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研究課題名（和文）Constitutionalizing National Protection of Universal Human Rights in the Formation of Regional ASEAN Human Rights Declaration

研究課題名（英文）Constitutionalizing National Protection of Universal Human Rights in the Formation of Regional ASEAN Human Rights Declaration

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研究成果の概要（和文）：本研究はアセアン地域における立憲主義の現状と課題を考える過程に国際人権法の位置付けを確認し、研究対象国の憲法と国際人権条約やアセアン人権宣言との関係を理解するねらいであった。対象国は主に1990年代から自由民主主義や経済体制の自由化を図るために新しい憲法を採択し、憲法を改正した国を中心としている。さらに、アセアン地域統合に重要な役割を果たしてきたシンガポールも対象国にした。
1990年代以降の憲法は国際人権条約の文言を多く導入し、国際基準との整合性が注目されているが、批判的な評価が目立つ。国内政治的な要素もあるが、国際基準というものの是非やその地域性について整理されていないことも課題である。

研究成果の概要（英文）：This research aims at clarifying the relevance of international human rights treaties in the process of establishing constitutionalism in the Asean region. The approach towards understanding this issue is by means of revlewing the relationship between constitutional human rights provisions and related human rights treaties and the Asean Human Rights Declaration.
Target countries are mainly those that have adopted or revised the constitution in order to start a regime based on liberal democracy or to liberalize the economy in recent years. Singapore is also included in the study due to its key roles in the formation of the Asean Community.
Constitutions since 1990 in the region have incorporated international human rights languages and the questions of implementation have been much criticized. Apart from the domestic political factors, the unsettled questions of international standards or universal values and their implications in regional context are also causing much uncertainty.

研究分野：　比較法学

キーワード：　憲法　アセアン地域統合　国際人権条約

１．研究開始当初の背景

When the ASEAN Human Rights Declaration was adopted in 2012, there were concerns that the regional human rights standard would not give as much protection to some categories of rights as the international human rights instruments had provided for. There were worries that some countries would use this new regional document as an excuse to lower the effects of constitutional human rights provisions which had earlier been modelled after the international treaty provisions. No prior research existed to lay down substantial discussions about the relationship among these different levels of standards in ASEAN.

２．研究の目的

The research is aimed at clarifying the relationship among these standards from different perspectives. First, the relationship as reflected in the making of the AHRD prior to 2012. Second, the relationship in legal terms when considering national implementation of international human rights standards through national constitutional provisions.

３．研究の方法

(a) Selection of target countries

Primary targets for the research are countries in ASEAN region that either adopted or revised their constitution in the early 1990s to introduce a political system based on liberal democratic principles or to liberalize the economy allowing for more freedom and basic rights in citizens to get engaged in social and economic activities. The main countries therefore include Cambodia, Vietnam, Thailand, Myanmar and Indonesia. The Philippines and Malaysia represented earlier samples of constitution making, not immediately relevant to this research, but as much as possible, these cases will also be picked up as secondary case studies focusing in particular on some recent constitutional debates and amendment that had direct human rights significance. Singapore is selected in this research for its important roles in assisting the formation of the ASEAN Community and its existence as a role model for many of its neighbors.

(b) Approaches to research questions

(b-1) Due to a serious lack of written records or first-hand documents either in the form of meeting minutes or publicly available analytical official reports, the research would have to primarily rely on verbal or narrative reports on what happened and what had been discussed in the relevant circles when the AHRD was drafted or deliberated up till its adoption in 2012. The information collection took place in the form of interviews and discussions with individuals directly involved in the different phases of the process. Information about the subsequent development of the discussions and documents was partly obtained through the same method and by reviewing the still limited number of literatures produced after 2012.

(b-2) Studies on the national implementation of international human rights instruments were made through two further steps. The first, and most practical step for the context of ASEAN countries, is detail reviews of the constitutional provisions, comparing them to the language of related international treaties, to see the degree of incorporating these languages into the national constitutions. This approach was taken side by side with broader reviews of the political and other contexts surrounding such incorporation at the first place, and reviews of substantive debates about the issue of implementation or actual effects of these languages in practice as they were nationalized through the constitutional provisions. The second approach was to examine recent case laws having direct relevance to the topics of human rights protection under existing international instruments. The second approach have been mainly effective in the studies about Malaysia with regard to the protection of the property rights of indigenous people.

