covenant be limited to political and civil rights. However, this option was blocked by a General Assembly resolution which directed the drafters to include both political-civil and social rights.

Thus the decision to have two covenants avoided the dilemmas facing the drafters. It allowed them to comply with the General Assembly resolution and still establish different approaches for the implementation of the two categories of rights. At the same time, a state would now be able to ratify a covenant protecting one set of rights even if it was unwilling to specifically guarantee all the rights set forth in the Universal Declaration. This, it was thought, would increase the chances that the overall program would be accepted by the world community.

(ii) Rights Specific to the Economic Covenant. The decision to divide the Human Rights Covenant into two documents was not a decision to have two totally independent documents. There is substantial overlap between the substantive provisions of the two. Both proclaim the right of self-determination, prohibit discrimination, and protect the right to join trade unions. However, there are rights which are dealt with only in one of the Covenants. The social welfare rights which are the subject of this chapter are included only in the Economic Covenant. Those rights are stated in a specific form of language, and are subject only to the Economic Covenant’s unique system of implementation.

There is a linguistic convention in the Economic and Political Covenants that warrants mention. In some cases, the parties ‘recognize’ a given right. In others, they ‘undertake to ensure’ a right. In most instances rights are simply declared. Most of the rights in the Political Covenant are declared. For instance, article 14 of the Political Covenant states, ‘All persons shall be equal before the courts and tribunals . . . ’ A few political and civil rights, e.g., the right to non-discrimination, are ‘ensured’ by the parties. On the other hand, most of the rights in the Economic Covenant are ‘recognized’. When this language is used, the Economic Covenant then lists steps that will be taken ‘to achieve full realization’. All of the ‘recognized rights’ are in the Economic Covenant and they are the social welfare rights with which I will deal. Specifically, the parties to the Economic Covenant recognize the rights:

1. to work; 2. to just and favorable conditions of work; 3. to social security; 4. to an adequate standard of living; 5. to health; 6. to education; and 7. to participate in and enjoy the fruits of culture and science.

The Economic Covenant also recognizes the importance of protection for families and children, but does not refer to this as a ‘right’.

(iii) Implementation: the Principle of Progressive Realization. The Economic Covenant is oriented around the principle of ‘progressive realization’. This principle has several elements. First, the rights which are exclusively dealt with in the Economic Covenant are said to be ‘recognized’ rather than ‘declared’ or ‘ensured’. This implies that a party’s obligations in the areas of work, education, health, etc., differ from its obligations in areas like the right to form trade unions, which right is ‘ensured’. Further, article 2(1) of the Economic Covenant, which states the principal obligation undertaken by parties in the social area, commits them ‘to take steps’ toward the realization of the rights that are ‘recognized in the present covenant’. 

31 Art. 2(1), Political Covenant.
32 These rights are recognized in arts. 6, 7, 9, 11, 12, 13 & 15, respectively, of the Economic Covenant.
33 Art. 10.
35 See text accompanying note 31 supra.
36 Art. 8.
These 'steps' described in the Economic Covenant can be read as specifications of what the right means and as elements of the program to realize the right. For example, among the 'steps' contained in article 12, which establishes the right to health, is '[t]he creation of conditions which would assure to all medical service and medical attention in the event of sickness.' This 'step' is both a definition of what it might mean to realize a right to health and the outline of part of a health delivery strategy which stresses equal access to curative medical services.

Implementation of only the 'steps' mentioned in the various provisions of the Economic Covenant would not exhaust the states parties' obligations. In one instance, i.e., social security, no steps at all are specifically listed, although the right is recognized. All other articles setting out 'recognized' rights say that the specified measures are merely included in the steps that states must take. In addition, article 2 requires that a state use 'all appropriate means' to fully realize the recognized rights.

The language of article 2 that a state must take measures 'with a view to achieving progressively' the rights recognized 'to the maximum of its available resources' calls into question the binding nature of these obligations. These clauses are ambiguous, yet certain things are clear. The language of progressive realization in article 2 indicates that the rights must be implemented, if only over time, by a program of activities. The language in article 2 relating to available resources reflects awareness that the realization of these social welfare rights will require states to spend money on them and that resource constraints may affect the rate of progress towards the goals established. The issue then becomes whether these clauses create obligations as to the priority to be given social welfare and the rate of progress that must be achieved.

Proponents of the position that the 'progressive realization' language creates an obligation to increased levels of commitment to social welfare argue that this language places 'upon signatories a duty to achieve ever higher and higher levels of fulfillment of rights'. True, the 'available resources' clause qualifies any such obligation. But what is the nature of this qualification? It clearly says that a state cannot be expected to commit resources it does not have. But does it leave the allocation of resources between social welfare and other goals entirely to the individual state, so that state X can say: 'We have no available resources for social welfare because we have decided to spend all our

budget for defense (or industrial development?)' Or does the use of the phrase 'maximum of its available resources' suggest an obligation to give priority attention to the social welfare area?

I believe the available resources language should be read as establishing a priority for social welfare. Given the purpose of the Economic Covenant, it is hard to see how the alternative reading would make any sense. It is clear that the drafters of the Economic Covenant wished to impose obligations on states. Yet if the only obligation arising from the Economic Covenant was that a state could spend what it wanted on social welfare, then this would be no obligation at all and the drafters would have failed in their goal. This reasoning from purpose is supported by the legislative history. At one point, the United States tried to substitute a clause stating that the obligation would be to take steps 'to the maximum of the resources which may be used for the purpose.' This amendment, which would have clearly established the more restrictive reading of the 'available resources' clause, was rejected. Supporting this rejection, one delegate said that the original (and final) version was preferable 'because it meant that without exceeding the possibilities open to them, States must do their utmost to implement economic, social, and cultural rights.' Another delegate, speaking to the same issue, noted that the protections of the Economic Covenant specify a bare minimum of those rights 'inherent in the human person', so that priority in favor of these over other demands on resources was both necessary and desirable.

Assuming arguendo that the Economic Covenant can be read as imposing an obligation to give the social welfare area priority in resource allocation, it is nevertheless clear that resource constraints will be a factor in determining the appropriate level of activity in the area. Naturally, the problems of how to determine what resources are available and whether priorities are met do arise. There are many issues here that were clearly left open by the Economic Covenant. One issue, however, deserves special comment. When the Economic Covenant refers to 'resources', does it refer exclusively to national resources or does it include international aid within the meaning of that term? Specifically, in evaluating the performance of any state under the principle of progressive realization, would it be proper to take into account a decision not to use available international assist-

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40 Emphasis added.
41 Comm'n on Human Rights (271st sess.), supra note 24, at 1.
42 The text of the draft Economic Covenant, as adopted by the Comm'n on Human Rights at its eighth session, did not include the substitute clause proposed by the United States. 8 Comm'n on Human Rights (275th sess.), U.N. Doc. E/CN.4/SR.275, at 6 (1952).
44 Id. at 13.
ance to meet social needs? Assume, for example, that state X explains its failure to eradicate some disease on the basis of lack of national resources but that it had simultaneously failed to take advantage of an international program in this area. It is possible to argue that the availability of aid is irrelevant since article 2 speaks of 'its' meaning the state's resources and, further, that issues of national sovereignty are raised by this reading. On the other hand, the legislative history of the Economic Covenant indicates that the broader meaning of 'available resources' was intended: the official history explicitly says that this clause was meant to include international aid. 45

Another issue in interpretation of the Economic Covenant is the question of the obligation of developed countries to render assistance to less developed countries in the latter's efforts to promote economic, social, and cultural rights. It is clear that the Economic Covenant obligates all parties, developed or not, to promote the rights of their own citizens. But can it also be read as obligating the richer parties to aid poorer parties' economic, social, and cultural efforts? An argument along these lines can be maintained. Article 55 of the U.N. Charter specifies that one of the purposes of the United Nations is the promotion of 'higher standards of living, full employment, and conditions of economic and social progress and development'. Under article 56, member states pledge themselves to take joint and separate action in co-operation with the [United Nations] to achieve these goals. Thus it could be argued that the Economic Covenant constitutes a more precise definition of the article 55 goals and that article 56 creates an obligation on all U.N. members to assist in these efforts. However, this very general argument finds no specific support in the text of the Economic Covenant or in its legislative history. Indeed, one could read articles 11 and 23 of the Economic Covenant as support for the argument that the drafters wished to leave the question of assistance from developed countries up to individual states, either through bilateral decisions or through future international agreements. 46

true that arguments have been made that international law is moving toward the recognition of a 'right to development' and that this right includes an obligation to provide development assistance. 47 The U.N. Secretary-General has indicated that it is time to consider whether the international community, through a series of actions concentrated in the past ten years, is moving toward the recognition of such an obligation. 48 But at the same time he concluded that no such obligation has yet been authoritatively established or accepted. 49 Thus it would seem inappropriate to try to ground such an obligation on the Economic Covenant alone. Of course, the lack of such an obligation on the part of developed countries does not affect the developing states' obligations under the Economic Covenant to use their own resources and such international assistance as is made available. 50

The principle of progressive realization, therefore, really means that a state is obligated to undertake a program of activities, including but not limited to the specific measures listed in the Economic Covenant, and to realize those rights which are 'recognized' by the Economic Covenant. While the obligation of progressive realization is limited by resource constraints, the Economic Covenant indicates that priority should be given to social welfare and that the level of effort should increase over time. These obligations apply to any state that has ratified the Economic Covenant, regardless of that state's economic resources.

(iv) Generic Implementation at the International Level. The final important feature of the Economic Covenant is what I call the system of 'generic implementation'. This feature is best understood if we see what the implementation system of the Economic Covenant does not do. Even if a state is only obligated to progressively realize social welfare rights within available resources, a system could be created through which the United Nations would review the activities carried out by member states.

45 Annotations, supra note 18, at 20.
46 Art. 11 of the Economic Covenant recognizes the right to an adequate standard of living for everyone and to continuous improvement of living conditions, thus seemingly incorporating many if not all of the other specifically enumerated rights in the Economic Covenant. Art. 11 requires all parties to take steps to realize the right to an adequate standard of living, including 'international co-operation based on free consent' (emphasis added). The addition of the term 'free consent' suggests an intent to encourage aid from rich to poorer parties, but not to require it by the terms of the Economic Covenant. Art. 23 contemplates that future action, including conventions, would be needed to secure the kind of international action needed to implement the Economic Covenant. The drafters may have thought that subsequent agreement could be the vehicle to create an aid-giving obligation. It is worth noting that the U.S. Executive Branch has adopted this construction of the Economic Covenant. Thus, in his letter of submission of the Economic Covenant to the U.S. Congress for its advice and consent to ratification, President Carter noted that the obligations under art. 2 do not include any obligation on the part of developed signatories to give economic aid to less developed states. See Weintrob, United States Ratification of the Human Rights Covenants, 63 Minn. L. Rev. 35, 53 (1978).

47 See Right to Development, supra note 4, at 29-43, 130-43; Schachter, supra note 2, at 9; Basic Human Needs, supra note 2, at 227-32 (comments by Oscar Schachter). See also Nayer, Human Rights and Economic Development: The Legal Foundations, 2 Universal Human Rights 55 (1980).
48 See Right to Development, supra note 4, at 134-43.
49 Id. at 141.

