Cadernos do Programa de Pós-Graduação DIREITO/UFRGS
volume 17 | número especial | 2022 | seer.ufrgs.br/ppgdir

ONE CUBA IS ENOUGH: COLLECTIVE SECURITY IN LATIN AMERICA DURING THE COLD WAR

UMA CUBA É O BASTANTE: SEGURANÇA COLETIVA NA AMÉRICA LATINA DURANTE A GUERRA FRIA

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ABSTRACT: Despite the contribution of new streams in international law scholarship, the decades of the Cold War remain underexplored in Latin American current historiography. Removing the geopolitical conflict from the centrality of historiographic analysis, the present article aims to understand the operation of international law in the Cold War through Latin American regional dynamics. Through the reading of the articles on "collective security" published in some international law journals during the period of the Cold War (American Journal of International Law and the Mexican Foro Internacional), this article recounts the history of the jurisdictional conflict between regional and universal organizations. It demonstrates that the history of collective security in the hemisphere begins as experiment in formalization of the long and distinct American tradition in international law. The defense of this tradition served as a basis to formalize or legalize the projection of US power in the Americas. Latin Americans responded to this push first by endorsing the creation of a regional organization and a collective security arrangement, later by using law as a strategy to advance their position. However, as collective security increasingly became a justification for violations of the UN Charter, solidarity among American republics faded and cooperation, despite a regional treaty, became virtually impossible. The regional agreement thus proved to be both an enabler and an obstacle for this strategy. Thus, we conclude that the history of the International Law in Latin American during the Cold War was also the history of the demise of American International Law.

KEYWORDS: Cold War. Latin America; International Law; Collective Security.

RESUMO: *Apesar de novas contribuições aos estudos de direito internacional, as décadas da Guerra Fria continuam subexploradas na historiografia atual da América Latina. Removendo o conflito geopolítico da centralidade da análise historiográfica, o presente artigo visa entender o funcionamento do direito internacional na Guerra Fria através da dinâmica regional latinoamericana. Através da leitura dos artigos sobre "segurança coletiva" publicados em algumas revistas de direito internacional durante o período da Guerra Fria (em especial o American Journal of International Law e o mexicano Foro Internacional mexicano), este artigo relata a história do conflito jurisdicional entre organizações regionais e universais. Ele demonstra que a história da segurança coletiva no hemisfério começa como uma experiência de formalização da longa e distinta tradição americana no direito internacional. A defesa desta tradição serviu como base para formalizar e legalizar a projeção do poder americano nas Américas. Os latino-americanos responderam a este impulso primeiro endossando a criação de uma organização regional e de um acordo de segurança coletiva, e mais tarde usando a lei como estratégia para avançar sua posição. Entretanto, à medida que a segurança coletiva se tornou cada vez mais uma justificativa para violações da Carta da ONU, a solidariedade entre as repúblicas americanas se desvaneceu e a cooperação, apesar de um tratado regional, tornou-se virtualmente impossível. Assim, o acordo regional provou ser tanto um facilitador quanto um obstáculo para esta estratégia. Conclui-se, pois, que a história do Direito Internacional na América Latina durante a Guerra Fria foi também a história do desaparecimento do Direito Internacional Americano.*

PALAVRAS-CHAVE: *Guerra Fria. América Latina. Direito Internacional. Segurança coletiva.*

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volume 17 | número especial | 2022 | seer.ufrgs.br/ppgdir

SUMMARY: Introduction. 1 The legalization of the concept of collective self-defense. 2 One Cuba is enough. 3 Avoiding another Iran, creating another Angola. 4 Conclusions. References.

INTRODUCTION

The paradox of the Cold War in Latin America is that the more formal international law in the region became, the less states cooperated. After independence, Latin American jurists were keen on adapting European monarchic legal concepts to a republican American reality. Some authors have even conceived of an American and later a Latin American stream of international law. These ideas helped build solidarity and Pan-American cooperation in the region. Cooperation, however, lacked formality and even the Pan-American Union did not have a treaty base. The Cold War and the move towards international organizations prompted American States to established regional agreements, first for the purpose of collective security, then for the establishment of an international regional organization. The initial enthusiasm with the new arrangements would soon fade as Latin American countries became wary that the regional organization became a vehicle for cooptation.

In studying the formation of a regional "legal conscience"[1] from the debate between Alejandro Alvarez and Sá Vianna[2] on the existence of a Latin American or American international law, Liliana Obregón asserts that Alvarez's defense of a regional perspective in the discipline is inserted in a previous tradition of thought. In 1832, four years after the Congress of Panama, Andrés Bello coined the idea of an "American perspective" of international law (OBREGÓN, 2012, p. 7). By the mid-nineteenth century, Carlos Calvo used the term "Latin America" to defend the sovereignty of the nations of the region (OBREGÓN, 2012, p. 10). Then, in the year 1868, he published the book "Theoretical and Practical International Law of Europe and America". In the 1950s, Alvarez still clashed with Daniel Antokoletz, defending Latin American international law until his death in 1960.

[1] Obregón calls this "creole legal conscience".

[2] For a Brazilian perspective of the debate, see: BARROS, Patrícia; VEÇOSO, Fábia Fernandes. Universalismo à brasileira: Manuel Alvaro de Souza Sá Vianna e o direito internacional no Brasil no começo do século XX. In: GALINDO, George Rodrigo Bandeira (org.). *Direito Internacional no Brasil*: Pensamento e tradição. *Vol. 1.* Rio de Janeiro : Lumen Juris, 2021, p. 333-366 ; VEÇOSO, Fabia Fernandes Carvalho; BRITO, Adriane Sanctis de; RORIZ, João Henrique. "Seremos julgados": revisitando o debate entre Alvarez e Sá Vianna sobre a regionalização do direito internacional na América Latina. In: JUBILUT, Liliana Lyram (org.). *Direito internacional atual.* São Paulo: Editora FGV, 2014, p. 287-315.

For Obregón, the existence of a Latin American international law represented "a response to geopolitical, economic and strategic factors in relation to global power players, rather than from a natural or shared historical source" (OBREGÓN, 2012, p. 3). However, that regional sensibility "fell into disuse and oblivion" with Alvarez´s death, and the changing economic and political landscape in Latin America's Cold War (OBREGÓN, 2012, p. 3).

In relation to period between 1890 e 1943, Juan Pablo Scarfi explains the connection among the defense of American International Law, the US political project of Pan-Americanism and the creation of the American Institute of International Law (AIIL). The progressive institutionalization of the inter-American system through the Pan American Union, the continental conferences and the later creation of the Organization of American States were also important for US' purposes. The unitary approach to the American continent to international law would work to legitimize the emergence of the United States as an "informal empire" in the Americas (SCARFI, 2017).

From another perspective, the Latin American faith on international law is highlighted for Arnulf Becker Lorca. For him, non-Western states appropriated nineteenth-century classical thinking in order to defend new and better rules governing non-Western states' international relations (LORCA, 2014).

Despite the contribution of this new stream in international law scholarship, the decades of the Cold War remain underexplored in Latin American current historiography. Although Scarfi is right to describe the emergence of an "informal empire", it is still counter-intuitive to imagine that at the high of Inter-American cooperation was contemporary to the silent demise of Latin American international law, particularly given the proud traditions invoked by Latin American jurists. To understand this paradox, it is necessary to explain how the international machinery worked in the second half of the twentieth century.

