

## INTERNATIONAL LEGAL THEORY

# Highlighting inequalities in the histories of human rights: Contestations over justice, needs and rights in the 1970s

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### Abstract

This article considers the ways in which concerns about economic equalities, both among and within countries, were taken up in human rights debates of the 1970s and how concerns about economic inequalities impacted on discussions about the possibilities, objectives and conceptions of rights. It shows how scholars and advocates from the global South, concerned about the production of underdevelopment and unequal accumulation, advocated a more 'structural approach' to human rights during this period that argued that a just international order was necessary for the realization of rights. The article first considers Third World demands for a New International Economic Order to address inequalities among countries, as well as the potentially conflicting focus on inequalities within countries by the World Bank and its subsequent promotion of a 'basic needs' approach to development. Thereafter, it considers how these different approaches to economic inequality were taken up in and influenced human rights debates and frameworks of this period.

### Keywords

development; economic inequality; history; human rights; New International Economic Order

## I. INTRODUCTION

The 1970s were, as historian Thomas Borstelmann has argued, a 'crucial period of change and adjustment' that reshaped the contours of global history, characterized by two countervailing 'powerful undercurrents': a 'spirit of egalitarianism and inclusiveness' but also a 'decisive turn toward free market economies as the preferred means of resolving political and social problems'.<sup>1</sup> It was a decade where questions of economic inequality between countries of the North and South provoked acute political contestation, most famously through the proposal advanced in the United Nations for a New International Economic Order (NIEO).<sup>2</sup> Concurrently, increased

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<sup>1</sup> T. Borstelmann, *The 1970s: A New Global History from Civil Rights to Economic Inequality* (2013), at 3–4.

<sup>2</sup> For recent scholarship on the NIEO see the special issue of *Humanity: An Interdisciplinary Journal of Human Rights, Humanitarianism and Development* (Spring 2015) as well as J. von Bernstorff and P. Dann (eds.) *The Battle for International Law in the Decolonization Era* (forthcoming).

recognition of growing inequality within states of the global South authorized development interventions in order to promote 'basic needs' and eradicate poverty. This article analyzes the way in which these concerns about economic equality, both among and within countries, were taken up in human rights debates of the period and how they impacted on discussions about the possibilities, objectives and conceptions of rights. In particular, it identifies how attention to the production of underdevelopment and unequal accumulation facilitated a more 'structural approach' to human rights during this period. The Tehran Proclamation issued at the first International Conference on Human Rights in 1968 identified that '[t]he widening gap between the economically developed and developing countries impedes the realization of human rights in the international community',<sup>3</sup> which arguably sowed the seeds for a more 'structural' phrase in UN human rights action. Such an approach recognized the need to 'remove structural obstacles that lie at the root of many an injustice' rather than simply deal with symptoms or particular violations, and to emphasize a 'preventative rather than curative strategy for improving the enjoyment of human rights'.<sup>4</sup> This approach, which arguably reached its apex in General Assembly Resolution 32/130 of 1977,<sup>5</sup> has been described as part of 'an independent Third World movement to reorient the UN human rights program' underway since the mid-1960s.<sup>6</sup> This article re-narrates some of these struggles and debates about inequality, distribution and the role of human rights in order to explicate the histories of our present, but also to acknowledge potential legal trajectories that were not enacted and realized, and thus the defeat of certain visions of how global legal relations could be instituted. It is hoped that this account, which highlights the persistence of economic inequality as a structural feature of the world economy and recalls some often forgotten conceptualizations of rights, their possibilities and limits, will draw out both lessons and inspirations for action to address the scandal of inequality in our own time.<sup>7</sup>

In recent years, there has been a renewed debate about the relationship between human rights and redistributive justice interrogating the role human rights have played or could play in the production or amelioration of economic inequality.<sup>8</sup>

<sup>3</sup> Proclamation of Teheran, Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968, UN Doc. A/CONF.32/41 (1968), para 12.

<sup>4</sup> P. Alston, *Development and the Rule of Law: Prevention versus Cure as a Human Rights Strategy* (1981), 9.

<sup>5</sup> 'Alternative Approaches and Ways and Means within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms', UNGA Res. 32/130, UN Doc. A/RES/32/130 (16 December 1977).

<sup>6</sup> T. Gonzales, 'The Political Sources of Procedural Debates in the United Nations: Structural Impediments to Implementation of Human Rights', (1981) 13 *International Law and Politics* 427, at 471, note 192.

<sup>7</sup> There is extensive literature on contemporary economic inequality. See, for example, J. Hickel, *The Divide: A Brief Guide to Global Inequality and its Solutions* (2017); B. Milanovic, *Global Inequality: A New Approach for the Age of Globalization* (2016); T. Piketty, *Capital in the Twenty-First Century* (2014).

<sup>8</sup> See particularly, P. Alston, Report of the Special Rapporteur on extreme poverty and human rights, UN Doc. A/HRC/29/31 (27 May 2015); R. Balakrishnan, J. Heintz and D. Elson, *Rethinking Economic Policy for Social Justice: The Radical Potential of Human Rights* (2016); D. Lettinga and L. van Troost (eds.), 'Can Human Rights Bring Social Justice? Twelve Essays', *Amnesty International Netherlands*, 2015, available at [www.amnesty.nl/content/uploads/2015/10/can\\_human\\_rights\\_bring\\_social\\_justice.pdf](http://www.amnesty.nl/content/uploads/2015/10/can_human_rights_bring_social_justice.pdf); I. Saiz and G. Oré Aguilar (eds.), 'Economic Inequality – Can Human Rights Make a Difference?', *openDemocracy*, available at, [www.opendemocracy.net/openglobalrights/economic-inequality-and-human-rights](http://www.opendemocracy.net/openglobalrights/economic-inequality-and-human-rights); M. Saloman, 'Why should it matter that others have more? Poverty, inequality and the potential of international human rights law', (2011) 37(5) *Review of International Studies* 2137; S. Moyn, *Not Enough: Human Rights in an Unequal World* (2018).

Some scholars have argued that extreme economic inequality has to be recognized as a human rights problem,<sup>9</sup> while others have contended that human rights can have limited 'redistributive effects' as economic and social rights represents only 'modest effort to build a floor of protection against indigence' rather than an 'ambitious attempt to create a ceiling on inequality'.<sup>10</sup> These debates, in so far as they take as given and fixed a specific idea of human rights, risk rarifying a particular vision and form of human rights as an internationally authorized claim of the individual against the state, rather than recognizing that this configuration of rights is itself historically contingent and the product of social struggles. As such, I seek to narrate a history of human rights as marked by 'raucous and contentious debate over what human rights were, when they ought to be cited, and how they ought to be enforced' and to what political uses they could be put,<sup>11</sup> and by doing so to draw attention to the political stake of struggles over *competing visions* of human rights and the necessary conditions for their realization that reflect different configurations of the relationship between the individual, the state and the international community. As critically important as the recent historiography of human rights has been,<sup>12</sup> there is, as Stephen-Ludwig Hoffmann recently highlighted, a need to recognize that contemporary notions of human rights 'do have an alternative history'<sup>13</sup> and that these other visions and conceptions of human rights receive little attention, 'precisely because . . . they have been defined out of the hegemonic version of human rights over the past two decades'.<sup>14</sup> Moreover, in connecting debates over visions and conceptualizations of rights with material struggles over global redistribution and against unjust appropriation and exploitation, I seek to avoid the very real risks of indulging in nostalgia for past struggles or over-investing in 'false contingencies' about what might have been.<sup>15</sup> Instead, by interrogating the development, content and definition of concepts of rights as one terrain in a broader struggle over the protection and dismantling of inequalities, I seek to 'understand . . . why something happened the way it did',<sup>16</sup> by elucidating the broader political economy and structural influences that explain why specific trajectories were taken and alternatives discarded.

The first part of this article reviews the debates on economic inequality in the 1970s. It examines the Third World demand for a NIEO to redress inequality among

<sup>9</sup> See, for example, Alston; Balakrishnan, Heintz and Elson; and Saloman, *ibid*.

<sup>10</sup> S. Moyn, *supra* note 8; S. Moyn, 'Human rights and the age of inequality', *openDemocracy*, 27 October 2015, available at [www.opendemocracy.net/openglobalrights/samuel-moyn/human-rights-and-age-of-inequality](http://www.opendemocracy.net/openglobalrights/samuel-moyn/human-rights-and-age-of-inequality).

<sup>11</sup> See C. Bon Tempo, 'From the Center-Right: Freedom House and Human Rights in the 1970s and 1980s', in A. Iriye, P. Goedde and W. Hitchcock (eds.), *The Human Rights Revolution: An International History* (2012), 224.

<sup>12</sup> S. Hoffmann, 'Genealogies of Human Rights', in S. Hoffmann (ed.), *Human Rights in the Twentieth Century* (2011), 1; see also S. Moyn, *The Last Utopia: Human Rights in History* (2012); B. Keys, *Reclaiming American Virtue: The Human Rights Revolution of the 1970s* (2014); M. Duranti, *The Conservative Human Rights Revolution: European Identity, Transnational Politics and the Origins of the European Convention* (2017); S. Jensen, *The Making of International Human Rights: The 1960s, Decolonization, and the Reconstruction of Global Values* (2017).

<sup>13</sup> S. Hoffmann, 'Human Rights and History', (2016) *Past and Present* 1, at 30.

<sup>14</sup> *Ibid.*, at 31.

<sup>15</sup> I. Venzke, 'Possibilities of the Past: Histories of the NIEO and the Travails of Critique', (2017) Amsterdam Center for International Law Research Paper No. 2017-26, at 2. On 'false contingencies' see S. Marks, 'False Contingency', (2009) 62(1) *Current Legal Problems* 1.

