

The (Latin) American Dream? Human Rights and the Construction of Inter-American Regional Organisation (1945-1948)

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Abstract

The American Declaration of the Rights and Duties of Man is often cited as evidence of the longstanding centrality of human rights in Latin American approaches to international law. However, when the Declaration is brought into the history of inter-American regionalism, a more complex picture emerges. This article places the early codification efforts of regional human rights within the post-war construction of inter-American regional organisation. It argues that for Latin American and US elites, the priorities lay on institutional, collective security, and economic aspects. In this context, they instrumentally embraced the flexible language of human rights to advance broader regionalist visions. As a result, human rights gained ground, albeit as a contested idea. The article reveals that the post-war institutional settlement ultimately comprised a collective security apparatus, crucial for the United States, supplemented by the principle of non-intervention, vital to Latin American states, in which human rights were not central.

Keywords

History of international law, human rights, regionalism, Latin America, Organization of American States, international organizations, non-intervention, collective security

1. Introduction

In the eyes of most jurists, inter-American regionalism has become almost synonymous with human rights. If one mentions the Inter-American System, chances are that even a knowledgeable reader might assume that one is referring to the Inter-American *Human Rights* System. The former, however, denotes a ‘network of institutional principles, policies,

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procedures, and organizations’ that can be traced to the Pan-American movement and the First Conference of American States (1889-1890), and today encompasses institutions such as the Organization of American States (OAS) and the Inter-American Development Bank.¹ The Inter-American Human Rights System (IAHRS), in contrast, is a mechanism for the protection of human rights within the Inter-American System that comprises two institutions, the Inter-American Court of Human Rights (IACtHR) and the Inter-American Commission on Human Rights (IACHR), as well as instruments including the American Convention on Human Rights (ACHR).²

It is thus not entirely surprising that the American Declaration of the Rights and Duties of Man (‘American Declaration’) stands as arguably the most visible legacy of the 1948 Ninth International Conference of American States in Bogotá (‘Bogotá Conference’).³ International lawyers remain largely oblivious to the Conference and most of its products, from the Economic Agreement of Bogotá to the American Treaty on Pacific Settlement.⁴ Seventy-five years on, even the OAS Charter,⁵ announced at the time as a joint ‘new constitution’ of the ‘American nations’ on the front page of *The New York Times*,⁶ seems to pale in comparison to the ‘first international human rights instrument of the modern era’.⁷ For if theorists and historians of international law have lost interest in regionalism,⁸ history has become a battlefield for the meaning of human rights.⁹ In this context, human rights scholars have rightly stressed that the American Declaration predated by several months and influenced the

¹ G Pope Atkins, *Encyclopedia of the Inter-American System* (Greenwood Press 1997) 1.

² American Convention on Human Rights (ACHR) 1969, OAS Treaty Series 36.

³ American Declaration of the Rights and Duties of Man, adopted by the Ninth International Conference of American States (Resolution XXX) (2 May 1948), Ninth International American Conference (‘Bogotá Conference’), Bogotá, Colombia, 30 March-2 May 1948.

⁴ Economic Agreement of Bogotá 1948, OAS Treaty Series 21; American Treaty on Pacific Settlement 1948, OAS Treaty Series 17. See, respectively, Perrone, ‘Locating the 1948 Economic Agreement of Bogotá: The Rise and Fall of Latin America’s International Economic Law Project’ [JHIL forthcoming]; Uriburu, ‘Organizing Peace in the Americas: Collective Security Versus International Adjudication’ [JHIL forthcoming].

⁵ Charter of the Organization of American States 1948, 119 UNTS 3.

⁶ Milton Brackers, ‘Americas’ Charter Signed in Bogota’ *The New York Times* (1 May 1948).

⁷ Claudio Grossman, ‘American Declaration of the Rights and Duties of Man (1948)’ in Anne Peters and Rüdiger Wolfrum (eds), *Max Planck Encyclopedia of Public International Law* (Oxford University Press 2009).

⁸ For a forceful argument, see Anne Orford, ‘Regional Orders, Geopolitics, and the Future of International Law’ (2021) 74 *Current Legal Problems* 149.

⁹ See Samuel Moyn, *Human Rights and the Uses of History* (Verso 2014); Joseph R Slaughter, ‘Hijacking Human Rights: Neoliberalism, the New Historiography, and the End of the Third World’ (2018) 40 *Human Rights Quarterly* 735.

Universal Declaration of Human Rights (UDHR). For many, the American Declaration, along with Latin American diplomats and jurists' parallel role in the drafting of the Universal Declaration, indicate the multicultural origins of international human rights law and undermine attempts to portray it as a creature of Western liberalism.¹⁰

The reclamation of the American Declaration as a central piece in the making of global human rights tends to convey the message that human rights as we know them today have long occupied a defining role in Latin American approaches to international and regional law and organisation. Indeed, historical accounts foregrounding the significance of the Declaration often group it with other Latin American 'contributions' to the rise of human rights and create a narrative of linearity from the Declaration to the present-day Inter-American Human Rights System.¹¹ But when the Declaration is brought into the history of inter-American regionalism, a more complex picture emerges.

This article places the early codification efforts of regional human rights in the context of the post-war construction of inter-American regional organisation, a process that began in the 1945 Chapultepec Conference and culminated in Bogotá. It contends that the primary attention of the Latin American and US diplomatic and legal elites involved in this project was directed towards institutional, collective security, and economic aspects of the Inter-American System (Section II). In this context, this article shows, regional actors instrumentally embraced the nascent and flexible language of human rights to advance their preferred broader visions of regionalism. In this way, human rights gained ground in inter-American legal thought and action, but they remained a highly contested idea and seen as much as a means to strengthen sovereignty as to erode it (Section III). The article describes the institutional settlement ultimately reached in Bogotá as revealing a collective security apparatus, crucial for the United States, supplemented by the principle of non-intervention, vital to Latin American states, in which human rights were not central (Section IV). Against this background, it reads the

¹⁰ See Kathryn Sikkink, *Evidence for Hope: Making Human Rights Work in the 21st Century* (Princeton University Press 2017) 55–58; Mary Ann Glendon, 'The Forgotten Crucible: The Latin American Influence on the Universal Human Rights Idea' (2003) 16 *Harvard Human Rights Journal* 15; Paolo Wright-Carozza, 'From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights' (2003) 25 *Human Rights Quarterly* 281. On Latin American identity and international law, see Arnulf Becker Lorca, 'A Racist International Law: Domination and Resistance in the Americas of the 19th Century' (manuscript on file with author).

¹¹ Certain chronologies begin much earlier, including Glendon (n 10); Wright-Carozza (n 10). Among the few exceptions, see Arnulf Becker Lorca, 'Human Rights in International Law? The Forgotten Origins of Human Rights in Latin America' (2017) 67 *University of Toronto Law Journal* 465; Juan Pablo Scarfi, 'Pan-American Human Rights' in Juan Pablo Scarfi and David MK Sheinin, *The New Pan-Americanism and the Structuring of Inter-American Relations* (Routledge 2022).

American Declaration as a reduced compromise instrument that contrasts with contemporary liberal approaches to human rights (Section V).

2. Setting: Towards the ‘Reorganization, Consolidation, and Strengthening’ of the Inter-American System

Throughout its first sixty years of existence, inter-American regionalism lacked a clear institutional structure. The International First Conference of American States (1889-1890) created the International Union of American Republics, commonly regarded as the precursor of the OAS, to focus on the distribution of commercial information.¹² It also established the Commercial Bureau of the American Republics as the Union’s secretariat, to be located in Washington and overseen by the US Secretary of State.¹³ In successive Pan-American conferences, the American states proclaimed principles, adopted diverse treaties, created organs, and progressively expanded the functions of the Bureau, which was renamed Pan-American Union (PAU) in 1910.¹⁴ However, inter-American regional organisation was not based on a treaty. The adoption of the concept of ‘Inter-American System’ towards the late 1920s reflected an attempt to conceptualise this complex combination of norms, bodies, and policies.¹⁵

This peculiar path of institutional development was not politically neutral. ‘Neither the Union of Republics nor the Organization of American States had been constitutionally formed, but the Pan-American Union was a concrete reality’, Mexican Ambassador Luis Quintanilla recalled in a lecture on his return from Bogotá.¹⁶ Stressing the significance of the newly adopted OAS Charter, the foundational instrument that had been conspicuous by its absence, Quintanilla pointed at the strong influence that the US had exerted on the PAU. The ‘law was made to protect the weak’ and the ‘nebulous state’ of Pan-Americanism had only favoured ‘the

¹² Inter-American regionalism had its origins in US foreign policy and has to be contrasted to the earlier ideas of Latin American regionalism that go back to Simón Bolívar and the Congress of Panama. See, e.g., Indalecio Liévano Aguirre, *Bolivarismo y monroísmo* (Revista Colombiana 1969).

