



ORGANIZATION OF AMERICAN STATES: MOVING THE AMERICAS FORWARD? ANALYSIS OF SUCCESSSES AND FAILURES OF THE OAS IN HUMAN RIGHTS, DEMOCRACY AND CONFLICT RESOLUTION.

LA ORGANIZACIÓN DE ESTADOS AMERICANOS: IMPULSANDO LAS AMÉRICAS?
ANÁLISIS DE LOS ÉXITOS Y FRACASOS DE LA OEA EN DERECHOS HUMANOS,
DEMOCRACIA Y SOLUCIÓN DE CONFLICTOS.

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Abstract

The Organization of American States (herein after OAS) is one of the most important regional organizations nowadays. However, it has been the target of much criticism all over the continent and a number of “rival” organizations such as UNASUR and CELAC have born in the last decade. Before analyzing whether or not the OAS has been a successful organization, it is necessary to understand its history and functioning, and thus the first part of this paper focuses on the history, raison d’être, admission policies, structure and decision-making processes. Since the mandate of the OAS is too broad, and it works in a variety of areas including development, security, international law, as well as a multiplicity of social, economic, political and cultural issues, for the purpose of this paper the analysis of successes and failures will be narrowed to human rights, democracy and conflict resolution, which are –on our view– the core of the organization’s work.

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Key words

Organization of American States, democracy, human rights, conflict resolution.

Resumen

La Organización de Estados Americanos (en adelante OEA) es una de las organizaciones internacionales regionales más importantes del momento. Sin embargo, esta ha sido blanco de muchas críticas en todo el continente, y varias organizaciones “rivales” como UNASUR y CELAC han sido fundadas en la última década. Para poder analizar si la OEA ha sido una organización exitosa o no, es necesario entender su historia y funcionamiento, por lo cual la primera parte de este artículo se enfoca en la historia, razón de ser, admisión de nuevos miembros, estructura y toma de decisiones dentro de la organización. Teniendo en cuenta que el mandato de la OEA es muy amplio, y su trabajo gira alrededor de múltiples áreas como lo son el desarrollo, seguridad, derecho internacional, así como una variedad de temas sociales, económicos, políticos y culturales, para el propósito de este artículo en análisis de éxitos y fracasos de la organización se va a restringir al ámbito de los derechos humanos, la promoción de la democracia y la resolución de conflictos, los cuales son –a nuestro parecer– el núcleo central del trabajo de la OEA.

Palabras clave

Organización de Estados Americanos, democracia, derechos humanos, resolución de conflictos.

Introduction

In the past decade the Organization of American States has been highly criticized by both right and left-wing politicians all over the continent. For example, former President Hugo Chavez from Venezuela and President Rafael Correa from Ecuador criticized the OAS for serving “imperialist interests” of the United States, and have even called for its elimination unless it goes through deep reforms.² On the other hand, Republican Congressmen in the United States have tried to defund it because it is seen as being an enemy of freedom and democracy;

2 Rodolfo Aliaga, “Hugo Chávez plantea acabar con la OEA si no cumple con las reformas”, La Razón (June 5th 2012), [online], available at: http://www.la-razon.com/nacional/Hugo-Chavez-plantea-OEA-reformas_0_1627037353.html



Representative David Rivera stated that “the OAS is an enemy of the U.S. and an enemy to the interests of freedom and security”.³ The purpose of this paper is to show that even though the Organization has failed in performing some of its purposes –and thus reform might be required in these specific issues–, overall it has been a successful organization that has benefited the Americas in the six decades it has been functioning. We can say that the Americas are better having the OAS than not having a regional international organization that performs its duties.

Before analyzing and judging whether or not the OAS has succeeded in accomplishing the duties assigned to it since its foundation in 1948, it is necessary to have a description of the historical background of the organization, the purposes for which it was created, the structure it uses, the membership and decision-making requirements (Section I). Once these issues have been addressed, then it is possible to analyze the successes and failures of the organization focused in two main areas of its work: human rights and democracy (Section II.I) and peaceful settlement of disputes (Section II.II). After this, a conclusion will be presented.

