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EAST ASIAN APPROACHES TO HUMAN RIGHTS*

*Christina M. Cerna***

I. ARE THE EAST ASIAN STATES DISSENTING FROM A SINGLE, UNIVERSAL INTERNATIONAL STANDARD?

A representative of Human Rights Watch/Asia, in a statement before Congress earlier this year, said that "Asia has continued to be a region of impressive economic growth rates and poor human rights. Previously, some of the worst abusers in the region argued that Asia had *its own definition of human rights* as they tried to resist criticism from Western governments."¹ Today, he suggested, these countries no longer have to make this argument because the developed world is pursuing a policy of "commercial diplomacy" with countries like China, Indonesia, India, Viet Nam and even Burma.²

In an attempt to identify the content of Asia's different definition of human rights, I have looked at some speeches of Asian leaders on the subject. In May 1991, Mr. Alatas, the Indonesian Minister of Foreign Affairs gave a "Speech on Human Rights" at an

* This article expands upon the author's written remarks published in 89 ASIL PROC. 146 (1995), © The American Society of International Law.

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¹ Mike Jendrzejczyk, Statement Before the International Relations Subcommittees on Asia and the Pacific, International Operations and Human Rights, United States House of Representatives, in FEDERAL NEWS SERVICE, Mar. 16, 1995 (emphasis added).

² *Id.*

ASEAN-EC Conference.³ This speech is a useful entry-point into the discussion because it involves an Indonesian political leader attempting to explain the Asian viewpoint to an audience of Westerners and Europeans.

In his speech, the Foreign Minister framed the discussion of human rights within the context of Articles 55 and 56 of the United Nations Charter. These articles call for international cooperation to achieve universal respect for, and observance of, human rights and fundamental freedoms. By placing the discussion of human rights within the context of cooperation, his purpose was to emphasize that confrontation between states on human rights issues is contrary to the spirit of the Charter. Cooperation, Alatas stated, presupposes "respect for the sovereignty of states and the national identity of peoples."⁴

The Indonesian Foreign Minister recognized that international concern over human rights was commonly agreed upon. However, since human rights questions "are essentially ethical and moral in nature," any politically motivated approach should be avoided.⁵ Alatas identified two categories of human rights: one, civil and political rights; and two, economic and social rights.⁶ He noted that "we have all accepted that all these rights are indivisible and are interrelated."⁷ Therefore, the accent should not be put "exclusively on . . . civil and political" human rights "because the realization of each aspect of human rights depends on the progress made on the other aspects as well."⁸ In the industrialized countries of Europe, he continued, attention is mainly on civil and political rights because the economies of the developed world are already well-established.

³ Ali Alatas, Intervention, A Speech on Human Rights, Delivered at the ASEAN-EC Conference in Luxembourg (May 1991) (made available to the author by the courtesy of the Indonesian Embassy in Washington, D.C.).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

However, since developing countries “are still struggling to overcome the blights imposed by past colonialism and new exploitation, and by the pervasive effects of an inequitable international order,” they must spend more time on basic needs.⁹

Up to this point, there appears to be no difference between the Asian and the Western definition of human rights, although one could argue that the Reagan/Bush Administrations’ failure to recognize economic, social and cultural rights as human rights could have led to this one-sided interpretation of the Western position. Today, the Clinton Administration recognizes that civil and political rights, coupled with economic, social and cultural rights, comprise the whole of human rights and the object of international concern.

The difference between the Asian and the Western position appears to be in the implementation of these rights, and not in the content. In the same speech, the Indonesian Foreign Minister said the following:

Let me, as emphatically as I can, stress that Indonesia and the ASEAN countries accept and recognize the universal validity of certain basic human rights and fundamental freedoms, *but with respect to their implementation, we believe national jurisdiction should prevail*. This national competence not only derives from the principle of sovereignty of states but is also a logical consequence of the principle of self-determination. In a world where domination over and interference between states are still a painful reality, no country or group of countries should assume the role of judge over other countries on such a vital and intimate problem as human rights.¹⁰

No one in the human rights field disputes the subsidiary nature

⁹ *Id.*

¹⁰ *Id.* (emphasis added).

of international protection. Clearly, respect for human rights requires national implementation. Only in cases where there is no national implementation should the international community play a role. However, the Indonesian position eliminates any recourse to the international level. If the national authorities are trampling on human rights, which is often the case in some countries, then the victim is left without recourse.

