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Third world sovereignty, indigenous sovereignty, and food sovereignty: living with sovereignty despite the map

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ABSTRACT

Sovereignty remains a theoretically unclear and politically problematic concept. I find some promise, however, in a practice of sovereignty that operates in spite of lines on a map. My study draws from a mix of personal narrative, historical study, doctrinal analysis, and institutional mapping. I examine sovereignty with one foot in Beirut and the other in Bandung; from this postcolonial and transnational setting, I run into a political and conceptual dead-end. I therefore look to two cases that I argue exemplify a practice of sovereignty worth supporting and replicating. The Inuit technique of geographical reframing through international doctrine and institutions is innovative and potentially something others can try. The food sovereignty movement highlights that power stems from social organising and change will not come from theoretical elegance. What these struggles confirm is that any understanding of change in international law must address the question of solidarity as a central concern.

KEYWORDS Sovereignty; Third World Approaches to International Law; Inuit; food sovereignty

I. Introduction

Even though sovereignty is a key concept in international law, I have avoided it for most of my life. This is not because notions of sovereignty often obscure more than they reveal. Nor is it because sovereignty's practical meaning is always different depending on when and how it is deployed. While I think those points are theoretically correct, up until recently, I did not rely too firmly on concepts of sovereignty in my research because it never made sense to me in how I lived my daily life. I have also made it a matter of political conviction to view sovereignty with suspicion.

I begin in **Part II** with an account of sovereignty from this perspective of personal narrative and political commitment. By rolling sovereignty into my own story, I do not have to reconcile with nationalist narratives or resist state-centric perspectives. Sovereignty's meaning becomes enveloped in how I make sense of myself through recalling memories, recounting family lore, listening

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to other stories nearby, and reading history. In this way, I can choose when to describe sovereignty as something in the background or I can focus on it in the foreground, all while never allowing it to dictate my political and legal understanding. Regardless of how I position sovereignty in my account, what makes sovereignty a useful concept is it often signals a claim to power in a sociopolitical struggle. More specifically, it is a concept that has always arisen in the context of imperial projects, used by expansionists to claim authority over indigenous peoples and their territory (the notorious colonial encounter).¹

The descriptive task under these terms is to understand how sovereignty is defined by the results of people's manoeuvring in their struggle against imperialism, and how sovereignty reconfigures political stakes in a particular way. The question is then not a matter of being 'for' or 'against' sovereignty, as was the case during globalisation debates of the past several decades. Rather it is a question of determining how people deploy claims to sovereignty in ways that serves or alters a political agenda.

Sovereignty, in all its persistent and mercurial forms, is often studied in historical terms. The consistent conclusion is that sovereignty is a conceptual paradox and is theoretically frustrating. People often draw from this account of the past, to argue that in the politics of the present sovereignty is irrelevant and that we live (or should live) in a post-sovereign world.² This approach treats sovereignty as a concept that should be measured against itself. I instead take sovereignty to be a political practice and understand the temporality and historiography of sovereignty to be determined by the history of particular struggles.³

My leery posture is best reflected in lessons from Third World Approaches to International Law (TWAAIL). If sovereignty's presence and meaning always arises from encounters between coloniser and colonised, then the political question is, 'how successfully the Third World could deploy sovereignty for the purpose of revealing and remedying the past'.⁴ So far, there has been work that reveals the past, but the record for remedy has been dire.⁵ One

¹ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press, 2005).

² Martti Koskenniemi, 'Conclusion: Vocabularies of Sovereignty – Powers of a Paradox' in Hent Kalmo and Quentin Skinner (eds), *Sovereignty in Fragments* (Cambridge University Press, 2010).

³ For a different but promising approach that examines sovereignty as a global aesthetic practice situated in histories of political thought, see Tsevi Ben-Dor Benite, Stefanos Geroulanos and Nicole Jerr (eds), *The Scaffolding of Sovereignty: Global and Aesthetic Perspectives on the History of a Concept* (Columbia University Press, 2017).

⁴ Anghie, *Imperialism, Sovereignty and the Making of International Law* (n 1) 199.

⁵ See for eg Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge University Press, 2011); Michael Fakhri, *Sugar and the Making of International Trade Law* (Cambridge University Press, 2014); Luis Eslava, *Local Space, Global Life: The Everyday Operation of International Law and Development* (Cambridge University Press, 2015); Umut Özsu, *Formalizing Displacement: International Law and Population Transfers* (Oxford University Press, 2015). Resistance and social change remain undertheorized in TWAAIL. For some examinations on resistance see Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements, and Third World Resistance* (Cambridge University Press, 2003); Ruth Buchanan, 'Writing Resistance Into International Law' (2008) 10 *International Community Law Review* 445; John Reynolds, *Empire, Emergency, and*

indictment has been that Third World jurists of the past sixty years focused too much of their energy on international institutions.⁶ This proved to be a limited tactic because international institutions are always sites of contestation, negotiation, and compromise and as such they will always de-radicalise political claims. Another charge is that Third World jurists did not reconceptualise sovereignty sufficiently because they still made certain assumptions that narrowed possibilities for change—things like a strong commitment to economic development plans and the predilection to imagine and practice politics through a state-centric view.⁷

From this perspective, postcolonial sovereignty has been a dead-end. And yet, despite all these misgivings, people in TWAIL are not willing to leave sovereignty alone. To some it is because sovereignty remains an unfulfilled promise of liberation for Third World peoples.⁸ But I think many TWAILers still wrangle with sovereignty because it continues to structure the legal and political imagination of people committed to imperial administration and colonial practice as well as people resisting these expansionist projects; it has been a tenacious concept with no sign of abatement.

In **Part II**, I therefore situate my personal narrative within the political history of the Bandung Conference of 1955, which I treat as an epitome of the Third World project. I look at sovereignty with one foot in Beirut and the other in Bandung situating myself in a postcolonial setting.⁹ This is not a *bildungsroman*, which is a common genre in international law; there is no clear advancement or notion of progress.¹⁰ Rather, the story is one of a sojourn where I go ‘there and back again’¹¹—the destination is a curious future and the notion of home is equivocal. This allows me to imagine spaces not as an exercise in mapping but rather as the experience of travelling along roads and through networks, moving across land, air, and water to arrive at discreet locations.¹² I dislike

International Law (Cambridge University Press, 2017). For an exceptional sustained study on the question see Robert Knox, ‘Valuing Race? Stretched Marxism and the Logic of Imperialism’ (2016) 4 *London Review of International Law* 81.

⁶ Rajagopal (n 5); Vasuki Nesiiah, ‘Placing International Law: White Spaces on a Map’ (2003) 16 *Leiden Journal of International Law* 1; Pahuja (n 5).

⁷ Rajagopal (n 5); Nesiiah (n 6); Pahuja (n 5).

⁸ Partha Chatterjee, ‘The Legacy of Bandung’ in Luis Eslava, Michael Fakhri and Vasuki Nesiiah (eds), *Bandung, Global History, and International Law* (Cambridge University Press, 2017).

⁹ In this instance, it would be more accurate to say Lebanon instead of Beirut, but I could not avoid the pleasure of this particular alliteration. I feel, however, it is still accurate since in Lebanon, it is Beirut that has left the most lasting imprint on me. And with Beirut comes an ongoing relationship with the Mediterranean Sea, which you may notice pops up here and there in my account.

¹⁰ Rose Sydney Parfitt, ‘Newer Is Truer: Time, Space, and Subjectivity at the Bandung Conference’ in Luis Eslava, Michael Fakhri and Vasuki Nesiiah (eds), *Bandung, Global History, and International Law* (Cambridge University Press, 2017). See also Thomas Skouteris, *The Notion of Progress in International Law Discourse* (TMC Asser Press, 2009).

¹¹ JRR Tolkien, *The Hobbit: Or, There and Back Again* (George Allen & Unwin, 1937).

¹² Lauren A Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge University Press, 2010) 16; Achille Mbembe, ‘The Idea of a Borderless World’ (*Africa is a Country*, 11 November 2018) <<https://africasacountry.com/2018/11/the-idea-of-a-borderless-world>> (accessed 14 December 2018).

mapping because it is usually a technique used to control territory by imagining space as measurable and firmly bounded.¹³ Moreover, attempts to redraw maps as an anti-imperial tactic are usually met with violent implications and a high death count.¹⁴

In this article, I instead want to think about a practice of sovereignty that operates despite existing maps and boundaries. I give an impressionistic personal account because my primary intent is not to describe the landscape in a way that highlights certain geographic features (rivers, islands, hills, etc.) as markers of sovereignty or to focus on local particularities in a way that resists generalisation; my aim is to take my particular experience of movement and abstract it out into the larger category of 'migrant' in order to bring out a transnational understanding of sovereignty.¹⁵

The other purpose of **Part II** is to identify the political limits of Third World sovereignty thus far and to provide some context to how I situate myself in relation to other anti-imperial struggles. My broader methodological purpose is to provide an example of what a TWAIL scholar might do in order to engage with, while not appropriating, other movements. I am not speaking for anyone or claim to bring forward anyone's voice. I situate myself in a particular way so that I can learn from those particular struggles and propose insights to others in TWAIL and law more broadly. I am also introducing myself, offering an account of who I am and where I am from, to scholars and activists in those other struggles as an invitation to collaborate with me and my comrades.¹⁶

Because my narrative is driven by my personal account, when I reach the same theoretical dead-end of sovereignty that others have pointed to in the postcolonial experience I cannot stop my story. My life continues, and I

¹³ Nesiah (n 6); Benton (n 12); Karin Mickelson, 'The Maps of International Law: Perceptions of Nature in the Classification of Territory' (2014) 27 *Leiden Journal of International Law* 621. For a good argument against re-drawing the map in the Levant see Aslı Bâli, 'Sykes-Picot and "Artificial" States' (2016) 110 *AJIL Unbound* 115.

¹⁴ This is not to say that an attempt to redraw a map is a call to violence; plans to redraw maps, however, often lead to violence. It is not enough to treat the effects of those plans as collateral damage and not theorise the expected violence itself. For an example from within TWAIL of such a call to redraw a map while eliding the question of violence, see Makau wa Mutua, 'Why Redraw the Map of Africa: A Moral and Legal Inquiry' (1995) 16 *Michigan Journal of International Law* 1113, 1175: 'It would be irresponsible to assume that the direction proposed in this article could not lead Africa down a more treacherous path in which power-mongers and cynical ethnic chauvinists would senselessly tear society apart in pursuit of self-aggrandizement. That possibility, which would be a real setback to pan-Africanism, exists. But it is far more damning to sit and wait for disaster to strike, precipitating the crises that have been witnessed in Somalia, Liberia, and Rwanda.'

¹⁵ The irony is not lost on me that Philip Jessup developed his notion of transnational law at time that coincided with and in effect disrupted rising claims of Third World sovereignty through international law, see Phillip Jessup, *Transnational Law* (Yale University Press, 1956); Anghie, *Imperialism, Sovereignty and the Making of International Law* (n 1) 223. Jessup develops the concept to complicate distinctions between public and private, domestic and international. I instead use transnational law in a narrower way to recognise and describe the legal tools that shape the direction and conditions of the movement of people and capital through borders.

¹⁶ This article is the product of a series of talks where I set out to do just that.

still have to confront or negotiate sovereign claims. My political imperative behind studying sovereignty is existential and not a matter of governance as such.¹⁷

After describing the limits of postcolonial sovereignty, in **Parts III and IV** I examine two cases of sovereignty constructed in spite of the map. They may help answer the question as to whether sovereignty can remedy imperial power and relieve colonised peoples. I want to quickly note on how to read these sections before providing a summary: most TWAIL scholars focus on how close encounters of the colonial kind generate sovereign claims. In my two examples, I instead focus on how sovereignty, while generated from those encounters, is being defined in terms of transnational solidarity. *If* there is any hope for conceptualising sovereignty in a way that counters imperial forces on a global scale, it will come from an understanding that reflects the fellowship that people create to neutralise those forces that want to centralise power in the hands of the few.

In **Part III** I examine Inuit assertions of Arctic sovereignty and look to how innovative techniques in geographic reframing brought new meaning to sovereignty. In **Part IV** I study the food sovereignty movement and argue that it enacted a new form of sovereignty that was created by a powerful force of transnational solidarity despite a diffuse definition and different interests. I find that people in the movement are adeptly navigating the line between using a transnational social movement to change institutions and not limiting their political ambition by institutionalising the movement.

