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English Edition

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Forced Disappearances?

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A Challenge to Those Working in the Field of Genocide
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Law Enforcement at Issue:
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CITIZEN SECURITY AND HUMAN RIGHTS

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INTRODUCTION



SUR 16 was produced in collaboration with the **Regional Coalition on Citizen Security and Human Rights**.¹ Every day individuals are subjected to countless forms of violations of their security. Entire impoverished communities have been deprived of their right to participate in the decisions about their own security; in some areas, citizens are exposed to violence both from criminals and from police allegedly combating crime; developments in the regional and international levels as well as in the local and national levels have been disparate and unsatisfactory. By discussing those topics and others, the articles in the dossier exemplify both the challenges and the opportunities in the field of citizen security and human rights.

The non-thematic articles published in this issue, some of which also touch upon the issue of security, albeit more tangentially, provide insightful analyses of other pressing matters relating to the field of human rights: violence against women, forced disappearances, genocide, the right to self-determination, and migrations.

Thematic dossier: Citizen Security and Human Rights

Security and human rights hold an intrinsic – and problematic – relationship in regions with high rates of criminal violence. In these contexts, lack of security can be both a consequence and a pretext for human rights violations, as human rights can be presented as impediments to effective policies against crime. It is precisely to conciliate the agendas of security and human rights, particularly in Latin America, that the concept of citizen security has emerged.

Citizen security places the person (rather than the state or a political regime) as the main focus of policies directed at preventing and controlling crime and violence. In Latin America, such paradigm shift took place in the last few decades, as part of the transition from military dictatorships to democratic regimes. The concept of citizen security seeks to reinforce the idea that security goes hand-in-hand with protecting human rights, and therefore clearly departs from the authoritarian idea of security as protection of the State, common in the times of military dictatorships in Latin America and elsewhere.

In its 2009 “Report on Citizen Security and Human Rights”,² the Inter-American Commission on Human Rights (IACHR) defines citizen security in the following terms: “The concept of citizen security involves those rights to which all members of a society are entitled, so that they are able to live their daily lives with as little threat as possible to their personal security, their civic rights and their right to the use and enjoyment of their property” (para. 23). Thus, the concept of citizen security used by the IACHR includes the issues of crime and violence and their impact on the enjoyment of personal freedom, specifically property and civil rights.

The report by the IACHR also intends to inform the design and implementation of public policies in this area. In paragraphs 39-49, the Commission highlights the States’ obligations regarding citizen security: (i) Taking responsibility for the acts of its agents as well as for ensuring the respect of human rights by third parties; (ii) Adopting legal, political, administrative and cultural measures to prevent the violation of rights linked to citizen security, including reparation mechanisms for the victims; (iii) Investigating human rights violations; (iv) Preventing, punishing, and eradicating violence against women, pursuant to the Convention of Belém do Pará.

In order to fulfill such obligations, the States should adopt public policies in the area of citizen security that incorporate human rights principles and that are comprehensive in their rights’ scope; intersectorial; participatory in regards to the population affected; universal, i.e. inclusive without discriminating vulnerable groups; and, finally, intergovernmental, involving different levels of government (para. 52). Even though these guidelines do not serve as a prescription, their focus on the actual impact of security policies on the enjoyment of the rights of individuals, their attention to the multi-sectorial nature and participatory mechanisms of those policies, as well as the obligation of preventing crime and violence by tackling its causes, serve as solid guide for States or for civil society organizations and victims wishing to advocate for security policies that promote human rights.

In other words, the concept of citizen security highlights that security policies must be, at very least, people-oriented, multi-sectorial, comprehen-

1. The Coalition is formed by the following organizations: Center for Legal and Social Studies (CELS) – Argentina, Brazilian Public Security Forum – Brazil, *Instituto Sou da Paz* – Brazil, Center for Development Studies (CED) – Chile, Center for Studies on Citizenship Security (CESC) – Chile, Center for the Study of Law, Justice and Society (Dejusticia) – Colombia, Washington Office on Latin America (WOLA) – United States, Myrna Mack Foundation – Guatemala, Institute for Security and Democracy (INSYDE) – Mexico, Miguel Agustín Pro Juárez Human Rights Center (Prodh Center) – Mexico, Fundar, Center of Analysis and Research – Mexico, *Ciudad Nuestra* – Peru, Legal Defense Institute (IDL) – Peru, Support Network for Justice and Peace – Venezuela. Representatives of the Andean Development Corporation (CAF) and the Open Society Foundations also took part in some of the meetings of the coalition.

2. Inter-American Commission on Human Rights, “Report on Citizen Security and Human Rights”, Doc. OEA/Ser.L/V/II. Doc.57, 31 December 2009, available at: <http://www.cidh.org/countryrep/Seguridad.eng/CitizenSecurity.Toc.htm>. Last Accessed on: May 2012.

sive, context-specific and prevention-oriented,³ as well as participatory and non-discriminatory. The papers in the present dossier reveal how daunting and necessary this task is.

In **Citizen Security and Transnational Organized Crime in the Americas: Challenges in the Inter-American Arena**, Peru's former interior minister Gino Costa examines some of the main challenges and advances in inter-American efforts to combat organized transnational crime using the concept of citizen security. In **The Current Agenda of Security and Human Rights in Argentina**, researchers from Argentina's Center for Legal and Social Studies (CELS) describe the public security agenda in Argentina within the regional context, analyzing the first year of operations of the country's Ministry of Security and its attempt to implement policies incorporating the concept of citizen security. This same department is the subject of an additional article appearing in this issue. In **Civic Participation, Democratic Security and Conflict between Political Cultures - First Notes on an Experiment in the City of Buenos Aires**, Manuel Tufro examines a pilot program recently implemented by the Argentinian ministry with the aim of expanding public participation in the planning of local public safety policies. In the essay, Tufro analyzes the conflicts arising from this attempt to disseminate a practice in line with the ministry's agenda of promoting "democratic security" in places in which mechanisms of participation owing their existence to what he calls a "neighborhood political culture".

