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REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH
WHICH THE SUB-COMMISSION HAS BEEN CONCERNED
HUMAN RIGHTS AND THE ENVIRONMENT

Final report prepared by Mrs. Fatma Zohra Ksentini, Special Rapporteur

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INTRODUCTION

1. The environment, development, democracy, human rights: these are the key issues which characterize the close of this century and pose a continuing challenge to the

establishment of an order in which, in conformity with the Universal Declaration of Human Rights, the rights set out therein can be fully realized. Revolt against oppression, the quest for justice, the search for progress and the pursuit of development are fundamental concerns of mankind. They were apparent in the acts of the Founder and King of Babylon, Hammurabi, who, 16 centuries before Jesus Christ, sought to bring in the reign of justice to protect the weak from being wronged. They also emerge from the thoughts of the Confucian Meng-tzu who, 300 years before Jesus Christ, asserted: "The individual is infinitely important; what matters least is the person of the sovereign". They also mark Antigone's act of revolt when she invoked her right to disobedience in order to transgress the orders of the King, and Spartacus' courage when he led the slaves to break their chains.

2. When, on 10 December 1948, the international community solemnly proclaimed the Universal Declaration of Human Rights, it acknowledged the dynamics of the triptych of oppression-revolt-repression, and underscored in two essential preambular paragraphs that "disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people" and that "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law".

3. The Universal Declaration also underscores the full importance of the legal expression of human rights and of establishing a legal framework that provides effective remedies. The protection of human rights by the rule of law indeed remains one of the means of democratic expression of claims, within a structured framework that guarantees legal action while fostering dialogue.

4. For the particular purposes of this study of human rights and the environment, it is equally important to establish the legal framework for pursuing what have become the essential demands of this century, in order to take up the legitimate concerns of our generation, to preserve the interests of future generations and mutually to agree upon the components of a right to a healthy and flourishing environment.

5. The Special Rapporteur remains convinced that providing the various agents and beneficiaries of this evolving right with the legal framework and means of expression, communication, participation and action will reinforce the channels for dialogue, discussion and cooperation nationally, regionally and internationally, thereby making it possible to define the mutually agreed component of this right as well as its harmonious application, in conformity with the universally recognized fundamental principles of human rights. Human rights would thereby gain a new dimension. In addition, they should make it possible to go beyond reductionist concepts of "mankind first" or "ecology first" and achieve a coalescence of the common objectives of development and environmental protection. This would signify a return to the principal objective that inspired the Universal Declaration of Human Rights, whose article 28 states: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized".

6. For many years environmental problems were almost exclusively considered from the standpoint of the pollution in one part of the world, i.e. the industrialized countries. "Immediately after the Stockholm Conference, perception of environmental problems was limited to a specific geographical area, the industrialized countries, and reduced to the simplest of terms, pollution". Mohammed Sahnoun, "Environnement et développement", Revue algérienne des relations internationales, No. 8, 1987, OPU, Algiers. Acknowledgement of the link between the environment and human rights was fostered by an awareness of the global, complex, serious and multidimensional nature of environmental problems. Moreover, attention is being focused more and more on environmental deterioration wherever it occurs, on understanding its causes and on examining its repercussions and the risks involved.

7. This new attitude has the virtue of going beyond the limited framework and narrow vision that previously circumscribed environmental problems, and it tackles the issue from a universal angle, involving a global economic, social and cultural approach to which it adds the human dimension (the human right to a healthy and balanced environment and to "sustainable development"). As regards this notion of "sustainable development", see the work of the World Commission on Environment and Development, General Assembly resolution 42/186 dated 11 December 1987 and entitled "Environmental Perspective to the Year 2000 and Beyond".

A. Origin of the study

8. In decision 1989/108 dated 31 August 1989, adopted without a vote, the Sub-Commission on Prevention of Discrimination and Protection of Minorities asked Mrs. Fatma Zohra Ksentini to prepare a concise note setting forth methods by which a study could be made of the problem of the environment and its relation to human rights. The above decision also indicates that the information on human rights and the environment provided to the Sub-Commission at its forty-first session by Friends of the Earth, the Sierra Club Legal Defense Fund, Inc. and the Association of Humanitarian Lawyers, and by certain members, together with the Environmental Perspective to the Year 2000 and Beyond (General Assembly resolution 42/186, dated 11 December 1987) justified the Sub-Commission's consideration of this issue.

9. On 6 March 1990 the Commission on Human Rights adopted resolution 1990/41, entitled "Human rights and the environment", in which it underscored the link between the preservation of the environment and the promotion of human rights and welcomed the decision of the Sub-Commission to have a note prepared for its forty-second session on methods by which a study on the problems of the environment and its relation to human rights could be made.

10. Although this is the first time the Sub-Commission has considered environmental problems as a whole and in relation to human rights, it has already dealt with some aspects of the problem, such as the movement and dumping of toxic and dangerous products and wastes (resolution 1988/26, dated 1 September 1988). See also the report prepared by the Secretary-General in accordance with Commission on Human Rights resolution 1989/42 (E/CN.4/Sub.2/1989/3).

11. Debates within the Sub-Commission and the Commission, together with written observations submitted to the Special Rapporteur pursuant to resolution 1989/108, have focused on the following points:

- (a) A universal awareness of the scale, seriousness and complexity of environmental problems;
- (b) The need for appropriate national, regional and international measures to address such problems;
- (c) The close link between the environment and human rights. Some human rights violations are allegedly the causes of or factors in environmental degradation; moreover, deterioration of the environment affects the enjoyment of human rights (life, health, work, information, participation, self-determination, the right to development, to peace and security, and so on);
- (d) Specific regional and other development projects were advanced as illustrations of environmental degradation and infringement of human rights;
- (e) The Sub-Commission and the Commission on Human Rights should focus greater attention on the environmental problems that affect human rights.

B. Terms of reference of the Special Rapporteur

12. In response to the requests of the Sub-Commission and the Commission, Mrs. Ksentini submitted a note to the Sub-Commission at its forty-second session containing a number of proposals for a study of the environment and its relation to human rights (A/CN.4/Sub.2/1990/12). After examining the note, the Sub-Commission adopted resolution 1990/7 on 30 August 1990 requesting the Special Rapporteur to submit a preliminary report to it at its forty-third session. That request was approved by the Commission on Human Rights, in resolution 1991/44 dated 5 March 1991, and by the Economic and Social Council, in decision 1991/244 dated 31 May 1991. The Sub-Commission, after considering the preliminary report (E/CN.4/Sub.2/1991/8), adopted resolution 1991/24 dated 29 August 1991, whereby it requested the Special Rapporteur to submit a progress report. The Commission on Human Rights in decision 1992/110 dated 28 February 1992, and the Economic and Social Council, in decision 1992/252 dated 29 July 1992, endorsed this request.

13. The Sub-Commission examined the progress report (E/CN.4/Sub.2/1992/7 and Add.1) containing an analysis of national and international provisions and the decisions and comments of human rights bodies relating to human rights and the environment as well as information on the results of the United Nations Conference on Environment and Development held in Rio de Janeiro from 3 to 14 June 1992, in which the Special Rapporteur participated as an observer.

14. In resolution 1992/31 dated 27 August 1992, the Sub-Commission took note with appreciation of the progress report and requested the Special Rapporteur to continue her study and to submit to the Sub-Commission at its forty-fifth session a second progress

report containing additional information and an analysis of decisions and views of international human rights organs and other relevant organs, as well as information on and an analysis of national laws and practice. The Commission on Human Rights endorsed this request in decision 1993/144 dated 10 March 1993.

15. The Special Rapporteur submitted her second progress report (E/CN.4/Sub.2/1993/7) in which she reviews developments in regard to the recognition and implementation of environmental rights as human rights on the basis of the standards and practices developed at the national, regional and universal levels. The report contains preliminary recommendations with a view to the submission of conclusions and final recommendations to the Sub-Commission at its forty-sixth session, in conformity with paragraph 3 of resolution 1992/31 of the Sub-Commission.

16. On the basis of the terms of reference defined by the Economic and Social Council, the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Special Rapporteur submits her final report, together with recommendations and guidelines, in conformity with Sub-Commission resolution 1993/32 dated 25 August 1993, and Commission resolution 1994/65 dated 9 March 1994.

17. The Special Rapporteur wishes to express her gratitude to the members of the Sub-Commission, States, United Nations organs, specialized agencies and non-governmental organizations for the information with which they have provided her and for the advice they have given. See annexes to this report: II (Meetings with, and contributions of, experts and non-governmental organizations) and III (Developments in national legislation and practices, essentially composed on the basis of replies received from Governments). She wishes to mention, in particular, the support given by the Sierra Club Legal Defense Fund, Inc., which has committed itself totally to this study and provided valuable assistance in organizing international meetings, including a seminar in Geneva from 15 to 19 May 1994, for the purpose of drawing up the guiding principles annexed to this report. She also wishes to thank the participants whose presence and expertise enabled her to improve the text submitted in the form of "draft principles on human rights and the environment".

18. Throughout the period of her mandate, the Special Rapporteur has received communications from Governments and non-governmental organizations drawing her attention to specific situations. As a rule she has used them as a source for identifying emerging trends, their use being restricted to the thematic aspects of the study for which she was responsible.

19. As the study concerns human rights and the environment, the Special Rapporteur's main concern has been to bring out those aspects of the environment that affect the enjoyment of human rights. As a result, the sources drawn on in preparing this report have essentially been the relevant international human rights instruments and the legislation and practices developed in this area nationally, regionally and universally. In this respect, the replies of Governments and intergovernmental and non-governmental organizations have proved very useful, as have the Special Rapporteur's consultations with representatives of Governments, international agencies, human rights bodies and non-governmental organizations, and with representatives of indigenous peoples.

C. Plan of the study

20. With these considerations in mind, this study will comprise six chapters. Chapter I is devoted to the legal foundations of the right to the environment. Chapter II addresses the specific relationship between development and the environment. Chapter III concerns other aspects of the relationship between human rights and the environment. Chapters IV and V analyse the impact of the environment on vulnerable groups and on the enjoyment of fundamental rights. In chapter VI, the Special Rapporteur sets out her conclusions and recommendations. The annexes contain a draft declaration of principles on human rights and the environment, an overview of consultations with non-governmental organizations and a summary of national legislation and practices compiled by the Special Rapporteur, essentially on the basis of replies by Governments.

