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SOVEREIGNTY, NON-INTERVENTION AND THE INTRUSIVE INTERNATIONAL ORDER

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Canada

SOVEREIGNTY, NON-INTERVENTION AND THE INTRUSIVE INTERNATIONAL ORDER

1. Introduction

The evolving nature of sovereignty will remain a key issue of the 1990s. In his speech to Stanford University, 29 September 1991, Canadian Prime Minister Brian Mulroney declared Canada in favour of "re-thinking the limits of national sovereignty in a world where problems respect no borders." Similarly, in a recent issue of Foreign Policy, Flora Lewis wrote that "if there is to be a somewhat orderly world, the prerogatives of national sovereignty and the state system will have to be re-examined from crisis to crisis".

This paper looks at the concept of state sovereignty in an era of increased interventionist practices in various policy fields. After examining the concept of sovereignty, various forms of intervention, the debate over non-intervention and current state practice, it argues that:

(1) the concept of sovereignty is of diminishing importance as the glue which binds the contemporary international system, although its theoretical underpinnings remain largely unchallenged;

(2) there will be resistance within the United Nations and other multilateral fora to any attempts to diminish the concept of sovereignty in favour of acceptance of more overtly interventionist or intrusive inter-state practices, even if the move to acceptance reflects current realities;

(3) various forms of interventionism in, inter alia, human rights, the environment and trade policy, has eroded the border between national jurisdiction and the international field, creating a more "intrusive" international system to which national governments must necessarily adapt (and which pose particular problems for federal systems because of the emergent confusion over divisions of powers);

(4) Canada's interest in an orderly, stable international system argues for a leadership role in accepting and sponsoring the acceptance of new realities, particularly in human rights and arms control, where the objective of achieving greater transparency is virtually synonymous with intrusiveness and where intrusive systems work in favour of stability and the rule of law;

(5) while recognizing the positive benefits which might accrue from an "intrusive" international system, Canada must seek to manage pragmatically how the current system evolves and to what extent there will be a need to balance

"intrusiveness" with the desirability of safeguarding certain key areas of national, "sovereign" Canadian interests;

(6) there needs to be a better understanding among Canadian jurisdictions and the general public about the nature of an "intrusive" international order and its long term implications for national interests in various policy areas.

(7) specific areas for possible Canadian initiatives might include: compulsory dispute-settlement mechanisms in the CSCE; an enhanced conflict prevention centre under the CSCE, with NATO as the security arm of the CSCE process; continued work on human rights "implementation" in the lead up to the 1993 World Conference, and a more vigorous United Nations role in peace-making, complementary to the traditional forms of peace-keeping.

1. The Old Inter-State System

A. Sovereignty:

The modern international legal system is anchored to the twin concepts of the nation-state and national sovereignty. These imply the exclusive jurisdiction of a state over specific territory or territories and over a more or less defined population. In brief, sovereignty can be defined as "the condition of being constitutionally independent", which underpins the legitimacy of the nation-state.

These concepts have given rise to two other principles which are seen as integral to national sovereignty: territorial integrity and political independence. The modern international order and its institutions, such as the United Nations, have been built on a foundation of membership by allegedly single, separate and sovereign entities. Consequently, states - rather than individuals or groups - have been considered the principal subjects of international law. The United Nations entrenched the idea of the sovereign equality of states in its Charter; Article 2.4. reads: "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations."

Prior to the Second World War, this "statist" concept of international relations was amply reflected in the distinction between domestic and international affairs, defined in Article 2.7 of the United Nations Charter. In essence, the protection of human rights, as well as other national actions affecting the "subjects" of states, were considered purely domestic affairs and beyond the reach of international law. What a state did to its nationals was its own business.

Largely owing to the political paralysis of the Cold War, as well as the emphasis placed on political independence during the de-colonization era, the concept of a singular "statist" sovereignty evolved slowly over the past forty years, even while practices were evolving which undermined its centrality in international relations theory.

B. Non-Intervention:

The corollary of the concept of sovereignty is the principle of "non-intervention in the internal affairs of a state". Intervention undermines political independence and, to the extent that it might result in imposing a foreign presence on the territory of a state without consent, it contradicts the idea of territorial integrity. The principle of non-intervention precludes the use or threat of force against another state, including debilitating economic sanctions which are defined as coercive in nature. These coercive measures should be distinguished from other forms of "interference", such as public criticism, aid conditionality, human rights monitoring or political pressure to respect human rights. It also should be noted that, whereas "non-intervention" has a generally understood meaning in international law, "non-interference" is without firm definition.

