From the role of cooperative law for development to sustainable development and cooperative law

Desde el papel del derecho cooperativo en el desarrollo, hasta el desarrollo sostenible y el derecho cooperativo

Do papel do direito cooperativo para o desenvolvimento ao desenvolvimento sustentável e ao direito cooperativo

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If *"[…], when we see the Earth from space, we see ourselves as a whole,"* we *"see the unity, and not the divisions",* and if this view *"is such […] a compelling message; one planet, one human race […]",* [1] alors nous devons en finir avec *"[...] la majestueuse égalité des lois qui interdit au riche comme au pauvre de coucher sous les ponts, de mendier dans les rues et de voler du pain »* [2] para que lo otro pueda subsistir, porque *"la esencial heterogeneidad del ser"* [3] nos obliga a nosotros a respetar la otredad de la diversidad.

Abstract

This article explores the relationship between cooperative law, development, and sustainable development. It argues that cooperative law is not just a tool but a principle that aligns with the International Cooperative Alliance's cooperative principles. It delves into the evolution of the concept of "development," which has shifted from economic growth to a multidimensional process, incorporating social, political, and environmental dimensions. The article traces this transformation, highlighting the significant role law plays in shaping development. It further argues that cooperative law, rooted in democratic principles, can contribute to sustainable development by promoting social justice, diversity, and equality. The text also examines the emergence of sustainable development as a legal principle in international law, emphasizing the human right to sustainable development. The contribution suggests that cooperative law's unique structure allows it to regenerate social justice, especially in intercultural and global contexts. It concludes by asserting that cooperative law is essential for achieving a just, sustainable future.

Keywords: Cooperative law, Sustainable development, Social justice, International law, Development theory, Cooperative principles, Human rights, Law and development, Economic growth, Diversity, Multidimensional development.

Descriptors

K23 Law and Economics: Regulation and Business Law
Q01 Sustainable Development
D63 Equity, Justice, Inequality, and Other Normative Criteria and Measurement
K33 International Law
L31 Nonprofit Organizations and Public Enterprises
O10 Economic Development
K39 Other Substantive Areas of Law

Resumen

Este artículo explora la relación entre el derecho cooperativo, el desarrollo y el desarrollo sostenible. Argumenta que el derecho cooperativo no es solo una herramienta, sino un principio que se alinea con los principios cooperativos de la Alianza Cooperativa Internacional. Aborda la evolución del concepto de "desarrollo", que ha pasado de ser un crecimiento económico a un proceso multidimensional, que incorpora las dimensiones social, política y ambiental. El artículo rastrea esta transformación, destacando el papel significativo del derecho en la configuración del desarrollo. Además, argumenta que el derecho cooperativo, basado en principios

1 Hawking, St., Brief Answers to the Big Questions, John Murray Publisher 2018, 4.

2 France, A., Le lys rouge, 1884, 118.

3 Antonio Machado, cited by Octavio Paz in his book "El laberinto de la soledad", México – Buenos Aires: Fondo de Cultura Económica, 4ª edición 1964, 7.

democráticos, puede contribuir al desarrollo sostenible al promover la justicia social, la diversidad y la igualdad. El texto también examina el surgimiento del desarrollo sostenible como un principio legal en el derecho internacional, haciendo hincapié en el derecho humano al desarrollo sostenible. La contribución sugiere que la estructura única del derecho cooperativo le permite regenerar la justicia social, especialmente en contextos interculturales y globales. Concluye afirmando que el derecho cooperativo es esencial para lograr un futuro justo y sostenible.

Palabras clave: Derecho cooperativo, Desarrollo sostenible, Justicia social, Derecho internacional, Teoría del desarrollo, Principios cooperativos, Derechos humanos, Derecho y desarrollo, Crecimiento económico, Diversidad, Desarrollo multidimensional.

Resumo

Este artigo explora a relação entre o direito cooperativo, o desenvolvimento e o desenvolvimento sustentável. Argumenta que o direito cooperativo não é apenas uma ferramenta, mas um princípio alinhado com os princípios cooperativos da Aliança Cooperativa Internacional. O artigo aborda a evolução do conceito de "desenvolvimento", que passou de um crescimento econômico para um processo multidimensional, que inclui as dimensões social, política e ambiental. O texto traça essa transformação, destacando o papel significativo do direito na formação do desenvolvimento. Além disso, argumenta que o direito cooperativo, fundamentado em princípios democráticos, pode contribuir para o desenvolvimento sustentável ao promover justiça social, diversidade e igualdade. O artigo também examina o surgimento do desenvolvimento sustentável como um princípio jurídico no direito internacional, enfatizando o direito humano ao desenvolvimento sustentável. A contribuição sugere que a estrutura única do direito cooperativo permite regenerar a justiça social, especialmente em contextos interculturais e globais. Conclui afirmando que o direito cooperativo é essencial para alcançar um futuro justo e sustentável.

Palavras-chave: Direito cooperativo, Desenvolvimento sustentável, Justiça social, Direito internacional, Teoria do desenvolvimento, Princípios cooperativos, Direitos humanos, Direito e desenvolvimento, Crescimento económico, Diversidade, Desenvolvimento multidimensional.

1. Introduction

By marking its 50th anniversary during the 2nd International Year of Cooperatives [4] with a monograph on "Derecho Cooperativo y Economía Social y Solidaria [Cooperative law and social and solidarity economy]" the Revista 'Cooperativismo y Desarrollo [Cooperativism and development]' summons us to reflect on the notions of 'development', 'law' and 'cooperative law'. This contribution is an attempt to do so from an international perspective based on the premise that cooperative law [5] is only that law which translates 'the cooperative principles' as enshrined in the 1995 International Cooperative Alliance

4 Declared by the United Nations Organization in 2024 (see UN Doc. A/RES/78/289).

5 In addition to the law on cooperatives, cooperative law are all legal principles, rules and practices that shape the legal structure of cooperatives in such a way as to compel and allow them to pursue their triple objective of meeting the economic, social and cultural needs and aspirations of their members and which justifies the attribution of legal personality to them.

Statement on the cooperative identity and as they are recognized by law (hereinafter: 'the cooperative principles'). [6] Considering the gradual juridification of the notion of 'development', the contribution argues that the debates on the notion of 'development' have led to the emergence of the legal principle of sustainable development that carries a radically new notion of development. It demonstrates that cooperative law can and must contribute to implementing this principle. Despite this focus on sustainable development and cooperative law, the contribution recapitulates these debates as they engendered concepts which are not redundant and which support the opinion that sustainable development has indeed evolved into a legal phenomenon.

1975, the year of the first issue of the Revista 'Cooperativismo y Desarrollo', was midway into the Second Development Decade of the United Nations. [7] This decade was a period of an extraordinary, yet mostly forgotten, intellectual turbulence that affected the notions of 'development' and 'law' and their relationship. It also influenced considerably the notion of 'cooperative law'. The 1970ies seem to have undone first steps towards a new notion of development and of a respective law that had been taken in the aftermath of World War II, and especially during the First Development Decade [8] in reaction to previous negative experiences with development policies and related legislative measures.

Despite this apparent backlash, the 1970ies held the germs for a radical transformation of the notion of development. They functioned as a hinge between development conceived as an economic goal and development conceived as a multidimensional, multifaceted process, as well as between law conceived as a tool to reach the goal of economic development and law conceived as shaping development. The

6 According to the 1995 International Cooperative Alliance Statement on the cooperative identity (ICA Statement, first published in: International Co-operative Review, Vol. 88, no. 4/1995, 85 f.; also available at: http://ica.coop/en/whats-co-op/co-operative-identity-values-principles) "[t]he [seven] cooperative principles [as listed and explained in the Statement] are guidelines by which cooperatives [as defined in the Statement] put the [six] values [on which they are based and as separated in the Statement from the four ethical values in which the members believe] into practice."