In **The March of Folly and Drug Policy**, Pedro Abramovay uses Barbara Tuchman's work to examine drug policies that have been implemented since 1912, arguing that they are example of policies that are not in the interest of the community being served by the policymakers who designed them.

Finally, this issue's dossier includes a double interview about the recent implementation of UPPs (Pacifying Police Units) in poor communities of Rio de Janeiro (Brazil) previously dominated by criminal organizations. The interviewees are José Marcelo Zacchi, who helped design and implement a government program to expand social and urban services in the areas served by the UPPs, and Rafael Dias, a researcher at human rights NGO Justiça Global.

Non-thematic articles

This issue includes five additional articles relating to important human rights issues.

In **Extraordinary Renditions in the Fight against Terrorism – Forced Disappearances?**, Patrício Galella and Carlos Espósito argue that the practice of kidnappings, detentions and transfers of presumed terrorists by United States officials to secret prisons in third-party States where they are presumably tortured – euphemistically called "extraordinary renditions" – guard similarities with the forced disappearance of persons. The distinction is important because

it means that perpetrators of forced disappearances may be prosecuted as having committed crimes against humanity.

Also dealing with crimes against humanity is an article by Bridget Conley-Zilkic in which she examines the field of genocide prevention and response as it furthers its professional development. In her essay, titled **A Challenge to Those Working in the Field of Genocide Prevention and Response** she explores some of the conceptual and practical challenges facing this field, such as how to define genocide, what can organizations do to prevent it, who are the subjects of these organizations' work, and how to measure success.

Another article, **The ACHPR in the Case of Southern Cameroons**, critically analyses decisions by the African Commission on Human and People's Rights concerning the right of self-determination. In it, Simon M. Weldehaimanot proposes that the case of Southern Cameroons has ignored previous jurisprudence and made this right unavailable for "peoples".

Also touching upon challenges to the sovereignty of nation-states is **The Role of the Universalization of Human Rights and Migration in the Formation of a New Global Governance**, in which André Luiz Siciliano reviews the literature on migration to propose that it is an issue which is still mired in anachronistic Westphalian notions that impede the broad and effective protection of fundamental human rights, as opposed to recent concepts such as cosmopolitan citizenship and the responsibility to protect.

In our final article, researchers from Brazilian think-tank Cebrap (Centro Brasileiro de Análise e Planejamento) examine challenges to the constitutionality of recent legislation on domestic violence, the so-called Maria da Penha law. In **Law Enforcement at Issue: Constitutionality of the Maria da Penha Law in Brazilian Courts**, the authors show that most judicial opinions favor positive discrimination of women in order to combat a scenario of chronic inequality. In a context of historical and ongoing oppression of women by men, they argue, treating men who commit domestic violence against women more stringently than women does not hurt the over-arching principle of non-discrimination.

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3. See the report developed by the United Nations Development Programme (UNDP) in partnership with the Inter-American Institute of Human Rights (Costa Rica), available at: http://www.iidh.ed.cr/multic/default_12.aspx?contentid=ea75e2b1-9265-4296-9d8c-3391de83fb42. Last accessed on: May 2012.



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ABSTRACT

This article briefly reviews a variety of literature on the political and social characteristics of our contemporary times, through which it paints a picture of the relative decline of the nation-state in the international system. This is particularly clear when addressing the issues of the universalization of human rights and the resistance to this process in the context of migration. These two issues are opposite sides of the same reality, since it is through the universalization of human rights that significant changes have occurred, such as the rise of social movements and the emergence of the concept of *cosmopolitan citizenship*, or even the *responsibility to protect*. The universalization of human rights, therefore, has been responsible for the relativization of State sovereignty vis-a-vis the international system. The issue of migration, meanwhile, based on ideas from the 17th century that invoke a nationalism – anachronistic in this day and age – that confines human beings to the territories where they “belong”, performs a dual function: on one hand, it preserves some fundamental characteristics of the Westphalian nation-state, such as the principles of sovereignty and self-determination; on the other, it impedes the broad and effective protection of fundamental human rights.

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THE ROLE OF THE UNIVERSALIZATION OF HUMAN RIGHTS AND MIGRATION IN THE FORMATION OF A NEW GLOBAL GOVERNANCE

André Luiz Siciliano

When the products of labor are not material goods, but social relationships, communication networks and forms of life, then it becomes clear that economic production immediately implies a form of political production, or the production of society itself. We are thus no longer bound by the old blackmail: the choice is not between sovereignty and anarchy.

(HARDT; NEGRI, 2005)

1 Introduction

The powerful ideas that shaped human societies up until the past three hundred years were almost all religious, with the notable exception of Chinese Confucianism. Since the Peace of Westphalia,¹ Liberalism was the main secular ideology to produce a worldwide effect, a doctrine associated with the rise of the middle class, first commercial and then industrial, in parts of Europe in the 17th century (FUKUYAMA, 2012). As enunciated by classical thinkers such as Locke, Montesquieu and Mill, Liberalism preaches that the legitimacy of State authority derives from the State's ability to protect the individual rights of its citizens and that the power of the State needs to be limited by law.

The technological advances of the 20th century, however, have led to the configuration of a new reality, in which individuals establish social relations independent of the territory they inhabit. The widespread use of the Internet and the expansion of television broadcasting means that anything can become news and that any news can circle the globe in a fraction of a second. New global concerns have become part and parcel of the daily life of individuals, such as concerns about global warming, human rights and the shortage of drinking water. The perception that the individual belongs to the world has grown increasingly strong, especially when solidarity or opportunity can be found across national borders. Similarly, as

Notes to this text start on page 124.

more companies become international and transnational, the ability to buy and sell products anywhere in the world, or even the simple fact of sharing information on online social networks, all reinforce the awareness of belonging to a global society.

