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'An Atmosphere of Genuine Solidarity and Brotherhood': Hernán Santa-Cruz and a Forgotten Latin American Contribution to Social Rights

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Abstract

Latin America played a crucial role in furthering the cause of human rights at the nascent United Nations (UN) when great powers were mostly interested in limiting the scope to issues of collective security. Following this line of thought, this article aims to understand the Latin American contributions to the promotion of ESCRs in both global and regional debates by tracing the figure of the Chilean diplomat Hernán Santa-Cruz and his efforts as both a drafter of the Universal Declaration of Human Rights (UDHR) and founder of the Economic Commission for Latin America and the Caribbean (ECLAC). In Santa-Cruz's silhouette we can find a vivid example of Latin American thought regarding social rights, marked by the intersections and contradictions of regional discourses such as social Catholicism, socialist constitutionalism, and developmentalist economic theories.

Keywords

Latin America – ESCRs – History and Theory of International Law

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> The true character of the declaration was revealed in three articles [...(i)] the right to life, freedom, and personal security, [(ii) the article that] stated everyone was entitled to economic, social, and

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> cultural rights indispensable for his dignity, and to social security [… and (iii) the article] that proclaimed the need for a just social order and a peaceful international order.[1]
>
> [I]t seemed at times that the chief protagonists in the conference room were the Roman Catholics and the communists, with the latter a poor second.[2]

⁂

1 Introduction

As the fog of war settled, American statesmen sat at Chapultepec Castle to discuss the future of the international order. In the Mexico City Conference on War and Peace – held just a couple of weeks before the epoch-making San Francisco United Nations Conference – Latin American diplomats re-stated their position regarding international law and inter-American cooperation. This Conference adopted a mandate for the reorganization for the inter-American system – including a declaration on the rights and duties of man[3] – a collective security system,[4] and a reiteration of regional international law.[5] Moreover, the delegates engaged with the Dumbarton Oaks blueprints, and established the guidelines for the integration of the pan-American dynamic within such a framework.[6] In this way, at Chapultepec, Latin Americans hoped to establish the principles of international governance after the war, not only at the regional, but at the global level. A contemporary cartoonist, however,

1 Hernán Santa-Cruz, cited at Schabas, William. *Universal Declaration on Human Rights: The Travaux Préparatoires* (Cambridge: CUP, 2013), 3031.

2 Humphrey, John. *Human Rights & the United Nations* (New York: Transnational Publishers, 1984), 66.

3 Kunz, Josef. 'The Inter-American Conference on Problems of War and Peace at Mexico City and the Problem of the Reorganization of the Inter-American System'. *American Journal of International Law* 39.3 (1945), 527–533.

4 Francis, Michael. 'The United States and the Act of Chapultepec'. *The Southwestern Social Science Quarterly* 45.3 (1964), 249–257.

5 Villalta, Ana. 'La Contribución de América Latina al Derecho Internacional'. *XXXIII Curso de Derecho Internacional* (Washington: Organization of American States, 2007), 59–94. Free translation by the author.

6 Act of Chapultepec, part III.

felt that it was merely hot air.[7] Up to a certain point, this statement appears to be true; Latin America's contributions to the post-war international legal architecture have been an unexplored affair.[8] Emerging literature has shown that the region played a crucial role in furthering the causes of human rights[9] and international cooperation as pillars of the future United Nations (UN) while great powers were interested in limiting the scope to collective security.[10]

Along these lines, this article analyses a strand of Latin American thought, and its influence on economic, social, and cultural rights (ESCRs) at the nascent UN. To do so, it will trace an intellectual history of the contributions to UN law promoted by the Chilean diplomat Hernán Santa-Cruz, considering his efforts as both a drafter of the Universal Declaration of Human Rights

7 Eça, Raul. 'Highlights of the Conference at Mexico City'. *World Affairs* 108.2 (1945), 115–118, at 115.

8 Kelly, Patrick. 'On the Poverty and Possibility of Human Rights in Latin American History'. *Humanity* 5:3 (2014), 435–451, 445 fn. 2; or Becker-Lorca, Arnulf. 'International Law in Latin America or Latin American International Law? Rise, Fall, and Retrieval of a Tradition of Legal Thinking and Political Imagination'. *Harvard International Law Journal* 47:1 (2006), 283–305, at 292, fn. 24; Griffith-Dawson, Frank. 'Contributions of Lesser Developed Nations to International Law: the Latin American Experience'. *Case Western Reserve Journal of International Law* 13:1 (1981), 37–81. An interesting exception is by Sikkink, Kathryn. *Making Human Rights Work: Evidence for Hope* (Princeton: Princeton University Press, 2017); and 'Latin America and the Idea of International Human Rights' in *Routledge Handbook of Latin America in the World*, Jorge Domínguez & Ana Covarrubias (New York: Routledge, 2015), 349–361. See further, Kelly, Patrick William. *Sovereign Emergencies: Latin America and the Making of Global Human Rights Politics* (Cambridge: CUP, 2018).

9 Morsink, Johannes. *The Universal Declaration of Human Rights: Origins, Drafting, Intent* (Philadelphia: University of Pennsylvania Press, 1999); Carozza, Paolo. 'From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights'. *Human Rights Quarterly* 25 (2003), 281–314; Glendon, Mary-Ann. *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2002); Obregón, Liliana. 'The Universal Declaration of Human Rights and Latin America'. *Maryland Journal of International Law* 24 (2009), 94–98; Moyn, Samuel. *The Last Utopia: Human Rights in History* (Cambridge: Harvard University Press, 2010); Sikkink, Kathryn. 'Latin American Countries as Norm Protagonists of the Idea of International Human Rights'. *Global Governance* 20:3 (2014), 289–404; or Jensen, Steven. *The Making of International Human Rights: The 1960s, Decolonization, and the Reconstruction of Global Values* (Cambridge: CUP, 2016).

10 Mazower, Mark. *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton: Princeton University Press, 2009). In Ramcharan's words, '[d]espite the grand rhetoric, the leading powers were concentrated with the looming struggle for supremacy than with inspiring human rights choices'. Ramcharan, Bertrand G. 'Norms and Machinery', in *The Oxford Handbook on the United Nations*, eds. Thomas Weiss and Sam Daws (Oxford: OUP, 2007), 439–462, 441; Normand, Roger and Sarah Zaidi. 'Human Rights Politics in the United Nations Charter', in *Human Rights at the UN*, eds. Roger Normand and Sarah Zaidi (Bloomington: Indiana University Press, 2008), 107–138.

(UDHR)[11] and the founder of the Economic Commission for Latin America and the Caribbean (ECLAC). In Santa-Cruz's silhouette, we can find a vivid example of Latin American thought regarding social rights, marked by the intersections and contradictions of social Catholicism, socialist constitutionalism, and developmentalist economic theories.[12] Thus, this article aims not only to shed light on the unexplored history of Santa-Cruz and his struggles at the UN, but also to explore the influences that cemented his proposals. For a contemporary spectator, the social doctrine of the Catholic Church, the quest for economic development in the Global South, and socialist constitutionalism may appear as contradictory aporias and yet, for Santa-Cruz, these elements were all fundamental to his understanding of personhood and human rights. This mindset responds to Santa-Cruz's experience as a Latin American in a context of religious fervour, pervasive inequality, and high hopes in international law.

Santa-Cruz was a staunch defender of human rights, and especially of social rights.[13] Although Cold War thinking framed ESCRs as a Soviet fiefdom, this was not the case at the early UN.[14] The Western welfare states also moved to include social rights,[15] even including the US.[16] Moyn argues that the inclusion of social rights in the UDHR should not come as striking, considering the 'powerful welfarist' consensus of the post-war years and the vagueness of social rights.[17] And yet, Latin America's revolted history of social rights constitutionalism can hardly be considered part of the same welfare consensus of the North Atlantic.[18] Therefore, this article claims that a missing piece needed

11 And the only Latin American delegate.

12 Berdion, Fernando and Kathryn Sikkink. '(Re)discovering Duties: Individual Responsibilities in the Age of Rights'. *Minnesota Journal of International Law* 26.1 (2017), 189–245, 197–198; Eslava, Luis, Liliana Obregón and René Urueña. 'Imperialismo(s) y Derecho(s) Internacional(es): Ayer y Hoy', in *Imperalismo y Derecho Internacional*, eds. Antony Anghie, Martti Koskenniemi and Anne Orford (Bogota: Ediciones Uniandes, 2016), 11–94.

