

THE PROBLEM OF GLOBAL ECONOMIC INEQUITY: LEGAL STRUCTURES AND SOME THOUGHTS ON THE NEXT 40 YEARS

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True realism should be aware of disasters within sight; and the only realistic policy to adopt seems to consist in building new structures.

- Jan Tinbergen

Not surprisingly, forty years looks like aeons to most of the inhabitants of the southern ghettos of the world because their average life span is itself less than forty years. Nonetheless, despite divergence in the span and quality of life, the ever present possibility of nuclear destruction has led both northerners and southerners to share an overriding concern with the very survival of the human species on this planet. Besides the apocalyptic contingency there are, to mention only a few, other "barbarians at the gates" such as the escalating arms race, population explosion, resource depletion and global economic inequity—manifested through mass poverty and enormous disparities between the rich and poor nations. These problems present extremely serious threats to the survival and the prosperity of mankind. Our perception of these threats should lead to fundamental structural changes because, due to the magnitude of the problems, mere marginal adjustments would be a sterile exercise in futility.

Further, these problems are, by and large, interrelated. In 1976, for example, the expenditure on armaments by the less developed countries (LDCs) amounted to \$56.3 billion (almost three times the net official development assistance (ODA) received by them).¹ Needless to say, had even a part of these resources been utilized for development, the outcome would have been far more desirable. This, in turn, could have been possible only if there had been a credible system of collective security in the world.

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**The views expressed in this paper are those of the author and do not reflect those of the government of Pakistan.

¹ Karachi, The Dawn, March 8, 1979, at 9 col. 5.

The linkage characterizing the cluster of international problems confronting us today clearly points to the need for remedial action along a broad spectrum covering, among others, the political, economic and legal structures. However, the theme of the symposium obliges one to narrow his focus mainly to the legal dimensions while space limitations leave little option except to select one of these problems for discussion. However, in proposing to deal with the issue of global economic inequity, I assume that serious endeavours will be made during the next forty years to build viable legal structures for resolving other major international problems.

In any ranking of current hazards and lethal potentialities confronting the world, I would unhesitatingly place the problem of global economic inequity next only to the outbreak of a nuclear war. The division of the world into the rich and poor is, of course, not a unique contemporary phenomenon. But in a world which, thanks to the breakthrough in communications, has become a global village, co-existence of unparalleled affluence in one part with degrading poverty in the other portends a morally intolerable and politically explosive future. As Jahangir Amuzegar perceptively points out:

Whether one likes it or not, mankind is now rowing a large, fragile and uneven boat. Those who are relatively more comfortably placed than others are obviously not interested in rocking it. But this short-sighted preference for stability over equity may end up giving them neither. The fatal flaw in unshared affluence is its tendency to sow the seeds of its own decay.²

The existing international economic system has a pronounced bias against the poor members of the international community. In fact the persistence and accentuation of global economic inequity is the outcome of a systematic process visibly evident in the mode of "unequal" exchange. Again the basic architecture of the world economic order comprising the "Bretton Woods" institutions—the International Monetary Fund, the World Bank and GATT continues to be dominated by the rich and powerful. The United Nations, even after the enlargement of its membership, has been performing essentially forum functions without achieving any success in effecting a structural transformation which would be advan-

² J. Amuzegar, *A Requiem for the North-South Conference*, 56 FOREIGN AFFAIRS 158 (Oct., 1977).

tageous to the poor. At present there is no mechanism for planned international development (though development strategies on paper abound). Neither does there exist any structure for the redistribution of income nor for international deficit spending. Similarly, no institution exists for initiating and implementing remedial policies for countervailing market forces or for guarding against inappropriate transfers of goods, technology and institutions from the rich countries. The weak in this setting have scant hope of redemption and the rich little fear of restraints.

