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'Nowhere home'

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ABSTRACT

The war in Gaza is killing home. Some are asking whether domicide should be a crime. But is there more at stake? This essay explores the concept of home in international law, the role of international law in the global regime of homemaking, and the prospects and limits of criminalising the destruction of home.

In a photo essay for *The New York Times* in January, the United Nations Special Rapporteur on the Right to Adequate Housing, Balakrishnan Rajagopal, wrote that we tend to forget the human stories behind the headlines of disaster and destruction coming out of Gaza.[1] The photos in the essay show the interiors of Gazans' homes before the war.[2] A living room decorated with plump cushions and finely detailed rugs. A table set, awaiting guests—a tray bearing delicate drinking glasses of different sizes, coffee, beautifully wrapped sweets. In one photo we see a pristine kitchen, the shelves stacked neatly with crockery and appliances, and a stand mixer—the cook's pride—taking up most of the bench space. In another photo, light pours through a set of tall windows. The stillness of the photos contrasts with the movement they capture—of bodies, of time, of the 'Palestinian sensorium'.[3] As Nadera Shalhoub-Kevorkian and Sarah Ihmoud write, the Palestinian home is 'saturated' with individual and collective, cultural and political meanings.[4] For Fatma Kassem, home is a place where history and memory are transmitted, preserving and continuing cultural and national identity.[5]

[1] Balakrishnan Rajagopal, 'Domicide: The mass destruction of home should be a crime against humanity' *The New York Times* (9 January 2024) <https://www.nytimes.com/interactive/2024/01/29/opinion/destruction-of-homes-crime-domicide.html>. All URLs last visited 12 July 2024.

[2] The essay's title draws on Nadera Shalhoub-Kevorkian, *Militarization and Violence against Women in Conflict Zones: A Palestinian Case-Study* (Cambridge University Press 2009) 196.

[3] Sarah Ihmoud, 'On Love, the Palestinian Way: Kinship, Care and Abolition in Palestinian Feminist Praxis' (2024) 12 *State Crime Journal* 206.

[4] Nadera Shalhoub-Kevorkian and Sarah Ihmoud, 'Exiled at Home: Writing Return and the Palestinian Home' (2014) 37 *Biography* 377, 381.

[5] Fatma Kassem, *Palestinian Women: Narrative Histories and Gendered Memory* (Zed Books 2011) 190.

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The lucky among us tend to think of home as an ordinary place, full of ordinary, familiar things. Our home tends to basic requirements for replenishment and protection from the elements. Home is a place for family to gather and for friends to drop by. Ghazi Falah writes that the ordinariness of home allows it to merge into and become part of the landscape of everyday life.[6] It is 'the one place where we seek to avoid the exceptional and the surprising.'[7] It is 'commonplace', and a common place.[8] What we seek in a home is stability, solid ground to stand on—or to push off from—something that gives our lives shape and meaning. To make a home is so mundane and routine that we rarely notice it happening: an almost imperceptible ordering of everyday practices and rituals and decisions in and around the space of home. Nonetheless, the effects are striking. The process of making-home, of 'homing',[9] is one of being and becoming in the world, of carving out our own socio-spatial history. Home is much more than a place in which we live.

Yet home in Gaza today is far from ordinary. No longer a refuge, home is a conflict zone. The destruction of home in the last eight months is massive: satellite imagery shows over 60 per cent of Gaza's infrastructure has been levelled.[10] As at May 2024, at least 135,142 homes have been destroyed or damaged.[11] The calculated attacks on home have displaced around 85 per cent of the population—eight in ten Gazans are homeless. For hundreds of thousands of people trapped in Gaza, home is now a corridor, a stairwell, a classroom, the beach, the street or in the crowded tent cities of Rafah—which was, until Israel's 'ground invasion' in May 2024, host to almost 1.4 million displaced Gazans, five times its pre-war population. The intensity of the destruction of home, and the depth of human suffering associated with it, prompted the Special Rapporteur to call it 'domicide'—the deliberate, widespread and systematic destruction of home.

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Despite the unprecedented level of home destruction taking place in Gaza, and the dire consequences for civilians, international law has been unable to stop it.[12] In fact, international law has little to say about home: what home means and what it is to lose a home in violent conflict. There is no explicit protection for home under international law and domicide is not (or not yet) a crime. This is striking when so much of everyday life revolves around the place we call home—and when home is crucial to the life of peace, security and dignity the United Nations says should be available to everyone.[13] On the other hand, international law's silence on home is perhaps not so surprising. This is a body of law that traditionally trains its gaze on the higher matters of states, 'world government' and diplomacy—preoccupations distant

[6] Ghazi Falah, 'The 1948 Israeli-Palestinian War and Its Aftermath: The Transformation and De-Signification of Palestine's Cultural Landscape' (1996) 86 *Annals of the Association of American Geographers* 256.

[7] Peter King, *The Common Place: The Ordinary Experience of Housing* (Ashgate 2005) 1. See also Peter King, *In Dwelling: Implacability, Exclusion and Acceptance* (Ashgate 2008).

[8] King, *The Common Place* (n 7).

[9] Paolo Boccagni, 'Homing: A Category for Research on Space Appropriation and "Home-Oriented" Mobilities' (2022) 17 *Mobilities* 585.

[10] Niels de Hoog et al, 'How War Destroyed Gaza's Neighbourhoods—Visual Investigation' *The Guardian* (30 January 2024) <https://www.theguardian.com/world/ng-interactive/2024/jan/30/how-war-destroyed-gazas-neighbourhoods-visual-investigation>.

[11] UNOSAT Gaza Strip Comprehensive Building & Housing Unit Damage Assessment, May 2024 <https://unosat.org/products/3861>. UNOSAT image analysis found 36,591 destroyed structures, 16,519 severely damaged structures and 47,368 moderately damaged structures, out of a total of 137,297 structures. This amounts to 55 per cent of the total structures in Gaza and 135,142 damaged homes.

[12] On 10 June 2024, the UN Security Council—after many attempts—passed Resolution 2735 (2024), drafted by the US (in a remarkable breakthrough of its position), and accepted by Israel and Hamas. The terms of the ceasefire are yet to be implemented. See UNSC Res 2725 (10 June 2024) UN Doc S/Res/2735(2024).

[13] 'Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, Balakrishnan Ragagopal: The Right to Adequate Housing During Violent Conflict' (19 July 2022) UN Doc A/77/190, 14.

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from the domestic. Framing itself in this way—a 'law of the above and beyond'[14]—means that international law has always failed to see homemaking as resistance and as a form of *worldmaking*. Home is a central aspect of liberation praxis that has long been invisible in modern international law, with its patriarchal conceptions of struggles for justice, self-determination and statehood, and its roots in colonial order.[15]

International law's silence, however, does not mean that it is inactive in the space of home. I would say that it is *already present* at home, shaping and defining the contours and conditions of home in myriad ways. In other words, international law does *homemaking* work. Most obviously through the human rights to housing and property and the right to privacy at home, and the protection of 'civilian objects' during conflict, but also through more subtle equivalences between international law and home. Think, for example, of how the state is often analogised as a 'home' for people. Or the connection between territory and 'homeland'. Meanwhile, states desire—and international law attempts to secure for them—the conditions of the ideal home: singular, detached and autonomous, a 'splendid isolation'.[16] International law's preference for stability, settlement and order bears resemblance to the structure of the household. And like the domestic, that preference marks it out from the instability, action and plurality of the political. International law tells a nostalgic narrative of unity, neutrality and 'the universal'—echoing the ideal home which is whole, unified and conflict-free, a return to womb and mother.[17] And we hear in international law's promise of statehood and self-determination the longing to be 'at home' somewhere in the world.

So while international law may be silent on home, its homemaking work susurrates close to the surface. A handful of scholars are attuned to this, even if not framing their analysis through the lens of home.[18] What is reflected in this nascent strand of scholarship is that international law has in mind an ideal type of home. And in the absence of a deeper conceptualisation of home, it tends to falls back on that ideal. International law is not alone in channelling or replicating an idealised notion of home. The ideal home—specifically, a western liberal ideal—filters through the media, public policy and public discourse and is embedded in institutions and systems, from the family and the household to private property and the shape of government at every level.[19] The problem is that this ideal type misses the complexity of home. It excludes the experience of those for whom home is much messier—more contingent and precarious. It obscures (perhaps even reinforces) the violence on which the ideal home is based. It fails to acknowledge the role of various forms

[14] Luis Eslava and Sundhya Pahuja, 'Beyond the (Post)Colonial: TWAIL and the Everyday Life of International Law' (2012) 45 *Verfassung und Recht in Übersee* 195, 215.

[15] Noura Erakat, Darryl Li and John Reynolds, 'Race, Palestine, and International Law' (2023) 117 *AJIL Unbound* 77; Noura Erakat, *Justice for Some: Law and the Question of Palestine* (Stanford University Press 2019).

[16] Eyal Benvenisti, 'Sovereigns as Trustees of Humanity: On the Accountability of States to Foreign Stakeholders' (2013) 107 *American Journal of International Law* 295, 295.

[17] See, eg, Simone de Beauvoir, *The Second Sex* (Random House 1952); Luce Irigaray, *Ethics of Sexual Difference* (Cornell University Press 1992); Iris Marion Young, 'House and Home', *On Female Body Experience: "Throwing Like a Girl" and Other Essays* (Oxford University Press 2005).

[18] See, eg, the critically important contributions of international law scholars on bordering/boundaries, nationalism and colonisation, among other practices, principles and tendencies that could be associated with international law's homemaking work: Antony Anghie, 'The Heart of My Home: Colonialism, Environmental Damage, and the Nauru Case' (1993) 34 *Harvard International Law Journal* 445; Cait Storr, '"Imperium in Imperio": Sub-Imperialism and the Formation of Australia as a Subject of International Law' (2018) 19 *Melbourne Journal of International Law* 335; Upendra Baxi, 'Some Newly Emergent Geographies of Injustice: Boundaries and Borders in International Law' (2016) 23 *Indiana Journal of Global Legal Studies* 15; Sara Dehm and Claire Loughnan, 'COVID-19 Passports and Refugees: An Emerging Border Technology of Exclusion and Mobility Injustice' (2022) 28 *Australian Journal of Human Rights* 366.

[19] On the ideal home, see Katy Bennett, 'Homeless at Home in East Durham' (2011) 43 *Antipode* 960; Ellen Gordon-Bouvier, 'Crossing the Boundaries of the Home: A Chronotopical Analysis of the Legal Status of Women's Domestic Work' (2019) 15 *International Journal of Law in Context* 479.

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of power—including law—in shaping the material space of home and the subjective experience of home. And it precludes understanding of the liberatory potential of home.[20]

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This essay is about home, domicide and international law. The situation in Gaza has made more impressive the need to consider how they are entangled. The silence on home in international law may in part explain why very little has been written about domicide, by legal or other scholars. What has been said focuses narrowly on how to define domicide and whether or not it should be a crime. These are important questions but they distract, I think, from the conversation we first need to have about home. Few have explored, for example, why it is that we might think about home through its absence or erasure.[21] In what follows, I argue that we need a more nuanced understanding of home in international law. This could, in turn, undergird what is meant by domicide and inform any legal approach to it.

