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# POPULATION GROWTH AND INTERNATIONAL LAW

Alfred C. Kellogg

## I. THE NEED FOR A WORLD PROGRAM

### A. POPULATION GROWTH AND INTERNATIONAL CONCERN

The world population is growing at an accelerating rate.<sup>1</sup> Post-World War II health measures on a world scale served to rapidly curtail death rates even in the less developed regions. At the same time, birth rates in these pre-industrial areas have remained at their previous high levels. In the developed countries, although birth rates have shown a tendency to drop once industrialization has been reached, births still significantly outnumber deaths.<sup>2</sup>

The most clearly threatening aspect of population growth is the danger of mass starvation.<sup>3</sup> This is most imminent in the economically underdeveloped regions of the world. In these pre-industrial societies, the population is now increasing several times more rapidly than in the industrially developed regions.<sup>4</sup> Closely tied to the threat of starvation is the present situation in many of the developing nations where popu-

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1. The accelerating trend of population growth might best be illustrated by the "doubling time" of world population. The number of people in the world, having reached 1 billion by 1850, required only 75 years to double. This 75 year doubling time has since been reduced to the present period of 37 years. One must keep in mind that while a doubled 1850 population added 1 billion people in 75 years, a doubled 1969 population will add 3.5 billion people in 37 years. P. ERLICH, *THE POPULATION BOMB* 18 (1968); POPULATION REFERENCE BUREAU, *1969 WORLD POPULATION DATA SHEET* (1969).

2. The population of the United States grows at a rate of one percent per year and by a process of "compound interest" currently takes 70 years to double. A country such as Morocco with a 3 percent growth rate will have a population twice its present size in only 23 years. POPULATION REFERENCE BUREAU, *1969 WORLD POPULATION DATA SHEET* (1969).

3. Population Biologist, Dr. Paul Erlich of Stanford sums up: "There is not enough food today. How much there will be tomorrow is open to debate. If the optimists are correct, today's level of misery will be perpetuated perhaps two decades into the future. If the pessimists are correct, massive famines will occur soon, possibly in the early 1970's certainly by the early 1980's." P. ERLICH, *supra* note 1, at 44.

4. For the 35 year period 1965-2000, it is estimated that the population of the developing regions will increase from 2,249 million to 4,688 million, a rise of almost 110 percent, while the population of the more developed regions is expected to increase from about 1,032 million to 1,441 million, a rise of about 40 percent. U.N. OFFICE OF PUBLIC INFORMATION, *BACKGROUND NOTE No. 62*, at 7, Aug. 20, 1968.

lation increases are defeating efforts at economic development,<sup>5</sup> and hence the ability to avoid future famines. The resulting frustration and hunger, in the opinion of many experts, creates a threat of war.<sup>6</sup>

In both developed and less developed countries, overcrowding degrades the quality of life.<sup>7</sup> There is evidence<sup>8</sup> that this overcrowding is already a key factor in many social ills.

The massiveness and urgency of the population problem make it one for international concern. Its effects recognize no national boundaries, but have far-reaching repercussions for all nations. The problem calls for action on a world level.

### B. THE LEGAL PROBLEM

The essential task of legal systems is the definition of norms. Traditionally, on the international level, such norms arose out of the conflicting interests of independent nation states. Areas of conflict between nations either have tended to resolve themselves through the development of patterns of behavior which over time attained the status of customary rules, or have been dealt with by means of interstate agreements.

Because the traditional approach often requires considerable time to allow norms to evolve and is likely to result in norms varying by region or nation, it is not an effective tool for dealing with the population crisis. Norms common to a large majority of nations are required to

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5. Robert MacNamara, World Bank President, states: "One third of mankind today lives in an environment of relative abundance. But, two thirds of mankind — more than two billion individuals — remain entrapped in a cruel web of circumstances that severely limits their right to the necessities of life. They have not yet been able to achieve the transition of self-sustaining economic growth. They are caught in the grip of hunger and malnutrition; high illiteracy; inadequate education; shrinking opportunity; and corrosive poverty . . . nations in Asia and Africa . . . struggle to survive on per capita incomes of less than \$100 . . . the greatest single obstacle to the economic and social advancement of the majority of the peoples in the underdeveloped world is rampant population growth." INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT, ADDRESS TO THE UNIVERSITY OF NOTRE DAME BY ROBERT MACNAMARA 3 (May 1, 1969).

