FOREWORD

SPECIAL ISSUE ON SUBALTERN PERSPECTIVES AND ALTERNATIVE EPISTEMOLOGIES

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I am delighted to contribute a foreword to the special issue of NUJS Law Review on Subaltern Perspectives and Alternative Epistemologies in international law. It carries a set of important essays written from critical perspectives on diverse aspects of international law. The issue includes an "interview article" with Balakrishnan Rajagopal on the question of right to housing and an essay on the political economy of global arms trade/war and peace by Ratna Kapur, both of whom have made vital contributions to the study of international law.

The accent on "subaltern perspectives" and "alternative epistemologies" is timely as mainstream approaches to international law do not possess the epistemic resources to effectively critique and oppose the ongoing creation of an illiberal global order by radical right governments in powerful nations. Among the signs of its arrival are the criminal and contemptuous neglect of even peremptory norms of international law. The genocide in Gaza exemplifies the increasing violence against weak nations, in this instance, to the complete disregard of the principle of self-determination. The Russian war against Ukraine represents a patent violation of the principle of non-use of force in international relations. The U.S threats against Greenland and its withdrawal from crucial international agreements (Paris agreement on climate change) and international organisations (World Health Organization, UN Human Rights Council) are another face of the emerging illiberal order. There have been many past incarnations of such undemocratic orders. The colonial global order saw unspeakable violence perpetrated against colonised peoples. Since imperialism remains the defining feature of the global order and is on the political plane associated with a lack of justice and endless violence, it was only a matter of time before it assumed an openly undemocratic character.

Imperialism is, in the final analysis, a response to the sustained accumulation crisis under capitalism. In order to help reinforce and extend the economic and political reign of capital in times of crisis, imperialism, among other things, engenders conflicts and wars. It is no accident that there are several international and internal conflicts that currently mark the global landscape; these are the expressions of competition among imperialist nations for the domination of global political space in times of acute crisis. There is a vast amount of literature available on questions of war and peace. But for those seeking to understand the political economy of war and peace from a Third World approaches to international law ('TWAIL') perspective, they can do no worse than to turn to the writings of Rosa Luxemburg as a critical resource. She made a fundamental contribution to understanding the relationship between capitalism, militarism and imperialism. In her work, The Accumulation of Capital, Luxembourg grasped the essence of imperialism in observing that it is the political expression of the accumulation of capital in its competitive struggle for what remains still open of the non-capitalist environment.[1] She linked the growth of the armaments industry or the military-

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[1] Rosa Luxemburg, THE ACCUMULATION OF CAPITAL, 446 (*translated by* Agnes Swarzschild, 1951).

industrial complex to an accumulation crisis, eventually leading to "lawlessness and violence" in international relations.[2] In The Junius Pamphlet, which contains rich insights into the political economy of militarism and war,[3] Luxemburg concretely showed that the First World War could be traced to the nature and dynamics of capitalism. She demonstrated how capitalist nations were competing in their expansion toward the non-capitalist countries and zones of the world.[4] These insights remain valid today even when the nature of imperialism has undergone transformation in the postcolonial era.

In a capitalist global order, there is also little possibility of the realisation of human rights of the poor, marginalised and oppressed groups. It is no accident that even at the best of times, basic rights such as the right to housing have not been realised. Given the importance of the housing question, we need to applaud the contribution of Balakrishnan Rajagopal as the United Nations Special Rapporteur on the Right to Adequate Housing. He demonstrates, among other things, the TWAIL commitment to both critique and reform of international law. Of course, to truly accomplish the right to housing, whether in developed or developing societies, what is required is radical social transformation. As Friedrich Engels pointed out in his essays on “The Housing Question”, "it is not that the solution of the housing question simultaneously solves the social question, but that only by the solution of the social question, that is, by the abolition of the capitalist mode of production, is the solution of the housing question made possible".[5] That proposition remains as true today as when it was penned.

In the wake of the ongoing transition from a liberal to what is likely to be a fascist global order, it is exceedingly satisfying to see the increasing number of critical voices from the Global South. Their writings are part of a corpus of literature that reflects on the failings of mainstream scholarship in combating the regressive trends in the global order. The focus on the lived experiences of peoples of the Global South, in particular the marginalised and oppressed groups, represents a significant development in the democratisation of knowledge production. In this regard, TWAIL helpfully draws attention to the dialectic between the lived experiences of the peoples and those of the author. The former constitutes the fundamental materials but assumes critical meaning in conjunction with the intersecting experiences of researchers. It is the interface between the two which produces illuminating insights. The challenge by TWAIL feminism of “imperial feminism” to foreground “marginal disabled women voices” in the Global South underscored by Vijay Kishor Tiwari, emerges from precisely the dynamic and dialectic of converging experiences. It is no different when Sai Ramani Garimella, Soumya Rajsingh, and Mohammed Saad speak of ‘constructing counterclaims related to modern slavery’ under international investment law. Finally, that can also be said to be the case when Vanza Hamzic foregrounds ‘insurrectionary West African conceptions of time and personhood, disrupts the normative assumptions of international law’s historical narratives’.

At a foundational level, it is extremely important for TWAIL and other critical approaches to offer a sustained critique of the dominant mainstream positivist approach. As Swati Parmar and Sudhir Verma ably demonstrate in their essay, the constraints imposed on the

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[2] *Id*.

[3] Rosa Luxemburg, *The Junius Pamphlet,* (1915) available at https://www.marxists.org/archive/luxemburg/1915/junius/ (Last visited on December 21, 2025).

[4] *Id*., 34. *See* B.S.Chimni, *Peace through Law: Lessons of 1914*, Vol. 3, LOND. REV. INT. LAW., 245 (2015).

