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Contesting Freedom of Information: Capitalism, Development, and the Third World

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Abstract

This paper historicizes the current challenges brought about by digitization to the Third World by revisiting a movement launched by the Non-Aligned Movement countries during the 1970s and early 1980s. Also known as the New World Information and Communication Order (NWICO), the movement contested the dominant liberal notion of freedom of information and spotlighted the critically material inequality and power asymmetry often concealed by the liberal vision of the free flow of information. Not only did NWICO present a counter-model to the liberal notion of freedom of information, it also provides a vital case for understanding the interrelations between information and domination and the role of international law therein. This paper retells the story of NWICO, its normative ambition as well as its internal contentions and practical limitations, and reflects on its legacy for TWAIL scholarship and the current politics of digitization.

Keywords: New World Information and Communication Order; sovereignty; development; Third World; freedom of information

The rapid development of digital technologies and the process of digitization in recent years have attracted two main opposite narratives. The first narrative portrays digital technologies as bringing about new transformative ways and possibilities for human progress: they are novel tools to empower people, ameliorate existing social problems, and fulfil objectives such as human rights and sustainable development goals.¹ The second narrative presents a rather dystopian picture of digitization, highlighting the unprecedented power of big tech companies and their lack of legitimacy and accountability, the (re)production of inequality through digitization, the effect of dehumanization, and, of course, the obvious problem of the abuse of personal data.²

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¹ For example, the United Nations (UN) Global Pulse was a program created to “accelerate the discovery, development, and responsible use of big data and artificial intelligence innovations and policies for sustainable development, humanitarian action, and peace,” online: UN Global Pulse: <<https://www.unglobalpulse.org/what-we-do/>>. See also Special Feature: Sustainability and Digitization: A Game-Changer? Possibilities, Perils, Pathways (2017) 12(2) Sustainability Science.

² See, for example, Frank PASQUALE, *The Black Box Society: The Secret Algorithms That Control Money and Information* (Cambridge: Harvard University Press, 2015); Shoshana ZUBOFF, *The Age of Surveillance Capitalism*:

These two contradictory narratives cannot be mapped along the Global North/South divide, but the effect of digitization and the two narratives manifest in the Global South and the Third World in specific ways. Third World countries are often seen as a fertile ground for experimenting new digital technologies to address issues such as poverty, climate change, health, and migration.³ Either embraced by the governments and entrepreneurs of Third World countries, or offered by international actors,⁴ these technologies carry the promise of offering a quick fix to chronic crises. However, this promise, and the underlying ideology of techno-solutionism, have been criticized for retrenching existing power asymmetries – especially between the people of the Third World and foreign companies – and for producing new extractive relations to further impoverish the Third World.⁵ One conventional take on such criticism attributes the negative impact of digitization to weak human rights and data protection in the Third World, and encourages the Third World to enhance their legal frameworks.⁶ The Third World is, indeed, responding by speedily introducing data protection laws (often modelled on European ones), but its effect remains highly controversial.⁷ A more historic perspective links the contemporary process of digitization in the Global South to its colonial history and lasting legacies and captures the power dynamics of digitization by the term “digital/data colonialism”.⁸ The charge of digital/data colonialism has not only been used to target the “Big Techs” from the West (and, increasingly, from China), but is also used by some governments and companies in the Global South to justify data localization and to strengthen data sovereignty. This is criticized by some liberals who see data sovereignty as furthering governmental censorship and economic protectionism,⁹ as well as by critical thinkers who argue that postcolonial language is being co-opted to serve the interest of national bourgeoisies.¹⁰

The Fight for a Human Future at the New Frontier of Power (London: Profile Books, 2019); Dimitri VAN DEN MEERSSCHE, “Virtual Borders: International Law and the Elusive Inequalities of Algorithmic Association” (2022) 34 *European Journal of International Law* 1. On the power of big techs, there is an emerging literature about technological feudalism: see, Evgeny MOROZOV, “Critique of Techno-Feudal Reason” (2022) 133/134 *New Left Review* 89, online: *New Left Review*: <<https://newleftreview.org/issues/ii133/articles/evgeny-morozov-critique-of-techno-feudal-reason>>.

³ Tim UNWIN, *ICT4D: Information and Communication Technology for Development* (Cambridge: Cambridge University Press, 2009).

⁴ Jorge E CUÉLLAR, “Bitcoin Sanctuaries” (2021) *New Left Review* (Sidecar), online: *New Left Review* <<https://newleftreview.org/sidecar/posts/bitcoin-sanctuaries>>; US Embassy in Fiji, “Regional TechCamp on Blockchain Technology” (4 April 2018), online: US Embassy in Fiji <<https://fj.usembassy.gov/regional-techcamp-blockchain-technology/>>.

⁵ Olivier JUTEL, “Blockchain Imperialism in the Pacific” (2021) 8 *Big Data & Society* 1, online: SagePub <<https://journals.sagepub.com/doi/pdf/10.1177/2053951720985249>>.

⁶ See, for example, Payal ARORA, “Bottom of the Data Pyramid: Big Data and the Global South” (2016) 10 *International Journal of Communication* 19; Vibhushinie BENTOTAHEWA, Chaminda HEWAGE, Jason WILLIAMS, “The Normative Power of the GDPR: A Case Study of Data Protection Laws of South Asian Countries” (2022) 3 *SN Computer Science* 183.

⁷ Jacqueline HICKS, “A ‘Data Realm’ for the Global South? Evidence from Indonesia” (2021) 42 *Third World Quarterly* 1417.

⁸ Michael KWET, “Digital Colonialism: US Empire and the New Imperialism in the Global South” (2019) 60 *Race & Class* 3; Arora, *supra* note 6. The term has also been used to describe the predatory process of datafication without sticking to any distinction between the Global North and Global South: see Nick COULDRY and Ulises A. MEJIAS, “Data Colonialism: Rethinking Big Data’s Relation to the Contemporary Subject” (2018) 20 *Television & New Media* 336; Jim THATCHER, David O’SULLIVAN, Dillon MAHMOUDI, “Data Colonialism through Accumulation by Dispossession: New Metaphors for Daily Data” (2016) 34 *Environment and Planning D: Society and Space* 990.

⁹ Milton MUELLER, “Against Sovereignty in Cyberspace” (2020) 22 *International Studies Review* 779.

¹⁰ Dhanashree THORAT, “Modalities of Data Colonialism and South Asian Hashtag Publics” (2021) 21 *Feminist Media Studies* 151.

What can one make of these complex, conflictual narratives and their depictions of current societies and desirable futures, especially in the Global South? While digital technologies and digitization are new phenomena, critical questions about how to conceive data flows, information technologies, and the power dynamics surrounding them are not new. This paper revisits a movement initiated by the Third World during the 1970s and the early 1980s, commonly referred to as the New World Information and Communication Order (NWICO), which tackles these important questions being debated today. Further, the movement provides avenues for considering not only what futures digitization is creating but, also, where the current process and debate of digitization come from.

During the 1970s, it was widely acknowledged that the international flow of information was seriously unbalanced and that the imbalance impeded Third World countries' access to information and their capacity to impart information and communicate with the outside world. In upholding the dominant liberal notion of freedom of information, NWICO challenged the prevailing structure of how information flowed. Normatively, for Third World countries, NWICO was part of the larger project to achieve decolonization and national liberation, and to promote development to resist neo-colonialism. This normative agenda of empowering the Third World in the information and communication field also aimed to promote international understanding and peace. Materially, NWICO highlighted the imbalance in the information and communication field and understood it as a result and contributing factor of the continued economic and technological dependency of the Third World countries on their industrialized and former colonial countries. Accordingly, NWICO brought forward a counter narrative for the continued imbalance in freedom of information, which spotlighted material conditions and power relations undergirding the so-called liberal notion of freedom of information.

Similar to many other Third World struggles, such as the New International Economic Order (NIEO), revisiting the NWICO debate reveals the opposing pull of normative radicalism and pragmatism as well as the internal complexity of the Third World, which partly explains its decline in the mid-1980s. Like the NIEO movement, whose "undead spirit" continues to haunt international law,¹¹ NWICO's core critique about the material inequality and power asymmetry perpetuated by the international flow of information provides crucial historical insights and analytical tools for understanding the reproduction of power relations through the flow of digitized data in our times. Retelling the largely forgotten NWICO story is, therefore, an important step, both in the process of mapping patterns¹² about what and how the notion of freedom of information empowers and suppresses, and in making NWICO an "unfailure"¹³ that can inspire and help articulate contemporary demands for alternative processes of digitization.

In addition to its relevance to current politics of digitization, the NWICO story is also of interest to Third World approaches to international law (TWAIL) scholarship – and ever more so for its connection to NIEO. As a struggle against the Western monopolization of international communication and information flows, NWICO provides an important case study for TWAIL to consider the relationship between information and domination, as well as the possibility of resistance. Moreover, questions raised by NWICO, such as how to conceptualize information and communication, how to perceive new information technologies, and how to treat traditional culture, are fundamentally connected to the identity of the postcolonial state, which has been critiqued in TWAIL scholarship in relation to

¹¹ Nils GILMAN, "The New International Economic Order: A Reintroduction" (2015) 6 *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 1, at 10.

¹² Susan MARKS, "False Contingency" (2009) 62 *Current Legal Problems* 1, at 15.

¹³ Gilman, *supra* note 11.

the ideology of the nation state and development.¹⁴ Not only does the NWICO story contribute to this strand of TWAIL critique, it also makes such critique highly pertinent in current politics of digitization in the Global South.

This paper will proceed as follows. Section I will describe the NWICO movement. Reading primary sources from the United Nations (UN) Educational, Scientific and Cultural Organization (UNESCO), the Non-Aligned Movement, and publications by NWICO advocates, this section reconstructs the terrain and term of its debate and its counter narrative of freedom of information. Section II will focus on the internal critique and practical constraints of NWICO which affected the result of this movement. Section III will draw on NWICO's normative challenges and historical limitations and consider its legacy, as an "unfailure", for TWAIL scholarship. Section IV will conclude with a brief reflection about NWICO's relevance for the current debate about digitization.

I. NWICO: CONTESTING FREEDOM OF INFORMATION

As NWICO emerged from a long wave of anti-colonial movements, there may be a certain degree of arbitrariness in pinpointing its starting point and discussing it as a distinct project. In the 1970s, the Non-Aligned Movement countries established NWICO to strengthen cooperation among themselves in the information and communication in order to overcome barriers in the field.¹⁵ Their complaints about the shortcomings of the existing structure of international information flows and the difficulties they encountered in international communication were picked up by UNESCO, which is mandated to promote "the free flow of ideas"¹⁶ using mass communication. UNESCO became NWICO's main international forum in parallel, with conferences organized by the Non-Aligned Movement during this period. One of the main contributions of UNESCO to understanding and promoting NWICO was the establishment of the International Commission for the Study of Communication Problems (ICSCP) by the then Director-General, Amadou-Mahtar M'Bow, following the resolutions adopted by UNESCO's 1976 General Conference in Nairobi. The ICSCP, chaired by Seán MacBride, compiled a massive volume of studies and data on communication issues. It submitted its final report, entitled "Many Voices, One World: Toward a new, more just and more efficient, world information and communication order" (the MacBride Report) to UNESCO's General Conference in 1980. This section reconstructs the NWICO movement by reading the MacBride Report and ICSCP's studies, as well as publications by ICSCP members and other advocates, to discuss the following questions, (i) how did NWICO challenge the liberal conception of freedom of

¹⁴ Sundhya PAHUA, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge, Cambridge University Press, 2011); Balakrishnan RAJAGOPAL, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge, Cambridge University Press, 2003); Mohammad SHAHABUDDIN, *Minorities and the Making of Postcolonial States in International Law* (Cambridge: Cambridge University Press, 2021).