13 For Samnøy, '[t]he most zealous defender of social and economic rights was Chile's representative, Hernan Santa-Cruz'. Samnøy, Åshild. *Human Rights as International Consensus: The Making of the Universal Declaration of Human Rights 1945–1948* (Bergen: Chr. Michelsen Institute, 1993), 82.

14 Bradley, Mark. *The World Reimagined Americans and Human Rights in the Twentieth Century* (Cambridge: CUP, 2016); Gorman, Robert F. *Great Debates at the United Nations: An Encyclopedia of Fifty Key Issues* (Westport: Greenwood Press, 2001), 104.

15 Whelan, Daniel and Jack Donelly. 'The West, Economic and Social Rights, and the Global Human Rights Regime: Setting the Record Straight'. *Human Rights Quarterly* 29.4 (2007), 908–949.

16 Way, Sally-Anne. 'The "Myth" and Mystery of US History on Economic, Social, and Cultural Rights'. *Human Rights Quarterly* 36.4 (2014), 869–897.

17 Moyn, *Last Utopia* 2010 (n. 9), 64.

18 Segura-Ubiergo, Alex. *The Political Economy of the Welfare State in Latin America: Globalization, Democracy, and Development* (Cambridge: CUP, 2007).

to understand social rights in the UDHR is Santa-Cruz's eclectic 'holy trinity' of God, Development, and Reform that gave ground to his ESCRs claims from a Latin American perspective.[19]

Although there are some fleeting references to the work of Santa-Cruz in the academic literature, there is no comprehensive account of his interventions at the committee. For example, there are mentions of him in Humphrey's memoirs[20] and in Glendon's account of the UDHR.[21] Moreover, Morsink explores the connection between the tradition of Latin American socialism and Humphrey (and his 'leftwing politics').[22] Although Korey mentions the impact of religious NGOs, he pays no regard to Santa-Cruz or Latin American Catholicism.[23] While Jensen refers to Latin American countries as early and effective advocates in the *making* of international human rights, he does not mention Santa-Cruz.[24] Even if human rights were stillborn in the 1940s – as Moyn argues – there is no account of how Santa-Cruz or Latin American thought influenced this 'death from birth' at the early stage.[25] Lauren tangentially refers to Santa-Cruz as a speaker in the debates at the General Assembly, but does not analyse his work on the Drafting Committee.[26] While Grandin mentions Santa-Cruz's defence of labour rights and his Jesuit education, he does not offer a detailed account of how Catholic and working-class influences collided in his vision of human rights.[27] Glendon analysed in general terms the influence of Catholic social thought – and the importance of the Latin

19 Claeys, Gregory. 'Socialism and the Language of Rights', in *Revisiting the Origins of Human Rights*, eds. Pamela Slotte, and Miia Halme-Tuomisaari (Cambridge: CUP, 2015), 206–236.

20 In his own words, '[t]here were some new faces, including that of Hernán Santa-Cruz, who represented Chile for the first time. No one has been more continuously or for a longer period of time associated with the human rights program'. Humphrey, *Human Rights & the UN* 1984 (n. 2), 37.

21 Glendon, *World Made New* 2003 (n. 9), 44.

22 'Humphrey took much of the wording and almost all of the ideas for the social, economic, and cultural rights for his draft from the tradition of Latin American Socialism [… A]mong the Guardians [of such tradition] Santa-Cruz, the delegate from Chile, was the greatest'. Morsink, *The Universal Declaration of Human Rights* 1999 (n. 9), 131.

23 Korey, William. *NGOs and the Universal Declaration of Human Rights: A Curious Grapevine* (New York: St. Martin's Press, 1998), 45; Rosenboim, Or. *The Emergence of Globalism: Visions of World Order in Britain and the United States, 1939–1950* (Princeton: Princeton University Press, 2017), 13 on 'Catholic scholars.'

24 Jensen, *The Making of International Human Rights* 2016 (n. 9), 26.

25 Moyn, Samuel. *Human Rights and the Uses of History* (New York: Verso, 2014), 82.

26 Lauren, Paul Gordon. *The Evolution of International Human Rights: Visions Seen* (Philadelphia: University of Pennsylvania Press, 3rd edn., 2011), 223.

27 Grandin, Greg. 'The Liberal Traditions in the Americas: Rights, Sovereignty, and the Origins of Liberal Multilateralism'. *American Historical Review* 117.1 (2012), 68–91, 75.

Americans who defended it – in the UDHR, but did not go further into the work of Santa-Cruz.[28]

To fill this void, this article sketches an intellectual biography of Santa-Cruz and his contributions to UN law, following similar narratives of other members.[29] It offers insight into Santa-Cruz's substantive claims on human rights, and the influences that cemented them. Thus, the object of study will be the strand of Latin American legal consciousness that informed Santa-Cruz's institutional and conceptual proposals for human rights. By legal consciousness, following Kennedy, this article refers to the 'vocabulary, of concepts and typical arguments, as a *langue*, or language, and to the specific, positively enacted rules of the various countries to which the *langue* globalized as *parole*, or speech.'[30] In this sense, the contention is that Santa-Cruz represents a Latin American strand of thought which was immersed in what Kennedy called the *social* transnational legal consciousness.[31]

Santa-Cruz was part of a broader intellectual movement of critique of classical legal thought in the face of the challenges that came with the end of the long nineteenth century.[32] But, at the same time, Santa-Cruz's eclectic influences (while all very *social*, all contradictory) show a very particular way of reading the second globalization of law from a distinct Latin American perspective.[33] In this sense – following Obregon's or Becker Lorca's work – we can under-

28 Glendon, Mary-Ann. 'The Influence of Catholic Social Doctrine on Human Rights'. *Journal of Social Catholic Thought* 10.1 (2013), 69–84.

29 Glendon, *World Made New* 2003 (n. 9); Krumbein, Frédéric. 'P. C. Chang – The Chinese Father of Human Rights'. *Journal of Human Rights* 14.3 (2015), 332–352; Winter, Jay and Antoine Prost. *René Cassin and Human Rights: From the Great War to the Universal Declaration* (Cambridge: CUP, 2013); Humphrey, *Human Rights & the UN* 1984 (n. 2); Malik, Habib C. *The Challenge of Human Rights: Charles Malik and the Universal Declaration* (Oxford: OUP, 2000).

30 Kennedy, Duncan. 'Three Globalizations of Law and Legal Thought: 1850–2000', in *The New Law and Economic Development: A Critical Appraisal*, eds. David Trubek and Alvaro Santos (Cambridge: CUP, 2006), 19–73, 23. Drawing on de Saussure [*Course in General Linguistics* (Chicago: Open Court Classics, 1998)], Kennedy refers to a fundamental debate in linguistics. Whereas *langue* alludes to the logical and grammatical structures that compose language, *parole* analyses the daily manifestations of such structures. See Stern, Hans Heinrich. *Fundamental Concepts of Language Teaching* (Oxford: OUP, 1983), 127–129.

31 Kennedy, 'Three Globalizations' 2006 (n. 30), 37.

32 See further, Hobsbawm, E. J. *The Age of Empire*, 1875–1914 (New York: Vintage, 1989).

33 It must be mentioned that it is not this paper's claim that Santa-Cruz represents the totality of Latin American thought, but rather a specific brand of a wide variety of regional perspectives. For (both) better or worse, it was that specific strand which got a seat at the UN. Contrary to this view, González-Jacome argues that during the 1940s, Latin American legal consciousness was dominated by the influence of *Franquismo* and corporatist right-wing thought, in which human rights were marginal. See Gonzaléz-Jácome, Jorge.

stand Santa Cruz's perspective as a *creole* reading of the *social* consciousness.[34] Although there are clear differences between *creole* thought in the nineteenth century and at the nascent UN, Santa-Cruz's falls into Obregon's definition of creole legal consciousness as he sees himself and the Latin American elites as 'part of the metropolitan centre – as descendants of Europeans – while at the same time challenging the centre with notions of their own regional uniqueness – as natives of America'.[35] These regional pressures contributed to a brand of *social* thinking, in which the regional readings of the Russian Revolution, papal encyclicals, and theories of economic development fused together into a proposal for social (and human) rights for the post-war international order.