¹³ See ‘Sixty-Fifth Day – Acta No. 65’ (Washington, 14 April 1890) in *Minutes of the International American Conference* (Washington 1890).

¹⁴ For a contemporary overview, see Clifford B Casey, ‘The Creation and Development of the Pan American Union’ (1933) 13 *The Hispanic American Historical Review* 437.

¹⁵ See Mary Margaret Ball, *The OAS in Transition* (Duke University Press 1969) 16–19.

¹⁶ Luis Quintanilla, ‘La Estructura Del Panamericanismo Después de Bogotá’ in Secretaría de Relaciones Exteriores (México) (ed), *México en la IX Conferencia Internacional Americana* (1946) 73.

strong', he explained.¹⁷ Quintanilla did not find it necessary to prove his point. However, if he had thought otherwise, he could have mentioned the limited representation in the Governing Board of the PAU, which only allowed representatives accredited to (and therefore recognised by) the US government to participate until 1923,¹⁸ or the fact that the Board had always been presided over by US Secretaries of State (*ex officio* until 1923), or that no Latin American was appointed Director-General of the PAU until 1944.

As World War II neared its conclusion, Latin American elites recognised the value in strengthening the regional political-legal system, eschewing any notion of disengagement.¹⁹ A number of changes that had taken place since the 1930s help account for their enthusiasm. Notable among them was the long-cherished codification of the principle of non-intervention in the Montevideo Convention on the Rights and Duties of States in 1933.²⁰ Franklin Delano Roosevelt's Good Neighbor Policy facilitated this transition, placing non-intervention at the centre of US policy towards Latin America and departing from the interventionism of his predecessors.²¹ Yet the 1944 Dumbarton Oaks proposals cast a cloud over these advances. Latin Americans feared that the Inter-American System, now structured around non-intervention, could be displaced by the future United Nations, which might enable the US to intervene in the region through the Security Council.²²

For Latin American states, a pressing priority therefore emerged: to safeguard the Inter-American System and develop a 'legal' framework for what had hitherto been a 'political' and US-driven project.²³ The gains from the interwar period on the rights and duties of states called

¹⁷ *ibid* 75.

¹⁸ See Juan Manuel Salceda Olivares, 'México y la V Conferencia Panamericana: un campo de batalla diplomática contra el intervencionismo norteamericano' (2009) 50 *Revista de Estudios Históricos* 44.

¹⁹ Greg Grandin goes further, arguing that 'after World War II there was no region more willing to submit to Washington's leadership than Latin America'. Greg Grandin, *Empire's Workshop: Latin America, the United States, and the Making of an Imperial Republic* (Picador 2021) 52. On the trajectory from US-led pan-Americanism to inter-American multilateralism, see Juan Pablo Scarfi, *The Hidden History of International Law in the Americas: Empire and Legal Networks* (Oxford University Press 2017) 160–168.

²⁰ Convention on Rights and Duties of States, Montevideo, 26 December 1933.

²¹ See Franklin D Roosevelt, 'Address before the Inter-American Conference for the Maintenance of Peace, Buenos Aires, Argentina' (1936). In Buenos Aires, the US signed the Additional Protocol Relative to Non-Intervention, which it later ratified without reservation. Additional Protocol Relative to Non-Intervention, Buenos Aires, 23 December 1936. See also Fredrick B Pike, *FDR's Good Neighbor Policy: Sixty Years of Generally Gentle Chaos* (University of Texas Press 1995).

²² See Gordon Connell-Smith, *The Inter-American System* (Oxford University Press 1966) 125–138; O Carlos Stoetzer, *The Organization of American States* (Praeger 1993) 25–29.

²³ Quintanilla (n 16) 61.

for more than mere protection; they required consolidation. After all, non-intervention had been partly counterbalanced by the introduction of a procedure of consultation, built on the premise that ‘every act susceptible of disturbing the peace of America affects each and every one’ of the American states.²⁴ Mexican diplomats and jurists stressed that the lack of binding assurances could favour flexible hegemonic interpretations by the US. They therefore proposed that this system of ‘regional solidarity’ was formalised.²⁵

The United States was not opposed to this general idea. Instead, it became the main promoter of a regional security agreement for the post-war period. US and Latin American motivations, however, differed. As the Cold War began to unfold, the Truman administration saw in such agreement an opportunity to lock, rather than check, US hemispheric dominance.²⁶ Collective security swiftly ascended as the United States’ foremost multilateral objective in the Americas.²⁷

A second aspiration of Latin American states contrasted more starkly with US interests: the expansion of regional economic co-operation. As the war heightened the strategic importance of Latin American raw materials, the United States forged trade agreements aimed at ensuring a consistent supply of commodities and funding projects to bolster the Latin American contribution to the Allied effort.²⁸ As a result, the war catalysed a significant boost in Latin American exports. Concurrently, Latin American states faced serious import challenges, intensifying the shift towards import substitution industrialisation.²⁹ Once the

²⁴ Declaration of Principles of Inter-American Solidarity and Cooperation, Buenos Aires, 21 December 1936. For US jurist Charles Fenwick this procedure of consultation was envisaged ‘as a means of meeting a situation that might put a strain upon the renouncement of intervention’. Charles G Fenwick, ‘Intervention: Individual and Collective’ (1945) 39 *The American Journal of International Law* 645, 656–657.

²⁵ See José Gorostiza, ‘La tesis de México entre Chapultepec y Bogotá’ in Secretaría de Relaciones Exteriores (México) (ed), *México en la IX Conferencia Internacional Americana* (1946); Jaime Torres Bodet, *Memorias, I: Tiempo de arena, Años contra el tiempo, La victoria sin alas* (2017), at 478–488. See also Tom Long, ‘Historical Antecedents and Post-World War II Regionalism in the Americas’ (2020) 72 *World Politics* 214, 231–234.

²⁶ Grandin (n 19) 54–55. See also Gene A Sessions, ‘The Multilateralization of the Monroe Doctrine: The Rio Treaty, 1947’ (1973) 136 *World Affairs* 259.

²⁷ US officials unsuccessfully sought to supplement this multilateral security agenda with a bilateral one: establishing an expansive web of military bases across Latin America via individual agreements. See Rebecca Herman, *Cooperating with the Colossus: A Social and Political History of US Military Bases in World War II Latin America* (Oxford University Press 2022) 177–203.

²⁸ Victor Bulmer-Thomas, *The Economic History of Latin America since Independence* (Cambridge University Press 2003) 232–267; Luis Bértola and José Antonio Ocampo, *The Economic Development of Latin America since Independence* (Oxford University Press 2012) 153–155.

²⁹ Rosemary Thorp, ‘A Reappraisal of the Origins of Import-Substituting Industrialisation 1930-1950’ (1993) 24 *Journal of Latin American Studies* 181.

prospect of peace drew nearer, many states aspired to deepen industrialisation, urging the United States to honour its wartime developmental promises through regional economic co-operation. However, the United States insisted that Latin American states prioritised lowering trade barriers, reverting to non-protectionist measures, and attracting foreign private capital.³⁰ While emphasising its preference for the ‘essentially bilateral character’ of inter-American economic relations,³¹ which served its geopolitical and economic influence, the United States tactically left open the possibility of future economic co-operation, using it as a carrot in diverse negotiations.³²

In the end, the overlapping concerns provided sufficient common ground to usher in a new era of (re)institutionalisation of the Inter-American System. In February 1945, the American republics convened in the Chapultepec Castle in Mexico City to discuss ‘the way to intensify their collaboration as well as the participation of America in the future world organisation and the impetus that should be given both to the inter-American system and the economic solidarity of the Continent’.³³ The Chapultepec Conference adopted provisional instruments that came to shape the entire effort for the ‘reorganization, consolidation, and strengthening’ of inter-American regional organisation.³⁴ As the United States temporarily deflected the Latin American economic demands, Chapultepec’s major outcomes revolved around a dual mandate: establishing a regional collective security arrangement and adopting a charter of the Inter-American System.

