

INTERNATIONAL SECURITY IN THE WESTERN HEMISPHERE: LEGAL AND INSTITUTIONAL DEVELOPMENTS

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1. INTRODUCTION

Since September 2001, after the terrorist acts committed in the United States, a wider debate has developed on the concept of security in the American Continent. Recent developments are the result of a series of multilateral initiatives that took place during the 1990s and will be the main object of our analysis in the present article. The end of the Cold War favoured new proposals that were introduced with the aim of providing some changes in the security framework of the Western Hemisphere. The Organisation of American States (OAS) and the Inter-American Treaty for Reciprocal Assistance (the Rio Treaty) –the continental mechanism for dealing with defence issues– have been the object of new attention and reform proposals.

The debate concerning the concept of security has identified new security threats and mechanisms, but it is not restricted to the Western Hemisphere. During the 1990s, NATO endorsed a series of documents concerning the definition of its security policy¹. The European Union adopted its “Euro-

* The author wishes to thank Professor Nigel D. White for comments on the initial draft of this article.

1. The documents include “The London Declaration” (6 July 1990), available at <<http://www.nato.int/docu/comm/49-95/c900706a.htm>>, “The Rome Declaration” (8 November

pean Security Strategy” in 2003². The United Nations (UN) presented two policy and reform-oriented documents, “A More Secure World: Our Shared Responsibility”³, and “In Larger Freedom: Towards Development, Security and Human Rights for All”⁴. Most recently, the Organisation for Security and Co-operation in Europe (OSCE) has issued a new policy document including proposals for reform⁵. These documents introduce either a wider concept of international security or new links between different security issues. They call for a greater co-operation not only among States, but also among international organisations to deal with international threats to security. They also raise fundamental issues regarding the relationship between the UN, as the universal security organisations, and regional organisations in the wider area of security to ensure international peace.

The concept of collective security is considered a “term of art” and it has been used in a well defined context⁶. International security and collective secu-

1991), available at <<http://www.nato.int/docu/basicxt/b911108b.htm>>, “The Madrid Declaration” (8 July 1997), available at <<http://www.nato.int/docu/pr/1997/p97-081e.htm>>, “The Alliance’s Strategic Concept” (24 April 1999), available at <<http://www.nato.int/docu/pr/1999/p99-065e.htm>>, and the “Prague Summit Declaration” (21-22 November 2002), available at <<http://www.nato.int/docu/pr/2002/p02-127e.htm>>. See also Lionel PONSARD, “The dawning of a new security era?”, NATO Review (Autumn 2004), available at <<http://www.nato.int/docu/review/2004/issue3/english/art3.html>>, and Lord Robertson, “Change and continuity”, NATO Review (Winter 2003), 2-6, available at <<http://www.nato.int/docu/review/2003/issue4/english/art1.html>>.

2. Javier SOLANA, “A Secure Europe in a Better World: European Security Strategy”, Paris: EU Institute for Security Studies, December 2003. See Gerrard QUILLE, “The European Security Strategy: A Framework for EU Security Interests?”, *International Peacekeeping*, vol. 11, n° 3 (2004), pp. 422-438.

3. UN, High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, UN doc. A/59/565, 2 December 2004. Gwyn PRINS, “Lord Castlereagh’s Return: the Significance of Kofi Annan’s High Level Panel on Threats, Challenges and Change”, *International Affairs*, vol. 81, n° 2 (2005), pp. 373-391; Marco ODELLO, “Commentary on the United Nations’ High Level Panel on Threats, Challenges and Change”, *Journal of Conflict and Security Law*, vol. 10, n° 2 (2005), pp. 231-262.

4. UN, Secretary General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, UN doc. A/59/2005, 21 March 2005.

5. OSCE, *Common Purpose: Towards a More Effective OSCE*, Final Report and Recommendations of the Panel of Eminent Persons on Strengthening the Effectiveness of the OSCE, 27 June 2005; see, Marco ODELLO, “Thirty Years After Helsinki: Proposals for OSCE’s Reform”, *Journal of Conflict and Security Law*, vol. 10, n° 3 (2005), pp. 435-449.

6. See Nigel D. WHITE (ed.), *Collective security law*, Aldershot, Ashgate/Dartmouth, 2003; George W. DOWNS and Keisuke IIDA, “Assessing the Theoretical Case against Collective Security”, in George W. DOWNS (ed.), *Collective Security beyond the Cold War*, Ann Arbor, The University of Michigan Press, 1994; Oscar SCHACHTER, *International Law in Theory and Practice* (1991), chapter XVII; Inis CLAUDE L., *Swords into Plowshares: The Problems and Progress of International Organization*, 4th ed., New York, Random House, 1971, chapter 12.

rity in particular, had acquired a clear definition in international law, mainly related to the collective action by States “designed to defuse situations that endanger the peace or to combat threats to and breaches of the peace”⁷. Kelsen’s definition foresees a mechanism created to protect “the rights of States” and “a reaction against the violation of the law, [which] assumes the character of a collective enforcement action”⁸. This narrow definition of collective security would mean “quite specific joint efforts by governments to maintain peace, prevent conflicts, and form alliances against an outlaw state”⁹. This is the main function of the UN under Chapters VI and VII of the Charter¹⁰.

But this concept seems too limited to deal with contemporary threats, such as terrorism, organised crime, pandemics, environmental degradation, migration, etc. Actually, the narrow interpretation could be considered in part as a result of the cold war, when great attention was placed on inter-State military threats, linking peace to the absence of war, while other “security” issues, such as human rights, democratic governance, and social issues, were left on a secondary level, when not (more or less) consciously forgotten. The UN Secretary General Kofi Annan has expressed this new vision by saying that “[t]he central challenge for the twenty-first century is to fashion a new and broader understanding [...] of what collective security means”¹¹. The main exception to a narrow approach can be identified in the experience of the Organisation for Security and Co-operation in Europe (OSCE)¹². Since 1975, it developed a broad concept of security¹³, based not

7. Nigel D. WHITE, “On the Brink of Lawlessness: The State of Collective Security Law”, *Indiana International & Comparative Law Review*, vol. 13, n° 1 (2002), pp. 237-251, at 237.

8. Hans KELSEN, “Collective Security and Collective Self-Defense Under the Charter of the United Nations”, *American Journal of International Law*, vol. 42, n° 4 (1948), p. 783.

9. Leon GORDENKER and Thomas G. WEISS, “The Collective Security Idea and Changing World Politics”, in Thomas G. WEISS (ed.), *Collective Security in a Changing World*, Boulder and London, Lynne Rynner, 1993, p. 4.

10. See generally Nigel D. WHITE, *Keeping the peace: the United Nations and the maintenance of international peace and security*, 2nd ed. Manchester, Manchester University Press, 1997.

11. UN, High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, UN doc. A/59/565, 2 December 2004, p. 11.

12. See generally M. BOTHE, N. RONZITTI and A. ROSAS (eds.), *The OSCE in the Maintenance of Peace and Security*, The Hague/London/Boston, Kluwer Law International, 1997.

13. See Jerzy M. NOWAK, “The Organization for Security and Co-operation in Europe”, in Trevor FINDLAY (ed.), *Challenges for the New Peacekeepers*, SIPRI Research Report No. 12, Oxford, Oxford University Press, 1996; Adrian HYDE-PRICE, “The OSCE and European Security”, in W. PARK and G. Wyn REES (eds.), *Rethinking Security in Post-Cold War Europe*, London and New York, Longman, 1998.

only on co-operation in military matters, traditionally conceived as security matters, but also dealing with the promotion of democratic governance and institutions, human rights, protection of minorities, and environmental threats¹⁴.

The broadening of the concept of international security¹⁵ involves issues related to the practice of collective security, generally defined under strict conditions in international law¹⁶. This is due to the fact that it generally involves the use of military force, under the limitations imposed on that use upon States by article 2(4) of the UN Charter. When the concept of international security expands into issues related to development, human rights and environmental protection, democracy, etc. new definitions of possible forms of State action must be formulated. As far as States are acting within the international system, either individually or through international organisations, international legal rules apply in any case. But the broadening of the concept of security implies also a redefinition of the concept of collective security, as the two terms are clearly related. The problem consists in defining new security threats that can be addressed collectively by States. This should not necessarily imply that all threats, such as health and environmental ones, must lead to military measures. But the traditional interpretation of collective security, based on threats to international peace and security, also foresaw the potential use of military force, at least as a last resort. For these reasons, it may be interesting to see how the concept of international security has been evolving in the case of the OAS. This may help to understand better new trends at the international level, in other international organisations, and possible implications for international law.

14. UNEP, UNDP, OSCE, *Environment and Security Initiative: Addressing Environmental Risks and Promoting Peace and Stability* (prepared by Alexander Carius), 2003, available at <http://envsec.grid.unep.ch/pub/envsec_post_kiev.pdf>.

15. See B. BUZAN, O. Wæver, J. DE WILDE (eds.), *Security: A New Framework for Analysis*, Boulder, Colo. London, Lynne Rienner Publishers, 1998; M. T. KLARE and Y. CHANDRANI (eds.), *World Security: Challenges for a New Century*, 3rd edn., New York, St. Martin Press, 1998; Ronnie D. LIPSCHUTZ (ed.), *On Security*, New York, Columbia University Press, 1995; D. DEWITT, D. HAGLUND and J. KIRTON, *Building a New Global Order: Emerging Trends in International Security*, Toronto, Oxford University Press, 1993; Barry BUZAN, "New patterns of global security in the twenty-first century", *International Affairs*, vol. 67, n° 3 (1991), pp. 431-451.