With the failure of League of Nations to deter aggressions, the international community witnessed, after the end of Second World War, the rise of the UN system with the promise "to save succeeding generations from the scourge of war" (UN, 1945).[3] In order to maintain international peace and security, collective measures were devised, especially for "the prevention and removal of threats to the peace, and for the suppression of acts of aggression or

[3] UNITED NATIONS. United Nations Charter, Preamble. Available in: <https://www.un.org/en/about-us/un-charter>.

other breaches of the peace".[4]

The UN Charter outlined the concept of collective self-defense in order to replace the League of Nations military alliances between States. Although ambiguity was designed into the concept, self-defense meant, at a minimum, that States had a right to forge binding agreements with regional partners, so that aggression to one member would trigger a collective response (MILLER, 1999, p. 303).

In short, the collective security system of the UN Charter is based on the prohibition against inter-state threat or use of force (Article 2.4) and on the Security Council's responsibility for the maintenance of international peace and security (Articles 39 a 42). Member states also have the legal obligation to carry out the Council's decisions and the UN organ has broad discretion of whether and how to react. But as the political dynamic within the Council evolved, the Cold War made impossible the application of the security system embedded in Chapter VII of the Charter, so the great powers, favoring balance of power strategies, ended up acting outside the UN framework (KOSKENNIEMI, 1996, p. 457).

The United States government quickly abandoned hope in the concerted system of the Security Council, changing their focus to formalize regional "communities" to defend itself against potential Communist aggression (MILLER, 1999, p. 307). It was a strategic movement justified under the right of collective self-defense (Article 51), rather than regional arrangements as allowed by the Charter (Article 52).

In Latin America, provisions on collective security intertwined with other mechanisms at the regional level. The Inter-American Treaty of Reciprocal Assistance, for instance, signed by American States in 1947 at Conference of Rio de Janeiro, was a result of a commitment established at the Act of Chapultepec, in the previous year, when the participants unanimously recommended the adoption of a reciprocal assistance and solidarity treaty to create effective institutional mechanisms within the Pan-American system. In Rio, there was a consensus about the necessity to stipulate the use of armed force to prevent or to repel aggression. The Chapultepec Conference seemed then to be a turning point in terms of ideological orientation, as Latin America sought a better position in a rising international system, especially concerned with its role in the new legal order (ROCHA; LE CHAFFOTEC, 2015, p. 3).

[4] United Nations Charter, Article 1, 1945. Available in: <https://www.un.org/en/about-us/un-charter>.

In this sense, the Inter-American Treaty of Reciprocal Assistance, far from being a mere passive consent to United States plans, could be explained by Latin American States' desire to avoid international isolation and to circumvent the high economic and military costs that could arise from an eventual insular position (ROCHA; LE CHAFFOTEC, 2015, p. 4). The treaty, therefore, should not be construed as being necessarily part of a rationality connected to the Cold War, like an anticommunist alliance or an anti-Soviet league, the proclamation of democratic and liberal principles during Rio Conference creating indirectly an antagonism to communism notwithstanding (ROCHA; LE CHAFFOTEC, 2015, p. 4). The agreement provided for the national freedom regarding the means to use the force in case of collective actions, the pacific resolution of controversies and for the mechanisms for discussion of issues related to intra or extra continental threats.[5] Furthering the cooperation within the inter-American system, the Organization of American States (OAS) was created in 1948, at the Conference of Bogotá.

That the regional organization was not initially intended to be an instrument of American power does not mean that it would not have ended up being one. Throughout the Cold War, there was a dispute between the regional and the universal approaches of collective security, determined by the interests of international actors. For Latin American States, the existence of a two-level game between an international and regional organization seemed to justify a strategic approach, in which American states sought the most favorable outcomes to their demands (ROCHA; LE CHAFFOTEC, 2015, p. 6). For the United States, however, the regional organization became an opportunity to strengthen a system of domination over its immediate neighborhood.

Traditionally, the histories of Cold War in Latin America oscillate between "redemption" and "savage crusade". On the one hand, the conflict is described as proof of the benefits from U.S. intervention and democracy promotion programs; on the other hand, it was interpreted as a fight "conducted by the United States and local reactionaries, that broke popular movements, ravaged the Left, and eviscerated Latin American democracy." (BRANDS, 2010, p. 8).

[5] For the full text of Treaty, see: <http://www.oas.org/juridico/english/treaties/b-29.html>

Both historical versions seem to overestimate the strength of the Cold War over Latin American countries. The region has its own complexities, which are not usually accessed by conventional narratives. Scholars agree that the conflict's meaning in the Latin American context or to Latin Americans in general is still unclear, in part because the studies are fragmented between different countries and time periods and because there is not even a consensus[6] on the beginning and the end of the conflict in the region (HARMER, 2014, p. 133). Indeed, the more we learn about the Cold War in Latin America, the more the Cold War fades into the background (MCPHERSON, 2013, p. 307).

A more fine-grained analysis reveals that the complexities in Latin American does not fall squarely into a binary dimension.[7] The regional context was composed not only by an expressive agency against US and Soviet forces, but also by the primacy of local motivations as opposed to global ones, and "the constant irruption of parallel historical currents", showing that the bipolar conflict was only one among others occurring before, during, and after the Cold War time (MCPHERSON, 2013, p. 314). Furthermore, the conflict was not "cold" in Latin America, as recurrent and dangerous violence erupted in the period, even if at times not directly related to the Cold War.

The risk of emphasizing the differences is to overlook a global perspective. Indeed, a fresh historiographical stream is showing the potential of linking regional complexities to a global framework (BOOTH, 2020). On the International Law field, the book *International Law and the Cold War*, edited by Matthew Craven, Sundhya Pahuja and Gerry Simpson, proposes "reading and unreading" the historiographical hiatus of the period between 1945 e 1990. In sum, the work seeks to identify and discuss the operation of International Law during the Cold War, aiming to "destabilize the idea that Cold War International Law was essentially an intra-European or US–Soviet affair, in which others figured only as proxies." (CRAVEN; PAHUJA; SIMPSON, 2020, p. 4). In this sense, for instance, Chapter 16 – called "The Cold War in Soviet

[6] For instance, see: Grandin and Joseph (2010).

[7] As summarized by Hal Brands (2010, p. 7): "[T]he intensity of Latin America's Cold War was a product of its complexity. As alluded to earlier, Latin America's Cold War was not a single conflict; it was a series of overlapping conflicts. It fused together long-running clashes over social, political, and economic arrangements; the persistent tension between U.S. power and Latin American nationalism; the ideological ramifications of decolonization and the rise of the Third World; and the influence of the bipolar struggle for preeminence in the developing countries."

International Legal Discourse", written by Boris N. Mamlyuk – argues that "Soviet faith in international law grew over the course of the Cold War, rather than diminished."

