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Historical Origins of the International Law Doctrines in Latin America (19th–20th Centuries)[1]

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Abstract. The expansion of the community of Latin American states that achieved independence from their European colonizers was a new historical fact that contributed to the evolution of international law. The principles enshrined today in universal international legal acts were proclaimed on the basis of Latin American doctrinal thought and international diplomatic practice. International law is often viewed from a Eurocentric point of view, which means that little attention is paid to the influence of Latin American doctrine on the development of international law at the universal level. Therefore, it seems appropriate to shine a light on the issue of the contribution of Latin American states to the formation of international law and international legal consciousness.

The materials used for the study were the international legal norms of universal and regional nature, as well as the works of Russian and Latin American scholars. When writing the article, general and particular scientific methods were used, namely, deduction, induction, analysis, synthesis, and the historical method.

The article reveals the origins of the doctrines of international law developed by influential Latin American lawyers, statesmen and political figures in the 19th–20th centuries. These doctrines had a significant impact on the formation and development of international law both in Latin America and in the world as a whole, and influenced the development of positions of Latin American states in the international arena.

The article substantiates the conclusion that modern international law must be considered with due account of the significant contribution of Latin American states to its evolution at the universal level. It also reveals the interconnection of the principles in the doctrines of Latin American lawyers and state figures that were included in the system of international law at the universal level.

Keywords: doctrine; international law; Latin America; treaties; institutions; principles; use of force; non-interference in the internal affairs of states; recognition of governments

[1] English translation from the Russian text: Golubeva M. M. 2023. Istoricheskie istoki doktrin mezhdunarodnogo prava v Latinskoy Amerike (XIX–XX vv.). *Moskovskiy Zhurnal Mezhdunarodnogo Prava* [Moscow Journal of International Law]. No. 2. P. 63–76. https://doi.org/10.24833/0869-0049-2023-2-63-76

Introduction

Throughout its history, international law has developed and experienced numerous evolutionary stages under the influence of objective reality and doctrinal concepts. One of the least studied areas in Russian legal science in this respect is the contribution of international legal doctrines developed in Latin America.

Latin America was long the colonial territory of Spain, Portugal and other European countries. However, as early as the late 18th and early 19th centuries, several countries on the continent had started to declare their status as independent subjects in the intercourse among states. The countries of Latin America, having become subjects of international law after securing their status as independent states following the collapse of the colonial system, were faced with the need to adapt to the existing international legal order, cognizant of their own international legal interests, and to develop unique approaches to this order. The need to develop foreign political and international legal steps would involve applying the doctrines formulated and put forward by Latin American lawyers, statesmen and politicians.

The first foreign policy doctrines were developed at a time when states were emerging and expanding, and they were subsequently used as the international legal basis for the relations of these states among themselves, and with third countries. The main ideas behind this were "independence and autonomy" (Menezes 2010: 24), non-interference in the internal affairs of other states, the non-use of force, the equality of all citizens (foreign and national), and so on. Many of these ideas appeared and were originally developed in Latin America – earlier than in Europe, and before they were enshrined in the UN Charter.[2] This confirms the primacy of Latin American countries in the formation and development of many of the principles and institutions of modern international law.

The earliest example of a group of Latin American states with a common civilization view on future relations coming together on multilateral basis was the first ever regional conference held in Latin America – the Congress of Panama (the Amphictyonic Congress) of 1826, which resulted in the "Treaty of Union, League, and Perpetual Confederation" that envisioned the unification of the Ibero-American peoples from Mexico to Chile and Argentina. The preamble to the Treaty states that the parties "desire to strengthen the intimate relations that currently exist, and to consolidate in a more formal and stable manner those relations that must exist henceforth between each and every State, as appropriate for Nations of a common origin…"[3]

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[2] See: United Nations Charter. URL: https://www.un.org/en/about-us/un-charter/full-text (accessed: 25.04. 2023).

[3] The only country to ratify the Treaty was Gran Colombia (1837), and it never entered into force. See: Tratado de Unión, Liga y Confederación Perpetua entre las Republicas de Colombia, Centro America, Perú y Estados Unidos Mexicanos, 15 de Julio de 1826 (Congreso de Panamá, 1826). URL: https://www.dipublico.org/12355/tratado-de-union-liga-y-confederacion-perpetua-entre-las-republicas-de-colombia-centro-america-peru-y-estados-unidos-mexicanos-15-de-julio-de-1826-congreso-de-panama-1826/ (accessed: 22.04.2023).