<sup>16</sup> Venzke *supra* note 15, at 3.

countries as well as the World Bank focus on inequality within countries, poverty alleviation and the realization of 'basic needs' as two competing responses, before examining the subsequent neoliberal 'counter-revolution'. The second part of the article focuses on how these concerns about economic inequality manifested themselves in human rights debates within UN institutions during this period. It examines, first, arguments that addressing inequalities and structural injustice is a prerequisite for the realization of human rights, especially economic and social rights, and the 1977 General Assembly Resolution 32/130. Thereafter, it traces the way in which the formulation of a right to development sought to recalibrate concerns about both individual and collective rights, as well as national development and the need for a just international order. The following section considers how the late 1970s human rights 'breakthrough' also represented a reclamation and reorientation of human rights which had the effect of neutralizing more radical rights claims, while publicizing a conception of human rights that prioritized civil and political rights compatible with the rise of economic neoliberal thought. It concludes with brief reflections on the aftermaths of these articulations of a more 'structural' approach to human rights.

## 2. DEBATING AND CONTESTING ECONOMIC INEQUALITY IN THE 1970S

### 2.1. Introduction

In the late 1960s and early 1970s there was a growing realization that even though growth rates of Third World states had been spectacular – averaging 5 per cent annual growth in the First Development Decade – such growth had not enabled the South to 'catch-up' with the North or bridge the inequality divide. Although global GDP had increased by US\$1,100 billion in the last decade, 80 per cent of this growth went to rich countries – where per capita GDP was already over US\$1,000 and which contained only 25 per cent of the world's population. Only 6 per cent of the increase went to poorer countries where per capita GDP was less than US\$200, which contained 60 per cent of the world's population.<sup>17</sup> Moreover, there was increasing recognition that high aggregate growth rates were accompanied by both rising poverty and inequality in states of the South,<sup>18</sup> with the bottom 40 per cent of the population in many developing countries doing far worse than national averages.<sup>19</sup> The General Assembly Resolution articulating the strategy for the Second UN Development Decade (1970–1980) pronounced that '[i]f undue privileges, extremes of wealth and social injustice persist, then development fails its essential purpose'.<sup>20</sup> Increasingly, inequality and the fact that 'in some developing countries, the distribution of income and wealth has become even more unequal in recent years' was again commented upon in the 1972 report by the Committee for

<sup>17</sup> R. McNamara, Address to the Board of Governors by Robert S. McNamara (1972), The World Bank, at 7.

<sup>18</sup> A. Sadd-Filho, 'Growth, Poverty, Inequality: From Washington Consensus to Inclusive Growth' (November 2010) DESA Working Paper No. 100, at 3.

<sup>19</sup> McNamara, *supra* note 17, at 8.

<sup>20</sup> UNGA Res. 2626(XXV), 'International Development Strategy for the Second United Nations Development Decade', UN Doc. A/RES/25/2626 (24 October 1970).

Development Planning (CDP) for the UN Economic and Social Council.<sup>21</sup> They continued:

The contrast between rich and poor is becoming sharper both as between the developed and developing countries and, in many cases, within the developing countries themselves. In a world pulsating with improving communications, these growing disparities generate urges and pressures that cannot be contained for any length of time.<sup>22</sup>

In the next two sections, two different – and potentially conflicting – ways in which the problem of economic inequality was taken up is discussed: the demands for an NIEO to redress inequalities *among* states, and a focus on inequalities *within* states of the global South, that authorized further developing interventions in the name of delivering ‘basic needs’ and poverty alleviation.

## 2.2. The New International Economic Order

In the wake of the collapse of the Bretton Woods system and the first ‘oil crisis’, the fourth conference of the Non-Aligned Movement (NAM) in Algiers in September 1973 focused its attention on ‘the constant deterioration of economic conditions in developing countries, with an ever-widening gap between them and the industrialized countries’.<sup>23</sup> It, thus, affirmed that in order to establish the ‘conditions for real development’ it was necessary to ‘put an end to all forms of foreign domination and exploitation’.<sup>24</sup> This galvanized the Third World to demand structural change and an NIEO, which quickly became the ‘most widely discussed transnational governance initiative of the 1970s’.<sup>25</sup> The objective was to contest the existing ‘international order of poverty’ that has organized the world economy so that ‘the prosperous countries have steadily grown richer at the expense of the under-developed countries, which have grown progressively poorer’, due to the ‘asymmetrical relationships between the dominant ‘centre’ and the dominated ‘periphery’.<sup>26</sup> The main components of the NIEO were the 1974 Declaration on the Establishment of a New International Economic Order<sup>27</sup> and the related Programme of Action on the Establishment of a New International Economic Order<sup>28</sup> passed at the Sixth Special Session of the General Assembly, as well as the subsequent Charter of Economic Rights and Duties of States.<sup>29</sup> Central to the rhetoric and focus of the Special Session was the

<sup>21</sup> Committee for Development Planning, Report of the Eighth Session, Economic and Social Council, Fifty-third session, Supplement 7, UN Doc. E/5126 (10–20 April 1972), para 9.

<sup>22</sup> *Ibid.*, para. 10.

<sup>23</sup> 4th Summit Conference of Heads of State or Government of the Non-Aligned Movement, Algiers, Algeria 5–9 September 1973, UN Doc. A/9330 (23 November 1973), at 18; see also M. Bedjaoui, *Towards a New International Economic Order* (1980), at 34.

<sup>24</sup> UN Doc. A/9330, *Ibid.*, at 19.

<sup>25</sup> N. Gilman, ‘The New International Economic Order: A Reintroduction’, (2015) 6(1) *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 1, at 1.

<sup>26</sup> Bedjaoui, *supra* note 23, at 23–4.

<sup>27</sup> ‘Declaration on the Establishment of a New International Economic Order’, UNGA Res. 3201, UN Doc. A/RES/S-6/3201 (1 May 1974).

<sup>28</sup> ‘Programme of Action on the Establishment of a New International Economic Order’, UNGA Res. 3202(S-VI), UN Doc. A/RES/S-6/3203 (1 May 1974).

<sup>29</sup> Charter of Economic Rights and Duties of States, UNGA Res. 3281(XXIX), UN Doc. A/RES/29/3281 (12 December 1974).

condemnation of growing international inequality, captured in the opening speech by Algerian President Boumedienne:

In the eyes of the vast majority of humanity it is an [economic] order that is as unjust and as outdated as the colonial order to which it owes its origin and its substance. Inasmuch as it is maintained and consolidated and therefore thrives by virtue of a process which continuously impoverishes the poor and enriches the rich, this economic order constitutes the major obstacle standing in the way of any hope of development and progress for all the countries of the Third World.<sup>30</sup>

The objective of the NIEO, as Nils Gilman explains, was to ‘transform the governance of the global economy’ to redirect more of the benefits of transnational integration towards ‘the developing nations’, through greater aid, debt relief, technology transfer, permanent sovereignty over natural resources, preferential and non-reciprocal treatment for developing countries, regulation of foreign investors and transnational corporations, and the stabilization of primary commodity prices.<sup>31</sup> The NIEO proposals were not socialist, but rather envisioned a modified form of state capitalism, it was ‘a sustained attempt to craft a new international law that would facilitate resource distribution in a world economy whose regulatory architecture had revealed itself to be fragile, if not obsolete’.<sup>32</sup> While, in substance, these demands were not new, the tone of their articulation arguably ‘represented a dramatic change from that of earlier years’ reflecting how a ‘long-suppressed frustration had bubbled to the surface and burst’.<sup>33</sup> There was clear resistance from the industrialized countries in response, with Southern states accused of ‘excessive politicization’ of international organizations<sup>34</sup> and the US ambassador suggesting that the ‘rule of the majority’ had become the ‘tyranny of the majority’.<sup>35</sup> While several reasons have been proposed for why the NIEO failed, however, the most pertinent, as Margot Solomon points out, is ‘that industrialized States did not want any such thing’.<sup>36</sup> Although the prescriptions sought by the NIEO did not pertain to human rights, nor did its agenda call for greater rights protection, enforcement or realization, the demands for an NIEO were taken up in human rights spaces and human rights activism by UN representatives and delegates from the global South. Before considering NIEO-inspired rights proposals, the next section briefly describes another response to the crisis of economic inequality in the 1970s that diverged both politically and substantively from the demands for an NIEO.

<sup>30</sup> Cited in R. Meagher, *An International Redistribution of Wealth and Power: A Study of the Charter of Economic Rights and Duties of States* (1979), at 3.

<sup>31</sup> Gilman, *supra* note 25, at 1.

<sup>32</sup> U. Özsu, ‘Neoliberalism and the New International Economic Order: A History of “Contemporary Legal Thought”’, in C. Tomlins and J. Desautels-Stein (eds.), *In Search of Contemporary Legal Thought* (2016).

<sup>33</sup> Meagher, *supra* note 30, at 5.

<sup>34</sup> See M. Salomon, ‘From the NIEO to Now and the Unfinished Story of Economic Justice’, (2013) 62 *International Comparative Law Quarterly* 31, at 46, note 86.

<sup>35</sup> Meagher, *supra* note 30, at 5.

<sup>36</sup> Salomon, *supra* note 34, at 46; see also U. Özsu, ‘“In the Interests of Mankind as a Whole”: Mohammed Bedjaoui’s New International Economic Order’ (2015) 6 *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 129.