The present article aims to understand the operation of international law through the regional dynamics, removing the geopolitical conflict from the centrality of historiographic analysis and assuming that local confrontations could be prevalent in relation to the Cold War. The analysis of the use of international law as a narrative will be examined through articles published in specialized legal journals, highlighting the collection of *American Journal of International Law*, as it was (and it still is) the journal with the greatest scope and importance in the Latin American context. Whenever the case, the views adopted by American writers will be contrasted to the ones held by Latin American authors, whose main avenue for publication was the Mexican *Foro Internacional*.

Writing part of the intellectual history of the Cold War through the use of academic journals is not a new enterprise (GRAFTON, 2006). One of the most interesting perspectives in using academic journals is that they provide a common meeting point of individual trajectories of like-minded authors (PLUET-DESPATIN, 1992, p. 126). In the case of the *American Journal of International Law*, but also *Foro International* and the *Boletim da Sociedade Brasileira de Direito Internacional*, not only scholars but also practitioners were engaging in academic and political dialogue. For instance, *Foro* was often cited in the other journals, whereas both *Foro* and *Boletim* translated and published the texts that first surfaced in the *AJIL*.

By reading the history of ideas in the pages of these journals to study the legal discourse of the period, one notices that a subtle change in emphasis and in justification of intervention emerges from the use of international organizations, and, in particular, through the concept of collective security. From an international law perspective, the Cold War in Latin America is a debate in different arenas of the applicability of the concept of collective security. From its inception in the Rio Treaty until its rejection in the Nicaragua case by the ICJ, "collective security" forged alliances among Latin American countries and transformed others – most notably in Central America – into regional pariahs.

As a trained lawyer is well aware, not the concept per se, but rather its use by different organizations, in this case the UN and the OAS, accounts for the perils of regionalism with an all too powerful member. Through the reading of the articles on "collective security" published

in some regional international law journals during the period of the Cold War, this article attempts to recount the history of the jurisdictional conflict between regional and universal organizations. It posits that the concept of "collective security", though present in the Inter-American Treaty of Reciprocal Assistance, only came into full light in the jurisdictional conflict between the OAS and the UN in the context of the Guatemalan Revolution and as an instrument for letting the OAS, rather than the Security Council, deal with the matter. By evoking the concept of collective security, countries could assume an ever more aggressive stance towards internal affairs from other states without worrying of it being fell under article 2 of the UN Charter. The history of international security law in the period is one in which acts short-of-outright intervention could get away from international scrutiny, at least until the Nicaragua decisions of the ICJ rejected the defense made by the United States of the concept and of its self-ascertained right to self-defense. Uncovering the struggle of resistance might help one not only to question an alleged hiatus in international law historiography, but also to show that, whenever deep asymmetries remain, selective universalization has its own perils.

1 THE LEGALIZATION OF THE CONCEPT OF COLLECTIVE SELF-DEFENCE

Article 51 of the UN Charter has a distinctive Inter-American history linked to its reference to the right of "collective self-defense". Before the end of WW2, the representatives of the Inter-American countries organized the Chapultepec Conference, in Mexico City, in which the Act of Chapultepec was adopted. The immediate political reason behind the conference was to pressure Argentina in declaring war against Nazi Germany, as the South American country was the only American State that had not yet done so (Argentina would finally declare war two weeks after the Conference). But the Conference also took on another objective. Building on the previous experience of the Pan-American Union, the representatives of the American States proclaimed a right to collective self-security. As established under Paragraph 3, any attack against the territory, sovereignty or political independence of an American State would presumably be an attack against the States that signed the Act (DECLARATION, 1945).

The right was not at the Dumbarton Oaks proposals and would only surface at San Francisco, after Latin American countries used it as a levy to claim a relative autonomy for a

regional organization. For these countries, the main issue was the fear that they would be sidestepped by the commitment the United States was about to make to the United Nations.

In San Francisco, they staged a crisis, in order to ensure that the new organization would respect regional arrangements. One of the representatives for Colombia argued that (KUNZ, 1947, p. 873):

> The Latin American countries understood, as Senator Vandenberg has said, that the origin of the term 'self-defense' is identified with the necessity of preserving regional systems like the Inter-American one. It may be deduced that the approval of this article implies that Chapultepec is not in contravention of the Charter.

He later remarked that (KUNZ, 1947, p. 873):

> In the case of the American states, an aggression against one American state constitutes an aggression against all the other American states and all of them exercise their right of legitimate defense by giving support to the state attacked, in order to repel such aggression. This is what is meant by the right of collective self-defense.

Although these words came from the Colombian representative, they revealed a unanimous agreement among his Latin American counterparts, and although the term "collective self-defense", as worded in Article 51, was certainly new, these countries also claimed that the idea of a military alliance had many political antecedents.

Recalling precedents was relevant. Latin American countries, perhaps with the Brazilian exception (BEVILAQUA, 1905; BARROS, VEÇOSO, 2021), had begun to find pride in the traditions of the Pan-American Union. Writers such as Alejandro Álvarez (1905), attempted to define and preserve a distinct American view of international law, manifested in the doctrines and ideas that reinforced solidarity and condemned coercion. The most evident aspect of this Latin American perspective was manifested in some themes, particularly the principle of non-intervention (SCARFI, 2018).

In international law, however, precedents sometimes come later. This is the case with the American organization, because although it said to rely on the long history of American cooperation, the organization only came formally into existence after the UN Charter, and the new right of "collective self-defense" was only formally established in the Treaty of Reciprocal Assistance, signed in 1947, two years after San Francisco. The paradox was that as

formalization towards a new arrangement began, Latin American International Law receded (OBREGÓN, 2012).

The consensus towards an agreement came less from the long tradition than from the immediate and more urgent discussions in Mexico City. This is because in the long history of Pan-American cooperation no one ever conceived of a regional alliance before the Havana Meeting in 1940 at the dawn of WW2. Although the declaration in Chapultepec stated that it would have immediate effect, its normative force remained contested without the conclusion of a treaty. The immediate effect provision also remained dubious because the Act itself recommended, under Article II, the conclusion of a treaty establishing procedures whereby a threat against any American Republic might be met using armed force to prevent aggression. A hard law declaration calling for a hard law treaty was no guarantee of a compromise, either among Latin American nations or among them and their northern neighbor. The appeasement out of the San Francisco crisis came after President Truman announcement that he intended to carry out the recommendation (FINCH, 1947).

In Rio, in 1947, the promise became a Treaty. The most prominent feature of the Treaty of Reciprocal Assistance, at least for the first commentator who had only the UN Charter as a comparison, was that, unlike the UN, the TIAR did not leave the question of whether there was an act of aggression to a political organ as the UN Security Council (FINCH, 1947). Rather, it was up for each individual state to decide to act in its individual or collective self-defense right, at least until the UN or the regional bodies could decide. The Rio Treaty also meant the initial establishment of what would later be the OAS machinery. A ministerial organ of consultation was created and a Governing Board could act provisionally until de Ministers could meet. No state had a veto power. Further, as to the problem of sanctions, the Treaty repeated the Act of Chapultepec in providing for an array of possible solutions from the breaking of diplomatic relations to the use of armed force.