The Treaty was the first international legal act in South America to affirm sovereignty and independence, as well as human rights, in the legal understanding that was characteristic of that historical period: most notably, it proclaimed the abolition of slavery. This marked the beginning of the dynamic development of international legal institutions with a Latin American flavor. For example, there emerged norms and institutions regarding the peaceful resolution of disputes between states, and the principles of non-interference in the domestic affairs of states and the right of peoples to self-determination were developed. Scientific, legal and political doctrines and concepts were pivotal in the emergence of new norms and institutions of international law and in the development of regional treaties. These included the Calvo Doctrine, the Drago Doctrine, the Tobar doctrine, and others (Menezes 2010: 142). These doctrines, which originated from the foreign policy diplomacy of Latin American states, were in large part a protest against the aggressive actions of European states and a way to contain the rapid expansion of the Union States, which, having proclaimed its Monroe Doctrine (1823), declared its own claims of dominance over the Latin American continent (Villarroel Peña 2011: 114, 117).

International legal scholars in Latin America emphasize the contribution that legal developments on the continent made to the evolution of international law at the global level, not only through the most advanced concepts of international law, but also through resolutions adopted at international conferences of American states in the late 18th century – before the First Hague Peace Convention of 1899.[4] Provisions and norms at the regional level are reflected in acts at the universal level. According to Latin American legal scholars, advanced elements of various kinds of doctrines in Latin America were included in the Second Hague Peace Conference, and in the middle of the 20th century in the formulation of the fundamental principles of international law enshrined in the UN Charter,[5] which effectively acts as the constitution of the modern world community. The Convention on private international law was adopted in 1928 and included an annex entitled the Code of Private International Law – the Bustamante Code (Erpyleva, Getman-Pavlova, Kasatkina 2021: 206).[6] Thus, Latin American states were ahead of many European countries in the codification of private international law, having set these processes in motion back in the 1850s.

[4] See: Scott J. B., ed. 1915. *The Hague Peace Conventions and Declarations of 1899 and 1907 accompanied by Tables of Signatures, Ratifications and Adhesions of the Various Powers and Texts of Reservations.* New York: Oxford University Press. P. 303.

[5] Ibid.

[6] See: Convención–Derecho internacional privado (VI Conferencia Internacional Americana, La Habana – 1928). URL: https://www.dipublico.org/14283/convencion-derecho-internacional-privado-sexta-conferencia-internacional-americana-la-habana-1928/ (accessed: 25.04.2023).

The Calvo Doctrine and the Principle of Non-Interference

The principle of non-interference lays the foundation of many of the earliest Latin American doctrines that underlie international legal consciousness in Latin America. One of the first appeals to the principle of non-interference in Latin America came in the 19th century in the form of the doctrine developed by the Argentinian diplomat and international lawyer Carlos Calvo and put forward in his 1868 work *Derecho Internacional teórico y práctico de Europa y América*[7] (Calvo 1868: 134–188). The idea of non-interference in the internal affairs of states was considered on the context of the equality of rights among citizens and foreigners. In practice, the "foreigner problem" referred exclusively to "foreign investors," and the Calvo Doctrine proposed to prohibit, at the level of international treaties, diplomatic protection for citizens (investors) of partner states in order to prevent foreign countries from interfering in Argentina's domestic affairs under the pretext of diplomatic protection for foreign investors in the country. This meant that disputes arising in the country involving foreign investors were an internal matter of the host state. And such a dispute should not acquire an international character until all local remedies have been exhausted (Mamedov 2021: 68–69). Private claims and the corresponding decisions of domestic courts should not give rise to foreign intervention. The led to the conclusion that national law takes precedence when regulating relations between citizens and foreigners, and this extended to investment relations, judicial proceedings and the execution of court decisions.

Another important aspect of the Calvo doctrine that is also tied to the establishment of the principle of non-interference in the internal affairs of other countries was the position regarding private debts of citizens to foreigners, who were almost always from Europe: the collection of a debt cannot be a basis for armed intervention by a foreign state in order to protect the interests of creditors; the host state cannot, and should not, be held liable for losses incurred by foreign creditors, including in cases of civil war or revolution. Calvo saw a connection between the intervention/non-intervention and the idea of equality, which ultimately led to the principle of the sovereign equality of states, no matter how strong or weak they may be. The Calvo doctrine has become firmly entrenched in international legal consciousness, having been enshrined in the framework of Pan-American conferences and written into various legislative acts of Latin American States.

