

**IN SEARCH
OF
UNIVERSAL HUMAN RIGHTS**

An On-Going Dialogue between Europe and ASEAN

edited by
Simon SC Tay

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Human Rights Dialogue Between Europe and ASEAN: Work in Progress

by

Simon SC Tay

and Norbert von Hofmann

Human Rights is a work in progress.

The progress of human rights can be traced from the end of World War II. Since then, human rights norms have been declared and agreed in numerous international treaties and resolutions. Institutions have been set up in the United Nations to enable the international community to enquire about human rights records in different states and to censure gross and persistent transgressions. This has challenged the old idea that a state can treat its own citizens in any way it chooses. The claim to universal human rights has opened state actions to the legitimate attention of the international community.

Yet human rights has also faced set backs. Violations persist in many parts of the world that the international community cannot or will not address. In other cases, states have challenged the claim that human rights are universal. They argue that rights may differ in their region or nation because of culture, history and stage of economic development. Asian nations have been among these; and some of the South East Asian countries have been prominent advocates of the Asian view.

Some of us may welcome this new willingness of governments in Asia to speak out on human rights and to try and define their own way forward. Such efforts may be better than silence or an antipathy to the very mention of human rights. Statements by governments in Asia on human rights also give hope for the establishment for an inter-state human rights mechanism for the region or sub-region. After all, Asia is the only continent not to have a regional mechanism in addition to the international framework for human rights. To some, it seems understandable that each region must

formulate its own vision of human rights and seek its own way to improve their human rights record.

Others among us however have been concerned that the "Asian" view challenges the claim that human rights are universal. They distrust relativism. They are concerned that rights may be watered down or ignored all together. Given the imperfect records of governments, there is some skepticism that the "Asian" view is a way of disguising or justifying human rights violations.

It is clear that the Asian view is concern with "conditionality" -- the linking of human rights issues to aid, trade and other economic concerns that a developed country may impose unilaterally against them. It is also clear that this Asian view juxtaposes itself against an idea of the "West" that is associated with the USA. What of Europe?

Asian-European Dialogue

The dialogue between Asia and Europe, like human rights, is also a work in progress.

The 1980s and 1990s have witnessed a growing dialogue between Asia and Europe. Europe and ASEAN ties were established in 1977. On many occasions, these dialogues at the government level were marred by differing positions on specific issues, such as Indonesia's policies towards East Timor. This changed for the better after the 11th Europe-ASEAN meeting in 1994.

The meeting represented a new European spirit of looking Eastwards, not as former colonial powers, but as equal partners seeking new ways of developing a relationship. This led to both sides seeking areas of agreement, rather than issues of conflict. The East Timor question was, in this spirit, referred to the United Nations.

The main factor behind this change of attitude was economic. Trade between the two continents is substantial, at almost US \$100 Billion in 1996. But investment figures lagged far behind those of Japan and the USA. There was a feeling that Europe was being left out of the growing international connections Asia made, as part of the Asia-Pacific.

This has led to the first Asia-Europe Meeting (ASEM) of 1996, attended by 15 European leaders and European Community President, and by 10 Asian leaders. The ASEM has been an important step towards creating broader dialogue

and links between the two continents, and to move their mindsets beyond colonial history. The two continents agreed on a common goal to maintain and enhance peace and stability, as well as creating conducive conditions for economic and social development.

However, some have lamented that Asia-European transactions are largely economic and fail to take human factors into account. Indeed, in some dialogues with Europe, some Asian countries have explicitly stated that they would not welcome further criticism on their human rights records. There has also been a division over the social clause, which sought to link trade to labour and human rights.

Yet Asia and Europe have much to offer each other in discussing human rights. The European approach to human rights differs to the American and thus can expand our understanding of the "West". The European institutional and legal framework for human rights is perhaps the most effective and comprehensive regional system. It can have lessons for initiatives to start a regional or sub-regional human rights system in Asia, even if it should start with less ambitious structures.

It is less apparent what Europe may gain from dialogue on human rights with Asia. Europeans speak from a conviction borne of experience as a theatre for two world wars and a history that has witnessed dictatorship, racism and colonialism as much as by democracy, freedom, and the promotion of human rights. Some skeptics may say that Europeans will exercise a sense of moral superiority, revisiting colonialism through the concept of human rights.

More positively, it may be that Europe may gain a better and truer understanding of how their conceptions and practices of human rights stand in juxtaposition with those of a very different continent. In this, different cultures, religions, histories and levels of development will test our idea of what is "universal" about human rights. This may assist Europe in its own definitions and approaches on human rights as the application of human rights extends from Western Europe to less homogenous nations in Eastern Europe.

For both continents, the human rights dialogue may be seen as a necessary balance to economic linkages. For as our economies integrate through increased trade and greater investment, it is inevitable that the human factors will come

in. Business does not remain business. The history of trade and commerce instead shows that cultural and human exchange has also followed. What should be avoided in this cultural and human exchange is the domination of one side by the other, as witnessed in the sad history of European colonialism. What can be gained is a more complete understanding of the human condition in our different continents and, therefore, the fuller and most appropriate implementation of human rights.

This Book

Like human rights and the Europe-Asia dialogue, this book is a work in progress.

This book has been developed from a conference on human rights sponsored by the Friedrich Ebert Stiftung of Germany. The conference was held in Manila, the Philippines, in September 1996. It is the second in a series on Democracy and Development, and the first to focus more particularly on Human Rights.

In approaching this discussion, participants did not focus on particular incidents in any country. A broader discussion was held, aimed at identifying norms as well as institutions that might best support human rights. This discussion was not held primarily among government representatives, although some did attend in their personal capacity. Rather, it was a gathering of intellectuals, activists, academics and others who shared a conviction about human rights.

In organizing this book, we have departed from the practice of presenting only the formal papers. Instead, longer presentations are followed by responses and comments from other participants. In this way, the book seeks to be a record not only of the papers presented by also a summary of different points of view expressed. In making this attempt, the editors have taken the liberty to edit and re-write some of the comments to reflect their presentation on the written page. They have also reordered some of the discussions to enable a more coherent structure.

This book is a work in progress in that more dialogue of this nature is needed between people from Europe and from ASEAN. It is also a work in progress in that, for 1997, the Friedrich Ebert Stiftung will sponsor another conference on human rights, furthering that dialogue. This book will provide a background to that second dialogue. It will afterwards be re-

visited and re-worked for publication with additions from the second dialogue.

From such beginnings, it is hoped that a further step can be taken for human rights and for the dialogue between the two continents of Asia and Europe.

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DEFINING HUMAN RIGHTS

ASIAN VIEWS OF HUMAN RIGHTS

by

Rene V Sarmiento

Long before the Universal Declaration of Human Rights came into being in 1948, an Asian and a European were exchanging letters that dealt with the raging issues at that time, one of which was human rights. While in London on August 7, 1888, Dr. Jose Rizal of the Philippines wrote his Austrian friend, Dr. Ferdinand Blumentritt, about the struggle for human rights in the Philippines. Writing in German (translated in English), Dr. Jose Rizal said: "We are struggling for our rights, for the rights of humanity, and if there is a God, He will have to help us. We are still few and weak, but we shall be stronger and more numerous."

For his advocacy of human rights and for his intense nationalism, Dr Jose Rizal was executed by firing squad by the Spaniards on December 30, 1896 at Bagumbayat, now known as Luneta. Ninety-nine years after Dr Jose Rizal's execution, October 1995 to be exact, a major international conference and exhibition on Jose Rizal was held in Kuala Lumpur.

In an article entitled "Rizal, Malaysia and Asia," Dr Chandra Muzaffar paid tribute to Jose Rizal as he wrote: "Rizal's suffering and sacrifice, his courage and commitment, his noble ideals and his powerful intellect make him one of the finest role models for any society, in any epoch. Rizal's ideals on the liberation of the Filipino people at the end of the nineteenth century seem so refreshingly invigorating for those of us who are committed to the renaissance of Asia at the end of the twentieth century."

Today, almost one century after the death of the Jose Rizal, now considered to be one of Asia's greatest social thinkers and reformers, Asia has not adopted a common definition of human rights; or better still, Asia has not embraced a common view of human rights. Instead of discussing Asians' definition of human rights, permit me to discuss Asians' views of human rights.

Asia's Diversity

The absence of one Asian view of human rights is not surprising. Asia, the largest continent in both size and

population, is the melting pot of the world's major religions, of different economic and political systems, and of diverse ethno-linguistic groups. Asia is also a region of booming economies and of overwhelming poor. Let us consider the following:

1. Buddhism, Christianity, Confucianism, Hinduism, Islam, Judaism, Shintoism and Taoism were founded in Asia. Hinduism is the major faith in India and Nepal. Islam is the major faith in the Western end of Asia east through to Pakistan. Most Indonesians and many other people in the south-central of then USSR and western China are Muslims. Buddhism is the chief religion of Southeast Asia and has many followers in East Asia. Confucianism and Taoism have many followers in China and Shintoism is important in Japan. Christianity is what most people in the Philippines practice.
2. Tribal subsistence economies are what exist in parts of Indonesia, Singapore, Hong Kong, Taiwan and South Korea have highly developed market economies. India has a mixed economy model and China and Vietnam have planned economies.
3. Linguistic experts classify all languages into nine major language families and the language of all the groups except African are widely used in Asia.
4. Japan, South Korea, India, Sri Lanka, Philippines and Taiwan have representative democracies while China, Vietnam and North Korea have communist regimes. Singapore and Indonesia have one-party systems. Malaysia is in-between democracy and authoritarianism.
5. Asia is where Japan, the four economic dragons Hong Kong, Singapore, South Korea and Taiwan, and the emerging dragons (Malaysia, Thailand and Indonesia) are found. These countries are experiencing spectacular economic growth and prosperity. Their prosperity notwithstanding, Asia remains home to millions of the world's poor. As Mr Kimimasa Tarumizu of the Asia Development Bank pointed out, "the overwhelming majority of the world's poor - and the extremely poor - still live in Asia. It is a sad story, indeed, that millions of men, women and children in our region must go to bed hungry every night."

Asia's Authoritarian View

Amidst these Asian divergences and contradictions that have repercussions on the meaning and practice of human rights, two views on human rights surface. One I describe as authoritarian and restrictive: the other I call democratic and expansive.

