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Small Powers, International Organizations and the Role of Law: Jorge Castañeda's Views from Mexico

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Abstract

This article examines the work of Mexican diplomat and jurist Jorge Castañeda as an insight into the trajectory of international legal thought in the semi-periphery on international organizations. It argues that Castañeda adopted a distinct approach to international organizations law that foregrounds power asymmetries. The article considers three interventions made by Castañeda that express this semi-peripheral approach and have lasting relevance. First, it shows how, by focusing on the interests of small powers, Castañeda's work in the 1950s departed from functionalist optimism and stressed the tension between rule by international organizations and domestic rule, emphasizing the centrality of the reserved domain and drawing lessons for strategic legal engagement for small powers. Second, this article studies how Castañeda's concern for the cause of small powers shaped his views on regionalism, grounding his critique of Pan-Americanism and his vindication of the United Nations (UN) to attenuate the perils of regionalism. Third, this article retrieves Castañeda's defence of the UN General Assembly as a platform for international law-making, contextualizes it within the rise of decolonization and explores the implications for his earlier sceptical views about the expansion of UN powers. The article concludes by highlighting the significance of the thought of semi-peripheral jurists for any efforts aimed at re-theorizing international organizations.

1 Introduction

International organizations have played a central role in the modes of action and political projects of international lawyers for at least a century.[1] International legal

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[1] See Kennedy, 'The Move to Institutions', 8 *Cardozo Law Review* (1987) 841; G.F. Sinclair, *To Reform the World: International Organizations and the Making of Modern States* (2017).

scholarship, in turn, has been defined in recent times by an increased attention to historical and theoretical approaches – often described as constituting a 'turn to history' and a 'turn to theory' or, indeed, a 'turn to history and theory' in international law.[2] A crucial driver of these developments has been the resort to history to challenge linear and teleological accounts of international law, often foregrounding the perspectives of actors from the global South.[3] Against this background, it might appear surprising that dominant approaches to international organizations law remain largely oblivious to the intellectual histories of legal thought on international organizations in the global South.[4] While Eurocentrism in international legal scholarship has been the subject of significant analysis and well-deserved critiques,[5] there is an additional reason for the exclusion in this subfield: legal scholars have significantly neglected the task of theorizing international organizations altogether, a job seized by scholars of international relations, political science, economics and other disciplines.[6]

Recent work has called attention to this theoretical deficit and sought to contribute to the development of the theory of international organizations law by retrieving the contributions to the field made by key figures in its foundational years.[7] This article seeks to build on these efforts by reclaiming the work of Mexican diplomat and jurist Jorge Castañeda (1921–1997) as an insight into the trajectory of international legal thought in the semi-periphery on international organizations. Castañeda joined the Mexican diplomatic service in 1950 and developed a stellar career, which culminated in his appointment as secretary of foreign affairs (1979–1982) by President José López Portillo.[8] Castañeda represented Mexico in various capacities before the Organization

[2] Though care should be exercised when discussing these 'turns' to avoid disregarding long-established interests of international legal scholars in history and theory. For an analysis of the idea of the 'turn to history' and the politics of this shift, see A. Orford, *International Law and the Politics of History* (2021).

[3] Within a vast literature, see A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005); A. Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842–1933* (2014); R. Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (2019).

[4] On the critical pasts, institutional experiments and heterodox visions of international law in and from the South, see generally L. Eslava, M. Fakhri and V. Nesiah (eds.), *Bandung, Global History, and International Law: Critical Pasts and Pending Futures* (2017).

[5] On the limits and possibilities of different critiques of Eurocentrism, see Koskenniemi, 'Histories of International Law: Dealing with Eurocentrism', 2011 *Rechtsgeschichte: Legal History* (2011) 152; Tzouvala, 'The Specter of Eurocentrism in International Legal History', 31 *Yale Journal of Law and the Humanities* (2021) 413.

[6] Klabbers, 'Theorizing International Organizations', in A. Orford and F. Hoffmann (eds), *The Oxford Handbook of the Theory of International Law* (2016) 618; Klabbers and Sinclair, 'On Theorizing International Organizations Law: Editors' Introduction', 31 *European Journal of International Law* (*EJIL*) (2020) 489.

[7] This is the aim of the *European Journal of International Law*'s symposium Theorizing International Organizations Law, edited by Jan Klabbers and Guy Fiti Sinclair. Klabbers and Sinclair, *supra* note 6. See also Klabbers, 'The Emergence of Functionalism in International Institutional Law: Colonial Inspirations', 25 *EJIL* (2014) 645; Viñuales, '"The Secret of Tomorrow": International Organization through the Eyes of Michel Virally', 23 *EJIL* (2012) 543.

[8] For a short biography of Castañeda commissioned by the Secretariat of Foreign Affairs, see Sánchez Quintanar, 'Jorge Castañeda y Álvarez de La Rosa', in Secretaría de Relaciones Exteriores (ed.), *Cancilleres de México: 1910–1988* (1992) 504. El Colegio de México published an excellent three-volume collection of his works in Spanish. J. Castañeda, *Obras completas* (1995).

of American States (OAS) and, for over 30 years, the United Nations (UN), serving as president of the Sixth Committee in 1958. He was a member of the International Law Commission (ILC) for almost 20 years (1967–1986), became the first Mexican and one of the first Latin American jurists appointed to the Institut de Droit International in 1965 and taught and researched international law throughout his life.

Castañeda's body of work is marked by a concern for the interests of small powers and the different ways in which international law could be used to promote their cause (or against their interests), particularly in and through international organizations. Already in his first book, *México y el orden internacional* (published in English as *Mexico and the United Nations*), commissioned by the Carnegie Endowment for International Peace, Castañeda challenged his received instructions to focus exclusively on Mexico.[9] Unlike other contributors to the Carnegie Endowment's book series on national experiences with international organization, who produced individual country studies, Castañeda focused on Mexico while adopting the broader perspective of 'small powers', arguing that the 'interests, aspirations, and means of action' of these states fundamentally coincided.[10] The influence of Castañeda's intellectual and professional defence of small powers is vividly exemplified by the fact that when Antonio Cassese and Eduardo Jiménez de Aréchaga wondered whether there were many 'really *Tiers-Mondiste*' international lawyers in Latin America, his was the only name that came up.[11] Castañeda, however, did not identify with this term.[12] Instead, this article presents him as a particularly eloquent exponent of a Mexican legal and diplomatic tradition built around anti-interventionism and an embrace of law as a weapon of weak states, which preceded the idea of the Third World.[13] Late representatives of this tradition, like Castañeda's contemporary and Nobel Peace Prize winner Alfonso García Robles, could persuasively claim that Mexico 'found itself often in the position of spokesman' for Third World states.[14]

This article examines Jorge Castañeda's work as a rich illustration of semi-peripheral legal thought, situated in the Mexican context, on contemporary international organizations throughout crucial moments of their institutional and ideological

[9] J. Castañeda, *México y el orden internacional* (1956), reprinted and translated as *Mexico and the United Nations* (1958) (all page citations refer to the English edition).

[10] *Ibid.*, at 2–11.

[11] A. Cassese, *Five Masters of International Law: Conversations with R.-J. Dupuy, E. Jiménez de Aréchaga, R. Jennings, L. Henkin and O. Schachter* (2011), at 77.

[12] For Bernardo Sepúlveda Amor, secretary of foreign affairs (1982–1988) and judge of the International Court of Justice (ICJ) (2006–2015), to whom Castañeda was a mentor and a friend, Castañeda's intellectual and professional trajectory exhibited a distinct concern for the interests of developing countries, but he did not identify with a 'Third Worldist vocation'. Author's interview with Bernardo Sepúlveda Amor, September 2021.

[13] For an analysis of Mexican legal thought in the context of the Mexican Revolution as forerunning 'Third World international legal sensibilities', see Scarfi, 'Mexican Revolutionary Constituencies and the Latin American Critique of US Intervention', in K. Greenman *et al.* (eds), *Revolutions in International Law: The Legacies of 1917* (2021) 218.

[14] A. García Robles, *México en las Naciones Unidas* (1970), at 11 (all translations from works in Spanish are by the author).

settlement.[15] It argues that Castañeda's perspectives reflect a distinct approach to international organizations law that foregrounds power asymmetries and addresses international organizations as more equivocal projects than the optimistic and teleological characterization drawn by the long-dominant functionalist rationale in the field.[16] This article identifies, examines and situates three interventions made by Castañeda that express this semi-peripheral approach and have lasting relevance. First, this article shows how, by placing the interests of small powers at the centre of his analysis, Castañeda's early work in the mid-1950s departed from functionalism and came to stress the tension between rule by international organizations and domestic rule. From this perspective, this article argues, Castañeda both derived concrete legal implications, illustrated by his defence of the principle of 'reserved domain' as 'implicit in the structure of all international organizations', and drew lessons for strategic legal engagement for small powers in and with international organizations, reflecting a defensive tactical embrace of formalism.[17] Second, this article studies how Castañeda's concern about the risks of certain organizational forms for the independence and development of small powers shaped his views on the legal and political interplay between regional and international organizations. This concern led him to develop a critique of Pan-Americanism that set him apart from other prominent Latin American jurists and, most notably, to stress the importance of the UN to attenuate the perils of bad regionalism. Finally, this article retrieves Castañeda's sophisticated vindication of the UN General Assembly as a platform for international law-making, contextualizes it within the rise of decolonization and his diplomatic experience and explores the implications for his earlier and more sceptical views about the expansion of UN powers.

