

“In the Interests of Mankind as a Whole”: Mohammed Bedjaoui’s New International Economic Order

International lawyers, it is often said, are exceptionally, even ridiculously, fond of “universality.” And this fondness, bordering at times on the obsessive, manifests itself in a variety of forms, the most nebulous and notorious being the idea of “*jus cogens* norms”—general principles from which international lawyers are willing to permit no deviation, even in the form of supposedly iron-clad treaties with directly counter-vailing provisions. Like principles of nonaggression and sovereign equality, prohibitions of piracy, slavery, and genocide are regularly ascribed *jus cogens* status, typically as part of an effort to win approval for one or another “social” model of international legal order.¹ Less frequently recognized, though, is that the kind of far-reaching universalism to which international lawyers typically commit themselves has underwritten a variety of proposals for the reorganization of international legal and economic relations.

Arguably the most ambitious such proposal was the project for a New International Economic Order (NIEO) in the 1970s.² Spearheaded by the nonaligned Third World and drawing heavily upon the rhetoric of universalism, the NIEO underscored the need to facilitate technology transfer, regulate foreign investment, supervise transnational corporations, encourage debt-relief and development assistance, and bolster sovereignty in respect to use of natural resources and formulation of economic policy—all with a view to restructuring north-south relations for an age in which many had become suspicious of the trade and investment regimes fostered by the post-1945 class compromise often characterized as “embedded liberalism.”³ If the wave of decolonization that swept through Asia, Africa, and the Pacific during the third quarter of the twentieth century produced a large number of formally independent states, the NIEO sought to consolidate and expand the scope of this transformation in the name of a genuinely inclusive international order—an order in which power would be redistributed on a global scale and *de jure* sovereignty would be reinforced with full-scale economic development.⁴ From the fortification of the principle of self-determination to the articulation of a right to development, from the augmentation of the principle of permanent sovereignty over natural resources to the development of a “common heritage of mankind” doctrine, the NIEO’s central claims were clothed in a particularly effusive form of universalism, one that would inaugurate a new, generously “social” conception of international affairs while doing away with the last vestiges of nineteenth- and early twentieth-century classical international law.

This essay revisits the work of Mohammed Bedjaoui, the Algerian jurist and diplomat who played a key role in coordinating efforts to garner support for the NIEO

before accepting a seat on the International Court of Justice.⁵ Focusing upon his principal contribution to the movement, *Towards a New International Economic Order* (1979), I will analyze Bedjaoui's account of the Third World as an agent of reform in international law and organization.⁶ Specifically, I will examine the way in which Bedjaoui attempted to ground his call for a structural transformation of the world order in a sustained defense of legal universalism and closely related critique of legal formalism. Further, I will argue that this insistence on a wholesale reconfiguration of international life—so pervasive and all-encompassing that it occasionally threatened to overwhelm the text in utopian idealism—can only be appreciated against the background of Bedjaoui's decades-long engagement with the Third World, including, crucially, his involvement in the Algerian war of national liberation.

Beyond “the Third World de trop”⁷

As a lawyer and politician with strong roots in both Algeria and France, Bedjaoui's trajectory is illustrative of a series of broader intellectual and professional developments during the Cold War. Born in Sidi Bel Abbès, near Oran, to a family of modest means, Bedjaoui studied law and political science in Grenoble, where he came into contact with “solidarist” legal sociology, a highly amorphous form of sociological jurisprudence that had emerged in the French Third Republic and continued to enjoy residual influence at the time. Subsequently embarking upon a dual-track legal and political career, Bedjaoui deepened his involvement in the struggle for Algerian self-determination, serving as legal advisor to the Front de libération nationale and its provisional government and participating in the Evian and Lugrin conferences in 1961, where the terms of Algeria's independence from France were negotiated. In the two decades that followed the achievement of independence in 1962, he occupied various political and academic posts in Algeria, served as its ambassador to France, and represented its government at diplomatic meetings, all the while building the reputation of a prolific and respected international lawyer that would land him a seat on the World Court in 1982 (a date which is interesting for a number of reasons, not the least of which is that it marks the debt crisis that effectively sounded the death knell for the NIEO). The initial encounter with the “social” approach to law—an approach that was not strictly *socialist*, at least not in any consistent sense, but that nevertheless saw the relation between “law” and “society” as tighter and more complex than conventional legal formalists were prepared to admit—proved to be especially lasting. Indeed, it was on the basis of a slightly radicalized variant of sociological jurisprudence, particularly the kind of postpositivist legal theory championed by early twentieth-century French intellectuals like Léon Bourgeois, Léon Duguit, and Georges Scelle, that Bedjaoui eventually attempted to develop what he regarded as a “holistic,” broadly antiformalistic argument in favour of the NIEO.⁸

Bedjaoui was not, of course, alone in these efforts. The rhetoric of “solidarity” was ubiquitous at the time, made all the more fashionable by its elasticity and imprecision.⁹ And Bedjaoui belonged to a generation of elite, Western-educated Asian, African, and Latin American jurists who were committed to realizing the NIEO and the transformation of north-south relations it entailed. In many cases, as with Kamal Hossain of East Pakistan and later Bangladesh, such jurists immersed themselves in

domestic political affairs after receiving training in law abroad.¹⁰ In other cases, as with Georges Abi-Saab of Egypt, somewhat atypical for having studied economics as well as law, they built their careers mainly by working for international courts and organizations (Abi-Saab's own experience would eventually include the International Criminal Courts for Rwanda and the former Yugoslavia, as well as the World Trade Organization's Appellate Body).¹¹ Even so, it was Bedjaoui who offered the most extensive legal argument for the NIEO program, the centerpiece of Third World activism within the United Nations during the 1970s.

