
THE UNITED NATIONS SYSTEM FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

WITH SPECIAL REFERENCE TO SOUTH KOREA AND
THE NEW NATIONAL HUMAN RIGHTS COMMISSION

LYAL S. SUNGA

I. Introduction

There is an important connection between human rights education and full respect for basic human dignity, namely that human rights guarantees can be implemented effectively only when people from all walks of life know about

their rights and can access the means to enforce them.

This implies that human rights education must reach individuals at all levels of society. Human rights training must target military commanders and soldiers, police, members of the judiciary and

anyone dealing with situations where human rights may be threatened or violated. But for human rights awareness to take root, human rights education must reach civil society at all levels, especially young people and vulnerable groups, including migrants, women, refugees and ethnic minorities, who tend to be singled out for discriminatory treatment. Human rights education is essential to help protect ordinary people against government abuse of power because it empowers people to speak out whenever their rights are placed in jeopardy. Thus, the growth of human rights awareness in a culture of peace remains an essential ingredient in the promotion and protection of human rights, democracy and the rule of law, but it can only take root through sustained human rights education.

The philosophy of human rights in a culture of peace lies also at the basis of UNESCO's mission and the mandate of APCEIU. And I believe that this workshop is particularly well timed, because the National Commission on Human Rights has just been set up here in Korea and people everywhere are anxious to see it function independently and effectively.

Here, I will outline the United Nations system of human rights promotion and protection, in pa-

rticular, how and why human rights became a matter of international concern, the growth of international human rights law, and its means of implementation. I will also relate the relevance of this system to the Republic of Korea, and finally, I will make a few observations on the potential role your new National Commission may play in furthering the cause of human rights, democracy and the rule of law in Korea through human rights education in a culture of peace.

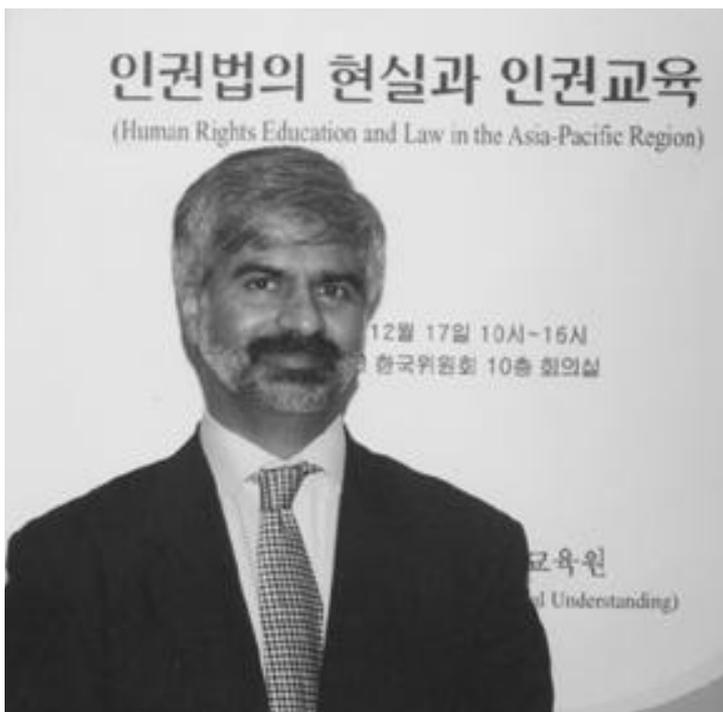
II. United Nations System for the Promotion and Protection of Human Rights

Human rights as a matter of international concern: from the UN Charter to the International Bill of Rights

International human rights law is a relatively recent phenomenon, arising only in the aftermath of the Second World War. Prior to that, strictly speaking, there were no *international* human rights. The basic rights of individuals and groups, for example, the right not to be enslaved, not to be arbitrarily detained by the police, not to be tortured while in custody of the state, or not to be subject to other forms of illegal interference from the state, were always considered matters for each government to address purely in the domestic context.