The article proceeds as follows. Section 2 situates Castañeda at the beginning of his diplomatic career in the early 1950s, describing the influence of two precursors,

[15] This article joins a line of research stressing the centrality of the interactions between centre and periphery for the development and operation of international law. A central work is Arnulf Becker Lorca's account of the role of semi-peripheral actors in the transformation of international law in the first three decades of the 20th century. For Becker Lorca, 'the international lawyer, although working with a discourse that claims universality, sees the world from the prism of the particular geopolitical location where situated, and thus understands international law differently, if situated at the core, periphery or semi-periphery'. I am inspired by his heuristic use of a semi-peripheral perspective as one situated in states with a certain margin of autonomy in the global economy but without sufficient geopolitical or economic power to fully belong in the centre. Becker Lorca, *supra* note 3, at 18–22. On centre-periphery dynamics and legal thought, Duncan Kennedy's work on the paths of legal institutional and conceptual change from the 19th to the 20th century has been foundational. See Kennedy, 'Three Globalizations of Law and Legal Thought: 1850–2000', in D. Trubek and A. Santos (eds), *The New Law and Economic Development: A Critical Appraisal* (2006) 19. On peripheral (and semi-peripheral) histories of international law, see Obregón, 'Peripheral Histories of International Law', 15 *Annual Review of Law and Social Science* (2019) 437. Beyond history, see Anthea Roberts' study on the intellectual and professional practices and assumptions that define the different approaches to international law across different states. A. Roberts, *Is International Law International?* (2017).

[16] On functionalism, see Klabbers, 'The Transformation of International Organizations Law', 26 *EJIL* (2015) 9; Lagrange, 'Functionalism According to Paul Reuter: Playing a Lone Hand', 31 *EJIL* (2020) 543; Sinclair, *supra* note 1, at 1–20; Viñuales, *supra* note 7.

[17] Castañeda, *Mexico and the United Nations*, *supra* note 9, at 182.

Isidro Fabela and Luis Padilla Nervo. Section 3 focuses on Castañeda's first substantive analysis of international organizations law, his book *Mexico and the United Nations*, where he departed from functionalism, foregrounded the centrality of the reserved domain and defended a conservative approach to UN powers. Section 4 considers Castañeda's positive assessment of certain approaches to regionalism, his enduring critique of Pan-Americanism and his views on the relationship between regionalism and universalism. Section 5 turns to Castañeda's later work on the UN and international law-making as well as his own role as an international lawmaker during the era of decolonization. Finally, section 6 concludes by highlighting the importance of studying the work of semi-peripheral jurists for any project aimed at re-theorizing international organizations.

2 Castañeda Situated: Mexico, Foreign Policy and International Law in the Early 1950s

After the Mexican Revolution came to an end, the country witnessed a hard-earned increase in political stability, which by the time Castañeda entered the diplomatic service was already remarkable by Latin American standards.[18] The ruling party had held uninterrupted power since its foundation in 1929, through its reorganization and renaming as the Partido Revolucionario Institucional in 1949 and until 2000. This political stability facilitated the development and consistency of Mexican approaches to foreign policy and international law.[19] An early defining feature of these approaches was a strong defence of the principle of non-intervention, which emerged in response to US interventionism during the revolution.[20]

A notable example of the Mexican anti-interventionist tradition is the Estrada Doctrine, named after Secretary of Foreign Affairs Genaro Estrada (1927–1932), a core foreign policy of Mexico to this day.[21] Estrada declared in 1930 that Mexico would

[18] See generally A. Knight, *The Mexican Revolution: Porfirians, Liberals, and Peasants* (1990); A. Knight, *The Mexican Revolution: Counter-Revolution and Reconstruction* (1990). Though it achieved political stability, the regime that emerged from the revolution had several shortfalls, including on matters of democracy and the rule of law, with legacies that have been traced down to the present. See P. Piccato, *A History of Infamy: Crime, Truth, and Justice in Mexico* (2017).

[19] For an overview of the role of law in Mexican approaches to foreign policy and world order, see Rodiles, 'Il ruolo del Messico nell'ordine mondiale (e accanto agli USA)', 8 *LIMES, Rivista Italiana di Geopolitica* (2017) 141.

[20] Castañeda himself explained that non-intervention was 'the international principle that has taken the deepest roots in the public conscience of my country' as a 'defense against external clashes' and noted the significance of President Venustiano Carranza's 1915 proclamation of the principle non-intervention as a response to US interventionism during the Mexican Revolution. Castañeda, 'El principio de no intervención', in J. Castañeda, *Obras completas: I. Naciones unidas* (1995) 529, at 529–532. On the impact of the Mexican Revolution and, specifically, Carranza and his Secretary of Foreign Affairs Isidro Fabela in the development of new international legal doctrines on intervention in Latin America, see Scarfi, *supra* note 13; see also C. Thornton, *Revolution in Development: Mexico and the Governance of the Global Economy* (2021).

[21] On the Estrada Doctrine, and its relationship to other Latin American legal principles constituting a rejection of intervention, including the Calvo Doctrine and the Drago Doctrine, see Esquirol, 'Latin America', in B. Fassbender and A. Peters (eds), *The Oxford Handbook of the History of International Law* (2012) 553.

not issue any statement in the form of the recognition or non-recognition of foreign governments but simply maintain or not maintain diplomatic relations with foreign governments. The doctrine was founded on the understanding that the recognition of foreign governments could be a potential means of illegitimate intervention, which Mexico had suffered first-hand.[22] The infamous non-recognition of President Álvaro Obregón's government (1920–1924) by the USA demonstrated the interventionist effects of the practice and its connection to the law of international organizations. As a result of the non-recognition, Mexico could not be represented in the Governing Board of the Pan-American Union, based in Washington, DC.[23] Shaped by episodes of this nature, Mexican diplomats and jurists became the strongest advocates of developing a 'legal' foundation for what had been a 'political' and US-led Pan-Americanism, and they ended up being a driving force behind the adoption of the OAS Charter in 1948.[24]

Against this background, Castañeda's emphasis on the centrality of non-intervention and the tension between international and domestic rule, discussed throughout this article, is unsurprising. Castañeda expressed admiration for two of his most notable precursors – Isidro Fabela and Luis Padilla Nervo – whom he described as 'exceptional' representatives for their proficiency in both international law and politics.[25] Fabela served as secretary of foreign affairs during the revolution (1913–1915), delegate to the League of Nations (1937–1940) and judge of the International Court of Justice (ICJ) (1946–1952). For Castañeda, Fabela's defence of the Spanish Republic in the League during the Spanish Civil War relied on a 'suggestive and original' approach to non-intervention and neutrality and symbolized 'better than any other instance, the will of Mexico to help the country that has suffered an attack'.[26] In his work, Fabela used the term 'weak nations', which might have inspired Castañeda's use of 'small powers'.[27]

[22] See Sepúlveda-Amor, 'Comments on Fawcett and Obregón', in M. Aznar and M. Footer, *Select Proceedings of the European Society of International Law: Regionalism and International Law* (2015) 39, at 42.

[23] This episode ultimately led to the 1923 amendment of the provisions that limited representation in the Governing Board to representatives accredited to the US government. Salceda Olivares, 'México y la V Conferencia Panamericana: un campo de batalla diplomática contra el intervencionismo norteamericano', 50 *Revista de Estudios Históricos* (2009) 44.

[24] Charter of the Organization of American States (OAS Charter) 1948, 119 UNTS 47; Quintanilla, 'La Estructura del Panamericanismo Después de Bogotá', in Secretaría de Relaciones Exteriores (ed.), *México en la IX Conferencia Internacional Americana* (1946) 61. See J. Torres Bodet, *Memorias, I: Tiempo de arena, Años contra el tiempo, La victoria sin alas* (2017), at 478–488.

[25] Castañeda, 'La aportación de Isidro Fabela a la seguridad internacional', in B. Segura García (ed.), *Homenaje a Isidro Fabela, Tomo II* (1959) 141, at 142–143.

[26] *Ibid.*, at 143–146. For an examination of Fabela's attempt to accommodate Mexico's commitment to non-intervention and the Mexican aid to the Spanish Republic, see Fernandes Carvalho, 'Mexican Post-Revolutionary Foreign Policy and the Spanish Civil War: Legal Struggles over Intervention at the League of Nations', in Greenman *et al.*, *supra* note 13, 242.

[27] Among Fabela's works cited by Castañeda, see, e.g., I. Fabela, *Neutralidad; estudio histórico, jurídico y político; la Sociedad de las naciones y el continente americano ante la guerra de 1939–1940* (1940), at 122; I. Fabela, *Cartas al Presidente Cárdenas* (1947), at 190.

Castañeda developed a close relationship with Luis Padilla Nervo, who played an influential role in Castañeda's decision to join the diplomatic service in 1950.[28] Like Fabela, Padilla Nervo served as secretary of foreign affairs (1952–1958) and became a judge of the ICJ (1964–1973). Castañeda credited Padilla Nervo with adapting 'the principle of non-intervention to contemporary needs and problems', including 'intervention through international bodies'.[29] As head of the Mexican delegation to the 1954 Caracas Conference, Padilla Nervo led the resistance to the US attempt to reinterpret inter-American instruments as permitting collective intervention in cases of 'domination or control of the political institutions of any American State by the international communist movement'.[30] Padilla Nervo's defiance of the US initiative was a defining moment for Mexican foreign policy towards the OAS and for Castañeda himself, who, at the invitation of Padilla Nervo, was in Caracas as a member of the Mexican delegation. Throughout his career, Castañeda recalled the developments in Caracas in his analyses of international organizations law, reserved domain and collective security.[31]

3 The UN from the Semi-Periphery: International Organizations, Power Asymmetries and International Law

Castañeda's first book, *Mexico and the United Nations*, was commissioned by the Carnegie Endowment for International Peace as part of a series on different national experiences with international organizations, focusing on the UN. With the 10th anniversary of the UN looming and the possibility of holding a conference to review the UN Charter on the agenda,[32] experts from various countries were asked to discuss topics such as the impact of the UN on national policy, the adequacy of the UN Charter for the operation of the organization and the relations between the UN and other international and regional organizations. Castañeda, then a legal counsellor at the Secretariat of Foreign Affairs, was tasked with conducting the study on Mexico in a personal capacity.[33] Castañeda chose to concentrate not only on Mexico but also on the perspective of 'small powers', arguing that the 'interests, aspirations, and means

[28] Author's interview with Bernardo Sepúlveda Amor, September 2021; J.G. Castañeda, *Amarres perros: una autobiografía* (2015), at 26. Jorge Germán Castañeda, Castañeda's son, also served as secretary of foreign affairs (2000–2003).

