The Inter-American System: Using Its Mechanisms and Institutions to Provide Answers to Challenges: From Lawless Areas to Democracy and Governance

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ABSTRACT

States have the obligation to ensure that activities in their territories do not cause injury or damage in the territories of other States. Otherwise, international responsibility will ensue.

In some cases, however, the jurisdictional control that a State has over parts of its territory may be weakened, leading to lack of effective control and to illegal activities being carried out therefrom. Increasingly, the expression "lawless areas" is being used to describe this phenomenon.

These areas may emerge due to lack of resources, lack of will or to political or economic circumstances where the legal authorities cannot guarantee law and order. States may be either the victims of or the accomplices for those illegal activities. In the Americas the former is case.

States should therefore have access to international co-operation in order to receive appropriate assistance conducive at providing remedies to the emergence of these so called "lawless areas". Co-operation should be first and foremost aimed at enabling each State to take necessary measures by itself, respecting the principle of non-intervention. The Inter-American system already has mechanisms and institutions specifically designed for dealing with the kind of problems involved in these "lawless areas". They should be fully implemented.

Success will depend on acting collectively and effectively to address these problems timely, respecting State sovereignty. Consolidation of representative democracy and the rule of law will also help to avoid the emergence of "lawless areas" in our continent.

"THE INTER-AMERICAN SYSTEM: USING ITS MECHANISMS AND INSTITUTIONS TO PROVIDE ANSWERS TO CHALLENGES: FROM LAWLESS AREAS TO DEMOCRACY AND GOVERNANCE".

I.- Introduction:

The exercise of territorial sovereignty by a State has as a main consequence the right to exclusive jurisdiction within that territory and, conversely, the obligation to ensure that international obligations are complied with in the whole of that jurisdictional space.

However, in order to exercise full control in a given territory which can be called its own, a State has to develop sophisticated and efficient institutional systems to ensure that its jurisdiction is applied. Different capabilities and resources, both human and material, among States explain different degrees of effective exercise of jurisdiction and control by them over their own territories.

Lack of effective control by the State over parts of its own territory may be due to lack of resources, lack of will or to political or economic circumstances which create pockets where the legal authorities cannot guarantee law and order. Responses by the State aiming at curbing illegal activities on those areas, as well as trends on the development of those very activities, lead these areas where the law is not fully or efficiently applied to shift from one place to another.

The existence of areas within sovereign States on which the constituted authorities do not have effective control, is not new. It is common to find such areas in countries which lack strong institutions, where infrastructure is poor, which are poverty ridden, etc., However, this is not the exclusive patrimony of developing countries. Rich and developed countries have also internal areas, albeit reduced in geographical terms, where the law does not have the level of application you would otherwise find in that society as a whole.

Those areas have generally been associated with the absence of effective legal systems and with rampant crime and corruption.

However, these lawless areas did not produce in the past much harm or danger far beyond their immediate vicinity. The main victims of their negative effects as well as the beneficiaries of their illegal activities, were the peoples living there.

Globalisation dramatically changed all that, making it easier for the results of illegal activities undertaken in some backwater in a remote corner of a poor State, to be taken overnight into the heart of the most developed and sophisticated States of the world.

States in which territories these activities take place can be either the victims of or the accomplices for them. In some cases they may be both.

As it was dramatically shown on September 11th., 2001, these areas became also the possible launching pads from which to strike everywhere, including at the heart of the most powerful countries on Earth. The relation between the Taliban in Afghanistan and Al-Queda, strongly made the point.

II.- Lawless areas and the role of the international community:

Trying to define on precise terms what a lawless area is, may be a futile exercise. However, for the scope of this paper, the essential precondition on our subject matter would be that it had an international impact. Activities in the area have to produce some sort of injury or damage beyond the borders of the State in which they happen.

Any other criteria would dangerously move on the already weak notion of State sovereignty over its own territory and would then contribute to further instability instead of providing for co-operative solutions which could benefit all States.

Therefore, from the point of view of the international community the first step when facing a case of a lawless area, would be to determine whether any kind of international involvement is appropriate and, if so, of what kind.

For that purpose it would be essential to establish whether illegal activities carried out in an area under, albeit theoretical, jurisdiction or control of a State take place against the authority of that State, with its indifference or with its complicity.

The responses and possible involvement of the international community should depend on the answer to those questions.

a) Co-operation:

When a situation is such that a State cannot control an area within its territory because of lack of resources to provide adequate institutions or to quell illegal activities which may cause damage beyond its borders, it should have access to international co-operation in order to receive appropriate assistance conducive at providing a remedy.

International co-operation has a crucial role to play when addressing the root causes which lead to the emergence of these so called "lawless areas".