Understanding the fibers of this Latin American proposal – and the influence it had on the UN human rights architecture – will be the aim of this article. To do so – after the (1.) introduction already encountered – the reader will find (2.) a brief biography of Santa-Cruz and (3.) an exploration of his three influences (God, Development, and Reform) in the Latin American context. Then, the reader will encounter a section on (4.) Santa Cruz's efforts at the early UN – and, in particular – at the (4.1.) UDHR drafting committee and at the (4.2.) ECLAC. This will lead to some (5.) concluding remarks.

2 An Amateur Expert

When president González-Videla summoned Santa-Cruz to his office in 1946 to offer him the position of Permanent Representative to the UN, the latter himself admitted he did not believe to have the background or the capacity for such office.[36] Santa-Cruz had built a career in the public sector and was a lecturer on law, but his main area of expertise was administrative and social security law.[37] Surprisingly, he had no past experience in international law or

'Teología de la Liberación y el Debate por los Derechos Humanos en América Latina'. *Revista General de Derecho Canónico y Derecho Eclesiástico del Estado* 39 (2015), 12.

34 Obregón, Liliana. 'Between Civilisation and Barbarism: Creole interventions in International Law', in *International Law and the Third World: Reshaping Justice*, eds. Richard Falk, Balakrishnan Rajagopal and Jacqueline Stevens (London: Routledge, 2008), 111–128; and Becker-Lorca, Arnulf. *Mestizo International Law* (Cambridge: CUP, 2014).

35 Obregón, 'Between Civilisation and Barbarism' 2008 (n. 33), 113.

36 Santa Cruz, Hernán. *Cooperar o Perecer: El Dilema de La Comunidad Mundial* (Buenos Aires: Grupo Editorial Latinoamericano, 1984), 37.

37 Eileen-Waltz, Susan. 'Universalizing Human Rights: The Role of Small States in the Construction of the Universal Declaration of Human Rights'. *Human Rights Quarterly*, 21.1 (2001), 44–72. As he himself recognized, he did not even speak English. Santa-Cruz, *Cooperar o Perecer* 1984 (n. 35), 128. For this reason, he lobbied – successfully – for the

even international affairs, other than assisting González-Videla when he was ambassador to Brazil. The president – who had been part of Chile's delegation to the San Francisco Conference in 1945 – insisted the UN was a 'newborn baby' and that traditional diplomats were unprepared for the challenges of the emerging multilateral order. Santa-Cruz accepted the appointment, which led to what he would call his second existence. But before studying his contributions to international law, we must understand Santa-Cruz's background as a lawyer in Chile, and the wide array of influences he experienced.

Santa-Cruz was born into an upper-middle class family of an 'illustrated bourgeois' background.[38] One of his grandfathers had been a recognized historian, while the other had been a senator and justice of the Supreme Court. His father was also a lawyer, journalist, and a local politician. Not surprisingly, he was raised in a rich intellectual context in which he had access to specialized literature, especially in French. He studied law and started working in the public sector around 1922. During these years, he was interested in the sociological, philosophical and political accounts of the Russian Revolution and the Great War. In his words, 'these issues would be a topic of discussion between me and my group of friends, even until late night.'[39]

Much later, Humphrey visited Santa-Cruz's house in Chile while they both worked at the UN. There, he met two radically different future presidents of Chile, Eduardo Frei (1964–1970) and Salvador Allende (1970–1973). Humphrey concluded that 'a man who could be friendly with two such personalities was likely to be politically eclectic.'[40] Santa-Cruz met Allende during his college studies and established a lasting friendship with him for over 34 years, until Allende's assassination. Despite their differences, Santa-Cruz claimed that Allende was 'an authentic democrat and had a profound a sensibility for the pain and the anguish of the poor and those in need.'[41]

At Santa-Cruz's house during the 1930s and 1940s, friends and political socialites discussed the future of Chile, Latin America, and the world. For example, he recalls that during these *tertulias*[42] they would discuss whether Latin America should cut ties with the Axis and support the Allies in their war effort. The fact that the Chilean government during that time opted for neutrality

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adoption of Spanish as a working language. Donald Walsh 'Spanish now a United Nations Working Language' *Hispania* 32.1 (1949) 97.

38 Santa-Cruz, *Cooperar o Perecer* 1984 (n. 35), 38.

39 Ibid. 39.

40 Humphrey, *Human Rights & the UN* 1984 (n. 2), 37.

41 Santa-Cruz, *Cooperar o Perecer* 1984 (n. 35), 40.

42 There is no exact word in English for *tertulia*. With this I refer to the gathering of intellectual *criollos*.

during the war led to the creation of a coalition of communists, socialists, members of the Radical party, Christian Democrats, and the Catholic church, led by Santa-Cruz.[43]

Bearing that in mind, even if Santa-Cruz was a perfect stranger when he arrived on the international scene in 1946, he was already a key player in Chilean politics; he had actively supported González-Videla and his Popular Front coalition[44] and his appointment at the UN happened at the same time as Videla was crushing his former communist allies (to the point of outlawing the party in 1948[45]) as the end of the war was followed by the emergence of a bipolar world order.

3 God, Development, and Reform

Since the start of the short twentieth century,[46] Latin America has been at the forefront of what Gargarella refers to as 'social constitutionalism'.[47] Following the example of Mexico in 1917, countries in the region adopted extensive declarations of rights, especially social rights. Contrary to Ackerman's claims, the 1930s were a period of high expectations for constitutionalism, in which law appeared to offer a solution to the 'social question' that had emerged with industrial modes of production.[48] Rights offered new ways to tackle poverty, provide welfare, or social justice for workers and peasants.[49] In Chile, the most salient example of this was the establishment of the social function of property in the 1925 Constitution as an attempt to promote land reform.[50]

43 Santa-Cruz, *Cooperar o Perecer* 1984 (n. 35), 41.

44 Huhle, Rainer. *Hernán Santa-Cruz (1906–1999) Chile*. Nürnberger Menschenrectszentrum NMRZ, 29 December 2008. Accessed on 16 June 2017 at http://www.menschenrechte.org/lang/es/verstehen/menre-geschichte/hernan-santa-cruz.

45 Barnard, Andrew. 'Chilean Communists, Radical Presidents and Chilean Relations with the United States'. *Journal of Latin American Studies* 13.2 (1981), 347–374.

46 Hobsbawm, Eric. *Age of Extremes: the Short Twentieth Century* (London: Abacus, 1994).

47 Gargarella, Roberto. 'Latin American Constitutionalism: Social Rights and the "Engine Room" of the Constitution'. *Notre Dame Journal of International & Comparative Law* 4.1 (2014), 9–18.

48 Ackerman, Bruce. 'The Rise of World Constitutionalism'. *Virginia Law Review* 83.4 (1997), 771–797.

49 For example, Klein, Herbert. '"Social Constitutionalism" in Latin America'. *The Americas* 22.3 (1966), 258–276.

50 Mirow, Mathew. 'Origins of the Social Function of Property in Chile'. *Fordham Law Review* 80.3 (2011), 1183–1217.

Therefore, rights offered Latin American lawyers a possibility for social reform, albeit a limited one. Social critique blurred the distinctions between the private and the public spheres that had been central to classical legal thought.[51] For Santa-Cruz, this meant that 'democracy must be understood as an inseparable totality that included not only political but economic and social aspects.'[52] Not without reason has literature referred to Santa Cruz as a generic socialist.[53] But, as Carozza noted, 'such a simple label can be deceiving'.[54] His Jesuit education, elite background, and staunch opposition to Marxism made him an odd type of socialist.[55] In Carroza's words, 'if Santa-Cruz embodies the *Latin American socialist tradition*, then it is a rather unique brand of socialism, which itself begs the question of its historical antecedents.'[56] This strand cannot be understood without the influence of Catholic thought and developmentalist economic theories.

