The emergence of transnational social movements as major actors in international politics – as witnessed in Seattle in 1999 and elsewhere – has sent shockwaves through the international system. Many questions have arisen about the legitimacy, coherence and efficiency of the international order in the light of the challenges posed by social movements. This groundbreaking book offers a fundamental critique of twentieth-century international law from the perspective of Third World social movements – the first ever to do so. It examines in detail the growth of two key components of modern international law – international institutions and human rights – in the context of changing historical patterns of Third World resistance. Using a historical and interdisciplinary approach, Rajagopal presents compelling evidence challenging current debates on the evolution of norms and institutions, the meaning and nature of the Third World as well as the political economy of its involvement in the international system.

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INTERNATIONAL LAW
FROM BELOW

Development, Social Movements, and Third World Resistance

B. RAJAGOPAL

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ABBREVIATIONS

AAA American Anthropological Association
ADB Asian Development Bank
ASEAN Association of Southeast Asian Nations
BWIs Bretton Woods Institutions
CIDA Canadian International Development Agency
DANIDA Danish Agency for Development Assistance
DRD Declaration on the Right to Development
EAD Electoral Assistance Division of the United Nations
EBRD European Bank for Reconstruction and Development
ECLA Economic Commission for Latin America
ECOSOC Res. Resolution of the Economic and Social Council of the United Nations
ESCAP United Nations Economic and Social Commission for Asia and the Pacific
FAO Food and Agriculture Organization
FTAA Free Trade Area of the Americas
GAOR United Nations General Assembly Official Records
GATT General Agreement on Tariffs and Trade
GSP Generalized System of Preferences
ICCPR International Covenant on Civil and Political Rights
ICESCR International Covenant on Economic, Social and Cultural Rights
ICJ International Court of Justice
ICNW Indian Cooperative Network for Women
IDA International Development Agency
IFC International Finance Corporation
IFES International Foundation for Election Systems
ILO International Labor Organisation
IMF International Monetary Fund
JVP Janata Vimukti Peramuna

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<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>LTTE</td>
<td>Liberation Tigers of Tamil Eelam</td>
</tr>
<tr>
<td>MIGA</td>
<td>Multilateral Investment Guarantee Agency</td>
</tr>
<tr>
<td>NABARD</td>
<td>National Bank for Agriculture and Rural Development</td>
</tr>
<tr>
<td>NADB</td>
<td>National Development Bank</td>
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<tr>
<td>NAFTA</td>
<td>North American Free Trade Agreement</td>
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<td>NAM</td>
<td>Non Aligned Movement</td>
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<td>NAPHR</td>
<td>National Action Plan on Human Rights</td>
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<tr>
<td>NATSR</td>
<td>National Alliance for Tribal Self Rule</td>
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<tr>
<td>NBA</td>
<td>Narmada Bacho Andolan</td>
</tr>
<tr>
<td>NED</td>
<td>National Endowment for Democracy</td>
</tr>
<tr>
<td>NFF</td>
<td>National Fishworkers Federation</td>
</tr>
<tr>
<td>NIEO</td>
<td>New International Economic Order</td>
</tr>
<tr>
<td>NOVIB</td>
<td>Netherlands Organization for International Development Cooperation</td>
</tr>
<tr>
<td>NUWW</td>
<td>National Union of Working Women</td>
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<tr>
<td>OAU</td>
<td>Organization of African Unity</td>
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<tr>
<td>OECD</td>
<td>Organization for Economic Cooperation and Development</td>
</tr>
<tr>
<td>OPEC</td>
<td>Organization of the Petroleum Exporting Countries</td>
</tr>
<tr>
<td>PCIJ</td>
<td>Permanent Court of International Justice</td>
</tr>
<tr>
<td>PCN</td>
<td>Process of Black Communities</td>
</tr>
<tr>
<td>PMC</td>
<td>Permanent Mandates Commission</td>
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<tr>
<td>PSNR</td>
<td>Permanent Sovereignty over Natural Resources</td>
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<tr>
<td>SERNAM</td>
<td>Servicio Nacional de la Mujer</td>
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<tr>
<td>SIDA</td>
<td>Swedish International Development Agency</td>
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<tr>
<td>SIDBI</td>
<td>Small Industries Development Bank of India</td>
</tr>
<tr>
<td>SUNFED</td>
<td>Special United Nations Fund for Economic Development</td>
</tr>
<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
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<td>UNDP</td>
<td>United Nations Development Program</td>
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<tr>
<td>UNFPA</td>
<td>United Nations Population Fund</td>
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<tr>
<td>UNHCHR</td>
<td>United Nations High Commissioner for Human Rights</td>
</tr>
<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
</tr>
<tr>
<td>UNGA</td>
<td>United Nations General Assembly</td>
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<tr>
<td>UNGA Res.</td>
<td>Resolution of the United Nations General Assembly</td>
</tr>
<tr>
<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
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<td>UNSG</td>
<td>United Nations Secretary General</td>
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<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>UNTS</td>
<td>United Nations Treaty Series</td>
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<tr>
<td>USAID</td>
<td>United States Agency for International Development</td>
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<tr>
<td>WHO</td>
<td>World Health Organization</td>
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<tr>
<td>WTO</td>
<td>World Trade Organization</td>
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<tr>
<td>WWF</td>
<td>Working Women's Forum</td>
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The role of non-state actors, particularly NGOs and social movements, has become more important in international relations and in domestic policy. The well-known protests against the World Trade Organization in Seattle in 1999 and against other global economic institutions since then have firmly introduced social movements into the debate on global governance. The violent attacks against targets in the US on September 11, 2001, have even introduced the idea of networks of non-state actors into analyses of peace and security. Indeed, recent work in several disciplines including international relations, comparative politics, sociology and anthropology has attempted to come to grips with these new phenomena.\(^1\) Despite this, legal scholarship in general, and international legal scholarship in particular, have been slow to respond to these changes. Despite recent work in law and society that examines the importance of social mobilization for legal transformation,\(^2\) international legal scholarship has remained largely isolated from this body of work. A principal purpose of this book is to fill this gap by systematically addressing the role of social movements in international legal transformation.

