JYU DISSERTATIONS 134

Marie Christine Boilard

Debating Development as a Human Right

A conceptual history of the politics in the formation of the right to development at the United Nations

UNIVERSITY OF JYVÄSKYLÄ
FACULTY OF HUMANITIES AND SOCIAL SCIENCES

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ABSTRACT

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This study offers a conceptual history of the politics in the formation of the right to development concept at the United Nations. It focuses on a particular moment in that history, namely the passing of UNCHR resolution 4 (XXXIII) of 21 February 1977, which called for a study of "the right to development as a human right". As the analysis uncovers, such a resolution would have been impossible some ten years earlier, as UN staff and member states largely conceptualized development and human rights as competing rather than completing concerns. At the heart of the analysis is thus a conceptual shift in the understanding of the relationship between development and human rights. The central objective of this study is to render intelligible this conceptual change as a rhetorical redescription (indebted to the work of Quentin Skinner), and draw attention to the revisions that this redescription was aiming to bring about to two key concepts in UN politics.

To that aim, the analysis proceeds on two levels. One consists in a study of relevant debates between representatives of member states at the UNCHR, from the end of the 1960s to the second half of the 1970s. On that level, the analytical narrative emphasizes the various shifts in the political constellations of these debates, including shifts within and between geopolitical blocs. The other level includes the writings of those "innovative ideologists" (Skinner) who served as special rapporteurs or initiators of resolutions relevant to the subject matter of this study at the UNCHR. On that level, the narrative emphasizes the arguments used by innovative ideologists (i.e. Hernán Santa Cruz, Manouchehr Ganji and Kéba M'Baye) in the debates to justify the acceptance of certain resolutions or proposals. It also draws attention to the work of reflection conducted outside of the UNCHR by these innovative ideologists on the concepts of development and human rights. By combining the two levels of analysis, the narrative reveals how these innovative ideologists were able to launch novel expressions and formulations at the UNCHR and to persuade member state representatives to accept them, albeit with varying degrees of success, at various stages of the debates.

Ultimately, this study illustrates how raising the question of how the right to development was recognized as a human right by representatives of states rather than theorists before being integrated into UN practice and policy can prove illuminating with respect to claims about the scope and contents of the said right that have been made in the debate so far. By uncovering the historical context and political process through which the concept of development was redescribed as a human right, its competing interpretations and the historically possible alternatives that were expressed contemporarily to it, we might contribute to better inform current debates on its possibility, reasonability and desirability for evaluating our past(s) and shaping our future(s).

Keywords: right to development, human rights, UNCHR, United Nations, conceptual history, history of concepts, debate, rhetoric, conceptual change

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Tutkimuksen ideana on retorinen analyysi käsitteellisestä muutoksesta "kehityksen" ja "ihmisoikeuksien" välisissä suhteissa. Yhdistyneissä kansakunnissa tämä muutos huipentui "oikeuden kehitykseen" tunnustamiseen "ihmisoikeudeksi". Analyysin keskeinen kohde on YK:n ihmisoikeuskomission (UNCHR) päätöslauselma, joka hyväksyttiin vuonna 1977 niin että mikään maa ei sitä vastustanut, ja jonka keskeinen käsite on juuri "oikeus kehitykseen ihmisoikeutena". Analyysistä käy ilmi, että kymmenen vuotta aikaisemmin tuollainen päätöslauselma olisi ollut mahdoton hyväksyä. Tutkimuksen keskeinen tavoite on tämän käsitteellisen muutoksen ymmärtämisen mahdollistaminen käyttämällä hyväksi retorisen uudelleentulkinnan käsitettä tavalla, jota Quentin Skinner on käyttänyt omissa kirjoituksissaan. Tutkimus suuntaa huomion siihen, kuinka tämän uudelleentulkinnan avulla tuli mahdolliseksi muuntaa molempia YK:n politiikan avainkäsitteitä, siis "kehitystä" ja "ihmisoikeuksia".

Analyysi etenee kahdella tasolla. Toinen niistä koskee jäsenmaiden edustajien välisiä debatteja UNCHR:n täysistunnoissa 1960-luvun lopulta 1970-luvun jälkipuoliskolle. Tällä tasolla tulkinta korostaa debateista esiin luettuja erilaisia käänteitä poliittisissa asetelmissa, mukaan lukien käänteitä YK:n geopoliittisten blokkien sisällä ja niiden välillä. Toinen taso koskee niiden UNCHR:n toimijoiden kirjoituksia, joita voi Skinnerin termillä kutsua "innovatiivisiksi ideologeiksi". He ovat toimineet erityisraportoijina tai esittäneet päätöslauselmia tälle tutkimukselle keskeisissä UNCHR:n debateissa. Nämä henkilöt, ennen muuta Hernán Santa Cruz, Manouchehr Ganji ja Kéba M'Baye, ovat debateissa esittäneet perusteluja tiettyjen aloitteiden tai päätöslauselmaesitysten puolesta. Tutkimus suuntaa huomiota myös näiden ideologien UNCHR:n ulkopuolella esittämiin pohdintoihin kehityksen ja ihmisoikeuksien käsitteistä. Yhdistämällä nämä kaksi tarkastelun tasoa tutkimus tuo esiin sen, kuinka nämä ideologit kykenivät lanseeraamaan UNCHR:n debateissa uusia ilmauksia ja muotoiluja, joiden avulla oli mahdollista suostutella debattien eri vaiheissa jäsenmaiden edustajat hyväksymään käsitteiden muutokset, tosin hyväksynnän aste-erot säilyttäen.

Tutkimus havainnollistaa kuinka valtioiden edustajat, eivät niinkään teoreetikot, tunnustivat oikeuden kehitykseen ihmisoikeudeksi ennen kuin se sisällytettiin YK:n käytäntöön ja politiikkaan. Samalla tutkimus osoittaa missä suhteissa vaatimuksia tuon oikeuden alasta ja sisällöstä on toistaiseksi esitetty YK:n debateissa. Työssä on nostettu näkyväksi spesifi poliittinen prosessi ja sen historiallisen konteksti, minkä yhteydessä kehityksen käsite kohotettiin ihmisoikeudeksi, kuten myös aikalaisten keskuudessa esillä olleet kilpailevat tulkinnat ja mahdolliset vaihtoehdot tässä historiallisessa tilanteessa. Tämän perusteella voimme paremmin osallistua nykyhetken debatteihin käsitteen mahdollisuudesta, järkevyydestä ja toivottavuudesta, palvellen sekä menneen arviointia että tulevan rakentamista.

Avainsanat: oikeus kehitykseen, ihmisoikeudet, UNCHR, Yhdistyneet kansakunnat, käsitehistoria, debatti, retoriikka, käsitteellinen muutos

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LIST OF ABBREVIATIONS AND ACRONYMS

AU	African Union
CP	civil and political (rights)
DAC	Development Assistance Committee
DEA	UN Department of Economic Affairs
ECLA	United Nations Economic Commission for Latin America
ECLAC	United Nations Economic Commission for Latin America and the Caribbean
ECOSOC	United Nations Economic and Social Council
ENFOM	Ecole Nationale de la France d'Outre-mer
E.P.S.	École primaire supérieure
ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
ESCWA	United Nations Economic and Social Commission for Western Asia
FAO	Food and Agriculture Organization of the United Nations
ESC	economic, social and cultural (rights)
IAEA	International Atomic Energy Agency
IAJC	Inter-American Juridical Committee
IALS	International Association of Legal Science
IBRD	International Bank for Reconstruction and Development
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IMF	International Monetary Fund
ILO	International Labour Organization
IR	International Relations
ISI	import substitution industrialization
MDGs	Millennium Development Goals
NIEO	New International Economic Order
OAS	Organization of American States
ODA	Official development assistance
OECD	Organization for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
RTD	Right to Development
SDGs	Sustainable Development Goals
SUNFED	Special United Nations Fund for Economic Development
UDHR	Universal Declaration on Human Rights
UK	United Kingdoms
UN	United Nations
UNCORS	United Nations Commission on Racial Situation in the Union of South Africa
UNCHR	United Nations Commission on Human Rights
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNECA	United Nations Economic Commission for Africa
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme
UNESCO	United Nations, Educational, Scientific and Culture Organization
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council
UNIHP	United Nations Intellectual History Project
US	United States (of America)
USSR	Union of Soviet Socialist Republics
WFTU	World Federation of Trade Unions
WHO	World Health Organization
WMO	World Maritime Organization

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1 INTRODUCTION

As we look into the history of the concept of development since the mid-twentieth century, we are faced with a paradox. On the one hand, since its institutionalization as an international practice and field of intervention in the aftermath of the Second World War, development belongs to a category of concepts that almost nobody directly opposes: the so-called universal ideals to which the international community is deeply committed and which are enclosed in the Charter of the United Nations (UN). On the other hand, the rising experience of unsettling and disruptive social and environmental effects accompanying the development process and the failure of the UN to deliver on its promise to equalize living standards and wealth across the "North-South" divide have led many to question the moral certainty of that concept and the practice and policy it has come to legitimize over the years. While development has been one of the most persistent ideas in the history of the United Nations, it has also been one of its most contested concepts. The various redescriptions of the concept since the creation of the world organization (e.g. economic development, social development, human development, the right to development, development as a human right, sustainable development, participatory development, etc.) provide a powerful illustration of its controversy.

Admittedly, some redescriptions have been considered more problematic than others. This is particularly true of the claim that development is a human right, which has found expression in the Declaration on the Right to Development, adopted by the United Nations General Assembly (UNGA) on 4 December 1986. Article 1 of the Declaration reads as follows:

> The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized.
>
> The right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources. (A/RES/41/128 (1986))

Ever since its recognition as a principle of international relations, the right to development has been the subject of fierce academic and policy debates, both inside and outside the world organization. These struggles and controversies did not prevent the concept to keep a rather undisputed status at the UN as a policy aim and moral imperative. This is well exemplified by the numerous mentions of the right in various UN resolutions and declarations, such as the Vienna Declaration (A/CONF.157/23, Part 1, Article 10 (1993)), the Millennium Declaration (A/RES/52/2, par.11 (2000)) and the 2030 Agenda for Sustainable Development (A/RES/70/1, Article 35 (2015).

More recently, on the occasion of the thirtieth anniversary of the adoption of the Declaration on the Right to Development, former UN Commissioner for Human Rights, Zeid Ra'ad Al Hussein, uttered the following words:

> The right to development will continue to play a key role as we seek to create an enabling environment for consistent, accountable, strongly directed implementation of the 2030 Agenda. Why? Because it makes explicit a number of profound and foundational truths. (OHCHR 2016)

One may rightfully ask what these "profound and foundational truths" are. The High Commissioner summarized them as follows:

> Societies which exclude groups of people from vital opportunities and resources hold back the ability of entire nations to develop their full potential. Inclusive, participatory societies benefit from the skills of all; and when adequate services are provided, such as decent health, education and housing, everyone reaps massive economic, political and social benefits.
>
> Where the people are oppressed, and seethe with resentment, there is a high risk of inequality, unstable development, violence and upheaval. Where the government listens to, and is responsive to, the people, there will be greater social justice, and more resilient and sustainable political, social and economic structures.
>
> Where there is secrecy and corruption, there is anger and fear; when a government is accountable and transparent, there is trust and predictability, creating the basis for a more sound [sic!] and more broadly prosperous economy, development that is sustainable, and societies that manage to resolve disputes in peaceful ways.
>
> Human rights are not luxuries that only rich and peaceful societies can afford. They are the drivers of peace, security, confidence, resilience, the public trust—and development, whether economic, social or personal. And as the Declaration on the Right to Development so clearly states, everyone, without distinction, is entitled to a social and international order in which human rights and freedoms can be realised. (OHCHR 2016)

To a certain extent, the "profound and foundational truths" identified by the High Commissioner for Human Rights, together with the outcome documents of the international events mentioned above reflect the profound impact of contemporary global political, economic and ecological crises on conventional thinking about the linkage between human rights and development, especially the right to development.

As Rajagopal underlines, "human rights, primarily economic and social rights, are based on a theory of *constant expansion of the economic pie for all*, and

RTD [the right to development] is explicitly predicated on the idea of the nation-state leading the *ever-increasing process of economic and social wellbeing* of its citizen through international cooperation and solidarity" (2013, 894 [emphasis added]). While assumptions about the open-endedness of development were only marginally criticized in the 1970s by organizations such as the Club of Rome and intellectuals such as the French sociologist Jean Braudillard, the Austrian philosophers Ivan Illich and André Gorz, the Romanian American economist Nicholas Georgescu-Rogen, and the Anglo-French environmentalist Edward Goldsmith, the so-called limits-to-growth dilemma is now recognized as one of the biggest global challenges of our time.

According to Rajagopal, "perpetual world economic expansion is under threat; the real wealth of the world—not just the economic wealth—may be shrinking rather than expanding; economic and social wellbeing is increasingly undermined for the most vulnerable populations of the world; the role of the nation-state is increasingly contested as a vehicle for development; and the international community is more divided than ever" (2013, 894). This set of crises may be more generally understood as "a crisis of development itself—not just of growth but of the broader idea that a constant improvement in living standards and even happiness is possible through technology, science, and rational thought, and that development is realized through an increase in wealth" (Rajagopal 2013, 908). For him, therefore, "a search for alternatives through RTD must begin by critiquing these foundational assumptions, which permeates the legal, social, political, and cultural orders which defend development and globalization" (Rajagopal 2013, 909).

The view advanced by Rajagopal is only one among several examples of scholarly attempts to revitalize the right to development (e.g. Tadeg 2010; Villaroman 2010 and 2011; De Feyter 2013; Markus 2014; Kuosmanen 2015; Arts and Tamo 2016; Cheru 2016). To be sure, the right to development has also encountered some fierce critics in recent years, particularly by those who mistrust the concept as an apology for human rights and other abuses. Yet others have denounced the use of the concept by emerging markets such as China in climate talks as a "right to pollute". Some scholars even went as far as to argue for the dismissal of the right to development (e.g. Vandenbogaerde 2013). The concept thus continues to divide academic thought even today.

Notwithstanding one's positon in these academic and policy debates, one principle should hold true for everyone: the fact that the international community once conceived and agreed on recognizing development as an inalienable human right is not in itself a reason that we should continue to do so. By uncovering the historical context and political process through which the concept of development was redescribed as a human right, its competing interpretations and the historically possible alternatives that were expressed contemporarily to it, we might therefore contribute to better inform current debates on its possibility, reasonability and desirability for evaluating our past(s) and shaping our future(s).

In the light of the above, this study suggests that raising the question of how the right to development was recognized as a human right by representatives of states rather than theorists before being integrated into UN practice and policy can prove illuminating with respect to claims about the scope and contents of the said right that have been made in the debate so far. The perspective offered here is meant as a critique of a large number of studies of conceptual change—be it in IR, UN studies or development studies—that either take theorists as the main innovators or dismiss the contents of UN debates as mere words (preferring instead to study the politics in the formation of new concepts at the local or "grassroots" levels). Contrary to these studies, the conceptual-aka-rhetorical study offered in this book draws attention to the importance of internal debates at the UN in general, and the UNCHR in particular, and to the thinkers that were themselves part of these debates.

1.1 Revisiting the history of the formation of the right to development concept at the United Nations

Most historical accounts of the formation of the right to development concept at the United Nations culminates with the adoption of the Declaration on the Right to Development by the UNGA in 1986, which defines the right to development as an inalienable human right. Such accounts often locate the key origins of the concept in an inaugural lecture delivered in 1972 by the Senegalese jurist Kéba M'Baye at the International Institute of Human Rights in Strasbourg. The narrative then usually jumps to the "reiteration" of the right to development as a human right by the UNCHR in resolution 5 (XXXV) of 2 March 1979. True, the lecture delivered by M'Baye was among the first public elaborations of the right to development as a human right (see Chapter 6). However, Spanish jurist Carrillo Salcedo made a similar contribution in the hispanophone sphere at about the same time (Salcedo 1972). What is more, M'Baye himself attributed the paternity of the idea of the right to development as a human right to a religious man, whom he heard on the Senegalese radio a couple of years prior to his 1972 lecture at the International Institute of Human Rights.

Others retrace the origins of the formation of the right to development concept at the United Nations further back in time, arguing that it came about in the 1960s. Again, there are some elements of truth in that narrative. As Whelan aptly demonstrates, the right to development concept entered the debate on international trade and development as a legitimating device for the claims advanced by developing countries for the establishment of a NIEO in the early 1960s. Nonetheless, the right to development concept used in these debates was never institutionalized in any of the documents adopted by the United Nations Conference on Trade and development (UNCTAD) (Whelan 2015). Then again, some of the conceptual foundations of what will later become the Declaration on the Right to Development were first formulated in the Declaration and Programme of Action

on the Establishment of a NIEO and the Charter on the Economic Rights and Duties of States. But as Whelan himself recognizes, there was very little about human rights in these instruments.

The two main historical narratives of the right to development thus either retrace its conceptual origin to M'Baye's speech at the International Institute of Human Rights in 1972 or present it as the product and orphan of the struggle for the establishment of a NIEO. The problem with these narratives is that they help us very little to understand both why and how development became recognized as a human right by representatives of UN member states in the first place. One narrative largely avoids the question of how the concept succeeded to enter the political arena of the UN, while the other avoids the question of its redescription as a human right. Indeed, there is nothing inevitable or self-evident about the introduction of a new concept into the UN system and its acceptance into the conventional language of international human right at the UN. What is more, while the rhetoric of the right to development was an integral part of the debates over the establishment of a NIEO, human rights were not. As such, there is nothing self-evident about the commonly presupposed link between the emergence of the *human* right to development at the UN and the struggle for the establishment of a NIEO.

More recently, the authors and editors of a book series published within the context of the United Nations Intellectual History Project (UNIHP) also offered a version of their own. In the volume of that series entitled *UN Contributions to Development Thinking and Practice*, for instance, Jolly et al. take on the task of assessing the record of UN's work in development. To that aim, they argue, "the standards we apply—our values and criteria—need to be made clear to the reader" (Jolly et al. 2004, 3). While recognizing some of the difficulties of doing so in a work of International History, not the least because of "the sharp differences between the views and the concerns of UN member states, they end up using "the core norms and values underpinning the UN system as defined in its two founding documents, the Charter of the United Nations and the Universal Declaration of Human Rights" (Jolly et al. 2004, 4). As a result, they endeavour to "judge the UN's development performance by reference to human rights", arguing that "the inclusion of human rights in the UN's development thinking culminated in December 1986, when the General Assembly adopted the Declaration on the Right to Development" (Jolly et al 2004, 9). In that context, the right to development as a human right—or at least the author's definition of it—serves as the standard against which the whole of UN's development work over the years is evaluated.

The above draws attention to the normative nature of the goal set out to be achieved with UNIHP. After remarking that "no systematic intellectual history and evaluation have been made of the UN structure as a whole" (Jolly, Emmerij and Weiss 2009, 7), the authors of *UN Ideas that Changed the World* – the capstone volume compiling the findings of the other 14 books in the UNIHP series – argue:

> An intellectual history should do at least four things. First, it should attempt to trace the ideas that an organization has identified, albeit recognizing that most ideas have

> many and distant origins. Second, it should examine the quality-validity, and the timing of these ideas. Third, it should identify missing ideas and why they are missing. And fourth, it should specify which areas in the future are in need of ideas and how the organization should change in order to ensure that the relevant ideas develop in good time are given a better chance of coming to fruition. (Jolly, Emmerij and Weiss 2009, 7)

However, such normative endeavour has limitations of its own, not the least because it obscures the contingent and controversial aspects of the norms and values that have informed and continue to inform the normative frameworks of the UN.

In the light of the above, the present study proposes to revisit the conceptual history of the politics in the formation of the right to development at the UN by emphasizing one moment, namely its redescription as a human right at the UNCHR. According to Reinhart Koselleck, there are three modes of writing history: "the recording (*Aufschreiben*), the continuing (*Abschreiben*), and the rewriting (*Umschreiben)* of history" (Koselleck 2002, 56). He explains: "Recording is a unique act; continuing accumulates temporal spans; rewriting corrects recorded and the continued, in order to retrospectively arrive at a new history" (ibid.). In particular,

> The rewriting of history is as unique as the very first time a history is written. It is certainly innovative because it moves in a conscious opposition to the previously reported or written history. It follows provisionally that this corresponds to a change of experience that amounts to a new experience. […] The facts of the events and their causes have to be articulated anew, or at least differently; otherwise there is nothing but further recording or continuing of prior traditions. (Koselleck 2002, 65)

The present study could be characterized as rewriting insofar as it combines a new perspective with in-depth reading of largely unused recorded material to arrive at a new conceptual history of the right to development. To be sure, the material in question has long been available to research upon but it was not so fashionable to do so—i.e. apart for studies on "voting groups" or "bloc voting" at the UNGA and other UN organs with similar voting records (see e.g. Ball 1951; Riggs 1958; Russett 1960; Alker and Russett 1965). Nowadays, researching UN archives—in particular UN verbatim and summary records—has become an accepted practice of producing knowledge (see e.g. Morsink 1999; Whelan 2010 and 2015). But until recently, these records were often dismissed as mere talk and IR scholars did not really grant it the attention they deserved.

The point of rewriting history, Koselleck argues, is to shed light on "a change of experience that would be lost to our current understanding without its methodological theoretization" (2002, 65). Yet, Koselleck warns us at the same time, with the rewriting of history "the methodological burden of proof increases enormously, for without it, it cannot be shown why history, as hencetofore reported or written down, was in reality so different from the way it was reported or written down" (2002, 64). The aim of the present study is to do just that by drawing attention to the redescription of development as a human right in the history of the formation of the right to development concept at the UN. More precisely, this study suggests that the right to development concept used in the

debates over the establishment of a NIEO and the one coined by M'Baye in 1972 and subsequently taken up by the UNCHR are better understood as two different albeit not completely distinct redescriptions of the concept of development at the UN, namely 1) development as a right *tout court* and 2) development as a human right. There is a large amount of confusion between these two redescriptions, which calls for further historical inquiry and interpretation of the right to development concept at the UN, an expression which might refer to either development as a right, development as a human right, or both. These two redescriptions occurred in largely parallel processes at the United Nations and ultimately came to converge into the UNGA debate over the Declaration on the Right to Development.

1.2 UNCHR resolution 4 (XXXIII) & the redescription of development as a human right: a threefold problematic

On 21 February 1977, the Commission on Human Rights passed a resolution in which it called for "a study of the international dimensions of the right to development as a human right, in relation with other human rights based on international cooperation, including the right to peace, taking into account the requirements of the NIEO and fundamental human needs". UNCHR resolution 4 (XXXIII) is of particular interest for the purpose of the present study for a number of reasons. For one, it contains the first explicit mention of the right to development as a human right in a UN resolution. Interestingly, however, only a few scholars have mentioned, set aside recognized the importance of this document in the overall history of the emergence of the right to development in international human rights debates (see e.g. Alston 1984, 612; Donnelly 1985, 474; Tadeg 2010, 329; Villaroman 2011, 15). What is more, the resolution adopted a rather oblique approach to the right. Indeed, the UNCHR did not explicitly recognize the right to development but instead issued a recommendation to ECOSOC to invite the Secretary-General, in cooperation with UNESCO and the other competent specialized agencies, to undertake a study on the subject. UNCHR resolution 5 (XXXV), in which the Commission "*reiterates* that the right to development is a human right and that equality of opportunity for development is as much a prerogative of nations as of individuals within nations" (E/CN.4/RES/5 (XXXV) (1979)), accentuates the importance of resolution 4 (XXXIII). Indeed, the wording of resolution 5 (XXXV) would tend to indicate that the UNCHR considered the recognition of the concept was already a *fait accompli*, pointing back to resolution 4 (XXXIII) of 21 February 1977.

This is all the more interesting in the light of the fact that, contrary to other international human rights, there had hardly been any substantial discussion of the right to development as a human right prior to the adoption of UNCHR resolution 4 (XXXIII). Jack Donnelly was one of the first scholars, if not the first one, to remark upon the lack of academic (and political) debate on the subject. He did

so in a paper delivered at the Symposium "Development as an Emerging Human Right", organized by the California Western School of law in 1984, i.e. the year prior to the adoption of the Declaration of the Right to Development.[1] A survey of the scholarly literature would tend to prove him right.[2] However, a closer look at official records of the meetings of the UNCHR tells a slightly different story. While Donnelly argued that the human right to development "had never even been discussed in the UN system" prior to 1977 (1985, 475), UNCHR records show that the representative of Senegal, Kéba M'Baye, had introduced the concept a few years earlier, in a speech delivered at the thirtieth session of the Commission. Admittedly, however, the idea introduced by M'Baye was barely discussed at the time and only briefly debated by the Commission in 1977.

On 22 February 1974, during consideration of an item entitled "question of the realization of the economic, social and cultural rights contained in the UDHR and the ICESCR, and study of special problems relating to human rights in developing countries", M'Baye forcefully argued:

> The responsibility for ensuring that everyone enjoyed human rights fell largely upon the rich countries. Such responsibility was the price of international security. Pope Paul VI had stated that development was the new name of peace, but his warning had gone unheeded. As the representative of France had said, creative imagination was needed. The developed countries were responsible for international events and their consequences. They caused such events with only their own interests in mind and should therefore share the disadvantages, since they benefited from the advantages. They must realize that the right to development was the natural outcome of the international solidarity embodied in the Charter. (E/CN.4/SR.1269, 30 (1974) [emphasis added])

He concluded his speech by arguing "development should be accorded the status of a human right" (E/CN.4/SR.1269, 31 (1974)). This assertion is of historical significance: it represents the first recorded attempt to redescribe development as a human right in the international setting of the UNCHR, and possibly also within the UN system at large. This conceptual innovation gains additional interest in the light of the negative terms in which the relationship between human rights and economic development was commonly understood during the 1950s and 1960s. What is even more interesting about the passage quoted above is that almost none of the representatives of member states present during the debate seemed to have found this redescription worth responding to. But the few who remarked upon it—albeit only after M'Baye repeated his rhetorical move at the next session—did so in an approbatory manner (see e.g. statement by Theo van Boven from the Netherlands at E/CN.4/SR.1298, 76 (1975)).

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[1] The focus of the discussion at the Symposium on development as an emerging human right "was primarily on the desirability of codifying such a right; however, some question were raised on the content of the right and the means of implementation" (Nanda 1985, 436).

[2] For practical reasons, the review was limited to scholarly literature in English, French, Spanish and Norwegian. Hence, there remains the possibility of the existence of some substantial discussion of the right to development as a human right in literature published in other languages (Arabic, for instance).

Less than half a decade later, the Commission called for a study of the international dimension of that right. While a few members of the Commission questioned the scope and contents of such a right, none of them rejected the concept altogether. Hence, the right to development entered the conventional language of the UNCHR as a human right concept without facing any real opposition. Yet, there was no clear consensus over its interpretation either. In other words, UNCHR resolution 4 (XXXIII) of 21 February 1977 only recognized the *possibility* of the right to development as a human right. The scope and contents of the concept were still largely undefined—as the mandate of the Working Group of Governmental Experts on the Right to Development (set up in 1981 to study, among others, the scope and contents of the right to development) illustrates.

UNCHR Resolution 4 (XXXIII) of 21 February 1977 points to a quite startling transformation, both in the status of development and its relationship to international human rights law as well as in the mandate of the UNCHR with respect to international trade and development policy and the proclamation of new human rights. How may we account for this moment of conceptual innovation, whereby representatives of UN member states at the UNCHR formally recognized development as a human right? This moment of conceptual innovation is instrumental in bringing to the fore the contingent struggles and controversies that rendered the introduction of the concept of a right to development into the conventional language of international relations at the UN possible. It is also instrumental in explaining *how* representative of UN member states later came to declare development as an inalienable human right and whether this was really, for instance, "the newest and most topical strand *after* economic self-determination and the NIEO, in attempts to redress the greatest international disparities in wealth" (Mansell and Scott 1994, 173 [emphasis added]) or something else.

How this moment of conceptual innovation and its collective assertion by representatives of member states at the UNCHR came about is at the heart of the present study. In particular, three aspects of this moment stand in need of explanation:

- Why did the UNCHR call for a study of the international dimensions of the right to development as a human right in 1977?
- Why did the UNCHR feel itself competent to call for a study of the international dimensions of the right to development as a human right?
- Why did the donor countries not oppose, at least not explicitly, this redescription at the UNCHR?

Firstly, why did the UNCHR call for a study of the international dimensions of the right to development as a human right at its thirty-third session—rather, for instance, than an investigation that the right did exist or ought to be established in international human rights law—thereby giving implicit recognition to the concept? As Alston observed, the proclamation of the right to development by the Commission on Human Right in 1977 was done "on the basis of no prior examination of the matter and without the assistance of any relevant documentation" (1984, 612). The starting point of the study called for in UNCHR resolution

4 (XXXIII) was "the presumption that the right *already* existed" (Alston 1984, 612 and fn19 [emphasis added]). Such practice stands in stark contrast to what had otherwise been a time-consuming process of deliberation and negotiation, that of formulating international human rights norms and standards. Indeed, while the right to development was a concept used since the 1960s in academic and policy debates over international trade and development, it was still largely foreign to the human rights debate. There was nothing self-evident about the notion of a human right to development.

The backhanded proclamation of the right to development as a human right contained in UNCHR resolution 4 (XXXIII) also represents a remarkable shift in the UN debate over human rights, both with respect to the linkage between development and human rights and the specific role assumed by the Commission in the recognition of a new human right. In the first two decades of the existence of the UN, the authority to proclaim human rights had conventionally been the prerogative of the General Assembly.[3] Hence, writing on the occasion of the twentieth anniversary of the UDHR, Bilder concluded "in practice, a claim is an international human right if the United Nations General Assembly says it is" (Bilder 1969, 173). Fifteen years later, Alston emphasized "the authoritative role that Bilder correctly attributed to the General Assembly [was] in serious danger of being undermined" (1984, 607). From his point of view, this was partly due to "the growing tendency on the part of a range of United Nations and other international bodies, in particular the Commission on Human Rights, to proceed to the proclamation of new rights without reference to the Assembly" (ibid.). This is all the more interesting when approached from the perspective of international legitimacy: should the UNCHR, which is composed of only a fraction of the member states of the UN, be given such extensive powers?

The question is not limited to asking why the notion of the right to development as a human right was considered as self-evident but also why the UNCHR decided to call for a study of the said right *at that precise moment.* The latter question necessarily provokes another one: What particular problem(s) was the right to development offered as an answer to? This question derives from the empirical puzzle itself. To understand why the UNCHR called for a study of the right to development as a human right, we must see it as more than a proposition, we must see it "as a move in argument" (Skinner 1988, 274). To that aim, "we need to grasp why it seemed worth making that precise move; to recapture the presuppositions and purposes that went into the making of it" (ibid.). I will come

[3] As Alston argues, the adoption by the international community of the Universal Declaration on Human Rights as "common standard of achievement for all nations and all peoples […] was only made possible by the fact that most members of the United Nations implicitly recognized the authority of the General Assembly to determine which claims should be deemed rights and which should not" (1984, 608). The authority vested in the General Assembly to proclaim human rights "was reinforced in the period from 1949 to 1966 when the two International Human Rights Covenants, as well as a number of other instruments of more limited scope were being drafted. During the whole of this time, the authority of the United Nations as the final arbiter was never seriously called into question even by those states which were unhappy with the direction in which the majority was moving" (Alston, 608-609).

back to this point in the next chapter, when discussing the theoretical framework and methods employed to conduct the present empirical inquiry.

Secondly, why did the UNCHR feel itself competent to call for a study of the "international dimensions of the right to development as a human right in relation to other human rights based on international cooperation, including the right to peace, taking into account the requirements of the New International Economic Order and fundamental human needs"? This question necessitates some clarification. To begin with, it was common practice for the Commission to specify the terms of reference and scope of any study to be entrusted to a special rapporteur. In that sense, the procedure followed in Commission resolution 4 (XXXIII) does not stand out from the one normally used by the UNCHR for studies of similar kind. Rather, the puzzling element lies in the very terms chosen by the Commission to do so, which would normally have fallen outside of its mandate. By calling for a study of the right to development as a human right based on international cooperation, and by linking it to the requirements of the NIEO and fundamental human needs, the Commission hinted at both a new conception of responsibility and a revised conception of development in international relations. This is all the more interesting given the terms of the relation between the main organs of the United Nations and the specialized agencies concerned with development (e.g. the IMF, the World Bank, UNESCO, UNDP, and the UN regional economic commissions) at the time.

Thirdly—and this is perhaps the most interesting question from our contemporary point of view—why did the donor countries not oppose, at least not explicitly, this redescription—which in effect could be interpreted as a right to development assistance? Indeed, the wording of UNCHR resolution 4 (XXXIII) and its adoption by consensus (i.e. without a vote) points to the tacit agreement of donor countries to bear part of the financial burdens associated with the realization of human rights in developing countries. It is perhaps not so surprising given that, in the context of the International Development Strategy for the Second United nations Decade for Development, "each economically advanced country" had agreed to "progressively increase its official development assistance to the developing countries" and "exert its best efforts to reach a minimum net amount of 0.7 per cent of its gross national product at market prices by the middle of the Decade" (A/RES/2626(XXV) (1970)). Resolution 4 (XXXIII), however, moves to give the idea of international development assistance a more obligatory connotation in articulating in the language of international human rights.

The rules regulating membership in the UNCHR at the time of the adoption of resolution 4 (XXXIII) distributed the thirty-two seats on the basis of a geographical quota as follows: eight seats to the Group of African States, six to the Group of Asian States, six to the Group of Latin American States, four to the Group of Eastern European States and eight to the Group of Western European and Other States. Generally speaking, ODA donor countries originated almost exclusively from the Group of Western European and Other States. By the time of the opening of the thirty-third session of the UNCHR, seven out of the eight members of the Group of Western European and Other States were also members

of the OECD Development Assistance Committee (DAC)—i.e. Austria, Canada, the Federal Republic of Germany, Italy, Sweden, the UK and the US. The remaining member state of that group, namely Turkey, did not officially launch its foreign aid development programme before 1985; in 1977, Turkey was still considered a recipient country according to official OECD data. Not only did some of the representatives of the aforementioned donor countries not oppose what became UNCHR resolution 4 (XXXIII); some, namely the representatives of Austria and Sweden, were among the very sponsors of the draft of that resolution. Others, such as the representatives of Italy and Germany, expressed their support to the "spirit" of the resolution despite having expressed their concerns over the scope and contents of the right to development as a human right.

The third question gains additional relevance in the light of contemporary debates with respect to "the unwillingness of Western States, and the United States in particular, to bear the financial burdens of international cooperation to improve the realization of economic and social rights in the rest of the world (Whelan & Donnelly 2007, 948). What is more, while Stephen Marks observes, in an article published in the early 2000s, that "U.S. policy had been consistently negative on the RTD in the political setting of the Commission on Human Rights and the General Assembly" (2004, 140), the adoption of UNCHR resolution 4 (XXXIII) by consensus seems to indicate otherwise. Marks certainly recognizes that the US joined consensus on the right to development as a human right a couple of time in the history of the right, but he makes no mention of UNCHR resolution 4 (XXXIII).

The temptation to explain this policy shift with simple reference to changes in the US administration is certainly high. Indeed, Jimmy Carter—who was in office when UNCHR resolution 4 (XXXIII) was passed—is considered the first American president to have made human rights a central foreign policy issue. He would then represent the exception to what Marks describes as the constant rejections or at best "reluctant participation in a consensus" of the United States on the right to development as a human right. According to Marks, this situation could be explained by reference to "five concerns shared by each of the U.S. administration" (2004, 143). The first concerns "ideological conviction based on political economy"; the second, objections based on the relationship between the right to development and ESC rights; the third, conceptual objections to the right to development as a human right; the fourth, jurisdictional objections; the fifth, regulatory objections to the right to development, which the US could accept as a principle but not as "an attempt to legislate rules" (see Marks 2004, 143—150). Similarly, Alston has explained the US objection to the Declaration on the Right to Development by reference to the conception of rights held by the Reagan administration, which excluded the idea of collective human rights (1988, 22). Nonetheless, the question would still remain as to whether the Carter administration differed so drastically from other US administrations on the five points identified by Marks, to the extent of allowing it to adopt a favourable outlook on the redescription of the right to development as a human right in 1977.

It is my conviction, however, that the position adopted by the United States and other donor countries on the right to development on 21 February 1977 can be as—if not more—satisfactorily explained by recourse to a conceptual and rhetorical analysis of the debates leading to the adoption of UNCHR resolution 4 (XXXIII). Doing so would provide a perspective from within the United Nations and help uncover some of the political controversy and contingency in the formation of the right to development concept that may have remained hidden thus far.

1.3 Research material and approach

Raising the question of how the right to development was recognized as a human right by representatives of UN member states rather than theorists before being enacted in UN practice and policy can prove illuminating with respect to claims about the scope and contents of the said right that have been made in the debate so far. This study suggests to do so just that through a close reading of the UNCHR debates leading to the adoption of resolution 4 (XXXIII) on 21 February 1977. To that aim, the study adopts a rhetorical perspective on conceptual change so as to map the changing horizon of opportunities as alternative trajectories for the realization of ESC rights were debated by representatives of member states at the UNCHR, shedding light on the politics in the formation of the concept of the right to development at the UN along the way. The methodological assumptions and approach elaborated for the purpose of the present study are discussed at great length in Chapter 2. Accordingly, the remaining part of this chapter only offers a few lines about the ideal-typification of the UNCHR as a site of conceptual debate before turning to a discussion of the scope and content of the research material analysed in chapters 3 to 6.

1.3.1 The UNCHR as a site of conceptual debate

Ultimately, answering "how" the right to development was recognized as a human right by the members of the UNCHR requires paying equal attention both to the form of the process leading to this outcome and its substance. The first requirement calls for a focus on the conduct of politics at the UNCHR. To that aim, this study suggests to approach the UNCHR as a site of conceptual debate—as opposed to, for instance, a forum of negotiation. To be sure, this ideal-typification of the UNCHR is not meant to provide a complete picture of the politics carried out within it. Rather, it is used to emphasize the dissensual as opposed to the consensual style of international politics at play in the process of conceptual innovation and change at the UN. As such, the struggle between opposing views are deliberately given centre-stage throughout the empirical-cum-analytical narrative. Dissensus not only between the UNCHR's geographically defined groups but also within them are thus accentuated. Conceptual nuances and disputes otherwise hidden behind the veils of consensus, bloc politics or diplomatic language,

are brought to the forefront of the analysis. By doing so, I hope to illuminate not only the controversial but also the contingent aspects of the normative concepts governing the actions and policies of the United Nations in the field of human rights. In other words, there is nothing absolute or immutable in the UN's normative frameworks—even those parts deemed as foundational.

As the present study serves to illustrates, the international human rights framework and the language used to represent it is neither stable nor uniform. Rather, it is amenable to the play of politics through the use of rhetoric. As building blocks of this rhetoric, concepts and their interpretation are important resources in UNCHR debates. As such, their interpretation might also become objects of struggles and controversies. The individual participants in UNCHR debates, be them representatives of UN member state or non-state actors, naturally act within the terms of this quasi-parliamentary context. They employ, for instance, the normative vocabulary of the world organization—particularly that found in its constitutive documents, namely its Charter and the UDHR—to justify their position, action or conduct. Indeed,

> the problem facing an agent who wishes to legitimate what he is doing at the same time as gaining what he wants cannot simply be the instrumental problem of tailoring his normative language in order to fit his projects. It must be in part the problem of tailoring his projects in order to fit the available normative language (Skinner 1978, XII)

We need, therefore, to treat our normative concepts less as statements about the "real" world—as neopositivists or critical realists would have it—than as tools and weapons of debate (Skinner 1999, 62), which is precisely what this study suggests to do.

The second requirement calls for an in-depth interpretation of the debate that opened up the horizon of possibility of the UNCHR to the recognition of the right to development as a human right. We want to know how representatives of UN member states to the UNCHR were persuaded of the acceptability of defining development as a human right, as advanced in resolution 4 (XXXIII) of 21 February 1977. A close reading of the debate that produced this outcome allows shedding light on historically valid alternatives that were proposed at the time but opposed, rejected or simply dismissed by member state representatives at the UNCHR.

1.3.2 Procedural history of the debate leading to the adoption of UNCHR resolution 4 (XXXIII)

The debate this study is interested with took place at the UNCHR between 1968 and 1977. Between those years, the number of members remained the same. In other words, eight seats were allocated to the Group of African States, six to the Group of Asian States, six to the Group of Latin American States, four to the Group of Eastern European States and eight to the Group of Western European and Other States. The composition of each group, however, changed almost every other year. Table 1 below offers an overview of these changes for each of the five regional groups and for every session/year covered by this study.

Table 1 List of states member of the Commission on Human Rights by Regional Group, 24th to 33rd sessions (1968-1977)

Session/ Year	Group of African States	Group of Asian States	Group of Latin American States	Group of Eastern European States	Group of Western European and Other States
24th / 1968	• Congo (Democratic Republic of) • Dahomey • Madagascar • Morocco • Nigeria • Senegal • United Arab Republic • United Republic of Tanzania	• India • Iran • Israel • Lebanon • Pakistan • Philippines	• Argentina • Chile • Guatemala • Jamaica • Peru • Venezuela	• Poland • Ukrainian SSR • USSR • Yugoslavia	• Austria • France • Greece • Italy • New Zealand • Sweden • United Kingdom of Great Britain and Northern Ireland • United States
25th / 1969	• Congo (Democratic Republic of) • Madagascar • Mauritania • Morocco • Nigeria • Senegal • United Arab Republic • United Republic of Tanzania	• India • Iran • Israel • Lebanon • Pakistan • Philippines	• Chile • Guatemala • Jamaica • Peru • Uruguay • Venezuela	• Poland • Ukrainian SSR • USSR • Yugoslavia	• Austria • Finland • France • Greece • Italy • New Zealand • United Kingdom of Great Britain and Northern Ireland • United States
26th / 1970	• Congo (Democratic Republic of) • Ghana • Madagascar • Mauritania • Morocco • Senegal • United Arab Republic • United Republic of Tanzania	• India • Iran • Iraq • Israel • Lebanon • Philippines	• Chile • Guatemala • Jamaica • Peru • Uruguay • Venezuela	• Poland • Ukrainian SSR • USSR • Yugoslavia	• Austria • Finland • France • Netherlands • New Zealand • Turkey • United Kingdom of Great Britain and Northern Ireland • United States

27th / 1971	• Congo (Democratic Republic of) • Ghana • Mauritania • Mauritius • Morocco • Senegal • United Arab Republic • United Republic of Tanzania	• India • Iran • Iraq • Lebanon • Pakistan • Philippines	• Chile • Guatemala • Mexico • Peru • Uruguay • Venezuela	• Poland • Ukrainian SSR • USSR • Yugoslavia	• Austria • Finland • France • Netherlands • New Zealand • Turkey • United Kingdom of Great Britain and Northern Ireland • United States
28th / 1972	• Egypt • Ghana • Mauritius • Morocco • Nigeria • Senegal • United Republic of Tanzania • Zaire	• India • Iran • Iraq • Lebanon • Pakistan • Philippines	• Chile • Ecuador • Guatemala • Mexico • Peru • Nicaragua	• Byelorussian SSR • Poland • Romania • USSR	• Austria • France • Italy • Netherlands • Norway • Turkey • Kingdom of Great Britain and Northern Ireland • United States of America
29th / 1973	• Egypt • Ghana • Mauritius • Nigeria • Senegal • Tunisia • United Republic of Tanzania • Zaire	• India • Iran • Iraq • Lebanon • Pakistan • Philippines	• Chile • Dominican Republic • Ecuador • Mexico • Nicaragua • Venezuela	• Bulgaria • Byelorussian SSR • Romania • USSR	• Austria • France • Italy • Netherlands • Norway • Turkey • Kingdom of Great Britain and Northern Ireland • United States of America
30th / 1974	• Egypt • Ghana • Nigeria • Senegal • Sierra Leone • Tunisia • United Republic of Tanzania • Zaire	• Cyprus • India • Iran • Iraq • Lebanon • Pakistan	• Chile • Dominican Republic • Ecuador • Nicaragua • Panama • Peru	• Bulgaria • Byelorussian SSR • Romania • USSR	• Austria • France • Italy • Netherlands • Norway • Turkey • United Kingdom of Great Britain and Northern Ireland • United States of America

31st / 1975	• Egypt • Ghana • Senegal • Sierra Leone • Tunisia • United Republic of Tanzania • Upper Volta • Zaire	• Cyprus • India • Iran • Iraq • Lebanon • Pakistan	• Costa Rica • Dominican Republic • Ecuador • Nicaragua • Panama • Peru	• Bulgaria • Byelorussian SSR • USSR • Yugoslavia	• Austria • France • Germany (Federal Republic of) • Italy • Netherlands • Turkey • United Kingdom of Great Britain and Northern Ireland • United States of America
32nd/ 1976	• Egypt • Lesotho • Libyan Arab Republic • Rwanda • Senegal • Sierra Leone • United Republic of Tanzania • Upper Volta	• Cyprus • India • Iran • Jordan • Lebanon • Pakistan	• Costa Rica • Cuba • Ecuador • Panama • Peru • Uruguay	• Bulgaria • Byelorussian SSR • USSR • Yugoslavia	• Austria • Canada • France • Germany (Federal Republic of) • Italy • Turkey • United Kingdom of Great Britain and Northern Ireland • United States of America
33rd / 1977	• Egypt • Lesotho • Libyan Arab Republic • Nigeria • Rwanda • Senegal • Uganda • Upper Volta	• Cyprus • India • Iran • Jordan • Pakistan • Syrian Arab Republic	• Costa Rica • Cuba • Ecuador • Panama • Peru • Uruguay	• Bulgaria • Byelorussian SSR • USSR • Yugoslavia	• Austria • Canada • Germany (Federal Republic of) • Italy • Sweden • Turkey • • United Kingdom of Great Britain and Northern Ireland • United States of America

The UNCHR debates of interest here took place during consideration of an agenda item entitled "Question of the realization of the economic, social and cultural rights contained in the Universal Declaration on Human Rights and the International Covenant on Economic, Social and Cultural Rights and study of special problems relating to human rights in developing countries" between 1968 and 1977. The ~~item in~~ question was initially introduced as two separated items on the agenda of the Commission: "study of the special problems relating to human rights in developing countries" and "question of the realization of the economic and social rights contained in the Universal Declaration of Human Rights". The two items were then considered together at the 25th session of the UNCHR, held in 1969, before being merged under a single item of the same name. A few words about the procedural history of these items are necessary in order to capture the political background against which the debates took place.

To begin with, an important step leading to the introduction of the question of the special problems relating to human rights in developing countries in the agenda of the UNCHR was taken at the first UN seminar on human rights in developing countries, held in Kabul, Afghanistan, from 12 to 25 May 1964 (hereafter Kabul seminar). This seminar and the ones that followed were aimed at "promoting the dissemination of knowledge about human rights, particularly in developing countries, by the holding of joint seminars with their governments" (Elias 1980, 166). Pursuant to a wish expressed at the Kabul seminar, the question of special problems relating to human rights in developing countries was included in the agenda of the twenty-first session of the Commission in 1965 (E/CN.4/940, 173 (1967)). However, owing to a lack of time and an overcrowded agenda, the Commission decided to postpone consideration of the question time and again until its twenty-fifth session, in 1969.

In the meantime, from 8 to 22 February 1966, the UN held another seminar on human rights in developing countries, this time in Dakar, Senegal (hereafter Dakar seminar). The following year, the representative of Iran submitted a draft resolution to the UNCHR, inviting the Preparatory Committee for the International Conference on Human Rights, scheduled to take place in 1968, to place the question in the agenda of the Conference. The draft resolution also contained a request to the Secretary-General to proceed to organize, under the programme of advisory services in the field of human rights, additional seminars on the subject of the special problems relating to human rights in developing countries. The draft resolution was adopted unanimously on 22 March 1967, with two minor oral amendments from the representatives of Jamaica and France. (E/CN.4/940, 174 (1967))

From 15 to 28 August 1967, the UN held another seminar, this time on the question of the realization of the ESC rights contained in the UDHR, in Warsaw, Poland (hereafter Warsaw seminar). Earlier the same year, the Chairman of the twenty-third session of the UNCHR, Petr Emelyanovich Nedbailo of the Ukrainian SSR, suggested the inclusion of the question of the realization of the economic and social rights contained in the UDHR as an additional item in the agenda of

its next session. On 5 February 1968, pursuant to his proposal, the UNCHR decided to include the question in the agenda of its twenty-fourth session, which it subsequently considered from 4 to 6 March (hereafter UNCHR debate of 1968).

A few days before the question of the realization of economic and social rights was scheduled for consideration, the representatives of Austria, Chile, India, Philippines, Poland, Senegal, Ukrainian SSR and Yugoslavia submitted a joint draft resolution, which was circulated among the members of the Commission prior to the debate (E/CN.4/972, 98—99 (1968)). The UNCHR debate of 1968, analysed at length in Chapter 3, thus opened directly with the introduction and consideration of that document.

The aforementioned document was based on the view that the implementation of economic and social rights was a matter that went beyond the technical competence of economic bodies and specialized agencies and came directly under that of the UNCHR. The sponsors, supported by several representatives, stressed that the essential function of the UNCHR in that field should be to undertake an integrated study of all the relevant problems which were at present being dealt with by many UN bodies and specialized agencies from different viewpoints, and to formulate comprehensive recommendations designed to stimulate progress in the realization of economic and social rights.

Accordingly, the joint draft resolution in its original form included a proposal to appoint a special rapporteur to prepare a study of the question of the realization of the economic and social rights contained in the UDHR and the ICESCR and to make recommendations to the UNCHR in that regard. It was also proposed that further seminars, similar to the Warsaw one, be held on the question of the realization of economic and social rights. The hope was expressed that the International Conference on Human Rights, to be held in Teheran later the same year, would pay due attention to such matters. (E/ CN.4/972, 102 (1968))

Contrary to the view held by the sponsors—a view shared by the vast majority of developing country representatives—some developed country representatives among members of the Group of Western European and Other States held that matters directly relevant to most of those rights were already being dealt with in great details by other organs of the UN and by the specialized agencies. From their point of view, the UNCHR was the only UN organ directly concerned with the promotion and protection of CP rights and therefore had an obligation to focus its attention on those rights. (E/CN.4/972, 100-101 (1968)) Part of the UNCHR debate of 1968 thus focused on the responsibilities of various UN organs and the specialized agencies in the implementation of the economic and social rights contained in the UDHR and the particular role (if any) to be assumed by the UNCHR in that regard.

Representatives among members of the Group of Western European and Other States also opined that the time was not ripe for the appointment of a special rapporteur. Accordingly, Polish diplomat Eugeniusz Wyzner introduced a revised version of the joint draft resolution. Pursuant to the revised text, the UNCHR would request the Secretary-General "to prepare, in consultation with in-

terested specialized agencies, a preliminary study of issues relating to the implementation of economic and social rights, and postpone consideration of the question of the appointment of a special rapporteur until its next session" (E/CN.4/RES/11 (XXIV) (1968)). While a few members felt that this might be interpreted as prejudging the question of the appointment of a special rapporteur, the revised draft resolution was adopted by the UNCHR, through the procedure of consensus, as resolution 11 (XXIV) on 5 March 1968 (E/CN.4/972, 102 (1968)).

The next year, at its twenty-fifth session, the UNCHR took on the task of considering the question of the realization of the economic and social rights contained in the UDHR and in the ICESCR (agenda item 9) jointly with the study of special problems relating to human rights in developing countries (agenda item 15). Pursuant to a wish expressed at its previous session, the Commission had before it the preliminary report of the Secretary-General. Accordingly, the UNCHR took on the task of discussing some of the issues identified by the Secretary-General in his preliminary study and the manner in which it should proceed to continue on the subject in the lines laid down by its resolution 11 (XXIV) of 5 March 1968. The resulting debate (hereafter UNCHR debate of 1969) is introduced in Chapter 3. Chapter 4 then offers a deep historical interpretation of some aspects of that debate of particular relevance to the present study.

For now, suffice to point out that part of the debate centred on the proposal to appoint a special rapporteur. The idea was supported by the vast majority of developing country representatives as well as members among the Group of Eastern European States but opposed by a number of developed country representatives among members of the Group of Western European and other States. The other part of the debate centred on a set of proposals introduced as a set of amendments and turned into a draft resolution by Hernán Santa Cruz of Chile, which concerned the interconnection between the realization of ESC rights and economic and social development. The proposals included but was not limited to the question of the special problems relating to the realization of ESC rights in developing countries, the international factors impeding the realization of those rights, and international action and cooperation for the realization of those rights.

By the end of the debate, the Commission had adopted two resolutions, each of which contained a different set of proposals to address the question of the realization of ESC rights and the special problems relating to human rights in developing countries: one was a study to be carried out by a Special Rapporteur (UNCHR resolution 14 (XXV) of 13 March 1969) while the other was a list of principles to be developed and acted upon (UNCHR resolution 15 (XXV) of 13 March 1969). Little happened in terms of arguments in the UNCHR debates over this item between 1970 and 1972. For the most part, the Commission was waiting to hear the conclusions and recommendations of the Special Rapporteur before taking a step forward with this item. Interestingly, the Commission did not take any further action on the list of principles contained in resolution 15 (XXV) between 1970 and 1972 either. The substance of these debates is therefore largely excluded from the present study, insofar as they had little to no impact on the redescription

and recognition of development as a human right by representatives of states members of the UNCHR.

The Special Rapporteur submitted his report together with his conclusions and recommendations to the UNCHR in 1973. The UNCHR only briefly considered the report that year as most of representatives of member states expressed the view that they needed more time to form an opinion on the document. The next two sessions (1974 and 1975) were devoted to consideration of that report and to the revised conclusions and recommendations of the Special Rapporteur. The year 1976 marks a turning point in the debate over the question of the realization of the ESC rights contained in the UDHR and in the ICESCR due to the entry into force of the ICESCR. Finally, on 21 February 1977, the Commission adopted UNCHR resolution 4 (XXXIII) in which it called for a study of the international dimensions of the right to development as a human right. Accordingly, the last empirical chapters (chapters 5 and 6) offer a close reading of the UNCHR debates of 1973 to 1977.

To summarize, the empirical-cum-analytical narrative offered in this study is divided into four chapters. Chapter 3 opens with the first consideration by the UNCHR of the question of the realization of the economic and social rights contained in the UDHR (UNCHR debate of 1968). Chapter 4 takes a closer look at the entanglement of this question with the question of the special problems relating to human rights in developing countries (UNCHR debate of 1969). Chapter 5 offers a rhetorical and conceptual analysis of the UNCHR debates over the report of the of the Special Rapporteur on the question of the realization of ESC rights (UNCHR debate of 1973) and of his revised observations, conclusions and recommendations (UNCHR debates of 1974 and 1975). Chapter 6 culminates with an interpretation of the debate in which the members of the UNCHR gave formal albeit indirect recognition to the concept with the adoption of resolution 4 (XXXIII) on 21 February 1977 (UNCHR debate of 1977).

1.3.3 Official documents of the UNCHR

The empirical-cum-analytical narrative offered in the present study is built upon a close reading of UN texts, the core of which consists of official documents of the UNCHR covering the 24th (1968) to the 33rd (1977) sessions. Table 2 below offers a list of the official documents of the UNCHR selected to constitute the main corpus of texts for this study. These documents include, but are not limited to agendas, summary records of meetings, reports, and resolutions and decisions adopted by the UNCHR.

Table 2 Main corpus of UN texts—Official documents of the UNCHR (1968-1977)

Session	Agenda item(s)	Meetings	Document list
24th (5 February – 12 March 1968)	Study of the question of the realization of the economic and social rights contained in the Universal Declaration on Human Rights	981st, 983rd and 984th (4, 5 and 6 March 1968)	• Report on the 24th session (E/CN.4/972) • Summary records of meetings (E/CN.4/SR. 981, 983 and 984)
25th (17 February – 21 March 1969)	9. Question of the realization of the economic and social rights contained in the Universal Declaration on Human Rights and the International Covenant on Economic, Social and Cultural Rights; 15. Study of special problems relating to human rights in developing countries	1021st, 1025th, 1027th, 1030th, 1031st (7, 10, 11, 12 and 13 March 1969)	• Report on the 25th session (E/CN.4/1007) • Summary records of meetings (E/CN.4/SR. 1021, 1025, 1027, 1030, and 1031) • Preliminary study of the Secretary-General
26th (24 February – 27 March 1970)	14. Question of the realization of the economic, social and cultural rights contained in the Universal Declaration on Human Rights and the International Covenant on Economic, Social and Cultural Rights; 15. Study of special problems relating to human rights in developing countries	1078th, 1083rd and 1084th (19 and 24 March 1970)	• Report on the 26th session (E/CN.4/1039) • Summary records of meetings (E/CN.4/SR. 1078, 1083 and 1084)
27th (22 February – 26 March 1971	18. Question of the realization of the economic, social and cultural rights contained in the Universal Declaration on Human Rights and the International Covenant on Economic, Social and Cultural Rights and the study of special problems relating to human rights in developing countries	1136th (25 March 1971)	• Report on the 27th session (E/CN.4/1068) • Summary records of meetings (E/CN.4/SR. 1136)
28th (6 March – 7 April 1972)	6. Question of the realization of the economic, social and cultural rights contained in the Universal Declaration on Human Rights and the International Covenant on Economic, Social and Cultural Rights and study of special problems relating to human rights in developing countries	1163rd and 1165th (23 and 24 March 1972)	• Report on the 28th session (E/CN.4/1097) • Summary records of meetings (E/CN.4/SR. 1163 and 1165)

29th (26 February – 6 April 1973)	7. Question of the realization of the economic, social and cultural rights contained in the Universal Declaration on Human Rights and the International Covenant on Economic, Social and Cultural Rights and study of special problems relating to human rights in developing countries	1225th, 1226th, 1227th, 1228th, 1230th, 1231st and 1233rd (26, 27, 28, 29 and 30 March 1973)	• Report on the 29th session (E/CN.4/1127) • Summary records of meetings (E/CN.4/SR. 1225, 1226, 1227, 1228, 1230, 1231 and 1233)
30th (4 February – 8 March 1974)	7. Question of the realization of the economic, social and cultural rights contained in the Universal Declaration on Human Rights and the International Covenant on Economic, Social and Cultural Rights and study of special problems relating to human rights in developing countries	1265th, 1266th, 1267th, 1268th, 1269th and 1270th (20, 21, 22 February 1974)	• Report on the 30th session (E/CN.4/1154) • Summary records of meetings (E/CN.4/SR. 1265, 1266, 1267, 1268, 1269 and 1270) • Report of the Special Rapporteur
31st (3 February – 7 March 1975)	9. Question of the realization of the economic, social and cultural rights contained in the Universal Declaration on Human Rights and the International Covenant on Economic, Social and Cultural Rights and study of special problems relating to human rights in developing countries	1298th, 1299th and 1230th (7 to 11 February 1975)	• Report on the 31st session (E/CN.4/1179) Summary records of meetings (E/CN.4/SR. 1298, 1299 and 1230) • Revised Report of the Special Rapporteur
32nd (2 February – 5 March 1976)	6. Question of the realization of the economic, social and cultural rights contained in the Universal Declaration on Human Rights and the International Covenant on Economic, Social and Cultural Rights and study of special problems relating to human rights in developing countries	1338th, 1339th, 1340th and 1341st (4 and 5 February 1976)	• Report on the 32nd session (E/CN.4/1213) • Summary records of meetings (E/CN.4/SR. 1338, 1339, 1340 and 1341)
33rd (7 February – 11 March 1977)	7. Question of the realization of the economic, social and cultural rights contained in the Universal Declaration on Human Rights and the International Covenant on Economic, Social and Cultural Rights, and study of special problems relating to human rights in developing countries	1389th, 1390th and 1391st (14 to 21 February 1977)	• Report on the 33rd session (E/CN.4/1257) • Summary records of meetings (E/CN.4/SR. 1389, 1390 and 1391)

1.3.4 Other sources

In order to grasp the point of the main arguments identified in those debates, however, official documents of the UNCHR must be supplemented with other UN texts. Here, a few words about intertextuality, broadly understood as interrelationship between texts, are called for. Indeed, UNCHR debates do not take place in a void. They both inform and are informed by texts produced by other organs of the United Nations. A good illustration of this are the annual reports issued by the UNCHR to ECOSOC. Decisions and resolutions adopted by ECOSOC on that basis may then influence the contents of UNCHR debates. At another level, members of the UNCHR may use the resolutions, decisions and declarations adopted by the UNGA or other UN bodies to support their view. To that aim, they may refer to a whole document or part of it, or they may import some of the arguments that were formulated in the process of the adoption of these documents. The arguments and documents, which thus became connected to the UNCHR debates under study, represent an important source in any attempt to analyze them for at least two reasons.

The first concerns the scope and contents of the main source material, namely the summary records of meetings of the UNCHR. Contrary to verbatim records, these documents do not reproduce the speeches delivered during these meetings in full. The second concerns the rhetoric employed by representatives of states members of the UNCHR, which must deal with the limited time accorded to each item. Put differently, the format of the debate does not allow them to develop their arguments to the same extent as, for instance, that of an academic conference. It is not uncommon, therefore, for state representatives to refer to arguments and principles contained in resolutions, decisions, conventions and declarations adopted by other UN bodies or conferences in order to advance their view and support their position in UNCHR debates.

What is more, a lot of the context necessary to interpret UNCHR debates is implicit. State representatives often avoid direct references to "real" events in international affairs and substitute them by fleeting allusions or vague references to these events. Put differently, they often favour speaking in general rather than specific terms. Hence, instead of speaking of the US involvement in the 1964 Brazilian coup d'état, for instance, they would rather speak of "foreign interventions" or perhaps "foreign-imposed regime change". The situation is of course altogether different if one of these events becomes the subject matter of a debate, as for instance the question of racial discrimination and apartheid in South Africa.

One reason for this behaviour concerns the particularity of the right of reply as a special rule of procedure of the UNCHR and other UN bodies, which allows a state representative to interrupt a speaker if her personal or national integrity has been insulted by being, for instance, wrongly accused of something. The point is that concrete references to historical events almost unavoidably imply some level of descriptive-evaluative terms and thus an opportunity for the countries involved to "rectify the narrative"—the US could for instance deny its involvement in a coup d'état while stating its support to the new regime in place.

In practice, the right of reply also represents an opportunity for the state representative who invoked it to reiterate her position on a particular issue. In other words, the simple fact of explicitly mentioning another member state in one's speech opens up the possibility for the representative of that member state to make use of the right of reply—allocating her additional time to speak during the debate. Another reason is that speaking in general rather than specific terms can save a lot of time during a debate. This is particularly useful if a time limit has been imposed on speeches. At the UNCHR, most speakers rightly assume that their main audience—composed of state representatives—are familiar with current world events and issues of international relevance.

In short, intertextuality here is mostly UN-immanent. In order to interpret UN debates, a wealth of arguments and their varieties can be found in UN official documents and publications. These are often enough to contextualize the debates without widening out to other academic texts. Nonetheless, as Weiss, Carayannis and Jolly remark, the United Nations is not only composed of member states and the secretariats, but also encompasses a "Third UN", which "consists of certain intergovernmental organizations (NGOs), external experts, consultants and committed citizens who work closely with the UN's intergovernmental machinery and secretariats" (2009, 123). Accordingly, the influences of actors that could be categorized as members of the "Third UN" are noticed in the empirical narrative (e.g. the Club of Rome and several academics on human rights and development published contemporary to the debates under analysis), but the problem of intertextuality has not been widened to them. Nonetheless, their presence in the narrative that unfolds in chapters 3 to 6 provide powerful illustrations of how arguments made in academic debates may be imported in political debates at the UN, how they are necessarily transformed in that process, and how the two kinds of debates are intertwined.

2 UN DEBATES, RHETORIC AND CONCEPTUAL CHANGE

The central argument of this study is that the formation of the right to development as a human right concept at the United Nations resulted from a series of debates over the question of the realization of ESC rights at the UNCHR, which included a consideration of the special problems relating to human rights in developing countries. The recognition of development as a human right by representatives of states members of the UNCHR was thus predicated on justifications and arguments opposing conventional views about the necessity of trade-offs between international human rights norms and standards and national development objectives in developing countries, and advocating new international development practices and institutions.

Raising the question of how development was recognized as a human right by representatives of states rather than theorists, and thus into the conventional language of international relations at the UN, can prove illuminating with respect to claims concerning the scope and contents of the right to development as a human right that have been made in debates thus far. To be sure, empirical study cannot, and should not, serve to answer whether or not UN practice and policy should continue to be formulated on the basis of the right to development as a human right; such a question is a normative and political one, which cannot be answered through mere empirical study. However, empirical study can help bring heterogeneous responses to the problem of the right to development together in a meaningful debate about the relevance and desirability of this concept in evaluating our present and shaping our future. It can do so by reminding us of the historical contingency of the right to development concept and the institutions and practice that enacted it. Then again, empirical study can also serve to remind us that any decision about deploying the rhetoric of the right to development as a human right cannot be justified on historical grounds alone; just because UN member states once recognized development as a human right is not in itself a reason why we should continue to do so.

Ultimately, explaining *why* the right to development was collectively asserted as a human right by the UNCHR in 1977 not only requires answering *how*

UNCHR resolution 4 (XXXIII) came to pass but also *how* development entered the conventional language of international human rights at the UN in the first place. In other words, the empirical puzzle under consideration calls for paying equal attention both to the form of the process leading to this outcome and its substance. In order to account for these two interconnected aspects, this study suggests a model of conceptual change, which combines a temporal perspective on politics with a rhetorical approach to conceptual change. To that aim, I proceed through five steps. First, I clarify my methodological assumptions. Second, I suggest the investigation of UN debates as a way to study conceptual change politically. Third, I suggest rhetorical analysis as an approach to study conceptual change as political change in UN debates. Fourth, I introduce the paradigmatic figures of the innovating ideologist and the apologist as alternatives to that of the "norm entrepreneur" (cf. Finnemore and Sikkink, 1998)—an analytical category widely used in the study of norm dynamics and political change in IR (e.g. Riss, Ropp and Sikkink 1999; Ingebritsen 2002)—and emphasize rhetorical redescription as a mode of conceptual change.

2.1 Philosophical and methodological premises

In a spirit of methodological pluralism and as a way to support calls for a "post-foundational IR", whereby IR scholars would "abandon the futile quest to articulate a single consistent basis on which to produce knowledge" (Jackson 2011, 189), I would like to say a few words about the methodological assumptions underpinning this study. My aim in doing so is twofold. On the one hand, my position departs from the dominant set of methodological assumptions in IR studies in general—and the sub-fields of UN and development studies in particular—and therefore much of what would be considered methodological common sense in those fields. By situating my assumptions in relation to the ones underlying dominant paradigms in IR, I hope to help clarify why I take concepts as valid units of analysis and the study of their use in arguments—UN debates to be precise—as an important form of knowledge-production. This clarification is directed for the most part against the charge of epiphenomenalism, which I have encountered on several occasions when discussing my research with my peers. It is also meant as a move towards methodological pluralism in IR, a scholarly field already "characterized by different methodological perspectives and 'systems of ideas'" (Jackson 2011, 209). This implies an "ongoing challenge of translation", between different bodies of knowledge. In absence of a "methodological neutral meta-language", the task at hand here is to make my claims "comprehensible to speakers of other methodological languages. (Jackson 2011, 209-210)

Before going any further, I would like to underline that the point of my argument is not to dismiss the "traditional epistemological project" (Kratochwil 2007, 1) and to advance my methodological position as a "new foundation" for the production of knowledge in the fields of IR. Rather, I share Friedrich

Kratochwil's view that, since the project of "securing knowledge through hierarchization and finding absolute foundations" through meta-theorizing in IR has failed to deliver on its promises, the pragmatic turn in theorizing represents "a good bet in pursuing our research while remaining attentive to the importance of meta-theoretical issues that arise in its course" (Kratochwil 2007, 2 and 4).

On the other, "[o]ntological commitments, whether philosophical or scientific, logically precede substantive claims, and serve as the often-unacknowledged basis on which empirical claims are founded" (Jackson 2011, 41). These commitments are "'foundational' in the sense that that they provide the conditions of intelligibility for those claims" (ibid.). In other words, my point in making the methodological foundations of the empirical claims advanced in this study visible to the reader is to avoid any confusion regarding the criteria upon which she may assess their scientific value.

Most discussions of methodology in IR, or any other social science discipline for that matter, take their point of departure in a dichotomous categorization or classification of research methods, such as "positivist" versus "interpretivist" or "quantitative" versus "qualitative". These dichotomous categories were rather unhelpful, however, when I was trying to clarify my methodological stance. This was just the tip of the iceberg: another remarkable thing in IR is that the whole field is divided "into schools and research communities based on substantive topics and preferred causal factors" or "lines of research united by techniques and tools" rather than being organized along "conceptual or philosophical lines" (Jackson 2011, 39). In short, in between the seemingly uncountable "ism", thematic or technique-defined research areas in IR (e.g. UN studies and development studies), "we lack any good and defensible way to make choices, or to evaluate the choices that other scholars make, about how research is conducted"(ibid.).

In order to overcome these problems, it might be useful to "clarify the terms of the distinction [...] by refocusing attention to the issues of philosophical ontology at the heart of the distinction properly understood" (Jackson 2011, 36). To that aim, the typology developed by Jackson becomes handy. It consists in four ideal-typical methodological positions: neopositivism, critical realism, analyticism and reflexivity. Each position is defined by a particular philosophical-ontological combination—or wagers—about "the relationship between the knower and the known" and "the relationship between knowledge and information" (see Table 2.1 in Jackson 2011, 37).

The relationship between the knower and the known "involves the relationship between the researcher and the world". Broadly speaking, it implies a choice between two alternatives: either the objects of study are seen as having "a more or less determinate essential character that is separate from the researcher's activity" or they are somehow constituted in the process of research, "in the course of gathering and assembling data." In other words, it "presents an ideal-typical choice between mind-world dualism" and "mind-world monism." (Jackson 2011, 35) The methodological perspective adopted here, inspired by the work of Friedrich Nietzsche and Max Weber, falls under the second category: mind-world

monism. It proceeds from the philosophical view that all ideations take place from particular perspectives or interpretations. As such, there are always many possible conceptual schemes or perspectives from which to make a statement of "truth" or judgement of value. It thus rejects the idea of a perspective-free or an interpretation-free "objective" reality.

The choice to adopt a monist perspective on the mind-world interface, as opposed to a dualist one, has profound implications in terms of the kinds of research strategy available to study the politics in the formation of the right to development concept at the UN. For one, the purpose of this study is not to uncover the "truth" by analysing what "really happened" in UN corridors or country-group negotiations. Rather, I focus one-sidedly on a series of debates in the UNCHR and use a conceptual historical-cum-rhetorical approach to offer a new perspective on that change. Historians may then use their approaches to deepen or criticize the findings acquired through such inquiry. Indeed, the aim here is not to tell the whole story but to draw attention and to illuminate a part of that story, one that has been untold and thus forgotten until now. UN, development or human rights scholars, for their parts, may find additional arguments in the following pages to debate whether this UN formula has a wider significance or is just another hollow compromise, typical of the UN. Again, such normative acts of judgement are excluded from the present study.

In order to better understand the limitations of this study, it is necessary also to discuss the second relationship between knowledge and information identified by Jackson, which "involves the kind of knowledge to which the social scientist is thought to have access" (2011, 35). In this case, the main issue "is whether knowledge is purely related to things that can be experienced and empirically observed, or whether it is possible to generate knowledge of in-principle unobservable objects" (Jackson 2011, 36). It presents an ideal-typical choice between "transfactualism" and "phenomenalism". The perspective adopted here falls under the second category, which "emphasizes the adoption of a first-person point of view, so that experience can be foregrounded and analyzed" and "seeks to disclose the structures of those experiences, steadfastly refusing to speculate on objects or entities outside of experience" (Jackson 2011, 61). From this perspective, to produce knowledge "is a matter of organizing past experiences so as to forge useful tools for the investigation of future, as-yet-unknown situations" (Jackson 2011, 36-37).

Each philosophical-ontological combination presents its own methodological implications. The two wagers based in mind-world dualism, namely neopositivism and critical realism, are largely irrelevant to the kind of textual analysis carried out in this study. This leaves us with two positions: reflexivism and analyticism, both of which are grounded in mind-world monism. Then again, a commitment to mind-world monism may lead to very different research strategies, depending on whether one combines it with transfactualism or phenomenalism. Following the four categories developed by Jackson, I will label the former case "reflexivism" and the latter "analyticism". I am aware that the term "analyticism"

may create some confusion due to its potential association with analytic/analytical philosophy (often associated with the Vienna Circle) or analytical empiricism (in the tradition of Locke, Berkley and Hume) and all that comes with them. The kind of approaches falling under the label of "analyticism" as used here, however, may borrow from Locke and Hume, but all go a step further in "dis-solving" Descartes and the Cartesian anxiety (cf. Jackson 2011, 116-122). Max Weber ideal-typical procedure is paradigmatic of what is here understood as "analyticism". As such, an analyticist builds upon the notion of "singular causal analysis" and "trace[s] and map[s] how particular configurations of ideal-typified factors come together to generate historically specific outcomes in particular cases" (Jackson 2011, 114). For the purpose of the present study, therefore, "causation" is understood as "a strategy of the disciplined used of counterfactuals—not as a way of elucidating the implications of law-like generalizations, but as a way of imagining alternate historical trajectories that might have led to different outcomes than that actually observed" (Jackson 2011, 115).

As monist, reflexivists "ground knowledge in the social situation of the researcher, arguing that what we know is inseparable from where we are situated when we produce knowledge" (Jackson 2011, 56). This assumption has profound implications for how reflexivists conceive of scientific knowledge:

> scientific knowledge, for a reflexivist, cannot be grounded in just any set of cultural values; instead, it is grounded in and warranted by the researcher's concrete implication (and, perhaps, imbrication) in sets of social relations that are through and through imbued with and marked by race, gender, and other logics of distinction. Knowledge either reinforces or challenged these distinctions—simply letting a distinction pass without comment is tantamount to permitting it to flourish uncontested. (Jackson 2011, 158—159)

In short, scientific knowledge necessarily assumes a function, which is never an accidental by-product of our modes of knowledge-production but is always intimately linked to it. In more concrete terms, "scientific knowledge is not simply an expression of one's class or race or gender or any other categorical or positional attribute, but instead either reinforces or challenges such social distinctions" (Jackson 2011, 159). Accordingly, those committed to this methodological stance "reject […] the notion that knowledge is limited to experience" (Jackson 2011, 38). Rather, they adhere to the view that "a systematic effort to analyze their own role as knowledge-producers and to locate themselves with reference to their broader social contexts will yield knowledge not merely of things experienced, but valid knowledge of the social arrangements that order and give rise to those experiences" (Jackson 2011, 159). Knowledge of such arrangements "begins not with the world, but with the self" (ibid.).

From the point of view of reflexivist scholars, "knowing the world and changing the world are inseparable" (Jackson 2011, 160). For them, "knowledge directs action along pathway that may lead to the invalidation of those knowledge-claims themselves" (Jackson 2011. 159). This aspect is particularly visible in feminist scholarship and other strands of critical theory, such as post-colonial or post-development theory. In the *Dictionary of Development: A Guide of*

Knowledge as Power, for instance, the authors proceed from the premise that development is a "mental frame", which has resulted in development hierarchies whereby developed countries appear as advanced and superior societies, while their underdeveloped counterparts seem as though they were lagging behind and in need of their help. From their point of view, knowledge of those hierarchies would contribute "to dismantle this mental structure" (Sachs 1992, 1), both in the social world at large and the in the narrower world of scientific research on development:

> This book offers a critical inventory of development credos, their history and implications, in order to expose in the harsh glare of sunlight their perceptual bias, their historical inadequacy, and their imaginative sterility. It calls for apostasy from the faith in development in order to liberate the imagination for bold responses to the challenges humanity is facing before the turn of the millennium. (Sachs 1992, 2)

As the passage above illustrates, reflexivists "are seeking to disclose those historical forces and factors shaping the present, a task that they engage first and foremost by analyzing the ways that those forces and factors are imbricated in their own research practice" (Jackson 2011, 160). They see an historical dimension in their role as knowledge-producers, which they articulate in a very specific way: "rather than simply recording what happens, reflexivists seek to bring to light an unfolding pattern that culminates in and clarifies the present" (Jackson 2011, 160). One may argue that reflexivists embrace a dialectical conception of knowledge "inasmuch as the conceptual vocabulary used to interrogate the social world is continually in the process of emerging from that world and then collapsing into it as historical change is provoked by the very articulation of that vocabulary" (ibid.). It cannot be emphasized enough that the notion of "progress, whether conceptualized as freedom, liberation, emancipation, democratization, or some similar notion, is vital to such a dialectical conception of knowledge" (Jackson 2011, 165). The point is that, for reflexivists, "history is, in a very real sense, going somewhere—and it is going somewhere that the researcher, through the act of producing knowledge, can contribute to" (ibid.).

Adopting a reflexivist stance thus calls for "a detailed self-examination of the social and historical conditions under which knowledge is produced" with a view to "helping the members of a given society come to a clearer understanding of their situations" (Jackson 2011, 167). Critical theories of development are a good illustration of this particular aspect of reflexivism. In their most radical form, however, these theories often call for the abandonment of the concept of development altogether (e.g. Escobar 1985, 1987, 1988, 1995, 2000; Esteva 1985, 1987; Fergurson 1994; Latouche 1986; Rahnema 1985, 1990; Rahnema and Bawtree 1997; Rist 1994, 1996; Rist and Sabelli 1986; Sachs 1992; Thomas 2000; Ziai 2013).

Adopting a reflexivist stance would thus have a profound and perhaps even more pernicious consequence than the ones entailed by adopting a neopositivist or critical realist stance for the study of the politics in the formation of the right to development concept at the UN. The inevitable search for historical factors and forces in which reflexivists are engaged with would run the risk of "devaluating

the content of political debates and disregarding the terms in which concrete political actors [justify] their position" at the UN (Jackson 2006, 10). The call to abandon the right to development concept which might result from adopting such a stance would "amount to a dismissal of the manifest *content* of such debates as either an epiphenomenal consequence of deeper social forces or as an irrelevant sideshow—albeit one that, as 'false consciousness', might obscure the operation of actual structural factors" (Jackson 2006, 10). Ultimately, if we were to follow post-development scholars in their reasoning, for instance, we would have to abandon development as a relevant category for the analysis of human social experience, and the myriad of struggles of former colonial countries and peoples to define their place and their relationship to other member states within the organization would disappear from view.

The point is that, based on present beliefs, holding the idea of the right to development as a human right "as 'simply false' misses the point, that is, the significance of these beliefs for the action of those who believed in them." (Palonen 1997, 68) After all, if our experience of development and our sense of being more or less developed in relation to other peoples in different places is produced by machinations of the "West" or by an objective threat posed by the destructive effects of capitalist modes of development to our survival as individuals, then why spend much time worrying about the nuances of the terms in which such a sense of relative development is expressed? Reflexivism is thus ill equipped to shed light on the political controversies and historical contingency of the redescription of development as a human right.

Keeping in line with the mind-world monism posited by reflexivism—which allows taking into account the relational meaning of development—but moving away from considering development as a trans-factual object of inquiry, lies another alternative: to approach development as an inter-subjective *phenomenon*. This is precisely what analyticism, a methodological approach arising from the conjunction of mind-world monism and phenomenalism, allows for. Analyticism, with which this study identifies,

> Departs from […] neopositivism, but not in the same way that critical realists do. Analyticists reject the notion that in-principle unobservable relations and objects are anything but instrumental devices to make sense of the world we can observe, whether with our unaided senses or with specialized deception equipment. Thus, for analyticists, knowledge is a useful ordering of experience, and it makes little sense to formulate and test hypotheses because the idea of an externally existing world against which to test them is non-sensical. (Jackson 2011, 38)

Put differently, the question as to whether the right to development "really" exists is non-sensical, because it cannot be anything more than an instrumental device, used by particular actors to make sense of the world surrounding them. From this perspective, the interesting questions are rather those concerning its very utility: what has it been used for and how? Contrary to reflexivists, analyticists are not interested to judge the value (be it historical, legal or political) of the right to development concept. Rather, they are interested in explaining and understanding its various uses.

Akin to reflexivists, analyticists adopt a monist stance on the mind-world interface. What does this entail for the present study? To begin with, "world" in the monist sense contrasts with the dualist conception in that it "refers not to a collection of things, but to an assemblage of facts" (Jackson 2011, 214). For a monist, therefore,

> the objects of scientific investigation are not inert and meaningless entities that impress themselves on our (natural or augmented) sense or on our theory-informed awareness, but are instead always already intermixed with conceptual and intentional content. As such, "world" is in important ways a *component of practical experience*, which does away with any effort to conform mental representations to a mind-independent world. (Jackson 2011, 114)

From a methodological point of view, what analytical monism has to offer to this study is "the notion of a disciplined ordering of the facts of experience […] as a recipe for engaging in empirical scientific practice" (Jackson 2011, 141). A key procedure in that regard is that of "ideal-typification" in the Weberian sense of the term.

While mind-world monism is certainly central to the procedure of ideal-typification, phenomenalism or the limitation of knowledge to experience is no less so. What are the implications of this posited relationship between knowledge and experiences on potential research strategies? To begin with,

> an analytical stance is one that seeks to ground the production of knowledge in concrete practical involvements of the researcher, and does so through a strategy involving the instrumental oversimplification of complex, actual situations; these deliberate oversimplifications, or ideal-types, are then utilized to form case-specific "analytical narratives" that explain particular outcomes. A particulate and judicious use of counterfactuals, different from the use of counterfactuals by neopositivists, can be of great help in constructing and evaluating such case-specific narratives. (Jackson 2011, 142)

Here, "causation" takes on a very particular meaning, "as a way of imagining alternate historical trajectories that might have led to different outcomes than that actually observed" rather than "as a way of elucidating the implications of law-like generalizations" (Jackson 2011, 115).

Central to the methodological stance adopted here is also the notion that "an ideal-typical claim tells us what to expect under ideal—even utopian—circumstances; actual events almost never look like that ideal, but keeping the ideal firmly in mind helps us make sense of what actually did happen, and why" (ibid.). In the context of the present study, "causation" connotes the contingent character of politics and serves to uncover the historically valid alternatives found on the trajectory of the redescription of the right to development as a human right at the UNCHR. The point is that there is nothing self-evident in that redescription or the fact that it took place at the UNCHR. Illuminating some of the unfulfilled or abandoned alternatives that were suggested to address the same problem thus becomes an integrated part of the empirical puzzle.

It cannot be emphasized enough that the model developed in the course of such analytical inquiry must "be regarded as ideal-typical—and thus not available for any kind of direct empirical verification or falsification—in virtue of its

roots in a set of value-commitments on the part of the concretely embedded researcher" (Jackson 2011, 142). What is more, the stance adopted here calls for separating the normative from the analytical. This "does not simply mean separating advocacy for a policy from the analysis of that policy; it also means not building claims about the transcendental normative validity of a policy into the causal mechanism used to explain how that policy came about" (Jackson 2006, 19). In other words, the present study wishes to distance itself from the normative endeavour of the UN Intellectual History Project.

To sum up, the analyticist stance adopted here has two important implications in terms of research strategy. On the one hand, "by only treating its imaginative analytical constructions as logical instruments, it limits knowledge to the sphere of the perceivable" (Jackson 2011, 142). On the other, "by grounding its imaginative constructions in the social and cultural world of the researcher, it exemplifies a mind-world monist way of producing knowledge" (ibid.). According to Dewey, theories

> are to be accepted as bases of actions which test them, not as finalities. To perceive this fact is to abolish rigid dogmas from the world. It is to recognize that conceptions, theories and systems of thought are always open to development through use. It is to enforce the lesson that we must be on the lookout quite as much for indications to alter them as for opportunities to assert them. They are tools. As in the case of all tools, their value resides not in themselves but in their capacity to work shown in the consequences of their use. (Dewey 1920, 145)

Along with John Dewey and Max Weber, the present study proceeds from the premise that concepts and theories are "instrumental idealizations of phenomena and relationship rather than representational copies of them" (Jackson 2011, 143). As such, they are "always provisional rather than final" and "firmly linked to the specific goals and purposes that animate them" (ibid.). For the present purpose, "idealization" implies that "the concept or theory or ideal-typical description both simplifies and misrepresents, and does so for pragmatic reason" (Jackson 2011, 143; see also Jones 2005, 186-188). However, "if the resulting simplification and misrepresentation fail to accomplish the pragmatic explanatory goals for which they were crafted, they can be discarded—not for being *false*, but for being *useless*." (Jackson 2011, 143) Put differently, "the only meaningful way to evaluate whether an ideal-type is a good one or not is pragmatically: that is, to examine whether, once applied, the ideal-type is efficacious in revealing intriguing and useful things about the objects to which it is applied" (Jackson 2011, 145). It is along these terms—i.e. keeping in mind the philosophical ontological commitments to mind-world monism and phenomenalism and their methodological implications—that I hope the reader will assess the scientific value of the present study.

2.2 Debates and conceptual change

This study takes its point of departure in a temporal perspective on politics as a contingent and controversial activity. To that aim, I would like to suggest conceptualizing politics as an activity as oppose to a sphere (see Palonen 2003a; 2006). I would even like to go a step further and argue that politics is an activity of an intersubjective and practical nature. From this perspective, the main questions become *how* and *why* particular things—in the present case concepts—become objects of political action. Studying politics as an intersubjective practical activity stands in contrast with a whole body of literature in political science and IR scholarship, which approach "politics as ontology" (e.g. Wight 2006). In the latter case, politics as an activity is downplayed to a mere surface phenomenon, something that needs to be transcended in order to uncover the deeper ontological structures of "the political". Such a stance "tends to devaluate the activity of politics, to 'explain away' its inherent contingency" (Wiesner, Haapala and Palonen 2017, 7).

A fruitful way to prod our thinking about the intersubjective and practical aspects of politics as an activity is to consider the example of what happens when someone plays a game. By doing so, I do not wish in any way to *reduce* politics to a (zero sum) game; I simply hope to make the intersubjective and practical aspects of politics as an activity more salient. Accordingly, the present example draws from Ludwig Wittgenstein's work on language games and not that of game theorists. The concept of "language-game" is intended "to bring into prominence the fact that the *speaking* of language is part of an activity, or of a form of life" (Wittgenstein 1953, §23). In language-games, words are resources. The function of a word "depends on the situation in which it is uttered or written" and its meaning "is its use in the language" (Wittgenstein 1953, §40 and §49).

Here, we are primarily interested in studying a particular kind of words, namely "concepts". According to Koselleck, "a word becomes a concept only when the entirety of meanings and experiences within a socio-political context within which a word is used can be condensed into one word" (2004, 85). In other words, a concept not only "unites within itself a plenitude of meanings", it also ties within itself "a selection of historical experiences together with a set of theoretical and practical references into a relation that is given and can be experienced only though the concept" (Koselleck 2004, 85). Most importantly, "a concept is not simply indicative of the relations that it covers; it is also a factor within them. Each concept establishes a particular horizon for potential experience and conceivable theory, and in this way sets a limit" (Koselleck 2004, 86). I will come back to "concepts" and their use in politics in the next section of this chapter, when discussing rhetoric as a way to approach the substance of UNCHR debates. Before doing so, however, we need a way to approach UNCHR debate as a particular form of politics, for which I would like to suggest conceptualizing them as a form of language-games.

Language-games have various possibilities, defined by a set of rules. On the one hand, "[t]here is a way of grasping a rule which is *not an interpretation*, but which is exhibited in what we call 'obeying the rule' and 'going against it' in actual cases" (Wittgenstein 1953, §201). On the other, it is possible "to distinguish between what is essential and inessential to the play of a game" insofar as it "has not only rules but also a *point*" (ibid., §564). Grasping a rule, then, requires the player to understand the point of the game she is playing. In other words, a single rule may have admitted multiple interpretations, and so a player "must first have chosen *one* such interpretation" (ibid, §213).

The question, then, is how the player performs this act of judgement. Here, "the use of the word 'rule' and the use of the word 'same' are interwoven" (Wittgenstein 1953, §225). There is, so to say, an element of repetition and predictability to a rule; "it always tells use the same" and we (normally) do what it tells us (ibid., §223). There is, of course, the possibility of admitting a new interpretation of a particular rule into the game, but that requires an act of justification, which can only be intersubjective (as opposed to purely subjective). Put simply, "if I need a justification for using a word, it must also be one for someone else" (Wittgenstein 1953, §378). The point is that, in terms of language-games, one "could not apply any rules to a *private* transition from what is seen to words. Here the rules really would hang in the air; for the institution of their use is lacking" (Wittgenstein 1953, §380). For Wittgenstein, following rules and playing games "are *customs* (uses, intuitions)" rather than simply character of such activities (1953, §199). In turn, "the customary character of such activities […] means that they are not meaningfully thought of as subjective, but are irreducibly intersubjective and public" (Jackson 2011, 131). Hence, "also 'obeying a rule' is a practice. Nonetheless, to *think* that one is obeying a rule is not to obey a rule. One cannot obey a rule 'privately'; otherwise thinking that one was obeying a rule would be the same thing as obeying it" (Wittgenstein 1953, §202). Put differently, "[t]he fact that individuals playing a game can be corrected—that it is possible to make a mistake, and to be corrected by the players—illustrates that the rules of the game are certainly something other than phantasms of mind, to be arbitrarily changed at will" (Jackson 2011, 131).

At the UNCHR, for instance, member state representatives naturally follow the rules and procedure adopted for the conduct of business in formal and informal meetings. They speak in turn during debate and limit their speeches to the number and length allotted—note that UNCHR debates can be limited or extended by passing a motion in that regard. The particularity of "debate" as one form of the language-games played at the UNCHR, however, is that there is no umpire to appeal to in case of disagreement. While the President of the Commission may call a member into order if the rules are broken, she cannot settle an argument. Questions put on the agenda of the UNCHR must be considered and proposals to solve them debated. Only through that procedure may a disagreement be settled.

Nonetheless, there is always the possibility for the participants to change the rules. By changing the rules, however, they are changing the game (Dewey

1938, 52). This is what happened on 15 March 2006, for instance, when the UNGA established the UN Human Rights Council to replace the UNCHR. By changing the structure of the forum and adopting new rules of procedure, the UNGA aimed to change the game its member states were playing over human rights. The whole point is that "the rules are part of the game" and that, without them, there is no game (Dewey 1938, 52). In short, "[t]he very condition of possibility for meaningfully playing a game is that the individuals involved orient their actions towards the rules, and it is this orientation that renders their actions explicable and evaluable in terms of that game's goals and procedures" (Jackson 2011, 132).

In the light of the above, I would like to suggest relying on the interpretation of UNCHR debates as a way to illuminate the politics in the history of the formation of the right to development concept at the UN. As mentioned above, we may fruitfully approach UNCHR debates as a form of language-games. The particularity of this language-game is that it offers a set of rules and practices for dealing with political controversies in an open and fair manner. The notions of fair play and openness are thus understood central components of debate as a language-game; they are its principles of intelligibility. The important point here is that "the fair chance for all points of view—both those already in existence and those constructed over the course of the deliberation to be heard […] creates an occasion for [conceptual] change" (Palonen 2010, 185). As an analytical concept, "debate" thus helps bring to the fore the contingency and controversy of politics as an activity precisely because a debate only makes sense if there is something to question and the possibility to alter one's view in the light of alternatives exists.

The conduct of debate is not the only way of regulating political disputes at the UN. In that respect, the division of rhetoric into genres provides a useful "typology of concepts that regulate political struggles in a definite manner and that are related to different political institutions" (Palonen 2017, 101). The different genres (e.g. epideictic rhetoric, forensic rhetoric, deliberative rhetoric and diplomatic rhetoric) also compete with each other over their validity as procedural rules and models designed to regulate controversies" (ibid.). Here, I am mainly concerned with deliberative rhetoric, which I emphasized as the main way of regulating political disputes in UNCHR debates:

> Deliberative rhetoric is the only genre for which the debate *pro et con* is constitutive. In deliberative rhetoric there is no superior or external authority to decide on the subject, but it is up to the agents themselves to debate and to decide, although they never have sufficient grounds to do so. The parliamentary form of deliberative rhetoric is its most nuanced procedural and institutional form, developed for the systematic treatment of opposed points of view and proposals. (Palonen 2017, 101)

The procedural model guiding the use of deliberative rhetoric in UN debates is parliamentary in nature. Sure, there is seldom a clear division in UN debates akin to the one found today between "government" and "opposition" in national parliaments. Nonetheless, it is still possible to draw the analogy from the kind of

parliament "in which there is a flexible majority that can be constructed and deconstructed on the basis of speaking in the plenum and committees" (Palonen 2010, 86).

While the approach suggested here emphasizes the dissensual aspect of politics in the UNCHR debates, the tensions between the parliamentary and diplomatic/intergovernmental styles of politics that permeate the UNCHR must also be taken into account in the interpretation—i.e. debating pro et contra versus negotiating and bargaining. Not least because these tensions point to competing views of the role and functions to be assumed by the UNCHR at that time. Was the UNCHR to serve as a site of deliberation, where proposals would call for political action to be mutually brought about by all sides in the debate? Was it to serve as a world bureaucracy, enforcing rules on internationally recognized human rights and fundamental freedoms for the world? Or was it to serve as a global forum of negotiation, where countries would give and take in matters related to international human rights?

Of course, none of the above excludes the others. Nonetheless, IR literature has tended to focus on the role of the UN as a multilateral forum of negotiation rather than deliberation. More recently, inspired by Michael Barnett and Martha Finnemore's seminal work *Rules for the World* (2004), IR scholars have studied the bureaucratization of world politics and approached international organizations as bureaucracies. In a way, therefore, this study is a modest attempt at rectifying the gap in our knowledge about the role of the UN as a forum of deliberation, by illuminating the importance of UN debates for the conduct of world politics. The perspective adopted here proceeds against the commonly held view of the UNGA and other international deliberative assemblies as places of mere talk or "waste of time". It also aims to oppose the argument that "real" politics at the UN takes place in the corridors and behind closed doors. To be sure, the authors and editors of the UNIHP book series have recognized this fact. However, it has not been reflected in their methodological practices to the extent that this study suggests doing.