We should also be looking at domicide through larger geopolitical and geolegal lenses.[22] Home destruction is happening in both the Global North and South at an unprecedented rate amid a constellation of drivers, forces, logics and events.[23] International law is just one among many other participants in what I call the 'global regime of homemaking'. This comprises all the institutions, systems, structures and arrangements that determine who can (and cannot) make home in the world and where. This can—and often does—have profoundly devastating effects, particularly for the poor and the less secure, the large swathes of humanity who are everyday forcibly displaced from their homes and dispersed to the peripheries of the earth into camps, warehouses and other unhomely spaces.[24] The global regime of homemaking fuels a 'politics of belonging' that divides the world into 'us' and 'them', those who are at-home and those who are not-at-home.[25] International law's participation in this does not mean, however, that we have to abandon it or disengage from it. But we should examine its place in the wider networks and assemblages of power that are connected with home destruction and consider how its own homemaking (and home-*unmaking*) work can be redirected towards more just and less violent outcomes.

To explore these ideas, in what follows I turn to the extensive literature on home outside of law. This tells us that home is a complex, multidimensional concept which comprises an array of feelings and experiences. In its most expansive meaning, home connotes a sense of being and belonging in the world. It is also a deeply contested concept and a key political backdrop: feminists see home as a crucible of gender domination; liberals identify it with

[20] On this see Michele Lancione, *For a Liberatory Politics of Home* (Duke University Press 2023); Henrietta Zeffert, *Home and International Law: Dispossession, Displacement and Resistance in Everyday Life* (Routledge 2024) ch 6.

[21] While not addressing home directly, see the tiny (but excellent) handful of books on domicide and home destruction published in the last decade (all outside of law): Ammar Azzouz, *Domicide: Architecture, War and the Destruction of Home in Syria* (Bloomsbury 2023); Bree Akesson and Andrew R Basso, *From Bureaucracy to Bullets: Extreme Domicide and the Right to Home* (Rutgers University Press 2022); Emmanuel Kreike, *Scorched Earth: Environmental Warfare as a Crime against Humanity and Nature* (Princeton University Press 2021); Qin Shao, *Shanghai Gone: Domicide and Defiance in a Chinese Megacity* (Rowman & Littlefield 2013).

[22] Katherine Brickell and Dana Cuomo, 'Feminist Geolegality' (2019) 43 *Progress in Human Geography* 104.

[23] See, generally, Global Data Institute—Displacement Tracking Matrix, UN Migration—International Office for Migration <https://dtm.iom.int/>; UNHCR, '2023: A Moment of Truth for Global Displacement' <https://www.unhcr.org/spotlight/2023/01/2023-a-moment-of-truth-for-global-displacement>; First United Nations Resolution on Homelessness, in Report of the 58th session of the United Nations Commission for Social Development, 19 February 2020, E/2020/26-E/CN.5/2020/7 <https://digitallibrary.un.org/record/3887640?ln=en&v=pdf>; UNHCR, 'Refugee Data Finder', United Nations Habitat Metadata on SDGs Indicator 11.1.1 (proportion of urban population living in slums, informal settlements or inadequate housing) <https://www.unhcr.org/refugee-statistics/>. See also Saskia Sassen, *Expulsions: Brutality and Complexity in the Global Economy* (Harvard University Press 2014); Saskia Sassen, *Territory, Authority, Rights from Medieval to Global Assemblages* (updated edn, Princeton University Press 2008)

[24] See generally Luce Beeckmans et al (eds), *Making Home(s) in Displacement: Critical Reflections on a Spatial Practice* (Leuven University Press 2022).

[25] Nira Yuval-Davis, *The Politics of Belonging: Intersectional Contestations* (SAGE 2011).

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personal autonomy, privacy and limits on state power; others protest its co-option by the state to exclude certain groups and to shift responsibility onto individuals. Far from the ideal home—fixed, private and secure—the literature demonstrates that the reality of home is of conflict, negotiation and shifting boundaries, and that home is better thought of as a dynamic process of re-articulation: of making, unmaking and remaking.[26] In drawing connections between home, domicide and international law in this essay, I look particularly to those writers whose work and activism opens up a view of home as a lived and embodied feminist praxis of resistance and solidarity that unfolds as part of a transnational, decolonial, anti-imperial movement. Scholars such as Iris Marion Young, bell hooks, Nadera Shalhoub-Kevorkian, Sarah Ihmoud and Hagar Kotef have framed home as a feminist method of disrupting the technologies and logics that deny or destroy home, and homemaking itself as an abolitionist praxis as well as a worldmaking praxis.[27]

When home and its destruction is viewed through this richer, more complex lens, domicide becomes about more than legal accountability for perpetrators and redress for victims. I argue that domicide is primarily about seeing the violence done through and to home in support of settler colonialism, ethnic oppression, apartheid or genocide, and other acts that undermine the ability of people to make-home. It is about acknowledging the yearning for home and homeland and the violence done in the name of that yearning, often strategically by states and other groups and frequently by deploying law as a tool to facilitate and legitimise it. As Kotef writes, we have always built homes on ruins: there are many who make-home from violence and establish a connection to a homeland through violence.[28] Making domicide a crime under international law, then, is about abolishing violence done to the homespace by states and other actors. More broadly, enshrining a more nuanced understanding of home in international law through domicide could make the practices of homemaking that hold alternative forms of social and spatial life, relationships of care and dependence, and the values of accommodation, hospitality and preservation—what Palestinians call *sumud*—at their centre, visible in international law.[29] This would be in sync with the ongoing paradigm shift in the theory and practice of international law towards a feminist, posthuman image of the state and statehood and a vision of universality that emerges from inclusion, interdependence and care.[30]

This essay is written in fragments, echoing what Gaza looks like now after eight months of conflict. I cannot, and do not, try to speak for those who are experiencing the devastation in Gaza. I do though draw from the writing of Palestinians and Israelis who have reflected on home against the backdrop of centuries of upheaval and more recent conditions of settler colonialism, occupation, expulsion and diasporic exile. The account of home I give here is inevitably coloured, and limited, by my own experience as an academic living and working in Europe with freedoms and advantages not available to Palestinians resident in Gaza, in the Occupied Palestinian Territories, and in Israel, and in many other parts of the world

[26] Hagar Kotef, 'Ba'it (Home/Household)' (2010) 1e *Mafte'ahk*; Doreen Massey, 'A Place Called Home?' (1992) 17 *New Formations* 3; Alison Blunt, 'Cultural Geography: Cultural Geographies of Home' (2005) 29 *Progress in Human Geography* 505; Alison Blunt and Ann Varley, 'Introduction: Geographies of Home' (2004) 11 *Cultural Geographies* 3; Bennett (n 19); Brickell and Cuomo (n 22); David Delaney, *The Spatial, the Legal and the Pragmatics of World-Making: Nomospheric Investigations* (Routledge 2010) 277.

[27] Nadera Shalhoub-Kevorkian and Stephen Sheehi, 'Abolitionism, Settler Colonialism and State Crime' (2024) 12 *State Crime Journal* 132; Ihmoud (n 4); Nadera Shalhoub-Kevorkian, 'Counter-Spaces as Resistance in Conflict Zones: Palestinian Women Recreating a Home' (2005) 17 *Journal of Feminist Family Therapy* 109; Hagar Kotef, *The Colonizing Self: Or, Home and Homelessness in Israel/Palestine* (Duke University Press 2020); Young (n 18); bell hooks, 'Homeplace: A Site of Resistance', *Yearning: Race, Gender, and Cultural Politics* (South End Press 1990).

[28] See generally Kotef, 'Ba'it' (n 26).

[29] On the Palestinian philosophy of *sumud* see Shalhoub-Kevorkian and Ihmoud (n 4) 213, 216, 220.

[30] On the posthuman see Rosi Braidotti, *The Posthuman* (Policy Press 2013); Rosi Braidotti and Maria Hlavajova (eds), *Posthuman Glossary* (Bloomsbury Academic 2018).

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where Palestinians find themselves making-home in the margins. As always in thinking and writing about home, I try to take into account the multiple, frequently contradictory and often enigmatic meanings of home, and the discrepancies between those meanings and between what they produce.[31]

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Homi Bhabha said that home is the site for history's most 'intricate invasions'.[32] The IDF has used maps carving Gaza up into numbered neighbourhoods to indicate which homes will be targeted and which homes Gazans should leave.[33] Weaponising home, the maps transform Gaza's homes into the unfamiliar and the *unhomely*.[34] As the war menaces street by street, home by home, we are reminded that home is contested ground. That far from being a neutral space, home is an alembic for politics.

The history of invasion—of uncontrolled entry and destruction—in Palestine extends over a much longer period than this conflict.[35] Edward Said called on the metaphor of the home to describe this:

> … an open door is necessary for passing between inside and outside, but it is also used as an avenue by others to enter. Even though we are inside our world, there is no preventing others from getting in, overhearing us, decoding our private messages, violating our privacy. That is how we read the history of Palestine from the crusades to Balfour and Weizman: that it was entered despite us, lived in despite us.[36]

Denied full agency or control over home, the conditions for home and for being-at-home in the world are radically altered. Most Gazans have been displaced multiple times in this disaster, fleeing from one place to the next as new fronts open up and as they are ordered to evacuate previously declared 'safe' areas with little warning, without transport, and with only what belongings can be carried in their arms. There is now nowhere left to go. The pain of domicide, Ammar Azzouz argues, extends not only to those whose homes have been destroyed but also to those who cannot return home because of ongoing hostilities and because, in Gaza, everything needed to make-home has been annihilated: water and electricity, markets, bakeries, hospitals, mosques, schools.[37] Everything is lost.

Home has always been provisional and contingent. Only when we do not have a home, or when we lose a home, or when we are living in the liminal space between being at-home and not-at-home, do we look past the ordinariness of home and begin to notice its complexity. Home is at once a material, affective and imaginative space.[38] It is also 'a psychological and epistemological space of yearning, and of radical thinking and belonging'.[39]

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[31] Jed Meers, '"Home" as an Essentially Contested Concept and Why This Matters' (2023) 38 *Housing Studies* 597, 608–09.
[32] Homi Bhabha, *The Location of Culture* (Routledge 1994) 13.
[33] Emma Graham-Harrison and Jason Burke, 'Israeli grid maps make life in Gaza "macabre game of Battleships", say aid workers', *The Guardian* (2 December 2023) <https://www.theguardian.com/world/2023/dec/02/israeli-grid-system-makes-life-in-gaza-macabre-game-of-battleships-say-aid-workers>.
[34] On the architecture and urban planning dimensions of this see Eyal Weizman, *Hollow Land: Israel's Architecture of Occupation* (new edn, Verso 2017); Eyal Weizman and Rafi Segal, 'The Mountain: Principles of Building in Heights' in Rafi Segal, Eyal Weizman and David Tartakover (eds), *A Civilian Occupation: The Politics of Israeli Architecture* (rev edn, Babel 2003).
[35] See, among others, Erakat (n 16); Erakat, Li and Reynolds (n 16).
[36] Edward W Said, 'Interiors' in Moustafa Bayoumi and Andrew Rubin (eds), *The Edward Said Reader* (Granta 2001) 120.
[37] See generally Azzouz (n 21).
[38] See generally Alison Blunt and Robyn M Dowling, *Home* (2nd edn, Routledge 2022).
[39] Shalhoub-Kevorkian and Ihmoud (n 4) 377.

