



THIRD WORLD APPROACHES to INTERNATIONAL LAW *Review*

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Whose Rights, Whose World? TWAIL-ing International Law's Ambivalences

*In the closing keynote conversation of the [2025 Toronto TWAIL Conference](#) organized by Osgoode Hall Law School, on 6 September 2025, [Oláolúwa Òní](#) engaged [Balakrishnan Rajagopal](#) on the conference theme: *A Structured Ambivalence? A Multidisciplinary International Conference on Third World Approaches to International Law and Governance in a Time of Global Crises*.*

1. Introduction: Shifting Conceptions of the 'Third World'

Oláolúwa Òní: It is wonderful to have this time to discuss some of the themes you have taken up in your work as a TWAIL scholar, including work that you have done as part of your UN mandate as special rapporteur on the right to adequate housing. I'll start with a question that is quite elemental to a discussion on TWAIL. I often find myself thinking through how changes in the international order can impact our current understanding of what it means to be a part of the 'third world'. There is the idea, which is gaining purchase, that the world is shifting towards a 'pax multipolaris,' where ['no single power sets the rules \[and\] peace is shaped through military deterrence and the shared threat of global extinction'](#). Part of this is also the felt sense that existing hegemonies are losing authority and legitimacy in global politics.

Two questions occur to me. First, does this strike you as an apt description of our current situation. And second, what does this mean for a tradition like TWAIL that is energized by resistance to the hierarchization of states, especially resistance to the hegemony of the global north in, and through, the hierarchy.

Balakrishnan Rajagopal: To talk about what the 'third world' means from the perspective of TWAIL, I will have to start with a discussion of some TWAIL history. I think incipient TWAIL ideas began to emerge with Latin America's pushback against US imperialism and against attempts to use international law to maintain US hegemony. So, one can trace the origins of TWAIL thought as far back as the mid-1920s and 1930s with the work of people like [Judge Alejandro Alvarez](#). However, we typically tend to look to the post-1940s and 1950s period, when most of the Asian and African states became independent.

The dominant idea of international law during this period was that international law was binding, universal, served the interests of everyone, and was neutral in character. Fortunately, the newly independent African and Asian states had very creative international law advocates and thinkers who rejected the prevailing claims made about international law. Instead, they demonstrated that international law was, essentially, a result of colonialism, that it retained (and continues to retain) many elements from its colonial history, and that it primarily served the interest of western countries.

Therefore, scholars from that period saw the need to do at least two things. One: reform international law, to bring about radical changes to its structure, to its norms, and its approaches. Two: challenge the prevailing ideas about the origins of international law. So, this early generation of TWAIL thinkers made interesting claims that questioned the idea of an international law that emerged from Europe and gradually extended itself over the rest of the world. They argued that there was a long tradition of African and Asian inter-state relationships and international legal norms. In other words, statehood was not a gift of the west. It existed before. There were organized political communities in non-western societies, and these communities knew how to conduct relations with each other. Many things that we tend to think of as Europe's contributions to international law were, in fact, commonly shared among non-European polities. The legal historian, [CH Alexandrowicz](#), is an example of a scholar working from India who did pioneering work in this era. Alexandrowicz was of Polish origin, but he wrote from – and about – Asia, and influenced the work of other TWAILers who came after him.

Then, in the 1980s and especially the 1990s, TWAIL re-energized itself. This latter upsurge is what many have called TWAIL II. In TWAIL historicizing, the formal coming together at Harvard Law School of a group of TWAIL scholars in the mid-1990s is often regarded as an important milestone in the evolution of TWAIL thought. At this conference, scholars asked questions about the place of the 'third world' in a global political moment where we were told the Cold War had ended. In fact, we were told that history itself had ended, and that liberal democracy and capitalism had

prevailed as the only forms of organizing politics and economy. The new generation of TWAIL scholars pushed back against these claims, and I would count myself among them.

We were quite acutely aware of the first generation of TWAIL scholarship. Or, to avoid the language of 'generations', we were aware of the early works in TWAIL thought. But we were also aware of the actual historical record of postcolonial states. And that record, unfortunately, was not a pretty one. In many ways, these states had behaved almost as badly as the colonial states of the past. We were resistant to the assumption that these states would be better stewards of the economy, or politics. It is fair to say that the TWAIL scholars who came in the late 1980s and 1990s tended to be a little bit more critical of the idea of third world states.

Láolú: But even the so-called 'TWAIL II' scholars were not of one mind in their consideration of the postcolonial state.

Raj: Of course we were not. Our opinions ranged across the spectrum. Some were more critical, others less so. I don't think anyone took the third world state as an automatic vehicle for achieving all the aspirations of third world peoples. But there were, of course, differences. In my case, I would put myself as one of the more acute critics of the idea of the third world state itself. In fact, I think the conventional idea of statehood is a barrier to the realization of the best cosmopolitan or normative goals of international law.

International law really aspires to create a world that is just and plural – one that enables the full expression of all our personalities, not just as individuals but as communities, as cultures. Its goal is to allow us to live in harmony, not just with ourselves, but also with nature. If you think that these are amongst the highest aspirations of international law, then many, including me, were quite convinced that the idea of statehood, as it had emerged in the postcolonial context was not a sufficient or appropriate vehicle for achieving the goals of international law.

All this to say, while the politics of relationship among states may change and shift from the hegemony of one or a small minority of states to 'pax multipolaris,' as you put it, I am inclined to altogether deemphasize states in my TWAIL theorizing.

Láolú: If not states for you, then what?

Raj: I think that we need to look at other arenas of doing politics, other ways of expressing our collective commitment to improving things. One of the frameworks I have taken up is the idea of social movements instead of states. Movements can become states, or movements can lead to transformation of states. But movements

can also make change possible, even in the absence of states. Or, despite opposition from states.