The authoritarian and restrictive view of human rights holds that the treatment of human rights is the exclusive concern of a state sovereign and not the concern of other states. One calls it the principle of non-interference in the domestic affairs of one country. Another calls it the principle of asserting domestic jurisdiction. At its meeting in February 1993, the Chinese delegation to the United Nations Commission urged that the World Conference on Human Rights should "reiterate the principle of state sovereignty contained in the UN charter and international law which is the basis for the realization of human rights."

The authoritarian and restrictive view of human rights further holds that economic, cultural and social rights should be given priority over civil and political rights; that collective rights are more important than individual rights; and that rights are determined by the economic and political circumstances of each country. In its "White paper" Human Rights in China (1991), the Chinese government held that "Owing to tremendous differences in historical background, social systems, cultural tradition and economic development, countries differ in their understanding and practice of human rights."

In a paper presented to the UN World Conference on Human Rights in 1993, the Singapore Foreign Minister argued that in some countries pornography is acceptable in the name of freedom of the expression but in other societies like Singapore, it is not acceptable. He also said that the Singapore government despite outside criticism, had given its people a society free from drugs, related crimes and homeless people.

In a speech delivered by Malaysian Prime Minister Dr Mahathir Bin Mohammed at the JUST World Trust International Conference on Rethinking Human Rights in Kuala Lumpur on December 6, 1994, he said no country has a monopoly of wisdom as to what constituted human rights. He stressed that "No one, no country, no people and no institution have a right to claim that it has a monopoly of

wisdom or to what constitute human rights. Certainly, from the record and the performance of Western liberals, they are least capable of defining and preaching human rights. Indeed, at the moment, they have no right at all to talk of human rights, much less judge on this issue.

Asia's Expansive View

The democratic and expansive view of human rights holds that human rights are universal, indivisible and interdependent. Universality means that rights belong to and are to be enjoyed by all human beings without distinction, of any kind such as race, colour, sex, language, religion, political and other opinion, national or social origin, property, birth or other status. Indivisibility and interdependence mean that civil and political and economic social and cultural rights are interrelated and co-equal in importance. They form an indivisible whole and only if these rights are guaranteed that an individual can live decently and in dignity.

In March 1993, 240 participants from 110 human rights and development organizations representing about 26 countries across the Asia-Pacific region attended the Asia-Pacific NGO Conference on Human Rights and issued a Joint Statement on the Universality and Indivisibility of Human Rights declaring that "the universal nature of human rights is beyond question, their promotion and protection are the duty of all states, regardless of their cultural, economic or political systems.

In 1995, several regional consultations were held in various parts of Asia and participated in by representatives of many non-governmental organizations in order to draft an Asian Human Rights Charter. The Preamble of the Draft Charter supports the principle of universality and indivisibility of human rights and has this to say: "Considering that the inherent dignity of each human person derives from the common humanity of all human beings, and therefore all human beings have equal and inalienable rights as members of the human family: respect for such rights is the foundation of freedom, justice, conflict resolution and peace in the world..."

The achievement of a unified Asian view of human rights is difficult at this time. Both parties tenaciously and passionately cling to their respective positions. This stalemate, notwithstanding, efforts should be made by both parties to address serious human rights problems in Asia

today. For as Koshi Yamasaki pointed out: "Nearly 700 million people in Asia live a marginal existence, enduring hunger, sickness, homelessness and unemployment. There are many countries in Asia in which the average life expectancy is below fifty years, and the percentage of elementary school attendance and of adult literacy remains very low."

The Social Democratic Perspective

by

Gunter Verheugen

There is no single European view on human rights but many. In my presentation, I will try to present a social democratic view.

The term, "human rights" is today used in different ways. How far the definition extends, and how the philosophical and ethnic background affects human rights, are critically debated. During the period of the Cold war, the civil and liberal positions on human rights were confronted by a Marxist Socialist interpretation.

The Social Democratic Synthesis

Social Democrats seek to synthesize these different interpretations. Our philosophic and political tradition is rooted in the emancipation of the civil society as well as in the working class movement and the woman's movement. Our ideal society, if such a thing exists, is one which gives the individual the possibility to participate in the democratic rule, social security, a just distribution of national wealth and equal opportunities, for both men and women.

We deny to declare that social well being is only a problem of an individual person, and not society. We also deny the idea that individual political rights can be reduced or neglected in the name of basic social rights.

There is no fixed Western understanding of human rights. We do not accept what is widely called the "Western" interpretation because this solely concentrates on political and economic freedom, which means the establishing of democracy and a capitalist economic system. We instead believe that the social situation of the population must be considered as a context for human rights. Each individual cannot sufficiently use political human rights if social rights is not also given.

A narrow minded and limited interpretation of the term human rights therefore just show that the West is only interested in dominating the developing countries under its economic and political system.

Current Debates on Human Rights

Today, the definition of the term, "human rights", is even more complex than in the time of Cold War, East-West confrontation. The North-South debate has resurfaced today. We also have a new debate between the West and the East, by which we now mean Asia, not Eastern Europe. This was unknown before the fall of the Berlin Wall in 1989.

Some countries in East Asia and in the Islamic world blame the West for disregarding their historic and cultural values. This position is declared by many supporters of authoritarian regimes. But it is not logical to me.

Does the implementation of social rights necessarily lead to reduction of civil and political rights? The argument that the protection of basic social rights can only go along with the repression of individual political freedom is just trying to prevent a more profound approach to human rights. If a regime claims it is necessary to arrange the economic and social reality in an authoritarian way, I do not believe that is a legitimate reason to limit human rights. Rather, it is a formula to establish a barbarian police state or concentration camps.

Towards Dialogue

Representatives of the West can depolarize the global debate on human rights and to make the world wide dialogue more efficient.

The first thing that we should consider is the link between human rights and one particular type of "Western" democracy. It does not help a world dialogue to take the implementation of the democratic civil society of the "Western" type as the only instrument of judging other societies. Moreover, the demand for "Western" style democracy in all parts of the world is really odd if this is called for in states that have no democratic tradition or are not in a position to establish a democratic civil society.

The ideal is that all states will reach a free and democratic system in the future. We must allow, however, that the path of development might be very different in different countries. This acceptance of a different path does not allow the easy position of focusing only on economic progress.

It is also necessary to implement an active foreign policy that will foster human rights. This is because if we focus only on economic progress, it might be a very long unbearable wait before political human rights are better protected.

A second step towards dialogue is to recognize that the rise of illegitimate rulers and regimes is a threat to us all. We do not have to refer to the past to realize that authoritarian rule has been the traditional source of military threats. So we must recognize this potential problem in today's world, when we just cannot afford regional or global conflicts.

Universal Expectations

This brings us back to the individual human being in a society. This individual has the right for his own life, respect of his ethnic group and for rights of religious and cultural self determination. He can expect from the police and the courts of justice that the laws of his country are applied equally on all the citizens, and that detention and trials are dealt with, under fair rules. The personal integrity of an individual as a human being should be respected. It should be a common understanding that all countries should open their jails for the inspectors of the UN Human rights Commission.

Additionally, state institutions have to be restrained from interfering in the privacy of the individual person. This refers especially to the right of religious and sexual self determination, which is threatened in some countries with severe fines -- even capital punishment.

For social development, it is necessary to guarantee -- as a minimum -- the right for free trade unions. This has been accepted in both the capitalist and in the socialist world as a basic right. In many communist countries, the fact was that trade unions were not really free. But this was not the natural and accepted state of things, but a violation of socialist principles by the countries that claimed to be socialist.

For a better dialogue among different countries, it is important to see these rights as some of the universal expectations in linking development and human rights. As for the link to democracy, it is important to see that these rights I have mentioned are rights which can also be guaranteed in a non democratic country, without creating a completely different political system.

This recognition that human rights can exist in a non-democratic system is essential, I think. Quite often it is heard from authoritarian countries that we in the West want just to overthrow the existing system. So we should understand that human rights can be respected by the existing system, even if it is not democratic.

International Intervention for Human Rights

Today in international law, the principle of non interference in a country's domestic jurisdiction is almost extinct as regards human rights. The UN has been given an important role in controlling the implementation of human rights, regardless of state sovereignty. It is no longer possible in today's world not to accept the basic human rights principles. Nor is it possible to reject international concern over human rights as a reserved subject of internal affairs.

The UN's human rights mandate is based on the UN Charter, Article 1 (3) and Article 55 (c), read in context with Article 56. UN member countries have accepted the commitment to work together, and also on their own, to implement (among other issues) the human rights and the basic principles of freedom.

This results in the UN's responsibility for the UN to control the protection of the human rights in the context of its financial and juridical possibilities. This task is fulfilled in practice by the Human Rights Commission, which is linked to UN Economic and Social Council, and has existed some 52 years.

The basic guidelines for UN supervision of human rights are found in the human rights conventions that are being accepted by almost all member countries. In talking about conventions, I would like to especially mention the 1966 International Covenants on Civil and Political rights as well as Social, Economic and Cultural Rights. Equally important are the Convention against Torture, the Convention to Eliminate Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child.

By signing these international conventions, countries have accepted the duties created therein. They have also accepted that the respective bodies of the UN have to control the implementation of these commitments. Violations against these commitments have to be made public and can therefore be openly debated.

With this legal situation in mind, it becomes clear that a single member country of the UN can call for the implementation of obligations under these conventions. This is expressing the political will which is decisive to implement the human right mandate of the UN. This legitimizes international intervention for human rights.

The intervention is, however, a very soft one. The visit of the reporting persons of the Human rights Commission and their talks with citizens of the respective country can never really threaten the country's sovereignty. Only a regime that feels itself threatened sees all open critics as spark for the explosion leading to the erosion of its own power.

When I talk about international intervention for human rights, I do not like to point fingers. Even for us in Germany the reporting of the UN and of non-governmental organizations (NGOs) about human right violations in our country is not very comfortable. The actions of right wing extremists can bring a very negative image for my country. But still, these reports are necessary. This is so even in a country where free speech is guaranteed in the constitution.

The UN Conference on Human Rights held in Vienna in 1993 has made the legal situation clearer. The final declaration of the conference states, in Chapter one, that "The universal character of these rights and freedoms is not in question".

The participating countries have therefore acknowledged that the content of the human right convention of the UN is valid on their respective territories. In reality this means that each participating country is willing to accept the control mechanisms of the Human Rights Commission. They will have to cooperate with it and to accept the requested implementation of the conventions they have signed as a legitimate demand.

