

# Global & Regional Institutionalization of Human Rights in ASEAN & East Asia

Prof. Yasushi KATSUMA (Ph.D., LL.M.)

Associate Dean

Graduate School of Asia-Pacific Studies (GSAPS)

Waseda University

# Puzzles

- Puzzle 1:
  - Why does ASEAN create a sub-regional human rights mechanism now?
- Puzzle 2:
  - Why don't "plus 3" countries (China, Japan, Republic of Korea) seem to be ready to cooperate to create a regional human rights mechanism in Asia?

# Hypotheses

1. A global historical trend of the development of regional human rights mechanisms.
2. The Universal Periodic Review (UPR) for all UN member states, including “ASEAN plus 3” countries.
3. Acceptance of core human rights treaties by ASEAN plus 3 countries.
4. Human rights networks in Asia-Pacific.
5. Political will of ASEAN member states to build the ASEAN Community. (And the lack of political will of “plus 3” countries?)

# Hypothesis 1:

## A global historical trend of the development of regional human rights mechanisms

		1950s	1960s	1970s	1980s	1990s	2000s	2010s & beyond
<b>Global</b>			(1966)	(1976) International Covenants: ICCPR & ICESCR				
<b>Regional</b>	<b>Europe</b>	(1950)	(1953) ECHR (European Convention for the Protection of HR & Fundamental Freedoms)					
	<b>Americas</b>		(1969)	(1978) ACHR (American Convention on HR: Pact of San José)				
	<b>Africa</b>			(1981)	(1986) ACHPR (African Charter on Human & Peoples' Rights: Banjul Charter)			
	<b>Arab</b>					(1994)	(2008) Arab Charter on HR	
	<b>Asia</b>							(2012) ASEAN HR Declaration
<b>Trans-regional Islamic community</b>						(1990) Cairo Declaration on HR in Islam		

Source: Author

# A Challenge to the Hypothesis 1: Why not the whole region of Asia?

		<b>Global and Regional Organizations</b> (Acronym: Membership)	<b>International Human Rights Norms</b> (Year Adopted, Year Effective)
<b>Global Development of Human Rights Norms</b>		United Nations (UN: 193)	UDHR (1948); ICCPR (1966, 1976) & its 2 Optional Protocols; ICESCR (1966, 1976) & its Optional Protocol; Vienna Declaration & Programme of Action (1993)
			CAT (1984, 1987); CPED (2006, 2010); ICERD (1965, 1969) ; CEDAW (1979, 1981);CRC (1989, 1990); CRPD (2006, 2008); ICRMW (1990, 2003)
<b>Regional Development of Human Rights Norms</b>	<i>Europe</i>	Council of Europe (CoE: 47)	ECHR (1950, 1953) and its 14 Additional Protocols; ESC (1961, 1965); RevESC (1996, 1999)
		Organization for Security & Cooperation in Europe (OSCE: 57)	Helsinki Final Act (1975); Charter of Paris (1990)
		European Union (EU: 27)	EU Charter of Fundamental Rights (2000)
	<i>Americas</i>	Organization of American States (OAS: 35)	American Declaration of the Rights & Duties of Man (1945); ACHR (1969, 1978); Protocol of San Salvador (1988)
	<i>Africa</i>	African Union (AU: 54)	ACHPR (1981, 1986); Additional Protocol to ACHPR (2008)
	<i>Arab</i>	League of Arab States (LAS: 22)	Arab Charter on Human Rights (1994, 2008)
	<i>Asia</i>	Association of Southeast Asian Nations (ASEAN:10)	<i>ASEAN Human Rights Declaration (2012)</i>
<b>Trans-regional Development of Human Rights Norms</b>		Organisation for Islamic Cooperation (OIC: 57)	<i>Cairo Declaration on Human Rights in Islam (1990)</i>

Source: Author

# More Challenge to the Hypothesis 1

- If Asian regional human rights mechanism is unrealistic in the absence of a legal regional organization, why not the sub-regional SAARC (South Asian Association for Regional Cooperation) but the sub-regional ASEAN only?
  - Hypothesis 5

## Hypothesis 2: The Universal Periodic Review (UPR) for all “ASEAN plus 3” countries

- The Human Rights Council of the United Nations (UN), created in 2006, consists of 47 UN member states. Out of the 47 seats, 13 seats are allocated to Asia.
- All UN member states must go through the Universal Periodic Review (UPR), irrespective of their ratification or accession status of core human rights treaties.

