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## The Failure of New International Economic Order: a Lesson Learned

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### Abstract

The establishment of the New International Economic Order (NIEO) has been underpinning the development of international law. The shortcomings of this struggle should be seen as a lesson-learn to step forward in the future. It is also essential to harmonise the economic justice relationship among all countries in the world regardless the developed or the developing countries. The sustainable struggle in the world economic sphere will appear as a shout from the perceived disadvantaged countries from an economic competition in the world. The establishment of the right to development that have been adopted in international law is a part of journey of TW struggled in international relation. The paper is simultaneously based on the perception of understanding of principles of NIEO coupled with scepticisms toward this principles and auto criticism of that scepticism in order to be a proposal as a source of international law in future.

**Keywords:** New International Economic Order; Sovereignty; Developing Countries; Right to Development.

### Introduction

The emergence of the NIEO<sup>1</sup> in 1974 has given a great hope and ever greater disappointment for the people. The failure to establish a new international legal framework will open a new problem<sup>2</sup> for the developing countries due to the interest of the developed countries<sup>3</sup> in shaping world order.<sup>4</sup> In contrast, the Classical

<sup>1</sup> The abbreviation "NIEO" will be used in a whole essay to indicate New International Economic Order.

<sup>2</sup> For instance: the new law of the sea regarding 200 miles Exclusive Economic Zone substantially diminished the Common Heritage of Mankind, see Milan Bulajic, 'A Changing World Calls for International Economic Law' in Peter Sarcevic and Hans Van Houtte (ed), *Legal Issues in International Trade* (Martinus Nijhoff 1990).[4].

<sup>3</sup> World economic issues are decided by a directorate of the United State, Germany, and Japan, see Samuel P Huntington, 'The Clash of Civilization' (1993) 72 *Foreign Affairs* <<https://www.foreignaffairs.com/articles/united-states/1993-06-01/clash-civilizations>>. Also see more comprehensive explanation in Michael Byers and Georg Noite (ed), *United States Hegemony and the Foundation of International Law* (Cambridge University Press 2003).

<sup>4</sup> In mapping the world order, there are the developing countries dominated 70 % of world-

International Economic Law is based on the principal of sovereign equality, however NIEO assumes that equality in condition of economic inequality is something to the legalization of inequality. Bulajic concerns that NIEO is the right to every state and people to exist and to develop equally, even poorest nations should take part as equal partner in a civilized countries.<sup>5</sup>

The Bretton Wood system as a basis of the Classical International Economic Order 1944<sup>6</sup> had essentially broken down when the USA suspended the dollar's convertibility into gold in 1971 and thereby ended the era of fixed exchange rates. The volatility of the International monetary system was exacerbated by the first oil price shock of 1973 which led the world economy into a state of complete turmoil by mid-1974. On top of all this, at a Special Session of the United Nations in 1974 there was a call for a "New International Economic Order".<sup>7</sup>

The NIEO principles, basically was to change the classical world order which is much influenced and by political and economical of the developed countries.<sup>8</sup> It is reflected from the Bretton Wood system that fails during 1945. However, the powerful still do not have a good will to receive this proposal,<sup>9</sup> as a result, the NIEO principles merely a death document. Thus, it really needs a new spirit to wake it up from prolonged sleep. Milan Bulajic emphasises that "The struggle for the establishment of the NIEO represents a continuation of the process of

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population, whereas 20 % is least developed countries and 10 % is developed countries. This unbalancing has been an issue of debate. It certainly shows The gap between the rich and the poor, industrially developed and developing countries. See Milan Bulajic (n 2).[1].

<sup>5</sup> *ibid.*

<sup>6</sup> The New Economic Order can not be separated to the "Bretton Wood System" 1944 that was established three big international institutions, that is the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD- the World Bank) and the General Agreement on Tariff and Trade (GATT) and its successor The World Trade Organization (the WTO). See J H Jackson,[et.,al.] *Legal Problem of International Economic Relations, Cases, Materials, and Text* (4th edn, West Group 2002).[199-200].