The differences between the UN Charter and the Rio Treaty notwithstanding, the interpretation of the Act did not immediately mean a departure from the UN as it was clear that none of the provisions of the treaty were to be construed as impairing rights and obligations under the UN Charter (Article X). However, as the Treaty was both similar and dissimilar to the provisions of the UN Charter, the very establishment of an Inter-American body raised potential conflicts with the universal organization.

According to some early commentators (KUNZ, 1947), the reading of Article 51 of the UN Charter did not depend on its history and was supposed to be interpreted on its own. Therefore, the obligation to refrain from the use of force, as worded in Article 2, paragraph 4, of the UN Charter, was to be construed as having the right of collective self-defense as a defeasibility rule (HART, 1949). That, in turn, meant the Inter-American System, the Pan-Arab League, new continental or regional organizations and assistance military pact against aggressions were all entitled to use it. It is precisely the possibility of opting out of the universal treaty the most striking feature of the concept. More significant than the Latin American history of Article 51, the lack of trust in the UN System felt its presence right from the start. The hope was that the UN System would one day develop its own military force, as was the intention under Article 43, the fear, that under the right of self-defense, be it individual or collective, regional alliances would substitute it.

Lack of trust felt then as a political problem, but Kunz (1947) soon realized that it was also a jurisdictional one. As an international lawyer, he thought that the best way to solve it was by discovering the meaning of Article 51. The goal was to preserve the competencies of the Security Council by maintaining its effectives in an increasing polarized international order, while, at the same time, providing some flexibility for the protection of vast swaths of influence.

Kunz began by differentiating defense from security. Whereas defense meant only the right of defense of another state, an autonomous exercise of force, collective security was both a right and duty, that is, under the Rio Treaty member states were obliged to act in defense of others, as parents must act to defend their children. Self-defense was, moreover, the attribute of an advanced legal order, whereas self-help (reprisals, war) was of a primitive one. He also remarked that under Article 51 self-defense could only take place where an “armed attack” had occurred and that the country that had suffered had discretion to decide upon its existence. However, there was no right when the act of aggression was a legal one, that is, when it was determined by the Security Council, or by the exercise of the collective security. Moreover, there was no requirement of proportionality or reasonableness, therefore any minor incident could fall within the discretion of the attacked state.

Although Kunz did not use these terms, his interpretation of Article 51 ended up creating, in the Americas, two avenues under which legal aggressions could occur. The most

relevant consequence was not the listing of which path a state should choose, but rather which institution was to determine the legality of the aggression.

A legal test for these concepts did not take too long to appear. In the Ninth Conference in Bogotá, when American States gather to discuss the charter of a new organization (then called an "organic pact"), the representatives immediately recognized that the new organization would have to be a "regional agency" within the limits of Article 51 (FENWICK, 1948, p. 555). Moreover, for Latin American States a new organization would also have to have as principle the equality between nationals and foreigners and include as a distinct type of aggression economic coercion. The representatives from Latin America also repudiated intervention and sought to distinguish it from the exercise of collective self-defense (Article 19).

But Bogotá also raised the issue of democratic solidarity through a proposal from the representative of Guatemala who sought to oblige American States to refrain from giving recognition to regimes that had originated from a coup d'état against governments of a legally established nature. Although there was no agreement, during the conference a series of leftist riots in Bogotá urged them to adopt a resolution against international communism. In it, the representatives denounced international communism as having an anti-democratic nature and an interventionist tendency and they pledge to adopt measures necessary to prevent foreign influence in the region.

Also of significance was the proposal of a declaration against the maintenance of colonies and territorial possessions of non-American Powers in the region. The Brazilian delegation, however, voted against it, defending instead that the subject was a competence of the UN General Assembly.

For Kunz (1948b), being born out of a series of informal agreements, the most significant change brought about by the Charter was the formalization of the Inter-American cooperation. Changes would no longer be made by simple resolutions, as it was the case with the Pan-American Union.

As to the differences between the UN and the Rio Treaty, Kunz (1948a) was of the opinion that:

> […] the Treaty certainly had in view the fact that the Security Council is paralyzed by the veto; here as in the TJN as a whole Art. 51 is being used more and more as a substitute, as Ersatz for the non-existing general collective security and sanctions. But,

> self-defense and Art. 51 gain, under such conditions, a very different meaning and become a technique pretty near to the old-fashioned right to resort to war, especially as there is no judicial control over the exercise of self-defense.
> […]
> The Rio Treaty is built entirely upon Art. 51 of the Charter and on the conception of "armed attack." It can, therefore, only be a system of self-defense, not a system of sanctions. The monopoly of the use of force is in the hands of the Security Council; the member-states can resort to force only under Article 51 and only against an armed attack.

A challenge for the newly formed arrangement emerged at the Guatemalan *Coup d'État*. After taking office in a constitutional transition, then President Arbenz begin an Agrarian Reform, having at its core a program of expropriation and redistribution of land. As it applied for every latifundio, including the holdings of the American company United Fruit, it soon came under the attention of the United States. At first, the FBI suspected of possible communist connections with other Latin American countries, but the suspicion extended to a more general concern for Communist influence in Guatemala (IMMERMAN, 1980, p. 635). The evidence of these links was inconclusive and even Eisenhower seemed doubtful of it. So, to build the case for an intervention in the country, other possible links, such as congruent votes in the UN General Assembly, were used against Arbenz, for instance Guatemala's representatives agreeing with the Soviet contention of bacterial warfare in Korea. The anti-communist propaganda also had the overt support of the United Fruit Company, who intensely lobbied Washington officials to convince that the expropriation in Guatemala was not an economic problem, but a political one.

According to Immerman (1980), indeed, more than the economic problem the intervention in Guatemala was directly and efficiently linked to the Communist threat. The role of the United Fruit Company was to use popular sympathy to get government backing. The preparation begun in the middle of 1953 before the Company's second expropriation with the CIA masterminding the plot by contacting neighboring countries such as Honduras and using diplomats that held close contact with Dean Acheson, Truman's foreign policy architect (IMMERMAN, 1980). The operation PBSUCCESS consisted mainly in financing opposition leaders, broadcasting anti-communist propaganda and lobbying army officers.

Regionally, the State Department campaigned to gather support from other Latin American nations. As it is often the case, it came after the beginning of the operation and this is of significance as the Pan American Union became a forum through which not only alliances

were forged, but also one through which monitoring begun. The United States proposed in Caracas in 1954 a "Declaration of Solidarity for the Preservation of the Political Integrity of the American States Against Communist Intervention", also known as the Caracas Declaration. Making an explicit reference to the Rio Treaty, the text contained provisions that justified "appropriate action", in case of "alien intrigue and treachery". The proposal immediately drew criticism from the Guatemalan representative and apparently other Latin American countries were loathed. The United States, however, manage to draw a majority support for the text.

The Guatemalan government soon realized what Caracas meant: its demise was imminent. In a desperate measure, Arbenz attempted to buy armament from the Soviet Union. As the CIA discovered the plan, it precipitated the coup.

A lesser-known initiative carried out by the Guatemalan government was to report to the United Nations. As it found out that the CIA and some neighboring countries were helping Colonel Castillo Armas, the government referenced the case the Security Council. The claim was that Nicaragua and Honduras were in violation of Article 2 duties. For Latin American countries, however, the reference was short of abusive, as Guatemala would have better sought solution through the Organization of the American States. For the American representative, who was also serving as President of the Security Council, the problem was rather "a revolt of Guatemalans against Guatemala", therefore not one of international dimension.

