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# Human Rights, Foreign Policy, and Religious Belief: An Asiaflacific Perspective

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## Human Rights, Foreign Policy, and Religious Belief: An Asia/Pacific Perspective

*Pamela A. Jefferies\**

### I. INTRODUCTION

While the New Zealand Human Rights Commission uses numerous definitions of “human rights,” I prefer the following:

Human rights are those conditions of life which allow us to realise our full potential and *to develop our human qualities of intelligence, conscience and spirituality*. Such an environment respects and protects the inherent dignity of each person and rejects stereotypical views of individuals. To deny individuals or groups their rights is to set the stage for political and social unrest. “Human rights” is not an abstract concept for lawyers and philosophers—human rights affect the daily lives of every man, woman and child in our society.<sup>1</sup>

Such a view of human rights recognizes the spirituality of man and its expression as fundamental to human rights. It further recognizes that denial of these rights leads to political and social unrest.

This Article provides a useful survey of the status of human rights in the Asia/Pacific region, with a particular emphasis on religious beliefs. Part II of this Article sets out to define the Asia/Pacific region. Part III examines the role of national human rights institutions and their umbrella body, the Asia/Pacific Forum of National Human Rights Institutions (“Forum”), and considers their responsibilities related to religion and religious belief. Part IV examines the foreign policy issues developing around religious beliefs in the region. Part V gives a brief overview of alternatives to membership in the Forum that, nevertheless, promote human rights. The Article concludes that if the Asia/Pacific region is to take center stage in the human rights arena it will require international cooperation.

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\* Chief Commissioner, New Zealand Human Rights Commission.

1. 1997 N.Z. HUMAN RIGHTS COMM’N ANN. REP. at 7 (emphasis added).

## II. THE ASIA/PACIFIC REGION

*A. Background*

The region loosely called Asia/Pacific is vast, covering a third of the world's surface and encompassing more than fifty percent of the world's population and trade.<sup>2</sup> It includes three of the world's four most populated sovereign states: India, the world's largest democracy; China, a Communist Party state; and Indonesia, a state going through a painful transition to democracy. The Forum encompasses much of the region.

The combined population of the countries represented by Forum member institutions is approximately 1.3 billion. If the populations of those countries currently working on the establishment of national human rights institutions were added, the Forum would represent some 1.6 billion people.

These 1.6 billion people live in widely divergent economic circumstances spanning the traditional developmental spectrum from "developing" to "industrialised". However, the overwhelming majority would be at the "developing" end of the spectrum and a large proportion would be struggling to meet basic needs for work, food, safe drinking water, clothing, housing, health, social security and education. For the much smaller number of those living at the "industrialised" end of the spectrum the proportion struggling to meet their basic living needs is lower. Nevertheless, even in industrialised countries a large number of people are concerned by major structural changes which threaten job security and impede access to universal health care, social security and higher education . . . .<sup>3</sup>

Asia/Pacific is referred to, in the exploits of adventurers and explorers of our history, as the "East", "New World", or "Spice Islands." It is the birthplace of many of the world's greatest religious leaders, prophets, and thinkers—Jesus Christ, Buddha, Confucius, and Mohammed. In the colonial era, European nations were eager to establish trade routes within the region, and with trade came missionaries to convert the "heathens" to Christianity. Indeed, all forms of Christian belief were introduced in this colonial era when Spain,

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2. See *The Fourth Annual Meeting, Manila, Philippines, 6–8 September 1999* (visited May 10, 2000) <[http://www.apf.hreoc.gov.au/about/meetings/al\\_3\\_5\\_4.html](http://www.apf.hreoc.gov.au/about/meetings/al_3_5_4.html)>.

3. *Id.*

France, Britain, Portugal, and Holland sought to bring their version of truth to these Asian and Pacific communities.

### *B. Defining the Region*

Three groups have sought to define, for their own purposes, the boundaries of the Asia/Pacific region. First, the United Nations defines the region as including Cyprus, Fiji, and most of the countries in between. However, the United Nations excludes some Middle Eastern countries, such as Israel, and Eastern Europe. This definition is used by the United Nations for the purposes of holding regional meetings of sovereign states to discuss human rights.