<sup>7</sup> *UN General Assembly Resolution 3201 (S-VI), UN Doc A/ 9559.sol*

<sup>8</sup> B.S. Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (Sage Publications India Put Ltd 1993).[11-13].

<sup>9</sup> the formal proposal of the NIEO by the developing countries in the summit meeting of Non-Aligned Movement in 1973, John (ed), *Routledge Encyclopaedia of International Political Economy* (Routledge 1999).

decolonialisation in the economic sphere,<sup>10</sup> the negation of domination of neo-colonialism in international economic relations”.<sup>11</sup> Economic backwardness from the developed countries needs a perpetual struggle for developing countries to get prospective future for their next generation. Moreover the rapid growth of inhabitant, the disaster of environment, the low price for material in developing countries and least developed countries make the problem become worse.

The legal issue is whether the NIEO can be established on the foundation of the old international legal system<sup>12</sup> or it needs a new International legal order. Many views of international Jurists has still mirrored pessimistic due to many weaknesses of the effort to NIEO that should be re-evaluate by the developing countries.<sup>13</sup> The essay is simultaneously based on the perception of understanding of principles of NIEO coupled with scepticisms toward this principles and auto criticism of that scepticism in order to be a proposal of a source of international law.

### **Legal Sources of New International Economic Order**

Legal Sources of NIEO mostly derive from the United Nation General Assembly Resolutions and the Charter of Economic Rights and Duties of States. These became a challenge to bring the NIEO to be legally binding in the light of positive International Law system. These sources has been an issue in order to involve in the classical source of International Law which is based on The Article 38 of International Court of Justice (ICJ). The specific proposals for changes in the economic system were advanced at the Summit Conference of Non-Aligned Nations held in Alger in September 1973. Following that, the Sixth Special Session of the United Nation General Assembly was called hastily for April 1974. This session adopted, without a vote, a manifesto entitled “Declaration and Program of Action of the New International Order”.<sup>14</sup> On

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<sup>10</sup> Mark Ruppert, *Ideologies of Globalization, Contending Visions of a New World Order* (Routledge 2000).[154-155].

<sup>11</sup> *ibid.*

<sup>12</sup> Milan Bulajic (n 2).[45].

<sup>13</sup> See how strong the spirit to established the NIEO in Moncarz R (ed), *International Trade and the New Economic Order* (Pergamon 1995).[1-2].

<sup>14</sup> Milan Bulajic (n 2).[46-47].

December 1974 the General Assembly approved the Charter of Economic Rights and Duties of States.<sup>15</sup> Confronted by the far-reaching demands for reform of the world's economic and social systems, the North responded by calling for the Seventh Special Session of the U.N. General Assembly.<sup>16</sup>

This session, held in September 1975, was intended to arrive at a North/South compromise, and resulted in the issue of Resolutions 3362, which was adopted by consensus. This resolution basically endorsed the demands for New International Economic Order. Basically, the NIEO established refer to the United Nation Declaration that is based on equity, sovereign equality, interdependence, common interest and cooperation between all states. According to report of the United Institute for Training and research (UNITAR), there are seven kinds of legal sources dealt with NIEO.<sup>17</sup> The sources comprise of the declaration of the General Assembly Resolution and the Charter of Economic Rights and Duties of states.

### **The Principles of New International Economic Order**

The principles of NIEO are the right of every state to attain appropriate standard of living with derive from human rights, states rights and people rights. This principles was mentioned by Jackson when defining International Economic Law.<sup>18</sup> He stated that International Economic Law comprises of trade, investment,

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<sup>15</sup> The Charter of Economic Right and Duties of States was adopted on December 12, 1974 by a roll-call-vote of 120 in favour, 6 against with 10 absentia. See Kamal Hosaain, *Legal Aspects of the New International Economic Order* (Frances Printer 1980).[5].

<sup>16</sup> See more explanation in John Carton, 'The Significance of the Seven-Power Summit' <<http://www.g7.utoronto.ca/scholar/kirton198902/order89.htm>> accessed 17 February 2004.

