Overcoming the Dysfunction of the Bifurcated Global System: The Promise of a Peoples Assembly

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INTRODUCTION

Richard Falk and I have proposed that the time is ripe for global civil society to take the lead and initiate a popularly representative Global Peoples Assembly (GPA). The tremendous growth in the commitment to, and practice of, democracy in domestic settings juxtaposed against globalization's large-scale transfer of political decision making to international institutions has made the almost complete lack of democracy at the international level the most glaring anomaly of the global system today.

Because states are unlikely to initiate the democratization of the international order, the task of beginning the drive for the first GPA necessarily falls to civil society. In taking up this cause, civil society could employ various strategies for bringing about such an assembly. For example, it could establish an embryonic assembly composed of representatives of civil society organizations with the goal that this body evolve into a popularly elected assembly. Alternatively, a very hopeful approach might be to enlist a relatively small core of like-minded states to create a treaty-based electoral assembly to which other countries could over time be persuaded to join. Falk and I have suggested that with the help of any willing states civil society could itself organize elections and establish the GPA. Quite clearly this strategy would entail overcoming formidable challenges. Civil society would have to come up with an institutional mechanism that would be broadly accepted for establishing electoral districts as well as campaign finance and other election rules. The fact that some of the world's more authoritarian governments would almost certainly not allow elections to occur in their countries would have to be dealt with. Until sufficient pressure could be brought to bear, probably after the assembly was well established, citizens of these countries would most likely have to go unrepresented. In other seemingly more receptive countries, civil society would have to guard against attempts to manipulate elections. Once the assembly was constituted, meeting facilities, translation services, office support personnel, and other staff would have to be provided. All of this would call upon civil society
to do more than it has ever done before. Nevertheless, in light of civil society’s recent successes in initiating global reform, Falk and I have suggested that it has the potential (we hope with the help of receptive states) to carry out such a project.5

If a citizen-founded Global Peoples Assembly were in fact to become a twenty-first century reality, it would not, of course, immediately transform global governance. As the third section of this chapter will explain, it would rather establish an institutional structure that would have the potential over time to grow into a legislative body with accepted lawmaking powers. If such an assembly were eventually to evolve into one with a significant legislative role, global governance would likely be improved in several respects. In this chapter I will, however, only explore how the assembly could help overcome the most fundamental institutional dysfunctions of the current international system. To function effectively, any community legal system must be able to prescribe norms of behavior for the community.6 Once such norms are prescribed, the system should be structured so as not to discourage internal compliance,7 and finally, the system should have the capacity to enforce its norms.8 The international system in significant respects fails these most basic tests of functionality.

At present, to a great extent in both theory and practice, elites who control the mechanisms of state power can choose for their states not to be bound by those international laws they do not wish it to be bound by, and even once bound, such elites maintain the internal ability to organize their citizenry to facilitate state noncompliance with the law when they deem it expedient. In response the international system is by and large unable to take effective remedial action to enforce its norms against those individuals who are actually responsible for causing international law violations. What all this means as a practical matter is that those who control state power can on behalf of their states often de jure or de facto opt out of community law.

In this chapter, I will trace the root of the dysfunction to what I call the bifurcated global system, by which I mean the rigid division of the global system into two distinct polities, the domestic and the international. In place of what, with the help of a directly representative assembly, could be an unmediated democratic connection between the global citizenry and the international order, states at present intermediate this relationship. Not only does this result in citizen access to international lawmaking power being channeled through states, but correspondingly, with rare exception, states, at the expense of the international order, maintain a captive monopoly on the legal obligations of citizens. Instead of a seamless democratic global legal system where no one is above the law, what results is a dysfunctional system that allows states to stand in contravention of the law, a system, to paraphrase John Adams, of states and not of laws.9 Tracing the origins of this dysfunction of the international system and understanding how a cure might be found in the promise of a Peoples Assembly is the subject of what follows.
The global system as presently structured relies on states to be intermediaries between citizens and the international system. This means that the planet's six billion citizens are not directly involved in creating international law, and the international legal order, likewise, does not directly command their compliance with its laws. Because law, domestic or international, can only affect the social order to the extent it influences the behavior of real human beings, the process of both creating and complying with international law necessarily must take place in two steps. With some recent qualification, if citizens wish to influence the creation of international law, they must petition their own government, which can, if it chooses, respond favorably to their appeal and work toward the creation of such law.

Once a state has agreed to a law, it must command real persons to do, or to refrain from doing, whatever is necessary to bring itself into compliance with the law. If states wish to establish an effective international regime banning the production of ozone-harming chemicals, for example, they must first enter into an agreement making such chemicals illegal under international law, and then each must preclude the real individuals within its jurisdiction from producing such chemicals. Sometimes the demands might be upon individuals who are acting as agents of the states either by direct employment or by commercial contract. For example, if two countries wish mutually to reduce their stockpiles of nuclear weapons, they must first enter into an international legal agreement among themselves to do so, and then each country must make the requisite demands upon the individuals involved in their respective defense establishments so that compliance with the agreement is achieved. Alternatively, if these two countries wish to agree to create a military alliance with each other, they would enter into an international legal agreement and then command those individuals in their respective defense establishments to act in such a way that the terms of the alliance were met.

The bifurcated system, requiring states to intermediate between citizens and the international order, is quite dysfunctional. It charges states with setting the rules for the international system, including the foundational rules that determine the extent to which states are imposed upon to comply with community norms. States have used this power to further their ability to maintain absolute discretion over the extent of their participation in the system. States, or more precisely those who control state power, have done this by adopting a
rule that allows each state to decide for itself which international laws it wishes to be bound by. Thus, for example, a state is under no legal obligation to agree to be bound by community laws that are necessary to the safety and well-being of the international community. Overtures by the international community to get states to join in pollution control, weapons elimination, or other regimes that are vital to the interests of the global community can all be rejected legally.

The implications of this for the international system are significant. Just as would-be bank robbers are among the least likely citizens to agree voluntarily to subject themselves to domestic laws proscribing bank robbery, those states contemplating action contrary to an international law are the least likely to assent to that law. For example, India's 1995 refusal to agree to be bound by the nuclear non-proliferation treaty might well have foretold its intention to become the newest avowed nuclear power. When, after three years, this came to pass, it precipitated a dangerous arms race in South Asia.

