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EMERGENCE OF THE "RIGHT TO DEVELOPMENT" AS A
HUMAN RIGHT IN THE CONTEXT OF A NEW INTERNATIONAL
ECONOMIC ORDER

by

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It must be admitted that the association of "development" and "right" is somewhat venturesome.

In fact, development belongs essentially to the realm of economics which, being very conscious of its increasingly technical nature, condescends to cohabit with law in our universities only as a temporary measure. Development, moreover, is concerned with the group, be it a region, a State or a collection of States, whereas a right amounts to a prerogative or a power of the individual. At a casual glance, development would appear to be the exclusive concern of States. Indeed, every country assumes its own destiny and is accountable, in the face of history, for its errors and achievements; after all, as Edouard Herriot put it: "Nations enjoy the fate they deserve. Nothing felicitous comes to them by chance".

Yet a new right is being fashioned before our very eyes: the right to development.

I. THE CONCEPT OF THE "RIGHT TO DEVELOPMENT"

After the adoption of the United Nations Charter, and especially since 1964,⁽¹⁾ jurists have been faced with a new task to undertake, and seemingly a difficult one.

Jurists, however, will not be alone in accomplishing it.⁽²⁾

"Development"! No other word has been used so much, analysed so often, and become so hackneyed, without the various "stages" of its content ever having been accurately defined. Economists, sociologists, historians, geographers and even philosophers have provided, each in their own way, scores of definitions. One of them found it easier to say that just like the camel, without ever having detected a case of underdevelopment before or managing to describe it, you can nevertheless recognize it when you see it.

Here then are jurists, falling to step with the scholars in other fields, lending their voices to the clamour of chaos.

Three preliminary remarks need to be made.

Firstly, care should be taken to differentiate between the "right to development" and "development law". Development law is also a new field, or more precisely, a legal technique and a range of legislative methods aimed at underpinning economic and social development in the backward countries.⁽³⁾ As René David⁽⁴⁾ pointed out, law must "be aimed at specifying the best solutions for a

- (1) It is recorded in the minutes of the debates of the United Nations Seminar held in Kabul (Afghanistan) in May 1964 that: "Several speakers stressed that countries have the basic responsibility of sharing their resources and technical expertise with the developing countries, as has been clearly recognized by the United Nations Organization, especially in resolution 1710, (XVI) of the General Assembly with regard to the United Nations Development Decade and the recent conference on trade and development".
- (2) Kéba M'Baye: "Le droit au développement, comme un droit de l'homme". Inaugural lecture at the International Institute for Human Rights, Strasbourg, 1972.
- (3) Kéba M'Baye: "Droit et développement en Afrique francophone de l'Ouest", in "Les aspects juridiques du développement économique", Dalloz 1966, p.137 et seq., published at the request of Unesco, under the editorship of Andié Tunc; cf. also "Revue Sénégalaise de Droit", no. 0-1.
- (4) René David: "La refonte du Code civil dans les Etats africains", Annales africaines, 1962, no.1, p.162.

society at a given time in a given context. If the society is in a satisfactory state, the law will naturally be founded on local customs and usage. If, on the other hand, the society is in such a state that a revolution is needed to achieve a satisfactory level of development, then certain practices, customs and traditions must be resolutely challenged and eliminated, since they obstruct the profound transformation of the society that is necessary".

This "law for advancement", to use an expression coined by Professor Gendarme, is law that jostles society forward towards economic and social development by challenging the ancestral practices which paralyse traditional societies. It creates a new human being through a radical upheaval in social mentalities. It turns away from traditional liberalism by building a socio-political system in which the rights of the individual are temporarily curtailed in favour of the general good, in which, it could be said, legality is broadened for reasons of exceptional necessity. In this context, "development law" touches on the "right to development" because it involves law on the means of development (whether goods or people), but does not merge with it. Within the framework of development law, the traditional balance "freedom - social order" is upset, because the need for order overrides the need to grant liberties.

This is where people in government hasten to invoke the adage: "you can't make an omelette without breaking eggs". Unfortunately, it often happens that eggs are broken without producing an omelette at all. Paul Sieghart once ventured a hypothesis which deserves to be followed up. The idea would be to discover what is the required correlation between development and respect for human rights. If suitable yardsticks were found for measuring each of these concepts on the basis of actual examples, what would be the shape of the graph representing respect for human rights in terms of level of development?