The impact of the available resources clause on the obligation of developed countries to promote the social welfare of their citizens is also worth considering. One reason behind the introduction of the clause was the concern that less developed countries would lack resources to achieve welfare goals. Comm'n on Human Rights (270th mtg.), supra note 22, at 9; Comm'n on Human Rights (271st mtg.), supra note 23, at 4; 8 Comm'n on Human Rights (272d mtg.), U.N. Doc. E/CN.4/532, at 7 (1982). The clause was designed in part to allow this lack of resources to be taken into account and to show the relationship between the obligations of less developed countries and the assistance programs that might be available. But the clause does not exclusively refer to less developed countries. To the extent that all countries face resource constraints, the Economic Covenant requires consideration of available resources in evaluating the absolute level of resources devoted to social welfare. In addition, to the extent that the clause says that priority should be given to social welfare, it affects all states.
out by state X in areas like health, work, etc., and determine whether the steps taken were adequate, given resources available and other appropriate factors. Although some drafters favored such a system for the Economic Covenant, it was not adopted.  

The implementation system of the Economic Covenant as adopted requires states to submit ‘reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein’. These reports are transmitted to the Economic and Social Council, the relevant specialized agencies, and the Commission on Human Rights. All these bodies may make recommendations on matters related to the realization of social welfare rights. However, the Economic Covenant makes clear that neither the Commission on Human Rights nor the Economic and Social Council can make specific observations, comments, or recommendations on the record of any specific country. The Commission on Human Rights is authorized to report its recommendations on the implementation of social rights and the Economic and Social Council can make similar recommendations to the General Assembly but this authorization is explicitly limited to ‘general recommendations’ in the case of the Commission and ‘recommendations of a general nature’ in the case of the Council.

The qualification that any recommendation be of a general nature was explicitly made by the drafters of the Economic Covenant in order to preclude specific comments by these two bodies on the activities of a particular state. Indeed, the history of these clauses suggests that recommendations were to only concern positive steps which the international community might take to further the program of progressive realization set forth in the Economic Covenant. Three factors can be distinguished which influenced the decision to limit recommendations to general and positive suggestions for programmatic efforts at the international level. There was a desire on the part of some drafters to aid rather than embarrass states. One proponent of this view said that ‘measures of implementation had been designed as a form of international cooperation to assist States by elucidating their real difficulties in giving effect to the rights rather than as a method of censoring them for failing to do so’. There was also concern that any specific censure might trench on national sovereignty. Finally, it was felt that social welfare issues were highly technical and that the general U.N. organs would lack necessary resources and expertise. The principal international responsibility for implementation of social welfare rights would therefore better lie with specialized agencies such as the International Labour Organization (ILO), the World Health Organization (WHO), the United Nations Educational, Scientific, and Cultural Organization (UNESCO), etc.

The system of generic implementation, therefore, has three principal elements. First, reporting on implementation is done by the states parties themselves, who must analyze their own progress. Secondly, on the basis of these reports the Economic and Social Council and the Commission on Human Rights can make only general recommendations which deal with positive measures to increase international efforts to foster social welfare. Finally, the task of developing concrete programs to foster specific rights is left principally to the specialized agencies.

(v) Role of Specialized Agencies. The overall implementation system of the Economic Covenant is therefore oriented toward generic implementation, in the sense of programs of general and positive promotion of social welfare rights. But if this were the limit of the implementation procedure, the Economic Covenant would be a very weak instrument. Effective programs can be designed only after careful consideration of the experiences of specific states, with frank appraisals of the nature and causes of failures. Moreover, it seems unlikely that states themselves would be willing to fully reveal their shortcomings. It would be hard to imagine the implementation procedures of the Economic Covenant having much effect unless the progress of states parties toward the realization of social welfare rights was subject to some kind of impartial scrutiny.

Such external and specific appraisals can be injected into the implementation process by specialized agencies such as ILO, WHO,

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52 Art. 16(1).
53 Art. 16(2)(a).
54 Art. 16(2)(b).
55 Art. 19.
56 Arts. 18-23.
57 Art. 19.
58 Art. 21.

59 See Sohn, supra note 13, at 163-64; Annotations, supra note 18, at 120. See generally Comm’n on Human Rights (420th-426th mtgs.), supra note 51.

and UNESCO. One commentator on the role of the specialized agencies has concluded that the ‘agencies have a fundamental responsibility to promote realization of human rights’, and that ‘the primary thrust of the [Economic Covenant’s] implementation procedure is directed at the agencies’. Moreover, the specialized agencies historically played a major role in designing the implementation procedures and as a result have a heavy responsibility to see that the procedures work effectively.  

The specialized agencies clearly have a role in the development of general positive programs to promote social welfare. They also have the power and ability to provide the specific analyses of country performances which are critical if the implementation procedure is to have ‘bite’. This aspect of the specialized agencies’ role, which is not well understood, is based on the text and purpose of the Economic Covenant and is supported by subsequent developments in the elaboration of the Covenant’s implementation procedures.

The Economic Covenant requires that national reports be transmitted to the relevant specialized agencies, which are authorized to report to the Economic and Social Council on progress in their respective fields. The Economic Covenant does not state that these reports must be general in nature, as the recommendations of the Commission on Human Rights and the Economic and Social Council must be, and it allows the specialized agencies’ reports to contain particulars. It is therefore possible to argue that the specialized agencies can specifically comment on whether appropriate steps toward implementation are being taken by specific countries. The rafters of the Economic Covenant explicitly inserted the qualifying language of generality elsewhere. Its omission in the provisions dealing with specialized agencies suggests an intent to allow specific reports. Moreover, such an interpretation would be consistent with the overall concern of the Economic Covenant for the conclusion of conventions and the adoption of recommendations. Furthermore, the official legislative history states that ‘[t]he Covenant ... had been drafted so as to contain, in the main, general statements of obligations, on the understanding that it would in general be for the competent specialized agencies to elaborate the detailed obligations required for the realization of the rights ...’.

Not only must the specialized agencies develop standards, they must informed by impartial evaluations of the progress of specific countries. The only sources of such evaluations are the specialized agencies.

The practice that has evolved under the Economic Covenant’s implementation procedures supports this view. Article 18 of the Economic Covenant and article 6 of the implementation procedures allow the specialized agencies to make arrangements with the Economic and Social Council to submit reports on the progressive achievement of observance of social welfare rights and states that ‘[t]he reports may include particulars of decisions and recommendations on such implementation adopted by [the specialized agencies’] competent organs’. Pursuant to the provision, the ILO has submitted reports to the Economic and Social Council which analyze in detail the performance of specific countries under the Economic Covenant. Moreover, the ILO has given the task of preparing these reports to its Committee of Experts which has experience in monitoring country performance under ILO standards. In its work pursuant to the Economic Covenant, the Committee of Experts has relied, in part, on ILO decisions on compliance with ILO standards relevant to the general areas covered by the Economic Covenant (e.g., employment policy, trade union rights, social security) by these individual states.

Besides their role in monitoring country performance, the specialized agencies must also help develop more specific standards and guidelines which facilitate accurate assessment of the progressive realization of social welfare rights. The drafters of the Economic Covenant clearly contemplated that the specialized agencies would develop such standards in the areas within their competence. In article 23 of the Economic Covenant, the states parties explicitly agree that international action for the realization of the recognized rights includes, inter alia, the ‘conclusion of conventions’ and the ‘adoption of recommendations’.

For a persuasive and detailed analysis of this position, see Alston No. 1, supra note 65, at 112-14.  

(footnotes are omitted for brevity)
also shape the positive programs of international cooperation and assistance which constitute the principal form of international implementation of the Economic Covenant. Seen as a whole, the generic implementation system is primarily designed to coordinate the efforts of the various specialized agencies and direct their energies to the issues which arise out of an overall assessment of national progress.\(^{77}\)

The Economic Covenant has left to the specialized agencies the basic responsibility for clarifying norms and devising appropriate programs to promote the realization of social welfare rights. Therefore, the specialized agencies must deal with the manifold issues which are left unanswered by the text and the history of the Economic Covenant. The Covenant can be read as imposing on states parties an obligation to give some priority to social welfare. Even if this interpretation is accepted, it does not answer a myriad of other questions essential to the realization of the Economic Covenant's goals. These include:

What measures are likely to further social welfare? How, for example, does a nation ensure the right of all to employment or an adequate standard of living? To what degree is governmental action the appropriate way to foster social welfare?

How can one determine whether the allocation of resources to social welfare represents the 'maximum' consistent with available resources? Are there minimal standards of social welfare that should be met before other national priorities should be considered?

What priorities are appropriate within the social welfare area? Are some rights more important than others? Are some 'measures' specified in the Economic Covenant more crucial than others?

What implication do the social welfare goals have for other areas of national policy?

Several areas in which the specialized agencies have begun to grapple with questions like these are examined in the remainder of this chapter. For reasons explained at the beginning of the chapter, this examination focuses on the work of the specialized agencies in relation to the Third World. While the details of this analysis are specific to situations of development and industrialization, the analysis of process and institutions is general and can be applied to efforts to answer these questions and enforce these obligations in all parts of the world.

If the work of the specialized agencies in areas like employment policy, health, and similar substantive areas is examined, and if changes in the economic development strategy employed by the World Bank and similar agencies are considered, it is possible to see how the principles of the Economic Covenant have oriented the evolution of an international program of social welfare for the Third World. Various international bodies have developed the content of this commitment to social welfare, maintaining the normative orientation of the Economic Covenant but increasingly refining the programmatic aspects so that they yield specific priorities, programs, and standards relevant to the realities of Third World states. The world community has supported this program—and thus the basic norms—through active efforts to promote social welfare goals. An examination of the development of an international program of social welfare for the Third World and the nature and impact of the international promotion of that program's goals shows how international social welfare rights may influence the behavior of states and how that behavior can affect individuals.

The answer to the question originally posed, i.e., what does it mean to speak of international protection of social welfare rights, can now be considered. If one takes a very broad view of international law, i.e., a set of norms which (a) is concrete enough to permit description of what compliance or non-compliance would mean; (b) is accepted by the world community; (c) has or is likely to have an influence on the behavior of states; and (d) ultimately will affect individual citizens, then international social welfare rights are law.\(^{78}\) The balance of this chapter demonstrates that social welfare 'rights' are reasonably specific, are widely accepted, influence behavior, and will affect individuals.

C. THE CONTEXT OF INTERNATIONAL SOCIAL WELFARE LAW: WELFARE, RIGHTS, AND DEVELOPMENT DOCTRINE

International social welfare law includes a body of general norms, specific standards, and concrete programmatic efforts by which the international community creates standards, monitors progress, and assists states in their efforts to meet their obligation to progressively realize the rights specified in the Universal Declaration and the Economic Covenant. But one cannot read these normative texts or even analyze specific programs in isolation. These manifestations of an international and universal commitment to social welfare operate in the context of a complex series of national and international processes. These processes affect the concrete meaning of specific rights and condition efforts to 'implement' them.

A systematic study of the context of international social welfare law lies beyond the scope of this chapter. Such a study would have to

\(^{77}\) See Annotations, supra note 18, at 117-118. See generally Comm'n on Human Rights (420th-426th mtgs.), supra note 51.

\(^{78}\) Compare Basic Human Needs, supra note 2, and Schachter, supra note 2, with Watson, Legal Theory, Efficacy and Validity in the Development of Human Rights Norms in International Law, 1979 U. Ill. L.F. 609. See also note 4 supra.
include a wide range of ideas, processes, and institutions. It would examine the social, economic, and political structures of the states which are obligated to progressively realize these rights to see how the goals of international law affect and are affected by national resources, priorities, and development programs. The international institutions which directly seek to promote social welfare through various forms of assistance and monitoring would have to be understood, as well as how they relate—or fail to relate—to national programs and processes. In the Third World context, moreover, such a study would have to examine how the overall international economic order affects the prospects for social welfare.

