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THE POST-COLD WAR ERA: RENEWED HOPE FOR INTERNATIONAL LAW IN THE INTER-AMERICAN SYSTEM

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I. INTRODUCTION

The purpose of this study is to give some preliminary analysis to the changing role of international law in the Inter-American System (IAS)¹ in this Post-Cold War period.² The end of the Cold War³ denotes the initiation of a new era of

1. Defining the Inter-American System is no easy task, but it is usually related to U.S.-Latin American relations. This construction has some structural difficulties as a vast number of very diverse countries are covered under the title "Latin America." For example, Haiti and Argentina, have nothing in common, but they are both catalogued under the same rubric. Despite this, the IAS includes an immense body of rules, both "public" and "private" in nature. The IAS comprises many governmental and non-governmental organizations that deal with an immense variety of issues. These governmental organizations are related to the Organization of American States, such as the Inter-American Commission on Human Rights, the Inter-American Defense Board, the Inter-American Judicial Committee, and the Inter-American Statistical Organization. There are also governmental organizations that are not sections of the OAS, such as: the Caribbean Community (CARICOM), the Group of Three (G-3), MERCOSUR, the Corporación Andina de Fomento, the Inter-American Development Bank, and many others. Finally, there are also non-governmental organizations, such as the Association of American Chambers of Commerce, the Inter-American Bar Association, the Consejo Latinoamericano de Ciencias Sociales, and many others.

2. Being such an extensive topic, it is important to illustrate what this paper will not cover: (1) legal analysis of the international and Inter-American rules and institutions; the legal instruments that make up the IAS (such as the OAS charter) will not be the object of legal analysis; (2) detailed historical description of the IAS or specific situations arising within; this is the purpose of many articles and books that deal extensively with the history of the IAS. Specific cases will be cited, but in-depth case analysis is not the purpose of this paper due to space limitations; and (3) foreign policy value judgments on U.S. and Latin American actions; this paper is not an exercise on foreign policy analysis; foreign policy will simply be used as an objective fact.

3. For purposes of this paper, the end of the Cold War will be marked by the fall of the Berlin Wall. Although in modern Latin America, the Cold War still has

interdisciplinary collaboration between international relations and international law; its implications are yet to be defined at the level of the IAS.

Growing interdependence in the world system is viewed by many states as an inevitable factor to account for foreign policy definition. The dynamics imposed on world politics by interdependence make it possible for states to rediscover international law as a desirable tool for the accomplishment of foreign policy objectives. Axioms I, II, and III attempt to illustrate the dimension and complexity entailed in building an efficient body of international norms for the solution of the conflicts through the application of foreign policy in the IAS.

Axiom I: The definition of whether an issue in the Inter-American System affects U.S.-Latin American relations is dependent upon domestic conditions in Latin America, U.S. perception of the issue, and world conditions affecting the Western Hemisphere.

The issue referred to in Axiom I depends upon the "value" of independent variables associated with the IAS. For example, an occurrence such as a communist revolution would be an issue in the Inter-American system if the following were to happen: there were a powerful communist block in the world (world condition), a revolution would take place in one of the Latin American countries (domestic condition in Latin America), and the United States were to perceive this occurrence as a threat to its national security (U.S. perception of the issue).

Once such an issue has been identified within the Inter-American System, IAS actors would deal with the arising conflict, aiming at a solution as stated in the following axiom:

vivid manifestations embodied in guerrilla fighters and radical leftist political parties.

Axiom II: The solution of an issue in the Inter-American system will be procured by the utilization of (a) the available instruments offered by international law; (b) the available instruments used in U.S. foreign policy; (c) the available instruments used in Latin American countries' foreign policy; and (d) the instruments used by non-state actors.

The effectiveness of the variables in Axiom II are determined by diverse factors which weigh the importance of each independent variable in the solution of the problem. For example, the instruments provided by international law would independently prove significant in procuring a solution to an issue in the Inter-American System if they were to coincide with United States foreign policy instruments available to procure a similar solution. This is evident because the United States, as a hegemonic power in the Western Hemisphere, has substantial influence in defining the agenda of the IAS and an enormous incidence in the *modus operandi* of the IAS through its legal institutions. In addition, international law's total relevance would require that the Latin American countries' foreign policy instruments and those instruments available to non-state actors, also coincide with those provided by international legal instruments and institutions for the procurement of solutions. Such conditions will maximize the relevance (although not necessarily the effectiveness) of international law in accordance with the terms of the following axiom:

Axiom III: The significance of international law in reaching a solution to an issue of the Inter-American System is dependent upon: (a) the U.S. willingness to apply international law; (b) Latin America's willingness to apply international law; and (c) non-state actors' willingness to apply international law.

Given the asymmetry of Latin America relative to the United States, the former's complete and unconditional willingness to apply international law toward the solution of issues in the IAS would have little incidence over the significance and relevance of international law within the IAS. If the United States is not willing to use the instruments provided by international law, its relevance may diminish considerably due to Latin America's relatively non-transcendental role in the solution of issues in the IAS.

While detailed discussion of the relevance of international law, or a solution to the issues of the IAS, is beyond the scope of this paper, extensive case studies measuring the variables of Axioms II and III follow. The first step is to search for those factors that make international law more or less relevant in the context of the IAS, such as domestic restrictions imposed on governments for conducting foreign policy and the end of the Cold War (a world condition as defined in Axiom I).

