



**Universiteit Utrecht**

**ASEAN's Struggle with Human Rights:  
Universalism versus Cultural Relativism**

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## Abstract

When the ASEAN Human Rights Declaration (AHRD) was adopted in 2012, it led to international criticism that it fell below international human rights standards. Even nuanced scholarly works referred to cultural relativism and Asian values, while no research had been done on public opinion regarding the AHRD in the region. The AHRD therefore provides an interesting and concrete starting point to re-examine universalism versus cultural relativism in the region where Asian values were once so fiercely proclaimed. This thesis answers the question to what extent South East Asian newspapers lean towards universalism or cultural relativism in their articles on this declaration. It follows the definitions of David Duquette on several forms of universalism and cultural relativism and uses discourse analysis on the 86 articles from the *Jakarta Post* from Indonesia, the *Bangkok Post* from Thailand and the *Phnom Penh Post* from Cambodia between the first of January 2012 to the last of December 2013. It then concludes that these newspapers and their readers, the educated upper and middle classes, lean most towards strong universalism.

Keywords: ASEAN, AHRD, human rights, Asian values, universalism, cultural relativism, public opinion, newspapers

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## List of Abbreviations

AAA	American Association of Anthropology
AHRD	ASEAN Human Rights Declaration
AICHR	ASEAN Intergovernmental Commission on Human Rights
ASEAN	Association of Southeast Asian Nations
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
FIDH	International Federation for Human Rights
HRWG	Human Rights Working Group
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICPED	International Convention for the Protection of All Persons from Enforced Disappearance
ICPMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ICSC	Indonesian Civil Society Coalition for the International Criminal Court (ICSC)
LGBT	Lesbian, Gay, Bisexual and Transsexual
LGBTIQ	Lesbian, Gay, Bisexual, Transsexual, Intersex and Questioning
UNHCR	United Nations High Commissioner of Human Rights
UNHCHR	United Nations High Commissioner for Human Rights
UPR	United Nations Human Rights Council Universal Period Review

## Introduction

On the 13<sup>th</sup> of November 2017, the Association of South East Asian Nations (ASEAN) organised its annual East Asian Summit (EAS) in Manila, the Philippines. According to a critical article from news agency Reuters on that same day, the leaders ‘skirted around the mass exodus of Rohingya Muslims triggered by Myanmar’s military crackdown, disappointing human rights groups who were hoping for a tough stand on the humanitarian crisis’.<sup>1</sup> This criticism is not surprising, when one considers that ASEAN designed these summits to discuss ‘issues of common regional concern’.<sup>2</sup> The mass migration of the Rohingya, a Muslim ethnic minority in Myanmar who has been targeted by the Myanmar government, should categorize as an issue of common interest and concern. More than 600.000 Rohingya’s fled since military attacked and burned villages in August 2017, which led to a refugee crisis in Bangladesh. This has resulted in international criticism from several governments and human rights groups, but apparently not from ASEAN member states.<sup>3</sup>

International outrage is understandable when one considers the commitment of ASEAN countries Brunei, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore and Thailand to their emerging regional human rights system. In such a completed system, regional intergovernmental norms, institutions and processes are created to promote and protect human rights as prescribed by the Universal Declaration of Human Rights (UDHR) from 1948 and other international human rights conventions.<sup>4</sup> Extensive systems already exist in Europe, America and Africa.<sup>5</sup> When ASEAN was founded in 1967, its goals were regional stability and economic cooperation, but after the World Conference on Human Rights in Vienna in 1993, human rights slowly became a priority. This would mean the start of the development of the fourth regional human rights system.<sup>6</sup> Although progress was stalled when more conservative countries such as Vietnam (1995), Laos and Myanmar (1997) and Cambodia (1999) joined ASEAN, the assigned working groups were able to construct and adopt the

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<sup>1</sup> Manuel Mogato and Steve Holland, “Human Rights Skirted at Asia Summit as Trump Rounds off Tour,” *Reuters*, November 13, 2017, accessed December 27, 2018, <https://www.reuters.com/article/us-ASEAN-summit/human-rights-skirted-at-asia-summit-as-trump-rounds-off-tour-idUSKBN1DD070>.

<sup>2</sup> Ministry of External Affairs of India, “India at the East Asia Summit,” news release, August, 2018, accessed January 4, 2019, <http://mea.gov.in/ASEANindia/about-eas.htm>.

<sup>3</sup> Aparupa Bhattacharjee, “BIPSS Special Report: Rohingya Crisis. Policy Options and Analysis” (Bangladesh Institute of Peace and Security Studies, 2017), <http://bipss.org.bd/pdf/Rohingya-Policy%20Brief.pdf>.

<sup>4</sup> After the adoption of the UDHR, several rights were adopted in legally binding conventions of which a list can be found in Appendix A.

<sup>5</sup> Henry J. Steiner, *International Human Rights in Context: Law, Politics, Morals: Text and Materials*, with the assistance of Philip G. Alston, and Ryan Goodman, 3rd ed. (Oxford: Oxford University Press, 2008), accessed September 28, 2018, 925.

<sup>6</sup> Yuval Ginbar, “Human Rights in ASEAN: Setting Sail or Treading Water,” *Human Rights Law Review* 10, no. 3 (2010): 1, doi:10.1093/hrlr/ngq024, 10-12-2018.

Vientiane Action Program in 2004, which would build an ASEAN community with human rights cooperation.<sup>7</sup> The following ASEAN Charter of 2007 set the timeline for the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR), which would be the institutional body of the system. Functional in 2009, the AICHR was tasked with drafting the ASEAN Human Rights Declaration (AHRD). This declaration would form the normative framework for the human rights system.<sup>8</sup> When the AHRD was unanimously adopted on November 18<sup>th</sup> in 2012, it was called ‘a landmark agreement’ by heads of ASEAN and ‘a legacy for our children’ specifically by the Philippine Foreign Secretary.<sup>9</sup>

However, several statements of civil society organisations (CSOs), governments and even scholars were critical of the declaration, arguing it could undermine the existing international human rights standards.<sup>10</sup> There is thus reason to dispute ASEAN’s commitment to establish a human rights framework, especially in the context of the debate on universalism versus cultural relativism and the introduction of ‘the Asian way’ and its ‘Asian values’ in this debate by Asian leaders. Human rights were internationally defined with the adoption of the UDHR in 1948, which assumed that the prescribed basic rights should apply to everyone no matter who they are. This implied universality had to do with the conviction that ‘(...) there is a minimal level of freedom that defines human beings and which ought to be defended’.<sup>11</sup> Although the UDHR was not legally binding, it would provide the basis for more than seventy binding human rights treaties and conventions.<sup>12</sup> As early as 1947, the Executive Board of the American Anthropological Association (AAA) expressed its concerns about this

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<sup>7</sup> Attilio Pisanò, “Human Rights and Sovereignty in the ASEAN Path Towards a Human Rights Declaration,” *Human Rights Review* 15, no. 4 (2014): 396–97, accessed October 8, 2018, doi:10.1007/s12142-014-0313-7.

<sup>8</sup> James Gomez and Robin Ramcharan, “The Protection Of Human Rights In Southeast Asia: Improving The Effectiveness Of Civil Society,” *Asia-Pacific Journal on Human Rights and the Law* 13, no. 2 (2012): 27, accessed October 10, 2018, doi:10.1163/138819012X13323234710062.

<sup>9</sup> See for the full declaration Annex 1. Unknown, “ASEAN leaders sign rights pact” *Jakarta Post*, November 18, 2012.

<sup>10</sup> See for example; Asia Pacific Regional Office, “The ASEAN Declaration: Questions and Answers” (International Commission of Jurists, 2013), Accessed January 4, 2019, <https://www.icj.org/wp-content/uploads/2013/07/ASEAN-leaflet-240713.pdf>; Office of the Spokesperson of the United States Department of State, “ASEAN Declaration on Human Rights,” news release, November 12, 2012, accessed December 27, 2018, <https://2009-2017.state.gov/r/pa/prs/ps/2012/11/200915.htm> and Katherine G. Southwick, “Bumpy Road to the ASEAN Human Rights Declaration,” *Asia Pacific Bulletin* 197 (2013), accessed October 8, 2018, [https://www.eastwestcenter.org/system/tdf/private/apb197\\_1.pdf?file=1&type=node&id=33862](https://www.eastwestcenter.org/system/tdf/private/apb197_1.pdf?file=1&type=node&id=33862).

<sup>11</sup> Pareshe Kathrani, “Quality Circles and Human Rights: Tackling the Universalism and Cultural Relativism Divide,” *AI & Society: Journal of Knowledge, Culture and Communication* 27, no. 3 (2012): 371–72, accessed October 3, 2018, doi:10.1007/s00146-012-0379-1 and Gerard Clarke, “The evolving ASEAN Human Rights System: The ASEAN Human Rights Declaration of 2012,” *Northwestern University Journal of International Human Rights* 11, no. 1 (2012), accessed October 20, 2018, <https://scholarlycommons.law.northwestern.edu/njihr/vol11/iss1/1/>.

<sup>12</sup> See for examples the mentioned core conventions in Appendix 1.0. See also: Uyen P. Le, “A Culture of Human Rights in East Asia: Deconstructing “Asian Values” Claims,” *U.C. Davis Journal of International Law & Policy* 18, no. 2 (2012): 486, accessed October 22, 2018, <https://heinonline.org/HOL/P?h=hein.journals/ucdl18&i=1>.

universality in a statement to the United Nations (UN).<sup>13</sup> The AAA argued that culture defined individual freedom and that every society has its own underlying values, which would allow states to adjust basic rights to their own cultural terms.<sup>14</sup> This emphasis on the existence of different cultural values, can be an obstacle in the implementation of universal rights, which is the core of the debate between universalism and cultural relativism. Since then, a vast body of literature has been written by scholars defending both terms, trying to unite the two or reject this theory of opposite views all together.<sup>15</sup>

‘Asian values’ made its entry in this debate when 34 states, including several ASEAN and future ASEAN states, signed the Bangkok Declaration in 1993.<sup>16</sup> This declaration contained the aspirations and commitments of these countries regarding human rights. It meant, as Ole Bruun and Michael Jacobsen state, ‘that the old debate from universalism versus cultural relativism had taken a new turn and a political consensus had been established among many Asian governments’.<sup>17</sup> The idea of Asian values is not novel, but its application to the human rights discourse was.<sup>18</sup> The usage of Asian values in a human rights context can be seen as a specific form of cultural relativism, which characteristics vary slightly among authors; but come down to a distinction between culture, economics and the role of the state.<sup>19</sup> As Joanne Bauer and Daniel Bell put it: “Asian values” was a term devised by several Asian leaders and their supporters in order to challenge “Western style” civil and political

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<sup>13</sup> Wilcomb E. Washburn, “Cultural Relativism, Human Rights, and the AAA,” *American Anthropologist* 89, no. 4 (1987): 939, accessed September 28, 2018, doi:10.1525/aa.1987.89.4.02a00150.

<sup>14</sup> Ulf Johansson Dahre, “Searching For a Middle Ground: Anthropologists and the Debate on the Universalism and the Cultural Relativism of Human Rights,” *The International Journal of Human Rights* 21, no. 5 (2017): 615, accessed October 7, 2018, doi:10.1080/13642987.2017.1290930.

<sup>15</sup> See for example for a cultural relativist plea Adamantia Pollis and Peter Schwab, “Human Rights: A Western Construct with Limited Applicability,” in *Human Rights: Cultural and Ideological Perspectives*, ed. Adamantia Pollis and Peter Schwab (New York: Praeger Publishers, 1979), for a connecting but slightly more universalist plea Jack Donnelly, *Universal Human Rights in Theory and Practice*, 2nd ed. (Ithaca: Cornell University Press, 2003) and for a rejection of cultural relativism John J. Tilley, “Cultural Relativism,” *Human Rights Quarterly* 22, no. 2 (2000), accessed October 16, 2018, doi:10.1353/hrq.2000.0027.

<sup>16</sup> These were Bahrain, Bangladesh, Bhutan, Brunei Darussalam, China, Cyprus, Democratic People’s Republic of Korea, Fiji, India, Indonesia, Iran (Islamic Republic of), Iraq, Japan, Kiribati, Kuwait, Lao People’s Democratic Republic, Malaysia, Maldives, Mongolia, Myanmar, Nepal, Oman, Pakistan, Papua New Guinea, Philippines, Republic of Korea, Samoa, Singapore, Solomon Islands, Sri Lanka, Syrian Arab Republic, Thailand, United Arab Emirates and Vietnam. See for more information: Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights, Bangkok declaration, Ministers and Representatives of Asian States (02-04-1993), accessed October 22, 2018, <https://www.ru.nl/publish/pages/688605/bangkok-eng.pdf>.

<sup>17</sup> Michael Jacobsen and Ole Bruun, eds., *Human Rights and Asian Values: Contesting National Identities and Cultural Representations in Asia*, Democracy in Asia 6 (Surrey: Curzon Press, 2000), 2.

<sup>18</sup> *Ibid.*, 5.