A lot of my work has emphasized the importance of movements historically in shaping and transforming international law over time. I have looked at areas that traditional international law scholarship would consider the most distinct elements of what is called modern international law of the twentieth century, that is the international legal order that emerged after the first world war. One such area is international institutions which did not exist in classical international law, including the positivist traditions of the nineteenth century. Before the twentieth century, we just had states. Institutions started emerging in the late nineteenth century, but really, things got going on that front with the First World War, and the institutionalization of international law that followed. In mainstream international law scholarship, the growth of international institutions is seen as a distinct element that characterizes modern international law.

Another element often mentioned as a key difference between modern and classical international law is the growth of human rights law. Human rights law focuses especially on the relationship between states and their own citizens. It prescribes norms to improve states' performance within their own territories. The idea of human rights as a norm of international law was a dramatic departure from the traditional black box thinking about sovereignty. The traditional ideas around sovereignty created a wall between states' domestic conduct and accountability under international law. But human rights law broke through the wall, and invoking sovereignty no longer shields states from accountability.

What I found in my work was a great deal of evidence that neither of these two aspects of international law – institutions and human rights law – would have emerged the way they did absent social movements as an explanatory variable. States are, of course, always at the heart of any story about international law. But they are not the only or even the most important aspect; we also need to look at social movements. We may be in a phase where states are asserting much more control over movements. The role of the state has been a little more pronounced during the last few years compared to those of movements, but the longer historical perspective shows that these things go through cycles.

The idea of the 'third world' was originally about states, no doubt. But by the late twentieth century, I think TWAIL scholarship had moved well beyond that and was engaged with actors within social movements. I don't want to call them non-state actors because that's a bit inaccurate; social movements are embedded in states and states are embedded in social movements. In fact, many states emerge from movements, or they are transformed through movements. They grow in new

directions, due to movement pressure. And I give examples [of that in my work](#), including how the environmental movement created new dimensions of statehood in Latin America. States would not have entered some domains but for movements that emerged and pushed the states in certain directions. States and movements are in a kind of dialectical relationship.

2. On Shaping International Law from the Margins

Láolú: The point you raise about decentralizing states in our narrative of international political action is an important one. I appreciate your sentiments about the inadequacy of statehood as a vehicle for achieving the goals of international law. Yet, I can't help thinking that notwithstanding the shortcomings of this vehicle, it continues to feature prominently in advocacy for marginalized peoples. If we consider the political context of the Middle East region, for example, a significant part of the advocacy towards securing the status of the Palestine peoples is recognition of Palestinian statehood.

A number of politically powerful states in the global north held back from recognizing Palestine as a state. Some of these states have [recently granted recognition](#) to Palestine, mostly to chastize Israel for its unlawful conduct in the Gaza strip. Notwithstanding the ugly politics surrounding the moment, there was [some celebration among Palestinians](#). It strikes me that statehood still holds a powerful appeal for marginalized peoples, even if the state is, as you say, an inadequate vehicle.

Raj: You are right. Just to be clear: statehood is, or can be, very important. But statehood is not important for its own sake. Statehood is important because it helps us achieve other things. For example, statehood is important for our exercise of the right to self-determination. But it is not always essential. There are many countries or societies where communities can exercise quite a lot of self-determination even in the absence of independent recognition as a state. This is true of many confederal and federal systems. Some non-state peoples sometimes have more authority and more capacity to fully realize their economic and political futures compared to so-called independent states that don't have any authority to determine what goes on within their territory. Some states remain, essentially under colonial control of powerful external actors.

There is often a confusion between statehood and recognition in the context of Palestine. Palestine already existed as a state. It existed as a component of the Ottoman Empire, or you could call it the Ottoman state before the First World War. With the spread of European colonialism, the territory was made part of the mandate system precisely because it was a distinct political entity. The British mandate resulted from the recognition of Palestine as a distinct political entity. Under international law,

a territory and people who were under a mandate system were like a candidate state in waiting. They were waiting for the soonest possible opportunity to be recognized by the rest of the world as a state, because, according to the thinking at the time, certain elements of statehood were absent. Of course, a lot of that thinking was itself problematic and colonial.

But for better or worse, you could say that Palestine as a state has existed, at least since the [1947 plan approved by the UN which recognized two states](#). In fact, Israel asserted itself as a state and was recognized by more countries right away. But Palestine took more time to be recognized as a state, especially after the [1967](#) and [1973](#) wars. But if you fast forward to where we are now, Palestine is recognized by an overwhelming number of states around the world, especially in the global south. And as we have seen in the last few weeks, even European states and other western states like Australia and Canada, have recognized Palestine as a state. But it doesn't mean that, due to their recognition, somehow Palestine has now become a state. It was already a state. Other states already recognized it. It was carrying on diplomatic relations with other states on an equal basis. It had an observer status at the UN and the only reason why it didn't become a full member was because of the veto exercised by the United States.

We should be careful not to confuse recognition and statehood. Some people say, 'Palestine is not quite a state because it's not recognized yet.' They're confusing a factual inquiry with a legal consequence. The factual inquiry is whether a people constitute a state. But recognition goes to the legal consequences that flows from a relationship between one group of people and another group of people through this normative or institutional medium called statehood. It would be ridiculous to say that a state does not exist prior to recognition. Suppose India has a relationship with France, but for many years, India never recognized France. Does that mean the French people don't exist as a state? Of course they exist as a state, even if India takes its own time to recognize France as a state.

Láolú: Can I offer a slight pushback to that? While I think the account of the factual inquiry you've laid out is accurate, we are speaking in the context of the international legal regime. Under this regime, recognition is consequential. It is almost a threshold issue that moves things one way or the other.

Raj: Right, right.

