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European Court of Justice

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Global Citizenship

Address to Seton Hall University,
by Gil Carlos Rodriguez Iglesias,
President of the European Court of Justice ¹

October 29, 2001

Monsignor,
Ambassador Constantinou,
Provost,
Members of the faculty,
Dear Students,
Ladies and gentlemen,

It is a great honor to be here today to be named the Global Citizen of the School of Diplomacy of Seton Hall University. I take great pleasure in this unique occasion.

First of all I should like to express my gratitude to the University, to the School of Diplomacy, to the President, Monsignor Sheeran, and to the Dean, Ambassador Constantinou.

Let me mention that I first met Clay Constantinou in Luxembourg, when he was the Ambassador of the United States, and we developed extremely cordial relations. I know that he was and he is strongly committed to building bridges across the Atlantic, and his contribution to transatlantic cooperation has been impressive. I should like to thank him in particular for the role he has played in fostering the cooperation between the European Court of Justice and the Supreme Court of the United States and also with American universities and of course I am particularly grateful for his initiative in inviting me here.

My brief address will focus on the title that you are so kindly giving me today: Global Citizen. I will try to sketch quite freely some of the questions and ideas that this expression brings to my mind.

I think the idea of global citizenship points to an ideal of universal norms and institutions that give shape to a world order based on justice, liberty, and equality: what I would like to call the global rule of law.

Certainly a fine ideal, but some would deem it Utopian. Perhaps they are right, but, as the word itself makes clear, Utopian ideas that do not belong to this world, sometimes have an important influence in reality and may help to improve the course of events. This has happened with the idea of Global Citizenship, or similar ideas.

Gil Carlos Rodriguez Iglesias is President of the European Court of Justice.

In the history of ideas, this notion of global citizenship has very old and deep roots. Many authors have delved into it. I shall only refer to two of them.

Eighteen centuries ago, the Roman Emperor Marcus Aurelius wrote the following passage:

All things are implicated with one another, and the bond is holy; and there is hardly anything unconnected with any other thing. For things have been coordinated, and they combine to form the same order. For there is one universe made up of all things, and one god who pervades all things, and one substance, and one law, one common reason in all intelligent animals, and one truth; if indeed there is also one perfection for all animals which are of the same stock and participate in the same reason.²

In 1795, Immanuel Kant published his *Philosophical Sketch on Perpetual Peace (Zum ewigen Frieden)*.³ In this interesting and enduring essay, Kant reflects on similar ideas to those of Marcus Aurelius, but his thought is somewhat more sophisticated.

I think the idea of global citizenship points to an ideal of universal norms and institutions that give shape to a world order based on justice, liberty, and equality.

Kant lays down a series of definitive articles for perpetual peace, on which he then comments. In the second article he proposes that “the law of nations shall be founded on a federation of free states.” The third definitive article for perpetual peace, which goes to the heart of my address, reads as follows: “The law of world citizenship shall be limited to conditions of universal hospitality.” Global citizenship and world citizenship are basically the same notion. For Kant, “hospitality means the right of a stranger not to be treated as an enemy when he arrives in the land of another.” He stresses that this should be a matter of right, not a question of philanthropy or good will. He then explains the foundations of this right of universal hospitality:

Uninhabitable parts of the earth—the sea and the deserts—divide this community of all men, but the ship and the camel (the ship of the desert) enable them to approach each other across these unruled regions and to establish communication by using the common right to the face of the earth, which belongs to human beings generally...In this way distant parts of the world can come into peaceable relations with each other, and these are finally publicly established by law. Thus the human race can gradually be brought closer and closer to a constitution establishing world citizenship.

For all his idealism in other areas, Kant’s political philosophy always shows a degree of realism. This realism can be seen in the following remark:

But to this perfection [of a world citizenship based on the right of hospitality] compare the inhospitable actions of the civilized and especially of the commercial states of our part of the world. The injustice which they show to lands and peoples they visit (which is equivalent to conquering them) is carried by them to terrifying lengths. America, the

lands inhabited by the Negro, the Spice Islands, the Cape, etc., were at the time of their discovery considered by these civilized intruders as lands without owners, for they counted the inhabitants as nothing. In East India (Hindustan), under the pretense of establishing economic undertakings, they brought in foreign soldiers and used them to oppress the natives, excited widespread wars among the various states, spread famine, rebellion, perfidy, and the whole litany of evils which afflict mankind.

Kant would not deny reality, which was then and still is today so distant from the ideal of world citizenship and perpetual peace among the nations and their peoples. But to this problematic reality he opposed, in the concluding paragraph of his short treatise, a renewed idealism which summarizes his thoughts on the topic:

Since the narrower or wider community of the peoples of the earth has developed so far that a violation of rights in one place is felt throughout the world, the idea of a law of world citizenship is no high flown or exaggerated notion. It is a supplement to the unwritten code of the civil and international law, indispensable for the maintenance of the public human rights and hence also of perpetual peace. One cannot flatter oneself into believing one can approach this peace except under the condition outlined here.