The prominent Mexican international legal scholar César Sepúlveda notes the need to distinguish between the concepts of the Calvo doctrine as an ideological basis for the formation of a foreign policy position and the so-called "Calvo Clause" – a legislative provision in the relevant internal acts of Latin American states. Sepúlveda identifies three types of Calvo clauses (Sepúlveda 2009: 247–255). The first is when the

[7] *International Law of Europe and America in Theory and Practice.*

law provides that the state does not impose on foreigners more duties and responsibilities than are provided for by the constitution and laws, particularly in cases of civil unrest. This includes provisions stipulating that foreigners filing civil complaints cannot have greater remedies than nationals, and that foreigners may only seek diplomatic assistance in the event that they are denied proper recourse to justice in the host state. It is important to note here that these provisions paved and expanded the way for the principle of legal equality of aliens in private international law

The second type of robust legal provision based on the Calvo Doctrine concerns the exhaustion of local remedies. At the core of these provisions is the concept that foreign citizens are required to exhaust all legal remedies provided for by the laws of the host country before applying for diplomatic protection. A similar rule is typically found in agreements between foreign individuals (investors) and the government of the host country.

The third type of "Calvo Clause" concerns the refusal of a foreign private person (typically an investor) to turn to his or her native country for protection. Provisions of this nature are usually included in the respective agreement with the foreign private person (Mendoza Bremauntz et al. 2010: 43–45). As we can see, all of these Calvo clauses ensure the priority of domestic law in relations of an international character. It is this aspect – the relationship between national legislation and the norms of international law regulating relations of an international character – that can be considered the quintessence of the Calvo Doctrine, and ultimately the contribution of Latin American legal consciousness to the scientific development of a number of institutions and principles of international law.

At the Second Hague Peace Convention in 1907, the Brazilian statesmen Rui Barbosa stressed the importance of the Calvo Doctrine (Cançado Trindade, Moreno 2003a: 40). According to Barbosa, the Doctrine contributed to the formation of a common vision based on mutual respect and the principle of non-interference in domestic and international affairs. He drew attention to the fact that it plays an important role in protecting the rights of the weakest (and we would add that this brings it closer to the idea of ensuring justice in international relations, a concept that is reflected in Russian legal consciousness).

The Calvo Doctrine "built a bridge" towards a broad understanding of equality – from the equality of rights of citizens and foreigners to the equality of rights of states. It also connected two principles: the principle of non-interference and the principle of the equality of national and foreign citizens, which anticipated the norm of the Declaration on Principles of International Law (1970)[8] establishing the interconnectedness of all modern principles of international law.

[8] See: Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations of October 24, 1970. URL: https://www.un.org/ru/documents/decl_conv/declarations/intlaw_principles.shtml (accessed: 20.04.2023).

The Drago Doctrine and the Principle of the Non-Use of Force

The principle of non-intervention was also associated with the doctrine of another respected Latin American lawyer and statesman, Minister of Foreign Affairs of Argentina Luis María Drago, who was a follower of Calvo. Drago condemned the bombing of the Venezuelan coast in 1902 by European states as a sanction for failing to repay its public debt, and thus supported the idea of the non-use of force on financial grounds, considering this a deviation from the principle of the equality of states. His note argued that public debt cannot serve as a reason for armed intervention, much less military occupation of the lands of the American peoples by European states. This position formed the basis for all subsequent foreign policy actions and international legal relations of Latin American countries (Drago 1906: 9–26).

The Drago Doctrine was in one way or another connected with the American Monroe Doctrine (1823), in which the United States declared that any attempt by Europe to restore its power over Latin American countries would be interpreted as a threat to U.S. security and a violation of its vital interests.[9] In this context, the Monroe Doctrine initially meant support for fledgling Latin American states that had recently gained independence from the European metropolises, and helped counter possible attacks by the Holy Alliance countries on former Spanish and English territories in the Caribbean. Over time, the policy and practice of implementing the Monroe Doctrine transformed into open expansion in Latin America: in 1904, U.S. President Theodore Roosevelt proclaimed the right of the United States to invade Latin American states to restore law and order and crack down on lawbreakers (Tah Ayala 2021: 181–183). The United States thus legalized its claim to dominance in Latin America. There was a clash of ideas and civilizational values between the nascent hegemon with its Pax Americana doctrine and a group of underdeveloped countries that had doctrinally enshrined the principle of non-interference of states in each other's internal affairs. In this context, the Drago Doctrine, based on the principle of non-intervention, directly opposed the Monroe Doctrine and U.S. expansion.

