CONVERSATION ON REIMAGINING INTERNATIONAL LAW: TWAIL, HEGEMONY, AND GRASSROOTS RESISTANCE IN THE QUEST FOR GLOBAL JUSTICE

Balakrishnan Rajagopal[*]

The NUJS Law Review was pleased to host Professor Balakrishnan Rajagopal for a conversation on July 2, 2025, as part of its Special Issue on Subaltern Perspectives and Alternative Epistemologies in International Law. *Professor Rajagopal, currently serving as the United Nations Special Rapporteur on the Right to Adequate Housing, reflected on his longstanding engagement with Third World Approaches to International Law ('TWAIL') and its relevance in understanding the relationship between international law, development, and power. The conversation examined how housing, land, and sovereignty serve as intersecting sites through which TWAIL interrogates both global and domestic structures of domination. Reflecting on bulldozer demolitions in India and the destruction of homes in Gaza, Professor Rajagopal illustrated how international law can function beyond institutional confines, as a tool of resistance, narrative, and political imagination. He warned against the appropriation of decolonial language by hegemonic actors and the erasure of internal colonialism in legal discourse. Situating these concerns within the broader crisis of the international legal order, he challenged the state-centric focus of mainstream legal thought and called for frameworks rooted in the lived experiences of affected communities. His reflections urged a reimagining of international law through post-developmental and movement-oriented approaches. The interview was conducted by Dr Vijay Kishore Tiwari, Special Advisor for the Special Issue, along with members of the NUJS Law Review Editorial Board. It was subsequently transcribed, edited, and finalised by the Board. The Review hopes that this dialogue offers a valuable contribution to ongoing conversations on the future of TWAIL, the legitimacy of international law, and the construction of counter-hegemonic frameworks of development and global justice.*

TABLE OF CONTENTS

[*] Professor of Law and Development at the Massachusetts Institute of Technology ('MIT') and the United Nations Special Rapporteur on the Right to Adequate Housing.

I. LEGAL CONTINUUM & THE OPERATION OF TWAIL

V.K. Tiwari: When we envisioned this particular issue of the NUJS Law Review, we had certain questions in mind, one being your very important intervention in Gaza as well as in India, on bulldozer justice. We saw a great connection between international law, municipal law and scholars' profound TWAIL intervention. This forms the bedrock of the first question: how would you perceive TWAIL in light of multiple scholarly arguments asserting that TWAIL itself has become a dominant reading of international law? Further, how do you engage with the issue of housing as a critical site to engage internationally?

Balakrishnan Rajagopal: Briefly breaking the question down into two parts, one is regarding the connection between TWAIL and my work as a Rapporteur within the system. Second, there is the connection between advocacy and engagement on global issues, including Gaza and elsewhere, and my simultaneous engagement with issues of home demolition in India, which predate my appointment as a Rapporteur. However, a Rapporteur position has given me a different platform to engage with the same issues, so I will proceed by separating the two questions.

As a TWAIL scholar, the issue of housing or any issue that impacts the survival needs of extremely vulnerable people globally, whether it's food, housing, water or any essentials that people need in order to survive, is at the core of TWAIL engagement with international law. This approach provides a lens into the actual operation of power and the systems of structure that reproduce power, since it enables an examination of the treatment of the vulnerable by the dominant. Housing is as good a place as any to understand this operation of power since it is ultimately connected to land, and land is a nexus of power and resistance. Land is at the core of sovereignty under international law, because it is at the core of the doctrine of territory under international law. There is no territory without land. Although the definition of territory in international law goes beyond just land, including air, space, water and all the other dimensions, land is the core of all these dimensions. Therefore, there is a direct link between housing, land and sovereignty. Housing is mostly seen as a domestic law concern.

However, if you scale up the housing issue, it becomes about land and community housing, and that community can often speak about housing in a way that is more about their connection to land itself. This is particularly the case with indigenous people, who cannot speak of housing without referring to land. When they refer to land, it takes the form of a kind of sovereignty. For example, in the area of food, the articulation of 'food sovereignty' is something familiar. Whereas, on the other hand, the 'right to food' is a human rights formulation that depends on a recognition of a particular entitlement as a right to be respected by the state or other actors with regard to individuals. It is a transactional relationship between the individual rights holder and another person or entity which has an obligation to respect the right.

