

PROSPECTS FOR THE DEVELOPMENT OF INTER-GOVERNMENTAL HUMAN RIGHTS BODIES IN ASIA AND THE PACIFIC

Jon M Van Dyke*

Since World War II, the international community has made great strides to codify human rights norms and to build institutions to protect those rights from governments that oppress their citizens to ensure their own power. The Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948; the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights adopted in 1966 and now ratified by over 80 nations; and the three regional human rights agreements - in Western Europe, in the Americas, and most recently in Africa - are all designed to define the protections that must be afforded to all citizens and to provide mechanisms that will in fact protect individuals whose rights are abused by their governments.

In a relatively short period of time, commissions and tribunals have been created and have begun issuing opinion, resolving disputes, and providing guidance for future conduct. The European Human Rights Commission and Court have a rich jurisprudence already and the Inter-American Commission and Court and the Human Rights Committee of the Civil and Political Rights Covenant are also beginning to issue significant opinions and reports that are helping citizens and minority groups. The African Charter has only recently achieved a sufficient number of ratifications to take effect so it cannot yet be fully evaluated, but the determination of African nations to draft this document and to achieve the necessary ratifications is strong evidence of the region's commitment to human rights.

The only part of the world (aside from Eastern Europe) that remains without a regional human rights charter and organization is the Asia-Pacific Region. Many possible reasons may explain why this area has lagged behind, but certainly a central problem is that it cannot really be called a "region" in any realistic sense. It constitutes half the planet and contains more than half of the world's population. It encompasses large and small nations, rich and poor, members of all political and military alliances and alignments, and adherents to all the current economic arrangements. The cultural and political differences among the peoples of Asia-Pacific are vast and, although common human rights issues can be identified that affect many of the nations of this area, it would be overly optimistic to expect that these nations will work together to solve these issues during the present generation.

The United Nations through the Economic and Social Commission for Asia and the Pacific (ESCAP) sponsored a meeting in Colombo, Sri Lanka, in 1982 to discuss the possibility of establishing a regional human rights organization. It assembled an impressive group of human rights advocates and government officials. Their most important recommendation was that subregions be identified, because Asia-Pacific as a whole is too large to support a single effective intergovernmental human rights organization.

Dividing Asia-Pacific into smaller zones is not, however, an easy task. South Asia is an obvious subregion; it has recently developed the South Asian Association for Regional Cooperation (SAARC) consisting of India, Pakistan, Bangladesh, Sri Lanka, Nepal, Bhutan, and the Maldives. But this subregion is currently torn by ethnic strife and significant interstate conflict, and several countries now have military government

* Professor of Law, University of Hawaii at Manoa.

These nations are thus unlikely to construct a human rights program in which the actions of a government toward its citizens can be scrutinized in detail by experts from other nations.

Southeast Asia is another areas that has some elements of cohesion, and some nations of this subregion - the Philippines, Indonesia, Malaysia, Singapore, Thailand, and now Brunei - have worked successfully together on economic problems through the Association of South-East Asian Nations (ASEAN). Other nations in the subregion - Vietnam, Kampuchea, and Laos - have not been involved in these efforts, and are unlikely to work together with the ASEAN countries either on economic problems or on human rights questions in the near future. Another problem country is Burma - it has steadfastly avoided joining either the ASEAN or SAARC and has demonstrated no interest in dealing with human rights questions regionally or subregionally.

The Middle East (or West Asia) is a region in geographic terms, and some regional organizations - like the Arab League - have functioned effectively on some issues. The area has been torn asunder by strife in this generation, however, and a number of ongoing conflicts resist easy solutions - the civil war in Lebanon, the armed confrontation between Israel and its neighbours, and the never ending war between Iraq and Iran which as of early 1988 was threatening to spill over into the Persian Gulf and the nations adjoining this waterway. The development of a human rights charter does not appear to be a very high priority for the nations of the Middle East.

Perhaps the subregion that is least likely to come together to form a human rights entity in the foreseeable future is Northeast Asia. In this area, the two Koreas, Japan, and China are nations that have been adversaries for millenia. Although they are now, in fact, working together on limited economic projects, it is improbable that they will want to form any formal regional organizations together in the near future.

That leaves the Pacific island area, where close political and economic ties have developed among the nations and where significant regional organizations are well-established. The South Pacific Commission (consisting of all the island entities) and the South Pacific Forum (consisting of the independent and free associated states) have been functioning effectively as regional organizations for a number of years, and they have spun off a number of other special topic organizations such as the Forum Fisheries Agency (FFA) and the South Pacific Regional Environmental Programme (SPREP). All these organizations include Australia and New Zealand and extend eastward to Tonga and the Cook Islands and northward to the Micronesian political entities. The French affiliated island and the U.S. affiliated islands participate in the South Pacific Commission and SPREP, but are excluded from the South Pacific Forum and FFA. The Pacific island area thus show the greatest promise of forming a cohesive subregion for the purpose of developing a human rights organization.

