Draft South Asian Regional Charter on Minority and Group Rights: A Comparative Regional Analysis

I. Introduction

In May 2008, the Sri Lanka-based non-governmental organization (NGO) International Centre for Ethnic Studies (ICES) published a draft South Asian Charter on Minority and Group Rights (hereinafter “draft Minority Rights Charter”). It was elaborated on the basis of the Statement of Principles on Minority and Group Rights in South Asia, which had been prepared by ICES with contributions from a range of NGOs in the region. According to the foreword, the aim of the draft Minority Rights Charter is to effectively raise minority issues which are common to the states of South Asia and address weaknesses in constitutional and legislative protection of minority and group rights. It is proposed that the draft Minority Rights Charter may be used as a reference document for governments, non-state actors, human rights institutions, NGOs and human rights advocates, and influence legislators and policymakers. The initiative was funded by the United States-based National Endowment for Democracy.

The draft Minority Rights Charter applies to members of the South Asian Association for Regional Cooperation (SAARC), which is referenced in the preamble and in particular in Article 26, which reads: “The present Charter is open for signature by any State which is a member of SAARC and any other State which has been invited by SAARC to become a member.” SAARC is a subregional intergovernmental organization with eight member states: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.

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1 International Centre for Ethnic Studies (ICES), official website at <www.ices.lk>. As of February 2010, the draft Minority Rights Charter was not yet available on the ICES website; copy of text with the author.
2 Draft South Asian Charter on Minority and Group Rights, “Foreword”.
5 South Asian Association for Regional Cooperation, official website at <http://www.saarc-sec.org/>. There are nine observer status countries or bodies: China, the European Union, Australia, Canada, Japan, Korea, Singapore, Turkey, and the US.

The UN General Assembly has been promoting efforts to establish regional human rights mechanisms since the 1970s. The 1993 Vienna Declaration affirms that “regional arrangements play a fundamental role in promoting and protecting human rights”, and reiterated the need to “consider the possibility of establishing regional and subregional arrangements for the promotion and protection of human rights”. A persistent argument against new regional instruments is the idea that implementing existing human rights obligations should be the primary focus. A recent comment in *Human Rights Features*, which represents the Asia Pacific Human Rights Network, summarized the dangers associated with drafting and promoting regional instruments:

Human rights organisations and activists, for their part, must be wary of calling for regional human rights instruments and mechanisms. These will allow states to set standards far below those available in international mechanisms, and will lay the ground for the whittling down of rights and protections available to the people of the region. SAARC has a regional agenda, but where human rights are concerned, its outlook must be universal.

This article aims to assess the role and contribution of the draft Minority Rights Charter through comparison with similar initiatives in Asia Pacific. The first section will explore attempts in the Pacific region to establish a human rights body. The Pacific region, including Australia, New Zealand and the Pacific Island Countries, has seen a nascent movement towards a regional instrument ultimately lose momentum. The second section by contrast will document the successful establishment of a human rights body by the Association of South-East Asian Nations (ASEAN) in October 2009, termed the ASEAN Intergovernmental Commission on Human Rights (AICHR), although this body is already being criticized for the weakness of its terms of reference. The third section will provide an overview of existing international, regional and domestic human rights standards in the SAARC region, in order to locate the need for a regional instrument in South Asia. The fourth section will assess whether the Council of Europe Framework Convention on National Minorities (FCNM), as the only binding regional or international instrument on minority rights, would make a suitable model for South Asia. Finally it will be asked whether NGO lobbying would be better concentrated on a regional human rights mechanism rather than a minority rights mechanism, as a more practical approach.