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If Israel is the only 'safe home' in the world for Jews—an observation that has been made by many in wake of October 7, including the president of the US[40]—the implication of widespread, violent antisemitism everywhere else is frightening. Jewish fear is real. Antisemitic incidents increased sharply in the days following Hamas' attacks but it is the resurgence of antisemitic violence and rhetoric in recent years that is just as troubling: the Anti-Defamation League's 2022 audit indicated antisemitic incidents in the US had risen by 36 per cent in a year;[41] antisemitic violence and rhetoric remain high in Europe, with an upward trend in many countries, according to the EU Fundamental Rights Agency's 2024 overview.[42]

As Said argued presciently in *The Question of Palestine*, we should understand 'the fear felt by most Jews that Israel's security is a genuine protection against future genocidal attempts on the Jewish people'.[43] Hamas' Operation Al-Aqsa Flood penetrated the social and spiritual heartland of Israeli society when it attacked the kibbutzim on Black Saturday. Described as an almost 'biblical' revenge,[44] Hamas militants murdered at least 1,200 civilians inside their homes, including migrant workers, whole families, infants, and the elderly. Around 240 others were kidnapped and taken to Gaza on the backs of motorbikes to be held hostage in apartments and in underground tunnels. Estimates are that at least half the hostages have since died, some as a result of Israeli bombardments in which a significant number of Palestinian civilians also died.[45] Many Israelis now ask, if we are not safe in our homes, where are we safe?

While daily life in most Israeli cities has returned to a state of almost normal, many people feel a gnawing anxiety. One commentator described it as a lost sense of security and quoted an Israeli who has a recurrent nightmare that Hamas is at their door.[46] The existential fear Jews feel arises from a history of violent discrimination, dehumanisation and expulsion. The problem is the damage that fear can bring. Said wrote that for Israel, Palestinians have become 'the equivalent of a past experience reincarnated in the form of a present threat'. Palestinian lives are 'mortgaged' to that threat.[47]

Much more than a physical structure, home is intimately bound to individual and collective identity and to personal and community projections of morality and dignity.[48] To destroy a home is to sever the connection between people and the places that give meaning to their lives. It is to erase the past and uproot the foundations of the future. It is not difficult, then, to see why the destruction of home has long been a tactic of warfare. The Special Rapporteur has noted that '[t]he attacking, bombing and shelling of civilian targets, the razing of entire cities and villages—displacing millions into homelessness—have continued unabated despite the development of modern human rights and humanitarian law.'[49] Those

[40] Joseph Biden, 'Remarks by President Biden at a holiday Hannukah reception' (The White House, 11 December 2023) <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/12/11/remarks-by-president-biden-at-a-hanukkah-holiday-reception/>.

[41] Anti-Defamation League, 'Audit of Antisemitic Incidents 2022' (23 March 2023) <https://www.adl.org/resources/report/audit-antisemitic-incidents-2022>.

[42] EU Agency for Fundamental Rights, 'Jewish People's Experiences and Perceptions of Antisemitism' (11 July 2024) <https://fra.europa.eu/en/publication/2024/experiences-and-perceptions-antisemitism-third-survey>.

[43] Edward W Said, *The Question of Palestine* (Vintage Books 1979) 231.

[44] David Remnick, 'The Price of Netanyahu's Ambition', *The New Yorker* (22 January 2024) <https://www.newyorker.com/magazine/2024/01/22/benjamin-netanyahu-israel-gaza-hamas-war-hostages>.

[45] Anat Peled, Summer Said, and Nancy Youssef, 'Families of Hostages in Gaza Are Desperate for News but Dread a Phone Call' *The Wall Street Journal* (20 June 2024) <https://www.wsj.com/world/middle-east/families-of-hostages-in-gaza-are-desperate-for-news-but-dread-a-phone-call-b3ba92cd>.

[46] ibid.

[47] Said (n 43) 231.

[48] Katherine Brickell, '"Plates in a Basket Will Rattle": Marital Dissolution and Home "Unmaking" in Contemporary Cambodia' (2014) 51 *Geoforum* 262, 270.

[49] UNOCHA, 'Domicide Must be Recognised as an International Crime: UN Expert' (28 October 2022) <https://reliefweb.int/report/world/domicide-must-be-recognised-international-crime-un-expert>.

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bodies of law were created in reaction to the horrors of the Holocaust and the Second World War, to the loss of home and a sense of 'being-at-home' in the world that millions suffered, on the promise of 'never again'.[50]

The destruction of home in Gaza today is a stretching-out of the colonial encounter that first reached the shores of Palestine in the early 1880s.[51] It is a continuation of the Nakba ('catastrophe') that began in 1948, and has extended through 75 years of apartheid, 56 years of occupation, and 16 years of siege. That the violence has gone on for so long is extraordinary, but also indicates that it has been normalised, even legitimised, through the active omission of states to condemn it and the international instruments that are used to facilitate it, or at least turn a blind eye to it.[52] The same dispossession, the same occupation, the same denial of freedom, is unfolding again. The same destruction—only its scale and extremity is different. A catalogue of the unconscionable is taking place in Gaza today: mass death, mainly of women and children; the bombing of hospitals and essential infrastructure; targeted killings of health and aid workers; home destruction and starvation being used as a weapons of war; the denial of medical supplies and equipment; the forced displacement of almost two million people and the threat of transfer to Egypt; women giving birth without medical assistance; men and boys forced to undress and kneel. In his 1989 'An Open Letter to American-Jewish Intellectuals', Said wrote of similar horrors done to Palestinians in the decades prior.[53] Little has changed. Justice, and a way for Palestinians and Israelis to live together, is as elusive as before, only the need for it is now more urgent.

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Kotef notes that the words *ba'it* in Hebrew and *bayt* in Arabic do the work of many in English.[54] *Ba'it* and *bayt* mean home and house, household, and a house that holds, in a literal and metaphorical sense. *Ba'it* and *bayt* are also places of worship ('the home of holiness'), places for healing the sick and places of light. She reminds us that in Hebrew a light socket is the *ba'it* of the bulb.[55] The question of home, and what it means to lose a home, has troubled both Palestinians and Israelis for decades. At the 'heart and core' of the Arab-Israeli struggle has always been the clash of two nationalisms.[56] Home and homeland, identity, collective memory and the political future of each are bound together and to each other.[57] Struggles over home go deep.[58]

[50] The canon of international humanitarian law chiefly comprises the Hague Regulations and the Geneva Conventions. See ICRC, 'The Geneva Conventions and their commentaries' <https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions>. The body of international human rights law is too voluminous to cite here. On Israel and international humanitarian law, see Orna Ben-Naftali, 'PathoLAWgical Occupation: Normalizing the Exceptional Case of the Occupied Palestinian Territory and Other Legal Pathologies' in Orna Ben-Naftali (ed), *International Humanitarian Law and International Human Rights Law* (Oxford University Press 2011); Eyal Benvenisti, *The International Law of Occupation* (Oxford University Press 2012).

[51] See among others Said (n 43); Erakat (n 15); Fatina Abreek-Zubiedat, 'Militarized Urbanism in the Cold War Era: The Resettlement of the Refugees in Khan Younis' (2023) 41 *Environment and Planning C: Politics and Space* 1079.

[52] See Erakat, Li and Reynolds (n 15); Orna Ben-Naftali, Aeyal M Gross and Keren R Michaeli, 'The Illegality of the Occupation Regime: The Fabric of Law in the Occupied Palestinian Territory' in Adi Ophir, Michal Givoni and Sārī Hanafi (eds), *The Power of Inclusive Exclusion: Anatomy of Israeli Rule in the Occupied Palestinian Territories* (Zone 2009); Benvenisti (n 50).

[53] Edward W Said, 'An Open Letter to Jewish-American Intellectuals' [1989] *Jewish Currents* (21 September 2022) <https://jewishcurrents.org/an-open-letter-to-american-jewish-intellectuals>.

[54] See further Kotef, 'Ba'it' (n 26). Arabic translation and transliteration is my own.

[55] ibid 1.

[56] Avi Schlaim, 'The Rise and Fall of the Oslo Peace Process' in Louise Fawcett (ed), *International Relations of the Middle East* (Oxford University Press 2005) 247.

[57] See further Virginia Tilley, *The One-State Solution: A Breakthrough for Peace in the Israeli-Palestinian Deadlock* (University of Michigan Press 2005); Ian Lustick, 'One State Not Two? A Cruel Examination of The Two-States-Are-Impossible Argument For a Single-State Palestine/The Land of Israel' in Susan Akram and Ian Lustick (eds), *International Law and the Israeli-Palestinian Conflict: A Rights-Based Approach to Middle East Peace* (Routledge 2011).

[58] See further Susan Slyomovics, *The Object of Memory: Arab and Jew Narrate the Palestinian Village* (University of Pennsylvania Press 1998).

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For Palestinians, home is a place, a powerful idea and an organising force. It is homeland, memory and identity. Arabic meanings of home express the interweaving of place and identity. *Dar* is the structure of home; *watan* is land or territory and has come to mean homeland.[59] Homeland is associated with village and common land, and encompasses religious structures and landmarks natural and humanmade.[60] Palestinian poetry and song celebrates the organic relation between home, land and identity through references to 'Mother's house', 'Father's orchard' and 'beloved soil'.[61]

A 'homeland' is a territory believed to be the birthplace of a group's identity.[62] It is generally understood at the scale of the state but it also manifests at the level of the neighbourhood, the region, the trans-state—in Arabic, *balad* means village and state—but also at the intimate scale of the home. The homeland may be an artificial construction—mobilised, for example, in discourses of nationalist exclusion and violence[63]—but it remains critical for understanding territorial claims, modes of ethno-national spatial control, and how, as Oren Yiftachel puts it, space is 'planned, settled and transformed', including the smaller space of home.