[29] Castañeda, 'La aportación', *supra* note 25, at 144.

[30] 'Discurso del Señor Padilla Nervo, Presidente de la Delegación de México (cuarta sesión plenaria)', in *Décima Conferencia Interamericana: Caracas, Venezuela (1–28 de Marzo de 1954), actas y documentos* vol. 1 (1956) 149.

[31] See, e.g., Castañeda, *Mexico and the United Nations*, *supra* note 9, at 181–183; Castañeda, 'El Panamericanismo y la Conferencia de Caracas', 14 *Investigación Económica* (1954) 373; Castañeda, 'El Sistema Interamericano: ficción y realidad', in J. Castañeda, *Obras completas: III. Política exterior y cuestiones internacionales* (1995) 147, at 152–155. The significance of this experience for Castañeda is further illustrated by the writings of his son. See, e.g., J.G. Castañeda, *México y América Latina*, 17 May 2009, available at https://jorgecastaneda.org/notas/2009/05/17/mexico-y-america-latina/.

[32] See Scott, 'The Question of UN Charter Amendment, 1945–1965: Appeasing "the Peoples"', 9 *Journal of the History of International Law* (2007) 26.

[33] Significantly, however, a study group composed of eight prominent Mexican jurists and statesmen, including Isidro Fabela, was appointed to discuss the draft and suggest revisions.

of action' of medium- and small-sized countries were largely aligned.[34] Writing before the massive admission of states to the UN as part of the decolonization of the Third World, Castañeda was thinking primarily, but not exclusively, of Latin American states, which made up 20 of the 50 founding members.[35] *Mexico and the United Nations* has significantly impacted the study of Mexican foreign relations, but it has been largely overlooked by international law scholars.[36]

This section examines *Mexico and the United Nations* and argues that, by placing the interests of small powers at the centre of his analysis, Castañeda highlighted the tension between rule by international organizations and domestic rule. Although he was confident in the promise of international organizations for the cause of small powers, his concern about their potential negative effects on sovereignty shaped his early legal approach to the subject. From this perspective, Castañeda underscored the centrality of the principle of reserved domain and outlined political and legal strategies for small powers to adopt in the UN. In this way, *Mexico and the United Nations* serves as a pioneering counterpoint to functionalist optimism.

Although functionalism has never been fully developed as a theory, it has long influenced legal thought on international organizations. From a functionalist perspective, states establish international organizations to perform certain functions and assign these organizations the necessary powers to succeed. Their relationship can thus be characterized as a principal-agent relationship.[37] This view informs the law of international organizations, enabling the construction of doctrines such as implied powers and grounding the analysis of matters including treaty making by international organizations. Despite its analytical appeal, functionalism projects a largely depoliticized view of organizations, presenting them as a vehicle for the inherent good of cooperation, with law serving as a tool to permit this cooperation.

Jan Klabbers has traced the origins of functionalism to the turn of the 20th century, foregrounding the foundational work of US political scientist and diplomat Paul Reinsch.[38] Reinsch's analysis was informed by his experience as a US delegate to the Pan-American conferences and his enthusiasm for the International Union of American Republics, established in 1890 as the first institutional iteration of the Pan-American movement and commonly regarded as the precursor of the OAS.[39] As Klabbers argued, Reinsch drew on 'colonial inspirations' and saw international organizations as offering the advantages of international cooperation in matters including free trade and communications without the unrest inherent in territorial

[34] Castañeda, *Mexico and the United Nations*, *supra* note 9, at 2–11.

[35] *Ibid.*, at 5. Castañeda finished his draft in the autumn of 1955.

[36] Bernardo Sepúlveda Amor described *Mexico and the United Nations* as arguably the most influential of Castañeda's works, contending that in Mexico it 'served to train several generations of students of international relations'. Sepúlveda Amor, 'Prólogo: El oficio internacional', in Castañeda, *Obras completas: I. Naciones Unidas*, *supra* note 20, 17, at 20–21.

[37] Klabbers, *supra* note 16. On functionalism, see the additional references in note 16 above.

[38] Klabbers, *supra* note 7; see P.S. Reinsch, *Public International Unions: Their Work and Organization: A Study in International Administrative Law* (1911).

[39] Reinsch, *supra* note 38, at 77–118.

expansion.[40] Reinsch's emphasis on the consensual character of the Union and its focus on technical priorities reveals the seeds of functionalist thought: although the USA was 'great and powerful', Reinsch argued, it claimed 'no hegemony'; instead, the Union was 'based upon the unanimous consent' of the American states and focused on the 'practical solution of specific problems' of general concern.[41] This early vision anticipated the pitfalls of functionalism, as it centred on the idea of organizations as largely harmless and ultimately overseen by their members, without addressing the issue of how to control them.[42]

Mexico and the United Nations is not a theoretical work. Still, lacking a canonical characterization, functionalism has been most influentially reconstructed from 'an amalgam of insights culled from judicial decisions and legal writings', including those of individuals who reflected on 'their practical experiences in a systematic way'.[43] Castañeda's book offers a systematic reflection on the UN and international organizations, based on his first-hand experiences and inspired by the Mexican legal and diplomatic tradition, which leads him to depart from certain functionalist assumptions. Like functionalists, Castañeda was primarily concerned about the relationship between international organizations and their member states. However, questions of control are a central concern of his book. More specifically, he worried about the limited possibilities that the small powers might have to control international organizations. Indeed, the prominent role he assigned to the category of small powers in his analysis might be seen as sitting in tension with an understanding of the relationship between the member states and the organization as one between a single collective principal and an agent. In addition, Castañeda explicitly acknowledged that organizations could harm their own member states. *Mexico and the United Nations* does not outline an alternative theoretical framework for international organizations law but offers an undoubtedly legal and deliberately political approach to international organizations.

Castañeda began his analysis by assessing the potential benefits of international organizations in serving the interests of small powers against the potential costs imposed by power asymmetries and lack of control. On the one hand, he argued, Mexico and many 'small- and medium-sized powers' shared three central aims that could be fulfilled through international organizations.[44] First, due to the 'almost unavoidable universalization' of war, the maintenance of peace had now become the concern of all countries. Second, small powers shared an interest in preserving their independence. Their progress, he stressed, depended 'above all on their own efforts', but the absence of external conditionalities was a prerequisite. International organizations could

[40] Klabbers, *supra* note 7, at 667–673.

[41] Reinsch, *supra* note 34, at 77–118; Klabbers, *supra* note 7, at 671–672.

[42] Klabbers, *supra* note 7, at 674; see Reinsch, *supra* note 38, at 116. Matters of control have become central in more recent theoretical work on international organizations law. See, e.g., E. Benvenisti, *The Law of Global Governance* (2014); D. Hovell, *The Power of Process: The Value of Due Process in Security Council Sanctions Decision-Making* (2016).

[43] Klabbers, *supra* note 16, at 9–15.

[44] Castañeda, *Mexico and the United Nations*, *supra* note 9, at 8–11.

be an effective tool for limiting the most blatant of these threats – namely, military aggression and the excessive political and economic influence of a state in another. Finally, organizations could assist in accelerating the economic and social development of small powers through mechanisms including international financing and technical assistance. At the same time, Castañeda warned, if unchecked, organizations could facilitate interventions led by powerful states and, more insidiously, interfere with the development of small countries, especially by imposing 'international standards of economic and social conduct', which might be 'worked out with the best intentions by the international agencies' but ultimately prove 'appropriate to more developed communities'.[45]

Concerned about power asymmetries, Castañeda stressed that the most pressing task in international organizations was to reinforce their effectiveness 'within the framework of the equal sovereignty of [their] members'.[46] The centrality he attributed to sovereign equality had concrete legal implications. Most notably, Castañeda argued that the 'principle of reserved domain' was implicit in the very idea of international organizations. In his words, 'there is a jurisdiction which embraces the domestic life of the state and which is "reserved," which is exempt from all foreign action, even of the international organization, since no country would wish to be a member of the latter if its participation implied the renunciation of their domestic autonomy'. The prohibition of international organizations from entering this reserved domain, Castañeda concluded, must be considered 'an essential, characteristic element' of any international organization, whether expressly established in the organization's charter or not.[47]

The discussion on the legal character of the reserved domain was far from merely theoretical. Admittedly, within the UN system, the UN Charter had settled this question to a certain extent: Article 2(7) codified the principle of reserved domain. However, like Reinsch's, Castañeda's approach to international organizations was shaped by his experience with Pan-Americanism, arguably the world's first regional political-legal system. Where Castañeda and other jurists south of the Rio Grande differed from Reinsch was in their appreciation of Pan-Americanism, which they came to see as a Latin American ideal distorted by the dominance of the USA.[48] Castañeda's argument for the implicit character of the principle of reserved domain had concrete implications in the OAS, whose charter did not codify this principle. He recalled the recent developments at the 1954 Caracas Conference where, by majority vote, the American states had declared 'the activities of the international communist movement as constituting

[45] *Ibid.*, at 10, 62–64, 179–183.
[46] *Ibid.*, at 17.
[47] *Ibid.*, at 182.
[48] See, e.g., Quintanilla, *supra* note 24. Scarfi has described the rise of a Latin American legal anti-imperialist tradition stepping back from Pan-Americanism. Scarfi, 'Denaturalizing the Monroe Doctrine: The Rise of Latin American Legal Anti-Imperialism in the Face of the Modern US and Hemispheric Redefinition of the Monroe Doctrine', 33 *Leiden Journal of International Law* (*LJIL*) (2020) 541; *cf.* Obregón, 'Between Civilisation and Barbarism: Creole Interventions in International Law', 27 *Third World Quarterly* (2006) 815.

intervention in America'.[49] The USA pushed this declaration with the expectation of using it as a justification for muscular collective interventions in cases where a purported communist regime had come to power, starting with the reformist government of Jacobo Árbenz in Guatemala.[50] For Castañeda, the declaration was built on the flawed and dangerous assumption that the OAS Charter's drafters, by codifying the principle of non-intervention, had chosen to forbid intervention by individual states but not by the organization.[51] He emphasized that intervention by international organizations was always limited by the essential principle of reserved domain.

