

# International Law and the U.N. System

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In the popular mind, even among relatively informed people concerned with international issues, there is something called "international law" that has developed in the world over much of the twentieth century. This includes the multiple Hague Conventions, the Geneva Conventions, the U.N. Charter and many treaties and agreements concluded under the United Nations. It is thought by such people that the central issue is how to get nations to obey international law.

This may take the form of "educating" nations concerning the need to respect international law or the related question of how to "enforce" international law properly. Part of the problem of chaos, war, and human rights violations in the world, it is thought, is that nations do not properly respect and obey international law. Part of what must be done, it is thought, is to create an international culture and ethos of respect for law so that nations (and corporations), big and little, more and more conform to its requirements. The 1995 report of the prestigious blue ribbon Commission on Global Governance, for example, took this approach.

When the dominant institutions that determine people's lives are so pervasive that they appear everywhere in the background of daily life, and when these dominant institutions go unquestioned by governmental officials, civic leaders, and the dominant media, then such institutions become virtually invisible. They become the "normal" and "natural" unquestioned background within which life is lived. Such is the case with the concept of the "sovereign nation-state" examined above. The concept goes unthought and unexamined. As such it accrues tremendous power over life precisely because it is accepted as "normal" and "natural."

The concept of "international law" follows directly from the unexamined concept of the "sovereign nation-state" and itself remains largely unthought and unanalyzed. This is true not only with respect to the popular mind but also with respect to professors of international law, international lawyers, and the

staff of the United Nations' International Law Commission. Thousands of people spend their careers involved with "international law" in connection with world trade, the United Nations, or prominent NGOs and never seriously reflect on the concept or its implications with respect to our world order and its future.

In the light of this, the concept of "international law" deserves sustained analysis and criticism in the form of penetrating books and articles, far more than is possible within the limited space of this volume. As a corollary of the concept of "sovereign nation-state," confusion regarding this notion is as dangerous and catastrophic as the nation-state itself, armed with weapons of mass destruction or a militaristic foreign policy and legally accountable, according to the internal logic of its concept, to no one but itself. "International law" is a dangerous and deadly misnomer. It is a concept intrinsic to the illegitimacy of the current world political system and deeply implicated in the ever-growing cataclysms we are experiencing on this planet.

The history, development, and content of "international law" can now be studied conveniently on-line, for example, in the comprehensive collection of documents found at the "Electronic Information System for International Law" website. All the fundamental documents are there. With a little insight, one can see there the immense internal contradictions between any viable concept of "law" and the elaboration of "treaties" and "conventions" that are referred to as "international law."

From the Charter of the United Nations itself (riddled by these same contradictions), to the "Charter of Economic Rights and Duties of States" (that serves as a cover for global economic exploitation of the weaker states by the stronger), to the "Draft Declaration on the Rights and Duties of States" (as if largely unaccountable fictitious entities rather than persons could have rights and duties), it is not difficult to discern the spurious nature of the concept of "international law" that is itself a direct derivative of the unexamined and unquestioned system of "sovereign nation-states."

Burns H. Weston, Richard A. Falk, and Anthony D'Amato have produced a massive textbook entitled *International Law and World Order: A Problem-Oriented Coursebook* (1990), designed for use in law schools for the teaching of international law. Chapters in the book cover the range of issues and problems often associated with international law: the concept of international law, the sources of international law, the application of international law, problems in environmental protection, problems in economic well-being,

problems in socio-political justice, problems in war prevention, the world order challenge, the normative challenge, and the professional challenge. The book is intended to be a comprehensive examination of the issues, as well as a support for both the concept and the continuing development of international law.

Their first chapter on "The Concept of International Law" argues that the traditional definitions of international law "as a standard of conduct for states" have been superseded by "a wider, more behaviorally responsive, perspective" that reflects "the expanding complexity of international life and...a growing sophistication about law and legal process." One of the traditional definitions offered proclaims that "international law is largely based on custom, e.g., on practice, and whereas certain customs are recognized as obligatory, others are in retrogression and recognized as nonobligatory." Another traditional definition says that "contemporary general international law can be defined as the aggregate of norms which are created by agreement between states of different social systems....and are secured, when necessary, by coercion effectuated by states individually or collectively" (p. 12).