As such, this study participates to a recent trend in IR studies to direct attention to international deliberative assemblies and to take the substance of their debates seriously (see for instance Gorman 2001; Götz 2011; Roshchin 2017). It proceeds from the assumption that, "for the purpose […] of preventing hasty action, and ensuring elaborate consideration […] there is no device like a polity of discussion" (Bagehot 2001 [1872], 108). A "polity of discussion" allows "a plurality of opinions and the contestation of received views" (Palonen 2008, 145). Three interrelated aspects of deliberative rhetoric must be brought to the fore here: "Deliberative assemblies are the paradigmatic *loci* of political activities, the activity of deliberation presupposes the presence of a plurality of alternative courses of action, and of the audience" (Palonen 2006, 147). From this perspective, deliberation *pro et contra* can no longer be reduced to "a passing cathartic moment" or "a transitory phase" (Palonen 2008, 145).

The particularity of UN debates is that parliamentary rules of procedure and practices are always mediated, to a greater or lesser degree depending on the

situation, by diplomatic practices. For instance, some governments might order their national representatives to follow detailed instructions on what to say and how to vote, particularly on issues they regard as highly sensitive. Similarly, they might tell them who to ally and not ally with in particular cases. In the case of the present study, representatives of the USSR to the UNCHR often repeated over and again the same arguments and lengthy narrative about the success of soviet countries with respect to the topic on the agenda, namely the realization of ESC rights. They often did so with complete disregard for the sub-issue that was actually under discussion during the debate. Such degree of similarities over the years across the speeches delivered by USSR representatives during the debates under consideration in the present study would tend to indicate that their statements were written in advance and potentially also carefully rehearsed. This attitude may foreclose the opportunity to formulate views in response to the situation in which the speaker finds herself. Nonetheless, in order to emphasize that participants in UN debates have to some extent or another the capacity of acting in their own conscience—even when they are forced to follow instructions, more or less closely depending on the country—the expression "representative" is used and preferred to "delegate" throughout the empirical-cum-analytical narrative of the present study.

In order to understand a debate politically it is not enough simply to analyse its substance, it is also important to look at its form. While "everything can be questioned" in a debate and "every debate can […] be terminated in multiple ways […], there may be difference of degree in the de facto 'questionability' or openness of the debate." (Wiesner, Haapala and Palonen 2017, 12) Indeed, "[p]olitical aspects can be found in every pro et contra, but their importance and intensity can vary greatly" (ibid., 29). Whether decisions on a particular issue can be made by the UN "is a controversial matter itself and indicates the thoroughly political character of the debate and the decision-making process" (Wiesner, Haapala and Palonen 2017, 26). Even more controversial is whether a particular body or agency has the competence to discuss an issue and the kind of decisions it may adopt. Accordingly, the political analysis of UN debates calls for careful attention to the mandate, composition and rules of procedure of the particular body or agency—in this case the UNCHR—where the debate is taking place and its relation to other bodies and agencies within the UN system. This is even more important given the empirical puzzle of concern in this study. We want to know how the representative of states members of the UNCHR came to feel that the Commission had competence to adopt a resolution on an issue commonly reserved to other UN bodies and specialized agencies, namely development.

Finally, the investigation of UN debates in general and UNCHR debates in particular presents a number of opportunities and challenges for studying conceptual change in world politics. One is the availability of primary sources for such endeavour. Most public meetings held by the main organs of the UN (i.e. the UNGA, the Security Council, ECOSOC and more recently UNHRC) as well as their subsidiaries (e.g. the UNCHR (1946-2006)) have been recorded in either verbatim or summary form since the very beginning of the organization. In 1993,

the UN launched an online database of its documents, which contains "full-text, born-digital UN documents published from 1993 onwards, including documents of the Security Council, the General Assembly, the Economic and Social Council and their subsidiaries, as well as administrative issuance and other documents" (UN ODS, www.documents.un.org). The digitalization of these official records, which comprises verbatim or summary records of meetings, annexes and supplements (including reports as well as resolutions and decisions), has facilitated both the access to and the possibility of analysing them.

However, a large part of the summary records of meetings of the UNCHR used in this study were not yet available in digital form at the time. Fortunately, the Dag Hammarskjöld library—the official library of the UN—has arranged since 1946 for the distribution of official documents and publications to users around the globe through a network of depository libraries. Today, the UN Depository Library Programme includes 356 depository libraries spread over 136 countries. Using libraries and archives for analysing the debates thus remained a central activity in the research process. I am extremely grateful to the staff at the Norwegian Nobel Institute Library in Oslo for their precious help in that regard. The online availability of UN documents is also constantly increasing, thereby presenting scholars from all over the world with inexpensive access to primary sources to conduct research on UN debates. In short, political analysis of UN debates can now be conducted much easier than only one decade ago.

Nonetheless, due to the diplomatic nature of these deliberations, "much of UN debates is informal and goes unrecorded" (Gorman 2001, xi). Accordingly,

> […] students of UN debates must rely to some extent on the actual position papers and statements of individual governments to identify points of contention and of potential agreement between or among governments. It is also helpful to know what a country's position in a debate may be in part a reflection of bloc politics. Countries of the former East bloc, for instance, had a very high percentage of agreement on issues debated before the United Nations. Members of the Group of Seven are often in agreement on political and economic issues. Members of the Africa Caucus share many similar concerns, as do countries in the Islamic Conference or the Asia Group. Members of the European Union group are fairly like-minded. (Gorman 2001, xi)

The point is that negotiation and deliberation are not mutually exclusive forms of politics at the UN. They permeate each other in ways that must be taken into account in the interpretation of the debates. It is often illuminating to know how prepared the speakers came to the debate, including whether some kind of negotiations preceded it or if they were given diplomatic instructions.

Then again, the study of UN debates often not only illuminates competing views across these blocs, but also within them. As such, "on any particular issue, the bloc alignments may do very little to predict the position of a particular country"; "bloc affiliation is important to know but not necessarily decisive in explaining a particular country's policies" (Gorman 2001, xi). Ultimately,

> UN debates reflect […] the positions staked out on important international issues by the governments of particular states. As the government of representing states change owing to political trends, revolutions and coups d'état, one can expect some, if not many, of the positions held to change as well. There is nothing static about UN debates.

> The issues change, and so do the arguments and the players articulating the arguments. (Gorman 2001, xi-xii)

Another important dimension, which adds a level of complexity to the analysis of UN debates, is the public character of the deliberations. For the most part, the main issues on the agenda of the UN are debated during public meetings held by the main organs or the specialized agencies. The statements made by national representatives during these public meetings "are sometimes affected by the emotion of the moment or by rhetoric calculated to be heard by domestic constituencies" (Gorman 2001, xi). The point is that any representative of member states—whether a UN representative or a foreign minister—"ultimately represents a government that seeks either to be reelected or at least to be respected by its domestic constituencies or public" (ibid.). In other words, UN debates do not take place in a void. Rather, "politics within and between governments drives the debates at the United Nations" (Gorman 2001, xii).

All of the above brings to the fore the question of "political literacy", which may be summarized as follows:

> The reading of debate has to take into account the agenda, its origins, initiators and purposes. What eventually becomes political during the debate has a lot to do with the circumstances of the moment. Therefore, sensitivity to the participants' rhetoric and use of language is needed for gaining political literacy. (Wiesner, Haapala and Palonen 2017, 25)

In the vocabulary of Austinian speech-act theory—which I discuss in greater detail below—"the concept of political literacy does not refer to the 'locutionary' meaning of word and sentence, to fluent command and knowledge of their familiar meanings, but to the 'illocutionary' meaning, that is, understanding the speech-act involved in the sentence" (Wiesner, Haapala and Palonen 2017, 26). Finally, political literacy presupposes the willingness and competence of the political scientist "to judge actions, situations, practices and institutions in terms of political struggle" (ibid.).

2.3 A rhetorical perspective on conceptual change

There are certainly different approaches available to study conceptual changes in UN debates. The approach taken here takes its point of departure in the suggestion that "conceptual changes in interstate language should be understood as products of rhetorical power struggles, in which some arguments lose the battle while others prevail, some concepts are discarded while others are modified" and yet others are introduced (Roshchin 2017, 177). It combines the analytical tools of rhetorical analysis with those of conceptual history, resulting in what has been termed a rhetorical perspective on conceptual change (e.g. Palonen 1997, 1999; Skinner 1999).

> For the analysis of conceptual change, rhetoric offers us a comparative perspective in the elementary sense that it does not deal with absolute entities but with debates—the pros and cons of motions and arguments. It analyses the strengths and weaknesses of the items debated as well as the similarities and differences among the concepts included in the items on the agenda. The rhetorical point is seldom found in a straightforward acceptance or rejection, but rather in the course of a debate that alter their conditions of acceptance. (Palonen 2017, 100-101)

The advantage of such a rhetorical analysis is that it "offers us clues for comparison, not only for the study of the outcome of the actual disputes over concepts but also for the changes of conceptual constellations during debates" (Palonen 2017, 101). It is my view that the substance, significance and political point of collective inter-state assertions—such as the resolutions, declarations and conventions adopted by UN bodies, agencies or conferences—cannot be properly understood without looking into the arguments advanced for and against it. Practically, such an approach allows avoiding reifying positions and for identifying potentially diverging views not only between opposing sides of the policy proposals but among each camp. In other words, it allows identifying disagreement and controversies across the whole range of views and values held by participants in the debates.

Rhetorical analysis, as a mode of knowledge-production, is primarily concerned with the linguistic strategies put into effect as means of persuasion. The following passage summarizes quite eloquently the importance of persuasion, and therefore rhetoric, in the study of politics:

> Persuasion is integral to politics because politics involves making judgements in contexts of uncertainty about what to do. To persuade in such contexts involves transforming, primarily by means of argument, a variety of possible options into a unified judgement, perhaps even a decision. There are many ways to persuade, no doubt, and threatening violence is one of the most common. But human communities are perhaps unique in their use of speech in making persuasion a matter not always or exclusively of brute force, but also of mutual understanding, share perceptions and interpretations, however temporary or tenuous. The power of persuasion, then, can be just as effective—if not more so than—the force of arms. Indeed, organized violence is usually accompanied by some effort at justification to make it appear the right thing to do. It would be fair to say, than, that speech—the ability to address others and to define problems and their solutions—is the dominant medium of persuasion in human societies. Knowing how to speak—whether in voiced words, written text or a combination of both—in order to successfully persuade may be the fundamental political knowledge or skill, arguably the original 'political science'. (Martin 2014, 1)

The point made about the use of speech in persuasion is particularly relevant when it comes to the UN, an international organization created with the expressed intentions to limit the use of force and to provide a forum of cooperation for peaceful and friendly relations among nations. I would therefore like to suggest that, from the perspective of the UN, "the foremost attribute of the international is shared language, in which states communicate with one another thereby defining in mutually agreeable terms new norms and institutions" or course of action (Roshchin 2017, 177).

The perspective adopted here departs from the assumption, as expressed by Quentin Skinner, that "we need to treat our normative concepts less as statements about the world than as tools and weapons of debate" (1999, 62), an assumption he shares with Reinhart Koselleck. Both have been important figures in the formation of the discipline of Conceptual History—also known as History of Concepts—and both have "understood the activities of politicking and politicization as inherent aspects of the understanding of conceptual changes" (Palonen 1999, 44).[4] Building upon the insights of Conceptual History, I do not take the right to development concept to be a reflection in any ways of how the world really stands in and of itself. Rather, I suggest that the "truth" or "falsehood" of the right to development is a matter of social conventions that serve human ends. This view departs from a number of approaches to ideas and institutions in IR, the vast majority of which derive from reflexivism or critical realism. Proponents of critical theories, including most variations of discourses analysis, would have considered the right to development concept as either a belief or a mental frame, while proponents of structural or institutional theories of IR would have considered it as the epiphenomenon of deeper ideological structures, causal forces or other kinds of trans-factual reality with underlying causal mechanisms.

Contrary to these approaches, the present study emphasizes the pragmatic value of the right to development in UN debates, for which the rhetorical perspective on conceptual change—including the Skinnerian approach to Wittgenstein's conception of meaning as use (as oppose to meaning as representation)—provides a good starting point. It proceeds from the view that "the meaning of the idea must *be* its uses to refer to in various ways" (Skinner 1969, 37; see also Skinner 1999, 62).[5] Such an approach calls for identifying the argumentative context, the particular debate the author meant to contribute to, and thus uncover the point of using the concept under consideration. By doing so, one may hope to avoid two common fallacies in the history of ideas. One is "crediting a writer with a meaning he could not have intended to carry, since that meaning was not available to him" (Skinner 1969, 9). The other consists "of too readily 'reading in' a doctrine which a given writer might in principle have meant to state, but in fact had no intention to convey" (ibid.).

What follows this linguistic contextualism is that "no agent can eventually be said to have meant or done something which he could never be brought to accept as a correct description of what he had meant or done" (Skinner 1969, 28). The methodological implication of adopting such a stance is twofold. On the one hand, recognizing "the special authority of an agent over his intentions does not exclude […] the possibility that an observer might be in a position to give a fuller

4 On "politicking" and "politicization" see Palonen 2004.

5 Skinner originally developed this perspective as an alternative to the kind of history of "unit" ideas proposed by Arthur Lovejoy and his followers, arguing "there is no history of the idea to be written, but only a history necessarily focused on the various agents who used the idea, and their varying situations and intentions in using it" (Skinner 1969, 56). From his point of view, "in focusing on ideas rather than their uses in argument, it has seemed insensitive to the strongly contrasting ways in which a given concept can be put to work by different writers in different historical periods" (Skinner 1985, 50).

or more convincing account of the agent's behavior than he could give himself" (ibid.). On the other, "it does exclude the possibility that an acceptable account of an agent's behavior could ever survive the demonstration that it was itself dependent on the use of criteria of description and classification not available to the agent himself" (Skinner 1969, 29).

In order to understand the point of a linguistic action, one must grasp the intention in doing it as opposed to the intention to do it. The former "not merely presupposed the occurrence of the relevant action, but is logically connected with it in that it serves to characterize its point" (Skinner 1969, 45). The point is that "statements of intention of this kind can quite validly be made to characterize an action *after* it has been performed" (ibid.). The latter, on the contrary, "must precede the action" but may as well "never successfully issue an action" (Skinner 1969, 45). Recovering the intention in doing it calls for identifying the questions or issues the author was trying to answer or solve with her propositions. Here, "the danger of anachronism is obvious and the rhetoric of their 'removal' is important" (Palonen 1997, 67). As such, "the possibility that the concepts and classifications in the text, i.e. on the intellectual and linguistic horizon of the author in relation to contemporary conventions, sometimes become more important than the original problems of the author" (ibid). The point is that "the historical task [must] be conceived as that of trying so far as possible to think as they thought and see things in their way" which requires to "recover the concepts they possessed, the distinctions they drew and the chains of reasoning they followed in their attempts to make sense of their word" (Skinner 1988, 252).

While Skinner initially intended the above as an alternative approach for the study of past political texts, I would like to suggest extending it to the study of past UNCHR debates as a "means of demonstrating the relativity and contingency of the concepts and classifications used in present controversies" (Palonen 1997, 67). In practice, this means that the interpretation of UNCHR debates require a certain level of familiarity with the intellectual climate in which the debate took place. For the purpose of the present study, it means identifying a range of relevant literature, including but not limited to UN official publications and documents, contemporary to the debate under investigation.

The perspective developed by Skinner was not straightforwardly rhetorical from the outset. Indeed, his earlier work was largely inspired by speech-act theory as developed by Austin, the language of which was not that of rhetoric. Still, I would like to argue along with Palonen, that speech-act theory as employed by Skinner in his earlier work shares some similarities with the rhetorical tradition: "Like rhetoric and hermeneutics, the speech-act theory approaches language as *parole*, not as *language*, as structuralistic or semiotic conceptions do." (Palonen 1997, 65). In the light of that, the remaining of this chapter draws both from Skinner's earlier and later, more straightforwardly rhetorical, methodological writings, in order to complete the outline of a methodological framework to study the politics in the formation of the right to development concept at the UN.

In the language of speech-act theory as used by Skinner[6], "propositions are not interesting because of their truth (or lack thereof) but because of their role as moves in argumentation" (Palonen 1997, 68). Akin to Skinner, I am not concerned with the "truth" or "validity" of the propositions advanced by an author independently of their role in the political rhetorical situation of their utterance. Rather, I am interested in uncovering "their meaning in the situation—more specifically, the answer to specific questions related to contemporary conventions" (Palonen 1997, 69). Here, conventions are broadly understood as "mere facticities of the situation, always alterable with singular conditions and specific strategies" (Palonen 2003b, 46).

The first task in trying to make sense of a proposition as a "move in argument" is to understand its point. To that aim, one must recover "the intentions of the agent in the text in relation to relevant conventions" (Palonen 1997, 69); what an author "may have been intending to do simply *in* writing a certain way" (Skinner 1972, 403); "what his primary intentions were in writing it" (ibid, 404). I would like to argue, for the present purpose, that this argument might be extended to legal theory or more precisely international legal theory. The intimate link between action and theory as conceptualized by Skinner is well-suited to study the redescription of development as a human right at the UNCHR because it brings to the fore the legitimizing role of both legal and political thoughts in the formation of the conventional language of international human rights at the UN.

We can distinguish between two types of intentions, which translates into the language of speech-act theory as "perlocutionary intentions" and "illocutionary intentions":

> We may wish to ask about the perlocutionary intentions embodied in a work. We may wish, that is, to consider whether the work may have been intended to achieve a certain effect or response—such as "to make you sad," or to persuade you to adopt a particular view, and so on. But on the other hand we may wish instead […] to ask about the writer's illocutionary intentions, as a means of characterizing his work. We may wish, that is, to ask not just about whether a given writer achieved what he intended and intended to achieve what he achieved, but rather just *what* he may have been intending to do in writing what he wrote. (Skinner 1972, 402-403)

According to Skinner "an understanding of the illocutionary act being performed by an agent in issuing a given utterance will be equivalent to an understanding of the agent's primary *intentions* in issuing that particular utterance" (1972, 402). Trying to understand the point of an illocutionary act is not sufficient, however, "because the 'illocutionary force' may transcend the illocutionary act itself" (Palonen 1997, 69; cf. Skinner 1988, 266). This implies a search "for the unintended consequences of action, which, of course, can be studied only in relation to the intended point of action" (Palonen 1997, 69). To understand a text thus calls both for a study of the perlocutionary and illocutionary acts it contains.

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[6] Skinner usage of Austinian categories "differs from the post-Austinian discussion, in which speech-acts are regarded in a conservative and ahistorical manner as trivial categories of everyday language" (Palonen 1997, 63). On the contrary, his usage "makes them applicable to the study of politics" and political action (ibid).

At this point, a discussion of the relationship between political action and legitimation is in order. I would like to suggest interpreting the language of speech-act theory used by Skinner as "a specification of the Weberian problems of legitimacy, especially those concerning ideological change" (Palonen 1997, 70). To that aim, I suggest adopting a temporal reading of Max Weber's view on politics, power and struggle as a way to emphasize the contingent and controversial character of politics as an activity. In "The Profession and Vocation of Politics", Weber argues that doing politics means "striving for a share of power or for influence over the distribution of power, whether it be between states or between the groups of people contained within a single state" (Weber 1994 [1919], 310). He adds, "Anyone engaged in politics is striving for power, either power as a means to attain other goals (which may be ideal or selfish), or power 'for its own sake', which is to say, in order to enjoy the feeling of prestige given by power" (ibid.). The words employed by Weber to describe politics bring to the fore the temporal character of politics as an intersubjective practice activity:

> Politics is oriented toward changing the existing state of affairs. The temporality of politics is a negative finality, an activity of getting rid of that which is. As an activity, politics has no substantive purposes 'above' itself. This is the proper temporality of doing, oriented toward change but not in an already determined direction. (Palonen 2003a, 172)

The openness of the situation is thus a necessary condition for acting politically. For Weber, "[p]ower expresses the openness of politics as striving, and striving for new power shares leads to the next decision one must take: what to do with these shares" (Palonen 2003a, 172). As Weber puts it in *Basic Sociological Concepts*: "Power (*Macht*) can be termed the *chance* within a social relationship of enforcing one's will against resistance, whatever this chance might be based on" (Weber 2004 [1922], 355, *my emphasis*). The conceptualization of power as chance directs attention to the contingent character of politics as a practical activity: power "is only a possibility, an occasion, or an opportunity to do something"; "it opens a horizon of action, but does not specify how to act within this horizon" (Palonen 2003a, 173).

Before going any further, I would like to suggest interpreting the Weberian concept of chance as referring "to a multitude of aspects, such as possibility, occasion, opportunity, lack of sufficient ground, realizability etc., yet not as something that is purely accidental or potentially hazardous" (Palonen 2009, 245-246). Following this interpretation, the point of the Weberian concept of chance "is that even unrealized possibilities (whether they have simply yet to be realized or never will be) play a crucial role in the understanding of politics as a contingent activity, as they too represent the chances (whether taken, missed or unrecognized) in a given situation" (ibid., 246). Chance thus understood calls attention "to possibilities that are present and 'real' in the experience of the persons acting politically, while the 'realized reality' is for political agents a contingent result of past political struggles" (Palonen 2003a, 173). This interpretation excludes the idea of an external force assumed to cause certain events, which cannot be fore-

seen or controlled. The latter meaning would explain away the contingent character of politics, which the present interpretation of the Weberian concept of chance serves to emphasize.

Another important aspect of the Weberian conception of power is its relative dimension. "'Power,' in Weber's nominalistic view of politics, consists only of the 'shares' (*Machtanteile*) and their distribution (*Machtverteilung*)" (Palonen 2003a, 173). Any such share of power or chance is necessarily something "temporary, arising only on specific occasions and having only a limited duration" (ibid., 174). The present study proceeds from the assumption that a concept can be turned into a chance in the Weberian sense, i.e. "into a share of power in relationship to other agents" (Palonen 2003a, 174). As resources in the play of politics, concepts may assume both "absolute" and "relative" forms. As absolute power shares, concepts are resources from which political actors can draw in order to legitimize or delegitimize a particular course of action, for instance. As such, concepts and their definition may themselves become objects of fierce political struggle. We can then speak of relative power shares inasmuch as the performance of the political actor no longer concerns her mastery of the key concepts of a debate in absolute terms, for instance, but her comparative ability in using them. In short, a concept may serve to legitimize drastically opposed lines of action. In such cases, the comparative ability of a player to delimit the horizon of *Chance* of a concept in favour of her cause or against that of her opponent will be a decisive instance in the struggle.

Going a step further, I would like to suggest that the political dimension of the contingency of concepts as horizons of chance "not only refers to the formal possibility of having acted otherwise but also to the presence of plural agents conflicting in their strivings for power" (Palonen 2003a, 174). Weber explicates this dimension of chance in the presentation of the concept of *Kampf* as follows:

> A social relationship will be called a struggle where the actor is oriented to the imposition of his own will upon an unwilling partner or partners. 'Peaceful' means of a struggle are those which do not actually involve physical force. 'Peaceful' struggle will be called 'competition' where there is a formally peaceful attempt to gain control of opportunities which are also desired by others. 'Regular competition' is where ends and means of competition are oriented to an order. (Weber 2004 [1922], 341)

Two remarks are in order at this point. On the one hand, the threefold typology developed by Weber for the concept of *Kampf* "does not indicate a zero-sum game" (Palonen 2003a, 174). In other words, a participant's missed opportunity to seize a share of power is not necessarily balanced by a gain in the shares of power of the other participants and vice versa. In addition, not all participants may value each share of power equally and their aggregated losses and gains may be less or more than zero.

On the other, "the plurality of the types of power shares render the struggle an open contest, in which the agents are also obliged to revise their views and redirect their striving for power shares" (Palonen 2003a, 174). In the Weberian

perspective, the struggle between opposing participants is "a 'moving' instance of politics" (ibid.). In "The Profession and Vocation of Politics", Weber writes:

> It is certainly true, and it is a fundamental fact of history (for which no more detailed explanation can be offered here), that the eventual outcome of political action frequently, indeed regularly, stands in a quite inadequate, even paradoxical relation to its original, intended meaning and purpose (*Sinn*). (Weber 1994 [1919], 355)

The passage above draws attention to the paradoxical relation between the intentions of the participants and the results of the game. Unintended or unanticipated consequences are always parts and parcels of the outcome of political action. In other words, the wind may change quite suddenly in politics. While a skilled politician might be able to go with the wind or take it to her advantage, others might be blown away if they do not adjust to the new situation.

The main implication of conceptualizing politics as a contingent and controversial activity for the study of conceptual change is to assume that there is always more than one possibility for action. Acting differently is always possible. Put differently,

> Often the uncertainty or ambiguity of the world forces us to confront plurality or contrasting perceptions of our situation and opposed views of how to act. […] If everything was certain and clear, if nothing were open to chance, it would be a world without choices, a strangely inhuman world devoid of the anxieties such choices generate. However attractive that sounds to you, it would be, nonetheless, a world without politics. (Martin 2014, 1)

Contrary to what some critics may be tempted to argue, this is not the same as to say that anything can be done; "the range of realistic alternatives is restricted not only by others who intentionally oppose a policy, but also by the complexities of the context and the historically formed situation" (Wiesner, Haapala and Palonen 2017, 8). Indeed, the interpretative type of political actions this study is concerned with are taking place in the framework of a fairly well defined organizational context, characterized by expressly stated rules, norms, values and goals. The process of interactions and the collective practices and decisions taking place within this organizational context are necessarily related (at least verbally) to these collectively asserted rules, norms, values and goals. The individual participants, be they representatives of member states or non-states actors, naturally act within the terms of this organizational context. They employ, for instance, the common vocabulary of the purposes and principles of the UN Charter to justify their position, action or conduct (Schachter 1963, 173). The very condition of possibility for meaningfully doing politics at the UN is that individuals orient their action towards the rules, norms, values and goals contained in the plethora of international instruments adopted by the membership of the organization. Each debate is, in turn, a unique situation in terms of its topic, its participants, its audience, their particular concerns and interests, etc. It is our task to recover the particularity of this context and situation, so as to as to explain the alternative taken in the light of those that were not taken.

At the same time, conceptualizing politics as a contingent and controversial activity also implies that some acts of legitimation is always required. More precisely,

> The choices between policy alternatives are contingent in so far as there never exists any sufficient ground for them, but this does not render them purely accidental, rather always connected with other policies, both the agents' own and those of others. In particular, retaining or obtaining some power-shares requires legitimation, and this is especially true of the asymmetrical shares of *Herrschaft*. In this sense, a persuasive dimension is always part of political action […]. (Palonen 2003b, 50)

Thus, political thought ought to be analysed as part of political action:

> We can hardly claim to be concerned with the history of political theory unless we are prepared to write it as real history—that is, as the record of an actual activity, and in particular as the history of ideologies. […] It would enable us to illuminate the varying roles played by intellectual factors in political life. It would thus enable us to begin to establish the connections between the world of ideology and the world of political action. (Skinner 1974a, 280)

The legitimizing role of political thought as it relates to the specific usage of ideology as identified by Skinner could not be emphasized enough here. Ultimately, "the sole motive for offering an ideological description of one's untoward actions will normally be to legitimate them to others who may have doubts about their legality or morality" (Skinner 1974a, 292—293).

Here, I would like to suggest that the normative horizon of the UN and the conventional language used to represent it is neither stable nor uniform. It is rather amenable to the play of politics through rhetoric. Put simply, politics at the UN takes place both with and over concepts and their interpretation, which are the building blocks of rhetoric. Rhetorical strategies of legitimation may be used to alter "the horizon of the accepted set of linguistic conventions in order to make 'untoward' actions possible" (Palonen 1997, 70). In this regard, speech-acts theory holds a very important piece of the puzzle in the emphasis given to "a group of terms which perform an evaluative as well as a descriptive function in the language" (Skinner 1974a, 293). These evaluative-descriptive terms,

> are standardly used to describe individual actions or state of affairs, and to characterise the motives for the sake of which these actions are performed. But if the criteria for applying one of these terms can be plausibly claimed to be present in a given set of circumstances, this not only serves to describe the given action or state of affairs, but also to evaluate it in a certain way. (Skinner 1974a, 293)

As such, these terms can be used in order to achieve both perlocutionary and illocutionary effects, such as "inciting or persuading his hearers or readers to adopt a particular point of view" and "evincing, expressing and soliciting approval or disapproval of the actions or states of affairs which he uses them to describe" respectively (Skinner 1974a, 294). In this regard, it should be noted that perlocutionary problems are "not primarily a linguistic matter, but simply matter for empirical investigation", while the illocutionary problems are about "applying relevant terms correctly" (Skinner 1974a, 294).

In keeping with the Weberian perspective on politics adopted here, the perlocutionary and illocutionary problems discussed above would respectively "refer to the unintended consequences of action" and be "related to the chances that 'untoward' action becomes acceptable, or at least tolerable, in the audience to which it is addressed" (Palonen 1997, 70). While this study addresses both the perlocutionary and illocutionary problems in revisiting the history of the politics in the formation of the right to development concept at the UN, a stronger emphasis is placed on the latter. Part of the puzzle is to understand how representatives among members of the Group of Western European and Other States were persuaded to accept this redescription. Accordingly, the remaining part of this chapter takes a closer look at the rhetorical problem of legitimacy—"in the sense of being dependent on the acceptance of the audience" (Palonen 1997, 69). To that aim, the last sections of this chapter introduces the paradigmatic figures of the "innovating ideologist" and the "apologist" and the linguistic strategies and tactics they might put into effect as means of persuasion.

2.4 Innovating ideologists and apologists of the existing order

The perspective adopted here rejects the notion of concepts as stable entities. Rather, I take the view that concepts "can be changed at any moment, and they exist only 'in movement', that is, when they are used as moves, as political instruments of action" (Palonen 1999, 46). The political analysis of conceptual changes thus calls for a way to grasp the problem of rhetorical legitimation, for which the paradigmatic figures of the innovating ideologist (e.g. Skinner 1974a 1974b) and of the apologist (e.g. Skinner 1973) are well-suited. To begin with, the task of an innovating ideologist,

> is to legitimate a new range of social actions which, in terms of the existing ways of applying the moral vocabulary prevailing in his society, are currently regarded as in some way untowardly illegitimate. His aim must therefore be to show that a number of existing and favorable evaluative-descriptive terms can somehow be applied to his apparently untoward actions. If he can somehow perform this trick, he can thereby hope to argue that the condemnatory descriptions which are otherwise liable to be applied to his actions can in consequence be discounted. (Skinner 1974a, 294)

On the one hand, the perlocutionary effect or pathos of the argumentation of the innovating ideologist remains to adapt her message to the audience. On the other, and that is where it becomes interesting, the illocutionary effect or logos of her argumentation is to perform a trick. The point is to use the ambiguities of language to favor her "untoward actions" by claiming that they conform to at least some existing practices, while remaining silent on other aspects. At least two characters are presented as innovative ideologists in the empirical-cum-analytical narrative that unfolds in the next chapters, namely Hernán Santa Cruz of Chile and Kéba M'Baye of Senegal.

A remark is called for at this stage of the argument: "the point in an innovation is not to attempt to do too much at time" (Palonen 2003b, 52). Put differently,

> however revolutionary the ideologist concerned may be, he will nevertheless be committed, once he has accepted the need to legitimate his behavior, to attempting to show that some of the existing range of favorable evaluative-descriptive terms can somehow be applied as apt descriptions of his own apparently untoward actions. (Skinner 1974, 294)

From the Weberian perspective of chance, the innovating ideologist could thus be defined as "someone who deals with 'untoward' claims by using some possibilities as resources which are recognized as being available in the situation but which are not commonly used to alter the situation" (Palonen 2003b, 52). An innovating ideologist thus brings about change through the unconventional use of the conventional language available in the situation. In doing so "he has no option but to show that at least some of the terms which his ideological opponents uses when they are describing the actions and state of affairs they approve can be applied to include and thus legitimate his own untoward behaviour" (Skinner 1974a, 295). This will result in "a shift in the vocabulary in favor of 'neutralizing' the prevailing derogatory connotations for the untoward claims" (Palonen 2003b, 53). In the case at hand, we are concerned with a range of claims about the nexus between development and human rights and the particular range of policies and actions that these claims served to legitimize at the UN in general and the UNCHR in particular.

As previously discussed, the conceptualization of politics as a contingent and controversial activity implies that acts of legitimation are always required. The puzzle to solve is thus as follows: "how is it possible […] actually to manipulate an existing normative vocabulary in such a way as to legitimate such new and untoward courses of action" (Skinner 1974a, 296)? The innovating ideologist can do so by altering the rhetorical dimension in the use of the descriptive-evaluative terms. Two main strategies are available to fulfil that aim. One consists "in effect of manipulating the standard speech act potential of an existing set of descriptive terms" (Skinner 1974a, 296), whereas the other "consists in effect, of manipulating the criteria for the application of an existing set of favorable evaluative-descriptive terms" (ibid., 298). Here "the first strategy concerns the modes of linguistic action available in the use of a descriptive-evaluative concept, while the second deals with the dimensions of meaning of the concept, as used in the situation in question" (Palonen 2003b, 53). Examples of both strategies could be found in the present study and are discussed in detail throughout the empirical narrative and the conclusion.

The point of the second strategy is to "challenge [your] opponents to consider the feelings of disapproval or even of mere neutrality which they are standardly expressing when they use these particular terms" (Skinner 1974a, 296). When employing this strategy, the aim of the innovating ideologist

> is to describe his own actions in such a way as to make it clear (from the context) to his ideological opponents that even though he may be using a set of terms which are

> standardly applied to express disapproval, he is nevertheless using them to express approval or at least neutrality on this particular occasion. (Skinner 1974a, 296)

The innovating ideologist has at her disposal two main tactics in order to realize this strategic intent. The first tactic consists in introducing "some wholly new and favourable evaluative-descriptive terms into the language" (Skinner 1974a, 296). This tactic presents two possibilities. On the one hand, she may simply coin "coin new terms as the descriptions of alleged new principles, and then to apply them as descriptions of whatever apparently untoward actions [she] may wish to see commended" (Skinner 1974a, 296). This is, however, "an extremely crude device" (Skinner 1974a, 296). Indeed, political agents in a debate often proceed with a common normative vocabulary, the terms of which are not easily replaceable. This is particularly true when it comes to the UN: you cannot simply replace the normative concepts embedded in the constitutive instruments of the organization, namely the UN Charter and the UDHR. Nonetheless, "the creation of new slogans or catchwords is a key device" in the play of politics at the UN, "because they can provide new topics to the political agenda" (Palonen 2003b, 54). The numerous buzzwords introduced in UN development policy over the years—such as "participation", "empowerment", "sustainability", "good governance", "capacity building", "resilience" and "inclusive growth"— are good illustrations of this tactic.

On the other, she may "turn a neutral description into a favorable evaluative-descriptive term (usually by means of a metaphorical extension of its uses) and then applying it in virtue of this extended meaning to describe some course of action which [she] wishes to see commended. (Skinner 1974a, 297). This second tactic, which consists in effect in a "transformation of ideology" by metaphorically increasing the range of its ordinary usage, represents a "far more commoner version" (Skinner 1974a, 297). Here, one may think of the various ways in which the concept of development became articulated at the UN over the years, such as "economic development", "social development", "human development", "the right to development", "sustainable development" or "participatory development". Each of these examples allowed extending the chance horizon of the concept into a particular direction (e.g. economic policy, social policy, social justice, human rights policy, environmental policy, etc).

The first strategy "consists of varying the range of speech-acts which are standardly performed with an existing set of unfavorable evaluative-descriptive terms" (Skinner 1974a, 297). Again, there are two main tactics available for the innovating ideologist to fulfil this strategic intent. On the one hand, she may "apply a term normally used to express disapproval in such a way as to neutralise this speech-act potential" (ibid.). On the other hand, she may "reverse the standard speech-act potential of an existing and unfavorable evaluative-descriptive term" (ibid.). In both cases, "the availability of a 'standard usage' is taken as a given and then the task is to invent deviating usages with a different coloring" (Palonen 2003b, 54). The success of this second strategy rests upon the ability of the innovating ideologist

> to challenge his ideological opponents to reconsider whether they may not be making an empirical mistake […] in failing to see that the ordinary criteria for applying an existing range of favorable evaluative-descriptive terms may be present in the very actions they have been condemning as illegitimate. (Skinner 1974a, 298)

As Chapter 4 uncovers, this is precisely what Hernán Santa Cruz and other Latin American representatives were doing in articulating their vision for a social and international order in the language of international human rights. This strategy not only allowed them to take the moral high ground but also advance the question of their special problems—e.g. their lack of resources for the realization of ESC rights—on the human rights agenda of the UN. By arguing that the economic and social development of the developing countries was a necessary condition for the universal realization of human rights, it became more difficult for their opponents to object to the claims advanced by Latin American states to change the status quo on the ground that they were contrary to the principles of free trade or to prior international agreements on tariff and trade.

The rhetorical situation of the apologist is in many ways similar to that of the innovating ideologist: "[a]n apologist will need to be able to show that these unfavorable characterizations can in some way be defeated or at least *overridden*', but the problem remains, how to do so" (Skinner 1973, 302). The point of the apologist, contrary to the innovative ideologist, is to maintain the status quo. Several different strategies are available to the apologist, but the most effective "will clearly consist of trying to establish, a purely empirical claim, that the same facts about the given system can with equal plausibility be described in favorably evaluative terms" (Skinner 1973, 302). Here, the strategy employed by the apologist will consist

> of trying to apply a rival evaluative description to the same political system which in turns fulfills two contrasting conditions: that it is more or less equally plausible to apply it in the light of the known facts about that given system; and that its applicability entails that the existing unfavorable evaluations of the system are thereby defeated or at least overridden. (Skinner 1973, 302-303)

I will come back to this strategy in the empirical-cum-analytical narrative when discussing how apologists of authoritarian regimes faced their critics by arguing that they were in fact working towards the realization of ECS rights by prioritizing development objectives. To that aim, they argued, their country needed some level of political stability, which the implementation of civil liberties and political freedoms could jeopardize. Princess Ashraf Pahlavi and other Iranian representatives were particularly vociferous in that regard. It would not only be unfair to blame Iran for the curtailment of CP rights, they suggested, but their political system represented a more viable and legitimate alternative to democratic models in the quest for the realization of human rights in developing countries. What is interesting here is how the concept of democracy loses its status as a favourable descriptive term when opposed to the concept of development, as the latter becomes associated with the realization of human rights in developing countries.

To summarize, "even if the agent is not in fact motivated by any of the principles he professes, he will nevertheless be obliged to behave in such a way that

his actions remain compatible with the claim that these principles genuinely motivated them" (Skinner 1974a, 299). That is to say that these principles are not epiphenomenon. On the contrary, descriptive-evaluative concepts, such as democracy, justice, freedom and equality, "serve as rather specific constraints and directives to the agent about what precise lines of conduct afford him the best means of bringing his untoward action in line with some accepted principle" (Skinner 1974a, 299). Put differently, "there are always some historically contingent conventions that limit the practical realization of some principles but which can also be turned into resources in a politics trying to alter these conventions" (Palonen 2003b, 55). Descriptive-evaluative concepts are thus powerful legitimating devices in the play of politics, the use of which is worth studying.

A significant element in previous studies carried out with a rhetorical approach to conceptual change is the recognition of "the omnipresence of a normative dimension in the key concepts, such as democracy, freedom and equality. These concepts tend to revaluate the phenomenon by their very use [...]" (Palonen 2003b, 56). All the same, ''the more formal concepts, such as politics, power or the state, are [also] highly disputed in their normative content and, just for this reason, immediately require specification of their use" (ibid.). The point is that "the tendency towards value-laden usage of the concepts presupposes such a specification" (Palonen 2003b, 56). There is, so to say, no "standard meaning" when it comes to our normative concepts, something Skinner himself came to acknowledge in his later work, after his "rhetorical turn":

> I have immerse myself in the writings of the ancient theorists of eloquence who originally spoke of rhetorical redescriptions, and have come to share their more contingent understanding of normative concepts and the fluid vocabularies in which they are generally expressed. As a result, I have found myself adopting their assumptions that it makes little sense to speak of evaluative terms as having accepted denotations that can either be followed or, with varying degrees of disingenuousness, effectively manipulated. Rather, as the ancient rhetoricians put it, there will always be a sufficient degree of 'neighbourliness' between the forms of behaviors described by contrasting evaluative terms for these terms themselves to be susceptible of being applied in a variety of conflicting ways. It now seems to me, in short, that all attempts to legislate about the 'correct' use of normative vocabularies must be regarded as equally ideological in character. Whenever such terms are used, their application will always reflect a wish to impose a particular moral vision upon the workings of the social world. (Skinner 1999, 67)

In the passage above, the metaphor of "neighbourliness" brings to the fore "the possibility of 'stretching the truth'", that is to say "the possibility that a concept has no criteria or 'proper' or 'ordinary' use, significance and evaluation" (Palonen 2003b, 163—164). Put differently, "there is a range of variation in the uses that cannot be fixed in advance by any dictionary or other authoritative source, but the uses remain disputable according to situations and purposes" (Palonen 2003b, 164). This is particularly true when it comes to the core concepts constitutive of the UN, such as peace, democracy, human rights and development, which is why the historical study of their various uses in different contexts might contribute to contemporary debate about their relevance for our present(s) and desirability in shaping our future(s).

2.5 Conceptual change through rhetorical redescription

I would like to conclude this chapter by discussing rhetorical redescription as a mode of conceptual change in UN debates. To that aim, I will explore the techniques of redescription identified by the Greek and Roman rhetoricians, embraced by their Renaissance admirers, and elaborated upon by Skinner in *Reason and Rhetoric in the Philosophy of Hobbes* (1996, 138—180). One important remark before going any further is that the present section revisits the tasks of the innovating ideologist from the perspective of rhetoric. The analytical vocabulary employed in the empirical narrative of this study is therefore primarily that of rhetoric and not that of speech-act theory—although some of their concepts may be used more or less interchangeably.

At the heart of the present discussion is the notion, widely accepted among rhetoricians of the Antiquity and the Renaissance, "that a mastery of *inventio* can help us stretch the truth in the required ways" (Skinner 1996, 138). This particular idea "illustrates the singularity of the rhetorical orientation towards changing the view of the audience" (Palonen 2003b, 161). An important aspect of "truth" thus understood is that it "has a certain range of variation that can be used in argument either in a narrower (*reductio*) or a wider (*amplificatio*) direction" (ibid.). In other words, the "truth" may be stretched in various directions, for which one may use the rhetorical device of redescription. This also applies to the "truth" of a concept, or its range of meanings, which becomes amenable to various interpretations through the use of rhetorical redescription.

The primary concern of this study is to interpret one such redescription, namely the redescription of development as a human right at the UNCHR in 1977, and its inclusion in the conventional language of international relations at the UN through the adoption of UNCHR resolution 4 (XXXIII). Chapter 6 thus uncovers how Kéba M'Baye attempted to modify the "truth" of development at the UN by redefining the limits of acceptable practices and policies in that field with human rights standards and principles. As this study shows, a peculiar aspect of his move to redescribe development as a human right is found in his simultaneous attempt to narrow its use in one direction and to widen it in another. However, as this study also points out, the redescription of development as a human right would not have been possible without a number of earlier interventions in the debate over the nexus between development and human rights.

Hence, while the resdescription of development as a human right stands at the heart of this study, the narrative offered in the first empirical chapters also present a few other examples of how redescription, as a way of strectching the "truth", has worked as a powerful rhetorical device in shaping the trajectory of UNCHR debates. Chapter 4, in particular, draws attention to Hernán Santa Cruz's redescription of human rights in the UNCHR debate over the question of the realization of the ESC rights contained in the UDHR and the ICESCR and

special problems relating to human rights in developing countries. This redescription is interpreted as an attempt to stretch the "truth" of that concept in the direction of international development assistance and cooperation.

Before getting to the empirical-cum-analytical narrative unfolding in chapters 3 to 6, let us have a closer look at the rhetorical device of redescription. The Greek and Roman rhetoricians "identified two contrasting ways in which we can hope, simply by offering a redescription of an action or state of affairs, to execute the emotions of our listeners and enlist them on our side" (Skinner 1996, 139—140). On the one hand, one may claim that "an existing description ought to be rejected on the grounds that one or more of the terms used to state it had been misleadingly defined" (ibid., 140). Aristotle and Cicero both discuss this technique, one in *The Art of Rhetoric* and the other in *De Inventione*. Cicero explains it as follows:

> Every subject which contains in itself a controversy to be resolved by speech and debate involves a question about a fact, or about a definition, or about the nature of an act, or about legal processes. This question, then, from which the whole case arises, is called *constitutio* or the "issues." The "issue" is the first conflict of pleas which arises from the defence or answer to our accusation, in this way "You did it", "I did not do it," or "I was justified in doing it." […] When the issue is about a definition, it is called definitional issue, because the force of the term must be defined in words. […] The controversy about definition arises when there is agreement as to the fact and the questions is by what word that which has been done is to be described. In this case there must be a dispute about the definition, because there is no agreement about the essential point, not because the fact is not certain, but because the deed appears differently to different people, and for that reason different people describe it in different terms. Therefore in cases of this kind the matter must be defined in words and briefly. For example, if a sacred article is purloined from a private house, is the act to be adjudged theft or sacrilege? For when this question is asked, it will be necessary to define both theft and sacrilege, and to show by one's own description that the act in dispute should be called by a different name from that used by the opponents. (Cicero 1949, 21, 23 and 25)

In the present case, for instance, there was general agreement over the fact that developing countries had special problems of their own with respect to the implementation of international human rights (i.e. as enclosed in the UDHR and the International Covenants on Human Rights). This agreement culminated in the inclusion of an item entitled "question of special problems relating to human rights in developing countries" on the agenda of the UNCHR in the early 1960s, and its consideration from 1969 onwards. Underlying this agreement was a recognition of the fact that development and human rights were linked. *How* they were linked, however, was the object of a fierce controversy in the early phase of the debate. Part of this controversy concerned how to judge development practices and policies in relation to the realization of human rights in developing countries and vice-versa, which ultimately required opposing sides to define the concepts of "development" and "human rights".

The author of *Ad Herennium* has something else to add on this topic, which is highly useful in order to understand the kind of possibilities the use of rhetorical redescription brought to opposing sides in the debate over the nexus between development and human rights:

> Definition [*definitio*] in brief and clear-cut fashion grasps the characteristic qualities of a thing, as follows: […] "That is not economy on your part, but greed, because economy is careful conservation of one's own goods, and greed is wrongful covetousness of the goods of others." Again: "That act of yours is not bravery, but recklessness, because to be brave is to disdain toil and peril, for a useful purpose and after weighing the advantages, while to be reckless is to undertake perils like a gladiator, suffering pain without taking thought." (*Ad C. Herennium de ratione dicenci* 1954, 317)

What is interesting in the passage above is how the two examples offer "a particularly useful 'contrast definition' to refute an opponent's term (*economy [/ bravery*]) with the speaker's relabeling (*greed [/recklessness]*) (Fahnestock 2011, 236). The rhetorical significance of such contrast definitions or "redefinitions" is to help an arguer "place the action in a new moral light" (Skinner 1996, 141). As a result, the opponents "not only come to see that the terms used to evaluate it was misleading" but "also come to see that the action falls under a different description which evaluates it in a much less favourable way" (Skinner 1996, 141—142). In the present case, for instance, the redescription of development as a human right allowed Kéba M'Baye to redefine the terms of the relationship between the developed and the developing countries, placing particular international development practices and policies under a new moral light. To that aim, however, M'Baye had to stretch the definition of development in the direction of human rights and vice-versa (see Chapter 6).

For the author of *Ad Herennium*, the use of definition as a rhetorical device—including contrast definitions or redefinitions—is useful because "it sets forth the full meaning and character of a thing so lucidly and briefly that to express it in more words seems superfluous, and to express it in fewer is considered impossible" (*Ad C. Herennium de ratione dicenci* 1954, 317). Nonetheless, as a strategy for redescribing an action or state of affairs "the manipulation of definitions obviously constitutes a somewhat crude and inflexible rhetorical device" (Skinner 1996, 142). Indeed, while examples of this strategy could be found in the empirical material used for the present study, they were rather scarce. There was another, far more common rhetorical technique employed by representatives of states in the debates to achieve a similar effect. It consisted in arguing "that a given action [had] been wrongly assessed not because the terms used to describe it [had] been misdefined, but rather because the action itself [had] a different moral complexion from that which the terms used to describe it suggest[ed]" (Skinner 1996, 142). For example, a large number of developing country representatives argued during the debate that the national development plans and policies followed by their governments were not cases of human rights "abuses" or "violations" as some of their opponents suggested. Rather, they were supportive of human rights, the realization of which could only be done progressively in their countries.

Both techniques raise questions about value and significance, but do so in different ways. The first technique raises disputes about naming or definition while the controversies in the second case concern the criteria of application of a concept (Palonen 2003b, 162). Quintilian makes an interesting point with respect to the above, which helps clarify the distinction between the two techniques:

> Some, indeed, would give the name *catachresis* even to cases such as where we call temerity valour or prodigality liberality. I, however, cannot agree with them; for in these instances word is not substituted for word [*verbum pro verbum*], but thing for thing [*res pro res*], since no one regards prodigality and liberality as meaning the same, but one man calls certain actions liberal and another prodigal, although neither for a moment doubts the difference between the two qualities. (Quintilian 1920—2c, 321 and 323)

The second technique, which consists in substituting *res pro res*, "constitutes one of the most potent means of amplifying our utterances" (Skinner 1996, 144). Quintilian is perhaps the one to provide the fullest account of how to use this technique in order to arouse the emotions of an audience. As he argues,

> the aim of appeals to the emotion is not merely to show the bitter and grievous nature of ills that actually are so, but also to make ills which are usually regarded as tolerable seem unendurable, as for instance when we represent insulting words as inflicting more grievous injury than an actual blow or represent disgrace as being worse than death. For the force of eloquence is such that it not merely compels the judge to the conclusion toward which the nature of the facts lead him, but awakens emotions which either do not naturally arise from the case or are stronger than the case would suggest. (Quintilian 1920—2b, 431)

What Quintilian intimates here and at a number of points in his work is that "we must first take note of a crucial fact about moral language, which helps to explain the possibility of arousing the emotions by substituting *res pro res*" (Skinner 1996, 144). In short, "if we can manage to challenge the description of a given action or state of affairs, we can often manage, *eo ipso*, to challenge its moral appraisal at the same time" (ibid.). This is precisely the strategy pursued by M'Baye in redescribing development as a human right. As Chapter 6 illustrates, this redescription served, among others, to depreciate the value and moral qualities of using international development cooperation and assistance in general and official development aid in particular as an instrument of foreign policy for the donor countries. Put differently, it was immoral to think of development as being anything else than a human right.

The point is that "There is no categorical distinction […] between descriptive and evaluative terms: some descriptions serve as the same time to evaluate." Since our normative language is always to some extend simultaneously descriptive and evaluative, the rhetorical technique of substituting *res pro re* represents a powerful device in deliberative oratory "to express and solicit an 'augmented' or 'extenuated' emotional response to a given action or state of affairs" by placing it under a different moral light. In short, the technique serves "to persuade our hearers to accept our redescriptions, and hence to adopt a new emotional attitude towards the action involved—either one of increased sympathy or acquired moral outrage." (Skinner 1996, 145)

In the case of the redescription of the right to development as a human right, a crucial point was to advance international aid and cooperation for the development of underdeveloped countries and peoples as a necessary condition for the universal realization of human rights. By doing so, such aid and cooperation could no longer be presented as a matter of sovereign decision of donor countries or tools of foreign policy. Rather, it would be seen as their moral (and ultimately

also legal) obligation under international human rights law to provide it. Put differently, the association of development and human rights was meant to both increase moral outrage towards the persistence of a "gap" in living standards (i.e. socio-economic inequalities) between the developed and developing countries and to acquire sympathy towards the demands of the latter towards the former to close that gap.

The Greek and Roman rhetoricians discussed thus far all "understood that the possibilities of rhetorical redescription contain a powerful tool in all rhetorical genres" (Palonen 2003b, 164). While "its value is perhaps most evident in epideictic or demonstrative oratory, since the main purpose of such oration is to commend or criticize", its significance should not be underestimated in the case of deliberative oratory (Skinner 1996, 146—147). The author of the *Ad Herennium*, in particular, accorded great value to this rhetorical device in deliberative oratory. He notes,

> we shall show that what our opponent calls justice is cowardice, and sloth, and perverse generosity; what he has called wisdom we shall term impertinence, babbling, and offensive cleverness; what he declares to be temperance we shall declare to be inaction and lax indifference; what he has named courage we shall term the reckless temerity of a gladiator. (*Ad C. Herennium de ratione dicenci* 1954, 167 and 169)

In short, rhetorical redescription may serve to "discredit whatever policies are being advocated" (Skinner 1996, 147). It should be noted that, "[i]n principle, the device of rhetorical redescription is open to both revaluing and devaluing acts" (Palonen 2003b, 164). While "the possibility to dethrone any policy was experienced as a more dramatic move" in the Roman context (Palonen 2003b, 164), the redescription of development as a human right was meant to do just that: to delegitimize a set of practices and policies in international relations deemed unfavourable or detrimental to the development and therefore also the realization of human rights in developing countries.

What makes the rhetorical technique of substituting *res pro re* so appealing in deliberative oratory is that "it will always be possible to propose such redescriptions with some show of plausibility" (Skinner 1996, 153). According to the classical rhetoricians, "many of the virtues, and many of the terms we consequently employ to describe and appraise human behaviour, constitute a mean between two extremes of vice" (ibid.). Aristotle was the first to recognize, in book II of the *Nicomachean Ethics*, that "virtue […] is a mean, insofar as it aims at what is intermediate" (Aristotle 1999, 24):

> §15 Virtue, then, is a state that decides, consisting in a mean, the mean relative to us, which is defined by reference to reason, that is to say, to the reason by reference to which the prudent person would define it. It is a mean between two vices, one of excess and one of deficiency.
>
> §16 It is a mean for this reason also: Some vices miss what is right because they are deficient, others because they are excessive, in feelings or in actions, whereas virtue finds and chooses what is intermediate.

> §17 That is why virtue, as far as its essence and the account stating what it is are concerned, is a mean, but, as far as the best [condition] and the good [result] are concerned, it is an extremity. (Aristotle 1999, 24—25)

A few paragraphs later, Aristotle explains the relation between mean and extreme states, which is worth reproducing in length by way of an illustration of the centrality of the doctrine of mean to moral argument:

> Among these three conditions, then, two are vices—one of excess, one of deficiency—and one, the mean, is virtue. In a way, each of them is opposed to each of the others, since each extreme is contrary both to the intermediate condition and to the other extreme, while the intermediate is contrary to the extremes. For, [...] the intermediate states are excessive in comparison to the deficiencies and deficient in comparison to the excesses—both in feelings and in actions. For the brave person, for instance, appears rash in comparison to the coward, and cowardly in comparison to the rash person; the temperate person appears intemperate in comparison to the insensible person, and insensible in comparison with the intemperate person; and the generous person appears wasteful in comparison to the ungenerous and ungenerous in comparison to the wasteful person. That is why each of the extreme people tries to push the intermediate person to the other extreme, so that the coward, for instance, calls the brave person rash, and the rash person calls him a coward, and similarly in the other cases. (Aristotle 1999, 27)

Aristotle later developed "the doctrine into a bridge between his moral and rhetorical thought" (Skinner 1996, 153). Skinner paraphrases Aristotle's key suggestion in that regard, as found in book I of *The Art of Rhetoric*, as follows: "if virtue is a mean, the virtues and vices must stand in a certain relationship of proximity" (ibid.). This suggestion seems to stand in contradiction with Aristotle's previous claim in the *Nicomachean Ethics*, "that the extremes of any virtue will always be opposed and indeed contrary to each other" (Skinner 1996, 154). As the examples above illustrate, however, "Aristotle also stressed that, because every good quality ties at an intermediate point, it will generally bear some resemblance to one or other of its extremes" (ibid.).

Aristotle observations about the proximity of vice and virtue found expression in the work of Roman rhetoricians, "in the form of the claim that every good quality will be found to have 'neighbouring' or 'bordering' vice" (Skinner 1996, 154). In discussing the concept of *honestas*, for instance, Cicero argues:

> the qualities to be avoided for their own sake are not only those opposites of these—as, for example, cowardice is the opposite of courage, and injustice of justice—but also those qualities which seems akin and close to these but are really far removed from them. To illustrate, diffidence is the opposite of confidence, and is therefore a vice, temerity is not opposite to courage, but borders on it and is akin to it, and yet is a vice. In a similar way each virtue will be found to have a vice bordering upon it, either one to which a definite name has become attached, as temerity which borders on courage, or stubbornness, which borders on perseverance, or superstition which is akin to religion, or one without any definite name. (Cicero 1949, 333)

In short, it is not enough to avoid qualities that are the opposites of virtues; one must also avoid the vices bordering such virtues.

All of the above leads us to discuss "the trope or scheme of rhetorical redescription called *paradiastole*" (Palonen 2003b, 164).

> With these contentions about the neighbourly relations between virtues and vice, the writers we are considering arrive at their explanation of why it will always be possible to employ the figure of paradiastole to arouse the deepest emotions of an audience. It is precisely because of these associations and affinities, they claim, that a clever orator can always hope to challenge the proffered description of an action or state of affairs with some show of plausibility. For he can always hope to go some way towards excusing or extenuating an evil action by imposing upon it the name of an adjoining virtue. Conversely, he can always hope to denigrate or depreciate a good action by imposing upon it the name of some bordering vice. (Skinner 1996, 156)

Examples of the above are variously found in Aristotle's *Art of Rhetoric* (1926, 96-8), Cicero's *De partitione oratoria* (1942, 370), and Quintilian's *Institutio oratoria*, (1920-2c, 214), among others. These authors usually emphasized the value of paradiastole as "a means of mitigation, a means of augmenting what can be said in favour of some particular action or of diminishing what can be said against it" (Skinner 1996, 161). However, there is nothing preventing the use of this technique "to perform the opposite task of amplifying what can be said against a given course of action by depreciating its apparently virtuous qualities" (Skinner 1996, 166). For the purpose of the present study, *paradiastole* thus offers "an exemplary scheme of how to operate with a concept in relation to its neighborhood" (Palonen 2003b, 165).

In conclusion, I would like to argue that the above contains an important lesson for scholars of international relations and organisations interested in the history of concepts. In particular in the idea that "our moral and social world" is not only "held in place by the manner in which we choose to apply our inherited normative vocabularies, but one of the ways in which we are capable of reappraising and changing our world is by changing the ways in which these vocabularies are applied" (Skinner 1999, 63). We need to keep in mind the contingent and controversial character of these vocabularies. To summarize,

> it makes little sense to speak of evaluative terms as having accepted denotations that can either be followed or, with varying degrees of disingenuousness, effectively manipulated. Rather, as the ancient rhetoricians put it, there will always be a sufficient degree of 'neighbourliness' between the forms of behaviour described by contrasting evaluative terms for those terms themselves to be susceptible of being applied in a variety of conflicting ways. It now seems to me, in short, that all attempts to legislate about the 'correct' use of normative vocabularies must be regarded as equally ideological in character. Whenever such terms are used, their application will always reflect a wish to impose a particular moral vision upon the workings of the social world. (Skinner 1999, 67)

A rhetorical analysis of UN debates along the terms laid out in this chapter allows us to do just that, by rendering conceptual changes "intelligible as dimension of political changes in themselves" (Palonen 2003b, 169).

3 (RE)OPENING THE UNCHR DEBATE ON HUMAN RIGHTS AND DEVELOPMENT

Part of the objective of this study is to understand how the UNCHR felt itself competent both to recognize the right to development as a human right and to specify the appropriate conceptual framework in which to carry out a study of the said right in 1977. Put differently, we want to understand why the UNCHR called for a study of the specific aspects of that particular concept at that precise point in time. To that aim, it is necessary to see this illocutionary act "not simply as a proposition, but also as a move in argument […]"—"we need to grasp why it seemed worth making that precise move; to recapture the presuppositions and purposes that went into the making of it" (Skinner 1988, 274). To grasp the point of resolution 4 (XXXIII) of 21 February 1977 (i.e. to understand the range of actions its sponsors aimed to legitimize with the right to development), it is necessary to recapture the settings, events and arguments that went into the making of it.

The redescription of development as a human right and its formal recognition by member states representatives at the UNCHR did not take place in a void. On the contrary, it is part of a long history of debate at the UNCHR, first over the nexus between development and human rights, and then over the question of the realization of the ESC rights contained in the UDHR and in the ICESCR, including the special problems and challenges faced by developing countries with respect to the implementation of those rights. Accordingly, the empirical-cum-analytical narrative offered in the present and next three chapters draws from that series of UNCHR debates as a way to provide an answer to how this moment of conceptual innovation and its collective assertion by member states representatives at the UNCHR came about. By doing so, this study hopes to recapture the politics in the formation of the right to development as a human right concept at the UN, shedding light along the way on failed alternatives and trajectories not taken.

As a first step into that direction, this study proposes to investigate the conceptual rapprochement of development and human rights at the UNCHR. Ac-

cordingly, the present chapter attempts to clarify *how it became possible for the concept of development to enter the horizon of possibilities of the UNCHR in the first place*. In other words, the present chapter focuses on the politicization of the concept of development at the UNCHR through its articulation in the conventional language of international human rights.

While not necessarily well understood, the idea of development as a human right appears rather commonplace from our contemporary perspective. However, up until the late 1960s it would have been rather difficult if not completely unthinkable for the UNCHR to support such a view. Indeed, although human rights and development are two central themes of the UN Charter, they were generally treated as separate concerns in the early years of the organization, and scant attention was paid to their interdependence. And when attention was given to their interdependence, it was often articulated in terms of trade-offs. The UNCHR was no exception in this regard. While some developing country representatives may have drawn attention to this issue, they did so mainly by expressing concerns over the lack of resources faced by their governments in implementing human rights.

As the present chapter suggests, an important shift in that regard happened in 1969, when the question of the realization of the ESC rights contained in the UDHR and in the ICESCR was considered jointly with the study of special problems in the developing countries by member states representatives gathered at the UNCHR (hereafter UNCHR debate of 1969). It is quite noteworthy that, when the question of the realization of the ESC rights contained in the UDHR was considered by itself the previous year, the core of the debate centred on the relationship between CP rights and ESC rights and the priority to be accorded to each category of rights. As such, the political fault lines were largely those of the Cold War, opposing representatives of the Group of Western European and Other States to representatives of the Group of Eastern European States. For the most part, representatives of the three other regional groups were either silent or supporting one or the other of these two camps.

Interestingly, however, the problem of the relationship between ESC rights and CP rights was barely touched upon—or rather only particular aspects of it were considered—when the UNCHR considered the question for a second time at its next session, held in 1969. By then, it had become commonplace to say not only that human rights and fundamental freedoms were "interdependent and interconnected" but also that they were "indivisible"; that equal attention and urgent consideration should be given to the implementation, protection and promotion of both CP rights and ESC rights. This basic affirmation, according to a majority of state representatives, could no longer give rise to any significant opposition. According to them, "it was difficult to conceive how one set of rights could be truly exercised if the realisation of the others was not ensured at least to some extent" (E/CN.4/1007, 123—124 (1969)).

The Proclamation of Teheran, adopted by the International Conference on Human Rights on 13 May 1968, greatly contributed to produce that rhetorical shift in the UNCHR debate. The Proclamation contains a statement that "since

human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights [was] impossible" (A/CONF.32/41, 14 (1968)). Similarly, the third preambular paragraph of Conference Resolution XXI, concerned with the realization of ESC rights, states that "in the modern world, the enjoyment of civil and political rights and freedoms also requires the realization of economic, social and cultural rights and that these human rights and fundamental freedoms are interconnected and interdependent" (A/CONF.32/41, 16-17 (1968)).

What this "indivisibility" or "interconnectedness and interdependence" means in practice, however, vary greatly according to the particular context of its use and the user. In the present context, this kind of rhetoric became part and parcel of the vocabulary employed to reach practical agreement over proposals dealing directly or indirectly with the problem of the relationship between ESC rights and CP rights—a sort of linguistic meeting point upon which all could agree. In practice, it served to silence theoretical disagreement on how different human rights related to each other and to focus on the practical aspects of the question of the realization of ESC rights. The practical issues flowing from the relationship between CP rights and ESC rights are more complex than they tend to appear—they are ambiguous and inevitably involve conflicting means and ends. Saying that these rights were "interdependent" or "indivisible" did not settle the political problems relating to the question of their implementation. It helped, however, move these questions to the background rather than the foreground of the debate.

Hence, while these affirmations no longer gave rise to explicit opposition in the UNCHR debate of 1969, the practice of the vast majority of state representatives nonetheless still reflected their government's preference for one set of rights over the other. Indeed, consideration of the role of economic development as a means of realizing ESC rights necessarily leads to an examination of the relationship of those rights with CP rights. Is there a dichotomy, as often alleged, between the two categories of rights? Are they compatible enough to be implemented at the same time in development plans and policies? Are CP rights and economic development competing concerns? These questions had great practical significance at the time. While it had become commonplace to argue that economic and social development was necessary for the realization of ESC rights, the importance of rapid economic development for developing countries had become, in some cases, a pretext for denial of CP rights (Nayar 1980, 56).

Not surprisingly, therefore, representatives of states that were generally more favourable to CP rights than to ESC rights were reluctant to the idea of allocating any of the limited resources of the UNCHR—the only UN organ concerned with CP rights—to the consideration of the question of ESC rights. To do so could only serve to divert attention away from the consideration of more pressing matters in the agenda of the UNCHR with respect to CP rights. Put differently, while the question of the relationship between CP rights and ESC rights seemed to have lost of its prominence in the UNCHR debate of 1969 as compared

to the UNCHR debate of 1968, theoretical disagreements did not disappear altogether. They only became hidden under the rhetoric of "indivisibility" or took more implicit forms in the debate. In order to illuminate some of the conceptual controversies that have informed the politics in the formation of the right to development as a human right at the UNCHR, it might therefore be useful to take a closer look at the UNCHR debate of 1968—where these controversies were articulated in terms that were more explicit.

At the same time, representatives of developing states voiced their concerns more vehemently during the UNCHR debate of 1969, as the question of the realization of the ESC rights contained in the UDHR was considered jointly with that of the special problems relating to human rights in developing countries. In particular, they drew attention to the "profound inter-connexion between the realization of human rights and economic development" and pointing to the "widening gap" between the developed and developing countries as hampering the universal realization of human rights—once again echoing the Proclamation of Teheran.

Overall, what can be observed when comparing the substance of these two debates is a shift away from East-West tensions to North-South ones, the work of the UNCHR with respect to the realization of ESC rights began to move towards a greater emphasis on social justice and equity in international human rights law. Here, international human rights norms and standards are no longer conceived as instruments to keep the status quo but rather as instruments for bringing about change in the international order, with more equitable conditions stimulating the economic and social development of developing countries (Cassese 1986, 119). What is interesting to note is how developing states turn to an international political and legal channel, namely the UNCHR, in an effort to remedy the pervasive problems of hunger, disease, and poverty—i.e. the conditions commonly associated with situations of underdevelopment. As the empirical-cum-analytical narrative offered in this study uncovers, the conceptual framework adopted in 1977 by the UNCHR to study the right to development as a human right was born out of this expansion of international human rights.

3.1 The UNCHR debate of 1968 and the conceptual dispute over the relationship between ESC rights and CP rights

When the UNCHR considered the question of the realization of the economic and social rights contained in the UDHR for the first time in 1968, the problem of the relationship between ESC rights and CP rights occupied a large portion of the debate. A number of competing propositions in that regard were advanced during the debate, which may be summarized under six points of controversy. They are summarized here because they are deemed relevant to the empirical-cum-analytical narrative offered in this study about the politics in the formation of the

right to development concept at the United Nations. This is mainly because developing country representatives deemed none of the propositions advanced by either side of the Cold War satisfactory enough to support them.

3.1.1 The dispute over the historical evolution of human rights

The first concerned the historical development of human rights. During the debate, some representatives argued that human rights norms emerged in two phases. The first, brought about by the French and American revolutions of the late eighteenth century, produced the concept of CP rights. The second was the result of the Russian revolution of the early twentieth century and introduced the notion of ESC rights. This spatiotemporal narrative had gained overwhelming authority in human rights talk, and is well exemplified in British sociologist Thomas Humphrey Marshall's influential essay, *Citizenship and Social Class* (1950), on the historical evolution of human rights. According to Marshall, eighteenth century civil rights expanded into nineteenth century political rights, which in turn evolved into twentieth century social rights.

Against this view, held predominantly by representatives among members of the Group of Western European and Other States, another spatiotemporal narrative, which saw the emergence of CP rights and ESC rights as integrally related as a necessary consequence of radical economic transformation, was voiced, mainly by representatives among members of the Group of Eastern European States. Ukrainian professor of human rights and soviet rights expert Petr Emelyanovich Nedbailo of the Ukrainian SSR, for instance, expressed the view that

> the problem of economic, social and cultural rights stemmed from the very development of society. Indeed, in the seventeenth century, or even at the beginning of the nineteenth century, that problem had not existed. Today, however, it had become very important and the Commission had a duty to study it and seek a solution to it. (E/CN.4/SR.981, 143 (1968))

While the argument advanced by Nedbailo that the "problem [of ESC rights] had not existed" before the mid-nineteenth century may seem to follow the lines of the dominant narrative about the historical evolution of human rights from eighteenth century civil rights to nineteenth century political rights and twentieth century social rights, it may more accurately be interpreted as a counter-narrative whereby the problem of ESC rights is understood as a necessary consequence of the radical economic transformation of the late nineteenth and early twentieth centuries in Russia.

In a similar fashion, Eugeniusz Wyzner of Poland argued that "the history of the nineteenth and twentieth centuries had demonstrated […] that it was not possible to protect one category of rights without the other, and that the two categories of rights were interconnected" (E/CN.4/SR.981, 136 (1968)). Wyzner was here dutifully recalling Marx's classic pronouncements from his *Thesen über Feuerbach* (1845), in which Marx argues that "das menschliche Wesen ist kein dem einzelnen Individuum inwohnendes Abstraktum […] ist es das ensemble der gesellschaftlichen Verhältnisse" (Marx 1845). From this perspective, CP rights are

inseparable from ESC rights, analogous to the way that the "superstructure" sat on top of the "base". Only from the soil of economic freedom and equality would such rights spring. Representatives of members among the Group of Eastern European States often reaffirmed and made this point clear in UNCHR debates at that time.

As Paul Betts remarks in his analysis of East Germany as a case study of socialism's "rights regime", "communist governments made no bones about their firm conviction that human rights were neither natural nor inalienable, countering that rights were always manmade, politically determined, and something to be conferred by the state in its efforts to transform society" (Betts 2012, 408). Interestingly, however, Nedbailo argued that ESC rights "should be recognized as *inalienable* as civil and political rights" (E/CN.4/SR.981, 143 (1968) [emphasis added]) before emphasizing that "the role of the State in contemporary society had increased and its influence extended to such sectors of society as education and employment" and that "all States without exception were obliged to promote the implementation of those rights" (E/CN.4/SR.981, 143 (1968)). To be sure, Nedbailo may have appropriated the rhetoric of his opponents to promote the views of his government: ESC rights were no mere political aspirations; they were legal rules to the same extent as CP rights. Indeed, if ESC rights were at the heart of the political project of communism, this project nonetheless required law to be carried out and legal rules needed public policy (and thus the state) to be effective. At the same time, however, Nedbailo was a renowned figure within the UNCHR, with a mind of his own: He was among the first winners of the UN Prize in the Field of Human Rights in 1968 along other and more well-known figures such as René Cassin and Eleanor Roosevelt (posthumous award).

Scepticism towards human rights, or rather towards human rights conceived as ends in and for themselves, was not exclusive to the communist left. A number of central nineteenth-century thinkers, including Edmund Burke, David Hume, Jeremy Bentham and John Stuart Mill, among others, had voiced their opposition to human rights in the past, satirizing these as "nonsense upon stilts" (Waldron 1987). Irish statesman, author, orator, political theorist and philosopher Edmund Burke, for instance, remarks

> What is the point of discussing a man's abstract right to food or medicine? The question is upon the method of procuring and administering them. In that deliberation I shall always advise to call in the aid of the farmer and the physician rather than the professor of metaphysics. (Burke 1984 [1790], 151-152)

As Betts emphasizes, "it was this more materialist tradition of rights that was fundamental to communist theory, as the 'state-made person' (*der verstaatlichte Mensch*) was elevated as the particular variant of socialist citizenship and rights culture" (Betts 2012, 409). This point is well exemplified by the Soviet Constitution of 1918, Betts continues, which "was less interested in the content of state freedoms (be it freedom of conscience, expression, assembly, and/or association) than in 'announcing what the state is obliged to do materially to facilitate their realization by the newly privileged elements of the population'" (ibid.). From this

standpoint, the adoption of theories advocating a radical transformation of society, among which Marxism occupied a particularly important place, was seen as the only path to the realization of ESC rights. It was therefore not the need for state intervention towards the realization of ESC rights that was disputed, but rather the nature and scope of such interventions, i.e. the means of implementation.

Morris Abram of the United States thus expressed the view that it was not because the constitution of his country, which dated from the eighteenth century, gave a prominent place to CP rights but said little about ESC rights that the latter were not given due regard. He continued, "since de New Deal, [ESC] rights had become deeply rooted in the conscience and legislation of the United States" (E/CN.4/SR.981, 141 (1968)). It is telling in this context to notice how the historiography of human rights has been shaped by this American conception of the concept, which often depicts human rights as a kind of Roosevelt-style "New Deal for the World" (Borgwardt 2005). Indeed, the tragic consequences of the economic depression in 1929 gave rise in many countries to a demand for active intervention by the state in order to solve economic and social problems and thereby promote general recognition of the idea of economic and social rights (E/CN.4/988, 10 (1969)). To emphasize his point, Abram argued

> His country recognized that although man did not live by bread alone, he could not live without it. As President Johnson had said, it was not enough to open the door to opportunity; all citizens must also be able to go through the door. Furthermore, he believed that the door should be opened not only to the citizens of a particular country, but to all the peoples of the world. Therefore, it was not enough to open the door; resources were needed in order to help the people to pass through it. (E/CN.4/SR.981, 141 (1968))

The words of Democratic President Lyndon B. Johnson, as quoted by Morris Abram, resonate with the internationalist colours of President Roosevelt's New Deal framework. Generally speaking, "the modern human rights movement's recognition of economic and social rights [in the US] can trace roots to [Franklin D. Roosevelt]'s Four Freedoms Speech in 1941 and 1944 State of the Union which both articulated a vision of social and economic rights for America" (Soohoo 2007, 200). In a way, it could be argued that Roosevelt's administration set out to construct onto the international level what it had built in the United States (Borgwardt 2005).

As historian Carol Anderson remarks, African Americans were excluded from the New Deal's programmes. What, then, were the implications of projecting this model onto the international scene where not just ten percent of the population, but nearly three-fourths of the world's inhabitants were people of colour? Put differently,

> One of the inherent problems with the New Deal model, and why its use as the framework for a new world order has to be more incisively interrogated, was that although "states had to 'give to get' in order to garner the benefits of a stable international system," the clear identification of, exactly, who is required to give so that others can get has achieved a certain elision in this story. (Anderson 2006)

To some extent, “New Dealer […] were more than willing to ‘give’ away black access to political and economic rights so that capitalism and white America could be saved” (Anderson 2006). This point is particularly important to keep in mind in order to understand the attitude of indifference, opposition or even hostility of developing country representatives towards the political project advanced for the world through the human rights concept by the American representative at the UNCHR. In that regard, the “Great Society” launched by President Johnson in 1964—1965 as a set of domestic programmes aimed at the elimination of poverty and racial injustice is noteworthy: the American society was only beginning to address the socio-economic consequences of centuries of racial discrimination.

At the same time, as international legal scholar Philip Alston remarks, while “relating the two sets of rights to specific historical events [may be] useful for purpose of illustrating some of the forces which supported the emergence of different rights”, this kind of argument “is totally inadequate in historical terms since it fails to take account of the philosophical development of natural law and rights concepts […] and the influence of many other historical events” (Alston 1981, 50—51). A similar observation was made in the preliminary study of the Secretary-General, considered during the UNCHR debate of 1969:

> It would be rash to try to find any common philosophy behind all the different ideas and movements of the nineteenth century theories inspired by concern for economic, social and cultural rights. Nevertheless, over and above their differences and inconsistencies, all those rights—co-operative, reformism, socialism, utopianism, etc.—combined to bring about the final recognition of these rights. Some theories called for intervention by the State; others envisaged autonomous structures and institutions or a new type, independent of the State and designed to create a new social order; in any case, all of them criticized the systems of classic economic liberalism which had led to the alienation of workers in town and country. (E/CN.4/988, 9 (1969))

The preliminary study thus underlined the plurality of “origins” of ESC rights, against both the dominant narrative and counter-narrative made about the historical evolution of human rights.[7]

3.1.2 The question of the nature and scope of state obligations

A second point of controversy in the UNCHR debate of 1968 concerned the nature of states’ domestic obligations with respect to the implementation of CP rights as compared to ESC rights. During the debate, some representatives advanced the view that whereas ESC rights required active intervention on the part of governments for their realization, CP rights required only that governments should abstain from activities that would violate them. For instance, Sir Samuel Hoare of the United Kingdoms argued against the usage of the words “remedies for the violation” with respect to ESC rights in the draft resolution before the

[7] Since then, scholars have located the ”origins” and development of human rights farther afield in space and time, such as South Africa, India, the Philippines and Latin America (see, for instance, Carozza, 2003; Dubow 2008; Mazower, 2009; Anderson 2006; Glendon, 2003).

UNCHR. In doing so, he remarked that there were at present many unemployed in the UK. He then presented the following rhetorical question: "Was this to be interpreted as a violation of the right to work or was it sufficient that under the legislation in force [the unemployed] enjoyed the corresponding social security benefits?" (E/CN.4/SR.981, 139 (1968)). Contrary to the view that CP rights require only the state to abstain from activities that would violate those rights (in contradistinction to ESC rights), the sponsors of the draft resolution were of the view that states were also in a position to violate economic and social rights. Accordingly, the draft contained a remark about the "attempts by various States to advance the implementation of economic and social rights, and, notably, the concern to make available remedies for the violations of [ESC] rights" (E/CN.4/972, 99 (1968)).

According to some representatives, the different procedures provided in the ICCPR and ICESCR also attested to the very different nature of the obligations assumed by states. For instance, Sir Samuel Hoare remarked that "the Polish representative had […] said that there were no arguments which justified the separation of human rights into two categories, but the existence of two international Covenants, one on civil and political rights and the other on economic, social and cultural rights, contradicted him" (E/CN.4/SR.981, 139 (1968)). In reply to the UK representative, Eugeniusz Wyzner of Poland said that "he had never sought to carry his arguments to such an extreme, as was shown by the fact that the draft resolution he had introduced was concerned solely with economic, social and cultural rights" (E/CN.4/SR.981, 142 (1968)). He then further emphasized the interconnectedness and interdependence of the two categories of rights. Hence, while Wyzner recognized that the procedures for implementation of the two categories of rights were substantially different, he also supported the view that this of itself did not diminish the nature of states' domestic obligations with respect to ESC rights, which he considered were of a legal nature.

3.1.3 The dispute over "available remedies for the violation of ESC rights"

The notion of available remedies for the violation of ESC rights draws attention to a third issue of controversy. It echoes the provision of Article 8 of the UDHR, which provides "that everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted to him by the constitution or by law". The question, however, concerned whether the term "violations" could be applied to ESC rights. In that regard, it is telling that a reference to "effective remedy" was included in articles 2(3) and 14 of the ICCPR but does not figure at all in the ICESCR. In that respect, the representative of the Ukrainian SSR argued that while all states without exception were obliged to promote the implementation of economic and social rights, "it might happen that the State violated them. In such event, […] national legislation should offer an appropriate judicial remedy, establishing sanctions, procedures, technical specialization, competent bodies, easy accessibility to such bodies, etc."

(E/CN.4/SR.981, 143 (1968)).[8] This argument not only presupposes that the legal nature of states' obligations with respect to the two categories of rights is one of the same, but also that ESC rights are as justiciable as CP rights.

Contrary to this view, other representatives argued that whereas CP rights were readily enforceable through the courts, ESC rights were, with but a few exceptions, not justiciable. For Sir Samuel Hoare, insofar as the realization of ESC required positive action by states, "only States were in a position to violate those rights and it was therefore paradoxical that they should make available remedies for violations for which they themselves were responsible" (E/CN.4/SR.981, 140 (1968)). He then gave the example of the right to work as a type of work requiring the state to take positive action for its realization. It appeared completely nonsensical to him to allow an independent arbitrator, such as a court, to adjudicate on claims laid down by individuals who had been deprived of what they were due according to policies adopted by the state towards the realization of ESC rights. Put differently, the question of the competence of the courts to render judgment over resource allocations has an inevitable political tinge to it:

> Such a competence would […] cover utterly political questions and would therefore nullify the separation of powers that is the cherished basis of the system of government in a great many countries. It would turn the judiciary into a political organ. How is a court of law to protect, say, the enjoyment of the right to work? How is it to judge and declare on the basis of law that a policy of full employment is not effective, and should be realized another way? (Vierdag 1978, 105)

Seen either from the perspective of the fusion of powers or that of the more strict separation of power, the domestic adjudication of ESC rights could provide courts with enhanced powers and could therefore represent a potential threat to politicians. If the separation of power was to be preserved, then legal remedies had to remain under the exclusive competence of the judiciary while economic, social and cultural plans and policies that of the political. From this standpoint, human rights could not be simultaneously understood as legal norms and as a political project; this would void the separation of power. The only acceptable way to proceed was to recognize that CP rights were by nature legal norms and thus pertained to the realm of law while ESC rights were political aspirations and thus pertained to the realm of politics.

In his concluding statement, the UK representative observed that the provision of social security benefits, as a means of implementation, "was possible in certain countries, but undoubtedly not in many developing countries" (E/CN.4/SR.981, 139 (1968)). Here, the question of justiciability is closely linked to the distinction between resource-intensive and cost-free rights: it is implied that CP rights can be realized without significant costs being incurred, whereas the enjoyment of ESC rights requires major commitment of resources. This argument directs attention to a fourth point of controversy in the UNCHR debate of 1968, namely the temporal dimension of the obligation to implement each category of human rights. Inasmuch as CP rights are considered cost-free and ESC

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[8] Here, it should be mentioned that a number of ESC rights had, in fact, already been made justiciable in certain legal systems.

rights as resources-intensive, the former are considered capable of immediate and full realization whereas the latter are said to constitute no more than long-term aspirational goals (Alston and Quinn 1987, 159).

3.1.4 The dispute over the temporal dimension of ESC rights

During the debate, Sir Samuel Hoare maintained that whereas CP rights could be fully implemented immediately (insofar as they require only that governments should abstain from activities that would violate them), ESC rights depended entirely on the stage of economic development attained by a particular country. The UK representative thus advanced the view that

> the question whether civil and political rights were more important than economic, social and cultural rights was pointless; it was useless to seek to decide whether it was better, for example, to be liable to arbitrary arrest but to be well fed or to have no food and no liability to be arrested. What was certain was that freedom from arbitrary arrest could not be implemented only up to fifty per cent one year and sixty per cent another year but this was precisely what could happen in regard to the right to an adequate standard of living, by reason of famine or other causes. (E/CN.4/SR.981, 139 (1968))

He concluded that the UNCHR should recognize that difference. There would always be conditions outside the control of the state, for instance, that could impede upon the full realization of ESC rights.

The reference to "famine" as a condition impeding the realization of ESC rights was particularly well chosen in the light of the number of people that died in famines since the end of the Second World War—most notably during the Soviet famine of 1946—1947, the Great Chinese Famine (1959—1961), the Ethiopian famines in Tigray (1958) and Amhara (1966) and the famine in Biafra during the Nigerian-Biafran war of the late 1960s. At the same time, it implies that such condition may be eradicated through technical means—e.g. by breaking the link between crop failure and famine—as a society proceeds further on the ladder of development. It is noteworthy that the first UN Decade for Development included a call to develop proposals for "the achievement and acceleration of sound self-sustaining economic development in the less developed countries through industrialization, diversification and the development of a highly productive agricultural sector" as well as "measures for assisting the developing countries […] to establish well-conceived and integrated country plans—including […] land reforms" (A/RES/1710 (XVI), Article 4 (a) and (b) (1961)). Following Hoare's logic, no similar situations would arise that would render the implementation of CP rights impossible.

While this may be true for famines caused by flood or drought, cases of famines caused by government policy (including the question of resource allocation) or conflict present situations of a different kind, bringing to the fore the political dimension of ESC rights. In a similar vein, one may also emphasize, as the Yugoslav representative did, the "economic basis" of CP rights (E/CN.4/SR.983, 162 (1968)). In other words, akin to their ESC counterparts, the implementation of CP rights has resources implications. More precisely,

> ensuring the free exercise of CP rights often involved significant State intervention and the incurring of considerable public expenditure in order to establish a system of courts, to train police and other public officials, and to establish a system of safeguards against potential abuses of rights by state officials themselves. (Alston 1981, 51)

In the light of that, one may argue that the question of the progressive realization of ESC rights is far more a question of strategy and priority (or political will) than a question of resource availability. Put differently, the question of the implementation of ESC rights (and CP rights for that matter) "depends far more, in practice, on the type of *development strategy* adopted rather than on the *stage of economic development* achieved" (Alston 1981, 51 [emphasis added]). As Alston points out, "a country with a relatively high GNP per capita and thus at an advanced stage of economic development, but which persists in growth-at-all-costs approach, will not satisfy the poorer segments of the community" (1981, 51). The next section of this chapter looks into the development-human rights trade-off debate in greater detail. For the moment, suffice to say that there were competing views on the acceptability of the human rights sacrifices to be made at any stage of a country's economic development—including the question whether CP rights should be given *immediate* effect at any such stage, whether they should be *postponed* until a country had reached a sufficient or satisfactory level of development and ESC rights given priority in the meantime, or about the balance to be established between these two diametrically opposed views.

3.1.5 The dispute over the scope and content of ESC rights

A fifth point of controversy in the UNCHR debate of 1968 concerned the scope and content of CP rights as compared to ESC rights. Some representatives expressed the view that whereas the scope and content of CP rights was clear, ESC rights were for the most part vague and imprecise. While this point of controversy has no clear relevance to the subject matter of this study, it is closely connected to the claimed dichotomy between the kinds of obligation (i.e. positive or negative) to be assumed by the state with respect to each category of right. As Canadian legal scholars Craig Scott and Patrick Macklem remark,

> Although the argument about imprecision is, in theory, independent of whether or not the right is felt to be negative or positive, this probably concedes too much, at least in respect of the strongest critics of social rights, as being anything but positive. Thus, the imprecision argument is often bound up in the claim that social rights are imprecise. For instance, a lack of precision may be thought to inhere in the very nature of social rights because violations of social rights are not amenable to immediate rectification, unlike civil and political rights that, it is thought, simply require the state to stop its interference. (Scott and Macklem 1992, 45)

Although this observation was made in the context of a debate over the explicit incorporation of social rights into the future constitution of South Africa, it points to an important conceptual aspect of the debate: the preciseness of the obligations is connected to immediacy, which in turn is correlated with negative rights and remedies for violation of those rights that take the shape, in its most basic form, of "stopping what you have been doing". In short, "the obligation of immediate

non-interference seems more precise because the suspect act itself defines the zone of immediate prohibition carved out by the right. Thus courts do not have to look into what the government has clearly and observably already done" (Scott and Macklem 1992, 45).

Eugeniusz Wyzner of Poland opposed the argument that economic and social rights suffered from a lack of definition and were therefore not capable of being judicially enforced by the courts. From his point of view many CP rights were also vague and imprecise, which did not prevent them from being liable to trial in a court of justice:

> Another argument employed by jurists was that rights which were still in the process of formation could not be included in a country's constitution. It was true that economic, social and cultural rights were in a state of dynamic growth, but the same was happening with civil and political rights, and yet that was not an obstacle to raising them to the level of legal norms, particularly in view of their importance for the development of the individual. (E/CN.4/SR.981, 136 (1968))

The argument raised by the Polish representative may be more fruitfully understood with some examples. The scope of the right to liberty or the substance of the right to freedom of speech and expression are, for instance, "things ascertained over time by judicial jurisprudence; once interpreted and clarified, these norms are no longer considered vague and imprecise" (Trispiotis 2010, 2). As Scott and Macklem observe, although some social rights are extremely imprecise, "historical, ideological, and philosophical exclusions of social rights from adjudicative experience have resulted in a failure to accumulate experience that would render the imprecision of social rights less and less as time goes on" (1992, 73). In other words, precision *will be gained* through the accumulation of adjudicative experience *once* ESC rights are raised "to the level of legal norms" and courts are rendered responsible for interpreting them. From this perspective, the logic of the argument is reversed: ESC rights are not excluded from adjudicative experience because they are vague and imprecise; they are vague and imprecise because they are excluded from adjudicative experience. The whole point here is that representatives among the Group of Eastern European countries were arguing strongly for this kind of perspective to be adopted by the UNCHR and applied to the question of the realization of ESC rights. While they were looking for support among developing country representatives, the latter did not necessarily share their views.

3.1.6 The dispute over the nexus between development and human rights

A seventh point of controversy emerged on the margins of the UNCHR debate of 1968 over the nature of the relationship between development and ESC rights: were they competing or complementary concerns? This point of controversy was only peripheral to the extent that very few statements were made in this regard, and gave rise to no resolution. The question as to whether ESC rights could be realized below a certain threshold of development and the priority to be estab-

lished to those rights in relation to the pace of economic development were nonetheless raised during the debate. Many representatives sustained the view that ESC rights were in general terms conterminous with the broad aspiration to development itself. What is more, consideration of the relationship between economic development and ESC rights necessarily leads to an examination of the relationship of those rights with CP rights in relation to development. In this regard, a few representatives argued that CP rights were preconditions to development while others expressed the view that CP rights and economic development were complementary concerns and yet others saw them as competing concerns.

The point is that the idea that one or both categories of rights were complementary to development was an important departure from arguments that had been advanced at the UN by mainstream development economists and planners about the necessity to accept a certain level of poverty, of socio-economic inequalities, to get rid of traditions and old mentalities, or to sacrifice certain liberties (or a mixture of those four) in order to accelerate the rate of economic growth in developing countries. Contrary to the perspective that had dominated UN development thinking and practice for most of the 1960s, some representatives of states members of the UNCHR began to argue that some, if not all of these trade-offs were politically, economically and socially unacceptable. More precisely, they ran counter to the kind of development they had envisioned for their country and people. In this context, the two-sided argument that individual development was intimately linked to national development and depended on the enjoyment of one or both categories of rights proved a powerful rhetorical tool of conceptual rapprochement between development and human rights at the UNCHR.

Before going any further, it is significant to note that the expression "the full development of the human personality," contained in Article 26 of the UDHR and Article 13 of the ICESCR, is closely connected to the right to education. In turn, it was becoming widely acknowledged that the human resources of a nation, as opposed to its capital or natural resources, ultimately determined the character and pace of its economic and social development. As American labour economist Frederick Harbison wrote only a few years later,

> Human resources […] constitute the ultimate basis for the wealth of nations. Capital and natural resources are passive factors of production; human beings are the active agents who accumulate capital, exploit natural resources, build social, economic and political organizations, and carry forward national development. Clearly, a country which is unable to develop the skills and knowledge of its people and to utilize them effectively in the national economy will be unable to develop anything else. (Harbison 1973, 3)

Accordingly, education became presented as the principal institutional mechanism for developing human skills and knowledge. More broadly, the stress laid on the individual dimension of development may also be understood in the context of the UN debate over the development objectives—that is the shift from a goods-centred to a human-centred conception of development, from an equation of national development with economic growth to one that encompasses social

objectives, including but not limited to the realization of higher standard of living for all and social advancement.

In this regard, it is interesting to note how some representatives emphasized the relationship between the individual dimension of development and the enjoyment of human rights while others drew attention to ESC rights exclusively. For instance, after expressing the appreciation of his delegation "of the fact that the Commission had included in its agenda the item on economic, social and cultural rights," Nedbailo argued that "the legislation of many countries, the legal literature on the subject and the work of international organizations provided evidence of the fact that such rights influenced the development of the individual" (E/CN.4/SR.981, 142 (1968)). For his part, Andrés Aguilar of Venezuela

> endorsed the initiative taken by the Commission which had enabled it to deal with economic and social rights, but with no implication that those rights should enjoy priority over civil and political rights, since both the later and the former were essential to the full development of the personality of a human being. (E/CN.4/SR.983, 162 (1968))

Similarly, the Malagasy representative, speaking in explanation of vote, said "his delegation had consistently held that the full development of the human personality was dependent upon the full enjoyment of human rights and, consequently that any obstacle to such enjoyment was an obstacle to development" (E/CN.4/SR.984, 175 (1968)). What is the nature of the controversy between those emphasizing ESC rights solely and those emphasizing both categories of rights?

In a way, it could be argued that underlying the arguments advanced by developing country representatives was often a belief that a rapid expansion of educational opportunities was not only essential to the full development of the personality of individual human beings but also key to achieve national development objectives. Contrary to representatives of members among the Group of Eastern European States, however, they believed that the enjoyment of CP rights was equally necessary to translate national development into social progress and better living standards. In other words, development was a two-way dynamic process, which required the enjoyment of both categories of rights.

This aspect is well reflected in the arguments advanced by Bosco Parra of Chile during the debate. Bosco thus argued, "the exercise of political rights [in developing countries] depended on the existence of a certain minimum level of economic and social rights" (E/CN.4/SR.983, 161 (1968)). This interdependence, he continued, could be illustrated by the following example:

> If a capitalist country, at a relatively low level of development, were to receive international assistance, it would undoubtedly increase its gross national product as reflected in world statistics, but it was not hazardous to assume that at the national level it would not give the people a much higher standard of living than they had enjoyed before, because unless there were organized trade unions to redress the balance of power in favour of minority groups, the additional funds would be spent on consumer goods and not invested in capital goods. Indeed, even if the funds were spent to establish new industries, the latter would most probably produce luxury goods which would not contribute to national development.

> On the other hand, if the right to organize trade unions was fully guaranteed in that hypothetical capitalist country, there would be a gradual development capable of conferring greater economic and social benefits on its citizens. (E/CN.4/SR.983, 161 (1968))

The Chilean representative thus raised a number of interesting arguments with respect to the subject matter, some of which echoed the emerging rhetoric of the international-dependence revolution in UN development thinking and practice.

As Michael Todaro and Stephen Smith remark, the international-dependence models gained increasing support during the late 1960s and 1970s, "especially among developing-country intellectuals, as a result of growing disenchantment with both the stages and structural changes models" of development (2003, 123). An important point is that "international-dependence models viewed developing countries as beset by institutional, political, and economic rigidities both domestic and international, and caught up in a dependence and dominance relationship with rich countries" (Todaro and Smith 2003, 123). Such perspective on the problems relating to the development of developing and underdeveloped countries was particularly en vogue among Latin American economists (the so-called *dependentistas*) and UN economists working at the Economic Commission for Latin America (ECLA).