It was in the context of this inter-American ‘move to institutions’ that human rights entered in earnest the vocabulary and politics of inter-American law and organisation.³⁵ Among the provisional instruments adopted in Chapultepec was the resolution on the ‘International

³⁰ See ‘Statement by Assistant Secretary Clayton’ (1945) 12 Department of State Bulletin 334.

³¹ Arthur P. Whitaker, ‘Pan America in Politics and Diplomacy’ in Arthur P. Whitaker (ed), *Inter-American Affairs 1945: An Annual Survey* (Columbia University Press 1946).

³² See Stephen G Rabe, ‘The Elusive Conference: United States Economic Relations with Latin America, 1945–1952’ (1978) 2 *Diplomatic History* 279.

³³ ‘Texto de la invitación que el gobierno de los Estados Unidos Mexicanos dirigió a los demás gobiernos americanos’ (10 January 1945) in *Diario de la Conferencia Interamericana sobre Problemas de la Guerra y de la Paz* 1 (1945).

³⁴ See Resolution VIII (‘Act of Chapultepec’), Resolution IX (‘Reorganization, Consolidation, and Strengthening of the Inter-American System’), and Resolution LI (‘Economic Charter of the Americas’), Final Act of the Inter-American Conference on Problems of War and Peace, City of Mexico, 8 March 1945.

³⁵ I borrow this concept from David Kennedy, who referred to the (global) role of international organisations in the aftermath of World War I. David Kennedy, ‘The Move to Institutions’ (1987) 8 *Cardozo Law Review* 841.

Protection of the Essential Rights of Man'.³⁶ This resolution requested the Inter-American Juridical Committee to prepare a draft declaration on the subject, which eventually led to the American Declaration. The origins of the resolution, explored below, illuminate a period in which human rights became relevant as a language to shape the direction of regional law and organisation, all the way to the Bogotá Conference, where the OAS was established.³⁷

3. Human Rights and the Organisation of Regional Power

3.1 Precedents: Individual Rights before Human Rights in the Americas

The post-war emergence of human rights in the Inter-American System was not without preliminary legal work. Even under the late nineteenth-century traditional international law, conceptually defined around the sovereign and 'civilised' nation-state as its single actor,³⁸ individual rights played a central role in the Americas. Latin American states and governments had to accept arbitration for harm to foreigners as a price for their recognition.³⁹ As shown by Arnulf Becker Lorca, semi-peripheral jurists, including Latin Americans, appropriated traditional international legal thought in their interests, but their strategy soon reached its limits as powerful states refused to renounce the 'ample prerogatives to secure their global commercial interests as well as the interests of their nationals abroad'.⁴⁰ It was in response to the semi-peripheral insistence on sovereign equality that core jurists led the turn to modern international legal thought.⁴¹ Towards the interwar period, the dominant view thus became that sovereignty was to be limited in the interests of the international community, unfolding vast

³⁶ Resolution XL, Final Act of the Inter-American Conference on Problems of War and Peace, City of Mexico, 8 March 1945.

³⁷ Charter of the Organization of the American States, Bogota, 30 April 1948. In the 1940s, 'derechos del hombre' (rights of man) was favoured over 'derechos humanos' (human rights), though they were used interchangeably by most jurists.

³⁸ Cf. David Kennedy, 'International Law and the Nineteenth Century: History of an Illusion' (1996) 65 *Nordic Journal of International Law* 385.

³⁹ See Kathryn Greenman, *State Responsibility and Rebels: The History and Legacy of Protecting Investment against Revolution* (Cambridge University Press 2021).

⁴⁰ Arnulf Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842–1933* (Cambridge University Press 2014) 146.

⁴¹ *ibid* 200–220. See also Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2005) 123–136; Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge University Press 2001) 353–412.

possibilities for intervention, including through the operation of international organisations and, eventually, international human rights law.⁴²

Modern international law, however, was not merely imposed on Latin America, as jurists from the region once again enlisted the dominant international legal approach, including incipient human rights ideas, to serve their cause.⁴³ As early as 1917, Chilean jurist Alejandro Álvarez provided for the ‘international rights of the individual’ in his codification projects.⁴⁴ A central figure in the turn to modernism in Latin American international legal thought, Álvarez called for the ‘reconstruction’ of international law throughout the decades.⁴⁵ Liliana Obregón has interpreted Álvarez’s concern about individual rights as part of his idea that a regionalism inclusive of the United States would serve to protect the sovereignty of Latin American countries. In this view, Álvarez promoted the codification of human rights as a tool to secure a minimum standard of civilised justice for aliens and limit pretexts for interventions.⁴⁶ Juan Pablo Scarfi, in turn, has foregrounded Álvarez’s ‘pioneering’ role and his understanding of the tension between individual rights and non-intervention, and argued that human rights were first envisioned in the Americas as part of Pan-Americanism’s ‘missionary aim ... to reconstruct international law’, which provided a framework for the construction of the Inter-American Human Rights System.⁴⁷

Despite these precedents, by 1945 human rights were just gaining ground. Crucially, they remained a matter of domestic legislation. As Álvarez himself argued, the Chapultepec and San Francisco conferences had given ‘paramount importance’ to the subject, but the projects discussed therein remained ‘confusing’.⁴⁸ Indeed, this article shows next, human rights

⁴² See Anghie (n 41) 135.

⁴³ Through codification, a modern mode of action, they succeeded in creating new rules of international law. On the road to the codification of non-intervention, compare Becker Lorca (n 40) 305–352 and Scarfi (n 19) 147–175.

⁴⁴ Instituto Americano de Derecho Internacional, *Actas, Memorias y Proyectos de Las Sesiones de La Habana (Segunda Reunión Del Instituto) 22 a 27 de Enero de 1917* (Oxford University Press 1918) 346.

⁴⁵ See, e.g., Alejandro Alvarez, ‘La Futura Sociedad de Las Naciones’ in Instituto Americano de Derecho Internacional, *Actas, memorias y proyectos de las sesiones de la Habana (Segunda reunión del Instituto) 22 a 27 de enero de 1917* (Oxford University Press 1918).

⁴⁶ Liliana Obregón, ‘The Universal Declaration of Human Rights and Latin America’ (2009) *Maryland Journal of International Law* 6. Cf. Sikkink (n 10) 62–63.

⁴⁷ Scarfi (n 11), 155.

⁴⁸ Alejandro Álvarez, *La reconstrucción del derecho de gentes: el nuevo orden y la renovación social* (Nascimento 1946) 457.

were a nascent and flexible language, and, for these reasons, Latin American elites employed it to advance their preferred visions of regionalism in the era of (re)institutionalisation.

3.2 Human Rights in a ‘Constitutional Moment’

The Bogotá Conference was once framed by constitutional metaphors. Allusions to a ‘constituent assembly’ or, in reference to the OAS Charter, ‘a constitutional statute’ were widespread until Bogotá faded into neglect.⁴⁹ These characterisations convey the illusion of popular representation, while the debates at the Bogotá Conference were dominated by high-level representatives from American states that were formally equal but starkly unequal. However, thinking of the period from Chapultepec to Bogotá as a ‘constitutional moment’ can be analytically helpful.⁵⁰ As argued by Roberto Gargarella, the key thinkers in the early history of Latin American constitutionalism recognised that fundamental rights and the structure of power were intertwined, meaning that alterations in either of these two central aspects of the Constitution could have a profound impact on the other. As a consequence, many of them judged that the ‘best way of ensuring certain changes in the area of basic rights was by ensuring certain changes in the area of the organization of power’.⁵¹ An examination of the inter-American constitutional moment reveals a comparable perspective. Human rights were part of broader struggles over regional geopolitical and economic ordering through international law. Three 1945 initiatives help illustrate the malleability of the language of human rights and the possibilities they offered to advance different approaches to the organisation of regional power (and, albeit to a lesser extent, vice versa).