The Drago Doctrine was recognized by the vast majority of countries on the continent, and received further development at the Second Hague Peace Convention (1907). In terms of content, the doctrine dealt with the connection between the concepts of the non-use of force and non-interference in the affairs of states, on the one hand, and the issue of public debt – international debt collection law – on the other. The prohibition of the use of force as a means to collect public debt can be seen as the main norm in the international legal institution of international debt collection law. At the same time, American diplomacy attempted to weaken and soften the potential

[9] See: Monroe Doctrine. 1823. URL: https://www.archives.gov/milestone-documents/monroe-doctrine (accessed: 29.04.2023).

of the non-use of force doctrine in relation to the collection of public debt, proposing a convention that would allow the use of force in cases where the debtor state refuses to resolve the issue through arbitration or does not comply with the arbitral award.[10] The wording of the convention essentially boiled down to coercion, under the threat of force, to engage in arbitration and implement the decisions reached at such proceedings. In the broader context, this led to the legalization of the threat of force and non-military coercion, and, as a consequence to the neutralization of the original Drago Doctrine, which aimed to eliminate the possibility of the use of force under any circumstances.

Following heated discussions at the Fourth International Conference of American States in 1910, the participating states recognized international arbitration as a procedural mechanism for resolving disputes concerning compensation for material damage.[11] This marked the start of the active use of arbitration to resolve such disputes, and it remains a distinctive feature of the international relations practice of Latin American countries. In a certain sense, the Drago Doctrine involuntarily gave rise to a new international legal mechanism for resolving disputes – inter-state arbitration.

However, the idea of the non-use of force in its rigid doctrinal form was later discussed at the Inter-American Conference for the Maintenance of Peace in Buenos Aires (1936),[12] but it did not receive the necessary support, as it was considered a purely Latin American initiative. Only then did it make its way beyond the continent: first, it was enshrined in the Charter of the Organization of American States (Arts. 16–18);[13] and then the principle of the non-use of force was included in the UN Charter (Art. 2, para. 4) as the obligation to refrain from the threat or use of force against the territorial integrity of any state. It thus follows that one of the fundamental principles of modern international law can trace its origins to the Drago Doctrine (Lorences 2015: 3).

The history of international relations of Latin American states among themselves and with third countries reveals that there has always been a preoccupation with the international legal issues of the non-use of force, non-interference in internal affairs, and the equality of states, including in their interrelation. The principle of non-interference in inter-state affairs was consolidated in 1928 at the Sixth International Conference of American States in Havana, Cuba.[14] The Declaration of Principles adopted at the Eighth International Conference of American States in Lima, Peru, in 1938 proclaimed the illegality of the use of force as an instrument of national or international

[10] It was called the Porter Convention on the Limitation of the Employment of Force for the Recovery of Contract Debts.

[11] See: Fourth International Conference of American States. URL: https://books.google.td/books?id=gPLKoQEACAAJ&printsec=frontcover&hl=ru#v=onepage&q&f=false (accessed: 30.04.2023).

[12] See: Acta Final de Consolidación de la Paz – Buenos Aires. 1936. URL: https://www.dipublico.org/14960/acta-final-conferen-cia-interamericana-de-consolidacion-de-la-paz-buenos-aires-1936/ (accessed: 20.04.2023).

[13] See: Charter of the Organization of American States. URL: https://treaties.un.org/doc/Publication/UNTS/Volume%20119/volume-119-I-1609-English.pdf (accessed: 25.04.2023).

[14] See: VI Conferencia internacional americana Habana, 16 de Enero – 20 de Febrero de 1928. URL: https://www.dipublico.org/conferencias-diplomaticas-naciones-unidas/conferencias-inter-americanas/conf-inter-amer-1889-1938/sexta-conferencia-internacional-americana-habana-16-de-enero-20-de-febrero-de-1928/ (accessed 20.03.2023).

policy.[15] The Mexican Declaration adopted at the Inter-American Conference on Problems of War and Peace in 1945 reaffirmed the principle of the legal equality of states.[16] All this influenced the proclamation of the ban on war as an instrument of national policy.

