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EXTERNALLY SOURCED FINANCE AND ITS IMPACT ON THE DOCTRINE OF THE SOVEREIGNTY AND EQUALITY OF STATE

by

*Arthur Johnson Manase**

The Problem

The Third World financial and economic crisis sprang from a number of factors. This paper will not seek to exhaustively examine the genesis of the crisis bedeviling the majority of the developing countries. Instead the main thrust of this analysis is to trace the link between the so-called "development aid" to the Third World and the general Third World debt crisis, and how this impacts negatively on the overall concepts of state sovereignty and non-interference in the internal affairs of states by other states.

The General Nature Of The Problem

Generally Third World countries assume that they need external assistance in order to achieve internal economic development. This is a notion shared by countries emerging from a colonial history. Colonialism inevitably exacted a heavy toll on colonies' resources since the primary objective of colonial powers was the expropriation of colonies' resources in order to facilitate the further development of the colonial powers' economies. Since the former colonial powers benefited tremendously from their exploitation of colonies the "new states" found it natural, upon the attainment of independence, to seek aid from their former colonial powers. There was a perceived obligation on the part of the former colonial powers to render such assistance. This assistance was always forthcoming although it came in different forms, some harmless whilst others not so harmless. Assistance in the form of educational grants, provision of training facilities and development grants (advances not subject to repayment) are to a great extent positive. It could be observed, however, that even this seemingly "innocent aid" has the unfortunate effect of creating a "dependency syndrome" which undermines a state's independence of decision making on issues involving the benevolent state.

Some forms of aid, however, have a *prima facie* negative impact on the twin doctrines of state sovereignty and non-interference in the affairs of sovereign states. Conditional aid has this effect, so does aid which comes in the form of loans subject to repayment. This is so whether or not it comes in the form of advances with concessional interest rate terms because it is this type of aid which fosters the debt problem.

The Question Of State Borrowing

States in general and Third World states in particular source funds for a number of reasons. Money is generally sourced to bridge the budget deficit and to finance huge capital projects although the general theory propagated is that money is sourced for development. Money sourced by states can come purely in the form of grants (conditional or unconditional aid) loans with grace periods and straight commercial loans sourced from international capital markets. State sourcing of money (borrowing) can be external or internal. Internal borrowing which is the sourcing of money from domestic market, has very little impact on the concept of sovereign equality of states other than for the fact that it weakens a state's financial muscles and hence makes that state vulnerable when dealing with external creditors and this might compromise its sovereignty and dignity as a state.

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External borrowing can come in the form of public borrowing from foreign governments. It can also come in the form of loans from entities in foreign countries such as the International Monetary Fund (IMF) and the (World Bank). Public lending is now very rare. States now generally resort to private borrowing from commercial banks but the current debt crisis has generally frightened commercial banks off and hence the main form of external borrowing which is taking place and which will be analysed is from the IMF and such related institutions. It will be submitted that it is this type of borrowing which most impacts on state sovereignty.

The General Concepts of Equality of Sovereign States, the Principle of Non-Interference in the Internal Affairs of Other States and the Territorial Integrity Of States

Article 2(1) of the United Nations Charter stipulates that "The Organisation is based on the principle of the sovereign equality of all its members". The notion of the sovereignty and equality of states represents the basic constitutional doctrine of the law of nations which governs a community consisting primarily of states having a uniform legal personality.¹ An examination of the concept of sovereignty entails the following:

- 1 A jurisdiction which on the face of it, is exclusive over a territory and the permanent population living there.
- 2 A duty of non-intervention in the area of exclusive jurisdictions of other states and
- 3 The dependence of obligations arising from customary law and treaties on the consent of the obligor.²

This study primarily focuses on the first two of the principal corollaries of the concept of sovereignty. It can be submitted that the sovereignty of a state is its independence and it is this sovereignty which describes both the legal personality of a state and incidents of that personality. In *The Island of Palmas Case* it was held that "sovereignty in the relations between states signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other state, the functions of a state".³ Thus sovereignty refers to formal legal equality between states and to the right of governments of such states to hold the highest decision making authority within their territorial boundaries. According to Brownlie "The corollary of the independence and equality of states is the duty on the part of states to refrain from intervention in the internal or external affairs of other states".⁴ It follows, therefore, that sovereignty thus has a strong negative aspect, the right not to be interfered with.⁵

In the final analysis one can conclude that the exercise of sovereignty on matters within the sole domain of a state depends to a great extent on just how unfettered the hands of a state are. There are several features which can fetter a state's freedom of action, for instance, treaty obligations and customary international law norms.

Aid, The Foreign Debt And The Sovereignty And Equality Of States

Financial aid which comes with strings attached has a direct impact on the independence of action of a state. Such strings might generally relate to how one state's foreign policy for instance is to be conducted and in this regard it can amount to basic issues as to how a state votes at the United Nations. The general principle is to the effect that once the dependent state fails to toe the line the aid lifeline is withdrawn and this usually

1 Brownlie I, *Principles of Public International Law* (3rd ed) p 287.

2 *Ibid.*

3 *The Netherlands v US* (1928) Jessup 22 AJIC 735.