At the first meeting of the Security Council, the Soviet Union vetoed the draft resolution proposed by the Brazilian and the Colombian delegation through which the case was to be referred to the OAS, the fact the Guatemala had not ratified the charter notwithstanding. France then presented a separate resolution calling for the immediate termination of any act likely to cause further injuries, but also stating that "the OAS still has jurisdiction in this matter an can still investigate and report to us the facts as it finds them to be" (FENWICK, 1954).

As the coup was still ongoing, Guatemala then requested a second meeting with the Security Council alleging, correctly, that Honduras and Nicaragua were still aiding the rebels, but as the representatives in the Security Council could not agree on the agenda, even with a request from the Soviet Union, there was no substantial discussions on the Guatemalan claim.

The loath with which the Security Council examined the request from Guatemala contrasts with the expediency in the OAS, through its Inter American Peace Committee. Guatemala, at first, pledged that the Committee should only go to the country after the Security

Council had finally decided. But as things at the Council took too long to develop, the Committee decided to go to Guatemala. In its way, the Committee received a telegram from the new government informing that it had decided to refer the case to a mediation offered by the United States and El Salvador.

The OAS also attempted to convene a Conference of the Ministers, but as the new government soon took office, the meeting was indefinitely postponed. A year later, in 1955, the meeting finally occurred in Antigua, Guatemala. In the opening, the new President Colonel Castillo Armas could triumphantly welcome the Foreign Ministers to the organization that had at its main objective the political unity and "the reconstruction of the Central American nationality" (FENWICK, 1955).

Four years later, at the Ministers' Meeting in Santiago, the issue of intervention was once again on the table. Charles G. Fenwick, writing as the Director of the Department of International Law of the Pan American Union, defended that the absolute concept of non-intervention, as stated in the Montevideo treaty, was incompatible with the Rule of Law, just as it was also incompatible with the idea of having the United States as a police force. Building on the experience of Guatemala, he would claim that the equilibrium between the two extremes was to be found at the idea of collective security, in such a way that action of "the regional group for the maintenance of peace and security in accordance with existing treaties would not constitute a violation of the principle of non-intervention" (1959).

Guatemala, here, was the precedent (1959, 875):

> In 1954 when the threat of international Communism led to the adoption of a resolution at the Conference at Caracas declaring that the domination of the political institutions of an American state by the "international Communist movement" would endanger the peace of America and would call for a Meeting of Consultation to consider the adoption of appropriate action in accordance with existing treaties, the fear that collective resistance to the intervention of Communism might result in collective intervention by the American states themselves led to the adoption of a formal supplement to the effect that the declaration of foreign policy thus Wade was designed to protect and not to impair the inalienable right of every American state "freely to choose its own form of government and economic system and to live its own social and cultural life.

Thus stated, the principle of non-intervention became a presumption against intervention, but only if the threat did not lead to the convocation of a Meeting of Foreign

Ministers. As it was the case in Guatemala, affirming the principle of non-intervention was, in fact, legitimizing what happened in the Central American nation.

Accioly (1955), who was President of the OAS, observed that given international interdependence the desirability of a universal organization was evident. However, because the Security Council depended on the political will of its members, regional agreements were necessary. It is important to notice here, at least in the beginning of the jurisdictional problems, that Brazil did not link the history of the regional organization to the Pan-Americanist tradition. For Accioly, regional agreements were latent in the League of Nations treaty and, given the political limitations of the Security Council, it was necessary to bring it to the fore.

2 ONE CUBA IS ENOUGH

One does not need to reflect too much on the ambiguities displayed by those who sought to defend non-intervention, while legitimizing PBSUCESS. A few months after Santiago, these ideas were retested in Cuba.

As if preparing the argument, James O. Murdock, the U.S. Member of the Inter-American Juridical Committee, defended collective security as the "antithesis of intervention" (1962). International law, he pondered, meant peaceful procedures and sanctions. Contrary to the arbitrary idea of intervention – "a dictatorial interference by one state in the affairs of another –, the primary purpose of collective security "is to provide rational and just procedures and sanctions that eliminate justification for intervention" (1962, p. 500).

Recognizing that this line of argument ran against the text of both the UN Charter and the Montevideo Treaty, Murdock dismissed them as "bad wording" and "blunder". The Charter of the Organization of American States, on the other hand, did not repeat these mistakes, thanks to the experience American countries had with international organizations for peace. He also voiced concern over the draft declarations, such as the one that Mexico floored in 1959, that aimed to amend the Charter to make a constitutional provision against intervention. Were it to be true, Murdock claimed, the Security Council could have jurisdiction over actions taken by the OAS. The case of Cuba was exactly what he had in mind (1962, p. 503):

> The present situation in Cuba clearly illustrates the necessity of distinguishing intervention from collective security. The intervention of Communist nations in Cuba has destroyed its independence as well as its economic and political institutions. From Cuba as a base of operations, the independence and institutions of other Latin American Republics are seriously threatened. The need for collective security action by the Organization of American States is apparent to stop foreign intervention and maintain the principal objective of that Organization.

Guatemala was a precedent not only for the American Republics, but for the Cuban revolutionaries. Che Guevara, for instance, was present when the Coup took place and is said to have understood that the overthrowing of a regime in Latin American would have to be coupled with the struggle against imperialism (IMMERMAN, 1980). This might explain why once in power Castro's administration supported communist insurgencies in Africa and Latin American. It also explains American reaction, first with the freezing of assets, then with the longest lasting embargo in US history. The embargo, in turn, push to Cuba towards the Soviet Union. Though initially reluctant (SAMSON, 2008), the USSR became Cuba strategic ally.

For the United States, Cuba presented a new challenge. Whereas in Guatemala the CIA was successful in ousting the Arbenz regime, the attempt to invade Cuba through the Bay of Pigs failed miserably. With no strong-arm policy available, only International Law could salvage what to the Eisenhower administration was a crescent influence of communism.

The natural strategy depended, therefore, on building agreement with regional institutions. The Meetings of Foreign Ministers, held in 1960 and 1962, were instrumental to the American case. At the Seventh Meeting, in 1960, the OAS condemned "the intervention or the threat of intervention by an extracontinental power in the affairs of the American republics, the main threat being "the existence of a Marxist-Leninist government in Cuba which is publicly aligned with the doctrine and foreign policy of the communist powers" (MEEKER, 1963). Two years later, at Punta del Este, the Meeting, acting as an Organ of Consultation, took (then) the unprecedented measure of excluding the Cuban government from participation in the organization of the Inter-American system.

Legally, the suspension of the Cuban government was problematic, as there was no provision in the Charter providing for a proper procedure. The blame rested on the danger posed by "the subversive offensive of communist governments, their agents and the organizations which they control". Acting under the Bogotá Charter, the Ministers present at the Meeting recalled the declaration of San José (at the Seventh Meeting) to charge the Government of Cuba

of links to the principles of Marxist-Leninist ideology. Then they relied on a special report from the Inter-American Peace Committee to state that "it is evident that the ties of the Cuban Government with the Sino-Soviet bloc will prevent the said government from fulfilling the obligation stipulated in the Charter of the Organization and the Treaty of Reciprocal Assistance" (Declaration of Punta del Este).