As 'the cooperative principles' form part of the Articles of Association of the ICA (According to their Article 12.2 "All Members [of the ICA] shall expressly adhere to the Statement on the Cooperative Identity as set forth in Appendix "A" to these Articles of Association." See at https://www.ica.coop/en/media/library/governance-materials/ica-articles-association) and as they are heteronomously recognized under public international law, all those who make cooperative law have to respect them (for more details, see recently Henrÿ, H. The Legal Principle of Sustainable Development and Cooperative Law - Remembering Professor Hans-H. Münkner, to be published by Ius Cooperativum.

7 Second United Nations Development Decade, 1971-1980 (UN Doc. A/RES/2626 (XXV)).

8 First United Nations Development Decade, 1960-1970 (UN Doc. A/RES/1710 (XVI)).

title of this contribution is to capture this hinge function of the Second Development Decade and its epistemological effects on the relationship between cooperative law and development.

To designate the two first Development Decades [9] as a marker must not be construed as ignoring relevant phenomena prior to this period, nor as delimiting an exact period when the reflection on law and development started. Theories on development had evolved prior to that over centuries [10] and the role of law for development in general has been dealt with systematically since the turn of the 19th to the 20th century at least, that of cooperative law for development less, though. Concerning national development, readers will be familiar with Max Weber's and Friedrich A. Hayek's writings on the subject, for example. [11] Concerning international development, the so-called Mandate Pact under Article 22 of the Covenant of the League of Nations (Part I of the Treaty of Versailles) stipulated that "[t]o those colonies and territories which as a consequence of the late war [World war I] have ceased to be under the sovereignty of the States which formerly governed them [12] … there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization …". [13] Concerning cooperative law, the so-called British Indian Pattern of Cooperation, [14] a bundle of policies and laws at the beginning of the 20th century, was to develop the colony through the development of cooperatives. It became a blueprint for the cooperative policies and laws of many a colonial and post-colonial government, without being the subject of a wider theoretical debate.

9 They were followed by the Third United Nations Development Decade, 1981-1990 (UN Doc. A/RES/35/56).

10 GianbattistaVico is known to have thought and written about a notion of development (see his "Principi de una scienza nuova intorno alla natura delle nazioni", 1725) , as have Georgius Agricola in the 16th century and the physiocrates, François Quesnay et al., in the 18th century. Carl von Carlowitz developed concepts for a sustainable forest economy based on his experience in France.

11 See Weber, M. Wirtschaft und Gesellschaft, Teilband 3: Recht [Economy and Society, Vol. 3: Law], Tübingen: Mohr (Siebeck) 2010; Hayek, F. A., Law, Legislation and Liberty, Routledge 2013.

12 The overseas territories the German Empire and the territories the Ottoman Empire were to lose as a consequence of the outcome of World War I.

13 Available at: https://avalon.law.yale.edu/20th_century/leagcov.asp#art22 (28.4.2025).

14 The British Indian Pattern of Cooperation was a bundle of policies and laws that empowered the colonial government to implement its development policies, among others through cooperatives that they established for this purpose. See Münkner, H.-H., British Indian Pattern of Cooperation, in: E. Dülfer (ed. in cooperation with J. Laurinkari), Handbook of Cooperative Organizations, Göttingen: Vandenhoeck & Ruprecht 1994, 57 ff.. Idem , The "Classical British Indian Pattern of Co-operation" – from state-sponsorship to state-control, in: Münkner, H.-H. (ed.), 100 Years of Co-operative Credit Societies Act, India 1904, International Cooperative Alliance Asia Pacific, New Delhi 2005, 95-150.

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But, while these and other phenomena were precursors to the debate on the relationship between law and development, [15] they do not meet the criteria for the choice of the two first Development Decades as marking the period when a systematic and continuous reflection on development and law as a world-wide phenomenon started. The first two Development Decades are closely linked with the specific de-colonization process in the aftermath of World War II when the number of the now independent states had reached a level that would make their meaningful participation in the decision making of international bodies possible. In addition, the ideas on law and development during these decades were decisively influenced by persons who had shaped their thoughts on how to deal with the questions arising in this process of decolonization on the basis of experiences in countries that had gained their independence much earlier, such as most countries in Central and South America and in the Caribbean, as had other colonies, while not all colonies had become independent by that time, such as the colonies under Portuguese rule. [16]

The ideas, policies, legal instruments etc. that are presented here did not develop linearly. The debates on law and development and on cooperative law have had their "ups and downs", advances and regressions, their successive and overlapping phases. All of these form the sediment of what we now understand by sustainable development and cooperative law.

After having retraced the broad lines of the "development of development theory" [17] toward sustainable development and the respective role of law in Part 2., the contribution will deal in Part 3. with the significance of sustainable development for cooperative law. The concluding remarks in Part 4. will summarize some salient points.

2. From development to sustainable development and the changing role of law

This part sketches the development of the notion of development (2.1) and discusses the respective role of law (2.2).

15 Doubts as to the Mandate Pact being such a precursor relate to the remainder of its Article 22. It is sufficiently clear as to the fact that it did not regulate the question of how these territories should be developed, but rather how they should be redistributed among the remaining colonial powers.

16 To name but a few of them: Raúl Prebisch (he was the main author of the United Nations reports which led to the creation of UNCTAD, the United Nations Conference on Trade and Development and its first Secretary-General from 1964 to 1969. See at: https://unctad.org/about/history); Gunder Frank, Paul Bairoch and Hernando de Soto Polar.

17 Expression borrowed from B. Hettne. See his "The Development of Development Theory", in: Acta Sociologica, Vol. 26 (1983), 247 ff..

2.1. From development to sustainable development

The connotations of the term 'development' have varied over time and in space. [18] This notwithstanding, their predominant common trait in politics and economics has been for a long time the conception of development as an economic goal, defined by the so-called developed countries, measureable [19] and mainly [20] measured on financial criteria, abstracted from the material basis of economic activity, reachable among other means through imitating the law of the so-called developed countries and on a path of unlimited growth.

By the time "The Limits of Growth", [21] the first report by the Club of Rome in 1972, laid bare the flaws of the theory of unlimited growth based on limited natural resources, [22] it had already become clear that the impossibility of legal equality of national states in unequal circumstances, especially as concerns their economies, would require addressing through three measures: One, measures to overcome

18 The term 'development' is often equated with terms such as 'progress', 'evolution', 'innovation', 'financial performance', and/or confused with the mechanism within a process or a mechanism to reach an aim, such as, for example, the terms 'modernization' (see as early as 1905 Weber, M., Die protestantische Ethik und der Geist des Kapitalismus [Protestant ethics and the spirit of capitalism]; Sadie, The social anthropology of economic underdevelopment, in: The Economic Journal 70 (1960), 294); 'growth' (see, for example, Baran, The political economy of growth, 1957; Rostow, The stages of economic growth. A non-communist manifesto, 3rd. ed. 1969).

As for the variety, which at times adds to the volatility and imprecision of the term development, see Dann, Ph., Ideengeschichte von Recht nd Entwicklung [The history of the idea of law and development], in: P. Dann/S. Kadelbach/M. Kaltenborn (eds.), Entwicklung und Recht. Eine systematische Einführung [Development and Law. A Systematic Introduction], Baden-Baden: Nomos 2014, 19 ff. (44 f.).

