

§ 7 The missing Asian human rights law

I. "Asian values" and the long way to the acceptance of the idea of human rights

- an ideological approach referring to an East-/Southeast Asian identity based on common characteristics of society, culture and history and traditional Asian values, in particular less individualism, as an antithesis and counterweight to the "Western" ideas of universal human rights and democracy
- human rights idea rejected by the traditional elites in many East- and Southeast Asian countries until the end of the 90s
 - therefore late ratification of global human rights treaties by these countries
- Bangkok declaration on human rights of 1993 still relativises human rights with regard to sovereignty, non-interference and needs of development

II. ASEAN and human rights

- *ASEAN principles* also include adherence to the rule of law and respect and protection of human rights (cf. art. 2(2) lit. h, i ASEAN Charter)
- however, to the present, the traditional strong emphasis on sovereignty and non-interference with internal affairs and the influence of the "Asian values" doctrine obstruct the introduction of a Southeast Asian geo-regional human rights regime
- recent: failure of ASEAN to defend human rights in the Rohingya crisis
- recent: failure of ASEAN to defend human rights against death penalty for homosexuals in Brunei

III. The ASEAN Human Rights Declaration (AHRD) - on the way to an ASEAN charter of human rights?

- just a *political declaration* of 2012 with *little practical impact* but potentially important in the ASEAN dialogue on human rights
- prepared by the ASEAN Intergovernmental Commission on Human Rights, an intergovernmental advisory body, without public discourse or consultation of the civil society
- proclaims civil and political rights (art. 10 et seq.), justice rights (art. 5, 20) and economic, social and cultural rights (art. 26 et seq.)
 - includes some innovative approaches (e.g. the right to safe drinking water and sanitation, art. 28 lit. e)
 - fails, however, to include some important rights (e.g. the freedom of association)
- proclaims a right to development, which is also a collective right but cannot be invoked to justify h.r. violations (art. 35 et seq.)
- proclaims a vaguely formulated right to enjoy peace (art. 38)
- criticised by experts for including *clauses that dilute or restrict the significance or substance of the human rights*
 - e.g. for demanding that the enjoyment of the rights "must be balanced with the performance of corresponding duties" and for especially stressing the "responsibilities to ... the community and the society" (art. 6)
 - e.g. for pretending that "the realisation of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds" (art. 7) - a dangerous *relativisation of human rights*