Secondly, we have asserted that development relates to the group, which is unquestionably the case. The reaction against "laissez-faire laissez-passer" gave rise in the 19th century to the idea of economic and social rights, as opposed to the individualistic tendencies of the previous period. Respect for these rights, the achievement of conditions for a better life in all justice, and, in more general terms, the undertaking of a harmonious economic and social development are all by nature collective; they involve mastering human and material resources, at regional, national and international levels, so as to bring up the standard of living of peoples in a satisfactory socio-cultural environment.

The fact remains, nevertheless, that the indicators to be used to assess the level of development obviously have to refer to the individual. Whether it be a matter of "gross domestic product per capita", "school attendance rate", "birth rate" or "death rate", "average age of the population" etc., all these hinge on the situation of the individual.

In his speech to UNCTAD III in Santiago de Chile, Robert McNamara stressed the need in assessing the results of development programmes to be wary of global figures which can nurture false hopes about the regression of poverty.

It would never occur to anybody to say that Samba is a citizen of a developed man. However, if the state of development in Senegal is to be measured, Samba's personal circumstances cannot be irrelevant, so that, the productivity, consumption and investment of every member of the population need to be taken into account in defining the growth which could be regarded as the raw material of development.

Twisting an expression coined by François Ferroux, we could say that development concerns "all men", "every man" and "all of man". It then becomes superfluous to indulge in rhetorical speculation on whether the right to development is really a collective or an individual right.

Thirdly, ensuring the economic and social development of all peoples is an obligation that rests both with each State and with the international community as a whole. This accounts for the fact that Th.C. Van Boven, after having stressed that the creation of suitable conditions for promoting and safeguarding human rights in developing countries is the responsibility, first and foremost, of national policies, hurries on to say: "The international community should also exercise its collective responsibility to realize economic and social justice" (Human Rights Journal, Vol. III - 3 - 1970, p. 384).

The right to development therefore has two facets: national and international. It is a power or prerogative which peoples can demand of their governments or of the organized international community. Within the scope of this study, however, we have deliberately chosen to concern ourselves exclusively with the international relations.

We should like to consider here the right to development within the framework of the co-operative rights that Unesco, under the signature of Karel Vasak, has attempted to define. In its resolution 4 (XXXIII), the Human Rights Commission states quite unequivocally: "the international dimensions of the right to development as a human right in relation with other human rights based on international co-operation, including the right to peace, taking into account the requirements of the new international economic order and the fundamental human needs".

In the context of the new international economic order, we shall attempt first to determine the best form of development and then endeavour to bring out the reasons which justify the existence of the right to development.

II. DEVELOPMENT, THE SCIENCE OF OPTIMALIZATION

The idea of development was conceived only recently. "Development terminology came to the fore shortly after the Second World War".⁽⁵⁾ In fact, the term itself in its current connotation was invented very late. François Perroux has certainly contributed most of all to defining its scope. Not so long ago, "development" was still identified with "growth". According to Austruy, "less than 10 years back, it was thought wiser to consider the concepts of growth and development as synonymous".⁽⁶⁾

With Marchall, during the sixties, the concept of development began to take shape. It was François Perroux, again, who was to give the idea of development its full identity. Perroux analysed the economic trends that have carried societies along and distinguished 4 levels that Jacques Austruy took up in his "Scandale du développement". These are expansion (a temporary irreversible increase in economic quantities), growth (prolonged increases over long periods of time with consequent modifications in economic structures), development as such (range of changes in mental and institutional patterns, conditions for the prolongation of growth), and last of all, progress (the significance of what has been achieved giving a purpose to the development process).⁽⁷⁾

Perroux grasped the concept of development and elucidated its meaning.⁽⁸⁾ His minute dissection could scarcely be improved by the finest scalpel. It would seem that development can be viewed as a metamorphosis of structures, a driving force for structural change.

When Jacques Austruy refers to history and to more normative concepts, he sees development as "the movement that profoundly upsets a society and encourages the rise, progress and direction of growth towards a human purpose"; or as:

(5) F. Perroux, "L'économie du XXème siècle", p.155.

(6) "Le scandale du développement", 1965, p.88

(7) See Jacques Austruy, op.cit., p.88 et seq.

(8) "Development is a combination of mental and social changes in a population which can enable it cumulatively and durably to increase its overall product in real terms". ("L'économie du XXème siècle", p.159).