16. See Inis CLAUDE, *Power and International Relations*, New York, Random House, 1962, p. 110 and 168; Mohammed AYOUB, "Squaring the Circle: Collective Security in a System of States", in Thomas G. WEISS (ed.), *Collective Security in a Changing World*, Boulder London, Lynne Rienner Publishers, 1993, pp. 47-50.

The aim of this article is to focus the attention on developments that have taken place within the Western Hemisphere, in particular within the OAS, in the field of security. This analysis will then be used to draw some comparison with the UN in the light of the most recent proposals concerning the reform of the universal organisation.

The first part of this article will show how the concept of security has evolved in the last decade within the Western Hemisphere, including more issues than the already broad list initially provided by the OAS Charter¹⁷. The analysis will also indicate how the evolution has taken place, both from the legal and institutional perspective, focusing our attention on the 2003 Mexico City Declaration on Security in the Americas. The value of the Declaration in the general area of international security, and in particular within the general principles of the OAS Charter with respect to the provision of Article 1(2), which seems to limit the activities to those expressly defined in it, will need some analysis. Comments concerning the new trends in international security taking place in the Western Hemisphere will be provided. Finally, some aspects of the relationship between the regional and universal system of international security will be addressed, taking into consideration recent reform proposals within both the OAS and the UN.

Due to the legal approach of this article, some political issues will not be necessarily addressed, or they will be only briefly mentioned. It is well known that the United States (US) plays a relevant role in the Americas¹⁸, and in the definition of the priorities of the OAS. This choice is not meant to underestimate this fact, but due to the limits and purposes of this article, this author has decided to keep the issue to the minimum.

2. EXPANDING THE CONCEPT OF HEMISPHERIC SECURITY

During the meeting of the OAS General Assembly organised at Barbados in 2002, the Secretary General of the Organisation, César Gaviria, declared that:

17. Charter of the Organisation of American States, Ninth International Conference of American States, Bogota, Colombia, 30 April 1948, OAS, Treaty Series, Nos. 1-C and 61, available at <<http://www.oas.org/juridico/english/charter.html>>.

18. Andrew HURRELL, "The United States and Latin America: Neo-Realism Re-examined", in Ngaire WOODS (ed.), *Explaining International Relations Since 1945*, Oxford, Oxford University Press, 1997, pp. 155-79; Andrew HURRELL, "Hegemony and Regional Governance in the Americas", *Global Law Working Paper*, n° 5, New York University School of Law, 2004, available at <http://www.nyulawglobal.org/workingpapers/GLWP_0504.htm>.

“In the last decade, the inter-American system has generated a considerable number of such instruments, tools, and initiatives in the area of hemispheric security to deal with its myriad challenges. The time is ripe to funnel these diverse tools and ideas into one framework, which is what you have done by deciding to convene the Hemispheric Conference on Security [...]”¹⁹.

During the same meeting, the General Assembly declared “that the security of the Hemisphere encompasses political, economic, social, health and environmental factors”²⁰.

The concept of hemispheric security has a long history in the American continent, and it is related to the development of the inter-American system²¹. The contemporary history of the concept of hemispheric security must be linked to the Inter-American Conference on the Problems of War and Peace held in Mexico City in 1945²². On that occasion, the participating States adopted the Chapultepec Act in which they reaffirmed the principle of hemispheric solidarity in case of an attack against any American State. In 1947, the idea was drafted in the Inter-American Treaty for Reciprocal Assistance, the Rio Treaty²³, providing the military support for co-operation in case of external attack against any American State. This concept was expressed in Article 3 of the Treaty which affirmed that “an armed attack by any State against an American State shall be considered as an attack against all the American States”, and therefore authorised the collective action by other Member States, under the conditions established by Article 51 of the UN Charter.

In 1948, with the adoption of the OAS Charter, the concept of security was included in the inter-American foundational document, as it affirmed that one of the main purposes of the organisation is “to provide peace and security in the continent”. In the case of violation of the peace, Article 29 of the

19. OAS, *Address by the Secretary General of the Organization of American States, César Gaviria, at the Inaugural Session of the Thirty-Second Regular Session of the OAS General Assembly, XXXII Ordinary Session, Barbados, 2 June 2002*, available at <<http://www.oas.org/speeches/speech.asp?sCodigo=02-0001>>.

20. OAS, *Declaration of Bridgetown*, “The Multidimensional Approach to Hemispheric Security”, OAS Doc. AG/DEC. 27 (XXXII-O/02), 4 June 2002.

21. See O. Carlos STOETZER, *The Organization of American States*, 2nd ed., Westport: Conn., Praeger, 1993, chapters 1 and 2; H. MCCOUBREY and J. MORRIS, *Regional Peacekeeping in the Post-Cold War Era*, The Hague, Kluwer Law International, 2000, chapter 5.

22. Manuel S. CANYES, “The Inter-American System and the Conference of Chapultepec”, *American Journal of International Law*, vol. 39, n° 3 (1945), pp. 504-517.

23. Rio de Janeiro Conference for the Maintenance of Continental Peace and Security, 15 August-2 September, 1947, Interamerican Treaty of Reciprocal Assistance, adopted in Rio de Janeiro, 2 September 1947, OAS, Treaty Series, Nos. 8 and 61.

OAS Charter established that “the American States, in furtherance of the principles of continental solidarity or collective self-defence, shall apply the measures and procedures established in the special treaties on the subject”. The Rio Treaty provided a mechanism for the collective security of the Hemisphere, and it was used on several occasions to deal with inter-State conflicts within the American continent²⁴. This included six cases, such as Costa Rica (1948), the conflict between El Salvador and Honduras (1969), the request by Argentina, during the Falklands War in 1982, and more recently, it was activated after the 11 September 2001 terrorist action against the US²⁵.

During the cold war the US monopolised the concept of hemispheric security focussing on the control of the spread of communist ideals and revolutions in the continent²⁶. There was some overlapping between what US governments considered issues of national security and the mechanisms concerning collective hemispheric security²⁷. Security was related to ideological, strategic, and military dimensions as demonstrated by US intervention in Latin America²⁸.

With the end of the cold war the debate on security took a new impetus, and new directions²⁹. In resolution 1123 of 1991³⁰, the OAS General Assembly established that:

“the [...] international situation would seem to dictate the adoption of measures to ensure hemispheric security, strengthen democratic processes in all of the

24. See Tatiana B. DE MAEKELT, “Inter-American Treaty of Reciprocal Assistance of Rio de Janeiro (1947)”, in Rudolf L. BINDSCHEDLER *et al.*, *Encyclopedia of Public International Law*, Amsterdam, North-Holland, 1983, vol. 6, pp. 217-221.

25. OAS, Twenty-Fourth Meeting of Consultation of Ministers of Foreign Affairs Acting as Organ of Consultation in Application of the Inter-American Treaty of Reciprocal Assistance, doc. RC.24/RES.1/01, Washington, DC, 21 September 2001 (original: portuguese).

26. During the Second World War stronger measures were taken to avoid infiltration of Nazi and Fascist movements in America. They originated in the Buenos Aires Conference (1936) which made reference to “the existence of a common democracy throughout America”. See INTER-AMERICAN INSTITUTE OF INTERNATIONAL LEGAL STUDIES, *The Inter-American System*, Dobbs Ferry, Oceana Publications, 1966, p. 114.

27. See Jessica TUCHMAN MATHEWS, “Redefining Security”, *Foreign Affairs*, vol. 68, n° 2 (1989), pp. 162-177. See also the Special Issue: US-Latin American Relations, *Journal of Interamerican Studies and World Affairs*, vol. 39, n° 1 (1997).

28. Jorge I. DOMÍNGUEZ, “The Americas: Found, and Then Lost Again”, *Foreign Policy*, n° 112, Autumn (1998), pp. 125-128 and 130-137. Herbert L. MATTHEWS, “The United States and Latin America”, *International Affairs*, vol. 37, n° 1 (1961), pp. 9-18.

29. See William PERRY and Max PRIMORAC, “The Inter-American Security Agenda”, *Journal of Interamerican Studies and World Affairs*, vol. 36, n° 3 (1994), pp. 111-127.

30. OAS, GA Resolution 1123, doc. AG/RES. 1123 (XXI-O/91), 8 June 1991.

member states and devote maximum resources in those countries to economic and social development” and that “such measures call for mechanisms for mutual consultation and an exchange of regional information to promote a climate of institutional international stability, progress, and confidence [...]”.

The main document dealing with new security concerns was the 1991 Santiago Commitment to Democracy and the Renewal of the Inter-American System³¹. Two main issues were introduced as part of the new security strategy: democratic governance and Confidence-and Security-Building Measures (CSBMs).

