Debunking Asian Ambivalence and Celebrating a Hopeful Regime - The 1993 Kuala Lumpur Declaration on Human Rights

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*The 1993 Kuala Lumpur Declaration on Human Rights*”

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“There is neither Jew nor Greek, there is neither slave nor free, there is no male and female, for you are all one in Christ Jesus.”

I. INTRODUCTION

What does it truly mean to uphold human rights or safeguard and promote human welfare? As Michael Ignatieff once asked, “if human beings are special, why do we treat each other so badly?" This question presupposes there is indeed ‘something special’ about human beings. Yet, from a religious perspective of HR, this is hardly unheard of. For example, drawing from the quote above, Christians believe in a radical version of HR that achieves complete oneness both in inherent nature and of intrinsic worth as the foundation of human dignity: the Judeo-Christian doctrine of imago dei. In a similar vein, the 1993 Kuala Lumpur Declaration on HR contains in its Preamble an assertive (rather than merely argumentative) and “a theocratic basis for understanding what it means to be human.” Yet, does the KLDHR fulfill the expectations of ‘universality, indivisibility, and inalienability’ – standards it proudly professes to meet – that flow from this basis?

This paper endeavors to show that ultimately, the KLDHR is normatively sound and practically effective as a HR instrument against the standards of The Criteria. Although it may not comprehensively fulfill all these expectations, this is primarily

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2 Hereinafter referred to as “HR”
3 Michael Ignatieff, Human Rights as Politics & Idolatry (1999), p 77
5 Hereinafter referred to as ‘KLDHR’
6 “Whereas, the peoples of ASEAN recognize that all human beings are created by the Almighty, and possess fundamental rights which are universal, indivisible and inalienable …” [Emphasis added]
7 Li-Ann Thio, Implementing Human Rights in ASEAN Countries: "Promises to keep and miles to go before I sleep" (1999) Yale Human Rights and Development Journal: Vol. 2: Iss. 1, Article 1 [Thio on Human Rights in ASEAN] at [59]
8 Hereinafter referred to as ‘The Criteria’
due to the Asian particularities underlining the declaration. Before analyzing the KLDHR proper, I will first establish in Part II that although The Criteria have been so widely invoked they has arguably devolved into mawkish platitudes, they are nevertheless valuable as yardsticks for measuring HR. Part III critically analyzes the failure of the KLDHR to operatively confer on the status of HR the ‘inalienability’ it advocates in its Preamble. Next, in Part IV, I will endeavor to highlight the KLDHR’s commendable balance of ‘universality’ as an ideal with the reality of cultural and contextual diversity. Part V will highlight that the KLDHR also upholds ‘indivisibility’ as a standard for HR both in principle and in practice. In closing, observations will be made on the concerns of Asian States and particularities of Asian societies as guidelines in appreciating the KLDHR.

II. “A TRUTH UNIVERSALLY ACKNOWLEDGED:”

THE FOUR ‘MOTHERHOOD’ MANTRAS

The KLDHR categorically and gloriously pronounces in its Preamble that HR are ‘universal, indivisible, and inalienable.’ These mantras or The Criteria have been widely invoked as the acceptable – even desirable – standards of HR.

Nonetheless, this author humbly implores that we take a step back and reexamine The Criteria, which has arguably become a convenient expression of HR standards that sounds goods to everyone but is shorn of real meaning. It has been argued that The

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9 Li-Ann Thio, Protecting Rights, in Li-Ann Thio & Kevin Y.L. Tan, eds., Evolution of a Revolution: Forty Years of the Singapore Constitution (Oxford: Routledge-Cavendish, 2009) [Thio on Protecting Rights], p 195:

“The ['Asian values'] may be distilled to include […] prioritisiation of collective welfare over individual concerns and of basic needs over civil-political rights [informing] the rights balancing process, as does the view that economic growth precedes democracy such that social harmony is deemed essential to the economic imperative, at the expense of civil liberties.” [Emphasis added]

10 To borrow a quote from Jane Austen, Pride and Prejudice, p 1

11 Colloquial slang for a platitude or “feel good”, overused remark lacking any genuine thoughtfulness or may even assume pervasive understanding even though the opposite is true in reality; nonetheless, a statement few would disagree with.