These do not spring out of the blue, in perfectly safe environments, where people have all the elements to achieve a level of social and economic development allowing them to fulfil their reasonable expectations of a decent life in freedom.

There is no Hobbesian primeval man lurking in the shadows of prosperous, free and happy communities, ready to turn these into "lawless areas". Nor is there a complicity of the prosperous but Hobbesian citizens of those areas, to have their living environment turned into "lawless area".

"Lawless areas" develop where the benefits of progress, freedom, opportunities, rule of law, etc., are non-existent or in short supply. When honest and transparent lives do not yield benefits to those who lived them but, on the contrary, those living outside the law thrive, temptation to join the illegal profiteers will certainly become stronger.

The balance that makes an area where institutions are weak and the quality of life is poor tip to a lawless one, may be when a critical mass of its citizens decides that to be outside the law is more profitable, in every sense, than to be within the law. When that happens, law abiding citizens become a danger for the illegal emerging system and this will tend to suppress them through ways which may be more or less violent, more or less open.

International co-operation may help not only in correcting or eliminating the negative effects of a "lawless area" once it has emerged but, more important, in avoiding their emergence by helping to create an environment under which the pre-conditions for the existence of a "lawless area" will not be present.

Social and economic development, institution building, education, infrastructure, etc., may be crucial for eradicating conditions which may otherwise set the stage for the emergence of one such an area.

It could be argued that in these cases international assistance to help redress the situation should be provided free of cost, as it is in the interest of the international community that effective action be adopted. However, others may argue in the opposite direction, indicating that the exercise of sovereignty implies obligations and therefore the State receiving the assistance should pay for it. The co-operation would thus be reduced to provide the assistance, albeit at a cost.

We must, nevertheless, acknowledge that there is an obligation to co-operate included in the United Nations Charter. Article 1.3 sets as one of the purposes of the organisation "To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character…". On this article a whole array of legal provisions and practical arrangements developed over the years.

It could also be argued that the application of this UN purpose, to which all States are legally bound, may imply an obligation of the international community in general and of States in particular, to help countries in trouble because of the emergence of one of these lawless areas, when that is not the result of either indifference and/or complicity on the part of the territorial sovereign.

One could further argue that there is a dual obligation. That of the affected country to request the co-operation when unable to provide responses on its own for the problems created in its territory which may impact abroad, as well as that of others to provide help in accordance with their means, particularly of those directly affected by the activities carried out in the area in question.

It is clear that any international co-operation should be, by definition, the consequence of a request by the State. If a State which cannot control a part of its territory from where activities which produce damage beyond its borders are conducted, does not request international co-operation to address the problem, it may be forcing itself to be considered on the second category mentioned before: that of a State indifferent to illegal activities committed from its territory.

To solve problems of a complex nature as that of lawless areas, international co-operation may take a variety of ways. It could be of a general nature, aiming at providing the State concerned with means for institution building, development programs which could create jobs and opportunities thus creating incentives for peoples to work in productive legal activities, education, health, etc. or it could be more focused to an specific problem and thus aiming at a narrower approach. For instance, drug trafficking could be addressed through general co-operation by all or some of the criteria indicated, or could instead be attacked through specific measures dealing with drug users prevention or law enforcement. Most likely a successful co-operation will require a combination of both.

Co-operation should be first and foremost aimed at enabling each State to take necessary measures by itself, in accordance with its own legislation and procedures. Making these adequate may be one of the main fields for international assistance.

The international community already has mechanisms to provide international assistance and to foster international co-operation, both of a general nature and on specific fields. The Inter-American system has also mechanisms and institutions of its own which could be useful for these matters, as will be mentioned further down in this paper.

From the point of view of self-interest, it could be said that all countries benefit when their neighbours are stable, prosperous and where the rule of law prevails, as those conditions enhance their own security.

The same is true for the existence of good governance and effective representative democracy. Prevalence of those conditions may contribute to make the emergence of lawless areas more difficult.

Totally or partially failed States make good ground for crime, corruption and for the spread of those ills to others in the international field.

It is therefore necessary for all States, particularly for those with more resources, to provide international co-operation on these new fields.

The few cases in the Americas where there has been allegations that "lawless areas" have emerged, would arguably fall under the first category of it happening against the authority of that State and not on those of indifference or complicity.

The spreading and consolidation of such areas may, however, constitute a challenge requiring international concerted action to help the affected country.

b) Indifference:

A second possibility regarding a lawless area in a part of the territory of a State which could cause damage or injury beyond its borders, could happen if the State in question would not take any effective measure to stop illegal activities from developing or continuing.

As indicated before, this is not the exclusive patrimony of developing countries. Rich and developed countries have also internal areas, albeit reduced or imprecise in geographical terms, where the law does not have the level of application you otherwise find in that society as a whole.