As for the history of the notion of development, see in addition to Hettne (op.cit.) the more recent accounts by J. Grinevald (Bibliographie. Pour une contribution à l'histoire récente de l'idée de progrès, in: D. Bourg et J.-M. Besnier (dir.), Peut-on encore croire au progrès ?, Paris : Presses Universitaires de France 2000, 255-277); Lepenies (An Inquiry into the Roots of the Modern Concept of Development. Contribution to the History of Concepts 4 (2008), 202 ff.); G. Rist (The History of Development. From Western Origins to Global Faith, 3rd ed., 2018), and especially the already mention detailed work of Dann et al., op. cit..

19 The idea forms part of the wider belief that everything can be measured and expressed in numbers, eventually be governed by numbers. See as for this development, where some might want to see law replaced with algorithms, Supiot, A., La Gouvernance par les nombres, Paris: Fayard 2015.

20 This is not to overlook attempts to introduce more comprehensive measurements, such as the Human Development Report based mainly on the work of A. Sen and published yearly since 1990 by the UN Development Program.

21 Meadows, D. et al., The Limits of Growth, 1972.

22 One year earlier, in 1971, Nicholas Georgescu-Roegen had published "The Entropy Law and the Economic Process" in which he demonstrates that natural resources used for economic activity cannot be used again for such activity.

structural trade inequalities; two, correction of the idea of the same rules for all states, independently of their circumstances; and, three, widening the narrow, "financialized" notion of development. With this report by the Club of Rome it now became clear that these measures would not suffice if States would continue pursuing only their own development, and even less when they would do so on the mentioned unlimited growth path.

Concerning the first and the second measures: While the creation of an international trade organization to counter structural inequalities in international trade failed in 1948 [23] and while the activities of UNCTAD, the United Nations Conference on Trade and Development, founded in 1964 only partly compensated for the disadvantages the so-called developing countries suffered as a result of this failure, the preparatory reports that led to the foundation of UNCTAD, [24] as well as the rules exempting the so-called developing countries from the application of the basic rules of the General Agreement on Tariffs and Trade, GATT, [25] should influence the emergence of a public international law that takes the unequal circumstances of countries into account. [26] Concerning the third measure and the awareness that the unlimited economic growth path was untenable: After the International Labor Conference had already widened the notion of development in 1944 to include its social dimension through an amendment

23 The Havana Charter, which was to lead to the foundation of an international trade organization, was finally not adopted. For its history and on the General Agreement on Tariffs and Trade, the "GATT", that was to come into force temporarily until such time when the international community would agree on the foundation of a world trade organization, see Senti, R., GATT. System der Welthandelsordnung [GATT. The system of world trade order], Zürich: Schulthess 1986. The WTO, the World Trade Organization was eventually founded in 1995.

24 Decisively inspired by its first Director-General Raúl Prebisch (see above).

25 Agreed during the Uruguay Round of trade negotiations under the GATT in the 1980ies.

26 For this new approach, see Henrÿ, H., Die Stellung der sogenannten Entwicklungsländer im GATT/MTN System - Kritik eines einheitlichen Welt(handels)Rechts - [The Position of the so-called developing countries in the GATT/MTN System – Critique of a Universal World (Trade)Law], in: The Finnish Yearbook of International Law 1992, 376-413.

It is true that the interplay between exemptions for developing countries from basic rules under the GATT, such as equal treatment and the most favored nation clause, on the one hand, and the enabling clauses, on the other hand, still reflect the traditional unidirectional idea of development. But this scheme may be seen as the origin of a differentiating public international law. For further examples, see Dann et al., op. cit.. Designed to be temporary exceptions, this led to what is discussed in international law under the term "fragmentation". For a critical overview of the various aspects of fragmentation of international law, see the doctoral thesis by A.-C. Martineau, (Une analyse critique du débat sur la fragmentation du droit international, Helsinki, University of Helsinki, 2014) and the ample work of Martti Koskenniemi. For a critique of the concept of fragmentation, see Tuori, K., The Law´s Farewell to the Nation State?, in: Finnish Yearbook of International Law, Vol. 19 (2008), 295-327.

to its Constitution based on the so-called Philadelphia Declaration [27] that "reaffirms the fundamental principle [...] that [...] poverty anywhere constitutes a danger to prosperity everywhere", the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966 and in force since 1976 (human rights Covenants), [28] further consolidated these changes from development being a one-dimensional - economic - phenomenon to that of a multi-dimensional phenomenon with many aspects, among which law. [29] The simultaneous adoption of the Covenants had come in recognition of the mutual dependency of civil and political rights, on the one hand, and economic, social and cultural rights, on the other hand, and in recognition of the fact that their implementation would require a global approach to development, something which the Philadelphia Declaration also implies.

However, the critics of "The Limits of Growth" convinced mainstream politics and economics that the limitations demonstrated by the Club of Rome could be circumvented by reproducing capital through capital. [30] That would allow financing technological progress and that, in turn, would allow continuing "doing development and law" as done hitherto. This amounted to prolonging the financialization of development policies, in fact of politics and economics, for years to come. [31] The critics of the interdependent character of the two Covenants succeeded in disconnecting the legally non-binding instruments on the New International Economic Order (NIEO), [32] adopted during the 1970ies, from the two legally binding human rights Covenants [33] that they were to operationalize.

27 "Declaration concerning the aims and purposes of the International Labour Organisation", Annex to the Constitution of the International Labour Organisation.

28 Respectively UN Doc. 999 UNTS 171 (1966) and UN Doc. 993 UNTS 3 (1966).

29 See Dann et. al., op. cit., throughout, and especially Peukert, A., Immaterialgüterrecht und Entwicklung [Intellectual property rights and development], in: Dann et al., op.cit, 189-227 (190 f.).

30 As for this development, see Niño Becerra, Santiago, El crash del 2010, 6ª ed., Barcelona: los libros del lince 2009; Idem, Diario del crash, Barcelona: los libros del lince 2013.

31 For example through the so-called Washington Consensus.

32 See Program of Action on the Establishment of a New International Economic Order (UN Gen. Ass Res.3202 (S-VI) (1974) and UN Gen. Ass. Res. 32/130 (1977). These instruments were at the center of a bundle of related ones. See for a fuller account, Henrÿ, H., The Global Environment and the Human Right to Development, in: Kirjoituksia Kansainvälisestä Ympäristöoikeudesta. Essays in International Environmental Law, Helsinki: Helsingin Yliopiston Julkisoikeuden Laitoksen Julkaisuja C:24, 1989, 35-55. Critical: Peláez Marón, J.M., La crisis del derecho internacional del desarrollo, 1987.

33 The Covenants are "international conventions" in the sense of Article 38, 1. a. of the Statute of the International Court of Justice (ICJ Statute).

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Despite these backlashes, the Second Development Decade was also the decade when the notion of development began its steady radical transformation into that of sustainable development. Indeed, not the least through a series of United Nations conferences - in Stockholm in 1972, in Rio de Janeiro in 1992, in Johannesburg in 2002 and in Rio de Janeiro in 2012 [34] - the notion of sustainable development solidified. Later it should juridify.

