

The Concept of Developing Country from International Legal Perspectives in Post NIEO/UNCTAD World

- From Solidarity to Complementarity -

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Shoji Matsumoto

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Summary

The concept of 'developing country' is now a source of controversy, asking "Is China a developing country?", for example. The normative implications of such question will be considered, after a brief survey of its use in international organizations. Then, the transformation of the relations between States from asymmetric solidarity to symmetric complementarity is suggested. As an example of complementary relations, those between Morocco and Japan is surveyed.

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1. Introduction

Bill Gates has stated, in the 2014 Annual Letter, that “the terms ‘developing countries’ and ‘developed countries’ have outlived their usefulness. Any category that lumps China and the Democratic Republic of Congo together confuses more than it clarifies”¹.

“Is China a developing country?” It’s an often asked question all over the world². Indeed, the question may have a lot of connotations. In particular, it was asked in a research meeting of the Atlantic Dialogue, held in December 2018, in Marrakech, sponsored by the Policy Center for the New South³. While the question may be asked with various intentions, in the research meeting the question marked the beginning of academic discussions on Chinese economy without any political or ideological prejudice. And the discussions by participants in the meeting were so instructive and stimulating that this paper was motivated and influenced.

As usual, the question may be made only for the purpose of emotionally speaking ill of China, motivated by political prejudice or bias, not expecting any answer at all. That is not a question in a strict sense. But, the question itself may be significant, if considered from the viewpoint of scientific positivism. For example, ‘G77 + China’ is a group of negotiation on behalf of developing countries⁴. As the concept of development is referred to in various international instruments and plays significant roles in the international society⁵, the term ‘developing countries’ is found here and there.

From such viewpoint, the question should be generalized as “What is the definition of developing country?” What’s more, a question beginning “What is ... ?” would stimulate more lively discussions than a question “Is it ... ?” to be responded simply “Yes” or “No”.

The applicability of “definition” that is involved in this question must be universal, because if its application is limited to a particular international organization alone, another definition would be

1. Bill Gates, “Our Annual Letter 2014”, Bill and Melinda Gates Foundation, February 12, 2014, <https://www.gatesfoundation.org/who-we-are/resources-and-media/annual-letters-list/annual-letter-2014>. See also, D. Olopade, “The End of the ‘Developing World’”, The New York Times, February 28, 2014, https://www.nytimes.com/2014/03/01/opinion/sunday/forget-developing-fat-nations-must-go-lean.html?_r=0.
2. D. M. Lampton, J. Wallace and B. Conrad, “Is China a Developing Country?”, ChinaPower, 2016, <https://chinapower.csis.org/is-china-a-developed-country/>.
3. “Atlantic Dialogues”, December 13-15, 2018, Marrakech, Annual Report 2018, Policy Center for the New South, 2018, p. 36.
4. K. D. L. S. Plah (compiled), The G77 + China and the Changing Multilateral Diplomacy of the South, Institute for Global Dialogue, 2014, http://www.igd.org.za/jdownloads/IGD%20Reports/NEW_Project%2037%20G77%20+China%20@%2050.pdf.
5. Paris Agreement on Climate Change considers development as a criteria for transfer of funds and technology, UNCC, “What is the Paris Agreement?”, <https://unfccc.int/process-and-meetings/the-paris-agreement/what-is-the-paris-agreement>. ‘The Doha Development Agenda’ of the Doha Round is devoted to development. WTO, “The Doha Round”, https://www.wto.org/english/tratop_e/dda_e/dda_e.htm#development. ‘Goal 8’ to develop a global partnership for development in the Millennium Development Goals and goals on sustainable development in the Sustainable Development Goals, SDGF, “From MDGs to SDGs”, <https://www.sdgfund.org/mdgs-sdgs>.

required for the else of world. Only after getting an answer to this preliminary question, the question “Is China a developing country?” would be duly answered⁶.

Before answering the question, moreover, an issue whether the definition is really necessary to survive in the world of the 21st century should be considered, even if the necessity is mainly to produce statistics, as will be reconfirmed later. And if there is less or no necessity to define the concept, the reason why the word ‘developing countries’ are normally used on a daily basis all around the world⁷, despite with no definition, should be elucidated. The elucidation is expected to open a complementary relationship between States, beyond solidarity in the sense of “Help me. I’ll help you”.

As regards the terminology, the terms ‘developing countries’ and ‘less developed countries (LDCs)’ are usually used interchangeably⁸. And, ‘LDCs’ also stands for ‘the least developed countries’ in the UN⁹.

2. For What ‘Developing Country’?

The concept of developing country has been discussed mainly from economic viewpoints. As the concept concerns economic development, it is natural. Economy in modernity, however, defines not only the material relations as such, but also the human relations through the defined material relations. So, the concept should be reviewed from other perspectives, too. A normative perspective may be one of them. In the international society, the concept has been used to classify States into two: developed and developing countries. For what purposes have States been classified like that?

The purpose of the distinction is now largely for producing statistics. In general, it has been believed that the statistics are produced for taking special measures for economic development of the States that are classified as developing countries. According to M49 standards of the UN¹⁰, the designations “developed” and “developing” are intended for statistical convenience, but it is noted that they do not necessarily express a judgment about the stage reached by a Member State in the development process¹¹.

World Bank made a decision to no longer distinguish between “developed” and “developing” countries in the presentation of its data, considering the two-category distinction outdated, in the World Development Indicators in 2016¹². Alternatively, based on the estimation of General National Income (GNI) per capita, it distinguishes the members into low income, lower middle income, upper

6. Or, this question may be construed as tacitly involving an issue asking the definition of developing countries.

7. “[P]rogressive development” and “constructive measures of development” in article 73(b) and (d) of the UN Charter, UN General Assembly Declaration on the Right to Development, Rio Declaration on Environment and Development, ECOSOC, UNCTAD, UNDP, OECD, UN Conference on Environment and Development, and the right to development in article 22 of the African Charter on Human and Peoples’ Rights.

8. M. E. Kreinin and J. M. Finger, “A Critical Survey of the New International Economic Order”, *Journal of World Trade*, Vol. 10, 1976, p. 493, n. 1.

9. UNCTAD, *The Least Developed Countries Report 2012*, 2012.

10. UN Statistics Division, “Standard Country or Area Codes for Statistical Use”, originally published as ‘Series M, No. 49’, issued last in 1999, <https://unstats.un.org/unsd/methodology/m49/>.

11. UN, “Composition of Macro Geographical (Continental) Regions, Geographical Sub-Regions, and Selected Economic and Other Groupings”, March 2010, n. c/, <https://web.archive.org/web/20100306024500/http://unstats.un.org/unsd/methods/m49/m49regin.htm>.