Within national orders such lacunae are taken care of through the instrumentality of law. But international law created by a few prosperous European nations only recently ventured to accept social and economic development as an issue of its legitimate concern. The extent of indifference of international law to problems of the vast majority of mankind is indicated by the fact that even this prefatory recognition was hailed as "far and away the most important new departure in contemporary international law."³

International law continues to be based on the sociological foundation of a community of sovereign states and the axiological foundation of christian occidental culture despite the emergence of nearly one hundred new states. While the occidental orientation is often criticized, the concept of state sovereignty is most ardently championed by the new nations themselves. It must be recognised that the lack of appropriate legal structures for coping with the problems of global inequity is largely accounted for by the underlying assumption that international law is a law of liberty for facilitating exercise of the sovereign prerogative by the coordinate states. The excessive accent on state sovereignty tends to impede the positive evolution of international law. Today the needs and priorities of the developing countries should lead them to emphasize human solidarity instead of the unrestricted exercise of a nation state's prerogatives. "A community," as Røling aptly says, "in which the majority of the members are indigent has need of a law that expresses responsibility of the whole for the part."⁴

Since the shape and design of any structure is determined by the

³ W. Friedmann, *The Relevance of International Law to the Process of Economic and Social Development*, 2 THE FUTURE OF INTERNATIONAL LEGAL ORDER 4 (R. Falk & C. Black eds. 1970).

⁴ B. ROLING, INTERNATIONAL LAW IN AN EXPANDED WORLD, XV *et seq.* (1960).

complex of tasks, responsibilities and functions to be performed by it, we should identify with greater precision the contours of the problem area. Global economic inequity is a two dimensional phenomenon—encompassing the absolute and relative levels of poverty. Without discounting the importance of bridging the gap between rich and poor nations, I feel that our predominant concern ought to be the extirpation of absolute levels of poverty. In fact, poverty, if viewed in the proper perspective, is really relevant in terms of people rather than nations. Consequently, the justification for demanding that the widening gap between the developed and developing countries be eliminated as a part of a New International Economic Order (NIEO) ultimately rests on the assumption that the real beneficiaries of the process will be the poor citizens of the LDCs. This assumption is plausible but our recent experience suggests that economic growth has done very little for the poorer of the world's citizens. The existing structures of ownership and power in the LDCs have effectively prevented the poor from benefiting from growth. This pattern is not only pronounced in the so called "Fourth World" of the very poor, but also in statistically well off countries like Brazil where more than half of the population stands excluded from the benefits of the rising tide of prosperity. In Robert Tucker's words "The growth of equality among states may prove quite compatible with a continuing or even perhaps a deepening inequality among individuals within states."⁶ The upshot is that though growth is a necessary condition for reducing poverty, it is not in itself sufficient for the achievement of that goal. Growth can help the poor only when it reaches the poor.

Of late one discerns a shift in thinking reflected in a heightened concern for the provision of basic human needs to the most deprived people of the world. It hardly needs to be stated that the worst form of inequity is the failure to satisfy those material needs which are linked with human survival. "In such cases the equation is simple: failure to satisfy them means inability to sustain life. This applies to food and water, health care and to varying extents to shelter and clothing."⁷ I would include a minimum level of education in this list because the concept of human survival also possesses a significant qualitative dimension.

⁶ R. TUCKER, *THE INEQUALITY OF NATIONS* 61 (1977).

⁷ *RESHAPING THE INTERNATIONAL ORDER (A Report to the Club of Rome)* 75 (A.J. Dolman ed. 1977).

The resolution by the developed countries to assist the LDCs in expanding their capabilities for meeting more effectively the basic needs of their people sounds most heartening. But the gap between declaration and performance is indeed monumental. The flow of ODA (which is not an outright grant but contains elements of concessionality) as a proportion of GNP has declined from .52% in 1960 to .30% in 1977 against the target of 0.70% adopted by the United Nation General Assembly in 1970.⁷ In fact the flow never exceeded half the target level and even absolute amounts were less in 1976 and 1977 in real terms than in 1975, 1972 or 1971.

The World Bank has projected an annual rate of growth at .57% for the LDCs during 1975-85. Assuming this rate holds on to the end of this century, the number of the absolute poor in the total population is projected to decline from 770 million to 600 million in 2000 A.D.⁸ This scenario is based on a set of assumptions which have scant chance of materializing in real life. On the contrary, countertrends are clearly visible. Persistently declining levels of ODA, ardent pursuit of neo-mercantilist policies and little willingness to effectuate changes necessary for the establishment of a NIEO are reinforcing the asymmetries of the existing arrangements. Under these circumstances the number of absolute poor will be larger and their situation more miserable than even these morally intolerable tragic projections.

