

ASEAN/Southeast Asia and the international human rights discourse and standard

Sriprapha Petcharamesree, Ph.D.

Institute of Human Rights and Peace
Studies, Mahidol University, Thailand

ASEAN Status of Ratifications of International Human Rights Instruments

HR Treaties / Country	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	Timor Leste
1. ICCPR	-	1992	2006 a	2009	-	-	1986	-	1996 a	1982 a	2003 a
ICCPR-OP1	-	2004 s	-	-	-	-	1989	-	-	-	-
ICCPR-OP2	-	-	-	-	-	-	2007	-	-	-	2003 a
2. ICESCR	-	1992	2006 a	2007	-	2015 s	1974	-	1999 a	1982 a	2003 a
ICESCR-OP	-	-	-	-	-	-	-	-	-	-	-
3. CEDAW	2006 a	1992	1984	1981	1995 a	1997 a	1981	1995 a	1985 a	1982	2003 a
CEDAW-OP	-	2010	2000 s	-	-	-	2003	-	2000	-	2003
4. CRC	1995 a	1992 a	1990	1991 a	1995 a	1991 a	1990	1995 a	1992 a	1990	2003 a
CRC-OP-AC	2016 a	2004	2012	2006 a	2012 a	2015 s	2003	2008	2006 a	2001	2004 a
CRC-OP-SC	2006 a	2002	2012	2006 a	2012 a	2012 a	2002	-	2006 a	2001	2003 a
CRC-OP-CP	-	-	-	-	-	-	-	-	2012	-	-
5. ICERD	-	1983	1999 a	1974 a	-	-	1967	2015 s	2003 a	1982 a	2003 a
6. CAT	2015 s	1992 a	1998	2012	-	-	1986 a	-	2007 a	2015	2003 a
CAT-OP	-	2007	-	-	-	-	2012 a	-	-	-	2005 s
7. ICRMW	-	2004 s	2012	-	-	-	1995	-	-	-	2004 a
8. CRPD	2016	2012	2011	2009	2010	2011 a	2008	2013	2008	2015	-
CRPD-OP	-	2007 s	-	-	-	-	-	-	-	-	-
9. ICCPED	-	2013 a	2010 s	2008 s	-	-	-	-	2012 s	-	-

Source: Office of the United Nations High Commissioner for Human Rights. www.ohchr.org.

- OHCHR, The major regional human rights instruments and the mechanisms for their implementation,
<http://www.ohchr.org/Documents/Publications/training9chapter3en.pdf>;
- Li-ann Thio, Implementing Human Rights in ASEAN Countries: "Promises to keep and miles to go before I sleep", Yale Human Rights and Development Journal, Volume 2, Issue 1,
<http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1008&context=yhrdlj>;

Reasons behind international human rights norms

Human rights norms were developed at the end of 20th century as a reaction against totalitarian and fascist regimes-to curtail state power and to afford vulnerable individuals some protection against maltreatment by their governments. States are positioned both to protect, and to abuse, human rights. To prevent abuse, it is imperative to subject states to some form of external accountability.

International human rights discourses

International human rights discourses

“While noting the significance of national and regional particularities, it stressed that “it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms”

Human rights discourses in ASEAN/SEA

the Singapore Foreign Minister Wong Kan Seng accepted that a

"core" group of universal rights existed—for example, the right to life, prohibition against torture, and other non-derogable rights found in the International Covenant of Civil and Political Rights (ICCPR). Nonetheless, he maintained that international consensus on what constituted "core" rights was fragile, and that "the hard core of rights that are truly universal is perhaps smaller than we sometimes like to pretend"

ASEAN/SEA human rights discourses

“[H]uman rights must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds”

Different values

David Hitchkok's survey asking the East Asians and the Americans to choose 6 societal values

The East Asians

- order
- an orderly society
- social harmony
- openness to new ideas oneself
- accountability of public official
- respect for authority

The Americans

- freedom of expression
- rights of individuals
- personal freedom
- open debate - thinking for
- accountability of public official
- accountability

Human rights perceptions of ASEAN leaders

- Asian values - a contextual approach towards human rights.
- Economic first - democracy as an inhibitor of economic growth
- An increased focus should be placed on duties
- Discretion and Derogation
- "positive, balanced and non-confrontational" posture.
Constructive Engagement vs. Imposition of Sanctions
- The Principle of Non-Intervention in Internal Affairs:
- ASEAN countries stress the right to development, which was elevated to the status of a "universal and inalienable" right

What leader think?

- Lee Kuan Yew has noted:

“Whether in periods of golden prosperity or in the depths of disorder, Asia has never valued the individual over society. The society has always been more important than the individual. I think that is what has saved Asia from greater misery”

(Sandra Burton, Society vs. The Individual, TIME, June 14, 1993, at 20,21)

“while universally valid in the world of theory and ideas, are qualified in their practical application by culture and contingency”

Singaporean values

White paper on Shared values released in 1990

- Nation before community and society before self;
- Family is the basic unit of the society;
- Community support individual;
- Consensus instead of contention;
- Racial and religious harmony

Singaporean school of thoughts

- Human dignity and good governance is best achieved by a political regime dedicated to social order and rapid economic growth. In pursuit of such a political regime, some rights can be sacrificed;
- It places the interests of the majority prior to the rights of individual
- Economic development and rapid economic growth over other political and social goals

Development and rights

“This asserts that the entire spectrum of human rights can only be enjoyed after a certain level of socio-economic development is reached. For the attainment of economic development, civil and political rights must be subject to social order; they may be suspended or severely curtailed in the name of development until the people are supplied with basic food, housing and jobs”.

Arguments against Asian values

- Some rights are absolute and universal because they are inherent to the individual. Any difference in religion, color, history, culture, class, etc, makes no difference;
- There is no clear cut contradiction of individual v.s. communal or societal rights in human rights. Protection of individual rights is the basis for protection of collective rights;
- Socio-economic v.s. political rights have been overcome because economic rights have been gradually accepted by the West

Arguments Cont.

- There is no such thing as an absolute sovereignty of state any more. Especially with the interdependence of economy, regionalisation, regionalism and development of information technology;
- Differences of opinion about the nature of human rights exist not only between the East and the West but within the West;
- Charles Taylor- It is probably not necessary to agree on the formulation of human rights so long as we can agree on the norms.

Conclusions

- Both Western and ASEAN countries tend to treat categories of rights unequally;
- Democracy, while not a panacea for economic woes, is an important stabilizing force that buttresses rather than impedes economic development.
- The focus should not be on the origin of the idea of human rights. Rather, a focus on the *raison d'etre* of human rights will be far more useful for demonstrating the validity and necessity of human rights.