Calling these two accounts ‘case studies’ is a bit of a misnomer because I want these two different struggles to be understood as exemplars. I highlight the specificities of each struggle, but also think about what aspects may be more generalisable. A common critique of international law has been that it presents itself as a universally applicable set of concepts and practices, while it is in fact the abstraction of a very particular (and often European and North American) experience. My premise is that if we understand that all international law is based on some sort of particular context, then if anyone wants to still rely on international law to make any sort of claim this should include being able to argue why a certain particular context warrants universalisation.

Now to summarise–

In **Part III**, I look at Inuit sovereignty as a claim made to constitute a single people across multiple jurisdictions. It is an example of how people with different citizenships, across a wide range of territory develop political concepts in order to exercise institutional power and resist imperial power. It is

¹⁷ I learned this from long-standing conversations with Ibrahim Gassama. See for example, Ibrahim J Gassama, ‘Bandung 1955: The Deceit and the Conceit’ in Luis Eslava, Michael Fakhri and Vasuki Nesiiah (eds), *Bandung, Global History, and International Law* (Cambridge University Press, 2017).

a claim that makes room for different anti-colonial tactics that range from secessionism to co-governance. The limits of universalising such an approach is that this still hinges on an ethno-nationalist notion of a singular ‘people’. It may be the case that this approach is only applicable to others, like the Kurdish people, whose political space spans multiple jurisdictions. Or it may open up the concept of ‘people’ and make it something that can withstand borders—something that might serve people such as the Palestinians. My intent is not to conduct a comparative analysis, resolve any of these tensions, or overcome the limitations. I use this case to put forward the question to TWAIL and others as to whether the underlying theoretical concepts that arise from Inuit sovereignty—and the technique of using doctrine to geographically reframe a political argument—could be deployed in other contexts in a way that transforms and debilitates imperial power. I thus write in an idiom that is closer to doctrinal argument than sociological investigation.

In **Part IV**, I track how the food sovereignty movement developed an ambiguous conception of sovereignty that has served them well. The food sovereignty movement has been one of the most effective transnational movements to influence international institutions and international law. Members of the movement are acutely aware of the political limits of legal tools and the difficulty with working against and within institutions. They are also vigilant to ensure that the movement itself is not institutionalised. This is a movement whose explicit ambition is to universalise its experiences and agenda, and we see its effects across a multitude of contexts and at different scales. Like Inuit approaches, sovereignty is deployed despite existing maps. But the concept of ‘people’ can only be used in very specific cultural and historical contexts. Food sovereignty, however, provides a space of negotiated fellowship not ethnic membership, which is why I think it is a more generalisable, global form. Somehow the movement holds together even though multiple (and sometimes contradictory) understandings of sovereignty operate within it, including Bandungian and indigenous notions. It has quickly rearticulated sovereignty in transnational manifold terms while maintaining an ambivalence to the state and empowering millions of people across the world. My style here is in the form of an institutional tactical handbook where I note the experiences of this movement in forming networks of transnational solidarity with different perspectives and interests while also directly engaging, influencing, and resisting international institutions. The food sovereignty movement includes peoples from different struggles and like all solidarity projects this alliance needs constant attention. The movement began with a stronger foothold in postcolonial struggles, but indigenous peoples are leading with their food sovereignty ideas both from within and outwith the formal movement.

I conclude in **Part V** with a reflection on how my story about these struggles may allow us to think about new anti-imperial techniques and not

be left with only ‘re-drawing the map’. I point to where one might go to in order to develop new techniques that overcome the wicked choice between ‘arbitrary colonial frontiers and the ineptitude of our postcolonial regimes [to govern]’ and ‘a future of violent change, presaged by the spread of separatisms’.¹⁸ To Adewale Maja-Pearce, extrapolating from experiences in Cameroon and Nigeria, the only option for people in the Third World is ‘to reimagine ourselves and our societies all over again’.¹⁹ For now, we will have to settle on making tools that enable such a reimagining.

After situating myself as a postcolonial migrant in **Part II**, this article is constructed as a doctrinal and institutional analysis sandwiched between two subjective accounts. I begin in **Part III** by situating myself personally in relation to indigenous struggles against settler colonialism and imperial power. I then tell a story about the Inuit struggle. In order to not interrupt the descriptive narrative, I continue with my story about the food sovereignty movement in **Part IV**, and end that section with a comment on how I position myself professionally as an academic jurist from a Third World tradition in relation to the food sovereignty movement and its embedded academics.

II. Third world sovereignty—‘who are you and where are you from?’

I am always very careful how I answer that question. It sometimes comes from someone who feels that they can ask such a presumptuous question at the outset of a conversation. More often, it is someone officially required to ask me because I am requesting permission to do something or go somewhere. Regardless, the question indicates to me that the interrogator has reason to believe that they hold a position that grants them power over me. No one less than Polyphemus, the demi-god and human-eating giant, confronts Odysseus with that question on one of the Cyclopean islands in the Mediterranean Sea.²⁰ Anyone answering that question, exposes themselves because whatever they say brings with it meanings, histories, and consequences beyond their control, many of which could be painful. If you give up that information, it also means people are more able to find you against your will. Odysseus answered Polyphemus with a clever lie and a stab to the eye in order to avoid death and continue his epic journey home. While escaping on his ship, Odysseus calls out taunting the giant bragging about his guile. In his arrogance he reveals his true name, which grants the now-blind

¹⁸ Adewale Maja-Pearce, ‘Prospects for Ambazonia’ (2018) 40(20) *London Review of Books* 23 <www.lrb.co.uk/v40/n20/adewale-maja-pearce/prospects-for-ambazonia> (accessed 15 December 2018).

¹⁹ *Ibid.*

²⁰ There has been a recent bout of translations of *The Odyssey* by Homer. For a helpful review see Colin Burrow, ‘Light Through the Fog’ (2018) 40(8) *London Review of Books* 3 <www.lrb.co.uk/v40/n08/colin-burrow/light-through-the-fog> (accessed 15 December 2018).

Polyphemus power over Ulysses. It is all Polyphemus needs to get his father, the god of the sea, to punish this man who turned out to be the king of Ithaca.²¹

People often respond to that question about identity with some reference to a nation, people, or state. Underlying that type of answer is some notion of sovereignty. At a very young age, when I had to answer that question, I understood it in terms that assumed territorial integrity and clear borders. But I also knew all borders had pores and that you could always make perforations. This was because I was also implicitly taught how to traverse those borders.

That is all to say, I have experienced sovereignty in transnational terms. I am a migrant, and my people have always been migrants. This is one reason I have had an aversion to the notion of sovereignty. Being a migrant has meant knowing where I was from but never quite sure when or even whether I would go back. Unlike nomads, I did not move with my people nor was it within a specific space. Unlike Odysseus, my will to return was wavering. My family left home to different destinations with an undetermined possibility of coming back. Moving was always a matter of necessity and I could tell you a history of global economic crises or Lebanese political violence through each of my moves.

There is a dizziness that comes with being a migrant and it was sometimes difficult to determine whether I was going away or coming back. Returning home for a migrant can also be disorienting in time since it sometimes happens generations later or not at all. This instability is further exacerbated by the fact that at any given moment after settling in a new place we may be tolerated as minorities, welcomed as guests, vilified as threats, or assimilated as citizens.

Here is how I experienced those swirls in space and time: I was told that my grandmother sang to me songs in Portuguese when she was putting me to sleep as a baby. When I was born, she left Lebanon to where we lived in Canada to raise me in my first year. My grandmother's Portuguese lullabies came from her mother, who was born in Brazil, who sang to her when she was a young girl growing up in the foothills of Mount Lebanon. My grandmother did not speak Portuguese, but those songs connected us to each other and to those who loved us from afar and in the past. On my father's side, in our village on the peak of the northern mountains in Lebanon, we have a house that was built with nineteenth century money. My great-grandfather went to Venezuela for a few years and travelled the country selling sundries. His cousins and siblings stayed in Venezuela, whereas he took his money and came back to his village to build his house. Two generations later, my uncle would leave Lebanon and move 'back' to Venezuela and marry a cousin.

²¹ Homer, *The Odyssey* (Emily R Wilson tr, London: W W Norton & Company, 2018) Book 9.

By the time I was six, my parents took us to live in Saudi Arabia during the Civil War in Lebanon. We later fled Riyadh right before Operation Desert Storm and went back to Beirut. The Green Line between East and West Beirut had just been formally erased. This was the year that Parliament passed the controversial law that granted amnesty for all political crimes perpetrated before 28 March 1991.²² This was my most confusing return: I was coming back home even though I was born somewhere else and had never lived in Lebanon. Up until then, I experienced Beirut in terms of three-month holidays having only visited every summer. What confused things even more is the fact that the amnesty law marked the exact moment that the war was turned into a memory designed for people to forget.

To understand the implications of the amnesty law you should know that a core aspect of contemporary political life in Lebanon is the fact that many high-ranking politicians and ruling families have blood on their hands from the war. What stability there is in Lebanon today hinges on the fact that no one can hold those in power accountable for the violence of those years. Some efforts have been made to create spaces for people to narrate to themselves and to each other what the war meant. That is one reason why when people in Lebanon recount the war, if they ever do, they do so in terms of the fragments of what they remember and not within any sort of collective narrative frame of forgiveness, catharsis, justice, or history. This is still a place where there has been very little opportunity for people to hold any constitutive conversations about how to create a new future despite the recent experience of violence, much less any opportunity for reconciliation.²³ So when I arrived in Beirut in 1991, it was to establish my relationship with the place in new terms as my home, all while everyone was collectively shifting from the punctuated absurdity of war into the fragmented politics of memory.

This was also when I learned that my grandparents were active members of a political party and had been involved, like everyone else in the family, in a failed coup in 1961. They were fighting for an idea of a Greater Syria (*Bilad Al Sham* or *Suriya Al-Kubra*) that included Lebanon, Syria, Palestine, Jordan,

²² General Amnesty Law No. 84/91 (26 August 1991).

²³ Launched under the #CounteringAmnesia hashtag in the fall of 2018, Lebanon Support and forumZFD (Forum Civil Peace Service) recently announced their project entitled 'Mapping of initiatives addressing the past in Lebanon'. They document over 156 initiatives in the country attempting to address its past between the end of the civil war in 1990 and 2017. See Lebanon Support and forumZFD, 'Mapping of Initiatives Addressing the Past in Lebanon' (*The Civil Society Knowledge Centre*, 2018) <<https://civilsociety-centre.org/hist/initiatives-addressing-conflict>> (accessed 14 December 2018). The final report concludes with the following: 'Reconciliation in Lebanon has faced many challenges such as a state imposed amnesia, unresolved human rights violations, and a lack of accountability of the perpetrators of these violations. Despite civil society's efforts to address the contested past in Lebanon, the limited education and awareness about past conflicts remains omnipresent.', see Mia Bou Khaled, *Contested History, Conflicting Narratives, and a Multitude of Initiatives: An Analysis of the Mapping of Initiatives Addressing Past Conflicts in Lebanon* (Civil Society Knowledge Centre; Lebanon Support, 2018) <<https://civilsociety-centre.org/paper/contested-history-conflicting-narratives-and-multitude-initiatives-analysis-mapping>> (accessed 14 December 2018).

Iraq, and Cyprus. This was Levantine postcolonial nationalism at its widest in scope. It was based on an ethno-historical account constructed for a vision of a postcolonial future. Now, that redrawn map is in essence the same one that the Syrian Ba'ath Party and ISIS used as they killed each other and everyone around them, all parties claiming to be against Western imperialism and the 1916 Sykes-Picot Agreement. The main difference was competing historical constructions.

While my understanding of sovereignty may be transnational, it is also postcolonial. This has only augmented my ambivalence. Let me quickly explain what I mean by a postcolonial sense of sovereignty by focusing on the 1955 Bandung Conference. On 18–24 April 1955, delegates from 29 states whose combined population made-up approximately two-thirds of the world attended the Asian-African Conference in Bandung, Indonesia. By this point, almost all countries in Asia had attained independence and African peoples were to follow suit soon after. The Spirit of Bandung described the pre-existing wave of emotion of confidence that swept across the world as an unprecedented number of peoples fought against vestiges of European imperialism. The Conference evidenced a belief that cultures, civilisations, and countries from all over the world, and not just Europe, had always played a historical role in the development of international law.

