

# The Possibility of an East Asian Human Rights Regime\* \*\*

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## I. Introduction

First of all, I would like to thank all of the officials who had granted me this opportunity to present my research here at this conference. I am Chun-Soo Yang, a professor at the Yeungnam University Law School in Korea. Today I would like to give a small talk on the possibility of an East Asian human rights regime. Due to the limit of time, and due to the yet incomplete stage of my research, my presentation today would be a brief introduction to the theme of East Asian human rights regime. Since local human rights regime is still absent in East Asian regions,<sup>1)</sup> I believe it is very important to raise the issue of East Asian human rights regime at this point.

The concept of human rights nowadays has become a signature icon that characterizes contemporary society. Various efforts to realize human right have been made not merely at the level of individual nation state, but also at international level. Thus international society seeks to realize human rights by making human rights regime at local units. However, East Asia unfortunately did not yet succeed in building independent human rights regime. There may be

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1) See Hidetoshi Hashimoto, *The Prospects for a Regional Human Rights Mechanism in East Asia* (Routledge, 2004).

various reasons for this, but I would like to focus on two main reasons: while the former is a practical reason, the latter would be a theoretical one. The main practical reason is the lack of empathy on the necessity of human rights regime. Because of numerous political or economical reasons, vast majority of East Asian countries still put in more efforts on economic growth than on the protection of human rights. However, I believe that this problem could be solved gradually in the course of time. Moreover, there remains the theoretical question on the controversy over whether it is possible to conceptualize the so-called *East Asian human rights* which may be applied in general to East Asian communities. This problem is also related to the discourse on universality of human rights.<sup>2)</sup> For instance, those who stress the cultural identity of East Asia criticize that the concept of human rights is not truly universal, but more-or-less Western-oriented. Because of this, they came out with the concept of *Asian Value* that would replace the concept of human rights. Such critical voices are based on the ground that the concept of human right is a kind of cultural product, and that it is difficult to talk about universal cultural value in today's world constituted of plural cultures. If such criticism turns out to be true, it would not be easy to talk about East Asian human rights.

Nevertheless I would assert that it is still possible to conceptualize East Asian human rights regime, even in theoretical level. In order to demonstrate this assertion, it is necessary to discuss mainly four issues. First, is it possible to arrange theoretical grounds for East Asian human rights that can be demarcated from *Asian Value*? Second, if we can find grounds for East Asian human rights, what should be the preferential consideration of East Asian human rights for the East Asian human rights regime? Third, what should be the ideal status of East Asian human rights regime that deals with East Asian human rights? Forth, through which process should we constitute East Asian human rights regime? My presentation today will sketch very briefly each of the four issues.

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2) About this problem see R. Forst, Das grundlegende Recht auf Rechtfertigung – Zu einer konstruktivistischen Konzeption von Menschenrechten, in: H. Brunkhorst u.a. (Hrsg.), *Recht auf Menschenrechte* (Suhrkamp, 1999), S. 66 ff.

## II. The Possibility of the Idea of East Asian Human Rights

First, let us examine if the idea of East Asian human rights could be realized. As I have mentioned above, those who stress the unique identity of East Asian communities empathize that concept of human rights is Western-oriented. According to their arguments, the concept of human rights is not truly universal, but an idiosyncratic Western value based on liberal culture of individualism which would not be appropriate for Asian culture empathizing communitarian solidarity.<sup>3)</sup> Such assertion contains dual implications: one is that the concept of human rights as well is a product of culture, while the other is that such concept of human rights as a byproduct of liberalism is unsuitable for Asian communities where more emphasis are given to the communities' values. On these grounds, they criticize universality of human rights.

Such argument may seem to be persuasive, particularly under today's condition dominated by multiculturalism.<sup>4)</sup> It is agreeable indeed, that the universality of human rights may be criticized in various aspects nowadays. Nevertheless, I find it to be inappropriate to give up the universality of human rights so hastily and so impatiently. Moreover, it seems rather improper to advocate the concept of Asian value in the very front. I believe that it is still possible to reflect cultural uniqueness of Asian communities on one hand, while demonstrating East Asian human rights that may be accordant to universality of human rights on the other hand. It may be demonstrated in the following way:

First, it can become possible by reducing the domain in which the universality of human right is recognized. In other words, the universality of human rights will not be recognized in every issue of human rights, but only in those which constitute most fundamental and kernel part of human rights. As the denotation

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3) About this context see M. Sandel, *Liberalism and the Limits of Justice*, 2<sup>nd</sup> edition (Cambridge University Press, 1998).

