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ALEJANDRO ANAYA

Free Trade, "Spillover" and Human Rights  
Foreign Policies in North America

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Fax: 5727•9800 ext. 6314  
Correo electrónico: [publicaciones@cide.edu](mailto:publicaciones@cide.edu)  
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## Abstract

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*The spillover thesis proposes that growing levels of economic association can result in processes of social and political integration. This argument has been applied in recent research to the issue of foreign policy design and implementation by the members of the North American Free Trade Agreement (NAFTA).*

*This paper evaluates a related hypothesis which advances that the establishment of a free trade scheme in North America has had something to do with recent changes in Mexico's foreign policy in the specific area of human rights, which has presumably become aligned to those of the United States and Canada. After exploring different causal mechanism that could link NAFTA to these recent changes in Mexico's foreign policy, the paper concludes that the "alignment-by-spillover" thesis does not hold, and offers coherent alternative explanations supported by evidence.*

## Resumen

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*La tesis del "derrame" (spillover) plantea que niveles crecientes de asociación económica podrán propiciar procesos de integración en las esferas social y política. Este argumento ha sido retomado por algunos autores, que lo han aplicado al área de la política exterior de los países integrantes del Tratado de Libre Comercio de América del Norte (TLCAN).*

*En concreto, este documento evalúa una hipótesis relacionada, que plantea que el establecimiento de un esquema de libre comercio en América del Norte ha tenido algo que ver con recientes cambios en la política exterior de México en el área concreta de los derechos humanos, la cual presumiblemente se ha alineando con las de Estados Unidos y Canadá. Tras explorar distintos mecanismos causales que podrían vincular al TLCAN con cambios recientes en la política exterior de México en cuestión, el documento concluye que la tesis de la "alineación por derrame" no se sostiene, y ofrece explicaciones alternativas coherentes y sustentadas en evidencia.*



## *Introduction*

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The well-known thesis of "spillover" proposes that growing economic interdependence can result in the convergence of national policies in issue-areas not strictly related to trade. Recent research has followed this proposition in an attempt to trace the influence of the North American Free Trade Agreement (NAFTA) on the definition of the foreign policies of Mexico, the United States and Canada.<sup>1</sup> One of the arguments developed thereof sustains that NAFTA has served as a "catalyst" for the "alignment" of Mexico's approach to the promotion of democracy and human rights in the Americas, with those of its trading partners from North America.<sup>2</sup> Even if the mechanism through which NAFTA allegedly intervened in the causation process were not specified—and therefore even the causal effect was not demonstrated—the suggestion that an integration arrangement with a very low level of institutionalization may have had an influence over a country's choices in an area quite different and not related to free trade invites further research.

This paper continues this line of enquiry focusing on a process that is related to but in several respects different from that of the alignment of Mexico's foreign policy on the promotion of democracy and human rights in the Americas—*i.e.* the quite recent change in the country's broad human rights foreign policy. More specifically, the paper investigates whether there has been an alignment of Mexico's human rights foreign policy with those of the United States and Canada, and whether NAFTA has had anything to do with that.

Indeed, since the mid-to late 1990s (but particularly after 2000), Mexico abandoned its traditional approach to human rights in foreign policy—which used to be based on the principles of national sovereignty and non-intervention—and accepted as legitimate the intervention of the organs and bodies of international human rights regimes in the situations of specific countries; most notably Mexico itself. But, can we really conclude that the Mexican government has aligned its policies with those of its trading partners from North America? Furthermore, can we find a causal link (even if indirect) between NAFTA and the recent changes in Mexico's human rights foreign policy?

In order to address these questions, the paper begins with a description of Mexico's new human rights foreign policy, and then proceeds to compare it to those of the United States and Canada. The conclusion in this respect is that the alignment is only partial and marginal. The paper then identifies and

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<sup>1</sup> Gordon Mace (ed.), *Regionalism and the State: NAFTA and Foreign Policy Convergence*, Aldershot, Hampshire, England: Ashgate, 2007.

<sup>2</sup> Jean-Philippe Thérien, "Democracy and Human Rights in the Western Hemisphere: North American Perspectives", in Gordon Mace (ed.), *Regionalism and the State...*, pp. 85-102.

assesses critically some of the possible causal mechanisms that could link free trade (as the independent or intervening variable) with the definition of a human rights foreign policy (as the dependent variable). The conclusion in this respect is that such causal mechanisms are by no means clear, and that there is no evidence that suggests a causal link between NAFTA and the specific changes observed in Mexico's human rights foreign policy. The paper then presents sound alternative explanations, based on clear causal mechanisms and sufficient evidence, concluding that Mexico's new approach to human rights in foreign policy is not the result of spillover but of specific transnational and domestic processes not related to the establishment of a free trade agreement or to growing economic integration. In this sense, the paper also concludes that the term "alignment" might not be appropriate to describe what is more a partial coincidence in the human rights foreign policies of Mexico, the United States and Canada.