CHAPTER I. FROM ENVIRONMENTAL LAW TO THE RIGHT TO A SATISFACTORY ENVIRONMENT: LEGAL FOUNDATIONS

A. General provisions

21. Environmental protection is not solely a concern of this day and age; this moral principle may be found in the precepts of Islam. Ibn Jarir al-Tabari narrates the recommendations of the first Caliph, Abu Bakr as-Siddiq, to the commander of the Arab armies, Ussama Ibn Zeid, who led an expedition towards the "Sham" (Syria):

"Remember that you are always under the eye of God, behave like men, do not run away, nor let the blood of women or children and old people stain your victory. Do not destroy palm trees, do not burn houses or fields of wheat, never cut down fruit trees and kill cattle only when you need to eat it. When you sign a treaty, make sure you respect its clauses. As you advance, you will meet men of faith living in monasteries and who serve God through prayer; leave them alone, do not kill them and do not destroy their monasteries".

22. International environmental regulations, which emerged from a worldwide movement and a collective realization of the dangers threatening our planet and the future of mankind, were initially sectoral and essentially envisaged within the traditional framework of inter-State relations; they have finally attained a global dimension, which has made possible the shift from environmental law to the right to a healthy and decent environment.

23. The qualitative leap taken at the United Nations Conference on the Human Environment (Stockholm, 5-16 June 1972) was preceded by sectoral regulations dating back to the turn of the century with the drafting of the Paris International Convention for the Protection of Birds useful to Agriculture. The obligation to protect the environment during armed conflict is considered to derive from the customary norms of international humanitarian law, and in particular the St. Petersburg Declaration of 1868, which laid down restrictions on methods of conducting hostilities by asserting that "the

only legitimate object which States should endeavour to accomplish during war is to weaken the military force of the enemy".

24. International environmental law has developed to such an extent that there are some 350 multilateral treaties, 1,000 bilateral treaties and a multitude of instruments of intergovernmental organizations that have been adopted in the form of declarations, programmes of action and resolutions. International regulations initially focused on combating maritime, river and air pollution and radioactivity. The latter is illustrated by the Treaty of Moscow of 5 August 1963 Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, the Antarctic Treaty, signed in Washington on 1 December 1959, and the conventions and standards drawn up under the aegis of International Atomic Energy Authority to safeguard against the risks of irradiation and to ensure the physical protection of nuclear material.

25. Regulation of global transboundary pollution has made it possible to define a range of relevant principles which, according to Michel Prieur, "may be considered as binding upon States". "La protection de l'environnement", Annuaire français de droit international, 1991, p. 1093. In this respect he cites the following principles:

Before engaging in any activity that may have perceptible effects on the environment of another State, the State under whose jurisdiction or control the activity is to take place must assess its consequences;

It must inform the other State and transmit to it relevant details of the project, provided they constitute information and data whose transmission is not prohibited by national legislation or by relevant international treaties;

In the case of activities liable to damage the environment of another State, it must consult the State concerned if the latter so requests;

States must urgently inform the other States likely to be affected, cooperate by providing mutual assistance in order to take the necessary preventive measures and, where necessary, eliminate, mitigate or repair the environmentally harmful consequences;

If the activities that take place within the jurisdiction or under the control of a State damage, or are liable to damage, the environment of another State, the latter's residents who are affected or liable to be affected by them must be able to have access to the administrative and judicial procedures of the State in which the environmental damage originates, on the same conditions as residents of that State. If persons living abroad have already suffered damage, the same remedies must be available to them as to residents. During these procedures, non-residents must receive the same treatment as residents;

A State must not discriminate in its legislation or in the application of that legislation on the basis of the location of the environmentally harmful effects, by applying less stringent rules to activities whose adverse environmental effects are felt beyond its frontiers.

26. As early as 1968, in resolution 2398 (XXII) dated 3 December 1968, the General Assembly underscored the consequent effects of impairment of the quality of the human environment on the condition of man and on his enjoyment of basic human rights. In the same year, the Proclamation of Tehran drew attention to the fact that, while recent scientific discoveries and technological advances had opened vast prospects for economic, social and cultural progress, such developments might nevertheless endanger the rights and freedoms of individuals and would require continuing attention (A/CONF.32/41, Proclamation, para. 18). The Stockholm Declaration of 1972 went on to recognize the relationship between the environment, man and his basic rights, even the right to life itself.

27. The Declaration of the 1972 United Nations Conference on the Human Environment See Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972 (United Nations publication, Sales No. E.73.II.A.14). contains, in addition to its 26 principles, an Action Plan for the Human Environment, which made possible the establishment of the United Nations Environment Programme, decided upon by the

General Assembly. General Assembly resolution 2997 (XXVII). Although it is not mandatory, the Stockholm Declaration none the less represents a set of values whose fundamental nature is acknowledged by the international community. The Declaration proclaims that "man is both creature and moulder of his environment" and that "Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights - even the right to life itself". The question of environmental protection and improvement is described as "a major issue which affects the well-being of peoples and economic development throughout the world ... and the duty of all Governments". The Declaration recognizes that "In the developing countries most of the environmental problems are caused by underdevelopment. Millions continue to live far below the minimum levels required for a decent human existence, deprived of adequate food and clothing, shelter and education, health and sanitation". The Declaration also recognizes that "To defend and improve the human environment for present and future generations has become an imperative goal for mankind - a goal to be pursued together with" the achievement of the goals of peace and development.

28. Noteworthy among the essential principles defined by the Stockholm Declaration is Principle 21, in accordance with which:

"States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction".

29. The concept of the international responsibility of States implied by this principle is also present in Principle 12 of the decision adopted on 19 May 1978 by the Governing Council of the United Nations Environment Programme concerning shared natural resources. It is also evident, in the provisions of the Charter of Economic Rights and Duties of States, General Assembly resolution 3281 (XXIX) of 12 December 1974. which asserts the sovereign right of States over their wealth and natural resources, while

affirming their responsibility to protect and preserve the environment for present and future generations. The Charter also emphasizes the special responsibility of occupying Powers over territories under their domination and the obligation to preserve such territories from the plundering of their natural resources.

30. Principle 1 of the Stockholm Declaration is also noteworthy. It states:

"Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated".

31. The relationships established by the Stockholm Declaration between the environment, development, satisfactory living conditions, dignity, well-being and individual rights, including the right to life, constitute recognition of the right to a healthy and decent environment, which is inextricably linked, both individually and collectively, to universally recognized fundamental human rights standards and principles, and which may be demanded as such by their beneficiaries, i.e. individuals alone or in association with others, communities, associations and other components of civil society, as well as peoples.

32. Many documents have since been adopted by international, regional and national bodies to strengthen the notion of the right to the environment and underscore its interdependence with other human rights (the Declaration on Social Progress and Development adopted in General Assembly resolution 2542 (XXIV), dated 11 December 1969 the Charter of Economic Rights and Duties of States; "By stating that economic, political and other relations must be governed in particular by the principle of respect for human rights and fundamental freedoms, this instrument asserts the need to work towards establishing the essential conditions for protecting, preserving and improving the environment". Andrzej Makarewicz, "La protection internationale du droit à l'environnement", Environnement et droits de l'homme, edited by Pascale Kromarek, UNESCO, 1987. United Nations environmental programmes, including resolution 42/186, dated 11 December 1987, relating to the Environmental Perspective to the Year 2000 and Beyond; See also General Assembly resolution 36/43, dated 19 November 1981, in which the General Assembly endorses the Global Strategy for Health for All by the Year 2000 adopted by the World Health Assembly on 22 May 1981, and General Assembly resolution 37/137 of 17 December 1982 relating to the publication and updating of a list of products harmful to health and the environment. General Assembly resolution 37/7, dated 28 October 1982, proclaiming the World Charter for Nature).

33. The World Charter for Nature proclaims 24 principles of conservation "by which all human conduct affecting nature is to be guided and judged", with as its basic precept the idea that "nature shall be respected and its essential processes shall not be impaired". Particular attention should be drawn to the following principles, which are directly linked to the rights set out in the international human rights instruments (right to health, to well-being, to an education, to participate in decision-making).

Principle 11, which concerns in particular the control of activities which might have an impact on nature, assessment of their consequences and environmental impact studies of development projects, and the rehabilitation of degraded areas for purposes in accord with their natural potential and compatible with the well-being of affected populations;

Principle 15, relating to broad dissemination of knowledge of nature, particularly by "ecological education as an integral part of general education";

Principle 23, which recognizes that "All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation";

Principle 24, pursuant to which "each person has a duty to act in accordance with the provisions" of the Charter and each person "acting individually, in association with others or through participation in the political process ... shall strive to ensure that the objectives and requirements" of the Charter are met.

B. International human rights instruments

34. International human rights instruments contain few specific provisions relating to the environment. The Universal Declaration of Human Rights

recognizes that "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized". It is generally accepted that the "order" to which the Declaration refers also covers the environmental concerns of this day and age.

35. In article 24, the African Charter on Human and Peoples' Rights states that "All people shall have the right to a general satisfactory environment favourable to their development".

36. The Additional Protocol to the American Convention on Human Rights (San José, 1969), which relates to economic, social and cultural rights, adopted at San Salvador in 1988, contains a clause concerning the right to an environment. Article 11 provides that everyone shall have the right to live in a healthy environment and to have access to basic public services; the States parties are required to promote the protection, preservation and improvement of the environment.

37. The Convention on the Rights of the Child, dated 20 November 1989, explicitly refers to the need for the education of the child to be directed, *inter alia*, to "the development of respect for the natural environment" (art. 29, para. (e)). Moreover, as with most other instruments, many of its provisions are intended to be implemented from an ecological standpoint, bearing in mind the relationship between the environment, development and human rights (see para. 31 above).

38. These links are even more apparent where children are concerned in view of their vulnerability. From this standpoint, the following articles cannot be dissociated from

environmental considerations: article 6 (inherent right of a child to life, survival and development); article 11 (protection against transfer); articles 12, 13, 14 and 15 (freedom of opinion, expression, thought and association); article 16 (protection of privacy and against arbitrary or unlawful interference [cf. case law of the European Court of Human Rights relating to infringements of privacy]); articles 17 and 29 on the role of the media, information and education; article 19 concerning protection against all forms of violence, abandonment, neglect, ill-treatment (cf. in this connection the phenomenon of urban growth and its effects on the well-being of children; the problems of abandoned children and street children); article 22 on refugee children (bearing in mind the concept of environmental refugees); article 24 on the right to health, including preventive health care; article 27 on the right of every child to a standard of living adequate for his or her physical, mental, spiritual, moral and social development; article 30 on the protection of the rights of indigenous children or children belonging to minorities.

39. The same is true of the other international human rights instruments. Without claiming to provide an exhaustive list, the way in which these instruments should be implemented from an ecological standpoint may be illustrated by the following examples.