### 2.3. The rise of 'basic needs' in development discourses

The problem of economic inequality was also taken up in development discourses. In his 1972 address to the Board of Governors, the President of the World Bank, Robert McNamara, focused on inequality, especially the fact that the 'unprecedented' aggregate rates of growth of the past decade have failed to reach the poor in most developing countries.<sup>37</sup> While McNamara remained optimistic that any conflict between the maximization of growth and the rapid reduction of poverty could be resolved – at least in the long term – his prescription was clear: policies need to be designed with the goal of improving the conditions of life for the poorest 40 per cent.<sup>38</sup> There was, he argued, 'no rational alternative to moving towards policies of greater social equity' because as the gap worsened between the 'highly privileged' and the 'desperately poor', he warned, 'it is only a question of time before a decisive choice must be made between the political costs of reform and the political costs of rebellion'.<sup>39</sup> That same year, McNamara made similar speeches before the UN Economic and Social Council where he raised, as a moral problem, the 'unacceptable' state of development in most of the developing world, its failure to improve the 'individual lives of the great masses of people' and the 'personal catastrophe' of poverty,<sup>40</sup> as well as at the UN Committee on Trade and Development (UNCTAD)<sup>41</sup> and the Stockholm Conference on the Human Environment.<sup>42</sup>

The following year, in his 1973 Nairobi speech to the World Bank's Board of Governors, McNamara extended his analysis of economic inequality and argued that 'growth [was] not equitably reaching the poor', given growth was accompanied by 'greater maldistribution of income in many developing countries'.<sup>43</sup> In response, he proposed to readdress growing inequality within and among nations through a new emphasis on 'basic needs' in development policy, thereby shifting the focus from problems of *relative* deprivation to problems of *absolute* poverty. McNamara continued:

If we look objectively at the world today, we must agree that it is characterized by a massive degree of inequality. The difference in living standards between rich nations and the poor nations is a gap of gigantic proportions. The industrial base of the wealthy nations is so great, their technological capacity so advanced, and their consequent advantages so immense that it is unrealistic to expect that the gap will narrow by the end of the century. Every indication is that it will continue to grow. Nothing we can do is likely to prevent this. But what we can do is begin to move now to insure [sic] that absolute poverty – utter degradation is ended.<sup>44</sup>

<sup>37</sup> McNamara, *supra* note 17. McNamara made a similar argument in his speeches to the Economic and Social Council (18 October 1972) and UNCTAD (14 April 1972).

<sup>38</sup> *Ibid.*, at 14.

<sup>39</sup> *Ibid.*, at 15.

<sup>40</sup> R. McNamara, President of the World Bank (International Bank for Reconstruction and Development) 'Address to the U.N. Economic and Social Council', (18 October 1972), at 6.

<sup>41</sup> R. McNamara, 'Address to the United Nations Conference on Trade and Development', (Santiago, Chile, 14 April 1972).

<sup>42</sup> R. McNamara, 'Address to the United Nations Conference on the Human Environment', (Stockholm, Sweden, 8 June 1972).

<sup>43</sup> R. McNamara, 'Address to the Board of Governors', (Nairobi, Kenya, 24 September 1973).

<sup>44</sup> *Ibid.*, at 13.

This focus on 'basic needs' was not necessarily new, given that the concept had been promoted since 1969 by the International Labour Organization (ILO) including in its 1976 Declaration of Principles and Program of Action, adopted at its World Employment Conference,<sup>45</sup> and in its book *Employment, Growth and Basic Needs*.<sup>46</sup> In 1974 the World Bank published 'Redistribution and Growth', the product of a three-year collaboration between the World Bank and the Sussex-based Institute for Development Studies (IDS), which reflected an interest in the possibility of redistributing gains without sacrificing growth.<sup>47</sup> The report's lead author, Hollis Chenery (Bank Vice-President for Development Policy), described it as a call for 'fundamental reorientation of development strategies so that the benefits of economic growth can reach a wider range of the population of developing countries' and a 'progress report on our [the Bank's] work towards formulating viable strategies for redistribution and growth'.<sup>48</sup> Subsequently, the report led to a review of the Bank's policy of capital-intensive development and its thesis 'became a major weapon of the basic needs strategists against growth model defenders'.<sup>49</sup> Thus, while the problem of poverty received only limited attention in development discussions prior to 1968, by the mid-1970s it had moved to 'front and center stage'.<sup>50</sup> In 1975 the Bank announced an 'Assault on Poverty', and other international institutions, including the United Nations Development Programme (UNDP), Food and Agricultural Organization (FAO) and the World Health Organization (WHO), as well as major bilateral donors, reoriented their focus to fulfilling 'basic needs' and this approach was almost universally embraced by 1977.<sup>51</sup> The 'basic needs' framework represented a response to the crisis of inequality that deliberately focused attention on poverty (rather than wealth). Further, the 'basic needs' framework conceptualized poverty primarily as a condition affecting individuals rather than states, and thereby promoted greater disaggregation of the state as well as more focused targeting of the poor *within* states in development policy.<sup>52</sup> Patrick Sharma has argued that in avoiding engagement with the NIEO and instead promoting its own alternative vision of global economic reform, the World Bank 'sought to distract attention from southern demands by mobilizing the international community behind a movement to eradicate global poverty'.<sup>53</sup> Additionally, the focus on poverty allowed for an expansion of World Bank authority to intervene in the Third World in the name

<sup>45</sup> See International Labour Organization, *Meeting Basic Needs: Strategies for Eradicating Mass Poverty and Unemployment (Conclusion of the World Employment Conference 1976)* (1977).

<sup>46</sup> International Labour Organization, 'Employment, Growth and Basic Needs: A One-World Problem. Report of the Director-General of the International Labour Office', (1976); see also J. Hoadley, 'The Rise and Fall of the Basic Needs Approach', (1981) *Cooperation and Conflict* 149.

<sup>47</sup> H. Chenery et al., 'Redistribution with Growth', (1974). The themes of the report had been developed in three Employment Missions of the ILO's World Employment Programme to Colombia, Sri Lanka, and Kenya, and ILO publication 'Employment, Incomes and Equality', (1972).

<sup>48</sup> World Bank Press Release, 30 September 1974.

<sup>49</sup> Saad-Filho, *supra* note 18, at 3.

<sup>50</sup> M. Finnemore, 'Redefining Development at the World Bank', in F. Cooper and R. Packard (eds.), *International Development and the Social Sciences: Essays on the History and Politics of Knowledge* (1997), 203.

<sup>51</sup> See Hoadley, *supra* note 46, at 151–2.

<sup>52</sup> Finnemore, *supra* note 50, at 203.

<sup>53</sup> P. Sharma, 'Between North and South: The World Bank and the New International Economic Order', (2015) 6(1) *Humanity: An International Journal of Human Rights, Humanitarianism and Development* 189, at 190.



of poverty alleviation.<sup>54</sup> As a ‘grand design’ for development theory and practice, the ‘basic needs’ approach therefore came to be seen as in tension with the Third World push for an NIEO focused on international institutional reforms to improve the unequal terms of trade between the North and the South.<sup>55</sup> Nonetheless, key proponents of an NIEO also highlighted the need to address the plight of absolute poverty and growing inequality *within* countries, and that ‘such a situation must sooner or later call for a change in the fundamental equations of economic power in the world’.<sup>56</sup>

#### 2.4. Inequality and the Washington Consensus

With hindsight, Bedjaoui’s optimistic prognosis at the end of the 1970s, that ‘[e]verything gives grounds for thinking that we are witnessing the twilight of an era now completing its historical function, and that we are on the eve of great structural revolutions in every field’,<sup>57</sup> was misdirected. By the late 1970s and early 1980s, the interest of international development agencies in the ‘basic needs’ framework had peaked.<sup>58</sup> The turn of the decade saw the prevailing economic mind-set shift to supply-side economics and monetarism and the gradual consolidation of ‘neoliberalism’, especially subsequent to the elections of Margaret Thatcher as United Kingdom Prime Minister (1979) and Ronald Reagan as United States President (1980).<sup>59</sup> The second Oil Crisis (1978–1979) led to a drastic increase in the foreign debts of many developing countries, which escalated after Paul Volcker, the US Federal Reserve Chairman, raised interest rates to 20 per cent and later to 21.5 per cent in June 1981, in order to address ‘stagflation’ – simultaneous high inflation and high unemployment. It was in this context of economic crisis that the World Bank and the IMF embarked on structural adjustment lending (SAL), imposing programmes whose objectives were to reduce soaring inflation, correct disparities between foreign debts and national budgets, and restore economic growth. Whether this move was initially driven by more internal institutional considerations or by donor demands,<sup>60</sup> the effect was to compel Third World states to undertake a series of drastic economic reforms aimed at liberalizing and deregulating national economies, by imposing ‘conditions’ requiring them to reduce or eliminate tariffs, dismantle quotas or domestic monopolies, make currencies convertible, open up to foreign ownership and investment, privatize state assets and maintain strict budget discipline. This set of policies, which came to be known as the ‘Washington Consensus’, has been described by Giovanni Arrighi as a ‘counterrevolution in development thought and practice’ which ‘did nothing to improve their [Third World state’s] position in the global hierarchy of wealth

<sup>54</sup> See S. Pahuja, ‘Global Poverty and the Politics of Good Intentions’, in R. Buchanan and P. Zumbansen (eds.), *Law in Translation: Human Rights, Development and Transitional Justice* (2014).

<sup>55</sup> See J. Galtung, ‘The New International Economic Order and the Basic Needs Approach’, (1978–79) 4 *Alternatives* 445.

<sup>56</sup> Bedjaoui, *supra* note 23, at 28.

<sup>57</sup> *Ibid.*, at 23.

<sup>58</sup> See Hoadley, *supra* note 46, at 149.

<sup>59</sup> See D. Harvey, *A Brief History of Neoliberalism* (2005).