"a range of changes in mental and intellectual patterns that favour the rise of growth and its prolongation in historical time".⁽⁹⁾

This can be taken without question to be an accurate description of development. It must be remembered, however, and Pearson certainly did, that development problems vary from one country to another. The particular nature of problems is heightened by the options and objectives of each State. Development models do exist, but they are only one side of the coin. The very concept of development, as presented to us through the ideas of Austruy, seems so relative that it is reckless to lump together a whole category of countries under the same title: "developing countries".

Let us not be carried away too far by these controversies, but rather it would be wiser, however, to steer away from disputes such as these, restrict ourselves to noting that development must be viewed not as an end in itself but as a means to an end. Growth comes in at the beginning and the end of development, but it is not development. Development is much more: it is a state that fosters growth, with a snowball effect, through a never-ending common effort.

Growth is certainly the condition sine qua non for development. Malcolm Adiseshiah believes that development arises first and foremost in economic terms. What is required is "the improvement of per capita income". Adiseshiah defines development as the increase of a quotient obtained by dividing the value of a country's gross domestic product by its total population figure. However, he goes a stage further by saying that the three economic factors of which the everyday life of every individual is made up - consumption, production and savings - should not be multiplied ad infinitum but should progress in optimal harmony, that is, at a level below or above which living conditions deteriorate. With this in mind, economics becomes the science of optimization.⁽¹⁰⁾ We could go as far as to say that it is not so much a question of being developed but rather of avoiding "patho-development" through a constantly renewed and steadfast quest for an ever precarious balance between the components of happiness.

To comprehend true development, the idea of "a real improvement in living standards" must be taken into account; it is not a longer life for every person that matters but a better life. The civilization that is based on ever greater production and on ever increasing consumption is, without a shadow of a doubt, as we are beginning to acknowledge it today, a civilization condemned to fatal contradictions and chaos.

Nine factors have to be taken into account when assessing living standards. These are:

- health;
- food consumption and nutrition;
- education;
- employment and working conditions;
- housing;
- social security;
- clothing;
- leisure activities and individual human freedom.

The list is certainly edifying.

(9) J. Austruy, op.cit., p.89; see also F. Perroux, "L'économie du XXème siècle", p.408.

With regard to the diversity of development concepts, see J. Austruy, op.cit.

(10) M. Adiseshiah, "Let my country awake", p.43.

It becomes clear that growth is a condition that is necessary though not adequate to achieve development. Development above all means evolution, but the kind that is gradual and qualitative. It is not just a matter, as Father Lebret has said, of "having more", but also of "living better". Besides growth that is measured in G.N.P. per capita, development is also made up of elements that cannot be quantified. It is vital that quality should be its yardstick.

Development means improving human life quantitatively, but above all qualitatively. We propose Adiseshiah's definition of development because it does not go along with so-called scientific rigour but refers to man, the very centre of our concern. He writes: "Development is, in the end, a form of humanism, for its finality is the service of man. It is moral and spiritual as well as material and practical. It is an expression of the wholeness of man serving his material needs of food, clothing and shelter, and embodying his moral demands for peace, compassion and charity. It reflects man in his grandeur and shame moving him ever forward and onward, yet ever in need of redemption of his errors and folly".⁽¹¹⁾

The aim of life is not growth but happiness.

In the meantime, however, mankind is set on its course, as Pascal would say, and the underdeveloped countries view their poverty as an injustice and the wealth of the rich countries as a provocation; because these late-comers cannot avoid comparisons.⁽¹²⁾

This is why development continues to be regarded as an asset and a right, the justifications of which we shall now consider.

III. THE JUSTIFICATIONS OF THE RIGHT TO DEVELOPMENT

Development certainly appears to us a right, in so far as we abide by the definition of a right proposed by a philosopher rather than a jurist, as in the case of Saint Thomas Aquinas, for example, for whom "a right is what the virtue of justice attempts to establish".

Development is a right of every man. It is directly related to the most fundamental of all rights, the right to life.⁽¹³⁾ Every man has a right to live and a right to live better, which in J.M. Domenach's view implies conditions "which guarantee his safety and his dignity, and contribute to his power to be free and to his capacity to be happy".⁽¹⁴⁾

The legitimacy of this right is based on political and economic considerations and is founded on moral grounds and in accordance with legal standards.

