6

Decolonizing *The Gift*

Nationalization and Sovereign Debt Cancellation in North–South Relations

If 1962 put an end to the constitutional debates in France and Algeria, none of the socioeconomic questions about which Mauss had written were solved by Algeria gaining its political independence. With the Evian Agreements signed in March 1962 by the French government and the provisional government of the Algerian Republic, the negotiators organized both the independence of Algeria and the sustained cooperation between Algeria and France. The Evian Agreements represented the template of what the French negotiators had in mind when they proposed international "cooperation" to their former possessions after independence. Formally, the logic of cooperation was inspired by the model of gift exchange: according to the Evian Agreements, cooperation was to be based on the "reciprocity of advantages and interests between the two parties,"[1] which was made manifest by the granting of "in-kind 'prestations,' loans, financial participation, or gifts,"[2] from the old metropolis to the newly independent Algerian state.

The Evian Agreements were premised on the prediction that the one million French citizens of European descent, most of whom had never lived in the metropolis, would remain in Algeria after independence, and that some form of financial, economic, cultural, and political cooperation would need to continue to ensure good relations between the Algerian citizens and these French citizens who remained Algerian residents. For a renewable period of three years, the French government thus agreed to maintain intact its financial obligations in Algeria, in order to avoid the collapse of the newly independent state, which would have resulted from an uncontrolled secession, according to the predictions that Jacques Soustelle and Germaine Tillion expressed at the time.

With the Evian Agreements, the French government believed that France had been faithful to its longstanding generosity toward Algeria. This cooperation was costly for France, as it involved, for instance, paying the salaries of *coopérants* (doctors, teachers, magistrates, etc.) who agreed to give a helping hand to the Algerian people during the transition toward social, economic, and financial autonomy. In the Evian Agreements, the French government went as far as committing to help the Algerian state sustain the financial burden of the future nationalization of

land[3] – a decision for which the Algerian Minister of Information, Redha Malek (1931–2017), lauded the "realism" of the French delegation.[4] As Jeffrey Byrne writes about the Algerian revolutionary leaders' economic program, the nationalization of land was "perhaps their one clearly and consistently expressed goal after independence,"[5] so there was little doubt that following Algeria's independence, the new independent government would declare the redistribution and collectivization of land ownership. The only realistic way to prevent land nationalization from being implemented without compensation for the French landowners was for France to cover some of the financial burden with its own operating budget.

In exchange, Algeria's provisional government promised to enforce all acquired private and private/public rights on land and subterranean resources.[6] In the Evian Agreements, the Algerian representatives committed to the principle that all nationalization should be compensated in a "fair and fixed manner,"[7] and that payments should be promptly executed. The future Algerian government not only promised to fairly compensate the large landowners, with the support of the French government, but it also promised not to expropriate the immovable properties (buildings, houses, or apartments) that French citizens owned in Algeria. At last, Algeria guaranteed the integrity of the acquired rights on oil research and extraction,[8] which were defined by the 1958 Oil Code whose preparation had been overseen by Jacques Soustelle when he was the Minister of Atomic Energy and the Sahara in the first government of Michel Debré.

The Evian Agreements were emblematic of many other devolution and independence agreements written by France in the early 1960s, inspired by the philosophy of post-independence "cooperation." If de Gaulle indeed believed that history would naturally bring colonies to their independence, and that it was more economic for France to accept it sooner rather than later,[9] the notion of "cooperation" reintroduced the idea that a transitional period was necessary for postcolonial societies to adapt after the moment of political independence and until the moment of economic independence. The government did not yet speak of "failed states," but, clearly, the metropolis wanted to prevent its former colonies from experiencing economic collapse as a result of achieving independence. During a transitional period, newly independent states that emerged from the ashes of the French Empire would march according to different rhythms, but along the same straight line and with the benevolent support of the former metropolis, which would generously provide expertise, financial support, and political guidance to these new nations as the latter sought ways to organize themselves internally, to find resources on external markets, and to form alliances within the orbit of France's soft hegemony.

Still, the fact that the provisional Algerian government (or GPRA) accepted to sign cooperation agreements that were inspired by this philosophy of cooperation was a surprise – if it wasn't just a temporary concession. Indeed, with the Tripoli Declaration of 1962 in particular, the GPRA had rejected the concept of "cooperation" with French economic interests, in which they saw the gravest

danger raised to the revolution by "the seductive guises of liberalism and financial cooperation that only purports to be disinterested."[10] Algerian revolutionaries denounced in the post-independence philosophy of cooperation the same paternalism they saw in the colonial mindset characteristic of the interwar imperial administrators who believed that overseas societies had not reached the highest point of maturity, and thus needed the continued support of the metropolis, even after being granted their independence. Mohammed Bedjaoui, eminent Algerian jurist, who served as a jurisconsult of the GPRA in the Franco-Algerian negotiation,[11] and who became the first secretary general of the government after 1962 – a role similar to that of a prime minister, to the extent that he organized the weekly Cabinet meetings with the Algerian ministers and coordinated the implementation of decisions with the relevant ministries[12] – clearly opposed the Gaullist concept of "cooperation" in which he saw the prolongation of colonial relations of interstate subordination in the post-decolonization era.[13]

Even though the GPRA did sign the Evian Agreements in March 1962, the Algerian diplomatic team fought hard against the general philosophy of bilateral cooperation in other public venues, such as the UN General Assembly (UNGA). Upon becoming Algeria's first president, Ahmed Ben Bella (1918–2012) made it clear that he saw in the French projects of cooperation a neocolonial project aimed at ensuring the prolongation of France's wrongly acquired rights on land expropriated at the time of colonization.[14] The French financial guarantees served the same function as the continued presence of French military forces in the territory of newly independent states: their overall goal was to insure French investors (especially in the oil business) against the threat that their investments might be nationalized with no compensation.[15] Citing the Swedish economist Gunnar Myrdal (1898–1987) and his criticism of the "forced bilateralism" associated with the continued exploitation of the South's natural resources by the Global North, Bedjaoui repeatedly argued that French financial help was far from a disinterested gift: he saw in "cooperation" a guarantee or "collateral" (*contrepartie*) that Algeria would protect "the interests of the French state and the acquired rights of the legal persons on Algerian territory."[16]

In many ways, Bedjaoui implicitly agreed with Bourdieu and Sayad's idea that the language of gift, cooperation, and solidarity that the metropolitan statesmen spoke before, during, and after the independence of former colonies was just a devilish charade aimed at confusing the peoples of newly independent states.[17] As Bedjaoui wrote in 1978, the fake gifts that the North extended to the South under the guise of "cooperation agreements" and "barter conventions signed on the side of aid agreements [between North and South], perpetuate the illusion among the rich countries that they deliver a truly authentic and disinterested aid to the countries of the Third World," when in fact, these "supposedly fair and freely accepted exchange contracts perpetuate the soft exploitation of the latter."[18]

The Algerian statesmen who would later come to be associated with the fight for a New International Economic Order (NIEO) in the 1970s, thus clearly distinguished between the bilateral cooperation between North and South proposed by the French government, and the multilateral South–South and North–South relations they envisioned. Ben Bellah's goal was to make Algeria the exemplary Third World rebellious nation, which meant confronting head-on de Gaulle's project of postcolonial cooperation, and forming new alliances in the South, in particular with Tito's socialist Yugoslavia, in which he found a model for the redistribution of land he announced in March 1963,[19] or with Cuba and other countries of Asia, Africa, and Latin America. Indeed, upon gaining its independence, Algeria became a "Mecca of Revolution,"[20] to use Jeffrey Byrne's title, as Algiers hosted some of the most important conferences where the non-aligned movement came to an agreement on the broad strategy needed to establish the NIEO.

In these debates, Algerian diplomats played a key role: the NIEO was launched in September 1973 during the Algiers conference of heads of state and government of the non-aligned countries, which concluded with a call by Algerian President Houari Boumédiène (1932–78) to the UN Secretary General to convene a special session of the UNGA to study problems of raw materials, sovereign debt, and development.[21] The subsequent UNGA session was organized in May 1974, under the tenure of Abdelaziz Bouteflika (1937–), Boumédiène's longtime Foreign Minister (1963–79) who was also the UNGA's president in 1974: during this session the UNGA adopted the Declaration on the Establishment of the NIEO, complemented by a program of action and the Charter of Economic Rights and Duties of States at the end of 1974. In parallel, Mohammed Bedjaoui also called for states from the Global South to reject neocolonial cooperation with their former metropolis and to engage with the Global North in honest "global negotiations" covering the topics of debt, concession rights and economic development on a multilateral basis, and recognize an inalienable right of all nations over their "wealth, natural resources and economic activities"[22] – an inalienable right which was later referenced in the Convention on the Succession of States in respect to State Property, Archives and Debts that was adopted in 1983 by certain states of the Global South (but which never entered into force). This Treaty was discussed within the group of expert lawyers chaired by Bedjaoui himself, which had been tasked in the mid 1960s by the UNGA to reflect upon economic transitions after independences: the International Law Commission (ILC) and its sub-committee on the questions of nationalization of property and cancellation of sovereign debt in the postcolonial context.[23] With the Evian Agreements, a new sequence was thus opened that led to the expression of the demands that non-aligned nations tabled both at the UNGA (1974–9), with the establishment in May 1974 of a Plenary Committee in charge of initiating the NIEO, and at the ILC, in which legal scholars spent twenty years codifying the legal doctrine on the economic rights of former colonies after independence.

In these different debates, two models of the gift exchange clashed with one another: the philosophy of bilateral cooperation between the former metropolis and its former colonies, which was modeled after the Evian Agreements; and the philosophy of multilateral and "global settlements," which was articulated by eminent jurists and diplomats of the Third World, among whom Algerian diplomats in general, and Mohammed Bedjaoui in particular, figured prominently. As far as Algeria was concerned, the support for the NIEO was premised on the recognition that, with the Evian Agreements, French views had shaped the law on the books, but that it wasn't clear whose views would shape the law in practice in the years ahead. The notion of "acquired rights" safeguarded by the Evian Agreements was immediately rendered meaningless by the unexpected and massive exodus of the French Algerians in the summer of 1962, leaving behind all their possessions.[24] The compromise reached on the transmission of sovereign debt and private rights (of French companies) over natural resources also proved temporary, as the two independent countries started to renegotiate the rights of oil concessions in Algeria after 1965. By then, it was hard to predict whether Algeria would abruptly cut all economic ties with the French economy and French oil concessions, or whether it would leave unchanged the existing French economic interests in Algeria – or whether it would look for a third solution, in between the two extremes. This was the context in which the Algerian statesmen started to develop their own doctrine of North–South relations, which eventually became the NIEO.

Thus, one can hardly say that the gift exchange disappeared as a model of international economic governance with the end of the Algerian War in 1962: rather, with decolonization in general, and the end of the war in Algeria in particular, the gift exchange seems to have been translated into the discourse of international law, and thus suffused with new meanings and novel political connotations. In this chapter, I thus ask: how was the model of gift exchange, which anthropologists quit using to analyze international exchanges around the time of Algeria's independence, recycled in the field of international law to frame the larger governance issues raised by the age of economic independences? Which transformations in the French field of power in general, and those affecting the relations between the French metropolitan and colonial fields in particular, have made this translation of the gift exchange in the language of international law possible? And with which larger geopolitical and economic considerations have these changes been associated?

As Nico Schrijver observes, the promotion of the NIEO in international law pitted the Global South – conceived at the time as encompassing Latin America, Africa, and Asia – in its search of new economic rights, against Western states (the United States and former European empires in particular), who defended the sanctity of contracts securing the economic rights acquired by private companies like oil concessions.[25] But its promoters did not come from just anywhere. Tracing the genealogy of the gift exchange in the Francophone context suggests that some interesting and under-explored intellectual continuities and discontinuities existed

between the Algerian intellectuals behind the NIEO and the French solidarists who wrote about international economic relations in the 1930s. Indeed, the intellectual and diplomatic movement in favor of the NIEO has taken to heart the questions that prior generations of socialist policymakers interested in the legal, social, economic, and political underpinnings of colonization and globalization had started to answer in the 1930s, and even before, when they questioned the limits that should be placed on the rights of concessionary companies. But they answered those questions differently, as they drew upon different resources, and spoke from very different positions within the French field of power, at least before 1962.

By focusing on the Francophone context, placed in a global perspective, this chapter prolongs and deepens previous genealogical analyses of the NIEO.[26] In so doing, this chapter operates two intellectual shifts with respect to the current historiography that has been elaborated on the NIEO by historians of ideas, like Balakrishnan Rajagopal, Gilbert Rist, Georges Abi-Saab, Matthew Craven, or Sundhya Pahuja.[27] First, in contrast to previous histories, which are not grounded on sociological analyses of the fields in which the key ideas NIEO concepts were elaborated, this chapter explores the transformations in the Francophone postcolonial context in general, and in the complex relation that existed between French metropolitan and colonial fields of power around the time of Algeria's independence. Second, this chapter operates a geographical shift, as it moves the genealogy of the NIEO from the study of the development discourse produced in the Anglophone and US-centered context (mostly in the disciplines of economics and law)[28] to the analysis of continuities between discourses on colonial and postcolonial solidarity produced in the French field of international law. Therein lies its originality.