It is just one step from the legal awareness of the non-use of force to the ideas of non-aggression, disarmament (Cançado Trindade, Moreno 2003b: 42) and the prevention of war in any form. It is no coincidence that Latin America was the first continent to declare itself a nuclear-weapons-free zone.[17] The Treaty of Tlatelolco set out the basic principles of a nuclear-free zone, which were later included in the corresponding wording of UN documents.

The Saavedra Lamas Treaty and the Condemnation of Aggression

There is an argument that it was Latin American statesmen and international lawyers who, from the very beginning, played the biggest role in the formation of the "legal awareness of non-aggression" and the opposition to war. At the very least, the contribution that the Latin American doctrine made to the development of the principles of the non-use of force and the prohibition of aggression cannot be denied. The multilateral Anti-War Treaty of Non-aggression and Conciliation, known as the Saavedra Lamas Treaty after the man who developed the treaty, Minister of Foreign Affairs of Argentina Carlos Saavedra Lamas, was signed in 1933.[18] The initiative was most likely influenced by events in Europe, where countries were eyeing Germany with suspension and anticipating the outbreak of war, signing non-aggression treaties of their own. The Saavedra Lamas Treaty became something of a Latin American version of the Pact of Paris,[19] condemning acts of military aggression, and establishing mechanisms for the diplomatic resolution of disputes, including disputes relating to the internal jurisdiction and constitutional foundations of the states involved, as well as of inter-state and even intra-state disputes in international courts (Menezes 2010:

[15] See: Declaración de los principios de la solidaridad de América (VIII Conferencia Internacional Americana, Lima – 1938). URL: https://www.dipublico.org/15744/declaracion-de-los-principios-de-la-solidaridad-de-america-octava-conferencia-internac-ional-americana-lima-1938/ (accessed: 20.03.2023).

[16] See: Declaración de México (Conferencia Interamericana sobre Problemas de la Guerra y de la Paz, Ciudad de México – 1945). URL: https://www.dipublico.org/106504/declaracion-de-mexico-conferencia-interamericana-sobre-problemas-de-la- guerra-y-de-la-paz-ciudad-de-mexico-1945/ (accessed: 20.03.2023).

[17] See: Treaty for the Prohibition of Nuclear Weapons in Latin America of 1968. URL: https://www.un.org/ru/documents/decl_conv/conventions/pdf/tlatelolko.pdf (accessed: 20.03.2023).

[18] See: Tratado antibélico de no agresión y conciliación (Pacto Saavedra Lamas). URL: http://www.oas.org/juridico/spanish/tratados/b-9.html (accessed: 24.04.2023). The Treaty was signed by Argentina, Brazil, Chile, Mexico, Paraguay and Uruguay, with Bolivia, Costa Rica, Honduras, Cuba, the Dominican Republic, Nicaragua, El Salvador, the United States, Venezuela, Peru, Colombia, Haiti, Guatemala, Panama, among other states not part of the continent, later acceding to it. The process of countries acceding to the Treaty concluded in 1936, and it was terminated in 1948.

[19] See: General Treaty for Renunciation of War as an Instrument of National Policy of 1928. URL: https://docs.cntd.ru/document/901786550?ysclid=li33ywekt4342903955 (accessed: 20.03.2023).

151–152). The reservations (exceptions) contained in the text negatively impacted the Treaty's significance, but this did not affect its status as one of the original sources of anti-war legal consciousness, despite the fact that it was not observed in practice.

Art. 1 of the Saavedra Lamas Treaty condemns wars of aggression and declares that the settlement of disputes or controversies of any kind must be carried out only by the peaceful means enshrined in international law. Art. 2 states that the parties do not recognize any territorial arrangement which is not obtained by pacific means, nor the validity of the occupation or acquisition of territories that may be brought about by force of arms. Under Art. 3, in cases of aggression, the parties involved must exercise the political, juridical, or economic means authorized by international law. States are required to make every effort for the maintenance of peace and adopt in their character, as neutral ones, a common and *solidary* attitude. Art. 4 contains the obligation of the parties to a dispute to submit to the conciliation procedure established by the Treaty, with certain exceptions related to the implementation of other treaties and constitutional norms of participating states. It is evident from the text of the Treaty that the law-makers developed its norms in accordance with those contained in the Pact of Paris (Ruda 1992: 31).