### *1. Mexico's new human rights foreign policy*

Mexico's foreign policy has been traditionally based on the principles of national sovereignty and non-intervention. In the field of human rights, this resulted, throughout most of the second half of the twentieth century, in a policy that, in spite of rhetoric, did not promote in practice the development of an intrusive international human rights regime. Evidently, a strong regime, which could eventually intervene in Mexico's internal affairs, would be contrary to the key foreign policy objective at the time: keeping all sort of foreign actors out of domestic affairs. In addition, Mexico was rather cautious in joining the emerging human rights regimes of the United Nations (UN) and the Organization of American States (OAS). Indeed, Mexico took its time to ratify the main human rights treaties of the UN and the OAS,<sup>3</sup> and even more so to accept the jurisdiction of jurisdictional and cuasi-jurisdictional bodies such as the Inter-American Court of Human Rights and the Human Rights Committee of the UN.<sup>4</sup> A common argument amongst Mexican diplomats during the 1970s and 1980s was that international human rights were politicized and that Mexico opposed the intervention of international organs or bodies in the human rights affairs of specific countries because such bodies were manipulated by the main powers.<sup>5</sup> In sum, until the late 1990s, the

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<sup>3</sup> The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which were adopted in 1966 and entered into force in 1976, were ratified by Mexico in 1981. The Inter-American Convention on Human Rights, which was adopted in 1969 and entered into force in 1978, was also ratified by Mexico in 1981.

<sup>4</sup> Mexico accepted the jurisdiction of the Inter-American Court of Human Rights in 1998 and the competence of the Human Rights Committee in 2002.

<sup>5</sup> See Luis F. González Souza, "La política exterior de México ante la protección internacional de los derechos humanos", in Centro de Estudios Internacionales de El Colegio de México, *Continuidad y cambio en la política exterior de México: 1977*, Mexico: El Colegio de México, 1977, pp. 138-154; Bernardo Sepúlveda Amor "Reflexiones sobre la



Mexican government refused to accept international supervision of its internal human rights practices. Concomitantly, it did not promote the development of an international human rights regime that could have the actual capacity to intervene in the human rights situation of specific countries.

Things started to change, however, in 1996 when, in the midst of the rebellion of the Zapatista Army of National Liberation (EZLN) in Chiapas and under pressure by domestic and international human rights groups, the government of Ernesto Zedillo (1994-2000) invited the Inter-American Commission of Human Rights (IACHR) to undertake a fact-finding mission to the country. In the three years that followed, the government accepted the visits of the UN Special Rapporteur on Torture, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and Mary Robinson, the UN High Commissioner on Human Rights at the time. But the most significant step taken by the Zedillo government was the recognition of the jurisdiction of the Inter-American Court of Human Rights in 1998.

The government thus started to open the country to the monitoring (and the subsequent criticism) by human rights organs and mechanisms of the UN and the OAS. In this way, it accepted a controlled "intervention" of the international human rights regimes in its internal affairs. This initial opening, however, was notoriously ambiguous. In the context of the Chiapas conflict, which attracted a lot of international attention, government officials strengthened the non-intervention rhetoric, established severe visa limitations for human rights observers, expelled scores of foreign activists, and severely criticized and questioned the integrity of national and international human rights Non-Governmental Organizations (NGOs).<sup>6</sup>

The government of Vicente Fox eliminated this ambiguity and decisively opened the country to international monitoring and assistance on human rights issues. On the very same day of his inauguration, Fox signed a Technical Cooperation Agreement with the Office of the United Nations High Commissioner on Human Rights (UNHCHR). In March 2001, in a speech given at

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política exterior de México", in Secretaría de Relaciones Exteriores, *Política exterior de México: 175 años de historia*, México: Archivo Histórico Diplomático Mexicano, 1985, pp. 20-31; César Sepúlveda, "México y los derechos humanos", in Secretaría de Relaciones Exteriores, *Política exterior de México: 175 años de historia*, pp.412-415; Secretariado Técnico del Gabinete de Política Exterior de la Presidencia de la República, *La política exterior de México en el nuevo orden mundial: Antología de principios y tesis*, Mexico: Fondo de Cultura Económica, 1993; Olga Pellicer, "México y las Naciones Unidas 1980-1990. De la crisis del multilateralismo a los retos de la posguerra fría", in César Sepúlveda, (ed.), *La política internacional de México en el decenio de los ochenta*, Mexico: Fondo de Cultura Económica, 1994, pp. 199-231; Manuel Tello, "Acción de la Organización de las Naciones Unidas para la promoción y la protección de los derechos humanos y la posición de México", in César Sepúlveda, (ed.), *La política internacional de México...*, pp. 417-436.