Democratic stability and its support became the main objectives of continental co-operation. A specific result in support of democracy was the adoption of the 1991 OAS Resolution 1080, known as the Santiago Declaration³², which stressed the importance of favouring the creation of adequate conditions for the respect of democracy as a fundamental element for security in the continent. In 1997, the Declaration was incorporated by the Washington Protocol in Article 9 of the amended OAS Charter³³. The new article provides for sanctions in the form of suspension of a Member State from the organisation when its democratically elected government is overthrown by force. In 2001 the OAS General Assembly adopted the Inter-American Democratic Charter³⁴ which foresees a series of diplomatic measures and the use of sanctions to facilitate the restoration of democratic regimes in affected States³⁵. This mechanism was applied in Peru (1992 and 2000), Guatemala (1993), and Venezuela (2002)³⁶.

The second relevant document was the Declaration of Santiago on Confidence-and Security-Building Measures, approved at the Summit of Santia-

31. OAS, GA, “The Santiago Commitment to Democracy and the Renewal of the Inter-American System”, doc. AG/RES. 1080 (XXI-O/91), 4 June 1991.

32. OAS, GA Resolution on *Representative Democracy*, doc. AG/RES. 1080 (XXI-O/91), 5 June 1991.

33. Protocol of Amendment to the Charter of the Organization of American States, “Protocol of Washington”, approved on 14 December 1992, at the Sixteenth Special Session of the OAS General Assembly.

34. OAS, GA, *Inter-American Democratic Charter*, Special Session, Lima, Peru, 11 September 2001.

35. *Ibid.*, Section IV, in particular Articles 17-20.

36. See Andrew S. COOPER and Thomas LEGLER, “The OAS Democratic Solidarity Paradigm: Questions of Collective and National Leadership”, *Latin American Politics and Society*, vol. 43, n° 1, Spring (2001), pp. 103-126; Heraldo MUÑOZ, “The Right to Democracy in the Americas”, *Journal of Interamerican Studies and World Affairs*, vol. 40, n° 1, Spring (1998), pp. 1-18.

go in 1995³⁷. The document established that the OAS would develop, through the Committee on Hemispheric Security (CHS)³⁸, a working plan for a Special Conference on Security within the OAS. In 1991, to study and define security issues, the OAS created a Working Group which in 1995 became the CHS within the context of the Permanent Council of the OAS. The Committee is the region's first permanent forum for the consideration of arms control, non-proliferation, defence, and security issues. Through it the OAS has adopted over 50 resolutions by consensus, and has contributed to the definition of the concept of hemispheric security. The areas attributed to the Committee were:

1. Creation of Confidence-and Security-Building Measures in America³⁹.
2. Specific attention to the security of small island States⁴⁰.
3. Aid to the Mine-Clearing Program in Central America⁴¹.
4. Development of the concept of the Western Hemisphere as an Antipersonnel-Land-Mine-Free Zone⁴².
5. Co-operation for hemispheric security⁴³.
6. Program of Education for Peace in the hemisphere⁴⁴.

The 1995 Montrouis Declaration⁴⁵ included some new components of the security architecture, such as terrorism, but also stressed traditional issues such as disarmament, peaceful solution of disputes, etc.⁴⁶. At the same time, in November 1995, a special OAS Conference adopted the Declaration of Santiago on Confidence-and Security-Building Measures⁴⁷ which established

37. OAS, *Declaration of Santiago on Confidence-and Security-Building Measures*, approved at Santiago de Chile, 10 November 1995.

38. OAS, GA, Resolution 1353 (XX-0/95), 9 June 1995. Since 1995, by General Assembly resolution, the Committee was given permanent status in the Secretariat of the Permanent Council.

39. OAS, doc. AG/RES. 1566 (XXVIII-O/98), 2 June 1998.

40. OAS, doc. AG/RES. 1567 (XXVIII-O/98), 2 June 1998.

41. OAS, doc. AG/RES. 1568 (XXVIII-O/98), 2 June 1998.

42. OAS, doc. AG/RES. 1569 (XXVIII-O/98), 2 June 1998.

43. OAS, doc. AG/RES. 1570 (XXVIII-O/98), 2 June 1998.

44. OAS, doc. AG/RES. 1604 (XXVIII-O/98), 3 June 1998.

45. OAS, GA, *Declaration of Montrouis: A New Vision of the OAS*, OAS doc. AG/DEC. 8 (XXV-O/95), Montrouis (Haiti), 7 June 1995, available at <<http://www.oas.org/EN/PIN-FO/RES/RESGA95/agd0008.htm>>.

46. *Ibid.*, see in particular points 1, 17, 19, 24, and 28.

47. *Declaration of Santiago on Confidence-and Security-Building Measures*, adopted at the Regional Conference on Confidence-and Security-Building Measures, 10 November 1995, Santiago, Chile (COSEGRE/doc.20/95 rev. 1).

a program for the adoption of agreements regarding (1) advanced notification of military exercises, (2) participation in the UN Register of Conventional Arms and UN military expenditures reporting, (3) promotion of exchanges of information concerning defence policies and doctrines, and (4) invitation of foreign observers to military exercises.

Finally, the 2002 Declaration of Bridgetown⁴⁸ underlined the importance of considering the issue of security in the continent as a complex one, a mixture of different elements with a multidimensional purpose. This contributed to further widening the concept of security by taking into account threats related to political, economic, social, health, and environmental issues. All those elements were included in the agenda of the 2003 Special Conference in Mexico City where American States endorsed the new concept of hemispheric security.

The actual problem consists in developing and defining a concept of international security and giving content to this general term included more than fifty years ago in the OAS Charter. The task has not been easy. Neither the States of the region, nor the existing sub-regional organisations, such as the Andean Community, the Mercosur, and the Community of Caribbean States, perceive or interpret the concept of security in the same manner. For instance, the island States in the Caribbean are particularly worried for their survival due to their size, their geographical position, and their economic, political, social and environmental vulnerability⁴⁹. Other States, such as Peru, Colombia and Mexico are concerned with issues related to drug-trafficking, social inequality, and migration. Canada adopts a wide concept of security, including the concept of human security⁵⁰.

This widened interest in security has been expressed by the idea of a flexible and multidimensional concept of security⁵¹. The most popular idea developed by the States in the region is that the new concept of hemispheric

48. OAS, GA, *Declaration of Bridgetown*, "The Multidimensional Approach to Hemispheric Security", AG/DEC. 27 (XXXII-O/02), 4 June 2002.

49. See OAS, GA, Resolution "Special Security Concerns of Small Island States of the Caribbean", doc. AG/RES. 1886 (XXXII-O/02), 4 June 2002; Resolution "Special Security Concerns of Small Island States", AG/RES. 1567 (XXVIII-O/98), 2 June 1998; Resolution "Promotion of Security in the Small Island States", AG/RES. 1410 (XXVI-O/96), 7 June 1996.

50. Andrew HURRELL, "Security in Latin America", *International Affairs*, vol. 74, n° 3 (1998), pp. 526-546; Juan Pablo SORIANO and Donald R. MACKAY, *Redefining Hemispheric Security After September 11*, The Canadian Foundation for the Americas (FOCAL), April 2003.

51. OAS, *Declaration on Security in the Americas*, doc. OEA/Ser.K/XXXVIII, CES/DEC. 1/03 rev.1, 28 October 2003, paragraphs 4(i)-4(m).

security should take into consideration other existing bilateral, sub-regional and multilateral agreements, trying to integrate them all into a unique framework. Several sub-regional organisations in the continent have contributed to the development of the concept and content of security. Some of these organisations have adopted their own instruments and declarations in the field of security. They include the Framework Treaty on Democratic Security in Central America (1995)⁵² within the Central American Integration System, which established the Central American Democratic Security Model for the promotion of

“all human rights, so that its provisions ensure the security of the Central American countries and their inhabitants, by creating conditions that permit their personal, family and social development in peace, freedom and democracy. It is based on strengthening civil power, political pluralism, economic freedom, the elimination of poverty and extreme poverty, the promotion of sustainable development, the protection of the consumer, the environment and the cultural heritage; the elimination of violence, corruption, impunity, terrorism, drug trafficking, and arms trafficking”⁵³.

The Treaty Establishing the Regional Security System (1996)⁵⁴ among Caribbean States was adopted

“to promote co-operation among the Member States in the prevention and interdiction of traffic in illegal narcotic drugs, in national emergencies, search and rescue, immigration control, fisheries protection, customs and exercise control maritime policing duties, natural and other disasters, pollution control, combating threats to national security, the prevention of smuggling, and in the protection of off-shore installations and exclusive economic zones”⁵⁵.

Finally, it is worthy mentioning the Political Declaration of Mercosur, Bolivia, and Chile as a Zone of Peace (1999)⁵⁶ among Mercosur members, plus Bolivia and Chile. The Declaration considers peace to be a fundamental

52. US Department of States, *Framework Treaty on Democratic Security in Central America*, signed at San Pedro Sula, Honduras, 15 December 1995 available at <<http://www.state.gov/t/ac/csbm/rd/4368.htm>>.

53. *Ibid.*, Article 1.

54. Treaty Establishing the Regional Security System, signed at St. Georges, Grenada, 5 March 1996, available at <<http://www.oas.org/csh/english/docc&t%20carib.asp>>.

55. *Ibid.*, Article 4(1).

56. *Political Declaration of Mercosur, Bolivia, and Chile as a Zone of Peace*, issued at Ushuaia, Argentina, 24 July 1999, available at <<http://www.oas.org/csh/english/docc&tmercotur.asp>>.

element for the development of economic relations, and stresses the importance of new confidence-and security-building measures in the sub-region, nuclear disarmament and all aspects of non-proliferation, and the development of anti-personnel-land-mine-free zone.