The 21st century has begun under this new perspective, with other powerful ideas dealing blows to the political and social structures that predominated in past centuries. New possibilities present themselves as people realize that, instead of belonging to different States, they all inhabit the same planet, almost all of which is accessible to them. The basic units of politics themselves, the territorial, sovereign and independent nation-states, including the oldest and most stable, are being pulled apart by the forces of a supranational or transnational economy and by the intranational forces of secessionist regions and ethnic groups (HOBSBAWM, 1994). By enabling the political articulation of individuals on a global scale, international or transnational social movements have formed new power structures in the international system that are independent of the nation-states to which they belong.

Therefore, although no institutionalized unitary supranational government exists and States are not the only agents, outlines are being drawn for new global governance in which universal values are shared. The new agents exert a certain diffuse control over the responsibilities of States to their respective citizens, requiring each State to assure the fundamental human rights of their nationals under penalty of foreign humanitarian intervention. The concepts of *Cosmopolitan Democracy*, *Cosmopolitan Citizenship*, *Responsibility to Protect* and *Fragmentation* have emerged, illustrating the internationalization of values and the irrelevance of national territorial borders in the configuration of the new order.

Thus, the objective of this paper is to demonstrate that the issues of migration and the universalization of human rights are important constituent elements of globalization and the new system of global governance, and to show that they challenge the existing structure of the nation-state. The first priority is to adopt a mode of analysis that is not contaminated by the idea that the nation-state is the natural form of political organization for humanity. Next, some specific developments shall be analyzed, namely the roles of immigration and citizenship in light of universal of human rights and the relative power of the State. Finally, it will demonstrate that the emerging form of global governance is likely to maintain the trend of weakening the nation-state and strengthening individual rights in the international system.

2 The State

The nation-state is not the natural form of political and social organization, nor can it be said to be the best possible form of organization. It is merely the form that best adapted to the social and political values following the Treaties of Münster and Osnabrück (1644-1648), which formally put an end to the dominance of religion in international politics. Similarly, it should not be assumed that human nature is to settle in one's place of birth since on the contrary, human beings are natural migrants. Since biblical times, there have been numerous records of human migrations, whether triggered by wars, basic needs or environmental catastrophes, among other reasons.

With the passage of centuries, human evolution led people to create forms of social and political organization that better permitted the exploitation of natural resources and improved conditions for survival, particularly in terms of competition with their peers. Territories were enclosed in order to allow for exclusive and more efficient use of natural resources by the people who possessed them.

The fact is that in the 21st century, practically everything is appropriated and traded, and different people agree to coexist with each other² peacefully. The flow of capital, products, ideas and information is all global. Wealth can be created both from cheaper resources and raw materials, and also in more valuable markets. In 2012, society is global, the challenges we face are global and nation-states have been stripped of many of their original functions. Marx, Durkheim, Weber and Parsons all argued that the growing differentiation, rationalization and modernization of society gradually reduced the importance of national sentiments. The senselessness of modern times, however, lies in the fact that while there are still good reasons for people to migrate such as wars, natural catastrophes, other insecurities, the search for a better life or the mere curiosity to visit other places, people are confined to the place where they were born.

2.1 The Nation-State

The world is still organized into nation-states, sovereign in their territories and reciprocally exclusive. For this reason alone, the immigrant is perceived and received either as a trespasser or as a promoter of development, depending on the interests of the State at any given time (WIMMER; GLICK SCHILLER, 2002). The assumption that nation, State and society are natural social and political expressions of the modern world has been called “methodological nationalism” by Wimmer and Glick Schiller. They argue that there are three modes of methodological nationalism.

The first is the result of ignorance, which has produced a systematic blindness towards the paradox that modernization has led to the creation of national communities amidst a modern society supposedly dominated by the principles of achievement. Wimmer and Glick Schiller mention that neither Parsons and Merton nor Bourdieu, Habermas or Luhman discuss the national framing of States and societies in the modern age. Moreover, these nation-blind theories were created in an environment of rapidly nationalizing States and societies and, in the case of Weber and Durkheim, at the conclusion of nationalist wars.

The second is taking national discourse, agendas, loyalties and histories for granted without questioning them or making them the object of analysis. Economists, political scientists, anthropologists and historians all assumed the State is the unit of reference for their studies, forging a unit that had not previously existed. Economists since Adam Smith and Friedrich List have taken the so-called internal economy and external relations as their primary references. Political scientists assumed that the nation-state was the ideal unit of reference in the international system, but they did not question why the system was *international*. Anthropologists, by abandoning diffusion and adopting the functionalist theory, practically assumed that the cultures to be studied were unitary and organically

related to (and fixed within) a territory. Even history became a study of the history of nations³ and not of men. Only during the last decade has it been possible to overcome this blindness of methodological nationalism by moving beyond the dichotomy between State and nation without falling into the trap of the nation-state (WIMMER, 1996, 2002).

The third is social science's use of territorial imagery and reducing the analytical focus to nation-states. It is worth pointing out that the social sciences have become obsessed with describing processes that occur within the boundaries of each nation-state in contrast to those outside them, thereby losing sight completely of the connection between these processes and the nationally defined territories (WIMMER; GLICK SCHILLER, 2002).

These three variants intersect and mutually reinforce each other, forming a coherent epistemic structure and a self-reinforcing way of looking at and describing the social world.

3 Migrations

With this in mind, it is necessary to understand the historical evolution of the perception of migrations in order to recognize the changing discourse of the States over a brief and recent time span, particularly in the period following the formation of the nation-states. The first period is the prewar era (1870-1918),⁴ marked by strong economic growth and demand for labor, but also brief financial crises. During this period, many European countries abolished the passport and visa system following the example of France, which eliminated the barriers to the free movement of labor in 1861 (WIMMER; GLICK SCHILLER, 2002). In this period, migration was strongly encouraged by States.

