

**BIBLIOGRAPHIC DATA SHEET**1. CONTROL NUMBER  
PN-AAH-2932. SUBJECT CLASSIFICATION (695)  
PA00-0000-0000

## 3. TITLE AND SUBTITLE (240)

Legal implications of the world population plan of action

## 4. PERSONAL AUTHORS (100)

Lee, L. T.

## 5. CORPORATE AUTHORS (101)

Tufts Univ. Fletcher School of Law and Diplomacy

## 6. DOCUMENT DATE (110)

1975

## 7. NUMBER OF PAGES (120)

42p.

## 8. ARC NUMBER (170)

## 9. REFERENCE ORGANIZATION (130)

Tufts

## 10. SUPPLEMENTARY NOTES (500)

(In Law and Population monograph ser. no. 28)

(Reprinted from Journal of International Law and Economics, v. 9, no. 3,  
p. 375-417)

## 11. ABSTRACT (950)

## 12. DESCRIPTORS (920)

Law                      Legal aspect  
Human rights        Population law  
Family planning        Population policy  
International cooperation

## 13. PROJECT NUMBER (150)

## 14. CONTRACT NO.(140)

AID/csd-2810

15. CONTRACT  
TYPE (140)

GTS

## 16. TYPE OF DOCUMENT (160)

PN-AAH-293

Law and Population Monograph Series  
Number 28 (1975)

# Legal Implications of the World Population Plan of Action

by Luke T. Lee

Reprinted from *Journal of International Law and Economics*  
Volume 9, No. 3 (1974)



Law and Population Programme  
THE FLETCHER SCHOOL OF LAW AND DIPLOMACY  
Administered with the Cooperation of Harvard University  
Tufts University  
Medford, Massachusetts

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- 29/ *Law and Population in Lebanon*, by George M. Dib (1975).

This monograph is one in a continuing series published under the auspices of the Law and Population Programme, the Fletcher School of Law and Diplomacy. The Law and Population Programme and its field work are supported in part by the International Planned Parenthood Federation, the United Nations Fund for Population Activities, and the U. S. Agency for International Development, among others. The Programme is under the general direction of an International Advisory Committee on Population and Law, whose members are listed at the end of this monograph. The conclusions and opinions of this monograph are the sole responsibility of the author, and do not necessarily reflect those of the Law and Population Programme, the Fletcher School, or any of the supporting agencies. Printed in the U.S.A.

# LEGAL IMPLICATIONS OF THE WORLD POPULATION PLAN OF ACTION

LUKE T. LEE\*

## I. INTRODUCTION

The most important feature of the World Population Plan of Action adopted by the World Population Conference in Bucharest is its call for the review of each participating country's laws which bear directly or indirectly on population and the reform of those laws in order to more effectively implement population-related human rights. The Plan of Action specifically accords "high priority" to:

[t]he review and analysis of national and international laws which bear directly or indirectly on population factors,<sup>1</sup>

and

[c]ollection, analysis and dissemination of information concerning human rights in relation to population matters, and the preparation of studies aimed at the clarification, systematization and more effective implementation of these human rights.<sup>2</sup>

The Plan especially urges review and reform of those laws which affect the status of women,<sup>3</sup> the rights of the child<sup>4</sup> and

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1. Approved by the Conference on 30 August 1974 without a vote. See U.N. Doc. E/Conf.60/WG/L.55/Add. 3, Draft Report of the Working Group on the World Population Plan of Action, with subsequent corrections, paragraph 78(h).

2. *Id.*, paragraph 78(g).

3. *Id.*, paragraph 41(d) which provides:

Governments should make a sustained effort to ensure that legislation regarding the status of women complies with the principles spelled out in the Declaration on the Elimination of Discrimination Against Women and other United Nations Declarations, Conventions, and international instruments to reduce the gap between law and practice through effective implementation, and to inform women at all socio-economic levels of their rights and responsibilities.

4. *Id.*, paragraph 40 which states:

- (a) Governments should equalize the legal and social status of children born in and out of wedlock as well as children adopted;
- (b) The legal responsibilities of each parent toward the care and support of all their children should be established.

family welfare.<sup>5</sup>

Since true national liberation includes freedom from "legal imperialism"—*i.e.*, freedom from laws imposed by erstwhile colonial powers without regard to the actual conditions and needs of their possessions' people, the Plan is accurate in stating:

True development cannot take place in the absence of national independence and liberation. Alien and colonial domination . . . and neo-colonialism in all its forms, continue to be among the greatest obstacles to the full emancipation and progress of the developing countries and all the people involved.<sup>6</sup>

Despite their political independence, many newly emergent nations have retained the antiquated population-related laws which they inherited from their mother countries. Ironically, some of those laws have even been discarded by the former colonial powers themselves for basic incompatibility with human rights, but are still on the books in the new nations. The retention of the French 1920 anti-contraceptive law by former French colonies in Africa despite its repeal by France in 1967, and the continuation of restrictive abortion laws in many of the former British colonies notwithstanding liberalization in the United Kingdom in 1967, are cases in point. Elsewhere, it is not difficult to discern the continued influence of Dutch law on population matters in Indonesia, the Anglo-French legal presence in the Middle East, which still reflects the divisions of the mandated system, and the Iberian influence on the legal structure of Latin American countries despite their century-old independence from Spain and Portugal.

Thus, it was a great achievement for the World Population Conference that all of these emergent countries should have united in Bucharest in declaring their common opposition to "neo-colonialism in all its forms," as well as their unanimous support for review and reform of population-related laws.

It remains to inquire as to the methodology for implementing this Plan of Action. What follows is an attempt to provide such a

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5. *Id.*, paragraph 39(c) which states:

National legislation having direct bearing on the welfare of the family and its members, including laws concerning age at marriage, inheritance, property rights, divorce, education, employment and the rights of the child, be periodically reviewed, as feasible, and adapted to the changing social and economic conditions and with regard to the cultural setting.

6. *Id.*, paragraph 14(b).

methodology, based on the experience and results of Law and Population Projects in twenty-five countries.<sup>7</sup>

## II. DEFINITION AND ROLE OF POPULATION LAW<sup>8</sup>

"Population law" may be defined as that "body of the law which relates directly or indirectly to . . . population growth [and] distribution and those aspects of well-being affecting, as well as affected by, population size and distribution."<sup>9</sup> The sources of this law include the customs of individual countries, as well as their constitutions, statutes, judicial and administrative decisions and administrative rules and regulations. "Law," as used in this paper, embraces more than the governmental decisions on programs that are "put into official form and translated into action."<sup>10</sup> The relevancy of customary law has been described by Eugen Ehrlich:

At the present as well as at any other time, the center of gravity of legal development lies not in legislation, nor in juridical science, nor in judicial science, but in society itself.

Furthermore, he cautioned:

To embrace the whole variegated body of human activities in Legal Provisions is about as sensible as trying to catch a stream and hold it in a pond; the part that may be caught is no longer a living stream but a stagnant pool—and a great deal cannot be caught at all.<sup>11</sup>

Not only does population law appear in different forms but it covers many fields. In addition to laws dealing with subjects directly concerned with fertility (contraception, sterilization and abortion), there are many more laws whose subject matter indi-

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7. For the approach and methodology employed by these projects, see Lee, *Law, Human Rights and Population: A Strategy for Action*, (a background paper prepared for the United Nations Second Asian Population Conference, 1-13 November 1972, Tokyo; reprinted in 12 *VIRGINIA JOURNAL OF INTERNATIONAL LAW* 309 (1972)).

8. Much of the material in this section is based on *Law and World Population*, U.N. Doc. E/CONF.60/BP/6, (a background paper prepared for the World Population Conference in Bucharest by the author in his capacity as Consultant on Law and Population for the UNFPA).

9. See L. Lee, *Population Law: A New Curriculum for Law Schools*, (a background paper prepared for the UNESCO Workshop on the Teaching of Population Dynamics in Law Schools, Feb. 18-22, 1974, Paris).

10. L. Lee & A. Larson, *Population and Law* vii (1971).

11. Ehrlich, *The Sociology of Law*, 36 *HARV. L. REV.* 130, 133 (1922).

rectly affect fertility: obscenity, marriage age, polygamy, extended family, child allowances, old age security, employment of women, child labor, housing, education (both general and sex education), medical practice, customs, taxes, migration, land tenure and inheritance.

As the impact of law upon the behavior of the people varies from country to country and according to the subject matter, so do the categories of law which have significant bearing on population growth, distribution and well-being. Let us consider the example of inheritance law in India. Despite the Hindu Succession Act of 1956 which puts male and female heirs on equal footing,<sup>12</sup> the continued dominance of customary law, which limits succession to males, has exerted a pronatalist effect. A family which already has several daughters will want more children in the hope of producing a son, in order to keep property within the family. On the other hand, in countries where succession is in fact shared equally by sons and daughters, inheritance law would not be a major factor in population matters. For India, therefore, both the statutory and customary laws on inheritance need to be "compiled" and studied. Similarly, since migration affects the population of some countries more than that of others, the migration laws of the former should be included in any compilative work.

Thus, the population problem is multidimensional and can no longer be viewed solely as one of numbers and census-taking, to be solved by the provision of contraceptives or family planning services. A true solution should involve the coordination of many fields and not be hampered by strict compartmentalization. As Secretary-General Kurt Waldheim stated:

In our interdependent world it is not possible nor practicable to attempt to solve problems in isolation. Thus, matters of population must be seen in conjunction with many other factors—including health, education, employment, food supplies, housing and environment.<sup>13</sup>

The World Population Plan of Action similarly underscores the interrelationship between population, on the one hand, and

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12. Act No. XXX of 1956. *see* Saran Gurdev Singh, India, in Lee & Larson *supra* note 10, at 119.