The mentioned sub-regional documents have contributed to the debate concerning the definition of security at continental level, but also pose some problems regarding the relationship among continental and sub-regional mechanisms, and the forms of co-ordination among them.

During a meeting of governmental experts of Member States of the OAS, organised in Miami in February 2003⁵⁷, two declarations were adopted⁵⁸, and several measures were suggested to improve security in the continent. Among the conclusions adopted we might emphasise, for instance, the need to resolve the existing territorial disputes in the continent, to co-operate in the military and political areas through joint military manoeuvres, and the promotion of dialogue on peace and security among the governments of the region. The meeting suggested the institutionalisation of the dialogue through the creation of a Forum for Confidence and Security-Building Measures. The meeting of Miami has contributed in a relevant way to the focusing on issues for the Conference of Mexico City of October 2003 that shall be the object of a more detailed analysis below.

3. THE MEXICO CITY CONFERENCE ON SECURITY IN THE AMERICAS

The practice of holding special conferences⁵⁹ on security in the American continent started in 1996 with the Conference of Lima⁶⁰, when the Declaration of Lima to Prevent, Combat, and Eliminate Terrorism was adop-

57. The meeting on Confidence and Security-Building Measures was held in Miami, 3-4 February 2003. The aim consisted in developing ideas, strategies and programs discussed in previous conferences on the same issues (Buenos Aires, 1994; Santiago, 1995; San Salvador, 1998).

58. The two declarations are: the "Consensus of Miami. Declaration by the Experts on CSBMs: Recommendations to the Summit-mandated Special Conference on Security"; and the "Miami Group of Experts Illustrative List of CSBMs for Countries to Consider Adopting on a Bilateral, Sub-Regional, or Regional Level".

59. Special Conferences are organs of the OAS foreseen in Articles 53, 122 and 123 of the OAS Charter.

60. OAS, First Inter-American Specialized Conference on Terrorism, Lima, Peru, 23-26 April.

ted⁶¹. The second Conference was organised in Argentina, in 1998⁶², when the Commitment of Mar del Plata⁶³ was adopted. The Commitment presented for the consideration of the OAS General Assembly the creation of the Inter-American Committee against Terrorism (CICTE)⁶⁴ as an institutionalised form of co-operation against terrorism.

The third conference was organised in Mexico City on 27 and 28 October 2003. The meeting had been anticipated by the original decision adopted at the Quebec Summit in 2001. The XXIII Meeting of Consultation of Ministers of Foreign Affairs of the OAS asked the CHS to accelerate the preparation of the Special Conference⁶⁵, with the aim of submitting the results of the Conference to the following meeting of the Summit of the Americas, planned for January 2004 in Monterrey (Mexico). The Conference adopted three relevant documents, a Declaration on Security in the Americas⁶⁶, a Declaration on Central American Democratic Security Model⁶⁷, and a Declaration on the Situation in Colombia⁶⁸.

The Declaration on Security in the Americas may be considered the most significant result of the Special Conference. It makes reference to many issues which had been addressed in a less systematic manner in previous OAS documents. In the next section the content of the 2003 Declaration on Security in the Americas will be considered. Then, issues related to its compatibility, problems and incorporation into the inter-American system will be more thoroughly discussed.

61. OAS, *Declaration of Lima to Prevent, Combat, and Eliminate Terrorism*, 26 April 1996.

62. OAS, Second Inter-American Specialized Conference on Terrorism, Mar del Plata, Argentina, 23-24 November 1998.

63. OAS, Commitment of Mar del Plata, doc. OEA/Ser.K/XXXIII.2, CEITE-II/doc.6/98 rev. 1.

64. The creation of an Inter-American Committee against Terrorism (known as CICTE on its Spanish name) was proposed during the Second Specialised Conference on Terrorism organised by the OAS at Mar del Plata (Argentina), in November 1998. The OAS General Assembly confirmed that project by adopting a resolution on 7 June 1999. See OAS doc. AG/RES. 1650 (XXIX-O/99). The first regular session of CICTE was held in Miami, Florida in October 1999.

65. See OAS, resolution *Strengthening Hemispheric Cooperation to Prevent, Combat, and Eliminate Terrorism*, doc. RC.23/RES. 1/01 rev. 1 corr. 1, 10 June 2003.

66. OAS, *Declaration on Security in the Americas*, doc. OEA/Ser.K/XXXVIII, CES/DEC. 1/03 rev.1, 28 October 2003.

67. OAS, *Declaration on Central American Democratic Security Model*, doc. OEA/ser.K/XXXVIII, CES/DEC. 2/03, 28 October 2003.

68. OAS, *Declaration of the Special Conference on Security on the Situation in Colombia*, doc. OEA/Ser.K/XXXVIII, CES/DEC. 3/03, 28 October 2003.

4. THE DECLARATION ON SECURITY IN THE AMERICAS

The Declaration is divided into four parts:

1. Principles of the United Nations and the Charter of the Organization of American States.
2. Shared values and common approaches.
3. Commitments and of cooperation measures.
4. Institutional issues.

Each of the four issues is further subdivided into several sub-issues that make more explicit the different areas related to security and the forms of cooperation among the States of the hemisphere. When dealing with the principles of the UN Charter and of the OAS Charter there is a simple reference to respect for the principles enshrined in the two documents. This is a shortcoming of the Conference, as it would be quite relevant to define the role and relationship between the OAS as a regional organisation under Chapter VIII of the UN Charter, and its role in the new peace and security domain⁶⁹.

As far as the shared values and the common approaches are concerned, it is reaffirmed that the

“new concept of security in the Hemisphere is multidimensional in scope, includes traditional and new threats, concerns, and other challenges to the security of the states of the Hemisphere, incorporates the priorities of each state, contributes to the consolidation of peace, integral development, and social justice, and is based on democratic values, respect for and promotion and defense of human rights, solidarity, cooperation, and respect for national sovereignty (para. 2)”.

It is evident that a wide concept of security is endorsed by the American States. It is a complex definition that at the same time tries to establish a relationship among issues that were not always considered in an interdependent way. It is also stressed that security is not the main value. The aim of se-

69. See generally, Erica DE WET, “The Relationship between the Security Council and Regional Organizations during the Enforcement Action under Chapter VIII of the UN Charter”, *Nordic Journal of International Law*, vol. 71, n° 1 (2002), pp. 1-37; Nigel D. WHITE, *The Law of International Organisations*, Manchester, Manchester University Press, 1996, Chapter 8; Fred L. MORRISON, “The Role of Regional Organizations in the Enforcement of International Law”, in Jost DELBRÜK (ed.), *Allocation of Law Enforcement Authority in the International System*, Berlin, Dunker & Humblot, 1995, pp. 39-56; Robert Lyle BUTTERWORTH, “Organizing Collective Security: The UN Charter’s Chapter VIII in Practice”, *World Politics*, vol. 28, n° 2, Jan. (1976), pp. 197-222.

curity is intended in the broad context to be foreseen as a tool for the enjoyment of peace. To this end, paragraph 3 of the Declaration affirms that “Peace is a value and a principle in itself, based on democracy, justice, respect for human rights, solidarity, security, and respect for international law”.

Then, the Declaration identifies issues (from paragraph 4.a to 4.h) which represent common values for American States and that are threatened by both new and traditional attacks against security. Those values are: representative democracy, respect for human rights, education for peace, social justice, respect for human security, and the need to improve female participation in decision taking processes within societies.

In this second part, from paragraph 4.i to 4.m, there is an express reference to the multidimensional aspect of continental security, with the purpose of expanding its content to include new threats of a political, economic, social, sanitary and environmental character. The Declaration also recognised that many new threats to security have a transnational character and therefore must be addressed with better forms of hemispheric co-operation. Also mentioned is the concept of “flexible architecture” for security, with the aim of addressing the needs of any sub-region and of any State in the continent (para. 4.l). The list includes terrorism, organised crime, drug trafficking, corruption, extreme poverty and social exclusion, natural disasters, HIV/AIDS, and other illness, the illegal trafficking of persons and arms, attacks to cyber security, environmental risks, damages in the event of an accident or incident during the maritime transport of potentially hazardous materials, including petroleum and radioactive materials and toxic waste; and the possibility of access, possession, and use of weapons of mass destruction and their means of delivery by terrorists.

It is particularly stressed that the “subregional and regional integration processes contribute to stability and security in the Hemisphere” (para. 4.n). Some issues are pointed out, such as border disputes among States in the continent, and the need for peaceful solution and conflict prevention, both internally and internationally (para. 4.p). The importance of peaceful solution of territorial disputes among American States is further stressed (para. 7).

The commitments and the forms of co-operation are defined in the third part of the Declaration. It is stated that “democracy is a right and an essential shared value that contributes to the stability, peace, and development of the states of the Hemisphere [...]” (para. 5).

Other areas of co-operation include reduction of armaments, co-operation in defence matters, co-operation with the International Atomic Energy Agency and the organisation of joint meetings among either Ministers of Jus-

tice or General Prosecutors of the American States. In this section, the importance of respecting international law during the fight against terrorism is also mentioned. In that context, American States renew their commitment

“to fight terrorism and its financing with full respect for the rule of law and international law, including international humanitarian law, international human rights law, international refugee law, the Inter-American Convention against Terrorism, and United Nations Security Council resolution 1373 (2001) (para. 22)”.