To these two shifts, I would add a third, epistemological, repositioning. Indeed, these first two moves require that a French-trained sociolegal anthropologist like myself sit at a different distance from, and with a different attitude toward, the discussed material: no longer from a position of externality, and with a critical tone, but, rather, from a position of reflexivity, nourished by the recognition that my own academic ideas and political heuristics derive in large part from the very same source as the material presently under study. If certain of my predecessors (even at the Graduate Institute, like eminent "post-development" theorist Gilbert Rist), could judge from far above the blinding reductions of the US developmental discourse, and its translation into some of the NIEO doctrines,[29] I shall be much less critical of the dead ends in which the NIEO found itself cornered, as these aporias are in fact similar to those that, in turn, afflicted the sociolegal discourse on international law produced in the wake of the NIEO's demise.

To achieve such "reflexivity" and to understand the genesis of the ideas of the NIEO and their emergence in the French field of international law, this chapter proposes first to quickly expand on the field analysis already provided in Chapter 2, in which I described the objective logics of the French metropolitan and colonial

legal fields in the 1950s, at a time of deep intergenerational change. Then, the chapter analyzes the discursive continuity between the solidarist understanding of the notion of gift exchange and key NIEO concepts. Some continuity seems evident: like solidarists, Mohammed Bedjaoui, for instance, articulated a scathing criticism of economic liberalism, which he associated with the egoistic tendencies of *homo economicus*, and against which he counterposed the value of "solidarity."[30] But I also explain how the writings of Bedjaoui about the debt obligations of successor states evolved throughout the 1970s, and how they departed from the solidarist doctrine. By surveying the work of the NIEO thinkers at the United Nations, both in the General Assembly and the ILC, this chapter thus shares Sundhya Pahuja's twofold objective to "show that international law [produced in the postwar era] has both an imperial and anti-imperial dimension and to understand what kind of strategies that engage with law are likely to 'decolonize' international law rather than enhance its imperial quality."[31]

1 ANTI-COLONIAL CAUSE LAWYERING IN THE FRENCH METROPOLITAN AND COLONIAL FIELDS OF LAW

To understand how the model of gift exchange became associated with the defense of decolonization as the use of such a notion traveled from anthropology to international law – precisely when eminent anthropologists of gift exchanges continued to side for an integrated French Algeria –, it is important to explore in further detail the main political divisions found in the French field of law before Algeria won its independence.

The postwar period was marked by the rise of an anti-colonial disposition among international law scholars, which was correlated with the emergence of a more realist and interdisciplinary approach to international law, particularly in the emergent law schools that attracted new talents outside Paris.[32] For the dean of the Grenoble Law School, Claude-Albert Colliard and other international law scholars of his generation, like Suzanne Bastid-Basdevant (1906–95) – Jules Basdevant's daughter, the first woman to become a professor of law at the University of Paris in 1946 (like her father), and the president of the UN Administrative Tribunal from the 1950s to the mid 1970s, who sat on Bedjaoui's doctoral dissertation defense – the lawful actors of international society were indeed states and international organizations; and once statehood was formally recognized de facto and de jure, then, no hierarchy existed between states based on their cultural or civilizational differences.

In the postwar context, Algerian students who came to study in the metropolis, like the young Bedjaoui in Grenoble, could thus get a classical training in constitutional law, administrative law, and international law, and publicly hold anti-colonial positions without suffering any negative consequences from their professors. Bedjaoui's dissertation on the duties, privileges, and guarantees of independence found in international secretariats (with particular emphasis on the League of

Nations, UNESCO, and the ILO)[33] followed the realist and formalist approach to administrative international law, which Colliard had developed in his manual *International Institutions*,[34] and Bastid-Basdevant in her own work on administrative agencies in the League of Nations.[35] None of them defended colonialist positions: quite the contrary, their realist perspective, which focused on the administrative organization of the state and international organizations encouraged them to view all states that had achieved a certain degree of administrative rationalization and political organization through the organization of parties as equal.[36]

In contrast to Maussian ethnologists, who had drawn from Mauss the idea that societies could be ranked according to their degree of integration, these international law scholars were blind to the cultural context in which the states operated. The formalist training in international law a student like Mohammed Bedjaoui received may explain why he never paid any attention to the local customs that were so central to the writings of legal pluralists inspired by Maussian principles. At the same time, as a PhD student in Grenoble, Bedjaoui could organize many anti-colonial meetings with student associations from Algeria and other overseas territories, and political leaders like, for instance the leader of the Tunisian independence movement, Habib Bourguiba (1903–2000), a Tunisian lawyer trained in Paris who was elected Tunisia's first prime minister in 1956 (and then president one year later), after thirty years of anti-colonial fight for his country's independence.[37] With his professor Georges Lavau (1918–90), a native of Guadeloupe who taught classes on constitutional law and political sociology at the Law School of the University of Grenoble, Bedjaoui also organized meetings with radical left parties, like Michel Rocard's (1930–2016) Parti socialiste unifié, in favor of the independence of the French colonies.[38] As Bedjaoui concluded, "we, Algerians, were much better treated in France than Algerians in Algeria: whereas the most minimal expression of pro-independence feeling could cost an Algerian his life in Algeria, we benefited from a great freedom of expression in metropolitan France, in Grenoble, where we organized all these student meetings against colonialism."[39]

In Grenoble, Bedjaoui could dream of upward mobility and benefit from the solidarity between Algerian students, their law professors, and leaders of the anti-colonial struggle. For instance, in 1951, Bedjaoui first took the test to enter the École Nationale d'Administration (ENA), the elite metropolitan school created after the war by Michel Debré to form France's high administration – which he failed because of a bad grade in Arabic, despite having the best grade in the test on general culture, an irony that illustrates the pedagogical and political priorities of French teachers in the Algerian colonial context in which Bedjaoui had been schooled. Ferhat Abbas, an Algerian politician who later joined the FLN, and whom Bedjaoui had met once in Tlemcen, was the one who originally advised Bedjaoui to enter the ENA.[40] As Abbas had made it clear to Bedjaoui, it was important that talented Algerian students get a proper training in administrative law at the ENA to take on responsibilities in a future independent Algerian Republic. Bedjaoui fully trusted

Abbas, as Ferhat Abbas and Ahmed Francis had become famous in 1943 for publishing the *Manifesto of the Algerian People* in which they and twenty-seven other Algerians demanded the formation of a Constituent Assembly in charge of writing a constitution for an independent Algeria. After spending a year in jail after the May 1945 demonstrations in Algeria that were bloodily repressed by the French colonists,[41] Abbas and Francis were both elected to the Algerian Assembly in 1948 and together they created the Democratic Union of the Algerian Manifesto (Union démocratique du manifeste algérien, UDMA), which defended an anti-colonial line close to that defended by Bedjaoui and his law professors.

International law professors from Sciences-Po and from the Law School of the University of Grenoble not only helped create an academic environment where young anti-colonial students could militate, but also helped them when they ran into trouble with the law, or when they suffered undue discrimination. For instance, in 1952, when Bedjaoui tried to pass the ENA exam for the second time, he was denied the right to take the test: specifically, he was sanctioned for having organized pro-independence conferences during his summers in Tlemcen, the city where he had been raised by his mother and maternal uncle after the early death of his father, and where he had taken his pre-university education.[42] The story did not end there, as the ENA authorities also barred a communist from taking the exam: Yves Barel, who was the son of a well-respected French communist parliamentarian. This was enough for the SFIO journals, as well as *L'Humanité*, the journal that Mauss had helped found but which had been under the control of the Communist party since 1920, to turn the political discrimination into a public scandal, which, while not as polarizing as the Dreyfus affair, was denounced in Parliament. In this context, it was Bedjaoui's professor Georges Lavau who wrote Bedjaoui's legal defense *pro bono* and mobilized his lawyer friends who submitted the case before the Conseil d'Etat, which ended up affirming the right of public servants to hold public opinions (including communist and anti-colonialist ones) in the famous "Barel, Bedjaoui and others" case of May 1954.[43] At that point, Bedjaoui could thus have continued with a career in the high civil administration in the French metropolis, despite holding anti-colonial opinions.

But in 1956, the FLN adopted a new strategy in relation to the Algerian students who evolved in the metropolitan academic field, which affected their career prospects as well as the anti-colonial solidarities between students and professors: as the FLN called for a student strike during the annual exams, it forced Algerian university students studying in the metropolis to lose one year of studies (and sometimes end their studies there), or demonstrate lack of loyalty to the Algerian cause. This strategic shift reflected the new diagnosis about the necessity to show a stronger oppositional front, which was decided by the FLN leadership, whose composition had been enlarged to include the leaders of the UDMA, like Francis and Abbas, who had decided to dissolve their own party and join the FLN after reaching Cairo in April 1956.[44] The radicalization of the FLN's strategy forced many young students

to become involved more deeply and directly in the fight for Algeria's independence. Bedjaoui no longer considered a career as a French legal scholar or high civil servant. Instead, in March 1956, he tried to reach out to Ahmed Francis, Ferhat Abbas, and to the FLN's representatives in Paris – Salah Louanchi (1923–90) and Bélaïd Abdessalam (1928–), who would later become Houari Boumédiène's powerful minister of energy from 1965 to 1977, and Algeria's prime minister in the early 1990s – asking them if they had any use for a doctor in law, something they had not yet considered at that time.[45]

In January 1957, as Bedjaoui had not yet heard from the FLN leadership, he joined the General Union of Algerian Muslim Students (Union Générale des Etudiants Musulmans Algériens, UGEMA), created in 1955, which sent him to the UN special session on Algeria in New York, where he delivered to the UN Secretary General Dag Hammarskjöld (1905–61), the UGEMA's declaration of support to the FLN – in which the UGEMA declared the FLN to be the only competent and representative authority in Algeria. The main goal of the UGEMA was to prove, against Soustelle's argument at the time, that there was an Algerian nation, and that its political consciousness was expressed through the voice of the FLN. In front of him, Bedjaoui faced the French government, which paraded some notable Algerian Muslim nationals, like a handful of presidents of local bar associations in Algeria, who praised the "generosity" of the French government in Algeria and its "non-colonial" character – some of whom were later assassinated by the FLN for having done so[46] – and who denied that the Algerian nation, if it existed, had pledged allegiance to the FLN.

The divorce between the few Algerian lawyers who had played the rules of the colonial game in order to access the legal profession in Algeria and the metropolitan academic international lawyer whom Bedjaoui had become could thus not have been greater in 1957, when the "battle of Algiers" was raging on the ground and on the diplomatic scene. Even if Bedjaoui's anti-colonial activities were known to the French authorities, Bedjaoui continued to spend most of his time in Grenoble organizing events against the French presence in Algeria. In March 1957, for instance, when Jacques Soustelle visited the University of Grenoble to present his views on the necessity to further integrate Algeria in the French Republic, Bedjaoui publicly criticized the former governor-general in Algeria for failing to engage in a debate with the students, and he was sued in court for threatening the "security of the state."[47] Once, again, being a trained lawyer helped him find the means to defend himself, as it was his former professor of criminal law, François Givord, who wrote his (successful) defense and kept him out of French jails.[48]

2 THE IRONY OF HISTORY: NEUTRALIZING AND RECLAIMING THE JUS PUBLICUM EUROPAEUM FOR ALGERIA'S INDEPENDENCE

In 1958, after a year spent publicly combating Soustelle, Mollet and their postcolonial ambitions for an integrated French Algeria, Bedjaoui was finally recruited as

a jurisconsult by the GPRA, newly created in September 1958, with Ferhat Abbas as its first president. Among other things, Ahmed Francis, named Minister of Economic and Financial Affairs in the GPRA, tasked him with actively seeking international legal recognition for the Algerian government in exile. This was the most pressing issue for the Algerian leadership as de Gaulle's return to power in May 1958 and the organization of a referendum on the Constitution of the Fifth Republic in both the French metropolis and Algeria raised a clear danger for the Algerian leaders. The GPRA was created one week before the referendum, and the massive vote in favor of the French Constitution of 1958 was interpreted in Algeria as a demonstration of allegiance to a French Algeria. Indeed, the vote was all the more dangerous for the FLN and the GPRA in that Muslim voters had been included in the consultation: thus, for Soustelle, French Muslims who had participated in the vote, and who had answered positively to the question asked, had rejected the GPRA's claims to national representation one week after its creation.[49] Bedjaoui's first task as jurisconsult for the GPRA was therefore to help the Algerian government regain its credibility outside Algeria, by convincing foreign chancelleries that the Algerian territories under FLN control were in fact under the civilian authority of a government in exile, which claimed international legal sovereignty.