The second period spanning from the First World War to the Cold War brought an end to the free movement of workers. The conflict itself, followed by the reconstruction of the devastated countries and the establishment of other newly independent States, had both made labor more valuable and become a serious threat. Part of the national defense strategy of these new countries involved the closure of the borders. Moreover, the models of social analysis developed over the period considered that each territory had its own, stable population, ignoring migration. An arbitrary assimilation was advocated. Immigrants began to be viewed not only as a security risk but as endangering the isomorphism between nation and people and, therefore, a major obstacle to the nation-state building that was underway. This was a period of closing borders and keeping counts.

The third stage occurred during the Cold War when the blind spot became blindness, since almost all historical memories of the transnational and global processes there had once been were erased. Modernization theory made it look as though Western Europe and the United States of America had developed national identities and modern States within their territorial confines rather than in close relationship with a global economy and flow of ideas. One notable example of this period was West Germany, which, in competition with East Germany, forged a national consensus by developing a generous welfare State for its citizens,

making the concept of citizenship assume a decisive role in the social structure, and guaranteeing rights to some workers and not to others (namely those who were not considered German and who were used to rebuild the country in the postwar period). The idea crystallized that the immigrant is not a citizen and few modern institutions are as emblematic of rights as citizenship. In a strict definition, citizenship describes the legal, incomplete, relationship between the individual and the polity (SASSEN, 2006).

Similarly, Zolberg argues that the political organization of the world's territories is one of mutual exclusion of sovereignties (ZOLBERG, 1994). It is worth pointing out that each territory is the sovereignty of a particular State, which excludes it from all the others and, from this perspective, immigration is no longer seen as natural movement (something intrinsic to human nature), but as transference from one jurisdiction to another. The immigrant, therefore, begins to be viewed as deviating from the norm of the new, politically organized world. Zolberg claims that the free flow of people and the right to leave one country and travel across borders would significantly reduce the sovereign authority over that territory, which leads to the conclusion that, rather than a matter of security or the economic viability of managing a territory, open migration implies the loss of power of a sovereign government over its territory and its people. In the words of Catherine Dauvergne (2008), "in contemporary globalizing times, migration laws and their enforcement are increasingly understood as the last bastion of sovereignty" (DAUVERGNE, 2008, p. 2).

A sovereign government, however, is not restricted to the negative aspect of coercive authority over the people in a given territory; it has, primarily, another extremely important duty to protect and defend the individual. Thus, the main problem lies in the fact that in this modern structure, the only entity with the legitimacy to protect the individual is the nation-state. The international community protects, to an extent, only refugees, those who are persecuted and, as far as everybody else is concerned, "the international community, as presently constituted, appears unable or unwilling to meet their needs" (ZOLBERG, 1994, p. 170).

3.1 Resistance of States to immigration

The migration issue is ultimately about maintaining power and preserving the *status quo*. To prevent the free flow of people is, to a large extent, to preserve the remaining power of States and of small interest groups with considerable political influence in developed States (FACCHINI; MAYDA, 2008, p. 695). From the time of the Cold War, national rhetoric has portrayed the immigrant as a foreigner with limited rights (SASSEN, 2006) and as responsible for falling salaries and rising unemployment, which is unfounded, as shall be demonstrated below.

However, restricting immigration does impede the protection of human rights, since the immigrant, who is thus not a citizen, has limited rights. An alarming, and paradoxical situation occurred in Europe in 2011 when developed nations demanded the ousting of dictators from countries in northern Africa, alleging that they were violating the human rights of the populations of these

countries. However, these same populations, when seeking asylum and refugee status in Europe, were turned away in equally inhumane conditions when they reached the European continent. By classifying people with a status that sets them apart from national citizens, restrictions on migration flows exempt States from the duty of assuring their human rights.

In an article titled “People flows in globalization”, Richard Freeman deconstructs the supposedly economic and developmentalist arguments to examine the causes and consequences of migration and argue that people flows are fundamental for the global economy and that the interplay among immigration, capital and trade is essential to understanding how globalization affects the economy. According to the United Nations (INTERNATIONAL ORGANIZATION FOR MIGRATION, 2009), while the number of immigrants more than doubled between 1970 and 2005, rising from 82.5 million to nearly 190 million, the number of immigrants in the United States during the 1990s was practically the same as in the first decade of the 1900s, although both the U.S. and the world populations were significantly larger in the 1990s (FREEMAN, 2006, p. 148).

One telling statistic on the restricted movement of people in our globalized times is the fact that immigrants represent just 3% of the global workforce, while world exports represent 13% of world GDP (2004) and direct foreign investment corresponds to 20% of global gross capital formation (FREEMAN, 2006). Another significant reality is that globalization has not diminished the difference between the cost of labor in different places; thus, wages paid in developed countries are 4 to 12 times higher than wages paid in developing countries for the same occupation (FREEMAN, 2006). These data largely explain why migration flows are directed from developing countries to developed countries: even though working conditions in developed countries are bad by local standards, the wage received by immigrants will be far higher than it would be in their country of origin, thereby enabling them to send money to their families.

The protectionist argument that barriers exist to protect the jobs and wages of citizens is entirely unfounded. First, unskilled immigrants (the majority of whom come from poor countries) do not compete with local labor, but complement it; second, the destination country is generally capital-intensive while the source country is labor-intensive; third, the vast majority of migrants are young working-age people; and, finally, the flow of immigrants drives the flow of investments (FREEMAN, 2006, p. 157).

