Reception and Disciplinary Formation of International Law in Latin America

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Abstract 1

The reception and disciplinary formation of modern international law in Latin America was marked by the rise of the US as an informal empire in the Americas in the late nineteenth century and the emergence of a hemispheric US-led approach to American international law. This chapter examines the origins and trajectory of the American Institute of International Law (AIIL), an organisation based in Washington and funded by the Carnegie Endowment of International Peace (CEIP), which performed a central role in the construction of a continental approach to American international law in the early twentieth century. It also explores the emergence of an alternative regional Latin American approach to international law. This latter approach emerged as a defensive reaction to the rise of a US-led approach to American international law as promoted by the AIIL.

I. Introduction

The disciplinary formation and reception of modern international law in 2
Latin America were inevitably marked by the rise of the United States as an informal empire in the Americas in the late nineteenth century and the emergence of a continental and US-led approach to American international law. Although the notion of American international law emerged in the mid-nineteenth century and was originally associated with Spanish-American States, it was only in the early twentieth century that it began to be deployed as a continental ideal encompassing the Americas as a whole. In this context, the emergence of the US-led Pan-American movement in the 1890s contributed to the inception of this continental approach to American international law a few decades later. In fact, the rise of this notion of American international law was to a large extent a legal derivation of Pan-Americanism and the emergence of the inter-American system in its early foundational period. More importantly, the creation of the Amer-

ican Institute of International Law (AIIL), an organization funded by the Carnegie Endowment of International Peace (CEIP) in Washington, which coordinated all the national societies of international law of the Americas, gave the initial impulse to the formation of the discipline of international law on the continent. This essay examines the role of the AIIL in the construction and consolidation of a continental approach to American international law, as well as the emergence of an alternative regional Latin American approach to international law in the early twentieth century. This chapter argues that the rise of US imperial hegemony in the Americas and the construction of a continental approach to American international law contributed in turn to shaping the foundational debates and institutions in the field in the context of the Montevideo Convention of 1933 and eventually the institutionalisation of inter-American multilateralism.

3 Classic overviews of the formation of the discipline of international law in Latin America have tended to overlook the important and hegemonic role played by the US in the inception of the discipline in the Americas. At the same time, the emergence of continental approaches to international law and, in particular, the notion of American international law have often been associated with Latin American legal tradition.[1] While the notion of American international law was first coined by the Argentine jurist Juan Bautista Alberdi in 1844 to define common principles among Spanish-American States, the idea of American international law as a truly continental notion did not emerge until the early twentieth century. The so-called historical turn in international law has generated a new body of studies focused on the role of imperial domination and hegemony in the context of the disciplinary inception of international law in Europe, the Americas and beyond, as well as the construction of different hemispheric and continental legal sensibilities and traditions.[2]

4 To best deal with its subject matter, this essay is divided into three sections. The first of these examines the emergence of the notion of Amer-

1 These two features could be found in H. B. Jacobini, *A Study of the Philosophy of International Law as Seen in the Works of Latin American Writers* (Martinus Nijhoff 1954). For a similar approach, more oriented to the study of US foreign policy towards Latin Americam see Samuel Flagg Bemis, *The Latin American Policy of the United States: An Historical Interpretation* (Norton 1967).

2 Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870–1960* (Cambridge University Press 2001); Benjamin Coates, *Legalist Empire: International Law and American Foreign Relations in the Early Twentieth Century* (Oxford University Press 2016); Juan Pablo Scarfi, *The Hidden History of International Law in the Americas: Empire and Legal Networks* (Oxford University Press 2017).

ican international law and the core diplomatic precedents that shaped the formation of the discipline in Latin America and the US, in particular the Monroe Doctrine. The second section explores the disciplinary formation and institutional consolidation of the AIIL, a continental legal network created by the US and Chilean jurists James Brown Scott and Alejandro Alvarez, which officially promoted a continental approach to American international law and its codification. The third section focuses on the contribution of the AIIL, as well as other regional legal anti-imperialist traditions and ideologies, to the institutionalisation of inter-American multilateralism in the context of the Montevideo Convention and the origins and legal foundations of the so-called 'Inter-American System'.

II. The Monroe Doctrine and the Origins of (Latin) American International Law

European legal traditions shaped the formation of international law in the US and Latin America in contrasting ways and thus were received differently across the Americas. European liberal legal traditions and imperial practices had a lasting impact in the Americas since the late nineteenth century, particularly in the US. The principle of the standard of civilisation, according to which international rules were assimilated as standard and legitimate only among independent civilised States, meaning uncivilised States were regarded as *terra nullius* and could be legitimately occupied or intervened in by European powers, became a core principle of European international law. Indeed, European international lawyers drew a distinction between civilised and uncivilised peoples and States based on the prevalence of stable domestic political and legal institutions, a distinction that became instrumental in European imperial and colonial interests. While most jurists in the US, notably Henry Wheaton, shared this basic European liberal legal and imperial sensibility, Latin American jurists were somehow distrustful of a European liberal legal sensibility that was complicit with imperial, and especially interventionist, practices.[3] Indeed, Latin American legal sensibility remained ambivalent towards the principle of the standard of civilisation. On the one hand, Latin American jurists sought to adapt their legal mindset to European standards to show Latin American States'