This conclusion is quite telling, and it has not lost but rather gained strength over time, especially in view of the tragic events that have recently shocked the world. I refer to the serious terrorist attacks of September 11, and to the current response of the United States of America and its allies. In this sad and tragic chapter of human history, it is in my view particularly important not to lose sight of Kant's stimulating ideas that I have just referred to.

Over and again, one should compare these noble ideals and ideas uttered more than two centuries ago with reality. Kant referred to a particular kind of economic exploitation, but one can easily transpose his critique of world affairs to the current situation. The economic and social divide between rich and poor nations is growing ever wider.

And yet one cannot ignore the immense force which is at the foundation of the ideas of world citizenship. This force has found its way into reality by fits and starts, not as a fact but as a normative ideal. I will refer to a number of international instruments that draw on this ideal.

The Preamble to the Charter of the United Nations, signed on 26 June 1945, in San Francisco, which came into force on 24 October 1945, is the first such instrument that comes to mind.

In limpid language that echoes that of Kant, the "peoples of the United Nations" expressed the need "to save succeeding generations from the scourge of war," "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small," "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained," and "to promote social progress and better standards of life in larger freedom." To this end, the peoples of the United Nations proposed "to practice tolerance and live together in

peace with one another as good neighbors,” “to unite our strength to maintain international peace and security,” “to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples.”

Other international instruments that come to mind are the Universal Declaration of Human Rights, adopted and proclaimed by the General Assembly of the United Nations on December 10, 1948, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both of 1966. They are all moved by, and respond, to the same ideal.

All these international instruments are a reality that cannot be ignored. An ideal made reality, so to speak. And yet how feeble, how uncertain these words seem, how dependant on the good will of the nations and their peoples, how weak, finally, in relation to the absolute denial of all their principles that comes with global terrorism of any kind and, also, with a world of isolated and selfish nations which we do not really care for the problems of our neighbors.

Why do they remain feeble, weak instruments?

Perhaps because they are made of words. Noble and strong words, it cannot be denied, but words after all. And words that have little power over the fact that the nations are not so united, since they have retained sovereignty, and have not created stable structures, institutions and norms that would achieve Kant’s world federation of free states. There are institutions and norms, like the United Nations and the international instruments I have just mentioned, but without the permanent transfer of a substantial part of the sovereignty of the states there is no perfect guarantee of perpetual peace and effective respect for human rights.

The global rule of law remains Utopian or imperfect, and will remain so until the states freely decide to pool their sovereignty in common institutions and norms.

Thus, the global rule of law remains Utopian or imperfect, and will remain so until the states freely decide to pool their sovereignty in common institutions and norms.

Likewise, a “global citizen” understood in ideal terms remains utopian as well, since citizenship, understood as the fact of being a member of a given polity, with the rights and obligations which are attached to it, is normally linked to the nation-state.

These imperfect norms and institutions that constitute the current world order are accompanied by many phenomena of regional integration. I will mention in this respect the NAFTA (North American Free Trade Area), Mercosur, ASEAN (Association of Southeast Asian Nations), and the European Union.

This latter organization is the one I know better, for obvious reasons, and I should like to say a word about it.

The European Union is the most advanced regional system of integration, more advanced than some of the others I've just mentioned, and in some aspects very similar to a federation. It touches upon all sorts of subjects: economic, social and political. It has its own currency, the euro, which in two months will be a physical reality and shortly after will replace the currencies of 12 of the Member States. It has its own fields of competence, which have been transferred on a permanent basis by the Member States at the different stages of European integration. And it has its own system of law.

Pierre Pescatore, a former judge at the European Court of Justice, memorably described this legal system as a "law of integration": a law which is, as he wrote, "qualitatively different from the classical international legal order." A law which is based on "a new type of relationship between States and their peoples." A law that has established "stable structures capable of standing up to the assault of crises and the erosion of time."⁴

Many aspects of the European Union are *sui generis*, unprecedented in the international sphere.

These institutional, normative and social structures are, indeed, still standing after several decades of existence. Many aspects of the European Union are *sui generis*, unprecedented in the international sphere. But the most specific feature is perhaps its law: a mature system of law which holds together the Member States and their peoples; a system which is suffused with principles of solidarity and common responsibility; a system of law characterized by a constant evolution and a creative dynamism, but also by stable structures that provide a degree of continuity in the integration process; a system, in sum, which has institutional and normative resources to improve and bring itself to completion.