12. N. Fantom, T. Khokhar and E. Purdie, “The 2016 Edition of World Development Indicators is Out: Three Features You Won’t Want to Miss”, *World Bank Blogs*, 2016, <https://blogs.worldbank.org/opendata/2016-edition-world-development-indicators-out-three-features-you-won-t-want-miss>.

middle income and high income countries¹³, thus not into developing and developed countries.

As regards IMF, World Economic Outlook classifies 39 members as “Advanced Economies” and all other members are called “Emerging Market and Developing Economies”. The terms “developing and developed countries” are not referred to. Then, it is noted that “[t]his classification is not based on strict criteria, economic or otherwise, and it has evolved over time. The objective is to facilitate analysis by providing a reasonably meaningful method of organizing data”¹⁴.

In UNDP’s Human Development Index (HDI), members are classified into “Very high”, “High”, “Medium” and “Low” levels of human development. HDI is a composite index measuring average achievement in three basic dimensions of human development—a long and healthy life, knowledge and a decent standard of living¹⁵.

Historically, the concept of developing country prevailed overwhelmingly in the world when the establishment of New International Economic Order (NIEO) was attempted through the UNCTAD, by means of concluding international commodity agreements¹⁶. At that time, NIEO was a slogan to unite developing countries and their struggle against developed countries. Then, the term developing countries had a politically positive purpose.

Eventually, however, the attempt has failed. On the failure, S. Amin has written in 1980 as follows.

The themes of the new international order have up until now been totally rejected, as the failure of the fourth UN Conference on Trade and Development (UNCTAD) and the north-south negotiations indicate. On the ideological level, the Club of Rome is trying to counter with an alternative construction¹⁷.

The classification of all the States in the world into only two groups of developed and developing countries is too simple to take into account the different potentialities and achievements of each State, because every State is endowed with various potentialities to positively contribute to the world, without exception. One of the means to make their potentialities, material or immaterial, fully demonstrate may be the worldwide application of the principle of complementarity, instead of solidarity in the sense of “Help me. I’ll help you”.

NIEO was a multilateral approach to regulate the economic relations between developing and developed countries. It was attempted to establish NIEO by the collected power of developing States. Even after the failure of the attempt, it is “crucial ... to appreciate the contingency of the events and decisions that took place”, N. Gilman suggests, and he continues that “[r]eappreciating the seriousness with which the NIEO was regarded in its time, not least by its fervent opponents, can help us to reopen the possibility space of contemporary geopolitics”¹⁸.

While under such multilateral approach as NIEO the simple groupings of States may be convenient to

13. WorldBank, “Classifying Countries by Income”, The World Bank, October 4, 2018, <https://datatopics.worldbank.org/world-development-indicators/stories/the-classification-of-countries-by-income.html>.

14. IMF, World Economic Outlook: October 2018, 2018, p. 130, <https://www.imfconnect.org/content/dam/imf/Spring-Annual%20Meetings/AM18/Public%20Documents/v2%20WEO%20Oct%202018.pdf>.

15. UNDP, “Human Development Index and its Components”, Human Development Reports, <http://hdr.undp.org/en/composite/HDI>.

16. J. Toye, “Assessing the G77: 50 Years after UNCTAD and 40 Years after the NIEO”, *Third World Quarterly*, Vol. 35, 2014, pp. 1759-1774.

17. S. Amin, *Class and Nation: Historically and in the Current Crisis*, Hainemann, 1980, p. 148.

18. N. Gilman, “The New International Economic Order: A Reintroduction”, *Humanity: An International Journal of Human Rights, Humanitarianism, and Development*, Vol. 6, 2015, p. 11.

reach an agreement by setting shared criteria for an agenda, the convenience may deprive the precious potentialities of States. And, what a developing country demands and supplies may be different from another developing country. On the other hand, under a multilateral approach, the bargaining power of a lot of weak developing countries would make it possible to negotiate on an equal footing with strong developed countries¹⁹.

One of the normative merits of a multilateral approach may be the possible forming of international order based on the rule of law through the uniform and coherent interpretation and application of a multilateral agreement, which may prevent the repetition of similar conflicts in the future. Thus, it is argued that “[a] multilateral approach, in particular, is more likely to produce an inclusive framework that reflects the interests and needs of economies at all stage of development, and thus is more legitimate, stable, and impactful”²⁰.

On the contrary, conflict resolutions of a bilateral agreement between two States would take much longer time to establish a universal norm as an international customary law, after the accumulation of State practice and the emergence of *opinio juris*. Although the problem is not restricted to whether the concept of developing country is legally universal, at first it should be considered, as a precondition to advance to the next step.

3. Designation as Developing Countries

A definition in international law is, different from economic, political, social and other definitions, one that is agreed by States, because the legal ground of its binding force has been held the consent of States. Normally the definition of a term is stipulated in a provision of a written agreement. Such definition is applicable, however, only to the State parties of the agreement. It cannot be, therefore, universal.

The universal definition of a term may be found only in another source of international law, namely customary international law, which is constituted of State practice and *opinio juris*²¹. But, there is almost no possibility for the concept of developing country to become an international customary law²².

Although there is no such possibility²³, however, it’s true that the terms developing and developed countries have been used on a daily basis anywhere, whether in the North or South. Besides, the terms

19. R. L. Rothstein, *Global Bargaining: UNCTAD and the Quest for a New International Economic Order*, Princeton University Press, 1979, pp. 148-156.

20. A. Berger et al., “Towards G20 Guiding Principles on Investment Facilitation for Stable Development”, in *Strengthening the Rule-Based Trading System*, Policy Center for the New South, 2019, p. 125.

21. *North Sea Continental Shelf Cases*, International Court of Justice Reports (ICJ Rep), 1969, para. 83.

22. In the only form of a legal norm, ‘if x, then y’, the legal effect ‘y’ depends on the legal requirement of ‘x’, i.e., the objectives and principles of an international organization. Given the objectives and activities of different organizations are not the same, both ‘x’ and ‘y’ would vary from agreement to agreement. If State practices on ‘x’ and ‘y’ do not converge, a universal definition of developing country would not be finalized as a customary international law even in the future.

23. As regards non-binding resolutions of the General Assembly and ECOSOC, it has been suggested that the repetition of the same resolutions may constitute an international customary law. While such repetition would foresee the future adoption of similar resolutions, in practice the General Assembly has adopted draft treaties for the necessary rules enshrined in the resolutions after discussions in the International Law Commission. Their possible contribution to international law would be through their influence on the practice of a Member State in the relations with other States. In respect of another constituent of an international customary law, *opinio juris*, it may not be the same with public opinion, allegedly represented in a General Assembly resolution. Consequently, there cannot be a fixed definition of developing country in the universal international organization of the UN. Cf. M. D. Óberg, “The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ”, *European Journal of International Law*, Vol. 16, 2005, P. 879–906.

have been convenient to instantly express the economical disparity between States in the existing unfair and unjust international economic relations.

