

OPENING UP TO THE AMERICAS IN ORDER TO BETTER PROTECT HUMAN RIGHTS AND COMMITTING TO RECONCILIATION

This project proposes setting up a platform that would allow Canadians to better understand, share, and as propose solutions drawn from the Latin-American experience in terms of human rights violations claims and denunciations, as well as policies and programs implementing the states' obligations to better promote and protect these rights.

1. Human Rights in the Americas

On the eve of Canada's 150th anniversary, the project we are proposing seeks to take part in the implementation of a more equitable human rights political culture while becoming part of the paradigm changes that we have been witnessing for many years in the world. For a few years now, Latin America has stood out as a region, which, after having gone through periods of instability, civil wars and dictatorships, is consolidating its democratisation and institutionalization of the rule of law. These advancements are reflected, among others, with regards to human rights issues. Although there is yet much to do in this area, Latin America has indeed succeeded in building an innovative and promising regional experience on many planes, among them transitional justice, the respect of human rights within the framework of the fight against terrorism, cultural pluralism, political participation etc. These successes have marked not only the recent story of the States in the region but that of the entire planet, whether it be on the normative and institutional planes or that of enfranchisement strategies and cultural anchors. (Sikkink 2014).

These advancements are due in great part to the innovative work of some international institutions that, in the last decades, have worked hand in hand with civil society in the quest for truth and justice. It is the case of, among others, the United Nations Working Group on Enforced or Involuntary Disappearances (UNWGEID) as well as the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR) of the Organization of American States (OAS) (Goldman 2009). Although some may feel that changes come about slowly, this is often due to the fact that our outlook on the world we live in holds and reflects our own cultural, economic and social experiences. In order to transform the world and mark a step change to it, specifically as it relates to human rights, it is important to have a perspective that encompasses all members of our community, and more broadly, the world.

In Canada, measures such as the Truth and Reconciliation Commission are the conclusive evidence of this (change?). In fact, in the last few years, these kinds of commissions have been created in numerous countries in Latin America; Peru, Chile and Argentina, to name but a few, have established such commissions in order to initiate an accessible process centered on victims. While in Latin America, these have been established in order to support the victims of forced disappearances, in Canada, at the request of the one called « the surviving student », it is the victims of residential schools who have been the beneficiaries. Each time, the objective has been the same: re-establishing and renewing relationships between the victims and the population.

2. -American System for the protection of Human Rights (IASPHR)

Beside its duties regarding the investigation of individual complaints, the Commission also has observation and defense of human rights duties in the region. To that end it can, namely, use its system of rapporteurs as well as theme or country-based annual reports dealing with human rights in order to recommend that governments adopt measures meant to promote the respect of those rights and prepare the studies and reports regarded as being useful in the in the performance of its duties.

As far as the Court is concerned, it was established under the American Convention; it can have cases brought to it by the Inter-American Commission or by any other State party to the Convention within the frame of contentious cases alleging the violation of rights protected by its constituent instrument or any other instrument over which it holds jurisdiction. The court may also give advisory opinions at the request of any State member of the OAS as well as certain bodies of the Organization about the interpretation of the Convention or any other treaty dealing with human rights protection in the Americas, as well as adjudicating on the compatibility of a national law with those instruments.

If, when they assume their duties, inter-American bodies are confronted with massive and systematic human rights violation cases perpetrated by authoritarian regimes, those cases brought to them also expose structural problems linked to the functioning of democracies. Nowadays, victims are often part of groups placed in vulnerable situations within their societies, and the violation of their individual rights generally raises questions of systemic discrimination. The sanctioning of the violation of guaranteed rights in this type of cases thus calls into question the entire apparatus of the state in its legislative duties as well as its political and institutional organization.

In light of these developments in case law, the IASPHR has sought to develop solutions not only based on individual reparation of the violated rights, but also on entrenching its analysis within the institutional and social context of the matters being presented to it. In so doing, Inter American bodies have introduced the principle of the protection of vulnerable groups “who have suffered “discriminating” alienation from a historical, sociological, economic or political point of view”.

