CHAPTER FOUR

COSMOPOLITANISM AND NEOLIBERAL DEMOCRACY
IN CONFLICT

Introduction: Adopt World Governance or Modify Existing Institutions?

Sed quis custodiet ipsos custodes? (Juvenal)

Whether we term the results of “development” and of neoliberal globalization “plunder”, “exploitation” or “ecoviolence”, the main contention of this work is that these consequences, however defined, cannot be mitigated—let alone eliminated—by current instruments, courts and institutions. Hence the subject of our research has to reach beyond the harms inflicted and beyond the violations of human rights that follow upon the practices of globalization, but it must also ask why we need to seek a new organization when the UN has been promoting human rights and supporting related declarations and conventions that have been multiplying since the Universal Declaration of Human Rights of 1948.

Therefore, in this chapter we will need to move from a consideration of the harms reviewed in Chapters 2 and 3, to discuss the relation between existing institutions, laws and (in particular) organizations, in order to show why they are insufficient, and why new institutions are needed to change the present situation. The last case discussed in the previous chapter shows clearly the importance of the basic principles of natural law and, by implication, jus cogens norms; traditional doctrines that appear to be best suited to deal with the novel threats that do not respond to the current legal regimes and approaches.

We start with the first requirement of a possible changed regime: it must not stop with positivist legal systems that work well in combination with neoliberal policies and globalization. At any rate, international law is what the term states: law between nations, first and foremost. Thus it would be easiest to start by improving the state in some way. Klaus Bosselmann believes that the state ought to be the “environmental trustee” regarding both its own citizens and others affected by its policies, and that appellation is supported by the case

The state has the central authority to govern people in a given territory. The authority involves the making and enforcement of rules based on fundamental principles such as justice and human rights. Without the state, these principles could not be guaranteed (Bosselmann 2008b: 145).

No doubt Bosselmann is influenced by the presence in Germany of debates on “the relationship between Umweltstaat [environmental state] and the Rechtstaat [constititutional state]” (Bosselmann 2008b). Unfortunately, most other Western democracies have no prominent place for such debates, either within or without their constitutions. Whether we consider developed Western countries or developing ones from the global South, ultimately both citizens and the states themselves are powerless because of the unequal global power distribution, and the weakness of international law and of the UN itself.

Western states for the most part support the tenets of neoliberalism through their constitutions; hence they resist any substantial “greening” of state institutions. Bosselmann asks, “How can the state’s territorial integrity be reconciled with the Earth’s ecological integrity?” (Bosselmann 2008b: 16). The answer is obvious, as the fragmentation of the state’s borders and the support of “national interests over global interests” (Bosselmann 2008b: 148) both militate against the recognition of the human rights of the collective, including the ecological integrity of the region.

In fact, international law itself—as it stands—protects neither the environment nor the related human rights, as it is “essentially a regime for the protection of property rights” (Taylor 1998: 118).

Therefore the present “state-centric” international law instruments, as well as the present power of sovereign states, will need a radical review. In addition, the interface between human rights and ecological realities must be laid bare, and the protection of both must be added to present jus cogens norms. This basic change would ensure that the protection would be viewed as an erga omnes obligation, thus transcending the limited obligations of current agreements.

Yet even if such changes in instruments and principles were achievable, the major block remains the lack of a centralized, principled “sovereign” power, beyond the politically driven present organizations such as the WTO and the biased authority of the UN’s Security Council.