<sup>6</sup> Ana Covarrubias identified signs of change in Mexico's foreign policy on human rights towards the end of Zedillo's presidential period; but still could not conclude that there was a "new foreign policy" on the issue. See Ana Covarrubias Velasco, "El problema de los derechos humanos y los cambios en la política exterior", *Foro Internacional*, vol. 39, no. 4, October-December 1999, pp. 431-451. Jorge Castañeda (Mexico's Secretary of Foreign Affairs from December 2000 to January 2003), argues that "there was a huge change" during the administration of Vicente Fox in human rights foreign policy, though he acknowledges that "some elements of change started before". Jorge Castañeda, Interview by Alejandro Anaya Muñoz, Mexico City, 12 February, 2007.

the regular session of the UN Human Rights Commission, Jorge Castañeda (Mexico's Secretary of Foreign Affairs from December 2000 to January 2003) announced that Mexico had abandoned the traditional non-intervention argument, and therefore was ready to receive international support and assistance to address its human rights problems.<sup>7</sup> In this way, 14 different special mechanisms of the human rights regimes of the UN and the OAS visited Mexico from 2001 to 2003, with the objective of observing and assessing the human rights situation in the country.<sup>8</sup> In addition, the government eliminated the visa restrictions for foreign human rights observers established by Zedillo, and sought a more constructive relationship with national and international human rights NGOs.

The Technical Cooperation Agreement signed with the UNHCHR was renewed and broadened in 2001. At the direct request of the Mexican government, the High Commissioner established a permanent office of representation in Mexico and conducted a diagnosis of the human rights situation in the country, which was elaborated in close collaboration with civil society actors. The diagnosis was published in 2003, and President Fox made a public commitment to address its recommendations.<sup>9</sup>

In 2002, Mexico got up to date in its international commitments and ratified just about every human rights treaty it had not ratified yet –the UN Convention on the Imprescriptibility of War Crimes and Crimes Against Humanity; the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and the Inter-American Convention on Forced Disappearance of Persons.<sup>10</sup> Very important was the recognition by Mexico in 2002 of the competence of the UN Treaty Bodies to receive individual complaints regarding the violation of human rights.<sup>11</sup> In 2005, Mexico ratified

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<sup>7</sup> Jorge Castañeda, "Statement to the UN's Human Rights Commission", 20 March, 2001. Available at <http://www.sre.gob.mx/derechoshumanos/onu/intermex57p01/castaneda57.htm>. Also see Alejandro Anaya Muñoz, "Hacia una nueva política exterior mexicana en materia de derechos humanos: entrevista con Juan José Gómez Camacho", *Revista Iberoamericana de Derechos Humanos*, no. 2, June 2006, pp.190-192.

<sup>8</sup> Juan José Gómez Camacho, "La política exterior de México en la nueva agenda internacional", Mexico: unpublished manuscript, 2005; Alejandro Anaya Muñoz, "Hacia una nueva política exterior...".

<sup>9</sup> See Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos en México, *Diagnóstico sobre la situación de los derechos humanos en México*, Mexico: Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos en México, 2003.

<sup>10</sup> For a critical assessment of these ratifications, see Amnesty International, *Mexico. "Disappearances": An Ongoing Crime*, London: Amnesty International, 2002, pp. 5-8; Human Rights Watch, *Justice in Jeopardy: Why Mexico's First Real Effort To Address Past Abuses Risk Becoming Its Latest Failure*, New York, Human Rights Watch, 2003, pp. 17-24.

<sup>11</sup> The Committee on the Elimination of Racial Discrimination (established by the International Convention on the Elimination of All Forms of Racial Discrimination), the Human Rights Committee (established by the First Optional Protocol to the International Covenant on Civil and Political Rights), the Committee on the Elimination of Discrimination against Women (established by the Convention on the Elimination of All forms of Discrimination against Women) and the Committee against Torture (established by the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment). *Inter alia*, these committees have the capacity to receive complaints by individuals regarding the violation of their human rights. However, the recognition of this competence

the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Rome Statute of the International Criminal Court.<sup>12</sup>

In addition to opening the country to international organs and mechanisms of the UN and the OAS human rights regimes, Mexico turned into an active participant in multilateral human rights forums, in which it sponsored and supported initiatives for the development of new international standards about the rights of women, indigenous peoples, women and disabled people.<sup>13</sup>

Mexico also changed its position within the UN Commission on Human Rights in relation to this body's consideration of the human rights situation in specific countries, abandoning the traditional position based on state sovereignty and non-intervention. The most controversial feature of this was Mexico's votes "against Cuba" within the Commission,<sup>14</sup> but Mexico also voted in favor of other country-specific resolutions (*e.g.* about Chechnya).<sup>15</sup>

In sum, during the administration of Vicente Fox, the Mexican government clearly abandoned the state sovereignty and non-intervention principles as the primary source of its foreign policy on human rights. In other words, the government recognized the legitimate claim of "the international community" (embodied, in this case, in the different organs, bodies and mechanisms of the human rights regimes of the UN and the OAS), and even of international human rights NGOs, to monitor and criticize the human rights situation in specific countries. Clearly, however, the main feature of this new approach to human rights is not so much the acceptance of the intrusiveness of international actors in other countries, but in Mexico it self. As shown above, Mexico not only "voted against" Cuba in the UN Human Rights Commission, but most notably ratified treaties, requested the permanent presence of the UNHCHR in Mexico, welcomed as many special rapporteurs, members of working groups and commissioners as possible and, last but by no means least, accepted the jurisdiction of the Inter-American Court of Human Rights and the International Criminal Court and the competence of the UN Treaty Bodies to receive complaints presented by individuals for the violation of their rights by the Mexican state.