The law of the European Union constitutes an independent and uniform body of law, applicable in all the Member States, relatively autonomous from, yet superior to, national law in case of conflict.⁵ It is based on the founding treaties and the legislation adopted by the European institutions pursuant to those treaties.

The treaties provide the basic rules of the integration process: the constitutional aims, principles and norms to which the states have agreed and have to respect; the institutions and processes through which these principles may be developed. They have thus been described by the European Court as the constitutional charter of a Community based on the rule of law.⁶

Regarding legislation, the institutions of the European Union integrate as well as innovate, incorporating the policies of Member States and establishing new policies applicable to them. This system of primary and secondary norms resembles national law in many respects, but also presents its own very specific features, which are both structural and substantive.

From a structural point of view, European Union law is law in the strict sense of the word: it is law that applies to both States and individuals, beyond classical

international law, which established legal relations only between sovereign States.

From a substantive point of view, it is a law of freedom, economic and otherwise. A law that precludes the traditional selfishness of the States in the international environment, by limiting their sovereignty, and in part pooling it together, in the interest of all concerned. A law, moreover, that is based precisely on a specific concept of common interest, which is sought through the operation of supranational institutions. A law, finally, based on a common citizenship, and an established understanding of the relationships between the States and their peoples. Two norms, among many other fundamental provisions, epitomize these achievements.

The first is Article 12 of the founding treaty. This provision prohibits “any discrimination on grounds of nationality.” It is thus very close to the principle of hospitality propounded by Kant in order to establish a world citizenship.

The second is Article 17, which establishes a “citizenship of the Union,” a concept pregnant with many actual and potential legal consequences regarding the way in which many traditional rules of community law are interpreted and applied.⁷

I should like to recall in this connection that the Constitution of the United States of 1787 did not originally provide for a common citizenship. It only established, in Article IV, section 2, that “the Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States,” a provision that closely resembles Article 12 of the Treaty of Rome. After the civil war, the 14th Amendment was added, providing that “all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

Article 17 of the European Treaty does more or less the same thing. According to that article, citizenship of the Union belongs to every person who holds the nationality of a Member State. Citizenship of the Union, the provision adds, “shall complement and not replace national citizenship.”

To put it in a simpler way: a composite citizenship which allows people to feel European while they also feel French or English or Spanish or Greek and so on.

Thus, even in the most advanced system of regional integration, citizenship remains inherently linked to the nation-states. This new, supranational citizenship is complementary, one may even say residuary, but it involves certain important rights: for instance, rights of movement and residence within the Member States; the right to vote and stand as a candidate in local and European elections all around the Union, and the right of diplomatic protection in the territory of a third country by the authorities of any Member State.

If one sees citizenship as a bundle of civil, political and social elements, as did T. H. Marshall in his seminal essay *Citizenship and Social Class* of 1950,⁸ what we are witnessing nowadays in the European Union is a distribution of these elements

of citizenship, with different degrees of intensity, between the national and supranational levels. This distribution is producing a unique citizenship made of layers that transcends one-directional national allegiances and identities and transforms them into multidimensional ones. Or, to put it in a simpler way: a composite citizenship which allows people to feel European while they also feel French or English or Spanish or Greek and so on.

It may be interesting to compare this situation with what happened long ago in the United States: the 14th Amendment was designed to foster racial integration in American society, something that took much time and strife to achieve through political, and not only legal means. One has to admit, there are limits to what the law can do without a corresponding human will. The 14th Amendment was important, however, as the embodiment of an ideal and as the legal expression of a commonality. But it took some time to extract from this provision all its normative content.

It will also take some time to find all that the citizenship of the Union means in legal and extralegal terms. But its inclusion in the treaties already expresses something very important that one has to keep in mind when thinking about community law: that this system of law gives normative shape to the principles and values of a community of peoples, not simply of states.

The citizenship of the European Union is another building block for the Global Citizenship, and not simply a redefinition of identities, of circles of inclusion and exclusion, of us and them.

This system is still unfinished, and is on the move, as it were. In a few years' time the European Union may have a fully-fledged Constitution. This Constitution will most probably be drafted by a Convention after a deep constitutional debate, which in name and mandate will be comparable to that of the Philadelphia Convention that drafted the Constitution of the United States in 1787.

A convention of the same kind, composed of 15 representatives of the Heads of State and Government, 30 representatives of the national parliaments, 16 representatives of the European Parliament and one representative of the Commission, was already set up in December 1999 with the mandate to draft a Charter of Fundamental Rights of the European Union. The text of the Charter was solemnly proclaimed by the Presidents of the political institutions of the Union on December 7, 2000. Its concrete legal value is to be determined in the constitutional debate on the future of the Union to which I have referred.

Let me now come back to the main thrust of my address.

