

Diversity of Southeast Asian countries according to constitutional regime.

Outline:

The ASEAN was established in 1967 in order to contain the communism in Southeast Asia. Thus, ASEAN was the loose association among five pro-America anti-communist authoritarian states (Thailand, the Philippines, Singapore, Malaysia, Indonesia). Since then, however, Brunei joined the ASEAN in 1984. Following Brunei, Vietnam in 1995, Myanmar and Laos in 1997, and Cambodia in 1999 became the ASEAN members. Now, the ASEAN expands to 10 countries association. The ASEAN has transformed from the states association to substantial regional community: ASEAN established the Permanent Secretariat of the ASEAN in 1976, started the ASEAN Free Trade Area (AFTA) started in 2002, adapted the ASEAN Charter in 2007, and established the ASEAN Intergovernmental Human Rights Committee in 2009. On the other hand, the ASEAN includes socialist countries (Vietnam and Laos) that were deadly enemy, Cambodia that started again as post-conflict society, and Myanmar that is isolated in international society. As seen in its membership, the ASEAN has very diverse political and economic regimes within it. The ASEAN countries have common historical and cultural background as non-European and former colonial countries, and declared their official consensus on human rights in the form of the Bangkok Declaration in 2003 and the terms of reference of the Intergovernmental Human Rights Committee. However, it is necessary to review how these diverse political and economic regimes are reflected in constitutional regimes in the ASEAN countries. This lecture categorize member countries plus East Timor into 4 groups based on their constitutional regimes: namely (1) authoritarian states, (2) Socialist states, (3) post-conflict states, and (4) states that constitutions do not functioned, then will examine human rights protection in those constitutions.

(1) Authoritarian or Democratic transition states (former authoritarian states) : Indonesia, Singapore, Malaysia, Thailand, the Philippines

Authoritarian state:

limited participation of people to politics

provisions of the Constitution and security regulations --> oppression on civil and political rights

combination of authoritarianism and developmentalism --> strong executive branch (technocrat), and relatively weak judiciary and legislative branch

Post-authoritarian state in transition to democracy:

Indonesia --> democratization since 1998. Constitutional amendments and abolishment of oppressive regulations

The Philippines --> peoples' revolution in 1986. But frequent declarations of a state of emergency and martial law

Thailand --> periodic coup d'état by military --> shrinking and expansion of authoritarianism

Main issue --> prevention of human rights violation by executive divisions. -->

Enhancing human rights provisions either in the Constitution or laws.

Empowerment of parliament.

Observation by, for example, national human rights body

(2) Socialist states (Vietnam and Laos)

No freedom of political association

Expansion of economic freedom along with development of market economy, and increased demand for political liberalization.

Enhancement of one party regime after 1989 (collapse of the eastern European socialist regimes)

(3) Post-Conflict states (Cambodia and East Timor)

Constitutions under the predominant influence of the United Nations --> complete human rights catalogue in Constitutions

Cambodia --> Paris Peace Agreement (new constitution accept international human rights standards and plural liberal democracy)

East Timor --> First UNTAET regulation declares that all officials respect to internationally recognized human rights standard.

(4) States that constitution do not work (Brunei and Myanmar)

Brunei --> suspension of parliament since the declaration of state of emergency in 1971.

Myanmar --> ramming referendum on new draft of constitution under the severe damage of Cyclone.