Láolú: I will give an example from a history that is familiar to me. In Nigeria, scholars – not least of which, Taslim Elias – have argued that precolonial African societies were

organized into political units that would satisfy the characteristics of a modern state.¹ Today, these 'states' do not exist within international law. Only the Nigerian 'state' enjoys recognition as a state, so Nigeria asserts itself as a state to the exclusion of the precolonial peoples drafted into it. If any of these peoples attempt to assert their precolonial statehood, they would not be acknowledged within international law, however factual their claim might be. In fact, such attempt would be considered treason, as the history of the [Biafra war](#) shows us.

It feels to me that there is a case to be made that, practically speaking, factually satisfying the checklist for statehood is not enough to be considered a state under modern international law. The key ingredient is recognition by other states, which is really recognition by a few select states. And I am interested in your sense of why international law, even with all the impulses of critical scholarship like TWAIL and Fourth World Approaches to International Law, continues to allow a system where non-recognition by a handful of states can serve the death knell on a people's attempt to assert their statehood.

For all the factual evidence of Palestinian statehood, the US [can issue a veto that prevents Palestine from coming into full membership of the primary institution of the international community of states](#). Even though many states have recognized Palestine as a state, it, as a practical matter, remains in limbo status within international law.

Raj: I don't know that we can say that international law allows for it. It is more so that the exercise of power by, in this case, the United States can prevent certain legal consequences because of the defects in the international normative and institutional structure. If we didn't have a veto system that allows single-member veto, for example and if we didn't have the Security Council structured the way it is then the result would be different. So, it's more the result of the defect of the systems that we have rather than any other factor.

The other thing I would say is that states come and go. States existing today may wither away or may transform themselves into some other territorial entity. Or they may be absorbed by other states. In the case of Nigeria, former states have been brought together in a variety of ways and they are now the state of Nigeria. But no state has ever been established for eternity. All states are capable of both being formed and of coming apart. The Soviet Union is a prominent example of this fact. Many of the component units of the Soviet Union were already states in the 19th century. But the Soviet Union absorbed all the states and then it subsequently disintegrated. With the disintegration of the polity, many of the former states have come back into being.

¹ T.O. Elias, *Africa and the development of international law* (A. W. Sijthoff, 1972) 6-15.

The reality is that there are states today. But if, as you say, a component unit attempts to assert itself as a state, it may not be immediately recognized by other countries, even if it meets the formal criteria of statehood under the Montevideo Convention. However, even if the prospective state is not immediately recognized, it may garner some recognition over time. I wouldn't fetishize the idea of the state and its current territorial or demographic formulation as somehow unalterable and written in stone. States are artificial entities. Martti Koskenniemi wrote [an article](#) many years ago about the artificiality of the state. His angle was different, but I subscribe to the idea that states are artificial entities we create to provide a sense of collectivity and a sense of community, to give us protection and an ability to achieve things for the benefit of all. But there is no reason why we can't organize ourselves in other ways, and, in fact, we often organize ourselves in other ways.

3. On Exercising Counterhegemony in the face of Hegemony

Láolú: I appreciate this idea of indeterminacy. The other thing I wanted to tease out of this conversation is how to understand the north-south relationship in our present moment. I wonder if you have a sense that this is a pivotal moment for folks who are advancing critical theories. I have found myself thinking often about the [Bandung Conference](#). I think of it as a moment when third world states moved to take charge of their own destinies in the global order. I also think our present moment represents another critical decision point for third world states. The big powers are fighting. The hegemons are becoming less popular. How would you compare the Bandungian moment to our present moment?

Raj: I would rephrase your question by asking how does one exercise counterhegemony in the face of hegemony. The former colonial western powers, chiefly led by the United States, are exercising hegemony. The extractive classes that rule over postcolonial states are also very much part of the same ruling structure, but they happen to rule from our own capitals as opposed to sitting in London or New York, although they may have houses in London and New York.

Now, to compare the Bandung moment to our present moment of counterhegemony. I would date the period of counterhegemony exerting itself to the [anti-World Trade Organization \(WTO\) protests in Seattle in 1999](#). During that period, we saw some exercise of third world agency through the WTO and a few other international institutions. We also saw division over the legality of the Iraq War in 2003. Then there was gradual build up of momentum up to the point when the world economic and [financial crisis of 2008](#) resulted in the collapse of the US-led financial

system. This, in turn, led to the consolidation of a coalition of third world states around China and the rise of [BRICS](#) as an alternative formulation in 2009-10.

I think there are many differences between the Bandung moment and the post 2000 moment. In Bandung, the states were mostly African and Asian. Latin American states were still part of the sphere of influence of the United States. At the time, many Latin American states imagined themselves to be western states. In many cases, this was factually true, because many Latin American states were ruled by elites who were Europeans descended from the former colonial powers and who didn't have anything in common with the rest of the Indigenous population they ruled over.

Fast forward to 2000 and we have a very different coalition of third world states. This coalition included a completely transformed Latin America playing a central role in pushing alternative ideas of third world agency. These ideas were incubated by social movements that had transformed Latin American states from the inside. For example, Brazil was a fundamentally different state after 1988. In that year, the country adopted a new constitution following social movement mobilization and the collapse of the extant military dictatorship. Brazil was leading progressive thinking about what third world states could become by early 2000. This was a very different world compared with when the Bandung conference happened.

I would also say that states in Asia and Africa did not have the ideological coherence that they had in Bandung. At that time, Asian states in particular, were a lot more ideologically coherent as anticolonial. But I think it's fair to say that, by the 2000s, that ideological coherence had disintegrated. So, the post-2000 moment of counterhegemony had a Latin America that was significantly more coherent in an emerging third world coalition. But it also had Asian and African states that were a little more fragmented. And these are just differences at the level of states.

Láolú: Are there other areas where we might observe a difference between Bandung and the post-2000 counterhegemony?

Raj: There were also differences at the level of social movements. The anti-WTO Seattle protests were the first instance of a global social movement exercising political power to engage with international institutions and states. It had a profound consequence on WTO negotiations and the positions states took on some issues. We see this in how negotiations on agriculture in the 2008 [Doha Development Round](#) played out. Opposition to the development agenda coalesced around developing states energized by social movements emerging within their own countries. These movements opposed the neoliberal policies being promoted through the WTO.