13. K. WALDHEIM, *THE UNITED NATIONS AND POPULATION: MAJOR RESOLUTIONS AND INSTRUMENTS* v. (1974).

socio-economic development, the status of women, etc., on the other.<sup>14</sup>

From earliest times population laws have been pronatalist. The early codes dating back to Hammurabi and the Emperor Augustus contained such provisions.<sup>15</sup> The Declaration of Independence accused King George III as follows:

He has endeavored to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.<sup>15</sup>

Thus, population law is significant in human history and it is noteworthy that population growth has been historically regarded as desirable per se. It has only been since World War II that the desirability of growth has been questioned and that human rights and other considerations have entered the population picture. The following may be noted among the factors causing this recent shift in emphasis:

(a) a general perception of the precipitous fall of the death rate, particularly in the developing countries, and of the dramatic increase in the rate of population growth;

(b) a better understanding of the danger both to mothers and children posed by malnutrition and of the consequent health hazard faced by large families in developing countries.

(c) the revolutionary change in the position of women in almost all developed countries and increasingly in the developing countries, where women are gaining equality, not only in political and economic life but also in domestic and sexual life; with the corollary that women should be free to decide for themselves whether or not to bear children;

(d) the increasing recognition of the problems of unwanted children, including emotional disturbance and juvenile delin-

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14. See note 1 *supra*, paragraph 14(c), (d), (h) and (j), among others. See also W. Dobson, *Population and Development Planning: The Incorporation of Population into Policy*, U.N. Doc. E/CONF.60/CBP/0 (1973).

15. C. EDWARDS, *THE HAMMURABI CODE* (1921). A translation of the Code is found in Chapter 3. For an analysis of the population-related law in the Code of Augustus see A. BOUCHE-LECLERCQ, *LES LOIS DEMOGRAPHIQUES D'AUGUSTE* (1895).

15.1. HAZELTON, *THE DECLARATION OF INDEPENDENCE: ITS HISTORY* 144-45 (1906); Means, *The Constitutional Aspects of a National Population Policy*, 15 *VILLANOVA L. REV.* 854 (1970).

quency, and of their consequences to the family and society;

(e) widespread illegal abortions and the growing realization that contraception is preferable to abortion;

(f) changing attitudes toward morality and sex, with greater willingness to discuss openly such matters as contraception, voluntary sterilization, abortion and sex education;

(g) the development of new and more reliable contraceptives, such as IUD's, pills, and relatively safe abortion operations;

(h) the concept of responsible parenthood, which has been more widely accepted among different religions and ideologies;

(i) the emphasis in United Nations declarations, proclamations and conventions upon various principles of human rights, including the characterization of family planning as a basic human right;

(j) the attainment of independence and self-determination by most nations, which enables them to review and reform their laws in light of their own needs and human rights principles.

The systematic involvement of lawyers in the population field is of even more recent origin—dating back to the establishment in April, 1971, of the International Advisory Committee on Population and Law at the OECD Development Center in Paris.<sup>16</sup> Lawyers themselves are partially to blame for their late entry into the population field. Being conservative as a profession, they have tended to avoid fields like population law which are regarded as politically sensitive. In 1965, there was only one lawyer among some 1,000 participants and observers at the United Nations World Population Conference in Belgrade, and none of the hundreds of papers presented at the Conference dealt with the legal aspects of population and family planning. Since 1966, however, six major events have lent particular urgency to the study of population law:

(a) the statement on population by twelve heads of state in 1966 (increased to thirty in 1967), which asserted that family planning is a basic human right;<sup>17</sup>

(b) the Tehran Proclamation adopted in 1968 by the United Nations Conference on Human Rights that couples have the basic

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16. For the agenda and part of the proceedings of the first meeting of the Committee, see *Law and Population Monograph Series No. 2*. The Committee is a non-Governmental organization in status with the United Nations Economic and Social Council.

17. U.N. Population Newsletter, Apr., 1968, at 44.

general principles of law that are recognized by civilized nations.<sup>31</sup> Each category of law has made its contribution to the development of human rights and is recognized by states in the absence of a treaty.<sup>32</sup> For human rights, by definition, are "rights which attach to all human beings equally, whatever their nationality."<sup>33</sup> The legal validity of their application cannot be rooted solely in a mere piece of paper signed and ratified by states.

Even assuming a refusal on the part of a country to accord full legal status to human rights, that country's vote on a General Assembly resolution or a human rights declaration must be taken as reflecting its official opinion with all the implications that go with it. Professor Humphrey states:<sup>34</sup>

How, indeed, could that opinion be more officially or more formally reflected? There is, it will be noted, an element of estoppel in the creation of the customary law. How can a State be

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Opinion on Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), [1971] I.C.J. 16, 76 (separate opinion of Vice President Ammoun). For a discussion on the acceleration of the custom-generating process through General Assembly resolutions, see *South West Africa, Second Phase, Judgment*, [1966] I.C.J. 6, 291-92 (dissenting opinion of Judge Tanaka).

31. For the inclusion of general principles of law as the third source of international law in the criteria of the International Court of Justice, see I.C.J. Stat. art. 38, para. 1(c). For a discussion of the concept of human rights as a general principle of law, see *South West Africa, Second Phase, Judgment*, *supra* note 30, at 298. Judge Tanaka wrote:

As an interpretation of Article 38, paragraph 1(c), we consider that the concept of human rights and of their protection is included in the general principles mentioned in that Article. Such an interpretation would necessarily be open to the criticism of falling into the error of natural law dogma. But it is undeniable that in Article 38, paragraph 1(c), some natural law elements are inherent. It extends the concept of the source of international law beyond the limit of legal positivism according to which, the States being bound only by their own will, international law is nothing but the law of the consent and auto-limitation of the State. But this viewpoint, we believe, was clearly overruled by Article 38, paragraph 1(c), by the fact that this provision does not require the consent of States as a condition of the recognition of the general principles. States which do not recognize this principle or even deny its validity are nevertheless subject to its rule. From this kind of source international law could have the foundation of its validity extended beyond the will of States, that is to say, into the sphere of natural law and assume an aspect of its supra-national and supra-positive character.

32. See Lee, *supra* note 7, at 310-16.

33. Waldock, *Human Rights in Contemporary International Law and the Significance of the European Convention*, 11 INT'L & COMP. L. Q. 3 (Supp. 1965). This paper was delivered at the European Convention on Human Rights.

34. J. Humphrey, *Human Rights and World Law* (work paper presented at the Abidjan World Conference on World Peace through Law, 26-31 August 1973).

heard to say on one occasion that the law is such-and-such and later deny that this is the case?

Such an official opinion must be understood to be indicative of the country's intention to modify its laws so as to include therein a basic set of human rights. This in itself may initiate review and reform by a country of its own legal codes.

The "Ihlen Declaration" of the *Eastern Greenland Case* is pertinent. An oral declaration by M. Ihlen, the Norwegian Minister for Foreign Affairs, was made in regard to Eastern Greenland. Denmark relied upon the declaration. Holding Norway to be bound, the Permanent Court of International Justice concluded:<sup>35</sup>

The Court considers it beyond all dispute that a reply of this nature given by the Minister for Foreign Affairs on behalf of his Government in response to a request by the diplomatic representative of a foreign power, in regard to a question falling within his province, is binding upon the country to which the Minister belongs. . . .

Might not the same reasoning apply to voting at the United Nations General Assembly or specially convened diplomatic conferences by duly accredited representatives of governments?

Since "right" and "duty" are two sides of the same coin, acceptance of human rights entails a corresponding duty not only to refrain from activities which would impede the exercise of the right but to undertake positive measures to aid in the attainment of such rights.

What are the human rights within population law? The Plan of Action states a few. In the interest of systematization, fourteen such rights already incorporated in various human rights instruments were listed in a background paper prepared for the Second Asian Population Conference in Tokyo in 1972.<sup>36</sup> They are:

1. The right to adequate education and information on family planning.<sup>37</sup>
2. The right of access to the means of practicing family planning.<sup>38</sup>

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35. *Denmark v. Norway*, [1933] P.C.I.J., ser. A/B, No. 53.

36. See *Lee*, *supra* note 7, at 318-19.

37. U.N. Doc. A/CONF. 32/41 at 3 (1968).

38. Declaration on Social Progress and Development art. 22(b), G.A. Res. 2542, 24 U.N. GAOR Supp. 30, at 52, U.N. Doc. A/7630 (1969).

human right to plan freely and responsibly the number and spacing of children, together with a resolution that couples also have a right to be sufficiently instructed and informed on family planning;<sup>18</sup>

(c) the General Assembly Declaration on Social Progress and Development in 1969 that the right to family planning includes not only the "knowledge" but also the "means necessary," for the exercise of this right;<sup>19</sup>

(d) the convening by UNESCO in Paris in February, 1974, of a workshop on the teaching of Population Dynamics in law schools for the purpose of preparing a textbook on population law for law schools, participated in by forty law deans or professors from thirty countries, and which established population law as a new field of law;<sup>20</sup>

(e) the holding of the Symposium on Law and Population in Tunis in June, 1974, sponsored by the UNFPA and the United Nations in cooperation with the World Health Organization, the International Labour Organization, the International Planned Parenthood Federation, the International Advisory Committee on Population and Law and the Tunisian Government, participated in by more than 100 experts from fifty countries which adopted specific recommendations for legal reform in such fields as the status of women, family relations, contraception, voluntary sterilization, abortion, para-medics, and the roles of national governments, local governments and international organizations in the field of population;<sup>21</sup> and

(f) the adoption of the World Population Plan of Action by the World Population Conference in Bucharest in August, 1974, stressing, among other things, the need for review of national and international laws which directly or indirectly affect population factors, and for reform of those laws in order to more effectively implement human rights.<sup>22</sup>

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18. U.N. Doc. A/CONF.32/41 (1968), paragraph 16 and Resolution XVIII: Human Rights Aspects of Family Planning.