One way to begin such an ambitious, but necessary, endeavor is through an examination of development doctrine. Development doctrine is a body of thought that orients national and international actors who design and conduct programs to improve the well-being of citizens of the Third World. It seeks both to identify the causes of underdevelopment and to direct the design of developmental strategies. If international social welfare law is to have an effect on the process of Third World development, it must be integrated into development doctrine. In the past, this has not been done. Development doctrine, at least as articulated by Western scholars and international agencies influenced by Western notions of development, has given little attention to social welfare rights either at the national or the international level. This has hampered the evolution of international social welfare law as well as limited the value of development doctrine itself. To understand why development doctrine has neglected social welfare and to see how changes in development thinking may make it possible to more closely relate international social welfare rights to the process of national development, we must look historically at Western development thinking in the post-World War II era with particular emphasis on the doctrine's treatment of social welfare rights.

1. The Liberal View of Development

Much of the theorizing about development has been indifferent to human rights in general and to social welfare rights in particular. Western thinking about development has focused on direct efforts to increase aggregate national income. It was thought that increased affluence would lead indirectly to increased political and civil freedom, and that a higher GNP would be translated directly into better jobs, a higher standard of living, improved medical care, and better education for all.

Unfortunately, we have learned that there is no necessary relationship between economic progress and increased protection for political and civil rights. In the past ten years it has become clear that rapid economic growth in Third World countries is often accompanied by increasing resort to repression by authoritarian regimes which are fundamentally opposed to the ideals of the Universal Declaration and the standards of the Political Covenant. Much has been made of an alleged trade-off between political and civil rights, on the one hand, and economic progress on the other. Elsewhere I have commented on the dubious nature of the idea of trade-offs. Here I wish to deal with another aspect of conventional Western development, thought—namely, the idea that social welfare is an automatic reflex of economic progress. This belief explains the relative lack of attention to social welfare in development thinking and underlies the general lack of concern in development doctrine for the establishment of social welfare rights as an integral part of the development process.

This point of view is still quite widespread. While few scholars and officials today believe the simplistic notion that economic progress automatically brings about political and civil freedom, many think that such progress will automatically enlarge the social welfare of all citizens. This theory, which is widely held in the West, is an obstacle to the development of national or international social welfare law since it denies the need for rights to social welfare.

The view that the establishment of social welfare rights—as opposed to social welfare—is secondary or unnecessary stems from normative and instrumental aspects of the liberal capitalist tradition of development doctrine. To understand how liberal development theory leads to


82. This view is suggested in Shue, supra note 2. Shue argues that a certain set of economic and social rights, called "subsistence rights", belong in a category of "basic rights" which are everyone's minimum reasonable demands upon society. This category of rights has the highest priority of implementation because their protection is essential to the enjoyment of all other rights. The basic requirement for the fulfillment of the right to subsistence is the availability of what is needed for a decent chance at a reasonably healthy and active life of normal length. Components of the right to subsistence include at least adequate food, clothing, and shelter, and minimal preventive public health care. According to Shue, since subsistence rights are a subset of basic rights, all societies have a minimum affirmative obligation to provide subsistence at least for those who cannot provide it for themselves.
these conclusions, both its normative orientation and its views on the
effective instrumentalities of social action must be critically examined.

Liberal development thought is not indifferent to social welfare—
quite the contrary. But there are features of the liberal approach that
focus attention away from social welfare rights. The liberal concept of
society stresses individual action over collective action to achieve
welfare; the liberal approach to the state places more emphasis on
preserving rights by limiting state action than on affirmatively promot-
ing rights; and the liberal idea of development stresses private
economic growth as the major instrument to foster higher standards of
living and increased general welfare. Each of these tenets of liberal
thought admits of exceptions: liberalism recognizes that in some cases
collective action is needed, affirmative state intervention justified, and
market-directed growth inadequate. Otherwise, liberalism could not
have accepted the modern welfare state, the national analogue of
international social welfare law. But each of these aspects of the
welfare state are treated as exceptions or qualifications to a general
principle.

These tenets of liberal thought have influenced the shape of liberal
attitudes toward development. Liberal development doctrine has been
heavily influenced by the ‘foreground’ features of liberal thought—
individualism, negative rights, and private market-led growth—with
each reinforcing the others. This helps explain the relative lack of
concern for social welfare rights in liberal development doctrine.
Social welfare rights involve collective action and affirmative efforts by
the state to intervene in or supersede the market. Full endorsement of
social welfare rights would involve a threefold challenge to basic tenets
of liberal, capitalist thought. The challenge can easily be avoided if it is
assumed, a priori, that private market economic growth will lead
directly to higher levels of employment, better health standards, more
adequate nutrition, etc. If this is the case, then positive, collective
action for social welfare is not necessary, except perhaps to care for
certain especially vulnerable segments of the population.

To a great degree, this is how Western development theory dealt
with issues of social welfare in the Third World in the 1950s and
1960s. Primary emphasis was given to measures thought to increase
per capita GNP. Resources were allocated to expand infrastructures and
increase industrial output. Foreign investment by multinational
firms was encouraged. A substantial role was allocated to government,
but principally because private markets were thought to be imperfect
or underdeveloped. Whatever role was allocated to government, the
purpose of public action was to foster private capital accumulation.
Social welfare programs were not totally ignored, but were relegated
to a secondary plane because it was believed that growth would

generate jobs, raise real incomes, and thus ensure that the needs of the
world’s poor would be met.

2. The Failure of Growth Strategy and the Emergence of Welfare-
Oriented Development Policies

Perhaps the most significant occurrence in Western development
theory since World War II has been the recognition that economic
growth does not necessarily lead to increased social welfare. As
 economists evaluated the records of the post-World War II economic
development programs in Asia, Africa, and Latin America, they
reached three basic conclusions about the effects on social welfare of
economic growth in non-socialist countries:

1. Rapid growth did not necessarily reduce unemployment.
2. Rapid growth was usually associated with a widening gap between
the incomes of the rich and poor, i.e., even were the absolute position of
the poor improved, their relative share of national income declined.
3. The resulting growth was not adequate to ensure that even the most
basic needs of the growing number of poor people would be met.83

Recognition that unemployment, inequality, and even absolute
poverty have increased despite several decades of growth caused a
broad-reaching reappraisal by Western economists of the premises of
the orthodox growth paradigm.84 A variety of viewpoints and
alternative strategies, some representing relatively moderate changes
of approach, others leading to a radical re-orientation of development
strategy, have emerged. Most of these new approaches, however,
include more emphasis on direct measures to improve social welfare.85

Three of the new approaches to development which have emerged
deserve special emphasis. These are (i) employment-orientation, (ii)
redistribution with growth, and (iii) the Basic Needs Approach (BNA).
Employment-orientation stresses the need for direct efforts to increase
employment, which should be as important an investment priority as
increased output, and suggests the importance of labour-intensive
employment strategies.86 Redistribution with growth underscores the

83 See Wilber & Jameson, Paradigms of Economic Development and Beyond [hereafter
cited as Wilber & Jameson], in Directions in Economic Development I (K. Jameson & C. Wilber
eds., 1978) [hereafter cited as Directions in Economic Development].

84 See generally id.; International Labour Office, Employment, Growth and Basic Needs: A
One-World Problem (1976) [hereinafter cited as International Labour Office].

85 See id. at chs. 1, 2; Wilber & Jameson, supra note 83, at 9.

86 See International Labour Office, supra note 84; Declaration of Principles and Programme
of Action Adopted by Tripartite World Conference on Employment, Income Distribution
and Social Progress and the International Division of Labour, World Employment Conference,
U.N. Doc. WEC/CW/E.1 (1976) [hereinafter cited as WEC Declaration]. These sources expressly
advocate an employment-oriented Basic Needs Approach. See also Follow-up of the World
Employment Conference: Basic Needs, 65 (No. 6) International Labour Office Report to the
International Labour Conference 1 (1979) [hereinafter cited as WEC Follow-up].
need for affirmative state action to ensure that the fruits of growth are divided more equally than would occur under market conditions.\(^{87}\) The Basic Needs Approach is really a supplement to the first two strategies:\(^{88}\) proponents of BNA argue that in addition to promoting overall per capita growth, increasing total employment, and securing greater equality in income distribution, it is necessary to directly ensure that certain basic, minimum needs of the entire population are met.\(^{89}\) BNA calls on governments to make available adequate levels of food, water, clothing, shelter, medical care, and education through direct action if necessary.\(^{90}\) Moreover, BNA stresses the importance of broad-based local participation in meeting basic needs.\(^{91}\)

These new approaches to development are all based on a belief that the success of a development policy must be determined by its impact on all members of society and particularly on the least well-off citizens. They agree in rejecting development policies that increase aggregate income without also increasing the share of that income which goes to the poor. They differ, however, in their views of the way this goal should be achieved. Thus there is a basic difference between the more indirect strategies, such as employment creation and redistribution with growth, and the Basic Needs Approach which calls, if necessary, for direct state provision of essential commodities and services.\(^{92}\)

### 3. The Welfare Approach to Development and the Role of Social Welfare Rights

The critique of development policy focuses attention on social welfare. The new approach to development policy, especially the Basic Needs Approach, asserts that direct action is needed if development is to include improved social welfare for all citizens. Economic progress alone does not necessarily improve welfare and it may at times worsen the situation of significant numbers of people.\(^{93}\) Therefore, if enhanced welfare for all is the real goal of national policy, states must pursue it in a direct, affirmative fashion. This means states must put social welfare at the top, not the bottom, of the list of national development priorities. They must have specific programs to ensure employment, meet basic needs, and redistribute income. They must also ensure that these programs are effectively carried out.

This last condition provides the nexus between a welfare-oriented development policy and social welfare rights. One of the great flaws in past development thinking has been its technocratic bias. However development has been conceived, there has been a tendency to see development efforts as technical manipulations of programs and policies by a neutral elite committed to 'universal' goals. This vision mocks the reality of life in Third World countries—or any country for that matter. The negative welfare effects of past development policy are not accidents or thoughtless omissions—they result because such development policies benefit powerful groups in society and the international environment in which these societies are embedded. To the extent that these policies have led to increased income, education, and wellbeing for the few, often at the cost of increased misery for the many, they also strengthen the power of the few and render efforts to reverse the situation all the harder.\(^{94}\)

That is why social welfare rights are important if development policies are to be truly welfare-oriented. Under capitalist, neocapitalist, and command economy growth policies, the accumulation of wealth and of power seem to go hand in hand.\(^{95}\) Therefore, even if welfare-oriented policies are established, the inequalities of wealth, and consequently of power, generated by economic progress can undermine the effectiveness of welfare programs.\(^{96}\) To offset these tendencies, it is necessary to establish rights to social welfare and ensure that they are effectively protected. The recognition of the importance of rights as a weapon against power and privilege has been the impetus of a long struggle in Western capitalist nations through which workers and others outside the status and property elites have sought to protect their welfare.\(^{97}\) It underlies decades of work by the International Labour Office in the field of trade union rights and employment.\(^{98}\) And it is crucial in the political and economic context