Various factors contribute to the difficulty associated with establishing a systematic analysis of the major problems in international law within the context of the IAS. First, there is no casebook that systematically analyzes the major problems of contemporary international relations in the IAS from an interdisciplinary international law-international relations perspective. Second, "a substantial percentage of public international lawyers know little about international relations in a formal, academic sense. Conversely, the overwhelming majority of international political scientists not only know nothing about international law, but in addition, are possessed by a deep-seated antipathy toward that subject."⁴ The traditional dichotomy between international relations and international law has impeded in-depth studies of their relation to the IAS. Third, although the international law-international relations debate indicates that both fields currently have more points of coincidence than ever before, the enriching analytical contribution each can make to the other

4. FRANCIS ANTHONY BOYLE, *THE FUTURE OF INTERNATIONAL LAW AND AMERICAN FOREIGN POLICY* 6-30 (1989).

does not occur often enough. Fourth, most of the recent studies attempting to create a solid link between international law and international relations refer exclusively to the world system, with little or no reference to the IAS. To make this connection, theorists have proposed institutionalist and liberal frameworks yet to be tested⁵ in the context of an extensive case study.

This paper will frequently refer to the variables proposed in Axioms I, II, and III. The discussion will be done in two sections. The first section will refer to how state actors of the IAS use international law in foreign policy definition. This section will emphasize United States foreign policy definition because of its vital role in the IAS. The second section will examine how the end of the Cold War has affected the role of international law in the IAS. This section will also briefly refer to the international law-international relations debate and its implications for the relevance of international law in the IAS.

II. THE IAS STATES AND INTERNATIONAL LAW

This section will begin by briefly referring to the willingness of Latin American countries to use the instruments of international law; it will then focus on the issue of whether international law is relevant and/or important to the United States, i.e., U.S. willingness to use international law as stated in Axiom III. The implementation of international law in the IAS is an additional problem that will be discussed in this section. The effectiveness of enforcement mechanisms will be separated from the issues of whether states in the IAS comply with the rules of international law, and whether international law is relevant to the

5. Anne-Marie Slaughter Burley, *International Law and International Relations Theory: A Dual Agenda*, 87 AM. J. INT'L L. 205 (1993). Slaughter Burley concludes that "[f]or political scientists, the relative explanatory power of one paradigm over another is ultimately an empirical question. International lawyers should prepare to follow this debate, to complement it with their own research within the Institutional and Liberal frameworks, and to draw their own conclusions."

conduct of foreign policy and important for the analysis of foreign relations at the IAS.

A. *Latin America*

Latin American states consider international law to be a valuable tool necessary for the accomplishment of their foreign policy objectives. Some states are more legalistic than others, but all appear to be more careful than the United States in the application of international rules. For example, the United States and Colombia have different approaches to the use of international law in the IAS, for the reasons explained in Table 1.

Table 1

Divergent Approaches Towards International Law
for the Solution of Issues in the IAS: The United States and Colombia

UNITED STATES OF AMERICA	COLOMBIA
<ul style="list-style-type: none"> - Hegemonic power in the Western Hemisphere with enormous capability in defining the agenda of the IAS and enormous incidence in the <i>modus operandi</i> of its institutions. - Different approach towards the application of international law according to the government in power. - Various international law violations (e.g., Grenada, Panama and Nicaragua) seeking a solution to an IAS issue. 	<ul style="list-style-type: none"> - Relatively small country in the Western Hemisphere with limited capability in defining the agenda of the IAS and limited incidence in the <i>modus operandi</i> of its institutions. - International law is always applied regardless of the government in power. - Strong support for the application of international law, even with very sensitive issues, such as the territorial disputes with Venezuela. Participation in Contadora Group, Rio Group, and Group of Three promoting the solution of conflicts in the IAS through the use of international law mechanisms.

There is little doubt of the willingness of Latin American countries to use international law in their foreign relations. Even though this practice has consequences under Axiom III, it may not

have a significant influence on the relevance and effectiveness of international law in the IAS. Some argue that this legalistic approach to foreign policy issues is a signal of their own weakness.⁶ Regardless of how the application of international law may be interpreted, Latin American states recognize two important qualities of international relations. First, cooperation among countries is an option in the anarchic nation-state system. With growing material interdependence, such cooperation may become an increasingly pervasive feature of world society. Second, this type of cooperation cannot be accomplished without the aid of international law, particularly at the level of the IAS.⁷

B. *United States*

U.S. willingness to use international law mechanisms is affected by domestic norms which dictate the relation between international and domestic rules. The impact of domestic norms on international law at the IAS must be analyzed on a case by case basis. This analysis must consider all bilateral and multilateral treaties in force in which the United States and a significant number of Latin American countries are parties.

In some instances, U.S. perception of international law is circumscribed by diverse factors. First, treaties ratified by Congress are incorporated into domestic legislation and bind the United States internationally. Nonetheless, in some crucial areas of U.S.-Latin American relations, treaty ratification is either highly complex or non-existent. Many human rights bills, including the American Convention, are not ratified. Those that are ratified

6. Interview with Bruce M. Bagley, Director of Inter-American Studies of the Graduate School of International Studies, University of Miami (October 1993). Indeed, a realist approach to the problem.