Nevertheless, sovereignty does not operate in such a manner. When indigenous people say they have 'food sovereignty', or as we see in the case of the UN Declaration on the Rights of Peasants,[1] there is a declaration that they have sovereignty over land. It is the expression of a different power relation that is being expressed. Thereby, a direct connection between housing, land and territory and sovereignty under international law emerges. Housing is also one of those domains where there is a clear-cut connection between domestic law and international law, a simpler continuum.

[1] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, A/RES/73/165 (December 17, 2018).

All law is a continuum, and when put on a scale, on the one hand, you could start with private property law, including the rules that regulate relations between neighbours, which we read about in property law courses. However, you could escalate this all the way to the relationship between people who live on the land and the state that governs the land, land use regulations being an example. Then you could escalate it beyond that, to look at the relationship between a community and a state. At that point, you're shifting into talking about sovereignty, including, for example, in India, in the case of newly enacted laws like the Forest Rights Act, there are recognitions of collective rights, which resemble quasi sovereign rights for the communities that live in forests. And then from there on, if you keep escalating it further, you end up with the recognition of sovereign territory.

Hence, the way I see TWAIL operating is that it has never believed that there is a sharp distinction between international and domestic law, at least the versions of TWAIL that I'm familiar with. These are all political categories, which are devised in order to achieve particular outcomes. To say, for example, that a particular law is a part of domestic law, as opposed to international law, is itself a political declaration. Therefore, in my identity as a TWAIL scholar, I never faced difficulties shifting from working on extremely local housing issues to looking at international human rights law, international humanitarian law, international criminal law, and trade law. I mean, you could look at a variety of virtually any area of international law in this way.

II. ASSISTANCE OF INTERNATIONAL LAW IN THE STRUGGLE FOR JUSTICE

V.K. Tiwari: I think this answers it in a comprehensive manner. A follow-up: for example, right now, we are living in an era where the liberal consensus on many things has taken a hit. Now, in that case, when municipal remedies are not working, whether it is possible for us to take shelter of international law, and whether, in your experience, international law has been of any help to people who are facing these 'bulldozer justice'[2] kind of actions?

Balakrishnan Rajagopal: Yes, absolutely. It has been hugely helpful, but not in the typical way that lawyers envision. For instance, if you ask lawyers whether international law matters for domestic struggles like those involving displacement, they are likely to answer in the affirmative. If you continue to ask them regarding examples in this matter, they're likely to cite international legal instruments or cases where courts have ruled favourably in certain disputes to halt an eviction. However, I have never understood international law to be relevant 'only' as part of a judicial proceeding. International law is much more than that. On the one hand, of course, it can be a technocratic instrument that can be used in a judicial proceeding. On the other hand, it's also a language of empowerment and legitimacy. It is used to raise presumptive questions about whether a particular course of action is correct or not. Further, it is not necessarily a legal resolution of that issue, but rather, in my opinion, a narrative. It constitutes a narrative of legitimacy, of resistance, of disputation.

This is the sense in which we need to understand international law. For example, in some of my writings, the use of international law by movements like the 'Narmada Bachao Andolan' in India cannot necessarily be judged by how successful they were before domestic or international courts. The issue is more of whether they were able to reframe their demands or questions in terms of international law and whether that was able to achieve the core objectives that they were seeking. The answer is yes, sometimes, but not always uniformly. It

[2] Madan B. Lokur, *Bulldozer Justice?*, Vol. 59(47), E.P.W 9 (2024).

is like the ebbs and flows of all struggle. It is two steps forward, and may come back two steps, or take two steps forward again. This reflects the dynamic nature of struggles.

Any engagement with power is not linear. The engagement with international law, if we look at it in that way, and that's how I approach international human rights law, for example, with regard to Gaza, where I've advocated for mass destruction of housing or 'domicide' to be recognised as a crime in my report to the UN General Assembly.[3] The question posed to me is about how exactly I would amend the Charter of the Rome Statute to enable a prosecution of people for domicide. For example, Article 7 of the Rome Statute can be amended to redefine crimes against humanity to include the mass destruction of housing more clearly.[4]

However, I'm not that interested in that answer alone. While I am happy to give a technical answer, I feel the real issue is about delegitimising the very easy way in which too many countries and armed groups around the world engage in mass destruction of housing without anything pulling them back. I want this language to contribute to a way of pulling them back from those tactics. I want military training and rules of engagement for the military to change. I want commanders on the field, even when they're fighting wars that are otherwise legitimate, to think twice about whether I should bomb a whole neighbourhood just because I believe that there may be one target that might be valuable. These questions don't enter military strategy and calculation these days. I am more interested in the impacts of that kind.