19. Proclaimed by the General Assembly of the United Nations on 11 December 1969 (Resolution 2542 XXIV), Art. 22(b).

20. See Summary Record of the Proceedings of the UNESCO Workshop on the Teaching of Population Dynamics in Law Schools, 18-22 February 1974, Paris. The UNESCO Workshop was followed by a Regional Workshop for Africa, 24-30 November 1974, Nairobi, under the direction of Professor U.U. Uche, Law Faculty, University College, Nairobi.

21. For the text of the recommendations, see Appendix A.

22. See notes 1 and 2 *supra*.

Thus, in the brief span of nine years from Belgrade to Bucharest, population law has come into the forefront of the population field. Furthermore, since the Bucharest Conference was an inter-governmental meeting—unlike the previous meetings in Rome and Belgrade which were attended only by experts—national delegations at Bucharest usually included lawyers in ministerial or advisory capacities, with several delegations headed by lawyers. In addition, many conference organizers were lawyers by training, such as Secretary-General Kurt Waldheim; Dr. Antonio Carrillo-Flores, Secretary-General for the World Population Conference; Mr. Rafael Salas, Executive Director of UNFPA; and Mrs. Helvi Sipilä, Assistant Secretary-General for Social Development and Humanitarian Affairs and Secretary-General for the International Women's Year, 1975.

Because of their training and practice in approaching a problem from all possible angles and acting on given evidence (essential in population where so many factors are unknown), lawyers can render invaluable service in the population field through the use and coordination of all branches of the law. Their preeminence around the world in policy-making positions and their familiarity with an adversary system, where the merits of opposing views can be fully weighed, increase the utility of lawyers in so troublesome an area as population. Robert H. Edwards summarized the discussion of a Ford Foundation Population Meeting in Cali, Colombia, on October 16, 1974, as follows:

As negotiators, as those who could help articulate policy, and as designers of instruments of policy, the lawyers should not be forgotten. Population policy would normally involve a complex balancing of interests and opinions, rather than the simple drafting of legal statutes regarding contraception, abortion, the age of marriage, etc.; lawyers usually needed to take into consideration a jungle of existing, conflicting law which bore directly on matters of population policy: the regulation of the manufacture and importation of drugs, restrictive laws on what doctors and paramedical staff can and cannot do, conflicts of law between customary, received and post-colonial enacted law. . . .<sup>23</sup>

In this connection, it should be recognized that, besides serving

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23. Ford Foundation Population Meeting, Report on Session VII—Laws on Contraception, Abortion, Age at Marriage, Family Structure, Welfare, at 2. Chair/Rapporteur: Robert H. Edwards.

as a means for *enforcing* policy, law also *reflects, refines* and *coordinates* policy. Cast in this light, law is an indispensable element of any meaningful policy. At the same time, however, its role as the basis or catalyst for the formulation of policy, particularly in the area of natural law, human rights or such a basic law as the United Nations Charter, cannot be over-emphasized.

### III. BINDING FORCE OF HUMAN RIGHTS

Although population law responds to the immediate challenges presented by the population problem, its ultimate concern is human rights. Family planning, for example, should not be viewed as a goal in itself. Rather, it is a means to achieve a set of basic human rights among which are included adequate food, health, clothing, shelter, education, work, recreation and old-age security.

A question may be raised in regard to the status of human rights: Are human rights imbued with a legal quality that imposes legal responsibility upon states, or are these merely moral rights, hortatory in nature, but not binding under law?

The status of human rights traditionally has been related to the types of instruments in which human rights are incorporated. Thus, the answer to the question whether human rights are legally or only morally binding upon states hinges upon the fulfillment or nonfulfillment of the various requirements under the law of treaties. Generally, when human rights are detailed in declarations,<sup>24</sup> proclamations,<sup>25</sup> or unratified covenants,<sup>26</sup> they are

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24. U.N. Doc. A/CONF.32/6, at 114 (1967) and Add. 1, at 5 (1968) list the following "declarations" on human rights adopted by the General Assembly through 1967:

Universal Declaration of Human Rights (1948); Declaration of the Rights of the Child (1959); Declaration on the Granting of Independence to Colonial Countries and Peoples (1960); Declaration on the Elimination of All Forms of Discrimination (1963); Declaration on the Promotion Among Youth of the Ideals of Peace; Mutual Respect and Understanding Between Peoples (1965); and Declaration on the Elimination of Discrimination Against Women (1967).

A "declaration" may be codified into a convention which enters into force upon receiving a requisite number of ratifications, as in the case of the Declaration Against Racial Discrimination (1963), which was codified in 1965 and entered into force in 1969, G.A. Res. 2106, 20 U.N. GAOR Supp. 14, at 47, U.N. Doc. A/6181 (1967), or it may be codified but lack the requisite number of ratifications to enter into force, as in the case of the Universal Declaration of Human Rights, G.A. Res. 217, U.N. Doc. A/810, at 71 (1948), which was codified into two international covenants in 1966, *see* note 26 *infra*, but has not yet entered into force. A declaration may also, of course, stand alone unaccompanied by codification, as in the case of the great majority of declarations cited above. For the complete language

considered to be only a moral commitment of the parties to the instrument. Only duly ratified conventions<sup>27</sup> are legally binding upon the countries which ratify them. Many jurists have subscribed to this treaty-oriented approach to human rights.<sup>28</sup>

However, the traditional approach of emphasizing the formal or procedural aspects of human rights treaties confuses the instruments stipulating human rights with the substantive *human rights* themselves. Instead, the analysis of the binding force of human rights must be approached with a view to their non-treaty sources: natural law,<sup>29</sup> customary international law,<sup>30</sup> and other

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of declarations, proclamations and conventions adopted prior to 1973, see Human Rights: A Compilation of International Instruments of the United Nations, U.N. Doc. ST/HR/1 (1973). See also I. BROWNIE, BASIC DOCUMENTS ON HUMAN RIGHTS (1971). Moreover, for a report on the status of multilateral agreements in human rights concluded under United Nations auspices, see U.N. Doc. E/CN.4/907/Rev. 5 (1969); see also U.N. Doc. A/CONF.37/7/Add. 1 (1968) for a report of agreements concluded under the auspices of specialized United Nations Agencies.

25. See, e.g., U.N. Doc. A/CONF.32/41, at 3 (1968).

26. See, e.g., G.A. Res. 2200, 21 U.N. GAOR Supp. 16, at 49-60, U.N. Doc. A/6546 (1966).

27. See, e.g., G.A. Res. 2106, 20 U.N. GAOR Supp. 14, at 47, U.N. Doc. A/6181 (1967); G.A. Res. 260, U.N. Doc. A/810 at 174 (1948); Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, Sept. 7, 1956, 266 U.N.T.S. 3; G.A. Res. 317, U.N. Doc. A/1251 at 33 (1949).

28. H. Kelsen, PRINCIPLES OF INTERNATIONAL LAW 144-45 (1952); H. LAUTERPACHT, INTERNATIONAL LAW AND HUMAN RIGHTS 397-417 (1950); Schwelb, *The Influence of the Universal Declaration of Human Rights on International and National Law*, Am. Soc'y Int'l L. 217 (1959); P. DROST, HUMAN RIGHTS AS LEGAL RIGHTS (1965).

29. Whether in their manifestation as "inherent rights," "fundamental freedoms," or "natural justice," human rights are synonymous with the law of nature. Except for those extreme positivists who would deny *in toto* the existence of natural law, the latter is deemed to underlie both domestic legislation and international agreements, finding expression in such basic instruments as the United Nations Charter and national constitutions. See, e.g., U.S. CONST. amend. I-X, especially the Due Process clauses. See also the American Declaration of Independence of 1776, which contains the renowned passage:

[W]e hold these truths to be self-evident—That all men are created equal; that they are endowed by their Creator with certain *inalienable rights*; that among these are life, liberty and the pursuit of happiness. (Emphasis added.)

Yet, even for these positivists, to the extent that human rights-natural law has already been incorporated into these basic laws, it is already binding upon states regardless, or even in spite, of a treaty. On the relationship between natural law and general principles of law, see note 3 *infra*.