What ought to be done to resolve this critical international problem? The answer is surprisingly simple but radical. The problem is insuperable only in the context of the current conceptual framework and institutional structures. The obvious need is to transcend them. The basic postulate all along has been that there is a fundamental link between the satisfaction of basic human needs and *rapid growth in the developing countries*. The gap between the task and capacity is to be bridged, to some extent, by subvention of the developed countries. The quantum of assistance, and that only partially concessional, is determined by the fluctuating political will and varying motivations in the donor countries.

It is my considered view that the resolution of the problem is possible only if the alleviation of absolute poverty is detached from economic growth in the developing countries. Since entitlement of an individual to food, health, shelter and basic education

⁷ The World Bank, Address by Robert McNamara to the Board of Governors 45 (September 1978) [hereinafter cited as Address by R. McNamara].

⁸ THE WORLD BANK, WORLD DEVELOPMENT REPORT 33 (1978).

is premised on his being born into a world we like to call "civilized," it ought to be the responsibility of the international community as a whole to transform this entitlement into a concrete reality. In this context the colour, creed, ideology, sex or national origin of the individual should be of no relevance. This responsibility is too important to be left either to the developing countries caught in the vicious circle of under development or the charitable impulses or foreign policy considerations of the affluent nations.

There should be no doubt as to the validity of the proposition requiring assumption of this responsibility by the affluent part of the world. What is sought here is the replication of arrangements already adopted in all progressive countries within their domestic contexts. Assuring every citizen of the state a certain minimum level of economic well being has come to be an undisputed national objective. Private philanthropy thus stands replaced by social security. The requisite resources are raised mainly through the progressive taxation of well off segments of the community. The absence of corresponding institutional structures at the international level is the sole reason for the persistence of degrading poverty in the world.

The type of legal structures which I am visualizing for the resolution of the problem would be a functional substitute of the government at the international level. But these structures will not amount to the establishment of a "World Government" as such. The proposed structures would be more akin to the model drawn up by Richard Falk of a "non-territorial central guidance mechanism"⁹ built around the functional imperative of eradicating absolute poverty from the world. The transfer of resources will consequently become an essential function that the system must perform. The ethical concept of voluntary charity will be transformed into the legal concept of binding obligation. The necessary resources will be generated through an international progressive taxation system. The poorest of the poor of the Fourth World will obviously be exempted from taxation while the new middle class nations will be obliged to make contributions on the basis of a clearly defined schedule of capacity to pay. The main burden, in accordance with the canons of progressive taxation, will have to be borne by the developed countries of both the First and Second World.

⁹ See, R. Falk *Conventional State Craft versus the Prospects for Global Reform* 8 N.Y.U. J. OF INT'L L. & POL. 148 (1975).

Alternatively, a different kind of regime of international taxation can be developed in due course. Some of the possibilities are: a tax on armament spending; a general tax on international trade; a tax on selected internationally traded commodities; a tax on polluters; economic rents for exploitation of the resources of the deep oceans; rent for use of international common areas; a tax on the income of trained immigrants from the LDCs.

Before proceeding further, certain issues related to the building of proposed structures need to be elucidated.

By putting a viable floor under global poverty, we will be removing an intolerable affront to the human dignity. The cost will not be prohibitive. According to a carefully worked out estimate, \$10-15 billion in additional annual expenditures can enable the entire population of the world to meet its basic human needs at the level of a country like Sri-Lanka, which enjoys one of the highest physical qualities of life of any country defined as poor by traditional measures of GNP alone.¹⁰ This level is, however, to be conceived in a dynamic setting. During the course of forty years there should be a progressive raising of the floor of need requirements.

I believe that mobilization of funds will be relatively easy. One reason for the declining will with respect to ODA is the fact that the citizens in the donor countries have serious doubts about the ultimate beneficiaries of the sacrifices made by them. The workers of Detroit rightly object to being taxed to subsidize the ruling elite of Zaire. But it would be far easier to convince them that their sacrifice is justified if it is not for the benefit of the petty bourgeoisie or ruling elite of a client state but for the wretched of the earth.

With alleviation of poverty becoming a responsibility on the part of the world community with the capacity to pay, a substantial quantum of resources will become available for investment by the developing countries in directly productive projects. Within the present resource constraints, lumpy strategic investment represents a trade off between the accentuation of misery today and possible better quality of life tomorrow. Once scarce resources are released from meeting certain types of requirements, they will be reallocated, making possible their optimal utilization with better prospects of eventual self-generating growth. This will also dispel the impression in the Third World that the "basic

¹⁰ See, J. Sewell *et al*, THE UNITED STATES AND WORLD DEVELOPMENT AGENDA 120 (1977).

human need approach" is a trap to keep us *really at a basic level*.