I would say that counterhegemony in the 2000s is different from counterhegemony in the Bandung era. During the Bandung era, counterhegemony was

largely expressed by states. However, I think it's fair to say that in the 2000s, what we have is a coalition of states and social movements that exercise counterhegemony. I'll give you two examples where this collaboration between social movements and states is transforming international law.

First is the adoption of the [UN Declaration on the Rights of Peasants](#) in 2018. This document was essentially a set of ideas that emerged from social movements of landless people such as [La Vía Campesina](#) in Latin America. It is now a global movement present on all continents. The set of ideas that emerged from these movements influenced the formal positions of states and, today, we have a soft international law instrument in the form of the UN Declaration on the Rights of Peasants.

The second example is the [Treaty on the Prohibition of Nuclear Weapons](#) (TPNW) which entered into force in 2021. This is different from the 1970 [Non-Proliferation Treaty](#) (NPT). [Seventy-four states are parties to the TPNW, and ninety-five states are signatories](#); more than half the states in the world have already become legally bound by this treaty that calls for an elimination of nuclear weapons. Of course, none of the nuclear states – including the states that created the NPT – are parties to the TPNW. But if you look at how the TPNW came about and the states propelling it, we see that it is largely driven by states in the global south and a few marginalized states from the global north like New Zealand. If you ask member states why they joined the TPNW, the answer is to be found in domestic political and social mobilization. There is a very long history of networking among peace groups across many countries, and these movements have targeted the elimination of nuclear weapons as a key objective. They have done an enormous amount of work behind the scenes. But for the work done by these movements, within countries and across countries, these states would not have become parties and the normative advance that we are seeing would not be happening.

Láolú: When we talk about the TPNW, it sounds to me like what we have are two parallel structures operating within international law. One that maintains the dominance of old powers and another that advances critical or third world ideas.

Raj: Exactly.

Láolú: What is your sense of how this will play out practically? Will the two structures eventually align at some mid-point? There is a case to be made that it is dangerous for one group of people who have been historically marginalized to forswear violence while another group that have historically perpetuated violence leave themselves free to maintain their stock of nuclear arms. When it comes down to it, one group is at a serious disadvantage.

The ideal desire – the vision of our international legal order – should lend itself towards the TPNW track. But we do not seem to all share the same vision. Do you have thoughts on strategies to move the old power block into the new progressive vision? Or to at least find a point of contact between the two, so that the vision establishes itself, instead of the current situation where opposing visions run on parallel tracks.

Raj: I don't know the answer to that. I hope they manage to resolve some of these issues, although some of the tensions that arise between these different visions of international law are unresolvable. They have to be settled in one way or the other. In my view, the strategy cannot be to resolve it in the discredited structures of the past. For example, you have the regime of the NPT, which preserves the world of the nuclear haves and have-nots. Within this regime, some states will always have the right to have nuclear weapons while others are permanently denied the same right. The world that I agree with is that pushed now by the TPNW in which nobody has nuclear weapons. I like that world, I think it is a better world, but I don't know how the two worlds can be resolved.

Why would states that enjoy a privilege because they already have these weapons agree to give them up? The history of a recent state that agreed to give up its weapons has not been good. Ukraine surrendered its nuclear weapons when the Soviet Union disintegrated. Now Russia has invaded their country and is attempting to annex part of the territory. Ukraine has no real way to defend itself, except through conventional weapons. One could arguably say that if Ukraine were already nuclear-armed, it might have been more difficult for Russia to do whatever it has done.

These visions of the world are irreconcilable. They are simply alternative ways of understanding the world. I would say it is comparable to the sort of world order that existed before anticolonial movements and the world after. These movements challenged colonial empires and made them disintegrate. The world of the nineteenth and early twentieth century and the world following the mid-twentieth century could not have been reconciled with each other. One had to give way for the other to come.

Láolú: That's a powerful comparison. It helps me make sense and perhaps rustle up some hope for what a less fraught future may look like.

Raj: I would add that while the US still has a certain kind of hegemony, the word hegemony is increasingly less apt to describe the dominance of the US. There is a clear distinction between what is just pure dominance, that is simply superiority in terms of economic, military, or political power, and hegemony which is grounded on a theory of legitimate authority, a dominance that is accepted by the rest of the world. I would

say in the last few years, the US has been losing its legitimacy as a global power. It still has power, but I'm not sure that most people in the world, are accepting the exercise of that power.

The idea that the US should function as a supreme power having all the economic, political, and military power in its hands to the exclusion of everybody else is not a sustainable model of power that the world can live with. To put it more straightforwardly, in the interest of the people of the US and that of the world, the US should simply be less powerful or only be as powerful as it needs to be, but not more. On the other hand, the gradual exercise of increasing power on the part of the global south is a reality. Take, for example, China's position regarding international law compared to that of the US in the last couple of years. The US comes across as being against international law, against the rule of law, against every institution that calls for the collective management of problems. But China, on the other hand, repeatedly emphasizes the importance of international law. I would say that is a clear instance of an attempt by China to establish counterhegemony, to create an alternative narrative of acceptability that bolsters their actual power. They have become very powerful, but power alone won't be enough. And they clearly recognize it. To become the new hegemon, they need a new theory of legitimacy.

4. On The Right to Adequate Housing and the COVID-19 Pandemic

Láolú: I am going to move on to your UN mandate, which you began in the early days of the COVID-19 pandemic. You began a mandate that was focused on the right to adequate housing when the rest of the world was consumed with questions around our health infrastructures. What strategies did you adopt to help advance your mandate while the world was consumed by a different set of problems?