(a) Universal Declaration of Human Rights

40. In addition to article 28, referred to above, the fifth preambular paragraph (worth of the human person; social progress; better standard of life); article 22 ("Everyone ... is entitled to realization ... of the economic, social and cultural rights indispensable for his dignity and the free development of his personality"); article 24 (right to rest and leisure); article 25 (right to an adequate standard of living).

(b) Proclamation of Tehran

41. Article 18 calls for vigilance concerning scientific discoveries and technological advances which, although they have opened vast prospects for economic, social and cultural progress, may nevertheless endanger the rights and freedoms of individuals.

(c) International Covenant on Economic, Social and Cultural Rights

42. Article 1 (right of peoples to self-determination and to freely dispose of their natural wealth and resources), article 7 (a decent living, safe and healthy working conditions, rest and leisure), article 11 (right to an adequate standard of living, and to be free from hunger; programmes to improve methods of production, conservation and distribution of food; disseminating knowledge of principles of nutrition; measures to achieve the most efficient development and utilization of natural resources; equitable distribution of world food supplies), article 12 (right to health; steps to be taken for the healthy development of the child, improvement of all aspects of environmental and industrial hygiene), article 15 (right to enjoy the benefits of scientific progress and its applications).

(d) International Covenant on Civil and Political Rights

43. Article 1 (right of peoples to self-determination and to freely dispose of their natural wealth and resources), article 6 (right to life), article 7 (prohibition of cruel, inhuman or degrading treatment or punishment, medical or scientific experimentation without the consent of the person concerned), article 17 (arbitrary or unlawful interference with privacy or the family) and article 20 (prohibition of propaganda for war).

(e) International Convention on the Elimination of All Forms of Racial Discrimination

44. The flagrant discrimination to which marginalized persons, vulnerable groups, minorities and indigenous peoples are subjected *vis-à-vis* ecological risks, raises sharply the issue of the effective implementation of the basic principle of non-discrimination set out in the Convention, and that of the practical implementation of all the provisions of the Convention on behalf of disadvantaged individuals and groups (and more particularly article 5 on the right to equal treatment before the tribunals, the right to security of person, political and civil rights, economic, social and cultural rights, the right of access to any place or service intended for use by the general public, and article 6 on the right to effective protection and remedies).

(g) Convention on the Elimination of All Forms of Discrimination against Women

45. The observations concerning the Convention referred to above are also valid for this Convention. The Special Rapporteur further wishes to stress the basic role played by women in promoting economic, social, cultural and political activities for sustainable development. She would therefore emphasize the importance of the participatory role of women and the particular value of the following provisions of the Convention on the Elimination of All Forms of Discrimination against Women: article 5 on measures to be taken to modify adverse social and cultural patterns of conduct of men and women; article 7 on participation in political and public life, particularly the right to vote and to stand for election, the right to participate in the formulation of government policy and the implementation thereof, and the right of participation and association; article 10 on the right of equal access to education; article 11 on the right to work; article 12 on the right to health and to appropriate services during and after pregnancy (with regard to this latter point, environmental factors have a decisive effect on pregnant women, embryos and young children); article 14 on the specific protection of rural women and the efforts to be made to ensure their full participation in the elaboration and implementation of development planning and in its benefits.

(e) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

46. The Convention rightly stresses "the situation of vulnerability in which migrant workers and members of their families frequently find themselves", as well as the need to ensure the international protection of their rights, which should be implemented on the basis of the principle of non-discrimination. The observations concerning the International Convention on the Elimination of All Forms of Racial Discrimination are valid for this Convention also, but the situation of vulnerability mentioned above must be kept in mind.

CHAPTER II. RIGHT TO DEVELOPMENT, PARTICIPATORY DEMOCRACY AND THE ENVIRONMENT

A. Some aspects of the problem

1. Indivisibility and interdependence of all human rights

47. The close relationship which exists between development - recognized as a human right by several international texts, including the Declaration on the Right to Development adopted by the General Assembly in its resolution 41/128 of 4 December 1986 - and the environment throws into relief the indivisible and interdependent nature of all human rights. The idea of indivisibility has already been emphasized by the Proclamation of Tehran of 13 May 1968, which states in paragraph 13 that:

"Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible. The achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development".

48. General Assembly resolution 32/130 of 16 December 1977 and the subsequent resolutions on "Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms" share the objective of "reconciling" different generations of rights and rehabilitating economic, social and cultural rights. This task of reconciliation was to be completed by the Declaration on the Right to Development, which reaffirms in the preamble the principle already embodied in the Universal Declaration of Human Rights of 1948 that:

"everyone is entitled to a social and international order in which the rights and freedoms set forth in that Declaration can be fully realized".

In article 6 the Declaration on the Right to Development states unequivocally that "All human rights and fundamental freedoms are indivisible and interdependent" and that they should receive equal attention and urgent consideration. Furthermore, the Declaration passes over neither the internal nor the external factors impeding the realization of the right to development (denial of civil, political, economic, social and cultural rights; inappropriate development policies; unfavourable national and international conditions; need to establish a new international economic order, to realize the right of peoples to self-determination and enable them to exercise their inalienable rights to full sovereignty over all their natural wealth and resources; primary responsibility of States for the creation of national and international conditions favourable to the realization of the right to development, and so on).

49. Underlying the links between the right to development and the right to the environment is the notion of the indivisibility and interdependence of all human rights, whether civil or political, economic, social or cultural. Moreover, it is impossible to

separate the claim to the right to a healthy and balanced environment from the claim to the right to "sustainable" development, which implies a concentration of efforts to combat poverty and underdevelopment.

2. Poverty, underdevelopment, environmental degradation and enjoyment of human rights

50. The Stockholm Declaration of 1972 affirms the inextricable link that exists not only between the environment and human rights (right to freedom, equality and dignity) but also between the environment and the right to development (right to live under adequate conditions and in an environment of a quality that permits a life of well-being and dignity).

51. For its part, the World Commission on Environment and Development, established by the General Assembly in 1983, submitted a report in 1987 Brundtland Report, "Our Common Future", UNEP/GC.14/13. which is a veritable plea for "sustainable development". The World Commission analysed the crises besetting certain regions of the world and emphasized the interaction of the economy and the environment, of national development policies but also of the world economic system which takes from a poor continent more than it gives to it. The Commission points out that "Debts that they cannot pay force African nations relying on commodity sales to overuse their fragile soils, thus turning good land to desert" (Introduction, para. 19). "As a consequence of the 'debt crisis' of Latin America, that continent's natural resources are now being used not for development but to meet financial obligations to creditors abroad. This approach to the debt problem is short-sighted from several standpoints: economic, political, and environmental. It requires relatively poor countries simultaneously to accept growing poverty while exporting growing amounts of scarce resources" (Introduction, para. 20).

52. It is now widely recognized and acknowledged that poverty and underdevelopment have an adverse effect that causes serious damage to the environment and everywhere impedes realization of the right to development and of other fundamental rights of the individual and of peoples. This cause-and-effect relationship has been demonstrated in many studies. Thus the South Commission, in its report "The Challenge to the South", Report of the South Commission "The Challenge to the South", 1990, Economica, p. 228. affirms that "The North, with its lifestyle conducive to waste, is mainly responsible for the degradation of the environment. But poverty too makes a heavy contribution to that degradation, and an effective strategy designed to eliminate poverty ultimately serves to protect the environment". The South Commission also analyses some aspects of national development strategies which, when they are inappropriate, inadequate, unsuitable or socially ill-oriented, carry great risks to the environment. By way of illustration, the South Commission argues that the absence of social services in rural areas speeds up the flight to the towns, to which the poor inhabitants emigrate in search of a better level of living (education, health, plumbing, water and well-being). This influx increases the pressure on urban social services and worsens the overpopulation of the towns. The South Commission concludes that the result is chaos and a sordid environment in the towns and desertion of the countryside, and that the only way to break out of this vicious circle is by improving education, health services, water supply and hygiene in rural areas.

53. The data on the extent of poverty given in the preliminary report (E/CN.4/Sub.2/1991/8) have not basically changed. As can be seen from the World Bank's "World Development Report 1992", 1 billion people lack an adequate water supply, and about 1.7 billion people do not have adequate sanitation facilities. "World Development Report 1992", World Bank, Washington 1992, p. 103. UNDP's "Human Development Report 1993" states that in the developing countries some 800 million people still do not get enough food; nearly 1 billion people - 35 per cent of the adult population - are still illiterate; about one third of the world's total population, or 1.3 billion people, are in absolute poverty; about 17 million people die every year from infectious and parasitic diseases; approximately 95 per cent of the 10-12 million HIV-infected people are in the developing world; each day, 34,000 young children still die from malnutrition and disease; two thirds of illiterates are women; internal conflicts affect some 60 countries, and about 35 million people are refugees or internally displaced; more than 850 million people live in areas that are suffering from desertification. "Human Development Report 1993", Paris, Economica, data taken from box 1.2, p. 12.

54. It is impossible to draw up an exhaustive or final balance sheet showing the effect of environmental degradation on human rights the enjoyment of which is already very much affected by underdevelopment and poverty (intolerable infant mortality and undernourishment; illiteracy; lack of primary health care and of social services; precarious housing; marginalization of the underprivileged strata, or even racism and discrimination; non-participation in the conduct of public affairs and in the country's political, economic and cultural decision-making, and so on). It is easy to see, however, that the poor populations, the underprivileged strata, the minority groups and others are the most affected in that they are more vulnerable to ecological risks and repercussions (absence of legal and material means of protection; lack of access to information; lack of suitable care, etc.). Furthermore poverty, underdevelopment and marginalization reduce the prospects of economic, social and cultural integration or reintegration of the victims. Those victims find themselves in a vicious circle which includes a series of violations of human rights: assaults on life and health; degradation of living conditions and disintegration of the family unit; unemployment; emigration, exodus, resettlement and even forced migrations which lead to further violations of human rights (racism; discrimination; xenophobia; acculturation; violations of dignity and arbitrary detention; refoulement; marginalization; precarious living and housing conditions; prostitution; drugs; street children, etc.).

3. The external factors

55. The structure of international relations, and more particularly the burden of debt and the impact of structural adjustment measures on the least favoured categories, may constitute serious impediments to the achievement of sustainable development.

56. The Brundtland report referred to above had already noted that:

"A mainspring of economic growth is new technology, and while this technology offers the potential for slowing the dangerously rapid consumption of finite resources, it also entails high risks, including new forms of pollution and the introduction to the planet of new variations of life forms that could change evolutionary pathways. Meanwhile, the industries most heavily reliant on environmental resources and most heavily polluting

are growing most rapidly in the developing world, where there is both more urgency for growth and less capacity to minimize damaging side effects" (Introduction, para. 14).

