

CAN INTERNATIONAL LAW INTEGRATE OUR REGION? POLITICS, INTERNATIONAL LAW, AND THE CRISES TO COME

This panel was convened at 9:00 a.m. on Thursday, March 30, 2023 by its moderator, Jorge Contesse of Rutgers Law School, who introduced the speakers: Professor Cecilia Bailliet of the University of Oslo, Norway; Viviana Krsticevic of the Center for Justice and International Law (CEJIL); Ofilio Mayorga of Foley Hoag; Maria Antonia Tigre of the Sabin Center for Climate Change Law, Columbia Law School; and Antonia Urrejola of the Ministry of Foreign Affairs, Chile.

THE ROLE OF SOLIDARITY AS AN INTERNATIONAL RIGHT AND DUTY WITHIN LATIN AMERICA

*By Cecilia M. Bailliet**

In 1936, U.S. President Franklin D. Roosevelt came to Buenos Aires and gathered all the presidents of the Americas for the first radio address in which they announced the signing of the Declaration of Inter-American Solidarity and Cooperation.¹ This instrument sought to promote regional integration and set the region apart from Europe, which was at war at the time. It formally committed to norms of a democratic form of governance, non-intervention, prohibition of forcible collection of pecuniary debt, and peaceful resolution of disputes by way of conciliation, arbitration, and international courts.

The Organization of American States (OAS) Charter was adopted in 1948 and expanded the scope of solidarity.² The preamble sets forth that American solidarity 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.

Article 3 reiterated the recognition of the principle of solidarity as tied to the effective exercise of representative democracy.

Article 30 cites solidarity as the inspiration for a united effort to pursue social justice and development.

At the national constitutional level, solidarity is omnipresent within almost all constitutions, yet it is articulated in several different ways that would facilitate both regional and national integration: Bolivia,³

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¹ Available at: <https://www.oas.org/sap/peacefund/VirtualLibrary/Inter-AmericanConfMaintenancePeace/Treaties/DeclarationOfPrinciplesofInter-AmericanSolidarityCooperation.pdf>.

² Charter of the Organization of American States, entered into force December 13, 1951, 119 UNTS 3.

³ Constitution of Bolivia 2009, pmb. – Principle; Art. 8 Value for Social Gender Equality and Participation, Social Justice, Redistribution of Wealth; Art. 18 Free Health Care; Art. 19 Housing for Social Benefit for Rural and Disadvantaged Groups; Art. 43 Organ Donation; Art. 45 Social Security; Art. 51 Workers' Union; Arts. 51, 310 Cooperative Systems; Art. 218 Public Defender; Art. 255 International Relations; Art. 270 Decentralization; Art. 306 The Plural Economy; Art. 330 The Financial System; Art. 373 Access to Water.

Cuba,⁴ the Dominican Republic,⁵ Ecuador,⁶ Guatemala,⁷ Honduras,⁸ Nicaragua,⁹ Paraguay,¹⁰ Suriname,¹¹ and Venezuela¹² have provisions invoking solidarity within international relations and international law. Argentina,¹³ Chile,¹⁴ Cuba, the Dominican Republic, and Ecuador refer to it in the context of development within all provinces. Costa Rica¹⁵ and the Dominican Republic refers to solidarity and the right of labor to organize collectively. Ecuador, Mexico,¹⁶ Panama,¹⁷ Paraguay, and Peru¹⁸ refer to solidarity education. Bolivia, Colombia,¹⁹ Ecuador, Uruguay,²⁰ and Venezuela refer to solidarity rights of social security, health care, and/or access to water. Paraguay connects solidarity to the prohibition of domestic abuse. Venezuela refers to solidarity with Indigenous people. Several countries have provisions addressing solidarity responses to humanitarian situations. All of these solidarity criteria have formed part of the normative foundation of Latin American International Law that set a framework for regional and national integration which we largely forgotten about and need to reconsider for implementation at the current time.

At the grassroots level, solidarity in Latin America evolved to being interpreted and implemented by civil society groups cooperating with international organizations and NGOs through

⁴ Cuba Constitution 2019, pml. – International Solidarity; Art. 1 Principle; Art. 16(J) Obligation to Side with Victim of Aggression; Art. 47 Obligation of Solidarity; Art. 90 Solidarity as a Duty; Art. 169 Solidarity of Municipalities.

⁵ Dominican Republic Constitution 2015, pml. – Solidarity as a Value; Art. 26(4) International Solidarity; Art. 26(6) Economic Solidarity with the Americas in Support of Biodiversity and Defense of Raw Materials and Basic Products; Art. 56 Solidarity with Families to Support Adolescent Development; Art. 75(10) Duty of Citizens for Social Solidarity, Respond to Humanitarian Situations; Art. 196 Public Investment in the Provinces; Art. 217 Orientation for Development and Economic Regime.

⁶ Ecuador Constitution 2008, pml. – International Solidarity; Art. 27 Education; Art. 32 Health Care; Art. 34 Social Security; Art. 66(15) Right to Develop Economic Activities; Art. 83(9) Duty of the Citizen in the Exercise of Rights and Enjoyment of Goods and Services; Art. 85 Provision of Public Policies and Public Goods; Art. 95 Public Participation; Arts. 238, 270 Decentralized Autonomous Government; Arts. 283, 288, 309, 311, 316, 318 Mixed Grassroots Solidarity Economy; Art. 320 Development Inclusion; Art. 355 Education; Art. 367 Social Security; Art. 397 Prevention, Risk Management, Natural Disaster; Art. 416 International Relations; Art. 416(12) International Trade and Investment.

