

1-1-1996

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Recommended Citation

Dellapenna, Joseph W. (1996) "Foreword: Symposium on East Asian Approaches to Human Rights," *Buffalo Journal of International Law*. Vol. 2 : No. 2 , Article 1.

Available at: <https://digitalcommons.law.buffalo.edu/bjil/vol2/iss2/1>

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FOREWORD: SYMPOSIUM ON EAST ASIAN APPROACHES TO HUMAN RIGHTS

*Joseph W. Dellapenna**

The nations sharing the eastern rim of Asia exhibit some of the most diverse political and economic systems on earth today. These systems range from one of the last -- perhaps the only -- remaining Stalinist dictatorships (in the Democratic People's Republic of Korea) to what is probably the purist capitalist system on earth (in Hong Kong).¹ Most forms of social organization in between these extremes are also found in a region that stretches from Indonesia to Mongolia, and from Thailand to Japan. Nor do the nations of this region share a common ethnic or cultural heritage.

The region here described as East Asia includes more than one-third of the world's population, with the Chinese alone constituting more than twenty percent of the total world population. Despite this numeric predominance of the Chinese, there are literally hundreds of other ethnic groups in the region. Among these, the Cambodians, Indonesians, Japanese, Koreans, Laotians, Malaysians, Mongols, Filipinos, Thais, Tibetans, and Vietnamese are the most numerically significant. Culturally, a large swath of East Asia, comprising China, Japan, Korea, Taiwan, and Vietnam, can be loosely described as sharing a "Confucian culture." At the other extreme, a Muslim-Malay culture stretches from Malaysia across Indonesia and into the southern Philippines. Cambodia, Laos, Thailand, and the Indonesian island of Bali share varieties of Hindu culture. While Western cultural influence is strong throughout the region, only the Philippines and the several urban colonies and former

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¹ See generally *THE POLITICAL ECONOMY OF THE NEW ASIAN INDUSTRIALISM* (Frederic C. Deyo ed., 1987).

colonies -- Hong Kong, Macao, and Singapore -- are largely westernized in their cultures. With most of these larger communities there are numerous small ethnic groups that maintain, to a greater or lesser extent, their usually highly localized cultural traditions. These range in size from the Mongols and the Tibetans with populations of more than one million, to isolated groups on remote islands with only a few dozen people.

With so much social diversity in the region, it is difficult to believe that one can speak meaningfully of a common approach to any issue of importance. Yet, a chorus of voices is raised throughout the region proclaiming, if not an East Asian approach to human rights, at least a common attitude toward the right of each community to define and implement human rights on its own terms.² This attitude is not unique to eastern Asia, finding resonances in similar arguments made widely in other parts of the so-called Third World.³ These resonances are particularly strong among the states of the Muslim Middle East.⁴ The dense populations of the East Asian states

² See generally The Bangkok Declaration, discussed in Michael C. Davis, *Human Rights in Asia: China and the Bangkok Declaration*, 2 BUFF. J. INT'L L. 215 (1995). See also Ian Buruma, *The Singapore Way*, N.Y. REV. OF BOOKS, Oct. 19, 1995, at 66; Information Office of the State Council, *A Report which Distorts Facts and Confuses Right and Wrong*, BEIJING REV., Mar. 13, 1995, at 17; Wu Naitao, *Revelation of U.S. Ruse as World Judge of Human Rights*, BEIJING REV., May 1, 1995, at 17; Xiang Xing, *Evolution of Human Rights Issues and Its Essence*, F.B.I.S. -- CHINA, no. 90-037-S, at 4 (Feb. 23, 1990).

³ See generally Christina Cerna, *Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Social-Cultural Contexts*, 16 HUM. RTS. Q. 740 (1994); Jack Donnelly, *Cultural Relativism and Universal Human Rights*, 6 HUM. RTS. Q. 400 (1984).