These marginal areas would normally produce crime and violence within the affected country. However, it may also be used to plan or carry out illegal activities elsewhere. On many occasions laws and regulation in developed countries tend to be more lenient with activities the effects of which are to be felt elsewhere, thus making it difficult to prosecute or investigate them.

Illegal trafficking in firearms is a clear example in this respect. Good control in developed countries could curb their transfers to weak developing countries and significantly

help reducing organised or common crime there. The Inter-American Convention against Illegal Production or Trafficking of Firearms, Ammunition, Explosives and other Related Materials (CIFTA),[1] had such a logic behind its request for co-operation from arms producer States.

Wherever this case of lack of effective measures to tackle illegal activities producing injury to third States happen to occur, be in develop or developing countries, it cannot be said that the State or its authorities become accomplices on those activities, but they are somehow responsible for not playing an active role to exercise effective jurisdiction which its sovereign rights would call for.

It is this situation which could create the most complicated scenario for the international community, as it cannot be said that there is a direct involvement of the State in the illegal activities producing effects beyond its border, but there is neither the will to stop them.

The complexity of the situation is compounded by the fact that the reasonable worries of any country with respect to injury or damages which could be produced to its detriment from activities taking place in some other State´s territory, could also have the potential to be used for political purposes by powerful States for unduly and illegally intervening in weaker States´ affairs.

The interest of the international community should lie between the legitimate right of any State, strong or weak, not to receive any damage from a third State´s territory caused by illegal activities, and the right of all States to have its sovereignty respected and foreign intervention on matters essentially within their domestic jurisdiction stamped out.

A balance between this two opposing interest must be found.

The risk of conflicts on these matters increases where stronger States can act unilaterally to enforce what they perceive to be their rights against the rights of weaker States, while these latter cannot do anything against illegal activities conversely taking place in the territories of the former. It is therefore desirable that disputes be ruled by multilateral mechanisms which act as a barrier to arbitrary unilateral decisions and, at the same time, provide with procedures under which legitimate interests of all States can be addressed and a framework for international co-operation be effectively put into practice.

The Inter-American system provides for such multilateral mechanisms. They should be fully applied in case situations like the ones included in this section emerge.

c) State responsibility:

It is a long held view in international law that governments have the obligation to take measures to avoid that their territories be used to produce injury or damage to the territories or legitimate interests of other States.

[1] Convención Interamericana contra la Fabricación y el Tráfico Ilícitos de Armas de Fuego, Municiones, Explosivos y otros Materiales Relacionados. OAS. November 13th., 1997.

In the "Corfú Channel Case", the International Court of Justice confirmed the rule by which: " every State has the obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States".[2].

In that case related to the planting of a minefield in the territorial waters of Albania which produced damage and loss of life in a British Navy ship, the Court stated: "From all the facts and observations mentioned above, the Court draws the conclusion that the laying of the minefield could not have been accomplished without the knowledge of Albania. As regards the obligations resulting for her from this knowledge, they are not disputed. It was her duty to notify shipping and especially to warn the ships proceeding through the Strait on October 22nd of the danger to which they were exposed. In fact, nothing was attempted by Albania to prevent the disaster, and these grave omissions involve her international responsibility".

In this particular case, where at stake was the responsibility of a country for not acting to avoid damages to be caused to other States from its territory. The fact that it refers to the territorial seas makes it even more applicable to activities carried out from the land territory, where the *imperium* of the State should be even more exclusive.

International environmental law has developed in the same direction, establishing that a state should not allow its territory to be used in such a manner which could cause injury to others.

In the "Trial Smelter Case", a dispute over the emission of sulphur fumes from a smelter situated in Canada which caused damage in the state of Washington in the USA, the Tribunal held that under international law "..no state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequences and the injury is established by clear and convincing evidence".[3]

Further, Principle 21 of the Stockholm Declaration provides: "States have, in accordance with the Charter of the UN and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdictions".[4]

This very same principle, with the addition of the words "and developmental" between "environmental" and "policies", was adopted as Principle 2 of the Rio Declaration of 1992.[5]. The important aspect of these two Principles for the purpose of this paper is that both reinstate the obligation of states to ensure that their territories are not used to cause injury to the territory of others.

But environmental law provides us also with a principle which goes beyond responsibility for damages caused from a State´s own territory and this is the principle of

[2] Corfu Channel (United Kingdom vs. Albania), 1949 ICJ Rep.4
[3] Trial Smelter Arbitration (United States vs. Canada), 16 April 1938, 22 March 1941; 3 Reports of International Arbitral Awards (R.I.A.A.) 1907 (1941)
[4] 1972 UN Conference on the Human Environment. Declaration of Principles.
[5] 1992 Rio Declaration on Environment and Development.

preventive action. Under this principle a State may be under an obligation to prevent damage to the environment within its own jurisdiction, including the obligation to take appropriate regulatory, administrative and other measures. The prevention principle requires action to be taken at an early stage and, if possible, before damage has actually occurred.