¹⁵ See Fourth Summit Conference of Heads of State or Government of the Non-Aligned Movement, "Final Document – Political Declaration" (5–9 September 1973) 85, online: James Martin Center for Nonproliferation Studies <http://cns.miis.edu/nam/documents/Official_Document/4th_Summit_FD_Algiers_Declaration_1973_Whole.pdf> at 89, para xiv; Conference of Foreign Ministers of Non-Aligned Countries in Lima in 1975, Resolution VI, see A.W. SINGHAM and Tran Van DINH, eds., *From Bandung to Colombo: Conferences of the Non-Aligned Countries, 1955-1975*, (New York: Third Press Review Books, 1976) 179, at 181; Meeting of Information Ministers of the Non-Aligned countries at New Delhi, (8–13 July 1976); Fifth Conference of Heads of State or Government of Non-Aligned Countries at Colombo, 1976, "Final Document" (16–19 August 1976), online: James Martin Center for Nonproliferation Studies: <http://cns.miis.edu/nam/documents/Official_Document/5th_Summit_FD_Sri_Lanka_Declaration_1976_Whole.pdf>.

¹⁶ *Constitution of the United Nations Educational, Scientific, and Cultural Organization*, 16 November 1945, 52 U.N.T.S. 276 (entered into force 4 November 1946), Article II.2.

information, and (ii) what alternative conceptions about freedom of information were proposed and debated? This section's focus on the work of ICSCP does not mean that NWICO was simply an intellectual debate. Rather, the ICSCP's work will be used as a snapshot to capture a variety of activities of Third World countries over a decade to strengthen their communication capacity and rebalance international information flows. Other state practices will also be assessed while discussing the ICSCP's work.

A. Critiquing the Prevailing Order of International Communication

1. The unbalanced flow of information

As introduced earlier, the symptom that NWICO sought to tackle was the imbalance of the international flow of information between developed and developing countries. In 1974, the Eighteenth General Conference of UNESCO, which marked the beginning of NWICO's journey on UNESCO's agenda, acknowledged that:¹⁷

a handful of countries, by their very state of development, dominate international exchanges as exporters of ideas and materials, while the majority find little opportunity to draw world attention to their problems, their aspirations and their contribution to the culture of mankind.

The imbalance was identified as both quantitative and qualitative. One clear example of the quantitative imbalance was the domination by four Western news agencies – commonly called “the Big Four”: Reuters (UK), the United Press International (US), Associated Press (US), and Agence France-Presse (France) – plus the (then) Soviet TASS. The Big Four controlled information flows not only between the North and the South, but also between the Third World countries.¹⁸ Besides news items, access to and exchange of cultural, scientific, and educational materials also displayed huge North-South disparities.¹⁹ In addition to the amount of information flows, another clear indicator of quantitative difference was the cost of international communication. In the 1970s, it was observed that transmitting a message from New Delhi to London (or vice versa) was much cheaper than from New Delhi to Kabul,²⁰ showing just how firmly *former* imperial capitals continued controlling channels of international information networks. As for qualitative imbalance, the ICSCP, in its final report, pointed out how “developed countries get the selected best of the culture (chiefly music and dance) from developing countries; the latter get a lot of what on any objective standard is the worst produced by the former”.²¹

For NWICO's advocates, the quantitative and qualitative imbalance had two major detrimental consequences for the Third World. First, the content of mass communication was mostly foreign produced, which introduced values alien to the indigenous cultures of Third World countries that undermined their cultural identities and developmental processes. For example, Mustapha Masmoudi, the Tunisian Secretary of State for Information

¹⁷ *Analysis of Problems and Table of Objectives to Be Used as a Basis for Medium-Term Planning (1977-1982)*, 18th Session of the General Conference of UNESCO, 18C/4 (1974), [*Medium-Term Planning Analysis*] at para. 139.

¹⁸ See, Wilbur SCHRAMM and Erwin ATWOOD, *Circulation of News in the Third World: A Study of Asia* (Hong Kong: Chinese University Press, 1981). Schramm's study on news reporting in Asia noted that three quarters of news stories about other Global Southern countries were from the Big Four.

¹⁹ *Many Voices One World: Towards a New More Just and More Efficient World Information and Communication Order*, Report of the International Commission for the Study of Communication Problems (ICSCP), finalized by Séan MACBRIDE, the MacBride Commission, UNESCO/ICSCP(063.2)/C6/ENG (1980) [*MacBride Report*], at 125–31.

²⁰ Singham and Tran van Dinh, eds., *supra* note 15 at 44.

²¹ *MacBride Report*, *supra* note 19 at 163.

and a leading figure of NWICO, criticized the prevailing information flow as “an alienating influence” and “instruments of cultural domination and acculturation.”²² Bogdan Osolnik, a Yugoslavian journalist and a member of ICSCP commented that:²³

[T]he mass media offer [underdeveloped countries] programmes, which were designed to further consumption, which stress egoistic individualism, the ethics of money and violence, irresponsibility and ‘dolce vita’ or encourage a flight from reality by other means. The final effect of the imposition of these values and thought patterns through the mass media conflicts not only with national cultural and social realities, but also with these countries’ interest in the overall development.

These criticisms epitomized a general perception about the vulnerability of traditional cultures in the Third World facing modernization driven by the industrialized world.²⁴ In 1974, UNESCO also saw the unequal exchange of culture and the power exercised by Western mass media as amounting to “cultural intrusion” and “cultural alienation” which could endanger the values of cultural pluralism and cultural identity.²⁵ The political stake of such “cultural intrusion” was particularly clear in Latin American countries, given their unique anti-colonial history and US interventions. Latin American scholars therefore condemned American “cultural imperialism”: the use of mass communication for propaganda and alienation to promote the American way of life and to preserve existing social hierarchies.²⁶ They also denounced both overt and covert US propaganda and activities through media that discredited and even helped overthrow some progressive and democratically elected governments in Latin America. Summarizing the Latin American perspectives and experiences, Luis Ramiro Beltrán, a Bolivian specialist in communication, depicted the existing structure of international communication as “vertical communication”, which was “from the top down, domineering, imposing, one-way and manipulatory; in short, undemocratic”.²⁷

The second detrimental effect of the imbalance in international communication and information flow was the occidental depiction of events in the developing world. Events were often depicted without proper understanding and even distorted in a sensationalist way to attract audiences in the West. For this, NWICO advocates criticized Western media for being discriminatory. Narinder Aggarwala, a journalist working for the United Nations Development Programme (UNDP), lamented the mainstream media practice, which only focused on instant events and never bothered to cover “process-oriented news”.²⁸ As a result, Third World developments barely received any coverage by the news media. This also pointed to a problematic notion of newsworthiness. As noted by the MacBride Report, Western media corporations commonly held that news

²² Mustapha MASMOUDI, “The New World Information Order” (1979) 29 *Journal of Communication* 172.

²³ Bogdan OSOLNIK, *Aims and Approaches to A New International Communication Order*, Report for the International Commission for the Study of Communication Problems, (Paris: UNESCO, 1978), at 7.

²⁴ This critique reflected a longer process of anti-colonial struggles and in particular struggles against cultural imperialism since the Bandung Conference. For example, at the 1961 Belgrade Summit, the Non-Aligned Movement countries argued that states should have the sovereign right to “freely pursue their economic, social and cultural development without intimidation or hindrance.” See A. W. Singham and Tran van Dinh, eds., *supra* note 15 at 12.

²⁵ *Medium-Term Planning Analysis*, *supra* note 17 at paras. 130, 134.

²⁶ One of the earliest cultural critiques in Chile is the book: Ariel DORFMAN and Armand MATTELART, *How to Read Donald Duck: Imperialist Ideology in the Disney Comic* (Amsterdam: International General, 1975).

²⁷ Luis Ramiro BELTRÁN, *Farewell to Aristotle: “Horizontal” Communication*, Report for the International Commission for the Study of Communication Problems, (Paris: UNESCO, 1979), at 14.

²⁸ Narinder K. AGGARWALA, “New International Information and Communication Order: Setting the Record Straight” (1982) 4 *NYLS Journal of International and Comparative Law* 9, at 13.

was “what is interesting” and “what is out of the ordinary”.²⁹ Such criteria of newsworthiness, NWICO advocates argued, would inevitably direct attention to natural disasters and violence in the Third World rather than slower, less visible development processes, the latter being equally, if not more important, in the developing world.³⁰ The distortion of facts by Western media was also deemed commonplace due to journalists’ lack of knowledge of the countries on which they reported, as well as the ideological lens – often mixed with racist prejudices – through which journalists presented and judged events.³¹ As a result, Third World countries were depicted poorly, which, some NWICO advocates argued, would “dampen the spirits”³² of the Third World peoples and worsen their terms of trade.³³

The imbalance of international communication and its effects were obviously inseparable from their colonial history, and NWICO naturally became an anti-colonial project. This was vividly expressed by Indira Gandhi in her speech at the meeting of information ministers of Non-Aligned countries in New Delhi in 1976:³⁴

[t]he media of the powerful countries want to depict the governments of their erstwhile colonies as inept and corrupt and their people as yearning for the good old days. Leaders who uphold their national interests and resist the blandishments of multinational corporations and agencies are denigrated and their images falsified in every conceivable way... We want to hear Africans on events in Africa. You should simply be able to get an Indian explanation of events in India.

2. The capitalist logic underpinning the free flow of information

The domination of Western mass media, such as the Big Four in news reporting and transmission (all of which were privately owned and profit-seeking), revealed the fundamentally capitalist nature of the doctrine of the free flow of information. The then Indian Minister of Information and Broadcasting, Vidya Charan Shukla, commented that “the idea of ‘free’ flow of information fits insidiously into the package of other kinds of ‘freedom’ still championed by the adherents of 19th century liberalism.”³⁵ The capitalist conception of information – that is, information as a commodity – brought about a particular form of passivity of people in the Third World. Masmoudi observed that people in the Third World were “relegated to the status of mere consumers of information sold as a commodity like any other”³⁶ and freedom of information effectively became “the freedom of information agent”; that is, the freedom of those already controlling the media to control the information flow and to disseminate information without any hindrance from the

²⁹ MacBride Report, *supra* note 19 at 157.

³⁰ Aggarwala, *supra* note 28 at 13; Masmoudi, *supra* note 22 at 4; MacBride Report, *supra* note 19 at 157. NWICO’s critique also echoes Hilary Charlesworth’s critique about international legal as a discipline of crisis, see: Hilary CHARLESWORTH, “International Law: A Discipline of Crisis” (2002) 65 *The Modern Law Review* 377.

³¹ Masmoudi, *supra* note 22.

³² Mort ROSENBLUM, “Reporting from the Third World” in Kaarle NORDENSTRENG and Herbert I. SCHILLER, eds., *National Sovereignty and International Communication* (New Jersey: Ablex Publishing Corporation, 1979) 244, at 254.

³³ The then Indian ambassador to the Socialist Republic of Vietnam, M. R. Sivaramakrishnan commented that “[t]he terms of trade will improve if the image improves and one of the fundamental requirements to produce a new international economic order and sustain it is a redressal of information inequality in terms of cultural images and free flow of information in real terms.” See M. R. SIVARAMAKRISHNAN, “Cultural Imperialism: An Asian View” in A. W. SINGHAM, ed., *The Nonaligned Movement in World Politics* (New York: Lawrence Hill Books, 1978) 42, at 45.

³⁴ Quoted by Mort Rosenblum, *supra* note 32 at 254–5.

³⁵ Vidya Charan SHUKLA, “Need for News Flow Cold” in A. W. SINGHAM, ed., *The Nonaligned Movement in World Politics* (New York: Lawrence Hill Books, 1978) 68, at 70.