Next, isn't there any definition of developing countries in the UN? Even in the UN, there is no consistent definition for the designation of developing and developed countries²⁴. The UN Statistics Division acknowledges as follows.

There is no established convention for the designation of "developed" and "developing" countries or areas in the United Nations system. In common practice, Japan in Asia, Canada and the United States in northern America, Australia and New Zealand in Oceania, and Europe are considered "developed" regions or areas. In international trade statistics, the Southern African Customs Union is also treated as a developed region and Israel as a developed country; countries emerging from the former Yugoslavia are treated as developing countries; and countries of eastern Europe and of the Commonwealth of Independent States [the former Soviet Union] in Europe are not included under either developed or developing regions²⁵.

In the General Assembly, whether a Member State is designated as a developing country or not is voluntarily decided by the State concerned itself. As a consequence, an entity that can finally answer the question "Is China a developing country?" is only China. However, a Member State that self-designated as a developing country is not entitled to claim special measures, though a Member State under humanitarian crisis will be specifically assisted, irrespective of the self-designation.

However, the designation of "developing countries" is officially used in a General assembly resolution establishing UNCTAD²⁶. for example. The General Assembly has established UNCTAD in 1964 as its sub-organ to deal with trade, investment and development issues. Its mandates are to reduce and eventually eliminate the trade gap between "developed and developing countries", and to accelerate the rate of economic growth of the developing world. Among its main functions is to promote international trade between "developed and developing countries" with a view to accelerate economic development. And its activities include various promotional activities designed to help "developing countries" in the areas of trade and capital flows.

As UNCTAD is a UN sub-organ under the General Assembly, there cannot be an official definition of developing and developed countries²⁷. As regards UNCTAD statistics, it is proclaimed that "[t]he designations employed and the presentation of the material on UNCTADstat do not imply the expression of any opinion whatsoever on the part of the secretariat of the United Nations concerning the legal status of any country"²⁸.

In other international organizations, established by States outside the UN, like WTO, any kind of

24. One of its legal reasons is that only the Security Council and ICJ are empowered to make legally binding decisions that can impose legal obligations on the Member States in conformity with the UN Charter. Other UN organs, including the General Assembly, are not thus empowered. Therefore, in order to legally establish a universal definition of developing country, a sufficient accumulation of precedents in the Security Council and/or ICJ would be required, though there's no such prospect at all.

25. UN, "Composition of Macro Geographical (Continental) Regions, Geographical Sub-Regions, and Selected Economic and Other Groupings", March 2010, n. c/, <https://web.archive.org/web/20100306024500/http://unstats.un.org/unsd/methods/m49/m49regin.htm>.

26. UN Doc A/RES/1995 (XIX), 1964.

27. UNCTAD cannot exceed the power of its authorizing institution, the General Assembly. Therefore, UNCTAD is not entitled to impose international obligations on the members, particularly in respect of the relations between developed and developing countries. Thus, the projects of UNCTAD are to be prepared, decided and implemented in consultation with the recipient. UNCTAD, Participatory Self-Evaluation: A Guide for Project Managers, Evaluation and Monitoring Unit, 2018.

28. UNCTADstat, April 2019, <https://unctadstat.unctad.org/EN/Classifications.html>.

legal rights and obligations may be freely agreed upon in the agreements, so long as they are not in conflict with the peremptory norms of *jus cogens*²⁹. While the UN Member States have agreed that only the Security Council and the International Court of Justice (ICJ) are empowered to make legally binding decisions, the members of other international organizations may agree differently.

In WTO, there are no definitions of developed and developing countries. At the same time, some WTO Agreements contain provisions which give developing countries special rights, called “special and differential treatment” provisions³⁰. The members announce for themselves whether developed or developing. However, other members can challenge the decision of a member to make use of provisions available to developing countries in the WTO Agreements which provide developing countries with longer transition periods before they are required to fully implement the agreement and provisions on technical assistance. However, self-designation as a developing country does not automatically ensure the benefit from such unilateral preference schemes as the Generalized System of Preferences (GSP)³¹. “In practice, it is the preference giving country which decides the list of developing countries that will benefit from the preferences”³². Thus, whether a member is a developing country or developed country is not a decisive problem in WTO. A decisive problem for a member is how the preference giving country judge the member.

4. Is ‘Developing Country’ Necessary?

Is there any necessity for a definition of developing countries, whether universal or not, for international organizations? Since each international organization needs a different definition due to different objectives and principles, there would not be any necessity for its universal definition. How about, then, a definition which is not universal?

In respect of World Bank, it was asked: “Should we continue to use the term ‘developing world?’”, expounding as below.

Many in the economics and development community already think it’s time we stopped using it. Bill and Melinda Gates certainly think the term to be passe, and in a recent talk, Hans Rosling argued that what most people think of as the divisions between the “developed” and “developing world” no longer exist, that using the term “developing world” is intellectually lazy, and that we should classify countries more precisely³³.

In World Bank, “[t]he low, lower-middle, upper-middle and high income groups are each associated with an annually updated threshold level of Gross National Income (GNI) per-capita”, critically pointed out before 2016, “and the low and middle income groups taken together are referred to in the World

29. K. Hossain, “The Concept of *Jus Cogens* and the Obligation under the U.N. Charter”, *Santa Clara Journal of International Law*, Vol. 3, 2005, pp. 72-98.

30. WTO, “Special and Differential Treatment Provisions”, n.d., https://www.wto.org/english/tratop_e/devel_e/dev_special_differential_provisions_e.htm.

31. B. F. Onguglo, “Developing Countries and Unilateral Trade Preferences in the New International Trading System”, M. R. Mendoza, P. Low and B. Kotschwar (eds.), *Trade Rules in the Making: Challenges in Regional and Multilateral Negotiations*, The Brookings Institution Press, 1999, Chap. 4.

32. WTO, “Who are the Developing Countries in the WTO?”, n.d., https://www.wto.org/english/tratop_e/devel_e/d1who_e.htm.

33. N. Fantom, T. Khokhar and E. Purdie, “Should We Continue to Use the Term ‘Developing World?’”, *World Bank Blogs*, November 16, 2015, <https://blogs.worldbank.org/opendata/should-we-continue-use-term-developing-world>.

Bank (and elsewhere) as the ‘developing world’”. And the criticism continues that “[t]he World Bank has for many years referred to “low and middle income countries” as “developing countries” for convenience in publications, but even if this definition was reasonable in the past, it’s worth asking if it has remained so”. As an answer to the question thus asked, it is remarked that “the terms ‘developing world’ and ‘developing country’ are tricky: even we use them cautiously, trying to make it clear that we’re not judging the development status of any country”³⁴.