Section I: Organization of American States

The Organization of American States as we know it today was founded in April 1948 when 21 American States signed the organization’s Charter in Bogotá (Colombia), at the Ninth International Conference of American States. However, a permanent regional organization of American States had already been established in 1889-1890, and thus some people –even the OAS itself⁴– track its origins to the First International Conference of American States which was held during those years in Washington, D.C. (United States). In the latter Conference, eighteen American States created the “International Union of American Republics” as well as a main bureau that was located in Washington, D.C. “for the promotion of trade and the exchange of commercial information among the member States”.⁵

Further Inter-American Conferences gave the Union and its bureau a broader scope than just commercial issues, and deepened inter-American cooperation and integration, within what was later going to be known as the inter-American system. The denomination of the organization changed in 1910, when “the title of the organization was changed to the Union of American Republics, and the bureau became the Pan-American Union”⁶, until 1948, when at the Ninth International Conference of American States the Charter of the Organization

3 Josh Rogin, “House panel votes to defund the OAS”, *Foreign Policy Magazine* (July 20th 2011), [online], available at: http://thecable.foreignpolicy.com/posts/2011/07/20/house_panel_votes_to_defund_the_oas

4 The OAS in its website claims to be “the world’s oldest regional organization, dating back to the First International Conference of American States, held in Washington, D.C., from October 1889 to April 1890. That meeting approved the establishment of the International Union of American Republics, and the stage was set for the weaving of a web of provisions and institutions that came to be known as the inter-American system, the oldest international institutional system”.

5 Giuseppe Schiavone, *International Organizations. A Dictionary*, 4th Ed., London, Macmillan, 1997, p. 221.

6 A. LeRoy Bennett, *International Organizations: Principles and Issues*, 6th Ed., Englewood Cliffs (NJ), Prentice Hall, 1995, p. 236.



of American States was signed, and thus the Organization as we know it came to exist. Notwithstanding the above, “some scholars trace the antecedents of the inter-American system back to the Congress of Panama convened by Simon Bolivar in 1826”,⁷ but it was not until the 1889-1890 Conference that a formally-established institution emerged; even though the Congress of Panama was the first attempt to gather recently created American States, it cannot be considered as a direct predecessor of the Organization of American States that we have nowadays.

The States represented at the Ninth International Conference of American States agreed upon the Charter of the OAS, by which they established the organization in order to accomplish eight purposes stated in Article 2. The *raison d'être* of the Organization was established in a very broad sense; in general terms it is to promote inter-American cooperation, but it was stated in a multiplicity of areas including security in general -as well as collective-security mechanisms and disarmament-, democratic principles, peaceful coexistence of American States, development and resolution of problems in a variety of areas including economic, cultural, social, political and juridical issues.

A set of bureaucratic institutions were set in the original text of the Charter and in the several amendments that have been made to it, developing the above mentioned thematic areas, and will be presented later on when describing the structure and management of the organization.

After stating the preamble, nature, principles and purpose of the Organization in the first three articles, the Charter deals with the issue of membership, therefore stating the admission policies that will be followed in the Organization. Since the OAS is a regional organization, the potential membership was restricted only to “American States”, which become Member States of the Organization through the process of ratification of the Charter (articles 4 and 6). Besides the initial signatory States, the Charter was left open for other independent American States to ratify it and thus become members of the OAS. The process of a State applying to membership in the OAS starts when the government of that State sends a note to the Secretary General stating the country’s will to sign and ratify the Charter, as well as abiding by the obligations inherent in membership (article 6). After that, the Permanent Council studies the request and then –if a two-thirds majority is reached in the Council among all Member States– recommends the General Assembly to authorize the Secretary General to allow the Applicant State to sign the Charter. Once the internal process of ratification is done, the Secretary General accepts the deposit of the instrument of ratification and thus the applying State becomes a Member State of the OAS. In the General Assembly the admission of new Member States requires a two-thirds majority of all Member States, like in the Permanent Council (article 7). A final issue to be noted while considering membership is that the OAS Charter contemplates the possibility of suspending a member state from participating in the