One would like to think that, to different extents and depending on their degrees of intensity, these processes of regional integration are building blocks towards a world order characterized by liberty, justice and the rule of law. One would like to think that they are not borders moved yet maintained, but that they are borders

quite simply removed. And, in the same vein, that the citizenship of the European Union is another building block for the Global Citizenship, and not simply a redefinition of identities, of circles of inclusion and exclusion, of us and them.

Much remains to be done, both at the regional and international levels. Work at the regional level should be accompanied by international activities of all sorts that may bring closer together the peoples of the world. In this connection, I should like to emphasize the Dialogue Among Civilizations project, launched earlier this year by the United Nations, and the Secretariat of which is at the School of Diplomacy and International Relations of Seton Hall University. Ambassador Constantinou has always been very keen on these topics. This project of the United Nations is indeed meant to develop a new model for international relations. That this model should be based on a dialogue, rather than on a reciprocal ignorance of civilizations or, worse, on a clash among them, is something that goes without saying.

Also in this connection I should like to refer to the Rome Statute of the International Criminal Court, of 17 July 1998. Its preamble emphasizes that "all peoples are united by common bonds, their cultures pieced together in a shared heritage," and expresses concern "that this delicate mosaic may be shattered at any time." In order "to guarantee lasting respect for and the enforcement of international justice," the States Parties to the Statute have agreed to establish an International Criminal Court. The projected Court would be "a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern." This Court would be most useful for cases of criminal activities that know no boundaries and can not be properly judged within state boundaries. Unfortunately, the statute has only been ratified so far by 43 out of the 60 signatory states which are needed for it to enter into force.

As I see it, therefore, regional integration builds blocks towards a new world order. International cooperation, simultaneously, builds bridges between these blocks, to prevent isolationism and the selfish attitudes of the nation-states and regional units.

Let me now address a final question.

Do the events of September 11, 2001, and what has followed, substantially change this scenario? Do they alter the prospects of peace among nations? Do they prevent the emergence of a global citizenship in a normative, ideal sense? Do they, as many have said and written, mark the beginning of a different kind of international relations?

As Professor Stanley Hoffmann has recently written, this would be "a misleading interpretation of a horrible event," for there is only a "change of scale and the location of the event," without really transforming world affairs.⁹ World affairs have long been marked by interdependence and globalization, beyond the nation-state. Not only business and trade are global. Terrorism, drug cartels and other criminal activities are no less global. And they cannot be effectively dealt with at the traditional level of the nation-state. From this perspective, the tragic events of September 11 can be interpreted as a confirmation of a trend in the structure of world affairs that

dates from the end of the cold war. They call, to be sure, for an adequate response and effective justice. But they call no less, for a deep reflection on the current structure of the international community, in political, social and economic terms.

In this connexion, the United Nations Millennium Declaration, adopted in September 2000, proclaimed, “the central challenge we face today is to ensure that globalization becomes a positive force for all the world’s people. For while globalization offers great opportunities, at present its benefits are very unevenly shared, while its costs are unevenly distributed.”

My hope is that these recent tragic events should not throw us back into self-regard and self-seeking within narrow national boundaries but that they should give a new and wide-spread impetus to the generous ideals expressed by Immanuel Kant. To me, this spirit of openness and generosity is the only way forward in the world today. It is in that spirit that I am grateful for this opportunity to address you and am honored to be named Global Citizen.

Notes

¹ This is the text of an address delivered on 29 October 2001, at Seton Hall University, on the occasion of the Global Citizen Award. The oral style of the address has been maintained and some references have been added. The author would like to express his gratitude to Julio Baquero Cruz, référendaire at the European Court of Justice, for his valuable assistance.

² *Meditations*, VII, 9 (The communings with himself of Marcus Aurelius Antoninus, Emperor of Rome, together with his speeches and sayings, a revised text and a translation into English by C.R. Haines, Heinemann, 1930).

³ In Kant’s political writings (ed. H. Reiss, tr. by H. B. Nisbet, Cambridge University Press, 1970).

⁴ P. Pescatore, *The Law of Integration: Emergence of a new Phenomenon in International Relations, Based on the Experience of the European Communities* (Sijthoff, Leiden, 1974), pp. 1-3.

⁵ See Case 6/64, *Costa v. E.N.E.L.* [1964] ECR 585.

⁶ See Case 294/83, *Les Verts v. Parliament* [1986] 1339; Opinion 1/91 (draft agreement relating to the creation of the European Economic Area) [1991] I-6079.

⁷ See, in particular, Case C-184/99, *Grzelczyk* [2001] I-6193, par. 31: “Union citizenship is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for.”

⁸ T. H. Marshall, *Citizenship and Social Class* (Pluto Press, London, 1992).

⁹ S. Hoffmann, “On the War,” *The New York Review of Books* (November 1, 2001).

