

Bogotá at 75: Palaces, Streets, and Classrooms

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En la esquina de una calle incendiada de sol, a la sombra –madura y tibia– de una casa mal encalada, un muchacho de doce años, negro de ébano, lustraba las botas de un yanqui alegre, simpático y reidor. El muchacho parecía contento con su trabajo. Y festejaba, como podía, las ocurrencias de su cliente. Ni uno ni otro se daban cuenta de que estaban representando, para mí por lo menos, una escena humilde pero simbólica. La historia explica los espectáculos más cotidianos... ¿Podría una conferencia internacional, por más favorable que resultase, detener o cambiar la historia?

Jaime Torres Bodet¹

Seventy-five years ago, representatives from twenty-one American republics convened in Bogotá to reorganise and consolidate the legal-political Inter-American System.² The Bogotá Conference – officially, the Ninth International Conference of American States – took place in Colombia's capital from 30 March to 2 May 1948. The gathering was expected to mark a defining moment in the trajectory of hemispheric relations, including political, legal, economic, and defence aspects. Over six decades, American states had regularly assembled in International Conferences of the American States – also known as Pan-American Conferences –, alternating locations across the continent. The conferences had been instrumental in crafting a rich array of regional principles, treaties, resolutions, and agencies. American leaders and diplomats had grappled with the challenges of fostering a closer continental union, navigating through periods of Latin American resistance to US interventionism and dominance. These tensions had been partially alleviated by Franklin Delano Roosevelt's Good Neighbor Policy and cooperation during World War II. With the war over and the United States emerging as the world's superpower, Bogotá emerged as a crossroad for the future of inter-American regionalism.³

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¹ Jaime Torres Bodet, *Memorias: Tiempo de arena, Años contra el tiempo y La victoria sin alas* (Mexico: Fondo de Cultura Económica 2017) 610.

² On the Inter-American System, see, within a vast literature, Arthur Preston Whitaker, *The Western Hemisphere Idea: Its Rise and Decline* (Ithaca, NY: Cornell University Press 1965); Mary Margaret Ball, *The OAS in Transition* (Durham, NC: Duke University Press 1969); O Carlos Stoetzer, *The Organization of American States* (Westport, Conn: Praeger 1993).

³ On the rise of US dominance in international affairs since World War II, see Stephen Wertheim, *Tomorrow, the World: The Birth of U.S. Global Supremacy* (Harvard: Harvard University Press 2020).

The post-war marked a high tide of Latin American multilateralist ambition. Efforts to develop comprehensive treaties on dispute settlement and economic cooperation were accompanied by the adoption of new vocabularies such as human rights and economic solidarity. The United States, recognising the upsurge in Latin American states' aspirations, sent a prominent delegation to Bogotá, including Secretary of State George C. Marshall, Secretary of the Treasury John W. Snyder, and Secretary of Commerce W. Averell Harriman. The primary achievement of the Conference, now so firmly ingrained in regional relations that it might appear unremarkable, was the establishment of the Organization of American States (OAS), headquartered in Washington, DC. While inter-American regionalism had long predated Bogotá, it operated without a constitutive instrument, and its institutional development had been ad hoc. The very reference to an '[Inter-American] *System*', as Mexican diplomat José Gorostiza noted, signified a reluctance to 'define the nature of an international process of more than fifty years'.⁴ By adopting the Charter of the Organization of American States (OAS), the American republics finally established an 'international organization' with the status of a 'regional agency' within the United Nations.⁵ Though frequently subject to diverse critiques, the OAS remains the central forum for inter-American relations.

The false necessity that presents the existence of the OAS – and the very notion of inter-American regionalism – as an inherent element of the international order is arguably a central reason for the oversight of the Bogotá Conference in the history and theory of international law.⁶ As a consequence, the post-war debates among American states concerning the nature, goals, and legal form of regional organisation, and the achievements and limitations of the 1948 Bogotá Conference in actualising these ambitions have received scant attention. This special issue aims to address this neglect. In this task, it builds upon the growing body of rich scholarship on the history and theory of international law in Latin America, which has so far primarily focused on the late nineteenth and early twentieth century.⁷

⁴ José Gorostiza, 'La tesis de México entre Chapultepec y Bogotá' in *México en la IX Conferencia Internacional Americana* (México D.F.: Secretaría de Relaciones Exteriores 1946) 23–38 (emphasis added).