12 Thio Li-Ann, ‘Cross-Cultural Exchange of Human Rights: Crossing Divides or Crossing Swords?’ The Seventh Beijing Forum on Human Rights, September 17-18 2014 [Thio, Crossing Divides or Crossing Swords?], p 244:

“We are all in agreement when it comes to huge abstract ideas like the importance of ‘dignity’, ‘justice’ and ‘human rights’. The devil is in the details and differences erupt over specifics.”
Criteria’s rhetoric (also those who champion it) basically “aim[s] at a kind of moral, even spiritual, regeneration through creation of human rights culture in which each and every human struggle will be converted into HR struggle.” If this is so, then one might not be unjustified in suggesting that The Criteria basically function as ‘motherhood’ mantras lacking practical utility in examining HR standards because it is inconsistent with the reality of HR discourse.

Notwithstanding, The Criteria may function as suitable measures of HR as long as it is not invoked haphazardly or given an unqualified definition (e.g. absolute ‘universality’ exclusive of any cultural diversity). This may be achieved if careful explanation is made and proper parameters are set out when discussing each individual mantra in conjunction with examining a HR instrument. Ultimately, at its core, the genesis of The Criteria is found in the Universal Declaration of HR’s vision of a human being free from any prohibited discriminations. Thus, if The Criteria were birthed both out of repugnance towards pre-1948 Nazi atrocities and a

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“The emergence of human rights faith communities [is] a notable feature of the worldwide promotion and protection of human rights. The international Bill of human rights is their sacred text; human rights education is their mission; and the peoples of the world their congregation. The evangelists believe in the power of the mantra of inalienability, indivisibility, interdependence, and universality.” [Emphasis added]


“… [E]fficiency in production of contemporary human rights standards raises new and difficult issues, as does the notion of quality. The notions of efficiency and quality are further complicated by the insistence on the rhetoric of universality, interdependence, indivisibility and inalienability of human rights. Eminently desirable according to the prevailing hegemonic models of human rights enunciations, these four mantras make judgments on efficiency and quality of enunciation of human rights standards and norms very difficult and, at times, even impossible;” and [Emphasis added]


“Not only are the universal mantras so familiar to human rights law too abstract to provide workable guidance about procedures and institutions for States […] they often require conduct that many States under economic and political stress are simply incapable of achieving.”

15 This will be addressed in greater detail in Part IV.

16 Johannes Morsink, ‘Article 1, the Preamble, and the Enlightenment’ in Article 1, the Preamble and the Enlightenment in The Universal Declaration of Human Rights: Origins, Drafting and Intent (University of Pennsylvania Press, 1999) [Morsink on the UDHR]:

“What we have left [when discriminations are eliminated] is just a human being without frills. And the Declaration says that the human rights it proclaims belong to these kinds of stripped down people, that is to everyone, without exception.”
prospective want for greater respect of human dignity, they are HR standards worth striving towards.17

III. TOKEN ‘INALIENABILITY’: PAYING LIP SERVICE

A. Delineating ‘Inalienability’

‘Inalienability’ is rooted in the belief that “HR inhere in people,”18 and are “irreducible to and undeducible from other rights or laws.”19 In practice, this perspective of HR requires the sovereign State to both affirm the “sovereignty of man”20 and also highlight particular HR “essential for the furtherance of human dignity.”21

While the KLDHR expressly affirms the ‘inalienability’ of HR, its operative contents suggest this may be mere lip service. This is because a significant number of HR are conferred in the KLDHR, subject to the limitation that they adhere to or are not inconsistent with existing law.22 If the State can dictate and limit HR, then are they really ‘inalienable’? Indeed, this was the concern with “domestic law trumps”

“[Rita] Joseph explains that the move towards recognition of universal and inalienable human rights was a direct response to the Nazis’ singling out groups of human beings for deadly discrimination, and that at no stage in the drafting history of the UDHR was any attempt made to exclude any group of human beings.”