3 Henry Wheaton, *Elements of International Law* (Little, Brown and Company 1866).

willingness to become 'civilised'.[4] On the other hand, they embraced a particular regional approach to civilisation distinct from that of Europe, one that was based on a robust understanding of sovereignty and non-intervention. This more ambivalent legal approach is epitomised by the efforts of Argentine jurist Carlos Calvo.[5]

6 The Monroe Doctrine emerged in 1823 as a unilateral US anti-colonial principle, asserting that any European intervention on the American continent would be regarded as a threat to US national interests. The doctrine proved to be a central principle for distinguishing between European diplomacy and that practiced in the Americas, especially when it came to organising the dynamics of US-Latin American relations from the nineteenth century up to at least the late twentieth century. More importantly, it became a key tenet for the construction of international law in the Americas and a continental tradition of 'legal diplomacy'.[6] At the same time, the doctrine proclaimed US tutelage in that it stated that the US was the guardian of the whole continent, particularly regarding intervention in any part of the continent as a response to (perceived) threats to US national interests. Although the doctrine was formulated as a foreign policy declaration, it affirmed that the Americas were not *terra nullius* and thus could be regarded as a precedent in the practice of the principle of self-determination.[7] Although the Monroe Doctrine was not a principle of international law, it strongly shaped the formation of the continental tradition of legal diplomacy across the Americas that condemned European interventions on the continent and traced a distinction between European imperial, monarchical and interventionist diplomacy and the alternative Western Hemisphere diplomacy founded on the promotion of republicanism, peace and the condemnation of conquest, territorial acquisitions and violent interventions. This important distinction, schematically framed in the original formulation of the Monroe Doctrine, laid the foundation for the formation and consolidation of a continental 'Western Hemisphere

4 Liliana Obregón, 'Completing Civilization: Creole Consciousness and International Law in Nineteenth-Century Latin America,' in Anne Orford (ed), *International Law and its Others* (Cambridge University Press 2006) 248–250.

5 Carlos Calvo, *Derecho internacional teórico y práctico de Europa y América* (D'Amyot, 1868).

6 Martha Finnemore, *The Purpose of Intervention: Changing Beliefs about the Use of Force* (Cornell University Press 2003) 24–51.

7 Jorg Fisch, *The Right of Self-Determination: The Domestication of an Illusion* (Cambridge University Press 2015) 236.

Idea' and, in particular, a Western Hemisphere approach to international law.[8]

7 The notion of continental American international law was originally coined in 1844 by the Argentine jurist and progenitor of the Argentine constitution Juan Bautista Alberdi. Alberdi´s notion encompassed forging an American Union composed exclusively of Spanish-American States, excluding the US and Brazil.[9] However, the debates over the existence of a specific regional or continental international law for the Americas have been often associated with a polemic between two other Argentine jurists, Carlos Calvo and Amancio Alcorta, who was in favour of this regionalist legal approach. This polemic was published in 1883 in the *Nueva Revista de Buenos Aires*, edited by the Argentine jurist, writer and diplomat Vicente Gregorio Quesada and his son Ernesto Quesada. The controversy emerged as a result of an article originally published in this very same journal in 1882 by Vicente Quesada, who invoked and made a case for what he termed 'Latin American international law,' as a set of norms distinct from those of Europe and the US.[10] Quesada was the first jurist of the region to use this notion. He was convinced that the foundational notion of Latin American international law was the principle of what he termed the '*uti possidetis juris* of 1810' and thus sought to consolidate it in Spanish-American legal language.[11] According to this latter principle, originally established as a practice of self-determination in Spanish America following the process of independence from Spain, the territorial and jurisdictional precedents consolidated in the context of the Spanish colonial order were the foundational basis by which the newly independent Spanish-American States should reorganise their territorial possessions and resolve any potential territorial

8 Arthur P. Whitaker, *The Western Hemisphere Idea: Its Rise and Decline* (Cornell University Press 1954).

9 Juan Bautista Alberdi, *Memoria sobre la conveniencia y objeto de un Congreso General Americano* (UNAM 1979).

10 Vicente Gregorio Quesada, 'Derecho internacional latino-americano: del principio conservador de las nacionalidades en nuestro continente' (1882) *Nueva Revista de Buenos Aires* 575.

11 The 'uti possidetis juris of 1810' was a Spanish American adaptation of a Roman legal principle which asserted that 'as you possess, so you may continue to possess.' See Juan Pablo Scarfi, 'Latin America and the Idea of Peace' in Christian Peterson, David Hostetter, Deborah Buffton and Charles F. Howlett (eds), *The Oxford Handbook of Peace History* (Oxford University Press, Forthcoming, 2023).

disputes.[12] Notably, Quesada contrasted the Monroe Doctrine, as a unilateral principle formulated by the US, with the *uti possidetis juris*, arguing that the latter was the more viable principle to safeguard peace in the Americas. All in all, the notions of American and Latin American international law emerged in the mid-nineteenth century and developed from their starting point of seeking to forge a specific international law for Latin America, in particular for Spanish-American States.