New areas of co-operation are identified, such as the fight against organised crime (para. 24), cybercrime (para. 26), and arms trafficking (para. 28). Other important areas of co-operation are those concerning the fight against poverty and social exclusion (para. 35), health problems (para. 37) and AIDS in particular (para. 38). Environmental issues, including natural and man-made disasters, “may constitute a threat, concern, or challenge to the security of states in the Hemisphere” (para. 40). It should be noted that this final issue is left at the end of the Declaration and no specific or new mechanisms were foreseen for the solution and prevention of environmental damage. Nevertheless, recent developments seem to address this issue, and they will be mentioned later.

5. THE SIGNIFICANCE OF THE DECLARATION ON SECURITY IN AMERICA

The widened concept of security involves some legal issues related to the mandate, aims and purposes of any organisation. The OAS, being the main inter-American organisation, is founded on the constitutional Charter. Therefore one of the purposes of our present work is to assess the role of the 2003 Declaration in the field of security and if it matches the defined aims and purposes of the Organisation. To deal with this task the text of the Charter will be addressed, to test the mandate of the Organisation, and see if it includes issues of security and in which terms, and if they are compatible with the new definition of security.

The Preamble of the OAS Charter defines the main purposes of the Organisation. States creating the Organisation declared that:

“Convinced that representative democracy is an indispensable condition for the stability, peace and development of the region;

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Confident that the true significance of American solidarity and good neighborliness can only mean the consolidation on this continent, within the framework of democratic institutions, of a system of individual liberty and social justice based on respect for the essential rights of man;

Persuaded that their welfare and their contribution to the progress and the civilization of the world will increasingly require intensive continental cooperation [...].”

There is a clear reference to solidarity and co-operation among American States to contribute to improved welfare and progress, but also a strong reminder that democracy is a fundamental element and an “indispensable condition” for stability and peace in the region. These are quite broad terms that inevitably would include also peace and security matters interpreted in a wider sense. These general statements are better defined in the text of the Charter. More specific reference to the concept of security and peace can be found in Articles 1 and 2 which define the Nature and Purposes of the OAS Charter. Article 1 affirms that:

“The American States establish by this Charter the international organization that they have developed to achieve an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence [...].

The Organization of American States has no powers other than those expressly conferred upon it by this Charter, none of whose provisions authorizes it to intervene in matters that are within the internal jurisdiction of the Member States”.

The Article makes reference in quite broad terms to the aim of the OAS to achieve “an order of peace and justice” and a series of other aims that can be related to the traditional concept of security, such as the protection of sovereignty, territorial integrity and independence of States. The terms clearly refer to issues of security in a broad sense, as the “order of peace and justice” would include possible initiatives related to security within the Hemisphere. This aim is better defined in the following article. Article 2 declares that one of the main purposes of the OAS is the reinforcement of peace and security in the continent in the following terms:

“The Organization of American States, in order to put into practice the principles on which it is founded and to fulfil its regional obligations under the Charter of the United Nations, proclaims the following essential purposes:

- a) To strengthen the peace and security of the continent; [...].”

The Principles of the Organisation are defined in Article 3. There are several points that can be considered relevant in relation to the broad concept of security. They include the affirmations that “International law is the standard of conduct of States in their reciprocal relations”; that “International order consists essentially of respect for the personality, sovereignty, and independence of States, and the faithful fulfilment of obligations derived from treaties and other sources of international law”. Issues such as the elimination of extreme poverty, consolidation of representative democracy, peaceful solution of disputes, and economic co-operation are considered part of the relevant aspects of inter-American aims. Social justice and social security are the bases of lasting peace (para. j).

It should also be mentioned that the OAS Charter establishes in Article 1(a), mentioned before, that the Organisation shall have competence only in those issues that are specifically prescribed by the Charter. This appears a quite relevant limitation on the possible range of actions of the OAS, and deserves some analysis to evaluate the conformity of the new trends with the inter-American system. As new broad areas are included in the concept of hemispheric security, does it mean that the use of military force, as traditionally used to face threats to security, is extensively allowed? Article 19 provides a quite clear rule with regard to the possibility of intervention into states' affairs:

“No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements”.

This rule is usually associated with Article 21 which affirms the inviolability of State sovereignty⁷⁰. But there is a clear exception to this rule provided by Article 23:

“Measures adopted for the maintenance of peace and security in accordance with existing treaties do not constitute a violation of the principles set forth in Articles 19 and 21”.

70. OAS Charter, Article 21: “The territory of a State is inviolable; it may not be the object, even temporarily, of military occupation or of other measures of force taken by another State, directly or indirectly, on any grounds whatever. No territorial acquisitions or special advantages obtained either by force or by other means of coercion shall be recognized”.

The question arises whether issues of “peace and security” broadly defined in the 2003 Declaration allow forms of derogation from Articles 19 and 21.

The reply should be negative, as far as one specific condition is not fulfilled, the fact that the measures must be foreseen by “existing treaties”. Therefore, in so far as security issues are contained only in declarations, such as the 2003 Mexico Declaration, they do not provide the legal justification for intervention into internal affairs and derogation from Articles 19 and 21. This position has been clearly stated during the recent process regarding the definition of legal prerogatives and powers of the IADB, as will be mentioned later.

The Fourth Section of the 2003 Declaration deals with the institutional issues of co-operation for security. The Conference recommended that the

“Permanent Council, through the Committee on Hemispheric Security, continue the process of study and assessment of the Inter-American Treaty of Reciprocal Assistance (Rio Treaty) and the American Treaty on Pacific Settlement (Pact of Bogotá) as well as other hemispheric instruments currently in force on collective security and the peaceful settlement of disputes”.

Furthermore, in paragraph 49 there is a quite long and detailed reference to “the need to clarify the juridical and institutional relationship between the Inter-American Defense Board (IADB) and the OAS”. The Conference made a direct request to the Permanent Council of the OAS, through the Committee on Hemispheric Security, to prepare the necessary recommendations. This work is still ongoing, and the Committee on Hemispheric Security has worked on a proposal concerning the relationship between the IADB and the OAS⁷¹.

What has clearly emerged from the proposals⁷² is that the IADB would have a merely technical function to assist the main bodies of the OAS in matters related to security, excluding any decisional power related to issues of security. It is clear that the position of the IADB, not being a main organ of the

71. OAS, Committee on Hemispheric Security, *Proposed Documents for Defining the Relationship between the Organization and the Inter-American Defense Board: Specialized Organization Option and Entity Option*, OEA/Ser.G, CP/CSH-680/05 rev. 1, 1 April 2005, available at <<http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/csh/english>>.

72. OAS, Committee on Hemispheric Security, *Summary of Deliberations by the Working Group to Conclude the Analysis of the Juridical and Institutional Link between the OAS and the Inter-American Defense Board, from November 2 to December 13, 2004*, OEA/Ser.G, CSH/GT/JID-8/04, 16 December 2004.

OAS, would not allow it to take decisions regarding Articles 19 and 21 mentioned above.

From the analysis of the text of the OAS Charter some elements should be noticed for the purpose of the present article. Despite the fact that there is a specific Chapter VI of the Charter entitled Collective Security (Articles 28 and 29), there seems to be an overlap of terminology and purposes in the initial articles of the Charter, between the concepts of security, peace and defence, such as in the case of Article 1. Security and defence are interrelated. The OAS was created by States to preserve peace, but also their territorial integrity, which means respect for their sovereignty, and the possibility of collective action by other Member States to protect that sovereignty.

Article 3 provides a wide list of issues that should be considered as principles, such as the respect for international law, peaceful solution of disputes, good faith, solidarity, but also includes other issues that would be better defined as aims, such as social justice, elimination of social disparities, extreme poverty and actions in the field of education.

In all the mentioned articles of the Charter the link between justice, peace and security is quite evident. Furthermore, social matters, international co-operation, democratic government, and respect for international law are the tools that should strengthen security within inter-American relations. These principles were in part left dormant during the cold war, when internal conflicts, terrorism, drug trafficking, and border disputes were not always efficiently addressed by the organisation.

The inter-American system also includes two other mechanisms strictly related to the concept of security, the Inter-American Treaty of Reciprocal Assistance (TIAR) and the Pact of Bogotá for the peaceful solution of disputes. Nevertheless, those two mechanisms have only been used in limited number of occasions. The new framework for security should also deal with these mechanisms to revitalise them as parallel tools for their active involvement in the security strategy of the hemisphere.

The 2003 Declaration should be considered a core document in the light of its importance for the interpretation of the meaning of peace and security in the Western Hemisphere. It may play a relevant role in developing new mechanisms and legal tools, and to better define their reciprocal relationships. The Declaration has become one of the leading documents for policy and legal developments within the OAS institutional bodies, in particular after its endorsement by the General Assembly⁷³, but also for the Permanent

73. OAS, GA Resolution, doc. AG/RES. 1998 (XXXIV-O/04), 8 June 2004.

Council, through the CHS⁷⁴. With its wide concept of security, it helps the definition of aims and purposes generally defined in the OAS Charter. Being a declaration, it has a soft law status, but with time it may acquire a stronger legal background. This may happen through the form of customary law, for the repetition of obligations defined in the Declaration, in subsequent documents and declarations adopted by the OAS and by American States. The Declaration may also help as the springboard and justification for further developments of international instruments and institutional rules within the organisation. During the last two OAS General Assemblies (2004 and 2005) it was also used as a basis for institutional and legal developments that embrace the wide areas of democracy, human rights, disarmament, environment, civil society participation, etc.