On one hand, Santa-Cruz was deeply moved by the social doctrine of the Church.[57] Liberalism, nationalism, and capitalism were shaking the foundations of state-church relations, and had created unparalleled amounts of (both) wealth and misery.[58] To solve these 'great inequalities [...] only Catholicism committed to social justice – not socialism or communism – offered the possibilities of improvement.'[59] In 1891, Pope Leo XIII took a ground breaking approach to the 'social question' with *Rerum Novarum*, an encyclical which addressed the rights and duties of capital and labour.[60] The Russian Revolution and the financial crash showed Catholics the dangers of unrestrained liberal capitalism and anticlerical socialism alike, and led Pope

51 Amaya-Castro, Juan. *Human Rights and the Critiques of the Public-Private Distinction* (Amsterdam: Vrije Universiteit Amsterdam, 2010), 29.

52 Santa-Cruz, *Cooperar o Perecer* 1984 (n. 35), 42.

53 Glendon, *World Made New* 2003 (n. 9); Humphrey, *Human Rights & the UN* 1984 (n. 2); or Johannes Morsink, *The Universal Declaration of Human Rights* 1999 (n. 9).

54 Carozza, 'From Conquest to Constitutions' 2003 (n. 9), 288, fn 34.

55 At the Drafting Committee, he welcomed the participation of the Soviets because they represented a 'different philosophy of the subject'. United Nations, Drafting Committee, Second Session, Meeting no. 21. E/CN.4/AC.1/SR.21, 7 May 1948, 5.

56 Carozza, 'From Conquest to Constitutions' 2003 (n. 9), 288, fn 34.

57 Hebblethwaite, Peter. 'The Popes and Politics: Shifting Patterns in "Catholic Social Doctrine"'. *Daedalus* 111.1 (1982), 85–99.

58 Hofman, André A. *The Economic Development of Latin America in the Twentieth Century* (Cheltenham: Edward Elgar, 2000).

59 Super, John. 'Rerum Novarum in Mexico and Quebec'. *Revista de Historia de América*, 126 (2000), 63–84, 67. See also Misner, Paul. 'The Predecessors of Rerum Novarum within Catholicism'. *Review of Social Economy*, 49.4 (1991), 444–464.

60 http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum.html (retrieved on December 14, 2017).

Pius XI to publish a new encyclical, *Quadragesimo Anno*.[61] This, in turn, led to a period of Catholic social agitation, in which religious trade unions and Catholic action groups stood at the forefront of the social struggles of the 1930s and 1940s.[62] Even if the 'People's Church'[63] reached maturity in the 1970s, its roots were entrenched in the Catholic action tradition of the first decades of the century.[64] In Latin America – where, as Lemaitre noted,[65] the Catholic church is at the centre of social life – the impact of the social doctrine cannot be overstated. In Gallagher's words, there is

> no place on the globe [which] has had a greater influence on the 'social teaching' of the Catholic Church than Latin America. The powerful institutional structure of the Church, the startling contrast between affluence and poverty, and the vibrant sense of popular activism and religion have combined to make the countries of Central and South America a testing ground for new and bold theological ideas concerning freedom, peace, and justice.[66]

61 http://w2.vatican.va/content/pius-xi/es/encyclicals/documents/hf_p-xi_enc_19310515_quadragesimo-anno.html (retrieved on December 14, 2017).

62 Seaton, Douglas P. *Catholics and Radicals: The Association of Catholic Trade Unionists and the American Labor Movement, from Depression to Cold War*. (Lewisburg: Bucknell University Press, 1981); or Gribble, Richard. '"Rerum Novarum" and the San Francisco Labor Movement'. *U.S. Catholic Historian* 9.3 (1990), 275–288. For student movements, Holbrook, Joseph. 'Catholic Student Movements in Latin America: Cuba and Brazil, 1920s to 1960s'. *FIU Electronic Theses and Dissertations* 1013 (2013); Bidegain, Ana Maria. 'From Catholic Action to Liberation Theology: The Historical Process of the Laity in Latin America in the Twentieth Century'. *Helen Kellog Institute for International Studies, Working Paper Series no. 48* (1985); or Schwaller, John Frederick. *The History of the Catholic Church in Latin America: From Conquest to Revolution and Beyond* (New York: NYU Press, 2011); Dussel, Enrique. *Historia de la iglesia en América Latina: medio milenio de coloniaje y liberación* (*1492–1992*) (Madrid: Mundo Negro-Esquila Misional, 1992), 182 & *ss*; Calles, Lilian. *The World Come of Age: an Intellectual History of Liberation Theology* (Oxford: OUP, 2018).

63 Other scholars prefer to refer to the 'Progressive' Church in Latin America. Wilde, Alexander and Scott Mainwaring. *The Progressive Church in Latin America* (Notre Dame: University of Notre Dame, 1989).

64 Burdick, John. 'The Progressive Catholic Church in Latin America: Giving Voice or Listening to Voices?'. *Latin American Research Review*, 29.1 (1994), 184–197.

65 Lemaitre, Julieta. 'The Problem of the Plaza: Religious Freedom, Disestablishment and the Catholic Church in Latin America's Public Square', in *Laicidad and Religious Diversity in Latin America*, eds. Juan Marco Vaggione and Jose Manuel Morán (Berlin: Springer, 2016), 21–42.

66 Gallagher, Daniel. 'The Concept of Development in Catholic Social Teaching and the Church in Latin America'. *The Latin Americanist* 50.1 (2006), 49–74, 49.

Unsurprisingly, Santa-Cruz was deeply moved by *Rerum Novarum*, which he considered was a 'powerful tool for change towards true social justice, and the achievement of equality and dignity of all human beings.'[67] Redistribution and social change – which scholars have branded as socialist elements of this thought – were seen through the prism of 'Catholic action'. Therefore, Santa-Cruz also blended Catholic elements to solve the problems before him, at both the national and international levels. He believed that the idea that all human beings were created equal and had a duty of solidarity amongst each other could be traced to the teachings of Jesus.[68]

Therefore – in a similar way to which Moyn described western Europe – religious thought played a crucial role in the articulation of human rights.[69] Therefore, this article follows a growing trend of literature on the relationship between human rights and religion,[70] in which there is still a void with regard to Latin American Catholicism.

Santa-Cruz once claimed that the UN reaffirmed his convictions, which were 'faith in democracy, in the value and the respect of the dignity of the human person, and the right of all peoples to determine their own destiny.'[71] This last quote shows how Santa-Cruz was close to – while at the same time far from – the Western tradition of Catholic thought. Although he uses the concepts of *dignity* and *personhood*[72] – in a very similar vein as his co-religionists did in western Europe[73] – he also brings up the issue of self-determination and decolonization. If dignity was the keystone that permitted the re-stabilization of western Europe under conservative Christian democracy in the context

67 Santa-Cruz, *Cooperar o Perecer* 1984 (n. 35), 49.

68 Ibid., 170.

69 Moyn, Samuel. *Christian Human Rights* (Philadelphia: University of Pennsylvania Press, 2015).

70 Slotte, Pamela. '"Blessed are the Peacemakers": Christian Internationalism, Ecumenical Voices, and the Quest for Human Rights', in *Revisiting the Origins of Human Rights*, eds. Pamela Slotte and Miia Halme-Tuomisaari (Cambridge: CUP, 2015), 293–329; Brett, Annabel. 'Human Rights and the Thomist Tradition', in *Revisiting the Origins of Human Rights*, eds. Pamela Slotte and Miia Halme-Tuomisaari (Cambridge: CUP, 2015), 82–101. 83.