7. See SEYOM BROWN, *INTERNATIONAL RELATIONS IN A CHANGING GLOBAL SYSTEM: TOWARD A THEORY OF THE WORLD POLITY* 28-56, (1992) for an opinion clearly supporting this statement.

become subject to numerous declarations and reservations.⁸ Second, a treaty may be signed but not ratified. In this case, Article 18 of the Vienna Convention on the Law of the Treaties has provisions compelling the signing party " . . . to refrain from acts which would defeat the object and purpose of a treaty when: (a) It has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become party to the treaty. . . ." Third, customary law is treated as federal law and may be enforced by domestic courts. Proving that there is an international custom may be difficult, but there are cases in which an international custom has been the basis of a judicial opinion.⁹ Finally, any domestic enforceability of a treaty or a custom depends on whether it is self-executing or non-self-executing; this distinction makes the treaty (or some of its norms) judicially enforceable or judicially non-enforceable in domestic courts, respectively. The U.S. Supreme Court has extensive jurisprudence on this subject, with important repercussions in terms of enforceability of international norms at the domestic level.¹⁰ Many issues of foreign policy may be illegal from an international

8. The U.S. Congress authorized the ratification of the Covenant on Civil and Political Rights on March 23, 1976. In this ratification, Congress made multiple reservations and declarations. For example, one declaration considers the treaty as non-self executing, despite the multiple individual rights included in the text of the Covenant.

9. *See, e.g., The Paquete Habana*, 175 U.S. 677, 700 (1900). In this case, the court declared that "[i]nternational law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction [W]here there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usage of civilized nations."

10. *See, e.g., Foster v. Neilson*, 27 U.S. 253, 259 (1829), *overruled by United States v. Percheman*, 32 U.S. 51, 89 (1833); *Frolova v. U.S.S.R.*, 761 F.2d 370, 373 (7th Cir. 1985); *People of Saipan v. United States Dep't of the Interior*, 502 F.2d 90, 97 (9th Cir. 1974).

perspective, but courts may abstain from asserting jurisdiction based on the political question doctrine.¹¹

U.S. foreign policy has two levels at which international law operates differently. One level involves foreign policy officials whose work is purely international law, although they do not perceive it as such. On this level, there is no Axiom I issue affecting U.S.-Latin American relations and, therefore, no purpose in analyzing its relevance. The next level involves extraordinary affairs where the United States has traditionally given peripheral importance to international law. This includes: crisis management, political and economic conflicts, and national security plans. Here the IAS is clearly affected, and the willingness of the United States to respect international law will determine its effectiveness in procuring solutions.¹² U.S. willingness to comply with the instruments provided by international law, and the consequential significance of international legal norms and institutions, depends upon the variables explained in the following sections.¹³ These

11. If someone is arrested illegally, a court can order his release. In contrast, a court cannot order the creation of taxes to reconstruct Panama after an invasion. Judges increasingly have chosen not to dismiss claims of injury on political question grounds, and instead have focused on sovereign immunity, failure to state a cause of action, or lack of standing. See FRANK NEWMAN & DAVID WEISSBRODT, *INTERNATIONAL HUMAN RIGHTS* 594-618 (1990).

12. It is more common for policy makers to look at international law as an instrument for public diplomacy and official rationalization, rather than as a source of "problems" to overcome.

13. In some instances, international law is important regardless of how the variables set forth interfere. This, for example, is manifest in treaty provisions where, for example: the use of airspace and base facilities for specific missions is challenged; there are military challenges when a country has close relations with the U.S. and sympathy and support is needed; and in bilateral agreements that are being violated by a close ally whom the U.S. may not want to challenge.

See Paul H. Kreisberg, *Does the U.S. Government Think That International Law Is Important?*, 11 *YALE J. INT'L L.* 479, 480-482 (1986).

variables include: the administration in office, domestic constraints, the changes in value-intensity and issue-intensity of U.S. foreign policy, geographical constraints, the role of non-state actors, and the current need for international cooperation in the Western Hemisphere.

1. Administration in Office

The application of international law to provide solutions to the various issues of the IAS varies according to the administration in office. Generally, Democratic presidents have been more careful to comply with international law. For example, during the Carter administration, the U.S. position to act in accordance with international law principles was widely accepted by the international community; this was evidenced by the Carter Administration's behavior with respect to Iran. The Carter administration was urged to approach the International Court of Justice, while "Cyrus Vance made continuing efforts to ensure that [the] Carter administration policy options were consistent with concepts of international law."¹⁴

The Reagan Administration followed, and with it, came the uselessness of international law in foreign policy definition. Sultan explains the Reagan administration's attitude towards international law when he argues that,

probably not since the Panama Policy of Theodore Roosevelt has the commitment to the international rule of law by an American president been as severely questioned as at the present time [W]e are experiencing an unmuted chorus articulating an aggravated insensitivity-some would say arrogance- towards respect for international law on the part of President Reagan and his policy makers. The chronological "bill of particulars" that

14. *Id.* at 480.

can be advanced to support this criticism is most telling.¹⁵

During the Cold War, Kreisberg also presented his point of view on the importance of international law from the government's perspective:

When questions of international law arise in meetings within government on critical political and security issues, decisionmakers generally refer either to domestic law, including treaties and formal agreements between the United States and foreign governments, or to options for dealing with the congressional reactions to policy. Unless a senior official personally focuses on broad questions of legal principle, American policy is conducted with an eye towards pragmatic policy concerns Overall . . . these issues are usually dealt with tactically. If another country raises an issue of international law as important to its concerns, that question will be addressed. But aside from attempts by the Carter Administration to pay attention to international law and international institutions, international law has received scant attention over the last two decades."¹⁶