Israelis remember 1948 as the establishment in Palestine of a 'national home' for the Jewish people. This took place in the backdrop of a generalised condition of homelessness among Jews who retained 'a sense of their original home in Zion and an acute, always contemporary, feeling of loss'.[64] For Palestinians, 1948 brought the Nakba which destroyed Palestinian society and expelled 700,000 Palestinians from their homes and land. What emerged was a 'nowhere' home, neither present nor absent.[65] (A dislocation sedimented in the term 'present-absentees' used to describe Palestinian refugees displaced within Israel after 1948.) For the refugees, home in Palestine was now lost or inaccessible but could still be conjured in memory or imagination.[66] The tent camps that sprung up after 1948 in time became the dense urban tissue of Gaza. Nonetheless, home would remain a 'place of ambivalence'.[67] On the one hand, many Palestinian refugees continue to worry that 'making-home' in displacement will be seen as foregoing the right to return. On the other, making-home makes sense in view of the longing for home.[68]

Palestinians displaced in 1948, and generations of their family, continue see their expulsion and displacement as temporary. As Shalhoub-Kevorkian and Ihmoud write: 'Our homes and land, in our home-land, carry our right to return to our safe-homes, as well as our identity as Palestinians.'[69] The intimate relationship between home, land and identity is hewn into the writing of poets either born into exile from Palestine or living under the occupation, such as Mahmoud Darwish and Ghassan Kanafani.[70] Contemporary Palestinian

[59] Douglas Porteous and Sandra Eileen Smith, *Domicide: The Global Destruction of Home* (McGill-Queen's University Press 2001). 92.
[60] ibid.
[61] Exploring the significance of place in Palestinian literature, see Barbara Parmenter, *Giving Voice to Stones: Place and Identity in Palestinian* (University of Texas 1994).
[62] Oren Yiftachel, 'Essay: Re-Engaging Planning Theory? Towards "South-Eastern" Perspectives' (2006) 5 *Planning Theory* 211, 218.
[63] For example, in apartheid South Africa. See Thembisa Waetjen, 'The "home" in Homeland: Gender, National Space, and Inkatha's Politics of Ethnicity' (1999) 22 *Ethnic and Racial Studies* 653.
[64] Said (n 43) 62.
[65] Shalhoub-Kevorkian, *Militarization and Violence* (n 2) 196.
[66] Nadera Shalhoub-Kervorkian, *Militarization and Violence against Women in Conflict Zones: A Palestinian Case-Study* (Cambridge University Press 2009) 196.
[67] Hilde Heynen, 'Coda: About the Displacement of Home' in Beeckmans et al (n 24) 399.
[68] ibid.
[69] Shalhoub-Kevorkian and Ihmoud (n 4) 377.
[70] See, among others, Mahmoud Darwish, *The Butterfly's Burden* (Fady Joudah tr, Copper Canyon Press 2007); Ghassan Kanafani, 'Returning to Haifa' (2008) 15 *Palestine-Israel Journal of Politics, Economics, and Culture* 213. See also Sumaya Alhaj Mohammad and Dania Meryan, 'Ghassan Kanafani's Returning to Haifa: Tracing Memory beyond the Rubble' (2020) 61 *Race & Class* 65.

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poets too, such as Waleed Khazindar, juxtapose the ordinariness of home, the experience of wandering and instability, and the fear of conflict and exile.[71] For Khazindar, the 'cloud of migrations is in his eyes' on moving to another home and 'he will not confess to a bed that will blow up in the next war'.[72] The loss of home, Said writes, is a 'terminal' loss whose 'essential sadness can never be surmounted'.[73] Home-unmaking, the separation from home and homeland, marks an 'unhealable rift between a human being and a native place, between the self and its true home'.[74]

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In Western bourgeois tradition, home was private, safe and autonomous.[75] Maria Kaika writes that the nineteenth-century home was the 'epitome, the spatial inscription of the idea of individual freedom, a place liberated from fear and anxiety, a place supposedly untouched by social, political and natural processes, a place enjoying an autonomous and independent existence: a *home*'.[76] As a metaphor for joy and protection, this ideal type produced a normative association between home and positivity.[77] The ideal home was spatially and temporally separate, a uniform and unchanging entity, connected to a sense of 'rootedness', nostalgia, rising even to 'heaven' and 'paradise'.[78] Recalling *homeostasis*, the ideal home embodied order as the natural, desirable state of human life, positioning change as negative, chaotic and dangerous. Behind its firm doors, the ideal home concealed its unequal economic basis, the reality of domestic violence, and the class and racial oppression that made the institution of the home possible. And it obscured the blending of home and whiteness in the colonial enterprise where domesticity was central to the 'civilizing mission'.[79]

The word 'home' was appropriated by the British ruling class to promote nationalism, the safeguarding of land, power and wealth, and to maintain a domestic morality that captured 'familial property', encompassing women and children as well as estates.[80] The bourgeoisie who built their fortunes through the trade opportunities created by colonialism sunk their fortunes into property ownership. Home became entangled in the collaboration between capitalism, imperialism and colonialism. In almost all countries legal apparatus sprung up to assign ownership of land and property, transforming home into a commodity.[81]

The nineteenth-century 'cult of domesticity' has by now been thoroughly unpicked by feminists. Their work highlights the explicitly gendered nature of the ideal home and illustrates how safety and privacy are often euphemisms for domination, exploitation and

[71] Waleed Khazindar, born in Gaza, is widely acknowledged as one of the leading younger generation Palestinian poets.
[72] Waleed Khazindar, 'Houses' (2013) 19 *Palestine-Israel Journal of Politics, Economics, and Culture* 172.
[73] Edward W Said, *Reflections on Exile, and Other Literary and Cultural Essays* (Granta 2001) 130.
[74] ibid.
[75] Heynen (n 67) 397.
[76] Maria Kaika, 'Interrogating the Geographies of the Familiar: Domesticating Nature and Constructing the Autonomy of the Modern Home' (2004) 28 *International Journal of Urban and Regional Research* 265, 266; Katherine Brickell, '"Mapping" and "Doing" Critical Geographies of Home' (2012) 36 *Progress in Human Geography* 225, 1.
[77] Brickell, '"Mapping" and "Doing" Critical Geographies of Home' (n 76) 1.
[78] Peter Somerville, 'Homelessness and the Meaning of Home: Rooflessness or Rootlessness?' (1992) 16 *International Journal of Urban and Regional Research* 529, 532–34; Lorna Fox O'Mahony, *Conceptualising Home: Theories, Laws and Policies* (Hart 2007).
[79] Heynen (n 67) 397. See also Brenna Bhandar, *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership* (Duke University Press 2018); Gordon-Bouvier (n 20); Wendy Webster, *Imagining Home: Gender, 'Race,' and National Identity, 1945–64* (UCL Press 1998).
[80] Lindsey McCarthy, '(Re)Conceptualising the Boundaries between Home and Homelessness: The Unheimlich' (2018) 33 *Housing Studies* 960, 964.
[81] Heynen (n 67) 398; Bhandar (n 79); Sarah Keenan, *Subversive Property: Law and the Production of Spaces of Belonging* (Routledge 2015).

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subjugation at home.[82] Nicole Shröder argues that the ideal of home as a place of comfort and retreat must be replaced by something more uncertain:

> It makes much more sense to view home as a site of and for ambiguity since its protective functions are interconnected with its limiting characteristics. Feelings of solidarity, safety, and protection are often achieved by severe acts of exclusion and regulation, which are in turn oppressive.[83]

The desire for coherence, for wholeness, for a fixed, 'unitary' identity emblematised in the ideal home is also troubled by the reality of disaggregation, fragmentation, diversity and contest over shifting terrain. It is a dangerously totalising and imperialist desire. As Bonnie Honig warns, linking home and the nation-state:

> The dream of home is dangerous, particularly in postcolonial settings, because it animates and exacerbates the inability of constituted subjects or nations to accept their own internal divisions, and it engenders zealotry, the will to bring the dream of unitariness of home into being. It leads the subject to project its internal differences onto external Others and then to rage against them for standing in the way of its dream both at home and elsewhere.[84]

Home is problematic in its ambiguity. As Alison Blunt and Ann Varley write, home can be 'a space of belonging *and* alienation, intimacy *and* violence, desire *and* fear'.[85] Yet, Iris Marion Young argues, it is difficult even for feminists to 'exorcise a positive valence to the idea of home. We look forward to going home and we invite others to make themselves at home.'[86] bell hooks prefigures home as a space to resist power but also as a place of renewal and recovery, self-love, agency and transformation. It can provide a space for building strength in the face of racism and sexist domination, and a sense of individual identity against oppression.[87] Homemaking is seen as central to a feminist praxis of solidarity and resistance and as a form of *worldmaking* from which a horizon of affective, intellectual and political possibility springs.[88]

The ambiguity of home has been embraced by scholars, particularly human geographers who have done most to enlarge the field of critical home studies over the last two decades. Alison Blunt and Robyn Dowling, in their much-cited book *Home*, describe home as a complex 'spatial imaginary': the relationship between feelings, attachment and dwelling, and a

[82] See in particular Biddy Martin and Chandra Talpade Mohanty, 'Feminist Politics: What's Home Got to Do with It?' in Teresa de Lauretis (ed), *Feminist Studies/Critical Studies* (Indiana University Press 1986); Teresa de Lauretis, 'Eccentric Subjects: Feminist Theory and Historical Consciousness' (1990) 16 *Feminist Studies* 115; Bonnie Honig, 'Difference, Dilemmas, and the Politics of Home' (1994) 61 *Social Research* 563.

[83] Nicole Schröder, *Spaces and Places in Motion: Spatial Concepts in Contemporary American Literature* (Neu Taschenbuch 2006) 33 cited in Brickell, '"Mapping" and "Doing" Critical Geographies of Home' (n 76) 2.

[84] Honig (n 82) 585.

[85] Blunt and Varley (n 26) (my emphasis).

[86] Young (n 17) 123.

[87] Iris Marion Young, *On Female Body Experience: "Throwing Like a Girl" and Other Essays* (Oxford University Press 2005); Bonnie Honig, *Public Things: Democracy in Disrepair* (Fordham University Press 2017); bell hooks (n 27); Chandra Talpade Mohanty, *Feminism without Borders: Decolonizing Theory, Practicing Solidarity* (Duke University Press 2003); Doreen Massey, *Space, Place, and Gender* (University of Minnesota Press 1994); Alison Blunt and Robyn M Dowling, *Home* (Routledge 2006); Allison Weir, *Identities and Freedom: Feminist Theory Between Power and Connection* (Oxford University Press 2013); Catriona Mackenzie and Natalie Stoljar, *Relational Autonomy: Feminist Perspectives on Autonomy, Agency, and the Social Self* (Oxford University Press 2000); Anna Stilz, *Territorial Sovereignty: A Philosophical Exploration* (Academic & Trade 2019); Cara Nine, *Global Justice and Territory* (Oxford University Press 2012); Said (n 73).

[88] Ihmoud (n 3); Shalhoub-Kevorkian and Ihmoud (n 4); Katherine Brickell, '"The Whole World Is Watching": Intimate Geopolitics of Forced Eviction and Women's Activism in Cambodia' (2014) 104 *Annals of the Association of American Geographers* 1256.