One argument reminiscent of the rhetoric of international dependence is found in the idea, expressed by Bosco Parra, that international assistance may not directly translate into the realization of the national development objectives of a country, because "even if the funds were spent to establish new industries, the latter would most probably produce luxury goods" destined to the rich countries or to certain groups of privileged individuals in the developing countries which already enjoyed high standard of living (E/CN.4/SR.983, 161 (1968)). Here, the "the existence and continuance of underdevelopment [is attributed] primarily to the historical evolution of a highly unequal international capitalist system of rich country-poor country relationships" (Todaro and Smith 2003, 124), where the economy of poor countries is determined by the demands of rich countries. Whether or not the situation is the result of intent or neglect on the part of rich countries, the point is that poor countries are caught in an international economic system of unequal power relationships, which "renders attempts by poor nations to be self-reliant and independent difficult and sometimes even impossible" (Todaro and Smith 2003, 124).

Bosco Parra's arguments also strongly resonates with the internal component of the solution advocated by Latin American dependency theorists in the late 1960s to curb the problem of unequal development between the "core" and the "periphery", who highlighted socialist revolution as a means to this end. Their arguments could be summarized as follows:

> Certain groups in the developing countries [...] who enjoy high incomes, social status, and political power constitute a small elite ruling class whose principal interest, knowingly or not, is in the perpetuation of the international capitalist system of inequality and conformity by which they are rewarded. Directly and indirectly, they serve (are dominated by) and are rewarded by (are dependent on) international special-interest power groups including multinational corporations, national bilateral-aid agencies, and multilateral assistance organizations like the World Bank or the International Monetary Fund (IMF), which are tied by allegiance or funding to the wealthy capitalist

> countries. The elites' activities and viewpoints often serve to inhibit any genuine reform efforts that might benefit the wider population and in some cases actually lead to even lower levels of living and to the perpetuation of underdevelopment. (Todaro and Smith 2003, 124)

From Bosco Parra's point of view, national development was not to be understood in individual terms, as increased economic power for a few people (i.e. the elite), but rather in class terms, as the attainment of higher standard of living and social advancement for the people as a whole.

For economic growth to translate into national development thus understood, developing nations must be freed from both their foreign and domestic oppressors, for which a minimum of CP rights and ESC rights are required. In other words, for Bosco, economic democracy is the means to attain the objectives of national development while the lack of it is understood as the underlying cause of underdevelopment—understood in terms of poverty and inequalities (the counter-concepts of "higher standard of living"). At the same time, the very possibility of political independence and self-determination is conditioned upon a certain level of economic democracy (for which the right to form trade union is seen as essential), both of which a required for national development. Without economic democracy, elections may be turned into mere instruments of status quo, legitimising ever-increasing living standards for the wealthy minority at the expense of that of the poor majority. In other words, effective participation in the electoral process as a component of political independence and self-determination can only contribute to national development if the masses (here understood as the working classes) have been empowered through economic and social rights of a participatory nature.

Ultimately, however, the argument goes both ways: individual development requires adequate enjoyment of economic, social, political and cultural rights and ensuring a minimum in any one of these contributes to maintain or further the enjoyment of the others. Going back to the previous discussion about the causes of famines, for instance, it could be argued that "the right to food is unlikely to be enjoyed on any sustained basis without political power, protected by respect for political rights" (Alston 1981, 52). Insofar as poverty reflects a relationship between peoples and between socio-economic groups within a country, the attainment of a higher standard of living "requires more than the injection of funds which will bring all individuals up to subsistence level in terms of specific commodities" (Alston 1981, 52). Thus, the objective of development "must be seen not merely in terms of feeding, clothing and sheltering each individual today and perhaps tomorrow, but in terms of an endeavour to enable all people to ensure their well-being in the years to come" (ibid.), for which economic democracy is required.

Another aspect of the controversy on the relationship between development and human rights concerned the determination of priorities when resources were insufficient and the issue of participation (i.e. who is to determine the order of priorities). In broad lines, it was argued that in some cases, particularly in developing countries, the limited resources available and other factors, such as admin-

istrative problems and the scarcity of qualified manpower, often made it advisable to establish priorities appropriate to the social and economic conditions and circumstances of the country concerned. In this regard, Jean Dominique Paolini of France argued, "criteria for priority should be compatible with the nature of the rights it was sought to implement" (E/CN.4/SR.981, 137 (1968)). He continued, "those concerned should be able to participate in the establishment of priorities, with the assurance that those priorities would be scrupulously observed. Similarly, it was essential to set up an adequate supervisory system to ensure that the organs which were to apply the priorities did so faithfully" (E/CN.4/SR.981, 137 (1968)). In short, priorities should not be dictated and the "urgency" of the problems should not legitimize the adoption of undemocratic procedures.

The latter argument draws attention to the increasing recognition among human rights scholars and practitioners as well as policy-makers of the special problems relating to economic and social planning and the coordination of economic and social development for the realization of ESC rights in developing countries. On the one hand, it was increasingly acknowledged that the kind of development policy found necessary in order to achieve progress in the realization of ESC rights could hardly be undertaken and pursued without an extensive degree of national programming or planning adjusted to the particular needs and circumstances of each country (E/CN.4/988, 17 (1969)). To be sure, the concept of planning, which had been broadly introduced and utilized during the Second World War, was widely accepted both within and outside the UN at that time, but its applications varied greatly from country to country, most notably between those on the two sides of the Cold War. [9] On the other, there was a slowly growing awareness of the potential threat posed by particular forms of development planning to human rights in general and CP rights in particular.

While the French representative emphasized the importance of participation, of the *process* over the *outcome*, others expressed the view that priority should be accorded to those rights directly linked to the right to life and human dignity. For some, that meant CP rights. For others, it meant ESC rights. For yet others, the very question of priority had no meaning since all human rights were necessary to protect human dignity. It that context, some representatives argued that, in an effort to give immediate effect to human rights guarantees inasmuch as they related to the many millions living in absolute poverty, it was necessary to give priority to a small core of subsistence or welfare rights. In other words, there were some basic standards of living that should never be sacrificed and thus given absolute priority (over CP rights). Evgeny Nasinovsky of the USSR, for instance, emphasized the importance of implementing economic and social rights and their relationship with the effective enjoyment of CP rights because "such enjoyment presupposed minimum conditions of subsistence"

9 Economist Arthur Lewis, one of the authors of the UN's report on *Measures for the economic Development of Under-Developed Countries* (UN, 1951), had previously distinguished between "planning by the market" from "planning by direction". The latter he associated with Soviet-style physical planning, while the former was the method he favoured. (Toye and Toye 2004, 106)

(E/CN.4/SR.983, 163 (1968)). He added, "the basic problem consisted in the abolition of the exploitation of man by man and the removal of economic inequalities both on the national and international level" (ibid.). What is noteworthy in this regard is the attempt made by the USSR representative to give priority to the realization of ESC rights in developing countries by emphasizing the importance of satisfying at least "subsistence" rights.

Similarly, Manouchehr Ganji of Iran argued that his country "was fully aware that civil and political rights were *meaningless* unless they were accompanied by the essential economic, social and cultural rights, and fortunately, because of its mineral and other resources, it had been able to devote sufficient attention to the latter rights by carrying out agrarian, administrative, educational and health reforms" (E/CN.4/SR.981, 138 (1968)) [emphasis added]. The rhetorical move found in Ganji's speech is of particular interest in the context of the present study. On the one hand, CP rights are redescribed as "meaningless"—they only gain meaning through their association with ESC rights. This argument echoes the ones set forth by representatives of members among the Group of Eastern European States, who considered that CP rights were inseparable from ESC rights akin to relationship between the "superstructure" and the "base" in Marxist theory. These arguments have already been discussed in this chapter and need not be elaborated any further. The point, however, is that this rhetoric was not deployed to legitimize the socialist ideal of a good society advanced by the USSR and other soviet representatives, but the Iranian one–similarly carried through, it should be pointed out, a programme of authoritarian modernization. To be precise, the Iranian White Revolution—with both its repressive policies and economic and social reforms—was advanced as an alternative model of development providing the necessary conditions for the realization of ESC rights in the developing countries. Indeed, the Iranian White Revolution represented at the time "one of the most dramatic efforts to modernize among the less-developed countries" (Bill 1970, 20).

On the other, and this is where his argument gets more interesting, Ganji alluded to the resources required for carrying the reforms needed for the realization of ESC rights, hinting that contrary to other countries Iran had "fortunately" enough "mineral and other resources" to carry out the reforms necessary for the realization of ESC rights. He added, "development presented a complex problem, in that the primary responsibility for it lay with the government concerned, but the international community also had responsibilities under Articles 55 and 56 of the Charter" (E/CN.4/SR.981, 138 (1968)). The Iranian representative similarly remarked upon the incompleteness of the reference to article 22 of the UDHR in the seventh preambular paragraph of the draft resolution, which stressed only the part relating to national efforts and resources in the implementation ESC rights, "when it was international responsibility which should be emphasized" (E/CN.4/SR.981, 139 (1968)). Interesting here is the attempt to shift the emphasis on diagnosis and prognosis about the question of the realization of ESC from national to international obstacles and responsibilities. The problem is not anymore conceptualized primarily in terms of domestic policies but as a matter of

international policies: the lack of success of developing countries in the realization of ESC rights is attributed to a lack of resources for their realization, i.e. to the condition of being undeveloped. Only once these countries will have their fair share of the world's resources, may they be able to undergo the radical reforms necessary for the realization of those rights. From this perspective, priority must be given to international measures and actions over national ones.

While the UNCHR debate of 1968 centred for the most part on the question of the national dimensions of responsibility and implementation, Ganji was one, if not perhaps the only representative who explicitly attempted to shift the focus to questions of international assistance and cooperation. To be sure, the Chilean representative implicitly mentioned this issue, nothing more. In that context, the Iranian representative drew attention to the study prepared by José Figueres on the economic foundations of human rights for the upcoming International Conference on Human Rights, in particular chapters IV and V, which set out, among others, the international obstacles to progress in the developing countries for which solution had to be found. He then quoted from a book authored by the Shah of Iran, *The White Revolution* (1967), and argued "all nations were interdependent, and it was therefore essential to analyse the ever-widening gap between the developed and developing countries, in respect of both material and educational resources, with a view to finding a remedy" (E/CN.4/SR.981, 138 (1968)). Two observations about this passage are worth making: emphasis is put on the international dimension of economic inequalities and the argument of "interdependence" echoes the rhetoric of dependency theory—also used by the Chilean representative during the debate, as briefly discussed earlier in this chapter.

The point is that by emphasizing external obstacles to the realization of ESC rights, and by presenting these rights as a precondition for the enjoyment of CP rights, Ganji implicitly shifted the blame for political repression (as a means of political stability) away from his government—and to some extent also those of less developed countries with a similarly authoritarian regime—to the international community. In the case of Iran, while the modernization efforts carried under the label of the White Revolution by the dictatorial monarchy of the Shah (who crowned himself Emperor of Iran in 1967) contributed a great deal to the economic and social development of the country, they also created their own problems. In particular, as James Bill argues in a study of the Iranian White Revolution published in 1970, the traditional socio-political system in Iran "was able to structure conflict and balance tension" (1970, 25). He explains,

> The personal web of patterned rivalry was spun so complexly that threatening individuals or groups could be sensed on many fronts and easily chocked off. Such a system could absorb invasion and violence and yet maintain the fundamental patterns. It could also absorb economic growth and accelerating wealth. (Bill 1970, 25)

The modernization of Iran, however, brought about a set of new forces that begin to challenge this socio-political system. These new forces included "the professional-bureaucratic intelligentsia," a new, professional class largely alienated and

from which emanated a strong demand for transformation of the traditional system. In particular, “the two great opposition movements, namely, the Communist Tudah Party and the National Front, [were] organized, led, and for the most part manned, by key segments of the professional class.” (Bill 1970, 27)

At the same time, the strongest religious and political forces behind the 1979 Iranian Islamic Revolution, which overthrow over 2,500 years of continuous Persian monarchy, were gathering strength in those years. The White Revolution in Iran was by and large launched in 1963 to counter that opposition by building and strengthening those classes that supported the traditional system, especially the peasants. On 10 April 1965, the Shah was the target of an assassination attempt. Then, “in the spring of 1967 and again in 1968, students [at various] universities massed and demonstrated against their administration over [a set of] issues,” but, as Bill remarks, “politico-ideological considerations were the key irritants” (1970, 29). The Shah grew increasingly fearful of opposition and concerned about the stability of his rule and, already wielding considerable power over the government, limited political freedom accordingly.

The arguments advanced by Abram of the United States in reply to the comments advanced by Ganji on the study prepared by José Figueres must be understood in the light of those facts. After expressing agreement with the conclusion reached by Figueres on the relationship between population growth and the difficulty “to achieve general well-being throughout the world”, Abram pursued

> That fact made it all the more obvious that the achievement of that well-being required not only justice for all men but also an abundance of resources. Mr. Figueres pointed out that political instability was one of the main obstacles in the way of development and wondered whether that was not in turn a result of the other difficulties faced by the developing countries. (E/CN.4/SR.981, 141 (1968))

Abram most certainly understood perfectly well that the rhetorical move made by Ganji was formulated as an attempt to move the bulk of the debate away from questions of respect for CP rights in the implementation of national reforms and development plans or policies deemed necessary for the enjoyment of ESC rights. In this regard, it is noteworthy that apologists of regimes that systematically restricted civil liberties and political freedoms often relied upon the argument that political stability was a requirement for rapid economic growth. This particular line of argument is discussed in detail below. For now, suffice to say that the fact that the close (military) ties between Mohammad Reza Shah Pahlavi and the United States—Iran was, among others, one of US’s largest purchasers of arms at the time—may partly explain why Abram was reluctant to push the issue of the relationship between CP rights and economic development any further during the UNCHR of 1968.

While the controversy on the relationship between human rights and development was a rather marginal part of the UNCHR debate of 1968, African, Asian and Soviet diplomats made sure to bring it to the forefront of the debate at the International Conference on Human Rights, which took place a few weeks later in Teheran, Iran (hereafter Teheran Conference). Although this study is primarily concerned with UNCHR debates, the Teheran Conference is a necessary

step in order to interpret the shift in the horizon of possibilities that occurred between the UNCHR debates of 1968 and 1969.

3.2 The Teheran Conference of 1968 and the rhetoric of indivisibility

Less than a month after the UNCHR debate of 1968, an important event took place that would play a significant role in drawing the attention of the UNCHR to the problem of the relationship between development and human rights in UN practice, programmes and policies, namely the International Conference on Human Rights. In that respect, the statement contained in paragraph 13 of the Proclamation of Teheran, a document adopted by consensus by the 120 representatives of states present at the Conference and subsequently endorsed by the UNGA in its resolution 2442 (XXIII) of 19 December 1968 (A/RES/2442(XXIII) (1968)), is of particular interest:

> Since human rights and fundamental freedoms are indivisible, the full realization of economic, social and cultural rights is impossible. The achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of social and economic development. (A/CONF.32/41, 4 (1968))

As Daniel Whelan argues in a study of indivisibility as postcolonial revisionism, paragraph 13 of the Proclamation of Teheran must be read "in tandem" with paragraph 12 (2010, 148—149). The latter reads as follows:

> The widening gap between the economically developed and developing countries impedes the realization of human rights in the international community. The failure of the Development Decade to reach its modest objective makes it all the more imperative for every nation, according to its capacities, to make the maximum possible effort to close this gap. (A/CONF.32/41, 4 (1968))

Paragraph 12 establishes the problem upon which the notion of the indivisibility of human rights and fundamental freedoms is presented as the conceptual foundation for the solution advanced in paragraph 13. The concept of indivisibility is associated with two important arguments that will have lasting consequences for subsequent human rights debates at the UN: on the one hand is the argument that "the realization of civil and political rights without the realization of economic, social and cultural rights is *impossible*"; on the other is the argument that "links the priority of economic, social and cultural rights with development—that the implementation of human rights is dependent upon sound and effective national and international development policies" (Whelan 2010, 149).

The Teheran Conference not only affirms the existence of a link between social and economic development and the implementation of human rights and fundamental freedoms but also that these rights and freedoms cannot be achieved below a minimum threshold of development. The latter argument is

emphasized in Conference resolution XVII on Economic Development and Human Rights, which states that "the enjoyment of economic and social rights is inherently linked with any meaningful enjoyment of civil and political rights and that there is a profound inter-connexion between the realization of human rights and economic development"; notes "with deep concern the ever widening gap between the standards of living of the economically developed and developing countries"; and recognizes "that universal enjoyment of human rights and fundamental freedoms would remain a pious hope unless the international community succeeds in narrowing this gap" (A/CONF.32/41, 14 (1968)). More importantly, resolution XVII recognizes "the collective responsibility of the international community to ensure the attainment of the minimum standard of living necessary for the enjoyment of human rights and fundamental freedoms by all persons throughout the world" (ibid.). The resolution then calls upon the developed countries, the developing countries, and the international community as a whole, to take a number of actions with respect to economic and social development to contribute to the universal realization of human rights and fundamental freedoms.

Before going any further, it should be pointed out that the official records of the sessions of the Teheran Conference are, as Burke rightly remarks, "scarce and hard to obtain, making even the most elementary archival research challenging" (2008, 276). The arguments presented in this section therefore largely rely on secondary sources. The Teheran Conference also took place in a very different setting from the annual sessions of the UNCHR, which is therefore worth remarking upon. In that regard, the words uttered by UN Secretary-General U Thant in his opening address to the Conference are telling:

> It was undoubtedly useful to depart from the routine succession of United Nations meetings on human rights for the purpose of a detached stock-taking and long-term planning. It was important to call on Governments to send specially qualified persons, including some of those who have participated in United Nations activities, as well as many who were active in the field of human rights outside the United Nations framework, in a great confrontation of cultures, historical traditions, political conceptions, religious and philosophical outlooks. A review of the situation as regards human rights in the world, if conducted in a constructive spirit designed to lead future international cooperation, may undoubtedly contribute to a better understanding of the tasks ahead. (A/CONF.32/41, 36 (1968))

In Teheran, the representatives of eighty-three countries assembled in the new Majlis building, which normally housed the two authorized parliamentary parties created by Mohammad Reza Shah Pahlavi in the late 1950s. Officially named the New Iran and Merdom parties, they were widely redescribed among the population as the "Yes" and "Of course" parties (Ganji 2002, xxv). As Roland Burke remarks, in one of the most insightful and detailed studies of the Teheran Conference debates and proceedings, accommodation was luxurious, which was in itself "an ironic endorsement of the shah's contention that economic development was more important than political freedom" (2010, 96).

In that regard, it is noteworthy that the security of the representatives to the Teheran Conference was ensured by the SAVAK (the secret police, domestic security and intelligence agency established by Mohammad Reza Shah Pahlavi with the help of the US Central Intelligence Agency and Israel), which had a reputation for torture. It is also noteworthy that press freedoms had been severely limited in Iran at the time. Asadollah Alam, one of the Shah's most trusted friends and confidant, recalls that the Shah came to conceive of "the idea of democratic participation in the political decision-making process" as unbearable and "the prospect that someone else might gain a degree of popularity" most intolerable (1991, 8). He added, "Given the Shah's sensitivity to the success of his own appointees, it is hardly surprising that he regarded the prospect of popular, and possibly successful, leaders elected through democratic processes as intolerable. As years went by, so the mere word 'democracy' came to produce an allergic response in him." (Alam 1991, 8-9)

The Teheran Conference was convened to review the progress which had been made in the field of human rights since the adoption of the UDHR as well as to evaluate the methods used by the UN, with particular regard to questions of racial discrimination and the policy of apartheid, and to prepare a programme for future action in that field (see A/RES/2081(XX) (1965)). According to Burke, although the Teheran Conference was "convened to commemorate the twentieth anniversary of the Universal Declaration, [it] would symbolize instead the diminished status of that document and the declining respect for traditional human rights [i.e. CP rights] across the developing world" (2010, 92-93). Whether or not one agrees with him, the fact remains that the Teheran Conference marked an important shift in the attitude and strategy of the developing world vis-à-vis international human rights—at least when compared to the one they had adopted at the Bandung Conference in 1955:

> A Third World whose delegates had once embraced the Universal Declaration now questioned its legitimacy. Concern for the individual rights was virtually obliterated by a preoccupation with collective goals like development and national liberation. Consensus about the balance of political and social rights was increasingly replaced by formulations that asserted the primacy of economic development. Bitter anti-imperialistic rhetoric dominated a majority of the sessions. Double standards and selectivity, which had been cautioned against at Bandung, began to threaten the credibility of the UN program. (Burke 2010, 94)

It might be important to point out at this stage that the "Third World" r "developing world" spoken of here consists mainly of representatives of African and Asian states, for an important "number of Latin American states ignored Teheran completely" (Burke 2010, 93).

Most striking is that the representatives of Western bloc offered little opposition to this radical redefinition of the international human rights agenda. Only two representatives, René Cassin of France and Rudolph Bystricky of Czechoslovakia, made serious explicit statements challenging this general redescription of human rights (Burke 2010, 106). The reasons behind this lack of opposition to the Afro-Asian bloc varied between outright scepticism about the value of individual rights in developing countries to a lack of concern or priority accorded to human

rights in the foreign policy of the Western powers attending the conference. Cold War politics at the UN meant that the United States, in particular, was often willing to concede to Third World countries on the human rights questions in exchange for their support in matters of international security or to secure military alliances (Burke 2008, 278).

It this peculiar setting, the concept of indivisibility emerged as a powerful rhetorical tool in the hands of authoritarian regimes, which represented more than two-thirds of the countries attending the Teheran Conference, to move attention away from questions of democratic freedoms and civil liberties to problems of ESC rights and national development. A quick glance at the lists of subjects addressed by the resolutions adopted by the Teheran Conference conveys a strong sense that Afro-Asian concerns and priorities dominated the debates. As Whelan argues, out of twenty-nine resolutions, "seven dealt with the issue of racial discrimination and apartheid", eight with "economic and social issues," and the remaining ones concerned "self-determination and decolonization, armed conflicts, disarmament, legal aid, science and technology and human rights, and a variety procedural issues" (2010, 146). In fact, only one resolution concerned specific CP rights, namely Resolution XIV on the rights of detained persons (A/CONF.32/41, 13 (1968)).

While Burke (2008 and 2010) and Whelan (2010) both emphasize in their studies how the Teheran Conference provided the rhetoric upon which the main priorities on the international human rights agenda shifted away from questions of individual rights towards a greater emphasis on questions of ESC rights and national and international development, the remaining part of this chapter interprets how this rhetoric travelled together with the text of the instruments adopted by the Teheran Conference into the UNCHR debate of 1969. The Chapter thus uncovers the twofold purpose served by the rhetoric of indivisibility in that debate: to liberate space in the UNCHR debate by providing a ready-made answer to the age-old theoretical-aka-ideological dispute between the West and the East about the relationship between CP rights and ESC rights, which was then filled with the problem of the relationship between human rights and development. The rhetoric adopted by state representatives at the Teheran Conference thus a powerful means to silence theoretical disagreements about the relationship between different categories of human rights, which had plagued the UNCHR debate of 1968. This left more room to debate the concerns and priorities which had been advanced by developing country representatives but given only marginal attention in 1968, particularly the question of the relationship between human rights and development.

In this regard, it is interesting to note that while the question of the special problems of developing countries should have been addressed with respect to human rights matters in their entirety, thus including both CP rights and ESC rights, a number of developing countries spoke primarily if not exclusively of problems pertaining to the latter category of rights. The question of the implementation of CP rights only survived in the debate in the form of a controversy over the necessity and desirability to sacrifice democracy—or some aspects of

it—at the altar of development. As opposed to what transpires from the Teheran Conference, however, some developing country representatives at the UNCHR were genuinely concerned about the need to redescribe the concept of development at the UN so as to reconcile national and international development plans, programmes and policies with the democratic aspirations of their country and people—most notably the Chilean representative, Hernán Santa Cruz.

3.3 The UNCHR debate of 1969 as a turning point: the development-human rights nexus takes centre-stage

Very early in the UNCHR debate of 1969, it was pointed out by the representative of Pax Romana (a Catholic non-governmental organization in consultative status) that care should be taken to avoid the danger of basing development policy too exclusively on economic aspects and considering human beings as no more than means of production. The measures taken within the framework of national development plans, he argued, should not ignore the human factors properly speaking. In that respect, he made reference to the Papal Encyclical *Populorum progressio*, according to which the full development of man, in the dignity of his person and respect for his fundamental freedoms, should be the final objective of any socio-economic development policy. In sum, the human rights of the individual should not be neglected at the cost of the economic development of the nation. Higher living standards and social advancement of individual human beings rather than economic power should be the ultimate objective of national development. In order to avoid this misdirected form of development "geared too exclusively to economic aspects" (E/CN.4/SR.1021, 102 (1969)), the concept of development should be broadened to include human rights.

The kind of development policy, described as "geared too exclusively to economic aspects" (E/CN.4/SR.1021, 102 (1969)) and criticized by the representative of Pax Romana, was nonetheless a generally and widely accepted one among development economists and planners at the time. Here, development was thought as a one-dimensional concept (purely economic growth),

> a process by which a state reaches the position were it can provide for its own growth without relying on special arrangements for the transfer of resources from other and richer countries—where its growth, in short, becomes self-sustaining on a reasonable level and may enable it, through its own efforts, to secure the benefits of industrial and technological progress for its people. (Pearson 1970, 7)

This conception of development was reflected in the UN Decade for Development, launched by the UNGA in 1961, which called all member states to "intensify their effort to mobilize and to sustain support for the measures required on the part of both developed and developing countries to accelerate progress towards *self-sustaining economic growth* of the individual nations and their social advancement *so as to attain in each under-developed country a substantial increase in*

the rate of growth" (A/RES/1710(XVI), Article 1 (1961) [emphasis added]). As politician, diplomat and former Canadian Prime Minister Lester B. Pearson observes, "at the core of this kind of development is the effort to increase productivity and make it more efficient" (1970, 7). In order to gain a deeper insight into this particular conception of development, we shall leave the UNCHR debate of 1969 for a brief moment and turn to a consideration of the politics and rhetoric of modernization theory, which underpinned the establishment of the 1960s as the UN Decade for Development.

In a speech delivered to the General Assembly on 25 September 1961, President John F. Kennedy proposed that the 1960s should become a United Nations Decade for Development (A/PV.1013, 72-73 (1961)). In fact, there was nothing much new in the set of ideas advanced by Kennedy under the banner of the "UN Decade for Development," which echoed in many ways the tenets of modernization theory. Indeed, throughout most of the 1950s, modernization provided the main conceptual lenses through which the development of the less developed countries was seen in international relations. Spreading beyond the narrow confines of previous models of economic development, the advocates of modernization argued from a reading of economic history that whole societies could be transformed to resemble the most modern then existing, including the US, under certain social and political conditions. On 6 October 1961, Philip M. Klutznick of the United States outlined the US proposal in detail in the Second Committee of the UNGA. The rhetoric of modernization theory was evident in his speech:

> During the United Nations Decade of Development […] it was necessary to capture the rich experience of the industrialized countries and devise effective means of accelerating sound industrial development in the less developed countries. (A/C.2/SR.718, 12 (1961))

Following a recommendation of the Second Committee, the US proposal was adopted by the UNGA as resolution 1710 (XVI) on 19 December 1961. As David Owen, then Executive Chairman of the Technical Assistance Board, remarks, "There was probably nothing very new in the Decade for Development. It was, however, a useful way of projecting an idea and giving it dramatic appeal. It set measurable targets and provided something attainable to strive towards" (Owen 1962, 101). More than anything else, therefore, the UN Decade for Development provided an unprecedented political momentum to strengthen and intensify the role of the UN in an emerging field of international politics, namely international development assistance and cooperation. As the Decade was ending, however, the high hopes and expectations ceded way to bitter feelings and criticism.

The critiques accompanying the intensification of UN activities in the emerging field of international development assistance and cooperation, however, cannot be understood outside of the setting, events and arguments that brought modernization theory and a preference for multilateralism to the fore of US foreign aid policy. As John Toye and Richard Toye argue, in a remarkable study of *The UN and Global Political Economy* published in the UNIHP Series, the

Cold War "opened an escalating competition between the superpowers for influence in those parts of the world defined by negative prefixes—the undeveloped and the unaligned" (2004, 180). They added,

> To keep such countries balanced between the competing centres of geopolitical attraction, the United States had to find ways of offering a new form of economic cooperation and legitimating its use. This was the political function that modernization theory was made to perform. (Toye and Toye 2004, 180)

This interpretation is supported by the views expressed on the political implications of modernization theory by one of its chief creators and exponents, author of *The Stages of Economic growth: A Non-Communist Manifesto* (1960)—in which is outlined one of the major historical models of economic growth—American economist and political theorist Walt Whitman Rostow (1916—2003). In *The Stages of Economic Growth*, Rostow argues that if the developing countries were provided enough capital to achieve rapid economic growth and reach the "take-off stage," or self-sustaining growth, they would embrace the American way of capitalism and democracy rather than Communism. In another book published in 1964 and written during his time as chairman of the US Policy Planning Council, Rostow argues

> The process of modernization involves radical change not merely in the economy of underdeveloped nations but in their social structures and political life. We live, quite literally, in a revolutionary time. We must expect over the next decade turbulence in these areas; we must expect systematic efforts by the Communists to exploit this turbulence. (Rostow 1964, 22)

In the light of that, it is highly interesting to note that it was Rostow who initially encouraged Kennedy to make the 1960s the "economic development decade" in a memorandum to the President dated 13 March 1961 (Rostow 1972, 647, n.3).[10] Rostow's ideas highly influenced the contents of the special message to Congress on foreign aid delivered by President Kennedy on 22 March 1961, as reflected in the following passage:

> In short we have not only obligations to fulfill, we have great opportunities to realize. We are, I am convinced, on the threshold of a truly united and major effort by the free industrialized nations to assist the less-developed nations on a long-term basis. Many of these less-developed nations are on the threshold of achieving sufficient economic, social and political strength and self-sustained growth to stand permanently on their own feet. The 1960's can be—and must be—the crucial 'Decade of Development'—the period when many less-developed nations make the transition into self-sustained growth—the period in which an enlarged community of free, stable and self-reliant nations can reduce world tensions and insecurity. (Kennedy 1961)

Three months later, the Managing Director of the Development Loan Fund, Frank M. Coffin, in a memorandum to his staff, noted that even though the necessary legislation had not yet been passed by the US Congress and the new

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10 When Kennedy was elected in 1961, Rostow was appointed Deputy Special Assistant for National Security Affairs.

Agency for International Development remained to be established, they had "already, for all intents and purposes, embarked on the President's program for the Decade of Development" (FRUS 1961—1963, Volume IX, Doc. 185, 406—408).

The question remains, however, as to why the US would turn to the UN to carry out this ambitious programme. Part of the answer is to be found in President Kennedy's special message to the Congress on foreign aid. After calling for the establishment of the 1960s as the "Decade for Development", Kennedy added,

> This goal is in our grasp if, and only if, the other industrialized nations now join us in developing with the recipients a set of commonly agreed criteria, a set of long-range goals, and a common undertaking to meet those goals, in which each nation's contribution is related to the contributions of others and to the precise needs of each less-developed nation. Our job, in its largest sense, is to create a new partnership between the northern and southern halves of the world, to which all free nations can contribute, in which each free nation must assume a responsibility proportional to its means. (Kennedy 1961)

The task ahead was grand and could not be carried out by the US alone; to succeed in achieving this end within the scope of a decade, the US would have to enlist a greater common effort on the part of other industrialized nations. As Kennedy further remarked, however, "the foundation" for this joint endeavour had "already been laid by the creation of the OECD under the leadership of President Eisenhower" (Kennedy 1961). Why then, not keep it that way? Why would the Kennedy administration decide to bring this matter before the UN?

As Toye and Toye suggest, "this bold exercise in leadership by the US was a new tactic in response to changed voting pattern in the UN" which had been revealed by a majority vote on the proposal to recommend the UNGA the establishment of a Special UN Fund for Economic Development (SUNFED) taken during the twenty-fourth session of ECOSOC in 1957 (2004, 178). For their part, the US largely opposed the idea of SUNFED, which had even been described by one UN official as a "Socialist UN plan to disarm and bankrupt the United States" (de Seynes 1956). Kennedy's proposal to establish the 1960s as the UN Decade for Development may therefore be understood as a political move in the struggle over leadership within the UN. As Toye and Toye further remark, "Foreseeing the possibility of being outvoted on unacceptably worded resolutions, the US tried […] to exercise a moderating influence by putting itself at the head of the majority and championing its expressed wishes, where this could be done without sacrifice of principle" (2004, 178).

The point is that to achieve the goal of self-sustaining growth envisioned for the developing countries under the programme of the UN Decade of Development, the efforts of the industrialized countries made through multilateral development cooperation and assistance were only one side of the coin. The other side was the tremendous efforts that the developing countries were asked to make in order to speed up the process of their modernization. As a result, the two main policy axioms of the UN Decade for Development were that foreign aid and comprehensive planning were indispensable for the economic development of the developing countries. In fact, one of the most striking events of the

UN Decade for Development was the widespread adoption of planning as a tool for development. As Jolly et al. observe, only a few years before the inauguration of the 1960s as the UN Decade for Development, hardly any developing countries "had rudimentary development plans at the national level" and most of them who had one were in South and Southeast Asia (2004, 90). In contrast, "almost all the developing countries formulated medium-term or long-term plans as a way to assess their requirements for sustained growth and guide their policy decisions" in the 1960s (Jolly et al. 2004, 90). However, developing planning required the preliminary collection of data on developing countries, which were largely unavailable at the time. The UN assumed a central role in this regard, most notably by analysing trends in the world economy and by comparing those trends to the goals set for the Development Decade. Insofar as planning required the prior collection of data, "every branch of the UN family became involved in collecting, evaluating, and disseminating the [necessary] data" (ibid., 91).

To be sure, planning could have assumed a great variety of forms and the political significance of those plans could have differed greatly among developing countries. By and large, however,

> Development planning in underdeveloped countries generally assumed a mixed economy in which the state had to take initiatives for development as a result of market failures. As market prices did not signal all the information required for optimal solution, it was not possible to leave the allocation of investment solely to market forces. The roles of the state and of planning were very similar to what would be called, much later, 'the developmental state' in the context of the 'East Asian miracle' countries. It was the responsibility of the State to set the priorities of development and to channel resources toward those priorities. In a mixed economy, appropriate incentives were crucial to guide private investment in the right direction. But the public sector also must be active, through public investments, to achieve the plan's targets. (Jolly et al. 2004, 91)

Overall, the necessity of rapid economic development was seen to supersede other legitimate claims and priorities in developing countries. It was sometimes alleged by government officials and policy-makers throughout the Decade that "the two overriding needs of planned development on the one hand and the maintenance of human rights and fundamental freedoms on the other [were] difficult to reconcile, especially in developing countries" (E/CN.4/988, 21 (1969)). For the most part, however, the alleged tensions between development and human rights were largely a non-issue. To be precise, some sacrifices on the part of the developing countries in the field of human rights were conceived as inevitable if not necessary in their transition to self-sustaining growth. This was so because the developing countries were understood as being caught in a vicious circle of poverty anyways. If "the 1950s saw the establishment of targets for the economic growth of poor countries, the formulation of national development plans, and the emergence of the new field of development economics", "the difficulty of attempting social change and growth simultaneously in the conditions of the 1950s led to an emphasis on the acceleration of aggregate growth as a means of overcoming the 'vicious circle of poverty', which led to an emphasis on increased GNP as a measure of success in development" in the next decade (Chenery 1977,

v). It thus became widely assumed that "appreciable economic progress in poor countries require[d] drastic sacrifices at home, supplemented by large-scale aid from abroad" (Bauer 1972, 31). The vicious circle of poverty thesis was nonetheless presented in several distinct although non-exclusive formulations, each of which called for sacrifices of a different kind on the part of developing countries. These sacrifices for long-term economic development took on the form of trade-off arguments and were rather commonplace in modernization rhetoric between the late 1950s and early 1960s. At the same time, however, all these trade-offs implied a growth-first development strategy, which was increasingly coming under attack as the emerging field of development studies extended beyond the narrow confines of economics to other social sciences. Quite interestingly, however, economists within the UN were among the first to raise awareness about the limits of economics to address the problems facing the developing countries and to voice their concerns and objections to these trade-offs—two of them, Hans Singer and Raúl Prebisch, are discussed in the next chapter.

The first trade-off argument resides in the idea of short-term sacrifices (mostly social progress) for long-term gains (economic growth). If you are going to have growth, it is argued, the average of savings in society must increase and be invested. Growth, for advocates of this kind of trade-off, comes primarily from productive investment. Hence, rather than devote scarce resources to social programmes to satisfy basic human needs (and associated human rights, for example food and healthcare), relatively high levels of absolute poverty (need deprivation) must be accepted in order to maximize investment. This forgone consumption, with interest in the additional production purchased, thereby minimizes the total economic and human costs of overcoming mass poverty *in the long run* (Donnelly 2013, 228). In the early 1960s, for instance, economist Stephen Enke (1916—1974) advanced the view that "an autonomous reduction in consumption is the human price that must be paid for a rapidly growing domestic national product" (Enke 1963, 181). Expressing a similar view, economist Bruce Morris argued, "a conscious effort must be made to increase savings, either from existing incomes or by capturing a major share of the rising incomes that result from inducing greater effort and productivity" (Morris 1967, 306). In such scenarios, "a strong trade-off attempts to constrain in order to capture the largest possible share of total resources" while a weak one "simply excludes consumption-oriented human rights from development planning" (Donnelly 2013, 228).

Contrary to this view, others started to consider that government services in education, welfare, and health, among others, were essential for sustained and healthy economic growth in developing countries. From their perspective, the foregone consumption resulting from the transfer of income into savings for long-term investment would only be tolerable, if ever acceptable, when

> the over-all national income is going up while the transfer from consumption to savings is being made, when new resources are coming into being, or when new land is being opened. Only under these circumstances is it possible to begin the transfer of wealth from consumption to savings without the desperate difficulties that arise when peoples' incomes are low and have to be pushed down further. (Pearson 1970, 16)

In other words, the transfer from consumption to savings could not be tolerated when peoples' incomes were too low, which was precisely the situation in which the lot of the developing countries were to be found—developing countries were after all "low income" countries. Another argument against needs deprivation and the maintenance of high levels of absolute poverty in the short term was to consider social progress in the narrower economic sense as contributing to faster economic growth. Without social progress, they argued, "economic growth would not have been nearly so fast as it has been" in the developed countries (Pearson 1970, 8). From this perspective, "the modern mass-consumption market of […] industrial high-income society is as much a product of progressive social policy as of wise economic policy" (ibid.). The main point of controversy between advocates and opponents of the needs trade-off thus concerned the question of poverty and whether social programmes and government services designed to cover basic needs were essential for the development process or could be traded-off in the short to medium timeframe of politics.

The second trade-off argument resides in the idea that relatively high levels of inequality must be accepted in order to maximize growth (Donnelly 2013, 228). This idea found expression in the work of Canadian economist Harry Gordon Johnson (1923—1977), among others, who argued "there is likely to be a conflict between growth and an equitable distribution of income; and poor country anxious to develop would probably be well advised not to worry too much about the distribution of income" (Johnson 1958, 153). A few years earlier, British economist Kenneth Boulding (1910—1993) had articulated a stronger version of this argument: "equality, in other words is a luxury of rich countries. If a poor society is to achieve anything at all it must develop a high degree of inequality—the small economic surplus must be concentrated in a few hands if any high-level achievements are to be made" (Boulding 1958, 94).

The extent of the equality trade-offs may vary from strong to weak, depending on whether inequality is deemed more or less necessary to obtain economic growth and reach a certain level of national development. The so-called Kuznets or (inverted) U hypothesis provides a good illustration of the weak kind of equality trade-off. According to this hypothesis, developed by American economist Simon Kuznets (1901—1985), both average incomes and income inequality tend to be lower in the "traditional" sector than in the "modern" one (Kuznets 1955). Therefore, during the transition to a modern economy, inequality on the size distribution of income will first increase, then be maintained at high level and finally recede at moderately high levels of national income, thus producing U shaped curve when inequality is plotted against the per capita gross national product (GNP). The strong kind of equality trade-off sees inequality not only as an unavoidable consequence but also as a factor of development. Since investment is the key to rapid growth and only the relatively wealthy can afford to save and invest, inequality is held to be in the best interest of the poor *in the long run*. In these scenarios, inequality may also be justified as an incentive or reward for superior economic performance. (Donnelly 2013, 228—229) Opposed to these views, others begun to question what was "the value of economic growth, however self-

sustaining, without social progress if the increased wealth [was] not shared equitably among all the people and not solely among a powerful and selfish few" (Pearson 1970, 8).

The third trade-off argument resides in the idea that "the exercise of civil and political rights may disrupt or threaten to destroy even the best-laid development plan" (Donnelly 2013, 229). From this perspective, the exercise of freedom of speech, press and assembly may create political instability that may then impede economic development. CP rights may for instance be exercised to provoke or intensify divisions, which a new and fragile polity may be unable to endure. For their part, the claims advanced by trade unions, which may merely seek additional special benefits for a labour aristocracy, may put undue pressure on poor states. In short, "Elected officials may feel pressured to select policies based on short-term political pressure and expediency rather than insist on economically essential but politically unpopular sacrifices" and must therefore "be temporarily suspended" (Donnelly 2013, 229).

To the three trade-offs identified by Donnelly could be added a fourth one, namely the cultural trade-off. Paragraph 91 of the consolidation report on the appraisals of the scope, trend and costs of the UN programmes, ILO, FAO UNESCO, WHO, WMO and IAEA in the economic and human rights fields, prepared by the ECOSOC's Committee on Programme Appraisals, provides a good description of the logic underlying this trade-off and of its limitations:

> the progress of technology and mechanization can be viewed both as a threat to non-material values and the cultural heritage of the past and as an opportunity for the development of the cultural riches of advanced and less developed countries alike. On the other hand, there is a danger that in the drive of modernity, old values that contribute to a fuller life may become eroded or be discarded rather than adapted to modern conditions and transformed into new cultural patterns. On the other hand, a greater ease of life, more leisure, and modern communication potentially make for a wider participation of all the people in cultural activities and for a greater exchange of cultural values between cultural groups. To avoid the dangers and to take advantage of the new opportunities, organized efforts are required for the preservation of cultural treasures, the adaptation of old non-material values to modern insights and conditions, and the promotion of a wider participation of individuals and groups in cultural activities and exchanges. (E/3347/Rev.1, 25-26 (1960))

In fact, culture had been largely neglected in the burgeoning literature on development in the 1950s and 1960s, dominated as it was by economists. Most authors either saw culture as an obstacle to economic development or ignored it altogether.

By the end of the 1960s, there was increasing recognition among development scholars and planners of the fragility of the balance between social progress and economic growth, which could only be determined by the country concerned. In particular, "the view that if development was to be stable and healthy, there must be a more equitable distribution of wealth and popular participation in political and economic life than is the case in some countries today begun to take

hold" and some scholars concomitantly begun to argue that, without such equality and participation, "it would not be easy for people to make the effort and accept the [required] sacrifices" in terms for instance of foregone consumption (Pearson 1970, 9). To be sure, by the end of the decade, the study of the dominant paradigm of development (i.e. modernization) was not anymore the exclusive domain of economics and scientists from a wide variety of disciplines were seeking to formulate meaningful theoretical statements about this issue. As James A. Bill remarks in an article on modernization published in 1970, several points had by then become generally accepted as follows:

> First, it is more fruitful to examine the challenge of modernization in terms of social forces such as groups, classes, and elites than to concentrate on formal-legal structures and institutions. Second, the varying intensities and levels of change indicate a need for comparative analysis. Third, development must be defined not only in economic and physical terms but in political, social, and human terms as well. Fourth, development is best viewed as a continuing process and not as an end point or fixed goal. No society including the United States and the Soviet Union, ever finally achieve this goal. (Bill 1970, 19)

Similarly, some authors began to argue against the equation of "modernization" and "Westernization". From their perspective, culture was an important dimension of the development process of developing countries, something to hold on to, to be preserved and protected, rather than thrown away or changed. In this context, new questions and concerns were being introduced in the development agenda with respect to poverty, equality, culture and participation. In that context, an increasing number of state representatives at the UNCHR started to formulate the view that the Commission had a role to play in setting human rights on the UN agenda for international development.

Now that we have a better grasp of the range of arguments advanced in early academic debates on human rights and development (narrowly conceived as economic growth), it is time to take a closer look at the UNCHR debate of 1969. It is interesting to note in the first place the general call found among developing country representatives to move away from a narrow definition of development as economic growth to a more human and social concept, and the accompanying assumption that the UNCHR had a role to play in creating that shift on the eve of the Second Decade for Development. This trend found expression, for instance, in the words of Hasan Nawab of Pakistan, who argued

> Generally speaking, development was considered only from a material point of view, and no account was taken of the twin facets of human personality and human environment. Steps should also be taken to promote human development, particularly through education, to which high priority should be accorded; yet the educational and social welfare sector was very often neglected in the development plans drawn up by the developing countries. Those were still the matters that could be studied to great advantage. (E/CN.4/SR.1025, 144 (1969))

The point advanced by the representative of Pakistan was that the fulfillment of human potential required far more than what could be specified in purely eco-

nomic terms, such as "adequate educational levels, freedom of speech, citizenship of a nation that is truly independent, both economically and politically, in the sense that the views of other governments do not largely predetermine his own government's decisions" (Seers 1969, 5).

For his part, Uruguayan jurist, politician and diplomat Héctor Gros Espiell similarly argued that while "there could be no doubt that economic development was the indispensable foundation for the realization of human rights and fundamental freedoms for all" it would be "wrong to think that economic development was all that was needed." He then expressed agreement with the warnings uttered by Pope Paul VI in his encyclical *Populorum Progressio* about the dangers threatening the individual in a "materially developed society." In the light of that, Gros Espiell further argued, "it was perhaps fortunate" that the Special Rapporteur put forth in the joint draft, Manouchehr Ganji, "was not an expert in economics"—specifying that the Special Rapporteur would anyways, "as far as economic matters were concerned, [...] have full access to the wealth of documentation accumulated by competent United Nations bodies" (E/CN.4/SR.1025, 149 (1969)). Similar arguments about the nature and scope of the development concept were advanced by other developing country representatives as well as a number of developed countries throughout the debate and ultimately found expression in paragraph 1(b) of resolution 15 (XXV), in which the UNCHR affirmed "that the ultimate objective of any effort to promote economic development should be social development of peoples, the welfare of every human being and the full development of his personality" (E/CN.4/1007, 190 (1969)).

Views nonetheless diverged among state representatives on the question of the nature and scope of the relationship to be established between development and human rights, largely depending on the particular concerns and priorities of their country with respect to international human rights. For the most part, developing country representatives forcefully argued against the necessity to make sacrifices in terms of needs, equality and to some extent their cultural identity on the altar of development. They pointed out to international development cooperation and assistance as ways and means to realize ESC rights in developing countries without these trade-offs. In that regard, many of them deplored the fact that "a large part of humanity still lived in squalor, disease, illiteracy and fear of the morrow" (E/CN.4/SR.1027, 172 (1969)). They also denounced the widening gap between rich and poor both at the national and international levels.

Once again, the speech delivered by Hasan Nawab of Pakistan is illustrative of that trend. Nawab began his speech with the following remark:

> Development was a new thing for the developing countries, something that had been unknown during the colonial era. Great caution should therefore be exercised in examining the effect of development on the economic and social life of the inhabitants. (E/CN.4/SR.1025, 144 (1969))

Like many developing countries in the 1960s, Pakistan was pursuing a development strategy based on nationwide centralised economic plans and targets, which came with its fair share of economic, social, political and cultural problems.

Nawab continued his speech with a fierce critique of the dominant approach adopted by development economists and planners:

> Economists usually discussed development in isolation from everything else. They overlooked the fact that development wrought changes in production and distribution processes and, consequently, in the structures of society and its scale of values. The developing countries had possessed a rich cultural heritage before the development era. The whole of the former structure of society was crumbling under the impact of development, and steps should therefore be taken to ensure that changes took place gradually, without disrupting the existing way of life. (E/CN.4/SR.1025, 144 (1969))

For planners, he added, "the construction of a dam in a developing country, for example, did not pose any human problems: the people living on the land to be inundated simply had to be moved elsewhere. Yet the way of life of the people thus displace would be radically changed as a result of such operations" (E/CN.4/SR.1025, 144 (1969)). This line of argument draws attention to the social and cultural dimensions of the structural changes accompanying economic development in Third World societies, which had been largely ignored by advocates of early theories of economic development—geared as it was to economic growth. It echoes some of the criticisms voiced by advocates of the structural change approach to development. From their point of view, the reason why the mechanisms of development embodied in Rostow's stages of growth did not work as expected "was not because more saving and investment isn't a necessary condition for accelerated rates of economic growth—it is—but rather because it is not a sufficient condition" (Todaro and Smith 2003, 116). At the same time, the idea that such changes should not only be recognized but that actions should be taken to ensure that they took place "gradually, without disrupting the existing way of life", hints towards the need for economic, social and cultural policies that might slow down economic growth to achieve the national development objectives set by the developing countries themselves.

Nawab then turned to a discussion of the relationship between inflation and economic development in the developing countries:

> Development brought about changes in the economy as a whole and gave rise to inflation and thus to price increase which were a source of much hardship to a large portion of the population. Planners should ensure that inflation was kept to a minimum in those countries, so that living conditions did not become more difficult than they had previously. (E/CN.4/SR.1025, 144 (1969))

The passage just quoted contains a critique of the way the masses could be deprived of their basic needs in the name of economic growth in situations of inflation, and a concomitant call to include ESC rights concerns in development plans so as to avoid it. Nawab further argued, "Development was a source of corruption in those countries. It raised a moral and social problem owing to the emergence of new privileged classes" (E/CN.4/SR.1025, 144 (1969)). He added, "Old values disappeared without being replaced by new ones, and a certain amount of confusion was thus created" (ibid.). Here, Nawab is denouncing the concen-

tration of wealth that had occurred in Pakistan under the Third Five-Year Economic Plans for the National Economy (1965—1970)—a series of nationwide centralised economic plans and goals inspired by the five-year plans of the USSR. In 1968, Mahbub ul Haq, then Chief Economist at the Planning Commission of Pakistan, had formulated the thesis that the gap between the rich and the poor had kept widening in Pakistan during the 1960s. Mahbub ul Haq presented data regarding ownership of companies listed on the Karachi Stock Exchange and suggested "that 22 families or groups had come to dominate the economic and financial life of Pakistan and that they controlled about two-thirds of industrial assets, 80 per cent of banking and 79 per cent insurance" (ul Haq 1973). His thesis had struck a responsive chord among Pakistani public opinion and, from this speech, the expression "22 families" entered the political lexicon, shorthand for the income concentration and economic exploitation upon which the economy was built.

Other representatives similarly pointed out during the UNCHR debate of 1969 that the material development of a country did not in itself provide any absolute guarantee that individuals would realize their ESC rights. In this regard, Hernán Santa Cruz expressed the opinion that the existence of a just social order was in that respect essential. In the end, this aspect of the debate was reflected in paragraph 2(a) of UNCHR resolution 15 (XXV), in which the UNCHR affirmed that "the existence of a just social order, at the national level, is a basis of the effective enjoyment of economic, social and cultural rights" (E/CN.4/1007, 190 (1969)).

The liberty trade-off, for its part, was not opposed with the same force and union during the UNCHR debate of 1969: only a few developing country representatives (along with the majority of developed Western country representatives) forcefully argued against it; others barely touched the subject or avoided it altogether, and yet others implicitly acknowledged its legitimacy. It should be remarked that representatives among members of the Group of Western European and Other States were the main ones to bring the question of the relationship between development and CP rights in the limelight. René Cassin of France, for instance, expressed the view that periodic reviews and annual reports to determine the human rights value of development efforts would be desirable. He added,

> it had sometimes happened that action undertaken with the best of intentions had been misdirected and had resulted merely in a waste of resources and energy. It would be possible to learn of such mistakes from the reports of the specialized agencies and of the States concerned. Some measures intended to speed up economic production might cause social upheavals; conversely, economic measures might fail because social conditions had not been sufficiently taken into account. Many organizations were dealing with matters such as investment, industrialization and the development of trade. Action taken in those fields might lose sight of the need to protect the individual. The Commission therefore had an important task to accomplish: to ensure that human rights were not sacrificed to the development process. (E/CN.4/SR.1023, 129 (1969))

After drawing attention to the tensions between particular means of development and respect for individual rights, the French representative argued, "it was not the Commission's task to give the world an economic and social plan but to see that human rights were not sacrificed under all sorts of conditions" (E/CN.4/SR.1029, 192 (1969)).

While the vast majority of developing country representatives expressed their views on the needs, equality and cultural trade-offs, only a few discussed the liberty trade-offs. In most cases, however, it was done in an attempt to prioritise questions of national development and the realization of ESC rights in developing countries in the agenda of the UNCHR. Princess Ashraf Pahlavi of Iran, for instance, remarking upon the stress laid in the UNCHR on "certain deliberate and flagrant violations of human rights", argued that "priority should [instead] be accorded to the constant violations represented by the diversion, for prestige reasons, of resources that would be more than sufficient to banish those scourge from the surface of the earth" (E/CN.4/SR.1023, 126 (1969)). Similarly, Abdallahi Ould Daddah Turkia of Mauritania emphasized the very special importance attached to the existence of ESC right in the developing countries, where the not very encouraging results of the first UN Development Decade had caused great bitterness. The developing countries, she added, had nevertheless been pleased that the Teheran Conference "had confirmed that there were very close links between human rights and economic and social development and that below a certain threshold it was futile to speak of human rights and fundamental freedoms" (E/CN.4/SR.1023, 123-124 (1969)). The intention behind the arguments raised by the Mauritanian representative materializes in the subsequent part of her statement:

> It was an ever-present problem for all the developing countries; they did their utmost to concert their efforts with those of the other members of the international community but, all too often, these efforts seemed to evoke no response, which was all the more distressing for the developing countries since they guaranteed civil and political rights to everyone. (E/CN.4/SR.1023, 124 (1969))

Here, the Mauritanian representative hints towards the bottleneck situation created by respect for CP rights in situation of low development; that CP rights might hinder the development of developing countries, or at least slow it down. Slower or lack of economic development in turn prevents or slows down social advancement (or at least that of particular classes), which in turn may lead so social upheavals and tensions, which in turn might require the governments of these countries to deny CP rights for matters of state security and survival. From this perspective, the only way to override the tensions between planned economic and social development and respect for human rights and fundamental freedoms in developing countries is by means of international development assistance and cooperation. If such assistance and cooperation were not forthcoming from the international community, it would be unjust to blame or shame developing countries for alleged or grave violations of CP rights. Instead, the international community should intensify its efforts to understand the causes of these violations in the domestic-international context and provide remedies.

According to Cassese, the attitude of developing countries towards CP rights, sometimes bordering hostility, may be explained through three main reasons. The first concerns the relationship between political stability and development. From the perspective of a large number of economists and policy-makers at the time, political stability and economic growth were understood as deeply interconnected. In fact, political instability was regarded as a serious problem harmful to overall economic development. The requirement of political stability meant that one could not hope for a full recognition of CP rights in developing countries, insofar as such rights could undermine or weaken the authority of already fragile governments. From this perspective, Cassese remarks, the priority of developing countries "often torn by conflict between different groups and factions and in some cases even by tribal wars" cannot be the full recognition of CP rights because of the "centrifugal tendencies" of those rights. Rather it must be, "at least in this post-colonial period, […] to strengthen the authority of the State." (Cassese 1986, 307)

The second concerns the need for state development planning to promote rapid economic growth. This perspective is grounded in the idea, conveyed by early modernization theorists, that "developing countries need a strong central government if their economies are ever to get off the ground" (Cassese 1986, 307). In other to satisfy the objective of rapid economic development, developing countries were encouraged to concentrate power in the hands of the government rather than to limit it by promoting individual rights and freedoms. The restrictions of these rights and liberties in turn "justified by need to give precedence to economic and social rights" with a view to create political stability and economic and social development. By way of examples, "restrictions on freedom of movement and expatriation are justified by the need to stop the 'brain drain'; limitations on personal freedom and the right to start a family can be justified by the urgent need for economic development and industrialization, etc." (Cassese 1986, 307). In sum, developing countries were often considered to be in a difficult position to protect human rights and fundamental freedom. When faced with the challenge to choose between CP rights and ESC rights, they often favoured the latter over the former. As stressed by Stanley Hoffman in *Duties Beyond Borders*, the preference of developing countries for ESC rights does not stem from cultural differences but from the inherent character of these rights: whereas CP rights "require the state to do things which will *limit* its power", ESC rights "actually build-up the state" (1981, 103).

In the third place, the typical socio-political structure of many African and Asian countries at the time (as opposed to their Latin American counterparts) was "that of a community with a leader exercising undisputed power" (Cassese 1986, 307). As Cassese remarks, "the freedom-authority dialectic [found] in the Western European tradition" is to some extent "alien to the culture of most of these countries" (Cassese 1986, 308). As a result, "the idea of a leader with unlimited power aroused neither criticism nor repulsion" (ibid.). As Tanzanian political leader Julius Nyerere wrote in 1961 (i.e. the year Tanzania obtained its independence from the United Kingdom), "The African concept of government is

personal, not institutional. When the word 'Government' is said the African thinks of the leader not, as the British, of a big building in which debates are held" (Nyerere 1961, 33). As Cassese observes,

> The leader expresses the needs of his people and stands up for their interests and they in turn submit to his will. In short, a curtailment of individual rights and freedom to the benefit of the centralized authorities, which for a westerner brings to mind a whole tradition of rebellion against absolute authority, often appears neither irrational nor to be condemned. (Cassese 1986, 308)

The point, however, is that the path to development proposed by advocates of modernization necessarily disturbs the traditional socio-political structure of these states, by introducing elements of the "Western European tradition" challenging the traditional authority of political and religious leaders.

Developing country representatives among members of the Group of African States and the Group of Asian States advanced these three arguments more or less explicitly during the UNCHR debate of 1969 to justify their relative indifference towards CP rights and to demand that the UNCHR accord priority to the realization of ESC rights in developing countries. It should be kept in mind, however, as Cassese notes, that some of these representatives may have had ulterior motives for using these arguments. In particular, they may have wished to support autocratic regimes in the face of attacks directed towards their country's regime at the UNCHR or in other UN forums. In short, the three kinds of arguments identified above may have been used as "an ideological justification for despotic and authoritarian forms of government, to protect these in power from unwelcome interference from the UN" (Cassese 1986, 308). More often than not, however, they began their speech by invoking the special importance attached to ESC rights in developing countries and recalling how the Teheran Conference had confirmed that there were very close links between human rights and economic development and that below a certain development threshold it was futile to speak of human rights and fundamental freedoms, thereafter avoiding the topic of CP rights altogether.

There were a few exceptions, however. Some developing country representatives, particularly among members of the Group of Latin American States, expressed concerns over the question of the relationship between CP rights and development. Marcella Martinez of Jamaica, for instance, recognized "the importance of guaranteeing the realization of economic and social rights" but disagreed over the idea that those rights were more important than CP rights (E/CN.4/SR.1027, 168 (1969)). She continued by emphasizing the dangers of giving priority to one category of rights over others by way of an example

> a century and a half ago those who advocated the maintenance of slavery had claimed as their main argument that the slaves were at least certain to be fed and housed. In point of fact the two categories of rights were equally important. Too little attention had so far been given to economic, social and cultural rights, and suitable means should be devised to guarantee their progressive and effective realization in the same way as other human rights. (E/CN.4/SR.1027, 168 (1969))

For his part, after noting with interest that whereas at the national level CP rights had been recognized well before ESC rights "the situation had been different at the international level, where stress had been laid on respect for economic and social rights from the very first session of the International Labour Conference", Gros Espiell argued

> In fact, all those rights formed an indivisible whole, stemming from the very concept of human person, and his delegation could not help regretting that the General Assembly had preferred to deal with them in two separate covenants with two different systems of application. (E/CN.4/SR.1025, 146 (1969))

Hence, contrary to the majority of developing country representatives who spoke during the UNCHR debate of 1969, the Uruguayan representative did not use the rhetoric of indivisibility to shift the focus away from questions of individual rights in the debate over the special problems relating to human rights in developing countries, but to draw attention to the equal importance of both categories of rights.

It might be worth remarking at this stage that there were important differences between so-called developing countries at that time. The "widening gap" separating them from the developed world was often wider for African countries than Latin American ones, for instance. While they did not make any significant progress in closing the gap that was separating them from the developed countries, Latin American countries experienced above-average growth rates and a significant expansion of their share of world production during the period of state-led industrialization (ca. 1930—mid-1960s) (Ocampo 2013, 14). What is more, although an important part of the region's population was still in situations of poverty in the late 1960s, Latin American countries were not actually "poor" countries—they qualified as middle-income as opposed to low-income developing countries according to the standard application of the terms in development economics at that time. The latter category of developing countries were generally held to be caught in a vicious circle of poverty and stagnation, which called for a particular set of policy proposals and measures—most notably "the suggestion that appreciable economic progress in poor countries requires drastic sacrifices at home and, supplemented by large scale aid from abroad" (Bauer 1965, 4). The situation in Latin America was different, as discussed in the next chapter. Briefly, their history of relative wealth and spare population had had an effect on their social and political structures which put them apart from other developing countries. In particular, CP rights had long been on the domestic agendas of these countries, at least when compared to the newly independent countries of Africa.

Nonetheless, developing country representatives spoke in unison about the international dimensions of the relationship between development and ESC rights, arguing that while "developing countries bear the primary responsibility for their development […] only through efficient, concomitant international action will it be possible to achieve a fuller mobilization and more effective utilization of domestic resources" (E/CN.4/1007, 191 (1969)). The Indian representative recalled, for instance, "the International Conference of Ministers responsible for

Social Welfare, held in New York, in September 1968, had reaffirmed that economic development was an indispensable prerequisite for the observance of all human rights" (E/CN.4/SR.1023, 125 (1969)). He continued by emphasizing how the developing countries were now putting all their hopes in the second UN Development Decade, and "trusted that during that decade the obstacles paralysing their economic development and trade would be eliminated and that their economies would at long last, towards the end of the decade, have gone beyond the take-off stage" (ibid.). The key to self-sustaining growth, according to the Indian representative, was to be found in international trade and development assistance. For his part, the Chilean representative more forcefully argued that "under-development was not only due to the fact that the developing countries had not made the necessary effort to improve the situation, but also to the inadequacy of international cooperation" (E/CN.4/SR.1025, 142 (1969)). These and other arguments are explored in detail in the next chapter. For now suffice to say that by calling attention to the international dimensions of economic and social development, developing countries were shifting the blame for their underdevelopment and, in many cases although certainly not in the case of Santa Cruz, their lack of respect for CP rights, away from their governments to the international community.

3.4 Concluding remarks

In conclusion, important shifts took place in the horizon of controversies of the UNCHR debate on the question of the realization of ESC rights between 1968 and 1969. During the UNCHR debate of 1968, the bulk of the controversy centred on theoretical disagreements about the relationship between CP rights and ESC rights. Throughout the debate, the East and the West unquestionably proceeded from different conceptions of the role of the state in society. However, the essence of the debate concerned political expediency—i.e. what would be effective—not the inherent "nature" of those rights themselves. Representatives among members of the Group of Eastern European States maintained that ESC rights would be meaningless without a strong state apparatus in charge of economic and social welfare. Accordingly, they called on governments to give impetus to the legislative consolidation of ESC rights and to the development and improvement of legal means of protecting those rights. For their part, representatives among members of the Group of Western European and Other States, while accepting the description of these rights as "fundamental human rights", nonetheless opposed efforts to mandate state-oriented implementation procedures for ESC rights, in order not to dampen private initiative or give too much power to the government of any state. They further emphasized that different systems of government had different approaches to resource allocation and management of economies, and urged the UNCHR to consider that aspect in its study of the question. In the end, the UNCHR resolved to entrust the Secretary-General with a preliminary study of the question to be considered at its next session.

When the UNCHR considered the question of the realization of the economic and social rights contained in the UDHR and the ICESCR again in 1969, it did so in parallel with the study of special problems relating to human rights in developing countries. As compared to the twenty-fourth session, however, the bulk of the controversy laid elsewhere: the main question was not anymore centred on the relationship between ESC rights and CP rights but on the question of the relationship between human rights and development and the determination of priorities in the light of available resources. At the same time, greater emphasis was laid on the role and responsibility of the international community with respect to the realization of human rights in developing countries and the importance of international cooperation in that regard (this aspect of the debate is further explored in the next chapter).

To be sure, all the representatives who took part in the UNCHR debate of 1969 shared the view that the realization of ESC rights was closely linked to economic and social development. Throughout the debate, however, representatives of developed and developing states expressed very different views with respect to the nature and scope of the relationship between human rights and development. There were also notable differences cutting across the development divide, in the various positions advanced by representatives of democratic and authoritarian states. A number of developing state representatives re-affirmed that certain human rights could not be realized below a certain level of development. Others went a step further and maintained that development was an indispensable *precondition* for any effective realization of human rights. Some among them concomitantly laid stress on the national responsibility of each state to use the means at its disposal to further the realization of ESC rights as much as possible, within an integrated programme of economic and social development. In this regard, the question of how to reconcile planned economic and social development with respect for individual rights came under the spotlight. The point is that not all developing country representatives shared the view that national development should have priority over individual rights. Some, in particular the Chilean representative, were of the view that ESC rights and CP rights were complementary and necessary to achieve national development objectives.

In a nutshell, the political constellation of the debate moved from an ideological confrontation between the capitalist "West" and the communist "East", to a political struggle opposing not only the developed and underdeveloped countries, but also democratic and undemocratic regimes. Five positions with respect to the linkage between development and human rights were advanced during the UNCHR debate of 1969, which called for different course of actions:

- **Respect for human rights and fundamental freedoms and development practice and policies actually represent competing alternatives**: In the short- to medium-term timeframe of politics in underdeveloped countries, priorities should be accorded to planning for economic development in order to reach the take-off stage to self-sustaining growth.
- **Economic and social development policy and planning are not necessarily inconsistent with respect for human rights and fundamental freedoms**:

The trade-offs may be partly or totally avoided without impeding national development, for instance. Different and equally effective trajectories might be taken by developing countries to achieve self-sustaining growth. One line of this argument called for minimizing these trade-offs by studying the effects of particular means of development on human rights and fundamental freedoms, so as to point out inconsistencies and suggest remedies.

- **The realization of human rights and fundamental freedoms and development objectives are potentially complementary concerns**: Given the right conditions, human rights may contribute to development (of a better kind) or development means may simultaneously serve as means for the respect, protection and realization of human rights and fundamental freedoms. This complementarity may vary according to the level of development of a country. This position proceeds from an appreciation of practical differences between CP rights and ESC rights.
- **Economic and social development policy and planning ought to be entirely consistent with respect for human rights and fundamental freedoms**: Development and human rights objectives are or ought to be one of the same. This position proceeds from a conception of CP rights and ESC rights as united—one cannot be realized without the other—and a broad conception of development in which economic growth alone is not considered enough to achieve national development objectives.
- **Development and ESC rights are duplicative**: From that point of view, there is no need for the UNCHR to concern itself with ESC rights insofar as a large number of UN organs and specialized agency concerned with development are already tasked with different aspects of those rights.

To be sure, these lines of argument were not all mutually exclusive: while it may be difficult to support the view of complete consistency and inconsistency at the same time, it is possible to argue that development and human rights *ought* to be perfectly consistent with each other all the while maintaining that they were *currently* not. Such cases only emphasized the discrepancy between how the relationship between these two concepts was conceived versus how it was experienced.

4 THE SANTA CRUZ MOMENTUM AND THE LATIN AMERICAN AGENDA FOR "A SOCIAL AND INTERNATIONAL ORDER"

This chapter takes its point of departure in UNCHR resolution 15 (XXV) of 13 March 1969, the draft of which was introduced by Hernán Santa Cruz during the UNCHR debate of 1969. In keeping with the model of conceptual change outlined in Chapter 2, the chapter approaches the politics in the formation of resolution 15 (XXV) through a close reading of the debates leading to its adoption. This approach allows uncovering how resolution 15 (XXV) broke away with earlier conceptions of development and human rights as competing concerns. This conceptual shift represented a necessary step in opening the horizon of *Chance* of the debate to the invention of a new perspective of politicization, that of development as a human right. This inventive moment of politicization came about with the adoption of UNCHR resolution 4 (XXXIII) of 21 February 1977, in which the UNCHR called for a study of the international dimensions of the right to development as a human right (cf. Chapter 6).

Throughout the empirical-cum-analytical narrative, particular attention is given to the setting, events and arguments that went into the making of UNCHR resolution 15 (XXV), including failed alternatives on the trajectory of its adoption. In that regard, the chapter underlines the strong elements of continuity between the human rights concept used by the Chilean representative, Hernán Santa Cruz, in the UNCHR debate of 1969 to justify his proposals and the one advanced by himself and other representatives of Latin American states in the drafting of the UDHR and the ICESCR. It illuminates how Santa Cruz aimed to use his reputation and authority at the UNCHR in order to seize the momentum produced by the entanglement of "the question of the realization of the ESC rights contained in the UDHR" with "the study of special problems relating to human rights in developing countries" in order to push Latin American concerns and priorities into the UN agenda for human rights. The chapter concludes with some reflections on the controversy surrounding Santa Cruz's attempt to politicize human rights and development in international relations and, by the same token, to use

the UNCHR as a political assembly in which matters are put through debate and votes.

4.1 Hernán Santa Cruz (1906—1999): a short biography

Born in Chile in 1906, Hernán Santa Cruz studied law and began his career as a lecturer on criminal and military procedure at the Academia Superior de Estudios Policiales. He was later appointed a judge to the Corte Marcial de Santiago. In the 1940s, he headed for a time the Chile-Brazil Institute in Rio de Janeiro, where he became friends with Gabriel González Videla—a well-known Partido Radical politician, who was then the Ambassador of Chile to Brazil. In 1945, González Videla attended the founding conference of the UN as a member of the Chilean delegation and, when he was elected president of the government in September of the following year, he named his friend Santa Cruz as Ambassador and Permanent Representative of Chile to the UN.

Like many others, the career of Hernán Santa Cruz took an unexpected turn when he began working at the UN. In his memoirs—which he published at the age of almost 80 years—he describes his time at the UN as his ″segunda vida″ (Santa Cruz, 1985). His role as Chilean representative to the Third Committee of the UNGA and to the UNCHR, in particular, was a formative one. In early 1947, Santa Cruz was elected to the newly created UNCHR, which consisted at that time of representatives of 18 members states. In the summer of the same year, the UNCHR created an eight-member drafting committee with the aim of carrying forward an International Bill of Human Rights. Hernán Santa Cruz became part of that committee.

It might be worth mentioning from the outset that Hernán Santa Cruz built quite a reputation for himself at the UNCHR through his work on the UDHR and the International Covenants on Human Rights. Indeed, in the literature on the history of the International Bill of Human Rights, Santa Cruz has been various described as "a leading voice in the Latin American human rights movement" (Normand and Zaidi 2008, 155) and "the spokesman for the Latin American contingent" in the drafting of the UDHR (Morsink 1999, 89; see also Carozza 2003, 285). According to Susan Waltz, although Santa Cruz "held no position of responsibility […] his political and substantive contributions were such" that both John Peters Humphrey—the first Director of the UN Division of Human Rights—and author Johannes Morsink singled out the important role he played in shaping the UDHR transition away from "eighteenth century Enlightment philosophy" to "socioeconomic rights" (2001, 60). The minutes and reports of the sessions he attended—analyzed in the present chapter—provides further proof that Santa Cruz continually contributed important ideas to the debates, especially in relation to the formulation of the right to life, which he considered as a basic one (see section 4.4 below).

Santa Cruz also insisted that ESC rights be treated the same way as CP rights. His convincing but controversial arguments in that regard were enclosed

in the UDHR (see section 4.4 below). On 9 December 1948, in his speech preceding the vote on the adoption of the UDHR, Santa Cruz pointed out the importance of what became Article 3, which proclaims "the right to life, liberty and personal security", Article 22, which "states that everyone was entitled to the economic, social and cultural rights indispensable for his dignity, and to social security", and Article 28, which proclaims "the need for a just social order and a peaceful international order—the two elements essential for the exercise of basic human rights" (A/PV.180, 863—864 (1948)). Nowadays it seems hardly surprising that the "international order" appears defined as "social and international" in the UDHR, or that the right to life has a social meaning. However, as the present chapter uncovers, the situation was otherwise in the early years of the UN. For Santa Cruz and many of his companions, the relationship between both elements was crucial and they fought hard to have it recognized in the UDHR. Santa Cruz then dedicated his later career at the UN to create an international order that would guarantee everyone a dignified life with social security (see e.g. Santa Cruz 1984 and 1985).

In mid-1947, Santa Cruz took a first step towards the creation of that order by promoting the creation of the Economic Commission for Latin America (ECLA) within the framework of ECOSOC. Thanks to his negotiating skills, ECLA was founded in 1948 and its headquarters were established in Santiago de Chile. In the following years, ECLA would play a major role in the debate on international development through its staff and publications.

In 1954, Santa Cruz moved from the diplomatic service of Chile to the UN Secretariat, where he worked on the implementation of economic and social rights. From the beginning, he focused his attention on the right to food—a right that could to a certain extent be considerd the core of social rights and development policy. In that regard, it is noteworthy that the second point of Article 11 of the ICESCR, which proclaims "the fundamental right of everyone to be free from hunger" and requires states to take concrete political measures to comply with that right, bears the stamp of Santa Cruz.

In 1958, Santa Cruz took on a new role at the FAO where he stayed until his retirement in 1984. There, he served as representative for Latin America and the Carribean and deputy director of the organization. During those years, Santa Cruz also intervene practically in all UN bodies related to social policy, development problems and the needs of the Third World in that regard, including UNCTAD, ILO, UNDP and the G-77 or Movement of Non-Aligned Countries.

The other big concern of Santa Cruz was the fight against racism. In 1952, he was appointed president of the newly founded Commission on the Racial Situation in the Union of South Africa (UNCORS), which led the UN struggle against apartheid until its abolition in 1994. In 1954, he became a member of the Sub-Commission on the Prevention against Discrimination and the Protection of Minorities, of which he was a member for twenty consecutive years. He also served as Special Rapporteur on racial discrimination—a subject on which he wrote two influential reports (see E/CN.4/Sub.2/307/Rev.1 (1971) and

E/CN.4/Sub.2/370/rev.1 (1977)). When FAO, ECLAC and the other UN institutions he was involved with granted him retirement in 1984, Santa Cruz was praised as one of the great personalities that had marked the work and reputation of the UN in the field of human rights. On 18 December 2008, the Executive Secretary of ECLAC, Alicia Barcena, in the naming ceremony of the Hernán Santa Cruz Library (ECLAC Library in Santiago de Chile), said

> There are men and women in life who manage to understand, before others, the signs of history. They see clarity where some just see clouds, they see opportunities where others only see difficulties. They fully understand the times in which we live and those that will come. And for that reason, they are capable of arguing with serene temperance; the reasons for their convictions and initiatives are unflagging. Hernán Santa Cruz was one of those human beings. (ECLAC 2018)

In his native Chile, however, this picture of Santa Cruz as a human rights advocate and activist is more controversial. When he died in 1999, the Christian Democratic government of Eduardo Frei Ruiz-Tagle enhanced his great merits—especially in relation to his role in the founding of ECLA/ECLAC and his frienship with Salvador Allende. Others, however, recalled how he had hardly appeared on the scene during the Pinochet Military rule (1973—1990), despite being a member of the Academia de Humanismo Cristiano and the Chilean Commission of Human Rights—two organizations strongly opposed to the dictatorship. The older generations also remembered the time when Gabriel González Videla—whom Santa Cruz was a close friend and supporter—, leading a coalition of the Partido Radical with liberals and communists, became president of the government. In particular, they recalled how that popular front was broken when, in 1947, the communists supported a series of mining strikes in different regions. González Videla then threw the communists out of the government, banned the party, dispossed their leaders of civil rights and interned them along with the union leaders in camps located in distant desert areas. Others, like the poet-diplomat and politician Pablo Neruda, had to escape abroad. In this regard, it is also noteworthy to draw attention to the radical change in UN politics brought about by González Videla: At the founding conference of the UN in 1945, González Videla was part of the only non-communist delegation with communist delegates—including the secretary of the Partido Comunista de Chile. Once in government, however, González Videla led the anti-communist movement in Latin America, which contributed in many regards to bringing the Cold War to the continent. (NMRZ 2008)

Santa Cruz himself also had hard confrontations with representatives of the communist countries at the UN (e.g. A/PV.227, 54—56 (1949), A/PV.281, 58—62 (1950), A/PV.379, 21—27 (1952)). He strongly supported the liberal democratic government of Edvard Beneš in Czechoslavakia (1945—1948)—overthrown by the communists in June 1948—and had become close friends with his minister of foreign affairs, Jan Garrigue Masaryk (1886—1948). On 10 March 1948, Marasyk was found dead in the courtyard of the Czernin Palace in Prague, wearing only his pyjamas. While "an investigation by the communist-controlled Czech police ascribed his death to a suicide", many Czechs believed that he was murdered by

the Communists (Axelrod 2009, 133). These and other similar situations made him a firm opponent of communist politics and ideology.

When, at the beginning of 1949, the World Federation of Trade Unions (WFTU)—dominated by the Communists and diplomats of the Eastern bloc—denounced to the UN the political situation in Chile, it was incumbent on Santa Cruz as Chilean Ambassador of Chile to defend the position of his government. He argued that the measures employed by his government were "exemplary moderate" and that the Law on the Permanent Defense of Democracy (Ley de Defensia Permanente de la Democracia)—which had served among other things to dispossess the communists of the right to both active and passive voting—had been approved by the parliament and was thus democratic. He even went as far as to comment that there had been an "enviable climate" in the exile camps of the desert, which had long since stopped working. (NMRZ 2008)

Santa Cruz did not stop there. He also justified the illegalization of the Communist Party of Chile and the dismantling of the communist unions by arguing that they did not defend the national interests of his country but those of a foreign power. To support his views, he referred to the speech he had delivered at the UNGA on 9 December 1948, before the vote on the adoption of the UDHR. There, he said, he had declared that since democracy is based on national solidarity, members of groups subject to foreign powers should not be able to receive public office. He failed to mention, however, the second part of his argument in his retrospection. That is, the part where he had argued that attempts to entrust the state with powers over the interpretation of human rights had failed in the drafting debates because that amounted to the proclamation of "totalitarian rights of the state", which had clashed with inalienable nature of human rights. (NMRZ 2008)

Although Santa Cruz's arguments against the WFTU campaign were certainly understandable, they hardly reflected the human rights ideas and values he had so vehemently defended at the UN in the drafting process of the UDHR. Nonetheless, this example illustrates fairly well the importance of the context and the audience in interpreting the use of normative concepts in UN debates. Without it, it would be near to impossible to uncover the politics in the formation and use of these concepts. Keeping that in mind, the remaining of this chapter attempts to do just that with concepts underlying UNCHR resolution 15 (XXV) of 13 March 1969.

4.2 UNCHR resolution 15 (XXV) of 13 March 1969

At its twenty-fifth session, held from 17 February to 21 March 1969, the UNCHR considered for the first time the study of the special problems relating to human rights in developing countries. It did so in conjunction with its consideration of the question of the realization of the economic and social rights contained in the UDHR and the ICESCR. During co-consideration of these items, the UNCHR had before it a preliminary study of issues relating to the implementation of ESC

rights prepared by the Secretary-General in consultation with the specialized agencies. It consisted of a presentation of issues relating to the formulation and application of international norms for the realization of ESC rights at the national and local levels. It also contained a number of conclusions, some of which echoed the concerns expressed during debate over the question of the realization of the economic and social rights contained in the UDHR at the 24th session of the UN-CHR.

In the ensuing debate, Hernán Santa Cruz of Chile attacked the preliminary study prepared by the Secretary-General for failing to provide a thorough discussion of "the link between economic and social rights and economic and social development" (E/CN.4/SR.1025, 141 (1969)). From his point of view, "the treatment of that topic was too cursory" (ibid.). In particular, Santa Cruz criticized the document for not laying "stress on the international community's responsibility for the realization of the rights in question and the economic and social development of the developing countries" and for merely referring "to the principal activities of the organizations of the United Nations system" instead. He also deplored the lack of emphasis placed on the question of popular participation. (E/CN.4/SR.1025, 142 (1969))

To be fair, the conclusions contained in the preliminary study prepared by the Secretary-General includes a statement to the effect that the close interconnection between economic development and human rights "makes it necessary to intensify still more than has been the case the international co-operation and assistance, especially economic and technical, which will accelerate progress towards the full realization of ESC rights" (E/CN.4/988, 76 (1969)). This statement in turn echoes in significant ways article 2(1) of the ICESCR, which provides

> Each State Party to the [ICESCR] undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. (A/RES/2200(XXI), Annex (1966))

In a section concerned with the question of international action and methods in regard to the realization of ESC rights, the author of the preliminary study identified two common ways to interpret the aforementioned article: one was to construe the provision of article 2(1) "as imposing a formal obligation upon States Parties in a position to do so to give other States Parties economic, technical and other assistance"; another was to see it as imposing "an obligation on each State to work towards the realization of the aims of the Covenant as regards its own people, and to seek to this end, when appropriate, international assistance and co-operation" (E/CN.4/988, 59 (1969)). He concluded that while only time would tell whether or not the ICESCR would "impose a formal obligation on States Parties to render assistance to other States Parties," it was "an historical fact that for two decades at least international assistance and co-operation in the economic and social fields had been practised on a large scale, multilaterally and bilaterally,

through the United Nations family of organizations and otherwise" (E/CN.4/988, 59 (1969)).

While the author of the preliminary study avoided lending support to one interpretation at the expense of the other, the reference to international assistance and cooperation as a well-established and conventional practice in international relations in the passage quoted above resonates better with the idea of a formal obligation *to render* rather than *to seek* assistance. The description of "international assistance and co-operation" as a generalized and widely accepted inter-state practice also hints towards the possibility of its recognition and application as a principle of customary international law, independently of the entry into force of the ICESCR (and application of article 2(1) of the said Covenant). From the perspective of the UN Secretariat, the realization of this possibility represented a great political opportunity. Indeed, in the event the principle to render assistance was recognized as a legal obligation, the future of the work of the organization in the field of international economic and social development would be assured in an unprecedented way.

After such a bold statement about the nature and scope of international development cooperation and assistance as an "historical fact", one would expect a policy recommendation to follow suit. Nothing of the sort followed, however. The preliminary study fell short from providing anything new at the time to the question of the relationship between international development cooperation and assistance and the realization of ESC rights. Indeed, as Santa Cruz remarked during the UNCHR debate of 1969, the section concerned with the question of international action and methods in regard to the realization of ESC rights was not only of an essentially descriptive nature but also confined to an annex, as if its subject matter was considered of secondary or minor importance. The substance of the conclusions and recommendations outlined by the author of the preliminary study further evidence the marginal attention attributed to that question. Apart from a general call to intensify international development cooperation and assistance, the conclusions of the author were limited to observations and recommendations on the question of the entry into force of the ICESR and the internal conditions for the realization of ESC rights.

The most daring recommendation contained in the preliminary conclusions could have been found in connection with the affirmation that "the whole process of programming and progressive development should be determined by concern for human rights" (E/CN.4/988, 76 (1969)). Nonetheless, the "question of reconciling certain measures planned in the economic field with respect for human rights" derived from this affirmation was somewhat disappointedly answered with the rather shy statement that "the existing United Nations instruments, particularly the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Abolition of Forced Labour Convention, offer guidance to decision makers" (E/CN.4/988, 77 (1969)). Indeed, to say that these international instruments (which were meant by design to create legal obligations for State Parties) simply

“offer guidance” falls short from providing any concrete method of insuring congruence between human rights and development. To be sure, the author of the report certainly carefully chose those words inasmuch as all but one of the international instruments listed above had entered into force by the time of the publication of his report. All the same, the preliminary report did not offer any concrete alternative course of action for the UNCHR in the meantime.

Remarking upon the above during the debate, Santa Cruz deplored the diffidence and vagueness of the conclusions and recommendations enclosed in the preliminary study, “particularly on the subject of international co-operation in the economic and social field” (E/CN.4/SR.1025, 142 (1969)). Since “international co-operation in those matters was at present passing through a very serious crisis,” Santa Cruz argued, “more specific and realistic recommendations” would have been preferable (ibid.). The crisis of international cooperation alluded to by the Chilean representative may safely be interpreted as a reference to the widening gap between the experience and expectations of developing countries vis-à-vis the work of the UN in the economic and social fields during the 1960s—which had been designated the “United Nations Decade of Development” by a resolution of the General Assembly adopted in 1961 under the leadership of the United States.

It was not so much that the growth rates envisioned were not met but rather that the growth which occurred did not translate into social advancement and higher living standards for the vast majority of citizens of developing countries, as was initially expected by the latter. Indeed, as Jolly remarks,

> The UN’s goal for faster economic growth in the 1960s, although dismissed by some as naïve and overly optimistic, was in fact more than achieved. Well over sixty individual countries exceeded the 5 percent growth target by 1970, and the growth rate for developing countries as a group averaged 5.6 percent over the decade. Nevertheless, there was widespread dissatisfaction with the result. (Jolly 2010, 3-4)

In a way, the argument advanced by Santa Cruz during the UNCHR debate of 1969, that “it was not enough to promote economic development; there must be a general development of man himself” (E/CN.4/SR.1025, 142 (1969)), is fairly representative of the conceptual controversy that informed competing appraisals of what had been achieved during the first UN Development Decade. Whether the normative concept used to evaluate the outcome of the policy pursued by the UN during that decade was that of “economic growth” or “social progress”, the development that had taken place in the recipient countries over the decade not only seemed insufficient in terms of growth rate or incomplete without its social counterpart, but also very unequal from a world perspective. British economist Dudley Seers summarized this feeling quite eloquently when, in an essay on the meaning of development published in the late 1960s, he argued:

> When we consider the world scene, it is wrong to talk about “development”. One cannot say that there has been development for the world as a whole, when the benefits of technical progress have accrued to minorities which were already relatively rich. To me, this word is particularly misleading for the period since the war, especially the “development decade” when the growth of economic inequality and unemployment must have actually accelerated. (Seers 1969, 24)

There was a need for both explanation and accountability. Was the perceived failure to be attributed to the governments of developing countries themselves or was there someone (or something) else to blame? Given the highly politicized nature of this question, the arguments underpinning competing views formulated by development scholars on the subject were quickly appropriated by state representatives in UN debates.

According to Santa Cruz, "[e]conomic and social rights were realized only to a limited extent in the developing countries, owing to the slow economic and social development of those countries" (E/CN.4/SR.1025, 142 (1969)). Given the close connection between the realization of ESC rights and economic and social development, the failure of the policies pursed under the first UN Decade for Development to accelerate progress towards self-sustaining economic growth and social advancement in the developing countries merited the attention of the UNCHR. He thus argued,

> Under-development was due not only to the fact that the developing countries had not made the necessary effort to improve the situation, but also to the inadequacy of international co-operation. The Charter of Algiers, like declaration 9(II), on the world food problem, adopted by the United Nations Conference on Trade and Development, had emphasized the difficult material conditions in which the population of the developing countries lived. It was therefore hardly surprising that economic and social rights were not fully respected in those countries. Those facts should have been mentioned in the Secretary-General's report. (E/CN.4/SR.1025, 142 (1969))

The analysis of the situation offered by Santa Cruz was a rather radical one: in the 1960s, it was still commonplace within the UN to argue that development efforts had to come to a larger extent from the developing countries themselves. In other words, the internal conditions of their development were considered more important than external ones. As Todaro and Smith remark,

> theorists of the 1950s and 1960s viewed the process of development as a series of successive stages of economic growth through which all countries must past. It was primarily an economic theory of development in which the right quantity and mixture of saving, investment and foreign aid were all that was necessary to enable developing nations to proceed along an economic growth path that historically had been followed by the more developed countries. Development thus became synonymous with rapid aggregate economic growth. (Todaro and Smith 2003, 111)

What is more, foreign aid was seen as a short-term and temporary measure, a supplement to recipient countries' own development efforts. It was also this line of reasoning that had informed the US proposal to designate the 1960s the UN Decade of Development. Advocates of foreign aid then believed that with proper assistance, the developing countries would take no more than a decade to catch up with the more advanced countries. In a way, the failure of the UN Development Decade to achieve adequate progress in overcoming problems of illiteracy, hunger and malnutrition despite the relatively favourable rates of economic growth being achieved was quite unexpected to its advocates in both developing and developed countries.

As Jolly et al. observe, "[w]hen the First Development Decade drew to a close, there was an emerging convergence of views on the need for development

policies to focus more specifically on employment generation and reduction of poverty and inequality" (2004, 111). Accordingly, mainstream UN economists, such as Gunnar Myrdal, began advocating major reforms in the structures of the developing states. In other words, while the focus of development policies shifted from a narrow emphasis on economic growth to include agriculture, education, population and the role of the state, the perspective adopted were still largely inward-looking. To take the alternative view, as Santa Cruz did, that "under-development was due […] to the inadequacy of international co-operation" (E/CN.4/SR.1025, 142 (1969)) was certainly perceived as a bold move by developed country representatives among members of the Group of Western European and Other States, particularly because of the political implications of the emerging conception of shared responsibility underlying that claim.

The point is that Santa Cruz did not only argue that international cooperation was needed to enable developing countries to reach a level of development conductive to the realization of ESC rights—something that most representatives of states members of the UNCHR would have easily agreed upon; he traced a causal relation between the disappointing state of international cooperation in the economic and social fields and the lack of progress experienced by developing countries towards the realization of ESC rights. He placed a stronger emphasis on the external rather than internal conditions for the realization of ESC rights. Above all, he attempted to turn the UNCHR debate away from an exclusive emphasis on forms of accountability linked to the nation-state towards a new form of accountability. The latter was to be based on a peculiar view of the principle of international cooperation enclosed in the UN Charter and the concept of international community. For the Chilean representative, while "the developing countries [had] the primary responsibility for development, […] only through efficient, concomitant international action [would] it be possible to achieve a fuller mobilization and more effective utilization of domestic resources" (E/CN.4/1007, 114 (1969)). In other words, the nation-state was no longer to be held the sole responsible of its economic and social development and by the same token of the realization of the ESC rights of its citizens.

While these arguments about international development and assistance had a taste of novelty at the UNCHR, they were not exactly new ones when considered from the perspective of the UN as a whole, and ECOSOC in particular. However, they represented a dissident view that conceived of development primarily in terms of an international project, one that collided with the mainstream conception of development as a national project. The point, however, is that many state representatives at the UNCHR were not as familiar with these arguments as Santa Cruz was—due, among others, to his personal involvement in other UN organs and specialized agencies concerned with development and in the creation of ECLA and concomitant familiarity with the work and rhetoric employed there. In order to illuminate his arguments, a quick detour from the UNCHR debate of 1969 to professional debates among UN economists concerned with development is called for.

In the early years of the UN, international trade presented particular problems, which UN economists started to identify and study. Of particular relevance to the present context is the work carried out by Argentine economist and diplomat Raúl Prebisch and American economist Hans Singer on the deterioration in terms of trade of primary commodity-producing countries. Their research culminated in what became known as the Prebisch-Singer thesis. Singer, as part of his early analytical work at the UN Department of Economic Affairs (DEA),

> had studied the long-term trends in commodity prices and discovered a tendency for commodity prices to fall relative to the prices of industrial goods over the long term. As commodities were the main exports of developing countries and industrial goods and machinery the imports they needed for economic development, Singer's research revealed that developing countries were in a bind. (Jolly 2010, 2)

His conclusions, contained in "Postwar Price Relations between Under-developed and Industrialized Countries" reached the Sub-Commission on Economic Development on 21 March 1949. As Toye and Toye remark, after a lengthy discussion, the Sub-Commission "accepted [...] the statistical evidence but rejected the lessons that had been drawn from it" (2004, 124). To be fair, "the most controversial of the suggestions that Singer had made in interpreting his findings—that underdeveloped countries were helping to maintain a rising standard of living in industrialized countries without receiving any equivalent compensation—was potentially politically explosive" (Toye and Toye 2004, 125). Not to mention that the Sub-Commission was composed of an overwhelming majority of developed countries, which had no interest in having this kind of rhetoric enter the political arena of the UN.

Such evidence led Raúl Prebisch, who served as executive director of ECLA from May 1950 to July 1963, "to argue strongly against policies of unrestricted free trade and for strategies of import substitutions" (Jolly 2010, 2). Under the direction of Raúl Prebisch, "ECLA rapidly developed a series of recommendations for the development of Latin America that criticized current models and theories of international trade through a periphery-based approach that promoted industrialization and social policies aimed at integrating the region" (Auroi and Helg 2012, 5). As Henderson, Delpar and Brungardt remark,

> By 1960 all Latin American States were involved in inward-looking development in spite of many drawbacks. Yet the limited size of national markets, aggravated by widespread poverty, constrained economic growth in ways that became increasingly apparent. This moved economic planners, foremost among them ECLA's Raúl Prebisch, to promote market expansion though international economic integration" (Henderson, Delpar and Brungardt 2000, 373).

The perspective developed by Prebisch and other economists at ECLA is discussed in greater detail below. For now suffice to say that while this "periphery-based approach" ironically remained largely peripheral to the work of ECOSOC in the economic and social fields in the 1950s and early 1960s, it gained global outreached at UNCTAD I (23 March—16 June 1964). There, the developing countries emerged as a more or less unified bloc with a common political agenda, steered by Raúl Prebisch himself.

Singer—who was among the first economists to join the newly established DEA after the Second World War—summarizes the essence of the controversy that turned the strategic optimism of developing countries into outspoken pessimism within less than a decade as follows: "It simply does not make sense to expand aid programs and help the underdeveloped countries along while at the same time they are allow to lose on the swings of trade—which is more important to them than aid—what they gain on the roundabout of aid" (Singer 1961, 73). The expectations of the developing countries that their richer counterparts in North America and Western Europe "would agree to modify those parts of the international trade system that they believed were obstacles to their economic development" were greatly heightened by the rhetoric of the development decade (Toye and Toye 2004, 179). The strategic optimism of developing countries towards the horizon of possibilities for change in the status quo of the international order brought about by the UN Decade for Development, however, was short-lived. Indeed, "when the developing countries were bold enough to call for fine words to be followed by fine deeds," particularly at UNCTAD I, the response of the developed countries was to back down on their word (Toye and Toye 2004, 179).