2.2 The changing role of law in respect to development

As part of the specific process of de-colonization in the aftermath of World War II and of state-building of the newly independent territories, the debates on the relationship between law and development engendered various schools of 'law and development' during the 1960ies and 1970ies. These schools, which one may call the Anglo-Saxon school and the French schools, were, respectively, short-lived and ignored. Indeed, the Anglo-Saxon one, [35] with its emphasis on the development of law (national private law) itself and/or on development through law (social engineering) was quickly declared obsolete in a rare show of academic self-criticism by its main proponents. [36] One of the French schools, that of 'droit international du développement', with its focus on public international law sought to complete the abstract principle of equality in international law with rules engendering real equality of the so-called developing countries. [37] The other French school, and the one on 'droit du développement', in-

34 Stockholm 1972: (First) United Nations Conference on the Human Environment, UN Doc. A/CONF.48/14; Rio de Janeiro 1992: Based on the Report of the World Commission on Environment and Development, entitled "Our Common Future", known as "Brundtland Report" (UN Doc. A743/427 (1987); Johannesburg 2002: World Summit on Sustainable Development (UN Doc. A/CONF.199/20); Rio de Janeiro 2012 ("Rio + 20"): UN Conference on Sustainable Development, Outcome document A/RES/66/288 ("The Future We Want").

35 See, for example, Anderson (ed.), Changing Law in Developing Countries, 1963; Galanter, The Modernization of Law, in: Weiner (ed.). Modernization. The Dynamics of Growth, 1966.

36 See Trubek/Galanter, Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States, in: Wisconsin Law Review 4 (1974), 1062 ff.. For a critique of Trubek/Galanter and others, see Baxi, People's Law, Development, Justice, in: Verfassung und Recht in Übersee (VRÜ) - World Comparative Law (WCL) 12, no. 2, 1979, 97 ff.; and Burg, Law and Development: A Review of the Literature & a Critique of "Scholars in Self-Estrangement", in: American Journal of Comparative Law 25 (1977), 492 ff..

37 See Feuer/Cassan, Droit international du développement, 1991; Flory, Droit international du développement, 1977; Pellet, Le droit international du développement, 1978; Virally, Vers un droit international du développement, in : Annuaire français du droit international 1965, 5 ff. ; Idem, Où en est le droit international du développement ?, Paris : Université de Paris V, n.d.. Critical : Blanc, Peut-on encore parler d'un droit du développement ?, in : Journal du droit international 1991, 903 ff..

sisted on the inextricable tie between private, public and public international law. [38] It has remained largely unknown. Even the detailed work edited and co-written by Dann et al. [39] mentions only the French school of 'droit international du développement. To some extent, the 'Social Theory of Law', [40] 'Law and Society' and the more recent 'New School of Law and Development' renewed and merged the mentioned schools. [41]

The concepts of the role of law in respect to development, which the various schools of 'law and development' engendered, moved and continue to move between two extremes. On the one end, law and development are seen as antagonistic concepts; on the other end, a rights-based approach to development affirmed itself. Whereas the notion that law and development were antagonistic concepts had never convinced, [42] but might resurge in recent attempts to subordinate law to "democratic policies", redefining the policy/law nexus, the other concepts situated between these extremes

38 See Schaeffer, Droit du développement, in : Bulletin de l'Institut International d'Administration Publique, 1968 ; Idem, , Aliénation, réception, authenticité – rélexions sur le droit du développement, in : Penant 745, 1974 et Dossier de l'Institiut des Sciences Juridiques du Développement, Paris; Seidman & Seidman, Drafting Legislation for Development: Lessons from a Chinese Project, in: The American Journal of Comparative Law Vol. 44 (1996), 43 ff..

39 Op. cit..

40 See, for example, Kamenka/Tay (eds.), Law and Social Control, 1980; Trubek, Towards a Social Theory of Law: An Essay on the Study of Law and Development, in: Yale law Journal 82 (1972), 50 ff..

41 See Chibundu, Law in development: on tapping, gourding, and serving palm-wine, in: Case Western Reserve Journal of International Law 29, 1 (1997), 167 ff.; Ginsburg, Does law matter for economic development? Evidence from East Asia, in: Law and Society Review 34, 3 (2000), 701 ff.; Houtzager, We make the law and the law makes us: some ideas on a law in development research agenda, in: IDS Bulletin 32, 1 (2001), 8 ff.; Merryman, Comparative Law and Social Change: On the Origins, Style, Decline & Revival of the Law and Development Movement, in: American Journal of Comparative Law 25 (1977), 457 ff.; Kennedy, Laws and developments, in: Hatchard/Perry-Kessaris (eds.), Law and Development: Facing Complexity in the 21st Century, 2003, 17 ff.. Critical as to the "new of the new": Baxi, Global development and impoverishment, in: Cane & Tushnet (eds.) Oxford Handbook of Legal Studies 2003, 455 ff.; Manji, Cause and consequence in law and development (review of McAuslan, Bringing the Law Back, in: Essays in land, law and development, 2003, in: Journal of Modern African Studies, 43, 1 (2005), 119 ff.; Tamanaha, The lessons of law and development studies, in: American Journal of International Law 89 (1995), 470 ff..

As for the controversies these schools sparked, see, Henrÿ, H, Co-operative Credit Societies Act, India, 1904. A Model for Development Lawyers?, in: H.-H. Münkner (ed.), 100 Years Co-operative Credit Societies Act …, op. cit., 135 ff. (136-137).

42 Opposing it, for example, Blackburn, Desarrollo de nuevas herramientas para asegurar la continuidad de las entidades cooperativas financieras, in: Revista de la Cooperación Internacional, Vol. 32, no. 2/1999, 39 ff.; Ginsburg, Does law matter for economic development? Evidence from East Asia, in: Law and Society Review 34, 3 (2000), 701 ff.; Henrÿ, H., Aktuelne tendencije u uporednom zadruznom prava [Cooperative Legislation. Current Trends. Ideal Contents], in: Pravo. teorije i praska (Novi Sad) 9/2002, 48 ff..

continue to be effective. These other concepts divide into two categories. One regroups approaches that see law as an ancillary instrument of development, such as 'the development of law'; 'development through law' (social engineering through law); and 'law in development projects'. [43] The other one reflects a gradual emancipation of law; it regroups a number of 'rights-based approaches to development', such as 'development tested as to its human rights-compatibility', 'development underpinned by human rights' and 'development as a human right'. [44]

As concerns the concept of law as an ancillary instrument of development, those who propose "doing development … as done hitherto" (see above) also propose "doing law as done hitherto", meaning they suggest the 'modernization of law' in the so-called developing countries on the lines of either common law or civil law, the presumably main legal traditions of the world. A variation was/is the concept of law as a tool to engineer social change through law. [45] That included, for example, "making cooperatives" through law in circumstances where they had no sociological basis. The idea that law could be modernized in this way or could produce sociological facts was given up by its most outspoken proponents. They replaced it with an approach that takes into account the culture-bound character of law. [46] This approach prepared the ground for the emancipation of law from 'development'. More radically, it signaled the shift from law being at the service of development policies to law shaping development. The recognition of a human right to development through a resolution of the United Nations General Assembly (UN GA) in 1986 and unanimously endorsed in 1993 [47] was not but a further logical step in the evolution of a law-based notion of de-

43 See, for example, Meinecke, Rechtsprojekte in der Entwicklungszusammenarbeit [Law projects in development cooperation], 2007.

44 See Cornwall & Nyamu-Musembi, Putting the 'rights-based approach' to development into perspective, in: Third World Quarterly 25, No. 8 (2004), 1415 ff.).