From this, I want to draw a clear conclusion: It is possible to debate on universal validity of the human right with all manner of justifications. But many arguments to justify a relativist position on human rights are artificial and rhetorical tricks that have no real ground. There are clear definitions of the international law which can be applied for by everyone and every country.

Human Rights and Realities

Reality may lag behind the standards set in the UN. In many countries very call for the implementation of human rights is seen as a subversive act which may lead to severe fines. It is also not satisfying to realize that some countries with big power and influence can afford to more easily reject international pressure than small and weak countries which might be disciplined by conditioning the development aid.

Another country with growing markets and the ability to place big economic contracts abroad will experience another situation. High ranking visiting dignitaries from Europe carefully dodge these human rights issues. If you want to sell airbuses to China, they say, you cannot sell human rights at the same time.

The Social Democrats believe in the direct connection between the democracy, peace and development on one side and the human rights on the other side. An active policy to support human rights is a justified part of foreign policy and serve our own best interest. What is the consequence of this? It is not sufficient to explain how important the market economy, free enterprise and deregulation are and to expect that all this will eventually but far away in the unknown future automatically establish a Western style democracy. It is true that was the way how it worked in Europe but over long period of time and not without important back lashes.

It is a matter of fact that in the 20th century, many economically developed European countries fell back to dictatorship and aggressive politics. The most serious and damaging case was Germany after 1933.

I really do not know whether democracy and human rights are conditions for economic and social development or, the other way around, whether development is a condition for democracy. It differs. And in some parts of the world, we have different experiences than in other parts the world. The European experience simply says it is easier for democracy with fully developed human rights to survive a crisis, if the economy and social conditions are healthy. In times of strong economic recessions, there is no guarantee that democracy will not fail.

Let me mention another important connection, the relation between arms export and human rights protection. We would have less international war, civil war and less suppression if the parties involved had not such an easy access to the most advance weapon including that of mass destruction.

From our recent history, we can see that the Gulf war was possible because Western states supplied Iraq for a long time with a mass of weapons beyond any reasonable defense needs. Hundreds of thousands of people died in these wars. They lost their lives. They were denied the most fundamental human right: the right to live. The majority of these victims had been civilians. It earns no credit if a state loudly and proudly

heralds human rights and yet is also responsible for so many losses of human lives because of arms deals.

This applies not only to full scale international wars. We have also a growing number of nasty little wars, which the international community take notice only if it turns into a real catastrophe like in Rwanda or Somalia. But whether it gets international attention or not, people die. One of the improvements for human rights is therefore to control the trade in armaments.

This will have economic costs. In Germany, during the last five years, we have lost three quarters of the jobs in our armaments industry. Nevertheless, I am convinced that we need international binding standards in order to restrict arms deals. There should be certain criteria. Sales should not be allowed, for example, if the customer state systematically violates human rights, or if it is a threat to its neighbours.

It is regrettable that even in the post Cold war era, the sale of armaments and its link to human rights is still subject to double standards. The question today is not whether a regime is close to the Western world or not. The question is the role of arms export in international trade.

In addition to example of Iraq, which I have mentioned, double standards can also be seen in the case of Cuba. The USA is a friend and ally to Germany on many issues. But it is necessary to criticize the American policy vis à vis Cuba. This island is certainly no threat to US security. It is not threatening the US interest in the American hemisphere. Yet, the US Administration and the US Congress tried to force other states to put economic pressure on Cuba. The question is why the US exerts pressure on Cuba, and not on other countries with a similar bad human rights records.

Another critical point is the fact that Western human rights policies is often directed by the mass media. Of course it is important to act quickly if a humanitarian crisis or sudden outbreak of violence arises. But hasty declarations of protest and ill-prepared crisis management are not sufficient and are not successful.

Early warning systems, preventive diplomacy and political de-escalation of conflicts are much more complicated but much more needed. It is sad but true that there are many systematic and mass violations of human rights which go unnoticed because of the media. You may call that the CNN factor in human rights. If the international media reports again

and again on a particular country, these will appear a common feeling in Western societies that something must do done. Thus the Western governments are under pressure to do something.

In these days, there are those who argue that human violations justify so called humanitarian intervention. But from my perspective, a purely "humanitarian" intervention does not exist. A state does not send young men to war in order to protect human rights in another countries. There have to be more and stronger reasons, such as strategic or economic national interests.

We also have to recognize that humanitarian intervention is not a reliable instrument. Prevention and de-escalation are much more difficult but also more successful. A successful policy of human rights must be preventive. Therefore it is of tremendous importance in the world today to closely watch closely the so-called low level crises.

We have states with permanent and, in a certain way, quiet oppression. We have states with civil wars and we have war of low intensity which are always resulting from old and unsolved conflicts. I would like to mention in this context the wars in South Sudan, Afghanistan, the conflict in Kashmir between India and Pakistan, the Kurdish problem in Turkey, the situation in Burundi and Tachikistan. The list is by far not completed. We should not forget the situation in Bosnia.

If we do not put these conflicts on the agenda of a preventive human rights policy, one could say that the Western understanding of human rights is no answer for most of the problems in today's world. We must learn that the massive violations of fundamental human rights are not necessarily the result of deliberate oppression. There can be very complex conflict situations with ethnic, religious and social roots. As such, it makes only limited sense to worry about the oppression of the Islamic population of Kashmir that is exercised by Indian security institutions. We have to look deeper to seek the roots of the conflict. And we need international efforts to contribute to the solution of this conflict.

In this context, it is justified to develop different strategies for human rights, according to the realities in different countries. Without any doubt, there are failing states which we cannot expect to build a peaceful civic society in a

foreseeable future. For such states, we should examine if there is a chance to find a stable peace settlement.

We need joint coordinated action in an international and multi-lateral framework to further the protection of human rights. This is limited by the principle of national sovereignty. But we cannot accept the predominance of national sovereignty at any costs, if internal conflicts arise. This is becoming a small world and internal conflicts always affects the neighbours and the region. International terrorism for instance, is today a very serious issue. In many cases, internal conflict is the cause behind international terrorism.

The simple fact is that internal and international peace is a condition for the development of human rights.

In political practice, we are confronted with the fact that there are conflicting interests. Very often it is a question of human rights versus trade. The American media are very frank on this, that for them human rights are "soft" issues and trade and investments are the "hard" issues. In reality, can we expect a Western industrialized state with high unemployment and serious problems of structural change in its economy to risk jeopardizing good bilateral relations, including trade relations, by taking a very tough stand on human rights? I believe that there is no general pattern on how to deal with human rights violations in other states. It strongly depends on the circumstances and conditions. What is important is that we always use the same criteria in judging human rights standards.

During the Cold war, Western states used to support African or Latin American dictators if they belonged to their political camp. The excuse, as US President Kennedy said about Ortega of Nicaragua, was, "he is a SOB but he is *our* SOB". Must this continue?

I think when necessary, we always have to include human rights questions in the political dialogue between states. If we have to decide whether we should use political and economic pressure and even to impose economic sanctions, we must examine the particular individual case carefully. There are situations where pressure and sanctions may be useful, like in South Africa under the apartheid system. But there are other cases where they are not. Sometimes quiet diplomacy may be helpful. Sometimes it may be better to protest loudly and to damage the reputation of a regime.

If we have to solve a particular human rights problem, the question of the ways and means depends only on the prospects of success. We must never forget the task is to protect the individuals who are in danger. The task of human rights is not to do something just for show and for political home consumption.

Conclusion

Many politicians and intellectuals from developing countries criticize the unequal distribution of wealth in our world as well as the unfair terms of trade. They make it absolutely clear that in their view the international economic and social order (or better to say disorder) is the main reason for poverty and misery. I share this view.

A man who literally fights a daily struggle for survival who does not know where to find shelter for his children and how to feed his children, will not be interested in human rights, which exist only in a formal way. Freedom of press is not important for a man who cannot read but on the other hand, freedom of press might be important to change the situation in which the man lives. The right to vote is not so important if starvation is going to kill you.

If Western states demand that developing countries should introduce democracy, pluralism, rule of law and human rights, they must be prepared to overcome the social and economic injustice on a global scale. From the perspective of a Social Democrat, I wish to emphasize that these political rights are interdependent with social rights. Political freedom and social security: these are the elements which finally will produce human rights and protection.

ASIA'S SEARCH FOR UNIVERSAL HUMAN RIGHTS

by

Simon SC Tay

The discussion of human rights in Asia today takes place against the background of an increasingly familiar but still heated debate. With the fall of Communism and as many Asian countries have risen economically, there has been anticipation that the system of governance and the practice of human rights in Asia would converge with their counterparts in Western liberal democracies. Analysts foresaw the "third wave of democracy" and "the end of history" (*Huntington, Fukuyama*).

Some Asian governments, however, did not embrace that convergence. They have argued that the region will seek its own path. They have posited an Asian approach to human rights and governance that differs from those seen in Western liberal democracies. They argue that the differences in Asia are caused and legitimated by differences from the West in culture and levels of development. As the Asian difference in human rights is based in culture, the debate is said to be about "Asian values". Various terms have been used to describe this Asian view. Some have called it, "soft authoritarianism", "Asian democracy" or even "the Singapore school" (*Jones*). More pejoratively, it has been called the "dictatorship development thesis".

The Asian view corresponds to an increasing self-confidence in the region, grown in tandem with economic development. The validity of these reasons can, and has been, questioned on a number of cultural and developmental grounds. The Asian view may also be suspected of masking continued transgressions.

Such criticisms have been made by a number of Western governments, commentators and human rights groups. There has also been some divergence of opinion within Asia itself, from some Asian governments, political opposition figures, commentators and non-government organizations. The debate about Asian values and Asian approaches to human rights, therefore, has dimensions both between Asia and other regions and within the Asia itself.

the Asian view. Rather, it assumes that the Asian view is now part of the policy framework for a number of governments in the region; a given in both foreign policy and domestic law. This essay also assumes that the main motive for putting forward the Asian view is not duplicitous, hiding gross transgressions behind cultural arguments. From these assumptions, the essay proceeds to summarize the differences claimed by the Asian view and to place them in the context of past claims to cultural difference in human rights. The essay then seeks to provide a way forward for inter-regional and intra-regional dialogues to further the search for universal human rights in Asia.