Thus, the Commission and the Court have developed a case law current that could be qualified as being « socially mindful », acknowledging the existence of groups that are placed in vulnerable situations in order to determine precisely which positive obligations the States are responsible for in the effective protection of guaranteed rights (Duhaime 2011, 2007).

3. Canada’s position

As Canada endeavours to create a closer bond with its Latin-American neighbours, both on the immigration and on the economic development front, many Canadians may doubtless be surprised to learn that Canada is one of the rare American countries that has not fully integrated the IASPHR. It is in fact the case that, although Canada joined the OAS in 1990, it did not subscribe to the inter-American treaties for the protection of human rights and has not accepted the compulsory jurisdiction of the Regional Court in this matter.

Canada therefore only remains bound by the OAS Charter as well as the American Declaration of the Rights and Duties of Man and is only subjected to the competence of the Inter-American Commission (Duhaime 2012, 2010). This commission has brought forward many important recommendations to Canada in terms of human rights protection, among them everything having to do with the rights of refugees and

the rights of aboriginal women (IACHR 2016, 2014, 2000). It is worth noting that the Canadian Senate has twice recommended that the Canadian government fully adhere to the IASPHR (Senate 2003, 2005).

4. Human Rights in Canada: State of Affairs

Although Canada is often seen or puts itself forward as a champion of human rights on the international scene, many problems remain in regard to this throughout the country. This is especially true in the case of effective enjoyment of economic, social and cultural rights, the rights of women to equality and of living free of violence, the rights of refugees and other migrants, freedom of expression and social protest. Aboriginal peoples, of course, are still the direct and indirect victims of these inequalities, more specifically with regards to territorial rights, cultural rights and governance.

Although many actions have been taken by the government to remedy this situation - *Commission of Inquiry into Certain Events at the Prison for Women in Kingston* (Arbour Commission) and the *Royal Commission on Aboriginal Peoples* released in 1996 (Erasmus Dussault Commission)- the situation is slow to improve and structural and cultural changes are taking a long time to be implemented. The *Truth and Reconciliation Commission* addressed different issues surrounding the question of residential schools in the 20th century and the recognition of experiences, aftereffects and consequences linked to what the victims went through. Newly set up, the *National Inquiry into Missing and Murdered Indigenous Women and Girls* will doubtless face numerous challenges. The issues, at once theoretical and methodological, the documentation of the cases as well as the changes to be brought both to institutional cultures and the fight against impunity processes, are all very telling. Beyond our own borders, we can see the impact of Canadian policies in terms of human rights in Latin America, for example (Canadian extractive corporations, safety and migratory policies etc.). (Amnesty 2016, Ligue 2015, Aboriginal Women 2011).

5. The Collaborative Experience : an Inclusive Project

In view of this, what is being proposed is setting up a platform of exchanges and dialogue allowing Canadians (general public, decision-makers, human rights defenders, Aboriginal authorities etc.) to better understand the Latin American experience with regards to claims and denunciations of human rights violations, as well as policies and programs for the implementation of state obligations that seek to better promote and protect those rights.

What is being proposed is firstly (I) proceeding to a state of affairs seeking to not only identify scientific literature and pertinent institutional reports, but also to identify the issues and key players in the defense of human rights arena in Canada and Latin America. North-South, South-North discussions and exchanges will be structured and built upon the experiences and observations of the main stakeholders- women, Aboriginals, human rights defenders etc.- and will seek, in the middle term, to better integrate Canada within the IASPHR as well as to leverage the beneficial effects of the Latin American experience for the protection of human rights in this country.