45 See, for example, Andersen (ed.), Changing law in developing countries, 1963; Galanter, op. cit..

46 See Trubek, op. cit.; Trubek/Galanter, op. cit..

47 See UN General Assembly Declaration on the Right to Development, Doc. A/RES/41/128 (1986) and UN General Assembly Doc. A/RES/78/203. Article 22 of the African Charter on Human and Peoples' Rights includes the human right to development. Literature : For example, Andreassen/Marks (eds.), Development as a Human Right: Legal, Political and Economic Dimensions, 2nd ed. 2010 (the title recalling the concept of political economy) ; Bennigsen, Das "Recht auf Entwicklung" in der internantionalen Diskussion [The right to development in the international discussion], 1989; Kerdoun, Le droit au développement en tant que droit de l'homme: Portée et limites, in: Revue québecoise de droit international 17.1 (2004), 73 ss.; M'baye, Le droit au développement comme un droit de l'homme, in: Revue des droits de l'homme 5 (1972), 503 ff.; Odendahl, Das Recht auf Entwicklung [The right to development] 1997; Özden, Le droit au développement. Etat des débats tenus à l'ONU sur la « mise en œuvre » de la Déclaration historique adoptée à ce propos par l'Assemblée générale des Nations Unies, le 4 décembre 1986,

velopment. However, as resolutions of the UN GA in general, these resolutions do not constitute sources of public international law under Article 38, 1. of the Statute of the International Court of Justice (ICJ Statute). [48] But they reaffirmed the legal value of the two human rights Covenants, which, meanwhile, had become justiciable instruments [49] and they swapped definitively the positions of law and development from law being a function of development to development being a function of law. In doing so, they emphasized the primacy of law over policies. That primacy emanates from the legal principle of the rule of law, a source of public international law according to Article 38, 1. c. of the ICJ Statute. Insofar, the human right to development goes beyond that of the two human rights Covenants. [50]

In addition, these instruments of the UN GA announced the emergence of sustainable development as a "general principle […] of law recognized by civilized nations […]", a source of public international law according to lit. c. of Article 38 of the ICJ Statute. This evolution started with the recognition of sustainable development by the International ICJ. In its first decision on the matter in 1997 the ICJ recognized sustainable development as a "concept" of public international law; [51] later as an "objective"; [52] the Arbitral Tribunal classified it as a "principle". [53] Since then, sustainable development has not only permeated legally non-binding instruments and the legal discourse in

CETIM Genève s.d. ; Sengupta, Realizing the Right to Development, in: Development and Change 2000, 553 ff.; Sinkondo, De la fonction juridique du droit au développement, in : Revue de droit international et de droit comparé no. 4 (1991) 271 ff. ; Tomuschat, Das Recht auf Entwicklung [The right to development], in: German Yearbook of International Law 25 (1982) 85 ff..

48 They are not "international conventions" in the sense of lit. a. of Article 38, nor may they be equated with a convention. They are also not a custom in the sense of lit. b.. See for a more detailed discussion, Henrÿ, H., Reflexiones en torno al derecho cooperativo desde una perspectiva global - homenaje a Dante Cracogna –, in: Congreso Continental de Derecho Cooperativo : San José de Costa Rica, 20 al 22 de noviembre de 2019 / compilado por Dante Cracogna. - 1a ed compendiada. - Ciudad Autónoma de Buenos Aires : Intercoop ; San José de Costa Rica : Cooperativas de las Américas, 2020. Libro digital, EPUB Archivo Digital: online ISBN 978-987-1596-59-1, 109-123.

49 See Kaltenborn, M., Soziale Rechte und Entwicklung [Social rights and development], in: Dann et al., op. cit., 155-187.

50 J. v. Bernsdorff (Das Recht auf Entwicklung [The right to development], in: Dann et al., op. cit, 71- 99) seems to share this view, B.-O. Bryde does not (see his "Was erforschen wir zu welchem Zweck [What do we investigate and to which end]?", in: Dann et al., op. cit., 101-115 (106).

51 See Case Gabcikovo-Nagymaros Project (Hungary/Slovakia), Judgment. I.C.J. Reports 1997, Paragraph 140.

52 See Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, ICJ Reports (2010) 14 at Paragraph 177.

53 See Indus Waters Kishenganga (Pakistan v. India), Partial award 2013, at Paragraph 450.

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general, albeit with varying qualifications, such as 'concept', 'principle', etc., [54] but it has become part of sources of law, from international and supranational conventions, treaties and court decisions to national constitutions, laws and court decisions. [55] This qualifies it as a principle in the sense of Article 38 of the ICJ Statute, to be respected by all subjects of law. [56] There is reason to hypothesize that a Human Right to sustainable development is emerging. [57]

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54 For a comprehensive account of the presence of "development", including sustainable development, in law, see Dann et al. (eds.), op.cit.; Gehne, K., Nachhaltige Entwicklung als Rechtsprinzip [Sustainable development as a legal principle], 2011; Glaser, Nachhaltige Entwicklung und Demokratie [Sustainable Development and Democracy], 2006; Voigt, Sustainable Development as a Principle of International Law: Resolving Conflicts between Climate Measures and WTO Law, 2008; Diepold, A., Nachhaltigkeitsaspekte in der EGMR-Rechtsprechung [Aspects of sustainability in the jurisdiction of the European Court of Human Rights], Tübingen: Mohr 2025; the CIRIEC Working Paper No. 2024/07 written by Frédéric Tiberghien details a panoply of policy and legal measures the French State has taken to address sustainable development issues; the contributors to Kahl (ed.), Nachhaltigkeit durch Organisation und Verfahren [Sustainability through organisation and procedure], Tübingen: Mohr 2016, suggest how to implement sustainable development in the German and European constitutional and administrative law.

For some, however, sustainable development is 'only' a (legally not binding) guiding principle of (public international) law. See, for example Goldmann, Staatsverschuldung und Entwicklung [Public debt and development], in: Dann et al. (eds.), op. cit., 377-431 (419); Marauhn, Umwelt und Entwicklung [Environment and development], in: Dann et al. (eds.), op. cit., 433-468 (456).

For the history of the concept of sustainable development, see Gehne, op. cit.; Henrÿ, H., Sustainable Development and Cooperative Law: Corporate Social Responsibility or Cooperative Social Responsibility?, in: International and Comparative Corporate Law Journal Vol.10, Issue. 3 (2013), 58-75. Barral, V., The Principle of Sustainable Development, in: L. Krämer/E. Orlando (eds), Principles of Environmental Law, Cheltenham: Elgar 2018, 103-114.

55 International and supranational law: for example, the 1992 Convention on Biological Diversity (Articles 2 and 6); the Marrakesh Agreement Establishing the World Trade Organization (Recital 1); the Treaty on European Union (Article 21) and the Treaty on the Functioning of the European Union (Article 11); the European Court of Human Rights, Decision 9. 4. 2024.

National law : for example, the Constitutions of Germany (Article 20a) and of Switzerland (see Glaser, op. cit.; La Charte de l'environnement, incorporated into the Constitution of France in 2005; in 2019 the Hoge Raad sentenced the Dutch State to do more for climate protection; in 2021 the German Bundesverfassungsgericht [Constitutional Court] recognized climate protection as an intergenerational right to freedom (Article 2 of the German Grundgesetz [Constitution]).

56 I do not share Barral's view (op. cit.) that it is an obligation of "international subjects" only.

57 Vasak (Die Allgemeine Erklärung der Menschenrechte 30 Jahre später [The Universal Declaration of Human Rights 30 years later], in : UNESCO Kurier No.11, 18 (1977), 29) mentions - to my knowledge for the first time – healthy environment and ecological balance as part of the right to development, aspects which are now part of the notion of sustainable development. I am indebted for the idea of a possibly emerging human right to sustainable development to Professor M. A. Bekhechi (see Bekhechi,

3. Sustainable development and cooperative law

This part deals first with the role of cooperative law for development (3.1) and then with the significance of sustainable development for cooperative law (3.2).