III. UNDERSTANDING THE GLOBAL SOUTH BEYOND GEOGRAPHY AND STATEHOOD

Mridul Anand (Editor): My primary question pertains to how accessible the Third World approach is beyond academic circles. However, I think that has been covered in your answers to Dr. Tiwari's question. Therefore, moving on to a more fundamental question: We, as international law students, hear the term 'Global South' a lot, which has been used across, not just in law, but even in journalism, perhaps without a full understanding of its meaning. How do you see the Global South? And if you were to explain this to international students, how would you differentiate it from corollaries such as the geographical South?

Balakrishnan Rajagopal: This takes me back to one of the earliest articles I wrote in the nineties on how to understand the term 'Third World'? This was the time when we were trying to formally articulate this whole TWAIL approach along with some fellow young students at Harvard Law School. I must say there was a difference even among us, where there were people who wanted to understand the Third World more traditionally as a collection of states. Essentially, postcolonial states that would seek to transform international law to be more equal and just, which is basically what the first generation of Third World international lawyers did. Of course, we were inspired and learned hugely from those interventions. But what the intervening decades also taught us was that those approaches to international law in the end didn't come to achieve the real goals of transforming an imperial, racist, class-based international law to serve as an instrument of true equality and emancipation or justice.

We were dissatisfied with what international law had been able to accomplish until that point. Especially at the end of the Cold War, with this sense of triumphalism prevalent in the West, that history had ended; We, in fact, felt an acute danger that rather than recognising that international law had essentially not delivered, there is a sense that international law is not

[3] Special Rapporteur on the Right to Adequate Housing, *Adequate Housing as a Component of the Right to an Adequate Standard of Living, and the Right to Non-Discrimination*, U.N. Doc. A/77/190 (July 20, 2022).
[4] Rome Statute Of The International Criminal Court, 2187 U.N.T.S. 90 (adopted on July 17, 1998, entered into force on July 1, 2002) Art. 7.

even needed anymore because 'history has ended'. And if history has ended, why do we need any law? Therefore, many of us engaged with this, and I was probably the minority among TWAIL scholars at the time in arguing pretty strongly that the term 'Third World' must be understood in a way that goes beyond a simple territorial understanding, whether physically or geographically. For example, the South can imply geographical South, below the equator essentially. There have been attempts to understand it that way. Additionally, of course, Third World can be understood as it was during the Cold War years as a 'third way' of engaging in political economy. You have the capitalist first world, you have the communist second world, and then you have the other option, which is the Third World. But personally, what was really distinctive about and important for understanding Third World as a counter-hegemonic project in international law was to understand it as one that is not linked to physical geography, but to very openly faced acute imbalances of power, exploitation, and operation of systems. I felt that there was a need to call attention to what I then called the cultural geography of international law rather than the physical geography of international law.

In most of my work, I've still maintained that the framework of social movements and states, as opposed to just States, is an attempt to go beyond the Westphalian framework to look at other actors who may be, at the core of the rise of the nation state itself. This may shape the nation state both from within nation states, but also across nation states in very powerful ways. We don't have a language to talk about it in international law if you stick to either the positivist or the liberal conceptions.

Positivism clearly rested on a more statist orientation in international law and first-generation international lawyers from the Third World, like Professor RP Anand, came from that tradition. I would have done the same thing at that time, probably because that was what was needed in the 50s. With the experience we have gained with the disappointment in the operation of the nation-states as a collective project, essentially, most states have failed the people that they have governed over the last several decades. The idea of statehood hasn't really worked out very well for the majority of the people who live in these states. But still, we live with them because we don't know what the alternative might be. Also, the alternatives look too difficult, too dangerous, or we lack imagination; whatever it is, we just don't know what the alternative might be. One can say we are stuck with it — there was a strong inherited baggage of a commitment to statehood in the Third World international law tradition when we were trying to do TWAIL work in the 90s. It was very hard even then to push for, say, a social movement approach to international law. It still is, although now it is much more actively engaged, and there are a lot more scholars who are working on it, with more visible movements globally and domestically.