<sup>17</sup> The legal sources of NIEO, *first*, the Declaration of Principles of International Law concerning friendly relations and cooperation between states (UNGAR 2625 (XXV)). *Second*, declaration and program of actions on the establishment of NIEO (UNGAR 3201 and 3202 (S-VI)). *Third*, the Charter of Economic Rights and Duties of State (Resolution 3281 (XXIX)). *Fourth*, Resolution 3362 (S-VII) September 1975 on Development and International Economic Cooperation. *Fifth*, the United Nations strategy for the third UN development decade (Resolution 35/56). *Sixth*, multilaterally agreed equitable principles and rules for the central of restrictive Business practice (Document TD/RBP/Conf 10). *Seventh*, final acts of the UNCTAD session IV the declarations of all UN conferences referring to the new order in 1976. See Jerzy Makarczyk, *Principles of A New International Economic Order: A Study of International Law In the Making* (Martinus Nijhoff Publisher 2001).[123].

<sup>18</sup> J H Jackson, [*et.,al.*] (n 6).[193].

service, monetary and even international norms on human right when they are involved in transaction that cross national borders.<sup>19</sup> International norms on human rights is the underpinning notions of the NIEO.

Briefly, there are several principles of NIEO, *Firstly*, NIEO proposed the Charter of Economic Rights and Duties.<sup>20</sup> *Secondly*, it manifests a distrust international law among the third world states.<sup>21</sup> *Thirdly*, it refuses the theory of classical economic capitalists of trade.<sup>22</sup> *Fourthly*, NIEO acknowledge a systematic hypocrisy<sup>23</sup> of imperialism and presented a coherent theoretical rejection of the west as an intellectual paradigm.<sup>24</sup> The NIEO was declared in a resolution of the UN General Assembly, in addition to the Charter of the Right and Duties of States which also contains the program to actions.<sup>25</sup> It is not merely to alleviate poverty.<sup>26</sup> However, more to change the material relation of production in order to give benefit to all people in third world. Among the demand were: increased export from the third to first world, transfer of capital to third world, transfer technology to third world, and a regime to control the Multinationals Corporations as well as provisions for increasing aid and to alter the international monetary system.<sup>27</sup> This proposal seems to not so radical due to social justice struggle among the world. Jerzi Makarczyk stated that there are seven general principles of NIEO,<sup>28</sup> these refer to the previous agreement and provisions in which the problem also emerge in them.

<sup>19</sup> *ibid.*[194].

<sup>20</sup> Gabe Farges, *The New International Economic Order Legal Debate* (Frankfurt 1983).[17].

<sup>21</sup> *ibid.*[35].

<sup>22</sup> Reviro Oswald, *The New International Economic Order and International Development Law* (Pergammon 1980).[5].

<sup>23</sup> Gabe Farges (n 20).[1].

<sup>24</sup> Reviro Oswald (n 22).[123].

<sup>25</sup> Gabe Farges (n 20).[5].

<sup>26</sup> *ibid.*[13].

<sup>27</sup> *ibid.*[15-16].

<sup>28</sup> Those principles are, the preferential treatment of developing countries, the stabilization of the export earnings of these countries, permanent sovereignty over natural wealth, the right of every state to benefit from science technology, the entitlement of developing countries to development assistance, the right of equal participation of developing countries in international relation, the common heritage of mankind, the principle of free choice of economic system. See Jerzy Makarczyk (n 17).[125]. See also Detler Christian Dicke, 'Public International Law and a New Economic Order' in Peter Sarcevic and Hans Van Houtte (ed), *Legal Issues in international Trade* (4th edn, 1990).[23].