<sup>19</sup> Three are mentioned by Langlois, four by Jacobsen and Bruun and seven by Donnelly. Anthony J. Langlois, *The Politics of Justice and Human Rights: Southeast Asia and Universalist Theory*, Politics of Justice and Human Rights (New York: Cambridge University Press, 2001), accessed October 8, 2018, <https://doi.org/10.1017/CBO9780511819155.003>, 24-25; Jacobsen and Bruun, *Human Rights and Asian Values*, 3 and Donnelly, *Universal Human Rights in Theory and Practice*, 107-23.

freedoms.<sup>20</sup> Although the economic crisis of 1997 seemed to mark the ‘death’ of Asian exceptionalism and Asian values, as they were no longer frequently mentioned in academic debate, the universalist view of human rights had not won. As Leena Avionus and Damien Kingsbury put it: ‘Human rights were still considered “Western”; non-interference in domestic matters was still a frequently heard phrase (...) and cultural differences were still used to explain why social or political problems were not addressed.’<sup>21</sup>

The adoption of the AHRD, was the first time that the ASEAN countries reached a consensus on and defined which human rights they found important. Although the Bangkok Declaration provided a beginning, it was not focussed on ASEAN states alone, and did not solely identify individual rights. In this context, the AHRD becomes an interesting and concrete starting point to re-examine universalism versus cultural relativism in Asia. In fact, some scholars already tried to do so. For example, Yogeswaran Subramaniam categorised some clauses as cultural relativist, and Gerard Clarke argued that the AHRD is a ‘delicate balance between universalist and cultural relativist norms’.<sup>22</sup> David Fisher’s more recent publication even concluded that: ‘The AHRD’s reference to the “regional and national context” is redolent of the “Asian values” brand of cultural relativism spearheaded in the 1990s as a counterweight to universalism.’<sup>23</sup> Nevertheless, these authors do not give a clear definition of the concepts and are all focussed on the declaration itself. How the drafting of the declaration and its eventual adoption was received by public opinion is not discussed. Other scholars, CSOs and politicians also do not focus on public opinion when looking at the declaration. They only try to conclude whether the declaration would be beneficial or harmful for the advancement of human rights in the region.<sup>24</sup>

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<sup>20</sup> Joanne R. Bauer and Daniel A. Bell, eds., *The East Asian Challenge for Human Rights* (New York: Cambridge University Press, 1999).

<sup>21</sup> Leena Avionus and Damien Kingsbury, eds., *Human Rights in Asia: A Reassessment of the Asian Values Debate* (New York: Palgrave Macmillan, 2008), 12–13.

<sup>22</sup> Yogeswaran Subramaniam, “The ASEAN Human Rights Declaration and Indigenous Rights,” *Indigenous Law Bulletin* 8, no. 4 (2013): 3–6, accessed October 8, 2018, <https://heinonline.org/HOL/P?h=hein.journals/indibull8&ci=96> and Clarke, “The evolving ASEAN Human Rights System,” 24.

<sup>23</sup> David I. Fisher, “The Regional and National Context Under the ASEAN Human Rights Declaration and Its Implications for Minority Rights,” *SSRN Journal* 50 (2017): 6, accessed October 8, 2018, doi:10.2139/ssrn.3076435, <https://ssrn.com/abstract=3076435>.

<sup>24</sup> See for example: Pisanò, “Human Rights and Sovereignty in the ASEAN Path Towards a Human Rights Declaration,” 392; Catherine S. Renshaw, “The ASEAN Human Rights Declaration 2012,” *Human Rights Law Review* 13, no. 3 (2013): 557–79, accessed September 28, 2018, doi:10.1093/hrlr/ngt016; Human Rights Watch, “Civil Society Denounces Adoption of Flawed ASEAN Human Rights Declaration: AHRD Falls far Below International Standards,” news release, November 19, 2012, accessed January 11, 2019, <https://www.hrw.org/news/2012/11/19/civil-society-denounces-adoption-flawed-ASEAN-human-rights-declaration> and Office of the Spokesperson of the United States Department of State, “ASEAN Declaration on Human Rights.”

Public opinion should be included, because otherwise the debate on human rights risks becoming completely detached from normal every day occurrences. Public opinion, or ‘the aggregate of the views of individual adults on matters of public interest’ is difficult to measure, but usually scholars try to grasp it by conducting nationwide surveys and interviews,<sup>25</sup> or by analysing mass media messages - such as broadcasts and articles - which would have some resonance with the public as they are widely read or watched or listened to.<sup>26</sup> However, there is no research available on the regional media’s reaction to the AHRD. Also, scholarly surveys on human rights in the region focussed only on whether Asian values exist. They do not involve the declaration, nor cultural relativism nor universalism.<sup>27</sup> Anthony Langlois comes closer by trying to establish whether there are ‘Asian’ interpretations of ‘western’ human rights in fifty interviews with Indonesians, Malaysians and Singaporeans.<sup>28</sup> Even so, his research is limited in scale due to the focus on personal views and Langlois does not involve the AHRD. James Gomez and Robin Ramcharan take an initial step in involving the AHRD, but focus on reviewing the role of CSOs during the AHRD’s drafting process. They concluded that CSOs were critical, but that ASEAN did not listen. They also mentioned they leaned towards universalism, although it was not their focus.<sup>29</sup> As they showed that civil society had a clear critical opinion on the AHRD, the question arises whether public opinion in these ASEAN countries was also critical and if it would also lean towards universalism.

This thesis will therefore add another layer to the existing literature, by analysing different national news media articles on the AHRD. By answering the question: ‘To what extent do South East Asian newspapers lean towards universalism or cultural relativism in their articles on the ASEAN Human Rights Declaration in the period between the first of January 2012 to the last of December 2013’, it will draw attention to the public opinion regarding this declaration and thus towards universalism and cultural relativism, including Asian values, in several ASEAN member states, which has not been done before. The selection of the countries (Indonesia, Thailand and Cambodia), newspapers (the *Jakarta Post*, the *Bangkok Post* and the *Phnom Penh Post*) and will be further explained in

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<sup>25</sup> Barbara A. Bardes and Robert W. Oldendick, *Public Opinion: Measuring the American Mind* (Lanham, MD: Rowman & Littlefield Publishers, 2012), 51

<sup>26</sup> Carroll J. Glynn et al., *Public Opinion* (New York: Routledge, 2018), 81

<sup>27</sup> Russel J. Dalton and Nhu-Ngoc T. Ong, ‘Authority Orientations and Democratic Attitudes: A Test of the ‘Asian Values’ Hypothesis,’ *Japanese Journal of Political Science* 6, no. 2 (2005), accessed November 22, 2018, doi:10.1017/S1468109905001842 and So Y. Kim, ‘Do Asian Values Exist? Empirical Tests of the Four Dimensions of Asian Values,’ *Journal of East Asian Studies* 10, no. 2 (2010), accessed October 20, 2018, doi:10.5555/jeas.2010.10.2.315, <http://dx.doi.org/10.5555%2Fjeas.2010.10.2.315>.

<sup>28</sup> Langlois, *The Politics of Justice and Human Rights*, 48

<sup>29</sup> Gomez and Ramcharan, ‘The Protection Of Human Rights In Southeast Asia,’ 1–3, 30.

the first chapter, which will fully introduce the methodology, to avoid a long introduction. In this chapter, the concepts of universalism, cultural relativism and Asian values and their relation to the AHRD will also be discussed in order to analyse the reactions to the AHRD properly. The second chapter will cover some background information about Indonesia and its human rights situation, introduce the Jakarta Post and analyse its articles. The third and fourth chapter will do the same for Thailand and Cambodia. The conclusion then combines the previous conclusions of each chapter and tries to establish if the newspapers leaned more towards universalism or cultural relativism.

It is important to note here, that due to language constraints, only English newspapers will be researched. Even though these newspapers reached less people than the national language newspapers and thus cannot be used to conclude national opinion, it was still a valuable starting point. According to Arpatat Indradat, English language newspapers, although modest in circulation, are usually the main ‘quality’ newspapers and wield ‘a disproportionately powerful influence in shaping public opinion’ as its readers include the educated English speaking middle and upper classes such as the political elite and opinion leaders.<sup>30</sup> This thesis will thus focus on analysing the public opinion of this group in certain ASEAN countries. It is also important to mention, that this thesis will not dive into the correlation between media and public opinion. Several scholars have pointed out that individuals reacts differently to the same message<sup>31</sup> and that it is thus ‘risky to generalize about what people think from what they watch, hear, or read’.<sup>32</sup> Nevertheless, it offers important insights as the news media determine, following the famous argument of Maxwell McCombs and Donald Shaw, which issues are highlighted and thus set the agenda of public opinion.<sup>33</sup> This makes newspaper articles a type of source that could bring scholars the closest to public opinion, when a national survey on a subject such as the AHRD is not available.

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<sup>30</sup> Arpatat Indradat, “Peace Journalism and Thailand’s Southern Insurgency: A Comparative Analysis of the Conflict Coverage in Bangkok Post and The Nation” (Bournemouth University, 2015), <http://eprints.bournemouth.ac.uk/24512/>, 11-12, 51.

<sup>31</sup> See for example William A. Gamson, *Talking Politics* (Cambridge: Cambridge University Press, 1992), 6–7, Richard Erickson, “Mass Media, Crime, Law and Justice: An Institutional Approach,” *The British Journal of Criminology* 31, no. 3 (1991): 219–23, accessed December 10, 2018, doi:10.1093/oxfordjournals.bjc.a048114 and Steven Kull, Clay Ramsay, and Evan Lewis, “Misperceptions, the Media, and the Iraq War,” *Political Science Quarterly* 118, no. 4 (2003): 591–96, accessed January 13, 2019, doi:10.1002/j.1538-165X.2003.tb00406.x.

<sup>32</sup> Glynn et al., *Public Opinion*, 82.

<sup>33</sup> Maxwell E. McCombs and Donald L. Shaw, “The Agenda-Setting Function of Mass Media,” *Public Opinion Quarterly* 36, no. 2 (1972): 6, accessed October 8, 2018, doi:10.1086/267990.

## 1. Defining universalism, cultural relativism and the AHRD

The Declaration is a fatally flawed document and falls below and risks undermining international human rights standards.<sup>34</sup>

When the AHRD was adopted in November 2012, international criticism just like the quote above followed. Some authors even called the document, or certain clauses, culturally relativist.<sup>35</sup> In order to analyse in the next chapters whether the newspapers leaned to universalism or cultural relativism, it is first needed to establish workable definitions and a methodology.

### 1.1 *Universalism versus cultural relativism*

Before trying to define universalism and cultural relativism, it is important to note, that these concepts are not solely used to discuss to human rights. Religion studies and anthropology see universalism and cultural relativism differently, but in a human rights context the concepts evolved over time.<sup>36</sup> This will be discussed below.

#### 1.1.1 Evolving concepts

When the AAA moved cultural relativism into the human rights debate with their critical statement on the draft of the Universal Human Rights Declaration, it was highly probable that its definition would change. As Elizabeth Zechenter described, other terms such as descriptive relativism (cultures vary), ethical relativism (there can be no normative justification that claims to be superior in a world with different cultures) and epistemological relativism (humans are shaped exclusively by culture so there are no universally held characteristics) have been added to enrich this idea of cultural relativism, which further complicated the debate.<sup>37</sup> Universalism became mixed with other terms such as absolutism (many ordinary moral rules are not only universally valid but indefeasible and cannot be overridden), ethnocentrism (uncritically accepts own cultural values and sees other contrasting cultural values as

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<sup>34</sup> Asia Pacific Regional Office, “The ASEAN Declaration.”

<sup>35</sup> Clarke, “The evolving ASEAN Human Rights System”, Fisher, “The Regional and National Context Under the ASEAN Human Rights Declaration and Its Implications for Minority Rights”, Subramaniam, “The ASEAN Human Rights Declaration and Indigenous Rights” and Office of the Spokesperson of the United States Department of State, “ASEAN Declaration on Human Rights”.

<sup>36</sup> Martin Albrow, “Universalism,” in *Encyclopedia of Global Studies*, ed. Mark Juergensmeyer and Helmut K. Anheier (Thousand Oaks: SAGE Publications, 2012), accessed December 28, 2018, 1903 and F. A. Hanson, “Cultural Relativism,” in *Theory in Social and Cultural Anthropology: An Encyclopedia*, ed. Richard L. Warms and R. J. McGee (Thousand Oaks: SAGE Publications, 2013), accessed December 10, 2018, 266–67

<sup>37</sup> Elizabeth M. Zechenter, “In the Name of Culture: Cultural Relativism and the Abuse of the Individual,” *Journal of Anthropological Research* 53, no. 3 (1997): 323, accessed October 28, 2018.

ignorant or backward),<sup>38</sup> positivism (a majority of the world has ratified several human rights treaties, which provides a legitimate basis for adherence to human rights) and rationalism (human rights are held in individual capacity, due to the universal capacity of all humans to think rationally).<sup>39</sup>

As a result, the debate between universalists and cultural relativists in the human rights sphere changed over time. At first, universalism and cultural relativism were seen as polar opposites. Fernand de Varennes summarised these extremes. According to him, universalists ‘suggest that human rights are independent of place, ideology and value systems, and that therefore any consideration of cultural specificities are completely and absolutely excluded in all situations’ and cultural relativists ‘tends to consider that human rights can only be applied by reference to the rules and values that are internal to any given culture, suggesting for example that there are distinct Western, Asian or Islamic perceptions of human rights’.<sup>40</sup> Here, human rights are the rights mentioned in the UDHR and international human rights conventions, such as International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).<sup>41</sup> The main question of the debate between the extremes, as Michael Addo pointed out, was whether cultural adjustments would be needed for legitimate human rights action, or that this cultural diversity would form ‘a threat to the effective guarantee of universal human rights standards.’<sup>42</sup>

This direction of the debate meant that cultural relativism came to imply that there was, as Louis Wolcher described it, ‘a kind of political-moral choice to be made: either one is for the universal validity of human rights or one is against it’.<sup>43</sup> However, several authors came to realize that ‘neither of these extremes were morally attractive or practically viable’ and that the contrast was overdrawn.<sup>44</sup> For example, some authors name Adamantia Pollis and Peter Schwab as cultural relativists, but Pollis and Schwab did not deny a universal human rights standard.<sup>45</sup> They just argued that the UDHR was

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<sup>38</sup> Tilley, “Cultural Relativism,” 526–27.