³⁶ Masmoudi, *supra* note 22 at 4.

developing world.³⁷ Denouncing this market-based conception of information, Masmoudi argued instead that information should be understood as “a social good and a cultural product” which would enable all countries to have equal access to sources of information and to participate in the process of international communication.³⁸

In addition to the conception of information, the capitalist character of international communication and information flows was demonstrated by how information and communication resources were owned, distributed, and reorganized for the production and transmission of information products. The MacBride Report observed that oligopolies and monopolies in the communication sector had been formed through vertical and horizontal integration, conditioned by national and world markets of profit rates, capital flows, and technological developments.³⁹ This led to concentration in the ownership and operation of media, which could have negative effects on media freedom and pluralism.⁴⁰ More strikingly, as the MacBride Report noted, for information of great economic and social value, such as scientific knowledge and industrial research findings, there was rarely any sign of “free flow”. Developed countries often restricted the outgoing of such information through intellectual property rights protection or export control,⁴¹ further testifying the capitalist character of information flows.

Beyond accumulation and profit, NWICO’s advocates also argued that international communication was an integral part of the process by which global capitalism developed. They highlighted two aspects of the interrelationship between communication and capitalism. The first aspect was ideological. Hugo Gutiérrez Vega, professor at National Autonomous University of Mexico, argued that communication through the capitalist cultural industry simultaneously reflected the ideology of the dominant class and created the ideology suited for capitalism by “moulding the mentalities of its consumers” which would reinforce the status quo and conformism, and allow capitalism to perpetuate.⁴²

The second aspect of the interrelationship was material. This was analysed by Cees Hamelink, a Dutch communication specialist. He used the term “communications-industrial complex” to describe the combination of three mutually strengthening elements which, he considered, had decisive influence on the international economic structure: “the control of finance capital, the control of technology, and the control of marketing channels”.⁴³ For Hamelink, this complex had been crucial for the growth of post-Second World War cross-border trading, which required more and more extensive information networks supported by the most advanced telecommunication technologies to coordinate dispersed activities of transnational corporations and to support their marketing and public relations.⁴⁴ As an analytical tool, the communications-industrial complex accurately demonstrated the material conditions of international communication and economic interests invested therein. It also revealed that the doctrine of freedom of information, despite its universal moral appeal as a fundamental human right, was not politically neutral but was in practice contingent upon the interests and practices

³⁷ *Ibid.*, at 6.

³⁸ *Ibid.*, at 15–6.

³⁹ *MacBride Report*, *supra* note 19 at 104.

⁴⁰ *Ibid.*, at 105.

⁴¹ *Ibid.*, at 144; Cees J. HAMELINK, *The Politics of World Communication* (New York: SAGE Publications Ltd., 1994) at 220.

⁴² Hugo GUTIÉRREZ VEGA, *The Cultural Industry*, Report for the International Commission for the Study of Communication Problems (Paris: UNESCO, 1978) at 2.

⁴³ Cees J. HAMELINK, *The New International Economic Order and the New International Information Order*, Report for the International Commission for the Study of Communication Problems, (Paris: UNESCO, 1979), at 2.

⁴⁴ Hamelink, *supra* note 41 at 30.

of Western transnational corporations that controlled or owned communication channels and sources.

3. *The free flow of information conceals dependency and power asymmetry*

The imbalance of international communication was symptomatic of the material inequalities and dependency relation between the Global North and the Global South: Third World countries typically lacked financial and technological resources to develop endogenous information infrastructure and mass media industry. The dependency relation would be further reinforced with the emergence of new technologies in the 1970s; for example, satellites and electronic data processing by computers that allowed for new activities such as remote sensing of natural resources and cross-border data flows.⁴⁵ Needless to say, these technologies were almost exclusively owned by American tech companies – such as IBM (International Business Machines) – supported by huge governmental subsidies. Considering the impact of the uneven technological development, Hamelink alluded to a specific power-knowledge nexus brought about by these corporate-owned technologies which would deepen the gap between the North and the South:⁴⁶

[f]or many Third World countries [the lack of ownership and control of these technologies] implies that an important basis for national decision-making is now extra-territorially located with some private firm[s]. As with natural resources, the national resource information is exploited by foreign interests which adds once more to dependency relationships.

The MacBride Report also observed that the unequal distribution of data banks and critical data and the monopolistic use of computerized data processing by American companies had undermined the development process of the Third World countries, “[depriving] them of vital data in many important areas, and often [hampering] their negotiating situation when dealing with foreign governments or transnational corporations”.⁴⁷

While the problem of money and technology shortage sensibly led to a call for more sharing and equitable redistribution between the North and the South, many NWICO advocates were critical of the one-sided technological assistance offered by developed countries, warning that simply receiving technological products from them would not lead to technological self-reliance.⁴⁸ For example, the MacBride Report pointed out how “the use of foreign technologies and imported models of infrastructures sometimes proves more beneficial to the countries providing the hardware, and sometimes even the software, than to those receive or purchase them.”⁴⁹ Oftentimes, the governmental officials of developing countries who negotiated deals lacked technical expertise and were ill-informed; the equipment bought as a result was not only extremely expensive, but completely inappropriate to local conditions.⁵⁰ In this context, Boobli George Verghese, the Indian member of the ICSCP, called for “care and restraint” to prevent poor decision-making resulting from “ignorance, market pressures, blandishments, or a

⁴⁵ Allan GOTLIEB, Charles DALFEN, and Kenneth KATZ, “The Transborder Transfer of Information by Communications and Computer Systems: Issues and Approaches to Guiding Principles” (1974) 68 *The American Journal of International Law* 227.

⁴⁶ Hamelink, *supra* note 43 at 4.

⁴⁷ *MacBride Report*, *supra* note 19 at 144.

⁴⁸ Hamelink, *supra* note 41 at 214.

⁴⁹ *MacBride Report*, *supra* note 19 at 221.

⁵⁰ For example, *ibid.*, at 217; *The Missing Link*, Report of the Independent Commission for World-Wide Telecommunications Development, Chaired by Donald MAITLAND, (1984), online: ITU <<https://search.itu.int/history/HistoryDigitalCollectionDocLibrary/12.5.70.en.100.pdf>> at 21.

mistaken desire to keep up with the Joneses”.⁵¹ Furthermore, he urged that for developing countries like India it was necessary “to seek simple, rugged, low cost, low energy, small-gauge options so as to ensure facility of management, maintenance and wide diffusion”.⁵² For him, this kind of frugal innovation would help narrow domestic disparities and meet varied information and communication needs of the greater population, especially in rural areas.

B. Envisioning a New International Information Order

1. Redefining the free flow of information

NWICO critique for the liberal notion of freedom of information was not done with the intention to abolish it, but to refine and qualify the principle. Masmoudi defined NWICO as “founded on democratic principles, [seeking] to establish relations of equality in the communications field between developed and developing nations and [aiming] at greater justice and greater balance”.⁵³ These objectives of NWICO, he clarified, were not against the principle of freedom of information but were to ensure this principle to be “applied fairly and equitably for all nations and not only in the case of the more developed among them”.⁵⁴ UNESCO, endorsing NWICO’s cause, also recognized that “the concept of free flow of information ... needs to be complemented by that of a more balanced and objective flow, both between countries and within and between regions”.⁵⁵ “Free and balanced flow” gradually became the standard term used by UNESCO to promote changes of the international communication order.

However, the formula for “free and balanced flow” raised questions. It may not be too difficult to empirically identify phenomena of the imbalance of information flows and to associate such imbalance with technical and economic dependency, but what should be the criteria for a “free and balanced flow”? Given the obvious difficulty of defining “free and balanced flow” in abstract, advocates of NWICO often approached the issue by emphasizing other, better understood principles. For example, Osolnik, the Yugoslavian member of the ICSCP, argued that the formula should be understood along with the following conditions:⁵⁶

1. Respect for equality of all nations and all cultures; the provision of equal opportunities which will enable them to assert themselves in international communications in a multidirectional and multi-dimensional flow of information;
2. Recognition of a pluralism of values and interests, of the need to respect their variety as a reality of the modern world;
3. Recognition of the responsibility of all those who in any way participate in international communications to realize the principles of the United Nations—especially those of peaceful coexistence, respect for the sovereign equality of nations and their right to self-determination, non-intervention in the inner development of other countries, etc.;
4. Respect of the right of any country to protect its sovereignty and independence by also adopting a policy in the field of culture and information and of its responsibility in this connection to refrain from procedures which are in contravention to the principles of the Charter of the United Nations and international law.

⁵¹ Boobli George VERGHESE, *A Philosophy for Development Communications: The View from India*, Report for the International Commission for the Study of Communication Problems, (Paris: UNESCO, 1978), at 9.

⁵² *Ibid.*

⁵³ Masmoudi, *supra* note 22 at 11.

⁵⁴ *Ibid.*

⁵⁵ *Medium-Term Planning Analysis*, *supra* note 17.

⁵⁶ Osolnik, *supra* note 23 at 12.

It is apparent that Osolnik built the notion of the “free and balanced” information flow on the fundamental principles of state sovereignty and sovereign equality, which was a common move of NWICO⁵⁷ and reflected the general state-centric approach of Third World initiatives in that era. In particular, this approach was central to two arduous, decade-long struggles over the regulation of satellite activities in the 1970s and 1980s, which were of great relevance to rebalancing international information flows. One concerned direct broadcasting by satellites and the other concerned remote sensing by satellites. The former, which will be discussed later, posed challenges for the cultural identity and political and ideological self-determination in the Third World, while the latter discussed the economic value of natural resources data collected by remote sensing satellites. In both cases, Third World countries insisted on the principle of sovereignty, equality, and self-determination, and demanded that such satellite activities obtain the prior consent of the country receiving the direct satellite broadcasting from another country, or sensed by foreign satellites. With particular regard to satellite remote sensing, Argentina and Brazil spearheaded the campaign at the UN Committee on Peaceful Uses of Outer Space (COPUOS) to extend permanent sovereignty over natural resources to sovereignty over the information about these physical assets.⁵⁸ This sovereigntist position contradicted the US’s stance of the free flow of information.⁵⁹ No treaties for these two issues were possible; non-binding principles were adopted instead. In the 1972 UNESCO Declaration of Guiding Principles on the Use of Satellite Broadcasting or the Free Flow of Information, the Spread of Education and Greater Cultural Exchange, a country conducting direct satellite broadcasting to another country was required to obtain “prior agreement” of that country.⁶⁰ This requirement was toned down to only require notification and consultation,⁶¹ which nevertheless affirmed that satellite broadcasting should respect the sovereignty rights of states, including the principle of non-intervention.⁶² As for satellite remote sensing, claiming permanent sovereignty over natural resource information did not succeed. Instead, a compromise was reached in the 1986 Principles Relating to Remote Sensing of the Earth from Outer Space, where the sensed state has the right to consult and gain access to the data gathered and processed by external remote sensing, as well as any analysed information concerning its territory.⁶³

⁵⁷ See, for example, the Report of the Meeting of Experts on Communication Policies held in Latin America in Bogota, which stated that “each country and each government should formulate its own national communication policy within the specific framework of the country” and that “the formulation of communication policies is necessarily incumbent on the state”. *Final Report*, Report of the Meeting of Experts on Communication Policies in Latin America, UNESCO, Luis Ramiro BELTRÁN, COM.74/Conf.617/4 (4–13 July 1974) [*Latin America Report*], at 7.

⁵⁸ Aldo Armando COCCA, “Remote Sensing of Natural Resources by Means of Space Technology: A Latin American Point of View” in Nicolas Mateesco MATTE and Hamilton DESAUSSURE, eds., *Legal Implications of Remote Sensing from Outer Space* (Leiden: A. W. Sijthoff, 1976) 63.

⁵⁹ The US perspective for satellite remote sensing was a combination of freedom of information and freedom of use of outer space. See Carl Q. CHRISTOL, *The Modern International Law of Outer Space* (Oxford: Pergamon Press, 1984) at 734–5; Monroe LEIGH, “United States Policy of Collecting and Disseminating Remote Sensing Data” in Nicolas Mateesco Matte and Hamilton Desaussure, eds., *ibid.*, at 147–50.

⁶⁰ UNESCO Declaration of Guiding Principles on the Use of Satellite Broadcasting for the Free Flow of Information, the Spread of Education and Greater Cultural Exchange, 17th Session of the General Conference of UNESCO (Paris, 15 November 1972), online: UNESDOC <<https://unesdoc.unesco.org/ark:/48223/pf000002136>>, Article IX.

