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Revisiting the Charter on Economic Rights and Duties of States: A Blueprint for Decolonial International Economic Law?

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ABSTRACT: *Fifty years after the adoption of the Charter on Economic Rights and Duties of States (CERDS) by the UN General Assembly in 1974, the international legal order continues to grapple with tensions between sovereign equality and structural inequality. While the charter was initially envisaged as the pillar of a New International Economic Order (NIEO) with bold normative ambition, it has nonetheless since been eclipsed by a global order which is entrenched in various asymmetries and inequalities: wealth, power, and legal influence.*

This paper revisits CERDS as a historical relic and normative blueprint, arguing that it still provides a feasible foundation for reimagining international economic law today. Drawing on insights from Third World Approaches to International Law (TWAIL), dependency theory, and world-systems analysis, this study reexamines the politics that propelled the clamour for a new international order, as well as explores contemporary economic injustices and proposes constructive ways to reimagine international law—from a tool of control, to a foundation and framework for global justice and collective prosperity.

Against the backdrops of regulatory chill, unequal financial governance, and new forms of extractivism, etc, the article contends that CERDS's core principles: economic sovereignty, equality, and solidarity, collectively foreshadow contemporary pressing agendas, to wit: technology justice, fair debt resolution, climate reparations, and responsible environmental stewardship. It advances concrete reform pathways—binding corporate accountability, a multilateral debt workout mechanism, and public-interest re-engineering of investment treaties—and maps complementary institutional shifts through South–South finance, reserve pooling, and a 'new Bretton Woods' orientation. Recasting 'law as it is' into 'law as it ought to be,' the article positions CERDS as a compass for a just, sustainable, and decolonial international legal order.

1. INTRODUCTION

The Charter on Economic Rights and Duties of States (CERDS), adopted by the United Nations General Assembly in 1974, was a landmark attempt to reorder the global economic system and affirm the principle of sovereign equality within international law. Envisaged as both a legal and moral cornerstone of the New International Economic Order (NIEO), the Charter aimed to reshape the trajectory of international society and international law, transforming a tool of domination into a framework for fair and equitable development and veritable economic sovereignty for independent states. As Mohammed Bedjaoui, one of its chief architects, contended, CERDS exemplified the hopes and aspirations of the developing countries to charter a more just and equitable international order, one that could, while ensuring justice for all constituent members of the international society, also recognize both the historical injustices of colonialism and the deep-rooted inequities of economic dependence.[1]

The call for a NIEO—which took root shortly after the global decolonisation—arose from the growing awareness among post-colonial states that formal political sovereignty had not, broadly speaking, translated into material autonomy or economic sovereignty.[2] Even as many African, Asian, and Latin American nations attained their political independence in the early 1960s, they quickly realised that they were still trapped in asymmetrical economic relations characterised by dependence on the export of cheap raw materials in exchange for expensive manufactured goods and services from industrialised nations. To make matters worse, the imbalance between these opposite worlds extended beyond the balance of payments to the terms of trade, which were skewed, and to financial assistance from the latter to the former, which was marred by conditions.[3] By contrast, international trade and finance systems—respectively structured under the GATT trade rules and Bretton Woods institutions—continued to privilege industrialized Northern economies.[4]

In this context, the push for economic sovereignty became a moral and political imperative. For scholars like Samir Amin and Raúl Prebisch, the persistence of economic subordination was rooted in structural mechanisms of dependency that perpetuated underdevelopment.[5] The NIEO agenda, as exemplified in CERDS, sought not only to reform and reshape global trade and investment regimes but also to assert states' right to exercise effective control over their natural resources and to self-determine their own development pathways and strategies. The vision was for

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[1] Mohammed Bedjaoui, *Towards a New International Economic Order* (New York: Holmes & Meier, 1979), at 15.

[2] Mohammed Ayoob, *The Third World Security Predicament: State Making, Regional Conflict, and the International System* (Boulder, CO: Lynne Rienner, 1995), pp. 3–4.

[3] Samir Amin, *Unequal Development: An Essay on the Social Formations of Peripheral Capitalism* (New York: Monthly Review Press, 1976), pp. 15–18.

[4] Susan George, *A Fate Worse Than Debt* (London: Penguin Books, 1988), pp. 42–46.

[5] Raúl Prebisch, *The Economic Development of Latin America and Its Principal Problems* (New York: United Nations Department of Economic Affairs, 1950), pp. 1–6; Samir Amin, *Accumulation on a World Scale: A Critique of the Theory of Underdevelopment*, trans. Brian Pearce (New York: Monthly Review Press, 1974), pp. 97–99.

states to play the leading and meaningful role in shaping their international relations and decision-making.[6]

Despite its transformative vision, CERDS was marginalized by the resurgence of neoliberal economic orthodoxy in the late twentieth century.[7] Coupled with the rise of investor-centric investment treaties, global market-oriented policies steadily eroded collective efforts to institutionalize the Charter's principles. Yet, half a century later—amid widening global inequalities and escalating climate crises—the vision embodied in CERDS suddenly feels somewhat newly relevant.[8] This study contends that recent geopolitical tensions across the Global South—driven by industrialised countries' accelerated pursuit of natural resources in these regions—render the need for a revitalised New International Economic Order more urgent than ever.

The study also re-examines CERDS as both a byproduct of its historical conjecture and as a framework for change even in contemporary times. It engages *Third World Approaches to International Law* (TWAIL), dependency theory narratives, and world-systems analysis. It contends that CERDS, far from being a relic of the past, remains a compelling foundational discourse for reimagining international economic law as an instrument for advancing global justice. Having strongly affirmed the key principles of equality, solidarity, and self-determination, the Charter accordingly remains an indispensable resource for reconstructing an international legal order grounded in fairness and shared prosperity.[9]

From the foregoing, it is evident that both trade and investment regimes are natural drivers of cross-border economic relations. They are nonetheless derived from distinct legal foundations, even as they often operate on parallel lanes. The international trade law regime is largely embodied in the General Agreement on Tariffs and Trade (GATT) and, later, in the World Trade Organization (WTO) framework. The frameworks oversee the actions of member states on trade-related issues, including market access, national treatment, most-favoured-nation treatment, and tariff bindings.[10] By contrast, the international investment law regime has largely been constituted through International Investment Agreements (IIAs) and investor–state dispute settlement (ISDS) mechanisms. It functions to protect and promote foreign direct investment and its investors in host states by ensuring the enforcement of a range of substantive rights (e.g., national treatment, fair and

[6] *Charter of Economic Rights and Duties of States* (adopted 12 December 1974), UNGA Res 3281 (XXIX), arts. 1–3.
[7] Robert Wade, 'What Strategies Are Viable for Developing Countries Today? The World Trade Organization and the Shrinking of "Development Space"', *Review of International Political Economy*, 2003, 10(4): 621–644.
[8] Dani Rodrik, *The Globalization Paradox: Democracy and the Future of the World Economy* (New York: W. W. Norton & Company, 2011), pp. 94–101; Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2004), pp. 245–248.
[9] Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements, and Third World Resistance* (Cambridge: Cambridge University Press, 2003), pp. 25–26; Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge: Cambridge University Press, 2011), pp. 207–211; B. S. Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (Cambridge: Cambridge University Press, 2017), pp. 96–100.
[10] Robert E. Hudec, *Developing Countries in the GATT Legal System* (Cambridge: Cambridge University Press, 1987), pp. 3–8; Dani Rodrik, *The Globalization Paradox* (New York: W. W. Norton, 2011), pp. 69–74.

equitable treatment, most-favoured-nation treatment, protection against expropriation, dispute settlement). All breaches of these pivotal provisions are subject to enforcement by investment arbitration tribunals.[11] While the two regimes sometimes converge in domestic regulation, they remain largely distinct in practice. This study is principally confined to the international investment regime.

2. HISTORICAL CONTEXT: CERDS AND THE CALL FOR A NEW ORDER

2.1. The Emergence of the NIEO

The New International Economic Order (NIEO) formally took shape in 1974 with the adoption of United Nations General Assembly Resolution 3201 (S-VI), during the Sixth Special Session of the General Assembly. It was a period of profound global economic turmoil on many fronts—the oil crises of 1973–74, the sudden collapse of the Bretton Woods system, the rising stagflation across industrialized nations, etc. Taken together, these factors deepened and widened the divide between the Global North and the Global South.[12] Caught up in this quagmire, developing countries—many of them newly independent—sought to challenge and rectify the deep structural inequalities of the international system. The purport of NIEO was thus to guarantee genuine permanent sovereignty over natural resources, fairer and improved terms of trade, access to technology, and a stronger voice for developing nations in international economic governance.[13]

Central to the NIEO clamour was an attempt to redress not only perceived historical imbalances in the international economic system, which its advocates deemed severely hampering the economic development of the Global South, but also to ensure that post-colonial independence translated into genuine economic sovereignty and self-determination.[14] In the immediate aftermath of decolonisation, the Egyptian political scientist and Marxian economist, Samir Amin cautioned against the euphoria surrounding political independence in the developing countries. He noted that without a radical restructuring of global economic structures and relations, newly independent states would remain trapped in patterns of dependency and peripheral capitalism, thereby perpetuating rather than eliminating what he described as 'the coloniality of the world economy.'[15] This reasoning was corroborated by the Argentine economist Raúl Prebisch, who argued that the unequal exchange between industrial manufacturing and resource-exporting countries, far from being accidental or a historical coincidence, was structurally embedded in the very fabric of the

[11] Robert E. Hudec, *ibid.*, pp. 69–74; M. Sornarajah, *The International Law on Foreign Investment* (4th ed., Cambridge: Cambridge University Press, 2017), pp. 20–34; Kate Miles, *The Origins of International Investment Law* (Cambridge: Cambridge University Press, 2013), pp. 2–7.
[12] *Supra* note 1, at 15; see also Richard H. Steinberg, 'Trade-Environment Negotiations in the EU, NAFTA, and WTO: Regional Trajectories of Rule Development', *American Journal of International Law*, 1997, 91(2): 231–67.
[13] Gilbert Rist, *The History of Development: From Western Origins to Global Faith* (3rd ed., London: Zed Books, 2008), at 109.
[14] B. S. Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (2nd ed., Cambridge: Cambridge University Press, 2017), pp. 95–98.
[15] Samir Amin, *Unequal Development: An Essay on the Social Formations of Peripheral Capitalism* (New York: Monthly Review Press, 1976), pp. 15-17.

global economic order.[16] The pursuit of justice, therefore, necessitated dismantling that structural order and advancing meaningful reforms to redress the uncovered inequities.

The NIEO agitation—crystallized through the solidarity of the Group of 77 and the Non-Aligned Movement—marked a pivotal yet unprecedented awakening in the political assertion of the Global South to reordering the international system.[17] For one scholar, the movement's strength lay not only in its critique and exposure of global inequality, but also in its insistence that economic justice was vital to achieving long-lasting international peace and stability.[18] It was in this guise that NIEO activism articulated concrete reforms in trade, finance, and technology transfer, areas which were perceived as heavily dominated by Western countries and their multinational corporations.