30. The validity of international custom as the second source of international law in the criteria of the International Court of Justice is stipulated in I.C.J. Stat. art. 38, para. 1(b). Thus, those human rights based on international custom continue to be binding upon states, notwithstanding the latter's failure to ratify or adhere to human rights treaties. For a discussion of the binding force of the Universal Declaration on Human Rights on the basis of codification of pre-existing binding customary norms, see Advisory

3. The right to the equality of men and women.<sup>39</sup>
4. The right of children, whether born in or out of wedlock, to equal status under the law and to adequate support from natural parents.<sup>40</sup>
5. The right to work.<sup>41</sup>
6. The right to an adequate social security system, including health and old-age insurance.<sup>42</sup>
7. The right to freedom from hunger.<sup>43</sup>
8. The right to an adequate standard of living.<sup>44</sup>
9. The right to freedom from environmental pollution.<sup>45</sup>
10. The right to liberty of movement.<sup>46</sup>
11. The right of privacy.<sup>47</sup>
12. The right of conscience.<sup>48</sup>
13. The right to separation of Church from State, law from dogma.<sup>49</sup>
14. The right to social, economic and legal reforms to implement the above rights.<sup>50</sup>

Fulfillment of these rights requires certain preconditions. The first right, for example, presupposes universal literacy and compulsory education. In turn, the absence of these presuppositions would necessitate a revision in techniques of education and would require or, at least, permit family planning instruction in

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39. International Bill of Human Rights art. 2, G.A. Res. 217, U.N. Doc. A/810 at 71 (1948); International Covenant on Civil and Political Rights art. 3, G.A. Res. 2200, 21 U.N. GAOR Supp. 16, at 53, U.N. Doc. A/6316 (1966); International Covenant on Economic, Social and Cultural Rights art. 3, G.A. Res. 2200, 21 U.N. GAOR Supp. 16, at 50, U.N. Doc. A/6316 (1966); and, Declaration on the Elimination of Discrimination Against Women arts. 1, 4, 6, 9, 10, G.A. Res. 2263, 22 U.N. GAOR Supp. 16, at 36, U.N. Doc. A/6716 (1967).

40. Declaration of the Rights of the Child prins. 1, 4, 6, 9, 10, G.A. Res. 1386, 14 U.N. GAOR Supp. 16, at 19-20, U.N. Doc. A/4354 (1959).

41. International Covenant on Economic, Social, and Cultural Rights art. 6, G.A. Res. 2200, 21 U.N. GAOR Supp. 16, at 50, U.N. Doc. A/6316 (1966).

42. *Id.* art. 9, at 50.

43. *Id.* art. 11(2), at 50-51.

44. *Id.* art. 11(1), at 50.

45. *Id.* art. 12(2)(b), at 51.

46. International Covenant on Civil and Political Rights art. 12, G.A. Res. 2200, 21 U.N. GAOR Supp. 16, at 54, U.N. Doc. A/6316 (1966).

47. *Id.* art. 17, at 55.

48. *Id.* art. 18(1), at 55.

49. *Id.* arts. 18, 26, at 55-56.

50. This right flows logically from the fact that human rights are *ipso facto* legal rights, entailing legal obligations on the part of governments to undertake the necessary reforms to conform with such rights.

schools. If laws forbid the publication, broadcasting, televising or mailing of family planning material, they would have to be changed. Moreover, regulations of publicly owned mass communication media may need reexamination to determine their obligation to disseminate family planning information.

In face of a shortage of actual and potential resources, another problem is how the individual's right to adequate education can be harmonized with a society's collective demands.<sup>51</sup> How may a grant of certain benefits, e.g. education or child allowances, that meet actual needs not constitute an incentive to increased fertility? Conversely, how may the withdrawal of certain benefits that further a population policy not penalize the innocent or the needy, and consequently impinge upon their basic rights? What controls must be established to prevent one law from negating another or from frustrating its implementation by inadequate or inconsistent administrative decrees?<sup>52</sup> What should be the relationship between a nation's set of laws and international law with regard to basic human rights?

It is obvious that a systematic approach to the above problems calls for a joint and coordinated effort on the part of all affected government agencies.<sup>53</sup> However, in view of the limited amount of available resources, each country must construct its

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51. The question of when exactly does the "individual" right give way to the "collective" is always difficult to answer—even in the case of freedom of speech notwithstanding its century-old development and refinement. However, it is equally clear that inability to define with exactitude the relationship between the two rights does not negate their existence.

52. For example, the effects of the French legalization of the sale and distribution of contraceptives in 1967 must be weighed against yearly increases in family allowance payments, on the one hand, and the nonenactment of administrative decrees to implement the 1967 law until 1972, on the other.

53. See L. Lee, *Legal Aspects of Implementing a Total National Population Program*, (a background paper prepared for the Population Panel of the Southeast Asia Development Group (SEADAG) of the Asia Society in Bali, Indonesia, 12-14 August 1974). See also the simultaneous promulgation of the following laws to implement the Chinese family planning program: (a) Directive of March 23, 1957, *Increasing the Supply and Reducing the Prices of Contraceptives*, 14 *Chung Hua Jen Min Kung Ho Kuo Kuo Wu Yuan Kung Pao* (State Council Bulletin of the People's Republic of China) 259-62 (1957); (b) Notice of April 2, 1957, *Concerning Exemption from Commodity and Business Taxes on the Manufacture and Importation of Contraceptive Devices and Chemicals*, [1957] 17 *Chung Hua Jen Min Kung Ho Kuo Kuo Wu Yuan Kung Pao* (State Council Bulletin of the People's Republic of China) 308; (c) Notice of April 2, 1957, *Concerning the Protection of Women and Youth Engaged in Rural Labor, the Intensification of the Campaign for Women's and Infants' Hygiene, and the Improvement of Health Service in Child Care Organizations*, *Id.* at 313-15.

own lists of priorities from the competing demands of the fourteen rights in the light of each country's own socio-economic conditions and needs.<sup>54</sup>

#### IV. STRATEGY FOR ACTION

Convinced that it is time for lawyers and law schools to contribute to the solution of population problems, the United Nations Fund for Population Activities, along with the International Planned Parenthood Federation and a few private organizations, has, since 1971, supported law and population projects in more than twenty countries.<sup>55</sup> These projects involve a compilation stage, an analysis stage and a recommendation stage. Each stage will be briefly described.

##### A. *Compilation*

Clearly the laws which affect fertility behavior and population in each country will be different from those of every other country. Moreover, their effects will vary, too.

Since reform is impossible unless it is known what the law is and how it works, the compilation stage is the first step. Indeed,

Knowledge as to what a law actually provides is obviously a prerequisite step towards the work of assessing the impact of a law on patterns of decision-making relevant to population trends . . . Nor are the prospects bright for any national family planning programme . . . if it is prosecuted in disregard of laws and practices which operate in a contradictory manner nullifying and frustrating the objectives of the programme.<sup>56</sup>

To make compilation effective, it was necessary to draw up a classification plan listing all the possible types of law to be considered. This plan is not only useful as a check-list for researchers, but it provides a format for world-wide reporting.

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54. See L. Lee, *Law and Population Policies*, 4 (a background paper prepared for the Expert Group on National Population Policies and Programmes in Africa, sponsored by the United Nations Economic Commission for Africa, in Addis Ababa, 11-15 November 1974).

55. These countries are Brazil, Chile, Costa Rica, Egypt, Ethiopia, Ghana, Indonesia, Iran, Kenya, South Korea, Lebanon, Malaysia, Mexico, Morocco, Nigeria, Pakistan, Philippines, Romania, Singapore, Sri Lanka (Ceylon), Thailand, Togo, Tunisia, Turkey.

56. K. Bentsi-Enchill, *Law Teaching and Research: The Ghana Law and Population Project*, in *Human Rights and Population: From the Perspectives of Law, Policy and Organization* 17-18 (Tufts University Law and Population Book Series No. 5, 1973).

Thus, developments in each country can easily be compared. The outline of this classification plan is attached as Appendix B.<sup>57</sup>

The compilation task may be more difficult than at first appears. Statutes and decrees are often scattered throughout the body of the law. Administrative and judicial decrees and regulations are usually buried and generally not known. Moreover, customary law is hard to "compile." In turn, this affects the important question of whether a particular piece of legislation is actually enforced. The compilation stage also may be complicated where a country has a federal-state form of government and the two sets of laws.

### B. Analysis

As suggested above, an indispensable component in the review of population law is the determination of the degree of compliance therewithin and the reasons for any divergence which may exist between law and practice.

Even in countries with somewhat developed legal institutions, differences between the law on the books and the law in actual practice inevitably exist. The differences are much greater in many of the developing countries. Thus, adequate methodology involves not only an analysis of the formal legal framework but also a considerable amount of empirical investigation of what people are in fact doing under it. An important part of the analysis stage should, if possible, involve systematic interviewing with such groups as physicians, nurses, pharmacists, public health and welfare officials, educators, prosecutors, judges, lawyers and legislators and a sample survey of public opinion classified according to age, sex, religion, education, occupation, race and geographic region.

Naturally, a successful investigation of this kind would hinge upon full utilization of sociologists who are trained in the preparation of questionnaires, the conduct of field surveys and the evaluation of results. A pilot project undertaken at the University of the Philippines in 1972 demonstrates the feasibility as well as desirability of such interdisciplinary cooperation.<sup>58</sup>

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57. For detailed breakdowns, see M. Cohen, *Law and Population Classification Plan* (Tufts University Law and Population Monograph Series No. 5, 1972).

58. R. Bulatao & L. Lee, *The Impact of Law on Fertility Behavior: Perspectives of Philippine Influentials*, 48 *Philippine L.J.* 324-355 (1973).

At the same time, one should warn against placing too much expectation on the ability to quantify any direct relationship between law and fertility behavior. Law is only one of many possible causative factors. "[E]vents in the macrosphere of population have to be explained by decisions made in the microsphere of the family and the individual, but that as yet no theory exists which could explain this and which is supported by individual and group psychology."<sup>59</sup>

### C. *Formulation of Recommendations*

The final phase of the review process is the formulation of suggested revisions of laws aimed at the full achievement of "human rights." These revisions should take into account not only existing laws but the political, social, economic, religious and cultural factors which give rise to such laws. This synthesis of practice and theory and of realism and idealism could help generate the necessary interest in legal reforms as well as provide a basis for concrete action. It is essential to include government officials, particularly policy-makers, in this process.<sup>60</sup>

In light of the comprehensive and well thought out recommendations adopted by the Symposium on Law and Population in Tunis, it is fitting to urge the use of these recommendations as bases for reviewing relevant national population laws, policies and programs.<sup>61</sup>

## V. CONCLUSIONS

It would be self-delusion to expect that legal reform could serve as the panacea for the population problem. But it is time to recognize and to stimulate the useful role that law can play in resolving the problem. After Bucharest, what remains is the implementation of the World Population Plan of Action—a task which lawyers can best perform through the reform and the en-

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59. See H. Schubnell, *Law and Fertility: Procreation, Contraception, Birth*, 31 (Wiesbaden: Federal Institute for Population Research, 1974).