57. There is indeed a considerable risk that the developing countries, ill-informed as they are or pursuing growth at all costs, will become the outfall of the polluting industries which the North, alerted or impelled by well-informed public opinion, wishes to remove from its own doorstep.

58. One author, analysing the combined effect of certain development policies on the environment, noted that "today it is widely acknowledged that certain international policies in the fields of investment, trade and aid may have harmful effects on environmental conditions. The conditions laid down by IMF, for example, may give rise to policies that generate practices that in their turn cause the destruction of the environment. The imposition of extensive agricultural production on marginal land, with the aim of increasing a given country's exports and improving its balance of payments, may have catastrophic results." Mohammed Sahnoun, *op.cit.*

59. The Special Rapporteur of the Sub-Commission on the question of the realization of economic, social and cultural rights notes for his part that "structural adjustment package policies, which invariably include increasing exports, often result in the overexploitation of natural resources, which counteracts governmental attempts to solve environmental problems." E/CN.4/Sub.2/1992/16, para. 118, p. 32. The author goes on to make an exhaustive analysis of the effects of adjustment on the exercise of economic, social and cultural rights. E/CN.4/Sub.2/1991/17, pp. 36-50, especially paras. 124-166.

60. The developing countries' debt now exceeds 1,500 billion United States dollars. It is agreed by various sources that the debt crisis has brought with it an unprecedented reverse flow of capital from the countries of the third world to the developed countries. The countries of the South are estimated to have paid some 500 billion dollars to the North between 1982 and 1990.

61. According to the European Network on Debt and Development (EURODAD), the reimbursement of the debt should not take priority over the fundamental rights of the populations of debtor countries to food, housing, clothes, work, health services, and a healthy and viable environment. Each country should have access to sufficient resources to permit sustainable and sustained development and growth. EURODAD, "Target 92", 1991, p. 16.

62. The Global Consultation on the Right to Development as a Human Right for its part noted that "Transfer of control of resources located in developing countries to interests in developed countries, which intensified in the 1980s, is another obstacle to development. Similarly, the growing burden of indebtedness and structural adjustment falls heaviest on the poorest and weakest sectors of society and has clear human rights implications." "The realization of the right to development", Consultation, Geneva, 8-12 January 1990, HR/PUB/91/2, 1991, para. 166, p. 48.

B. Right to development; sustainable and environmentally

sound development

63. Awareness of the major challenges emerging both as regards development and with reference to the environment has made possible a consensus on the concept of "sustainable and environmentally sound development" which the "Earth Summit", meeting in Rio in 1992, endeavoured to focus by defining an ambitious programme of action, Agenda 21, clarified by a Declaration of 27 principles solemnly adopted on that occasion. The Special Rapporteur does not intend to revert to the results of this Conference, which she outlined in her earlier reports. See E/CN.4/Sub.2/1992/7/Add.1 and E/CN.4/Sub.2/1993/7. However, she wishes to refer to the features which seem to her to underlie the consensual approach to environmental problems.

64. Reference should be made at this point to the content of the Declaration on International Economic Cooperation adopted by the General Assembly in May 1990, in particular the "Revitalization of economic growth and development of the developing countries", which pays ample heed to the environment, thus forging an inseparable link between development and the environment. The Declaration recognizes that "Economic development must be environmentally sound and sustainable," (para. 16) and notes that "The current threat to the environment is the common concern of all. All countries should take effective actions for the protection and enhancement of the environment in accordance with their respective capacities and responsibilities and taking into account the specific needs of developing countries. As the major sources of pollution, the developed countries have the main responsibility for taking appropriate measures urgently. The economic growth and development of developing countries are essential in order to address problems of the degradation and protection of the environment. New and additional financial resources will have to be channelled to developing countries," (para. 29).

65. One should in this respect bear in mind the premises, defined by the General Assembly in resolution 44/228 of 22 December 1989, premises which, according to the Secretary-General, "were accepted when the nations of the world called for the United Nations Conference on Environment and Development". A/CONF.151/PC/100/Add.1, para. 3. It will be noted in particular that this resolution stresses that the major cause of the deterioration of the environment is the "pattern of production and consumption, particularly in the industrialized countries" and that "the responsibility for containing, reducing and eliminating the global environmental damage must be borne by the countries causing such damage". It recognizes that "new and additional financial resources will have to be channelled to developing countries in order to ensure their full participation in global efforts for environmental protection". It was also decided to examine "environmental degradation and the international economic environment... without introducing new forms of conditionality". The examination of strategies for national and international action conducive to "sustained and environmentally sound development" should take place "bearing in mind that the incorporation of environmental concerns and considerations in development planning and policies should not be used to introduce new forms of conditionality in aid or in development financing and should not serve as a pretext for creating unjustified barriers to trade".

66. The Agenda 21 programme is considered as giving expression to the now accepted principle whereby responsibilities are shared but separate, in accordance with the similarly accepted principle that the polluter pays - reaffirmed in Principle 16 of the Declaration of Rio, on the basis of the idea that "the polluter should, in principle, bear

the cost of pollution", and establishing a global partnership on a new and equitable basis. In this

context, "environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it" (Principle 4), while the eradication of poverty is "an indispensable requirement for sustainable development" (Principle 5). The "common but differentiated responsibilities" of States imply acknowledgement of the responsibility the developed countries bear "in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command" (Principle 7). In addition to the principle enshrined in the Declaration, the United Nations Conference on Environment and Development agreed on the need to support and complement the efforts of developing countries and recognized that the implementation of the Agenda 21 programmes would require providing developing countries with substantial new and additional financial resources. The Conference also recognized the importance of achieving during solutions to the debt problem.

C. Development, participation and the environment

67. The idea of partnership, initiated by the Earth Summit, is also based on the notion of participatory democracy at all levels, nationally and internationally. It thus ties in with the principle contained in article 1, paragraph 1, of the Declaration on the Right to Development that the right to development is also "an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."

68. A development strategy which did not take into account the human, social and cultural dimension could have only adverse repercussions on the environment. It was emphasized in particular at the Global Consultation on the Right to Development as a Human Right that "What constitutes 'development' is largely subjective, and in this respect development strategies must be determined by the people themselves and adapted to their particular conditions and needs".

69. Failure to take part in decision-making, whether internationally or nationally, has been and still is at the origin of development choices or the imposition of development strategies which have had serious adverse effects on the environment. In this respect, the internal and external factors affecting the realization of the right to development are so many elements affecting the realization of the right to the environment. It may thus be said that a national development strategy is viable from the economic, social and ecological standpoint only if it gains the active adherence of the various social strata of the population. Such adherence cannot be gained on the basis of denying the rights of the human person, whether civil and political or social, cultural and economic (discrimination, racism, slavery, servitude, forced migration; freedom of thought, information, participation, association and expression; the right to work, to health, to an adequate level of living and to fair remuneration; cultural rights, etc.). Such adherence will also be lacking if the development model recommended is incompatible with the fundamental socio-cultural characteristics of the populations concerned. In this context

attention should be drawn to some conclusions reached at the Global Consultation on the Right to Development as a Human Right, which acknowledged that:

"Development strategies which have been oriented merely towards economic growth and financial considerations have failed to a large extent to achieve social justice; human rights have been infringed, directly and through the depersonalization of social relations, the breakdown of families and communities, and of social and economic life" (para. 153).

70. The right to participation has both individual and collective dimensions; it covers economic, social, cultural and political aspects which give full meaning to the concept of democracy. Without going back to the fruitful discussions on this issue, the Special Rapporteur wishes to emphasize the full importance of the concept, of participatory democracy in the context of the environment, without which the concept of sustainable development would be totally without substance.

71. The United Nations Conference on Environment and Development had the merit of stressing the importance of this participation by including it in various solemnly adopted principles (see in particular Principle 10 of the Declaration of Rio on the participation of citizens, Principle 20 on the participation of women, or Principle 22 on the participation of indigenous people and their communities). Moreover, the underlying principle of the implementation of Agenda 21 is the adequate reinforcement of the role which the main groups are required to play. A whole section is devoted to this issue. The Conference was of the opinion that critical to the effective implementation of the objectives, policies and mechanisms agreed to by Governments in all programme areas of Agenda 21 would be the commitment and genuine involvement of all social groups, and that one of the fundamental prerequisites for the achievement of sustainable development was broad public participation in decision-making. Furthermore, the Conference recognized, in the specific context of environment, "the need for new forms of participation" and "the need of individuals, groups and organizations to participate in environmental impact assessment procedures and to know about and participate in (pertinent) decisions". A/CONF.151/4(Part III), chap. 23, paras. 23.1 and 23.2.

72. The Conference implicitly linked the notion of real participation in the right of access to information by noting that "Individuals, groups and organizations should have access to information relevant to environment and development held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment, and information on environmental protection measures". Ibid. The link between participation and information can also be found in Principle 10 of the Declaration of Rio.

73. The Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993, places particular emphasis on participatory democracy and states solemnly that "Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political economic, social and cultural systems and their full participation in all aspects of their lives." A/CONF.157.23, Sect. I, para. 8.

CHAPTER III. OTHER ASPECTS OF THE RELATIONSHIP BETWEEN HUMAN RIGHTS AND THE ENVIRONMENT

A. Indigenous peoples and the environment

74. "This we know, the Earth does not belong to man; man belongs to the Earth. This we know, all things are connected, like the blood which unites one family. Whatever befalls the Earth, befalls the sons of the Earth. Man did not weave the thread of life; he is merely a strand in it. Whatever he does to the web he does to himself." This letter from Chief Seattle, Patriarch of the Duwamish and Squamish Indians of Puget Sound to United States President Franklin Pierce (1855) underlines the specific relationship of indigenous peoples to the land.

75. The Special Rapporteur considers the issue of indigenous peoples' rights and the environment of such importance that it warrants attention in her final report. The human rights problems facing indigenous peoples due to environmental factors are rapidly increasing. The number of communications received, the seriousness of the many situations presented, and the need for a multifaceted approach militate in favour of attention being paid to this issue. In this light, the Special Rapporteur has welcomed the interest of the Sub-Commission on Prevention of Discrimination and Protection of Minorities which, in paragraph 2 of its resolution 1990/27 of 31 August 1990, invited the Special Rapporteur "to take into account the special relationship between fragile habitats and indigenous peoples, especially with regard to sustainability". The Commission on Human Rights, in its resolution 1991/44 of 5 March 1991, requested the Secretary-General to invite indigenous peoples and their organizations to provide the Special Rapporteur with information for this study.