Asians are not the first to claim a difference in universal human rights. Since the inception of human rights, there have been many varying claims of difference. Despite this, a dominant view of human rights has arisen, largely from the Western democracies. This dominant view neglects the indivisibility of civil and political rights from social, economic and cultural rights. It largely fails to recognize the conception of group rights on par with individual entitlements.

Placing the Asian view within this context, the essay argues that Asians do not reject universal human rights per se. Rather, the Asian view questions if the dominant view of human rights is in fact universal. In place of this dominant view, Asia seeks a new universalism that better reflects the indivisibility of human rights, promotes greater equity between the regions of the world, and embraces multiculturalism to allow regional and minority cultures within a range of differences. Both governments and non-government actors in Asia, while they disagree on other aspects of human rights and practice, agree on this much.

This new universalism would not require Asian countries to ape Western democracies. The search for a new universalism equally requires Western democracies to re-examine the dominant view and some of their prevailing assumptions about human rights. The context for dialogue between regions on human rights would, as such, be between equals, with a respect for differences.

Other regions may still play a part in supporting and promoting human rights in Asia. However, this essay argues that policies of criticism and threatened sanctions devolve to bullying tactics that are unjustified in international law and are often counter-productive. When other countries try to force

the issues, human rights is in danger of being seen as an imposition by non-Asians, a tool of criticism and containment, rather than what Asians themselves can and should aspire towards. As between regions, unless there are persistent and gross transgressions of human rights, attitudes of promotion and support would be more productive.

The context for dialogue within Asia itself is equally important. The essay suggests that the path forward for Asia's search for human rights is towards instituting a regional charter and supervising structure. This should be supported by human rights commissions at the national level. Efforts to educate and involve civil society groups in this process are essential for the peoples of the region to achieve a better understanding and stronger consensus on human rights. Such a consensus would leaven and legitimize the views of Asian governments. Regional mechanisms within ASEAN and the ASEAN Regional Forum are also suggested. In this regard, the inter-regional efforts of promotion and support intersect with the intra-regional need for dialogue.

In the search for universal human rights, it is important that no region or culture dominate another. In universalism, we do not seek homogeneity or uniformity. That would bankrupt culture and diversity, attributes that are part of the human dignity which human rights seeks, in the first place, to promote and protect. Asia's search for human rights can be assisted and informed by efforts by other regions. Beyond that, however, Asians must find their own way.

A History of Differences and the Dominant View

The post-world war world has witnessed a growing articulation of human rights. First, with the 1948 Universal Declaration of Human Rights; then, in 1966, with the two international covenants on Civil and Political Rights and Economic, Social and Cultural Rights. These have been followed by conventions on more specific rights, such as the right against torture and the freedom from genocide.

Newer regimes of rights have also arisen. These include the rights against racial discrimination, the freedom from discrimination against women, and the rights of the child. These rights regimes were not explicitly set out in the Universal Declaration of 1948 or the 1966 covenants.

However, they now enjoy widespread support and high numbers of ratification among the nations; in many cases, exceeding the 1966 covenants.

The body of human rights has grown to such a point that many argue at least some of them -- like the prohibitions against genocide and torture, and the right to self-determination -- have become norms of customary international law. Arguably, they bind even those nations, who have not acceded to the major human rights treaties or who were not nations when the universal declaration was made. Commentators suggest we are in the age of rights, that consensus exists on an "irreducible core of integrity and dignity" in which "human rights is the essential idea" (*Henkin*). This is despite the comparative youth of human rights discourse in the long time scale of international law and humankind, and transgressions by many nations. A nation's conduct as regards its citizens is no longer purely a matter of its internal laws. It is the legitimate subject of international concern.

In this progress, what we call a dominant view of human rights has arisen. The dominant view associates human rights primarily with civil and political rights, with less emphasis on social, economic, cultural and other emergent, "third generation" rights. This tendency has manifested itself in the two human rights covenants of 1966. The differences between the dominant view of human rights and the perspective of socialist and developing country were evident in the negotiation and drafting of these two documents (*Pechota, Leary*).

The dominant view continues today. It is evident in the reports and actions of international human rights non-governmental organizations. They almost wholly ignore group rights, and economic, social, and cultural rights, while restricting their attention to a limited set of civil and political rights. The dominant view is also marked in the United Nations system, in which economic and social matters come under development agencies, wholly separate from "human rights" organs that focus on civil and political rights. A noted academic and one time UN human rights official noted that "one of the principal failings of existing intergovernmental institutional approaches to human rights ... is the rigid separation of the human rights organs, and that of the development and financial agencies" (*Alston*).

The dominant view may, with some justification, be associated with liberal Western perspectives. The human rights documents themselves are primarily positivist documents, without express reference to philosophy and ideology and very limited reference to democracy. But Western academics have argued or even assumed that Western liberal democracy is the best or only way of achieving a good record in human rights (*Howard and Donnelly*).

Despite or perhaps because of this dominant view, calls for cultural and other differences have issued. From Vitoria's first consideration of the native American Indians in "the New World", we have wondered if others who are not like us should be given rights and be treated as human. In the modern development of human rights, cultural relativism was an early obstacle put forward by anthropologists (*American Anthropological Association*). The relativists believed that rights and values were inseparable from the society that gave them context and meaning. Therefore, no universal rights could exist independent of culture. This relativist argument is by no means over (*Pannikar*). There are also other, moderated forms that suggest that no value transcends a culture and equivalents must be found in different societies in order to validate human rights (*Rentlen, An-Na'im*).

A second challenge to universal human rights came in the 1960s and 1970s as Western democracies and Socialist countries disputed first and second "generations" of rights as matters of political and cultural preferences (*Casessa*). The Socialist system strongly emphasized the primacy of social and economic rights, such as the right to education and to food. In the socialist democracies of Western Europe too, these rights were increasingly effected by law and welfare policy.

In contrast, social and economic rights in the USA have never been recognized on par with civil and political rights. While the USA provided unemployment benefits, other aspects of social and economic rights such as the state provision of health and education -- seen in Europe and many developing countries in that period -- were not instituted. Rights to education and schools, for example, have consistently been derogated by courts of law, unless there was another principle of civil or political rights at stake e.g. the rights of equal access to different races.

Amidst the democratic/ socialist debate over human rights, the principle that human rights are indivisible has been

neglected. Many from the West have, for example, consistently held the view that civil and political rights are legally enforceable while social, economic and cultural rights are not. They also argue that civil and political rights should be absolute and identical in all countries, whereas economic and social rights are merely aspirations.

Another challenge to human rights came with the so-called "third" generation of human rights. These rights, such as the right to development and the right to the environment, have been seen as "group" rights. These were mostly declared by resolutions passed in the United Nations General Assembly, where developing countries who supported these principles, were in the majority. The "third generation" rights were then stressed by developing nations on an international level; not only as between groups and the state but more, between states. This played a part in the demand for a global transfer of resources to enable a more equitable international order: the New International Economic Order (NIEO).

These "third generation" rights have been doubted by many in the West. The developed countries in the UN General Assembly almost all abstained from or voted against the resolutions on these "third" generation rights. They have maintained that they do not constitute norms of international law. Moreover, while Western jurists and human rights advocates accept that individuals have rights, they have consistently refused to conceive of rights that inhere to groups. As between nations, the developing countries did not succeed in creating undisputed legal norms, despite the declaration of third generation rights and the NIEO. Inter-governmental aid and assistance, for example, has remained a matter of choice for developed countries to give or withhold, and not the right of the developing nations.

In sum, then, there have been different and recurring questions of difference from cultural relativism, from socialism and from developing countries. Despite these challenges, the dominant view of human rights has not been reduced to doubt and silence. Indeed, it has persisted and gained strength as the challenge of socialist and many developing countries has waned. It is against the dominant view that Asia makes its argument for regional difference.

The Asian View: Government and Non-government

What is the Asian view of human rights? How does the Asian view stand in this context of preceding challenges to universality?

The Asian view of human rights, as articulated by governments, has been set out in the writings of some Asian leaders (For statements by Asian leaders at the 1993 Vienna Conference on Human Rights, see Appendix II in *Tang*) and diplomats (*Kausikan*). Among academics, such arguments have also been voiced both by Asians and by Westerners who have studied Asia (*Pye*). The Asian view of human rights is perhaps most clearly embodied in the Bangkok Declaration, a statement issued by over 40 Asian governments in the run up to the 1993 World (Vienna) Conference on Human Rights ("*Bangkok Declaration*" in *Tang*, appended).

The Asian view can and has been questioned on several grounds. Both the Asian view and the rebuttals by its critics are now sufficiently well known that only a summary is needed in this essay. Briefly, they are as follows.

The Asian view argues that Asians emphasize community and consensus, rather than individualism and confrontation. Accordingly, Asians accept and value strong government that brings economic development, and they do not necessarily seek to divide and constrain it as do the Western liberal democracies. So long as governments deliver economic growth and good governance, the Asian view suggests that there is no need for "Western-style" democracy and human rights. The integrity of civil and political rights should not oppose development for the nation. Some spokesmen of the Asian view have in fact suggested that good government may require detention without trial or controls over the press and free speech (*Kausikan*). The Asian view is said to result from Asian culture (*Lee*). Additionally, the Asian view has its basis in the developmental levels of Asian countries, which largely lag behind the Western democracies. In the debate over Asian values and human rights, these generalizations have drawn a strict dividing line between East and West, re-working the old Kipling adage that the twain shall never meet.

Critics of the Asian view argue that it is based on many over-generalizations of Asian culture. It ignores other, more liberal strands in Asian thought and over-emphasizes historical culture. It also ignores the more recent ruptures of colonization and independence, and the on-going forces of globalization. They criticize the Asian view as being a construction by some Asian governments that does not

represent the aspirations of all Asians, including the rising middle class, minorities and indigenous peoples.

For it is not only Western governments and human rights groups that have questioned the Asian view. In Asia too, individual commentators and non-governmental organizations have voiced their disagreement to different degrees and in different ways (*Aung San, Kim Dae Jung, Ghai, Neier, Tay*). Perhaps, this is most clearly seen in the Bangkok NGO Declaration ("*NGO Declaration*", appended), issued in parallel to the Bangkok Declaration by governments. The NGO Declaration differs significantly from the Asian view seen in the Bangkok Declaration. For example, the NGO Declaration calls for the liberalization of "repressive laws" and increased freedoms of speech.