<sup>39</sup> Zechenter, “In the Name of Culture,” 321.

<sup>40</sup> Fernand de Varennes, “The Fallacies in the “Universalism Versus Cultural Relativism” Debate in Human Rights Law,” *Asia-Pacific Journal on Human Rights and the Law* 7, no. 1 (2006): 83, accessed October 8, 2018, doi:10.1163/157181506778218120.

<sup>41</sup> See for more examples the nine core human rights conventions in Appendix 1.0.

<sup>42</sup> Michael K. Addo, “Practice of United Nations Human Rights Treaty Bodies in the Reconciliation of Cultural Diversity with Universal Respect for Human Rights,” *Human Rights Quarterly* 32, no. 3 (2010): 603–4, accessed October 8, 2018, doi:10.1353/hrq.2010.0012.

<sup>43</sup> Louis E. Wolcher, “Cultural Diversity and Universal Human Rights,” *Cambrian Law Review* 43 (2012): 45, accessed October 8, 2018, <https://heinonline.org/HOL/P?h=hein.journals/camblr43&i=45>.

<sup>44</sup> David Duquette, “Universalism and Relativism in Human Rights,” in *Universal Human Rights: Moral Order in a Divided World*, ed. David A. Reidy and Mortimer N. S. Sellers, Philosophy and the Global Context (Lanham: Rowman & Littlefield Publishers, 2005), accessed November 22, 2018, 54.

<sup>45</sup> See for example Addo, “Practice of United Nations Human Rights Treaty Bodies in the Reconciliation of Cultural Diversity with Universal Respect for Human Rights,” 604, and Zechenter, “In the Name of Culture,” 322.

not universal, because it focussed on individual human rights while many other societies emphasised communities and groups. More empirical research, they said, is needed to define a truly universal standard.<sup>46</sup> It is clear that their viewpoint does not fit into the extremist definition of cultural relativism. Even great universalist thinkers such as Thomas Aquinas, who stated that all individuals have inalienable rights, give several limitations which imply that some relativity is built into the concept.<sup>47</sup> This is visible in the work of another universalist, Henry Steiner, who recognised that many rights ‘allow historically and culturally influenced forms of implementations’.<sup>48</sup> The right to a fair trial, for example, does not command the need for a jury and the right to political participation does not dictate a particular voting system. As a result, an increasing body of scholars has tried to break through the drastic dichotomy, and to combine the concepts or introduce new terms.<sup>49</sup>

### 1.1.2 A spectrum with multiple forms

It would therefore be more practical to see the debate on a spectrum, in which several gradations are possible. Although Jack Donnelly already divided the spectrum between four practical options,<sup>50</sup> an even larger variety with more subtle differences is offered by philosopher David Duquette. He identified strong cultural relativism, which argued for the superiority of indigenous standards, saw human rights as a barrier to cultural development and emphasised a policy of non-interference. His moderate version of cultural relativism agreed that moral norms overlap and that there is ‘at least a common denominator’, although it did not support the full array of rights mentioned in the UDHR and international conventions.<sup>51</sup> A weak cultural relativist recognised more rights from the UDHR and international conventions, but emphasised the need for cross cultural dialogue and cultural legitimization, which might require ‘some alteration of the cultural status quo’. This suggested the status quo of UDHR could be adapted to fit a culture.<sup>52</sup>

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<sup>46</sup> Pollis and Schwab, “Human Rights,” 14-19.

<sup>47</sup> Duquette, “Universalism and Relativism in Human Rights,” 47.

<sup>48</sup> Steiner, *International Human Rights in Context*, 517.

<sup>49</sup> See for concrete examples Ann-Belinda S. Preis, who suggested culture is not homogenic but an ever changing practice which would have consequences for both concepts, Eva Brems, who argues for inclusive universality which meant that in order for human rights to apply equally to all, they must take specific circumstances in account and Jack Donnelly, who opts for an abstract universality of human rights but with limited regional variations in implementation. Ann-Belinda S. Preis, “Human Rights as Cultural Practice: An Anthropological Critique,” *Human Rights Quarterly* 18, no. 2 (1996): 288–89, accessed October 10, 2018, <https://www.jstor.org/stable/762506> and Eva Brems, “Reconciling Universality and Diversity in International Human Rights: A Theoretical and Methodological Framework and its Application in the Context of Islam,” *Human Rights Review* 5, no. 3 (2004): 8–12, accessed October 10, 2018, doi:10.1007/s12142-004-1005-5. Jack Donnelly, *Universal Human Rights in Theory and Practice*, 3rd ed. (Ithaca: Cornell University Press, 2013), accessed October 8, 2018, <http://ebookcentral.proquest.com/lib/uunl/detail.action?docID=3138459>.

<sup>50</sup> Donnelly, *Universal Human Rights in Theory and Practice*, 89–90.

<sup>51</sup> Duquette, “Universalism and Relativism in Human Rights,” 55.

<sup>52</sup> David Duquette, “Universalism and Relativism in Human Rights,” in Reidy; Sellers, *Universal Human Rights*, 55.

Moving to universalism, Duquette described weak universalism as accepting the UDHR and the conventions rather uncritically and respecting diversity in its implementation, recognizing that ‘the duty to comply with the human rights standard is conditional to the ability to do so’.<sup>53</sup> This proposed that weak universalists do aim towards a stronger implementation in the long run. The moderate universalist would emphasise the consensus on and thus universality of human rights and state that the rights standard should be uncontroversial although some relativity can serve as a check for excessive universalism.<sup>54</sup> This would mean that strong universalism would not even recognise relativity as a possible check for excessive universalism, but emphasise that every right mentioned in the UHRD and international conventions should be implemented the same way everywhere, without variations in interpretation or limitation. It is clear that there are multiple forms of both universalism and cultural relativism, but the main thing separating them would be their commitment to the implementation of UHRD and international human rights conventions.

### *1.2 Asian values in a human rights context*

Now universalism and cultural relativism have been defined in extreme and less extreme versions on a spectrum, which form would then apply to Asian values and the AHRD itself? As mentioned in the introduction, the concept of Asian values was not new. With the colonist expansion of Europe in the nineteenth century, ‘Asia’ became the definition of a region ‘bound together by such commonalities as a shared history, close cultural links, (...) and the notion of a “common destiny”’.<sup>55</sup> This idea of an Asian identity was accompanied with a call for Asian solidarity, unity and integration in defence against Western imperialism, which Sven Saaler and Christopher Szpilman defined as Pan-Asianism.<sup>56</sup>

This common identity is also recognizable in the definition of Asian values, which are said to be derived from the Confucianist tradition and culture within the region.<sup>57</sup> However, Langlois added Asian interpretations of Islam and more specific cultural heritages as contributors to these Asian values. The values encouraged all aspects of Asian life and contributed to the Asian worldview.<sup>58</sup> Although Asian values are defined differently, they contained the same essence, which Kim So Young incorporated in four dimensions. She distinguished family, community, authority and work ethic. First,

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<sup>53</sup> Ibid., 55.

<sup>54</sup> Ibid., 55.

<sup>55</sup> Sven Saaler and Christopher W. A. Szpilman, *Pan-Asianism: A Documentary History*, Asia/Pacific/perspectives 2 (Lanham Md.: Rowman & Littlefield, 2011), accessed October 16, 2018, <https://login.ezproxy.leidenuniv.nl:2443/login?URL=http://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=359976&site=ehost-live>, 10.

<sup>56</sup> Ibid., 11.

<sup>57</sup> Dalton and Ong, “Authority Orientations and Democratic Attitudes,” 211.

<sup>58</sup> Langlois, *The Politics of Justice and Human Rights*, 12.

Asians placed high value on family in public and private life. Second, they valued the welfare of the community or group over that of the individual and thus valued consensus over competition. Third, they respected higher authority and hierarchy and valued stability and order in the form of a strong leader. Fourth, they possessed a strong work ethic and strong self-discipline.<sup>59</sup> How these values have been used in relation to human rights, will be discussed below.

### 1.2.1 Asian values as a form of cultural relativism

With the confrontational statements of Prime Minister Lee Kuan Yew of Singapore and Prime Minister Mahathir Mohammed of Malaysia in the 1980s, Asian values were placed in a human rights context.<sup>60</sup> For example, Yew stated in an interview that Asian societies were ‘unlike’ Western ones, that these societies ‘believe that the individual exists in the context of his family’, and that ‘[t]he ruler or the government does not try to provide for a person what the family best provides’.<sup>61</sup> Other political leaders followed in their line of arguing. For example, during the 1993 World conference on Human Rights, Indonesian Prime Minister Ali Atalas argued that ‘(...) Indonesian culture was not as individualistic as the West's and that this had consequences for human rights, democracy and societal organisation’.<sup>62</sup> As a reaction to this conference and its adopted Vienna Declaration and Programme of Action, which argued that all rights were ‘universal, indivisible and interdependent and interrelated’<sup>63</sup>, 34 states adopted the Bangkok Declaration.<sup>64</sup> According to Uyen Le, Asian values were consolidated in this declaration as it reformulated human rights ‘to privilege of the state over the individual’ and emphasised ‘the need for respect for national sovereignty and territorial integrity’.<sup>65</sup>

The argumentation the strong statements are summarized by Langlois. He described three sorts of arguments about culture, economy and the role of the state. First, the cultural argument stated that Asia had ‘distinctive cultural traditions which are different from, perhaps even opposed to, those of

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<sup>59</sup> Kim, “Do Asian Values Exist? Empirical Tests of the Four Dimensions of Asian Values,” 320–22.

<sup>60</sup> However, it is important to note here, that Asian values have also been used in an economic context, as Randall Peerenboom describes. This so called ‘Asian values thesis’ focussed on economic growth and whether Asian authoritarian regimes or western liberal democracies were better equipped for this. For this thesis, only the human rights part of the debate is relevant. See: Randall Peerenboom, “Beyond Universalism and Relativism: The Evolving Debates about “Values in Asia”,” *Indiana International & Comparative Law Review* 14, no. 1 (2003): 2–3, accessed October 20, 2018, doi:10.18060/17786.

<sup>61</sup> Fareed Zakaria and Lee K. Yew, “Culture Is Destiny: A Conversation with Lee Kuan Yew,” *Foreign Affairs* 73, no. 2 (1994): 113, accessed October 22, 2018, doi:10.2307/20045923.

<sup>62</sup> Langlois, *The Politics of Justice and Human Rights*, 19.

<sup>63</sup> World Conference on Human Rights, Vienna Declaration and Programme of Action, December 7, 1993, A/CONF.157/23, United Nations General Assembly.

<sup>64</sup> *Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights*.

<sup>65</sup> Le, “A Culture of Human Rights in East Asia,” 477–78

the West', which meant that Asian nations had the right to maintain their own cultural values.<sup>66</sup> Second, the economic argument described that civil and political human rights are dependent on economic development. Thus, as Asia is not as economically developed as the West, economic and social rights were prioritized. Finally, the government argument stated that a soft-authoritarian government was needed to preserve national integrity while the country was developing. It is emphasised that recognition of state sovereignty and non-intervention should not be limited to Western countries.<sup>67</sup>

This summary is supported by other scholars, but the radicality of the cultural argument varied. Jakobsen and Bruun identified cultural, collective, disciplinary and organic arguments. These are similar to Langlois's arguments, but they used certain Asian values as starting points.<sup>68</sup> The disciplinary argument for example, stated that Asians would voluntarily discipline themselves when this is needed for economic growth, which resulted in social and economic rights being prioritized over civil and political rights. Their cultural argument was slightly more radical, as they argued that the human rights standard derived from a particular Western historical, social, economic, cultural and political setting, which was not relevant to Asian societies. They emphasised that these are incompatible by adding the collective argument, which emphasised that in Asia community and family are more important than the individual, thus individual rights can be destructive to the harmonious function of society in the East.<sup>69</sup> Another example is Donnelly, who had a similar radical cultural argument, but did not distinguish any clear categories in his seven arguments.<sup>70</sup>

Asian values in the human rights context thus incorporated not only culture, but also economy and the role of the state. Nevertheless, there is no definite consensus among authors, which makes it difficult to define within the spectrum of universalism and cultural relativism described by Duquette. Based solely on the arguments above, strong cultural relativism can be identified, as they emphasise non-interference and the uniqueness of Asian values which was incompatible with western human rights.

### 1.2.2 Defining the AHRD on the spectrum

Now the remains question if strong cultural relativism also applies to the AHRD. Although it was adopted twenty years after the Asian values debate peaked in the 90s, the debate between universalism

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<sup>66</sup> Langlois, *The Politics of Justice and Human Rights*, 24.

<sup>67</sup> Ibidem, 24.