The problems caused by the ability of states to opt out of community norms, however, go beyond the system's inability to extend the law to a limited number of recalcitrant countries. Because treaties are often ineffective without the participation of certain, and sometimes most, countries, a defiant minority can effectively veto the introduction of treaties that are in the vital interest of the world community. This is the practical, but reversible, effect of the United States' refusal thus far to ratify the Kyoto Protocol, the treaty that establishes binding limits on greenhouse gases. The failure to achieve this treaty could have major adverse implication for the global climate, but going forward with a treaty makes no sense without participation by most countries and especially the United States, which accounts for over twenty-five percent of the world's greenhouse gases.

To only focus on obvious failures—the refusal of individual states to accede to international norms, or the potential for a minority of states to effectively veto a treaty—is still to understate the dysfunctionality of the present system. Given the intransigence that so many states exhibit in so many different types of negotiations, when broad-based agreements capable of securing general adherence are reached, it is often done at the cost of sacrificing a treaty's true effectiveness. So riddled with ambiguities and exceptions or reservations, for example, are conventions to protect women, such as the Convention on the Elimination of Discrimination Against Women and the Convention Concerning Equal Remuneration, that these lowest common denominator instruments are severely compromised in their effectiveness.

An effective Global Peoples Assembly would go a long way toward remedying this dysfunction of the international lawmaking system. The delegates to the Global Peoples Assembly, unlike national elites who control the mechanisms of state power, would not have an interest in promoting unfettered discretion by states over whether or not they are to be bound by international legal obligations. Therefore, as distinct from the current international legisla-
tive system controlled exclusively by states, a Global Peoples Assembly, committed to the rule of law, would be much more predisposed to proclaim a functional system of binding law that states could not opt out of. Supporting the right of the assembly to issue such a proclamation and legitimizing it in the public mind would be the fundamental democratic principle that the ultimate power to create law flows from the consent of the governed, and that states do not have the discretion to opt out of law that is authorized by the higher authority of the citizenry. If the GPA were over time to become an accepted part of the international lawmaking system, possibly integrated into an expanded United Nations, such a proclamation could become accepted as a fundamental legal precept of the international system. After all, what appears so obvious in a domestic setting—that no functional legal system can give its subjects the individual discretion to opt out of laws they do not like—should, once officially proclaimed, come to appear obvious in the international setting as well.

THE PEOPLES ASSEMBLY AND THE DYSFUNCTION OF THE INTERNATIONAL LAW COMPLIANCE SYSTEM

Once a state consents to be bound by an international law, it is obliged to follow that law. But here too, the system remains dysfunctional. Although states at this point no longer have the legal right not to comply with community norms, the bifurcated system is specifically designed to give them the practical ability to do just that. Because states (with one significant emerging exception) continue to be the sole source of law applicable to citizens, they maintain the ability to mobilize their citizens to directly contravene their international legal obligations.

Securing institutional compliance with law is different from securing the compliance of individuals because institutional action that is intended to be either in conformity or not in conformity with the law is itself largely organized and coordinated through rules. States wishing to maintain centralized control over their compliance with international law must, therefore, come up with some legal mechanism for coordinating the actions of their citizens in the furtherance of directing either compliance or noncompliance with international law. There are different doctrinal approaches used by states to accomplish this. The United States follows a particular application of what is called dualism, which maintains—consistent with the bifurcation of the international system—that international law and domestic law are two totally distinct systems of law. International law applies between states, and domestic law applies within states. The American approach, however, provides that international law is automatically incorporated into U.S. federal law so that it becomes the law of the United States. This means that, in the normal course, when political authorities desire for international law to be followed, they simply allow for such incorporation. However, since U.S. domestic law holds that a later-in-time federal law takes precedence over an earlier-in-time federal law,
by passing legislation inconsistent with a previous international legal obligation, the United States political branches can effectively direct those subject to its jurisdiction to violate international law.

Some other countries give internal precedence, to a greater or lesser extent, to international law over their domestic law. Those that give precedence as a general rule to international law are referred to as “monist.” All countries are ultimately “dualist,” however, in the sense that as a result of the bifurcated international system, their own governing institutions (often their constitutions) are the ultimate determiners of which law will be given precedence. As long as it remains the case that states maintain ultimate control over their own internal compliance with international law, they will have the option of organizing their citizens so as to promote the violation of international law.

In a legal system organized to maximize law compliance, such an option would not exist. For example, within the domestic realm, corporations are somewhat analogous to states in the international realm in that each entity is self-governed through a system of internal rules and yet operates within the context of a larger community legal system. In all countries, however, the larger community legal system attempts to secure the legal obedience of these corporate entities by imposing compliance obligations not only upon them but also upon those employees who work within their structures. Indeed, we would regard it as quite illogical for the state to limit intentionally the effectiveness of its ability to secure compliance with its mandates.

A Global Peoples Assembly would very likely improve the international compliance system by extending the obligation to obey international law directly to individuals. Unlike the national governing elites who, acting as agents of their states, have colluded to maintain an international system whereby their claims on citizen legal obligations are uncontested, a GPA dedicated to an effective system of law would be inclined to proclaim transnational law to be binding on citizens. Correspondingly citizens who directly participate in the international system would likely come to accept and even expect that the law their assembly creates would apply directly to them.

To the extent such law actually comes to be generally accepted by citizens as applicable, in what could be labeled “compliance from the inside out,” states would lose the ability to mobilize their citizens in contravention of transnational law. The old system would be turned on its head. States would no longer, as under the bifurcated system, be the vehicle that must be relied upon to bring their citizens into compliance with international legal obligations. Instead, because states are in effect the sum of their citizens, citizen compliance with international legal obligations would necessarily result in state compliance as well.

THE PEOPLES ASSEMBLY AND THE DYSFUNCTION OF THE INTERNATIONAL LAW-ENFORCEMENT SYSTEM

Not only does the bifurcated system facilitate the organizational ability of states to break international law in the first instance, but it does not allow for
an effective remedial system of enforcement. Under the bifurcated system, states rather than individuals are the exclusive subjects of international law, so enforcement is with rare exception both against states and by states.

Enforcement against states takes several forms. The most far-reaching enforcement powers are given to the United Nations Security Council under Chapter VII of the United Nations Charter. Under Chapter VII, the Security Council has a right either to impose economic sanctions or use military force against a nation whenever it determines "the existence of any threat to the peace, breach of the peace, or act of aggression." More narrowly focused treaty organizations also have certain enforcement powers. For example, the World Trade Organization (WTO) can authorize members to introduce retaliatory trade restrictions against other states that have violated one of the agreements enforceable by the WTO, such as the General Agreement on Tariffs and Trade. Other organizations, such as the International Labor Organization (ILO), rely on criticizing the practices of countries, or what is sometimes referred to as the "mobilization of shame," in attempts to enforce their norms. What these international enforcement practices all have in common, however, is that the state itself is the unit upon which enforcement is targeted.