The developed countries, those of the northern hemisphere, derive from their relations with the underdeveloped countries a certain number of advantages which, in turn, give rise to certain obligations on their part. These obligations, which generate among their partners from the southern hemisphere the feeling that they can rightfully express their own demands, are no more than an equitable compensation for the exorbitant profits which they derive from international trade.

(11) Malcolm Adiseshiah: "Let my country awake", p.44.

(12) J.K. Galbraith.

(13) Franciszek Przetacznik, "The right to life as a basic human right". Human Rights Journal - Vol IX - 4 - 1976, p.585 et seq.

(14) J.M. Domenach, "Aide au développement, obligation morale?", Centre for Economic and Social Information, United Nations, New York, 1971, Document No.4, p.13.

We shall endeavour to establish the basis for the right to development by examining the problem from various standpoints:

1. The economic standpoint

The colonial venture on which the Europeans embarked led them to establish with the foreign peoples they encountered relations of domination, supposedly justified in terms of differences in race, customs and religion, and maintained for reasons of economic interests up to the present day.

These countries were considered, and still are today, suppliers of cheap raw materials and labour. Furthermore, they constitute a vast group of consumers for European-finished and semi-finished products, customers whose purchasing power must be carefully safeguarded, but just enough for them to remain clients in a type of trade that changes outwardly but is still basically the same. In point IV of his speech in 1949, Truman said: "experience has shown that our trade with other countries becomes increasingly significant as these countries develop". It follows then that funds earmarked as development aid are little more, in several cases, than disguised subsidies for national exports.

This was how the system of colonial agreements was set up in the past, and its effects are still felt today. It was an extremely simple pattern and has undergone very little change: countries of the southern hemisphere were allotted the task of supplying raw materials and unskilled labour. The producers of raw materials were swaddled in favour of the intermediaries of the "mother country".

Although UNCTAD IV gave rise to a lot of hope, it must be admitted today that the two sides in the North-South "dialogue" are talking on different wavelengths.

I was particularly struck by remarks made by Christian Jelen in an article published in "Le Monde" in 1972. He had the following words to say to his French readers: "When we put oil in our salad dressing, we unwittingly participate in a glaring case of injustice...." He then went on to explain: "Out of the 4,30 francs we pay for a bottle of peanut oil, the Senegalese producer gets only 83 centimes. The rest goes almost entirely into the coffers of the big corporations under the guise of covering costs for trituration, brokerage, marine insurance, handling and marketing".

In the meantime, underdeveloped countries have to pay more and more for manufactured goods. In the space of 15 years, the selling price of a kilo of coffee has been multiplied by fifteen, while over the same period the cost of a 5 tonne lorry bought by the Ivory Coast has gone up a hundredfold.

This inequity characteristic of North-South relations has been unceasingly denounced, ever more vigorously, by talented but unheeded defenders of the Third World.

Samir Amin has pointed out, with regard to peanut oil production alone, that on account of the deterioration of the terms of trade, and using the year 1890 as the base, Senegal had received 15 billion francs CFA by 1970 instead of the 110 billion which would have been its normal income, had there not been this phenomenon. (15)

(15) Samir Amin, "L'Afrique de l'Ouest bloquée", p. 59.

So as to ensure that this state of affairs continued, a single crop agricultural system was imposed on the colonies as they shrugged off the yoke of colonialism and became, theoretically at least, their own masters; they still have to endure a kind of colonialism, that is, "neo-colonialism". And when their desire to diversify their farming system is acknowledged, they are guided towards those products which are often most likely to be replaced by substitutes manufactured in the developed countries. All the traditional raw materials are scheduled to be replaced, thanks to technological progress, by synthetic or artificial materials. The Third World is living on borrowed time.

Although it has been enthusiastically voiced that the share of the underdeveloped countries in international trade has grown in absolute terms, this share, in point of fact, has considerably deteriorated as a percentage.

World trade conditions have been worsened by the fact that the underdeveloped countries are never consulted on the monetary situation. Admittedly, a few privileged countries have been admitted into the club of the strong, as a mark of goodwill. The fact remains, however, that when the United States devalues the dollar, they do not consult anyone. Similarly, when the Ten felt the need to readjust their currencies for considerations of world trade, they went ahead without sounding out their trading partners.

2. The strategic standpoint

The developed countries are formidable adversaries in relation to each other. They consequently need allies, outside the northern hemisphere, to further their strategic aims. They naturally find these allies among the underdeveloped countries.

