

CHAPTER TWO

THE CURRENT DEBATE ON THE INTERPRETATION OF HUMAN RIGHTS IN THE REGION

Introduction

2.1 This Chapter examines the background to the ongoing regional debate on the interpretation of human rights in this region. Accordingly, the main headings under which the topic is discussed comprise the international framework which promulgates universal human rights principles; the momentum for reviewing those principles and their application; the nature of the regional debate on interpretation of human rights; Australia's contribution to the debate; and possible strategies for enhancing that contribution.

2.2 The principle that human rights are universal and indivisible was confirmed by the international community at the World Conference on Human Rights in Vienna in June 1993 when the Vienna Declaration was passed by consensus of all the participating states. Notwithstanding this consensus, there was an emerging focus even then on a regional interpretation of human rights principles, which strove to recognise cultural and historical experiences in applying international human rights standards. An illustration of this tension is to be found in the earlier Bangkok Declaration on Human Rights, which was adopted on 2 April 1993 by the governments of forty Asian states at the conclusion of the UN regional meeting of the World Conference on Human Rights.

2.3 The Bangkok Declaration affirmed the commitment of Asian governments to the Universal Declaration of Human Rights¹ and encouraged further ratification of international human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). It also reaffirmed the interdependence and indivisibility of political, civil, economic, social and cultural rights as well as the right to development as a 'universal and inalienable right and an integral part of fundamental human rights'. However, the Declaration also recognised that economic and social progress facilitated the growth of democracy and the promotion and protection of human rights. Further, it upheld the principles of national sovereignty and 'non-interference in the internal affairs of states' and urged the promotion of human rights by cooperation and consensus, not confrontation and conditionality.²

2.4 An NGO conference representing 110 non-government organisations from the Asia Pacific region met in Bangkok shortly before the UN regional meeting for Asia. The declaration produced by this meeting showed a marked divergence from the one issued later by the governments. The NGO declaration took a stronger line on the issue of universality

1 The Universal Declaration, together with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, constitute what is known as the International Bill of Rights. The Universal Declaration of Human Rights is reproduced at Appendix 6.

2 See Appendix 5 of DFAT/AusAID Submission, pp. 909-910, especially paragraphs 4 and 5.

than did governments and did not regard the advocacy of human rights as encroaching on national sovereignty.³

Human rights in context: the Committee's 1994 report

2.5 The Committee's 1994 report on human rights recognised inherent dangers in emphasising regional interpretations of human rights principles and practice at the expense of established international standards. In particular, the report concluded that 'regional cultural and historical experiences [would] not produce merely different routes to the same end, but different ends ... [and] cultural difference [would] be an excuse for authoritarian regimes to dispense with human rights altogether'. Further, the report concluded that, if inadequate attention were to be given to economic, social and cultural rights, redress did not lie in the diminution of the attention states should pay to civil and political rights, since they are complementary categories of rights. The report also concluded that 'civil and political rights, as applied in the West, are never absolute, but qualified by the impact they have on the rights of others'.⁴

2.6 In 1997, Justice Michael Kirby AC, CMG wrote about the context in which human rights principles have developed, including the notion of 'generations' of human rights. In discussing the need for the UN and other human rights bodies to adapt to a world influenced by nations with traditions other than Western values, Justice Kirby wrote:

Given that the current understanding of human rights in Western countries is a product of centuries of social and legal development, it should scarcely be a matter of surprise that other societies with different cultural, legal, religious, philosophical, epistemological and political experiences should sometimes see human rights issues in ways different from the West and assert different priorities.⁵

'Asian values'

2.7 In recent years, debate on the nature and importance of human rights has been influenced strongly by criticisms from several regional leaders of what they perceive as imposition of 'Western' concepts of human rights and hence interference in the internal affairs of their states. As the Department of Foreign Affairs and Trade indicated:

Proponents of specifically "Asian values" argue either that, in developing economies, economic and social rights are more important than political and civil rights; or that a "Western preoccupation" with (individual) civil and political rights threatens to undermine the social cohesion of a more communitarian tradition. In addition, they argue

3 'Bangkok NGO Declaration on Human Rights', 27 March 1993; see Appendix 6 of DFAT/AusAID, Submission, pp. 911-928.