76. The Special Rapporteur presented an introductory discussion of indigenous peoples' rights and the environment in her Note, in her preliminary report, in her first progress report, and in her second progress report. E/CN.4/Sub.2/1990/12, para. 33 and note 9; E/CN.4/Sub.2/1991/8, paras. 23-30; E/CN.4/Sub.2/1992/7, paras. 19, 94-95, 99; E/CN.4/Sub.2/1992/7/Add.1; E/CN.4/Sub.2/1993/7, paras. 29-32, 69, 89-90, 126. She received useful information at meetings with indigenous leaders that took place in New York and San Francisco in 1991 and in Rio de Janeiro in conjunction with the Global Forum at the United Nations Conference on Environment and Development in 1992. She also has received numerous communications from indigenous peoples and their organizations throughout the period of the study and has reviewed a wide range of materials from other non-governmental organizations and from United Nations and other sources.

77. As indigenous representatives have pointed out to the Special Rapporteur, international, regional and national action taken by indigenous peoples and their organizations to promote and protect their rights have always focused on the need of indigenous peoples to protect their traditional territories. This is because removal from or destruction or degradation of traditional lands inevitably leads to serious loss of life

and health and damage to the cultural integrity of indigenous peoples. Describing his people's relationship to the land, in 1885 Chief Seattle stated:

"My people venerate each corner of this land, each shining pine needle, each sandy beach, each wreath of mist in the dark woods, each glade, each humming insect; in the thought and practice of my people, all these things are sacred. The sap rising in the tree carries the memory of the red man." Cited in Mario Ibarra, "Traditional practices in respect of the sustainable and environmentally sound self-development of indigenous people" (E/CN.4/Sub.2/1992/31/Add.1), para. 94.

78. Echoing Chief Seattle, one Indian leader stated to the Working Group on Indigenous Populations at its 1985 session:

"Our principal and fundamental struggle is for the land, our territory and natural resources ... Our defence of the land and natural resources is for the cultural and human survival of our children ... For us, the first thing is to secure our land, which belongs to us by right, because we are the true owners of the land and natural resources. We indigenous peoples know that without land there can be no education, there can be no health and there can be no life." J. Uranavi, Statement on behalf of the International Work Group for Indigenous Affairs, 1985.

79. Experts in the field have been particularly critical of large-scale development schemes in Indian lands, as reflected in the background papers submitted at the United Nations Seminar on the effects of racism and racial discrimination on the social and economic relations between indigenous peoples and States (Geneva, 16-20 January 1989). In one background paper, Prof. Rodolfo Stavenhagen writes:

"Much damage has been done to the indigenous peoples through economic development projects ... The isolated, marginal areas often occupied by indigenous peoples constitute the last great and, until recently, unexploited reserves of natural resources. Neither State planners nor multinational corporations nor international development agencies have hesitated to 'incorporate' these areas into the national and international economy. In the process, indigenous peoples have suffered genocide and ethnocide." E/CN.4/1989/22, annex III C, para. 3.

80. Another expert, Prof. Viti Muntarhorn, writes:

"[Cultural] disintegration is compounded by destruction of the ecology and habitat upon which indigenous groups depend for their physical and cultural survival. Deforestation, particularly of rain forests, and pollution introduced by outsiders jeopardize the modus vivendi of indigenous groups. The social nexus binding members of the group to the environment is thus annihilated." Ibid, annex III A, pp. 27-28.

81. In part as a reflection on the comments of the experts at the 1989 seminar, the issue of indigenous peoples was addressed at the 1990 Global Consultation on the Realization of the Right to Development. Once again, the assessment of the environmental factors of human rights and indigenous peoples was harsh:

"The experience of indigenous peoples and development clearly demonstrated that human rights and development are inseparable, for the abuse of the rights of indigenous

peoples is principally a development issue. Forced development has deprived them of their human rights, in particular the right to life and the right to their own means of subsistence, two of the most fundamental of human rights. Indigenous peoples have been, in fact, victims of development policies which deprive them of their economic base - land and resources - and they are almost never the beneficiaries.

"It was underlined that the most destructive and prevalent abuses of indigenous rights are a direct consequence of development strategies that fail to respect the fundamental right of self-determination. Using illustrations, participants described how indigenous peoples are routinely perceived as obstacles to development and excluded from decision-making in matters that affect them. The result has been the elimination and degradation of the indigenous land base; destruction, degradation and removal of natural resources, water, wildlife, forests and food supplies from indigenous lands either through commercial exploitation or incompatible land use; the degradation of the natural environment; removal of indigenous peoples from their lands; and their displacement or pre-emption from the use of their lands by outsiders." The realization of the right to development, Global Consultation on the Right to Development as a Human Right, United Nations publication, (HR/PUB/91/2).

82. The relationship between environmental concerns, development and the rights of indigenous peoples was also addressed at the 1992 United Nations Conference on Environment and Development and at the 1993 United Nations Conference on Human Rights. It was also a prominent feature in issues addressed in conjunction with the 1993 International Year for the World's Indigenous People.

83. The United Nations and its specialized agencies have long been concerned with the human rights of indigenous peoples. International action to safeguard the rights of indigenous peoples has increasingly focused on the land and environmental issues. For example, in 1957 ILO promulgated the Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (No. 107). This Convention was revised by the Convention concerning Indigenous and Tribal Peoples in Independent Countries, (1989 No. 169), primarily to address the land rights issue. These two Conventions are the only international treaties specifically concerning indigenous peoples, although a number of indigenous groups signed treaties with Governments during the period of penetration of indigenous lands. The subject of treaties, arguments and other constructive arrangements between States and indigenous populations is now under review by the Sub-Commission and its Special Rapporteur, Mr. Miguel Alfonso Martínez.

84. The revised Convention shows the influence of indigenous peoples and their organizations in its new emphasis on land and the vital importance of land to indigenous peoples. Convention No. 169 represents substantial progress at the international level. Article 4 requiring special measures to protect the environment of indigenous peoples is especially important. This mandate is reinforced by article 7, which requires the direct participation of indigenous peoples and environmental impact studies prior to any development schemes in their territories. Part II (arts. 13-19) of the Convention specifically addresses land: article 13 recognizes the "special importance for the cultures and spiritual values" of their land; article 14 recognizes land ownership rights; article 15 recognizes the right to resources of their own lands; article 16 protects indigenous peoples from unlawful relocation from their lands; article 17 provides for procedures for

redress, including the requirement that Governments prevent indigenous people from being deprived of their land by unscrupulous acts; article 18 require penalties for land violations; article 19 requires provision of adequate land to enable indigenous peoples to live and increase normally.

85. ILO has a well-developed enforcement process by which indigenous peoples could seek remedies for the violation of the Convention. Regrettably, few Governments have ratified Convention No. 169 and there is no public information regarding complaints that are lodged. Additional ratifications will provide increased access to the ILO dispute-resolution mechanisms, including a procedure by which individuals may petition the ILO Governing Body through recognized representative organizations. Under other ILO procedures, organizations may call the matter to the attention of ILO in the form of a "representation". Or the ILO Governing Body may open a complaint on its own motion or at the insistence of a delegate to the International Labour Conference. Both representations and complaints are investigated, and the results may be published if the situation is not corrected. International Labor Office Fact Sheet, International Labor Standards, Washington Branch, January 1991.

86. The study on racial discrimination, begun by the Special Rapporteur of the Sub-Commission, Mr. Hernán Santa Cruz, in 1965, contained a chapter on indigenous peoples. Hernán Santa Cruz, Racial Discrimination, United Nations publication, Sales No. E.71.XIV.2, 1971. The Special Rapporteur's suggestion that the United Nations study the situation of indigenous peoples in a comprehensive fashion led to the appointment in 1971 by the Sub-Commission of Mr. José Martínez Cobo to carry out such a study. His report José Martínez Cobo, "Study of the problem of discrimination against indigenous populations" (E/CN.4/Sub.2/1986/7 and Add. 1-4). Addendum 4 containing the conclusions and recommendations, issued as a United Nations publication, Sales No. E.86.XIV.3. contains much discussion about indigenous peoples and their land. In 1981, the Sub-Commission proposed the establishment of the Working Group on Indigenous Populations, which met for the first time in 1982. The Working Group has prepared a draft declaration on indigenous rights, which is still under consideration by the Working Group. Throughout the drafting period, indigenous land rights and environmental concerns have been the most keenly contested, with indigenous organizations insistent that any formulation of their rights must firmly protect their lands from exploitation and ecological degradation. Their concern is clearly reflected in the 1992 draft as contained in the report of the Working Group on its tenth session, E/CN.4/Sub.2/1992/33, annex I. especially in operative paragraphs 17-20 and 38 which the Special Rapporteur set out in her second progress report. E/CN.4/Sub.2/1993/7, para. 89.

87. As a further reflection of serious concerns about indigenous peoples, human rights and the environment, in 1992 the United Nations sponsored the United Nations Technical Conference on Practical Experiences in the Realization of Sustainable and Environmentally Sound Self-development of Indigenous Peoples. The report and the background papers E/CN.4/Sub.2/1992/31 and Add.1. provide an analysis of the impact of ecological devastation on indigenous peoples and their struggle to protect their land and its resources, and to develop their economies in an ecologically sustainable fashion that does not jeopardize traditional ways.

88. In her review of cases brought to the Human Rights Committee and to the Inter-American Commission on Human Rights by or on behalf of indigenous peoples, the Special Rapporteur is impressed by the fact that the human rights violations at issue almost always arise as a consequence of land rights violations and environmental degradation and indeed are inseparable from these factors. In her progress report E/CN.4/Sub.2/1992/7, the Special Rapporteur described Communication No. 167/1984 addressed to the Human Rights Committee by Chief Ominayak and the Lubicon Lake Band of Canada involving the threat to the lives and traditional ways and culture of the Band posed by oil and gas exploitation. The Human Rights Committee found violations of article 17 (minority/cultural rights) of the International Covenant on Civil and Political Rights in that case. Report of the Human Rights Committee (A/45/40), vol.II, annex IX A.

89. At the Inter-American Commission on Human Rights the two cases already presented by the Special Rapporteur - the Yanomani case in Brazil Case 7615 of 5 March 1985, in the annual report of the Inter-American Commission on Human Rights, 1984-1985 (OEA/Ser.L/V/II.66, doc. 10 rev.1), referred to by the Special Rapporteur in E/CN.4/Sub.2/1992/7, para. 94 and E/CN.4/Sub.2/1993/7, para. 69. and the Huaorani case in Ecuador Confederación de Nacionalidades Indígenas de la Amazonia Ecuatoriana, petition filed 25 June 1990 and now subject of *in situ* investigation by the Inter-American Commission, referred to by the Special Rapporteur in E/CN.4/Sub.2/1992/7, para. 95 and E/CN.4/Sub.2/1993/7, para. 69. raise questions concerning violations of the right to life, the right to health, the right to the promotion and protection of indigenous peoples' culture caused by development projects in their traditional territories. Other cases reviewed by the Inter-American Commission include the Guahibo Indians of Colombia, the Ache and Toba-Maskoy of Paraguay, the Miskito of Nicaragua, the Mayan of Guatemala, the Inuit and Athabaskan of Alaska, the Kanaka Maoli of Hawaii. The Inter-American Commission has also raised Indian human rights issues in reports of States parties to the American Convention on Human Rights, Organization of American States, Treaty Series 36. involving the human rights consequences of displacement from and/or degradation of traditional indigenous lands.