<sup>60</sup> For the first position see P. Sharma, ‘Bureaucratic imperatives and policy outcomes: The origins of World Bank structural adjustment lending’, (2013) 20(4) *Review of International Political Economy* 667.

but greatly facilitated the redirection of capital flows toward sustaining the revival of US wealth and power'.<sup>61</sup> Numerous studies examined the relationship between structural adjustment policies, inequality and poverty.<sup>62</sup> While a number of such studies suggested that if structural adjustment programmes were properly implemented they could improve the condition of the poor, others showed how these programmes adversely affected income distribution and increased poverty.<sup>63</sup> A 2002 civil society review of structural adjustment policies found that such policies 'have contributed to the further impoverishment and marginalization of local populations, while increasing economic inequality'.<sup>64</sup> Other recent studies also showed that structural adjustment policies worsened human rights protections as the policy changes required hurt the poorest the hardest.<sup>65</sup> By the end of the 1980s this period was widely recognized as a 'lost decade' for development,<sup>66</sup> with per capita GDP decreasing in numerous countries and a dramatic reversal in net resource flows of US\$180 billion from the South to the North between 1984 and 1989.<sup>67</sup>

However, perhaps most critically, understandings of inequality were transformed during this period, with 'neoliberalism' – whether understood as an intellectual project,<sup>68</sup> governmental rationality<sup>69</sup> or a political project of the ruling class<sup>70</sup> – reconfiguring engagement with economic inequality. Neoliberal thought presented inequality as both necessary and desirable (provided it was contained within 'acceptable' limits) as economic differences were assumed to incentivize work and investment. Additionally, a focus on the market not as a site of exchange, but of competition, which necessarily produces not equivalence but inequality, helped justify inequality as inevitable.<sup>71</sup> In *The Constitution of Liberty* Hayek connected the 'rapid economic advance we have come to expect' with inequality, suggesting such gains would be 'impossible without it'.<sup>72</sup> He posed, as a rhetorical question, '[i]f on an international scale even major inequalities may be of great assistance to the progress of all, can there be much doubt that the same is also true of

<sup>61</sup> G. Arrighi, 'The world economy and the Cold War, 1970–1985', in M. Leffler and O. Westad (eds.), *The Cambridge History of the Cold War, Volume 3: Endings* (2010), 35. See also J. Toye, *Dilemmas of Development: Reflections on the Counter-Revolution in Development Economics* (1993).

<sup>62</sup> See E. Carrasco and M. Ayhan Köse, 'Income Distribution and the Bretton Woods Institutions: Promoting and Enabling Environment for Social Development', (1996) 6 *Transnational Law and Contemporary Problems* 1, at 31–2.

<sup>63</sup> *Ibid.*

<sup>64</sup> 'The SAPRI Report: Structural Adjustment: The Policy Roots of Economic Crisis, Poverty and Inequality', (2002), at 203.

<sup>65</sup> M.R. Abouharb and D. Cingranelli, *Human Rights and Structural Adjustment* (2007).

<sup>66</sup> For example, J. Darnton, "'Lost Decade' Drains Africa's Vitality', *The New York Times*, 19 June 1994, available at [www.nytimes.com/1994/06/19/world/lost-decade-drains-africa-s-vitality.html?pagewanted=all](http://www.nytimes.com/1994/06/19/world/lost-decade-drains-africa-s-vitality.html?pagewanted=all).

<sup>67</sup> 'The State of International Economic Co-operation and Effective Ways and Means of Revitalizing the Economic Growth and Development of Developing Countries: Report of the Secretary-General', UN Doc. A/AC.23/5 (30 January 1990).

<sup>68</sup> P. Mirowski and D. Plehwe (eds.), *The Road from Mont Pèlerin* (2009).

<sup>69</sup> See M. Foucault, *Birth of Biopolitics, Lectures at the Collège de France 1978–79* (2008) and also W. Brown, *Undoing the Demos: Neoliberalism's Stealth Revolution* (2015).

<sup>70</sup> See Harvey, *supra* note 59.

<sup>71</sup> See Foucault, *supra* note 69, at 118–19 and also M. Lazzarato, 'Neoliberalism in Action: Inequality, Insecurity and the Reconstitution of the Social', (2009) 26(6) *Theory, Culture and Society* 109.

<sup>72</sup> F.A. Hayek, 'The Constitution of Liberty', in R. Hamowy (ed.), *The Collected Works of F.A. Hayek*, (2011, vol. XVII), at 96.

such inequalities within a nation?’ given those who move fastest increase progress for all.<sup>73</sup> Thus, deliberate redistribution, he argued, would have destructive long-term effects of slowing progress of all, whereas the dynamic nature of ‘impoverished but highly competitive countries’ would eventually benefit all.<sup>74</sup> Hayek additionally contended that equality before the law and material equality were in conflict with one another, that they could not be achieved simultaneously. For him, freedom demands equality before the law, even though it might lead to material inequality, but the promotion of material inequality would kill freedom and required unjustifiable coercion.<sup>75</sup> However, Hayek’s focus on formal equality before the law in order to allow everyone to participate in the ‘game of competition’ carefully obscured from examination the background rules that structured competition and how these rules potentially fostered inequality. Closely linked to his promotion of a specific economic rationality based on full and complete competition was also an attack on state interventions that ‘distorted’ the operations of the market. Further, within neoliberal thought, inequalities were increasingly framed as the product of individual failings rather than structural factors, with responsibility for poverty attributed to failings of the individual (or the nation state) rather than the structural context in which they found themselves. This movement from a politicized contestation of inequality in the early 1970s and an anti-redistributive counter-revolution was in some ways also reflected in the human rights debates of the period, to which we now turn.

### 3. HUMAN RIGHTS DEBATES AND THE PROBLEM OF ECONOMIC INEQUALITY

#### 3.1. Introduction

The demands of the NIEO did not focus on human rights or (as Alston critically notes) recognize human rights as ‘an important, let alone essential ingredient of the efforts to establish a NIEO’.<sup>76</sup> However, when the Charter on Economic Rights and Duties of States was first proposed, it was described by the President of Mexico as a ‘counterpart in the economic field to the Universal Declaration of Human Rights and the International Covenants on Human Rights’.<sup>77</sup> Further, the NIEO agenda was increasingly taken up by representatives from the global South in human rights spaces, and the argument that the realization of human rights – especially economic and social rights – depended upon a radically transformed international order gained traction. Such a claim had already been articulated in the 1972 UNCTAD resolution on the ‘Charter of the Economic Rights and Duties of States’, which affirmed that the Universal Declaration of Human Rights and

<sup>73</sup> *Ibid.*, at 101.

<sup>74</sup> *Ibid.*, at 102.

<sup>75</sup> *Ibid.*, at 150.

<sup>76</sup> P. Alston, *supra* note 4; see also U. Baxi, ‘The New International Economic Order, Basic Needs and Rights: Notes Towards Development of the Right to Development’, (1983) 23(2) *Indian Journal of International Law* 225.

<sup>77</sup> Proceedings of the United Nations Conference on Trade and Development, Third Session, Vol. 1, Report and Annexes, UN Doc. TD/180, para. 210; see also V. Ogle, ‘State Rights Against Private Capital: The “New International Economic Order” and the Struggle Over Aid, Trade and Foreign Investment, 1962–1981’, (2014) 5(2) *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 211, at 219.

the Covenants ‘make the full exercise of those rights dependent on the existence of a just international order and respect for the principle of self-determination of peoples and of the free disposition of their wealth and natural resources’.<sup>78</sup> The next sections discuss some of the ways in which the agenda of the NIEO was reflected in human rights spaces, firstly in debates on the realization of economic and social rights, in General Assembly Resolution 32/130 and in the claim to a right to development, before considering the impact of the neoliberal ‘counter-revolution’ on rights claims.

### 3.2. The realization of economic, social and cultural rights

In March 1968, at its 24th session, the Commission on Human Rights passed a resolution calling for a ‘[s]tudy of the question of realisation of economic, social and cultural rights contained in the Universal Declaration of Human Rights’.<sup>79</sup> This agenda item was welcomed at the Tehran Conference later that year, which noted with concern that the ‘widening gap between the economically developed and developing countries impedes the realisation of human rights in the international community’.<sup>80</sup> The following year, the Commission added to this agenda item the ‘special problems’ relating to human rights in developing countries, and requested that Iranian lawyer Manouchehr Ganji prepare a report for consideration.<sup>81</sup> His initial report, sub-titled ‘The Widening Gap’, was presented to the Commission in February 1973<sup>82</sup> and contained six substantive parts, copious statistical charts and numerous appendixes spanning over 360 pages. In January 1974, Ganji provided the Commission revised observations, conclusions and recommendations under the title ‘The widening gap: a study of the realization of economic, social and cultural rights’.<sup>83</sup> The following year, the Commission published Ganji’s reports as ‘The Realization of Economic, Social, and Cultural Rights: Problems, Policies and Progress’.<sup>84</sup>

Ganji’s analysis focused on both inequality within and among countries. He drew on detailed statistics to demonstrate a widening income gap between rich and poor nations<sup>85</sup> noting, however, that these statistics were even more alarming when the growing internal disparities in per capita income within countries of the global South were also taken into account. In relation to intra-country inequality, he provided statistics to ‘show that the gap is widening in most countries between the rural and the urban population and between the rich and the low income groups’

<sup>78</sup> UNCTAD, Res. 45(III) (18 May 1972).

<sup>79</sup> ‘Study of the question of the realization of economic and social rights contained in the Universal Declaration of Human Rights’, Commission on Human Rights, Res. 11(XXIV) UN Doc. E/CN.4/972 (1968), at 155.

<sup>80</sup> Tehran Proclamation, *supra* note 3, para 12.

<sup>81</sup> ‘Question of the realization of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of the special problems relating to human rights in developing countries’, Commission on Human Rights, Res. 14(XXV) (13 March 1969).

<sup>82</sup> M. Ganji, ‘The Widening Gap: A Study of the Realization of Economic, Social and Cultural Rights – Preface and Introduction’, UN Doc. E/CN.4/1108 and Add.1-9 (5 February 1973); see also Commission on Human Rights, Res. 1792(LIV) (18 May 1973).

<sup>83</sup> M. Ganji, ‘The Widening Gap: A Study of the Realization of Economic, Social and Cultural Rights’, UN Doc. E/CN.4/1131 (1 January 1974).

<sup>84</sup> M. Ganji, ‘The Realization of Economic, Social and Cultural Rights: Problems, Policies’, UN Doc. E/CN.4/1108/Rev.1 (1975).