4 Joint Standing Committee on Foreign Affairs, Defence and Trade, *A Review of Australia's Efforts to Promote and Protect Human Rights*, November 1994, p. 6.

5 'Human Rights: An Agenda for the Future', in *Rethinking Human Rights*, B Galligan and C Sampford, eds, The Federation Press, 1997, p. 13.

that cultural relativism should determine the treatment of individuals in any given society.⁶

2.8 The submission from Professor Joseph Camilleri of La Trobe University provided a succinct discussion of the development of 'Asian vs Western' human rights discourse, and argued that the differences between so-called Asian and Western perceptions of human rights may not be as sharply drawn as many Asian governments claim. He also reminded the Committee that 'the debate about human rights is not simply a contest about ideas or principles, it is often a contest for power'.⁷ Acknowledging the significant cultural differences between Asia and the West and the inevitable impact on the theory and practice of human rights, Professor Camilleri concluded that it is not at all obvious that such differences as do exist are at odds with universalist conceptions of human rights:

In a recent study of four of Asia's most influential religious and ethical systems (Hinduism, Buddhism, Confucianism and Islam), I concluded that human rights discourse is not as foreign to these traditions as is often supposed In each case personal and social relations, it is true, normally derive their meaning and content from notions of obligation and social harmony. Yet underpinning these religious or moral principles is a much deeper sense of the dignity of human life, a commitment to human fulfilment, and a concern for standards of "rightness" in human conduct. Common to all traditions is the notion of humane and legitimate governance, although the various formulations of the criteria of legitimacy indicate differences of emphasis, if not substance.⁸

2.9 The 'Asian values' debate was also discussed in a submission from Mr Akio Kawamura, a post-graduate researcher at the Asia-Pacific Human Rights Information Center in Osaka. Mr Kawamura concluded that the 'Asian' perspective tends to be defensive in character and to defend authoritarian rule, rather than to present a new set of enduring values. Similarly, he argued that the changing socio-political circumstances facing regional leaders and communities have significant consequences for traditional 'Asian' cultures:

All the states claiming the "Asian" perspective are in a process of very rapid social transformation. The socio-political context which enables [a] government to exploit the "Asian" perspective claim itself is changing. In fact the very leaders who use the "Asian perspective" argument are the prime movers for this change by leading their countries into the process of industrialisation and modernisation. The sort of "Asian" traditional culture the leaders try to depend on is more in the nature of political culture rather than culture as a way of life, and therefore arguably more susceptible to changes in political and social conditions.⁹

6 DFAT/AusAID, Submission, p. 814.

7 Camilleri, Submission, p. 294.

8 *ibid*, p. 300. See also Professor Tay, 'A Policy for Human Rights in the Asia Pacific', in *Rethinking Human Rights*, *op. cit.*, pp. 90-92.

9 Asia-Pacific Human Rights Information Center, Submission, p. 409. See also Human Rights in China, Hong Kong, Submission, p. 202.

2.10 In evidence, Michael Curtotti from the Australian Forum of Human Rights Organisations (AFHRO) echoed the views of many human rights organisations in discussing the relationship between cultural differences and the regional debate on interpretation of human rights. He supported greater use in the debate of other philosophical sources supporting human rights than purely Western ones:

... although cultural differences certainly exist and there is a great variety of cultures around the world, there is no necessary implication from that that there cannot be universal core values which are shared by all societies and which find expression in the universal declaration of human rights.¹⁰

2.11 Submissions from several sources including the Department of Foreign Affairs and Trade (DFAT) and the Australian Council for Overseas Aid (ACFOA) drew attention to the absence of consensus in the region on a comprehensive definition of 'Asian values'. This is not surprising, given the diversity of political ideologies, cultures and histories within the region. As Michael Freeman has written:

The debate about "Asian values" is dangerously confused. There may be differences between "Asian" and "Western" values, but both Asia and the West are characterised by a great diversity of values among political elites, majority and minority cultural groups, and individuals.¹¹

2.12 These views would appear to have been given credence even in states such as Malaysia, whose Prime Minister is one of the strongest advocates of 'Asian values'. Deputy Prime Minister Anwar Ibrahim as long ago as December 1994 warned against citing 'Asian values' as an excuse for autocratic practices and denial of basic human rights/civil liberties.¹² Similarly, President Kim Dae Jung of the Republic of Korea stated categorically in 1996 that he found arguments advocating respect for cultural differences in order to justify authoritarian rule in Asian states offensive in the extreme.¹³

2.13 In similar vein, the Indonesian Foreign Minister Mr Ali Alatas, referring to the inter-relationship between various human rights at the Vienna Conference, stated that individual rights and the rights of the state have the same value, acknowledging that it is 'now generally accepted that all categories of human rights ... are interrelated and indivisible'. He further stated that 'implementation of human rights implies the existence of a balanced relationship between individual human rights and the obligations of individuals toward their

10 Australian Forum of Human Rights Organisations, Transcript, p. 125.

11 Michael Freeman, 'Human rights, democracy and "Asian values"', in *The Pacific Review*, Vol. 9 No. 3, 1996, p. 365.

12 Keynote address to the Asian Press Forum in Hong Kong on 2 December 1994, cited by the Department of Foreign Affairs and Trade, Submission, p. 814 and by Diplomacy Training Program, Submission, pp. 240-241.

13 See, for example, the speech given by President Kim on receiving an honorary doctorate from the University of Sydney, reported in *The Australian*, 3 September 1996, p. 2.

community'.¹⁴ Views such as these have balanced the pronouncements of leaders who promote strongly the cause of cultural relativism. As AFHRO stated:

While there can be no blanket rejection of the validity of an argument that asks for recognition of cultural difference, the aim of such an argument is often to remove the impact of international human rights standards on the unfettered power of authoritarian governments.¹⁵

2.14 In a discussion paper written in 1996, Dr Sarah Pritchard argued for greater recognition of contextual diversity and cultural specificity in the international practice of human rights. At the same time, she took issue with the suggestion that respect for context and culture must lead to a rejection of universally applicable human rights norms. According to Dr Pritchard, most of the disagreement appeared to be about implementation of human rights rather than the norms themselves:

Human rights judgments require skill in evaluating how, in a particular instance, historical conjunctures and cultural and religious traditions produce a particular conception of right and wrong. In turn, such judgments might assist the development of effective, context-specific strategies to enhance the protection of human rights.¹⁶

2.15 In Professor Camilleri's view, what makes a universal human rights discourse viable and productive are the differences as much as the commonalities. The major religious and ethical traditions of Asia share a good deal in common with the Judeo-Christian tradition and its modern secular offshoots, although there are important differences. According to Professor Camilleri, Asian perspectives provide the following contribution to the debate:

- a richer and more varied conception of political community;
- a more effective balance between rights and obligations;
- a clearer appreciation of the relationship between social and economic rights on the one hand, and civil and political rights on the other;
- a strong sense that no culture or civilisation has a monopoly on the formulation of human rights; and
- a readiness to explore a consensual approach to the negotiation of an international human rights regime.¹⁷

2.16 Professor Camilleri reminded the Committee that discussion of universal human rights standards, which have been developed primarily in the West over the last 200 years, cannot be meaningful until there is far greater knowledge of the traditional Asian religions and philosophies such as Confucianism, Buddhism, Hinduism, Taoism and Islam:

14 HE Mr Ali Alatas, Minister for Foreign Affairs and leader of the Indonesian delegation to the World Conference on Human Rights, Vienna, 14 June 1993, cited by Kawamura, Submission, p. 405.