In *Towards a New International Economic Order*, his most influential piece of scholarship, Bedjaoui devoted the bulk of his energy to a series of reform proposals. At root, nearly all such proposals promoted the establishment of new international institutions to complement existing United Nations agencies and departments, encouraged resistance to attempts on the part of developed states to co-opt or otherwise deracinate the "common heritage of mankind" doctrine, and called for greater use of General Assembly resolutions as a means of circumventing the influence of a Security Council dominated by great powers. Nevertheless, at every turn, these and related proposals were introduced on the basis of a grander, more elaborate program—namely, regaling faith in international law's capacity to secure "the integrated development of all the peoples on Earth."¹² For Bedjaoui, the Third World was entrusted with the responsibility of militating for the new order that would make such development possible, acting not simply on its own behalf but as a representative of the "whole world community."¹³ This was of crucial significance, as it was only through the coordinated actions of a politically conscious and economically self-reliant Third World that international law might be mobilized "in the interests of mankind as a whole."¹⁴ International law was capable of acting as a progressive force for the entire "international community," but only insofar as the Third World was prepared to intervene in international affairs with a view to transforming the "fictitious independence" of the "probationary" postcolonial state into a real sovereignty buttressed by economic autonomy.¹⁵

Notwithstanding its similarities to other works of the period, Bedjaoui's study—the NIEO's most influential and widely circulated legal manifesto—was especially notable for the vigor with which it stressed "the development of all."¹⁶ In opposition to those who saw Eurocentrism as a problem of the past, tied inextricably to a protean "standard of civilization," which had enjoyed influence in the late nineteenth-century age of imperialism but had since been expunged from mainstream legal discourse, Bedjaoui presented decolonization and its economic completion in the NIEO as a direct challenge to Euro-American hegemony, the international law it spawned, and the radically uneven development that was thereby fostered and legitimated. Just as the idea of a "family of nations" had once served as an instrument of imperialism, making it possible to distinguish between "civilized," "semi-civilized," and "savage" peoples when formulating doctrines of recognition, so too it was now manipulated to burden newly independent states with a host of unwarranted obligations, constraining their freedom of action and rendering existing mechanisms of control all the more resilient for having become invisible.¹⁷ Bedjaoui had no patience for this, irreconcilable as it evidently was with his universalism. History, he wrote,

offered “the best possible case against a law which is continental rather than international,” and any body of legal rules and principles that failed to respect “real human solidarity” would merely play into the hands of a particular “syndicate of States.”¹⁸ When all was said and done, Bedjaoui subscribed to a familiar, and ultimately teleological, vision of the history of international law: the deeply Eurocentric order canonized in the “Westphalian” law of nations had been supplanted by the explicitly imperialistic legal positivism of the mid- to late nineteenth century, which, in turn, had been replaced by a promising but deeply contradictory move to international organizations in the first half of the twentieth century. Decolonization was best understood as the completion of this process of universalization—the culmination of a progressive, though incremental, commitment to craft a truly “open community” on the ruins of traditional international law.¹⁹ And the NIEO, aiming for a systematic reconstruction of north-south relations, was essential to fulfilling the economic preconditions of a fully decolonized world.²⁰

That said, Bedjaoui’s defense of universalism was not entirely consistent. At key points in his text, Bedjaoui displayed caution in respect to the implications of universalistic rhetoric, pointing out that it had often reinforced precisely those relations of power that stood in the way of the participatory international order whose consolidation he aimed to facilitate. Such caution was related to his attempt to maintain a certain degree of distance from both Soviet and U.S. experiences. Although he leaned upon various strands of neo-Marxist theory, particularly world-systems theory, Bedjaoui was, for instance, careful to avoid reliance upon any developmental model that would assimilate change on the periphery of the world economy to a linear account of stage-by-stage progression toward the socialist utopia.²¹ Similarly, “universal awareness” may have been the transcendental horizon of Bedjaoui’s vision of a new, properly “modern” international law, but the kind of modernization theory popularized by Walt Rostow in the 1950s and 1960s was clearly not what he had in mind when he idealized the United Nations’ promise of an “open community,” applauded the coming “reconciliation of the human race,” or spoke of “the search for and the maintenance of universality.”²² Bedjaoui placed great value on universality. He noted that even well-intentioned efforts to ensure that international law did not remain a “law for the ghetto” could backfire if the charges of hypocrisy and double standards on which they relied contributed to the sort of regionalism that had long fueled fears of international law’s “atomization” and “fragmentation.”²³ In stark contrast to legal regionalism, advocated by the Chilean jurist Alejandro Álvarez as early as the turn of the twentieth century, Bedjaoui foregrounded the need to act and think globally: decolonization was the completion of humanity’s centuries-long drive toward ever greater levels of equality and inclusion, and so the NIEO, as the economic conclusion of decolonization, had to be understood as a fully international response to a fully international set of challenges.²⁴ Yet such internationalism, and the universalism by which it was nourished, was not to be confused with a mechanical account of progress indexed to an overarching theory of modernity.