While differences exist between the Bangkok Declaration and the NGO Declaration, there is also common ground on at least two important points. The first is in respect of culture. Like the Bangkok Declaration's call to recognize cultural difference, the NGO Declaration too welcomes the prospect of regional cultures in enlivening universal human rights. The second common point is that the NGO Declaration, like the Bangkok Declaration, emphasizes the indivisibility of human rights and calls for a greater emphasis on social, economic and cultural rights in tandem with civil and political entitlements.

This argument -- that the Asian view does not reject universal and indivisible human rights -- may surprise some. The tendency among some spokesmen of the Asian view has been to emphasize the differences they have from the West and Asian non-government actors, rather than the common ground they may share. But on closer examination, some common ground exists.

The universality of human rights can be seen in the Bangkok Declaration. While Asian spokesmen railed against the imposition of "incompatible values" in the name of human rights, they reaffirmed "their commitment to principles contained in ... the Universal Declaration of Human Rights" (*Bangkok Declaration, Preamble*). The Bangkok Declaration also emphasizes the indivisibility between different types of human rights -- social, economic and cultural as well as civil and political -- in securing development.

As such, the Asian view -- whether governmental or non-governmental -- does allow for the possibility of universal

human rights and, indeed, wants all rights to be increasingly and indivisibly promoted.

Seen in this light, the argument for Asian differences is not a rejection of universal human rights. The Asian view argues that while human rights are universal norms, there must be allowance for national and regional differences in priorities, emphases and specific forms of practice in giving recognition to them (*Bangkok Declaration, Article 8*). Since it accepts that some rights are universal, the Asian view may be characterized as a form of "weak" cultural relativism, in that norms are accepted.

If the Asian view agrees that there are universal and indivisible human rights, then what differences do they have with the dominant and largely Western conception of human rights?

The context we have sketched of a history of differences will assist in considering this question. For while Asia may seem currently to be the most often articulated difference in human rights, the region is not the first to debate the question of universality. The preceding challenges of cultural relativism, socialism and developing countries, informs the Asian view of human rights. From this perspective, we can see that the Asian view shares many of the concerns of these earlier arguments.

(a) Cultural Relativism

Like the cultural relativist, the Asian view does not assume that the values embodied in the dominant view human rights must be adopted. Instead, Asians seek equivalents in their own culture to better understand and respect human rights. This allies the Asian view to another present trend in human rights. This is the attempt of some to seek a multicultural human rights, equally valid in different religions and regions (*An-Na'im*).

This argument is that culture -- using the word in its broadest sense to include social and political systems and values -- is needed for human rights. It is insufficient, perhaps impossible, to associate universal human rights solely with the cultures of the Western liberal democracies. Consequently, it is best that different regions and countries imbue and flesh out human rights in terms of their own cultural values. The persistent challenges to the dominant view of human rights, which we have briefly sketched, suggest that if one culture tries to dominate the

interpretation of human rights, there will be resistance from other cultures.

This need to include different cultures and religions within universal human rights may draw legitimacy from human rights themselves (*Universal Declaration, Articles 22 and 18*). For example, a minority group has the human right to seek government support in keeping its language and culture alive (*Article 27*). This gives rights to culture. In some cases, however, the cultural argument goes one step further when it suggests that where cultural norms differs from human rights norms, it is the cultural norms that must prevail. For example, some would argue that human rights norms cannot invalidate punishment that is allowed by Muslim *hudud* laws. In contrast to human rights to culture, just mentioned, this argument is that culture takes priority over human rights. This idea of culture's precedence over other rights is not recognized in human rights documents. It is perhaps this assertion to culture's precedence, rather than culture *per se*, that concerns critics of the Asian view. It has been argued that in seeking a multicultural-cultural human rights, culture must take its place, but not be given preference over other rights (*Tay*).

In this context, it can be seen that the Asian view does not question the possibility of universal human rights. Rather, it questions whether the dominant view is truly universal. The Asian view may be said to reject the dominant view and its supporting, largely Western culture. It instead seeks a universal human rights that allows and embraces cultural difference and does not reduce humanity to a bland homogeneity.

If human rights is to be universal, the approach should be to universalize 'Western' rights, not to Westernize the different cultures and peoples. This approach, which seems to be increasing, might be described being "inclusive but not Western" or "multicultural". In this respect, subject to the warning that culture should not automatically be given precedence over other rights, the Asian view can be said promote the cause of universal human rights by reinvigorating the call to include different cultures.

(b) Social and Economic Rights

Like the arguments of socialism, the Asian view emphasizes social and economic rights. This counters the

refusal of the dominant view to put these rights on par with civil and political rights. The Asian view affirms the principle that rights are indivisible and, to this extent, seems justified by international human rights law.

The Asian view, as articulated by government spokesmen, is however sometimes unclear if this emphasis goes further to suggest that civil and political rights may be derogated, so long as social and economic progress is made. This is what has been termed the "trade-off" or "development dictatorship" thesis. As noted, some Asian spokesmen have indeed suggested that "good government" may require the use of detention without trial and the suppression of free speech and the press to, say, avoid inciting racial violence. From a human rights perspective, we may agree if these are seen as emergency measures. Some may even agree that a government may be good *despite* the occasional transgression of such rights. Too often, however, it seems almost as if some Asian spokesmen are arguing that these transgressions have no negative effect on how we measure good government or even that a government is good *because* it undertakes such actions.

While Asian governments counter the dominant view of human rights by emphasizing social and economic rights, the extent to which the Asian states themselves give effect to such rights is open to further study. In a number of states, social and economic safety nets have been de-emphasized. Governments play a smaller role than they did in the past in promoting equality and assisting the poor. This may be, of course, due to a limitation of resources in these countries. But it may also be attributed to an increasing emphasis on policies based on the "free market", bereft of concerns with equity.

The challenge of universal human rights must be to allow for the indivisible nature of rights. For example, in the case of elections and the right of political participation, we can see how economic rights may support political rights when people have sufficient and assured income to avoid having to sell their votes. In contradistinction, while some dictatorships have initiated economic progress, there are many more cases in which unelected regimes have led to a diminution of social and economic rights on top of the violation of civil and political rights. Accordingly, the search for universal human rights should avoid the

dominant view that wholly prioritizes civil and political rights, while steering clear of any views that suggest that these can be wholly abandoned without danger. Rather, it should seek integrated ways to promote their positive interaction and reinforcement of each other.

This has been recognized in the 1993 Vienna Conference on Human Rights that followed up from the Bangkok Declaration and other regional meetings. The Vienna conference declaration reaffirmed "the importance of ensuring the universality, objectivity and non-selectivity of human rights" (*Article 32*).

(c) Developing Country Concerns

While Asian countries are among the world's fastest growing economies, the majority of the region are still developing countries. Not surprisingly, therefore, the Asian view shares some common points with the concerns of developing countries that relate to group rights. These have been recognized in many UN General Assembly resolutions. They have also been recognized in the 1993 Vienna Conference on Human Rights: e.g. the right to development (Arts.10-12), and the group rights of minorities (Art. 19) and the indigenous (Art.20). Two aspects of these rights may be considered in seeking universal human rights. The first is in regard of group rights against the state in which they reside; and the second is the right of that state vis a vis other states.

Group rights within the states of Asia have been criticized by many in the West, especially in respect of rights to self-determination by some groups, and the rights of indigenous peoples. In a number of countries, however, it must be observed that minority rights have been respected and enshrined by policies, laws and the constitution. South-East Asian countries, in particular, have given attention to minorities as their societies are largely multi-racial, multi-religious and multi-cultural.

In Singapore, for example, although the state is secular and Muslims are a minority, their religious rights in property, marriage and other customs are continued. In this regard, the dimensions of the South East Asian experience with minority rights to culture, language and to religion, may be of interest to Western and other democracies which may have less experience with mass heterogeneity. Clearly, the tragedy of Bosnia and Herzegovina has

suggested to many in Asia -- Muslims and non-Muslims -- that the West cannot be counted upon to defend the rights and dignity of a minority within Europe (*Muzaffar*).

The second dimension of the developing country concerns is that between states and, specifically, the right to development. Some commentators have pointed out that while the Western democracies express concern over individual citizens in other countries, they have been reluctant to carry out the policies that would alleviate poverty and other development-linked deprivations of human rights. This relates to the effect of international institutions on national policies. For example, the policies of the International Monetary Fund for austerity, encouraging privatization and discouraging subsidies may assist in minimizing public sector inefficiencies. But these policies have also had considerable impact on government provision of social and economic rights in many countries, with the greatest effect on the poorest in those societies. In this context, the thrust of the United Nations Development Programme for human development -- which includes factors such as the provision of education, basic health, housing and other social and economic rights -- in place of pure economic development, is laudable but insufficient.

More generally, commentators in Asia criticize what they see as "self-serving policies connected with trade, investments, technology, science, currencies, interest rates ... unjust sanctions ... and the monopoly that a few in Europe and North America exercise over the articulation and dissemination of ideas and information across the globe" (*Muzaffar*). Many Asian governments may not put their arguments so strongly. But many Asian countries remain committed, both individually and through groupings such as the Non-Aligned movement, to seeking from the developed countries of the West and the international institutions that they influence, more stable economic conditions and fairer opportunities for development and economic progress. In this regard, the Asian view of human rights shares considerable common ground with the concerns that developing countries from Africa and other regions have articulated.

Asia's Search Today

We have considered the Asian view in contrast to the dominant view of human rights and in the context of other, preceding challenges to that dominant view. This essay has

argued that Asia does not reject universal human rights, but rather the dominant view of what human rights entails. This does not paper over the differences between Asian and Western views. But it is important to understand that the controversy in Asia is not whether human rights exist at all. Nor is it about the basic core of rights. It is more about what, precisely, these rights mean in everyday life, in Asian societies.

For even as Asia agrees that universal human rights can be found, other questions and controversies arise. What comprises these universal rights (e.g. Are economic rights part of universal human rights? are they real rights?). How should these rights be promoted and enforced (e.g. Does human rights allow unilateral sanctions or external intervention by one country against another?). What do these rights as abstract norms mean in concrete situations (e.g. Even if we believe in freedom of speech, do we curtail speech that incites racial hatred?).