15 Australian Forum of Human Rights Organisations, Transcript, p. 127.

16 Dr Sarah Pritchard, Exhibit 25, *'Asian Values' and Human Rights*, May 1996, p. 19.

17 Camilleri, Submission, p. 304.

Cultural difference and universality merge when human rights discourse is understood as a dynamic process of continuous dialogue, which seeks to identify and cultivate the universal within each culture.¹⁸

The 'Western' approach

2.17 Among others, ACFOA's submission to the inquiry provided an informative commentary on East-West perspectives in the interpretation of human rights. The submission pointed out that critics of Dr Mahathir's arguments (and Lee Kuan Yew's before him) have been less than convinced by his demonising of the West, his simplistic reversal of the Asian cultural stereotype and his failure to acknowledge that libertarianism is a live debate in Western societies too.¹⁹ ACFOA concluded that what is needed is more dialogue between East and West in non-political forums, so that differences can be discussed in an open, constructive way with a view to finding a better balance and a new consensus.²⁰

2.18 A common criticism of the so-called Western approach to human rights relates to perceptions in Asia of Western arrogance and hypocrisy in seeking to impose an 'alien' human rights agenda on the rest of the world. Professor Camilleri noted that Western states have their own unresolved problems and are not always consistent in their application of human rights principles:

Where important geopolitical interests are at stake, the foreign policy of the United States and other Western governments has often shown scant regard for human rights considerations. Overt and covert forms of military intervention, including the overthrow of democratically elected governments, and extensive economic, military and diplomatic support for dictatorships and other governments with appalling human rights records offer striking evidence of double standards. Australia cannot regard itself entirely blameless in this regard.²¹

2.19 Nor are the approaches of Asian governments to human rights any more consistent than those of Western governments, as Dr Pritchard has observed:

In Asia, as elsewhere, a constant movement in human rights policy derives from pressures for change from within and without societies. Perceptions of human rights are transient and differ from government to government, as well as within governments. It would be surprising if there were one perspective [throughout Asia], since neither Asian culture nor Asian realities are homogeneous throughout the continent.²²

2.20 In his submission, Mr Bill Barker, a former DFAT officer, argued that theoretical debates about Asian versus Western values in the field of human rights can be not only unproductive but can distract participants from making practical efforts to advance dialogue:

18 *ibid.*, p. 303.

19 See ACFOA, Submission, p. 733, which cites the works of Edward Said and Douglas Lummis.

20 *ibid.*, pp. 738-739.

21 Camilleri, Submission, p. 302.

22 Diplomacy Training Program, Submission, p. 240.

... it is not very productive if the debate degenerates into a squabble over the relationship between culture and human rights. Dialogue with our regional neighbours should be allowed to focus on the many important issues within the internationally-agreed agenda and should be bolstered by a willingness on the part of Australia to put resources into human rights promotion.²³

Proposals for review of the Universal Declaration of Human Rights

2.21 The Universal Declaration is regarded as the cornerstone of the international human rights system. From it grew the ICCPR and other international instruments on protection of human rights in specific areas such as freedom from torture and racial discrimination and promotion and protection of the rights of women.

2.22 In its second appearance before the Committee, DFAT reported being encouraged by the extent to which the importance of the Universal Declaration had been endorsed at the various meetings around the region, for example the Tokyo Symposium on Human Rights in the Asia-Pacific Region in January 1998. The Symposium was co-sponsored by the Japanese Ministry of Foreign Affairs and the United Nations University, Tokyo and attracted participants from a range of government and NGOs from around the region, including Australia, Japan, the Philippines, Cambodia, Indonesia, the Republic of Korea, Papua New Guinea, China and Burma. As a whole, that symposium strongly reaffirmed the importance of the Declaration.²⁴

2.23 It is clear that, within the region, many non-government voices—mainly scholars and NGOs—take issue with the suggestion that respect for culture and social and economic context must lead to a rejection of international human rights norms. Professor Yash Ghai has argued that NGOs for example urge the inclusion of cultural values and perceptions in discourse about human rights, but 'do not allow culture to trump universally applicable standards nor to deny the indivisibility of all human rights ...'.²⁵ Conclusions that there is increasing convergence of human rights perceptions within non-government constituencies in Asia and the West are supported by the experience of the Diplomacy Training Program (DTP), an NGO affiliated with the University of New South Wales. DTP has for some years provided human rights training to individuals and organisations from almost all countries across the region, including Bangladesh, Burma, Cambodia, East Timor, Fiji, India, Indonesia, Malaysia, Nepal, New Zealand, Nauru, Pakistan, the Philippines, Papua New Guinea, Sri Lanka, Thailand, and Tonga, as well as Australia.²⁶