In the 2016 edition of the World Development Indicators of World Bank, however, “the term ‘developing country’ is at last eliminated from its data vocabulary, no longer distinguishing between ‘developed’ and ‘developing’ countries in the presentation of its data”. Tim Fernholz appreciates it that “[t]he change marks an evolution in thinking about the geographic distribution of poverty and prosperity. But it sounds less radical when you consider that nobody has ever agreed on a definition for these terms in the first place”³⁵.

Besides, in respect of the effects of special measures for developing countries, J. P. Trachtman critically unveiled their limited utility as follows.

[T]he concept of ‘Special and Differential Treatment’ (S&D), at least as applied so far, has limited utility. S&D is a complex phenomenon – some aspects of S&D are undoubtedly beneficial. However, this concept seems to mask the fact that the international trade system has done little specifically intended to alleviate poverty: it is not special and differential enough³⁶.

In the similar vein, F. Ismail argues that “the concept of S&DT, while recognizing the need to take into account the special needs of developing countries, is by itself ineffective and serves as a palliative for unfair and imbalanced trade rules”³⁷. Then, B. Herz and M. Wagner conclude that “[w]hile the exports of developing countries are enhanced by GSP in the short-run, the medium- to long-run effect is clearly negative”³⁸. These arguments may be construed as not in favor of producing statistics by classifying States to developing and developed countries, and substantially disadvantageous against the practical necessity to define developing countries.

Nevertheless, the term developing countries still continues to be daily used everywhere in the world. Why the term is so commonly used? Its motive is not legal as considered above, and may not be even economic, for its economic meaning is neither clear nor shared as described above. It may be more political than legal and economic. One of the popular motives to use the term may be a kind of condemnation against the unfair and unjust structure of international trade, though M. Wionczek assumes that “NIEO is needed not because the traditional order is wicked, immoral or unjust, but because in the long run it does not bring real benefits to anyone”³⁹. When the term is referred to in a

34. Ibid.

35. T. Fernholz, “The World Bank is Eliminating the Term ‘Developing Country’ from its Data Vocabulary”, QUARZ, May 17, 2016, <https://qz.com/685626/the-world-bank-is-eliminating-the-term-developing-country-from-its-data-vocabulary/>.

36. J. P. Trachtman, “Legal Aspects of the Poverty Agenda at the WTO: Trade Law and ‘Global Apartheid’”, *Journal of International Economic Law*, Vol. 6, 2003, pp. 10-11.

37. F. Ismail, “Mainstreaming Development in the WTO: Developing Countries in the Doha Round”, CUTS/FES, 2007), iii, quoted in M. E. Salomon, “From NIEO to Now and the Unfinishable Story of Economic Justice”, *International and Comparative Law Quarterly*, Vol. 62, 2013, p. 45, n. 81.

38. B. Herz and M. Wagner, “The Dark Side of the Generalized System of Preferences”, German Council of Economic Experts, Working Paper 02/2010, 2010, https://www.sachverstaendigenrat-wirtschaft.de/fileadmin/dateiablage/Arbeitspapiere/The_Dark_Side_of_the_Generalized_System_of_Preferences.pdf.

39. M. Wionczek, “The New International Economic Order: Past Failures and Future Prospects”, *Development and Change*, Vol. 10, 1979, p. 647.

daily conversation on the road or at home, it would symbolically involve a shared political criticism against the unfair and unjust structure of the existing international trade, even if Wionczek is correct from the purely economic perspectives. Then, NIEO should be reviewed from different perspectives.

5. Failure of NIEO/UNCTAD

Developing countries called for a NIEO, advocating the needs for fundamental changes in the conduct of international trade and economic development to redress the economic imbalance between developing and developed countries. While the concept of NIEO was projected by Raul Prebisch of Argentina and other economists, it is suggested that one of its antecedents was the first United Nations Conference on Trade and Development (UNCTAD) in 1964. And in 1974 the UN General Assembly has adopted the Declaration and Programme of Action on the Establishment of a New International Economic Order, committing itself “to work urgently for the establishment of a new international economic order based on equity, sovereign equality, common interest and co-operation among all States, irrespective of their economic and social systems, which shall correct inequalities and redress existing injustices, make it possible to eliminate the widening gap between the developed and developing countries and ensure steadily accelerating economic and social development and peace and justice for present and future generations”⁴⁰. The commitment affirms that the existing economic order is unjust, and there is the necessity to create a new international economic order based on justice and co-operation. As regards the Programme of Action, they called for “[e]xpeditious formulation of commodity agreements where appropriate, in order to regulate as necessary and to stabilize the world markets for raw materials and primary commodities”⁴¹.

R. N. Cooper observes that the group of 77 was influential in advocating the NIEO, and, in that, especially Latin American States were prominent⁴². At the same time, the Group was successful in creating UN organs such as the Special United Nations Fund for Economic Development, the UN Capital Development Fund and the International Development Association⁴³. And it should not be overlooked that the UN Convention on the Law of the Sea (UNCLOS) stipulates on technology transfer and the “equitable sharing of financial and other economic benefits derived from activities in the ‘Area’”⁴⁴. In the process of NIEO, moreover, such General Assembly resolutions as UN Declaration on Permanent Sovereignty over Natural Resources and the Charter of Economic Rights and Duties of States were adopted⁴⁵.

On the other hand, however, bitter fight between Latin American and African States has been barely compromised. R. L. Rothstein views, “the disagreement continued a prolonged conflict between Latin American States and the less developed Afro-Asian States”⁴⁶. On the causes of the failure of NIEO that are attributable to developing countries, M. E. Salomon considers that the NIEO’s “overall lack of success has been attributed in part to developing countries not having presented a unified platform

40. Declaration on the Establishment of a New International Economic Order, UNGA Res 3201 (S-VI), Appendix, 1974, Preface.

41. Programme of Action on the Establishment of a New International Economic Order, UNGA Res 3202 (S-VI), 1974, I, 3, a, iii.

42. R. N. Cooper, “A New International Economic Order for Mutual Gain”, *Foreign Policy*, No. 26, Spring 1977, pp. 66-67.

43. S. Kumar, “What was the Thrust of the NIEO and What was its Success Rate? – Answered”, *Share Your Essays*, <http://www.shareyouressays.com/knowledge/what-was-the-thrust-of-the-nieo-and-what-was-its-success-rate-answered/94980>.

44. UNCLOS, arts. 140 and 144.

45. “As a matter of normative status, there was one success which is often said to have emerged from the efforts by developing States to shape the evolving rules of international economic law: the general acceptance by the international community of the principle of permanent sovereignty over natural resources”, Salomon appreciated, in *loc. cit.*, *supra* n. 38, p. 38.

46. R. L. Rothstein, *loc. cit.*, *supra* n. 19, p. 118. See also E. M. Rezaei, “Revisiting the Concept of ‘the South’”, *Atlantic Currents*, Policy Center for the New South, 2018, pp. 145-159.

and an agreed set of concrete objectives”⁴⁷. As regards the stance of developed countries on the demands of NIEO⁴⁸, he views that “the central failure to establishing a NIEO was due to the fact that industrialized States did not want any such thing. It is not surprising to hear suggested that they were unwilling to enter into genuine global negotiations; and then, as now, were unwilling to see rules created that did not serve their economic interests well”⁴⁹.