8 By the late nineteenth century, in the context of the expansion of US hegemony in Latin America and the aftermath of the US-Mexican War, the Monroe Doctrine adopted a different feature and was invoked by US politicians, notably Richard Olney, as a principle to justify US interventionism and hemispheric supremacy.[13] This interventionist usage of the doctrine by the US remained dominant up to the early twentieth century, in which context the Roosevelt Corollary of the doctrine (1904) defined it as a US interventionist principle in Latin America. US President Theodore Roosevelt proposed an official US version of the Monroe Doctrine as a new US standard of civilisation in the Americas, in particular in Central America and the Caribbean, with interventionist civilising and humanitarian implications. However, the rise of US-led Pan-Americanism in the 1890s contributed to redefining the doctrine as a hemispheric and multilateral principle of non-intervention. This quest to reframe the Monroe Doctrine along the lines of the emerging Pan-American movement was advocated primarily by Latin American jurists, such as Luis María Drago and Alejandro Alvarez.[14] Pan-Americanism emerged as a US policy of economic, political, legal and cultural cooperation towards Latin America and it has been rightly regarded as the friendly face of US hegemony in the hemisphere.[15] While US Secretary of State James Blaine played a central role in the inception of Pan-Americanism, Secretary of State Elihu Root contributed to institutionalising it and promoting legal diplomacy and cooperation within a specific epistemic community of international lawyers and diplomats in South America. Root´s visit to South America in 1906 and his advocacy for getting the seats for the Latin American delegations at the Second Hague

12 Eduardo Jiménez de Aréchaga, 'Boundaries in Latin America: Uti possidetis doctrine' *Encyclopedia of Public International Law I* (1992) 449.

13 Jay Sexton, *The Monroe Doctrine: Empire and Nation in Nineteenth-Century America* (Hill and Wang 2011) 202–203.

14 Scarfi, *The Hidden History* (n 3) 59–85.

15 David Sheinin, 'Rethinking Pan Americanism: An Introduction' in David Sheinin (ed), *Beyond the Ideal: Pan Americanism in Inter-American Affairs* (Praeger 2000), 1.

Peace Conference (1907) set the foundational precedents for the formation of a hemispheric legal network in the Americas around the emerging Pan-American movement. Root established close contacts with international lawyers and diplomats, such as Drago and Ruy Barbosa, who represented respectively Argentina and Brazil at the Second Hague Peace Conference. As such, Root contributed to stimulating the Pan-Americanisation of the US Monroe Doctrine and its redefinition as a hemispheric principle of non-intervention.

The so-called 'Drago Doctrine' set the grounds for the Pan-Americanisation of the Monroe Doctrine and its redefinition as both a continental principle and, eventually, as a principle of American international law. In the context of the British, German and Italian intervention of 1902 in Venezuela to collect public debts, Argentine Foreign Minister Drago sent a note to the Argentine Ambassador in Washington, categorically condemning this European intervention as illegal and, more generally, that the collection of public debts was not legitimate grounds to forcefully intervene in any country of the Americas. Like the Calvo Doctrine (1868), the Drago Doctrine asserted that those who invested or resided in a foreign country should make their claims with local tribunals, avoiding any resort to interventions. Drago relied on the US Monroe Doctrine to condemn European interventions in the Americas, advocating the principle of absolute non-intervention, meaning it could also be regarded as a corollary of the Monroe Doctrine.[16] Drago sought to transform the meaning and scope of the Monroe Doctrine that, on the one hand, transformed the unilateral US doctrine into a multilateral principle and, on the other hand, redefined this US national doctrine as a Pan-American continental doctrine of absolute non-intervention to be invoked by the Americas as a whole. Although he did not redefine the Monroe Doctrine as a principle of international law, by recognising the importance of this US national doctrine and legitimised it as a benevolent hemispheric principle, setting the scene to forge a common language of international law for the continent rooted in US principles and values. Drago acknowledged that while the United States sought only its own interests when formulating the original Monroe Doctrine in 1823, it (unintentionally) created a framework to safeguard the whole continent. Indeed, Drago asserted:

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16 Whitaker (n 9) 86–107.

> "Proclaimed by the United States in the interest of its own peace and security, the other Republics of the continent have, in their own turn, proceeded to adopt it with an eye alone to their own individual welfare and internal tranquillity."[17]

10 The most fervent advocate of redefining the Monroe Doctrine as a Pan-American legal principle of international law was certainly the Chilean jurist Alejandro Alvarez. Alvarez advocated a much stronger multilateral approach to Pan-Americanism than Drago because he was convinced that it was possible to forge a unitary Pan-American legal approach based on a synthesis between the US and Latin American legal traditions. Alvarez was the first Latin American jurist to invoke the notion of American international law as an authentic hemispheric principle encompassing the US and Latin American legal traditions. His notion of American international law drew on a contrasting difference between the European legal tradition, based on the notions of monarchical solidarity, political equilibrium and intervention, with that of American international law which was instead rooted in an idea of solidarity, non-intervention and State autonomy.[18] According to Alvarez, the Monroe Doctrine was the foundational principle of American international law, a notion based on the ideal of continental and US exceptionalism. As was the case with Drago, Alvarez acknowledged and legitimised the US' hegemonic role in the construction of a common hemispheric international law by recognising the importance of the US role in the formation of the Monroe Doctrine and the exceptional role of the US in the Americas. Inspired by this key US national doctrine, which was placed as its core foundational principle, American international law remained attached to US hemispheric hegemony. Alvarez's ideas about the existence of a continental American international law proved, in turn, to be intellectually inspirational for those who came after him and envisioned and planned the establishment of the AIIL.