Such enforcement against an artificial person as complex and diffuse as a state is both ineffective and violative of basic human rights. Elites who control state power and can cause international law violations often personally benefit or are responsive to those who personally benefit when their country violates international law. Whether they or those to whom they are beholden actually benefit, those elites are seldom forced to face personally the consequences of their actions. If they hail from powerful states, their ability to mobilize the machinery of their own state against international enforcers can remove the possibility that any enforcement action will be taken or, if taken, that it can have any significant affect on their state. Those individuals from less powerful countries who cause violations usually fare as well. While their countries may be the target of international enforcement action, with their social power comes the capacity to insulate themselves from the effects of such action. This seems particularly true in the more authoritarian countries where leaders can successfully insulate themselves from the effects of negative public opinion. Perversely, those who have little responsibility for engineering violations of international law often bear the brunt of enforcement action. Obviously, this significantly limits the deterrent effect of the international enforcement system. In addition, collective punishment is contrary to accepted notions of human rights. Even for those who, inconsistently with international law and accepted notions of justice, would have it that citizen passivity in the face of violations of international law or even widespread acquiescence in following the commands of the state calls for some type of collective responsibility, the bifurcated compliance and enforcement systems taken together are internally inconsistent. The compliance system, as I have discussed, makes no attempt to pierce the veil of the state to extend its legal obligations to common citizens.
Thus, citizens under the present system are in effect held collectively responsible for violating laws that they were not expected to comply with in the first place.

Nowhere has the dysfunction of the international enforcement system become more clear than in the United Nations Security Council–authorized war and the ten-year-long sanctions regime against Iraq. Perhaps indicative of the overall state of the international enforcement system, this is frequently thought of as a great example of successful international enforcement because Iraq was dislodged from Kuwait. During the war, however, hundreds if not thousands of Iraqi conscripts were killed, almost all of whom, of course, had no role in the decision to invade Kuwait. While the Iraqi dictator is reported to be profiting from smuggling opportunities made possible by the sanctions regime (which has been ineffective at meeting its political objectives), many Iraqi children are reported to have died as a direct result of the sanctions. Obviously, any enforcement system that systematically sanctions the innocent rather than the infractors is both perversely unjust and deficient in promoting law-abiding behavior.

Compounding the dysfunction of this system where enforcement is almost entirely against states is the symmetrical reality that enforcement is almost entirely by states. Under the bifurcated system, states largely stand between the international order and the real persons whose activities are ultimately necessary to carry out enforcement measures. The international order only maintains direct but limited control over a small number of international civil servants composed mostly of technical specialists. For example, when the United Nations Security Council takes action under Chapter VII, the organization itself has no direct means of enforcing economic sanctions or applying force against a country. Rather, it must rely upon its state members who are alone capable of mobilizing citizens to carry out enforcement measures. In the Gulf War Chapter VII action against Iraq, the United Nations Security Council “authorized” what was effectively the United States, Britain, France, and Saudi Arabia to “use all necessary means” to get Iraq out of Kuwait, and it is primarily American naval ships that have been enforcing the oil sanctions against Iraq. Practical proposals to enhance the independent enforcement abilities of the international order have mostly fallen on the deaf ears of states (particularly powerful states) committed to maintaining the prerogatives that come with the strict bifurcation of the global order.

Under such a system, the imposition of enforcement measures becomes highly politicized. In determining whether enforcement measures will actually be imposed against an infractor, such legitimate considerations as the severity of a violation, the future danger posed by the infractor, or its past incorrigibility are weighed against the geopolitical and other interests of would-be enforcing states. Strategic alliances, business considerations, the ethnic identifications of domestic constituencies, and the general diplomatic and military power of the infractors can individually or collectively conspire to preclude enforcement
in any given case. Not only does the politicization of the enforcement system compromise enforcement in individual cases, but to the extent states can predict that no action will be taken against them, the enforcement system loses its ability to deter violations. Perhaps most importantly, such politicization undermines the perception that law rather than politics guides the international enforcement system, greatly frustrating the creation of an international ethic of respect for the rule of law.

An empowered Global Peoples Assembly could remedy both of these dysfunctions. If, as suggested, a GPA dedicated to the creation of a fully functional international system were to extend the obligation to comply with transnational law directly to individuals, presumably it would correspondingly provide that that law be enforced against them as well. Then, in accordance with principles of fairness and deterrence, those actually responsible for law-breaking would themselves be the target of legal sanctions, and the ability of states to mobilize their citizens in contravention of the law would be further eroded. In addition, with a GPA, enforcement would no longer have to be dependent upon the vacillating willingness of states to undertake enforcement action. Over time, an empowered GPA would have the potential to directly authorize an international infrastructure to enforce international law directly. While visions of a standing army come to mind, this would be by far the most controversial enforcement mechanism that might come to be considered by the GPA. Most direct enforcement would be far more everyday and mundane. Armies of bureaucrats rather than soldiers would be the most likely to be marshaled and would in many ways provide a far more effective and hopeful vision for the future. To the extent that the bifurcated structure of the international order begins to break down and international law comes to be directly enforced against citizens, the state will begin to lose its ability to break international law. With the growth of a more law-abiding world, it is to be hoped that standing armies will become a much less prominent feature of the global architecture.

FULFILLING THE PROMISE: THE EMPOWERMENT OF THE GLOBAL PEOPLES ASSEMBLY

It is, of course, one matter for a citizen-created Global Peoples Assembly to proclaim internationally prescribed regulation to be binding, applicable to citizens, and directly enforceable on citizens by international institutions. It is quite another matter for such proclamations to become institutional reality. To counter the impression that the creation of an assembly-led seamless global legal system, while perhaps desirable, is purely in the realm of the utopian, I will now explain how such a transformation could over time become a reality.

