Globalization, Violence and World Governance

By

Laura Westra
CONTENTS

Foreword, by Upendra Baxi ................................................................. xi
Acknowledgments ............................................................................ xv

Introduction ....................................................................................... 1

Chapter One Globalization and World Governance:
A Preliminary Discussion ................................................................. 7

Introduction: Understanding the Impact of Globalization .............. 7
A Preliminary Discussion of the Possibility of a World State .......... 9
Some Difficulties with "World State Institutions" ......................... 15
Teleology and Causal Explanations: The Better Alternative .......... 17
From Biological to Social Systems? .................................................. 19
Complex Systems and the Problem of Surprises ......................... 20
European Citizenship: A Blueprint for Cosmopolitanism?
  Identity and Democracy ................................................................. 22
A World State Reconsidered ............................................................ 28

Chapter Two Globalization as "Plunder", "Exploitation"
  and "Ecoviolence": A Causal Analysis .......................................... 31

Introduction ....................................................................................... 31
Chimni on a Marxist Course for International Law ....................... 34
The "Right to Development"? ......................................................... 36
Introduction to the History of Development and
  International Law ........................................................................ 40
Chimni on Sen, Development and International Law .................... 44
"Exploitation": A Marxist Category? .............................................. 46
"Plunder" and Covert Illegality ........................................................ 48
From Economics to Biological Integrity: The Case for
  Ecoviolence .............................................................................. 51
State Responsibility for Environmental Harms and its
  Difficulties ................................................................................ 53
Ecoviolence and the Responsibility to Protect ............................. 60
Sovereignty as Responsibility: The Report of the
  International Commission on Intervention and
  State Sovereignty ................................................................... 64
Chapter Three  Hazards, Ecoviolence and the Need for World Law ................................................................. 67

Introduction to the Possibility of New Organizations for Protection from Collective Hazards ............................................. 67
Some Preliminary Considerations ................................................................................................................................. 73
UNEPO: Another Proposal for Global Environmental Governance ................................................................................... 76
“Employing Public Health for Global Justice”? .................................................................................................................. 79
Globalization and Public Health: The Disappearance of State Responsibility in International Law ................................. 81
A “Lawless World” and Global Warming: Environmental Harms and Domestic Law ...................................................... 84
Water as Danger and the Negative Consequences of Climate Change .................................................................................. 86
The Kivalina Complaint and “Civil Conspiracy Allegations” ................. 88
The parents patriae Doctrine: An Old Principle and a Novel Application .............................................................................. 93
The Public Trust Doctrine: A Discussion ......................................................................................................................... 98

Chapter Four  Cosmopolitanism and Neoliberal Democracy in Conflict ............................................................................ 103

Introduction: Adopt World Governance or Modify Existing Institutions? ................................................................. 103
State Sovereignty Revisited ................................................................. 105
Plan Colombia and the Indigenous Peoples of the Colombia–Ecuador Border Region ...................................................... 108
A Brief Overview of the Constitutional Protection Available for the Environment in Colombia and Ecuador .................... 111
The State and Neoliberal Globalization: Democracy v. Principles and Jus Cogens Norms ....................................................... 113
The Limits of Legal Positivism for World Governance ...................................................................................................... 115
The Content and Limits of Jus Cogens .............................................................................................................................. 119
Attacks on the Human Person ........................................................................................................................................... 121
Ecocrimes as Forms of Genocide: A Possible Way to Link Environmental Crimes and Jus Cogens .............................................. 124
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jus Cogens and Erga Omnes Obligations in Defence of the Collective</td>
<td>129</td>
</tr>
<tr>
<td>Current Use of Jus Cogens: Advisory Opinion on Genocide and Bosnia-Herzegovina v. Yugoslavia</td>
<td>131</td>
</tr>
<tr>
<td>The Reality of International Law v. Cosmopolitanism</td>
<td>133</td>
</tr>
<tr>
<td>Chapter Five The Right to Water: Israel v. Palestine (A Case Study)</td>
<td>137</td>
</tr>
<tr>
<td>Introduction</td>
<td>137</td>
</tr>
<tr>
<td>The Role of the United Nations and Collective Human Rights</td>
<td>140</td>
</tr>
<tr>
<td>The Influence of the Early History of the United Nations</td>
<td>141</td>
</tr>
<tr>
<td>National Protection and Religious Beliefs: Israeli Policies and the Palestinians</td>
<td>143</td>
</tr>
<tr>
<td>&quot;National Protection&quot; and the Case of Operation Cast Lead</td>
<td>149</td>
</tr>
<tr>
<td>&quot;Water is a Human Right&quot;: International Law v. Policies of Denial</td>
<td>152</td>
</tr>
<tr>
<td>International Law in Palestine and the Implications of the Right to Water</td>
<td>159</td>
</tr>
<tr>
<td>The Politics of &quot;Plunder&quot;</td>
<td>161</td>
</tr>
<tr>
<td>Genocide or Crimes Against Humanity?</td>
<td>164</td>
</tr>
<tr>
<td>Ratner's Approach: Comparing &quot;Evils&quot;</td>
<td>165</td>
</tr>
<tr>
<td>Crimes Against Humanity Reconsidered</td>
<td>167</td>
</tr>
<tr>
<td>Conclusion</td>
<td>168</td>
</tr>
<tr>
<td>Neoliberal Democracies and Human Rights: Neglected Customary Law Requirements</td>
<td>178</td>
</tr>
<tr>
<td>The Current Responsibility of States for Human Rights</td>
<td>180</td>
</tr>
<tr>
<td>&quot;In Larger Freedom: Towards Development, Security and Human Rights for All&quot;</td>
<td>185</td>
</tr>
<tr>
<td>Aggression and Terrorism in International Law: Violence Beyond Plunder</td>
<td>190</td>
</tr>
<tr>
<td>From 1972 to 2005: Working on an Impossible Definition</td>
<td>191</td>
</tr>
</tbody>
</table>
The Issues: Terrorism and Collective Rights ........................................ 193
Global Governance and the Imposition of "External Constitutions" on States ................................................................. 197
Global Governance for Collective Security ........................................ 199
Fairness in Institutions and the Role of the Security Council ............ 200
A World State? The Possibility of Global Change in Governance ................................................................. 202
The European Union: A Model for a World State? ....................... 204
Cosmopolitanism and Global Change: The Need for "Dual Democracy"? ................................................................. 208

Appendix I       List of Cases .............................................................. 211

Appendix II      List of Documents ..................................................... 215

References ................................................................. 219

Index ................................................................. 233