Emphasizing power asymmetries in the understanding of international organizations led Castañeda not only to derive concrete legal consequences but also to discuss different possibilities of organizing internationally from the semi-periphery. His approach was highly pragmatic: he recognized, in line with functionalist thought, the promise of international organizations but, displaying an inclination towards political realism, acknowledged the limited tools that smaller states had to shape them.[52] Against this background, throughout *Mexico and the United Nations*, he combined legal and political analysis to determine the course of action that, in his view, would best serve the interests of Mexico and the small- and medium-sized powers on a number of crucial issues concerning the UN. Overall, his approach to legal strategy can be understood as resting on two pillars: prioritizing law over politics and adopting a conservative approach to UN powers.

First, and most clearly, Castañeda argued that small powers should emphasize 'the function of law' for the solution of 'all international questions'.[53] Many situations 'in the theory and practice of international organizations', he argued, allowed either a political or a juridical response. Matters such as the determination of an instance of aggression or the adoption of collective security measures, he noted, could be articulated by reference to vague concepts such as 'justice' or through legal criteria.[54] He stressed that small powers must insist on the legal delimitation of UN functions and ensure that they are 'carried out with due respect for the precepts of international law'.[55]

[49] Declaration of Solidarity for the Preservation of the Political Integrity of the American States against the Intervention of International Communism, adopted by the Tenth Inter-American Conference, 28 March 1954.

[50] Though drafted in impersonal terms, the declaration was aimed at the Árbenz government. A secret memorandum by the US assistant secretary for inter-American affairs concisely summarized its immediate objectives: to 'lay ground work for subsequent positive action against Guatemala by the Organization of American States'. Memorandum by the Assistant Secretary of State for Inter-American Affairs (Cabot) to the Acting Secretary of State, 10 February 1954, reprinted in *Foreign Relations of the United States, 1952–1954: The American Republics*, vol. 4 (1982) 279, at 290.

[51] Castañeda, *Mexico and the United Nations*, *supra* note 9, at 179–183.

[52] Castañeda's son described him as a 'geopolitical realist'. J.G. Castañeda, *supra* note 28, at 25. For Bernardo Sepúlveda Amor, the distinctive aspect of Castañeda's academic work is that it combines a highly solid legal knowledge with the practical approach of someone who designs foreign policy. Author's interview with Bernardo Sepúlveda Amor, September 2021. Castañeda often described his own positions as 'realist'. See, e.g., Castañeda, 'El Panamericanismo', *supra* note 31, at 383.

[53] Castañeda, *Mexico and the United Nations*, *supra* note 9, at 10–11.

[54] *Ibid.*, at 10–11, 21–24.

[55] *Ibid.*, at 22.

Although he reiterated this point throughout the book, Castañeda did not present a comprehensive theory about how law could serve the cause of small powers. Despite its theoretical implications, *Mexico and the United Nations* was, above all, a report. However, in passages from the book and other works published around the same time, Castañeda provided examples that illustrate the different roles that he envisaged law could serve, exhibiting a certain sociological orientation. Most generally, he noted that, unlike great powers, smaller states could not rely on material resources to gather support for shifting positions. The best way for small powers to be heard in international fora and, in this way, protect their interests was by grounding their positions on legal principles and defending these principles with 'absolute' and 'intransigent' consistency.[56] This was, in his opinion, the reason why Mexico's positions on foreign policy, which persistently defended sovereignty and non-intervention, were given weight, contributing to the creation of precedents constraining future developments. Castañeda also linked the role of law with public opinion. He stressed this connection in arguing for the importance of defining aggression. A definition of aggression, he argued, would serve as an 'additional juridical element' to subject decision-making by UN political bodies to law on matters of collective security, not only by offering small powers a clearer principle on which to ground their arguments but also by facilitating the judgment of the increasingly weighty global public opinion.[57] Finally, Castañeda acknowledged the importance of adjudication and discussed the role that the ICJ could play in significant matters such as the struggle on the admission of new members.[58] He was, however, pragmatic and noted the limits that the Court faced to intervene in issues affecting the interests of the great powers.[59]

In another display of his practicality, Castañeda acknowledged that, exceptionally, broadening the role of law in the determination of certain questions would be against the interests of small powers and should be avoided. Notably, he argued, the essential principle of reserved domain had been codified as a vague standard in Article 2(7) of the UN Charter. He noted that, in principle, the formula excluding matters 'essentially within … domestic jurisdiction' from the UN's sphere of competence could be legally delimited through codification. However, Castañeda explained that codifiers could conclude that subject matters regulated by treaties transcended the domestic jurisdiction of the state. Since the number of treaties was increasing, this move would result in the reduction of the reserved domain, to the detriment of small powers.[60] After

[56] Castañeda, 'El Panamericanismo', *supra* note 31, at 382; see also Castañeda, *Mexico and the United Nations*, *supra* note 9, at 10.

[57] Castañeda, 'La aportación', *supra* note 25, at 149–155.

[58] Castañeda, *Mexico and the United Nations*, *supra* note 9, at 84–95.

[59] See, e.g., Castañeda's discussion of the USA's reservations to the Pact of Bogotá. *Ibid.*, at 174–175. On adjudication and the problem of substantive law favouring the interests of industrial countries, see section 5 of this article and Castañeda, 'The Underdeveloped Nations and the Development of International Law', 15 *International Organization* (*IO*) (1961) 38.

[60] The Permanent Court of International Justice (PCIJ) had opened a way for the line of reasoning he feared in its interpretation of the Covenant of the League of Nations 1919, 13 AJIL Supp. 128 (1919), which included a similar clause but recognized a more limited reserved domain, as it excluded matters 'solely' rather

all, he argued, Article 2(7) had incorporated the term 'essentially', which was not juridical but had 'some psychological value' that led it 'to operate in a "conservative" way'. Castañeda concluded that small powers should hold to this almost 'political' standard.[61] This further showcases Castañeda's sociological orientation. His was less a call for small powers to embrace the certainties of law against the whims of politics than for them to build an approach to international law and organizations suited to their interests, informed by political experience and sociological observation.

The second pillar of Castañeda's views on small powers' engagement with the UN was a conservative approach to the organization's powers. In powerful states, a broad understanding emerged promptly on how to resolve the ambiguities of the UN Charter. The Charter came to be seen as a living document, which would be developed through ongoing processes of legal interpretation.[62] From the post-war period to the mid-1960s, a series of interrelated instances of 'constitutional growth' took place in the UN with long-lasting impact.[63] In passing, Castañeda showed hesitance towards the living constitution analogy.[64] More importantly, he consistently defended restrictive, and arguably formalist, interpretations in his discussion of certain entangled struggles around the boundaries and growth of UN powers. His was less a vindication of formalism than a defence of the interests of small powers, which, in his view, were best served in this context by formalist positions. This interpretation of Castañeda's view is supported by the fact that his formalist legal arguments were always complemented with supporting policy assessments.

His criticism of the 'Uniting for Peace' resolution is particularly illustrative.[65] This resolution, devised to circumvent Soviet vetoes during the Korean War, allowed the UN General Assembly to consider matters of international peace and security and make recommendations for collective measures if the UN Security Council, 'because of lack of unanimity of the permanent members', failed to exercise its primary responsibility.[66] Several small states, including most Latin American countries, were enthusiastic about the possibility of strengthening the General Assembly and supported the resolution on the grounds of sovereign equality, both as a legal argument and a political goal.[67] Indeed, in his 1958 treatise on the constitutional law of the UN Charter,

than 'essentially' within domestic jurisdiction from action by the Security Council. The Court argued that '[t]he words "solely within the domestic jurisdiction" seem rather to contemplate certain matters which, though they may very closely concern the interest of more than one State, are not, in principle, regulated by international law. The question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends on the development of international relations'. *Nationality Decrees Issued in Tunis and Morocco (French Zone)*, 1923 PCIJ Series B, No. 4, at 23–24.

61 Castañeda, *Mexico and the United Nations*, *supra* note 9, at 71–75.

62 Sinclair, *supra* note 1, at 121–123.

63 *Ibid.*, at 113–198.

64 Castañeda, *Mexico and the United Nations*, *supra* note 9, at 54–56.

65 *Ibid.*, 128–140.