<sup>68</sup> Jakobsen and Bruun, *Human Rights and Asian Values*, 3

<sup>69</sup> See for a full distinction between these two the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

<sup>70</sup> Donnelly, *Universal Human Rights in Theory and Practice*, 105–16.

and cultural relativism was not over. For example, Aguirre and Pietropaoli mentioned that cultural relativism could be identified during the AHRD drafting process as some states asked for the realization of rights in the context of regional and national particularities.<sup>71</sup> Yogeswaran Subramaniam identified cultural relativism specifically in article seven, which mentioned that the regional and national context and economic, social, cultural, historical and religious backgrounds must be considered in the implementation of human rights,<sup>72</sup> while Fisher argued that cultural relativism was ‘embraced’ in the entire AHRD by its emphasis on the regional and national context.<sup>73</sup> By specifically mentioning its commitment to the UDHR and other ‘international human rights instruments to which ASEAN Member States are parties’ and by acknowledging in article seven that ‘[a]ll human rights are universal, indivisible, interdependent and interrelated’, strong cultural relativism as defined by Duquette is not applicable to the AHRD.<sup>74</sup>

Even so, article seven also mentioned that ‘At the same time, 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’, which limited the universal implementation of human rights in favour of cultural interpretations. Article eight went further by arguing that the rights shall be subject to limitations which ‘meet the just requirements of national security, public order, public health, public safety, public morality’.<sup>75</sup> Also, several of the articles mentioning political, civil, social, cultural and economic rights showed that these rights have to be ‘in accordance with international law’, which allowed further limitations when a country has not changed its legal system to fit international human rights law. The importance cultural interpretation is also recognisable in other articles. Article six focussed on the importance of duties and responsibilities of the individual to the community and the state and added the right to economic growth and development and the right to peace in the form of harmony and stability, which are not found in any convention.<sup>76</sup>

This suggests the AHRD contains at least weak cultural relativism as described by Duquette, as this form recognises many rights from the UDHR and conventions, but also emphasises that they

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<sup>71</sup> Daniel Aguirre and Irene Pietropaoli, “Human Rights Protection the ASEAN Way: Non-Intervention and the Newest Regional Human Rights System,” *International Human Rights Law Review* 1, no. 2 (2012): 305, accessed December 28, 2018, doi:10.1163/22131035-00102003.

<sup>72</sup> Subramaniam, “The ASEAN Human Rights Declaration and Indigenous Rights,” 3.

<sup>73</sup> Fisher, “The Regional and National Context Under the ASEAN Human Rights Declaration and Its Implications for Minority Rights,” 1.

<sup>74</sup> Association of Southeast Asian Nations, “ASEAN Human Rights Declaration” (Association of Southeast Asian Nations, Phnom Penh, 2012), <https://asean.org/asean-human-rights-declaration/>.

<sup>75</sup> Ibid.

<sup>76</sup> Association of Southeast Asian Nations, “ASEAN Human Rights Declaration.”

may require some alterations. Weak cultural relativism is supported by Nicholas Doyle's conclusion that many of the articles in the declaration restrict, rather than expand the scope of the rights mentioned in the UDHR and international covenants.<sup>77</sup> He argued that these regional particularities are included to 'constrain the role human rights can be expected to play'.<sup>78</sup>

### 1.3 Methodology

Now all concepts have been defined, the methodology can be introduced. In order to identify whether newspaper articles on the AHRD either lean towards universalism or cultural relativism, it is first needed to establish which countries, which newspapers and which timeframe will be looked at.

#### 1.3.1 Selecting the countries and newspapers

As research is more representative when it includes more data, this thesis' selection criteria are aimed to analyse as much articles as possible. Therefore, it follows the assumption that countries with governments who took a strong position (either positive or negative) regarding the declaration, would probably have more media articles on the matter as well. To establish which countries this were, Clarke's analysis of the drafting process becomes useful. Clarke concluded that mainly Thailand and Indonesia promoted 'a progressive Declaration that embraced universal human rights standards', while Cambodia, Laos, Myanmar and Vietnam (also called the poorer conflict-ravaged 'CLMV' countries of ASEAN), 'sought a more conservative document, limiting the application of these standards in ASEAN'.<sup>79</sup> This suggests especially strong opinions from these countries, in comparison to the other ASEAN countries such as the Brunei, Malaysia, the Philippines, and Singapore who sided with one or the other side depending on issue.<sup>80</sup> Even so, some of these countries do not have a free press. As this thesis tries to figure out public opinion, state-controlled newspapers would provide an incomplete image. This leaves out Laos, Myanmar, and Vietnam, as Freedom House, an independent organisation which analyses freedom in the world, rates their freedom of the press as 'not free'. On a scale from 0 to 100, which incorporates the legal environment for the media, political pressures that influence reporting, and economic factors that affect access to news and information, these countries scored 84, 85 and 84 in 2012.<sup>81</sup> Although Cambodia's score would also define it as not free, its press freedom rate

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<sup>77</sup> Nicholas Doyle, "The Asean Human Rights Declaration and the Implications of Recent Southeast Asian Initiatives in Human Rights Institution-Building and Standard-Setting," *International and Comparative Law Quarterly* 63, no. 01 (2014): 86-89, accessed November 11, 2018, doi:10.1017/S0020589313000390.

<sup>78</sup> *Ibid.*, 94.

<sup>79</sup> Clarke, "The evolving ASEAN Human Rights System," 7-8, 19.

<sup>80</sup> *Ibid.*, 19.

<sup>81</sup> Arch Puddington et al., eds., *Freedom of the Press 2012. Breakthroughs and Pushback in the Middle East: Selected Data from Freedom House's Annual Press Freedom Index* (2012),

is a lot better with 63, which makes it still relevant to include.<sup>82</sup> Especially, when one looks at the ‘partly free’ rated Indonesia with a score of 49 and Thailand with 60.<sup>83</sup>

For the newspapers, timeframe and search terms, similar choices were made to ensure the largest number of articles. However, as stated in the introduction, due to language constraints only English newspapers from the region could be researched. Some English newspapers have searchable archives, but several are behind paywalls or do not allow for a search prior to two years ago. For this reason, the Factiva database was the primary source of articles, as it stores many newspapers from Asia, including ones with paywalls. This thesis settled on the largest independent national newspapers in the Factiva database, which were the *Jakarta Post* from Indonesia, the *Bangkok Post* from Thailand and the *Phnom Penh Post* from Cambodia. Although the *Nation* is also a large national newspaper in Thailand, the *Bangkok Post* has been chosen because of its slightly larger circulation.<sup>84</sup> The timeframe from 1<sup>st</sup> of January 2012 to 31<sup>th</sup> of December 2013 provided the largest number of articles in Factiva. This way the period before the signing of the declaration in November 2012 and the period afterwards have been addressed, which encompasses both part of the drafting and implication process. The search term ‘ASEAN Human Rights Declaration’ and ‘AHRD’ led to 50 potentially relevant articles for the *Jakarta Post*, 39 for the *Bangkok Post* and 28 for the *Phnom Penh Post*. However, some of these articles did not mention the AHRD itself – only human rights, declaration and ASEAN – and sifting through the articles, 40 remained for the *Jakarta Post*, 25 for the *Bangkok Post* and 21 for the *Phnom Penh Post*. This makes a total of 86 relevant articles.

### 1.3.2 Step by step discourse analysis

To analyse these 86 articles, this thesis used a form of discourse analysis. Although content analysis is usually the method used to study media such as newspapers, it has several disadvantages that will be discussed below.<sup>85</sup> Content analysis is, according to its original definition from Bernard Berelson, a ‘research technique for the objective, systematic and quantitative description of the manifest content

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<https://freedomhouse.org/sites/default/files/FOTP%202012%20Final%20Full%20Report.pdf>, accessed December 28, 2018, 92-94, 212-213, 367-371.

<sup>82</sup> Ibid., 96–97.

<sup>83</sup> Ibid., 183-186, 333-335.

<sup>84</sup> Watchiranont Thongtep and Petchanet Pratrungkrai, “Newspapers covering HM’s death become collector’s items,” *The Nation*, October 19, 2016, accessed December 27, 2018, <http://www.nationmultimedia.com/news/business/EconomyAndTourism/30297906>.

<sup>85</sup> Darrin Hodgetts and Kerry Chamberlain, “Analysing News Media,” in *The SAGE Handbook of Qualitative Data Analysis*, ed. Uwe Flick (Los Angeles: SAGE Publications, 2014), accessed December 28, 2018.

of communication'.<sup>86</sup> With the popularisation of framing analysis, more context was incorporated.<sup>87</sup> However, the remained focus on quantifying texts, the need to tick of the boxes of previously established keywords in the title and frames in the texts and the increased codifying by computers which Professor of Public Communication Jim McNamara describes, still did not incorporate much context in which an article occurred.<sup>88</sup> Discourse analysis goes beyond quantifying words and sentences, and sees language within its social context.<sup>89</sup> It situates the text in the context of which it occurs and argues that a text deprives its meaning through interaction between writer, text and reader.<sup>90</sup> This method adds extra steps to textual analysis, which focus also on the context. The critical discourse analysis (CDA) designed by Norman Fairclough illustrates this. The first step is the analysis of the text itself (the content analysis), the second step looks at the process of text production and consumption (the discourse analysis) and the third step involves researching the society the text is part of (the critical discourse analysis).<sup>91</sup>

In order to provide the context in which the articles occurred, each country will be discussed in its own chapter. The second chapter will give background information about the political history and human rights situation in Indonesia and the *Jakarta Post* and the third and fourth chapter will do the same for Thailand and Cambodia. Then, in order to analyse the newspaper articles themselves, several steps will be followed. Firstly, based on the previous research of several media specialists, a distinction shall be made based on the tone of the news article, as its wording can give an indication to the author's point of view.<sup>92</sup> This thesis will try to divide the articles in factual, balanced, positive and negative articles, which is similar to Pak's categories when he researched news articles on comfort women in Asia, in order to establish how much interest there is in the AHRD in general.<sup>93</sup> This distinction also shows how many articles contain a strong opinion on the AHRD, either positive or

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<sup>86</sup> Bernard Reuben Berelson, *Content Analysis in Communication Research*, Content analysis (Glencoe: The Free press, 1952), 18.

<sup>87</sup> Hodgetts and Chamberlain, "Analysing News Media," 381–82.

<sup>88</sup> Jim R. Macnamara, "Media Content Analysis: Its Uses, Benefits and Best Practice Methodology," *Asia Pacific Public Relations Journal* 6, no. 1 (2005): 4-5, 7-9, 17, accessed October 30, 2018, <https://opus.lib.uts.edu.au/bitstream/10453/10102/1/2007002122.pdf>.

<sup>89</sup> Bart Miles, "Discourse Analysis," in *Encyclopedia of Research Design*, ed. Neil J. Salkind (Los Angeles: SAGE Publications, 2010), accessed October 31, 2018, 368.

<sup>90</sup> John E. Richardson, *Analyzing Newspapers: An Approach from Critical Discourse Analysis* (Basingstoke: Palgrave Macmillan, 2007), 15.

<sup>91</sup> *Ibid.*, 38–43.

<sup>92</sup> Michael Pfau et al., "Embedding Journalists in Military Combat Units: Impact on Newspaper Story Frames and Tone," *Journalism & Mass Communication Quarterly* 81, no. 1 (2016), accessed November 11, 2018, doi:10.1177/107769900408100106 and Sid Bedingfield and Dien Anshari, "Thinking about Romney," *Journalism & Mass Communication Quarterly* 91, no. 1 (2014), doi:10.1177/1077699013514417.

<sup>93</sup> Hyeong-Jun Pak, "News Reporting on Comfort Women," *Journalism & Mass Communication Quarterly* 93, no. 4 (2016): 1010, accessed October 18, 2018, doi:10.1177/1077699016644560.

negative. Thirdly, it will be established what sort of form of universalism or cultural relativism, following the distinction made by Duquette, is at the root of the argument. The conclusion will then link all results together in order to conclude how the AHRD was discussed in the national newspapers of the different countries and what type of arguments they used to support their points of view.

## 2. Human rights portrayed in the *Jakarta Post*

On 7 June 1999 Indonesia held democratic elections for the first time in over 30 years, in what will be represented as a watershed for future prospects of democratization and, hopefully, improved human rights throughout the region.<sup>94</sup>

With a surface area of almost 2 million km<sup>2</sup>, Indonesia is the largest state in Southeast Asia and it is also the most heavily populated.<sup>95</sup> In 2000, the population reached 211,54 million, which had already grown to 242,52 million in 2010.<sup>96</sup> In the quote above, Christie and Roy expressed hope for human rights protection in Indonesia, not knowing that the country would play a leading role in proclaiming universal human rights within ASEAN and the drafting of the AHRD.<sup>97</sup> In order to understand the changes Indonesia had made and to properly analyse the articles on AHRD from the *Jakarta Post*, this chapter first provides background information on Indonesia's human rights landscape and secondly introduces the *Jakarta Post* and analyses the 40 relevant articles.

### 2.1 *Human rights landscape*

While multiple human rights atrocities and violations occurred during Sukarno and Suharto's dictatorships which suppressed ethnic and religious diversity, Indonesia turned over a new leaf in the 1990s.<sup>98</sup> As a result of the collapse of the Indonesian currency in the aftermath of the Asian financial crisis of 1997, Suharto resigned in May 1998 and Indonesia became a multi-party democracy.<sup>99</sup> The new democratic shifts in Indonesia's legal framework were accompanied by unprecedented modifications in the Indonesian human rights infrastructure.<sup>100</sup> Although Indonesia already ratified two international human rights conventions during Suharto's regime<sup>101</sup>, all other important

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<sup>94</sup> Kenneth Christie and Denny Roy, *The Politics of Human Rights in East Asia* (London: Pluto Press, 2001), 124

<sup>95</sup> Christie and Roy, *The Politics of Human Rights in East Asia*, 123

<sup>96</sup> World Bank, "World Development Indicators Database: Indonesia," accessed January 6, 2019, [https://databank.worldbank.org/data/views/reports/reportwidget.aspx?Report\\_Name=CountryProfile&Id=b450fd57&tbar=y&ddd=y&inf=n&zm=n&country=IDN](https://databank.worldbank.org/data/views/reports/reportwidget.aspx?Report_Name=CountryProfile&Id=b450fd57&tbar=y&ddd=y&inf=n&zm=n&country=IDN).