In April 1985, the Law Association for Asia and the Pacific (LAWASIA), a non-governmental organization based in Sydney, Australia, coordinated a conference in Fiji where attorneys, community activists, and government officials from the South Pacific presented papers on the types of human rights problems found in the region. Among the issues identified were:

- the self-determination of peoples;
- the rights of indigenous peoples;
- the rights of cultural minorities - often immigrants from elsewhere in the region;
- the status of women;
- the rights of children and youths particularly with regard to education and jobs; and
- the right to participate in decisions affecting one's vital interests.

The papers submitted at the 1985 meeting have since been published and the participants have now begun to develop a human rights charter for the region. LAWASIA sponsored drafting committee and working party meetings in Sydney and Apia, Western Samoa in 1986. A Model Charter was drafted which will be examined at meetings to be held throughout the Pacific in the hope of developing a constituency to persuade the governments of the region to support this effort.

The drafters began by looking at the African Charter of Human and Peoples' Rights and then modified it as appropriate for the Pacific island region. The African Charter contains statements of civil and political rights, economic, social and cultural rights; rights of peoples; and duties of governments and individuals. It is the most recent statement of rights and comes from a part of the world in which peoples have only recently obtained their independence or are still pressing for it. Not only does it grapple with the critical issue of the right to development but it also raises two other issues of considerable importance for Pacific nations: the duties of individuals to the group, community, and society; and the rights of indigenous peoples. Human rights declarations and treaties from other regions of the world do not address these two topics.

Many Pacific island communities have a strong sense of the structure of the village or group, which is frequently a large extended family. One finds in island communities ranging from Samoa and Tonga to Yap, and including many variations, a set of traditional relationships within the group that may in some instances be thought to override the rights of a member of the group as an individual. The challenge in drafting a human rights charter for the Pacific is thus to find language that recognizes and protects the values found in such traditional group relationships but also protects each individual against possible abuses.

The rights of indigenous peoples is also central in many Pacific island communities. In New Caledonia, the indigenous Kanaks are outnumbered by Europeans and other Pacific islanders and have been struggling to regain control over their islands or at least some degree of autonomy within their regions. In Fiji, the election of a coalition government that included many persons of Indian ancestry in early 1987 led to a military coup by the army (which is dominated by native Fijians), and then to the reestablishment of a government that effectively excludes Fiji Indians from participation. This action was taken by the native Fijian community even though the 1970 Fiji Constitution appears to have strong protections to ensure that the land rights of the native Fijians cannot be altered, and it thus illustrates how strongly felt the claims of the indigenous people are. Other Pacific communities with problems relating to the rights of the indigenous people in relation to other members of the community include Australia, New Zealand, Guam, the Northern Marianas, and Hawaii.

The working party and drafting group developed a Draft Model Pacific Human Rights Charter by starting with the African Charter and modifying it by examining all the constitutions of the Pacific, determining which principles are accepted throughout the region, and choosing language that expressed those principles best. All the constitutions of the Pacific have bills of rights, except those of Australia and New Zealand. Parliament is currently considering the enactment of a bill of rights. But the government in Australia recently abandoned its attempt to enact bill of rights which would have implemented Australia's obligations under the International Covenant on Civil and Political Rights. Both countries have indigenous and immigrant communities who would benefit from specifically articulated and enforceable constitutional rights.

The drafters decided that the Pacific island nations are not ready for a regional court that could issue decisions binding on governments. Instead they recommended - again following the African model - a commission with powers to receive complaints, conduct investigations, and made recommendations for the resolution of grievances. The first

steps toward forming a regional human rights organization are thus underway, in the Pacific island region, at least at the non-governmental level and it is possible that the next few years will see the establishment of a Pacific Human Rights Charter and a Pacific Human Rights Commission.

The question remains whether all or part of the rest of Asia will move toward developing human rights treaties or organizations. Do Asian countries have a cultural aversion toward this topic or do other fundamental obstacles stand in the way of movement toward international human rights protections? Although generalizations are dangerous on a broad question like this one, certain observations can be offered:

1. The nations of Asia have been especially reluctant to allow third-party adjudication of disputes and strongly favour direct bilateral negotiations as the proper way to resolve controversies. They have been reluctant to accede to the compulsory jurisdiction of the International Court of Justice and have not ratified the Optional Protocol to the International Covenant on Civil and Political Rights, which allows individuals to bring complaints against their government to the attention of the Human Rights Committee. Among Asian Nations, only India, Japan, Pakistan, and the Philippines have accepted the compulsory jurisdiction of the International Court of Justice.

International Human Rights mechanisms are designed to be less confrontational than the International Court, and to facilitate settlement rather than formal adjudication whenever possible, but Pacific and Asian Nations appear to be similarly skeptical about such approaches. As of December 15, 1987, for example, not one Pacific or Asian Nation was among the 39 nations that had ratified the Optional Protocol. Given their lack of receptivity to existing international dispute resolution mechanisms, Asian Nations are likely to be reluctant to create new organizations with the power to address violations of Human Rights.