Many Asian governments argue that these rights should be interpreted and prioritized according to their culture and stage of social and economic development, especially in emerging countries like Vietnam. Some critics however expect that rights must immediately take forms seen in Western democracies.

For example, citing freedom of speech, some American commentators reject censorship that protects racial or religious sensitivities. They do not recognize the fears of multi-ethnic nations which have known a history of inter-racial violence. Nor do they acknowledge that, in other Western democracies, speech which provokes racial anger is also restrained by similar laws, such as the Race Relations Act in the United Kingdom. Similarly, some European commentators believe the death penalty is a form of "cruel and inhuman punishment" which violates human rights. Asians may not agree with that interpretation. Indeed, they can point out that in most American states with rising crime, the death penalty is popularly supported.

On such points, American and European human rights advocates do themselves and Asians a disservice. They should not put forward certain practices and interpretations of human rights as being "universal", when there are clearly differences even among the developed countries of the West.

At other times, propositions are made by some human rights advocates that are not sustained by human rights law. There are those, for example, who argue that a person should not be detained without trial under any circumstances. Yet even the international covenant on civil and political rights recognizes that detention is legitimate when a public emergency has been proclaimed. In this way, human rights recognizes national exigencies. It bends when there is a clear and present danger. The laws on detention in Singapore, Malaysia and elsewhere in the region are different insofar as no emergency need be declared. But human rights does not absolutely prohibit detention and critics are wrong to overstate their case.

More generally, it would seem that those who believe in human rights do their cause a disservice if they only look to the Western democracies for the full meaning of human rights, and therefore limit human rights to those emphasized by the dominant view. Asia must find its answers within the region's own compass. To that end, as never before, Asia has been in search of human rights.

There is, however, a significant difference whether that search is made and measured by regional human rights declarations and instruments or by international human rights treaties. Let us look at the regional approach first.

The Bangkok Declaration and NGO Declaration, already mentioned, are important examples of the regional approach. From these, a core of human rights has been articulated in Asia, by Asians. This core includes rights against torture, slavery and genocide. They now form a basic framework that binds all nations as part of customary international law. Other human rights are considered too. In a 1992 speech in Japan, Singaporean Senior Minister Lee Kuan Yew identified the rule of law and the prohibition against racial discrimination as prerequisites for development. The 1993 ASEAN Inter-Parliamentary Organization Declaration on human rights is another significant step forward in Asia's search for human rights (*AIPO Declaration, appended*).

The AIPO declaration substantially adopts many universal human rights, on similar terms with international human rights documents. For example, the freedom of expression and the opportunity to participate in the conduct of public affairs is subject only to reasonable restrictions. There is also a right to the presumption of innocence in courts of law.

While the AIPO Declaration, like the Bangkok and NGO Declarations, is not binding on governments, it can serve as a code to judge conduct and move towards a regional charter. The declaration, moreover, has a greater legitimacy than purely Western viewpoints as it was drafted and adopted by ASEAN parliamentarians who understand their own region.

While the Bangkok and AIPO declarations have furthered the regional articulation of human rights, when we turn to international human rights treaties, we see that the region's record is not strong (*See Table, appended*). In ASEAN, only the Philippines and Vietnam have signed both treaties that further the universal declaration: the two 1966 covenants on civil and political rights and on economic, social and cultural rights. Many other ASEAN countries, including Singapore, have signed neither. Nor have all ASEAN countries signed other human rights treaties, such as the convention against racial discrimination. This neglect may be surprising in view of the need for co-existence in most Asian states of different races and religions.

Among the international human rights treaties, Singapore only acceded to its first conventions as recently as 1995. It has adopted the Convention against Genocide, the Convention on the Elimination of all forms of discrimination against Women (CEDAW) and the Convention on the Rights of the Child. For the latter two covenants, moreover, Singapore has entered significant reservations, as have other ASEAN countries, like Malaysia. These reservations are used to limit the application of practices that the international convention might otherwise require. Upon making a reservation, non-observation of that reserved part is not unlawful. As such, reservations question the universality of those practices.

For example, Singapore's reservation on CEDAW includes reservations on Articles 2 and 16 that might otherwise lead to criticism of women's roles under Muslim syariah law. This because of, "Singapore's multi-racial and multi-religious society and the need to respect the freedom of minorities to practise their religious and personal laws". In Malaysia, where Islam is the official religion, the reservation to CEDAW is more widely drafted. It declares the act of accession to the treaty "is subject to the understand that the provisions of the Convention (i.e. CEDAW) do not conflict with the provisions of the Islamic Sharia' law and the Federal Constitution of Malaysia".

This does not deny the importance international treaties or inter-regional dialogues on human rights. But from the experience of ASEAN in considering international human rights treaties, such as CEDAW, the regional or national approach is needed to ensure that general norms do not, without forethought at least, displace existing religious and cultural norms. The regional approach, moreover, seems more likely to see advance, at least in the near to medium term.

Furthering Dialogue: Intra-Regional and Inter-Regional Approaches

Many Western commentators have suggested the norms of human rights are already established and, further, have already been substantiated through conventions setting out practical applications, such as the 1966 Covenants and other international documents on specific rights (e.g. Convention against Torture). Now is the time, these commentators argue, that the main thrust of human rights should be aimed at enforcement. The priority they preach is therefore monitoring, evaluation and enforcement in Asia and elsewhere. That enforcement they seek would be carried out by international bodies such as the UN and its recently created human rights commissioner, or by international human rights non-governmental organizations.

Many Asians cannot, I believe, agree with this. Even as they hope for effective human rights mechanisms, most Asians would argue that there still is need for dialogue on human rights norms and cultures that underpin such norms. The focus suggested by Western human rights commentators on enforcement neglects two important factors in Asia.

First, there is the fact that few Asian nations were present and active during the norm creation process. When the United Nations adopted the Universal Declaration on Human Rights in 1948, the vast majority of today's nations were neither represented nor consulted. Most of Asia, and also Africa, was still under colonial domination by the Western powers. Singapore and most Asian countries were not there to vote either yes or no.

In the decades after independence, most of Asia still did not openly embrace international human rights. Their participation in the drafting of the 1966 Covenants was also minimal. Some Asian nations, alongside other developing countries, have played a role in articulating the "third"

generation of group rights, such as the right to development. As already discussed, however, such rights find little recognition from Western democracies within the dominant view of human rights.

There is a second and perhaps more important factor that encourages further dialogue about human rights norms. This is the increasing recognition that, for rights to be generally observed and effectively enforced, there must be cultural norms within the different societies that supports them. That is to say, human rights work best when there is an internal or indigenous belief that supports and validates them. Neither a positivist obligation drawn from international documents nor external persuasion by Western democracies is sufficient by themselves. Our acceptance and sense of ownership of human rights is necessary. This can best be achieved when Asians have more clearly articulated human rights norms, fleshing out how they disagree with the Western or dominant notions of those rights as well as the ways they may agree. This process at the regional and national levels is important and perhaps crucial for universal human rights, notwithstanding their universal nature.

For regional charters can and have played significant roles in promoting human rights. Europe, the Americas and Africa: each part of the world except Asia has its own regional charter on human rights. As compared to the international regime of human rights, a regional charter deals with nations that have closer links in culture, economics and other interests. This can enable them to find greater harmonization of standards between nations. In the European system of human rights, there has also been an ability for the regional human rights courts to play a large role in arbitrating between nations in dispute. The effectiveness of that role far exceeds anything in the international human rights system.

Regional charters can also flesh out the universal principles according to the region's particular needs and practices. Unlike the Americas, for example, Africa's charter includes the idea of duties alongside rights to reflect its more communal culture. While we can recognize that the concept of duties may be used by governments to diminish rights, it is equally important for the search for universal human rights to seek out ideals that may be an indigenous heritage (*Mutua*).

Asia -- the largest and most populous continent in the world -- is the only region that does not have its own human rights charter. Without a regional charter, there is a danger

that human rights are primarily an occasion for outsiders to berate Asia; not an aspiration for all Asians to adopt for themselves. By embarking on the search for its own meaning of human rights, Asia may cease to be the passive subject of criticism. It can instead act to shape its own destiny. In Asia's search for human rights, there are dangers that governments will predominate. Some may argue for greater authority in the name of culture and past tradition even while societies are rapidly becoming more open and participatory. It is therefore important that more voices be added to the Asian debate on human rights. These voices must include opposition politicians. Even more importantly, the common and independent men and women of the region should be involved.

The following points may be suggested for a context that can further dialogue on universal human rights in Asia, both intra-regionally and inter-regionally:

1. Unless there are persistent gross transgressions of human rights, other regions should refrain from threatening sanctions against Asian nations. This is likely to be counter-productive as Asians grow more self-assertive; they will resist the imposition of external viewpoints. It is also hard to justify given international human rights law which requires systemic and gross transgressions of human rights, rather than isolated, particular incidents. The threat of sanctions, moreover, runs counter to the aspiration of Asian countries and the need of their peoples to fulfill the right to development.
2. Other regions have a role in supporting and promoting human rights in Asia. Support and promotion by other regions can include dialogue on human rights norms as well as funding and the sharing of experience and technical assistance (e.g. human rights monitoring). This role may be played at the regional level or the national, and on a bilateral or multilateral basis. Two existing fora may be considered for inter-regional dialogue. These are the ASEAN Regional Forum (ARF) and, in the case of Europe, the follow up to the Asia Europe Meeting (ASEM). Both fora are relatively recent and, in each, there have been concerns that human rights should not dominate the agenda. This said, however, they may be part of the discussion. In the ARF, human rights violations come into the picture as the gross transgressions may affect regional stability by, for example, leading to

the mass outflow of refugees. In the ASEM, human rights may be discussed in relation to cultural understanding between the continents. Dialogue on human rights may be more acceptable provided it is clear no sanctions will be threatened and that, instead, respect and equality will be observed. It will also assist if the Western democracies recognize the possibility that Asian views of human rights may inform and enrich their own views on human rights.