By the end of the 1960s, the view that, contrary to what advocates of the linear stages of growth or structural change models of development suggested, not all of the conditions necessary for development were in the control of the poorer nations had gained popularity both among developing country diplomats and development experts and policymakers within the UN. Pearson for instance remarked,

> Even the most resolute national effort for growth is likely, in present conditions, to be frustrated by shortages of capital, of foreign exchange, of technical assistance and know-how. The developing countries cannot quickly escape from their need for these things; without them, their own resources often cannot be mobilized. This is were foreign aid come in. (Pearson 1970, 49)

It is noteworthy in this regard that the passage above was uttered during a lecture series delivered before the Council on Foreign Relation, between November and December 1969, which followed the publication of *Partners in Development*—a report commissioned by the President of the World Bank, Robert McNamara, and authored by the Commission on International Development, chaired by Pearson himself. The report in question contained an analysis of the effectiveness of the World Bank's policy in the area of development assistance and made recommendations in that regard.

In the light of that, it is also significant to note that Santa Cruz was no longer a regular member on the Chilean delegation to the UNCHR. He only attended the twenty-fifth session of the Commission—not the previous or next ones. As such, it could be argued that his presence was an attempt to seize the momentum provided by the entanglement of the study of the special problems relating to human rights in developing countries with the question of the realization of the ESC rights contained in the UDHR and the ICESCR to advance the controversial view, in his own words, that "the Commission was not only a legal but also a

political body" (E/CN.4/SR.1025, 143 (1969)). This statement requires some historical context to be understood, particularly in the light of the fact that the UNCHR was composed, in principle, of state representatives and not of independent legal experts. In other words, the rules concerning UNCHR membership made it primarily and by definition a political as opposed to an expert/technical body. Why, then, would the Chilean representative feel the need to emphasize the political nature of the UNCHR? To solve this empirical puzzle, a brief detour into the meetings and debates that led to the creation of the UNCHR are in order.

The acute tension between the call to promote and respect international human rights and fundamental freedoms, on the one hand, and to respect the principle of national sovereignty, on the other, emerged from the very beginning of the UN. This tension, already apparent in the political debates and diplomatic negotiations of the United Nations Conference on International Organization (also known as the San Francisco Conference), travelled into the UN through the conventional language laid out in its charter. As Lauren notes, "from that time to the present, members of the organization have struggled with the politically-charged process of defining the meaning of 'human rights' and determining exactly what lies 'essentially within the domestic jurisdiction of any state'" (2007, 312). In other words,

> The overwhelming majority of nation-states [...] began their whole postwar life as members of the United Nations by claiming that they supported international human rights norms while, at the same time, remaining unwilling to sacrifice elements of their national sovereignty to the extent that it might authorize the international community to intervene in their own internal affairs. (Lauren 2007, 312)

The changing role and functions assumed by the UNCHR over its 60 years of existence has both informed and been informed by this struggle.

Of particular interest to the present empirical-cum-analytical narrative is the debate informing the distinction made by the Chilean representative between the "legal" and "political" roles of the UNCHR. In a way, this distinction may be traced back to the mutually incompatible goals the founders of the UNCHR were asked to achieve: "to serve as protector of the victims of human rights abuses and, at the same time, not threaten the shield of national sovereignty claimed by member states" (Lauren 2007, 313). The founders of the UNCHR were well aware of the challenges they were facing, but understood their role as going beyond that of representing the selfish interest of their state. Eleanor Roosevelt, for instance, advanced the view that

> Sometimes points arise when one has to advocate something that may be difficult for one's government to carry through, and yet, if one believes it is right, I think one should advocate it, hoping that if it would be good for the world, it would therefore, in the end, be good for one's own government and one's own people too. (E/HR/10, 1 (1946))

The members of the Preparatory Committee (also known in the literature as the "nuclear" commission) had an ambitious programme in mind for what would

soon become the UNCHR. As Lauren remarks, "one of their most daring recommendations was that the Commission be composed of *individual experts* genuinely interested and knowledgeable about human rights rather than *representative of governments* interested in maintaining national sovereignty" (2007, 314). However, as Lauren further remarks, "this proposal met with immediate hostility by member states who feared that is was far too ambitious and too threatening to their own domestic jurisdiction" (Lauren 2007, 314). This hostility came not only from the Soviet representatives, but also from the British and US ones—although in a more subtle way, as deep historical research into diplomatic correspondence uncovers. In the end, it was decided that the UNCHR "would operate under the authority of the Economic and Social Council and would be composed of eighteenth members serving as representatives of their respective government following 'positions papers' and 'letters of instructions' on behalf of highly politicized agendas" (ibid.).

Throughout the six decades of its existence, the role and trajectory of the UNCHR has constantly been informed by the tensions between particular conceptions of *international* human rights and *national* sovereignty. At the same time, the UNCHR assumed an important role in transforming that relationship. Indeed, those who wished to provide some form of protection for victims of human rights abuse fought hard to achieve this goal. The first important event in that regard, after the creation of the UNCHR, is the progress accomplished in that direction with the adoption of the UDHR. Despite all the obstacles thrown in their way—especially during debate over various draft articles of the UDHR at the UNGA—advocates of a broad interpretation of international human rights persisted in their efforts. In the end, their bold vision of the UDHR proclaiming "all human beings are born free and equal in dignity and rights" (A/RES/217 A (III) (1948)) was adopted by forty-eight votes against none, with eight abstentions. This vision, however, had competing interpretations, as discussed below.

In order to realize the vision of the UDHR, those representatives of states members of the UNCHR deeply committed to providing international protection for victims of human rights abuses "set to work on a vast program of establishing human rights norms and standards despite powerful political forces that presented resistance every step of the way" (Lauren 2007, 319). From the perspective of those who supported a strict application of the principle of national sovereignty as non-interference in the international affairs of state, enclosed in Article 2 of the UN Charter, "the danger of these documents [was] that they introduced legal order standards based not on the volition of the sovereign, but on human personality" (Lane 1978, 293). Indeed, as the director of the UN Human Rights Division, John Humphrey, remarked in a speech delivered before the UNGA on 1 January 1952, this effort to create international protection for human rights "represents a radical departure from traditional thinking and practice […]. We are in effect asking States to submit to international supervision their relationship with their own citizens, something which has been traditionally regarded as an absolute prerogative of national sovereignty" (UNOG, SOA 317/1/01 (4) (1952)). The role thus assumed by the UNCHR in creating international supervisory

mechanisms with a view to regulate the relationship relations between a state and its citizens is most likely what Santa Cruz had in mind when he referred to the "legal" aspect of its work during the UNCHR debate of 1969.

There was, however, at least one other way for the UNCHR to work towards the realization of the vision enclosed in the UDHR proclaiming "all human beings are born free and equal in dignity and rights", namely fostering international cooperation and solidarity. Here, the UNCHR would act not as an international legal body to oversee the enforcement of international human rights norms and standards in the relationship between a state and its citizens, but as a political body to oversee the protection and realization of these rights in relations between states. Underlying this view is a conception of international human rights that no longer conflicts with respect for the principle of national sovereignty conceived as non-intervention in the domestic affairs of states. On the very contrary, the function of human rights in international relations thus conceived could serve to strengthen the national sovereignty of smaller states by providing them with a tool and weapon to fight the foreign policy of the big powers on the basis that it threatens the fundamental rights and freedoms of their citizens. Here, the UNCHR could, for instance, serve as a political body to appeal any policy of the special agencies or evaluate the interaction of states with one another with a view to the universal protection and realization of human rights. The vast majority of Latin American states who supported the creation of the UNCHR, held such view. The point is that, from their point of view, there was nothing paradoxical in creating a political organ composed of state representatives (as opposed to an independent body composed of international legal experts) with a view to the international protection and realization of human rights, because the latter aim was both the means and the end of the sovereign equality of states (and therefore of respect for the principle of national sovereignty).

In view of his active role in the drafting of the UDHR and in the early work on the ICESCR, it might be safe to argue that Santa Cruz understood the role of the UNCHR along such lines. This interpretation is supported by his emphasis on the political role of the UNCHR during the UNCHR debate of 1969, and his view that the UNCHR

> […] was under an obligation to analyse world political factors that affected the realization of economic, social and cultural rights. The United Nations was preparing for its Second Development Decade and seeking to determine in broad outline what international action would make it possible to put an end to under-development. The Commission must examine the obstacles in the way of the implementation of human rights and must therefore make a thorough analysis of the situation. The real purpose of development was to ensure human dignity. Economic bodies might lose sight of that objective; it was the Commission's duty to draw attention to it. (E/CN.4/SR.1025, 143 (1969))

In terms of rhetoric and conceptual use, the affirmation that the "real objective" of development is "human dignity" (i.e. as opposed to economic growth)—a principle considered the basis of the fundamental human rights contained in the UDHR and the International Covenants on Human Rights—is of particular interest. Here, the concept of dignity assumes a double function. On the one hand, it

serves to oppose the idea, commonplace among development economists at the time, that the deprivation of basic needs was an acceptable development policy in order to achieve rapid economic growth. From the perspective of "human dignity", however, such sacrifices would go against the principle that the lives of all humans must be valued and that every human being must be respected and receive ethical treatment. On the other hand, when used in combination with a reference to the Second UN Development Decade, the concept of human dignity assumes a proscriptive and cautionary connotation: it calls for the application of human rights norms and standards to international development strategy and policy.

The point is that, from the perspective of human dignity, the study of the problems of development and underdevelopment can no longer be regarded as the prerogative of economists or the technical bodies and specialized agencies of the UN (such as UNESCO, ILO, WHO or the newly established UNDP); it becomes a legitimate concern of the UNCHR—inasmuch as human dignity is the basic principle upon which human rights are understood to rest and that the UNCHR is the main organ concerned with the universal realization of those rights. In other words, Santa Cruz was of the view that the UNCHR should not only assume a legal role in promoting human rights and helping states elaborate treaties, but also a political role in directing international development assistance and cooperation towards their realization. Accordingly, he submitted a proposal to that effect, first in the form of an amendment to the Mauritanian draft (hereafter the Chilean amendment) and then as a draft resolution on its own (hereafter the Chilean draft).

In introducing the text of his amendments to the Mauritanian draft, Santa Cruz said that questions relating to the realization of ESC rights were very important, "particularly in the developing countries". The UDHR and the ICESCR, he added, represented "a great step forward in comparison with previous [international] instruments" adopted before the Second World War, "which had dealt only with civil and political rights". He then reminded his audience that, in the drafting process of ~~the~~ those instruments,

> His delegation had striven to secure acceptance of the idea that economic, social and cultural rights should be the subjects of a covenant, since it was obvious that the international community's responsibility was the same in regard to those rights as to civil and political rights. (E/CN.4/SR.1025, 141 (1969))

For a great number of state representatives present during the UNCHR of 1969, however, there was nothing self-evident in the idea that the international community had the same responsibility with respect to ESC rights as to CP rights. Some representatives among members of the Group of Western European and Other States saw irreconcilable tensions between the universality of human rights and their individual nature on the one hand, and the articulation of developing countries' aspirations for economic sovereignty in the language of human rights on the other. For their part, many representatives of developing states along with representatives of among members of the Group of Eastern European States saw a clear tension between respect for the principle of state sovereignty

and the international dimension of human rights; between the diplomatic duty of non-interference in the internal affairs of states and the emphasis put by some representatives of states members of the UNCHR on the encouragement and protection of human rights in other states. For a great number of representatives of developing countries with limited resources of their own, ESC rights were seen as imposing a heavier burden upon their government than upon the governments of developed countries. For their part, representatives of newly independent and/or authoritarian states feared that the stress laid on the international dimensions of the protection and promotion of CP rights by other representatives at the UNCHR could be turned into a legitimating tool for foreign intervention, threatening their independence and sovereignty. In short, many representatives of states members of the UNCHR commonly opposed the politicization of human rights in international relations, albeit for radically different reasons.

Contrary to those views, Santa Cruz, along with the vast majority of representatives of members among the Group of Latin American States, "saw human rights policy not as intervention in the internal affairs of his home country" but as a way to stop foreign support for authoritarian regimes in the region (Sikkink 2004, 51). From his point of view, human rights were part of a political project inescapably embedded in international cooperation. For Santa Cruz the radical challenge posed by human rights to state sovereignty in international relations was a minor issue at best, because international human rights were the only way to preserve that sovereignty and the only way to realize those rights was through international cooperation. Once those rights had been firmly entrenched in the agenda of the newly founded UN, the only question that remained to be answered concerned the nature of the required changes at the international level and the speed at which these changes were possible.

Santa Cruz advanced several reasons for adopting his draft. Firstly, in acting to promote the realization of ESC rights, the UNCHR should recognize certain facts and principles, as had been done in the Proclamation of Teheran (E/CN.4/SR.1029, 190 (1969)). Two aspects of the Proclamation are particularly significant in this regard. One is the statement that "the widening gap between the economically developed and the developing countries impedes the realization of human rights in the international community" and that "the failure of the Development Decade to reach its modest objectives makes it all the more imperative for every nation, according to its capacity, to make the maximum possible effort to close this gap" (A/CONF.32/41 (1968)). The other is the argument about the "indivisibility" of human rights and fundamental freedoms, or the notion that the full realization of civil and political rights without the enjoyment of ESC rights is impossible. The political point of introducing this argument into the conventional language of international human rights employed within the UN is uncovered through the concomitant claim 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" (A/CONF.32/41 (1968)). While the "indivisibility" of human rights could be interpreted in various ways, its significance in terms of conceptual use and rhetoric

in the present context lies primarily in the fact that it succeeded in bringing the concept of development as a legitimate tool and weapon of debate into the dispute over the nature and scope of international human rights policy and objectives. The Chilean draft resolution aimed at achieving a similar purpose, albeit in the narrower context of the UNCHR.

Secondly, Santa Cruz argued, the UN was at that time engaged in planning an international development strategy as part of its second Development Decade. To that aim, it was trying to elaborate a programme of national and international action to accelerate development, and UNGA resolution 2411 (XXIII) dealt with the formation of a committee to prepare an international development strategy in cooperation with all bodies and organizations in the UN system. The UNCHR had a role to play in the matter and had to act to ensure that the programme for the decade was oriented towards the realization of ESC rights. (E/CN.4/SR.1029, 190 (1969)) This argument is particularly interesting given the fact that Santa Cruz had, at that time, accumulated a wealth of experience working in various UN organs and specialized agencies, including ECOSOC, ECLA, FAO and UNCTAD. As such, this chapter suggests that the inclusion of economic and social development in the agenda of the UNCHR, through the adoption of resolution 15 (XXV), was part of a broader strategy towards the realization of the "social and international order" envisioned by Santa Cruz and other Latin American representatives and which had been enshrined in the UDHR. Santa Cruz's attempt to use the authority of the UNCHR to include the realization of ESC rights in the development agenda of the UN must be interpreted within the broader context of this strategy.

In the light of the above, the last argument advanced by Santa Cruz, that "the developing countries were making very great efforts to increase international co-operation, which was of great importance for the realization of [ESC] rights" (E/CN.4/SR.1029, 190 (1969)), gains a further layer of meaning. Only by persuading the representatives of state members at the UNCHR that their work was intrinsically linked to the work carried out in the economic and social fields by other UN organs and agencies could he hope to use the authority of the UNCHR in order to redefine the development agenda of the organization—and thus change the status quo between the developed and developing countries. While apologists of totalitarian and authoritarian regimes had claimed a connection between development and human rights in order to shield themselves from criticism of human rights violations and legitimize the priority accorded to the pursuit of national development policy and objectives, Santa Cruz hoped to achieve a different objective. By setting human rights as the standards upon which international development assistance and cooperation would be judged, he wished to delegitimize the rhetoric of sacrifice employed by mainstream development economists—and to some extent also donor countries, who used it to limit or oppose any obligation to international cooperation and assistance. The sacrifices that recipient countries had to make in exchange of foreign aid and assistance—which were ultimately political choices made by outsiders (i.e. development economists and donor countries)—were increasingly perceived and experienced

by the governments of developing countries as an affront to their national sovereignty. By the same token, he also wished to de-legitimize any support provided by foreign countries to human rights violating regimes—an objective at odds with the one pursued by many representatives of authoritarian regimes—or to foreign involvements in regime change. Although Santa Cruz made no explicit mentions of these events, his criticism hints to several acts of foreign interventions or occupation that took place in Latin America in the early 20th century and during the Cold War (e.g. the US occupation of Nicaragua, the US-backed 1954 Guatemalan coup d'état, the 1954 Paraguayan coup d'état) as well as the endorsement and support given to authoritarian governments in the region by the US government.

In the end, the Chilean draft was amended and adopted, by 18 votes to none with 13 abstentions, as UNCHR resolution 15 (XXV). The regional diversity of the countries abstaining in the vote over the Chilean draft is puzzling. All but one country among members of the Group of Western European and Other States abstained (Finland voted in favour while Austria, France, Greece, Italy, New Zealand, the UK and the US abstained). Votes from the Group of socialist Eastern European States were evenly divided (the USSR and Yugoslavia voted in favour while Poland and the Ukrainian SSR abstained). All but one among the Group of Asian States voted in favour (Israel abstained while India, Iran, Lebanon, Pakistan and the Philippines voted in favour). A similar situation occurred in the Group of Latin American States (Guatemala abstained while Chile, Jamaica, Peru, Uruguay and Venezuela voted in favour). Finally, two countries among the Group of African States abstained (Nigeria and the United Republic of Tanzania) while five others voted in favour (Congo, Madagascar, Mauritania, Morocco and United Arab Republic).[11] (E/CN.4/1007, 129 (1969)) What was so controversial about the Chilean draft that it created divisions not only within the Group of Western European and Other States and the Group of Eastern European States, but also within the groups of African, Asian and Latin American States? Where can the political fault lines be traced?

Part of the answer is to be found in the debate preceding the vote on the Chilean draft, as some representatives raised concerns and objections about the "facts and principles" it set forth. The Guatemalan and Ukrainian representatives, in particular, attacked the declarative statements contained in the first and fourth operative paragraphs of the draft concerned with the situation in developing countries and the call for change in the international division of labour. However, the Chilean draft was primarily opposed on a procedural basis. The subject matter of the Chilean draft, it was argued, fell outside of the competence of the UNCHR. Rita Hauser of the United States for instance argued that the UNCHR "was required to focus its efforts on human rights, not to adopt resolutions relating to economic development." She added,

[11] Senegal was absent during the vote.

> the Chilean representative had maintained that the draft resolution did not deal with very technical economic questions, but her delegation disagreed. In its view, the Commission was not competent in economic matters. She hoped that the Chilean representative would consider withdrawing his draft resolution. (E/CN.4/SR.1030, 6 (1969))

For his part, Sir Samuel Hoare of the United Kingdom considered that the subject matter of the Chilean draft did not come within the scope of the UNCHR's activities. From his point of view, "many of the provisions related to general economic and social development, which was the province of specially designated United Nations bodies, such as UNCTAD" (E/CN.4/SR.1031, 15 (1969)). Similarly, Christopher David Beeby of New Zealand said his delegation had abstained in the vote on the Chilean draft,

> not because it disagreed with the substance of the proposal, but because, like other representatives, it considered that it contained a number of provisions which were concerned with economic development and international trade. Although it fully agreed that such matters had a very important bearing on the promotion of economic and social rights, it did not believe that they came within the Commission's sphere of competence. (E/CN.4/SR.1031, 14-15 (1969))

Even Klaus Törnudd of Finland, speaking in explanation of vote on the Chilean draft, said that his delegation had voted in favour "to make its sympathy with the general purpose of that proposal" but "had certain reservations in parts of the resolution and tended to agree with speakers who had stressed that the Commission was not competent to evaluate all its implications" (E/CN.4/SR.1031, 13 (1969)). In a way, therefore, representatives among members of the Group of Western European and Other States were unified in their opposition to the role assigned to the UNCHR by the Chilean draft. From their perspective, the economic dimension of ESC rights was a question best left to the more technical bodies and specialized agencies of the UN.

Since opposition to the proposals introduced by Hernán Santa Cruz of Chile was raised primarily based on the lack of competence of the UNCHR vis-à-vis its subject matter, deep historical interpretation is called for in order to uncover the conceptual controversies and politics potentially hidden behind this procedural disagreement. Accordingly, the remaining of this paper proposes a rhetorical genealogy of the concepts, arguments and instruments introduced by Santa Cruz to support his views as a way to supplement the close reading of the UNCHR debate of 1969. It is noteworthy in that regard that Hernán Santa Cruz himself participated in the drafting of both the UDHR and the ICESCR.

4.3 Latin American contributions to the UN Charter

The contribution of Latin American experts, diplomats and politicians in laying the foundations for a postwar world ordered by human rights can be traced as far back as the San Francisco Conference, where the UN Charter was drafted and

adopted. As international human rights scholar and practitioner Susan Waltz remarks, the Dumbarton Oaks proposals—a document adopted in 1943 by the major Allied powers of World War II (the US, UK, USSR and China), which was to serve as the basis for the negotiations over the creation of the UN—"contained only one small reference to human rights" (2001, 52; see also Jhabvala 1997). While "papers prepared by the United States in preparation for meetings at the Dumbarton Oaks referenced human rights," she further notes, "support was at best lukewarm" (Waltz 2001, 51). Perhaps even more interesting from our contemporary perspective is that "China […] was the most supportive of that idea." (Waltz 2001, 51). But then again, it was a different, economically weak China, on the verge of all-out civil war. Indeed, at the time, the Kuomindang government—which ruled China from 1927 to 1948, before moving to Taiwan—was barely surviving in Sichuan the Japanese conquest attempt, with memories of the behavior of many other colonial powers before the war.

In contrast to the major Allied powers, human rights were a central element of the new world order envisioned by the vast majority of Latin American countries. Accordingly, in concert with other small powers and NGOs, they assumed an important role in making more space for human rights on the political agenda of the new world organization. In that regard Glendon notes that, soon after the Conference got underway on 25 April 1945,

> Panama submitted a draft declaration of human rights (complete with rights to education, work, health care, and social security). Representatives from Chile, Cuba and Mexico joined Panama in waging an unsuccessful fight to have that declaration incorporated into the UN Charter. In a more productive effort, the Latin coalition joined forces with delegates from newly independent countries like the Philippines and Lebanon, and with observers from Catholic, Protestant, and Jewish religious groups, civic associations, and labor organizations, to try to make sure the Charter would at least proclaim a serious commitment to the protection of human rights. (Glendon 2003, 29)

By the time the conference ended, the language of international human rights had been inserted into the UN Charter in several places (see Preamble and Articles 1, 13, 55, 62, 68 and 76), including a provision establishing a commission on human rights. The main point here is that international human rights were a central conceptual foundation of the postwar world order as envisioned by Latin American countries.

Beside the lasting contribution representatives of Latin American states to the San Francisco Conference made on the UN by including human rights in its Charter, their role in securing the inclusion of a wider concept of cooperation in the normative framework of the new world organization is also noteworthy. In a way, these contributions were inextricable from one another: if the postwar world was to be ordered by human rights, the new world organization created to that end had to be given the concomitant means. To understand that point, the views expressed by Hernán Santa Cruz in an article on the creation of the UN and ECLA, published in 1995, are enlightening:

> the novel element which gives the United Nations Charter its historical value and present validity is that it conceives a world order and makes human beings the centre of

> its interest and action, in their capacity as individuals, citizens, and members of a race governed by principles of equality, justice and solidarity. (Santa Cruz 1995, 21)

To that aim, he added, the UN Charter makes international economic and social cooperation one of the central elements of the UN system, something that comes to light by looking at the contents of the Preamble, the Purposes and Principles set forth in Article 1, and the whole chapter IX, especially Article 55 and 56 (Santa Cruz 1995, 21).

Santa Cruz advanced similar views during the UNCHR debate of 1969. Arguing that the draft resolution under consideration by the UNCHR should contain a reference to Articles 55 and 56 of the Charter, he said "it must be shown that, in the absence of the necessary international order, the conditions making it possible to ensure respect for human rights could not be met" (E/CN.4/SR.1025, 143 (1969)). Accordingly, the preamble of the text of the amendment proposed by his delegation read as follows:

> *Mindful* again of the fact that, under Article 56 of the Charter, all Members pledged themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55, including the promotion of higher standards of living, full employment, and conditions of economic and social progress and development; (E/CN.4/1007, 113 (1969))

It is rather interesting to note how Santa Cruz included a reference to Article 55(a) of the UN Charter and left 55(b), which concerns the promotion of "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion", out of his draft amendment. This move must be interpreted in the light of the subject matter of the UNCHR debate of 1969, namely the question of the realization of ESC rights and the special problems relating to human rights in developing countries. Here, the emphasis laid on Article 55(a) as opposed to 55(b) could be interpreted as an attempt at bringing to the fore the importance of international cooperation in the economic and social fields for the realization of human rights in developing countries.

Quite significantly in the context of the present discussion, French lawyer and former president of the UN Law Commission Alain Pellet characterizes the principle of international cooperation included in Articles 55 and 56 of the UN Charter as the "center of gravity of the Charter" and as the key to what could be termed the "world ideology" of the UN (Pellet 1985, 841 and 843). Perhaps it would be more accurate to speak of "world ideologies". Indeed, the representatives assembled at San Francisco in 1945 might all have agreed on the importance of international cooperation, but they also held very different visions for the new world organization created to that aim. As Santa Cruz remarked in 1995, while economic and social cooperation was already present in the Dumbarton Oaks proposals, "the Charter expanded and extended the objectives of the United Nations in the economic, social and human rights spheres […] on the initiative of the developing countries" (Santa Cruz 1995, 20). At the time, however, the "developing countries" were not yet organized as a political bloc but Latin American countries were. Representing eighteen out of the forty-six governments that met

at the San Francisco Conference in 1945,[12] the Latin American delegations often worked together and obtained support for their proposals from other small states.

There is nothing self-evident in the concept of cooperation used by the UN then or now. It is the result of fierce political struggles and controversies, which necessitate deep historical interpretation to be uncovered. Indeed, a close reading of the vast documentation related to the drafting of the UN Charter and the creation of the new world organization sheds light on clashes of opinion over the form and direction of the international cooperation to be achieved through the UN. Disagreement over the nature and scope of the principle of international cooperation to be entrusted to the UN, in particular, first emerged at the Dumbarton Oaks conference, where the four major Allied powers discussed their respective preliminary plans for the new world organization. Commenting on the American plans in an extensive study of America's UN policy between 1944 and 1955, Thomas M. Campbell remarks:

> To foster cooperation between nations, the [American] proposals recommended "additional organs" whose function would be to make recommendations about social and economic problems. The Americans had in mind an economic and social council. Such a body would initiate studies and work with particular governments, "with a view to promoting the fullest and most effective use of the world's economic resources." This concept was one of the major American contributions to the United Nations. Neither Russia nor Britain included such provisions in their plans. It reflected the American belief that the new organization should be more broadly conceived than solely as a security organization. (Campbell 1973, 35)

What the United States had in mind for the world organization, therefore, "was a 'one-tent' organization covering international relations generally, with autonomous functional agencies" (Toye and Toye 2004, 25). While "the British agreed with the American view that the UN should have a broader role than that of policing the peace", the Soviet considered "that the primary and indeed the only task of the international organization should be the maintenance of peace and security" (Campbell 1973, 36).

When they were finally given a voice in the matter at the Inter-American Conference on Problems of War and Peace (hereafter Chapultepec Conference), held in Mexico City from 21 February to 8 March 1945, the Latin American delegations supported the American idea, enclosed in the Dumbarton Oaks Proposals, to task the new world organization with international cooperation in the economic and social fields. In that regard, a Mexican document submitted to the Conference and supported by the majority of Latin American delegations, "commended the 'happy innovation' of the Economic and Social Council" (Campbell 1973, 122). While the Latin American delegations at the Chapultepec Conference endorsed the Dumbarton Oaks Proposals as "a basis for, and a valuable contribution to the setting up of, a General Organization", they also thought that the plans for the new world organization could be improved in a number of ways. In the end, a compromise view was reached and the following points were

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[12] The eighteen Latin American nations were Bolivia, Brazil, Chile, Columbia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela.

adopted in the form of an amendment to the Dumbarton Oaks proposals, to be considered at the San Francisco Conference:

> (a) Aspiración a la universalidad como ideal a que debe tender la Organización en lo futuro;
>
> b) Conveniencia de ampliar y precisar la enumeración de los principios y fines de la Organización;
>
> c) Conveniencia de ampliar y precisar las facultades de la Asamblea General para hacer efectiva su acción, como el órgano plenamente representativo de la comunidad internacional, armonizando con dicha ampliación las facultades del Consejo de Seguridad;
>
> d) Conveniencia de extender la jurisdicción y competencia del Tribunal o Corte Internacional de Justicia;
>
> e) Conveniencia de crear un organismo internacional encargado especialmente de promover la cooperación intelectual y moral entre los pueblos;
>
> f) Conveniencia de resolver las controversias y cuestiones de carácter interamericano preferentemente según métodos y sistemas interamericanos, en armonía con los de la Organización Internacional General;
>
> g) Conveniencia de dar adecuada representación a la América Latina en el Consejo de Seguridad; [13]

In a way, the raison d'être of the new world organization for the majority of Latin American states was not the *maintenance* of peace and security, which they thought could be better achieved through a regional organization, but international cooperation in the economic, social, humanitarian and cultural fields, with a view to achieve equal sovereignty of states. This would promote peace through other than military means.

According to Campbell, "[t]he Latin American countries, because they feared a communist expansion, favored a purely regional approach to security and challenged international alternatives" (1973, 111). This interpretation is partly supported by the fact that "three major resolutions […] aimed at creating a strong, permanent inter-American security system" were submitted by Brazil Uruguay and Colombia to the steering committee of the conference that dealt with inter-American security (Campbell 1973, 114). The fact that even later, "at the San Francisco Conference, the Latin American countries made a determined effort to give broad autonomy for regional arrangements under the UN" lends further support to Campbell's thesis (ibid., 120). It is not to say that Latin American states completely opposed the idea of entrusting the new world organization with the task of maintaining peace and security; after all, they sought a seat for themselves on the Security Council (see point (g) above). But this very move points towards the greater importance they attributed to the achievement of sov-

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[13] Resolución XX. Sobre Establecimiento de una Organización Internacional General, http://constitucionweb.blogspot.no/2009/11/acta-de-chapultepec-firmada-por.html

ereign equality, which they thought could only be achieved through international cooperation and solidarity. The cooperation they envisioned was not limited to the economic and social fields, but extended to the intellectual and moral fields as well (see point (e) above).

In keeping with the interpretation suggested above, the fact that Latin American states wished to give greater powers to the UNGA than initially intended by the four major Allied powers is all the more significant (see point (c) above). This aspect is well-exemplified in the relationship envisioned between the Security Council and the UNGA in the 200-page document submitted to the conference by the Mexican Ministry of Foreign Affairs—a document which according to the American delegation represented "the best analysis and expression of the views of Latin America" (quoted in Campbell 1973, 122). Campbell summarizes the Mexican argument as follows:

> Mexico sharply denounced the imbalance between the power of the major states and the small ones in the proposed organization. The Mexicans drew evidence from the other international bodies which had been established during the war and found that "all these international instruments embody the principle that the Supreme Organ is that one on which all the member States are represented." It was only logical that the same principle must apply to the UN. (Campbell 1973, 122)

In this regard, the Mexican delegation objected to the idea of having permanent members on the Security Council. Rather, the composition that council "should be flexible to allow for changes in the world balance of power, so that new nations would become 'semi-permanent' members when they achieved sufficient stature." In addition, a state standing accused of breaking the peace should not have a vote on the council. Finally, it should be possible for a state, if it so wished, "to appeal from the Security Council to the General Assembly." As Campbell remarks, "[i]n Mexican thinking, the assembly was really the supreme organ in the organization, and it should have the power to take action on its own initiative or when a member appealed from the Security Council." (Campbell 1973, 122)

For years to come, however, the principle of international cooperation enclosed in the UN Charter remained notoriously imprecise and thus the object of fierce political struggles within the world organization. Even when attempt was made by the Sixth Committee of the UNGA, in the context of the consideration of principles of international law concerning friendly relations and cooperation among states in accordance with the UN Charter, to elaborate on the nature of "the duty of States to co-operate with one another" (A/RES/1815 (XVII) (1962)), little, if any progress was made. As Italian international lawyer Gaetano Arangio-Ruiz comments, the resulting statements contained in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (A/RES/2625 (XXV) (1970)), adopted by the UNGA upon recommendation of the Sixth Committee on 24 October 1970, were "mostly either reiterations of Charter provisions […] or reiterations in different words of the statement that States should co-operate" (Arangio-Ruiz 1979, 143).

For Santa Cruz, however, the duty of states to cooperate with one another was of a very precise nature and had profound implications both with respect to the realization of ESC rights in developing countries and their economic and social development. Again, the views adopted by the Chilean representative during the UNCHR debate of 1969 present strong elements of continuity with the one advanced by representatives of Latin American states in the making of a new world order that included the UN. Hence, the draft amendment submitted by his delegation to the Mauritanian draft in 1969 contained a declaration "that the developing countries bear the primary responsibility for development, but that only through efficient, concomitant international action will it be possible to achieve a fuller mobilization and more effective utilization of domestic resources" (E/CN.4/1007, 114 (1969)). This statement was then transferred to the draft resolution submitted by his delegation once the Mauritanian and the Polish drafts were merged into a joint text that did not include his amendment.

4.4 Articles 3, 22 and 28 of the UDHR and the Postwar World Order

Once the UN began its work, representatives of Latin American states kept pushing for further action to be taken on the human rights front. When the UNGA convened for its first session on 10 January 1946 in the Westminster Central Hall in London, "Panama proposed that the draft bill of rights it had sought to introduce into the Charter now be adopted as a resolution" (Carozza 2003, 285; see also Humphrey 1984, 14). Once more, the Panamanians were defeated. The question was accordingly transferred to ECOSOC. At its first session, pursuant to Article 68 of the UN Charter, ECOSOC established a Preparatory Committee to report on the functions and scope of work of the projected UNCHR. At its second session, ECOSOC considered the recommendations of the Preparatory Committee and set up the terms of reference of the UNCHR. The ECOSOC tasked the UNCHR with making provisions "for the implementation of human rights and of an international bill of human rights" (E/56/Rev.2, 1 (1946)). ECOSOC also decided that the UNCHR should consist of one representative from each of the eighteen member states of the UN selected by the Council. Latin American states obtained three seats (Chile, Panama and Uruguay). The fifteen remaining seats were given to Australia, Belgium, China, Egypt, France, Iran, Lebanon, the Philippines, the United Kingdom, the United States and four members of the Soviet bloc (Byelorussian SSR, USSR, the Ukrainian SSR and Yugoslavia) (Yearbook of the United Nations 1947, 524).

At its first session, the UNCHR decided that the Chairman (Eleanor Roosevelt of the United States), the Vice-Chairman (Peng Chung Chang of China) and the Rapporteur (Charles Malik of Lebanon), with the assistance of the Secretariat, formulate a draft International Bill of Human Rights (Yearbook of the United Nations 1947, 524). At the Secretariat, the Division of Human Rights, then headed

by Canadian international lawyer John Humphrey, was tasked to prepare a Draft Outline of International Bill of Rights (hereafter Draft Outline). To that aim, "Humphrey began by having his staff conduct a complete survey of the world's existing rights documents, together with all the proposals that had been submitted to the UN" (Glendon 2003, 30). Significantly, Chile, Panama and Cuba were the first three governments to submit full-fledged draft bills of rights to the UN. With a similar degree of significance, Humphrey admitted in his memoirs that, after studying the sea of material he had received and collected, he decided to take as his principal models the drafts submitted by the Panamanian and Chilean governments (Humphrey 1984, 31—32).

After completing his Draft Outline, Humphrey turned it over to the Drafting Committee appointed by the UNCHR to pursue the drafting work. The Drafting Committee consisted of the members of the UNCHR for Australia, Chile, China, France, Lebanon, the USSR, the UK and the US (Yearbook of the United Nations 1947, 525). Hernán Santa Cruz of Chile was a key member of that drafting committee. Contrary to common wisdom, it was he, "far more than any Soviet bloc representative, who was the Commission's most zealous promoter of social and economic rights" (Glendon 2003, 36). Indeed, Santa Cruz sponsored in bulk the social and economic rights contained in the Draft Outline and (as discussed in greater detail below), made sure that they stayed there throughout the whole drafting process. Since the Latin American bloc—who represented roughly one-third of the membership of the UN at the time—generally supported Santa Cruz, his views were also very influential in the debates that took place at the UNGA over the drafting and adoption of the UDHR.

That the formulation of the ESC rights owes much to Santa Cruz and representatives of Latin American states is clear (see Carozza, 2003; Glendon, 2000 and 2003; Humphrey, 1984; Morsink, 1999; Waltz, 2004), but whether "the tradition of Latin American socialism" (Morsink 1999, 130-131) suffices to interpret these contributions is less clear. As Glendon remarks, "by the 1940s, social and economic rights had found their way into the constitutions of many Latin American and continental European countries via the programs of socialist, social democratic, labour, Christian democratic, and Christian social parties" (2003, 35). Similarly, Carozza notes, "very few of the Latin American countries represented could be said to have socialist constitutional structures or economic system at the time" (2003, 288). In a way, the human rights concept held by Latin American countries served to legitimize an agenda for economic, social and political development quite different from the agenda of the socialist countries of Eastern Europe. Not least because of the universalizing, internationalist dimension of the human rights project in Latin America. In this regard, it is significant to note the American Declaration of the Rights and Duties of Man (hereafter Bogotá Declaration), adopted on May 2 1948 by the Ninth Conference of American States and which therefore predates the UDHR, adopted on 10 December 1948, as the first international human rights instrument of a general nature.

For the most part, the rhetoric of rights utilized in Latin America at the time, which emphasized "the family, religion, and the dignity of the person," was significantly at odds with the rhetoric of rights employed by socialist countries of Eastern Europe to justify state socialism (Glendon 2003, 35). This interpretation is supported by the views advanced by Santa Cruz during the final UNCHR debate on the draft international declaration on human rights. In that debate, Santa Cruz opposed his conception of democracy to the one held by countries like the USSR in an attempt to illustrate that, if the meaning of democracy was not defined, some articles might lead to abuses. He thus argued,

> Marxism aimed at the creation of a classless society in which the State as such no longer existed. This definition of its aims showed that its highest stage had not yet been achieved in countries like the USSR, where a powerful State existed. According to the Marxist theory, the USSR was in the intermediate stage of the dictatorship of the proletariat. The organs of information, culture and the arts were controlled by the Party because the revolutionary conscience was the sole source of law. The USSR Government considered that even in that intermediate stage, it represented a democratic State. But he, for his part, could not imagine that dictatorship, even if temporary, could exist side by side with democracy. (E/CN.4/SR.51, 2-3 (1948))

He concluded that "the Commission was faced with two different concepts of human rights" and that "it was therefore only logical to define the notion of democracy" (E/CN.4/SR.51, 3 (1948)).[14] Indeed, during the drafting process of the UDHR, Santa Cruz often expressed the hope "that the Declaration would embody a conception of democracy based on respect for human rights and the dignity and worth of the human person, and that there would be provisions against the abuse of such rights" (E/CN.4/SR.50, 7 (1948)). Hence, if Latin American and Soviet representatives to the UN both conceived of human rights as a political project, they often held diverging views on the exact form and direction of that project.

According to Glendon, one feature that distinguished twentieth century Latin American rights rhetoric from the Marxist-Leninist type emanating from the socialist countries of Eastern Europe "was their resemblance to two influential papal encyclicals that grounded social justice in respect for human dignity: the 1891 encyclical *Rerum Novarum*, and *Quadragesimo Anno*, published on the fortieth anniversary of *Rerum Novarum*" (Glendon 2003, 35). Carozza similarly recognizes the influence, although indirect, of the ideas and rhetoric of the Catholic social agenda "in the Mexican Constitution of 1917's social guarantees"—an instrument which had immediate and wide influence on the constitutional history of the region—which he characterizes as "both a continuity with the tradition of Latin American human rights and thinking and also a deep irony in the works of the Constitutional Congress" (2003, 308).[15] For Carozza, the "tradition of Latin American human rights" presents with a peculiarity of its own, found in

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14 For the USSR reply see E/CN.4/SR.51, 7-9 (1948).

15 Indeed, Carozza notes, "the irony […] is that Mexico was a paradigmatically anticlerical state throughout most of the 19th century, and during the revolutionary years between 1910 and 1917 the persecution of the Catholic Church was sometime extreme" (2003, 308).

what Glendon summarizes as “a distinctive application, and extension, of Thomistic moral philosophy to the injustices of Spanish conquests in the New World” (2003, 32). This is interesting because “conventional history treats Latin American constitutionalism as merely derivative of American and European models”, while it could be more accurately regarded as an adaptation of the rhetoric of the American and French revolutions to the Latin American context infused with “a natural law tradition to which the idea of the common humanity of all persons was central” (Glendon 2003, 33).

The contributions of Santa Cruz to the drafting debate of the UDHR in the late 1940s and early 1950s and to the UNCHR debate over the question of the realization of ESC rights in 1969 both seem to lend strength to the idea that the human rights agenda of Latin America still had a lot in common with the “social” agenda of the Catholic Church and concomitant idea of the common humanity of all human beings. In this regard, it is significant to note how the rhetoric employed by Santa Cruz in the UNCHR debate of 1969 resonates with the one brought into play by the representative of Pax Romana—the international federation of Catholic intellectuals—during the same debate. Contrary to a number of developing country representatives—mainly among members of the groups of Asian States and African States--, Santa Cruz did not utilize the rhetoric of indivisibility as a means to prioritize national development over individual rights. On the very contrary, the equal importance attributed to political as well as economic and social rights is at the very core of the concept of development, understood as a participatory process with human dignity as its ultimate objective, advocated by Santa Cruz. From his point of view, there was nothing inevitable or self-evident in any of the trade-offs advanced through the rhetoric of linear growth à la Rostow or structural change à la Lewis—in which individual liberties were represented as the engine of long-term economic development, but where needs and equality were gladly sacrificed on the altar of economic growth until a country had reached either the “take-off stage” or “balanced growth”—or that of Marxism-Leninism—where individual liberties were sacrified in the name of equality and the satisfaction of basic needs. Indeed, the emphasis laid by Santa Cruz on the “participation by the less privileged sectors of the population” (E/CN.4/SR.1031, 12 (1969)) in economic and social development confirms the equal importance he accorded to socio-economic and political rights. Because of its implications for drawing the line between the kind of development plans and policies that were acceptable or not for developing countries, this conception of human rights was problematic for several representatives who adhered to either conceptions of development outlined above. Nonetheless, as further discussed below, Santa Cruz was able to draw from his influence and that of the Latin American bloc on the conventional language of the UN Charter, the UDHR, and the ICESCR, in order to bring support to his position on the possibility and desirability of conceiving development and human rights as complementary rather than competing concerns.

In a speech delivered to the UNGA on 9 December 1948, during the final debate on the UDHR, Santa Cruz emphasized the importance of what became

Article 3 of the Declaration, which he said proclaims "the right to life, liberty and personal security", Article 22, which "states that everyone was entitled to the economic, social and cultural rights indispensable for his dignity, and to social security", and Article 28, which proclaims "the need for a just social order and a peaceful international order—the two elements essential for the exercise of basic human rights"—of the UDHR (A/PV.180, 863-864 (1948)). He added,

> The other principles enunciated completed the conception of a democratic society, on the national as well as on the international plane, and in the economic, social and political fields. The result was a conception of society which excluded all non-democratic regimes, and provided a criterion for distinguishing between true and false forms of democracy. Democracy was a system opposed to every form of dogmatism. No one could claim a monopoly of the truth, and common problems should be solved by universal and free suffrage. That system was based on national solidarity. Groups of persons subject to the orders of foreign authorities could not be called upon to take part in public affairs. Furthermore, efforts made to have the declaration recognize the State authority to restrict or regulate the rights proclaimed had failed. The opinion of the majority had been that to do otherwise would amount to waiving indefeasible human rights and proclaiming the totalitarian rights of the State; whereas the declaration as it stood would make it incumbent on States to adapt their legislation to the principles laid down. (A/PV.180, 864 (1948))

This summarizes briefly the main aspects of Santa Cruz's unified conception of human rights as being simultaneously a set of legal rules (means) and a political project (ends). In order to gain a deeper understanding on how his conception relates to the one held by other representatives of Latin American states, his arguments must be interpreted in the context of their use, namely with reference to the debates underlying Articles 3, 22 and 28 of the UDHR.

Right at the start of the drafting process, in April 1946, Assistant Secretary-General for Social Affairs Henri Laugier—the UN official who was at the time ranked above the Director for the Human Rights Division, John Humphrey—told the representatives to the Preparatory Committee that they would have to show

> that the political rights are the first condition of liberty but that today the progress of scientific and industrial civilization has created economic organizations which are inflicting on politically free men intolerable servitude and that, therefore, in the future, the declaration of the rights of man must be extended to the economic and social fields. (E/HR/6, 2 (1946))

John Humphrey had no reservations about following these instructions. He accordingly devoted ten articles to ESC rights in his Draft Outline (E/CN.4/AC.1/3, 14-15 (1947)). When the Draft Outline reached the Drafting Committee, however, views were divided on whether those rights should be included (if at all) in a declaration, a covenant, or both.

Discussion in the first session of the Drafting Committee revealed that many representatives were ready to accept a draft declaration if it would precede and not replace a covenant. While Humphrey's Draft Outline served as the basis of discussion in the first session, René Cassin of France was soon asked to prepare a draft declaration (hereafter French draft) for consideration by the Drafting Committee. When the Drafting Committee considered the suggestions of articles covering economic and social rights contained in the French draft, Ralph Harry

of Australia expressed the view that "two or three Articles in the final draft should be sufficient to cover broad principles. Their exposition and development could be left to a later stage [i.e. a covenant]" (E/CN.4/AC.1/SR.9, 10 (1947)). Similarly, Geoffrey Wilson of the United Kingdom "felt that two or three general principles should be stated" in the draft Declaration and "worked out at a later stage by the United Nations and its Specialized Agencies" (ibid.), by which he meant that they would be left out of the Covenant.

From the outset, Hernán Santa Cruz sustained a different view:

> the declaration, however short it might be, should include all the points that humanity expects to be included at this period of our history. To him it appeared to be especially important that economic and social rights be assured. The recognition of these rights would make the return of Fascism impossible. He agreed that the Declaration should be short, but emphasized that it should define the principles of freedom, of equality, of non-discrimination and of the rights of man to a just life. (E/CN.4/AC.1/SR.7, 3 (1947))

Similarly, when the Drafting Committee considered the French draft, Santa Cruz took issue with the views expressed by Harry and Wilson and argued that "the social and economic rights should be mentioned not only in the Articles of the Declaration but also in the Preamble, in order to give them adequate importance" (E/CN.4/AC.1/SR.9, 10 (1947)). He also thought "every right mentioned in Prof. Cassin's draft should be included in the Declaration" (ibid.). Eleanor Roosevelt of the United States agreed with Santa Cruz that ESC rights could not be omitted. At the same time, however, she "thought that […] they could not be expended too much in a Declaration" (E/CN.4/AC.1/SR.9, 11 (1947)).[16] In the end, after Roosevelt, speaking as the Chairman, reminded the Drafting Committee that ECOSOC had specifically asked for the draft international bill of human rights to include ESC rights, they were agreed upon without much debate (as compared to the articles on CP rights, that is) by the Drafting Committee. Perhaps their opponents thought that doing so would liberate some precious time for consideration of the draft convention submitted by the UK, which excluded ESC rights. But whatever the reason, the final report of the Drafting Committee on its first session to the UNCHR contained suggestions for articles on economic and social rights to be included in an international declaration on human rights (see E/CN.4/21 (1947)).

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[16] As Glendon remarks, "nowhere was Eleanor Roosevelt's ability to influence U.S. policy more evident than in her success in persuading a reluctant State Department to accept the inclusion of social and economic rights in the Declaration" (Glendon 2001, 43). Even so, Roosevelt and Santa Cruz frequently disagreed on the specifics of the language on ESC rights. For example, at one point during consideration by the Drafting Committee of revised suggestions submitted by the representative of France for Articles of an International Declaration on Human Rights, the Roosevelt suggested to replace the wording of an article beginning with "Every one has the right and the duty to perform socially useful work […]"(E/CN.4/AC.1/W.2/Rev.2, 5 (1947)) by "Every one has the right to a fair and equal opportunity to perform socially useful work" (E/CN.4/AC.1/SR.14, 6 (1947)). Santa Cruz preferred the language of "the right to work" employed in the text put forward by Cassin to that of "the right to equal opportunity of employment" advanced by Roosevelt (E/CN.4/AC.1/SR.14, 6 (1947)).

During its Second Session, the Drafting Committee considered comments from governments. Many delegations still hoped that there could be both a declaration and a covenant on human rights, and most of the discussion concerned the draft covenant. But the draft covenant did not include ESC rights. The Australian representative, supported by Santa Cruz, pushed for their inclusion in the covenant and submitted a proposal to that effect (E/CN.4/AC.1/21 (1948)), which was defeated (E/CN.4/AC.1/SR.29 (1948)). When the time finally came to discuss once again the section of the French draft concerned with economic and social rights, the Chairman proposed that, in view of the short time left for the Drafting Committee to finish its work, the remaining articles of the French draft should be submitted to the UNCHR, as contained in the Report of the Second Session, together with any amendments to any of these articles submitted in writing at the current session. The Drafting Committee could then devote its remaining meetings to study the question of implementation as they had been directed to do. Santa Cruz argued to the contrary that it would be better to finish the discussion of the French draft; the declaration, he argued, was as important as implementation. The remaining articles, he further argued "covered economic and social rights" that "had not been included in the Covenant, which was an added reason for not overlooking them in the Declaration" (E/CN.4/AC.1/SR.42, 2 (1948)). A debate ensued among members of the Drafting Committee on whether or not it should continue discussion of the French draft. The Drafting Committee finally decided, at the suggestion of Wilson, to finish its consideration of the draft covenant and then decide how to proceed, on the basis of the amount of time left. In the end, only a few hours were allocated to consideration of economic and social rights during the Second Session of the Drafting Committee (see E/CN.4/AC.1/SR.42, 7—14 (1948)).

The debates on economic and social rights, which led to the drafting and adoption of articles 22 and 28, thus took place to a greater extent at the Third Session of the UNCHR and the Third Session of the Third Committee of the UNGA. Before moving to those debates, a point should be made about another important aspect of Santa Cruz's conception of human rights as a political project, well captured in the following amendment proposed by his delegation to the draft Declaration's article on the right to life:

> Unborn children, incurables, the feeble-minded and the insane have the right to life.
>
> Everyone has the right to enjoy conditions of life compatible with human dignity and the normal development of his or her own personality.
>
> Persons incapable of satisfying their own needs have the right to maintenance and support. (E/CN.4/AC.1/SR.35, 3 (1948))

In the ensuing debate, attention was paid to the first paragraph of the Chilean proposal but no mention was made of the second and third ones. When Santa Cruz pointed out this fact to the Drafting Committee, Malik of Lebanon drew in turn the Drafting Committee's attention to the fact that three articles of the draft Declaration under consideration already dealt with the economic rights of the

individual (E/CN.4/AC.1/SR.35, 6 (1948)). In reply to Malik, Santa Cruz "stated that the principle of the security of the individual should find expression in the definition of the right to life even if it already occurred in other articles of the [draft] Declaration" (E/CN.A/AC.1/SR.35, 6 (1948)). Cassin shared Malik's view that the idea of security should not be expressed in the article on the right to life. In the end, the inclusion of paragraphs 2 and 3 of the Chilean proposal in the draft Declaration's article on the right to life was rejected by three votes to one, with four abstentions (E/CN.A/AC.1/SR.35, 6 (1948)). As Glendon comments, "while Santa Cruz was unsuccessful in his attempt […], no one played a greater role than he in securing recognition for the rights of persons who cannot provide for their own needs" (2003, 36).

When the report of the Second Session of the Drafting Committee reached the UNCHR at its Third Session, members begin by expressing their views on the purpose of the Declaration as compared to the Covenant and how they understood the relationship between the two instruments. The views expressed in that regard provides a good starting point for a discussion of what became articles 22 and 28 of the UDHR. Quoting the words of Abraham Lincoln on the United States Declaration of Independence, Eleanor Roosevelt argued that the authors of the draft Declaration now before the UNCHR

> did not mean to assert the obvious untruth that all men were then actually enjoying that equality, or yet that they were about to confer it immediately upon them. In fact, they had no power to confer such a boon. They meant simply to declare the *right*, so that the enforcement of it might follow as soon as circumstances permitted. (E/CN.4/SR.48, 6 (1948))

From the perspective of her delegation, the Declaration would serve two purposes: in accordance with the Charter, it would serve to establish basic standards which would guide the UN in the realization of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms for all; it would also serve as a guide and inspiration to individuals and groups throughout the world in their efforts to promote respect for human rights. As such, the Declaration should not be in any sense a legislative document; the UNGA—which would ultimately proclaim it—was not a legislative body. The manner in which the UN would undertake the task of promoting and encouraging respect for human rights and fundamental freedoms thus remained in large measures to be determined. Furthermore, the Declaration, as envisaged by her delegation, would not create legal remedies or procedures to ensure respect for the rights and freedoms it proposed to the world; that ideal would have to be achieved by further steps in accordance with international and domestic law. The Declaration would thus have moral, not mandatory, force. It was quite otherwise with the Covenant, which bound the parties legally. The Covenant was therefore the document that should contain measures of implementation. (E/CN.4/SR.48, 5—6 (1948))

There were, however, conflicting views on the nature of the authority to be granted to the Declaration. As René Cassin of France summarized during the same debate,

> Some saw the Declaration purely as a document interpreting the Charter and therefore vested with the same mandatory force as the Charter itself. Others saw it as a purely formal document, giving expression to a hope of a rather limited moral influence, and of no legal value until its principles had been embodied in one or several covenants. (E/CN.4/SR.48, 7—8 (1948))

He continued by stating that his delegation "did not share either of those too strict and simple views." From his perspective and that of his government, the Declaration "should to a certain extent bear an assertive character." In other words, "Even in the absence of any Covenant [...] the principal organs of the United Nations would [...] be entitled to take cognizance of the fact if any State violated human rights." (E/CN.4/SR.48, 8 (1948)) The views expressed by Cassin on the character of the Declaration may be interpreted against a rigid conception of the principle of non-intervention and the accompanying notion that the UN ought not to concern itself with the treatment accorded by a state to its own nationals. From his point of view, the UN ought to be allocated the competence to do so, even in the absence of an international legal instrument to that end. This was the kind of purpose the Declaration was aimed to serve.

Nonetheless, Cassin added, the Declaration should not be of a purely assertive character; it should also be a guide. By that function, the Declaration should "introduce new conceptions" (E/CN.4/SR.48, 8 (1948)). In particular, the Declaration should

> make a distinction between those obligations which applied to the United Nations as a whole and those which applied to each particular nation. The United Nations Organization was subject to the obligations imposed by the General Assembly's resolutions. In respect of the United Nations as a whole, therefore, the mandatory force of the proposed Declaration would derive from the resolution of the General Assembly might adopt on it. In respect of individual States, the new concepts which the Declaration contain, such as the right of nationality or the right of asylum, would have only the value of a recommendation like the resolution of the General Assembly. (E/CN.4/SR.48, 8-9 (1948))

In order to delve further into Cassin's remarks about the obligations of individual states as compared to that of the international community (i.e. the obligations of states taken collectively) with respect to the new concepts contained in the Declaration, I would like to suggest relying on Morsink's analytical concept of "special international (human) rights" (1999, 72—73).

As Morsink points out, the vast majority of UN member states "had little difficulty voting most of the rights in the Declaration for more often than not their own national constitutions also contained the particular right to be voted upon. All that was required was a shift from the national to the international level" (Morsink 1999, 72). The same could not be said, Morsink further remarks, about "special international (human) rights" (ibid.). Contrary to the rights enclosed in national constitutions, special international human rights were addressed "to worldwide audiences" and "required more than one nation to implement" (Morsink 1999, 72). Such was the case, for instance, of the rights enclosed in Articles 13, 14 and 15 of the UDHR. Morsink thus explains,

> For people to enjoy these rights various countries have to cooperate and hence give up a piece of their sovereignty. The same is true of Articles 22, 28, 29 (3), and 30, which also require international cooperation. These rights are, therefore, real test cases for any list of human rights, for in their case the question of the problem of sovereignty can no longer be hidden behind the veil of positive national law. (Morsink 1999, 73)

In this regard, the views formulated by Hernán Santa Cruz of Chile with respect to the purpose of the Declaration are of particular interest. Santa Cruz began his statement by stating that his delegation

> believed that both the Declaration and the covenant must be inspired by the principles of the Charter. It had been recognized at San Francisco, when the horrors of the war and totalitarianism were still in the memory of the world, that if the causes of war were to be eliminated, the sovereignty of States must be limited by considerations of international solidarity and co-operation, and the economic level of the peoples of the world must be raised. (E/CN.4/SR.50, 6 (1948))

For Santa Cruz, therefore, any real possibility for a lasting peace was premised on the willingness of states to limit their sovereignty by accepting the duties of international solidarity and cooperation so as to raise the living standards of people worldwide. With respect to this last point, Santa Cruz drew the attention of the UNCHR to the fact that his delegation

> had made it clear in the Drafting Committee that it could not support a Declaration that did not embody those principles. Economic and social rights must find their place in the Declaration; the right to work, the right to an equitable salary, and to the benefits of culture and scientific progress must not be omitted. (E/CN.4/SR.50, 6 (1948))

Santa Cruz concluded his statement by urging the UNCHR on "the importance of taking into account the ideals which had inspired the French revolution" (E/CN.4/SR.50, 6 (1948)), for which he certainly had in mind the tripartite motto of liberty, equality, and fraternity (the latter concept being understood in terms of solidarity).

In order to better understand how his views diverged from those of Cassin, for instance, it might be useful to turn to the political origins and history of the Bogotá Declaration. After all, the full-fledged draft bill of rights submitted by the Chilean government to the UNCHR, from which Humphrey took part of his inspiration for the economic and social rights contained in the Draft Outline, was in fact a preliminary version of the Bogotá Declaration, commissioned in 1945 by the Chapultepec Conference (Glendon 2003, 31). As Professor of Law Robert Goldman argues, in a discussion of the origins of the inter-American human rights system,

> The persistence of the United States into the domestic affairs of its Latin American neighbors in the early part of the twentieth century stimulated Latin American efforts to establish a regional public order system based on the principles of non-intervention and the sovereign equality of states. Early efforts in support of human rights were directed primarily towards this goal. (Goldman 2009, 857)

To be sure, the Inter-American system may have been established at the turn of the nineteenth century, but it was Venezuelan soldier and statesman Simón Bolívar—byname *El Libertador* for his role as a leading figure in the Latin American Wars of Independence—who initiated the whole process in 1826 by calling the First Congress of American States (Canyes 1945, 504). As Goldman remarks, pointing to various instruments adopted by the Inter-American conferences in the early part of the twentieth century, while "expression of commitment to the protection of human rights were common in early Inter-American conferences and occasionally were embodied in agreements concerning civil and political rights", it was not until the end of the Second World War "that concern for human rights became the subject of regional as well as worldwide attention" (2009, 857 and 858).

The process that led to the adoption of the Bogotá Declaration thus began in earnest at the Chapultepec Conference. According to Gros Espiell,

> Aunque pueden citarse antecedentes ulteriores, fue en la Conferencia de Chapultepec [...] en 1945,—que preparo la posición común de las republicas americanas ante la próxima conferencia de San Francisco—, un momento de optimismo idealista y de euforia democrática, que se precisó claramente el criterio Americano sombre la protección y promoción internacional de los derecho humanos. (Gros Espiell 1989, 44)

In that context, the Conference adopted Resolution XL (Protección Internacional de los Derechos Esenciales del Hombre), in which it assigned the task of drafting a Declaration on the International Rights and Duties of Man to the Inter-American Juridical Committee (IAJC). Here again, however, human rights rhetoric was deployed to serve the principle of non-intervention. In the Preamble of the same resolution calling for the drafting of an international human rights instrument, the participants to the Chapultepec Conference included the following consideration:

> Que la protección internacional de los derechos esenciales del hombre eliminaría el uso indebido de la protección diplomática de los ciudadanos en el exterior, cuyo ejercicio ha determinado más de una vez la violación del principio de no intervención, y también el de igualdad, entre nacionales y extranjeros, en cuanto a los derechos esenciales del hombre.[17]

The Conference also adopted Resolution XI (Declaración de México), paragraph 12 of which emphasized the principles of liberty and social justice: "El fin del Estado es la felicidad del hombre dentro la sociedad. Deben armonizarse los intereses de la sociedad con los derechos del individuo. El hombre Americano no concibe vivir sin justicia. Tampoco concibe vivir sin libertad" (quoted in Gros Espiell 1989, 44). Of greater interest, however, are paragraphs 15, 16 and 17 of that resolution:

> 15. La colaboración económica es esencial a la prosperidad común de las naciones americanas. La miseria de cualquiera de sus pueblos, ya sea como pobreza, desnutrición o insalubridad, afecta a cada uno de ellos y por 10 tanto a todos en conjunto.

17 http://constitucionweb.blogspot.no/2009/11/acta-de-chapultepec-firmada-por.html

> 16. Los Estados americanos consideran necesaria la justa coordinación de todos los intereses para crear una economía de abundancia, en la cual se aprovechen los recursos naturales y el trabajo humano, con el fin de elevar las condiciones de vida de todos los pueblos del Continente.
>
> 17. La Comunidad Interamericana está al servicio de los ideales de cooperación universal.[18]

These paragraphs, found in a resolution otherwise concerned with the protection and promotion of human rights, draw attention to another important aspect of international human rights rhetoric employed by Latin American states, brought about by the experience of the Great Depression and the Second World War: the extraterritorial dimension of human rights as a political project. Here, the interconnected challenges of economic development and human rights and the reality of an interdependent world are seen as calling for a collective response in the form of universal cooperation.

It was not until 1948, at the Ninth International Conference of American States, that the inter-American human rights system was formally born. The Conference not only adopted the American Declaration on the Rights and Duties of Man but also created the Organization of American States (OAS). The Preamble of the OAS Charter emphasizes the significance of human rights in terms of state practice and the conduct of international relations:

> the true significance of American solidarity and good neighborliness can only mean the consolidation on this continent, within the framework of democratic institutions, of a system of individual liberty and social justice based on respect for the essential rights of man.

At the same time, Article 15 of the OAS Charter established "non-intervention […] as an authoritative principle in the region's public order" (Goldman 2009, 859). As José Cabranes observes, "the apparent readiness to overlook the inherent contradiction between the international protection of human rights and the regional doctrine of non-intervention has been a familiar and notable characteristic of Inter-American conferences" (1968, 889). To be sure, the contradiction identified by Cabranes only applies to a narrow conception of the function of human rights in international relations as legal rules applicable to the relationship between a state and its citizens. From this perspective, the international protection of these rules calls for the possibility to intervene in the domestic affairs of states and is necessarily at tension with respect for the principle of national sovereignty.

The role and functions of human rights in international relations envisioned by Latin American states, however, was of a different nature. From their perspective, human rights represented a political project of international cooperative character; there were rights that could never be fully realized by a state alone given the interdependent nature of the world. At the same time, human rights assumed a proscriptive function as the standard against which the international cooperation required for their implementation would be judged and evaluated. In their international relations with one another, states would have to take into

[18] http://constitucionweb.blogspot.no/2009/11/acta-de-chapultepec-firmada-por.html

consideration the human rights and fundamental freedoms of individuals in other states and therefore avoid any action that could violate or weaken them. Under this framework, it would be deemed unacceptable for a state to provide foreign military support to an oppressive regime violating the human rights of its citizens, for instance. It would be similarly unacceptable for a state to refuse lending its support to another state found in a situation of need threatening the human rights and dignity of its people, such as famine and drought. The point, here, is that international human rights are conceived as legal rules applicable to relations between states. Underlying this idea is an emerging conception of shared responsibility in international relations: the international protection of human rights completes rather than competes with international mechanisms for the protection of national sovereignty. Far from being in tension with one another, therefore, the conception of international human rights advocated by Latin American states was meant to strengthen their national sovereignty and to achieve sovereign equality with their more powerful neighbours.

Keeping the conceptual uses and arguments about the role and functions of human rights in international relations outlined above in mind, let us turn back to the drafting of the UDHR and discuss the genesis of Articles 22 and 28. At one point during the discussion of the right to work, Charles Malik of Lebanon observed that

> until now the Commission had discussed and examined the rights of the individual as such; the right to life, freedom of thought, freedom to come and go, to marriage, and so on. Now it was engaged in discussing the rights of the individuals as a member of society. It was desirable, therefore, to insert somewhere in the Declaration a statement calling attention to the need for establishing the kind of economic and social conditions that would guarantee those rights. What was necessary was to define the standard of an ideal society in which the individual could develop and in which his rights could be guaranteed. Such a statement could be inserted in the preamble or could stand as a separate article. (E/CN.4/SR.64, 17 (1948))

Malik advanced his remarks in the context of the discussion of the obligations of states with respect to the protection against unemployment. Contrary to Alexei Pavlov of the USSR, who argued that the right to work "would have no full meaning unless the measures to prevent unemployment were also set forth" (E/CN.4/SR.65, 4 (1948)), Malik thought that while the "right to protection against unemployment" could be included in the article on the right to work (E/CN.4/SR.65, 5 (1948)), it would be preferable "to make no specific references to the State's obligation in respect of measures to combat unemployment" (E/CN.4/SR.64, 17 (1948)). Instead, he argued at the next meeting, "it should be clearly stated somewhere in the Declaration that it was not enough to enumerate economic and social rights, but that society itself should be of such nature as to ensure the observance of those rights. Favourable social conditions were necessary for that purpose" (E/CN.4/SR.65, 3 (1948)). Thus, he suggested, "an article containing a provision to the effect that 'everyone had a right to a good social order ensuring the enjoyment of …' might be inserted at the beginning or the end of the section dealing with economic and social rights" (E/CN.4/SR.65, 5 (1948)).

Accordingly, the Chairman appointed a new drafting committee "to work out a special article concerning the measures to be taken in order to ensure enjoyment of economic and social rights" (E/CN.4/SR.65, 11 (1948)). The committee consisted of representatives of states members of the UNCHR from France, Lebanon, the UK, the US and the USSR. The committee produced and adopted unanimously the following article: "Everyone has the right to a good social and international order in which the rights and freedoms set out in this Declaration can be fully realized" (E/CN.4/SR.67, 2 (1948)). Since this article is the forerunner of Article 28 of the UDHR, it will hereafter be referred as "draft Article 28". In the ensuing debate, an exchange of views between Chang and Malik on the duty of the individual to contribute to the good social order called for in draft Article 28 (E/CN.4/SR.67, 3—4 (1948)) led Cassin to spill the beans. On the one hand, the fact that draft Article 28 had been adopted unanimously in the committee was certainly laudable and "answered a real need", but it also meant that the text was "of a very general nature and covered all the articles of the Declaration" (E/CN.4/SR.67, 5 (1948)). On the other, the text he had submitted to the committee, which had been abandoned in favour of draft Article 28, "was more specific and applied to the economic, social and cultural rights which the Commission was examining at present" (E/CN.4/SR.67, 5 (1948)). In the light of the discussion now taking place, he wished to submit that text to the UNCHR, which read as follows: "Everyone, as a member of society, has the economic, social and cultural rights enumerated below, whose fulfilment should be made possible in every State separately or by international collaboration" (E/CN.4/120 (1948)). The text introduced by Cassin is the forerunner of Article 22 of the UDHR and is hereafter referred as "draft Article 22".

At the request of Wilson of the UK, who considered that draft Article 28 obviated the need for draft Article 22, the UNCHR at its seventy-second meeting discussed the two articles in relation to each other (E/CN.4/SR.72, 2 (1948)). Those opposing draft Article 22, like Charles Malik, did so on the basis that it would "create a bias in favour of economic and social rights" while draft Article 28 "dealt adequately with all rights without exception" (E/CN.4/SR.72, 5 (1948)). Those in favour of retaining both draft articles did so mainly on the ground that in order to be realized, ESC rights, contrary to CP rights, "required material assistance to be furnished by the State—a practical difference which the Declaration could not ignore" (E/CN.4/SR.72, 4 (1948)). As Morsink observes, those who supported draft Article 22 were of the view that ESC rights were "special international rights", in the sense that they "could not simply be seen as the duty of each particular country separately"; they required international cooperation for their realization (1999, 84). In contrast, those who supported draft Article 28 were of the opinion that "there was in this respect nothing special about the social, economic, and cultural rights" (Morsink 1999, 84). From the perspective of the latter, "international cooperation was equally needed for the realization of all the

other rights of the Declaration" (ibid.). In the end, both covering articles were kept in the report of the UNCHR to the UNGA (E/800 (1948)).[19]

Contrary to the procedure followed at the UNCHR, draft articles 22 and 28 were debated separately by the Third Committee of the UNGA. When draft Article 22 reached the Third Committee, numerous amendments were submitted and calls for clarification were made towards members of the UNCHR. Upon an initiative taken by the French representative at the seventy-second meeting of the UNCHR, draft Article 22 had been amended to include the right to social security. The latter had been left out of the original draft of another article and Cassin "felt that it would be a grave error to omit in the Declaration the modern and widely accepted concept of social security" (E/CN.4/SR.72, 4 (1948)). After suggesting the inclusion of that concept in the draft Article 22, he added that since "that article was of a general nature, the precise interpretation of that concept would be left to the individual States" (ibid.). The text that reached the Third Committee then read as follows:

> Everyone, as a member of society, has the right to social security and is entitled to the realization, through national effort and international co-operation, and in accordance with the organization and resources of each State, of the economic, social and cultural rights set out below. (E/800, Annex A, 12 (1948))

The main difficulty arising in the Third Committee from the text proposed by the UNCHR was caused "by the fact that the expression 'social security' had two meanings, a definitely limited technical meaning and a general meaning" (A/C.3/SR.138, 506 (1948)). As the representatives of Greece argued, "it was the latter which the UNCHR had wished to give it" (ibid.). The USSR, France and Chile, among others, provided a similar interpretation (A/C.3/SR.137, 498, 499 and 500 (1948) respectively). In the words of Julio Alvarado of Peru, supported by France and Chile, social security as it was used in draft Article 22 "meant social justice in the broad sense and not the protection of the individual from want in the narrow technical sense" (A/C.3/SR.137, 497 (1948)). From the point of view of the Syrian representative, however, the general meaning of "social security" was still too limited. He thus proposed to substitute "social justice" for "social security" in the text of draft Article 22 (A/C.3/SR.138, 504 (1948)). His proposal was rejected by 26 votes to 8, with 8 abstentions (A/C.3/SR.138, 513 (1948)).

A close reading of the Third Committee debate over the concept of social security found in draft Article 22 of the UDHR reveals the great importance attached to it by representatives of Latin American states. While the Latin American bloc may not have shared "the North Atlantic problem of meaning"[20], contrary to what Morsink argues, they were not "content to let the phrase stand as it had been received from the Third Session [of the UNCHR]" (1999, 207). While many representatives of Latin American states wished to retain the concept of "social security" in draft Article 22, they also fought for a greater emphasis to be

[19] By the time the Commission engaged in that debate, Joaquín Larraín, the alternate representative of Chile, had replaced Hernán Santa Cruz. Larraín, however, did not speak during that meeting (at least there is no record of it).

[20] See e.g. Morsink (1999, 202) for a summary of that controversy.

placed on its general meaning and submitted several amendments to that aim. Hence, Carrera Andrade of Ecuador pressed for the retention of the phrase "social security", arguing that "a principle was involved which was recognized by the majority of Latin American States and which should not be confused with social insurance, by which was understood the solution adopted by Great Britain in regard to the problem of social security" (A/C.3/SR.138, 503 (1948)). For his part, Enrique Corominas of Argentina, one of the most vocal representatives in that respect, argued that social security "was a right which differed from and was independent of all other rights" (A/C.3/SR.137, 497 (1948)). As such, "it should not be made dependent upon other rights"; it should stand by its own in the Declaration (ibid.). Guy Pérez Cisneros of Cuba, among others, expressed support for the Argentine view (A/C.3/137, 498 (1948)). Corominas later explained,

> The aid given to those in need should not be considered as an act of charity on the part of society, but as a right which is owed to the individual. […] The idea of social security was now universal. Social security was both a doctrine and the realization of that doctrine in practice. Even before that idea had been expressed in the form of human solidarity among the peoples of the world. The way in which social solidarity had been converted into social security constituted a triumph of the proletariat in the struggle against poverty. […] it would be an unpardonable mistake if the right to social security were not guaranteed in the declaration of human rights. To guarantee it while making it dependent on other economic, social and cultural factors would be to diminish it. (A/C.3/SR.138, 507-508 (1948))

As Morsink points out, "it was not clear how much the speeches of Corominas […] influenced the other Latin American delegations, but he did capture their unreserved acceptance of a most general and independent right to social security" (1999, 207).

When draft Article 28 reached the Third Committee, only two amendments were introduced: one by the representative of Egypt, which called for the deletion of the article (A/C.3/264 (1948)); another by the Russian representative, who wished to remove the term "good" in front of "social order" (E/800, 35 (1948)). The latter was adopted by a vote of 34 against 2, with 2 abstentions (A/C.3/SR.152, 642 (1948)). The former, however, was not put to a vote on the ground advanced by the Chairman that "those who wished to support it could vote against the article as a whole" (A/C.3/SR.152, 638 (1948)). In the end, the Third Committee of the UNGA adopted draft Article 28, as amended, by 25 votes to 3, with 8 abstentions (A/C.3/SR.152, 642 (1948)). In the debate over draft Article 28, the Egyptian amendment received formal support from the Ecuadorian poet, historian, author, and diplomat Jorge Carrera Andrade, who argued "it was quite impossible for any individual to lay claim in an effective manner to the rights granted in [that] article" (A/C.3/SR.152, 639 (1948)). In that regard, the remark advanced by Uruguayan jurist and professor of international public law Eduardo Jiménez de Aréchaga, that draft Article 28 "was necessary because it allowed the individual a voice in international affairs" (A/C.3/152, 640 (1948)), is noteworthy. In a way, both representatives emphasized the centrality of the individual in international human rights law. But the latter draws attention to an

important aspect of the human rights concept held by the majority of Latin American delegations, found in the idea that "the right to a world ordered by human rights"—as Morsink describes it (1999, 230-231)—is ultimately a right of individuals, not states.

What is of particular interest about these aspects of the drafting process of the UDHR is that the text submitted by the Chilean representative during the UNCHR debate of 1969 makes no reference to Article 22 but includes a reference to Article 28 as follows:

> *Declares* […] that the provisions of article 28 of the Universal Declaration of Human Rights, which lays down that everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized, implies, […] at the international level, the assurance of an international division of labour which favours and does not hamper the economic and social development of the developing countries;

To be sure, both articles relates to the realization of ESC rights. One could even argue, as René Cassin of France did during the drafting debate on those provisions, that UDHR Article 22 is more closely connected to the realization of ESC rights than Article 28. Why, then, not include a reference to both articles? Why would the Chilean representative intentionally leave Article 22 out of the preamble of his draft amendment and later also of his draft resolution? The argumentative context of the adoption of UDHR Article 28, and the importance accorded to it by representatives of Latin American states during the drafting process, gives a good point of departure from which to interpret this rhetorical move.

As Morsink points out, the debates surrounding Articles 22 and 28 of the UDHR are "intimately connected to the question of whether or not there are two kinds of rights in the Declaration" (1999, 84). Those who subscribed to the view that all human rights were legal rules but also, "and perhaps above all, a project for the future, that is to say a political project" (Soussan 2015, 7), often expressed a clear preference for Article 28, while those who subscribed to the appreciation of practical differences—who saw CP rights as legal rules and ESC rights as a political project—tended to favour Article 22 (Morsink 1999, 84). An important implication of the former kind of view with respect to the question of implementation is that "it becomes difficult to distinguish politics from law within the context of human rights" (Soussan 2015, 7).

According to Santa Cruz (and the vast majority of Latin American representatives for that matter), Article 28 of the UDHR established the preconditions for the exercise of human rights around the world. From his perspective and that of his Latin American counterparts, *all* human rights required action beyond the state and thus international cooperation for their implementation, including CP rights. Not all representatives of states members of the UNCHR, however, shared this view. Hence, when the question of international cooperation was raised again by Santa Cruz in 1969, in the context of the UNCHR debate over the realization of ESC rights and the special problems relating to human rights in devel-

oping countries, René Cassin repeated the argument he had formulated two decades earlier. After claiming the authorship of Article 22 of the UDHR, which he remarked "clearly showed that [ESC] were of a very special nature", he argued

> Some rights could be proclaimed inside a State without reference to other States, but economic and social rights were pre-eminently a matter which called for efforts not only by each nation but by the international community. That aspect of universality was of capital importance for a study of the problem. (E/CN.4/SR.1023, 123 (1969))

While most developed country representatives were ready to recognize that the realization of ESC rights called for international development cooperation and assistance, they were not ready to accept the extension of this claim to CP rights. They feared that, by doing so, the "inadequacy of international cooperation" the Chilean representative had so poignantly criticized could become a rhetorical tool and weapon of debate in the hands of apologists of authoritarian regimes to excuse the denial of CP rights or their violations. This fear was not clearly expressed in the UNCHR debate of 1969. It was, however, made very clear in the drafting process of the International Covenants on Human Rights. Interestingly and conversely, as discussed below, some developing country representatives expressed a similar fear with respect to ESC rights—that the governments of developing countries could use the argument of insufficient international assistance to postpone indefinitely the enjoyment of those rights by their population.

4.5 Article 2(1) of the ICESCR and the duty to cooperate

As mentioned in the introduction to this chapter, Santa Cruz advanced the ICESCR, along with the UN Charter and the UDHR, as a basis for claiming that the international community had a responsibility as regard to the realization of ESC rights in developing countries and their economic and social development (E/CN.4/SR.1025, 141 (1969)). For Santa Cruz, international cooperation for the realization of ESC rights was not voluntary but obligatory. Underlying this argument is a particularly controversial view on the nature and scope of international human rights obligations, informed by an emerging conception of shared responsibility in international relations. This view was particularly visible in the debate over the nature and scope of the obligations to be imposed on States Parties to the ICESCR, including the question as to whether ESC rights obligations would assume an extraterritorial scope. As international law scholars Philip Alston and Gerard Quinn remark, the ICESCR

> contains three provisions which could be interpreted as giving rise to an obligation on the part of the richer states parties to provide assistance to poorer states in situations in which the latter are prevented by a lack of resources from fulfilling their obligations under the Covenants to their citizens. (Alston and Quinn1987, 186)

The first is the phrase "individually and through international assistance and co-operation, especially economic and technical", which appears in Article 2(1) of

the Covenant. The second is the provision in Article 11(1) according to which states parties agree to "take steps to ensure the realization of this right [to an adequate standard of living], recognizing to this effect the essential importance of international co-operation based on free consent." Similarly, in Article 11(2) states parties agree to take, "individually and through international co-operation," relevant measures concerning the right to be free from hunger. (Alston and Quinn 1987, 186—187)

Almost inevitably, dramatically diverging interpretations of the nature and scope of the "international cooperation" called for in these articles were put forward during the drafting process of the ICESCR. To be sure, the ICESCR had not yet entered into force by the time the UNCHR took on the task to consider the question of the realization of ESC rights jointly with the study of the special problems relating to human right in developing countries at its twenty-fifth session held in 1969. But the struggle over the meaning and application of the phrase "international assistance and co-operation" during the drafting process of the ICESCR is nonetheless of considerable value to interpret the controversy over the Chilean draft in the UNCHR debate of 1969. As Cassin remarked during the UNCHR debate of 1969:

> while the Chilean representative's idea of emphasizing the importance of international co-operation was acceptable, it might be unwise to go any further. On the other hand, he had been right to stress the importance of article 28 of the Universal Declaration of Human Rights. Nevertheless, because his delegation wished to save the Commission from the serious disputes which had occurred in other bodies, it would not be able to support many of the provisions of that draft resolution. (E/CN.4/SR.1029, 193 (1969))

The passage above directs attention to the centrality of the dispute over the range of acceptable meanings and uses of the concept of international cooperation, not confined to the UNCHR but stretching across the whole organization, in the controversy over the Chilean draft resolution. The French representative did not take issue with the linking of the principle of international cooperation to the question of the realization of the ESC rights contained in the UDHR and in the ICESCR per se; he took issue with the conclusion reached by the Santa Cruz on the practical implication of the concept of international cooperation contained in Article 28 of the UDHR to "the assurance of an international division of labour which favours and does not hamper the economic and social development of the developing countries" (E/CN.4/1007, 113 (1969)). But while the French representative expressed his wish "to save the Commission from the serious disputes which had occurred in other bodies", for which he most certainly had in mind UNCTAD, it is interesting to note that such disputes had been part and parcel of UNCHR debates for several years. The most notable event with respect to that controversy is the drafting process of what became Article 2(1) of the ICESCR.

It is noteworthy that it was the French delegation who introduced the phrase "to the maximum of its available resources" during consideration by the UNCHR at its seventh session held in 1951 of a general clause concerning ESC rights to be included in the draft ICESCR. At the time of the debate, it was thought that the UN would still adopt a single human rights covenant that would

include provisions concerning ESC rights. It was made clear during the preparatory work of the ICESCR that the word "its" was to be interpreted as including both the resources available to a country internally as well as externally (i.e. from international sources). René Cassin of France, in introducing his proposal, noted that "the expression 'their resources' was intended to convey, not that States should, in implementing the rights in question, renounce all progress which was beyond their own resources, but that countries with substantial resources should lend their assistance internationally" (E/CN.4/SR.233, 72 (1951)). The assistance in question would thus be lent on a voluntary and not an obligatory basis. In other words, Cassin "stopped well short of identifying any formal legal obligation to provide assistance" (Alston and Quinn 1987, 188).

For his part, Mahmoud Azmi Bey of Egypt objected to the wording of paragraph 4 of the French proposal on the count that it related only to national resources, whereas outside assistance in the implementation of ESC rights should also be anticipated. Accordingly,

> "whatever resources available" might be substituted for the phrase "to the maximum of their available resources." The latter referred only to the resources of each individual state, but it was unlikely that the available resources of the small countries, even if utilised to the maximum, would be sufficient; as a result, those countries have to fall back on international co-operation and he considered that the adoption of the phrase he proposed would make it easier for them to do so. (E/CN.4/SR.236, 18 (1951))

A number of representatives disagreed with that interpretation. Danish diplomat and professor of international law Max Sörensen argued, for instance, "surely the word 'available' would apply to both national and international resources" (E/CN.4/SR.236, 20 (1951)). He added, "the phrase was more widely conceived than its counterpart in earlier proposals, but he could not go so far as the Egyptian representative […] since that might be equivalent to an engagement to use the resources of other States for the purpose" (ibid.). Similarly, Eleanor Roosevelt of the United States argued that the words "'available resources' […] included resources other than those of the country immediately concerned" (E/CN.4/SR.236, 25 (1951)). In reply to the Danish representative's comments, Azmi Bey said that Sörensen

> had completely misrepresented his concept of international co-operation. There was no question of laying hands on foreign capital in any country. By international co-operation he meant the co-operation achieved through international bodies such as the United Nations, the International Monetary Fund, the Technical Assistance Board, etc. (E/CN.4/SR.236, 21-22 (1951)).

In his final reply to the Egyptian representative, Sörensen reiterated his opposition to any principle of differentiated responsibilities. From his point of view,

> the obligations of governments were the same, whatever their resources. Countries without resources could not fulfill such obligations without assistance from outside. That was what he had meant by saying that the Egyptian proposal was tantamount to an obligation to use the resources of other States. He agreed, however, with the Egyptian representative that countries with insufficient resources should be able to obtain help under the technical assistance programmes or similar projects. (E/CN.4/SR.236, 28 (1951))

For his part, Santa Cruz of Chile expressed a very different opinion with respect to the possible interpretation to be given to paragraph 4 of the French proposal. From his point of view, "it would be an error of principles to introduce into the Covenant any special provision which would in effect mean the creation of a separate covenant for economic, social and cultural rights" (E/CN.4/SR.236, 18 (1951)). As such, the French proposal "would increase the risks already confronting the Commission" of making ESC rights the subject of a separate covenant (E/CN.4/SR.236, 18—19 (1951)). More importantly, Santa Cruz criticized the use of the word "available" on the ground that states might use the argument of availability to disguise a lack of political will: "The expression 'to the maximum extent of their available resources' could, in the absence of a closer definition, be interpreted as applying only to the resources of States available for that particular purpose, and not to their overall resources" (E/CN.4/SR.236, 19 (1951)). In response to the Chilean representative, Sörensen advanced the view that

> if the Commission was to be realistic, it could not close its eyes to the fact that in drawing up its budget any government had to make certain decisions about allocations. At the present moment, for example, many countries were faced with the problems of reconciling defence requirements with those of social services. Even if that particular difficulty disappeared, governments would still have to apportion allocations between the various branches of the social services or other budgetary appropriations relating to the realization of economic, social and cultural rights. It would be unrealistic to attempt to dictate to States how they should allocate their resources in that respect. (E/CN.4/SR.236, 20 (1951))

Similarly to Santa Cruz, Aldo Ciasullo of Uruguay—who authored, among others, a paper entitled *El hombre y la comunidad internacional* (1954)—expressed the view that "the fundamental defect of the French proposal was that it put ESC rights at a disadvantage in relation to the other rights set forth in the draft Covenant" (E/CN.4/SR.236, 28 (1951)). The French proposal, he argued along with the Chilean representative, represented "a regression by comparison to Article 56 of the Charter", which "contained no reservation like those included in the French proposal" (E/CN.4/SR.236, 28 (1951)). The limitations Ciasullo had in mind were those "implicit in the words 'available resources' and in the adverb 'progressively'", which assume that all ESC rights would necessarily have to be achieved progressively while some provisions "such as those pertaining to health, periods of work, the equality of men and women, the protection of mothers and children, etc., should not be made the subject of a partial or fixed-term commitment" (E/CN.4/SR.236, 27 (1951)). In short, the majority of representatives of Latin American states expressed concerns about the potential consequences of the differentiated approach to CP rights and ESC rights the French proposal would introduce into the Covenant.

In terms of conceptual uses and rhetoric, the competing views advanced in the debate over the French proposal present many similarities with the preferences expressed by representatives for either Article 22 or 28 of the UDHR. Indeed, most representatives who took issue with the wording of the French proposal—and forerunner of Article 2(1) of the UDHR—did so on the basis that the

French proposal proceeded from a conception of human rights they could not agree with, one which applied a temporal distinction between CP rights as present/immediate rights (means) and ESC rights as future/progressive rights (ends). Hence, those who subscribed to a conception of human rights whereby CP and ESC rights were both/simultaneously means and ends were generally against the French proposal, while those who subscribed to the conception embracing a temporal distinction between CP and ESC rights were generally in favour. At the same time, however, it was conceded by virtually all state representatives during the preparatory work on the ICESCR that developing states would require some form of international assistance if they were to be able to promote effectively the realization of ESC rights. Even the representative of the biggest donor country, Eleanor Roosevelt of the US, agreed that it was "quite essential for the article […] to indicate the necessity of international co-operation in the matter" (E/CN.4/SR.270 (1952)). As Alston and Quinn remark, however, "the consensus […] did not extend much, if at all, beyond that general proposition" (1987, 189).

The controversy over the nature and scope of the concept of international cooperation found in the general clause concerning ESC rights in the draft Covenant resurfaced several years later, at the UNGA. It was then that the latter part of the phrase "especially economic and technical assistance" was added, through an amendment submitted by Chile and four other countries (hereafter five-Power amendment). Introducing the five-Power amendment, Humberto Díaz Casanueva of Chile called attention to the following statement in the annotations on the text of the draft International Covenants on Human Rights: "It was pointed out also that the text gave due recognition to the need for international co-operation in providing the basis for the realization of economic, social and cultural rights" (A/2929, 58 (1955)). He then argued that it could be concluded from that statement that the UNCHR "regarded the words 'international co-operation' as referring to financial and technical assistance" (A/C.3/SR.1202, 336 (1962)). According to Díaz Casanueva, the old wording was vague and in need of "clarification and modernization" to keep track with developments in the field of international cooperation (A/C.3/SR.1202, 336 (1962)). To support his view, he remarked upon the growth of organizations such as the IMF as signifying new trends and to the fact that "the word 'technical' had taken on quite a general meaning. It no longer applied solely to the activities of engineers but also to legislative and cultural efforts and—a very important point—to commercial activities relating to basic commodities. (A/C.3/SR.1202, 336 (1962))

The main concern of the five Powers, Díaz Casanueva explained,

> was that the expression "through international co-operation" was too vague and oriented more towards the industrial nations than towards the newly independent and less developed countries, which needed financial and technical assistance if they were to guarantee the full enjoyment of economic, social and cultural rights in the foreseeable future. (A/C.3/SR.1203, 342 (1962))

He added, "international assistance to under-developed countries had in a sense become mandatory as a result of commitments assumed by States in the United Nations" (A/C.3/SR.1203, 342 (1962)). He concluded,

> this history and structure of the United Nations technical assistance funds and programmes clearly demonstrated the trend to replace or supplement voluntary bilateral aid with multilateral assistance which tended, by its nature, to entail binding commitments" (A/C.3/SR.1203, 342 (1962)).

To be sure, the only formal suggestion of the existence of such a biding legal obligation during the GA debates on the draft Covenant came from Díaz Casanueva; no other representative advanced such a radical view during the debate, at least not so explicitly. He then remarked that the realization of ESC rights was dependent upon "the level and rate of economic development" of a country and added,

> It was well known, however, that the economic development of the less developed countries was bound up with the factors over which the highly industrialized countries had more control than the developing countries themselves. The need for active co-operation and assistance was becoming increasingly apparent and, fortunately, was gaining wider recognition, as could be seen from programmes such as the Alliance for Progress. It was also being recognized that to narrow the gap between the developed and underdeveloped countries would be in the interests of all concerned, for it would mean the universal enjoyment of the rights and privileges exercised today only by the industrial nations, and hence a world safer from conflict and upheaval. That was the new philosophy of international co-operation, which was gaining ground and which the five Powers had sought to express in their amendment. (A/C.3/SR.1203, 342 (1962))

In other words, they were of the view that international development assistance and cooperation should assume the character of a legal duty with a view to the universal realization of human rights.

In the ensuing debate, those arguing in favour of imposing a stronger (although not necessarily legal) obligation on the developed countries invoked a wide range of justifications. Like the Chilean representative, Mohamed Ben Mebarek of Algeria invoked the argument of interdependence, arguing that when the developing countries "spoke of assistance and technical economic co-operation they viewed them as a two-way venture; indeed the highly developed countries depended on the less developed countries for their very existence" (A/C.3/SR.1204, 349 (1962)). On occasion, the argument of interdependence was closely linked to the view that international cooperation was owed to the formerly colonized states in reparation for the "systematic plundering of their wealth under colonialism," as Jeanne Rosseau of Mali for instance argued (A/C.3/ SR.1204, 347 (1962)). Or, as Mebarek put it, "nations that were or had been colonized did not go begging, but called for the restoration of their rights and property" (A/C.3/ SR.1204, 349 (1962)).

The arguments against the proposition of imposing a stronger obligation on the developed countries took a variety of forms and came from a significant range of states. Grethe Refslund Thomsen of Denmark argued, for instance, "it would be wrong to specify such assistance in too much detail and preferred the original text, which was much broader in scope" (A/C.3/SR.1204, 345 (1962)). In the view of Alexandra Mantzoulinos of Greece, "developing countries like her own had

no right to demand financial assistance through such an instrument; they could ask for it, but not claim it" (A/C.3/SR.1204, 346 (1962)). She added, "such assistance could not be regarded as a *sine qua non* for the progressive achievement of human rights" (A/C.3/SR.1204, 346 (1962)). For his part, the representative of New Zealand argued that the assistance provided by his country

> to less fortunate countries […] was given and accepted in the spirit of true friendship, with no discussion of rights or obligations, which was the only way of maintaining the spirit of true international co-operation. In article 2, therefore, it would be preferable to retain the realistic concept of international co-operation rather than to introduce financial considerations supposedly based on rights and obligations." (A/C.3/SR.1204, 346 (1962))

Similarly, the representative of Panama argued that "[i]t was natural for a great Power to want something in return for its help," adding that "the greatest caution should always be exercised by recipient country" (A/C.3/SR.1204, 348 (1962)). For his part, Jean-Marcel Bouquin of France expressed the view that "multilateral assistance could not be mandatory", adding that, "in any case, the choice of the word 'assistance' was not a very happy one, and there was an increasing trend in the United Nations to use the expression 'technical co-operation'. That being so, the word 'co-operation' adequately rendered the idea expressed in the five-Power amendment" (A/C.3/1205, 352 (1962)). The representative of the USSR advanced an almost identical argument. After expressing his disagreement "with the particular point that economic assistance provided through the United Nations could be regarded as mandatory", he argued that the expression "through international co-operation […] fully covered the very apt points raised by the Chilean representative, whereas the proposed new wording, although it might be suitable for instruments dealing with economic development and assistance, was not particularly appropriate for the draft Covenant" (A/C.3/SR.1203, 342 (1962)).

Jamil Murad Baroody—a Lebanese-born New Yorker who had served as UN representative of Saudi Arabia ever since 1946—opposed the reference to international cooperation on the ground that it would enable states seeking to evade their obligations to invoke the inadequacy of international development assistance as an excuse (A/C.3/SR.1203, 341 (1962)). This argument was strongly opposed by the Chilean representative, who indicated that the sponsors of the five-Power amendment calling for international assistance and cooperation

> were not preparing excuses for lack of progress in the guaranteeing of economic, social, and cultural rights, but wanted only to show that States Parties, while obliged to take steps individually—whether or not international assistance was forthcoming—might find international assistance and technical co-operation helpful or necessary for accelerated development in matters covered by the draft Covenant. (E/C.3/SR.1203, 342 (1962))

Two other arguments raised against the five-Power amendment were of an essentially procedural nature. One was to argue, as Sir Douglas Glover of the United Kingdom—a Conservative Party politician and member of the British Par-

liament since 1953—did, that "[t]here was a tendency among delegations to regard the Committees and the General Assembly as one, but in fact to raise questions of economic and technical co-operation in the Third Committee was to usurp the powers of another Committee of the General Assembly" (A/C.3/SR.1204, 349 (1962)). Responding to the representative of the United Kingdom, Ashraf Ghorbal of the United Arab Republic—a career diplomat who had studied political science at Harvard University—remarked that "the draft Covenant under consideration concerned, in particular, economic rights, so that the amendment in question was fully justified. Furthermore, the functions of bodies which formed part of one whole could not be limited arbitrarily" (A/C.3/SR.1205, 353 (1962)). On the other hand, Kurt Herndl of Austria—who later founded and headed the UN Centre for Human Rights (1982—1987)—argued that it was "not […] suitable in an instrument designed to safeguard the rights of individuals to refer to international assistance, which pertained only to relations between States" (A/C.3/SR.1025, 351 (1962)).