\(^{87}\) See Wilber & Jameson, supra note 83, at 12.
\(^{88}\) See id., at 16; Streiten & Burki, Basic Needs: Some Issues, 6 World Dev. 411, 413 (1978) [hereinafter cited as Streiten & Burki]. For an understanding of the objectives and types of programs inherent in the Basic Needs Approach, see generally International Labour Office, supra note 84; WEC Declaration, supra note 86; Streiten, A Basic-Needs Approach to Economic Development [hereinafter cited as Streiten], in Directions in Economic Development 73, supra note 83; Alston No. 2, supra note 79, at 48.
\(^{89}\) See International Labour Office, supra note 84, at 31; Streiten, supra note 88, at 73-74.
\(^{90}\) See WEC Declaration, supra note 86, at 4; International Labour Office, supra note 84, at 54; Streiten & Burki, supra note 88, at 414.
\(^{91}\) See Streiten & Burki, supra note 88, at 4; Streiten, supra note 88, at 74. See also Alston No. 2, supra note 79, at 48.
\(^{93}\) See, e.g., The World Bank, Brazil: Human Resources Special Report (A World Bank Country Study 1979) [hereinafter cited as Brazil: Special Report].
\(^{94}\) See Unequal Protection, supra note 80.
\(^{96}\) See Unequal Protection, supra note 80.
\(^{98}\) See text accompanying notes 103-46 infra.
of many Third World countries, where disparities of income and power are extreme and rooted in centuries-old structures.99

The development of social welfare rights, and the systems to enforce such rights, must therefore be an essential part of the new approach to development. Most of this work must go on at the national level, with the form of the protective systems varying substantially. Methods must be evolved to ensure that program goals are not distorted and that beneficiaries of social welfare policies participate in the formulation of those policies and the monitoring of their implementation. Protection of political and civil rights will therefore also be essential to the effective protection of social welfare rights, and the goal of greater participation in development policy—a main theme of the BNA—will have to be realized in practice.100

4. The Effect of the New Approach to Development on International Social Welfare Law

The new approach to development provides a framework within which the United Nations and other international bodies can develop concrete social welfare programs. It also offers a starting point for the establishment of specific standards through which the international community can evaluate the performance of countries which have pledged to progressively realize the rights recognized by the Universal Declaration and the Economic Covenant. The new approach therefore provides the basis for the evolution of an international law of social welfare.

The Economic Covenant leaves to the specialized agencies the task of defining the precise meaning of the rights to work, health, social security, an adequate standard of living, etc. It further delegates to them the job of determining what steps are desirable or necessary to realize these rights, of developing forms of international assistance to support states which wish to take these steps, and of monitoring the process of 'progressive realization'. But taken by itself, the Economic Covenant provides inadequate guidance for these tasks. It recognizes that social welfare will require affirmative state action, supported by the international community, and it makes clear that this action will involve the investment of resources, which will take time to accomplish. But it does not provide any key to how such programs should be developed, which aspects of investment should receive what priorities


100 See Alston No. 2, supra note 79, at 48.

Economic, Social, and Cultural Rights in the Third World and what rate of progress can be reasonably expected. All of this is left to the specialized agencies.

The Economic Covenant speaks in the language of rights, but refers to the realities of programs. Programs require targets, priorities, and specific measures. The Economic Covenant sets maximum goals but does not specify minimum standards. As a result, it might become just one more set of pious and worthy aspirations.

The new development approach offers a way to overcome the weaknesses of the Economic Covenant. Because it stresses the importance of social welfare to development policy, it provides an opportunity to relate the general goals of the Economic Covenant to concrete issues of national and international decision-making. Since the new approach to development contains targets and priorities and incorporates minimum immediate goals as well as long-term aspirations, it could provide guidance to the specialized agencies which seek to define what is meant by the obligation to progressively realize rights to work, health, etc. This is not to say that the new development approach is a panacea or that it contains the answers to all the questions left unresolved by the Economic Covenant. The new approach is just a first step—the job of translating its broad strategies into detailed programs, guidelines, and standards has barely begun.

Moreover, as noted above, there are contradictions within the new model and barriers to its acceptance by the international community and the countries of the Third World. To explore the potential—and the limits—of this new approach, specific areas of social welfare and the performance of specific specialized agencies must be more closely examined.


Given the structure of the Economic Covenant, the general nature of the rights it recognizes, and the key role it gives to specialized agencies in implementation, the 'sources' of international social welfare law must go beyond the Universal Declaration and the Economic and Political Covenants and must include such material as declarations made by conferences, and resolutions, recommendations, and policies of international agencies such as the ILO, the World Bank, and the WHO.101 Evidence that the international community is developing a coherent program for promotion of social welfare in the Third World and an effective strategy to carry out that program may be found in such standards and policies.

101 See note 4 supra.
This section will examine in depth one of the Economic Covenant’s social welfare rights, i.e., the right to work, focusing on the work of the International Labour Organization. The ILO is the key specialized agency concerned with the right to work established by the Economic Covenant. The ILO was active in this area long before the United Nations was founded and it played an influential role in the drafting of the social welfare portions of the International Bill of Rights. Recently, the ILO has given increasing attention to the development of concrete programs to improve social welfare in the Third World and the establishment of standards to evaluate progress toward that goal. Its efforts in the area of employment demonstrate concretely how the international community has sought to refine the principles of the Economic Covenant, develop affirmative programs to assist states which seek to realize these rights, and develop methods to monitor progress. This brief study of the work of the ILO, when seen in the context of parallel work by other specialized agencies such as the World Bank and the WHO, suggests that progress has been made in this area, but also that the full promise of the Economic Covenant and of a truly effective international approach to social welfare has yet to be realized.

1. The Right to Work

One of the most important of the social welfare rights is the ‘right to work’, understood in the broad sense of the term. Creating a ‘right to work’ involves ensuring not only that all who seek and need work can find it but also that there exist:

(i) the right to free choice of work;
(ii) the right to a living wage;
(iii) the right to decent working conditions;
(iv) the right of freedom from discrimination in work; and
(v) the right of workers to form trade unions.

The Economic Covenant protects all these aspects of the right to work. Article 6 recognizes ‘the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts...’. Article 7 recognizes fair wages, equal pay for equal work, a living wage, decent working conditions, and adequate leisure time. Article 8 protects the right to form trade unions, trade union freedom, and the right to strike. Article 11 supplements the guarantee of a living wage found in article 7 by recognizing ‘the right of everyone to an adequate standard of living for himself and his family...’

2. The ILO and the Economic Covenant

The International Labour Organisation has played a major role in efforts to realize the right to work. At the time the Economic Covenant was adopted, it was clear that the specialized agencies would have an important role in giving specific content to the rights the Covenant protects. Moreover, given the mandate of the ILO, which covers many of the social welfare rights from work to social security, and its long record in this area, it was understood that the ILO would take the lead within the U.N. system in the implementation of the provisions of the Economic Covenant relating generally to work, employment, and trade unions.

Immediately after the adoption of the Economic Covenant by the General Assembly, the ILO acknowledged its responsibilities under that Covenant. The Governing Body and the International Labour Conference pledged the full cooperation of the ILO in the task of implementing the Economic Covenant. Jenkins has stated that the ILO could become ‘the most effective executing agency of much of the Covenant’. He argued that the ILO could provide a way to give specificity to the general provisions of the Economic Covenant and put teeth in its enforcement machinery.

Jenkins’ argument to demonstrate how the ILO could fill the gaps left by the drafters of the Economic Covenant highlights its weaknesses. He noted that while the language of the Economic Covenant is extremely general, the ILO had an established body of standards in the field of social welfare which could give content to the Covenant’s general norms. Existing ILO conventions and recommendations (the ‘International Labour Code’) already dealt in detail with issues like fair wages, occupational health and safety, trade union rights, etc., and new international standards in specific areas not covered by the current Code could be added through appropriate ILO techniques. Unlike the Economic Covenant, ILO instruments provided for detailed reporting on compliance and established specific structures for international monitoring. Finally, Jenkins pointed out that the ILO had the capacity to provide positive assistance to member states which sought to protect the right to work and other economic, social, and cultural rights of everyone to an adequate standard of living for himself and his family...’

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103 See Jenkins, supra note 102, at 230.


105 See Jenkins, supra note 102, at 248-50.

106 Id. at 251
rights. ILO advisory services and other forms of technical assistance were available and had been widely used.\textsuperscript{107}

One of the first measures the ILO undertook following adoption of the Economic Covenant was a comparative analysis of the Economic and Political Covenants and the international labour conventions and recommendations.\textsuperscript{108} This analysis was undertaken to permit the ILO to determine how it could make the most effective contribution to implementing the rights protected by the Economic and Political Covenants.\textsuperscript{109} The report describes in detail all the standards that had been established by the ILO through 1968 as they relate to specific provisions of the two human rights Covenants. It contains a catalog of ILO instruments protecting social welfare,\textsuperscript{110} and describes detailed conventions and recommendations covering a wide range of areas, including fair wages, equal pay, occupational safety and health, trade union rights, social security, and protection of the family.

In addition to indicating the areas in which the ILO had already developed international standards which could give greater specificity to rights guaranteed by the Economic Covenant, the report discusses the overall relationship between the activities of the ILO and the task of implementing social welfare rights.\textsuperscript{111} One of the report's general observations in this area dealt with the relationship between the Economic Covenant's principle of progressive realization and the ILO's approach. While ILO instruments do not explicitly recognize the concept of progressive realization, they do contain sufficient flexibility so that there is no necessary conflict between the two approaches. The report concluded that since ILO instruments deal with very specific issues and since member states are not bound to adhere to all of them, the 'ILO system of individual conventions, each dealing with a clearly defined subject in itself, makes possible the gradual assumption of an ever-widening network of obligations'\textsuperscript{112} and is therefore consistent with the principle of progressive realization.

The report's second general observation on the relationship of ILO activities and the implementation of social welfare rights confirmed Jenks' arguments. In many areas of social welfare, rights recognized in general terms in the Economic Covenant are already subject to a substantial body of precise and detailed ILO standards. Moreover, the report concluded, in many cases 'the guarantees called for by the ILO instruments go beyond the standards embodied in the Covenants'.\textsuperscript{113}

However, the report noted that there were areas covered by the Economic Covenant in which the ILO had not acted or in which existing ILO standards were incomplete, so that the Economic Covenant could serve as an impetus to further ILO actions in the social welfare area.

3. The ILO, Employment Policy, and Development Strategy

The overall work of the ILO in implementing human rights is covered elsewhere in this volume.\textsuperscript{114} This section will focus on the work of the ILO in the area of employment policy. Employment policy is clearly a major aspect of any effective program to realize the right to work. Article 6 of the Economic Covenant explicitly lists a full employment policy as one of the 'steps' to be taken to realize the right to work. Moreover, employment policy is an area in which the effort to implement social welfare rights in the Third World has forced the international community in general, and the ILO in particular, to re-examine the conventional wisdom of development strategy and to articulate new approaches to development.

(i) Unemployment and the Right to Work in the Third World. The unemployment problem in the Third World is massive. According to a study prepared by the ILO in 1976, there were then 300 million persons in the Third World either unemployed or underemployed.\textsuperscript{115} The ILO estimated that in the remaining quarter of the twentieth century, an additional 700 million people would enter the job markets of the developing countries.\textsuperscript{116} In such a situation, the 'right to work' has a hollow sound. Legal protections are not likely to have much meaning if such conditions of massive unemployment prevail. In this context, employment policy becomes the central issue for any organization concerned with protecting the right to work.