7 Organization of American States, “Our History”, *About the OAS*, [online], available at: http://www.oas.org/en/about/our_history.asp. accessed on September 26th 2012.



organization, when its democratically constituted government has been overthrown by force (article 9); this decision has to be adopted by the General Assembly in a special session, with a two-thirds majority of the Member States. Until now, the decision of suspension has been only made twice: towards Cuba in 1962 after the Revolution that led Fidel Castro to power and Honduras in 2009 when the government of Manuel Zelaya was expelled from the country by the military, which was considered a *coup d'État*. Both these suspensions were lifted by the General Assembly –Cuba in 2009 and Honduras in 2011–, which also required a two-thirds majority of all Member States. Nowadays, the organization has as Member States all the 35 independent countries in the Americas, although Cuba has refused to participate again in the organization after its suspension was lifted in 2009.

A second key issue established in the Charter is the structure of the Organization. Its organs are outlined in article 53, either directly or indirectly. The directly mentioned organs are the General Assembly; Meeting of Consultations of Ministers of Foreign Affairs; Councils; Inter-American Juridical Committee; Inter-American Commission on Human Rights; General Secretariat; Specialized Conferences; and Specialized Organizations. However, the Charter left the door open for the creation of “subsidiary organs, agencies and other entities as are considered necessary”.

The first organ mentioned in the Charter is the General Assembly. It is the supreme organ of the Organization according to article 54, and its functions include: deciding the general action and policies of the Organization; determining the structure and functions of its organs, as well as coordinating their work; adopting its agenda by a two-thirds majority vote among all Member States; and considering reports from other organs. One of the main functions of this organ is approving the budget of the organization and determining the contributions or quotas of Member States. This budgetary approval is done after the Preparatory Committee of the General Assembly, which happens to be the Permanent Council following article 91.c, has reviewed and recommended the adoption of the proposal made by the Secretary General; according to article 55 decisions on all budgetary matters require a two-thirds majority vote. All Member States are equally represented in the General Assembly with one vote each; its decisions are adopted by an absolute majority, unless either the Charter or the General Assembly in its rules of procedure requires a two-thirds vote. The regular sessions of the General Assembly are held annually in a location that is rotated among Member States (for instance, the Forty-Second Regular session was held in Bolivia in June 2012, and the one before that in El Salvador in 2011), and special sessions are held when convened by the Permanent Council through a two-thirds vote of Member States. However it should be noted that the General Assembly was established only in 1967 through the Protocol of Buenos Aires, the first amendment of the Charter. Between 1948 –when the OAS was founded– and 1970 –when the Protocol of Buenos Aires entered into force– the ruling organ of the Organization were the Conferences of American States which met at varying intervals.⁸

8 *Ibid.*



The next organ to be mentioned in the Charter is the Meeting of Consultation of Minister of Foreign Affairs, which is convoked by the Permanent Council (requiring an absolute majority decision), after any Member State has so requested, in order to consider problems of an urgent nature and of common interest to the American States (article 61). So far there have been twenty-seven meetings, being the last one just several months ago (in August 24, 2012) to deal with the situation between Ecuador and the United Kingdom relating the inviolability of the Ecuadorian Embassy in London after this country granted political asylum to Julian Assange, the founder of Wikileaks.

Chapter XI of the Charter is devoted conjunctly to the “Councils” of the Organization, which are the Permanent Council and the Inter-American Council for Integral Development, where all Member States have the right to be represented. These Councils have certain functions as mandated by the Charter and other inter-American instruments, as well as the tasks assigned to them by either the General Assembly or the Meeting of Consultations of Ministers of Foreign Affairs. The Permanent Council has a broader scope than the Inter-American Council for Integral Development, because the latter has the function of “promoting cooperation among the American States for the purpose of achieving integral development and, in particular, helping to eliminate poverty” (article 94), while the former deals with issues ranging from the friendly relations between States (article 84) –establishing procedures of peaceful settlement of disputes, such as good offices; in the exercise of these the Council requires a two thirds majority, excluding the parties to the dispute, according to article 89– to administrative and executive tasks (article 91).