Against this political backdrop, the United Nations General Assembly (UNGA) adopted the *Charter of Economic Rights and Duties of States* (CERDS) in December 1974. The landmark instrument gave legal form and expression to the long-standing aspirations of developing countries.[19] In other words, the charter translated their vision of a New International Economic Order (NIEO) into a legal and institutional reality. It affirmed key norms from the Global South that had reverberated throughout the clamour, to wit: doctrines of economic sovereignty, self-determination, and permanent sovereignty over natural resources. It further declared that every state had 'the right to freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities.'[20] As Nico Schrijver has observed, CERDS embodied an ambitious normative framework through which developing countries sought to reclaim their agency and assert equality within an international legal order historically structured around Western economic dominance, interests, and hegemony.[21]

While some Western scholars dismissed CERD's resolution as little more than a politicized manifesto rather than a binding law, its adoption nonetheless marked a turning point in the discourse of justice and fairness in international economic relations over the intervening decades.[22] For scholars such as Georges Abi-Saab and R. P. Anand, it represented the collective cry of the Third World, which was an unwavering demand for an international order grounded in justice, solidarity, and shared humanity, rather than in subordination and exploitation.[23]

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[16] Raúl Prebisch, *The Economic Development of Latin America and Its Principal Problems* (New York: United Nations Department of Economic Affairs, 1950), pp. 3–6.
[17] Vijay Prashad, *The Darker Nations: A People's History of the Third World* (New York: The New Press, 2007), pp. 79–85.
[18] *Supra* note 13, pp. 109–110.
[19] *Supra* note 6.
[20] *Ibid.*, art. 2, para. 1.
[21] Nico Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties* (Cambridge: Cambridge University Press, 1997), pp. 42–44.
[22] Susan Marks, *The Riddle of All Constitutions: International Law, Democracy, and the Critique of Ideology* (Oxford: Oxford University Press, 2000), pp. 56–58.
[23] Georges Abi-Saab, 'The Newly Independent States and the Rules of International Law: An Outline', *Howard Law Journal*, 1962, 8: 95–121; R. P. Anand, *Sovereign Equality of States in International Law* (New Delhi: Hope India Publications, 2008), pp. 211–215.

2.2. The Economic Order Before NIEO

Prior to the NIEO, the global economic system was structured to stabilize and expand capitalism in favour of the industrialized North. Institutions such as the International Monetary Fund (IMF) and the World Bank emerged from the Bretton Woods Conference of 1944 with mandates focused on monetary stability and reconstruction, rather than on distributive justice. By regularly attaching stringent conditions to their loans, these institutions variously deepened economic dependency and eroded developing countries' ability to set their own economic priorities. The immediate consequence of conditionality instead was their subordination to the logic of external fiscal discipline.[24] Joseph E. Stiglitz has perceived these Bretton Woods institutions as part of the problem. To him, the institutions steadily evolved into global enforcers of a rigid, one-size-fits-all economic orthodoxy. And it was one that unmistakably privileged creditors' interests over the developmental needs of nation-states.[25] This position has been corroborated by dependency theorists, such as Fernando Henrique Cardoso and Enzo Faletto, who have described this dynamic as a structurally hierarchical system that ensured that industrial centers maintained their dominance by subordinating peripheral economies within the international system.[26]

Trade relations during this era were perceived by many in the global south as reflecting imbalances. As Raúl Prebisch and Hans Singer have demonstrated, the global trading system was built on structurally unequal terms, in which developing countries were confined to extractive industries and exported cheap raw materials in exchange for expensive imported manufactured goods from developed countries.[27] This structural imbalance drained value from the periphery to the core, locking developing nations into cycles of underdevelopment and dependence.[28] By embedding Bretton Woods institutions within the post–World War II recovery and legal order through treaties, UN recognition, and related frameworks, International law effectively legitimised them as imperative hegemonic economic frameworks for the regulation of international finance and economic development.[29] The discipline indeed framed them in the language of neutrality and global consensus.[30]

The proliferation of international investment agreements, bilateral investment treaties, and norms of diplomatic protection in the post-CERDS era increasingly privileged the over-protection and security of foreign investors and their mobility of capital (home states) over the corresponding

[24] Eric Helleiner, *States and the Reemergence of Global Finance: From Bretton Woods to the 1990s* (Ithaca, NY: Cornell University Press, 1994), pp. 33–36.
[25] Joseph E. Stiglitz, *Globalization and Its Discontents* (New York: W. W. Norton & Company, 2002), pp. 54–56.
[26] Fernando Henrique Cardoso and Enzo Faletto, *Dependency and Development in Latin America* (Berkeley: University of California Press, 1979), pp. 25–27.
[27] Raúl Prebisch, *The Economic Development of Latin America and Its Principal Problems* (New York: United Nations Department of Economic Affairs, 1950), at 1; Hans W. Singer, 'The Distribution of Gains Between Investing and Borrowing Countries', *American Economic Review*, 1950, 40(2): 473–485.
[28] Samir Amin, *Accumulation on a World Scale: A Critique of the Theory of Underdevelopment*, trans. Brian Pearce (New York: Monthly Review Press, 1974), pp. 97–100.
[29] George Forji Amin, 'Encountering Underdevelopment: International Law, Capital Accumulation and the Integration of Sub-Saharan Africa into the World System (1492-1900)', 2020, pp. 12-18.
[30] *Ibid.*

right of host states to regulate foreign direct investments (FDIs) for the public interest.[31] As M. Sornarajah has pointed out, international investment law largely reflected the whims and influence of capital-exporting powers, as it shielded their economic interests through the familiar language of protecting assets and contracts.[32] For James Thuo Gathii, these legal architectures were emblematic of a neo-colonial matrix of global governance, that is, one that continued to clip and frustrate the ambitions of the Global South to pursue genuine economic independence.[33]

For many Third World thinkers, the pre-NIEO system was therefore far from a neutral expression of market forces, as it was frequently heralded. It was, instead, a deliberately engineered system of rules and institutions whose primary design was to preserve prevailing hierarchies of power and privilege.[34] Thanks to mechanisms such as fiscal conditionalities, structural trade imbalances, and constraining legal regimes, the system, as noted above, not only entrenched inequality but also steadily undermined the economic sovereignty of newly independent states. Against this perceived backdrop, the movements for a New International Economic Order (NIEO), which culminated in the Charter of Economic Rights and Duties of States (CERDS), took shape. For its advocates, these were ambitious and necessary efforts to reimagine the global economy around the principles of justice, equity, and genuine sovereignty.[35]

2.3. Why Revisit CERDS Now? Resource Sovereignty in a Fragmenting Global Order

The renewed imperative for a new international economic order is not merely a reinvigoration or a rewriting of history. Far from that, it is animated, among other things, by contemporary struggles and the threat of hegemony over natural resources, supply chains, and geopolitical controls worldwide, all of which closely mirror structural anxieties prevalent among newly independent countries in the Global South during the 1960s and 1970s decolonisation decades. In particular, following the recurrent steady transition to renewable energy and digital technologies being led by industrialized countries, there has been an accelerated global mad rush for critical minerals—lithium, cobalt, coltan, nickel, rare earth elements, etc, which ironically are disproportionately located in the Global South—thereby revitalising the imperativeness of the doctrine of permanent sovereignty over natural resources (PSNR) in international economic law discourse.

Indonesia's domestic policy of export restrictions on nickel ore, which it adopted to enhance domestic production and downstream industrialisation, became the subject of WTO litigation in the recent case of *Indonesia—Measures Relating to Raw Materials (DS592)*—with the Panel

[31] Kate Miles, *supra* note 11, pp. 21–25.
[32] M. Sornarajah, *supra* note 11, at 234.
[33] James Thuo Gathii, *War, Commerce, and International Law* (Oxford: Oxford University Press, 2011), pp. 231–233.
[34] Robert W. Cox, *Production, Power, and World Order: Social Forces in the Making of History* (New York: Columbia University Press, 1987), pp. 129–132.
[35] Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Boston: Beacon Press, 2001), pp. 249–252; Dani Rodrik, *The Globalization Paradox: Democracy and the Future of the World Economy* (New York: W. W. Norton & Company, 2011), pp. 99–103.

finding Indonesia's measures to be inconsistent with GATT obligations.[36] The dispute nonetheless demonstrated the enduring tension and constraints between sovereign development strategies and global trade exigencies, which are perceived in the Global South as primarily prioritising market access. Similarly, Zimbabwe recently imposed restrictions on the export of raw lithium, explicitly emphasising the importance of adding and retaining value as one of its core domestic industrial policy objectives.[37] The measures in both Indonesia and Zimbabwe, without doubt, echo the logic and sentiment of Article 2 of CERDS, which empowered states to retain perpetual sovereign authority over the use and disposition of their natural resources, as they found fit, in their pursuit of national development.

Beyond trade litigation, recent geopolitical developments have further triggered the need to reconsider the relevance and spirit of CERDS. For instance, in January 2026, U.S. authorities conducted an imperial military operation on the sovereignty of Venezuela, resulting in the capture of President Nicolás Maduro and his wife, who were promptly flown out of the country and incarcerated in US jails, with very little opposition or criticism from Western countries.[38] The operation directly put international law on trial, particularly with respect to sovereignty, imperialism, international diplomacy, and resource geopolitics. U.S. presidential statements bluntly linked the intervention to the Venezuelan oil sector. President Donald Trump publicly boasted that Venezuela was immediately going to turn over 30–50 million barrels of oil to the United States, and further that U.S. oil companies were subsequently going to manage Venezuela's crude output, thereby illustrating the manifestation of naked imperialism in contemporary times.[39] The US accelerated rush for energy resources and external influence in Venezuela accordingly squares with the historic critique by the erstwhile NIEO proponents of the global structural dependency of the wealth of the Global South at the mercy of powerful industrialized countries.