3.1 Cooperative law and development

To my knowledge, the debates of cooperative law have remained outside the debates on the relationship between law and development. [58] This is rather surprising as the mentioned so-called British Indian Pattern of Cooperation may be seen as the first policy and legislative measure aimed at furthering development. [59] On the other hand, the introduction of this approach by the British government in its Indian colony may be seen as an offialization of cooperatives, [60] the first of three trends in cooperative legislation away from its origins in the mid-nineteenth century [61] when the law distinguished the structural features of cooperatives clearly from those of other enterprise

Quelques notes et réflexions sur le statut du droit international du développement durable, in: Mohammed-Jalal Essaid (sous la dir.), Variations sur le système international. Mélanges offerts en l'honneur du Professeur Mohamed Lamouri, Casablanca, Najah Al Jadida, 2010, 107 ss.). See also Henrÿ, H., La identidad cooperativa y el derecho cooperativo - en vía a un derecho humano al desarrollo sostenible, in: Anales del VIII Congreso Continental de Derecho Cooperativo, organizado los 27-29 de octubre de 2022 en Asunción/Paraguay por Cooperativas de las Américas (ACI), Anales Congreso 2022. Versión final (2).pdf), 113-128; and Mania, K., Legal and historical aspects of sustainable development, in: A. Kuźniarska/K. Mania/M. Jedynak (eds.), Organizing Sustainable Development, 2023 (DOI https://doi.org/10.4324/9781003 794 09), 5 ff.

58 There is, however, an abundant literature on the role of cooperatives in the development of so-called developing countries. See, for example, Centro Interdisciplinario de Estudios sobre el Desarrollo Latinoamericano de la Fundación Konrad Adenauer (ed.), Cooperativismo. Instrumenmto de Desarrollo en un Ordre Libre, Buenos Aires 1992; Watkins, W. P., The Promotion and Role of Co-operation in the Developing Regions, in: International Labour Review 1965, 85-101 (85).

59 Henrÿ, H., Co-operative Credit Societies Act, India, 1904 …, op. cit..

60 In addition to regulating the organization of cooperatives, as did the laws in Europe, the United States of America and Canada, the rules of the British Indian Pattern of Cooperation also regulated the promotion and control of cooperative by the State and the respective administrative structure. This approach found its most pronounced expression in countries with state-led economies.

61 The preparatory report for the 'Promotion of Cooperatives Recommendation [No. 193]' of the International Labor Organization contains an account of the various trends in cooperative legislation up to the end of the 1990ies. See International Labour Conference, 89th Session 2001, Report V (1), Promotion of Cooperatives, Geneva: International Labour Office 2000. See also Henrÿ, H., Trends and Prospects of Cooperative Law, in: D. Cracogna/A. Fici/H. Henrÿ (eds.), International Handbook of Cooperative Law, Heidelberg: Springer 2013, 803-823.

types. [62] The two other trends are the 'companization' [63] and the 'socialization' [64] of the structure of cooperatives through law. None of these trends is in line with 'the cooperative principles' that any law-maker [65] has to comply with nowadays (see above). The question is whether cooperative law, derived from these principles, can contribute to sustainable development and if so, how? This question is the object of the following section.

3.2 Sustainable development and cooperative law

This section describes in which sense the notion of sustainable development carries a notion of development which not only differs from the notion of development, but constitutes an alter to it (3.2.1); and it then draws the consequences from this transformation of the notion of development for cooperative law (3.2.2)

62 The first laws on cooperatives were to recognize, regulate and monitor existing modern cooperatives as they had emerged as from the beginning of the 19th century in Europe, the United States of America and Canada. It is unclear whether the development of these cooperatives and, indirectly, that of the respective counties was an effect of or co-incidental to cooperatives being recognized and regulated by law. The motive of many of the laws on cooperatives that were adopted during the latter part of the 19th and the early part of the 20th century were to ignite the establishment of cooperatives and co-operatives were to contribute to the development of the respective country or territory. This shift occurred mainly, but not exclusively, in Central and South America and in the European colonies, while China, Japan and Korea followed paths that still need to be made known. Its clearest expression was that the British Indian Pattern of Cooperation.

63 By "companization" (in Spanish rather 'comercialización') I understand the approximation through law of the structural features of cooperatives with those of capital-centered enterprises. It also appears as 'convergence'. By "convergence" I understand the approximation by law of the governance structures of all enterprise types, cooperatives included, on the lines of capital-centered enterprises.

The trend to companize cooperatives starts as of the beginning of the 1970ies with the first extensive cooperative law reform in Germany. See Henrÿ, H., Retos y oportunidades de la globalización para las cooperativas y el marco legal cooperativo, in : Revista Jurídica de Economía Social y Cooperativa (CIRIEC España) 18/2007, 124-138 (especailly footnote 10); Idem, Quo Vadis Cooperative Law?, in: CCIJ Report No. 72 (2014), 50-61 (in Japanese; original in English); Idem, Reflexiones en torno ..., op. cit.; Villafañez Perez, I., Algunas reflexiones en torno a la necesidad de integrar la perspectiva cooperativa en el estudio y desarrollo del ordenamiento jurídico, in: H. Henrÿ, P. Hytinkoski and T. Klén (eds.), Co-operative Studies in Education Curricula. New Forms of Learning and Teaching, Mikkeli and Seinäjoki/Finland. University of Helsinki/Ruralia Institute Publications No. 35 (2017), 54-71.

64 By socialization I understand the approximation through law of the structural features of cooperatives with those of associations.

65 By "law-maker" I understand all those who legitimately make, interpret and/or implement cooperative law.

3.2.1 Sustainable development, the alter to development

Literature and other sources on sustainable development seem to agree that sustainable development composes of four interrelated, mutually regenerative and dependent aspects, namely a social, a political, an economic and an environmental (biosphere) one. [66] But no source of public international law has yet validated this consensus. [67]

As already mentioned, the notion of development carried by that of sustainable development constitutes an alter to the notion of development that evolved in the aftermath of World War II and until the recognition of it as a human right. This alterity expresses in four interrelated features. Firstly, globality: As the aspects of sustainable development are interrelated, mutually regenerative and dependent and as one of them, the biosphere, is global, each aspect of sustainable development is global, as is sustainable development in its totality. Where the notion of development related to the international relations between so-called developing and so-called developed countries, that of sustainable development relates to a non-divided planet (to which Hawking refers). Secondly, diversity: As it is for life ("la esencial heterogeneidad del ser"), the source of development, hence that of sustainable development, is diversity in its two aspects, biological and cultural. [68] Unlike the vital importance of biological

66 With the exception of political stability, these aspects of sustainable development are generally recognized. See, for example, the cited Rio de Janeiro 2012 Outcome document "The Future We Want"; the 2002 Delhi Declaration of Principles of International Law Relating to Sustainable Development of the International Law Association (ILA). Annex to Res. 3/2002, preamble, paragraph 14, which contain an elaborate definition of sustainable development; European Union (available at: https://ec.europa.eu/europeaid/ sites/devco/files/ communicatioenn-next-steps-sustainable-europe-20161122_e.); Club of Rome & Wuppertal Institute (eds.), Earth for All Deutschland, München: Oekom 2024; and Pufé, I., Nachhaltigkeit [Sustainability], München: UKV Verlag 2012. As here, recognizing four aspects, UNESCO (http://www.unesco.org/education/ tlsf/mods/ theme_a/popups/ mod04t01s03.html –). The word 'biosphere' is either used as a synonym for 'nature' or 'environment' or as comprising the three or four aspects of sustainable development. In this latter sense, see for example, Grinevald, J., La Biosphère de l'Anthropocène. Climat et pétrole, la double menace. Repères transdisciplinaires (1824-2007), Genève : Georg 2007.