Mridul Anand (Editor): Certainly does. I just have a follow-up: considering the current geopolitical situation where nationalism is rising everywhere, do you think this idea of the Global South, where we don't consider statehood as important, would be feasible in today's times?

Balakrishnan Rajagopal: If people want to see it as a binary alternative, I don't see how it is sustainable at this stage. I am not even sure that we should think about it that way, but it does provide a framework for trying to question the limits of a traditional state structure in international law, which, of course, benefits quite a lot from the rising nationalism, as you said, in countries around the world.

Paradoxically, nationalism can also mean that it can pose a threat to the existence of certain states, because nationalism is not a singular phenomenon; it's a force that can play across and within states. So, the same nationalist sentiment can also generate forces

of dissension and division and ultimately, secession within states. If you look at the experience of former Yugoslavia, before it splintered, it was under tremendous pressure. On the one hand, the Soviet Union had collapsed because of the end of the Cold War, and then the former Yugoslavia was under the thumb of the International Monetary Fund ('IMF') at that time, with structural adjustment programs being foisted on the country. There was a sense of outrage at their sovereignty being so blatantly violated by transnational actors like the IMF. There was a strong anti-IMF sentiment in the former Yugoslavia. But this also meant that it was feeding the subnational sentiments of Croats and Serbs, the groups that ultimately fed the flames that led to the civil war. The roots of IMF intervention, for example, for having caused the dissolution of Yugoslavia as a state, are now well covered in scholarly literature. So I just believe that movements can be unpredictable that way. They can solidify a nation-state in its current form. They can also transform it quite radically by splintering it, by altering its configuration or its very nature. That is the reason why I don't see a binary in that sense between the statist approach to international law and an approach that looks at collective action in general that has to do with social, political, and cultural movements.

IV. MISAPPROPRIATION OF THE ANTI-COLONIAL APPROACH BY HEGEMONIC FORCES

V.K. Tiwari: I would have a follow-up question about the future of TWAIL because, as pointed out, the ultra-nationalistic rise we see across the globe has its own deep-rooted problems. Coming to the Indian context, what we have seen, for example, this bulldozer justice is like an avatar of hegemonic masculinities. Many feminist scholars have said that post-colonial states behave like hegemonic masculinities. Also, many times we have seen that the TWAIL scholars who are very obsessed with this state-centric argument miss the point of internal colonialism in various forms and are unable to answer the question of internal colonies.

We are also seeing a very interesting and new phenomenon where Hindutva forces in India are misappropriating the language of decolonisation. We have seen that authors are talking about something called Middle Eastern colonialism. I would give you a very interesting example. Two years back, a Hindutva scholar wrote a book; one of my students sent it to me, asking me to include it in my TWAIL syllabus, praising it as a new way of looking at decoloniality. I noticed that Walter Mignolo, a decolonial scholar, had endorsed that book, and I was horrified. So, how does one engage with the question of this misappropriation of decolonisation by the forces which support hegemonic masculinities, which try to hide the question of internal colonialism? For example, the very same scholars don't want to talk about the very brute nature of caste hierarchy, and are silent about it.

Balakrishnan Rajagopal: Well, that is unfortunate to hear. But the appropriation risk is very real. The appropriation of anti-colonialism or resistance by hegemonic language itself is not that uncommon.

We have observed this in many settler colonial states. For example, in New Zealand, we have heard that the whole question of who is a native to New Zealand has been appropriated by the white settler colonialist project. We have also heard of this most conspicuously in the case of Israel and Palestine, with the settler colonial Zionist elements claiming that they are the real indigenous people of the land, not the Palestinians. Although they came from Europe or other Arab countries, but nevertheless, they claim that they're more indigenous than the Palestinians who actually physically live there. So, it's an ongoing project of appropriation, for hegemonic purposes. There is no way easy around it, I think.

There has to be a relentless and robust, critical scrutiny of such acts of misappropriation, wherein scholars like us need to do our best to show that these kinds of misappropriations have no legs at all. We must constantly expose this deceit of power, and that's really the only way to insist on the truth, and to never back down in the face of these kinds of misappropriations. Of course, you're always going to find excellent scholars like Walter Mignolo falling for a ruse like this. The correction here is to openly challenge somebody like Mignolo to question the effects of their endorsement of such interpretations. That is what scholarship is for, ultimately, and we should definitely do it.