Next, the economic definition, designed by the Asian Pacific Economic Council (“APEC”), includes twenty-nine Pacific Rim, southern Asian, and eastern Asian economies from China to South America, including the United States of America and Canada.<sup>4</sup> It does not include the Sri Lanka, India, and Pakistan.<sup>5</sup>

Finally, while the Forum has no formal definition of the region’s boundaries, it has established a working guideline. In my experience as Regional Coordinator, I have found that the boundaries have simply been defined by the location of the national human rights institution members. However, the Forum has been expansive; it is actively involved in assisting the development of further national human rights institutions in a wide area, and the day is coming when it will have to arrive at a more precise definition. For working purposes, the region is informally defined as comprising an area from Mongolia sweeping down through Asia, including India, Sri Lanka, Bangladesh, Pakistan, and finishing in the Pacific Ocean with the Pacific Island states, currently represented by Fiji.

### *C. Regional Arrangements for Human Rights*

At annual Forum meetings, representatives of states in the region that are interested in establishing a national human rights institution are invited to attend and participate as observers. The Forum’s objective is to run meetings on an inclusive basis and assist in developing further national human rights institutions. To this end, interested

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4. See *Member Economies* (visited Aug. 26, 2000) <<http://www1.apecsec.org.sg/member/apecmemb.html>>.

5. See *id.*

governments have been welcomed as observers from outside the Asia/Pacific area, including the Middle Eastern states of Yemen, Jordan, and Iran.

Outside the Forum, a number of political subgroups in the region have already taken some interest in human rights. They include the Association of South East Asian Nations (“ASEAN”) and the South Asian Association for Regional Cooperation (“SAARC”).<sup>6</sup>

Despite the existence of groups such as the Forum, ASEAN, and SAARC, the Asia/Pacific region is the one area of the human rights world that currently has no regional arrangement regarding human rights. For instance, the European Union developed the 1950 European Convention on Human Rights, enforceable by the European Court of Human Rights in Strasbourg. Similar arrangements exist under the Organization of African Unity, and regional arrangements exist with respect to the North, South, and Central American states. There have been some attempts to enforce these rights in the Asia/Pacific region through inclusion of some of the principles in trade agreements (*e.g.*, the Multi-Lateral Agreement on Trade and Investment) and through donor aid agreements.

The World Conference on Human Rights, held in Vienna under the auspices of the United Nations in 1993, produced a concluding statement that included four points that have had a particular impact on the development of human rights in the Asia/Pacific region: first, the establishment of the position of High Commissioner for Human Rights;<sup>7</sup> second, the acknowledgement that regional arrangements in respect of human rights were to be encouraged;<sup>8</sup> third, the requirement of each nation state to produce a National Action Plan for Human Rights;<sup>9</sup> and finally, the recommendation that each state should establish or strengthen a national human rights institution in its country.<sup>10</sup>

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6. See SAARC, *Declaration of the Tenth SAARC Summit Colombo* (visited Apr. 11, 2000) <<http://www.south-asia.com/saarc/10thdel.htm>>.

7. See United Nations, *Vienna Declaration & Programme of Action (1993)*, art. 18 (visited Apr. 11, 2000) <[http://www.ifs.univie.ac.at/intlaw/konterm/vrkon\\_en/html/doku/vienna-d.htm](http://www.ifs.univie.ac.at/intlaw/konterm/vrkon_en/html/doku/vienna-d.htm)>.

8. See *id.* art. 37.

9. See *id.* art. 71.

10. See *id.* art. 36.

*D. The High Commissioner for Human Rights in Asia/Pacific*

The United Nations has been running an annual workshop that allows Asia/Pacific states to discuss regional arrangements regarding Human Rights since 1992. Unfortunately, the workshops have resulted in little or no progress. Thus, at the sixth regional workshop, in Teheran in 1998, Mary Robinson, the second High Commissioner for Human Rights,<sup>11</sup> attended personally and suggested a fresh approach to enhancing the human rights of those in urgent need of better human rights protection. She suggested a “four building block” approach in which each state would agree to, first, establish a National Action Plan for Human Rights; second, establish a National Plan for Human Rights Education; third, establish or strengthen a national human rights institution; and finally, focus on better delivery of economic, social, cultural, and developmental rights.

It is appropriate that Commissioner Robinson should shift the emphasis back to the states. Asia/Pacific governments have committed themselves to deliver numerous human rights to their citizens as part of the international human rights covenants and conventions.

## III. NATIONAL HUMAN RIGHTS INSTITUTIONS

*A. National Human Rights Institutions Generally*

The General Assembly and the Commission on Human Rights have repeatedly requested that states establish or, where they already exist, strengthen national institutions for the protection and promotion of human rights.