No less central to Bedjaoui’s argument for a new international order was a comprehensive critique of legal formalism. Bedjaoui rejected wholesale the claim that law may plausibly be understood as a closed system with a wholly autonomous logic. Law,

he insisted, does not derive its authority simply from the formal procedures through which specific rules come to be endowed with legal force. Such a view, which he characterized as “legal paganism,” failed to recognize that legal norms are rooted in and responsive to extralegal realities—that, in the final instance, law is best conceived as a “dependent variable” that is nevertheless a significant “factor of change,” derived from but still capable of intervening in relations of economic and political power.²⁵ Fed largely by a francophone tradition of legal solidarism, such antiformalism had wide-ranging implications. For Bedjaoui, law was both conservative and emancipatory, an “indicator” of existing conditions and a “catalyst” for substantive improvement, as capable of entrenching as it was of subverting relations of domination.²⁶ A truly progressive account of international law, one that made room for its evolution and its capacity to effect concrete change, could be developed only by accepting “the death of old-fashioned legal science,” and with it the assumption that international law was structurally resistant to the kind of “institutional action” and “extensive normative activity” that alone could further the NIEO.²⁷ International lawyers could not, he claimed, remain wedded to the hackneyed notion that legal norms are independent of economic and political forces, constituting a static totality distinguished by internal coherence and immanent rationality, without also remaining indifferent to law’s capacity to further justice, providing a framework within which hegemonic claims may be countered and weaker states afforded a measure of protection. Antiformalism was therefore key to unlocking law’s subversive potential: “While it is rather naïve to think that international law can, by itself, become the cornerstone of change and development, it is equally wrong to say that international law can only represent the ratification and conservation of already established international norms.”²⁸

Here too, though, Bedjaoui’s position was marked by ambiguity. While he held firm to a solidarist mode of sociological jurisprudence, even to the point of issuing calls for a finely tuned “sociology of international conferences,” Bedjaoui also felt a need to stress his continued respect for the legal form.²⁹ It was, he argued, because of their long-standing desire to reform, not to repudiate, the United Nations that Third World states pressed so vehemently, even desperately, for a new international order. Their disappointment with existing legal structures ought not to be confused with a dismissal of legality *tout court*, for adapting legal norms and institutions to changing circumstances was necessary to ensure that a new world order might be generated.³⁰ Thus, when sketching the merits and drawbacks of the concept of a “common heritage of mankind,” Bedjaoui dismissed the suggestion that it ran counter to traditional views of statehood, claiming flatly that, when all was said and done, the global solidarity in which advocates of the “common heritage” concept placed their faith was premised upon continued adherence to established legal models of sovereignty.³¹ Despite his antiformalism, Bedjaoui was keen to emphasize that he remained respectful of the legal form of sovereignty, crucial, in his view, to constraining a host of forces—from northern neocolonialism to transnational capitalism—that would otherwise go unopposed. As with so many other jurists affiliated with or sympathetic to the interests of the Third World, he was willing to temper his general commitment to antiformalism with a suspicion of casual and excessive deformalization, a

phenomenon that found expression throughout the 1970s in increased efforts to dilute sovereign power by recourse to “soft law” and “transnational law.”³² After all, it was anything but clear that deformalization would always benefit the Third World, as opposed to simply serving as a strategy to keep certain areas of international relations beyond the reach of legal accountability.³³

Interestingly, the two central features of Bedjaoui’s analysis—a spirited, if inconsistent, defense of universality, and a sweeping, though cautious, critique of formalism—would eventually manifest themselves in an overt reliance upon *jus cogens*, in the opinion of many jurists the “loftiest” expression of international law’s “inner nature.” *Towards a New International Economic Order* makes little mention of *jus cogens*, with only a single, express reference in nearly three hundred pages of detailed discussion, and this of a rather passing and unilluminating sort.³⁴ But for Bedjaoui, it was ultimately through the kind of strong commitment to international justice that received its broadest juridical expression in *jus cogens* that the formalism of classical international law, not least its ongoing indebtedness to the *mission civilisatrice* and its insistence on fulfilling treaty obligations regardless of changes in circumstances, might finally be overcome in the name of a universal international legal order.³⁵ And some seven years after the publication of *Towards a New International Economic Order*, he would make the connection between *jus cogens* and the NIEO openly. Relying upon UN resolutions, World Court decisions, and even the writings of Marcel Mauss and Georges Bataille, Bedjaoui now advanced an antiformalist argument on behalf of “international solidarity” by suggesting that the right to development, the principle of permanent sovereignty over natural resources, and other core elements of the NIEO program were underwritten by *jus cogens* norms.³⁶ As the “grandest” articulation of the legal universalism advocated by the “Third World trade union” that had been cobbled together after decolonization, *jus cogens* was neither an empty abstraction nor a clichéd resuscitation of natural law but the product of a sustained effort to ensure that no “‘apartheid’ of international law” would go unchallenged.³⁷ This, it seems, was the apogee of Bedjaoui’s insistence on a deformalized, fully “social” universalism.

Algeria, Agent of the Universal

Towards a New International Economic Order characterizes decolonization as a “categorical imperative,” akin (notwithstanding the Kantian terminology) to the French and Russian revolutions in scale and significance.³⁸ This is neither a flippant comparison, unsupported by informed understanding of international history, nor a groundless exaggeration, designed simply to prime the pump of militant Third World activism. On the contrary, it underscores Bedjaoui’s lifelong involvement in the law and politics of decolonization, first and foremost in the context of his native Algeria. Nearly twenty years prior to the publication of *Towards a New International Economic Order*, Bedjaoui had published a study on the specifically legal dimensions of the Algerians’ resistance to colonial rule. Titled *Law and the Algerian Revolution*, this work had also been organized around a general commitment to universalism. Unlike colonialism, whose legal structures were too unjust, too beset by internal contradiction, and too clearly dependent upon great-power intrigue to constitute anything like a “universal system,” even a nominally functional one, anticolonialism had, Bedjaoui

believed, succeeded in finding “definite universal legal expression,” reinforced as it was by rights to sovereignty and self-determination underpinning the “substantive international law” he would examine at close quarters in *Towards a New International Economic Order*.³⁹ The Algerian people’s confrontation with French colonialism and the class relations it supported was of crucial importance in this regard, as the “continually rising curve of the Algerian Revolution” had accorded Bedjaoui’s native country a “leading place” in the “great movement of disintegration of the colonial system.”⁴⁰