17 Luis María Drago, 'State Loans in Their Relation to International Policy,' (1907) 1 *AJIL*, 692, 714.

18 Alejandro Alvarez, 'Latin America and International Law,' (1909) 3 *AJIL* 269.

III. The Rise of the American Institute of International Law and the Institutionalisation and Codification of American International Law

The outbreak of the First World War, which was largely a European conflict, contributed to consolidating the emerging US-led Pan-American liberal internationalist tradition and the epistemic community of international lawyers and jurists across the Americas that Root sought to forge. This broader context led to the institutional and official creation of the AIIL in 1915 and stimulated the formation of modern international law in Latin America. Nevertheless, the progressive Pan-Americanisation of the Monroe Doctrine, along with the outbreak of the First World War, was not the only stimulus that led to the formation of the AIIL. The creation of the American Society of International Law (ASIL) and the institutionalisation of international law in the US strongly influenced and were inspirational for the creation of the AIIL to the extent that the ASIL offered a model and framework that the AIIL could be based on. This eventually stimulated the disciplinary formation of modern international law in Latin America as the AIIL sought to create from its outset national societies of international law across the Americas that would also draw on the model provided by the ASIL. The AIIL provided a continental forum to join all the national societies of international law together in a single continental organisation, one funded by the CEIP and based in Washington DC. 11

It comes as no surprise that the AIIL was founded in 1915 at the Second Pan-American Scientific Congress where US President Woodrow Wilson officially announced his project for the creation of a Pan-American Pact between the US and the ABC countries (Argentina, Brazil and Chile) to enforce the Monroe Doctrine as a shared principle.[19] Wilson's vision foresaw the US and the ABC countries assuming the role of the guardians of the Americas. The project of the Pan-American Pact emerged from the critical context of US intervention in Veracruz, Mexico in 1914 and the subsequent tensions between Mexico and the US, which eventually led to the mediation of the ABC countries. The Pact was conceived as "a model for the European nations when peace is at last brought about" and it aimed to prevent wars and armed conflicts in the Americas by creating a system of collective security and obligatory arbitration.[20] Although the 12

19 Mark T. Gilderhus, *Pan American Visions: Woodrow Wilson in the Western Hemisphere, 1913- 1921* (University of Arizona Press, 1986) 50.

20 Ibid 50.

Pan-American Pact ultimately failed as a project, the AIIL was officially founded and had its first formal meeting at the Second Pan-American Scientific Congress. The renovation of Pan-Americanism following the outbreak of the First World War and the official engagement of Wilson with the Pan-Americanisation of the Monroe Doctrine stimulated the creation of the AIIL. More importantly, and under these promising circumstances, Alvarez began to envision that the Americas, through the promotion of neutrality, hemispheric cooperation and peace, was forging a new "international law of the future" that could contribute to redefining the international legal order after the First World War under new Pan-American legal standards.[21] According to Alvarez, the international law of the future was in the hands of the Americas and, once the war in Europe ended, the Western Hemisphere would teach the Old World the lessons of peace and how to attain the peaceful and legal settlement of international disputes, presenting itself as an alternative and far superior legal model to the then-dominant European-based one.

13 The AIIL was conceived in 1911 by Scott and Alvarez and, as noted above, held its first formal meeting in 1915, where it adopted a constitution. Scott became the President and Alvarez Secretary-General of the organization. Although they maintained different legal sensibilities and even opposing approaches to the codification of international law, Scott and Alvarez adopted common grounds and a shared legal mission. This common approach is seen in a formal letter sent to Elihu Root in 1911, letting him know about their plans for the organisation, a central objective of which was that "each country should organize at their capital a local [national] society of international law" affiliated to the AIIL and that "little by little a code of international law might be drafted which should represent the enlightened thought of American publicists".[22] In fact, the creation of a code of American international law for the Americas became a central mission of the AIIL in the 1920s and this task was undertaken in cooperation with the Pan-American Union. As stated in its constitution, the main objectives of the AIIL were to advance the study and development of new principles of international law in the Americas; to discover a method of codifying

21 Alejandro Alvarez, *El derecho internacional del porvenir* (Editorial-América 1916) 17–18.

22 James Brown Scott and Alejandro Alvarez to Elihu Root, Washington D.C., June 3, 1911, reproduced in James Brown Scott, 'The Gradual and Progressive Codification of International Law,' (1927) *AJIL* 417, 425–426.