Nevertheless, the Declaration needs further interpretation and clarification with regard to its possible legal implications. Despite the fact that the Declaration does not mention the role and participation of the Inter-American Juridical Committee, this last body has started its analysis and legal evaluation and implications of the new security agenda⁷⁵.

6. LEGAL AND INSTITUTIONAL DEVELOPMENTS CONCERNING INTER-AMERICAN SECURITY ISSUES

The identification of new areas of security by the 2003 Special Conferences created the need to incorporate those issues into the general policy and structural framework of the OAS. First of all, the OAS General Assembly has to include in its declarations specific matters defined in the Declaration, and then implement them. This action is attained through two types of action: the development of legal instruments and the institutional definition of powers of existing and new bodies in the areas of security.

Legal developments have taken place since the 1991 Santiago Commitment for Democracy and the adoption of Resolution 1080⁷⁶, which led to the

74. See OAS, CHS, *Summary Report on the Recommendations of the Committee on Hemispheric Security Concerning the Mandates it Received (2003-2004 Term)*, doc. OEA/Ser.G, CP/CSH-644/04, 20 May 2004, available at <<http://www.oas.org/csh/english/cforhsrepdoc.asp>>.

75. See OAS, *Annual Report of the Inter-American Juridical Committee to the General Assembly (2004)*, OEA/Ser.Q/VI.35, CJI/doc.174/04, Rio de Janeiro, Brazil, 20 August 2004, pp. 41-87.

76. See above notes 31 and 32.

1997 Washington Protocol. This amended the OAS Charter and established the condition of democratic government for Member States, including the possibility of institutional action in the case of undemocratic change of government in the hemisphere, as mentioned before.

An issue that since the independence of American States has represented a high risk for regional security resides in unresolved border disputes between many States of the region. Recently, the OAS has taken steps to intervene in negotiations concerning cases between Belize and Guatemala⁷⁷, and between Honduras and Nicaragua⁷⁸. In cases concerning border disputes, the parties involved can use a voluntary Fund for Peace⁷⁹, created in 2000, with the aim of financing initiatives that help the negotiated solution of the conflict between the involved States.

Terrorism is certainly one of the most relevant contemporary issues both at a national and at an international level⁸⁰, and a main area of concern for the US government. The OAS has dealt with this issue also in the past⁸¹. In the specific area of fight against terrorism, the Ministers of Foreign Affairs of American States, meeting for the General Assembly of the OAS in Barbados, signed the Inter-American Convention against Terrorism in 2002⁸². The Convention does not provide any definition of terrorism. It merely makes reference to a list of existing international treaties related with specific acts of terrorism⁸³. It provides some forms of co-operation at the continental level, but also for the respect for international and regional human rights instruments when dealing with anti-terrorist measures. Since 1999 the CICTE has re-

77. OAS, *Belize-Guatemala Territorial Differendum*, available at <<http://www.oas.org/documents/eng/belizeguatemala.asp>>.

78. OAS, *Honduras-Nicaragua Situation*, available at <<http://www.summit-americas.org/asg/Honduras-Nicaragua/>>.

79. The full name is "Fund for Peace: Peaceful Resolution of Territorial Disputes", created by the OAS General Assembly, doc. OEA/Ser.P, AG/RES. 1756 (XXX-O/00), Windsor, Canada, 6 June 2000. On the mechanism and the two mentioned cases see OAS, Permanent Council, Committee on Hemispheric Security, OEA/Ser. G, doc. CSH/GT/ADS-3/02 add.1, 18 December 2002.

80. Concerning the UN in particular see Security Council resolution 1373, 28 September 2001.

81. For example see the Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that Are of International Significance, OAS doc. A/49, signed at the III Special Session of the General Assembly (Washington D.C., 2 February 1971), *OAS Treaty Series* n. 37.

82. OAS, GA, *Inter-American Convention against Terrorism*, AG/RES. 1840 (XXXII-O/02) adopted at Bridgetown, Barbados, 3 June 2002, entered into force 10 July 2003.

83. *Ibid.*, Article 2.

newed its efforts to provide a better co-ordination of activities by Member States in their fight against terrorism⁸⁴. Among the initiatives already taken we can mention the establishment of a network of national officers against terrorism to facilitate the interchange of information⁸⁵. In January 2003 the CICTE adopted a Work Plan⁸⁶. Another relevant initiative was organised by the CICTE at the OAS Headquarters in October 2003⁸⁷. The purpose of that meeting was to analyse new forms of international co-operation to fight terrorism and compare the experiences of different international institutions. The meeting, organised in co-operation with the United Nations Committee against Terrorism (CTC), has gathered representatives of more than fifty international organisations, including the OSCE, the European Commission, the African Union, and delegates from Asian and Middle East countries. The meeting has focused its attention on four areas of interest and co-operation: (1) the role of regional organisations in the collection of distribution of information and practices among Member States; (2) the harmonisation and interchange of policies and forms of evaluation; (3) the role of regional organisations in developing the capacity of Member States to fight terrorism; (4) and the development of a program of co-operation among the most interested international organisations⁸⁸.

We should underline here that other continental bodies are involved in issues related to the fight against terrorism. Quite relevant under this aspect is the Inter-American Commission on Human Rights that in 2002 published a Report on Terrorism and Human Rights⁸⁹. The aim of the report was to provide guidelines to national legislative organs and to national agencies of the region to develop adequate responses to terrorism, keeping in due considera-

84. The CICTE is constituted by governmental experts who are competent in different areas concerning the fight against terrorism.

85. CICTE, *Declaration of San Salvador on Strengthening Cooperation in the Fight Against Terrorism*, adopted on 24 January 2003 (III Ordinary Session, San Salvador), OEA/Ser.L/X. 2.3, doc. CICTE/DEC. 1/03 rev. 2 corr. 1, 17 March 2003, paragraphs 6-12.

86. CICTE, Work Plan of the Inter-American Committee Against Terrorism, adopted on 24 January 2003 (III Ordinary Session, San Salvador), OEA/Ser.L/X.2.3, doc. CICTE/doc. 4/03 rev. 1.

87. OAS, UN/CTC-OAS/CICTE Special Meeting, Washington, D.C., 7 October 2003.

88. See OAS, "Discurso de la Lic. Maria Eugenia Brizuela de Avila, Ministra de Relaciones Exteriores, en la reunión del Comité Antiterrorista de las Naciones Unidas/Comité Interamericano contra el Terrorismo", *America's Forum*, vol. III, n° 7, August (2003); Kimberly PROST, "Delivering the Program. Technical Assistance in Counter-Terrorism Capacity Building: A Commonwealth Perspective", *America's Forum*, vol. III, n° 7, August (2003).

89. OAS, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., 22 October 2002.

tion relevant standards defined at international level for the protection of human rights.

Drug trafficking is considered to be one of the most destabilising factors in some countries of the region such as Colombia and some other countries in Central America. The threats are related both to the use of drugs and to the development of more or less organised criminal groups that are involved in the international market and traffic of drugs. The Inter-American Drug Abuse Control Commission (CICAD) is developing several activities concerning the control over the traffic, commercialisation, and demand for drugs, and also on some connected issues such as money laundering⁹⁰. The Commission, to better develop its tasks, uses two recently created organs: the Multilateral Evaluation Mechanism (MEM) that monitors progress against drug trafficking in 34 countries of America, and the Inter-American Observatory on Drugs, established in 2000.

In the area of armaments control, the OAS has adopted two important treaties. The Inter-American Convention on Transparency in Conventional Weapons Acquisitions⁹¹, and the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA)⁹². In January 2003, a report of the OAS⁹³ concerning an arms cargo that illegally reached paramilitary forces in Colombia pointed out that States in the region could do more to avoid the risks related to arms traffic, and suggested the adoption of adequate national legislation and better administrative measures to prevent the illegal traffic of arms⁹⁴. This concern led CIFTA Member States to organise the first conference of State parties in Bogota in 2004, where they adopted measures, including exchange of information, national legislative implementation, and mutual legal assistance to improve their co-operation in the field of control over

90. See OAS, Inter-American Drug Abuse Control Commission (CICAD), *Final Report*, doc. OEA/Ser.L/XIV.2.33, CICAD/doc.1256/03 Rev. 1, 30 June 2003.

91. OAS, GA, *Inter-American Convention on Transparency in Conventional Weapons Acquisitions*, doc. A/64, adopted at Guatemala City, 7 June 1999, entered into force on 21 November 2002.

92. OAS, GA, Special Session, *Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials*, OEA doc. A/63, adopted at Washington D.C., 14 November 1997, entered into force on 1 July 1998.

93. OAS, Report of the General Secretariat of the Organization of American States on the Diversion of Nicaraguan Arms to the United Defense Forces of Colombia, 6 January 2003, Permanent Council, OEA/Ser.G, CP/doc. 3687/03, 29 January 2003.

94. *Ibid.*, recommendation n° 6.

illicit arm trafficking⁹⁵. In March 2004, the OAS Permanent Council also adopted a methodology for States to improve the application of the CIFTA⁹⁶.