2.24 Leaders of Malaysia, Singapore and Indonesia in particular have in recent times called for review of the Universal Declaration.²⁷ The proposal was not supported by the

23 Human Rights International, Submission, p. 358.

24 DFAT/AusAID, Transcript, pp. 260 and 265. See also Exhibit No. 26 presented by DFAT, Moderator's Summary, Third Meeting of the Symposium on Human Rights in the Asia-Pacific Region, 26-28 January 1998.

25 Cited by Diplomacy Training Program, Submission, p. 242: Y Ghai, 'The Asian Perspective on Human Rights', in *Asian Human Rights Commission Newsletter*, Vol. 5, October 1993.

26 Diplomacy Training Program, Submission, p. 243.

27 For example, see ACFOA, Submission, p. 730, citing HE Dr Mahathir's call at the 1997 ASEAN Regional Forum for a re-negotiation of the Universal Declaration on the basis that it was 'formulated by the superpowers which did not understand the needs of poor countries'. See also Lee Kuan Yew's

United States and the European Union at the ASEAN Post Ministerial Conference (PMC) in Kuala Lumpur in late July 1997, during which Mr Downer reaffirmed Australia's support for the declaration as it stands. Only the UN General Assembly can agree to a review of the Universal Declaration, and at this stage it seems unlikely that the necessary international support could be generated for such a course of action.²⁸

2.25 In Professor Camilleri's view, reactions in the West to these proposals have been dismissive rather than constructive. He suggested that there is room for consideration of responsibilities as well as rights in the debate on human rights principles. He suggested further that a more positive reaction to the calls for review of the Universal Declaration would have been to seize the opportunity to establish a 'regional forum ... to extend the culture of regional cooperation'. In such a forum, recognition of certain key elements would inform the discussions:

Universality does not mean uniformity. Conversely, it must not be thought that cultural diversity precludes the acceptance of universal norms.²⁹

Draft Universal Declaration of Human Responsibilities

2.26 One of the most recent developments in the international debate on the Universal Declaration has been a proposal from the InterAction Council to raise in the UN General Assembly a draft of 'A Universal Declaration of Human Responsibilities'.³⁰ The Council's draft Declaration was developed to complement the 1948 Universal Declaration of Human Rights, and the document has been circulated to heads of government worldwide. The extent of international support for the proposed draft is not yet clear.³¹ The Council's draft document is reproduced at Appendix 4.

2.27 In submissions from ACFOA and Professor Camilleri, different assessments of the value of the InterAction Council's initiative were put forward. ACFOA, while accepting the document as a fine statement of principles, considered that most of them are already contained in existing human rights instruments. Further, ACFOA considered that the proposal comes at a very dangerous time in view of the pronouncements by Dr Mahathir and others on the need for reviewing the text of the Universal Declaration.³²

2.28 On the other hand, Professor Camilleri welcomed the energy represented by discussions such as those generated by the InterAction Council's draft proposal, although he

statement: 'The Universal Declaration was written by the victorious powers at the end of World War II... The Russians did not believe a single word ...' quoted from H Bielefeldt ('Muslim Voices in the Human Rights Debate', (1995) 17 *Human Rights Quarterly* p. 587 at p. 593) by Dr Sarah Pritchard, Exhibit 25, op. cit., p. 7.

28 DFAT/AusAID, Submission, p. 816.

29 Camilleri, Submission, p. 303 and Transcript, p. 230.

30 Formed in 1987, the InterAction Council is a group of former heads of government from around the world. The Rt Hon Malcolm Fraser, Chairman of the Council, has held discussions with the UN Secretary-General on the Draft Declaration of Human Responsibilities with the aim of securing support in the UN General Assembly for adoption of the document as a complement to the Universal Declaration of Human Rights.