71 Santa-Cruz, *Cooperar o Perecer* 1984 (n. 35), 42.

72 Moyn, *Christian Human Rights* 2015 (n. 68); Sandelands, Lloyd. 'The Business of Business is the Human Person: Lessons from the Catholic Social Tradition'. *Journal of Business Ethics* 85 (2009), 93–101; or Cusick, Timothy J. 'Management, Labor, and the Development of the Human Person'. *Review of Business* 27.2 (2006), 20–26; McCrudden, Christopher. *Understanding Human Dignity* (Oxford: OUP, 2013); Rosen, Michael. *Dignity: Its History and Meaning* (Cambridge: Harvard University Press, 2012).

73 Moyn, *Christian Human Rights* 2015 (n. 68); or, Duranti, Marco. *The Conservative Human Rights Revolution: European Identity, Transnational Politics, and the Origins of the European Convention* (Oxford: OUP, 2017).

of post-World War II reconstruction,[74] for Santa-Cruz it meant the forgotten promise of development, technical cooperation, and self-determination.

For all his cosmopolitanism and Catholicism – which, at least etymologically, may be synonyms[75] – Santa Cruz understood that talking about human rights did not mean the same in Paris as in Santiago; after all, he was *creole*. He was convinced that Chile's fate was part of what soon would be called the *third world*, and as such, believed in the 'just aspiration of millions to live a life with dignity and authentic progress'.[76] Therefore, the mixture of socialist redistributive demands and God-fearing social thought meant that human dignity was only achievable through economic development.

If Kennedy considered that social legal thought could be 'all summarized in the idea of interdependence',[77] for Santa-Cruz, interdependence not only existed between persons but among countries.[78] Therefore, the UN should not only maintain the balance between great powers, but also serve as a vehicle for global development and flourishment. Not for nothing did he title his memoirs 'Cooperate or Perish: The Dilemma of the International Community'. Santa-Cruz considered that war-time rhetoric of democracy, human rights and self-determination had to be achieved through international cooperation in a way that allowed the economic development of the third world.[79]

Trubek observed that 'the international development effort is a form of secular religion [in which] the salvation it aspires to is the realization of human rights'.[80] Years before, Santa-Cruz argued that development effort is a religious pursuit that aims at the realization of human dignity through international cooperation and multilateral understanding. For Santa Cruz in the 1940s, human rights and development were not competing utopias – as Anghie claimed was the case in the 1970s[81] – but components of a holy triad of God, Development, and Reform. With this in mind, Hernán Santa-Cruz arrived in New York in 1947

74 Moyn, *Christian Human Rights* 2015 (n. 68), 58.

75 Bagot, Matthew. 'Catholicism and Cosmopolitanism: The Confluence of Three Catholic Scholars and the Cosmopolitan Democrats on State Sovereignty and the Future of Global Governance'. *De Ethica.* 3.2 (2016), 37–51.

76 Santa-Cruz, *Cooperar o Perecer* 1984 (n. 35), 18.

77 Kennedy, 'Three Globalizations' 2006 (n. 30), 38.

78 Santa-Cruz, *Cooperar o Perecer* 1984 (n. 35), 18.

79 Ibid., p. 18.

80 Trubek, David M. 'When is an Omelet? What is an egg? Some Thought on Economic Development and Human Rights in Latin America'. *The American Journal of International Law* 67.5 (1973), 198–205, 198.

81 Anghie, Antony. 'Whose Utopia?: Human Rights, Development, and the Third World'. *Qui Parle: Critical Humanities and Social Sciences* 22.1 (2013), 63–80.

to participate in the project of governing the world[82] at the most 'dramatic and decisive decade of the twentieth century'.[83]

4 The UN in 1947

4.1 *UDHR Drafting Committee*

> I have visited more than 70 countries in the five continents to work with and for, to use Goethe's words, the only truly interesting thing there is in this world: the human being.[84]

At Lake Summer in 1947, Santa-Cruz insisted on keeping verbatim records of the drafting committee, as they would be 'of great importance for future debates'.[85] Although he was 'strongly supported by several representatives' Humphrey explained that having a permanent reporter was materially impossible.[86] In the end, Chairwoman Roosevelt convinced the Secretary-General to provide recordings and transcriptions.[87] The following section will reconstruct Santa-Cruz's contribution to UN law based on the archives of summary records of the UDHR.[88] It may be pertinent to remind the reader of the institutional setting that led to the drafting process. Although 'the influence of the Five powers was dominant everywhere' at the San Francisco Conference,[89] Latin American states exerted important pressure, especially regarding the issue of human rights.[90] As a senior North American diplomat recognized,

82 Mazower, Mark. *Governing the World: The History of an Idea, 1815 to the Present* (London: Penguin Books, 2013).

83 Reynolds, David. *From World War to Cold War: Churchill, Roosevelt, and the International History of the 1940s* (Oxford: OUP, 2006), 1.

84 Santa-Cruz, *Cooperar o Perecer* 1984 (n. 35), 43.

85 United Nations, Drafting Committee, First Session, Meeting no. 9. E/CN.4/AC.1/SR.9, 3 July 1947, 2.

86 Ibid.

87 Ibid., p. 3.

88 As a staff member of the Secretariat explained to the second session of the Drafting Committee, the provisions of the General Assembly did not permit verbatim reports. United Nations, Drafting Committee, Second Session, Meeting no. 1. E/CN.4/AC.1/SR.20, 3 May 1948, 6.

89 Khan, Daniel-Erasmus. 'Drafting History', in *The Charter of the United Nations: A Commentary*, eds. Bruno Simma, Daniel-Eramus Khan, George Nolte and Andreas Paulus (Oxford: OUP, 3rd edn., vol. 1, 2012), 2–23.

90 Glendon, Mary Ann. 'The Forgotten Crucible: The Latin American Influence on the Universal Human Rights Idea'. *The Harvard Human Rights Journal, 16* (2003), 27–40;

> Latin America played a much larger role there [...] because there were twenty Latin countries and the original Charter membership was only 51, so they were roughly 40% of the whole. And of course, the Latin Americans have always prided themselves on legal documentation, and they love to write constitutions, and they like to debate fine points of law.[91]

After San Francisco – at the first session of the UN General Assembly (GA) – the Cuban delegation moved to include a 'declaration on fundamental rights' in the agenda, which was not approved.[92] Instead, the mantle of rights was taken up by the Economic and Social Council (ECOSOC), which in 1946 established the Nuclear Commission (1946) and, eventually, the UN Human Rights Commission (HRC).[93] The UDHR was created in three sessions of the HRC,[94] and in two sessions of an ad hoc Drafting Committee.[95] Afterwards, it was approved by the GA plenary session in 1948.[96]

Although Santa-Cruz joined the effort in June 1947, Latin American influence predated his participation. The Nuclear Commission recognized the 'importance of regional conferences' and explicitly referred to the Chapultepec Conference of 1945.[97] Moreover, pioneer documents were submitted by Cuba[98] and Panama.[99] The latter attempted to re-introduce human rights to the GA, but Roosevelt argued that the HRC and ECOSOC had the mandate.

When Santa-Cruz arrived at the first meeting of the Drafting Committee, the group worked with a documented outline.[100] Humphrey took into ac-

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Sikkink, 'Latin American Countries as Norm Protagonists' 2014 (n. 9); Carozza, 'From Conquest to Constitutions' 2003 (n. 9).

91 United Nations Oral History Project. Interview with Ambassador W. Tapley Bennett by James S. Sutterlin. Accessed on July 19, 2017 at http://dag.un.org/handle/11176/89633, 11–12.

92 United Nations, *Yearbook on Human Rights for 1947* (Lake Success: United Nations, 1949), 431.

93 Replaced by the Human Rights Council (2006).

94 Which met in January/February 1947, December 1947, and May/June 1948.

95 Which met in June 1947 and May 1948.

96 Alfredsson, Gudmundur and Asbjørn Eide. *The Universal Declaration of Human Rights* (The Hague: Martinus Nijhoff, 1999).

97 Which is, of course, why that was the starting point of this article. United Nations, *Yearbook of the United Nations 1946–47* (Lake Success: United Nations, 1947), 523.