### **The Principles of New International Economic Order as a Source of International Law**

Milan Bulajic assumed that there is a little attention to process codifying the principle of NIEO.<sup>29</sup> there are problem of different organs and organization in the United Nation such as International Law Commission, UNCITRAL, GATT, UCTAD, WIPO, ILO, UNDROIT, etc.<sup>30</sup> In order to support this attempt. The General Assembly issued the resolution to establish the United Nation Commission on International trade Law (UNCITRAL) with the duty of coordinating legal activities related to the unification and harmonisation of International Trade Law.<sup>31</sup> General assembly appeal to all United Nation organs to contribute to the establishment of the NIEO.<sup>32</sup> After the UNCITRAL focused on it, at the Madrid Conference on the law of the World in 1979, it was conclude that the International law Commission and UNCITRAL were unable to fulfil the growing number of tasks connected with the codification of technical legal aspect of NIEO.<sup>33</sup>

In addition, there are the United Nation General Assembly Resolutions 34/142 of 17 December 1979 and 35/51 of 4 December 1980. Its content related to Coordination in the field of international trade Law and asking the UN secretary general to regulatory prepare a report for the section of UNCITRAL on the legal activities of the international organs and organisation dealing with international trade, together with recommendations on steps to be taken by UNCITRAL in its role as coordinator.<sup>34</sup> So, the UNCITRAL has responsibility to establish legal draft of NIEO and the implementation of the Charter of Economic Right and Duties of States. It needs to establish the UN Economic and Social Council with cooperate

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<sup>29</sup> Milan Bulajic (n 2).[12].

<sup>30</sup> See full explanation from *ibid*.

<sup>31</sup> *United Nation General Assembly Resolution 2205 (XXI)*.

<sup>32</sup> Milan Bulajic (n 2).[13].

<sup>33</sup> See the Madrid Conference on the Law of The World in 1979, Resolution number 1: Legal Aspects of the NIEO and number 5 : the changing role of UNCITRAL.

<sup>34</sup> Para 5 (6) of resolution 34/ 142.

with secretariat of UNCTAD.<sup>35</sup>

Based on the effort above, it seems that the capability of the Classical International Economic Law to adopt the NIEO is somewhat weak. Many attempts has been done by International Lawyers to explore the flexibility of the Article 38 of International Court of Justice, however, the results obtained have not sufficient enough.<sup>36</sup> Considering the complexity of legal notions regarding the topic, it is likely to divide into many opinions. *Firstly*, legal effect of Resolutions and Charter will depend among other things like the accompanying statement, relevancy, the dissenters and the abstainers and so forth.<sup>37</sup> Consequently, A large number of states argue that the Charter of Economic Rights and Duties of Sates is legally binding by virtue of fact the provision of the charter have become part of Custom.<sup>38</sup> It is certain that both the Resolutions and the Charter has been agreed by the majority of states. So, there is no doubt that it could be a source of International Law. *Secondly*, Some conclude that the Principle of NIEO constitute International Development Law.<sup>39</sup> This is a realistic thing since the right to development has been admittedly and more convenient for the developed countries. On contrary, The NIEO looks extremely against the developed countries interests; moreover, it can decrease the benefit of their industry. I have not found a good analyses regarding the objections of the developed countries for the NIEO.

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<sup>35</sup> See International Law Association, International Law Association, 'International Committee on Legal Aspect of NIEO', *Delgrack Conference* (Preliminary Report 1980).[19-20]. and also United Nation General Assembly expected to be a forum for the effective participation of all states in formation of the new rule of International Law. See the Tenth Conference on the Law of the World, Sao Paula (Brazil) 21 August 1981, Resolution Number 9: "Progressive Development of the Principles and Norms of International law relating to the NIEO".

<sup>36</sup> See sufficient explanation regarding these theoretical difficulties in Maurice Mendelson, 'The Legal Character Of General Assembly Resolutions: Some Consideration of Principles' in Kamal Hossain (ed), *Legal Aspects of the New International Economic Order* (Nichof Publishing Company 1980).[95-107].

<sup>37</sup> M. Mendelson, *The Legal Character of General Assembly Resolutions: Some Consideration of Principle*. in Kamal Hosaaain (n 15).[95].