31 See, for example, Mr Fraser's article, 'The Responsible Course of Action' in *The Australian*, 12 September 1997, p. 13.

32 ACFOA, Submission, p. 732.

indicated he did not necessarily agree with all the provisions of the document. Professor Camilleri nevertheless saw the current debate on interpretation of human rights in terms of presenting very real opportunities at a time of democratic progress in the region, even in some countries where governments remain quite repressive:

I would want to argue that this is a unique moment. A number of things of very far-reaching importance are taking place and will continue to unfold in our part of the world over the next several years. The region is in real ferment economically, socially, and politically.³³

2.29 The Committee recommends that:

- 1. The Australian government give consideration to acceptance of the draft Universal Declaration of Human Responsibilities, provided that the final document is seen to complement the Universal Declaration of Human Rights and not to derogate from it.**

Asian Charter on Human Rights

2.30 A Hong Kong based NGO, the Asian Human Rights Commission, developed a draft Asian Charter on Human Rights in 1997.³⁴ Like the Bangkok NGO Declaration, the document rejects the notion of a simple dichotomy between 'unrealistic universalism and paralysing relativism', and the Charter demonstrates that the views of NGOs in Asia and the West are showing increasing signs of converging:

Despite differences of emphasis and approach, there is an increasing convergence of human rights perceptions within non-governmental constituencies in Asia and in the West.³⁵

Although it is possibly too early to assess the Charter's influence on regional understanding and debate on human rights, the document is significant and deserving of wide discussion, as ACFOA indicated in its submission.³⁶

2.31 The signs are encouraging that all the discussions and initiatives outlined above demonstrate the dynamic nature of the regional debate on the interpretation of human rights. The challenge for the regional community is to turn the questioning of fundamental principles into productive channels. As Mrs Mary Robinson said in her opening address to the Sixth Workshop on Regional Human Rights Arrangements in the Asia Pacific region:

Now we mark the 50th anniversary [of the Universal Declaration of Human Rights]. I believe this should be a time for reflection and rededication rather than celebration. ... I am also aware that there is lively debate in the Asia-Pacific region on the continuing relevance of this 50 year old document. I welcome this debate not least because it

33 Camilleri Transcript, p. 230. Similar views were expressed by Mr Basil Fernando, Executive Director of the Hong-Kong-based regional NGO, the Asian Human Rights Commission, Submission, p. 168.

34 Asian Human Rights Commission, Submission, pp. 170-177.

35 Diplomacy Training Program, Submission, p. 243.

36 ACFOA Submission, p. 1255. The Charter itself was included as an attachment to the submission from the Asian Human Rights Commission, Submission, pp. 170-177.

has drawn me to consider some of the practical wisdom and insight into the human condition found in the writings and sayings of the great thinkers and religious leaders of this region.³⁷

Australia's contribution to the regional debate

2.32 The Committee's 1994 report highlighted Australia's commitment in human rights policy to the fundamental importance of international human rights principles as set out in the international instruments.³⁸ The preamble to the *National Action Plan* produced by Australia in 1994 reflected the high priority that the Australian government accords to the promotion and protection of human rights, both domestically and internationally:

In seeking to advance human rights through its foreign and domestic policies, the Australian Government subscribes to the view that human rights are *inherent*, that is, they are the birthright of all human beings; *inalienable*, insofar as they cannot be lost or taken away; and *universal* in that they apply to all persons, irrespective of nationality, status, sex or race. Australia rejects the view that there is any hierarchy of human rights.³⁹