⁴ See, e.g., Reza Afshari, *An Essay on Islamic Cultural Relativism in the Discourse of Human Rights*, 16 HUM. RTS. Q. 235 (1994); Jill Crystal, *The Human Rights Movement in the Arab World*, 16 HUM. RTS. Q. 435 (1994); David Forte, *Apostasy and Blasphemy in Pakistan*, 10 CONN. J. INT'L L. 27 (1994); Urfan Khaliq, *Beyond the Veil?: An Analysis of the Provisions of the Women's Convention and the Law as Stipulated in the Shari'ah (sic)*, 2 BUFF. J. INT'L L. 1 (1995); Ann Elizabeth Mayer, *Universal versus Human Rights: A Clash of Cultures or a Clash with a Construct*, 15 MICH. J. INT'L L. 307 (1994); Basam Tibi, *Islamic Law/Shari'a, Human Rights, Universal Morality and International Relations*, 16 HUM. RTS. Q.

along with their possession of the most dynamic economies on earth, make their common attitude toward human rights and the Western claim that there are universal standards of human rights particularly important. Perhaps as a result, some Western governments and intellectuals have been more willing to accept the claim to cultural differences regarding human rights than has been true of most other regions of the world.⁵ The question of what, if any, are the relevant East Asian cultural traditions with respect to human rights is particularly pressing at a time when there is growing evidence of a split between official thinking on this topic and the attitudes of many intellectuals and laypeople.⁶ And so central are the questions surrounding cultural differences relating to human rights that by considering this question in the context of East Asia, we gain insight into the nature of human rights discourse and its role elsewhere in the world, including here in the United States.⁷ With these thoughts in mind, I organized a panel for the American Society of International Law at its annual meeting in April 1995. The panel was jointly sponsored by two interest groups of the Society: the Human Rights Interest Group chaired by Professor Anthony D'Amato, and the Law of the Pacific Region Interest Group which I chair.

Within the common attitude of the East Asian states towards human rights, there is, of course, wide room for differences over

277 (1994).

⁵ See RONALD KEITH, CHINA'S STRUGGLE FOR THE RULE OF LAW 54-87 (1994); Roberta Cohen, *People's Republic of China: The Human Rights Exception*, 9 HUM. RTS. Q. 447 (1987).

⁶ See, e.g., *Beijing Pro-Democrats Form "Peace Charter" Group*, F.B.I.S. -- CHINA, no. 93-219, at 24 (Nov. 16, 1993); *Dissident [Wei Jingsheng] Writes Letter to Jiang Zemin, Li Peng*, F.B.I.S.; -- CHINA, no. 93-244, at 14 (Dec. 22, 1993); Jacques Delisle, *Disquiet on the Eastern Front: Liberal Agendas, Domestic Legal Orders, and the Role of International Law after the Cold War and Amid Resurgent Cultural Identities*, 18 FORDHAM INT'L L.J. 1725 (1995); Kim Dae Jung, *Is Culture Destiny?: The Myth of Asia's Anti-Democratic Values*, FOREIGN AFF., Nov.-Dec. 1994, at 189.

⁷ See, e.g., Alan Freeman, *Racism, Rights and the Quest for Equality of Opportunity: A Critical Legal Essay*, 23 HARV. C.R.-C.L. L. REV. 295 (1988).

specific issues. Thus, the panel was named "East Asian Approaches to Human Rights." There simply never was an expectation that one would discover a single approach to specific human rights issues in this vast and diverse region. Five of the panelists have written articles based upon the talks given at that discussion. (Four of the five are published in this issue; the other article will be published in the next issue.) These articles together with two other articles that, while included in this issue, were not part of the panel discussion,⁸ present an interesting and coherent view of the East Asian approaches.

One of the panel articles is by Bilahari Kausikan,⁹ at the time of the panel Singapore's Permanent Representative to the Russian Federal Republic and presently Singapore's Ambassador to the United Nations. Ambassador Kausikan has previously published a noted defense of the right of Singapore and of East Asian states generally to develop and implement their own particular visions of human rights.¹⁰ In his article here, he gives us a subtle and effective argument for allowing each culture to determine for itself what "human rights" will mean in that culture; an argument, he acknowledges, that represents a "governmental perspective" on the question.