The authors of this text argue that the concept of international law is no longer a direct corollary of the system of sovereign nation-states but has developed in practice into a larger framework of regulations, customs, and practices that certainly include, but go beyond, the relationship between sovereign states. Indeed, these larger patterns of regulation (often connected with the World Bank, the International Monetary Fund (IMF), the World Trade Organization (WTO), and the practices of powerful, private transnational corporations) have evolved in an *ad hoc* manner in response to the development of globalized trade, financial interactions, communications, and travel that has outpaced the ability of the system of "sovereign" nation-states to efficiently handle.

In popular parlance, this expanded role for "international law" is often termed "A governance." What has emerged in the world to supplement the international laws by which sovereign nation-states are said to operate is "governance," which involves rules applying to trade, finance, communications, environmental practices (like "emissions trading" ), etc. The 1995 *Report of the Commission on Global Governance* puts the matter explicitly as follows:

Contemporary practice acknowledges that governments do not bear the whole burden of global governance. Yet states and governments remain primary public institutions for constructive responses to issues affecting peoples and the global community as a whole. Any adequate system of governance must have the capacity to control and deploy the resources

necessary to realize its fundamental objectives. It must encompass actors who have the power to achieve results, must incorporate necessary controls and safeguards, and must avoid overreaching. This does not imply, however, world government or world federalism.... It is a broad, dynamic, complex process of interactive decision-making that is constantly evolving and responding to changing circumstances. (p. 4)

The Report ignores that this increasingly formalized *ad hoc* system of "global governance" (it is very clearly not "government" ) is directly derived from the inherent weaknesses and absurdities of the system of sovereign nation-states. In other words, the developing system of "global governance" only exacerbates the absurdities, injustices, and weaknesses of this system. It does nothing to move the world forward toward authentic democracy, justice, or good government. Just the reverse. It is taking the world down a path toward imminent destruction.

Their expanded, more "behavioral" definition of "international law" is presented by Weston, Falk and D'Amato through quoting several authors who argue that "law" is larger than what governments decide. As one author (Weston) puts it:

Law does not live by executives and legislators alone. It lives also by individual human beings such as ourselves, pushing and pulling through reciprocal claim and mutual tolerance in our daily competition for power, wealth, respect, and other cherished values. To turn a phrase, law is legitimized politics, a Hydra-headed process of social decision, involving persons at all levels and from all walks of public and private life who, with authority derived both explicitly and implicitly from community consensus or expectation, and supported by formal or informal sanction, effect those codes or standards of everyday conduct by which we plan and go about our lives. (p. 15)

Another author (McDougal) argues that "international law be regarded not as mere rules but as a whole *process* of authoritative decision in the world arena, a process in which authority and control are appropriately conjoined and which includes, along with an inherited body of flexible prescriptions explicitly related to community policies, both a structure of established decision-makers and a whole arsenal of methods and techniques by which policy is projected and implemented" (p. 16).

What these extremely broad and vague descriptions of "international law" apparently account for is phenomena like the growing control of the World Bank and IMF over so-called "sovereign nations," the creation of World Trade

Organization rules in top secret meetings of transnational corporations and First World governments, and independent practices of global corporations operating almost autonomously within Third World countries often weaker than themselves. What is not stated by the authors, but is implicit in their account (which attempts to legitimize "international law" and defend it from critics who claim that it is not "law" ) is that much of the "process" of authoritative decision-making, "supported by formal or informal sanction" is profoundly undemocratic.

What is not stated is that the emerging "process" of international law is defined, not by some euphemistically characterized "community consensus" but by the strong dominating the weak in a vicious and amoral world of exploitation and oppression, an imperfect, but equally deadly, mirror of the system of "sovereign" nation-states from which it derives. International law mirrors the lawlessness of the system of sovereign nation-states, examined above. It consists of "rules" and "customs" created by the strongest agents in a lawless world to coordinate among themselves the processes of domination and exploitation of humanity and the Earth.