Secondly, (II), the proposal is to consult Canadian stakeholders interested in a national debate on human rights in order to identify the main challenges faced by Canadian society in this regard. These will include officials from the federal and provincial governments, human rights organizations and defenders,

Aboriginal authorities, attorneys, etc. This consultation will also raise awareness within the Canadian population through the sharing of information and acquisition of new knowledge, and the advantages of a better integration of Canada within the IASPHR. During this exercise, the misgiving and prejudices held by certain sectors of society – the Canadian legal community among them – as they pertain to the IASPHR will be considered. In allowing for a better understanding of the topics covered in the context of the consultation, and depending on the results of the research carried out previously (I), discussions will range from the protection of women’s rights, Aboriginals and migrants, the fight against terrorism, the exploitation of natural resources, economic, social and cultural rights, the fight against discrimination and the question of federalism. Three or four meetings of one or two days could be held in Quebec, Ontario, British Columbia and Northern Canada. Likewise, the researcher and accompanying team will provide a questionnaire to the stakeholders who were unable to participate in the consultations.

Thirdly, (III), we propose inviting Latin American experts and members of civil society (including organizations of human rights defenders and Aboriginal authorities, experts from the inter-American Commission and/or Court, Latin American officials), on Canadian soil so that they can illustrate their own experiences, fights, challenges, and victories in these political and social innovation fields, thanks to, among others, the tools supplied by the IASPHR. Guests will be particularly called upon to tackle the subjects discussed previously during the consultations (II). Canadian stakeholders who will have participated in those consultations will be invited to these presentations in order to exchange with their Latin American peers. In the context of these activities, Canadian best practices and successes in terms of human rights protection will also be discussed in order to allow for profitable feedback to Latin American peers as well. This approach will also provide the opportunity to create networks and a space for exchanges between Canadian and Latin American participants, leading to a mutual enrichment of their reflections as well as allowing them to provide briefs about their advocacy and analysis work. These networks will, we hope, help make the outcomes achieved by the present project more sustainable. In order to increase the benefits of this event, we propose facilitating the participation of the people and groups previously consulted (II) but unable to be physically present at the conference, through the use of the UQAM’s video conferencing technology and multi media installations as well as filming and broadcasting the event over the web.

Finally, we fourthly (IV) propose, making concrete recommendations to the federal and provincial governments, as well as other stakeholders (bar associations, NGOs, Aboriginal authorities, academics, etc.) regarding a greater integration of Canada within the IASPHR. Taking into consideration the needs identified during the consultations (I and II) and the experiences presented during the exchanges with our Latin American peers (III), the results of the discussions between the various participants from Canada and Latin America will be used to establish these conclusions. This will also provide the opportunity of proposing channels of greater collaboration between Canadian and Latin-American communities in order to leverage the positive Canadian experiences in Latin American and within the IASPHR. Moreover, the contributions of Latin American experts will be integrated in a publication translated into French, English, Spanish, Cree and Inuktitut, and which will also be broadcast on a web platform that will share them together with the researcher’s recommendations. Finally, a further proposal is to present these results to Canadian authorities (Global Affairs in Ottawa, Permanent Mission of Canada to the OAS in Washington), at the Inter-American Commission (Washington), as well as to those who participated in the consultations (Montreal, Ottawa, Vancouver and Northern Canada).

6. Expected Results

- Recommendations geared toward Canadian authorities addressing the lessons learned from the Latin American experience and the full integration of Canada within the **IASPHR**
- Publication of the contributions of Latin American experts
- Web site presenting the researcher's recommendations as well as the contributions of Latin-American experts
- Creation of an inter-American network between Canadian and Latin American stakeholders.

7. Knowledge Mobilization:

This project fits with many principles of knowledge mobilization. Not only will the results of the project be synthesized and widely broadcast, but the joint development by Prof. Duhaime of human rights defenders, representatives of Aboriginal peoples and Canadian attorneys will favour the transfer of knowledge to communities who are directly concerned by the research. This project invites human rights defenders and representatives of Canadian Aboriginal peoples to take an active role in the project and to contribute to it in a significant way. Beyond the world of academia, taking into account the important and influential role of Prof. Duhaime with the United Nations Organization, this project will strike a particular chord in public programs and policies in Canada as well as elsewhere in the world.