Similarly, President Donald Trump's public insistence that the United States acquire Greenland—an Arctic autonomous territory of Denmark, rich in rare earth minerals and strategically positioned along a major trading route—has triggered both diplomatic tensions and renewed debates about the respect for and effectiveness of sovereignty in international law.[40] While the erstwhile NIEO clamour was mostly championed by countries of the Global South with very little support from the industrialized North, the western geopolitical tension over Greenland, and Trump's other interests in annexing Panama and Canada to become part of the US, nonetheless

[36] *Indonesia—Measures Relating to Raw Materials*, WTO Panel Report, WT/DS592/R, 30 November 2022, paras. 7.420–7.475.
[37] 'Zimbabwe to Ban Export of Lithium Concentrates from 2027' *Reuters* (10 June 2025), https://www.reuters.com/business/energy/zimbabwe-ban-export-lithium-concentrates-2027-2025-06-10/ (accessed 2 April 2026).
[38] UK House of Commons Library, 'The US Capture of Nicolás Maduro' (6 January 2026), Research Briefing CBP-10452, pp. 3–5.
[39] 'Trump Says Venezuela Will Be "Turning Over" up to 50 Million Barrels of Oil to US' *BBC News* (January 2026), https://www.bbc.co.uk/news/articles/c4grxzxjjd8o (accessed 12 February 2026).
[40] 'European Parliament Condemns Trump's Greenland Demands' *Euronews* (14 January 2026), https://www.euronews.com/my-europe/2026/01/14/european-parliament-condemns-trumps-greenland-demands (accessed 12 February 2026).

demonstrate that the imperativeness of ensuring effective control over a sovereign state's natural resources, and the drive for a just and stable international economic order more generally is a vital project not just for the Global South but the international community as a whole.

From the afore-mentioned examples in Southeast Asia, Southern Africa, to Latin America, and the Arctic, it is clear that the core concern that previously permeated the NIEO movement remains. Put differently, the question of who controls natural resources, under what legal sovereignty and authority, and for whose benefit, is still paramount. A re-examination of CERDS is accordingly not a mere retrospective exercise, but rather a necessary response to contemporary struggles over economic sovereignty.

3. Decolonisation and the Rise of Third World Agency

The wave of decolonisation that steadily swept across all the former European colonies on every continent in the 1950s and accelerated in the 1960s transformed the global political landscape in profound ways. As afore-stated, immediately following the attainment of their independence, these countries quickly came to the realisation that their political sovereignty was normative at best, as they perceived themselves as still being economically trapped to the interests of their former colonial masters, their allies, western multinational corporations (MNCs), and international financial institutions (IFIs) created under the Bretton Woods framework at the close of the Second World War (WWII).[41]

However, following the rapid surge in the number of new member states to the United Nations, its General Assembly was quickly reshaped into a far more vibrant and assertive arena, in which the collective voice of the so-called 'Third World' could no longer be ignored.[42] In 1964, 77 developing countries established the Group of 77 (G77) at the conclusion of the first United Nations Conference on Trade and Development (UNCTAD) to advance their collective economic interests and strengthen their negotiating power within the UN system. This development marked a decisive turning point, as developing countries, for the first time ever, had a unified platform under the auspices of the UN through which they could henceforth express shared economic frustrations and press for meaningful reforms to the global system.[43] The establishment of the United Nations Conference on Trade and Development (UNCTAD), that same year, gave these aspirations an institutional home. It was through UNCTAD that developing states routinely pushed for fairer trade arrangements, access to technology, and international support that could enable national development strategies realise positive results.[44]

[41] *Supra* note 17, pp. 41–47.
[42] Georges Abi-Saab, *supra* note 23, pp. 95–121.
[43] United Nations Conference on Trade and Development (UNCTAD), *The Group of 77 at the United Nations: Historical Documents 1964–2009* (New York: United Nations, 2010), pp. 207-212.
[44] *Supra* note 13, at 110.

Despite these advances, genuine economic self-determination was still elusive for developing countries. It quickly dawned on many newly independent states that their inherited economies, which were built around monoculture cash crops or single export minerals with little or no industrial capacity or robust financial structures, were designed to serve the exigencies of metropolitan countries rather than local aspirations.[45] Faced with these structural vulnerabilities, developing countries felt even more trapped and acutely susceptible to global market volatility, thereby making recurrent debt crises an almost inevitable feature of their economic reality.[46]

This predicament was vividly captured by Samir Amin's famous idea of 'unequal exchange,' which provided that international economic order was structured in such a way that peripheral economies were perpetually locked into an exploitative relationship with the core, as they were being confined to supplying raw materials and cheap labour in exchange for expensive manufactured goods from industrialized countries.[47] In his book *How Europe Underdeveloped Africa*, Walter Rodney adopted a similar line of thinking, noting that colonial economic systems in Africa were never designed to enhance local productive capacity but uniquely to meet the needs of external extractive imperatives.[48] To him, any attempt to build economic sovereignty on them was bound to be futile. He argued that underdevelopment was not a natural condition but rather the cumulative result of systematic expropriation and structural distortion.[49] As noted earlier, Africa's economic marginalization in the global economy did not result from neutral market forces but rather from the cumulative effects of legalized extraction under colonial international law. It is the process by which doctrines of sovereignty and property were deployed across non-European territories as a modality for the accumulation of capital by the metropoles, at the expense of indigenous control over their natural resources.[50]

Third World Approaches to International Law (TWAIL) scholars have expanded on this dependency discourse in the legal sphere, noting that international law has historically been complicit in the impoverishment of the Global South by legitimating mechanisms that reproduce global inequality in favour of Western countries.[51] According to Makau Mutua, the discipline, for instance, has repeatedly legitimized the norms and vernacular historically deployed to colonize non-European societies and has since sustained the imperial structures that underpin these relationships under the guise of neutrality and universality.[52] Antony Anghie has concurred, noting that the colonial encounter, without doubt, shaped the foundational doctrines of sovereignty and

[45] Walter Rodney, *How Europe Underdeveloped Africa* (London: Bogle-L'Ouverture Publications, 1972), pp. 149–150.
[46] Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton, NJ: Princeton University Press, 1995), pp. 88–92.
[47] Samir Amin, *Unequal Development: An Essay on the Social Formations of Peripheral Capitalism* (New York: Monthly Review Press, 1976), pp. 15–18.
[48] Walter Rodney, *How Europe Underdeveloped Africa* (Baltimore: Black Classic Press, 2011), pp. 149–168.
[49] *Ibid.*, pp. 205–207.
[50] George Forji Amin, *International Law and the History of Resource Extraction in Africa: Capital Accumulation and Underdevelopment, 1450-1918* (London, Routledge, 2023), pp. 45-62.
[51] Obiora Chinedu Okafor, *Re-Defining Legitimate Statehood: International Law and State Fragmentation in Africa* (The Hague: Martinus Nijhoff, 2000), pp. 23–27.
[52] Makau Mutua, 'What Is TWAIL?', *Proceedings of the American Society of International Law*, 2000, 94: 31–38.

property in the global order as we know it today.[53] For Balakrishnan Rajagopal, the post-World War II (WWII) international legal order, far from deconstructing these imbalances, instead solidified and legitimized the structures, thereby ensuring continuous Western economic dominance.[54]

Academics in the economic realm, such as James Thuo Gathii, have observed that economic instruments, including bilateral investment treaties (BITs) and multilateral trade agreements (MTAs), have been detrimental, as they largely restrict the policy space available to Global South states. The attendant consequence is the curtailing of their economic sovereignty and the limitation of their ability to pursue redistributive or protectionist measures that are vital to structural transformation.[55] Sundhya Pahuja and B. S. Chimni have concurred, emphasizing that the architecture of international economic law is not only largely rooted in liberal market orthodoxy but also has entrenched asymmetries of wealth and power (through institutionalisation) between countries at opposite poles of the global order.[56]

In light of all these considerations, the Charter of Economic Rights and Duties of States (CERDS) emerged as a collective juridical project to variously reclaim economic agency and confront the structural inequities that had long constrained developing nations. CERDS was thus more than just a legal document. It was a moral statement of collective resistance and solidarity, an assertion of genuine independence, and a counter-hegemonic vision of international law. For its proponents, this new vision of international law would place justice, equality, and sovereignty at the heart of the global economic order.[57]

4. International Law and Economic Sovereignty

4.1. The Legal Status of CERDS

The concept of economic sovereignty in international law refers to the right of states to freely determine their economic systems, control their natural resources, regulate foreign investment, and formulate development strategies, free from external coercion or interference. The idea is deeply rooted in the principle of permanent sovereignty over natural resources (PSNR), which became common parlance in the immediate aftermath of decolonization and was first recognized as a distinct legal doctrine in the early 1960s, pursuant to Resolution 1803 (XVII) of the United Nations General Assembly.[58] In effect, the resolution affirmed 'the right of peoples and nations to

[53] Antony Anghie, *supra* note 8, pp. 38–45.
[54] Balakrishnan Rajagopal, *supra* note 9, pp. 25–29.
[55] *Supra* note 33, pp. 231–233.
[56] Sundhya Pahuja, *supra* note 9, pp. 207–211; B. S. Chimni, *supra* note 9, pp. 96–100.
[57] Richard Falk, *On Humane Governance: Toward a New Global Politics* (Cambridge: Polity Press, 1995), pp. 118–120.
[58] United Nations General Assembly, *Permanent Sovereignty over Natural Resources*, Resolution 1803 (XVII), 14 December 1962.

permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.'[59]

In the immediate aftermath of global decolonisation avalanche in the 1960s, policy-makers and thinkers in the newly independent states began to perceive economic sovereignty as the *sine qua non* for economic development. It dawned on them that without the ability to control their economic futures, the heralded political independence which they had just attained was bound to be hollow and incomplete.[60] Some academics—the likes of Antony Anghie, Sundhya Pahuja, Luis Eslava and Michael Fakhri, have projected international law as the legitimating instrument of imperial economic control, as it functioned even in the post-independence period, to entrench global structural hierarchies and inequalities.