The role of a national human rights institution is, with a broad mandate from government, to promote and protect human rights. Key features and responsibilities of national human rights institutions are:

- independence from government;
- the ability to undertake independent investigations into breaches of human rights;
- to review existing legislation and ensure consistency with

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11. Ayolo Lasso of Peru was the first High Commissioner for Human Rights, from 1993–97.

national human rights law and international human rights standards;

- to undertake human rights education;
- to provide technical advice and conduct research; and
- establishment by constitution or statute.<sup>12</sup>

Resolution 48/134 of the 1993 General Assembly adopted the *Principles Relating to the Status of National Institutions* (the “Paris Principles”) in Paris.<sup>13</sup> These principles clarify the concept of a national institution and provide standards on the status and advisory role of national human rights commissions. In addition, the Paris Principles include guidelines on the composition of national institutions, the appointment of members, guarantees of independence and pluralism, and methods of operation.

### *B. The Role of National Human Rights Institutions*

The role of national human rights institutions in promoting freedom of religious belief derives from two sources: first, the United Nations international covenants and conventions, which set out international law, and second, domestic legislation that establishes each national human rights institution.

#### *1. United Nations international covenants and conventions*

Since its inception, the United Nations has strived to encourage states to promote and respect human rights and protect fundamental freedoms for all people, without distinction as to race, sex, language, or religion.<sup>14</sup> The U.N. Charter, however, contains no detailed guarantees for freedom of religion; it only provides general norms in prohibiting discrimination. A report to the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1959 stated:

[W]orld-wide interest in ensuring the right to freedom of thought, conscience and religion stems from the realisation that this right is of primary importance. In the past, its denial has led not only to untold misery, but also to persecutions directed against entire

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12. See G.A. Res. 48/134, U.N. GAOR, Supp. No. 49, U.N. Doc. A/48/49 (1993).

13. See G.A. Res. 48/134, Annex 1, U.N. Doc. A/48/49 (1993).

14. See U.N. CHARTER art. 1, para. 3.

groups of people . . . . [T]oday, notwithstanding changes in the climate of opinion, equality of treatment is not ensured for all religions and beliefs, or for their followers, in certain areas of the world.<sup>15</sup>

The Universal Declaration of Human Rights (“Universal Declaration”) is both a statement of agreed values and the progenitor of a number of treaties. Of these, the best known are the International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Cultural and Social Rights. Additionally, a number of others are designed to address the needs of specific groups, such as the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of Discrimination Against Women, and the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (“1981 Declaration”). However, the principles in these agreements remain “aspirational” until they are given domestic expression—they cannot otherwise be enforced. How this transfer is effected varies from country to country. In sum, the Universal Declaration has been incorporated constitutionally (either expressly or in spirit), while others—including New Zealand—do not have a constitution, and the protection of the relevant rights is effected by legislation such as Bills of Rights.

The ICCPR states that everyone has the right to freedom of thought, conscience, and religion and prohibits coercion that would impair one’s freedom to have or adopt a religion or belief of her choice. The ICCPR also provides for the prohibition by law of any advocacy of religious hatred and protects the right of minorities to practice their own religion. In those states that have signed the Optional Protocol, individuals may petition the Human Rights Committee if their religious freedom is impaired.

The 1981 Declaration was adopted and proclaimed by the General Assembly, by unanimous vote, in 1981 after twenty years in the drafting, which reflects the complexity and sensitivity of the issues involved.

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15. *Study of Discrimination in the Matter of Religious Rights and Practices* at v, U.N. Sales No. 60.XIV.2 (1960).



## *2. Asia/Pacific Forum of National Human Rights Institutions*

The Forum, a group of national human rights institutions, was formed in 1995. It arose from a challenge at the 1994 International Workshop of National Human Rights Institutions in Manila to find ways to increase cooperation between institutions in the region and assist states interested in establishing institutions. The first meeting was held in Darwin in 1995, and the fourth annual meeting recently took place in Manila. New Zealand is the regional coordinator, and the offices of the secretariat are located in Sydney, Australia. Member commissions are expected to exist within the provisions of the Paris Principles and the U.N. covenants and conventions and to seek accredited membership of the International Co-ordinating Committee of the National Human Rights Institutions (“NHRIs”). Four Forum members represent this group in the International Body. The Forum currently has seven member institutions: Australia, Fiji, India, Indonesia, New Zealand, Philippines, and Sri Lanka.<sup>16</sup> Further, Bangladesh, Mongolia, Nepal, Papua New Guinea, and Thailand are all currently considering establishing national human rights institutions.<sup>17</sup>