Indeed, Algeria was a constant source of inspiration throughout a career that saw Bedjaoui occupy numerous posts in its government and represent it at countless meetings of the United Nations, Arab League, and Organization of African States, not to mention before the World Court in 1975 for deeply controversial proceedings concerning the legal status of Western Sahara.⁴¹ Bedjaoui was proud that it was in Algiers that the Universal Declaration of the Rights of Peoples had been signed in 1976, and he emphasized that the city had hosted the first meeting of the Group of 77 in 1967 and the fourth major meeting of heads of state for the Non-Aligned Movement in 1973, the latter of which he viewed as having “been to the Third World’s struggle for economic emancipation what the Bandung Conference of 1955 and the Belgrade Conference of 1961 were to the struggle for political liberation.”⁴² It was Algeria, he argued, that had taken up the mantle of universalism with greatest consistency, campaigning for a right to development premised upon a “new international social law” that would be inspired by the spirit of “solidarity” and dedicated to improving the lot of every “proletarian nation.”⁴³ It could not, at any rate, be denied that it had been Algeria that had pressed for a special session of the UN General Assembly to discuss questions concerning development and raw materials, and that it had been at this session that the NIEO had begun to assume a distinct legal form.⁴⁴

Considered from the standpoint of his involvement in the NIEO, Bedjaoui’s relation to Algeria is illuminating. To be sure, Bedjaoui was hardly oblivious to what he regarded as other sites of resistance against both predatory state-sponsored capitalism and what he dubbed the “private macro-power” of multinational corporations.⁴⁵ Salvador Allende’s Chile is, for example, referenced throughout his work, including at several points in *Towards a New International Economic Order*.⁴⁶ Yet it is to Algeria that one finds Bedjaoui turning most consistently in order to assert the centrality of his new “universal awareness.” The “global disorder” to which the NIEO was a response would pave the way for “the salvation of all mankind,” and this, he thought, would be due in no small part to Algeria’s determination to achieve political independence, reinforce it with economic sovereignty, establish strong ties with other recently decolonized states, and work assiduously toward an international redistribution of rights and resources, not simply through participation in producer associations like the Organization of Petroleum Exporting Countries but also through coordinated plans for swift and comprehensive industrialization.⁴⁷

Of course, Bedjaoui was in no way exceptional in this regard. On the contrary, Bedjaoui’s vision of Algeria and its place in a rapidly decolonizing world was very much in keeping with the way in which leading members of its modernizing elite understood the geopolitical and ideological environment within which they operated. Algerian policymakers routinely invited assistance from a variety of great powers. But

they also took steps to position their state as a leader of the Non-Aligned Movement, maneuvering in the face of stiff competition from the likes of Tito's Yugoslavia in the process. Irrespective of their differences, Ahmed Ben Bella and Houari Boumediene, the two most dominant figures in the political life of early independent Algeria, were both at pains to have their state acknowledged as a model of socialist anti-imperialism for the Third World as a whole. Such views were in no way limited to the Algerians themselves. Having waged a war of liberation that had galvanized organizations from Fatah to the African National Congress, Algeria was widely regarded as the post-colonial state par excellence, the lynchpin of anti-imperialism for a generation of thinkers and activists influenced by Frantz Fanon, Jean-Paul Sartre, and an ever more expansive Marxism.⁴⁸ The French began to invest in such suggestions even before Algeria won its independence, with de Gaulle making much of the idea that only large-scale developmental projects and a carefully negotiated settlement could foster the kind of *coopération* needed to ensure that Paris continued to retain its principal foothold in the Third World.⁴⁹ Writing in 1977, even Jagdish Bhagwati took note of the international resonance of Algeria's socialist experiment by suggesting that what he termed the "North-South dialog" continued unabated and "on more harmonious terms than the early 'Algerian-style' rhetoric and the 'Moynihan-style' ripostes (both of which were petty but popular in their own spheres of influence)."⁵⁰ If, as Matthew Connelly has recognized, Algerian independence was the result of a "diplomatic revolution," a revolution designed and achieved through the force of law, then it was also a key point of reference in the project for a reconfigured international legal and economic order—the project through which the process of decolonization was to be brought to its ultimate conclusion.⁵¹

Conclusion

It is of no small importance that *Towards a New International Economic Order* appeared in 1979, five years after the Declaration and Programme of Action on the Establishment of a New International Economic Order and the closely related Charter of Economic Rights and Duties of States, the key legal instruments of the NIEO. The United Nations Conference on Trade and Development, an important forum for discussion of NIEO-related issues, had by then been stripped of the emancipatory promise it had displayed under the early leadership of Raúl Prebisch.⁵² Human rights had been "operationalized," coming into their own as a potent political force in the hands of the Carter administration and nascent advocacy groups like Amnesty International.⁵³ And the NIEO itself was increasingly regarded as a losing proposition; it had come under serious fire from a variety of quarters, and most of its radical tendencies had already been co-opted or neutralized, not least through an explosion in the number of bilateral investment treaties. To some degree, Bedjaoui's text confirms the influence of these developments, betraying a touch of disenchantment, even disorientation, here and there. Interestingly, though, even at this comparatively late stage in the NIEO's history, Bedjaoui retained a residual faith in international law and international organizations. He threw his weight behind institution-building within the parameters of the United Nations system, and he agitated for a fully "social" world order, one that would radicalize traditional conceptions of statehood, sovereignty, and

self-determination with a view to achieving a “fairer,” more “equitable” international distribution of resources.