But what constitutes an 'employment policy'? If the assumption is that rapid economic growth will, by itself, lead to increased levels of employment and growing real wages, then a growth policy is also an employment policy. As long as rapid growth is fostered, there is no need for specific affirmative efforts to foster employment. This was the approach taken by many institutions concerned with the development of the poorer countries. Apparently, this view was also held by the ILO in the years immediately following World War II.\textsuperscript{117}

The ILO's special concern with employment, however, caused it to question the conventional wisdom of development economics even before other organizations had begun the reappraisal that marked the

\textsuperscript{107} See id. at 245-57.
\textsuperscript{109} See id. at 181; Jenks, supra note 102, at 250.
\textsuperscript{110} See Comparative Analysis, supra note 108, at 181-214.
\textsuperscript{111} See id. at 214-16.
\textsuperscript{112} Id. at 214.
\textsuperscript{113} Id.
\textsuperscript{114} See ch. 7 infra.
\textsuperscript{115} See International Labour Office, supra note 84, at 3.
\textsuperscript{116} Id. at 9.
\textsuperscript{117} See id. at 1-3.
1970s. From these doubts emerged the belief that full employment requires active efforts by government and must be a priority goal in national planning.

(ii) The Need for Affirmative Action: the Employment Policy Convention of 1964. The ILO began its reappraisal of orthodox development doctrines in the 1960s. At that time, according to the ILO's Director General, 'the ILO began to question the conventional wisdom that higher levels of employment would automatically result from growth, irrespective of the pattern pursued'.

This recognition of the need for affirmative action to ensure employment was reflected in the Employment Policy Convention (EPC) adopted by the General Conference of the ILO in 1964. Although the EPC predates the Economic Covenant, it was explicitly designed to implement those provisions of the Universal Declaration which guarantee rights to work and to protection against unemployment. The EPC requires ratifying states to declare and pursue a policy designed to promote full, productive, and freely chosen employment and to relate these goals to a coordinated economic and social policy. The EPC further specifies that such policies must be 'active' and must be a major goal of the ratifying state.

While the 1964 Employment Policy Convention reflected an awareness by the ILO that affirmative state action would be needed to ensure realization of the right to work and that such action would have to be given priority, the EPC was silent on what types of measures should be taken or how priorities should be determined. Moreover, the EPC does not deal specifically with the problems of the Third World. Although it represented an important shift in approach, the EPC did not offer Third World governments and the international community the guidance needed if they were to shape an effective approach to employment policy in the context of development.

Some of these deficiencies were remedied by the non-binding recommendations which were promulgated by the ILO to assist states which sought to implement the EPC. But those recommendations fell short of articulating a comprehensive approach to the employment problems of the Third World. In the 1970s, however, the ILO began a new phase of its work on employment policy. From these activities emerged one of the most comprehensive international statements of the new approach to development.

(iii) The World Employment Conference of 1976. In 1969 the ILO initiated what it called an 'employment-oriented approach to development'. Under its World Employment Programme, the ILO began to provide technical assistance in the employment policy area to countries which requested it and to conduct research on the relationship between development policy, income distribution, and employment. In 1974, the Governing Body of the ILO convened a world conference on employment, income distribution, social progress, and the international division of labour. A reappraisal of conventional approaches to development, from the point of view of effective realization of the right to work was to be a key feature of this Conference.

The preparatory material which the ILO produced for the Conference reflected a major shift in thinking about development in general and employment in particular. Not only did the ILO reject the laissez-faire approach to employment policy and development strategy, it proposed a specific approach to development that would foster employment and articulated a new, comprehensive approach to development that went well beyond the issue of employment.

The key to the ILO's critique of past policies was the recognition that they did not reduce poverty. The ILO concluded that 'conventional development strategies have not succeeded in reducing the numbers of poor and inadequately employed people'. Even though many less developed countries had experienced rapid growth, this growth had not significantly reduced unemployment, increased real wages, or lessened income inequality. Growth which was dependent on capital intensive investment did not provide enough jobs to allow employment to keep up with increases in population. Since growth strategies often compressed the real wages of industrial workers, they did not significantly contribute to better living conditions for the mass of the population. And since rapid growth led to increased profits for elites, income distribution in many Third World countries became less, not more, equal.

To deal with this situation, the ILO proposed a new approach to

118 Id. at 2.
119 Employment Policy Convention (No. 123) adopted July 9, 1964.
119 Id.
121 See id., arts. 1, 2.
122 While its provisions are silent as to implementation measures and priorities, the EPC nevertheless must be viewed as a primary instrument establishing fundamental employment policy standards. See 48 Proc. International Labour Conference 773 (1964).
124 See id. at 916-17, 925-26.
125 International Labour Office, supra note 84, at 2.
126 See id. at 2-3.
127 Id. at 4-5.
128 See id. at 4-7.
129 Id. at 31.
130 See id. at 15-30.
development. It would incorporate the lessons of the employment-oriented approach to development, but would include other elements as well. 'An employment-oriented strategy, by itself, will not suffice', the ILO concluded. 'The creation of more and better jobs is not enough; employment issues are intimately connected to the wider issues of poverty and inequality.' Therefore, the ILO proposed that development planning include as an explicit goal and high priority the satisfaction of an absolute minimum level of basic needs.

'Basic needs' are defined as minimum requirements for private consumption and essential community services. They include adequate food, shelter, and clothing, as well as safe water, sanitation, transport, health, and education. A basic needs strategy, moreover, implies the active participation in development decisions of the people affected.

The basic needs approach differed from past development strategies in a number of ways. It involved making the satisfaction of basic needs a first priority, and rejected indirect, growth-based strategies as the exclusive mechanism for meeting this goal. It stressed redistribution of income, land reform, more labour-intensive technologies, productive mobilization of the unemployed, and techniques for improving the productivity of the working poor. It called for increased investment in the 'traditional' agricultural and 'informal' urban sectors, and for the establishment of institutions which would facilitate popular participation in the development process.

The result of these efforts was the Tripartite World Conference on Employment, Income Distribution and Social Progress and the International Division of Labour, held in Geneva in 1976. This Conference issued a detailed Declaration of Principles and Programme of Action (WEC Declaration) and requested the Governing Body of the ILO to implement the detailed program spelled out in the WEC Declaration.

The WEC Declaration endorsed the ILO's critique of conventional development policy. It noted that:

- The experience of the past two decades has shown that rapid growth of gross national product has not automatically reduced poverty and inequality in many countries, nor has it provided sufficient productive employment within acceptable periods of time; the growth of productive employment is one of the most effective means to ensure a just and equitable distribution of income and to raise the standard of living of the majority of the population; problems of underemployment, unemployment, and poverty must be attacked by means of direct, well-coordinated measures at both national and international levels.

The WEC Declaration also devised a Programme of Action covering Basic Needs, International Manpower Movements, Technologies for Productive Employment Creation in Developing Countries, Manpower Policies in Developing Countries, and the role of Multinational Enterprises in Employment Creation in the Developing Countries. A few features of this Programme of Action deserve special note. In dealing with strategies to create full employment and meet basic needs in developing countries, the WEC Declaration noted, inter alia, that:

- These measures will often involve a transformation of social structures and income redistribution; systems to produce and distribute essential goods and services must be strengthened; employment creation must be a high priority; rural development and agrarian reform must be emphasized; and international as well as national action will be needed to meet basic needs.

(iv) From Labour Standards to a Comprehensive Development Strategy. With the publication of the WEC Declaration, the ILO completed a long process by which its approach to the right to work had been extended to include not only standard setting but also an affirmative programmatic approach which included the whole range of development activity at the national and international level. Moreover, by proposing a basic needs strategy, which suggests in general terms the appropriate priorities for the allocation of available domestic and international resources, the ILO had produced at least a partial answer to the problem of defining the nature of a state's obligation under the Economic Covenant to progressively realize the right to work and other social welfare rights.

(v) The Impact of the Basic Needs Approach on the Work of the ILO. Two key questions remain to be answered: what effect has the WEC Declaration had on the work of the ILO, and to what extent has the ILO been able to influence development policy in the Third World? Full answers to these questions are beyond the scope of this chapter, but it is important to recognize that until they can be answered it will be impossible to evaluate Jenkins' optimistic view that the ILO could become 'the most effective executing agency of much of the [Economic] Covenant.'

The ILO has taken numerous actions designed to implement the principles of the WEC Declaration. In the area of standard setting, it has worked to secure implementation of several ILO conventions

131 Id. at 31.
132 Id. at 32.
133 See id. at 32-43.
134 See note 86 supra.
135 See WEC Declaration, supra note 86, at 8.
136 See id. at 2.
137 See id. at 4-8.
138 Jenkins, supra note 102, at 251.
which relate directly to the basic needs and employment-orientation approaches. These include the Human Resources Development Convention (No. 142), which looks toward better utilization of labour resources, and the Rural Workers' Organizations Convention (No. 141) which strengthens the capabilities of rural unions. It has initiated action to revise the Employment Policy Convention (No. 122) to make it more consistent with the basic needs approach. The ILO has also monitored progress by specific countries and the international community toward the goals of the WEC Declaration. In 1979 the International Labour Office produced a comprehensive report which assessed progress toward an international strategy for meeting basic needs, and included analyses of problems and results in a wide range of areas, from employment to health to local participation in development decision making. As this report notes, the ILO has worked both with the member states of the United Nations and with other specialized agencies to foster the basic needs approach. The report lists numerous technical assistance projects which the ILO has aided and missions it has sent to Third World states. It points out that the ILO has helped other specialized agencies, such as the Food and Agriculture Organization (FAO) and the WHO, whose work is in areas into which ILO's concern for basic needs also extends.

It would be desirable to have a comprehensive and independent assessment of the extent and impact of these new directions in ILO activities. The 1979 report indicates that much has been done. It does not, however, permit an assessment of the priority which has been given to these activities within the ILO, nor to gauge the impact of these activities on other specialized agencies or on Third World states. If such an assessment confirms what a reading of the report suggests, then the ILO has made significant steps toward the goals outlined by Jenks.

(vi) The ILO and Evaluation of Country Performance under the Economic Covenant. Although insufficient data is available to allow an evaluation of the full impact of the ILO's programmatic efforts in social welfare, it is possible to examine a key feature of the ILO's work under the Economic Covenant. As indicated above, the ILO has assumed responsibility for commenting on the reports submitted by states parties on their progress under the Economic Covenant. This responsibility offers an opportunity for the ILO to take the central role in implementation which it sought during the drafting of the Economic Covenant and which the debates over implementation procedures apparently indicate it was to have. It also offers an opportunity to relate all three aspects of the specialized agency implementation of the Economic Covenant—program development, standard setting, and country monitoring.

In its programmatic work the ILO has developed the idea of a basic needs approach which indicates the priorities which countries should set in their development policies and programs. These priorities offer at least a crude set of standards that can be used for evaluative purposes and are thus a starting point for the evolution of some of the specific norms which are needed in development policy.

In its observations on a country's progress, the ILO seeks to draw on a wide range of data including its own appraisal of that country's performance under existing ILO standards and the progress the country has made in implementing recommendations made by ILO advisory teams. However, the observations fall short of what one might hope for, given the central role the ILO necessarily must play under the Economic Covenant. The observations on progress by Third World countries do reflect a desire to draw on available normative sources including the WEC Declaration and specific ILO instruments. Some effort is made to use these sources to develop guidelines and assess country performance in light of these principles. But the authors of the observations often lack essential information, do not try to reach any conclusions about the adequacy of specific efforts, and deal very cursorily with vital issues.

It is clear that these 'deficiencies' in the observations in part reflect a conscious strategy on the part of the ILO. The Committee of Experts has signalled that it would begin its task of monitoring in a very general way, in part because of the technical problems involved in such evaluation and in part because of the resistance of some states to any critical evaluation. It is therefore too early to give a final assessment of the way the ILO will carry out these duties.