As Richard Falk and I explain elsewhere, the ideological underpinnings of the global political order were at one time based upon the divine right of kings. The bifurcation of the international order arose because monarchs who personified the state were thought to be the fundamental repository of all worldly political authority. Under this conceptual structure monarchs were empowered
to lord over their subjects below and to become the exclusive progenitors of the inter-state order above. As a result of a fundamental paradigm shift that has occurred, beginning over two hundred years ago, however, political authority is no longer thought to come directly from an absolutist ruler. Rather, people today increasingly accept the notion that political authority comes from the citizens who are called upon to validate political leadership through periodic elections. While the state maintains its role as the final political authority, what is different is that this authority is now delegated from its ultimate source, the citizenry. This means that if citizens were to circumvent the state and themselves create an elected transnational authority to which they would directly delegate certain transnational powers, the state could no longer lay ideological claim to be the sole source of all international political authority. For the first time, an international institution would have a basis of authority separate from that which has been derived from the consent of states.

The Global Peoples Assembly's democratic foundation, however, would not immediately translate into the kind of binding powers that would end the dysfunction of the international system. Traditional political and bureaucratic structures reinforcing state power and the established notion that international law is created by states would not automatically transform themselves with the mere realization of the Global Peoples Assembly. Rather, at first the assembly as a nongovernmental institution would likely be regarded, at least within official circles, as only empowered to issue unofficial and nonbinding resolutions and declarations. In what Falk and I refer to as the “socio-political and ideological dynamics of empowerment,” however, the assembly would hopefully come to achieve its democratic potential.

What we mean by sociopolitical empowerment are those social and political dynamics that would be unleashed by the existence of the assembly and would enhance its ultimate ability to command authority. This process of sociopolitical empowerment would begin with the first elections. Born amidst the publicity that would result from worldwide citizen participation in elections and uniquely capable of speaking in the name of the global citizenry, the assembly would act as a magnet drawing organized interests with globally oriented policy agendas into its field. Civil society organizations, in particular those that, as I have mentioned, have been frustrated in their attempts to participate in the state-centric international system, would likely take advantage of the democratic opportunity afforded by such an assembly. By lobbying the GPA to endorse their positions formally, these organizations would force states and others with opposing policy goals to either concede the legitimacy afforded by the only popularly elected global body or to themselves competitively engage its processes.

Our experience of parliamentarianism writ large tells us that as transnational citizen groups organize to petition the assembly directly, they would form coalitions with other like-minded citizen groups for the purpose of more effectively challenging other similarly coalescing groups. As the organized citizenry
increasingly came to find the Global Peoples Assembly useful as its forum for resolving political conflict of a global nature and achieving a workable social consensus, the center of political gravity would gradually shift in favor of the GPA. Allowed for the first time to participate in the international lawmaking process directly, the organized citizenry would tend to become institutionally committed to the Assembly and invested in its legislative product.

The citizenry at large would as well tend to be drawn into the assembly’s field. The need for candidates for the assembly to appeal to the electorate would naturally incorporate it into the global system. Discussions that once were considered the elite province of foreign relations specialists and in which citizens could at best participate indirectly at the national level would be as a matter of course broadened to incorporate the newly enfranchised citizenry as a whole. Still, this political vitality would not in itself mean that the assembly would gain the power to create binding law applicable and enforceable in the ways called for in this chapter. This would potentially result, however, from the addition of what Falk and I call the ideological dynamic of empowerment, the acceptance of the assembly’s democratic claim to exercise legal authority by those existing institutions that are themselves imbued with formal lawmaking powers.54

Domestic courts are the most obvious of such institutions. Certainly at least a few pioneering litigants with the institutional backing of the assembly’s supporters, or simply because such arguments would be helpful to their cause, would begin to cite the assembly’s directives as authoritative. On the pages of law journals, academic supporters of the assembly could be counted on to provide the rationale for this position by applying globally the familiar arguments supporting the legal powers of democratic assemblies. If the assembly were in fact gaining the institutional allegiance of the citizenry, some of the bolder progressive judges in open societies would be tempted to be among the first to accept this democratic logic.55 To the extent judicial acceptance were to occur,56 the ideological coherence underlying the doctrine of dualism would be eroded, and with such erosion the state’s political authorities would lose from within their absolute control over the state’s ability to violate international law.

Other lawmaking institutions could as well help solidify the assembly’s de jure legislative authority. Acceptance of the assembly’s powers by international courts and tribunals would put pressure on state executive and political decision makers to recognize the assembly’s authority. Further pressure could come from the assembly’s efforts to lobby governments on its own behalf as well as from a GPA-organized international plebiscite putting approval of the assembly’s powers to the global citizenry.

Some national parliaments or their equivalents might unilaterally accept the assembly’s powers. However, the definitive event would be when states, the primary entities with a rival claim to power, act collectively to formally recognize the assembly’s legislative authority. This could be done by way of a treaty officially defining the assembly’s powers as part of the overall constitutional structure of the United Nations system of global governance. This, of course, would
not happen solely as a result of the compelling logic in favor of the assembly's democratic authority, but rather out of an acceptance of a new political reality that sees citizens increasingly coming together to resolve political conflict and achieve social consensus within the framework of the Global Peoples Assembly. As this citizen heart of pluralist decision making migrates in the direction of the Global Peoples Assembly, governments would only be acknowledging a reality over which they had little direct control.

If a Global Peoples Assembly were to be established at the instigation of civil society, it is, of course, impossible to know if it would develop in the ways suggested. Much would depend upon serendipity and the competence and integrity of the representatives who came to be identified with the assembly. There are historical reasons, however, to be optimistic that the dynamics I have suggested would play themselves out in ways that would empower the assembly. After all, the venerable English Parliament began as but an advisory body to the Crown. Nevertheless, as the democratic ideal took hold its status as the representative of the people secured its eventual supremacy. Moreover, in our own time there is indeed precedent for a transnational assembly along the lines of a GPA. The directly elected European Parliament, although once a largely symbolic representative of the peoples of the European Union, has today attained significant law making powers. What is more, it is the national governments of the European Union that have acted primarily on their own initiative to create and strengthen that institution.

Perhaps the most significant force that would propel the eventual empowerment of a GPA is the sheer need for such an organization. The global system is dysfunctional, and as globalization proceeds, the need to find transnational solutions to once local problems continues to accelerate. As the recent protests in Seattle have made clear, citizens are increasingly unlikely to continue willingly to allow themselves to be excluded from the global decision-making process. Political and commercial elites attempting to solve global regulatory problems are, therefore, increasingly likely themselves to come to accept the need for some kind of innovation along the lines of the GPA.

If indeed a GPA does come to pass, and if its authority is to evolve in accordance with some rough approximation of what has been described, then over time, it could carry out what has been called for in this chapter as necessary to overcome the dysfunction of the international system: make international laws that are binding, applicable to citizens, and directly enforceable on citizens.