<sup>97</sup> Clarke, "The evolving ASEAN Human Rights System," 19.

<sup>98</sup> Edward Aspinall, *Opposing Suharto: Compromise, Resistance and Regime Change in Indonesia*, East-West Center series on contemporary issues in Asia and the Pacific (Stanford, California: Stanford University Press, 2005), accessed November 12, 2018,

<http://search.ebscohost.com.proxy.library.uu.nl/login.aspx?direct=true&db=nlebk&AN=136139&site=ehost-live>, 21.

<sup>99</sup> Michele Ford, "International Networks and Human rights in Indonesia," in Davis; Galligan, *Human Rights in Asia*, 42.

<sup>100</sup> *Ibid.*, 43.

<sup>101</sup> The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was ratified in 1984 and the Convention on the Rights of the Child (CRC) in 1990.

international conventions were ratified after 1998, except for the International Convention for the Protection of All Persons from Enforced Disappearance (ICPED).<sup>102</sup>

Legislative changes introduced Human Rights Law, established human rights courts and strengthened the already existing National Commission on Human rights (Komnas Ham).<sup>103</sup> The Constitution of 1945 was also amended, to expand the range of human rights protection. The new article 28 for example, guaranteed almost all universally accepted human rights.<sup>104</sup> In addition, the Press Law of 1999 and the Access to Public Information Law of 2008 strengthened the freedom of the press and government accountability by specifying the protection of journalists and by abolishing the previous allowed forms of censorship, bans and permits.<sup>105</sup> As a result of the democratic changes ‘the number of civic associations, NGOs, private businesses, and media exploded.’<sup>106</sup> Also, the Indonesian journalist, ‘previously famed for their discretion and prudence became increasingly bold in running critiques and exposes on the activities of business and governments’.<sup>107</sup>

Although all these developments seem quite positive, several remarks must be made. Firstly, although Indonesia ratified eight conventions, it also made several reservations and did not yet hand in all required reports.<sup>108</sup> For example, as Mathew Davies describes, Indonesia wanted the right of self-determination in Article 1 of the ICESCR and the ICCPR to apply only to the national level, not subnational groups or regions.<sup>109</sup> Secondly, the actual process of implementing human rights had some flaws as well. The United Nations Human Rights Council Universal Period Review (UPR), for example,

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<sup>102</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was ratified in 1998, the Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 1999, the Covenant on Civil and Political Rights (ICCPR) in 2006, the Covenant on Economic, Social and Cultural Rights (ICESCR) in 2006, the Convention on the Rights of Persons with Disabilities (CRPD) in 2011 and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICPMW) in 2012. The International Convention for the Protection of All Persons from Enforced Disappearance (ICPED) was only signed, but never ratified. See: Marco Bünte and Björn Dressel, eds., *Politics and Constitutions in Southeast Asia*, Routledge law in Asia 17 (New York: Routledge, 2017), 164.

<sup>103</sup> Michele Ford, “International Networks and Human rights in Indonesia,” in Davis; Galligan, *Human Rights in Asia*, 42–43.

<sup>104</sup> Irene I. Hadiprayitno, “Defensive Enforcement: Human Rights in Indonesia,” *Human Rights Review* 11, no. 3 (2010): 377, accessed December 10, 2018, doi:10.1007/s12142-009-0143-1.

<sup>105</sup> Azmi Sharom et al., *Breaking the Silence*, with the assistance of Azmi Sharom et al. (Bangkok: Southeast Asian Human Rights Studies Network (SEAHNRN), 2011), 103.

<sup>106</sup> Verena Beittinger-Lee, *(Un) Civil Society and Political Change in Indonesia: A Contested Arena* (Florence, UK: Routledge, 2009), 72–73.

<sup>107</sup> Angela Romano and Michael Bromley, *Journalism and Democracy in Asia*, with the assistance of Angela Romano, and Michael Bromley, Media, Culture and Social Change in Asia 2 (London: Routledge Curzon, 2005), 108.

<sup>108</sup> Mathew Davies, “States of Compliance? Global Human Rights Treaties and ASEAN Member States,” *Journal of Human Rights* 13, no. 4 (2014): 420–23, accessed November 22, 2018, doi:10.1080/14754835.2014.886949 and Roland Rich, “An Appreciation of the Human Rights Situation in Southeast Asia,” in *The Crisis of Democratic Governance in Southeast Asia*, ed. Aurel S. Croissant and Marco Bünte, Critical Studies of the Asia-Pacific 3 (Basingstoke: Palgrave Macmillan, 2011), 172–74.

<sup>109</sup> Davies, “States of Compliance?,” 420.

expressed concern in 2012 that decentralisation in Indonesia had led to ‘more than 1,000 local laws and policies that were not in accordance with national and internationally agreed standards’.<sup>110</sup> Also, several laws had been passed that threaten freedom of the press. Most noteworthy were the severe criminal sanctions against defamation by journalists, which allowed the criminalization of the press.<sup>111</sup> As a result, the media were plagued by many legal cases and experienced, especially in 2009-2010, violence in the form of beatings, torture and even murder. Law enforcement agencies were not able to provide proper punishment or failed to prosecute the violence at all.<sup>112</sup> Ford concludes that ‘corruption, structural weakness, a lack of government infrastructure at the grass roots and vagaries of political system’ were the main reasons for the remaining fragility of Indonesia’s human rights mechanism.<sup>113</sup>

In conclusion, Indonesia set encouraging steps towards national human rights protection, although the implementation had its faults. Within ASEAN however, Indonesia is ‘the country most assertively pushing the bounds of consensus on human rights’, as John Giorciari states.<sup>114</sup> This progressiveness was visible in Indonesia’s commitment to the UHRD during the drafting of the AHRD.<sup>115</sup> Even so, as was argued in chapter one, the final AHRD - also signed by the Indonesian government - could be categorised as weak cultural relativism. Below it will be seen whether the *Jakarta Post* articles agree with such a declaration.

## 2.2 Analysing the *Jakarta Post*

The *Jakarta Post* is the largest daily English newspaper in Indonesia. by four competing Indonesian newspapers on April 25<sup>th</sup> in 1983 under the encouragement of the government, it aimed to provide a high quality newspaper with the highest standards of professional journalism while also trying to improve the standard of English in Indonesia.<sup>116</sup> Most of its readers have an university degree and although five nationalities read the Post, Indonesians are the main consumers.<sup>117</sup> After the financial

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<sup>110</sup> United Nations Human Rights Council, Compilation: [Universal Periodic Review]: Indonesia/ prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, December 3, 2012, A/HRC/WG.6/13/IDN/2, 3.

<sup>111</sup> Sharom et al., *Breaking the Silence*, 109.

<sup>112</sup> *Ibid.*, 115.

<sup>113</sup> Michele Ford, “International Networks and Human rights in Indonesia,” in Davis; Galligan, *Human Rights in Asia*, 43.

<sup>114</sup> John D. Giorciari, “Institutionalizing Human Rights in Southeast Asia,” *Human Rights Quarterly* 34, no. 3 (2012): 724, accessed December 28, 2018, doi:10.1353/hrq.2012.0055.

<sup>115</sup> Clarke, “The evolving ASEAN Human Rights System,” 19.

<sup>116</sup> Prayudi and Retno Hendariningrum, “Textual Analysis of the Jakarta Post Online Representation of Presidential Candidates in Indonesia,” *Jurnal Humaniora* 28, no. 3 (2017): 342, accessed November 4, 2018, doi:10.22146/jh.v28i3.22288.

<sup>117</sup> *Ibid.*

crisis of 1997, the *Jakarta Post* monopolized the English language newspaper market with a circulation of 40,000 copies in 2008.<sup>118</sup>

Moving towards the forty relevant articles in the *Jakarta Post* on the AHRD<sup>119</sup>, a total of eighteen were opinion articles written by either a scholar, civil society activist or government official. There were also one editorial, two interviews and nineteen news articles that were written by the journalists of the *Jakarta Post*. Several discussed general hopes and fears for the declaration before its adoption, but from June 2012 onwards, articles become more focussed on the actual content of the declaration. This probably had to do with a leaked draft in June, as one article mentioned.<sup>120</sup> After it's the AHRD's adoption, articles first discussed the final product and moved to discuss ASEAN's commitment to the AHRD and new endeavours by the AICHR in the following months.

Following the steps from the methodology, all articles could be identified as taking either a positive, balanced, critical or factual tone towards the AHRD and its drafting process. From their arguments, several forms described by Duquette could be found, which are summarized in Table 1 and will be further explained below. However, five factual articles will be left out, as they only mentioned the AHRD in passing and contained not enough information to identify either universalism or cultural relativism.<sup>121</sup>

Form of Duquette ↓ / Tone of the article →	Positive	Balanced	Critical	Factual	Total of articles
Strong universalism	3	1	19	0	23
Moderate universalism	1	0	3	0	4
Weak universalism	4	1	0	0	5
Weak cultural relativism	0	0	0	0	0
Unclear	1	1	1	5	8
Total of articles	9	3	23	5	40

<sup>118</sup> Bill Tarrant, *Reporting Indonesia: The Jakarta Post Story, 1983-2008* (Jakarta: Equinox Publishing, 2008), 256.

<sup>119</sup> A list of the 40 articles of the Jakarta Post can be found under primary sources in the bibliography.

<sup>120</sup> Bagus B.T. Saragih, "NGOs raise missing rights in ASEAN draft," *Jakarta Post*, June 28, 2012, Factiva.

<sup>121</sup> "A Busy Week in Phnom Penh," *Jakarta Post*, November 17, 2012, Factiva; Lina A. Alexandra, "What to Do Text to Keep ASEAN Unity and Peace?," *Jakarta Post*, August 1, 2012, Factiva; Yohanna Ririhena, "RI's Leadership Crucial in ASEAN," *Jakarta Post*, September 24, 2012, Factiva; Erwida Maulia, "It's Time for ASEAN to 'Move Beyond Awareness Promotion'," *Jakarta Post*, January 21, 2012, Factiva and "National Scene: New Envoy Appointed for AICHR," *Jakarta Post*, January 7, 2013, Factiva.

### 2.2.1 Positive

Only nine articles could be defined as positive, written between June 2012 and October 2013. This includes one interview with Indonesia's permanent representative to ASEAN, I Gede Ngurah Swajaya, two news articles written by the Jakarta post journalists and six opinion articles written by five Indonesian and foreign government officials and one civil society activist for the International Criminal Court. These articles were positive, because they contained more positive than negative sentences on the AHRD. Four articles from before the adoption showed signs of hope for the declaration to turn out a certain way.<sup>122</sup> An example would be a news article on the rights of disabled people. It argued that 'now is the time to create synergy between the central government and local administrators, between ministries and with other stakeholders to concretely implement the ratified convention for wider access in civil and political life for persons with disabilities'.<sup>123</sup> This 'time' seemed to suggest the AHRD, as it was written a few days before its adoption. Three other articles mentioned mostly positive characteristics of the declaration.<sup>124</sup> For instance, an article from a Dutch government official mentioned that the inclusion of the right to economic development and peace 'exceeds international expectations'.<sup>125</sup> Two articles from after the adoption were also positive. They noted the AHRD was criticised but emphasise the difficult circumstances of its drafting.<sup>126</sup>

Analysing these articles for the different forms or concepts of universalism and cultural relativism by Duquette, led to several conclusions. All articles contained signs, except one opinion article, which contained too little information to clearly distinguish any of the forms or concepts of Duquette.<sup>127</sup> **Weak universalism** could be found in three opinion articles by three government officials and one news article.<sup>128</sup> These articles, interestingly all from after the adoption, acknowledged the regional context, while still showing commitment to universal or fundamental rights or to a stronger human rights system. This is in line with Duquette's earlier description of weak universalism

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<sup>122</sup> Tassia Sipahutar and Yohanna Ririhena, "ASEAN Declaration Should Be 'Equally Powerful' to UN's," *Jakarta Post*, June 28, 2012, Factiva; Espen Barth Eide, "A Broader Democratic Effort," *Jakarta Post*, November 7, 2012, Factiva; Harison Citrawan, "ASEAN Human Rights Regime: Reciprocity or Common Interest?," *Jakarta Post*, August 8, 2012, Factiva and Agnes Winarti, "RI's Disabled Fight to Remove Political, Rights Barriers," *Jakarta Post*, November 12, 2012, Factiva.

<sup>123</sup> Winarti, "RI's Disabled Fight."

<sup>124</sup> Ronald Eberhard, "The ASEAN Approach to Human Rights," *Jakarta Post*, December 6, 2012, Factiva; Rully Sandra, "Does International Justice Matter for Indonesia?," *Jakarta Post*, December 12, 2012, Factiva and Kevin H.R. Villanueva, "The ASEAN 'Magna Carta' Universalizes Human Rights," *Jakarta Post*, January 8, 2013, Factiva.

<sup>125</sup> Eberhard, "The ASEAN Approach."

<sup>126</sup> Malvino Aprialdy Mazni, "Institutionalizing ASEAN Human Rights Dialogue," *Jakarta Post*, July 21, 2013, Factiva; and "Address Trafficking for Better Handling of Human Rights," *Jakarta Post*, October 2, 2013, Factiva.

<sup>127</sup> Eide, "A Broader Democratic Effort."