The fourth institution to be mentioned is the Inter-American Juridical Committee, with seat in Rio de Janeiro (Brazil), which is an advisory body of the organization in legal matters, intended mainly to promote the development and codification of international law. Its functioning and detailed regulation can be found in Chapter XIV of the Charter.

The next body to be mentioned in the Charter is the Inter-American Commission on Human Rights, which has the mandate of promoting the observance and protection of human rights; this Commission has been increasingly important within the organization, at the side of the Inter-American Court of Human Rights (with seat in San José, Costa Rica), which together comprise the Inter-American human rights system; it is to note, however, that the Court belongs to a different category of bodies of the organization called “subsidiaries organs, agencies and other entities”. These issues will be discussed in depth in Section II.I, when analyzing the successes and failures of the organization.

The Organization’s bureaucratic or administrative body is called the General Secretariat, which is headed by the Secretary General, who is elected by the General Assembly for a five-year term, with possibility of one term reelection (article 108). The General Secretariat performs duties assigned to it by the Charter, or by other bodies such as the General Assembly or the Councils; for example, it prepares reports on the functioning of the organization, deals with budgetary issues approved by other organs and provides secretariat and documental support to other organs. The Secretariat is also composed by the Assistant Secretary General and



several Secretariats, where international civil servants (the staff of the Organization) perform their duties. The Secretary General and the Assistant Secretary General may be removed by the General Assembly after a two-thirds vote of the Member States.

Finally, a very quick mention is to be done to other bodies in the organization: Specialized Conferences, Specialized Organizations and “Autonomous or Decentralized Organs”. The first ones are intergovernmental meetings convened to discuss certain technical matters or to develop specific aspects of inter-American cooperation (article 122). The Specialized Organizations are intergovernmental organizations established by multilateral agreements (i.e. treaties or conventions) that deal with technical matters of common interest to the American States (article 124); the most well-known is the Pan-American Health Organization, established in 1902 by the Second International Conference of American States. The last sentence of article 53 of the Charter established the possibility for the creation of new organs, agencies and entities as considered necessary; these are a multiplicity of organs that range from dealing with telecommunications to terrorism, to the Inter-American Court of Human Rights, created in 1969 to apply and interpret the American Convention on Human Rights, which will be analyzed in Section II.I.

Section II: Successes and failures of the Organization of American States in Human Rights, Democracy and Pacific Settlement of Disputes.

Analyzing if the OAS has been a successful international organization or not, has to be done within the framework of what it actually does and what it was intended to do when it was founded. This is the reason why these questions are going to be developed around two major groups of the organization’s work: human rights and democracy, and the pacific settlement of disputes.

Section II.I: Human Rights and Democracy

Since the foundation of the organization, the issues of human rights and democracy were thought to be fundamental in the work of the organization, and thus they were enshrined in a multiplicity of ways in the Charter: in the preamble, the purposes, principles and organs. All of the above embody the aim that the organization would serve to strengthen representative democracy and the respect and promotion of human rights in Member States.

Parallel to the adoption of the Charter in 1948, the Ninth International Conference of American States also adopted the “American Declaration of the Rights and Duties of Man”, which constituted the birth of the Inter-American human rights system.⁹ The institutional

⁹ Organization of American States, “What is the IACHR?”, *Inter-American Commission on Human Rights*, [online], available at: <http://www.oas.org/en/iachr/mandate/what.asp>, accessed on October 28th 2012.



establishment of this system started in 1959 with the creation of the Inter-American Commission on Human Rights (herein after IACHR) –which had been already set by the Charter–, and in 1969 when the American Convention on Human Rights was adopted (it is worth mentioning that this Convention created the Inter-American Court of Human Rights), although the entry into force of this treaty was in 1978. Besides the above mentioned documents, the Inter-American human rights system counts with several more international law instruments such as the Inter-American Convention to Prevent and Punish Torture; the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights; the Protocol to the American Convention on Human Rights to Abolish the Death Penalty; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women; the Inter-American Convention on Forced Disappearance of Persons; and the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities.