４．研究成果

(a) Formation of the AHRD

The idea of an official document on human rights for ASEAN emerged first of all in the Vientiane Plan of Action of 2004. The appeal came from the group of experts representing the 10 members. Among these experts were well-established human rights law scholars and activities. The idea then went to different levels of discussions and gradually reached the official negotiations among bureaucrats and diplomats to end up in the final documents of the ASEAN Charter and the AHRD. Differences in the choice of languages and

wordings for human rights provisions were evident throughout the negotiation process and dominated all discussions about the substances of the provisions. Negotiators came up with their own understanding of how these languages should be rephrased to suit the situation of ASEAN and distinctive from the other human rights instruments. Some of them came up with proposals which to some extent reflected the constitutional values and provisions of their respective countries. The final approach adopted by the negotiators was not to adopt one proposal at the expense of another, but to try to be as inclusive as possible. As a result the Charter provisions on human rights and the AHRD in particular introduce wording which were quite unique and unfamiliar in most other international human rights documents, focusing on the idea of "people-centered" and "people-oriented" system of governance. Some basic rights such as the right to assembly was not included in the AHRD as a result of resistance by some countries where such rights are not recognized constitutionally.

During the final stage of adopting the Declaration, civil societies in some countries, such as the Philippines, Thailand, Indonesia and Malaysia, lobbied for more consistency with the international human rights treaty provisions, but not all of their efforts were able to go through the high profile negotiations among bureaucrats and politicians. The final document has therefore been viewed with skepticism by these civil societies and remain little referred to in official platforms or public institutions. Academic interests on the AHRD are also very limited in the region, when comparing to other international human rights documents.

(b) Constitutional provisions

Constitutions of ASEAN countries adopted or amended in the last 20 years have a relatively comprehensive bill of rights. Cambodia is a typical case of comprehensive incorporation of international human rights treaty languages into the Constitutional Council of Cambodia also officially stated that international human rights treaties adopted by Cambodia form one part of the national law. However, when it comes to detail implementation of human rights provisions by state institutions including the judiciary, the situation remains much unclear. There is no convincing court cases or decisive interpretations that may lead the way. With the exception of the ECCC decisions or judgements against the crime committed by the former senior Khmer Rouge leaders, there is little reference to the provisions or languages of international human rights treaties when the courts are seized with human rights-related cases. The situation in Thailand has been less predictable due to the changing political situations over the last few years. Myanmar has had a new Constitution since 2008, which contains a relatively comprehensive bill of rights but makes no direct reference to the international human rights treaties. The courts have been tasked to deal with day-to-day human rights issues and have shown some signs of positive pursuit of a standard of its own. Indonesia has had a more or less similar process of positive development as Myanmar. Vietnam has in 2013 adopted a new Constitution that incorporated several important human rights provisions, modelling after the languages of international human rights treaties to a significant degree. However, the real effects of these provisions remain highly dubious to constitutional scholars as they mostly complain about the absence of a constitutional mechanism to enforce or implement these provisions. Malaysia and the Philippines have had a longer and more stable process of implementing constitutional human rights provisions than any of the countries mentioned above. But the Philippines may be the only country that has experienced more judicial activism than its neighbors in ASEAN.

To sum up, emerging constitutions of the region have literally paid more attention to international human rights treaties. But when it comes to the issue of implementing these provisions, uncertainties remain very real. This fact has added to the skepticism about any positive impacts of the AHRD. Critical views remain dominant among people of the scholarly circle. The root causes are many. It is not only about the institutional capacity of those national institutions to implement and enforce the relevant provisions. Any important part of the causes also seem to be due to the increasing ambiguity in the efforts of international law to present universal values and the general lack of indepth understanding about the appropriate relationship between parallel value perceptions and workable standards

existing at different levels. In this sense, the AHRD has not been able to assert itself as a strong medium for the region so far.

５．主な発表論文等
（研究代表者、研究分担者及び連携研究者には下線）

〔雑誌論文〕（計　5　件）

〔学会発表〕（計　10　件）

〔図書〕（計　　件）

〔産業財産権〕

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〔その他〕
ホームページ等

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