As it was held as incompatible for an American Republic to be a member of the OAS and, at the same time, adhere to Marxism-Leninism, the Meeting ended up deciding that "this incompatibility excluded the present Government of Cuba from participation in the Inter-American system", whereby Cuba was not allowed to take any part in the discussions occurring in the OAS.

But only looking at the voting or the final declaration may give one the impression that no question on the legality of the measure was raised. This was not the case. As the representative of Mexico later remarked (ROBLEDO, 1962), there was outright opposition against the idea that the incompatibility of a Marxist government meant the expulsion of Cuba from the OAS. Argentina, Bolivia, Brazil, Chile, Ecuador and Mexico opposed the proposal made by the United States with the simple argument that there was no exclusion clause in the treaty and suffered enormous pressure. Robledo, who himself was present at Punta del Este, noted that these six countries were dubbed "legalistas", though obviously with a derogatory tone. For him, the result was worse than the isolation of American republics (1962, p. 32): "This is the true crisis, the deepest split and tear, because what until now gave the inter-American community its most authentic unity and meaning was precisely the experience of law as the supreme value among the guiding values of community life."

This same coalition would, in part as a response to the results of Punta del Este, go on to propose in the General Assembly of the United Nations a resolution that would later form the Treaty of Tlatelolco. Robledo himself, now the Mexican Ambassador to the UN, was later called the "father" of the treaty (ROBINSON, 1970, p. 284).

Cuba, for its part, also attempted to find redress by consulting the ICJ through referral from the Security Council, but the Council failed to reach an agreement. Latin American authors not only enthusiastically supported the idea, but also saw a high probability of having a favorable decision (SEPÚLVEDA, 1966, p. 84-85).

The Cuban exclusion led to another difficult legal question: did the OAS still have jurisdiction over the threat or the Cuban case should simply be referred to the Security Council? As it is well-known, this was not an academic question, as the Ministers would soon find out in the Missile Crisis.

Although there were many political implications of the USSR aiding the placement of strategic missiles in the Cuban island, legally the key problem emerging from this event was the justification of the "quarantine" in Cuba. As the proponent of the measure, the United States were well aware that in traditional international law, there was no quarantine, but only "blockade", an action only to be taken in war times. As the placement of the missiles in Cuba – much the same way as in Turkey – was not a direct act of aggression, it was not to be cofounded with war.

The State Department preferred to call it "an aggression which is not an armed attack", therefore roughly squaring it with the wording of Article 6 of the Rio Treaty (MEEKER, 1963). The idea was to allow deliberation of the Organ of Consultation, even if it meant the provisional one, the Council of the Organization of American States. As deliberation by the Organ was the sole prerequisite for the legal action under the Rio Treaty, the quarantine was not a blockade, but a legal action taken under the Rio Treaty.

Moreover, the quarantine did not challenge neither the text of the UN Charter nor the authority of the Security Council. Recalling the statement from the Colombian representative at San Francisco, Meeker (1963), inverting Kunz formula, claimed that the existence of Act of Chapultepec, which was approved before the voting on the UN Charter, was known by the members of the new UN Charter when they were deliberating on the adoption of Article 52. Therefore, that a regional agreement existed was sufficient to recognize its legality.

As to the authority of the Security Council, the problem was more complex. It was necessary not only to justify whether or not prior authorization by the Council was required, but also whether it must be express. It was also necessary to decide if the Council should have the final saying on the meaning of "enforcement action".

The State Department defended that authorization must not be prior. Invoking the discussions held by the Security Council on the topic of the Dominican Republic in 1960, it recalled that the Soviet representative had himself floored a resolution on authorization after

the decision of the OAS. The topic of the Dominican intervention in Venezuela, therefore, set the precedent for the timing of the notification to the Council.

Moreover, as the Cuban crisis demonstrated, authorization does not need to be express. Before the convening of the OAS Organ, the United States had notified the members of the Council of the situation in Cuba. According to Meeker (1963), were it contrary to the Charter, the Security Council would have had to take a vote on the subject. As it has not done so, the quarantine was legal. The argument surely inverts the veto procedure of the Security Council by assuming that only actions that were effectively blocked were contrary to the Charter. The onus, thus, fell not in the intervening states, but on its opponents, which, with the veto of the United States, virtually made it impossible to challenge a decision of the OAS.

As to the meaning of "enforcement action" as stated under Article 53(1), Meeker argued that it was necessary to distinguish between Council actions under Articles 40, 41 and 42, and recommendations made either by the Council or the General Assembly (1963, 521). Relying on the Advisory Opinion of the International Court of Justice on Certain Expenses of the United Nations, the then Deputy Legal Adviser of the State Department demonstrated that only Council obligations were to be thought of as "enforcement action". Moreover, as the wording in Article 53 (1) made it clear, the meaning of actions could only be a reference to actions adopted by a regional organization. In other words, the text presupposes that the use of armed force as contained in Article 53(1) was restricted to the actions that were mandatory for the members of a regional organization. Thus, for the United States, those actions should include only obligations not recommendations: "enforcement action (…) should not be taken to comprehend action of a regional organization which is only recommendatory to the members of the organization" (1963, 522). As quarantine was carefully crafted as a recommendation for OAS members it was not an "enforcement action".

Just as was the case in the justification for tacit authorization, State Department's line of reasoning seemed an attempt to eschew political limitation in the Security Council. To be sure, there is a difference between recommendations and obligations but to argue that the Security Council would only have jurisdiction in the event of a mandatory resolution by a regional organization voids the meaning of Article 53(1). For as long as any regional organization limits itself to issue recommendations no action by the Council would ever be necessary.

This was precisely the point made by Meeker's Latin American counterparts. Sepúlveda (1966) argued, for instance, that an autarchic interpretation found no support in the UN Charter. For him and other authors, it was hard to think of any case with so few credible arguments, particularly because the UN Charter had established all the necessary guarantees for peaceful coexistence (AMOR; GREEN, 1970).

Later – as one can observe by studying the crisis in the Dominican Republic –, the political elite would come to view the actions in Cuba through an analogy with the Soviet intervention in the Czech Republic. The rationale had then become less legal: the key for a peaceful coexistence would depend on the definition of "which parts of the planet" either American or Soviets would see as indispensable for their own security (REISMAN, 1982). The idea was that the superpowers would have to respect this "critical defense zones or CDZ's", as a concept through which a minimum order could be achieved. This is what a realistic assessment of international politics should entail, whereas "indignant protests of CDZ's can achieve little more than a self-stimulated exhilaration of righteousness" (REISMAN, 1982, p. 590).

Despite what seemed a victory in the international legitimation of the quarantine – which also seemed to impact Khrushchev's decision to remove the missile (BOYLE et al., 1984, p. 174), the Cuba revolution haunted the specter of Inter-American cooperation. Just less than three years after the missile crisis, the revolution in the neighboring island of the Dominican Republic prompted a clear directive from the United States of the idea that – to use Lindon Johnson famous quote – "one Cuba is enough" (FENWICK, 1965, 65).