Kausikan starts by conceding that there are indeed universal standards of human rights -- as indeed he must given the many actions over the last fifty years of the United Nations as well as other international organs.¹¹ He then argues that these universal standards

⁸ Melanne Andromedea Civic, *A Comparative Analysis of International and Chinese Human Rights Law -- Universality versus Cultural Relativism*, 2 *BUFF. J. INT'L L.* 285 (1995); Stephen Lee, *American Policy toward Taiwan: The Issue of the De Facto and De Jure Status of Taiwan and Sovereignty*, 2 *BUFF. J. INT'L L.* 323 (1995).

⁹ Bilahari Kausikan, *An Asian Approach to Human Rights*, 2 *BUFF. J. INT'L L.* 263 (1995).

¹⁰ Bilahari Kausikan, *Asia's Different Standard*, 92 *FOREIGN POL'Y* 39 (1993).

¹¹ See, e.g., *The Universal Declaration of Human Rights*, G.A. Res. 217 A(III), Dec. 10, 1948, U.N. Doc. A/810, at 71; *International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200A (XXI), Dec. 16, 1966, 21 U.N.

are capable of differing interpretations and applications, and that, even if these standards were wholly unambiguous, they cannot presently be fully achieved in any society. He asserts that it is nothing short of cultural imperialism (without ever quite using that term) to insist that East Asian nations are not entitled to decide for themselves how to interpret these standards and the sequence in which to implement them. Kausikan also argues that economic development (which he characterizes as a human right) takes precedence over certain aspects of political liberty -- a common theme for many governments resisting the granting of political freedoms.¹² He closes his argument with the observation that perhaps the (in his view) increasingly strident Western, and particularly American, demands that other nations adhere to "universal norms" that are basically Western (and particularly American) bespeak our loss of confidence in our norms rather than a real belief in their universality.

Turning to the article by Michael Davis,¹³ we find an American-born professor of law at the Chinese University of Hong Kong who was serving as a fellow at the Schell Institute of Human Rights at Yale University at the time the panel was held. In contrast

GAOR Supp. No. 16, at 49, U.N. Doc. A/6316, 993 U.N.T.S. 3; *International Covenant on Civil and Political Rights*, G.A. Res. 2200A (XXI), Dec. 16, 1966, 21 U.N. GAOR Supp. no. 16, at 52, U.N. Doc. A/6316, 999 U.N.T.S. 171; *Optional Protocol to the International Covenant on Civil and Political Rights*, G.A. Res. 2200A (XXI), Dec. 16, 1966, 21 U.N. GAOR Supp. no. 16, at 59, U.N. Doc. A/6316, 999 U.N.T.S. 302. See generally FRANK NEWMAN & DAVID WEISSBRODT, *INTERNATIONAL HUMAN RIGHTS* 109-90 (1990); *THE INTERNATIONAL BILL OF HUMAN RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS* (Louis Henkin ed. 1981); THEODOR MERON, *HUMAN RIGHTS LAW-MAKING IN THE UNITED NATIONS* (1986); M.T. Kaminga, *The Thematic Procedure of the UN Commission on Human Rights*, 34 NETH. INT'L L. REV. 299 (1987).

¹² See, e.g., Buruma, *supra* note 2; Information Office of the State Council, *supra* note 2; David Trubek, *Economic, Social and Cultural Rights in the Third World*, in *INTERNATIONAL PROTECTION OF HUMAN RIGHTS IN INTERNATIONAL LAW: LEGAL AND POLICY ISSUES* 205 (Theodor Meron ed., 1984); Wu Naitao, *supra* note 2; Xiang Xing, *supra* note 2.

¹³ Davis, *supra* note 2.

to Ambassador Kausikan, Professor Davis writes in support of universal standards. Davis focuses on analyzing the language with which human rights issues are both discussed and ignored in China. While he surveys the language of the Chinese Constitution with its extensive guarantees of human rights and its feebleness in practice, his emphasis on the language of human rights enables him to consider the critical voices raised by Chinese intellectuals and laypeople on these issues so as to suggest that China's approaches to these questions might be changing. Still, Davis closes his review of the Chinese discourse on human rights by noting the posture that the Chinese government has taken internationally, particularly in the Bangkok Declaration in 1993. There, and less successfully at the United Nations Human Rights Conference in Vienna in 1993, China lobbied for respect for sovereignty as a value overriding international concern about human rights. Yet, as Davis notes, even the Chinese government has begun to acknowledge international human rights norms to some extent, while simultaneously asserting its right to interpret and apply those norms in its own fashion.