60. See the following background papers prepared for Ford Foundation Population Meeting, 14-18 October 1974, Cali, Colombia: O. Simmons & Saunders, *The Present and Prospective State of Policy Approaches to Fertility* 14; A. Hawley, *Some Thoughts on Organizational Models for Population Policy Research* 9. See also, O. Harkavy, *Social Research and Population Policy* 47 (Third Bellagio Conference on Population working papers, The Rockefeller Foundation, 1974), D. Bell, Summary, *id.* at 92.

61. See Appendix A.

forcement of laws furthering the goal of human rights.

Despite insufficient knowledge concerning the impact of law upon behavior, the legal approach to population should be emphasized because it is *right* to stress human rights. While the available evidence is meager, such an approach has already begun to bear fruit in a number of instances—a subject which will form the content of a separate paper in the next issue of this *Journal*.<sup>62</sup>

Above all, the legal approach meets the prerequisite for a successful population program in that it stresses self-review and self-reliance. There is no alternative to self-help. The ineffectiveness of the present international assistance programs in the population field is traceable to the fact that the donors are trying to do something which the recipients ought to do for themselves.

The World Population Plan of Action has paved the way for a fundamental solution to the problem through essentially what is self-help<sup>64</sup>—that of legal reform in each country based on human rights. What may appear impossible today may well prove attainable in a few years' time.

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62. E. Kellogg, *Laws Affecting Population Growth: Recent Developments* (to be published in Vol. 10-1 of this *Journal*, 1975).

63. For candid commentaries on the "political" character of United Nations population assistance programs, see Third Bellagio Conference on Population working papers, *supra*, note 60 especially at 95-96.

64. The average budget for a two-year Law and Population Project is about \$20,000-30,000. The total costs for a world-wide network of projects would amount to only a medium-sized grant given by the UNFPA to a single country.

**APPENDIX A****RECOMMENDATIONS OF THE SYMPOSIUM ON LAW  
AND POPULATION**

17-21 June 1974

Tunis

Sponsored by  
The United Nations Fund for Population Activities and the  
United Nations

Under the Patronage of  
His Excellency  
Habib Bourguiba, President of Tunisia

In cooperation with the World Health Organization,  
International Labour Organization,  
United Nations Educational,  
Scientific and Cultural Organization,  
International Planned Parenthood Federation,  
the International Advisory Committee  
on Population and Law  
and the National Office of Family Planning  
and Population of Tunisia

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*THE SYMPOSIUM ON LAW AND POPULATION*

17-21 JUNE 1974

TUNIS

*INTRODUCTION*

The Symposium on Law and Population adopted the following recommendations which reflect the discussions at the meeting.

It was recognized that the recommendations were not necessarily representative of the views or policies of the United Nations

specialized agencies concerned, or of Governments and non-governmental organizations. The Symposium dealt with a number of issues on which relevant and reliable scientific information is incomplete or inconclusive. The meeting requested that the International Advisory Committee decide to what extent they should, within the Committee's mandate, be adopted and submitted in an appropriate form for the consideration of Governments and organizations at the World Population Conference.

In making the following recommendations, the Symposium was guided in its deliberation by a number of United Nations Instruments; foremost among these were: the Teheran Proclamation on Human Rights which declares that couples have the right to "determine freely and responsibly the number and spacing of their children," and the United Nations Declaration on Social Progress and Development which calls upon Governments to make available to couples the "knowledge and means necessary to enable them to exercise" this right.

The Symposium was aware of the fact that a free decision to make use of family planning requires that individuals have a meaningful existence and a high degree of self respect which will lead them to plan their lives and the size of their families. The Symposium was also aware that the mere provision of means and services will be ineffective unless free and informed individuals are provided with the proper motivation.

## *RECOMMENDATIONS OF SYMPOSIUM*

### *I. THE STATUS OF WOMEN*

[Original English]

The Symposium on Law and Population,

*Recalling* that the equal rights of all human beings, without distinction based on sex, are set forth in the United Nations Charter, the Universal Declaration of Human Rights, the International Covenants of Human Rights, the Declaration on the Elimination of Discrimination Against Women, the Declaration on Social Development and in various Conventions and Recommendations of the United Nations and its Specialized Agencies, particularly in the United Nations Conventions on the Political Rights of Women, on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, and in the United Nations Recommendation on the same subject; in the UNESCO

Convention on the Elimination of Discrimination in the field of Education, in the ILO Conventions on the Elimination of Discrimination in Employment and Occupations, on Equal Remuneration for Work of Equal Value, and in ILO recommendations concerning working women with family responsibilities;

*Realizing* that the preparations made for the World Population Conference, including the documentation and deliberations of the symposia on the relationship between population on one hand and development, family, environment and natural resources and human rights, on the other, the regional conferences on population, the International Forum on the Role of Women in Population and Development, and the regional inter-governmental consultations and seminars in the ECAFE and ECA regions have considerably increased the general awareness of the inter-relationship between development, population, the status of women and other issues, and that pragmatic measures for the improvement of the status of women and for their full integration in development with special reference to the population factor are suggested by the beforementioned gatherings;

*Recalling* that the full integration of women in the development effort is one of the goals of the Second Development Decade's International Development Strategy and that a Programme for Concerted International Action for the Advancement of Women was adopted by the same United Nations General Assembly in 1970;

*Considering* that the human right to determine freely and responsibly the number and spacing of their children is of particular importance for women, who play the most crucial role in the human reproduction and that it is a prerequisite for their equal access with men to other human rights as well;

*Bearing in mind* the interrelationship between the status of women, especially their education and training, their economic opportunities, their status in civil law and their participation in the life of the society, including political decision-making and administration, on one hand, and the composition and size of their families, on the other;

*Taking into account* the direct effect of the mental and physical condition of the mother on the health and development of the child and therefore on the quality of the population;

*Deploing* that despite the adopted international standards for equality and non-discrimination, between men and women,

discrimination against women still continues, due to the lack of general development, caused by the slow implementation of the goals and objectives of the International Development Strategy and within the national framework and the low priority, given by the Governments to the implementation of the internationally adopted requirements, and the low number of States, who have ratified the above-mentioned Conventions;

*Considering* that current and future trends in population size, growth, composition and distribution are inexorably linked to and affected by the status of women throughout the world;

*Recognizing* the vital relationship between the status of women and the overall social and economic development;

*Realizing* that the existing discrimination against women significantly limits their opportunity for free choice as to the number and spacing of their children, restricts their exercise of other human rights and prevents their full participation in the social and economic development in their own countries and in the international community;

*Considering* also that the discrimination against women works to the detriment not only of women but also directly or indirectly affects their children, their entire family as well as the society at large, and obstructs the implementation of population policies and the total development effort; and,

*Taking into account* that the World Population Year 1974, the International Women's Year 1975, the adoption of the Declaration and Action Programme by the Special Session of the General Assembly on Raw Materials and Development and the mid-term review and appraisal of the Second Development Decade's International Development Strategy in 1975, offer a most opportune time for assessment of the current status of women and its consequences in relation to the population trends and policies and in the total development effort, in addition to the promotion of the basic principles of Human Rights;

*Recommends that:*

1. Governments give highest priority to the ratification of the above-mentioned Conventions and to the implementation of the international standards, contained in the international instruments, strategies and programmes, referred to above;
2. All people, men and women alike, be included in planning and policy-making in all questions concerning the entire

development of a country, including questions of population, so that the exercise of individual rights may be harmonized with corresponding civic rights and responsibilities;

3. Governments and intergovernmental organizations pay full attention to the importance of technical and financial assistance through international cooperation to carry out local, national, regional and international plans, programmes and policies designed for the advancement of women and their full integration in the development process;

4. More concerted action be taken at local, national, regional, and international levels taking into account the assistance that can be offered by national and international non-governmental organizations in cooperation with the Governments and inter-governmental organizations; and,

5. Governments examine their laws, regulations and customs affecting the status of women with a view to bringing about their conformity with the basic principals of equality between men and women without discrimination as to sex.

## II. INCENTIVES AND DISINCENTIVES

[Original English]

### A. Basic Principles

The Symposium on Law and Population,

*Recognizing* the obligations of Governments to take steps to secure for all their people the full realization of the economic, social and cultural rights expressed in the Universal Declaration of Human Rights;

*Noting* that as stated in Article 25 of the Universal Declaration of Human Rights such rights include the right of every person to "a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services;"

*Noting further*, as recognized in General Assembly Resolution 2542 (XXIV), the necessity of assuring that family planning services are freely available in order to provide families with the knowledge and means required for the free exercise of the right to determine freely and responsibly the number and spacing of their children; and,

*Taking into account* that changes in family size may in some circumstances have an impact on the economic resources of the

family and on security in old age which Governments may wish to redress by offering benefits or services in the context of family planning;

*Recommends that:*

1. Any benefits or services provided or withheld as incentives or disincentives take into account the value system and mores prevailing in any given society and be planned so as to counteract the practical obstacles facing family planning programmes;

2. Governments adopting programmes of incentives relating to family planning ensure that any benefits or services provided as incentives to family planning be in addition to the benefits and services to which all persons are entitled as basic human rights; and,

3. Governments ensure that any benefits or services withheld or withdrawn as disincentives in the context of family planning do not conflict with the enjoyment of basic human rights.