There are many excellent volumes that analyze today's international system in detail. A number of them are cited in the bibliography. Together they show that what is called international law amounts most basically to a set of rules evolved by nation-states and global capital to facilitate their rape of humanity and nature in the name of power and wealth for the few. We recommend that the reader examine the books in the bibliography by William Blum, Noam Chomsky, Michael Chossudovsky, Chalmers Johnson, David Korten, Michael Parenti, James Petras, John Perkins, Vandana Shiva, J.W. Smith and others. These thinkers collectively reveal the nightmare of a world disorder operating according to "global governance" under an enhanced conception of international law now designed to facilitate the "free trade" of global actors.

Whether "international law" is defined as the relations between nation-states or as these relations plus the multiplicity of actual practices that become "custom" as actors struggle for "power, wealth, respect, and other cherished values," the net result of international law is the same: a system in which the strong prey upon and dominate the weak and make their own rules in the process, grubbing for evermore power and wealth. As the Editors of Monthly Review Magazine put the matter:

Capitalism is by its very nature a globally expanding system geared to accumulation on a world scale. Since its beginnings in the fifteenth and

sixteenth centuries it has been a world economy with an international division of labor ruled over by competing nation-states... From the outset, the leading capitalist states engaged in an outward, imperialistic movement. Precapitalist societies in the Americas, Africa, and Asia were pillaged, their populations enchained, and the plunder sent back to Europe. Wherever possible, noncapitalist societies were destroyed and transformed into colonial dependencies....

Wealth extracted from these colonial domains flowed into the coffers of the center capitalist nations, enriching them and enhancing their power. British hegemony over the world economy came under increasing challenge in the early twentieth century, particularly from Germany, and collapsed as a result of the First and Second World Wars, to be replaced in the aftermath of the Second World War by American hegemony as the United States rose to dominance over the world capitalist system.... U.S. multinational corporations seized control of whole economies in the third world and, although doing so on the basis of so-called "free trade," were backed up in their economic operations and interests whenever necessary by U.S. military power. (Jan. 2005, pp. 1-2)

Weston's metaphor of a "Hydra-headed process" is more apt than he perhaps intended. For the consequence of today's international law is indeed a monster that is uncontrollable under the current world system (i.e. lack of enforceable world law). When you cut off one head of the Hydra (through making adjustments in the system of "international law" to deal with the often disastrous consequences of these practices), another instantly grows, equally hideous and equally disastrous for the poor, the victims, the environment, and the future of the Earth. The problem is not bad international laws. The problem is the system itself, and the entire conceptual framework that sees the failed system of "sovereign" nation-states and its derivative in "international law" as legitimate.

Subsequent chapters in Weston, Falk, and D'Amato's massive volume bear out my claim. This system of international law must be studied and enhanced, these authors claim, but it is nevertheless legitimate law. They quote with approval one author (Jenks) who states that "the imperfect development and precarious nature of the organized world community is reflected in the early stage of development of the law, but does not invalidate the basic conception" (p. 13). Indeed, perhaps not.

However, their book goes on to devote entire chapters to certain "problems" under this system, that, taken collectively, show the system to be unjust in the extreme, unworkable, impractical, and absurd: Chapter Four: "Problems in

Environmental Protection" (an elegant way of stating that the planetary ecosystem is collapsing), Chapter Five: "Problems in Economic Well-Being" (another euphemism for ever-growing hellish poverty among the bottom sixty percent of humanity), Chapter Six: "Problems in Sociopolitical Justice" (i.e. worldwide terrorism, human rights violations, massive displacement of populations, disease, lack of clean water, and social chaos), and Chapter Seven: "Problems in War Prevention" (just a small problem in which there have been some 150 wars since the advent of the U.N. system of "international law" with some twenty-five million war-related deaths, ninety percent of whom were civilians) (Sivard, 1996).

This conceptual framework (designed to legitimate the concept of "international law" ) fills their 1300 page book and amounts to a refusal on the part of these and similar authors to commit themselves to *the greatest legacy that the modern world has bequeathed to the twenty-first century: the concept of democracy as the only legitimate form of government, articulated above*. Here is where their false analogy with law within functioning national legal systems again becomes apparent.

It is indeed true that law is not solely a matter of coercion within functioning legal systems. But in the absence of genuine world law democratically legislated by a World Parliament, the result is not legitimate law but the rules made by constellations of unaccountable power and wealth resulting in a world order of domination and exploitation that is rapidly destroying the common good of present and future generations.