At the 1998 meeting, Forum members agreed to establish an advisory group, the Advisory Council of Jurists, to assist the Forum and individual states by advising on the interpretation and implementation of international human rights law or other human rights matters. Each existing member institution has now nominated one person to the Council, except Fiji, a new member, which has yet to make a recommendation. In a region without a human rights court, such a body, together with the Forum project to develop a region-wide database of relevant jurisprudence, will greatly assist existing and new commission’s in their work.<sup>18</sup>

## *3. Individual national human rights institutions in the Asia/Pacific region and their responsibilities regarding religious freedom and belief*

To address the question of how national human rights institutions handle issues of religious freedom in the Asia/Pacific region, it

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16. See Asia-Pacific Forum, *Forum Members* (visited Aug. 26, 2000) <<http://www.apf.hreoc.gov.au/members/index.html>>.

17. See Asia-Pacific Forum, *About the Forum: Membership* (visited Aug. 26, 2000) <<http://www.apf.hreoc.gov.au/about/membership/index.html>>.

18. See Asia-Pacific Forum, *Third Annual Meeting, Jakarta, Indonesia, September 1998* (visited Aug. 26, 2000) <[http://www.apf.hreoc.gov.au/about/meetings/a1\\_3\\_1.html](http://www.apf.hreoc.gov.au/about/meetings/a1_3_1.html)>.

is necessary to understand something of the domestic legal structures that underpin each national human rights institution.

*a. Indonesia.* The National Commission on Human Rights was established by presidential decree in 1993.<sup>19</sup> The preamble to the decree notes that the Indonesian nation respects the Universal Declaration.<sup>20</sup> Article 4 of the decree declares the objective to “help develop a national condition which conducive [sic] to the implementation of human rights in conformity with the . . . United nations [sic] Charter and [the Universal Declaration].”<sup>21</sup> New human rights legislation was passed by the Indonesian Parliament on September 8, 1999, and was signed into law by the President at the end of that month. Article 22 protects religious freedom. Unfortunately, no translation of the new legislation is yet available for review.

The 1998–2003 Indonesian National Plan of Action on Human Rights states that it is based on “four main pillars,” the first of which is “preparation for ratification of international human rights instruments.” The ratification of the ICCPR (referring to freedom of religion) is planned to occur in the fifth year of the Indonesian plan.

*b. Fiji.* The 1997 Fijian Constitution Amendment Act provides for the establishment of the Human Rights Commission and also enacts the Fiji Bill of Rights.<sup>22</sup> The Bill of Rights protects freedom of conscience, religion, and belief and also prohibits unfair discrimination on various grounds, including opinions and beliefs “except to the extent that those opinions or beliefs involve harm to others or the diminution of the rights or freedoms of others.”<sup>23</sup>

The Human Rights Commission’s functions are defined in the Constitution and in the Human Rights Commission Act of 1998. These functions include educating the public, making recommendations to the government on matters affecting compliance with human rights, promoting and protecting human rights of all persons in

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19. See Komnas Ham, *Appendix: 1* (visited Aug. 26, 2000) <<http://www.komnas.go.id/english/report/index.html>>.

20. See *id.*

21. See *id.*

22. See Asia-Pacific Forum, *Fiji Human Rights Commission* (visited Aug. 26, 2000) <<http://www.apf.hreoc.gov.au/members/index.html#Fiji>>.

23. FIJI CONST. ch. IV, § 38(2).

the Fiji Islands, resolving complaints by conciliation, and referring unresolved complaints to the courts.<sup>24</sup>

The Human Rights Commission may take complaints concerning contraventions of human rights (including freedom of conscience, religion, and belief) and complaints of unfair discrimination on a prohibited ground in an area covered by the Act, including employment, provision of accommodation, goods and services, education, and housing.<sup>25</sup>

*c. Australia.* Australia's federal human rights body, the Human Rights and Equal Opportunities Commission ("HREOC"), was established by the 1986 Human Rights and Equal Opportunities Act ("HREOA").

"Human rights" under HREOA are defined as the rights and freedoms contained in various international instruments, including the ICCPR and the U.N. Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.<sup>26</sup> HREOA does not prohibit discrimination, although discrimination on the basis of religious belief in areas of public life is prohibited in most Australian states.