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political space of contest and negotiation.[89] They show that home is multi-scalar; it is rarely one place or a fixed location. Across the life-course most people will experience multiple homes. Home inhabits myriad temporal and psychic landscapes: it may be a memory of home, a nostalgia for a lost home, and a future 'dream home', as much as it is a 'place' in the present. Home-making happens 'on the move', during journeys of migration and displacement within and across borders.[90] Home, Katy Bennett writes, is capable of 'absorbing memories, fantasies and other places'.[91]

The bourgeois ideal of home—fixed, private, secure, autonomous, bound up with notions of race, class and gender, and ineluctably linked to liberalism—hasn't disappeared. It suffuses the media, public discourse and public policy, for example in the feverish promotion of home ownership and the taxation advantages for landlords available in many countries.[92] And it filters up into the global arrangements for regulating (and disciplining) human mobility—the journeys people make, willingly or otherwise, from home and to a hoped-for new home. Hilde Heynen reflects on the way states issue passports for entry and exit, establishing a system of belonging that recognises some people as being legitimately able to inhabit a particular part of the globe and not others. Mobility, and hypermobility, are generally the privilege of the Global North and those others who can afford access costs such as visas. This means that the poor are more likely to be displaced and stateless when they leave their homes, forced or voluntarily. Displacement and the un-making of home is thus 'the mirror image of the politics of belonging', which divides the world into 'us' and 'them'.[93] The politics of belonging, Heynen argues, is an extension of the 'gestures of exclusion' that are 'fundamental' to the ideal home.[94]

Amid the current global crisis of displacement, 'home-unmaking' and 'un-homing' are apt lenses through which to understand the conditions and experience of home. Home has never been more precarious and conditional for most of the world. By the end of 2024, there will be more than 130 million people forcibly displaced from their home globally due to conflict, violence, persecution, human rights violations and the impacts of climate change, land grabbing, economic instability and urban gentrification.[95] This includes refugees, asylum seekers, internally displaced persons and migrants.[96] A safe and secure home should not be the privilege of the West: it should be accessible to everyone. This makes it all the more striking that international law is virtually silent on home.

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Home is not explicitly protected in international law. In fact, international law seldom mentions the word 'home'.[97] At best, home can be derived from or implied in particular

[89] Blunt and Dowling (n 87); Blunt and Dowling (n 38). See also work by Katherine Brickell, eg Brickell, '"Mapping" and "Doing" Critical Geographies of Home' (n 76); Katherine Brickell and Richard Baxter, 'For Home UnMaking' (2015) 11 *Home Cultures* 133; Brickell and Cuomo (n 22).

[90] See, eg, Paolo Boccagni and Andrea Mubi Brighenti, 'Immigrants and Home in the Making: Thresholds of Domesticity, Commonality and Publicness' (2017) 32 *Journal of Housing and the Built Environment* 1.

[91] Bennett (n 19) 965; Divya P Tolia-Kelly, 'Materializing Post-Colonial Geographies: Examining the Textural Landscapes of Migration in the South Asian Home' (2004) 35 *Geoforum* 675.

[92] Bennett (n 19) 964; Shelley Mallett, 'Understanding Home: A Critical Review of the Literature' (2004) 52 The Sociological Review 62; Tony Chapman and Jenny Hockey (eds), *Ideal Homes? Social Change and Domestic Life* (Routledge 1999).

[93] Beeckmans et al (n 24) 398; Yuval-Davis (n 25) 20.

[94] Beeckmans et al (n 24) 398; Brickell, '"Mapping" and "Doing" Critical Geographies of Home' (n 76).

[95] See latest statistics at UN Migration, International Office for Migration, Displacement Tracking Matrix, <https://dtm.iom.int/>.

[96] See European Commission, European Civil Protection and Humanitarian Aid Operations, 'Forced Displacement', available at <https://civil-protection-humanitarian-aid.ec.europa.eu/what/humanitarian-aid/forced-displacement_en>.

[97] As mentioned above, this is not to discount the excellent contributions of international law scholars reflecting on concepts, principles and practices relating to international law's homemaking work—from bordering and passports to colonialism and nationalism—even if not explicitly framed as such. See, among others, Anghie (n 18); Baxi (n 18); Storr (n 18); Dehm and Loughnan (n 18).

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provisions, such as the rights to housing, property and privacy at home.[98] We see something like 'homeland' in the recognition of indigenous peoples' distinctive spiritual connection to land.[99] The laws of war prohibit targeting 'civilian property' and 'civilian objects', which we can take to mean home, though they do not refer to 'home' expressly.[100] Under international criminal law the destruction of home might amount to a war crime. It might also be comparable to a crime against humanity, where (as often happens) home destruction results in deportation, persecution, forcible population transfer, apartheid or another inhumane act that amounts to a crime against humanity, such as deliberately destroying the homes of a group based on their identity.[101]

Home destruction may also precipitate genocide. In the International Court of Justice's recent order recognising Palestinian's right to be protected from genocide, the court mentioned 'home' eight times in a short, 29-page document, underlining the link between the destruction of home and genocide.[102] That link, unfortunately, is not without historical precedent. As the world saw in Myanmar, in Rwanda, in Bosnia and Herzegovina, and in the Holocaust, genocide and domicide are, in the words of the Special Rapporteur, 'tightly entwined'.[103] Whether or not home destruction is partial, complete, isolated or widespread, it can be a *means to* genocide when the intention is to bring about the destruction of a group or population.

I suggested earlier that international law participates in the wider 'global regime of home-making'—all those institutions, systems, structures and arrangements that determine how people move about the world and who can (and cannot) make a home and where. This includes refugee law, the law of internally displaced persons, development law and disaster law, among other branches of international law that in different ways touch on people's journeys of home-making, -unmaking and -remaking. These areas of international law are full of principles and policies on when and how people can be evicted, evacuated, relocated, resettled and returned—even setting out the exact dimensions of space that should be available to an asylum seeker in temporary accommodation.[104] Still, with no direct protection for home or prohibition of its destruction, and with the word 'home' rarely mentioned, home largely goes unnoticed in international law. The idea of home in the discipline is limited to

[98] See Universal Declaration of Human Rights (10 December 1948) UN Doc A/RES/217(III) art 25(1); International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR); CESCR, 'General Comment No 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)' (13 December 1991) E/1992/23, 3.

[99] 'Housing, Land and Property Issues in the Context of Internal Displacement—Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons, Cecilia Jimenez-Damary' (21 April 2021) UN Doc A/HRC/47/37.

[100] Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 art 147.

[101] 'Report of the Special Rapporteur on Adequate Housing' (n 13) 45–48. See further ICC, *Situation in the State of Palestine*, ICC-01/18 <https://www.icc-cpi.int/palestine>; 'Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967' (21 March 2022) UN Doc A/HRC/49/87.

[102] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* (Order of 26 January 2024) <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>.

[103] 'Report of the Special Rapporteur on Adequate Housing' (n 13).

[104] Deriving from the right to housing which is enshrined in article 11 of the ICESCR. See also, among many other directives and policies on refugee and asylum accommodation: Platform for European Red Cross Societies, *Guidelines on the Reception of Asylum Seekers for National Red Cross and Red Crescent Societies*, 2.6 Accommodation in a centre, principle 3: Single adult residents should, as a rule, be housed in rooms with a maximum of four beds, and have at least have six square metres of space in the bedroom. See also 'UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers' (February 1999) <https://www.unhcr.org/uk/media/unhcr-revised-guidelines-applicable-criteria-and-standards-relating-detention-asylum-seekers>; rights to freedom of movement and residence in art 13 UDHR, art 12 ICCPR, and art 2, protocol no 4 of the ECHR. See also Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 on standards for the reception of applicants for international protection <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0096:0116:EN:PDF> and the Proposal for a Directive of the European Parliament and of the Council on standards for the reception of applicants for international protection, COM (2016) 465 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0465>.

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what can be derived from other things (housing, property, 'civilian objects'). Yet home is far from a derived experience. Home is real life. Home is embodied and emplaced. Home is present, past (nostalgia) and future (utopia). As Sara Ahmed writes, home is about storytelling, colonialism, racial discrimination, class relations and the politics of gender.[105]

One way that international law's silence on home can be understood is by reflecting on how it frames itself. International law has always presented itself as a law of the 'above and the beyond', a law associated with high-level matters of states, events and crises. Home, the domestic sphere, lies outside its field of vision, its 'enframing of reality'.[106] Indeed, legal scholars have given home only sporadic attention.[107] *Home* and *house* are frequently elided or conflated in legal texts, decisions and commentary, despite an extensive literature (outside of law) attesting to the importance of that distinction. Among the handful of legal scholars who have turned their minds to home, Andrew Basso and Bree Akesson argue for a 'right to home' and propose an international treaty specifically on home.[108] The Special Rapporteurs, while not necessarily using the word 'home', also draw from home-like concepts and ideas in their work on the right to housing. Raquel Rolnik underlined the 'social value' of housing, suggesting that housing is more than bricks and mortar, perhaps hinting at the broader set of personal and communal meanings that 'home' implies.[109] Leilani Farha made the connection between the right to housing and identity, reminding us how much our sense of home is bound up with who are we.[110] Rajagopal took things a step further when he recently argued that violations of the right to housing can undermine 'the fundamental sense of belonging and home'.[111]

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International law goes about its homemaking work in more subtle ways too. Equivalences between home and key international legal concepts are not difficult to draw. The nation-state is frequently analogised with home.[112] Claims to statehood, sovereignty, territory and self-determination are often grounded (physically and imaginatively) in the language of home.[113] Home is the ultimate sovereign space—a place of exclusive belonging and universal order.[114] Kotef reflects on these equivalences. Home, she argues, is a 'territorial unit which is also an organising unit', it contains an array of functions and orders—family, reproduction, private property, nurturing. These are also the functions of the state: 'a demarcated territorial unit, which is also an institution that organizes within (or

[105] Sara Ahmed, 'Home and Away: Narratives of Migration and Estrangement' 2 *International Journal of Cultural Studies* 329.

[106] Luis Eslava, 'Istanbul Vignettes: Observing the Everyday Operation of International Law' (2014) 2 *London Review of International Law* 3, 3.

[107] See, eg, Jessie Hohmann, *The Right to Housing: Laws, Concepts, Possibilities* (Hart 2013); Akesson and Basso (n 21); Padraic Kenna, 'Globalization and Housing Rights' (2008) 15 *Indiana Journal of Global Legal Studies* 397.

[108] Bree Akesson, Andrew R Basso and Myriam Denov, 'The Right to Home: Domicide as a Violation of Child and Family Rights in the Context of Political Violence' (2016) 30 *Children & Society* 369.