What Weston, Falk, and D' Amato want to legitimize as genuine "international law" fails by all the criteria set forth above that define the differences between effective democratic government and all forms of governance that cannot supply the governed with a reasonable degree of social stability and good order, security and safety of citizens from external or internal threats, assurance of widespread prosperity for citizens, maintenance of environmental integrity and proper management of resources, or popular enfranchisement and maximization of the role of citizens in governing. *None* of these criteria for legitimate government (and legitimate law) applies to what these authors call "international law." Indeed, the last criterion (popular enfranchisement) states just the opposite of the trend in international law in which tiny elites of the superpowerful, behind closed WTO doors, make decisions determining the fate of millions of their fellow human beings. Similarly, *none* of the seven moral and five effectiveness criteria for legitimate law and government identified in the last chapters applies to "international law."

In the Third World, even supposedly "democratic" governments have the destiny of their countries and the will of their people taken out of their hands through the domination of the World Bank, huge transnational corporations, an ever-declining environment, and imperial First World governments. Decisions about what is "international law" are indeed defined in the doing, as these authors claim, but the "doing" involves extremely undemocratic forces hungry for power and wealth that destroy security, prosperity for the masses, the environment, and popular enfranchisement in governing. These forces are out of control precisely because international law is written largely by them (rather than democratically) and because even then it is unenforceable (with few or no negative consequences for its violation).

Weston, Falk, and D'Amato attempt to address the criticism that international law is unenforceable through a misleading analogy with the processes of obedience to law within functioning national states. They argue that a court order within a nation may compel, for example, the executive branch of government to obey without having to do this through use of the police or military. They give examples of when courts within the United States have assessed penalties against the executive branch, and the executive branch has complied (pp. 24-28).

This analogy is misleading in three ways. First, *no* law is enforced within functioning national legal systems by the direct use of force, so to speak, "at the point of a gun." Most law is obeyed because of the possibility of the use of force (for arrest and prosecution) in the relatively distant background of behavior. Most people feel a duty to obey the law and one function of enforceability is that it reinforces their sense of the legitimacy of the law. Yet enforceability remains a key component in their recognition of the law as valid law, worthy of obedience.

Second, and perhaps more important, the courts in a functioning legal system are part of a complex set of governmental relationships, one component of which is the capacity of the state to use force to ensure compliance with its dictates. Courts in the United States, for example, often have an entire branch of the police force, the Sheriff's Office, at their disposal to serve summonses, protect the court from disruption, and otherwise enforce compliance. When courts order state or local governments to pay a penalty, eventual use of force does lie in the background. Courts may order the arrest of recalcitrant government officials or hold them in contempt of court. Continued failure to comply may result in the government officials getting deeper and deeper into trouble leading to eventual jail time. None of this "getting deeper and deeper

into trouble" would be possible if it were not for the eventual threat of enforceability.

Third, functioning national law applies to individuals, even when governmental agencies are named in court judgments. If a financial penalty is served on a city government, for example, those in charge of the government at the time, whether elected or appointed, may be held legally liable for dealing with the court judgment. As mentioned above, they can be held in contempt of court, a warrant can be issued for their arrest, additional penalties can be assessed for noncompliance, etc. An attack on the entire people of a city is unthinkable under functioning legal systems. A court would not dream of ordering the military to bomb a city for failure to pay a penalty it had assessed. Nor would it dream of economically blockading an entire city to punish it for noncompliance with court orders by its officials.

Yet both of these absurdities apply to international law defended as genuine law by Weston, Falk, and D'Amato. Under the U.N. system of "sovereign" nation-states, states themselves (and to a growing extent, multinational corporations), not persons, are the "individuals" subject to international law. Hence, if a nation-state violates some international law, the only options (enshrined in Chapter VII of the U.N. Charter and elsewhere) are economic sanctions and, if this fails, war. An entire people, most innocent, none protected by due process, must be attacked because of the absurdity that international law applies to states, not to individuals.

Corporations, operating under World Trade Organization "rules," are often promoted and protected by their home base nation-states, as we have seen. Holding them responsible for the disastrous human and environmental consequences of their operations is notoriously difficult (Korten 2001, Shiva 2001). The system of sovereign nation-states today is protected and maintained in part because it provides a perfect cover for the rape of the world by private corporate entities who can operate outside the rule of any genuine laws.