### B. *Old-Age Benefits*

The Symposium on Law and Population,

*Considering* that one of the fundamental goals of family planning is to enhance the well-being of all members of the family and to enable parents to provide more adequately for their children while at home and in school;

*Recognizing* that in many societies children have traditionally served as a major source of support during the old age of their parents; and,

*Taking into account* that many parents may choose to practice family planning if they could be assured of adequate support in their old age through other means;

*Recommends* that Governments desiring to provide incentives to family planning undertake programmes through which persons limiting the size of their families can be assured of adequate income in their old age; such programmes might take the form of bonuses or benefits payable to persons in their old age.

### C. *Role of Non-Governmental Organizations*

The Symposium on Law and Population,

*Considering* the urgent need for family planning education and services in many countries that lack adequate national public health and social welfare services;

*Taking into account* that in many such countries basic health and welfare services are customarily provided by non-governmental organizations, including employers, labor unions and community centers; and,

*Noting* that in many such countries family planning education and service might appropriately form a part of the basic health and welfare services provided by such non-governmental organizations;

*Recommends* that:

1. Governments in such countries encourage the relevant non-governmental organizations to include family planning education and services in the basic health and welfare services made available through such organizations; and,

2. Costs of family planning education and services made available through non-governmental organizations be supported to the maximum extent possible through subsidies to such organizations or, as appropriate in the circumstances, through credits against the taxes paid by the organization, pending their integration into the national public health and social welfare services.

### III. LEGISLATION AND DEMOGRAPHIC EVOLUTION

[Original French]

#### A. *Right to Information on Family Planning*

The Symposium on Law and Population,

*Recalling* that the United Nations Symposium on Population and Human Rights, held in January 1974 in Amsterdam, expressed the hope that international organizations would assist Governments in "providing family planning information . . . to all persons who want" it, and that this should include "material on family life and population dynamics at all levels of the educational system"; and,

*Recalling further* that there is often a close relationship between a low level of education and high fertility, as there is between fertility and other social and cultural variables, in particular, the way of life;

*Recommends* that Governments should not only repeal present legal restrictions on the dissemination of family planning information, but also take positive steps to provide it in a manner consistent with their national culture, using all available channels of information, and taking advantage of such assistance as may be offered by international organizations in this field; it being understood that such information on human reproduction, health aspects of reproduction, family planning techniques, and population awareness.

### B. *Education and Child Labor*

The Symposium on Law and Population,

*Noting* that the Declaration on the Rights of the Child states that the child is entitled to free and compulsory education at least in the elementary stage;

*Bearing in mind* that under the same declaration the child should not "be admitted to employment before an appropriate minimum age;"

*Noting* the close relation which exists between compulsory education and laws on child labor, since without such education, it is difficult to enforce or to justify a minimum working age, and at the same time, unless there is such a minimum age, parents will be tempted to take advantage as soon as possible of the income which their children would produce; and,

*Noting further* the obligation of Governments to introduce compulsory elementary education, which usually means keeping children in school until they reach the age of 13;

*Recommends* that Governments, if they have not already done so, institute a system of free and compulsory elementary education as a matter of first priority, and, at the same time, establish a minimum working age which should not be less than 13 years.

### C. *Social Security*

The Symposium on Law and Population,

*Recalling* that the Universal Declaration of Human Rights states that "everyone, as a member of society, has the right to social security," and that the United Nations Declaration on Social Progress and Development calls for the use, as a common basis for development policies, of "means and methods" which

include the implementation of comprehensive social security schemes and social welfare services;

*Bearing in mind* the direct effect which the provision of such services, and particularly of illness protection, has on population dynamics, and the possible effect on fertility which would result from the economic security for older persons which a social security system would guarantee; and,

*Recognizing* that, at least in some countries, parents would rather depend upon their economic support on official social security schemes for sickness and old age protection than rely on their children for this purpose;

*Recommends* that Governments adopt a system of social security appropriate to the conditions of their respective countries, taking into consideration the demographic effects of this system.

#### D. *Maternal and Child Protection*

The Symposium on Law and Population,

*Bearing in mind* that the fear of infant mortality is one of the important factors in the motivation of parents to have many children, and that an awareness of improved chances of child survival might have an important effect in weakening this motivation considerably; and,

*Recalling* the United Nations Declaration of the Rights of the Child which provides that "special care and protection shall be provided both to him and his mother, including adequate pre-natal and post-natal care";

*Recommends* that Governments strengthen their pre- and post-natal care services as well as their general public health services so as to better protect child health and reduce infant mortality.

#### E. *Internal Migration*

The Symposium on Law and Population,

*Recognizing* that while in some countries the size and the rate of growth of population may not be considered to pose serious problems but that in most countries the unplanned growth of the urban population, especially in metropolitan areas, strains the labour market, social services, etc., and that many migrants have to live in conditions of deprivation, misery and squalor;

*Recommends that:*

1. Development programmes attempt, wherever feasible, to create employment and income opportunities, social services and other amenities in rural areas, or in areas accessible to the rural population, with a view to holding to manageable proportions the exodus from country to town;

2. Arrangements be made to better inform potential rural migrants of the economic and social conditions, especially employment and income prospects, in urban areas; and,

3. Measures which infringe upon the right of freedom of movement and residence within national boundaries enunciated in the Universal Declaration of Human Rights and other international instruments be avoided.

#### F. *International Migration*

The Symposium on Law and Population,

*Recognizing* that migration across national boundaries can contribute to achieving a better balance between labour and other factors of population in both the countries of immigration and emigration;

*Noting* that in this regard, the freedom of movement for employment has generally tended to contract; and,

*Bearing in mind* that the scope and conditions of international migration can be effectively regulated by legal provisions;

*Recommends that:*

1. Migrant workers should be provided proper treatment and that necessary social welfare measures be extended to them and their families in receiving countries in conformity with the provisions of the relevant ILO conventions and recommendations as well as other international instruments; and,

2. Governments adopt policies in regard to migrant workers aimed at preventing discrimination against migrants in the labour market, preserving their human rights, combatting prejudice against them and facilitating reunion of families.

### IV. *FAMILY RELATIONS LAWS*

[Original English]

#### A. *Minimum Marriage Age*

The Symposium on Law and Population,

*Bearing in mind* the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, which specifically requires states to "take legislative action to specify a minimum age for marriages;"

*Recalling* the General Assembly Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages that the minimum age for marriage shall not, in any case, be less than fifteen years of age; and,

*Recalling further* that the United Nations Regional Seminar on the Status of Women and Family Planning held in Jogjakarta, in June 1973, recommended that in view of the "close relationship between the low status of women, early and universal marriage of girls, and high fertility . . . Governments, which have not already done so, ensure that the laws provide for a minimum age of marriage for women of not less than 16 years;"

*Recommends that:*

1. Governments review the existing laws on the minimum marriage age with a view to specifying it at no less than eighteen years of age; and,
2. Governments establish effective systems for enforcing such laws.

#### B. *Consent to, and Registration of Marriages*

The Symposium on Law and Population,

*Bearing in mind* that the Convention on Consent to Marriage, Minimum Age for Marriage and Registration provides that "no marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity . . .," in view of the need for "complete freedom in the choice of a spouse;"

*Bearing in mind* that the same convention provides that "all marriages shall be registered in an appropriate official register;" and,

*Recalling* that the United Nations Regional Seminar on the Status of Women and Family Planning in 1973 recommended "the registration of all marriages," the "contracting of marriage only with the full and free consent of intending spouses," and the need to create awareness of the "right not to marry;"

*Recommends that:*

1. Governments ratify the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages; and,
2. Governments take the steps necessary to enact laws which are consistent with the principles mentioned above and that the competent organs concerned be instructed to implement such laws.

*C. Marriage and Divorce*

The Symposium on Law and Population,

*Bearing in mind* that the Universal Declaration of Human Rights and the Declaration on the Elimination of Discrimination against Women provide that men and women are "entitled to equal rights as to marriage, during marriage and at its dissolution;" and,

*Recalling* that the United Nations Seminar on the Status of Women and Family Planning in 1973 recommended that "women and men have equal rights at marital dissolution" and that the "unilateral right of husbands to divorce their wives at will lowers the status of women;"

*Recommends that* Governments take the steps necessary to enact laws which are consistent with the principles mentioned above and that the competent organs concerned be instructed to implement such laws.

*D. Registration of Births*

The Symposium on Law and Population,

*Recognizing* that a fool-proof system for the registration of all births is essential for the effective implementation and enforcement of many laws, including those governing the minimum age of marriage, child labor, compulsory education, social security and old age protection;

*Bearing in mind* that the Draft World Population Plan of Action, prepared by the Secretary-General, calls for the establishment of "vital registration systems and, in the interim, for the development of sample registration data;" and,

*Conscious* of the fact that the implementation of population

policies by Governments will require dependable demographic data;

*Recommends that* Governments take steps to establish effective systems for the registration of births.