⁵ Charter of the Organization of American States (adopted 30 April 1948, entered into force 13 December 1951) 48 UNTS 1952 (OAS Charter) art 1.

⁶ On false necessity, see Roberto Mangabeira Unger, *False Necessity: Anti-Necessitarian Social Theory in the Service of Radical Democracy: From Politics, a Work in Constructive Social Theory* (New York: Verso 2004).

⁷ We think of the foundational work of Liliana Obregón, Arnulf Becker Lorca, and Juan Pablo Scarfi. Liliana Obregón, 'Between Civilisation and Barbarism: Creole Interventions in International Law' (2006) 27 *Third World Quarterly* 815–832; Arnulf Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842–1933* (Cambridge: Cambridge University Press 2014); Juan Pablo Scarfi, *The Hidden History of International Law in the Americas: Empire and Legal Networks* (Oxford: Oxford University Press 2017). Significant exceptions have

This is not a contributionist intervention. Our goal is not to reclaim the contributions of Latin America to the construction of international law as we know it today.⁸ Rather, we seek to shed light on the elements of oppression and possibility that international law has offered Latin American states to contest and construct inter-American regionalism. TWAIL literature has exposed in great detail the imperialism of international legal structures, but studying the role of oppression in Bogotá remains critical because different international arenas reflect 'distinctive experiences that generate their own histories and epistemologies'.⁹ If looking at oppression is important, reclaiming agency is vital, to the extent that 'even in defeat there is something to learn' from past attempts at transformation and resistance.¹⁰

Bogotá at 75 shows that, for international law scholars, the Bogotá Conference must be regarded as relevant in and of itself. In this way, it joins the emerging scholarship on international law in peripheral locations that rejects demands to show how 'regional debates reflected or differed from debates occurring in Europe'.¹¹ At the same time, reflecting upon the 1948 Bogotá Conference involves delving into the post-war context, where discussions on international law and organisation took place against the backdrop of the newly established United Nations. The Bogotá Conference served as a forum for substantive discussions on why and under what conditions a regional organisation should be established within an international order structured by reference to the global United Nations. The relationship between the regional and the universal shaped the many discussions that took place under an extensive conference programme, which encompassed items as diverse as the rights and duties of states, the rights and duties of man, peaceful settlement of disputes, collective defence, economic cooperation, and recognition of de facto governments.¹²

emerged from international history, including Christy Thornton, *Revolution in Development: Mexico and the Governance of the Global Economy* (Berkeley: University of California Press 2021).

⁸ On contributionism, see James Thuo Gathii, 'Africa' in Bardo Fassbender and Anne Peters (eds), *The Oxford Handbook of the History of International Law* (Oxford: Oxford University Press 2012).

⁹ Antony Anghie, 'Rethinking International Law: A TWAIL Retrospective' (2023) 34(1) *European Journal of International Law* 7–112, 101.

¹⁰ Arnulf Becker Lorca, 'After TWAIL's Success, What Next? Afterword to the Foreword by Antony Anghie' *European Journal of International Law* (forthcoming).

¹¹ Karen Alter, 'The Empire of International Law?' (2019) 113(1) *American Journal of International Law* 183–199, 198. On international law in peripheral locations, see 'Symposium on Imperial Locations' (2018) 31(3) *Leiden Journal of International Law*, edited by Martti Koskenniemi; Liliana Obregón, 'Peripheral Histories of International Law' (2019) 15 *Annual Review of Law and Social Science* 437–451.

¹² 'Programa y reglamento de la Novena Conferencia Internacional Americana' in Organization of American States, *Novena Conferencia Internacional Americana: Actas y Documentos* (vol I).