The Indonesian Foreign Minister developed a rather ingenious “balancing” argument to buttress his concept of national implementation of human rights. He cited Article 29 of the Universal Declaration as authority for the proposition that an individual has obligations to the community.¹¹ Therefore, he argued, rights and freedoms are subject to limitations, determined by law, and in accordance with the “just requirements of morality, public order and the general welfare in a democratic society.”¹² A failure to balance rights with obligations, the Foreign Minister stressed, “can lead to a denial of the rights of the community as a whole and, indeed, can lead to instability and often anarchy especially in developing countries.”¹³ When international bodies evaluate the implementation of human rights in individual countries, the Foreign Minister suggested “the characteristic problems of developing countries in general, as well as the specific problems of individual societies, should be taken fully into account.”¹⁴ This is necessary because “the basic aim of actions in the field of human rights is not to accuse nor to promote debate but to develop together a common consciousness in the international community and to encourage improvement in respect of these rights and fundamental freedoms.”¹⁵

At the risk of digressing, it appears to me that this view has some support from individuals in the United States government. For example, a former human rights activist now employed by the federal

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

government recently asked whether I still subscribed to the view that the human rights movement should condemn governments for human rights violations. The question was framed in such a way as to exclude the possibility of a positive response. Nevertheless, I affirmatively reiterated my opinion, and then solicited his input as to the present state of affairs for the human rights movement. The goal, he said, was to change the behaviour of governments and to promote democracy in countries where it does not exist. He suggested that the way to do this is through technical assistance and international cooperation. As a spokesman for "Asia's Different Standard" has written, "the trend . . . is away from rights as relatively precisely defined in international law, toward the promotion of hazier notions of 'freedom' and 'democracy.'"¹⁶ My disagreement with this position is that technical assistance should be limited to those countries that have the political will to democratize. However, not all countries have such will, and those countries that flaunt the human rights norms of the international community should continue to be censured. Neither this government employee nor the Indonesian Foreign Minister appear to allow for this distinction.

Ambassador Kausikan writes that the end of the Cold War produced a triumphalism in the West that its system and values had won on the ideological battlefield with the collapse of Communism. As a result, he continues, "There has been a tendency since 1989 to draw parallels between developments in the Third World and those in Eastern Europe and the former USSR, measuring all states by the advance of what the West regards as 'democracy.'"¹⁷ He doubts that the West will be able "to remake the world in its own image" and doubts whether the countries of the former USSR and Eastern Europe will evolve into "democracies" or whether this is always "for the

¹⁶ Bilahari Kausikan, *Asia's [D]ifferent [S]tandard; [H]uman [R]ights*, FOREIGN POLICY, September 22, 1993, at 24 (Ambassador Kausikan is currently Ambassador to the Permanent Representative of the Republic of Singapore to the United Nations -- the Director of the East Asian and Pacific Bureau of the Ministry of Foreign Affairs in Singapore).

¹⁷ *Id.*

better, given the ethnic hatreds in the region.”¹⁸ For Asians, on the other hand, he states that the “self-congratulatory, simplistic, and sanctimonious tone of much Western commentary at the end of the Cold War and the current triumphalism of Western values grate on East and Southeast Asians.”¹⁹ It is the West “that launched two world wars, supported racism and colonialism, perpetrated the Holocaust and the Great Purge, and . . . [is now] apparently exhausted of everything except pretensions of special virtue.”²⁰ I have chosen the Indonesian Foreign Minister because he represented the important viewpoint of the Non-Aligned Movement (NAM) at the United Nations World Conference on Human Rights held in Vienna in June 1993, since Indonesia was Chair of the NAM at the time. The Movement claims to represent over two billion people and two-thirds of the constituency of the United Nations. In his speech at the World Conference, the Foreign Minister stated that he was representing the consensus of the 108 member states of the Movement which had adopted a declaration on human rights at the Jakarta Summit in 1992, reaffirming the universality of human rights.²¹ The Foreign Minister attacked international media reports that he said gave the impression that the success of the Vienna Conference was being:

[T]hreatened by a clash of values between the developed countries of the South, by a confrontation between the perceived universal, mostly Western, concept of human rights that stresses political and civil rights, and the purported “dissident” view, particularly of Asian and African countries, which emphasizes the indivisibility of all categories of rights and the need to take into account the diversity of socio-economic, cultural and political realities

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

prevailing in each country.²²

Referring to the Bangkok Declaration and the Jakarta Message, he stated that Asian countries “have not come to Vienna to engage in confrontation, nor to advocate an alternative concept of human rights, based on some nebulous notion of ‘cultural relativism,’ as spuriously alleged by some quarters.”²³

In his Statement to the World Conference, the Indonesian Foreign Minister called for international cooperation in the promotion of human rights and for no group of countries to elevate unto themselves the “role of judge, jury and executioner over other countries on this critical and sensitive issue.”²⁴ Indonesia, he concluded, “cannot accept linking questions of human rights to economic and development cooperation, by attaching human rights implementation as political conditionalities to such cooperation.”²⁵

Ambassador Kausikan, for his part, writes that the World Conference on Human Rights in Vienna in June 1993 did not promote “a genuine and fruitful dialogue” between the West and East and Southeast Asia.²⁶ Instead he states that:

The West went to Vienna accusing Asia of trying to undermine the ideal of universality, and determined to blame Asia if the conference failed. Inevitably, Asia resisted. The result after weeks of wrangling was a predictable diplomatic compromise ambiguous

²² Ali Alatas, Statement to the Second World Conference on Human Rights, Delivered in Vienna (June 14, 1993) (made available to the author by the courtesy of the Indonesian Embassy in Washington, D.C.).