However, World War II, which saw 50 million dead, countless wounded and enormous property damage, changed all that. From the time Hitler took power in Germany in 1933 to the outbreak of the war in 1939, the Nazi government of Germany instituted a systematic programme of severe human rights violations against certain groups of its own citizens. The international community did little to stop these evils, partly from the misguided belief that human rights violations by Germans against Germans were not really anyone else's concern. It was not very long before the entire world was plunged into war. Hitler had learnt that he could get away with murder and persecution at home. Why not try these methods to subdue and dominate people in other countries?

The point is that human rights violations, if left unchecked, can undermine human security, dissolve law and order and escalate into hostilities,



even war. Human rights violations are everyone's concern because they can jeopardize regional stability and international peace and security. They are both a signal and a cause of further conflict. Conflicts such as in Rwanda, the former Yugoslavia, Chechnya, India and Pakistan over Kashmir, Afghanistan, and in many other places, illustrate that human rights problems may begin as domestic problems, but can spiral out of control and threaten international peace if ignored for too long by the international community.

The Republic of Korea knows this all too well. It has endured long decades of tension and it can see that human rights violations in one country can threaten the peace and security of its neighbours.

As early as 1942, President Roosevelt and Prime Minister Churchill recognized in the Atlantic Charter that, once World War II was brought to an end, the international community must ensure a freedom from fear and want, and the fullest collaboration between all states in economic and social fields, with the object of improved labour standards, economic advancement and the right of all nations to choose the government under which they would live.

In the Charter of the United Nations, human rights is included as a principal aim of the UN, alongside international peace and security. However, in 1945 there was little agreement among people and governments about how human rights should be defined and the Charter does not define them either. In 1946 the Economic and Social Council, one of the main functional organs of the UN, established the UN Commission on Human Rights and requested it to prepare an international bill of rights to define and develop human rights.

The first pillar in this normative architecture was the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948. Strictly speaking, the Universal Declaration is not a legally binding instrument. It is a resolution, not a treaty. Resolutions are recommendatory only and do not legally bind any entity.

However, the Universal Declaration on Human Rights does express the international community's agreement on a common standard of achievement for all peoples and nations. As such, it provides the basis for the development of specific legal norms of



international human rights law, norms that can claim a high level of consensus from all countries and peoples. The Declaration covers the principle of non-discrimination, freedom from slavery, torture, the right to be recognized as a legal person, the right to be treated equally, freedom from arbitrary arrest, detention or exile, fair trial, right to privacy, freedom of movement, right to seek asylum and to be free from persecution, right to a nationality, right to marry, own property, freedom of opinion and expression, freedom of association, right to take part in government, the rights to social security and to work. In Article 25, the Declaration provides for the right to a standard of living; in Article 26 the right to education; and in Article 27 the right to culture.

So the Universal Declaration covers not only civil and political rights, i.e., guarantees of the rights of individuals against undue government interference, but also economic, social and cultural rights, which may require positive government action to bring into realization. However, the Universal Declaration of Human Rights is programmatic and general. Its provisions are not sufficiently specific or detailed to be implemented as law.

The rise of UN human rights treaty bodies

It was to take almost another 20 years before the international community could agree on more specific human rights guarantees to give legal effect to the broad provisions of the Universal Declaration.

In 1965, the UN General Assembly adopted the

International Convention on the Elimination of All Forms of Racial Discrimination. The Racial Convention defines racial discrimination and requires states parties to monitor and report on their domestic law and practice in terms of Convention obligations. Importantly, Article 14(1) of the Convention provides that a state party may recognize the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation of any rights provided for in the Convention. Korea ratified the Convention on 5 December 1978 and declared its recognition of the competence of the Committee to receive individual petitions.

In 1966, the General Assembly adopted the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The International Covenants spell out in detail the catalogue of international human rights law and provide a further basis for the normative development of international human rights law. The UN Human Rights Committee monitors state adherence to the provisions of the International Covenant on Civil and Political Rights and is competent to receive communications where the state party agrees. Korea ratified both Covenants in 1990 and has recognized the competence of the Human Rights Committee to receive individual communications.