They thus build up throughout the underdeveloped world a network of strategic bases, either equipped with conventional weapons or suitable for modern weaponry, which they can use in the case of war waged against them or by them. Furthermore, these underdeveloped countries are potential allies who could take up arms on their side in the event of an international conflict.

But that is not all. As the developed countries have an arsenal of unimaginable destructive power at their disposal, they obviously do not want to come directly into conflict with each other. Therefore, each developed country wins over one or more underdeveloped countries, through which it either expresses certain ideas which it would be loath to voice directly or wages war against its adversaries.

It is thus quite clear that in all the conflicts that have occurred since the end of the Second World War, some major power, lurking behind the underdeveloped countries directly involved, has contributed to the conflict, but essentially from a financial standpoint, leaving the losses in human life to the sole responsibility of the underdeveloped countries.

Recent events in Africa are quite unequivocal in this respect. It is war between other countries that is being waged in Africa. War by proxy, for ideas and values that are quite alien to Africans.

This accounts for the generosity with which weapons and military equipment are supplied to the underdeveloped countries, generosity that contrasts sharply with the customary meanness as regards development assistance.

3. The political standpoint

A third justification for the right to development is to be found in the political preoccupations of the developed countries.

(a) The arrival on the international political scene of several newly independent States has tended to modify relations between ideologies. Underdeveloped countries such as these, with their outspoken approach, therefore represent for the great powers a kind of electorate. The idea has gained ground that the fact of contributing to the economic and social progress of a country in need generates in the recipient country feelings of gratitude with regard to the donor, leading subsequently to the satellization of the assisted country.

Such is the philosophy of tied-up aid.

This is, however, a somewhat over-simplified view. Relations between States and relations between human beings are placed on the same footing, as if political entities had human feelings, which is hardly the case.

Nevertheless, this line of thinking fashioned most development aid policies during the immediate post-war years. Moreover, it underlies bilateral aid strategy whose multiple combinations tend to mould opinion in the underdeveloped countries. Every donor State establishes so-called "privileged" economic relations with one or more underdeveloped countries, hoping to benefit in return from a certain political loyalty. These relations are rooted in colonization or were established during the period beginning in 1955, when reconstruction in Europe came to an end and the cold war assumed new dimensions. It was believed that it would be possible, by this means, to ensure the extension of ideologies which had survived the death of the Gods and which are shared by the Western countries with ambitions to secure a foothold in the South.

The object, broadly speaking, was either to combat communism or to propagate it.

Such aid, behind which lurks a desire to achieve ideological subjugation, is now denounced. It tends to be replaced by multilateral aid; but, as yet, this accounts for less than 20% of overall aid and is, for its part, fraught with serious disadvantages.

(b) The desire to safeguard peace is another justification of the right to development. Nobody has expressed this idea better than Pope Paul VI in his celebrated phrase: "Development is the new name for peace".⁽¹⁶⁾ The kind of peace which needs to be preserved is not only the absence of international war; it also involves the internal stability of States and international public order.

Poverty is likely in the last resort to split the world into two blocks: the powerful minority and the impoverished majority whose strength lies in its very poverty. As the feelings of injustice that this situation has aroused and perpetuated are increasingly intense, it would seem wise to be wary of a major upheaval. The status quo will persist so long as the confrontation resulting from differences in wealth has not been done away with, through a reduction in the excessively large disparity between rich and poor nations. Admittedly, a war, in the conventional sense, seems highly unlikely between these two groups. The consequences of any conflict, however, would be serious and should already be viewed with apprehension.

(16) "Populorum progressio".

In the meantime, the tyranny of power and possession has already created despair of a kind that could produce a climate of complete insecurity on the international scene in the future. This type of insecurity is all the more serious in so far as it is usually generated by individuals or isolated groups who blindly take vengeance on anyone for the misfortunes of which they are the victims. Nothing can justify individual or collective violence waged against innocent people, but the following words of Yeats deserve not to be forgotten: "Prolonged sacrifice can make the heart as hard as stone".

(c) It was thought that an improvement in living standards in the under-developed countries could perhaps provide them with a certain measure of stability. This idea has had to be thought out again since the events of May 1968. The affluent society has bred its own social disasters but, basically speaking, the idea remains valid. Concern of this kind has not been totally excluded from bilateral aid policies in recent years. It has been present in the minds of the leaders of developed countries and experts in international institutions.