Drawing from the legal capital he had accumulated in the French metropolitan field of law – and from the research resources offered by the UN library in Geneva, where he had spent long hours working on his dissertation – Bedjaoui started writing a book, titled *La Révolution algérienne et le droit*, in which he justified Algeria's claims to independence on international legal principles. The book was published in 1961 by the Association Internationale des Juristes Démocrates (AIJD) – an international association located in Brussels that published essays by lawyers close to the Communist party and the Soviet Union – thanks to the mediation of Pierre Cot (1895–1977), a native of Grenoble, a doctor in law from that same university from which Bedjaoui graduated thirty-six years after him, and who had met Bedjaoui at Sciences-Po Grenoble where Cot had delivered a lecture titled "Political Parties and the State." Cot had held various Cabinet positions in the interwar period in various left-wing coalitions (including as Blum's Minister of Air, where he sold airplanes to the Spanish Republicans during the civil war), after which he participated in the Resistance from Washington and Algiers, and later represented the departments of Savoie and then Rhone at the French Parliament in the postwar era.[50] It was Cot who, as the President of AIJD, agreed to publish and write the preface for Bedjaoui's 1961 book, as well as to brief the GPRA and Francis's team in Geneva when the negotiation with de Gaulle's government started.[51]

With his book, Bedjaoui demonstrated that the GPRA qualified for international recognition as the de jure government of Algeria,[52] despite the opposition of Soustelle. Not only had the GPRA already been granted de facto international recognition by an expanding list of states in the communist bloc and non-aligned

countries, but, for Bedjaoui, it qualified for *de jure* recognition as it had the formal structures of a state, effective control over large portions of a territory, and it behaved, as far as the conduct of the war was concerned, like a modern state adhering to the Geneva Conventions – a claim that was largely overstated, considering the exactions against Algerian civilians that the FLN committed. As Bedjaoui wrote, he could have chosen to ground the Algerian claims for independence and economic autonomy on the "new law of decolonization" emerging in the principle of "equal rights and self-determination of peoples" in the UN Charter (article 55) or in Resolution 1514 passed by the UNGA in 1960, which proclaimed the need to end colonialism "with no pre-condition."[53] Instead, he showed how the GPRA respected international public law while the French government violated these same commitments, by conducting torture on a systematic and massive scale.

To accomplish his demonstration that the GPRA deserved the formal recognition of statehood, Bedjaoui referenced only classical notions of statehood found in European international public law. He thus hoped to convince American states (the United States, for instance) as well as the French officials from the Quai d'Orsay with whom the GPRA had started to engage in negotiations, to recognize the legality of Algeria's claim to independence and self-governance by translating these demands into their language.[54] For instance, he offered a scholarly review of the legal instruments from which France had (wrongfully) concluded that Algerian sovereignty had been extinguished (and replaced by France's sovereignty) with the 1830 conquest.[55] He demonstrated how, in view of the four criteria used in international public law to prove such transfer of sovereignty (the end of a public authority, independent from any other state, and recognized by a group of people, with effective management over a territory), the Algerian state had never been extinguished despite the French occupation of some of the Algerian territory since Charles X's conquest.[56] Neither were the Algerian state structures extinguished, nor was the Algerian nationality suppressed at the time of the conquest: it was only in 1865 that the Algerian nationality was unilaterally suppressed by an act of the Senatus-Consulte, which unilaterally declared the Muslim indigenous to be French – but without any real effect on Algerians' disposition toward acquiring French nationality.[57]

Through Bedjaoui's book, the GPRA's defense of Algeria's independence thus shared the same goal as those of Aron and Bourdieu, even though each of them (a legal scholar, a political scientist, and a sociologist, respectively) used very different disciplinary tools, further consolidating the split between ethnology and international public law. Since 1957, Aron had argued that the changing political economy of Western Europe required that the French Republic let go of its less developed colonies to accentuate commercial and financial integration with the leading Western power, the United States.[58] In 1960 and 1961, Aron's teaching assistant, Pierre Bourdieu, denied that Soustelle's plan of massive French investments in Algeria could solidify a postcolonial Franco-Algerian Republic and that Mauss's

model of gift exchange had any validity in the realm of modern international relations.[59] Bedjaoui's anti-colonial charge thus ran parallel, but used a very different language, as he argued that the new Algerian government in exile, whose constitutional structure was well thought out, behaved just as classical public international law required, even before being granted independence. Algerians had demonstrated that they deserved independence not because their legal system (customary rule of law) was different and irreconcilable with modern public law, but precisely because Algeria's behavior as a state represented by the GPRA was in total conformity with classical notions found in the *jus publicum europeaum*, against the belief of ethnologists and colonialists who had long professed that the Algerian nation was incapable of forming and adhering to the formal structures of a classical nation-state.

When he analyzed the distribution of powers between the Algerian executive and legislative branches and how the two were articulated within and around the FLN as the single political party, Bedjaoui worked as if he were still a student writing an essay in a constitutional law class of Georges Lavau.[60] But when he articulated his arguments in the context of multilateral UNGA discussion, he gave them a performative effect that revealed the power of international and constitutional legal knowledge as a force for progress and decolonization: the mere fact that an Algerian legal scholar, speaking on behalf of the UGEMA, claimed that the Algerian deep state represented by the FLN, and its government, the GPRA, obeyed the very classical rules of statehood that had been used by colonial international law scholars in the interwar period to deny Algerians the right to statehood, was a very effective way to neutralize the French arguments in favor of France's continued tutelage.

Still, some of Bedjaoui's early critics deemed it an irony of history that Algerian diplomats like Bedjaoui referred only to (European) international public law, or to French law (in order to justify why the Sahara should be considered an integral part of Algeria, for instance), when at the same time, they recognized that the *jus publicum europeaum* and French administrative law had long been the main legal sources of exploitation of the colonial subjects. Remarking on the absence of any reference to precolonial Muslim law in Bedjaoui's writings, and the plurality of sources of law in any colonial society, some political sociologists who mixed Weberian studies with ethnological studies of local societies reviewed his book critically.[61]

Postcolonial theorists inspired by Franz Fanon and Albert Memmi may find in this paradox the classical position of the colonized subject vis-à-vis the knowledge of the colonizer: the former comes to read his own experience of a divided self through the eye of the colonizer, for whom no knowledge coming from the colony is legitimate.[62] But prior training and intellectual trajectory, shaped by the evolutions in the French academic field of in the 1950s, and the split between the metropolitan and colonial fields, can also account for this paradox.[63] Indeed, as the metropolitan field of law, where no classes were offered on Muslim or Kabylian law, was the only

place where a young Algerian of Muslim descent could study international law in relative freedom, it was natural that Bedjaoui would mostly justify Algerian independence in reference to key concepts of European international public law. Furthermore, the mobilization of such knowledge by Algerian diplomats achieved essential practical goals: to neutralize international law, and even turn it against the imperialistic designs that it had long helped achieve in the interwar era.

More broadly, the neutralization of international law by anti-colonial legal scholars who used the legal categories once used against them to their own advantage was the preferred discursive strategy of the non-aligned movement. Until the mid 1960s, the agenda of the Non-Aligned Movement gradually taking shape since the Bandung Conference, and the Afro-Asian Peoples' Solidarity Organization, had not yet moved beyond classical notions of international public law when it defended the political independence of new nations from Africa and Asia.[64] At Bandung, the leaders of the non-aligned world had asked for political rights according to a classical and universal conception of international law, as found for instance in the UN Charter: new nations demanded the respect for fundamental human rights, the respect for the sovereignty and territorial integrity of all nations, the recognition of the equality of all races and of the equality of all nations, the settlement of all international disputes by peaceful means, etc.[65] They wanted a place at the table, rather than to rock the table. Likewise, Bedjaoui managed to register the FLN as a member to the four Geneva Conventions in 1960 – a legal success that was never matched by any other decolonizing movement.[66] In so doing, he helped the GPRA assert its authority through international de facto recognition; this, in turn, helped de Gaulle consider the GPRA as the only negotiating partner as he moved toward a realist policy of first, autonomization and, second, acceptance of Algerian independence.

3 THE EVIAN AGREEMENTS AND THE QUESTION OF ACQUIRED RIGHTS: A TEMPORARY DEFEAT FOR ALGERIAN NATIONALISTS?

Until the mid 1960s, and the creation of a multilateral arena in the UN architecture – with the establishment of the UN Conference on Trade and Development (UNCTAD), which was created in 1964 under the impetus of Latin American heterodox neo-Marxist economist Raúl Prébish (1901–86), who theorized the notion of "dependence" through trade specialization – the non-aligned nations that would create the Group of 77 in 1964 had not yet formed a consensus on the best way to prolong political independence with economic independence. Nor had the officials of the GPRA argued for the reform of international economic relations when they tried to obtain the de jure and de facto recognition of Algeria's independence from foreign powers.

Discussions of the economic rights of the future Algerian nation, which concerned the rights of the concessions, the protection of privately acquired rights in

Algeria and the recognition of Algeria's sovereign debt, were only discussed in the highly secret context of bilateral talks between the French government and the GPRA. It was in this context that Bedjaoui turned his attention away from classical administrative and international public law – topics he addressed in his 1961 book – to more immediate questions related to the economic and financial obligations of successor states.

In 1958, Bedjaoui had found in Ahmed Francis a powerful political mentor who could put the young law doctor's vast erudition, sharp analytical mind, and hard-to-match work ethic to good practical use. The experienced Minister of Economic and Financial Affairs of the GPRA overshadowed other political figures who worked from Geneva, Cairo, and Tunis to advance the cause of a free and independent Algeria. Even before his nomination as minister, in the spring of 1958, Francis sent Bedjaoui to Morocco and Tunisia on a first mission to inquire about the positions of nationalist leaders in exile: on the Constantine Plan launched by Soustelle, then Minister of Atomic Energy and the Sahara; on the future of nationality and migration requirements in a post-independence Algeria; and on many other economic topics that the future negotiation of the Evian Agreements would later explore.[67] Then, Francis asked Bedjaoui to settle in Geneva and help him plan future negotiations between the Algerian revolutionaries and the French government, as he was sure that such a moment would arrive eventually.[68] For Bedjaoui, the connection to Ahmed Francis became a key marker of his path to a political career first as jurisconsult, and then as minister in an independent Algeria – even more so that, in 1962, Bedjaoui married the adopted daughter of Ahmed Francis, who was in fact the natural daughter of Abdel Khader Francis and thus Ahmed's niece.[69]

The bilateral negotiations between the GPRA and the French government started after Soustelle was replaced as minister in charge of Algerian affairs by Louis Joxe (1901–91), a career diplomat who had spent the Second World War in Algiers. At the beginning of the negotiations, it appeared clear to both delegations that one of the main obstacles on the road toward Algerian independence was the issue of Algeria's claim of sovereignty over the Sahara and its oil resources, and the challenge that such claims mounted against the acquired rights of French oil concessions. The French government's emissaries initially argued that independence would be granted to the northern departments of Algeria but not to the Sahara, which was considered French according to the theory of *terra nullius*, which had been promoted, among others, by Soustelle, as Minister of the Sahara until 1960.[70] If the French government kept a military stronghold in the Sahara, it hoped that it could reassure the one million *pieds noirs* in Algeria and make sure that their rights would be guaranteed by the independent Algerian Republic. Furthermore, in May 1961, during the first meeting between the two delegations in Evian, the French argued that France had spent 512 billion francs for oil extraction in the Sahara and 60 billion for roads and telecommunications, and therefore the Oil Code could not be reformed unilaterally by the future Algerian state. Instead, a future independent

Algeria should guarantee the "acquired rights" that such lavish spending had secured for France, and recognize the continued sovereignty of the French Republic over the Sahara.