CONCLUSION

Some will regard the ability of a popularly elected Global Peoples Assembly to seriously remedy the major dysfunctions of the international system as a hopelessly utopian dream. I have done my best to respond. Others, however, might come to the opposite conclusion. They might see the GPA as a potentially dangerous Leviathan paving the way toward world domination. In concluding, I would like to briefly address this concern.
A word of qualification is first in order. It is far beyond the scope of this chapter to suggest in any detail the structure of a Global Peoples Assembly. While future academic works exploring alternative models would be useful, the ultimate framework for a GPA must, of course, be determined by democratic process, and at any rate, as the analysis in this chapter makes clear, a GPA born of citizen initiative would very much be a constitutional work-in-progress. The role it would eventually settle into playing in the overall global order would not be known for many years.

Having said all this, to propose a Global Peoples Assembly endowed with certain lawmaking powers is not the same as to suggest an all-powerful sovereign-like organization. Such a model would likely be unacceptable to just about everyone. The template that would achieve the most support would likely be drawn from some sort of federalist or confederalist model. In accordance with what the Europeans call “subsidiarity”—the principle by which decisions are made as closely as possible to the citizen60—the assembly’s powers would be limited in such a way as to protect autonomy over national matters.61 Indeed, such deference to internal affairs is the vision presently endorsed by Article 2, Section 7 of the United Nations Charter.62 Likewise, given the present commitment to international human rights, the international community is likely to insist that an empowered assembly be limited by the Universal Declaration of Human Rights.63 How these rights would be enforced as well as the GPA’s relationship with the United Nations and other international organizations and tribunals would all have to be determined.

Would there be any absolute guarantees that despite the best of intentions such an assembly would not help pave the way toward a consolidation of power that could be fundamentally threatening to freedom? Probably not. However, it seems clear from political theory, experience at the national level, and indeed common sense that democratic outcomes are most likely to proceed from democratic structures. In addition to any structural checks and balances established, the assembly’s legitimacy would be grounded in popular democracy and its usefulness as a forum for pluralist decision making rather than loyalty to a sovereign, an authoritarian ideology, or nationalism. Such an institution would be difficult to convert to authoritarian ends without losing the normative command over citizen legal obligations upon which, as previously discussed, the institution’s authority ultimately depends.

That the present international order is, in contrast, not structured to allow for democratic participation has been the basic premise of this chapter. What may be less obvious, however, is the extent to which the bifurcated system is configured to allow authoritarian governance to persist at the national level. In the first place, national governments, whether they be democratic or not, continue in their role as the ultimate and exclusive focal points for citizens’ legal obligations. Even to the extent that national governments come to embody the democratic spirit, such a bifurcated system of discrete democracies channels citizen legal obligations so that state-defined societies are structurally juxta-
posed to each other. Coercion of one society by another ultimately backed by the ever-present threat (and often use) of military violence is an inherent feature of this bifurcated structure. Such architecture is, of course, the antithesis of seamless democratic governance which results when an integrated democratic structure is designed to protect the rights and security of everyone. To make matters worse, in truth even the best of discrete democracies cannot enjoy an insulated fully functional democratic existence. The democratic health of every society will be to some extent compromised by national security concerns as long as the bifurcated system predetermines an ever-present threat from other societies.

On balance, therefore, it seems far more likely that a democratic future will be attained with the implementation of democratic structures at the international level than without. As this chapter has suggested, the bifurcated system that provides that states be the ultimate focus of citizen’s legal obligations is a remnant from a previous era when absolutist national rulers were accepted as divinely mandated with supreme and absolute power. In the modern democratic view it is commonly held that within states political power at all levels of governance must directly involve the citizenry. It is time these basic democratic principles were applied to the international order. As more political decision making takes place within the confines of the undemocratic international order, to continue to leave this anomaly unchallenged is to lose ground in the quest for democracy and to see the dysfunction of the bifurcated system become increasingly debilitating.

NOTES


2. Over the last thirty years there has been a significant global trend toward democratization. It started in southern Europe in the mid-1970s, engulfed Latin America in the 1980s, and expanded to many parts of Asia, the former Soviet Union, Eastern Europe, and Africa in the late 1980s and early 1990s. According to Freedom House, 117 countries—more than sixty percent of the world’s states—are now, at least in a qualified sense, democratic. See Adrian Karatnycky, “The Comparative Survey of Freedom 1998–1999: A Good Year for Freedom,” in Freedom House: The Annual Survey of Political Rights and Civil Liberties 1998–1999 (New York: Freedom House, 1999), 1, 3. Reporting on and interpreting this trend toward democracy has not surprisingly been a major theme among commentators. Receiving perhaps the most notoriety has been Harvard political scientist Samuel Huntington, who, in 1993, introduced the concept of waves of democratic expansion and surveyed the advance of democracy around the world. See generally Samuel P. Huntington, The Third Wave: Democratization in the Late Twentieth Century, Julian J. Rothbaum Distinguished Lecture Series, Vol. 4 (Uni-
yersity of Oklahoma Press, 1993). At about the same time, a related work by Thomas Franck received a great deal of attention within the international law community. Franck, the recently retired president of the American Society of International Law, celebrated this trend toward democratization by suggesting that international law was in the process of evolving a right to democratic governance. See Thomas M. Franck, "The Emerging Right to Democratic Governance," American Journal of International Law 86, 1992. While the global trend toward democratization heralded by Huntington and Franck continues, or certainly has not lost significant ground, scholars have more recently begun to give greater emphasis to the frailties of existing democratic systems and the potential limits on the further expansion of democracy. See Samuel P. Huntington, The Clash of Civilizations and the Remaking of World Order (New York: Simon and Schuster, 1996) (asserting that democratic expansion is limited by its connection to Western cultures); Fareed Zakaria, "The Rise of Illiberal Democracy," Foreign Affairs, Nov./Dec. 1997, 22 (observing that despite electoral validation, many governments maintain authoritarian systems of administration); Thomas Carothers, "Democracy without Illusions," Foreign Affairs, Jan./Feb. 1997, 85 (discussing the countermovement away from democracy).