<sup>85</sup> *Ibid.*, at 309–18.

especially in less developed countries.<sup>86</sup> This was, he argued, ‘creating a politically explosive situation both at the national and the international levels’<sup>87</sup> and also threatening to undermine ‘possibilities of uniform definition and application of [human rights] standards’.<sup>88</sup> He identified how elements of a country’s social structure, such as excessive concentration of wealth and income, concentrated poverty and stagnation, social and economic exclusion, lack of mobility and discrimination especially based on gender, were preventing the realization of economic and social rights.<sup>89</sup> His focus was on guaranteeing minimum rights standards but he also connected the realization of minimal rights to broader distributional considerations, suggesting that:

Since it has been proven that the more egalitarian its income and wealth distribution the better a nation copes with the guarantee of at least minimum standards of economic, social and cultural rights for all of its citizens, the Commission could recommend that all countries, and in particular the less developed, should institute necessary measures so that the distortion in income distribution within them would at least stop increasingly by 1975 and begin to narrow within the last half of the present decade.<sup>90</sup>

Additionally a whole section of the report addressed the ‘international dimensions of the obstacles to and the possibilities for the realization of economic, social and cultural rights in the less developed countries’.<sup>91</sup> Ganji characterized relations between the developed and developing countries as a relationship of dependency and ‘lopsided development’, which he understood as a ‘the by-product of increasing disequilibrium between the centres [sic] and the peripheries of international development’, that has been persistent since the industrial revolution and not rectified by recent gains in science and technology.<sup>92</sup> He named this a relationship of neo-colonialism and connected the international center-periphery dependence with the internal situation in Southern states, arguing that ‘under-development (as a system of self-reproducing hard-core poverty and stagnation) is a complex system of mutually supporting internal and external factors that allows the less developed countries only a lop-sided development process’.<sup>93</sup>

The concerns expressed and arguments made by Ganji were taken up in a series of Commission resolutions. At the 30th session representatives expressed ‘dire concern’ about conditions of poverty and the ‘considerable disparities of income levels in several developing countries’ and invited states to ‘take steps with a view to eliminating inequality in income distribution and social services’.<sup>94</sup> The resolution also focused on inequality between countries and reiterated that preconditions for the realization

<sup>86</sup> Ganji, ‘The Widening Gap’, *supra* note 83, para. 12.

<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*, para. 13.

<sup>89</sup> *Ibid.*, para. 20.

<sup>90</sup> *Ibid.*, para. 78.

<sup>91</sup> See Ganji, ‘The Realization of Economic, Social and Cultural Rights’, *supra* note 84, Ch. V: The International Context, at 113.

<sup>92</sup> *Ibid.*, para. 302.

<sup>93</sup> *Ibid.*, para. 308.

<sup>94</sup> Commission on Human Rights, Report on the Thirtieth Session (4 February–8 March 1974), UN Doc. E/CN.4/1154, para. 79.

of rights included the 'liquidation of colonialism, neo-colonialism, racism and apartheid', equitable trade agreements and the regulation of multinational corporations. It restated that:

the international community, in particular economically developed countries, had a duty to extend all possible co-operation, with full respect for the interdependence and equality of all States, in order to promote the realization of the right of peoples to economic and social development.<sup>95</sup>

The Commission recommended a draft resolution for the Economic and Social Council expressing 'deep appreciation' for the 'comprehensive and useful study' and affirmed:

its conviction that early realization of the economic, social and cultural rights of people can be achieved only if all countries and people are able to attain an adequate level of economic growth and social development and if all countries institute all necessary measures with a view to eliminating inequality in income distribution and social services in accordance with the International Development Strategy for the Second Development Decade.<sup>96</sup>

There was a further Commission resolution the following year on similar terms.<sup>97</sup> In 1975 the Commission decided to adopt the realization of economic, social and cultural rights as a standing item on its agenda. At the 1975 World Conference for the International Women's Year in Mexico City the need for an NIEO dominated the interventions from representations of the global South. Many Southern delegates characterized the problem of women's rights as social problems, caused by an unjust economic order, and thus the redress of these inequities required first the achievement of a more just international order.<sup>98</sup>

However, it was at the 32nd session of the Commission in 1976 – in the aftermath of the 6th and 7th Special Sessions and the 29th and 30th General Sessions of the General Assembly where calls for an NIEO dominated the agenda – that the argument that a more equitable international economic order was an essential condition for the realization of economic, social and cultural rights was made more forcefully.<sup>99</sup> The Commission's Resolution 4(XXXIII) the following year, at the 33rd session, demonstrates the degree to which the logic and demands of the NIEO has filtered into the human rights agenda being pursued by Third World states. The resolution affirmed that the persistence of colonialism, neocolonialism and the failure to recognize full permanent sovereignty over natural resources, among others, were 'essential obstacles to the full realization of economic, social and cultural rights'.<sup>100</sup>

<sup>95</sup> *Ibid.*, para. 80.

<sup>96</sup> *Ibid.*, 'Question of the Realization of the Economic, Social and Cultural Rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems relating to human rights in developing countries'.

<sup>97</sup> *Ibid.*, para 34.

<sup>98</sup> R. Burke, 'Competing for the Last Utopia?: The NIEO, Human Rights, and the World Conference for the International Women's Year, Mexico City, June 1975', (2015) 6(1) *Humanity: An Interdisciplinary Journal of Human Rights, Humanitarianism, and Development* 47, at 50.

<sup>99</sup> Commission on Human Rights, Report of the Thirty-Second Session (2 February–5 March 1976), UN Doc. E/CN.4/1213, para 9.

<sup>100</sup> Commission on Human Rights, Report on the Thirty-Third Session (7 February–11 March 1977), Res. 4(XXXIII) 'Question of the Realization of the Economic, Social and Cultural Rights contained in the Universal



The resolution expressed concern about the ‘increasing disparity of living conditions and income levels between the developed and the developing countries’ and articulated that ‘it is the duty of the international community to contribute to putting an end to this disparity’.<sup>101</sup> The resolution also called for the Secretary-General together with UNESCO to complete a study on:

[t]he international dimensions of the right to development as a human right in relation with other human rights based on international co-operation, including the right to peace, taking into account the requirements of the New International Economic Order and the fundamental human needs.

This resolution was the first institutional affirmation of the right to development (discussed below) and thus, has subsequently been described as ‘the germ that grew into a more complex and far-reaching concept of the right to development’.<sup>102</sup>

### 3.3. General Assembly Resolution 32/130 (1977)

These arguments that the realization of rights depended on a just international order culminated in the 1977 General Assembly Resolution 32/130 1977<sup>103</sup> which reiterated the indivisibility of all human rights, and arguably ‘inscribed the logic of the NIEO into the human rights program’.<sup>104</sup> The resolution quoted directly from the Tehran Proclamation to repeat that ‘the achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development’.<sup>105</sup> It also affirmed that ‘the realization of the New International Economic Order is an essential element for the effective promotion of human rights and fundamental freedoms’.<sup>106</sup> In the debate leading up to the resolution’s adoption, the representative from Colombia reiterated an earlier statement made to the General Assembly by their Foreign Minister, Indalecio Liévano Aguirre:

While international organizations devise, without insurmountable difficulties, important concepts in matters of political democracy—as in the case of the protection of human rights, the struggle against racial discrimination, or the equal representation of States—on the other hand obstacles systematically arise whenever the powerful vested interests of a small group of affluent societies are involved, as for them the concepts of equality, equity and human rights are subjects that can be, and in fact are, excluded from the economic sphere, deemed by them to be a reserved area for inequalities, the predominance of power and the maintenance of the privileges and advantages acquired under the old international economic order.<sup>107</sup>

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Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study on special problems relating to human rights in developing countries’, UN Doc. E/CN.4/1257, at 74, preamble.

<sup>101</sup> *Ibid.*

<sup>102</sup> ‘Introduction’ in ‘Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development’, *OCHR*, 2013, available at [www.ohchr.org/Documents/Publications/RightDevelopmentInteractive\\_EN.pdf](http://www.ohchr.org/Documents/Publications/RightDevelopmentInteractive_EN.pdf), at 3.

<sup>103</sup> UNGA Res. 32/130 (1977), *supra* note 5.

<sup>104</sup> Burke, ‘Competing’, *supra* note 98, at 57.

<sup>105</sup> UNGA Res. 32/130 (1977), *supra* note 5, para. 1(b).

<sup>106</sup> *Ibid.*, para. 1(f).

<sup>107</sup> United Nations General Assembly, Thirty-Second Session, 105th plenary meeting, 16 December 1977, at 3:30pm, UN Doc. A/32/PV.105, para. 138.

The representative from Bolivia too, reflected upon his country's fickle fortunes, due to outside events that destabilized 'social peace', reduced national income and 'inflict[ed] harsh suffering on the weakest, most vulnerable and poorest sectors of our population'. He thus stressed 'the direct and determining incidence of the economic factor in the maintenance of social peace and the full enjoyment of human rights'.<sup>108</sup>

Resolution 32/130 has been strongly criticized by proponents of individual human rights who saw it and the Ganji report as emblematic of the dangerous 'evolution of human rights goals and priorities of the UN during the seventies'.<sup>109</sup> Jack Donnelly concluded a critical discussion of the Ganji report and the General Assembly resolution by asserting that '[i]n the field of human rights, the UN has found its voice – and that voice is not only limited in range, but shrill and quite disturbing'.<sup>110</sup> Philip Alston has also criticized Ganji's report for focusing on international problems faced by developing countries in overcoming poverty rather than the 'national norms and standards governing the realization of economic, social and cultural rights'.<sup>111</sup> More recently, Roland Burke was critical of how the NIEO operated as a 'solvent that effaced any injustice in the particular' by gesturing instead to 'the nebulous promise of structural revolution, concentrated in state hands', and thereby 'reallocated the question of justice back to the international plane and resized the constituent granules of debate as states and peoples, not individuals' in ways that evaded individual rights demands.<sup>112</sup> Although these are important critiques, I have tried to foreground what remains of value in the Ganji report and subsequent resolutions, namely the recognition that is necessary to address intra- and international inequality and the unjustness of the international order as a precondition for the realization of economic and social rights. The next section turns to the articulation of the right to development in the context of the NIEO as a third-generation solidarity right. In particular, it focuses on how some discussions on the right to development sought to mediate some of these difficult tensions between the NIEO and 'basic needs' approach and also between an overly 'structural' and a predominately 'individual' or 'legalistic' approach to human rights. In doing so, some discussions on the right to development suggested more nuanced ways to connect the realization of rights and inequality *within* states and the broader conditions structuring economic and legal relations *among* states.