The Bush administration oscillated between being the most manifest transgressor of international law, to symbolizing a passionate advocacy of the importance of complying with international rules. The invasion of Panama is considered to be the clearest example of an international law violation after the Cold

15. Allen Sultan, *The International Rule of Law Under the Reagan Administration*, 10 U. DAYTON L. REV. 245 (1985).

16. Kreisberg, *supra* note 13, at 480-81.

War. Whereas the Persian Gulf War was not a unilateral response, it was a collective responsibility formally approved by the Security Council of the United Nations. President Bush also announced the Enterprise for the Americas Initiative (EAI) in June 1990. The EAI was a new approach to the issues of the IAS as defined in axiom I. For the first time in many years, U.S. foreign policy towards Latin America was not directed to contain the U.S.S.R.'s expansion in the region.

Finally, the Clinton administration has relied on international law to deal with humanitarian intervention in Somalia and restoration of democracy in Haiti. Clinton also gave continuity to the EAI, and passed the North American Free Trade Agreement (NAFTA), a treaty with immense consequences for U.S.-Latin American relations.

2. Domestic Constraints

The issue of whether international law should be considered for the formulation of U.S. foreign policy is determined mainly by domestic actors. U.S. willingness to use international law mechanisms is also determined by Congress and public opinion. In many instances, presidents make foreign policy decisions without accounting for the opinion of Congress and/or the public. Nonetheless, the increasing insistence of these two actors in playing a role in the formulation of United States foreign policy definition is forcing the state to further comply with international norms and institutions.

a. Congressional Pressure

Generally, the significance of international law is augmented when Congress intervenes in U.S. foreign policy definition. Congressional pressure favors the application of international law because of the powerful role the Senate and the House have in determining how international law is considered. This power is especially seen at the international treaties approval level, a process

in which Congress has power in deciding what formal international law is binding. Additionally:

- Congress has made efforts to constrain the President's freedom to use military force. Examples of these efforts are the War Powers Act and more recently Congressional acquiescence as to humanitarian intervention in Somalia, and in the presidential actions to restore democracy in Haiti.

- Congress has established a system to monitor CIA activities abroad, furthering U.S. observance of international law principles such as the non-intervention principles in domestic affairs.

- Congress is generally committed to organizations in the world by contributing resources to these institutions.

- Congress' involvement in the discussion of foreign policy issues has limited the discretion of the President, and has narrowed the gap between domestic and foreign policy issues. NAFTA, for example, became an entirely domestic issue with immense foreign policy implications.

b. Public Opinion

International law plays an important role when the United States wants to legitimize its actions with the American public. Many criticisms of the United States by Congress, the press, and other nations, are based on international law arguments. Kreisberg argues the importance of public opinion in the definition of the relevance of international law:

Domestic critics may be particularly conscious of international legal norms because of the respect accorded law in American political practice Whether or not international law plays a direct and immediate role in decisionmaking by any particular United States administration, it is often of such importance to other governments that United States

officials are compelled to take it into account in explaining and justifying their actions. Failure to do so risks confrontation with allies abroad and endangers public support at home. Therefore, a key question for policy-makers who may not be otherwise overly concerned about international law is whether what they would *like* to do can be made to *look* good, and thus limit damage to our policy interests.¹⁷

3. Values and Issues of United States Foreign Policy

For the most part, international law violations do not take place in times of peace. Major international law violations take place when there is a conflict, i.e., when the United States feels there is a threat to its national security. The violation will occur when the United States is not willing to comply with international law because its own foreign policy instruments are perceived as more effective than those provided by international law.

An IAS issue is determined by U.S. perception of the issue, which in turn will be defined by the values of U.S. foreign policy at stake. U.S. foreign policy values are often accepted in the world as patterns of international behavior.¹⁸ The most important values of U.S. foreign policy are democracy, human rights, environmental protection, free trade, non-aggression, anti-communism, economic strength, and leadership. Although values do not change dramatically from time to time, their intensity does change with unquestionable repercussions on the importance of international law. This value-intensity has changed in the IAS with the end of the Cold War. Table 2 contains estimations of intensity variations

17. *Id.* at 483.

18. Many of these values are reflected in the preambles of the U.S. Constitution and the U.N. and OAS charters. Both charters are heavily influenced by American drafters.

for each foreign policy value during and after the Cold War, including an estimation of the relevance of international law in both periods.

Table 2

U.S. Foreign Policy Values and the IAS

Value	Intensity at the IAS During the Cold War	Intensity at the IAS After the Cold War
Democracy	****	*****
Human Rights	***	*****
Environmental Protection	***	*****
Free and Open Trading Systems	**	*****
Expansion of Interest	*****	**
Respect for International Law	*	****
Non-Aggression	*****	*****
Anti-Communism	*****	*
Maximization of Economic Strength	***	*****
Shared Leadership	*	****

Maximum intensity = *****

Minimum intensity = *

The value-intensity fluctuations included in Table 2 have explanations. First, U.S. foreign policy towards Latin America during the Cold War was dominated by an objective: exclusion of an extra-hemispheric rival from the region. During the Cold War there was no focus on Latin America *per se*, but on rivals coming

into the region.¹⁹ Second, because the communist threat is less intense during the post Cold War period; other values have become more intense in the IAS. Although it may be premature at this point to make conclusions, NAFTA's approval by Congress, for example, indicates that Latin America is being treated differently by the United States. Today, unlike in the Cold War era, Latin America is being considered as a potential trading partner. This positions trade as an important U.S. foreign policy objective towards the region—a phenomenon practically nonexistent during the Cold War.