18 Morsink on the UDHR, p 290:
“[T]he view that human rights inhere in people as such; people have these moral rights because of their membership in the human family, not because of any external force or agency… The drafters did see some sort of connection between human nature and human rights […] That means no person and no political or social body or organ gave them to us [or could remove them] … ; ” [Emphasis added]

Cf. 1789 French Declaration: “natural, imprescriptible, and inalienable.”

19 Hannah Arendt, The Origins of Totalitarianism (1973), p 287

20 H. Lauterpacht, International Law and Human Rights (1950), p 70:
“For fundamental human rights are rights superior to the law of the sovereign State…To that vital extent, the recognition of inalienable human rights and...of the individual as a subject of international law are synonymous, [signifying] the recognition of a higher, fundamental law [by] States…” [Emphasis added]

“In fact the concept of inalienable rights is precisely aimed at distinguishing those rights which are essential for the furtherance of human dignity from those which are not.” [Emphasis added]

22 Articles 7, 9, 10, 12 and 22, KLDHR
overriding HR, which surfaced when the 2012 ASEAN Declaration on HR was introduced.\textsuperscript{23}

Here, the KLDHR purports a notion that HR may be ‘inalienable’ (at least in a purely theoretical sense) but should in no way be legally unfettered in reality. One may perhaps interpret this qualification of ‘inalienable’ HR in the KLDHR as an “affirm[ation] that man [is] only a means and that the State [is] an end in itself.”\textsuperscript{24}

This brings me to my next point on the State-individual relationship.

\textbf{B. Aligned to Asia but Alien to the West}

Generally speaking, a thriving HR regime “must incorporate the healthy ideal of an individual liberty paradigm; it is the individual who is the ultimate beneficiary of these liberties, not any metaphysical entity like the State.”\textsuperscript{25}

However, as argued above, the KLDHR certainly does not countenance the overriding of State interests by individual HR. Instead, it implicitly recognizes the communitarian Asian HR approach as distinct from the Western, more positivist slant.\textsuperscript{26} In other words, that the KLDHR places fetters on HR via existing law reflects the priority of ASEAN States to defend domestic interests and uphold domestic laws.\textsuperscript{27} This also reveals ASEAN’s firm confidence in its communitarian HR

\textsuperscript{23} US Department of State, ASEAN Declaration on Human Rights, 20 November 2012:
“\textit{We are deeply concerned that many of the ASEAN Declaration’s principles and articles could weaken and erode universal human rights and fundamental freedoms as contained in the UDHR. Concerning aspects include: the use of the concept of "cultural relativism" to suggest that rights in the UDHR do not apply everywhere; stipulating that domestic laws can trump universal human rights; incomplete descriptions of rights that are memorialized elsewhere; introducing novel limits to rights; and language that could be read to suggest that individual rights are subject to group veto.” [Emphasis added]}

\textsuperscript{24} Morsink on the UDHR, p 289

\textsuperscript{25} Li-Ann Thio, \textit{The Secular Trumps the Sacred: Constitutional Issues Arising From Colin Chan v Public Prosecutor [1995] 16 Sing. L.R. 26 [The Secular Trumps the Sacred]}, p 27

\textsuperscript{26} Stephen Hall, “\textit{The Persistent Spectre: Natural Law, International Order and the Limits of Legal Positivism}” (2001) 12 EJIL 269, p 301-305.