Whether the issue is absence of war, internal security or international security, the economic and social development of the so-called "backward" countries may be regarded as a sort of life insurance by the rich countries. They take out an insurance policy, paying their premiums in the form of loans, gifts or aid; but they want to pay at the lowest possible rate, which means that the risk is barely covered.

4. The moral standpoint

(a) First of all, the responsibility that weighs upon the rich countries must be taken into account. Their responsibility is involved because international events and their consequences are their doing. Since they bring about these events in their interests alone, it is proper, considering that they benefit from the advantages, that they share the disadvantages. They decide on peace and war, the international monetary system, the conditions governing business relations, they impose ideologies, and so on. They tie and untie the knots of world politics and the world economy. What could be more natural that they should assume responsibility for the consequences of events and circumstances that are their own doing? What other justification could there be for the right of veto held by only five States out of the whole family of the United Nations?

Some of the events which they have orchestrated as they pleased date back quite far into the past, but their consequences are still dramatically present today. The responsibility for the harm inflicted should be shouldered by those who caused it; it is a matter of elementary justice.

On a journey to Germany in 1970, I acquired the distinct impression that the Germans of today, even the very young, still feel with some remorse the weight of the atrocities perpetrated under Hitler. In the history of the colonial powers, however, there were acts with moral implications as grave as those of Hitlerism, such as slavery, forced labour and colonialism with its train of misfortunes. In the consciences of those who were formerly colonized, the people responsible should not only be answerable for those events but should contribute to making good the damage they caused. Who will ever be able to measure the extent of the harm which the rounding-up of tens of millions of young, healthy men and women caused to Mali or Dahomey?

A young Congolese writer, Antoine Letambet Ambily, has written a play entitled "Europe stands accused". Making allowances for a somewhat naive tone in the dialogues and a few inevitable imperfections in the work of a young author, the play none the less portrays very effectively the mentality of African youth.

However, care should be taken not to minimize the underdeveloped countries' own responsibility. As development requires a constant reappraisal of accepted values and a permanent application of the ideals inherent in each nation to its fundamental options, it necessarily calls upon the participation of the people concerned.

(b) While the right to development may be justified by an appeal to responsibility, it is above all solidarity that should be invoked in this context. It is no longer a matter of weighing up possible gains or losses, and of hoping for advantages or fearing drawbacks. What matters is to focus on what should be the very foundation of all human behaviour and policy: man himself, "thrown into the world at his own risk", as the existentialists would say. He is put there to make his own way, and to achieve this, he must be free. But to be free means to love oneself in others, to act for man and in relation to him, not denying the existence of others, which would amount to denying one's own. Freedom stems from life itself....., not the life of an animal or an object, but the life of a thinking being, blessed with the power of choosing "to become what one is", as Nietzsche said. This faculty of "free will", which Descartes refers to is the common denominator and "raison d'être" of the human condition. It distinguishes us from mere animals. This is a moral, rather than a material "truth", as Senghor puts it.

The words of Kant spring naturally to mind: "Act as if you were both legislator and subject", and: "Act only according to a maxim which you would like to see become a universal law". Nobody better than Kant can help us in our quest for an ethics of development, for it must be a categorical imperative.

Being a man means being free and accepting the freedom of others.

Yet, "a starving man is theoretically free, while in actual fact remaining a slave", according to J.M. Domenach. What significance can freedom have for a man who is going to die of hunger? The rights of man, as proclaimed in the Declaration of Human Rights, of the citizen are meaningless for men who vegetate in starvation, disease and ignorance.

Scriptural religions have striven to elevate man towards God, thereby detaching him from the contingencies of his clan. The undertaking, however, has become secularized. The man of the "city" and the "gens" has become just Man.

As participants in mankind, we must first seek to conquer human selfishness which, as Karel Vasak explains⁽¹⁷⁾ "has an aggressive content and, as such, is a disease which threatens the still fragile body of human rights".

The self-centredness of peoples must yield to an aspiration towards the universal. Our first instinct is invariably towards ourselves or those who are close to us (family, fellow-citizens), while what is remote from us, seeming essentially hostile, arouses our own hostility. Is it not true to say that "we like only what we do know"? Feelings of charity stir in us only when poverty comes very close to us, and we go so far as to set up charity as a natural obligation.