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is optional to the states party to each convention. In this sense, even if Mexico had ratified all these treaties, it did not recognize the competence of the committees to receive individual complaints until 2002.

<sup>12</sup> For the case of the International Criminal Court see Sergio García Ramírez, *La Corte Penal Internacional*, Mexico: Instituto Nacional de Ciencias Penales, 2002.

<sup>13</sup> Juan José Gómez Camacho, "La política exterior de México en la nueva agenda internacional".

<sup>14</sup> For a detailed account on Mexico's human rights policy towards Cuba see Ana Covarrubias Velasco, "La política mexicana hacia Cuba a principios del siglo: De la no intervención a la protección de los derechos humanos", *Foro Internacional*, vol. 43, no. 4, October-December, 2003, pp. 627-644.

<sup>15</sup> Mariclaire Acosta (Special Ambassador for Human Rights and Democracy, and Undersecretary for Human Rights and Democracy of Mexico's Ministry of Foreign Affairs from December 2000 to March 2003). Telephone Interview by Alejandro Anaya Muñoz, 23 October, 2006.

## ***2. The human rights policies of Mexico, Canada and the US in comparative perspective***

Is Mexico's new approach to human rights in foreign policy similar to that of Canada and the US? Can we say that Mexico "aligned" its policies with those of its North American trading partners? In order to answer these questions, it is necessary to briefly describe the main features of the human rights foreign policies of the United States and Canada.

David Forsythe has noted that to understand the human rights foreign policy of the United States "it is crucial to understand that both elite and mass view the USA as a beacon of freedom to the world".<sup>16</sup> The "American exceptionalism" doctrine is therefore at the core of the definition of the United States' approach to human rights in foreign policy. Forsythe argues that the influence of this doctrine does not guarantee specific foreign policy initiatives in favor of human rights any where and at all times; but it predisposes the United States' government "to talk about freedom and democracy and to assume it can make a difference for the better when and if it gets involved."<sup>17</sup>

In spite of all the internal human rights problems that the United States does have (related, for example, to segregation, racism, gender discrimination, inequality, prison conditions, the death penalty and, more recently, the "war on terror"), American foreign policy on human rights is not about recurring to international human rights norms and regimes to address internal shortcomings. "Human rights" are in fact defined by the United States in terms of its *Bill of Rights*, not in terms of International Human Rights Law. The United States ratified the International Covenant on Civil and Political Rights in 1992, and the Convention on the Elimination of Racial Discrimination and the Convention against Torture in 1994. However, it has not ratified the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of Discrimination against Women and the Convention on the Rights of the Child, while it has not even signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Evidently, the United States has not recognized the competence of the UN Treaty Bodies that are mandated to receive personal denounces regarding the violation of human rights. The United States has not ratified the Inter-American Convention on Human Rights, and therefore it has not even considered recognizing the jurisdiction of the Inter-American Court for Human Rights. In sum, the United States'

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<sup>16</sup> David Forsythe, *Human Rights in International Relations*, Cambridge, UK: Cambridge University Press, 2000, p. 141.

<sup>17</sup> David Forsythe, *Human Rights in International Relations*, p. 142. For the general contradictions and tensions in the human rights foreign policy of the United States see *ibid* pp. 141-149; and Debra L. DeLaet, *The Global Struggle for Human Rights. Universal Principles in World Politics*, Belmont, California: Thomson Wadsworth, 2006, pp. 147-150.

foreign policy on human rights is exclusively concerned about the (many times unilateral) promotion of civil liberties and political rights in other countries; it is of course reluctant to acquire international obligations and absolutely opposed to bind itself to the decisions of any inter-governmental human rights organ.