“[T]he state-centered NIEO is now quite irrelevant, though its basic ideals and objectives prescribed in the Declarations remain the same”. While for developing countries one of the most decisive elements for economic development is an access to the markets of the developed countries, in practice, the markets in North America and the EU have become more protectionist. And it is observed that “this has been one of the biggest issues”⁵⁰. Thus, M. E. Salomon has argued that “[t]he NIEO and subsequent legal initiatives that sought to bring economic and social development to bear on international law were dismissed as either aspirational or misguided”, on the basis of his severe criticism against international law that “the international law that we have is the international law that the powerful want”⁵¹.

For S. Moyn, however, NIEO has successfully raised issues of global justice, and opened the philosophical discourse on economic justice, quoting T. W. Adorno that ‘philosophy lives on because the moment to realize it was missed’⁵². And, Gilman concludes as below.

What made the NIEO remarkable was not so much the content of its program as the fact that political and economic leaders throughout both the postcolonial world and the industrial core of the global economy took seriously the possibility—the former mainly with Wordsworthian hope, the latter often with Lovecraftian horror—that they might be witnessing the downfall of the centuries-long hegemony of what was coming to be known simply as “the north”⁵³.

Hence, people in general on the road and at home would determinedly continue to speak of developing countries, regardless of absence of its exact definition.

Then, what happened of the expected bargaining power of developing countries for establishing international commodity agreements? Although at that time international commodity agreements could be expected as one of the desirable forms of implementing solidarity on the part of the united developing countries⁵⁴, now it is widely believed that the agreements have already lapsed⁵⁵, because they have failed in uniting, albeit their reality has been complex, according to C. L. Gilbert. He summarizes the reality that the tin commodity agreement collapsed. But as regards sugar and cocoa

47. Salomon, loc. cit., supra note 38, p. 46.

48. On the demands of NIEO, see M. E. Ellis, ‘The New International Economic Order: The Debate over the Legal Effects of General Assembly Resolutions Revisited’, *California Western International Law Journal*, Vol. 15, 1985, p. 658.

49. Ibid.

50. Kumar, loc. cit., supra n. 41. See also Salomon, loc. cit., supra n. 38, pp. 31-54,

51. Salomon, *ibid.*, pp. 43, 53.

52. S. Moyn, ‘Justice Delayed: The Political Origins and Uncertain Future of Global Justice’, *ABC Religion and Ethics*, 27 January 2016, <http://www.abc.net.au/religion/articles/2016/01/27/4395512.htm>, quoted in I. Venzke, ‘Possibilities of the Past: Histories of the NIEO and the Travails of Critique’, *Journal of the History of International Law*, Vol. 20, 2018, pp. 296-297.

53. S. Gilman, ‘The New International Economic Order: A Reintroduction’, *Humanity Journal*, March 19, 2015, <http://humanityjournal.org/issue6-1/the-new-international-economic-order-a-reintroduction>.

54. R. L. Rothstein, ‘Regime-Creation by a Coalition of the Weak: Lessons from the NIEO and the Integrated Program for Commodities’, *International Studies Quarterly*, Vol. 28, Issue 3, September 1984, pp. 307-328.

55. E. Quill, ‘The Failure of International Commodity Agreements: Forms, Functions, and Implications’, *Denver Journal of International Law and Policy*, Vol. 22, 1993-1994, p. 503.

international commodity agreements, tough market environment and lack of general support made their price stabilization impractical. And unfortunately, but as is often the way it is, as the producing States of coffee could not compromise on the distribution of share of profitable prices, the control of the coffee market was lost. Then, Gilbert observes that in general commodity control would not fit in a more and more globalized and competitive world, and the developing countries have finally lost the motivation to resolve the practical difficulties of stabilizing the price of their primary products⁵⁶. The failure of international commodity agreements would be construed as marking the beginning of the end of solidarity. Now, the fundamental flaws of solidarity in the sense of “Help me. I’ll help you” in the world of the 21st century should be considered.

6. From Solidarity to Complementarity

Under the principle of solidarity in the sense of “Help me. I’ll help you”, “I’ll help you” needs “Help me” at first. In this vein, for solidarity, the plight to cry “Help me” is a necessary condition. Thus, V. Jabri discusses on the complicities of solidarity in global structures of domination⁵⁷. Solidarity may be, unintentionally, connected with the global structures that have caused economic plights. The principle of solidarity may have worked as a kind of “palliative” or self-immunity of unfair and unjust international trade⁵⁸, which has in fact widened the gap between assisting and recipient States, aggravating especially the domestic society of the latter⁵⁹. Was it successful for the African continent as a whole, still confined to the recipient of economic assistance from outside the continent, even around 60 years after independence? If it’s not successful, solidarity approach should be reconsidered.

Solidarity principle inevitably presupposes the immobilized positions of those who look for help and those who help, at least while it is implemented. Thus, in solidarity the positions of States are asymmetrical and both parties are neither interdependent nor mutual, in conflict with the principles adopted by the Bandung Conference and Non-Alignment Movement⁶⁰. In self-consciousness, moreover, the expanding effects of asymmetry may not stop at the economic relations. They may extend to the political and social relations, and finally even to the human relations, causing serious problems within a State. That would neither be ideal for nor beneficial to both the recipient and assisting States.

In practice, however, there cannot be perfectly developed States that do not feel necessary to pursue economic development anymore. Not only for developing countries but also for highly developed States such as the US, Japan and Germany, there cannot be an end to economic development. Even highly developed States would not stop making great efforts to economically develop year by year. In practice, it has been proclaimed, as if it were a fixed phrase, that the economic development should

56. C. L. Gilbert, “International Commodity Agreements: An Obituary Notice”, *World Development*, Vol. 24, 1996, pp. 1-19.

57. V. Jabri, “Solidarity and Spheres of Culture: the Cosmopolitan and the Postcolonial”, *Review of International Studies*, Vol. 33, 2007, pp. 715-728.

58. F. Ismail, “Mainstreaming Development in the WTO: Developing Countries in the Doha Round”, *CUTS/FES, 2007*”, iii, quoted in Salomon, loc. cit., supra n. 38, p. 45, n. 81. See also, P. Jory, “Karl Popper and Thailand’s Political Crisis: The Monarchy as the Problem for an ‘Open Society’”, in *The Open Society and its Enemies in East Asia: The Relevance of the Popperian Framework*, G. C. G. Moore (ed.), Routledge, 2014, p. 56.