⁶¹ *Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting*, 37th Session of the UN General Assembly (4 February 1983), A/RES/37/92, Annex, at para. 13

⁶² *Ibid.*, at para. 1.

⁶³ *Principles Relating to Remote Sensing of the Earth from Outer Space*, 41st Session of the UN General Assembly (22 January 1987), A/RES/41/65, Principles XII and XIII.

Besides the emphasis on state sovereignty and sovereign equality, another effort to rebalance international communication flow was to articulate the responsibilities of the mass media. The position of many Third World countries was that the state should have the right to regulate the mass media to ensure it would not undermine the country's cultural integrity, and prevent it from being used for harmful propaganda to sow seeds of hatred or offend national feelings.

The most controversial issues of this position concern state responsibility and the right to correction. For the former, Third World countries proposed that the state should be held internationally responsible for the conduct of their mass media when such media operated outside the state's territory.⁶⁴ Syria made a more radical argument by suggesting that states should also do their utmost "to ensure that the mass media not under its direct jurisdiction operate" in accordance with the objectives of strengthening peace and international understanding.⁶⁵ The proposal of state responsibility was clearly targeted at transnational media corporations, but was objected to by many Western countries who saw it as contradictory to human rights and the constitutional principle of free speech in many countries.⁶⁶

For the latter issue, the Third World countries claimed that states should have the right to correction when news reports are wrong and injure inter-state relations or the state's national prestige as a result.⁶⁷ This right to correction was also derived from the view of some Third World and socialist countries that the freedom of expression and information was only pertinent to the dissemination of truthful, accurate, and objective information. This way of qualifying freedom of information was considered by Western countries as potentially justifying governmental restrictions on media freedom.⁶⁸ The tough, eight-year normative and ideological debate led to fatigue and compromises. An ideological compromise, the Mass Media Declaration, was finally adopted at the UNESCO General Conference in 1978,⁶⁹ which omitted any reference to state responsibility and the right to correction,⁷⁰ but promised Third World countries technical and economic aid to develop their mass media.

In addition to rebalancing the power of Third World states and transnational media corporations, NWICO attached great importance to regional cooperation between Non-Aligned Movement countries to facilitate exchanges and strengthen their collective capacity to communicate with the outside world.⁷¹ The creation of the Non-Aligned News Agencies Pool in 1975, was one of the major practical achievements of NWICO.

⁶⁴ See UNESCO, *Historical Background of the Mass Media Declaration* (Paris: UNESCO, 1982) at 30.

⁶⁵ *Draft Declaration on Fundamental Principles Governing the Use of the Mass Media in Strengthening Peace and International Understanding and in Combating War Propaganda, Racism and Apartheid: Summary of Interventions Made in Programme Commission III of the Nineteenth Session of the General Conference*, 19th Session of the General Conference of UNESCO, CC.77/WS/21 (1977), at 35.

⁶⁶ UNESCO, *supra* note 64 at 25.

⁶⁷ Principle VII of the Draft Declaration of Fundamental Principles Governing the Use of the Mass Media, submitted for adoption to the 18th session of UNESCO General Conference. The full text of this draft declaration is available in *ibid.*, 18–22.

⁶⁸ *Ibid.*, at 27–8.

⁶⁹ *Declaration on Fundamental Principles Concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War*, 20th Session of the General Conference of UNESCO, RES/4/9.3/2 (1978) [Mass Media Declaration].

⁷⁰ The only place where the word "responsible" appeared was in Article VIII, stipulating responsibilities of professional organizations. As for the right of correction, Article V only required the views of those who felt seriously prejudiced by the published information be disseminated.

⁷¹ The combination of national policies with regional cooperation was a common strategy. See, for example, UNESCO, "Meeting of Experts on the Development of News Exchange Arrangements in Latin America, Quito, 1975" COM-75/CONF.603/4 (12 August 1975); *Latin America Report*, *supra* note 57.

The pool had several “redistributive centers” such as Telegrafiska Agencija Nova Jugoslavija (in Yugoslavia), Tunis Afrique Presse, and the Iraqi News Agency to gather and redistribute news items transmitted from participating news agencies and cooperated with other regional news services such as the Inter Press Service.⁷² The pool also cooperated with UN agencies to report major conferences and organize journalist training programs.⁷³ According to the MacBride Report, the pool contributed to the vast increase of news exchange between Non-Aligned Movement countries and helped them improve telecommunication facilities, establish news agencies, and increase training facilities for journalists.⁷⁴

2. Alternative conceptions of information

One of the central questions posed by NWICO’s critique was how to reconceptualize “information” to replace its present capitalist conception. Masmoudi gave an unambiguous answer: “information must be understood as a social good and a cultural product, and not as a material commodity or merchandise”.⁷⁵ As a social good, information should be free from market logic, to allow “all countries [to] enjoy the same opportunities of access to sources of information as well as to participate in the communication process.”⁷⁶

Related to this non-commodified notion of information, Masmoudi offered a non-individualist conception of the right to freedom of information. For him:⁷⁷

[i]f it is true that the right to information is intrinsic to the human condition, it is nonetheless a natural right of every human community, in the sense that each people feels an overpowering urge to communicate with ‘the other’, not only in order to come to terms with and to preserve its own personality but also in order to know and understand other peoples better.

He argued that the prominence given to the individualist notion of rights had empowered those who already owned or controlled communication media and was detrimental to the rights of communities and groups. By contrast, a non-commodified and non-individualist understanding of information and the right to freedom of information prioritized collective, sociocultural needs of developing countries and placed responsibilities on the communicator – such as the media corporations – toward those receiving information.⁷⁸

While Masmoudi’s conception of information focused on information’s social-cultural dimension, other advocates of NWICO considered the economic dimension of information critically important. For example, Jan Pronk, the Dutch member of the ICSCP, saw information as “a scarce economic good or service”, and communication as a process by which information was produced, exchanged, and consumed.⁷⁹ He distinguished information from other economic goods: it was non-material with a high non-economic value; it was a condition for producing, exchanging, and consuming other economic goods; in the information sector, producers were able to influence demand for it and the exchange

⁷² The Inter Press Service was created in 1964 as a co-operative to provide news to Latin America.

⁷³ Inger ÖSTERDAHL, *Freedom of Information in Question: Freedom of Information in International Law and the Calls for a New World Information and Communication Order (NWICO)* (Uppsala: Iustus Forlag, 1992) at 174.

⁷⁴ *MacBride Report*, *supra* note 19 at 85.

⁷⁵ Masmoudi, *supra* note 22 at 15.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*, at 6.

⁷⁸ *Ibid.*

⁷⁹ Jan PRONK, *Some Remarks on the Relation between the New International Information Order and the New International Economic Order*, Report for the International Commission for the Study of Communication Problems, (Paris: UNESCO, 1978), at 11.

was not followed by the loss of information of suppliers.⁸⁰ These characteristics, as argued by Pronk, meant that information should not be subject to a free-market mechanism that would lead to huge inequality and harm the public.

Hamelink offered yet another perspective on information, conceiving of information as “a national resource”.⁸¹ With the change from analogue to digital form, the technical distinction between data flows and information flows has become increasingly obsolete. This led him to hold a broader view of information, which included not only news items and cultural products but, more crucially, digitized data transmitted by satellites and processed by computers. Digitized data and cross-border data transfers already form a vital part of international business and banking activities; they are also critically important for national decision-making. As mentioned earlier, he argued that the unequal access to informatics technology undermined the decision-making capacity of many Third World countries and their national development.⁸² However, he also saw information as unlike other resources; for it can be collected, processed, and sold many times, which may allow Third World countries to exploit information more easily than exploiting mineral or agricultural resources.⁸³

Underlying these different notions of information was the consensus about treating it as a public good. As expressed by Latin American scholars in 1974, “communication is a necessary public utility and, as such, should be entirely at the service of the entire population”.⁸⁴ This understanding was reflected in the contemporaneous Third World endeavour to change the intellectual property (IP) protection system. Not only did countries like India and Brazil reform domestic IP laws and use tools in the Paris and Berne Conventions, such as compulsory licensing and denial of registration, to give their population greater access to copyright or patented materials, at the World Intellectual Property Organization (WIPO) they also pushed to amend these conventions to further restrict the rights of IP holders and enable more liberal use of compulsory licensing to serve public interests such as mass education.⁸⁵ Here, the tension between these different conceptions of information played out vividly. Whereas the Third World countries emphasized the public good nature of certain information and its indispensable role for national development, and considered IP largely as barriers to information flows, Western countries argued that a strong IP protection was a precondition and facilitator of technology transfer and the free flow of scientific knowledge,⁸⁶ showing their vision of the free flow of information as one based on the firm protection of individual property rights.

3. Linking NWICO with NIEO

Compared to Masoudi’s conception of information, which stressed its sociocultural values, the approach taken by Pronk and Hamelink more clearly spotlighted the material conditions for information imbalance and its intrinsic relation with traditional and more well-

⁸⁰ *Ibid.*, at 13.

⁸¹ Hamelink, *supra* note 43 at 6.

⁸² *Ibid.*, at 4.

⁸³ *Ibid.*, at 5–6.

⁸⁴ *Latin America Report*, *supra* note 57 at 13.

⁸⁵ Sam F. HALABI, *Intellectual Property and the New International Economic Order: Oligopoly, Regulation, and Wealth Redistribution in the Global Knowledge Economy* (Cambridge: Cambridge University Press, 2018) at 45–6. The consequence of this effort to revise IP was not dissimilar to NWICO’s own result: the US was alarmed by the Third World’s demand, and shifted the forum from WIPO to the General Agreement on Tariffs and Trade, leading to the incorporation of IP in trade and the reinforcement of the private property conception of scientific knowledge. See Peter DRAHOS and John BRAITHWAITE, *Information Feudalism: Who Owns the Knowledge Economy?* (London: Earthscan, 2002).

⁸⁶ Hamelink, *supra* note 41 at 222.

understood forms of dependency and domination. The latter approach was also strategically useful, as it allowed NWICO to be linked to another highly influential movement of the 1970s, the NIEO movement. The close relationship between these two movements was acknowledged by the Non-Aligned Movement countries who claimed that NWICO was “as vital as” NIEO.⁸⁷ It was also reflected in UNESCO’s agendas since the mid-1970s, which began to incorporate the goals of NIEO. It saw UNESCO playing an important role in establishing NIEO by supporting developing countries in strengthening their information and communication systems.⁸⁸ It saw NIEO and NWICO as “indissolubly linked”.⁸⁹

Strategically, connecting NWICO to NIEO not only allowed NWICO to benefit from NIEO’s momentum and success, it also gave NIEO a new front and task. More crucially, to thinkers like Hamelink and Nordenstreng, it was important to build NWICO on the values and semantics of NIEO in order to retain NWICO’s radical character, and to prevent its demands from being turned to “yet another mechanism to subtly integrate the dependent countries in an international order which perpetuates their dependence”.⁹⁰

Connecting these two movements enabled advocates to draw on NIEO to elaborate on the content of NWICO. For example, Pronk saw NWICO as essentially a subsystem of NIEO rather than a separate movement complementing NIEO. Defining information as “a scarce economic good or service”, he drew analogies between the process of communication on the one hand and the process of production and consumption of oil and textiles on the other hand, and approached the issue of informational imbalance from the angle of market structure. He condemned that “the international information market is as little free and as little competitive as ... the international crude oil market”.⁹¹ As discussed earlier, his assessment entailed the call for governmental intervention to rebalance market forces through, *inter alia*, the socialization of means of production of information.⁹²

Pronk’s tying of NWICO to NIEO was shared by many others who believed that these two movements shared the same foundation,⁹³ and that principles of NIEO should be applicable to NWICO.⁹⁴ In more analytical terms, the connection between the two new orders was entailed by the fact that international communication was “an integral part”

⁸⁷ Fifth Conference of Heads of State or Government of Non-Aligned Countries at Colombo, 1976, “Political Declaration” (16–19 August 1976) NAC/CONF.5/S.2 at 50, online: James Martin Center for Nonproliferation Studies <http://cns.miis.edu/nam/documents/Official_Document/5th_Summit_FD_Sri_Lanka_Declaration_1976_Whole.pdf>.