The resolution on the ‘International Protection of the Essential Rights of Man’, adopted in Chapultepec, is a crucial first case.⁵² In accordance with it, the Inter-American Juridical Committee produced the first two drafts of the American Declaration of the Rights and Duties of Man.⁵³ The resolution was the product of a more ambitious Mexican draft, which, unlike the

⁴⁹ See, e.g., Inter-American Institute of International Legal Studies, *The Inter-American System, Its Development and Strengthening* (Oceana Publications 1966) xxxii; Jesús María Yepes, *Del Congreso de Panamá a la Conferencia de Caracas, 1826-1954* (Cromotip 1955) 186.

⁵⁰ See Bruce Ackerman, *We the People: Foundations* (Harvard University Press 1991).

⁵¹ Roberto Gargarella, *Latin American Constitutionalism, 1810-2010: The Engine Room of the Constitution* (Oxford University Press 2013) 138.

⁵² Resolution XL (n 36).

⁵³ Inter-American Juridical Committee, ‘Proyecto de Declaración de los Derechos y Deberes Internacionales del Hombre’ (8 December 1947) (hereinafter ‘Second Draft’). See also Inter-American Juridical Committee, ‘Draft

final text, would have recommended the Governing Board of the PAU to consider establishing ‘a specialised body to watch over the regulation and practical application’ of the future declaration.⁵⁴ Mexico had similarly proposed the establishment of an agency for the international protection of human rights in its response to the Dumbarton Oaks proposals.⁵⁵ At first sight, the crucial sponsor of the Chapultepec resolution may appear to have had a concern for the protection of human rights which outweighed the importance it attributed to sovereignty.⁵⁶

However, as stressed by Mexican diplomat and jurist Jorge Castañeda, the Mexican counter-proposals to Dumbarton Oaks must be understood as ‘an organic whole’ that represented a drastically different conception of international organisation.⁵⁷ Together with the international protection of human rights, Mexico’s propositions included the incorporation of a Declaration on the Rights and Duties of States to the Charter of the United Nations – which would have extended the ‘American principle’ of non-intervention to the ‘front rank’ of the ‘universal order’ –,⁵⁸ the automatic incorporation of international law into domestic law, and the expansion of the powers of the General Assembly. The United Nations envisioned by Mexico was expected to strengthen rather than undermine the sovereignty of weaker states.

The Mexican promotion of human rights in Chapultepec, likewise, cannot be understood in isolation from the broader conception of regional organisation underpinning it. The preamble of the Chapultepec resolution signals this vision:

The international protection of the essential rights of man would eliminate the misuse of diplomatic protection of citizens abroad, the exercise of which has more than once led to the violation of the principles of non-intervention and of equality between nationals and aliens, with respect to the essential rights of man.⁵⁹

Declaration of the International Rights and Duties of Man and Accompanying Report’ (31 December 1945) (hereinafter ‘First Draft’).

⁵⁴ ‘Proyecto de resolución de la Delegación de México sobre protección internacional de los derechos del hombre’ (Draft No. 30) in *Diario de la Conferencia Interamericana sobre Problemas de la Guerra y de la Paz* 14 (1945).

⁵⁵ *Opinion of the Ministry of Foreign Affairs of Mexico on the Dumbarton Oaks Proposals for the Creation of a General International Organization* (1944) 61–64.

⁵⁶ See, e.g., the portrayal of Mexico in Mark Mazower, ‘The Strange Triumph of Human Rights, 1933-1950’ (2004) 47 *The Historical Journal* 379, 394.

⁵⁷ Jorge Castañeda, *Mexico and the United Nations* (Manhattan Publishing Company 1958) 45.

⁵⁸ *Opinion of the Ministry of Foreign Affairs of Mexico on the Dumbarton Oaks Proposals for the Creation of a General International Organization* (n 55) 15–34.

⁵⁹ Resolution XL (n 36).

This reference to diplomatic protection came from the Mexican draft. The Mexican delegation argued that diplomatic protection was incompatible with the principle of non-intervention and made ‘futile in practice that principle of juridical equality between the citizen and alien’ by privileging the nationals of powerful countries.⁶⁰ The adoption of a system for the protection of the rights of man would provide ‘a minimum standard of civilized justice’ and thus eradicate ‘the only valid objection’ to the abolition of diplomatic protection. This concern made sense in light of Mexico’s history and outlook. By the 1940s, Mexico enjoyed a unique political stability by Latin American standards and was experiencing impressive economic growth and industrial development.⁶¹ Throughout the inter-American constitutional moment, its diplomats championed a well-defined institutional structure with clear legal obligations, starting with the principle of non-intervention, and led the call for regional economic cooperation.⁶² This approach to human rights was consistent with Mexico’s regionalist vision: it was expected to limit economic interventionism, primarily from the United States, and safeguard sovereignty.⁶³

The project did not go uncontested. Alwyn V. Freeman, a US jurist with close ties to the State Department, denounced it as a ‘sinister’ and ‘deplorable’ use of the rights of man. ‘There is nothing progressive, humanitarian, or altruistic in the philosophy inspiring this resolution’, Freeman argued, as ‘in the guise of liberalism [... its] exclusive aim is to free an interested state from restraints imposed by international law upon conduct which would otherwise produce a pecuniary liability to its sister nations’.⁶⁴ However, the Mexican perspective garnered support among Latin American states.⁶⁵ Indeed, highlighting the

⁶⁰ ‘Proyecto de Resolución de la Delegación de México’ (n 54).

⁶¹ See, generally, Alan Knight, *The Mexican Revolution: Porfirians, Liberals, and Peasants* (University of Nebraska Press 1990); *The Mexican Revolution: Counter-Revolution and Reconstruction* (University of Nebraska Press 1990).

⁶² See Torres Bodet (n 25) 565–607; Gorostiza (n 25). See also Francisco-José Quintana, ‘Small Powers, International Organizations and the Role of Law: Jorge Castañeda’s Views from Mexico’ (2023) 34 *European Journal of International Law* 319.

⁶³ In the words of the Mexican representative on the subject of the rights and duties of man in Bogotá, the elimination of the abuse of diplomatic protection was ‘the incentive that Mexico had had to propose this international protection’. Germán Fernández del Castillo, ‘La Declaración Americana de Derechos y Deberes Del Hombre’ in Secretaría de Relaciones Exteriores (México) (ed), *México en la IX Conferencia Internacional Americana* (1946) 140.

⁶⁴ Alwyn V Freeman, ‘Recent Aspects of the Calvo Doctrine and the Challenge to International Law’ (1946) 40 *American Journal of International Law* 121, 125.

⁶⁵ Similar human rights projects were also considered in Chapultepec. Cuba presented a draft declaration of the rights and duties of the individual, which exhibited a related concern about the relationship between aliens and nationals, providing that ‘no alien shall intervene directly or indirectly in the politics of the country’. Delegation

Chapultepec resolution, Becker Lorca has forcefully interpreted the post-war regional efforts to codify human rights as a tool to advance ‘absolute sovereignty’ in line with the Latin American international legal tradition, through the limitation of diplomatic protection and the recognition of social and economic rights that would legitimise their economic and social policies.⁶⁶ This was part of the story, but there were other human rights initiatives, reflecting other concerns.

A second approach to the protection of human rights is visible in another project presented to the Chapultepec Conference. Under a draft resolution presented by Guatemala, the Conference would have recommended the American Republics to ‘abstain from granting recognition to and maintaining relations with anti-democratic regimes’.⁶⁷ The recitals to the draft explained that the international protection of human rights was ‘a universal aspiration’ and ‘such rights in the face of a regime arising from violence and the imposition of a minority would be unfailingly violated and weakened’. This proposition was not entirely new in the Americas, with the Tobar Doctrine endorsing the non-recognition of de facto governments as a clear precursor.⁶⁸ The invocation of human rights was, however, new, illustrating the possibilities that the nascent language offered to advance pre-existing regionalist ideas. At the same time, the nexus between the regional protection of democracy and human rights was a doctrinal innovation and would remain relevant.⁶⁹

The specific idea that the protection of democracy would ensure the protection of human rights – and not necessarily the other way around – was not capricious. It was rooted in the geopolitical priorities of the newly-elected government of Guatemala. Just two months prior to the Conference, Juan José Arévalo became the first democratically elected president of the country. The leaders of the revolution that deposed dictator Jorge Ubico, including Arévalo and delegate in Chapultepec Guillermo Toriello, exhibited a genuine commitment towards individual and social rights, but their primary concern was the political survival of their

of Cuba, ‘Declaration of the International Duties and Rights of the Individual’ (Draft No. 24). Uruguay proposed a more succinct draft declaration, focused on social rights, which was ultimately superseded by the Mexican draft. Delegation of Uruguay, ‘The Rights of Man’ (Draft No. 83).