Over the years, both the NIEO and Bedjaoui’s book have attracted a variety of critical appraisals from international lawyers. David Kennedy has suggested that Bedjaoui’s (predominantly French) understanding of the relation between law and economic development rested upon an unstable combination of solidarism and conventional positivism, with notions of global interdependence conjoined uneasily with traditional assumptions about national sovereignty.⁵⁴ Writing from a postcolonial perspective oriented toward “social movements,” Balakrishnan Rajagopal has characterized Bedjaoui’s repeated invocation of institution-building, and the “functional and organic reorganization” of international affairs it would help to bring about, as a throwback to outdated narratives about international law’s mission to guarantee progress and enlightenment.⁵⁵ Searching for the cause of the NIEO’s ultimate failure, Margot Salomon has pointed not simply to disagreement between oil-producing and non-oil-producing developing states, a conventional and typically somewhat overstated criticism, but also, and more importantly, to concerted opposition from First World states, which generally avoided direct negotiation while diverting key questions to the international financial institutions they dominated.⁵⁶ Some, like Sundhya Pahuja, simply forgo the attempt to provide an explanation of the NIEO’s failure, focusing instead on the way in which support for essential features of its program has waxed and waned in a constant struggle to endow particular values with “universal” status.⁵⁷

While each of these points has its merits, Salomon’s explanation strikes closest to the mark. The NIEO’s advocates succeeded in establishing a right to development and augmenting the principle of permanent sovereignty over natural resources but failed to realize the top-to-bottom reconstruction of international legal and economic relations to which its more ambitious supporters had aspired. Whatever its conceptual muddiness and its residual attachments to dubious narratives of positivist progress, the NIEO’s failure was at root an affirmation of the weakness of public authority in the face of private power, the global south in the face of the global north, the developmental state in the face of the state-legitimated market. Bedjaoui may have been convinced that his “structural revolution” was “inexorably on the march,” given that, in his view, “socio-economic phenomena have become so full of contradictions that they are ready to bring a new world into being.”⁵⁸ But like all other militants of the NIEO, he was working and writing at a time when the last major stage of decolonization had elicited strong reactions, from the revitalization of neoclassical economics to the mobilization of individualistic human rights, both of which stood fundamentally opposed to robust politico-economic self-determination.⁵⁹ Emerging as a reform agenda after the collapse of the Bretton Woods system and the oil crisis of 1973, the latter partly a reaction to U.S. support for Israel during the Yom Kippur War, the NIEO met its demise with the debt crisis of the early 1980s, an outgrowth of a new era of dominance for private capital in which state enterprises were sold to the highest bidder and austerity-driven structural adjustment established itself as an accepted practice. That Bedjaoui never relinquished his faith in international law or the United Nations, whose “universal nature” he saw as a guarantor of the NIEO’s eventual

success, would be unintelligible were it not for his broadly antiformalist commitment to legal universalism.⁶⁰ The “holistic approach to international law” upon which he pinned his hopes may not have borne fruit with the NIEO, but it would, Bedjaoui remained convinced, do so before long.⁶¹ Such, after all, was “man’s destiny.”⁶²

NOTES

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1. For the crucial role played by socialist and nonaligned states in the drive to secure legal recognition for *jus cogens* through the 1969 Vienna Convention on the Law of Treaties, see Umuto Özsü, “An Anti-Imperialist Universalism? *Jus Cogens* and the Politics of International Law,” in *Empire and International Law*, ed. Martti Koskenniemi, Walter Rech, and Manuel Jiménez Fonseca (Oxford: Oxford University Press, forthcoming).

2. For the United Nations resolutions that crystallized the NIEO, see Declaration on the Establishment of a New International Economic Order, Gen. Ass. Res. 3201 (S-VI), May 1, 1974; Programme of Action on the Establishment of a New International Economic Order, Gen. Ass. Res. 3202 (S-VI), May 1, 1974; and Charter of Economic Rights and Duties of States, Gen. Ass. Res. 3281 (XXIX), December 12, 1974.

3. The expression was coined by John Gerard Ruggie in his “International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order,” *International Organization* 36, no. 2 (Spring 1982): 379–415. For a useful recent appraisal of the legal dimensions, see Andrew Lang, *World Trade Law after Neoliberalism: Re-imagining the Global Economic Order* (Oxford: Oxford University Press, 2011), esp. chaps. 2 and 7.

4. On the relation between questions of political independence and questions of economic development in the Non-Aligned Movement, and the way in which the latter gained increased attention in the early 1970s, see Karl P. Sauvant, “The Origins of the NIEO Discussions,” in *Changing Priorities on the International Agenda: The New International Economic Order*, ed. Karl P. Sauvant (Oxford: Pergamon Press, 1981), 7–8, 22–23.

5. Details on Bedjaoui’s life and work can be found in Emile Yakpo and Tahar Boumedra, eds., *Liber Amicorum Judge Mohammed Bedjaoui* (The Hague: Kluwer, 1999), part 1. See also Arthur Eyffinger, *La Cour internationale de justice, 1946–1996* (The Hague: Kluwer, 1999), 269.