The condemnation, prevention and suppression of acts of aggression, in conjunction with the principle of the peaceful solution of disputes, which lie at the heart of the Saavedra Lamas Treaty, subsequently became a throughline of the UN Charter (Arts. 39, 41 and 42) and several other treaties at various levels. It also formed the basis of the London Convention Relating to the Definition of Aggression (1933),[20] and the UN General Assembly Resolution on the Definition of Aggression (1974).[21] The resolution emphasizes that "aggression is the most serious and dangerous form of the illegal use of force." Even so, no other norm in international law is violated more frequently than that on the non-use of force. And for decades the vast majority of international mechanisms for restoring peace remained indifferent to facts of aggression, primarily on the part of the United States and a number of European countries.

There is a certain contradiction in the modern international legal order between the institution of the non-use of force (including countering aggression) and the institution of ensuring the security of states (Farkhutdinov 2015: 34–38): ensuring national security (for example, in the case of self-defence) often entails the use of force; and the doctrines and real-life practice of states provide different jurisdictions for both the use of force in exceptional circumstances and the very principle of the use of force. This contradiction is similar to the contradiction between the principle of the right to self-

[20] See: London Convention Relating to the Definition of Aggression. URL: http://www.derechos.org/nizkor/aggression/doc/aggression89.html (accessed: 24.04.2023).

[21] See: UN General Assembly Resolution on the Definition of Aggression of December 14, 1974. URL: https://www.un.org/ru/documents/decl_conv/conventions/aggression.shtml (accessed: 25.03.2023).

determination of nations and the principle of the territorial integrity of states.[22] Both situations occurred with regularity in the history of Latin America, and the doctrines of Latin American scholars were formed as a protest to the aggressive practices of the United States on the continent – both with regard to the use of force (aggression), and with regard to issues of the self-determination of nations – while at the same time observing the principles of the equality of rights of states, non-interference in internal affairs, and the territorial integrity of the states of the continent. For this reason, the concepts of countering aggression enshrined in the Saavedra Lamas Treaty should be considered a valuable contribution of Latin American doctrines to international legal consciousness. The principles put forward by Carlos Saavedra Lamas are doctrinal in nature (Devés, Álvarez 2020: 229–230). His ideas echo, among other concepts, the doctrines of Luis María Drago and Carlos Calvo, which reflect the interconnectedness of the principles of the sovereign equality of states, non-interference, non-use of force, and maintaining international peace and security.

The Brum Doctrine and the Principle of Solidarity

Another idea connected with the international legal institution of countering aggression was born as a result of the history of the struggle of Latin American countries for independence and sovereignty as a consequence of the Bolivarian tenets. This was the idea of the solidarity of the peoples of Latin America in the face of external threats (which was understood primarily as threats from the United States and the European colonizers). In 1917, the Uruguayan Foreign Relations Minister, Baltasar Brum Rodríguez, faced with the consequences of the First World War, issued a ministerial note calling for ties of friendship among Latin American countries so that any external actions contrary to the principles and norms of international law perpetrated against an American country would be construed as an act of aggression against all of them, and would be met with an appropriate joint response. The provisions of this ministerial note were dubbed the "Brum Doctrine." According to Brum, the application of the principle of solidarity in foreign policy was to ensure that the ideals of justice and democracy were respected so that weaker states would not suffer from the unjust actions of stronger states.

Brum was a supporter of the Monroe Doctrine and the Pan-Americanism policy. He put forward the idea of creating an American League of Nations, which would be tasked with determining the illegality of external actions directed against Latin American countries and the United States, with appropriate joint response actions to be taken where necessary. The idea was for the American League of Nations, in which all member states would enjoy equal rights, to coexist with the League of Nations

[22] Aleksanian S. R. 2018. *The Principle of Equality and Self-Determination of Peoples in Modern International Law.* Doctoral dissertation, Moscow. P. 53 onwards.

by pursuing similar goals. Brum suggested that any kind of dispute arising between American states should be considered by a court of arbitration of the American League of Nations (Brum 1920: 31–32). However, the idea never came into being because the interests of the prospective organization did not align with those of the United States, which was not willing to give up its leadership as part of a unification project.

The significance of the Brum doctrine for Latin America was that it served as the starting point for the development of the principle of continent-wide protection, which would later be written into the Inter-American Treaty of Reciprocal Assistance (1947),[23] and the Charter of the Organization of American States (1948), as a fundamental principle for regulating inter-state relations. Interestingly, it would then be adopted in the NATO Charter (1949) in its oft-cited Art. 5.[24]

Thus, the principle of solidarity should be considered a locally and regionally significant principle of international law designed to safeguard the principle of the non-use of force and countering aggression in the understanding of countries affected by it. This principle has its roots in the doctrines and practices of Latin American states.