Arguably, the Bandung conference laid the political, economic, cultural, and legal foundations for our world today. At the core of the Final *Communiqué* was the claim that sovereignty amongst states was to be respected as a matter of mutual interest and territorial integrity. Sovereignty was built on the principle that states were to abstain from intervening or interfering in the internal affairs of another country.²⁴ By 1955, all (First, Second, and Third World) states acted as if their sovereignty was premised on a clear sense of domestic jurisdiction.²⁵

In practice the line between international sovereignty and domestic jurisdiction changed depending on the political context.²⁶ Time has revealed that sovereignty did not prove to be the great emancipatory power that people expected. It did not have to be that way. The Spirit of Bandung describes the incredible feeling of confidence, power, and desire that swept across the world. But postcolonial leaders took the idea of sovereign power, and like Europeans, they crystallised it into the form of a unitary state.

The dreadful result was that the postcolonial state continued a lot of the oppressive practices of the former imperial overlords. Postcolonial states

²⁴ Final *Communiqué* of the Asian-African Conference of Bandung (24 April 1955), in *Asia-Africa Speaks from Bandung* (Jakarta: Ministry of Foreign Affairs Republic of Indonesia, 1955) 161.

²⁵ Sundhya Pahuja, 'Laws of Encounter: A Jurisdictional Account of International Law' (2013) 1 *London Review of International Law* 63.

²⁶ George M Abi-Saab, 'The Newly Independent States and the Scope of Domestic Jurisdiction' (1960) 54 *Proceedings of the American Society of International Law at Its Annual Meeting* 84.

often brutalise indigenous peoples sometimes to the same degree as settler states.²⁷ This way of concentrating power, organising it in bureaucratic hierarchy, of ruling over territory; the practice of disciplining people and excluding others; this preoccupation with economic development and market forces was and remains brutal not just in the Third World but as a universalised state practice in nearly all countries. It may be more accurate to describe our juridical global order today as Bandungian and not Westphalian.

That leaves those of us who are part of the Bandung tradition with very little to build on in international law. If I am not too careful in my scholarship, I might slip and end up supporting the likes of the murderous lot running governments or leading militant rebel groups.²⁸ I say this with Syria in mind since what happens in Syria has almost-immediate repercussions in Lebanon and vice versa. This is because the border between Lebanon and Syria has always been a matter of renegotiation. If you look at the early economic history of this border, you can see an important aspect of its postcolonial character and appreciate that since its inception this border has been in flux.²⁹

What are now considered modern Arab states began as a result of the dissolution of the Ottoman Empire after World War I. The Arab regions that were all related to each other in complex ways through Ottoman power, were now a series of places carved up by Great Britain and France into a system of mandates and protectorates. The exceptions were Yemen and the territories that later became Saudi Arabia which achieved independence after World War I.

In the 1920s, separate custom unions and currencies arose in the post-Ottoman region. Syria (which at the time included Lebanon³⁰ and other territories) had its Syrian pound which was tied to the French franc and retained high tariff duties.³¹ Palestine and Transjordan (as it then was) adopted the Palestinian pound which was tied to the British pound. The tariff rate was considerably lower than Syria's at the time.³² Even after Transjordan attained

²⁷ Pooja Parmar, *Indigeneity and Legal Pluralism in India: Claims, Histories, Meanings* (Cambridge University Press, 2015); Luwam Dirar, 'Rethinking the Concept of Colonialism in Bandung and Its African Union Aftermath' in Luis Eslava, Michael Fakhri and Vasuki Nesiah (eds), *Bandung, Global History, and International Law* (Cambridge University Press, 2017).

²⁸ Others in international law need to be wary of inadvertently supporting imperial powers (admittedly, some relish their role as apologists).

²⁹ For a more contemporary, political historical account see Bassel Salloukh, 'Syria and Lebanon: A Brotherhood Transformed' (2005) *Middle East Report* 14. Of course, I could also describe the contingency of this border through family genealogy.

³⁰ The French formally carved out what is now Lebanon from the rest of Syria in 1926. Alfred G Musrey, *An Arab Common Market: A Study in Inter-Arab Trade Relations, 1920-67* (Praeger, 1969) 11. There are more recent economic studies and histories of the border and the region more broadly. But I point to this book because it was written from a perspective that is seeking postcolonial Arab economic integration at a time when there were significant political and military attempts to redraw the map of the region.

³¹ The rate ranged from 15% to 30% with certain exceptions. This was later raised to 25–50% in 1926. *Ibid.* See also Charles Philip Issawi (ed), *The Fertile Crescent, 1800-1914: A Documentary Economic History* (Oxford University Press, 1988).

³² Averaging around 12% with some exceptions. Musrey (n 30) 11.

independence from Great Britain in 1934, it maintained economic ties with Palestine. Iraq, which attained independence from Great Britain in 1922, adopted the Indian rupee with a tariff rate similar in range to Palestine and Transjordan. The Arabian Peninsula territories adopted the silver riyal in 1928; they imported very little and had a very low tariff rate.³³ France and Great Britain (the mandatory powers) and the League of Nations recognised the existence of economic ties between certain Arab territories and claimed to make provisions to continue these ties. What happened instead during the 1920s was that occupying and mandatory European masters structured Arab nations' economies in a way that ensured Europe was the economic hub and they were separate spokes.³⁴ Even though there were trade agreements and customs unions between the Arab nations during the 1920s and 1930s, by 1939 'the process of Arab economic disintegration was well advanced'.³⁵

This was reversed during the time of World War II. In 1942 the Middle East Supply Centre was created as an Anglo-American agency intended to act as a regional planning agency within the international wartime framework (thereby also establishing the notion of the 'Middle East'). Even though intra-regional trade increased (although not significantly) during this time, what did result was a 'functional integration' amongst the Arab countries.³⁶ However, in the post-war 1950s—despite the creation of the Arab League in 1945—the Arab states were functioning as independent political and economic entities with respect to each other. In 1958, various political experiments, such as the United Arab Republic (combining Egypt and Syria) and the United Arab States (combining the UAR and Yemen) all ended quickly.³⁷

This historical/geographical record combined with my personal history leads me to ask: is there anything then in international law's future that can create options for people that neither apologises for oppressive national governments nor concedes to messianic militant hyper-masculine gangs? This is not only the question in Syria and the region, but (as I mentioned above) one for Third World peoples all over the world.³⁸ Unfortunately, I have not, and nor have I seen, anyone come close to an answer. It is not just that the debate on the war in Syria has run into a dead-end,³⁹ but so has international law.

³³ Ibid.

³⁴ Ibid 11, 25.

³⁵ Ibid 28. The Maghreb countries were well integrated into the French, Spanish and Italian economies with very little trade with other Arab countries. Egypt, Iraq and Saudi Arabia created non-preferential trade policies that restricted inter-Arab trade. Yemen and Sudan were removed geographically, economically and politically from other Arab countries. Kuwait basically only had economic ties to Iraq. Transjordan, Syria and Lebanon held a tenuous free trade agreement.

³⁶ Ibid 31–35.

³⁷ Ibid 74–76.

³⁸ See Maja-Pearce (n 18).

³⁹ Bassam Haddad, 'The Debate Over Syria Has Reached a Dead End: Two Warring Narratives Now Dominate Discussions—And Neither is Sufficient' *The Nation* (New York, 18 October 2016) <www.thenation.com>.

III. Indigenous sovereignty (looking to the Arctic)

A. Friendship, solidarity, and incommensurability

If imperialism is the continuous expansion of spatial power by a single authority, it is likely not something you can defeat. If you are cunning and lucky, imperialism is something you diminish or abate while it continues to adapt and transmutate. Therefore, to fight imperialism, the best tactic is to ensure that not only is your home safe from imperial power, but that so is your neighbour's. Because if her home gets enveloped, you are more vulnerable. That is why, my liberation is bound to my neighbour's and we have to work together to keep imperialism in all its pernicious and ever-changing forms at bay.⁴⁰

Asking *who is my neighbour?* is not a geographical question but a political one based on interdependence and 'mutual interest' (to go back to the language of the Bandung Final *Communiqué*).⁴¹ I take the statement from the Black-Palestinian Solidarity movement to heart: solidarity against imperialism and state-sanctioned violence is neither a guarantee nor a requirement—it is a choice.⁴² This freedom to choose whom to live with, help, and befriend has in it the potential for liberation because in choosing our neighbour, for all the complicated almost-arbitrary reasons that we do, we create new worlds. Now, once we find each other, it is even harder to establish the terms and develop the practices through which we want to eat, share, work, and play together. The stakes are too high, however, not to seek each other out and be left to live alone or be defined by pre-existing relationships.⁴³

Let me start, however, with Eve Tuck and K. Wayne Yang's call for an ethic of incommensurability.⁴⁴ To Tuck and Yang, too often indigenous struggles against settler colonialism is swept up within other struggles against imperialism or for social justice causes in the name of solidarity. The result is that the specificity of settler colonialism is lost, the indigenous fight for land is diluted amongst other causes, and differences are elided. Instead, they clarify that, '[s]olidarity is an uneasy, reserved, and unsettled matter' and

com/article/the-debate-over-syria-has-reached-a-dead-end/ (accessed 14 December 2018); Bassam Haddad, 'The Left, Imperialism, and Syria at KPFA' (*Jadaliyya*, 21 December 2016) <www.jadaliyya.com/Details/33866/Jadaliyya-Co-Editor-Bassam-Haddad-on-the-Left,-Imperialism,-and-Syria-at-KPFA> (accessed 14 December 2018).

⁴⁰ I am paraphrasing from Aboriginal activist groups in Queensland in the 1970s. The quote is 'If you have come here to help me, you are wasting your time. But if you have come because your liberation is bound up with mine, then let us work together.' There is no official reference for this quote and has developed a genealogy of its own that starts with Aboriginal activist groups in Queensland in the 1970s.

⁴¹ See also David Cayley (ed.), *The Rivers North of the Future: The Testament of Ivan Illich as Told to David Cayley* (House of Anansi Press, 2005) 50–52.

⁴² Maja-Pearce (n 18).

⁴³ Ayça Çubukçu, 'In Solidarity: Rethinking Political Friendship' (*Tanqeed*, 15 November 2016) <www.tanqeed.org/2016/11/in-solidarity-rethinking-political-friendship-ayca-cubukcu/> (accessed 14 December 2018).

⁴⁴ Eve Tuck and K Wayne Yang, 'Decolonization Is Not a Metaphor' (2012) 1 *Decolonization: Indigeneity, Education & Society* 1.

that '[o]pportunities for solidarity lie in what is incommensurable rather than what is common across these efforts'.⁴⁵ This approach is a constant reminder that relationships of solidarity are delicate tactical alliances, yet they provide parties with strength and power.

As a migrant living in different parts of North America, on Turtle Island, I entered into and occupied indigenous land because of the privileges granted to me by colonial governments. As I write this, I live in Eugene, Oregon located in the Willamette Valley. This is the area of the Kalapuya tribes, and more specifically this is the land of people such as the Chifin, Winefelly, Pee-u (Mohawk), and Chelamela tribes. Today this is the home of the Confederated Tribes of Grand Ronde Community of Oregon, a confederation of over twenty-seven tribes and bands from western Oregon, southern Washington, and northern California. The confederation brings together the tribes that had been forcibly displaced by the US Federal Government from their homelands to the Grand Ronde reservation in 1855–1856.⁴⁶

Until indigenous peoples can determine who can come in or out of their territory and on what conditions, my presence here is not only as a postcolonial migrant but also as a settler in a colonial system. That in and of itself is not a place of irreconcilability but it is the place of contingency. I accept the discomfort of the fact that to fight for decolonisation in the settler colony where I live, means that I have to be prepared for a future where I will be subject to indigenous law, in whatever form and however defined. That authority may deny me entry or ask me to leave. Or indigenous hospitality will provide me with the conditions for which I can stay. As a migrant, I am always ready for that moment, so I do not consider it something to avoid.

What I can offer from a TWAIL perspective (or Bandungian tradition) to others struggling for liberation and equality is an idiom that understands international law as a way to both enhance and resist imperial ambition. From where we stand, international law is by definition an imperial conceit.⁴⁷ Put in other terms, TWAIL generates knowledge about how international law and institutions support different projects and practices of occupation and administration.⁴⁸

⁴⁵ Ibid 28.