Two exceptions to the prohibition of the use of force or coercion are recognized under the United Nations Charter: self-defence, and collective security under Chapter VII. Beyond these two exceptions, all United Nations provisions regarding non-intervention are clear and specific. For example, the 1970 United Nations Declaration on Principles of International Law Concerning Friendly Relations And Co-operation Among States stated that it is "the duty not to intervene in matters within the domestic jurisdiction of any State", such that:

> "No state or group of states has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other state. Consequently, any armed intervention and all other forms of interference or attempted threats against the personality of the state or against its political, economic and cultural elements, are in violation of international law."

These proscriptions are so strong in the United Nations system that one scholar has argued that if "the sovereign territorial state claims, as an integral part of its sovereignty, the right to commit genocide..., the United Nations, for all practical purposes, defends this right."

2. The Emergence of New Practices

Between the extremes of interventionism and complete non-interventionism, practices have arisen over the past forty years which have gradually created a large and

growing middle ground of practice and precedent. The reasons for their emergence are varied, but their implications tend to lie in similar directions.

In the area of human rights the United Nations 1948 Universal Declaration of Human Rights propounded a series of hortatory principles which essentially claim to govern state practice with respect to its own nationals. These principles have subsequently been converted into treaty law in a series of conventions and covenants, which are binding upon states that have accepted them. Because of mounting international pressure in the human rights area, these treaties have impressive ratification lists, notwithstanding the absence of any effective mechanism to monitor compliance.

Over time, the distinction between obligations arising from acceptance of treaty obligations and moral obligations stemming from adherence to United Nations principles began to erode. In the CSCE process, human rights occupied a central place, notwithstanding the fact that the Helsinki Final Act was deemed not to form part of international law. The attitudinal change since the 1940s, when human rights was a domestic issue, is best illustrated by an excerpt from the concluding document of the 1990 Moscow Meeting on the Human Dimension:

> "The participating States emphasize that issues relating to human rights, fundamental freedoms, democracy and the rule of law are of international concern, as respect for these rights and freedoms constitutes one of the foundations of the international order. They categorically and irrevocably declare that the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned."

A similar process of pragmatic evolution has led to increased interventionist practices in a number of areas. In the past five years, the concept of a "right to intervene" has been introduced to buttress the traditional (and controversial) doctrine of humanitarian intervention. In the environment, the landmark 1972 Stockholm Conference determined that one state's environment policies do not necessarily end at its borders. In the field of arms control, the concept of "intrusive verification", long advocated by the strictest proponents of arms control, has in the aftermath of the Gulf War become mainstream thinking . In its purest form ("anywhere, any time"), verification is perhaps the most intrusive component of emerging international law and practice.

Global market forces compel governments to coordinate and harmonize domestic economic, industrial and trade policies to an unprecedented degree. What was once regarded as the preserve of sovereign states is now becoming an accepted subject of international scrutiny (and even direction). The international trade policy agenda is

becoming more intrusive. Environmental and industrial standards, subsidies, preferential access to natural resources, investment incentives, intellectual property protection, competition policy, exclusionary marketing arrangements and supply-management structures have all become the focus of the international economic agenda.

The internationalization of issues as diverse as human rights, the environment and arms control have not proceeded from any grand design about the need to limit sovereignty in the interests of a wider global community. Rather, changes have been pragmatic, incremental and largely non-ideological responses to specific circumstances.

3. The Impact on Doctrines of Sovereignty and the Principle of Non-Intervention

The fabric of the international system has already been affected by new factors which have undermined the old inter-state order, in particular the growing economic, political and ecological interdependence of states. Sovereignty as a concept has been eroded in a number of directions:

- the multiplication of international fora, agreements and arrangements on many issues; some entail legal obligations, like the growing network of treaty-based bodies, while others, such as the CSCE, rely on collective political will;

- the growth of transnational corporations and a large and vocal non-governmental organization (NGO) community, acting outside the traditional channels of inter-state relations; the ties that bind the international system are less the bonds of inter-state obligation and more the networks of the corporate and NGO associations, each with its own rules and series of obligations;

- the international appearance of non-state political actors, such as supra-national organizations (certainly the EEC, arguably the Commonwealth and la Francophonie), and sub-national units (provinces, laender, states); effective power at the national level is challenged both from above and below.