66 GA Res. 377A(V), 3 November 1950.

67 See J.A. Houston, *Latin America in the United Nations* (1956), at 141–147; Sinclair, *supra* note 1, at 130–134. In the General Assembly debate, the Cuban representative Carlos Gutiérrez was among the most emphatic when he argued: 'We have never shared-neither before San Francisco, nor at San Francisco, nor since San Francisco the opinion that only the great Powers have the right to act in questions involving international peace and security. Such a view is totally inadmissible for any peace-loving nation, no matter how small. To accept it would take us back to the early days of modern civilization, to the somber

the Uruguayan jurist and future judge of the ICJ Eduardo Jiménez de Aréchaga described this 'constitutional development' as 'the most constructive step that has been taken since the San Francisco Conference', which, he celebrated, had made medium and small countries participants in the maintenance of collective security.[68]

Castañeda did not share this optimism. His textualist case against the resolution was straightforward. He noted that Article 39 assigned the determination of the existence of a threat to the peace, breach of the peace or act of aggression to the UN Security Council, while, under Article 11(2), the General Assembly was obliged to refer to the Security Council any question 'on which action is necessary'. His 'political standpoint' was much more interesting. The veto, he explained, was working as expected: it was preventing the adoption of collective measures from creating 'greater dangers for universal peace than those very ones that it seeks to avoid'.[69] Even if the veto were to become an obstacle to collective security, Castañeda added, the UN Charter offered a solution: collective self-defence. The veto was merely impeding that the action be carried in the name of the UN and, significantly, that unwilling members became legally obliged to join in.[70]

Seen in this light, the veto became 'more a defense of the small than of the great countries'.[71] For Castañeda, the veto preserved the balance of forces within the UN, and this balance constituted a crucial mechanism of control. The Security Council was a more suitable place for negotiations and considering the viewpoints of involved parties, compared to the General Assembly where the majority could disregard the interests of minorities. His argument was founded on a first-hand understanding of agency in the semi-periphery. Castañeda argued that broadening the functions of the General Assembly in matters of collective security under the flag of sovereign equality could threaten sovereignty. Although small states composed the majority of the General Assembly, political dependence and fear of reprisals had often led them to support interests contrary to their own.[72] Under the terms of the 'Uniting for Peace' resolution, this could mean getting dragged into great powers' conflicts. The Caracas Conference, in which the USA had persuaded most Latin American states to vote for the resolution targeting Guatemala, once again loomed large in his analysis. In condemning this incident, he put it most clearly: '[T]he modern form of intervention is through collective action obtained by votes in international meetings.'[73] In this way,

days of the Congress of Vienna, as if the shadow of Alexander, emperor and autocrat of all the Russias, were projected upon the developments of contemporary political events, as if mankind had not copiously shed its blood and suffered appalling destruction in order to triumph over Hitler's nazism and Mussolini's fascism.' United Nations General Assembly, 5th session: 301st plenary meeting, UN Doc, A/PV.301, 2 November 1950, at 324.

68 E. Jiménez de Aréchaga, *Derecho constitucional de las Naciones Unidas: comentario teórico-práctico de la Carta* (1958), at 204–205.

69 Castañeda, *Mexico and the United Nations*, *supra* note 9, at 130.

70 *Ibid.*, at 132.

71 *Ibid.*, at 139.

72 Similarly, Castañeda criticized the 'frequent inconsistencies' in the approach to questions of reserved domain by certain Latin American countries, which he attributed to 'the exigencies of the political and ideological conflict dividing the world'. *Ibid.*, at 63.

73 *Ibid.*, at 183.

Castañeda's practical political knowledge translated into a sceptical outlook on collective action. This stands in contrast to the interwar solidarist approach of Chilean jurist Alejandro Álvarez, arguably the most influential Latin American international lawyer of the 20th century, who, in a very different context, grounded in sociological observation his defence of collective intervention in the interests of humanity or the international community.[74]

Overall, in a functionalist key, Castañeda portrayed international organizations as necessary tools for states to achieve goals they would otherwise be unable to accomplish. However, being that he was from Mexico, a medium power with a superpower as a neighbour and regional hegemon, Castañeda was concerned about how aspects of institutional design could reproduce existing inequalities.[75] Put differently, only from the centres of power where functionalist thought originated could structural inequalities and questions of control be disregarded. This perspective had direct legal implications: for Castañeda, international organizations presupposed the principle of reserved domain. In addition, he adopted a strategic perspective on international organizations, calling on small powers to strengthen the role of law in international organization and defending restrictive interpretations of the UN Charter over deformalizing arguments seeking to increase and transform the powers of the UN.

Balancing a vindication of law as a defensive tool for weaker countries – most easily achieved through formal legal argument, with certain flexibility aimed at seizing the potential of organizations to serve their development – would prove an increasingly challenging task for Third World jurists.[76] *Mexico and the United Nations* anticipated some of these tensions and reflected a preference for a tactical embrace of formalism – that is, for erring on the side of caution.[77] This was not a dogmatic exaltation of legal categories or an exercise in deductivist legal reasoning but, rather, a thoughtful analysis of the importance of consistency, caution and shared interests for small- and medium-sized powers in their legal and political approach to international organizations in a

[74] See, e.g., Alvarez, 'The State's Right of Self-Preservation', 3 *Washington University Law Review* (1919) 113, at 122–123. Castañeda was a vocal critic of the 'American international law' championed by Álvarez and of the work of Jesús María Yepes, a follower of Álvarez's ideas. See section 4 in this article. Despite their conflicting conclusions, there is a link between Castañeda and Álvarez in this sociological orientation built on a practical understanding of politics. On Álvarez, pragmatism and the interwar turn to modernism in international law, see Kennedy, 'International Law and the Nineteenth Century: History of an Illusion', 65 *Nordic Journal of International Law* (1996) 385.

[75] As argued by Luis Eslava, Latin America's earlier experiences with colonialism and post-coloniality anticipated what would later be 'thinkable and doable in the rest of the decolonizing world'. Eslava, 'The Developmental State: Independence, Dependency, and the History of the South', in J. von Bernstorff and P. Dann (eds), *The Battle for International Law* (2019) 71.

[76] For a powerful illustration, see Özsu, 'Organizing Internationally: Georges Abi-Saab, the Congo Crisis and the Decolonization of the United Nations', 31 *EJIL* (2020) 601.

[77] For instance, Castañeda acknowledged that certain international norms were unfair but offered a mild solution: he recommended small powers to insist on the 'clear and categorial' inclusion in the UN Charter of the principle of peaceful revision of international treaties. Castañeda, *Mexico and the United Nations*, *supra* note 9, at 22–23. Similarly, he celebrated the increasing intervention of the United Nations (UN) towards the independence of the colonial peoples but cautioned small states to develop an 'adequate juridical basis' to avoid contributing to expanding the UN's competence in other areas, such as human rights, which might bite back. *Ibid.*, at 67–68.

particular historical context. As explored in section 5, in his later work and in a very different historical moment, Castañeda grew confident in the General Assembly's transformative potential in the interest of non-European states and came to call for the strengthening of its 'quasi-legislative functions'.[78] Before this shift, he turned to a particular way of organizing to navigate these tensions: regionalism.

4 The Limits of Universalism Strengthen the Case for Regionalism (and Vice Versa)

In *Mexico and the United Nations*, Castañeda acknowledged that the UN was an imperfect organization. Still, he defended it as advancing a necessary, but 'limited and temporary', task – namely, 'to serve as an instrument of coexistence in times of transition'.[79] Writing in the context of geopolitical tensions of the early Cold War, he saw the UN as aiding the 'pacific coexistence between the capitalist world and the communist world, between the dependent peoples and the colonial powers, between the rich countries and the poor countries'.[80] By cultivating global peace, facilitating a 'pacific transition' away from colonialism and serving as a centre of technical exchange and resource transfer, the UN could pave the way towards a more integrated, less unequal and less divided world.[81] Castañeda's conservative approach to the expansion of UN powers sought to preserve the organization's political balance that both made possible this process and safeguarded the interests of small powers. At the same time, Castañeda acknowledged that most states were desperately in need of deeper cooperation – politically and economically. This section retrieves three aspects of Castañeda's legal thought on regionalism, which he saw as a partial way out of this conundrum. His approach to the subject remained shaped by the tension between the international and the domestic.

First, Castañeda emphasized the potential of regionalism to open up space for the economic and political international cooperation that small powers needed. At the global level, in an era of rampant nationalism and tensions, these states had good reasons to defend their reserved domain. Smaller associations of homogeneous countries, in contrast, offered their members the opportunity 'to be less jealous of their sovereignty'.[82] While traversing these times of transition, he argued, regional organizations could serve as a 'bridge between the isolated national state and a sufficiently integrated world collectivity of the future', allowing small states to develop a common policy for their shared problems and create larger economic units.[83] Throughout the

[78] Castañeda, 'The Underdeveloped Nations', *supra* note 59, at 44.
[79] Castañeda, *Mexico and the United Nations*, *supra* note 9, at 16–19.
[80] *Ibid.*, at 17. For an examination of the relationship between the Cold War and international law, though without significant attention to the Latin American experience, see M. Craven, S. Pahuja and G. Simpson (eds), *International Law and the Cold War* (2019).
[81] Castañeda, *Mexico and the United Nations*, *supra* note 9, at 18.
[82] *Ibid.*, at 180. For Castañeda's discussion of nationalism, sovereignty and international organizations, see *ibid.*, at 5–11.
[83] *Ibid.*, at 165–167.

years, Castañeda consistently foregrounded economic cooperation as the central reason for regional cooperation.[84] From early on, his economic analysis bore the mark of the UN Economic Commission for Latin America and the structuralist economics of its executive director, Raúl Prebisch.[85] The 'economic structure' of most regions, Castañeda wrote in 1955, required 'planning on supranational bases' to 'attain specialization of national industries [and] lower the cost of products', which was at the time only possible 'through the association of similar countries in larger economic units'. For poor countries, the default alternative of '"non-discrimination" and the spontaneous international division of work', to which the global seemed to condemn them, was obviously unsatisfactory.[86]

Second, Castañeda did not simply advocate regionalism, but he discussed what kind of regionalism was desirable. The concerns of the jurists of the newly independent states that, in the words of Georges Abi-Saab, regional organizations 'might be used as a cover for hegemonial powers to perpetuate their spheres of influence' did not escape him.[87] In fact, Castañeda became an early prominent critic of the OAS on similar grounds. In his account, the promise of regionalism relied on the association of countries with common economic interests, who were similar in strength and had a shared tradition. Thus, for Castañeda, the OAS was a wrong model for a simple reason: the presence of the USA. Castañeda went to great lengths to expose the limits of the Pan-American approach to regionalism, pre-publishing his chapter on the subject from *Mexico and the United Nations* as an article in *International Organization*.[88] His critical approach to Pan-Americanism in works written for an international audience contrasted sharply with similar engagements by other Latin American jurists – from Alejandro Álvarez in the early 20th century to the then more recent work of Colombian Jesús María Yepes.[89] Prominent US jurist and chief of the OAS Department of International Law Charles Fenwick saw in Castañeda's critique of Pan-Americanism a surprising, 'severe' indictment.[90]

[84] See, e.g., *ibid.*, at 165–171; Castañeda, 'El Panamericanismo', *supra* note 31, at 147–150.