Raj: I started my mandate in May 2020 when COVID had just been declared a global emergency. Countries were beginning to shut down. Flights were being canceled around the world. And I assumed my role. The early advice coming from the World Health Organisation (WHO) and national health authorities made clear that the best approach was prevention, to avoid getting the disease altogether. At the time, there were no vaccines in the immediate horizon. We were told: 'if you don't want to die, protect yourself'. How do you protect yourself? We were told, 'isolate yourself'. And how do you isolate? By going to and staying in your homes. To me, the connections between combating the spread of the virus and advancing protections for the right to adequate housing were obvious.

Basically, effective prevention required access to adequate housing. Housing is not just four walls and a roof. Within international human rights, adequate housing is

a space that has enough infrastructure and is livable. Livability includes running water. A house where you don't have the ability to wash your hands frequently is not adequate. It is odd to go to people who travel an hour or two to fetch water and tell them that there is a horrible new disease, and the way to prevent it is by constantly handwashing. It is kind of crazy to tell people who are overcrowded to the extent of 10 people in a two-room house that they must isolate themselves. How exactly would they isolate themselves if there are so many in a household? To me, it was obvious that having an adequate house was often the difference between life and death in the context of the pandemic. And that is the way I framed the issue.

The other thing that was also obvious is that not everyone was going to be equally affected by the pandemic. Populations that were economically better off would be better able to prevent the spread of the virus. These populations had the option to sit at home while they earn their income, they would not have to leave their homes to work. And if they did fall sick, they had better means of treating themselves. The early data already showed that people in developing countries were more affected, and within developed countries like Italy or the US, the racial, ethnic, and Indigenous minorities who lived in impoverished areas were more affected than people living in affluent communities.

I wrote my [first report](#) to the UN General Assembly on COVID-19 and the right to adequate housing. It provided a portrait of the housing challenges countries were facing in wake of the pandemic. To prepare this report, I put out a call for countries to share their experience, and we received massive engagement; more than 60 states responded by providing detailed information about the challenges they were facing. That project reinforced my sense of the importance of the right to housing for addressing the pandemic. It was clear that the right to housing is foundational to protecting the right to health. This insight, I should add, is not news to health researchers. They have always understood that health at home is an important component of an individual's health – along with health in the workplace. It was easy to make the connection between housing and health, and to provide an early critical intervention in pandemic management strategies.

Láolú: Staying on the theme of the pandemic, I have always been intrigued, from a TWAIL perspective, about the differences in how states responded to the pandemic and implemented prevention measures. My sense of it was that there was an observable difference between the approaches in the global north and global south to state enforcement of shelter-in-place mandates. To put it plainly, it felt like the mandates were more violently enforced in a country like Nigeria than in a country like the US, where I was living at the time. In New York, we were strongly encouraged to stay at home and maintain social distance. In Lagos, however, armed police men were

patrolling the streets, beating people up, destroying businesses, and violently arresting people on suspicion of violating the pandemic measures.

I do not mean to suggest that enforcement in New York was seamless or without government high-handedness; the US has its fair share of problems when it comes to police violence, and these problems are well known. But I, at least, never heard of a situation where the state demolished business premises or beat up occupants of a space because they failed to heed pandemic mandates. Such incidents happened often in Nigeria with video footage making the rounds on social media. And I was quite surprised that there wasn't much of a push back against this texture of abuse of state power by the usual international human rights agencies.

My first question is if you agree with the account I have laid out on the differences in how states enforced the pandemic mandates.

Raj: Yes, there were certainly big differences in the way states responded to the pandemic. You are right that, in many states, the pandemic created a new opportunity for states to exercise new forms of control over their population, to engage in repressive actions and measures. I expressed a great deal of concern in my report about how the so-called emergency laws authorized in the context of the pandemic were used to undermine the right to adequate housing. There were many cases of mass evictions being carried out during lockdown to take advantage of the curfew-like conditions in which access to legal remedies and the movement of affected persons were restricted. In a number of countries, the pandemic resulted in a partial shutdown of the justice system itself. People could not go to courts or access lawyers. This triggered a wave of irregular evictions, home demolitions, and other housing rights violations. And it went beyond just housing, there were also impacts on free association rights and the repression of civic dissent.

In the US and other rich countries, we saw less of this type of repression. The restrictions played out in different ways, but you are right that they were not so patently violent. In some countries, like India, particularly vulnerable populations like migrant labor, who are itinerant from rural communities to big cities, were rounded up like criminals and expelled en masse to the countryside without any transport options. These populations were left without any sort of food, or water, or support. It was just horrendous. In China, it was well-known that in the name of the pandemic entire communities were locked up in their own buildings or neighborhoods and not allowed to come out. They were treated like prisoners.

So yes, there was a difference between the global north and the global south, especially countries in the global south that had a history of being harsh towards their own populations. They treated the pandemic as an opportunity to escalate the level of

harshness. Countries in the global north also escalated measures against already marginalized groups. For example, the US treated its African American and Native American populations very poorly. In fact, in many ways, you could say that the impact of COVID-19 in the US was largely concentrated in black and brown communities, especially if you look at the number of deaths and casualties.

5. On TWAIL-ing a UN Mandate

Láolú: I agree that one is likely to find people living in global south conditions within countries in the global north and vice versa. Now, let us speak more generally about the posture that you brought to your mandate as a TWAIL scholar. I have to imagine that part of what was front of mind for you as you were working to articulate the right to adequate housing under your mandate were the lessons or the lenses that TWAIL provided. Could you speak about how your work as a TWAIL scholar impacted the direction you took with the mandate.

Raj: Absolutely. I cut my teeth as an international lawyer in the 1990s, working on issues of evictions and displacement. I was interested in the rights of people displaced due to large development projects, like dam projects. Particularly important to my work was one of the most prominent dam projects in the world, the [Narmada Dam project](#) in India. That project educated me, along with a generation of others in the 1990s, about the need to be more critical towards the liberatory narratives of development that third world states often use to legitimize themselves and engage in actions that violate the rights of their own people. They perpetuate such violations in the name of bringing about benefit to the entire population. This was the most dangerous part of the narrative: the idea that so much suffering had to be imposed because it was good for everybody else. Or that it was good for the people who were being subjected to the horrible treatment as well.