# A Challenge to the Hypothesis 2

- Have ASEAN member states created a sub-regional human rights mechanism in order to complement the UN Charter-based human rights mechanism (Human Rights Council)?
- Or is it an attempt by ASEAN member states to treat human rights in an “ASEAN way,” possibly deviating from global human rights norms?



# Hypothesis 3:

## Acceptance of core human rights treaties by ASEAN plus 3 countries

	ASEAN										Plus 3		
	OIC												
	Indonesia	Brunei	Malaysia	Singapore	Thailand	Philippines	Cambodia	Vietnam	Myanmar	Lao	People's Republic of China	Japan	Republic of Korea
ICCPR	2006				1996	1986	1992	1982		2009		1979	1990
ICESCR	2006				1999	1974	1992	1982		2007	2001	1979	1990
CAT	1998				2007	1986	1992			2012	1988	1999	1995
CPED												2009	
ICERD	1999				2003	1967	1983	1982		1974	1981	1995	1978
CEDAW	1984	2006	1995	1995	1985	1981	1992	1982	1997	1981	1980	1985	1984
CRC	1990	1995	1995	1995	1992	1990	1992	1990	1991	1991	1992	1994	1991
CRPD	2011		2010		2008	2008	2012		2011	2009	2008		2008
ICRMW	2012					1995							

# Challenges to the Hypothesis 3

- Mixed records are found among ASEAN member states.
- The Philippines and Indonesia (also a member state of the Organisation for Islamic Cooperation [OIC]) are leading, followed by Thailand, Cambodia and Lao PDR.
- On the other hand, Brunei, Malaysia, Myanmar and Singapore have not ratified or acceded the ICCPR and ICESCR yet.

# Hypothesis 4:

## Human rights networks in Asia-Pacific (1)

- APF: Asia-Pacific Forum of National Human Rights Institutions (NHRIs):
  - Established in 1996 when 4 NHRIs of Australia, India, Indonesia and New Zealand met in Darwin.
  - The NHRIs of 4 ASEAN member states (Indonesia, the Philippines, Malaysia and Thailand) and the Republic of Korea participate in the APF as full members accredited with 'A status' (compliance with the Paris Principles) by the International Coordinating Committee of NHRIs.
  - The NHRI of Myanmar participates in the APF as an associate member.

## Hypothesis 4:

### Human rights networks in Asia-Pacific (2)

- The Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT):
  - Started in 2003 by 6 countries of the Greater Mekong Sub-region (GMS): People's Republic of China, Cambodia, Thailand, Lao PDR, Vietnam and Myanmar.
  - In 2004, Memorandums of Understanding (MoUs) were signed by the 6 countries to combat trafficking in person through a sub-regional framework.

# Challenges to the Hypothesis 4

- Mixed records are found among ASEAN member states.
- The issue-specific multilateral framework may be established from a functional viewpoint. However, it may not evolve into a comprehensive human rights mechanism.

## Hypothesis 5:

### Political will of ASEAN member states to create the ASEAN Community (1)

- SAARC (South Asian Association for Regional Cooperation) was created in 1985. The SAARC Charter (1985) does not mention any sub-regional human rights mechanism, but SAARC has taken an initiative to combat trafficking in persons.
- The SAARC Charter of Democracy (2011) :  
“Reaffirming faith in fundamental human rights and in the dignity of the human person as enunciated in the Universal Declaration of Human Rights...”

# Hypothesis 5:

## Political will of ASEAN member states to build the ASEAN Community (2)

- ASEAN Charter (2007) has transformed ASEAN from a political sub-regional organization into a legal sub-regional organization.
  - The Eminent Persons Group on the ASEAN Charter.
  - The High-Level Task Force on the Drafting.
  - Article 14: “ASEAN shall establish an ASEAN human rights body.”
- ASEAN Intergovernmental Commission on Human Rights (AICHR) was created based on the Terms of Reference (2009) .
  - The High-Level Panel appointed by the ASEAN Foreign Ministers Meeting.
  - The 4.2 of the ToR: “ASEAN Human Right Declaration.”
- ASEAN Human Rights Declaration (2012).

# ASEAN & Plus 3 Countries

- ASEAN Vision 2020 (1997) to build the ASEAN Community:
  1. ASEAN Political-Security Community.
  2. ASEAN Economic Community.
  3. ASEAN Socio-Cultural Community.
- Plus 3 countries:
  - Lack of a legal regional organization.
  - Lack of political will?