[85] See Prebisch, 'The Economic Development of Latin America and Its Principal Problems', United Nations Economic and Social Council, UN Doc E/CN.12/89/Rev.1, 27 April 1950. This was an unsurprising influence considering how decisive the Mexican intellectual atmosphere had been for the development of Prebisch's thought on Latin America. Castañeda did not, however, mention Prebisch or the Economic Commission for Latin America. See E.J. Dosman, *The Life and Times of Raúl Prebisch, 1901–1986* (2008), at 188–210. Prebisch became the founding secretary-general of the UN Conference on Trade and Development in 1964, and his economic thought shaped global South approaches to international law and development.

[86] Castañeda, *Mexico and the United Nations*, *supra* note 9, at 166–167.

[87] Abi-Saab, 'The Newly Independent States and the Rules of International Law: An Outline', 8 *Howard Law Journal* 95, at 105.

[88] Castañeda, 'Pan Americanism and Regionalism: A Mexican View', 10 *IO* (1956) 373.

[89] See, e.g., Alejandro Álvarez's seminal article arguing for an American hemispheric order, including the USA. Álvarez, 'Latin America and International Law', 3 *American Journal of International Law* (*AJIL*) (1909) 269. For an analysis of the strategic meaning of Álvarez's intervention, see Esquirol, 'Alejandro Álvarez's Latin American Law: A Question of Identity', 19 *LJIL* (2006) 931; see also J.M. Yepes, *Philosophie du Panaméricanisme et Organization de la Paix* (1945).

[90] Fenwick, 'Mexico and the United Nations, by Jorge Castaneda', 53 *AJIL* (1959) 213.

This critique was an early account of the limits of contemporary regional organizations with a hegemon. In the 1950s, Castañeda illustrated his case by analysing the economic and political implications of the participation of the USA in the OAS. Economically, he noted that the USA was a regional system in itself, with a large internal market and fully developed industrial and agricultural sectors. The interests of the USA and Latin American countries were antagonistic, as shown by the US push to create a customs union in the very first Pan-American Conference (1889–1890), which would have 'condemned [Latin America] to the never-ending extraction of raw materials'. Latin American states, he added, had much to gain from adopting a common economic policy. The importance of this endeavour had been concealed by the attempt to find 'an economic decalogue common to the United States and Latin America', a task that could not be resolved in the interest of the latter.[91] For Castañeda, Pan-Americanism was precluding the Latin American states from the very first step of articulating their own shared interests.

It could be argued that any limits that Pan-Americanism may have exhibited in advancing economic cooperation were compensated for by the achievements in the field of political cooperation. However, Castañeda was also unforgiving in his assessment of this front. He criticized the idea of 'American international law', the purported distinct, common body of law governing the relations among the American republics, which operated as a legitimating force of Pan-Americanism, famously defended by Álvarez and, later, Yepes.[92] The sole distinctive principle governing Pan-American relations, Castañeda argued, was non-intervention. Though universally valid, this principle had been codified with unprecedented strength and preciseness in Pan-American instruments in 1933 and 1936 and, finally, in the 1948 OAS Charter, which outlawed intervention 'directly or indirectly, for any reason whatever'.[93] Still, Castañeda argued that non-intervention was no argument in favour of Pan-Americanism: it was merely 'a defensive principle' that operated as 'a necessary prerequisite' for organizations 'made up of states which are unequal in strength and at different levels of development'.[94]

Castañeda's argument was not, however, that Pan-Americanism merely aimed at 'coexistence' when Latin American countries needed regional 'cooperation'.[95] Rather,

[91] Castañeda, *Mexico and the United Nations*, *supra* note 9, at 169–171. Throughout the 1940s and the 1950s, the USA persistently deferred the discussion of economic questions within inter-American regional law and organization, against the insistence of Latin American states. See Rabe, 'The Elusive Conference: United States Economic Relations with Latin America, 1945–1952', 2 *Diplomatic History* (1978) 279.

[92] See Álvarez, *supra* note 89; Yepes, *supra* note 89; see also Esquirol, *supra* note 89; J.P. Scarfi, *The Hidden History of International Law in the Americas: Empire and Legal Networks* (2017). Castañeda singled out Yepes as representative of the vision he rebuked. Castañeda, 'Mexico and the United Nations', *supra* note 9, at 173; J. Castañeda, *Legal Effects of United Nations Resolutions* (1969), at 227, n. 16.

[93] The OAS Charter was often referred to as providing for 'absolute non-intervention'. See, e.g., A.V.W. Thomas and A.J. Thomas, *Non-Intervention: The Law and Its Import in the Americas* (1956), at xi; Falk, 'American Intervention in Cuba and the Rule of Law', 22(1) *Ohio State Law Journal* (1961) 546, at 575.

[94] Castañeda, *Mexico and the United Nations*, *supra* note 9, at 179–181.

[95] Towards the 1960s, the language of 'cooperation' and 'coexistence' became prominent in international legal thought. See most notably W. Friedmann, *The Changing Structure of International Law* (1964), at 60–68.

he was anxious about the OAS becoming a tool of the USA in the global Cold War.[96] For Castañeda, the anti-communist 'Declaration of Solidarity' adopted in Caracas signalled an abandonment of the principle of non-intervention in favour of a system of collective security to condition and overthrow disliked governments.[97] He was categorical: continental solidarity 'lost all meaning' once 'the United States became an extracontinental power'.[98] Fabela agreed: in promoting the adoption of the declaration, he argued, the USA had announced the end of the good neighbour policy.[99]

Third, and finally, after a series of developments proved his analysis on the OAS' turn for the worse to be prescient, Castañeda stressed the potential of universalism to control the perils of bad regionalism. Concretely, after the Cuban Revolution, the OAS adopted a number of controversial decisions on matters of collective security: sanctions against the Dominican Republic in 1960, sanctions against Cuba in 1962, an authorization of the use of force in the context of the US quarantine on Cuba in 1962 and, finally, the transformation of the US intervention in the Dominican Civil War into an OAS operation in 1965.[100] The OAS forces were still in the Dominican Republic when Castañeda published an article affirming the competence and the primacy of the UN in a series of 'conflicts of competences' between both organizations.[101] On the burning question of enforcement measures, Castañeda was unequivocal. Under Article 53 of the UN Charter, the OAS could only use force with prior authorization by the Security Council: the OAS powers were 'limited and delegated'.[102]

Castañeda further rejected the legality of the so-called 'priority thesis' defended by the USA and its circumstantial Latin American allies. According to this thesis, in the event of a dispute among them, the OAS members had the obligation to resort to regional proceedings before referring them to the UN.[103] In encouraging members to achieve pacific settlement through regional arrangements, Castañeda reasoned, Article 52 of the UN Charter confirmed, rather than altered, each member's right to

[96] See O.A. Westad, *The Global Cold War: Third World Interventions and the Making of Our Times* (2005).

[97] Castañeda, *Mexico and the United Nations*, *supra* note 9, at 186–187.

[98] *Ibid.*, at 191. In his 1965 Hague Academy course on the 'expansion of the international society', the Spanish jurist Antonio Truyol y Serra considered the trajectory of the 'American international law' idea and expressed sympathy for Castañeda's account of these new political stakes and what Truyol y Serra presented as a call for a 'move towards a Latin American community'. Truyol y Serra, 'L'expansion de la société internationale aux XIXe et XXe siècles', 116 *Recueil des cours* (*RdC*) (1965) 91, at 123–126.

[99] I. Fabela, *Intervención* (1959), at 285. In his book on intervention, Fabela devoted considerable attention to the declaration and quoted approvingly an excerpt from *Mexico and the United Nations*. *Ibid.*, at 280; *cf.* B. Wood, *The Dismantling of the Good Neighbor Policy* (1985).

[100] See Sepúlveda Amor, 'Las Naciones Unidas, el Tratado de Río y la OEA', 7 *Foro Internacional* (1966) 32.

[101] Castañeda, 'Conflictos de competencia entre las Naciones Unidas y la Organización de Estados Americanos', 6 *Foro Internacional* (1965) 303.

[102] *Ibid.*, at 320.