international law and thus advance the codification of international law on the continent; to bring about the principles of justice and humanity through the promotion of instruction and education on international law; and to organise the study of international law along scientific and practical lines, taking into account the specific problems of the Western Hemisphere and its own doctrines.[23] Right from the inception in 1915 the AIIL began its activities and mission as a continental legal network of hegemonic interaction with a common set of values. The members of its Executive Committee, especially Scott and Alvarez, shared a common adherence to the legitimacy of the Monroe Doctrine and Pan-Americanism as principles of continental solidarity, the acceptance of the Platt Amendment, which legitimised regular US interventions in Cuba; US hegemonic role in the development of international law in the Americas and its legal tradition as exemplary for the continent; the condemnation of violent interventions and war; and the formal support for the principle of sovereign equality.[24]

While the ideas of Alvarez about the existence of American international law provided the intellectual foundations for the creation of the AIIL, Scott, as Secretary-General of the CEIP, was the administrative leader and financial supporter of the organisation and, as such, defended a US-led approach to American international law and its codification. Scott´s US-led approach was well epitomised in the Declaration of the Rights and Duties of Nations he elaborated during the first formal meeting of the AIIL. Scott also advocated the creation of an international court of justice based on the domestic model of the US Supreme Court and prepared the project presented by the US delegation at the Second Hague Peace Conference (1907) that proposed such an undertaking.[25] In a similar vein, Scott´s Declaration of the Rights and Duties of Nations drew on the US Declaration of Independence, for it defended the principles of 'sovereign equality' and the 'natural rights of individuals.' He affirmed that the implications and scope of the US Declaration of Independence extended beyond the domestic confines of the US, since "the Government of the United States not only recognizes these rights, in so far as its citizens are concerned but

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23 James Brown Scott, *The American Institute of International Law: Its Declaration of Rights and Duties of Nations* (The American Institute of International Law 1916) 107–108.

24 Scarfi, *The Hidden History* (n 3) 33.

25 James Brown Scott, *The Status of the International Court of Justice* (Oxford University Press, 1916) 66.

that it insists that governments in American countries in which the United States has influence shall secure to the people thereof the protection and enjoyment of these rights".[26] Scott also referred to the US right to intervene in Cuba under the Platt Amendment, which "reserved the right to intervene in Cuba not only for the preservation of Cuban independence but for the maintenance of these specified rights", that is, the individual rights of the human person.[27] He was convinced that the US should maintain the right of intervention in Cuba to protect these important individual rights, invoked and safeguarded by the US Declaration of Independence.

15 Alvarez played a leading role in the preparations and initial elaboration of the AIIL projects for the codification of American international law. He believed that codification had to be undertaken through a gradual and progressive adaptation of legal principles to the transformations of international society. However, unlike Scott, who sought to maintain some scope for US interventions as a mechanism to safeguard individual rights, Alvarez advocated in the preliminary codification projects presented before the Fourth Pan-American Conference of 1923 a moderate approach to the principle of non-intervention. While he considered non-intervention as the basic standard of American international law, he regarded multilateral 'collective interventions,' and other exceptional forms of interference as acceptable on solidaristic grounds.[28] Alvarez thus stated:

> "No State may intervene in the external or internal affairs of another American State, against its own will. The only interference that these could exert is amicable and conciliatory, without any character of imposition."[29]

16 As a result of this stance, Alvarez sought to create collective mechanisms of social solidarity among the members of the international community in the Americas to protect individual rights. As such, he also put forward in his draft code, pioneering human rights aspirations for the Americas, invoking the notion of "international rights of individuals and international associations". According to him, such international individual rights included,

26 Scott, *The American Institute* (n 19) 26.
27 Ibid 26.
28 Stephen C. Neff, *Justice among Nations: A History of International Law* (Cambridge, MA: Harvard University Press, 2014) 292.
29 Alejandro Alvarez, *La codificación del derecho internacional en América: trabajos de la tercera Comisión de la Asamblea de Jurisconsultos reunida en Santiago de Chile* (Imprenta Universitaria, 1923) 98.

among other things, the inviolability of property, the right to enter and reside in any part of the territorial jurisdiction of another State, the right to associate and meet, the rights to liberty of press, consciousness, religion, commerce, navigation and industry, the rights of foreigners to be protected by the national tribunals of their country of residence and the rights of States to protect their nationals when their rights have been affected.[30]

Yet Scott´s approach to the codification of American international law 17
was sharply distinct from that of Alvarez. Scott advocated a US-centric and elitist posture and considered that codification had to be performed pragmatically by an enlightened and small elite of legal experts. In contrast, Alvarez regarded that codification had to be gradual and progressive and based on a synthesis between the US and Latin American legal traditions. The original projects prepared by Alvarez were revised by the Executive Committee of the AIIL and presented before the Pan-American Union in 1924 to be discussed later at the Second Rio de Janeiro Commission of Jurists (1927) and the Sixth Pan-American Conference scheduled to be held in Havana in 1928. These initial projects consisted of a hybrid mix of the contradictory legal approaches to codification advocated by Scott and Alvarez and, as such, they combined a moderated approach to the principle of non-intervention, as advocated by Alvarez, with the Declaration of the Rights and Duties of Nations elaborated by Scott in the first official meeting of the AIIL. The first two articles of Scott´s Declaration established limitations to the principle of non-intervention as well as the sovereignty and independence of States, which resulted in a commitment to not violate the rights of other nations. This complex combination of contradictory principles created tensions between the principle of non-intervention and the respect for certain rights of other nations and eventually stimulated the politicisation of the question of intervention at the Rio de Janeiro Commission and the Havana Conference in the years to come.