3. Many observers perceive this evolution of power to the international order. For some important works, see Susan Strange, The Retreat of the State: the Diffusion of Power in the World Economy (Cambridge: Cambridge University Press, 1996), 49 (arguing that state power is giving way to the power of global institutions and multinational corporations); Christoph Schreuer, "The Waning of the Sovereign State: Toward a New Paradigm for International Law?" European Journal of International Law, 4, 1993, 447, 451 (discussing the increasing independence from their state constituents of such international organizations as the World Health Organization, the International Monetary Fund, and the World Trade Organization); Robert J. Holton, Globalization and the Nation-State (London: Palgrave, 1998), 50-79 (noting the evolution toward transnational networks and regulatory arrangements).

4. Now surfacing are several preliminary but important citizen efforts to create an institution similar to what we are calling the Global Peoples Assembly. Out of Perugia, Italy, an initiative called the Assembly of the United Nations of Peoples has attempted to organize civil society organizations into a quasi-representative assembly. In 1998, with civil society organizations from one hundred countries in attendance, it had its third assembly. Similarly significant is the Global Peoples Assembly Movement, which had its inaugural meeting in Samoa in April 2000. Like the Perugia initiative, this movement's purpose is to create an ongoing institutional structure that would allow the global citizenry to have an effective voice in global governance. The civil society organization, Citizen Century, launched a major effort to begin an organizational drive to link all the national parliamentarians of the world together over the Internet into a voting body. In addition, a major discussion is currently going on within the World Federalist Association on whether it should return to its roots and itself participate in an organizing drive for a Global Peoples Assembly. Perhaps most important, and linking all of these initiatives, was the Millennium NGO Forum. At the invitation of the United Nations Secretary General, representatives of hundreds of civil society organizations convened in May at the United Nations Headquarters in New York. One of the primary stated goals of the forum was "to create an organizational structure whereby peoples of the world can participate effectively in global decision-making." The forum's outcome was reported on by the Secretary General at the special millennial assembly of states which examined the future architecture of the global system of governance.

5. See Falk and Strauss, "On the Creation."
7. Ibid., 61–83.
8. Ibid., 86.
10. Nongovernmental organizations, often now referred to as civil society organizations, are increasingly attempting to bypass the nation-state and participate directly at the international level. For further discussion, see generally Peter J. Spiro, "New Global Communities: Nongovernmental Organizations in International Decision-Making Institutions," *Washington Quarterly*, Winter 1995, 45; Dianne Otto, "Nongovernmental Organizations in the United Nations System: The Emerging Role of International Civil Society," *Human Rights Quarterly*, 18, 1996, 107; Dinah Shelton, "The Participation of Non-Governmental Organizations in International Judicial Proceedings," *American Journal of International Law*, 88, 1994. While international organizations have been reluctantly and tentatively opening their doors to citizen organizations, within the logic of the present international system, constituted as a community of states rather than citizens, there is no clear structural role for citizen organizations to play.
11. The dominant view is that under the bifurcated international legal system, international law emanates from the general consent of states. See, e.g., Louis Henkin, "International Law: Politics, Values and Functions," *Recueil des Cours* 216, 1989, 46 (proclaiming that "[i]nter-state law is made, or recognized, or accepted, by the 'will' of States. Nothing becomes law for the international system from any other source"). This view, while generally endorsed by those who control the mechanisms of state power, has been contested. See Myres McDougal et al., *Studies in World Public Order*, New Haven Studies in International Law and World Public Order, no. 1 (New Haven: Yale University Press, 1960); Richard Falk, *Law in an Emerging Global Village: A Post-Westphalian Perspective* (Ardsley, NY: Transnational Publishers, 1998).
13. Generally speaking, states have accepted the view that they are only bound by those international laws to which they agree, either explicitly by treaty or impliedly by customary practice. This statement, however, draws upon a long tradition of discussion and debate and is subject to some qualification. First, in regard to customary international law, states have traditionally maintained that they are only bound by customary laws that they accept. The generally accepted requirement, however, for manifesting a lack of consent ("the persistent objector rule") demands that states declare their intention not to be bound by a customary law at the time of the formation of the law. For a variety of reasons, this is sufficiently unlikely to happen that, practically speaking, most of the time states are considered bound by customary international law. Second, and more fundamentally, there has been an increasing, although seldom articulated, trend toward viewing customary international law as binding on even those states that have stated a desire not to be bound based upon a subtle shift to the notion that a general consensus among states binds all states. For further discussion, see J. Patrick Kelly, "The Twilight of Customary International Law," *Virginia Journal of International Law*, 40, 2000, 449. Most states, however, do not seem to accept this view.

Treaties are to an ever greater extent replacing customary international law as the primary source of legal obligations on states. Whether a state wishes to adhere to a treaty is, under the state-created rules of the international system, always voluntary.
Here, however, some qualification is also in order. While a state always has the legal option to resist a treaty, as a practical matter, in certain cases diplomatic pressure may be such that a state actually has little option but to accept a treaty. For a discussion of this problem, see Robert Keohane, "Reciprocity in International Relations," *International Organization*, 40, 1986, 1.

The final qualification to the absolute ability of states to opt out of international law is that most states seem to accept that in certain very limited cases fundamental international norms can apply to states that do not in any way consent to be bound by them. They hold that, regardless of consent, states can be bound by natural law (some concept of absolute right) not to engage in certain basic wrongs. See, e.g., Vienna Convention on the Law of Treaties, May 23, 1969, Article 53, 115 U.N.T.S. 331, 334 (1969) (providing that a treaty is "void if . . . it conflicts with a peremptory norm of general international law"). Peremptory norms are probably inclusive of core human rights standards. See Lauri Hannikainen, *Peremptory Norms (jus cogens) in International Law: Historical Development, Criteria, Present Status*, Part III (Philadelphia: Coronet Books, 1988).

14. Treaty on the Non-Proliferation of Nuclear Weapons, opened for signature July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161. In 1995, India refused to agree to an extension of the nuclear nonproliferation treaty. Almost all of the nonnuclear weapons states have joined the nonproliferation treaty, which requires them to remain nonnuclear. The five nuclear weapons states party to the treaty have accepted the treaty's requirements that they eventually eliminate their nuclear weapons. Only India, Pakistan, Israel, and Cuba have not joined the global regime. Cuba is not thought to have nuclear weapons. Israel does, but has not declared itself to be a nuclear weapons state. Only India and Pakistan have tested nuclear weapons and declared their nuclear status.

15. By using India's failure to adhere to the extension of the nuclear nonproliferation treaty, I do not mean to imply that India's arguments against the treaty were without validity. India argued that there had, in fact, not been a good faith effort on the part of the nuclear powers to meet the treaty's nuclear disarmament requirement and that the treaty, therefore, acted to legitimize a discriminatory state of affairs. India was particularly concerned that China, with whom it shares a border and a history of tension, continued to retain such weapons.