The Tobar Doctrine, Estrada Doctrine and the Recognition of Governments

The history of Latin America is the history of frequent changes of government, including violent coups. And each time the question that arose in inter-state relations concerned the status of the new government: Is it legitimate? How far do its powers extend? And so on… This led to the development of two related doctrines concerning the recognition of governments: the Tobar Doctrine (1907), devised by Minister of Foreign Affairs of Ecuador Carlos Rodolfo Tobar; and the Estrada Doctrine (1930), which was the brainchild of Genaro Estrada Félix, Secretary of Foreign Affairs of Mexico. Both doctrines remain relevant to this day.

The Tobar Doctrine deals with the issue of the legitimacy of governments and the prevention of upheavals in states. The Estrada Doctrine supplemented these ideas with the nuances of non-interference in internal affairs and the equal rights of states, and opposed the recognition of *de facto* governments that emerged as a result of constitutional coups. Carlos Tobar believed that a "revolutionary" government could not be officially recognized until a popular vote within the framework of the constitutional legal order was held. Change of government was thus associated with the notions of public order, human rights, and the constitutionality of foreign policy actions and events. The doctrine is also known as the "doctrine of democratic legitimacy" or the "doctrine of constitutional legitimacy." The tenets of the Tobar Doctrine are reflected in a letter

[23] See: Tratado Interamericano de Asistencia Recíproca. URL: https://www.iri.edu.ar/publicaciones_iri/manual/UltimaTanda/OEA/3.%20TIAR.pdf (accessed: 23.04.2023)

[24] See: The North Atlantic Treaty. URL: https://www.nato.int/cps/en/natolive/official_texts_17120.htm (accessed 23.04.2023).

sent by the stateman to the Bolivian Consul in Brussels in 1907 in which he argued that American states, in order to preserve their reputation and on the basis of humanitarian considerations, should indirectly intervene in the internal disputes of the states of the continent, at the very least through the non-recognition of governments that have come to power as a result of revolutions, which are inherently unconstitutional (Díaz de Zamora, Miró Colmenárez 2022: 129).

Tobar made a significant contribution to international legal consciousness, as is reflected in subsequent legal acts and norms, and was nominated for the Nobel Peace Prize for his efforts in 1909. The doctrine received institutional support following the signing of several agreements at the Central American Peace Conference in 1907 organized by the United States and Mexico, most notably through the creation of the first ever permanent Central American Court of Justice, which was to consider cases relating to human rights.

That same year, a number of Central American states (Costa Rica, Guatemala, Honduras, Nicaragua, and El Salvador) signed the Central American Treaty of Peace and Amity, which created a procedure for recognizing governments on the basis of constitutional legal orders and reforms. Art. 1 of the Additional Convention to the General Treaty directly states that the parties undertake "not to recognize a government that has come to power in one of the five republics as a result of a coup or revolution against a recognized government without the constitutional reform of a freely elected organ that is representative of the people.[25] The Agreement was replaced with a similar document at the Second Conference on Central American Affairs in 1923, with the above-quoted provision being repeated and expanded.[26] This confirmed the continuity of the principle and its firm entrenchment in international law. The Tobar Doctrine influenced the foreign policy and international legal position of the United States with regard to human rights (including the freedom of speech, religion, etc.) and the recognition of governments.

The Estrada Doctrine proclaimed in 1930 at a meeting of the League of Nations,[27] in turn, enshrined the idea that all peoples have the right to create and freely change their government, and thus does not require the recognition of other states to be considered legitimate. It is obvious that this idea was put forward as a response to the cases of external intervention that occurred in Latin American countries in response to changes of governments in critical situations (the 1910 revolution in Mexico was one such event). Estrada, for example, believed that the formal recognition of the new government in Mexico amounted to interference in the internal affairs of the country.

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[25] See: Tratado general de paz y amistad 1907. URL: http://legislacion.asamblea.gob.ni/Instrumentos.nsf/bde7f9f0e2863496062578b80075d822/c2b0cbf6813f6eb6062577c7005b89d5/$FILE/1907%20Tratado%20general%20de%20Paz%20y%20Amistad.pdf (accessed: 17.05.2023).