It need not be emphasized that the proposed model is not intended to provide an escape hatch to the national governments and regional/local authorities to abdicate their responsibilities with respect to the welfare of their own citizens. They will not only be expected, but will have to be constantly persuaded, to improve the qualitative aspects of need satisfaction. Basic education, for example, is envisaged to be an international concern which should make it possible for the national government to divert a greater amount of resources than before to the promotion of higher education. Similarly, it should remain primarily a domestic responsibility to make the poor economically more productive. The magnitude of the task is so colossal that assumption of set responsibilities by the international community will not, by any stretch of imagination, supplant national commitments. In fact, if conceived on an analogy to a federal polity, it would mean transfer of certain subjects from the state/provincial list to that of the federation. This process cannot mean that states will be thereby absolved from discharging their own responsibilities. Specifically, the nation states will have to do their utmost to effect necessary reforms in their domestic orders. The national institutions will have to be made responsive to the needs of the poor. Their development strategies should be imparted similar orientation. Although financial and technical expertise will be provided by the world community where necessary, the actual execution of projects for meeting basic needs will be primarily through the agency of the individual nation state. The input for antipoverty planning will have to be provided by the concerned countries.

Similarly, the global antipoverty agenda of action does not seek to dispense with the need of international action for the establishment of a NIEO. During the next forty years a planetary compact will have to be entered into, regarding *inter alia*: a substantial increase in real resource flows from rich to poor countries on a "predictable continuous and increasingly assured" basis; expanding volume of LDCs' exports on more favourable terms; greater access to technology; and revamping the international monetary system. These developments should contribute significantly to the resolution of the problem of relative poverty, apart from their positive impact on absolute levels of poverty. One can thus look forward to expansion in the functional horizon of the central guidance mechanism envisaged with regard to the problem of absolute poverty.

But my primary concern remains with the problem of mass poverty. On the organizational plane I would suggest setting up of a "World Anti-Poverty Authority." The function of this Authority should be:¹¹

- (1) Formulation of antipoverty objectives for the LDCs.
- (2) Defining clearly operational programmes and institutional policies for achievement of the objectives within specific time periods.
- (3) Determining the levels of resources required to meet the minimum goals.
- (4) Preparation of multi-year (preferably for a five year period) budgets within a general framework sanctioned by the (hopefully reformed) U.N. General Assembly.¹²
- (5) Collection of taxes from nation states and their disbursement.
- (6) Surveillance and monitoring of utilization of resources by the recipient countries.
- (7) Imposing sanctions on tax assesees in case of default in payment and on recipients in event of misapplication of funds.

To make the "World Authority" functionally viable and effective it would be essential to provide it with the support of three Regional Authorities—one each for Asia, Africa and Latin America. It would not be possible at this stage to spell out the organizational details of these institutions, but I would like to mention some features which I would consider desirable. (a) The size of the World and Regional Authorities should be manageable. (b) They should be manned by personages of great eminence and stature like the Judges of the International Court of Justice. (c) The membership should be drawn equitably from international taxpayer countries and from those who are beneficiaries of the anti-poverty programme. Geographical balance should also be kept in view. (d) Members of the Authority would not, however, be expected to represent any special interests but will be acting on behalf of the international community as a whole.

¹¹ See, Address by R. McNamara, note 7, *supra* at 30. Some of the proposed functions of the Authority represent extrapolation of Mr. Robert McNamara's policy advice to the individual developing countries.

¹² It is hoped that the U.N. General Assembly will become a more effective body for which some structural reforms would be essential e.g. enlargement of binding decision making powers coupled with perhaps some sort of voting reforms to make this arrangement acceptable to the developed countries. The Authority will, *inter alia*, need a more effective General Assembly for ensuring backing for imposition of sanctions on tax defaulters etc.

Leaving aside organizational details (which will be, in any case, the subject of international negotiation and hard bargaining) for the moment, our primary task would be to examine the feasibility of encouraging the march of the world community to a point where it will accept the principle of the proposed institutional leap—which has profound implications for the existing nation state system and involves substantial financial sacrifice by many countries.