<sup>128</sup> Eberhard, "The ASEAN Approach"; Villanueva, "Magna Carta"; Aprialdy Mazni, "Institutionalizing ASEAN Human Rights Dialogue" and *Jakarta Post*, "Address Trafficking."

that nation states have a duty to comply, but that this is conditional to their ability to do so. If these articles would emphasise the regional context without any mentioning of a commitment to stronger universal human rights in the long run, weak cultural relativism would be more applicable. For example, in an opinion article a scholar argued that AHRD's 'greatest contribution' was its endorsement of universal human rights. However, he also put much emphasis in the article on national and cultural context. He argued that international community should 'be sensitive about the specific needs and desires of national constituencies - but to be critical and steadfast against local practices that violate human dignity'.<sup>129</sup>

**Strong universalism** was detected in two opinion articles and one news article, as a clear commitment to a universal human rights standard could be found, either in relation to a fear for limitations on human rights or a certain disregard for state sovereignty. Namely, Duquette mentioned that with strong universalism, universal human rights should be implemented the same way everywhere, without a mentioning of possible limitations. For instance, an opinion article from an Indonesian government official stated that with the AHRD 'national interest' shall be replaced by 'a non-reciprocal common interest in human rights'.<sup>130</sup> This official argued that 'all human beings equally possess these rights and freedoms' and that 'human life, human freedom and human dignity represent higher values than state sovereignty'.<sup>131</sup> These statements disregarded diversity in implementation, but stressed the universality of rights and the importance of these rights over potential limitations such as sovereignty. Interesting to mention is an article that used the adoption of the AHRD to promote going further and ratifying the Rome statute of the International Criminal Court.<sup>132</sup> Although it did not mention a universal human rights standard, giving up sovereignty points toward strong universalism.

**Moderate universalism** can also be established in an interview with the earlier mentioned representative Swajaya, as it showed a commitment to the universal standard, while also acknowledging some limitations as Duquette suggests. He ensured the interviewer that the AICHR has decided 'that the AHRD must not be less powerful than the Universal Declaration of Human rights', which 'is not an easy thing to do, but we are pretty optimistic about the outcome'.<sup>133</sup> He acknowledged here the limitations of working together with other member states but expressed hope for a strong AHRD. Also, by arguing that human rights issues in other countries than one's own are 'not sensitive or taboo

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<sup>129</sup> Villaneuva, "Magna Carta."

<sup>130</sup> Citrawan, "ASEAN Human Rights Regime."

<sup>131</sup> Ibid.

<sup>132</sup> Sandra, "Does International Justice Matter?"

<sup>133</sup> Sipahutar and Ririhena, "Equally Powerful."

anymore to be discussed in ASEAN', he showed a willingness to slightly let go of non-interference by underlining the possibility to openly talk about it with other ASEAN states.<sup>134</sup>

To sum up, four positive articles showed signs of weak universalism, three showed strong universalism and only showed one moderate universalism. More positive articles aligned towards weak universalism and interestingly, these were all written after the adoption of the AHRD and three were written by government officials. Before, the positive articles leaned towards strong universalism.

### 2.2.2 Balanced

Three articles could be categorised as balanced, namely two news articles and one opinion article written by a scholar and former Indonesian government official, all written before July 2012. The articles did not contain only factual information, but also did not engage in either positive or negative remarks about the declaration. All three showed both hope and fear.<sup>135</sup> For example, a news article from before AHRD's adoption argued that the 'Declaration will be one of the most important documents drafted since the adoption of the ASEAN charter in 2007', but also mentioned that 'the drafting process has been criticized for its lack of public participation, particularly by civil society organisations'.<sup>136</sup>

Although this news article did not contain enough other information to identify a concept of Duquette, the two other balanced articles showed clearer alignments. **Strong universalism** could be detected in a news article, as it mentioned the comment of AICHR representative of Indonesia, Rafendi Djamin, that there 'tends to be a willingness to undermine and negate the standardized principle of international human rights', while stating he would 'ensure international consensus (...) in implementing the drafting'.<sup>137</sup> This showed a fear of limitations and a strong commitment to a universal standard. **Weak universalism** was found in an opinion article written by a scholar long before the adoption. This scholar and former Indonesian government official, argued that AHRD needs to be 'realistic' in order to address the region's challenges regarding its differences in government, religion, territory, population and language and that this also requires 'flexibility to address the diverse interests on human rights in the region'.<sup>138</sup> The author took the regional differences into account, while showing some commitment to universal human rights and a stronger human rights system in the sentences: 'it

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<sup>134</sup> Ibid.

<sup>135</sup> "RI Follows ASEAN Human Rights Draft," *Jakarta Post*, February 12, 2012, Factiva; Hafid Abbas, "The Long Road to ASEAN Rights Charter," *Jakarta Post*, May 23, 2012, Factiva and "AMM to Focus on Human Rights, South China Sea," *Jakarta Post*, June 29, 2012, Factiva.

<sup>136</sup> *Jakarta Post*, "AMM."

<sup>137</sup> *Jakarta Post*, "RI Follows."

<sup>138</sup> Abbas, "The Long Road."

is a paradoxical reality that some ASEAN countries are resistant to universal human rights as they believe it will hinder their development' and 'it would be less controversial to make the declaration as a road map for years to come'.<sup>139</sup>

To conclude, both strong universalism and weak universalism were found in in one news and one opinion article and interestingly, all were written quite early in the year, which shows the discussion became more polarized towards the adoption.

### 2.2.3 Critical

The largest number of articles were critical, namely 23, written from May 2012 to July 2013 with a peak in October and November, just before the AHRD's adoption. These included twelve news articles, ten opinion articles and one editorial. The opinion articles were written by six members of civil society organisations, three scholars and one Indonesian government official. These articles were critical, because they contained more critical than positive sentences. This was especially visible in a few articles which are overall critical, but do contain a paragraph or more on positive comments about the AHRD's potential or mention the government's argument that they are doing the best they can under difficult circumstances.<sup>140</sup> For example, a news article mentioned representative Djamin's soothing comments that 'member-states have to reach a compromise' and that it was 'more of a political document to move forward'.<sup>141</sup> However, the article used more sentences to describe the critique of UN High Commissioner of Human Rights (UNHCR) and the critical statement of 62 human rights groups who stated that 'ADHR is not worthy of its name'.<sup>142</sup>

Most articles focussed almost entirely on civil society criticism towards the drafting process, towards specific problematic clauses, towards the fact it might not be up to universal standards and towards its potential to limit rather than enhance human rights.<sup>143</sup> For instance, an editorial called the

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<sup>139</sup> Ibid.

<sup>140</sup> Yohanna Ririhena and Bagus B.T. Saragih, "Despite Criticism, ASEAN Set to Adopt Rights Declaration," *Jakarta Post*, November 17, 2012, Factiva; "Editorial: Ensuring Rights," *Jakarta Post*, November 20, 2012, Factiva; "ASEAN Declaration Won't Guarantee Protection," *Jakarta Post*, October 30, 2012, Factiva ; Bagus B.T. Saragih, "AHRD Won't Be Perfect, Says Marty," *Jakarta Post*, September 20, 2012, Factiva and Yohanna Ririhena, "Maintaining Transparency Key to ASEAN Human Rights Declaration," *Jakarta Post*, June 28, 2012.

<sup>141</sup> Ririhena and Saragih, "Despite Criticism."

<sup>142</sup> Ibid.

<sup>143</sup> "ASEAN Human Rights Commission 'Toothless': NGOs," *Jakarta Post*, May 8, 2012, Factiva; Muhamad Haripin and Mutiara Arumsari, "States and Human Rights in Southeast Asia," *Jakarta Post*, December 11, 2012, Factiva; Bagus B.T. Saragih, "Groups Concerned over ASEAN Charter," *Jakarta Post*, June 11, 2012, Factiva; Yuyun Wahyuningrum, "Rights Mechanisms: Solutions or Problems?," *Jakarta Post*, October 8, 2012, Factiva; Yohanna Ririhena, "First ASEAN Human Rights Declaration Criticized," *Jakarta Post*, October 29, 2012, Factiva; Saragih, "NGOs Raise Missing Rights"; Mahmudin Nur Al-Gozaaly, "Wither Women's Rights in ASEAN?," *The Jakarta Post*, December 4, 2012, Factiva; "Asian Values' or Universal Human Rights?," *Jakarta Post*, June 28, 2012, Factiva; Yohanna Ririhena, "NGOs Hope for More Responsive, Independent Body," *Jakarta Post*, October 24, 2012, Factiva; Yohanna Ririhena and Margareth Aritonang, "ASEAN Human

AHRD a ‘compromise’, which ‘binds signatories, at best, to the lowest standards’ and was sceptical about the possible limitations to ‘fundamental freedoms’ such as the mentioning of national security, public order and public morality.<sup>144</sup> Then there are also articles which hardly comment on the AHRD itself, but could still be seen as critical due to their phrasing.<sup>145</sup> For example, an opinion article argued that: ‘Despite the fact that AICHR has existed for three years, human rights in ASEAN are going nowhere.’<sup>146</sup> This shows the civil society’s criticism towards the AICHR, but indirectly also the AHRD its adoption apparently did not help human rights.

Moving on to analysing the articles, one contained too little information to identify any of Duquette’s concepts.<sup>147</sup> From the remaining articles, **strong universalism** was identified in nineteen articles of which twelve news articles, one editorial and eight opinion articles written by one government official, three scholars and four civil society activists.<sup>148</sup> These articles showed some sort of commitment to a universal standard and a fear for limitations to these rights or a disregard for state sovereignty. Six articles mentioned very detailed criticism on various clauses of the declaration, which focussed mostly on the mentioning of public morality and national laws in the wording of the draft and the missing protection for minorities such as LGBTIQ (lesbian, gay, bisexual, transgender, intersex and questioning).<sup>149</sup> For example, a news article raised human rights defenders’ concerns that ‘the AHRD should not result in a document that is below the standards and principles of the Universal Declaration of Human Rights’.<sup>150</sup> It noted special concern ‘about references in the draft to national

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Rights Declaration Fails to Impress UNHRC,” *Jakarta Post*, November 14, 2012, Factiva; Yuyun Wahyuningrum, “Standardizing Human Rights in ASEAN,” *Jakarta Post*, August 25, 2012, Factiva and Debbie Stothard, “ASEAN: Chartering Human Rights,” *Jakarta Post*, July 25, 2012, Factiva.

<sup>144</sup> *Jakarta Post*, “Editorial: Ensuring Rights.”

<sup>145</sup> Dimas Muhamad, “ASEAN a Helpless Bystander on Rohingya?,” *Jakarta Post*, September 7, 2012, Factiva; “\$15t Trade Bloc,” *Jakarta Post*, November 21, 2012, Factiva; Yuyun Wahyuningrum, “What Next for ASEAN Human Rights Commission,” *Jakarta Post*, March 18, 2013, Factiva; Pierre Marthinus, “Stretching Public Morality from Aceh to Papua,” *Jakarta Post*, March 21, 2013, Factiva; Yuyun Wahyuningrum, “It Is Not the Time for ASEAN to Draft a Human Rights Convention,” *Jakarta Post*, July 6, 2013, Factiva and Haris Azhar, “ASEAN Bent on Shrouding Myanmar’s Rights Abuses,” *Jakarta Post*, March 23, 2013, Factiva.

<sup>146</sup> Wahyuningrum, “What Next.”

<sup>147</sup> *Jakarta Post*, “Trade Bloc.”

<sup>148</sup> *Jakarta Post*, “Editorial: Ensuring rights”; Ririhena and Saragih, “Despite Criticism,”; Muhamad, “Helpless Bystander”; Ririhena and Aritonang, “Fails to Impress UNHRC”; Saragih, “NGOs Raise Missing Rights”; Ririhena, “NGOs Hope”; Ririhena, “Declaration Criticized”; Stothard, “Chartering Human Rights”; Wahyuningrum, “Rights Mechanisms”; *Jakarta Post*, ““Asian Values””; Nur Al-Gozaly, “Wither Women’s Rights”; *Jakarta Post*, ““Toothless””; Haripin and Arumsari, “States and Human Rights”; Ririhena, “Maintaining Transparency”; Saragih, “Groups Concerned over ASEAN Charter”; Wahyuningrum, “What Next”; Marthinus, “Stretching Public Morality” and Azhar, “Myanmar’s Rights Abuses.”

<sup>149</sup> Wahyuningrum, “Rights Mechanisms”; Ririhena, “Declaration Criticized”; Ririhena, “NGOs Hope”; Saragih, “NGOs Raise Missing Rights”; Ririhena and Saragih, “Despite Criticism” and *Jakarta Post*, “Editorial: Ensuring Rights.”

<sup>150</sup> Saragih, “NGOs Raise Missing Rights.”

laws' and that activists argued that 'the term "public morality" should be taken out of the draft'.<sup>151</sup> They also insisted on including clauses for the protection against the increasing religious intolerance and many enforced disappearances.<sup>152</sup>

There were also four articles who did not specifically mention a clear alignment to an universal human rights standard, but it was still suggested by their rejection of limitations on human rights.<sup>153</sup> For instance, an opinion article from a scholar, mentioned that 'Public morality was also problematic in the recent ASEAN declaration of human rights', which suggested he disliked this limitation on human rights. However, the rest of the article did not mention the UHRD or universal rights. Even so, he did argue that 'any mention of public morality reeks of hypocrisy and is tainted by local political elites manipulating it to push through sharia inspired agenda's or to achieve short term political gain or popularity - usually at the expense of women, ethnic and religious minorities', which suggested he wished for better protection of these minorities. This showed a willingness to go beyond the UHRD, which does not particularly protect minorities.<sup>154</sup>

A slightly more difficult case was a news article which stated that the Indonesian Foreign Minister 'has succumbed to the "flawed" draft', because of the 'diverse systems', while also noting more arguments from the government containing weak universalism.<sup>155</sup> The author did mention that the government would ensure universal standards, but the protection of rights of minorities such as LGBTIQ and indigenous people could not be incorporated because these 'issues are still problematic in almost all ASEAN countries, including Indonesia'. These remarks showed displeasure regarding the limitations of working together with other countries and a willingness to go further than the UHRD, which makes strong universalism more likely.