Canada, on the other hand, aspires to be a "moral super power" and a "champion of human rights" in the world. Indeed, Canada has included a strong human rights component in its foreign policy, recurring to "quiet (bilateral) diplomacy" and, most importantly, to multilateralism, through the promotion of the activism of the human rights regime of the UN.<sup>18</sup> So Canadian foreign policy on human rights, like that of the United States, also seeks to promote and defend rights abroad. However, as just suggested by the comment on its emphasis on multilateral action, Canada's approach to international human rights is quite different to that of its neighbor. Canada holds a much better record on the ratification of the main human rights treaties of the UN –it ratified the Convention on the Elimination of Racial Discrimination in 1970, and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in 1976. The Convention on the Elimination of Discrimination against Women was ratified in 1981 and the Convention against Torture in 1991. Since 1976 it recognized the competence of the Human Rights Committee to receive individual complaints, and that of the Committee against Torture since 1989. Within the UN framework, Canada has only failed to adhere to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Paradoxically, however, Canada has not even signed the Inter-American Convention on Human Rights, let alone recognized the jurisdiction of the Inter-American Court for Human Rights.<sup>19</sup>

Alison Brysk has noted that the linkages of Canada with international human rights organs and bodies have influenced the development of the country's domestic legal and judicial systems. This involvement with international norms and bodies is said to have stimulated the development of human rights legislation, institutional design and public policies at the federal and provincial levels. In addition, Canadian courts tend to recur to international human rights standards in their decisions, taking into account, for example, sentences by the European Court on Human Rights and citing the Convention against Torture and the Convention on the Rights of the Child in

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<sup>18</sup> David R. Black, "Human Rights in Foreign Policy: Lessons for South Africa from Canadian Experience?", *The International Journal of Human Rights*, vol. 5, no. 1, Spring 2001, pp. 37-57; Alison Brysk, "Canada as 'Global Good Samaritan'", unpublished manuscript presented at the John F. Kennedy Institute, Free University of Berlin, July 12, 2006. Canadian foreign policy on human rights is not free from contradictions and double standards (see *idem*).

<sup>19</sup> The justification is that there are contradictions between the Inter-American Convention and Canadian law in relation to issues like abortion and freedom of expression. See Jean-Philippe Thérien, "Democracy and Human Rights in the Western Hemisphere...".

scores of cases.<sup>20</sup> However, in spite of this kind of processes, the dominant feature of Canadian foreign policy on human rights is not so much to open the country to the influence of international norms and organs, but rather to defend and promote human rights in other countries.

In sum, the foreign policies on human rights of the United States and Canada are fundamentally outwards oriented; while Mexico's, primarily, follows an outside-to-inside dynamic. In other words, Canada and the United States (legitimately or not, coherently or not) seek to promote human rights in other countries; while, as shown in the previous section, Mexico's new foreign policy on the issue is mainly concerned with dealing with the influence of international norms, actors and processes. In this way, the alignment argument needs to be qualified. It is true that Mexico changed its perception about the legitimate involvement of international human rights regimes in specific country situations; but the main characteristic of this new understanding was the opening of the country to international monitoring, criticism and assistance. This is not by any means similar to the United States' approach to international human rights, and only marginally similar to that of Canada. The coincidence of Mexico's new approach to those of its NAFTA partners is evident only in the support by Mexico of an intrusive role for the UN Human Rights Commission from 2002 to 2005 (notably, but not exclusively, in relation to the situation in Cuba). So, the coincidence of Mexico's foreign policy on human rights with that of its trade partners from North America is only partial and marginal.

Thérien has rightly noted that the only human rights foreign policy that has changed in a significant way after NAFTA has been that of Mexico.<sup>21</sup> So the question remains is if this change can be explained as the result of a NAFTA "spillover" effect into the specific field of human rights foreign policy.

### ***3. Spillover and change in Mexico's human rights foreign policy***

The spillover argument proposes that there will be "increasing social and political integration resulting from degrees of economic association".<sup>22</sup> A neo-functional argument would advance that the possibility of political integration emerges in common market schemes, "in which significant institutions have been created or market forces released".<sup>23</sup> This is not the case of NAFTA, which was defined in quite narrow, minimal terms, and does not establish

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<sup>20</sup> Alison Brysk, "Canada as 'Global Good Samaritan'".

<sup>21</sup> Jean-Philippe Thérien, "Democracy and Human Rights in the Western Hemisphere..."

<sup>22</sup> Glen Drover, "Free Trade and Social Policy: The Canadian Debate", *Social Policy and Administration*, vol. 23, no. 2, August 1989, p. 132.

<sup>23</sup> Joseph S. Nye, "Comparing Common Markets: A Revised Neo-Functionalist Model", in Leon N. Lindberg and Stuart A. Scheingold (eds.), *Regional Integration. Theory and Research*, Cambridge, Massachusetts: Harvard University Press, 1971, p. 192.