For Anghie, doctrines of sovereignty and trusteeship were born of the colonial encounter and continued to define development discourse, even after the decolonisation of the non-European worlds, thereby steadily resulting in a hierarchical world order between the 'developed' and 'developing' parts of the world.[61] Pahuja has corroborated this position, noting that international law's development project ultimately universalized a particular model of economic growth, which cemented the primacy of the Western perspective while simultaneously marginalizing alternative trajectories; hence, the third world postcolonial states were engulfed in a framework that fervently perpetuates structural dependency.[62] Eslava, on his part, has underscored the modalities by which international development law uses everyday administrative and governance practices to operationalize and normalize market-oriented reforms, which are, in effect, political choices, but which it advances as neutral necessities.[63] In his historical study of trade law, Fakhri showed that international economic rules—especially for common commodities such as sugar and other cash crops—were structured to privilege metropolitan commercial interests while simultaneously subordinating the interests of ordinary producers in developing countries.[64]

The imbalance in the structural arrangement routinely subordinated the autonomy of postcolonial states to the interests of not only foreign investors but also powerful metropolitan powers.[65] Some of the mechanisms that have, over time, been deployed to achieve this imbalance include unequal treaties, international investment protection clauses, and policy conditionalities.[66] The earlier nineteenth-century ideology of the 'civilizing mission,' with its paternalistic and

[59] *Ibid.*, para. 1.
[60] *Supra* note 1, pp. 33–35.
[61] Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2004), pp. 196–244.
[62] Sundhya Pahuja, *supra* note 9, pp. 38–46, 122–134.
[63] Luis Eslava, *Local Space, Global Life: The Everyday Operation of International Law and Development* (Cambridge: Cambridge University Press, 2015), pp. 3–12, 139–150.
[64] Michael Fakhri, *Sugar and the Making of International Trade Law* (Cambridge: Cambridge University Press, 2014), pp. 5–18, 198–205.
[65] Antony Anghie, *supra* note 8, pp. 197–200; Sundhya Pahuja, *supra* note 9, pp. 54-60; Luis Eslava, *supra* note 63, pp. 7-12; Fakhri, *supra* note 64, pp. 1-3, 10-14.
[66] *Ibid.*, 254–257.

ambivalent vision of development in non-European territories further provided the conceptual foundation for modern doctrines of economic tutelage and intervention. This is the precise asymmetrical logic that CERDS as a revolutionary dogma sought to confront and overturn.[67]

The adoption of CERDS by the UNGA on 12 December 1974 symbolised many things. Not only was it a powerful collective assertion of economic sovereignty, but it was also a direct challenge to the supposedly liberal capitalist order.[68] Although adopted by an overwhelming majority of 120 states voting in favour, the vote itself nonetheless revealed some deep global divisions. While all countries in the Global South decisively voted in favour of the resolution, all those that voted against or abstained were countries from the Global North.[69] If anything, the outcome made the North–South divide over the international economic order and the politics of economic sovereignty even more glaring.[70]

The vision of the Third World for a New International Economic Order was crucially captured in several foundational principles of CERDS. Article 2 recognised 'the sovereign and inalienable right of every State to choose its economic system as well as its political, social and cultural systems.'[71] Article 16 went a step further by proclaiming the right of sovereign states to nationalize or expropriate foreign assets, subject to payment of what it termed 'appropriate compensation' in accordance with their domestic laws. This clause was a direct challenge to the long-standing Western doctrine of 'prompt, adequate and effective' compensation for any nationalisation of foreign assets. Also known as the Hull Rule, this quantum-of-compensation standard had been promoted since the early 20th century.[72] The *travaux préparatoires* to CERDS have revealed that developing countries deliberately employed the term 'appropriate compensation' as a means to give themselves interpretative flexibility, thereby ensuring that the standard of compensation would thereafter reflect both national sovereignty and development priorities rather than externally imposed economic norms.[73]

Despite articulating a bold, ambitious, and transformative vision for the global economic order, CERDS ultimately lacked binding legal force. As it was a General Assembly declaration rather than a treaty, it did not correspondingly create enforceable obligations under positive international law.[74] As Nico Schrijver has noted, while CERDS certainly expressed a 'collective political consensus' among developing nations, it nevertheless failed to achieve the degree of

[67] George Forji Amin, *supra* note 50, pp. 23-25.
[68] *Supra* note 6.
[69] Six opposed it (Belgium, Denmark, the Federal Republic of Germany, Luxembourg, the United Kingdom, and the United States), and ten abstained (Austria, Canada, France, Ireland, Israel, Italy, Japan, the Netherlands, Norway, and Spain).
[70] *Supra* note 1, pp. 54–56.
[71] *Supra* note 6, art. 2(1).
[72] *Ibid.*, art. 16(1); see also Oscar Schachter, 'Compensation for Expropriation', *American Journal of International Law*, 1984, 78(1): 121–130.
[73] Nico Schrijver, *supra* note 21, pp. 42–44.
[74] *Supra* note 1, pp. 71–72.

universal acceptance necessary to crystallize into customary international law.[75] Industrialized countries recurrently resisted the very ethos of the Charter's normative framework, namely, its purport to reshape and reorder the foundational principles that underpinned the international economic system.[76]

This resistance was even more apparent in the sphere of international investment arbitration. In *Texaco Overseas Petroleum Co. v. Government of the Libyan Arab Republic* (1977), the sole arbitrator in the case, René-Jean Dupuy dismissed Libya's reliance on CERDS to justify the legality of its extensive nationalization measures. He ruled that the Charter was no more than 'a resolution of a recommendatory nature' hence incapable of producing binding legal effects.[77] By the same token, in *LIAMCO v. Libya* (1981), the tribunal held that CERDS 'reflects an aspiration rather than an obligation,' thereby reaffirming the primacy of contractual commitments based on the international law principle of *pacta sunt servanda* –which provides that promises must be kept.[78] Taken together, these decisions underscored the deeply conservative posture of arbitral tribunals, given that they readily grounded legality in deep-rooted norms of international law and paid little or no attention to contemporary, progressive sovereign assertions articulated in UN General Assembly resolutions.[79]

TWAIL scholars have long noted judicial conservatism, but have also argued that it is not accidental; rather, it reflects deeper structural biases ingrained in the body politic of international law.[80] B. S. Chimni, for instance, has argued that the jurisprudence of investment arbitration, on its face, reveals 'the imperial character of international law,' given that it continually delegitimizes most attempts by the Global South to assert autonomy and rebalance economic power in their favour.[81] His contemporary, Makau Mutua, has contended that the rejection of CERDS by arbitral tribunals, if anything, exemplifies the international legal order's continued resistance to transformative projects that challenge entrenched hierarchies in the global system.[82] Others have noted that, while arbitral tribunals have zealously protected and promoted investor rights, they have respectively paid very little attention to the corresponding rights and developmental priorities of host states. This differentiation has effectively reproduced a form of legal dependency that ultimately undermines the pursuit of meaningful economic self-determination by the Global South.[83]

In the end, while CERDS failed to attain a binding legal status, there is no gainsaying that its adoption nonetheless still symbolized a profound legal and moral challenge to the dominant

[75] Nico Schrijver, *supra* note 21, pp. 45, 131-135.
[76] Susan Marks, *supra* note 22, pp. 56–58.
[77] *Texaco Overseas Petroleum Co. v. Government of the Libyan Arab Republic* (1977), 53 I.L.R. 389, pp. 405–406, 410–412.
[78] *LIAMCO v. Libya* (1981), 62 I.L.R. 140, pp. 169–170.
[79] Kate Miles, *supra* note 10, pp. 219–224.
[80] *Supra* note 14, pp. 99–103.
[81] *Ibid.*, at 105.
[82] Makau Mutua, *supra* note 52.
[83] Balakrishnan Rajagopal, s*upra* note 9, pp. 42–44.

international economic order.[84] Historically, it remains one of the most ambitious yet comprehensive collective attempts by the Global South to articulate an alternative vision of justice, equity, and sovereignty in the face of entrenched structures of global capitalism.[85]

4.2. The Normative Vision of CERDS: Sovereignty, Equality, and Solidarity

To date, the Charter of Economic Rights and Duties of States (CERDS) remains one of the most ambitious normative undertakings in the history of international economic law. Though not legally binding, it nevertheless represents a remarkable, coherent attempt to rethink and reimagine international economic relations based on justice, equality, and collective self-determination.[86] Taken together, its provisions underscore a vision of the global order in which sovereignty is not merely a formal attribute of statehood but is anchored in states' ability to pursue economic development free from external domination or coercion.

4.2.1. Sovereignty and self-determination (Articles 2 and 16)

Articles 2 and 16 as aforementioned, sit at the core of CERDS vision for economic sovereignty. By affirming 'the sovereign and inalienable right of every State to choose its economic system as well as its political, social and cultural systems,' Article 2 accordingly rejects the notion that global development ought to follow any singular, market-oriented model or path.[87] In doing so, the provision codifies a genuinely pluralistic understanding of economic sovereignty. That is, one that allows different societies to pursue their chosen models of modernization and social organization as they see fit. As Mohammed Bedjaoui observed, CERDS sought to restore the 'dignity of choice' to postcolonial states whose economic systems had long been dictated by external actors.[88]

Article 16 reinforces this sovereignty by recognizing 'the right of every State to nationalize, expropriate or transfer ownership of foreign property' in accordance with its domestic laws and priorities.[89] By placing the determination of compensation within domestic laws, CERDS, as already noted, was accordingly directly challenging the Hull formula of 'prompt, adequate, and effective compensation,' which has been perceived by some scholars as being a decades-long tool of imperial control over economic control in non-Western states.[90] The *travaux préparatoires* reveal that developing countries deliberately substituted the word 'adequate' with 'appropriate'—a term that afforded them more flexibility in dealing with foreign assets in their jurisdictions. Though a modest linguistic shift, it nonetheless marked a deep epistemological challenge to

[84] Nico Schrijver, *supra* note 21, pp. 51–53.
[85] Georges Abi-Saab, 'The Third World and the Future of the International Legal Order', *Revue égyptienne de droit international*, 1973, 29: 27–48.
[86] *Supra* note 1, pp. 81–83.
[87] *Supra* note 6, art. 2(1).
[88] *Supra* note 1, at 84.
[89] *Supra* note 6, art. 16(1).
[90] M. Sornarajah, *supra* note 11, pp. 234–237.

prevailing Eurocentric legal doctrines on property rights, which hitherto were not just essentially absolute but also insulated from public interest or social obligation.[91]

Taken together, Articles 2 and 16 reconceptualise sovereignty beyond the political realm, that is, only complete if driven by both *freedom from external domination* and *freedom to pursue autonomous development*.[92] The two clauses also established an implicit hierarchy between the collective right to self-determination and private economic interests. By so doing, they were positioning the former as paramount whenever the two came into conflict.[93]

4.2.2. Equality and mutual benefit (Articles 9 and 12)

CERDS made a conscious commitment to global equality, especially in the economic realm. This devotion was vividly expressed in Articles 9 and 12, where it recast global economic relations around sound principles of equity and reciprocity. While Article 9 perceived all states as having 'the duty to co-operate in the promotion of international economic stability and justice,' Article 12, on its part, called for 'equitable sharing of the benefits derived from the development of science and technology.'[94] These provisions accordingly embodied the supposedly moral ethos of the New International Economic Order (NIEO), essentially one premised on solidarity, shared prosperity, and mutual advantage rather than competition and structural domination.[95]

The principle of mutual benefit as articulated in Article 9 challenges the classical liberal assumption that free trade naturally yields mutual gains for all trading parties. Instead, it reimagined a redistributive international order in which fairness, rather than market efficiency, became the more accurate measure of justice.[96] For Georges Abi-Saab, CERDS's insistence on 'co-operation and equity' was a direct repudiation of the laissez-faire logic that had long permeated and shaped international law's treatment of commerce, trade, and investment.[97]

On its part, Article 12 challenged the growing monopolization of knowledge through restrictive patent and intellectual property regimes by calling for equitable access to technology.[98] Interestingly, the provision envisaged many of today's debates over technology transfer, innovation inequality, intellectual property, and the widening global digital divide. In this sense, the charter represented an early formulation of what B. S. Chimni would later term as the 'right to