I spent a semester in South Africa, at the Centre for Advanced Studies, during one of my sabbaticals, and he was one of the scholars there with me, and I got to know him well. I'm quite surprised and shocked that he had endorsed, as you say, this particular project. The question of whether TWAIL scholars may be silent about certain kinds of misappropriations is more complicated because, like all scholars, TWAIL scholars are not exempt from the fallibility of positionality, in the sense that positionality defines, and drives very often the approach to one's work, including whether as a scholar, as a bureaucrat in the government, as a practicing lawyer, or as an official in an international organisation, whatever it is, your positionality defines very often what you end up doing. For some, it may be difficult to question due to their position and specific engagement. However, this also shows the disconnect that exists between even progressive scholars in the TWAIL tradition and the most vulnerable marginalised, including those, for example, who are victims of these punitive demolition drives. The engagement needs to be not virtual acts of solidarity, but actually getting to know the material and human consequences of acts like demolitions, which is possible only if you're in the movement itself. Movement lawyering is a very different kind of lawyering from legal scholarship about movements.

One can do the latter, but still not be connected in particular ways. You can write about, feminist movements in copious ways, but if you're not really feeling the stakes of actual struggles that those movements are facing, then you're never going to be part of that movement. So, I believe that there may be a need to also question the way we all do lawyering, both domestic but also international law as well, which kind of traps us in particular corners.

We can't really see beyond those corners to see what is out there, what may be very much connected, what is below us, what is above us, what is all around us. Often, we are so hemmed in by the parameters of what we are 'supposed to be doing'. For instance, as a professor, if you think your job is to go to a classroom, teach students, then go back home and be in a library, that is one way of understanding scholarship. However, if you are really trying to understand not simply law on the books, but law as it works out in the everyday world, including in the case of demolitions, then you have to really also encounter the operation of the law to see who the people on the front lines are actually and how they're coping with the application of the law, it's appropriation and effects.

I am not saying every scholar needs to be an activist, but it's that there needs to be more of a grounded understanding of people's own experiences with the law as it exists in practice, not simply law on the books. For example, it's very easy to speak only positively about some progressive laws that have been passed in India recently, like the Forest Rights Act or the Land Acquisition Act of 2013.[5]

Laws on paper may look great, but you have an entirely different view once you look at the gaps, ambiguities, contradictions and deliberate sabotaging of their application

[5] The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006; The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

across India in particular contexts. I have run into problems on issues like this when I have tried to bridge the gap between the law and the harsh ground reality that people were facing. In one of my UN reports, I had a critical report about the Land Acquisition Act of 2013. The Indian ambassador was very upset and basically accused me of not having enough footnotes to support the claim. I wish I could have added endless footnotes, but the UN has strict word requirements for these reports which I cannot exceed. If that is the best comeback that the Indian government had for my critical assessment of a law that was basically a paper tiger, it's a bit strange.

V. ROLE OF INTERNATIONAL LAW POST GAZA

V.K Tiwari: I have a final question from my side, after which I will hand it to my editors. It is kind of a provocative question. After the war in Gaza, we saw doomsday calls for International Law. In your book, 'International Law from Below',[6] you had a very interesting take from Gramsci, where you said that hegemony works through coercion as well as consent. After Gaza, do you see that the consent of the 'rule-based order' has simply evaporated? How would you answer these questions, which have been asked that *firstly*, International Law is dead, and *secondly*, rule-based International Law is dead. What we have right now is only coercion. So, with respect to the Palestine-Israel conflict and the recent bombing in Iran, how do you see and navigate this question?

Balakrishnan Rajagopal: I mean, there is no question that the idea of international law has always been contested, despite the mainstream historiography of international law, of the linear account of international law's constant evolution towards becoming better and bigger and more and more binding, with more and more force in the world of states and other actors. The reality is that international law as a project was always a project of power and resistance, and one which was incomplete. It was in that way more of an aspirational law than a law that was already fully formulated and operating in practice.