Christina Cerna, an attorney with the Organization of American States, was for several years assigned responsibility within that organization for human rights issues, and in that capacity worked on the United Nations Conference on Human Rights in Vienna in 1993. Her contribution to this symposium moves us out of the Chinese cultural sphere that provided the context for the other participants in the symposium; instead, she focuses on a speech by the Indonesian Foreign Minister from 1991 as well as some statements by other Indonesian officials.¹⁴ As with Ambassador Kausikan or the Chinese surveyed by Professors Hom and Davis, the Indonesian Foreign Minister accepts to some extent the legitimacy of international concern for human rights, but he would make the interpretation and application of international norms an exclusively national concern. Despite these attitudes, however, Cerna finds that

¹⁴ Christina M. Cerna, *East Asian Approaches to Human Rights*, 2 *BUFF. J. INT'L L.* 201 (1995).

the nations of East Asia have been more forthcoming in accepting Western-defined international human rights standards than has the United States, which has ratified rather few of the international agreements relating to human rights issues.

Finally, we come to my article.¹⁵ My article draws upon my experience of having held Fulbright professorships both in the People's Republic of China and in the Republic of China (Taiwan), and of teaching Chinese law in the United States. These experiences have led me to consider the role of law as a rhetorical system, and to question how our speaking about law shapes not only our thinking about law but also our behavior. I conclude that many great political decisions (and the events shaped by those decisions) are the result of personal experiences and not of great, impersonal political forces (the so-called tides of history). As a lawyer and student of the law, I believe that among the personal experiences that shape decisions, both in the West and in East Asia, are the experiences of law and legal institutions. These experiences are both reflected in the language of the law and, in turn feed back to shape future experiences of law and legal institutions. I have sought to apply this perspective in examining the great and tragic events at Tienanmen Square of 1989.¹⁶

Regrettably, one panelist, Professor Sharon Hom of the City University of New York School of Law, was unable to complete her revision of her paper in time for publication in this issue. Professor Hom, a Hong-Kong born American, calls our attention to the voices -- particularly those of women -- that are now emerging from a long silence in China. While she has little sympathy for the official

¹⁵ Joseph W. Dellapenna, *The Role of Legal Rhetoric in the Failure of Democratic Change in China*, 2 BUFF. J. INT'L L. 231 (1995).

¹⁶ For a similar reading of Chinese speaking about politics and political institutions, see MICHAEL SCHOENHALS, *DOING THINGS WITH WORDS IN CHINESE POLITICS: FIVE STUDIES* (Chinese Research Monograph, University of California at Berkeley, Center for Chinese Studies, 1992). I thank Sharon Hom for calling this book to my attention, but unfortunately it came too late to include in the body of or references in my article.

position of the Chinese government on human rights, she also calls into question the Western positions on these issues. She would have us seek another way; one that is neither capitalistic nor authoritarian. Her paper will appear as an article in the next issue of this journal, and will be well worth the wait.

In sum, the articles contained in this symposium summarize an important debate between East Asian states and Western states over the role of international law and international institutions in assuring proper respect for human rights. While East Asian governments now generally accept a role for international institutions to define in general terms the content of human rights, those governments nonetheless generally deny international competence to review national decisions and policies regarding human rights. Without such recourse, the international standards remain largely irrelevant in those countries -- except to the extent that internal dissidents can hold their governments accountable or that Western governments and non-governmental organizations can apply pressure to support such dissidents or otherwise compel respect for human rights. Whether the will of the dissidents and their Western supporters to demand such respect for human rights will prove stronger than the resistance of East Asian governments remains, at this point, an open question even as we witness Western governments becoming less willing to put their other interests at risk by insisting upon respect for human rights.¹⁷

¹⁷ One need only note here the decision of the Clinton administration to abandon its promise to link improvements in trade between the United States and the People's Republic of China to improvements in the latter's human rights record.