6. The Director General of the United Nations Food and Agricultural Organization, Binay Sen, has observed: "Either we take the fullest measures both to raise productivity and to stabilize population growth or we face a disaster of unprecedented magnitude. . . . Problems of hunger and malnutrition which affect more than half of the world's population . . . pose a serious threat to peace." HUGH MOORE FUND, THE POPULATION BOMB 3 (1967).

7. U. Thant, U.N. Secretary General has stated: "We are concerned with the numbers of human beings on earth. We bear an immense responsibility for the quality of human life in the future generations . . . succeeding generations to whom we must bequeath a life worthy of human beings." U.N. OFFICE OF PUBLIC INFORMATION, STATEMENT BY SECRETARY GENERAL AT PRESENTATION OF DECLARATION ON POPULATION GROWTH, PRESS RELEASE SG/SM/874, Dec. 8, 1967.

8. J. HUXLEY, THE HUMAN CRISIS 74 (1963).

permit the unified and co-ordinated effort<sup>9</sup> which the magnitude of the problem seems to indicate is necessary for a solution. The legal problem, essentially that of defining norms, remains the same, but the time limitation inherent in the nature of the population crisis and the need for a coordinated application of world resources require international organs to take an active part in catalyzing the creation of a normative consensus as rapidly as possible. "Normative consensus" is meant to denote a common recognition of and policy toward the problem which will enable the creation and evolution of a true world population program. To the extent that different norms are allowed to develop between regions, nations, or political groups, the possibility of an efficient and timely cooperative effort is eclipsed and the risk of calamity is increased.

## II. THE INADEQUACY OF THE CURRENT RESPONSE

Efforts to deal with the population crisis up to the present have not been successful.<sup>10</sup> This is due in some cases to the limitations of the approach taken and in others to factors outside of the approach. Thus it would be helpful to briefly sketch the more important existing measures and examine their limitations in contributing to the legal aspect of a solution to the control of world population.

### A. PRIVATE ACTION

Private action can have significant influence on the population problem. The work of private foundations constitutes the most significant form of private effort in this field.<sup>11</sup> These organizations offer funds

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9. U. Thant has stated: "The type of action needed is among those for which the international community has shown great ingenuity and inventiveness as well as readiness to provide resources." POPULATION DIVISION OF U.N. DEP'T. OF ECONOMIC AND SOCIAL AFFAIRS, 3 POPULATION NEWSLETTER 25 (1968).

Though it may be questioned whether this statement is entirely accurate in its emphasis on the "readiness" of the international community to provide resources, it does express a belief that the problem is best approached on an international community (as opposed to bilateral) level.

Clearly the social and technical problems involved in implementation of any birth control policy, initiated on any level, are great and as varied as the cultural differences from one nation to the next. They are recognized but are not within the scope of this note.

10. "... the world situation remains unsatisfactory and the economic gap between the developed and the developing nations continues to widen . . . population increases negate the impact of economic growth." U.N. ECONOMIC AND SOCIAL COUNCIL, REPORT ON THE WORLD SOCIAL SITUATION, 44 U.N. ECOSOC Supp. 1, at 9, U.N. Doc. ST/SOA/84 (1968).

11. Private organizations playing important roles in efforts to curb population growth include the Ford Foundation, the Rockefeller Foundation, the Population

and technical assistance to countries requesting them, and provide funds for research and educational publications.

Relatively free from political pressure, the foundations have led the way in constructively dealing with this sensitive problem. However, their non-political character hinders them from creating the needed binding normative consensus and thus from effectively coordinating world efforts.

### B. NATIONAL ACTION

Action on a national level is a prerequisite to any solution to the population problem. Population control policies must ultimately affect individual behavior and governments control access to their citizens. Thus, for any program to reach the peoples of the world and affect their behavior, national governments, even if they institute no programs on their own, must, at the very least, allow others to undertake such efforts within their territories.

Although it is essential, national action alone is not enough. Even if it is effective in one nation, by definition, it ceases beyond that nation's borders and will have little influence on those other nations which are less able to cope with their burgeoning populations. Many nations<sup>12</sup> already show signs of inability to deal with their own overpopulation.