\textit{“Without an anchorage in the natural law, juridical and political thought will increasingly treat human rights not as an objective reality, but as a convenient sanctuary into which may be placed whatever interests the politically powerful or astute wish to quarantine from normal contention. In such a setting, the language of human rights becomes too frequently little more than an illiberal rhetorical card which may be played for the purpose of pre-emptively silencing (or 'trumping') dissent.” [Emphasis added]}

\textsuperscript{27} Thio on Human Rights in ASEAN at [28]
approach as opposed to what it perceives is an undesirable Western single-mindedness towards individualistic HR.\(^{28}\)

This communitarian approach is further evident in the KLDHR’s stipulation that individuals have responsibilities and obligations to the State\(^{29}\), which are in turn conjointly operative with the duties of the State.\(^{30}\) Moreover, the KLDHR specifies *many more duties on States* than on individuals\(^{31}\), reflecting a distinct Asian flavour in which “the diligent fulfillment of its duties by a State is a *counterpart* of the respect and obedience it receives from the citizens.”\(^{32}\)

In light of the aforesaid, the KLDHR’s qualification that HR are reducible to *limited rights* according to State-defined perimeters is arguably defensible. This ‘delineated inalienability’ is also palatable if one acknowledges that HR must fundamentally be understood on the basis that individuals are *situated within a larger community* with which they forge bonds and develop relationships.\(^{33}\)

\(^{28}\) *Ibid*

\(^{29}\) Articles 1 (duties to the community), 15 (participating in the conduct of public affairs) and 22 (to exercise rights within limits of law), KLDHR

\(^{30}\) *Thio on Human Rights in ASEAN* at [60]:

“An ASEAN Charter is likely to elaborate a *group-oriented vision of society* incorporating the critique of social irresponsibility to counter the influence of excessive Western "individualism" and its attendant social ills. Like the African Charter, an ASEAN charter would place significant emphasis on individual duties in relation to the state. [Emphasis added]

\(^{31}\) On top of the individual’s duty of participation in Articles 1 and 2 and the mutual duty of the citizens and the State in Article 20, there are five more articles stipulating duties of the state, namely: Articles 16, 17, 18, 19 and 21, KLDHR


“The values of separation, independence and autonomy are historically grounded, deeply rooted in and nurtured by the liberal tradition of individual rights. This in turn prompts non-interference among people, and has the potential of fostering indifference. In that tradition, rights reflect a partial vision of human experience and conceal an important part of it, that part which is made of relationship, of responsibilities, of care and affection. *Whereas rights tend to dissolve all natural bonds in support of individual claims, human experience knows the drive towards the other, a drive that knits a genuine fabric of relationships and interdependence.*” [Emphasis added]
C. The Hypocrisy of the Preamble

Notwithstanding the above, the declaration of ‘inalienability’ in the Preamble remains very much an empty assertion upon further perusal of the KLDHR’s operative contents.

For one, Article 22 notably subjects all preceding HR espoused in the KLDHR both to the limits of existing law and also to other “just requirements.” Disappointingly, these added limitations to HR only serve to exacerbate the already restricted operation of HR. More regrettably, the phrase “shall endeavor” in Article 22 troublingly reflects a feeble attempt at safeguarding these HR from onerous or unfair limitations that may fall short of Article 22’s “just requirement.” Should there not be a positive duty on the State to ensure definitive and effectual elimination of such limitations rather than mere effort to undertake some action?

Consider also Article 17, where social, economic and cultural rights are addressed. A closer observation reveals that these rights are neither framed as HR per se nor articulated as State duties. Lamentably, the only guarantee appears to be the mere undertaking of each Member State to ensure equality of opportunity in their citizen’s access to these basic resources (as opposed to ensuring access itself).\(^{35}\) In light of the above, it appears the KLDHR merely advances a token form of ‘inalienability’.