Defending U.S. foreign policy values has created issues for the IAS and the world. Presently, the most important of the U.S. foreign policy issues are arms control, international drug trafficking, U.N. involvement in dispute resolution, immigration, nuclear proliferation, regional ethnic struggle, terrorism, economic competitiveness, access to vital resources, and use of aid. These issues and their intensity may change dramatically depending on world conditions. Table 3 estimates the variations of issue-intensity during and after the Cold War in the IAS, and the implications of this shift upon the importance of international law for the solution of these issues.

19. These views are well analyzed in Lars Shoultz, *U.S. Values and Approaches to Hemispheric Security Issues*, in *SECURITY, DEMOCRACY, AND DEVELOPMENT IN U.S.-LATIN AMERICAN RELATIONS* 33 (Lars Shoultz et al. eds., 1994).

Table 3

U.S. Foreign Policy Issues and the IAS

Issue	Intensity at the IAS During the Cold War	Intensity at the IAS After the Cold War
Arms Control	*****	***
International Drug Trafficking	*****	****
U.N. Use in Dispute Resolution	**	*****
Immigration	*****	*****
Nuclear Proliferation	*****	*****
Respect for International Law	*	****
Regional Ethnic Struggle	*****	**
Terrorism	*	*
Economic Competitiveness	***	*****
Access to Vital Resources	****	****
Use of Aid	*****	***

Maximum intensity = *****

Minimum intensity = *

The issue-intensity variations included in Table 3 have several explanations. First, Clinton's emphasis on domestic affairs makes Latin America less important to the United States. At the time of this writing, the Clinton administration has not announced a comprehensive policy towards the region, aside from those

rhetoical assertions made by State Department officers.²⁰ Second, the issues in Table 3 are partially determined by Latin America's own capacity to become a threat to the U.S. via immigration and drug trafficking. Third, while the relevance and importance of international law increases, there is always the possibility of a "Kick the Dog Effect"²¹ in the Caribbean and Central America when things go wrong for the United States in other areas of the world. Fourth, the U.S. may address these issues by taking actions to terminate the conflict. These actions may or may not utilize international law mechanisms. For instance, if intervention, in the form of economic and military aid, economic sanctions, covert intervention, paramilitary intervention, or direct military intervention, is chosen by U.S. officials as the most effective tool, the issue becomes whether international law was violated. No violation *per se* proves that international law was ineffective in absolute terms.²² International law plays a different role in every crisis. At times it is important (as in the restoration of democracy in Haiti), and at others it is less important (as in the invasion of Panama).

4. Geographical Constraints

At the level of the IAS, international law violations appear to have geographical constraints. Central America and the Caribbean are the most affected regions vis à vis South American

20. Alexander F. Watson, Statement at Confirmation Hearing, in 4 DEP'T ST. DISPATCH No. 21, May 1993.

21. The "Kick the Dog Effect" is the possibility of a U.S. attack of a small country in Central America or the Caribbean when the reputation of the U.S. is at stake in some other action in the world. See Shoultz, *supra* note 19.

22. A recent study on the subject explains how in this new world, as more and more rules become universally accepted, international law strengthens as a more effective tool. See Jonathan I. Charney, *Universal International Law*, 87 AM. J. INT'L L. 529, 551 (1993).

nations. Illegal acts tend to occur more frequently in regions smaller than, and closer to, the United States, and less in regions larger than, and geographically more distant from, the United States. History validates this statement. If we examine military intervention in Latin America in the twentieth century, very few interventions occurred in South American countries.²³ Economic sanctions, a different form of intervention, and an alternative to military intervention, have been imposed upon South American countries, but especially on countries in Central America and the Caribbean.²⁴

A domestic condition in Latin America is perceived by the United States differently, depending on whether it affects a country in the Caribbean or Central America, or a country in South America. (The differences in United States perception affect Axiom I). For instance, two similar events in the IAS were perceived differently by the United States. The *coup d'état* in Haiti against Aristide has had enormous implications in United States foreign policy, while in Peru, the Fujimori *autogolpe* had more modest implications. The possibility of massive migration from Haiti made that *coup* a more important issue for the IAS. United States perception varies from region to region, and therefore, a similar domestic condition in the Caribbean may be dealt with differently and/or more acutely than in South America.

These differences in the U.S. approach to similar domestic conditions in Latin America have the following consequences: (I) the solution of an identical situation is different depending on whether the issue of the IAS is related to Central America or the Caribbean, or to South America; (II) there is more U.S. willingness to account for international law when the issue affects South America, and less willingness when the issue is related to Central

23. See MICHAEL J. KRYZANEK, U.S.-LATIN AMERICAN RELATIONS 215-17 (1990).

24. Kimberly A. Elliot, *Economic Sanctions, in INTERVENTION INTO THE 1990S: U.S. FOREIGN POLICY IN THE THIRD WORLD* 97, 104-06 (1992).

America and the Caribbean; (III) the significance of international law also varies according to this regional pattern: it is more relevant in U.S.-South American relations than in U.S.-Central American relations or U.S.-Caribbean relations; and (IV) any conclusions about the effectiveness of international law in the IAS cannot be generalized to all of the Western Hemisphere.