67 There is no general consensus on whether the existence of an obligation (here the obligation to respect the principle of sustainable development) may be affirmed in the absence of a consensus on its content. To be noted, however, that the case discussed here is not a singular case.

68 As for cultural diversity as a vital correlate to biological diversity, see Gruzinski, La pensée métisse, 1999;

Gervereau, Pour une écologie culturelle, in : Le Monde, 3 Octobre 2008; Martí et al., Palabras y mundos, Informe sobre las lenguas del mundo, in: El País, Babelia, 24.2.2007, 12. For more details, see Henrÿ, H., Kulturfremdes Recht erkennen. Ein Beitrag zur Methodenlehre der Rechtsvergleichung [How to know culturally different law. Contribution to the methodology of comparative law]. Forum Iuris, Helsinki 2004.

diversity, [69] that of cultural diversity is hardly known, despite its being enshrined in international legal instruments and despite its having been called for by academia. [70] Without cultural diversity, biological diversity may be protected, but its capacity to regenerate cannot be preserved. Without bio-cultural diversity, the way to sustainable development is blocked. This realization requires a paradigm shift from universality to diversity, from difference to alterity. Thirdly, indivisibility: Where for a long time the notion of development divided into various elements, that of sustainable development composes of aspects, namely social justice, political stability, economic security and environmental balance (biosphere). Fourthly, the centrality of social justice: While the aspects of sustainable development are interrelated, mutually regenerative and dependent, social justice is the central one. Without social justice, no political stability; without political stability, no economic security; without economic security, no concern for the biosphere. The mechanism to regenerate social justice is therefore the key for the pursuit of sustainable development. Whether the legal form of cooperatives lends itself to the regeneration of social justice will be explored in the following Subsection.

3.2.2 Sustainable development-determined cooperative law

This Subsection discusses the legal form of cooperatives as a way to regenerate social justice (3.2.2.1) and some effects of the four features that distinguish 'sustainable development' from 'development' on cooperative law (3.2.2.2).

69 See, for example, Willoughby et al., The reduction of genetic diversity in threatened vertebrates and new recommendations regarding IUCN conservation rankings, in: Biological Conservation 191 (2015), 495 ff..

70 See, for example, the Convention on Biological Diversity and Article I, 3. of the Constitution of UNESCO, the United Nations Educational, Scientific and Cultural Organization; and Arizpe, L., Culture in International Development, Keynote, 19th World Conference of the Society for International Development, New Delhi 1988.

As concerns the economies, there is growing evidence that the co-existence of diverse forms of enterprise makes an economy more resilient against market and other shocks. See, for example, Burghof, Vielfältiges Bankensystem besteht die Krise [A diverse banking system resists the crisis], in: Wirtschaftsdienst 2010/7, 435 ff.; and Groeneveld, H., The Value of European Co-operative Banks for the Future Financial System, in: J. Heiskanen/H. Henrÿ/P. Hytinkoski/T. Köppä (eds.), New Opportunities for Co-operatives: New Opportunities for People. Proceedings of the 2011 ICA Global Research Conference, Mikkeli and Seinäjoki/Finland. University of Helsinki/Ruralia Institute Publications No. 27 (2012), 185 ff..

3.2.2.1 The legal form of cooperatives and social justice

Notwithstanding what they and other enterprise types do contribute to sustainable development by abiding by their Corporate Social and Societal Obligations (CSSOs) [71] and/or as a prerequisite and consequence of them being recognized on the basis of respective laws as social and/or solidarity economy actors, cooperatives distinguish by what they potentially contribute to sustainable development by having a legal obligation to keep their form in line with 'the cooperative principles', i.e. cooperatives have, in addition to a CSSO, a CoopSSO. [72]

According to the definition of cooperatives, which is a part of 'the cooperative principles' (see above footnote 6), the objective of cooperatives is to "meet [the] common economic, social and cultural needs [… of the members] through [… an] enterprise." According to the same definition, this enterprise is "jointly-owned and democratically controlled" by the members. This form is a function of the objective and it is further specified through 'the cooperative principles'. It lends itself to regenerate social justice. It condenses in the metaprinciple of member democratic participation, including control. Member democratic participation means the equal say of all members in the decisions on what and how to operate and how to distribute the wealth ensuing from that, independently of their financial or other contributions. This metaprinciple permeates the elements that compose 'the cooperative principles'. [73] Because of the way these elements are linked, "democratically-controlled" (definition) and "Democratic Member Control" (2nd ICA Principle) may not be reduced, as is often done, to the 'one member, one vote' rule enshrined in the 2nd Principle.

The specific form of cooperatives balances the three aspects of cooperatives, the economic, the social and the cultural.

71 As the stakeholder value is gradually superseding the shareholder value (capital based enterprises) and the member value (person based enterprises), the corporate social responsibility (CSR) is shifting to a corporate social and societal responsibility (CSSR). This CSSR is juridifying, thus it is shifting to a corporate social and societal legal obligation (CSSO). The CSSO may be seen as the juridical correlate to the economic stakeholder concept. The CSSO is a legal obligation of all enterprises, independently of their type.

72 See Henrÿ, Sustainable Development …, op. cit..

73 For a demonstration of this see Henrÿ, H., Cooperativas, democracia em ação [original: Cooperatives, Democracy at Work], in: Economia Social. Revista da Cooperativa António Sérgio para a Economia Social número 21, março (2024), 20 ss.. Electronic version in Portuguese and English available at: https://www.revista-es.info/numero_21.html

3.2.2.2 Social justice and cooperative law

Not ignoring the relevance of radical structural changes of cooperative enterprises and of the de-organization of all types of enterprises, brought about by the factors of globalization (digitization, digitalization and teletransferability of data), nor a series of other legal challenges, [74] this Paragraph focusses on some of the effects of the four mentioned features by which the notion of 'sustainable development' distinguishes from that of 'development' on a cooperative law that is to compel cooperatives to regenerate social justice as the central aspect of sustainable development. These features are: globality, diversity, indivisibility of the four aspects of sustainable development and the centrality of the aspect of social justice.

As for social justice, we need considering three dimensions. One relates to social justice as an aspect of the objective of any cooperative; one relates to social justice in intercultural circumstances; one relates to global social justice. [75] The first dimension is a known one, but nevertheless a challenging one. In addition to the mentioned structural changes of cooperatives and the de-organization of all enterprise types, a number of obstacles prevent the metaprinciple of member democratic participation from materializing. [76] Hence, the regeneration of social justice is at stake. The second

74 As for the radical structural changes of cooperative enterprises, their structure has become/is becoming more complex as far as the notion of members, the activities and the beneficiaries of these activities are concerned.

As concerns the de-organization, enterprises of all types, cooperative enterprises included, de-organize in two respects: they "loose" their own organization by integrating organizationally into (global) horizontal and/or vertical value chains governed by the general contract clauses of the chain leaders, and/or by dissolving into networks governed by algorithms of actors.

The other legal challenges are, for example: How to "translate 'the cooperative principles'" into law?; How to transit from 'the cooperative principles' to law?; How to derive cooperative law from the metaprinciple of member democratic participation while keeping with the aspects of sustainable development?