90. The Inter-American Commission, in its Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin, OEA/Ser.L/V/II.62/doc.10 rev. 3 of 29 November 1983 and OEA/Ser.L/V/II.62/doc. 26 of 16 May 1994. analysed relocation of indigenous peoples from their traditional lands from the point of view of human rights. The Commission found that involuntary relocation of indigenous peoples could be justified only under article 27 of the American Convention which allows for derogation of rights "in time of war, public danger, or other emergency that threatens the independence or security of a State Party". The Inter-American Commission reiterated that the danger must be extremely serious. However, involuntary relocation under these circumstances "should not outlive the emergency, and termination of the emergency should allow the return of the civilian populace to their original region". Inter-American Commission, *ibid.*, pp. 112-118. The Inter-American Commission asserted that relocation for lesser national goals, such as economic development, do not meet article 27 criteria, and may not be undertaken involuntarily. *Ibid.*

91. National courts are also increasingly being presented with indigenous human rights issues. Here too, the preponderance of cases involve indigenous lands and subsistence rights being effected by confiscation, degradation, inappropriate development or

inappropriate regulation. In her second progress report, the Special Rapporteur described the *Organización Indígena de Antioquia v. Codechoco y Madarién*, Decision of the Third Agrarian Court of the District of Antioquia, Colombia (24 February 1993), in which the court emphasized that the destruction of the forest lands of indigenous peoples places their lives and cultures in danger. In this regard the Special Rapporteur would also like to note that in *Regina v. Sparrow*, Supreme Court reports of 31 May 1990, the Canadian Supreme Court in 1990 upheld the fishing rights of Canadian indigenous peoples. In holding that Canada must be held to a "high standard of honourable dealing", the Court emphasized that the rights of indigenous peoples "must be interpreted flexibly to permit their evolution over time".

92. The Special Rapporteur notes with interest initiatives by indigenous peoples themselves to encourage indigenous self-development. The 1992 United Nations Technical Conference referred to above produced a wide array of useful strategies, many of them currently employed by indigenous people. Recent sessions of the Inter-Commission Task Force on Indigenous Peoples of the IUCN World Conservation Union, at which indigenous leaders and others exchanged information and presented case studies on indigenous sustainable development, Reports of a 1994 session in New Mexico, USA, and a 1993 session in Gland, Switzerland, are available from the IUCN World Conservation Union. are also encouraging developments. The Special Rapporteur is pleased by the increasing cooperation between indigenous peoples and their organizations and environmental organizations which should enhance the abilities of indigenous peoples to preserve their territories from ecological destruction.

93. In spite of some encouraging events, the Special Rapporteur is aware that existing efforts to protect indigenous peoples' rights and their fragile habitat have been inadequate. The situation of indigenous peoples, especially as it relates to human rights and the environment, is at a critical point. No one single solution can hope to address the multifaceted problems. None the less, she is aware that alternatives to large-scale development schemes, with their potentially destructive consequences, exist.

94. These alternatives must be encouraged. Indigenous peoples must genuinely participate in all decision-making regarding their lands and resources. The international community, in particular the United Nations and regional monitoring procedures, must respond accordingly.

B. Protection of the environment in periods of armed conflict

95. Montesquieu wrote in *L'esprit des lois*: "The right of peoples is naturally based on this principle - that the various nations must in peace do one another the greatest good and in war the least evil". Despite the United Nations Charter's prohibition - in Article 2, paragraph 4 - of the use of force in international relations, war unfortunately remains a constant that fully demonstrates the value of international humanitarian law, a law which imposes rules for the conduct of hostilities, restricts the methods and means of warfare, and protects persons, property and environment liable to be affected in conflicts.

96. The principle of humanity and the concept of proportionality impose limits on war, the Declaration of St. Petersburg recognizing as early as 1868 that "the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy".

97. For their part, the Hague Conventions of 18 October 1907 and the regulations relating thereto contain provisions which deal with the protection of the environment, even though this term is not expressly used. In a report submitted to the General Assembly in 1993, See A/48/269, sect. II. ICRC rightly notes that "The destruction of property in times of armed conflict is also restricted by customary international law".

98. The Stockholm Declaration of 1972, apart from enunciating the general duty to protect and improve the environment, expressly states, in Principle 26, that "Man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons".

99. The World Charter for Nature recognizes that "Nature shall be secured against degradation caused by warfare or other hostile activities" (sect. I, para. 5) and that "Military activities damaging to nature shall be avoided" (sect. III, para. 20).

100. These fundamental principles find their legal expression in various international instruments, and more particularly in the 1977 Protocol I Additional to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of International Armed Conflicts. Protocol I contains two provisions relating to the protection of the environment:

"Article 35 - Basic rules

...

"3. It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.

...

"Article 55 - Protection of the natural environment

"1. Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.

"2. Attacks against the natural environment by way of reprisals are prohibited."

101. As emphasized by the International Committee of the Red Cross (ICRC) in its reply to the Special Rapporteur, Letter DDN/JUR/89/1405 AAB/VR of 29 December 1989. several factors have generally speaking prompted States to adopt, at the

international level, rules relating to the protection of the environment: growing awareness of the deterioration of the environment; the realization of the risks entailed for the environment by certain technical and technological developments; or finding that certain types of damage to the environment are international in character. In the case of the protection of the environment in periods of armed conflict (principal sphere of application of the rules of international humanitarian law), two additional factors may be mentioned: the evaluation of the damage caused by the massive use of defoliants during the Viet Nam war, and a concern to differentiate ever more precisely between military objectives and civilian property.

102. In its analysis of the articles cited above, ICRC considers that the two provisions, which appear similar, do not duplicate one another, given the place they occupy in the systematics of the treaty and the objective they pursue: article 35, paragraph 3, falls within the context of methods and means of warfare and refers in particular to the principle - fundamental in international humanitarian law - whereby it is forbidden to inflict unnecessary harm. It protects the environment as such and is therefore broader in scope than article 55, which is intended to protect the civilian population from the effects of warfare on the environment. In both cases the following are prohibited: (a) attacks on the environment as such; and (b) making use of the environment as an instrument of warfare". Above-mentioned reply to the Special Rapporteur and document DOM/DIRHPG/AAB/RAF entitled "Protection of the natural environment in time of armed conflict: an overview of the state of international humanitarian law and of the position of the International Committee of the Red Cross", Geneva, 7 August 1991.

103. ICRC considers that, besides article 35, paragraph 3, and article 55, other provisions of Protocol I touch incidentally on protection of the environment in armed conflict. In particular, article 56 deals with the danger to the environment resulting from the destruction of dams, dykes or nuclear electrical generating stations. Under the heading "Protection of objects indispensable to the survival of the civilian population", article 54 prohibits in certain circumstances the destruction of, among other things, agricultural areas or irrigation works. Finally, article 36 obliges the parties to Protocol I to determine whether the acquisition, development or use of a new weapon would be compatible with international law. Of course, the rules on the protection of the environment are to be taken into account during this assessment.

104. Several other legal instruments also deal with protection of the environment in wartime, in particular: the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, of 17 June 1925; the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, of 10 April 1972; the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, of 10 December 1976; the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects, of 10 October 1980; the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, of 13 January 1993; the Convention for the Protection of Cultural Property in the event of Armed Conflict, of 14 May 1954; and the Convention concerning the Protection of the World Cultural and Natural Heritage, of 23 November 1972.

105. ICRC states that the rules protecting the victims of non-international armed conflict are less well developed than those governing international armed conflict. Article 3 common to the four Geneva Conventions of 1949 does not say anything about protecting the environment during civil wars; it addresses only humanitarian issues in the strictest sense. Protocol II Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, contains no provisions relating explicitly to the environment. However, article 14, on the protection of objects indispensable to the survival of the civilian population, has a direct impact on warfare and the environment, with its prohibition of attacks on agricultural areas, irrigation works and so on.

106. The protection of the environment in time of armed conflict has come tragically to the fore in the Iran-Iraq conflict, the Gulf war and in the conflict in the former Yugoslavia. Although the ecological consequences of these recent conflicts cannot yet be determined precisely, they have fuelled questions about the content, limits, shortcomings and indeed effectiveness of international humanitarian law intended to protect the environment as such, together with persons and their property, against damage to the environment in the course of hostilities. See in particular:

- Antoine Bouvier, "La protection de l'environnement naturel en période de conflit armé", Revue internationale de la Croix-Rouge, No. 792, 1991;

- Philippe Antoine, "Droit international humanitaire et protection de l'environnement en cas de conflit armé"; Adams Roberts "La destruction de l'environnement pendant la guerre du Golfe de 1991"; and Antoine Bouvier "Travaux récents relatifs à la protection de l'environnement en période de conflit armé", Revue internationale de la Croix-Rouge, No. 798, 1992;

- Ksentini F. Zohra, "Droit internationale humanitaire et protection des populations, de leurs biens et de l'environnement", Revue algérienne des relations internationales, No. 23, 1993.

107. Although the United Nations Conference on Environment and Development did not pay the closest attention to the question of protection of the environment in periods of armed conflict, Agenda 21 states that "Measures in accordance with international law should be considered to address, in times of armed conflict, large-scale destruction of the environment that cannot be justified under international law". In addition, the Declaration of Rio recognizes, in Principle 24, that "Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary".

108. For its part, the General Assembly adopted decision 46/417 on 9 December 1991 at the conclusion of its deliberations on the agenda item entitled "Exploitation of the environment as a weapon in times of armed conflict and the taking of practical measures to prevent such exploitation". It decided, in resolution 48/30 of 9 December 1993, to continue to consider the question of the protection of the environment in periods of armed conflict in the context of the United Nations Decade of International Law. At the same time, it took note with appreciation of the results of the International Conference on the Protection of War Victims, (Geneva, 30 August to 1 September 1993), and its

Final Declaration "as an important means for reaffirming, strengthening and promoting international humanitarian law", and reminded "all States of their responsibility to respect and ensure respect for international humanitarian law in order to protect the victims of war".