These trends, which have been emerging for well over the past two decades, now affect the functioning and the structures of the old order, as well as perceptions among the main actors. These trends have:

- reduced the effective exercise of sovereignty by states; national freedom of choice is circumscribed by a growing network of international legal obligations, and by international political forces which can no longer be ignored;

- induced a tighter and more immediate pattern of interactions between internal and external decision-making processes; international obligations have to be taken into account as domestic policies are developed;

- produced a set of broadly shared standards and values while drawing a sharp line between the growing number of countries which profess to share common values and those few which adhere to exclusionist, traditional notions;

- created a need for closer harmonization of policies and concerted actions between international actors;

- given rise to a greater awareness on the part of publics in many countries of violations of human rights and double standards in international practices;

- inclined several states towards advocacy of enhanced international organizations or international action in selected areas to secure a more "interventionist" global environment in defence of their own interests.

Countries have pursued, both consciously and subconsciously, more interventionist practices in the human rights, humanitarian assistance, environment and other areas, and these practices have in turn stretched the traditional boundaries of international law. In the area of trade policy, the GATT and concomitant contractual commitments and dispute-resolution provisions reflect an effective ceding of sovereignty to a multilateral organization. Regionally, the regulatory function of the European Commission and, to a lesser extent, the dispute-resolution mechanism of the Canada-USA Free Trade Agreement, provide mutually agreed rule-based interventions.

But practices advocated for one purpose become precedents for other occasions. Hence, the advocacy of a droit de regard by the United Nations on state human rights practices becomes interventionism vis-a-vis Canada in the 1991 Oka crisis stemming from conflicting land claims and armed resistance by Canadian aboriginal groups. Concern for the Brazilian rain-forest becomes, over time, scrutiny of Canadian forestry practices. Advocacy of the elimination of non-tariff barriers for European farmers is soon translated into principles with an impact on the future operations of Canadian provincial agricultural marketing board practices.

4. The Intrusive International Order

The international system has become inherently and irreversibly intrusive. We are not yet at the stage where all of Canadian policies and practices are subject to international rules or international scrutiny, but we are heading incrementally in that direction. A few examples:

- human rights: we can expect the issue of Canadian aboriginal peoples to be a quasi-permanent feature of the international human rights landscape, with occasional surprises for Canadian government policy;

- the environment: as energies devoted to international environmental issues increase, we can expect Canadian practices - from fisheries to forestry - to be subjected to increased scrutiny, heightening tension between environmental protection and job-creation policies;

- arms control: in order to obtain effective verification regimes in key areas (nuclear, biological and chemical weapons), more intrusive and systematic means of verification will have to be developed;

- trade policy: Canada's non-tariff barriers and internal provincial barriers to trade have attracted attention; we will see increased recourse to dispute-settlement mechanisms, some of which will force changes in Canadian Federal and Provincial trade policy.

- sanctions: the Haitian situation and the crisis in East Timor provoked both governmental and non-governmental responses in many states, forcing countries unilaterally or collectively to invoke sanctions in response to domestic events in other countries.

- international military or humanitarian intervention: states will soon have to consider whether the costs of military intervention in such situations as Yugoslavia or Haiti, despite their attendant risks, outweigh the option of less intrusive, more passive types of sanctions (which are inherently contradictory from a political point of view as the time required to take effect often erodes the political will for stronger action).

5. Defining a Balance

The trend in the international system is towards integration, harmonization and globalization in key areas of economic and social policy. The principle of "subsidiarity" argues, in essence, that a political or economic issue will be resolved at its own level. That level may well be national or local within large countries like Canada, but it may also involve the international community to an increasing extent.

Intrusiveness will increasingly characterize international policies and the practices of international institutions. A key Canadian concern will be striking the right balance between advocacy of, or support for, intrusive policies and resisting unwelcome intrusions in key areas of national debate. Given the absence of clear criteria to guide debate, the scope for inconsistency is obvious.