Power asymmetries between the American states shaped the dynamics of the conference. Throughout the nineteenth and twentieth centuries, despite fluctuating relations, one element remained constant: the global and regional ambitions of the United States were a pervasive influence in all regional interactions and developments. In Latin American perspectives, this hegemonic presence offered both incentives and deterrents for more robust regional cooperation. In the early twentieth century, Chilean jurist Alejandro Álvarez was one of the influential supporters of the notion that a (Pan-)American legal and institutional framework, including the Monroe Doctrine, could serve to constrain US unilateral interventionism.¹³ After World War II, most Latin American leaders found the prospect of alignment more appealing than opposition to the emerging superpower. They viewed regional cooperation as a gateway to economic collaboration to strengthen their domestic economies and a chance to establish an organisation without veto power. However, concerns about inter-American regional organisation remained. Some Latin American states were cautious of reducing their reserved domain, wary of potential intervention, and reluctant to accept US demands.¹⁴

The conference lasted thirty-four days, a span that cannot solely be attributed to its ambitious agenda. Ten days into the conference, Jorge Eliécer Gaitán, the popular left-wing leader of the Liberal Party and the ‘most thrilling politician’ of a country under conservative rule, was assassinated outside his office in Bogotá.¹⁵ The murder of Gaitán ignited mobs, violence, and chaos in the Colombian capital and later in other cities, an episode that became known as *El Bogotazo*. Numerous public buildings, including the Capitolio Nacional de Colombia, where the Bogotá Conference was being held, were looted and destroyed.¹⁶ The cable from the US ambassador in Colombia reported the Capitolio as ‘completely gutted’, resulting in the loss of conference records and equipment. Faced with these extraordinary circumstances, American delegations weighed the options of suspending the conference or relocating it to Panama, ultimately deciding to continue. The proceedings were moved to the

¹³ See, e.g., Alejandro Álvarez, ‘Latin America and International Law’ (1909) 3(2) *American Journal of International Law* 269–353.

¹⁴ On these post-war debates on inter-American regionalism, see further Francisco-José Quintana, ‘The (Latin) American Dream? Human Rights and the Construction of Inter-American Regional Organisation (1945–1948)’ (2023) *Journal of the History of International Law* 560–593.

¹⁵ Robert Karl, *Forgotten Peace: Reform, Violence, and the Making of Contemporary Colombia* (Berkeley: University of California Press 2017) 25. See also Herbert Braun, *The Assassination of Gaitán: Public Life and Urban Violence in Colombia* (Madison: University of Wisconsin Press 1985).

¹⁶ ‘The Ambassador in Colombia (Beaulac) to the Acting Secretary of State’ in *Foreign Relations of the United States, 1948, The Western Hemisphere*, vol IX (US States Government Printing Office 1972) document 22.

Gimnasio Moderno school, where, in the most unusual setting of school classrooms and perched on desks designed for students, the delegates negotiated the new foundational instrument of inter-American regionalism: the Charter of the Organization of American States.¹⁷

Beyond the Charter of the OAS, the conference yielded a substantial normative output. American states adopted several treaties, including the American Treaty on Pacific Settlement (now commonly known as the Pact of Bogotá), the Economic Agreement of Bogotá, and the Inter-American Convention on the Granting of Political Rights to Women. They also adopted important declarations, such as the American Declaration on the Rights and Duties of Man and the Inter-American Charter of Social Guarantees, as well as resolutions on matters ranging from colonies and occupied territories in the Americas to the right of resistance. Gaitán's assassination facilitated the adoption of a resolution declaring the 'political action of international communism' to be 'incompatible with the American conception of liberty',¹⁸ heralding the later rise of the 'inter-American Cold War'.¹⁹ Delegates also resolved to incorporate the main principles of the Inter-American Treaty of Reciprocal Assistance – also known as the Rio Treaty –, negotiated a year earlier in Brazil, into the OAS Charter. That treaty created a collective security scheme for external and intra-regional threats to peace that would come to play an important role in the geopolitical Cold War.