Therefore, increased immigration flows do not depreciate the salaries of local workers,⁵ meaning that any justifications to restrict immigration are primarily political and ideological, and have nothing to do with economic or developmentalist reasons. Indeed, if developed countries allowed more immigration, world GDP would rise and the inequality of wages among countries would decline. As Dani Rodrik points out, “If international policy makers were really interested in maximizing worldwide efficiency, [...] they would all be busy at work liberalizing immigration restrictions” (RODRIK, 2001). Nevertheless, liberating migration flows and ultimately permitting the free movement of people across territories would severely diminish the power of nation-states (ZOLBERG, 1994).

4 Human rights, citizenship and the nation-state

The primary function of the nation-state and also the source of its legitimacy is the protection of its citizens. Therefore, the origin of the State's duty to protect referred only to citizens recognized as such, i.e. those vested with citizenship. However, the nature of citizenship has been challenged by changes such as the erosion of privacy rights and also by the proliferation of old issues that have gained new attention, such as the status of indigenous communities, expatriates and refugees, etc. (SASSEN, 2006). The international consciousness of the need to protect the basic rights of all peoples by means of some universally acceptable parameter partially influenced the United Nations Charter of 1945, which affirmed a "faith in fundamental human rights, in the equal rights of men and women and of nations large and small" (IBHAWOH, 2007).

The commitment to uphold the human rights expressed in the UN Charter of 1945 was followed by the Universal Declaration of Human Rights (UDHR) of 1948. These conventions, which were later replicated on regional levels in Europe, the Americas and Africa, currently constitute the foundation of contemporary international human rights standards. The universalization of human rights is intended to assure the individual rights and guarantees of any person in any territory safeguarded by the international community. However, this distinction between person and citizen created a significant problem for international political theory: the problem of how to reconcile the actual diversity and division of political communities with the newly discovered belief in the universality of human nature (LINKLATER, 1981).

The individual, now the holder of universal rights⁶ independent of the nation-state where they are located,⁷ became the object of concern of the international community, overriding the international principles of sovereignty and non-intervention. This could bring about a possible structural shift in the system, which would permit individual or collective self-determination independent of States (LINKLATER, 1981). On this point, while not in any way radical, there is a school of theorists (Cosmopolitans) that envisage the rise of global democratization, both of institutions and of political participation, by individuals on the global stage. However, while the prevailing system is one of nation-states, the protection of the rights of individuals, in addition to citizenship and its guarantee of rights and duties, will continue to primarily be the responsibility of States (CHANDLER, 2003).

Cosmopolitans claim that globalization has produced a juxtaposition of jurisdictions, meaning that sovereign power in the same location may be divided between international, national and local authorities, as is the case in the European Union. They believe a reconfiguration of political power is taking place, a shift to one no longer underpinned by traditional internal/external and territorial/non-territorial distinctions (HELD, 2004). From this theory, two others have emerged: cosmopolitan democracy, which explores the possibility of new structures of representative power; and cosmopolitan citizenship, which recognizes individual rights and guarantees independent of the submission of the individual to any nation-state.

The Cosmopolitans assert that democracy as a system of government was considerably strengthened following the Cold War and the victory of the West over the Soviet system (ARCHIBUGI, 2004). Indeed, as a result of people's movements, many countries in Eastern and Southern Europe embraced democratic constitutions and, in spite of countless contradictions, autonomous governments have gradually expanded and consolidated. In this respect, the recent events in the Middle East, known as the Arab Spring, reinforce Archibugi's thesis, since although new democracies have not yet emerged, the process of reviewing and discussing the current political systems in the region has been profound, complex and undeniable.⁸

However, this same school of thought also argues that a democratic deficit exists within nation-states, emphasizing the fact that a national decision may not be truly democratic if it affects the rights of citizens that do not belong to the community in question. Moreover, they bemoan that another, equally important development that should have followed the victory of the liberal States has not occurred: the expansion of democracy as a model of global governance (ARCHIBUGI, 2004). Although there are signs of change – with discussions on the representativeness of countries in the IMF, the emergence of the G-20 as a decisive group in the economic sphere, or the reform of the UN Security Council that is always under consideration – there are no real prospects for the democratization of world governance. This presents serious distortions in the exercise of power, whether in the WTO, NATO, the Security Council itself or even in terms of the representativeness of decisions taken by the UN General Assembly.⁹

Nevertheless, Danielle Archibugi emphasizes that the principles of the Rule of Law and Shared Participation have been progressively applied to international relations, which was the basic idea behind the concept of Cosmopolitan Democracy. Archibugi's intention is to reassert the basic concepts that underpin Cosmopolitan Democracy and suggest that there could be a widening and deepening of the participation of citizens and groups of people at the global level, as well as a weakening of the nation-state as the legitimate and unitary representative of the interests of people.

In cosmopolitan citizenship, there is an opposing argument at work. It claims that the proposed framework of cosmopolitan regulation, which is based on the fictitious rights of global citizenship, does not recognize the democratic rights of citizens, or the collective expression of these rights in State sovereignty that could result in the loss of the guarantee of protection by a nation-state (CHANDLER, 2003). On the other hand, the framework of regulation of the modern democratic system is historically and logically derived from the formal assumption of equal self-governing individuals (CHANDLER, 2003, p. 341).

Although there is some divergence over the resulting benefits, universal rights of global citizens could lead to new forms of managing the international public order and individual guarantees. Besides focusing on citizenship rights that are territorially limited by national States, attention needs to be paid to the spillover of democracy and human rights globally. In this respect, the strengthening of the international human rights system could lead to the transfer of citizenship rights

to the individual, inasmuch as citizenship may cease to be the condition that guarantees rights. In other words, rights would be conferred based on the inherent dignity of the human person, not by nationality (REIS, 2004). A real step in this direction would be to gradually extend some of the rights inherent to citizens to immigrants, such as the right to vote in local elections.