In environmental law this should be complemented with the precautionary principle. This foresees that when there is the risk that a certain activity may produce irreversible damage to the environment, lack of proven or definitive scientific data should not be used as an excuse for not adopting preventive measures in order to stop or reduce such damage as practicable. It must be noted that the USA is one of the countries which does not accept the precautionary principle as a rule of law.

Thus, it could be reasonable argued that if these are accepted rules of international law in the field of the environment, there could be no lesser law for actions which may produce damages or injuries in other fields of human activity of no lesser importance. If a State has the obligation to take action to avoid that environmental damage be produced to third States as a result of activities undertaken from its territory, it would be reasonable to expect that actions which could cause damage on other, equally or more important principles of international law, should also benefit from a corresponding international norm which will oblige States not to allow its territory to be used to cause damage to third States on matters such as non use of force, terrorism, organised crime, drug trafficking, etc.

Some have argued that some of these activities may constitute aggression and the case of terrorism is a case in point.

Regarding the use of force or the threat of use of force, the definition of aggression[6] limits its scope only to armed attack, even in case that it is configured by the using or sending of armed bands, groups, irregulars or mercenaries.. However, it also states that the enumeration contained in the definition is not of an exhaustive nature and that the Security Council could determine that other acts may constitute aggression under the provisions of the UN Charter. In the scope of the use of force this may indicate that only the Security Council has the right to qualify which other actions may be considered aggression, thus triggering the mechanism set forth in the UN Charter.

Procedures of the UN Charter may also open the way to develop other alternatives within the scope of general international, particularly at the regional level, provided the UN Charter principles are observed.

In this respect, it should also be recalled that even for the most essential principles of international law, it is possible that the rules have a field of application given by conventional agreements such as the UN Charter, without precluding others given by customary international law.

In the case "Military and Paramilitary Activities in and against Nicaragua"[7] the International Court of Justice said: "The Court, which has already commented briefly on this

[6] UN General Assembly resolution 3314 (XXIX)

[7] Military and Paramilitary Activities in and against Nicaragua (Nicaragua vs. USA)(Merits). ICJ Rep.1986,14.

subject in the jurisdiction phase (I.C.J Reports 1984, pp. 424 and 425, para. 73), develops its initial remarks. It does not consider that it can be claimed, as the United States does, that all the customary rules which may be invoked have a content exactly identical to that of the rules contained in the treaties which cannot be applied by virtue of the United States reservation. Even if a treaty norm and a customary norm relevant to the present dispute were to have exactly the same content, this would not be a reason for the Court to take the view that the operation of the treaty process must necessarily deprive the customary norm of its separate applicability. Consequently, the Court is in no way bound to uphold customary rules only in so far as they differ from the treaty rules which it is prevented by the United States reservation from applying."

It may be therefore possible that a customary rule may develop, regionally or universally, which may allow for expanding the criteria set at present in general international law regarding activities carried out entirely in the territory of a sovereign State, in order to allow for the adoption of remedial action when circumstances may so require. The clear limit to any such development would be it being contrary to the principles of the UN Charter.

Could therefore a regional organisation adopt a more flexible definition of aggression for its own territorial space? Chapter VIII of the UN Charter would suggest they could not, unless the Security Council accepts it either expressly or by acquiescing to it.

However, the case could still be argued that no State, by its negligence or will can allow its territory to be used as a source of injury to the rights of other States, particularly when those injuries imply violence.

Negligence would be here equated to the case of a State acting with indifference to actions taking place in an area under its jurisdiction or control and producing negative effects beyond its borders. That would be a situation equivalent to the one described in b).

What are therefore the remedies for those States which consider themselves the victims or actions taking place in an area under the jurisdiction or control of another State, even though those actions are not of an official nature or officially endorsed?

If the actions in question have the official blessing of the State or of the State´s authorities, a clearer line of international responsibility would seem to emerge and thus the possibility for the affected States to act under the remedies provided by international law. In this context the concept of indirect aggression may come into play and might even be considered, depending on its nature and consequences, a case of breach of the peace and international security.