98 United Nations, Draft Declaration on Human Rights and Letter of Transmittal – Cuban Legation, E/HR/1, 22 April 1946.

99 United Nations, Statement of Essential Human Rights presented by the Delegation of Panama, E/HR/3, 22 April 1946.

100 United Nations, Commission on Human Rights – Drafting Committee, Draft Outline of International Bill of Rights (prepared by the Division of Human Rights), E/CN.4/AC.1/3, 4 June 1947.

count several constitutions for this outline; the majority (eighteen) were Latin American.[101] Cuba, Panama (in tandem with the American Law Institute), and Chile (which submitted a draft prepared by the OAS's Inter-American Juridical Committee[102]) were highly influential on Humphreys initial proposal. Morsink claims that 'Humphrey took much of the wording and almost all of the ideas for the social, economic, and cultural rights of his draft from the tradition of Latin American socialism.'[103] It is clear then that Latin American contributions inspired both the form and the substance of the UDHR.[104]

During the first session the drafter realized there were competing interpretations of what the 'International Bill of Rights' meant. While some argued for a manifesto, others preferred a binding instrument of law. Santa-Cruz – along with Cassin, Malik, and Koretsky – favoured the idea of a declaration, whereas the Anglo-Saxon bloc preferred an international 'Act of Parliament' which offered real possibilities for enforcement.[105] Roberts has stated that the fact that the Committee eventually settled for a manifesto constitutes its most important decision, as it allowed compromise and unity for groundbreaking – but un-enforceable – principles.[106] Santa-Cruz believed this difference in approach was derived by the divide between the common and civil law traditions; whereas the manifesto camp was more inspired by the French Declaration of 1789 (with general principles), the Anglo-Saxon group was drafting an international version of the North 1791 American Bill of Rights (that favoured precise legal institutions).[107]

In his choice for a manifesto, Santa-Cruz declared that the 'International Bill of Rights should not be just a Bill but rather a true spiritual guide for humanity enumerating the rights of man which must be respected everywhere.'[108] His contributions, therefore, were not only socialist, but also religious. One of the

101 Whereas only eight were European (and four of them, Socialist Eastern European), five from Asia, five from the Middle East, and four from Africa. Schabas, *The Travaux Préparatoires* 2013 (n. 1), lxxxix; and United Nations, Commission on Human Rights – Drafting Committee, Documented Outline, E/CN.4/AC.1/3/Add.1, 11 June 1947, 3–6.

102 Which, as this article mentioned at the beginning, received such a mandate from the Mexico Conference of 1945. In that way, Santa-Cruz's first actions were to revive the traditions of Chapultepec.

103 Morsink, *The Universal Declaration of Human Rights* 1999 (n. 9), 131–132.

104 Schabas, *The Travaux Préparatoires* 2013 (n. 1), xc.

105 United Nations, Drafting Committee, First Session, Meeting no. 2. E/CN.4/AC.1/SR.2, 13 June 1947, 3. For the British draft, see United Nations, Commission on Human Rights – Drafting Committee, Text of letter from the United Kingdom representative to the Secretary-General of the United Nations, E/CN.4/AC.1/4, 5 June 1947.

106 Roberts, Christopher. *The Contentious History of the International Bill of Rights* (Cambridge: CUP 2015), 69.

107 Santa-Cruz, *Cooperar o Perecer* 1984 (n. 35), 171.

108 United Nations, Drafting Committee, First Session, Meeting no. 2, 3.

first substantive Committee debates was regarding the right to life. Whereas other delegates preferred a short statement about the inviolability of life (or the progressive prohibition of the death penalty),[109] Santa-Cruz moved for a robust wording that expressed not only the right to life (from the moment of conception) but also the duty of the state to implement it.[110] Accordingly, Santa-Cruz not only wanted to protect the life of the *nasciturus*[111] (in a very Catholic fashion) but also proclaimed the need for state intervention in favour of those 'unable to support themselves'[112] (following a socialist – or at least *social* – preoccupation).

As other religious delegates,[113] Santa Cruz preferred the notion of human person or being instead of the term individual, closer to the liberal tradition. Even so, he argued that the 'first article in the Bill of Rights [...] should be a declaration concerning what constitutes a [s]tate and what obligations an individual owes a [s]tate'.[114] This strong conviction of the importance of human duties – and not only human rights – 'cuts across the traditional boundaries of liberalism, conservatism[,] communitarism'[115] and – in my opinion – socialism. Recent scholarship has shown how duties (a forgotten element in the history of human rights), were crucial for their inception;[116] and this is certainly true in the case of Santa-Cruz.[117] The International Bill of Rights was not only a statement of individual rights, but the framework that would regulate

109 For example, Cassin and Wilson insisted that life meant only mere physical existence, and the right to life implied the negative obligation of the state to not intercede in it. In that sense, Santa-Cruz offers an early and strong argument for positive obligations. United Nations, Drafting Committee, First Session, Meeting no. 3. E/CN.4/AC.1/SR.3, 12 June 1947, 12.

110 Ibid., 10.

111 In the civil law tradition, this refers to the legal personality of who is yet to be born but has already been conceived. This, of course, meant that Santa-Cruz – despite being strongly in favour of the equality of women – would have been a staunch critic of reproductive rights.

112 The original wording of the Chilean/Inter-American proposal may be found at United Nations, Commission on Human Rights – Drafting Committee, Documented Outline, E/CN.4/AC.1/3/Add.1, 11 June 1947, 16.

113 On Cassin, see United Nations, Drafting Committee, First Session, Meeting no. 2, 11; and for the Malik, Glendon, 'The Influence of Catholic Social Doctrine on Human Rights' 2013 (n. 28).

114 United Nations, Drafting Committee, First Session, Meeting no. 3. E/CN.4/AC.1/SR.3, 12 June 1947, 10.

115 Berdion-Del Valle and Sikkink '(Re)discovering Duties' 2017 (n. 12), 197.

116 Ibid.; and Moyn, Samuel. 'Rights vs. Duties: Reclaiming Civic Balance', 16 May 2016, Available at http://bostonreview.net/books-ideas/samuel-moyn-rights-duties.

117 For him, 'it was impossible to discuss a right without considering the limitations accompanying it'. United Nations, Drafting Committee, Second Session, Meeting no. 22. E/CN.4/AC.1/SR.22, 11 May 1948, 4.

relationships between the person and state at the domestic level, and among states at the international level.[118]

Another issue was the right to property. If we use Sayward's analogy of the UN as a borderland, the Cold War was drawn at the question of private property.[119] Santa-Cruz initially proposed a formula which granted the right to *personal* property, and subjected property to the interest of the community.[120] Malik replied that it was 'self-evident that man cannot live without [it …] and this particular right was as essential and as fundamental as almost any other.'[121] Attempting to compromise, Santa-Cruz argued that property could be protected, if the Declaration also established 'the rights of the [s]tate to co-operate with citizens so that they might have a minimum of private property in accord with their necessities, and the necessary decorum to enable them to maintain their dignity.'[122] Accordingly, his solution was the recognition of the social function of property, in a way that 'would establish the right of man to have private property, and also recognize the rights of the community with respect to all property.'[123]

Drawing on the American Declaration of the Rights and Duties of Man (ADRD),[124] Santa-Cruz included references to 'the essential needs of decent living' and the 'dignity of the individual and of the home'.[125] But 'Chile's victory in the Drafting Committee did not last long'.[126] A sub-committee of the third session of the HRC – composed only of France, the United Kingdom, the USA, and the USSR – remade the article into a shorter version, which made no reference to dignity or the social function of property. Although Santa-Cruz (Chile),

118 United Nations, Drafting Committee, Second Session, Meeting no. 21. E/CN.4/AC.1/SR.21, 7 May 1948, 5.

119 Sayward, Amy. *United Nations in International History* (London: Bloomsbury Academic, 2017), 22.

120 United Nations, Drafting Committee, First Session, Meeting no. 8. E/CN.4/AC.1/SR.8, 20 June 1947, 9.

121 Ibid. 10.

122 Ibid. 11.

123 Ibid. 11–12.

124 Adopted by the Ninth International Conference of American States in Bogotá, Colombia in April 1948 (thus predating the UDHR by a couple of months). Morsink talks of the 'Bogota menace' to refer to the fact that Latin American delegations tried to mould the UDHR on the basis of the ADRD. Morsink, *The Universal Declaration of Human Rights* 1999 (n. 9), 131.