### 3.4. The right to development

The concept of a right to development, often described as a third-generation 'solidarity' right,<sup>113</sup> was first suggested by Senegalese foreign minister Doudou Thiam

<sup>108</sup> *Ibid.*, para. 125.

<sup>109</sup> J. Donnelly, 'Recent Trends in UN Human Rights Activity: Description and Polemic', (1981) 35(4) *International Organization* 633–55. See also a response, P. Alston, 'The Alleged Demise of Political Human Rights at the UN: A Reply to Donnelly', (1983) 37(3) *International Organization* 537–46.

<sup>110</sup> Donnelly, *ibid.*, at 655.

<sup>111</sup> See also P. Alston, 'Foreword', in M. Langford (ed.), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (2008), for a critique of this focus.

<sup>112</sup> Burke, 'Competing?', *supra* note 98, at 52.

<sup>113</sup> S. Marks, 'The Human Right to Development: Between Rhetoric and Reality', (2004) 17 *Harvard Human Rights Journal* 137.

in 1966<sup>114</sup> and then subsequently formulated and promoted in human rights circles by Senegalese jurist M'Baye in 1972.<sup>115</sup> The right to development has oscillated between a focus on 'right of peoples' or 'proletarian nations', but also as an individual human right, although one that belonged to 'the human being, *in relation to the national community of which he [sic] was a part*'.<sup>116</sup> While, in both formulations, the human being is the ultimate recipient of the right, the ambiguity left open the question of who is seen to be the provider or duty-bearer in relation to this right – whether the nation state or the international community.<sup>117</sup> Mohammed Bedjaoui has argued that the 'international dimension of the right to development is nothing more than an equitable distribution with regard to global social and economic well being'.<sup>118</sup> The demand is, he writes, a reflection of the fact that 'four fifths of the world's population no longer accept that the remaining fifth should continue to build its wealth on their poverty'.<sup>119</sup> It was for him, therefore, 'the alpha and omega of human rights' or 'the *core right* from which all the others stem'.<sup>120</sup>

After the Commission on Human Rights in 1977 first recognized the right to development in the context of calling for a study on 'the international dimensions of the right to development as a human right'<sup>121</sup> a UNESCO-hosted expert meeting was held in 1978 to explore the question of human rights, human needs and the new international economic order. The UNESCO expert report gestures towards a vision or model of human rights attentive to *both* inter- and intra-national inequality, and in which attention to the 'structural violence' of the international order does not detract from the imperative to realize individual rights and needs. The report confirmed that it is necessary to 'break the framework which continually generates conditions that are the anti-thesis of those in which people could enjoy their rights' and that 'without struggle against structures there can be no realization of rights'.<sup>122</sup> However, it also acknowledged that '[i]nternational social justice in the sense of the New International Economic Order might be neither a necessary nor a sufficient condition for intra-national social justice in the sense of basic human needs'.<sup>123</sup> Specifically, the report highlighted the limitations in the elitist nature of the NIEO proposals and the risk that it 'could be used to reinforce the position of elite groups throughout the world by confining itself to a redistribution of privileges among existing dominant groups'.<sup>124</sup> In doing so, the experts

<sup>114</sup> D. Whelan, "'Under the Aegis of Man": The Right to Development and the Origins of the New International Economic Order', (2015) 6(1) *Humanity: An International Journal of Human Rights, Humanitarianism and Development* 93, at 94.

<sup>115</sup> K. M'Baye, 'Le droit au développement comme un droit de l'homme', (1972) 5 *Revue des droits de l'homme* 505.

<sup>116</sup> M. Bedjaoui, 'The Right to Development', in M. Bedjaoui (ed.), *International Law: Achievements and Prospects* (1991), 1177 at 1179 (emphasis in original).

<sup>117</sup> *Ibid.*, at 1181.

<sup>118</sup> *Ibid.*

<sup>119</sup> *Ibid.*, at 1182.

<sup>120</sup> *Ibid.*, at 1182 (emphasis in original).

<sup>121</sup> Commission on Human Rights Res. 4(XXXIII), *supra* note 100. See also Report of the Secretary-General on the International Dimensions of the Right to Development as a Human Right, UN Economic and Social Council Official Records, Thirty-fifth session, UN Doc. E/CN.4/1334 (1979).

<sup>122</sup> UNESCO, 'Expert Meeting on Human Rights, Human Needs and the Establishment of a New International Economic Order, Paris 19–23 June 1978', UN Doc. SS.78/Conf.630/2 (29 December 1978), para 65.

<sup>123</sup> *Ibid.*, para. 55.

<sup>124</sup> *Ibid.*, para. 67.

recognized that ‘what is really at stake is a total change in both inter- and intra-national power structures’ and that ‘such a change surpasses the economic sphere’.<sup>125</sup> In presenting this report to the Secretary-General, UNESCO highlighted that:

the analysis of this relationship provides a framework for understanding the structures and processes which make the establishment of a new international economic order an important element in the implementation of human rights, taken as an indivisible whole, with particular reference to economic, social and cultural rights and to the situation prevailing in developing countries.<sup>126</sup>

In a similar vein Uprenda Baxi, in his analysis of the NIEO and basic needs, criticized the NIEO’s failure to address intra-national redistribution and human rights. Baxi, therefore, recognized the NIEO as a necessary but insufficient precondition for the realization of social justice and human rights.<sup>127</sup> However, he too notes that ‘insofar as the existing inequities of the world economic order are causally related to the cruel frustration of basic needs of millions of human beings in the Third World’ the NIEO could be consistent with a new ‘paradigm of development’ envisioned by the right to development.<sup>128</sup>

The Secretary-General’s report, ‘The international dimension of the right to development as a human right in relation with other human rights based on international co-operation, including the right to peace, taking into account the requirements of the New International Economic Order and the fundamental human need’, prepared by Philip Alston, was released in 1978.<sup>129</sup> It suggested that the right to development originates from ‘a new conception of the redistribution of power and decision-making and sharing of the world’s resources based on needs’.<sup>130</sup> The report highlighted that there were both international and national dimensions to the right to development, although it noted that growing interdependence between these spheres increasingly meant that it ‘may not always be possible to draw a workable distinction between what constitutes the “international” as opposed to the “national” dimensions of particular issues’.<sup>131</sup> The analysis paid attention to the ‘international dimensions’ of the right to development, recognizing both growing international co-operation but also persistent transnational obstacles including ‘continuing patterns of domination and dependency’ and how underdevelopment is produced as a ‘consequence of plunging a society and its economy into a world whose structures condemn them to a subordinate status and stagnation or internal imbalance’.<sup>132</sup> However, the report’s recommendations focused primarily on ‘the need to ensure that the promotion of respect

<sup>125</sup> *Ibid.*

<sup>126</sup> ‘Report submitted by UNESCO in connexion [sic] with paragraph 4 of resolution 4(XXXIII) of the Commission on Human Rights’, UN Doc. E/CN.4/1340 (9 February 1979).

<sup>127</sup> Baxi, *supra* note 76, at 225–6.

<sup>128</sup> *Ibid.*, at 229.

<sup>129</sup> ‘The international dimensions of the right to development as a human right in relation with other human rights based on international co-operation, including the right to peace, taking into account the requirements of the New International Economic Order and the fundamental human rights: Report of the Secretary-General’, UN Doc. E/CN.4/1334 (2 January 1979).

<sup>130</sup> *Ibid.*, para. 74.

<sup>131</sup> *Ibid.*, para. 37.

<sup>132</sup> UNESCO, ‘Medium Term Plan (1977–1982)’, cited in *ibid.*

for human rights is an integral element in all development-related activities' rather than calling for a more radical transformation of international economic and legal structures.<sup>133</sup> This focus arguably reflects Alston's concerns about the 'potential pitfalls' of an overly structural approach to rights. He identified various risks with such an approach including that a 'structural' approach would address only international or 'external' structures 'thereby neglecting the equally important dimension of equitable domestic structures which are conducive to the realization of human rights' as well as that it could 'become identified with a sweepingly broad, non-legal, economically or sociologically-oriented approach'.<sup>134</sup> Overall therefore, the need for global structural change in order to enable the realization of rights was quickly brushed over in the report, with more space dedicated to discussing the relationship between the right to development and basic needs.

This question about how to balance the realization of individual rights and the removal of structural inequalities, and thus to avoid the pitfalls of both an overly 'structural' or an overly 'individual' and 'legalistic' approach to rights, continued to be discussed in the late 1970s. In 1979 the General Assembly affirmed the need for a seminar on the unjust international order and human rights,<sup>135</sup> held the following year in June–July in Geneva. At this Seminar on the Effects of the Present Unjust International Order on the Economies of the Developing Countries and the Obstacle that this Constitutes for the Implementation of Human Rights and Fundamental Freedoms, Theo van Boven, Director of the Human Rights Division at the United Nations Secretariat, reiterated:<sup>136</sup>

It is a challenge of the utmost importance, for unless we can effectively bridge the gap between the realms of human rights and economics we risk the pursuit, on the one hand, of an international economic order which neglects the fundamental human development objective of all our endeavours, and, on the other hand, of a shallow approach to human rights which neglects the deeper, structural causes of injustice, of which gross violations of human rights are often only the symptom . . .