It should be recalled that when the terrorists attacks of September 11th., took place, the UN Security Council reaffirmed that terrorism constituted a threat to the peace and international security and its determination of combating this scourge by all means at its disposal, and called all States to bring those responsible for the attacks to justice.[8]

[8] UN Security Council resolution 1368 (2001)

The Council had condemned terrorism before and had specifically condemned the use of Afghanistan as a safe heaven for terrorists and for the planning of terrorist activities.[9]

These resolutions constitute a clear example of the notion of indirect aggression put into practice by the UN Security Council in a matter of such importance as international terrorism.

No country could argue that allowing the use of its territory for planning or carrying out acts of terrorism beyond its borders constitutes no breach of international law.

But it is a collective mechanism that has the right to qualify the action clearing the way to a response by the international community or by those directly affected. Otherwise, anarchy in international relations may ensue.

There has not been in the Americas cases where actions of an illegal or criminal nature carried out from the territory of a State has been blamed on State complicity. The case is different elsewhere as allegations against the Palestine National Authority, Somalia or Kosovo have been put forward. The above mentioned case of Afghanistan been arguably the clearest on this logic.

Questions which may arise in this context relate to what is the role that multilateral mechanisms could or should play.

They could be of a universal or regional nature and they need not contradict each other but act as complements.

III.- Western Hemisphere responses.

a) The OAS is a formidable tool at the disposal of the Western Hemisphere to address practically all kind of issues collectively. It has been perceived for decades as a bureaucratic and inefficient body and/or as dominated by one country and therefore incapable of political action for the benefit of all of its Member States.

It is not necessarily so. In fact, since the return of democratic rule to Latin America in the early 80s, the Inter-American system, under the umbrella of the Organisation of American States, perfected existing institutions and mechanisms to adapt them to the new realities and established new ones in order to deal with new challenges and needs. The purpose of those mechanisms, old and new, was to deal collectively on matters of common concern to the countries of the hemisphere.

Thus the functioning of the OAS General Assembly was perfected to make it more agile and focused on specific subjects, avoiding the rambling sessions which would in the past go through all possible matters without dwelling substantively on any in particular.

A similar process was applied to the Inter-American Council for Integral Development and to the Inter-American Commission on Human Rights..

[9] UN Security Council resolutions 1269 (1999) and 1333 (2000)

This process of making the OAS system more agile and responsive to present needs, was also accompanied by the creation of new institutions to deal with emerging problems, such as the Inter-American Drug Abuse Control Commission (CICAD), the Committee on Hemispheric Security (CHS), the Inter-American Committee Against Terrorism (CICTE), the Inter-American Democratic Charter or the Inter-American Convention against Corruption.

The importance of these mechanisms is that they relate to the kind of activities which normally thrive in the so called "lawless areas" and therefore show that the Inter-American system has availed itself of an array of tools specifically designed to address these problems.

The appropriate use of these instruments may help avoid inter-state conflicts when dealing with illegal activities originating in the territory of a State, as preventive measures taking in the context of those instruments, as well as international co-operation through health services, customs, police, judiciary, etc, may serve to control and eliminate those activities or, at least, their transnational effects.

If correctly applied, these mechanisms and the appropriate international co-operation on these matters may also contribute to hemispheric security, by controlling the increasing risks of the so called "new threats", thus avoiding the need for draconian measures to be taken at a later stage.

It is unfair to attribute the failures of international organisations to these alone, as their efficiency can only be as good as the political will of their Member States to achieve such an outcome. It has been many times the case that those who most criticise those inefficiencies are the ones who most difficulties create for the adoption of truly collective decisions or refuse to abide by them.

With regard to existing instruments and mechanisms related to different aspects of hemispheric security, the Summit of the Americas held in Santiago in 1998, in the Chapter on "Building Confidence and Security Among States", mandated that: "Governments will:……Promote regional dialogue with a view to revitalising and strengthening the institutions of the Inter-American system, taking into account the new political, economic, social and strategic-military factors in the Hemisphere and in its sub-Regions". To that end, it entrusted the OAS, through the Committee on Hemispheric Security to: "Pinpoint ways to revitalise and strengthen the institutions of the Inter-American System related to the various aspects of Hemispheric Security".[10]

This mandate was the result of the call made by the Declaration of San Salvador on Confidence and Security Building Measures, to the Summit of the Americas, to consider directives for OAS, through its pertinent bodies, to study possible means to revitalise and strengthen Inter-American institutions related with different aspects of Hemispheric Security, with a view to face the challenges of the new century.[11]

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[10] Summit of the Americas, Final Declaration. Santiago, Chile, 1998. Plan of Action. Chapter on "Building Confidence and Security Among States."

[11] Declaration of San Salvador on Confidence and Security Building Measures. San Salvador, 28th. February, 1998.