If, as in Guatemala or later Cuba, intervention was distinguished from collective security, now, in the Dominican Republic, the issue was whether self-defense could be interpreted as authorizing what seemed an outright invasion of the island. The argument of self-defense came up as the crisis worsened and the American Embassy in Santo Domingo could not evacuate American citizens from the capital. The conviction by the American President that support for the rebels was also coming from communists prompted the decision to intervene.

For Fenwick (1965), that communist support might mean a pro-Castro government in the Dominican Republican was enough to render the defense of the invasion on self-defense grounds as credible. But the actual evidence of foreign interference was weak and American authorities were reluctant to the prospect of convincing other OAS members of the legitimacy of the intervention (CRANDALL, 2006, p. 77). This is why deliberation by the OAS took so

long to begin. In fact, the Marines and the 82nd Airborne "were already in operation when the resolution was passed" (CRANDALL, 2006, p 78), which in fact meant that the approval was retroactive. The United States, for its part, had informed the Security Council of President Johnson's authorization in April 29.

The first Resolution adopted by the OAS in April 30 simply called the parties in the Dominican Republican crisis to enforce a cease-fire and to establish a safety zone, which was the ground used for justifying the invasion. A second resolution, voted 6 days later, established for the first time an Inter-American Armed Force, under a Unified (American) Command, thus incorporating the (almost exclusively American) forces already dispatched to the Dominican Republic. The problem of the force was that the necessary two-third majority was not available for stating that factions in the Dominican crisis were to establish a regime similar to the Cuban, so OAS members had to resort to other grounds for invasion. The solution was to equate the "civil strife" to a "threat to the peace" in the Americas": "each resort to violence within the individual state weakens the fabric of international as well as of national law" (FENWICK, 1965, 67).

As we have being showing throughout this article, although the conflict seemed to be confined to a Caribbean state, the Security Council was also used to object the course of events. Right after the official communication by the United States, the USSR called for the examination of the subject in the Council arguing as before that enforcement measures could not be taken without the Council's approval. This time, however, the Soviet Union was not alone. Whereas Cuba used the same line of reasoning, Uruguay also dissented arguing that the intervention was a clear violation of articles 15 and 17 of the Bogotá Charter. According to the Uruguayan representative, the Charter clearly rejected a right of intervention (BAUER, 1968, p. 143).

Given the divergence, the Council invited the Secretary General to represent a report on the conflict. For the first time, therefore, concurrent action was taken by both the regional and the universal organizations. In his reports, however, the Secretary General envoy stated that he did not have authority to promote investigations and that if he were to do so the Security Council would need a second resolution. As the Council failed to reach an agreement, the envoy took notes of the events in the Dominican Republic until the next election. What could have been a contestation ended up muted in the Council.

Although there was no further debate in the international organization, after the Dominican Republic intervention, distinct voices appeared not only in the American Journal. In 1966, Bohan firmly refuted Fenwick's argument for either self-defense or for the internationality of the conflict. Self-defense could not be applied because the threat would have to be "real and immediate". Moreover, Articles 15 and 17 of the Charter of the OAS clearly prohibited intervention in the internal affairs another State. Bohan (1966) goes even further by also claiming that the fear of the spread of communism could not justify unilateral action. According to the Caracas declaration, the presence of a communist government entails the convocation of a Meeting of Consultation, not a license to intervene. The Dominican Republic marked, for him, a return to unilateralism.

This line of reasoning was not new. Bohan echoed the ideas of the Mexican diplomat Antonio Gomes Robledo (1962) who had earlier rejected an attempt to justify military action on human rights ground. What was significant, however, was that Bohan's article marked the beginning of a legal critique of American actions abroad and the willingness in the journal to welcome distinct approaches to legal problems including the exchange of arguments from other Latin American authors. What seemed then as a soft exchange of legal views would in time become a full critique of the American foreign policy. The divergence between American and Latin American academic views became, thus, increasingly blurred.

In the following decade, the criticism against the lack of clarity in the text were used to negotiate and approve the Protocol of Amendment to the Inter-American Treaty of Reciprocal Assistance. Among the innovations of the Protocol, Latin American writers were eager to remark the definition of armed attack, but lamented the generous territorial definition (ROBLEDO, 1977). The most celebrated amendment was that of Article 6. Robledo, for instance, reminded that the concept "aggression that is not an armed attack" was used erroneously in Guatemala and in Cuba: "incredible it would seem in the future that such thing was allowed to be written or approved" (ROBLEDO, 1977, p. 348).

3 AVOIDING ANOTHER IRAN, CREATING ANOTHER ANGOLA

Almost twenty years after the Cuban crisis, the United States used similar legal arguments to defend what became known as the invasion of Grenada: self-defense and international collective legitimation.

After a military coup, the new established government in Grenada had issued travel restrictions that caused insecurity among more than a thousand American residents in the country, of which a vast number were medical students. To protect these citizens, but also to attend a request from other six Caribbean nations to "help remove Soviet-Cuban influence" in Grenada, the United States began on October 23rd, 1983, the invasion of the island. The fear was that, with so many citizens abroad and a hostile government in place, a new Iranian hostage crisis would take place (WILLIAMS, 1997, p. 151). Differently from Iran, "it was not conditions in Grenada that put the students' lives at risk, but the U.S. invasion itself" (KENWORTHY, 1984, p. 638).

This time it was much harder to justify the legality of the measure, despite the American attempt of using the same rationale. In a fierce critique for the American Journal of International Law, Joyner (1984) argued that, even if morally correct, the intervention was unlawful. The almost abused excuse of self-defense could not be applied, because there was no foreign-armed attack, nor was there a real and immediate imperilment to any American state. Moreover, the invasion was a clear violation of the legal principle of internal self-determination and of the obligation not to intervene in the domestic affairs of any state. Even recourse to the justification of the Dominican Republican action lacked grounding, as humanitarian reasons for intervention not only should be severely restricted, but also rarely used only in cases of genuine, imminent and substantial risk (JOYNER, 1984, p. 135).

As to the more delicate invitation to intervene as it was requested by the Organization of Eastern Caribbean States (OECS), one must consider the unusual use of its constitutive treaty. The Charter of the OECS is a regional organization within a regional organization within a universal one. Therefore, the same problem that the OAS had in justifying collective defense could also be applied here with a caveat: the OAS Charter had clear provisions on the prohibition of intervention. Moreover, the United States, even if acting under its terms, was not a part to the agreement, nor did the Treaty mentioned the possibility of authorizing collective self-defense measures against one of its members. More to the point, Grenada, as a member of the OECS would have to vote, because the treaty only accepted unanimous decision.

The problem of intervention was not then of its legality but of the precedent it set. The strategic gain once again prevailed over the more diplomatic compromise of a law-abiding order. If Robledo (1962) could talk about a crisis in 1962, the intervention in Grenada could not help "but exacerbate those costs in credibility for the United States" (JOYNER, 1984).