In contrast, in May 1961, the Algerian delegation not only insisted that the Sahara would fall under Algerian sovereignty, but it also envisioned a reform of the "acquired rights": those rights acquired by the French population of European descent on Algerian lands, which were threatened by the GPRA's willingness to reform land ownership and property rights, but also the rights of research and exploitation granted by the French state to its national oil company in the Sahara.[71] The Algerian delegation wanted to reform the Oil Code of 1958 in order to decrease the price of oil for internal consumption, and renegotiate contracts of exploitation and research – claims that de Gaulle's emissaries did not want to hear. The two delegations fiercely argued over the matter of "acquired rights," especially in the meetings of Lugrin (in July 1961), until a compromise was eventually introduced by Louis Joxe's aide, Yves Roland-Billecart (1936–): provided that the Algerian people voted in favor of independence, France agreed to recognize the Sahara and its oil fields as part of Algeria, and in exchange, an independent Algeria would guarantee the acquired rights that France had obtained for the exploitation of 700,000 square kilometers in the Sahara, and a joint organization controlled by the Algerians and the French would take over all matters relating to technical cooperation in the oil sector, according to the post-independence model of post-colonial cooperation that de Gaulle wanted to extend to all of France's former colonies.[72]

The negotiation took more time as a further complication emerged: when Algeria's neighbors Morocco and Tunisia, both claimed a right to oil extraction in the Sahara – claims that meant that territorial boundaries might need to be redrawn through regional negotiations after the end of the war.[73] Security concerns were added to this economic negotiation when Tunisia staked a claim on the prized territory. Indeed, after the secret negotiations of Lugrin in July 1961, the negotiation was put on hold for a few months to quash the anger of President Bourguiba of Tunisia, who had not been informed by the French or the Algerian government of the ongoing negotiation, and who was furious that neither had consulted him on the question of the Algeria–Tunisia borders in the Sahara. Bourguiba made it known to President de Gaulle that Tunisia wanted its share of the Sahara's subterranean resources,[74] and after de Gaulle snubbed him, the Tunisian leader mounted a military operation against Fort Saint in the Sahara, close to the border between Tunisia and Algeria and still occupied by French forces, which ended in a bloodbath after the French opened fire to defend themselves. The Algerian diplomats refused to start negotiations anew to appease the Tunisian leader, but they did not change their position on the question of the Sahara.[75] Neither did the French diplomats, who did not want to compromise the French ability to play guardian of the regional security order in the Maghreb.

But the French projects of bilateral cooperation in the business of oil extraction, coupled with the French government's insistence on maintaining intact the French laws on oil concessions after Algeria's independence, struck at the heart of the Algerian delegation's claim of independence for Algeria. How could Algeria declare itself independent if its future sovereignty was limited by French laws that preexisted its declaration of independence? This, as the members of the Algerian delegation argued, was the mark of a neocolonial project aimed at ensuring the prolongation of France's wrongly acquired rights on land expropriated at the time of colonization.[76] The GPRA claimed that the Algerian people had an "imprescriptible" right to self-determination and "permanent sovereignty over [their] natural resources," which, as Redha Malek, Algeria's Minister of Information, noted, sometimes led the negotiation to take an "academic turn."[77]

On this issue of acquired rights, Bedjaoui presented some of the most radical (if sometimes contradictory) arguments in favor of Algeria's absolute (rather than limited) sovereignty over the Sahara and its natural resources. For instance, Bedjaoui argued on the one hand that France's decision to include the Sahara in French Algeria made it impossible to deny the unification of the northern and southern parts of Algeria now: Algerian boundaries were recognized by French law, so it was hard for the French delegation to now declare that the Sahara was not part of Algeria. On the other hand, Bedjaoui claimed that there could be no law (in particular, the 1958 Oil Code) imposed by French occupiers over Algerian territories that would continue to bind how an independent Algeria would use its natural resources.[78] For Bedjaoui, the philosophy of postcolonial bilateral cooperation only relayed in the post-independence age the claims that colonial lawmakers like Albert Sarraut had made about the sources of imperial solidarity.[79] In place of the recognition of acquired rights, he wanted to guarantee only French "legitimately acquired rights"[80] in the future independent Algeria.

Ultimately, the Evian Agreements of March 1962 did not endorse Bedjaoui's thesis that an independent Algeria should be completely free to decide all economic matters concerning the repartition of debts, concessions, and public properties claimed by France and Algeria, including those that concerned the rights acquired by the metropolitan oil companies over the former colonies' natural resources. The solution initially proposed by Yves Roland-Billecart eventually found its way into the final text: the French government agreed to recognize the integrity of the Algerian territory, which included the Sahara; in exchange, the GPRA agreed to recognize and guarantee the validity of "acquired rights" by also mentioning explicitly that "no one will be deprived of its acquired rights without an indemnization determined in advance."[81] Furthermore, France's "independence agreements were followed by various protocols concerning property, under which the independent state did not succeed to the whole property appertaining to sovereignty," meaning that "in exchange for French cooperation, a limited transfer of property was agreed upon,"[82] and some property (military bases for instance) was ceded to the French.[83]

At last, the Algerian delegation accepted to create a Franco-Algerian cooperative in the oil sector operating in the whole Saharan desert. In exchange, they received the promise from the French government that it would extend some "financial help . . . in the form of either in-kind '*prestations*,' loans, financial participation or gifts,"[84] to Algeria's projects of public investment in the oil sector, and in Algeria's efforts to integrate the hundreds of thousands workers among the "regrouped populations" back into the economy. The promoters of the philosophy of bilateral and postcolonial cooperation had stroked a first victory.

The Evian Agreements thus settled the matter of economic international relations in the post-independence age in a way that was less progressive than what the Algerian delegation had hoped for, based on other contemporary developments in the international scene. In the debate over international obligations in a post-independence Algeria, it was not so much the legitimacy of nationalizations of either land ownership or concessions that distinguished the interwar solidarists, or the Gaullist advocates of bilateral cooperation, from the thinkers from the Global South, but the question of how to deal with debts associated with the nationalization of concessionary companies or other forms of acquired rights. Should the latter be reimbursed and should concessionary companies be compensated for the costs of exploration and their investments in extraction technologies? Who would decide on the amount of the reparation? And who would pay such indemnity: the former metropolis or the newly independent state? As far as they were concerned, the Gaullists were adamant that all acquired rights should be honored in the independent Algeria, and that, should nationalization occur, the companies should be compensated so that they could meet the debt obligations they had contracted to develop oil extraction.

The Evian Agreements aligned with the Western dominant conception, by repeatedly guaranteeing throughout the text that all acquired rights would be honored in an independent Algeria. If international law had proved to exert a powerful performative function when used by Algerian diplomats to claim political independence in the multilateral scene, the developments of international law in the economic field were too embryonic to compensate for the weakness of Algeria's position in the bilateral negotiation over economic matters. Indeed, as far as the nationalization of oil concessions was concerned, the claim that economically weak nation-states had a right to nationalize extractive concessionary companies was only introduced in the international arena ten years before Algeria's independence: in 1952, when Chile introduced a resolution at the Human Rights Commission, and Uruguay at the UNGA, at the same time as the Iranians were discussing the decision to nationalize the British oil trusts.[85] But against the resolution proposed by Uruguay in November 1952, which asserted the essential link between "complete independence" and "the right of each country to nationalize and freely exploit its natural wealth," and declared the permanent sovereignty of states over their natural resources,[86] the United States and Western European states had claimed that the

right for nation-states to decide nationalizations when vital necessities were at stake did not erase their obligations to disburse "prompt, adequate and effective compensation" to the aggrieved private parties,[87] especially if the latter were foreign multinationals. This lesson was not forgotten by the Algerian delegation, which decided to mount a formidable diplomatic fight to change the international economic law of decolonization.

4 THE QUESTION OF COLONIAL DEBTS IN THE ILC

In the context of Algeria's independence, and, more broadly, the expansion of the number of newly independent states represented in the UNGA, the UNGA passed Resolution 1686 in December 1961 to put the ILC in charge of exploring the legal issues associated with the economic problems affecting newly independent nations. To study the topic of the succession of states and governments in view of the phenomenon of decolonization, the ILC formed a subcommittee in 1962, which divided the work into three topics: succession with respect to treaties, succession with respect to matters other than treaties, and succession of governments (not states) with respect to membership in international organizations.[88] The ILC had initially nominated Manfred Lachs (1914–93), a Polish jurist, to serve as special rapporteur of the subcommittee in charge of succession of states with respect to matters other than treaties, but after the latter was elected to the ICJ, not much work was achieved until the Yugoslav representative, Milan Bartos (1901–74), proposed the name of Bedjaoui for special rapporteur. As Algeria's Minister of Justice, and a promising scholar previously trained in the French field of international law, Bedjaoui's name gathered the support of the representatives of non-aligned, Western and communist nations. Even Paul Reuter (1911–90), a specialist in French law in overseas territory, said of Bedjaoui that, "as the French representative at the ILC, he would not be able to vote for Bedjaoui, but that he was personally in favor of his nomination."[89]

After his nomination at the ILC, Mohammed Bedjaoui wrote twelve reports – one per year[90] – in which he gradually derived principles that should guide the establishment of more equitable international economic relations. In so doing, Bedjaoui, and with him, the ILC tried to finally redress the situation that the interwar legal scholar, Alexander Sack had found wanting. Indeed, Sack had deplored the anarchic nature of state successions, which were essentially left to be determined through political compromises,[91] in the absence of "universal rules that could be recognized by all *civilized states* to govern matters related with the *public credit*."[92] As Sack had added, without a clear doctrine to guide the obligations of each state in the case of decolonization, secession, or merger of sovereignties, the "non-repartition of old debts and the sustainability of ties of solidarity and joint responsibilities [*responsabilités solidaires*] between the predecessor and successor states cannot be said to represent a right for the creditors, and not an obligation for the successor states."[93]

To remediate this situation, Sack had surveyed many treaties and conventions in which the question of repartition of public and private debts and assets between predecessor and successor was addressed, at a time when the Allied victors had just dismantled the three long-lasting empires: the German Second Reich (with the Versailles Treaty, 1919), the Austro-Hungarian Empire (Treaties of Saint-Germain and Trianon, 1920), and the Ottoman Empire (Treaty of Lausanne, 1923). But he had conducted the effort of codification with no mandate from any international organization (like the League of Nations) and from a purely academic perspective, and his theory of when, how, and why debts should be cancelled and acquired rights ignored, was far from well respected, when it was known at all.

As far as Bedjaoui and other members of the ILC from the non-aligned world were concerned – and in contrast to the Western jurists in the ILC, in particular, Stephen Schwebel (1929–), from the United States[94] – the work of ILC was also supposed to neutralize the power of international economic law, which, so far, had been eminently conservative, to the extent that it had been based on the recognition of acquired rights of former powers, except in exceptional circumstances. Indeed, the "folk legal theory"[95] that Sack had identified in the texts that the Allied powers had imposed on Germany and its wartime allies, and that he rationalized, was that those inherited debts should be "odious" (and thus cancelled) when three conditions were found: lack of consent of the people when the debt was contracted in the first place, lack of benefit for the people, and creditor awareness of the two first conditions (although the latter condition, which concerned the lenders' responsibility) was not always required.[96]

For instance, the Versailles Treaty had assumed that "the colonies should not bear any portion of the German debt, nor remain under any obligation to refund to Germany the expenses incurred by the Imperial administration of the protectorate," especially if the debt incurred had been contracted for the "purpose of enslaving indigenous populations or for the purpose of helping its own nationals colonize the lands."[97] In fact, Sack had added "it would have been unjust to burden the natives with expenditure which appears to have been incurred in Germany's own interest, and that it have would been no less unjust to make this responsibility rest upon the Mandatory Powers which, in so far as they may be appointed trustees by the League of Nations, will derive no benefit from such trusteeship."[98] In the interwar settlement, this folk theory found its legal concretization in article 254 of the Versailles Treaty, which left to the Reparations Commission the duty to measure the amount of debt that the German and Prussian governments had contracted to help German nationals colonize Polish lands, and to decide under which conditions colonial debts had been contracted, before declaring some of them odious or not. Still, for Sack, the Reparations Commission should not have cancelled the Polish debts to the Germans: before the Great War, the Germans had bought the lands they colonized from Poles at a very high price, and the Germans did not fund these land purchases with loans, but on the Prussian budget, which meant that German taxpayers had

already paid for these purchases.[99] The fact the debts were cancelled was a departure from the solidarist principles implicit in Sack's doctrine of "odious debt," which were held dear to the French-speaking international law scholars, most of whom, like Mauss himself, believed in the sanctity of contracts except when the latter blatantly violated rules of fairness.

In fact, the African debts contracted by the German colonial governments were also cancelled after 1919, although Sack had found that it was not clear why they could be called "odious" according to his own doctrine: indeed, Sack believed, some of the debts incurred in Africa by the Germans had been used for the purpose of developing railroads and other infrastructures, and should have been placed on the debit of the local governments that succeeded to Germany's colonial governments. He thus wondered why the Versailles Treaty (article 257, 1) did not create any obligations for the German colonies in Africa and elsewhere – or for the mandate powers designated to administer their development – to repay the debts left by the German state and which had been used for their development, despite express German demands to the mandate powers.