59. Seminar on the Effects of the Existing Unjust International Economic Order on the Economies of the Developing Countries and the Obstacle that this Represents for the Implementation of Human Rights and Fundamental Freedoms, Geneva, Switzerland, 30 June-11 July 1980, UN Doc ST/HR/SER.A/8, 1980.

60. Rezrazi, loc. cit., supra n. 46, pp. 148-154.

be sustainable⁶¹, in the sense that meets the needs of the present without compromising the ability of future generations to meet their own needs⁶². Indeed, it has been believed that “economic growth is not only a necessary but a sufficient condition for improving human welfare”⁶³, as enshrined in the Charter on the Economic Rights and Obligations of States⁶⁴.

Thus, economic growth still remains to be one of the most urgent domestic policy goals for States, whether developed or developing. In this vein, almost all the States desire to economically develop forever. Against that background, recently, even the word ‘degrowth’ is uttered. It is submitted as one of the interpretative frames for a new social movement where numerous streams of critical ideas and political actions converge⁶⁵. The advocates of degrowth suggest that “[w]hen the concept of sustainable development reveals its essence of mere green-washing, degrowth comes as a proposal for radical change”, and it is added that “[j]ustice is a major concern for degrowth in its social and economic dimensions” and “[d]egrowth promotes then open communities and understanding for the concerns of the others in the neighborhood, city and planet level and a change of imaginary that would enable us to share”⁶⁶. The problem is, however, not whether growth or degrowth.

In European modernity, intrinsically, economic development may be an endless and impossible dream. Then, can we finally give up the impossible dream, including sustainable growth? Its answer would be found in the fundamental flaws of asymmetrical principle of solidarity.

From the above, it has come out that the problem is not economic development as such, but it is the immobilization of those who cry “Help me” and those who respond “I’ll help you”, as an empirically inevitable result of economic development. However, the immobilization under solidarity principle of assisting developed countries and recipient developing countries would be overcome by means of transformation from asymmetrical to symmetrical relationships in the particular conducts of a State to another State. The transformation may be made possible by the acceptance of symmetrical principle of complementarity by States⁶⁷. If solidarity is taken as ‘organic solidarity’, involving the attractions of complementarity and the mutual benefits of free exchange between participants that are different if not equal⁶⁸, difference between solidarity and complementarity would be made virtually small.

Under the principle of complementarity, “Help me” is no longer relevant. The affordable States would transfer the surplus of products to those States where the products are in short supply. The distinction of assisting and recipient States would disappear. Thus, hopefully, Japan has complemented African

61. S. Guru, “What is the Importance of Sustainable Development?”, Your Article Library, n.d., <http://www.yourarticlelibrary.com/environment/what-is-the-importance-of-sustainable-development/9910>.

62. UN General Assembly, Our Common Future, UN Doc A/RES/42/187, 1987.

63. S. Fukuda-Parr, Global Partnerships for Development. Paper delivered at 25 Years of the Right to Development: Achievements and Challenges, Friedrich Ebert Stiftung/OHCHR, Berlin 24–25 February 2011, quoted in Salomon, loc. cit., supra n. 38, p. 50, n. 105.

64. Charter on the Economic Rights and Obligations of States, Chap. 1, (k).

65. F. Demaria, F. Schneider, S. Francois and F. Sekulova, “What is Degrowth? From an Activist Slogan to a Social Movement”, *Environmental Values*, Vol. 22, 2013, pp. 191-215.

66. Idem., “Degrowth in South Europe: Complementarity in Diversity”, 2011, https://degrowth.org/wp-content/uploads/2011/10/Demaria_et_al_Degrowth-complementarity-in-diversity.pdf. See also, F. Schneider, G. Kallis and J. Martinez-Alier, “Crisis or Opportunity? Economic Degrowth for Social Equity and Ecological Sustainability”, *Journal of Cleaner Production*, Vol. 18, 2010, pp. 511-518.

67. On complementarity in general, see N. Wiley, “The Complementarity of Durkheim and Mead”, *Symbolic Interaction*, Vol. 12, 1989, pp. 77-79. According to S. M. Ritchie and D. L. Rigano, moreover, as solidarity may have a variety of meanings, it may well be held that it can emerge from complementarity. Idem., “Solidarity through Collaborative Research”, *International Journal of Qualitative Studies in Education*, Vol. 20, 2007, pp. 129-150.

68. M. Kohli and M. Novak (eds.), *Will Europe Work?: Integration, Employment and the Social Order*, Routledge, 2001, p. 28.

States through Tokyo International Conference on African Development (TICAD)⁶⁹, for example. What a State would complement other States may be determined on the basis of incessant and endless dialogue with other States in the proper perspective. In this vein, it should be reminded that B. S. Santos has referred to ‘the ecology of knowledges’, “by starting an intellectual dialogue and translation among different cultural knowledges and practices: South-centric and North-centric, popular and scientific, religious and secular, female and male, urban and rural, and so forth”⁷⁰. Then, the complementary relationships would penetrate gradually into the African continent and then into the whole world.

From international legal perspectives, the international society is now going in the direction of complementarity, which is symbolically and comprehensively represented by the international customary law of obligations *erga omnes* (in relation to everyone) owed to the international community as a whole⁷¹, instead of solidarity. Under the international obligations *erga omnes*, any State is entitled to complement an injured State in relation to the wrongful State, irrespective of request or consent by the injured State. Thus, the entitlements of non-injured third parties to a conflict between other States under the Draft Articles on Responsibilities of States for Internationally Wrongful Acts are based on the principle of complementarity⁷². Besides, it is well known that the universal jurisdiction of the International Criminal Court (ICC) is based on the principle of complementarity⁷³, though it seems that the AU has a different opinion⁷⁴. In the African continent, in particular, article 4 (h) of the AU Act provides for the principle of ‘non-indifference’ as the “right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity”⁷⁵. Thus, in international law, both criminal responsibilities and responsibilities for internationally wrongful acts include the principle of complementarity as a constituent part, which entitles non-injured third parties or the relevant society as a whole to act, even when the injured parties do not cry “Help me”, eliminating the distinction between those who look for help and those who are lending hands from the international society. Under the principle of complementarity, injured parties and developing countries are held as victims of global structure, in which any State would not be conceived as the third parties.

In fact, so far, not only in such courts as the ICJ and ICC, but also between States, the symmetrical principle of complementarity has been, consciously or unconsciously, accepted and implemented. As the conclusion, its case may be briefly illustrated by the relations between Morocco and Japan.

69. B.Z.Osei-Hwedie and K.Osei-Hwedie, “Japan’s TICAD: Alternative Global Framework for Africa’s Development?”, *Zambia Social Science Journal*, Vol. 1, 2010, pp. 123-140.

70. R. Dale and S. Robertson, “Interview with Boaventura de Sousa Santos”, *Globalisation, Societies and Education*, Vol. 2, 2004, quoted in E. M. Rezrazi, “Revisiting the Concept of ‘the South’”, *Atlantic Currents, An Annual Report on Wider Atlantic Perspectives and Patterns, Overcoming the Choke Points*, 5th edition, OCP Policy Center, 2018, p. 159.