109. The aims of this Conference, convened by the Swiss Government on the initiative of ICRC, were, inter alia "to elicit a strong reaction from the various States to widespread violations of international humanitarian law" and to consider "the measures which the States undertake and should further develop to prevent violations of international humanitarian law". On the question of the environment, the participants solemnly declared the need to "Reaffirm and ensure respect for the rules of international humanitarian law applicable during armed conflicts protecting cultural property, places of worship and the natural environment, either against attacks on the environment as such or against wanton destruction causing serious environmental damage, and continue to examine the opportunity of strengthening them".

110. In conclusion, the participants affirmed their "conviction that, by preserving a spirit of humanity in the midst of armed conflicts, international humanitarian law keeps open the road to reconciliation, facilitates the restoration of peace between the belligerents, and fosters harmony between all peoples". The Special Rapporteur fully shares this conviction. Its translation into reality depends on the realization of the commitment entered into by the States parties to the Geneva Conventions to "respect and to ensure respect for" these Conventions "in all circumstances", and on the positive measures to be taken with a view to the prevention of conflicts and of violations of humanitarian law.

C. The environment, and international peace and security

111. The Special Rapporteur commented on the relationship between the environment, human rights, and international peace and security in her note and in her second progress report. E/CN.4/Sub.2/1990/12, para. 5, and E/CN.4/Sub.2/1993/7, paras. 113-115. Maintenance of international peace and security is a fundamental purpose of the United Nations and a duty of the Organization and its Member States. See in particular the Charter of the United Nations, Articles 1, 2, 55 and 56. The importance of peace is underscored by its inclusion as a fundamental right in the Universal Declaration of Human Rights, especially its article 28. The Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind General Assembly resolution 3384 (XXX) of 10 November 1975. and the Declaration on the Right of Peoples to Peace General Assembly resolution 39/11 of 12 November 1984. are especially relevant to the issue of human rights and the environment.

112. The present potential for purposeful or even accidental environmental harm is a serious threat to peace and security, whether during war or in peacetime. Nuclear weapons and biological and chemical substances can eliminate much if not all of life. There are now many methods of altering the climate and destroying essential foodstuffs, and the deprivation that would certainly follow would create social unrest and instability. Population pressures, with or without intentional environmental degradation, will inevitably lead to States vying with each other for resources essential for survival.

113. The International Law Commission recognizes the ominous potential of purposeful environmental destruction and has characterized serious and intentional harm to the environment as a crime against humanity. In the course of the debates in the Commission, it has been stated that acts with grave consequences to humans and the environment should be considered crimes and that there should be culpability for "flagrant errors and omissions". The debates also reflect the growing trend that destruction of the property of an ethnic group should be included in the concept of environmental harm.

114. In the Special Rapporteur's view, acts with substantial environmental and human damage falling short of crimes against humanity can still have a negative impact on international peace and security and are within the scope of the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind, the Charter of Economic Rights and Duties of States, and other relevant international instruments. The International Law Commission has also been considering this problem in preparing a draft instrument on international liability for injurious consequences arising out of acts not prohibited by international law. Work on this topic began in 1978. Mr. Robert Quentin-Baxter was Special Rapporteur from 1978 until 1985. In 1985, Mr. Julio Barboza was appointed Special Rapporteur.

115. The World Health Organization has for its part notified the Economic and Social Council that, pursuant to resolution WHA 46.40 adopted by the World Health Assembly on 14 May 1993, the Director-General filed in the Registry of the International Court of Justice a request for an advisory opinion on the following question:

"In view of the health and environmental effects, would the use of nuclear weapons by a State in war or other armed conflict be a breach of its obligations under international law, including the WHO Constitution?" E/1994/16.

116. The Special Rapporteur believes that it would also have been useful to ask that distinguished Court whether the manufacture, testing, possession and stockpiling of nuclear weapons and other weapons of mass destruction are lawful under international law.

CHAPTER IV. ENVIRONMENTAL DEGRADATION AND ITS IMPACT ON VULNERABLE GROUPS

A. Overview

117. Major environmental crises, such as the 1967 (Torrey Canyon), 1978 (Amoco Cadiz) and 1980 (EKOFIX) oil-spills, the Seveso (1976) and Bhopal (1984) chemical disasters, and the Chernobyl nuclear accident (1986), have highlighted the transnational nature of their impact and their multidimensional repercussions. The state of the environment is nowadays perceived as a worldwide problem that should be addressed globally, in a coordinated and coherent manner and through the concerted efforts of the international community. Issues such as the preservation of natural balances, the stability of the ecosystem as a whole, the preservation of natural resources or the very

survival of the Earth are urgent because of the scale of environmental damage to the planet and its impact on the individual, on his well-being, and consequently on the enjoyment of fundamental rights, including the right to life.

118. According to the World Commission on Environment and Development (Brundtland Commission), since 1970, when the first Earth Day was celebrated, the world has lost almost 200 million hectares of forest; 11.4 million hectares of tropical forest have disappeared each year; one fifth of arable land has been affected by desertification. The Commission analysed the ecosystems and economic structures of various developed and developing countries. It drew attention to the need to match regulatory measures with planning in order to achieve "sustainable development" that would make it possible to satisfy the needs of present generations without jeopardizing the opportunities of future generations. The 1992 Earth Summit again highlighted the major threats looming over the planet and the interaction among various phenomena, as is illustrated by the following examples:

1. Climate changes

119. Emissions resulting from human activities increase the atmospheric concentration of gases producing a greenhouse effect. The greenhouse effect will take the form of heating up the planet, probably accompanied by a rise in the level of the sea that might seriously threaten the sea and the climate. The rise in that level in many parts of the world, in particular islands and low-lying areas, will have an effect on life, land, lifestyles, natural resources, cultural heritage and so on. Apart from the fact that the varying effects of climate on socio-economic systems have always imposed substantial constraints on development, the climate changes expected from the greenhouse effect may render those constraints utterly unbearable (effects on the water cycle and on food production chains; floods and drought; increase in the number, intensity and seriousness of natural disasters). These phenomena, while producing their own adverse effects on the enjoyment of human rights, will also worsen several existing problems and will affect most of all those populations, regions and countries that are particularly vulnerable.

120. In the words of the Ministerial Declaration of the Second World Climate Conference, "The potential impact of such climate change could pose an environmental threat of an up to now unknown magnitude; and could jeopardize the social and economic development of some areas. It could even threaten survival in some small island States and in low-lying coastal, arid and semi-arid areas". A/45/696/Add.1, annex, second preambular paragraph.

2. Deforestation and wood stripping

121. Forests are subjected to a great many natural and man-made pressures (climate changes; air pollution; intensive logging, etc.) which have led to substantial losses of standing timber. The stripping and wasting away of forests are in evidence in all parts of the world, whether boreal, temperate or tropical; they contribute to environmental degradation (drought, desertification, erosion, genetic losses, extinction of species of fauna and flora, etc.) and to the disruption of local communities, their way of life and their crops, and impair their well-being and health.

3. Biological diversity

122. According to the progress report of the Secretary-General of the United Nations Conference on Environment and Development on conservation of biological diversity:

"Biological diversity is fundamental to human life. It is a basic feature of the way in which living organisms are structured. As such, it provides support for ecosystems, for the regulation of water and the atmosphere and the basis for agricultural production. When genetic variations are lost, therefore, not only are specific and potential properties and adaptations also lost, but with them species are diminished, ecosystems are impaired and the ability to sustain human life is damaged".

4. Pollution, discharge of toxic and dangerous products, etc.

123. Pollution of the air, water and land from various sources, in particular through industrial disasters, presents great risks to the health, life and well-being of populations. Ecological disasters such as those of Bhopal and Chernobyl, to mention only two, have claimed many victims and caused shifts of population. According to the estimates of the League of Red Cross and Red Crescent Societies, "the Chernobyl disaster affected and still affects some 4 million people who, not to speak of the 135,000 evacuees from the villages closest to the power station, are still living on land contaminated by radiation and growing their food on it. These potential victims fear for their future, fear the illnesses and genetic mutations that the medical experts are still unable to predict; but most of them have nowhere else to go. "Spotlight Tchernobyl", Bulletin of the League of Red Cross and Red Crescent Societies, January 1991.

124. The effects of ecological accidents, whether nuclear or not, are not merely dangerous to health; they are liable to contaminate land, watercourses, the air and the atmosphere. The same applies to the discharge of untreated wastewater into the ground and into surface water bodies, leading to the concentration of chemicals, dangerous substances and pathogenic agents in living environments. Furthermore these accidents are accompanied by traumas and emotional shocks associated with the evacuation of whole communities, their displacement and the splitting up of families. Another result is the breakdown of the habitual lifestyle of the populations, who in addition live in a state of constant anxiety. The absence or shortage of reliable information about the induced or delayed effects of such disasters does nothing to reassure those populations. In some instances, where the disasters have occurred in underdeveloped regions or have befallen marginalized population groups, the relief, assistance and allowances extended to the victims fall far short of the requisite minimum standards, to the point where it is possible to detect practices akin to a veritable discrimination that flouts the principles of dignity and equality innate in every human being.

5. Transboundary transfer of hazardous wastes

125. The transfer of toxic and dangerous products and wastes across frontiers and their dumping also lead to violations of human rights, not only having regard to the risks incurred by man and his environment but also considering the observed trend to export dangerous substances produced in the North to developing countries, particularly in Africa. These intolerable practices, which impose severe risks on the South, are particularly outrageous in that they transfer problems to particularly vulnerable regions

and populations (lack of resources for monitoring and prevention and of appropriate technology; absence of suitable legislation; broken-down sanitation; information that is unreliable, unusable, non-existent or inaccessible).

126. Until the mid-1980s, 80 per cent of the imports and exports of hazardous waste were between developed countries. A.E. Fry: "International Transport of Hazardous Waste", Environmental Science and Technology, 1989, p. 509. In 1988, from 2 to 2.5 million tons of waste were transported among the European member countries of OECD. H. Yakowitz: "Global Hazardous Transfers", Environmental Science and Technology, 1989, p. 540. It was essentially only after 1986 that the North-South trend emerged. In this connection, Greenpeace has pointed out that between 1986 and 1988 over 6 million tons of hazardous waste were exported from the developed countries to the developing countries and the countries of Eastern Europe, in particular Romania and Hungary. Ibid. It also asserted that of the 100 to 300 million tons of waste produced each year by the developed countries, some 50 million were shipped to Africa. S. Rublack: "Fighting transboundary waste streams: Will the Basel Convention help?", Verfassung und recht in ubersee 1989, p. 367.