[109] 'Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, Raquel Rolnik' (4 February 2009) UN Doc A/HRC/10/7; 'Mission to the United Kingdom of Great Britain and Northern Ireland—Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living and on the Right to Non-Discrimination in This Context, Raquel Rolnik' (30 December 2013) UN Doc A/HRC/25/54/Add.2; Raquel Rolnik, 'Late Neoliberalism: The Financialization of Homeownership and Housing Rights' (2013) 37 *International Journal of Urban and Regional Research* 1058; Manuel B Aalbers, Raquel Rolnik and Marieke Krijnen, 'The Financialization of Housing in Capitalism's Peripheries' (2020) 30 *Housing Policy Debate* 481.

[110] 'Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context: The Right to Adequate Housing of Persons with Disabilities, Leilani Farha' (12 July 2017) UN Doc A/72/128.

[111] 'Report of the Special Rapporteur on Adequate Housing' (n 13) 14.

[112] See, eg, Waetjen (n 63); Kotef, 'Ba'it' (n 26).

[113] Anghie (n 18).

[114] On this idea see generally Keenan (n 81).

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"under") it the assemblage of citizens (and some non-citizens), regulates and regularizes private property, and provides (on varying levels) an array of social functions (such as healthcare, education, or welfare)'.[115] She notes though that the definition of home is neither 'precise nor fixed'; it provides an 'ideal-type that does not remain stable through time or across space'.[116]

The equivalence between home and concepts like the state, sovereignty, territory and the universal, among others, suggests that international law may be not so much silent on home as itself shaped by ideas about home. We see this also in its preferences and preoccupations—such as for stability, settlement and order, the virtues of the ideal home—and its interest in boundaries and borders, which recalls the walls of the home. The functions of those walls, and borders, is to protect those within, to exclude others, and to demarcate the essential if impossible boundary of the political space and a particular understanding of freedom.[117] Law, like the walls of the home, provides a constitutive frame for the political, and in doing so, distinguishes the political from its 'other', the domestic.[118]

My claim that international law is *already present* at home and participates in homemaking work—work that takes it far from its usual territory, the higher matters of states, treaties and conventions—cuts against the grain of liberal political philosophy which has continually maintained the boundary between the political and the domestic and which has made it law's role to patrol that boundary. Hannah Arendt argued that separation between the domestic and the political is crucial—that there should be a sealed and stable border between the two sites.[119] This is to open up a space, the political space, that is not limited by necessity: the political sphere, as a space of freedom, she argued, was dependent on there being a separate site to attend to biological functions. From this emerges the opposition between need, reproduction, stability, order and determination—contained within the home—and change, plurality, the ability to create—i.e. action—which is made possible by the political.

If law provides only a frame for the political, we might think of it as the walls that constitute and delimit the *polis*. In doing so, it implicitly defines the boundaries of its other, the home. In this sense law is a set of limitations which define the space of freedom in parallel to the homespace, which is an 'array of borders'—physically demarcated by walls but also, Kotef argues, by the 'very boundaries of life': birth and death. Home and the political, then, are not separate but intertwined and mutually constituted, a reminder of Judith Butler's 'constitutive outside'.[120] This shatters the conceptualisation of home as 'other' and reveals it to be central to the political. It also disturbs the notion of home as a neutral, detached and inert space. It is in fact constitutive of the political. As such, the boundary between the domestic and the political, illusory as it always was, now dissolves. Doreen Massey put it this way: it has 'always been difficult … to distinguish the inside of a place from the outside; indeed, it is precisely in part the presence of the outside within which helps to construct the specificity of the local place'.[121]

For Arendt, the dissolution of the border between the political and domestic came with the appearance of the social, which expanded into the political sphere and brought with it necessity as a governing imperative. Yet even as the political was corrupted by the overflow of the functions of the home, liberal ideology required the domestic to retain at least the illusion of being a separate site. The home was thus redefined and respatialised as a place of

[115] Kotef, 'Ba'it' (n 26) 1.
[116] ibid 1, 19.
[117] Hannah Arendt, *The Human Condition* (2nd edn, University of Chicago Press 1999) 36–37.
[118] Kotef, 'Ba'it' (n 26).
[119] ibid 5.
[120] Judith Butler, *Bodies That Matter: On the Discursive Limits of "Sex"* (Routledge 1993) 3.
[121] Massey (n 87) 170.

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intimacy and a signifier of family life, and the chief organising concept of the state. It was demarcated along gendered lines and by function, designed and organised to reinforce the meaning of home in terms of security, order, privacy and respectability.[122] Industrialisation precipitated further respatialisation of home, making more distinct the separation of home and work as people went 'out' to work in factories. This cemented the association of home with the domestic, making home a more intimate place, largely constructed in reference to the family and the feminine.[123]

It is from here that the state came to be seen as a home, a homeland, a 'motherland', a home for a nation and its people—a family of a different scale and order.[124] The nation was the 'home' of the extended family of citizens. It follows then that a 'national exile is a 'destruction of the home': the displacement of the family, its dispersion across foreign territories', and the cycle of collapse between the political and domestic continues.[125] The conflation of home and the nation-state is apparent in mainstream political outlooks, including international law. International law holds, in the same hand, the promise of a universal rule of law that transcends states, and that most particular promise of a home for peoples—a state, a stable territory, a bounded land. As ever, the universal and the particular, the political and the domestic, exist in dynamic tension, the one dependent on the other for its definition. Home derives, Massey argues, 'precisely from the fact that it had always in one way or another been open; constructed out of movement, communication, social relations which always stretched beyond it'.[126] The walls of the home are permeable and can be passed through; the domestic cannot be entirely kept apart from the political, and the particular has been shown again and again to be the entry point to the universal.[127] International law's silence on home belies the reality that home is already present in it.[128]

Despite this, the problem remains that international law lacks a rich conceptualisation of home. As I have said, it bears home-like concepts and equivalences and it engages in homemaking (and sometimes -unmaking and -remaking) work, but it does not expressly define home and seldom mentions home. Instead, international law falls back on an ideal-type home: private, secure, autonomous, unitary, static in place and unchanging in time. We find in international law the same 'longing for home', and the exilic-nostalgic narrative of 'return' to a stable world order (made up of a collection of states or homelands) that is emblematised by the ideal home.

This ideal-type misses the complexity of home. It is also, as Honig argues, dangerous.[129] Lacking a more nuanced understanding of home, international law excludes from its ambit of recognition and protection all those whose experience of home is inconsistent with that ideal. Displaced people, the unsettled, the homeless and the transient, people 'on the move', the absent and those who withdraw or dissent lie outside or on the margins of the ideal home. It also ignores the reality that, for most people, home is contingent and precarious, and entails a process of making, unmaking and remaking over the life-course. In shaping the boundaries of home, of who is included and excluded, international law serves the global regime of homemaking (and home-*unmaking*), contributing to its gestures of exclusion and

[122] ibid.
[123] ibid. See also John Tosh, 'New Men? The Bourgeois Cult of Home' (1996) 46 *History Today* 9.
[124] See further Waetjen (n 63).
[125] Kotef, 'Ba'it' (n 26) 6.
[126] Doreen Massey, 'A Place Called Home?' (1992) 17 *New Formations* 14.
[127] Kathryn McNeilly, 'Reclaiming the Radical in Universal Human Rights' (2015) 4 *International Human Rights Law Review* 256.
[128] A nascent thread apparent in the work of other international law scholars: Anghie (n 18); Baxi (n 18); Storr (n 18); Dehm and Loughnan (n 18).
[129] Honig (n 82).

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amplifying the divide between us and them, between those who are at-home in the world and those who are not-at-home. In doing so, international law also overlooks the liberatory potential of home.[130]

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What use, then, is international law in the face of challenges to home, from the mass destruction of home during a campaign of state violence to the increasingly obvious effects of climate change on home, when its own grasp of the concept is inadequate? Returning to Gaza, I think that the calls to make domicide a crime under international law is a chance—out of the bleakest circumstances—to embed in international law a more nuanced understanding of home, along the lines that I have argued for above. This would first require rethinking current approaches to domicide. Specifically, what is needed is a shift from a static, material conceptualisation of home and its loss to a multidimensional view of home and homemaking that spans different temporalities, affective registers and modalities of loss, as well as experiences of resistance, agency and transformation. Enriching this approach to domicide through the lens of state crime theory,[131] this would also go some way to address contemporary critiques of international criminal justice by international law scholars.[132] In this final part of the essay, I look first at what has been said about domicide to date and then make some suggestions as to how this shift could be made and a different approach taken.

In its most basic sense, domicide draws attention to the political nature of the homespace and the complexity of home destruction. The term was introduced in the 1970s and has been largely neglected by scholars since then, with the exception of Douglas Porteous and Sandra Smith in 2001[133] and more recently Akesson and Basso, Ammar Azzour and Qin Shao,[134] and a handful of others mainly in fields outside of law, particularly urban studies.[135] However, reflecting unprecedented global challenges to home and homemaking over the past decade—from multiple pandemics to new conflicts (and persistent old ones), economic crises, and a cycle of human and non-human made disasters—there has been exponential growth in scholarship on dispossession, displacement, forced eviction and expulsions,[136] and other issues to do with home such as forced movement, planned relocation, campicide, memoricide, topicide, 'root-shock' and slow violence.[137] Among this entropy of terms, where does domicide sit?

[130] See recent important work by political geographer Michele Lancione (n 20).

[131] See leading work by Penny J Green and Tony Ward, 'State Crime, Human Rights, And the Limits of Criminology' (2000) 27 *Social Justice* 101; Penny Green and Tony Ward, *State Crime: Governments, Violence and Corruption* (Pluto Press 2004); Penny Green, Tony Ward and Kristian Lasslett, 'The Advance of State Crime Scholarship Introduction' (2012) 1 *State Crime Journal* 5.

[132] See in particular Sophie Rigney, *Fairness and Rights in International Criminal Procedure* (Edinburgh University Press 2022); Christine Schwöbel-Patel, 'Locating Humanity in Crimes against Humanity' (2023) 11 *London Review of International Law* 113; Christine Schwöbel-Patel, 'The "Ideal" Victim of International Criminal Law' (2018) 29 *European Journal of International Law* 703; Christine Schwöbel-Patel, 'Spectacle in International Criminal Law: The Fundraising Image of Victimhood' (2016) 4 *London Review of International Law* 247.

[133] Porteous and Smith (n 59).

[134] Akesson and Basso (n 21); Azzouz (n 21); Shao (n 21).

[135] Akesson and Basso (n 21); Andrew R Basso, Patrick Ciaschi and Bree Akesson, 'Cumulative Domicide: The Sayisi Dene and Destruction of Home in Mid-Twentieth Century Canada' (2020) 68 *Current Sociology* 651; Stuart Hodkinson, 'Against Neoliberal Domicide' (2021) 11 *Dialogues in Human Geography* 341; Mel Nowicki, 'Rethinking Domicide: Towards an Expanded Critical Geography of Home: Rethinking Domicide' (2014) 8 *Geography Compass* 785; Vickie Cooper and David Whyte, *The Violence of Austerity* (Pluto Press 2017); Akesson, Basso and Denov (n 108).