⁸⁸ During the 19th Session of the General Conference of UNESCO in Nairobi, UNESCO adopted the Medium-Term Plan for 1977–1982, which declared that efforts to redress imbalance of international communication “should be based upon deep deliberation, taking into consideration all the problems of communication in society, and taking account of those things which are needful for the establishment of a new international economic order”: *Medium-Term Plan, 1977–1982*, 19th Session of the General Conference of UNESCO, 19 C/A Approved (1976), at IX.

⁸⁹ *Ibid.*, at 78.

⁹⁰ Kaarle NORDENSTRENG, “Defining the New Information Order” in George GERBNER and Marsha SIEFERT, eds., *World Communications: A Handbook* (New York: Longman, 1984) 28, at 33; Hamelink, *supra* note 43 at 9.

⁹¹ Pronk, *supra* note 79 at 14.

⁹² *Ibid.*, at 15.

⁹³ For example, the MacBride Report saw information as “a specific kind of economic resource” and identified “a coherent correlation” between the two orders: *MacBride Report*, *supra* note 19 at 39. Masmoudi saw NWICO as the essential corollary of NIEO: Masmoudi, *supra* note 22 at 22. Osolnik claimed that “only far-reaching changes in international economic relations can ensure the developing countries the material and technical conditions needed for the development of their own information and communication system”: Osolnik, *supra* note 23 at 9.

⁹⁴ For example, Pronk drew from NIEO and argued that NWICO should include: focus on development, and not only on growth; focus on society as a whole, not only economically but also socially and culturally; self-reliance as a basis; people’s participation as pre-condition; freedom as a means; harmony and justice as the aim: Pronk, *supra* note 79 at 12.

of the existing international economic relations.⁹⁵ Furthermore, as Hamelink considered information to be a national resource with distinct features, he argued that it could have “a liberating force” if the information field was developed based on the principles of NIEO.⁹⁶ Similar to Pronk, he built the definition of NWICO on elements of NIEO: “an international exchange of information in which nations, which develop their cultural system in an autonomous way and with complete sovereign control of resources, fully and effectively participate as independent members of the international community”.⁹⁷ Based on this definition, he argued that national information policies and programmes should be designed for two aims, first, national self-reliance, which meant that resource information should be thoroughly exploited by the state to meet the basic socio-economic needs of the population and to develop endogenous informational models and, second, collective self-reliance. This in turn meant that Third World countries should exchange and share resources, facilities, and technology with each other in order to build horizontal links of international communication.⁹⁸ He specifically raised these two aims within the informatics sector, which, from his view, simultaneously served as a vital stronghold for the existing economic and communication systems and provided a basic infrastructural component of NIEO and NWICO. Accordingly, establishing these two new orders would require national and collective self-reliance through sovereign control of the informatics sector.⁹⁹

Whilst NIEO provided NWICO with useful advocacy and conceptual tools, it was also clear that the new information order would have a profound impact on NIEO as well: “[c]hanges in a prevailing economic order demand changes in the underlying information order”.¹⁰⁰ Similarly, the MacBride Report acknowledged the transformative impact of information, claiming that “the new communication order is a pre-condition of the new economic order, just as communication is the *sine qua non* of all economic activities”.¹⁰¹

Hence the relationship between NIEO and NWICO may be seen as one of co-dependence and co-production, essentially mirroring the imbrication between the information imbalance and economic dependency that advocates of NWICO had identified. The mutually constitutive and supportive relationship of these two new orders also pointed to the enormous task and difficulty of NWICO. In this regard, Pronk described “a vicious circle” challenging NWICO and NIEO:¹⁰²

[A]ny given information order is a subsystem of the prevailing economic order, and possibilities of changing that information order depend on the distribution of (economic) power within the economic order, which makes it very difficult to implement changes in the direction of a [NWICO], which in itself is a precondition for the creation of a NIEO of which it in turn should become a subsystem.

⁹⁵ Hamelink, *supra* note 43 at 2.

⁹⁶ He listed the following principles: the sovereignty and equality of states; the full and effective participation of all states in international decision-making; the right of all states to adopt appropriate economic, political, and cultural systems; the full permanent sovereignty over national resources; the right to regulate the activities of foreign entities (such as transnational corporations) in concurrence with national goals and priorities; the right to formulate a model of autonomous development geared towards the basic needs of the population; the right to pursue progressive social transformation that enables the full participation of the population in the development process. *Ibid.*, at 6.

⁹⁷ *Ibid.*, at 7.

⁹⁸ *Ibid.*, at 8.

⁹⁹ Cees J. HAMELINK, “Informatics: Third World Call for New Order” (1979) 29 *Journal of Communication* 144, at 147.

¹⁰⁰ Pronk, *supra* note 79 at 17.

¹⁰¹ *MacBride Report*, *supra* note 19 at 39.

¹⁰² Pronk, *supra* note 79 at 17.

For Pronk, breaking through this vicious circle needed collective self-reliance and partial de-linking,¹⁰³ a strategy informed by NIEO's experience.

C. Summary: NWICO and Self-Empowerment of the Third World

It would be incorrect to say that NWICO was the first occasion for Third World countries to voice their demand for rebalancing international information flows. Such a demand had been implicit in Third World campaigns. What NWICO did was to elevate the information and communication field, make it the new front of the anti-colonial and national liberation agenda, and align it with the development needs of Third World countries. Meanwhile, NWICO also captured the spirit of contemporaneous Third World endeavours outside UNESCO (for example, NIEO and the campaigns in COPUOS and WIPO) and linked them to this new world vision of international communication.

By identifying the symptoms and historical root causes of the North/South informational imbalance, NWICO powerfully exposed the colonial nature of existing patterns and structures in international information flows, their capitalist nature, and the material conditions that locked Third World countries in the dependency relationship – which hampered not only their economic development, but also political, cultural, and ideological self-determination. The new world order of information and communication envisioned by NWICO advocates would be built upon a conception of information as common good and a collectivist notion of freedom of information. The primary agent to enact NWICO would be the states who exercise sovereign control over the information flow through the establishment of national communication infrastructures. This new world order would see the dominance and monopoly of Western media conglomerates coming to an end, as well as greater regional cooperation and mutual understanding among developing countries.

II. INTERNAL CRITIQUE AND AFTERMATH

Just like NIEO, which was “not a single coherent entity”,¹⁰⁴ there was a considerable degree of diversity at conceptual and practical levels in NWICO, despite its overarching anti-colonial and self-empowerment goals. From the outset, the precise name of NWICO was subject to debate and critique, which, interestingly, became more intense as NWICO made its way to UNESCO and received support from the UN. The term used by the Non-Aligned Movement countries was “new international” information order, which was changed to “new world” order at UNESCO. Some critics believed that this change from “international” to “world” deradicalized the campaign. Kaarle Nordenstreng, a Finnish communication expert who was one of the first to empirically identify imbalances of international communication, expressly argued that the word “world” was a device to dissociate this new information order from NIEO, and that “world order” also implied the theory of interdependence, which in many instances had been used to co-opt the interests of developing countries to make them collaborate with, rather than fundamentally change, the Western “transnational-corporate order”.¹⁰⁵

As discussed below, the worry about tokenism was not unwarranted. More descriptors were added to NWICO at UNESCO, such as “new, more just and more balanced world information and communication order”,¹⁰⁶ a “new, more just and more effective world

¹⁰³ *Ibid.*, at 18.

¹⁰⁴ Gilman, *supra* note 11 at 2.

¹⁰⁵ Nordenstreng, *supra* note 90 at 34.

¹⁰⁶ *Mass Media Declaration*, *supra* note 69, Preamble.

information and communication order”,¹⁰⁷ and a “New World Information and Communication Order, seen as an evolving and continuous process”.¹⁰⁸ Some academic critics of NWICO considered these descriptors as largely Westernized terminology, and the word “more” suggested that radical breaks with the existing system were to be avoided.¹⁰⁹ The politics of terminology was indicative of the general strategic shift towards achieving compromises between starkly different ideological groups. The MacBride Report itself was an example of this. For instance, it stressed that “communication is a basic individual right, as well as a collective one”, and the freedom of information “is a fundamental human right”,¹¹⁰ which clearly contrasted with the Non-Aligned Movement countries’ approach of prioritizing collective and social needs. Such compromise, though, perhaps, necessary for NWICO to obtain broad support, led Sergei Losev, the Soviet member of the ICSCP, to claim that “the position of developing countries has been eroded”.¹¹¹

Besides the terminological problem, this section focuses on two substantive issues of internal critique which will be further reflected upon in the next section. One concerned technology. That new technology tended to reinforce dependency was widely acknowledged, but how to respond to new technologies remained an open question. It seemed that the majority of NWICO advocates implicitly accepted a progressive narrative, with new technology creating avenues for development and modernization and calling for greater transfer of technology and scientific knowledge – with, of course, the precondition that it should fit local conditions and development needs and should contribute to achieving technological self-reliance. Even though mass media and satellite technology were criticized by some advocates using striking terms such as “cultural invasion”¹¹² and “mental rape”,¹¹³ the issue was generally framed as the lack of equal access to information sources, the unequitable distribution of benefits brought by these new technologies, and the lack of national control over them. Most NWICO advocates did not question technology’s progressive promises as such, nor the associated ideology of development. For example, Gutiérrez Vega claimed that “no one ... wishes to set the clock back, or to forget the promises which technological progress holds out for the future of mankind”.¹¹⁴ Similarly, Verghese claimed that “there is no cause to fear technology”.¹¹⁵ This general acceptance of technology’s progressiveness was criticized by Gabriel Garcia Marquez and Juan Somavia (members of the ICSCP) who stressed that technological solutions should not be glorified because the technological promise was “neither neutral nor value-free”.¹¹⁶ Similarly, Herbert Schiller, an American cultural critic, launched a powerful attack against the idea that:¹¹⁷

technology is autonomous”, arguing that technologies developed from advanced capitalism was themselves embedded in the capitalist structure and served the prevailing system of social power. Accepting technology as autonomously evolving in

¹⁰⁷ *Ibid.*, at 102.

¹⁰⁸ UNESCO’s *Contribution to the Attainment of the Objectives of the New International Economic Order*, Report by the Director-General, 22C/13 (1983), at para. 78.

¹⁰⁹ Österdahl, *supra* note 73 at 167.

¹¹⁰ *MacBride Report*, *supra* note 19 at 253.

¹¹¹ *Ibid.*, at 279.

¹¹² *Ibid.*, at 164.

¹¹³ Masmoudi, *supra* note 22 at 7.

¹¹⁴ Gutiérrez Vega, *supra* note 42 at 2.

¹¹⁵ Verghese, *supra* note 51 at 9.

¹¹⁶ *MacBride Report*, *supra* note 19 at 281.

¹¹⁷ Herbert I. SCHILLER, *Communication and Cultural Domination* (New York: M. E. Sharpe, 1976) at 50–1.

progressive way would deprive people of their agency to determine what technologies they want through democratic processes.

The other critical issue concerned what NWICO would mean for domestic democratization. The presumption of “statism”, as expressed by NWICO’s proposals to strengthen national control and planning in the information and communication field was, unsurprisingly, attacked by NWICO’s opponents who saw this as an attempt to promote governmental censorship and violate the right to freedom of information.¹¹⁸ NWICO’s advocates repeatedly claimed that, on the one hand, there was no necessary connection between having national communication policies or planning and, on the other hand, the control over content. Content censorship could happen regardless of whether a state formally adopted communication policies and whether the media ownership was public or private. But this criticism indeed raised the problem of the suppression of free speech by the Third World governments for the sake of implementing national information and cultural policies to equalize international communication. This problem was, however, largely marginalized in the NWICO debate, for its major effort was directed against the domination by Western countries, especially former colonial powers.