⁷ Guatemala Constitution 1985, Art. 150 Solidarity with Central American States; Art. 155 International Solidarity.

⁸ Honduras Constitution 1982, Art. 15 International Law; Art. 329 Economic Development Zones.

⁹ Nicaragua Constitution 1987, Art. 3 International Solidarity Against Oppression and Discrimination; Art. 5 National Solidarity Against Domestic Exclusion to Support Marginalized People; Art. 73 Family Based on Solidarity Between Man and Woman.

¹⁰ Paraguay Constitution 1992, Art. 60 Prohibition of Domestic Violence; Art. 73 Education; Art. 113 Cooperatives; Art. 143 International Relations.

¹¹ Suriname Constitution 1987, pml. – International Solidarity; Art. 7(4) Collaboration with Other Peoples in the Combat Against Colonialism, Neo-colonialism, Racism, Genocide and in the Combat for National Liberation, Peace and Social Progress.

¹² Venezuela Constitution 1999, pml. – Multi-ethnic and Multi-cultural Society and Future Generation; Art. 2 Value; Art. 4 Decentralized State; Art. 75 Family; Art. 84 Health; Art. 123 Native People's Economic Rights; Art. 135 Civic Duty; Art. 152 International Relations Solidarity Among Peoples in the Struggle for Their Liberation and the Welfare of Humanity; Art. 299 Economic Regime; Art. 326 National Security.

¹³ Argentina Constitution 1983, Art. 75 Development of the Provinces.

¹⁴ Chile Constitution 1980, Arts. 3, 115 Development of the Provinces.

¹⁵ Costa Rica Constitution 1949, Art. 64 Cooperatives and Workers' Associations.

¹⁶ Mexico Constitution 1917, Art. 3 Education.

¹⁷ Panama Constitution 1972, Art. 91 Education

¹⁸ Peru Constitution 1993, Art. 14 Education.

¹⁹ Colombia Constitution 1991, Art. 1 Principle; Art. 48 Social Security; Art. 49 Health Services; Art. 95 Civic Duty; Art. 356 Distribution of Resources to Provinces; Art. 367 Public Services.

²⁰ Uruguay Constitution 1985, Art. 47 Water.

the establishment of solidarity cities to protect refugees and migrants, as well as solidarity initiatives aimed at the protection of trade unionists and human rights defenders, including those acting on behalf of Indigenous rights.

At present, Latin America is undergoing increased levels of inequality,²¹ poverty, social marginalization and exclusion, democratic recession, and return to authoritarianism. This is met with civic protests, which in turn have had the consequence of wrongful prosecution, threats, attacks, and murder of Indigenous land rights and environmental defenders, human rights NGOs, labor rights, anti-corruption defenders, and women's rights activists by state and non-state actors. There is a very real need to strengthen transnational civil society and reopen civic spaces essentially pursuing international solidarity. The Inter-American Court of Human Rights acts in solidarity when issuing provisional orders protecting defenders and activists.

Contemporaneously, within the UN there is a draft declaration on the right to international solidarity that will be presented at the UN Human Rights Council. It seeks to articulate international solidarity as a participatory right and duty, linked to freedom of expression and association in a transnational context, which recognizes calls for collective action to respond to exclusion and marginalization of vulnerable groups. International solidarity is a liberating participation that frames itself on the connections and communication between diverse individuals and groups between different countries; with increased impact due to digital technology and a globalized media. Human rights are the shared values that are at the basis of solidarity.

All individuals alone and in association with each other would have the right to call for and benefit from international solidarity. States, international organizations, and transnational companies would have responsibilities, including the creation of mechanisms for reception and response to communicated solidarity demands. States respect the right to international solidarity by not criminalizing humanitarian actors who assist irregular migrants in solidarity or not subjecting civil society groups pursuing solidarity actions to defend victims of state and non-state violence or protect the environment to unnecessary or disproportional surveillance. The UN Counterterrorism Office should not provide technological support to a state that is misapplying its counterterrorism law against civic solidarity activists. A mining corporation would respect the right of international solidarity by ensuring that its subcontractors permit labor unions, or Indigenous groups to present solidarity demands regarding labor wages, working conditions, or the environmental impact of the mining.

Adoption of this instrument would facilitate articulation of the need to review the best practices of states, transnational companies, and international organizations to promote inclusive participation of marginalized groups, potentially utilizing reports to the UPR.

Because of the hesitance of Western states toward recognition of third generation rights, Latin American states should pursue consensus to diminish polarization within the UN Human Rights Council in order support the adoption of the Draft Declaration on the Right to International Solidarity. The aim would be to promote a new era of solidarity to address the challenge of reducing social inequality, poverty, and exclusion that fragments our societies in order to promote regional and national integration.

²¹ Within Latin America, extreme poverty is 14.5% this year according to the Economic Commission for Latin America and the Caribbean (Cepal).