²³ *Id.* See also Report by the Secretariat, Bangkok NGO Declaration on Human Rights, 4th Sess., Agenda Item 8, U.N. Doc. A/CONF.157/PC/83 (April 19, 1993).

²⁴ Alatas, *supra* note 22.

²⁵ *Id.*

²⁶ Kausikan, *supra* note 16 (Kausikan suggests such dialogue would require a balance between unrealistic universalism and paralysing cultural relativism, but does not specify how to achieve this balance).

enough so all could live with it, but that settled very few things. There was no real dialogue between Asia and the West, no genuine attempt to address the issues or forge a meeting of the minds. If anything, the Vienna conference may only have hardened attitudes on both sides and increased the deep scepticism with which many Asian countries regard Western posturing on human rights.²⁷

Indonesian President Soeharto's address to the Group of Seven in Tokyo, a month later, in July 1993, returned to this question of "conditionalities" and stated that:

[T]he Non-Aligned countries have noted with growing concern the tendency among developed countries to expand the scope of conditionalities to include such issues as human rights and "good governance." The Non-Aligned countries acknowledge that there is a relationship between development and human rights. Both are vital and important by and for themselves and both should be vigorously pursued. However, we believe that to unilaterally transform the relationship into a one-sided conditionality, i.e. making development cooperation subject to implementation of human rights is counterproductive and in fact will detract from the value of both.²⁸

I don't believe that conditionalities, or linking development assistance to progress in "democratization" or human rights will go away, any more than the politicization of human rights can be made

²⁷ *Id.*

²⁸ H.E. Soeharto, *An Invitation to Dialogue, A Message to the Leaders of the Group of Seven, Delivered in Tokyo (July 5, 1993)* (made available to the author by the courtesy of the Indonesian Embassy of Washington, D.C.).

to disappear. These issues are inherently “political,” and not simply moral and ethical in nature.

The Vienna Declaration and Programme of Action, adopted by consensus by the 171 states present at the World Conference on Human Rights on June 25, 1993, including those from the Asian region, reaffirmed the commitment of all states to human rights and the universal nature of such rights.²⁹

The Vienna Declaration called for universal ratification of the Convention on the Rights of the Child by the end of 1995. Today, in large part thanks to the efforts of UNICEF, this Convention has more ratifications than any other United Nations human rights convention. As of November 1, 1995, it had 181 states parties, including some countries which may be considered surprising from the Asian region: China, Cambodia, Democratic People’s Republic of Korea, India, Indonesia, Japan, Malaysia, Myanmar, the Philippines, Singapore, South Korea, Thailand and Viet Nam. Perhaps it is more useful to approach the numbers game from the other direction and to point out that of the countries which have neither signed, ratified nor acceded to the Convention on the Rights of the Child, only one is from the Asian region: Brunei Darussalam. The United States only recently signed this Convention on February 16, 1995, but has not yet ratified it.

Even defenders of the “different standard” notion, such as Ambassador Bilahari Kausikan, have accepted that “There is an emerging global culture of human rights, and a body of international law on human rights has gradually developed, codified in the United Nations Charter, the Universal Declaration of Human Rights and other international instruments.”³⁰ None of the Asian states rejects

²⁹ The author believes that the World Conference on Human Rights reaffirms the solemn commitment of all States to fulfil their obligation to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights is beyond question.

³⁰ Kausikan, *supra* note 16.

this global culture of human rights.

I am simply trying to demonstrate that East Asian states and the Asian region in general are accepting the so-called "Western catalogue" of international human rights as defined in the United Nations human rights treaties by becoming parties to those treaties. Only a handful of countries, not exclusively in the Asian region, such as Oman, Brunei Darussalam and Saudi Arabia have chosen, for the time being at least, not to ratify *any* international human rights treaty. Until recently, however, the United States was in the same situation. I can recall speeches defending this policy of isolationism based on arguments of national implementation: we have a Bill of Rights, we do not need international supervision of our compliance with human rights. In March 1995, the United States presented its first report on compliance with the International Covenant on Civil and Political Rights to the United Nations Human Rights Committee, meeting in New York. For whatever reasons, the press virtually ignored this historic event. The number of questions on issues such as the death penalty for minors and the tolerance of hate speech reflected doubts about the adequacy of United States efforts in the implementation of international norms.