5. Non-state Actors²⁵

Non-state actors also have an active role, though less important than that of state actors, in procuring solutions to issues of the IAS as defined by Axiom II. The state is no longer the only important actor, as trade, investment, and many other private transactions increase over the years. Non-state actors involved in these international operations are of enormous importance to international law. For example, multinational corporations are bound by, and respect, the web of agreements that regulate their industry at the private international level. Moreover, under the current world juncture where international cooperation appears to be the key for world economic survival, non-state actors acquire a transcendental importance.

6. Cooperation

Cooperation is possible when there are common interests and common values; only under these conditions will countries concede to be bound by a common set of rules and share common institutions. This has not been the case in U.S.-Latin American relations, although there is some optimism now that the Cold War has ended. The values of the nations of the IAS are more similar today than ever before. The United States feels safer because most of the countries of the Western Hemisphere have democratic regimes and market economies.

25. See also KRYZANEK, *supra* note 23 (contains a chapter on the importance and role of non-state actors in the IAS).

Cooperation is fortified by other actors of the world system because governments are no longer the only actors. These "other actors" are in charge of implementing government policies in coordination with other partners. NAFTA, for instance, would be less important were it not for the active role played by these "other actors." Cooperation in the IAS is growing due to the developing interdependence in the Western Hemisphere. Not only will this make the system less anarchic, but it will also favor the relevance and effectiveness of international law.

III. INTERNATIONAL LAW DURING AND AFTER THE COLD WAR

A. *The Debate: International Law v. International Relations*²⁶

The debate's usefulness is based upon the incorporation of the end of the Cold War as an explanation to the numerous points of coincidence between international law and international relations. Four international relations paradigms--realism, neo-realism, institutionalism, and liberalism--have made value judgments in reference to the role of international law within international relations. In response, international lawyers have responded to each of the international relations arguments in an effort to prove the effectiveness of the field in international relations. Regardless of the multiple ramifications of this important debate, the corollaries drawn from its application to the world system differentiate the times of the Cold War from the present.

The prevalent international relations paradigms during the Cold War (mainly realism) impeded interaction and interdisciplinary collaboration between international relations theory and international law. Currently, the role of international legal

26. See also Slaughter Burley, *supra* note 5; Francis Anthony Boyle, *The Irrelevance of International Law: The Schism Between International Law and International Politics*, 10 CAL. W. INT'L L.J. 193, 219 (1980).

rules, procedures, and organizations are more effective than at any time since 1945. The prevalent paradigms allow interaction and interdisciplinary collaboration between international relations theory and international law.

International law was not the most relevant and important tool used by civilized nations to define foreign policy during the Cold War. At the end of the Cold War, civilized nations of the world gave importance and relevance to international law in the foreign policy definition.

Mutatis mutandis, these conclusions can be applied to the IAS by using the variables of Axioms I, II, and III. In Axiom I, the end of the Cold War meant the disappearance of the U.S.S.R. as a superpower and as a U.S. enemy, an occurrence that dramatically changed world conditions and U.S. perception of the events of the IAS. In other words, what could be considered as an issue of the IAS during the Cold War, may not be considered as such today. For instance, the U.S. value of "anti-communism" that led many of the military interventions in Latin America, such as Nicaragua and Grenada, is less important today because the superpower that had to be detained no longer exists.

Without having to deal with a communist threat, other conflicts may now be resolved with international law instruments. This happened at a world level in the cases of "Desert Storm" operation in Kuwait against Iraq, and the humanitarian intervention in Somalia. At the IAS level, the United States has used international law instruments to procure a solution to the crises in Haiti. This IAS issue, for example, is not related to the value of "anti-communism" but to the value of "democracy." If this trend continues, U.S. foreign policy instruments would tend to coincide with international law instruments in accordance with Axiom II.

Finally, in Axiom III, U.S. willingness to use international law instruments will define the speed of the blending of U.S. foreign policy instruments and those provided by international law. Given the asymmetrical relationship between the United States and Latin America, any advancement achieved in consolidating U.S. willingness to use international law instruments in the solution of

conflicts in the IAS will have a multiple effect on the importance, relevance, and effectiveness of international law in the Western Hemisphere.

B. *The Cold War*

After the end of World War II, the study of international relations was divided into two distinct fields: international political science and international legal studies. The best international relations theoretical framework to explain state behavior during this time is realism, under which law as conceived at the domestic level has no application. For realists, the only relevant laws are the laws of power in which the strongest will prevail. Realists present international lawyers with the challenge of proving the relevance of international law, and international lawyers have been forced to redefine the relationship between international law and politics.²⁷ Unfortunately, experts in both fields frequently disregard each

27. The ideological dispute between legal realists and political realists is a complicated one. While legal realists argue that law subsumes politics, political realists argue that politics proceeds independently of law. Slaughter Burley classifies the responses to the realist challenge as follows: (I) *Law as a policy science* (Myres McDougal and Harold Lasswell) where theoretical insights of political science and other sciences were taken into consideration to critique the existing law; (II) *Law as a systemic policy science* (Richard A. Falk, Saul Mendlovitz, Burns Weston) where the importance of understanding law as the expression of political and social values is recognized, allowing for the possibility of a community of values at the systemic level in an ideologically charged world; (III) *Pragmatism and legal process* (Abram Chayes, Thomas Ehrlich, Andreas F. Lowenfeld), where international law is not just a set of rules, but has been redefined as an international *legal process*. They studied the extent to which law, lawyers, and legal institutions operate to affect the course of international affairs. Based on this approach, these theorists try to prove that law is a major force in international affairs. See Slaughter Burley, *supra* note 5, at 209.