### C. BILATERAL ACTION

A national government can extend its influence beyond its borders if it finds another government willing to accept aid in dealing with its population problem. Sweden and the United States are the current leaders in this type of effort through the Swedish International Development

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Council, the International Planned Parenthood Federation, and the Pathfinder Fund. Such private foundations often work with national and international agencies and play a very important role in the international scene. That they can strongly influence the development of international awareness of the problem is illustrated by the activities of the Population Council in obtaining the signatures of heads of state of 30 countries including the United States to a policy statement in favor of family planning. This document, entitled Declaration on Population, was presented to the United Nations Secretary General on December 10, 1966. U.S. AGENCY FOR INT'L DEVELOPMENT, POPULATION PROGRAM ASSISTANCE 55 (1968).

12. A good example of this class of nations is India, where it has been predicted by some experts that mass starvation cannot be entirely avoided, no matter what steps are taken. Although India has long had a family planning program it has been less than effective:

"At the start of the program (1951) the Indian population was some 370 million. After 16 years of effort at family planning, the growth rate was pushing 3% per year and the population was well over 500 million. P. ERLICH, *supra* note 1, at 87.

Authority (SIDA) and the United States Agency for International Development (USAID).<sup>13</sup>

The limitation inherent in this approach is that it involves only two countries at a time and thus is not likely to create a uniform norm structure soon enough to cope effectively with overpopulation. Its effectiveness is further narrowed by the suspicion often engendered when a developed country seeks to limit the population of a less developed one.<sup>14</sup> Such programs are useful, but in dealing with the normative aspect of the situation, their effectiveness is relatively limited.

#### D. INTERNATIONAL ACTION

Although private, national, and bilateral measures to control population are significant, they do not have the potential for a rapid creation of an international normative consensus. The United Nations, however, as a multilateral treaty organization, is well adapted to discover and influence common attitudes and goals, as well as to form a broad plan of attack on the problem.

The other multilateral treaty organization of importance in dealing with population is the Organization for Economic Cooperation and Development (OECD). This organization, acting through its Development Assistance Committee (DAC) is primarily a coordinator of bilateral efforts by the developed countries and has been subject to the limitations of the bilateral approach.<sup>15</sup> The United Nations, however, represents the majority of world governments (with the important exception of Communist China representing 740 million people) in a forum open to the active give and take of debate with the concurrent possibility of crystalizing any accord reached by resolution and initiating concrete action. Thus it is the most appropriate existing organ to assume the leading role in guiding world efforts to limit population.

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13. Sweden was the first government with such a program of family planning assistance in 1958. The U.S. began in 1966 when the State Department post of Special Assistant to the Secretary for Population was established. Sweden's 1968-69 budget in this field was approximately \$9 million, that of U.S.A.I.D. was about \$45 million. U.S. AGENCY FOR INT'L DEVELOPMENT, *supra* note 11, at 61.

14. See J. FULLBRIGHT, *THE ARROGANCE OF POWER* 240 (1966).

15. "It is probably on the technical level and among aid administrators that DAC's influence has been greatest. Beyond that level DAC does not easily reach. But the basic decisions about aid policy, decisions about its volume and direction, are made elsewhere — in high echelons of ministries of finance and foreign affairs or in cabinets." Ohlin, *The Organization for Economic Cooperation and Development*, in *THE GLOBAL PARTNERSHIP* 239 (1968).

### III. U. N. POLICY AND ITS IMPLICATIONS

#### A. SIGNIFICANT FACTORS IN U.N. RESOLUTIONS

The task of evolving a basis of agreement among Member States is carried on primarily in the U.N. General Assembly. The population issue was put on the agenda of the General Assembly in 1962 after repeated attempts to have the issue dealt with in the World Health Organization had been frustrated.<sup>16</sup> In 1962, the General Assembly passed a resolution asking for intensified research by appropriate bodies and requesting that a questionnaire issue from the Secretary General to Member States to determine what problems and policies, if any, each Member State had concerning population growth.<sup>17</sup> This resolution passed without contrary vote, 29 abstaining, only after a clause allowing the U.N. to give technical assistance on request of Members, had been deleted.<sup>18</sup> Nevertheless, the impact and significance of the resolution was indisputable; the population problem had been officially recognized as an international problem and concrete action was begun.