Why should the rich country be willing to be taxed for the objective of eradication of mass poverty? Their willingness can be forthcoming if they are inspired by an ethical conception of human solidarity. History, however, has demonstrated that ethical vision has only infrequently governed the actions of men. Still, it would be worthwhile to make sincere endeavours to mould elite and public opinion to a different conception of the world. Vision is, after all, not entirely irrelevant in history. But even given the requisite effort, the glacial pace of change in human attitudes and social institutions generates pessimism. At the same time the perception of a shared danger—unparalleled in history—can indeed furnish a viable basis for action. The problem is that the level of perception is not at all commensurate with the explosive potentialities. Both the elite and mass public opinion in the developed world (both market and command economies) have been woefully slow in reading the handwriting on the wall. This uneven perception has led to the absence of political will to effect significant redistribution premised on justice for all segments of global society. It is not realized that a persistent denial of distributive justice in the context of nuclear proliferation and stark desperation is bound to lead to the emergence of revolutionary regimes who may not be overly inhibited in resorting to the ultimate tactics. As Robert Heilbroner pointedly brings out: "The possibility must then be faced that the under-developed nations which have 'nothing' to lose will point their nuclear pistols at the heads of the passengers in the first class coaches who have everything to lose."¹³ An international class war for redistribution may not occur. But commando-type nuclear terrorism by the militant groups has now acquired substantial credibility. Apart from the nuclear terrorism one cannot, no matter what one may wish, exclude the horrifying possibility of some desperate southern country

¹³ R. HEILBRONER, AN INQUIRY INTO THE HUMAN PROSPECTS 44 (1975).

developing and using "chemical and biological weapons in an effort to challenge the unabashed technological weapon superiority of the Northern World."¹⁴

A steady voluntary progress towards a world social security system can prevent events coming to such a tragic divide. Hunger need not be turned into fury before the world wakes up. With every passing moment the margin of error and delay is progressively shrinking. Let us fervently hope that in the cynical calculus of politicians the long-term interests of mankind, in view of the contemporary unique situation will, for a change, outweigh the short-term considerations. It would be essential, however, to keep on reiterating the hazards in relevant quarters since it obviously often goes unnoticed.

Even for the LDCs this model is not unexceptionable, owing mainly to its implications for the concept of state sovereignty. The legal structures envisaged here entails the voluntary surrender of a part of sovereignty. They do not supplant the nation state system but certainly circumvent it. The developing countries are passionately attached to the concept of national sovereignty. This springs from their historical experience and also from a psychological need to bridge the gap between legal equality and factual impotence. Once, however, a legally binding commitment is made for the transfer of resources for alleviations of poverty and compliance is assured through institutionalized international arrangements, LDCs would be willing as a *quid pro quo* to accept monitoring of their development policies and utilization of transferred resources. I am sanguine that pragmatic considerations will be strong enough to effect the necessary mutation in conceptual thinking.

One would very much like to reshape the world nearer to our hearts desire overnight. Telescoping processes of change is certainly possible, but this can be accomplished only within very real limits. The proposed legal structure cannot be erected in "one go." The process of construction involves the careful and assiduous placing of one building block on the other. First of all, a framework treaty setting out antipoverty objectives, organizational structures and financing arrangements will have to be negotiated. After the functional structures are on the ground, action should commence with the poorest part of the world popula-

¹⁴ T. Hyder, *Inchoate Aspirations for World Order Change* 2 INTERNATIONAL SECURITY 64 (1978).

tion. It would certainly take some time before even the minimum needs of the poorest of the poor are met. In any case our target should be to eradicate poverty as we know it today from the whole world by 2000 A.D. But as stated earlier, the levels of need should be viewed dynamically. During the first twenty years of the next century we should therefore aim to move upwards towards satisfaction of needs which are more than "basic" according to present criteria.

Then arises the basic question, lurking all the time in the background. Will it be possible for us to bring about non-incremental changes through peaceful and orderly means? If it really happens in our age it would be indeed a great tribute to the wisdom of the present generation of mankind. In my view, with incessant endeavours, a clear perception of our hazards and an ardent aspiration to make the world a better place to live in for our children, it should not be impossible to build legal structures capable of effectuating peaceful change.