This immoral and absurd premise of "international law" is reflected in the innocuous sounding definition quoted above: "the aggregate of norms which are created by agreement between states of different social systems....and are secured, when necessary, by coercion effectuated by states individually or collectively." To enforce norms by these forms of "coercion," is a criminal act, reminiscent of the Nazi policies of collective punishment of social groups under their domination. Under the nation-state system, entire peoples are economically punished or militarily attacked for the suspected crimes of a few.

Meanwhile, the crimes of the multinational corporations slip through the cracks, invisible within a system that pretends to focus on collective entities called "nations" as the primary accountable actors. These forms of criminal behavior follow directly from the premises of "sovereign" nation-states and their derivative in "international law."

The emerging International Criminal Court created by the Assembly of States Parties (and strenuously opposed by the U.S.) is an attempt to address this absurdity by holding individuals accountable for their crimes. However, as we will see further below, the Rome Statute of the International Criminal Court is hamstrung by this system of so-called "sovereign" nations (even when supplemented by *ad hoc* patterns of "governance" ) to the point where the ICC can only "request" evidence from nations or "request" arrest of persons suspected of crimes. No legitimate court "requests" these things. Courts, under enforceable, legitimate law, order arrest, issue warrants, subpoena witnesses, etc.

In their misguided desire to strengthen international law, Weston, Falk, and D'Amato, therefore, create an analogy that is entirely misleading and false in response to those who argue that genuine law must not only be enforceable, but enforceable over individuals. They claim that no law is enforced directly by police or military, so to speak, "at the point of a gun." And they ignore the fact that the real issue is whether international law applies to individuals. But this is surely and obviously a straw man argument.

No critic of the unenforceability of international law is claiming that law must be enforced directly by police or military. A large function of all viable police work is gathering evidence, not the threat of force. It would be absurd to make such a claim about any genuine law. And the real issue is not only the role of enforceability, but the fact that real law is enforceable over individuals. By so distorting the argument of the critics of international law, these authors distract the reader from the real issues and attempt to make the critics of international law look ridiculous.

The truth of the matter lies with the second point above. Genuine law involves a complex set of relationships between political will formation, democratically legislating bodies, courts, bureaucratic procedures, public recognition, due process arrangements, and enforceability. Weston, Falk, and D'Amato use this complex set of social relationships as evidence that the essence of law does not need to include enforceability. But this itself is a misleading argument. The issue is not whether enforceability is only part of a network of social

relationships comprising legitimate law. The issue is whether enforceability over individuals is *necessary* to this network of relationships, whether the elimination of such enforceability vitiates the entire concept of "law" beyond recognition. I think it is clear that it does.

Another way of stating this is to point out that the analogy between the "complex set of relationships" that make up the law within functioning national legal systems and the set of relationships outside of such legal systems (i.e. in the international arena where so-called "international law" functions) is misleading. It is true that this network of customs, common practices, citizen loyalty, traditions, moral understandings, and habitual ways of doing things is integral to law. But when there is a democratic legislature passing universal, routinely enforced laws for the entire society, this entire system of relationships is transformed into one that can function in the service of real justice, equality, due process, freedom, and prosperity.

When the framework of a democratically legislated body of enforceable law is missing (as in the international arena), then the "network of relationships" functions entirely differently: the strong prey upon the weak, international child prostitution flourishes, slavery and trafficking in human beings or human organs is rampant, international drug smuggling is unstoppable, hit squads of assassins travel the globe looking for their targets designated by national governments or their counterparts in terrorist organizations, currency manipulation and financial fraud is commonplace. Imperialism destroys entire countries with its military and economic warfare, international exploitation of the poor by the rich worldwide flourishes, militarism and worldwide legal and illegal sales in weapons expands annually, unstoppable poverty grows nearly everywhere, and multi-faceted environmental destruction continues unabated. These horrors are not something yet to be dealt with through an evolution or tinkering with the system of international law. Rather, they follow directly from the absurd premises on which international law is based.