other.²⁸

During the Cold War, the United States engaged in actions that violated international law in the IAS. Excessive asymmetry in U.S.-Latin American relations, U.S. hegemony in the region, and the threat created by communism to U.S. national security made the legal tools of the IAS irrelevant, ineffective, and inefficacious. Simply put, the United States could not afford international law operating as a limit to its policy towards the region. Force was used selectively when the risks were low, in order to demonstrate that the United States would act with decisiveness while reinforcing deterrence against the Soviet Union in the Third World. This procedure displayed the ability of U.S. armed forces to defend American and allied interests, induced countries that challenged the United States to cease and desist, and enhanced an international perception of the United States as the great world power.

The Reagan Administration is representative of how the Cold War affected the significance of international law. The Carter pattern was reversed, and the interplay between international legal and purely political concerns was left behind. The Reagan Administration offered new definitions of international norms that increased the flexibility of U.S. foreign policy to deal with a dangerous international environment. The U.S.S.R. also provided its own definition of international law by approving and justifying insurrection, revolution, aggression, and terrorism. The Reagan administration displayed skepticism about international organizations in pursuing policy goals and leaning towards the use

28. BOYLE, *supra* note 4. Boyle argues that both disciplines share some characteristics. His analysis stems from depictions in Thomas Hobbe's *Leviathan*. International political scientists and public international lawyers essentially perceive the world of international relations and domestic affairs in Hobbesian terms. Political scientists embrace the first part of the book, which proclaims that human nature is basically rapacious; thus, the state of nature is "solitary, poor, nasty, brutish, and short." Public international lawyers basically operate within the intellectual framework of the second part of *Leviathan*, on the nature of the Commonwealth, which promulgates the cardinal tenet of legal order positivism: the will of the sovereign is the source of all law.

of military pressures as a policy option. Little credibility was given to the U.N. or other international organizations, such as the World Court. In *Nicaragua v. United States*, the World Court held that it had jurisdiction to hear Nicaragua's claim that it was the victim of U.S. aggression. The Court's opinion was in opposition to the State Department's position that the court should not proceed with the case *even if* jurisdiction existed. The United States opted out of the proceeding completely.²⁹

C. *After the Cold War*

Under the current world's juncture, arguments against the effectiveness of international law in international relations are more questionable than ever. As rigid assumptions of realism fade in favor of more flexible principles, changes abound in the current structure of the world economic order. The emerging role of the United Nations, new problems with the balance of power in the world system, and the new tone used by government officials in handling foreign affairs, once again make international law determinative in international relations. As argued by Slaughter Burley, this format creates increasing opportunities for effective interaction and interdisciplinary collaboration between international law and international relations:

Writing in 1968 on the "relevance of international law," Richard Falk described his efforts as part of the larger endeavor of "liberating the discipline of international law from a sense of its own futility." In 1992 that task appears to have been accomplished. International legal rules, procedures and organizations are more visible and arguably more effective than at any time since 1945

29. Subsequently, the U.S. asserted a political argument to justify the action: the Soviets consistently refused to submit to World Court proceedings, so there was no reason for the U.S. to do so.

The resurgence of rules and procedures in the service of an organized international order is the legacy of all wars, hot or cold.³⁰

In spite of Slaughter Burley's victorious statement, the end of the Cold War does not necessarily induce a maximum relevance and effectiveness of international law in the IAS. We may be in the process of this desirable effectiveness notwithstanding at least three recent events that violated international law in the Western Hemisphere: the Invasion of Panama (ordered by the President), the Torricelli Bill (ordered by Congress), and a Supreme Court opinion. Some details of these actions are provided below:

(I) The invasion of Panama was a flagrant violation of international law.³¹ The objectives of the Panama incursion were to protect American lives, support democracy, bring Manuel Noriega to justice, and protect the integrity of the Panama Canal Treaties. The legal justification given by the United States for this action was self-defense based on article 51 of the U.N. Charter and article 21 of the OAS charter, where the use of force is authorized in cases of self-defense.³² However, the reaction to this action pointed in a different direction. Venezuelans argued that the intervention of Panama had mortally injured the IAS and turned the Rio Pact and the OAS charter into "meritless dishonored protocols."³³ In Mexico, the action was interpreted as the return

30. Slaughter Burley, *supra* note 5, at 205.

31. See Margaret E. Scranton, *Panamá*, in *INTERVENTION INTO THE 1990s: U.S. FOREIGN POLICY IN THE THIRD WORLD* 343, 360 (Peter J. Schraeder ed., 1991).

32. Christopher Joyner, *International Law*, in *INTERVENTION INTO THE 1990s: U.S. FOREIGN POLICY IN THE THIRD WORLD* 240, 241 (Peter J. Schraeder ed., 1991).