The OAS entrusted to the Committee on Hemispheric Security, *inter alia*, this task, and decide to hold in due course, a regional conference on these matters, once the work of the CHS, had been completed.[12]

The work of both the CHS and the OAS General Assembly continued through meetings of experts and it finally decided to call for the celebration of a Conference on Hemispheric Security, which Mexico will host.[13]

In this context it may well be appropriate that one of the many perspectives from which hemispheric security could be approached, be to ensure that hemispheric co-operation is put in practice to avoid problems or disputes emerging from the conduct of activities in the territory of a State which may negatively impact in the territory of another or cause damage or injury therein.

It is a delicate matter which will surely arise suspicious in a hemisphere fraught with the memories of interventions, but developments may prove collectively and timely addressing the issue wise. It should be undertaken with openness and transparency.

The key will reside in finding adequately collective procedures which may allow for progress to be made in this field. Countries may be willing to co-operate if they are convinced that addressing these issues will not be used as pretexts to foster foreign intervention in their internal affairs but are indeed the result of legitimate concerns to avoid harmful consequences to any State resulting from activities originating in another´s territory.

b) In the course of the last two decades, it was not only the OAS that developed relevant mechanisms in the field of hemispheric security, which have proven relevant to buttress the democratic process under way in most of the continent.

Regional and sub-regional instances were also established and in may of them, specific co-operation regimes were established.

The most important example of a regional mechanism is the Rio Group, an offspring of the Contadora process, which was designed to provide a political alternative to military confrontation in Central America during the 1980s. This process opened a space for dialogue between the parties involved in that crisis, and was instrumental in facilitating the peaceful resolution of many of the complex problems which led to violence and could have ended in a war. It was also important in providing a democratic exit to those conflicts.

The Rio Group transformed itself into a mechanism of political co-ordination on a wide variety of issues ranging from social to security matters. As it encompasses both Latin American and Caribbean countries, it is well suited to consider matters affecting a wide range of situations.

The Caribbean countries have established their Regional Security System (RSS) and the Framework Treaty on Democratic Security in Central America, can also provide sub-regional responses if effectively and co-operatively applied.

[12] OAS General Assembly resolution AG/RES.1566 (XXVIII-O/98).
[13] OAS General Assembly resolution AG/RES.1908 (XXXII.O/02)

These instruments could prove to be specially relevant when dealing with situations of areas where problems of law enforcement may generate the danger for third States of illegal activities permeating into their territories and thus generating tensions which may negatively impact on regional or hemispheric security.

Processes as those have been established with regard to areas of concern, such as the ones established among Argentina, Brazil and Paraguay with reference to the so called "Triple Border Area", where a tripartite Command was established to address a range of matters which may have impact in the security of the area and beyond..

An example of a sub-regional system is the so called "political" MERCOSUR, which includes the Member States of that integration process, plus Bolivia and Chile as associates. It was in that context that the "Democratic Clause of MERCOSUR" and the "Political Declaration of MERCOSUR, Bolivia and Chile as a Zone of Peace and Co-operation" were adopted.

c) The so called "new threats" to security include some of the activities which are generally associated with the concerns generated by the lawless areas.

Ways and means on how best to address these phenomena have also been the object of both study and debate.

The use of institutional mechanisms designed specifically to each of these activities may constitute the way to provide co-operative and collective responses to effectively and adequate face them.

International terrorism, drug trafficking, illicit trafficking of firearms and corruption are some of those phenomena.

i) International terrorism has acquired a new dimension in the Americas following the attacks on the Israeli Embassy in 1992 and on the AMIA in 1994, both in Buenos Aires, and a world-wide impact after the attacks of September 11th, 2001 in the USA.

Argentina promoted in the OAS the creation of an specific hemispheric body to deal with terrorism and thus the **Inter-American Committee on Terrorism (CICTE**), was created in 1999.[14], that is a couple of years before September 11th.

After those attacks which shook the world, the OAS responded by agreeing to the **Inter-American Convention against Terrorism**.

By Article 15, d) of the Committee Statute, State Parties are committed to provide assistance to States which so requests in order to pre-empt, combat and eliminate terrorism, as well as to exchange experiences. This obligation goes beyond that on the Inter-American Convention in as much as information on the activities of individuals, groups, organisations and movements linked to terrorist acts and their methods, sources of financing,

[14] Comité Inter-Americano contra el Terrorismo (CICTE). OEA. Asamblea General. AG/RES.1650 (XXIX-0/99).

etc. could be the object of such exchange. Entities protecting and/or supporting these activities, directly or indirectly, could also come under scrutiny in this context.

As related illegal activities are also under watch in this context, article 15, f) calls on CICTE to co-ordinate its work with the Advisory Committee established by The Inter-American Convention against the Illicit Trafficking and Production of Small Firearms, Ammunition, Explosives and other related Materials (CIFTA), as it is obvious that the use of illegal arms, explosives or ammunition may have a direct link to terrorism and greatly facilitate their objectives, as well as those of both organised crime and common criminality.