[136] Nicholas Blomley, 'Law, Property, and the Geography of Violence: The Frontier, the Survey, and the Grid' (2003) 93 *Annals of the Association of American Geographers* 121; Sassen, *Expulsions* (n 23); Sassen, *Territory, Authority, Rights from Medieval to Global Assemblages* (n 23).

[137] See among others Rachel Pain, 'Chronic Urban Trauma: The Slow Violence of Housing Dispossession' (2019) 56 *Urban Studies* 385; Yolanda Weima and Claudio Minca, 'Closing Camps' (2022) 46 *Progress in Human Geography* 261; Hanno Brankamp, 'Camp Abolition: Ending Carceral Humanitarianism in Kenya (and Beyond)' (2022) 54 *Antipode* 106;

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Porteous and Smith define domicide as 'the deliberate destruction of home by human agency in the pursuit of specific goals, which causes suffering to the victims'.[138] They outlined two subtypes of domicide: 'extreme' or 'everyday'. 'Extreme' domicide is perpetrated as a form of political violence or as a corollary to other violent processes such as armed conflict and atrocity crimes.[139] The authors give as examples the bombing of Vietnam, the removal of indigenous people by white settlers from their homelands in Canada and the US, and segregation policies in apartheid-era South Africa. By contrast, 'everyday' domicide is associated with capitalism and development. This is domicide that unfolds 'through the normal, mundane operations of the world's political economy',[140] such as the demolition of homes and neighbourhoods for corporate or political interests, giving as an example dam construction in British Columbia.

The everyday/extreme typology is attractive because it makes visible diverse harms to home that may not otherwise be seen. But in its simplicity, the complexity of domicide may be overlooked. Mel Nowicki, a human geographer, argues that Smith and Porteous focus too much on the physical destruction of home, ignoring the affective and socio-symbolic effects of domicide.[141] The everyday/extreme typology also has the effect of positioning domicide as an 'event'—a single, violent episode, an anomaly, an exception, a 'once-off'—rather than something systematic or structural, or even industrial. Experiences of agency and resistance also seem to be forgotten, or excluded from, Smith and Porteous' understanding of domicide and how it is lived by different people.[142]

This approach to domicide needs to be reconsidered. The gravity, scale and pace of domicide today, and the geopolitical context in which it is taking place, is radically different from when Porteous and Smith were writing over two decades ago. In thinking about domicide as a state crime, it is germane to draw attention to the prevalence and scope of home destruction as a strategy or tactic used by states and non-state groups in recent violent conflicts. In Syria between 2017 and 2020, one third of all homes were partially or completely destroyed, displacing 13 million people. In Myanmar between 2017 and 2019, armed forces destroyed at least 392 Rohingya settlements, killing more than 10,000 and displacing over 800,000 in brutal, targeted and systematic 'clearance operations'.[143] Similar figures can be cited in Libya, Afghanistan and Iraq. In Ukraine, thousands of homes have been deliberately targeted in Russian aggression: 90 per cent of all apartment buildings in the city of Mariupol have been partially or completely destroyed.[144] This is in addition to mass, calculated destruction of home that is happening in non-conflict situations in both the Global North and South, all of which remain underexamined: state demolition of housing in the aftermath of climate disasters, corporate land grabbing, development-induced eviction, and the

Scott Webster, 'Revisiting Memoricide: The Everyday Killing of Memory' (2023) *Memory Studies*; Scott Webster, 'Post-Domicide Artefacts: Mapping Resistance and Loss onto Palestinian House-Keys' (2016) 22 *Cultural Studies Review* 41; Scott Webster and Robert Ross, 'The "Palestine Poster" and Everyday Memoricide: Making Killing Memory Mundane' (2021) 14 *Human Geography* 346; Nur Masalha, *The Palestine Nakba: Decolonising History, Narrating the Subaltern, Reclaiming Memory* (Zed Books 2012); John Tomaney and others, 'Social Infrastructure and "Left-behind Places"' (2023) *Regional Studies* 1; Celia McMichael, Manasa Katonivualiku and Teresia Powell, 'Planned Relocation and Everyday Agency in Low-lying Coastal Villages in Fiji' (2019) 185 *The Geographical Journal* 325; Jane McAdam, 'Historical Cross-Border Relocations in the Pacific: Lessons for Planned Relocations in the Context of Climate Change' (2014) 49 *Journal of Pacific History* 301; Mariya Gromilova, 'Revisiting Planned Relocation as a Climate Change Adaptation Strategy: The Added Value of a Human Rights-Based Approach' (2014) 10 *Utrecht Law Review* 76.

[138] Porteous and Smith (n 59) 12.

[139] Basso, Ciaschi and Akesson (n 135); Akesson, Basso and Denov (n 108); Porteous and Smith (n 59).

[140] Porteous and Smith (n 59) 106.

[141] Nowicki (n 135).

[142] ibid.

[143] 'Report of the Independent International Fact-Finding Mission on Myanmar' (12 September 2018) UN Doc A/HRC/39/64 [42]; 'Report of the Independent Investigative Mechanism for Myanmar' (30 June 2023) UN Doc A/HRC/54/19.

[144] Report of the Special Rapporteur on Adequate Housing' (n 13).

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widespread deployment by governments of policies of neglect, austerity and exclusion that have, over a long period, made home in many places uninhabitable, inaccessible or otherwise unhomely, especially for the poor and the less secure. These are among many other examples of contemporary domicide I could give.[145]

In rethinking domicide, the ideal notion of home as a comforting and secure place, politically neutral, stable, and fixed in time, must be replaced by a more nuanced understanding of home and its undoing. Likewise, domicide must be seen as something more complex than the bulldozing or bombing of a home or a neighbourhood: it is a multifaceted phenomenon with diverse temporalities, affective registers and modalities of loss. To some extent Basso et al capture this in their term 'cumulative domicide': home destruction that occurs 'again and again and oftentimes spanning different locations', incorporating different intents and methods.[146] Contemporary domicide, they argue, keeps a community 'in a state of continual upheaval', prohibited from resettling and making home in new places, living in a 'constant uncertainty without any solid connection to a permanent home'.[147]

This marks a shift from domicide seen as a singular event or a 'once-off' to a process that is neither linear, instant or finite, but unfolds over a period of time and often involves repetition—the destruction of home over and over again. The case of Al Araqib, one of the 'unrecognised' Bedouin villages in the northern Naqab desert which has been levelled over 160 times, is instructive here.[148] Residents interviewed by Penny Green and Amelia Smith speak of being made homeless on multiple occasions.[149] The repetition underscores the intentional and systematic element of domicide and the logic of violent erasure that drive it. On this view of domicide, the concept expands to include processes of *home-unmaking* or *un-homing*. If home*making* is the 'cultivating, nurture and preservation of home',[150] home-*unmaking* is actions that neglect, ignore, damage or destroy a home.[151] *Un-homing* occurs when the connection between people and place is severed, and can be registered through different types of loss—experiential, financial, social, familial and ecological. [152] It is also important to note the diverse forms and mechanisms through which domicide is operationalised. In one of its most perverse and extreme forms, Palestinian residents of East Jerusalem have been compelled by occupying forces to self-destroy their homes.[153] The mechanics of domicide play out through a range of other, more everyday (but no less insidious) forms and logics. In the West Bank, these include the denial of residency rights and refugee return, restriction of access to natural resources, discriminatory zoning and planning restrictions and 'urbanization' programmes: which together Jeff Halper sees as a 'matrix of control' and Green and Smith refer to as 'deviant planning'.[154] During the two decade-long siege of

[145] See further Azzouz (n 21); Akesson and Basso (n 21); Shao (n 21); Loretta Lees and Hannah White, 'The Social Cleansing of London Council Estates: Everyday Experiences of "Accumulative Dispossession"' (2020) 35 *Housing Studies* 1701.

[146] Basso, Ciaschi and Akesson (n 135) 652.

[147] ibid.

[148] See further Forensic Architecture, 'Destruction and Return in Al-Araqib' <https://forensic-architecture.org/investigation/destruction-and-return-in-al-araqib>, an investigation and documentation of the erasure of material remains in Al-Araqib through 'community satellite' imagery to show the transformation of the land from before the creation of the state of Israel to now as well as the continuity of Bedouin inhabitation. See also Alexandre Kedar, Ahmad Amara and Oren Yiftachel, *Emptied Lands: A Legal Geography of Bedouin Rights in the Negev* (1st edn, Stanford University Press 2018).

[149] Penny Green and Amelia Smith, 'Evicting Palestine' (2016) 5 *State Crime* 81.

[150] Blunt and Dowling (n 87) 5.

[151] Basso, Ciaschi and Akesson (n 135) 651; Brickell and Baxter (n 89).

[152] Adam Elliott-Cooper, Phil Hubbard and Loretta Lees, 'Moving beyond Marcuse: Gentrification, Displacement and the Violence of Un-Homing' (2020) 44 *Progress in Human Geography* 492, 494.

[153] Green and Smith (n 149) 93.

[154] ibid 83–84; Jeff Halper, 'Dismantling the Matrix of Control' (MERIP, 11 September 2009) <https://merip.org/2009/09/dismantling-the-matrix-of-control/>; Oren Yiftachel, 'Deepening Apartheid: The Political Geography of Colonizing Israel/Palestine' (2023) 4 *Frontiers in Political Science* 1.

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Gaza, Israel has placed restrictions on the import of construction materials—notably concrete—limiting Palestinians' ability to build, maintain, renovate, extend or rebuild homes. Domicidal processes, activities and operations may or may not result in the physical destruction of home. The point is that they render home uninhabitable and deny the conditions for homemaking, systematically, deliberately and on a large scale, for weeks, months or years.

This reframing of domicide allows us to use domicide as an organising concept for different forms of home destruction, such as forced displacement, dispossession, eviction, population transfer and demolition. I am not suggesting that domicide should subsume those: the distinction between those different forms needs to be maintained. Forced displacement, for example, drives people from their homes, frequently through violence and often (though not always) accompanied by home destruction. It is a form of home-*unmaking* that destroys the home in an emotional sense, even if not in a material sense.[155] As a penumbra for forms of home-unmaking, domicide could bring clarity to definitional debates in the field and return the focus to identifying the forces and logics that undermine people's ability to make and sustain a home and which result in systematic and widespread losses of home, and other harms and obstacles to experiencing a sense of belonging and of 'being at home' in the world.