The U.S. position has evolved and now accepts international supervision in this area. I am of the opinion that once the catalogue of human rights is accepted by the Asian states, which I believe is happening, the second step, the acceptance of international jurisdiction, is somewhere down the road. Consequently, we can no longer say that the Asian region has rejected international human rights if countries as diverse as China, India, Myanmar, Viet Nam and even Singapore have ratified one or more United Nations human rights instruments.

II. WHAT CAN WE SAY ABOUT THE FUTURE OF HUMAN RIGHTS IN THE ASIAN REGION?

It is very difficult to predict anything about the future.

However, if the current trends continue, it appears that the Asian states will increase their cooperation with the United Nations in the human rights area. Asian states will continue to ratify United Nations human rights treaties, as the recent ratification by Singapore demonstrated. For three years the United Nations has organized a workshop on "Regional arrangements for the promotion and protection of human rights in the Asian and Pacific region." The third such workshop was held in Seoul, Korea in July 1994. The chairman of the workshop encouraged the establishment of national institutions for human rights and human rights commissions. Such commissions will continue to be established, and some, like the National Human Rights Commission in Indonesia, will prove to be more independent than expected. Others, such as the National Human Rights Commission in India, which is not allowed to investigate allegations of human rights violations committed by the army or paramilitary forces (such as those at issue in Kashmir), will be less independent. At the Seoul workshop it was decided that a human rights forum for the Asian and Pacific region should be convened annually. The next workshop will be convened in Nepal, India in 1996.

Asian states are increasingly cooperating with the United Nations. During 1994, the United Nations High Commissioner for Human Rights visited the Kingdom of Bhutan, Cambodia, Indonesia, Japan, Nepal and Korea. During 1995, he made an important visit to India and met with political parties, individuals, organizations and authorities in Jammu, Kashmir and Punjab. The Centre for Human Rights established an office in Phnom Penh, Cambodia on October 1, 1993, which has served as a human rights presence in that country since the departure of the United Nations Transitional Authority in Cambodia (UNTAC). Justice Michael Kirby, an Australian jurist, is serving as the Secretary-General's Special Representative for Cambodia and presented a report to the United Nations Human

Rights Commission this year.³¹ In July 1994, the United Nations Special Rapporteur on Summary and Arbitrary Executions visited East Timor and presented his report to the United Nations Human Rights Commission this year. In October 1994, the United Nations Working Group on Arbitrary Detention, represented by its chairman, Mr. Louis Joinet and two members, visited Viet Nam. This was the "first" on-site visit for the working group and the first invitation on the part of the Vietnamese authorities to a United Nations body with a human rights mandate. In November 1994, China extended an invitation to the Special Rapporteur on Religious Intolerance, who visited Beijing and Lhasa, Tibet.

III. IS THE EXPERIENCE OF OTHER REGIONAL ORGANIZATIONS USEFUL?

The absence of a regional political umbrella organization in Asia such as the Council of Europe, the Organization of African Unity or the Organization of American States complicates the process of establishing a regional human rights arrangement for Asia. The existence of these other regional organizations, however, provides an incentive for the creation of one in Asia.

Achieving universal acceptance of international human rights norms is a process, and change and acceptance of these norms must ultimately come from within the region and cannot be imposed by outside forces. As individuals and groups in Asia become more familiar with international human rights norms, the claims to make these rights effective in the region will become louder. Asian States cannot rely on the particular historical, social, cultural context which has deprived individuals of their rights as an excuse for continuing to

³¹ *Situation of [H]uman [R]ights in Cambodia: Report of the Special Representative of the Secretary-General for [H]uman [R]ights in Cambodia, Mr. Michael Kirby, [S]ubmitted in [A]ccordance with Commission [R]esolution 1994/61, U.N. ESCOR, 51st Sess., Agenda Item 21, U.N. Doc. E/CN.4/1995/87 (Jan. 24, 1995).*

deny them when individuals are clamouring for them. One interesting “Asian” demand included in the Bangkok NGO Declaration on Human Rights called on “the UN to take appropriate steps to eradicate the practice of untouchability, which is a crime against humanity, and discrimination on the basis of caste, religion and other factors by the year 2000, failing which sanctions will be imposed.”³² The international community can only support the claims for international human rights in Asia and the people of the region will set the agenda.

³² *Report by the Secretariat, Bangkok NGO Declaration on Human Rights*, 4th Sess., Agenda Item 8, U.N. Doc. A/CONF.157/PC 83 (Apr. 19, 1993) (official document of the UN World Conference on Human Rights).