Perhaps the most interesting line of argument against the five-Power amendment was the one advanced by Ernesto De Santiago Lopez of Mexico, which is worth reproducing in full here despite its length. De Santiago Lopez began his speech by expressing his agreement with Díaz Casanueva "that one of the major obstacles to the economic development of many parts of Latin America was the relative scarcity of capital" (A/C.3/SR.1204, 346 (1962)). Yet, he continued,

> economic development had to be based above all on the rational and efficient use of a country's own resources and on the hard work of its people; international economic assistance could only be supplementary and was mainly a means of counter-acting economic maladjustments arising from external causes. Obviously, many problems encountered by developing countries could not be resolved without international co-operation, but the kind of international co-operation required went far beyond the financial and technical assistance mentioned in the five-Power amendment. What was needed, for instance, was permanent international machinery for preventing sudden and excessive fluctuations in the prices of primary commodities, which could be disastrous for the developing countries, and the elimination of the imbalances between the prices those countries received for their primary commodities and the prices they had to pay for manufactured goods. (A/C.3/SR.1204, 346-347 (1962))

This line of argument bears strong resemblance to the one advanced by Santa Cruz in response to a comment made by the Ukrainian representative against the Chilean draft during the UNCHR debate of 1969. In that regard, it might be worth recalling the early and unsuccessful attempts made by Latin American diplomats and economists at ECLA to move the issue of trade and development up in the agenda of priorities of the UN. By the beginning of the 1960s, however, the debate on the comparative merits of trade versus aid for the economic and social development of developing countries had gained momentum. By 1964, UNCTAD has been established as a permanent body within the UN system. Another event worth mentioning with respect to aid and development in Latin America is the adoption of the Charter of Punta del Este by the OAS in 1961, which established the Alliance for Progress—an international development programme launched in 1961 by President John F. Kennedy and targeting 22 Latin American countries.

In the light of that, the remarks addressed by Pedro Zuloaga of Venezuela to "the representative of the sister Latin American country of Mexico" in the debate over the five-Power amendment during the drafting process of the ICESCR are noteworthy. Zuloaga observed,

> there appeared to have been some misunderstanding […] of the argument advanced by the Chilean representative, who had certainly not spoken of charity. On the other hand, the latter had emphasized that international assistance from highly developed to under-developed countries was useful to both parties—an assertion with which he could not entirely agree, particularly in the case of countries dependent upon a single commodity. The miraculous recovery of Europe as a result of the Marshall Plan had shown that assistance from one highly developed country to others, which had been devastated by war but possessed large numbers of skilled technicians, could be successful. However, as the Chilean representative himself had said, purely financial assistance to countries with semi-colonial economies—such as most of the Latin American and all of the African countries—could be rendered useless by a slight decline in the price, for instance, of coffee from Brazil, petroleum from Venezuela or tin from Bolivia. (A/C.3/SR.1204, 347 (1962))

This view echoes the argument advanced by UN economist Hans Singer and discussed in the introduction of this chapter, that there is no point in providing financial assistance to the "underdeveloped" countries if the latter are "at the same time […] allow to lose on the swings of trade" (Singer 1961, 73). Zuloaga nonetheless conceded that "[w]hereas financial assistance alone could become a boomerang, technical assistance could be of benefit both to the donor country and to the recipient country" (A/C.3/SR.1204, 347 (1962)). The Venezuelan representative then suggested substituting the word "economic" for "financial" in the wording of the five-Power amendment so as to "remove any suggestion of charity and dispel some misgivings, especially those of the Mexican representative" (A/C.3/SR.1204, 347 (1962)).

Another argument raised by the Mexican representative against the five-Power amendment draws attention to the fear of a number of developing country representatives that the text of the amendment—which could be interpreted as an obligation *to seek* rather than *to render* international cooperation and assistance—might not play out in their countries' favour:

> The draft Covenant was a political, not a technical, instrument, whereas the proposed amendment covered only one of the technical phases of economic development. In its draft of article 2, the Commission on Human Rights had wisely left it to each State to determine what international co-operation it required and on what terms. The Mexican delegation therefore believed that the text of that article should be left as it was. International co-operation was necessary for everyone, but it had to be based on full respect for the sovereignty of the nation which received it and had freely accepted it. Sovereignty in international economic relations was no mere abstraction, but the basis for any rational progress and international solidarity. (A/C.3/SR.1204, 347 (1962))

In response to the arguments advanced by the Mexican representative, Díaz Casanueva advanced the view that there were no reasons

> for fearing that the sponsors of the amendment favoured international political ties between the donor and the recipient countries. He could not understand why the representative of Mexico, a country whose outlook was identical with that of Chile, opposed the amendment. The Mexican representative had acknowledged the need for

> international assistance and co-operation—for without it development, as the term was currently understood, was impossible—and he had gone deeply into the question of national sovereignty, which was of concern to all Latin American countries. (A/C.3/SR.1204, 347-348 (1962))

The controversy taking place between the Mexican and Chilean representatives over the nature and scope of the relationship between international development assistance and cooperation and the economic dimension of national sovereignty must be interpreted in the light of the particular experience of Latin American countries with foreign aid at the time. As the Professor of politics and co-director of the International Development Institute at Kings College London Peter Kingstone remarks in a study of neoliberalism and development in Latin America, "by the late 1950s into the 1960s, Latin American governments were facing increasing pressure from foreign lenders over their inability to meet their international financial obligations" and had to turn to the IMF for assistance (Kingstone 2011, 39). Turning to the IMF, however, had important political consequences, which would contribute to government failures in the region. From that perspective, an instrument that would impose an obligation to seek assistance for the realization of ESC rights would potentially worsen the situation by coercing the governments of already heavily indebted Latin American states to seek further loans.

Kingstone further remarks, the main reason why Latin American states were largely dependent on international financial markets and institutions to borrow capital to finance their development after the Second World War is to be found in the nationalist sentiments import substitution industrialization (ISI), which "had closed the door to multinational corporations and therefore foreign direct investment was not initially an important source of foreign currency" (2011, 39). As Jolly et al. observe, "the positive results of ISI started to vanish in the 1960s, and a considerable disenchantment with it grew among Latin America's elite. This shift in the climate of opinion in Latin America resulted from the question of sustainability of ISI strategy" (2004, 100). Without going into too much detail, some of the problems noted at the time merits closer attention.

One is that "[t]he high protection of domestic industries—if prolonged too long—tends to produce an inward-looking mentality and an expensive and inefficient industrial structure that is unable to compete in the world market" (Jolly et al. 2004, 100). As Raúl Prebisch—the lead advocate of ISI as a strategy for economic development in Latin America—came to acknowledge in the early 1960s,

> An industrial structure virtually isolated from the outside world thus grew up in our countries. […] As is well known, the proliferation of industries of every kind in a closed market has deprived the Latin American countries of the advantages of specialization and economies of scale, and owing to the protection afforded by excessive tariff duties and restrictions, a healthy form of internal competition has failed to develop, to the detriment of efficient production. (Prebish 1963, 71)

This kind of critical appraisal of ISI had become commonplace among Latin American representatives at the UN and influenced their point of view on questions of international development assistance and cooperation throughout the

1960s. During debate over the five-Power amendment, for instance, Casanueva criticized the economic nationalist sentiments that had accompanied ISI development projects in Latin America, informed as they were by conceptions of national self-sufficiency. He argued that while he "entirely agreed that it was for the developing country alone to determine the desirability and the terms of international assistance", "the idea that each country should be self-sufficient was an anachronism in modern times, when even the great Powers needed the co-operation of others" (A/C.3/SR.1204, 347—348 (1962)). In short, Casanueva was of the view that a country would never be able to achieve the kind of economic and social development necessary to realize the ESC rights contained in the UDHR and in the ICESR on its own, be it through ISI or other inward-looking development strategy. As such, international cooperation was not only desirable but also necessary.

Another important problem with ISI as a strategy of economic development in the region was that of the increasing dependence it created both in terms of export of primary products and import of technology. As the Venezuelan representative remarked in his response to the Mexican representative during debate over the five-Power amendment at the UNCHR in 1962, the weight of foreign aid was not as significant as that of trade in the development of countries with a commodity exporting economy (A/C.3/SR.1204, 347 (1962)). On the one hand, "commodity exports suffered from poor terms of trade [...] exacerbated by growing weakness in the agricultural sector" (Kingstone 2011, 39). On the other, "ISI was based on the import of Western technology" which was "capital intensive and labour saving and the new industries did not make an adequate contribution to the solution of the employment problem" (Jolly et al. 2004, 100-101). As a result, the development resulting from the pursuit of an ISI strategy was often not geared towards the realization of ESC rights. Beside problems of unemployment, ISI also produced growing socio-economic inequalities. As Jolly et al observe, "ISI was constrained by relatively small domestic markets" and "a high effective protection stimulated investment in industries that produced non-essential goods, which responded to the demands of the elite, whereas the bulk of the population lacked access to essential goods" (2004, 100).

In the light of the above, the argument advanced by Casanueva to the effect that the sponsors of the five-Power amendment understood the words "assistance" and "co-operation" in the very broadest sense, as going far beyond financial aid, gains a further layer of meaning. It was for that reason, Casanueva added, that the sponsors had agreed to use the word "especially" in the revised amendment but for historical and other reasons they had felt necessary to emphasize the economic aspect. They would be glad to replace the word "financial" by "economic", as suggested by the representative of Venezuela. He concluded by saying that the basic purpose of their amendment was to bring up to date and make more precise the wording of article 2." (A/C.3/SR.1204, 348 (1962)) In the end, the five-Power amendment was reworded to read "through international assistance and co-operation, especially economic and technical" and adopted by 46 votes to 9, with 32 abstentions (A/C.3/SR.1206, 359 (1962)).

By way of a preliminary conclusion, it could be said that it is difficult, if not impossible on the basis of the preparatory work to sustain the argument that the commitment to international cooperation contained in the Covenant can accurately be characterized as a legally binding obligation upon any particular state to provide any particular form of assistance. In fact, both developed and developing countries had concerns vis-à-vis the practical implications the recognition of such an obligation would have in the conduct of international relations. In any case, it is important to remember that the ICESCR had not yet entered into force by the time the UNCHR moved to consider the question of the realization of the economic and social rights contained in the UDHR and the ICESCR; the question of the nature and scope of the provision contained in article 2(1) of the ICESCR was therefore not formally posed before the entry into force of the Covenant in 1976. The conceptual debate that took place over the wording of that article during the preparatory work of the International Human Rights Covenant, however, gives a good starting point from which to interpret the range of arguments advanced for and against the Chilean amendment and later, also, the Chilean draft submitted during the UNCHR debate of 1969. To be sure, controversy over the nature and scope of the concept of international cooperation discussed thus far did not end with the adoption of a particular formulation, on the very contrary. Nevertheless, most of the arguments expressed during the drafting process of Article 2(1) of the ICESCR were echoed or repeated, in one form or another, during the UNCHR debate of 1969.

Policy trend and events in the general area of international development assistance and cooperation subsequent to these debates, however, may be such as to necessitate a reinterpretation of the meaning attributed to the principle of international cooperation contained in Articles 55 and 56 of the UN Charter, Articles 22 and 28 of the UDHR, and Article 2(1) of the ICESCR, by different actors, and thus of the horizon of controversy of the concept. Indeed, some important events took place and a number of international instruments were adopted with respect to the question of international trade and development, which affected further the notion of international assistance and cooperation. Of these events, the first Ministerial Meeting of the Group of 77 and the first and second United Nations Conferences on Trade and Development are particularly significant. Of these instruments, the Charter of Algiers adopted by the Group of 77 in 1967, which Santa Cruz referenced several times during the UNCHR debate of 1969, is particularly noteworthy.

4.6 Concluding remarks

The proposals advanced by the Hernán Santa Cruz of Chile in the UNCHR debate of 1969 may be interpreted as an alternative to Covenant-based human rights law with a view to the creation of the conditions necessary for the realization of ESC rights in developing countries. To be sure, Santa Cruz recognized that

specialized agencies were already contributing in that way, but their contributions was often limited to a particular dimension of the problem. Since neither the UN organs nor the specialized agencies approached the problem from the perspective of international development cooperation, it was incumbent on the UNCHR to take on that role. It was this approach, in turn, which Santa Cruz wished the Special Rapporteur on the question of the realization of ESC rights to adopt.

Above all, however, Santa Cruz's contribution may be understood as a move to revive the Latin American agenda for a world ordered by human rights. For representatives of Latin American states, human rights implied "an agenda for improving the world, and bringing about a new one in which the dignity of each individual [would] enjoy secure international protection" (Moyn 2010, 1). The kind of international protection envisioned by Latin American countries was not limited to CP rights but extended to ESC rights as well. The point is that, contrary to what Harvard Professor of law and history Samuel Moyn argues, the shift which brought about human rights as "the highest moral and political ideals" of our time was not "introduced into minor circulation" by the US in the postwar world order, to then be "dropped" very soon after and only to return in the 1970s (2010, 1). On the contrary, representatives of Latin American states, supported by representatives of other small states, played a crucial role in introducing and disseminating human rights into the agenda of the new world organization.

Hernán Santa Cruz, in particular, played a significant role in fostering Latin American priorities in the drafting process of the UDHR and, to some extent also the ICESCR at the UNCHR. It is significant to note in that regard that Santa Cruz was no longer a member of the Chilean delegation to the UNCHR when the Commission begun its consideration of the question of the realization of the ESC rights contained in the UDHR in 1968. And while Chile stayed a member of the UNCHR until 1974—the year Kéba M'Baye of Senegal redescribed development as a human right—there is no trace of Santa Cruz in the records of the Commission after 1969 (at least for the period covered by the present study). It would seem that Santa Cruz attended the UNCHR debate of 1969 for a very special purpose, one ultimately achieved in the passing of resolution 15 (XXV) on 13 March 1969.

In a way, the argument advanced by Santa Cruz in the UNCHR debate of 1969 that different bodies and agencies within the UN system could take on the task of studying particular aspects of the problems of the realizations of ESC rights according to their own horizon of possibilities and in keeping with the technical terms of their mandate echoed the majority view among the Group of Western European and Other States. For Santa Cruz, however, this was not enough. The UNCHR had a very special role to play in acting to promote the realization of ESC rights insofar as it was more than a technical body; it was also a political assembly. The UNCHR was understood as such by Santa Cruz precisely because of his conception of human rights. Human rights, according to him, were not only legal rules applicable in the conduct of international relations but also and above all a political project calling for international cooperation. The role

of the UNCHR could therefore not be limited to that of an international human rights law-making body because law, be it national or international, was but only one means towards the realization of human rights as a political project. Other means included international trade and development cooperation, which is recognized in paragraphs 4 and 5 of UNCHR resolution 15 (XXXV). From the point of view of Santa Cruz, it was precisely this aspect of the question of the realization of ESC rights that the Preliminary Study prepared by the Secretary-General as well as the draft resolutions submitted by other delegations had neglected.

What is more, from Santa Cruz's point of view, the UNCHR as a political assembly was entitled to make political declarations. This view was reflected in the wording of the Chilean draft, the first paragraph of which contained a number of declarative statements by the UNCHR about the interconnectedness between the universal realization of ESC rights and the economic and social development of developing countries; about the "ultimate objective of […] economic development" as the "social development of peoples, the welfare of every human being and the full development of his personality"; about the implications of the provisions of Article 28 at the national and international levels; and about the responsibility of the international community to assist developing countries in their endeavour towards "a fuller mobilization and more effective utilization of domestic resources" (E/CN.4/1007, 122 (1969)). In particular, the use of the word "*Declares*" in front of these statements, accompanied by a reference to some of the principles adopted by the Teheran Conference and by UNCTAD in the preamble of the draft, meant that the UNCHR was taking a political stance by openly aligning itself with the perspective of developing countries—or rather the perspective of the majority among them, which built largely on Latin American contributions to the conventional language of the UN in the economic and social fields.

It is no wonder that most developed country representatives, the majority of which considered that over-elaboration and doctrinaire approaches to controversial issues deprived the UNCHR of any chance of success, could not support the Chilean draft. Even the representative of Finland, who voted in favour of the Chilean draft, later explained that his country had done so because it supported the "general purpose" of the draft but could not agree with the role it assigned to the UNCHR (E/CN.4/SR.1031, 13 (1969)). In the end, the word "Declares" was replaced by the word "Affirms" in an attempt to broaden support for the Chilean draft. Interestingly, the proposal to do so came from Salvador P. Lopez of the Philippines, who argued "the Commission was not competent to make declarations on economic and social matters, and the words 'Declares' in paragraph 1 should consequently be replaced by some such words as 'Affirms' or 'Reiterates'" (E/CN.4/SR.1029, 198 (1969)). This change in wording, however, was not enough to persuade developed country representatives opposed to the draft to change their view.

5 THE GANJI MOMENTUM AND THE IMPASSE OVER "THE WIDENING GAP"

Between the time it decided to (re)open the debate about human rights and development in 1968 and its recognition of the right to development as a human right in 1977, the UNCHR considered two reports. The first one was the preliminary report of the Secretary-General covered in chapters 3 and 4. The second was a significant report authored by Manouchehr Ganji, initially entitled *The Widening Gap* (E/CN.4/1108 (1973)) and then revised to *The Realization of Economic, Social and Cultural Rights: Problems, Policies and Progress* (E/CN.4/1108/REV.1 (1975)). Nothing remarkable in terms of arguments happened in the UNCHR debates between the consideration of the preliminary report in 1969 and the introduction of the report of the Special Rapporteur in 1973. As Donnelly remarks, "in many ways this study, and the period of calm and relative inaction during which it was being prepared, mark the germination period for the priorities adopted in the late seventies" (1981, 637). In particular, the debates unfolding across UN organs and specialized agencies on the contents of the report on that study—after its publication and circulation pursuant to an ECOSOC resolution adopted upon recommendation of the UNCHR in 1975—opened up a new horizon of possibilities for the realization of ESC rights. While it would certainly be an interesting endeavour in connection with the broader history of the entanglement of human rights and development at the UN, following the trajectory of the report through the debates taking place upon its reception by various UN bodies and agencies is outside of the scope of this modest study. Accordingly, the empirical-cum-analytical narrative offered in the present chapter takes its point of departure in the report submitted by the Special Rapporteur to the UNCHR and the debate that took place over its conclusions and recommendations.

Before doing so, however, a couple of remarks about two events that took place in the early 1970s and that were of great significance for international development thinking and practice are called for. The first event is the 1973 oil crisis, which sent prices soaring and ended the era of cheap energy and cheap industrialization—and therefore of cheap development. This event is often identified as an important source of inspiration for the Declaration on the Establishment of a

NIEO (as discussed below). The second event is the global food shortage brought about by two disastrous world harvests in 1972 and 1974. The UN responded to the atmosphere of crisis with a series of international conferences on the environment (Stockholm, 1972), population (Bucharest, 1974), food (Rome, 1974), women (Mexico City, 1975), human settlements (Vancouver, 1976), employment (Geneva, 1976), water (Mar del Plata, 1977), and desertification (Nairobi, 1977).

Between the UNCHR debate of 1968 and the UNCHR debate of 1973—i.e. between the year the Special Rapporteur was appointed and the year he submitted his report to the Commission—representatives of developing countries advanced significantly in terms of arguments in various UN debates and their position within the word organisation was growing stronger by the day. In particular, the success accomplished in 1974 by the OPEC cartel inspired them to voice their demands for the establishment of a new international economic order more loudly than ever. As a result, on 1 May 1974, the UNGA at its sixth special session adopted the Declaration on the Establishment of a New International Economic Order, in which it committed itself

> to work urgently for the establishment of a new international economic order based on equity, sovereign equality, common interest and co-operation among all States, irrespective of their economic and social systems, which shall correct inequalities and redress existing injustices, make it possible to eliminate the widening gap between the developed and developing countries and ensure steadily accelerating economic and social development and peace and justice for present and future generations. (A/RES/S-6/3201 (1974))

The Declaration was accompanied by the adoption of the Programme of Action on the Establishment of a NIEO (A/RES/S-6/3202 (1974)).

These events and the currents of thinking they unleashed had important repercussions in UNCHR debates. Even though the demands for the establishment of a NIEO were not articulated in the conventional language of international human rights, the spirit and style this particular struggle brought to the UN system was in itself very important. This is well illustrated by the fact that UNCHR resolution 4 (XXXIII) of 21 February 1977 calls for a study of the international dimensions of the right to development *in relation to the establishment of a NIEO*. Then again, while the struggle for the establishment of a NIEO and the international instruments adopted in that regard certainly played a role in the trajectory taken by the debate under consideration in this chapter, they only represent one aspect of an otherwise more complex historical narrative. This is important to underline, because the right to development has often been presented as the orphan of the struggle for the establishment of a NIEO and his interpretation limited to a product of that struggle. However, as discussed in this and the next chapter, Kéba M'Baye, who introduced the concept at the UNCHR for the first time in 1974, was fighting a different battle—albeit one intertwined with the establishment of a NIEO.

In short, contrary to common beliefs, the success of the OPEC cartel, the oils crisis, and the struggle for the establishment of a NIEO were not what triggered the redescription of the development as a human right at the UNCHR. While they

represent important elements of the context, we have also to look at the particularities of the situation. The point is that the NIEO was not a debate about human rights and that the redescription of the development as a human right at the concerned the nexus between development and human rights. While the "right to development" was part of the rhetoric employed by developing countries in the struggle for the establishment of a NIEO, they never felt the need to articulate it in terms of human rights. To explain the point of the redescription of development as a human right as oppose to a right *tout court*, we need to look elsewhere. This is precisely what this chapter as well as the next one suggest to do. While the next chapter focus on the resdescription of development as a human right, the present one offers an analysis of the argumentative context in which this redescription took place for the first time at the UNCHR.

5.1 Manouchehr Ganji (1931—present): a short biography

Before taking a closer look at the report itself, a few words about the Special Rapporteur are called for. Born in Teheran, Manouchehr Ganji studied at the University of Kentucky, located in the city of Lexington in the United States, where he received his B.A. and M.A. degrees in Political Science and International Relations in 1955 and 1956 respectively. He then moved to Geneva, Switzerland, to pursue his studies at the Graduate Institute of International Studies, where he obtained his Doctorate in International Law in 1960. He completed his education at the University of Cambridge, United Kingdom, with a Diploma of International Law in 1962.

Ganji began his professional career at the Official Secretariat of the International Labour Organization (ILO), Division on the Application of Conventions and Recommendations, in 1962, before moving to the Official Secretariat of the UN, Division of Human Rights, in 1963, where he served for three consecutive years. Between 1967 and 1968, Ganji served as Special Rapporteur on Apartheid and Discrimination in Southern Africa for the UNCHR. In the same period, he founded and served as Secretary-General of the Iranian Human Rights Committee (1967—1969) and assumed the position of the Dean of the Faculty of Law and Political Science at Teheran University (1969—1971). Before his appointment as Special Rapporteur on the question of the realization of ESC rights in 1969, Ganji also served as alternate representative of Iran to the twenty-fourth and twenty-fifth sessions of the UNCHR (1967 and 1968). In 1972, Ganji was offered the position of director of the UN Center for Human Rights in Geneva. According to him, "most Afro-Asian countries had supported [his] nomination, but [he] had turned it down because by now [his] first priority was Iran" (Ganji 2002, 182). Theodoor Cornelis van Boven was then appointed in his place. In 1973, Ganji was elected as a member of the UN Sub-Commission on Prevention and Protection of Minorities.

A few words about his career following the period covered in the present chapter (i.e. 1973—1975) might also be useful in order to get a better grasp on this

important figure in the empirical-cum-analytical narrative that unfolds below. One aspect of his later career that merits being highlighted here concerns the ratification and implementation of the ICESCR and the ICCPR in Iran. According to Ganji, Iran ratified these two covenants "as a result of [his] interventions with the Shah" (2002, 2). He was then elected as a member of the Human Rights Committee—a body of independent experts responsible for supervising the implementation of the ICCPR by its state parties. In this role, he played an important role with respect to the treatment of Iranian prisoners. In his own words,

> In 1976, I raised the question of Iran concluding an agreement with the ICRC to monitor prison conditions in Iran with the Shah. The Shah finally accepted my recommendation in November 1976. The ICRC opened its permanent office in Tehran in early 1977, and from that time to the end of the Shah's regime continued its inquiries into prison conditions in Iran. Its first report was not favorable. The second, however, showed many substantial changes, and the third spoke of further improvements. Individuals who were in prison at the time and who after the revolution occupied positions of power have attested to that fact. (Ganji 2002, 2)

Ganji further recalls how the attitude of the Shah towards his interventions on the subject of human rights had changed by then. In 1977, in particular, after attending the thirty-third session of the UNCHR, he asked for an audience with the Shah "to discuss essential discrepancies with him [...] in honoring the obligations contained in the [ICCPR]" (Ganji 2002, 2). According to Ganji, "It was to be the longest audience he had ever granted me—nearly two hours and only the two of us" (ibid.). At the end of the audience, the Shah asked Ganji to see that all they had agreed upon with respect to the promotion and protection of CP rights was translated into laws. Accordingly, Ganji met with the Shah's chief of special bureau, Nosratollah Moiniyan, and helped him prepare a letter addressed to the Prime Minister, Jamshid Amouzegar, covering these issues (Ganji 2002, 2). During the same period, Ganji also served as Minister of Education of Iran (1976—1979)—i.e. until the Shah was overthrown by the Iranian Revolution on 11 February 1979.

Soon after Iran became an Islamic Republic under the Grand Ayatollad Ruhollah Komeini, Ganji decided to leave his country and to create a resistance movement from abroad. To be sure, the decision to leave Iran was not an easy one. After spending a few months in hiding in Teheran, drafting what he defined as "the outlines of our movement's doctrines" and delineating "the main profile of our political battle" (2002, 55), Ganji received a letter from his daughter that made him change his mind about staying. He recalls:

> It was a farewell letter. Tears came to my eyes. I was a dead man in reprieve and my daughter was sure she would never see me again. She said that I had done my duty, but in fact she said something else. I had been incredibly selfish in my devotion to work. I had sacrificed my family to my country, my ideals, my obsession with human rights, and what I thought were my heartfelt duties toward humanity. And I was prepared to continue on this road. What a selfish man, I thought, I was. My daughter was right. I was certainly going to die in the pursuit of my ideals. We were experiencing an earthquake, and it was hopeless to act the part of the sea urchin glued to a stone tossed everywhere by heavy vibrations. I had to start life anew, from scratch, to reunite with my family, I had an obligation toward my wife and children. My wife and children needed me. Their safety and happiness must be my first priority. I could also create a

> resistance movement outside of Iran where I would enjoy the freedom to move, raise my voice, communicate, and act. I had to bear witness to the events taking place in my country. (Ganji 2002, 55—56)

Once in exile, Ganji's career took an unexpected turn. While his membership at the Human Rights Committee was personal, and would last unitl the end of the 1980, he was unable to attend the three-week session of the committee in 1979. Ganji bitterly recalls how, after the ambassador of the Islamic Republic, Kazem Rajavi, threatened to organize a press conference against him if he dared come to Geneva, UN officials failed him:

> Van Boven's office never sent me a ticket or the U.N. pass. My right to participate in the next session was arbitrarily denied, against the U.N. rules. Complaining to Kurt Waldheim, then U.N. Secretary-General, would not have changed things. The committee's secretariat knew well enough that I would not get the Swiss entry visa without the U.N. pass. It knew well enough that I could not afford my own airfare and hotel expenses for three weeks. The highest world authority on the international protection of human rights arbitrarily violated the United Nations rules and my rights. What more could be said of the world we live in? (Ganji 2002, 183)

After three months with no pay, Ganji decided to open a bakery in North Dallas. Not before long, however, his "office at the bakery had turned into a center of political activity for Iranians" (Ganji 2002, 194). During his exile, Ganji "devoted a large part of [his] time to giving talks and holding conferences in Iranian gatherings and universities" all over the United States (Ganji 2002, 191). He also contributed to the creation of "the nucleus of an association that would help [his] fellow countrymen in need and inform Americans of the atrocities committed in Iran in the name of God and religion" in Dallas (ibid.).

5.2 The Widening Gap: towards a basic needs approach to human rights in developing countries

On 26 March 1973, Special Rapporteur Manouchehr Ganji introduced the report of his study on the question of the realization of ESC rights, including a set of proposals advanced in the form of recommendations, to the UNCHR. In introducing his report, Ganji commented upon the various parts. The introduction of the study contained information on the procedure used in its preparation. Part One provided an analysis of comparative constitutional law with regard to the recognition of ESC rights. As such, Ganji remarked, "it gave only a fragmented picture of national norms and standards governing the realization of [ESC] rights and would have to be supplemented later by a more comprehensive study" (E/CN.4/SR.1225, 138 (1973)). From his perspective ESC rights were primarily "in the nature of policy objectives whose realization [could] only be gradual" because it depended "on economic and social advances." The issue of interest with respect to the question of their realization was therefore "their actual implementation" rather than their "legal substance." Accordingly, Part One was "purely factual and descriptive"; it did not "cover the application of the norms referred

to, and no attempt [was] made to evaluate their effectiveness." In short, he did not deem necessary to inquire into the legislation in force with respect to ESC rights in the various countries included in his study. (E/CN.4/1108/Rev.1, 7 (1975))

In order to justify emphasizing political over legal means of implementation, Ganji pointed out the limitations of a purely legalistic approach to the realization of ESC rights. Some of the rights set forth in the UDHR and the ICESCR could "only be expressed in actual policies or social attitudes." For example, "the right to the continuous improvement of living conditions," arguing that such a right was "no doubt subscribed to by all countries, but [was] ensured by the determination of the community that all its members should share in economic progress rather than by legal statutes." A legalistic approach was nonetheless required in the case of the right to social security, for instance, arguing that the latter could "hardly be enjoyed in the absence of concrete provisions of a legal character." (E/CN.4/1108/Rev.1, 7 (1975))

His primary concern with the "actual implementation" of ESC rights rather than their "legal substance" was further reflected in parts Two, Three and Four of the report. Constituting the bulk of the report, these three parts were filled with socio-economic indicators (on e.g. health, education, and wealth and poverty) listed by country, which Ganji grouped into three categories: the less developed countries (Part Two), the socialist countries of Eastern Europe (Part Three) and the developed market economies countries (Part Four). In this respect, the report resembled something that one would expect to see from UN programmes or specialized agencies. In fact, Ganji drew heavily from the publications of these programmes and agencies in his report.[21]

Ganji's had made his intention to approach the question of the realization of ESC rights by categorizing countries according to their level of development clear when he introduced his preliminary report to the UNCHR in 1970. While members of the UNCHR voiced little to no concern against this methodological choice when the final report was introduced to the UNCHR in 1973 and debated in 1974 and 1975,[22] it had been a topic of controversy while the study was being prepared. Most notably, Pierre Juvigny of France opposed quite vehemently the framework outlined in the progress report submitted by the Special Rapporteur during the UNCHR debate of 1970. From his point of view, there was no clear division between developed and developing countries with regard to some of the most relevant aspects of economic and social development relating to human rights. On the contrary, differences and similarities were cutting across levels of development when approached from the perspective of planning techniques:

[21] He quoted from e.g. the *Demographic Yearbook 1970*; the *World Economic Survey, 1969-1970;* the *1970 Report on the World Social Situation*; the *World Population Situation in 1970*; UNESCO's *Statistical Yearbook 1970* and *Literacy 1969-1971: Progress Achieved in Literacy Throughout the World*; and the IMF and World Bank Group's *Finance and Development;* ILO's *Yearbook of Labour Statistics, 1970*, among others.

[22] The only exception is Rachid Driss of Tunisia, who questioned the validity of the concepts used in the typology employed by the Special Rapporteur to approach the question of the realization of ESC rights (E/CN.4/SR.1270, 35 (1974)).

> some countries in each category adopted a flexible approach to planning while some in each category adopted a rigid or centralized approach. In some countries in both categories, too, the realization of economic, social and cultural rights was not only a matter for the State, but for private bodies and semi-public institutions such as industrial and commercial organizations, development banks or pilot agencies engaged in certain projects. There was, for instance, a similarity between the relationship of the State to such semi-public institutions in France, some Latin American countries and Italy. Furthermore, some developed countries encountered problems in developing their own under-developed regions which were similar to the problems encountered by the developing countries. (E/CN.4/SR.1084, 158 (1970))

In other words, socio-economic systems mattered more than levels of development to study the question of the realization of ESC rights. Juvigny concluded by stating his firm belief that, once the Special Rapporteur would have carried out a comprehensive study of the matter "on a scientific basis," he would certainly "find that he could not always draw a clear-cut distinction between the developed and developing countries but that he could formulate some conclusions and recommendations applicable to both categories" (E/CN.4/SR.1084, 158-159 (1970)).

Despite these objections, the Special Rapporteur kept to his word and treated the special problems of developing countries separately from those of the developed ones. He nonetheless used a sub-categorization to differentiate between three aspects of these problems among the developing countries. The first aspect related to the level of economic development of a country and based on the *per capita* income used as an "index for the measurement of the level of economic capability and performance of a country." While acknowledging its limitations, Ganji argued "*per capita* income makes it possible to compare levels of performance, in other fields, of countries that have reached a similar stage of material advancement." The second concerned the level of social development of a country and based on the rate of literacy and life expectancy. Similarly, Ganji pointed out that while "highly unsatisfactory for any sophisticated analysis", these indices made it possible "to classify and compare the countries that [had] reached a similar level of social development". Both indices were suggestive indexes of other social aspects of development. The third one derived from the assumption of the relevance of cultural areas to the study of the realization of ESC rights. From his point of view, "certain countries located in the same region [had] enough in common culturally […] to justify, for certain purposes, considering them as a group." Accordingly, he identified four cultural regions based on the criteria of religion and language: the Islamic World, which encompassed North and West Africa; the Hindu-Buddhist world, which covered South and East Asia; the Latin Catholic world, which consisted of Central and South America; the syncretistic religious world, composed of Africa south of the Sahara. (E/CN.4/1108/Rev.1, 24 (1975))

Getting back to the tripartite categorization and the title of Part Two of the report, the fact that the Special Rapporteur favoured the expression "less developed countries" in contrast to the expression initially employed in the resolution calling for the report (i.e. "developing countries") is noteworthy. In a footnote to his general observations, Ganji explained his choice as follows:

> The terms "backward", "under-developed", "developing", "third world", "less developed" have been used by different sources to designate the general conditions prevailing in Africa, Asia and Latin America. For the purposes of this study, however, the latter designation seems the most accurate and appropriate. The other terms all carry assumptions that are not necessarily valid with reference to individual countries in the three continents. By contrast, the term "less developed" seems to be the most assumption-free of the above designations and assumes only a relative position of less development in relation to the more developed countries of the industrialized world. (E/CN.4/1108/Rev.1, 23, fn.1 (1975))

Ganji emphasized the relative character of the concept of development within the context of international relations. However, he wished to keep his usage of the word at a purely "descriptive" level, or at least as free as possible from biases and unwarranted assumptions. Hence, he favoured the use of "less developed countries", precisely because it did away with the negative or positive assumptions attached to other expressions such as "underdeveloped countries" or "developing countries".

From Ganji's point of view, the section of the report concerned with "the less developed countries" covered a part of the world presenting "enormous diversity" in terms of "races, languages, standards of living, resources, and prospects for development and the realization of economic, social and cultural rights." He therefore considered that "the only real justifications for attempting a general discussion of their conditions rest[ed] on the fact that most of the countries [were] poor, which is to say that their levels of living and productivity [were] low *by the standards of the wealthier regions of the world*." (E/CN.4/1108/Rev.1, 23 (1975) [emphasis added])[23] Put simply, all of these countries were *relatively* poor, some less than others. This is an important point to keep in mind, particularly since this rhetorical move allowed Ganji to look for alternative development models and trajectories within this category of countries. If he had assumed that the living conditions of all these countries were declining relatively to those of the developed countries, he would have had to look towards the latter category of countries for a viable model of development that would "close the widening gap" so to say.

Part Three of the report covered the socialist countries of Eastern Europe.[24] In introducing this part of the report to the UNCHR, Ganji remarked that, "[b]y their very nature, the Governments of the socialist countries undertook the planning and administration of their economies with the declared intention of ensur-

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23 China and other socialist countries outside of Eastern Europe were omitted from the study of the Special Rapporteur "because sufficient information on them was not available from the United Nations, the specialized agencies or other statistical sources" (E/CN.4/1108/Rev.1, 131 (1975)). However, he advanced the view that the observations contained in Part Two could be extended to the developing socialist countries insofar as "regardless of their present socio-political systems, most of the less developed countries [had] in common a colonial heritage and an under-developed economy" (E/CN.4/1108/Rev.1, 23 (1975)).

24 Except Albania which, similarly to China and other socialist countries outside of Eastern Europe, was omitted "because sufficient information on them was not available from the United Nations, the specialized agencies or other statistical sources" (E/CN.4/1108/Rev.1, 131 (1975)).

ing [ESC] rights to the fullest extent compatible with the advance towards communism" (E/CN.4/SR.1266, 233 (1974)). He added that "[t]hose countries had achieved substantial progress in realizing those rights, but that did not mean, of course, that all the problems were fully solved" (ibid.). Interestingly, Ganji did not elaborate any further on the nature and scope of those problems nor did he criticize in any tangible way the socialist models of enforcement of ESC rights found among Eastern European countries.

The briefness of his comment with respect to the realization of ESC rights in those countries may be interpreted as a reflection of Ganji's political agenda. After all, the vast majority of his conclusions and recommendations called for radical reforms in the less developed countries. In other words, the problems of the socialist countries of Eastern Europe and that of the developed market economies countries were at the bottom of his list of priorities. At best, pointing out areas of failure in these countries could serve as means to justify his recommendations as a more viable solution for the realization of ESC rights in the less developed countries than the models offered by developed countries across the East/West divide. In the case of the socialist countries of Eastern Europe, however, the scope and contents of his analysis was so narrowly limited that it could not even serve such a purpose.

The tone employed by Ganji in the introduction to Part three of the report is somewhat apologetic. There, he emphasized that the information available about the realization of ESC rights in the socialist countries of Eastern Europe presented a number of obstacles and shortcomings making it extremely difficult to assess their problems and propose remedies. According to him, "the main sources for a listing and definition of the individual rights for which socialist Governments claim[ed] responsibility [were] their written constitutions and derivative instruments (law codes, labour codes, model charters, etc.)." Another source, which concerned the question of implementation, confused "the economic plans and current ordinances of the socialist States and the official reports on their fulfilment", a confusion attributable to the very nature of their governments. By way of example, when discussing the right to work, Ganji found no official data available on unemployment for most of the socialist countries of Eastern Europe, with the notable exception of Yugoslavia, for the current period. The USSR, for instance, recorded unemployment figures only until 1930, stating that unemployment "was completely liquidated in 1931." The point is that in most European socialist countries, "the prevailing employment concept […] derives from the Marxian vision of a transformed society from which unemployment is banned forever." While unemployment might not exist in theory, in practice it might occur because of e.g. "structural imbalances and planning errors." However, no information on that matter was available since, apart from Yugoslavia, socialist countries of Eastern Europe did not record "unemployment figures in [their] regular statistics, in conformity with official statements that unemployment [did] not exist." (E/CN.4/1108/Rev.1, 134 (1975))

In order to deal with "information on obstacles, failures in implementation, infirmity of purpose or perversion of aims which socialist communities, in common with all human societies, experience as impediments or threats to the exercise of individual rights," the Special Rapporteur therefore had to rely on "disclosures, complaints and case studies publicized in the affected countries themselves" supplemented by "critical reports, comparatives studies and even speculation by outside observers […] provided they [could] be linked to scholarly research in the interests of truth." However, this kind of information, according to Ganji, was "necessarily dispersed." (E/CN.4/1108/Rev.1, 133 (1975))

The critical stance adopted by Ganji towards the kind of information available in official publications of the socialist countries of Eastern Europe, his reliance on external information, and his decision not to inquire into the legislation in force, all meant that the report could not really be utilized by the socialist countries in the debate that followed to showcase their experience as a blueprint for the realization of ESC rights in the less developed countries. They will, nonetheless, persistently try without any great amount of success, to regain the upper hand in the debate by calling on numerous occasions for an alternative and comparative study of national experiences in the realization of ESC rights.

As the narrative offered in this chapter suggests, representatives of members among the Group of Eastern European States were pushed to the margins of the debate over the realization of the ESC rights contained in the UDHR and in the ICESCR as the problems relating to human rights in developing countries took centre-stage. In the end, the inclusion of the right to peace in UNCHR resolution 4 (XXXIII) of 21 February 1977 was certainly done upon their initiative and/or to obtain their support for the resolution. This might have served as a way for representatives of these member states to reclaim some power of initiative in that debate. This part of the story about the right to peace, however, is not included in the empirical-cum-analytical narrative unfolding here, as it did not contribute in any significant way to the recognition of the right to development as a human right by the UNCHR in 1977. For these reasons, representatives of members among the Group of Eastern Europe States do not figure prominently in the present and next chapters, which covers the UNCHR debates of 1973 to 1977.

In introducing Part Four, Ganji remarked how "the progress achieved by countries with developed market economies was also substantial" when compared to that achieved in the less developed countries (E/CN.4/SR.1266, 233 (1974)). However, it remained disappointing when "viewed in the light of the vast material abundance that many of these countries command[ed]" and "measured against the standards set in the [ICESCR], the Declaration on Social Progress and Development and the [UDHR]" (ibid.). For him, "the rapid economic growth of those countries merely brought into sharper focus wide disparities in income and the persistence of isolated areas of poverty in the midst of affluence" (E/CN.4/SR.1266, 234 (1974)). As such, "individuals and groups which were still outside the mainstream of national prosperity" represented a serious problem in countries with developed market economies, even though "the level of living of

some of the poorest sectors of the population in those countries appeared high" in comparison with that in a number of other countries (ibid.). The problems encountered in the realization of ESC rights caused by high levels of poverty and socio-economic inequalities were thus not exclusive to the less developed countries but also encountered in the developed ones.

This finding—i.e. the persistence of poverty and widening inequalities amidst unprecedented and ever-increasing prosperity in the developed countries—discredited the development-human rights trade-off thesis. The sacrifices made in the less developed countries on the altar of development (be them in terms of needs deprivation or socio-economic inequalities) were not only temporary; the consequences of these sacrifices would not disappear overnight once these countries would reach a certain level of development. That is, if they followed the development path taken by countries with developed market economies. In other words, the dire situation of the poor and the persistence of inequality in some highly developed countries could serve to illustrate that the short to medium term sacrifices made in a country to achieve higher levels of economic growth would not necessarily benefit the poor in the long term. Ganji was in fact launching a fierce criticism of what is today referred as "trickle-down economics" or the belief that "the accumulation of wealth by the rich is good for the poor since some of the increased wealth of the rich trickles down to the poor" (Aghion and Bolton 1997, 151).

In this regard, Ganji's use of Maslow's hierarchy of needs—originally developed as a motivational theory in human developmental psychology—in his appraisal of the human rights situation in the developed market economies is worth remarking upon.

> Abraham Maslow suggested plausibly 30 years ago that human needs are ordered hierarchically from physiological needs such as food and needs for safety and physical security, to emotional needs for love, esteem, and finally "self-actualization", which is the need "to become everything that one is capable of becoming". The higher needs—love, esteems, and "self-actualization"—can in Maslow's view come into play only after more basic needs are met, a view not very different from the one expressed by Berthold Brecht in the refrain, "*Erst kommt das Fressen, dann kommt die Moral*" […]. It follows from this view that as the developed market economies succeed in fulfilling the basic needs of food, shelter, and protection against hazards and dangers of nature and the economy, the more prominent will emotional needs become in people's lives. (E/CN.4/1108/Rev.1, 218-219 (1975))

In terms of conceptual use and rhetorical innovation, it should be underlined that the application of Maslow's theory of needs to the question of the realization of ESC rights and special problems relating to human rights in developing countries resonates with the basic needs strategy for development advanced in publications and reports of the ILO and UNESCO in the 1970s.[25] The emergence of this approach, which marked a shift in the theories of development employed in UN

[25] According to Jolly et al. the basic-needs strategy for development was developed "in the 1970s by a number of organizations working independently of each other" (2004, 113; see e.g. Herrera et al. (1977), ILO (1976), Sheehan and Hopkins (1979), and Ghai, Khan and Lee (1977)).

circles, may be interpreted by reference to the emergence of a new climate of development thinking during that period. By the early 1970s, "the idea that transfers of capital and technical know-how would quickly dispense with gross poverty had proven misconceived" (UNICEF 1996). While many less developed countries had managed to achieve high rates of economic growth, socio-economic inequalities remained high. In other words, economic growth did not "trickled down" to the poor. In search for explanation, some development scholars pointed out that high population growth were slowing down the development of low-income countries. However, this was only part of the problem. Accordingly, development scholars "busily began to diagnose what had gone wrong and set out on the quest for alternatives" (UNICEF 1996).

Since economic growth did not alleviate poverty as swiftly as expected, development scholars proposed to include measures deliberately targeted at the poor in the programme of action for the Second Development Decade. This would be done with a view to help the poor meet their basic needs (i.e. food, (including water), shelter and clothing but also health and education). Before then, development scholars had considered these basic needs as forms of "consumption" rather than factors of economic productivity. By the early 1970s, however, an important shift in thinking about these matters was taking place. On 14 April 1972, Robert McNamara, then President of the International Bank for Reconstruction and Development (IBRD), presenting the findings of Hollis Chenery's research during general debate at the UNCTAD III, made a statement that would give momentum to this new way of thinking about development and human needs. He argued, "governments in developing countries […] should redesign their policies to meet the needs of the poorest 40 percent of their people—and relieve their poverty directly." The rhetoric advance to support this new development strategy took on the shape of a campaign to "attack poverty", accompanied by economic slogans of "redistribution with growth" and "meeting basic needs". (UNICEF, 1996)

The rhetoric of basic needs employed by Ganji in his report, combined with his redescription of the enjoyment of ESC rights as "fundamental needs of mankind" (E/CN.4/SR.1225, 138 (1973)), served a twofold objective. On the one hand, it served to prioritize the realization of ESC rights in the less developed countries on the basis that some fundamental needs could not be sacrifice in the pursuit of higher economic growth. Pushing his reasoning a step further, however, it could also be argued that "higher needs", commonly associated with civil and political liberties, could await higher levels of development to be satisfied. While Ganji never advanced such a view in his report or during the debate, his approach nevertheless made room for it. After all, representatives of Iran had sustained this view in the UNCHR debate ever since the Teheran Conference held in 1968 (see Chapter 3). Indeed, as discussed further below, some representatives of states members of the UNCHR—and representatives of authoritarian states in particular—did push the arguments formulated by the Special Rapporteur into that direction. They argued, for instance, that the right to vote was meaningless for those with an empty stomach.

For Ganji, however, the rhetoric of needs mainly served to devaluate the models of development offered by the developed market economies by drawing attention to inequalities and the persistent of situations of poverty in the midst of abundance and to offer an alternative. The point is that while communism was considered an unrealized utopia, modernization theorists and proponents of the stages-of-growth model of development claimed that the most advanced industrialized nations—i.e. the United States, Western Europe and Japan, or what Ganji termed the "developed market economies countries"—had reached the pinnacle of development, namely the "age of high mass-consumption." According to Rostow, in the "age of high mass-consumption," a society had successfully moved from self-sufficiency to abundance through mass consumption and consumerism (1960, 73—92). The present form and organization of the most advanced industrialized countries was thus presented to the less developed countries as the realized vision of their optimal development, provided they followed the historical development paths taken by the former. Ganji opposed these claims by arguing that, despite their state of abundance, the form and organization of countries with developed market economies did not necessarily translate into greater enjoyment of human rights—something that became known once the problem of their realization was approached from the perspective of the satisfaction of human needs. In his view, the realization of human rights should be set as the ultimate objective of development and the satisfaction of needs as a means towards their progressive realization.

To illustrate his point, Ganji emphasized the relative dimension of needs and the problem of their satisfaction in relation to material abundance:

> Since minimum "felt needs" of the individuals or households vary according to the wealth of the society to which individuals or households belong, poverty has become a relative concept in countries experiencing a rapid economic growth and the acceptable minimum will increase with the growth of national income. (E/CN.4/1108/Rev.1, 203 (1975))

In order to understand the concept of "felt needs" employed by Ganji, Jonathan Bradshaw's "The taxonomy of social need" (1972) might be useful. Bradshaw identified four types of social needs as follows: normative need, felt need, expressed need and comparative need. According to him, a normative need "is that which the expert or professional, administrator or social scientist defines as need in any given situation" while a felt need "is equated with want" (Bradshaw 1972, 1-2). As such, felt need "is limited by the perception of the individual—whether he/she they know there is a service available, as well as a reluctance in many situations to confess a loss of independence" and "inflated by those who ask for help without 'really needing it'" (Bradshaw 1972, 2). In turn, expressed need "is felt need turned into action" (Bradshaw 1972, 3). Finally, comparative need is a measure of need "obtained by studying the characteristics of the population in receipt of a service" (ibid.). This taxonomy is helpful to assess social policy in different contexts. Here, the different types of needs may be used to conceptualize access to social services, whereby "felt needs" may give an indication of the gap between individual experience and expectations in that regard. The point is

that individuals in wealthier societies may think their state is able to afford better services than it currently offers, or may feel that they do not have equal access to those services. This is probably what Ganji meant to say here by relying on the expression "felt needs".

In a way, a lot of the arguments contained in Part Four of the study resonates with the criticisms launched against the "age of high mass-consumption" by the New Left, of which German-American philosopher, sociologist and political theorist Herbert Marcuse is a prominent figure. A crucial question to be answered according to these critics was why people felt "a nagging sense of want even amid a superabundance of things" (Lears 1998, 451). Although Ganji himself made no reference to Marcuse or other theorists of the New Left, some aspects of their work on the ideology of advanced industrial societies are worth mentioning here in order to understand how the development models of the United States and Western Europe were beginning to lose appeal for Latin American, African and Asian societies. This is important insofar as the critique and crisis of Western models of development called for, or rather opened up space in the debate for the emergence of alternative visions of social futures, both within and outside the "West".

As American cultural and intellectual historian Jackson Lears remarks in a book chapter on changing conceptions of abundance in American thought in the second half of the twentieth century,

> By the mid-1970s, a developing strain in social thought reflected the sense of contracting possibilities that had entered parts of the political culture; it also expressed a sense of frustration, an insistence that the existing economic system failed to meet fundamental human needs. […] Assertions about fundamental human needs popped up everywhere in the 1970s. New left ideologues influenced by Hebert Marcuse, among others, sought to distinguish "true needs" from the "false needs" promoted by the propaganda agenda of commodities. Even the most idiosyncratic Left conservatives stayed at least implicitly within this framework (which was common to Thoreau, Marx, and Norman O. Brown): the necessary versus the superfluous, use value versus exchange value, objective needs versus subjective wants. (Lears 1998, 459)

According to Marcuse, the advanced industrial societies claimed to be democratic but were in fact "totalitarian", not in the sense of "terroristic political coordination of society" but rather as "a non-terroristic economic-technical coordination which operates through the manipulation of needs by vested interests" (1964, 3). In keeping with this line of reasoning, Marcuse argues that "the intensity, the satisfaction and even the character of human needs, beyond the biological level, [had] always been preconditioned" (1964, 4). From there, Marcuse identifies "true" and "false" needs. He describes false needs as "needs that are superimposed upon the individual by particular social interests in his repression: the needs that perpetuate toil, aggressiveness, misery and injustice" (Marcuse 1964, 5).

The point, as William Leiss argues in *The Limits to Satisfaction* (1976), is that the culture of high mass consumption characterizing advanced industrial societies could never deliver the satisfaction it promised:

> There is no apparent end to the escalation of demand and no assurance that a sense of contentment or well-being will be found in the higher reaches of material abundance. The society which promotes the idea of the high-consumption lifestyle seems to lack any reliable measure of the improvements in the quality of life that we should expect to result from its expanding productive capacity. The personal objectives sought in the frenetic activity of the marketplace are more and more obscure. (Leiss 1976, 7)

Leiss further argues that "massive capital investments and technological innovations are planned to ensure the supply of resources and energy that we think we need" but that "more thought ought to be given to the question as to whether this is the best approach to the problem of our needs" (Leiss 1976, 7). From this standpoint, the claim that the US or other developed market societies had reached the pinnacle of economic and social development could be disputed. Indeed, the modes of organizing and utilizing the available resources employed by high mass-consumption societies presented problems of their own, including poverty and inequalities, something that Western scholars had now themselves come to recognize.

Ganji also implicitly took issue with the view developed by Rostow and widely held among modernization theorists that "the use of the powers of the State, including the power to redistribute income through progressive taxation, to achieve human and social objectives" was the privilege of the developed countries (Rostow 1960, 73). According to Ganji, some of the less developed countries showed better results in that field than the developed ones and could therefore provide better alternatives for other less developed countries than the developed ones. The same could be said in other areas such as employment, gender equality, health and education. Emphasizing the cultural dimension of the problems faced by the less developed countries with respect to education to illustrate his point, Ganji argued

> In most of the less developed countries, the educational system was only remotely relevant to material requirement. It had developed alongside economic growth rather than contribute to it. While development called for orientation towards productive sector, the present system tended to direct graduates to administration and to the services which were frequently incapable of absorbing them. (E/CN.4/SR.1225, 142 (1973))

He then quoted a French report, which recognized, among others, that the education systems of the less developed countries recipient of French foreign aid and cooperation in the educational and cultural fields mostly reproduced the French school and university system, which was already unsuited to France itself and only remotely relevant to the requirements of the countries to which it had been transferred. To some extent, it could be argued that Ganji shared the general view expressed by Marcuse that "the established way of organizing society [could be] measured against other possible ways, ways which [were] held to offer better chances for alleviating man's struggle for existence" (Marcuse 1964, x). The point is that the alternative modes of organizing and utilizing resources chosen by some of the most advanced among the less developed countries suggested that it would be possible for other less developed countries to achieve rapid economic development without having to trade off the satisfaction of their basic needs,

their approach to social equality or particular aspects of their cultural identity. As we shall see, Ganji drew from the authoritarian model of modernization adopted in his country, namely Iran, in tracing such alternatives for the less developed countries.

Ganji continued the introduction of his report with a discussion of what he referred as "the widening gap"—the significance and importance attached by the Special Rapporteur to this particular concept is reflected, above all, in the fact that he originally named his report after it. He drew attention to the fact that "the gap between rich and poor was widening, nationally as well as internationally, and was creating a politically explosive situation at both levels" (E/CN.4/SR.1225, 145 (1973)). Underpinning his argument is the assumption that poverty and inequalities are the prime source of social and political instability. In his report, Ganji explained the relationship between "the widening gap" and the realization of ESC rights as follows:

> Although there can be but one definition of "human rights and fundamental freedoms", the term, in view of the economic and social realities of life in different parts of the world, conveys different needs and expectations and a different order of priorities for those living below the poverty line as compared with those enjoying higher standards of living. Thus, while the gap between the rich and the poor, the privileged and the underprivileged keeps on widening both within and between countries, the possibilities of the uniform definition and application of those standards tend to diminish. Such conditions are harmful not only for national integration and consolidation but also for co-operation. (E/CN.4/1108/Rev.1, 292 (1975))

The notion of a widening gap was rather commonplace in rhetoric of economic development at the time. The term had been widely associated with the suggestion of an ever-increasing inequality of incomes at the national and international levels, which proceeded from the thesis that the difference in per capita incomes between the rich and poor within and between countries was constantly increasing. This was thought to be the case because, while the developed regions or countries were progressing, the underdeveloped regions or countries, which were caught in a vicious circle of poverty, had stagnated or were even retrogressing (Bauer 1972, 50). The point, according to Ganji, was that while the standards and principles enclosed in international human rights instruments were universal, the less developed countries still had a long way to go to reach them—at least in comparison to some developed countries. Given the importance of the universal realization of human rights and the fact that developing countries represented two-thirds of humanity, this meant that their problems had to be accorded priority at the UNCHR. But it also meant that the ways and means and approaches employed by the developed countries to the realization of ESC rights were not necessarily well suited to overcome the particular problems of the less developed countries.

While representatives among members of the Group of Latin American States and their supporters had long fought for international responsibility and international cooperation in the realization of these rights (see chapters 3 and 4), Ganji emphasized the importance of taking actions at the national level in order to narrow the gap:

> Radical reforms were needed in the less developed countries—land reform, the strengthening of administration, changes in educational systems. Many of those countries still had to eradicate the remnants of colonialism and to consolidate political independence and sovereignty. Such reforms, and the right of everyone to participate in economic, social, cultural and political activities, should not be considered as by-products. (E/CN.4/SR.1225, 145 (1973))

The emphasis on structural changes at the national level (as opposed to structural changes at the international level) with a view to the realization of ESC rights in the less developed countries is reminiscent of the programme of authoritarian modernization adopted in Iran. In point of fact, the revised observations, conclusions and recommendations of the Special Rapporteur were largely inspired by his country's experience with the ongoing White Revolution, a large series of reforms launched by the Shah Mohammad Reza Pahlavi in 1963 and concluded in 1978 (see Chapter 3).

The statement delivered by the representative of Iran, Soheyla Shahkar, during the UNCHR debate of 1974, lends support to this interpretation. Shahkar begun her speech by stating that her delegation approved the approach and methods adopted by the Special Rapporteur, who, she was proud to say, was one of her compatriots. She then endorsed all the conclusions and recommendations in the report, which she argued were in line with the policy of the government of Iran. In particular, she welcomed the fact that the Special Rapporteur,

> instead of merely stating the facts, had drawn some extremely useful conclusions and submitted recommendations which, being based on the actual experience of a number of countries, could be applied elsewhere, subject to adaptation to the circumstances of a given region or system. (E/CN.4/SR.1270, 39 (1974))

She went on to give an account of the achievement of the decade that had followed the launching of the White Revolution in Iran and the main principles underlying it. She argued that, generally speaking, emphasis was placed on investment in the social sector. Iran had a system of unified planning which concentrated as much effort on social development as on economic development. While heavy investment in infrastructure and social services might lower the national growth rate in the short run, it would prove to be far more profitable in the long run, not only from the human standpoint but also in economic terms. She then called attention to paragraph 63 of the Special Rapporteur's conclusions, which read as follows:

> High growth rates alone are […] no guarantee against worsening poverty and human degradations. Social justice, defined as the increasing equality of wealth, income and opportunity, is not an eventual outcome of economic growth. It is rather an essential prerequisite to integrated and sustained national development. There is substantial evidence that those countries that have chosen a strategy of development, as the end rather than the means of economic progress, have not suffered in terms of economic growth. On the contrary, they have proved to have better prospects for self-sustaining and integrated national development then those which have placed the main emphasis on economic growth. (E/CN.4/1108/Rev.1, 298 (1975))

Following a similar reasoning, Shahkar added, special priority had been assigned to education, in particular to the use of modern teaching techniques and the campaign against illiteracy in Iran's Fifth National Plan. In addition, with a view to ensuring that a population explosion would not stand in the way of social and economic progress, the birth control policy, which had already been in operation for some years, was again assigned the highest priority. (E/CN.4/SR.1270, 41 (1974))

In this regard, it should be noted that Iranian development was "an exception to the norm for developing countries" at that time as it had been "sustaining high and growing rates of real economic growth" since the early 1960s (Looney and Frederiksen 1988, 490). In fact, "Iran's GNP growth rate was among the highest in the world" (Ganji 2002, xxi). By the time Ganji was introducing his report to the members of the UNCHR, "Iran had entered an oil boom period" and its '"revenues from the sale of oil amounted to $22 billion a year—four times more than before". It is also noteworthy that while the Shah of Iran advertised the White Revolution as a step towards modernization/westernization, there is little doubt that he also had political motives; the White Revolution was a way for him to legitimize the Pahlavi dynasty. The reform programme, centred on land reforms and the abolition of feudalism, was built to create a new base of support among the peasants and working classes while weakening an increasingly hostile middle class and those classes that supported the feudal system. The socio-economic model proposed by the Shah appealed to a number of authoritarian regimes, which saw an opportunity to legitimize their rule. As Shahkar remarked during the UNCHR debate of 1973, the main tenets of the White Revolution were reflected in the recommendations of the Special Rapporteur, in particular those concerning land reforms, tax reforms and reforms in the educational system in the less developed countries (see E/CN.4/1108/Rev.1, 310-312 (1975)).

Since the reform programme of the White Revolution, with its accompanying political objectives, permeates through Ganji's recommendations, the debates unfolding on his report may partly be interpreted as a struggle over the validity of the Iranian model as an alternative for the realization of ESC rights in the less developed countries. Then again, the report of the Special Rapporteur should not be seen as a manifesto for authoritarian models of development. After all, Ganji emphasized "the right of everyone to participate in economic, social, cultural and political activities" as an integral part of the reforms called for in his report (E/CN.4/SR.1225, 145 (1973)). He was also himself a strong advocate for CP rights in Iran, as the following passage—in which Ganji recalls how became representative of Iran for the thirtieth session of the UNCHR—illustrates:

> In 1974, Iran was on the blacklist of the U.N. Commission on Human Rights. One day in early February, I was told by the minister of foreign affairs that I had been named as representative of Iran for the forthcoming session of the U.N. Commission on Human Rights, meeting soon in Geneva. As a condition of my acceptance, I asked to be fully informed on the number of political prisoners and on the situation of torture in Iranian prisons. […] Shortly afterwards Parviz Sabeti, a top official of SAVAK (the National Security and Information Agency), contacted me and offered to cooperate and provide me with whatever information I needed. […] With that background and the

> promise by the high authorities to change course and henceforth to allow the representatives of Amnesty International and the International Commission of Jurists entry into the country, I went to Geneva to represent Iran in the Commission on Human Rights. (Ganji 2002, xxii)

Nonetheless, the fact remains that Ganji was sent to attend the twenty-ninth session of the UNCHR as the representative of Iran in order to intervene in favour of his country in the commission's deliberation over the case of gross and systematic violations of human rights in Iran—and he did just that. Among other things, he said:

> Mr. Chairman, it is late April. We are meeting in the serene and beautiful city of Geneva. It is a part of a beautiful democratic and prosperous country of Switzerland. In this country the illiteracy rate is nearly nil. Infant mortality is nonexistent. Hunger and dire poverty have long disappeared. There are no shortages of doctors, nurses, engineers, lawyers, well-trained, free and dedicated judges…Minimum education of the Swiss police is equivalent to a junior college certificate. The press is free and responsive to its public duties…What a beautiful country Switzerland is, in spite of its own kinds of problems…It must be wonderful to live in Switzerland.
>
> But I was born in Iran. We still today have over 50 percent illiteracy. We still have poverty, hunger, and a high rate if infant mortality. My country if called a developing country. We are short of lawyers, short of well-trained judges, engineers, doctors, nurses, skilled workers…Average education of our police force is only a sixth grade education. Until a few years ago, there existed a host of discrimination against women. The situation has somehow improved since that time. Still much remains to be done here. We still don't have enough schools, enough hospitals, enough universities…But we are committed to change this situation and we are moving ahead with fast speed and determination.
>
> Of course, it is pertinent to ask why there exists today such a chasm between our situations and that of the Western democracies? We are not here today to point fingers of blame at each other for the exploitations and mistakes of the past. What is important is for the U.N. Commission on Human Rights to take note of the fact that we consider ourselves duty-bound to comply with the terms of the Universal Declaration of Human Rights. We are cognisant of the fact that we have problems and shortcomings. We are determined to overcome those problems in the most expeditious way possible. (Ganji 2002, xxiii)

In the end, the UNCHR removed Iran from its blacklist. According to Ganji, however, the Shah did not like "the tone or the content of [his] speech, which implied that the attainment of the Western democratic model was in fact [their] ultimate goal" (Ganji 2002, xxiii). As a result, "the Iranian delegation in Geneva connived with the U.N. documentation division to make [his] statement disappear completely from the United Nations archives" (ibid.).

Apart from the economic and social aspects of the Iranian White Revolution discussed above, the perspective adopted by the Special Rapporteur in formulating his recommendations also echoed the inward looking development strategies that had dominated UN development thinking and practice—with the notable exception of ECLA, as discussed in Chapter 4—throughout the 1950s and 1960s. It was simultaneously illustrative of the shift which had taken place towards the end of the 1960s, where development thinking had moved away "from an almost exclusive preoccupation with growth rates to concern also with equity, poverty

and employment"—a shift which had been accompanied by "an emerging convergence of views on the need for development policies to focus more specifically on employment generation and reduction of poverty and inequalities" (Jolly et al. 2004, 111). The numerous calls made by Ganji throughout his report and in his recommendations to address problems of poverty, inequalities and more generally the "widening gap" with a view to the creation of the conditions of social justice necessary for the realization of ESC rights are illustrative of that trend. Examples of such recommendations include (but are not limited to) that "the primary objectives of all Government […] be a more equitable distribution of wealth, income, opportunity and social services" and that "the Commission should strongly recommend the institution of land reform in all the less developed countries where this has not taken place yet" with a view to reduce "inequalities in the rural sector and between the rural and urban sectors" (E/CN.4/1108/Rev.1, 310 (1975)).

Of particular relevance in that connection is the work of Swedish economist and former Executive Secretary of the UN Economic Commission for Europe, Gunnar Myrdal, whom Ganji cited around two dozen times throughout his report (see E/CN.4/1108/Rev.1 (1975) at 31, 39, 48, 65, 82, 85, 101, 113, 114, 123, 291, 292, 296 and 301). In 1970, Myrdal published *The Challenge of World Poverty*, in which he outlined a world anti-poverty programme that put forward "major reforms in agriculture, education, population, and the role of the state" (Jolly et al. 2004, 111). The programme thus advanced by Myrdal departed from the main thrust of his Asian study (see Myrdal 1968), which emphasized the non-economic factors in development, the tensions between traditional values and the ideas of modernization, and the prime responsibility of the "underdeveloped countries" themselves to institute radical social and economic reforms that would foster development (Myrdal 1970).

From Ganji's perspective, the governments of the less developed countries had the main responsibility for their development and "blaming foreign countries for all the ills they suffered from was useless" because "the wealthy countries could do little to spread birth control or institute land reforms" (E/CN.4/SR.1225, 146 (1973)). Contrary to M'Baye, therefore, Ganji rejected the arguments advanced by proponents of dependency theory as well as the overall rhetoric of blame carried by charges of neo-colonialism against former colonial powers. According to him, two of the main challenges to be faced by the less developed countries were that of population growth and inflation. These two factors had offset the benefits of economic growth in those countries, which were consequently trapped in a vicious circle of poverty (E/CN.4/1108/Rev.1, 291 (1975)).

From this line of reasoning follows the argument, well-spread among advocates of a structural approach to national development, that if significant economic advance were to be achieved in the less developed countries, their governments had an "indispensable as well as comprehensive role in carrying through

the critical and large-scale changes necessary to break down the formidable obstacles to growth and initiate and sustain the growth process" (Bauer 1984, 1). In particular, Ganji argued,

> [a]n over-all plan for social and economic progress was needed, to cover all of the population without differentiation in respect to sex, religion or language, or social, racial or national origin. […] the less developed countries could very well spend as much as 40 per cent of their total public resources on social development and services, provided social progress was firmly believed in by political leaders and became an integral part of the national plans. That could happen only if it were acknowledged that social services did not necessarily, so far as financial resources were concerned, compete with production. (E/CN.4/SR.1225, 146 (1973))

Contrary to the early trade-off arguments presented in Chapter 3, therefore, the development strategy advocated by Ganji rejected the general idea that the policies required for the economic development of the less developed countries called both for utmost general austerity (i.e. needs trade-off) and the acceptance of socio-economic inequalities (i.e. equality trade-off) in the short to medium term. On the contrary, social investments in the present were called for because the long-term benefits of social policies on production would outgrow their initial costs.

From Ganji's point of view, economic development had to be accompanied by social development—a perspective widely acknowledged among members of the Commission on both sides of the development divide, particularly since the UNCHR debate of 1969 and the adoption of the Declaration on Social Progress and Development by the UNGA later that year. In point of fact, upon recommendation of the UNCHR in 1972, ECOSOC had requested Ganji, in his capacity as Special Rapporteur, to take into account while preparing his study the provisions of UNGA resolution 2542 (XXIV), containing the Declaration on Social Progress and Development, and UNGA resolution 2543 (XXIV), on the implementation of that Declaration. While economic development and social development had long been treated as separate matters within the organization, the Declaration on Social Progress and Development marked an important shift in the conventional language of international development within the UN system. This is important because many of the social dimensions of development had been recognized as human rights in the UDHR and the ICESCR. In terms of conceptual use, the association of economic development and social development allowed the conceptual rapprochement of development—no longer limited to economic growth—with human rights. In particular, social rights such as the right to food, housing, education and health were no longer simply conceived as ends of development policy but as means.

Accordingly, with respect to the trade-off between basic human needs and economic development, Ganji advanced the view that "hunger and malnutrition were sapping energy, stunting bodies and slowing down minds" in most of the less developing countries, thereby affecting production negatively (E/CN.4/SR.1225, 140 (1973)). As regards to the trade-off between equality and development, he argued that "contrary to the traditional view of economists, the report of IBIRD […] observed that there was very little difference between the

average rate of growth in the group of countries with the greatest income inequalities and the average growth rate of countries where those inequalities were smallest" (E/CN.4/SR.1225, 141 (1973)). Viewed from that angle, the equality trade-off had no raison d'être. On the very contrary, the trend towards increasing inequalities between different socio-economic groups hampered the realization of ESC rights in the less developed countries. Ganji thus explained

> Not only did the higher-income groups receive a disproportionate share of public goods but they also contributed less than their due share of the public revenue. It was also they who benefited the most from public services such as electricity, water, roads, police protection, higher education, the telephone system, etc. And yet indirect taxes still constituted the larger part of public revenue in the vast majority of the less developed countries; in addition, although the proportion of direct taxes was increasingly, a large part of the increase was attributable to the growing number of salaried employees. Tax on capital gains and especially tax on real estate were inadequate. (E/CN.4/SR.1225, 142 (1973))

In his opinion, the problem was that the working classes were financing economic development in the less developed countries, while the wealthy and privileged classes of these societies benefited from it. Contrary to what mainstream economists had assumed, there was no trickle-down effect; income or capital gains tax breaks (or other financial benefits for that matter) to large businesses, investors and entrepreneurs did not stimulate economic growth but contributed to widening the gap between rich and poor within the less developed countries.

As Pierre Juvigny of France remarked during the UNCHR debate of 1974, "Ganji went so far as to suggest that social development was a *factor* of economic development" (E/CN.4/SR.1268, 22 (1974) [emphasis added]). In other words, Ganji did not only argue that there was no genuine opposition between economic development and social progress, he also argued that they were complementary to each other. Juvigny grasped the gist of it when, referring to the creation of the social security system in Britain by Lord Beveridge, he argued the idea that

> social progress was an effective factor of economic growth […] was an altogether different concept from that of assisting the poor which prevailed during the nineteenth century, and if the burden of expenditure required for the operation of a genuinely integrated social security system, such as that of France since 1945, seemed fairly heavy to bear at first, it soon proved to be a good investment. That was also true in the ease of social assistance to women. All measures which enabled women to pursue a career had a favourable economic impact, since they increased the productive forces and at the same time helped to implement the right to work for all without discrimination as to sex. (E/CN.4/SR.1268, 22 (1974))

The point of this line of argument is found in the idea that charity (including charity between nations) was not enough, because it did no focus on the structural causes of poverty and inequalities. Deeper reforms in the structures of society were called for in order to insure the realization of ESC rights. Interestingly, both Ganji and Juvigny approached the problem from a strictly national point of view. For a number of developing country representatives, however, the problem had to be approached from an international perspective. The charity of nations

delivered in the form of development aid and assistance was not enough to alleviate poverty and inequality in the less developed countries; reforms in the structure of the international economic order were called for to insure a more equitable distribution of resources across the world.

As the above illustrates, Ganji gave an overwhelming emphasis to national actions in the implementation of ESC rights in parts Two, Three and Four of the report. To be sure, he did not avoid the question of international actions altogether. Instead, he decided to treat it separately in Part five of his report, which comprised a summary account of the various actions taken at the international and regional levels towards the realization of those rights. More precisely, Part five provided a general description of the activities of the UN and its subsidiary organs in that field (the UNGA, ECOSOC, UNCHR, Commission on the Status of Women, Commission for Social Development, Committee for Development planning, Advisory Committee on the Application of Science and Technology to Development, Committee on Review and Appraisal, UNIDO, UNCTAD, UNDP and two conferences of plenipotentiaries on the status of refugees and stateless persons), those of the specialized agencies which were entrusted with responsibilities directly related to the formulation and observance of ESC rights or to the creation of the conditions needed for their enjoyment (ILO, FAO, UNESCO, WHO, and IBRD), the World Intellectual Property Organization (WIPO), and three regional organizations (the Organization of American States, the Council of Europe and the League of Arab States). The measures thus identified by Ganji were subsequently classified according to their scope (general versus specific), their mode of operation (standard-setting, promotional activities, and advisory services), and the process of their implementation.

Of particular interest for the purpose of the present chapter are the concluding observations arrived at by the Special Rapporteur in Part five on the scope of action of the UN as compared to the specialized agencies and the question of implementation. On the question of the scope of international and regional actions, Ganji remarked that the difference in approach between the general instruments adopted by the UN (including, therefore, the UNCHR) and the specific ones adopted by the specialized agencies reflected "the divergent character of the organizations concerned." On the one hand, the UN pursued "objectives of an over-all nature" while, on the other, the specialized agencies were "concerned with the specific subjects which they were established to deal with." As such, situations could occur where the instruments adopted by the specialized agencies, due to their specific character, left "gaps of unprotected humanity." Accordingly, Ganji expressed the view that the UN should give greater attention to these gaps by developing an overall approach to the problem—a conclusion reflected in recommendation 18 of the report. (E/CN.4/1108/Rev.1, 286 (1975)) This argument along with recommendation 18 may be interpreted as Ganji's contribution to the debate on the distribution of roles and functions between the UNCHR—i.e. the main organ of the UN dealing with human rights—and the specialized agencies in the realization of ESC rights. He gave no indication, however, on what this overall approach would be or how to bring it about. This is where, as

we shall see in Chapter 7, the redescription of development as a human right came into play.

Finally, on the question of implementation, Ganji argued that, insofar as there was "no true coercive power to ensure compliance" at the international and regional levels, the realization of standards would depend "in the final analysis on the readiness of Governments to carry out the obligations which they have assumed." The problem for the developing countries was above all one of economic and social advancement. The legal and institutional provisions enclosed in these international and regional instruments were nothing but a necessary framework, which were of little value if they were not given concrete substance by policies and action with a view to the creation of the conditions required for the enjoyment of ESC rights. The fact that article 2 of the ICESCR contained the idea that ESC rights could be realized only progressively, he argued, supported his views. Ganji acknowledged that economic and social development was one of the main concerns of the UN system and that, in formulating rights and advocating their implementation, the world organization had added a new dimension to it. Nonetheless, the central point Ganji wished to make in Part V of the report is found in the argument that the UN could only "propose standards and, were these adopted, endeavor to ensure their observance"; the responsibility "of translating them into actual rights" lay "with the national authorities within the means and resources available." (E/CN.4/1108/Rev.1, 287 (1975)) It is telling that although Part Five is presented as a study of international actions for the realization of ESC rights, Ganji ultimately placed emphasis on national action for the realization of ESC rights.

The stress laid on action at the national level can be interpreted in a number of ways. One concerns the importance attributed by developing countries to respect for the principles of national sovereignty and non-interference in the internal affairs of states. In short, developing countries wished to safeguard their sovereign right to self-determine their political status and freely pursue their economic, social and cultural development in addressing the problems relating to the realization of ESC rights. The point is that some levels of conditionality, dictated by the donor countries, often accompanied international aid and cooperation, which could threaten the sovereignty of recipient countries. The challenge, then, from the perspective of many developing countries, was to obtain the international development aid and cooperation they desired, but on their own terms. In Part Five of the report, Ganji made use of this fear to advance his conclusions and recommendations, which put the primary responsibility for the realization of ESC rights on individual states and called for the implementation of national reforms towards that objective. Ganji's final conclusions in this regard are then formulated as follows:

> The actual realization of economic, social and cultural rights is primarily the sole concern of each State acting by itself and determining its policies within the prevailing economic, social, cultural, legal and ideological setting, which is not the same in any two countries in the world. Therefore, each country is entitled to develop its own forms and methods for the realization of economic, social and cultural rights, although it can,

> of course, make use of the successful expertise of other countries, if it so desires. (E/CN.4/1131/Rev.1, 295 (1975))

The Special Rapporteur further argued that the most important prerequisite for the meaningful realization of all rights—in particular ESC rights—was "independence, territorial integrity and national sovereignty, without which no effort towards economic or social development could lead to a more egalitarian and just society".

Ganji further warned the UNCHR that "the adoption of regional and international measures should not be used as an excuse for delaying the necessary national action, since regional and international instruments did not create new rights but only spelled out existing ones" (E/CN.4/SR.1225, 145 (1973)). From his standpoint, the responsibility for the realization of ESC rights in the less developed countries lay primarily in the hands of their governments. International assistance and cooperation could be at best a supplement and at worst an impediment to the radical reforms necessary to transform domestic structures in order to achieve ESC rights in those countries. In a way, the very possibility for the less developed countries to safeguard their independence rested to some extent upon the willingness of their government to shoulder that responsibility. Underlying this line of reasoning is the idea that the realization of ESC rights in the less developed countries not only has to begin with actions at the national level, but that such actions are sufficient in themselves *provided they are accompanied by the necessary political will to carry them forward.*

The position adopted by Ganji as Special Rapporteur on the question of the realization of ESC rights in that regard is quite different from the view he had advanced as alternate representative of Iran in the UNCHR debate of 1968 (see Chapter 3). It might be worth recalling the argument advanced by the Iranian representative on the subject of the resources required for carrying the reforms deemed necessary for the realization of ESC rights. After acknowledging that, contrary to other countries, Iran had "fortunately" enough "mineral and other resources" to carry out the reforms necessary for the realization of ESC rights, Ganji had pointed out that "development presented a complex problem, in that the primary responsibility for it lay with the government concerned, but the international community also had responsibilities under Articles 55 and 56 of the Charter" (E/CN.4/SR.981, 138 (1968)). He had then remarked upon the incompleteness of the reference to article 22 of the UDHR in the seventh preambular paragraph of the draft resolution, which stressed only the part relating to national efforts and resources in the implementation ESC rights, "when it was international responsibility which should be emphasized" (E/CN.4/SR.981, 139 (1968)). As discussed in Chapter 3, this was one of several attempts made by developing country representatives to shift the focus of the debate from national to international obstacles and responsibility with respect to the realization of ESC rights. Now, in his report submitted to the UNCHR in 1973, Ganji had put a case forward for shifting the focus back from the ills of the international system to the domestic policies of developing countries in addressing the problems of the realization of ESC rights.

To summarize, the study of the Special Rapporteur emphasized domestic structural issues with respect to the realization of ESC rights. His conclusions and recommendations thus favoured national reforms and policy efforts towards the implementation of those rights. However, as a close reading of the UNCHR debates over the report of the Special Rapporteur between 1973 and 1975 illuminates, an important number of developing country representatives wanted the problem of the realization of ESC rights to be addressed differently by the Commission. On the one hand, as Ganji had himself acknowledged in the past, as an oil-exporting country, the situation in Iran—from which he drew inspiration for his recommendations—was quite different from that of many other developing countries. Indeed, Iran had received substantial revenue from oil—even before the 1973 oil crisis, which had served as an important source in fininancing the economic and social reforms of the White Revolution (1963—1978). For developing countries relying on the exports of agricultural commodities (like groundnuts or coffee), however, the main problem relating to the realization of ESC rights was their lack of resources. A number of them were also already dependent to various extents on foreign aid. Put simply, to speak of primary if not exclusive reliance on national efforts and reforms as a matter of self-determination makes sense for the richest among developing countries—i.e. those countries that can afford to invest in their own development. But for the poorest among them, foreign aid could not be so easily discarded.

On the other hand, as discussed in Chapter 4, a number of representatives, particularly among the Group of Latin American States, had fought hard to have the international dimensions of human rights in general and that of ESC rights in particular recognized by the UN. They held a different vision of the place and role of international human rights practice in relation to their economic and social development; a vision some representatives among members of the Group of African States and the Group of Asian States were starting to share. As such, they could hardly accept the structural approach outlined by the Special Rapporteur, who pursued it only in connection with equitable domestic structures, thereby neglecting the equally important dimension of equitable international structures for the universal realization of human rights. Above all, the international dimension of human rights was, contrary to what Ganji suggested, key to insure respect for the principles of national sovereignty and non-interference in the internal affairs of states.

5.3 The UNCHR debates of 1973 to 1975, the NIEO moment and the controversy over the widening gap

The report of the Special Rapporteur was introduced to the Commission during consideration of the question of the realization of the ESC rights contained in the UDHR and in the ICESCR, and the study of special problems relating to human

rights in developing countries (agenda item 7) at its twenty-ninth session (hereafter UNCHR debate of 1973). While the vast majority of representatives commended the Special Rapporteur for the scope and the quality of his study, they generally agreed that because of the length and complexity of the study and its relative recent circulation, they would not be in a position to formulate a definitive judgement on the study as a whole or to make suggestions on the action to be taken as regards its conclusions and recommendations (see e.g. India at E/CN.4/SR.1226, 151 (1973)); UK at E/CN.4/SR.1226, 158 (1973)); Pakistan at E/CN.4/SR.1228, 174 (1973); USSR at E/CN.4/SR.1228, 180 (1973); Norway E/CN.4/SR.1228, 184 (1973)). In the opinion of the majority, it was desirable at this stage to seek the comments of governments, specialized agencies and other international organizations (E/CN.4/1127, 39 (1973)). Leela Damodora Menon of India introduced a draft resolution to that effect, co-sponsored by Nigeria, the UK and the US. Pakistan and Iran became co-sponsors after the following amendments were incorporated in the draft resolution: One requested the Secretary-General to provide the Special Rapporteur with appropriate assistance (E/CN.4/SR.1228, 174 (1973)). Another further requested the specialized agencies, regional economic commissions and the UN bodies concerned, as well as other intergovernmental organizations, to do the same (ibid.).

During the same debate, Humberto Díaz Casanueva of Chile—a poet, diplomat and educator who won the Chilean National Prize for Literature in 1971—introduced two other sets of amendments to the draft resolution: one on behalf of Romania and the other on behalf of his country. The amendments proposed by the delegation of Romania consisted of two preambular paragraphs: The first paragraph included a reference to General Assembly resolution 421 E (V), which stated that "when deprived of economic, social and cultural rights, man does not represent the human person whom the Universal Declaration regards as the ideal of man." The other paragraph included a statement to the effect that the enjoyment of ESC rights was "of paramount importance to the enjoyment of all rights and fundamental freedoms, particularly in the developing countries." (E/CN.4/SR.1228, 180 (1973))

The amendment proposed by the delegation of Chile consisted of a preambular paragraph, which included a statement to the effect that the economic and social situation of developing countries had lately seriously deteriorated, a fact that gravely impeded the full realization of ESC rights and required, in conjunction with the efforts and programmes of interested States, a better full-scale international cooperation (E/CN.4/SR.1228, 180 (1973)). The amendment introduced by the Chilean delegation is of particular relevance inasmuch as it represents an attempt to bring the question of international assistance and cooperation, including the obligation to cooperate for development, back under the spotlight. In that regard, it might be interesting to note that Allende's Popular Unity Government was still in power at the time of the UNCHR debate of 1973. Humberto Díaz Casanueva had been appointed as Permanent Representative of Chile to the UN by Allende in 1970 and served until the coup d'état in September 1973.

In the light of the above, it might be worth recalling that the UNCHR had adopted two separate resolutions on the item under consideration at its twenty-ninth session, held in 1969. While the Special Rapporteur on the realization of ESC right had been appointed under UNCHR resolution 14 (XXV), UNCHR resolution 15 (XXV) contained a number of working assumptions with respect to the international dimensions of the problem relating to the realization of ESC rights in developing countries. In particular, it contained an affirmation to the effect that the universal enjoyment of the ESC rights set forth in the UDHR depended to a very large degree "on the rapid economic and social development of the developing countries which [were] inhabited by more than one-half of the world's population, whose lot continue[d] to deteriorate as a result of the tendencies which characterise[d] international economic relations."

In addition, UNCHR resolution 15 (XXV) contained a recognition that the provisions of article 28 of the UDHR, which lays down that everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized, implied, among others, "the existence of a system of international relations which ensures an equitable international division of labour which favours the economic and social development of the developing countries." The same resolution also urged "all States Members of the United Nations and members of the specialized agencies to take, on the threshold of the second United Nations Development Decade, convergent measures designed to transform international economic relations so as to ensure an equitable division of labour different from that existing at present and capable of furthering a rapid development of the economically backward areas, thus promoting therein the fullest enjoyment of economic, social and cultural rights". (E/CN.4/1007, 190 (1969))

The point is that, while the Special Rapporteur briefly discussed the international dimensions of the widening gap and the need for international assistance and cooperation with a view to the realization of ESC rights in developing countries, he did not incorporate any proposal for action in that respect in his recommendations. More precisely, Ganji recognized "the problem of world poverty called for concerted international action" and argued that "in the interest of world peace, human solidarity and international co-operation, the world-wide problem of poverty and human degradation must be considered from the standpoint of public international law and the obligation of the international community" (E/CN.4/SR.1225, 146 (1973)). He nonetheless believed that this particular topic was best left to another branch of the UN and he thus suggested that the UNCHR "recommend the matter be placed on the agenda of the International Law Commission, which should already have considered it within the context of the progressive development of international law." (ibid.) His focus, then, was placed on the need to address problems of poverty, hunger and inequalities through national reforms and policy efforts. His move was an attempt to emphasize the obligations of each state to take appropriate measures to integrate the realization of ESC rights into their national development plans and policies. Following his approach, the governments of developing countries could no longer

invoke a lack of resources or, more precisely, insufficient international development aid and cooperation as an excuse for not taking the necessary steps towards the realization ESC rights.

What transpires not only from the UNCHR debates of 1973 but also of that of 1974 and 1975, is that the majority of developing country representatives—notwithstanding their regional group—were primarily concerned with the widening gap *between* as opposed to *within* states. From their point of view, the issue at stake in the debate was the recognition of a reciprocal responsibility—vested in the concept of international solidarity and/or community—towards the realization of ESC rights of all individuals and peoples throughout the world. This notion of reciprocal responsibility included that of the rich countries towards the less developed countries to provide assistance for the realization of those rights. For advocates of development aid and cooperation on both sides of the development divide, the advance of the less developed countries was to be considered a mutual goal in an interdependent world. The realization of this goal was premised upon "ample supplies of capital to provide for infrastructure, for the rapid growth of manufacturing industry, and for the modernization of their economies and societies" (Bauer 1984, 1). In this regard, Jinadu of Nigeria for instance argued that, "in addition to the measures recommended for alleviating the problem [...], the developed countries could contribute substantially by investing capital in the less developed countries" (E/CN.4/SR.1228, 179 (1973)). As Bauer remarks, it was widely believed at the time that the capital required could not be generated in the less developed countries themselves "because the inflexible and inexorable constraint of low incomes (the vicious circle of poverty and stagnation), reinforced by the international demonstration effect and by the lack of privately profitable investment opportunities in poor countries with their inherently limited local markets" (1984, 1).

Hence, while developing country representatives acclaimed the study of the Special Rapporteur, a large number of them expressed disappointment over the range and scope of his initial recommendations, which did not take sufficiently into account the international or external dimensions of the structural problems relating to the realization of ESC rights. On the one hand, the economic and social reforms called for by the Special Rapporteur were deemed largely insufficient to address the vicious circle of poverty in which the poorest among the less developed countries were trapped. On the other hand, the conclusions and recommendations of the Special Rapporteur did not sufficiently integrate the human rights vision and political objectives set forth by Hernán Santa Cruz and other representatives of members among the Group of Latin American States and supported by an increasing number of developing country representatives, embodied in UNCHR resolution 15 (XXV) of 1969 (see Chapter 4). This interpretation is strengthened by the fact that the statement made by Humberto Díaz Casanueva of Chile before introducing his amendment to the Commission largely echoed the views formulated in UNCHR resolution 15 (XXV). From his point of view, "it was only when a country had emerged from a state of under-development that its inhabitants could enjoy those rights." Even if ESC rights were "incorporated

into the constitutions and laws of the developing countries, they could not be translated into fact so long as those countries lacked sufficient resources to combat […] poverty." Unfortunately, "the situation of the developing countries was becoming worse" and an ever-widening gap could be observed at the international level; "the poor countries were becoming poorer and the rich countries richer." In this regard, there were a number of factors that the Special Rapporteur had failed to identify in his study, which impeded the realization of ESC rights and called for international action, namely colonialism, racism, neo-colonialism and the exploitation by foreign Powers of the resources of countries that had achieved political independence. (E/CN.4/SR.1227, 168-169 (1973))

After acknowledging that economic development should be accompanied by qualitative changes in social structures and that it was incumbent on the UNCHR to assess the progress made in that respect, the Chilean representative remarked that the less developed countries encountered not only internal but also international difficulties in their effort to guarantee the full realization of ESC rights. While the internal difficulties (e.g. inequality of income, population growth, inadequate educational facilities, a shortage of skilled labour and competent managerial staff, poor housing conditions and malnutrition) were considerable, the international difficulties were no less so and were partly responsible for the internal problems. By way of an example, he remarked with outrage that a country like Ghana had to pay five tons of cocoa for a tractor. As the Special Rapporteur had said, small countries could not develop without intensive trade with the advanced countries, which provided them with the consumer goods, the capital and the services they needed. Hence, it was necessary to attack not only the internal causes of poverty in the less developed countries but to reconsider all aspects of their economic relations with the developed countries. While the UN "had developed a coherent system for combating this state of affairs," but "it was the developed countries […] which should assume the main responsibility for changing the situation." (E/CN.4/SR.1227, 171-171 (1973))

In the light of the above, it should be emphasized that the UNCHR debate of 1973 took place before the oil crisis and the UNCTAD and UNGA debates over the establishment of a NIEO. What is more, the Declaration on the Establishment of a NIEO was adopted after the UNCHR debate of 1974 took place. In other words, the preoccupations of developing countries with respect to the NIEO only became articulated in the conventional language of international human rights in the UNCHR debate of 1975. As a result, neither the Special Rapporteur's initial recommendations nor his revised ones made explicit reference to these preoccupations. Then again, although they were not yet formulated in terms of the establishment of a NIEO, a number of these preoccupations had already been advanced by developing country representatives in previous UNCHR debates. In particular, these preoccupations had been advanced by representatives of members among the Group of Latin American States in their agenda for "a social and international order" conducive to the full realization of human rights. These preoccupations had then been embedded in UNCHR resolution 15 (XXV) of 13

March 1969, which had also established a positive and mutual correlation between economic and social development and the realization of ESC rights.

Not all developing country representatives, however, shared the pessimistic outlook on the situation of developing countries contained in the Chilean amendment and some even took issue with it (see e.g. Martinez Cobo of Ecuador at E/CN.4/SR.1230, 212 (1973)). Nonetheless, the vast majority shared the view that the international community, in particular the economically developed countries, had a duty to extend all possible cooperation to the developing countries in order to promote the realization of ESC rights. The fact that some developing countries were better off than others and could potentially achieve the desired development and human rights objectives without external help did not erase the moral responsibility of the developed countries in that regard. In this regard, Yaya A. O. Jinadu of Nigeria argued that "the Charter of the United Nations could be regarded both as an agreement between individual States and the Organization, and as an agreement between individual States in relation to one another, by which the less fortunate among them could be assisted to reach a reasonable level of living" (E/CN.4/SR.1228, 179 (1973)). For his part, Virgilo Mañagas of the Philippines remarked that while the Special Rapporteur had "recognized that the primary responsibility for breaking the vicious circle of poverty […] rested with individual developing countries", "it was essential for concerted international efforts to be applied steadfastly and intelligently to the task of improving the steadily worsening conditions of the people of those countries" and the UN with the cooperation of the developed countries "had an indispensable role to play in the matter" (E/CN.4/SR.1230, 213 (1973)).

Statements made by other developing country representatives during the UNCHR debate of 1973 usually followed a similar line of argument. After remarking upon the part of the study dealing with the situation in developing countries and the effort of those countries, including their own, to achieve the progressive realization of ESC rights, they usually pointed out the many obstacles they encountered in their endeavours, first internally and then externally. Internally, the realization of those rights implied the availability of adequate resources and skilled labour and the utilization of advanced technology. Externally, developing counties were faced with the unjust trade policies pursued by many developed countries and the exploitation of those resources by those countries of their natural resources. Certain developing countries had to contend, in addition, with aggression and all kinds of foreign interference. From their point of view, the main prerequisites for progress towards the realization of ESC rights in those part of the world was the elimination of all vestiges of colonialism, a determined struggle against neo-colonialism, and respect for the principles of national sovereignty and non-interference in the internal affairs of states. While it was true that the primary responsibility for breaking the vicious circle of poverty, lack of capital, and insufficient educational, cultural and medical facilities rested with individual countries, those countries should also be able to count on effective international assistance and cooperation (see e.g. Egypt at E/CN.4/SR.1230, 210-212 (1973), Ghana at E/CN.4/SR.1228, 188-189 (1973), Nigeria at

E/CN.4/SR.1228, 178-179 (1973), and Philippines at E/CN.4/SR.1230, 213-215 (1973)).

An alternative, more marginal view was advanced by the representative of Ghana, who considered that, following the experience of colonialism, many countries, including his own,

> had […] learned the lessons that radical political and economic changes were inevitable in order to dismantle peacefully the alien politico-economic structure, that it was essential to mobilize the people fully for national development, and that it was necessary to control the country's natural resources, described in Ghana as 'control of the commanding heights of the economy'. (E/CN.4/SR.1228, 189 (1973))

It followed that "it was essential to follow a policy of self-reliance and to develop regional and subregional ties" (E/CN.4/SR.1228, 189 (1973)).