This was true, particularly more acutely after World War II, because of radical ideas like the sovereign equality of states and non-intervention into other states, as well as limits on the use of force by states, all new terms under international law. Before World War II, if you go back to the type of international law that prevailed in the late 19th and early 20th century, international lawyers from the West could say that there was something called international law. But I think most of the TWAIL scholars know very well, and they've argued that whatever existed then had no relationship at all to something that we call law.

It was simply a brute use of power that was thought to be legitimised in various ways by appeals to law. The powerful pretty much did what they wanted, and those without power put up with it, endured it, or resisted it. There was no other way to understand international law before then, and no limits really on the exercise of, particularly, the most dangerous forms of power, including the use of force. The beginning of a sense that there was something wrong with the use of force as an instrument of national policy, which was going to lead to the destruction of the entire planet, began to evolve in the 1920s.

Then World War II proved it by showing how destructive the logic of relying on force could be. Ending up with these rules, even though they were weak in terms of the enforcement systems in the UN Charter, was still a revolutionary forward movement towards the idea of law. The idea of law replaces the idea of force, for example, to govern relations between states.

[6] Balakrishnan Rajagopal, INTERNATIONAL LAW FROM BELOW (Cambridge University Press, 2009).

But I think that the entry of formerly colonised states into the international system, after political colonialism formally ended, did lead to many challenges for the formerly hegemonic states to accept that suddenly they were in a field where the formerly enslaved people were calling for equality in a variety of different domains.

The way I see the current moment is that the attempt to create a more equal world order based on law began to gradually break down from the end of the Cold War, from the 1990s. It sped up during the 2000s after 9/11 and with the attack on Iraq. If you look at institutions like the Security Council that are set up to control the most fundamental issues of international law, like the use of force under the UN Charter, they have been dysfunctional for over two decades.

They have been unable to make any meaningful decisions on any conflict around the world. It's clear that what we have right now is an international law in patches. You have a set of institutions and norms that govern relations between states with regard to certain functional areas. So, for laws of the sea, certain dimensions are regulated. Maybe with regard to international trade or international finance, certain aspects are regulated and countries still meet and follow rules that were established before. But with regard to many other areas of international law, they have been rendered completely ineffective and inapplicable.

So, in that sense, you could say that international law, especially after the catastrophe of Gaza, appears to have evaporated. However, I do think that because of the way I have approached international law as a terrain of contestation over meanings, over actions, over the specifics of political engagement, international law still comes in as an important resource for not just the powerless. So, you find the people in Gaza appealing desperately to international human rights law, approaching powerless functionaries such as UN independent experts and special rapporteurs like me or Francesca Albanese, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967. The reality is that we get approached, although we can do very little. However, the power that we do have is the power of narrative, a form of non-material power, which Gramsci actually understands very well, especially when he talks about counter-hegemony.[7] I try to articulate that in my own approach to international law. Ultimately, international law is always going to be a weak form of law.

But nevertheless, it's an essential weak part of the law. For example, in a four-stroke car engine, a carburettor is really one of the least dependable things. It can choke very easily; it can break down very easily. Carburettor problems, especially in cars until the 1990s, were rampant. However, you cannot do without the carburettor as you need that to run the engine. In a way, international law is that which we cannot do without, but will always remain a weak part of what we consider to be the notion of law. The other thing I would say, as my final sort of reflection on this, is that I think the role of international law also depends on the changes in the materiality of power and the way materiality of power approaches the idea of law.

So, to me, it's a very significant thing that we have formally colonised countries, which have developed quite a lot of material power now, like the rise of the BRICS and China in particular. The extent to which this economic power, and increasingly military power, may manifest itself in either making international law more effective or suborning it to their own goals is something that we have to watch carefully.

[7] Antonio Gramsci, SELECTIONS FROM THE PRISON NOTEBOOKS, (Q. Hoare and G. N. Smithed., New York International Publishers, 1971).

Now, so far, I must say that in the BRICS framework, especially the role of China towards international law, has been something that I've been studying very carefully. I'm actually of the view that the Chinese approach to international law still seeks to maintain a traditional understanding of international legal order, including the post-1945 UN charter-based approach to international law, with a belief in the juridical equality of states with strong commitment to sovereignty and non-intervention. If you see the record, there is no instance of China having invaded other countries. For example, after the use of force against Vietnam in the 1970s, given their power and influence, they have resorted to very little abuse that many expected. When countries get even mildly powerful in the West, they seek to ignore the rules of international law quite readily. However, China has not followed that. To me, it's an encouraging sign. Perhaps, a different world order might come if the materiality of power shifts enough. Then, there may truly be a law based on a new set of power relations. I don't know whether we'll get there or not, but I certainly see some signs of that.