[91] Antony Anghie, *supra* note 8, pp. 201–203.
[92] Sundhya Pahuja, *supra* note 9, pp. 210–212.
[93] *Supra* note 14, pp. 105–107.
[94] *Supra* note 6, arts. 9, 12.
[95] United Nations, *Declaration on the Establishment of a New International Economic Order*, Resolution 3201 (S-VI), 1 May 1974, paras. 4–7.
[96] Dani Rodrik, *supra* note 8, pp. 99–103.
[97] Georges Abi-Saab, *supra* note 85, pp. 27–31.
[98] Peter Drahos and John Braithwaite, *Information Feudalism: Who Owns the Knowledge Economy?* (London: Earthscan, 2002), pp. 57–60.

development', a term now widely accepted as rooted in principles of equality, solidarity, and global distributive justice.[99]

4.2.3. Solidarity and collective responsibility (Article 17)

Article 17 of CERDS enshrines perhaps the Charter's most forward-looking ideal: that of international solidarity**.** It provides that 'States should co-operate in the protection, preservation and enhancement of the environment for present and future generations.'[100] Remarkably, this language foreshadowed the environmental commitments that were captured decades later in the Rio Declaration (1992) and the Paris Agreement (2015). By recognizing the plight and interests of future generations, Article 17 not only connected economic justice with environmental responsibility but further anticipated the advent of the logic of sustainable development as a normative anchor and guiding principle of international environmental law.[101]

Broadly speaking, Article 17 embodied one of the Charter's often-overlooked visions: that a state's economic sovereignty is intrinsically inseparable from collective responsibility.[102] Accordingly, Mohammed Bedjaoui famously remarked that sovereignty without solidarity is an illusion, for no nation is an island and cannot be truly independent in a profoundly interdependent world.[103] This sentiment aligns squarely with the TWAIL conception of *relational sovereignty*, that is, a conception of independence not as self-contained isolation, but a nation-state's ability to freely exercise its authority in conjunction with shared global obligations, as well as the recognition that all members of the international community are bound together with some shared human concerns.[104]

Taken together, Articles 2, 9, 12, 16, and 17 reveal that CERDS was certainly something more than just a catalogue of new entitlements for the developing countries. It was a holistic philosophical project. It reimagined international society and international law by analogy as a moral framework that ought to guarantee equality and mutual cooperation amongst its constituent members. Accordingly, it sought to transform the global order from a system of domination to one capable of supporting collective flourishing.[105] While its aspirations were never fully realized, the Charter nonetheless stood out as an enduring testament to the possibility of a more just, equitable, and striving international legal order.[106]

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[99] B. S. Chimni, 'The Right to Development: A Right of Peoples or of States?', in Philip Alston and Mary Robinson (eds.), *Human Rights and Development: Towards Mutual Reinforcement* (Oxford: Oxford University Press, 2005), pp. 95–98.
[100] *Supra* note 6, art. 17.
[101] Philippe Sands, *Principles of International Environmental Law* (4th ed., Cambridge: Cambridge University Press, 2018), pp. 52–54; Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (Tokyo: United Nations University Press, 1989), pp. 31–33.
[102] Nico Schrijver, *supra* note 21, pp. 51–53.
[103] *Supra* note 1, at 97.
[104] Balakrishnan Rajagopal, s*upra* note 9, pp. 82–85.
[105] Mohammed Ayoob, *The Third World Security Predicament: State Making, Regional Conflict, and the International System* (Boulder, CO: Lynne Rienner, 1995), pp. 4–6.
[106] *Supra* note 57, pp. 122–124.

5. KEY JURISPRUDENCE: THE CONSERVATIVE ORIENTATION OF INTERNATIONAL TRIBUNALS ON THE QUESTION OF ECONOMIC SOVEREIGNTY

The conservative posture of international tribunals to questions and claims of economic sovereignty is vividly illustrated in a series of landmark arbitral cases. Taken together, these decisions reveal a somewhat persistent tendency amongst international adjudication to privilege the sanctity of contracts and the protection of investor expectations over the sovereign right of host states to regulate in furtherance of their developmental goals.[107] Far from treating such economic regulations as inherent expressions of sovereignty, tribunals have historically instead perceived such measures as exceptional departures from a presumed international contractual norms.

In *Texaco Overseas Petroleum Co. v. Government of the Libyan Arab Republic* (1977), the arbitral tribunal, presided over by René-Jean Dupuy, rejected Libya's invocation and reliance on the *Charter of Economic Rights and Duties of States* (CERDS) to legally justify its nationalization of foreign oil concessions.[108] The tribunal held that CERDS did not constitute binding customary international law but instead, was merely expression of the aspirations of developing countries.[109] While noting that CERDS did not trigger enforceable legal norms, Dupuy instead affirmed the primacy of *pacta sunt servanda*—the doctrine that agreements must be kept—and contractual stability as cornerstones of international law.[110] The decision effectively subordinated Libya's assertion of economic sovereignty to the sanctity of private contractual rights, in which case any sovereign regulatory action was tantamount to a deviation from, rather than an expression of, sovereign equality.[111]

A similar outcome was reached in *Libyan American Oil Company (LIAMCO) v. Libya* (1981). Chaired by Sobhi Mahmassani, the tribunal also dismissed CERDS as constituting an expression of aspirations rather than a formulation of binding legal rules.[112] By undermining the primacy of CERDS while simultaneously regurgitating the dominance of investor protections, the tribunal accordingly entrenched a hierarchy gap between contractual obligations and sovereign regulatory authority.[113] This interpretive tendency if anything has merely widened over the decades, and been strengthened by successive tribunals' expansive readings of model bilateral investment treaty (BIT) provisions such as the fair and equitable treatment as well as full protection and security standards. The tribunals' interpretation of both clauses have progressively narrowed the

[107] *Supra* note 32, pp. 239–242.
[108] *Texaco Overseas Petroleum Co. v. Government of the Libyan Arab Republic* (1977), 53 I.L.R. 389, pp. 400–401.
[109] *Ibid.*, pp. 410–412.
[110] *Ibid.*, at 413.
[111] Antony Anghie, *supra* note 8, pp. 201–203.
[112] *Libyan American Oil Company (LIAMCO) v. Libya* (1981), 62 I.L.R. 140, pp. 31-32, 169–170.
[113] Nico Schrijver, *supra* note 21, pp. 50–53.

host-state ability to regulate on public policy grounds, while simultaneously bolstering a neo-colonial investment regime.[114]

This conservative orientation has been prevalent even in contemporary investor–state dispute settlement (ISDS). In *Yukos Universal Limited (Isle of Man) v. Russian Federation* (2014), the Permanent Court of Arbitration (PCA) awarded over $50 billion in damages against the Russia Federation pursuant to the Energy Charter Treaty.[115] Although the tribunal did not directly invoke CERDS while making the ruling, its reasoning nonetheless squarely reinforced the supremacy of investor rights and contractual expectations (over host states actions) as cornerstones of international economic law.[116] Noteworthy was the scale of the award and the limited tolerance of tribunal for perceived deviations (state conduct) from liberal investment norms, even in the multi-layered political and economic contexts.

The tribunal was even more forthright in *ADC Affiliate Limited and ADC & ADMC Management Limited v. Hungary*, by underscoring that any interference on foreign investment—regardless of whether this was in pursuance of a policy objective—necessarily had to satisfy the stringent requirements of due process, proportionality, as well as prompt, adequate, and effective compensation.[117] The judgment was yet another indication that international investment tribunals continue to accord a very narrow margin to host states for any regulatory discretion, including situations where such regulatory measures concern the pursuit of legitimate public policy objectives.

The same restrictive approach was even more evident in cases that were triggered by Argentine financial crisis of the early 2000s and its regulatory actions of foreign direct investments. In *CMS Gas Transmission Company v. Argentina*,[118] Argentina invoked the doctrine of economic necessity available under Article 25 of the International Law Commission's (ILC) Articles on Responsibility of States for Internationally Wrongful Acts, arguing that its emergency measures were triggered by the gravity of the 2001–2002 financial crisis which had gone beyond its control, thereby necessitating imminent policy actions to safeguard essential public interests. [119]

The tribunal largely dismissed this defence, and held Argentina liable for breaching investors' expectations, thus bound to pay substantial compensation to the aggrieved corporations.[120] As José E. Alvarez has observed, the decision revealed the extent to which arbitral

[114] George Forji Amin, 'Attaching the Right Meaning to Typical Provisions of Bilateral Investments Treaties (BITs): A Sketch', *Journal of African and International Law*, 2011, 3(3), pp. 560-563.
[115] *Yukos Universal Limited (Isle of Man) v. Russian Federation*, PCA Case No. AA 227, Final Award, 18 July 2014, paras. 1583–1585.
[116] David Schneiderman, *Constitutionalizing Economic Globalization: Investment Rules and Democracy's Promise* (Cambridge: Cambridge University Press, 2008), pp. 133–135.
[117] *ADC Affiliate Limited and ADC & ADMC Management Limited v. Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, paras. 423-426, 432–435.
[118] *CMS Gas Transmission Company v. Argentina*, ICSID Case No. ARB/01/8, Award, 12 May 2005, paras. 315–323.
[119] International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts*, UN Doc. A/56/10 (2001), art. 25.
[120] *Supra* note 118, paras. 373–382.

awards can constrain state sovereignty in times of dire economic crisis. To him, the conservative position of arbitration tribunals has continually transformed international investment law into a constitutional charter for global capital.[121] My own examination of ICSID jurisprudence on the doctrine of necessity largely concurs with this perspective. In a previous study, I found that investment tribunals have since the advent of BITs slowly but surely adopted a restrictive reading of necessity, that chiefly prioritises investor expectations over the sovereign prerogative to safeguard essential public interests.[122] This interpretive rigidity has the effect of entrenching the very structural hierarchies that CERDS had sought to dismantle.[123] It follows that there is a clear dichotomy between the general lip service recognition of the doctrine of economic sovereignty of states, and practical application amongst host states and home states of FDIs. In between this ideological contention, investment arbitration tribunal clearly resonate more with the vision of home states' ideologues.

It is worth noting that even where respondent (host) states ultimately prevail, the cumulative procedural and financial costs of investor–state dispute settlement (ISDS) have the tendency of exerting a significant chilling effect on domestic regulatory and policymaking autonomy. This dynamic is clearly illustrated by *Philip Morris Brands Sàrl v. Uruguay*. Against claims that Uruguay's tobacco control measures violated investor protections under the Switzerland–Uruguay bilateral investment treaty, Uruguay successfully defended the actions by arguing that they were introduced to protect public health.[124] The case nevertheless involved prolonged proceedings and substantial litigation costs, thereby highlighting how transnational corporations can indirectly strategically appropriate and deploy ISDS mechanism to deter or delay regulatory interventions, especially when involved in conflict with developing countries.[125]

It seems to me that the *Philip Morris* arbitration thus exposed asymmetrical power relations that is fervently embedded within the international investment regime. Although Uruguay's measures were upheld, the case nevertheless showed that regulatory success in itself does not necessarily eliminate the penalizing effects of arbitration. In fact, the threat of costly and time-consuming disputes have the tendency of discouraging states from adopting robust public interest regulations, even where such measures are legally defensible. In this sense, ISDS functions not merely as a dispute-resolution mechanism but also as a structural constraint on sovereign policymaking, especially in areas such as public health, environmental protection, and social welfare.