127. While the local capacity for hazardous waste storage and elimination in the developed countries is steadily declining, the volume of waste produced continues to rise. Thus, the European Union is reported to have the capacity to eliminate an estimated 10 million tons of waste while it produces as much as 30 million tons a year. C. Hitz and J.R. Ehrnefeld: "Transboundary Movement of Hazardous Wastes. A Comparative Analysis of Policy Options to Control the International Waste Trade", Environmental Affairs, Vol. 3, Winter 1991, p. 29.

128. The scandals of 1987 and 1988, in particular the revelation concerning contracts between Western companies and African countries to which the companies concerned paid ridiculously low sums for land on which they could get rid of toxic waste, prompted the developing countries, and especially the countries of Africa, to react. Within this context, the Council of Ministers of the Organization of African Unity declared, in resolution 1153 (XLVIII) dated 25 May 1988, that such dumping was "a crime against Africa and the African people". Pambou-Tchivounda: "L'interdiction de déverser des déchets toxiques dans le tiers-monde; le cas de l'Afrique", Annuaire français de droit international, 1988, p. 709.

129. Similarly, on 7 December 1988, the United Nations General Assembly adopted a resolution condemning the dumping of nuclear and industrial wastes in Africa. Resolution 43/75 - entitled "Dumping of radioactive wastes".

130. Simultaneously, the developing countries engaged in the drafting of a convention to regulate the transboundary movement of hazardous wastes in order fully to implement the principles already developed at the 1972 United Nations Conference on the Human Environment and by the United Nations Development Programme. See Principle 21 of the Stockholm Declaration; General Assembly resolution 36/166 dated 16 December 1981; and the "Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes", UNEP/GC/DEC/14/30.

131. The 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal was the outcome of a compromise between the

advocates of a complete ban on transboundary movements of wastes and those who wished to define the legal framework and conditions for the international transfer of wastes.

132. The 1989 Basel Convention marks a step forward in the assumption of responsibility for the problem, although it was considered inadequate by many countries, particularly those in Africa which drew up the Bamako Convention on the Banning of the Import into Africa and the Control of the Transboundary Movement of Hazardous Wastes within Africa, adopted on 29 January 1991.

133. At the 1992 Earth Summit, the international community expressed its concern that part of the international movement of hazardous wastes was in violation of national legislation and of existing international instruments, to the detriment of the ecology and public health of all countries, in particular the developing countries.

134. The following objectives were adopted within the framework of Agenda 21 in order to prevent the illegal transboundary movement of hazardous wastes: (a) to reinforce national capacities to detect and halt any illegal attempt to introduce toxic and dangerous products into the territory of any State, in contravention of national legislation and relevant international legal instruments; (b) to assist all countries, particular developing countries, in obtaining all appropriate information concerning illegal traffic in toxic and dangerous products; (c) to cooperate, within the framework of the 1989 Basel Convention in assisting countries that suffer the consequences of illegal traffic.

135. Governments were also urged to exchange information on illegal transboundary movements of hazardous wastes.

136. In the Vienna Declaration, the World Conference on Human Rights, held in 1993, recognized that "illicit dumping of toxic and dangerous substances and waste potentially constitutes a serious threat to the human rights to life and health of everyone" (A/CONF.157/24 (Part I), para. 11).

B. Vulnerable groups

137. The Special Rapporteur has already referred to the vulnerability of indigenous peoples to ecological hazards (chap. III, sect. A), and to that of individuals and groups who are marginalized by poverty (chap. II, sect. A). The specific situation of peoples under domination will be considered later. The following sections are concerned with other groups that illustrate this vulnerability, albeit not exhaustively.

1. Women

138. There was good reason why Agenda 21, which was drawn up by the United Nations Conference on Environment and Development, devoted considerable attention to "Global action for women towards sustainable and equitable development", and proposed a series of objectives for national Governments, together with activities and tangible measures to be undertaken to achieve the full integration of women into the

development process and to ensure the effective implementation of their rights. A/CONF.151.4 (Part III), chap. 24. The Declaration of Rio also notes that "women have a vital role to play in environmental management and development. Their full participation is therefore essential to achieve sustainable development" (Principle 20).

139. The decisive role of women in promoting development and preserving the environment is now firmly established. It is recognized that women's organizations have promoted environmental awareness, See "Women and the environment", Report of the Secretary-General of the United Nations to the thirty-sixth session of the Commission on the Status of Women (E/CN.6/1992/9). and that women play a critical role in the management, use and protection of natural resources and the environment, *Ibid.*, p. 7. and in environmental education.

140. Even if, because of their traditional knowledge, skills and experience, women are no longer regarded as victims of environmental degradation, but as agents that possess essential assets for its preservation, it is still true that in practice they are the first to suffer from environmental degradation and among the last to enjoy the right to a satisfactory environment.

141. The Special Rapporteur notes that discrimination against women - regardless of their acknowledged formal rights and the ambitious programmes of action devoted to them, in conjunction with the social inertia and prejudice surrounding the issue of women's emancipation, accounts for the precarious situation of women and the thankless tasks that bring them face to face with the consequences of the deterioration in living, working, housing and other conditions, depriving them of opportunities to enjoy their fundamental rights.

142. In addition, because of delays in the enjoyment of civil, cultural and political rights, it is not possible to ensure effective and genuine participation by women in public life, and they are thereby prevented from influencing decision-making. Even if a favourable trend is discernible among local communities, in which women are increasingly involved in carrying out development projects, such participation needs to be further encouraged, developed and expanded. Moreover, it does nothing to remedy the fundamental imbalance in participation in public life and political office, from which women are virtually excluded, even in the developed countries. According to UNDP statistics for 1993, women in the developed countries made up 40 per cent of the total labour force, but still held fewer than 10 per cent of parliamentary seats. They held less than 5 per cent of ministerial and other senior posts throughout the world. "Human development report", *Economica*, 1993, pp. 3 and 27. See also the publications of the Interparliamentary Union, including: Distribution of seats between men and women in national parliaments. Statistical data from 1945 to 30 June 1991, Series "Reports and documents", No. 18, Geneva, 1991; Women and political power. Survey carried out among the 150 national parliaments existing as of 31 October 1991, Series "Reports and documents", No. 19, Geneva, 1992.

143. The Special Rapporteur cannot fail to note a disturbing discrepancy between recognition of the decisive role played by women in promoting sustainable development and the place they occupy in practice. As was noted in a report by the United Nations: E/CN.6/1990/2, subsequently published under the title Women in Politics and Decision-

making in the Late Twentieth Century - A United Nations Study, Martinus Nijhof publishers, 1992.

"Without their political participation, progress in the other areas may be slow since it is often dependent on resources that come from public sources. There is a close reciprocal relationship between the general advancement of women and the participation of women in decision-making. Women's political participation will be enhanced if social and economic support structures exist, legal discrimination is eliminated and negative stereotypes are banished from education and the media. No country can afford not to utilize all its human resources. Women comprise half the world's pool of potential talent and ability. The importance of their fundamental biological and social roles is clear, and, though their input is often unrecognized, they are major contributors to national economies through their paid and unpaid labour. Excluding women from positions of power and from elected bodies impoverishes public life and inhibits the development of a just society. In short, without the full participation of women in decision-making, the political process will be less effective than it can and should be, to the detriment of society as a whole".

2. Children and young people

144. Children and young people make up approximately 30 per cent of the world's population and virtually half the population of the developing countries. They are a force for the future in which investment is vital. They are extremely vulnerable to the consequences of environmental degradation and are entitled to effective protection. The vitality of these ardent defenders of nature should be channelled in order to transform them into active supporters of the ecological cause.

145. As was underscored by UNICEF in The state of the world's children 1994, "the cause of meeting the most basic needs of all children must now be taken up with a new determination, both for its own sake and as an essential step towards resolving the problems of poverty, population growth and environmental deterioration". However, there is no forgetting the figures that bring us face to face with reality. Fourteen million children die each year from preventable diseases. Over the past 10 years alone, 1.5 million children are estimated to have died during conflicts, while 4 million bear the scars of conflict. There are 5 million refugee children, and another 12 million have been displaced. UNICEF, The state of the world's children 1994. The child victims of rape, ill-treatment and torture, child soldiers, street children, unwilling drug pushers, economically exploited child labourers, sexually abused children, children in debt bondage, hundreds of millions of children are the victims of contemporary forms of slavery. See the reports of the Subcommission's Working Group on Contemporary Forms of Slavery. They are trapped in what UNICEF has rightly described as the "poverty-population-environment" (PPE) spiral. The huge potential of children and youth is jeopardized by "the mutually reinforcing problems of persistent poverty, rapid population growth and environmental degradation".

146. Meeting the essential needs of the poorest for adequate nutrition, safe water, basic health care, basic education and family planning is one of the most powerful ways of breaking into the destructive synergisms of the poverty-population-environment problem.

147. Education and a minimum of prosperity are essential if environmental problems are to be contained and if poor people too are to have a stake in the future. UNICEF, op. cit. See also: UNICEF and UNEP, 1990: Children and the environment, UNEP, Nairobi and UNICEF, New York; UNICEF, 1989: Children and environment: a UNICEF strategy for sustainable development, document for the 1989 Executive Board session (E/ICEF/1989/L.6); Report of the Symposium "Women and children first", Geneva, 27-30 May 1991, organized under the auspices of UNCED, UNFPA, the Government of Denmark and UNICEF.

3. Disabled persons

148. The Special Rapporteur wishes to refer to the situation of disabled persons in order to highlight the particular impact of the environment on the enjoyment of their rights as human beings and of their specific rights to enhanced protection which derive from the need to cater for their special requirements.

149. While environmental factors are frequently responsible for disability, the environment in which a disabled person lives is also likely to restrict access to essential care and services, aggravate disabilities, restrict the possibility of enjoying fundamental rights, and even lead to their total denial (right to life, to health, to work, to participation; discrimination, etc.).

150. The Special Rapporteur has discerned a tendency to minimize the problems posed by disabilities, despite the fact that estimates, such as those of WHO, indicate that over 500 million individuals, i.e. 10 per cent of the world's population, suffer from some form of disability. In addition, 300 million of them live in the developing countries, where they are confronted with the inadequacy of assistance and rehabilitation services. Moreover, according to estimates by ILO, one third of disabled people, i.e. 160 million, are women, and 140 million children. These estimates lead to an unavoidable conclusion: the impact of the environment on disabled persons is felt at all stages, at several levels and in varying degrees - upstream as a cause of disability, and downstream by making the possibility of reintegration more difficult. Consequently, throughout their lives, disabled people suffer violations of their rights as individuals, as women or children, as disabled persons - a situation that is exacerbated by poverty.

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