⁴⁶ David Lewis, 'Native Community History of Eugene Area' (*NDNHistory Research: Indigenous, Public & Critical Essays*, 11 April 2016) <<https://ndnhistoryresearch.com/2016/04/11/native-community-history-of-eugene-area/>> (accessed 14 December 2018).

⁴⁷ Nesiah (n 6); Anghie, *Imperialism, Sovereignty and the Making of International Law* (n 1); Pahuja (n 5); BS Chimni, 'Capitalism, Imperialism, and International Law in the Twenty-First Century' (2012) 14 *Oregon Review of International Law* 17; Christopher Gevers, 'International Criminal Law and Individualism: An African Perspective' in Christine EJ Schwöbel (ed), *Critical Approaches to International Criminal Law: An Introduction* (Routledge, 2014). My thanks to Sundhya Pahuja since I find her use of the word 'idiom' a helpful description of TWAIL.

⁴⁸ See eg Usha Natarajan, 'Creating and Recreating Iraq: Legacies of the Mandate System in Contemporary Understandings of Third World Sovereignty' (2011) 24 *Leiden Journal of International Law* 799; Ntina Tzouvala, 'Food for the Global Market: The Neoliberal Reconstruction of Agriculture in Occupied Iraq

TWAIL also provides a historical record of what not to do. One reason that many people experience the Third World project as a tragedy is because its demise was foreseeable and therefore theoretically avoidable. Fanon, a patron saint of anti-colonial struggles all over the world, wrote some of his most famous tracts at a time when the indigenous struggle in Algeria he fought for was shifting into a postcolonial project. He warned that soon after victory, the oppressed can easily become oppressors and people will 'find out that the iniquitous fact of exploitation can wear a black face, or an Arab one' in their own country.⁴⁹ History has shown that the people of the Third World already lost when postcolonial leaders all turned to state-building as the principal goal for liberation.

Thankfully, the historical relationship between anti-colonial indigenous struggles and postcolonial ones are not linear and indigenous struggles will not inevitably become postcolonial. Sometimes, the distinction between indigenous and postcolonial is historically arbitrary.⁵⁰ Today, anti-colonial and postcolonial struggles are operating in tandem, each with their own notions of time and space. Indigenous peoples have always been very active in international law, and their victories and defeats in international law ebb and flow as they do for everybody.⁵¹ Indigeneity to some degree is defined by people struggling every day for their land, air, and water in real time with high existential stakes, the trauma more immediate. Postcoloniality and TWAIL operates more in the everyday of historical time, looking to the continuity and evolution of institutional projects and practices, with violence wrapped up more around access to state apparatuses.

B. Inuit sovereignty

TWAIL has much to learn from indigenous struggles.⁵² Looking to indigenous experiences with international law's inherent imperial dynamics, I must

(2003–2004) and the Role of International Law' (2017) 17 *Global Jurist* 11; Kerry Rittich, 'Occupied Iraq: Imperial Convergences?' (2018) 31 *Leiden Journal of International Law* 479.

⁴⁹ Frantz Fanon, *The Wretched of the Earth* (Richard Philcox tr, Grove Press, 2004) 94.

⁵⁰ For eg the 1916 Sykes-Picot Agreement (combined with the 1917 Balfour Declaration) created a new international border between people in Lebanon and Palestine; this later made the Palestinian liberation struggle an indigenous action against settler colonialism, and the Lebanese project a postcolonial fight over the nature of the state. See Antony T Anghie, 'Introduction to Symposium on the Many Lives and Legacies of Sykes-Picot' (2016) 110 *AJIL Unbound* 105; Bâli (n 13); Victor Kattan, 'Palestine and the Secret Treaties' (2016) 110 *AJIL Unbound* 109; Umut Özsü, 'Sykes-Picot: The Treaty That Carved up the Middle East' (*OUPblog*, 9 May 2016) <<https://blog-oup-com.libproxy.uoregon.edu/2016/05/sykes-picot-treaty-middle-east-international-law/>> (accessed 19 December 2018).

⁵¹ S James Anaya, *Indigenous Peoples in International Law* (Oxford University Press, 2004); Lillian Aponte Miranda, 'Indigenous Peoples as International Lawmakers' (2014) 32 *University of Pennsylvania Journal of International Law* 61.

⁵² Gerardo Munarriz, 'Rhetoric and Reality: The World Bank Development Policies, Mining Corporations, and Indigenous Communities in Latin America' (2008) 10 *International Community Law Review* 431; Amar Bhatia, 'The South of the North: Building on Critical Approaches to International Law with Lessons from the Fourth World' (2012) 14 *Oregon Review of International Law* 131; Fernanda Cristina

first reconsider what terms I start with when I think about nations. In settler colonies, indigenous people's sovereignty is often negotiated through domestic or what one might call colonial laws. But if we assume these laws are the product of sovereign negotiation and contestation (again, the notorious colonial encounter), then we must also recognise them as inter-national.

This is why when I wanted to understand how Inuit communities were fighting the EU seal regime in the World Trade Organization (WTO) and EU courts, I had to also study Inuit struggles in Alaska through US federal and state law.⁵³ Seal hunting is central to Inuit self-understanding and is a practice that expresses sovereign power across the multiple borders that constitute the Arctic. At the time I thought I was comparing seal hunting laws in Alaska to the EU seal regime. I realise now, however, that my interpretive technique was transnational and not comparative. I did not compare the laws of different regimes to discern patterns of commonality and difference; rather I looked to the Inuit struggle as a singular act that traversed multiple legal regimes.⁵⁴

To understand Inuit sovereignty, one good place to start is with the Inuit Circumpolar Conference (ICC). The ICC is a transnational organisation that represents approximately 155,000 Inuit. It comprises Inuit/Yupik peoples living in Alaska (United States), Canada, Greenland, and Chukotka (Russia). It was established in 1977 in Utqiagvik (formerly known as Barrow), Alaska during a time when indigenous peoples throughout the Arctic were responding to resource development in the North American Arctic and Inuit in Greenland were pressing for greater autonomy (obtaining home rule in 1979).⁵⁵

Twenty years later, when the Arctic Council was established the ICC was already a well-organised and a powerful Arctic authority framing a circumpolar world. The Arctic Council's original purpose was primarily to focus on

De Oliveira Franco, 'Oportunidades e desafios das TWAIL no contexto latino-americano a partir de perspectivas dos povos indígenas ao direito internacional [TWAIL's Opportunities and Challenges in the Latin American Context from Indigenous Peoples' Perspectives to International Law]' (2015) 12 *Brazilian Journal of International Law* 227 [with thanks to Erika Wozniak for translating from the Portuguese]. See also Sujith Xavier, 'Loving, Working, and Living on Stolen Land: People of Colour, Settler Colonialism & White Supremacy' (*reconciliationsyllabus*, 8 December 2018) (accessed 14 December 2018).

⁵³ Michael Fakhri, 'Gauging US and EU Seal Regimes in the Arctic Against Inuit Sovereignty' in Nengye Liu, Elizabeth A Kirk and Tore Henriksen (eds), *The European Union and the Arctic* (Brill Nijhoff, 2017).

⁵⁴ Not to say that comparative legal technique does not offer useful analytical tools for international law or indigenous struggles. Today, one can talk about comparative approaches to international law. See Boris N Mamlyuk and Ugo Mattei, 'Comparative International Law' (2011) 36 *Brooklyn Journal of International Law*; Robert J Miller, 'The International Law of Colonialism: A Comparative Analysis' (2011) 15 *Lewis & Clark Law Review* 847. I am also inspired by Robert A. Williams, Jr.'s course at the University of Arizona entitled 'Comparative Legal Systems & Their Role in Nation Building' Robert A Williams, Jr., 'Comparative Legal Systems & Their Role in Nation Building' (*University of Arizona Indigenous Governance Program*) <<http://igp.arizona.edu/comparative-legal-systems-their-role-nation-building>> (accessed 17 December 2018).

⁵⁵ Jessica Shadian, 'Remaking Arctic Governance: The Construction of an Arctic Inuit Polity' (2006) 42 *Polar Record* 249; Gary N Wilson and Heather A Smith, 'The Inuit Circumpolar Council in an Era of Global and Local Change' (2011) 66 *International Journal* 909.

environmental protection and sustainable development issues, but it has become the principal forum for negotiating and constituting Arctic sovereignty and policy. It has eight Member Countries: Canada, Denmark (including Greenland and the Faroe Islands), Finland, Iceland, Norway, Russia, Sweden, and the United States. Six Arctic indigenous communities have Permanent Participant status: the ICC, Aleut International Association, Arctic Athabaskan Council, Gwich'in Council International, Russian Association of Indigenous Peoples of the North, and Saami Council. They are all supported by the Indigenous Peoples Secretariat.

While the Permanent Participants do not have voting power, they have the same procedural power as national governments, an equal 'seat at the negotiating table'. Moreover, Member States must consult Permanent Participants before the Arctic Council can do anything. This status was hard-won by indigenous leaders, making the Arctic Council a unique site of global governance.⁵⁶

As the effects of climate of change continue to unfold and temperatures in the Arctic rise, the Arctic is increasingly becoming a 'global' issue. National governments all over the world are manoeuvring to gain access to emerging shipping routes and untapped sources of minerals, oil, and gas. One way non-Arctic governments buttress their position is by obtaining Observer Status in the Arctic Council. Observers have the right to attend Arctic Council meetings and observe council workings. They can only more actively participate at the discretion of Member States or Permanent Participants. To date, Observers include 13 non-Arctic States,⁵⁷ 13 intergovernmental and inter-parliamentary organisations,⁵⁸ and 13 non-governmental organisations (NGOs).⁵⁹

Indigenous peoples still maintain privileged power and standing over all these governments and organisations as Permanent Participants, even as council membership grows. This leads to a very unique situation in international law and politics where in the Arctic Council, for example, the

⁵⁶ Leif Halonen, 'Full Interview' (*Indigenous Peoples Story Map project at GRID-Arendal*, 2017) <www.grida.no/resources/4879> (accessed 14 December 2018). The indigenous delegates were influential players in determining the constitution and Terms of Reference of Arctic Council.

⁵⁷ France, Germany, the Netherlands, Poland, Spain, United Kingdom, People's Republic of China, Italy, Japan, South Korea, Singapore, Switzerland, and India.

⁵⁸ International Council for the Exploration of the Sea, International Federation of Red Cross & Red Crescent Societies, International Union for the Conservation of Nature, Nordic Council of Ministers, Nordic Environment Finance Corporation, North Atlantic Marine Mammal Commission, OSPAR Commission, Standing Committee of the Parliamentarians of the Arctic Region, United Nations Economic Commission for Europe, United Nations Development Program, United Nations Environment Program, World Meteorological Organization, and the West Nordic Council.

⁵⁹ Advisory Committee on Protection of the Seas, Arctic Institute of North America, Association of World Reindeer Herders, Circumpolar Conservation Union, International Arctic Science Committee, International Arctic Social Sciences Association, International Union for Circumpolar Health, International Work Group for Indigenous Affairs, National Geographic Society, Northern Forum, Oceana, University of the Arctic, and World Wide Fund for Nature-Global Arctic Program.

Russian Association of Indigenous Peoples of the North has greater political standing than Germany or the People's Republic of China. There remains a disparity, however, because Permanent Participants have less resources to devote to Arctic Council politics than many of the Observers—but that is changing with the establishment of the Álgu Fund.

Even though indigenous peoples fought hard for the powers and privileges of Permanent Party status at the creation of the Arctic Council, this is a position they have had to preserve and defend. In 2007, Artur Chilingarov, as part of a Russian-led polar expedition, planted a titanium-supported Russian flag on the seabed four kilometres beneath the North Pole, declaring 'The Arctic has always been Russian'.⁶⁰ Not only was the act reminiscent of imperial explorations of the past, but the editorial and scholarly commentary that followed also mirrored the past. There was nervous talk about the political fallout by the Russian divers, a worry about a potential 'scramble for the Arctic' if governments were to compete to secure Arctic territory and riches.⁶¹ Since such language was used ignorantly, this story of scramble made little reference to the indigenous communities that lived there.