Nevertheless, this external criticism was picked up by a few NWICO advocates to critique and reconsider its purpose and strategy. Beltrán, reflecting on the Latin American experience, condemned “vertical communication” as a tool of mercantilism, propaganda, and alienation to entrench both external domination and internal domination by power elites over the masses. For Schiller, strengthening national communications capacity and asserting a country’s cultural sovereignty did not justify the existence of repressive establishments in the developing world. Instead, the liberation of culture and communication should be “opposed to repressive authority and domination regardless whether it is exercised from within or outside the country”.¹¹⁹ In his view, the project of cultural and communication liberation required “vigilance” over those who, while supporting the causes of NWICO, occupied privileged positions in the Third World and held deep down prejudices of their own class, and might use the anti-colonial efforts of the masses to re-establish their own domination over the people.¹²⁰

Similarly, Verghese believed that international struggles were inseparable from domestic ones.

The foundations of the New International Economic Order and the New International Information Order will be well and truly laid if they are simultaneously laid at home —within developing societies. There has to be freedom and balance in the flow of

¹¹⁸ A comment by Ithiel de Sola Pool (a professor at Massachusetts Institute of Technology) illustrated the delicate position of NWICO advocates: “The people who write indignantly about cultural imperialism and warn that direct satellite broadcasting can violate the cultural identity of peoples are sometimes traditionalist conservatives, but more often they are of the left: American new-leftists, Chilean radicals, Scandinavian social democrats, and so forth ... Increasingly they find themselves pushed by the logic of their position to see themselves as more opposed to liberalism ... Their ideological predecessors fought to liberate the print media from state control, but increasingly people who call themselves men of the left find themselves advocating state monopoly control of the newer media. Thus a strange alliance puts conservative military regimes or theocratic oligarchies at one with nominal progressives in defense of censorship. Needless to say, the things they want censored, what they want controlled, and by whom are different. But they unite in advocating restrictions on broadcasting and other instrumentalities of the free flow of information.” Ithiel DE SOLA POOL, “Direct Broadcast Satellites and the Integrity of National Cultures” in Kaarle NORDENSTRENG and Herbert I. SCHILLER, eds., *National Sovereignty and International Communication* (New Jersey: Ablex Publishing Corporation, 1979) 120, at 140.

¹¹⁹ Schiller, *supra* note 117 at 86.

¹²⁰ *Ibid.*

news and in communications structures at home as much as abroad. To separate these two aspects would be mistaken even if it were possible.¹²¹

To pursue domestic democratization of communication, which in itself could play a crucial role in national integration, Verghese argued that national communication policies should encourage public participation, especially in rural areas, and should incorporate local specificities such as traditional media and language diversity.

As will be discussed later, these two questions – technology and domestic democratization – exemplified the conceptual and practical limits of many advocates who embraced developmentalism and saw the state as the agent to establish NWICO. These limits converged with a broader shift from ideological confrontations towards pragmatism at the UN agencies: while NWICO obtained the UN's endorsement in the late 1970s and early 1980s,¹²² the conceptual and ideological debate about the international flow of information gave way to more practical and measurable achievements on the building of communication infrastructures.¹²³ In this context, some advocates' concern about the deradicalization of NWICO became real. The Twenty-First General Conference of UNESCO invited the Director-General to take "the necessary measures to follow up the suggestions"¹²⁴ presented in the MacBride Report and to set up the International Programme for the Development of Communication (IPDC).¹²⁵ In Resolution 4/19, UNESCO described NWICO as based on the following "considerations":¹²⁶

- (i) Elimination of the imbalances and inequalities which characterize the present situation;
- (ii) Elimination of the negative effects of certain monopolies, public or private, and excessive concentrations;
- (iii) Removal of the internal and external obstacles to a free flow and wider and better balanced dissemination of information and ideas;
- (iv) Plurality of sources and channels of information;
- (v) Freedom of the press and information;
- (vi) The freedom of journalists and all professionals in the communication media, a freedom inseparable from responsibility;

¹²¹ Verghese, *supra* note 51 at 17.

¹²² The UN General Assembly adopted Resolution 33/115 in 1978, which affirmed "the need to establish a new, more just and more effective world information and communication order, intended to strengthen peace and international understanding and based on the free circulation and wider and better-balanced dissemination of information" and acknowledged that this new world order "should reflect in particular the concerns and legitimate aspirations of the developing countries". See *International Relations in the Sphere of Information and Mass Communication, Resolution 33/115B*, UN Doc. A/RES/33/115B (1978). It also created the UN Committee on Information to examine UN's public information policies and activities in the light of the need to establish the NIEO and NWICO.

¹²³ For example, a round table on NWICO was organized by the UN and UNESCO in 1983. At the roundtable, the Chairman of the UN Committee on Information argued that the "gaps in perception" between the developed and developing countries had impeded the establishment of a NWICO and that the differences needed to be reconciled. Similarly, the General Rapporteur of the International Council of IPDC argued that the IPDC's work was to be a practical effort aimed at helping developing countries build their own communication infrastructures. See *Study of Communication Problems: Implementation of Resolutions 4/19 and 4/20 Adopted by the General Conference at Its Twenty-First Session*, Report by the Director-General, 22 C/96 + ADD., A/AC.198/70 (1983).

¹²⁴ See Part V of Resolution 4/19: *Volume 1: Resolutions*, Records of the Twenty-First Session of the General Conference of UNESCO, 21 C/Resolutions (1980), at 70.

¹²⁵ See Resolution 4/21, *ibid.*, at 72.

¹²⁶ See Resolution 4/19 at Part VI, *ibid.*, at 71.

- (vii) The capacity of developing countries to achieve improvement of their own situations, notably by providing their own equipment, by training their personnel, by improving their infrastructures and by making their information and communication media suitable to their needs and aspirations;
- (viii) The sincere will of developed countries to help them attain these objectives;
- (ix) Respect for each people's cultural identity and for the right of each nation to inform the world public about its interests, its aspirations and its social and cultural values;
- (x) Respect for the right of all peoples to participate in international exchanges of information on the basis of equality, justice and mutual benefit;
- (xi) Respect for the right of the public, of ethnic and social groups and of individuals to have access to information sources and to participate actively in the communication process.

Some critics commented that this Resolution can be construed in a Western way, and therefore did not challenge the present liberal conception of freedom of information.¹²⁷ As NWICO was characterized as an “evolving and continuous process”, subsequent UNESCO Resolutions emphasized technical solutions that addressed developing countries' needs, which was not opposed by the West. The creation of the IPDC, whose main mandate was to develop communication infrastructures by managing the financing of information and communication projects in the developing world, epitomized this turn to pragmatism that emphasized tangible progress. Even this pragmatic consensus was fiercely pushed back by some American media corporations and organizations, depicting UNESCO as having “declared war against the Western free press” and NWICO and NIEO as “a formula for a global socialist state”.¹²⁸ The pushback culminated in the withdrawal of the US and UK from UNESCO in 1984 and 1985, respectively. The forum of NWICO then moved to the UN General Assembly, the Committee on Information, and the International Telecommunications Union¹²⁹ where the same shift towards pragmatism emerged with a new climate of detente between the East and West.¹³⁰ Briefly, by the end of the 1980s, NWICO and its radical normative challenge on the liberal-capitalist notion of freedom of information became largely irrelevant to the discussion and policymaking on international communication.

III. REFLECTIONS ON NWICO'S LEGACY FOR TWAIL SCHOLARSHIP

Curiously, as a sister project of NIEO, NWICO has not attracted much attention of TWAIL scholars, not to say the broader international legal scholarship. A plausible explanation is that many of those involved in NWICO were scholars and experts in communication and

¹²⁷ Österdahl, *supra* note 73 at 219.

¹²⁸ A comment made by the Heritage Foundation, quoted in William PRESTON, Edward S. HERMAN and Herbert I. SCHILLER, *Hope and Folly: The United States and UNESCO, 1945-1985* (Minneapolis: University of Minnesota Press, 1989) at xvii.

¹²⁹ Interestingly, the International Telecommunications Union released two reports, known as the Maitland Report and the Hansen Report, in 1985 and 1989, on the communication gap between the Global North and the Global South. Their findings about the gap was consistent with the MacBride Report, but did not address the sociopolitical implications of the communication gap at all. Instead, they proposed solutions focusing on the administrative reform of the telecommunication sector to allow the liberalization and privatization of domestic telecommunication markets. See Independent Commission for World Wide Telecommunications Development, *supra* note 50; *The Changing Telecommunication Environment: Policy Considerations for the Members of the ITU*, Report of the Advisory Group on Telecommunication Policy, Poul HANSEN, ITU(063.2)/C3 (1989).

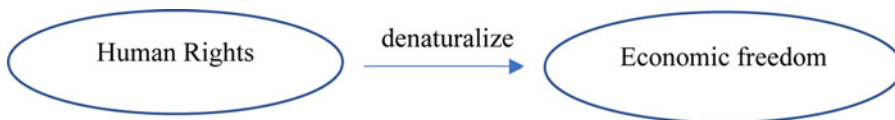
¹³⁰ Österdahl, *supra* note 73 at 250–2.

cultural studies. They were only engaged with international law indirectly and unsystematically, whereas protagonists of NIEO, such as Mohammed Bedjaoui, were high-profile legal professionals and provided a clear legal articulation of NIEO. In addition to this disciplinary difference, the oblivion of NWICO may also suggest that while TWAIL scholarship has offered valuable critiques about colonial legacies and epistemological biases in international law, it has not paid particular attention to how international law might have co-evolved with a materially unbalanced process of information production and exchange. This lack of attention also means that TWAIL has yet to develop a critique of freedom of information to account for how information flows generate distributive effects, and how these effects are reproduced by both international law and political economic conditions. Such a critique may eventually emerge, and this paper invites future TWAIL scholars to engage with NWICO and retell this history. Here, I provide a few preliminary reflections about how NWICO complements or complicates TWAIL scholarship.

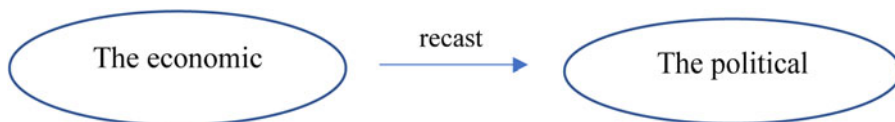
A. Politicization as a Strategy of Struggle

The NWICO story exemplifies Third World countries' effort to redefine certain liberal and seemingly apolitical notions as political. In this story, politicization took mainly two following steps:

Step 1



Step 2



First, freedom of information, which was characterized by opponents of NWICO as a fundamental human right, was denaturalized by NWICO advocates to demonstrate its fundamentally capitalist character in the prevailing international information order. This denaturalization of human rights was seen in, for example, Masmoudi's claim that freedom of information was actually "the freedom of information agent". Similarly, Schiller analysed various statements by American media managers in the post-Second World War era, and argued that the universal human right to freedom of information was redefined by media corporations as the universal extension of their property rights.¹³¹ This redefinition gave media corporations the moral high ground, and any proposal designed to redress the imbalance of the information flow was easily attacked by the media as restricting the right to freedom of information.¹³² Examining the US's foreign policies, Schiller further demonstrated how the American version of freedom of information

¹³¹ Schiller, *supra* note 117 at 41; Herbert SCHILLER, "Freedom from the 'Free Flow'" (1974) 24 *Journal of Communication* 110, at 113.