75 As for the global aspect of social justice, see Henrÿ, H. Justice through Cultural Diversity. The Problem of Justice in a New International Economic Order, in: The Finnish Yearbook of International Law, Vol. I (1990), 387-414; Idem, Social Justice through Enterprises. The End of the 1972/1973 Conjuncture? A Legal Perspective, in: International Journal of Social Quality 5(2), Winter 2015: 81–96; Idem, Social Justice in the Global World – the Role of Enterprises, in: J. Laurinkari/F. Unger (eds.), Justice and Solidarity: The European Utopia in a Globalising Era, European Academy of Sciences & Arts, Kuopio: Grano 2015, 88-99; Idem, Who Makes the Law? Parliaments, Governments, Courts or Others? Social Justice through Cooperatives at Stake, in: C. A. d´Alessandro/C. Marchese (eds.), Ius Dicere in a Globalized World. A Comparative Overview, Volume One, Studies in Law and Social Sciences 3, Roma Tre Press 2018, 251-260.

76 Firstly, members may not understand that according to the definition of cooperatives they should serve themselves through the running of an enterprise, instead of the cooperative serving them; and/or they may lack time, motivation, interest and/or knowledge and know-how to participate in decision-making bodies; and/or some active mem-

dimension, social justice in intercultural situations, occurs in four circumstances: co-operatives with members who identify with different cultures, cooperatives as part of global value chains (see above), multi-national States and the global of our modern existence. [77] All of these circumstances share a common trait, namely the meeting of different laws. As all laws share the quest for justice, they are all apt to support the regeneration of social justice. But laws are determined by their underlying culture. Considering the necessary paradigm shift from universality to diversity in order to secure the source of development, we need taking account of the following: where different cultures meet, different conceptions and perceptions of (social) justice meet. In their pursuit, written state law meets other States' laws and other types of law, such as, for example, religious laws, customary laws, standards set by private actors, laws of or in the informal sectors, oral laws as part of oral cultures. [78] The growing effectiveness of these other types of law correlates with the diminishing outreach of state law and, by extension, that of regional and international law. [79] What law is and

bers may pursue interests which are not congruent with the interest of all members. Secondly, the management may lack the necessary qualification and/or the willingness to run a cooperative according to 'the cooperative principles'; and/or it may pursue own interests. As for these first two challenges, see Anderson, B., Democratic Control and Cooperative Decision Making: A Conceptual Framework, in: Journal of Agricultural Cooperation 1987, 1-15. Thirdly, there is a cooperative-typical "six-fold control risk". These risks may arise from an information, knowledge and/or know-how gap between the various stakeholders within the cooperative, i.e. the members, the general assembly, the delegates (if any), the surveillance committee (if any), the board, the administration/ management, and the employees. It is a risk; it is not a feature of cooperatives. Fourthly, where cooperatives integrate into higher-level cooperative organizations according to the 6th ICA Principle, their horizontal heterarchical structural element of member democratic participation needs composing with a vertical hierarchical structural element of the higher-level cooperative organizations without which these cannot function in a way that reinforces the structure of its affiliates (See Henrÿ, H., Cooperation Among Cooperatives, in: G. Fajardo/A. Fici/H. Henrÿ/ D. Hiez/D. Meira/H.-H. Münkner/I. Snaith (eds.), Principles of European Cooperative Law. Principles, Commentaries and National Reports, Cambridge et al.: intersentia 2017, 119-134).

77 Interculture is a ubiquitous empirical fact. "[...] le fait interculturel n'a rien à voir avec la seule cohabitation plus ou moins harmonieuse, la coexistence pacifique sans plus. L'interculturel ne s'épuise ni dans la recherche d'un consensus universel, ni dans un modus vivendi universel, qu'il soit éthique, social, du droit international, etc.. Le fait interculturel est la toile d'araignée dans sa totalité, c'est le donné per excellence dont est concerné chaque fibre, chaque chose, tout ce qui est, le divin, le cosmique, l'humain" (Lomomba Emongo, « L'interculturalisme sous le soleil africain : L'entre-traditions comme épreuve du nœud », in : INTERculture, Vol. XXX, no. 2, Cahier 133, 1997).

78 For a critique of the written state law-centeredness of legal science, see De Sutter, L., Hors la loi. Théorie de l'anarchie juridique, 2021. As for the nature of such oral law, as opposed to law not written, but forming part of a written culture, see the works of Glissant.

79 This must not be construed as depreciating the indispensable role of national state law, foremost because of its enforcement mechanisms.

what its content is in all these circumstances differs with the cultures underpinning these laws. They filter through a triple, culture-specific continuous process: one that determines to what extent facts have power over norms; one that distinguishes norms from policies; and one that distinguishes law from other norms. The results of these processes are not static. Facts may push law-makers to mold them into law; a policy may become a norm; a social norm may become a legal norm. The reverse may also occur. In addition, the interrelationship among facts, policies and norms, as well as that between these categories varies. [80]

The requirements that this situation establishes for law recall those of the so-called double bodies in law, a figure developed by classic Roman lawyers and translating the idea that between the whole and the sum of its parts there is a fundamental difference. [81]

Finally, if law is a means to regenerate social justice, then the individualistic/privative notion of law as it currently dominates the legal discourse [82] might not serve the purpose as it does not allow for the legal principle of solidarity [83] to shape the notion of law of cooperative law. The principle of solidarity requires accepting and fulfilling obligations without a legally protected expectation of a return. Without solidarity social justice will remain deficient.

4. Conclusion

Cooperative law has ceased to be what law-makers say it is. It is determined by 'the cooperative principles' and by the legal principle of sustainable development,

80 Concerning the interrelationship between norms, Jean Carbonnier coined the term "internormativity". See Carbonnier, J., Internormativité. Dictionnaire encyclopédique de théorie et de sociologie du droit. Dir. A. J. Arnaud. 1988, 313 f.

81 The idea of double bodies in law might be helpful in addressing the increased occurrence of transnational, supranational and privately set laws alongside national state laws. See, for example, Meder, S., Doppelte Körper im Recht [Double bodies in law], Tübingen: Mohr 2015. The idea is also related to that of Übersumme.

82 For a critique, see, for example, De Conto, A hermenêutica dos direitos fundamentais nas relações cooperativo-comunitárias. Universidad do Vale do Rio dos Sinos-Unisonos. Sao Leopoldo/Brasil, 2013; Menke, Chr., Kritik der Rechte [A critique of law], Berlin: Suhrkamp 2015.

83 See Preamble of the Constitution of the ILO and a great number of UN resolutions, for example, the UN Res. XXVI on the Rights and Obligations of States. See also Bude, H., Solidarität. Die Zukunft einer grossen Idee [Solidarity. The future of a great idea], München: Hanser 2019; Rodotà, S., Solidarietà. Un´utopia necessaria, Roma: GEDI 2017. In her seminal oeuvre « Les forces imaginantes du droit » (4 volumes, Paris: Seuil 2004-2011) Mireille Delmas-Marty distills the principle of solidarity out of numerous contexts.

recognized by public international law. Hence, cooperative law composes of all legal principles, rules and practices that shape the legal structure of cooperatives in such a way as to compel and allow them to pursue their triple objective of meeting the economic, social and cultural needs and aspirations of their members while respecting the principle of sustainable development and which justifies the attribution of legal personality to them. We owe such law to the inevitability of our double dependence, on our fellow creatures and on nature. [84]

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84 Similar Bude,op. cit.; Camus, L'homme révolté, Paris: Gallimard 1951; P. Servigne/G. Chapelle, L'entraide, l'autre loi de la jungle, Les liens qui libèrent 2019.

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