<sup>38</sup> Milan Bulajic (n 2).[15].

<sup>39</sup> See the remark of Rivero, *International Development Law Is Taking Shape as Spin -off of the Countless Resolution and Recommendations Adopted* (international organization as a result of confrontation and negotiations).; O de Revero, *New Economic Order and International Development Law* (Oxford 1980).[122].

Milan Bulajic merely noted the close relationship between the establishment of a NIEO and the realization of the right to development.<sup>40</sup> Actually, the right to development has been a win-win solution between the notion of NIEO by the developing countries and the free trade or economic colonialization by the developed countries in another side. *Thirdly*, the NIEO merely a modern useful tool for standard setting and rule creating in expending international society that require more rapid formulation of standard.<sup>41</sup> This idea reaffirm how hard the struggle to get a New International Order. This failure caused by several reasons, most important is the political weakness of the third world in bargaining with the developed countries.

In another perspective, principles of NIEO have possibilities to be a source of International Law if the United Nation General Assembly Resolutions (UNGAR) and the charter can be considered as Treaty or Custom. Obviously, it can be seen that the principles of NIEO might be an *Independent Source*, a *Dependant Source* or a *Moral Source* for Sources of International Law. Most of International Lawyers still consider the UNGAR as a moral source or 'soft law'<sup>42</sup> which is not legally binding.<sup>43</sup> It is signified that the efforts to construct legal arguments about it is somewhat weak, let alone the effort to construct the UNGAR as the *Dependent Source*.<sup>44</sup> Even though some considered that it can be involved in the customary International Law, it is completely insufficient conditions to construct the UNGAR to be an *Independent Source*.<sup>45</sup>

Theoretically, the Principles of NIEO should be an independent source of International law beside the others. The consensus or agreement of most

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<sup>40</sup> Milan Bulajic (n 2).[18]. see the Universal Declaration of Human Rights 1948 art. 22-27 and art 55-56 of the United Nation Charter.

<sup>41</sup> Eric Suy, 'An International Law for New World Order', *Uppsala Seminar* (Uppsala Seminar 1981).

<sup>42</sup> Soft law is guidelines of behaviour, such as those provided by treaties not yet in force, resolution of the United Nations, or International Conference, that are not binding in themselves... see Martin Elizabeth A (ed), *Oxford Dictionary of Law* (5th edn, Oxford University Press 2002).[467].

<sup>43</sup> See the explanation of Wallace Rebecca M.M, *International Law* (Sweet and Maxwell 1997).[28-31].

<sup>44</sup> John (n 9).[100].

<sup>45</sup> Evan, Malcolm D. said that the UNGAR 'were creative of law as a formal sources...' and he argue that the UNGAR is no more than declaratory of customary law. Evan Malcom D, *International Law* (Oxford University Press 2003).[141].



international representatives is most worthy to consider as International Legal Sources.<sup>46</sup> There is no essential differences among International conventions, international customs, and general principles of Law in legal philosophy perspective. Legality is common consensus between/among people. Therefore, what is the meaning of consensus if it is not considered a binding-rule. Even, the UNGAR deserves place as a primary source of international law due to representing of nations' world. However, it is certain that it needs the whole reformation of the International law system, particularly the Charter of the United Nations in order to adopt the NIEO become a source. The UNGAR should be the consensus of the world affairs in certain periods on certain cases by the representatives of nations, organizations and distinguished people.

In addition, when we look at article 38 of Statute of the International Court of Justice mentioned that the sources of International law are: International convention, international custom, and general principle of law, judicial decisions and the teachings of the most highly qualified publicists of the various nations. The principles of NIEO are referring to the united nation general assembly resolution that is from one of international institution. The UNGAR can play a flexible instrument for the progressive development in International Law<sup>47</sup> rather than the traditional sources.<sup>48</sup> However, for the time being, the UNGAR has not legally bound yet. It is merely a moral consensus among countries, but it has a huge prospective to be *lege de ferenda*.<sup>49</sup>

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<sup>46</sup> Compare with consensus (Ijma') in Islamic Legal Sources that considered as the third source, the absentia voice in a forum is still regarded as in favour (Ijma' Sukutiy), see more comprehensively in Abdul Wahab Khallaf, *Ushul Al-Figh (Islamic Legal Methodology)* (Dar-al-Qalam 1986).