16. In May 1998, India conducted nuclear weapons tests and declared itself to be a nuclear weapons state. Fifteen days later, rival Pakistan, claiming it had no other strategic choice but to follow India's lead, conducted its own series of tests and also declared itself a nuclear power. For further discussion of the implications of this for regional and global security, see Strobe Talbott, "Dealing with the Bomb in South Asia," *Foreign Affairs*, March/April, 1999, 110; "The Most Dangerous Place on Earth?" *Economist*, May 22, 1999, 5.


My assertion that the United States is acting to "veto" the Kyoto Protocol needs some explanation. In December 1997, the United States joined 150 other countries in Kyoto, Japan, under the U.N. Framework Convention on Climate Change to finalize negotiations over an agreement to provide for mandatory reductions in greenhouse gases. After difficult negotiations, a final agreement was reached that provided a comprehensive plan to reduce greenhouse gas emissions between 2008 and 2012. Developed countries are required by the protocol to reduce emissions significantly below 1990 levels; however, the requirements for developing countries are far less stringent.
President Bill Clinton signed the protocol. Strong opposition to the treaty, however, developed within the United States Senate because of stated concerns over the lack of "meaningful participation" by developing countries and the impact of the treaty on the U.S. economy. President Clinton, therefore, did not present the treaty to that body for ratification, and instead attempted to negotiate with developing countries so that they might assume greater responsibility for the reduction of greenhouse gases. When President George W. Bush took office, he unconditionally rejected the Kyoto Protocol.

While most other countries have also not yet ratified the convention, their reluctance has not principally been opposition to the treaty but a desire to see what would happen in the United States. While it is certainly too soon to say that the United States has permanently defeated the treaty, and an ultimately stronger treaty with increased developing country participation might emerge, it is not clear that the U.S. Senate, unless ideologically reconstituted, will ever ratify the treaty. Certainly the United States is causing a delay in the full implementation of measures necessary to deal with the problem of global warming.


20. See Mike Dunn, "Conference to Affect State: Nations Will Gather to Discuss Global Warming," Solutions, The Advocate, Nov. 30, 1997, 1B. Realizing this, the protocol’s drafters provided that the protocol needs to be ratified by fifty-five parties representing at least fifty-five percent of global carbon emissions in order to come into force. See Kyoto Protocol, Article 24.


22. Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (ILO Convention No. 100), June 29, 1951, 165 U.N.T.S. 303. The language of the convention is so hedged that states are not bound to much of anything. See especially Article 2.

23. Of course, this is not to imply that a claimed right of the assembly to impose law should or would be without limitations. Such a claimed power of the assembly to create or participate in creating binding law would only be likely to be accepted to the extent that it was constitutionally limited to matters within the proper scope of international decision making.

24. Following World War II, the notion that at least certain international human rights and humanitarian norms apply not just to states, but also to individuals, began to gain acceptance. The watershed events were the Nuremberg and Tokyo trials and convictions of individuals for wartime violations of international humanitarian and human


26. Consistent with the bifurcation of the global system, both the domestic and international orders have their own separate bodies of law, and each has its own distinctive law-applying institutions. International law is created by states through procedures that manifest their consent either explicitly through treaties or implicitly through customary practice. See note 13. Domestic law, on the other hand, comes exclusively from the domestic system. In the United States, Congress, state legislatures, administrative agencies, and courts, to name a few, are all lawmaking institutions. International legal problems are largely resolved through international dispute resolution mechanisms, such as diplomacy, international arbitration, or the International Court of Justice, while domestic legal problems are thought to be largely resolved in national legal institutions, most notably domestic courts. See J. G. Starke, “Monism and Dualism in the Theory of International Law,” *British Year Book of International Law*, 17, 1936, 66, 68; Josef L. Kunz, “The ‘Vienna School’ and International Law,” *New York University Law Review*, 11, 1934, 370, 399; Hans Kelsen, *Principles of International Law*, 2nd ed., edited by Robert W. Tucker (New York: Holt, Rinehart, 1966) 446–447.

27. See “The Paquete Habana,” 175 U.S. (1900), 677, 700 (“[1]nternational law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination”). Not all international law, however, is incorporated into United States law. Only what are called “self-executing” treaties and other “self-executing” international agreements, as well as customary international law that is appropriate for
application by domestic courts, are incorporated. All other international law is limited to application in international fora. See Restatement (Third) of the Foreign Relations Law of the United States, Section 111(3) and commentary c (American Law Institute, 1987).

28. The Supreme Court has interpreted the Supremacy Clause of the United States Constitution (U.S. Const. Article VI, Section 2) to support the equal status of self-executing treaties and statutes and consequently has endorsed application of the later-in-time rule. See Whitney v. Robertson, 124 U.S. 190, 194 (1887) ("By the Constitution, a treaty is placed on the same footing, and made of like obligation, with an act of legislation. Both are declared by that instrument to be the supreme law of the land, and no superior efficacy is given to either over the other. When the two relate to the same subject, the courts will always endeavor to construe them so as to give effect to both, if that can be done without violating the language of either; but if the two are inconsistent, the one last in date will control the other ... ").

While the Constitution does not directly address the matter, and there is no case law directly on the point, it is most consistent with the overall framework for the American application of international law described in the text that the later-in-time rule should also apply to customary international law. See Restatement (Third) of the Foreign Relations Law of the United States, Section 115, reporter's note 4 ("arguably later customary law should be given effect as law of the United States, even in the face of earlier law"); see also Louis Henkin, "International Law as Law in the United States," Michigan Law Review, 82, 1984, 1555, 1562–1564 (customary international law should be given authority equal to United States federal law).

29. The extent to which the president acting on his own authority can within this American compliance structure command citizens to act contrary to international law remains unclear. Authority for him to do so has been read into the Supreme Court's dictum that courts will give effect to international law "where there is no treaty, and no controlling executive or legislative act or judicial decision." The Paquete Habana, 175 U.S. 190, 677, 700 (emphasis added). But see Louis Henkin, "The Constitution and United States Sovereignty: A Century of Chinese Exclusion and Its Progeny," 100 Harvard Law Review, 100, 1987, 853, 879. "Unlike Congress, the President has no general authority to make law that might compete with international law as law of the United States. The President's duty is to 'take Care that the Laws be faithfully executed,' a duty that applies to international law as well as to other law of the land." Ibid.