Four years later, in 1966, the population issue was again raised, this time clarified by the data received by the survey authorized in the 1962 resolution. The 1966 Resolution on Population Growth and Economic Development took a clear stand in favor of action. It stated the two elements of U.N. policy repeatedly emphasized in later documents:

Recognizing the sovereignty of nations in formulating and promoting their own population policies, with due regard to the principle that the size of the family should be the free choice of each individual family.<sup>19</sup>

The first factor, then, is that the sovereignty of nations will be respected. It has become clear U.N. doctrine that technical cooperation programs will be instituted only at the request of the government involved.<sup>20</sup> Some critics have suggested that in light of the magnitude of the population crisis, this type of deference to national sovereignty is misplaced and will interfere with the enactment of the strong measures many feel are needed.<sup>21</sup> While it is true that the U.N. has been slow in launching a serious attack on the problem, it is clearly not feasible at

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16. Gardner, *Toward a World Population Program*, in *THE GLOBAL PARTNERSHIP* 349 (1968).

17. G.A. Res. 1838, 17 U.N. GAOR Supp. 17, at 25, U.N. Doc. A/5217 (1962).

18. Gardner, *supra* note 16, at 349.

19. G.A. Res. 2211, 21 U.N. GAOR Supp. 16, at 41, U.N. Doc. A/6316 (1966).

20. *Id.*

21. See Falk, *World Population and International Law*, 63 AM. J. INT'L L. 517 (1969).

the present time to initiate any enforceable measures to combat population against the will of governments. As mentioned, governments hold control over access to their citizens by concerned agencies and any direct challenge to sovereign rights would be likely to reduce support for birth control measures. Thus, the recognition of sovereign rights could be anticipated as a measure to allay anxieties of governments sensitive to outside intervention in their affairs.

Although the U.N. will not initiate any program within a country without the express request of the government, it will advise the government of the latest research, findings and developments in the field. Thus, while not violating sovereignty in any way, the U.N. is capable of bringing some influence to bear.

The second element found in the 1966 Resolution, the right of the individual to plan his family, has since been re-emphasized and broadened. The U.N.-sponsored 1968 International Conference on Human Rights at Teheran resolved:

Couples have a basic human right to decide freely and responsibly on the number and spacing of their children and a right to adequate information in this respect.<sup>22</sup>

This same resolution observed that the present rapid rate of population growth

hampers the struggle against hunger and poverty, and in particular reduces the possibilities of rapidly achieving adequate standards of living . . . thereby impairing the full realization of human rights.<sup>23</sup>

Thus the right to choose family size is being firmly implanted in the international recognition of human rights. Yet the right of the individual to choose family size free from interference is, to some degree, incompatible with an assertion of sovereign discretion. For example, a government would be restricted from passing a law forbidding family planning because this would violate the individual's right to choose the number of children he wants. Thus, to that extent, sovereign discretion has been limited. Moreover, the Teheran Resolution would appear to broaden the right to choose family size by including within it a right to information on family planning and thus mandating apparently, that if a government does not assure its citizens access to information on family planning it violates their human rights. The implication in the final statement of the Teheran Resolution that increasing density of population impairs human rights might imply that a government which irresponsibly allows overpopulation without taking action is violating the human rights of its citizens.

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22. Final Act of the International Conference on Human Rights Ch. III, Res. XVIII, at 15, U.N. Doc. A/Conf. 32/41 (1968).

23. *Id.*

It is clear that the U.N. is not presently capable of, nor does it intend, enforcement measures against governments guilty of impinging these broad human rights provisions related to population. In any event, a U.N. resolution, even one coming out of the General Assembly, falls short of being strictly enforceable<sup>24</sup> and merely raises an expectancy of compliance. What then is the rationale behind framing the population explosion in terms of human rights?