5 A New global governance

Archibugi's framework is, to an extent, the same as the one addressed by Rosenau when he identified the process of *fraggementation*, which consists of the fragmentation of the State coupled with the integration of social groups. Fragmentation occurs when groups and individuals no longer consider the nation-state to be the legitimate expression of their interests, insofar as they start to act by themselves in defense of their interests that are no longer served by the State. For example, this can be seen in the case of Belo Monte¹⁰ in which local indigenous groups demonstrated against the policies and actions of the Brazilian government on the use of resources in the region of Volta Grande do Xingu, in Pará. These groups identified with other groups that were equally isolated in other areas, joining forces through social integration with their peers in different regions or nations. They also joined other indigenous groups from the region of Rondônia in Brazil and also from Peru to protest the use of their lands by their respective national governments and demonstrate more effectively on the international stage.¹¹ Furthermore, they sought backing from the Inter-American Commission on Human Rights of the OAS for their demands that were being ignored by the Brazilian State (SICILIANO, 2011). In this case, we can see the fragmentation of the State (vertical) and the social integration (horizontal) (ROSENAU, 1997).

National borders have become increasingly permeable and new issues transcend current jurisdictions. The governance that exists on a local and national level no longer serves the demands of a global world and there is no legitimate supranational governance to resolve these new issues. In this context, four challenges are particularly relevant to the process of building global governance (ROSENAU, 1997): i) the speed with which normative issues have to be addressed, since the telecommunications revolution imposes a new speed on decision-making processes in the field of international relations; ii) the possibility that the tensions inherent in the process of *fraggementation* may have rendered the traditional precepts of Western civilization unreliable as guides to individual or group conduct, since *fraggementation* means that society, at the same time that it fragments in relation to an old model (statist hierarchical structure), integrates in relation to a new one (social, networked and horizontal); iii) that some worldwide norms (values) can be identified both in the sphere of the State and in a multi-centric world; and iv) arenas in which the cleavages may be so deep as to prevent the evolution of widely shared norms.

The case of Belo Monte, or even that of the Arab Spring, clearly demonstrates the diminishing relative importance of nation-states and the growing significance of social movements, whose interests very often transcend borders and diverge

from the official position of national governments. In these two examples, the “international community” was called upon to take a stand and to interfere and assist those most vulnerable, potentially violating the sovereignty of the States involved. And what will be the reaction of the “international community”? What precedents will be set? What values based on concrete cases such as these will be established or reinforced?

These situations have a tendency to repeat themselves more frequently and the questions they raise point to the configuration of a new paradigm in international relations.

5.1 *New Structures*

In the early 1980s, Robert W. Cox claimed that “social forces” were capable of breaking down statist political structures. He predicted three possible outcomes resulting from these forces: i) the emergence of a new hegemony based upon the global structure of social power generated by the internationalization of production; ii) the emergence of a non-hegemonic world structure of conflicting power centers; or iii) the emergence of a counter-hegemony based on a third-world coalition against core-country dominance. Regardless of the accuracy of any of the predicted outcomes, “social forces” have been responsible for driving a paradigm shift in the power relations of nation-states for more than thirty years (COX, 1981).

Towards the end of the last century, the phenomenon that Rosenau named “fragementation” was derived from the observance of the same force that Della Porta, with some variation, called “social movements” – which are typified by a segmented organizational structure, with groups arising, mobilizing and declining continually; *polycephalous*, with a plural leadership structure; and networked, with groups and individuals connected through multiple links (DELLA PORTA, 2007, p. 125). This definition means that social movements can be groups of landless farmers lobbying for land reform or indigenous groups demanding the inviolability of their land, or even a large portion of the population of a territory that no longer accepts submission to its government.

These forms of social organization which gained prominence in the 1990s were the subject of a recent analysis by former Brazilian president Fernando Henrique Cardoso,¹² who asserted that social movements were driven by the evident inability of the State to fulfill social demands, but also, to some extent, by society’s distrust in the politics practiced by representative democracy, i.e. by their elected members of Congress. Cardoso summed up his arguments by stating that social movements are extremely efficient when it comes to staging resistance, but they face major difficulties implementing policies; he cited the example of the Arab Spring, in which the population managed to organize itself to topple dictators from power, but not to form a new government.

Similarly, Della Porta points out that the non-governmental organizations that flocked to Seattle¹³ for the WTO Ministerial Conference in 1999 were an example of everything the trade negotiators were not. They were not only well organized, but they also had built unusual coalitions (for example, environmentalists

and trade unionists overcame old divisions in order to act together against the WTO). And they had a clear agenda: to obstruct the negotiations (DELLA PORTA, 2007, p. 141). Whatever the shortfalls of social movements, their social and political power is notable and all indications point to them growing stronger.

The emergence of social movements has only been possible thanks to the reductions in time and space brought about by globalization (CARDOSO, 2011). This argument is corroborated by David S. Grewal, who asserts that globalization may be defined as the intensification of worldwide social relations that link distant localities in such a way that local happenings are shaped by events occurring many miles away and vice versa (GREWAL, 2008).

Globalization is the name commonly attributed to the recent ability of people to interrelate with one another while they are anywhere on the globe and it is, among other things, the unparalleled process through which conventions are determined (GREWAL, 2008, p. 2). For Milton Santos:

Globalization is not just the existence of a new system of techniques, but also the result of actions that assure the emergence of a global market responsible for the currently effective political processes. Therefore, the factors that contribute to explain the architecture of modern-day globalization are the uniqueness of the technique, the convergence of the moments, the awareness of the planet and the existence of a single motor in history, represented by a globalized surplus-value.

(SANTOS, 2007, p. 24).