3. Within Asia itself, there should be encouragement towards a regional or sub-regional charter. The Bangkok Declaration and the AIPO Declaration may, in this regard, be starting points for further articulation of Asian human rights. This should lead to Asian or ASEAN working groups and, further, institutions for human rights. Such approaches are already undertaken for better understanding and cooperation on issues such as the environment. In such ASEAN groups, there is a traditional emphasis on consensus and cooperation instead of confrontation. In this atmosphere, there is no reason for human rights considerations -- not just civil and political, but in their full dimensions -- should not also be discussed.
4. At the national level, human rights commissions may also be encouraged. Within ASEAN, Indonesia and the Philippines have taken this step. Other ASEAN states, in light of their leadership in articulating Asia's search for human rights, should also consider doing so. These national commissions are important to help educate citizens at the grass roots about human rights. They also have an important role to play in the application of human rights norms to domestic situations. It is only with the practical application of human rights that the norms in the declarations can be tested and made relevant to real life human rights concerns.
5. In the process towards a regional charter and institutions for human rights, non-government actors, such as the organizations who have promulgated the NGO Declaration, minority groups, women, and indigenous peoples should be included. This would serve to leaven the discussion and legitimize the Asian view that then arises.

Conclusion: Towards Multicultural Human Rights

Human rights and the dignity that they promise to the human being should be the aim of all nations. There is a danger, however, that in the promotion of human rights, we come to identify the particular cultures and practices of the West with human rights to the exclusion of other cultures. What this essay has called the dominant view of human rights is not the only, nor the best, way of conceiving of universal human rights. Nor, strategically, is it the best way to ensure an increased compliance with human rights in different societies.

The dominant view of human rights has not been accepted as universal. Many different nations and peoples have rejected its imposition in whole or in part. This can be seen in the history of arguments put forward by cultural relativism, by socialism and by developing countries. It can be seen in human rights themselves. Although social, economic and cultural rights, and the "third" generation of group rights are articulated in international human rights documents, treaties and UN General Assembly resolutions, the dominant view has neglected or downplayed these aspects of human rights. In so doing, the dominant view has failed to acknowledge the principle of indivisibility.

Some of the sources of this argument for different perspectives in human rights have now gone quiet, especially the socialist arguments and the call of developing countries for a new international economic order. But many of the arguments themselves are continued in the Asian view.

There seems to be an emerging form of argument which this essay has tried to identify as a new universalism or a multicultural/ pluralist view in human rights. This seems to emerge from a democratic and communitarian politics that assumes ethnic, cultural and religious differences can and should be accommodated in both national systems and the new world order. It also assumes that there is a common ground to speak about human rights, even if that common ground is not the first generation rights or Western liberal theory.

This new universalism, this essay has suggested, will move away from predominately Western concepts to allow more cultures to find their own basis for human rights. This is an "inclusive but not Western" approach that is characteristic of the Vienna Declaration. Article 5 of the Vienna Declaration typifies this, stating that, "All human rights are universal ... While the significance of national and regional particularities and various *historical, cultural and religious backgrounds must be borne in mind*, it is the duty of the States, *regardless*

of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms." (emphasis added).

What we have called a new universalism or multicultural human rights does not apply to Asia alone. The idea also means that the liberal traditions within Western countries need to be reconsidered. This is already happening in some countries, giving the international debate about culture and rights a domestic counterpart. Inside Western democracies and particularly the USA, people increasingly question the sufficiency of ethnic and gender equalities and search for greater pluralism in democracy. There have been calls for greater emphasis on duty, as opposed to right, and community/ society/ peoples as opposed to the individual. Some have questioned the lack of social and economic rights for all, as befitting rich nations. The call for economic opportunity in the poorer communities parallels the call for the right to development. Many Western societies fall short of human rights standards on different grounds, ranging from the treatment of the indigenous to the lack of social and economic rights.

The quest for a consensus in a system of universal human rights should not be a one-way conversation in which Western democracies are held up as an unassailable and faultless model for all to ape. Internally, it is clear that it is not -- many citizens in these societies call for a more participatory, egalitarian and pluralistic society. Externally, this may be a humbling admission but one, that if addressed, would strengthen the legitimacy of the West to take the lead in the quest for universal human rights. For that search cannot aim to pass off what is Western as being what is universal. The search for universal human rights instead calls on the West, as much as Asian and other countries, to profit in the exchange and education of what our different cultures have to teach all human beings about the rights that inhere to our humanity.

Endnotes and Selected References

Documents

Universal Declaration of Human Rights, G.A. resolution 217A, UN Doc A/810 (1948)

International Covenant on Civil and Political Rights, GA resolution 2200, 21 UN GAOR (no.16 52, UN doc A/ 6316 (1966)

International Covenant on Economic, Social and Cultural Rights, GA res. 2200, 21 UN GAOR Supp (No.16) 49, UN doc A6316 (1966)

"Vienna Declaration": 1993 UN World Conference on Human Rights, published in Human Rights Law Journal, Vol. 14, No.9-10.

"Bangkok Declaration": Asian Regional Declaration, Human Rights Law Journal, Vol. 14, No.9-10; alternatively, re-published as Appendix I of *Tang* (cited below), p. 204.

"NGO Declaration": The Bangkok NGO Declaration of Human Rights, dated 27 March 1993; summary published in *Tang* (cited below); copy attached.

"AIPO Declaration": Draft Declaration on Human Rights in ASEAN Region, dated 23 August 1993; published as an Annex to the ASEAN-European Human Rights Conference 1993; copy attached.

Books and Articles

A. A. *An-Na'im* (ed.), *Human Rights in Cross-Cultural Perspective: A Quest for Consensus*, University of Pennsylvania Press, 1992

Aung San Suu Kyi, "Listen the Culture of Democracy and Human Rights is Universal," *International Herald Tribune*, 1994.

Alston, Philip, *The Right to Development in Human Rights Yearbook*, Vol. 1, United Nations, Hutchinson & Co, 1988

American Anthropological Association. Statement on human rights submitted to the Commission on Human Rights, *American Anthropology* 1947, Vol. 49, p. 539-43.

Casese, Antonio, *Human Rights in a Changing World*, Temple University Press 1990

Fukuyama, Francis, *The End of History and the Last Man*, 1992.

Ghai, Yash, *Asian Perspectives on Human Rights*, Hong Kong Law Journal, Vol. 23 No. 3, 1993.

Henkin, Louis, *The Age of Rights*, Columbia University Press, 1990, p.193

Howard and Donnelly, *Human Dignity, Human Rights and Political Regimes*,

Huntington, *The Third Wave: Democratisation in the Late 20th Century*, 1991.

Jones, Eric, *Asia's Fate: A Response to the Singapore School*, *The National Interest*, Spring 1994.

Kausikan, Bilahari, *Asia's Different Standard*, *Foreign Policy*, Fall 1993, p.24-41.

Kim Dae Jung, *Is Culture Destiny?*, *Foreign Affairs* Nov/Dec 1994.

Lee Kuan Yew, *Democracy, Human Rights and the realities*, *Singapore Ministerial Speeches* Vol. 16 No. 6.

Lee Kuan Yew, *Culture is Destiny*, *Foreign Affairs* Vol. 73 Mo. 2, Mar/ Apr 1994.

Leary, Virginia, *The Effect of Western Perspectives on International Human Rights*, in *Human Rights in Africa: Cross Cultural Perspectives*, (*An-Na'im and Deng*, eds.), *Brookings Institute*, 1990, p.15-30.

Leary, Virginia, *The Effect of Western Perspectives on International Human Rights*, in *Human Rights in Africa*, supra, p.15-30

Mutua, Makau Wa, "The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties," *Virginia Journal of International Law*, Vol. 35: 359.

Muzzafar, Chandra, "Europe, Asia and the Question of Human Rights", *JUST Commentary*, 15 Nov 1995.

Neier, Areyeh, *Asia's Unacceptable Standard*, *Foreign Policy*, Fall 1993, p.42-51.

Panikkar, R. *Is the Notion of Human Rights a Western Concept?* *120 Diogenes* 75, 1982.

Pechota, *The Development of the Covenant on Civil and Political Rights*, in *The International Bill of Rights* (*Henkin*, ed.), *Columbia University Press*, 1981, p. 32.

Rentlen, Alison, *International Human Rights: Universalism versus Relativism*, 1990.

Tang, James JH, *Human Rights and International Relations in the Asia-Pacific Region*, 1995.

Tay, Simon SC, Human Rights, Culture and the Singapore Example, McGill Law Journal Vol. 41, No. 4, 1996 (Special issue on Human Rights).

Core Concepts and Asian Traditions

by

S H Alatas

When we are discussing the comparative difference or common factors between the concept of human rights from different regions, we should clarify one key aspect of human rights. This is the difference between the core concept of human rights and its particular manifestation in different cultural settings.

Core Concepts

What is meant by the core concept of human rights? These are universal elements of human rights. For instance, no society would approve of torture. While we can see this as a core human rights concept, we also have to admit that torture is being carried out in many societies in the world. Torture is used in criminal procedures to extract confessions. This method of torture was used in many parts of the world including Europe, up to the time of the French Revolution.

It was the French Revolution which first abolished torture as a means to obtain confessions. Yet, this was only applied in the colonies. In the 19th century, torture was still applied in the Philippines and Indonesia.

Another core concept of human rights is the fair application of law and justice. When that fails, a person in a higher rank can get away with anything, they can rape and kill without punishment. Those in power can be extremely corrupted and still not have to pay for their crimes.

These two examples -- the right against torture and the fair application of law and justice -- show what is meant by the universal core of human rights. There are others of course. For instance, there is no society that would approve or tolerate and attempts by a group to deprive others of food. Even if there are cases in which these core concepts are not observed, they remain the essence of human rights. They deserve our particular concern.

Cultural Manifestations

At other times, however, discussions focus on what may be called cultural manifestations of human rights. Nowadays, many things are included under the concept of "human rights". Some in the USA seem to consider practically anything as part of human rights. For instance, in employment in certain areas, it is against human rights not to allow women to work in certain fields, like in the air-force in the United States. In the Catholic Church, women cannot become priests. We find such practices disagreeable. But should we consider them as a human rights issue?

It may instead be a question of cultural agreement. For example, it is simply part of their culture that priests should be male. This may not have anything to do with the overall rights of women as far as basic rights are concerned; like the rights to justice, rights to health and rights to freedom. So, if there are certain sectors of society that would reserve some occupations in some areas, I would not include this as a universal core of human rights. For instance, among the Muslims, the prayer leaders in mosques are always men. Women are not allowed to lead prayers in mosques because the congregations are mostly men and they are afraid that if women were to lead prayers, the men would misbehave. But I do not see these issues as a concern to the core concepts of human rights.