6. Mohammed Bedjaoui, *Towards a New International Economic Order* (Paris and New York: UNESCO / Holmes and Meier, 1979). The book was originally published in French; see Bedjaoui, *Pour un nouvel ordre économique international* (Paris: UNESCO, 1979).

7. Bedjaoui, *New International Economic Order*, 45.

8. For discussion of French solidarism, see Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870–1960* (Cambridge: Cambridge University Press, 2001), chap. 4.

9. A good example is offered by the final report of the Brandt Commission, published in 1980 and making much of the need for “international solidarity,” stemming “both from strong mutual interests in cooperation and from compassion for the hungry.” Willy Brandt, “A Plea for Change:

Peace, Justice, Jobs,” in *North-South: A Program for Survival—The Report of the Independent Commission on International Development Issues under the Chairmanship of Willy Brandt* (Cambridge, MA: MIT Press, 1980), 16. Interest in the concept continues unabated. See, for example, Rüdiger Wolfrum and Chie Kojima, eds., *Solidarity: A Structural Principle of International Law* (Heidelberg: Springer, 2010).

10. For details on Hossain’s life and career, including his training in Britain and his subsequent involvement in antidiscrimination litigation and national liberation politics, see Sharif Bhuiyan, Philippe Sands, and Nico Schrijver, “‘I Believe in the Power of Human Beings to be Agents of Change’: An Interview with Kamal Hossain,” in *International Law and Developing Countries: Essays in Honour of Kamal Hossain*, ed. Sharif Bhuiyan et al. (Leiden: Brill, 2014), 1–31.

11. For details on Abi-Saab, see Laurence Boisson de Chazournes, “Portrait de Georges Abi-Saab,” in *The International Legal System in Quest of Equity and Universality: Liber Amicorum Georges Abi-Saab*, ed. Boisson de Chazournes and Vera Gowlland-Debbas (The Hague: Kluwer, 2001), 3–8. See also “Profile—Georges Abi-Saab, Egypt,” in *The International Judge: An Introduction to the Men and Women Who Decide the World’s Cases*, ed. Daniel Terris et al. (Lebanon, NH: Brandeis University Press, 2007), 131–40.

12. Bedjaoui, *New International Economic Order*, 228, also 72.

13. *Ibid.*, 196.

14. *Ibid.*, 228.

15. *Ibid.*, 78–79.

16. *Ibid.*, 127. From an enormous body of contemporaneous literature on the NIEO, see especially Jorge Castañeda, “La Charte des droits et devoirs économiques des États: Note sur son processus d’élaboration,” *Annuaire français de droit international* 20 (1974): 31–56; Michel Virally, “La Charte des droits et devoirs économiques des États: Notes de lecture,” *Annuaire français de droit international* 20 (1974): 57–77; Ige F. Dekker, “The New International Economic Order and the Legal Relevance of Structural Violence,” *Revue belge de droit international* 12, no. 2 (1976): 467–98; Kamal Hossain, ed., *Legal Aspects of the New International Economic Order* (London and New York: Frances Pinter/Nichols Publishing, 1980); Upendra Baxi, “The New International Economic Order, Basic Needs and Rights: Notes Towards Development of the Right to Development,” *Indian Journal of International Law* 23 (1983): 225–45; *Progressive Development of the Principles and Norms of International Law Relating to the New International Economic Order: Report of the Secretary-General*, UN Doc. A/39/504/Add.1 (1984).

17. Bedjaoui, *New International Economic Order*, 49–57, 96.

18. *Ibid.*, 94, 102, 157.

19. *Ibid.*, 57, 60, 135.

20. For Bedjaoui’s vision of international legal history, see generally *ibid.*, 49–63.

21. This was consistent with efforts by a variety of nonaligned states to ensure that the NIEO project would not toe a strictly Soviet line. See Roy Allison, *The Soviet Union and the Strategy of Non-Alignment in the Third World* (Cambridge: Cambridge University Press, 1988), 111–25. Note further that many Marxists distanced themselves from the NIEO, holding it to be fundamentally reformatory rather than revolutionary in character. For a strong example, see Samir Amin, “After the New International Economic Order: The Future of International Economic Relations,” in *New International Economic Order: A Third World Perspective*, ed. Pradip K. Ghosh (Westport, CT: Greenwood, 1984), 297–312.

22. Bedjaoui, *New International Economic Order*, 57, 60, 119, 135, 189, 197, 238, with Bedjaoui

engaging directly with Rostow at 66–68. For Rostow’s role in the elaboration and popularization of modernization theory, see especially Michael E. Latham, *Modernization as Ideology: American Social Science and “Nation Building” in the Kennedy Era* (Chapel Hill: University of North Carolina Press, 2000); Nils Gilman, *Mandarins of the Future: Modernization Theory in Cold War America* (Baltimore: Johns Hopkins University Press, 2003).

23. Bedjaoui, *New International Economic Order*, 253–54 (some italics omitted). As if to confirm Bedjaoui’s fears, this threat has since come to figure prominently in recent debates concerning international law’s disintegration into specialized technocratic regimes of “expert knowledge.” For the most rigorous treatment to date, see International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law—Report of the Study Group of the International Law Commission, Finalized by Martti Koskenniemi*, UN Doc. A/CN.4/L.682 (2006).

24. Álvarez’s chief work in this vein was *Le droit international américain: Son fondement, sa nature d’après l’histoire diplomatique des États du Nouveau Monde et leur vie politique et économique* (Paris: Pedone, 1910). For analysis of his conception of “American international law,” see “The Periphery Series: Alejandro Álvarez” (symposium), *Leiden Journal of International Law* 19, no. 4 (December 2006).