This initial experience of the ILO underscores the potential of the approach in which the specialized agencies could combine program development, standard setting, and country monitoring, and in which programmatic ideas could be translated into standards for monitoring.
But it also underscores the difficulties of this approach. Among the problems which have appeared are the lack of comprehensive data on key issues, the inadequacy of efforts to translate programmatic ideas into standards for evaluation, the failure to develop more specific international instruments in the broad area covered by the Economic Covenant, and the continuing resistance of some states to international monitoring. Perhaps as the ILO and the states parties gain experience under the Economic Covenant and greater attention is devoted to the task of translating programs into standards, these problems will be resolved.

E. THE WHO AND THE RIGHT TO HEALTH

The ILO is not the only specialized agency that has devoted attention to the problem of developing programs, priorities, and standards for improving social welfare in the Third World. This section very briefly examines the parallel efforts of the World Health Organisation (WHO). Its experience demonstrates that some of the concepts of the new development approach are influencing work in the health field as well as the employment field. But the WHO case also shows how, for some specialized agencies, are from the goal of developing and applying a body of normative principles based on the new approach.

1. The WHO and the Economic Covenant

Article 12 of the Economic Covenant guarantees the right to the ‘highest attainable standard of physical and mental health’. Article 12(2) articulates the ‘steps’ necessary to achieve this right including reduction of the stillbirth and infant mortality rates; provision for the healthy development of children; improvement of all aspects of environmental and industrial hygiene; the prevention, treatment, and control of epidemic, endemic, occupational, and other diseases; and provision to all of medical service and attention in the event of sickness.

The primary specialized agency responsible for implementing this right to health is the World Health Organisation. The WHO has begun to develop policies which could be used to evaluate whether countries are taking reasonable efforts to progressively realize the right to health. These policies, which have distinct similarities to the Basic Needs Approach, suggest the possibility of identifying the minimal standards, priority measures, and specific targets that are needed for effective international implementation.151

151 See Alternative Approaches to Meeting Basic Health Needs in Developing Countries (V. Djukanovic & E. Mach eds. 1975) [hereinafter cited as Alternative Approaches]; World Health Organisation, Primary Health Care (1978) [hereinafter cited as Primary Health Care]. Part IV of Alternative Approaches, supra, at 109-12, is entitled ‘Recommendations to WHO and UNICEF’. The heart of the recommendations was incorporated in the conceptual and programmatic aspects of primary health care as put forth by the WHO in Primary Health Care, supra.

152 See Primary Health Care, supra note 151.
154 Primary Health Care, supra note 151, at 2.
155 See id.
156 See id. at 7. See also Alternative Approaches, supra note 151, at 10-25; B. Herzel, Basic Care in Developing Countries: An Epidemiological Perspective 1 (1978); Abel-Smith, Poverty, Development, and Health Policy 11-20 (Public Health Papers No. 69, 1978).
157 See Primary Health Care, supra note 151, at 7-10. See also Inter-relationships Between Health Programmes and Socio-Economic Development (Public Health Papers No. 49, 1973); Health Economics I (Public Health Papers No. 64, 1975).
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Economic and Social Council is responsible for and ignores the kind of country-specific data which article 18 calls for from specialized agencies and which the ILO has provided.

One can only hope that the WHO will modify its approach in future reports. The ILO experience has shown that programmatic policies like the BNA or PHC can be used as sources of the standards needed for international monitoring of country progress. If the specialized agencies are to play the role assigned them by article 18, the WHO will have to find ways to follow the ILO lead and directly evaluate national efforts.

F. U.N. DEVELOPMENT POLICY AND SOCIAL WELFARE

This chapter has explored the nature of the international protection of social welfare rights. We have seen that within the U.N. system primary responsibility for this task lies with specialized agencies such as the ILO and WHO. These agencies have a triple role in the area of social welfare. They are responsible for developing positive programs to assist countries which seek to further the broad goals of the Economic Covenant, they are the source of more specific standards to measure progress toward those goals, and they are charged with monitoring country progress.

One of the major conclusions of this chapter is that the tasks of program development, standard setting, and country monitoring are complementary. The human rights standards of the Economic Covenant are too general to permit a simple comparison of national performance with the text of the Covenant. More precise standards must be developed before it is possible to determine if states are meeting the obligation under the Economic Covenant to progressively realize the rights they have recognized. But these 'standards' cannot be fixed except in the context of sensible programs to reach desired goals with limited resources.

This means that the first task is to design development policies which are oriented towards the social welfare goals of the Economic Covenant. While the values articulated by the Economic Covenant provide a starting point for analysis, they must be related to specific measures and priorities. A development model oriented towards social welfare must take into account the overall national and international economic structure, recognize the need to generate resources as well as allocate them, identify linkages among goals, and specify barriers to the realization of those goals. Some of the specialized agencies

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2. The WHO and Implementation of the Economic Covenant

While the Primary Health Care approach seems to provide a basis from which the WHO could evaluate progress toward realization of the right to health, the WHO has not sought to use these principles as standards to measure country progress under the Economic Covenant. Unlike the ILO, the WHO does not have a tradition of standard-setting through international agreements or of monitoring country progress through institutions like the ILO’s Committee of Experts. Perhaps for this reason, the WHO has construed its obligations under article 18 of the Economic Covenant very differently than has the ILO. The WHO has submitted one report pursuant to Resolution 1988 (LX) of the Economic and Social Council, which calls on the specialized agencies to submit reports on progress toward achieving the goals of the Economic Covenant. In contrast with the ILO’s response, which focuses on individual country progress and comments on the extent to which specific standards have been met, the WHO report focuses exclusively ‘on the implementation of Article 12 at the global, international level and on the relevant global policy decided collectively by the Organization’s Member States.’ Thus the WHO’s report merely covers those very issues of ‘generic implementation’ which the

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158 See Primary Health Care, supra note 151, at 16-18.
159 See id., at 2-31.
160 See Alston No. 1, supra note 65, at 111.
162 See text accompanying and note 71.
164 See Alston No. 1, supra note 65, at 111.
have begun to design such development policies. But these policies are far from forming a consistent and precise strategy. There are significant areas of debate and disagreement even among those who accept the new approach's basic principles. A great deal of work remains to be done.

It has only been possible to examine a few aspects of the work of the U.N. system in this area. The efforts canvassed in this chapter are part of the overall activity of the specialized agencies in the field of development policy. A more complete survey of the work of the United Nations in social welfare would have to examine the overall U.N. development effort. In such a canvass, special attention should be given to the work of the World Bank. Since the World Bank is the major international source of funds for development and since it has a significant impact on national development plans, its policies and programs are at the core of U.N. activity in the social welfare area. In recent years, the World Bank has given increased attention to problems of employment, health, education, and other aspects of social policy. The Bank has endorsed the Basic Needs Approach, and has made significant contributions to the new development model which underlies the approach taken by the ILO and the WHO. It has made the eradication of absolute poverty a priority goal and has stressed the importance of more equitable distribution of the benefits of economic growth. The Bank has sought to allocate more money to the poorest countries and to the programs that aid the poorest segments of the population. Moreover, it has conducted detailed studies to determine the resources needed to meet the basic needs goals in specific countries.

If these trends continue, they hold promise for more effective implementation of the rights guaranteed by the Economic Covenant. Increased World Bank concern for social welfare will mean more detailed attention to the relationship between the goals of the Economic Covenant and national development policies. Since the Bank has substantial experience with development planning and policy, its technical staff has the capability to work out many of the complex problems presented by the challenge of the new development model. Moreover, the Bank can ensure that the level of international support for social welfare programs will increase. Thus the World Bank can at the same time help Third World states determine the best way to pursue the goal of progressive realization of social welfare, provide other specialized agencies with more specific ideas as to the policies which can be used to measure progress in this area, and provide resources needed to make these efforts effective.

G. SOCIAL WELFARE, BASIC NEEDS, AND THE NEW INTERNATIONAL ECONOMIC ORDER

This chapter has largely been concerned with analyzing relationships between international law and the national efforts to realize social welfare goals. The international law of human rights has established basic principles which should govern national endeavors. How specialized agencies can help set more precise standards, monitor progress, and provide direct assistance to Third World countries has already been demonstrated. It is, however, also important to see this process in the context of the broader effort now underway to transform the international economic order in ways that would substantially increase the resources available to Third World countries, thereby increasing their capability to enhance the welfare of their citizens. This effort has crystallized in the call for a New International Economic Order (NIEO). The struggle by Third World states to restructure what they consider to be an unjust international economic order will be one, if not the, dominant theme of the development debate in the 1980s.

1. The NIEO

The NIEO strikes at the heart of the economic relationships between developed and developing countries. Its fundamental goals are to close the resource gap between these countries and to enhance 'the capacity of developing countries for self-sustained as contrasted with dependent development'. By their nature, the NIEO proposals represent comprehensive principles and programs of reform and restructuring which operate through a wide range of activities.

The NIEO can be seen as a continuation of the critique of past approaches to development policy. The new approach to development stresses the need to deal directly with the needs of the poor and to transform national structures that create and maintain poverty. The NIEO is based on the view that Third World poverty can only be

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171 See, e.g., Brazil: Special Report, supra note 93.
understood in the context of the entire world economy. It asserts that the current international economic system is one of the causes of underdevelopment and that until it is reformed there is no way to make major progress toward greater global equality.

The basic NIEO principles are found in two General Assembly resolutions—the Declaration \(^{173}\) and the Programme of Action \(^{174}\) on the Establishment of a New International Economic Order. The Declaration sets forth the fundamental principles of the NIEO. Most importantly, they include:

(a) effective domestic control over natural resources; (b) regulation of the activities of multi-national corporations; (c) just and equitable prices for primary commodity and other exports of developing countries; (d) money and development finance reforms; (e) market access for products of developing countries; and (f) strengthening the science and technological capacity of developing countries.

These principles are promulgated within a framework of international cooperation and especially of mutual economic, trade, financial, and technical cooperation within the Third World. \(^{175}\)

The Programme of Action elaborates upon the principles of the Declaration by both recognizing more targeted objectives and establishing specific modes of action. For example, the Programme of Action seeks strengthened Third World export earnings. \(^{176}\) Moreover, it seeks greater real transfers of resources to the Third World through both official development assistance and international financial institutions. \(^{177}\)

\(^{173}\) Id.


The Resolution on Development and Economic Co-operation was adopted at the General Assembly's Seventh Special Session in 1975. It elaborates upon both the NIEO Declaration and Programme of Action. In some respects, this Resolution is more programmatic in scope than the foundational NIEO documents, especially with regard to measures of increasing real transfers of resources and levels of development assistance. See G.A. Res. 3362, supra, at sec. II (Transfer of real resources for financing the development of developing countries and international monetary relations).

The NIEO proposals contained in the Declaration and the Programme of Action are well summarized by the U.N. Secretary-General in his report to the General Assembly Eleventh Special Session. See U.N. Doc. A/5-11/5, at 6-18 (1980).