For what it is worth, one may say the UDHR expounds a rather similar concept of ‘inalienability’ too, with Article 29 also restricting HR to existing law and “just requirements.”\(^{36}\) However, a significant difference lies in the UDHR specifies these limitations only exist so that the HR of other individuals are not encroached upon, whereas this is not so for the KLDHR. Worded as such, the limitations the UDHR

\(^{34}\) Hereinafter referred to as “SECR”\(^{34}\)

\(^{35}\) Brems on Human Rights, p 78:

“Saying in the first part of article 17 that the states “should” do something, is a rather weak formulation. […] It is not certain whether an obligation for the state to provide housing, food, education etcetera to those among its citizens who are deprived of it, can be derived from article 17. …” [Emphasis added]

\(^{36}\) “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.” [Emphasis added]

\(^{37}\) “… for the purpose of securing due recognition and respect for the rights and freedoms of others …”
places on HR are shown to be *subservient* to ‘inalienability’ rather than a constraint on it – a phraseology the KLDHR should consider if it truly prizes HR ‘inalienability’.

**IV. REINING IN THE “UNRULY HORSE” OF ‘UNIVERSALITY’**

‘Universality’ may be understood as the transcending of HR, across culture, time and space; an idea grounded in the notion of inherent human dignity. While the KLDHR’s conception of ‘universality’ qualified with cultural diversity may face “powerful opposition”, it appositely accommodates an approach towards ‘universality’ where culture may be exploited as a resource for the positive progression of HR.

**A. Where Universality and Diversity Collide**

The KLDHR strikes this commendable balance between “the ideal of universality and the reality of diversity” through its “context-based concept” of HR enshrined in the

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38 To borrow a phrase from Burrough, J., *Richardson v. Mellish* (1824), 2 Bing. 252, which was later quoted by Lord Bramwell in *Mogul Steamship Co Ltd v McGregor, Gow & Co* [1892] AC 25:

> “Public policy is a very unruly horse, and when once you get astride it you never know where it will carry you.”

39 Thio, *Crossing Divides or Crossing Swords?*, p 242:

> “As a form of global ethics, human rights carries the potential of unifying humanity insofar as human rights is predicated on human dignity and seeks to advance human freedom and human welfare. At this abstract level, “human rights” carries the potential of “crossing divides”, whether of race, sex, civilisation, or other cleavages that divide humanity into clans, tribes and interest groups.”

40 Michael Ignatieff, *The Attack on Human Rights* (2001) 80 Foreign Affairs 102, p 108; and Thio, *Crossing Divides or Crossing Swords?*, p 242:

> “[The universality of human rights] carries with it both hope and a fear, generating advocacy, ambivalence and antipathy, sometimes all three impulses simultaneously. This is unsurprising in a plural, postmodern world, where civilizational diversity is celebrated and where ‘grand narratives’ are deemed unfashionable.” [Emphasis added]


> “… [T]he issue of “human rights becomes less threatening if it is perceived as a proposal for how people of different cultures and backgrounds might live together, as opposed to a doctrine or ideology forced onto people in an authoritarian manner.” [Emphasis added]


> “Like the Bangkok Declaration, the KLDHR diverges from the liberal, individualistic HR concept by its strong reference to obligations of the individual to society and state. These
Preamble. This approach implicitly rejects the West’s uncompromising insistence on a ‘one size fits all’ model of individualistic HR to oblige an Asian “‘communitarian’ cultural values” perspective instead. Compare this to the UDHR for example, which the United Nations General Assembly proclaimed as “a common standard of achievement for all peoples and all nations” in respect of HR. While this may seem desirable, can it actually coexist with and in the reality of cultural diversity?

An arguably more accurate view of ‘universality’ perceives “HR [as] historically and ideologically the property of the liberal democracies of the West [enshrining] values which are universal neither in time nor in place.” To purport ‘universality’ apart from a specific culture and context therefore only advances a hollow understanding of HR divorced from reality. It is in this sense that ‘motherhood’ mantras like ‘universality’ invoked indiscriminatingly have degenerated into an unruly horse that complicate more than edify in the evaluation of HR.

Accordingly, the KLDHR should be duly commended for emphasizing and achieving a balance between the theory of ‘universality’ and the irrefutable reality that is cultural diversity.

responsibilities towards the community may curtail individual freedoms. AIPO thus champions a HR concept that is context-based, meaning that HR are the outcome of a country’s history and its specific political, economic, social and cultural conditions.”