If Sack criticized the Versailles Treaty for applying criteria for sovereign debt cancellation that was too loose, the special rapporteur of the sub-committee of the ILC in charge of codifying the doctrine on such issues, believed the Versailles Treaty had not gone far enough to serve as a model for the new age of decolonization.[100] Revisiting the history of interwar sovereign debt controversies, Bedjaoui arrived at a position more radical than that of Sack and Mauss, as he strongly justified the decision made by the Bolsheviks to unilaterally cancel their sovereign debt upon taking power.[101] For Bedjaoui, the Soviet debt cancellation "gave its letters of nobility to the notion of express agreement," which accompanied "the progressive elaboration of a *voluntary* international law,"[102] with which the anti-colonial lawyers like himself were associated. He went even further, as for him, there was no temporal limit to the period during which a new state could exert a "right of inventory"[103] and decide which legal obligations it would keep and which it would reject. The newly independent states did not have to cancel illegitimate debt immediately after independence: there was no "*délai de dénonciation*"[104] (time limit for denunciation) in the case of decolonizing states, especially as the latter were under too much stress to focus on canceling any debt at the time of independence.

As far as the topic of debt transmission from metropolitan states to newly independent states was concerned, Bedjaoui's position at the ILC was as uncompromising as it had been during the negotiation of the Evian Agreements; but this time, he had more room to maneuver and obtain support (if not consensus) from his colleagues. Even if Bedjaoui praised the previous work of legal scholars, and especially that of Alexander Sack, he was clearly opposed to Sack's attempt to limit the applicability of the concept of "odious debt."[105] For Bedjaoui, the criteria of intended use (for development rather than war or expropriation of natives by colonizers) that Sack had introduced to limit the applicability of the doctrine of

"odious debt" to the most extreme cases were not useful guides to determine which colonial debts contracted by the metropolitan state should pass on to the newly independent states. Bedjaoui illustrated his point with the case of Algeria: during the seven and a half years of war between France and the FLN, the administering power had, for political reasons, been "overgenerous in pledging Algeria's backing for numerous loans."[106] These debts contracted to fund the great developmental plans, like, in the case of France and Algeria, Soustelle's 1959 Constantine Plan, had in fact had the effect of "seriously compromising the Algerian Treasury" after independence,[107] to the point that he wondered if such generosity had not hidden darker intentions: that of leaving a nation almost bankrupt at the time of its birth.[108] For Bedjaoui, those debts that the metropolitan states had contracted at the end of the colonial era, even for developmental purposes, were not to be transmitted to the newly independent states: they were thus just one example of the "poisonous gifts"[109] which Mauss had written about, and which Bedjaoui suspected to have caused the "increasingly insupportable debt problem" among newly independent states in the 1970s.[110]

In the ILC discussions, Bedjaoui explicitly cited Algeria as a precedent, which showed that even debts contracted for developmental purposes by a former colonial state could be cancelled. At Evian, the Algerian delegation had fought to include in the Evian Agreements a proposal for France to erase the totality of the external debt that Algerian communities had contracted toward France, in compensation for all the profits that France presumably had made during more than a century of occupation, and for France to inherit part of the Algerian internal debt; but to no avail.[111] As Bedjaoui wrote, the Algerian delegation to the Evian negotiation had argued: "that the [developmental] projects had been undertaken in a particular political and military context, in order to advance the interests of the French settlers and of the French presence in general, and that they were part of France's overall economic strategy, since virtually the whole of France's investment in Algeria had been complementary in nature."[112] The Gaullists had imposed their will during the negotiation of the Evian Agreements, as Algeria's negotiating position was weak at that time. But Bedjaoui remarked that, even though the Evian Agreements did not plan debt cancellation, Algeria rightfully "refused to assume debts representing loans contracted by France for the purpose of carrying out economic projects in Algeria during the war of independence."[113] This had been the situation as far as the law-in-the-books was concerned. But Ahmed Francis, upon his arrival as Minister of the Economy and Finance in Algiers, discovered that the partisans of a French Algeria who rejected the Evian Agreements (the Organisation armée secrète or OAS) had emptied the Bank of Algeria of its gold, cash, and foreign reserves, and had absconded with it to Spain and Latin America.[114] Algeria was completely "bankrupt," which led Francis and Bedjaoui to go to Paris (as Algeria was still in the "zone franc") and obtain Treasury-to-Treasury cooperation to give Algeria some emergency relief and agree on debt cancellation solutions.[115] Then,

in December 1966, when Algeria and France settled debt issues after three years of negotiations, Bedjaoui underlined that "Algeria does not seem to have succeeded to the state debts of the predecessor state by making the payment of 40 billion old francs (400 million new francs)"[116] to France. Rather, Algeria and France had engaged in a broad political negotiation, in which the payment was part of a broader economic bargain, including a commitment by France to import certain goods that Algeria had in surplus (oil and, most importantly at the time, wine).

As Bedjaoui argued in the ILC, in principle, all of the state debts owed to the former metropolis should thus be disregarded, and debts owed to private citizens of the former metropolis should be left for the metropolitan state to reimburse. In other terms, in the case of decolonization, "the general principle of non-transferability of the debts of the administering power, to which exceptions may be allowed . . . places the burden of proof on the predecessor state rather than on the newly independent state."[117] This conclusion derived from the general premise that, as far as territories (as well as public properties) and sovereign debts were concerned, the idea that elapsed time would turn wrongs committed during conquest and occupation into contractual rights was not grounded in international public law. Even if more than one hundred years had passed since the occupation had started, the revolution from which a newly independent state emerged meant that the new state was free to act *as if* history had started anew, as if no contractual development occurring after the occupation had any legal basis. In this way, Bedjaoui's discourse on the right of conquest fell in the tradition – beautifully analyzed by Michel Foucault – of the English revolutionaries of the seventeenth century, who argued against Hobbes that the law imposed by the Normans on local landlords after William the Conqueror's invasion (in the eleventh century) had never been legitimate.[118] Closer still, Bedjaoui cited the precedent of Poland, whose sovereignty was "resurrected"[119] in 1919 and until the Russo-German invasion of 1939, after more than a century of joint occupation by the Germans and Russians – a time lapse comparable with the French denial of Algerian sovereignty.[120]

This was a contentious idea: the French jurist Maurice Flory, who wrote his dissertation under the supervision of Hersch Lauterpacht (1897–1960) and Charles Rousseau (1902–93) – himself a former student of Jules Basdevant – argued that this legal fiction according to which the revolutions of the decolonization era would be in fact a series of restorations was nonsensical: for Flory and other French jurisconsults, the legal fiction according to which the Algerian independent state could have survived intact despite a century of absence was unfounded.[121] Even ILC members from the Third World remarked that Bedjaoui's analysis on that matter appeared to "deal extensively with French colonial practice" but much less with Dutch or British colonial practice, which, to a much larger extent than the French, had left the ability to raise taxes or loans to dependent but still "separate administrative units that were largely fiscally autonomous."[122] To these arguments, which contradicted the notion that colonialism had created no obligation for newly independent states,[123] Bedjaoui

contended that, even if Algeria was a separate case, as its administration had been integrated into the government of the metropolis, whereas most colonies had remained somehow separate, the lessons he drew from the Algerian experience were valid elsewhere. As he wrote, "even though these colonial debts had formally been contracted 'freely' by separate administrative authorities, all colonial era debts could be held in suspicion (until metropolitan states demonstrated otherwise), since the loans were guaranteed by the colonial power" – whose intentions were rarely generous, despite their rhetoric invoking purity of intention and generosity – and since "the 'organs of the colony' which have contracted the loan in the name of the territory only belong to that colony by a legal fiction: they are in reality, the representatives of the colonial power in the territory."[124]

Due to his prominent involvement in the domestic situation in Algeria, it was not surprising if Bedjaoui drew close analogies between the specific economic claims that Algeria had made before and after the Evian Agreements, with regard to the issues of nationalization, cooperation, and debt cancellation, and the general recommendations he formulated at the ILC. Still, his arguments and those of his critics reached a higher level of generality, which still has some relevance today. Indeed, the wrong notion that developmental projects in the colonies were paid for by the metropolis by taxpayer money, rather than out of the budget of local colonial administrators, and then transferred as debts on the debit of new states at the time of their independence, continues to dominate many popular narratives about colonization, which still use the tropes of "generosity" that Soustelle and other colonial administrators used to justify their hegemonic designs outside Europe. Today, we still hear the notion expressed by nostalgics of the Empire in France or in the United Kingdom that colonialism produced many good things for which colonial subjects should be grateful, in particular, the railroads and hospitals that colonial powers had developed initially for themselves, but which ended up in the hands of newly independent states: in February 2005, the French Parliament went as far as making it mandatory for French history programs at the pre-university level to "emphasize the positive aspects of the French presence overseas, including in North Africa"[125] (a sentence that was deleted one year later). With his reports to the ILC, Bedjaoui thus tried to crush these notions, by placing the developmental objectives that European powers entertained outside Europe in the context of sustained warfare and occupation.

In general, the ILC members from the non-aligned world (Algeria, Yugoslavia, Nigeria, India) supported the conclusions of the special rapporteur: they agreed with Bedjaoui that "even in the case of loans granted to the administering power for the development of the dependent territory (criterion of intended use and allocation), the colonial context in which the development of the territory may take place thanks to these loans disqualifies the undertaking."[126] They followed Bedjaoui when he said that "in these circumstances, it would be unjust to make the newly independent state assume the corresponding debt even if that state retained some 'trace' of the

investment, in the form, for example, of public works infrastructures."[127] In so doing, Bedjaoui and other non-aligned scholars in the ILC acknowledged that the principle of intransmissibility of state debts to newly independent states[128] that they wanted to enshrine in the future convention represented less a "codification" of established practice – as "the practice of the newly independent states of Asia and Africa is far from uniform" – than a new principle of international public law which conformed with the general principles of the NIEO.[129]

Methodologically, this conclusion meant to break with accepted principles recognized by professional international law scholars. From the start, Bedjaoui argued that codifying obsolete rules or devolution agreements that had been largely imposed by former metropolises – as had been the case with the Evian Agreements – would have been completely useless, or even counter-productive: diplomatic arrangements found in decolonization cases "had to be interpreted with caution, since some of them had been imposed by metropolitan states on new and weak states and might lead the Committee astray if taken as typical examples" to form a customary law.[130] Even if Bedjaoui acknowledged that it was not the job of the ILC to "create new law under the guise of progressive development,"[131] it was also its duty to analyze emerging "norms known and accepted by most [newly independent] states to a greater extent than traditional law, in whose formulation most existing states [which had come into being through decolonization wars] took no part." For instance, Bedjaoui noticed that the term "succession,"[132] as in the "law of state succession" which the ILC was in charge of codifying, was not neutral, but inherently conservative: the law of state succession was based on the "as if"[133] assumption that private law could be extended to public law matters, and that sovereigns had limited powers to change the order of private property; and that, if they did, they should proceed diligently to compensate private victims of property changes with fair indemnities.[134] To Bedjaoui, such limits placed on the sovereignty of newly independent states by international law prolonged the colonialist conception of limited sovereignty expressed in the interwar period by the Versailles, Lausanne, and Trianon treaties.[135] Thus, international law scholars had to switch methodologies, if they didn't want to remain captive to the colonial biases of their discipline.

Instead of codification, Bedjaoui thus engaged the ILC in an effort of "progressive development" of international law by basing his work "on legal constructions embodying to the maximum extent possible the present trends of international law, the principles of the Charter, the right to self-determination, sovereign equality, ownership of natural resources, etc."[136] In contrast to what he did for his 1961 book on Algeria and international law, which used the language of classical European international law to claim a place at the table for Algeria, without changing the doctrine, Bedjaoui claimed that with the age of political independences now almost over, now had come the time to change legal doctrines, and to evaluate all prior treaties and agreements by examining whether they represented new "progressive developments" in the emerging law of decolonization.[137] Otherwise, international

law in general, and the work of the ILC in particular, would remain intrinsically conservative and colonialist in spirit. Apart from some isolated voices, like that of Shabtai Rosenne, a legal scholar from Israel who had initially "favored the formulation of general principles," the ILC members thus decided to prepare "terse and brief articles of the type usually included in a convention,"[138] in order to flesh out which rights would fall to the economic North and South.

5 RISING DEMANDS FOR A NEW INTERNATIONAL ECONOMIC ORDER IN THE CONTEXT OF OIL NATIONALIZATIONS

At the turn of the 1960s and 1970s, the Algerian diplomats at the UNGA and the ILC pursued a similar objective, which consisted in redistributing national debts and assets between North and South in a broad and comprehensive manner. To do so, they used different means: whereas the former tried to engage the North in a political negotiation, the latter tried to obtain from the North the recognition of a new legal doctrine, enshrined in a convention – although Bedjaoui still refrained from explicitly calling it a doctrine of "odious debt," not wanting to shock his Western legal colleagues.[139] Both opposed the attempts by French Gaullists to organize a series of gift exchanges between North and South on a bilateral basis, as they wanted to unite the South first, before engaging in global negotiations with the North.