bureaucratic supranational institutions.<sup>24</sup> Indeed, NAFTA was not explicitly designed to achieve common tariffs or a unified monetary or fiscal policy. From a formal perspective, a free trade arrangement, such as NAFTA, does not intend to result in political union. However, for the moment, let us concede that "one cannot ignore the possibility for spillover at the level of free trade".<sup>25</sup> Looking into the possible effects of the pre-NAFTA free trade agreement between Canada and the United States in the late 1980s, and going beyond a neo-functional approach, Drover proposed that spillover is associated with the existence of 1) transnational institutions; 2) "public dissatisfaction with the limits of free trade benefits", or 3) "the unequal distribution of benefits in the free trade area that cannot be corrected by unilateral action. In each of these cases, the propensity to policy harmonization (...) could be significant."<sup>26</sup> This argument appears plausible in relation to steps taken towards further economic integration or to policy harmonization in issue areas more directly linked to the economic sphere, such as social policy. It is difficult, however, to find any logical connection between the second and the third conditions and a confluence in something as specific and not trade related, such as foreign policy on human rights.<sup>27</sup> The transnational institutional arrangements of NAFTA, such as those related to labor and the environment, might indeed be facilitating the alignment of Mexico's labor and environmental standards and practices with those of its trading partners.<sup>28</sup> Similarly, the institutional framework established by NAFTA's investment chapter might be promoting the development of a common standard on property rights in the three countries.<sup>29</sup> Imtiaz Hussain has argued that NAFTA's dispute settlement mechanisms have fostered convergence, or more specifically *Americanization* (adjustments have been

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<sup>24</sup> Robert Pastor, "North America: A Partial Eclipse and a Future Community", in Imtiaz Hussain (ed.), *Community, Diffusion, and North American Expansiveness: The Political Economy of Flux*, Mexico: Universidad Iberoamericana, 2008, pp. 29-32; Gordon Mace, "Introduction", in Gordon Mace (ed.) *Regionalism and the State*, pp. 6-8. NAFTA's institutions are oriented towards dispute settlement. Imtiaz Hussain has stressed the innovative character of these institutions and the supranationalism they have encouraged. For a detailed analysis see Imtiaz Hussain, "NGOs and NAFTA's Dispute Mechanisms: In Through the Front Door", in Imtiaz Hussain (ed.), *Community, Diffusion, and North American Expansiveness*, pp. 319-355.

<sup>25</sup> Glen Drover, "Free Trade and Social Policy...", p. 132.

<sup>26</sup> *Ibid*, p. 133.

<sup>27</sup> Particularly so if we keep in mind that "[i]ssue-areas are best defined as sets of issues that are in fact dealt with in common negotiations and by the same, or closely coordinated, bureaucracies". Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy*, Ewing, NJ: Princeton University Press, 2005, p. 61.

<sup>28</sup> Robert Pastor, "North America: A Partial Eclipse and a Future Community", pp. 31-32. Imtiaz Hussain has stressed that such alignment in labor and environmental standards was fostered by NAFTA even before it entered into force, with the intention of leveling the playing field. See Imtiaz Hussain, "NGOs and NAFTA's Dispute Mechanisms", pp. 323-326, 347-348.

<sup>29</sup> David Schneiderman, "Default Convergence? Human Rights and Fundamental Freedoms in North America", in Yasmeen Abu-Laban, Radha Jhappan and Francois Rocher (eds.), *Politics in North America. Redefining Continental Relations*, Peterborough: Broadview, 2008, pp. 251-272.

made more often by Mexico and Canada than by the United States).<sup>30</sup> But this convergence has taken place around the specific issues addressed by each dispute settlement arrangement (labor rights, the environment, trade and investment). Indeed, it is difficult to expect that these institutions might have an impact on issues not related to their regular business. The transnational institutions of free trade in North America are not a forum for discussing issues related to the legitimacy of an intrusive international human rights regime. In this sense, there is no evident reason to expect that they might have had an impact on the definition of Mexico's new approach to the subject.

Joseph Nye identified several process mechanisms that lead to the deepening of an integration process. Of these, two appear to be possibly relevant for the specific issue under consideration here –elite socialization and regional group formation.<sup>31</sup> Elite socialization (somehow related to the existence of transnational institutions mentioned above) can take place when bureaucrats “learn by doing”. The socialization process amongst bureaucrats, however, is likely to be more effective if it takes place in the framework of “central institutions”,<sup>32</sup> which are non-existent in NAFTA. In any case, the interaction between North American bureaucrats and politicians that takes place in the framework of NAFTA's institutions is focused on specific issues, all of them closely related to trade and the economic sphere, and it is difficult to expect that discussions about tariffs, import quotas and the like might be in any way a vehicle for the socialization of ideas related to the legitimacy of an intrusive international human rights regime. Indeed, labor rights (and perhaps environmental) controversies deal directly with a specific set of internationally sanctioned human rights. But the dispute settlement procedures on labor (and the environment) deal with inconsistencies between actual practice and domestic (not international) law. Even if their framework of reference was International Human Rights Law, such discussions would still be distant from those related to the legitimacy of the intrusiveness of the international human rights regime (which includes, but by far transcends labor and environmental rights).

Regional interest groups, on the other hand, might emerge and consolidate in the framework of integration processes. These transnational groups can exert pressure over their governments and also promote a (pro-integration) socialization process among different actors.<sup>33</sup> Indeed, as will be described with detail in the following section, human rights transnational civil society groups were key actors in driving the emergence of a new approach to

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<sup>30</sup> Imtiaz Hussain, “NGOs and NAFTA's Dispute Mechanisms”, pp. 330-331. Schneiderman coincides, in respect to the outcomes of the investment chapter dispute settlement mechanisms. David Schneiderman, “Default Convergence?...”.