30 Ibid 99–101.

IV. The Politicisation of International Law in the Americas, the Montevideo Convention and the Institutionalisation of inter-American Multilateralism

18 The deliberations over the codification of American international law promoted by the AIIL at both the Rio de Janeiro Commission of Jurists and the Havana Conference led to a series of controversial debates over the question of intervention among a diverse set of jurists and diplomats across the Americas, generating the continental politicisation of American international law.[31] Outside the microcosm of the AIIL, a group of anti-imperialist jurists advocated and began to popularise a Latin American radical anti-interventionist posture on the grounds of a legal critique of the Monroe Doctrine and the Pan-American movement, leading to a robust and lasting anti-imperialist legal tradition in Latin America.[32] The Mexican Isidro Fabela and the Cuban Emilio Roig de Leuchsenring were two of the most prominent figures associated with this approach. Although legal anti-imperialist and critical attitudes towards the Monroe Doctrine and the emerging Pan-American movement in Latin America were not completely new and both Quesada and Roque Sáenz Peña, among others, proved to be precursors of this approach, the insertion of a reference to the Monroe Doctrine in the Covenant of the League of Nations reinforced and expanded legal anti-imperialist critiques of the Monroe Doctrine and anti-interventionist postures among jurists, diplomats, public intellectuals and even political movements across the Americas in the 1920s. The debate over intervention at the Rio de Janeiro and Havana conferences generated a confrontation and eventually a politicisation of international law between the leaders and main figures of the AIIL and other advocates of a US-led Pan-American approach to American international law and this anti-imperialist legal posture, which was in favour instead of a regional and defensive notion of Latin American international law. These tensions softened and were eventually resolved at the Montevideo Convention of 1933 when the principle of non-intervention was consolidated in the Americas along with inter-American multilateralism.

31 Juan Pablo Scarfi, 'The Latin American politics of international law: Latin American countries' engagements with international law and their contradictory impact on the liberal international order,' (2022) *Cambridge Review of International Affairs* 662.

32 Juan Pablo Scarfi, 'Denaturalizing the Monroe Doctrine: The Rise of Latin American Legal Anti-imperialism in the Face of the Modern US and Hemispheric Redefinition of the Monroe Doctrine,' (2020) *LJIL* 541.

In the context of the Rio de Janeiro Commission, the adherence and 19
allusion to some basic principles outlined in Scott´s Declaration of the Rights and Duties of Nations, which were included in the projects prepared by Alvarez and revised and presented by the AIIL before the Pan-American Union, were finally eliminated. At the same time, the moderate declaration on non-intervention introduced by Alvarez was modified along the lines of a declaration on absolute non-intervention. The Costa Rican jurist Luis Anderson, then Treasurer of the AIIL, presented a revised proposal in defence of strong adherence to non-intervention where he stated: "No State could intervene in the internal affairs of another"[33] Anderson´s proposal was fervently received with a "burst of applause from all over the continent".[34] His approach to absolute non-intervention was in line with the legal anti-imperialist posture of other jurists who withdrew from the AIIL's efforts to codify international law, including Fabela, Roig de Leuchsenring and Argentine jurist Carlos Saavedra Lamas, the latter of which played a leading role at the Montevideo Convention. In contrast, Scott voiced strong reservations regarding the final version of the article on non-intervention, arguing that two exceptions had to be made, namely on the grounds of 'reasons of humanity,' that is, humanitarian grounds, and 'self-defence'.[35] Scott referred once again to US humanitarian interventions in Cuba and thus justified the Platt Amendment as a legitimate principle of international law.[36] These sharp differences between the politicised anti-interventionist postures advocated by Anderson, Fabela, Roig de Leuchsenring and Saavedra Lamas, and the humanitarian approach of Scott generated even more tensions at the Havana Conference in 1928.

In a clear attempt to politicise the debate over US interventions and 20
the implications of the Monroe Doctrine and Pan-Americanism for Latin America, Fabela sent a message to the Latin American delegates in the context of the preparations for the Havana Conference. He urged them

33 'International Commission of Jurists (Sessions held at Rio de Janeiro, Brazil, April 18th to May 20th, 1927), Public International Law: Projects to be Submitted for Consideration of the Sixth
International Conference of Americas States,' (1927) *AJIL* (Special Number) 240.

34 Camilo Barcia Trelles, *Doctrina de Monroe y cooperación internacional* (Editorial Mundo Latino 1931) 698.

35 Víctor M. Maúrtua, *Páginas diplomáticas: La codificación americana del derecho internacional (Ensayos, proyectos, discursos)* (Librería e Imprenta Gil, 1940) 364.