The normative commitments behind each of these regional efforts varied. The extent to which they were ultimately used or invoked by states, too, came to differ: some legal projects negotiated in Bogotá became immediately central within the OAS, while others were deferred or dismissed. While the Inter-American Treaty of Reciprocal Assistance was repeatedly employed, the American Treaty on Pacific Settlement remained dormant until 1986, when Nicaragua invoked the treaty's compromissory clause establishing mandatory jurisdiction of the International Court of Justice to initiate proceedings against Costa Rica and Honduras. Similarly, while the rights and duties of states were incorporated into the OAS Charter, the non-binding American Declaration on the Rights and Duties of Man remained the single inter-American human rights instrument until the adoption of the American Convention on Human

¹⁷ Torres Bodet (n 1) 634.

¹⁸ 'Resolución XXXII: Preservación y defensa de la democracia en América' in Organization of American States, *Novena Conferencia Internacional Americana: Actas y Documentos* (vol VI) 253.

¹⁹ See Tanya Harmer, *Allende's Chile and the Inter-American Cold War* (Chapel Hill: University of North Carolina Press 2011).

Rights in 1969. The Economic Agreement of Bogotá never entered into force, and inter-American economic cooperation has languished since then, with the notable exception of the work of the Inter-American Development Bank, founded in 1959.

As we commemorate the 75th anniversary of the Bogotá Conference, we turn the spotlight on these long-overshadowed contrasting and forking paths. *Bogotá at 75* critically examines how the OAS fits into the broader trajectory of the Pan-American movement, dating back to the nineteenth century, and assesses the new dimensions that its creation introduced into inter-American regionalism. It also reclaims and probes the legal and political economy imaginations that shaped the institutional settlement of Bogotá. In so doing, this issue tries to shed light on pressing questions today, including why, despite its limitations and critiques, the OAS persists, while other regional organisations such as the Bolivarian Alliance for the Peoples of Our America (ALBA-TCP) and the Union of South American Nations (UNASUR), established in part as an attempt to partially replace it, have failed to achieve lasting influence. Each article in this issue is the work of a Latin American scholar and focuses on a specific issue, area, or theme that was at the centre of the Bogotá Conference. The authors have navigated the intellectual challenges of avoiding hagiography, essentialism, and contributionism.

A central common thread through this issue's articles is the analysis of how initiatives were legally articulated, promoted, and resisted. Nicolás Perrone focuses on the Economic Agreement of Bogotá, which he describes as 'one of the most important economic law-making efforts in the Western Hemisphere'.²⁰ He tells the story of the international economic project focused on the industrialisation of Latin America that lay behind the failed Economic Agreement and that later shaped other projects: the establishment of the Economic Commission for Latin America (CEPAL), John Fitzgerald Kennedy's Alliance for Progress, and eventually the New International Economic Order (NIEO). The failure of the NIEO, he argues, left Latin America in the historically unlikely position of a 'rule-taker' in international economic law. Lucas Lixinski, in turn, recovers the forgotten legal discussions on the so-called indigenous question in Bogotá. He shows how, despite the absence of indigenous voices, state representatives addressed indigenous issues in two different ways: first, in the context of the construction of a Pan-American identity; and second, in discussions surrounding inequality and

²⁰ Nicolás Perrone, 'Locating the 1948 Economic Agreement of Bogotá: The rise and fall of Latin America's International Economic Law Project' (2023) *Journal of the History of International Law* 529–559.

land distribution across the Americas.²¹ Lixinski identifies important insights in a conversation that, despite sharing concerns associated with indigenous emancipation, contrasts with contemporary discussions framed in the language of human rights. Francisco-José Quintana places the American Declaration of the Rights and Duties of Man and the early codification efforts of regional human rights within the post-war construction of inter-American regional organisation.²² He explains that Latin American states first embraced human rights as an instrumental language to advance other – institutional, collective security, and economic – regionalist projects. While human rights played a significant role in Bogotá, Quintana shows, they were highly contested. As interpreted by many states and diplomats of the time, human rights in Bogotá were markedly different from today's liberal paradigm of human rights.

