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FOREWORD

NATIONAL SOVEREIGNTY AND
GLOBALIZATION*

Miguel de la Madrid H.†

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† Miguel de la Madrid Hurtado was President of Mexico from 1982–1988. Currently, de la Madrid serves as president of the publishing company *Fondo de Cultura Económica*. He received a law degree from *Universidad Nacional Autónoma de México* (UNAM) and has been a law professor at UNAM.

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I. INTRODUCTION

Sovereignty has always been a concept of great controversy and debate by jurists and scholars of law and political sciences. That is due, to a large extent, to the different meanings of this concept (a frequent phenomenon in political issues), to the various circumstances that have characterized it through time and in relation to space, and to the evolution of political organization at the national and international level.

As it is known, sovereignty as an attribute of the state power was born as a doctrinal justification of absolutism, that struggled in Western Europe to impose the supremacy of monarchy on the papacy and the empire, the external front, and beyond the scattered and autonomous power of feudal organization. Bobino, Hobbes, and the various theories of divine law of the kings were politically active in this battle that finally resulted in the emergence of the absolutist state as the first manifestation of modern state in the sixteenth century.

The liberal and democratic revolutions that took place at the end of the eighteenth century, inspired in a large extent by the English constitutional system, transferred to the people or to the nation the source of political legitimacy by stating that only popular will or consensus can establish political power through the law, a necessary product of general will. The new doctrine of popular sovereignty coincided with the doctrine of the rights of men, that promoted, together with the theory of division of powers, the political and legal limitation of power with the purpose of moderating its exercise to protect people's freedom.

These key ideas were the foundation of modern constitutionalism that emerged specifically through the Charters that established the League of Nations and the United Nations. The

acknowledgment of the juridical equality of the states and the non-intervention principle, fundamental pillars of contemporary international law, are logical consequences of such doctrine.

The self-determination doctrine of the peoples has given birth to a multitude of new independent political units. It has also served both the decolonization processes generated by the two World Wars as well as the disintegration of the Soviet empire. The fact is that the United Nations, founded in 1945 by 51 states, presently has 185 member countries.

The formal recognition of the principles of popular sovereignty, juridical equality of the states, and non-intervention has not been, in practice, a real obstacle for the military or economically powerful states to occasionally carry out a different policy and openly violate those principles of international law. As noted in an Orwellian phrase: “even though all animals are equal there are some more equal than others.”

II. TRENDS IN GLOBALIZATION

During the last several years, some outstanding trends in international relationships and in the internal life of nation states have placed on the table of discussion, with more frequency and intensity, the scope of sovereignty and even the perspective of the existence itself of the national state. I find that the present discussion focuses on the areas of economic, political, and social globalization.

A. *Economic Globalization*

It is evident that interconnection or interdependence among nations has accelerated during the last few decades. The intensification of commercial activity, investments, financial transactions, tourism, and technological exchanges, notably in the transportation and communications areas, have fostered an intensive process in the integration of national economies—regardless of their magnitude and degree of development.

Within this model, even though the advances achieved in matters of integration are different and at different paces, the trend toward forming regional economic groups implies a new interrelationship, not only of an economic nature, but with juridical, political, and social effects as well. Some of the most notable of these regional economic groups are the European

Union (under process of expansion), the North American Free Trade Agreement (NAFTA), the Forum of the Asian-Pacific Economic Cooperation (APEC), and the South American Common Market (MERCOSUR).

The European Union, due to its characteristics and seniority, represents the deepest and most ambitious movement. It has increased in complexity by increment over the last few years due to the incorporation of new members and the interest of other members to associate. As it transfers to community entities the authorities that were part of the internal jurisdiction of nation states, this expansion clearly points toward a form of federalism which, at the same time, significantly affects the concept and duration of the traditional idea of national sovereignty.

In a parallel manner, there is also an evident trend to strengthen and make more use of certain international organizations of universal character, such as the International Monetary Fund (IMF), the World Bank, and the World Trade Organization (WTO, formerly GATT). For example, these organizations have expanded or are in the process of expanding as a result of the disintegration of the Soviet bloc and they are also considering the complex problems in China. Other developing countries, such as Mexico, have incorporated trade organization ideals throughout the movement of opening their economic policies.

In practice, these two trends—regionalism and multilateralism—are not clearly compatible and could ultimately conflict, although they should eventually converge in the long term. In any event, multilateralism and regionalism—together with the amazing revolution in the field of communications—are undeniable symptoms of a new stage of closer international economic relationships.

On the other hand, we must recognize that the present agenda of the United Nations has centered on the tasks of peace and international safety, relatively postponing relations with economic and social development. The end of the Cold War did not bring about the expected stability. On the contrary, many conflicts arose in all regions of the planet. An additional impediment to international economic and social development is the financial weakness of the WTO, due basically to the lack of payment of budget obligations by its main participant, and the attitude of other important participants—who are dissatisfied with the programs and tasks of specialized organizations such as

UNESCO, UNIDO, ILO and WHO. This dissatisfaction is due partly to ideology, and partly to programs of budget austerity, a common problem of the majority of the member countries.