<sup>31</sup> Joseph S. Nye, “Comparing Common Markets...”, pp 203-206.

<sup>32</sup> See *ibid*, pp. 203-205.

<sup>33</sup> *Ibid*, pp. 205-206.



international human rights in Mexico. Those transnational human rights networks emerged before NAFTA, but they became consolidated after 1994.<sup>34</sup> Indeed, the impact of free trade in Mexico's poorest sectors has been a permanent source of concern for human rights groups in Mexico, the United States and Canada, and it has motivated their activism. But the main drive to transnational human rights mobilization was not free trade but the human rights violations perpetrated in the framework of the conflict in Chiapas.

In this way, the causal mechanisms through which free trade could have generated a spillover effect and fostered the observed partial coincidence of the human rights foreign policies of the three NAFTA countries are far from clear. More specifically, there is no convincing evidence that may even suggest that the spillover argument is relevant for an explanation of the changes in Mexico's foreign policy on human rights. Coherent and sound alternative explanations are offered in the following section.

#### ***4. Transnational and domestic processes and the definition of Mexico's new foreign policy on human rights***

Following the propositions of the "boomerang-spiral model"<sup>35</sup> and the "locking in" argument,<sup>36</sup> it has been shown elsewhere that the recent changes in Mexico's human rights foreign policy resulted from a combination of transnational and domestic processes.<sup>37</sup> The boomerang-spiral model underscores the role of transnational advocacy networks (TANs) —an alliance of domestic and international human rights NGOs, joined by Church groups, funding agencies and individuals within inter-governmental organizations and Western governments that share information and services. In a nutshell, the model proposes that TANs generate a process of pressure "from above" and buttress those of pressure "from below". Rights-violating governments are presented as pariah states, not worthy of membership in the community of "civilized nations"; and since governments generally care about their reputation and want to be part of "the club", they decide to give some concessions and modify their behavior. A careful review of the Mexican case during the second half of the 1990s shows that the causal mechanisms proposed by the boomerang-spiral model were set in motion by a very active TAN during the second half of the 1990s. In this case, there is enough evidence to argue that pressure "from above" (which reached its peak in 1998

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<sup>34</sup> See Alejandro Anaya Muñoz, "Transnational and domestic processes in the definition of human rights policies in Mexico", forthcoming in the *Human Rights Quarterly*.

<sup>35</sup> Margaret Keck and Kathryn Sikkink, *Activists Beyond Borders. Advocacy Networks in International Politics*, Ithaca and London: Cornell University Press, 1998; Risse, Thomas, Stephen C. Ropp, and Kathryn Sikkink, (eds.), *The Power of Human Rights: International Norms and Domestic Change*, Cambridge, Cambridge University Press: 1999.

<sup>36</sup> Andrew Moravcsik, "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe", *International Organization*, vol. 54, no. 2, 2000, pp. 217-252.

<sup>37</sup> Alejandro Anaya Muñoz, "Transnational and domestic processes...".

and 1999) had something to do in the decision by the government of Ernesto Zedillo to implement the partial openness to international monitoring and scrutiny mentioned above.<sup>38</sup> Although the peak of pressure “from above” over Mexico had passed by 2000, key decision-makers in the Fox government (including Jorge Castañeda, and Ricardo Sepúlveda, head of the Human Rights Promotion Unit of the Ministry of the Interior during most of Fox’s period) acknowledged that actual or potential pressure was important in the deepening of the opening approach.<sup>39</sup> President Fox himself stressed in his inauguration speech that “Mexico will not be any longer reference of discredit in relation to human rights. We are going to protect them as never before.”<sup>40</sup> In sum, the opening of the country to the monitoring and supervision of the different bodies and mechanisms of the human rights regimes of the UN and the OAS can be (in part) explained as an instrumental response of the Mexican government to the pressure generated by a TAN.<sup>41</sup>

The decision to embrace country-related resolutions within the UN Commission on Human Rights (in particular those targeting Cuba) can also be explained within this broad framework. Ana Covarrubias has argued that Mexico’s votes “against Cuba” were another element of the government’s efforts to strengthen its new international image as a democratic country that promotes human rights.<sup>42</sup> Similarly, according to Mariclaire Acosta, the change in Mexico’s international human rights image (from “part of the problem” into “part of the solution”) was not complete until Mexico complemented its openness policy with a vote in favour of country-specific resolutions, including those related to Cuba.<sup>43</sup> In this way, a concern with the country’s reputation and an interest in “belonging to the club”, which lie at the core of the “boomerang-spiral” model and thus explain in part Mexico’s opening to international monitoring and supervision, also account for the other side of the coin –the acceptance of the legitimate intrusion of international regimes in the human rights situation of other countries.