71. *Barcelona Traction Case*, ICJ Rep. 1970, para. 34. See M. Ragazzi, *The Concept of International Obligations Erga Omnes*, Oxford University Press, 2000. Examples of international obligations *erga omnes* are: the outlawing of acts of aggression; the outlawing of genocide; protection from slavery; and protection from racial discrimination.

72. E. K. Proukaki, *The Problems of Enforcement in International Law: Countermeasures, the Non-Injured State and the Idea of International Community*, Routledge, 2009, Chap. 4.

73. M. Bergsmo, O. Bekou and A. Jones, “Complementarity after Kampala: Capacity Building and the ICC’s Legal Tools”, *Goettingen Journal of International Law*, Vol. 2, 2010, pp. 791-811.

74. The AU Assembly has adopted a declaration recommending to withdraw from the ICC. AU Doc. EX.CL/1006(XXX), 2017, para. 8. And, Kenya has sent a letter, practically on behalf of the AU, asking the UN General Assembly to make a request for an ICJ advisory opinion on the consequences of legal obligations of States with respect to the Heads of State immunities. Letter dated 19 July 2018 from the Permanent Representative of Kenya to the UN addressed to the Secretary-General, UN Doc A/73/144, 2018.

75. M. Mwanasali, “From Non-Intervention to Non-Indifference”, in *The African Union and its Institutions*, J. Hoffmann and A. Nolkaemper (eds.), Amsterdam University Press, 2012, pp. 224-227.

7. Conclusion: Morocco and Japan

Up to around two couples of decades ago, squid and octopus were not at all expensive, rather reasonable, in Japan and they were very popular foods among Japanese people in general. At that time, almost every day, we used to have squid and octopus, eaten rare, boiled, grilled, fried and dried, at home and in the stalls. But, nowadays, their prices have risen higher and become high class foods, because of decrease in their domestic production. So, from Morocco, Japan has imported squid, octopus and other seafood, which are indispensable materials to cook Japanese traditional cousins, Sushi, Sashimi and Tempura. Without those Moroccan seafood, it would be hard for Japanese people to enjoy and maintain the food tradition and food-related cultural tradition. As regards food-related cultural tradition, for example, Sushi has long played impressive roles in the traditional narrations, such as comical Rakugo and serious Kodan, as well as other traditional popular entertainments, which constitute the bases of today's Japanese culture. And such traditional culture in turn helps to maintain and strengthen the national identity as Japanese. In this sense, Moroccan seafood has daily complemented Japanese people, consciously or unconsciously, what is necessary but lacking to maintain its national identity.

Furthermore, there is such an interesting complementary case that a product from Morocco has become established in Japan and common to Japanese people, as if the product were originally Japanese. The mystery is related to Morocco Ingen, or Moroccan Gengen. Even now, it is called Morocco Ingen. We do not usually call it Ingen, or Gengen, in short, omitting the word Morocco. It is called in its full name, as if respectfully. In restaurants, it is indispensable as a garnish of beef stake and hamburg. Besides, its popular cousins cooked at home and in Japanese taverns seem to have been regarded as specifically Japanese foods. As it is very often referred to at superstores and home, the word Morocco has been accepted as a part of Japanese daily language. The case may be cited as an example of the long term effect of complementarity, respecting with each other.

On the other hand, 35 Japanese companies, such as Yazaki, Sumitomo Corporation, Mitsui & Co., Ltd., and HIS, have created over 27,000 employees in Morocco, raising Japan to the first country-employer in Morocco⁷⁶. And reportedly the Achmmach tin project in Morocco has attracted interest from Japanese investors⁷⁷. Also, it is reported in 2019 that “Yokogawa Group, a global leading industrial instrumentation and maintenance company has revealed its plans to launch a subsidiary in Morocco’s largest city, Casablanca”. “With the new subsidiary, the group aims to expand its customer base in Morocco in various economic sectors such as energy, chemicals and petrochemicals, drug manufacturing, agri-food, and water/waste treatment”⁷⁸. Nowadays, Morocco is Japan’s second largest business partner in Africa, “which made the Japanese companies in Morocco increase during the last ten years by five times”⁷⁹. Besides, Director General of Japan External Trade Organization (JETRO), Mizuno Daisuke, said “Japanese economic operators are interested in the investment opportunities in Morocco in various

76. MoroccoEmbassyinJapan, “InvestmentOpportunitiesandOfferofMorocco”, InvestinMorocco, 2014, p.4, http://www.morocco-embaj.jp/news/2014/JABF_AMD1.pdf.

77. R. Speight, “Japanese Investment in the African Mining Industry”, 2014, https://www.mayerbrown.com/files/News/dd4d4329-f734-4e11-a39c-a71fd3f4dd95/Presentation/NewsAttachment/24c48b12-9e6e-4170-a4d4-ad70eddc45d7/art_speight_japanese-investment_jun1114.pdf.

78. “Morocco Attracts More FDI as Japanese Companies Mulls Expansion into Casablanca”, Yokogawa, 2019, <http://venturesafrica.com/morocco-attracts-more-fdi-as-japanese-company-mulls-expansion-into-casablanca/undefined>. See also “Japanese Companies Follow in China’s Footsteps, Opening Subsidiaries in Casablanca”, Morocco Traveler and Travel Exploration News, 2019, https://moroccotravelblog.com/scalia_news/japanese-companies-follow-in-chinas-footsteps-opening-subsidiaries-in-casablanca/.

79. T. Bazza, “Morocco is Japan’s Second Largest Business Partner in Africa”, Morocco World News, 2018, <https://www.moroccoworldnews.com/2018/12/261535/morocco-japan-second-largest-business-partner-africa/>.

sectors, notably automobile, aeronautics, agribusiness and energy”. JETRO is a Japanese government-related organization that works to promote mutual trade and investment between Japan and other States, inaugurated in 2014 its bureau in Rabat. It is the first of its kind in Maghreb region⁸⁰.

Besides, for the purpose of supporting the political and economic reform in Africa and evoking the attention of international society towards Africa, Japan has co-hosted TICAD, through which Japan has contributed to promote high-level policy dialogue between African leaders and development partners since 1993⁸¹. Thanks to investment from abroad⁸², “in 2017 Morocco produced over 350,000 cars and commercial vehicles and is now the largest vehicle producer in Africa”⁸³. In particular, with the historical background of the diplomatic relations between Morocco and Japan over 80 years, moreover, triangular cooperation between Morocco, Japan and Africa has been actively implemented in such sectors as road maintenance, port management, electricity, drinking water, fisheries and health⁸⁴.