With globalization, what we are experiencing now is the creation of an international group that covers the entire globe within established parameters: a new world order in which we clamor for connection to one another via standards that are offered for universal use (GREWAL, 2008, p. 3). And the standards that permit such global coordination are a reflection of “network power”. The concept of network power, as conceived by Grewal, assumes two things: i) the standards that permit coordination gain in value as more people use them; and ii) this dynamic can lead to the gradual elimination of competing standards. For example, that globalized surplus-value has an enormous network power, just like the international financial system does, or Facebook or the metric system. The network is the group of interconnected people linked to one another so they can benefit from cooperation. These benefits can assume different forms, including the exchange of goods and ideas (GREWAL, 2008).

Thus, social movements such as the environmental, human rights and humanitarian aid movements are largely transnational. However, even though there may be a global network of social relations, there is no sovereign global governance to give it order as we know it on the national level. This is why the term *globalization of sociability* is used to distinguish relations of sociability from those of sovereignty and to emphasize the core tension in contemporary globalization: that everything is being globalized except politics (GREWAL, 2008, p. 50). The same author points out that even Cosmopolitan Democracy theorists argue that democracy should be strengthened at the national levels, thus reproducing the current system on a larger scale.

An example of the political globalization referred to by Grewal is the organization of international environmentalists, rubber-tappers and indigenous groups, who received the support of the United States Congress and the Treasury Department for their local demands (HOCHSTETLER; KECK, 2007, p. 155). However, these movements have not emerged from a process of cumulative development of institutions and organizations that have responded to issues and problems, both internal and external to their countries. Instead, there are clear discontinuities, contingencies and also sudden surges of opportunity (HOCHSTETLER; KECK, 2007, p. 223).

Transnational social movements play a democratizing role in globalization in that they enable some direct participation by individuals in political matters by enhancing representation in international institutions and providing voices and ideas that were not previously heard (KHAGRAM; RIKER; SIKKINK, 2002, p. 301). Transnational networks and non-governmental organizations, when analyzed from the perspective of representativeness, internal democracy, transparency and deliberation, are quite flawed and imperfect; in fact, they are informal, asymmetrical institutions that function as ad hoc antidotes for domestic and international representative imperfections (KHAGRAM; RIKER; SIKKINK, 2002). However, this specific role of correcting representative imperfections is of extreme importance and must not be suppressed, since from it comes the capacity to raise local demand to the sphere of international interest.

It can be concluded that social movements not only use the standards and networks provided by globalization, but they also fuel them, creating new networks and developing new standards so as to establish a path dependence which, at first, does not conflict with the dominant structures. However, Della Porta warns that substantial changes may be driven by the growing power of multinational corporations and international governmental organizations, not to mention a weakening of the representative model of democracy, meaning there may be room for reflection on new forms of democracy (participative, direct, deliberative etc.). Milton Santos asserts that another globalization is possible, since current globalization is much less a product of ideas that are actually possible and much more the result of a restrictive ideology that was purposefully established.

6 Conclusion

Globalization allows the world to be seen as the new unit of reference, whether economic, political, anthropological or historical. Financial and trade relations do not respect the territorial borders of nation-states; political organizations in many ways transcend and impose obligations on States; man is once again viewed as an inhabitant of the planet and history is one of humanity.

The individual and groups of individuals have begun to organize in networks and have managed to create social movements with enough political clout to interfere directly in the decision making of national governments. In the international system, decision-makers also cannot ignore the influence of or repercussions for social movements. There is a growing distance between

the individual and the State that allows various issues (environmental, cultural, labor and trade, among others) to be handled internationally without any State involvement. In spite of the strength of this movement, it has not been capable of breaking down the structures of the power relations created following the Peace of Westphalia. Indeed, it coexists with them in relative harmony.

The universalization of human rights and the restriction of large-scale international migration are the only two issues capable of bringing about a comprehensive restructuring of the current statist, hierarchical power structure. From a human rights perspective, this is because individuals, whether in the international system or inside States themselves, are rights holders independent of States. Moreover, considering that the legitimacy of State power derives basically from the ability to protect its citizens, international recognition of individual human rights supersedes the principle of self-determination and, more importantly, in the event of individual rights violations by the State, legitimizes external intervention to override the sovereignty of the State.

The issue of migration represents another aspect of the same dilemma. Preventing the free movement of people by attaching a given population to a given territory precludes the universalization of human rights. On one hand, this occurs by not recognizing the rights of those humans who are not national citizens and, on the other, by not guaranteeing the rights of citizens outside of their territory. Citizenship, the political and legal link to the State, guarantees the existence of the State's power over its nationals.

Thus, while social movements are altering the relations between forces in domestic and international politics by the strengthening power of networks, the new global governance continues to coexist with the Westphalian system of nation-states. Despite numerous changes, there are no prospects for any radical restructuring of the system for the following reasons: first, because the universalization of human rights is still modest and, second, because migration is not on the agenda of social movements.