The Algerian diplomatic offensive started in October 1967, a few months after Bedjaoui issued his first report to the ILC, when Algeria hosted an important conference in Algiers, where non-aligned nations issued the Charter of Algiers, by which they stressed the necessity of increasing the prices of raw materials through revised trade conventions.[140] Among many other actions aimed at rebalancing the financial situation between the Global North and South, the conference of heads of state and government of the non-aligned countries which took place in September 1973 in Algiers was a key landmark during which the leaders of the Global South concluded with a call to the UN General Assembly to agree upon a program of action for the establishment of the NIEO, which recommended "debt renegotiation on a case-by-case basis with a view to concluding agreements on debt cancellation, moratorium, rescheduling or interest subsidization" (section II, article 2.g), starting with the "the least developed, land-locked and island developing countries and to the countries most seriously affected by economic crises and natural calamities" (section II, article 2.i).[141] As President Houari Boumédiène said at the conference of Non-Aligned Countries in Algiers in 1973, the newly independent countries were suffocated by the debt they inherited from the colonial past and the low prices of raw materials such as oil, which made their economic models unsustainable. Bedjaoui had similar claims: citing the Pearson Commission on International Development, Bedjaoui underlined that "debt service alone, namely annual amortization and interest payments, would exceed the total amount of new

loans by 20 percent in Africa and by 30 percent in Latin America,"[142] which meant that the level of state indebtedness inherited by newly independent states from metropolitan states left them crippled at birth.

As Nicole Grimaud writes, in the early 1970s, the Algerian oil diplomats became not only the main defenders of the idea of debt cancellation for newly independent nations, but also "the champions of the thesis of national sovereignty over natural resources" on the world scene, which allowed the newly independent states to nationalize oil concessions without inheriting the debts that such concessions had contracted in the past to develop their activities.[143] In particular, the UNGA Plenary Committee affirmed the "permanent sovereignty of every State over its natural resources and all economic activities."[144] The Plenary Committee, which was charged by the UNGA to formalize concrete actions for the NIEO, planned to integrate debt cancellation and debt renegotiation into the broader framework of North–South negotiations for a:

> just and equitable relationship between the prices of raw materials [oil in particular], primary commodities, manufactured and semi-manufactured goods exported by developing countries and the prices of raw materials, primary commodities, food, manufactured and semi-manufactured goods and capital equipment imported by them, and to work for a link between the prices of exports of developing countries and the prices of their imports from developed countries.[145] (section 1, article 1.d)

This Algerian diplomatic offensive, even if it didn't always go as far as the NIEO promoters wished, strengthened the latter's position. In particular, the UNGA Plenary Committee's affirmation of permanent sovereignty over natural resources echoed the May 1974 Declaration in favor of the NIEO, which entitled "each State to exercise effective control over their [natural] resources and their exploitation with means suitable to its own situation, including the right to nationalization or transfer of ownership to its nationals, this right being an expression of the full permanent sovereignty of the State." It complemented this right to nationalize with a "right of all States under . . . colonial domination to restitution and full compensation for the exploitation . . . and damages to, the[se] natural resources" as well as a right to "supervise the activities of transnational corporations by taking measures in the interest of the national economies of the countries."[146]

In so doing, the UNGA rejected the position of the United States and West European states, which conditioned the right to nationalize to the "duty to conform with international obligations."[147] Still, nine months later, when the rights of newly independent states were further defined in the Charter of the Economic and Social Rights of States adopted by the UNGA in December 1974, the absoluteness of the right to nationalize multinational companies (without obligation to impose an immediate and fair indemnization), claimed by new oil-rich nations, was diluted under the pressures of the United States and its European allies: the Charter declared that such indemnization was no longer a decision under the control of the nationalizing state, but a decision that

needed to conform to rules enshrined in international law.[148] The change showed the intensity of the fight taking place at the UNGA and the ILC on the questions of debt cancellation, oil nationalizations, and the right to fair compensation.

These resolutions were not merely discourse, but were associated with extremely controversial economic decisions and actions undertaken by newly independent states in the 1970s, especially those who were members of the Organization of Petroleum Exporting Countries (OPEC), which was founded in 1960, but had remained dormant until the late 1960s. The economic program that some of these OPEC member states wished to implement in the 1970s had converged toward the kind of socialist utopias that Mauss had dreamed about: public national companies and land cooperatives would take over the properties of a few colonial magnates and extractive conglomerates, which controlled vast swaths of land and their subterranean resources. Algeria seemed a case in point: Algerian nationalists declared the nationalization of land in 1963, soon after the 1962 exodus of around one million *pieds noirs* who chose French nationality and emigration to the French metropolis. A few years later, in 1971, the government of Algerian President Houari Boumédiène was one of the first Arab League and OPEC countries to declare the nationalization of gas and oil concessions – quickly followed by Qaddafi's Libya, which nationalized British Petroleum's assets in 1971, and then by Saddam Hussein's Iraq and Saudi Arabia, in retaliation against Western support for Israel in the 1973 war.[149] Indeed, in February of that year, the Algerian government decided to claim 51 percent of the property rights of French oil companies operating in Algeria (and 100 percent of the gas sector and the pipelines). This decision was a unilateral cancellation of the 1965 bilateral treaty by which the Algerian government had agreed to respect France's acquired rights[150] regarding the exploration and exploitation of Algerian oil in the Sahara, provided that the French would reinvest half of its oil revenues in Algeria.[151] The 1965 Treaty, in line with the Gaullist philosophy of bilateral "cooperation" found in the Evian Agreements, had indeed created a "Franco-Algerian cooperative association for the exploration and exploitation of oil" in a vast region of the Sahara, with the French contributing 400 million francs each year to the industrialization of Algeria (with 40 million as gifts, 160 as governmental loans, and 200 as private debts guaranteed by a French financial establishment).[152] The Franco-Algerian Treaty also planned that the French would reinvest a large part of their profits in exploring the Sahara, but in 1970, the Algerians raised the bar of French companies' reinvestment of their profits in Algeria from 50 percent to 90 percent. The Algerians knew that this bar was unacceptable to the French, but claimed that it respected the preamble of the 1965 bilateral agreement, which sought to develop Algeria's oil extractive capacities in the "framework of Algerian sovereignty."[153] They thus claimed that Algerian sovereign decisions trumped the technical clauses agreed upon in the treaty itself, along lines that reflected the legal doctrine that Bedjaoui pushed at the ILC.[154] They forced the crisis to justify the nationalization that they had long planned.

Bedjaoui knew very well the file on the nationalization of oil concessions, as President Boumédiène had requested Bedjaoui be "sent to the front line,"[155] by nominating him in 1970 to serve as Algeria's ambassador in Paris, at the very time when he was engaged, together with Foreign Minister Bouteflika, Energy Minister Abdessalam, in the struggle against the French government and the French oil and gas concessions. After Algeria's 1971 decision regarding the oil concessions, Bedjaoui, established as the new Algerian ambassador in Paris, soon received a letter of protestation from the French government, followed by a memorandum transmitted in March 1971 by French Prime Minister Jacques Chaban-Delmas that listed all the French claims against the unilateral nationalization of the oil sector.[156] In this memo, the prime minister recognized "Algeria's right to nationalize," but not without preliminary and fair compensation for the nationalized assets (according to what the Evian Agreements had planned), and he threatened to ask French companies to immediately stop production in the Sahara if a committee charged with determining such compensation was not set up – a demand that the Algerian government rejected, first through the voice of Bedjaoui, on March 15, 1971, and then through the voice of President Boumédiène, when the latter abolished all the concessions in April 1971. Eventually, some agreement was found, in large part thanks to the massive support that Algeria's decision found in the OPEC, and Algeria's active diplomacy, which emphasized that Algeria had showed good will before, when they agreed to destroy 400,000 hectares of vineyards that produced the "red gold" that Algeria had exported to France and which de Gaulle's Minister of the Economy, Valéry Giscard d'Estaing, had unilaterally prohibited from entering the French territory in 1963 and 1964.[157]

The Franco-Algerian oil crisis of 1971 thus put an effective end to the idea of bilateral cooperation between former metropolis and a newly independent state conceived as a "total fact" – in which the private interests of oil concessions are indistinguishable from the public interests of independent states – which Denise Grimaud claims may have been for the better. Indeed, when new decisions clashed with the philosophy of bilateral cooperation that had inspired the Evian Agreements, economic disputes between Algeria and France were immediately turned into state affairs that involved logics of honor and radicalization.[158] With this decision, Algeria sought to signal that it no longer accepted to shape its economic relations with the former metropolis according to the logic of bilateral gift exchange, when the exchange of prestations, gifts, and loans was supposed to follow the logic of reciprocity between two otherwise unequal partners. For Bedjaoui, the rights and obligations of newly independent states and former metropolises could not be symmetrical, or reciprocal. For Bedjaoui and other French legal scholars who accompanied the advances of the NIEO, like Charles Chaumont (1913–2001), the "most favored" clauses and other boilerplates by which the French metropolis had created some fake sense of reciprocity with its colonies just hid the continued exploitation of the South by the North thanks to legalistic artifacts.[159] To institute

real (as opposed to fake) reciprocity between the two kinds of states, some time needed to be given to the newly independent states to grow economically, and become prosperous enough, before they could finally give back.

At the same time as Algeria decided to nationalize oil concessions, the ILC addressed the question of debt in the context of the nationalization of private property, especially the oil concessions granted by the former colonial powers to private interests. In 1963, it had appeared that the ILC (despite its mandate that was mostly limited to the codification of international public law) would extend its study to cover how state succession affected the rights of private individuals,[160] especially those of "nationals of foreign states,"[161] as these issues were at the center of negotiations in the case of newly independent states – as illustrated by the Franco-Algerian negotiation. But the issue had been swept under the carpet at the ILC, as it appeared the most contentious ever since the former colonies had gained their political independence. Realizing in 1970 that "the topic of acquired rights was extremely controversial and that its study, at a premature stage, could only delay the Commission's work on the topic as a whole, most members had been of the opinion that the codification of the rules should not begin with the preparation of draft articles on acquired rights."[162] In order to minimize disputes with the ILC subcommittee, Bedjaoui originally restricted the mandate of the ILC to study only issues of transmission of state property – or rather "public property appertaining to sovereignty"[163] – and excluded the thorny issue of the private acquired rights of foreign nationals and multinational (oil) companies.

Still, in 1971, the question of "acquired rights" returned to the ILC discussion, as the definition of the "state property" which Bedjaoui proposed to include in the future convention, and which "devolved automatically and without compensation from the predecessor to the successor state," was no longer restricted to "public property" in the restrictive sense meant by the former metropolises (public buildings, etc.), but encompassed also the oil concessions and all the other items that a newly independent state might declare to be "necessary for the exercise of sovereignty."[164] The ambiguity of this criterion meant that it could more or less include any property that the newly independent state wanted to nationalize if it could claim it was necessary for the exercise of sovereignty. As Bedjaoui remarked, after reviewing the vast body of precedents, he had found "no precise answers in international contemporary law to the two following key questions: (1) what property is required for the exercise of sovereignty? (2) what authority has the power to determine such property?"[165] The two questions were in fact intrinsically related. If ambiguities remained as to which property could be called "state property," then, the main question was whether the law of the metropolitan state or that of the successor state would serve as the source for the definition. Bedjaoui found in the precedents – decisions made by the Reparations Commissions – that no international body had been "in a position to carry out the task [of defining which properties belonged to the sovereignty of the state] without reference to the municipal law of

the predecessor state."[166] But he didn't find that the Permanent Court of Justice, or the ICJ, had recognized this principle as part of customary international law.[167]

To the contrary, Bedjaoui claimed that when the law of the predecessor state differentiated between the "public" and "private" property of the state – like in Italy, but also and most importantly, in France – based on the distinction between property rights that were "necessary to the sovereignty" of the state and those that came from commercial activities of the state and which were deemed to belong to the "private" domain of state property, then, countries like France could not ask for compensation from the successor state if the latter nationalized such "private" properties that were in fact, "essential to the exercise of the sovereignty" of the successor state.[168] Whether oil concessions could be considered one or the other was thus ambiguous. The colonial history of the French Empire showed that France had considered that natural resources in its colonies had been so "essential for the exercise of its sovereignty" that it had invaded overseas territories to conquer such resources. And even if France refused to acknowledge it now, Algeria believed oil resources were "essential for the exercise of its sovereignty." As a consequence, Bedjaoui weakened the general rule according to which "public property should be made by reference to the municipal law which governed the territory concerned" by adding the following exception: "save in the event of a serious conflict with the public policy of the successor state."[169] This was an important and broad exception, as it was not completely clear who would decide the "seriousness" of the conflict of law and thus, the ability of the successor state to impose its legal definition.[170]