HREOC's functions include promoting the understanding, acceptance, and public discussion of human rights; inquiring into Commonwealth acts or practices that may be inconsistent with human rights; advising on laws or actions needed for Australia to comply with its international treaties; and intervening, when appropriate, in court proceedings.<sup>27</sup>

*d. Philippines.* The 1987 Philippine Constitution seeks to protect and promote human rights mainly through directive principles, the enumeration and description of fundamental rights and guarantees, and the creation of institutions such as the Commission on Human Rights. The Commission on Human Rights came into existence in May 1987 by a presidential order that declared the legitimacy of the Commission's constitutional creation. Article 3, section 5 of the

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24. See Asia-Pacific Forum, *Fiji Human Rights Commission* (visited Aug. 26, 2000) <<http://www.apf.hreoc.gov.au/members/index.html#Fiji>>.

25. See *id.*

26. See Asia-Pacific Forum, *The Human Rights and Equal Opportunity Commission of Australia* (visited Aug. 26, 2000) <<http://www.apf.hreoc.gov.au/members/index.html#Australia>>.

27. See Human Rights and Equal Opportunity Commission, *Human Rights* (visited Aug. 26, 2000) <[http://www.hreoc.gov.au/human\\_rights/index.html](http://www.hreoc.gov.au/human_rights/index.html)>.

Constitution protects the right to the free establishment and exercise and enjoyment of religion without discrimination.<sup>28</sup>

Article 13 of the Constitution provides the legal mandate for the establishment of the Commission on Human Rights to:

- Investigate, on its own, or on complaint by any party, all forms of human rights violations involving civil and political rights;
- Provide appropriate legal measures and legal aid services to the underprivileged, whose human rights have been violated or need protection;
- Establish a continuing program of research, education, and information to enhance respect for the primacy of human rights;
- Recommend to Congress effective measures to protect human rights and provide for compensation to victims of violations of human rights or their families.<sup>29</sup>

*e. India.* The Constitution of India protects the rights of people from discrimination on the basis of religion, particularly the rights of access to public places,<sup>30</sup> access to employment,<sup>31</sup> and admission to educational institutions.<sup>32</sup> Furthermore,

- Article 30(1) provides that “[a]ll minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice”;
- Article 25(1) provides that, subject to certain limits, “all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion”;
- Article 26 provides religious denominations with the freedom to manage religious affairs, maintain institutions, and acquire and administer property.

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28. See PHILIPPINES CONST. art. 3(5).

29. See *id.* art. 13.

30. See INDIA CONST. art. XV(1)(a) (prohibiting discrimination based on religion in relation to access to shops, restaurants, hotels, and places of public entertainment); see also *id.* art. XV(b) (prohibiting discrimination based on religion in relation to the use of wells, tanks, bathing ghats, roads, and places of public resort maintained wholly or partially out of state funds or dedicated to use of the general public).

31. See *id.* art. 16(1) (stating that no person shall be discriminated against based on religion in respect of any employment or appointment to any office of the state).

32. See *id.* art. 29(2) (stating that no citizen shall be denied admission to any educational institution maintained by the state or receiving aid out of state funds on the grounds of religion).

Rights and guarantees under the Indian Constitution can be enforced under the 1993 Protection of Human Rights Act. The Act provides for the establishment of the National Human Rights Commission of India and gives the Commission the power to investigate on its own motion or upon a complaint by an individual violations of human rights and negligence in the prevention of such a violation.<sup>33</sup> The Act also gives the Commission the power to review any safeguards provided for under the Constitution and any law in force for the protection of human rights.<sup>34</sup>

*f. Sri Lanka.* The Constitution of Sri Lanka provides for protection from religious discrimination. In particular,

- Article 7, relating specifically to Buddhism, provides that “the Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the state to protect and foster the Buddha Sasana, while guaranteeing to all religions the rights granted by Articles 15(1) and 15(3)”;<sup>35</sup>
- Article 11 provides that citizens shall neither be discriminated against on the grounds of religion nor denied access to shops, public restaurants, hotels, places of public entertainment, and places of public worship of his own religion;<sup>36</sup>
- Article 15 provides that every person is entitled to freedom of thought, conscience, and religion, including the freedom to have or to adopt a religion or belief of his choice.<sup>37</sup> Furthermore, every person is entitled to the freedom to manifest his religion or belief in worship, observance, practice, and teaching.<sup>38</sup>

The 1996 Human Rights Commission of Sri Lanka Act provides the mandate for the operation of Sri Lanka’s Human Rights Commission, which enforces the constitutional guarantees. Section 10 of the Act provides that the Commission’s functions are to:

- inquire into and investigate complaints regarding compliance with the provisions of the Constitution relating to fundamen-

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33. See The Protection of Human Rights Act, 1993 (visited Sept. 22, 2000) <<http://nhrc.nic.in/vsnhrc/hract1993.htm>>.