Let me mention also:

- the Committee on Economic, Social and Cultural Rights, established to supervise the implementation of the International Covenant on Economic, Social and Cultural Rights;
- the 1979 Convention against Discrimination against Women, which is monitored by the Committee on the Elimination of Discrimination against Women and which Korea ratified in December 1984;
- the 1984 UN Convention against Torture, which is monitored by the Committee against Torture and which Korea ratified in January 1985;
- the Convention on the Rights of the Child, adopted in 1989, which is monitored by the Committee on the Rights of the Child, and which

Korea ratified in November 1991; and the Migrant Workers' Convention, adopted in 1990, which Korea has not yet signed or ratified and which has not yet entered into force since it has been adopted by only 17 states as of 26 November 2001 (out of the 20 required).

The work of these treaty monitoring bodies is instrumental in considering the problems and progress of state parties with respect to their treaty obligations and in recommending measures to bring domestic law, policy and practice into better conformity with the Convention. However, one of the problems has been that few states are really candid about the situation in their countries. Many governments simply recite their constitutional and statutory provisions relating to their conventional human rights obligations without relating this to actual practice and implementation. In other cases, states even fail to submit their reports at all or do so very late.

The UN human rights treaty bodies constitute a system of implementation but it remains a weak system, relying more on cooperation, subtle pressure and in some cases, embarrassment, to move governments towards better observance of international human rights standards. Part of the work of the Office of the High Commissioner for Human Rights in Geneva is to service the work of these treaty bodies, and to encourage all states that have not yet done so, to ratify and implement the main multilateral human rights treaties.

The special procedures of the UN Commission on Human Rights

Another system of international human rights protection in the UN plays an extremely important role and that is the special procedures of the UN Commission on Human Rights. This Commission is a political body made up of the representatives of 53 states and it meets every year in Geneva to consider human rights situations around the globe.

Technically, the Commission adopts a resolution that establishes a mandate to consider the human rights situation in a particular country, or around the globe according to a particular theme. In such cases, the Commission appoints an expert, usually called a Special Rapporteur, either on a particular country or territory (such as on Iraq, East Timor,

Afghanistan or Myanmar) or on a particular theme or issue, such as the problem of summary or arbitrary executions, violence against women, torture, the plight of human rights defenders, etc., in any country. The Commission's special rapporteur visits the country if possible and meets with victims of human rights abuse, witnesses and relevant government officials in order to evaluate, analyze and report back to the Commission on the problem in question and to recommend measures to improve the situation. Thematic special rapporteurs do the same, but instead of concentrating on a single country, they monitor and report on a particular human rights theme in any country. For example, the special rapporteurs on torture, arbitrary detention, enforced or involuntary disappearances every year identify a number of countries of special concern and report to the Commission on the situation there. In total, there are around 60 Commission on Human Rights special procedures mandates and rapporteurs.

This system is essentially extra-conventional in the sense that Special Rapporteurs are authorized by the Commission on Human Rights to report on human rights situations according to country or theme regardless of a country's treaty or conventional obligations, in other words, regardless as to whether the particular state has consented to such scrutiny or not.

Every year the Commission on Human Rights meets to hear the reports of these rapporteurs and decides whether to terminate the mandate (in case the situation has improved), to extend the mandate (in case the government has more work to do), or to establish a new mandate (where there are new situations or concerns). The special procedures system basically provides the international community with an avenue to expose serious human rights violations and to pressure governments to improve their human rights practices.

UN human rights field presences

In the mid-1990s the Office of the High Commissioner for Human Rights launched a number of human rights field presences to deal with emergency situations in particular countries. These human rights field presences were deployed to assist governments in countries that have

suffered intense conflict, such as Rwanda, Burundi, the Democratic Republic of Congo, the former Yugoslavia, Colombia, Guatemala, Cambodia, Gaza, Abkhazia/Georgia, to help monitor and improve the human rights situation.

The UN has also investigated massacres that have taken place in the conflict between Northern Alliance forces and the Taliban in Afghanistan. During the Kosovo crisis, the High Commissioner deployed her Special Representative to the region and a number of human rights officers in neighbouring territories to monitor the human rights situation by conducting interviews with refugees and gathering information from UN agencies, the International Committee of the Red Cross and non-governmental organizations.