Apparently, this "network of relationships" is not too bad for comfortable, First World professors like many of today's professors of "international law" or advocates of "reform" of the U.N. system. Give it time, they seem to say, and the international Mafia-like operations of organized extortion, murder, weapons trading, and robbery will settle down into "customs" that we can consider as yet another source of "global governance." In *When Corporations Rule the World*, David Korten details the devastation, corruption, and destruction that occurs worldwide by the operations of gigantic transnational corporations who understand that power and money can get them anything they

want, from the right to destroy the environment to "free trade zones" where they can exploit starving people at will without regard to labor laws in the host country.

In *The Globalization of Poverty*, Michael Chossudovsky shows in what ways even the horrific genocide in Rwanda was a direct consequence of the international financial rules administered by the World Bank with respect to Rwanda. He shows this social disintegration operating in others places, as well, in consequence of World Bank and IMF policies. Apparently, this "network of relationships" is not so bad for the defenders of international law who may see the vast potential of the international laws of "free trade" that codify this pattern of exploitation, domination, and dehumanization. The books documenting the horrors of today's world under current "international law" are numerous and some of the relevant authors were cited above.

The larger reality ignored by nearly all those in the "reformist" camp is that the strong in today's world (imperial nation-states and multinational corporations) use this anarchic world system to exploit the majority of the world's citizens (primarily the poor) in their greed for evermore wealth and power. These practices are inherent within the premises of the system itself. And for this reason the system also encourages them. They are not the inevitable result of a "greedy human nature." They are the consequences of the fragmented political and economic system of modernity that we have been examining.

Secondly, perhaps the most compelling specific points against accepting so-called "international law" as law at all should be restated at this juncture. As we have seen, so-called international law primarily applies to abstractions called "nation-states" (or what the U.N. calls "states parties" ) and not to individuals. As Harris puts the matter: "The very idea of international law is a standing contradiction, because...sovereign nations are, by their very sovereign nature, subject to no law superior to their own... they cannot then be subject to International Law" (2005, p. 62).

Governments make treaties with one another. These treaties are unenforceable and not binding, since the governments may withdraw from the treaties at any time. Governments may also make "reservations" to their agreement to a treaty, exempting themselves from one or another provision of a treaty that they do not like. Treaties often build in a time limit at which time the treaty expires and must be renegotiated. This system is not, and cannot be democratic. Under the rule of legitimate (democratically legislated) law, individuals (the subjects

governed by law) do not decide whether to agree to the law, when they will exempt themselves from the law, or specify a time-line dictating when they will no longer be subject to the law. Once again, the premises on which "international law" is founded obviate the possibility of anything remotely resembling the genuine rule of law.

Once governments have signed a treaty, Weston, Falk, and D'Amato claim that we now have "law." If a government fails to comply with a treaty it has signed, the "community of nations" can apply economic sanctions or it can go to war against the offending nation (according to the U.N. Charter, Chapter VII). Hence, since the absurdity of "international law" applies only to governments (being treated through the fiction that they are individuals), an entire community must suffer starvation or military attack if the treaty is to be "enforced" on that government. This insane, immoral, and absurd system that believes law can apply to a fictitious thing called "governments" or "corporations" (however supplemented by patterns of "governance" derived from this same set of assumptions), rather than to individuals, is what is known today as "international law."

All of these contentions we have made regarding the conceptual problems inherent in this textbook on international law are also borne out if one studies the website of the International Law Commission of the United Nations (<http://www.un.org/law/ilc/ilcintro.htm>). The site describes the development of the Law Commission out of the failed League of Nations and into the United Nations (founded on the same assumptions concerning "sovereign" states as the League). One can read about its "relationship with governments," with the General Assembly, and with "other bodies." The main "Conventions" that comprise international law are listed, with the explicit caveat that these only apply to states, although they cannot be enforced over states who are "sovereign" and recognize no law above themselves. Also explicitly stated is the fact that the tenants of international law are only "treaties" among sovereign states.

The site makes it clear that treaties can be withdrawn from at any time or entered into with "reservations," exempting the nation involved from obeying whatever it does not like about the treaty. For example, the U.S. finally signed the International Convention Against Genocide (40 years after it was written and signed by many other nations) with a reservation stating that this Convention was not applicable to the United States. Therefore, such treaties

create unenforceable "law" to which, in addition, nations can exempt themselves if they do not like what the "law" says.