25. Bedjaoui, *New International Economic Order*, 97–115. Bedjaoui saw Hans Kelsen’s “pure theory of law” as emblematic of such “paganism,” maintaining that the idea that “‘legal norms are neutral’ and the law an esoteric, unchangeable technique, must be dropped”; see *ibid.*, 134.

26. See esp. *ibid.*, 110–15.

27. *Ibid.*, 108, 113.

28. *Ibid.*, 114.

29. *Ibid.*, 160.

30. *Ibid.*, 195–97.

31. *Ibid.*, 235–36.

32. For the most famous attempt to sound the alarm, see Prosper Weil, “Towards Relative Normativity in International Law?” *American Journal of International Law* 77, no. 3 (July 1983): 413–42.

33. Such arguments against antiformalism continue to resonate today, albeit in different registers. For two influential examples, which nevertheless diverge significantly in their assessments of formalism and of its political and theoretical consequences, see Koskenniemi, *Gentle Civilizer*, 494–509; and Jean d’Aspremont, *Formalism and the Sources of International Law: A Theory of the Ascertainment of Legal Rules* (Oxford: Oxford University Press, 2011).

34. Bedjaoui, *New International Economic Order*, 185.

35. Note that the question of continuing treaty obligations struck at the heart of the larger problem of state succession, that is, the problem of whether recently decolonized states were bound by treaty commitments incurred by the states and governments they succeeded. For detailed reconstruction of the ensuing debate, in which Bedjaoui played a key role, see Matthew Craven, *The Decolonization of International Law: State Succession and the Law of Treaties* (Oxford: Oxford University Press, 2007), 80–90. See further Mohammed Bedjaoui, “Problèmes récents de succession d’États dans les États nouveaux,” *Recueil des cours de l’Académie de droit international de La Haye* 130, no. 2 (1970): 455–585.

36. Mohammed Bedjaoui, “The Right to Development and the *Jus Cogens*,” *Lesotho Law Journal* 2, no. 2 (1986): 93–129. See also Mohammed Bedjaoui, “Right to Development and the

Jus Cogens,” in *The Charter of Economic Rights and Duties of States: Ten Years of Implementation*, ed. Milan Bulajić et al. (Belgrade: Institute of International Politics and Economics, 1986), 43–68.

37. Bedjaoui, *New International Economic Order*, 245, 246, also 255.

38. *Ibid.*, 86, 88.

39. Mohammed Bedjaoui, *Law and the Algerian Revolution* (Brussels: International Association of Democratic Lawyers, 1961), 10–11.

40. *Ibid.*, 11, 13. That the national struggle was also a class struggle was not lost on contemporaneous participants and observers. Pierre Bourdieu, who spent significant time in Algeria in the 1950s, was, for instance, of the view that “if the struggle against the caste system takes the form of a war of national liberation, this is perhaps because the existence of an independent *nation* appears the only decisive means for achieving a radical change in the situation that can bring about the definitive collapse of the caste system.” Bourdieu, “Revolution in the Revolution,” in Bourdieu, *Political Interventions: Social Science and Political Action*, ed. Franck Poupeau and Thierry Discepolo, trans. David Fernbach (London: Verso, 2008), 8.

41. For the case, see Western Sahara, Advisory Opinion (October 16, 1975), [1975] *International Court of Justice Reports* 12. For analysis of Bedjaoui’s submissions to the Court, see Karen Knop, *Diversity and Self-Determination in International Law* (Cambridge: Cambridge University Press, 2002), 120–27, 159–61.

42. Bedjaoui, *New International Economic Order*, 89–90, 189–90, 231–32, 238. The text of the Algiers declaration is reproduced in Antonio Cassese, ed., *UN Law/Fundamental Rights: Two Topics in International Law* (Alphen aan den Rijn: Sijthoff and Noordhoff, 1979), 219–23.

43. See Mohammed Bedjaoui, “The Right to Development,” in *International Law: Achievements and Prospects*, ed. Bedjaoui (Paris and Dordrecht: UNESCO/Martinus Nijhoff, 1991), 1177–78. See further Mohammed Bedjaoui, “L’Algérie dans la lutte pour le développement du Tiers-Monde,” *Annuaire du Tiers-Monde* 1 (1975): 17–29.

44. See “Summary of the Algerian Proposal on Raw Materials and Development at the Sixth Special Session of the UN General Assembly, 1974,” in *A New International Economic Order: Selected Documents, 1945–1975*, ed. Alfred George Moss and Harry N. M. Winton, 2 vols. (New York: UNITAR, 1976), 1:470–71. For contextual discussion, see Craig Murphy, *The Emergence of the NIEO Ideology* (Boulder, CO: Westview Press, 1984), 113–15 and Vanessa Ogle, “State Rights against Private Capital: The ‘New International Economic Order’ and the Struggle over Aid, Trade, and Foreign Investment, 1962–1981,” *Humanity* 5, no. 2 (Summer 2014): 218.

45. Bedjaoui, *New International Economic Order*, 37.

46. *Ibid.*, 33, 37, 86, 126, 151, 152. The depth of this influence can be discerned from the fact that Bedjaoui dedicated his 1976 course at the Hague Academy of International Law to Allende; see Mohammed Bedjaoui, “Non-alignement et droit international,” *Recueil des cours de l’Académie de droit international de La Haye* 151, no. 3 (1976): 347.