⁶⁶ Becker Lorca (n 11).

⁶⁷ ‘Proyecto de resolución de la Delegación de Guatemala sobre defensa y conservación de la democracia americana frente a la eventual instalación de regímenes antidemocráticos en el continente’ (Draft No. 177) in *Diario de la Conferencia Interamericana sobre Problemas de la Guerra y de la Paz* 7 (1945).

⁶⁸ See Charles L Stansifer, ‘Application of the Tobar Doctrine to Central America’ (1967) 23 *The Americas* 251.

⁶⁹ See Hector Gros Espiell, ‘Le système interaméricain comme régime régional de protection internationale des droits de l’homme’ (1975) 145 *Collected Courses of the Hague Academy of International Law* 19–20.

government. In the face of the threat posed by the military-landed elite alliance, a strong regional stance against anti-democratic regimes was in their immediate interest.⁷⁰ At the same time, this project dovetailed with Arévalo's opposition to dictators in Central America and his vision for a Central American federation, which he believed was impeded by 'personalist' governments.⁷¹

The Chapultepec Conference referred the Guatemalan proposal to the Inter-American Juridical Committee,⁷² which eventually concluded that it was not feasible as it would require assessing the democratic nature of each government, in violation of the principle of non-intervention.⁷³ Instead, the Committee favoured ongoing efforts to adopt legal instruments on the rights and duties of individuals and on social guarantees. Despite the tension between the Guatemalan project and the principle of non-intervention, Arévalo and Toriello aimed to curb US backing for undemocratic governments rather than enable interventionism.⁷⁴ Thus, under the language of human rights, Guatemala and Mexico pursued related political goals through legally conflicting means.

By the end of 1945, the 'Larreta Doctrine' emerged as a third prominent attempt to advance a broader regionalist agenda using the language of human rights. In November, the Uruguayan Minister of Foreign Relations Eduardo Rodríguez Larreta sent a note to the American Foreign Ministries calling for the 'harmonisation' of the principle of non-intervention with three key principles 'for the preservation of international peace and security'.⁷⁵ These were the 'parallelism between peace and democracy', the 'conviction' that 'peace is indivisible', and the 'defence of the elementary human liberties'. Rodríguez Larreta concluded that:

[A] multilateral collective action, exercised with complete unselfishness by all the other republics of the continent, aimed at achieving in a spirit of brotherly prudence the mere

⁷⁰ See Piero Gleijeses, *Shattered Hope: The Guatemalan Revolution and the United States 1944-1954* (Princeton University Press 1992) 30–49.

⁷¹ Juan José Arévalo, *Escritos políticos y discursos* (Cultural 1953) 235. See Gleijeses (n 70) 107–116.

⁷² Resolution XXXVIII ('Defense and Preservation of Democracy in America'), Final Act of the Inter-American Conference on Problems of War and Peace, City of Mexico, 8 March 1945.

⁷³ Inter-American Juridical Committee, 'Opinion on the project submitted by the delegation of Guatemala to the Inter-American Conference on Problems of War and Peace, Mexico, 1945' (29 October 1946).

⁷⁴ See Juan José Arévalo, *Fábula del tiburón y las sardinas: América Latina estrangulada* (Editorial América Nueva 1956); Guillermo Toriello, *La batalla de Guatemala* (Editorial Universitaria 1955).

⁷⁵ 'Nota del Gobierno del Uruguay' (21 November 1945) in 'Consulta del Gobierno del Uruguay y contestaciones de los gobiernos' OAS Archives (JX 1980.55.C557).

reestablishment of essential rights, and directed toward the fulfilment of freely contracted juridical obligations, must not be held to injure the government affected, but rather it must be recognized as being taken for the benefit of all, including the country which has been suffering under such a harsh regime.⁷⁶

In this way, human rights were employed to advance a collective security project. The Uruguayan Minister argued that his views were ‘far from constituting an innovation’. On this point, Mexican jurist Antonio Gómez Robledo, co-author of the first draft of the American Declaration, did not disagree. Analysing the proposition a few years later, Gómez Robledo criticised it as ‘the most conspicuous theoretical manifestation’ of the earlier movement ‘in favour of collective intervention’ that had surged during World War II.⁷⁷ Others have stressed that Rodríguez Larreta’s note did not call for collective intervention, but for collective action, and recalled that the Minister clarified before the Uruguayan Senate that this concept did not encompass military measures.⁷⁸ Yet, Rodríguez Larreta’s need to clarify what the note called for, amid escalating political pressure, indicates, at a minimum, a negligent level of ambiguity.⁷⁹ Despite this clarification, the attenuation of the principle of non-intervention lay at the heart of the note.

The Larreta Doctrine was discussed among the American Foreign Ministries and emphatically rejected by the majority. Most states refused to revisit the principle of non-intervention, citing either legal or political reasons.⁸⁰ The proposal had arisen in the context of a consultation by the United States regarding the ‘Argentine problem’, which made it even less appealing.⁸¹ The United States had, in the words of former Under Secretary of State Sumner Welles, conducted acts of ‘undeniable intervention’ in Argentina to prevent the rise of populist Juan Domingo Perón.⁸² This led many to view the initiative as targeted at the Argentine

⁷⁶ *ibid.*

⁷⁷ Antonio Gómez Robledo, *Idea y experiencia de América* (Fondo de Cultura Económica 1958) 204–205.

⁷⁸ See, e.g., Diego Uribe Vargas, *Panamericanismo democrático: bases para una transformación del sistema continental* (Nuevo Signo 1958) 308–309; Tom Long and Max Paul Friedman, ‘The Promise of Precommitment in Democracy and Human Rights: The Hopeful, Forgotten Failure of the Larreta Doctrine’ (2020) 18 *Perspectives on Politics* 1088.

⁷⁹ On the domestic context, see Carolina Cerrano, ‘De Rodríguez Larreta al Libro Azul’ (2020) 24 *Quinto Sol* 46.

⁸⁰ ‘Consulta del Gobierno del Uruguay y contestaciones de los gobiernos’ (n 75). The Larreta Doctrine has consistently been interpreted as rejected by most American republics. See, Gómez Robledo (n 77) 227–233; Uribe Vargas (n 78) 310–319. Cf. Long and Friedman (n 78).

⁸¹ On the ‘Argentine problem’, see Ernesto Semán, *Ambassadors of the Working Class: Argentina’s International Labor Activists and Cold War Democracy in the Americas* (Duke University Press 2017) 44–67.

⁸² Sumner Welles, ‘Intervention and Interventions’ [1947] *Foreign Affairs*.

government and reflective of concerns over the growing influence of the Peronist movement. The Larreta Doctrine was supported by the United States from its inception,⁸³ which appreciated a flexible approach to collective security that could serve to keep Peronism and other rebellious governments in check. Ultimately, the Doctrine made too explicit the interventionist potential of human rights, arguably contributing to the slowdown of the overarching agenda for their regional protection.

In his first-hand account of inter-American diplomacy, Castañeda posited that the conflicting positions on collective action, human rights, and democracy were largely driven by each country's 'geographical position, their situation within the game of political forces in their respective area of the continent [and] their peculiar economic problems'.⁸⁴ In other words, at the heart of these debates were conflicting visions for ordering geopolitics and economics through law. The three projects examined illustrate how these struggles played out in relation to the regional protection of human rights at the beginning of the constitutional moment that culminated in Bogotá.

4. The Institutional Settlement of Bogotá: What Place for Human Rights?

By March 1948, as delegates from twenty-one American states convened in Bogotá to deliberate the reorganisation of the Inter-American System, the United States had already secured its core goal. A year earlier, the American republics had adopted the US-driven Inter-American Treaty of Reciprocal Assistance in Rio de Janeiro.⁸⁵ This instrument provided a legal framework for regional collective security that would later serve as a model for the North Atlantic Treaty.⁸⁶ The adoption of the Rio Treaty shaped the bargaining dynamics in Bogotá, allowing the United States to focus on increasing the number of ratifications without the pressure of major concessions. Recounting the conference in his memoirs, Mexico's then-Secretary of Foreign Affairs, Jaime Torres Bodet, reflected with regret on what he presented as a strategic error. In Bogotá, according to Torres Bodet, US Secretary of State George C. Marshall conveyed a clear message to Latin America: 'ratify the Rio treaty (which you naively

⁸³ 'The Uruguayan proposal for intervention [...] (Documents 126-157)' in *Foreign Relations of the United States: Diplomatic Papers, 1945, The American Republics, Volume IX* (US Government Printing Office, 1969).