The IACHR has the broad mandate of promoting the observance and protection of human rights according to article 106 of the Charter. To fulfill those tasks, the work of the IACHR has three main pillars: “the individual petition system, monitoring of the situation of human rights in the Member States, and the attention devoted to priority thematic areas”¹⁰. The individual petition system allows individuals from Member States who consider that their human rights have been violated, to file a petition before the IACHR. What the IACHR can do is that after studying the case, it issues recommendations to the accused Member State in order for it to repair the victim for the damage, restore the enjoyment of his rights and prevent possible future violations. The monitoring of the situation of human rights is done through issuing reports on an annual basis, both in a general scope and specific for countries (one Annual Report and one Country Report per year). Finally, when certain topics are considered especially important in relation to the human rights situation in the Americas, it falls in “thematic” category where there are both Thematic Reports and Thematic Rapporteurships –for instance Freedom of Expression, Rights of Women, Rights of Indigenous Peoples and many others–.

The other main body of the Inter-American human rights system is the Inter-American Court of Human Rights, which is an autonomous judicial body (unlike the IACHR which is not judicial and its decisions are not binding) of the organization. The Court has contentious and advisory jurisdictions, which means that they can render decisions in cases brought to it by the IACHR and Member States, and also give advisory opinions if requested by Member States or certain bodies of the OAS; both functions are related to the interpretation and application of the American Convention on Human Rights, but also other international treaties (like the Additional Protocol to the American Convention on Human Rights in the area of Economic,

10 *Ibid.*



Social and Cultural Rights and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women) which have given jurisdiction to the Court. Of all 35 Member States of the OAS, 25 have ratified the American Convention on Human Rights and 22 have recognized the jurisdiction of the Court.¹¹

The establishment and functioning of the Inter-American human rights system is a success that could have only been achieved through the work of the OAS. Since 1987, when the Court rendered its first decision, until now, the Court has heard 250 contentious cases and given more than 20 advisory opinions.¹² The only other international human rights tribunal that exists in the world is the European Court of Human Rights, which is the European Union equivalent for this organ of the OAS. The work of the IACHR is also outstanding: per year they receive and evaluate around 1.000 petitions and cases. Notwithstanding the above, the Inter-American human rights system has flaws inherent to almost every international organization, in relation to the issue of sovereignty. Because Member States of the OAS are independent and sovereign, the decisions of the IACHR are not binding upon them (so they only follow the recommendations when they want to), and the jurisdiction of the Court has to be recognized in advance by the State; in fact, thirteen Member States of the OAS, including the United States and Canada, have not signed the Convention nor recognized the jurisdiction of the Court, making it impossible for it to study cases from these countries.

Another criticism, but highly related to the one just mentioned, is the passive role the human rights system had during the dictatorships and human rights violations that occurred all over the continent in the 1970s and 19780s. The explanation for this problem is the same principle of sovereignty and non-intervention recognized in international law, because only when the countries recognized the jurisdiction of the Court it was possible for it to start investigations and procedures, but this only happened in countries affected by dictatorships when those dictators left the countries (for instance Chile did it in 1990, a couple of months after Augusto Pinochet left power; Argentina recognized it in 1984, one year after the military had been replaced with a civilian, democratically elected government).