Small States in the Caribbean Sea have also pointed out their specific needs and their vision of the concept of security, and the OAS General Assembly has dealt with the issue on several occasions⁹⁷. In particular, the OAS General Assembly adopted Resolution 1886 of 2002, which considered that because of their insular nature and small size, the Caribbean States have “peculiar characteristics which render these States specially vulnerable and susceptible to risks and threats of a multidimensional and trans-national nature, involving political, economic, social, health, environmental, and geographic factors”⁹⁸.

Another area of present concern is the institutional framework for dealing with environmental threats. In October 2004 a Working Group on the Inter-American Convention to Facilitate Disaster Assistance was established by the Committee on Hemispheric Security. There is an Inter-American Convention to Facilitate Disaster Assistance adopted in 1991 by the OAS General Assembly⁹⁹, but only three States have ratified it. There are at least seven inter-American bodies¹⁰⁰ plus other international institutions, such as the Inter-American Development Bank, the United Nations, through its specialised agencies and bodies, including the UN Office for the Coordination of Humanitarian Affairs of the (OCHA), Inter-American Strategy for Disaster Reduction (ISDR), UNDP, UNICEF, the World Health Organization (WHO),

95. CIFTA, First Conference of States Party, Bogotá, 8-9 March 2004, OAS doc. OEA/Ser.L/XXII.4, CIFTA/CEP-I/DEC.1/04 rev.3, 9 March 2004.

96. OAS, Permanent Council, *Report of the Chair of the Committee on Hemispheric Security Transmitting the Committee's Recommendations Pursuant to the Mandates from the General Assembly on the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials*, OEA/Ser.G, CP/doc.4036/05, 18 May 2005.

97. See, in particular, OAS, GA, Resolution, *Special Security Concerns of Small Island States of the Caribbean*, doc. AG/RES. 1886 (XXXII-O/02), 4 June 2002.

98. *Ibid.*

99. OAS, *Inter-American Convention to Facilitate Disaster Assistance*, adopted at Santiago, Chile, 6 July 1991.

100. The identified bodies are: the Committee on Hemispheric Security (CSH); the Inter-American Committee on Natural Disaster Reduction (IACNDR); the Inter-American Committee for Emergency Situations (IACSE) of the Inter-American Emergency Fund (FONDEM); the Inter-American Committee on Sustainable Development of CIDI; the Executive Secretariat for Integral Development (SEDI) and the Office of Sustainable Development and the Environment (OSDE) of the General Secretariat; the Pan American Health Organization (PAHO); the Pan-American Development Foundation (PADF); and the Inter-American Institute for Cooperation on Agriculture (IICA).

and the World Bank, that work in the field of natural disasters and whose sphere of competence overlap in many cases.

This issue shows the difficult institutional and legal conundrum when dealing with harmonization and co-ordination of different bodies within the inter-American system. There have been some recent proposals by the OAS Department for Legal Affairs and Services to overcome the problems related to possible amendments of some legal instruments, including the reform of the mandate of existing bodies¹⁰¹.

7. INTERNATIONAL SECURITY IN THE OAS AND THE UN

The analysis and developments regarding the OAS are of interest also in relationship to the recent UN reform process. The UN Secretary General Kofi Annan has been particularly interested in this issue¹⁰², and at least two documents¹⁰³ have been prepared for the consideration of Member States within the UN General Assembly¹⁰⁴. Among the many topics that a thorough UN reform implies, a couple of matters can be addressed in this final part of the article, as it is not possible to discuss all the relevant issues in the present work. Developments and proposals concerning both the concept of international security and the role of regional organisations in the field of international security may provide some interesting issues for legal discussion. The following analysis will take into consideration the High-level Panel Report (the UN Report) and the 2003 Mexico City Declaration on Security in the Americas.

The different nature of the two documents should also be kept in mind. The UN Report is a background paper prepared by individuals, acting in their individual capacity, appointed by the UN Secretary General to formulate proposals. Then, the document has been submitted to the UN Member States for their consideration, and for the adoption of relevant documents

101. OAS, Committee on Hemispheric Security, *Report by the Chair of the Working Group*, OEA/Ser. G, CP/CSH-704/05, 9 May 2005, available at <http://scm.oas.org/doc_public/ENGLISH/HIST_05/CP14483E04.doc>.

102. Kofi ANNAN, "In Larger Freedom: Decision Time at the UN", *International Affairs*, vol. 84, n° 3 (2005), p. 63.

103. See above notes 3 and 4.

104. CNN, "U.N. reform agenda watered-down", 13 September 2005, available at <http://www.cnn.com/2005/US/09/13/un.reform.ap/?section=cnn_world>; Nancy SODERBERG, "The United Nations' missed opportunity", *Financial Times*, 14 September 2005, p. 17.

and reform proposals. Therefore, it is up to Member States to endorse, modify, or reject the proposals formulated in the Report. In the case of the Mexico Declaration, Member States of the OAS, through their Heads of State and Government, have adopted and endorsed the document at the final stage of a specialised intergovernmental conference on the subject. Therefore, the Declaration has a higher political standing compared to the UN Report. This may be one of the reasons why the OAS has already started the process of implementing some parts of the Declaration. Nevertheless, it may be interesting to compare the two documents to see if there are similarities and differences, and with the aim of understanding recent trends in the definition of international security.

7.1. *International Security*

The wider concept of threat to international security adopted by the OAS has also been endorsed by the UN High Level Panel. This is due to the fact that both organisations define a quite general concept of international security.

A quite similar approach is taken by the two documents when linking international security and sovereignty, even if formulated in different terms. The UN Report endorses the idea that State sovereignty should be linked to the “responsibility to protect”. This expression, originally formulated by the International Commission on Intervention and State Sovereignty (ICISS)¹⁰⁵ tries to shift attention from the controversial concept and practice of “humanitarian intervention”¹⁰⁶ to the individual and collective responsibility of States to protect human beings¹⁰⁷. Therefore it changes the emphasis from the vio-

105. ICISS, *The Responsibility to Protect* (2001), available at <<http://www.iciss.ca/pdf/Commission-Report.pdf>>.

106. See generally, Itziar RUIZ-GIMÉNEZ ARRIETA, *La historia de la intervención humanitaria: el imperialismo altruista*, Madrid, La Catarata, 2005; James L. HOLZGREFE and Robert O. KEOHANE (eds.), *Humanitarian intervention: ethical, legal and political dilemmas*, Cambridge, Cambridge University Press, 2003; Juan Francisco ESCUDERO ESPINOSA, *Cuestiones en torno a la intervención humanitaria y el derecho internacional actual*, León, Universidad, Secretariado de Publicaciones y Medios Audiovisuales, 2002; Simon CHESTERMAN, *Just War or Just Peace? Humanitarian Intervention and International Law*, Oxford, Oxford University Press, 2001; Consuelo RAMÓN CHORNET, *¿Violencia necesaria? La intervención humanitaria en Derecho internacional*, Madrid, Trotta, 1995.

107. See generally, Thomas G. WEISS, *Military-civilian interactions: humanitarian crises and the responsibility to protect*, Lanham/Oxford, Rowman & Littlefield, 2005.

lation of State sovereignty to the protection of human rights, identified with the broad concept of human security¹⁰⁸.

The Mexico Declaration states that the new concept of security “contributes to the consolidation of peace, integral development, and social justice, and is based on democratic values, respect for and promotion and defence of human rights, solidarity, cooperation, and respect for national sovereignty” (para. 2).

The UN Report also provides a general definition of a threat to security as “any event or process that leads to large-scale death or lessening of life chances and undermine States as the basic unit of the international system”¹⁰⁹. In this statement, States are considered the central actors of the international community, and when their survival is threatened by different risks, the other States, as members of the international community, should provide collective action to ensure the survival of that State. Therefore, a State-centric approach is still predominant in the UN Report. This may not surprise, as the UN Report is addressed to Member States of the UN for their consideration. But the UN, as a major international organisation dealing with many issues, such as human rights, environment, disarmament, etc. could have been more innovative in defining the priorities for the maintenance of international peace. Nevertheless, at least the UN Report suggests the possibility of international intervention, including the use of force, when the Security Council, acting under Chapter VII of the UN Charter, “can always authorize military action to redress catastrophic internal wrongs if it is prepared to declare that the situation in a “threat to international peace and security”, not especially difficult when breaches of international law are involved”¹¹⁰.

A parallel statement cannot be found in the Mexico Declaration. Here a more traditional approach may be seen, when the “[f]ull respect for the integrity and the national territory and for the sovereignty and political independence of each state in the region” is considered as “an essential basis for peaceful coexistence and security in the Hemisphere”¹¹¹. This may be due to the fact that the OAS cannot authorise the use force against a Member State¹¹². Exceptions to the rule are foreseen when American States apply spe-

108. See generally, Robert GRANT MCRAE and Don HUBERT, *Human security and the new diplomacy: protecting people, promoting peace*, Montreal, London, McGill-Queen's University Press, 2001.

109. UN Report, p. 12.

110. *Ibid.* para. 202.

111. *Declaration on Security in the Americas*, para. r., above note 66.

112. See Articles 19-23 of the OAS Charter.

cial treaties on collective security and defence¹¹³. It may invoke the application of the Rio Treaty, involving the use of force, when the security of the Hemisphere is at stake. The OAS Charter and the Declaration on Security also reaffirm respect for the Charter of the United Nations, which prohibits the use of force, without previous Security Council authorisation.