Another example is the recognition of single parents as formal homes or recognition of same-sex marriages, which is being advocated by some groups in the West. We cannot project this as an universal human rights issue. This is relative to a certain context in certain societies. In Asia, such an idea will not be tolerated. If one brings in such ideas and start talking about human rights, it will spoil the power of the term when it comes to more critical human rights problems.

Using the human rights banner in this way will distract attention and possibly create resistance against human rights. We should be careful not to impose our views on another society when it comes to particular manifestations of human rights. It is necessary for us to concentrate on the universal or core aspect of human rights. This spells out as rights to the media, rights to freedom, rights to a fair trial, rights to have a decent life.

Asian Traditions

If we look at the Asian traditions, most of these core values of human rights are already there. If we link human rights today to these historical traditions, the force of human rights in our societies would be greater. Unfortunately, this vast body of historical knowledge of human rights traditions in Asia have not been transferred to human rights groups and this knowledge are not being utilized.

One example of Asian traditions that supports human rights comes from Islamic history. The fourth caliph, Ali, had written about human rights, and his life also revealed a lot of human rights aspects. He was confronted by a rebellion from a Sectarian group. It was a fanatical group which considered those outside itself as heretics. They believed that claiming the blood of heretics is all right. Ali was killed by them. When they rebelled, he instructed his soldiers not to change their beliefs but only to ensure that the rebel group did not harm the general public. These rebels believed that Ali, son-in-law of the Prophet who was the first male convert, was not "Muslim" as they defined the term. This group condemned him and thus justified the spilling of his blood. Yet Ali gave these rebels the freedom to retain their belief.

When he was struck down by them in the mosque, and before he died, Ali's immediate instructions to his children was to execute the murderer, if he died. He instructed them not to torture the murderer. He specified that the murderer must not be tortured in any way and his physical being should not be injured otherwise the rebels would be angry and would seek vengeance. Shortly before facing death, he took the trouble to think about the welfare of the murderer. The religion prohibits the application of torture for punishment.

If we were to use these or other incidents in Islamic traditions to build up human rights, modern Muslims would be more receptive. They would realize that the present day practices of using torture for punishment in jail without fair trial is wrong.

When we talk about democracy, press freedom, respect for the individual, we refer to them as Western notions. Efforts to defend the individual, however, is an Asian notion. Buddhism, for example, is a radical departure from previous systems because it defends the individual. In Islam too, most of its traditions defend the individual and it believes in the sanctity and

freedom of the individual. Thus, the linking of present-day attempts to introduce human rights with the existing traditions in Asia will give it a bigger impact.

Take the Philippines for example. In the Philippines, it is best to link human rights with the history of Jose Rizal, their national hero. Rizal's life was a tremendous effort to defend human rights. By ignoring Asia's own historical contributions to human rights ideals, we would be starting anew. It would be more difficult unless it is linked to the existing traditions. This allows people to be more receptive emotionally. We should transfer this body of historical knowledge to the present groups active in the promotion of human rights.

The East-West Debate

It is important to build human rights in Asian on Asian traditions. Otherwise, there will always be groups around which would try to detract the issue, declaiming human rights as Western concepts; a new form of colonialism that is unsuitable for us and that there is little human rights in the West. But they forget that it is not the presence or absence of human rights in the West that is the issue. It is the attempt to introduce human rights which is accepted as a valid norm in the West, people in the West do not accept discrimination as part of human rights. The West admitted having such problems and we also know the people in the West suffered tremendously from oppression, like the war, the Fascists, the Nazis and the communist systems that had taken place. What is important is that there has been an awareness that has always been resistance against these violations of human rights. Sometimes they have failed to protect human rights. But At no period in modern Western history where there was no resistance against the violation of human rights.

Some are concerned about Western interference. But this is not the issue. The issue is whether we are in favour of human rights. If so, we should also be in favor of efforts because of our convictions, because of the universal significance of these efforts, and we should go along with it. We should not be discouraged by "interference".

European Definitions in Practice

by

Erik Fribergh

It is important to link the European definition of human rights and European practice. What human rights are, and the nature of human rights, is revealed in how these rights are protected.

In Europe, the emphasis is on the concept of individual rights. This is one area specific to the European approach to human rights. A second area is the emphasis for the protection of the rights; that is, the institutional framework.

From the European perspective, it is impossible to dissociate these two aspects. If we look first at the type of individual rights which are emphasized in Europe, we can see rights that are characterized as individual rights, civil and political rights like freedom of expression, right to fair trial, prohibition against torture. In that context, there is also social rights that are individual rights but everyone are protected under the European system in a different way.

The political rights are protected in an extremely judicial system. There is a very advanced judicial procedure which is represented in particular by the European convention on human rights, which is limited to only the civil and political rights. The social or individual rights like the right to work, the right to health, the right to social security, are not protected in the same judicial procedure. These rights are protected under the European social charter. This system of protection is less effective than the one under the European convention on human rights. It is a system based on reports from the states which are examined by independent experts in committees.

There is a trend in Europe today to improve the part concerning institutional framework. In other words, the actual rights are not developed today. In Europe, there is satisfaction with the definition of human rights. There is no development of rights anymore. However, there is concentration on defined rights which are actually protected and how everyone are enforced. Therefore there is little reform done today on the

development of human rights and on the creation of new human rights.

The concentration is on the machinery which is supposed to enforce existing rights. One example of the latest reform work in this area is concerned with the social rights under the European social charter. Individuals cannot complain about the lack of social rights to an institution as these rights are based on reports from the states. However, there is going to be a change, individuals can possibly complain via an international/national labour organization or other bigger organization in the labour market. This is a new system which has been adopted and would be enforced soon, when this new protocol has been rectified by a sufficient number of states.

The other important development on the institutional side is the reform system under the European convention on human rights. Today, we have a system whereby all individuals in Europe can complain to European Commissioner Human Rights and the European Commissioner Human Rights is a judicial body. It can then bring a case before the European Court of Human Rights (which is really a judicial court) and the states are obliged to follow the judgments from the European Court of Human Rights.

The reform which is envisaged in this area is that one will abolish in a couple of years, both the Commission and the Court and replaced by a single court. The whole system would only be a court system in the future and this means that the individual European who wants to complain will have access to a court which guarantees him a public and the judicial procedure. In respect of all complains concerning human rights, it means that human rights that are defined in the European convention on human rights today. It is the enforcement machinery that is beginning, the actual rights would remain unchanged as under the current system.

There are two very important developments that also show the concentration in Europe on the enforcement machinery. The rights have developed a little since the European Convention was adopted in 1950. The social rights, a new charter, also new rights have been added to the original convention on human rights. We have seen a right for property, aliens but there are not many substantial ones.

With regards to the more collective rights, the European system does not really have reinforcement machinery. These rights (rights to environment, rights to development) are considered to be dependent on the political, economical situation of the country, these rights are also not easily susceptible judicial procedure. These are some of the general consideration which I wanted to start with.

In relation to what Prof. Alatas said just now, I would like to share with you a piece of case law from the Court of Human Rights which might be of interest as Prof. Alatas spoke about torture as a method to obtain confession (which is a problem all over the world). It is not so frequent in Europe, I may hope but it has developed a case law on that score which may be of interest to you.

Normally, if torture is used to obtain a confession, it is almost an impossible situation for the person who has been subjected thus to prove it. The European court has delivered a judgment which more or less says that it has reversed the burden of proof which means that if a person which has been taken into custody or psychiatric hospital and detained, if he then comes out from that detention, having scars, marks or other indication that he had been subjected to torture. If he has been proved by a certified doctor, it will be under the judicial examination in Strasbourg by the Court of Human Rights. The burden of proof will be reversed in the sense that it will be up to the state to prove that the torture did not take place while he was held in custody by the state authorities.

This practice of the European Court has helped us move strongly against instances of torture. It is an example of how practice will be the means of defining and defending human rights.

Human Rights and Cambodia

by
Dr. Lao Mong Hay

Cambodia could be considered as a focal point between different continents with regards to human rights. In October 1991, 19 countries signed the Paris Peace Accords to end the war in Cambodia. The Accords may be the first time that clauses on human rights were included in international treaties of this nature. It is notable that countries from four continents namely, North America, Europe, Asia and Africa, agreed to this.

All the 19 signatories acknowledged that because of the recent tragic history of Cambodia, there must be special measures for the protection of human rights and for the prevention of recurrences of human rights abuses in Cambodia. All signatories undertook to promote respect and observances of human rights in Cambodia.

All the agreements to end the war in Cambodia are still in force. I believe that all the signatories concurred in the adoption of the concept of human rights and helped obligated Cambodia to adhere to the Universal Declaration of Human Rights, the two major international covenants on human rights (namely, the political, civil rights and economic, social and cultural rights), the prevention of discrimination against women, the prevention of torture and even child rights.

If we refer back to the Paris peace agreement, it seems that Asian, European, African and American countries, specifically America and Canada, have agreed on the universal concept of human rights. As others at the conference have said, there are historical and cultural elements in the adoption and application enforcement of human rights in every society.

All Asian countries have agreed to uphold the respect and observance of human rights, to promote democracy in Cambodia. As a Cambodian citizen, I have been questioning why some countries who had helped contribute to the inclusion of human rights and democracy in the Paris agreement and have undertaken to promote by their signing of the agreement and the questioning

human rights as provided for in the universal declaration of human rights.

To contribute to the definition of human rights, we need to enforce and adopt not only core human rights but also other human rights like social, economic, political and cultural rights. This is supported by Asian traditions as well as our laws.

All human beings in Buddhism aspire to freedom. In the Koran, human beings are human beings and are to be treated with equality. In Confucianism, Confucius also said that although there is a social hierarchy among human beings but they are human beings aspiring to freedom, to self-fulfillment.

I feel there should not be any reference to cultural and "Asianess". I would like to question the Asian culture and values. In Cambodia, which period of culture would one refer to? In Pol Pot's time, when human beings are considered to be just a labor force or machines or even tractors. We heard phrases like "We have ten thousand tractors in this area"; which really means ten thousand human beings. But they are used as tractors or machines.

Which period of our culture should we refer to? In Asian countries, some say we have an "Oriental" disposition. Do we refer to that in Cambodia? The Cambodian Constitution has adopted and devoted one whole chapter to the respect to human rights, including the rights of women and children.

To me, the distinction between Western and Asian values with regards to human rights may be irrelevant, in the Cambodian context.