All the absurdities of this system that we have identified above are apparent on the website of this prestigious U.N. Commission, just as they are in the "Strategy for an Era of Application of International Law Action Plan" of the Secretary General, also posted on the U.N. website (<http://untreaty.un.org/ola-internet/cover-sheet.htm>). Study of this so-called "action plan" makes it very clear that there is little or no action that the U.N. can take to "apply" international law, that the most that can be done is to "educate about," "train for," and "encourage obedience" to international law. What we have is a world of no law, but only "treaties" among so-called sovereign nations (influenced in governance by other powerful players like multinational corporations, the WTO, the World Bank, and the IMF) in which the powerful do what they wish and the weak suffer what they must.

The in-depth analysis that is missing from both these U.N. websites and this textbook on international law requires the insight first articulated forcefully by Karl Marx in the nineteenth century, then elaborated by dozens of important thinkers through contemporary, twentieth-century philosophers like Jürgen Habermas. The insight is that all unjust societies, all systems of domination and exploitation, *generate a false ideology* to justify and cover up the domination and exploitation that is really going on (see Pines 1993). Today, the concepts of "A free trade," "A peace processes," "A spreading democracy," "international security arrangements," "encouraging development," and "international law" all serve as an ideological cover for a profoundly unjust and undemocratic world order (Chomsky 1996, Smith 2002).

To buy into the idea that the United Nations or international law can be evolved or reformed through citizen participation toward a world of justice, equality, and freedom is to be complicit in this global system of domination and exploitation. International law, as we have seen, is derivative from the system of "sovereign" nation-states, which itself is a global imperial system of domination and exploitation. The ideology covers up the fact that the rulers in this system have no intention of allowing it to evolve towards something more just and decent. However, the fault lies not in particular governments, nations, or rulers, but in the system itself (Martin 2005a, 2005b), which necessarily generates a class of nations or rulers who benefit from the system and will defend it to the end through both propaganda and force.

Noam Chomsky writes at the end of *What Uncle Sam Really Wants* that "the terms of political discourse typically have two meanings. One is the dictionary meaning, and the other is a meaning that is useful for serving power – the doctrinal meaning" (1996a, p. 86). Hence, in the propaganda system (fostered by the mass media, imperial governments, and the powerful), the doctrinal meaning of "democracy," "a crisis of democracy," "free enterprise," "defense against aggression," "peace process," or "special interest," is nearly the opposite of the dictionary definition. For example, Chomsky writes, the doctrinal meaning of "free enterprise...refers...to a system of public subsidy and private profit, with massive government intervention in the economy to maintain a welfare state for the rich" (p. 87).

Economist J.W. Smith similarly describes the ideological function of the concept of "free trade" :

When the blatant injustices of mercantilist imperialism became too embarrassing, the belief that mercantilism had been abandoned and true free trade was in place was expounded. In reality the same wealth confiscation went on, deeply buried within complex systems of subtle monopolies and unequal trade hiding under the cover of free trade. Many explanations have been given for wars between the imperial nations when there was really only one common thread: "Who will control resources and trade and the wealth produced through inequalities in trade?" This is proven by the inequalities of trade siphoning the world's wealth to *imperial-centers-of-capital* today just as when *plunder-by-trade* was learned centuries ago. The battles over the world's wealth have only kept hiding behind different protective philosophies each time the secrets of laying claim to the wealth of others have been exposed. (2003a, p. 85)

Just the same is true of the phrase "international law." Commonly accepted understandings of "law" are twisted by international jurists or U.N. reformers (who wittingly or unwittingly serve powerful imperial interests) into the illusion that the world has a growing body of something called "legitimized politics – a Hydra-headed process of social decision, involving persons at all levels and from all walks of public and private life who, with authority derived both explicitly and implicitly from community consensus or expectation, and supported by formal or informal sanction, effect those codes or standards of everyday conduct by which we plan and go about our lives" (Weston).

Such innocuous sounding definitions serve as an ideological cover for a world system where dominant elites make the rules and reap the spoils at the expense of not only the Earth and the majority of human beings, but truth, justice,

freedom, and human decency as well. The very opposite of legitimate law is here enshrined as "international law." This system must be exposed before the entire world as the travesty of "law" that it is. This system cannot be reformed but can only be replaced by democratic world government, that is, genuine, democratically legislated world law enforceable over individuals.