¹³² To this, Osolnik deplored that "the concept of freedom of information and of the free international flow of information had been so generally accepted as an absolute value that any discussion on responsibilities in international relations in this field was a priori impossible": Osolnik, *supra* note 23 at 10.

was intimately tied to the freedom of commerce and, therefore, the global expansion of the US economy. The connection between the free flow of information and free trade was corroborated by Hamelink, who mapped out the global information networks of major financial institutions and the interactions between the media and banking industries.¹³³

NWICO's denaturalization of the right to freedom of information adds to TWAIL's (particularly the Marxist strand of TWAIL) discussion on how the human rights discourse has been historically associated with and continues to be invoked for the universalization of property rights and the freedom of trade.¹³⁴ Interestingly, this denaturalization and critique of the capitalist nature of the right to freedom of information did not lead to the denouncement of this right. Rather, the second step of politicization was to: recast the flow of information as political, rather than economic (that is, concerning media corporations' economic freedom); seeing the unbalanced flow of information as an instrument of cultural imperialism; the imposition of foreign ideology; and the undermining of self-determination. The politicization of international communication and information flows is clearly demonstrated by Third World countries' reassertion of the legal principles of state sovereignty and sovereign equality. As discussed previously, many advocates resorted to these principles to articulate how the "free and balanced" flow of information should be. These principles also made their way to various Resolutions and Declarations passed by the UN General Assembly/UNESCO that concern the role of the mass media and the use of satellites for broadcasting and remote sensing.

NWICO's stress on sovereignty was not only in tension with the framing of freedom of information as a fundamental human right, it was also directly opposed to the capitalist notion of freedom of information as economic freedom. This second step of politicization can be related to the observation by Pahuja about the artificial division between the political and the economic in international law, and how drawing the division is itself a struggle.¹³⁵ NWICO's struggle over the political-economic split was not about defining freedom of information as belonging to one domain rather than the other, but using the political to tame the economic. The debate of the Mass Media Declaration was an example of Third World countries subjecting the economic freedom of transnational media corporations to the state's sovereign control. Meanwhile, although many NWICO advocates highlighted the economic dimension of information, the goal was precisely to bring information, as national economic resources, to the domain of state sovereignty. In short, the NWICO's attempt was to first economize information and then politicize it.

This push towards politicizing information also had an impact on institutional characters. Unlike the Non-Aligned Movement or the UN General Assembly, UNESCO was not primarily an agency dealing with political or ideological agendas, but a specialized agency created to promote the international exchange of culture, education, and science. This mandate has hardly ever been non-political. But NWICO made it particularly clear that UNESCO could not fulfil its mandate in a technical and functional manner because its mandate of promoting "the free flow of ideas" itself reflected particular normative visions about the world, and was inevitably captured by complex ideological confrontations. While this "politicization" of UNESCO was condemned by the US, who eventually withdrew from it,¹³⁶ some NWICO advocates approached UNESCO with suspicions about

¹³³ Cees J. HAMELINK, *Finance and Information: A Study of Converging Interests* (New Jersey: Ablex Publishing Corporation 1983).

¹³⁴ B. S. CHIMNI, "Third World Approaches to International Law: A Manifesto" (2006) 8 *International Community Law Review* 3; Antony ANGHIE, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2007); Upendra BAXI, *Future of Human Rights* (Oxford: Oxford University Press, 2008).

¹³⁵ Pahuja, *supra* note 14 at 20–2.

¹³⁶ Preston, Herman and Schiller, *supra* note 128.

Westernization and co-optation. UNESCO's achievements for NWICO were, indeed, much of a compromise.

B. The Role of Culture

As discussed above, the various approaches of defining information demonstrate the intimate relations between the political, the economic, and the cultural. In particular, NWICO reveals a complicated attitude of postcolonial states towards their cultures in the process of achieving political and economic independence. As pointed out by Pahuja, the political-economic split, per se, was accepted by Third World countries, who saw themselves as politically independent but economically "backward". By accepting this split, the "economic backwardness" of Third World countries, which justified foreign interventions to develop the Third World economy, would not undermine their formal equality.¹³⁷ The contradiction between political equality and economic inequality was always present in Third World's struggle for recognition and development, and was particularly amplified in their attitude towards their own cultures.

On the one hand, NWICO's critique about foreign cultural domination through the unbalanced information flows was associated with the understanding that traditional culture or cultural sovereignty was fundamental to a country's identity and its political independence. The assertion and preservation of one's cultural tradition is fundamentally crucial to the postcolonial countries whose nationalist identity was developed through identifying or constructing national culture. Although the identification of national culture, as Chatterjee argued, was often a myth,¹³⁸ it gave the postcolonial country self-esteem and dignity of formal equality, and helped the country reconcile with the need to modernize. Traditional culture was the "inner" domain of the colonized, which was believed to be superior and unviolated by the "external" material superiority of Western cultures.¹³⁹

In this way, NWICO advocates denounced the cultural hierarchy imposed by the former colonial powers, and deemed traditional cultures of postcolonial countries as offering great potential for their development. For example, speaking about traditional media, Verghese argued:¹⁴⁰

[T]he illiterate man is not necessarily uneducated and certainly not uncultured. Religion, tradition and ingrained social mores are powerful socialising forces and the oral tradition of India—and indeed of several other "traditional societies"—is a vital stream that has run parallel to the literary tradition. It embodies the wisdom of the ages and sages and an extraordinarily rich and diverse cultural heritage. This cultural identity is a precious asset and one on which communicators can draw with advantage, reinterpreting ancient and familiar symbols anew in transmitting contemporary messages.

On the other hand, NWICO also recognized that the equalization of international communication was about "developing" national culture; that is, to expand education systems, to increase literacy rates, and to develop mass communication such as radio broadcasting.¹⁴¹ This need for development acknowledged that the "backwardness" could not be

¹³⁷ Pahuja, *supra* note 14 at 48.

¹³⁸ Partha CHATTERJEE, *Nationalist Thought and the Colonial World: A Derivative Discourse?* (London: Zed Books, 1986) at 5.

¹³⁹ *Ibid.*, at 51.

¹⁴⁰ Verghese, *supra* note 51 at 11.

¹⁴¹ Verghese, *supra* note 51.

“contained within the economic sphere”,¹⁴² and that the cultural and communication sector of the Third World also needed liberation. For example, in the speech addressed to the information ministers of Non-Aligned Movement countries in 1976, Indira Ghandi said that:¹⁴³

[i]n spite of political sovereignty, most of us who have emerged from a colonial or semi-colonial past continue to have a rather unequal cultural and economic relationship with our respective former overlords ... The European language we speak itself becomes a conditioning element. Inadequacy of indigenous educational materials made us dependent on the books of these dominant countries ... The self-deprecation and inferiority complex of some people of former colonies makes them easy prey to infiltration through forms of academic colonialism. This also contributes to the brain drain.

This recognition of inequality even in the inner spiritual domain was further exacerbated by new mass communication technologies, especially the audiovisual media which could bypass the language and literacy barriers. This explains why many Third World countries, without aligning with the Soviet Union, perceived direct satellite broadcasting as threatening and insisted that freedom of information should be “on the basis of strict respect for the sovereign rights of states”.¹⁴⁴ This sentiment was powerfully expressed by the Chilean delegate at the First Committee of the General Assembly in 1972 on the drafting of principles for direct satellite broadcasting:¹⁴⁵

[w]hat I wish categorically to state here is that direct television broadcasting by artificial satellites constitutes simultaneously one of the potential possibilities of greatest benefit to mankind and, at the same time, one of the greatest threats to man—that of reducing him to a mere statistic and of subjecting him to the power of the imperialist forces ... If the new space techniques are not framed within and controlled by legal provisions, the peoples of Latin America will be exposed to spatial, political, economic and cultural contagion from the large imperialist monopolies.

In addition to acknowledging the vulnerability of traditional cultures, some critics pointed out how the cultural sector of the Third World served not the masses, but domestic elites who were complicit with international monopolies to avert social change. This echoes Fanon’s hostility towards the bourgeoisie after national independence, describing them as a “little greedy caste, avid and voracious, with the mind of a huckster, only too glad to accept the dividends that the former colonial power hands out to it”,¹⁴⁶ who functioned as a “transmission line between the nation and a capitalism”.¹⁴⁷ This means that to achieve NWICO, domestic culture needed liberation, not only because it was weakened by colonialism but also because, controlled by the bourgeoisie, such culture had impeded the developmental process of the postcolonial state. This was again evident in the Chilean context, where communication channels had been largely commercialized and the mainstream media, enjoying constitutional freedom and the support by the United States

¹⁴² Pahuja, *supra* note 14 at 48.

¹⁴³ Quoted in TRAN Van Dinh, “Nonalignment and Cultural Imperialism” in Kaarle NORDENSTRENG and Herbert I. SCHILLER, eds., *National Sovereignty and International Communication* (New Jersey: Ablex Publishing Corporation, 1979) 261, at 268–9.

¹⁴⁴ See *Statement by Brazilian delegate De Sousa E Silva at the UN General Assembly First Committee*, UN Doc. A/C.1/PV.1870 (1972), at para. 80.

¹⁴⁵ *Twenty-Seventh Session of the General Assembly, First Committee Meeting*, UN Doc. A/C.1/PV.1867 (1972), at paras. 91, 93.

¹⁴⁶ Frantz FANON, *The Wretched of the Earth* (London: Penguin Books, 2001) at 141.

¹⁴⁷ *Ibid.*, at 122.

Information Services and the Central Intelligence Agency, launched harsh attacks on Allende's policies. Reflecting on the Chilean coup, proponents of NWICO argued that the cultural sector of the Third World needed to rapidly and radically develop alternative media structures to ensure popular participation.¹⁴⁸

In short, the contradiction between political equality and economic inequality corresponded to the untenable separation between the inner spiritual domain of the postcolonial state and its external material domain. Although NWICO deemed traditional culture as rich assets, it more clearly showed that the inner domain was in fact not untouched by material imbalances, such that the core of nationalist identity of postcolonial countries was shaky.

C. Developmentalism and the Postcolonial Nation State

NWICO was a movement to both improve Third World countries' access to information and their capacity of communication. In this light, TWAIL critique about developmentalism and state-centrism becomes pertinent.¹⁴⁹ It is clear that both had fundamentally determined the outlook of NWICO. Developmental thinking was clearly present in how information was understood. For advocates who emphasized the economic dimension of information and its intrinsic role in economic production, information was a specific national resource to be exploited for development. This was highlighted by the connection of NWICO with NIEO, and the unsuccessful attempt by Third World countries to claim permanent sovereignty over information concerning natural resources. The recognition of the economic importance of information by Third World countries in fact reflected the developmental model of the 1970s, which relied increasingly on the exploitation of natural resources and the export of primary commodities. This model required Third World countries to develop comprehensive and accurate inventories of their resources as well as to have access to or control information affecting the price of exported commodities, such as estimates of grain yields.¹⁵⁰ For those who stressed the social and cultural or ideological dimensions of information, *how* to communicate *what* information to *whom* became a matter of cultural and communication policies, which were considered crucial for social progress and national liberation. In addition to seeing information as resource or tool for development, the information sector and the associated cultural domain were themselves sites of development and modernization.

Despite certain nuances, developmental thinking was also reflected by how NWICO advocates perceived modern technology. The progressiveness of modern technology was largely taken for granted. As quoted earlier, even Chile, who was the most vocal about the danger of direct satellite broadcasting, saw it as "one of the potential possibilities of greatest benefit to mankind". Drawing on the philosophy of technology, one may say that NWICO advocates typically adopted an instrumentalist perspective on technology, seeing technology as fundamentally neutral and separable from the "external" political-economic relations.¹⁵¹ Accordingly, NWICO advocates had critiqued how modern technology worsened the dependency relationship between the North and the South, but the target of the critique was the ownership, control, and the use of technology; the condition of technology transfer; and benefits-sharing, not technology as such. Similarly, the critique surrounding the capitalist nature of information flows and mass media left out communication technology. It was the minority's view to be sceptical of the alleged

¹⁴⁸ Schiller, *supra* note 117 at 107–9.

¹⁴⁹ Pahuja, *supra* note 14; Shahabuddin, *supra* note 14; Rajagopal, *supra* note 14.

¹⁵⁰ Eleonora AMBROSETTI, "The Relevance of Remote Sensing to Third-World Economic Development: Some Legal and Political Aspects" (1979) 12 *New York University Journal of International Law and Politics* 569.