125 Following Article XXIII of the ADRD.

126 Schabas, William. 'The Omission of the Right to Property in the International Covenants', in *Hague Yearbook of International Law vol. 4*, ed. Alexandre-Charles Kiss (The Hague: Martinus Nijhoff, 1991), 135–170, 142.

Cuba, and Panama attempted to reintroduce this at the GA, their proposals were considered too vague.[127]

Despite that setback, Santa-Cruz's strong influence can be felt on the issue of ESCRs. For him, if the Committee did not include such rights, 'it would not appear to the world to be acting realistically'[128] and 'social and economic rights should be mentioned not only in the Articles of the Declaration but also in its Preamble, in order to give them adequate importance.'[129] In this view, Santa-Cruz often clashed with Cassin (who believed economic rights should be confined 'towards the end of the Declaration'[130]) or Malik (for whom ESCRs were compatible with socialist societies, and should be sacrificed for unanimity).[131] Malik claimed that if a man 'wanted to be his slave, it was his right.'[132] Against this narrow individualistic – while also religious – reading, Santa-Cruz strongly advocated for state intervention and the restriction of individual liberties for the general welfare of the population.[133] While some saw this as a limitation of democracy, for Santa-Cruz 'it was merely a way of transforming the political democracy of the nineteenth century into economic democracy'.[134]

For these reasons, Santa-Cruz sponsored and moved for an increased saliency of social rights in the declaration.[135] Although he was unable to convince the drafting committee to include reference to ESCRs and human personality into the right to life,[136] his initial proposal did live on in the form of the –more peripheral – article 22 of the UDHR:

> [e]veryone, as a member of society, has the right to social security and is entitled to realization, through national effort and international

127 See Belgium's intervention at United Nations, General Assembly, Hundred and Twenty-Sixth Meeting, A/C.3/SR.126, 8 November 1948, 6.

128 United Nations, Drafting Committee, First Session, Meeting no. 9. E/CN.4/AC.1/SR.9, 3 July 1947, 10.

129 Ibid.

130 United Nations, Drafting Committee, First Session, Meeting no. 12. E/CN.4/AC.1/SR.12, 3 July 1947, 7.

131 United Nations, Drafting Committee, First Session, Meeting no. 9. E/CN.4/AC.1/SR.9, 3 July 1947, 10.

132 Ibid. 11.

133 For example, Santa-Cruz was a staunch defender of curtailing liberty of speech if it led to 'incitement to national, racial or religious hatred, or other forms of totalitarian ideology.' United Nations, Drafting, Second Session, Meeting no. 8. E/CN.4/AC.1/SR.28, 18 May 1948, 3.

134 United Nations, Summary Record of the Sixty-Ninth Meeting [of the ECOSOC], E/422, 14 March, 1947 cited at Schabas, *The Travaux Préparatoires* 2013 (n. 1), 245–246.

135 United Nations, Drafting Committee, First Session, Meeting no. 4. E/CN.4/AC.1/SR.12, 13 June 1947, 10; to Schabas, *The Travaux Préparatoires* 2013 (n. 1), 1551.

136 United Nations, Drafting Committee, First Session, Meeting no. 12. E/CN.4/AC.1/SR.12, 3 July 1947, 7.

> cooperation and in accordance with the organization and resources of each [s]tate, the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

4.2 *The ECLAC*

> A painful paradox is the coexistence of undreamt wealth with an atrocious misery that afflicts more beings than it ever did in the past.[137]

As article 22 shows, Santa-Cruz's commitment to human dignity and ESCRs did not stop at the frontiers of the nation-state. Moyn claims that the enshrinement of ESCR in the UDHR must be understood as the canonization of the welfare state after World War II.[138] While this may hold for the North Atlantic, this was certainly not the case for Latin America; instead of the welfare state, the region would experiment with the developmentalist state.[139] Suddenly, mass poverty was 'discovered' in Latin America, Asia, and Africa, leading to – for (both) better and worse – the creation of the 'third world.'[140] As Sikkink has shown, the notion of development was forged in the first UN debates, which created institutional forums for the discussion of economic and social problems amongst peoples.[141] The discussions regarding – and the institutions created to enhance – international cooperation for the reconstruction of Europe became the blueprints for the third world to frame the issue of poverty as an international problem.[142] As he participated in the drafting process of the UDHR, Santa-Cruz led a pioneering effort to combat underdevelopment with the establishment of the ECLAC. Consequently, the library of the organization now bears his name, and an important homage conference recognized his twelve years of work at the United Nations on Latin American contributions to UN law.[143]

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137 Santa-Cruz, *Cooperar o Perecer* 1984 (n. 35), 36.

138 Moyn, Samuel. *Not Enough: Human Rights in an Unequal World* (2018).

139 Kaufman, Robert. 'Reflections on the Latin American Experience in the 1930s and the Postwar World', in *Manufacturing Miracles: Paths of Industrialization in Latin America and East Asia*, eds. Gary Gereffi and Donald Wyman (Princeton: Princeton University Press, 1990), 110–138.

140 Escobar, Arturo. *Encountering Development: the Making and Unmaking of the Third World* (Princeton: Princeton University Press, 1995), 21.

141 Sikkink, Kathryn. *Ideas and Institutions: Developmentalism in Brazil and Argentina* (Ithaca, Cornell University Press, 1991).

142 Sachs, Ignacy. 'Revisiting Development in the Twenty-First Century'. *International Journal of Political Economy* 38(3) (2009), 5–21.

143 CEPAL. *Hernán Santa Cruz Barceló: Un Homenaje* (Santiago: Naciones Unidas, 2000).

In 1947, Santa-Cruz was a vice-president at the fifth session of the ECOSOC. By this point, he was no longer an amateur; he had endured the discussions regarding four 'great debates'; (i) reconstruction after the war, (ii) reorganization of world commerce, (iii) the state of Israel, and (iv) the human rights drafting process.[144] During this time, Santa-Cruz had been influenced by the perspectives of other delegates, and became convinced that the war had important consequences for Latin America (even if it was not fought in the region).[145] In his view, millions of Latin Americans lived in a state of poverty and desperation that was comparable to those who had lived under the scourge of war, and it would be a mistake to separate the issues of reconstruction with those of development.[146] If the last session of the ECOSOC had created an Economic Commission for Europe and an Economic Commission for Asia and the Far East,[147] Santa Cruz reckoned it was time for a similar framework for Latin America.

Therefore, without waiting for official permission from his government, he submitted a proposal on 12 July 1947.[148] The project was initially opposed by both the USA – which claimed that this new organization would duplicate the work of the more US-oriented Inter-American Council – and the USSR, and Santa Cruz held out little hope.[149] Nevertheless, he aligned with other countries of the third world (such as Lebanon and India) and negotiated with European states. He was quickly surprised by the lack of information regarding the economic situation of the region, and with the help of his brother (a recent Harvard graduate) prepared a long speech to convince the Council to focus on the region's underdevelopment as a global issue.[150]

Santa-Cruz insisted that Latin America had been a key supplier of natural resources to the allied war effort, and such focus on raw materials had thwarted the region's incipient industrialization.[151] Also, he argued that the new organization would not duplicate the work of the Inter-American Council, as it would address the problem of development as a global phenomenon and not merely as a regional problem. Although Cuba and Venezuela (which were the only other Latin American states) supported the idea, the USA insisted

144 Santa-Cruz, *Cooperar o Perecer* 1984 (n. 35), 143.
145 Ibid., 144.
146 Ibid., 128.
147 United Nations, ECOSOC, Resolutions adopted by the Fourth Session, E/437, 29 March 1947, 10.
148 Santa-Cruz, Hernán. *La CEPAL: Encarnación de una Esperanza para América Latina* (Santiago: Naciones Unidas, 1985).
149 Sikkink, *Ideas and Institutions* 1991 (n. 140). On the history of the Inter-American system, see Scarfi, Juan Pablo. *The Hidden History of International Law in the Americas: Empire and Legal Networks* (Oxford: OUP, 2017).
150 Saéz, Hugo. *La Fundación de la CEPAL en México* (México: Naciones Unidas, 2009), 11.
151 Santa-Cruz, *La CEPAL* 1985 (n. 147), 14.