34. See *id.* art. 12(d).

35. SRI LANKA CONST. art. 7.

36. See *id.* art. 1.

37. See *id.* art. 15(1).

38. See *id.*

tal rights and to promote respect for and observance of fundamental rights;

- provide for the resolution of infringements of rights by conciliation and mediation;
- advise and make recommendations to the government in forming legislation to ensure that national laws and administrative practices are in accordance with international human rights norms and standards;
- make recommendations to the government on the need to subscribe or accede to treaties and other international instruments on human rights;
- promote awareness of and provide education in relation to human rights.

*g. New Zealand.* The long title of the 1977 Human Rights Commission Act was “[an act] to establish the Human Rights Commission and to promote the advancement of human rights in New Zealand in general accordance with the United Nations International Covenants on Human Rights.”

Part 2 of the Act prohibited unlawful discrimination in certain areas of public life on just four grounds: sex, marital status, religion, or ethical belief (including religious beliefs as well as a lack of religious belief).

The 1990 New Zealand Bill of Rights Act affirmed New Zealand’s commitment to human rights and to the ICCPR. Section 15 provides for the right to manifest a person’s religion and belief, while section 19 states that everyone has the right to freedom from discrimination on prohibited grounds, including religious or ethical belief.

The 1977 Human Rights Commission Act and the 1971 Race Relations Act were then consolidated and amended into the 1993 Human Rights Act, into which further prohibited grounds of discrimination were introduced. Section 21 of the 1993 Human Rights Act outlines the prohibited grounds of discrimination, including religious and ethical beliefs.

Part 3 of the 1993 Human Rights Act provides for the functions of conciliating and investigating complaints of unlawful discrimination on prohibited grounds, including religious or ethical belief, in certain areas of public life: employment, partnerships, access to places and facilities, provision of goods and services, education,

accommodation, membership of professional and trade associations, and qualifying bodies.

Under part 1 of the 1993 Human Rights Act, the Commission has wide powers and functions, including:

- promoting and encouraging respect for and observance of human rights;
- consulting and cooperating with other bodies concerned with human rights;
- inquiring generally into any practice, law, or procedure if it appears to the Commission that human rights may be infringed; and
- reporting to the Prime Minister on any matter affecting human rights.

#### IV. SOME CURRENT FOREIGN POLICY ISSUES WITH RELIGIOUS OVERTONES

##### *A. Sovereignty*

Some Asian nations have consistently argued that domestic human rights concern only sovereign states and the international community should play no role in correcting even routine domestic abuse of human rights. However, the clearly stated views of the Office of the High Commissioner for Human Rights—celebrating the fiftieth anniversary of the U.N. Charter in 1997 and the fiftieth anniversary of the Universal Declaration in 1998—is that ways must be found to better deliver human rights within states. Pressure and persuasion from peers externally will not suffice, and recognition of this fact has led to adoption of the High Commissioner for Human Rights’ “four building block” approach in the Asia/Pacific region.<sup>39</sup> However, as recently as September 22, 1999, the Foreign Minister of China, Tang Jiaxuan, had this to say in an address to the U.N. General Assembly:

“Such arguments as ‘human rights taking precedence over sovereignty’ and ‘humanitarian intervention’ seem to be in vogue these days.” . . . “The issue of human rights is, in essence, an internal

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39. See discussion *supra* Part II.D.

affair of a country, and should be addressed mainly by the Government of that country through its own efforts.”<sup>40</sup>

China, with its right of veto on the Security Council, is in a position to exert significant power when issues such as the current East Timor crisis (which has a religious dimension<sup>41</sup>) flare up and require urgent decisions by the United Nations. China’s attitude contrasts sharply with the Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights in 1993—a declaration that was agreed to by representatives of 171 states, including China—which states, “Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments.”<sup>42</sup>

It can be argued that intervention by a domestic national human rights institution to prevent further human rights abuses is preferable to the slow, painful erosion of economic, social, and cultural rights that arise from impositions of economic sanctions, such as those applied to Iran and, somewhat less effectively, to Myanmar. The day-to-day conciliation and resolution of human rights conflicts by national human rights institutions within a state before the development of civil war and internal conflict can provide a significant contribution to democracy, peace, and stability in the region.