7.2. Universal and Regional Organisations

The problems concerning the co-ordination among existing organisations within the Western Hemisphere, as mentioned before, can also be identified when dealing with regional and universal organisations. International security and the relationship between the UN and regional organisations had been one of the central issues during the drafting of the UN Charter in San Francisco. The UN Charter provided a compromise that in practice has offered different solutions. On the one hand, the UN and the permanent members of the Security Council were interested in having a centralised control over the use of force and collective security actions. On the other hand, with the Cold War individual superpowers were ready to proclaim their spheres of influence and ask for exceptions to this general rule. The OAS, including most American States, has generally been quite jealous to assert autonomous action in the field of collective security, based on the preservation of the Treaty of Reciprocal Assistance.

The distinction and separation of competencies between universal and regional organisations in the field of international security has not been resolved yet. Tensions exist between the centralised system based on the UN Security Council's powers, and the possible resort to force by regional organisations. The OAS has been possibly the most active regional organisation in using this power if compared to other regional organisations.

The UN Charter tries to find a balance between centralised use of force, and regional organisations. When the UN Charter was drafted, actually very few regional organisations existed. At the same time, the Allied Powers (USA, USSR, UK, China and France) were willing to maintain the centralised control over international affairs. So, it was quite reasonable to have a more powerful UN, as compared to existing regional organisations. But with time, regional organisations have grown in number and have

113. Article 29 OAS Charter.

moved into security issues. They also claim the possibility of acting when the UN Security Council is unable or unwilling to act. The cases of Kosovo, Afghanistan and Iraq show that either international organisations or *ad hoc* “coalitions” are willing to use force without previous UN authorisation. This is a quite difficult issue that involves the prohibition of the use of force established in Article 2(4) and the powers of the Security Council foreseen by Articles 39-42 of the UN Charter. This is a problem singled out by the UN Secretary General in 2003¹¹⁴, but still not fully addressed by international organisations.

Regional arrangements (which mean regional organisations in the Charter’s text) are mentioned on several occasions in the High Level Panel Report. But the general trend of the Report is that the powers of the Security Council in the field of security should be maintained as they are, and no reform is needed. Suggestions made by the UN Report are limited to the need of further co-operation and possible formalisation of agreements between the UN and regional organisations.

But still problems exist, in particular when the use of force is envisaged. The UN Charter establishes that the use of force must be authorised by the Security Council under Chapter VII. The OAS has used a quite broad concept of threat to security, in particular through the interpretation of Article 51 of the UN Charter related to the right of self-defence. It included forms of military pressure, as in the case of the Cuban Missiles crises in 1961-1962¹¹⁵. The interpretation of Article 51 of the UN Charter was one the central issue from the legal point of view in the Security Council. The unclear line between use of force and self-defence has not yet been defined, after sixty years of UN practice.

The OAS has also used its own peace-keeping forces in some regional crises, even if peace-keeping cannot properly be included in the use of force, unless it takes the form of peace-enforcement.

Some forms of co-operation between the UN and the OAS have occurred in the past, such as the case of Haiti crisis since 1994, but they have also led to misunderstandings and bad management of the mission. More recently, the UN Secretary General has stressed the importance of cooperation

114. UN Secretary General, *Address to the General Assembly*, 23 September 2003, available at <<http://www.un.org/webcast/ga/58/statements/sg2eng030923.htm>>.

115. See the legal debate in *The American Journal of International Law*, vol. 57, n° 3 (1963).

between MINUSTAH¹¹⁶, the Organization of American States and CARICOM in Haiti¹¹⁷.

Experience shows that better rules should be defined to clarify the relationship between the UN and the OAS, as well as with other international organisations. This process has been initiated with two meetings held in 2003¹¹⁸ and in 2004, when a Presidential Statement was produced¹¹⁹.

Better communication and contact between regional organisations and the UN may help in this area. But also clear procedural rules concerning the powers of the different organisations might help in defining roles and responsibilities. For instance, if the Security Council, or any other UN organ, does not act in a given situation, in crises occurring within the geographical area of a specific organisation, then there might be a sort of “subsidiary” action giving legitimacy to the regional action. A certain time limit could be provided, or a request by the majority of Member States within the UN General Assembly, could ask a regional organisation to act. Conversely when a regional organisation is not acting, the UN would be allowed to. This second option is less controversial, as the UN has universal competence anyway and the Security Council can be always activated.

8. CONCLUSION

From the analysis presented in this article, it appears that a wider definition of security with international dimensions has been generally endorsed by States in the American continent. New and traditional dangers and threats to security, including the formulation of strategies and rules to face them are undergoing gradual definition. In this framework, the OAS has developed several initiatives and documents that culminated in the 2003 Mexico City Special Conference on Security that have been presented in this work.

116. United Nations Stabilization Mission in Haiti, established by UN, Security Council resolution 1542, 30 April 2004.

117. UN, Office of the Spokesman, “Secretary-General’s remarks to the Security Council meeting on cooperation between the United Nations and regional organizations in the processes of stabilization”, New York, 20 July 2004, available at <<http://www.un.org/apps/sg/sgstats.asp?nid=1030>>.

118. UNIS, “Security Council Meets with Regional Organizations to Consider Ways to Strengthen Collective Security”, SC/7724, 14 April 2003, available at <<http://www.unis-vienna.org/unis/pressrels/2003/sc7724.html>>.

119. UN, Security Council, UN doc. S/PRST/2004/27, 20 July 2004.

The evolution of security concerns analysed in the present article provides interesting new conceptual developments, but also raises some issues from the legal perspective. The central problem consists in considering if the new broad agenda related to security fits into the mandate of the OAS. The OAS is trying to incorporate and define the legal powers and relationship between the existing bodies, in particular the IADB and the CHS, within the OAS system. This task can lead to the reform of parts of the Charter through protocols, to the amendment of the statutes of those bodies, or to the creation of new institutions. The problem that can be envisaged is that, if security issues need stronger action by specific bodies, their powers should be defined by legal instruments and norms, and include them in the legal framework of the OAS.

But issues of legal definition, competences, overlapping and co-ordination among existing and future bodies and legal rules have just started. These also should include the definition and clarification of several issues, including the role of existing institutions, such as the Rio Treaty and the Bogotá Pact that have not played a relevant role in the inter-American system, as they should have probably done. The relationship and co-ordination between the OAS and sub-regional organisations and mechanisms needs further clarification. The issue of co-ordination should also address the position of American organisations in relation to the UN in dealing with action that falls within the domain of international security.

The suggestions adopted in the 2003 Mexico City Declaration concerning the means for the solution of problems linked to hemispheric security show that some issues and mechanisms are better defined, and have a priority over others. For instance, the problem of terrorism receives primary attention and already foresees a series of multilateral agreements and new organs for the co-ordination of action by American States. Cybercrime receives special attention and it is mentioned before the fight against hunger and the environmental protection. In both these last cases the prevalent interest of the US to ensure its security is evident. Problems like extreme poverty, illiteracy, health protection, etc. are mentioned but in very broad and general terms, without foreseeing adequate support, or mechanisms to deal with them properly. This outcome seems still to equate the concept of US national security with hemispheric security.

The protection of human rights, mentioned broadly in the Declaration, has not been considered as a central and fundamental element when defining instruments and actions linked to security. While shaping a multidimensional concept of threat to security, and mentioning human rights, democracy and justice as the basis for peace, it seems that there has not been a parallel com-

plex response which should take into consideration the real needs of all States in the continent. No adequate role has been identified for institutions acting for the protection of human rights, in particular the Commission and the Inter-American Court of Human Rights.

In the Declaration of Mexico City, still unresolved issues that give rise to tension in several countries in the region, such as the case of indigenous peoples, are not even mentioned. Neither is there reference to the International Criminal Court as a possible international tool for the fight against international crime. The role of civil society is almost forgotten. In the new framework of international security, civil society organisations should have a growing role due to the variety and complexity of the issues under discussion. New mechanisms should be envisaged when dealing with the reinforcement of democratic institutions, the fight against corruption, environmental degradation and the protection of human rights.

Linking security, co-operation and law should be the best solution for the improvement of the inter-American system. But this link was sometimes forgotten during the last fifty years, under the East-West confrontation based on the cold war and mostly the unilateral interests of continental superpowers. It seems that finally, under the process analysed in the present work, the inter-American system is regaining momentum, to provide more security, and therefore peace, to people in the continent. The 2003 Mexico Conference had the positive aim of putting into the inter-American agenda relevant security issues for many States in the continent. Consensus has been reached on them. The following step consists in including these issues in the legal and institutional mechanisms of the inter-American system. This aim cannot be attained if all the States in the continent would not understand the importance of reinforcing international law through multilateral commitments and actions. Unilateral, sometimes illegal, actions may provide short-term advantages, but undermine international security, the international rule of law, and the legitimacy of international institutions. International organisations, as international actors with institutional roles defined in their constitutional documents, represent a central component of co-operational security based on the respect of international legal rules and peace. In this context, actual institutional and legal developments within the OAS provide a very interesting experiment. They may offer useful ideas for other regional organisations; they may contribute to the international definition of the concept of international security, and new forms of co-ordination among international organisations.

Notas