Fabia Fernandes Carvalho takes a step back from the conference, offering a redescription of the doctrinal work undertaken by the Inter-American Juridical Committee, also known as the Rio Committee.²³ The committee engaged in the codification of regional peaceful dispute settlement mechanisms from 1942 to 1947, ultimately producing drafts which would form the basis of the debates at the Bogotá Conference. Fernandes Carvalho contends that examining the committee's work provides a critical window to explore changes in Pan-Americanism in critical years and the articulations of universalism and regionalism in a regional organisation concerned with power differentials. Moving forward, Justina Uriburu argues that American states implemented two modes of organising peace in the Bogotá Conference: collective security through the Rio Treaty and international adjudication through the Pact of Bogotá.²⁴ She moves beyond contemporary understandings of international adjudication and collective security, and foregrounds how American states conceived the projects underlying these regimes at that time. With the United States at the helm, security was construed as an ample concept; in turn, Latin American states promoted a comprehensive dispute settlement framework to mitigate power asymmetries in the region. Finally, George Rodrigo Bandeira Galindo closes the special issue with an epilogue that presents the Bogotá Conference as an event epitomising tensions between particularism and universalism,

²¹ Lucas Lixinski, 'Indigeneity at the 1948 Bogotá Conference' (2023) *Journal of the History of International Law* 510–528.

²² Quintana (n 14).

²³ Fabia Fernandes Carvalho, 'Regional imaginations of peace: the work of the Rio Committee and the antecedents of the Pact of Bogotá (1942–1947)' (2023) *Journal of the History of International Law* 621–642.

²⁴ Justina Uriburu, 'Organizing Peace in the Americas: Collective Security Versus International Adjudication' (2023) *Journal of the History of International Law* 594–620.

reproduction and originality, stability and revolution.²⁵ As such, Galindo says, Bogotá provided a privileged space for reflection on institutional projects where time and law were politicised in different manners.

Two caveats are in order. First, in our quest to reinvigorate Latin American discussion on inter-American regionalism, we invited only Latin American scholars to contribute. Despite this, we recognise the limitations inherent in any selection of authors. Particularly notable is the absence of voices from Central America and the Caribbean, perspectives often sidelined in the literature on the history and theory of international law in the Americas. Second, the Bogotá Conference covered a myriad of topics not addressed in this issue. Nevertheless, we hope that this publication will pave the way for future analysis on some of them, such as women's rights and the status of colonial possessions in the Americas.²⁶

Bogotá was no Bandung, but it operated as a platform for international legal ideas, projects, and imaginations that have been neglected and now deserve our attention. By revisiting them, we also aspire for this issue to help 'resist normalization and ... wrench open the possibility of an alternative, fairer, and more just' international law and order in Latin America and beyond.²⁷ This is but a tentative beginning. Just as the Capitolio Nacional, the popular uprisings, and the Gimnasio Moderno defined the Bogotá Conference, the future of inter-American regionalism will similarly be decided by discussion and contestation in palaces, streets, and classrooms.²⁸

²⁵ George Rodrigo Bandeira Galindo, 'Bogotá, law, time, and politics' (2023) *Journal of the History of International Law* 643–650.

²⁶ On women's rights in the Americas, see Katherine Marino, *Feminism for the Americas: The Making of an International Human Rights Movement* (Chapel Hill: University of North Carolina Press 2019).

²⁷ Luis Eslava, Michael Fakhri, and Vasuki Nesiiah, 'The Spirit of Bandung' in Luis Eslava, Michael Fakhri, and Vasuki Nesiiah (eds), *Bandung, Global History, and International Law: Critical Pasts and Pending Futures* (Cambridge: Cambridge University Press 2017) 32.

²⁸ Recent collective projects on Latin America and international law offer hope on the future of classroom discussions. See Alejandro Chehtman, Alexandra Huneus, and Sergio Puig, 'Introduction to the Symposium on Latin American International Law' (2022) 116 *American Journal of International Law Unbound* 292–296; Liliana Obregón, Laura Betancur-Restrepo, Juan Manuel Amaya Castro, and Daniel Quiroga-Villamarín (eds), *The Oxford Handbook of International Law and the Americas* (Oxford: Oxford University Press, forthcoming).