[Our] role implies neither interference nor involvement in technical issues which are beyond our sphere of competence. But neither does it permit the abdication of our responsibilities to the human rights provisions of the United Nations Charter. It is in the light of these human rights responsibilities that we should work for a new international order with economic as well as with human and social components, because, in the final analysis, the welfare of all human beings in its spiritual and material dimensions is the primary and ultimate aim of our endeavours.<sup>137</sup>

<sup>133</sup> *Ibid.*, at 314.

<sup>134</sup> P. Alston, *Development and the Rule of Law*, *supra* note 4, at 19.

<sup>135</sup> 'Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms', UNGA Res. 34/46, UN Doc. A/RES/34/46 (23 November 1979), para. 10.

<sup>136</sup> Seminar on the Effects of Existing Unjust International Economic Order on the Economies of the Developing Countries and the Obstacle that this Represents for the Implementation of Human Rights and Fundamental Freedoms, Geneva, Switzerland, 30 June–11 July 1980, UN Doc. ST/HR/SERA/8.

<sup>137</sup> Cited in R. Ferrero, Special Rapporteur on the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, 'The New International Economic Order and the Promotion of Human Rights', UN Doc. E/CN.4/Sub.2/1983/24/Rev.1 (1986), 2.

These attempts to grapple with how best to protect individual rights, whilst also being attentive to the structural conditions and patterns of injustice that engender and produce rights violations, can provide valuable inspiration for contemporary discussions. These debates serve as an important reminder about the necessity of connecting the realization of economic and social rights *within* states to the broader conditions structuring economic and legal relations *among* states. The next section examines some of the attacks on this more ‘structural’ approach to human rights.

### 3.5. The human rights ‘counter-revolution’?

Historians of human rights have identified the late 1970s as a moment of ‘breakthrough’ in which ‘the idea of international human rights achieved a prominence that far outstripped even that of its founding epoch thirty years before’.<sup>138</sup> The fact that this ‘breakthrough’ coincided with the consolidation of ‘neoliberalism’ has raised questions about whether there is a relationship of complicity between human rights, neoliberalism and the production of economic inequality.<sup>139</sup> Susan Marks has critiqued Samuel Moyn’s influential *The Last Utopia*<sup>140</sup> for failing to address the economic transformation of the late 1970s or consider the role that neoliberalism played in the emergence of the contemporary human rights movement. Marks extends the discussion in Naomi Klein’s *The Shock Doctrine*<sup>141</sup> to argue that ‘that part of the context for the consolidation of neo-liberalism itself was the emergence of the human rights movement, with its non-political creed’.<sup>142</sup> In response, Samuel Moyn has insisted that it remains too early to assess the relationship between neoliberalism and human rights and stressed the difference between historical ‘coincidence’ or ‘companionship’ and ‘actual causality and complicity’.<sup>143</sup> He suggests that the relationship between human rights and economic inequality is rather that of a ‘missed connection’, writing that:

precisely because the human rights revolution has at its most ambitious dedicated itself to establishing a normative and actual floor for protection, it has failed to respond to – or even allowed for recognizing – neoliberalism’s obliteration of the ceiling on inequality.<sup>144</sup>

For Anghie, too, the inability of human rights frameworks to rein in the neoliberal counter-revolution, highlight not so much their complicity with neoliberalism, but rather the limitations and weaknesses of rights frameworks.<sup>145</sup> Further, critical scholars have long recognized the limitations of formal equality and how ‘the abstract equality of citizens goes hand in hand with the inequalities of class and

<sup>138</sup> See S. Moyn, ‘The 1970s as a Turning Point in Human Rights History’, in J. Eckel and S. Moyn (eds.), *The Breakthrough: Human Rights in the 1970s* (2014), 2; see also Moyn, *The Last Utopia*, *supra* note 12.

<sup>139</sup> On this, see particularly S. Moyn, ‘Human rights and the age of inequality’, *supra* note 10; see also M. Nolan, ‘Human Rights and Market Fundamentalism’, (Max Weber Lecture Series, European University Institute, 2014/02).

<sup>140</sup> S. Marks, ‘Four Human Rights Myths’, in D. Kinley, W. Sadurski and K. Walton (eds.), *Human Rights: Old Problems, New Possibilities* (2013), 217–35.

<sup>141</sup> N. Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (2007).

<sup>142</sup> Marks, *supra* note 140, at 226.

<sup>143</sup> S. Moyn, ‘A Powerless Companion: Human Rights in the Age of Neoliberalism’, (2014) 77(4) *Law and Contemporary Problems* 147, at 150.

<sup>144</sup> *Ibid.*, at 149.

<sup>145</sup> See A. Anghie, ‘Legal Aspects of the New International Economic Order’, (2015) 6(1) *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 145, at 154.



administrative power',<sup>146</sup> and how in both neoliberal economic frameworks and human rights frameworks the individual – whether as a rights-bearer or a rational, self-maximizing actor – is foregrounded as the 'primary unit of social analysis and political and ethical concern'.<sup>147</sup>

It is beyond the scope of this article to directly interrogate the relationship between human rights and neoliberalism. Instead, this article speaks to these debates more indirectly; by drawing attention to how – alongside the increased prominence of human rights during this period – there was also the prioritization and promotion of a specific vision of apolitical individual political and civil rights as an internationally authorized claim by the individual against the state alongside the marginalization of alternative, more 'structural', approaches that saw a just international order and redistributive justice as necessary preconditions for the realization of rights. In the late 1970s, Western participants expressed increased frustrations about trajectories of UN human rights debates and especially the more 'structural' vision of rights being articulated. For example, after the Mexico women's conference the UK representative to the General Assembly, Baroness Dora Gaitskell, expressed disillusionment with UN human rights discussions, arguing that these debates had become 'so unfair' that 'the Western countries should get together' and challenge 'the Afro-Asian majority in the United Nations'.<sup>148</sup> In 1975, John Scali, the US ambassador to the UN, noted that at present there is 'no consensus on the very definition of the term – human rights' and that, although the US affirms a 'Western tradition of human rights [that] centres on the individual and his need for protection against the society and the state', it was now necessary to:

concentrate on securing the widest possible agreement in the United Nations on the proposition that both individual and group rights are vitally important, that neither is incompatible with the other and that the promotion of both is a legitimate pursuit for the international community.<sup>149</sup>

His successor, Daniel P. Moynihan, also urged greater US engagement in human rights debates,<sup>150</sup> but his writings also suggest a more deliberate attempt to reclaim and promote a narrower conceptualization of individual human rights in order to contest how the language of rights was being used to promote what he saw as dangerous, redistributive demands.<sup>151</sup> In a 1975 essay for *Commentary* he warns against the Third World calls for greater global wealth redistribution<sup>152</sup> especially in the context

<sup>146</sup> See T. Asad, 'What Do Human Rights Do?: An Anthropological Enquiry', (2000) 4(4) *Theory & Event*, J. Whyte, 'Neoliberalism and the Collateral Damage of Human Rights: On Talal Asad's "What Do Human Rights Do?"', (2017) 20(1) *Theory & Event* 137. See also K. Marx, 'On the Jewish Question', in *Early Writings* (1974).

<sup>147</sup> Nolan, *supra* note 139, at 1.

<sup>148</sup> Cited in Burke, 'Competing?', *supra* note 98, at 54–5.

<sup>149</sup> J. Scali, 'Address by Ambassador John Scali, United States representative to the United Nations, at the Twelfth North American Invitational Model United Nations, Washington DC, 6 March 1975', in W. Veenhoven (ed.), *Case Studies on Human Rights and Fundamental Freedoms: A World Survey* (1976), Vol. V, at 565–71.

<sup>150</sup> Cited in R. Burke, 'From Individual Rights to National Development: The First UN Conference on Human Rights, Tehran, 1968', (2008) 19(3) *Journal of World History* 275, at 291–2, note 68.

<sup>151</sup> For a discussion of Moynihan's politics and engagement with the UN see G. Tor, *Moynihan's Moment: America's Fight Against Zionism as Racism* (2013).

<sup>152</sup> *Ibid.*, at 36.

of the ‘emergence of a world order dominated arithmetically by the countries of the Third World’<sup>153</sup> who were forming an increasingly vocal ‘formal economic bloc’ through the G77.<sup>154</sup> Moynihan points to the NIEO as evidence that the ‘tyranny of the UN’s “new majority” has accordingly been deployed’<sup>155</sup> to promote dangerous ideas that ‘saw the future not just in terms of redistribution, but something ominously close to looting’.<sup>156</sup> In his view, such Third World demands reflected a ‘radical discontinuity with the original, essentially liberal vision of the United Nations’ which was being transformed into a space where a ‘general a rhetoric of expropriation became routine’.<sup>157</sup> To respond to these threats he suggests that ‘[i]t is time we asserted that the inequalities in the world may be not so much a matter of condition as of performance’<sup>158</sup> and that states of the global South should be subject to more sustained international attacks regarding both internal economic inequality and their human rights records.<sup>159</sup> Moreover, he suggests that a greater focus on human rights – especially in their apolitical guise – by the US could provide a critical tool in both the struggle against totalitarianism and transforming relations with Third World states.<sup>160</sup> In a subsequent piece, he reiterates the role human rights could play in ideological battles against the ‘cult of the Third World’ and condemns both the ‘selective morality of the United Nations in matters of human rights’<sup>161</sup> and the ‘perversion of the language of human rights and its transformation into a weapon against democracy’.<sup>162</sup>

This analysis suggests that alongside the current scholarship examining the factors that led to the increased political saliency of rights rhetoric (especially in the US) during this the late 1970s,<sup>163</sup> it is also necessary to pay attention to concurrent struggles over competing visions of rights during this period, and how the rise of an apolitical, individual rights framework was accompanied by the marginalization of a more ‘structural’ and potentially more redistributive approach to rights.