The second purpose of the OAS to be analyzed in this section is the promotion of democracy to which the organization is committed. Similarly to human rights, representative democracy is one of the most important principles and purposes of the organization as mentioned in the Charter, but it took several decades until that mandate became more concrete. During the first years of the organization's existence, it became trapped in the Cold War and consequently its member states, led by the United States, supported military regimes all over the continent as long as they were not communist. For example Chilean President Salvador Allende was killed during a *coup* in 1973, after which Augusto Pinochet ruled the

11 Organization of American States, "American Convention on Human Rights", Inter-American Commission on Human Right, [online], available at: <http://www.cidh.oas.org/Basicos/English/Basic4.Amer.Conv.Ratif.htm>, accessed on October 28th 2012.

12 Organization of American States, "Jurisprudencia", *Inter-American Court of Human Rights*, [online], available at: <http://www.corteidh.or.cr/casos.cfm>, accessed on October 28th 2012.



country on a dictatorship for more than 15 years. Situations like that were common in South and Central America as well as the Caribbean. “By the early 1990s, however, Latin America was cresting on the “third wave” of democratization, and the region boasted a greater number of elected governments than ever before”,¹³ which led in 1990 to the creation within the OAS of a Unit for the Promotion of Democracy (UPD) in order to consolidate democratic principles in the region. The main activity of the UPD was to send observation missions to electoral processes in member states of the organization to ensure that they were fair and transparent. This electoral assistance continues to be a key issue in the OAS, but now it has been taken over by the Secretariat for Political Affairs’ Department for Electoral Cooperation and Observation. It is important to realize that in order for these missions to intervene in a country’s electoral process, the previous invitation by the government of that country is required, thus guaranteeing national sovereignty and the principle of non-intervention of international law. Shortly after this, Resolution 1080 was adopted unanimously by the General Assembly in 1991 instructing the Secretary General that in case of any “sudden or irregular interruption of the democratic political institutional process or of the legitimate exercise of power by the democratically elected government in any of the Organization’s member states”, the Permanent Council should be immediately convened to examine the situation and decide whether to convene a Meeting of the Ministers of Foreign Affairs or a special session of the General Assembly to deal with the issue. Collective defense of democracy was further entrusted in the OAS by the adoption of the Washington Protocol in 1992, an amendment to the organization’s Charter that allowed the General Assembly to suspend a member state from participation in the organization if its democratically elected government was overthrown (procedure already mentioned in Section I). Thus, the OAS became “the first regional political organization to allow suspension of a member state in the event that its democratically elected government is overthrown by force”¹⁴, which sends a clear signal of the political commitment or will of using the organization as a guardian of democracy in the continent. The only time the Washington Protocol has been applied was the suspension of Honduras’ membership in 2009, already mentioned in Section I.

The final document to be mentioned in relation to the promotion of democracy is the Inter-American Democratic Charter adopted by the General Assembly in 2001 which enshrined democracy as a right of the peoples of the Americas as well as a duty of the governments to protect and promote.

It can be criticized that the Inter-American system for the protection and promotion of democracy took too long to be established, but it is due in a great extent to the fact that the organization can only reach as much as its member states agree to; since democracy issues were not the priority for the United States nor for the other countries –many of which were

13 Barry S. Levitt, “A Desultory Defense of Democracy: OAS Resolution 1080 and the Inter-American Democratic Charter”, *Latin American Politics & Society*, vol. 3, no. 48, 2006, p. 93.

14 Clare Ribando, “Organization of American States: A Premier”, United States Congressional Research Service, [online], available at: <http://www.fas.org/sgp/crs/row/RS22095.pdf>



led by undemocratic rulers– the OAS could not deal in depth with it. However, since it was established it was proven to be quite effective. Resolution 1080 has been invoked four times: Haiti in 1991, Peru in 1992, Guatemala in 1992 and Paraguay 1996.¹⁵ The allegedly fraudulent 2000 Peruvian general elections, the 2002 Venezuelan *coup d'État* attempt against President Hugo Chávez, the 2009 Honduran *coup d'État* against President Manuel Zelaya and the one-day impeachment process of Paraguayan President Fernando Lugo in 2012 have also been important events in which the OAS has gotten involved when found an alteration of the democratic government processes, and thus being an important player in the hemisphere in the ensuring of stability and democratic governance among member states.