2. The Relationship between BNA and NIEO: Complementary or Conflicting Strategies?

One might expect that proponents of the NIEO and the BNA would see these two policies as complementary aspects of a unified attack on Third World poverty. \(^{182}\) Those who favor the Basic Needs Approach in place of past `trickle-down' approaches to development should be the first to recognize the value of and need for complementary international reallocations of resources. The achievement of BNA goals requires the mobilization of substantial resources, and while some BNA adherents believe that the needed resources could be secured through domestic reallocations, most recognize that increasing the Third World's share of resources would facilitate the success of the BNA. This latter view was explicitly recognized by the WEC Declaration, which saw the emerging demands for a New International Economic Order as part of the strategy to implement the basic needs principles it articulated. \(^{183}\) At the same time, the core of the NIEO is a belief that Third World poverty is caused in part by the conditions of economic dependency created by the current structure of international economic relations. \(^{184}\) NIEO advocates should therefore support efforts to ensure that the real victims of such dependency—the poor of the Third World—should have a priority claim on resources generated by international economic reforms. The complementarity of the BNA and the NIEO seems, at first blush, to be obvious.

\(^{176}\) See id. at sec. I.3(a)(ii).

\(^{177}\) See id. at sec. I.1.

\(^{182}\) See id. at sec. II.1(c).

\(^{183}\) See id. at sec. II.2(c).

\(^{184}\) See id. at sec. III.2(g).


\(^{186}\) See WEC Declaration, supra note 86, at 7, 8.

However, some see the policies as being in basic conflict. They very different types of conflict are noted. Some who favor the BNA think that the NIEO will not lead to the kind of people-oriented development strategy which they believe is necessary. They agree that it is impossible to separate the international and the domestic effects of any changes in basic economic relationships and that each of the policies involved in the NIEO will affect the distribution of wealth and power within Third World states. However, they feel there is no guarantee that such redistribution will benefit the 'have-nots' of the Third World, and they have good reason to believe that the NIEO will principally benefit the 'have's'. If that were the case, then the NIEO would contain within it the flaws of prior orthodox development strategies.

Proponents of the NIEO who criticize the BNA take a rather different tack. They do not directly challenge the policies suggested by the BNA. Instead, they reject the principle that any external body should dictate to Third World governments the development strategy that they should follow. The conflict here is not necessarily between the policies of the NIEO and the BNA. Rather, it is a conflict between the principle of the independence of sovereign states, one of the main aspects of the NIEO, and the perceived imposition of a particular development approach. One of the main goals of the NIEO is to give the Third World more economic independence. If, however, any increase in resource transfer were conditioned on the existence of certain policies, even policies thought to benefit the poor of the Third World, the transfer would fail to meet one of the basic goals behind the drive for the NIEO.

Neither of these fears is groundless. There is no question that successful implementation of the NIEO could, under some circumstances, lead to resource transfers that would benefit Third World elites without significantly improving the lot of the poorest segments of society. Nor is there any doubt that if the developed countries explicitly conditioned their agreement to some NIEO proposals on the acceptance of specific domestic policies by the Third World, Third World governments would have less freedom of maneuver than they desire.

The NIEO probably cannot succeed without some sort of commitment to meeting basic needs, while it is doubtful that the BNA can succeed without reform of the international economic order. It is not clear that the developed countries will accept the demands of the NIEO. But it is clear that the appeal of the NIEO to the developed states will be even further reduced if it does not contribute to alleviating real poverty within the Third World. The developed states will therefore seek assurances that resources allocated to the Third World by the NIEO will be used to meet priority problems and to deal with basic needs. The developed states will be reluctant to make the sacrifices the NIEO calls for under any circumstances, but they certainly will be unwilling if their sacrifices merely benefit already affluent elites in the Third World. On the other hand, the Third World will not accept or effectively administer a BNA if it is perceived as an alien imposition and is unaccompanied by the increased resource transfers which will make it possible to meet basic needs goals without sacrificing other vital national interests. Unless the Third World accepts the Basic Needs Approach as its own and has confidence that it will have enough resources to reach its goals, this approach will not work.

3. International Social Welfare Law and a Global Compact

International development is an area where effective legal institutions might help to overcome conflicts and reduce risks. Mechanisms are needed which can increase acceptance by developed and developing countries of their mutual responsibility to relieve world poverty and correct past injustices. Such mechanisms must perform two functions. First, they must contribute to building a normative consensus on the existence and nature of the mutual obligation to achieve development and social justice. Secondly, they must provide mutually satisfactory assurances that the developing and developed world will meet their respective obligations.

What is needed, therefore, is a sort of global compact through which agreement can be reached on methods to reallocate resources simultaneously at the international level and within the countries which will benefit from such a reallocation. The question then arises: if the world community agreed to such a development strategy, could the international law of social welfare described in this chapter play a role in the establishment of the appropriate compact?

The answer to this question depends, in part, on what kind of arrangements such a compact would require. It would hardly call for a highly detailed and precise set of legal agreements with immediate and effective mutual sanctions—a sort of world-wide trust indenture, as it

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185 See generally Galtung, supra note 182; WEC Follow-up, supra note 86, at 10,11.
186 See Galtung, supra note 182, at 129-32.
187 See id. at 135, 136.
188 See WEC Follow-up, supra note 86, at 119.
189 See Galtung, supra note 182, at 129-32.
190 See id. at 136

191 See id. at 143-48; Markes, supra note 183, at 243-46; WEC Follow-up, supra note 86, at 10-11, 89-90; Alston, Human Rights supra note 165, at 285.
192 See Streiten & Burki, supra note 88, at 415.
were. Rather, a set of working principles, and institutions designed to develop these principles over time so that mutually conditioned performances are, by and large, accomplished, is needed. In this ‘quasi-constitutional’ as opposed to “bond-indenture” model, the current international law of social welfare could provide a starting point.

Part of any global compact would be a commitment by developing countries to give priority to meeting basic human needs. We have seen that such priorities can be translated into relatively specific standards. Further, we have seen that the international community can agree on such standards and, to some degree, monitor progress toward them. The work done by the ILO illustrates how this can be done within the framework of existing human rights instruments. At the same time, the lack of comparable progress in areas such as health, and the general weakness of the system of international monitoring under the Economic Covenant, suggest the limits of the current mechanisms and the need for reform of the international social welfare system.

In any movement toward a global compact, such reform would be essential. Third World states would have to be assured of effective participation in the process of standard setting. This not only involves the framing of international agreements such as ILO conventions but also involves making detailed policy decisions in the specialized agencies. Thus to be sure that any emerging body of principles and policies really reflects an international consensus, it will be necessary to ensure—and accept—full Third World participation in the policy-making decisions of the specialized agencies.

A second weakness of the existing system—viewed in the perspective of the global compact suggested above—is the system’s lack of mutuality of obligation. International monitoring of Third World progress toward social welfare goals should be part of a system that ensures international assistance. Thus it will be necessary to establish a principle that developed countries have an obligation to ensure that the Third World receives a greater share of global resources.193

Finally, any effective system which creates standards, renders assistance, and monitors progress must have more central direction than is currently available within the U.N. family. The strong point of the existing system is the specialized agencies, which have the capacity to monitor progress in their fields. But the absence of any central institution which can review country progress means that comprehensive reviews can not be conducted and thus a truly effective assessment of national efforts can not be made. While the ILO has construed its mandate to go well beyond the area of labour policy, its powers and expertise remain limited, so that even the most effective ILO appraisal will fall short of the kind of country reviews that would be needed to make a global compact work.

The effort to secure the NIEO may provide the impetus for reform. For the NIEO to succeed, there will have to be more specific international commitments both to development assistance and to social justice in the Third World. The experience—both positive and negative—gained in the evolution of the international law of social welfare should be of immense value in the construction of such a reformed system, and the needs international social welfare law generates will help identify the flaws in the current structures. This is not to say that an improved international law of social welfare will effectively mediate all the conflicts between North and South or remove all the obstacles to social justice in the Third World. At best, it will provide partial gains and modest solutions to some of the conflicts.

H. CONCLUSION: A NOTE OF CAUTION

Even if the goals are modest, caution is in order. There are positive trends in the social welfare area. But the effort to reorient development policy, develop more specific standards, and reallocate international resources faces substantial barriers. Perhaps the most important current development is the growing recognition of the existence of those barriers.

Neither the New International Economic Order nor the new development approach are neutral, technical concepts. They are rooted in certain general values which have been endorsed by the international community. But these values are not universally accepted. And the NIEO and the Basic Needs Approach cannot be realized without cost. These twin approaches to development require major and painful transformations in national social structures and international relations. In many countries, important and powerful groups have benefited from past development policies and from the existing structure of the world economy. Any effort to force a global compact comprising a new international economic order and a commitment to new domestic development policies will encounter strong resistance from such groups. Obviously, not everyone benefits from land reform or more labour-intensive growth strategies. The national elites of some developing countries are not the only potential losers from the BNA or the NIEO. The high-growth of development adopted by states such as Brazil has brought substantial benefits to multinational firms. Multinational firms are not likely to enthusiastically support policy changes which could substantially affect their profit margins and investment possibilities. The current system of international trade and monetary relations also benefits developed market economy countries in sig-

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193 See, e.g., Right to Development, supra note 4, at 142, 143.
significant ways. The developed states will not easily accede to the demands contained in the drive for a NIEO.

The effort to realize the economic, social, and cultural rights established by the International Bill of Human Rights therefore faces three basic barriers: the resistance of Third World elites, the unwillingness of developed countries to substantially alter the structure of the world economy, and the weakness of the international human rights machinery. The resistance of elites in some Third World nations is well documented. In a thoughtful essay on Brazilian economic history, Hewlett examines the reluctance of the Brazilian government to abandon its commitment to a growth strategy that has failed to benefit the poor, while enriching the top strata of the society. She notes that:

A crucial cause of unequal development in Brazil is that vicious circle of wealth set up by capital intensive industrial structures producing sophisticated consumer good for an elite market. One way to break out of this circle and increase employment and income levels for a majority of the population would be by massively subsidizing the development of a more... labor intensive technology... [and]... substantial income distribution....

While such measures would foster the economic, social, and cultural goals, Hewlett concludes that:

No Brazilian government enjoying the support of the contemporary power elite can make a significant dent on the social welfare problem, for a radical improvement in the condition of the poor would seriously threaten the very existence of the elite.

Anyone who has followed the debate over the establishment of policies for the United Nations Third Development Decade and the unsuccessful effort to structure a negotiating process for the establishment of the NIEO will be aware of the reluctance of many developed countries to assume further obligations to the Third World.

Finally, a principal purpose of this chapter has been to highlight the weaknesses of the existing machinery to implement international economic, social, and cultural rights. These weaknesses flow from many factors, including: (i) the obvious complexity of the task, which involves translating broad normative prescriptions into detailed standards and programs covering very different cultural, economic, and political conditions; and (ii) the novelty of developing international machinery to monitor intranational activities—a task inherent in the idea of international protection of social welfare but

not well accepted either by national governments or international institutions.

When we understand the true meaning of the economic, social, and cultural rights that have been recognized by the international community, and especially when we understand the implications of these rights for citizens of the Third World, we see that the International Bill of Human Rights constitutes a challenge to existing systems of power and privilege in many parts of the world and to conventional approaches to international law. For some, this may mean that international economic, social, and cultural rights are pious aspirations incapable of realization. For others, this very challenge may be a spur to more comprehensive and effective international action to secure these rights.

II. Teaching Suggestions

A. INTRODUCTION—ONE COURSE OR MANY?

How should this subject be taught? I start from a disadvantage, as I have never tried to teach the material outlined in this chapter. While this may appear to disqualify me at the start, let me say that there are few in this country who have, so that my credentials are no worse than most who might otherwise be asked to comment on this matter. That is not to say that no attention has been paid to these subjects in various courses on human rights, international organization, or development policy. But an informal inquiry has failed to uncover any text, materials, or course devoted exclusively to the rights protected by the Economic Covenant.