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[121] José E. Alvarez, *The Public International Law Regime Governing International Investment* (The Hague: Hague Academy of International Law, 2011), at 354.
[122] George Forji Amin, 'Drawing the Right Lessons from ICSID Jurisprudence on the Doctrine of Necessity', *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management*, 2010, 76(1), pp. 42-44.
[123] *Ibid.*
[124] *Philip Morris Brands Sàrl v. Uruguay*, ICSID Case No. ARB/10/7, Award, 8 July 2016.
[125] *Ibid*, paras. 588–595.

Overall, these cases collectively confirm a broader pattern, namely: international investment law has entrenched and consolidated a legal environment that continually privileges rights and proprietary interests of foreign investors over economic sovereignty of host states. Given the dynamic of the international system in systematically reproducing and legitimizing an international order centered on a one dimensional conception of property rights, contract, and capital accumulation, one observer has contended that this jurisprudential orientation by marginalizing alternative visions of economic order accordingly exemplifies the structural role of international law as an ideological apparatus of global capitalism.[126] Put differently, the marginalization of alternative normative frameworks such as the historical Charter of Economic Rights and Duties of States (CERDS) is neither accidental nor incidental, but instead constitutive of the broader international legal order.

Faced with this reality, TWAIL scholars have unsurprisingly interpreted the consistent undermining of CERDS in arbitral rulings as symptomatic of a deeper struggle by the Global South to translate sound declaratory assertions of economic sovereignty into enforceable legal frameworks for economic emancipation. The jurisprudential treatment of CERDS can thus be read as a persistent tension between the law of capital and the law of peoples. The tension continues to define international economic law even in our times.[127]

6. REVISITING CERDS IN THE CONTEMPORARY EPOCH

6.1. Persistent Structural Inequalities

Half a century since the adoption of the *Charter of Economic Rights and Duties of States* (CERDS), it would be an understatement to note that global economic inequalities have not only persisted but intensified in several respects. The most recent manifestation of this dynamic was the COVID-19 pandemic response which vividly exposed the structural vulnerabilities of developing countries within global economic governance. To be specific, disparities in access to vaccines, essential medical supplies, and emergency financial assistance not only reflected logistical failures but also long-standing discrepancies in intellectual property rights regimes, trade governance, and global health decision-making. [128]

For many states in the Global South, pandemic responses required additional sovereign debt, which compounded their already unsustainable fiscal burdens. In 2022 alone, Sub-Saharan African states for instance, collectively faced external debt servicing obligations exceeding USD 70 billion, a staggering amount that diverted scarce and critical public resources away from essential sectors such as healthcare, education, and social protection.[129] These structural imbalances have further been amplified by the proliferation of bilateral investment treaties (BITs) and investor–state dispute

[126] *Supra* note 14, at 45.
[127] *Supra* note 57, pp. 126–128.
[128] United Nations Economic Commission for Africa (UNECA), *Economic Report on Africa 2022: Building Resilient Economies in a Post-COVID-19 World* (Addis Ababa: UNECA, 2022), at 5.
[129] *Ibid.*, pp. 5–6; World Bank, *International Debt Report 2023* (Washington, DC: World Bank: 2023), pp. 42–44.

settlement (ISDS) mechanisms. While multinational corporations (MNCs) generally benefit from wide-ranging legal protections under these instruments, developing states are nevertheless bound to deal with the risks of substantial compensation awards in cases of disputes, often significantly constraining domestic policy autonomy.

As Muthucumaraswamy Sornarajah has observed, the contemporary international investment regime continually systematically prioritizes investor interests over social welfare, environmental protection, and the developmental imperatives of host states, with the attendant consequence being the persistence and reproduction of global inequalities rather than the fostering of enhanced economic development.[130] The cumulative effect of this dynamic is the sense of pervasive regulatory chill amongst host states, a condition whereupon states typically hesitate or refrain altogether from enacting essential public-interest regulations (notably in key areas such as: public health, environmental protection, and taxation), for fear of triggering costly arbitral proceedings.[131]

Empirical findings have established that the chilling effect do not only operates through adverse awards, but also in several cases where there is the mere threat of arbitration. Lauge N. Skovgaard Poulsen's extensive study on the treaty practice of developing countries has for instance shown that in response to foreign investors' pressure and anticipated reputational costs associated with ISDS claims, many governments in the global south frequently abandon, dilute, or postpone a good number of regulatory initiatives.[132] An earlier analysis by Jason Webb Yackee arrived at a similar conclusion, by asserting that ISDS mechanisms typically exert a chilling deterrent effect on domestic regulatory initiatives, thereby undermining the democratic decision-making and policy experimentation of these states.[133] As a result, international investment regime is marred by structural imbalance in which the operation of private investment capital routinely adversely influences public governance, as well as erodes substantive aspects of economic sovereignty. Another example of this is the commonly used stabilization clauses and classical investor protections habitually embedded in BITs. Given their tendency to subordinate the sovereign regulatory authority of host states to the preferences of transnational capital, it can be deduced that the clauses are both hegemonic in nature as well inherent threats to the economic sovereignty of the Global South.[134]

[130] M Sornarajah, *Resistance and Change in the International Law on Foreign Investment* (Cambridge: Cambridge University Press, 2017), pp. 88-92.
[131] Lise Johnson and Jeffrey Sachs, 'Investor-State Dispute Settlement, Public Interest and U.S. Domestic Law', Columbia Center on Sustainable Investment Policy Paper, Columbia University, 2015.
[132] Lauge N. Skovgaard Poulsen, *Bounded Rationality and Economic Diplomacy: The Politics of Investment Treaties in Developing Countries* (Cambridge: Cambridge University Press, 2015), pp. 145-151, 162.
[133] Jason Webb Yackee, 'Do Bilateral Investment Treaties Promote Foreign Direct Investment? Some Hints from Alternative Evidence', *Virginia Journal of International Law*, 2010, 51(2), pp. 405–406.
[134] George Forji Amin, 'All that Glitters is Not Always Gold or Silver: Typical Bilateral Investments Treaties (BITs) Clauses as Peril to Third World Economic Sovereignty', *Athens Journal of Law*, (2020), 6: 301-305.

6.2. The Resource Curse and Neo-Extractivism

The *resource curse* is a persistent phenomenon in many resource-rich developing economies. Despite the abundant endowments of oil, minerals, and other natural resources in their subsoils, a number of countries across the Global South, such as the Democratic Republic of Congo (DRC), Nigeria, Venezuela, Sierra Leone, and Guinea, are still trapped in entrenched poverty, environmental degradation, and protracted internal conflicts. [135] As Michael L. Ross has demonstrated, over-reliance on resource rents by these countries—which he terms rent-seeking behaviour—has frequently undermined institutional capacity and incentivized corruption and conflict. Put differently, instead of these countries pursuing and catalyzing broad-based economic development, the overreliance on rents from extractive wealth has frequently not only weakened these states' capacity to be dynamic but further distorted political accountability of the regimes. Considering the fall to economic despair of such countries despite their abundant natural resources, the phenomenon has been termed by Economists as the 'paradox of plenty.' [136]

In Latin America, this dynamic has been reconfigured through what some critical scholars have described as *neo-extractivism*. It is a dynamic by which a couple of post-neoliberal Latin America states have rejected privatization schemes as heralded by international financial institutions, and in response been able to fund essential social programs by significantly increasing the extraction and export of raw materials (minerals, oil, agricultural goods) and then ploughing-back the profits into social welfare programs.[137] Such initiatives are naturally geared at reducing poverty reduction and the fostering of economic development. Even left-wing governments that are typically committed to redistributive or progressive agendas have also increasingly relied on large-scale resource extraction as a central development strategy. Hence, Maristella Svampa has characterized neo-extractivism as the new consensus whereupon states have been able to retain their formal ownership of natural resources while simultaneously deepening their integration into global commodity chains.[138] This model could nevertheless expose domestic economies to volatile commodity prices, external financial shocks, and asymmetric trade relations. In fact, if not properly managed, the initiatives could cause socio-environmental conflicts and perpetuate a culture of dependency. One scholar has even argued that neo-extractivism tends to reproduce the familiar colonial logic of capital accumulation, albeit through extraction, and to generate new forms of ecological dependency, social displacement, and debt-driven development.[139]

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[135] Michael L. Ross, *The Oil Curse: How Petroleum Wealth Shapes the Development of Nations* (Princeton, NJ: Princeton University Press, 2012), at 69.
[136] *Ibid.*, pp. 1-6, 140, 63-87.
[137] Eduardo Gudynas, 'Extractivisms: Tendencies and Consequences', *Latin American Perspectives*, 2014, 41(5): 1–16; Maristella Svampa, *Neo-Extractivism in Latin America: Socio-Environmental Conflicts, the Territorial Turn, and New Political Narratives* (Cambridge: Cambridge University Press, 2019), pp. 3–9, 25–41.
[138] Maristella Svampa, *Neo-Extractivism in Latin America: Socio-Environmental Conflicts, the Territorial Turn, and New Political Narratives* (Cambridge: Cambridge University Press, 2019), pp. 3–9, 25–41.
[139] Verónica Gago, *Neoliberalism from Below: Popular Pragmatics and Baroque Economies* (Durham, NC: Duke University Press, 2017), pp. 112–118; Verónica Gago, *Feminist International: How to Change Everything* (London: Verso Books, 2020).

TWAIL scholars on their part have transpose these line of critique into the legal fray, by placing emphases on the recurrent role of international trade, investment, and environmental regimes in legitimizing extractivist practices under the heralded rhetoric of 'development,' 'modernization,' and the 'protection of foreign direct investment'.[140] One author has indicated that colonial patterns of accumulation are now systematically reproduced in contemporary international economic law through the facilitation of wealth transfer from the Global South to the Global North.[141] The cumulative effects of investment legal mechanisms in the Global South such as stabilization clauses, investor protections clauses, and weak environmental safeguards have been the fortification of a global economy whereupon resource-rich countries are still subordinated to the transnational value chains, and their sovereignty being diluted by legal and financial mechanisms that perpetuate and sustain economic dependency.