#### *B. Asian/Western Values and Cultural Particularities*

Asian values and the so-called “Eastern Personality” have attracted considerable discussion in the West. Largely the concepts seem to be dismissed by academics from Asia.<sup>43</sup> The debate seems to center on some of the developing economies in Asia that are accused of human rights abuses and their accusers. The question “tells you more about the singer than the song.” One recent deputy Prime Minister in Asia contends: “[I]t is altogether shameful . . . to cite Asian values as an excuse for autocratic practices and denial of basic rights and civil liberties.”<sup>44</sup> He adds, “To say that freedom is Western

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40. *Human Rights an ‘Internal Affair’*, N.Z. HERALD, Sept. 24, 1999 (visited Apr. 10, 2000) <<http://www.nzherald.co.nz/storydisplay.cfm?storyID=14650>>.

41. See discussion *supra* Part IV.D.

42. *Vienna Declaration and Programme of Action (1993)* (visited Apr. 11, 2000) <[http://www.ifs.univie.ac.at/intlaw/konterm/vrkon\\_en/html/doku/vienna-d.htm](http://www.ifs.univie.ac.at/intlaw/konterm/vrkon_en/html/doku/vienna-d.htm)>.

43. Ariel Heryanto, New Zealand-Asia Policy Consultation, New Zealand Asia Institute (Aug. 1997).

44. Datuk Seri Anwar Ibrahim, *Online Sites Offer Sense of the Vehemence of Malaysia’s*



or un-Asian is to offend our own traditions . . . as well as our forefathers who gave their lives in a struggle against tyranny and injustice.”<sup>45</sup> The High Commissioner for Human Rights has observed that political leaders, the elite, talk to her about Asian values while their people talk to her about gaining their basic human rights.

In frustration, I have asked several Asian politicians which of the universal human rights they did not wish to deliver to their constituents. Interestingly, I was told that they actually wanted to add to the Universal Declaration. Yet, if they simply want to add issues related to the Right to Development or issues from Agenda 21 regarding the preservation and protection of the environment, I fail to grasp why they cannot implement the rights already enumerated in the Universal Declaration.

Recently, the concept seems to be largely driven by ASEAN leaders. The Forum is working on a handbook for the Asia/Pacific region on human rights values. It will draw on Judeo-Greek and Christian West-European cultural background as well as the great cultural values of Asia, derived from a mixture of Hinduism, Buddhism, Confucian, Shintoism, Islam, and Christianity.

A much more volatile version of Asian values seems to have been appropriated recently under the titles of “cultural particularities” or “cultural relativity.” These terms are popular with indigenous populations, who view them as providing them with special status or entitlements to human rights. The argument is that human rights as expressed in the Bill of Rights are expressed as individual rights, while other societies—particularly indigenous groups living in tribal groupings—lean more towards collective rights. Therefore, the cultural relativity perspective advocates subsuming global standards to the traditional norms in collective groups.

The risk of carrying this argument to the extreme is the likely detriment to the human rights of some within the identified group, particularly women. The use of cultural relativity, when related to particular religious or legal practices that suppress women, is to keep them in a less than equal state. Rights compromised by relativity can be used by some to excuse the excesses of the Taleban in Afghanistan, creating a travesty of women’s human rights.

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*Political Dispute* (visited Aug. 28, 2000) <<http://www.freedomforum.org/international/1998/9/16anwar.asp>>.

45. *Id.*

The Universal Declaration is clearly a product of its time, and, dated in its sexist language, adding to it may be a need of the next millennium. To reduce those rights either in the name of Asian values or cultural relativity will not meet the needs of the people in the streets.

### *C. Proselytising*

The daily newspaper in Jakarta, Kompas, held a public opinion poll from August 6 to August 9, 1999. It covered a sample of telephone owners in the big cities of Indonesia—Jakarta, Yogyakarta, Surabaya, Denpasar, Medan, Banda Aceh, Pontianak, Ujungpandang, and Manado. The question was, “What are the most important issues the nation faces?” The answers were:

- 40.1%—Religious conflict;
- 27%—Interethnic conflict;
- 8.8%—Conflict between political parties;
- 7.7%—Conflict between the poor and the rich;
- 5.9%—Inter-regional conflict;
- 3.6%—No problem;
- 6.9%—Don’t know.