4) See W. Kymlicka, *Liberalism, Community and Culture* (Clarendon Press, 1989); W. Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Clarendon Press, 1995).

of human rights is continuously being extended, and as various rights with different attributes have been embraced to the domain of human rights, such approach, I think, can be very convincing. In this aspect, we can simultaneously pursue the universality of human rights and the cultural relativity by recognizing universality on essential human rights in which various cultures may be applied in common, while still affirming cultural plurality in other domains. In such prospect, *the multicultural conception of human right* that Santos had claimed would also be realized.<sup>5)</sup>

Moreover, the concept of human rights should not be designed solely on the basis of liberalism. The conceptualization of East Asian human rights may also include the dimension of communitarian solidarity. I would like to conceptualize this as an idea of *liberal communitarian human rights*. Since major parts of what Asian value tries to assert are related to the issue of communitarian solidarity, we may overcome the criticism on human rights by designing human rights as a combination of liberalism and communitarianism.<sup>6)</sup>

Last, what I would like to demonstrate is an active combination of human right and culturalism. In other words, while affirming that the concept of human rights is also a cultural byproduct, we may on the other hand seek common grounds between mutual cultures. By doing so, what we may call *intercultural human right* may also be possible. With these three ways of argumentation, we may also arrange theoretical grounds for the concept of East Asian human rights.

### III. The Domain of East Asian Human Rights

If we can talk about East Asian human rights in this way, what would

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5) See Boaventura De Sousa Santos, Toward a Multicultural Conception of Human Rights, in: *Zeitschrift für Rechtssoziologie* 18 (1997); Boaventura De Sousa Santos, *Toward a New Legal Common Sense: Law, Globalization, And Emancipation*, 2<sup>nd</sup> ed. (Butterworth, 2002).

6) See M. Sandel, *Public Philosophy: Essays on Morality in Politics* (Harvard University Press, 2005).

constitute the specific list of rights in East Asian human rights? Since my research on this topic has not yet been fully developed, I would not be able to explain this in detail. But with the help of previous researches done by Professor Hyo-Je Cho, an authority of human rights in Korean academia, I would like to give just a very brief explanation here on the domains of human right which the current East Asian communities should pay primal attention to.<sup>7)</sup>

### *1. Rights Related to Multiculturalism*

First, we can raise the issue of human rights related to multiculturalism. Today in the course of globalization and international shift of labor as its consequence, multiculturalism has emerged as a new big issue in the civil society of the world. Same phenomenon can be perceived in Asian communities. In case of Korea, for instance, debates on the assertion that it is now time to respond towards multiculturalism have been actively going on. As a consequence, the question of 'to what extent should we guarantee the rights related to multiculturalism' - particularly those of the emigrant workers - has become a hot issue of multicultural human rights. East Asian communities now need to make efforts to prepare common criteria for namely the multicultural human rights.

### *2. Rights Related to Environment*

Next, we can think about the rights related to the environment. Now environmental problem has become a problem beyond that of the boundary of a single nation state. It is a communal problem of the East Asian communities, and furthermore that of the community of entire humankind. For this reason, rights related to the environment as well have gained the reputation of transnational universal right. In East Asian communities too, right related to the environment has earned a universal reputation, for East Asian communities are

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7) Hyo-Je Cho, *A Grammar of Human Rights* (Humanitas, 2007), pp. 237-263.

constantly threatened by catastrophe such as global warming, huge earthquake and Tsunami. Of course, there still remain controversies over this, because the right to environment may collide with the right to development in many parts of East Asian communities where we can still find developing countries. However, because of this reason, I strongly insist that East Asian communities should pay more attention to the right to environment.

### *3. Self-determination of the community*

In addition, I would like to claim that self-determination can also be the subject of human rights that East Asian communities should examine together. What I mean by self-determination of community is, in other words, the right to independence. However, considering the Chinese situation with numerous minority ethnic groups, this may seem to be a problem that needs more prudent approach. Nonetheless, as we anticipate that more attention will be focused on this issue in relation to multiculturalism, we can expect restrained yet gradual approach to this matter.

## **IV. The Reputation of East Asian Human Rights Regime and its Composition**

In the course of concluding this presentation, I would like to set forth very briefly my thoughts on what reputation the East Asian human rights regime should have, and how it should be composed. First I believe that East Asian human rights regime should be a kind of transnational regime. In order to assure proper operation of this human rights regime, East Asian human rights regime should first secure independence from each nation state. In addition, with reference to the research done by G. Teubner and A. Fischer-Lescano, famous German scholars of socio-legal studies, I would like to assert that East Asian human rights regime should be understood as a sort of auto-constitutional

regime.<sup>8)</sup> What I mean by auto-constitutional regime is a regime which produces and evaluates its own legal norms. Thus East Asian human rights regime should be composed in such a way to retain ability to reproduce its own adequate human rights norms, while also being able to make feedback by reflective evaluation.

Then, how can we constitute such East Asian human rights regime? Due to various reasons, it would be difficult to constitute such human rights regime instantly. Thus, it would be necessary to set up a long term plan to establish such East Asian human rights regime, while pushing ahead short-term plans to systematize East Asian Human Rights Meeting (or Conference) composed of the human rights committees of each East Asian nation states. Of course, it will be realized under the premise that each nation states of East Asia is equipped with proper human rights committees like that of Korean Human Rights Committee.

## **V. Concluding Words**

I have hitherto explained very briefly my ideas on the possibility of realizing East Asian human rights regime. As I have mentioned earlier, my research on this topic has not been fully developed yet, and is still in its conceptual stage. I would like to ask for your understanding regarding this. I am planning to give more concrete form to my yet-abstract ideas through further researches. Thank you sincerely for listening.

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8) Andreas Fisher-Lescano/Gunther Teubner, *Regime-Kollisionen* (Suhrkamp, 2006).