Section II.II: Peaceful Settlement of Disputes.

Ensuring the peaceful settlement of disputes was considered essential to guarantee peace and security in the Americas and thus the states gathered in the Ninth International Conference of American States in Bogota in 1948 took two major steps to pursue this end: its inclusion as one of the purposes of the OAS and the adoption of the “American Treaty on Pacific Settlement” (Pact of Bogota), which have guided the work of the organization in this area. Both instruments of international law establish the commitment of party states to give peaceful settlement to disputes among them, for which they may use procedures such as direct negotiation, good offices, mediation, investigation and conciliation, judicial settlement, arbitration, as well as any other procedures the parties consider useful to settle their differences.

Among the permanent institutions of the OAS, the peaceful settlement of disputes is a primary responsibility of the Permanent Council, which “ shall keep vigilance over the maintenance of friendly relations among the Member States, and for that purpose shall effectively assist them in the peaceful settlement of their disputes” (article 84 of the Charter); when the above mentioned procedures of dispute settlement are not currently taking place, any of the parties to the conflict can submit the issue to the Permanent Council to obtain its good offices but if this is not accepted either by one of the parties, the Council reports the situation to the General Assembly.

Besides the above mentioned institutions, the Pact of Bogota refers the situation to organs of the United Nations; this is due to the fact that the OAS considers itself as a regional agency within the UN (article 1). However, it is required that disputing states try first the regional procedures of dispute settlement before the issue is referred to the Security Council. The Pact of Bogota also refers judicial procedures to the International Court of Justice, stating that “the High Contracting Parties declare that they recognize, in relation to any other American State, the jurisdiction of the Court as compulsory *ipso facto*, without the necessity of any special agreement so long as the present Treaty is in force, in all disputes of a juridical nature that arise among” (article XXXI

15 Organization of American States, “¿Por qué es importante la Carta Democrática Interamericana?”, Documentos Asamblea General 2001, [online], available at: http://www.oas.org/charter/docs_es/porque_carta.htm, accessed on November 2nd 2012.



of the Pact). This article was used by the ICJ in the “Territorial and Maritime Dispute (Nicaragua v. Colombia)” case where Colombia denied that the Court had jurisdiction but its argument was refused saying that the Pact of Bogota had granted it in advance.

In the last decade, the OAS’ efforts to get involved in conflict resolution among member states was focused to the solution of territorial and border disputes through the establishment of the “Peace Fund”. This fund was created in 2000 by General Assembly Resolution 1756 (XXX-O/00) to “provide financial resources to OAS Member States that so request in order to enable the Organization to react swiftly to an unforeseen crisis resulting from a territorial dispute, as well as to strengthen the General Secretariat’s knowledge and experience in the field of territorial dispute settlements”. Since its creation, the fund has been actively involved in ensuring the adoption of procedures leading to the peaceful settlement of disputes in the following territorial conflicts: Belize and Guatemala; Honduras and Nicaragua; Honduras and El Salvador; Costa Rica and Nicaragua.

The conflict between Honduras and Nicaragua was the first one that led to the application of the fund and involved disagreement between the two countries on what their maritime boundaries were, starting in December 1999. The OAS action –directed by the Permanent Council– was very successful in this case, through facilitating negotiations and talks between the two countries which led their governments to sign agreements by which they committed to peaceful relations and submitting the maritime boundary claim to the ICJ for judicial settlement.

A few years later, in 2003, Honduras and El Salvador had a territorial dispute regarding the implementation of an ICJ ruling. The OAS got involved in this conflict when “at the request of both governments, the OAS General Secretariat and the Pan American Institute of Geography and History helped to resolve a series of technical problems that had prevented the full demarcation of the international border between the two countries”;¹⁶ it is to note that the Pan American Institute of Geography and History is one specialized organization of the OAS, thus showing cooperation between different organs of the OAS to fulfill the purposes and principles embodied in the Charter.