⁸⁴ Jorge Castañeda, 'El Panamericanismo y la Conferencia de Caracas' (1954) 14 *Investigación Económica* 373, 382–383.

⁸⁵ Inter-American Treaty of Reciprocal Assistance (Rio Treaty) 1948, 21 UNTS 92. See Uriburu (n 4).

⁸⁶ North Atlantic Treaty 1949, 34 UNTS 243.

signed before the drafting of the organic charter of the ‘system’) and we will see to what extent it will be prudent to adopt [what] you invite us to sign’.⁸⁷

Since human rights had been instrumentally used to promote various objectives, their significance tended to fade once these objectives turned into specific debates – and even more once those debates were settled. The trajectory of the Rio Treaty illuminates this pattern: its adoption significantly curtailed the possibilities of reshaping collective security at the Bogotá Conference, and consequently, the invocation of human rights for such purposes. At the Rio Conference, human rights had been invoked, with Guatemala at the forefront. Guatemala presented a proposal that would have made the treaty’s consultation machinery operative against governments ‘that deviate from the basic norms inherent to the democratic system and violate ... the essential rights of man’.⁸⁸ While Uruguay supported the proposal, a majority of the Latin American delegations opposed it, concerned about its interventionist potential. Less predictable was the explicit opposition of the United States. The arguments presented by US delegate and President of the Senate Arthur H. Vandenberg are, however, elucidating: if defining armed aggression remained elusive, Vandenberg argued, defining ideological or economic aggression would be even more challenging.⁸⁹ The United States did not want the Guatemalan proposal to complicate the adoption of the Rio Treaty or embolden the adjacent Cuban proposal to include ‘economic aggression’ as a ground for collective action.⁹⁰ Marshall articulated the US general stance, which ultimately prevailed: the purpose of the Rio Conference was to reach an agreement on the ‘collective responsibility for our common defence’ and Bogotá would be the place for any other discussions.⁹¹

The discussion on the reorganisation of the Inter-American system in Bogotá was fragmented into several specialised subjects within an extensive programme.⁹² Item

⁸⁷ Torres Bodet (n 25) 589. US delegates in Rio reported to Washington that the treaty ‘satisfied every fundamental objective [they] had set out to attain’. C.P. Trussell, ‘U.S. Group Affirms Gains in Rio Pact’ *The New York Times* (31 August 1947).

⁸⁸ ‘Propuesta de la Delegación de Guatemala para incluir el principio internacional de los derechos esenciales del hombre’ in *Inter-American Conference for the Maintenance of Continental Peace and Security, Rio de Janeiro 1947: Chronological Collection of Documents*.

⁸⁹ See Antonio Gomez Robledo, ‘El Tratado de Río’ (1960) 1 *Foro Internacional* 47.

⁹⁰ See ‘Discurso pronunciado por su excelencia el señor Guillermo Belt’ (19 August 1947) in *Inter-American Conference for the Maintenance of Continental Peace and Security* (n 88).

⁹¹ ‘Address by the Honourable George C. Marshall’ (20 August 1947) in *Inter-American Conference for the Maintenance of Continental Peace and Security* (n 88).

⁹² ‘Programa y reglamento de la Novena Conferencia Internacional Americana’ in *Organization of American States, Novena Conferencia Internacional Americana: Actas y Documentos* (Vol. I).

‘International Rights and Duties of Man’ was now simply one among many and efforts to utilise human rights as a means for other goals became less useful. For instance, the invocation of human rights to either strengthen sovereignty or reduce the scope of non-intervention lost traction as the rights and duties of states became a central subject at the conference. The American Republics enshrined a decalogue of state rights and duties in the OAS Charter, including a revised principle of non-intervention that explicitly outlawed collective intervention, arguably in response to the Larreta Doctrine.⁹³ Similarly, while the early Mexican-led initiative to codify human rights aimed to restrict the scope of diplomatic protection, delegates in Bogotá directly prohibited the exercise of diplomatic protection among American republics as part of the American Treaty on Pacific Settlement – although the United States made a reservation to that provision.⁹⁴

Human rights were primarily discussed in the Sixth Committee (Legal-Political), where the draft American Declaration elaborated by the Inter-American Juridical Committee served as the basis for the discussions.⁹⁵ Before delegates delved into its articles, they decided to address important general questions. Should the rights and duties of man be included in the OAS Charter, as envisioned in Chapultepec?⁹⁶ If not, should a binding treaty or a declaration be adopted? And would an international mechanism of protection be established? The discussions on these questions revealed a decline in interest in the regional protection of human rights compared to the earlier days of Chapultepec.

In spite of the extended reluctance towards firm commitments on human rights, the Committee saw rich discussions on their bindingness and protection. The delegations of Uruguay and Mexico were the most vocal and epitomised two rival positions. Uruguayan delegate Dardo Regules initiated the discussions by asking the delegations to respond to a questionnaire.⁹⁷ Most of the delegations provided their opinions on various aspects of a future human rights instrument, including its juridical nature, the inclusion of social rights, the creation of an international protection mechanism, and the political or judicial nature of such a

⁹³ OAS Charter, Article 15. See Gómez Robledo (n 77) 204–205.

⁹⁴ Article VII, American Treaty on Pacific Settlement, Bogotá, 30 April 1948.

⁹⁵ Inter-American Juridical Committee, ‘Proyecto de Declaración’ (n 53).

⁹⁶ The American states had enshrined this expectation in the Final Act of the Chapultepec Conference. Resolution IX (n 34).

⁹⁷ ‘Minuta de la primera sesión de la Subcomisión A’ (6 April 1948); ‘Acta de la tercera sesión de la Comisión Sexta’ (17 April 1948) in *Novena Conferencia Internacional Americana: Actas y Documentos* (Vol. V).

mechanism.⁹⁸ Regules advocated the inclusion of the rights (both individual and social) and duties of man as binding norms in the OAS Charter, offered a controversial interpretation of the UN Charter as already providing for a political mechanism of protection, and called for the American Republics to establish the first international judicial system for the protection of human rights.⁹⁹

Though Regules presented several arguments in support of the Uruguayan position, including principled arguments, at times an instrumentalist approach to human rights appeared to drive his approach. In his words:

[I]n America there is suppression of individual freedoms, whether due to internal turmoil or the indefinite perpetuation of those in power. These are the causes of the friction that the countries of America unfortunately have. ... [M]en who seek protection for individual freedoms have to leave their nation to seek it in free countries; and then free countries find ourselves in a very difficult situation. ... As long as man is not respected in his individual, economic, and social freedoms, [peace] cannot exist in the world or in America.¹⁰⁰

The connection between human rights and peace demonstrates a shared thread between the Larreta Doctrine and the Uruguayan championing of human rights at the Bogotá Conference. Both exhibit a concern with developing a regional legal order premised upon stability and the protection of individual rights. In emphasising how Uruguay was affected by the violations of human rights elsewhere, Regules made explicit the stakes involved for his country, which could be interpreted in light of Uruguay's "buffer state" position'.¹⁰¹ Yet the Uruguayan delegation strengthened its case with impersonal and clear legal and policy arguments. Regules pointed out the contradiction of recognising human rights but 'leaving them entrusted' to the domestic jurisdictions where they were violated and argued that if one understands 'that international life is governed by law' one should 'let justice pronounce the final word'.¹⁰² Crucially, Uruguay presented a project on the establishment of an international

⁹⁸ The 'Uruguayan questionnaire' dominated the discussions of the sub-committee on the rights and duties of man until its agenda was seized by the Sixth Committee, where delegations continued to respond to it. 'Acta de la tercera sesión de la Comisión Sexta' (n 97).

⁹⁹ Ibid. See Delegation of Uruguay, 'Propuesta sobre la organización de la competencia internacional para la garantía de los derechos de la persona humana' (CB-112/C.VI-Sub A-3).

¹⁰⁰ Intervention by Dardo Regules (Uruguay) in 'Acta de la tercera sesión de la Comisión Sexta' (n 97).