**Moderate universalism** was detected in three articles: two opinion articles from the same civil society activist and one news article.<sup>156</sup> They all showed a commitment to some form of universal human rights and some sort of acknowledgement of limitations. An example is an opinion article from a civil society activist, which argued that 'national security', 'national safety' and 'public morality' were

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<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

<sup>153</sup> *Jakarta Post*, "Toothless"; Nur Al-Gozy, "Wither Women's Rights"; Marthinus, "Stretching Public Morality" and Azhar, "Myanmar's Rights Abuses."

<sup>154</sup> The UDHR only states that rights are universal regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. However, the conventions focus on more specific groups such as women, although there is none for ethnic and religious minorities.

<sup>155</sup> Saragih, "Martyr."

<sup>156</sup> *Jakarta Post*, "Protection"; Wahyuningrum, "Standardizing Human Rights"; Wahyuningrum, "Human Rights Convention."

especially problematic in the AHRD and that the AICHR has ‘to be compliant with existing boundaries on the limitation of rights, and to ensure the definitions of such terms are in line with international standards and principles’.<sup>157</sup> This suggested moderate universalism, as it recognised universal human rights, but also allowed restrictions to the universal standards if these are within existing international boundaries.

To sum up, only eight were either factual or balanced, which suggests a strong opinion on the AHRD. The majority was critical (23) and a similar amount contained signs of strong universalism (23) and while three showed moderate universalism. The peak occurred in October and November, showing much discontent just before the adoption. Although some of these articles contained arguments with weak universalism, the strong and moderate universalist arguments dominated, with specific mentioning of the issues with public morality, national laws and the missing protection for minorities such as LGBTIQ. Interestingly, after the leaked draft and before the adoption of the AHRD itself, the largest number of critical articles, namely fourteen, were written.

### *2.3 Conclusion*

Now, to conclude this chapter, Indonesia clearly came a long way since Sukarno and Suharto’s rule by signing six more core international human rights conventions, although there were faults in their implementation. While Indonesia championed a liberal document during the drafting process of the AHRD, it still adopted a culturally relativist document in November 2012, which does not align with the sentiment shown in the articles from the *Jakarta Post*, which contained a strong opinion. Only 9 articles from the 40 articles were positive about the declaration and 3 of these 9 showed signs of strong universalism. No form of cultural relativism has been identified at all. An overwhelming number of articles, namely 23 were critical, especially towards the clauses on public morality and national laws and an equal amount showed signs of strong universalism. Time wise, these were mostly written after the leaked draft in June and before the adoption of the AHRD itself, which suggested the newspaper tried to change the situation while it was still possible. The mentioning of missing the protection of minorities, focussed on LGBTIQ, in the AHRD shows a willingness to go beyond the original UHRD. This suggested the *Jakarta Post* hoped for a stronger AHRD with as few limitations on human rights as possible.

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<sup>157</sup> Wahyuningrum, “Standardizing Human Rights.”

### 3. Human rights portrayed in the *Bangkok Post*

Thailand's slide into overt authoritarianism in the last decade, under both elected and coup-appointed governments, has shocked observers who viewed the country as democracy's beacon in Southeast Asia.<sup>158</sup>

Thailand is about a quarter size of Indonesia, with its surface area covering almost 515,000 km<sup>2</sup> and population wise, the Thais reached 62,97 million in 2000 and almost 68 in 2012.<sup>159</sup> Although Thailand had a turbulent political past, its 'people's constitution' of 1997 promised open and democratic government, which placed Thailand ahead of its ASEAN neighbours, according to Christie and Roy.<sup>160</sup> Thailand even became a progressive champion of universal human rights within ASEAN during the drafting of the AHRD.<sup>161</sup> However, a coup in 2006 changed the political landscape again and thus, in order to analyse the articles on AHRD from the *Bangkok Post*, this chapter first provides background information.

#### 3.1 Human rights landscape

Thailand's turbulent political history started with a coup in 1932, which replaced the absolute monarchy with a constitutional one. The military would attempt seventeen more coups in the following sixty years.<sup>162</sup> This led to large scale political violence and mass fatalities and after the massacre of pro-democracy demonstrators in May 1992 a coalition of reformers was forged.<sup>163</sup> Their efforts resulted in the 'people's constitution' of 1997, which was aimed 'to control corruption and limit money politics' and reinvigorated Thailand's commitment to human rights and civil liberties. It developed the National Human Rights Commission (NHRC), promoted freedom of speech and assembly and gave credibility to human rights CSOs.<sup>164</sup>

The democratic elections brought Thaksin Shinawatra and his Thai Rak Thai to power in 2001 and 2005 and during his regime gross human rights violations occurred, for example during his war on

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<sup>158</sup> Michael K. Connors, "Ambivalent about Human Rights: Thai Democracy," in Davis; Galligan, *Human Rights in Asia*, 104.

<sup>159</sup> World Bank, "World Development Indicators Database: Thailand," accessed January 6, 2019, [https://databank.worldbank.org/data/views/reports/reportwidget.aspx?Report\\_Name=CountryProfile&Id=b450fd57&tbar=y&dd=y&inf=n&zm=n&country=THA](https://databank.worldbank.org/data/views/reports/reportwidget.aspx?Report_Name=CountryProfile&Id=b450fd57&tbar=y&dd=y&inf=n&zm=n&country=THA).

<sup>160</sup> Christie and Roy, *The Politics of Human Rights in East Asia*, 163.

<sup>161</sup> Clarke, "The evolving ASEAN Human Rights System," 19.

<sup>162</sup> Christie and Roy, *The Politics of Human Rights in East Asia*, 161.

<sup>163</sup> Michael K. Connors, "Ambivalent about Human Rights: Thai Democracy," in Davis; Galligan, *Human Rights in Asia*, 104.

<sup>164</sup> Christie and Roy, *The Politics of Human Rights in East Asia*, 163.

drugs which claimed thousands of lives.<sup>165</sup> Thaksin's rule ended with a coup in September 2006, when a junta seized power and strong control over the judiciary and senate. Although human rights were neglected at first, but the new constitution from 2007, incorporated many rights from the 1997 constitution.<sup>166</sup> It still addressed basic civil and political rights such as freedom of expression and added the right to freedom of information, the right to education and public health and the right to protest peacefully against coups. Several groups were also addressed, such as consumers, women, elderly, children and handicapped people.<sup>167</sup> These rights are in line with the seven conventions Thailand ratified, of which the Convention on the Rights of Persons with Disabilities (CRPD) and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) were added after the coup. ICPED and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPMW) were never ratified.<sup>168</sup>

However, the Thai judiciary has undermined the legitimacy of law as jurists found ways over the years to legalize each coup.<sup>169</sup> The recent coup and constitution raised questions about whether the established powers 'had truly accepted the democratic system' and human rights implementation.<sup>170</sup> Firstly, although Thailand ratified seven conventions, it also made several reservations and had not yet handed in all required reports. For example, as Mathew Davies describes, Thailand rejected the articles in three conventions which argued for mandatory arbitration of state disputes.<sup>171</sup> Secondly, the actual process of implementing human rights was flawed. Cade summed up the two most persistent human rights problems, namely government limitations on freedom of expression and abuses by government security forces, such as the killing and torturing criminal suspects and prisoners.<sup>172</sup> For example, although freedom of expression was guaranteed in the constitution of 2007, the constitution also allowed the government to pass laws that bar publications that supposedly insult the monarchy

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<sup>165</sup> Michael K. Connors, "Ambivalent about Human Rights: Thai Democracy," in Davis; Galligan, *Human Rights in Asia*, 105.

<sup>166</sup> Ibid.

<sup>167</sup> Naruemon Thabchumpon, "Human Rights in Thailand: Rhetoric or Substance on Asian Values," in *Human Rights in Asia: A Reassessment of the Asian Values Debate*, ed. Leena Avonius and Damien Kingsury (New York: Palgrave Macmillan, 2008), 151.

<sup>168</sup> Davies, "States of Compliance?," 419.

<sup>169</sup> Michael K. Connors, "Ambivalent about Human Rights: Thai Democracy," in Davis; Galligan, *Human Rights in Asia*, 117.

<sup>170</sup> Kenny N. Cade, *Thailand: Conditions, Issues and U.S. Relations*, Asian Political, Economic and Security Issues (Hauppauge: Nova Science Publishers Inc, 2014), 23.

<sup>171</sup> This were the Convention for Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the earlier mentioned CAT. See: Davies, "States of Compliance?," 420.

<sup>172</sup> Cade, *Thailand*, 33.

question Buddhism or challenge public morality. These defamation laws were ‘part of a legal framework restricting speech that is critical of the government’ as Arapat pointed out.<sup>173</sup>

In conclusion, Thailand seemed to be recommitted to human rights in 1997, but the military coup in 2006 raised questions about its sincerity. There are still several problems, especially with freedom of expression and abuse by police forces. Nevertheless, the 2007 constitution did incorporate new rights and Thailand also played a leading role in promoting universal human rights in the AHRD draft, although the result could be identified as weak universalism. It seems that, as Michael Connors concluded, ‘human rights in Thailand are subject to the ebbs and flows of political circumstance’.<sup>174</sup> The final product was not so progressive, which suggest Below, it will be seen whether the *Bangkok Post* agrees with this AHRD.

### 3.2 Analysing the *Bangkok Post*

Thailand’s oldest still publishing daily newspaper is the *Bangkok Post*, which was founded by an American and a Thai in August 1947.<sup>175</sup> According to its website, the *Bangkok Post* tried to ‘inspire debate and discussion’, sought to ‘educate and entertain’ and sought to ‘serve Thai society’ by providing in depth news stories in a ‘fair and balanced manner without an agenda’.<sup>176</sup> The newspaper has a mixed foreigner and Thai staff and is read mostly by the middle and upper classes, both by the Thai population as well as the foreigners based in Thailand.<sup>177</sup> Although the number of English speakers was limited in Thailand and 90 percent of its sales were in Bangkok, the *Bangkok Post’s* circulation reached 80,000 copies a day in 2015, which meant it held 55% of the market.<sup>178</sup>

Moving on to the analysis of the articles that mention the AHRD, the *Bangkok Post* contains 25 relevant articles, including 15 news articles, 2 editorials, 2 interviews, 5 opinion articles and 1 spectrum article, which is a sort of opinion article by a journalist instead of an outsider.<sup>179</sup> The articles showed a similar pattern to the *Jakarta Post*. First, a few articles discussed general hopes and fears for the declaration, while later more detailed comments were written. The turning point was a little later, as the *Bangkok Post* still had no concrete knowledge of the draft contents in June.<sup>180</sup> Only after AICHR

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<sup>173</sup> Indradat, “Peace Journalism and Thailand’s Southern Insurgency,” 59–60.

<sup>174</sup> Michael K. Connors, “Ambivalent about Human Rights: Thai Democracy,” in Davis; Galligan, *Human Rights in Asia*, 106.

<sup>175</sup> Indradat, “Peace Journalism and Thailand’s Southern Insurgency,” 12.

<sup>176</sup> “Celebrating Seven Decades of the ‘Post’,” *Bangkok Post*, January 1, 2012, accessed January 4, <https://www.bangkokpost.com/news/general/813288/celebrating-seven-decades-of-the-post>.

<sup>177</sup> Indradat, “Peace Journalism and Thailand’s Southern Insurgency,” 51.

<sup>178</sup> *Ibid.*, 12, 52.

<sup>179</sup> A list of the 40 articles of the *Bangkok Post* can be found under primary sources in the bibliography.

<sup>180</sup> Achara Ashayagachat, “ASEAN Human Rights Draft to Get Airing,” *Bangkok Post*, July 8, 2012, Factiva.

consulted CSOs - including Thai organisations - in September, the articles increased in number and detail.<sup>181</sup> After its adoption, the articles that mentioned the AHRD focussed mostly on the AICHR, although two discussed its lack of implementation.<sup>182</sup>

Following the steps from the methodology, all articles could be identified as taking either a positive, balanced, critical or factual tone towards the AHRD and its drafting process. From their arguments, several forms described by Duquette could be found, which are summarized in Table 2 and will be further explained below. Three factual articles will be left out, as they only mentioned the AHRD in passing as they focussed on the appointment of a new Thai representative to the AICHR, Seree Nonthasoot, and contained not enough information to identify either universalism or cultural relativism.<sup>183</sup>

Form of Duquette ↓ / Tone of the article →	Positive	Balanced	Critical	Factual	Total of articles
Strong universalism	0	1	12	0	13
Moderate universalism	3	1	0	0	4
Weak universalism	1	1	0	0	2
Weak cultural relativism	0	1	0	0	1
Unclear	0	1	1	3	5
Total of articles	4	5	13	3	25

### 3.2.1 Positive

Only four articles could be defined as positive, namely an interview with Nonthasoot, a news article and two opinion articles written by a scholar and a government official.<sup>184</sup> Each article was written in a different month, one in January, May, November in 2012 and in July 2013. All are positive, because they contain either hope for the declaration or mention its positive aspects. For example, hope is visible

<sup>181</sup> Achara Ashayagachat, “NGOs against HR Draft,” *Bangkok Post*, September 24, 2012, Factiva.