### 3.6. Aftermaths: Remnants of a different approach to rights

The dominant story of human rights in the late 1970s is of the growth in prominence of a view of civil and political rights as an internationally authorized claim of the individual against the state. Nonetheless, as Ronald Burke reminds us, it is necessary to recognize that this period was ‘less straightforward in its expression and less homogenous in its effects’ and especially that there was ‘a substantial gap between the fulminant growth of human rights NGO activism outside the UN, and the patterns of debate inside the General Assembly’.<sup>164</sup> Into the 1980s

<sup>153</sup> *Ibid.*, at 40.

<sup>154</sup> *Ibid.*, at 35.

<sup>155</sup> D. Moynihan, ‘The United States in Opposition’, (1975) 59(3) *Commentary* 31, at 31.

<sup>156</sup> *Ibid.*, at 34.

<sup>157</sup> *Ibid.*, at 38.

<sup>158</sup> *Ibid.*, at 42.

<sup>159</sup> *Ibid.*, at 43.

<sup>160</sup> *Ibid.*, at 44.

<sup>161</sup> *Ibid.*

<sup>162</sup> *Ibid.*, at 20.

<sup>163</sup> On this see also Keys, *supra* note 12.

<sup>164</sup> R. Burke, ‘Human Rights Day after the “breakthrough”: Celebrating the Universal Declaration of Human Rights at the United Nations in 1978 and 1979’, (2015) 10 *Journal of Global History* 147, at 147.

more 'structural' accounts of human rights continued to be advanced in UN spaces even though the prevailing economic and political mood had dramatically changed and, thus, these arguments increasingly appeared as remnants of a failed agenda. An example of this is the 1986 report on 'The New International Economic Order and the Promotion of Human Rights' by Raúl Ferrero, Special Rapporteur on the Sub-Commission on the Prevention of Discrimination and Protection of Minorities.<sup>165</sup> The report begins by situating the present economic 'disorder' in the history of European colonialism and ongoing relations of imperialism and neo-colonialism, and suggests that the liberal principles of freedom, equality and reciprocity are operating to 'profit the powerful alone and harm the weak' so that legal equality produces material inequality and 'reciprocal concessions [operate] to widen still further the already immense gap between the rich and the poor countries'.<sup>166</sup> Ferrero writes:

It must be agreed that the present order is a serious obstacle to the realization of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights, more particularly in article 25, which declares that everyone has the right to a standard of living adequate for the health and well-being for himself [sic] and of his [sic] family. However, it must be clearly established from the outset of this work that the fact that an unjust international order exists cannot be used to justify failure to secure the realization or observance of human rights. In any event, there are two needs that have to be met side by side. One is the need to change the present international economic order into a more equitable order, and the other is the need to promote and protect human rights and fundamental freedoms in each and every country; they are interrelated needs, but neither of them is a prerequisite for the realization of the other.<sup>167</sup>

The report included an early critique of the structural adjustment conditions imposed by the IMF and the dangerous consequences of such conditions including growing rates of inflation and unemployment, and the forced removal of tariffs exposing developing countries to competition which is 'not always healthy or fair' and calls for accountability of the IMF and the GATT for the social effects of their 'recommendations' and a debt moratorium.<sup>168</sup> In articulating a 'link between economic issues and human rights' he focuses on the bridge that can be built by the formulation of third generation rights of international solidarity, development and a healthy environment.<sup>169</sup> The enjoyment of economic, social and cultural rights, Ferrero argues, depends upon 'international solidarity viewed as an extension of the principle of brotherhood' as a means to:

make it possible to redress an international economic situation that is notorious for the unequal distribution of wealth among nations and a widening gap between the rich and the poor countries which ultimately runs counter to the efforts being made to achieve collective prosperity.<sup>170</sup>

<sup>165</sup> Ferrero, *supra* note 137.

<sup>166</sup> *Ibid.*, at 3.

<sup>167</sup> *Ibid.*, at 3.

<sup>168</sup> *Ibid.*, at 10.

<sup>169</sup> *Ibid.*, at 17.

<sup>170</sup> *Ibid.*, at 17.

Such rights of solidarity, he argued, are ‘undeniably linked with the demands of the developing countries, the poor countries, the “peripheral” countries, the very countries calling for the establishment of a new international economic order.’<sup>171</sup>

Nonetheless, even as such critiques continued to be articulated, their power and effect was clearly marginalized, and instead discussions on the realization of economic and social rights increasingly focused (perhaps more pragmatically) on a more minimalist agenda and on identifying the core requirement of rights.<sup>172</sup> In December 1990 when the Committee on Economic Social and Cultural Rights (CESCR) released its General Comment No. 3 on the nature of State Parties’ obligations,<sup>173</sup> its focus was on a ‘minimum core’ obligation to ensure the minimum level of each of the rights essential to the Convention. Whilst there been considerable debate on how to understand or conceptualize such ‘minimum core’ obligations, Katherine Young suggests that the Committee’s formulation ‘is suggestive of the more categorical (or more flatly instrumental) formula of “basic needs” amounting to survival’.<sup>174</sup> She further suggests that ‘[t]his minimalist mode of investigation actually recalls the discourse, ascendant in the development literature of the 1970s of “basic needs”’.<sup>175</sup> Interestingly, it therefore appears that contemporary approaches to the realization of economic and social rights draws on one of two very different frameworks from the 1970s for thinking about inequalities (discussed earlier) and reflects an approach more focused on poverty within countries than on international economic inequalities and the global political economy of underdevelopment. The transition observable from the Ganji report to General Comment No. 3, therefore, is suggestive of the ways in which approaches to the realization of economic and social rights have been reconfigured over time, with the result that rights claims have arguably become a comparatively much less powerful idiom for making redistributive demands.

Similarly, although the concept of the right to development gained some traction and was included in the 1981 Banjul African Charter on Human Rights and Peoples’ Rights<sup>176</sup> and in a further General Assembly resolution,<sup>177</sup> it also faced growing resistance. Before the Commission on Human Rights established a drafting committee to formulate the right to development<sup>178</sup> the Reagan Administration asserted

<sup>171</sup> *Ibid.*, at 18.

<sup>172</sup> See the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN Doc. E/CN.4/1987/17; P. Alston and G. Quinn, ‘The Nature and Scope of State Parties’ Obligations under the International Covenant on Economic, Social and Cultural Rights’; and the other articles in the Symposium in (1987) 9(2) *Human Rights Quarterly*.

<sup>173</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 3, ‘The Nature of State Parties’ Obligations’, UN Doc. E/1991/23 (14 December 1990).

<sup>174</sup> K. Young, ‘The Minimum Core of Economic and Social Rights: A Concept in Search of Content’, (2008) 33 *Yale Journal of International Law* 113, at 128.

<sup>175</sup> *Ibid.*, at 131.

<sup>176</sup> African Charter on Human and Peoples’ Rights (Banjul Charter) (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58, Art. 22.

<sup>177</sup> ‘Alternative Approaches and Ways and Means Within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms’, UNGA Res. 36/133, UN Doc. A/RES/36/133 (14 December 1981).

<sup>178</sup> Commission on Human Rights Res. 36, UN ESCOR, 37th session, Supp. No. 5, at 237, UN Doc. E/CN.4/1475 (1981).

the US position that the right to development ‘should not be used as a means of resuscitating NIEO’.<sup>179</sup> The Administration also insisted that the US would not allow the Declaration to create new entitlements for the transfer of resources, characterizing aid as a matter for the sovereign decision of donor countries that could not be subject to binding international rules.<sup>180</sup> By 1986, when the General Assembly resolution regarding the right to development finally passed<sup>181</sup> (with the US voting against and eight other countries abstaining) the international political situation was no longer one in which an organized and resurgent Third World was making demands. Rather ‘the intellectual and political pendulum ha[d] swung dramatically rightwards, and structural adjustment ha[d] replaced international reform as the talk of the day’.<sup>182</sup> The adoption of the ‘right to development’ (RTD) by the General Assembly was, in this context, a hollow victory for the Third World, with the ‘right’ confirmed as non-binding and carrying no resource-transfer obligations.<sup>183</sup> Although discussions on the RTD were revived again after the 1993 Vienna Conference on Human Rights and it continues to articulate a political claim for greater justice within and among countries, it lacks the teeth to actually implement a more redistributive agenda.

#### 4. CONCLUSION

This article has re-narrated contested debates about growing economic inequality within and among countries in the 1970s, paying attention to how these concerns were taken up and given shape within human rights debates of that period. In doing so, it highlighted an often forgotten and invisibilised history of politicized human rights engagement with the problem of inequality that was intimately connected to demands for an NIEO. Such claims focused not only on individual rights against the state but also on the assertion of a vision of rights that recognized that the rights of individuals could only be realized within a just international order. Revisiting these debates from the 1970s and the connections they drew between human rights and economic inequalities highlights the political stakes in struggles over *competing visions* of human rights that reflect different configurations of the relationship between the individual, the state and the international community. This alternative conception of rights arguably failed to ‘break through’ into popular consciousness or debates, remained sidelined and marginalized, and moreover was ultimately inadequate to contest the neoliberal counter-revolution. Nonetheless, these ideas are, especially at the present juncture, worth excavating, both as an important part of the history of human rights and also as a resource for, and source of inspiration in, the present.

<sup>179</sup> Marks, *supra* 113, at 143.

<sup>180</sup> *Ibid.*

<sup>181</sup> Declaration on the Right to Development, General Assembly Res. 41/128, UN Doc. A/RES/41/128 (4 December 1986).

<sup>182</sup> P. Uvin, ‘From the Right to Development to the Rights-Based Approach: How “Human Rights” Entered Development’, (2007) 17(4/5) *Development in Practice* 597, at 598.

<sup>183</sup> *Ibid.*