National governments did rush to the north, but it was to a diplomatic meeting in Ilulissat, Greenland. The five Arctic Ocean coastal states—Canada, Denmark, Norway, Russia and USA—met to 'explain to the rest of the world that there was no scramble for resources going on in the Arctic, but rather an orderly development'.⁶² The national governments produced the Ilulissat Declaration where they stated, 'By virtue of their sovereignty, sovereign rights and jurisdiction in large areas of the Arctic Ocean the five coastal states are in a unique position to address [the] possibilities and challenges [of climate change]'.⁶³

Indigenous communities were mentioned but not invited to the summit. National governments did not have to invite indigenous leaders because this meeting was held outside the auspices of the Arctic Council. Instead, this declaration in effect asserted state authority over Arctic space, ecology, and its indigenous communities. It enveloped indigenous 'livelihood' into

⁶⁰ 'Frozen Conflict: Denmark Claims the North Pole' *The Economist* (London, 17 December 2014) <www.economist.com/international/2014/12/17/frozen-conflict> (accessed 14 December 2018).

⁶¹ 'Scramble for the Arctic' *Financial Times* (London, 19 August 2007) <www.ft.com/content/65b9692c-4e6f-11dc-85e7-0000779fd2ac> (accessed 14 December 2018).

⁶² Timo Koivurova, 'Redefining Sovereignty and Self-Determination through a Declaration of Sovereignty: The Inuit Way of Defining the Parameters for Future Arctic Governance' in Asbjørn Eide, Jakob Th Möller and Ineta Ziemele (eds), *Making Peoples Heard: Essays on Human Rights in Honour of Gudmundur Alfredsson* (Martinus Nijhoff Publishers, 2011) 494.

⁶³ Ilulissat Declaration adopted at the Arctic Ocean Conference (28 May 2008) <<https://arcticportal.org/images/stories/pdf/Ilulissat-declaration.pdf>> (accessed 14 December 2018). See also Jon Rahbek-Clemmensen and Gry Thomsen, *Learning from the Ilulissat Initiative: State Power, Institutional Legitimacy, and Governance in the Arctic Ocean 2007-18* (University of Copenhagen Centre for Military Studies, 2018) <https://cms.polsci.ku.dk/publikationer/learning-from-the-ilulissat-iniative/download/CMS_Rapport_2018__1_-_Learning_from_the_Ilulissat_initiative.pdf> (accessed 14 December 2018).

each state's domestic sphere thereby reasserting the states' role as territorial stewards.⁶⁴

Inuit people were insulted and angered by the Ilulissat Declaration. They responded by producing what would prove to be an affirmation of sovereignty that used international legal doctrine to geographically reframe a political debate—*A Circumpolar Inuit Declaration on Sovereignty in the Arctic* (the 'Inuit Declaration').⁶⁵ The Inuit Declaration, in Part 1, took on the fact that the Ilulissat Declaration only referenced one type of law, which was the law of the sea. It challenged this narrow approach by first asserting their authority and jurisdiction with detailed terms.⁶⁶ The terms were respectively geographical, temporal, and political:

- 1.1. Inuit live in the Arctic
- 1.2. Inuit have been living in the Arctic from time immemorial
- 1.3. Inuit are a people

By asserting themselves as a people, the Inuit were claiming their position as a collective of rights-holders and not stakeholders, continuing the trend of recognising indigenous rights in the Arctic.⁶⁷

Then the Inuit Declaration made several assertions, each of which respectively relied on international, regional, national, and local law. I list the headings which can be read as claims of sovereignty; I also provide a description of the authority used to support the assertion:

- 1.4. Inuit are an indigenous people
 - referencing international legal treaties and instruments such as the 2007 UN Declaration on the Rights of Indigenous Peoples
- 1.5. Inuit are an indigenous people of the Arctic
 - referencing their status as Permanent Participants of the Arctic Council
- 1.6. Inuit are citizens of Arctic states
 - referencing national constitutions, laws, policies, and programmes

⁶⁴ Koivurova (n 62) 498. This is a classic colonial technique, see Usha Natarajan and Kishan Khoday, 'Locating Nature: Making and Unmaking International Law' (2014) 27 *Leiden Journal of International Law* 573; Mickelson (n 13).

⁶⁵ Inuit Circumpolar Council, *A Circumpolar Inuit Declaration on Sovereignty in the Arctic* (April 2009) <www.inuitcircumpolar.com/sovereignty-in-the-arctic.html> (accessed 14 December 2018).

⁶⁶ I only excerpt the headings and leave out the extensive arguments of the Inuit Declaration.

⁶⁷ Gail Fondahl, Viktoriya Filippova and Liza Mack, 'Indigenous Peoples in the New Arctic' in Birgitta Evengård, Joan Nymand Larsen and Øyvind Paasche (eds), *The New Arctic* (Springer International Publishing, 2015); Jessica M Shadian, 'Reimagining Political Space: The Limits of Arctic Indigenous Self-Determination in International Governance?' in Kathrin Keil and Sebastian Knecht (eds), *Governing Arctic Change* (Palgrave Macmillan UK, 2017) 54.

1.7. Inuit are indigenous citizens of Arctic states

—referencing national constitutions, laws, policies, and programmes

1.8. Inuit are indigenous citizens of each of the major political subunits of Arctic states (states, provinces, territories and regions)

—referencing local law

In this way, the Inuit Declaration embeds sovereignty within a multi-scalar mesh of authority, but without any necessary hierarchy amongst the different legal scales. This is not federal system in which one national authority trumps. Nor is it a clear delineation between international and domestic. This embeds national and local law into a complex geography of power in which there are overlapping sources of authority. This in effect counters the Ilulissat Declaration's reliance on national law as the sole defining authority *over* indigenous people and space. This allows the Inuit people to weave national and local law into their sovereign power while also asserting, 'These rights and responsibilities do not diminish the rights and responsibilities of Inuit as a people under international law' (paras. 1.6, 1.7, and 1.8).

The Inuit Declaration is not a demand to secede, which is what national governments fear the most when it comes to indigenous sovereignty claims.⁶⁸ Rather, as seen in Part 1, it is an intervention specific to the Arctic and the political conditions of the time. It presents the Inuit as a singular people with a unitary claim.

The Inuit not only used their declaration to respond to the Ilulissat Declaration but also to strengthen their position in ongoing struggles against, and negotiations with, colonial powers. Due to the fact that the Inuit people are spread across several states, the Inuit Declaration includes references to specific land claims and hunting rights within the legal regimes of the United States, Canada, Denmark/Greenland, and Russia (paras. 1.2, 1.3, 2.1, 2.2). What lies in the background are the various strategies different communities pursue within the colonial regimes of those states. For example, in Alaska, Inuit and other indigenous people pursue sovereignty as a demand for equal standing in negotiations with the governments of Alaska and the United States within the bounds of so-called Indian Law. Whereas Inuit in Greenland were and continue to be inspired by the Spirit of Bandung;⁶⁹ they obtained home rule in 1979, continue to expand their autonomy, and are having an active debate over whether or how they want to pursue full independence.⁷⁰

⁶⁸ United Nations Declaration on the Rights of Indigenous Peoples, UNGA Res 61/295 (13 September 2007), Article 46.1.

⁶⁹ Inuk Silis Høegh, *Sumé: The Sound of a Revolution* (DR Sales, 2014).

⁷⁰ Hannes Gerhardt, 'The Inuit and Sovereignty: The Case of the Inuit Circumpolar Conference and Greenland' (2011) 14 *Politik* 6.

In these terms, the Inuit Declaration can be understood as a declaration of intra-Inuit solidarity as much as a stand against colonial power.

Even though Part 2 of the Declaration is entitled ‘The Evolving Nature of Sovereignty in the Arctic’, the opening sentence, unlike many of the other provisions, is written in more universal terms:

‘Sovereignty’ is a term that has often been used to refer to the absolute and independent authority of a community or nation both internally and externally. Sovereignty is a contested concept, however, and does not have a fixed meaning. Old ideas of sovereignty are breaking down as different governance models, such as the European Union, evolve. Sovereignities overlap and are frequently divided within federations in creative ways to recognize the right of peoples.

To some, the Inuit Declaration may be a novel conception of sovereignty.⁷¹ But the Inuit Declaration makes an empirical claim that sovereignty is a dynamic idea and frames itself as reflecting an existing reality of ‘different governance models’ (para. 2.1).

Old or new, the Declaration’s universality lies in how it codifies an experience of sovereignty that traverses several boundaries. Most formal declarations of sovereignty demand the securing of some border or clarification of a line on a map.⁷² This declaration is innovative because it challenges the assumption that sovereignty is something that is always determinatively settled. The Inuit people draw from the context of their ‘long history of struggle to gain recognition and respect’ (para. 2.1), to highlight the fact that sovereignty is a concept that people deploy in different ways when they argue over who gets to create the rules, practices, and institutions that govern territory.

I will conclude with a brief abstraction of the Inuit Declaration. To some, sovereignty is about the authority to rule over people and things within a particular territorial jurisdiction, that is established through military exercises, government outposts, flag planting, or regular scientific expeditions. This understanding does not capture the multiple ways that sovereignty is expressed and defined in practice. Sovereignty is pluralist and relational, involves the regular negotiation of authority and jurisdiction, and constitutes a complex relationship to land. Learning from the Inuit, we can take sovereignty as a historically contingent concept, but in which the understanding of time is inseparable from a physical, cultural, and spiritual experience of space.⁷³

⁷¹ Fiammetta Borgia and Paolo Vargiu, ‘The Inuit Declaration on Sovereignty in the Arctic: Between the Right to Self-Determination and a New Concept of Sovereignty?’ (2012) 4 *Yearbook of Polar Law* 189.

⁷² See for eg Michael Byers, *International Law and the Arctic* (Cambridge University Press, 2013) 10–16, 235; David L VanderZwaag and Jonathan R Edge, ‘Canada–Russia Relations in the Arctic: Conflictual Rhetoric, Cooperative Realities’ in Suzanne Lalonde and Ted L McDorman (eds), *International Law and Politics of the Arctic Ocean* (Brill, 2015).

⁷³ For example some have argued that one way to understand the Arctic is through the relationship between people and seals, Nikolas Sellheim, ‘The Right Not to Be Indigenous: Seal Utilization in Newfoundland’ (2014) *Arctic Yearbook* 546; Fakhri (n 53).

IV. Food sovereignty

A. 'A movement of movements'

While TWAIL provides analytical tools to understand international law as an imperial project, its ambition to develop the tools to contest, resist, and redefine international law to assist those people fighting imperial power remains untested. It is still unclear whether TWAIL can serve people who want to build a new future. This is not because of any inherent limitations of TWAIL, but because of the uncertain role that law should play, or indeed what law will even mean, in the future.

Some in TWAIL are looking at the food sovereignty movement as an exemplary case of how one group has navigated those tensions around law in a way that has led to specific political gains. The focus so far has been treating the movement as a political success or inspiration.⁷⁴ My focus is more on how the movement has organised itself around a novel understanding of sovereignty in order to hold multiple interests together in solidarity. I also note how the movement has used legal tools but kept legalistic politics at bay.

A key element of the food sovereignty movement has been La Vía Campesina, one of the most dynamic and influential transnational peasant movements in its own right. La Vía Campesina comprises peasants, small and medium size farmers, landless people, rural women and youth, indigenous people, migrants and agricultural workers from around the world. Its members include 182 organisations spanning 81 countries and by their own count represent over 200 million people.⁷⁵

It is through the International Planning Committee for Food Sovereignty (IPC), an autonomous organisation, that the food sovereignty movement primarily interacts with international institutions. The IPC 'facilitates dialogue and debate' and creates a space for discussion that is autonomous from 'political parties, institutions, governments and [the] private sector'.⁷⁶ Its members include transnational social movements (such as La Vía Campesina, the World Forum of Fishers People, and the World Alliance of Mobile Indigenous Peoples); regional organisations (such as: ROPPA, PROPAC, and Movimiento Agro Ecológico Latino Americano); and NGOs that provide support (such as FIAN and Friends of the Earth International).⁷⁷ So while

⁷⁴ See eg Carmen Gonzalez, 'Climate Change, Food Security, and Agrobiodiversity: Toward a Just, Resilient, and Sustainable Food System' (2011) 22 *Fordham Environmental Law Review* 493; James Thuo Gathii, 'Food Sovereignty for Poor Countries in the Global Trading System' (2011) 57 *Loyola Law Review* 509; BS Chimni, 'Anti-Imperialism: Then and Now' in Luis Eslava, Michael Fakhri and Vasuki Nesiiah (eds), *Bandung, Global History, and International Law* (Cambridge University Press, 2017).