8. Current Research:

This project will serve to strengthen the collaboration that the applicant is carrying out as part of his ongoing research dealing directly with the subject of a full integration of Canada within the **IASPHR**, which he is conducting, among others, with a team from the University of Ottawa's Human Rights Research And Education Centre, within the framework of a project financed by the Social Sciences and Humanities Research Council (SSHRC). This will also be the opportunity to make the similar collaboration begun by the applicant in 2011 last longer. At that time, he was a Visiting Fellow at Harvard Law School with Prof. James Cavallaro (Stanford University, USA), who is the present President of the Inter-American Commission on Human Rights. Prof. Cavallaro and the applicant are working jointly on *Doctrine, Practice, and Advocacy in the Inter-American Human Rights System*, which should be released shortly by Oxford University Press. This work will also tackle the issues proposed within the framework of the present project with the purpose of demystifying the Latin American human rights protection experience for a north-American audience.

This project is fully consistent with two important publishing projects that Prof. Duhaime is presently conducting on the **IASPHR**: a monograph written in English and published by Edward Elgar Publishing in the United Kingdom (*The Elgar Companion to the Inter-American Court of Human Rights*) and an encyclopaedic article in French by *Jurisclasseur France*. It is worth noting that the applicant has already produced around twenty arbitrated scientific publications on the IASPH, of which two deal directly with Canada's integration in the Inter-American System (in *International Journal* and *United Nations University Press*). Moreover, in the hundred or so lectures delivered by Prof. Duhaime, let us also make note of those lectures speaking directly on this question of Canadian foreign policy, and given not only at Harvard University in the USA, but also at the Los Lagos University in Chile and the Buenos Aires and La Plata Universities in Argentina, as well as at the Canadian Embassy in Washington in 2010 and more recently in 2016 at UQAM (the University of Quebec in Montreal) in collaboration with *Global Affairs Canada* and the *The Latin-American Studies Network of Montreal*. The applicant is an active participant in the dissemination of the research on the IASPHR in Canada. He co-signed in the *Revue québécoise de droit*

international between 2006 and 2008 and, since 2013, has done so in the *Canadian Yearbook International Law with Chronique de droit interaméricain*. Finally, let us note that he teaches the only university course specialised on IASPHR offered in French (JUR 655L) at the UQAM.

Prof. Duhaime's proposal of holding consultations with stakeholders in Canada also fits into the framework of a project that he has undertaken with Prof. Clara Sandoval of Essex University in the United Kingdom. This project deals with the implementation of international human rights organizations decisions by Canada. This initiative also requires conducting the same type of inquiry with a series of targeted stakeholders everywhere in Canada. In a similar way, it is worth repeating that Prof. Duhaime has also conducted this type of activity with groups of Canadian Latin American migrants in the *Beyond Borders: Latin Americans in Canada and the Legacies of Human Rights Struggles* event, organised together with the University of Manitoba in Winnipeg, with the help of a grant from the *Canada-US Fulbright Community Leader* program offered to *Fulbright* alumni researchers.

Lastly, let us remember that since December 2014, Prof. Duhaime has been a member of the United Nations Working Group on Enforced or Involuntary Disappearances. As such, he deals with hundreds of instances of forced disappearances per year; he participates in the Group's sessions; he communicates with the families of the disappeared, victims' associations, human rights defenders and governments; he participates in the presentation of the Group's work at the Human Rights Council and the Third Committee of the UN General Assembly; he prepares thematic reports destined to the various countries; and he carries out missions (Argentina, Salvador, Sri Lanka, Morocco, Turkey, etc.). Since March 2015, Prof. Duhaime has been commissioned by the Group to prepare a thematic study on forced disappearances within the context of migrations. Prof. Duhaime carries out research on this delicate question, which is one of the most burning issues of our time. It goes without saying that this thematic study will be of great assistance in the present project, since these works will put forward the significant experience of Latin American societies, both on the fight against forced disappearances front as that of human rights protection within the context of migrations. It will be interesting to see how this study will contribute to the better understanding and prevention of the disappearance of Canadian aboriginal women as well as better protecting the rights of migrants who wish to settle in Canada.

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Fondation Pierre Elliott Trudeau, 2017
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