Human rights constitute an increasingly prominent theme in the field of international law. The first major step in the emergence of human rights was the passage in 1948 of the Universal Declaration of Human Rights.<sup>25</sup> This instrument sets out certain basic human rights to be respected by all states. The exact legal status of this document is somewhat vague, but it is clear that its importance has been steadily increasing:<sup>26</sup>

... the Universal Declaration increased its weight through the force of circumstances and became far more relevant an international instrument than most of its draftsmen contemplated. The majority of delegations that participated in the drafting of the Declaration in the Human Rights Commission and at the General Assembly level were of the opinion that the Declaration should have only moral force and no legal relevance and no legal importance.

The connection between the terms of the Universal Declaration and the population crisis have been explicitly pointed to by Secretary General U. Thant:

There are important links between population growth and the implementation of the rights and freedoms proclaimed in the Universal Declaration of Human Rights . . . . The Universal Declaration of Human Rights describes the family as the natural and fundamental unit of society. It follows that any choice and decision with regard to the size of the family must irrevocably rest with the family itself and cannot be made by anyone else.<sup>27</sup>

Implicit in this growing emphasis on direct concern for the individual is a reduction of the traditional recognition of the sovereign as the sole source of authority within its boundaries. Professor E. W. Tucker has observed that

Admittedly the scope of the rights of individuals beyond what is conceded to them by the nation having jurisdiction over their person or property is presently on a comparative basis, infinitesimal. However,

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24. MEMORANDUM OF THE SECRETARY GENERAL ON LEGAL EFFECT OF GENERAL ASSEMBLY RESOLUTIONS, U.N. Doc. E/CN.4/L. 610, April 4, 1962.

25. Universal Declaration on Human Rights, G.A. Res. 217, 3 U.N. GAOR 71, U.N. Doc. A/810 (1948).

26. Schwelb, *The United Nations and Human Rights*, 11 How. L. J. 362 (1965).

27. U.N. OFFICE OF PUBLIC INFORMATION, *supra* note 7.

this minimal yet invisible, erosion of the national boundary line approach is significant in terms of setting a possible tone for the future national and international activities. The traditional philosophy, that the right of individual governments to exclusively govern those subjects to their power is sacrosanct in nature, has already been subjected to serious inroads.<sup>28</sup>

This would seem to indicate a trend toward international interdependence and cooperation and away from absolute sovereignty. As part of this trend, the assertion of a human right to limit families could be justified simply as creating an ideal or eventual goal to give a sense of direction to efforts to control population.

Beyond this normative direction-giving function, could this assertion of a human right to limit families have any binding legal effect or enforceability now, or in the near future? In spite of the lack of strict enforceability of the terms of a General Assembly Resolution, there are still other direct pressures which may be brought to bear, particularly where human rights provisions are involved:

. . . the Charter itself establishes a kind of complaints system in the matter of Human Rights. It has been possible . . . to bring a number of causes célèbres before the General Assembly where they have been discussed and ventilated and in many cases resolutions have been adopted which go so far as to condemn certain conduct as being contrary to standards recognized by the United Nations.<sup>29</sup>

Thus where a strong majority consensus exists there is a distinct possibility of investigations, recommendations and possibly sanctions of some indirect type. This would not be on the same plane with strict enforcement in the domestic law sense, yet these are measures which may have considerable influence over the actions of a state. It should be clear that enforcement will not be the key method of attacking the population problem, nor is it a substitute for willing cooperation. Any such sanctions could only come about in a situation in which a strong sense of cooperation already existed to the extent that the Members felt justified in taking measures against a non-cooperating state, and were prepared, in turn, to submit themselves to such an eventuality. As population projections indicate, the increasing threat of overpopulation is such that this type of active cooperation will soon be imperative.

Thus while the 1966 Resolution of the General Assembly emphasizes sovereignty on its face, it asserts the need for an effort in which sovereignty must play a role subordinate to that of international cooperation.

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28. Tucker, *The Individual as the Subject of International Law*, 34 U. CIN. L. REV. 341 (1965).

29. Humphrey, *The United Nations and Human Rights*, 11 How. L. J. 375 (1965).

By defining a human right to plan one's family and by designating overpopulation, itself, as an infringement on human rights, the U.N. has cleared the way for the possible use of a series of precedents which includes sanctions against human rights violators as in the case of South Africa.<sup>30</sup>

#### B. CURRENT EFFECTIVENESS OF U.N. ACTIVITIES

Given the important and recent work of the U.N. in defining the population problem as one of international concern and formulating a world policy, what empirical results have occurred through U.N. efforts?