¹⁰¹ On human rights and Uruguay's "buffer state" position', see Mario Sznajder and Luis Roniger, 'The Legacy of Human Rights Violations and the Collective Identity of Redemocratized Uruguay' (1997) 19 *Human Rights Quarterly* 55, 56–58.

¹⁰² Intervention by Dardo Regules (Uruguay) in 'Acta de la tercera sesión de la Comisión Sexta' (n 97).

judicial mechanism, which Regules, unlike Rodríguez Larreta, defended as entirely consistent with the principle of non-intervention.¹⁰³ In a short book on the conference, Regules expanded on the relationship between human rights, peace, and non-intervention, evidencing a generally pragmatic approach to human rights.¹⁰⁴

Mexican delegate Germán Fernández del Castillo summarised the arguments of ‘the different delegations that [did] not agree with Uruguay’, focusing on legal and practical aspects.¹⁰⁵ More concise than Regules, del Castillo argued that the adoption of a treaty had been tied to the establishment of a body with powers to impose sanctions, and that the passing of judgment on the internal affairs of a state would ‘constitute a true intervention’. He added that anyone dissatisfied with a state decision would appeal to the international mechanism, leading to an exorbitant multiplication of claims. Further excavation reveals the consistency of the Mexican approach to human rights throughout the 1940s. At a lecture given soon after Bogotá, del Castillo explained that, after the Rodríguez Larreta note, Mexican diplomats came to appreciate that the international protection of rights ‘would not eliminate the inconveniences of diplomatic protection but aggravate them’.¹⁰⁶ The ‘political or judicial intervention’ by an international body, they believed, ‘would have even more strength’ than that of a single protecting state. In Bogotá, this position carried the day.

Despite the efforts made by Uruguay, as well as Guatemala, Haiti, and Cuba, a broad consensus was reached against adopting binding human rights norms and creating mechanisms for their protection. Only six states supported the proposal to incorporate a human rights instrument into the OAS Charter, while nine voted against it and five abstained. The compromise of adopting a treaty, which would have allowed states to voluntarily become bound without affecting their OAS membership, was rejected by twelve votes to eight. Finally, the proposal for a ‘simple declaration’ – which became the American Declaration of the Rights and Duties of Man – passed with eighteen votes in favour.¹⁰⁷ In light of these decisions, there

¹⁰³ ‘Propuesta sobre la organización...’ (n 99).

¹⁰⁴ Dardo Regules, *La lucha por la justicia y por el derecho: apuntes sobre la IX Conferencia Panamericana* (Barreiro y Ramos 1949) 97–108.

¹⁰⁵ Intervention by Germán Fernández del Castillo (Mexico) ‘Acta de la tercera sesión de la Comisión Sexta’ (n 97).

¹⁰⁶ Fernández del Castillo (n 63) 139–142.

¹⁰⁷ ‘Acta de la tercera sesión de la Comisión Sexta’ (n 97).

was an agreement not to put the issue of establishing an international mechanism of protection for a vote. The American republics therefore favoured the most restrictive positions available.

In the First Committee (OAS Charter), Panamanian Ricardo Alfaro tried with little success to convince his colleagues to take a more proactive stance.¹⁰⁸ An early promoter of human rights in the UN, Alfaro stressed that the UN Charter included seven references to human rights. Indeed, the contrast between the OAS and the UN constitutive instruments is sobering. Unlike the UN Charter, the OAS Charter did not include human rights among the ‘essential purposes’ of the organisation.¹⁰⁹ Furthermore, the principles listed in Article 5 of the OAS Charter, including the proclamation of human rights, were generally regarded as programmatic goals and not binding norms.¹¹⁰ At San Francisco, the drafters had taken a timid approach to institutionalising human rights by providing that the ‘Economic and Social Council shall set up commissions ... for the promotion of human rights’ in Article 68.¹¹¹ No similar provision was adopted in Bogotá.

In the end, the institutional architecture for the Inter-American System that emerged from Bogotá stood on two pillars. The Rio Treaty’s collective security apparatus formed the first, designed to counter both extra- and intra-hemispheric threats to peace and security, and closely aligned with US geopolitical priorities. The second, highly valued by Latin American nations, centred on the rights and duties of states. These were codified in the OAS Charter, notably including the unqualified prohibition of intervention, be it ‘directly or indirectly, for any reason whatever’.¹¹² With the US consistently deflecting economic commitments, the Latin American nations saw the adoption of the Charter as their crowning regionalist achievement. The Charter not only enshrined state rights and duties, but it finally provided a legal foundation for the Inter-American System after fifty years, outlining its mandate and powers. Additionally, its adoption fortified the fabric of inter-American regionalism, carrying with it the expectation of future co-operation in other areas – including the economic realm. In this hard-fought

¹⁰⁸ ‘Minuta de la segunda sesión de la Subcomisión A de la Comisión Primera’ (23 April 1948) in *Novena Conferencia Internacional Americana: actas y documentos* (Vol. III).

¹⁰⁹ OAS Charter, Article 4. A general obligation to ‘respect the rights of the individual and the principles of universal morality’ was incorporated into the OAS Charter as a condition for states to exercise their ‘right to develop its cultural, political and economic life freely and naturally’. OAS Charter, Article 13.

¹¹⁰ See Josef L Kunz, ‘The Bogota Charter of the Organization of American States’ (1948) 42 *American Journal of International Law* 568, 572.

¹¹¹ Charter of the United Nations 1948, XV UNCIO 355.

¹¹² OAS Charter, Article 15.

institutional settlement, there was little space for a human rights agenda that would have reduced the reserved domain of the Latin American states. Delegates did reach an informal understanding that human rights would be discussed in the next Inter-American Conference. To facilitate the future debate, the Conference adopted a resolution asking the Inter-American Juridical Committee to elaborate a draft statute for an inter-American human rights court.¹¹³ However, a year later, the Committee rejected the assignment, stating that it was ‘premature’.¹¹⁴

5. Re-Reading the American Declaration of the Rights and Duties of Man

On the fortieth anniversary of the American Declaration, prominent Uruguayan jurist and IACtHR judge Héctor Gros Espiell expounded its ‘conceptual roots’. ‘There can be no doubt’, he argued, that the Declaration ‘is part of an American historical process’ dating to nineteenth-century constitutionalism, shaped by the Enlightenment, and marked by an ‘invariable constant’. The ‘ideological foundation’ of the Declaration was the idea ‘that the human being is the holder of inalienable and imprescriptible rights’; that ‘these rights coexist with correlative duties’; and that the state, authority, and power were means for the common good, which necessarily included those rights.¹¹⁵ The debates in Bogotá confirm the influence of these ideas and, at the same time, illustrate the insufficiency of a progressivist account to explain the role of the American Declaration – and human rights at large – in post-war regional law and organisation.

Every delegation acknowledged the importance of human rights, with even those opposing the adoption of a treaty or an international mechanism emphasising the need for their domestic protection. Delegates explained that the region had not yet developed ‘sufficient maturity’ to advance further,¹¹⁶ but was ‘walking towards that day’.¹¹⁷ However, the arguments for the inalienable nature of rights existed alongside more pragmatic justifications for their

¹¹³ ‘Corte Interamericana para proteger los Derechos del Hombre’, adopted by the Bogotá Conference, 2 May 1948. See ‘Acta de la cuarta sesión de la Comisión Sexta’ (21 April 1948) in *Novena Conferencia Internacional Americana: actas y documentos* (Vol. V).

¹¹⁴ Inter-American Juridical Committee, ‘Informe al Consejo Interamericano de Jurisconsultos sobre la resolución XXXI de la Conferencia de Bogotá’ (1949), OEA Ser.I CIJ-2.

¹¹⁵ Héctor Gros Espiell, ‘La Declaración Americana: Raíces Conceptuales y Políticas En La Historia, La Filosofía y El Derecho Americano’ (1989) Número especial Revista IIDH.

¹¹⁶ Response of the Dominican Republic to the Uruguayan questionnaire in ‘Minuta de la segunda sesión de la Subcomisión A’ (8 April 1948) in *Novena Conferencia Internacional Americana: Actas y Documentos* (Vol. V).