A lot of my early work came from engaging with these experiences. In the 1990s, I was human rights advisor to the World Commission on Dams. That role provided me a global understanding of how widespread the problem I had identified was. In my early scholarship, I stayed particularly focused on the rights to land and housing as part of economic, social, and cultural rights. I also felt that these rights were the unique contribution of third world states and third world movements. International law would not have these rights but for political mobilization around the rights of poor people. International law has always treated these rights as secondary compared to civil and political rights. I was trying to find ways in which I could do meaningful work on economic, social, and cultural rights as a TWAILer. The entry point for me was land and housing. I remained very much focused on it during my

first years as an academic at MIT. Ten years later, I established the displacement Research and Action Network to further build on this work. And then, finally, I ended up being the housing rapporteur in 2020.

Now, to the focus of your question: how my research in TWAIL traditions impacted my approach to the UN mandate. It informed the thematic priorities I chose to focus on. Every rapporteur writes two reports per year: one to the UN General Assembly and another to the UN Human Rights Council. In these reports we discuss themes we consider important for either immediate attention or future engagement. These themes are important for the realization of the human right that you're dealing with. In my case, it was the right to adequate housing, and I'll mention a few of these reports.

I was already sure when I came in that I wanted to focus much more openly on discrimination. The issue, as I see it, is not simply that housing is unaffordable or inadequate, which is a global problem. The issue was also not just that too many people are evicted without any recourse. It is that the issues with housing fall disproportionately on people of color, on marginalized communities, on Indigenous people, on women – on people who do not traditionally possess power. I wanted to really focus on discrimination, and on spatial segregation. I was interested in the increasing division of cities and human settlements into balkanized communities where rich people live in so-called gated communities, walling themselves off. We see that not just in rich countries, where it has been going on for a long time, but also in newly emerging cities. We see it in the global south. Lagos, since you come from Nigeria, is a good example of a city with this kind of phenomenon.

Láolú: I can confirm that we tend towards spatialized segregation in Lagos.

Raj: It seems the main characteristic about becoming rich is not that you must have money, it is that you must express a distaste for the poor. Money is a material element. But the main thing that seems to distinguish a rich person is a psychology of aversion to people who are different from you. I see that in every society; it manifests itself in different ways. This is the psychological ugly underbelly of economic 'development' and 'growth'. As people become better off, they develop this psychological attitude.

I also knew that I wanted to look at armed conflict and the mass destruction of housing. I have long felt – and [have written about it](#) – that when we look at what conflict does to people, to the extent that there is any attention to the kind of suffering people go through, they tend to be much more on civil and political rights violations. We start with violation of the right to life through unlawful killing and then consider similar violations such as torture and infliction of unusual punishment. But when homes are destroyed across an entire community or when cultural life is extinguished

by the systematic destruction of cultural institutions or symbols of identity, international law never takes such violations seriously enough to prosecute them on their own terms. I wanted to highlight the fact that wars are increasingly urban; conflicts are increasingly urban. More people live in urban areas and when conflicts happen, it leads to more destruction of homes. But mass destruction of homes is not recognized as a crime under international law in its own right. I thought this was a normative gap that we needed to fill.

I was also interested in the [global affordable housing crisis and climate change](#). As a TWAILer, especially as someone who has been critical of the development enterprise, I was interested in the idea of development as a destructive idea that ended up bolstering the power of the states, especially in the global south, without corresponding improvement in the lives of the people of these states. This has been the history of statehood from the 1950s, 1960s, and 1970s. I wanted to really express a clear view about these problems in my report.

When housing rights advocates write about climate change, it is to express concern that increasing impacts of climate change will lead to more people losing their homes or living in homes that are not adequate. When flooding happens, for instance, homes will get destroyed or washed away. This is a stark reality, and I spent a huge amount of space in the report discussing it. But there is another dimension to consider: the impact of housing on climate change. The ways in which we build our homes and human settlements are exacerbating the problem of climate change. Our methods are leading to more emissions impacting climate change negatively. I estimated the global emissions produced by the built environment of homes and associated infrastructure as 37%. Increasingly, as more and more new cities are planned, they result in the destruction of forests. They are also built using processes that are extremely energy inefficient.

My work so far under the mandate reflects my central preoccupations as a TWAILer, which is, in sum, a critique of the postcolonial state. My forthcoming report is on land and the right to adequate housing. In it, I am highly critical of the way in which countries are exercising eminent domain powers of land acquisition. It is completely out of control, and it has to be brought under some control.

Láolú: I'm looking forward to that report. In my PhD research, I also engage with the colonial origins of governments' authority to take over land, presumably for public benefit.

Raj: I'm sure the report is not going to endear me to the states at the General Assembly. But the fact is that it is out of control. My position as a TWAILer is to be more critical of states and the development enterprise. To be more critical of the

enormous colonial legacy and the vestiges of colonialism in the very structure of international law, particularly the systematic degrading of any attempt to treat the suffering of non-western people as being equally important. For me, the clearest example of such degrading is the complete neglect of a person's suffering when that person loses the thing for which they have worked for 30 years. A home built with a great deal of effort is destroyed in a moment but that is not taken seriously. But if the same person is picked up by the police, and he or she alleges torture, there might be some chance of that being prosecuted.

6. On Reading the Crisis in Gaza as a Genocide

Láolú: You have put forward a very persuasive argument. Listening to you now, I am struck by how your observations match attitudes towards destruction of homes in Palestine. Much voice is appropriately given to condemn the violations of civil and political rights, especially the right to life. However, when the President of the United States released that [video talking about building the Riviera of the Middle East](#), people were critical, but not with the same heft with which they criticized the killings in Gaza.