It has been estimated that there are 140 million women in the less developed countries (not including Communist China) exposed to the risk of unwanted pregnancy. Of these only 75 million are in countries permitting or encouraging family planning programs.<sup>31</sup> Thus, more than 40 percent of those in need of assistance in the less developed regions cannot presently be effectively reached by family planning programs. This would seem to indicate that the norms of the General Assembly Resolution of 1966 as well as the subsequent Human Rights resolutions have yet to be acted upon<sup>32</sup> by many governments.

The norms espoused in the resolutions are essentially a framework intended to enable action, not insure it, and they can only be as effective as the Member States' commitments to them. Although a U.N. Fund for Population Activities was set up by the Secretary General in July of 1967 to provide an independent source of financing for population programs, it has not been adequately funded by Member States. It has been estimated that the Fund would require at least \$5 million in 1969, \$10 million in 1970, and \$20 million in 1971, yet as of June 26, 1969, contributions totaled only \$3.5 million.<sup>33</sup> It is apparent that the finances are presently inadequate to handle technical-informative programs of a sufficient scope to deal effectively with overpopulation even in the underdeveloped countries requesting such assistance.<sup>34</sup>

This lack of funding reflects a basic inertia. As Richard Gardner, past Deputy Assistant Secretary of State commented,<sup>35</sup>

Obviously the obstacle to closing the family planning gap is not just money. In addition to lack of funds family planning programs are

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30. Schwelb, *supra* note 26, at 364.

31. Gardner, *supra* note 16, at 336.

32. Revelle, *International Cooperation in Food and Population*, in *THE GLOBAL PARTNERSHIP* 362 (1968).

33. U.N. OFFICE OF PUBLIC INFORMATION, BACKGROUND NOTE No. 112, at 2, June 27, 1969.

34. Gardner, *supra* note 16, at 338.

35. *Id.*

hampered by the absence of education, the absence of communication and perhaps most fundamentally, the absence of will to get on with the job.

The normative consensus of U.N. activities as embodied in resolutions can never be more effective than the funding and effort put behind it.<sup>36</sup> The slow start and recency of developments account in large part for the present inadequacy of this effort. Although we have examined some of the implications of the normative consensus, its adequacy and future evolution can only be ascertained over time as these efforts are increased.

#### IV. CONCLUSIONS

The crisis presented by the growth of world population, because of its immensity and urgency, is a proper subject of international concern. An international consensus must be achieved and a world-wide program formulated. The United Nations is currently the only organization with the representative capacity and prestige to act effectively in attaining these goals.

Emphasizing the human rights aspects of the problem as the U.N. has done may well prove to be the most effective approach as it encourages the sacrifice of absolute sovereignty necessary for an international cooperative effort, without seeming to create any direct infringement on sovereign rights. Past experience in the U.N. with human rights problems has demonstrated the underlying possibility of various sanctions when the majority pressure for action on an issue becomes great.

The ultimate success or failure of the United Nations in leading a coordinated world effort to halt overpopulation will reside in its ability to marshal a vigorous and directed international effort. The legal problem of defining objectives and norms is the first step in this process.<sup>37</sup>

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36. There is little consensus on how much effective population control will eventually cost in world resources. It is, however, almost universally thought that the present amounts being spent are inadequate. In speaking on the resources which will be required to successfully negotiate the population crisis, C. P. Snow described the outer limit of current estimates: "This extreme estimate is that, to make the world safe while there is still time, the rich countries would have to devote up to 20 percent of their G.N.P. for a period of 10 to 15 years." C. P. Snow, *John Findley Green Lecture at Westminster College*, N.Y. Times, Nov. 13, 1968, at 29, col. 6.

37. Consistent with U.S. recognition of U.N. leadership in controlling world population growth (Message from the President, H.R. Doc. No. 91-139, 91st Cong., 1st Sess. 2 (1969)), Secretary of State Rogers announced on January 24, 1970, that the U.S. would contribute \$7.5 million to the U.N. Fund for Population Activities provided the sum is matched by other countries' contribution. (N.Y. Times, Jan. 25, 1970, at 2, col. 5). Hopefully, this action represents a growing awareness of the world crisis at hand.

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