Against this backdrop, it is worth noting that CERDS had envisaged this tension and provided thoughtful remedies by affirming the permanent sovereignty over natural resources (PSNRs) for all sovereign states in Article 2 of the instrument, as well as its insistence on equitable benefit-sharing per Article 12, which directly challenged any potential adverse extractivist models that prioritizes external capital over domestic welfare initiatives.[142] By taking a firm stand for natural resources to be primarily managed for the benefit of national populations, CERDS was accordingly envisaging an utopian moral economy that ought to be driven by core values of stewardship, redistribution, and collective responsibility. [143]

A revisitation of CERDS in this context therefore necessitates confronting both the dynamic of unequal trade and financial relations on the one hand , and on the other hand, to take a deep dive into the legal architecture that continues to perpetuate dependency and ecological exploitation.[144] As one scholar has noted, the struggles over economic sovereignty is ultimately inseparable from the struggles over epistemic authority and ecological justice.[145] This is the more telling as to why it is still imperative to reinvigorate CERDS. Doing so is not just a nostalgia quest but a necessary step for reimagining alternative development pathways that are more just, more sustainable, and genuinely autonomous for the Global South. [146]

[140] Usha Natarajan, 'TWAIL and the Environment: The State of Nature, the Nature of the State, and the Arab Spring', *Oregon Review of International Law*, 2012, 14(1): 177–203.
[141] Carmen G. Gonzalez, 'Bridging the North-South Divide: International Environmental Law in the Anthropocene', *Pace Environmental Law Review*, 2015, 32, pp. 419–420; Gonzalez, Carmen G, 'Environmental Justice, Human Rights, and the Global South', *Santa Clara Journal of International Law*, 2015, 13(1), pp. 151–156.
[142] United Nations General Assembly, *Charter of Economic Rights and Duties of States*, arts. 2, 12.
[143] *Supra* note 1, pp. 91–93.
[144] Sundhya Pahuja, s*upra* note 9, pp. 215–219.
[145] *Supra* note 14, at 45.
[146] Richard Falk, *Power Shift: Revisiting the Charter on Economic Rights and Duties of States* (unpublished lecture, Princeton University, 2024).

7. LEARNING FROM THE NIEO AND CERDS VISIONS: FAILURES AND FUTURE DIRECTIONS

7.1. Historical Limitations

Despite their vision, normative ambition, and political resonance, the Charter of Economic Rights and Duties of States (CERDS) and the wider New International Economic Order (NIEO) activisms ultimately failed to attain practical structural transformation of the global economy that they fervently envisaged. One of the biggest stumbling blocks was the sustained resistance from industrialised Northern states, which collectively perceived CERDS as a major obstacle to the prevailing architecture of international trade, the protection of international investment, and standard contractual obligations.[147] As a result, most Western nations strongly rejected NIEO's redistributive orientations, arguing that the emanating provisions from CERDS both radically and adversely threatened the sanctity of investment contracts, which by analogy undermined the international law principle of *pacta sunt servanda*.[148] And the resistance was not just technical or doctrinal. It reflected profound ideological clash between two competing visions of international economic law. While one is rooted on pivotal issues such as sovereignty, economic redistribution, and developmental justice; the other concerns questions on necessary dogmas on which to anchor the international economic order (such as: market liberalism, property rights, and investor confidence).[149]

The second limitation rests in CERDS's institutional and legal form. Having been adopted as a United Nations General Assembly resolution rather than as a multilateral treaty, the Charter accordingly lacked binding legal force and effective enforcement mechanisms. As Nico Schrijver has observed, CERDS was accordingly bound to primarily function as a *soft law* instrument.[150] This position presupposes that CERDS was naturally expected to be normatively influential but legally indeterminate, that is incapable of compelling compliance or sanctioning violations.[151] True to this expectation, its impact following adoption largely remained rhetorical, initially shaping political discourse without translating any of the new debates into durable legal obligations within international economic law. Slowly but surely, even these conversations largely waned from public discourse.

Moreover, there were also noteworthy internal divisions among developing states themselves. While the Global South as a bloc shared a broad united critique on structural inequalities perceived to be embedded in the international economic system, they were nevertheless far from being absolutely unified in terms of economic models, geopolitical alignments, and even

[147] Antony Anghie, *supra* note 8, pp. 255–257.
[148] *Supra* note 6, pp. 238–240.
[149] Stephen D. Krasner, *Structural Conflict: The Third World Against Global Liberalism* (Berkeley: University of California Press, 1985), pp. 43–47; Susan Marks, *The Riddle of All Constitutions: International Law, Democracy, and the Critique of Ideology* (Oxford: Oxford University Press, 2000), pp. 56–58.
[150] Nico Schrijver, *supra* note 21, at 85.
[151] *Supra* note 6; See: Schrijver, *supra* note 21, at 309-314.

development priorities.[152] The apparent unity of the Global South in fact masked the significant divergences on sovereign policies relating to oil management. In effect, these fractures dramatically came to the fore in 1973–74, in what was dubbed as the oil crisis. While OPEC oil-exporting member states—such as Saudi Arabia, Algeria, and Venezuela—heavily benefited from a sudden boom in petroleum prices leading to unprecedented revenue surpluses, many oil-importing developing states in Sub-Saharan Africa and South Asia correspondingly suffered the opposite effects in the form of severe balance-of-payments crises and rising external indebtedness.[153] This asymmetric difference resulted to third world countries expressing different priorities within the G77. For instance, while energy exporters within the bloc were perceived as new capital accumulators and lenders, energy-importing developing countries on their part felt that their already dependence on Western financial markets and multilateral lenders had been worsened by fellow third world countries playing similar roles and perpetuating their woes.[154]

There were further divisions over trade strategy and economic development models. While few developing countries—the likes of South Korea, Taiwan, Singapore, and later Brazil and Mexico that were making a successful leap to becoming newly industrialized economies—increasingly favoured export-oriented economic strategies typically akin to Western markets, the rest of the third world were still marred by their structural concentration on primary production in extractive sectors and cash crops. The different groups of developing countries accordingly entertained varying discourse to some degree on economic discourse.[155] It follows that the Third World vision of the NIEO beside the opposition from western countries, was equally strained by the differential integration of the third world into global capitalism, with different groups of the latter countries adapting varying economic frameworks.[156]

On attaining independence, various developing countries also sided with different sides of the global geopolitics cold war, with third world Soviet Socialist-aligned countries and Western-aligned capitalist countries respectively frequently expressing more solidarity with their geopolitical blocs.[157] These divergences which were intensified by other regional rivalries and differential integration into global markets, somewhat not only undermined the collective bargaining power that they could have garnered, but moreover permitted advanced industrial states in latter decades to exploit these fractures within the Global South to their own advantage.[158] It can thus be said that the NIEO project ultimately faltered not only due to external opposition from the West but moreover as a result of the difficulty faced by the Global South to sustain the fragile solidarity across their diverse postcolonial trajectories.

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[152] *Supra* note 17, pp. 112–115.
[153] Eric Helleiner, *States and the Reemergence of Global Finance* (Ithaca: Cornell University Press, 1994), pp. 104–109.
[154] Susan George, *A Fate Worse Than Debt* (London: Penguin, 1988), pp. 23–34.
[155] Dani Rodrik, *supra* note 10, pp. 86–92.
[156] *Supra* note 17, pp. 214–225.
[157] Mohammed Ayoob, *The Third World Security Predicament* (Boulder: Lynne Rienner, 1995), pp. 52–60.
[158] Robert W. Cox, *Production, Power, and World Order: Social Forces in the Making of History* (New York: Columbia University Press, 1987), pp. 253–254.

Finally, the global ascendancy of neoliberalism in the late 1970s and 1980s also contributed to the collapse of the NIEO agenda.[159] This new drive was pioneered by the Reagan and Thatcher administrations in the USA and UK respectively. Both conservative administrations reconceived the dominant orthodoxy of both domestic governance and international economic policy around deregulation, privatization, and capital mobility. These undertakings effectively challenged displaced prior redistributive discourse that was centered around sovereignty and developmental equity. These latter categories were increasingly delegitimized by the Reagan-Thatcher Lites as too protectionist, hence inefficient and ineffective.[160] It has been noted that such a consolidation around neoliberalism was without doubt a counter-revolution against progressive development thinking.[161] Put differently, the Reagan-Thatcher objective was to systematically dismantle both the intellectual and normative foundations upon which CERDS and the NIEO rested.

Overall, it seems to me that the above historical limitations ought not to be read as completely negating and obliterating CERDS moral significance, but instead as underscoring the structural challenges that are inherent in any global scheme that seeks to transform declaratory principles into enforceable international economic norms.

7.2. Recent Innovations and Lessons

Notwithstanding the historical setbacks that undermined the realization of the NIEO vision as articulated in CERDS, recent developments in international economic law have suggested a gentle yet cautious re-emergence of key principles that were paramount in these instruments. While these initiatives remain fragmented and at times incomplete, they nonetheless indicate some renewed energy and efforts by actors in the Global South to reclaim policy space, enhance collective economic agency, and challenge entrenched asymmetries that have long permeated the global system.

One of the most significant contemporary developments has been the establishment of the African Continental Free Trade Area (AfCFTA), which entered into force in 2021 and became the largest Regional Trade Agreement (RTA) in the world, with 54 member states.[162] Bent on uniting all countries on the African continent and their 1.4 billion people into a single market for goods and services, AfCFTA, in principle, constitutes the most ambitious regional integration project since the creation of the World Trade Organization (WTO).[163] Its stated objectives to boost intra-African trade, promote industrialization, and reduce dependence on external markets signify a strategic shift toward endogenous development and collective self-reliance. In this respect, AfCFTA closely aligns with CERDS's emphasis on economic cooperation, sovereign equality, and

[159] Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (Cambridge, MA: Harvard University Press, 2018), pp. 89–94.
[160] David Harvey, *A Brief History of Neoliberalism* (Oxford: Oxford University Press, 2005), pp. 2–5.
[161] *Ibid.*, pp. 10–12.
[162] United Nations Economic Commission for Africa (UNECA), *Assessing Regional Integration in Africa IX: Next Steps for the African Continental Free Trade Area (AfCFTA)* (Addis Ababa: UNECA, 2021), pp. 3–5.
[163] *Ibid.*, pp. 3-5.

the right of states to pursue development strategies tailored to their specific historical and structural conditions.[164]

Its merits notwithstanding, a closer reading of the Agreement and its Protocols presents a more complex picture than the often-held image of it as an innovative project. Its Protocol on Trade in Goods largely replicates core WTO frameworks, especially regarding the key liberalisation provisions: most-favoured-nation treatment, national treatment, tariff schedules, safeguards, and technical barriers to trade.[165] The same is true of its Dispute Settlement Protocol, which is a direct reflection of the WTO Dispute Settlement Understanding (DSU) in both structure and procedure.[166] Many other parts of the Act, including its borrowing provisions, suggest a continuity with the multilateral trading system, albeit at the regional level, rather than a radical rupture from the global trading order.