CICTE has been working actively and during 2003 has identified actions to strengthen regional co-operation to prevent, combat and eliminate terrorism in the Hemisphere.

The Inter-American Convention against Terrorism, for its part establishes in Article 7 border co-operation amongst States Parties, acting in conformity with their respective legal and administrative regimes. By this international law instrument, both co-operation and information exchange in order to improve border and customs control to detect and pre-empt the movement of international terrorists as well as arms trafficking or other materials to be used in their activities, should be implemented.

It also calls on State Parties to co-operate and exchange information to improve their controls on the issuance of travel and identity documents and to prevent their counterfeiting, forgery or fraudulent use.

These measures are not intended to hinder the full application of international agreements permitting free movement of people across borders or as a trade barrier.

Law enforcement officials and the Judiciary should also co-operate in this context, to ensure that the law and international instruments for the combating of terrorism are effectively applied.

With respect to the Judiciary, even in the absence of international agreements on co-operation for the prevention, investigation and prosecution of crimes related to terrorism, State Parties should assist each other in an expeditious manner in conformity with their legislation.

This rule is clearly intended to avoid that bureaucratic filibustering may void the commitment of State Parties to the convention on the achievement of the goal of effectively combating this scourge.

A synergy should be effectively developed between CICTE and the Inter-American Convention, to better achieve their objectives.

Both this instruments could provide an adequate framework to further develop a systematic co-operation among all countries in the hemisphere to better respond to this scourge which threatens international peace and security everywhere.

This co-operation will also determine areas of concern which may be used for terrorist groups to plan or carry out their activities, as well as safe heavens. No country could expect to achieve good results in this combat acting alone or in isolation.

ii) As a result of the Specialized Conference on Traffic in Narcotic Drugs held in Rio de Janeiro in 1986 an Inter-American Program of Action on the matter was adopted and one of its recommendations was the creation of the Inter-American Drug Abuse Control Commission (CICAD), and its Statute was approved on the same year.[15]

CICAD activities relate to production, illicit traffic and abuse of drugs, as well as money laundering, the diversion of chemical precursors and substances, and also the traffic in firearms, their parts and components, and ammunition. Model regulations on these latter points were prepared by CICAD and adopted by the OAS General Assembly and should now be co-ordinated with CIFTA.

However, the same as with the other instruments, only effective co-operation could produce progress in the combat of drug trafficking.

iii) **The Inter-American Convention against the Illicit Trafficking and Production of Small Firearms, Ammunition, Explosives and other related Materials (CIFTA**), approved by the OAS on November 1997, also focuses on international co-operation, exchange of information and other appropriate measures, with the basic goal of stopping international crime.

INTERPOL is called to play a significant role and essentially its task is one of international co-operation, without which no progress could be achieved in matters which are by its very nature transnational.

Exchange of information clauses are similar to those to be later included in the Inter-American Convention on Terrorism and are contained in Article XIII.

Co-operation is dealt with in Article XIV and Technical Assistance is included in Article XVI., both essential for achieving the objectives of the CIFTA.

It also establishes a Consultative Committee, which CICTE´s Statute will later call its own body to co-operate and co-ordinate with.

This Convention has led to several regional initiatives tending to control the spreading of illegal and unregistered weapons plaguing the countries of the hemisphere. It would be very important for the success of this important instrument that the USA ratifies it.

The impact that this illegal traffic has on the kind of activities of concern carried out in the so called lawless areas, is obvious.

Its effective and co-ordinated implementation could be a very useful tool in the fight against crime, both at the national and international level, as well as to curb violence in our countries.

[15] OAS General Assembly resolution. AG/RES.813 (XVI-0/86)

iv) All these scourges related to crime and international terror, have a basis on corruption. These activities thrive on corruption, as the investigation on the terrorist attacks carried out against the Israeli Embassy and AMIA in Buenos Aires are clearly indicating.

The **Inter-American Convention against Corruption** becomes thus an essential part in the puzzle to efficiently fight against these other acts.

Article XIV of the Corruption Convention foresees international assistance and co-operation as key issues in this process.

This is one of the most critical issues for all of the Americas and it may not be an exaggeration to state that the future of our countries will greatly depend on the success we may or may not have on combating corruption.

It could also be argued that a significant portion of the blame for poverty, social inequalities, lack of development, failing State institutions, etc., cold be laid on corruption. Eradicating it will not bring immediate solutions to all the problems on the hemisphere but will surely significantly contribute to the beginning of a better future.