The reaction was not only restricted to American's commitment abroad: it was also responsible for stating another turbulent domestic crisis. In a joint Editorial Comment for the AJIL, leading academics strongly criticized the "lawlessness" of Grenada noting that the strategic use of concepts, such as "self-defense", and the creation of regional organizations was also happening in Nicaragua, through a call to revive the "moribund" Central American Defense Council Pact (BOYLE, 1984). Made in 1984, Boyle's warning proves to be omniscient: international lawlessness in Grenada did return to haunt American foreign policy.

Intriguingly, the critics here were also part of the problem. In the same editorial questioning the legality of the Grenada intervention, Boyle called for a "Clark Amendment" for Central America. The Clark Amendment was an amendment sponsored by then Senator Dick Clark to the American Arms Export Control Act of 1976. The context was the American reaction to the Cuban involvement in Angola and the intention of President Ford to counter them. The idea of the amendment was that, as the American government was increasingly participating in proxy wars, only Congress could authorize aid in armament to groups engaged in military or paramilitary operations in Angola. The Amendment, however, proved to be of little use, as the United States used Israel as a proxy for aiding Angolans (HAAPISEVA-HUNTER, 1987, p. 16). That notwithstanding, the American Congress did end up passing a Clark-like Amendment to Central America – also undermined through Israel as proxy – this time sponsored by House of Representative's member Edward Boland and limited to the assistance of the Contras in Nicaragua.

Curiously, however, the Nicaraguan Revolution marks the end of the legal disputes of jurisdictional competencies. The history of collective security in the hemisphere begins as experiment in formalization of the long and distinct American tradition in international law. But as collective security increasingly became a justification for violations of the UN Charter, solidarity among American republics faded and cooperation, despite a regional treaty, became virtually impossible. Support also dwindled for reviving almost buried regional agreements such as OECS, while covert aiding became pervasive. Though international law arguments were

used in the other conflicts, Security Council blocking or inaction made them mute. Nicaragua, however, took the case to the International Court of Justice.

For the United States, the conflict in Nicaragua had many elements in common with other previous crisis: the covert aiding of the CIA, as it happened in Guatemala, the strategic use of the OAS and the attempt to use the Central American Defense Council to legitimize intervention, as it happened in Cuba and later in Grenada, and, finally, the vague use of the concept of self-defense as an overarching legal excuse.

The filling of the case against the United States was unprecedented in scope and in gaining support from leading scholars. Recalling the arguments that were used by Cuba, Mexico, or Argentina, Nicaragua charged its northern neighbor with violations against the UN Charter, the OAS Charter and general international law (CHAYES, 1985). The American reaction, much in the same way as in the past, was to eschew discussions, firstly by simply attempting to revoke its authorization for compulsory jurisdiction, then by contesting ICJ's jurisdiction (BRIGGS, 1985).

The Court's decision on its own jurisdiction, although complex and long, contended with the US argument that the case should be referred to the Security Council. The Court rejected the idea implied by the argument that there ought to be in the international plan a concept akin to municipal's law separation of powers, because "these concepts are not applicable to the relations among international institutions for the settlement of disputes" (par. 92). The argument advanced by Americans that the concept of self-defense could not be examined by the Court as the parties were in the midst of the conflict was confronted with the strong remark that "factual allegation made against Nicaragua by the United States, even if true, fall short of an 'armed' attack within the meaning of Article 51" (par. 92) and were not reported to the Security Council (par. 98).

As the attempt to eschew jurisdiction failed, the US simply refused to accept the ruling both on the jurisdiction question and, most importantly, on its merits. The reaction in the media was negative, with many newspapers generally agreeing with the idea that their country should respect the ICJ's jurisdiction as any other court in the country (CHAYES, 1985) – a signal that evading law would sooner than later haunt the government.

By leaving at an early stage, it is not possible to hear what arguments the US would have advanced; had it done so, it would probably be like John Norton Moore's argument in the

pages of the AJIL in 1986. American actions against Nicaragua were legal because Nicaragua was aiding guerrillas in neighboring countries, most notably in El Salvador, which, in itself, constituted an "armed attack" within the meaning of the UN Charter. The American reaction was, therefore, a legitimate exercise of its right of collective self-defense under Article 51, especially given that El Salvador had requested such assistance (MOORE, 1986).

The evidence supporting these claims were scant. As Rowles later observed, the evidence upon which it was based pointed to Nicaragua's possible involvement in El Salvador in training insurgents and in transferring arms, but that, in itself, did not amount to an "armed attack" (ROWLES, 1986, p. 572). Therefore, the only lawful reaction available to the United States would be requesting collective action by the Organ of Consultation under Article 6 of the Rio Treaty or by the Security Council.

Even if one assumes that there was an armed attack, no country other than El Salvador requested assistance. El Salvador, by its turn, only requested it in 1984 citing attacks that occurred two years before, which admittedly is very different from the standards of self-defense. The American actions also failed to observe the rule of strict proportionality, as "the military action of the contras have not in fact been limited to action bearing a direct and rational relation to the objective of halting shipments of arms" (ROWLES, 1986, p. 575).

The ICJ eventually adjudicated in favor of the Nicaraguan claims along the same lines that Rowles had defended. Even if the case was sweeping in its condemnation of American actives in Nicaragua, by rejecting a long strand of precedents, it also ended up rejecting what up until then had been the grounds of collective security. The arguments were still there, but there few who would give it backing. The invasion of Panama, which happened more than three years after the ICJ ruling, received – except for D'Amato (1990) almost unanimous reprobation (FARER, 1990; NANDA, 1990).

A year later, Michael Reisman, who had almost a decade earlier defended a more realistic interpretation of the non-intervention in the UN Charter (1984), wrote an Editorial in the AJIL on "International Law after the Cold War" (1990). For him, the end of one of the most significant events in history marks also the end of the passive defense of sovereignty (1990, p. 876):

> one can no longer simply condemn externally motivated actions aimed at removing an unpopular government and permitting the consultation or implementation of the

> popular will as per se violations of sovereignty without inquiring whether and under what conditions that will was being suppressed, and how the external action will affect the expression and implementation of popular sovereignty.

After the Cold War, the most basic legal defense that Latin Americans had used for years was now outdated. But Latin Americans, according to Reisman, should not complain of things getting too complicated (1990, p. 876): “those who yearn for "the good old days" and continue to trumpet terms like "sovereignty" without relating them to the human rights conditions within the states under discussion do more than commit an anachronism”.

4 CONCLUSIONS

The US abandonment of the Nicaragua case is a metaphor for the demise of Latin America cooperation through the Cold War. The defense of a Latin American tradition in international law served as a basis to formalize or legalize the projection of US power in the Americas. Latin Americans responded to this push first by endorsing the creation of a regional organization and a collective security arrangement, later by using law as a strategy to advance their position.

Throughout this period, the regional agreement proved to be both an enabler and an obstacle for this strategy. On the positive side, the Bogota charter with all its limitations served as a benchmark to judge and to protest outright invasions and violations of sovereignty. But because outside the region recourse to the Security Council was blocked, Latin American countries had few instances to appeal.

Not that task was an impossible, as there were clear victories in American public opinion and academia. But Bello’s and Alvarez’s aspiration of genuine equality among nations became ever more distant. The history of the International Law in Latin American during the Cold War was also the history of the demise of American International Law.

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DOI: 10.22456/2317-8558.128821