Whereas, the peoples of ASEAN accept that human rights exist in a dynamic and evolving context and that each country has inherent historical experiences, and changing economic, social, political and cultural realities and value system[s] which should be taken into account.”

Thio on Protecting Rights, p 232


Ibid:

“They are in essence the Enlightenment's values of possessive individualism, derived from the historical paradigm which has shaped our world of the conscious human actor whose natural enemy is the state - a necessary evil - and in whose maximum personal liberty lies the maximum benefit for society.” To accept... that this view is rooted in time and place is not to consign it to the bin of relativism, for the same has been and will continue to be true of all historic proclamations of self-evident and universal truths...It is perfectly possible to recognise the localisation of ideas in time and place and to assert that they are none the worse for it: indeed, that ideas which pretend to universality are historical delusions.”

Richard Magnus, Keynote address, AICHR Singapore Representative, Annual Summer Institute in International Humanitarian law and Human Rights, 5 July 2011:

“... ASEAN is not a monolithic entity. Hence, it is unrealistic to expect all 10 ASEAN Member States to always be on the same page with regards to the promotion and protection of these rights. Every one of us is a unique product of our history...As a result, different societies have, at present, different social mores and priorities. In fact, it partly has to do
B. Aspirational Human Rights: Empty Pipedream or Hopeful Regime?

However, despite the KLDHR’s effort to balance diversity with ‘universality’, it arguably fails to crystallize or juridify this crucial notion in its operative contents.49

For example, Articles 4 and 5 only serve to emphasize the international law principle of non-intervention rather than definitively spell out in legal terms the Asian ‘context-based approach’ to HR.50 Also, the wording of Articles 16 (“to formulate appropriate…”), 18 (“undertake appropriate”), which only tenuously suggest some nominal regard for cultural diversity, is generally passive and imprecise. In this regard, the buoyant ambition of cultural diversity embodied in the Preamble51 is perhaps merely an aspirational pipedream.

Having said that, the KLDHR’s aspirational posture towards HR should not be hastily dismissed just because it may lack emphatic legal effect or praxis. While this very aspirational dimension is criticized as impractical and arbitrary52, it is nevertheless imperative and fulfills the vital function of HR evangelism for instruments such as the KLDHR.53

49 Brems on Human Rights, p 79: “The last of the favourite “Asian” topics figuring in the KLDHR is the combination of universality and cultural diversity, or the contextual flexibility of human rights standards. […] It is remarkable that no effort was undertaken to translate this concern into legal terms in the operative part of the KLDHR.” [Emphasis added]

50 Infra Note 55

51 Supra Note 44

52 Julian Rivers, Human Rights and Human Dignity: Unmasking the Trojan Horse, Oct 2013, Jubilee Centre, Cambridge: “[M]any human rights establish principles subject to competing considerations which need balancing. Yes, speech should be free, but not if it is obscene, or defamatory, or subject to commercial confidentiality, or a threat to national security and so on. Where then should the lines be drawn? If human rights were merely moral and aspirational, these matters could be left vague.” [Emphasis added]

53 Yuvraj Joshi, ‘What's wrong with human rights? Conflating human rights with social justice forces the public to seek legal rather than social or religious remedies’, Guardian (United Kingdom), 9 Oct 2009: “[Harvard Professor David] Kennedy views the human rights movement as claiming a communality that remains aspirational, "speaking a ‘truth’ far more universal than our plural world could ever recognise". For him the challenge for human rights is to speak

with the residual effects of colonial history. […] It is foolhardy to ignore or deny this important, if unpalatable, fact of life.” [Emphasis added]
Further, the KLDHR’s aspirational characteristic is consistent with the non-imposing and ‘soft’ Asian approach towards HR.\textsuperscript{54} Under this approach, one State’s failure to take any active steps towards realizing a common aspiration – e.g. the Article 16 duty to “formulate appropriate and sustainable national development policies” – coupled with the rest of ASEAN striving diligently to realize it inevitably generates considerable peer pressure on that one State to effect some tangible changes. In this sense, the KLDHR does not propound bare aspirational HR without muscle.