In this vein, Morocco and Japan have complemented each other, though geographically and culturally far away. In the complementary relationships, both investing and accepting States are always symmetrically helping and helped simultaneously. Thus, the designations of developing and developed countries would neither be relevant nor necessary any longer.

Furthermore, the complementary relationships are not restricted to material products. In the world of IT globalization, immaterial intelligence, such as knowledge, skill and experience, whether traditional or modern, would as well play no less important roles than material products in the complementary relationships. For instance, Japan’s food culture is going to take hold in Morocco. You will find in Rabat very many Sushi restaurants, such as Sushi Box, Yoka Sushi, Matsuri, Mysushi, Cote Sushi, Tokyo Restaurant, Sushi Lounge and Sushi House⁸⁵, where miso soup, sashimi, nigiri, gunkanmaki, chirashi and temaki are served. And in Bento restaurants and shops, tempra is one of routine meals in a bento box. Rice (long grain), shoyu, tofu, nori and surimi, or kani kamaboko in Japanese, are normally sold in supermarkets, and cooked as ingredients used for side dishes. They are used on a daily basis for cooking in restaurants and at home.

In the long run, therefore, the economic complementary relations between States, like Morocco and Japan, would inevitably give crucial impact with each other on the social and cultural life within each State. In Taoism and Confucianism, for example, “Yin and Yang, the two primary and fundamental forces in the universe ... are opposite but mutually complementary”. Here, “[y]ang represents what is firm, and Yin represents what is yielding”. “Yin and Yang must cooperate and support each other”⁸⁶.

80. “Japanese Companies Seek to Reinforce Presence in Morocco: Japanese Official”, Morocco World News, May 1, 2016.

81. Ministry of Foreign Affairs of Japan, “TICAD I Outline”, 2014, <https://www.mofa.go.jp/region/africa/ticad/outline.html>.

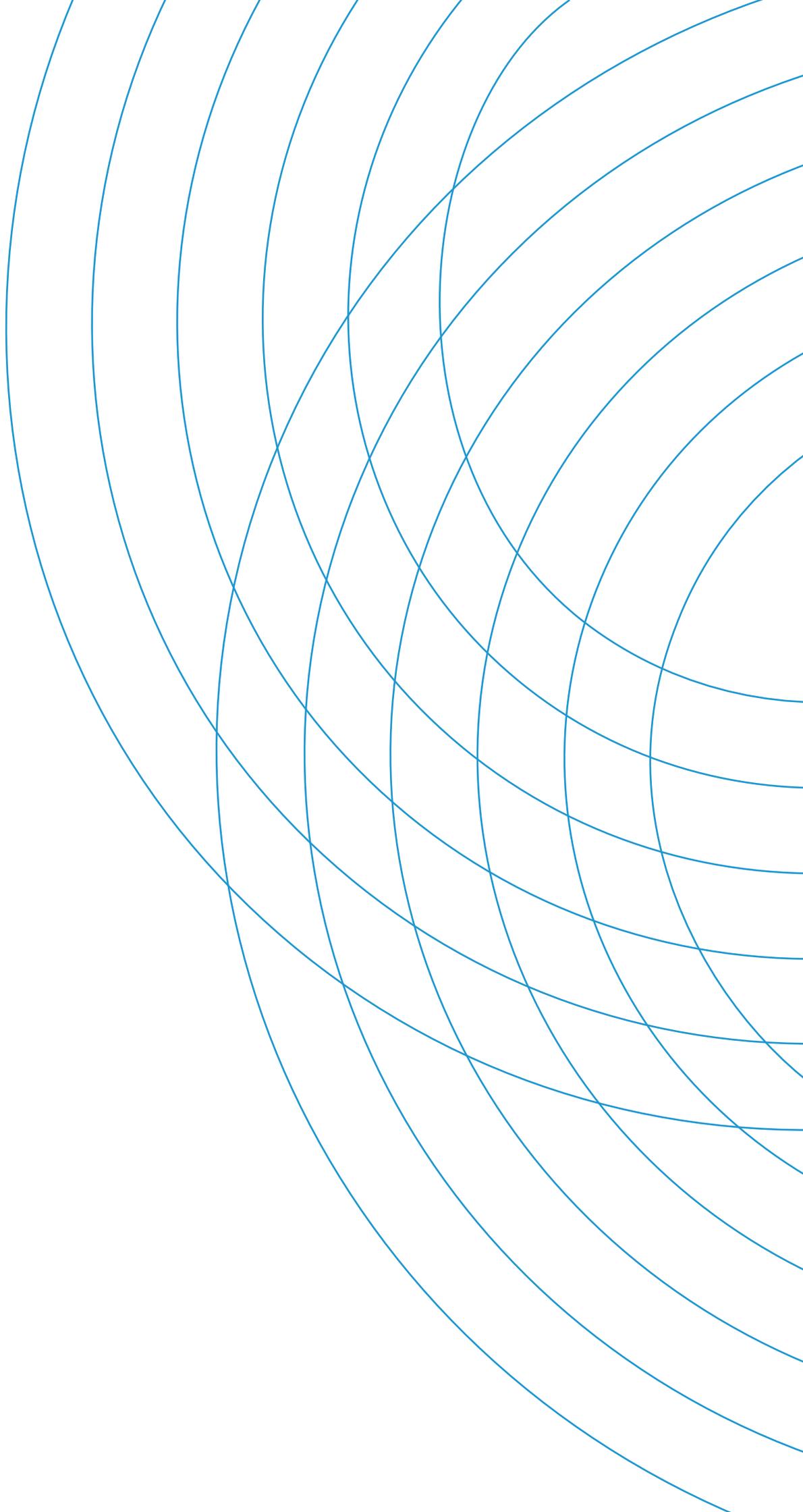
82. According to ‘Africa Investment Index’ in 2018, Morocco made the top spot in Africa in foreign investment. See Morocco Embassy in Japan, “2018 Africa Investment Index – Morocco Leading the Continent”, 2018, <http://www.invest.gov.ma/?Id=39&lang=en&RefCat=5&Ref=807>.

83. K. E. Aynaoui, “Preface”, in *Strengthening the Rule-Based Trading System*, Policy Center for the New South, 2019, p. 4.

84. Morocco Embassy in Japan, “Investment Opportunities and Offer of Morocco”, *Invest in Morocco*, 2014, p. 3, http://www.morocco-embassy.jp/news/2014/JABF_AMDI.pdf.

85. “Japanese Restaurants in Rabat”, *tripadvisor*, 2019, https://www.tripadvisor.com/Restaurants-g293736-c27-Rabat_Rabat_Sale_Zemmour_Zaer_Region.html.

86. “On the Complementarity of Taoism & Confucianism”, *The Institute for Dialectic Complementarity Studies*, November 21, 2014, <http://julianahunt.weebly.com/on-the-complementarity-of-taoism-confucism/on-the-complementarity-of-taoism-confucianism>.





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