The role of the organization in the territorial dispute between Belize and Guatemala is much more outstanding and thus is worth noting. These two countries have had a territorial dispute that has not been resolved yet, but they have taken several steps towards it, including the establishment of an “Adjacency Zone” (one kilometer in either direction from an adjacency line established by the two governments) which is administered conjunctly by Guatemala and Belize with a very active involvement of the OAS through the Office of the OAS General Secretariat in the Adjacency Zone (OAS/AZ). “The OAS/AZ Office serves as a neutral and reliable body that can investigate any incident that might occur in the Adjacency Zone and propose mediation options aimed at reducing tensions. It can also act as an independent body

¹⁶ Magdalena Talamas, “Peaceful Settlement of Territorial Disputes”, *Américas. Official Publication of the Organization of American States*, Washington, 2011, p. 51



that can coordinate activities with armed forces, police, and other bodies of the governments of Belize and Guatemala in the Adjacency Zone”¹⁷, which proves that the OAS, given the support of the involved governments, can in fact give appropriate solutions to territorial dispute while preserving both security and sovereignty in the Americas.

Finally, the OAS played a crucial role in solving through good offices one of the most serious conflicts between two member states of the OAS in the past years: the diplomatic dispute between Colombia and Ecuador in 2008, following the entry of Colombian military forces to Ecuador to bomb a camp of a Colombian guerrilla group. The OAS got involved in this issue since it started. Following the procedures established in the Charter, the Permanent Council got seized of the matter and decided to convene a Meeting of Consultations of Ministers of Foreign Affairs, which decided “to instruct the Secretary General to use his good offices to implement a mechanism for observing compliance with this resolution and the restoration of an atmosphere of trust between the two Parties”¹⁸. The OAS Good Offices Mission in Ecuador and Colombia (MIB/OEA), as the just mentioned mechanism was called, was developed through the Peace Fund although it was not exactly a territorial dispute like the other cases. The role of the Secretary General in confidence-building helped a lot to resolve the crisis and restore diplomatic relations between the two countries.

17 Ibid, p. 52

18 Organization of American States, Meeting of Consultations of Ministers of Foreign Affairs, Resolution of the Twenty-Fifth Meeting of Consultations of Ministers of Foreign Affairs, 2008.



Conclusion

The work that the OAS has done throughout its history in a variety of fields has to be recognized as one of the factors that promoted development and moved the Americas forward. Human rights, democracy and dispute settlement discussed in this paper were just a show of all the work that the organization has done; other important areas of the organization's work are cooperation for development (highly noting the creation of the Inter-American Development Bank), as well as indigenous peoples issues, terrorism, disarmament, among others..

It is true that the OAS still faces many challenges, including the creation of new international organizations in the Americas –like the Union of South American Nations, UNASUR and the Community of Latin American and Caribbean States, CELAC– which some consider to be overlapping with the OAS work. However, these deficiencies cannot be attributed to the organization per se, since they are mostly due to the attitude and commitment of member states to the organization. If regional powers like the United States, Brazil and in a much lesser extent Venezuela, do not use the tools available through the OAS to discuss and align in inter-American cooperation it is missing a great opportunity because the OAS already has an institutional and legal framework, as well as experience dealing with multiple issues, which can make member state's actions more efficient and thus lead to complying with the purposes and principles stated in the Charter, to which all member states can agree on. Notwithstanding the above, the real threat for the OAS is the ideological division between certain Latin American states and the United States, which has conducted to lack of cooperation within the OAS, but the organization as such is not guilty of this lack of commitment of member states towards its purposes and principles. Evaluating the past performance of the organization, it can be seen that it has in fact promoted inter-American cooperation in a variety of fields –which was the purpose for its creation– and it has definitely helped the Americas move forward, in spite of the flaws it may have. However, these flaws cannot deny the progress the OAS has brought, and in no way can justify its elimination, as some politicians suggest.



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