[26] See: Pactos de Washington 1923. Tratado general de paz y amistad. URL: https://www.sica.int/cdoc/publicaciones/union/pac_28051927.pdf (accessed: 17.05.2023).

[27] See: Natalicio Genaro Estrada. URL: https://www.gob.mx/epn/articulos/natalicio-genaro-estrada?idiom=es (accessed. 15.05.2023).

The Estrada Doctrine has two components: the emphasis on non-intervention and the rejection of the practice of recognizing governments that come to power through unconstitutional means. At the same time, Estrada elevates the issue of the self-determination of peoples – in this case, self-determination refers to the right to create governments and other public authorities.[28] Thus, in this respect, Latin American international legal thought and practice had a huge influence on the formation and development of many well-known norms and principles of international law.

The Larreta Doctrine and the Principle of Non-Intervention

Uruguayan Foreign Minister Eduardo Rodriguez Larreta would go on to expand upon the ideas of human rights protection, especially during periods when the constitutional order has been violated (1945). In a doctrinal note entitled "The Parallel between Democracy and Peace: The International Defence of Human Rights. Collective Actions in Defence of these Principles," which he sent to all the states of Latin America, Larreta argued that governments that have come to power through revolutionary means should not be recognized, and that collective intervention should take place in such states in order to restore constitutional order. Larreta proposed that the countries should discuss the possibility of multilateral action against any regime violating elementary human rights (Álvarez 2021: 249). In his opinion, the consequences and lessons of the Second World War revealed the relationship between democracy and peace, and the principle of non-intervention cannot serve as a cover for the violation of human rights and regional agreements developed earlier at inter-American conferences. With this in mind, multilateral collective action taken, after extensive consultations, against illegitimate regimes is an entirely acceptable and necessary course of action, even if these regimes do not pose a threat to peace and have not committed acts of aggression. Larreta proposed, in appropriate cases, to "exchange views" with the aim to implementing joint actions based on "fraternal prudence" to ensure democratic principles and freedoms in the countries in question. This approach made it possible to cover up interventionist actions with beautiful words about democracy. In essence, the Larreta doctrine proposed to limit the principle of non-intervention and was thus not accepted by the majority of states on the continent (Cerrano 2019: 2). What is more, it can be assumed that, behind-the-scenes, some aspects of the doctrine were put forward by the United States, as a number of them would later by used as part of the country's foreign policy practice and international legal argumentation – it is, of course, quite typical of Washington to hide its interests and violations of international law behind "noble causes." However, the Latin American countries have maintained doctrinal unity within their own civilizational framework for the benefit of the progressive development of international law and order.

[28] See: Palacios Trevino J. La doctrina Estrada y el principio de la no intervencion. URL: https://diplomaticosescritores.org/obrasADE/DOCTRINAESTRADA.pdf (accessed: 26.05.2023)

Conclusion

Our study of the doctrinal features of the international legal consciousness of Latin America allows us to conclude that the countries of the region represent, in a sense, an independent community of states bound by certain civilizational values, including common approaches to international law (Shumilov 2014: 46–48). The international legal consciousness of Latin American states is deeply rooted in their unique history, including the colonial past and post-colonial internal conflicts, coupled with the interference of European countries and the United States.

Our excursions into the doctrines in this paper have revealed that the greatest international legal values for this group of states are the ideological foundations of and the international legal positions on the strengthening of sovereignty; the constitutional foundations of the domestic legal order; the rights of states to independently form governments and other authorities; the general principles of inter-state coexistence – namely, the inadmissibility of interference in the internal and external affairs of the countries of the region, equal rights, the non-use of force, and the prohibition of aggression; solidarity in fighting aggression and interference; and human rights protection. All these ideas were considered and developed systematically and comprehensively, in an interconnected manner, and were subsequently codified in the Declaration on Principles of International Law, as well as in many regional and universal treaties. They also gave rise to the development of many institutions of international law. Thus, the Latin American continent, as a regional community of states, demonstrates its contribution to the progressive development of international law. It is also worth noting the ways in which doctrinal norms have been translated into practice: first announced through diplomatic notes, they were then established at regional conferences and enshrined in regional international treaties.

However, there is another aspect to the promotion of doctrines, and that is their academic evaluation and presentation through the lens of international law in scholarly works. The Latin American school of international legal scholarship is also known for its originality, and names such as Eduardo Jiménez de Aréchaga (Jiménez de Aréchaga 1983). However, a study of the scientific understanding of the Latin American school of international law would be better suited for another paper.

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