\textbf{C. Non-Intervention: Managing Delicate State Emotions}

Having said that, it bears highlighting that the ASEAN principle of absolute non-intervention\textsuperscript{55} embodied by Articles 4 and 5 of the KLDHR is untenable in a HR regime even if rationalized on the said basis of cultural diversity. While a HR regime geared solely towards ‘universalism’ and divorced from diversity is undesirable, a regime founded \textit{exclusively} on unqualified State self-determination is equally unsatisfactory. In such ‘isolated’ HR regimes, even a \textit{mere comment} by one State on the internal affairs of another (or it’s leaders) may be considered intrusive ‘intervention’. Yet, where HR implementation is concerned, surely “better is open rebuke than hidden love!”\textsuperscript{56} 

In this regard, a more transparent and interdependent HR regime, such as that embodied by the UDHR will augment the realization of HR in ASEAN.\textsuperscript{57} Notably, 

\textsuperscript{54}Thio on Human Rights in ASEAN at [91]: “The traditional ASEAN way avoids confrontation, preferring quiet diplomacy. ‘Constructive engagement,’ as an alternative method of HR management, seeks not to embarrass the object of engagement through isolation or condemnation. Change is through peer pressure.”

\textsuperscript{55}Article 2(c), Treaty of Amity and Cooperation in Southeast Asia Indonesia, 24 February 1976: “In their relations with one another, the High Contracting Parties shall be guided by the following fundamental principles: c. Non-interference in the internal affairs of one another.”

\textsuperscript{56}Proverbs 27:5, The Holy Bible, English Standard Version (2001)

\textsuperscript{57}UDHR Preamble: “\textit{Whereas}, Member States have pledged themselves to achieve, \textit{in co-operation with the United Nations}, the promotion of universal respect for and observance of human rights and fundamental freedoms;” [\textit{Emphasis added}]
although the KLDHR advocates for some room for external cooperation\textsuperscript{58}, this is curiously not translated into its operative contents.

V. ‘INDIVISIBILITY’: BUILDING ASEAN’S “ARCHED STONE BRIDGE”\textsuperscript{59}

‘Indivisibility’ is simply translated as strong interdependence between different HR\textsuperscript{60}, such that the respect and implementation of one right may promote the same for another. However, as James Nickel argues, the reality is not so utopian, especially where developing countries are concerned.\textsuperscript{61}

Majority of ASEAN States were considered developing countries back in 1993.\textsuperscript{62} Although ‘indivisibility’ of HR may \textit{prima facie} appear an unthinkable impossibility HR standard for the developing countries of ASEAN in 1993, the KLDHR suggests otherwise. In fact, the practical inability of these ASEAN States to \textit{comprehensively} implement HR (without sacrificing any rights along the way) could have possibly pushed them “to downplay political and civil liberties in favour of no-nonsense economic growth”, what Amartya Sen terms the “Lee thesis”\textsuperscript{63} or what Professor Thio Li-Ann identifies as “The Economics First Argument.”\textsuperscript{64} If this was indeed the prevalent phenomenon in ASEAN States during the 1990’s, then the KLDHR is distinct in this regard.