⁷⁵ 'Who Are We?' (*La Vía Campesina*) <<https://viacampesina.org/en/who-are-we/regions/>> (accessed 14 December 2018).

⁷⁶ 'About Us' (*International Planning Committee for Food Sovereignty*) <www.foodsovereignty.org/about-us/> (accessed 14 December 2018).

⁷⁷ 'Structure and Organization' (*International Planning Committee for Food Sovereignty*) <www.foodsovereignty.org/about-us/structure-and-organization/> (accessed 14 December 2018).

La Vía Campesina took to the streets to protest against the WTO, the IPC provided support to its members who wanted to work with the Food and Agriculture Organization (FAO) to develop new programmes and policies.

In the 1990s, small-holder farmers and other small-scale food producers around the world were fed up with international economic institutions, disappointed with their national governments, and cynical when it came to development discourse. For fifty years, most national governments across the Third World were preoccupied with development. Regardless of their particular understanding of development, very few governments and advisors were committed to easing the life its food producers in a way that allowed them to continue their way of life. The emphasis was on industrialisation. Generally, the plan was to industrialise agriculture in order to reduce labour costs and then funnel that surplus labour to cities to work in or to serve the manufacturing sector.

During this time food producers in different countries organised themselves and protested against their governments in order to resist this plan. Then, small-holder farmers, other small-scale food producers, and indigenous peoples around the world, especially in South America and Mexico, began to organise themselves into transnational movements committed to opposing international economic institutions like NAFTA and the World Bank. By May 1993, the movement became global when La Vía Campesina was formed in Mons, Belgium.⁷⁸ Seven months later, this new movement marched in Geneva against the newly created WTO.⁷⁹

It was in 1996, when La Vía Campesina attended the NGO Forum of the World Food Summit, that the concept of ‘food sovereignty’ was publicly announced. Much as how the Inuit used sovereignty to consolidate their own interests in international law and politics, La Vía Campesina successfully established ‘unity through diversity’ by devoting its first years (1993–1999) to internal consolidation amongst its members in order to work through their differences.⁸⁰ Also, like the Inuit Declaration, the food movement treats sovereignty as an ever-changing concept. Unlike the Inuit Declaration, the different articulations of food sovereignty more clearly display the defining tensions and paradoxes of the movement.⁸¹

⁷⁸ La Vía Campesina, Mons Declaration (16 May 1993) <<https://viacampesina.org/en/mons-declaration>> (accessed 14 December 2018).

⁷⁹ Annette Aurélie Desmarais, ‘The Vía Campesina: Consolidating an International Peasant and Farm Movement’ (2002) 29 *Journal of Peasant Studies* 91, 93.

⁸⁰ Hannah Wittman, ‘Food Sovereignty: A New Rights Framework for Food and Nature?’ (2011) 2 *Environment and Society: Advances in Research* 87, 96–97; Annette Aurélie Desmarais, Marta G Rivera-Ferre and Beatriz Gasco, ‘Building Alliances for Food Sovereignty: La Vía Campesina, NGOs, and Social Movements’ in Douglas H Constance, Marie-Christine Renard and Marta G Rivera-Ferre (eds), *Research in Rural Sociology and Development*, vol 21 (Emerald Group Publishing Limited 2014) 92.

⁸¹ Raj Patel, ‘What Does Food Sovereignty Look Like?’ (2009) 36 *Journal of Peasant Studies* 663.

There are significant class tensions within La Vía Campesina amongst medium to rich farmers, subsistence farmers, and landless workers.⁸² In everyday politics, pastoralists and land-owners of all classes often dispute over land.⁸³ In fact, La Vía Campesina is dominated by farmers' voices, and others—such as pastoralists, fisherfolk, landless agricultural workers, migrant workers, and forest dwellers—are less prominent.⁸⁴

Gender equality is a central tenant to La Vía Campesina and influenced its internal governance structures. At first, all elected coordinators were men but due to feminist struggles within the movement, by 2000 the governance structures were amended to ensure that women and men were equally represented.⁸⁵ Nevertheless, much work remains to be done to use food sovereignty to transform food practices in households, farms, and fields in terms more equitable to women.⁸⁶ Indigenous communities have had their own histories and politics when it comes to the importance of food in struggles for sovereignty, have a different relationship with trade, and sometimes have often come into conflict with settler farmers.⁸⁷ There is also a wide-range of ideological tendencies that are independent from class identity and include: radical agrarian populists; different strands of Marxists, including Maoists; anarchists; feminists; and radical environmentalists.⁸⁸

Despite these differences, members of La Vía Campesina used food sovereignty to consolidate their transnational peasant movement in complex and dynamic ways.⁸⁹ Starting in 1999, they also used the concept to expand their strategic alliances to NGOs and other movements.⁹⁰ The process has not been easy or linear, but it has proven to be key to the movement's institutional interventions. In 2002, in preparation for the World Food Summit:

⁸² For a summary on these tensions see Marc Edelman and Saturnino M Borras, *Political Dynamics of Transnational Agrarian Movements* (Fernwood Publishing, 2016) 37–60.

⁸³ Maryam Rahmanian, 'Food sovereignty – A critical dialogue' (*TNI*, 21 February 2014) <www.tni.org/en/multimedia/mariam-rahmanian-food-sovereignty-critical-dialogue> (accessed 14 December 2018).

⁸⁴ Edelman and Borras (n 82) 45.

⁸⁵ Esther Vivas, 'La Vía Campesina: Food Sovereignty and the Global Feminist Struggle' (*Pambazuka News*, 31 October 2012) <www.pambazuka.org/gender-minorities/la-campesina-food-sovereignty-and-global-feminist-struggle> (accessed 14 December 2018).

⁸⁶ Maggie Ellinger-Locke, 'Food Sovereignty Is a Gendered Issue' (2010) 18 *Buffalo Environmental Law Journal* 157; Rajeev C Patel, 'Food Sovereignty: Power, Gender, and the Right to Food' (2012) 9 *PLoS Medicine*; Bina Agarwal, 'Food Sovereignty, Food Security and Democratic Choice: Critical Contradictions, Difficult Conciliations' (2014) 41 *Journal of Peasant Studies* 1247; Clara Mi Young Park, Ben White and Julia, 'We Are Not All the Same: Taking Gender Seriously in Food Sovereignty Discourse' (2015) 36 *Third World Quarterly* 584.

⁸⁷ Sam Grey and Raj Patel, 'Food Sovereignty as Decolonization: Some Contributions from Indigenous Movements to Food System and Development Politics' (2015) 32 *Agriculture and Human Values*; Dordrecht 431; Kyle Whyte, 'Food Sovereignty, Justice and Indigenous Peoples: An Essay on Settler Colonialism and Collective Continuance' in Anne Barnhill, Mark Budolfson and Tyler Doggett (eds), *The Oxford Handbook of Food Ethics* (Oxford University Press, 2017).

⁸⁸ Edelman and Borras (n 82) 54.

⁸⁹ Annie Shattuck, Christina M Schiavoni and Zoe VanGelder, 'Translating the Politics of Food Sovereignty: Digging into Contradictions, Uncovering New Dimensions' (2015) 12 *Globalizations* 421.

⁹⁰ Desmarais, Rivera-Ferre and Gasco (n 80).

five years later, La Vía Campesina joined with others to create the IPC; this was the point at which one could talk about food sovereignty as a concept and movement that was something more than La Vía Campesina (but with the transnational peasant movement at its core).

The IPC has been a 'network of networks, movement of movements' on a grand scale.⁹¹ It does not act as a singular institutional actor and is instead a decentralised network that coordinates members' actions in relationship to governments and international institutions. Since 2003, it has had a formal relationship with the FAO in four priority areas: the right to food, agro-ecological approaches to food production, local access to and control of natural resources, and agricultural trade and food sovereignty.⁹²

The IPC and FAO agreed to 'establish common priority themes for a collaborative work in the fight against hunger and food insecurity'.⁹³ This signalled that the food sovereignty movement has some access to influence the language of decision-making around and within the FAO. Of course, there is always the danger that the FAO will use the enhanced legitimacy granted from working with influential social movements to define and implement the right to food and food sovereignty in ways that do not necessarily benefit the movement (ie 'co-optation').

Like many movements of this kind, and like TWAIL,⁹⁴ the IPC holds within it a tension between reformist and radical tendencies. Many in La Vía Campesina were wary of working within the UN system and reforming the FAO in particular; they worried that this would demand a significant amount of resources that could otherwise be committed to national or regional organisations or to more radical tactics, all without a clear sense of the benefits. While at the same time, many of the movement leaders also recognised that they could not cede the FAO to multinational agribusiness.⁹⁵ The IPC further complicated this dynamic since it included a fair number of reformist movements and NGOs who already were comfortable navigating the halls of international institutions.

Nevertheless, the IPC was the vehicle through which La Vía Campesina successfully achieved its slogan of 'globalizing hope and globalizing the struggle'.⁹⁶ In light of food sovereignty being taken up by an increasing number of groups, governments, and organisations, La Vía Campesina and

⁹¹ Edelman and Borras (n 82) 68–70.

⁹² Nora McKeon, *The United Nations and Civil Society: Legitimizing Global Governance—Whose Voice?* (Zed Books, 2009) 101–03.

⁹³ Letter from Jose Graziano da Silva (Director-General of the FAO) to Members of the Facilitating Committee of IPC (23 May 2014) <www.foodsovereignty.org/the-ipc-and-fao-establish-common-priority-themes-for-a-collaborative-work-in-the-fight-against-hunger-and-food-insecurity/> (accessed 14 December 2018).

⁹⁴ Luis Eslava and Sundhya Pahuja, 'Between Resistance and Reform: TWAIL and the Universality of International Law' (2011) 3 *Trade, Law and Development* 103.

⁹⁵ McKeon (n 92) 104.

⁹⁶ Desmarais, Rivera-Ferre and Gasco (n 80) 101–07.

others turned to the IPC to ensure that the meaning and goals of food sovereignty were always a product of dialogue and debate, and was deeply understood by members of the movement. Along these lines, in 2007 the IPC Secretariat coordinated the International Nyéléni Forum for Food Sovereignty in Mali. The result was the most comprehensive definition of food sovereignty to date, the Nyéléni Declaration.⁹⁷

The source of food sovereignty's authority has changed over the years. In 1996 in Rome, the movement defined food sovereignty as, 'the right of each nation to maintain and develop its own capacity to produce its basic foods respecting cultural and productive diversity'. The declaration focused on national constitutions and national territory.⁹⁸ This focus on national sovereignty was a continuation of Bandung as seen in older doctrines such as Permanent Sovereignty over Natural Resources and the right to development, in effect linking authority to the state's national territory.⁹⁹ This was different to how many people, especially indigenous people like the Inuit, understood sovereignty as a cultural, political, or ethnic concept with an unclear relationship with the state.¹⁰⁰

Later, in 2002, with the advent of the IPC, the movement moved away from the singular 'nation' and defined food sovereignty in terms of 'peoples, communities, and countries', in effect pluralising food sovereignty's authority.¹⁰¹ By 2007, the movement buried the state more into the background and simply focused on 'peoples' in the Nyéléni Declaration: 'Food sovereignty is the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems'.¹⁰²

Some have criticised this all as incoherent and confusing.¹⁰³ Instead, as Patel has argued, the movement has proven that such a flexible organising concept is 'blowing apart the notion that the state has a paramount authority, by pointing to the multivalent hierarchies of power and control that exist within the world food system'. But while food sovereignty displaces the singular sovereignty of the state, it does not put forward other particular notions of sovereignty.¹⁰⁴

⁹⁷ Declaration of Nyéléni, adopted at the Forum for Food Sovereignty (27 February 2007) <<https://nyeleni.org/spip.php?article290>> (accessed 14 December 2018).

⁹⁸ La Via Campesina, The Right to Produce and Access to Land. Food Sovereignty: A Future Without Hunger (11–17 November 1996) <www.acordinternational.org/silo/files/decfoodsov1996.pdf> (accessed 14 December 2018).

⁹⁹ Julio Faundez, 'Between Bandung and Doha: International Economic Law and Developing Countries' in Luis Eslava, Michael Fakhri and Vasuki Nesiah (eds), *Bandung, Global History, and International Law* (Cambridge University Press, 2017).

