

# HUMAN RIGHTS PROTECTION IN THE AMERICAS:

## WHAT CAN WE LEARN IN THE ASIA PACIFIC REGION?

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This conference on the ‘Diaspora of the Latin American Imagination’ provided an opportunity to explore certain facets of the American experience. I propose here, however, to take a step sideways and look at what we, in the Asia Pacific region, can learn from the American experience. I propose to address the human rights situation in the Americas and specifically the Inter-American Human Rights system. And I shall discuss in broad terms the model created in the Americas and whether such a model could similarly be established in this region.

The absence of an overarching regional human rights system in the Asia Pacific is important for the region and the international human rights community as it stands alone in the world as the only region that has not established such a system. In addition to the Americas, Europe and Africa have also established a system of human rights. It is the American experience — that is, the experience of the American continent — that is the point of comparison. I will highlight some ways in which this experience can inform our thoughts and debates on the issue of establishing such a system in this region. I intend to rebut some of the arguments often used to justify the position that our

region should not or could never agree to the establishment of a system of human rights along the lines of the Inter-American Human Rights system. I will also outline some of the steps already made towards the creation of a regional mechanism.

### THE AMERICAN REGIONAL HUMAN RIGHTS SYSTEM

The Inter-American political system and related human rights structures were the first of their type to be established in the world. American states held meetings on regional issues well before the Second World War. Following the defeat of the Axis Powers, the Americas, comparatively untouched by the human rights atrocities of Europe and the Pacific, were in a good position to respond with a united human rights position which might also act as a model for others. In early 1948 a group of states of the Americas established a regional organisation aimed at promoting peace and security: the Organisation of American States (OAS). The United Nations had been formed a couple of years before, in 1946. Europe followed closely behind the Americas with the establishment of the Council of Europe

in 1949. The African Organisation of Unity was established in 1963.<sup>1</sup>

The OAS originally comprised 21 states including Argentina, Brazil, Cuba (which by resolution was excluded from participation in the OAS in 1962 and has yet to regain membership), Haiti, and the United States of America. In subsequent years all other American states joined the OAS. Canada, Belize and Guyana were the last states to become members in the early 1990s.

The *American Declaration of the Rights and Duties of Man*,<sup>2</sup> which sets out a comprehensive list of civil, political, economic, social and cultural rights and duties, was adopted during the same conference that established the OAS. The *American Declaration* was important not only regionally but also internationally as it preceded by a few months the *Universal Declaration on Human Rights*.<sup>3</sup> The latter must also have at least been in the minds of the drafters of that document which was to become the touchstone of all future human rights documents. The *American Declaration of the Rights and Duties of Man* was therefore the first overarching human rights document of its kind in any regional or international setting.

The *American Declaration*, not originally named in such a way that suggested any legally binding obligations on those states that signed it, in fact was held by the Inter-American Court and Commission to create obligations for the member states of the OAS.

Another important step in the protection of human rights in the region was taken in June 1960 with the establishment of the Inter-American Commission of Human Rights. This body was charged with promoting the observance and protection of human rights and was designed to serve as a consultative organ to the OAS. Despite

the intention that the Commission act as a consultative body, it came to acquire wider powers. One significant example of the evolution of the Commission was the development of its power to hear individual petitions and to make recommendations to member states in response to these petitions. This change gave the Commission a quasi-legal function and relatively wide scope in which to exercise it.

The OAS was originally intended as a regional political body. Nonetheless, the combined effect of the *American Declaration* and Inter-American Commission was to create a limited range of human rights obligations which the members of the OAS were obliged to implement. Thus, the OAS in fact became a norm-setting and monitoring body that demanded certain human rights standards of its members.

The OAS took an important step towards entrenching regional human rights concerns in law with the adoption of the *American Convention on Human Rights* in November 1969. Until that date the members of the OAS were bound by regional human rights arrangements only to the extent that the *Declaration of the Rights and Duties of Man* was considered to be legally binding on OAS members. In 1966, however, the *International Covenant on Civil and Political Rights*<sup>4</sup> and the *International Covenant on Economic, Social and Cultural Rights*<sup>5</sup> of the United Nations were adopted and opened for ratification. The *Universal Declaration on Human Rights*, which had been intended to represent the aspirational, if not legally binding, human rights standards of the United Nations members, thus led the way for two legally binding instruments. Similarly in the American context, after 1969, any member nation which ratified the Convention became strictly bound by