Raj: I will also add that the excessive focus on loss of life and deaths has led to this unfortunate situation where Israel, for example, can argue that they are not committing genocide. One reason they offered in support of this claim is that there are still so many people left in Gaza. Where people have died, they claimed such victims were either Hamas or were used as civilian shields by Hamas. So, such deaths were to be regarded as the unfortunate casualties of war. Or they say, 'if we wanted to kill so many people, we would not be trying to arrange the delivery of aid'.

Láolú: I think it's quite clear that they can no longer lay claim to the aid excuse. They have [been preventing aid from getting to Gaza for some time now](#).

Raj: It is still part of the official narrative of Israel that they never stopped the delivery of aid, as alleged by, among others, human rights experts like me. The problem is that the focus is entirely framed by how many human lives are lost. This is an important focus, of course. But if we look at other dimensions of genocide, including Article 2(c) of the Genocide Convention, which is what South Africa focused on in their genocide case at the ICJ, we understand that a group can be eliminated in whole or in part, by creating conditions that make life impossible. This is exactly what they have done by destroying all of their homes; by making it impossible to have access to shelter, to water, to sanitation, to basic healthcare, to protection against elements. To make the place uninhabitable is, in fact, a main method through which genocide can be committed. And this is recognized in the Genocide Convention. But so far, nobody

has been held accountable. There is not a single case in our jurisprudence in international law of someone being held guilty of violating Article 2(c). South Africa is alleging that, and that is one reason I think their case is crucial for the jurisprudence of international law.

7. On Domicide and International Criminal Laws

Láolú: We have segued quite smoothly into something else I wanted to talk about: your [report on domicile](#). You have advanced a case for recognizing domicile as its own unique category of international crimes or violation of international law. My reading of your argument is that the crime of genocide as currently constructed does not adequately cater to what constitutes the crime of domicile, as you frame it. I am interested in where you draw the line of difference between the two concepts. For example, when I read [South Africa's case at the ICJ](#), what I understand to be an important piece in the argument they are constructing is how Isreal's actions have effected the destruction of cultural life, including housing, which goes towards Isreal's genocidal intent.

I'm not an expert by any means on international humanitarian law or international criminal law but, to my knowledge, one potent way to establish the crime of genocide is by demonstrating an assault on cultural life. In the context of the Palestinian experience one of the ways to establish that Israel is perpetuating genocide is by pointing to the assault on the cultural life of Palestinians. This suggests that embedded within the crime of genocide is the concept of domicile. But you argue that we need to think about them as two separate concepts.

Raj: Yes, I think we need to think of them as two separate concepts. What exactly is genocide? The way it is understood by the lay public is that genocide involves a huge amount of killing. Enough people must die. So, there are many who publicly say, 'only 65,000 people have died in Gaza, that's not genocide. Genocide means a million should die'. Many people imagine that there is a minimum threshold and enough people must die for something to qualify as genocide. But that's total nonsense. There is nothing in the Genocide Convention that says that there is a minimum requirement in terms of the number of lives lost.

Láolú: And it would be strange if such a thing existed.

Raj: It would be an extraordinarily strange requirement. If you go back to the original concept of genocide, especially as articulated by Raphael Lemkin who proposed the idea of genocide, the concept was looking to make sense of the threatened [extinction of Jewish people as a distinct people](#). According to Lemkin, the main way in which it

happens is by Jewish people no longer being Jewish. It is not only that they are being killed. Of course in many places pogroms did happen against Jewish people, especially in Europe. Those were instances of people wanting to eradicate Jewish people physically. But physical extermination of a people is not necessarily or solely how genocide is carried out.

Imagine, as a thought experiment, an alternate universe where no Jewish people were killed, but they were not allowed to be themselves anymore. Of course, in reality, in every case where a dominant community is trying to suppress the ability of a non-dominant community, it usually involves some killing. But imagine a situation where there are no deaths, yet the victims are not allowed to be Jewish in any meaningful sense – they are not allowed to exercise any of their religious, cultural, or other Jewish traditions, could we then say that there is a cultural sense in which there has been genocide?

Lemkin didn't explicitly answer this question. But, if you look at the ideas he proposed from 1933 leading to his [book that articulated the idea of genocide](#), it is clear that he was more worried about cultural extinction of the Jews. He was not so much worried about the physical extinction of the Jewish people. He was not particularly worried that every last Jewish person would be somehow killed off, although that later became a real threat. But when Lemkin was writing originally, it was not obvious to him that, for example, the Nazis were going to adopt the strategies they did. In fact, Lemkin wrote the text before public evidence of the gas chambers and Auschwitz became known to him, so it was not part of his analytical apparatus.

How do international lawyers then decide that a particular type of behavior that may or may not involve mass killing is genocide? It turns on intention. Intention to eliminate a people in whole or in part. The difference between genocide and crimes against humanity which also involves large numbers of lives lost, or other forms of mass suffering, is the intention.

Láolú: I agree that there's a lay sense in which people think genocide means mass killing. But institutions like the ICJ have technical competence and they are generally able to hold the nuances. So, what I am particularly interested in is the technical implications of the distinction you're making. If we were before an international tribunal, how would you make the case that genocide be considered separately from domicile, if the counter argument is that domicile is already implicated in genocide.

Raj: Domicide, as I have articulated it in my report can be a war crime, a crime against humanity, or genocide. It depends on the context in which mass destruction of housing takes place. A war commander may order an indiscriminate attack against a neighborhood in order to kill what he or she thinks of as a military target. The analysis

of that attack might show that the traditional elements of proportionality and necessity which are required under international humanitarian law have not been met, and therefore, it's a disproportionate attack, and can be classed as a war crime.