To summarize, the majority of developing country representatives were hoping to use the moral and legal authority of the Commission in order to encourage UN member states to give substance to their pledge "to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms" through increased co-operation for development (see e.g. Rachid Driss of Tunisia at E/CN.4/SR.1266, 236-237 (1974), Ibrahim Ali Badawi of Egypt at E/CN.4/SR.1268, 10 (1974) and Rajen Nehru of India at E/CN.4/SR.1268, 18-19 (1974)). These views and concerns found expression in the draft resolution introduced by Rajen Nehru on behalf of India, Cyprus, Egypt, Ghana, Nigeria, Peru, Senegal, Sierra Leone and Tunisia. In introducing the draft resolution, she drew attention to operative paragraph 2 which stressed that early realization of the ESC rights of people could be achieved only if all countries and peoples were able to attain an adequate level of economic and social growth and if all countries were able to institute all necessary measures with a view to eliminating inequality in income distribution and social services. It is worth underlying here the use of the concept of people to qualify the nature and scope of ESC rights. It echoes the collective dimension of human rights discussed in Chapter 5, which M'Baye advanced to redescribe the right to development as a human right. For now, suffice to say that this conception of ESC rights as people's human rights has important implications for the kind of policy alternatives deemed adequate to work towards their progressive realization.

After introducing the draft, Nehru drew attention to the statement made by the Indian Prime Minister, Indira Gandhi, at the UN Conference on the Human Environment, held in Stockholm, Sweden from 5 to 16 June, 1972. After remarking upon the need "to re-evaluate the principles on which societies were based, and also the ideals on which they were sustained," Gandhi had argued that "while each country should itself deal with its own particular problem, it was obvious that all countries had to unite in an over-all endeavour as only a co-operative approach on the global scale would make it possible to tackle the entire spectrum of problems." (E/CN.4/SR.1263, 19 (1974)) As this example illustrates, the 1970s were marked by the rise of a global consciousness among members of the international community. A series of events, which took place for the most

part in the first half of that decade and were experienced as crisis in one way or another brought an unprecedented sense of the interdependence, that the faith of developed and developing countries were intertwined. In such a context, to argue, as Ganji did, that the realization of ESC rights was primarily a question of national reforms and policies seemed outdated at best. This is particularly true for a number of developing countries who saw the small gains of their development efforts—often acquired through great sacrifices—in the 1960s threatened if not swept away by global issues and challenges in the 1970s (e.g. climate change, population growth, unemployment, food crisis, and so on).

For their parts, while they expressed some misgivings about the Special Rapporteur's conclusions and recommendations, developed country representatives from the Group of Western European and Other States generally agreed with the emphasis laid on national reforms and policy efforts in his structural approach to the problem of the realization of ESC rights. Sir Keith Unwin of the United Kingdom, however, strongly disagreed with the statement that "the prevailing view today is that only through State action and planning can effective enjoyment of economic, social and cultural rights be realized for all the members of society" (E/CN.4/1108/Rev.1, 308 (1975)). From his point of view, "while the State might have to make a large contribution, a considerable one was also made, in free-enterprise economy, by individuals and independent organizations" (E/CN.4/SR.1226, 159 (1973)).

According to Philip Hoffman of the United States, while international assistance and cooperation would continue to play an essential part, "increasing attention should be paid to the role and responsibilities of individual Governments in that regard" (E/CN.4/SR.1228, 178 (1973)). For the majority of developed country representatives, the role of the UNCHR should be to concentrate on promoting the fundamental rights of the individual. It was in this context that it should set the task of deciding how it might most effectively contribute to the realization of ESC rights. The UNCHR should not duplicate the work done by other organs but should rather complement such activities by devoting its efforts to determining the basic concepts of human rights in this area. (E/CN.4/1127, 40 (1973))

From their perspective, one of the main problems to be addressed by the UNCHR was therefore that of reconciling certain measures involved in planned economic and social development with respect for human rights and fundamental freedoms. For instance, after commending the attention given in the study of the Special Rapporteur to the rights of the individual, Hoffman remarked

> The view that economic and social progress should be directed towards the promotion of human worth and dignity coincided with the recent approach of scholars, administrators and planners, who had stressed the need for priority attention to be given in the development process to human needs. The President of IBRD had repeatedly stated that more attention should be directed to social factors affecting the reduction of disparities and population control should all be accorded greater right in their relationship to the quality of life of individuals. (E/CN.4/SR.1228, 177 (1973))

This passage draws attention to the enduring debate in international development practice and policy over the question as to whether there was a trade-off between the equitable provision of basic human needs and rapid economic growth in low-income countries or below a certain development threshold. The dilemma could be summarized as follows:

> Given scarce resources and widespread poverty among their citizens, should government of developing countries pursue rapid economic growth, possibly at the expense of continuing and perhaps worsening poverty among the poorest members of society? Or should these governments risk market distortions and inefficiencies so as to secure some minimum standard of access to basic needs for all citizens? (King 1998, 386)

As discussed in Chapter 3, the main answer given to this question by development economists in the 1950s and the 1960s was that it was necessary to sacrifice a certain level of welfare (by accepting continuing poverty and inequalities) until a country had reached a sufficient level of development to break the vicious circle of poverty. Their main concern was that the "redistributive justice needed to secure widespread welfare improvements in developing countries [might] distort incentives for the sorts of private investment required for sustained economic growth, growth that should eventually benefit everyone in society" (King 1998, 386). Many were therefore of the view that "some inequalities [might] be a necessary consequence of the distributions of resources and opportunities that lead to improved economic circumstances for all" (ibid.).

In the late 1960s and 1970s, however, this assumption was increasingly questioned by empirical work supporting "the argument that improvements in basic welfare and enhanced economic performances [were] mutually reinforcing processes" (King 1998, 386). For instance, in an extensive study of data relating to developing countries entitled *Economic Growth and Social Equity in Developing Countries* published in 1973, Irma Adelman and Cynthia Taft Morris, two economists who could be classified in the mainstream of orthodox theories of development economics at the time, concluded "that development [was] accompanied by an absolute as well as relative decline in the average incomes of the very poor"; "that there [was] no automatic, or even likely, trickling down of the benefits of economic growth to the poorest segments of the population in the low-income countries"; and that their analysis supported the "Marxian view that economic structure, not level of income or economic growth, [was] the basic determinant of patterns of income distribution" (Adelman and Morris 1973, 189 and 186). In other words, there was no beneficial trade-off between the equitable provision of basic human needs and rapid economic growth in low-income countries. As a result, national development plans and priorities could no longer be invoked as an excuse for neglecting ESC rights in developing countries. Indeed, following this view "Government investment in basic material and social welfare may thus be motivated as much by a concern for secure and effective economic infrastructure as for the equal fundamental rights of all citizens to some minimum standard of basic needs fulfillment, these motives being entirely compatible and mutually reinforcing" (1998, 386).

Hoffman continued his argument by discussing some of the issues stressed by the Meeting of Experts on Social Policy and Planning, which had taken place at Stockholm in 1969 and to which the Special Rapporteur had also referred in his study. First, "economic phenomena were social in nature, were socially conditioned and had social consequences." Second, "any development planning that neglected social conditions and social implications was bound to be misleading." Third, "the development process should be viewed as a complex whole, comprising economic, social, political and administrative elements." Finally, "any design for a national or international development strategy, if it was to be meaningful, internally consistent and capable of effective implementation, had to cover all those fields." (E/CN.4/SR.1228, 177 (1973)) The arguments thus advanced by Hoffman reflects fairly well the shift that had occurred in development thinking within the UN system between the late 1960s and early 1970s, "from an almost exclusive preoccupation with growth rates to concern also with equity, poverty, and employment" (Jolly et al. 2004, 111), and embodied in the UN Declaration for Social Progress and Development (A/RES/2542 (XXIV) (1969)) as well as the International Development Strategy for the Second United Nations Development Decade (see A/RES/2626 (XXV) (1970), par.7 and 18).

What is noteworthy in this regard is that the concept of development utilized by the majority of state representatives had effectively moved away from an exclusive preoccupation with growth towards a broader concept including social concerns and centred on the welfare of the individuals in the UNCHR debate of 1973. All sides in that debate now generally accepted the idea that the human person should be the subject rather than the object of development and that ESC rights were a core ingredient of the development process. Nonetheless, the view that CP rights were also an important factor of economic and social development was still a highly controversial one and their importance for developing countries was therefore disputed. For the majority of developed country representatives who spoke during the debate (see e.g. van Boven of the Netherlands at E/CN.4/SR.1230, 209 (1973) and Juvigny of France at E/CN.4/SR.1230, 215 (1973)), ESC rights and CP rights were equally important and should be treated with the same level of priority in addressing the special problems relating to human rights in developing countries. From their point of view, the UNCHR ought to concentrate on promoting the fundamental rights and freedoms of the individual. It was in this context that it should set the task of deciding how it might most effectively contribute to the realization of ESC rights. In this regard, Pierre Juvigny of France argued that "macro-economics should not be given undue attention" because "if attention was concentrated on global statistics, the basic question of the rights of the individual, the family and the small community might be overlooked" (E/CN.4/SR.1230, 215 (1973)).

What Juvigny and other developed country representatives were effectively doing in emphasizing the need to concentrate on the promotion and protection of the fundamental rights and freedoms of the individual was to warn against the potential pitfalls of pursuing a development strategy base on the structuralist approach of the kind the Chilean and other developing country representatives

seemed to be calling for (i.e. which gave priority to the international dimension of the structural aspects impeding the economic and social development of the less developed countries). On the one hand, the fear was that the UNCHR would be loosing sight of the domestic structural issues by emphasizing international or external structural issues and by the same token loosing sight of individuals within nations. On the other, the structuralist approach called for by the Chilean representative presented the danger of becoming identified with a wide, non-legal, economically or sociologically-oriented approach to the problems relating to human rights in developing countries. The consequence of such a shift in perspective within the UNCHR would then be

> to downplay the importance of other, specifically legal, approaches to human rights issues, to move the focus of UN human rights activities away from specifics towards global economic problems, and generally "to disappear into the clouds of a universality that leaves the larger world stranded far below". (Alston 1981, 45)

In the light of that, the UNCHR ought instead to concentrate its work on specific, more legally oriented issues. Beside the question of reconciling certain measures for planned economic and social development with respect for human rights, developed country representatives identified a number of other such issues during the UNCHR debate of 1973, such as:

- the participation of the people in development (see e.g. Hoffman of the US at E/CN.4/SR.1228, 178 (1973));
- the question of equality and non-discrimination (see e.g. van Boven of the Netherlands at E/CN.4/SR.1230, 209 (1973)), and alternative and more dynamic means of implementing ESC rights than the measures of implementation contained in the ICESCR (see e.g. van Boven of the Netherlands at E/CN.4/SR.1230, 210 (1973)).

In addressing those issues, they nevertheless warned, the UNCHR should take care not to duplicate the work done by other organs (see e.g. Sir Keith Unwin of the UK at E/CN.4/SR.1226, 159 (1973)).

The next year, during the UNCHR debate of 1974, the vast majority of developed country representatives among members of the Group of Western European and Other States agreed with the call made by the Special Rapporteur to the effect that the UNCHR should "consider mass poverty for what it really was and make the guaranteeing of a minimum of dignity and decency for mankind its first objective" (E/CN.4/SR.1266, 234 (1974)). Concomitantly, they agreed with the emphasis laid by the Special Rapporteur in his revised observations and recommendations on national efforts to attack poverty, inequalities and hunger with a view to the realization of ESC rights (see e.g. Sir Keith Unwin of the UK at E/CN.4/SR.1270, 37 (1974) and Hoffman of the United States at E/CN.4/SR.1268, 12 (1974)). In other words, they still maintained the view that international measures and mechanisms could not substitute national ones.

Similarly to the Special Rapporteur, they recognized that some of the problems relating to the realization of ESC right in developing countries called for concerted, harmonized and sustained international efforts by a number of organs and agencies within and outside of the UN (see e.g. Hoffman of the United States

at E/CN.4/SR.1268, 12 (1974) and Juvigny of France at E/CN.4/SR.1268, 23 (1974)), but that it was not the task of the UNCHR to address these problems. The specialized agencies were already active in the fields of interest enumerated by the Special Rapporteur: the FAO and the WFP were concerned with food, the ILO with employment, and UNESCO with education (see e.g. Juvigny of France at E/CN.4/SR.1268, 24 (1974)). From their point of view, it was imperative that the UNCHR should not duplicate the work done by other organs and agencies, a situation that called for a division of competences on the question between the UNCHR and the specialized agencies concerned.

Similar views had been expressed during the UNCHR debate of 1973. At the time, several representatives had expressed the view that ESC rights certainly deserved more attention by the UNCHR than they had hitherto received, but views differed widely on how to approach the problem. One possibility would have been to increase the number of meetings or to double the number of sessions of the UNCHR (passing e.g. from one to two sessions per year and attributing one of them to the problems of ESC rights)—a suggestion advanced by the Special Rapporteur early in the debate but quickly dismissed as unfeasible. Another would have been, like the Special Rapporteur had also suggested, creating a special bureau on the application of ESC rights attached to the office of the UN Secretary-General. This second alternative was also opposed by a number of representatives as well as the Director of the Division of Human Rights (see e.g. the arguments advanced against the proposal by Seykyiamah of Ghana at E/CN.4/SR.1228, 189 (1973), Martinez Cobo of Ecuador at E/CN.4/SR.1126, 156 (1973) and Sir Keith Unwin of the UK at E/CN.4/SR.1226, 160 (1973), the reply delivered by the Special Rapporteur at E/CN.4/SR.1227, 164-165 (1973), and the view expressed on the matter by the Director of the Division of Human Rights, Marc Schreiber, at (E/CN.4/SR.1228, 175 (1973)). As a result, the Special Rapporteur decided not to press for this proposal and left it out of his revised conclusions and recommendations.

In this regard, it is noteworthy that all of these alternatives would have required considerable resources at a time when the UN found itself in a rather precarious financial situation. In point of fact, as Digambar Bhouraskar remarks in a book chapter on the rationalization of UN functions and staffing in the economic and social field,

> Since the beginning of the 1970s, there have been financial crises in each decade with the UN going through periods of zero growth in real terms. Some of these crises were partly imposed by some member states to assert their ideas of priorities. Major contributors to the UN budget began to express their uneasiness with the level of inefficiency in UN and consequently unproductive use of resources. It is also probable that developed countries tried to decelerate the rate of growth of UN finances, as developing countries gained majority for decision making and some of their decisions proved unpalatable to the developed countries. (Bhouraskar 2007, 133)

"Inter-agency cooperation and coordination" thus became the new name for the struggle that took place over the distribution of existing power shares within the organization. As a result, all alternatives that would have served to create new power shares and allocate them to the question of the realization of ESC rights

were excluded from the horizon of possibilities of the UNCHR for similar reasons. This is important because it meant that the question of the realization of ESC rights would have to be dealt with within the existing organizational framework of the UN. The only option left to those who wished the UN in general and the UNCHR in particular to give more attention to the realization of ESC rights was to increase the number of meetings allocated to consideration of that question. It would be difficult to do so, however, without concomitantly diminishing the number of meetings devoted to consideration of matters related to the promotion and protection of CP rights. Consequently, the struggle over the distribution of existing power shares between ESC rights and CP rights within the UNCHR dramatically intensified in the UNCHR debate of 1974 as compared to the UNCHR debate of 1973.

To settle the conflict, developed country representatives among the Group of Western European and Other States tried to advance a compromise view: the UNCHR could contribute to the development debate by assuming a moral and legal function in the field of international development cooperation. By doing so, the UNCHR would answer, at least partly, the call made by developing country representatives for greater attention to be paid to the links between development and human rights and the international dimensions of the problem relating to the realization of ESC rights in developing countries. Similarly, it would allow the UNCHR to keep its focus on the protection and promotion of individual rights and freedoms. For instance, Juvigny of France opined that

> The Commission might assume responsibility for analysis and interdisciplinary synthesis, to enable each office and each expert to keep in mind that the aim of all activities undertaken from a technical point of view must be none other than to promote the cause of human rights. The role of the Commission was to serve, like the report under consideration, as a stimulus and a corrective, so that all the activities undertaken in the field in question should effectively contribute to the promotion of human rights and to ensure their enjoyment to all without distinction or discrimination of any kind. (E/CN.4/SR.1268, 24 (1974))

Similar views were advanced by van Boven of the Netherlands (E/CN.4/SR.1267, 248-249 (1974)), Hoffman of the United States (E/CN.4/SR.1268, 15 (1974)), Eriksen of Norway (E/CN.4/SR.1268, 7 (1974)) and Sir Keith Unwin of the United Kingdom (E/CN.4/SR.1270, 38 (1974)). From their point of view, the Commission would do best by devoting special attention to a number of specific issues while fully respecting the spheres of competence of other organs. Such issues could include:

- the role of law as an instrument of economic development and social progress (see e.g. Hoffman at E/CN.4/SR.1268, 15 (1974)), Juvigny at E/CN.4/SR.1268, 23 (1974));
- the elimination of discrimination in the exercise of ESC rights (see e.g. van Boven at E/CN.4/SR.1267, 247 (1974) and Hoffman at E/CN.4/SR.1268, 13 (1974));
- the institution or improvement of remedies available for any discrimination or arbitrary treatment in the implementation of ESC rights (see e.g. Juvigny at E/CN.4/SR.1268, 23 (1974));

- the ensuring of an appropriate degree of participation of the peoples concerned in the formulation and implementation of development plans (see e.g. Eriksen at E/CN.4/SR.1268, 6 (1974), Hofmann at E/CN.4/SR.1268, 12 (1974), Juvigny at E/CN.4/SR.1268, 22 (1974));
- the harmonization of certain measures involved in planned economic and social development with respect for human rights and fundamental freedoms (see e.g. van Boven at E/CN.4/SR.1267, 248 (1974), Hoffman at E/CN.4/SR.1268, 15 (1974)).

In a way, the compromise view proposed by developed country representatives may be interpreted as a strategy to ensure that CP rights would not lose too much ground to ESC rights on the agenda of the UNCHR. Indeed, the issues they identified as falling under the competence of the UNCHR were those where both categories of rights overlapped. The point is that while a number of developed country representatives may have shifted views on the nature and scope of the relationship development and human rights, they nonetheless maintained the argument that the problem of the realization of ESC rights was inseparable from the problem of the protection and promotion of CP rights, whatever the level of development of a country. While they recognized, like Ivar Eriksen of Norway, that "the success of an economic and social plan depended on the existence of stable political structures", they also argued that these structures were conditioned on the protection and promotion of CP rights (see Eriksen of Norway at E/CN.4/SR.1268, 6 (1974); see also e.g. van Boven of the Netherlands at E/CN.4/SR.1267 (1974) and Hoffman of the United States at E/CN.4/SR.1268, 11 (1974) and E/CN.4/SR.1268, 1 (1974)).

The words uttered by Rachid Driss of Tunisia summarized fairly well the two main competing approaches dividing the UNCHR on the question of the realization of ESC rights and special problems relating to human rights in developing countries at that point:

> On the one hand, emphasis could be placed on the over-all social aspect, in which case the solution consisted in concentrating on the need to provide food, housing and education for the largest possible number of people, so that man would finally be able to enjoy his fundamental freedoms. On the other hand, there was the western or humanist approach based essentially on man as an individual. (E/CN.4/SR.1270, 36 (1974))

One side in the debate was composed of advocates of an "over-all" and "social" approach or what became known as the structural approach to human rights. Theoretically speaking, this approach meant "linking human rights to major worldwide patterns and issues;" "identifying the root causes of human rights violations;" "assessing human rights on the light of concrete contexts and situations;" and "recognizing the diversity of political and social systems, cultural and religious pluralism, and different levels of development" (van Boven 1989, 122). This approach, advanced and supported for the most part by developing country representatives, drew heavily from its equivalent in the analysis of the problems of development in developing countries, namely the strucutralist approach to development policy. As Hollis B. Chenery—who served as Vice President for Development Policy at the World Bank at the time—remarks,

> The initial set of structural hypotheses was formulated in the 1950's by writers such as Paul Rosenstein-Rodan, Ragnar Nurkse, W. Arthur Lewis, Raul Prebisch, Hans Singer and Gunnar Myrdal. […] A common theme in most of this work is the failure of the equilibrating mechanisms of the price system to produce steady growth or a desirable distribution of income.
>
> The success of a number of developing countries in accelerating their rates of growth in the 1960's casts some doubts on the significance of the structural problems that had been identified in the previous decade. However, in the past few years the importance of structural rigidities has been reemphasized by several new phenomena: the limited ability of economies to absorb the growing labor force, the worsening of the income distribution in several developing countries, and—most recently—the disruption to world trade caused by increased oil and food prices, which will require a substantial adjustment in productive structures. In short, development policy again seems to be constrained by a number of structural factors that require a more explicit analysis of the possibilities for short-term adjustment and for longer terms changes in the economic structure itself. (Chenery 1975, 310)

The structural approach to development policy had been embraced in UN development thinking and practice and was apparent in the UN Declaration on Social Progress and Development. From a human rights perspective, however, the most important document in that regard only came into existence a few years after the UNCHR debate of 1974, with the adoption of resolution 32/130 by the UNGA on 16 December 1977 (van Boven 1989, 122). In essence, the structural approach to human rights could be compared to what Gilabert labelled as a "political" or "practical" perspective on human rights inasmuch as human rights are generally understood as "claims that individuals have against certain institutional structures, in particular modern states, in virtue of interests they have in contexts that include them" (Gilabert 2011, 439—440).

Another side was composed of advocates of a "humanist approach" to human rights, which basically defended a "liberal conception of rights […] based on the idea that individuals are independent of others and therefore owe nothing to others" (Felice 1996, 141). Generally speaking, proponents of this approach consider that "human rights are pre-institutional claims that individuals have against all other individuals in virtue of interests characteristic of their common humanity […] not their membership in any specific institutional structure" (Gilabert 2011, 440).

As Driss remarked during the debate, choosing between the "overall" and "humanist" approaches required taking a stance not only on the relationship but also on the hierarchy to be established between different categories of rights and freedoms:

> The question then arose as to whether it was necessary to wait until all were fed, housed and educated before individuals could exercise their rights freely and, if so, whether that might not reduce man to the level of an animal seeking its subsistence? The problem was a real once, and was rightly stressed in articles 3, 22 and 25 of the UDHR, for the right to life meant the right to subsistence. It would therefore be appropriate to define more exactly what was understood by right to subsistence. The Commission should take a decision on that point either by adopting a text, or by recommending that the World Food Conference, to be held in November, should adopt a declaration on the right of peoples to subsistence. (E/CN.4/SR.1270, 36 (1974))

The suggestion made by Driss to "define more exactly what was understood by the right to subsistence" is grounded in an important criticism advanced by the vast majority of developing country representatives against the "humanist" approach to human rights. From their point of view, the problem with this approach, advocated for the most part by developed country representatives among members of the Group of Western European and Other States, derived from the way they conceptualized of human rights as moral claims rights based on some universal features of human nature. The abstract rights thus obtained "presuppose asocial circumstances that are radically discontinuous with the actual circumstances for which [for instance] the rights of the Declaration are formulated" (Gilabert 2011, 444) or the particular circumstances of each country. In other words, developing country representatives viewed national and above all international structures as crucial in any account of ESC rights because of their enormous importance in creating the possibilities of both violation and realization of these rights for each individual sovereign state.

As professor of government Robert E. Goodin writes, "if arguments for strong moral rights can be made," as supporters of the humanist approach argued, "then one of the implications surely must be that it is morally impermissible to trade off rights for wealth even were the trade possible" (1979, 32). Yet, complications might arise in the case of the right to subsistence and other similar rights "where certain levels of wealth are a prerequisite for respecting [them]" (Goodin 1979, 32, fn.2). This logic follows the premise that socio-economic rights, such as the rights to food, housing, health, education, and more generally to an adequate standard of living, are resource-intensive rights. In situations where there is not enough material abundance to support the basic needs of all, as in the least developed among developing countries, priority must by necessity be accorded to economic development. This situation of basic needs deprivation, however, could be avoided if the international community put forward adequate international assistance and cooperation. Developing country representatives advanced the adoption of an overall-cum-international approach to human rights as a remedy to these problems.

By the end of the UNCHR debate of 1974, however, the UNCHR had not made any real progress on the question of the realization of ESC rights. The situation only worsened in 1975, as the preoccupations of the NIEO came to occupy the spotlight. The central point is that the basic needs strategy advanced by the Special Rapporteur "sought to promote equity at the national level". Although he spelled out the implications for foreign trade, investment and assistance in his report and his statements made during UNCHR debates, his focus had been maintained on national action. In parallel to basic needs strategy, however, another significant event had come to dominate UN debates on international development at the time, "also aiming at equity between rich and poor country", namely "the proposal to establish a NIEO made by the developing countries" (Jolly et al. 2004, 121). Here, the argument that developing countries were facing a number of obstacles extending beyond national boundaries, which could not be overcome without international assistance and cooperation, were voiced more

forcefully than ever. In point of fact, all developing country representatives who spoke during the UNCHR debate of 1975 advanced a similar argument (see e.g. M'Baye of Senegal at E/CN.4/SR.1297, 65 (1975); Nehru of India at E/CN.4/SR.1297, 66 (1975); Khalif of Egypt at E/CN.4/SR.1297, 67 (1975); Kamara of Sierra Leone at E/CN.4/SR.1297, 65 (1975); Yildirim of Turkey at E/CN.4/SR.1298, 71 (1975); Mora of Costa Rica at E/CN.4/SR.1298, 71-72 (1975); Mahmood of Pakistan E/CN.4/SR.1298, 72 (1975); Yoko of Zaire at E/CN.4/SR.1298, 74 (1975); Danieli of the United Republic of Tanzania at E/CN.4/SR.1298, 77 (1975). According to them, that problem should be given special attention by the UNCHR.

Contrary to previous debates, the Special Rapporteur acknowledged the aforementioned view in his introductory statement. Referencing José Figueres, an economic specialist who had produced an important study for the International Conference on Human Rights (Teheran, Iran, April 22 to 13 May 1968) and who had since then become the President of Costa Rica, Ganji argued

> trade between rich and poor nations might be the instrument of uniform world development. If economic and social rights were universally effective, one hour of human work in one country could be traded for one hour of work in another. That rule would give most retarded countries sufficient income for their development. The realization of economic, social and cultural rights in the least-developed countries required not only a correction of the internal causes of poverty in the developing countries but also a total recasting of all economic relations with the advanced countries. The prerequisite for the realization of all rights was independence, territorial integrity and national sovereignty. (E/CN.4/SR.1297, 63 (1975))

The reference to Figueres' paper, "Some Economic Conditions of Human Rights," in the wake of the 1973 oil crisis and the struggle for the establishment of a NIEO is quite telling. The purpose of Figueres' paper was twofold: "to identify the obstacles to the full enjoyment of human rights encountered in the economic and social struggles by the peoples of the less developed countries" and "to suggest some measures that should be taken if economic and social factors are to stop denying to those peoples their full range of human rights" (Figueres 1968, 474). After emphasizing Article 28 of the UDHR, "which states that everyone is entitled to a social and international order in which the rights and freedoms of the Declaration can be fully realized" (Figueres 1968, 472), Figueres raised the question of distributive justice and presented a persuasive case for a new international economic order, concluding among others that "development requires not only corrections to the internal causes of poverty in the retarded nations, but also a full revision of all economic relations with the advanced countries" (Figueres 1968, 488).The point is that most of the architects of the NIEO left the question of human rights outside of the rhetoric they employed to advance their proposals. In many ways, the struggle for a NIEO was mostly a battle fought on behalf of the workers in the developing countries and articulated in the language of trade unions. Figueres paper was one of the only scholarly texts at the time to articulate the demands of developing countries for a new world economic order in the language of human rights.

It is no coincidence that Ganji decided to make reference to Figueres at this point in time. To be sure, he had already done so in a statement delivered as representative of Iran at the UNCHR debate of 1969 (cf. Chapter 3). But in the months prior to the UNCHR debate of 1975 a series of important events took place outside of the UN, which gave further impetus to the arguments developed by Figueres and the demands of the developing country representatives for the UNCHR to pay more attention to the international (or external) structural dimension of human rights. On the one hand, the UNGA adopted by consensus, amidst the sweeping reservations of representatives among the Group of Western European and Others States led by the US, two resolutions: one containing a Declaration on the Establishment of NIEO (A/RES/S-6/3201 of 1 May 1974), the other containing a Programme of Action on the Establishment of NIEO (A/RES/S-6/3202 of 16 May 1974). These two documents "were the crowning achievement of a long process of building Third World solidarity through the nonaligned movement, the Group of 77, and the ongoing United Nations Conference on Trade and Development (UNCTAD) process" (Whelan 2010, 156). The proposals for a NIEO "sought to significantly redistribute global wealth and resources, representing the first attempt since Bretton Woods to alter global terms of trade, this time for the benefit of the most commodity-producing countries of the developing world" (Whelan 2010, 157). As Guyanese Professor of Public Affairs Denis Benn remarks, developing countries saw the NIEO "as a means of accelerating the pace of their development and as a necessary precondition for putting an end to the inequality which had traditionally characterized relations between the developed and developing countries" (2003, vii).

On the other hand, the UNGA adopted the Charter of Economic Rights and Duties of States (A/RES/3281(XXIX) of 12 December 1974). While both the Declaration and the Programme of Action on the Establishment of a NIEO contained loose formulations and were drafted in the form of general guidelines and objectives and did not claim to impose a set of biding standards of action, the Charter was couched in a language more akin to international legislation. This, as well as the fact that its provisions were more specific than those of the two previous instruments were divisive factors in the UNGA. When a vote was taken, a few representatives from the Group of Western European and Other States voted against (i.e. Belgium, Denmark, the Federal Republic of Germany, Luxembourg, the UK and the US), while other industrialized countries abstained (Austria, Canada, France, Ireland, Israel, Italy, Japan, the Netherlands, Norway, and Spain). What happened was very significant, politically and ideologically: the Charter, born from a combination of Afro-Asian and Latin American countries, was strongly supported by all the socialists States, while it aroused intense opposition in the Western bloc. The new text reflected the aspirations and demands of two segments only of the world community, which greatly weakened its "normative" force.

These events are significant for a number of reasons, not the least because they raised the UNCHR debate on the question of the realization of the ESC rights

contained in the UDHR and in the ICESCR, and study of special problems relating to human rights in developing countries, to a completely new level. This included the Group of Western European and Other States losing most of their power of initiative within the organization and the developing countries advancing strongly in terms of argument. This new constellation of powers soon reached the UNCHR, where the developing countries were struggling to take control of the agenda. Then again, as Daniel Whelan notes, "the NIEO itself was not articulated within the framework of human rights" (2010, 157). Indeed, no reference to human rights are to be found in either the Declaration or the Programme of Action on the Establishment of a NIEO, not even in "the standard-stock preambular material" that were commonly found in resolutions and programmes of action adopted by the UN at the time. Only a single reference to human rights is found in the entire Charter of the Economic Rights and Duties of States, which lists "respect for human rights and international obligations" as the eleventh among fifteen principles by which "economic as well as political and other relations between States shall be governed" (A/RES/29/3281 (1974)).

Nonetheless, an important aspect of these documents and the language in which they were formulated was "a recognition of the substantive inequality of developing countries as against developed States, entitling the latter to affirmative [international] action" (Rich 1985, 128). As such, the rhetoric of the NIEO proposals was a potentially very powerful weapon in the hands of developing country representatives at the UNCHR, which could be used to redescribe the state of world affairs in a light favourable to their cause. However, ~~from~~ the only representative to capitalize on this opportunity was Kéba M'Baye of Senegal, who made explicit reference to Article 7 of the Charter of Economic Rights and Duties of States. His contribution is discussed below. For now, suffice to say that developing country representatives did not achieve much during the UNCHR debate of 1975. After noting the importance of the question of the realization of ESC rights, several of them simply requested the inclusion of this item in the UNCHR's agenda each year as one of the basic topics with which the UNCHR should be concerned. They felt that the UNCHR should devote more of its attention to matters that affected the everyday life of two thirds of mankind and that it had a specific role to play within the UN system in order to contribute to the realization of ESC rights, while fully respecting the spheres of competence of other organs dealing with the technical aspects of the problem.

For their part, the majority of developed country representatives among the Group of Western European and other States shared the view expressed by Philip Hoffman of the United States that the question of the realization of ESC rights "should receive prominent treatment in the Commission's work, since the exercise of many other rights with which the Commission was concerned was, of necessity, dependent on man's fundamental needs for food, shelter, clothing, health and education" (E/CN.4/SR.1298, 76 (1975)). They still disagreed, however, with the view advanced by some developing country representatives that ESC rights were a *prerequisite* to the promotion and protection of CP rights. Hoffman, for instance, remarked upon the fact that "even if human beings all over the world

were well fed and well housed, their lives would be of little value if they could not enjoy freedom of expression, movement and belief" (E/CN.4/SR.1298, 76 (1975)). He added, "under such circumstances their material conditions would be good, but their spirits would be starved" (ibid.).

Developed country representatives nonetheless all agreed with the developing country majority that the UNCHR had an important role to assume to secure the universal realization of ESC rights and should therefore keep the question on its agenda and consider it as an item with high priority at future sessions. It should do so, however, while fully respecting the spheres of competence of other organs dealing with the technical aspects of the problem. In this regard, Hoffman expressed the following view:

> [t]he Commission could not usefully debate the merits of the solutions proposed at various international meetings, and in particular at the recent World Population and World Food Conferences, but, as a body concerned with the promotion of fundamental rights, it should continue to serve as a conscience, constantly reminding Governments of the provisions of the Universal Declaration and other international instruments in the field of human rights. It should constantly proclaim the community of mankind and the interdependence of all peoples. For those reasons, the Commission should keep the item on its agenda and consider it at future sessions. (E/CN.4/SR.1298, 76 (1975))

To compare the function of the Commission of the UN system to that of a conscience gives a strong indication of the moral nature of the human rights concept advance by the US and other members of the Group of Western European and Other States at that time. Here, human rights are understood as a set "fundamental" standards and principles that ought to be included in national systems. They concern the relations between individuals and the State they belong to. Accordingly, the role of the Commission was limited to overseeing that individual States were fulfilling their obligations in that regard. For his part, Pierre Juvigny of France advanced a slightly different view. After remarking that some representatives had in the past expressed the opinion that the study by the Special Rapporteur on the realization of ESC rights was not strictly necessary and even superfluous, he argued

> It was true that a number of bodies were on a technical plane, tackling questions affecting the effective implementation of certain economic, social and cultural rights; and it was true that there were now numerous bodies and agencies each responsible for a particular aspect of development. Yet it was clear that the Commission must continue to play the part of integrator. The technical approach predominated in the specialized bodies and agencies, and there was need for an authoritative body capable of seeing beyond the technical aspects, of proclaiming again the ultimate objective of a form of development which respected the rights of man. (E/CN.4/SR.1297, 68 (1975)

To summarize, the role envisioned by Juvigny for the Commission was that of a moral arbitrator, an international actor given the authority to judge both national and international programmes and policies from the standpoint of human rights. These two examples point to competing views among members of the Group of Western European and Other States on the nature and scope of the role to be assumed by the UNCHR.

5.4 Concluding remarks

By 1975, the UNCHR had not taken any significant step with respects to the conclusions and recommendations contained in the report of the Special Rapporteur. Criticizing the passivity of the UNCHR, the Special Rapporteur argued that his report "should have been the beginning of a serious examination rather than an outcome" (E/CN.4/SR.1297, 64 (1975)). Indeed, while the UNCHR had been called upon to give high priority to the question of the realization of ESC rights and to take action with respect to the conclusions and recommendations of the Special Rapporteur at its previous session, the main outcome of the UNCHR debate of 1974 had been to request the circulation and publication of the report. The few other recommendations that were adopted by the UNCHR in 1974 were the ones that satisfied the requirement of "non-duplication" formulated by developed country representatives. In that regard, Ganji remarked, while "it was true […] that other organs were dealing with some aspects of the problem," the task of the UNCHR "was to consider it from the standpoint of human rights" (E/CN.4/SR.1297, 64 (1975)). His criticism, however, was to no avail. The only one of his recommendations all representatives could agree to act upon during the UNCHR debate of 1975 was recommendation 21, which concerns the inclusion of the item under consideration in the agenda of the UNCHR each year as one of the basic topics with which it should be concerned.

Unable to reach an agreement over more substantive matters with respect to the question of the realization of ESC rights and special problems relating to human rights in developing countries, the UNCHR had become deadlocked. The national~~ist~~ perspective on the question of the realization of ESC rights offered by the Special Rapporteur could not satisfied the vast majority of developing country representatives. Indeed, a number of them—particularly among representatives of the Group of Latin American States—had been struggling for the international dimensions of those rights to be recognized by the UNCHR ever-since the question of their realization had been included in its agenda. For their part, representatives of members among the Group of Western European and Other States had no particular issue with the national~~ist~~ perspective suggested by Ganji. Nonetheless, the majority of them were of the opinion that it was not the task of the UNCHR to advance the set of economic and social reforms contained in the conclusions and recommendations of the Special Rapporteur.

6 THE M'BAYE MOMEMTUM: OVERCOMING THE IMPASSE WITH THE RIGHT TO DEVELOPMENT

The present chapter offers a detailed interpretation of M'Baye's attempts to persuade the members of the UNCHR to recognize the right to development as a human right. To that aim, the chapter proceeds through the following four steps. First, the chapter opens with a short biography of Kéba M'Baye. Second, the chapter offers a detailed analysis of a speech delivered by M'Baye at the International Institute of Human Rights in 1972. Third, the chapter builds upon the analysis of that speech to interpret M'Baye's move to redescribe development as a human right during consideration of the conclusions and recommendations of the Special Rapporteur in the UNCHR debates of 1974 and 1975. Fourth, the chapter offers a close reading of the UNCHR debate of 1977, which provides the argumentative context for the interpretation of the adoption of UNCHR resolution 4 (XXXIII) and the concomitant recognition of the right to development as a human right.

Before going any further, a few remarks about the UNCHR debate of 1976 are called for. Development as a human right does not figure in the summary records of that debate and it has therefore not be deemed necessary to include an analysis of that debate in the present chapter. A few words about the contents and outcome of that debate are nevertheless called for, not the least because the entry into force of the ICESCR marked a turning point in the struggle to define the role of the UNCHR with respect to the realization of ESC rights. The point is that so long as the ICESCR had not entered into force, the search for alternatives to Covenant-based mechanisms occupied an important place in the UNCHR debates over the question of the realization of ESC rights.

Quite interestingly, however, the entry into force of the ICESCR did not put an end to that search. On the contrary, on 3 January 1976, having regard to the entry into force of the ICESCR and the forthcoming entry into force of the ICCPR, the UNCHR decided to place on its agenda a new item entitled "Status of the International Covenants on Human Rights" (agenda item 15) (E/CN.4/1213, 36 (1976)). At the same time, pursuant to its resolution 2 (XXXI) of 10 February 1975, the UNCHR also had on the agenda of its session the question of the realization

of the ESC rights contained in the UDHR and in the ICESCR, and study of the special problems relating to human rights in developing countries (agenda item 6). In principle, this meant that the question of the implementation of the ICESCR would be discussed under agenda item 15—leaving more time to discuss other issues under agenda item 6. Despite the clear efforts made by Director of the Division of Human Rights, Marc Schreiber, to separate the question of the realization of ESC rights from that of the entry into force of the ICESCR in introducing agenda item 6, the latter occupied an important part of the debate during consideration of the former. From the outset of the debate, the entry into force of the ICESCR was recognized as a major development, likely to give a new dimension and stronger impetus to international action for the realization of ESC rights.

What is interesting for the present analysis is that most of the proposals advanced during the debate were advanced by developed country representatives and concerned the role to be assumed by the UNCHR under articles 16 to 19 of the ICESCR. This left little time to discuss the issues introduced by the Director of the Division of Human Rights (E/CN.4/SR.1338, 2 (1976)), the revised conclusions and recommendations of the Special Rapporteur, or alternatives to Covenant-based mechanisms that had been introduced by developing country representatives at previous debates. Put differently, the concerns and priorities of the developed countries with respect to the realization of ESC rights dominated the debate. From their point of view, the role of the UNCHR with respect to the realization of ESC rights could have been limited to the supervisory mechanisms provided for under the ICESCR. Indeed, they considered that the primary task of the UNCHR was to protect and promote individual rights and fundamental freedoms, and they voiced their view more forcefully than ever before during the UNCHR debate of 1976. Anything else would be a duplication of international actions being carried out by other international bodies and specialized agencies.

For their part, most if not all developing country representatives who spoke during that debate expressed the view that the UNCHR should go beyond these mechanisms and assume a role in bringing about the conditions to secure the universal realization of those rights. It was not only the responsibility of individual governments to take action with a view to the realization of the ESC rights of their people; it was also the responsibility of the international community and the UNCHR should assume a role in that regard. They pointed out that the realization of ESC rights established by the entry into force of the ICESCR met with serious problems in the developing countries, where it was for now impossible to achieve even a reasonable standard of living. Some of these countries would be unable to fulfil their obligations under the ICESCR, not for lack of will but for lack of means. Put simply, national efforts had to be met by international ones if those rights were to be universally realized.

In that regard, M'Baye remarked that out of the 37 States Parties to the Covenant, only five were African states despite their intense interest in the promotion of ESC rights. The fact was that the implementation of articles 2 to 15 of the ICESCR would entail substantial resources which not all states, especially developing ones, had at their disposal. It was no doubt possible, by a legal subterfuge,

to evade the obligations prescribed in the ICESCR, but some states, like Senegal, refused to accede to an instrument when they knew very well that they would not be in a position to comply with its provisions. By way of illustration, M'Baye discussed the special problems relating to the realization of the right to education in Senegal, remarking that even "by devoting 32 per cent of its national budget to education" his country "still could not provide schooling for more than 50 per cent of its school-age population" (E/CN.4/SR.1339, 2 (1976)). The situation was worst in some other African countries. What applied to the right to education in terms of the resources needed for its realization "was equally true for healthy working conditions, social security, the right to strike, protection of the family and physical and mental services" (E/CN.4/SR.1339, 2 (1976)).

In the end, despite the many efforts of developed country representatives made in that regard, the "question of the realization of the ESC rights contained in the UDHR and in the ICESCR and study of special problems relating to human rights in developing countries" was not merged with that of the "status of the International Covenants on Human Rights". In other words, pursuant to the wish expressed by the vast majority of developing country representatives, the UNCHR would continue its search for alternatives to Covenant-based mechanisms for the realization of ESC rights despite the entry into force of the ICESCR. It had also become very clear to developed country representatives that a significant number of developing countries would not ratify the International Covenants on Human Rights if the international conditions they considered necessary for their realization were not met.

It seems that the UNCHR was still stuck at an impasse over the question of the realization of ESC rights despite the entry into force of the ICESCR. It had become clear that neither an approach emphasizing national measures for the realization of ESC rights, as suggested by the Special Rapporteur, nor Covenant-based mechanisms, as emphasized by developed country representatives, would satisfy developing country representatives. In order to obtain the support of the developing country majority, any proposal put before the UNCHR would not only need to include but to emphasize the international dimensions of the problem.

In the light of the above, it is worth remarking upon the opportunity to break the impasse identified by Pierre Juvigny of France during the UNCHR debate of 1976. Even though this opportunity was not acted upon in 1976, it nonetheless provides a good a vantage point from which to look at the UNCHR debate of 1977 and the adoption UNCHR resolution 4 (XXXIII). According to Juvigny, "the Commission had frequently acted as the initiator of new approaches later taken up and given concrete expression by higher United Nations bodies or specialized agencies" (E/CN.4/SR.1340, 2 (1976)). He added,

> Although it was now recognized at the international level that human rights formed an essential part of economic, social and cultural problems as well as civil and political ones, the emphasis placed on the human rights aspect of these problems was still insufficient and the Commission would do well to continue to bring that aspect to the attention of policy-making international bodies. The Special Rapporteur's report, […]

> provided an opportunity for further action in that direction. (E/CN.4/SR.1340, 2 (1976))

What Juvigny was referring to was recommendation 18 of the Special Rapporteur, which recognized that "the Covenants are unlikely to be accepted by all States Members of the United Nations in the near future" and that there was therefore an "urgent need for the United Nations to devote special attention to the question of economic, social and cultural rights throughout the world" (E/CN.4/1108/Rev.1, 312 (1975)).

According to the Special Rapporteur, the problem was that while various UN organs and specialized agencies were "dealing with parts of the general question," none was addressing it in a comprehensive manner. However, "an over-all approach [was] necessary if economic and social development [was] to be carried out in a manner that [would] promote effectively the well-being, freedom and dignity of all human beings without discrimination" and the enjoyment of all human rights recognized in the UDHR and the International Covenants on Human Rights. This could be achieved by requesting the Secretary-General "to explore ways and means of ensuring that proper attention is paid to these considerations and objectives by all interested units and agencies of the United Nations system." This would be done "with a view to promoting in a constructive way the desirable awareness of human rights considerations in the execution of economic and social development projects." (E/CN.4/1108/Rev.1, 312 (1975))

No proposal in that regard was formally introduced during the UNCHR debate of 1976. In a way, as we shall now see, the proposal to study the international dimensions of the right to development as a human right, adopted by the UNCHR at its next session in 1977, acted upon the opportunity provided for in recommendation 18 of the report. It also offered a viable alternative to all parties in the debate, especially since the range of alternatives originally envisioned by the developed country representatives had for the most part been rejected by their opponents. This chapter aims to provide further light on exactly how this became the case and how developed country representatives were ultimately persuaded to recognize development as a human right.

6.1 Kéba M'Baye (1924—2007): a short biography

As a lawyer with strong roots in both Senegal and France, Kéba M'Baye's trajectory is illustrative of a series of broad intellectual and legal developments during the Cold War and the decolonization of French West Africa. There is no better introduction to the present biography than the words uttered by Kéba M'Baye himself in his *Propos d'un juge*:

> Je crois, en effet, que les événements que l'on a vécus, particulièrement au cours de l'enfance et de l'adolescence, de même que les projets que l'on a formés en les tirant du fond de soi, laissent des traces profondes dans le caractère et imprègnent la pensée et la conduite de chacun. Il me semble en particulier qu'une enfance matériellement difficile développe le sens de l'égalité, de la justice et donc l'attachement au respect

> des droits de l'homme. La situation et les contraintes matérielles difficiles injustement infligées par le sort et subies par l'enfant stimulent le goût de l'effort, de la liberté, de l'indépendance et de la dignité, l'âge adulte venu. Pitié à ceux à qui il a fallu simplement pleurer pour être comblés et qui n'ont donc pas connu le bonheur de l'habitude de la lutte pour être et recevoir.
>
> Je crois aussi que certains évènements, à l'épreuve desquels se forge le tempérament de l'homme adulte, méritent d'être relatés au profit de ceux qui s'interrogent sur les traits de caractère et la conduite d'un homme, notamment quand ils lui portent quelque estime. (M'Baye 2013)

M'Baye was born on 5 August 1924 in Kaolack, a town situated on the North Bank of the Saloum River and capital to the Groundnut Basin of Senegal. He was raised, like many Senegalese of his age, according to a method he called "spartan"—i.e. he grew up partly in the street, although always closely watched by a caring and considerate mother (M'Baye 2013). He attended both a "Daara" (Koranic school) and French primary school in Kaolack before moving to Dakar to attend the École primaire supérieure (E.P.S.). He then entered William Ponty School, where he graduated with a diploma in teaching in 1946.

M'Baye served two years in Saint-Louis (1946—1948), the capital of Senegal, at l'École Duval, before deciding to abandon his teaching career to study law at the Faculty of Law of Dakar. In the meantime, M'Baye married Mariette Diarra, a Sudanese woman of Christian faith, with whom he had seven children. In 1956, after a few years during which he served as interim Magistrate at the court of appeal in Dakar, M'Baye was sent to France to attend the Ecole Nationale de la France d'Outre-mer (ENFOM), located Avenue de l'Observatoire in Paris. M'Baye recalls his time in Paris as follows:

> J'ai découvert Paris où je m'étais brièvement arrêté l'année précédente, en compagnie de mes amis Ama Fall, Amadou Nicolas Mbaye, Oulimata Ba et d'autres jeunes Sénégalais, au cours d'un voyage organisé en France. Paris m'a littéralement fasciné. C'est à Paris que j'ai connu Doudou Cissé Ndiar Meew qui est devenu un de mes plus grands amis. J'y ai précédé Mariette qui m'y a rejoint avec nos quatre premiers enfants. J'y ai mené une vie dure. Je n'avais comme revenu que la solde d'instituteur de laquelle je devais défalquer la somme destinée à mes parents à Kaolack. J'ai passé les hivers avec un imperméable. Mariette n'avait que deux robes et deux paires de chaussures. Par contre les enfants n'ont manqué de rien.
>
> À Paris nous avons rencontré un couple d'une grandeur d'âme et d'une simplicité rares. Ils nous ont adoptés et nous ont fait connaître des personnages fort intéressants comme Tibor Mende, Jean-Marie Domanach et Madame Léon Bloum. En guise de reconnaissance nous les avons invités à Dakar en 1963. Il s'agit de Odette et de Pierre de Courtivron. (M'Baye 2013)

After graduating from ENFOM, M'Baye practiced the profession of judge with the status of French magistrate, but opted for the public service of his country soon after it obtained its independence from France in 1960. Chief of staff of various ministries and president of the commission for codification of personal status law and the law of obligations, he influenced very strongly the attempt to reform laws on family and property matters in Senegal following independence (see e.g. M'Baye 1968). Succeeding Isaac Foster in 1963, he served as President of

the Supreme Court of Senegal for 17 years and became the first honorary president of that court. Interestingly, however, M'Baye never developed any aspiration or interest for a political career in his country. In that regard, he recalls the numerous times the first president of Senegal, Léopold Sédar Senghor, attempted to appoint him as minister and how he politely declined his offers:

> À plusieurs reprises, quand j'étais Premier Président, Senghor a voulu me nommer ministre. J'ai chaque fois décliné l'offre avec les mots de courtoisie qu'il fallait. La dernière fois, c'est mon ami Assane Seck qui m'a appris la nouvelle. C'était un dimanche matin. J'allais jouer au tennis quand il m'a hélé alors qu'il était debout devant le « Building administratif ». Après avoir donné à Assane l'assurance que je ne citerai pas mes sources, j'ai demandé à voir le Président. Dès le début de l'audience, après que je lui ai dit, en y mettant toute la diplomatie dont je suis capable, que j'ai appris qu'il voulait me faire entrer dans le gouvernement, le Président m'a fait savoir en fronçant un peu les sourcils et avec un ton grave : « mon cher président, cette fois, il faut venir nous aider ». Il faut dire que je n'ai jamais appartenu, même jeune, à un parti politique. Je n'ai jamais milité dans un syndicat. Si c'est une tare, je l'assume totalement. J'ai répondu à Senghor exactement ceci : « vous savez, Monsieur le Président de la République, vous appréciez peut-être mon travail comme magistrat. Il n'est pas sûr que ce serait le cas si j'étais ministre. D'ailleurs, être ministre requiert des qualités que je n'ai pas et des défauts que je n'ai pas non plus ». Senghor a ri. Depuis lors, non seulement il ne m'a plus fait de telles propositions mais, dans une interview à « Jeune Afrique » il a dit : « j'ai proposé à « mon » Premier Président d'être ministre, il a refusé ». Il semblait en tirer une certaine fierté, ce qui est en son honneur. (M'Baye 2013)

Given his role in the modernization of the Senegalese legal system, M'Baye also took a keen interest in the emerging discipline of development law. In the 1960s, UNESCO called for a study of the legal aspects of economic development, which resulted in a series of reports. These reports were subsequently edited by French jurist André Tunc and published by France's main legal publisher, Dalloz, in 1966, under the auspices of the International Association of Legal Science (IALS). At the time, the literature on the legal aspects of the development of developing countries was scarce, and the book served as a platform for lawyers to voice their concerns and add their perspective to a debate that was still largely dominated by economists. M'Baye contributed a chapter on law and development in Francophone West Africa. Other contributors included French economist René Gendarme, British-born South African social anthropologist Max Gluckman, Nigerian Barrister and Attorney-General Hedley Herbert Marshall, Nigerian Professor of Law Benjamin Obi Nwabueze, and American Professor of Law Abraham Arthur Schiller.

M'Baye's keen interest for the nexus between law and development probably sprang from his own experience and observations with respect to the economic and social struggle of his people before and after independence. During the colonial era, the economy of Senegal was streamlined to produce groundnuts (primarily peanuts). Once the country gained its independence from France in 1960, the peanut export economy was continued. However, this cash crop economy was not enough to meet the popular expectation that political independence would be accompanied by economic development and social progress. As a matter of fact, in the decade following independence, "the adjusted growth curve [...]

fell to a rate of 4%" (Amin 1973, 4). According to Egyptian-French economist Samir Amin,

> Not only does growth seem to have remained at this level for some years, but there are even signs of a regression, shown by a reduction in the area of surfaces sown for the first time in the history of the country, except for the period of the Second World War. The record harvest which produced a sale of 1,011,00 tons in 1965—6 was followed by three mediocre harvests: 786,000 tons in 1966-7; 834,000 in 1967—8; and 598,00 in 1968—9. (Amin 1973, 4)

To be sure, the problems associated with an economy based on single agricultural commodity exports were not unique to Senegal. On the contrary, they could be observed across a great number of former colonial areas across the African continent, emerging through the gate of independence as the "underdeveloped countries".

As Hungarian-born French journalist and former UN official Tibor Mende—whom M'Baye met during his stay in Paris—remarks, the "experiment" of the 1960s itself rested on a double assumption, namely on:

> the belief that, through successive stages, the economically backward regions could repeat the Western world's own experience of economic development that the wealthiest industrial states could set off and speed the economic development of the materially backward countries by offering part of the funds compulsory collected from their taxpayers to governments of the new sovereign states in the form of gifts or loans. (Mende 1973, ix-x)

As the governments of newly independent African states failed largely to meet the heightened expectations of their people for better lives and higher living standard, a search for explanations began. For those who had been opposed from the outset to development aid, it was not difficult to argue that the experiment had been "a quixotic enterprise that attempted the impossible and tried to do so with inadequate means" (Mende 1973, x). For those who had been more favourably disposed towards the idea, however, the explanation had to be found elsewhere. Some found fault with the governments of the underdeveloped countries, who they saw as incompetent or corrupt. Others called for a reappraisal of the economic terms of the relations between the underdeveloped countries and their industrially advanced counterparts. Yet others "maintained that the modesty of the resources devoted to the experiment and growing contradictions in both its execution and its motivations [had] been short-circuiting whatever chances of success it may have had" (Mende 1973, x). In that debate, M'Baye took the latter view and advanced the idea of development as a human right to serve as a guiding principle for good international development practice based on sound ethical thinking.

6.2 M'Baye's speech at the International Institute of Human Rights (1972)

Over the years, many scholars have attributed the authorship of the concept of the right to development as found in the UN Declaration on the Right to Development to Kéba M'Baye, pointing to a speech he delivered in July 1972 at the International Institute of Human Rights in Strasbourg and subsequently published in *La Revue des droits de l'homme*. Admittedly, the speech in question represents one of the first fully-fledged articulations of the right to development as a human right. Then again, another articulation of the same concept can be found in a text published the same year and authored by the Spanish jurist Carrillo Salcedo, which bears a very similar title "El derecho al desarollo como derecho de la persona humana" in the academic journal *Revista Española de Derecho Internacional*.

We may start by asking upfront what makes M'Baye's speech worth covering in this chapter. The answer lies in the interrelationship between this text and the UNCHR debates analysed in chapter 5 and below. As we shall see in this section, it was M'Baye who introduced the idea of the right to development as a human right to the UNCHR. The present section thus offers a contextual reading of this speech before turning to his interventions in the UNCHR debates of 1974, 1975 and 1977. The purpose is to bring to the fore what M'Baye was doing when he was speaking about the right to development as a human right in these two different albeit connected forums. Here, the kind of "apparently untoward actions" (Skinner 1974a, 294) M'Baye was trying to legitimate by redescribing development as a human right are at the heart of the empirical puzzle.

To solve that puzzle, this section first takes the reader away from the UNCHR debates, if only for a brief moment, to study the political thought and intellectual history of Kéba M'Baye. It suggests interpreting M'Baye's redescription as an intervention of a particular kind in a debate largely dominated by economists at the time: that of a legal scholar concerned with ethical questions in the development debate. To be sure, M'Baye was not the only legal scholar to concern himself with development. At the time, development law was making its appearance as an academic discipline in its own right. Then again, as M'Baye himself recognized, development law ("le droit du développement") and the right to development ("le droit au développement") were two different things. As the narrative uncovers, his move to redescribe the latter as a human right was partly an intervention in the path taken by the former.

Before getting to the substance of M'Baye's speech at the International Institute of Human Rights in 1972, a few words about the venue and the audience are called for. Founded by René Cassin one year after he received the Nobel Peace Prize, the Institute was created to contribute to the protection and promotion of human rights through research and teaching. Each year since 1970, the Institute has organized annual three-week teaching sessions. These sessions usually focus

on a particular theme and are intended to provide high-level training to participants from around the world by experts from different countries. The speech delivered by M'Baye in July 1972 was the inaugural lecture of the third of such teaching sessions. Although I could not gain access to the list of participants, it is fair to assume that his audience was composed of French-speaking academics (including graduate students alongside lecturers, professors and researchers) and professionals interested in human rights from various countries and organisations (but most likely predominantly from Europe, North Africa and West Africa).

It is also worth mentioning that, at the time, the Institute was still presided by his founder, René Cassin, and directed by Karel Vasak, a Czech-French international officer and university professor. It was Vasak, one may add, who had invited M'Baye to speak at the Institute in 1972. M'Baye recalls,

> C'est sur invitation de mon ami Karel Vasak que j'avais hasardé en 1972, à l'occasion d'une leçon inaugurale que je faisais à l'Institut international des droits de l'homme, le mot "droit au développement". Seule notre profonde conviction, Karel et moi, soutenait cet apport nouveau à l'univers déjà surpeuplé des droits de l'homme, dont les jaloux gardiens nous jetaient des regards de défi, espérant que le temps aurait raison de notre témérité. (quoted in Seck 2009, 143—144)

Cassin and Vasak had also both contributed to the drafting of the UDHR and had maintained close ties with the UN ever since. While Cassin kept his ties to the UNCHR, Vasak joined UNESCO in 1976 where he served as Director for the Division of Human Rights and Peace until 1980 and, subsequently, as legal advisor. There, he wrote his seminal essay characterizing human rights in international law under "three generations" (Vasak, 1977). The third generation, which he also referred as "solidarity rights", includes the right to development. He then introduced his tripartite categorization to the International Institute of Human Rights in Strasbourg in 1979. It would thus appear that the Institute was a privileged forum to discuss novel ideas about international human rights, with close ties to the United Nations and its work in that regard.

Nevertheless, M'Baye's move to redescribe development as a human right was a very bold and innovative one and his task to justify it to his peers, first at the Institute and then at the UNCHR, a quite colossal one. Indeed, while the idea that development and human rights objectives are not only compatible but also complementary sounds like common wisdom today, it was quite the opposite at the time. M'Baye was facing an audience that, for the most part, held the belief that development and human rights were competing policy concerns in developing countries. The debate often centred on whether developing countries should sacrifice human rights to speed up their development and, if so, to what extent (cf. Chapter 3)—something often deplored by human rights advocates. Whether one argued for or against one or all of these sacrifices, everyone agreed that some trade-offs between the development rate of a developing country and its level of protection and realization of human rights was somewhat unavoidable.

In that intellectual landscape, the idea that development was in fact a human right was received at best with scepticism if not outright rejection. For

M'Baye, however, there was no doubt: human rights and development objectives not only could but should be achieved simultaneously in developing countries; no trade-offs between them would be needed if the necessary conditions were in place, which would be the purpose served by his ethics of international development. Put differently, trade-offs between development and human rights could be avoided provided the international community ensured that development aid and cooperation for the realization of those rights would always be forthcoming. This would be the purpose of recognizing development as a human right. To persuade his audience of this possibility, M'Baye followed a twofold strategy, which consisted in altering the rhetorical dimension in the use of both concepts (i.e. development and human rights).

6.2.1 The quest for ethics in development

M'Baye began his inaugural lecture on the right to development as a human right with the following remark: "Le thème que je suis chargé de développer devant vous […] est embarrassant à plus d'un titre pour le juriste que je suis" (1972, 505). He then identified the two most common objections raised by jurists against the association of the subject matters of development and human rights in international law. The first type of objections derived from the premise that the subject of development itself belonged to the realms of economics and sociology, not to the realm of law. Economics condescended to cohabit with law in (francophone) universities only as a temporary measure. For, as French economist Jacques Austruy (1930—2010) had remarked, "les sciences de l'économie se défendent de plus en plus d'être normatives et […] se réfugient, éblouies par leurs propres succès, dans la technicité toujours plus poussée de leur analyse" (Austruy 1965, 88, quoted in M'Baye 1972, 505). This passage highlights how the discipline of economics attempted to dissociate itself from the social sciences and to establish itself as a more "scientific" discipline, akin to the natural sciences, by claiming its objectivity in the post-positivist sense of the term.

Of particular interest for the present analysis is the value-centred approach to the development problem proposed by Austruy as an alternative to technical economic analysis, and found in his book *Le scandale du développement* (1965)—i.e. the book from which M'Baye quoted during his inaugural lecture. It might be worth emphasizing from the outset that Austruy, along with other authors referenced by M'Baye during his speech (e.g. François Perroux and Father Lebret), was a precursor of development ethics. It is precisely in building up this new discipline that M'Baye thought lawyers like himself could make their contribution to the development debate, something made explicit when he characterized his endeavour towards the end of his speech as "la recherche d'une éthique du développement" (1972, 523).

The second type of objections to the idea of development as a human right identified by M'Baye is that development usually referred to a group or a given society (e.g. a region, a state or a group of states, a people, etc.) while human rights were ordinarily analysed as the rights of an isolated human being or the

law of the individual. In other words, the meaning of development was commonly associated with collective entities while human rights dealt with that which existed as a distinct entity (M'Baye 1972, 505). The latter argument denotes a particular conception of human rights, namely the individualist approach to human rights, which is necessary to comment upon in order to understand the alternative subsequently elaborated by M'Baye.

The individualist approach to human rights derives from the idea that "human rights are claims of the individual against society and the state" (Howard 1992, 81). Human rights, according to proponents of this view,

> are private, individual and autonomous. They are private because they inhere in the human person him- or herself, unmediated by social relations. They are consequently individual; an isolated human being can in principle exercise them. In addition, they are autonomous because again, in principle, no authority other than the individual is required to make human rights claims. (Howard 1992, 82)

The point is that this individualist approach does not admit group rights, whatsoever, in its definition of human rights, because "the human being who holds rights holds them not only against the state, but also against "society", that is his or her community or even family" (Howard 1992, 83). It is worth remarking that this standpoint represents

> a radical departure from the way most human societies in the past—and many in the present—have been organized. For most human societies, insofar as "rights" might be considered to be applicable at all, collective or communal rights would be preferred to individual human rights. (Howard 1992, 83)

However, from this standpoint, "the claim for collective rights is a claim for something very different from human rights; it is a claim that reasserts the value of the traditional community over the individual" (Howard 1992, 83). The point is that proponents of this view could only ever accept the redescription of the right to development as a human right if individuals were defined as the sole right-holders. This point is of particular importance because M'Baye's attempt to justify the redescription of the right to development as a human right departed from a different set of assumptions about the nature and scope of human rights as compared to those held by proponents of an individual conception. His collective conception of human rights, however, was nonetheless premised on a similar set of humanistic principles.

In order to persuade his opponents to recognize development as a human right, M'Baye had to demonstrate at least one of two things: either that development was a concept ultimately concerned with the well-being of the individual or that individuals could hold human rights as groups under particular conditions. One would define development as an individual right and the other as a collective right. M'Baye decided to follow both lines of argument: as a human right, he argued, development was both a right of individuals and a right of peoples. This might be explained by the very nature of his task as an innovating ideologist: while the *pathos* of his argumentation remains to adapt his message to the audience, the *logos* of his argumentation is to perform a trick. The point was for

M'Baye to use the ambiguities of the human rights concept to favour his "untoward actions" by claiming that they conform to at least some existing practices, while remaining silent on other aspects. In order to both persuade his audience and achieve his objective, M'Baye therefore opted for a twofold strategy, simultaneously arguing that development had an individual dimension and that human rights could assume collective forms. The crucial point, however, is that while both arguments were equally central to M'Baye's conception of the right to development as a human right, he only needed to persuade his opponents to accept *one or the other of these two propositions* in order to make them recognize the right to development as a human right. This, as the chapter uncovers, might account for the coexistence of competing uses and interpretations of that right among member state representatives at the UNCHR in 1977.

To some extent, the arguments developed by M'Baye in the early 1970s about the necessarily collective dimension of human rights are found today in the view that "if we insist that human rights must be rights that people can hold only as *independent* individuals, our conception of human rights will not match the social reality of the human condition" (Jones 1999, 81 [emphasis added]). Surely, not all group rights would qualify as human rights. Under which circumstances may human rights take the form of group rights? According to Jones,

> group rights arise when the joint interest of a number of individuals provides sufficient justification for importing duties upon others even though, if we were to consider the interest of only one of those individuals, that single interest would not provide the necessary justification. (Jones 1999, 84)

The key aspect of what Jones and others identify as the "collective" conception of group rights is the idea of "common but contingent interest" (Jones 1999, 85). This element of contingency is central to the redescription proposed by M'Baye. The point is that the right to development only "exists" as a human right as the contingent result of a number of factors, which together have put individuals belonging to a particular group (i.e. the developing countries) in a situation threatening their interest as human beings (i.e. underdevelopment).

Another important aspect of human rights thus conceived is their relational dimension. As Donnelly remarks,

> Rights establish a special type of relationship between right-holders and duty-bearers with respect to rights-objects: A is entitled to *x* with respect to B, who stands under correlative obligation *y*. Analysis of a right thus requires, at minimum, specification of the *source* of the right, its *content* (or object), the *right-holder* (or active subject), the *duty-bearer* (or passive subject), and the right's *correlative obligations*. (Donnelly 1985, 478)

During his speech, M'Baye identified the international community as a whole as the duty-bearer of the right to development; the developed members of the community bore a greater part of that responsibility. He will later remark:

> chaque élément du corps social international a l'obligation de participer au développement du monde, qu'il s'agisse de l'État en cause, des autres États ou de la communauté internationale. […] Assurer le développement économique et social

> des populations est une obligation qui pèse à la fois sur chaque État et sur la communauté international toute entière. (quoted in Seck 2009, 146)

This is quite innovative from the perspective of international law in the 1970s: "joint action by States for the realization of shared objectives [had belonged thus far] to the realm of classical (non-human rights) public international law" (de Feyter 2013, 31). The redescription of development as a human right could open the door to a whole new range of practices and policies in international human rights law:

> the acknowledgement of the relevance of traditional inter-States reciprocal mutual obligations for the realization of human rights is a novelty […]. since the purpose of such inter-State obligations is the realization of the right to development, mutual obligations need to be complemented by a mechanism for ensuring accountability of the partnership bound by mutual obligations to the holders of the right to development, i.e. to individuals and peoples. (de Feyter 2013, 31)

The collective conception of human rights outlined by M'Baye in his speech, which emphasises the social dimension of those rights, also echoes in many ways the arguments developed by French solidarists in the late nineteenth and early twentieth centuries about the relationship between individuals and human collectivities. As international lawyer and former Finnish diplomat Martti Koskenniemi observes in a book chapter on French solidarism, while

> classical political theory and the *privatisme* of the *Code Civil* had portrayed individuals as undetermined and autonomous, an increasing number of politicians and social scientists, including lawyers and legal theorists, were arguing from the 1880s and 1890s onwards […] that an irreducible social solidarity bound individuals to positions and communities that dictated to them what they should will and what their true interests were. (Koskenniemi 2001, 269)

The point of interest here is that, "solidarism sought to balance the right to individual freedom with the claims and obligations upon the individual by society" (Porter 1999, 203)—which is precisely what M'Baye was endeavouring albeit at a more international level.

Given that the very prospect for the recognition of the right to development as a human right was itself premised on the possibility to reconcile the tensions between the interests of the individual and those of the collectivity to which they belonged, M'Baye was keenly aware that his attempt would be perceived as a bold move. The primary responsibility for development was then commonly attributed to individual states. Every country and people had to assume responsibility for its own destiny and was only accountable before history for its errors and achievements. After all, M'Baye remarked, Édouard Herriot—a French Radical politician who served as Prime Minister and as President of the Chamber of Deputies during the French Third Republic—was right, "Les nations ont le sort qu'elles se font. Rien d'heureux ne leur vient du hazard" (quoted in M'Baye 1972, 505). What is more, human rights were ordinarily conceived as inherent and absolute, while development and underdevelopment were understood as relative concepts. He then observed, "N'est-ce pas que le développement est mouvement vers un « mieux-être » et que le sous-développement est avant tout la perception

d'une différence de bien-être ?" (ibid.). Poverty (which characterized underdeveloped countries) was not intolerable in itself; poverty was chiefly a relative phenomenon:

> Galbraith nous l'a dit : « il faut que les pays tard venus se soumettent à des comparaisons ». Et c'est de ces comparaisons que naît le sentiment de sous-développement. Mais ce qui est vrai pour le sous-développement, l'est aussi pour le développement. Si bien que le sous-développement ou le développement disparaît tout naturellement avec la différence. M. Trystiam l'explique clairement quand il dit : « il n'y aurait plus de problème de pauvreté dans le monde, si tous les peuples avaient atteint le niveau supérieur ». (M'Baye 1972, 505-506)

In short, "underdevelopment" could only be understood through the lens of a comparison, through the act of interpreting a perceived difference (e.g. in terms of living standards or social progress) between the countries thus described and those commonly understood as "developed".

The discussion of "development" and "underdevelopment" as relational concepts (i.e. a set of phenomena that could only be experienced or changed through the relation they served to identify) may be considered a radical methodological move on the part of M'Baye. To be sure, the vast majority of research done on economic development and underdevelopment at the time took these phenomena as objective realities (i.e. facts that could be observed, measured and evaluated) while a growing minority considered development as a trans-factual reality with causal powers in the "real world" and underdevelopment as its consequence. These perspectives were premised on a problematic set of assumptions regarding the role of "law" (understood in the scientific usage of the term) in international trade and development that were built into their theoretical framework and foreclosed their conclusions. They render impossible to account for the inter-subjective dimension of the normative, temporal and spatial order both registered and produced by development in international economic relations and beyond. Contrary to these views, M'Baye proposed to approach the problem of development and underdevelopment, quite literally, from the perspective of international *relations* (M'Baye 1972, 508). From his perspective "development" and "underdevelopment" were nothing more than inter-subjective phenomena.

From M'Baye's point of view, the task of identifying the right to development as a human right devolved upon lawyers ever since the adoption of the UN Charter. The UN Seminar on Human Rights in Developing Countries, held in Kabul, Afghanistan, from 12—25 May 1964, had provided a further impetus to their task. The following passage from the Kabul Seminar report summarizes fairly well the substance of the debate going on at the time on the relationship between development and the realization of human rights:

> It was considered as self-evident by all the speakers that the existence of adequate material means and a high standard of economic development were essential prerequisites of the full and effective enjoyment of economic, social and cultural rights, and contributed to the promotion of civil and political rights. As was pointed out by several speakers, man needed to be adequately fed and clothed before he could be realistically expected to concern himself fully with human

> rights. To mention only one instance which was stressed by several speakers, the right to work was meaningless in countries where employment opportunities were grossly inadequate owing to overpopulation combined with economic underdevelopment. (ST/TAO/HR.21, par.133)

In this regard, many seminar participants had emphasized the responsibility of the developed countries to share their resources and technical knowledge with their underdeveloped counterparts. Although controversial, this argument had also been emphasized in UNGA resolution 1710 (XVI) of 19 December 1961 on the UN Decade for Development as well as in resolutions adopted by the various UN Conferences on Trade and Development (M'Baye 1972, 506, fn.1). The difference with the rhetoric employed at the Kabul Seminar and that of these instruments and conferences, however, is found in the use of human rights as a justificatory device to engage the responsibility of developed countries towards the development of developing countries.

M'Baye also remarked that development was no longer the exclusive domain of economics. Scholars of other social sciences and of philosophy had started to define the concept in different ways. It was high time legal scholars added their voice to that debate (M'Baye 1972, 506). To that aim, it was first necessary to distinguish between "le droit au développement" and "le droit du développement" (i.e. between "the right to development" and "development law"). Development law, M'Baye observed, was a new discipline or, more exactly, a juridical technique and a set of legislative methods aimed at guiding the economic and social development of the backward countries. He added, as French Professor of Law René David said, law must be aimed at

> dire les solutions qui, à une époque et dans un milieu donnés, sont les meilleures pour la société. Si cette société est dans un état satisfaisant, le droit sera naturellement fondé sur les coutumes et les mœurs. Si la société, en revanche, est telle qu'une révolution s'impose pour qu'elle parvienne à un état de développement satisfaisant, il faut alors résolument combattre certaines pratiques, certaines coutumes et mœurs pour les faire disparaître, car elles font obstacles à la transformation profonde nécessaire de la société. (David 1962, 162, quoted in M'Baye 1972, 507)

In short, when a society had reached a satisfactory level of development, law would tend to be a reflection of social reality. If, however, a society had not reached an acceptable level of development, then law would represent a powerful instrument to promote economic development and social progress. This "droit de promotion"—an expression M'Baye borrowed from French economist René Gendarme—was law that pushed and pulled society towards economic and social development by challenging the ancestral practices that paralyzed traditional societies. It created a new kind of human being through a "révolution des mentalités"—by which he meant the mental structures through which human beings unwittingly perceived and ordered their social world (M'Baye 1972, 507). The last point is noteworthy because it marks an attempt to break away from the dominant analysis of development, which emphasized material structures and economic factors, towards a concern for mental structures and social factors.

In a way, this shift of emphasis resonates with the perspective developed by François Perroux (1903—1987), a French economist and former assistant of Joseph Schumpeter, who M'Baye made reference to during his speech. For Perroux, development was "une combinaison des changements mentaux et sociaux d'une population qui la rendent apte à faire croître, cumulativement et durablement, son produit réel global" (Perroux 1961, 155). From his perspective, the main problem faced by societies with an underdeveloped economy, notwithstanding their economic system, was that "la croissance cumulative et durable du produit réel global y est empêchée par de nombreux caractères mentaux et sociaux des populations" (ibid.). According to Perroux, it was possible to change these mental and social habits, the costs and benefits of which could be managed rationally (1961, 155). In that context, the relationship between law—understood as an instrument of social change—and development—understood as economic growth and social progress—came under the spotlight.

Before going any further, a few remarks about the emergence of development law as a sub-field of international law and the concept of the right to development are called for. To begin with, law became an increasingly important aspect of academic and policy debates on economic development in the 1960s, which led to the emergence of development law as a new discipline alongside development economics. For instance, there was a movement called "Law and Development" in the US, which greatly influenced US foreign aid to Latin America. However, it is highly unlikely that M'Baye was trying to engage with this branch of development law given the chosen venue and audience of his speech. Rather, his speech was probably meant as an intervention in the legal debate on development taking place in European and African circles at the time.

This interpretation is supported by the fact that M'Baye had been part of that debate at least since the mid-1960s, as a book chapter entitled "Droit et development en Afrique Francophone de l'Ouest" and published in an edited volume on the legal aspects of economic development in 1966 illustrates. The book in question, edited by André Tunc, Professor at at the Faculté de Droit et des Sciences Economiques de Paris, regrouped authors from France, Britain, Senegal, Nigeria and the United States. All authors were also members of the International Association of Legal Sciences, an association created in 1950 and operating, at the time, under the auspices of UNESCO and of the International Social Science Council. The arguments and analysis of the situation of law and development in Francophone West Africa offered by M'Baye in those pages provide a good starting point to understand the point he was trying to make through the redescription of development as a human right a few years later.

The book chapter in question begins with an examination of the three main conditions that led to the entanglement of law and development and the concomitant emergence of development law as a particular form of national law in Francophone West Africa in the 1960s: the fight against isolationism, the overhaul of the legal framework and capital attraction.

Firstly, the fight against isolationism is a response against the balkanisation of Africa following its decolonization. This fight has taken two forms in Francophone West Africa. On the one hand, the lack of capital in the region forced these countries to seek bilateral cooperation with countries in Europe and the Americas as well as with the USSR and China. For the same reason, they also turned to multilateral cooperation through international organisations, such as the UN. On the other, balkanisation has been met with expressions of regional solidarity across the whole continent, exemplified by the emergence of the concept of "unité Africaine" (African unity) and pan-Africanism as an intellectual and political movement. Countries have also made many efforts towards the creation of regional unions. Some were more successful than others and economic unions were more popular than political ones. M'Baye attributes the latter situation to the fact that while most countries in the region did not hesitate to speak of African unity, they nonetheless also sought to preserve every single bits of their newly acquired political independence. Indeed, a simultaneous and opposite trend towards nationalism, M'Baye tells us, accompanied the trend towards African unity. While Africans themselves had judged the separation between various territories during the colonial era highly artificial, they seemed to change their minds as each of these territories became an independent country. What they had judged artificial and ephemeral they now considered untouchable and attached a deep national sentiment to it. (M'Baye 1966, 138—139)

Notwithstanding these issues, countries in Francophone West Africa made a few attempts towards political unification. While most of these had failed by the time M'Baye wrote his book chapter, he nonetheless remained hopeful about the possibility of their realization in the future. In that regard, he drew attention to the history of the African and Malagasy Union (AMU). Similarly to the other unions created in the region at that time, the AMU "n'avait pas d'autre pretention que d'organiser la solidarité naturelle existant entre les États africains en matière économique" (M'Baye 1966, 139, [emphasis added]). The natural solidarity that bound together these African countries in the economic field soon evolved into political cooperation—an outcome that M'Baye seems to suggest as being in the natural order of things, as part of a somewhat self-evident evolution of the trend towards regional unification. With the creation of the African Union (AU), however, the AMU changed its name to the Afro-Malagasy Union for Economic Cooperation (AMUEC) and confined itself to economic matters—a step back according to M'Baye. Indeed, once the AU embarked on the journey of political cooperation, the AMUEC saw no need to continue its work in that regard and, as a result, soon fell into disuse.

The above calls for a few words about the meaning and use of the concept of African unity in Francophone West Africa following decolonization. To put it shortly, countries in the region generally understood the concept as a political tool and weapon of resistance in the fight against balkanisation. In other words, it provided a rhetorical device powerful enough to create a united front against the rich countries. While such front mostly concerned economic matters at first, it later came to encompass political issues. The concept of African unity was itself

justified through the idea of "africanité", which M'Baye commented upon as follows: "C'est une notion vague, difficile à définir, mais on sent tout de suite qu'elle est chargée d'une volonté militante tendue vers la reconnaissance de l'apport des valeurs africaines dans la « civilisation de l'universel »" (M'Baye 1966, 138). I will come back later to the concept of "civilisation de l'universel" and its role in M'Baye's articulation of the right to development concept. For now, suffice to say that M'Baye mentioned the concept as one deeply cherished by Leopold Sédar Senghor, who served as the first President of Senegal from 1960 to 1980. This is noteworthy insofar as M'Baye drew heavily from the experience of his country in his analysis of development law as a novel form of national law centred on the new requirements of economic development in Africa following decolonization.

The second condition was that the overhaul of the colonial legal framework was itself part of a vast array of policy measures taken by the governments of newly independent states in Francophone West Africa in the 1960s, with a view to achieve economic development. In other words, most of the administrative and judiciary reforms adopted by the governments of these countries were geared towards economic development; their ultimate aim and objectives was to respond more effectively to the requirements of their national development. On the one hand, West Africans had adapted the administrative organisation of their states to the needs of their national development. The territorial divisions were based on homogeneous economic areas ("zones économiques homogènes"). Each area was oriented towards a given economic activity. In addition, these areas were meant to complete each other harmoniously. The character and attributes of administrative organs followed a similar pattern, oriented towards economic development. This had created an ambiguous situation where local administrative and judiciary organs had to assume an economic function. The result was a radical transformation of the role traditionally assumed by local administrators towards development regulation and planning, and the creation of new administrative organs: « Des organismes consultatifs pour l'exécution des plans nationaux ou régionaux, d'animation dans les villes et dans la brousse ont été créés. Des institutions de commercialisation, de crédit et de coopération ont été mises sur pied » (M'Baye 1966, 140—141). On the other, all states in Francophone West Africa had taken on the task of attacking the colonial legal framework, which no longer met current concerns. This judicial reform could, according to M'Baye, be summarized in one word: "simplification". He explains: "C'est cette idée de simplification qui a été appliquée à tous les niveaux dans la réforme judificiare qui a pour effet la supression des jurisdictions coutumières et des jurisdictions administratives, et la création de Cours Suprêmes et de Justice de Paix" (M'Baye 1966, 141).

The third condition that played an important role in the emergence of development law in Francophone West Africa was capital attraction : "qui dit développement dit investissement, donc necessité de capitaux" (M'Baye 1966, 142). This capital investment could be national or foreign, public or private. Being poor, countries in the region had to leave more or less of a role to private foreign investment in the achievement of national development plans. In some countries,

like Senegal, this participation was equal to that of national public investment. To be sure, the development strategy of encouraging private capital to invest was not an invention of the newly independent states. France had long ago put this strategy into practice in its overseas territories. After obtaining their independence, the countries in Francophone West Africa simply expanded and improved the policies and regulations introduced by France in that regard. Put shortly, countries in the region used private capital attraction as a development strategy, which consisted in giving a few advantages to foreign investors such as "regime fiscale de longue durée" (a form of preferential tax treatment for long-term capital gains) and "coventions d'établissement" (a particular form of investment contract). As a counterpart to the benefits granted to them, foreign investors were subjected to a series of specific obligations. These included, for instance, the obligation for the enterprises thus prioritized to have the nationality of the state in which they operated. It also included the right of the said state to participate in the enterprise; limitations on the rate of exploitation of the natural resources of that state; the obligation to use and train local labour and thereby help the state fight unemployment; the right of the state to intervene in the pricing of products, including price fixation.

In the light of the above, M'Baye made the following observation: "Les règles du droit ont donc été modifiées dans leur ensemble, pour faire face aux exigences de la nouvelle société africaine et pour favoriser le développement" (1966, 145). Here, development law is presented and understood as the sum of the changes and adjustments made to the legal systems of the countries of Africa following their independence, with a view to respond more effectively to the new requirements of the development of their countries. These changes and adjustments, M'Baye tells us, were not limited to the economic sphere: "Les rapports entre les individus n'ont pas échappé à cette transformation. Le droit des obligations, le droit des personnes, le droit du travail et le régime des terres sont au centre même de cette mutation qui, d'ailleurs, ne fait que commencer" (M'Baye 1966, 145). Accordingly, the second half of his book chapter on law and development in Francophone West Africa is devoted to an analysis of the social aspects of these profound transformations.

Two aspects of this analysis are worth remarking upon in order to shed further light on the background against which M'Baye proposed to redescribe development as a human right. The first concerns the way the newly independent countries of Francophone West Africa dealt with the tensions between tradition and modernity, between culture and development, and the trade-offs that resulted therefrom. The other concerns how the rhetoric of equality in terms of economic and social rights had been utilised in the struggles for independence in the region, and the problems encountered in meeting expectations in that regard once independence had been achieved. Albeit formulated in a different language—namely that of law and legal theory—the way in which M'Baye addressed these two aspects resonates strongly with scholarly discussions going on at the time in development economics (see Chapter 3).

At the time, part of the debate concerned whether law should be used to preserve tradition and customary practices or to foster economic development. On this issue, M'Baye took the following view, as expressed by René David:

> Il ne faut pas avoir exclusivement, ni même mettre au premier plan, dans une codification, la préoccupation de respecter les coutumes : le code ne doit pas être conçu essentiellement comme une coutume réformée et améliorée. Le code doit viser à dire les solutions qui, à une époque et dans un milieu donnés, sont les meilleurs pour une société. Si cette société est dans un état satisfaisant, ce code sera naturellement fondé sur les coutumes. Si la société, en revanche, est telle qu'une révolution s'impose pour qu'elle parvienne à un état de développement satisfaisant, les coutumes ne peuvent lui servir de base. L'idée que l'œuvre de codification doit être réalisée en faisant évoluer les coutumes n'a de valeur que dans certaines circonstances. Dans d'autres circonstances, il faut résolument combattre le droit coutumier et le faire disparaître, car il fait obstacle à une transformation nécessaire de la société. (quoted in M'Baye 1966, 147)

According to M'Baye, "Une codification peut être, soit la constation de ce qui est, soit l'instauration de ce qui doit être. Dans les sociétés en voie de développement, il faut que la loi tende vers « le plus être de l'humain » comme dirait François Perroux. Elle doit attirer la révolution." (M'Baye 1966, 147) This brings to the fore M'Baye's conception of the role of law as means to change society as opposed to a reflection of how society is.

Not surprisingly, therefore, when he wrote this book chapter in the 1960s, he also seemed to embrace fully the idea that it was necessary to trade-off some aspects of a people's culture and traditions to further its economic development. The following passage, where M'Baye comments upon the modernisation of family law, illustrates this aspect very well: "Certains aspects du droit africain de la famille sont un frein au développement. La conception trop large de la famille, la condition de la femme, le régime de la dot, sont des facteurs qui influencent directement l'évolution économique" (M'Baye 1966, 149). In that regard, a few remarks about M'Baye's role and involvement in the changes and adjustments made to the legal system of his country following independence are called for. As previously mentioned, M'Baye served as president of the commission for codification of personal status law and the law of obligations. In this capacity, he exercised a strong influence on the attempt to reform laws on family and property matters in Senegal following independence. As President of the Supreme Court of Senegal, he also had first-hand knowledge of and practice in the legal system of his country.

Even more interesting is the fact that M'Baye initially embraced the trade-offs between the realization of economic and social rights and the pursuit of economic development in developing countries. He thus argued:

> Avant d'être indépendants, les pays africains avaient déjà entre les mains le Code du travail de 1952. [...] Il était trop avancé, car ce n'était que la législation européenne faite pour l'Europe et transportée en Afrique avec seulement les aménagements inévitables. Or, un code du travail doit être un instrument de développe-

> ment et non pas seulement un moyen de progrès social. Il faut qu'il soit une sécrétion du milieu pour lequel il est destiné. Dans ce domaine il faut éviter un plaquage automatique de ce qui a été jugé bon ailleurs.
>
> Mais le code de 1952 ne pouvait pas être moins que ce qu'il était. En effet : un des aspects du système colonial c'est d'être un ensemble de deux éléments artificiellement soudés, et se situant à des niveaux d'évolution tout à fait différents : la société métropolitaine et la société indigène. La première est souvent industrialisée, avec un revenu et un niveau de vie élevé. La seconde est toujours à l'état de l'économie de subsistance. Elle est essentiellement agricole, pratiquant de surcroît la monoculture, et possédant un revenu et un niveau de vie très bas. Or, ces deux sociétés, dont le destin est la séparation, vivent si près l'une de l'autre que la société indigène revendique, au nom de l'égalité, et obtient à petites doses (mais obtient quand même) une certaine assimiliation. C'est là la cause de l'application plus ou moins totale de la législation métropolitaine qui se trouve nécessairement inadaptée dans les colonies. Certains avaient vu juste en instaurant le principe de la spécialité législative. Mais ce principe est impuissant en face de la force revendicatrice du colonisé, force dont le soutien, à l'extérieur et à l'intérieur même de la société métropolitaine, croît sans cesse. La France ne pouvait pas octroyer aux territoires d'outre-mer un code moins avancé que celui de 1952. Le spectre des élus africains se dressait continuellement devant les pouvoirs publics. Ils étaient toujours prêts à critiquer, à revendiquer et toutes les occasions leur étaient bonnes pour s'attaquer au système colonial lui-même. (M'Baye 1966, 154)

To be sure, M'Baye was keenly aware of the paradoxical situation many governments in the region were facing. Once independence had been achieved, those in charge were faced with an unsuitable labour code and hurried to undertake its modification. Unfortunately, once the path of social progress had been taken, it was impossible to turn back; the arguments that were developed to obtain the labour code of 1952 still resonated to the ears of African workers, who were claiming their economic and social rights more forcefully then ever after independence. These squabbles stood up, insurmountable, before the African legislator, who finally found himself with a labour code in every respect similar to that of 1952. There were in the former Francophone West Africa eight new codes, but all of them were similar and resembled that of 1952. (M'Baye 1966, 154-155) Remarking upon the tensions between national development policies aimed at speeding up the process of economic growth and those aimed at increasing the living standards and overall social progress of the population, he further remarked, "On peut même noter dans l'ensemble un renforcement des garanties accordées aux travailleurs, alors que les pays africains prônent la politique de l'austérité. C'est parce que la législation sociale est un tobogan dont la pente est irresistible." (M'Baye 1966, 155)

In the same paper, published in 1966, M'Baye argued that, in Africa "il faut faire une économie riche avec des gens pauvres" (Schaeffer, quoted in M'Baye 1966, 158). The point of codifying labour law, according to M'Baye, could not be thought in terms of social progress alone. The current situation in which the newly independent countries of Francophone West Africa found themselves was not a viable one. As such, the codification of labour law had to include the pursuit of economic development. In the debate over trading some levels of economic

and social benefits to further economic growth, therefore, M'Baye took the stance that long-term "investments" were necessary to move out of the subsistence economy, which called for short-term sacrifices. In other words, according to him, "Ce qui est essentiel, c'est l'industrialisation, la normalisation des rapports extérieurs et non pas la hausse du pouvoir d'achat" (M'Baye 1966, 158).

As the above illustrates, M'Baye understood the act of sacrificing certain aspects of African cultures and level of economic and social rights as necessary policy measures to allow the economy of underdeveloped countries in Francophone West Africa to "take-off". At the same time, he was keenly aware of the political tensions and controversies accompanying such sacrifices. While M'Baye acknowledged these issues and the competing alternatives governments in the region were faced with in using law as means of economic development and social progress, he avoided the question of CP rights altogether. This is quite interesting, given that colonial rule had been replaced by one-party systems of government in the vast majority of Francophone West African countries. In Mauritania, for instance, the President Ould Daddah had justified his one-party system of government by arguing that his country was not "ready" for multi-party democracy as found in Western societies.

In the time between the publication of his book chapter, in 1966, and his inaugural lecture at the International Institute of Human Rights, in 1972, the situation of civil and political rights had visibly worsened in a number of West African countries. Some of the reasons that could be advanced to explain the general attitude of indifference, if no straightforward hostility, of many African leaders towards CP rights at that time have been extensively discussed in Chapter 3. Nonetheless, it might be necessary to add a remark in that regard here: African leaders were not the only ones to advance the view that their countries were not "ready" for liberal democracy. Some Western leaders and scholars of all disciplines were also sympathetic to the hierarchy of rights underlying the particular form of African socialism adopted by these countries. For instance, Canadian jurist Robert Martin wrote, in 1974, that

> the liberal-democratic theory of politics, with its emphasis on the individual and on political freedom, may be of little value in a society where intense poverty and economic inequality are the essential national problem. In fact, in such a society, a state apparatus which dedicated itself to the preservation of the 'individual rights' of liberal democracy would be the opposite of democratic. By putting the needs of individuals above the needs for independence and development of the mass of the people, a government would forfeit the right to be called democratic. (Martin 1974, I)

Some US leaders and policy-makers entertained a similar, but more pessimistic view on the value of liberal democracy and individual rights in the newly independent countries of Africa. During a meeting of the National Security Council held in 1960, for instance, Vice President Richard Nixon made the following comment:

> The British anticipated that in many countries of Africa such as Nigeria, a South American pattern of dictatorship would develop. The U.S. must avoid assuming

> that the struggle in Africa will be between Western-style democracy and Communism. We must recognize, although we cannot say it publicly, that we need the strong men of Africa on our side. It is important to understand that most of Africa will soon be independent and that it would be naive of the U.S. to hope that Africa will be democratic. (FRUS 1958—1960, Volume XIV, Doc.21, 75)

He added even more bluntly, "Some of the peoples of Africa have been out of the trees for only about fifty years" (ibid.). Expressing a similar view, Maurice Stans, a State Department expert for Africa, said during the same meeting that "he had formed the impression that many Africans still belonged in the trees" (FRUS 1958—1960, Volume XIV, Doc.21, 77).[26]

Quite relevant to the present analysis, therefore, is the fact that Senegal has generally been perceived "as an exception to the general absolutist trend developing in Francophone African politics" at the time—an image, according to Aslı Berktay, "largely connected to the image of President Leopold Sédar Senghor himself" (2010, 205). Senghor, Berktay remarks,

> believed that his self-synthesis as a person of politics and culture, at once "Black, French, and African", could also be extended to the politics of his country. In his effort, Senghor was aided by the ideologies of Negritude and African Socialism which functioned as rhetorical devices that sought to bridge the many social gaps and bifurcations in Senegalese society. Some of these were bridged within Senghor himself, while others became all the more evident in his person. (Berktay 2010, 205)

The point here is that Senghor utilized the concepts of "negritude" and "African socialism" as rhetorical device to convince the general Senegalese public that some elements of their identity, which would have commonly been associated with Europe (and therefore colonialism), were in fact elements of any civilization—of both the African and the European civilizations. His attempt to reconcile the conflicts between cultures found its ultimate expression in his notion of "the civilization of the universal". In a way, Senghor and M'Baye shared a similar identity, which (ironically, one may say) distanced them from the general Senegalese public. Akin to Senghor, M'Baye had received a French education. In his later attempt to defend the universality of human rights—or rather the applicability of every human rights and freedoms to African countries notwithstanding their particular level of development—M'Baye drew heavily from Senghor's ideas.

The above provides the background against which to interpret both the contingency and controversy of the move to redescribe development as a human right, both at the International Institute of Human Rights in 1972 and at the UN-

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26 Later the same year, answering a series of questions about Africa during another meeting of the National Security Council, Stans said: "The Africans do not understand Western-style ballot box democracy. If the Congo were to be reorganized politically, the reorganization should start on the basis of tribal lines. Tribal federations like those formed by the American Indians would provide the best basis for political organization. We could not assume that Africans would accept our kind of democracy. Democracy in Africa did not extend beyond the village; beyond the village the people look to the chief of the tribe who is a kind of dictator." (FRUS, 1958–1960, Volume XIV, Doc. 33, 155)

CHR in 1974, 1975 and 1977. From M'Baye's point of view, the arguments development by scholars of the newly founded discipline of development law had provided political leaders in underdeveloped countries with powerful ways of justifying socio-political systems where individual liberties were "temporarily" curtailed in the name of social progress and economic development and where legality had been extended without limit for reasons of necessity (1972, 507). In this context, development law touched upon the substance of the right to development as a human right because it involved law on the means to development (whether human or material), but did not merge with it. Within the framework of development law as it developed in a number of African countries following independence, the traditional balance between liberty and social order had been upset; the need for order, understood as a necessary condition for rapid economic development, came to supersede the need to grant even the most basic liberties to individuals (M'Baye 1972, 507). The point is that while development law provided a means for political leaders to sanction the curtailment of individual liberties in the pursuit of economic and social development objectives, the right to development conceived as a human right could serve to prohibit this curtailment.

