

## Austria and Mexico: Substantive Reasons for an Internal Law Partnership

Alberto Székely

It was indeed an honor for me, as the son of an Austro-Hungarian father, to participate in this Seminar. How remarkable that with the history of Austro-Mexican relations in the Nineteenth Century,<sup>1</sup> we would come to the great historical re-encounter provided by the episode of the Anschluss 80 years ago.<sup>2</sup> As we can see today, it was in the end an international law re-encounter.

Mexico and Austria share some important substantive coincidences in the conduction of their foreign policy, which necessarily result from the need to uphold what they perceive as their respective national interests in the world stage, be it at the multilateral, regional or bilateral levels, interests which are dictated in no small measure by their historical experience.

Geo-strategic vulnerability, derived from being situated near some of the most militarily powerful countries on Earth, which in the past had a recurrent hunger and ambition for expansion, is also a common experience that both countries have suffered, in one case losing more than half of its territory<sup>3</sup> and in the other its very independence for 17 years.<sup>4</sup> No wonder the principle of non-intervention, inherent in the Estrada Doctrine and developed by some of Austria's most distinguished international jurists, such as Kelsen (a professor in this University) and Verdross,<sup>5</sup> constitutes a cornerstone of the foreign policy of the two countries. The teachings of Hans Kelsen deeply marked my own legal education at the University of Mexico.

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<sup>1</sup> José C. Valadés, *Maximiliano y Carlota en México* (México : Editorial Diana, 1976); José Juárez Fuentes Mares, *El Imperio y la República*, 4<sup>th</sup> ed. (México: Grijalbo, 1984); Graciela Arroyo Pichardo, *México-Austria: Historia de una Relación* (Inst. Paradigma de Actividades Científico Culturales, Universidad de Wisconsin, 1999); Alan Palmer, *Twilight of the Habsburgs. The Life and Times of Emperor Francis Joseph* (New York: Atlantic Monthly Press, 1994).

<sup>2</sup> Aranzazú Payán López, 'Tensiones Diplomáticas entre México y Austria durante el Siglo XX: Un Análisis de Políticas Exteriores' (Cuaderno 8, junio de 2014) *Revista SASKAB*.

<sup>3</sup> Francisco Martín Moreno, *México Mutilado* (Editorial Santillana 2004); *Nueva Historia General de México* (México: El Colegio de México, 2010).

<sup>4</sup> William L. Shirer, *The Rise and Fall of the Third Reich* (New York: Simon and Schuster, 1960).

<sup>5</sup> Hans Kelsen, *Principles of International Law* (Clark, New Jersey: The Lawbook Exchange, Ltd., 2003); Alfred Verdross, Karl Zemanek, *Derecho Internacional Público*, 4<sup>th</sup> edn (Madrid: Aguilar, 1967).

Mexico is constrained by its national Constitution (Article 89/X),<sup>6</sup> to conduct its foreign policy observing ten very precise legal principles, most of them enshrined in the Charter of the United Nations.<sup>7</sup> It is quite interesting to note that Austria's "second" foreign policy principle (aside from the principle of neutrality), that is, "internationalism",<sup>8</sup> seems to perfectly encompass the ten principles of Mexican foreign policy: self-determination, peaceful solution of international disputes, prohibition of the threat or use of force in international relations, legal equality of States, international cooperation and "the struggle for international peace and security".

The two countries have also shared in some measure in the experience of the status of neutrality (Austria since 1955 and Mexico during WWI).<sup>9</sup> It was precisely that neutrality that made it difficult for Mexico to later on be admitted to the League of Nations, only to find itself once again isolated there, when the time came to protest against the Anschluss in 1938, in the historical intervention of Ambassador Isidro Fabela.<sup>10</sup>

Austria's hosting in its territory of numerous inter-governmental organizations, goes hand in hand with Mexico's historical commitment to multilateral diplomacy and international cooperation. In the same sense, Austria's hosting of historical diplomatic conferences for the negotiation and adoption of some of the most significant international law conventions (such as those governing diplomatic and

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<sup>6</sup> See Jorge Castañeda, *Obras Completas* (México: SRE-El Colegio de México, 1995); César Sepúlveda, *Derecho Internacional Público* 26<sup>a</sup> edn (México: Editorial Porrúa, 2009); Barra Mexicana-Colegio de Abogados. *El Pensamiento Jurídico de México en el Derecho Internacional* (México: Librería de Manuel Porrúa, 1960).

<sup>7</sup> Constitución Política de los Estados Unidos Mexicanos, 1917: <http://www.diputados.gob.mx/LeyesBiblio/ref/cpeum.htm> (24.10.2018); Charter of the United Nations, San Francisco, 26 June 1945, in force 24 October 1945, <http://www.un.org/en/charter-united-nations/> (24 October 2018).

<sup>8</sup> Eric Solsten, *Austria: A Country Study* (Washington: GPO for the Library of Congress, 1994); Helmut Tichy, *Austria's Permanent Neutrality*, <http://www.austrianinformation.org/winter-2015-16/wc55d7qi5qrmyzmxh1qkofcmluxj> (24 October 2018).