[103] For instance, in the context of the 1954 Guatemalan coup d'état, the USA supported a draft Security Council resolution co-sponsored by Brazil and Colombia referring the Guatemalan complaint to the Organization of American States. In support of the draft resolution, the Colombian representative argued that Article 52(2) imposed 'on all Members the duty to apply first to the regional organization, which is of necessity the court of first appeal. This is not a right which can be renounced because the States which signed the Charter undertook this obligation'. UN Security Council, 9th year: 675th meeting, UN Doc. S/PV.675, 20 June 1954, at 15–16.

refer disputes to the UN. He once again invoked the principle of sovereign equality: an alternative interpretation, Castañeda concluded, 'would mean that UN members that are also part of regional organizations could find themselves in a situation of inferiority in relation to the other members'.[104] In the words of Bernardo Sepúlveda Amor, Castañeda made the important case that in a regional institution in which 'the imbalance of forces is evident, granting coercive powers represents an extreme risk for the sovereignty of Latin American nations'.[105] Sepúlveda Amor developed the matter in a 1966 article that, in agreement with Castañeda, went further: '[T]he conflict of universalism versus regionalism must be resolved in favor of the first, mainly if it concerns the maintenance of international peace'.[106]

Castañeda's legal thought intertwined the regional and the universal, closely examining the nuances of their different institutional expressions and their potential benefits for Mexico, Latin America and small and medium powers in shifting political landscapes. Even as he became increasingly sceptical of Pan-Americanism,[107] Castañeda maintained an openness to both regional and universal legal and political engagement. His intellectual context made this aspect of his thought particularly salient. The 1950s marked the beginning of the decline of the ideal of a particularist (Latin) American international law.[108] Steeped in a Mexican international legal tradition that was wary of US regional dominance, Castañeda effectively articulated a generalizable discontent with the course of inter-American regional law and organization. Nevertheless, he avoided a simplistic embrace of universalism. Instead, his writings foregrounded specific tensions between regionalism and universalism, demonstrating the importance of keeping both domains open as a matter of semi-peripheral strategy.

5 'A New Law for a New Era': The UN as a Platform for International Law-Making

Among contemporary international lawyers, Castañeda is most often consulted for his book *Legal Effects of United Nations Resolutions*.[109] First published in Spanish in 1967, later in English in 1969 and finally in adapted form in French as his Hague Academy course in 1970, this work studies the practice of UN organs, focusing on the General Assembly and the attitudes of UN members towards it.[110] Castañeda famously argued that, besides the typical non-binding 'recommendation', the General

[104] Castañeda, 'Conflictos de competencia', *supra* note 101, at 309–310.
[105] Sepúlveda Amor, *supra* note 36, at 29.
[106] Sepúlveda Amor, *supra* note 100, at 97.
[107] By 1977, Castañeda would conclude that Pan-Americanism had not 'been a defense but, on the contrary, served as an instrument to intervene in the internal life of Latin American countries'. Castañeda, 'El Sistema Interamericano', *supra* note 31, at 154.
[108] See Becker Lorca, 'International Law in Latin America or Latin American International Law? Rise, Fall, and Retrieval of a Tradition of Legal Thinking and Political Imagination', 47 *Harvard International Law Journal* (2006) 24.
[109] Castañeda, *Legal Effects*, *supra* note 92.
[110] J. Castañeda, *Valor jurídico de las resoluciones de las Naciones Unidas* (1967); Castaneda, 'Valeur juridique des résolutions des Nations Unies', 129 *RdC* (1971) 205.

Assembly adopted at least six categories of resolutions 'which produce, for a variety of reasons, true juridical effects against which members have no legal recourse'.[111] At first glance, this argument seems to mark a pronounced shift from his earlier thought, departing from the tactical formalism and the conservative approach to UN powers of his first book. Besides its conclusions, *Legal Effects of United Nations Resolutions* differs significantly in what one might call its political style. In this book, Castañeda does not explicitly adopt the viewpoint of 'small powers', while his politics are considerably less explicit. This section situates *Legal Effects of United Nations Resolutions* within Castañeda's intellectual and professional trajectory and a new global context marked by the rise of decolonization. It offers three arguments for why this shift was less abrupt than it might seem and was, in fact, consistent with Castañeda's approach to the cause of an international legal order more favourable to the interests of small powers.

First, and most obviously, the context had changed. The seeds of Castañeda's second book are visible in a series of earlier interventions, in which the politics of his new perspective are anything but concealed. In 1960, most eloquently, Castañeda called for 'a new law for a new era' before the Sixth Committee.[112] He noted an apparent paradox that lay at the centre of recent debates on arbitral procedure in the ILC and the General Assembly. The newly independent states, which being weak states should support the enforcement of a 'universal normative order', appeared to rebel against international law, at least in the eyes of European jurists like George Scelle.[113] However, echoing views expressed by international lawyers including Padilla Nervo and Bert Röling, Castañeda clarified that post-colonial states did not oppose international law or judicial settlement but, rather, the particular body of international norms that had been created 'by the practice of their likely adversaries and tailored to their interests'.[114] These norms formed the basis of international law but could be changed.

In an article published the following year, Castañeda elaborated on his argument. It was in the interests of the new states, he argued, 'to facilitate and simplify the methods of creating and modifying international law'.[115] Castañeda joined a number of jurists

[111] Castañeda, *Legal Effects*, *supra* note 92, at vii.

[112] Castañeda, 'Un nuevo derecho para una época nueva', 15 *Revista de la Universidad de México* (1960) 17.

[113] *Ibid.*, at 20; Castañeda, 'The Underdeveloped Nations', *supra* note 59, at 41–42. As the International Law Commission's (ILC) special rapporteur on arbitral procedure, Scelle identified two groups of states in response to his draft favouring a 'juridical and jurisdictional concept of arbitration'. On the one hand, there were governments 'with a long democratic tradition and a constant concern for juridical correctitude'. On the other, there were states 'that have newly acquired sovereignty' and remained 'deeply imbued with the dogma of State sovereignty'. ILC, Report Concerning the Draft Convention on Arbitral Procedure adopted by the Commission at Its Fifth Session by Mr. G. Scelle, Special Rapporteur (with a 'model draft' on arbitral procedure annexed), UN Doc. A/CN.4/109 + Corr.1, 24 April 1957.

[114] Castañeda, 'Un nuevo derecho', *supra* note 112, at 20. See, e.g., Padilla Nervo's intervention in the ILC's debate on state responsibility in 1957. ILC, Summary Record of the 413th Meeting, UN Doc. A/CN.4/SR.413, 7 June 1957; see also B.V.A. Röling, *International Law in an Expanded World* (1960). For a contrasting view from Mexico, see César Sepúlveda's account on the 'recent mutations of international law'. Sepúlveda, 'Mutaciones recientes del derecho internacional (1940–1965)', 1 *Boletín Mexicano de Derecho Comparado* (1968) 389.

[115] Castañeda, 'The Underdeveloped Nations', *supra* note 59, at 43.

from the post-colonial world who sought to inscribe the aims of the new states in international law, starting in the 1960s.[116] These attempts were part of a complex historical trajectory that can be traced to the 1955 Bandung Conference and the birth of the Third World, continued through the establishment of the Non-Aligned Movement and the UN Conference on Trade and Development (UNCTAD) in the early 1960s and enabled the New International Economic Order (NIEO), the project to transform international economic law and governance for the benefit of the developing world.[117] The place of Latin American international lawyers in this story has only recently become the subject of scholarly attention.[118] To comprehend the significance of Castañeda's views on law-making by international organizations in his legal thought, it suffices to take into account that he promptly perceived the context of decolonization as offering an extraordinary opportunity for international legal change. A 'radical change', he wrote in 1961, had taken place in the geography of international law. Space had opened up, and, strategically, it made sense for supporters of the interests of what he now called 'underdeveloped nations' to shift away from a defensive embrace of formalism. International law could be changed, Castañeda argued, by 'the application of the majority principle within international organizations'.[119] His tactical formalism had aimed to maintain the balance of forces within the UN as a mechanism of control. In the new context of decolonization, formalism appeared less useful as the balance had already been disturbed and, in Castañeda's account, the new states resisted the imposition of norms developed against their interests.

Second, Castañeda's approach to international law-making, while flexible, was far from an 'anything goes' position.[120] Castañeda was trying to account for – and, arguably, shape – a practice that was already taking place – namely, the 'unexpectedly strong impact' that the activities of multilateral diplomacy within the General Assembly had had in the development of international law.[121] In so doing, he may

[116] These series of attempts to transform international law to serve the cause of the global South marked what Samuel Moyn has termed the 'high tide of anticolonial legalism'. Moyn, 'The High Tide of Anticolonial Legalism', 23 *Journal of the History of International Law* (2020) 5. One of the most notable arguments in this direction was produced in the late 1970s, sharing Castañeda's focus on sovereignty but going considerably further in its embrace of law-making by the General Assembly. M. Bedjaoui, *Towards a New International Economic Order* (1979).

[117] See Eslava, Fakhri and Nesiah, 'The Spirit of Bandung', in L. Eslava, M. Fakhri and V. Nesiah (eds), *Bandung, Global History, and International Law: Critical Pasts and Pending Futures* (2017) 3. On decolonization, international legal change and Third World politics, see S. Pahuja, *Decolonising International Law: Development, Economic Growth, and the Politics of Universality* (2011).

[118] See Perrone and Schneiderman, 'Lost to History? Latin America and the Charter of Economic Rights and Duties of States', in L. Obregón, L. Betancur-Restrepo and J.M. Amaya-Castro (eds), *Oxford Handbook on International Law and the Americas* (forthcoming); Thornton, *supra* note 20.

[119] Castañeda, 'The Underdeveloped Nations', *supra* note 59, at 43.

[120] Consider, in contrast, Prosper Weil's identification of Castañeda as one of the authors responsible for endangering the future of international law by facilitating a shift towards 'relative normativity'. Weil, 'Towards Relative Normativity in International Law?', 77 *AJIL* (1983) 413, at 416, n. 10.

