

GLOBALIZATION, SOVEREIGNTY AND THE COMMON HERITAGE OF MANKIND

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Abstract

Globalization is a force of history but it is not a concept in international law while sovereignty and the common heritage of mankind are. But over time we know that the economic and social forces of history influence the development of law. What has been the impact of globalization on the law of sovereignty and the common heritage of mankind? What are possible future consequences? The author believes that liberal meanings of globalization - rather than mercantilist or radical - will predominate over the long term with the consequence that this process will reinforce Article II of the Outer Space Treaty and the promotion of collective goods notions of the Common Heritage of Mankind principle.

Forces of History

The introduction of the concept of sovereignty in international law can be traced to the consequences of the Thirty Years War

(1618-1648) and the Peace of Westphalia (1648). Each state is to be sovereign within its own territorial boundaries. Further, a dynastic state system is established which, over time, becomes the nation-state system. This system can be organized automatically through the balance of power system among the great powers (cf. the free market) or in a more organized and humanitarian manner under a collective security system such as has been attempted in this century by the League of Nations and the United Nations.

The concept of the Common Heritage of mankind (CHM) principle has become part of international law through the law of the seas¹ and the law of outer space.² For centuries, it was part of the writings of great political philosophers such as John Locke when he wrote that the oceans are "that great and still remaining common of mankind"³ and Immanuel Kant when he wrote about "the right to the earth's surface that belongs in common to the totality of men..."⁴ but its introduction as a concept of international law came late in this century. Thus, the CHM principle is a much more recent and tenuous principle of international law than sovereignty which remains the

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bedrock principle in spite of recent limitations.

CHM and Sovereignty

Why is CHM so recent and why is sovereignty not an absolute principle but merely a dominant one? CHM is so recent because it represents an organized consensus of some nations making law in a more enlightened era than the 17th, 18th or 19th centuries. The principle represents and reinforces a concern for and a commitment to the commons. This existed previously in religion and philosophy but not in diplomacy and law. It could not exist in law until a consensus was reached, but the consensus was shortlived as is well known - not only for the Moon Agreement, which has been ratified by only nine states but also for UNCLOS III, in which, after 1994, an attempt was made to change the meaning of CHM in to a market-based concept.⁵ Thus, the forces that made CHM a concept in the law - these being the forces of Idealism and Liberalism - were not strong enough to withstand the forces of capitalism, globalization and nationalism. This came about in spite of the well-known failures of the global market and the individual national security interests of states to deal with the issues of collective goods and negative externalities.

Paradoxically, or anomously, sovereignty has been weakened by the willingness of sovereign states to limit themselves by forming world organizations like the UN, regional organizations like the EU, and to sign on to international laws like Article II of the Outer Space Treaty. Of course, sovereign states can withdraw from international organizations and treaties, but

do they? And, if not, over time, each voluntary give-away of sovereign prerogatives adds up to something which is more than it seems. The process becomes a force of history. The willing weakening of sovereignty takes on a life of its own.

Globalization

Globalization has more theoretical meanings than sovereignty or the Common Heritage of Mankind principle. Globalization as a force of history is most often associated with economic factors such as the worldwide market, increased trade, and increased globality of the factors of production - capital, technology and labor. But globalization is also associated with many political phenomena such as the increasing number of international regimes in fields ranging from aeronautics and astronautics to weather and whaling. Furthermore, globalization is related to many cultural factors such as the spread of English as the global language and the "hegemony" of American culture which brings forth charges of cultural imperialism on the one hand and praise for the spread of a democratic ethos on the other.⁶

If we restrict globalization to its economic aspects, it would have three meanings from the perspective of students of international political economy (IPE). These are 1) the mercantilist/realist meaning, which, in the post-Cold War era, assumes that the one remaining superpower dominates the world economy; 2) the liberal/idealist model which assumes that global markets will lead to global growth, modernization and development; and 3) the radical/neo-Marxist model which assumes that globalization will lead to a widening gap

between the haves and the havenots both within and between countries.