[5] Frederick Engels, *The Housing Question*, 47 (1872) available at https://www.marxists.org/archive/marx/works/download/pdf/Housing_Question.pdf (Last visited on December 21, 2025).

development of jus cogens norms reflect the expedient and gatekeeping dimension of positivist institutions and the scholars who inhabit them, especially when they encounter the possibility that the substance of peremptory norms may be shaped and deployed by subaltern nations and groups. I hope that in their future work, Parmar, Verma, and others go beyond the functional explanation that positivism serves the interests of powerful nations, which it undoubtedly does, to offer an epistemic critique of the other opportunistic moves of the positivist approach. Although the positivist method is defined in terms of reliance on social facts, it does not eschew turning to natural law for interpreting particular rules and, in the final analysis, sustaining the legitimacy of international law. In other words, a binary between positivism and natural law does not adequately capture the epistemic complexity of the positivist method; it does not take sufficient cognisance of its unprincipled turn to natural law, drawing inter alia on the ethical aspects of the idea of order and the moral dimensions of international human rights law.

At this point, allow me the liberty to express some concern with extant "subaltern perspectives" and "alternative epistemologies", and more generally, on the general state of critical international law approaches. I think it is time to assess the role of critical approaches from both epistemic and pragmatic standpoints. In my view, these approaches must avoid the trap of both vacuous radicalism and anodyne critiques. The former assumes the complete rejection of the language of international law, freeing authors of the responsibility to deal with concrete issues and provide viable answers and the latter masquerades as a critique without engaging with deep structures. There is, of course, no unique way of doing critical theory, but to be meaningful, it is important that critical approaches address systemic issues. In other words, when critical theory does not grapple with the political economy of global capitalism and imperialism, the outcome often lacks epistemic bite. It is therefore time to critique critiques that do not contest the deep history and deep structures of the global order. Put differently, the recognition of the internal relationship between capitalism and imperialism is central to enhancing global spaces of freedom. The idea is not to endorse some form of reductionist scholarship but to signal the importance of structural issues.

I would also like to flag the importance of the category "class". The critical project is pursued by different approaches that include feminist approaches to international law, third world approaches to international law, and critical race theory, which centre on different social and political categories. While the categories "gender" and "race" frequently mark their presence in the literature, there is the troubling absence of the use of the category "class", other than in the literature elaborating the Marxist approaches to international law. The neglect of class analysis, even in intersectional terms, at a time when the world is increasingly divided between the rich and the poor, and the powerful and the powerless, is puzzling. The collaboration between ruling classes on the transnational plane is central to the creation of an illiberal global order, even as narrow "national interests" prevail from time to time. The latter phenomenon reflects an attempt to redistribute the gains from globalisation between national and transnational fractions of the capitalist class and, in some instances, among the transnational fractions of the capitalist class of different nations. There are times in history when the logic of territory prevails over the logic of capital, but such moves are, in the final analysis, themselves determined by the state of global capitalism. Today it reflects the growing strength of national fractions of the capitalist class as a response to the negative impact of globalisation on working peoples. In terms of the present policies of Global North nations, it is important to underscore the categories "race" and "racial capitalism" in analysing the global order. But this does not mean the necessary displacement of the multiracial transnational capitalist class.

Finally, imagining alternative futures is a necessary task today. In my view, the disengagement of critical theory from the idea of democratic socialism has proved to be a serious setback in looking for answers to the multiple crises encountered in the global order. The misplaced critique of historical materialism centred around economic determinism has often pushed critical scholarship in a direction where a focus on structures is seen to prevent exploring crucial social and political complexities, both objective and subjective, leading to a false understanding of "reality". The other obstacle is that in many postcolonial spaces, challenging Eurocentricity is mistakenly equated with the necessity of a nativist turn. In this instance, we must ask with Homi Bhabha the question: 'Are the interests of 'Western' theory necessarily collusive with the hegemonic role of the West as a power bloc? Is the language of theory merely another power ploy of the culturally privileged Western elite to produce a discourse of the Other that reinforces its own power-knowledge equation?'[6] A third problem is the erasure of the contribution that socialist international law made to the world of international law. It not only represented the first foundational critique of mainstream international law but also inaugurated crucial changes in positive international law, including the adoption of the International Covenant of social, cultural and economic rights.[7] Needless to add, in reimagining postcapitalist societies, it is crucial to take into account the dark side of "actually existing socialism", including the gross violation of civil and political rights. What we need are democratic postcapitalist societies in which human dignity is never compromised for one reason or another.

But such postcapitalist societies are not going to arrive on their own. While objective conditions exist the world over to bring about fundamental social and political transformation, the absence of sufficiently well-organised oppositional forces at the domestic and global levels makes their realisation a distant reality. Put differently, imperialism is not being systematically opposed through the collective struggles of those groups and peoples that are subjected to its rule. In the case of the leadership of Global South nations, what can be seen are epistemic and material prejudices against weak and marginalised groups in society. In the circumstances, the community of critical scholars need to subject these developments to sustained critique. It is the organic unity of the community of critical scholars and the global oppressed classes that is the need of the hour.

Lastly, it is crucial not to assume a nihilist posture towards international law, an understandable response at a time of its complete disregard by hegemonic states. As Rajagopal rightly argues, international law can serve 'as a tool of resistance, narrative, and political imagination'. The weak have to rely not only on the foundational principles of international law but also invoke all progressive norms and practices to both protect themselves from hegemonic interventions and, at the same time, seek reform in the doctrines and regimes of international law that support imperialism.

[6] Homi Bhabha, *The Commitment to Theory* in INDIAN POLITICAL THOUGHT: A READER, 228 (Routledge, 2010).
[7] B.S. Chimni, *Socialist International Law* in CAMBRIDGE HISTORY OF COLD WAR (unpublished manuscript, on file with author).