International criminal prosecutions

In some cases, the High Commissioner's Office has assisted the international community to deal with the question of criminal responsibility for massive violations. In fact, my own involvement with the UN began in 1994 following the civil war in Rwanda. My work was to visit Rwanda with a Commission of Experts created by the Security Council to determine who was responsible for the genocide and associated atrocities and to recommend measures by which to prosecute leaders and organizers of the genocide. This process led to the establishment of the International Criminal Tribunal for Rwanda.

More recently, the international community has been working to establish a permanent International Criminal Court to have global competence over war crimes, crimes against humanity, genocide, and also over aggression once aggression can be defined for the purposes of international criminal law. The idea behind the Court is to ensure that any individual regardless of official capacity, nationality or rank may be prosecuted for crimes under international law in cases where domestic courts are either unwilling or unable to prosecute.

Incidentally, as of 30 November 2001, 47 states had already ratified the Rome Statute. Because the Rome Statute requires ratifications from only 60 states before it commences operation, it is foreseen that the International Criminal Court will start up in

the next 12 or 18 months. The Republic of Korea signed the Rome Statute on 8 March 2000, but has still not ratified it. Only countries that have ratified the Statute may nominate judges to the Court. So unless Korea hurries up and ratifies, the International Criminal Court could start functioning without a judge from the Republic of Korea. And Korea needs a place on the Court.

United Nations technical cooperation programme in the field of human rights

Another element of the work of the UN High Commissioner's Office is to assist governments by providing technical cooperation in the field of human rights. In some cases, governments voluntarily request assistance to help them improve their legislation, policy and practice in regard to universal human rights standards, or they wish to establish national procedures or commissions to implement human rights guarantees.

For example, on numerous occasions the Office in Geneva has advised the government of the Republic of Korea on the establishment of its National Human Rights Commission in line with the Paris Principles, which brings me to the question of the role that your new Commission can play.

III. The National Human Rights Commission of the Republic of Korea and the Question of International Human Rights Standards

Concerning the establishment of the new Korean Commission, I believe that Nobel Prize Laureate President Kim Dae-Jung has shown his country's serious commitment to human rights when he signed into law the National Human Rights Commission Act on 24 May this year. However, the real test will be how the Commission functions in practice, which I understand is still being worked out.

It is worth recalling that, when it met on 9 May 2001 in Geneva, the UN Committee on Economic, Social and Cultural Rights emphasized the importance of establishing the commission in full conformity with the 1991 Paris Principles relating to the status of national institutions. (See UN Doc.

#/C.12/1/Add. 59 of 21 May 2001, para. 35.)

I would say that a national human rights commission with strong powers can act as a social safety valve by addressing human rights violations and letting out political steam that could otherwise build up out of frustration. In order to ensure that the Human Rights Commission remains independent and effective, Koreans will need to feel that it is their commission. For this reason, NGOs and civil society must continue to be involved in defining the functions, powers and role of the Commission in Korean society through a transparent process.

A strong, independent and effective national commission will enhance respect for human rights and for the government because it will show the people that the government intends to honor its human rights obligations in fact, even if this sometimes requires some painful adjustments in policy and practice.

In addition to investigating and dealing with complaints and advising the government on its adherence to universal human rights standards, the National Human Rights Commission could also take an active role in providing human rights training and education which remain essential to the strengthening of human rights, democracy and the rule of law throughout Korea and to human security in the globalizing world of the new millennium.

In closing, I feel that the Republic of Korea has many challenges ahead in the field of human rights. However, I believe it is following the right path in having ratified most of the key multilateral human rights conventions and in establishing the National Human Rights Commission to ensure universal human rights standards are implemented throughout Korean society.

Dr. Lyal Sunga is Director of the LLM Programme in Human Rights at the Faculty of Law of Hong Kong University. (E-mail: lssunga@hku.hk.) He delivered the above lecture at the APCEIU Workshop on "Human Rights Education and Law in the Asia-Pacific Region," held jointly with the Asian Human Rights Commission on December 17, 2001, in Seoul, Korea.