¹¹⁷ Intervention by Antonio de Oliveira (Brazil) in ‘Acta de la cuarta sesión de la Comisión Sexta’ (n 113).

protection, from references to peace and security to the importance of providing ‘a defence against totalitarianism’,¹¹⁸ or ‘red totalitarianism’,¹¹⁹ and ‘exalting man ... against the onslaught of totalitarian ideologies’.¹²⁰ Moreover, most delegations refused to address in significant detail how to strike a balance between individual rights and social interests – a pressing question in Latin American constitutionalism since the incorporation of the working class into political life in the 1930s. The American republics concurred that the state should serve the common good, but they did not reach a consensus on what that good entailed or the best way to achieve it.

Diplomats and jurists cared about human rights for various, if interrelated, reasons. Therefore, they had different ideas on which rights should be recognised and the extent to which they should be protected at the international level. Alongside human rights, they were also concerned with other means of promoting national welfare. This is well-exemplified by Venezuelan Luis Lander’s demand that ‘*in addition* to the measures of an economic and social justice nature that must be adopted for the protection of the citizens of America ... effective measures to defend the political rights of the men of America must *also* be taken’ (emphasis added).¹²¹

The result was a reduced instrument. The Draft Declaration prepared by the Inter-American Juridical Committee had formulated each right in great detail and, for most of them, included a corresponding and very specific state duty.¹²² However, delegates saw fit to simplify most rights to a single sentence. They believed that each country had ‘their own specific needs’ in establishing the common good and the ‘terms of their relations’ with the American countries.¹²³ This perspective led to the inclusion of article XXVIII, which stipulated that ‘the

¹¹⁸ Response of Venezuela to the Uruguayan questionnaire in ‘Minuta de la segunda sesión de la Subcomisión A’ (n 116).

¹¹⁹ Response of Chile to the Uruguayan questionnaire in ‘Minuta de la segunda sesión de la Subcomisión A’ (n 116).

¹²⁰ Intervention by Luis Fernán Cisneros (Peru) in ‘Acta resumida de la segunda sesión de la Comisión Sexta’ (16 April 1948) in *Novena Conferencia Internacional Americana: Actas y Documentos* (Vol. V).

¹²¹ Response of Venezuela to the Uruguayan questionnaire in ‘Minuta de la segunda sesión de la Subcomisión A’ (n 116).

¹²² For example, the right to work meant that the ‘state has the duty to assist the individual in the exercise of his right to work when his own efforts are not adequate to secure employment; it must make every effort to promote stability of employment and to insure proper conditions of labor, and it must fix minimum standards of just compensation’. IAJC, ‘Proyecto de Declaración’ (n 53).

¹²³ Response of Mexico to the Uruguayan questionnaire in ‘Minuta de la segunda sesión de la Subcomisión A’ (n 116).

rights of man are limited by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy'.¹²⁴

As a product of compromise, the Declaration exhibits different influences. The liberal roots are visible in the catalogue of civil and political rights.¹²⁵ The weight of interwar welfarist constitutionalism, strands of which had been influenced by Catholic social doctrine, can be appreciated in the extensive catalogue of social and economic rights.¹²⁶ These include a right to property that, unlike the Universal Declaration, protected only the minimum necessary for 'the essential needs of decent living' and maintaining 'dignity'. Notably, as demonstrated by Becker Lorca, the Declaration bears the marks of its origins in Latin American international legal thought.¹²⁷ In this respect, it contrasts most clearly with contemporary liberal approaches to human rights. For instance, the entire chapter on duties – absent in the original draft – cannot be accounted for by reference to a concern about inherent rights, as reflected in the US delegate's complaint that this 'second part does not have the dignity that the first has'.¹²⁸ A central motivation of this salient feature was 'to establish the minimum to which foreigners are obliged', an issue that had 'so frequently given rise to controversies' between the American states.¹²⁹

The American Declaration, when viewed in its institutional context, is less a landmark in the long march of human rights than a convergence of broader regional projects in which different interpretations of human rights norms and institutions played different roles. The Mexican-led attempt to enlist human rights into the project of 'the completion – rather than the limitation – of absolute sovereignty' through codification is a particularly important and

¹²⁴ See Fernández del Castillo (n 63) 148–149.

¹²⁵ They are also visible in two treaties on the rights of women adopted in Bogotá, each composed of a single article: the Inter-American Convention on the Granting of Political Rights to Women and the Inter-American Convention on the Granting of Civil Rights to Women.

¹²⁶ It also left a mark in the Inter-American Charter of Social Guarantees adopted by the Conference. See Lixinski, "'Action to solve the Indigenous problem": The Bogotá Conference and Indigenous Affairs between Historical Artefact and the Political Economy of the Peasantry', *JHIL* (forthcoming). On economic and social rights, the social question, and Catholicism in Latin America, see Gargarella (n 51) 105–131; Wright-Carozza (n 10); Daniel Ricardo Quiroga-Villamarín, "'An Atmosphere of Genuine Solidarity and Brotherhood": Hernán Santa-Cruz and a Forgotten Latin American Contribution to Social Rights' (2019) 21 *Journal of the History of International Law* 71.

¹²⁷ Becker Lorca (n 11).

¹²⁸ Intervention by Jack B. Tate (United States) in 'Acta de la cuarta sesión de la Comisión Sexta' (n 113). Somewhat tellingly, Gros Espiell considered the enunciation of duties to be 'excessive'. Gros Espiell (n 97) 116.

¹²⁹ Fernández del Castillo (n 63) 160.

forgotten road in this intersection.¹³⁰ However, other projects were in tension with it, with the Larreta doctrine's call for the 'harmonisation' of non-intervention as a clear illustration. After all, interventionist strands had long coexisted with sovereignty-centred approaches to 'American international law'.¹³¹ The emergence of human rights initiatives less deferential to sovereignty provides another reason why many states, especially Mexico, tempered their earlier enthusiasm. In Bogotá, Mexico went as far as leading the charge to remove state duties from the Declaration, dragging those to protect economic and social rights along the way, which could have served governments in their dealings with foreign private capital.

6. Conclusion

The history of human rights in inter-American regionalism has often been portrayed as an ardent quest, with the American Declaration frequently serving as proof of the progression of human rights towards their present-day centrality. This article has charted a different course. During the 1940s, human rights initially played an important role, but they were predominantly employed as instruments in regional geopolitical and economic struggles rather than pursued as ends in themselves. The Latin American and US elites involved in the reorganisation of the Inter-American System developed a clear awareness of the changing limits and possibilities of human rights to leverage their broader visions on the legal foundations of the Inter-American System, regional economic relations, and the form and purpose of collective security.

As pressing post-war debates reached conclusions, human rights began to recede. The early adoption of the Rio Treaty reduced the potential of human rights to reshape collective security in the Bogotá Conference, and the transformative potential of human rights in economic matters was curtailed as the US actively prevented economic discussions. For most Latin American states, the adoption of the OAS Charter became the main objective in the Bogotá Conference. The Charter not only promised to regulate the powers of the Inter-American System, limiting potential abuses, but also help preserve inter-American regionalism, laying groundwork for future co-operation – including on economic matters. The case for binding commitments on human rights was then weaker, as they would have reduced the reserved domain that many Latin American states were striving to assert.

¹³⁰ Becker Lorca (n 11) 481.

¹³¹ See Scarfi (n 11).

In this context, the American Declaration of the Rights and Duties of Man was adopted as a reduced non-binding instrument. Admittedly, its drafters understood that the Declaration could serve practical and moral purposes, particularly within state borders, and human rights promoters had valid expectations of further progress. Yet a growing disenchantment with the post-war efforts began to preclude inter-American co-operation. Important aspirations that were truly central to most Latin American countries remained neglected. Notably, the Truman administration couched the Economic Agreement of Bogota with reservations, and it never entered into force. It was only in 1959 that a new era for inter-American human rights started, with the establishment of the Inter-American Commission of Human Rights. However, this was not a continuity of the post-war human rights agenda, but a shift prompted by tensions in the Caribbean. For instance, unlike the American Declaration, the inter-American human rights project of the 1960s notably side-lined economic and social rights.

Narratives of linearity from the American Declaration to the present-day Inter-American Human Rights System erase the complexities of the post-war history of human rights in the Americas. As this article has shown, this history is one in which human rights were not a primary objective and where the meaning of human rights was debated by actors with different visions, some of which emphasised sovereignty, material equality, and the social question. These forgotten concerns do not easily align with the contemporary liberal paradigm of human rights in Latin America – or beyond.

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