[121] Castañeda, *Legal Effects*, *supra* note 92, at 1–21. For a similar argument in a contemporary assessment of Prosper Weil's account of 'relative normativity', see Dupuy, 'Prosper Weil's Article: A Stimulating Warning', 114 *AJIL Unbound* (2020) 72; see also A. Cassese and J.H.H. Weiler (eds), *Change and Stability in International Law-Making* (1988).

have accentuated his once mild sociological orientation, but he remained quite careful about the implications on sovereignty of his arguments. For instance, by the time of his second book, his 'political' assessment of the 'Uniting for Peace' resolution had changed. After Suez, Hungary and Congo, he came to see the resolution as having given rise to 'a beneficent and desirable evolution of the collective security system of the Organization'.[122] However, he went to great lengths to stress that the resolution was illegal when first adopted and could not be justified by mere reference to the UN Charter or the doctrine of implied powers.[123] In his words, 'only through universal or quasi-universal acceptance of the initially illegal basis could a juridical norm be established over time'.[124] His was an attempt to reconcile the practice of international law-making with the traditional sources of international law, favouring majority rule. The erudite and more doctrinal style of *Legal Effects of United Nations Resolutions* might have favoured his cause: the 'anticolonial legalists' calling for the rewriting of international law had often risked being seen as agitators.[125]

Finally, any consideration of Castañeda's views on international law-making must consider his own role as an international lawmaker. He was a central actor in the drafting and adoption of the Charter of Economic Rights and Duties of States, serving as president of its drafting committee at UNCTAD.[126] This Charter, which was adopted by the General Assembly in 1974, was a significant contribution to the NIEO.[127] It provided various rights safeguarding sovereignty, including the rights of states to choose their economic system, to permanent sovereignty over natural resources and to regulate foreign investment, and it outlined duties of developed states towards developing states on matters such as financial assistance, technology transfer and more favourable treatment. *Legal Effects of United Nations Resolutions* formed part of the doctrinal groundwork of this and other related attempts to transform international law to serve the needs of the developing world.

Castañeda's evaluation of the Charter of Economic Rights and Duties of States captures his views on small powers, international organizations and the role of law, blending defensive formalism and ambitious flexibility in a pragmatic and nuanced approach. In 1974, he declared that the post-war voluntaristic approach to

[122] Castañeda, *Legal Effects*, *supra* note 92, at 86.
[123] *Ibid.*, at 81–116.
[124] *Ibid.*, at 86.
[125] Moyn, *supra* note 116, at 13.
[126] For Castañeda's account of the three-year process of elaboration of the Charter, see Castañeda, 'La Charte des droits et des devoirs économiques des États. Note sur son processus d'élaboration', 20 *Annuaire français de droit international* (1974) 31. On the Charter as 'a framework that distilled the many decades of Mexican advocacy' and Castañeda's role, see Thornton, *supra* note 20, at 166–189. On the Charter as a culmination of a century-long Latin American effort and the influence of jurists including Castañeda and Uruguayan Héctor Gros Espiell, see Perrone and Schneiderman, *supra* note 118. Among Mexican international lawyers, Castañeda is particularly remembered for his contribution to the development of 'the new law of the sea', which he saw as possibly facilitating a fairer distribution of natural resources. See, e.g., J.A. Vargas, *Mexico and the Law of the Sea: Contributions and Compromises* (2011).
[127] Charter of Economic Rights and Duties of States, GA Res. 3281(XXIX), 14 December 1974.

cooperation was no longer sufficient.[128] A new legal framework for cooperation and new institutions were necessary to deal with several problems – from monetary affairs to the preservation of the environment or the administration of maritime spaces. He augured a proliferation of legal regimes but warned that they would be unable to address pressing challenges if they operated in isolation. These regimes, he argued, had to be conceived as partial attempts to address the overarching subject of international economic relations. The Charter of Economic Rights and Duties of States, in his eyes, could operate as a general framework, tying regimes and institutions together by way of a constitution. This instrument would tame the risks that these legal and institutional changes might pose to developing states. Rights and duties would reduce the 'legal uncertainty, vagueness, imprecision, doubt' that 'always favor the strong'.[129] However, a certain degree of indeterminacy was unavoidable. Once again exhibiting a jurisprudentially cautious and politically practical perspective, Castañeda noted that, because of its heterodox provisions and the fact that some had been contested by several developed states, it was not yet possible to determine the legal character of the Charter on the whole, but only of each provision individually. The Charter, he concluded, privileged the interests of the Third World but was not and could not work as an instrument of the Third World alone.[130]

6 Conclusion: (Re-)Theorization beyond the Centre

With an intellectual background rooted in the Mexican international legal tradition, which acknowledged the country's position as a regional, but not a global, power and challenged US dominance in Pan-Americanism, Castañeda understood international organizations not as inherently beneficial agents of cooperation but, rather, as ambiguous projects that could be coercive, yet sometimes malleable. Throughout his academic and professional work in international law, his approach to international organizations prioritized the sovereignty and development of smaller nations. Recognizing the limited control that these countries had over international organizations, Castañeda consistently adapted his approach based on the context, addressing structural and contingent constraints from his perspective as a Mexican diplomat and jurist. Castañeda's work illustrates why semi-peripheral jurists often exhibit hesitation rather than the idealization and systematization that define comprehensive legal theories.[131] However, this very attribute renders the frequently overlooked writings

[128] Castañeda, 'El mundo futuro y los cambios en las instituciones políticas internacionales', 15 *Foro Internacional* (1974) 1, at 9–10.

[129] *Ibid.*, at 11.

[130] Castañeda, 'La Carta de Derechos y Deberes Económicos de los Estados desde el punto de vista del derecho internacional', in Castañeda, *Obras completas: III. Política exterior*, *supra* note 31.

[131] There is a parallel here with Sarah Nouwen's epistemological observations in the (rather different) context of empirical socio-legal research into international criminal law. Nouwen observes that '[a]t law conferences it strikes me how those who have spent considerable time in situations of conflict often take less absolutist positions than those who have not'. Nouwen, '"As You Set Out for Ithaka": Practical, Epistemological, Ethical, and Existential Questions about Socio-Legal Empirical Research in Conflict', 27 *LJIL* (2014) 227, at 259.

of these jurists particularly important for the task of re-theorizing international organizations.

The lasting significance of Castañeda's semi-peripheral thought on international organizations, attuned to power inequalities, can be appreciated in his achievement of two balancing acts. First, Castañeda understood that both universalism and regionalism should be kept open as a matter of strategy since the interplay between both dimensions offered mechanisms of control and opportunities to advance the interests of less powerful actors. This idea did not prevent him from embracing specific projects for engagement at either level – whether regional economic integration or the authority of the Security Council on matters of collective security. For him, the legal tensions between regionalism and universalism – of which Latin America has a particularly rich history – were a fact and an opportunity. This insight seems to have been forgotten by a discipline in which regionalism remains under-theorized.[132] A dichotomy haunts contemporary works on the subject: regionalism is largely portrayed as a mechanism that might either 'strengthen the modes of global governance' or 'weaken their coherence'.[133] Instead, a semi-peripheral perspective such as Castañeda's would shift the focus from whether regionalism increases or decreases globalization to whether it can help reshape globalization in the interest of global South states.

In addition, Castañeda's work reveals a balancing act between form and flexibility that semi-peripheral states need to perform to protect their relative autonomy and independence. This is one of the lessons of Castañeda's intellectual trajectory from the tactical formalism of *Mexico and the United Nations* to his endorsement of international law-making by the General Assembly in *Legal Effects of the United Nations*. In the more promising context of decolonization, Castañeda, like many jurists from the South, grew enthusiastic and grounded his calls for a fairer world order in international law. As a highly sophisticated technician, he sought to clarify and shape the international law-making capacity of international organizations, advocating for open multilateral diplomacy that he hoped would serve the cause of the Third World. Yet, even at his most optimistic, he remained steadfast in his commitment to the consistency, rigour and protective character of his formalist legal analysis. This lesson is valuable in a time when formalism is often seen as detrimental to progressive causes in international law and organizations, as evidenced by contemporary legal approaches to inter-American regional organization focused on human rights and democracy.[134]

[132] Orford, 'Regional Orders, Geopolitics, and the Future of International Law', 74 *Current Legal Problems* (2021) 149, at 151.

[133] L. Boisson de Chazournes, *Interactions between Regional and Universal Organizations: A Legal Perspective* (2017), at 63–64. In his study on international law and democracies, Tom Ginsburg similarly contrasts the 'sovereignty-eroding regional integration', which he argues can help protect liberal values, with the 'sovereignty-reinforcing international law', which he presents as advanced by authoritarian regimes including through regional cooperation. T. Ginsburg, *Democracies and International Law* (2021), at 124–236.

[134] For a compelling critical examination of dominant approaches to inter-American human rights law and their dismissal of formalism, see Rodiles, 'The Great Promise of Comparative Public Law for Latin America: Toward *Ius Commune Americanum*?', in A. Roberts *et al.* (eds), *Comparative International Law* (2018) 501.

Castañeda approached international organizations from several intersections: law and politics, diplomacy and research, centre and periphery. An exclusively legal approach to diplomacy, he argued, led only to academicism and ineffective rhetoric, while the pursuit of mere political aspirations risked being perceived as arbitrary.[135] His views offer seeds for new alternatives and relevant warnings. Consider his defence of openness in international law-making, his call to govern different international legal regimes as parts of the whole of international economic relations or his admonition about power inequalities within regional organizations in an era of rival regionalisms. There is also much to learn from what went wrong. It is now clear that if a 'new law' did emerge in the 1960s and the 1970s, it was not one that ended up serving the interests of the 'underdeveloped nations'. With this benefit of hindsight, one might view Castañeda's contributions to the turn to international law-making as ultimately aiding the processes of deformalization that supported the rise of the 1990s models of global governance that are so heavily challenged today.[136] However, it is perhaps his broader vision that we will find most illuminating. His paths can inspire those who examine international organizations law today to reconcile a permanent sense of unease with an attempt to understand and shape what is to be done.[137]

[135] Castañeda, 'La aportación', *supra* note 25, at 142.

[136] See M. Koskenniemi, *International Law and the Rise of the Far-Right* (2019); A. Orford, *International Law and the Social Question* (2020).

[137] After all, '[i]t is precisely in an age of revision of basic concepts, such as ours, that jurists can and must stand at the vanguard of their times.' Castañeda, 'Un nuevo derecho', *supra* note 112, at 18.