30. In addition to the fact that in every domestic legal system individuals are always personally obligated to follow the law, as agents of a corporation or otherwise, the American legal system, for example, has developed several additional ways of enhancing the power of the external law to encourage compliance by real persons operating within the corporate structure. For example, racketeering laws can be used to impose extra severe penalties for committing a crime on behalf of an organization. In addition, managers can be held strictly liable under, for example, certain federal environmental laws for the workplace violation of those laws by subordinate employees. See generally Joseph G. Block and Nancy A. Voison, "The Responsible Corporate Officer Doctrine—Can You Go to Jail for What You Don't Know?" Environmental Law, 22, 1992, 1347. This principle of strict liability for corporate managers was upheld by the U.S. Supreme Court in United States v. Park, 421 U.S. 658 (1975), and United States v. Dotterweich, 320 U.S. 277 (1943). Likewise, the American system allows shareholders to sue directors derivatively to enjoin action in, or recover damages for, violation of law. See Miller v. ATE–T, 507 F.2d 759 (3d Cir. 1974) (holding that the business judgment rule cannot insulate directors from liability for criminal acts).
31. See note 24.
33. Ibid., Article 41.
34. Ibid., Article 42.
35. Ibid., Article 39. Article 39 reads in its entirety as follows: “The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 [relating to economic sanctions and severance of diplomatic relations] and 42 [relating to military force], to maintain or restore international peace and security.”
36. If the WTO’s dispute resolution system determines a party to be in violation of an agreement governed by the WTO and that party refuses to comply with that determination or pay compensation to the aggrieved party, then the aggrieved party “may request authorization from the [Dispute Settlement Body] to suspend the application to the Member concerned of concessions or other obligations under the covered agreements.” Understanding on Rules and Procedures Governing the Settlement of Disputes, Article 22, Paragraph 2, Apr. 15, 1994; Marrakesh Agreement Establishing the World Trade Organization, Annex 2, International Legal Materials, 33, 1994, 1125.
38. Trade sanctions authorized by the World Trade Organization (see note 36) are actually well designed to provide a measure of deterrence. The aggrieved party, who may decide against which commercial sector to impose trade restrictions, is most likely to choose one with significant domestic political clout. That way the target government will be placed under maximum internal pressure to adhere to its trade obligations.


41. Estimates of the number of Iraqi soldiers killed have varied widely. The Pentagon’s Defense Intelligence Agency estimated in 1991 (with a self-proclaimed error factor of fifty percent or higher) that approximately 100,000 Iraqi military personnel were killed in action. See Barton Gellman, “One Year Later: War’s Faded Triumph; Oil Flows, but Saddam Endures and New World Order Is Elusive,” *Washington Post*, Jan. 16, 1992, A1. Other subsequent estimates have been much lower. See U.S. News & World Report, *Triumph Without Victory: The Unreported History of the Persian Gulf War* (New York: Times Books, 1992), ix (estimating that approximately 8,000 Iraqis were killed); John Heidenrich, “The Gulf War: How Many Iraqis Died?” *Foreign Policy*, Spring 1993, 108, 124 (arguing that number killed may have been as low as 1,500).


have had "considerable impact on Iraq [in economic terms] without producing the desired political effect").

44. See Sarah Zaidi and Mary Smith-Fawzi, The Lancet, 346, 1995, 1485 (reporting on the 1995 Food and Agricultural Organization study finding that post–Gulf War sanctions were responsible for the deaths of 567,000 Iraqi children); Barbara Crossette, "Unicef Head Says Thousands of Children are Dying in Iraq," New York Times, Oct. 29, 1996, A8 (reporting that, according the 1995 UNICEF report, 4,500 children under the age of five were dying every month in Iraq from hunger and disease). These figures have been very controversial. The question has been highly politicized and the methodologies in these studies have been questioned, along with their reliance on official Iraqi information sources. See George Lopez and David Cortright, "Counting the Dead," Bulletin of Atomic Scientists, May/June 1998, 39. Whatever the exact number of dead, however, it has been clear to all observers that the Iraqi sanctions regime has inflicted tremendous hardship on the Iraqi civilian population.


47. Other countries participating under United States command are Australia, Belgium, Britain, Canada, the Netherlands, and New Zealand. See Barbara Crossette, "Illegal Iraqi Oil Shipments Increase, U.S. Says," New York Times, Nov. 19, 1997, A8. While the post–Gulf War weapons inspectors, who were responsible for monitoring Iraqi compliance with the requirement that it eliminate its weapons of mass destruction, worked for the United Nations, even they found themselves relying heavily upon national intelligence agencies for information. See generally Scott Ritter, End Game: Solving the Iraq Problem—Once and for All (New York: Simon & Schuster, 1999).


49. See generally Falk and Strauss, "On the Creation." In many ways the present analysis takes up where that paper leaves off. The central aim of our joint work is to argue that civil society is now capable (hopefully with the help of certain progressive states) of founding the Global Peoples Assembly, and that because this assembly would have a basis in popular legitimacy, it would, despite its unofficial origins, have the potential to play a major role in global governance.


51. This is, of course, not true everywhere, but the movement toward the belief and practice, although imperfect, of electoral democracy in domestic settings is unmistakable.

52. See Falk and Strauss, "On the Creation."


54. See Falk and Strauss, "On the Creation."

55. Of course, the greater the judicial acceptance, the more litigants would begin to make such arguments, which would in turn lead to greater judicial acceptance.

56. There is some empirical evidence indicating the potential for such acceptance. Some courts have given legal force to resolutions of the United Nations General Assembly.
While the General Assembly is composed of almost all of the countries, its formal powers under the United Nations Charter are largely precatory. For further elaboration, see Falk and Strauss, "On the Creation." The Global Peoples Assembly would be more truly democratic than the General Assembly and, of course, more connected to the citizenry. Falk and I, therefore, conclude that its authority has far more potential for acceptance. See ibid.


59. For a discussion of the protest at Seattle's WTO meeting, see e.g., Juliette Beck and Kevin Danaher, Editorial, "Is the WTO a Blessing or a Curse?" *San Francisco Chronicle*, Nov. 29, 1999, A25.


61. Of course, differences of opinion would present themselves as to exactly how the subsidiarity principle should be applied in concrete situations. This has been the case in Europe and even the United States, where debates about federalism have recurrently surfaced.


63. UDHR; note 39.