<sup>47</sup> B. Colleck-Stern, 'The Legal Character of Emerging Norms Relating to the New IEO: Some Comments' in K. Hossain (ed), *Legal Aspect of the New International Economic Order* (1980).[70].

<sup>48</sup> The International Court of Justice article 38.

<sup>49</sup> *De Lege Ferenda* [latin: of (concerning) the law that is to come into force] A phrased used to indicate that a proposition relates to what the law ought to be or may in the future be, Martin Elizabeth A (n 42).[143], and this is the opinion of Professor Dupuy as well, see David Flint, 'Economic Development Agreement' in Kamal Hossain and Subrata Roy Chowdhury (ed), *Permanent sovereignty Over Natural Resources In International Law: Principles and Practice* (Prances Printer 1984).[165].

Hence, according to the traditional source of International law, there is a little likely to assume NIEO would be a source of International law, other wise the reformation of International law would be successfully acted. In another way, it seems not likely to hope that it can accommodate the new development of legal rules in the world, so Milan Bulajic idea to establishing new international rule of law before NIEO is very reasonable.<sup>50</sup> However, the establishment of the right to development is an incredible result. And it is not separated from the positivists' jurists' thoughts<sup>51</sup> who considered the International Law is something need to be created.

Garcia Amador assumes that the right to development as a branch of International law has been a legal structure and an instrument of the proposed NIEO.<sup>52</sup> In addition, the Doha Development Round on November 2001 has also adopted the agenda of development. However, the collapse of the latest round, Cancun Ministerial conference on September 2003 emerges the adverse impression of the reality due to rejecting proposal from the developed countries by the developing countries.<sup>53</sup>

The International law has been an 'Ivory Tower',<sup>54</sup> that far from reality and the need of international society. It is just the works of the people many years ago. So, the new development and the new interpretation can not be denied. The conflict of interests between the developed countries and the developing countries has made the legalization of NIEO become more difficult.<sup>55</sup> In addition the anxiety for emerging the new economic powerful in the world has make the industrialized

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<sup>50</sup> Milan Bulajic (n 2).[14].

<sup>51</sup> Anthony Carty, *The Decay of International Law, A Reappraisal of the Limits of Legal Imagination in International Affairs* (Manchester University Press 1986).[1].

<sup>52</sup> Edward Kwakwa, 'Emerging International Development Law and Traditional International Law-Congruence or Cleavage?' (1987) 17 Georgia Journal of International and Comparative Law.[433].

<sup>53</sup> See comprehensive information in World Trade Organization, 'Beyond Cancun: Key Issues Facing the Multilateral Trading System' (*ActionAid International*, 2003) <[www.wto.org/english/forums\\_e/pospap38acton\\_aid\\_e.doc](http://www.wto.org/english/forums_e/pospap38acton_aid_e.doc)> accessed 26 January 2004.

<sup>54</sup> And also Carty said that 'International law is literatures and is none the worse of it' *ibid*. [128].

<sup>55</sup> For example Compensation standard for expropriation should pay prompt, adequate and effective compensation according to developed Countries and compare with the Charter of Economic Rights and Duties of States Article 2 (c).

country conceive doubt to receive the NIEO. As well as the weaknesses of the developing countries should not be forgotten, such as, while the west regularly uses its economic power to control the third world, the NIEO supporters still uses the paradigm under the aegis of the Bretton Wood System.<sup>56</sup>

There is no serious effort of the third world international jurists in establishing new international legal principle which independent of Bretton Wood System. The NIEO is still normative standard, whereas the classical world order is on law level. Moreover, the third world still struggle from the lack of ability in negotiating with the first countries that admittedly powerful in economic and politic, the problem of legal theory transformation, such as right to self-determination, sovereignty and the division in the third world leading to strategic paralyses among them.<sup>57</sup> The notion of NIEO has been transformed to the right to development<sup>58</sup> in recent years. It is an answer from the developed countries that has not yet fully implemented due to the anxieties of power-loss and world-driver from them.