V.K. Tiwari: Now, I will leave it to the editors to ask any further questions.

VI. ROLE OF DEVELOPMENT IN INTERNATIONAL ECONOMIC ORDER

Rishit Soni (Editor): So, firstly, thank you so much for doing this with us, and thank you for all the answers that you have given to our questions. While you have primarily covered everything, we just have a couple more things to cover before we end this interview. So firstly, as we were discussing an international legal order, since there is a developing discourse and an idea of phenomena such as the new international economic order, or even the regime bias approach for that matter, which is inevitably based on a core principle of the structural inequality in resource allocation among different parts of the world. How do you envision the discourse that surrounds development and how we understand development against the backdrop of phenomena like the regime bias approach?

Balakrishnan Rajagopal: Well, the approach to development, I'm afraid, is at the heart of the inequalities and the structural imbalances that have produced international law's own failures. Essentially, the approach to development, which in a larger sense can be looked at as a story about the growth of capitalism, about how societies based on traditional forms of living, manufacturing, trading and agricultural production went through a process of modernisation. To make things more effective and efficient. Ultimately, the story of development is that of the shift from more traditional ways of doing things to more modern ways of doing things. In this sense, development has been with us since the end of World War II and the emergence of developing countries, with the question of how developing countries will now 'develop'. So, often the story about development can be told in that way.

However, I don't think we should look at development as a project that's only eighty years old. We should look at development as one that is rooted in assumptions, theories and frameworks that evolved over at least 250–300 years with the growth of industrial capitalism and scientific modernisation and the Enlightenment, to some extent. So, for example, with regard to my own work, I would say that it's very hard to understand why so many people, when they move out of their rural areas into cities, live in slums or informal settlements without any secure access to land. It's very hard to understand that with an understanding of the need for capitalism to generate an unlimited supply of labour, which is cheap enough so that they can be employed for the needs of industrial capitalism. This is very much a part of Economic Theory 101.

So, an economist like Arthur Lewis,[8] for example, who's considered the founding father of development economics in the 1950s, plainly articulates that as long as people are connected to their land, it's very hard for a labour force to emerge that will serve the needs of industrialisation and urbanisation. In a rural area, even if they're sitting on a small patch of land, they think they can somehow make a living by trying to farm that land. So, he says, we need to cut their links to land to convert them into free-floating labour. It's very much the same theory that drove Britain, for example, to enact the 'Poor Laws' in the early part of the 19th century, which led to so many British people losing their connection with land and moving to urban areas, where they became essential for Britain's rapid economic development through industrialisation. Where did that labour come from? They came from their own rural areas.

We see the same story operating in China. China's essential growth story depends on the control and carefully planned movement of populations from the rural to the urban areas to feed the industrial machine. They've done it through the 'Hukou' system, which is basically a permit system for residents that connects access to social services, including your child's education, etc., to your permit. If you're a resident of, say, Beijing, it's very hard for you to simply move to another city. You need the resident permit of the other city to move there. Thus, the 'Hukou' system enabled the state to produce a huge number of people who could be brought from the rural areas and employed as industrial labour, but nevertheless, not recognised as urban labour. Therefore, they don't impose any costs, and you could exploit them in very specific ways. As a result, the cost of labour in China remained extremely low for many, many decades.

I'm pointing this out just to say that development is the framework through which the transformation of societies has taken place over the last 300 years, from traditional to modern and from non-economic to more economic dimensions. It's very hard to bring about transformations to international law if we don't recognise the central role of development in having caused these transformations, and then be willing to articulate alternative notions of development that can anchor new approaches to international law. In my work, for example, I have called for a post-developmental approach to international law. There are examples of such approaches, but they remain few and far between. They are not scaled up enough, but I tried to point out how these examples can inspire us to build a better future.