36 *Comisión Internacional de Jurisconsultos Americanos, Reunión de 1927*, Vol. I (Imprenta Nacional, 1927) 262.

to defend Latin-Americanism against Pan-Americanism and to generate a broader debate over US interventions in Latin America as well as the meaning and scope of the Monroe Doctrine. Unlike Alvarez, Fabela regarded that constantly redefining the meaning and scope of the Monroe Doctrine was especially problematic for weak Latin American States. Fabela encouraged the Latin American delegates to openly raise the following questions at Havana: "1) Is Pan-Americanism compatible with the interventions carried out by the United States in some of the nations of the continent?; 2) What is the meaning and scope of the Monroe Doctrine?; 3) Does the Monroe Doctrine suit and bind Latin Americans?; 4) Should Pan-Americanism persist or should be replaced by Latin-Americanism?"[37] In contrast, at the Havana Conference, the Peruvian jurist Victor Manuel Maúrtua, strongly aligned with Scott´s humanitarian posture when he presented a controversial project in defence of the principle of US humanitarian interventionism in Latin America to protect US citizens and property located abroad. In fact, Maúrtua sought to reintroduce the Declaration of the Rights and Duties of Nations elaborated by Scott, which had been eliminated at the Rio de Janeiro Commission of Jurists in 1927. Maúrtua believed that Scott´s formula of 1915 was more advanced than that proposed twelve years later in Rio de Janeiro because it was legitimised among the small and selected epistemic community of international lawyers, that is, the Executive Committee of the AIIL. The project presented by Maúrtua was vehemently resisted by the delegates from Argentina and El Salvador, Honorio Pueyrredón and Gustavo Guerrero, who assumed a politicised and anti-imperialist posture similar to that of Fabela, Roig de Leuchsenring and Saavedra Lamas. They contrasted their stance with the technocratic legalist views of Maúrtua in defence of the legitimacy of the AIIL Declaration.

21 In a similar vein, Maúrtua drew a sharp distinction between what he regarded as a "battle formula", associated with "political gestures" in defence of non-intervention, and "a juridical formula, frank, serene, expressive of what we estimate it should be on the basis of universal international law", as epitomized by the AIIL Declaration[38] This latter declaration stressed the need to protect the lives and properties of US citizens located in Latin American countries. Maúrtua questioned the principle of absolute non-intervention on the grounds of an argument in favour of interdepend-

37 Isidro Fabela, 'A los señores Delegados Latinoamericanos' in I. Fabela, 'Los Estados Unidos y la América Latina (1921–1929),' (1955) *Cuadernos Americanos* 71.

38 Maúrtua (n 35) 119.

ence and solidarity.[39] Maúrtua´s legal approach was also very much engaged with the humanitarian and interventionist posture of Charles Evans Hughes, who served as the US delegate at Havana and famously advocated the US right to intervene in Latin America as a principle of international law.[40] Although it proved to be impossible to reach an agreement on a common code in Havana, unsurprisingly, Scott managed to replace Alvarez with Maúrtua as the new Secretary-General of the AIIL.

The politicisation of American international law at the Rio de Janeiro and Havana conferences was the culmination of such efforts, in the years that followed tensions and positions softened so that, in the Montevideo Convention of 1933, the principles of non-intervention, sovereign equality and statehood, as well as recognition by the US of the principle of absolute non-intervention, were all institutionalised. 'The Saavedra Lamas Anti-War Treaty of Non-aggression and Conciliation' had a profound impact on the agenda of the Montevideo Convention. As such, Carlos Saavedra Lamas played a leading role, both as the architect of the Anti-War Treaty and as one of the most prominent critics of US hegemony over the projects for the codification of American International Law that were being advanced by the AIIL and the Pan-American movement. The Anti-War Treaty was originally conceived as a South American treaty that emerged from the Chaco War (1932–1935) that started over a territorial dispute between Bolivia and Paraguay. The Anti-War Treaty was signed by Argentina, Brazil, Chile, Paraguay and Uruguay and was open to all the countries of the world. The treaty adhered to the principle of absolute non-intervention as a South American doctrine and, in Article 3, it stated: 22

> "Contracting States undertake to put forth their best efforts to maintain peace [and] will bring the influence of public opinion, but in no case resort to intervention, either diplomatic or military".[41]

In recognition of his contribution to the promotion of peace in South America during the Chaco War, Saavedra Lamas was the first Latin Americ- 23

39 Maúrtua (n 35) 95–96.

40 Charles Evans Hughes, 'Speech at the Last Plenary Session of the Sixth International Conference of American States, Havana, Cuba, 18th February, 1928,' in *Report of the Delegates of the United States to the Sixth International Conference of American States*, held at Habana, Cuba, January 16 to February 20, 1928 (Government Printing Office, 1928) 14–15.