¹⁵¹ Andrew FEENBERG, *Transforming Technology: A Critical Theory Revisited* (New York: Oxford University Press 2002) at 5–6.

technological neutrality and to understand technology's embeddedness in, and embodiment of, the prevailing political-economic relations. The acceptance of technological progressiveness, especially by thinkers from the Third World, such as Verghese and Gutiérrez Vega, may suggest a tension: to critique Western domination of the existing international information order but not make charges that may be deemed as primitive or backward. Here, the division between the inner spiritual domain and the external material domain reappeared. The instrumentalist view of these thinkers held technology as belonging to the latter domain and embraced it without much hesitation.

The ideology of development is closely connected to state-centrism. Just like many other Third World projects of the 1970s, it was never doubted that the newly independent, post-colonial state was the agent of development through exercising its sovereignty. NWICO politicized the issue of information flows as a matter of state sovereignty to discipline transnational media corporations and equalize international communication. Simultaneously, it affirmed the agent role of the state. This state-centrism gave the opponents of NWICO an easy charge, accusing NWICO of sanctioning governmental censorship and other violations of the freedom of information, and even depicting NWICO as a Soviet-sponsored attack on the freedom of Western media. Ideological confrontations aside, the opponents' attack exemplified what Rajagopal calls "the biggest myth" of human rights; that is, "human rights is an anti-state discourse".¹⁵² As previously mentioned, NWICO advocates and Third World countries did not deny the freedom of information but sought to qualify and refine it; for example, by attaching to it media responsibilities; by characterizing it as not just an individual right but more crucially a group right associated to development; and by grounding it on state sovereignty. From TWAIL's perspective, the acceptance of freedom of information by Third World countries should not be surprising. For one, human rights had historically provided the Third World with powerful tools with which to fight for global justice, and NWICO was a typical example of it. For another, as Rajagopal observes, the human rights discourse has been embraced by the Third World because it enabled "etatization" – the expansion and strengthening of the state, which was attractive for Third World countries that had embarked on state-building to create "the apparatus of modernity".¹⁵³ Understandably, the acceptance of freedom of information by Third World countries was intertwined with their desire to build national information infrastructure, which was an essential aspect of state-building. Furthermore, by the 1970s and the 1980s, when NWICO took place, there existed a more general convergence of human rights and development, as seen by the emergence of the "third generation" of human rights and, in particular, the right to development, articulated by the Third World as the right to state development.¹⁵⁴ NWICO's acceptance of the right to freedom of information, therefore, should be contextualized within the process of "developmentalization of human rights", which reinforced etatization.

While the Western charge was hardly genuine, there were, indeed, many difficult questions about this statist paradigm. Take the example of national culture, discussed earlier. With the state as the sole agent of development, the development of national culture entails a process of homogenization to uphold national identity. This process simultaneously "diminish[es] all meaningful ethno-cultural diversity and reduc[es] such diversity to a token" and "imposes the majoritarian identity on the entire nation".¹⁵⁵ Therefore, for the postcolonial, especially the multi-ethnic state, the more urgent problem is, perhaps, not that state sovereignty could endanger individual human rights but, rather, that it endangers minorities' identities and rights, especially cultural rights, by homogenization

¹⁵² Rajagopal, *supra* note 14 at 189.

¹⁵³ *Ibid.*, at 191–3.

¹⁵⁴ *Ibid.*, at 216–22.

¹⁵⁵ Shahabuddin, *supra* note 14 at 65.

and majoritarian domination. In the NWICO debate, the diversity of cultural heritage was seen as an asset of postcolonial countries, but how to preserve and further cultivate such diversity while developing the “national” culture was rarely a question to be considered. Similarly, while freedom of information was argued as a group right, how to identify the group and who to exercise the right was not discussed.

At a more general level, state-centrism is hardly capable of addressing domestic inequality and hierarchy. The limitation of state-centrism was noted by those NWICO advocates who argued that democratization of communication at the international level was inseparable from that at the domestic level. They sought to experiment with traditional or new media to democratize domestic international flows. For example, Beltrán, drawing on ideas from the Brazilian philosopher Paulo Freire, developed the notion of “horizontal communication”, which he defined as:¹⁵⁶

[t]he process of democratic social interaction, based upon exchange of symbols, by which human beings voluntarily share experiences under conditions of free and egalitarian access, dialogue and participation. Everyone has the right to communicate in order to satisfy communication needs by enjoying communication resources. Human beings communicate with multiple purposes. The exertion of influence on the behaviour of others is not the main one.

This definition seems quite liberal, as it does not mention any role for the state. However, it is still antithetical to the capitalist notion of freedom of information, which applied market principles to communication and saw monopolistic control of communication by private actors as an unproblematic exercise of their economic freedom. Aiming for horizontal communication, Beltrán proposed to use face-to-face communication, group techniques, the combination of mini-media, and telecommunication technologies to enable mass participation.¹⁵⁷

Overall, NWICO’s developmental thinking and state-centrism show that it was, after all, a movement of its times when many postcolonial countries were going through the difficult process of nation-building. While many of NWICO’s demands sounded radical to the West; that is, to “sovereignize” information resources and infrastructure, to develop national communication and cultural policies, to conceive of information as common good rather than private property or a commodity, NWICO’s commitment to development and state-centrism also reflects an implicitly mimetic desire of the Third World towards those in the First World. To a certain extent, developmentalism and state-centralism converged with the turn to pragmatism at the UN agencies which focused on the building and financing of communication infrastructures and, ultimately, contributed to the deradicalization of NWICO.

IV. CONCLUSIONS

This paper has revisited the NWICO movement. Empirically, this movement revealed the enormous disparity of information flows between the Global North and the Global South. This disparity was considered not only as a colonial relic, but also symptomatic of and integral to the continued dependency relations. Conceptually, NWICO critiqued the commodification and individualist conception of freedom of information and replaced this concept with one that emphasized the public good character of information, its sociocultural importance, and its indispensable value for national development. As a sister project of NIEO, NWICO unsurprisingly insisted on the principle of sovereign equality to strengthen

¹⁵⁶ Beltrán, *supra* note 27 at 16.

¹⁵⁷ *Ibid.*, 14–5.

domestic information and communication capacities, and to tame Western media multinationals. By stressing the role of sovereign states in its counter narrative of freedom of information, NWICO offers TWAIL scholarship another example of how Third World countries politicize and denaturalize certain liberal ideas. Meanwhile, its state-centrism not only gave rise to external criticism, it also gave rise to internal disagreement over the issue of domestic democratization. This was one of the main difficulties that NWICO encountered, but largely sidestepped. A movement of its own time, it relied on the “moral possibilities”¹⁵⁸ of the state to achieve its primary target of rebalancing the *international* information flow.

For TWAIL scholarship, NWICO also offers a unique chance to consider the ambivalent attitude that postcolonial states expressed towards their culture, their “inner domain”: it was not at all inferior to Western cultures, but needed development to withstand shocks introduced by new information technologies and mass media. The development of “national” culture may ironically undermine traditional cultures but it also required the embracing of modern technologies. This circular reasoning shows the unsteady cultural foundation of postcolonial states and the impossibility of the division between inner and external domains and, likely, has contributed to the deradicalization of NWICO from the mid-1980s, when the issue of communication gap became mainly an infrastructure-building game.

Zooming out from the 1970s, many issues that were vigorously debated during NWICO have since reappeared decades later in the politics of the internet and data governance. Most strikingly, the notion of free internet propagated by the US¹⁵⁹ is, essentially, a descendant or a variant of the freedom of information, which encountered several challenges in the 2010s,¹⁶⁰ just as the notion of freedom of information did in the 1970s. Since the Snowden revelations and the Cambridge Analytica scandal, especially, there has been a surge of sovereignty claims by a variety of countries and regions over the internet, digital infrastructures, and data against the monopoly of American, and increasingly Chinese, tech giants. Resorting to sovereignty is not simply motivated by the state’s will to power, but is often driven by concerns about the rule of law, democratic accountability, and human rights values. Despite the contradiction inherent to NWICO’s state-centrism, what NWICO had problematized and aimed to redress in the 1970s is not fundamentally different from what has made sovereignty claims appealing again nowadays.

Revisiting the NWICO movement reminds us that information or data is not apolitical things that naturally flow freely. They are techno-social constructs by which the existing economic-political systems and social values are reproduced. Furthermore, as digitization and data flows are socially embedded processes, the idea of free flow of data has no single reality but multiple ones, and it is imperative to continue NWICO’s inquiry and ask who speaks of that freedom, whose practice is justified by it, and who are the winners and losers that freedom creates. Linking NWICO and current struggles over digitization and data governance, international law scholars can not only observe similarities of normative agendas, they can also map patterns of how information technologies developed from

¹⁵⁸ Rajagopal, *supra* note 14 at 189

¹⁵⁹ See, for example, Hillary Rodham CLINTON, “Remarks on Internet Freedom” (21 January 2010), online: US Department of State <<https://2009-2017.state.gov/secretary/20092013clinton/rm/2010/01/135519.htm>>.

¹⁶⁰ For example, Global South countries have called for democratize the management of the internet and criticised the ICANN for lacking representativeness and transparency. See Government of India, ‘Government of India’s Initial Submission to Global Multistakeholder Meeting on the Future of Internet Governance’ (23–24 April 2014),

online: Government of India, Ministry of External Affairs <https://www.mea.gov.in/Images/pdf/official_submission_to_the_conference.pdf>; NETmundial, “NETmundial, ‘NETmundial Multistakeholder Statement’” (24 April 2014), online: NETmundial <<https://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Documents.pdf>>; Houlin Zhao, “ITU-T and ICANN Reform” (April 2002), online: International Telecommunication Union Doc (ITU DOC) <<https://www.itu.int/itudoc/itu-t/com2/infodocs/013.pdf>>.

capitalist social relations and how they have co-evolved with the structure of power asymmetries over the past four decades.

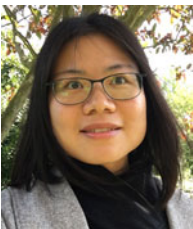
Compared to NWICO, which was state-centric, it is noticeable that actors in current politics of digitization have proliferated. For almost two decades, “multistakeholderism” has become a mantra for global internet governance. While multistakeholderism has been criticized as precisely being what neoliberalism had led to, and therefore only window dressing actual power asymmetries between actors,¹⁶¹ it remains interesting to note that more and more actors are demanding not only participation in decision-making, but also ownership, control, and autonomy: in short, “data sovereignty”. The limitation of NWICO’s state centrism as well as the ambition of those NWICO advocates to eliminate external and internal repression and domination may inspire profound reconceptualization of the very notion of sovereignty in today’s politics of digitization, and enable the formation of transnational alliances such as city networks to challenge the power of big techs and to democratize digitization.

Last but not least, NWICO’s debate about technology remains highly relevant. Despite the instrumentalist and progressive view on technology, NWICO’s critique about the social aspects of technology (ownership, control, access, and benefit-sharing) sends a crucially important message: a certain level of scepticism should always be given to technologies hailed by those selling them as providing ready-made solutions to social problems or as representing the irreversible trend of progress. Pushing NWICO’s critique further, the very assumption about digital technologies’ political neutrality (whether the technology itself embodies certain choices about how society should be) and its promise of progress should be carefully and critically examined. This type of examination is especially pertinent nowadays as the “race”¹⁶² to 5G, artificial intelligence, and/or cryptocurrency seems to impose an imperative on every society to participate without delay.

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¹⁶¹ Avri DORIA, “Use [and Abuse] of Multistakeholderism in the Internet” in Roxana RADU, Jean-Marie CHENOU and Rolf H. WEBER, eds., *The Evolution of Global Internet Governance: Principles and Policies in the Making* (Berlin: Springer, 2014) 115.

¹⁶² Nathalie A. SMUHA, “From a ‘Race to AI’ to a ‘Race to AI Regulation’: Regulatory Competition for Artificial Intelligence” (2021) 13 Law, Innovation and Technology 57.

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