As to the latter, we cannot overlook the emotional, affective and psychic dimension of domicide. To dismiss these harms as intangible, as 'too difficult' to recognise, is a thinly-veiled attempt to deny them. Law (including courts and decision-makers) regularly deals with intangible harms such as psychological harm and loss of connection to land and community. At the international level, the recent agreement between states to create a fund for 'loss and damage' after climate disasters includes compensation for non-material harm.[156] The Special Rapporteur reflects on the multidimensional nature of domicide this way: 'Destroyed is not only a home. Destroyed are the savings of entire families. Destroyed are memories and the comfort of belonging. … Along with this comes a social and psychological trauma that is difficult to describe or imagine.'[157]

The Special Rapporteur has called for domicide to be a standalone crime, rather than tucked into the category of crimes against humanity. In his 2022 report, he offers a legal definition of domicide as 'the deliberate destruction of homes, the rendering of homes uninhabitable or any other systematic denial of housing such as acts are carried out in violation of international law and committed as part of a widespread or systematic attack against any civilian population'.[158] It is a broad definition that encompasses any activity that violates the right to housing.[159] It could include deliberate acts that undermine the elements of 'adequate housing' set out in Article 11 of the International Covenant on Economic, Social and Cultural Rights, such as damage to services and infrastructure or undermining access to home or cultural practices associated with home.[160]

The Special Rapporteour's framing of domicide expands understanding of home destruction in international law, attending to the reach and complexity of this phenomenon. The legal definition of domicide would require further discussion but, as a starting point, this is promising. In any legal approach to domicide, I would urge the need to make space for the emotional and affective dimensions of home destruction, such as the destruction of collective memory, the loss of a sense of belonging and security, and the psychological trauma of

[155] Elliott-Cooper, Hubbard and Lees (n 152); Brickell and Baxter (n 89).
[156] United Nations Climate Change, 'Fund for Responding to Loss and Damage' <https://unfccc.int/loss-and-damage-fund-joint-interim-secretariat>; UN Climate Change, 'COP28 Agreement Signals "Beginning of the End" of the Fossil Fuel Era' (13 December 2023) <https://unfccc.int/news/cop28-agreement-signals-beginning-of-the-end-of-the-fossil-fuel-era>.
[157] UNOCHA (n 49).
[158] 'Report of the Special Rapporteur on Adequate Housing' (n 13) 48.
[159] ibid.
[160] See n 104 above.

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losing home.[161] It should also account for the fact that domicide doesn't happen 'overnight' but has a range of temporalities—from the 'fast' violence of an aerial raid that blows apart a residential building to the 'slow' violence of home destruction that unfolds incrementally over a longer period.[162] Other details would need to be agreed. How would the elements of the crime be made out? How would particular types of harm be 'measured', and differences accounted for, between for example partial and complete destruction of home, or where there are other forms of harms, such as loss of belonging or ontological bearing, memory and identity?[163] What role and weight would be given to intent? What is the relationship between domicide and genocide; domicide and ecocide; and between domicide and other inhumane acts, such as forced deportation, population transfer, persecution and apartheid?

Making domicide an international crime would not stop the destruction of home, though it may deter it. However, it could provide an organising tool for decolonial and anti-imperial resistance and be a focal point for mobilising around human rights. It would be a step towards ending impunity for perpetrators, and as the Special Rapporteur argues, it would help to close gaps in protection and ensure that widespread human rights violations—economic, social and cultural, as well as rights to life and health, among others—receive attention.[164] Ignoring harms to home is not only unjust, it is also convenient for states and other actors for whom home destruction serves strategic ends. To the extent that international law refuses to act on domicide, this could be interpreted as turning a blind eye, tacit authorisation, or even complicity. As the Special Rapporteur argues: 'We should stop shutting our eyes to widespread or systematic destruction of civilian homes in conflict.'[165]

What I have suggested here is an expansive view of domicide. It does not rely on an ideal type of home. It is instead founded on the essential openness and fluidity of home, its ambiguities, its core of contestation and resistance, and its liberatory potential.

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I want to return to where we began: the Special Rapporteur's photo essay that took us inside home in Gaza. The photo essay is, I think, an attempt to change the narrative. Home shows us a different view of this war. Invited inside Palestinian homes through the photos, we suddenly see 'them' as 'us'. And we see that their homes are the same as ours. That could be my home (I think, sitting in the privilege of my safe-home). The photos connect us but they also reveal in us that we did not see 'them' as 'us' before; that we saw, through imperial eyes, Palestinians as victims in a distant war, not as people with lives and dreams—and homes—the same as ours.[166] Home allows us to see something important and worth seeing. Perhaps home could be used to guide larger principles.

I have said that home is a contested concept and sometimes an ambiguous one.[167] That it is difficult if not impossible to define.[168] Better, I think, to see home as multiple and changing, unfixed in place and time, an ongoing process of 'homing'—of moving towards, as Paolo Boccagni writes, 'a place or condition they [a person] constructs as home'.[169] Home is not only a 'special type of domestic place, but also a constellation of practices,

[161] See Pain (n 137).
[162] On slow/fast violence see ibid.
[163] On cataloguing home destruction, see Walid Khalidi, *All That Remains: The Palestinian Villages Occupied and Depopulated by Israel in 1948* (Institute for Palestine Studies 1992).
[164] 'Report of the Special Rapporteur on Adequate Housing' (n 13).
[165] UNOCHA (n 49).
[166] See generally Raimond Gaita, *A Common Humanity: Thinking about Love and Truth and Justice* (Routledge 2001).
[167] See Meers (n 31).
[168] On defining home see Meers (n 31); David Jenkins and Kimberley Brownlee, 'What a Home Does' (2022) 41 *Law and Philosophy* 441; Kotef, 'Ba'it' (n 26).
[169] Boccagni (n 9) 593.

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processes, skills, material settings and meanings that evolve in private, public and communal spaces'.[170] That includes legal processes, activities and operations that take place in and around home and constitute the material and discursive experience of home. The difficulty of defining home, however, does not limit its use as a decolonial, anti-imperial analytic or its emancipatory potential—in fact, the capaciousness of home animates and enlarges that potential. Nor is it always clear, when we talk about international law's 'homemaking' work, what law is doing (or *not* doing or *un*doing) in relation to home; but complexity is no reason to back away from examination. The expansive notion of home I have outlined in this essay can help to identify the points that need to shift if we are to make progress in struggles against colonial dispossession and other forms of erasure that are operationalised through home-unmaking—whether the systematic destruction of home in violent conflict and occupation or the slow violence of 'un-homing' that unfolds through policies and processes of neglect, exclusion and discrimination.

I have also said that at a global scale there is much we need to understand about homemaking and the role of international law in fostering or hampering the ability of people to make-home. In particular, it is pressing that we turn our attention to homemaking in displacement, considering the vast number of people currently internally displaced, including now in Gaza, or displaced across borders. Homemaking in displacement has for too long gone unseen, ignored, dismissed or underestimated.[171] We have failed to see how homemaking in displacement is a powerful and effective practice of resistance and a method of preserving individual and communal identity in the face of colonial and other threats.[172] This also means that we overlook (perhaps knowingly) the many ways in which homemaking in displacement is deliberately, often violently, suppressed in order to subdue and diminish groups and individuals who are perceived as 'other' and a threat to order and security. As David Delaney notes, so often systems, structures or arrangements that are organised around the realisation of liberal commitments (such as property ownership or border control), 'tend to generate the conditions of illiberalism', such that some settings or sectors (including the home) become characterised by 'relative disorder, disproportionate levels of coercion, or felt experiences of injustice'.[173]

As we have seen, international law is entangled with home, and with its destruction. But rather than abandoning it or disengaging from it in light of its participation in home-unmaking, I have argued that international law has a role to play in changing the status quo. First, bringing a more nuanced understanding of home to international law could lead to better protection of home and homemaking as well as deepen international law theory and practice itself. This would not require a specific right to home or a treaty on home.[174] It can be done by suffusing that richer concept of home in the interpretation of international legal norms and standards—particularly those that already touch on or relate to home, such as the right to housing, protections of property in war, the rules and principles that determine how people move to and from home in refugee law, internally displaced persons law, development law and disaster law, and in any eventual crime of domicide. Core international legal

[170] Emma Bimpson, Sadie Parr and Kesia Reeve, 'Governing Homeless Mothers: The Unmaking of Home and Family' (2022) 37 *Housing Studies* 272.

[171] The influence of 'bare life' theory in refugee studies—the idea that camps and other forms of containment are designed to provide no more than the basic minimum to sustain life—at least in part explains why homemaking in displacement has been neglected by scholars.

[172] Katherine Brickell has extensively examined Cambodian women's resistance to forced eviction in Brickell, 'The Whole World is Watching' (n 88).

[173] David Delaney, *The Spatial, the Legal and the Pragmatics of World-Making: Nomospheric* (Routledge 2010) 118–19.

[174] As suggested by Akesson, Basso and Denov (n 108). While welcome, it would be necessary to think through the pros and cons of these proposals. For reasons of space, I cannot do so here.

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concepts—statehood, sovereignty, territory, self-determination, order and universality, among others—can also be rethought through the lens of home. These concepts have long been associated in the Western liberal legal imaginary with stability, neutrality, exclusive belonging and universal meaning. Deployed as an analytical or heuristic device, home opens up a view of those concepts, and international legal power more generally, as contingent, fluid, partial and open to negotiation, and suggests an alternative basis for them in the values of interdependence, mutuality and relationality.

Second, embedding a more expansive notion of home in international law might catalyse a paradigm shift for thinking about home on a global scale. Specifically, by redirecting the homemaking work international law *already* does towards more just and less violent outcomes, this could challenge the gestures of exclusion that characterise the global regime of homemaking and counter the colonial and imperial logic of erasure, domination and dehumanisation that underpins it. The ideal concept of home replicated and reinforced by the global regime of homemaking is founded on racist, gendered and classed exclusion. This has devastating effects for people's homemaking capabilities. That ideal type must be replaced by an inclusive notion of home. One that is responsive to the contemporary conditions of making and sustaining a home: in particular, the reality of hypermobility—that movement to and from home, whether forced or voluntary, rather than stability and settlement, describes the experience of home for most people, most of the time, in the world today.

These interventions will not assist Gazans who have lost their homes in this conflict, or the Ukrainians or the Rohingya or the Syrians whose homes were destroyed before them. Nor will making domicide a crime adequately remedy the emotional and affective rupture of losing a home through violence. However, seeing home and home-making as part of a feminist liberatory praxis and a movement of resistance to state crime, articulated through gestures of inclusion, accommodation, hospitality, interdependence, relationality and solidarity, and alternative social and spatial practices, is an opportunity to build communities that enable not merely bare life and survival but resistance and transformation, and address the concerns scholars have raised, particularly as to victimhood and spectacle.[175] 'We live on the accumulated ruins of experience';[176] and we live by building homes, building the next one when the first is destroyed, and the second and the third.[177] Home lives on above the ruins.

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[175] See, eg, Schwöbel-Patel, 'Locating Humanity in Crimes against Humanity' (n 133); Schwöbel-Patel, 'Spectacle in International Criminal Law' (n 132); Schwöbel-Patel, 'The "Ideal" Victim of International Criminal Law' (n 132); Rigney (n 132).

[176] Teju Cole, *Tremor* (Faber 2023).

[177] Al-Araqib being the most powerful example: see above at (n 148) and (n 149).

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