This general exception found its most manifest illustration in the conflict of law regarding the right to grant oil concessions. As Bedjaoui noted in his 1973 report to the ILC, "it is quite inappropriate to consider the successor state as 'subrogated' to the rights of the predecessor state, or as 'succeeding' the latter regarding the right in respect to the authority to grant concessions."[171] Citing the French jurist Lyon-Caen, for whom a concession is the "juxtaposition of a contract and an act of sovereignty," Bedjaoui reintroduced the issue by leaving aside the "*contractual* aspect of the concession," in order to "deal exclusively with *the act of sovereignty*."[172] As far as this public law aspect was concerned he "considered that the successor state exercises its own rights as a new conceding authority, which replaces the former conceding authority," meaning that it could freely decide to grant or withdraw "by virtue of its sovereignty, the title of owner of the soil and subsoil of the transferred territory."[173] As Bedjaoui continued to work in 1971 and 1972 on these conflicts of law between predecessor and successor states, he made it clear that "the fact that the successor state 'receives' the internal juridical order of its predecessor state should not automatically imply that the concessionary regime is thereby renewed."[174]

After the Algerian decision to nationalize oil concessions in 1971, it was natural that Mohammed Bedjaoui had turned again his attention to the limits that newly independent states could impose on the rights of private companies like oil concessions when he delivered his reports to the ILC.[175] Even if Bedjaoui knew that his

reflections on the superiority of the newly independent states' sovereign "vital interests" over the private (and even sometimes moral) rights of citizens and foreign nationals (and the superiority of public law over private law) divided the ILC's subcommittee, the 1971 Algerian decision proved that the ILC could no longer escape addressing the issue, for otherwise, it risked becoming completely irrelevant.[176] In his ILC reports, Bedjaoui made it clear that decolonizing states could and should ignore "devolution agreements"[177] (for instance, those decreed by France for Algeria) and acquired rights of oil concessions when concessions had been obtained during colonial times: then, they were inherently tainted by the colonists' lack of respect for the acquired rights of the colonial subjects (as the colonists, like Soustelle, often used the *terra nullius* doctrine to appropriate natural resources). Against the position that the French delegation had expressed during the negotiations at Evian, Bedjaoui claimed that it was precisely when the newly independent states were incapable of paying "just" reparations that the state needed to expropriate large private interests. Newly independent states could not accept the principle that all rights of foreign nationals should be compensated, as the "lands, the buildings, the transport, the industry, the trade companies, etc., belonged to private interests" during colonial administration, and thus, "compensating them for the loss of their property in case of nationalization would mean that the new state would have to buy its whole country back"[178] which would be economically impossible. In this case "the state would indebt itself in perpetuity, and even [if] the debt was distributed over a very long period, no budget could service such a debt." For Bedjaoui, newly independent states, whose *raison d'être* was the protection of the "vital interests of the nation"[179] (a very Gaullist notion found under Bedjaoui's pen), had the right to reject the sanctity of public treaties when the latter protected illegitimate private rights.[180] Otherwise, the situation would look very much like that of slaves "buying back their freedom."[181] The notion extended the kind of expropriation beyond the question of "unjust enrichment"[182]: with the notion of "vital interests," there was no longer any need for the nationalizing state to prove illegitimate acquisition, but just a need to prove the absolute economic need of such nationalization. In that sense, his program did not focus on the notion of "odious debt," which implied a notion of immorality, but extended to concern all kinds of unsustainable debts incurred by newly independent states: the criteria used to cancel sovereign debt were to be purely economic and political.

6 A WAY OUT OF THE DEADLOCK BETWEEN THE GLOBAL SOUTH AND NORTH? THE NOTION OF "GLOBAL SETTLEMENTS"

At the ILC, Bedjaoui's perspective was far from consensual, and the countries of the Global North strongly objected to the redistribution of property and debt between the Global North and the Global South, and from private companies to publicly owned national champions, that the NIEO entailed. The NIEO promoters'

response to the North's objections was that if newly independent states were ready to consider compensating private concessions for the loss of their right to extract oil or gas or minerals, the discussion of the value of that compensation had to take place in the framework of what Bedjaoui called a "global settlement."[183] The latter was based on a comprehensive assessment of the value of nationalized properties at the time of the expropriation by the decolonizing nation, but also on the calculus of past benefits realized by private interests and chartered companies in the colonies, which were not reemployed for the good of the colonial subjects from whom profit was extracted. Thus, only if reparations were to be calculated based on a long-term view of the historical relations between metropolis and colonial territories was Bedjaoui in favor of entertaining compensations and reparations for the expropriation.

Turning the tables, Bedjaoui went even further as he cited the 1961 Declaration by the non-aligned states in Belgrade, which stated quite clearly that the decolonized states were in fact "creditor states" rather than "debtor states" toward the old metropolises.[184] As he asserted that colonial economies were largely extractive and exploitative, as the industrial development of the metropolises had depended upon the ability of colonial private interests to funnel profits toward the metropolis and to cut the local colonial populations off from the benefits of growth, the metropolis had "contracted a debt" with its colonies, such that the nationalization of private interests could be seen as a reparation paid by the metropolis to its colony. If the debtor state was the metropolis, private individuals who sought compensation should turn to their own state rather than to the new independent state.[185]

In the ILC, Bedjaoui's proposition to refer to such global settlements was favorably received among the other non-aligned members, who agreed to inscribe within the article on state succession in respect to property for newly independent states a clause on global settlements. Such clause introduced "the concept of the contribution of the dependent territory to the creation of certain movable property of the predecessor state … so that such property should pass to the successor state in proportion to the contribution made by the dependent territory."[186] This principle meant for instance that, if Algeria was to settle claims by companies like French oil companies, French companies should also be accountable to claims by Algerian interests.

As the 1979 oil crisis further hit the global economy, consensus between the Global South and Global North became harder to reach on questions of international economic governance. In 1975, Mohammed Bedjaoui had worked on the project of a North–South conference to be organized in Paris when, as Algeria's Ambassador in Paris, he was in charge of organizing the official state visit of French President Valéry Giscard d'Estaing to Algeria; but this idea was abandoned after President Giscard d'Estaing's disappointing official visit, to later be taken up by Mexican President Lopez Portillo and Austrian Chancellor Bruno Kreisky. The North–South Summit which gathered the heads of state of twenty-two nations

in Cancun in October 1981 – including President François Mitterrand, who had ruled Algeria as Minister of Interior in the 1950s – showed to the G77 representatives that the newly elected Anglo-American leaders, especially President Reagan, were not interested in talking about the reform of international economic governance, except when reform meant the implementation of neoliberal ideas, and the use of international financial institutions as vehicles for imposing budget cuts and austerity measures to the Global South as conditionalities to new loans. In Cancun, the representatives of the G77 were flabbergasted when they heard President Reagan tell them that he was the real revolutionary because he was in favor of market deregulation.[187] The irony of seeing a former movie star talk about economic revolution was not lost to the Algerian revolutionaries who had suffered from the French repression during their revolution. Thirty-five years later, it would be Emmanuel Macron, a former high civil servant who briefly worked for Bank Rothschild, who cut the ground from under the socialists' feet by launching his presidential campaign with a book titled *Revolution*: it seems that not only US but also French neoliberals like to fancy themselves as "revolutionaries."

Within the ILC, controversies lingered until Bedjaoui released his last report to the UN General Assembly, which decided in December 1981 to convene an international conference of plenipotentiaries to consider the draft articles of the international convention on succession of states in respect to state property, archives, and debts. The conference assigned to the Committee of the Whole the consideration of the draft articles adopted by the ILC. Mohammed Bedjaoui had a very important role in the debates as the special Rapporteur to the ILC on state succession.[188] Unsurprisingly, representatives of the Western states at the 1983 Vienna Conference, called to adopt (or reject) the resulting convention emerging from twenty years of ILC work, heavily criticized the legal doctrine of the NIEO, and more specifically, the principle of intransmissibility of state debts in the context of newly independent states. Western legal scholars and diplomats in the Committee of the Whole did not see how newly independent states could ground the principle of intransmissibility of debts on established practice, except in extreme circumstances. Furthermore, they questioned the link that Bedjaoui made between the cancellation of debts and the nationalization of public assets by newly independent states.

When the text of the final convention was debated in 1983, the former imperial states, led by the British and the French, expressed strong objections to clauses on "global settlements" that could open up reparation debates. The British delegate objected to the statement that newly independent states should inherit property outside their territory (in the territory of the metropolis) "in proportion to the contribution of the dependent territory" as the determination of such property would "require mathematical calculations that were practically impossible to carry out,"[189] thus leading to intractable controversies about reparations – a position which the Indian delegate criticized, but which the French delegate endorsed, as the latter also claimed that "the term 'contribution' lacked precision."[190]

The French delegate even proposed deleting the article on newly independent states, where delegates of the G77 had placed the only exception to the general principle that debts should be transmitted to successor states: the French representatives argued that it created exceptional rules for a category of states defined according to a "political" rather than "legal" criterion. He added that as the decolonization process was almost over, it had lost its relevance for dealing with future cases of state succession – a point which was rejected by the Algerian delegate and the other representatives of the Group of 77.[191] In so doing, the British and French delegates wanted to prevent the imperial history of their states from being open to scrutiny.

Already during the plenary conference the main lines of division appeared between the liberal doctrine of the Western states, which refused to sign, and the communist bloc and the non-aligned states (or Group of 77), which were in favor.[192] The US representative, for instance, justified his opposition due to "the extent and scale of the special treatment given to newly independent states and the unnecessary vagueness of the formulation of a number of provisions,"[193] on the question of debts. The British delegate clearly rejected the view that "the principle of permanent sovereignty over wealth and natural resources and certain so-called rights had the force of *jus cogens*."[194] To take one example that best represents the liberal doctrine on behalf of which the Western states mounted their opposition against the notions of the NIEO embodied in this Convention, it suffices to quote the interventions of the West German representative during the conference. Anticipating the rigid defense of the sanctity of private contracts that the German Finance Minister Wolfgang Schäuble would later express during the Greek debt crisis, the German delegate at the Vienna conference objected that a "conference like the present one, which attempted to formulate existing rules of customary international law and to reach agreements about rules of contractual international law [two different tasks] could not be fulfilled if it did not take into consideration the views of a substantial minority of states."[195] For him, the articles that related to the treatment of debts for newly independent states (article 38) – which affirmed that no "state debt of the predecessor state shall pass to the newly independent state, unless an agreement between them provides otherwise" (article 38.1), and that the "agreement referred to in paragraph 1 shall not infringe the principle of permanent sovereignty of every people over its wealth and natural resources, nor shall its implementation endanger the fundamental equilibria of the newly independent state" (article 38.2) – were particularly inacceptable, a position shared by the representatives of all Western states.

Among the articles on state property, the liberal West strongly objected to the reference to the inalienability of natural resources in newly independent states and the "principle of the permanent sovereignty of every people over its wealth and natural resources,"[196] as the latter represented the gravest threat to the sanctity of private contracts. As the US delegate remarked, he did not believe that article 15 was

"an accurate statement of existing law and that its provisions should be accepted as progressive development of international law" – a position echoed by the Dutch delegate, according to whom the term "permanent sovereignty" was not a legal but a "moral" notion.[197] As the Canadian delegate said, the "value of a treaty that did not codify customary law but purported to create new rules, as was unquestionably the case with that convention, depended upon the degree of support it could command among states with different interests on the matter," and as the French delegate regretted, the method of work, which had consisted in voting on articles rather than seeking consensus had imperiled the whole work of the conference, by departing from the jurisprudence of international courts, like the International Center for the Settlement of Investment Disputes (ICSID), created in 1962 at the World Bank, which protected the interests of foreign investors' concerns against the risk of nationalization with no compensation.[198] For the Western representatives, the adoption of the Convention could have created a precedent that ICSID would have had to consider as it based its decisions on international standards rather than on existing national laws.[199]

The Algerian delegate tried to counterattack by arguing that the "principle of permanent sovereignty was already embodied in the 1978 Vienna Convention on Succession of States in Respect to Treaties"[200] and that the principles of "equitable compensation" were well-recognized principles of international law, and that it was only fair to take a broad view of compensation if the global negotiations were open; but from the discussion, no consensus emerged. As a last attempt to salvage the twenty years of work at the ILC, the Committee of the Whole tried to suggest that the Convention did not affect the private rights of oil concessions and other foreign companies operating in newly independent states. As Mohammed Bedjaoui remarked before delegates of the Committee of the Whole, "many speakers had expressed the fear that a successor state might seize property other than that which belonged to the predecessor state, for example, property of a third state or of private persons," but these (mostly Western) delegates should be reassured by the strict definition of *state* property enshrined in article 8, defined in accordance "with the internal law of the predecessor state."[201] The Convention explicitly recognized that "a succession of States does not as such affect the rights and obligations of creditors" (article 36), and as Bedjaoui remarked before the Committee of the Whole, the articles on state debt only concerned debts that "were governed by international *public* law and therefore excluded debts owed by the predecessor state to private creditors."[202] Furthermore, Bedjaoui added that the ILC was of the opinion that "transnational corporations [including oil corporations] were not subjects of international law" and were thus not concerned by the articles on the intransmissibility of debts from metropolitan states to newly independent states.[203] But Bedjaoui's demonstration was not sufficient to assuage the fears of Western delegates: the US delegate, for instance, doubted the validity of the argument that the

Convention protected private creditors, as by restricting itself to the succession of state-to-state financial obligations, it left private creditors with no other choice than to "resort to the general rules of customary international law, and those rules were highly intricate, complicated, often ambiguous and unclear."[204] Others argued that the historical context of the 1970s had suggested that nationalizations could take place with no fair and quick indemnity. [205]

On April 7, 1983, led by the states of the G77, the conference adopted the Vienna Convention on Succession of States in respect of State Property, Archives and Debts consisting of a preamble, fifty-one articles, and an annex. The Convention was opened for signature from April 7 until December 31, 1983, but it has not yet entered into force as it is missing the signature of key UN member states. In particular, the articles that concerned the succession of rights on property and debts in the case of "newly independent states" for which exceptional rules applied (articles 15 and 38, respectively) continued to be the most controversial, as can be seen from a brief survey of the objections of Western states to the Convention.[206] The Algerian delegate could only regret that Western states' "negative attitudes to an instrument which was fully in conformity with trends in the international community paralleled the uncooperative approach which had led to difficulties in the negotiations of the new international economic order,"[207] which by the time the 1983 Convention was open to signature, had lost all relevance since the election of President Reagan and Prime Minister Thatcher.