Although it might be useful to examine criteria which could be developed to underpin a doctrine of intervention, seeking formal acceptance of such an approach internationally is likely to be counterproductive. Most governments are highly sensitive to any suggestion that the doctrine of sovereign equality of states should be modified, even in the most extreme cases (such as Iraq). Most far-reaching declarations by like-minded states (for example, the 1991 London Summit Political Declaration) fall short of promoting the creation of new concepts, such as the "right to intervene", which would undermine established precepts.

We would argue that any attempt to redefine sovereignty or introduce new concepts (even if they reflect current realities) is bound to fail and possibly, in so doing, set back interventionist causes which we might favour. It follows that we should focus on securing pragmatic departures from established principles in actual situations, where we can expect to be successful, where international consensus is building and which do not necessarily create precedents. There is no need to hasten the evolution of international law.

Similarly, in the trade policy area, the interaction between domestic and international policies is increasing, and the Canadian interest is in recognizing, adapting and capitalizing on momentum. Competition and innovation policy, the trade and environment interface, the trade and labour/social policy link, and product and process standards are all areas where greater international agreement, regionally and ultimately globally, will be required. Canada should recognize the advantage and desirability of negotiated, transparent and rule-based regimes, and the undesirability of allowing ourselves to fall prey to the imposition of unilateral alternatives.

The Canadian interest is in an international system capable of adjusting peacefully to change. Where crises are beginning to get out of hand, and where the preemptive authority of bilateral contacts or international organizations has yet to have much impact, it is logical that we promote more authoritative and decisive action, even at the price of increased "interventionism". The examples of Yugoslavia and Haiti are appropriate, as the objectives of Canadian action have been to secure international intervention in support of clearly-recognized principles of international law and practice, to prevent further blood-shed, and to support negotiations leading to definitive settlements. More aggressive collective action, perhaps to the point of contemplating intervention forces, should continue to be contemplated to support these objectives, even though care needs to be taken to ensure that interventionist practices do not support unsustainable objectives.

The benefits to Canada which accrue from promoting intrusive international efforts in these areas, in terms of stability, harmony and economic development, far outweigh the disadvantages to particular Canadian interests. Although we may wish to look at the trade-offs in each situation, the vast majority of situations will argue that Canada be in a position of leadership in advocating intrusive action in most fields.

In the area of human rights, we have more to gain by securing transparent, workable international mechanisms than we have to protect at the national level. Similarly, in the area of arms control, Canada has no security interests which are so compelling that we need to be reticent about highly intrusive verification regimes, including far-reaching confidence-building measures such as Open Skies. As a general principle, our own degree of interdependence, Canada's own openness to the international system (our tradition of "liberal internationalism") has rendered us more sensitive to the need for reconsidering some aspects of sovereignty than are many other countries. We should build upon this absence of ideological inflexibility. Moreover, the down-side of resistance is that we would be cutting against the grain of history at a time of profound and quickening globalization.

7. Conclusion

It would be pointless and futile to argue against the trend towards globalization, harmonization and a more intrusive international order. Moreover, the Canadian interest in human rights, arms control policy, the environment and trade policy argue that we continue to be among the leading countries advocating a more intrusive rule-based international regime, not for its merits as a principle, but for what that principle means in policy areas of interest to Canada. Nor should we fear a more intrusive international order. There will be occasions, in the fields of human rights or the environment, when what we advocate for other states will come back to haunt us. But it would be inconsistent and short-sighted to reverse our long-term policies for short-term gains when the tide of history is against us. Our best defence is consistency. In the human rights area, it means allowing international scrutiny of our record, just as we advocate examination of the records of others. In the environmental area, it means acceptance of principles we advocate for others. In the arms control area, it means openness towards transparent and intrusive verification regimes.

A key concern is that we ensure a fair degree of harmony and consistency in Canada about an intrusive international society and its implications for Canadian interests. Canada is a federal state; many Provincial governments are involved in issues with international implications. Some have limited international experience. A more concerted effort will have to be made by the Federal Government to explain the significance of the evolving nature of the international system and its implications. Similarly, greater efforts will have to be made to bring to the attention of the media, the academic community, non-governmental organizations and other constituencies in Canada how the international system is evolving and how this evolution will bear on Canada in the years ahead.