that the decision should not be taken without consulting the Inter-American Council, and the USSR declared itself against the project.[152] Malik supported the idea and the impasse was brokered by Nehru (India), who proposed the establishment of a committee to study the proposal.[153]

At the end of that session, the ECOSOC recognized 'that the Latin American countries are faced with serious post-war problems of economic adjustment threatening the economic stability of these countries, with the less developed economies' and established an *ad hoc* committee to evaluate Santa-Cruz's proposal.[154] Santa-Cruz produced a letter from Lleras Camargo – the director of the nascent OAS – on the compatibility of the inter-American regional system with a UN regional commission, the US's opposition to the idea lost credibility and the ECLAC was finally established in 1948.[155]

It is no mere coincidence that Santa-Cruz was participating in these two processes in tandem. He understood that the enforcement of human – and social – rights was something no Latin American state could achieve on its own. Human dignity demanded not only a national welfare state, but a just and peaceful international order that promoted cooperation and furthered development in the third world. As Schabas recalls, Santa-Cruz was the first delegate to 'propose that the declaration should mention the right of every person to participate in the benefits of scientific advancement.'[156] Economic development and human rights were not mutually exclusive utopias, but two sides of the same coin: dignity.

5 Concluding Remarks

When the UDHR was adopted in 1948, Santa-Cruz declared he felt 'an atmosphere of genuine solidarity and brotherhood amongst men and women of all latitudes.'[157] This represented the spirit of 1945, and the promise of a fairer international order. The war against Nazism had not only been the war to end all wars, but also 'the declaration of war on hunger, want, disease, ignorance, unemployment, on the exploitation of man by man of one race by another, of

152 Ibid. 15.
153 Ibid. 15.
154 United Nations, ECOSOC, Resolutions adopted by the Fourth Session, E/573, 2 September 1947, 16–17.
155 United Nations, ECOSOC, Resolutions adopted by the Sixth Session, E/777, 12 March 1948, 14–17.
156 Schabas, *The Travaux Préparatoires* 2013 (n. 1), 2743.
157 Santa-Cruz, *Cooperar o Perecer* 1984 (n. 35), 194.

one group by another group.'[158] The UN could not be understood solely as a system of collective security, but as a forum for international cooperation and multilateral understanding. After all,

> [i]t was born in one of those supreme moments in the life of mankind when man feels the bonds that tie him to his fellow-man; when his eyes and mind are opened and he is able to discern the needs of his neighbor and the injustice and exploitation suffered by individuals as well as by whole peoples; when, as happens very rarely, peoples and their leaders are capable of penetrating into the underlying causes of war and conflict and of prescribing suitable remedies.[159]

Although he had no experience in international affairs in 1946, by 1948 Santa-Cruz was convinced that the future of mankind depended on a global understanding about the problems the affected humanity as a whole. This is not to say that Santa-Cruz believed this meant the end of the nation-state; on the contrary, he strongly believed that the promises of self-determination and sovereignty (or perhaps more precisely, non-intervention in internal affairs) would be the foundations of a new world order. Therefore, he envisioned a world of *inter-national* (not supranational) cooperation, in which nation-states – without losing their sovereign rights – would work together to achieve a common end: the protection of human dignity. In his view, individual rights and state power were not in contradiction, in the same way in which the national project was not antithetical to the internationalist dream.[160]

Santa-Cruz claimed that the recognition of ESCRs would make the return of fascism impossible.[161] If the war against fascism had been a global one, it would follow that the struggle against the root causes was an international struggle also. In consequence, only a global endeavour would be able to satisfy the needs of the poor, the hungry, and the wretched of the earth.[162] He knew that Chile – or any country of the third world – could not satisfy the ESCRs of

158 Santa-Cruz, Hernán. 'Opening address for the General Commemorative Conference of the FAO', 16 November 1970, available at http://www.fao.org/docrep/x5591E/x5591e08.htm.

159 Ibid.

160 Following a strong vein of Mazzinean nationalism. See Mazower, *Governing the World* 2013 (n. 81), 48 or Moyn, Samuel. 'Mazzini in (and beyond) the history of human rights', in *Revisiting the Origins of Human Rights*, eds. Pamela Slotte and Halme Halme-Tuomisaari (Cambridge: CUP, 2015), 119–139.

161 Summary record of Santa-Cruz's intervention. United Nations, Drafting Committee, First Session, Meeting no. 7. E/CN.4/AC.1/SR.7, 19 June 1947, 3.

162 Fanon, Frantz. *The Wretched of the Earth* (New York: Grove Press, 2015).

its citizens on its own. Neither the executive nor the judicial power had the resources or capabilities to provide the indispensable means for every man to achieve his dignity. For this reason, he consecrated in article 22 of the UDHR that both national efforts *and* international cooperation were indispensable for the realization of ESCR, social security, and human dignity.

This abstract and utopian view of the international community had a practical application: the specialized agencies of the UN family.[163] The newly created institutions would be at the forefront of the global struggle for ESCRs. It is not surprising then that after serving as Chile's representative at the UN and as Special Rapporteur on Racial Discrimination,[164] Santa-Cruz would serve at the Food and Agriculture Organization (FAO). These specialized agencies were the main agents for the fulfilment of ESCRs and social justice. In that sense, Santa-Cruz did not entrust ESCRs to the growing executive power of the national welfare state – as Moyn argues his contemporary colleagues from the north Atlantic did[165] – but international organizations as the guardians of social rights.

Contemporary scholarship about ESCRs has focused on the role of national courts – especially in the Global South – to protect and enforce social rights in contexts of inequality.[166] Recent debates centre on the *justiciability* of ESCRs,[167] and progressive legal academics[168] and practitioners[169] have made compelling arguments on the benefits – and drawbacks[170] – of endowing domestic courts with the guardianship of such rights. Delving back into the history of the inception of such rights may offer refreshing perspectives to these debates.[171] Santa-Cruz never saw national courts as an interesting place for ESCRs struggles but

163 See further, Sinclair, Guy Fiti. *To Reform the World: International Organizations and the Making of Modern States* (New York: OUP, 2017).

164 United Nations, Human Rights Committee, Report of Special Rapporteur Hernán Santa-Cruz, E/CN.4/Sub.2/307/Rev.1, 1 April 1971.

165 (n. 137).

166 Bonilla, Daniel. *Constitutionalism of the Global South* (Cambridge: CUP, 2013).

167 McCorquodale, Robert and Mashood Baderin, eds. *Economic, Social, and Cultural Rights in Action* (Oxford: OUP, 2007).

168 Langford, Malcolm. *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (Cambridge: CUP University Press, 2008).

169 International Commission of Jurists, *Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative Experiences of Justiciability* (Geneva: ICJ, 2008).

170 Landau, David. 'The Reality of Social Rights Enforcement'. *Harvard International Law Journal* 53(1) (2012), 190–247.

171 Scarfi, Juan Pablo. 'Del giro ético al historicista: El potencial y los límites de la perspectiva histórico en los derechos humanos y el derecho internacional'. *Revista Latinoamericana de Derecho Internacional*, 6 (2017), 1–14.

not because he believed that social rights enforcement was incompatible with judicial activity. Perhaps the problem is not that the courts lack the capacity for the allocation of resources; it may be the case that not even the legislative or executive powers of a post-colonial state in the Global South can do so. Whether specialized agencies – and international cooperation in general – can offer potential solutions for this fact should be a question for further study.

Santa-Cruz offers a rare vision of human rights cosmopolitanism, in which Catholicism, socialist constitutionalism, and developmentalist economic thinking merge in a rare blend by contemporary standards. Many of his ideas may be ill-suited to present challenges (as many of them were for the problems of his own time) but one thing appears certain. For all his flaws, Santa-Cruz was right. The global community – if it still exists, of course – increasingly faces two mutually exclusive choices: to cooperate or to perish.

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