Maybe to ground this a bit more in my own work as a rapporteur, let me give you an example. It has to do with the fact that in city after city, we find that housing is unaffordable, it's very hard for people to afford their rents, and they're paying thirty to fifty per cent of their incomes towards rent, and it's very hard to do anything else with their money. Now, why has housing become so unaffordable? In my work as a rapporteur, I pointed out that the main cost of housing comes from the cost of land. Up to almost seventy per cent of the cost of a home comes from the availability of serviced land, not from materials. The land cost is the main issue. So, if a government controls the land cost, for example, it's much more possible for that government to ensure access to more affordable housing. We see that concretely, for example, in the case of Singapore, where close to eighty-five percent of the people actually live in homes that they don't own. However, these homes are available to them on long-term leases, close to 100 years. Thus, they don't technically own them, even though these can be inherited, passed on and so on.

[8] W. Arthur Lewis, *Economic Development with Unlimited Supplies of Labour*, Vol. 22(2), MANCH. SCH., 139 (1954).

The land itself is owned by the state, and you see the same thing in cities like Vienna, which is one of the most desirable places to live on the planet according to The Economist magazine. In Vienna, more than sixty per cent of the people live in public housing, where they pay only between 600–700 euros a month as rent even today. By the way, if you go and look at these apartments, they don't look shabby or rundown. The whole idea that public housing, meaning government-provided housing, means it's going to be terrible is kind of the impression that people in many countries may have, especially in India, where government housing is equivalent to terrible housing. Even in the U.S., public housing, unfortunately, means rundown housing. It has basically lost its appeal after the 1960s. However, if you go to Vienna to look at these homes, they are beautifully designed, clean, comfortable, beautifully located and thus, people want to live in them. By the way, these homes are not only for poor people. Except for very, very high-income groups, all the other classes are mixed in these homes. They can all apply and get in.

So, this is the reason I say that land, particularly control of the price of land, is such a crucial part of development. If there is a key issue in development, it is land. Then, of course, we have other key issues like labour and technology. These are all important issues for bringing about economic growth and, therefore, economic development. Land, in my view, should be governed very differently. It should not be governed as a commodity, for example. If it is governed as a commodity subject to free transactions in the market, then you're going to have several perversions that follow, including the affordability crisis. So, is it then too radical or perhaps communist to say that land should not be traded as a commodity?

My report to the UN General Assembly will focus on land.[9] I will make the decommodified nature of land an issue, but there will be people who say that it is not compatible with the system of the market economy. In a market economy, everything should be tradable and exchangeable. However, I'm saying, wait a minute, don't do it to land. If you want people to have housing, don't do it on land. I feel like interventions like these are critical to correct the mistakes of an idea of development that has gone out of control. We need to bring it back down to earth and make it work for the people on the planet, as opposed to the people on the planet being destroyed by development. So, I'll just leave it at that.

Rishit Soni (Editor): Thank you so much, sir, for that very exhaustive answer, where we got to understand how the development discourse should work. I think that largely covers what we wanted and what we wished out of this interview as well. I think I will just pass the baton to Akshay, and he will take it forth.

Akshay Sriram (Editor): Thank you very much, sir. Your answer to the previous question summarises what we intended to achieve with this interview, which is to revisit the story of development from where it began and ground it to where it actually matters, that is, at the grassroots level, down to the earth. With that, we move on to the formal vote of thanks for this event. First and foremost, a very big thank you to Professor Balakrishnan Rajagopal from the NUJS Law Review for taking time off his busy schedule to join us for this interview. The conversation enriched our understanding of TWAIL against the backdrop of structural inequality in development.

We have tried our very best to cover various things in this interview, which helped us to understand international law and development from a fresh perspective. The Law Review is eager to use this interview as a stepping stone for further engagement in alternative justice teams. Secondly, I would like to thank our very own Professor Vijay Kishore Tiwari for

[9] The report was published on August 27, 2025. *See* Special Rapporteur on the Right to Adequate Housing, *Land and the right to adequate housing*, U.N. Doc. A/80/351 (August 27, 2025).

supporting the NUJS Law Review in this endeavour and spearheading the TWAIL special issue. Your support and encouragement are the backbone of healthy academic engagement and the exchange of ideas. Lastly, thank you to my colleagues Mridul Anand and Rishit Soni, editors of the NUJS Law Review, for working hard to achieve and ideate and execute thoughts and notes written on paper. All of us are eager to revisit this interview, transcribe it and publish it as part of our TWAIL special issue project.