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NOTES

1. Signed in the towns of Münster and Osnabrück, the Westphalia Treaties sealed the Peace after the Thirty Years' War in Europe (1618-1648). These treaties introduced a new normative logic both to the relations between and those within countries, as sovereign states purposefully ignored the Church in their decision-making. The influence of the Holy See on European political issues was annulled by the sovereign states. (Romano, 2008).
2. The main exception is the dispute between Israelis and Palestinians, which is probably the only one that could impact the international system. There are other hostile episodes of intolerance in Africa, the Middle East, Eastern Europe and West Asia, although these conflicts involve a relatively small contingent of people or limited resources, and are not capable of influencing the international system.
3. The history of Brazil is one of the few examples in the Western world, since Brazilians consider their country more than 500 years old, i.e. that its origin precedes the emergence of the Brazilian nation. As a rule, countries consider as the starting point of their existence the respective unifications or proclamations of independence, i.e. the emergence of a unit of exclusive national identity.
4. Wimmer and Glick-Schiller propose a division in three "moments" (i – the pre-War era; ii – the period comprising two Great Wars until the start of the Cold War; iii – the Cold War era) in which patterns of behavior and normative trends can be identified in public policies in various countries. There is no precise date in which each of this "moments" can be said to have started and ended, as there are no single facts that can be pinpointed as milestones. Therefore, even though they are imprecise, the dates suggested by Wimmer e Glick-Schiller are used here.
5. "In fact, studies find the opposite. For the United States, Freidberg and Hunt (1995) report that a 10% increase in the fraction of immigrants in the population reduces native wages by at most 1%". Cited in Freeman (2006, p. 157).
6. Consolidated primarily in the UN Universal Declaration of Human Rights.
7. Conventions on refugees and stateless persons recognized for the first time the existence of the individual on the international level (REIS, 2004, p. 151). The principle of the Responsibility to Protect (UNITED NATIONS, 2006) was approved by the UN General Assembly, in New York in 2005 (A/RES/60/161), by more than 170 states and it has been invoked to permit the occupation by the international community of states that violate human rights.
8. The so-called "Arab Spring" has been the subject of numerous studies, with various interpretations of its causes and consequences, as can be seen by the debate between Salem Nasser, Arlene Clemesha and Gunther Rudzit, and moderated by William Waack, which can be viewed at: <<http://globoTV.globo.com/globo-news/globo-news-painel/todos-os-videos/v/segundo-turno-da-eleicao-no-egito-traz-expectativas-diversas-para-toda-a-regiao/1986106/>>. Last accessed on: 14 Jan. 2012.
9. "In the UN General Assembly, those member states whose total number of inhabitants represents just 5% of the world's population have a majority in the Assembly. Would it then be a more democratic system were the weight of each state's vote proportional to its population? In such a case, six states (China, India, the United States, Indonesia, Brazil and Russia) that represent more than half of the world's population would have a stable majority." (ARCHIBUGI, 2004).
10. A hydroelectric dam being built by the Brazilian government on the Xingu river in the state of Pará that is facing strong resistance from indigenous communities, environmental groups and part of the international community, particularly non-governmental organizations involved in the defense of minorities and the environment.
11. Three Amazon Indians protested in London against the hydroelectric dams that threaten to destroy the land and the lives of thousands of indigenous people. Ruth Buendia Mestoquiari, an Ashaninka Indian from Peru, Sheyla Juruna, a Juruna Indian from the Xingu region of Brazil, and Almir Suruí, of the Suruí tribe in Brazil, are calling for three controversial hydroelectric dam projects in the Amazon to be halted. The three indigenous representatives protested, with supporters from Survival International, outside the office of the Brazilian Development Bank – BNDES, which is providing much of the funding for the dams (SURVIVAL INTERNATIONAL, 2011).
12. At a conference staged by the International Conjuncture Analysis Group (Gacint) of the University of São Paulo's International Relations Institute (IRI-USP), on November 23, 2011, the former president Cardoso addressed the issue "The economic crisis and the changing global order: the role of Brazil" (CARDOSO, 2011).
13. In 1999, in Seattle, during the WTO Ministerial Conference, many civil society groups united to demonstrate their grievances. Organizations ranged from environmental and human rights associations to small, 20-year persons groups, and protests were organized online.

RESUMO

O presente artigo trata de tecer breve revisão de literatura diversificada acerca das características políticas e sociais dos tempos atuais, na qual se pretende apresentar um retrato da situação de relativo enfraquecimento do Estado-nação no Sistema Internacional, especialmente quando enfrentadas as questões da universalização dos direitos humanos e da resistência a esse processo manifestada na questão das migrações. Ambas questões são aspectos opostos de uma mesma realidade, pois significativas evoluções tem ocorrido através da universalização dos direitos humanos, como o fortalecimento dos movimentos sociais, o surgimento do conceito de *cidadania cosmopolita*, ou mesmo o da *responsabilidade de proteger*, e, assim, a questão da universalização dos direitos humanos tem sido responsável pela relativização das soberanias estatais face ao sistema internacional. A questão migratória, por outro lado, sustentada sobre os ideais do século XVII, invocando um nacionalismo, hoje anacrônico, que confina os seres humanos aos territórios aos quais “pertencem”, exerce uma dupla função: por um lado, a de preservar algumas características fundamentais do Estado-nação westfaliano, como os princípios da soberania e da autodeterminação; por outro, a de obstar a proteção ampla e efetiva dos direitos humanos fundamentais.

PALAVRAS-CHAVE

Direitos humanos – Estado-nação – Migração – Governança global

RESUMEN

El presente artículo intenta presentar una breve revisión de la diversificada literatura sobre las características políticas y sociales de los nuevos tiempos, en los que se pretende presentar un retrato de la situación de relativo debilitamiento del Estado-nación en el Sistema Internacional, especialmente cuando se trata de cuestiones referentes a la universalización de los derechos humanos y de la resistencia en este proceso, que se manifiesta en la temática de las migraciones. Estas dos cuestiones son aspectos opuestos de una misma realidad, pues a través de la universalización de los derechos humanos han ocurrido avances significativos, como el fortalecimiento de los movimientos sociales, el surgimiento del concepto de *ciudadanía cosmopolita*, o incluso el de *responsabilidad de proteger*, y de esta forma, la cuestión de la universalización de los derechos humanos ha sido responsable por la relativización de las soberanías estatales frente al sistema internacional. La cuestión migratoria, por un lado, sustentada sobre los ideales del siglo XVII, invocando un nacionalismo, actualmente anacrónico, que confina a los seres humanos a los territorios a los cuales “pertenecen”, ejerce una doble función: por un lado, la de preservar algunas características fundamentales del Estado-nacional westfaliano, como los principios de la soberanía y de la autodeterminación; y por otro, la de obstaculizar la protección amplia y efectiva de los derechos humanos fundamentales.

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