## Conclusion

The principles of New International Economic Order, basically, is the principles of the sovereignty of the state over its people, wealth, natural resources and economic activities.<sup>59</sup> Several United Nation General Assembly Resolutions and the Charter of the Economic Rights and Duties of States as the primary source of NIEO should be considered as a source of International Law whether as independent source or dependent source. To be independent sources need a totally reform and

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<sup>56</sup> Oppermann and Petersmann, *Reforming the International Economic Order* (Duncker and Humblot 1982).[176].

<sup>57</sup> See the different interest both among the South and the North in Salman Khurshid, *Justice and the New International Economic Order*. In Kamal Hosain (n 15).[111].

<sup>58</sup> See the The Declaration to the Right to Development in the UN General Assembly Resolution 41/28 on December 1986, Lome IV and Kennedy Round which added to the article XXXVI: 8 "The developed contracting Party do not expect reciprocity for commitment made them in trade negotiation to reduce or remove tariffs and other barriers to the trade of Less-Developed contracting parties" See in Gilliam White, 'The NIEO: Principles and Trends', *International Economic Law and Developing States, An Introduction* (Hazel Fox, The British Institute of International and Comperative Law 1992).[52-94].

<sup>59</sup> Jerzy Makarczyk (n 17).[350].

transformation of classical International law, whereas to be dependent sources needs a new interpretation of International Convention, Treaties, International Custom and General Principles of Law. Meanwhile, to be a moral sources is not necessarily to be discussed, as it has not have the same level with legal sources. In addition, law is a system govern and give a value to the actions of the person/people or the states or other legal entities between legal or illegal.<sup>60</sup> At least the NIEO can be *lege de ferenda*. However, this notion relatively can be questioned due to the ambiguity of time and measurement used.<sup>61</sup>

In addition, there are weaknesses of the third world in struggling NIEO as a source of International Law, including: the division of the third world, the lack of economic and political power, the strong power of the first world in maintaining Bretton Wood system, the lack of idea transformation and theoretical problems, and the lack of international Jurists from the third world. To conclude, There Four opinions regarding with NIEO as source of International law, *first*, NIEO is source of International Law, *second*, NIEO merely a means to get a new world order, *third*, NIEO is the right to development. *Fourth*, NIEO merely an issue that viewed by the developing countries. NIEO was an attempt of the third world to enforce a new norm of the responsibly of the first world to the third world. However it failed to be a firm legal standing.

As things turned out, the NIEO never became much more than a rallying cry for the South. This failure stemmed partially from of the South's lack of power in world politics, and disparities within the South created divergent interests among the member states. Also it became apparent that many of the proposed commodity schemes were not simply a proposal for stable prices, but, instead, high prices. As such, the financial costs of implementing these programs were way beyond anything the advanced countries were willing to fund.

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<sup>60</sup> This definition inspired from Islamic law definition, however, in Islamic Law there are five standard values, namely: Wajib, Sunnat, Makruh, Mubah, Haram.

<sup>61</sup> The Period of approximately 30 years (from 1974-2004) show that the NIEO has not implemented in a real world. Obviously this argument will weekend the notions of *lege de ferende*.

The NIEO has been considered failed, and replaced by the establishment of the right to development.<sup>62</sup> But the right to development has also faced similar problem with the NIEO, so it has no particular benefit for TW in general. So the new movement should be formulated under the spirit of the NIEO, facing twenty first century challenges.

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<sup>62</sup> See a deep explanation regarding the issue of then development IISD, "Special and Differential Treatment", IISD Trade and Development Brief" (2003) 2 Spring <[www.iisd.org/trade](http://www.iisd.org/trade)>.

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