St. Ambrose used to say: "It is not your wealth that you share generously with the needy man; you merely restore to him what is rightly his". The prophet Mohammed was to make this one of the five pillars of Islam. This interpretation of charity as an obligation is not the monopoly of religious figures. In answer

(17) Karel Vasak, "Egoïsme et Droits de l'Homme (Esquisse pour un procès)", Mélanges Polys Modinos, 2.

to the question, "Why help underdeveloped countries?", Lester Pearson replied: "It is only right that those who have should share with those who have not".⁽¹⁸⁾ Our hearts and minds bear the stamp of this precept within the familiar circle in which we live.

A gradual effort must be made to enlarge the familiar circle from the individual to the family, then to the "gens", the city, the nation. Each stage calls for the renunciation of a particle of freedom or sovereignty for the benefit of the collective entity, which is thereby invested with a responsibility.

Today, a universal approach is the order of the day, a rationalized world attitude.

The march of mankind towards total solidarity may be considerably slowed down by barriers based on race, religion or other factors. But all forms of selfishness must ultimately give way with the emergence of a broader conception of society.

Let us reflect on these fine words of Jacques Leclercq:

"The aim of society is not merely to safeguard freedom in equality and prevent men from harming one another, but to direct community life towards progress, to organize work so as to bring men together in a common cause, the cause of civilization which goes on from generation to generation, and above all to ensure that the improvement of living conditions and the freeing of mankind from primitive existence respond to the basic exigencies of physical subsistence and that men devote themselves to forms of activity freely chosen in accordance with the exigencies of the mind".

"The aim of society is to achieve a finer, freer, more human existence, calling upon the increasing ways and means offered by civilization made available to everyone, on a basis of equality"⁽¹⁹⁾.

Leclercq wrote this page while under the emotional shock of the wave of generosity provoked by the atrocities of the Second World War and the enthusiasm generated by the San Francisco Charter.⁽²⁰⁾ The truth it expresses, however, is eternal. If only we could comprehend it at once.

Let us recall that nineteenth-century Europe, reacting against the golden age of natural law as represented by the previous period, had shut itself up in a narrow philosophical and juridical positivism. It took the horrors of the 1939-1945 war to awaken it and make it realize that the self-centredness of men and States was the surest threat to the safety and dignity of each and every one of us.

Natural law came to the fore again at the same time as the surge of solidarity was rising in the aftermath of the war.

Human society is still in a crisis situation, as it aspires to a universal status, but is constantly a prey to egotism. Overcome at the regional level (or on the way to being overcome), egotism of this kind is still manifest on the international scene. The flame of solidarity which was kindled after the war has not been kept alight. It nevertheless led to acts of generosity which have a juridical as well as moral value.

(18) Lester B. Pearson, "Partners in Development", (The Pearson Report), Report of the Commission on International Development. Prayor Publishers, 1969, p.8.

(19) Jacques Leclercq, "Le fondement du droit de la société", 1947, pp. 39 and 209.

(20) Leclercq wrote his book in 1947.

5. The juridical standpoint:

The Algerian "Justice and Peace Commission" has called for the proclamation of a "Right to Development", to be added to the Universal Declaration of Human Rights.

In our view, it would seem pointless to be burdened with an additional proclamation, as if it were a matter of instituting a new right.

The right to development is already embodied in international law. It is clearly set forth in the United Nations Charter as a consequence of the renunciation of the normal attributes of conventional sovereignty and as an extension of the duty of co-operation.

By stating their firm resolve "to accept principles and establish ways of ensuring that no use is made of armed force, except in the common interest", the signatory States thereby renounced the most ancient attribute of sovereignty, namely the right to wage war.

In deciding to establish a responsible international society, it was natural that it should be granted attributes in the sphere of international economic public order. This was expressed by Lester Pearson in the following terms: "This concept of world community is itself a major reason for international co-operation for development".⁽²¹⁾ The signatory States declared their firm resolve: "to foster social progress and to establish better living conditions in broader freedom", "to appeal to the international institutions for promoting the economic and social progress of all peoples".

Articles 55 and 56 of the Charter itself are even more explicit. On the basis of the principle of the equality of rights between nations and their right to self-determination, the United Nations pledged themselves "to promote higher standards of living, full employment, and conditions of economic and social progress and development; solutions of international economic, social, health and related problems; and international cultural and educational co-operation".