The commentators noted that foreign and local Christian evangelists continually trying to convert Muslims complicate matters. Local people who feel humiliated and feel their identity threatened react, sometimes peacefully, but increasingly violently. Two examples from Indonesia are note-worthy. In Aceh, a foreign evangelist and his local partners were expelled by the police for disturbing the peace because they had distributed Bibles and other literature to passers-by in the streets. In West Sumatra, Bibles were printed in the local language and disguised to look like the Koran and were distributed to an unsuspecting public, causing public protests. An even more serious incident occurred in India recently, resulting in the death of an Australian missionary in a Hindu area of North India.

Both of these governments have established national human rights institutions and have worked with them to establish and implement programs to promote a trilogy of inter-religious tolerance, including tolerance within one’s own religious group, tolerance between religious groups, and tolerance between religious groups and the government. Individual and voluntary conversion from one’s own faith to another is widely respected as one of the basic human rights. However, can it be argued that well-organized, well-funded,

and involuntary programs of conversion of people of other faiths can be included in the right of freedom of religious belief?

*D. Borders Defined by Religion*

More than one border conflict is defined by conflicting religions on each side of the border or dispute. East Timor was a colony of Portugal and is a Roman Catholic country. Bishop Belo and Jose Ramos Horta, joint Nobel Peace Prizewinners for their efforts, have fought for its independence. They and their supporters are Roman Catholics. Indonesia, including West Timor, is a largely Muslim country.<sup>46</sup> In Sri Lanka the conflict is between Buddhist and Hindu. On the Kashmir border, the conflict is between Hindu India and Muslim Pakistan. Since all of these belief systems express belief in fundamental values, many of which are represented in the Universal Declaration, and, since these states, with the exception of Pakistan, have established national human rights institutions, there must be some expectation of resolution of these tensions over time.

*E. Globalisation and Tribalism*

It is notable that as the world becomes more global and is defined by CNN, the Internet, mobile phones, and McDonald's, there is resurgence in tribalism or states within states. In some states it is represented by a demand by indigenous populations for their rights particularly associated with land, *e.g.*, Aboriginal tribes in Australia, Maori iwi in New Zealand, Karen people in Thailand/Myanmar. In others there is a concern to protect traditional group rights from being trampled on in the name of progress, *e.g.*, Indonesia, Philippines, and India. Borders defined by colonial powers are unlikely to represent traditional groupings, which in some cases span several nation states. In some groups, there is also a reclaiming of traditional spiritual beliefs and practices such as ritual healing and traditional medicines. The Internet, while allowing mass communication, also allows the development of the smallest group into an effective lobby against multinational companies, which are presumed to oppress their rights, thus adding to the demands of small groupings that they achieve political and religious autonomy in some form of derogation of state power.

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46. Bali is a Hindu part of Indonesia.

## V. AN ALTERNATIVE TO THE FORUM

There is one national human rights institution that attends meetings of the Asia/Pacific Forum as an observer—the Islamic Human Rights Commission. It is an observer, not a member, because it does not meet the test of the Paris Principles. It is not a pluralistic organization because it concerns itself only with human rights of the Islamic population. A human rights commission is under development in Malaysia. The Malaysian government has recently passed legislation establishing it, but commissioners have yet to be appointed. The legislation has been reviewed by the Office of the High Commissioner for Human Rights. As written at present, it seems unlikely to meet the requirements of the Paris Principles. The Indonesian Human Rights Commission was established by President Suharto by way of a presidential decree. This decree is being replaced by legislation recently passed by the Indonesian Parliament. Komnas Ham, the Indonesian commission, has yet to apply to the International Coordinating Committee of the NHRIs to become a member. It is waiting to apply until the passage of the new legislation, which will clarify its mandate.

When read together, these three institutions have the potential to form an “observer” block of three national human rights institutions that do not conform to the Paris Principles and are established in Asian countries that are substantially Islamic states. Observer status may not satisfy them or their governments, and there is a risk of an alternative grouping of Islamic commissions developing. There is no reason to believe that this would develop into Asia/Pacific Islamic fundamentalism, but it would be hard to conclude that such a grouping would contribute to the advancement of the human rights of women and girls.

## VI. CONCLUSION

Each word in this Article could be considered as a stone that, when lifted up, reveals a need for a sixty-thousand word thesis. The Article will have achieved its purpose if it has revealed new avenues for further research. If the Asia/Pacific region—home of three of the world’s largest nation states—is to take center stage in the human rights field in the next millennium, it will have to follow the example of the Forum in establishing national human rights institutions. As the High Commissioner for Human Rights, Mary Robinson, notes

on the home page of her office website: “Today’s human rights violations are the causes of tomorrow’s conflicts.”