Another important globalization phenomenon that deserves to be commented on, is the growth of transnational companies that make strategic and tactical decisions separate not only from the national entities where they operate but also from the countries where they were created or where they are domiciled. This phenomenon, which some authors have termed “dislocation” of economic decisions, dilutes or disperses the exercise of the powers characteristic of national states.

The relatively recent problem of globalization of short term financial flows, with its speculative and volatile nature, started with the eurodollar markets, moved on to petrodollars, and is now multiplying with the new modalities of institutional investments and the opening of securities markets. This problem of short term financial flows has become an aspect of economic globalization that challenges both national financial authorities as well as international entities charged with financial cooperation and stability; the order of exchange rates; and money and capital flows.

Restricted decision making circles survive despite globalization. These national entities continue to implement policies such as pricing mechanisms for raw materials, trade goods, and personal services which have become international through stock markets, cartels, and other entities that affect world trade. These institutions continue to operate despite the fact that globalization reduces the efficacy of adopting long term decisions and policies in an isolated and independent manner.

B. Political Globalization

Another trend that has been taking shape in recent years, essentially since the collapse of the Soviet-communist regime, is the reaffirmation of the demo-liberal doctrines postulated by Western nations and international organizations, to ensure the effectiveness, expansion, and respect of representative democracy as a universal form of government and human rights in its liberal conception. Phenomena such as reawakened regional conflicts (or those arising from postcommunist rivalries), tribal warfare caused by a rather arbitrary territorial partition, unrest

resulting from African colonial politics, and ethnic and religious conflicts, have led some international community powers to invoke the "right of interference" in the name of collective safety or humanitarian intervention. This attitude arouses, of course, the suspicion or fear of medium to small countries, who see their sovereignty diminished by selective decisions of the Permanent Members of the Security Council of the United Nations.

There is a gradual expansion of the international entities charged with safeguarding human rights. There is also an increase in activity by international organizations to promote Western style laws and electoral processes. In connection with this activity, international organizations offer an increasing variety of technical support programs, with a certain degree of political induction, to restructure the powers of the state and of the state's social organizations, depending on the reform processes of the state.

Another phenomenon affecting the traditional role of national states is the operation of group dynamics in the arena of international relationships. The presence of a larger number of members of international organizations and of their financial and political weaknesses, make certain processes more complex, such as dialogue and negotiations, and, more importantly, efficient decision making. This increased complexity has resulted in the establishment of relatively smaller groups of countries, frequently at the level of Heads of State, to discuss and negotiate strategies and responses to international problems. The most notorious example is the Group of Seven, whose decisions have a determining influence on the orientation of international relationships. This trend has resulted in a feeling of marginalization and indifference for international interaction by states that do not belong to such exclusive organization.

C. Social Globalization

Significant successes in global social coexistence have been achieved in the recent past, due in part to the globalization of economic and political relationships. However, these successes are mainly the result of innovations in transportation and communications; innovations that created an unprecedented intensification in the degree and pace of intercommunications between every country in the world.

Satellite networks now deliver almost instantaneous dissemination of information about the most striking events occurring anywhere in the world, including all types of information related to every-day applications of general knowledge to information vital to economic transactions. This situation is provoking a technological revolution that is comparable to the Industrial Revolution of the nineteenth century. The world is now moving towards a society of services, based on computer science changes and on the power of knowledge. These developments have produced radical changes in the diverse manners of human life, at social and individual levels: in education and culture, in work and entertainment. Although there are huge differences among countries and social groups, these trends can be observed in almost all countries.

Such changes affect the traditional forms of relationship between nation states and their own societies. The strengthening of individual and regional values are generating changes, within national societies themselves, as to the relationships between the authority and the individual, both at the political level, as well as at the level of social organizations, such as workers' unions, associations of farmers and professionals, associations of neighbors and other forms of associations that multiply and that make the daily evolution of the fabric of society more and more complex.

A typical example of this phenomenon is the emergence of non-governmental organizations (NGOs), frequently linked at an international level by a broad variety of topics and causes. The activities of these NGOs often disregard the social effects of their proposals or demands and frequently attempt to displace traditional organizations such as political parties, workers' and farmers' unions, entrepreneurs' associations, and other traditional institutions, that have not been able to adapt themselves to a new social dynamic. Political institutions and international organizations have been forced to recognize, and even to support this new type of social organization, but not without dealing with problems affecting dialogue and negotiation, and not before reaching solutions as to the status of such NGOs specifically adapted to the general interests of the society in a given state.