The members of the United Nations pledged themselves, furthermore, to work in co-operation with the organization, either separately or jointly, so as to attain the goals thus defined.

The duty of co-operation and its consequences and the right to development are set forth even more clearly in the Declaration on the principles of international law concerning friendly relations and co-operation between States, in accordance with the United Nations Charter approved by the General Assembly in its resolution 2625 (XXV) of 24 October 1970. The paragraph entitled "The duty of States to co-operate with one another in accordance with the Charter" concludes with the words: "States should co-operate in the promotion of economic growth throughout the world, especially that of the developing countries".

The Universal Declaration of Human Rights, furthermore, proclaimed economic and social rights in its articles 22 to 27.

As early as January 1952, at the request of the Commission for Human Rights, the Secretary-General of the United Nations prepared a report "on the activities of the United Nations and the Specialized Agencies in the field of economic, social and cultural rights", which was to represent one of the first steps towards the establishment of the international covenant on economic, social and cultural rights, which was to be signed only in December 1966, and has come into force since 23 March 1976. The covenant states in its preamble that "the ideal of the

(21) Lester B. Pearson, op.cit., p.10.

free human being, freed from fear and poverty, can only be achieved if suitable conditions for each and every human being to enjoy their economic, social and cultural rights are created".

The constitutions of all the United Nations agencies state a profession of faith on "the common prosperity of mankind" and on the need to establish, maintain and strengthen international co-operation between all the nations of the world, in view of the principle of universal solidarity. It would be superfluous to go into these prescriptions in detail here, with regard to Unesco, FAO, ILO and WHO.

On the occasion of its sixth extraordinary session, on 1 May 1974, the General Assembly of the United Nations adopted, in its resolution 3201 (S-VI), an historic Declaration on the establishment of a new international economic order. This Declaration rejects the present international economic order, stresses the need to avoid dissociating the interests of the developed countries and those of the developing countries, and sets out the guiding principles for the establishment of a new international economic order.

On 12 December 1974, another significant event occurred at the United Nations. The General Assembly, in its resolution 3281 (XXIX), adopted the Charter of Economic Rights and Duties of States. This document in 34 articles establishes the right to development. This right can be broken down into the right of a country to choose its own particular economic system, the right of permanent sovereignty over its riches, resources and activities, and the duty of solidarity. Article 22 of the Charter stipulates that: "all States should respond to the needs and aims of development.....".

In view of what has been said, it can be asserted that the right to development is not only a right according to the philosophical sense of the term. It also corresponds to the definition provided by jurists, especially that given by Edmond Picard who believes that "a right is a force ... which is fulfilled in the form of enjoyment, exercised by a subject over an object and protected by social constraint..".

Its true foundation is the obligation of solidarity, the absence of which can deal deadly blows to human survival.

The "oil war" has shown underdeveloped countries that they were not totally powerless in the face of the major powers and that, in some circumstances, they are quite capable of imposing their will.

Helmut Roesler has contributed the following analysis to this situation: "the West needs raw materials and the overseas countries own them. Up to now, the situation was dominated by the principles of free trade. Third World countries, however, are beginning to grow aware of power conferred on them by the ownership of tin deposits or a copper mine. They want to change the system and to do so straight away". They wish to achieve this within the framework of a more equitable new economic order which would recognize their right to development. This is what has led them to demand safeguards against price fluctuations for their products and to advocate, among other solutions at UNCTAD IV, the setting up of a common fund and the indexation of the prices of raw materials on changes in the prices of industrial goods.

The idea of a right to development has been gaining ground. The conception and the systematic definition of human and economic, social or cultural rights are comparatively recent. Awareness of such rights has finally been imposed by the reformist and revolutionary ideas of the late eighteenth and early nineteenth centuries.

With the exception of the founding of ILO, the international community before the Second World War concerned itself with human rights in only a very indirect manner, and the League of Nations acted in this field with such dilatoriness that its efforts were stillborn. As regards the problem of development conceived in the framework of economic interdependence, it was entirely absent from the preoccupations of the founders of the League of Nations.

The United Nations Charter was the first to bring to the centre of the international political stage an overall codification of human rights which went beyond the scope of the traditional civil and political rights and encompassed economic, social and cultural rights, set up as "aims" on an equal footing with peace and security.

The right to development has thus descended from the sphere of morals to that of law, but will it necessarily be better off?