2.33 The question of whether Australia has a role on human rights in the Asia Pacific region was considered by Professor Alice Erh-Soon Tay (recently appointed President of the Human Rights and Equal Opportunity Commission) to be rhetorical. She concluded that the real question is what Australia's role should be and how it should be performed, and enunciated three criteria that appear to have governed Australia's action on human rights: principle, pragmatism and patience.⁴⁰ In her analysis, Professor Tay considered Australia to have made small but significant effects in pursuing 'human rights policy in the flexible direction [Australia] has so far adopted and generally exercised judiciously ... to good effect'. While acknowledging the value of Australia's persistent bilateral representations on individual human rights cases, Professor Tay cites the visits by Parliamentary delegations and official parties to China, Vietnam and other countries as examples of gradual advancement of mutual understanding of human rights perspectives. She acknowledged also the difficulties for Australia in reaching understanding with regional governments on some complex human rights situations, such as Tibet, East Timor and Irian Jaya:

... the crown of justice is not woven of roses but thorny ivy. The important thing is that the challenge has been accepted and efforts are being made.⁴¹

37 Mrs Mary Robinson, United Nations High Commissioner for Human Rights, Opening Address to the Sixth Workshop on Regional Human Rights Arrangements in the Asian and Pacific Region, Tehran, 28 February 1998, p. 1.

38 Joint Standing Committee on Foreign Affairs, Defence and Trade, *A Review of Australia's Efforts to Promote and Protect Human Rights*, 1994, pp. 22-23.

39 *National Action Plan: Australia*, 1994, p. 3. Updates for 1995 and 1996-97 retained the commitments contained in the 1994 preamble.

40 Professor Tay, 'A Policy for Human Rights in the Asia Pacific', in *Rethinking Human Rights*, op. cit., pp. 92-94.

41 *ibid.*, p. 96.

2.34 The Committee notes that just before the release of the White Paper on foreign and trade policy in August 1997, the Minister for Foreign Affairs, the Hon Alexander Downer MP, affirmed the Australian government's emphasis on developing practical measures to achieve the protection and promotion of human rights. In his address to the DFAT/NGO human rights consultations on 27 August 1997, Mr Downer said:

The protection of human rights, to promote the dignity of the individual, is too important to be a matter for symbolic gestures alone. It is through the pursuit of practical and effective efforts to promote human rights that we show our real commitment. This is what the Australian Government intends to deliver.⁴²

Moving the debate forward

2.35 Australia was one of the participants at the Tokyo Symposium in January 1998, which re-affirmed the continued validity of the Universal Declaration and emphasised the importance of national human rights institutions. All participants stressed the importance of education and training in the promotion and protection of human rights.⁴³ In Chapter Seven, some measures that may address the deficiencies in education and training are considered.

2.36 As several contributors to the inquiry observed, meaningful discussion of human rights in our region requires considerable cultural sensitivity from all parties. Universality does not mean uniformity, and discourse must involve the entire regional community in order to give voice to all major civilisations, cultures and ethical traditions:

If human rights discourse is to be a universal discourse, then it must not only apply to but involve the entire international community. It must, in other words, necessarily engage and give a voice to all major civilizations, cultures and ethical traditions. Cultural difference and universality merge when human rights discourse is understood as a dynamic process of continuous dialogue, which seeks to identify and cultivate the universal within each culture.⁴⁴

2.37 This view was supported by Mr Curtotti in evidence, when he urged Australia to make greater efforts to join the debate with those who champion cultural relativity. He told the Committee that the current debate appears more like 'two monologues happening in different camps, without a real process where proponents are actually engaging each other on what it is they are trying to achieve in the positions they are advocating'.⁴⁵

2.38 The dominance of the concept of cultural relativity in the regional debate on interpretation of human rights fundamentally threatens the effectiveness of the international standards that Australia has traditionally supported. As a demonstrably multicultural society, Australia does have a legitimate voice in the region on matters pertaining to the diverse

42 Hon Alexander Downer MP, Minister for Foreign Affairs, *Promoting Good Governance Through the Aid Program*, Canberra, 27 August 1997, DFAT/AusAID, Submission, p. 902.

43 See moderator's summary, Third Meeting of the Symposium on Human Rights in the Asia-Pacific Region, 27-28 January 1998, Exhibit No. 26. Ms Gillian Bird, International Organisations and Legal Division of DFAT, was Australia's representative.