However, as mentioned above, domestic politics is also an important part of the story. Andrew Moravcsik underlines the importance of “instrumental calculations about the establishment of legitimate *domestic* governance”.<sup>44</sup> Looking closely into the emergence of the European human rights regime, Moravcsik notes that its main promoters were the governments of newly established democracies, and not long-established, consolidated democracies. New democratic governments have a clear interest in “locking in” their

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<sup>38</sup> See *idem*.

<sup>39</sup> *Idem*.

<sup>40</sup> Vicente Fox, “Discurso de toma de posesión”, 1 December, 2000. Available at: <http://fox.presidencia.gob.mx/actividades/?contenido=4>

<sup>41</sup> For a more detailed argumentation see Alejandro Anaya Muñoz, “Transnational and domestic processes...”.

<sup>42</sup> Ana Covarrubias Velasco, . “La política Mexicana hacia Cuba...”.

<sup>43</sup> Mariclaire Acosta, Telephone Interview.

<sup>44</sup> Andrew Moravcsik, “The Origins of Human Rights Regimes...”, p. 224, my emphasis.

political preferences, which are opposed to those of their authoritarian predecessors. Thus, they have an interest in buttressing the credibility of the new regime and its stability against possible authoritarian regressions. This kind of approach is taken when the benefits of future stability outweigh the 'sovereignty costs' implied.<sup>45</sup> "[G]overnments turn to international enforcement when an international commitment effectively enforces the policy preferences of a particular government at a particular point in time against future domestic political alternatives".<sup>46</sup>

Indeed, Fox's was a new democratic government, established after seven decades of (authoritarian) rule of the Institutional Revolutionary Party (PRI). In his inauguration speech, Vicente Fox argued that his arrival into the presidency would not conclude, by itself, the transition process, and thus called all political actors to "demolish all remains of authoritarianism and to build a genuine democracy".<sup>47</sup> According to Jorge Castañeda, Fox and his close circle were concerned about the difficulties they would face to consolidate the new rules of the political game, and about possible set-backs in the gains of the political transition. Thus, they adopted the thesis of "locking" domestic changes in international norms and institutions.<sup>48</sup> This was particularly significant in the area of human rights, which was considered by influential members of Fox's government as an integral element of democratic rule. In this sense, Jorge Castañeda argued that "I always held the idea [...] that one of the best anchors for human rights progress was to acquire commitments abroad".<sup>49</sup> This argument was shared by other important actors within the Ministry of Foreign Affairs. It is relevant to underline, in this respect, that human rights activists (highly critical of the government) have acknowledged that key decision-makers within the Ministry of Foreign Affairs were truly convinced that opening the country to international monitoring, supervision and assistance would consolidate domestic transformations.<sup>50</sup>

In sum, there is convincing evidence to conclude that Mexico's new perception about the legitimacy of an intrusive international human rights regime (in particular the strategy to open the country to international monitoring, supervision and cooperation) can be explained on the basis of the causal mechanisms advanced by the "boomerang-spiral" model and the "locking in" thesis.<sup>51</sup>

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<sup>45</sup> *Ibid*, p. 220.

<sup>46</sup> *Idem*.

<sup>47</sup> Vicente Fox, "Discurso de toma de posesión".

<sup>48</sup> The idea of acquiring commitments abroad in order to consolidate the transition process was "sold" to Vicente Fox and his transition team by former Spanish President Felipe Gonzalez. Jorge Castañeda, Interview.

<sup>49</sup> *Idem*.

<sup>50</sup> See Alejandro Anaya Muñoz, "Transnational and domestic processes...".

<sup>51</sup> For a detailed argumentation see *idem*.

## *Conclusions*

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The correlation between the recent changes in Mexico's foreign policy on human rights and the establishment of a free trade agreement in North America does not imply (direct or indirect) causality. There is no evidence of a causal link between NAFTA and these changes in Mexico's policies. In addition, the causal mechanisms through which free trade, in general, and NAFTA, in particular, may have fostered the alignment of the human rights policies of Mexico, with those of the United States and Canada are by no means clear or evident.

The main causes for the change in Mexico's approach to human rights in foreign policy are to be found not in spillover and free trade, but in specific transnational and domestic processes not related to the dynamics of regional integration. In this sense, the notion of "alignment" seems inadequate, since it suggests that the explicit point of reference of Mexico's new foreign policy were the foreign policies of the United States and Canada. There is, indeed, a (partial and marginal) coincidence; but the failure of the spillover hypothesis implies the inadequacy of the notion of alignment.

NAFTA has failed to foster convergence in the domestic policies of its members on issues and areas closely related to free trade, such as trade practices and the regulation of domestic markets. Why should we expect it to have any impact over quite different and unrelated issue-areas, such as human rights foreign policies? Indeed, an important ingredient for the perception of overall NAFTA failure is the overstretching of expectations. The Agreement was designed to increase trade and investment; let us not expect anything else from it.

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