¹⁰⁰ Otto Hospes, 'Food Sovereignty: The Debate, the Deadlock, and a Suggested Detour' (2014) 31 *Agriculture and Human Values* 119, 122.

¹⁰¹ *Ibid.*

¹⁰² Declaration of Nyéléni (n 97).

¹⁰³ Eg Marc Edelman, 'Food Sovereignty: Forgotten Genealogies and Future Regulatory Challenges' (2014) 41 *Journal of Peasant Studies* 959; Hospes (n 100).

¹⁰⁴ Patel, 'What Does Food Sovereignty Look Like?' (n 81) 668.

Such an open concept allows for different elements of the movement to use food sovereignty and deploy it within their particular juridical contexts at whatever scale. For example, food sovereignty has been written into constitutions governing states, used in local law to challenge federal law, and deployed to change internal governance structures of international institutions without state endorsement.¹⁰⁵

La Vía Campesina and its allies deploy food sovereignty to delegitimise food policies that feed people but have no regard for concentrations of political power. Their goal is to generate laws and policies that instead empower the large number of decentralised small-scale food producers. Many governments, international institutions, and experts frame hunger as a problem of distribution with a focus on access and commerce, whereas food sovereignty asks the question: who controls the systems of production and consumption?¹⁰⁶

In these terms, the movement is trying to think of authority and territory in a way that grants small-scale and vulnerable food producers more control. But this is not a mapping exercise. The movement knows that they want a future where communities are defined by how they make and eat food; where people have the power to define themselves and therefore their food practices; a place where power and resources are distributed more equitably on a global scale. The appropriate verbal metaphor is not map-making but trailblazing. The path leading to their destination will be created through radical equality, dialogue, and direct participation of all members. The closer they get to a world of multiscale and interconnected sovereignties the more they are able to look back and appreciate the path they marked.¹⁰⁷

In less metaphorical terms, the food sovereignty movement has made some political gains at the global scale which provide the rest of us with a sense of how international institutions operate. The Rome-based institutions (FAO, IFAD, WFP) radically reformed the UN Committee for World Security (CFS) through the collective efforts of the G77 government leaders, the food sovereignty movement, and key international civil servants from within institutions. They pulled the CFS out of irrelevance and obscurity and established it as the most influential intergovernmental policy space on food security to come immediately out of the global food crisis that first hit in 2007.¹⁰⁸

¹⁰⁵ Nadia CS Lambek and others (eds), *Rethinking Food Systems: Structural Challenges, New Strategies and the Law* (Springer, 2014).

¹⁰⁶ Raj Patel, 'Food Sovereignty' (2009) 36 *Journal of Peasant Studies* 663; Hannah Kay Wittman, Annette Aurelie Desmarais and Nettie Wiebe, 'The Origins & Potential of Food Sovereignty' in Hannah Wittman, Annette Aurelie Desmarais and Nettie Wiebe (eds), *Food Sovereignty: Reconnecting Food, Nature and Community* (Food First Books, 2010).

¹⁰⁷ Christina M Schiavoni, 'Competing Sovereignties, Contested Processes: Insights from the Venezuelan Food Sovereignty Experiment' (2015) 12 *Globalizations* 466.

¹⁰⁸ McKeon (n 92); Jessica Duncan, *Global Food Security Governance: Civil Society Engagement in the Reformed Committee on World Food Security* (Routledge, 2015); Josh Brem-Wilson, 'Towards Food

Recent studies describe the CFS as a place that hosts a ‘discursive turf war’ which allows for political give-and-take and not ideological posturing.¹⁰⁹ The consensus is that the CFS is, so far, a unique space that allows people directly affected by the issues in question to have direct influence in global policy coordination. It is inclusive in the sense that it is the result of trying to *recalibrate* power in more equitable terms, and not simply a matter of token civil society participation.

What also makes the new CFS unique is that the food sovereignty movement managed to carve out an autonomous space for themselves through the Civil Society Mechanism (CSM). The CSM is an open organisation with ‘participating organisations’ rather than formal ‘members’. Any organisation that ‘belongs to civil society and works on food security and nutrition can join and participate’.¹¹⁰

Recent studies outline the functions of the CSM and detail the internal formal and practical matrix of power and decision-making.¹¹¹ Two of the most unique features, evidence of the food sovereignty movement’s influence, is that the CSM participants organise themselves. Moreover, social movements are granted privileged representation over NGOs.¹¹² Thus, much like indigenous Permanent Participants in the Arctic Council, the CSM has been the place where delegates who do not represent state governments convene and directly engage with the international institutional decision-making.

The CFS’s main purpose is to act as a place to develop global policy and cohesion across international institutions and national governments. It derives its legitimacy in its ability to be accepted by all people, wealthy, poor or otherwise, whose lives are acutely and directly affected by global food markets.

Since 2010, the private sector (represented by the International Agri-Food Network) has been more actively involved in the CFS and is lobbying hard to have a number of seats at least equal to that of civil society organisations.¹¹³

Sovereignty: Interrogating Peasant Voice in the United Nations Committee on World Food Security (2015) 42 *Journal of Peasant Studies* 73.

¹⁰⁹ Duncan (n 108) 62.

¹¹⁰ ‘What is the CSM?’ (*Civil Society Mechanism for the UN Committee on World Food Security*) <www.csm4cfs.org/the-csm/> (accessed 14 December 2018).

¹¹¹ Duncan (n 108) 130–52; Ingeborg Gaarde, *Peasants Negotiating a Global Policy Space: La Vía Campesina in the Committee on World Food Security* (Routledge, 2017).

¹¹² Civil Society Mechanism for the UN Committee on World Food Security, Terms of Reference for CSO members of the CFS Advisory Group (May 2017) <www.csm4cfs.org/wp-content/uploads/2016/03/Eng_Terms-of-Reference-for-Advisory-Group-Members-amended-May-2017.pdf> (accessed 14 December 2018).

¹¹³ CFS Evaluation Meeting, Implementation of the CFS Evaluation – Recommendation 4 (5 February 2018) Doc. No. CFSEvaluation/2018/02/05/04 <www.fao.org/fileadmin/templates/cfs/Docs1718/Evaluation/05Feb/CFSEvaluation_2018_02_05_04_Outcomes%E2%80%8CFINAL.pdf> (accessed 14 December 2018); CFS Bureau and Advisory Group Meeting, CFS Advisory Group 2018–2019 Composition Information Note (6 February 2017) Doc. No. CFS/Bur Ag/2017/02/06/05 <www.ipcinfo.org/fileadmin/user_upload/cfs/doclibrary/CFSEvaluation/CFSEvaluation_2018_02_05_04_Advisory_Group_2018_2019_Info_note>.

The private sector's interest reflects the growing influence and authority of the CFS. This increase in private sector involvement also puts the food sovereignty movement in a delicate position: members of the movement want to ensure that the CFS remains the principal site for global food security policy-making because it does not have the resources to influence governments working across a number of international institutions. The movement also wants to maintain the legitimacy of the CFS because the FAO, which houses the CFS, remains committed to civil society organisations and the food sovereignty movement. But if civil society organisations do not make the right compromises, the private sector or philanthropic organisations (mainly the Bill and Melinda Gates foundation) will withdraw from the institution thereby destabilising its legitimacy. If civil society organisations cede too much power, they lose what gains they made. As one La Vía Campesina member stated, '[at the CFS] we get to know both our enemies and ourselves better from the engagement'.¹¹⁴

Meanwhile, government leaders are trying to navigate amongst the different stakeholders. Ever since the anti-globalisation protests of the 1990s and food riots of the 2000s, they are acutely attuned to the fact that civil society organisations, especially the food sovereignty movement, can easily activate their network and confront politicians through mass demonstrations in home streets.¹¹⁵

If one is measuring degrees of ongoing influence within the CFS, then La Vía Campesina is correct in their claim that their work so far at the CFS has been a victory.¹¹⁶ Through the CFS, the movement has significantly influenced global governance structures and policy. The result is that the CFS is a unique space that advances the right to food as a legal doctrine.¹¹⁷ This means that the CFS reinforces the argument that the issue of ensuring people have adequate food, access to food, and control over their own food treated as a political necessity and not as a matter of charity or a method of exerting cruel pressure. This is an argument that remains important in light of ongoing geopolitics today in places like Gaza and Yemen.

pdf> (accessed 14 December 2018); CFS, Evaluation of Committee on World Food Security: Final Report (14 April 20) <www.fao.org/fileadmin/templates/cfs/Docs1617/Evaluation/CFS_Evaluation_Final_Report__14_April_2017.pdf> (accessed 14 December 2018).

¹¹⁴ Quoted in Gaarde (n 111) 81.

¹¹⁵ Brem-Wilson (n 108) 81; McKeon (n 92) 51–52.

¹¹⁶ La Vía Campesina, *The Committee on World Food Security (CFS): A New Space for the Food Policies of the World, Opportunities and Limitations* (September 2012) La Vía Campesina Notebook No. 4 <<https://viacampesina.org/en/the-committee-on-world-food-security-cfs-a-new-space-for-the-food-policies-of-the-world-opportunities-and-limitations/>> (accessed 14 December 2018). See also Joe Wills, *Contesting World Order?: Socioeconomic Rights and Global Justice Movements* (Cambridge University Press, 2017) 94–150.

¹¹⁷ Nadia Lambek, 'The Right to Food: Reflecting on the Past and Future Possibilities—Synthesis Paper' (2015) 2 *Canadian Food Studies / La Revue canadienne des études sur l'alimentation* 68.

But policy wins to any degree do not necessarily turn into redistribution of resources and reconfigurations of power, as required by the food sovereignty movement's broader agenda. The CFS is strictly a normative space with no authority over financial resources; the CFS is not able to provide funds or personnel towards implementing any of the global policies. This is left to institutions like the FAO, IFAD, WFP and national governments.

As Ibrahim Coulibaly, from Mali and a leader of a farmers' movement in West Africa summed up in 2011 at a CFS policy roundtable on food price volatility:

Instead of responding to the causes of our poverty and of price volatility, we have seen whole catalogues of projects and programmes financed in the name of the agricultural sector, billions of dollars are mobilized every year, but the truth is that more than half of the peasant families in the majority of our countries do not have access to money to buy a plough, a couple of oxen, a cart, or a donkey.¹¹⁸

Even if projects were implemented under CFS policies, this alone does not ensure that food producers have access to more resources.

B. 'What do you want?'

The question I discussed earlier, *who are and where are you from?*, is often immediately followed with the other political question of desire and demand. In order to work through that question of *what do you want?*, I had to write and think about Inuit people and the food sovereignty movement in a style that does not speak for them. Like many in TWAIL, I want to decolonise international law leaving it open whether this would debilitate or resuscitate international legal practice. In fact, many in TWAIL are thinking through the relationship between their theoretical and practical work (or praxis, if you prefer) in international law.¹¹⁹ Part of the reason I usually write in a theoretical and historical register is so that I am not misunderstood as writing on behalf of anyone. To me, writing from a Third World perspective is to stylise my experiences in a way that relates with others wrestling with similar questions of imperialism.¹²⁰

¹¹⁸ Quoted in Jessica Duncan and David Barling, 'Renewal Through Participation in Global Food Security Governance: Implementing the International Food Security and Nutrition Civil Society Mechanism to the Committee on World Food Security' (2012) 19 *International Journal of the Sociology of Agriculture and Food* 143, 157.

¹¹⁹ This was the theme of the TWAIL conference in Cairo in 2015. Since then there have been several special journal issues on this question, see for example Sujith Xavier, Amar Bhatia, John Reynolds and Usha Natarajan (eds), *Conspiring in Cairo & Canada: Placing TWAIL Scholarship and Praxis* (2016) 33(3) *Windsor Yearbook of Access to Justice*; James Thuo Gathii, Henry J. Richardson and Karen Knop (eds.), 'Theorizing TWAIL Activism' (2016) 110 *AJIL Unbound*; Usha Natarajan, John Reynolds, Amar Bhatia and Sujith Xavier (eds), *On Praxis and the Intellectual* (2016) 37(11) *Third World Quarterly*.

¹²⁰ TWAIL is an open movement that allows anyone to self-identify. That means everyone position themselves in their own way when writing from a Third World perspective.