However, this is a hard task. There are two ways of seeing and interpreting international legal transformation – from above as most lawyers do when they focus on formal sources, judicial opinions, and treaties exclusively – or from below when we focus on the lived experience of ordinary people with international law when they encounter international institutions, frame their demands in international legal terms, and network for influencing international or domestic policy. The latter genre of work is not usual in international law, partly because there is no tradition of socio-legal research in international law as there is in domestic law. Therefore, “thicker” descriptions of how norms and institutions evolve – for instance, through ethnography – are not common. But it is clear that there is a greater need for such scholarship in international law now more

\(^1\) See e.g., Keck and Sikkink (1998).

\(^2\) See e.g., Epp (1998); Rosenberg (1991).
than at any other time. This book is a modest contribution to such an effort. It describes how the growth of modern international law (especially international institutions and human rights, its two most cosmopolitan achievements of the twentieth century) is a product of an ambivalent and complex interaction between international law and social movements of people in the Third World faced with a process of enormous transformation unleashed in their territories called “development.”

The telling of this story is also targeted at the ideological and political structure of standard narratives about how international legal transformation happens. In this traditional analysis, legal change is either “internal,” driven by the structure of norms, the function of institutions, and the interests of states. Or legal change is “external,” driven by changes in community values, interests, or power. In either case, this story-telling has been characterized by two major sets of bias: a bias towards the West, rarely treating the Third World as a maker of legal transformation; and a bias towards the elites in legal transformation, ignoring the importance of the role played by ordinary people. This book challenges these sets of bias and argues that it is impossible to understand how international law and institutions have evolved in the modern period (since the League of Nations) without taking Third World social movements, into account. To that extent, this study is also a contribution to a tradition of Third World scholarship in international law. But it is also a challenge to traditional Third World scholarship in international law that remained focused on the state, by examining the relation between states, social movements, and international norms and institutions.

This book is the outgrowth of my doctoral dissertation at Harvard Law School submitted in June 2000, but reflects several years of engagement with the themes presented here during my human rights and legal work with the United Nations. Writing this book would not have been possible without the help of a very large number of individuals. First among them is David Kennedy, my doctoral supervisor, whose personal encouragement to “return” from the field of activism and undertake the arduous task of writing a doctoral thesis, is gratefully acknowledged. More than that, his scholarship has provided a singular inspiration for my work and challenged me to engage in critical reflection in a way that I myself would never have imagined possible.

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“International Law and Social Movements: Challenges of Theorizing Resistance,” *Columbia Journal of Transnational Law* 42 (2003), 397


This book is dedicated to my wife, Anu and our children, Mekala and Muhil, whose love and affection in the face of my obvious failings makes all the work so important. Finally, this book and all my work would not have been possible without the love and support of my mother, Kalyani, and the faith of my father, S. R. Balakrishnan, who inspired the love of law and scholarship in me.