The inadequacy of political and social institutions in dealing with the growing complexity of international social relations, accelerated to a certain extent by the global demographic explo-

sion of the twentieth century, is also expressed in the generically labeled "ungovernability phenomena" to which most countries have been exposed, in a larger or smaller extent. Poverty and marginalization of important social groups in urban and rural societies threaten the effectiveness of the rule of law and a state's authority. This phenomena increases violence and corruption that challenges the authority of nation states. In addition, diverse forms of organized crime continue to elude, with growing efficiency, attempts by the traditional forces of order and safety to prosecute and punish such criminal activity. Activities linked to drug trafficking have also gone global, becoming symbols of international delinquency that effectively restrict the capacity of nation states to act in an isolated manner.

Lastly, the problems of sustainable development, related to the severe deterioration of the planet's natural resources, threatens the subsistence of the human race itself. Humanity continues to grow at a disproportionate rate, and this threat to humanity's future emphasizes the fact that we, at the turn of the century and the dawn of a new millennium, face unprecedented environmental challenges which clearly evince the insufficiency of action by existing international organizations or by independent nation states to deal with these global issues with efficacy and equality.

III. THE CONTINUING ROLE OF NATION STATES

These trends toward globalization underscore the inadequacy of action by individual nation states in dealing with a wide range of national and international problems. However, perhaps due to the relative underdevelopment of existing international organizations and their multilateral and regional institutions, a realistic evaluation of future international relations does not reveal a viable form of political organization radically different from the archetypal nation state.

At this point, it may be advantageous to sum up those conditions necessary for the efficient existence of nation states, as well as the way, extent, and pace in which nation states themselves participate in the co-existence and co-operation with other sovereignties through international organizations. For brevity's sake, I will limit my discussion to those discretionary powers I

consider to be essential to the sovereignty and internal jurisdiction of nation states.

A. Constitutional Jurisdiction

A sovereign community must have the power to interpret its own constitution as the supreme law of its juridical order, which contains the definition of the political, economic, and social institutions and principles of that nation. A sovereign must also have the authority to amend the constitution pursuant to its own decisions and in compliance with procedures as determined by the constitution itself.

B. Jurisdiction for the Creation and Development of Its Juridical Order in General

A sovereign must have the legislative power to enforce the constitutional precept and to regulate social relationships in their various aspects according to the nation state's constitutional principles and international law as incorporated into the national juridical order.

C. Elective Jurisdiction

A sovereign must enjoy the right to self-determination without external interference. This right to self-determination includes the right of the community to freely elect the heads of the respective entities of public power, according to the laws and procedures established by the electoral legislation of the nation state.

D. General Governmental Jurisdiction

A sovereign must have the power necessary to apply its own constitution and laws, as well as constitutionally ratified international conventions and treaties. This power is normally exercised by a country's executive and judicial branches in order to provide safety and order to its population and as the basis of ensuring freedom and justice within the nation state's political system.

E. Directorship Jurisdiction for National Development

Although implicit in the general governmental jurisdiction, contemporary nation states have a set of specific powers to regulate and orient the political, economic, and social development of their societies according to their constitutional and legal norms and according to the strategies and policies determined by society itself through its representative institutions. This jurisdiction must include the exercise of internal jurisdiction over natural resources within its respective territory. Other powers essential to the sovereignty of nation states include the authority to orient, promote, support, and, if applicable, conduct the national education system, and to maintain and promote culture as a strategic means of caring for and strengthening the national identity, on which the subsistence of the state itself is based.

F. Participative Jurisdiction in the Configuration and Management of Order and International Law

A government—recognized by the international community as the legitimate government of a nation state—must have the power to participate in the integration of its own law and institutions with international law and international organizations. Globalization has necessarily required that this authority be exercised more and more frequently in the last few decades.

The exercise of these powers by a sovereign must look for the complex but necessary balance between self-determination and independence of national states, and the necessary evolution and strengthening of the international community. The defining element of this balance must be the law as based on principles of universal acceptance by our community of sovereign nations. In international relationships, bilateral as well as multilateral, the nation state is still the best instrument to defend and to promote the rights and interests of its society and, at the same time, is an indispensable actor in the formulation and implementation of international law and organizations.

IV. CONCLUSION

It is inappropriate for one or various international powers to create hegemonies in the new structure of world power. Al-

though the United States aspires to assume the role of the sole economic and military superpower, it has not been able to unilaterally impose its power to the rest of the world. Nor does it have the resources or political will to one day do so. Even the tripolar economic bloc of the United States, the European Union, and Japan lacks the capacity to face the dense and complex problems of globalization. Other centers of power will arise in Asia, Europe, Africa, and Latin America in the world of the twenty-first century, and these new centers of power will demand participation and harmonization with existing powers.

With these limitations before us, it is illusory to think in terms of a supranational government. With the information now available, it is foreseeable that complete globalization will not be accomplished within the coming century. If we accept this as true, we must also accept the subsistence of nation states as the only viable basis for organizing an international organization. The concept of sovereignty is entering a dynamic period of adaptation in which it will be necessary to balance the continuing and vital role played by nation states and the need to improve, enhance, and expand the competence of international organizations.