For this article I have had to work out my ethical position in relation to writing about a movement that I am sympathetic to but not a part of. The stakes are especially high since the food sovereignty movement has spent a lot of political resources ensuring that no one speaks on their behalf. The food sovereignty movement comprises people who have the most to lose if they do not effectively ensure that national governments and international institutions establish a food regime that best serves members of the movement; the current food regime is not just a threat to the economic livelihood of people in the food sovereignty movement, but also to their sense of who they are and where they are from. In contrast, as a scholar I have more options available to me regarding what I decide to focus on and how to research.

The food sovereignty movement worked to protect the autonomy of their voice from the very beginning. At the 1996 World Food Summit in Rome, when La Vía Campesina participated in its first international conference they attended the official NGO forum.¹²¹ At this forum, Southern organisations confronted Northern NGOs for acting as gatekeepers to international organisations. More specifically, many Northern (urban) NGOs assumed peasant groups were not ‘capable and articulate’ enough to represent their own interests.¹²² Also at the forum, groups like La Vía Campesina wanted to sharpen the distinction between people’s organisations/social movements established by and representing particular groups versus NGOs who do not represent the population they serve or are accountable to them.

Starting in 1999, La Vía Campesina expanded their strategic alliances to academics, NGOs, and other movements through the IPC.¹²³ IPC processes ensure that peasants drive the dialogue around the meaning of food sovereignty and the political agenda. The food sovereignty movement has successfully reproduced this practice within institutional processes; as discussed above, you see this in relation to how social movements ensured that they would have more power than NGOs within the CFS through the CSM.

The academics that have been the most active in examining and spreading the idea of food sovereignty have been participant-observers and activist-academics. They are sometimes associated with local, regional, or global NGOs that support the IPC.¹²⁴ Many also come from the field of critical agrarian studies, and publish their work on food sovereignty mostly in the *Journal of Peasant Studies*. The jurists involved tend to have a direct relationship with the office of the Special Rapporteur on the Right to Food.

¹²¹ Nora McKeon, ‘Who Speaks for Peasants? Civil Society, Social Movements and the Global Governance of Food and Agriculture’ (2009) 1 *Interface* 48.

¹²² Desmarais (n 79) 103.

¹²³ Desmarais, Rivera-Ferre and Gasco (n 80).

¹²⁴ Global NGOs include FIAN, Friends of the Earth International, Centro Internazionale Crocevia, and the International Collective in Support of Fishworkers. See ‘About Us’ (*International Planning Committee for Food Sovereignty*) <www.foodsovereignty.org/about-us/> (accessed 14 December 2018).

Academics that embed themselves in such a way, drawing on sociological and anthropological methodologies, have to create a direct relationship with the movement in order to gain access to privileged knowledge.¹²⁵ This means that not only do they have to abide by standard ethical rules that come with qualitative research, but they also have to maintain individual members' trust so that they do not lose access to the movement. At the same time, the academic/scholar benefits from this privileged information since it becomes a significant part of their research; they use it to meet certain professional standards and buttress their own professional standing. Embedded academics often gain entry by positioning themselves as an ally to the movement, but also maintain some critical distance to ensure scholarly independence. They therefore need to secure their own political integrity and not publish their findings in a way that makes them an informant. If such an academic is working in good faith, there is no clear reconciliation between these different demands and each person finds their own way of navigating the fact that they are held accountable by the movement, their profession, and themselves.

In this article I am not drawing from any privileged position as a scholar in the food sovereignty movement. I take the position of the international jurist, writing with the food sovereignty movement and about international law. I do have similar competing demands as the embedded academic, but the movement that holds me accountable is TWAIL. My principal worry then is ensuring that I do not find myself becoming a native Third World informant in the field of international law.

From this perspective, the normative value of the food sovereignty struggles, as for all international jurists learning from social movements, will not be found in determining whether they succeed or fail. The jurist's task is to closely follow people's understanding of law collectively expressed as they traverse transnational institutions. People in these struggles are often clever and nimble. As they navigate the existing institutional landscape they are constantly changing their legal and political tactics. I take it that only through those high-stakes experiences will we be able to appreciate the possibilities and limits of contemporary law.¹²⁶

I make this stark contrast between embedded academic and academic jurist in order to highlight the different ethical positions. Of course, academics occupy different positions depending on the piece of writing and attend to the appropriate ethical demands. Each position also lends itself to a particular style: the embedded scholar is well suited to focus on the tension between

¹²⁵ In this article I out leave the aspect of some people's work that depends on international institutional patronage for their research. See for eg Deval Desai and Mareike Schomerus, "There Was A Third Man ...": Tales from a Global Policy Consultation on Indicators for the Sustainable Development Goals' 49 *Development and Change* 89, 92. I discuss this in 'The International Political Economy of the Right to Food' in Nehal Bhuta (ed), *Human Rights and Global Governance* (Oxford University Press, 2019).

¹²⁶ Amy J Cohen, 'The Law and Political Economy of Contemporary Food: Some Reflections on the Local and the Small' (2015) 78 *Law and Contemporary Problems* 101.

social movements and institutions; the jurist is adept at parsing the multiple stakes of the doctrinal debates and describing the inter-institutional landscape in historical terms (in this case, the food regime). Since both people and ideas matter, such a distinction is also only a heuristic to understand where a piece of work lies in between these two points.¹²⁷

From my position, I meet the food sovereignty movement in two ways. First, I take the fact that they articulate their interests and demands in the language of international law and in the idiom of TWAIL. This allows me to look to things like the Nyéléni Declaration as a global communal articulation of sovereignty that warrants consideration and study as a core dynamic in international legal practice today. To ignore such a declaration and fall back on state-centric perspectives would be a disservice to the movement. Second, this article was only made possible because this journal and the editors of this special issue brought together a certain group of people. This created a unique and exhilarating space of interface between the embedded academic and the academic jurist (among us and within us). I imagined this article to be situated within the dynamics of that specific space with its dialogues, disagreements, friendships, and political commitments. My work, as you can see in the footnotes, depends on the work of embedded academics. I, therefore, also hold myself accountable to them.

V. Conclusion

The Spirit of Bandung was a name to a phenomenon that preceded the Asian-African Conference held in Bandung on 1955. The conference was an attempt by world leaders to harness and shape the wide-spread feeling of liberation and hope that swept across the world and to define sovereignty as a matter of mutual dependence. To be sure, the sentiment was not limited to the peoples of Africa and Asia, for example inspiring Inuit people in Greenland and Black people in the United States.¹²⁸ Part of its inspiration was from the liberation movements of Latin America in the early nineteenth century.¹²⁹ The Spirit of Bandung is the name of

¹²⁷ An example of work that exquisitely does both—while also placing indigenous perspectives at its core—is Parmar (n 27).

¹²⁸ Malcolm X, 'Message to the Grass Roots. November 10, 1963, Detroit' in George Breitman (ed), *Malcolm X Speaks: Selected Speeches and Statements* (Grove Press, 1965) 3; Mohammed Alnaiem, 'The African Roots of MLK's Vision' (*JSTOR Daily*, 14 February 2018) <<https://daily.jstor.org/the-african-roots-of-mlks-vision/>> (accessed 14 December 2018).

¹²⁹ The histories of national liberation and postcolonial state-building in Latin America, of course, has its own set of dynamics. See Liliana Obregón, 'Between Civilisation and Barbarism: Creole Interventions in International Law' (2006) 27 *Third World Quarterly* 815; Jorge L Esquirol, 'Alejandro Álvarez's Latin American Law: A Question of Identity' (2006) 19 *Leiden Journal of International Law* 931; Arnulf Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842-1933* (Cambridge University Press, 2014); Fabia Fernandes Carvalho Veçoso, 'Bandung in the Shadow: The Brazilian Experience' in Luis Eslava, Michael Fakhri and Vasuki Nesiah (eds), *Bandung, Global History, and International Law* (Cambridge University Press, 2017).

something that was a cultural and aesthetic phenomenon as much as it was political.¹³⁰

That spirit has been harnessed, disciplined, and crystallised into state practice.¹³¹ Although in the past I was suspicious of sovereignty, I am now more agnostic on the question of whether sovereignty can be constructed and deployed in a way that fundamentally transforms and neutralises imperial authority today. Indigenous struggles and the food sovereignty movements' campaigns may help us undo or at least loosen existing political forms and release that spirit again. They have taught us how sovereignty is a way to claim lawful authority in order to both consolidate solidarity and engage with rivals. This practice of sovereignty has proven to be transnational—or to be more accurate transjurisdictional—across multiple forms and scales of territory.

I was only able to learn from these other movements by situating myself as a postcolonial migrant. The stakes of elevating a migrant perspective is becoming more acute every day. Current understandings of sovereignty treat the movement of people as the exception, and blocking people at a border with armed force or physical walls as the rule. This has produced deadly results. For example, waterways such as the Mediterranean Sea are being turned into a 'collective graveyards' amassing the corpses of migrants who had left their homes at a moment of desperation.¹³² Universalising a migrant perspective reflects, as a historical matter and urgent issue, an understanding of sovereignty that starts with the transnational movement of people as the norm.

That method of reframing the exception as the rule is a classic technique. In fact, all the techniques in this article—provincialising Europe, universalising the particular, foregrounding my positionality—are prevalent in international legal thought today. I used them here in novel ways: in some regard I reframe migration as the rule, but then when I imagine that identity as a guest in indigenous land, I reconfigure the migrant as an exception.

I provincialise the Global North by placing it in the periphery of my analysis. In a reflexive move, I also decentralise Bandung and put it in

¹³⁰ Vik Kanwar, 'Not a Place, but a Project: Bandung, TWAIL, and the Aesthetics of Thirdness' in Luis Eslava, Michael Fakhri and Vasuki Nesiiah (eds), *Bandung, Global History, and International Law* (Cambridge University Press, 2017).

¹³¹ Antony Anghie, 'Bandung and the Origins of Third World Sovereignty' in Luis Eslava, Michael Fakhri and Vasuki Nesiiah (eds), *Bandung, Global History, and International Law* (Cambridge University Press, 2017). For the Arab world this started in the late nineteenth century, see Saree Makdisi, "'Post-colonial' Literature in a Neocolonial World: Modern Arabic Culture and the End of Modernity' (1995) 22 *boundary 2* 85.

¹³² Samera Esmeir, 'Bandung: Reflections on the Sea, the World, and Colonialism' in Luis Eslava, Michael Fakhri and Vasuki Nesiiah (eds), *Bandung, Global History, and International Law* (Cambridge University Press, 2017) 93.

the semi-periphery, leaving the Arctic and food sovereignty movement as the centre. In doing so, I am arguing that it may be helpful to displace the Final *Communiqué* of Bandung as one cornerstone of postcolonial sovereignty, and replace it with something that is directly inspired by the Inuit Declaration and Nyéléni Declaration. In temporal terms, I want to live in world where the Peace of Westphalia is prehistoric, the Bandung Final *Communiqué* is the past, and the Inuit and Nyéléni declarations are the future.

In articulating my positionality, it is not in relation to my subject of study. My subjectivity is presented in the spirit of solidarity and is in relation to potential allies. I started this article explaining how dangerous it is when you have to answer the question, 'Who are you and where are you from?' I nevertheless proceeded to do so but not as an answer to an authority figure, but as an offering to people whom I want to invite into my political life. It is intended to provide a descriptive entry point for others who may want to meet my comrades and me.

When I universalise a particular, I redirect this technique's energy so that it is not a critique of international legal doctrine. I instead use it as an argument to international jurists that we should imagine the world in the multitude of ways that people in these struggles do, as articulated in the Inuit and Nyéléni declarations.

As imperial practices change, so must the techniques to counter them. I have used these classic techniques in oblique ways in an effort to think of them anew in contemporary contexts. At this moment of time, it may be that these techniques have lost their critical edge even when used in unorthodox ways. In the least, they are an alternative to mapping and might provide enough of an analytical sharpness that can cut through the current institutional landscape. The Inuit technique of geographical reframing through international doctrine and institutions is innovative, sophisticated, and potentially something others can try. The food sovereignty movement highlights that power stems from social organising and change will not come from theoretical elegance. This is a lesson that is still not deeply encoded in international legal thought. What these struggles confirm is that any understanding of change in international law must address the question of solidarity as a central practical and theoretical concern.

Change in international law, however, still does not guarantee a better future for anyone. What the Third World experience teaches everyone is that international law is by definition generated by expanding or resisting imperialism. At its best, international law can only create the spaces that make way for new technologies acutely aware of imperialism, but not defined by it.

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