#### E. *The Rights of the Child*

The Symposium on Law and Population,

*Recalling* the Declaration of the Rights of the Child, which affirms that "mankind owes to the child the best it has to give;"

*Noting* that under the above-mentioned Declaration, the child is entitled to special protection, opportunities and facilities "to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity," as well as to free and compulsory education, at least in the elementary stages, and to the right to adequate nutrition, housing, recreation and medical services;

*Noting further* that the child, as stated in the Declaration, needs "love and understanding" for the full and harmonious development of his personality, and requires affection, moral and material security from his parents;

*Considering* that the Declaration applies to every child, "without distinction or discrimination on account of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status," and that these requirements, for humanitarian reasons, apply urgently to refugee children caught in the circumstances of war and emergencies, no matter where they live, as is now the case of the Palestine refugee children;

*Recommends that* Governments adopt the necessary implementing legislation to ensure that every child is a wanted and protected child, whose best interests shall be the paramount consideration; in particular, that he shall be wanted by the parents and protected by the society in terms of adequate education, medical care, nutrition, housing and recreation.

#### V. *CONTRACEPTION*

[Original English]

The Symposium on Law and Population,

*Bearing in mind* that family planning has now become a basic aspect of health and socio-economic welfare;

*Considering* that in many countries access to contraceptives, which is an important aspect of the basic human right of family planning, may be available only to a fraction of the population, particularly under present medical requirements;

*Taking into account* the fact that a number of countries in various regions have successfully established training programmes in family planning for para-medical and auxiliary health personnel;

*Recognizing* that the experience in several countries has shown that such procedures as the prescription of oral contraceptives and the insertion of IUD's can be safely and effectively performed by appropriately trained and supervised para-medical personnel; and,

*Recognizing* that the pattern of supervision of the distribution of contraceptives depends upon expert medical advice, which itself changes with time, and which divides contraceptives into those that are safe for widespread distribution and those for which it is desirable to retain some degree of professional or para-medical supervision;

*Recommends that:*

1. Governments remove legal and administrative obstacles to manufacture, display, advertisement, sale and wide spread distribution of contraceptives, and enact such provisions as may be necessary to make contraceptives readily available;

2. Contraceptives be treated in the same manner as other products requiring broad and regular distribution and that limitations be imposed only to the extent that they are absolutely necessary on health grounds;

3. Sale of contraceptives not be restricted to pharmacies or medical facilities, unless necessary on health grounds;

4. Import as well as duty restrictions on contraceptives be removed or kept to a minimum, and that local packaging be encouraged, seeking assistance from UNIDO and UNCTAD as appropriate;

5. Governments review their regulatory provisions relating to the prescription of hormonal contraceptives, insertion of IUD's, and other family planning procedures, weighing the risks and benefits under national conditions, with a view to maximizing the

role of para-medical personnel in providing these services;

6. The World Health Organization and other organizations continue and intensify efforts to develop flexible and realistic international guidelines for the training and qualification of the various categories of medical and para-medical personnel in family planning, and that Governments take steps to follow these guidelines;

7. Governments of countries with official health insurance schemes ensure that the cost of contraceptives is covered by those schemes; and,

8. In situations where the price of contraceptives is beyond the reach of the community, due to manufacturing costs or to additional costs which may arise due to the manufacturer's liability at law from possible adverse effects, Governments (or international bodies) consider subsidizing the price.

## VI. VOLUNTARY STERILIZATION

[Original English]

The Symposium on Law and Population,

*Bearing in mind* the recommendation of the Second International Conference on Voluntary Sterilization, held in Geneva in 1973, that each individual should be recognized as having "freedom of choice in the matter of voluntary infertility;"

*Recommends that:*

1. With due regard to the legal and cultural traditions and mores, and the economic needs, of the respective countries, Governments adopt such legislation as may be required to make voluntary sterilization available for contraceptive purposes;

2. In adopting such legislation Governments ensure freedom of choice based upon legally competent and fully informed consent, and subject to proper medical procedures and requirements; and,

3. Governments further ensure that neither criminal nor civil penalties or liabilities be imposed upon persons undergoing voluntary sterilization for contraceptive purposes or, except in cases of negligence, upon persons performing such sterilizations.

## VII. ABORTION

[Original both French  
and English]

The Symposium on Law and Population,

*Mindful* of the fact that an increasing number of countries have recognized the right of women to decide for themselves the number and spacing of their children;

*Conscious* that restrictive abortion laws do not prevent women from resorting to clandestine and dangerous measures, which result in high rates of injury and mortality;

*Recognizing* that restrictive abortion laws result in discrimination between rich and poor, since the former can either travel abroad for safe abortions in more liberal countries or obtain safe but illegal abortions at home;

*Recognizing* that all countries prefer contraception to abortion, but that some countries interpret abortion as a family planning method, while others do not, and that this judgement depends on religious, cultural and medical insights which are still evolving;

*Taking into consideration* that recent medical progress has perfected the techniques for the interruption of pregnancy, thus considerably reducing the danger of abortion during the early stages of pregnancy;

*Taking into consideration* that the majority of the world's population now live under legal systems which enable women to have access to abortion;

*Noting further* that a 100 percent effective contraceptive method has not yet been developed, and that contraceptives failures may also result from the ignorance of the couple concerned and from the misuse of these methods; and,

*Bearing in mind* that menstrual regulation, if performed prior to the time at which a possible pregnancy could have been determined, would not violate the anti-abortion laws of many countries;

*Recommends that:*

1. A woman having an abortion in the early stages of pregnancy not be dealt with under the penal codes, but be accorded humane treatment and effective contraceptive advice;
2. Abortion in the early stages of pregnancy be treated in

the same manner as any other health act;

3. Abortion after the early stages of pregnancy be permitted at least to protect the life and health of the women, and particularly to prevent the birth of defective offspring, and in cases of rape and incest;

4. Abortion legislation be so drafted as to be part of maternal and child health care legislation, with emphasis on the fact that women who have recently had abortions be given full information regarding available family planning services;

5. No individual be compelled to participate in an abortion procedure against his or her conscience, but in cases where such objections are made, the woman requesting the abortion be referred to a person or institution which does offer such procedures; and,

6. Menstrual regulation be treated as falling outside the scope of restrictive abortion laws.

#### VIII. *ROLE OF PROFESSIONAL PARAMEDICAL PERSONNEL IN MENSTRUAL REGULATION, EARLY ABORTION AND VASECTOMY*

[Original English]

The Symposium on Law and Population,

*Mindful* of the growing importance of menstrual regulation, early abortion and vasectomy as family planning techniques in the context of the right to access to the knowledge and means necessary to exercise freedom of choice in determining the number and spacing of children;

*Bearing in mind* that there is a need for the speedy expansion of the technical, medical and other categories of professionally qualified personnel in the field of maternal and child health care services, of which family planning is an essential component; and,

*Recognizing* that certain surgical techniques of fertility regulation are being simplified, that vasectomy, menstrual regulation and early abortion already have been successfully performed by professional para-medical and auxiliary health workers and that expert opinion, in the light of local circumstances, has in some countries and may in the future in others, delegate appropriate procedures to such personnel when they are specially trained and supervised;

*Recommends that:*

1. Governments expand the facilities and develop guidelines for the training of professional para-medical and auxiliary health personnel in this field as to be acceptable to the local community;

2. International organizations take positive supportive action to assist Governments in the establishment of integrated maternal and child care health services in which medical workers play a role;

3. Governments review their national policies, laws and regulations in these matters taking into account the urgent need for the rapid increase in the number of technical, medical and other categories of professionally qualified personnel working in the field of maternal child care services;

4. Nothing in these recommendations shall compel any individual to participate in such procedures, but any individual shall have an obligation to inform the individual requesting such procedures of another person or facility which offers such procedures as legally available, it being understood that every Government-supported facility shall be obliged to make available such procedures as are lawful.

**IX. ROLE OF NATIONAL GOVERNMENTS IN THE  
FORMULATION AND IMPLEMENTATION OF POPULATION  
POLICY**

[Original English]

The Symposium on Law and Population,

*Recalling* that the United Nations Declaration on Social Progress and Development calls for the "formulation and establishment, as needed, of programmes in the field of population, within the framework of national demographic policies . . . ;" and,

*Recognizing* that law, as an instrument of policy, has an important role to play in implementing national population policy, as well as human rights;

*Recommends that:*

1. Governments establish, if they have not already done so, population commissions or other bodies to formulate national population policies and coordinate the activities of the various

Ministries in the field of population, and that they consider the adoption of a general population law which clearly sets forth these policies;

2. As an aid in the performance of this task, Government commissions undertake or encourage the undertaking of the compilation, review and revision of the laws of their countries in the light both of national policies and of human rights, taking advantage of assistance from international organizations in this regard; and,

3. Governments consider the recommendations of this Symposium in formulating their national population policies and laws.

#### *X. ROLE OF LOCAL GOVERNMENT IN THE IMPLEMENTATION OF POPULATION POLICY*

[Original English]

The Symposium on Law and Population,

*Recognizing* the potential of local Governments in bringing their personnel, resources and unique knowledge of local conditions and requirements to bear on the implementation of national population policies;

*Conscious* of the need for a total and coordinated approach to population; and,

*Recalling* the inauguration of a "Model City Project" in Cagayan de Oro in the Philippines in 1973, which seeks to implement the principle of family planning as a basic human right of the population in that city primarily through the coordination of local initiatives and resources;

*Recommends that:*

1. Local Governments be actively involved in the population field;

2. The utilization of local personnel and resources be maximized in the fulfillment of national population policies, including the use of educational, social, economic, mass media, medical, as well as legal components;

3. Such local governments as face particularly great demographic pressures establish a special body to provide leadership and coordination of local activities; and,

4. Local governments provide for the full participation of

the citizenry in the formulation and implementation of the policies mentioned above.