\begin{itemize}
\item “Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and \textit{international co-operation} and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.” [\textit{Emphasis added}]
\item KLDHR Preamble:
\begin{quote}
“Whereas, ASEAN seeks to further enhance its role in promoting a world order based on freedom, peace and social justice \textit{through international, regional and bilateral cooperation}.”
\end{quote}
\item \textsuperscript{58} KLDHR Preamble:
\item \textsuperscript{59} James W Nickel, \textit{Rethinking Indivisibility: Towards A Theory of Supporting Relations between Human Rights} (2008) 30 HRQ 984-1001 at 998
\item \textsuperscript{60} Nickel on Rethinking Indivisibility at 987
\item \textsuperscript{61} Nickel on Rethinking Indivisibility at 997
\item \textsuperscript{62} Except for Singapore, it would have been uncontroversial to consider Brunei, Indonesia, Malaysia, the Philippines, and Thailand developing countries.
\item \textsuperscript{64} Thio on Human Rights in ASEAN at [39]:
\begin{quote}
“This asserts that the entire spectrum of human rights can only be enjoyed after a certain level of socio-economic development is reached. Since human dignity is denied by abject poverty, according to this view, the inalienable right to development must be guaranteed first.”
\end{quote}
\end{itemize}
This is simply because the KLDHR does not reflect a similar focus on economic growth at the expense of other HR such as civil, political rights. Beginning with the Preamble itself, the KLDHR articulates a discernable concern with both (1) SECR and (2) other basic HR, including CPR. In its operative contents, while some Articles highlight SECR, others equally emphasize CPR. Building on Nickel’s analogy, this can be said to be the blueprint for an “arched stone bridge” HR system built holistically both from its center and its ends.

Articles 16 through 19 also point towards “providing a remedy or process that is sometimes, often, or always useful in protecting the supported right” possibly through Non-Governmental Organizations or National HR Institutions; in Nickel’s analogy, this would be equivalent to the “temporary scaffolding” or “support” for the “arched stone bridge.”

In closing, it bears emphasizing that the KLDHR’s endeavor towards ‘indivisible’ HR may be bolstered if it welcomes more international cooperation, e.g. as embodied in Articles 22, 26(2) and 28 of the UDHR.

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65 Hereinafter referred to as “CPR”  
66 “Whereas, the peoples of ASEAN realize that human beings cannot live alone but in harmony with one another with nature and their environmental to achieve complete fulfillment of their aspirations in a just society based on harmonious and balances economic, social, political and cultural developments.” [Emphasis added]  
67 “Whereas, the peoples of ASEAN are convinced that human being had a right to development and freedom from poverty, hunger, illiteracy, ignorance, injustice, diseases and other human miseries.”  
68 Articles 2 and 3, KLDHR  
69 Articles 8, 9, 11, 12, 13, 14 and 15, KLDHR  
70 Nickel on Rethinking Indivisibility, p 988  
71 Supra Note 58  
72 “Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.” [Emphasis added]  
73 “Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.” [Emphasis added]  
74 “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”
VI. CONCLUSION

In the final analysis, it is hoped that the reader emerges from this examination of the KLDHR with greater conviction that ASEAN is not at all ambivalent and unconcerned towards HR. As argued above, the KLDHR is principally supportable and also workable as a HR instrument against the expectations of The Criteria. Even where it compromises on ‘inalienability’, this may arguably be justified in light of the concerns and particularities of Asia.

Greater patience should also be exercised when considering the role Asian particularities play in shaping HR instruments. Admittedly, there are potential pitfalls in emphasizing the influence of Asian concerns such as communitarianism. However, what ultimately matters is that HR standards are enriched and human welfare is safeguarded – and this, to a considerable extent, is exactly what the KLDHR achieves.

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75 Cf. Thio on Human Rights at [21]:

76 Yash Ghai, 'Asian Perspectives on Human Rights' (1993) 23(3) HKLJ 342 at 348-35:

“The 'communitarian' argument […] overstates the 'individualism' of Western societies... Second, Asian governments fall into the easy but wrong assumption that they or the state are the 'community.' Nothing can be more destructive to the community than this conflation. The community and state are different institutions, and to some extent in a contrary juxtaposition.” [Emphasis added]


“However, especially in the political domain, Asia is particularist in the sense that several governments are reticent towards universal standards and prefer to abide by their own standards. Is this approach objectionable? The answer is again a relative one: it depends on which particularity we are referring to. If the particularity helps to enrich universal standards, this is acceptable ...;” and [Emphasis added]