2. Large numbers of the peoples of Asia are still influenced by the teachings of Confucius, which emphasize hierarchy and respect for authority and the proper place for each person within the hierarchy and discourage individualism. The world view tends to deemphasize the importance of protecting individual human rights in relation to other priorities. Perhaps if "collective" or "group" rights were also protected in a human rights charter, it might be more acceptable to the peoples of Asia and the Pacific.
3. Communist regimes have historically been uninterested in supporting regional human rights organizations in other parts of the world, and those in Asia are not likely to be more interested in such initiatives than their counterparts elsewhere.
4. Many nations in Asia do have serious human rights problems that go to the very essence of their national identity, so that outside scrutiny would be perceived as threatening. An illustrative list of such conflicts would include the ethnic strife in Sri Lanka, the conflict between Chinese and Malays in Malaysia, religious and linguistic conflicts in India, the ongoing boundary disputes between India and Pakistan, the status of Chinese in Indonesia and Vietnam, the situations in the West Irian and East Timor areas which were incorporated into Indonesia, the Moro Rebellion in the Philippines, the treatment of ethnic Koreans in Japan, and the status of indigenous peoples in many of these countries. Free expression in most of these nations is suppressed, and the right to participate fully and in some cases even partially in governmental decision-making is forbidden. The

death penalty is used extensively in many Asian countries - in Malaysia it is used for persons convicted of smuggling drugs, for instance, and in the People's Republic of China it is used for a broad range of offences, including according to a September 1987 report for showing pornographic movies.

Even in Asian nations with legal systems received from the West, human rights problems exist. For instance, in the spring of 1987, 16 community activists were arrested without formal charges in Singapore, accused of being Marxists involved in a communist conspiracy to overthrow the government. Their arrests were pursuant to Singapore's Internal Security Act which permits detention without trial. When asked about the proof that these individuals were in fact subversives, Prime Minister Lee Kuan Yew replied that he did not intend to submit his proof to a court of law and that he would not 'allow subversives to get away by insisting that I got to prove everything against them in a court of law with evidence that will stand up to the strict rules of evidence of a court of law. The Singapore constitution specifically authorizes detention without charges or trial in such internal security cases and limits the freedoms of speech and association when the security or public order of the nation is affected. The Malaysian government similarly arrested over 90 persons under its Internal Security Act in October and November 1987, including the leader of the main opposition party, and shut down three newspapers.

The Pacific island nations had generally managed to avoid such flagrant human rights violations after gaining their independence during the past two decades, but the Fiji coups in 1987 and their aftermath illustrated that a Pacific island government was also capable to detaining citizens without trial, interfering with press freedom, and nullifying the results of a free election. Another serious human rights problem can be found in New Caledonia, where the indigenous Kanaks have been denied effective access to the political process by the governing French. Both of these situations involve the special legal status of indigenous people and how that status should be protected in a multi-ethnic community.

CONCLUSION

The road toward the development of international human rights protections is a long and bumpy one, and it is not surprising that some regions of the world have moved faster than others. Many reasons can be cited to explain why the Asia-Pacific area has been the slowest to make progress in developing regional human rights mechanisms, and some of those reasons are so central to some nations that it is unrealistic to expect any significant steps toward the development of a regional human rights programme in this century.

Democracies do nonetheless thrive in parts of Asia-Pacific and many activists continue to pursue the goal of creating a structure that can help individuals in nations where individual freedoms are not protected. A group of academics at the Jawaharlal Nehru University in New Delhi is now compiling information on human rights conditions throughout Asia and publishing regular reports, and LAWASIA is also continuing to promote interest in human rights throughout Asia and the Pacific. These non-governmental organizations can do a great deal to increase awareness of human rights among the citizenry and to generate political pressure against governments that abuse these rights. On some occasions, one government may also try to bring pressure against another government, particularly when the second government is abusing the right of citizens with ethnic or religious ties to the first government. Examples include India's attempts to assist the Tamils in Sri Lanka and the ethnic Indians in Fiji, Pakistan's concern for the rights of Muslims in India, and China's attention to the treatment of Chinese communities in South-East Asia.

Although these ad hoc efforts are useful, they are not a satisfactory substitute for an ongoing regional body that can monitor human rights problems on a more systematic basis. The Pacific island region may be the subregion within Asian-Pacific where the efforts to establish such an organization may bear fruit first.

Most Pacific island nations have excellent constitutions and functioning democracies with independent judiciaries sensitive to the need to protect individual rights. Pacific islanders have worked together effectively on other issues, and a number of individuals throughout the region have shown strong interest in developing a human rights charter and commission. The issues of colonialism and the rights of indigenous peoples and other ethnic groups, as exemplified by the disputes in New Caledonia and Fiji, may provide an impetus to develop mechanisms that will permit regional input into festering local problems. Although this effort remains at the non-governmental level as of this writing, efforts to promote a Pacific Human Rights Charter and Commission will undoubtedly continue and can be expected ultimately to be successful.