One might see this as evidence of serious inattention to an area of major international importance. The creation of a new course devoted exclusively to these matters might be justified. Certainly the subject is important. Intellectually, the field is rich. It presents important issues about the nature of international law, the operations of international organizations, the problems of the Third World, and the evolution of the welfare state. International lawyers should know more about social welfare. Experts on development policy should be exposed to the normative content of the Economic Covenant and the role of specialized agencies in promoting and protecting rights to work, health, etc. Each of these groups will understand their roles and professions better if they are exposed to the issues I have sought to survey.

An increase in the understanding of the relationship between international law and social welfare is important for the realization of social welfare goals. This gist of this chapter is that effective implementation of what I have called 'social welfare rights' requires a
combination of normative analysis and programmatic imagination. Teaching in this area could encourage the development and fusion of these two approaches.

But does that mean that such teaching should be incorporated in a special course on this subject? Perhaps in a few advanced centers of graduate study in human rights and international organization such a course might make sense. But in most university contexts, I suspect that another strategy would be preferable. Rather than trying merely to develop a specialized offering in economic, social, and cultural rights, I think we should devote our energies to increasing the coverage of these issues in more general courses on human rights, international organization, development policy, and substantive areas of welfare policy like labour, health, and social security.

I favor this approach for several reasons. The first is conceptual. My approach to the topic leads me to see international 'law' in this area as embedded in the policies and programs of specific agencies like the ILO, WHO, and World Bank. To fully understand what is involved in protecting these rights, the specific problems these specialized agencies deal with, the policies and programs they have developed, and the way they function, must be first understood. This approach requires a mastery of the details of complex areas and an understanding of the workings of complex institutions. In conducting the research for this chapter, I confronted this problem and barely began the task of developing the requisite kind of expertise in just a few of the areas covered by the Economic Covenant. There will be few teachers who will be able to master all the material needed to deal with the issues which would have to be included in a comprehensive survey of all the rights protected by the Economic Covenant. Yet without such mastery it is impossible to convey the essence of the message I think we should get across here.

To avoid this dilemma, I suggest that we try to build on existing expertise and explore the various issues in courses which will contain sufficient depth and background material that students and teachers can grapple with the core issues and dilemmas that are presented. This would suggest that a good way to fully explore the activities of the ILO in this area would be in a course on the ILO as an institution, or in a course on Employment Policy and Development. I would suggest that the best way to understand the special problems of implementing 'rights' of this nature may be in a general course on human rights, where various approaches to implementation could be examined. Further, one might want to examine the normative implications of the Economic Covenant in a variety of contexts, but especially in courses that deal with development policy and development strategy.

B. LEARNING FROM THE BASIC NEEDS APPROACH—A STRATEGY FOR DEVELOPING THE FIELD

If there is a conceptual argument that supports the approach I suggest, there is also a very practical reason why it is best to start the teaching of this area in existing courses on human rights, international organizations, and development policy. As teachers, we can learn from some of the thinking that underlies the Basic Needs Approach and the Primary Health Care doctrine. One element of these approaches is to build on what is already there and improve the productivity of existing resources. That lesson applies to teaching as well as employment and health care. It is certainly desirable to increase the resources devoted to teaching students about the role of the international community in the social welfare area. But the resources currently available for this task are severely limited. I have not located one person teaching in U.S. universities who is really a specialist in this area. The literature in the field is sparse. If one defines the field broadly, as I have done, one can identify a wealth of primary material and libraries of relevant material that can be employed to illuminate the issues that are presented here. But I have found almost no comprehensive analyses of the overall topic, and very few detailed studies that focus on the specific questions I think should be covered. To continue the development analogy, there is a severe shortage of human resources and intellectual capital.

In such a situation, one must either invest massively in training teachers and producing detailed studies, or build gradually from the slender base that exists. The second of these options seems the most feasible. What exists, in this case, are teachers who are interested in human rights, international organization, and development policy. What we should do, then, is encourage people with this base of expertise to expand their focus to include international social welfare law in their current offerings. At the same time, it would be desirable to increase the resources devoted to research on this subject and to find ways to bring specialists from various areas together. In this fashion we can gradually expand our stock of human resources and intellectual capital.

C. A TWO-PRONGED APPROACH

For the reasons outlined, I suggest that the development of this field be encouraged in two ways. First, specific courses on this subject should be added. Second, teachers of existing courses should add 'modules' on economic, social, and cultural rights to existing offerings. The syllabi for each of these approaches follow.
III. Syllabus

A specific course on 'Economic, Social, and Cultural Rights in the Third World' would have to be quite comprehensive and interdisciplinary. It might be best, where possible, to have such a course jointly taught by persons with backgrounds in international law and development policy. A substantial part of the course should be devoted to 'case studies' of the type set forth in the chapter, and to country-oriented studies which would give the student a clearer idea of the structures that affect social welfare and the barriers suggested in the last section of the discussion.

I. Introduction
   A. Brief history of international efforts to protect human rights.
   B. Principal U.N. human rights documents.
   C. Relation between civil/political and economic, social, and cultural rights.

II. The International Covenant on Economic, Social and Cultural Rights
   A. Drafting history and entry into force.
   B. Basic structure.
      1. Rights included.
      3. Implementation.
   C. Introduction to specific rights and 'steps' specified for their realization.
      1. Work.
      2. Just and favorable conditions of work.
      3. Social security.
      5. Health.
      6. Education.
      7. Culture and science.
      8. Protection of families and children.

III. The Third World and Development Policy
   A. The challenge of development—description of economic, social, and cultural conditions in the Third World.
   B. Development models and development strategies.
      1. The post-war response.
      2. The first development decade.
      3. The debate over development strategies.
         a. Income distribution.
         b. Employment generation.

IV. Economic, Social, and Cultural Rights in the Third World
   c. Role of developed countries.
   4. The emergence of a new approach.
      b. Re-distribution with growth.
      c. Employment-orientation.
      d. New International Economic Order.
   C. The institutional structure of development.
      1. Domestic structures.
      2. Bilateral assistance.
      3. Specialized agencies.

IV. Minisyllabus

1. Modules for Existing Courses

The second approach to teaching social welfare rights is to develop modules for existing course offerings. Detailed outlines are not possible here since they would have to be tailored to fit existing syllabi. Rather I shall merely suggest how the issues in this area might be approached from the viewpoint of separate courses on human rights law, international organizations, and development policy.

Any module in this area should cover at least three topics: (i) the normative content of the Economic Covenant and other relevant
sources of international law; (ii) the operations of the specialized agencies that have programs in this area; and (iii) the national development policies that are needed to support national efforts. However, teachers in different fields could emphasize different dimensions of this overall body of material. Thus one might imagine three modules with three different emphases:

**Human Rights Law Emphasis**

From the human rights lawyer's perspective, the problem appears most acutely as a question of 'implementation'. Much has been said about the alleged distinction between implementing political and civil rights on the one hand, and social welfare rights on the other. Much more is made of this distinction than I think is warranted, but it is a useful didactic starting point. The recognition that rights entail programs, and program specificity involves normative analysis, is a key insight, as is the role of the specialized agencies in the implementation task. The ILO is clearly the paradigmatic agency to evaluate in this area, but one should not stop with the ILO.

**International Organization Emphasis**

From this focus, I think the principal issue is: how do various specialized agencies determine policies, and how likely is it that they will take effective measures to implement the Economic Covenant? What do these specialized agencies actually do, and what effect do their activities have on national decision-making? What methods do the WHO, ILO, and World Bank use to get states to adopt the policies they endorse? What techniques work best? How do different organizational structures influence the social welfare rights work of the several specialized agencies?

**Development Policy Emphasis**

What is the argument for development policies that stress social welfare? Which countries have adopted such policies? Under what conditions have the elements of the new development model (BNA, employment-orientation, growth with redistribution) actually worked? What are the barriers to successful implementation of such policies? What implications does the new approach have for international economic relations? Do the current international economic policies of the developed states deter adoption of the new development model and encourage the growth and trickle-down approach that has been subjected to such criticism but still prevails in much of the Third World? What impact would the NIEO have on social welfare in the Third World?

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*Economic, Social, and Cultural Rights in the Third World*

(2) A BRIEF INTRODUCTION TO ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

If a teacher of a general course on human rights wishes to include a short segment on 'International Economic, Social, and Cultural Rights', I suggest the following syllabus, which would require three class hours. Articles bearing on each subject are listed in the Mini-bibliography.

I. **Introduction—The Basic International Norms**

This class is devoted to introducing the basic texts and explaining how the Economic Covenant is designed. It is assumed that the student has already studied political and civil rights.

**A. Texts**

1. Articles 55 and 56 of the U.N. Charter.
2. Article 22 of the Universal Declaration of Human Rights.

**B. Questions for Discussion.**

1. What are the differences between the rights protected by the Economic Covenant and those guaranteed by the International Covenant on Civil and Political Rights?
2. Why did the drafters of the Economic Covenant include the principle of 'progressive realization' in the system of 'generic implementation'?
3. What role did the authors of the Economic Covenant envision for the specialized agencies?
4. What is the significance of article 23 of the Economic Covenant?

II. **The United Nations, Human Rights, and Development in the Third World**

This class places international economic, social, and cultural rights in the context of Third World development and the activities of the specialized agencies.

**A. Text.**


**B. Questions for Discussion.**

1. What is the difference between a basic needs approach (BNA) and prior approaches to development?
2. Is the BNA compatible with principles of the Economic Covenant?
3. Could the BNA be used to interpret the obligation to progressively realize rights like the right to work or health? How would this be done?

4. Could the WEC Declaration of Principles be used to interpret the meaning of the obligation to realize the right to work?

III. Implementing Economic, Social, and Cultural Rights in the Third World

This class uses the ILO comments on country progress under the Economic Covenant to elaborate the problems involved in implementing social welfare rights.

A. Texts


5. Implementation of the International Covenant on Economic, Social, and Cultural Rights (World Health

B. Questions for Discussion

1. Contrast the approaches taken by the WHO and the ILO in commenting on progress under the Economic Covenant. What explains the different approaches taken?

2. Did the ILO Committee of Experts provide a very clear statement of the criteria used to evaluate country progress? Of the extent of particular countries' compliance or non-compliance? Given the ILO's willingness to provide country-specific criticism, why did the ILO take the approach it adopted?

3. What are the principal deficiencies of the implementation procedure? How could they be improved? Is there a role for NGOs in this procedure? What would it be?

V. Bibliography

I. General Background Materials


II. The International Covenant on Economic, Social and Cultural Rights: Text and Drafting

A. Books and Articles


B. U.N. Publications and Documents


— Commission on Human Rights, Seventh Session, Working Group on Measures of Implementation of Economic, Social and Cultural Rights, Summary Records of 1st to 3d meetings,
III. Human Rights, International Law, and Social Welfare

Moving Toward Change: Some Thoughts on the New International
Economic Order (UNESCO 1976).
R. Unger, Law in Modern Society: Toward a Criticism of Social Theory (1976).

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IV. Specialized International Organizations and Economic, Social, and Cultural Rights

A. The International Labour Organisation
Economic, Social, and Cultural Rights in the Third World

World Bank and IDA Questions and Answers (1971).

VI. Minibibliography
(To accompany Minisyllabus No. 2: ‘A Brief Introduction to Economic, Social, and Cultural Rights’)

Introduction—The Basic International Norms

The United Nations, Human Rights, and Development in the Third World
4. Trubek, op. cit., part I(3).

Implementing Economic, Social, and Cultural Rights in the Third World
2. Trubek, op. cit., parts I(4) and (3).