Homes are protected objects under the Geneva Conventions, but I looked at the actual case law of tribunals, not just the tribunals after World War II, but also after the Geneva Conventions were put into place in the late 1940s. I looked at the conflicts in which Geneva Convention prosecutions had happened, including tribunals in the 1990s such as the [International Criminal Tribunal for the former Yugoslavia](#). Nobody was prosecuted for mass destruction of housing. But we all know that it was a central element in the war in former Yugoslavia. Mass destruction of homes is not prosecuted as a war crime, but it should be. But war crimes are only one route to take towards prosecuting domicile.

Another approach is to categorize it as a crime against humanity, because it is a crime that imposes extraordinary human suffering. Just consider the instances in which mass destruction of housing has happened – the [Dresden bombing in World War II](#), the [London bombing by the Nazis](#), the [Tokyo bombings by the Allied forces](#), the [Hiroshima-Nagasaki bombings](#) – these acts leave severe destruction in their wake. Was any attempt even made to make a case that mass destruction of housing was a crime against humanity? Mass killing of people is a crime against humanity and a war crime in its own sake. But mass destruction of housing is not treated seriously as a crime against humanity as well.

Domicide can also be an act of genocide as we are seeing in Gaza, where mass destruction of homes is part and parcel of rendering a place uninhabitable such that a people disappear, in whole or in part. That is what is going on in Gaza. Domicide can be an act of genocide, it can be a crime against humanity, or it can be a war crime. I have explained the implications of my framework in a [podcast](#).

I have called for the recognition of domicile as a crime, but I do not necessarily expect prosecution in a legal sense. We call many things crimes to socially delegitimize the action, to shift the narrative of legitimacy. Mine is more of a popular call to shift the narrative and not merely advocacy for legal change. Of course, if there is a change in the law, and if there is a legal change in the practice of military and other forces involved in fighting conflict, such that destruction of homes becomes less regular, I would love to see that. But advocacy for recognition of domicile transcends targeting a change in the law.

8. On the Limits of the Concept of Domicide

Láolú: I think I have a clearer sense of the substance of the concept as you understand it. Now I want a sense of what you conceive to be the limits of the concept. I'll give

you an example from Nigeria. A few years ago, [the government of Lagos State as part of a development project removed a community that had long settled and lived in an area called Otodo Gbame](#). The Otodo Gbame people had lived there even before the colonial constitution of Nigeria. But the community basically became a clog in plans to create luxury housing units. The government sent in the police and military to forcefully remove the Otodo Gbame community. This, naturally, resulted in the destruction of home and the displacement of members of the community. The area is now called Periwinkle Estates and contains a number of luxury flats and homes. Is this domicide as you understand the concept?

Raj: Absolutely. In fact, I clearly call attention to that in the report itself. I clearly say that what I'm calling for is the criminalization of mass destruction of housing in the context of conflict which is a different word from war or armed conflict. The word 'war' has a technical meaning under international law. It's usually used to denote interstate war. Whereas the term armed conflict can also be used in the context of, say, civil war. So, the additional protocols to the Geneva Conventions apply. But as far as I am concerned, domicide does not have to involve armed conflict. Non-armed conflict suffices. It can be the kind of conflict that we have seen in states like Myanmar or even in parts of Sudan. Initially, they were not quite armed conflict. Now they are much more heavily formally armed with military weapons. But initially, they were just random weapons with a few guns thrown in between. It was conflict between well-organized groups that were killing each other, were torching each other's homes, and driving people out of the areas where they were living in.

In all those contexts, whether a home is a fancy three-story building or an apartment, or a simple hut in the middle of Sudan, a home is a home. The destruction of a home is still domicide if it is done as part of a larger pattern. It is interesting you mentioned the Nigerian example in the development project, because there have been some recent cases of similar use of extreme force in fact, in Lagos. I have been involved in those in my official capacity and have written to the government of Nigeria. My communications are public. I don't think the government has yet responded to those concerns.

I've actually raised the concept of domicide in the context of other development projects, including the infamous [NEOM project in Saudi Arabia](#), which is this massive new planned city in the middle of what they call the desert. But a lot of Indigenous people are living there; more than 30,000 people were forced out at gunpoint. Some were killed. This mass elimination of the people in that area is then hidden behind a celebratory rhetoric about how Saudi Arabia is modernizing and advancing, and all you see is shiny pictures of AI-generated visions of the city. Everybody seems to be in love with how the rulers of that country are modernizing so

beautifully and nobody remembers the ugly realities that lie behind these forms of 'development.'

When the [Khmer Rouge came to power in Cambodia](#), they adopted such extreme punitive measures against their own population. This included many acts of killing and deliberate acts of starvation and punishment that led to the death of almost one-third of their population. Scholars struggled to describe the incident. Was it an act of genocide? Did they really intend to eliminate the people in whole or in part? They were eliminating themselves. Cambodians killing Cambodians. It was hard to say that they were trying to eliminate all Cambodians. Some scholars came up with this concept of auto-genocide – a group trying to eliminate itself. But that doesn't quite capture what happened. There is quite a lot of new work needed to extend these concepts, including in the context of massive development-justified suffering as we are seeing in countries around the world, like Nigeria and Saudi Arabia.

Láolú: I think a concept like auto-genocide is one that wrongly takes seriously the identities created via colonialism. If one takes the Nigerian civil war as an example, it would be simplistic to describe it as Nigerians fighting Nigerians. Rather it is that the government of the colonially-created state of Nigeria was waging a war against Igbo people for the explicit purpose of keeping the colonial boundaries intact. My PhD research challenges how quickly we reach for colonial identities when we try to understand developments in postcolonial states.

At the top of this conversation, you mentioned your resistance to the idea of eminent domain, and I think this is where it connects with your work in domicile. The power of eminent domain provides an important justification for governments to displace people from their homes. Putting the concept of domicile into operation, as you have articulated it, would challenge the power of the state to do that sort of thing, right?

Raj: Exactly, exactly. It's a critical part of it.

Láolú: Thank you for your time, it is always so enlightening chatting with you, and I look forward to reading your forthcoming reports with the UN.

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