According to the first IPE meaning of globalization, what the world is witnessing is the hegemony of the United States which is primarily concerned with its own sovereignty and national interest and not that of other states. The U. S. is interested in the welfare of others insofar as it does not lessen its relative power position in the world but, if a policy issue touches on power, then power politics will come into play as in the so-called "Banana War" or limiting the free market for launching satellites. If one accepts this conceptualization of globalization, then it will undermine CHM and reinforce older notions of sovereignty as benefiting the great powers in the classical European balance of power sense. Sovereignty in the sense that all states are to preserve their territorial integrity and political independence and be equal will be more honored *de jure* than *de facto*.

According to the second meaning of globalization, i.e., that liberal market forces in a globally competitive system will encourage global growth and lay the basis for democracy,⁷ globalization should work for a balance between the CHM and sovereignty principles. This is because liberal economics recognizes that there are market failures and calls on government - in this case many regimes at the global level - to provide firewalls and safety nets to deal with the negative consequences. This definition of globalization as a force of history would replace U. S. hegemony with a more competitive reality both politically and economically. That is, there would be a more multipolar world - not a unipolar world with one remaining superpower and markets

with many firms - not just a few.

The third meaning of globalization - as a force tending to further divide the global south from the global north is supported by some recent statistics - 1) only 5 percent of the world's population has access to the Internet; 2) three individuals have more assets than the combined GDPs of 43 countries; and 3) 1.3 billion people in the world make \$1.00 a day or less.⁸ Thus, globalization is beneficial for an elite but not for most people in the world. If this is the way history is going, then neither CHM nor sovereignty mean very much. They are legal fictions which misrepresent reality.

Diagnosis and Prognosis

If forces of history explain the origins and permutations of concepts in the law and not the other way around, then students of the law should examine and study these forces. In this paper, I have identified Nationalism and Realism as sources of the concept of sovereignty in international law. Idealism and Liberalism are sources of the CHM principle. How will the forces of globalization affect the changes in the meanings of these two concepts? Since globalization has three different meanings, one should ask which meaning will prevail in the long run.

As a Liberal and an Idealist, I would be more optimistic about the future. Mercantilism and old-fashioned Realpolitik will falter because the U. S. cannot continue to be the dominant actor for the next era of history. The lessons of history inform us that periods of unipolarity are short. The workings of the economy at the global level seem to point to a borderless world in this

the Space Age and the Information Age combined. Further, the Third radical meaning of globalization will prove to be in error because the market is a force for increasing and spreading wealth over time. The negative aspects of free market economics will be controlled by international regimes which seek to assure orderly growth and provide services to the disadvantaged.⁹ If globalization in its Liberal and Idealistic form does prevail, then, in terms of international law, we shall see a reinforcement of Article II of the Outer Space Treaty and a more enlightened perspective on the Moon Agreement's CHM provisions.

NOTES

1. Third UN Convention on the Law of the Sea, December 10, 1982, opened for signature. November 16, 1994, entered into force. 21ILM at 1261; 22 ILM at 309. Part XI the Area, Sect. 2, Article 136. 21 ILM at 1293.
2. Agreement Governing the Activities of States on the Moon and other Celestial Bodies. Adopted on December 5, 1979; opened for signature on December 18, 1979, entered into force on July 11, 1984. Article 11 (1).
3. John Locke, Two Treatises of Government (New York: Mentor, 1965), 331.
4. Immanuel Kant, Perpetual Peace and Other Essays trans. with Introduction by Ted Humphrey. (Indianapolis: Hackett, 1983), 118.
5. See Jonathan F. Galloway, "Limits to Sovereignty: Antarctica, Outer Space and the Seabed," Proceedings of the Forty-First Colloquium on the Law of Outer Space (Reston, VA: IAA, 1999) 80-86, 83.
6. Benjamin R. Barber, Jihad vs. McWorld: How Globalism and Tribalism Are Reshaping the World (New York: Ballantine, 1996) Barber himself is worried that democracy may be lost in the conflict between globalism and tribalism.
7. Francis Fukuyama, The End of History and the Last Man (New York: The Free Press, 1992).
8. Time, July 26, 1999. Also see United Nations Development Programme (UNDP) Human Development Report (New York: Oxford University Press, 1999), 3.
9. For instance, see UN, Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space, Space Benefits for Humanity in the Twenty-First Century (Vienna: United Nations, 1999).