As we have seen, even the International Criminal Court is not yet a real court as it was created by the Assembly of States Parties. It is hamstrung by the absurd system of so-called "sovereign" nation-states. The U.N. is a mere *confederation* of independent states, not a federation, which could only exist under a genuine *Earth Constitution*. Hence, Articles 2 and 16 of the original Rome Statute allow the Security Council to override decisions of the court. Article 72 allows confederal military circumvention of the court. In Part 9, from Article 86 to Article 98, dozens of provisions grant the court powers to *merely request* evidence, arrest, or *habeas corpus*.

A real court, of course, has the power of *mandamus*, the court order. It can subpoena evidence or witnesses, issue a warrant for arrest, etc. Articles 100, 109, and 112 through 118 contain fiscal provisions that are merely confederal. A real court cannot depend on voluntary donations from sovereign nations for its budget. Articles 124 and 127 allow for nonacceptance of jurisdiction and withdrawal, respectively, by sovereign nations who are party to the treaty that supports the court.

In the Eighth Session of the Provisional World Parliament, meeting under the authority of Article 19 of the *Earth Constitution*, the statute of the International Criminal Court was molded into the language of genuine law. World Legislative Act Number 15 (WLA 15) eliminated those Articles relying on the confederal system, placed the Rome Statute under the authority of the *Earth Constitution*, and replaced all instances of the phrase "the Court may request" with "the Court may order." In doing so, the Provisional World Parliament turned the Rome Statute into an excellent component of emerging world law. Real law is enforceable, and citizens cannot refuse to accept a court's jurisdiction or decide to withdraw from obedience to a court's dictates.

By contrast to the travesty called international law, the Provisional World Parliament has begun to formulate provisional world laws that conform to the norms of authentic law. With respect to the criminal statutes of the ICC, the Provisional World Parliament demonstrates how easily many existing international laws can be converted into real world law. In its Seventh, Eighth, and Ninth Sessions, meeting in 2003, 2004, and 2006, the Parliament adopted

the entire Rome Statute of the International Criminal Court nearly *verbatim* as provisional World Law. With very slight modifications in the language, and by placing the International Criminal Court under the authority of the *Constitution for the Federation of Earth*, delegates used this excellent statute to expand real emerging world law. This statute was placed under one bench of the World Supreme Court designated as "the World Bench for Criminal Cases."

In fact, work of the Provisional World Parliament since its inception in 1982 illustrates how easily illegitimate "international law" can be transformed into effective democratic world law under legitimate government. We don't need to scrap the many valuable U.N. agencies now in place. We do not need to abandon much of existing "international law." We do not have to abolish transnational corporations, nor the territorial and cultural integrity of the world's nations. We simply need the crucial insight that *the premises themselves* of the modern world system (nearly four hundred years old, hopelessly outdated and fragmented) are the source of our insoluble problems and crises. We must simply put the institutions presently in place on the solid foundation of democratically legislated, enforceable world law.

In this chapter we have seen in detail why no existing sovereign nation-state is legitimate. If possession of power alone conferred legitimacy, drug cartels, Mafia organizations, and terrorist networks would be considered legitimate. Many of today's nation-states have nearly sunk to the status of such criminal organizations because they have thrown away their democratic moral legitimacy by refusing to create the democratic world law that can alone restore their social stability, protect the security and safety of their citizens, ensure widespread prosperity, maintain environmental integrity, and democratically empower their citizens. If the nation-states themselves have become illegitimate, the spurious "law" by which they claim to regulate themselves and their corporations beyond their borders is nothing more than a fiction built upon a fiction.

The greatest legacy of the modern period, and the greatest promise of our emergent human potential, we have seen, is the concept of democracy. This concept is today used as a propaganda tool by imperial nations, transnational corporations, the World Bank, IMF, and some agencies of the U.N. to cover up a profoundly undemocratic reality. We must use our common sense critical abilities to penetrate the propaganda that claims they are "evolving" toward democracy. You cannot "evolve" a system based on absurd and contradictory premises. Change these premises and the entire system can easily become genuinely democratic and begin to function in a just and efficient manner.

There is no other route to human and environmental survival and flourishing on this planet.