47. Bedjaoui, *New International Economic Order*, 118. On Algeria’s commitment to industrialization, see Jeffrey A. Hart, *The New International Economic Order: Conflict and Cooperation in North-South Economic Relations, 1974–77* (New York: St. Martin’s Press, 1983), 12.

48. Odd Arne Westad, *The Global Cold War: Third World Interventions and the Making of Our Times* (Cambridge: Cambridge University Press, 2005), 105–7.

49. Jeffrey James Byrne, “Our Own Special Brand of Socialism: Algeria and the Contest of Modernities in the 1960s,” *Diplomatic History* 33, no. 3 (June 2009): 428–32. Of course, the war in Algeria and its conclusion had far-reaching consequences within France itself, not least on account

of the arrival of nearly a million *pièdes noirs*. For analysis, see Todd Shepard, *The Invention of Decolonization: The Algerian War and the Remaking of France* (Ithaca, NY: Cornell University Press, 2008).

50. Jagdish N. Bhagwati, "Introduction," in *The New International Economic Order: The North-South Debate*, ed. Bhagwati (Cambridge, MA: MIT Press, 1977), 14.

51. See generally Matthew Connelly, *A Diplomatic Revolution: Algeria's Fight for Independence and the Origins of the Post-Cold War Era* (New York: Oxford University Press, 2002).

52. On Prebisch's influence over various facets of the NIEO, see Edgar J. Dosman, *The Life and Times of Raúl Prebisch, 1901–1986* (Montreal: McGill-Queen's University Press, 2008), chap. 20.

53. On the trajectory of human rights in the 1970s, see especially Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Harvard University Press, 2010); and also Jan Eckel and Samuel Moyn, eds., *The Breakthrough: Human Rights in the 1970s* (Philadelphia: University of Pennsylvania Press, 2013). Like most of his Third World contemporaries, Bedjaoui did not have a great deal to say about human rights, international human rights law, or even the status of the individual under international law when writing about the NIEO. The general tenor of *Towards a New International Economic Order*, and of many of Bedjaoui's other writings, makes it clear that he was generally unsympathetic to the rhetorical and organizational mobilization of human rights—and of humanitarianism—that marked so much of the 1970s. That said, *Towards a New International Economic Order* does at times marshal the nebulous rhetoric of "dignity," typically in connection with peoples, nations, and states (but also at times in connection with "man," especially in the general, collective sense of "humanity"). See, for example, Bedjaoui, *New International Economic Order*, 26, 31, 71, 146, 233, 238.

54. David Kennedy, "The 'Rule of Law,' Political Choices, and Development Common Sense," in *The New Law and Economic Development: A Critical Appraisal*, ed. David M. Trubek and Alvaro Santos (Cambridge: Cambridge University Press, 2006), 119, also 121–22.

55. Bedjaoui, *New International Economic Order*, 200; Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge: Cambridge University Press, 2003), 89–94. For a more charitable interpretation of the NIEO as part of a broad-based "protest" movement, see Kate Miles, *The Origins of International Investment Law: Empire, Environment and the Safeguarding of Capital* (Cambridge: Cambridge University Press, 2013), 100–102.

56. Margot E. Salomon, "From NIEO to Now and the Unfinishable Story of Economic Justice," *International and Comparative Law Quarterly* 62, no. 1 (January 2013): 46–47. See also Salomon, "Winners and Others: Accounting for International Law's Favourites," in *The Cambridge Companion to Human Rights Law*, ed. Conor Gearty and Costas Douzinas (Cambridge: Cambridge University Press, 2012), 284–85.

57. Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge: Cambridge University Press, 2011), 96.

58. Bedjaoui, *New International Economic Order*, 120.

59. For key accounts from a large and deeply contentious literature on the origins of neoliberalism, see David Harvey, *A Brief History of Neoliberalism* (New York: Oxford University Press, 2005), Johanna Bockman, *Markets in the Name of Socialism: The Left-Wing Origins of Neoliberalism* (Stanford, CA: Stanford University Press, 2011), and Philip Mirowski and Dieter Plehwe, eds., *The Road from Mont Pèlerin: The Making of the Neoliberal Thought Collective* (Cambridge, MA:

Harvard University Press, 2009). A crucial feature of much recent literature on the history of human rights is the distinction between self-determination as the basis for anticolonial strategy and human rights as a largely Euro-American instrument of “democracy promotion.” The point is examined with considerable subtlety in Moyn, *The Last Utopia*, chap. 3; and Jan Eckel, “Human Rights and Decolonization: New Perspectives and Open Questions,” *Humanity* 1, no. 1 (Fall 2010): 114–15ff.

60. Bedjaoui, *New International Economic Order*, 159, 199, 256.

61. *Ibid.*, 191–92.

62. *Ibid.*, 236. It is not uncommon for contemporary legal scholars to invoke the NIEO when examining the legal dimensions of the “Great Recession” and the continued growth of “emerging markets.” See, for example, Muthucumaraswamy Sornarajah, “The Return of the NIEO and the Retreat of Neo-Liberal International Law,” in Bhuiyan, Sands, and Schrijver, *International Law and Developing Countries*, 32–59; and Ruth Gordon, “The Dawn of a New, New International Economic Order?” *Law and Contemporary Problems* 72, no. 4 (Fall 2009): 131–62. And the NIEO’s ongoing influence is by no means limited to lawyers. See, for example, Vinod K. Aggarwal and Steve Weber, “The New New International Economic Order,” *Harvard Business Review* blog, April 18, 2012, <https://hbr.org/2012/04/the-new-new-international-econ> (accessed December 13, 2014).