44 Camilleri, Submission, p. 303.

45 Australian Forum of Human Rights Organisations, Transcript, p. 126.

influences which impact on the human rights debate. According to AFHRO, the effectiveness of Australia's regional dialogue is waning and one means of reviving its impact would be to return to Australia's long-term commitment to universal human rights principles:

In this way, Australia may avoid sacrificing its long and internationally respected tradition of support for human rights, as well as improving relations between Australia and our regional neighbours by aiding those nations to come to a greater understanding and acceptance of international human rights standards.⁴⁶

2.39 The continuing regional debate on the interpretation of human rights should be viewed as a positive rather than a negative force. Defining and protecting human rights principles, and promoting their implementation must be subject to periodic review and re-affirmation in appropriate forums.

2.40 In a positive way, Australia could assist neighbouring states to come to a greater understanding and acceptance of international human rights standards by demonstrating a willingness to devote resources to human rights promotion. This might include increasing DFAT's resources and ensuring that links with the proposed Centre for Democratic Institutions (CDI) announced by the Minister for Foreign Affairs on 27 August 1997 are structured and effective.⁴⁷ The role of the CDI and other institutions and processes for improving Australia's dialogue on human rights are discussed more fully in the final chapter of this report.

2.41 ACFOA suggested that a stronger human rights focus could be assured by accepting its earlier proposal to establish an independent Human Rights Centre for Dialogue and Cooperation, funded jointly by public and private sources. ACFOA had suggested establishment of a centre which would promote dialogue on human rights matters, particularly in the Asia Pacific region, by focusing on applied policy and research in human rights, providing a specialist human rights information service, and being an 'honest broker', when asked, in the area of human rights.⁴⁸

2.42 The aim, according to ACFOA, was to embrace the gap between international and domestic human rights activity, as well as the gap between the civil and political rights and the economic, social and cultural rights. The Committee's 1994 report endorsed that proposal, finding merit in the concept of a human rights centre that would be outside established governmental and academic structures. In that report, the Committee considered that such a human rights centre could have a significant role in training and education, both domestically and regionally, network-building, institution-building, and also in enhancing Australia's utility as a model for human rights and democracy. The Committee envisaged the centre as a public institute, rather than an NGO.⁴⁹

46 *ibid.*, p. 128.

47 See Appendix 3, DFAT/AusAID, Submission, p. 901, address by the Hon Alexander Downer MP, Minister for Foreign Affairs, 'Promoting Good Governance and Human Rights Through the Aid Program', Canberra, 27 August 1997. The Minister's address indicated that the Centre for Democratic Institutions will design and deliver short, intensive programs on a wide range of democratic processes and will fund applied research.

48 Joint Standing Committee on Foreign Affairs, Defence and Trade, *op. cit.*, p. 53.

49 *ibid.*, pp. 53-55.

2.43 The government accepted in part the Committee's recommendation to consider establishing such a centre, by announcing the intention to establish the CDI. However, ACFOA has pointed out that the CDI's mandate is not human rights as such, but rather technical assistance focused on good governance. ACFOA contends that there is no national body charged with fostering dialogue and understanding between Australia and the region on human rights and promoting international human rights standards. Further, ACFOA urged the Australian government to take every opportunity to promote the universal, indivisible and inalienable nature of human rights, and saw the Centre for Human Rights Dialogue and Cooperation as a means of achieving those objectives.⁵⁰

2.44 The Committee recommends that:

2. The Australian government establish formal coordination mechanisms between the Department of Foreign Affairs and Trade, AusAID and the new Centre for Democratic Institutions.

2.45 The Committee reiterates the recommendation in its 1994 report *A Review of Australia's Efforts to Promote and Protect Human Rights*, and accordingly urges the Government to consider again the proposal developed by ACFOA for a Centre for Dialogue and Cooperation to be established outside traditional governmental and academic structures.

50 ACFOA, Submission, pp. 739, 753 and 1255.

2.46 The Committee recommends that:

- 3. The Australian government develop a Centre for Dialogue and Cooperation to be established outside traditional government and academic structures.**