<sup>9</sup> Emilio Portes, *Autobiografía de la Revolución Mexicana - Capítulo Quinto: Actitud de Carranza en la Primera Guerra Mundial*, [http://antorcha.net/biblioteca\\_virtual/historia/autobiografia/5\\_11.html](http://antorcha.net/biblioteca_virtual/historia/autobiografia/5_11.html) (24 October 2018); Robert E. Clute, *The International Legal Status of Austria 1938-1955* (The Hague: Martinus Nijhoff, 1962).

<sup>10</sup> Luis Ignacio Saíenz, 'El Anschluss y la Protesta de México. Notas sobre el LX Aniversario de la Invasión de Austria por la Alemania Nazi' (Vol. 19, 1998) *Estudios Políticos Cuarta Época*, pp. 173-187; José Isidro Fabela Alfaro (1882-1964), Doralicia Carmona Dávila, *In Memoria Política de México, Nueva Edición Perenne* (2018) <http://www.memoriapoliticademexico.org/Biografias/FAA82.html>; Baldomero Seguro García, 'Homenaje a Isidro Fabela', *Volumen 2, Isidro Fabela y sus Libros, de Mauricio Magdaleno* (México: Universidad Nacional Autónoma de México 1959) (México, (1959).

consular relations, treaties, succession, protection of the ozone layer and illicit traffic in narcotics)<sup>11</sup>, has made it possible for the two countries to cooperate in the building of international law, acting often as formal or informal co-sponsors of proposals that, eventually, made their way into the text of key articles that are a part of several Vienna Conventions. Most of the more distinguished and recognized Mexican international law specialists have come to Vienna as part of or heading Mexican Delegations, to join and work together with those representing Austria. They have also met, albeit on a personal capacity, at the International Law Commission,<sup>12</sup> contributing together to the codification and progressive development of international law.<sup>13</sup>

On the basis of all of the above substantive bilateral coincidences, this presentation identifies and suggests a few specific areas and topics, in which Mexico and Austria can join in a true international law partnership, for the empire of the rule of law, both at the national and international levels.

To begin with, something has been lately happening with international law, which challenges both countries. The principles of their foreign policies, which were mirrored in principles of international law governing all nations, are beginning to attain different meanings and even being subjected to certain requirements, limits and conditions, which not too long ago would have been regarded as unthinkable. Somehow, “sovereignty” and “non-intervention” are no longer indispensable corollaries of each other since, for instance, there are certain exercises of sovereignty that may not necessarily preclude the right of intervention, as has been increasingly the case in humanitarian and human rights law.<sup>14</sup>

The evolvement of the international scenery is making it necessary for international law to incur in areas which were formerly regarded as being within the exclusive realm of domestic or national jurisdiction and interest, and which were thus banned from the direct legal relations between and among sovereign nations. There is growing recognition in international state practice that there is an increasing number of such areas that should be subject to some degree of international regulation, perhaps

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<sup>11</sup> See Multilateral Treaties Deposited with the Secretary General of the United Nations: [https://treaties.un.org/pages/AdvanceSearch.aspx?tab=UNTS&clang=\\_en](https://treaties.un.org/pages/AdvanceSearch.aspx?tab=UNTS&clang=_en); see also Alberto Székely, *Instrumentos Fundamentales del Derecho Internacional Público (1919-2015)*, (México: Universidad Nacional Autónoma de México, Instituto de Investigaciones Jurídicas, 2016) pp. 119-202.

<sup>12</sup> Austrian Members: Gerhard Hafner, August Reinisch, Alfred Verdross and Stephen Verosta; Mexican Members: Jorge Castañeda; Roberto Córdova, Luis Padilla Nervo, Bernardo Sepúlveda, César Sepúlveda, Alberto Székely, Juan Manuel Gomez Robledo.

<sup>13</sup> United Nations, *The Work of the International Law Commission*, (New York: United Nations, 2017).

<sup>14</sup> Claribel de Castro Sánchez, ‘El Fin de la Soberanía Nacional?. El Derecho de Injerencia Humanitaria ante los Últimos Acontecimientos: Breves Reflexiones’ (Vol. 1, 2016) *UNED Revista de Derecho*, pp. 113-118.

because of their inherent capacity to create international conflict, or to threaten international peace and security.

In short, the way a national government conducts itself domestically in certain delicate areas, are beginning to become a matter of concern for the international community.<sup>15</sup> They involve, among others, certain migration policies, the human rights treatment of certain persons, widespread corruption and impunity and increasing situations of violence at all levels, all of which present serious challenges to Austria and Mexico, and they should cooperate and lead in the construction of the corresponding international legal norms.

It is in this context that the participation of our two countries in a United Nations forum (precisely under Austrian coordination by the way), dealing with a topic (that of “the rule of law”) which has the greatest importance for the future of Mexico, and for overcoming one of its most difficult and transcendental problems, presents another significant area of international law building in which they can be partners.<sup>16</sup> Let me express my hope that that will be the case.

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<sup>15</sup> Nicholas Wheeler, ‘Legitimizing Humanitarian Intervention: Principles and Procedures’ (Vol. 2, 2001) *Melbourne Journal of International Law*, pp. 1-18.

<sup>16</sup> Remarks by Ambassador Martin Sajdik as Coordinator of the Group of Friends of the Rule of Law, United Nations, International Negotiations on the Post.2015 Development Agenda, February 2015, <https://sustainabledevelopment.un.org/content/documents/13022sajdik.pdf> (24 October 2018).