4 Brownlie I, *Principles of Public International Law* (3rd ed) p 291.

5 Thomas Dr Caroline, 1989 Commonwealth Secretariat *Human Rights in Development Series* p 7.

pressurises the renegade state to reconsider its position. This was generally the position in which most Third World countries found themselves during the cold war era. In the contemporary era of a monolithic United States headed world power-structure this usually comes in the form of prescriptions of human rights, liberalisation of the economy and political pluralism. If a recipient state fails to swallow a dose of any of these prescriptions then the aid is suspended. Needless to say, this is a total negation of the sovereignty, equality and independence of states. Sometimes aid might not come with overt strings attached but because of the dependent nature of recipient states the practical effect is exactly the same as when aid is given with strings attached to it.

The Impact Of IMF Funds

At the end of the 2nd World War the United States was the driving force behind the establishment of three main regulatory financial systems. Each of these financial systems in its own way propounds the United States conception of economics. The idea behind the setting up of the International Monetary Fund was to provide financial help and economic advice to states which go into balance of payments difficulties. The International Bank for Reconstruction and Development (World Bank) was to provide financial support for reconstruction of war torn economies although under contemporary situations it has assumed the role of a development agency for Third World countries. The objective of the GATT was to regulate trade. It will be submitted in this work that each of these bodies is dominated by the wishes of the United States and the United States uses these bodies to regulate poor countries.

Apart from being a most influential financial actor the IMF plays an even more extensive political role. Although to begin with this organisation was established to lend money for short periods to alleviate transient balance of payments deficits, the IMF has acquired enormous influence in deciding the types of economic policies and programmes governments should implement. "Whilst claiming to promote neutral policies, the IMF advocates an economic orthodoxy which is based on a particular political philosophy — that of the free market".⁶

The manner in which the United States ensures the promotion by the IMF of preferred policies is by way of the institution of weighted voting within the Executive Board where all major decisions are taken. The United States is actually the only country with a unilateral veto power. IMF funds are given on conditions set by the IMF which are illegitimate in a world where the principle of sovereignty is supposed to reign supreme. According to Nyerere, "We expected these conditions to be non-ideological and related to ensuring that money lent was not wasted, instead, the IMF's conditions demonstrate that it has an ideology of economic and social development which it is trying to impose on poor countries irrespective of their own clearly stated policies".⁷

The reality is that states cannot evade United States propagated IMF prescriptions. There is virtually no alternative source of finance open to Third World countries today since commercial banks are reluctant to lend in the wake of the Debt problem. They only lend upon IMF pressure. The web of influence of the IMF permeates every corner of the financial system. To become a member of the World Bank a country has first to be a member of the IMF and to be a member of the International Development Agency a country has to be a member of the World Bank. The International Development Agency is the body which lends to the poorest countries at concessional rates of interest. Therefore, the economic philosophy propagated by the United States is propounded by the IMF and reinforced in each of these other key lending bodies. A useful example is of Jamaica. "Manley's democratically elected socialist government was faced with the choice of accepting IMF remedies which hurt most the very poorest sectors of Jamaican society which they were aiming to champion or trying to generate capital from other sources without the IMF's seal of approval — an impossible

6 *Ibid* pp 12-13.

7 Nyerere quoted in "Development Dialogue", Sweden, 1980 No. 2 p 7.

ask.”⁸ IMF prescriptions have led to chaos after disrupting the economic fabric in countries as far apart as the Sudan, Zambia and Venezuela.

The situation is much more subtle when dealing with a state with a massive foreign debt. Once the nature of a state's debt obligations assumes the level of a national crisis then the dependence syndrome is actually accentuated. This is because the reasons for the birth of the crisis are reproduced. Just as a state had to borrow due to lack of “sufficient” internal resources so in this case the state might have to borrow even more since all the resources accumulated within go towards servicing the debt. Sometimes a dependent state might even be compelled to borrow more in order to get the resources for the servicing of its debt. Whenever this re-borrowing happens the borrowing terms and conditions which would have led to the establishment of the initial debt crisis would still be in existence. The vulnerability of the debtor state to creditor pressure on how to solve its budget deficit by, for example, introducing a structural adjustment programme is increased. A state caught in this syndrome cannot resist pressure on how to relate with other countries and what sort of investment and on what terms should be encouraged. This is particularly so if a debtor country wishes at some stage to seek favours from creditor nations and agencies in the form of debt rescheduling and the writing off of debts. Negotiations on both these fronts inevitably entail a compromise of state dignity and sovereignty.

Conclusion

The doctrine of sovereignty with all it entails in terms of independence and non-interference in the internal affairs of state depends for its operation on the true equality of states. The current world economic order ensures the inequality of states and hence the negation of this doctrine. What is needed is a switch from positive to negative real interest rates, a positive movement in Third World countries terms of trade and an improvement in the location of trade outlets. With a sustained world economic recovery Third World States will be able to service their debts and the need to source external funds on subservient terms will be obviated. Only then can progress take place towards the establishment of true sovereignty of states.

At the end of the day it is worth emphasising that the principle of sovereignty under international law has never been absolute. The concept of interfering in the internal affairs of a country in order to protect human rights has gained prominence of late. Even in the arena of development interference in countries to promote economic development seems to be the backbone of the United Nations General Assembly Declaration on the Right to Development of 1986. According to Dr Caroline Thomas, “Sovereignty has a strong negative aspect: the right not to be interfered with. The right to development falls within the realm of positive attributes and requires not non-intervention by other states and non-state actors but often direct action, even intervention”.⁹ The negation of sovereignty analysed in this work can perhaps be excusable then only if it is established that it furthers this right to development.

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