41 Carlos Saavedra Lamas, *Tratado Antibélico de no-agresión y de conciliación* (Ministerio de Relaciones Exteriores y Culto, República Argentina, 1933) 4.

an jurist and politician to be awarded the Nobel Peace Prize in 1936. All in all, Saavedra Lamas proved to be a shrewd tactician, as seen by his putting the Anti-War Treaty before the League of Nations, which created some distance from the relative turmoil of the Pan-Americanism environment, and allowed the treaty to later be presented at the Montevideo Convention as a *fait accompli*.[42]

24 The Anti-War Treaty has tended to be considered as a South American extension of the Kellogg-Briand Pact of 1928, which famously sought to abolish the recourse to war as a solution to international disputes.[43] However, the treaty is better understood as an attempt to expand some of the implications of the latter by introducing legal principles long advocated by Latin American States, such as non-intervention and the right to self-defence. With regard to the Kellogg-Briand Pact, Saavedra Lamas stated that the Anti-War Treaty "seeks to strengthen it, introducing in its text some formal improvements", especially safeguarding the "inalienable" right to self-defence and the exclusion of any forms of intervention.[44] Moreover, the Anti-War Treaty was also rooted in an inclusive Latin American approach to international law and peace, distinct from that of Pan-Americanism, for it included all the different national legal traditions of the region. Indeed, it was framed as a regional South American and universalist project and was also presented to the League of Nations. Saavedra Lamas was especially distrustful of Pan-Americanism, for "it involves something of a bilateral expression of the inevitable differences between the Latin and Anglo-Saxon worlds".[45]

25 As a leading advocate of absolute non-intervention at the Montevideo Convention, Saavedra Lamas expanded the principles articulated in previous declarations at the Rio de Janeiro Commission of Jurists, consolidating it as a multilateral inter-American principle and contributed, in turn, to the derogation of the Platt Amendment. The consolidation of the principle of non-intervention and inter-American multilateralism also contributed to shaping the modern multilateral liberal international order beyond the Americas. Although he was not the first advocate of non-intervention,

42 Greg Grandin, 'Your Americanism and mine: Americanism and anti-Americanism in the Americas' (2006) *AHR*, 1055.

43 Oona Hathaway and Scott J. Shapiro, *The Internationalists: How a Radical Plan to Outlaw War Remade the World* (Simon & Schuster, 2017).

44 Saavedra Lamas (n 41) 17.

45 Saavedra Lamas (n 41) 14.

Saavedra Lamas amplified the scope of Anderson´s original proposal, which had condemned interventions in the internal affairs of another State, by extending this to also include the external affairs of other States.[46] Most of the Latin American delegations at the Montevideo Convention condemned US interventions and vehemently adhered to the principle of absolute non-intervention, especially the Argentine, Cuban and Mexican delegations. In fact, these three delegations categorically condemned the Platt Amendment and, following the Montevideo Convention, the US committed itself to respect the principle of non-intervention and consolidated the Good Neighbour Policy, which led to the derogation of the Platt Amendment in 1934 and the institutionalisation of inter-American multilateralism. This cascading series of events led to the progressive decline of US-led Pan-Americanism and the AIIL as an organisation based on a US-led approach to American international law. All in all, the consolidation of inter-American multilateralism in the 1930s, and its subsequent impact on the formation of global multilateral institutions associated with the liberal international order in the 1940s and 1950s, such as the OAS and the UN, coincided with the progressive decline of continental and regional approaches to both American international law and Latin American international law as well as the globalisation of international law as a specialised and more fragmented discipline.[47]

V. Conclusions

This essay examined the history of the disciplinary formation of international law in Latin America and the reception of European and US legal traditions, doctrines and diplomatic practices. Two important factors strongly shaped this process of disciplinary formation and the institutionalisation of international law in Latin America: the rise of US hemispheric hegemony in the Americas and its impact on the formation of a US-led continental approach to American international law through the AIIL. Furthermore, this process unfolded in an environment that saw the politicisation of American international law over the question of interventions in the context of the 26

46 Séptima Conferencia Internacional Americana, *Actas y antecedentes con el índice general* (Imprenta Nacional 1933) 122–123.

47 Arnulf Becker Lorca, 'International Law in Latin America or Latin American International Law? Rise, Fall and Retrieval of a Tradition of Legal Thinking and Political Imagination,' (2006) *Harvard JIL*, 47) 283–305

projects for the codification of American international law advanced by the AIIL.

27 Firstly, the chapter showed that the AIIL contributed to the inception of a US-led approach to American international law and framed the subsequent debates over US legal, political and diplomatic values and traditions, as manifested in the Monroe Doctrine, Pan-Americanism and the US Declaration of Independence. Moreover, the AIIL was inspired by the model of the ASIL and, as such, stimulated the creation of national societies of international law throughout the Americas. Secondly, the politicisation of international law and the development of the AIIL projects for the codification of American international law laid the foundation for the formation and consolidation of a regional anti-imperialist legal tradition that favoured absolute non-intervention and an alternative Latin American view of American international law. The growing tensions between these two opposing traditions culminated at the Montevideo Convention over the consolidation of the principles of non-intervention, statehood and sovereign equality, the institutionalisation of inter-American multilateralism, and the subsequent decline of a US-led approach to American international law and Pan-Americanism, as well as other regional Latin American legal approaches. This latter consolidation of the principle of non-intervention and inter-American multilateralism shaped and informed the formation of global multilateral institutions in the 1940s and 1950s where, arguably, the contributions to the formulation of the UN Charter, in particular Articles 2(7) and 2(84) are among the more prominent outcomes.[48]

Further Reading

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