33. Luis Oropeza, *Panamá y el derecho internacional*, *UNIVERSAL*, (Caracas, Venezuela), Jan. 18, 1990, at 4.

of Theodore Roosevelt when a revolution in the then-Colombian province was instigated.³⁴ Nicaragua placed its troops on alert, Peru recalled its Ambassador to the United States, leftist groups in Argentina, Uruguay, and Mexico planned public rallies to protest the invasion, and Chile, with a dictator as President at the time, rejected the action and called for a rapid restoration of Panama's sovereignty.³⁵

(II) The Torricelli Bill, approved by Congress to impede international transactions between American companies located abroad and in Cuba, was interpreted by various governments as a violation of international legal principles, especially the tenet of non-intervention in the affairs of other countries.³⁶ The application of the Bill eventually led the U.N. General Assembly to oppose its implementation.

(III) The United States Supreme Court's decision to allow the capture of suspected criminals in foreign countries for trial in American territory was an additional source of discrepancy between the United States and other states in the IAS. The legality of this issue was revised and rejected by the Judicial Committee of the OAS in August of 1992, and all Latin American countries protested against the Court's decision.³⁷ President Bush was obligated to clarify the scope of the decision,³⁸ given the negative implications

34. Gaston Garcia, *El retorno de T. Roosevelt: Crimen impune*, EXCELSIOR, Dec. 22, 1989, at 1A.

35. James Brooke, *Latin America: U.S. Denounced by Nations Touchy about Intervention*, N.Y. TIMES, Dec. 21, 1989, at 24.

36. Evangelina Hernandez, *Rechazo oficial del gobierno de Mexico a la ley Torricelli de EEUU*, JORNADA (Mexico), Oct. 15, 1992, at 1, 6.

37. See, e.g., *Diplomacy: Indignation at US kidnap-right ruling*, LATIN AM. WKLY REP. (London), July 2, 1992, at 8, 9.

38. The clarification made by the U.S. Ambassador to Venezuela on June 19, 1992 was an example of this behavior. See *Embajador Michael Skol: EEUU garantiza respeto a soberanía venezolana*, NACIONAL (Caracas, Venezuela), June

of this decision for the application of international law principles in the Western Hemisphere.

IV. CONCLUSION

In spite of the obscure panorama inherited from the Reagan and Bush administrations, it is indisputable that the world has evolved and the new role of international law is reaching the Western Hemisphere. From a theoretical perspective, there is the possibility of creating a long-lasting bridge for interaction and interdisciplinary collaboration between international lawyers and political scientists devoted to the study of the IAS. From a more pragmatic perspective, the effectiveness of international law in the IAS is promising. During the Cold War, the presence of a hegemonic power was a necessary element to consolidate U.S. leadership in the Western Hemisphere. Under this format, the United States was able to impose values and create common interests that permitted the emergence of induced cooperation. The IAS was reduced to an international security regime.

U.S. foreign policy towards the region remains to be defined for the post-Cold War era. Congress's approval of NAFTA is the only action that embodies a shift in the conduct of U.S.-Latin American relations. Custom unions, common markets, and regional trading blocks such as NAFTA, are possible because domestic economies would be overwhelmed by more economically powerful states, or by transnational corporations. Today, the creation of international economic regimes is useful to governments, as it allows governments to attain objectives that would otherwise be unattainable;³⁹ they come in situations where states have both common and conflicting interests in multiple, overlapping issues. The IAS is evolving towards an international economic regime replacing the obsolete international security regime.

20, 1992, at 2A.

39. See BROWN, *supra* note 7, at 28, 56.

The effect of the Enterprise for the Americas Initiative on the role of international law in the IAS must not be underestimated. The Initiative was important to the United States because of the following reasons that allude to the concept of increasing interdependence: (1) the United States is the greatest debtor in the World; (2) the United States consumes 25% of the world's energy and 50% of it is imported; the energetic potential of Latin America is immense, and in the future, countries such as Colombia, Venezuela, and Mexico may be of great importance to United States interests; (3) U.S. productivity has dropped from 4th in 1988 to an estimated 12th for the year 2030; (4) U.S. military spending is four times greater than that of its competitors; and (5) U.S. petroleum dependency has tripled.⁴⁰ These weaknesses make the sub-regional integration efforts, MERCOSUR, the Andean Pact, and the G-3, more relevant in the context of U.S.-Latin American relations, and consequently the effectiveness and importance of international law in the Western Hemisphere will be enhanced. Today, Latin America and the United States have more points of coincidence than ever before. Both parties find international rules more acceptable for the accomplishment of their foreign and domestic objectives.

Finally, Latin American leaders recently made two relevant declarations. First, the "Santiago Commitment to Democracy and the Renewal of the Inter-American System" adopted by plenary session of the OAS in June 1991, announces a commitment to "strengthening representative democracy" and "promoting the observance and defense of human rights" throughout the region. On June 5, 1991, the General Assembly approved a resolution entitled "Representative Democracy" by which the OAS Secretary-General is required to set into motion appropriate action within 10 days in response to "any occurrences giving rise to the sudden or irregular interruption of the democratic political institutional process or of the legitimate exercise of power by the

40. See also Xavier Gorostiaga, *Latin America in the New World Order*, in *GLOBAL VISIONS: BEYOND THE NEW WORLD ORDER* 67, 86 (1992).

democratically elected government in any of the Organization's members states." Second, in October 1993, the Rio Group reinforced the principles contained in the "Santiago Commitment" with a declaration in which three issues that coincide with United States perspectives are recognized: (I) the U.N. is important for international peace and security and international dialogue about development; (II) economic and social development is an important factor for international peace and security; and (III) United States foreign policy towards Latin America is embodied in NAFTA's approval. Latin America and the United States are finally focusing on similar issues. These declarations benefit the legal institutions of the IAS.