As it is evident, the areas of concern of this paper, "lawless areas", need corruption to happen. Combating it is therefore at the root of solving the problems these areas create or for simply stopping their emergence.

d) Democratic and transparent institutions represent a bonus for addressing problems such as these of "lawless areas".

Since the beginning of the new century, however, worries have emerged on democratic governance in our hemisphere and with them the search for strengthen it.

The double perception of representative democracy as an essential pillar for peace and security in the hemisphere and its weakness has lead to the adoption of instruments such as the Inter-American Democratic Charter[16].

This is a crucial instrument to address a basic political and legal principle of the Americas: that representative democracy is the only accepted rule.

The defence of democracy is judged essential for the existence of transparent and responsible governments. It is a necessary although not sufficient condition for it.

The transparency and rule of law that democratic governments imply should be also better equipped to provide responses in case its territory be used in harmful ways as those previously described in this paper.

Strengthening of democracy is therefore also conducive to better the chances of avoiding the emergence of these areas of concern as well as to providing adequate solutions when they do emerge.

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[16] Carta Democrática Interamericana. OEA. Asamblea General. AG/RES.1 (XXVIII-E/01).

e) The countries of the hemisphere should make a more frequent and better use of the mechanisms described above to address specific problems related to illegal activities. They could enable countries with problems or lack or resources to overcome them and provide the adequate responses by themselves.

They should also act together with the view of consolidating and strengthening democracy and governance, thus ensuring the full enjoyment by all of the values we share.

It would also have a positive impact on these areas which constitute a problem for the countries where they happen and a source of potential conflict with other countries, which could lead to instability, crime and conflict.

The emergence, spreading and consolidation of areas of concern may require the adoption of specific collective and co-operative mechanisms to be applied in addition an in co-ordination with those mentioned in c) above.

The key for success in this field lays on acting jointly and effectively to address these problems timely, before they become intractable..

IV.- Conclusions.

There might be a legitimate interest in States to ensure that illegal activities carried out in the territory of other States do not cause them harm or injury.

The emergence of areas where effective control of a State is weak or lacking, increases the risks of trans-boundary harm from the illegal activities carried out in those "lawless areas".

In the Americas the emergence of this kind of problem is not related to complicity nor arguably even to indifference from any State, but essentially due to lack of resources.

The best way to respond to it should therefore be through international co-operation. This should be increased and improved to provide assistance to those countries which encounter difficulties to effectively control criminal activities in their territories, in order to enable them to address the problem.

Ideally that co-operation should focus on allowing the affected countries to develop their own institutions to deal with these matters, be judiciary, law enforcement, education, labour training, etc.

Preventive actions on a multilateral scale would also be needed in a concerted effort in order to eradicate criminal activities such as drug trafficking, terrorism, corruption, organised crime, illegal trafficking of fire arms, etc.

States to whose markets criminal activities aim from these so called "lawless areas", should also take effective measures in their own territories to curb their spread, be

through demand of illegal products, export of weapons, money laundering, control of financially obscure assets and investments, etc.

Conversely, affected States where these areas of concern emerge, should be open to receive international co-operation to address the problem and do their outmost to effectively search for solutions.

The transnational nature of these phenomena makes inter State co-operation essential to achieve positive results.

Confrontation between States on account of these activities could only benefit those who thrive on them. We should therefore be ready to act on conflict prevention as well as to manage actual or potential crisis before they materialise.

In the Americas, institutional means both to channel co-operation and to provide help in cases where conflict prevention is required, are in place. They should be put to work in an authentic collective spirit and the different competent bodies should co-ordinate their actions amongst them.

The idea that draconian action by those who wield power is required to give responses to these problems belittles the importance and usefulness of preventive actions through the appropriate channels.

Co-operation should not be limited to repression but should start at the adoption of socio-economic policies which could lead to the creation of appropriate conditions thus making the emergence of areas of concern more difficult.

Social and economic policies in areas such as health, education, development, infrastructure, etc, as well as a network of judiciary, police and intelligence when dealing with phenomena of an international nature, should be further integrated in the Western hemisphere.

Non-intervention should be scrupulously respected and actions which interfere in the domestic affairs of a State, when inevitable, should be the result of collective decisions adopted in accordance with international law. Individual actions take by those States with the power to act on weaker ones, should be avoided as they will be detrimental to the confidence building process necessary to promote international co-operation on these matter.

Consolidation of representative democracy and the rule of law will also contribute a great deal to the collective success of avoiding the emergence of “lawless areas” in our continent.

These problems are better faced through adequate prevention mechanisms. It might be wise to start thinking collectively about the best ways and means of avoiding the emergence, spreading or consolidation of “lawless areas” in our hemisphere, before the problem becomes a real threat.

Fuente:

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