## XI. *ROLE OF INTERNATIONAL ORGANIZATIONS IN REGARD TO POPULATION POLICY*

[Original English]

### A. *Compilation, Review and Revision of National Laws*

The Symposium on Law and Population,

*Bearing in mind* that the national laws, regulations and decisions, including customary law, of all countries should be consistent with fundamental principles of human rights in the population field;

*Recognizing* that archaic or out-dated laws continue to hamper the full implementation of human rights in many countries;

*Taking into account* the difficulties encountered by Governments in revising their laws to reflect the development of human rights in the population field; and,

*Noting that* the United Nations Symposium on Population and Human Rights held in Amsterdam in January 1974 specifically called upon international organizations to render assistance to Governments in "reviewing national legislation in the light of both population policy and human rights;"

*Recommends that:*

1. International organizations,—both governmental and non-governmental—concerned with the population field encourage Governments seeking assistance in this field to include the compilation, review and revision of national laws in the light of both population policy and human rights as part of their population programmes; and,

2. Appropriate measures, including in-depth studies on law and behavior, be undertaken in each country with a view to an effective implementation of such laws.

### B. *International Women's Year*

The Symposium on Law and Population.

*Bearing in mind* that discrimination against women is often rooted in legislation which in turn reinforces discriminatory practices;

*Considering* the close relationship between such discriminating laws and demographic phenomena;

*Recognizing* the need for the compilation, review and revision of laws affecting the status of women; and,

*Noting* the designation of 1975 as the International Women's Year;

*Recommends that:*

1. All international organizations, both governmental and non-governmental, include in their programmes for the International Women's Year assistance to national governments or organizations in the compilation, review and revision of laws affecting the status of women; and,

2. Compilation of the laws bearing on the status of women of all countries be undertaken and published by a United Nations organ on a periodic basis.

#### C. *Legislative Series*

The Symposium on Law and Population,

*Considering* that an increasing number of countries in all parts of the world are establishing projects for the compilation, review and revision of their national population laws in the light of both population policy and human rights;

*Recognizing* the desirability of coordinating such projects so that each may profit from the experience of the others; and,

*Noting* the usefulness of the *International Digest of Health Legislation*, published by the World Health Organization, and of the *Legislative Series*, published by the International Labour Organization;

*Recommends* the publication, on a regular basis, under the auspices of an appropriate international organization, of a "Legislative Series on Population" or "Population Law Reports" which shall inform all interested bodies—both governmental and non-governmental—of developments in population laws.

#### D. *Regional Organizations*

The Symposium on Law and Population,

*Considering* the desirability for close collaboration in the

population field between countries in the same region;

*Welcoming* the increasing emphasis given to population questions by the regional economic commissions of the United Nations as well as by other regional organizations, both mental and non-governmental;

*Bearing in mind* that substantial progress has been made in the field of law and population in selected countries of different regions and that other countries could benefit from the experience of these selected countries; and,

*Noting* in this context, the success of the Rio Seminar on Law and Population sponsored by the Inter-American Bar Association in August 1973;

*Recommends* that regional organizations intensify regional cooperation in the field of law and population, including in particular:

(a) the sponsorship of regional meetings and seminars on law and population; and

(b) the incorporation of a regular law component into the regional demographic and training centres.

APPENDIX B  
OUTLINE OF LAW AND POPULATION  
CLASSIFICATION PLAN

- 100 Fertility regulation
  - 110 Sterilization
  - 120 Contraception
  - 130 Abortion
- 200 Family status and welfare
  - 210 Marriage
  - 220 Termination of marriage
  - 230 Extended family obligations
- 300 Children and child welfare
  - 310 Support of children generally
  - 320 Protection of children
  - 330 Artificial insemination
  - 340 Legitimacy of children
  - 350 Registration of births
- 400 Criminal offences penology
  - 410 Criminal law treatment of sexual activity
  - 420 Penology (as affecting ability of prisoners to continue family relations)
- 500 Public welfare
  - 510 Family allowances generally
  - 520 Housing assistance programmes
  - 530 Maternity leaves and benefits
  - 540 Old age and retirement benefits
  - 550 Death benefits to survivors
  - 560 Labour protection and employment standards
  - 570 Personal status and integrity
  - 580 Personal mobility (intra and international migration)
- 600 Public health
  - 610 Health insurance and medical assistance
  - 620 Hospital insurance and public clinics
  - 630 Control of medical facilities
  - 640 Medical profession (licensing, education and regulation)
  - 650 Drugs and pharmaceuticals
  - 660 Food distribution and control

- 680 Environmental protection programmes (efforts to control population growth as a means of protecting the environment)
- 700 Education
  - 710-720 Compulsory education
  - 730 Literacy programmes
  - 740 Adult education programmes
  - 750 Financial assistance to education
  - 760 Educational opportunities for women
  - 770 Education affecting population directly (health, sex, marriage, contraception and population)
- 800 Property and economic factors
  - 810 Income distribution measures generally
  - 820 Taxation
  - 830 Land tenure and land improvement programmes
  - 840 Distribution of decedents' property
  - 850 Employment guarantee and public works programmes
  - 860 Guaranteed wage and income subsidies
- 900 Miscellaneous
  - 910 Military service
  - 920 Religious law
  - 930 Other

## **International Advisory Committee on Population and Law**

The Programme is under the general supervision of an International Advisory Committee on Population and Law, which is on the roster of non-governmental organizations accredited to the U.N. Economic and Social Council. The Committee meets annually in different regions of the world. Its members are:

- Professor Georges Abi-Saab (*Institute of International Studies, Geneva*)  
Professor Richard Baxter (*Harvard University*)  
Professor K. Bentsi-Enchill (*University of Ghana*)  
Mr. Robert Black (*Organization for Economic Cooperation and Development*)  
Dr. Jean Bourgeois-Pichat (*Comité International de Coordination des  
Recherches Nationales en Démographie*)  
Mr. Philander Claxton, Jr. (*U.S. Department of State*)  
Lic. Gerardo Cornejo M. (*Fundación para Estudios de la Población, A.C.,  
Mexico*)  
Dean Irene Cortes (*University of the Philippines*)  
Dr. Jean de Moerloose (*World Health Organization*)  
Mr. Kailas C. Doctor (*International Labour Organisation*)  
Mr. Carl M. Frisen (*U.N. Economic and Social Commission for Asia and the  
Pacific*)  
Mr. Carl M. Frisen (*U.N. Economic Commission for Asia and the Far East*)  
Mr. Robert K. A. Gardiner (*U.N. Economic Commission for Africa*)  
Professor Richard Gardner (*Columbia University*)  
Mr. Halvor Gille (*U.N. Fund for Population Activities*)  
Professor Leo Gross (*Fletcher School of Law and Diplomacy*)  
Dean Edmund A. Gullion (*Fletcher School of Law and Diplomacy*)  
Miss Julia Henderson (*International Planned Parenthood Federation*)  
Mr. Edmund H. Kellogg (*Fletcher School of Law and Diplomacy*)  
Professor Dudley Kirk (*Stanford University*)  
Dean Peter F. Krogh (*Georgetown University*)  
Dr. Arthur Larson (*Duke University*)  
Dr. Luke T. Lee (*Fletcher School of Law and Diplomacy*)  
Mr. Thomas C. Lyons, Jr. (*U.S. Agency for International Development*)  
Vice-Chancellor O. Roy Marshall (*University of the West Indies*)  
Mr. Bertil Mathsson (*U.N.E.S.C.O.*)  
The Reverend Arthur McCormack (*Vatican*)  
Mr. Robert Meserve (*American Bar Association*)  
Dr. Minoru Muramatsu (*Institute of Public Health, Japan*)  
Mrs. Harriet F. Pilpel (*U.S. Planned Parenthood-World Population*)  
Dr. Rafael Salas (*U.N. Fund for Population Activities*)  
Mr. Marc Schreiber (*U.N. Human Rights Division*)  
Mrs. Helvi Sipilä (*Assistant Secretary-General for Social and Humanitarian  
Affairs, U.N.*)  
Mr. Leon Tabah (*U.N. Population Division*)

### Law and Population Book Series

- 1/ *Population and Law*, Luke T. Lee and Arthur Larson (eds.) (Leyden: A.W. Sijthoff; Durham, North Carolina: Rule of Law Press, 1971).
- 2/ *International Migration Law*, Richard O. Plender (Leyden: A.W. Sijthoff, 1972).
- 3/ *Population in the United Nations System: Developing the Legal Capacity and Programs of UN Agencies*, Daniel G. Partan (Leyden: A.W. Sijthoff; Durham, North Carolina: Rule of Law Press, 1973).
- 4/ *World Population Crisis: The United States Response*, Phyllis T. Piotrow (New York: Praeger, 1973).
- 5/ *Human Rights and Population: From the Perspectives of Law, Policy and Organization* (Medford, Massachusetts: Law and Population Programme, 1973).
- 6/ *The Abortion Experience*, Howard J. Osofsky and Joy D. Osofsky (eds.) (New York: Harper & Row, 1973).
- 7/ *The United Nations and Population: Major Resolutions and Instruments* (New York: United Nations Fund for Population Activities, 1974).
- 8/ *Le Droit et la Croissance de la Population en Roumaine*, Joan Ceterchi, Victor D. Zlatescu, Joan M. Copil, and Petre Anca, (Bucarest: Commission Nationale de Démographie de la République Socialiste de Roumaine, 1974).
- 9/ *Law and Population in the Philippines* (Medford, Massachusetts: Law and Population Programme, 1974).
- 10/ *La Ley y la Población en Colombia*, Oscar Lopez Pulecio (Medford, Massachusetts: Law and Population Programme, 1975).
- 11/ *Symposium on Law and Population: Proceedings, Background Papers and Recommendations* (New York: United Nations Fund for Population Activities, 1975).