7 CONCLUSION

Until now, most historians of the NIEO have failed to relate the key concepts of the NIEO with the Gaullist conception of bilateral cooperation between postcolonial nation-states, especially, between France and its former oil-producing former colonies and overseas territories. Writing about Mohammed Bedjaoui in particular, Balakrishnan Rajagopal underlines, for instance, that he had, like "no international lawyer from the Third World, taken aim at the very nature of development and its linearity and progressivism,"[208] which may be right, but not precise enough to capture the key contribution of the NIEO.[209] It is true that Bedjaoui was characteristic of the NIEO scholars from the Third World who stopped viewing history's progress as gradual, linear and oriented toward the end goal of socioeconomic liberalism and democratic modernity. But Bedjaoui's main target was not the "modernization theory,"[210] which was elaborated by MIT political economist Walt Rostow (1916–2003) in his *Non-Communist Manifesto*[211] – whose influence in shaping the linear notion of "development" in the Anglophone world has indeed been crucial but almost inexistent in the French field of law; rather, it was the kind of forced bilateralism which he saw embodied in the Evian Agreements, and which imposed limits to the economic sovereignty of Algeria after it was granted its independence.

Still, while rejecting the notion of postcolonial bilateral cooperation, NIEO thinkers from Algeria didn't intend throwing out the concept of "cooperation" and gift exchange with the murky water of forced bilateralism between former metropolis and colonies. This is the reason why it is difficult to conclude that the NIEO thinkers were responsible for the downfall of the model of the gift in international law, which solidarists like Albert Sarraut, writing mostly on colonial law, had made fashionable in the interwar period. In many ways, the NIEO thinkers promoted an organization of the international system that was not unlike the one promoted in theory (but rarely achieved in practice) by solidarist thinkers who lauded the model of gift exchange as a method to organize relations between European nations or between colonies and their metropolis in the interwar era – the difference being that NIEO thinkers substituted the latter with the relations between independent states in the Global North and the Global South. This chapter thus confirms the conclusion of eminent international law scholars, who coined the "Third World Approach to International Law," like Anthony Anghie, Bhupinder Chimni, and Obiora Chinedu Okafor,[212] or next-generation scholars like Sundhya Pahuja, for whom the NIEO reformulation of sovereignty in "international law was neither still imperial nor newly liberatory – it was both."[213]

This chapter, thus, rehabilitates the attempt of NIEO thinkers to decolonize international law, or at least, end its alliance with colonial prospects. The NIEO thinkers not only defined a broad and ambitious new program for the Global South but also decolonized the solidarist thinking of interwar law scholars, by reformulating international economic relations on the basis of peoples' long-term needs, international trust, and gift exchanges, rather than on the short-term speculative logic of deregulated financial markets.[214] They revived the idea that gift exchanges work to create international solidarity, not only between sovereign parties but also between peoples and private actors: they proposed that newly independent states cement new contractual relationships with the Global North which would redefine long-term exchanges between commodity and industrial products, as well as engage in comprehensive sovereign debt renegotiation which NIEO thinkers coined as "global settlements."[215]

In fact, NIEO thinkers proposed that new international economic relations be grounded on real rather than fake gift exchanges;[216] that is, on long-term international relations based on trust between sovereign nations practicing reciprocal exchanges, rather than on contractual obligations between short-term-oriented profit-seeking private actors (metropolitan oil concessions), or on "cooperation agreements" by which former metropolises imposed a sustained cultural and economic domination upon their former colonial subjects.[217] The reciprocity the NIEO thinkers had in mind also involved some time lapse between the gift and the counter-gift: the Global North would be asked to give first by cancelling debts from their former colonies, in exchange for the gift of peace, stability, and sustainable development in the South, which would eventually benefit the North, as the

South would gain from the initial gift and then buy more goods from the North.[218] For these reasons, NIEO thinkers also promoted the wave of unilateral nationalization of oil companies carried out by Arab states, the cartelization of the oil trade with the creation of OPEC, and the rise in oil prices that would force the North to pay more for oil but that would also allow OPEC to redistribute part of their profits to the least developed countries through an OPEC fund.[219]

In the NIEO historiography, the importance of gift exchange as a model – when used to argue against neoliberalism – and counter-model – when the circulation of gifts was used to justify the bilateral cooperation that the Gaullist had in mind – is rarely underlined,[220] partly because its recycling in the field of international law by the postwar generation of realist scholars made the continuities with anthropological discourses on gift exchange hard to recognize. As this chapter demonstrated, these discontinuities were entrenched in the different trajectories followed by the metropolitan and colonial fields of international law before and after the Second World War, with the former taking off and the latter coming to an abrupt end after Algeria's independence in 1962. The shift from gradualism and pluralism (as found in the writings of Maussian legal anthropologists) to an association between the notion of gifts and an anti-colonial and realist conception of international relations reflected an original attempt to decolonize the model of gift exchange pioneered by international public law scholars who were taught in the metropolitan (rather than colonial) French field of law after the Second World War.

In so doing, this chapter offers a rebuke to hasty readings by post-development thinkers like Gilbert Rist, for whom "the NIEO did no more than reinforce the existing order of things."[221] Judging the NIEO from the surface, Rist indeed believes for instance that its promoters mainly reinforced the US-led discourse in which economic growth, expanding international trade and increased foreign aid to the Global South formed the three main objectives of the US policy toward the South since the famous publicization of the "Truman Doctrine" in 1947. For that reason, Rist concludes, "it is therefore fortunate that the NIEO was stillborn, everything having begun and ended on the same day, May 1, 1974,"[222] when the UNGA issued its Declaration. As a result of this misreading of the NIEO's main claims, it is not surprising to read under Rist's pen that, "far from closing the gap between center and periphery" as it proposed to do, "[the NIEO] actually widened it."[223] If the NIEO only had to offer a defense of rising prices of oil and other raw materials thanks to revised trade agreements, it would be fair to say that it indeed accentuated not only the division between Western states and developing states, but also the division between oil-producing countries and the least developed countries. But NIEO thinkers did not just want to strengthen the power of the oil-producing or rare-minerals-extracting countries, but to take the business of extractive industries outside of the realm of geopolitical conflicts and economic speculation, and turn it into an opportunity to arrive at a stable and peacefully negotiated compromise between creditor and lender states, complementing the overall scheme with special funds

that would redistribute some of the profits generated to the least developed nations.[224]

Still, even if it had succeeded in establishing the 1983 Convention on Succession of States in respect of State Property, Archives and Debts, it is worth acknowledging conceptual limitations in Bedjaoui's work at the ILC and the associated NIEO program. In particular, some members of the ILC rightfully regretted that "the definition of the term 'newly independent state' . . . [which was] restricted to cases in which the territory of the state had been a dependent territory immediately before the date of the succession of states" seemed to eliminate cases which there was no reason to exclude, such as the "emergence of a new state as a consequence of the separation of part of an existing state or from the uniting of two or more existing states."[225] In many ways, by creating rigid boundaries between different types of succession gathered into two broad groups (transfer, union, separation, and dissolution on one side, and newly independent states from Asia and Africa on the other side), and creating two opposite sets of rules for each group (as far as the issue of state debt was concerned), Bedjaoui restricted the principles of the NIEO to the newly independent states of Asia and Africa – most of which had already been through the process of independence at the time.[226] In doing so, he assumed implicitly that those state debts that could be deemed "odious" were those that exclusively fell on the shoulders of the "newly independent states" (since those were the intransmissible debts) and vice versa, so there was no need to add a separate discussion of the doctrine of odious debt as related to the other categories of state succession (transfer, union, separation, or dissolution) in other non-African and non-Asian contexts. NIEO scholars thus excluded the possibility of applying the principles they agreed upon for "newly independent states" to other states in the future, for instance, those that would secede, for instance, from the Soviet "Empire," first in Eastern Europe and then in the Balkans,[227] or from new currency zones like the Eurozone, when the case of Grexit began to be discussed in 2015. That may well have been a big mistake, which explains why his theory remains little used in the present-day debates about the sustainability and cancellability of the debts held by Cyprus, Greece, or other countries that have long suffered from a colonial or neocolonial domination.

With these limitations in mind, it is not surprising if direct references to the work of the ILC on state succession in matters of state debts and assets and to the NIEO more generally have largely been absent from more recent debates about the sovereign debts of developing nations from South Asia and Latin America, or in the case of the recent sovereign debt crisis in Greece. This is unfortunate, as Bedjaoui's contribution to the NIEO (with notions of "global settlement," "permanent sovereignty over natural resources" or the "principle of non-transmissibility of debts" in a postcolonial context) would prove much more useful to contemporary debt cancellation activists to defend their claims than Sack's doctrine.[228] We can

thus only regret that Bedjaoui failed to associate his name with a new (and more progressive) doctrine of "odious debt": as some ILC members regretted, "although the question of odious debts had been discussed by the Commission ... and the Special Rapporteur's earlier proposals [were] quite interesting, no provisions relating to it had been included in the draft articles."[229] In fact, Bedjaoui's definition of "cancellable" debts emphasized the notion of their unsustainability, as he proposed to assess whether former debts should be cancelled or not based on economic and political rather than moral criteria.

Whether one believes that it is unfortunate that neoliberal prescriptions imposed themselves as the solution to the sovereign debt crises of the Global South in the 1980s or not, it is true that the combination of both dealt the NIEO a fatal blow. Still, calling it an utter failure would be wrong: indeed, the rise of the NIEO participated in disentangling the newly independent states from former imperial economic interests, and thus helped the former denounce the devolution agreements which, like the Evian Agreements in the case of Algeria, had organized the prolonged economic submission of former colonies to the power of colonial concessions. In so doing, it showed how international law could be used as a force for progress and revolution rather than as a conservative endeavor, whose main methodological precepts serve the purpose of ensuring continuity in the interpretation of international agreements, and thus, continued recognition of the debtor states' legal obligations that have been inscribed by European great powers in generations of international agreements since the colonial times.

In the history of ideas about global governance, the global mobilization of neoliberal intellectuals in favor of the deregulation of financial markets and the strengthened protection of the rights of private investors[230] has often taken all the attention, relegating the NIEO story to the dustbin of history.[231] The sovereign debt crises that have erupted since the 1980s certainly empowered the international financial institutions of Bretton Woods (the IMF and World Bank) and their Western state backers to impose neoliberal policies and stringent tools of monitoring and control upon the domestic policies of borrowing nations, especially in Africa, Asia, Latin America but now also in Europe.[232] As Sundhya Pahuja writes, it is true that the rise of the NIEO on the international stage in the 1970s was related to an "economic boom in the North, a concomitant rise in commodity prices, a brief moment of Third World unity brought on by the oil crisis, and finally a consequent sense of vulnerability of the North,"[233] followed by a quick downfall when the solidarity between oil producers and non-oil producers in the Global South dissolved as a result of the debt crises of the early 1980s, starting with the Mexican debt crisis of 1982. Except for Balakrishnan Rajagopal, who sees in the NIEO a story of relative institutional success,[234] the observed failure of the NIEO movement to stop the rise of such neoliberal ideas of global governance is indeed presented as the ineluctable result of a convergence between adverse external (economic and

political) conditions rather than from inner intellectual flaws and contradictions, whose content is thus often left in the background.[235] Winners always get historians' attention, except when the odd genealogist attempts to recover the history of losers. But beyond the questions of whether the NIEO was successful or not, or why it was not, the progressive ambition that the NIEO thinkers have ascribed to international law certainly warrants that we pay more attention to its genesis in the Francophone context from which it arose.