M'Baye then turned to a rebuttal of the common assumption according to which development and human rights were competing concerns, at least in the short to medium timeframe of political action, and insofar as one was concerned with collectivities and the other with individuals. On the one hand, he acknowledged that development unquestionably related to groups. The reaction against "laissez-faire, laissez-passer" had given rise in the nineteenth century to the idea of economic and social rights, in contrast to the individualist tendencies of the previous period. The implementation of these rights with a view to the achievement of better living standards and, more broadly, the development enterprise, had always borne a collective character. The aim was to mobilize material and human resources at the regional, national or international levels, with a view to raising the living standards of a group in a given socio-economic context. (M'Baye 1972, 507—508)

In this regard, it might be worth saying a few more words about French solidarism—not the least because the emergence of economic and social rights is often associated with nineteenth-century socialism, but solidarism, which also embraced those rights, "emerged as a philosophy of increased state intervention to achieve social security and justice which would prevent the spread of socialism" (Porter 1999, 203). This is noteworthy given that a central aspect of M'Baye's final argument is his reliance upon the concept of solidarity as a rhetorical device to legitimize his redescription of the right to development as a human right. It is likely that, akin to Algerian jurist and diplomat Mohammed Bedajoui, M'Baye 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" (Özsu 2015, 130)—through his studies and stay in Paris. In a nutshell,

> In the *solidariste* vision ties of "social solidarity" linked individuals to their wider communities. Moral and material progress did not happen naturally. It was instead a result of social organisation based on the principle of interdependence. *Solidarisme* posited an associative conception of political community that was inspired by Émile Durkheim's theory of collective consciousness and emphasis on social roles as determinants of individual behaviour. The true interests of individuals were determined by their social role and their obligation to society. (Jackson 2013, 66)

A central aspect of this doctrine, as formulated by one of its most prominent figures, namely Léon Bourgeois, is found in the idea that "[l]'organisme ne se développe qu'au prix du développement des éléments qui le composent ; la société ne peut progresser que par le progrès des hommes" (1896, 40).

When approached from the lens of solidarism, M'Baye's argument that the indicators to be used to assess the level of development of a country *obviously* had to refer to the individual, gains a further layer of meaning. According to him, whether it be a matter of GDP per capita, school attendance rate, birth rate or mortality rate, the average age of the population, and so on, all hinged on the situation of the individual. He continued by remarking how, in his speech at UNCTAD III in Santiago de Chile, World Bank President Robert S. McNamara had stressed the need to be wary of global figures in assessing the results of development programmes, because they could nurture false hopes about the regression of poverty. Twisting an expression coined by French economist François Perroux—who wrote extensively about "l'économie de tout l'homme et de tous les hommes"—M'Baye argued that development concerned "all men", "every man" and "all of man." (M'Baye 1972, 508)

The intention behind this rhetorical move is twofold. First, M'Baye wished to avoid altogether the debate on whether the right to development was to be understood as a collective right or an individual right. In the final analysis, according to him, the subject of development was always the individual human being. However, and this is surely the most crucial part of his argument, the development of an individual could not be thought of in isolation from the development of the other individuals constituting the social reality in which the individual in question lived. In order to understand this point, it is important to bring to the fore that a number of African politicians and scholars at that time "often insisted on differences between the communitarian and collectivist nature of African societies and the more individualistic societies of the West" (Eckert 2011, 297). From their viewpoint, an African approach to human rights would "have to go beyond the Universal Declaration and reflect individuals as right holders enmeshed in communities with collective rights and specific duties to others" (ibid.). It might be worth mentioning, "many of the leaders of African independence movement such as Senghor, Nyerere and Nkrumah regarded themselves as socialists" (Eckert 2011, 298). While many African thinkers and movements identified with various strands of Marxist and social-democratic forms of socialism, they sought to translate them in order to make them fit their particular experience and expectations. For these African nationalists,

> Western visions of rights were both suspect for their historical coexistence with colonialism and impoverished in their limitation to civil and political guarantees (Even the most narrow of which were belied by treatment of blacks in the United States before the Civil Rights movement, a hypocrisy of which African leaders were acutely aware). 'Rights' were an important part of independence rhetoric, but African leaders in the decade after independence generally emphasised 'economic and social' rights […]. (Eckert 2011, 298)

In a way, the view advanced by M'Baye in 1972 offered an alternative in the debate opposing Western liberal individualism to African collectivist communitarianism. The philosophical premises underlying M'Baye's approach to the nexus between human rights and development presented great similarities with the thinking of late nineteenth and early twentieth century French solidarists. According to Léon Bourgeois, for instance,

> L'homme n'est plus une fin pour lui et pour le monde : il est à la fois une fin et un moyen. Il est une unité, et il est la partie d'un tout. Il est un être ayant sa vie propre et ayant droit à conserver et à développer cette vie ; mais il appartient en même temps à un tout sans lequel cette vie ne pourrait être ni développée, ni conservée ; sa vie même n'a été possible, elle n'est ce qu'elle est que parce que le tout dont il fait partie a été avant lui, parce que d'autres vies inférieures à la sienne ont été, avant la sienne, conservées et développées grâce à cet ensemble, et ont déterminé l'épanouissement de la vie commune supérieure d'où il est lui-même issu. (Bourgeois 1896, 35)

For the French solidarists, the dichotomy between the state and the individual was nonsensical. According to them, the state was but a metaphor. For instance, according to Bourgeois,

> En détruisant la notion abstraite et a priori de l'homme isolé, la connaissance des lois de la solidarité naturelle détruit du même coup la notion également abstraite et a priori de l'Etat, isolé de l'homme et opposé à comme un sujet des droits distincts ou comme une puissance à laquelle il serait subordonné. L'Etat est une création des hommes : le droit supérieur de l'Etat sur les hommes ne peut donc exister ; il n'y a pas de droits là où il n'existe pas un être, dans le sens naturel et plein du mot, pouvant devenir le sujet de ces droits. Les économistes ont raison quand ils repoussent, au nom de la liberté individuelle, la théorie socialiste de l'Etat. (Bourgeois 1896, 36)

During his speech, M'Baye deplored how the philosophy underlying foreign aid proceeded from an over-simplified view of the problem of the relationship between developed and underdeveloped countries, where relations between states and relations between human beings were placed on the same footing, as if political entities had human feelings (M'Baye 1972, 518—519). Ultimately, the point for the French solidarists was that the problem of rights and duties was not between the individuals and the state or individuals and the society. Rather, the problem had to be understood in terms of solidarity—i.e. the mutual relations between individuals, whereby individuals are conceived as associates with a common undertaking and obliged to one another by the necessity of a common goal. Contrary to advocates of state socialism, then, the aim of the solidarists was not to define the rights that the state (or the society) would have over individuals,

but the reciprocal rights and duties "que le fait de l'association crée entre les hommes, seuls êtres réels, seuls sujets possibles d'un droit et d'un devoir" (Bourgeois 1896, 37). Here, the reciprocal and mutual dimension of human rights—as rights based on the principle of solidarity—provides the key to intrerpret M'Baye's rhetorical move.

M'Baye's innovation with respect to the redescription of the right to development as a human right is twofold and could be summarized as follows: once conceived as a human right, the right to development allows conceiving development as the mutual goal of all individuals and peoples, bound and obliged to one another beyond the confines of their respective state. It also allows conceiving of international human rights in terms of mutual obligations between states, going beyond the individual obligations of states towards their own citizens.

6.2.2 Development as a concept of international relations

Before turning to a discussion of the justifications for conceiving of development as a human right, M'Baye attempted to circumscribe the concept of development within the context of international relations. The idea of development, he argued, had been conceived only recently. According to François Perroux, he remarked, the terminology of development only came to the fore in international relations after the Second World War (Perroux 1961, 155, quoted in M'Baye, 1972, 508). Not so long ago, he continued, the concepts of "development" and "growth" were considered synonymous. It was not before the 1960s that the concept of development began to take its full shape. During that decade, M'Baye observed, Perroux analyzed the economic trends that had carried societies along and distinguished four levels, subsequently taken up by Jacques Austruy in his book *Le scandale du développement* (1965): expansion (a temporary irreversible increase in economic quantities), growth (prolonged increases over long periods of time with consequent modifications in economic structures), development as such (a range of changes in mental and institutional patterns, conditions for the prolongation of growth) and progress (the significance of what had been achieved, giving a purpose to the development process).

According to M'Baye, Perroux had grasped the notion of development and elucidated its meaning. While the detailed analysis offered by Perroux could scarcely be improved upon, M'Baye opined, development could perhaps also be viewed as a metamorphosis of structures, as a driving force for structural change. To support his view, he turned to Austruy, who had analyzed development within the framework of history and more normative concepts (M'Baye 1972, 509). Development, as understood by Austruy, meant "le mouvement qui bouleverse fondamentalement une société pour permettre l'apparition, la poursuite et l'orientation de le croissance vers une signification humaine"; "un faisceau de transformation dans les structures mentales et intellectuelles qui permet l'apparition de la croissance et sa prolongation dans la période historique" (Austruy 1965, 89).

In this regard, M'Baye argued, development had to be viewed not as an end in itself but as means to an end. Growth came in at the beginning and the

end of development, but growth and development were not the same thing. Development was much more than growth; development was a state of mind that fostered growth. Indisputably, growth was the condition sine qua non for development. According to Indian development economist and educator Malcolm Adiseshiah, M'Baye continued, development arose first in economic terms: "economic development is the improvement of per capita income, i.e. an increase in the number resulting from dividing a country's gross domestic production by its population" (Adiseshiah 1970, 43). However, as Adiseshiah had further observed, the three economic factors that made up the everyday life of each individual—consumption, production and saving—should not be multiplied ad infinitum, but should progress in optimal harmony, i.e. at a level below or above which living conditions deteriorate (Adiseshiah 1970, 26). M'Baye concluded that economics was, in that sense, the science of optimum. (M'Baye 1972, 510)

M'Baye also concurred with Adiseshiah that it would not be possible to conclude that economic development had occurred from the simple observation of an increase in per capita income. The idea of a real improvement in living standards had to be taken into account in order to comprehend "true" development:

> il s'agit non plus pour chaque individu de vivre plus, mais de vivre mieux. La civilisation de la production toujours plus grande et de la consommation toujours plus accrue, est inévitablement, nous commençons à le savoir aujourd'hui avec certitude, une civilisation condamnée à des contradictions, au chaos. Les sages de mon Saloum natale le savent bien, eux, qui disent : « Le ventre est un sac à capacité limitée. » (M'Baye 1972, 511)

The evaluation of living standards could not be limited to an appraisal of economic measures of production and consumption (e.g. GDP per capita, wages and salaries, income distribution), but had to include the following factors (as identified by the UN): health, food intake and nutrition, education, employment and working conditions, housing, social security, clothing and finally leisure and individual liberties. On that point, M'Baye concluded that growth was a necessary but not a sufficient condition for development. Development meant above all an evolution, but the kind that was progressive and qualitative. It was not just a matter, as Father Lebret had said, of having more but also of living better. (M'Baye 1972, 511—512)

The above reference to French Dominican social scientist and philosopher Louis-Joseph Lebret (1897—1966) is salient, especially because some of the main themes of his lifework on human economics are found throughout M'Baye's 1972 speech on the right to development as a human right. In this regard, it might be worth mentioning that Father Lebret had spent a number of years in Senegal between the late 1950s and early 1960s and served as an economic advisor to the Senegalese government (Becker, Missehoungbe and Verdin, 2007). Also noteworthy is the fact that Father Lebret cooperated closely with French economist François Perroux during and shortly after the Second World War—i.e. when Perroux joined Économie et humanisme (an association founded by Father Lebret in

1941). An important aspect of Lebret's though concerned "the nexus between development and the creation of new civilizations" which, as human development theorist and main founder of development ethics—i.e. as a self-conscious discipline[27]—Denis Goulet remarks, was "so intimate that he could only define the former in terms of the latter" (Goulet 1974, 43). For Lebret, according to Goulet, this definition was "anchored in essential human values, and, consequently, […] valid for all social groupings, from village to nation, and for all cultures" (ibid.). Lebret more or less consistently defined development throughout his work as

> the series of transitions, for a given population and the sub-population units which comprise it, from a less human to a more human phase, at the speediest rhythm possible, at the lowest possible cost, taking into account all the bonds of solidarity which exist (or ought to exist) amongst these populations and sub-populations. (translation quoted in Goulet 1974, 43)

According to Lebret, development was about achieving an ever more human economy. Here, as Goulet remarks, "[t]he expression 'more human' and 'less human' must be understood in the light of a distinction Lebret considered vital: the difference between *plus avoir* ('to have more') and *plus être* ('to be more')" (1974, 43). As Goulet explains, Father Lebret meant that

> Societies are more human or more developed, not when men and women "have more", but when they are enabled "to be more". The main criterion of value is not production or possessions but the totality of qualitative human enrichment. Doubtless growth and quantitative increases are needed, *but not any kind of increase or at any price.* (Goulet 1974, 43 [emphasis added])

It is most likely to this message that M'Baye clung when he referred to Lebret's idea that development was not only about having more, but also of living better. The effect of this rhetorical move is twofold: it depreciates development theories and policies focused exclusively on the material-cum-economic aspects of human life by giving greater value to those emphasizing other aspects. The question remains, however, as to what M'Baye meant, exactly, by "living better".

Economic growth, M'Baye continued, must be accompanied by social and cultural progress; in other words, development must be given a human dimension (1972, 512). He added,

> L'augmentation du P.N.B., même évaluée par tête d'habitant, est muet en lui-même s'il ne rend pas compte au même moment du progrès de l'éducation et de la culture, et d'une façon générale, n'illustre pas et ne développe pas les valeurs de civilisation du groupe et leur participation à la « civilisation de l'universel ». (M'Baye 1972, 512)

While this line of argument largely echoes human economics as developed by Father Lebret, it also resonates with the thinking of Léopold Sédar Senghor. In fact, the "civilization of the universal" was a central element in Senghor's thought, which he conceptualized as the ultimate outcome of the Negritude movement:

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[27] Indeed, Goulet himself traces the origins of the discipline back to Lebret and other thinkers. But none of them define their own work as belonging to the discipline of "development ethics" properly speaking.

> Or donc, la Négritude, c'est comme j'aime à le dire, *l'ensemble des valeurs culturelles du monde noir*, telles qu'elles s'expriment dans la vie, les instituions et les œuvres des Noirs. […] notre unique souci a été de l'assumer, cette Négritude, en la *vivant*, et, l'ayant vécue, d'en approfondir le *sens*. Pour la présenter, au monde, comme une pierre d'angle dans l'édification de la *Civilisation de l'Universel*, qui sera l'œuvre commune de toutes les races, de toutes les civilisations différentes—ou ne sera pas. (Senghor 1964, 9)

For Senghor, the civilization of the universal may only be edified upon its primary resource: human beings. As such, the European civilization, which had been presented as *the* Civilization, "ne méritait pas encore ce nom, puisque civilisation mutilée, à qui manquaient les « énergies dormantes » de l'Asie et de l'Afrique" (Senghor 1963, 19). That civilization was not yet a form of *humanism* because it denied the participation of two-thirds of humanity, namely the Third Word, to the "Universal" (ibid.).

In this regard, the fact that M'Baye subsequently offered to rely upon the following definition of development, as proposed by Adiseshiah, is telling:

> Development is, in the end, a form of humanism, for its finality is the service of man. It is moral and spiritual as well as material and practical. It is an expression of the wholeness of man serving his material needs of food, clothing and shelter, and embodying his moral demands for peace, compassion and charity. It reflects man in his grandeur and shame moving him ever forward and onward, yet ever in need of redemption of his errors and folly. (Adiseshiah 1970, 44)

What is striking, here, is how M'Baye changed position—as compared with his earlier writings on law and development in Francophone West Africa—on the question of trading off the culture of a people or any level of social advancement in the pursuit of speeding up the process of economic development. It might be relevant to point out that the linear stages of growth model of development—which positioned rapid economic growth as the main engine of development—had come under fierce attack by the end of the first UN Development Decade. By the beginning of the 1970s, many development scholars and practitioners had turned their back on this model.

M'Baye concluded his discussion of the concept of development by questioning the "Western" values underlying the common usage of the concept of development in international relations. The object of his criticism concerned, in particular, the claim that the mass consumption society was the pinnacle of development. While acknowledging emerging critiques of the dominant model of development offered by Western societies—an approach which was taken to imply that the level of satisfaction, or happiness, increased when a person consumed more (found in e.g. the work of Hebert Marcuse and informing the degrowth movement)—he argued that they remained marginal. In the meantime,

> l'humanité est embarquée […] et les pays sous-développés perçoivent leur dénuement comme une injustice. Les exhortations à la tempérance ne s'adressent d'ailleurs pas à eux, dont certains ressortissants vivent à la lisière de la disette. C'est tant mieux si une nouvelle vision du bonheur obligeait les pays avancés à observer un peu le répit dans la course à la consommation. Ce serait peut-être une façon de

vaincre le sous-développement en effaçant le sentiment de différence. Mais pour les pays sous-développés, le but reste le décollage et le développement. Ils continuent à croire, à tort ou à raison, avec Nehru, que le « développement apporterait à tout citoyen sur un pied d'entière égalité, la pleine possibilité de servir et de s'épanouir… la différence de richesse et de condition s'effaceraient. L'esprit de clocher, le séparatisme, l'isolationnisme, le sectarisme, la corruption, l'exploitation de l'homme par l'homme, n'auraient plus de place dans la vie nationale ». (M'Baye 1972, 514)

The point is that while scholars and policy-makers in the underdeveloped countries often criticized the historical path of development taken by Western societies, their criticism was not wielded against the idea of development per se. It was rather directed against unequal development both within these societies and between them and other societies. In other words, no one (except perhaps some religious leaders) in what was then understood as the underdeveloped world was really against "development" or openly opposed it in those days. On the contrary, as M'Baye observed, development continued to be perceived as an asset and even as a human right (1972, 514).

6.2.3 The moral case for recognizing development as a human right

In the remaining part of his speech, M'Baye endeavour to justify the redescription of development as a human right. Most of the arguments he used to do so were not so different from the ones developed by postcolonial critiques of development and dependency theorists (as discussed in chapters 3 and 4) at the time. This is well exemplified by the authors M'Baye choose to quote in that regard during his speech: Samir Amin, Tibor Mende, Leopold Sédar Senghor, etc. These included economic and geopolitical considerations and centred on issues such as international trade in an interdependent world, colonialism, neocolonialism, the Cold War, etc. He also used the same arguments, in one form or another, to persuade the members of the UNCHR to recognize development as a human right in 1974 and 1975. The analysis of theses justifications is therefore left to the latter part of this chapter. For the moment, I would like to focus on the novel aspect brought to the fore by M'Baye in his 1972 speech to justify the redescription of the right to development as a human right.

From M'Baye's point of view, none of the arguments advanced by postcolonial and other critiques of development was strong enough to justify the recognition of international development cooperation not only as a mutual right and responsibility of states in international relations but as a human right of all individuals and peoples. Whether they justified international development aid and cooperation as being in the economic and political interests of the developed countries or as an historical responsibility, all their arguments had come to be ruined by the facts or denied by men (M'Baye 1972, 521—522). While he did not elaborate any further on that point, examples could easily be found in the literature he referred to in his speech. According to Tibor Mende, for instance, the market argument for foreign aid policies (i.e. the idea that the underdeveloped countries' markets offered great possibilities for the manufactured products of

the developed countries, provided their economic developed translated into higher purchasing power) was invalidated as soon as it was balanced with the facts. On the one hand, "for want of rapid economic growth, trade with the underdeveloped countries [did] not grow in proportion with the numerical promise of their potential consumers" (Mende 1973, xix). In other words, the problem of population growth in the underdeveloped countries far outweighed the potential rise in purchasing power that could unfold from their economic development. On the other, "if inhibiting political considerations were one day set aside, trade within the North, between the Western industrial states and Japan on the one hand, and the Soviet Union and China on the other, would yield far more spectacular results than anything that could be expected from exchanges with the underdeveloped countries at their present and foreseeable rates of economic progress" (Mende 1973, xix). Another problem was found in the fact that "Western concern for non-Communist development as much as Communist concern for the non-capitalist type of development was prompted by the assumption that economic aid would produce quick results and, by implication, proportionally rapid political commitments" (Mende 1973, xxi). However, by the beginning of the 1970s, it had become abundantly clear that such was not the case.

Perhaps, M'Baye opined, these justifications had failed because they approached relations between states from the standpoint of their material foundations. Accordingly, he suggested addressing the problem of the coexistence of nations from the standpoint of their moral foundations. From this angle, he argued, the first issue to be taken into account was the responsibility of the rich and developed countries. He advanced the view that the responsibility of these countries was involved because international events and their consequences were of their doing. In particular, the rich countries decided on war and peace; determined the international monetary regime; chose the conditions governing international business relations; imposed their ideologies, and so on. In short, they tied and untied the knots of world politics and economy as they pleased. Since they had triggered these events with only their interests in mind, it was their duty, insofar as they benefited from the advantages, to share the disadvantages. (M'Baye 1972, 522)

M'Baye then drew attention to the case for reparations for colonialism. From this particular point of view, a feeling of obligation among citizens of the rich countries should arise from their guilt for slavery, the holocaust, colonialism and other international tragedies. Although some of these events had been orchestrated in a distant past, their harmful consequences were still dramatically felt today. From his point of view, it was a principle of elementary justice that those alleged to have caused harm to others should shoulder the responsibility for the harm inflicted. This line of argument may fruitfully be interpreted within the context of the postwar debate on reparations. Akin to the way underdeveloped country representatives sought, in the early years of the UN, to widen the range of activities of the UN in the field of economic and social cooperation by moving beyond questions of short-term reconstruction to long-term development, representatives of former colonial countries and peoples sought to extend

the logic of reparations to questions of slavery and other injustices caused by colonialism. This interpretation is strengthened by M'Baye's comparison of "colonialism" to "Hitlerism". According to him, it was a strange thing that while Germans, even the young ones, still felt remorse for the abuses perpetrated under Hitler's rule, there did not seem to be an equivalent feeling for the abuses committed under colonial rule among citizens of former colonial powers. To be sure, events that carried as heavy a moral burden as the ones which had taken place under Hitler's rule could be found in the past of colonial peoples, e.g. slavery, forced labour and colonialism with all its attendant miseries. To some extent, this line of argument reminds of the words of Martiniquan poet and politician Aimé Césaire, for whom the fact that the acts perpetrated under Hitler's rule differed in the eyes of the Europeans from those committed under colonial rule was essentially a question of race and racism (see Césaire 1972, 36—37).

In the mind of former colonial countries and peoples, M'Baye remarked, leaders of the rich countries had not only an obligation to account for these acts but also to repair the damage they had caused. The argument usually went as follows: as "our obligation as citizens of rich countries from our misbehaviour in the past, we owe reparations to the poor states and their people" (Hoffman 1981, 158). However, this line of reasoning was problematic for a number of reasons. At the psychological level, the most likely result "of trying to inject a sense of collective guilt is resentment, not a feeling of obligation" (Hoffman 1981, 158). A quick glance over the history of war reparations in Europe supports this view: what happened, for example, to the relations between France and Germany after the Franco-Prussian war of 1871 or to the relations between Germany and the rest of the world after it was forced to pay reparations to the Triple Entente in the Treaty of Versailles. Another problem identified by Hoffman concerns how far back in time one would have to go in order to assess the harm done. This question necessary calls another one with respect to the exact origin, in time, of the harmful behaviour. Above all, it raises the unavoidable question of who is supposed to pay reparations for the harm done:

> Is it just the descendants of the people who went and exploited them, is it all of us? We are dealing most of the time now with what Karl Deutsch would call "socially mobilized publics" or "democratic publics," even if the regimes are not always democratic. Now, one of the principles of democratic publics is that they do not accept responsibility for the sins of their ancestors. As Tocqueville put it, each generation believes it begins anew. And you will never be able to convince people in this country or in England or in France that the aid which they feel a duty to give, they must provide because their ancestors were brigands and exploiters and murderers. It is not a suitable basis for obligation. (Hoffman 1981, 158—159)

Perhaps because he was keenly aware of the fact that guilt was not a "suitable basis for obligations," has M'Baye looked for another, stronger moral foundation for the right to development and thus simply concluded his consideration of this particular point with a rhetorical question: "Qui pourra jamais évaluer le tort que les razzias de dizaines de millions d'hommes et de femmes jeunes et de bonne santé on pu causer au Mali et au Dahomey?" (M'Baye 1972, 522)

It could also be argued that M'Baye was even more aware of the potential dangers of reducing the underdeveloped countries to the status of passive victims by articulating the right to development within the conceptual framework of restorative justice. In that regard, he expressed the view that care had to be taken not to minimize the responsibility of the underdeveloped countries for their current state of affairs. On the one hand,

> Même dans les évènements du passé, les ressortissants de ces pays ont pu apporter une contribution coupable. Quant à leur part dans la situation actuelle, elle est d'une importance capitale : ils se laissent facilement conquérir pas les leurres du développement que certains aventuriers internationaux inventent à profusion de leur intention; ils refusent de s'unir, s'obstinant à donner continuellement prise à la politique de balkanisation géographique ou idéologique ; il serait aisé d'ajouter bien d'autres. (M'Baye 1972, 523)

However, he opined, these particular aspects were better understood as the symptoms rather than the causes of underdevelopment. As such, it made no sense to look further into these matters. On the other, as development required a constant reappraisal of accepted values and a permanent application of the ideals inherent in each nation to its fundamental options, the participation of the peoples concerned was necessarily called upon. (M'Baye 1972, 523)

Hence, while the right to development could be justified by an appeal to responsibility, the very foundation of that right laid elsewhere. For M'Baye, the right to development was, above all, a question of *solidarity*. When the right to development was approached from the conceptual lenses of solidarity, it was no longer a matter of weighting gains or losses, and of hoping for advantages of fearing disadvantages (M'Baye 1972, 523). Within the conceptual framework of solidarity, relations between developed and underdeveloped countries had to be understood in cooperative rather than competitive terms. Solidarity also called for a focus on mutual interests instead of comparative ones. Above all, as French solidarist Léon Bourgeois puts it, "when it is a question of weighing rights, there is no longer inequality, and rights of the smaller and weakest weigh just as much on the scales as the rights of the greatest" (quoted in Koskenniemi 2001, 286). However, where there are rights, there are necessarily duties. When the right to development is approached from the perspective of solidarity, it is no longer about determining *who* is responsible because *all individuals and peoples* have positive and negative duties *towards each other* within their community of solidarity. The right to development conceived as a human right stood for respecting the life and value of all human beings and affording particular protection to those in need or who were the weakest.

M'Baye then turned to the philosophical assumptions upon which the concept of solidarity could serve as a moral justification for the human right to development. It might be worth underlying from the outset that the philosophical underpinnings of his argument were definitely anti-individualist and anti-statist: the human right to development called for balancing equally the principles of solidarity and freedom. Accordingly, he began his philosophical inquiry by ar-

guing that what mattered the most was to focus on what should be the very foundation of all human behaviour and policy: "l'homme lui-même, « jeté là », comme disent les existentialistes, « à ses risques et périls », il est proposé pour se faire, et pour cela, il doit être libre" (M'Baye 1972, 523). Our existence as human beings is characterized by "thrownness," a concept first introduced by German philosopher Martin Heidegger (1889-1976). However, it is more likely that M'Baye, who had been educated in the French system, came across this concept through the work of French existentialist philosophers like Gabriel Marcel or Jean-Paul Sartre—although M'Baye only spoke of "les existentialists" in general terms, without referencing any one of them in particular. Perhaps not so coincidentally, existentialism was also an important source of inspiration for Senghor—whose ideas M'Baye referred both directly and indirectly to in his speech. In that regard, it is interesting to note that Sartre prefaced Senghor's *Anthologie de la nouvelle poésie nègre et malgache de la langue française* (1948).

According to Sartre, there were two trends of existentialism: Christian existentialism—to which e.g. German philosopher Karl Jaspers and French Catholic philosopher Gabriel Marcel belonged—and atheistic existentialism—to which Heidegger and Sartre himself belonged. Notwithstanding differences in their approaches, both trends shared the idea that "l'existence précède l'essence, ou, si vous voulez, qu'il faut partir de la subjectivité" (Sartre 1947, 17). For atheistic existentialists, who declared that God did not exist, "il y a au moins un être chez qui l'existence précède l'essence, un être qui existe avant de pouvoir être défini par aucun concept, et que cet être c'est l'homme" (Sartre 1947, 21). Sartre further elaborated on the significance of the existentialist idea that existence preceded essence as follows:

> Cela signifie que l'homme existe d'abord, surgit dans le monde, et qu'il se définit après. L'homme, tel que le conçoit l'existentialiste, s'il n'est pas définissable, c'est qu'il n'est d'abord rien. Il ne sera qu'ensuite, et il sera tel qu'il sera fait. Ainsi, il n'y a pas de nature humaine, puisqu'il n'y a pas de Dieu pour la concevoir. L'homme est seulement, non seulement tel qu'il se conçoit, mais tel qu'il se veut, et comme il se conçoit après l'existence, comme il se veut après cet élan vers l'existence ; l'homme n'est rien d'autre que ce qu'il fait. Tel est le premier principe de l'existentialisme. C'est aussi ce qu'on appelle la subjectivité, et ce que l'on nous reproche sous ce nom même. (Sartre 1947, 21-22)

According to Sartre, this "subjectivité" or rather "subjectivisme" could be understood either as "choix du sujet individuel par lui-même" or as "impossibilité pour l'homme de dépasser la subjectivité humaine" (1947, 24—25). The latter interpretation was to be understood as the deeper meaning of existentialism (Sartre 1947, 25).

In this regard, it is highly interesting to note that M'Baye developed his argument along lines similar to those adopted by Sartre in *L'existentialisme est un humanisme*—some passages of which are quoted above. According to M'Baye, humans were free, in contrast to animals and objects, because of their quality as thinking beings endowed with the power of choosing to "become what one is"

(1972, 523). While he rightly attributed the quote to German philosopher Friedrich Nietzsche, the emphasis given to the existential freedom of the individual also resonates with Sartre's idea that "l'homme se choisit" (1947, 25):

> Quand nous disons que l'homme se choisit, nous entendons que chacun d'entre nous se choisit, mais par là nous voulons dire aussi qu'en se choisissant il choisit tous les hommes. En effet, il n'est pas un de nos actes qui, en créant l'homme que nous voulons être, ne crée en même temps une image de l'homme tel que nous estimons qu'il doit être. Choisir d'être ceci ou cela, c'est affirmer en même temps la valeur de ce que nous choisissons, c'est toujours le bien, et rien ne peut être bon pour nous tous sans l'être pour tous. (Sartre 1947, 25—26)

Broadly speaking, both philosophers held the notion that "human being *is* all and nothing more than what that being *does*" (Burnham and Papandreopolous, par.1).

It is likely that while M'Baye seems to have been inspired by the work of Sartre, he chose not to quote him directly given that the French philosopher rejected the existence of God. M'Baye was a man of faith and, contrary to Sartre, he certainly believed in a set of higher moral principles to guide human behaviour. Indeed, M'Baye's speech is marked not only by the influence of his own faith (i.e. Islam) but also that of his wife (i.e. Christianity). Indeed, the social rhetoric of the Catholic Church is widely present in his speech. The language of Sartre, however, certainly appealed to a larger segment of M'Baye's audience than that of the Catholic Church—or that of Christian existentialism or personalism for that matter. Then again, the kind of personalism articulated by the members of Economie et humanisme (e.g. Father Lebret and François Perroux) or in the French literary and political magazine of personalism *Esprit* (directed by Jean-Marie Domenach from 1957 to 1976)—two important sources of inspirations in M'Baye's articulation of the right to development as a human right—borrowed heavily from Sartre. In short, Satre was perhaps not a direct source of influence for M'Baye, but his writings nonetheless remain useful to intepret the intellectual context of the present speech.

M'Baye concluded his discussion of free will by arguing that "Cette faculté c'est le « libre arbitre », dont parle Descartes. Il nous délivre de l'animalité. C'est là une vérité morale et non plus matérielle" (M'Baye 1972, 523). While many philosophers make a distinction between freedom of choice and freedom of will, "Descartes identifies the faculty of will with freedom of choice" (O'Connor 2016, par.3). In fact, he uses the concept of free will and free choice interchangeably in his *Meditations on First Philosophy*.[28] Free will thus understood is a "moral truth" insofar as free choice comes with moral responsibility. The point is that, akin to Descartes, M'Baye considered that the concepts of free will and moral responsibility were closely connected. As such, "acting with free will is just to satisfy the metaphysical requirement of being responsible for one's action" (O'Connor 2016, par.1).

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28 Based on a reading of the 1911 translation of his work by Elizabeth S. Haldane published in *The Philosophical Works of Descartes,* London: Cambridge University Press, 131—200.

In order to move from description to value, M'Baye turned to the theory of ethics developed by German philosopher Immanuel Kant (1724—1804), which could easily be considered as the most famous version of duty-based/deontological ethics (in contrast to e.g. ends-based ethics such as utilitarianism or character-based ethics such as virtue ethics). According to Kant, morality is based in a rational respect for persons (moral agents) as the foundation of value. In addition, "morality and freedom reciprocally imply one another" and therefore "to act morally is to exercise freedom, and the only way to fully exercise freedom is to act morally" (Rohlf 2016, Section 5.4, par.1). From this particular perspective, the morality of our action is not evaluated based on their consequences (be they intended or not)—as the philosophical theory of ethics underlying the case for reparations for colonialism discussed above would have it. Rather, our actions are evaluated as right or wrong according to "a single fundamental principle of morality, on which all specific moral duties are based" (Rohlf 2015, Section 5.1, par.2). This formal principle of duty, according to Kant, is the categorical imperative. The idea underlying this central concept in Kantian ethics is well summarized in the following passages of the German philosopher's work, which M'Baye quoted during his 1972 speech: "[Kant] nous dit : « Agis comme si tu étais en même temps législateur et sujet », et il ajoute : « N'agis que selon une maxime dont tu puisses vouloir en même temps qu'elle devienne une loi universelle »" (M'Baye 1972, 523). Put simply, the categorical imperative could be interpreted as "an objective, rationally necessary and unconditional principle that must always be followed despite any natural desires or inclinations to the contrary" (Johnson and Cureton 2016, par.1). According to M'Baye, no one other than Kant could provide better support in the quest for development ethics, for it had to be a categorical imperative (M'Baye 1972, 523).

In this regard, M'Baye raised the question, informed by the principle of solidarity, of our responsibility to help people in need. Ultimately, he argued, being a man meant being free and accepting the freedom of others (1972, 523). Nonetheless, he subsequently remarked along with French Catholic writer and left-wing intellectual Jean-Marie Domenach—who he had met in the 1950s, during his stay in Paris—« un affamé est théoriquement un homme libre ; pratiquement il reste un esclave » (M'Baye 1972, 524). What significance can freedom have, M'Baye asked, for a man who is going to die of hunger? From his point of view, the rights proclaimed in the UDHR were meaningless for those who vegetated in starvation, disease and ignorance. The reference to Domenach here denotes the influence of Christian personalism in M'Baye's search for justifications for the human right to development. Indeed, Domenach served as secretary of the personalist journal *Esprit* from 1946 to 1957 and as its editorial director from 1957 to 1976. As a philosophical school of thought, personalism shares many of the ideas of existentialism. Personalism, for instance, was advocated by Christian existentialist philosopher Søren Kierkegaard.

Quoting Vasak, M'Baye added that, as participants in humankind, we first had to seek to conquer human selfishness, which had « a un contenu agressif et constitue à cet égard une maladie qui menace le corps encore fragile des droits

de l’homme » (Vasak 1968, 2). Likewise, the selfishness of nations had to give way to an aspiration towards the universal. Our first instinct was invariably towards ourselves or those who were close to us (e.g. family, fellow citizens), while what was remote from us, which seemed by essence hostile, aroused our own hostility. Similarly, the feeling that inspired us to perform acts of charity only aroused when poverty came very close to us. However, in those cases charity had already become a duty. Examples of this duty to the poor could be found in religious texts and the writing of religious figures. For instance, Saint Ambrose used to say “Ce n’est pas de ton bien que tu fais largesse au pauvre, tu lui rends ce qui lui appartient” (M’Baye 1972, 524). For his part, the prophet Mohammed had made the duty of charity one of the five pillars of Islam. This interpretation of charity as an obligation was not exclusive to religious figures. In his answer to the question “Why help underdeveloped countries?”, for instance, Pearson had replied: “It is only right that those who have should share with those who have not” (Pearson 1969, 8, quoted in French in M’Baye 1972, 524). Elsewhere, Pearson argued more explicitly that “[t]here [was] a moral obligation to assist,” for it was “part of the higher nature of man to help those who need help. It [was] only right for the strong to help the weak, for those who [had] to share with those who [had] not” (Pearson 1970, 32).

Our hearts and minds, M’Baye emphasized, bear the stamp of this precept within the familiar circle in which we live. However, this was no enough; a gradual effort had to be made to enlarge the familiar circle from the individual to the family, to the city, to the nation. Each stage had called for the renunciation of a particle of freedom or sovereignty for the benefit of the collective entity, which had been invested with a responsibility. By way of illustration, M’Baye provided the following example:

> en passant du système de la vengeance individuelle au système de la vengeance collective, puis à la loi du talion, la société a fait un grand progrès. Elle est passée de l’individu au groupe, organisé au niveau du clan ou de la tribu qui endosse la responsabilité de prononcer la sentence et de punir les coupables. Cette progression a abouti à la création des Etats qui tendent à établir un système dans lequel l’Autorité commune assume la responsabilité du groupe tout entier jusque, et y compris, ses fautes, ses erreurs, ses maladies ou simplement son état. C’est toute la base de la sécurité sociale sous ses formes les plus variées. (M’Baye 1972, 525)

According to M’Baye, a universal approach was now the order of the day for the redistributive programmes that had characterize the organization of social relations under the modern welfare state system. While racial, religious or other barriers could considerably slow down the march of humanity towards total solidarity, all these forms of selfishness would ultimately give way to the emergence of a broader conception of society (M’Baye 1972, 525). Akin to early twentieth-century solidarist lawyers such as Nicolas Politis, M’Baye considered the individual as “situated in a historical continuum from family to tribe; tribe to nation; nation to region; region to universal community” (Koskenniemi 2001, 306). From his point of view, solidarity was a condition for the continued existence of a so-

ciety (M'Baye 1972, 525). With reference to the existence of the international society, M'Baye quoted the following passage from Jacques Leclercq's *Le fondement du droit et de la société*:

> La société n'a pas seulement pour but de garantir la liberté dans l'égalité et d'empêcher les hommes de se nuire les uns aux autres, mais d'organiser la vie collective de façon à l'amener au progrès, d'organiser le travail en commun de façon à faire de l'ensemble des hommes un tout collaborant à une œuvre commune, l'œuvre de la civilisation qui se continue de génération en génération, et surtout que les conditions de vie s'améliorant et l'humanité se libérant de la vie primitive soient soumises aux exigences primordiales de la subsistance physique, que les hommes se consacrent à des formes d'activités librement choisies selon les exigences de l'esprit.
>
> Le but de la société est d'assurer d'une vie plus belle, plus humaine, plus libre, grâce aux moyens d'actions accrus que donne la civilisation mise à la disposition de tous, selon une règle d'égalité ». (Leclercq 1947, 209)

Although written over two decades ago—Leclercq wrote this page while under the emotional shock of the wave of generosity provoked by the atrocities of the Second World War and the enthusiasm generated by the adoption of the UN Charter at the San Francisco Conference—the "truth" it expressed was eternal according to M'Baye (1972, 526). Whether or not one agrees with him on this particular point, the fact remains that, at the time, "[a]id-giving as a part of international relations [had] not been widely challenged. Not even public opinion or legislatures in the rich countries [had] in their majority turned against the practice the burden of which they [were] supposed to carry" (Mende 1973, xii).

Let us recall, M'Baye continued arguing, that nineteenth-century Europe, reacting against the golden age of natural law as represented by the previous period, had shut itself up in a narrow philosophical and legal positivism. It took the horrors of the Second World War to awaken it and make it realize that selfishness of men and states was the surest threat to the safety and dignity of each and every one of us. Hence,

> Le droit naturel s'est réveillé en même temps que naissait l'élan de solidarité des suites de la guerre. Certes, il s'agit d'un droit naturel nouvelle manière, différent, dans sa conception, de celui du XVIIIe siècle. Il est encore constitué de lois immortelles, mais qui ne sont plus que des « principes directeurs » et « un idéal de justice », selon l'expression du juriste français Henri Capitant. (1972, 526)

According to M'Baye, human society was in a crisis situation because it aspired to be universal but was still plagued by selfishness. Overcame at the regional level (or on its way to being overcome), selfishness of this kind was still manifest at the level of the international society. The flame of solidarity kindled after the war had not been kept alight. This solidarity had nevertheless led to acts of generosity, which not only had moral but also legal value.

M'Baye concluded his discussion of the moral justifications for recognizing the right to development as a human right by emphasizing its legal dimension. According to him, the right to development was already embodied in international law. It was clearly set forth in the UN Charter as a consequence of the

renunciation of one of the conventional attributes of sovereignty and as an extension of the duty of cooperation. By stating their determination "to ensure, by the acceptance of principles and the institutions of methods, that armed force shall not be used, save in the common interest", the signatory states had renounced the most ancient attribute of sovereignty, namely the right to wage war. (M'Baye 1972, 526) In deciding to create a responsible international society, it was natural to grant it attributes in the sphere of international economic public order. In the words of Lester B. Pearson, the "concept of world community is itself a major reason for international co-operation for development" (Pearson 1969, 10).

In the Preamble of the UN Charter, M'Baye remarked, the signatory states declared their determination "to promote social progress and better standards of life in larger freedoms" and, for that end, "to employ international machinery for the promotion of the economic and social advancement of all peoples." Articles 55 and 56 of the UN Charter were even more explicit in that regard. Taking its point of departure in the principle of equal rights and self-determination of peoples, UN member states had pledged themselves to promote "higher living standards, full employment, and conditions of economic and social progress and development; solutions of international economic, social, health, and related problems; and international cultural and educational co-operation." UN member states had further pledged themselves "to take joint and separate action in co-operation with the Organization for the achievement of [these] purposes."

In addition, M'Baye further remarked, the UDHR proclaimed economic and social rights in its articles 22 to 27. As early as 1952, the UN Secretariat was tasked by the UNCHR to elaborate a report on the activities of the UN and the specialized agencies in the field of ESC rights. This was to represent one of the first steps towards the establishment of the ICESCR, which was to be adopted by the UNGA only in December 1966. Since all that, international development agencies had multiplied. Today there were no less than 20 such institutions, to which had to be added national and regional ones. Finally, all the specialized agencies, in their constitutional texts, proclaimed their faith in the common prosperity of humanity and in the necessity to establish, maintain and strengthen international cooperation between all the nations of the world, in view of the principle of universal solidarity. (M'Baye 1972, 526—527)

In the light of the above, M'Baye expressed the view, as a human right, the right to development was not only a right in the philosophical sense of the term. It also corresponded to the definition provided by jurists, especially that given by Edmond Picard, of a right as "une force… réalisée sous forme de jouissance, s'exerçant par un sujet sur un objet et protégée par la contrainte sociale…" (M'Baye 1972, 528). The right to development thus understood implied a right to the means, both human and material, to development. While he recognized that this dimension of the right to development raised the issue of the tensions existing between the obligation of the state to develop and its obligation to respect and protect individual rights and freedoms, he chose not to address it during his speech. Instead, he kept the focus of his analysis at the international level—i.e. at

the level of the relations between the developed and underdeveloped countries—as he had originally intended.

Accordingly, M'Baye moved to discuss the right of underdeveloped countries to use their natural resources freely. In 1962, he observed, the UNGA had adopted a declaration in which it proclaimed the right of peoples and nations to permanent sovereignty over their wealth and natural resources. Upon this sovereignty was established the right to nationalize or expropriate foreign investment property. Some countries had used this right as means of retaliation or coercion against more powerful economic partners (e.g. Algeria, Iraq, and Libya for oil and Zaire, Zambia, and Chile for copper). It should be noted that the right of peoples and nations to permanent sovereignty over their wealth and natural resources is not unlimited. Article 4 of the 1962 Declaration states that "nationalization, expropriation or requisition shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interest, both domestic and foreign" (A/RES/1803 (XVII) (1962)). All the same, decisions to nationalization or expropriate foreign property investment could easily be legitimized as means to development at the time. The point M'Baye wished to advance in this regard was that the nationalization of Algerian oil and other similar cases had shown to the underdeveloped countries that they were not completely helpless in front of the power of the developed countries to regulate the international monetary system. It had also shown how, under certain circumstances, the underdeveloped countries could impose their will. The free disposal of wealth and natural resources, he observed, was neither more, nor less than the corollary of the right of peoples and nations to self-determination; being master of its destiny involved being master of the soil and what it contained. (M'Baye 1972, 528)

According to M'Baye, development was a human right precisely because there would be no human rights without development (1972, 530). This was well exemplified by the fact that the rights to the means to development discussed above, and the need to promote them, were enshrined in ICESCR Article 1, which proclaimed the right of all peoples to self-determination, including the right to freely dispose of their natural wealth and resources and to freely pursue their economic, social and cultural development, and Article 2, in which each State Party had pledged to undertake to take steps to the maximum of its available resources to achieve progressively the full realization of the rights enclosed in the ICESCR, without discrimination of any kind (M'Baye 1972, 528). In reality, he continued, it was the same for all other human rights and fundamental freedoms. These rights were always and necessarily related to the right to exist, to live well and always better, and so to develop (ibid.). In the words of Leo Strauss, "he that is master of himself and his own life has a right, too, to the means of preserving it" (Strauss 1953, 227; quoted in French in M'Baye 1972, 529, fn.30).

After saying a few remarks about the history and evolution of human rights law, M'Baye concluded "[l]e droit au développement est descendu de la Morale au Droit" (1972, 529). The international community had only treated hu-

man rights as a subsidiary matter prior to the Second World War—the sole exception being the ILO. The decision-making process of the League of Nations in the field of human rights was so dilatory, he argued, that its efforts were stillborn. Similarly, the problem of development conceived within the framework of economic interdependence had been entirely absent from the concerns and priorities of the member states of League of Nations. The UN Charter, he remarked, had been the first instrument to put on the international political agenda the idea of an overall codification of human rights (i.e. one that went beyond the scope of traditional CP rights to encompass ESC rights), to set them up as "aims" on equal footing with peace and security. It was not sure, however, whether this change of status was to be celebrated. It was, he opined, as if this promotion was an end in itself. It took twenty-one years to draft and adopt the International Human Rights Covenants. However, since their adoption, these instruments had laid dormant and those who had contributed to their elaboration had felt they had accomplished their work.

Here, M'Baye echoes the suspicion underlying the most influential criticisms of legal positivism: "that it fails to give morality its due" (Green 2009, Sec. 3, par.1). As Leslie Green remarks, the main point for critics of legal positivism is that

> [a] theory that insists on the facticity of law seems to contribute little to our understanding that law has important functions in making human life go well, that the rule of law is a prized ideal, and that the language and practice of law is highly moralized. Accordingly, positivism's critics maintain that the most important features of law are not to be found in its source-based character, but in law's capacity to advance the common good, to secure human rights, or to govern with integrity. (Green 2009, Sec.3, par.1)

He thus concluded his speech by arguing that it was now generally accepted, as it had been recognized at the Teheran Conference, that "there [was] a profound interconnection between the realization of human rights and economic development." Similarly, there could be no "true" development without the enjoyment of human rights. Development and human rights were bound in a cumulative dialectical process; the right to development was a human right. (M'Baye 1972, 529)

In summary, M'Baye adopted a natural law (as opposed to positivist) approach to international law in order to justify the redescription of the right to development as a human right. For him, the validity of international law was not measurable through state consent but through its consistency with higher state of reason and morality. As such, there were fundamental principles of international law to be discovered and accepted by the international community of state as international norms of conduct and behaviour. Such was the case with the principle of solidarity, which justified the recognition that the right to development was a human right.

6.2.4 The right to development versus development as a human right

Why are moral arguments outlined above so important? While most of the economic and political justifications advanced by development critiques (and discussed by M'Baye during his speech) could equally serve to justify the right to development *tout court*, the moral justifications and arguments discussed above could only serve to legitimize the right to development *as a human right*. The whole point, as Whelan remarks, is that the right to development as it initially emerged in the debate over international development aid and cooperation, "was clearly *not* a human right" (2015, 95). Put shortly,

> As articulated by Doudou Thiam in 1966,[29] the right to development was framed within an emerging postcolonial critique of the dominant strand of development thinking after World War II—"modernization theory"—which was first fully articulated in W.W. Rostow's "take-off" model of economic growth published in 1960. This development paradigm, in which national economies pass through various stages—from preindustrial "traditional" society toward high-consumption, fully industrialized modernization—was challenged by many Third World states that were influenced by dependency theorists (such as Raúl Prebisch, who was UNCTAD secretary-general from 1963 to 1969). Dependency theory maintained that declining terms of trade thwarted developing countries from moving out of production and trade of primary goods. While critical of this dominant development model, challengers nevertheless still subscribed to the notion that trade was the primary engine of development, a stance that remained a centerpiece of development policy throughout that period […]. It was a central goal of the NIEO to fundamentally alter this trade model—not to replace it. (Whelan 2015, 95)

Most of the issues identified by Whelan, to the exception of the goal of the NIEO, have been discussed more or less extensively in the previous chapters in relation to the debate over the nexus between development and human rights. That being said, two aspects of the right to development rhetoric that accompanied the struggle over those issues need to be brought to the fore here: On the one hand, while the right to development rhetoric made its first appearance at the UN in the mid-1960s, it did not reach the UNCHR before the mid-1970s. As Whelan rightly remarks, "a *real* link between development and human rights was never forged […] through the G-77/NIEO process" (2015, 105). As a matter of fact, the recognition of "'the right to development' as a human right would occur through a process that, at first, was wholly separated from that was going on in the G-77 and UNCTAD" (Whelan 2015, 105). Then again, while that link was being forged at the UNCHR (cf. chapters 3 and 4), the right to development concept was barely mentioned in that forum before its introduction as a human right in 1974. These two aspects are important to keep in mind when interpreting the point of M'Baye's move in redescribing development as a human right and introducing this innovation to the UNCHR. The whole point is that M'Baye's move marks another shift in thinking about the relation between development and human

[29] On September 23, 1966, the Senegalese foreign minister Doudou Thiam gave an impassioned speech to fellow representatives assembled in New York for the opening of the 21st session of the United Nations General Assembly (cf. Whelan 2015, 94).–

rights: they are not only compatible—as Hernán Santa Cruz and other Latin American representatives had long argued—but they are also one of the same thing, namely humanism.

On the other, "while, the right to development rhetoric grew and gained more adherent during various […] UNCTAD summits, outcome documents from those meetings failed to embrace its principles in any robust fashion" (Whelan 2015, 95). Interestingly, however, UNCHR resolution 4 (XXXIII) of 21 February 1977 calls for a study of the international dimensions of the right to development as a human right, *taking into account the requirements of the NIEO*. Should the redescription of the right to development as a human right then be interpreted as an attempt to rescue that concept and its principles by renewing its legitimacy through the normative power of human rights? If so, what were those principles? According to Whelan, an important shift in rhetoric occurred in the G-77/UNCTAD process between UNCTAD II and UNCTAD III. The Group of 77 met in Algiers in October 1967 with a view to adopt a common agenda in preparation of UNCTAD II. The outcome document of their meeting, the Charter of Algiers, identifies a number of economic and social trends impeding the development of the developing countries and underlines the obligations of the international community "to rectify these unfavourable trends and to create conditions under which all nations can enjoy economic and social well-being, and have the means to develop their respective resources to enable their peoples to lead a life free from want and fear"[30]. Although the Charter makes no explicit reference to the right to development, Whelan argues that it "was the 'new world economic charter' that Doudou Thiam envisioned in his 1966 General Assembly speech", the principles of which the right to development concept was meant to carry forward. However, as opposed to the Charter of Algiers, the outcome documents of UNCTAD II failed to formally endorse Thiam's vision for a new economic order. They were finally endorsed by the international community at UNCTAD III, and consolidated with the adoption by the UNGA of the Declaration and Programme of Action for the Establishment of a NIEO and the Charter on Economic Rights and Duties of States.

Now, M'Baye's redescription of development as a human right occurred in-between UNCTAD II and UNCTAD III. As such, his move may fruitfully be interpreted, at least partly, as an attempt not only to bring back the human dimension but also to bring forward an ethical one in international development practice and policies—or rather in the relations between the developed and developing countries—as initially envisioned by Doudou Thiam. Conceived as a human right, the right to development draws the lines for an alternative to a model of international development aid and cooperation which M'Baye perceived as ultimately flawed. The point is that the redescription of development as a human right served to alter the rhetorical dimension in the concept of development. With this redescription, M'Baye attempted to put international development theories and policies, which had long been the exclusivity of the discipline of economics and, as such, articulated in their self-claimed technical-aka-objective language,

[30] www.g77.org/doc/algier~1.htm

under a new moral light. By doing so, he could more easily re-evaluate the terms of the relationship that had been established between the developed and developing countries and call for their transformation.

To fully grasp the innovative dimension of M'Baye's move to redescribe development or rather the right to development as a human right, a final few words about the debate over the emergence and formation of international development law are called for. As professor of law Oscar Schachter wrote, in an article on "The Evolving International Law of Development" published in 1976, at the heart of the controversy was not only the question of "what do we mean by an international law of development" but also "where do we find its content" (Schachter 1976, 1). According to Schachter, there was at least two broad and distinct categories of international instruments that could be identified as pertaining to development. The first category consisted in a "complicated network of international undertakings and arrangements concerned with aid, trade, investment, and the like for the benefit of the less developed countries" (Schachter 1976, 1). These undertakings and arrangements involve international agreements of states and, as such, may be labelled as treaties. While treaties are incontestably a source of international law, "they are, generally speaking, only law for the parties to them" and thus "cannot be regarded ipso facto as law in its normal sense"; "they are more naturally treated as contractual undertakings with specific and limited effects for the parties alone" (Schachter 1976, 1-2). Why, then, speak of an international law of development? At least that is the kind of arguments that had been raised by those who either opposed or expressed scepticism towards its recognition.

Against this view, some begun to argue that one should not look at these international agreements individually but rather "to the large body of international agreements for evidence of state practice that may be 'regarded as law' and for evidence of general principles of law, both recognized by article 38 [of the Statute of the International Court of Justice]" (Schachter 1976, 2). Put simply, they considered that the task of assessing when "state behaviour is transmuted into obligation" was "the very heart of [their] professional activity in dealing with the international subjects of international law" and that this task also extended to the increasing body of undertakings and arrangements dealing with international development (Schachter 1976, 2—3).

The second category consists in "resolutions, declarations, charters of rights and duties, standards, and final acts of conferences," which "do not purport to be treaties but [...] are formulated as norms and requirements of state behaviour, sometimes in juridical terms of obligations and rights" (Schachter 1976, 3). It is noteworthy that while the UN Declaration on the Establishment of a NIEO and the Charter of Economic Rights and Duties of States had been adopted by the time Schachter wrote these lines, they were nascent ideas when M'Baye delivered his speech on the right to development as a human right at the International Institute of Human Rights, in July 1972, and introduced the concept to the UNCHR in 1974. However, they had been adopted by the UNGA by the time the UNCHR

recognized the right to development as a human right. This historical fact, however, does not minimize the relevance of the second category of instruments identified by Schachter for the interpretation of M'Baye's redescription of development as a human right. It still provides a good point of departure for an in-depth interpretation of the contingency and controversy of M'Baye's move inasmuch as the UDHR, along with most international human rights instruments that adopted by the UN, also fell under that category of instruments. The recognition of development as a human right would mean that these international human rights instruments would also have to be included in the content of international development law. Once included in the content of international development law, human rights would provide a set of moral principles or norms to describe ethical standards of conduct and behaviour in international development cooperation.

According to Schachter, the principles contained in this second category of instruments were not neutral (1976, 4). On the contrary, "[t]hey are, by and large, challenges to the existing order" and "their adoption by large majorities through parliamentary and conference voting procedures is seen as an attempt to impose obligatory norms on dissenting minorities and to change radically the way in which international law is created" (Schachter 1976, 4). Developing country representatives often favoured the adoption of this kind of international instruments over the multilateral treaties falling under the first category discussed above. Put differently, developing country representatives have had a tendency to insist "on the need to elaborate general principles as opposed to detailed and precise legal rules" (Cassese 1986, 119).

> To them, international law is relevant to the extent that it protects them from undue interference by powerful States […] and is instrumental in bringing about social change, with more equitable conditions stimulating economic development. Their legal strategy in international relations consequently hinges on two important principles: State sovereignty and radical legal change. (Cassese 1986, 119)

Although Cassese wrote these words in the mid-1980s, they capture fairly well how developing country representatives were beginning to turn to the second category of international instruments identified by Schachter as means to effect change in their relations with the developed countries in the 1970s.

According to Cassese, several reasons may account for the preference given by developing country representatives to principles over rules in the conduct of international affairs One of them is "the fact that these principles, being general and sweeping in character, are more acceptable to Western countries than detailed rules in areas where they oppose new developments demanded by the Third World" (1986, 120). He explains: "Often the West accepts a principle but enters the explicit or tacit reservation that in any case it is no more than a political guideline or that it is too wholly to possess definite legal content" (Cassese 1986, 120). At the same time, as Schachter remarks,

> even within the conservative frame of article 38 of the statute, legal effect may be given to the collective pronouncements of the General Assembly and of international conferences despite their formally non-binding character. Clearly, we can-

> not simply banish the problem of legal significance by characterizing the declaration as political or by relying on the absence of formal authority to adopt binding decisions. (Schachter 1976, 5)

At the time, international legal experts were only beginning to develop ways to assess the legal significance of these instruments—something Schachter himself endeavoured to do with respect to international development law (see Schachter 1976, 5—7). The point, as Cassese further explains, is that despite "their misgivings and reservations [...] Western countries do not ultimately oppose the reaffirmation of principles in official documents" (1986, 120). This is something developing country representatives "count [...] as a considerable success, for it makes room for the gradual transformation of general tenets into definite standards of behaviour to be used in appraising the conduct of States and exposing it to public condemnation in case of violation" (Cassese 1986, 120.).

The recognition of such a principle (e.g. development as a human right) in an international document such as a resolution or a declaration (e.g. UNCHR resolution 4(XXXIII) (1977)), is usually not considered the end but the beginning of the struggle by developing country representatives. In other words, "it is the starting point of a long process in the course of which the principle is restated, specified, elaborated, expanded, updated, in short gradually made workable and operational as in international parameter" (ibid.). This interpretation of the general attitude of developing country representatives towards international law is well-suited to understand why—albeit not how—representatives of states members of the UNCHR recognized development as a human right and called for a study of its international dimension through the adoption of UNCHR resolution 4 (XXXIII) on 21 February 1977.

6.3 Narrowing the gap with development as a human right

It is in the argumentative context of the UNCHR debates over the report of the Special Rapporteur as outlined in Chapter 5 that M'Baye advanced the view that "development should be accorded the status of a human right" (E/CN.4/SR.1269, 31 (1974)). He did so twice before the debate leading to the adoption of UNCHR resolution 4 (XXXIII) of 21 February 1977: first during the UNCHR debate of 1974 over the question of the realization of the ESC rights contained in the UDHR and in the ICESCR and special problems relating to human rights in developing countries. Then again, during the UNCHR debate of 1975 over the same item. This section offers a close reading of these interventions before turning to the UNCHR debate of 1977.

6.3.1 The UNCHR debate of 1974

During the UNCHR debate of 1974, M'Baye recognized the need for an "overall" approach to the question of the realization of the ESC rights as advocated by a number of developing country representatives, who called for an emphasis on

the international rather than the national dimension of the special problems relating to human rights in developing countries. His suggestion to approach development as a human right was in many ways a contribution to this call.

However, like Manouchehr Ganji, he was well aware of the potential threat that an approach exclusively focused on the international dimensions of the problem could represent to the universal realization of human rights. While such an approach had not necessarily been presented as entailing an outright rejection of the humanist approach, a number of representatives of developed country (often those with an authoritarian regime) had nonetheless advocated it mainly for two reasons. They wanted to challenge the importance accorded to the realization CP rights in contexts where basic human rights, such as the right to food, went frequently unmet. They wanted to justify the priority accorded by their government to their country's economic development over the promotion and protection of those rights. From M'Baye's point of view, however, the proper articulation of an overall approach to the question of the realization of ESC rights and special problems relating to human rights in developing countries necessarily entailed humanist considerations.

According to Gilabert, "the humanist story about abstract rights leads naturally to the political story about specific rights once we take account of the institutional context in which the protection of the abstract rights is engaged" (2011, 445). This line of argument represents a good point of departure in order to interpret the opening sentences of the speech delivered by M'Baye during the UNCHR debate of 1974, where he discussed very briefly the history of international human rights. It was with the UN Charter, he argued, that the international community had attempted for the first time to deal systematically with the question of human rights, which were no longer limited to traditional CP rights, but extended to ESC rights. The latter set of rights

> were then viewed as *goals to be striven for* in the same way as peace and security, and States accordingly committed themselves individually and collectively to safeguard such rights. Individually, it was incumbent upon them to lay down national standards guaranteeing respect for the right to health, education, work, social security and so on. (E/CN.4/SR.1269, 28 (1974) [emphasis added])

He added that while "such rights were generally ensured by constitutional provisions [...] there was a difference between the enunciation of principles and their application" (E/CN.4/SR.1269, 28 (1974)).

Underlying his remark was also a critique of the situation in many African states, which had failed to match their words with appropriate and sufficient action. On the one hand, many African leaders were asserting the importance of satisfying ESC rights as part of protecting other rights, but some were clearly doing so "with the intention of using rhetoric as a ploy to suppress civil and political rights" (Agbakwa 2002, 178). Indeed, repressive regimes in Africa at the time were often claiming that they could not allow basic CP rights in their various states so long as the population suffered from hunger and the country remained in a situation of underdevelopment. While M'Baye generally agreed with the view that economic development might lead to improvement in the enjoyment

of CP rights (i.e. so long as economic development translated into improved living standards), he rejected the claim that the curtailment of the CP rights of a people could contribute to the improvement of their ESC rights and development. On the other, akin to the Special Rapporteur, M'Baye was of the view that any quest for meaningful development ought to be predicated on the realization of ESC rights. As such, the conditions of underdevelopment in which many African states found themselves could not justify outright non-enforcement of ESC rights. In the current era, a government's legitimacy was largely a function of its ability to guarantee the security and dignity of its people and thus to guarantee and protect their ESC rights.

Contrary to the Special Rapporteur, however, M'Baye considered the fact that many developing states had failed to match their words with appropriate means and action was not only because of a lack of political will at the national level. Akin to the vast majority of developing country representatives who spoke during the UNCHR debate, he was of the view that domestic reforms and policy measures would not be enough to overcome the structural problems preventing the realization of the ESC rights in developing countries, which bore an international dimension. Using his country as an example, M'Baye argued that it "did not limit itself to proclaiming such rights, but had attempted to implement them within the framework of a vast programme of social justice."

He proceeded with an enumeration of the various reforms and other measures carried out by his government with a view to the progressive realization of ESC rights, adding that their purpose "was to reduce the inequities in the distribution of wealth, which were in the final analysis, the root of all human ills." Despite taking similar measures, however, the economic and social conditions in the poor countries were worsening to such an extent that the use of the words "developing countries" seemed to be a misnomer. It would be more appropriate to say "underdeveloped", and some had even spoken of "underdeveloping countries." From his point of view, there could be little prospect of improvement in the universal realization of ESC rights so long as the development of the economies of the underdeveloped countries was blocked by a wholly unfair international economic and financial system, which did not pay equitable prices for their labour. (E/CN.4/SR.1269, 28 (1974)) In short, the universal realization of ESC rights called for profound changes in the structure of the international economic order—an argument that resonates both with the view advanced by representatives of members among the Group of Latin American States and the rhetoric of the NIEO.

In this regard, M'Baye remarked upon "the responsibility of the international community to transform the system so that each country could benefit, according to its efforts, from the general prosperity." The international community had an obligation to match its rhetoric on ESC rights with commensurate programmes and action at the international level. To justify this view, he advanced arguments similar to those developed by postcolonial critiques of development he had summarized in his inaugural lecture delivered at the International Institute of Human Rights in 1972. Among others, he denounced the persistence of

“the old colonial system of domination”, which he argued “still survived under less obvious forms” in relations between underdeveloped and developed countries. For example, Senegal and the Ivory Coast received very little in exchange for their raw material in comparison to the high prices they had to pay for manufactured goods. This“[d]eterioration in exchange rates meant that the export earnings of the developing countries were failing lower and lower.” He also denounced the lack of representation and participation of the underdeveloped countries in the international monetary system. Underdeveloped countries had no control over that system; adjustments were made to meet the needs of world trade as if they were not involved. By way of illustration, he pointed out how “the devaluation of the dollar had resulted in an 8 per cent drop in income for the large majority of such countries” (E/CN.4/SR.1269, 29 (1974)).

While there was no element of novelty in these arguments, it is interesting to note how M’Baye used them to advance his proposal to approach development as a human right against the recommendations of the Special Rapporteur. He thus argued that the consequence of the current international situation outlined above “was that, for all their good intentions, the underdeveloped countries would not be able to guarantee their nationals full enjoyment of economic, social and cultural rights.” Indeed, despite their “commendable efforts […], less than 25 per cent of the children attended school, disease was rife, unemployment was growing and housing was far from adequate” in many countries (E/CN.4/SR.1269, 29 (1974)). From his point of view, “it was useless to try to engage the interest of the peoples of the Sahel, for example, in a population programme when they were dying of hunger” (ibid.) The example utilized by M’Baye is worth remarking upon, not the least because it plays on the commonplace argument advanced by authoritarian regimes that hungry people do not care for political freedom. This time however, the argument serves to illustrate the limitations of the approach suggested by the Special Rapporteur, which emphasized domestic reform and policy efforts to address the special problems relating to the realization of ESC rights in developing countries. More precisely, it was a powerful way to illustrate how international efforts for the realization of fundamental human rights, such as the right to food, took precedence over the implementation of national efforts aimed to tackle other obstacles to economic development in developing countries, such as population growth. Recommendation 10 of the Special Rapporteur emphasized that since population was a key factor in the process of development and as the realization of ESC rights was closely related to “population growth, structure and distribution,” governments, the UN, the specialized agencies and NGOs “should give high priority to the adoption of policies appropriate to the solution of problems associated with fertility, morbidity and mortality, population structure, internal population distribution and international migration” (E/CN.4/1108, 311 (1975)). From M’Baye’s point of view, this kind of measures could not be implemented where human survival needs, such as food, were frequently unmet—as had been the case in the Sahel, which had been plagued by a history of drought and famine.

What is even more interesting is how population policies of the kind advanced by the Special Rapporteur were increasingly popular among UN organs and specialized agencies concerned with the problems of development at the time. M'Baye was perhaps aware of the dangers inherent to the argument of population pressure supporting these policies. Population pressure was presented as one of the major obstacles to development in the developing world at the time. An important number of development practitioners and policy-makers considered the curtailment of certain social rights in the implementation of population programmes and policies an acceptable practice. Yet, as Goodin remarks in an article about the development-human rights trade-off published in the late 1970s, "no one, however inured to ordinary infringements of rights, can help being taken aback at the forced sterilization policies of Mrs. Gandhi's recent government" (1979, 34). To be sure, the set of measures listed by the Special Rapporteur under Recommendation 10 were in no way comparable to the coercive and compulsory sterilization policies adopted by the government of India in April 1976 under the National Population Policy Statement. On the very contrary, the measures advanced by the Special Rapporteur to curb population growth were all non-coercive in nature. As the Special Rapporteur had himself pointed out in his report, the problem of population growth could effectively be kept in check in the long-term by adopting a development strategy based on the equitable satisfaction of basic needs. However, the very inclusion of population programmes and policies in his recommendations effectively lent legitimacy to the prioritization of such policies, whether coercive or not, by governments, the UN, the specialized agencies concerned and NGOs.

During his speech, M'Baye also addressed the question of the relationship between development, human rights, and world stability. After remarking that the US representative had rightly stressed the link between development and human rights, he turned to an evaluation of the outcome of the first UN Development Decade. While "it had been hoped that a 5 per cent growth rate would be achieved […] such hopes had quickly evaporated." Indeed, "only 65 per cent of the world's population had achieved a 3.5 per cent rate of growth. During the Decade, 60 per cent of the world population received only 6 per cent of the increased in GNP for the world as a whole." What is more, the target for aid fixed at the first session of UNCTAD had similarly not been made by any country. Instead, "the average rate was 0.34 per cent, i.e. 20 per cent of the amount which was spent in the developing countries on advertising." On that point, he concluded, "after so many disappointments, the underdeveloped countries might well feel that development was not something to be negotiated but something to be seized by any possible means." (E/CN.4/SR.1269, 30 (1974))

Turning to a discussion of the negative consequences of that current state of affairs for the maintenance of international peace and security, including the question of friendly relations among nations, he argued

> The responsibility for ensuring that everyone enjoyed human rights fell largely upon the rich countries. Such a responsibility was the price of international security. Pope Paul VI had stated that development was the new name for peace, but his warning had

> gone unheeded. As the representative of France had said, creative imagination was needed. (E/CN.4/SR.1269, 30 (1974))

The linkage between world peace, development and human rights and the stress laid on the responsibility of the developed countries in that regard, supported with reference to the teachings of the Catholic Church, strongly resonates with the Latin American vision of international human rights introduced in Chapter 4. The reference to Catholic Faith could also be interpreted as a rhetorical strategy on the part of M'Baye to rally the support of a number of developed country representatives for his cause. Indeed, at the time, Catholicism was the most important religion in Western Europe: France, Belgium, Luxembourg, Spain, Portugal, Italia, Malta, Ireland and Austria were all countries with a Catholic majority. For their parts, Switzerland, the Netherlands and Germany had important Catholic minorities. He continued,

> The developed countries were responsible for international events and their consequences. They caused such events with only their own interests in mind and should therefore share the disadvantages, since they benefited from the advantages. They must realize that the right to development was the natural outcome of the international solidarity among States embodied in the Charter. (E/CN.4/SR.1269, 30 (1974))

In a way, it could also be argued that the Senegalese representative was advocating the application of the socialist principle "from each according to their abilities, to each according to their needs" to relations between developed and developing countries. As Gilabert observes, "the Abilities/Needs Principle is arguably the ethical heart of socialism" (2015, 197). It might be interpreted so as to offer "appealing ideas of solidarity, fair reciprocity, recognition of individual differences, and meaningful work", most of which were central to M'Baye's initial considerations for an ethics of development and concomitant redescription of the right to development as a human right. To be sure, he held a conception of socialism compatible with democracy and freedom—one that, while comparable to various forms of socialism found in Western Europe and Latin America at the time, was somewhat also different. As such, he was very careful not to use any concepts too strongly associated with either side of the Cold War divide. This is certainly why he added, towards the end of his speech, that what he had said so far "in no way implied that all ideologies and methods should be uniform. Africa would create its own ideologies, just as the USSR and China had done." (E/CN.4/SR.1269, 30 (1974)) M'Baye thus concluded his speech by arguing "development should be accorded the status of a human right" (E/CN.4/SR.1269, 31 (1974)).

M'Baye's first attempt at redescribing development as a human right in the particular context of the UNCHR debate over the question of the realization of ESC rights and special problems relating to human rights in developing countries highlights an important aspect of his move. Put simply, the redescription of development (or the right to development for that matter) as a human right meant that the concept could no longer be used to justify the curtailment of CP rights or the postponement of the realization of ESC rights. This is an aspect, as this chapter uncovers, which representatives of authoritarian regimes at the UNCHR either did not fully comprehend or purposefully decided to ignore. However, for

this aspect to materialize, another and more central aspect of his move had to be accepted. The responsibility for development went far beyond the national level; development of all individuals and peoples was the mutual and reciprocal responsibility of all states in the international community.

6.3.2 The UNCHR debate of 1975

In elaborating upon the right to development as a human right during the UNCHR debate of 1975, M'Baye adopted a different strategy. This time, instead of justifying his proposal against the recommendations of the Special Rapporteur, he aimed to persuade developed country representatives from the Group of Western European and Other States. Accordingly, he began by remarking that some (developed country) representatives had expressed the view "that the UNCHR might duplicate the work of other bodies by concerning itself with [ESC] rights" and argued "although a number of United Nations organs dealt with development, the Commission approached it from another angle, that of development as a human right" (E/CN.4/SR.1297, 65 (1975)). He then endeavoured to explain in more detail than at the previous session the nature and scope of the conceptual framework provided for by the right to development as a human right and why it was called for at this particular point in time.

His first argument concerned the individual dimension of development. He thus pointed out that,

> Living standards depended on several elements—health, food, education, employment, housing, social security, clothing, leisure and individual freedom—which were set forth in the Universal Declaration on Human Rights and in the International Covenant on Economic, Social and Cultural Rights. The responsibility incumbent on every State to assure to each individual a living standard adequate for surviving in dignity had been made a legal obligation by the Declaration and the Covenant and thus constituted a right to development for every citizen. (E/CN.4/SR.1297, 65 (1975))

He then turned to refute one of the most common objections to the admission of the right to development as a human right, namely the distinction established between group rights and individual rights. Mostly, his arguments in that regard echoed the ones he had developed in his inaugural lecture at the International Institute of Human Rights in 1972. He thus argued,

> There were some who considered that development concerned a particular group or community—a State, region or continent—and that human rights were traditionally those of man in isolation and often even of a man opposed to a group, but it was high time to discard the idea. Ever since the reaction against "*laisser faire* and make way" had led, in the nineteenth century, to the concept of economic and social rights based on the mobilization of a country's material and human resources in order to ensure the betterment of all, it had become impossible to speak of development without referring to the individual. That was no cause for surprise, since man's first right was the right to life, and he who had the right to live also had the right to live better. (E/CN.4/SR.1297, 65 (1975))

Emphasizing the individual dimension of development was the only way to persuade, at the philosophical level at least, proponents of what has previously been

identified as the "humanist" or "individualist" perspective on human rights, about the admissibility of the right to development into the conventional language of international human rights of the UNCHR. According to proponents of this approach, "human rights are pre-institutional claims that individuals have *against all other individuals* in virtue of interests characteristic of their common humanity" (Gilabert 2011, 440 [emphasis added]). As a result—and contrary to proponents of the overall-cum-structural approach to human rights—they generally do not admit group rights in their definition of human rights. The fact that, two years later, the Italian and German representatives voiced their concern over the incompatibility of the right to development as a group right with the right to development as an individual human right seems to confirm this interpretation (see E/CN.4/SR.1397, 7 and 8 (1977)).

M'Baye also included a novel element in his justification of approaching development as a human right, by drawing attention to article 7 of the Charter on Economic Rights and Duties of States, which reads as follows:

> Every State has the primary responsibility to promote the economic, social and cultural development of its people. To this end, each State has the right and the responsibility to choose its means and goals of development, fully to mobilize and use its resources, to implement progressive economic and social reforms and to ensure the full participation of its people in the process and benefits of development. All States have the duty, individually and collectively, to co-operate in eliminating obstacles that hinder such mobilization and use. (A/RES/3281 (XXIX) (1974))

At this point, it might be useful to remind the reader that the initial purpose to be served by redescribing the right to development as a human right was not limited to the economic dimension of the problems of the relations between developed and developing countries. The point of this redescription was more far-reaching: it was to serve as a point of departure for development ethics (M'Baye 1972, 523). As such, it would provide a means to challenge the status quo, by securing the application of the full array of concepts, norms, conventions and machinery normally used for the human rights area onto the sphere of international development assistance and cooperation. As the main UN body concerned with the protection and promotion of human rights, the UNCHR was the ideal forum to fulfil that aim.

In this regard, attention should be given to the final sentence of Article 7, which states that "All States have the duty, individually and collectively, to co-operate in eliminating obstacles that hinder [the] mobilization and use" by a state of its resources in the promotion of the economic, social and cultural development of its people. Article 17 of the same international instrument is even more explicit on the subject:

> International co-operation for development is the shared goal and common duty of all States. Every State should co-operate with the efforts of developing countries to accelerate their economic and social development by providing favourable external conditions and by extending active assistance to them, consistent with their development needs and objectives, with strict respect for the sovereign equality of States and free of any conditions derogating from their sovereignty. (A/RES/3281 (XXIX) (1974))

For M'Baye, however, this was but old wine in a new bottle. As a human right, the right to development had assumed an international dimension already with the UN Charter, which "had for the first time undertaken, at the level of the international community, to systematize human rights", which were "no longer limited to political and civil rights but encompassing economic, social and cultural rights." As a result of the adoption of the UN Charter, "a new obligation had been born for the international community, as a logical consequence of the duty of co-operation which every State had taken upon itself by adopting the Charter." (E/CN.4/SR.1297, 65 (1975))

This obligation, subsequently elaborated upon in article 22 of the UDHR, in the International Covenants on Human Rights and more recently in article 17 of the Charter on Economic Rights and Duties of States, "was more particularly incumbent on the rich countries" (E/CN.4/SR.1297, 65 (1975)). He explained,

> The obligation was most rightly imposed upon the rich and the powerful States because of their responsibility for the current situation of the under-developed countries and for the course which world events had taken. Nothing was more fair, indeed, than the demand that satisfaction regarding the right to development should be given by countries which were responsible for slavery and colonization, for the economic exploitation of the under-developed lands, for the existing monetary system and for the veto in the Security Council. (E/CN.4/SR.1297, 65—66 (1975))

Once again, the arguments advanced by the Senegalese representative to justify the recognition of the right to development as a human right concept by the UNCHR largely echoes those developed during his inaugural lecture delivered in 1972 at the International Institute of Human Rights. It also resonates strongly with the views expressed by developing country representatives during the debate. There would therefore be no need to expand further on this part of the empirical narrative, was it not for the change in the tone employed by M'Baye.

Adopting an urgent, more dramatic tone, M'Baye argued that the realization of the right to development "was no longer a question of a mere legal obligation" (E/CN.4/SR.1297, 66 (1975)). In fact, the developed countries had no choice but to make it happen. While it would be tempting to interpret this statement as an expression of the preoccupations of the NIEO, M'Baye's following arguments hint to something else. To justify his view, he remarked that "[a]ccording to the recent conclusions of the Club of Rome the international community was, as it were, condemned to solidarity if it wished to avoid the catastrophe to which the selfishness of States was directly leading" (ibid.). In a nutshell, the conclusions of the authors of the report "*The Limits to Growth*" commissioned by the Club of Rome were that in closed system like Earth, it was impossible for population, food production, industrialization, the exploitation of natural resources to continue to experience exponential growth without sooner or later "driv[ing] the world system towards the limits of the earth and ultimate collapse" (Meadows *et al*. 1972, 184). The report concluded that to prevent this disaster, a collective commitment would be needed to achieve a "controlled, orderly transition from growth to global equilibrium" (ibid.). To be sure, M'Baye had previously discussed the interrelationship between development, human rights and the

maintenance of peace and security, emphasizing the negative impact of global inequalities on world stability. This time, however, he brought in the economics and scientific arguments of the Club of Rome to illustrate that "the ethics of the wolf and the lamb were obsolete and that the right of the stronger was not always the better-founded" (E/CN.4/SR.1297, 66 (1975)).

According to M'Baye, the only solution to get out of the impasse laid "in solidarity and organic growth, in awareness of the fact that the countries of the world were interdependent and could not solve their problems alone" (E/CN.4/SR.1297, 66 (1975)). These two ideas—i.e. "solidarity" and "organic growth"—are central to the right to development concept advanced by M'Baye as the foundation for an overall approach to human rights. On the one hand, the idea of solidarity denotes mutual support within a group, which might in turn connote an ideal of reciprocity within that group. On the other, the idea of organic growth denotes a growth rate achieved by increasing output, customer or market base expansion, diversification, or new product development as opposed to mergers and acquisitions. The latter, associated with inorganic growth, might connote the practices of colonialism and neo-colonialism. As such, the right to development concept articulates an ideal of development according to which each country should produce and distribute according to their abilities, but with the needs of other countries (i.e. beside their own) in mind. Development would thus be a collaborative rather than a competitive enterprise.

The right to development thus conceived, i.e. as a human right, has strong connotations of socialism as it "involves positive duties to help make the life of other better, or, as Einstein puts it 'a sense of responsibility for [one's] fellow men'" (Gilabert 2015, 199). In this regard, M'Baye argued

> Salvation called for an attack on the selfishness of men and States, and the Commission on Human Rights certainly seemed to be the appropriate weapon for such an undertaking. Each member of the Commission should listen to the inner voice of brotherliness which bound him to others and should act according to the words of St. Ambrose: "It is not your property that you give away to the poor: your return to them what is theirs." (E/CN.4/SR.1297, 66 (1975))

Here again, M'Baye deployed Christian religious rhetoric to advance his arguments, which might be interpreted both as a move to gain the moral high ground and to rally the support of Christian representatives or at least those from countries with a large Christian population. A large number of them were found among members of the Group of Latin American States and the Group of African States, but also among members of the Group of Western European and Other States.

Interestingly, the only developed country representative—and only other representative for that matter—to comment upon M'Baye's proposal to approach the right to development as a human right during the UNCHR debate of 1975 was Theodoor van Boven of the Netherlands. It might be worth mentioning from the outset that, throughout his career, van Boven devoted a lot of attention to the idea of "emancipation" and its correlated principle, the right to self-determination. According to van Boven, "the realization of the right to self-determination

‘is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of these rights’” (van Boven 1988, 581). In other words, “denial of the right to self-determination cannot fail to have adverse consequences on the respect and enjoyment of individual human rights.” (ibid.).

After briefly discussing the important transition of a number of former colonial countries and peoples from political to economic emancipation between the 1960s and the 1970s, van Boven thus remarked,

> As the representative of Senegal had pointed out, emancipation was closely linked with the right to development, but the interests of development often conflicted with the status quo, as the contrast between national expenditures on defense and on economic and social rights on the other. Younger people, and possibly women, were perhaps more convinced of the urgent need for social justice than those with vested interests in the status quo, whether nations or men. (E/CN.4/SR.1298, 76 (1975))

Van Boven thus recognized the transformative power of the right to development as a human right and its potential to upset the status quo both within and between countries.

He then remarked that, since the publication of the Special Rapporteur’s report the previous year, little had changed as regards the realization of ESC rights. To be sure, certain changes had occurred in international economic relations influencing the fate of many people throughout the world. The General Assembly, for instance, had adopted a Declaration and Program of Action on the Establishment of a NIEO. To some extent, he continued, the ideas contained in that program were already reflected in the International Development Strategy for the Second United Nations Development Decade. However, “a redefinition of the purpose of development was needed if the new economic world order was to be effective.”

In this regard, he quoted from the Cocoyoc declaration, a document adopted by the participants in a symposium co-organized by UNCTAD and UNEP on “Patterns of Resource Use, Environment and Development Strategies” in Cocoyoc, Mexico, from 8 to 12 October 1974 (A/C.2/292 (1974)). According to van Boven, the Declaration explicitly approached the question of economic development from the standpoint of human rights. He concluded that “a fundamental change in political mentality was called for, giving rise to a new outlook no longer based on self-interest or on charity but on the legitimate demands and rights of all peoples and individuals,” thus echoing the call made by M’Baye in his speech. (E/CN.4/SR.1298, 76-77 (1975))

What is interesting is how van Boven not only recognized the political point of the redescription of the right to development as a human right, but also attempted to justify it by linking it to a document adopted at a meeting convened under the initiative of two UN bodies concerned with questions of technological and economic import and composed of experts serving in their individual capacity (i.e. not as representatives of member states, contrary to the UNCHR). The conclusions contained in the Declaration are “among the first systematic attempts to state under UN auspices, the connection between the issues of environmental

protection and the redistribution of global economic and social resources" (Bergsten and Krause 1975, 893).

In particular, van Boven strongly echoed these conclusions when arguing that "a redefinition of the purpose of development was needed" (E/CN.4/SR.1298, 76 (1975). On that matter, the Declaration states that "Our first concern is to redefine the whole purpose of development", which goes as follows:

> Our first concern is to redefine the whole purpose of development. This should not be to develop things but to develop man. Human beings have basic needs: food, shelter, clothing, health, education. Any process of growth that does not lead to their fulfillment-or, even worse, disrupts them-is a travesty of the idea of development. We are still in a stage where the most important concern of development is the level of satisfaction of basic needs for the poorest sections in each society which can be as high as 40 per cent of the population. The primary purpose of economic growth should be to ensure the improvement of conditions or these groups. A growth process that benefits only the wealthiest minority and maintains or even increases the disparities between and within countries is not development. It is exploitation. And the time for starting the type of true economic growth that leads to better distribution and to the satisfaction of the basic needs for all is today. We believe that thirty years of experience with the hope that rapid economic growth benefiting the few will "trickle down" to the mass of the people has proved to be illusory. We therefore reject the idea of "growth first, justice in the distribution of benefits later".

What is interesting here is how the authors of the Declaration reject the development trade-offs discussed in Chapter 3. Not only that, but also how they redescribe the objectives of development beyond the satisfaction of basic needs, as the passage below illustrates:

> Development should not be limited to the satisfaction of basic needs. There are other needs, other goals, and other values. Development includes freedom of expression and impression, the right to give and to receive ideas and stimulus. There is a deep social need to participate in shaping the basis of one's own existence, and to make some contribution to the fashioning of the world's future. Above all, development includes the right to work, the right not to be alienated through production processes that use human beings simply as tools.

These two statements point to an important shift in development thinking at the time, one which may well account for the positive stance adopted by van Boven towards the redescription of the right to development as a human right in the UNCHR debate of 1975. However, it is not enough to explain how all developedcountry representatives among the Group of Western and Other States were persuaded to recognize the right to development as a human right two years later, on 21 February 1977.

6.3.3 The UNCHR debate of 1977

The political point of M'Baye's redescription of development as a human right in the UNCHR debates over the conclusions and recommendations of the Special Rapporteur was twofold. He wanted to offer an alternative to the approach suggested by the Special Rapporteur that would satisfy not only his country but also the developing country majority all the while rejecting the curtailment of CP rights in the name of development. He also wanted to offer a view that would be

acceptable to representatives of Western European and Other States and could thus serve to unify opposing sides on the issue of development and human rights at the UNCHR. While M'Baye proposal that the UNCHR approach the right to development as a human right could perhaps had served to overcome the impasse in which the UNCHR had been stuck, he made no formal proposal in this regard in the UNCHR debates of 1974, 1975 or 1976. The final section of this chapter offers a close reading of the UNCHR debate of 1977 so as to shed light on how a resolution recognizing the right to development as a human right finally came to pass at the UNCHR.

6.3.3.1 Princess Ashraf Pahlavi's address

On Monday, 14 February 1977, the Chairman of the UNCHR welcomed Her Imperial Princess Ashraf Pahlavi of Iran and invited her to address the Commission on the question of the realization of the ESC rights contained in the UDHR and in the ICESCR, and study of special problems relating to human rights in developing countries (agenda item 7). Her address calls for a detailed interpretation, not the least because the arguments developed during her speech were at the centre of the debate resulting in the adoption of UNCHR 4 (XXXIII). Before turning to her speech, a few words about Princess Ashraf—the twin sister of Mohammad Reza Shah Pahlavi—are in order. Not the least because she played a central role for the promotion of human rights, both in Iran and the UN. She also knew well the insides of the 1953 coup organized by the CIA, among others, which gave her a clear window on the morality of Western governments. While they would not hesitate to denounce CP rights violations and abused by the governments of developing countries, they would not hesitate either to violate these rights if the outcome was at their advantage.

Opening the UNCHR debate of 1977, Princess Ashraf began her speech by arguing that all fundamental human rights formed an indivisible whole. However, she felt that it was necessary to acknowledge the existence of a cause-and-effect relationship between ESC rights and CP rights—or "between material needs and so-called psychological and intellectual needs", as she put it. It was unrealistic to expect CP rights and individual freedoms to be respected "without the prior implementation of economic and social rights, whose attainment entailed the focusing of national efforts on the achievement of a rapid improvement in the standard of living and, consequently, rapid national economic development." The point she thus wished to emphasize was that her government and that of other developing country representatives gave priority to national development "in the interests of promoting human rights," a point which "had not always been well understood and had given rise to certain misunderstandings." (E/CN.4/SR.1389, 2 (1977)) From her point of view,

> certain circles, particularly in the West, distorted the significance of the daily struggle of the developing countries, alleging that those countries neglected certain human rights, mainly civil and political, which their critics unilaterally defined as having sole priority without regard to the socio-economic context of the countries concerned. (E/CN.4/SR.1389, 2 (1977))

In this regard, she drew attention to the "enormous and ever-widening social and economic gap between the rich and the poor countries," arguing that for some states the "common ideal [of the UDHR] remained distant and unreal." Generally speaking, illiterates could hardly be expected to fully appreciate freedom of information, nor could starving, undernourished or unemployed masses exercise their political rights in a practical manner. Such a situation was evident in developing countries where millions of people were still struggling for subsistence amidst difficulties, which had in most cases increased over the past decade. This contrasted with the situation in industrialized developed countries, where the standard of living had continued to rise steadily. The point of her argument was "to emphasize the enormous disparities between countries—not only economic disparities, which entailed differences in institutional, administrative and judicial structures, but also cultural, political, historic and many other disparities." (E/CN.4/SR.1389, 3 (1977))

After emphasizing those disparities, Princess Ashraf launched an attack against the continued insistence of developed country representatives from the group of Western European and Other States to prioritize the protection and promotion of CP rights at the expense of ESC rights. She qualified their attitude of "incomprehensible", arguing that

> comparing the rest of the world with their own standards as nationals of industrialized countries which were highly developed both economically and socially, and equipped with extensive information and education machinery, they judged other countries by their own self-appointed criteria, handing out leisurely condemnation and reviling in their "clear conscience". (E/CN.4/SR.1389, 3 (1977))

She added that the approach adopted by these representatives to study the special problems relating to human rights in developing countries "was somewhat simplistic, in that they ignored basic realities." In this regard, it is noteworthy that the "basic realities" subsequently advanced by Princess Ashraf largely echoed the usual set of arguments advanced by representatives of member states with an authoritarian regime to justify their general attitude of indifference or straightforward hostility towards CP rights. This time, however, she extended her arguments in order not only to justify the position taken by her government in the debate on the nexus between development and human rights, but also to present her country's position on the matter as the most viable alternative to other developing countries, notwithstanding their political system.

Her first argument concerned the economic development of developing countries. She argued, "the developing countries were still, by definition, at a stage where material needs and the right to a decent life had not yet been assured" (E/CN.4/SR.1389, 3 (1977)). Hence, the rights emphasized by the developed countries, such as the right to freedom of information and expression, "often had real significance only for a small, privileged minority" in those countries (ibid.). Her second argument concerned the political development of developing countries. She remarked, "the institutional and administrative structures of the developing countries, particularly the newly independent States, were different [from that of the developed countries] and often fragile" (E/CN.4/SR.1389, 3 (1977)).

The recognition of particular CP rights in countries with such a fragile state apparatus could threaten their development—and the realization of ESC rights—by undermining or weakening the authority of their government. Her third argument concerned the cultural development of developing countries. According to Princess Ashraf, important differences could be found in "culture and scales of values between nations": some nations might place primary emphasis "on the role of the individual and on political freedom" while others might place it "on the interests of the community and on the common effort" (E/CN.4/SR.1389, 3 (1977)).

All these arguments could simultaneously serve to justify the authoritarian development experienced by Iran under the White Revolution as a model for other developing countries in their quest for the realization of ESC rights. This interpretation is supported by the arguments subsequently advanced by Princess Ashraf Pahlavi to depreciate the value of the historical models of development offered by the developed countries. She thus argued, "the developed countries tended to forget that there was a gap of decades, if not centuries, between the material and intellectual standard of living they had achieved and the standard of living of those they criticized." Likewise, she considered that the developed countries should keep in mind "the human sacrifices which they themselves had had to make during the nineteenth century to carry out the industrial revolution" before "blaming the developing countries for giving priority to development as against certain individual freedoms." (E/CN.4/SR.1389, 3 (1977))

These remarks, Princess Ashraf argued, were meant as a way "to emphasize the need to bring humility to bear when passing judgement", adding that

> After all, the industrialized countries had not attained their current living standards overnight. No State or system could lay claim to a magic formula enabling the various economic, social, cultural, civil and political rights to be guarantee to all on an equal basis and at the same time. A formula which might appear sound in a particular context which would not be so in another context, because of the various historical, cultural, institutional, economic and other elements involved. (E/CN.4/SR.1389, 4 (1977))

Her point was not to pass judgment on the various systems adopted by the developed countries per se, but rather to change their attitude towards their international relations with the developing countries—an attitude which, according to Princess Ashraf, "was rooted in a lack of historical perspective among certain Western circles but which was also based on more egoistic and serious political and economic considerations"—by redescribing the value of these systems for the development of the developing countries. While the "Western states" did not hesitate to emphasize the civil rights and individual freedoms proclaimed in the UDHR, the Declaration itself "proclaimed, *inter alia*, that respect for those rights should be promoted by 'progressive measures, national and *international*' [emphasis added]." This passage was the only reference to international measures in the UDHR. Only with the formulation of the International Covenants on Human Rights, nearly two decades later, had the right of people to self-determination, "a *sine qua non* for the effective enjoyment of all other rights," been adopted. Indeed, the provisions of the UDHR "could not be implemented by a people which was

not even free to determine its own future"; political decolonization was the primary condition for the realization of ESC rights in the developing countries. (E/CN.4/SR.1389, 4 (1977))

While political decolonization could now be considered an irreversible process, Princess Ashraf expressed the view that "economic neo-colonialism and the structure of the international economic relations continued to ensure the predominance of the industrialized countries." Only in 1974, with the adoption of the Declaration on the Establishment of a NIEO, had the efforts of the developing countries to secure a more just system borne fruit. In referring to the need to

> correct inequalities and redress existing injustices, make it possible to eliminate the widening gap between the developed and the developing countries and ensure the steadily accelerating economic and social development and peace and justice for present and future generations. (A/RES/S-6/3201 (1974))

the Declaration had pinpointed the conditions which needed to be fulfilled before the developing countries could hope to assure many of the ESC rights proclaimed in the UDHR. Here, the preoccupations of developing countries with respect to the establishment of a NIEO are entering the political arena of the UNCHR even more explicitly than at previous debates—something that was reflected in UNCHR resolution 4 (XXXIII), which request the Special Rapporteur to "take into account the requirements of the NIEO" in is study of the international dimensions of the right to development as a human right.