Although the agreement still faces several implementation challenges, including infrastructure deficits, non-tariff barriers, and uneven productive capacities, it nonetheless serves as an instrument that signals a new modality of renewed commitment to South–South economic solidarity.[167] AfCFTA's conception and framework also include notable developmental aspirations, which, at their core, are consistent with the erstwhile NIEO's emphasis on structural transformation. Article 3 of the Agreement, for instance, enumerates its aims and objectives, including the protection and promotion of industrial development, sustainable and inclusive socio-economic development, and the structural transformation of member states' economies.[168] These provisions clearly signal an attempt to make the imperative of industrialisation the forefront of the rules-based continental convention.

Following the COVID-19 pandemic, there was an intense global debate, championed by the Global South, over the proposed waiver of intellectual property protections under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The entertainment of such a debate illustrated the continuing relevance of CERDS's normative framework.[169] First initiated by India and South Africa in 2020, the proposal for the waiver sought to temporarily suspend the necessary patent protections for essential vaccines, diagnostics, and related therapeutics, in order to facilitate local production in developing countries and ensure equitable access for the masses in these countries.[170] Although the eventual outcome fell considerably short of the original proposal, the campaign itself marked a significant moment of collective activism by developing nations

[164] *Ibid.*, at 12.
[165] *Agreement Establishing the African Continental Free Trade Area* (AfCFTA) (adopted 21 March 2018, entered into force 30 May 2019), arts. 4-19.
[166] *AfCFTA Protocol on Rules and Procedures on the Settlement of Disputes*, arts. 3–20.
[167] *Supra* note 14, pp. 120–122.
[168] AfCFTA, art. 3(e)–(f).
[169] Third World Network, 'TRIPS Waiver Proposal: South Africa and India Lead the Way' *TWN* (2021)., <https://www.twn.my/title2/wto.info/2021/ti210303.htm> Last accessed, 10 April 2026.
[170] *Ibid.*, pp. 2–3.

against what they perceived as the commodification of life-saving technologies.[171] The spirit of the activism in some sense, was a revival of CERDS's core values, to wit: the recognition of health as a global public good rather than a market privilege, and secondly, a revitalization of the call for the democratization of technology.[172]

The issue of climate governance is yet another topic whereupon CERDS's principles have attracted considerable attention and discourse. During the 2022 United Nations Climate Change Conference (COP27) in Sharm El-Sheikh, developing countries collectively clamored and successfully secured an agreement to establish a Loss and Damage Fund for the most vulnerable states to the impacts of climate change.[173] Although the operational modalities of the fund are still contested, and it remains undercapitalized, its creation nonetheless represents an important symbolic acknowledgment of some historical responsibility and an ecological debt to the Global South. The underlying logic here is synonymous with the polluter-pays principle: those who have polluted their way to industrialization by disproportionately benefiting from carbon-intensive development should accordingly bear greater responsibility for the climate harm they have caused. This understanding aligns with CERDS's prior commitment to an equitable distribution of benefits and burdens in international economic relations.[174] It has been observed that climate reparations should not be treated merely as compensatory mechanisms but must form part of the broader effort to restructure global political and economic relations and address environmental injustices.[175]

There have been parallel innovations in international finance. For instance, the establishment of alternative financial and development institutions such as the New Development Bank (NDB) by the BRICS countries as well as the Asian Infrastructure Investment Bank (AIIB), and African Development Bank (AfDB), collectively reflect a sense of growing dissatisfaction with the governance structures and conditionality regimes of the traditional Bretton Woods institutions.[176] It is worth noting that these newer banks have not fully disengaged from mainstream development paradigms. The governance structure of AfDB has a significant number of external participants, with non-African countries collectively controlling well over 40% of the bank's shares. While it is understood that this structure is geared toward enhancing the continent's capitalization and creditworthiness in the world market, the downside is the undermining of full financial self-determination.[177] Their presence nonetheless tacitly indicates early attempts at fragmentation

[171] James Gathii, 'The Promise of the TRIPS Waiver', *American Journal of International Law Unbound*, 2022, 116, pp. 57–62.
[172] Third World Network, *TRIPS Waiver Proposal*, 4–5. < https://www.twn.my/title2/intellectual_property/trips_waiver_proposal/W684.pdf> Last accessed: 11 April 2026.
[173] United Nations Framework Convention on Climate Change (UNFCCC), 'Report of the Conference of the Parties on Its Twenty-Seventh Session (COP27)', Sharm El-Sheikh, 6–20 November 2022.
[174] Carmen G. Gonzalez, 'Bridging the North-South Divide: International Environmental Law in the Anthropocene', *Pace Environmental Law Review*, 2015, 32, pp. 419–421.
[175] Olúfémi Táíwò, *Reconsidering Reparations* (New York: Oxford University Press, 2022), at 110; Carmen Gonzalez, 'Bridging the North-South Divide: International Environmental Law in the Anthropocene', *Pace Environmental Law Review*, 2015, 32, at 420.
[176] Kevin P. Gallagher and Richard Kozul-Wright, *The Case for a New Bretton Woods: Reforming the Global Financial Architecture* (Cambridge: Polity Press, 2022), at 88.
[177] African Development Bank, 'AfDB Annual Report 2023', pp. 34–36.

within the international financial architecture.[178] They have been vital for expanding the policy space and choices available to eligible borrowing countries. Most importantly, such initiatives echo CERDS's insistence on the sovereign equality of states in economic decision-making and their supposed inherent right to freely charter and determine their own development priorities, void of any coercive external constraints.[179]

8. CONCLUSION

Half a century after the adoption of the CERDS, the international economic order remains unsettled by many of the very tensions that previously energized and sustained the erstwhile New International Economic Order (NIEO) movement. These things include the disconnect between normative sovereign equality and the practical structural inequality amongst nation-states, as embedded through global markets, finance, and trade governance. Ideological tensions, albeit less pronounced, have also persisted in other areas, such as policy autonomy against conditionality, with many third-world countries feeling very constrained by international financial institutions' loan conditionalities, credit ratings, and market pressures; questions across the Global South of resource sovereignty versus extractive dependency, disconnect between economic development rhetoric and trade asymmetries, increasing debates around technology transfer versus intellectual property protection, issues of debt justice versus creditor discipline, climate responsibility concerns versus developmental space, and participation versus power in global governance. Collectively, these tensions reveal that the structural critiques of the global economic order have not vanished, as the system has never reformed to address the plight of the Global South; they ought to now be directed at the new institutional, doctrinal, and hegemonic nature of the world system.

This study has shown that the whole purpose of the NIEO movement and the CERDs emanating from it was to reorient the architecture of international economic law to equitably meet the needs and aspirations of all constituent members of the international society. Put differently, it was conceived to rebalance the rights and duties of states in the global economy.[180] While the proponents of NIEO achieved some normative victories through CERDS, the Western response to the charter has worsened, rather than improved, the economic welfare of countries in the Global South.

The central claim of this article is that CERDS ought not be read merely as a historical artefact of 1970s activism, but rather as a useful blueprint for veritably decolonising and reorientating international economic law towards global justice in the 21st century. Its core principles—permanent sovereignty over natural resources, equitable sharing of economic benefits, sovereign equality in economic decision-making, and solidarity across generations (a variant of

[178] *Ibid.*, pp. 91–93.
[179] *Ibid.*, 95.
[180] Nico Schrijver, *supra* note 21, pp. 289–295.

sustainable development)—foreshadowed many of the crises that the world is currently facing in both the international investment and trade spheres.

First, in the sphere of investment law, CERDS offers an important conceptual lesson for recalibrating the balance between investor protection and host states' imperative to regulate FDIs for public policy (regulatory sovereignty). Over the decades, some of the myriad reform efforts on the subject—such as implementing regulatory carve-outs in some bilateral investment treaties, the narrowing the fair and equitable treatment standard, the embedding of investor obligations into some IIAs, and the increasing supporting multilateral reform of ISDS—while all significant and pragmatic, were nonetheless inspired by CERDS's firm clamour for veritable sovereign equality.[181]

Second, the insurmountable degree of sovereign debt crises across the Global South is yet another testament to the imperativeness of a fairer global financial architecture. As Kevin Gallagher and Richard Kozul-Wright have argued, any meaningful reform would necessarily require appropriate institutional mechanisms to address systemic imbalances rather than merely replicating current frameworks that administer adjustments within creditor-dominated structures.[182] By contrast, a fairer approach would be a multilateral debt workout mechanism, which has not only been long championed by developing countries but has moreover been central to CERDS' ethos that economic sovereignty is impossible if states are perpetually subjected to fiscal tutelage.

Third, while the subject of environmental science and the climate justice debate wasn't mainstream at the time of CERDS proclamation, the charter nonetheless advanced the logic of distributive justice in Articles 9, 12, and 17. It can be argued that the Loss and Damage Fund, which was agreed at COP27, symbolically and significantly acknowledged historical responsibilities and is very much in the spirit of global justice, as CERDS.[183] For Carmen Gonzalez and Olúfẹ́mi Táíwò, the issue of climate reparations must be treated not as charity but as an act of structural correction, especially the rectification of historical unequal capital accumulation.[184]

From the foregoing, it can be observed that contemporary developments are animated by reformist energies akin to the environment from which CERDS was born. The normative aspirations of NIEO and the CERDS regime have not completely vanished.[185] The contention of this study is that, far from that, they continue to inspire and inform contemporary struggles over crucial discourse on economic sovereignty, the equality of states, and general solidarity in international economic law. It seems to me that one of the key lessons to be drawn from CERDS is that transformative legal change cannot solely rest on declaratory instruments. It may even need more than one cycle of activism to materialise. It crucially requires sustained political mobilization,

[181] David Schneiderman, *supra* note 116, pp. 215–222; M. Sornarajah, *supra* note 11, pp. 361–375.
[182] Kevin P. Gallagher and Richard Kozul-Wright, *The Case for a New Bretton Woods* (Cambridge: Polity Press, 2022), pp. 145–167.
[183] Egypt, 'COP27 Sustainability Report', Sharm el-Sheikh Climate Change Conference, 2023, paras. 7–10.
[184] Carmen G. Gonzalez, 'Environmental Justice, Human Rights, and the Global South', *Santa Clara Journal of International Law*, 2015, 13(1), pp. 151–160; Olúfẹ́mi Táíwò, *Reconsidering Reparations* (New York: Oxford University Press, 2022), pp. 103–110.
[185] Sundhya Pahuja, *supra* note 9, pp. 221–223.

rhetorical emphasis, institutional innovation, and coordinated action across concerned states, regions, and social movements.[186] It is probably only through such collective efforts that the international legal order moves closer to what Mohammed Bedjaoui once dubbed as a just and rewarding international economic system, that is, one grounded not on a notional but genuine equality among states.[187]

[186] Balakrishnan Rajagopal, *supra* note 9, pp. 142–144.
[187] *Supra* note 1, at 104.