Princess Ashraf added, "the industrialized countries had shirked their responsibilities in that regard," yet they invoked respect for CP rights and individual freedoms "at no costs to themselves and for motives which were not always disinterested, in order to interfere in the internal affairs of others" (E/CN.4/SR.1389, 4 (1977)). It should be noted that Iran had recently been removed—following the intervention of Ganji, who assumed the double role of Special Rapporteur and representative of Iran at the UNCHR in 1974—from the blacklist of the UNCHR for gross and systematic violations of human rights. What is more, Princess Ashraf had witnessed first-hand how easily Western countries could set aside respect and protection of CP rights in other countries if it could benefit them. Indeed, the 1953 Iranian coup d'état, orchestrated by the UK and the US, had taken place following the decision of the Iranian Parliament to nationalize its oil industry and to expel foreign corporate representatives from its soil. Hence, while Ganji had argued that the rhetoric of international responsibility was but a way for developing countries to evade their national responsibility towards the progressive realization of ESC rights, Princess Ashraf turned the tables by arguing that the rhetoric of national responsibility and the call to give priority to CP rights in developing countries were but a means for developed countries to evade their international responsibility towards the developing countries with respect to the realization of ESC rights and to intervene in their domestic affairs—against their right to freely determine their political status and their economic, social and cultural development.

Those considerations led Princess Ashraf to a number of conclusions. Firstly, at the national level, it was for each state to decide on the best method of promoting full respect for human rights. Depending on levels of economic and cultural development and traditions, different priorities asserted themselves in each country, although the goals to be pursued were common to all. Moreover, no system had an infallible formula for insuring economic wealth, freedom and social justice (E/CN.4/SR.1389, 4—5 (1977)). Put differently, human rights could not be used to justify the imposition of a particular system or trajectory upon developing countries; it was for each country to decide how and when to implement those rights—although she strongly suggested that Iranian model represented the most viable alternative in that regard.

Secondly, at the international level, industrialized countries should shoulder their responsibilities. Concerning political and economic self-determination, bilateral assistance and international economic relations, the developed countries could play a major role in creating the necessary conditions for rapid economic development by the disadvantaged countries, and thus assist those countries to ensure the realization of ESC rights. To this end, the present international economic order—which was largely to blame for the underdeveloped condition of the developing countries and hence for human rights "shortfalls" (she carefully avoided terms such as "abuses" or "violations") in these countries—had to be altered. From her point of view, the lack of any real progress towards the establishment of a NIEO largely justified the sceptical attitude of the developing countries towards any statement about the respect and realization of human rights advanced by the industrialized countries and fostered the belief that they were a means by which the developed countries were endeavouring to evade their responsibilities. (E/CN.4/SR.1389, 5 (1977))

A few remarks about the particular conception of sovereignty underlying the conclusions advanced by Princess Ashraf with respect to the realization of ESC rights and special problems of developing countries in that regard are called for at this stage. To begin with, it could be argued that the role of the UNCHR has always been defined by the tensions between the need to respect the principles of national sovereignty and non-interference in the internal affairs of states and the wish to promote and protect human rights and fundamental freedoms universally. The stronger the concepts of sovereignty and non-interference were advanced by representatives of member states at the UNCHR, the weaker the horizon of possibilities for actions of the UNCHR has been. The developing country representatives—an important number of which represented former colonial countries and peoples—were often jealously guarding their national sovereignty against any attempt to impose limitations upon it. As such, they would often favour general principles over particular rules in the formulation of international human rights instruments.

In that sense, the situation with respect to special problems relating to human rights in general and the realization of ESC rights in particular in developing countries presented a dilemma. From the point of view of the vast majority of developing countries, human rights were matters falling essentially within the

domestic jurisdiction of state and, as such, could not serve to justify intervention in the internal affairs of state. There were but only a few exceptions to this line of argument, such as "cases of countries in which, for example, the government pursue[d] a declared policy of racial discrimination (South Africa; Rhodesia from 1965-80) or denie[d] the right to self-determination (Israel)" (Cassese 1986, 309). Here, the argument was that "the organized international community should concentrate on these exceptional cases, which involve grave violations of all kinds of rights" (Cassese 1986 309). On the other, to denounce or condemn certain states for alleged abuses or violations of human rights was at best to no avail since the lack of recognition of human rights in the developing countries was intimately linked to their situation of underdeveloped. The conditions of this underdevelopment, in turn, were found in the structures of international trade and of the international financial system, which put the developing countries at a relative disadvantage as compared to developed countries. Thus, the change had to be brought about in international economic relations, "thereby contributing to removing the objective conditions which lead to violations" (Cassese 1986, 309). In short, while each state was primary responsible for the progressive realization of ESC rights to the extent of the resources available for that purpose, the UNCHR "should recognize that the international community as a whole had a duty to remove the obstacles which faced the developing countries in their efforts to attain those rights" (E/CN.4/SR.1396, 8 (1977)).

In the debate that followed, Mervat Tawally of Egypt advanced similar justifications in support of that view. She added that the UNCHR "should not restrict itself to considering reports submitted by States" but should also "take the initiative in alerting world public opinion to the situation of hundreds of millions of people who were still suffering from hunger, illiteracy and malnutrition and for whom there were no economic, social and cultural rights" (E/CN.4/SR.1391, 12 (1977)). Tawally continued by arguing that the UNCHR "should state what were the reasons for that situation and what the inevitable consequences would be." In addition, the UNCHR should "remind world public opinion of the moral and legal obligation incumbent upon the members of the United Nations, particularly the richest among them, to help improve the world political and economic situation." From Tawally's point of view, "it should not be left to economists to redress that situation." (E/CN.4/SR.1391, 13 (1977))

What is interesting here is the suggested role for the UNCHR as a whistle blower and moral arbitrator in international relations—i.e. both inter-states relations and relations between states and international organizations—rather than in the relations between states and its citizens. While Ercüment Yavuzalp of Turkey, Antoine Ntashamaje of Rwanda, and Dia Allah El-Fattal of the Syrian Arab Republic shared the apologetic view expressed by the Iranian and Egyptian representatives (see statements delivered at E/CN.4/SR.1391, 11 (1977), E/CN.4/SR.1394, 4-5 (1977) and E/CN.4/SR.1394, 8 (1977), respectively), José Rafael Serrano of Ecuador expressed a brighter one, arguing that "his Government and people were fully aware of their responsibilities and had faith that their own abilities and resources would enable them to attain the well-being which the

realization of all human rights presupposed" (E/CN.4/SR.1394, 7 (1977)). Nonetheless, the Ecuadorian representative also argued that

> A country's confidence in itself did not, however, release the nations which had become affluent, in most cases by exploiting the human and natural resources of the poor countries, from their obligations. The industrialized countries now had a historic opportunity to contribute to the realization of ESC rights, on the basis of respect for and implementation of the new international economic order and the Charter of Economic Rights and Duties of States. (E/CN.4/SR.1394, 7 (1977))

Serrano added that "the right to development, the new symbol of peace, was an imperative of the modern world and called for concerted action in which the developing countries' own efforts would not be frustrated" (E/CN.4/SR.1394, 7 (1977)). Beside Kéba M'Baye—to which we will arrive at in a moment—the Ecuadorian representative was the only other developing country representative to use the right to development during the UNCHR debate of 1977. However, he kept his reference to the above and did not redescribe it as a human right. In that regard, it should be noted that the right to development concept was already part and parcel of the rhetoric of the struggle for the establishment of a NIEO. As such, Serrano's use of the concept is nothing surprising or out of the ordinary.

To summarize, all developing country representatives who spoke during the UNCHR debate of 1977 shared the view that the developed countries had evident responsibilities and obligations with respect to the realization of ESC rights in developing countries. However, only those with an authoritarian regime used that line of argument to redescribe criticism of the "occasional" curtailment of certain CP rights in developing countries as an unfair oversimplification in the light of the international obstacles they had to face. Instead of blaming and shaming developing countries for violating CP rights, they argued, "the economic and social causes [had to] be found and the domestic-international context of these violations understood" (Cassese 1986, 309). The only way to bring these violations to an end was to change that context and eliminating the causes thus identified (ibid.). This line of argument provides the rhetorical basis upon which developing country representatives could redescribe the continued insistence of developed country representative among members of the Group of Western European and Other States on the priority to be accorded to CP rights as a tactic to evade their international responsibility.

During the debate, a number of developed country representatives attempted to defend their position on the matter. For the most part, they disagreed with the conclusion reached by Princess Ashraf Pahlavi of Iran that it was for a country and people to determine its priorities, which in the light of the present state of affairs in developing countries meant that the realization of ESC rights was to be considered a major if not absolute priority. To the contrary, they argued, some CP rights were fundamental and could not be postponed indefinitely. In other words, the need (or lack thereof) of international cooperation for the realization of ESC rights could not serve to justify the lack of recognition or curtailment of fundamental rights and freedoms in developing countries. In that regard, Gerhard Jahn of the Federal Republic of Germany expressed the view that the

implementation of ESC rights "would be incomplete so long civil and political rights were not respected" (E/CN.4/SR.1391, 3 (1977)). From his point of view "any violation of political rights was a violation of the rights of the entire international community" (ibid.).

According to Jahn, the UNCHR had an obligation to "consider human rights on their totality and it would fail in its task if, in that inseparable whole which was intended to protect the dignity of all, it assigned less importance to some rights than to others." Remarking upon Princess Ashraf Pahlavi's comments about the right to freedom of information and freedom of expression, he acknowledged that "freedom of the press was of no use to those who could not read and it would not eliminate illiteracy." However, "progress was only possible if everyone was able to contribute to it." Accordingly, the quest for economic development, even if done to raise the level of living of a country, "could never be an excuse for depriving the citizens of their political rights." (E/CN.4/SR.1394, 4 (1977)) It is interesting to note that although the German representative utilized the argument of indivisibility, akin to Princess Ashraf Pahlavi and other developing country representatives, he used it to turn the tables on the question of the priority to be accorded to ESC rights over CP rights. That is, instead of using it in order to legitimize the claim that the realization of ESC rights should be accorded priority in developing countries, he used it to support the view that CP rights were *equally* important and should not be forgotten.

This kind of view, which emphasized the unacceptability of trading off liberties for development, was widely shared among representatives of the Group of Western and Other States. Adopting a more diplomatic stance, for instance, Hans Danelius of Sweden remarked that "developed countries tended to emphasize civil and political rights, whereas developing countries were more concerned with economic, social and cultural rights." He then turned to a rebuttal of Princess Ashraf Pahlavi's comments regarding the right to freedom of information or freedom of expression, which she argued had real meaning only for a small part of the population in some developing countries:

> Those rights were of particular importance since they implied the free exchange of ideas and opinions, but he recognized that a person of little or no education, deprived of the basic means of livelihood, might not be in a position to make full of them. On the other hand, there were other civil rights equally important to the peoples of all countries, irrespective of their degree of development, and among economic and social rights there were some that were a primary concern of many developed countries—for example, the right to work, which could not be regarded as fully guaranteed in countries in which there was high unemployment. (E/CN.4/SR.1391, 6-7 (1977))

Danelius continued his argument by recognizing that there was a link between the two groups of rights. While it was "no doubt an exaggeration" to say that ESC rights were a prerequisite to implementing CP rights, "the realization of the former certainly promoted the enjoyment of the latter." From his point of view, however, the importance of the connection between development and concern for CP rights "should not be exaggerated." Indeed, CP rights "were held in high esteem in most developing countries and that there were developed countries in

which the right to freedom of thought and expression was frequently disregarded and in which arbitrary arrests were a common occurrence." Danelius concluded that while "it was natural that the developing countries should attach particular weight to the observance of economic, social and cultural rights that were directly connected with their development efforts" and, as such, "should be actively supported by the developed countries," they should under no circumstances be allowed to "make a choice between different kinds of human rights." From his point of view, ESC rights and CP rights "were not mutually exclusive but complementary." (E/CN.4/SR.1391, 7 (1977))

Sadi of Jordan, speaking sometime after the Swedish representative, admitted that some elements of truth could be found in the view advanced by Danelius:

> there were fundamental rights which had to be guaranteed, whatever the economic conditions prevailing. For example, the right not to be tortured, not to be arbitrarily arrested or subjected to ill-treatment, was absolutely fundamental and could not be subordinated to the achievement of social and economic rights. (E/CN.4/SR.1391, 13 (1977))

Nonetheless, this view was often advanced by developing country representatives as Sadi did, "to emphasize the idea of relativity in the notion of human rights" and the fact that "those rights could not all be placed on the same footing." The point of his argument was not to argue that all CP rights could and should be implemented immediately, as some representatives among members of the Group of Western European and Other States had claimed in the past. On the contrary, similarly to some ESC rights, which could only be attained in the long term, "some elements of democratic institutions could not be established overnight; they required years of preparation and it would be wrong to expect the developing countries to set up immediately systems copied from those of the developed countries." (E/CN.4/SR.1391, 13 (1977)

For his part, Sir Keith Unwin of the United Kingdom made observations on two specific points—individual freedoms and freedom of expression and information—that he said might be a source of misunderstanding. From his point of view, it was the combination of the right of the individual to freedom (of thought, conscience and opinion) and freedom of expression and information that led to the formulation and the realization of ESC rights, both at the national and international levels. Without these civil liberties, neither the industrial revolution nor the extraordinary technical advance of today would have been possible. If man could not exercise his imagination without arbitrary constraints, such enormous drive, which could help in large measure to improve the lot of humanity, might become exhausted and peoples might return to their stagnation. (E/CN.4/SR.1391, 7—8 (1977)) Put simply, civil liberties were the engine of the industrial revolution and the reason for the extraordinary technical advance of the UK, or why the UK was 'ahead' in terms of economic and social development.

The arguments advanced by the UK representative were, however, highly controversial. According to a large number of developing country representatives, other factors had contributed and to a greater extent to the success experi-

enced by the UK. Many of these factors had been identified by postcolonial critiques of development. For instance, the human capital and resources obtained at relatively low price through colonization had played a major role in the unprecedented economic development of the UK during the long nineteenth century. What is more, the historical development path followed by the UK could no longer serve as a blueprint for the development of the developing countries because the international context was radically different. It was no longer acceptable to expand the welfare of a nation through colonial expansion. In other words, the historical development model offered by the UK omitted the centuries of exploitation suffered by the colonies which greatly contributed to the UK getting ahead and the underdevelopment of the colonies. An increasing number of developing country representatives thus challenged the validity of the claims advanced by the UK to prioritize the implementation of particular CP rights as the ultimate solution to their problems.

In the long run, Sir Keith Unwin continued, "the problem now before the Commission was perhaps […] the most important facing the international community, for it raised the fundamental question of the obligations of Governments and of society as a whole, in other words, of the international community, towards the individual" (E/CN.4/SR.1391, 8 (1977)). From his point of view, the elimination of poverty and of all its accompanying handicaps had to be a priority objective for any government. Governments could, by taxation, provide various basic services and redistribute wealth among their citizens, but it did not seem that they could themselves create wealth. His country believed in private initiative and saw in it the most effective and rapid means of creating the necessary resources for raising the level of living of the weakest in society. For that reason, successive governments in the UK had recognized their responsibilities towards the individual. Otherwise, they could not have survived long. That was true of all democracies. While authoritarian forms of government "could perhaps ignore the basic needs of its citizens somewhat longer" as compared to democracies, "the concentration of expenditures on armaments at the expense of the daily needs of the population could have disastrous effects both externally and internally, as Europe had seen in the 1930s and 1940s." For this reason, "the first preoccupation of all western countries was to ensure that no new authoritarian or totalitarian system in Europe should be given the opportunity or the temptation to follow that path." He then remarked upon the fact that "his country's concern at the international level for economic and social rights was a reflection of that national and regional preoccupation." His country was dependent upon international trade. As such, the UK "accepted an obligation to contribute to the building of the new international economic structure now being considered inside and outside the UN, and was ready to play its full part in such collective endeavours." (E/CN.4/SR.1391, 9 (1977))

For his part, Jahn acknowledged that while the ICESCR imposed individual obligations on State Parties, "it also assigned an important role to international co-operation, in view of the necessity of participation by all countries in the common effort to ensure decent living conditions for everyone"—a fact "not always

sufficiently recognized in the developed countries" (E/CN.4/SR.1391, 3 (1977)). From his point of view, "If that joint enterprise for improving the condition of all mankind was to be successful, it was necessary to strengthen the foundations of co-operation and not to cast doubt on them" (ibid.). The question of the establishment of a NIEO, however, was more controversial. Some, like Danelius of Sweden, were of the view that "it was essential that the industrialized countries should support, both financially and morally, the efforts of the developing countries to improve the economic, social and cultural conditions of their peoples" (E/CN.4/SR.1391, 7 (1977)). As such, they "agreed with the developing countries that, to that end, a new international economic order should be established and international development co-operation intensified" (ibid.). Others, like Jahn of Germany, were of the view that while the international economic order should be changed, it should not be destroyed. He explained, "the industrialized countries, which were the motive power of that co-operation, should be encouraged and not weakened" (E/CN.4/SR.1391, 3 (1977)).

As the examples above illustrate, representatives from the Group of Western European and Other States largely opposed the negative terms in which the relationship between development and CP rights had been articulated by Princess Ashraf Pahlavi and other representatives of countries with an authoritarian regime. Nonetheless, they also largely agreed with the idea that international assistance and cooperation should be forthcoming in order to ensure the realization of ESC rights in developing countries. It is against this background what would become UNCHR resolution 4 (XXXIII) was introduced.

6.3.3.2 UNCHR resolution 4 (XXXIII)

On 18 February 1977, Soheyla Shahkar of Iran introduced a draft resolution sponsored by nearly half the members of the UNCHR. Among the fifteen sponsors were:

- five representatives of the Group of Asian States (Cyprus, India, Iran, Jordan, Syrian Arab Republic);
- four representatives of the Group of African States (Egypt, Libyan Arab Republic, Senegal, Uganda), three of the Group of Latin American and Caribbean States (Cuba, Ecuador, Peru,);
- two representatives of the Group of Western European and Other States (Austria and Sweden), and
- one (out of the four) representatives of the Group of Eastern European States (Yugoslavia).

The Commission debated the draft resolution over two meetings, both held on 21 February 1977. After some minor revisions, the UNCHR passed the draft resolution by consensus (i.e. without a vote) as resolution 4 (XXXIII).

In the resolution, the UNCHR stressed the responsibility and duty of all members of the international community to create the necessary conditions for the full realization of ESC rights as an essential means of ensuring the real and meaningful enjoyment of CP rights and fundamental freedoms. It called upon all

states to take prompt and effective measures, both on the national and international levels, to remove all obstacles to the full realization of ESC rights and to promote all actions that would secure the enjoyment of the said rights. The UNCHR also decided that the concepts contained in the resolution would guide its future work on this item. Finally, it decided to pay special attention to the consideration of obstacles hindering the full realization of ESC rights, particularly in the developing countries, as well as actions taken in that regard on the national and international levels.

Of particular interest to the present study is the fourth operative paragraph of that resolution. In that paragraph, the UNCHR recommends to ECOSOC to invite the Secretary-General, in cooperation with UNESCO and the other competent specialized agencies, to undertake a study on the subject of the international dimensions of the right to development as a human right in relation with other human rights based on international cooperation, including the right to peace, taking into account the requirements of the NIEO and the fundamental human needs, and to make this study available for consideration at its thirty-fifth session. By doing so, the UNCHR gave *implicit* recognition to the right to development as a human right. In other words, the UNCHR did not *explicitly* proclaim the right to development as a human right; it *presumed* its existence and called for its study. While the concept may have been mentioned or discussed in other UN forums prior to that point, the UNCHR was the first UN body to adopt a resolution on the topic, thereby formally introducing the concept into the horizon of possibilities of the UN system.

As the previous chapter uncovered, the UNCHR was at an impasse in the debate over "the question of the realization of the ESC rights contained in the UDHR and in the ICESCR, and study of special problems relating to human rights in developing countries". The proposal to study the right to development as a human right based on international cooperation represented an opportunity for the UNCHR to overcome this impasse. This is important because the members of the UNCHR entertained a heterogeneous set of views not only on the nature and scope of human rights but on their functions in international relations. This broad spectrum of views explains the absence of consensus over basic understanding of the relationship between development and human rights. In order to move forward, therefore, there was a need for a policy concept flexible enough to allow these seemingly irreconcilable perspectives on a philosophical level to coexist on a political one. This is one of the functions, that of a mediating device, the right to development came to play in the debate.

Hence, when Soheyla Shahkar of Iran introduced the draft proposal on 18 February 1977, she argued "the text was designed to reflect all the various points of view expressed during the debate on agenda item 7" (E/CN.4/SR.1396, 8 (1977)). Remarking upon some of the arguments advanced by the Swedish and Austrian representatives during the general debate over the agenda item, she added

> it was true that rights such as the right to life and to freedom from torture and arbitrary arrest were […] of prime importance; the right to a decent life, however, as distinct

> from the right merely to exist, necessarily involved economic, social and cultural rights, which were essential for the physical and intellectual well-being of the individual. The draft resolution acknowledged the essential interdependence of all human rights and did not overlook the importance of civil and political rights. (E/CN.4/SR.1396, 8 (1977))

Similarly, Allard K. Lowenstein of the US opined that the notable achievement of the draft resolution was that it broke away from traditional polarized concepts such as political versus economic and internal versus international, and attempted to find a way in which all countries could work together on the higher priorities of suffering and deal with the miseries afflicting humankind. It was to be hoped that that initiative marked the emergence of a synthesis making it possible for countries of different histories, cultures and levels of economic development to achieve a sense of common purpose. (E/CN.4/SR.1398, 4 (1977)

As the final section of this chapter uncovers, the proposal to study the right to development as a human right, enclosed in UNCHR resolution 4 (XXXIII), offered a rhetorical means to move beyond the political fault lines in the debate. In particular, it allowed both representatives of states with an authoritarian regime and representatives of states with a democratic regime as well as representatives of developing countries and representatives of developed countries to agree on an alternative approach to covenant-based mechanisms for the realization of ESC rights.

6.3.3.3 Development: from a right to a human right

Akin to the vast majority of developing country representatives, M'Baye remarked that "it was often said that the implementation of ESC rights was essentially the responsibility of the States concerned, but to say that was to diminish the share of responsibility of the international community and the developed countries in the development efforts which the poor countries were making" (E/CN.4/SR.1391, 4 (1977)). According to M'Baye, the international dimensions of the problem could be articulated as follows:

> If there was indifference to the fact that in one country or another human beings were poorly cared for, under-nourished and did not receive even a minimum education, while waste was increasing elsewhere, it was scarcely permissible to intervene or even to protest when in a certain region, some individuals were deprived of the right to free movement or free speech. In other words, it was the Commission's absolute duty to concern itself at the same time and in the same way with civil and political rights and with economic, social and cultural rights. (E/CN.4/SR.1391, 4 (1977))

From M'Baye's point of view, it was not only hypocritical to recognize the need for international action with respect to one category of rights while refusing to do so for another, it also weakened the moral authority and legitimacy of the UNCHR. If it could be argued, as developed country representatives did, that it was fully justified to intervene in the internal affairs of states in cases of serious and large-scale violations of CP rights, based upon the moral obligation of the international community to individuals, then it was fully justified to expect the same logic to apply to ESC rights. What is interesting here is how M'Baye borrowed from the rhetoric used by developed country representatives, to the effect

that the UNCHR "concern itself at the same time and in the same way" with CP rights and ESC rights, to introduce his point.

The direct implication of this view in the context of the UNCHR is that, for this purpose, the national sovereignty of both developed and the developing countries was necessarily limited by their collective obligations to individuals all over the world. This was a small price to pay in the eyes of M'Baye, who saw in the redescription of the right to development as a human right a powerful rhetorical tool for the developing countries to transform their relationship with the developed countries and thereby achieve global justice and equality. To be sure, M'Baye was keenly aware of the importance former colonial countries and peoples, including his own, attributed to the principles of national sovereignty and non-interference in the internal affairs of states. However, he was also aware of the price of self-determination, broadly understood as the free determination by a country of its political status and its economic, social and cultural development. Indeed, self-determination is easier for an oil-rich developing country like Iran than for a groundnuts exporting country like Senegal. He was therefore also careful to argue that some countries had a greater obligation to contribute to the universal realization of human rights following the premise that each country should contribute according to their ability and receive according to their needs.

Then again, developing country representatives did not necessarily share the view advanced by M'Baye in redescribing development as a human right. In particular, his argument about the equal importance of CP rights and ESC rights—a central point of his redescription—did not reflect the position advanced by representatives of member states with an authoritarian regime in that regard. Nonetheless, these representatives also saw in the right to development an opportunity, albeit of a different kind, to move out of the impasse on the question under consideration: it could serve as a means "to rationalize and justify national priorities as well as legitimize statist political and economic agenda using the language of rights" (Ibhawoh 2011, 78). This is a quite remarkable situation: the conceptual innovation coined by M'Baye to devaluate the curtailment of CP rights in the name of national development plans and policies could serve to justify it all the same. In a way, this is because the proposal to approach the right to development as a human right was but old wine in a new bottle for representatives of authoritarian regimes; it only served to renew the legitimacy of a rhetorical device, namely the right to development, which had already proven its worth in the eyes of these representatives in the context of struggle for the establishment of a NIEO. Put simply: there was no need to persuade them; M'Baye was already doing them a favour by attempting to persuade their opponents about the legitimacy of a device they would be able to use in order to shield themselves from accusation of human rights abuses or violations.

For apologist of authoritarian regimes, the redescription of the right to development as a human right at the UNCHR represented an opportunity in that it could be used "not so much as a claim against the developed West, but as means of maintaining the status quo and to counter domestic and international pressure for political liberalization" (Ibhawoh 2011, 78). As Cassese points out,

> at least for some of the developing and socialist countries warmly supporting the right to development (assuredly not for Senegal), ventilating this right constituted a useful tool in the political and ideological struggle between blocs. It helped the introduction of elements calculated to divert the attention of States and UN bodies from gross violations of human rights (in their views, it does not make sense to put too much emphasis on violations of such rights in developing countries, for as long as their right to development, which would have the highest priority, is not implemented, they must of necessity rely on fragile structures which cannot fully respect either civil and political rights and economic, social and cultural rights). (Cassese 1986, 369)

The concept could further be used in order to shift the blame for the lack of progress in the area of human rights in general, and CP rights in particular, away from the governments of developing countries to developed ones. Indeed, "emphasis on the right to development afforded a good opportunity to attack the Western industrialized countries, for it is mainly with them that responsibility for transforming such a right into reality lies" (Cassese 1986, 369). The whole point is that, in the eyes of these representatives, the redescription of development as a human right only served to justify its use in the context of the debate over development and human rights; it was not meant to alter its range of acceptable use—as M'Baye originally intended it.

In the light of the above, it is quite interesting to note not only the importance attributed to the international dimensions of the right to development as a human right by M'Baye during his speech at the UNCHR, but also the particular aspects he deemed necessary to emphasize in that regard. Invoking article 22 of the UDHR, he remarked "all human rights had a national dimension and an international dimension" (E/CN.4/SR.1391, 4 (1977)). Before going any further the operational linkages between international cooperation for progress and human rights in article 22 of the UDHR are worth remarking upon. According to Diller, "the principle of mutuality between society and its members, woven into the rights-based guarantee of article 22, drives the dynamic between UN's human rights agenda and its economic and social programmes" (2012, 16). In particular,

> Article 22 offers a concrete path for implementing the Charter commitment in article 55 (a) to "promote: (a) higher standards of living, full employment, and conditions of economic and social progress and development". The right to social security as expressed in article 22 is, in essence, a guarantee to fulfil the type of social and economic conditions described in article 55 (a) as necessary for stability and well-being in human life and society. (Diller 2012, 17)

In addition, "The ESC rights introduced by article 22 and specifically recognized in articles 23—27 of the Declaration significantly parallel the fields identified in article 55 (b) of the Charter for promotion of solutions or co-operation" (Diller 2012, 18). For the purpose of the present chapter, the distinction introduced in Article 55 (b) of the UN Charter between two types of international cooperation, namely "solving international problems in economic, social, health and related fields" and "promoting international co-operation in cultural and educational fields", is also worth remarking upon in relation to the substance of Article 22 of the UDHR.

> The first is solution-oriented, seeking to improve conditions of development or address humanitarian disaster or health or economic crises. The second, in contrast, is an ongoing process in which the focus is not on a problem to be solved, but rather on nurturing opportunities for the international community to develop freely through exchanges and co-operation of scientific, cultural and other ideas among States and their peoples. The distinction between these objectives is reflected in the dual goals at the end of article 22, which specify the aim of realizing ESC rights in referring to them as "indispensable for human dignity and for the free development of [the] human personality". The reference to dignity evokes at least a baseline of decency of conditions of life and work for which the avoidance of deprivation in economic and social terms involves rights recognized in articles 23, 24 and 25 as needing "international solutions" within the scope of the first half of article 55(b) of the Charter. In contrast, the reference to "free development of [the] personality" recalls the spirit of international cultural and educational co-operation in the second half of article 55 (b) of the Charter. (Diller 2012, 18-19)

As this interpretation suggests, UNCHR article 22 not only "gives particular significance and effect to the role that ESC rights play in Member States' commitments under article 55 of the Charter" (Diller 2012, 17) but also emphasizes two different forms of international cooperation. Of course, article 22 may be interpreted differently. I would like to suggest, however, that it is along similar lines that M'Baye wished to use article 22 of the UDHR.

The problem according to M'Baye was not that "under-developed countries were […] evading their responsibilities in that respect." On the very contrary, "the constitutions of those countries assumed all those obligations in good faith," but "that good will was frustrated by an international situation which was certainly denounced frequently, but which persisted and was more inhuman then ever" (E/CN.4/SR.1391, 5 (1977)). Alluding to the ongoing struggle for the establishment of a NIEO, M'Baye pointed out that "the economic order imposed on them made their efforts practically futile" (E/CN.4/SR.1391, 4 (1977)). He then recalled the explanation he had given at the previous session for the lack of enthusiasm shown by poor developing states about ratifying the ICESCR:

> articles 2 to 15 of the Covenant proclaimed rights whose implementation called for means which were out of proportion with the present possibilities of those countries. Article 14, for example, provided that the States Parties undertook to provide and ensure compulsory primary education, free of charge, within a reasonable time. Studies had shown, however, that in one particular African country it would be necessary in order to achieve that objective, to spend one and a half times the national budget: in the present international context, it was unthinkable that that State would be able to make primary education compulsory and free of charge in the foreseeable future. (E/CN.4/SR.1391, 5 (1977))

To be sure, developed country representatives had repeatedly raised the issue of their lack of resources for the implementation of ESC rights at the UNCHR, ever since the item had been put on the agenda of the Commission and even before that, in the drafting debates of the ICESCR (cf. chapters 3 and 4). The Senegalese representative was thus not the only one to point out this problem with respect to the implementation of the ICESCR in developing countries during the UNCHR debate of 1977. Other developing country representatives across the political spectrum also placed emphasis on the importance of taking into account these

difficulties when formulating an approach to the realization of those rights at the UNCHR.

Antoine Ntashamaje of Rwanda, for instance, considered that the developing countries "had cause to welcome the adoption and entry into force of the ICESCR and the ICCPR." From his point of view, "the latter served to confirm the results of decolonization, while the former brought hope for the future, always provided that the necessary international co-operation was forthcoming." Like M'Baye, however, he pointed out that the scope of the ICESCR "was such that while certain countries, including his own, had been able to ratify or adhere to it without delay, others, faced with the problem of scanty resources, had taken longer to consider the matter." He added that those countries which had been able to ratify the ICESCR "were aware of their obligations under the Covenant to promote economic, social and cultural development but they were equally aware of the limitations of their resources." After briefly mentioning the efforts of his people "in the fight for development," Ntashamaje emphasized how "as one of the poorest countries in the world" his country was well aware of the need for international cooperation in the realization of ESC rights. He concluded by arguing "the industrialized countries were required, under the Covenant, to co-operate in the realization of economic, social and cultural rights." (E/CN.4/SR.1394, 4—5 (1977))

A possible way to interpret M'Baye's arguments with respect to the ICESCR is that he was making a point to secure that the international assistance and co-operation promised under Article 2 of the Covenant for the progressive realization of ESC rights would be forthcoming before his country ratified it. Indeed, by the time the UNCHR concluded its consideration of the question of the realization of the ESC rights contained in the UDHR and in the ICESCR, and study of special problems relating to human rights in developing countries at its thirty-third session, on 21 February 1977, Senegal had not yet ratified the Covenant. In fact, only forty countries had done so.[31] The resources needed to implement the rights contained in the ICESCR were out of proportion with the present possibilities of the vast majority of developing countries. Accordingly, the UNCHR "should place emphasis first and foremost on the obligations of Member States and the international community to act jointly in the conviction that everyone had the right to security and dignity, and therefore to living conditions which

31 Australia (10 December 1975), Barbados (5 January 1973), Byelorussian SSR, Bulgaria (21 September 1970), Canada (19 May 1976), Chile (10 February 1972), Colombia (29 October 1969), Costa Rica (29 November 1968), Cyprus (2 April 1969), Democratic Republic of the Congo (1 November 1976), Denmark (6 January 1972), Ecuador (6 March 1969), Finland (19 August 1975), Germany (17 December 1973), Guyana (15 February 1977), Hungary (17 January 1974), Iran (24 June 1975), Iraq (25 January 1971), Jamaica (3 October 1975), Jordan (28 May 1975), Kenya (1 May 1972), Lebanon (3 November 1972), Libya (15 May 1970), Madagascar (22 September 1971), Mali (16 July 1974), Mauritius (12 December 1973), Mongolia (18 November 1974), Norway (13 September 1972), Philippines (7 June 1974), Romania (9 December 1974), Rwanda (16 April 1975), Suriname (28 December 1976), Sweden (6 December 1971), Syria (21 April 1969), Tunisia (18 March 1969), Ukraine (12 November 1973), UK (20 May 1976), United Republic of Tanzania (11 June 1976), Uruguay (1 April 1970), USSR (16 October 1973).

would enable to be free and happy" (E/CN.4/SR.1391, 5 (1977)). The problems relating to the realization of ESC rights in developing countries could not be solved through national efforts alone, notwithstanding the depth and extent of the economic and social reforms; international efforts were called for.

According to the Senegalese representative, the UNCHR could change its approach "by recognizing the right to development as a fundamental right", which was justified

> not only by the economic interdependence which made the economic progress of the developing countries an important factor in the growth of the industrialized countries, but also the moral responsibility of the economic Powers, by the principle of universal solidarity and by the legal obligation to co-operate. (E/CN.4/SR.1391, 5 (1977))

The argument of economic interdependence has already been discussed on several occasions in this study and there is no need to elaborate any further upon it at this stage. The three other arguments advanced by M'Baye in order to justify the redescription of development as a human right, however, are of greater interest because of their relative novelty. The first one concerned the linking of "moral responsibility" in international relations with the concept of "economic Powers." In the context of the present argument, the term "economic Powers" may be interpreted as a reference to those countries having sufficient resources at their command to provide them with the capacity not only to make but also to enforce economic decisions. The "moral responsibility" of these countries, M'Baye explained, derived from "history" as well as "the economic, financial and political privileges that they enjoyed: the right of veto in the Security Council could only be justified by the duty to assume responsibility for the state of the present-day world, and particularly for the unjust economic order which characterized it." (E/CN.4/SR.1391, 5 (1977)) Put simply, with great powers come great responsibilities. In other words, if the developed countries wished to keep their power of initiative and decision in the international economic sphere, it would only be fair for them to assume a similar level of responsibility towards the developing countries in exchange. While this argument had been part and parcel of the UNCTAD debates over the establishment of a NIEO, it was a fairly new one at the UNCHR.

The second one concerned the moral duty of solidarity, which M'Baye argued was "of the same nature as human rights." This duty was incumbent on the "world community" as a whole, a concept that "implied international co-operation." He explained,

> by agreeing in the Charter to adopt principles and to establish methods to guarantee that no use would be made of force except in the common interest, the State had created a responsible international society. At the same time, they had undertaken to encourage social progress and, for that purpose, to establish better international conditions. […] Article 55 and 56 of the Charter were significant in that respect. (E/CN.4/SR.1391, 5 (1977))

From his point of view, the particular role to be assumed by the UNCHR in that respect was to provide the normative framework for international cooperation in

the economic and social field, thereby "channelling the vast movement of ideas which was developing, not without some effort, in UNCTAD and the 'North-South Conference'" (E/CN.4/SR.1391, 5 (1977)). Such framework was readily available in the UDHR and other texts adopted by the UN. In particular, M'Baye advanced article 11 of the ICESCR—and particularly paragraph 2(a) and (b)—as defining the kind of cooperation called for to put the right to development into practice, which he described as a "co-operation which was freely agreed upon and was designed to safeguard the sovereignty of young States" (E/CN.4/SR.1391, 6 (1977)). In other words, M'Baye was calling for ethics in the international relations between developed and developing countries. Here, the right to development as a human right would give the extent and scope of ethical obligations in the conduct of affairs between developed and developing states. This perspective affirms the importance of moral principles in international law and the primacy of the interest of the international community as a whole over the selfish interest of individual states in international relations.

While cooperation in the economic and social field with a view to the development of the underdeveloped countries had been intensified over the past few years, it was far from enough. In particular, remarking upon the latest session of UNCTAD to illustrate his point, M'Baye said that "like the first three sessions, [it] had ended in great disappointment, with just a small ray of hope to appease the hungry until the end of 1970" (E/CN.4/SR.1391, 6 (1977)). He thus argued that if the right to development "was to have any real meaning", it "would require a stand to be taken, not only by economists, but also by jurists and humanists, and hence by such bodies as the Commission" (ibid.). To that aim,

> It seemed essential to specify the juridical outlines of the right to development in its international dimension, in a study which follow up Mr. Ganji's report on the implementation of economic, social and cultural rights and would provide a moral and juridical basis for research on the establishment of a new international economic order. (E/CN.4/SR.1391, 6 (1977))

He then justified linking the redescription of the right to development as a human right with the quest for the establishment of a NIEO as follows:

> The under-developed countries claimed the right to sovereignty over their natural resources, and therefore fair and stable prices, within the framework of North-South trade, for primary commodities, and the right to solidarity, i.e. generalized trade preferences, the transfer of technology, food aid and help for agricultural development, particularly for the poorest countries. The UDHR had outlined a minimum of justice, which cast a new light on the question before the Commission, since it stated in article 23 that "Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity". (E/CN.4/SR.1391, 6 (1977))

Echoing the message delivered by Princess Ashraf Pahlavi, M'Baye concluded his speech by arguing that "what had to be done was to break the present colonial pact of deterioration in the terms of trade and to replace it, in a new and more just economic order, by the stabilization of terms of trade which would make it possible to pay everybody a fair price for his labour." (E/CN.4/SR.1391, 6 (1977))

Here M'Baye clearly articulates the demands of developing countries for justice and equality in international economic relations in the language of human rights. This not only serves to strengthen their claims by augmenting their moral value, but also to revise the agenda for the establishment of a NIEO by using international human rights to set the normative limits within which this new order can be realized.

In the light of the above, it might not be so surprising that a number of developed country representatives initially opposed the redescription of the right to development as a human right during the UNCHR debate of 1977. For instance, speaking on the subject matter of the study requested under paragraph 4 of the draft resolution, Giuseppe Sperdutti of Italy argued that the paragraph in question "seemed to be proclaiming two new human rights for the 'individual', namely, the right to development and the right to peace" (E/CN.4/SR.1397, 7 (1977)). From his point of view,

> Peace and development were naturally of the highest importance, but they were rather the rights of nations or peoples, and the former had already been proclaimed in the Charter. It was true that individuals felt the benefits of development and that the realization of rights depended on peace, but his delegation would like the sponsors to make their ideas clear and to state whether the right to peace and the right to development were rights of peoples or individual persons. (E/CN.4/SR.1397, 7 (1977))

He added that a number of declarations had already been adopted by the UN on the topics of decolonization, racial discrimination, and so on, which made yet another declaration on the right to development and the right to peace somewhat redundant (E/CN.4/SR.1397, 7 (1977)). For Sperdutti, therefore, the recognition of the right to development as a right of people was a fait accompli. The adoption of a UNCHR resolution calling for a study of the right to development thus understood would at best be an unnecessary duplication of work based on a conceptual confusion.

Sperdutti's request to the sponsors to clarify these two concepts proceeded from the philosophical assumption that a right borne by a group qua group could not be a human right. Therefore, the rights of nations and peoples were distinct from rather than encompassed by human rights. The reasoning underlying this assumption could be summarized as follows "each human being is [self-evidently] an individual being. Groups may have rights of some sort, but, whatever those rights might be, they cannot be human rights. Human rights must be rights borne by human individuals" (Jones 1999, 80). From this perspective the important question to be answered was whether there was a right to development that could be conceived as a right of individuals, distinct from the right to development as a right of nations and peoples; only then would it constitute a human right.

To shed further light on the kind of professional battles and philosophical assumptions underlying the controversy over the redescription of the right to development as a human right, a common division made among human rights

theorists who distinguish between group rights and human rights is worth introducing. According to Professor of Political Philosophy Peter Jones, there are some for whom

> the reality of the conceptual difference between human rights and group rights does not betoken any antagonism between the two forms of rights. Rather, they regard some group rights, such as the rights of peoples or the rights of cultural minorities, as close complements of human rights. They believe that the reasons that lead us to ascribe rights to individuals are also reasons why we should recognize certain forms of group rights: human rights may be conceptually different from group rights, but the two sorts of rights are united by the same underlying values and concerns. (Jones 1999, 81)[32]

While they would certainly argue that there is a theoretical difference between the right to development as a right of peoples and the right to development as a right of individuals, supporters of that view would in practice have no problem in recognizing the right to development as belonging to both categories of rights. It is highly possible that the representatives of the two developed countries that co-sponsored the draft of UNCHR resolution 4 (XXXIII), namely Felix Ermacora of Austria and Hans Danelius of Sweden, held that view. However, neither Ermacora nor Danelius spoke on the topic of the right to development as a human right during the UNCHR debate of 1977, or any time prior to that debate for that matter. To be sure, this view had been repeatedly advanced by develop country representatives from the Group of Western European and Other States during consideration of other items. The only example of this view with respect to the subject matter, however, was found in the statement delivered by Theodoor Cornelis van Boven of the Netherlands during the UNCHR debate of 1975, who expressed support for the redescription of the right to development as a human right by arguing that the right to development and human rights were united by the same concern for emancipation (see van Boven at E/CN.4/SR.1298, 76-77 (1975) and Chapter 6). Nonetheless, any conclusion drawn on the matter cannot be considered more than speculative at this stage.

For others, however, “the distinction between group rights and human rights is of more than merely analytical significance” (Jones 1999, 81). From their point of view, group rights are “potential threats to individual rights” because they often are rights “claimed against, or over, individuals” (ibid.). The point of human rights, however, is “to protect individuals from the power of groups, whether or not that power is institutionalized” (Jones 1999, 81); they are rights held by individuals “not only against the state, but also against ‘society’, that is his or her community or even family” (Howard 1992, 83).[33] Contrary to the previous case, explicit examples of that view could be found in the summary records of the UNCHR debate of 1977. For instance, Gerhard Jahn of the Federal Republic of Germany—a former Federal Minister of Justice (1969—1974) and member of the Social Democratic Party—advanced the view that “the right to development,

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32 See also Marie (1986), van Boven (1986) and Rigaux (1979) for similar but earlier expressions of this view.

33 See e.g. Donnelly (1990, 2003), Graff (1994) and Nordenfelt (1987) for other examples of such view among Western scholars.

in relation to the realization of human rights, could not be more than an *individual* right to free development of the personality" (E/CN.4/SR.1397, 8 (1977) [emphasis added]). For Jahn, the values and concerns underlying the right to development as a right of peoples and the right to development as an individual right were diametrically opposed and could therefore not be brought together under a single concept, namely human rights. It might be worth underlying that, not so long ago, the UNCHR was still debating the virtue of the right of peoples to self-determination as a human right. While that right became enclosed in the International Covenants on Human Rights (see Article 1 (1) of the ICESCR and the ICCPR), it was still a contentious issue at that time. Perhaps not so surprisingly, therefore, the political fault lines in the debate over classifying the right to development as a human right resembled those in the covenant debates over the right of peoples to self-determination.

Akin to Sperdutti, Jahn requested the sponsors to clarify the relationship established in the fourth operative paragraph of the draft resolution between the demands for a NIEO, which he argued were already embodied in resolutions adopted by the UNGA and UNCTAD, and the right to development as an individual human right (E/CN.4/SR.1397, 8 (1977)). Similarly, after expressing his lack of conviction on the need for the study mentioned in the fourth operative paragraph, Sir Keith Unwin of the UK argued that it "set a diffuse and difficult task, which his delegation did not think had been defined clearly enough" (E/CN.4/SR.1397, 7 (1977)). To be sure, representatives from the Group of Western European and Other States were not the only ones to criticize the fourth operative paragraph of UNCHR resolution 4 (XXXIII), but their objections were the only ones raised on substantive ground against the subject matter of the study it called for.

The concerns raised by Aureliano Aguirre of Uruguay, for instance, were of a very different nature than those of Italy, Germany, and the UK, and were revealed once the sponsors rejected in bulk his proposal to delete operative paragraph 4 along with amendments proposed by other representatives. Following the fourth preambular paragraph as it stood in the original text of the draft resolution, the UNCHR would have recommended ECOSOC to invite UNESCO in cooperation with the other competent specialized agencies to carry out the study in question. According to Aguirre, this recommendation "implied the involvement of UNESCO in a manner at variance with the avowed non-political role of that body, which had been stressed during its nineteenth General Conference. Indeed, the tasks referred to in operative paragraph 4 seemed to fall rather within the purview of bodies such as ILO and WHO." (E/CN.4/SR.1398, 3 (1977)) From his point of view, a request to the Secretary-General as opposed to UNESCO to undertake the type of study mentioned in the draft resolution would have been more appropriate. Taking a strong stance on the question, he argued that "his delegation would have to vote against the draft resolution" if the fourth operative paragraph was not revised accordingly (E/CN.4/SR.1398, 3 (1977)). In order to allow the sponsors of the draft resolution the opportunity to respond to his re-

marks, the meeting was suspended for a short time. When the meeting was resumed, the representative of Iran said on behalf of the sponsors that, as a result of the consultations conducted during the suspension, they had decided to amend the opening part of operative paragraph 4 to read: "*Recommends* to the Economic and Social Council to invite the Secretary-General, in co-operation with UNESCO and other competent specialized agencies…" (E/CN.4/SR.1398, 5 (1977)).

In the end, the justification that seems most likely to have persuaded even the most sceptic developed country representatives to admit the right to development as a human right based on international cooperation in the conventional vocabulary of the UNCHR was the articulation of the concept in the conventional vocabulary of the UDHR and the ICESCR. In this regard, Gerhard Jahn of the Federal Republic of Germany said that while the ICESCR imposed obligations on states, "it also assigned an important role to international co-operation, in view of the necessity of participation by all countries in the common effort to ensure decent living conditions for everyone" (E/CN.4/SR.1394, 3 (1977)). The arguments subsequently developed by the German representative to redescribe the right to development as "a right to the free development of the personality" drew heavily from article 22 of the UDHR. In order to interpret this rhetorical move, it might be useful to turn briefly to the conceptual equivalent of that article in Article 2(1) of the German Constitution.

As Joan Church, Christian Schulze and Hennie Strydom remark in a book chapter on the protection of human rights in Germany, the term "*freie Entfaltung der Persönlichkeit*" ("free development of the personality") found in Article 2(1) of the German Constitution, which "is no more self-defining in the German language than it is in English," "seems to suggest something akin to a right to privacy, an intimate sphere of autonomy into which the state is forbidden to intrude" (Church, Schulze and Strydom 2007, 108). The adjective "free" before "development of the personality" as used by the German representative to redefine the right to development may be interpreted as conveying "a sense of an 'enabling' environment, both in terms of liberty from a lack of interference in the process of self-development, and positive assistance, as necessary, in ensuring the economic and social conditions to self-development" (Diller 2012, 70). Thus understood, the right to development —i.e. as a human right to the free development of the personality—could serve as a powerful weapon in the struggle of the Group of Western European and Other States to maintain their power of initiative over the human rights agenda of the UN. As a human right to the free development of the personality, the right to development could be used against the claim advanced by representatives of authoritarian states that some levels of civil liberty trade-offs were not only acceptable but necessary for the realization of human rights in developing countries, at least until they had reached a sufficient level of development.

This interpretation is strengthened by the fact that other representatives from the Group of Western European and Other States advanced similar arguments during the debate. Giuseppe Sperdutti of Italy, for instance, emphasized

the individual dimension of development. His delegation's position on the item under consideration, he argued, "was illustrated by paragraph 2 of article 3 of the Italian Constitution" (E/CN.4/SR.1394, 3 (1977)), which read as follows:

> it is the duty of the Republic to remove those obstacles of an economic and social nature which in fact limit the freedom and equality of its citizens, impede the full development of the human being and the effective participation of all workers in the political, economic and organization of the country.

From his point of view, the concept of full development of the human being was closely connected to that of his dignity and worth, "for only through the enjoyment of freedom in all its forms, and on a basis of equality, would the dignity and worth of the human person be fully protected" (E/CN.4/SR.1394, 3 (1977)). From Sperdutti's point of view, "[i]t was [...] for each State to ensure, under its national legislation, that all persons within its jurisdiction enjoyed the human rights and basic freedoms laid down in the [UDHR] and in the international instruments adopted to give effect to the Declaration" (ibid.). Furthermore, it was through national law that international law would achieve its objectives regarding human rights, since people were still subject to national law and the sovereign power of the state.

However, Sperdutti disagreed with the view that there should be no control, in the absence of special arrangement, over the inclusion in national law of the principles of the UDHR and related international instruments. For example, if a state took certain national legislative, administrative or other measures in violations of those instruments, with the result that persons within its jurisdiction were victimized, it was not admissible for other states to refrain from any action on their behalf. In other words, the principle of non-interference in the internal affairs of state was inapplicable to this kind of situations. Once human rights and basic freedoms had become a matter of priority and the subject of international legal instruments, they had ceased to be within the exclusive competence of national law. Far from being an interference in domestic affairs, appropriate initiatives taken in good faith would not merely be lawful but would fulfil the obligation imposed on states by the UN Charter and referred to in the preamble to the ICESCR and the ICCPR: namely, "to promote universal respect for, and observance of, human rights and freedoms" (E/CN.4/SR.1394, 4 (1977)). This is how representatives of the Group of Western European and Other States usually described international responsibility with respect to human rights and fundamental freedoms.

In short, the German and Italian representatives had no objection to the redescription of the right to development as a human right, so long as its individual dimension and the national aspect of its realization were emphasized. However, the right to development concept advanced by M'Baye was broader in range and scope than the interpretation suggested by Jahn and Sperdutti. As we have seen, it was simultaneously an individual and a collective right and its realization called for both national and international actions. In particular, M'Baye's interpretation of international responsibility went far beyond the one outlined by Sperdutti and other representatives of the Group of Western European and Other

States. As already mentioned, the novelty of the redescription of the right to development as a human right was "to complement the international human rights regime by rules going beyond individual State responsibility, and taking inspiration from principles derived from international development efforts" (de Feyter 2013, 32). In particular, the idea of international responsibility for human rights was "no longer exclusively conceived in terms of the mutual accountability of States towards one another, but extend[ed] to individuals and peoples within other States in the partnership" (de Feyter 2013, 31).

Generally speaking, the view advanced by M'Baye proceeded from a particular conception of human rights, grounded in the premise that

> what is fundamentally important to human beings relates to 'goods' and 'bads' that people experience collectively rather than individually: if we insist that human rights must be rights that people can hold only as independent individuals, our conception of human right will not match the social reality of the human condition. (Jones 1999, 81)

For Kéba M'Baye, the national and international dimensions of the right to development were part of the same social reality and were therefore non-dissociable. What could be said for individuals at the national level about the liberty from any interference in the process of self-development and positive assistance in creating the conditions to that self-development could also be said for peoples at the international level. As a human right, the right to development still concerned the establishment of a NIEO, because the structures of the international economic order hampered the realization of the economic dimensions of the right to self-determination of peoples in developing countries. For M'Baye, the right of peoples to self-determination was integral to basic human rights and fundamental freedoms. This is where the view advanced by the Senegalese representative started to conflict more heavily with the ones held by the German, Italian and other representatives among members of the Group of Western European and Other States.

Jahn argued that as the right to development currently stood in the draft resolution, alongside a set of collective demands for a new international economic order, it could not be given the status of a human right. From his point of view, the demands for a new international economic order associated with the study of the international dimensions of the right to development as a human right in the fourth operative paragraph of the draft "had already been formulated in an appropriate fashion in separate resolutions adopted by other bodies, such as the General Assembly and UNCTAD" (E/CN.4/SR.1397, 8 (1977)). In other words, the promotion of human rights was an end to be pursued in its own right by the UN; it was not at any cost to be subordinated to that of friendly relations among nations based on equality and the principle of self-determination (Cassese 1986, 298)—as the sponsors of the draft would have it. Only by emphasizing the individual dimension of the right to development as a human right would the UNCHR contribute something of value towards that end.

Akin to the German and Italian representatives, Allard Lowenstein of the US—a Democratic politician and former member of the US House of Representatives—recognized the need for international cooperation with a view to the universal realization of human rights. He said,

> the world situation had been deteriorating during the past 20 years, which called for redoubling efforts to protect man and his environment before it was too late. The Commission could best play its part by eschewing categories of human rights and taking direct action, guided by the UDHR, in fields where human needs were evident and immediate. He hoped that the United States, despite its own particular problems, would continue to join with other countries in alleviating the world's problems, which could only be dealt with by concerted international action. (E/CN.4/SR.1398, 4 (1977))

Unfortunately, Lowenstein remarked, some dichotomies had plagued recent debates on the item. For instance, human rights were generally deemed to be in two categories: CP rights being distinguished from ESC rights. He opined that "the dichotomy had become so entrenched as to obscure the real priorities, discussion of which could thus easily become irrelevant to real human suffering and needs" (E/CN.4/SR.1398, 3 (1977)). He continued by arguing that

> The pace and direction of the evolution of human rights differed from State to State, and the progress of that evolution in any one society had never been uniform in all fields of human rights. It should be recognized therefore that groupings of human rights were necessarily arbitrary and could not be accorded any absolute order of priority. Indeed, a given type of human rights objective could have more immediate relevance to some societies than others; educational goals, for instance, had a different significance for societies with an established educational infrastructure than for those without books and teachers. Similarly, the pretend distinction between international and internal affairs should be discarded; if famine within a particular region was rightly a cause for international concern, so were matters such as torture. (E/CN.4/SR.1398, 3—4 (1977))

Here, a couple of remarks about Lowenstein's human rights activism are called for. One remark concerns his book *Brutal Mandate: A Journey to South-West Africa* (1962), which he wrote after making a clandestine tour of what is now Namibia, but was then a United Nations Trust Territory. His book, based on a collection of interviews and recordings, gave convincing evidence against the South African-controlled government. In particular, it drew attention to the gross human rights violations perpetrated by the white minority in South West Africa—a territory where the UN had the special responsibility to enforce the mandate which South Africa accepted after World War I. Elenaor Roosevelt, with whom Lowenstein had worked at the American Association for the United Nations, wrote the introduction. Another remark concerns his lasting impact on the American civil rights movement. Although Lowenstein served in Congress only for one term (3 January 1969—3 January 1971), he nonetheless left his mark on American politics by recruiting whites into the civil rights movement (Cummings 1985).

In the light of the above, Lowenstein's move to engage openly with the question of the consequences of colonialism on the development of the developing countries during the UNCHR debate of 1977 is not completely surprising. He

began by drawing attention to the persistence of the situation of oppression in which some former colonial countries and people still found themselves:

> all countries must accept responsibility for each other, not because any one State had a monopoly of wisdom but because resources were distributed unevenly and because the ending of colonial rule and oppression from foreign sources had in some instances given way to oppression exercised by independent Governments, thus changing the political realities and making it necessary to find new ways of dealing with oppression. There was no simple solution to that problem. (E/CN.4/SR.1398, 4 (1977))

This line of argument may be interpreted as a reply to the accusation of neocolonialism that had so often been wielded by developing country representatives as one of the international conditions impeding the realization of human rights in their countries. According to Lowenstein, the developed countries were not the only ones to blame for the problems relating to human rights in developing countries, as some developing country representatives had seemed to imply during the debate.

Nonetheless, Lowenstein recognized the role of his country in enabling the government of some developing countries to perpetrate these acts of oppression through the provision of foreign aid:

> His government had for years furnished a country possessing a colonial empire with financial assistance which it had used against the interests the United States should have stood for. Thus, it was not enough to say simply that the richer countries had an obligation to assist the poorer countries; the question of what that assistance was used for should also be examined. (E/CN.4/SR.1398, 4 (1977))

Although Lowenstein did not explicit mention it during the debate, it is highly likely that what he meant in the passage above was the conflict of interests underlying the provision of US aid to Apartheid South Africa. At this point, it might be relevant to note that it was President Jimmy Carter who had appointed Lowenstein as US representative to the UNCHR. Not so coincidently, "it was President Carter's executive that confronted Pretoria to the greatest extend" (Thomson 2008, 89). As Alex Thomson remarks in an extensive study of *U.S. Foreign Policy towards Apartheid South Africa*,

> Following the 1976 Kissinger initiative, the new White House remained focused on southern Africa at the highest level. Resources were committed and interest sustained. The United States verbally castigated apartheid, issued warnings, undertook symbolic actions, and supported a mandatory U.N. arms embargo. (Thomson 2008, 89)

In a way, it could be argued that Lowenstein was simply using an opportunity in the debate to justify the position adopted by the Carter administration towards South Africa against that of previous US administrations who had provided support to the apartheid regime. What is remarkable here is not so much the confrontation with South Africa, but rather the decision to use it as an example to support the proposal—advanced by M'Baye through the redescription of development as a human right—to approach international development aid and cooperation from the perspective of international human rights. Although Lowenstein made no mention of the right to development as a human right, he concluded his

speech by arguing that the UNCHR "had an obligation to ensure that those who were tortured or oppressed, even by their own government, had some recourse and that persons suffering from famine and disease were able to secure the assistance from other countries when their own country lacked the resources to help" (E/CN.4/SR.1398, 4 (1977)).

In the end, Lowenstein considered that the draft resolution, which called for "a study of the international dimensions of the right to development as a human right, in relation with other human rights based on international cooperation, including the right to peace, taking into account the requirements of the NIEO and fundamental human needs", succeeded in moving beyond the problematic dichotomies he had spoken about during his speech. Accordingly, he proclaimed his support for it. A possible interpretation to his tacit agreement to recognition of the right to development as a human right, as well as that of other members of the Group of Western European and Other States for that matter, is that it not only allowed for competing philosophical perspectives but also for opposing political views to coexist under the same umbrella concept. By doing so, it provided the opportunity to move forward on a practical level in the longstanding debate over the question of the nexus between development and human rights.

Interestingly, even though M'Baye redescribed development as a human right for the first time during the UNCHR debate of 1974, his move was barely remarked upon by other representatives prior to the UNCHR debate of 1977. Furthermore, it was only during the two meetings preceding the adoption of UNCHR resolution 4 (XXXIII) that developed country representatives really voiced their objections by questioning the nature and scope of development as a human right. The point is that representatives among the Group of Western European and Other States did not reject altogether the possibility of the right to development as a human right; they rejected the possibility for it to be simultaneously a collective and an individual right. In other words, the right to development was either a right of nations and peoples—in which case it was not a human right—or a right of the individual—in which case it was a human right—but it could not be both.

For his part, M'Baye deemed the conceptual distinction between the right to development as a collective right and the right to development as an individual right unnecessary. The right to development, once conceptualized as a human right, encompassed both:

> The question whether the right to development was collective or individual and whether the duty to assist its realization was a national or an international one was somewhat a false problem, since all the indicators of development employed by economists were related to the individual and the concept of real improvement in standards of living, linked as it was to the essential precondition of peace, necessarily involved both national and international effort. (E/CN.4/SR.1398, 6 (1977))

As the present chapter suggests, M'Baye found a way to go around the dichotomy between collective and individual rights by arguing that human rights could assume both forms. Whether one aspect (the collective or individual one) was

more prominent than the other was not an issue. The right to development assumed a collective form because individuals living in conditions of underdevelopment possessed a right that none of them possessed individually. As such, they formed a right-holding group "related by a common but contingent interest" (Jones 1999, 85). It just so happened that the vast majority of these individuals lived in African, Asian and Latin American countries or the "underdeveloped countries" as M'Baye referred to them. Nonetheless, the right to development equally applied to individuals living under conditions of underdevelopment in developed countries. It is interesting to note that M'Baye delivered this part of his argument in a statement made *after* the adoption of UNCHR resolution 4 (XXXIII). In fact, none of the sponsors provided an answer to the request for clarification advanced by the Italian, German, and British representatives with respect to the nature and scope of the right to development prior to the adoption of resolution 4 (XXXIII).

What is interesting here is the political point of the conceptual struggle over the request advanced by developed country representatives to the sponsors to clarify the relationship between the right to development as a group right—a right associated with the demands for the establishment of a NIEO—and the right to development as an individual right. Indeed, the redescription of the right to development as a human right could only serve to bring the momentum of human rights to bear on the demands of developing countries for economic self-determination and equality in their relations with the developed countries into focus, and by the same token claim development cooperation and assistance as a human right, if human rights could take individual as well as collective forms. In other words, by limiting the nature of the right to development as a human right to that an individual right, developing country governments would not be able to use that right to claim development on behalf of their *people*.

What is puzzling about the adoption of UNCHR resolution 4 (XXXIII), however, is not really the fact that it was adopted by consensus (i.e. without a vote) despite persistent professional battles and philosophical controversies over the nature and scope of the right to development concept. After all, similar battles and controversies had been visible throughout the drafting of the UDHR and the International Covenants on Human Rights, which did not prevent the UNGA to adopt these instruments. In the process of debating their adoption at the UNGA, however, the contents of these instruments came out in a more diluted form than the draft proposals that had been recommended by the UNCHR. This aspect of the politics in the formation of new human right concepts and the adoption of international instruments at the UN is important to remember: the UNCHR is not the ultimate instance with regard to the adoption of these instruments and its members—most of whom also participate in the meetings of the Third Committee of the UNGA—are keenly aware of that. In short, the adoption of a resolution at the UNCHR is often the beginning rather than the end of a political battle.

What is more, other dimensions of draft resolution 4 (XXXIII) seemed to have raised greater concern than the proposal to study the international dimensions of the right to development as a human right, none of which prevented the

adoption of the resolution by consensus. One such point was the right to peace, also found in the fourth operative paragraph of the draft. Another was the relationship between ESC rights and CP rights and the interpretation attributed to the concept of interdependence in the eighth preambular paragraph of the draft (see e.g. statements made by Sir Keith Unwin of the UK at E/CN.4/SR.1394, 7 (1977) and Yvon Beaulne of Canada at E/CN.4/SR.1397, 8 (1977)). Yet another was the linkage of disarmament and development with the realization of ESC rights in the seventh preambular paragraph of the draft (see e.g. Beaulne of Canada at E/CN.4/SR.1397, 8 (1977)).

While the adoption of resolutions and declarations by UN organs or specialized agencies necessarily calls for a minimum level of shared language, "[l]anguage is not a neutral medium and reservoir of readily available and neutral meaning; instead, it is a sword with which political battles are waged" (Roshchin 2017, 177; cf. Skinner 2002, 7). As such, the formal introduction of a new concept into the conventional language of the UN through its recognition in such a resolution may be interpreted, in Weberian terms, as an attempt to change the horizon of chances within the organization. The adoption of UNCHR resolution 4 (XXXIII) modified this horizon of chances in important ways. On the one hand, it gave a way to advance the concerns and priorities of the developing countries on the agenda of the UNCHR, by providing a means to support their claims for international aid and cooperation in the realization of human right and to counter what could be said against it. Indeed, the priorities of the Group of Western European and Other States had traditionally dominated the agenda of the UNCHR. They were, however, starting to lose their power of initiative in that regard and more attention had been paid in recent years to issues of racial discrimination, apartheid and foreign occupation. The right to development, once redescribed as a human right, could serve to amplify what could be said against the priority accorded to CP rights over ESC rights by depreciating, for instance, the argument according to which the economic development necessary for the realization of ESC rights would naturally follow the implementation of CP rights.

This is quite a startling transformation. Indeed, less than a decade ago, developing country representatives were fighting hard to have both the linkage between development and human rights and the international aspects of the special problems relating to human rights in developing countries formally recognized by the UNCHR (see Chapter 3 and 4). British and American representatives, among others, had vehemently opposed these efforts. As seen in Chapter 3, development and human rights were often considered competing concerns in the short to medium timeframe of politics. What happened, then, between the UNCHR debate of 1969 and the UNCHR debate of 1977 that made the redescription of the right to development as a human right an acceptable proposal to the members of the UNCHR? As this Chapter uncovers, the redescription of development as a human right could also serve to counter the claims, often advanced by authoritarian regimes, that ESC rights should be given priority over CP rights. As

such, it contained the potential to serve as a shield to representatives of democratic regimes against the attempts of representatives of authoritarian regimes to depreciate the value of CP rights.

To summarize, while members of the UNCHR unanimously agreed to recognize the right to development as a human right, they did so not only for highly different reasons but also with highly different conceptions in mind—meaning they intended to use the concept in highly different ways. In a way, the conceptual struggle accompanying the redescription of the right to development as a human right had just begun with the adoption of UNCHR resolution 4 (XXXIII), which opened a new horizon of chances in the debate over the nexus between human rights and development at the UN.

6.4 Concluding remarks

In conclusion, it is possible to identify three distinct and interconnected aspects of the agenda to be carried forward by the conceptual innovation introduced by Kéba M'Baye through the redescription of development as a human right in the particular context of the UNCHR:

- a political project;
- an intervention intersecting the trajectory of international development law and international human rights law; and
- a moral vision for the future of international relations.

More precisely, the redescription of the right to development as a human right may be simultaneously interpreted as a set of political objectives, a legal tactic and an attempt to give a place to development ethics in international relations. According to Slim, the challenges for people using human rights in order to challenge rather than to maintain the status quo in a development context "is to organize and create a counter-veiling force to the complacency and oppression of those on the moral high ground" (2002, 5). In practice, "it involves abolishing the development enterprise as a neo-colonial program of correction administered from rich to poor and replacing it with a common political project that recognizes everyone's equal rights and judges the behavior of all on the basis of how they realize or violate these rights" (ibid). M'Baye's intentions in redescribing development as a human right, I would like to suggest, may fruitfully be interpreted along these lines.

To begin with, an important aspect of the redescription of development as a human right is the re-evaluation of the trade-offs between development and human rights in terms of basic human needs, poverty, culture and, above all, civil and political liberties. Here, these sacrifices are presented as political choices and the recognition of the right to development as a human right as an alternative to these choices. For M'Baye, these sacrifices were only "necessary" or "inevitable" insofar as the developed countries were not fulfilling their obligations vis-à-vis the underdeveloped countries in terms of aid and cooperation.

M'Baye's redescription further served to re-evaluate the existing patterns of relations between the developed and the underdeveloped countries, which he claimed were organized to systematically favour the developed countries. As a lawyer by formation, M'Baye employed a legal tactic to do so, intersecting the trajectory of international development law and international human rights law. According to Italian jurist and Professor of International Law Antonio Cassese, the right to development

> was a means of reformulating the whole problem of the international law of development in terms of 'fundamental right'; this served to bring the demand of developing countries for a restructuring of the world economic order into focus and indeed to dramatize such demand: clearly if you speak of a 'right' it follows that there must exist a duty falling upon somebody. (Cassese 1986, 369)

However, M'Baye's move went far beyond the economic dimension of the right to development identified by Cassese. Once redescribed as a human right, the right to development called for radical changes in all aspects of the relations between developed and developing countries. For M'Baye, the duty to cooperate was a core element of the right to development as a human right and fell upon the international community as a whole following the principle of solidarity. Put differently, the responsibility for the development of the individuals and peoples in the underdeveloped countries lay no longer exclusively nor primarily on the shoulders of these countries alone, but extended to the developed countries—or more precisely to individuals and peoples in other countries. Put simply, the right to development as a human right called for inter-state mutual reciprocal responsibility.

Another novelty of the redescription of the right to development as a human right was also to seek "to complement the international human rights regime by rules going beyond individual State responsibility, and taking inspiration from principles derived from international development efforts" (de Feyter 2013, 32). Indeed, at the time, "the focus on individual State responsibility in current human rights treaty law prevent[ed] the integration of human rights into the international development effort" (de Feyter 2013, 32). In particular once understood as a human right, the right to development suggested that accountability for human rights should no longer exclusively be conceived in terms of the mutual accountability of states towards one another, but should be extended to individuals and peoples within other states (de Feyter 2013, 31). This is perhaps one of the main lessons to be learned from the struggle over the recognition of the right to development as a human right at the UNCHR. Indeed, this issue is still problematic today, something which tends to indicate that the point of the resdescription of the right to development as a human right—or at least one of its core aspects—was lost somewhere between now and then.

According to Cassese, the right to development, once articulated into the conventional language of international human rights, also "served to bring the whole momentum of the human rights doctrine […] to bear on all the problems of international economic relations, thereby forcing Western countries, notori-

ously devious in this field, to come out into the open" (1986, 369). This interpretation draws attention to the evaluative function played by the redescription of the right to development as a human right, which forces donor countries to reevaluate their foreign (economic) policy according to international human rights standards. More precisely, the right to development serves as the normative framework within which to (re)evaluate the value and moral qualities of the foreign (economic) policies of developed countries. As previously mentioned, M'Baye's redescription served an even broader purpose than the one identified by Cassese. In many ways, M'Baye was seeking something more than the establishment of a new world economic order. To be sure, his vision certainly encompassed this dimension. Indeed, he called for economic justice for the underdeveloped countries during his speech. Nonetheless, this was not the only, let alone the most crucial point of his redescription. For him, the point in redescribing the right to development as a human right was of a more political, far-reaching nature. It was not only about fairness in what different countries and peoples received in terms of resources, but also about fairness in how they were treated. Put simply, the principle of fairness upon which the international order envisioned by M'Baye was to be built was about fair play as opposed to fair share. It was formulated against double standard politics in relations between the developed and developing countries. Ultimately, as he himself recognized, his redescription was to serve as a point of departure for development ethics in international relations (M'Baye 1972, 523). The right to development thus conceived represented a powerful rhetorical device to challenge the status quo and to fight for justice and equality in the relations between the developed and the developing countries.

7 CONCLUSIONS

From our contemporary perspective, the idea that the right to development is a human right seems rather commonplace. The numerous calls to make the right to development a reality for everyone and the creation of a Special Rapporteur on the right to development thirty years after the adoption of the UN Declaration on the Right to Development are illustrative of this trend. Only half a century ago, however, the situation was altogether different. Back then, scholars and practitioners concerned with problems of international development or human rights would most likely have found the idea of the right to development as a human right exceedingly odd. M'Baye reflected this situation when he remarked, in the opening statement of his inaugural lecture on the right to development as a human right in 1972, "Le thème que je suis chargé de développer devant vous […] est embarrassant à plus d'un titre pour le juriste que je suis" (1972, 505), thereby acknowledging the peculiarity of his subject matter.

How has it been possible for this commonplace to appear at the United Nations in the first place? One of the main objectives of this study has been to suggest an answer by shedding some light on the politics in the history of the formation of the concept at the United Nations. To that aim, the study has proceeded by asking why and how state representatives at the UNCHR were the first to give formal recognition to the right to development as a human right. In particular, three aspects of this assertive action were considered puzzling and were used to guide the empirical narrative:

- The fact that the UNCHR called for a study of the international dimensions of the right to development as a human right in 1977—rather, for instance, than an investigation that the right did exist or ought to be established in international human rights law—thereby recognizing the concept "on the basis of no prior examination of the matter and without the assistance of any relevant documentation" (Alston 1984, 612);
- The fact that the UNCHR felt itself competent to call for a study of the "international dimensions of the right to development as a human right in relation to other human rights based on international cooperation, including the right to peace, taking into account the requirements of the New International Economic Order and fundamental human needs"—thereby hinting to a conception of duties and responsibilities for human rights extending beyond the traditional view of the

state as the sole or primary duty-bearer for the human rights of its people to include other states, international institutions and the international community as a whole. It should be added, in that regard, that the substance of the study called for in resolution 4 (XXXIII) also exceeded in many ways the range and scope of the regular activities of the UNCHR at the time;

- The fact that representatives of the donor countries at the UNHCR (i.e. members of the Group of Western European and Other States) did not oppose, at least not explicitly, this redescription—which in effect could be interpreted as a right to development assistance and cooperation.

Accordingly, the empirical narrative has discussed how the renaming of development as a human right took shape in UNCHR debates, drawing attention to the role of particular actors and rhetorical events in its formation. Perhaps the most interesting finding of this study is that, contrary to common belief, the UN concept of the right to development as a human right is not the result rational consensus-formation. In other words, the concept did not gain acceptance among UN member states following careful consideration and deliberation. On the contrary, the UNCHR recognized it rather quickly after its introduction in the debate over the realization of ESC rights and special problems relating to human rights in developing countries.

Indeed, as the narrative uncovered, apart from Kéba M'Baye of Senegal, developing country representatives barely used the concept in that debate prior to its recognition through the adoption of resolution 4 (XXXIII) on 21 February 1977. Similar, apart from Theo van Boven of the Netherlands, developed country representatives deemed it necessary to comment upon M'Baye's redescription of development as a human right when it first happened at the UNCHR in 1974 and again in 1975. Finally, while disagreement emerged over the range and contents of the right to development as a human right during the UNCHR debate of 1977, the UNCHR adopted resolution 4 (XXXIII) by consensus. By paying attention to the politics in the formation of this concept at the UN, the present study has sought to bring to the fore its contingency and controversy.

Had the UNCHR debate over the question of the realization of ESC rights and study of special problems relating to human rights in developing countries taken a different turn in the late 1960s and 1970s, it is highly questionable whether this right to development concept would today be part of UN practice and policy. Indeed, while the right to development had entered the rhetoric of the struggle for the establishment of a NIEO before its redescription as a human right, the concept had not been enclosed in any of the official documents adopted at UNCTAD or by the UNGA in that regard. Then again, the right to development concept used in the context of that struggle and the one introduced by M'Baye at the UNCHR in 1974 departed from radically different conceptions of state sovereignty as a pillar of international relations—as it has been discussed on various occasions throughout the empirical narrative. In the light of that, the aim of this concluding chapter will be to summarize how the renaming of development in the language of human rights ultimately resulted in its formal recognition as a human right. I will do so by emphasizing what I take to be the most important preconditions for the redescription of the right to development as a human right by state representatives at the UNCHR in 1977.

One of such preconditions is the emergence of the view that ESC rights and CP rights should have equal status notwithstanding a country's level of development. As seen in chapter 6, the idea that both categories of rights are equally importance in addressing the special problems relating to human rights in developing countries was a central element in the redescription of development as a human right. M'Baye introduced the idea of the right to development as a human right to the UNCHR as a sort of no compromise view in that regard. On the one hand, he formulated the concept against the view that the ESC rights would naturally follow the implementation of CP rights in developing countries and that the UNCHR should therefore give priority to the latter over the former. On the other hand, he advanced it against the opposite view, supported mainly by representatives of authoritarian regimes, which consisted in arguing that developing countries had to give priority to the realization of ESC rights over the protection of CP rights.

While this presupposition had become commonplace at the UNCHR in the mid-1970s, the relationship between ESC rights and CP rights and the priority to be accorded to each category of rights in addressing the problems of developing countries had been a very controversial when the debate first opened in the 1960s. As seen in Chapter 4, the contributions of Hernán Santa Cruz of Chile and other representatives of Latin American States in securing the inclusion of ESC rights in the foundational documents of the UN and other international human rights instruments and giving them equal status with CP rights were quite remarkable. For representatives of Latin American states, human rights implied "an agenda for improving the world, and bringing about a new one in which the dignity of each individual [would] enjoy secure international protection" (Moyn 2010, 1). The international protection thus envisioned by Latin American states was not limited to CP rights but extended to ESC rights.

The fact that developing country representatives took control of the UNCHR debate over the question of the realization of the ESC rights contained in the UDHR and in the ICESCR also contributed to giving equal status to both categories of rights notwithstanding a country's level of development. As mentioned in Chapter 3, a representative of the Group of Eastern European States introduced the above-mentioned item on the agenda of the UNCHR in 1967. The UNCHR then considered the item for the first time in 1968. At the time, the bulk of the controversy centred on theoretical disagreements about the relationship between CP rights and ESC rights between representatives of the Group of Eastern European States and the Group of Western European and Other States. When the UNCHR considered the question again in 1969, it did so in parallel with the study of special problems relating to human rights in developing countries. As compared to the twenty-fourth session, however, the bulk of the controversy laid elsewhere: the main question was not anymore the relationship between ESC rights and CP rights but the special problems relating to their realization in developing countries. Santa Cruz, who had by then moved from the UNCHR to serve as representative of Latin America and the Caribbean at the FAO, came

back as representative of Chile and assumed a leading role in the passing of resolution 15 (XXV) on 13 March 1969. The substance of that resolution is worth remarking upon, as it points to two additional presuppositions that ultimately made the redescription of development as a human right a possibility in that debate.

One remark concerns the normative re-evaluation of the concept of development, which allowed its inclusion as a dimension of the universal realization of human rights. A major condition for this re-evaluation to happen has been the common de-valuation of the 1960s academics and officials' identification of development with economic growth. A correlate of this de-valuation has been the rejection of the trade-offs advocated by development economists in the 1960s. These included sacrifices in terms of not satisfying basic human needs, persistent or increased poverty and inequalities, restricting or suppressing civil and political liberties, or the abolition or interdiction of some cultural practices and traditions to achieve or increase economic growth. As seen in Chapter 4, resolution 15 (XXV) broke away with earlier conceptions of development and human rights as competing concerns by providing an alternative view stating not only their compatibility but also their complementarity. In other words, sacrificing human rights did not *contribute* to development, as some development economists were suggesting. On the very contrary, human rights and their realization could contribute to speeding up the development process in developing countries. This conceptual shift has served as a necessary step in opening the horizon of chance of the UNCHR debate to the invention of a new perspective of politicization, that of development as a human right. While the intervention of Santa Cruz and the passing of UNCHR resolution 15 (XXV) in 1969 has introduced the possibility to conceptualize the relationship between development and human rights in positive terms, the redescription of development as a human right was aimed to strengthen that view by emphasizing it as the only morally acceptable one.

The other remark is about the duty to international cooperation as a necessary correlate of the view that development and human rights are complementary rather than competing concerns as found in resolution 15 (XXV). An important point in that regard is the argument that sacrificing human rights of any kind on the altar of development is ultimately a political choice. The governments of developing countries had "no choice" or were "forced" to make such choices because of insufficient resources at the national level. They found themselves in an either-or situation, where they had to decide whether to invest in their economic development or in the realization of human rights. On the one hand, human rights sacrifices were only "necessary" or "inevitable" to the extent that not enough international resources were made available to support the development of developing countries. Together, the international community could make the choice of not trading off human rights for economic development anymore. It could do so by recognizing that development, like other human rights, was a mutual and shared responsibility of states.

The inclusion of development as a dimension of the international human rights concept at the UN thus presupposed the recognition of the mutual responsibility of states with respect to universal realization of human rights and of the importance of international cooperation in that regard. It presupposed such a recognition even when it could lead to a *de facto* loosening of the principle of non-intervention in the internal affairs of states. Once again, Chapter 4 has served to emphasize the central role assumed by Hernán Santa Cruz of Chile in bringing to the fore the international dimension of human rights as a political project based on international cooperation and solidarity. Indeed, Santa Cruz's contributions to the International Bills of Human Rights and appearance in the UNCHR debate of 1969 had lasting consequences on the conventional language of international human rights at the UN and on the role and functions assumed by the UNCHR in the economic and social fields. The concepts introduced and the arguments advanced by Santa Cruz and other representatives among members of the Group of Latin American States opened up the possibility to debate international development assistance and cooperation in the language of international human rights. More importantly, their vision of international human rights as a political project based on international cooperation and solidarity contained emerging conceptions of shared responsibility, which became central elements in justifying the recognition of human rights based on international cooperation, including the right to development, at the UNCHR. Underlying all that was a view of international human rights as a means to strengthen rather than weaken their sovereignty.

As the relationship between development and human rights became conceptualized in positive terms—as completing rather than competing concerns—a point of dispute emerged over the status of the UNCHR and its role and functions with respect to international development cooperation. Was the UNCHR a technical body of international legal experts or a deliberating political assembly? In the latter case, the UCNHR would be competent to pass general resolutions while in the former it would only be competent to adopt technical ones. In principle, the rules regulating its memberships make the UNCHR by definition a political organ. In practice, however, the UNCHR has been composed of large number of international legal experts who assumed the role of member state representative. This has led to persistent struggles and controversies over the role and functions of the UNCHR.

As seen in Chapter 4, according to Santa Cruz the UNCHR had a very special role to play in acting to promote the realization of ESC rights in developing countries. To be sure, he recognized the contributions of other UN organs and the specialized agencies in that regard, but he deemed their contributions insufficient to address the full scope of the problem. The point is that their contributions were often limited to a particular dimension of the problem, while a holistic approach was called for. Since neither the UN organs nor the specialized agencies approached the problem from the perspective of international development cooperation, it was incumbent on the UNCHR to take on that role. The UNCHR could assume such a role precisely because it was more than a technical body; it

was a political assembly. As such, it was entitled to make political declarations. The UNCHR was understood as such by Santa Cruz because human rights, according to him, were not only legal rules applicable in the conduct of international relations, but also and above all a political project calling for international cooperation. The role of the UNCHR could therefore not be limited to that of an international human rights law-making body because law, be it national or international, was but only one means towards the realization of human rights as a political project. Other means included international trade and development cooperation, which were recognized in paragraphs 4 and 5 of UNCHR resolution 15 (XXV). In many ways, the substance of this resolution created a powerful precedent for the adoption of UNCHR resolution 4 (XXXIII) of 21 February 1977, which called for a study of "the right to development as a human right in relation to other human rights based on international cooperation" and "taking into account the requirements of the New International Economic Order".

Another precondition concerns the failure of the Special Rapporteur on the question of the realization of ESC rights, Manouchehr Ganji, to provide a policy alternative that would not only be acceptable but would also satisfy all parties in the debate. Indeed, as seen in Chapter 5, the UNCHR did not take any significant step with respects to the conclusions and recommendations contained in the report of the Special Rapporteur when the report was presented for the first time in 1973 and again, with revised conclusions and recommendations, in 1974. When the report was considered for the third time during the UNCHR debate of 1975, representatives were only able to agree on the inclusion of the item under consideration in the agenda of the UNCHR each year as one of the basic topics with which it should be concerned. Unable to reach an agreement over more substantial matters, the UNCHR had become deadlocked. The various ways and means and approach to the realization of ESC rights offered by the Special Rapporteur could not satisfy the vast majority of developing country representatives. In that debate, the point of M'Baye's redescription of the right to development as a human right was twofold: to offer an alternative to the approach suggested by the Special Rapporteur that would satisfy not only his country but also the developing country majority; to offer a view that would be acceptable also to representatives of Western European and Other States and would thus unify opposing approaches to the problem of development and human rights. However, the time was not yet ripe for the Senegalese representative to advance a proposal in that regard as developed country representatives still considered that the mechanisms provided for in the ICESCR would not only suffice but were the most acceptable alternative for the realization of ESC rights.

Another precondition, which played a crucial role in creating the opportunity for the recognition of the right to development as a human right by state representatives at the UNCHR therefore concerns the entry into force of the ICESCR in 1976. During the UNCHR debate of 1976, it became clear to developed country representatives that the entry into force of the ICESCR would not put an end to the search for alternative to Covenant-based mechanisms for the realization of ESC rights and special problems relating to human rights in developing

countries. As Chapter 6 illustrates, M'Baye seized this opportunity with great success when, in the UNCHR debate of 1977, he finally included his conceptual innovation as a proposal into what became UNCHR resolution 4 (XXXIII).

For M'Baye, this redescription was to serve a threefold aim: One was to advance the concerns and priorities of the developing countries on the agenda of the UNCHR by extending the concept of human rights to the topic of development. Indeed, the agenda of the Commission had long been dominated by the concerns and priorities of the Group of Western European and Other States and its debates by East-West rivalries. As seen in Chapter 3, the question of the realization of the ESC rights contained in the UDHR and in the ICESCR is a good example. Included upon initiative of a member of the Group of Eastern European States, its consideration initially took the form of an ideological debate opposing them to member of the Group of Western European and Other States. Soon, however, that question became entangled with the question of the "study of special problems relating to human rights in developing countries" and developing country representative succeeded in taking control of the debate. This was only the beginning, however, of a lengthy struggle over defining the nexus between development and human rights and the role of the UNCHR in that regard. In that struggle, the redescription of the right to development as a human right served to settle the controversy over the nexus between development and human rights. The UNCHR could then move forward in its search for policy alternatives to address special problems relating to human rights in developing countries; once development became accepted as a human right, it simultaneously became a legitimate issue to be addressed by the UNCHR.

Another was amplifying what could be said against the view that CP rights should come first and depreciating its apparently virtuous qualities—an argument often advanced by members of the Group of Western European and Other States and accompanied by the argument that economic development would then follow naturally. While some developing country representatives meant to use the concept to prioritize the realization of ESC rights, however, it could also be used against that view (see for instance the views expressed by the German and Italian representatives in Chapter 6). The point of naming development as a human right was precisely to reject the opposition between development and human rights, including the trade-offs that had been advocated in development economics in the 1950s and 1960s.

Yet another, more lofty aim, to be served by the redescription of the right to development as a human right was to use the moral authority of the UNCHR on human rights in order to re-evaluate the terms of the relations established between the developed and developing countries at the UN with a view to changing the status quo. The right to development, as envisioned by M'Baye, would serve as the conceptual framework upon which an ethics of development in international relations would be built. The point is that, once redescribed as a human right, the whole range of practices and policies legitimized under the banner of development appeared under a new moral light. As such, the adoption of UN-

CHR resolution 4 (XXXIII) was only the beginning in the realization of an ambitious moral vision for the future of relations between developed and developing countries, where development would become "a common political project that recognizes everyone's equal rights and judges the behavior of all on the basis of how they realize or violate these rights" (Slim 2002, 5).

Finally, as Chapter 6 has uncovered, the recognition of the right to development as a human right at the UNCHR could be justified by various arguments, some of which were more acceptable than others to members of the Group of Western European and Other States—aka the donor countries. The fact that representatives of these countries did not oppose the adoption of UNCHR resolution 4 (XXXIII) may partly be interpreted as a neutralisation of those types of rights they found less important. It may also be interpreted as recognition of the horizon of chance of the right to development concept once redescribed as a human right, which provided a deeply needed political commonplace in the debate over the special problems relating to human rights in developing countries. At the same time, it seems that representatives of authoritarian regimes simply ignored or failed to see the edge of the redescription of the right to development as a human right against traditional conceptions of national sovereignty. While some might have misunderstood the innovation introduced by the Senegalese representative, others saw in the redescription of the right to development as a human right a means to justify its use in the context of the debate over development and human rights. The acceptance of the resolution by representatives of authoritarian states thus points to another important condition for the recognition of the concept: its independence from the natural law justifications advanced by M'Baye in coining the concept.

In short, while a consensus on the justification for the right to development as a human right was impossible to reach, a practical agreement on its recognition could be reached. As Jacques Maritain famously replied when he was asked how people who adhere to starkly opposing ideologies had been able to agree on a list of fundamental rights: "Yes, we agree about the rights but on condition no one asks us why" (Glendon 2001, 77). Put differently, while "philosophically it might be unsatisfying that there should be such persistent disagreement over why we should recognize a particular set of rights as human rights", it is "practically […] a formidable state of affairs, since it means that people subscribing to different philosophies or religions can still reasons, albeit different reasons, for endorsing a common set of human rights" (Jones, 2017). The different underlying philosophies used to justify the recognition of the right to development as a human right have ever since generated disagreement about the scope and contents of the right and how to relate it to the international human rights edifice.

A final remark about the political configuration of the UNCHR debate of 1977 is called for at this point. Representatives from the Group of Eastern European States are barely mentioned in Chapter 6 because they contributed very little to the issue of concern, namely the redescription and recognition of the right to development as a human right. For the most part, they simply contended that economic and social rights could never be fully realized in capitalistic systems,

which, in their view, were based on exploitation and characterized by chronic unemployment, and that consequently civil and political rights remained theoretical in such conditions. In the opinion of those speakers, only socialist systems free from exploitation could ensure full employment and the realization of human rights without discrimination. Accordingly, they often held lengthy speeches aimed at presenting the socialist countries of Eastern Europe as the historical development model par excellence towards the full and effective realization of ESC rights all over the world. They had very little to say about the nexus between development and human rights and it is highly likely that the inclusion of the right to peace the problem of disarmament in the preamble of UNCHR resolution 4 (XXXIII) was done to secure their support.

Had the present study been about the right to peace, the Group of Eastern European States would have been given centre stage. However, since it was about the right to development, their story is best left to another study. An interesting shift thus took place in the political fault lines of the debate over the question of the realization of the ESC right contained in the UDHR and in the ICESCR between 1968 and 1977: the heart of the debate moved from an ideological dispute opposing representatives of the Group of Eastern European States to representatives of the Group of Western European and Other States to a more complex political struggle opposing, on the one hand, developed country representatives to developing country representatives, and, on the other, representative of democratic states to representatives of authoritarian states.

While this study has served to shed light on the controversy and contingency of the initial recognition of the right to development as a human right by state representatives at the UNCHR, a similar rhetorical and conceptual analysis of the UNCHR and UNGA debates leading to the adoption of the UN Declaration on the Right to Development in 1986 would be needed in order to better inform current debates on the possibility and desirability of the right to development. Not the least to shed light on Asia as the silent continent. Indeed, apart from India, representatives of Asian states were curiously absent from the UNCHR debates analysed in the context of this study.

Nonetheless, I would like to conclude this study with a few reflections for the contemporary debate on development and human rights in this era of crisis and climate change. Not the least because climate change has already increased global inequalities and the situation might only get worse as our planet gets more dangerous and inhospitable for the vast majority of its inhabitants. For millions of people, climate change means hunger and poverty, loss of livelihoods, forced displacement, loss of state-hood or conflict and thus constitutes a systematic denial of fundamental human rights and freedoms. As we look into our uncertain future, we might find some valuable lessons in the history of the redescription of the right to development as a human right.

One such lesson concerns the principle of solidarity advanced by M'Baye as the foundation of the right to development as human right. Here, it might be useful to recall M'Baye's argument that the conclusions of the Club of Rome

meant that “the international community was, as it were, condemned to solidarity if it wished to avoid the catastrophe to which the selfishness of States was directly leading”. In other words, the selfishness of states, expressed through a mode of development based on competition rather than cooperation between states, would sooner or later condemn the whole world to a deeply uncertain future. The mode of development advocated by M’Baye through the redescription of the right to development as a human right, for instance, could help insure that the interests of all individuals and peoples are taken into account in the search for alternative ways and means to solve the climate change crisis. It could also help unlock UNFCCC negotiations by underscoring the need for technological transfers between the developed and developing countries.

These are only a few thoughts, however, and there is surely much more to be taken from the present study in that regard. My hope is that someone will find something in the previous 300 pages or so that might contribute to create a brighter future than the one we are currently facing.

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UN Documents

The two main UN organs referred to in this study, namely the United Nations General Assembly (UNGA) and the Economic and Social Council (ECOSOC), and their subsidiary organs, have official records. The General Assembly Official Records (GAOR) consist of meeting records of the Plenary and Main Committees, supplements (including reports of the other principal organs, reports of subsidiary bodies and resolutions and decisions of the UNGA), and annexes (selected documents organized by agenda item). Similarly, the Economic and Social Coun-

cil Official Records (ESCOR) consist of meeting records of plenary meetings, supplements (reports of subsidiaries, such as the UNCHR, and resolutions and decisions of the ECOSOC) and annexes (selected documents organized by agenda item, issued until the 55th session of the ECOSOC).

All UNGA documents begin with "A". From the 1st session (1946) through the 30th session (1975), UNGA meetings and documents were consecutively numbered and the format was "A/sequential number" (e.g. A/520). At the 31st session, the symbol began to include the session number and the basic format changed to "A/session/sequential number" (e.g. A/31/12). In addition to the Plenary, there are six main committees of the UNGA. Each committee deals with a particular topic and is allocated item according to the topic. A report is issued to the plenary for each item allocated to a main committee. All are committees of the whole (i.e. all UN member states participate in them). They are entitled to meeting record coverage. From the 1st to the 31st sessions of the UNGA, the basic format for working documents and summary records issued by the main committee was "A/C. followed by the number of the committee/sequential number", and from the 31st session onwards "A/C. number of the committee/session/sequential number". The present study made primarily used of the summary records and other documents produce by the Third Committee before the 31st session, which are referred as "A/C.3/sequential number" (see Chapter 4).

All the documents of the Economic and Social Council (ECOSOC) begin with "E". Since the UNCHR (UNCHR) is one of the sub-organs of the ECOSOC, all of its documents start with "E" followed by "CN.4".

Statements made during UN meetings may be issued as verbatim records "PV" (i.e. full, first-person account of the meeting) or as summary record "SR" (i.e. third-person condensed version of the meeting). Meeting records are not issued for all UN meetings, and principal organs and selected subsidiaries may have either verbatim or summary records, but not both. In the case of the UNGA, verbatim records of are generally issued for the plenary meetings and while the Main Committees have summary records. In the case of the UNCHR, meetings records are issued as summary records and are therefore referred as "E/CN.4/SR.sequential number".

Finally, since next to all of the primary source material for this dissertation comes from official documents of the United Nations, I have omitted to include the reference to "UN Doc." in the text, but have included it in the references below.

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