<sup>182</sup> “Activists Slam ASEANs Lack of Commitment to Human Rights,” *Bangkok Post*, January 9, 2013, Factiva and Achara Ashayagachat, “DISAPPEARANCE - Lao Case a ‘Slap in Face’ for ASEAN,” *Bangkok Post*, January 10, 2013, Factiva.

<sup>183</sup> Achara Ashayagachat, “Seree Nonthasoot New AICHR Member,” *Bangkok Post*, January 3, 2013, Factiva and Achara Ashayagachat, “Thai Lawyer Picked for Rights Group,” *Bangkok Post*, January 3, 2013, Factiva and Achara Ashayagachat, “HUMAN RIGHTS - Law Expert Named as New AICHR Delegate,” *Bangkok Post*, January 4, 2013, Factiva.

<sup>184</sup> Achara Ashayagachat, “ASEAN Meet Strengthens AHRD Rules: Human Rights Document Revised,” *Bangkok Post*, November 18, 2012, Factiva; Vivit Muntarbhorn, “A GUARANTEE OF FREEDOMS - Towards an ASEAN Declaration of Human Rights,” *Bangkok Post*, January 20, 2012, Factiva; Panote Preechyanud, “Moving Closer to a Rights Declaration,” *Bangkok Post*, May 8, 2012, Factiva; Achara Ashayagachat, “ASEAN - Seree Tips Big Shift in Rights Blueprint,” *Bangkok Post*, July 4, 2013, Factiva.

in a news article which focussed on the revision of the AHRD just before its adoption. It mentions hopefully that the Philippines Secretary of State, who favoured a declaration up to international standards, ‘was a bit happier with the AHRD now’ and that ‘the ministers at the meeting agreed to add a few lines to the declaration to make it acceptable to all’.<sup>185</sup> Positive aspects are mentioned in an opinion article, which noted that the AHRD was an ‘important milestone in ASEAN’s progress toward creating a people centered community’ and that it ‘reflects the commitment of the leaders to strengthening democracy and promoting and protecting human rights’.<sup>186</sup>

Analysing these articles for the different forms of universalism and cultural relativism of Duquette, led to several conclusions. **Moderate universalism** came forward in three articles.<sup>187</sup> They all emphasised a universal human rights standard, while recognizing some sort of limitations in its implementation. For example, an opinion article written by a scholar/UN special rapporteur, noted that the AHRD would probably uphold universal human rights standards, although some representatives would ‘try to raise the issue of national sovereignty and the principle of non-interference (...) to limit the application of human rights’.<sup>188</sup> Especially the recognition that ‘if there are to be such limitations to constrain the exercise of human rights, they must be in accordance with the law and not be based on arbitrary action’, pointed towards moderate universalism as it recognises and tolerates limitations in implementation but only in small amounts.<sup>189</sup>

A little more difficult was an interview with Nonthasoot, which did not mention limitations concretely, but instead discussed the limits of the AICHR itself, could still be seen as moderate universalism. Nonthasoot hoped to do more, but had to work together with some representatives who ‘protect the government rather than the human rights of the people in the region’. She argued that: ‘While some people still apply rigidly the interpretation that the AICHR must not interfere while protecting someone, given the non-intervention and consensus principles, I and some other AICHR members believe there are things we can do’, and mentions that they discussed working ‘on a more legally binding convention, not just a declaration’.<sup>190</sup> This showed a recognition of limitations while upholding a universal standard.

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<sup>185</sup> Ashayagachat, “ASEAN Meet Strengthens AHRD.”

<sup>186</sup> Preechyanud, “Moving Closer.”

<sup>187</sup> Ashayagachat, “ASEAN Meet Strengthens AHRD”; Muntarbhorn, “A GUARANTEE OF FREEDOMS” and Ashayagachat, “Seree Tips Big Shift.”

<sup>188</sup> Muntarbhorn, “A GUARANTEE OF FREEDOMS.”

<sup>189</sup> Ibid.

<sup>190</sup> Ashayagachat, “Seree Tips Big Shift.”

**Weak universalism** could be found in one opinion article from an Indonesian government official, written well before the AHRD's adoption, as it mentioned the regional context should be incorporated while also 'protecting human rights in accordance with internationally accepted standards'.<sup>191</sup> This became visible when the author mentioned that the declaration was intended to be a political document, which 'should represent a balance of rights and duties, incorporate universal values, while taking into account regional particularities as well as national laws and regulations of each ASEAN member'.<sup>192</sup>

To sum up, three positive articles showed signs of moderate universalism, while only one showed weak universalism. It is interesting to note that weak universalism was incorporated by an opinion article by a government official, while moderate universalism was used more often in positive news articles by Bangkok journalists and a scholar/UN special rapporteur. Time wise, there was no clear switch in form from before to after the declaration.

### 3.2.2 Balanced

Five articles could be described as balanced, namely two news articles, one interview and two opinion articles, which were spread out over the year: one from May, two in November, one in December 2012 and one from February 2013. These were balanced, as they showed both critical and positive aspects of the declaration, but leaned towards neither.<sup>193</sup> For example, an interview with the previous representative to AICHR, Sriprapha Petcharamesree, mentioned that the document was not perfect and 'has some room for improvement', but that it should be taken 'as a living document which will evolve over time'.<sup>194</sup>

Identifying either cultural relativism or universalism was difficult, due to the balanced nature of the articles. This was especially the case in the two news articles. One contained too little information to identify any concept of Duquette.<sup>195</sup> The other article from just before the adoption showed signs of **weak cultural relativism** in its arguments, as it noted the ASEAN's secretary general's comments. He argued that 'so far, the AHRD is a document that members are comfortable with'.<sup>196</sup> This showed

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<sup>191</sup> Preechyanud, "Moving Closer."

<sup>192</sup> Ibid.

<sup>193</sup> Achara Ashayagachat, "Frustrations, Challenges of a Rights Advocate," *Bangkok Post*, February 25, 2013, Factiva; "ASEAN Leaders Sign Rights Pact," *Bangkok Post*, November 18, 2012, Factiva; Achara Ashayagachat, "Surin Calls for ASEAN Unity," *Bangkok Post*, November 17, 2012, Factiva; Hafid Abbas, "ASEAN Must Not Flag on Human Rights," *Bangkok Post*, May 24, 2012, Factiva and Vitit Muntarbhorn, "REFUGEES - A Robust Helping Hand for Displaced Rohingya, Please," *Bangkok Post*, February 25, 2013, Factiva.

<sup>194</sup> Ashayagachat, "Frustrations."

<sup>195</sup> *Bangkok Post*, "Rights Pact."

<sup>196</sup> Ashayagachat, "Surin Calls for ASEAN Unity."

that human rights protection must incorporate the members states specific situations. He also said the AHRD ‘was not perfect or up to international standards, but said it was progress’, which suggested that he would like better human rights protection, but that he was willing to bend the universal standards a little to come to this declaration.<sup>197</sup> Even so, is not clear if the author agrees due to the balanced nature of the article.

The opinion articles were a little easier. Mainly **weak universalism** could be detected in one written by a scholar/former government official, as it is the exact same article as the *Jakarta Post* published. Only the title changed from *The long road to ASEAN rights charter* to *ASEAN must not flag on human rights*.<sup>198</sup> The author took the regional differences into account, while showing some commitment to universal human rights and a stronger human rights system.<sup>199</sup> **Moderate universalism** was found in the earlier mentioned interview with government official Petcharamesree, as she admitted feeling disappointed that ‘some provisions are not up to international standards’ and she wished it to be the beginning of ‘more forceful and legally binding regional human rights instruments’.<sup>200</sup> The moderation with ‘more’, still left room for limitations and sovereignty which excludes strong universalism. **Strong universalism** seemed to be the main argument from an opinion article written by a scholar/former UN special rapporteur. It mentioned ASEAN should do something about the situation of the Rohingya’s as there are ‘recurrent breaches of their right of freedom of movement, access to education, freedom of religion and the right to marry’.<sup>201</sup> However, Myanmar had hardly signed or ratified any conventions in 2012, which indicated some willingness to interfere.<sup>202</sup> The author placed human rights over state sovereignty, which is typical of strong universalism.

In conclusion, the balanced articles which did contain signs towards certain concepts of Duquette, were all the opinions of outsiders as they were opinion articles and an interview. One news article showed weak cultural relativism just before the adoption, but only through the comments of the ASEAN secretary general.

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<sup>197</sup> Ibid.

<sup>198</sup> Abbas, “The Long Road” and Abbas, “ASEAN Must Not Flag.”

<sup>199</sup> Abbas, “ASEAN Must Not Flag.”

<sup>200</sup> Ashayagachat, “Frustrations.”

<sup>201</sup> Muntarhorn, “Helping Hand.”

<sup>202</sup> Conventions ratified around 2012: CRC (1991), CEDAW (1997) and CRPD (2011). See: Office of the High Commissioner for Human Rights, “Ratification Status for Myanmar,” Office of the High Commissioner for Human Rights, accessed January 3, 2019, [https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=119&Lang=EN](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=119&Lang=EN).

### 3.2.3 Critical

More articles were critical, namely thirteen, of which two editorials, nine news articles and one spectrum article, which was an opinion article written by a journalist. Nothing was written by a government official or civil society agent. From June to December 2012, nine critical articles were published, with a peak of six articles in November 2012. In 2013, four other articles were written, with a peak of two in January.

Most sentences in these articles were critical towards the declaration or its drafting process. Before and just after its adoption, most articles emphasised civil society's criticism.<sup>203</sup> For example, one news article argued that 'CSOs have already denounced the opaque drafting process' and stated that 'signing the declaration should not go ahead' as it would provide 'lower denominated rights than universal human rights principles'.<sup>204</sup> After the adoption, criticism became directed to its lack of implementation.<sup>205</sup> For instance, one news article mentioned activists argument that 'the disappearance of the Lao community advocate Sombath Somphone is a slap in the face for the ASEAN human rights declaration'.<sup>206</sup> Three other articles focussed more on general criticism towards human rights implementation or the AICHR than the AHRD itself.<sup>207</sup> This becomes visible in a news article which focuses on the AICHR and argues critically that it is a toothless body, 'given that there has been almost no public consultations over the ASEAN human rights Declaration'.<sup>208</sup>

Analysing these articles led to the identification of **strong universalism** in all but one critical article. This news article contained too little information to distinguish a concept of Duquette, as its main focus was on the South China Sea.<sup>209</sup> Clearest were seven articles - two editorials and five news articles - which mentioned both a fear of limitations in relation to a strong commitment to a universal

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<sup>203</sup> Ashayagachat, "Get Airing"; Ashayagachat, "NGOs against HR Draft"; Achara Ashayagachat, "ASEAN - Civil Society Groups Reject 'Flawed' Human Rights Declaration Draft," *Bangkok Post*, September 25, 2012, Factiva; Achara Ashayagachat, "HUMAN RIGHTS - Civil Groups Fail to Delay Adoption of Declaration," *Bangkok Post*, October 13, 2012, Factiva; Achara Ashayagachat, "Activists Slam Cambodia Obstruction," *Bangkok Post*, November 15, 2012, Factiva; "Surin Calls for South China Sea Hotline," *Bangkok Post*, November 17, 2012, Factiva and "EDITORIAL - ASEAN Fails on Human Rights," *Bangkok Post*, November 20, 2012.

<sup>204</sup> Ashayagachat, "NGOs against HR Draft."

<sup>205</sup> *Bangkok Post*, "Lack of Commitment"; Ashayagachat, "Lao Case" and "EDITORIAL - ASEAN Ignores Yangon Abuse," *Bangkok Post*, March 25, 2013, Factiva.

<sup>206</sup> Ashayagachat, "Lao Case."

<sup>207</sup> Phil Thornton, "The Ugly Face behind 'Open' Myanmar Charm Offensive," *Bangkok Post*, June 6, 2012, Factiva; Achara Ashayagachat, "HUMAN RIGHTS - Groups Slam ASEAN Watchdog for Being Toothless, Secretive," *Bangkok Post*, June 21, 2013, Factiva and Kanis Dursin, "SOUTHEAST ASIA - ASEAN Human Rights Body Lacks Teeth," *Bangkok Post*, December 28, 2012, Factiva.

<sup>208</sup> Ashayagachat, "Groups Slam ASEAN Watchdog."

<sup>209</sup> *Bangkok Post*, "South China Sea Hotline."

human rights standard.<sup>210</sup> For example, an editorial from right after the declarations' adoption mentioned it 'allows any government to suspend human rights for real or claimed reasons'.<sup>211</sup> This was 'unacceptable', because 'if human rights can be suspended for claimed security or morality reasons, then they are not rights at all. (...) They apply to all people everywhere'.<sup>212</sup> Other articles were similar in their mentioned criticism. Interestingly is that four times the missing rights for LGBT, not including intersex and questioning as the *Jakarta Post* did, were mentioned and five times the difficulties with the public morality and national security clause.<sup>213</sup> The rights of disabled people and enforced people also came up, although only twice.<sup>214</sup>

Four articles, one spectrum and three news articles, did not mention a clear commitment to a universal standard, but did mention a will to do more and to take stronger action towards the protection of human rights regardless of state sovereignty and non-interference. This also pointed towards strong universalism.<sup>215</sup> For instance, one news article mentioned the disappearance of Sombath Somphone and that the government of Thailand and Laos 'were accused of lack of sincerity in implementing the ASEAN Human Rights Declaration'.<sup>216</sup> This in combination with the sentence that this should be 'a wake up call for ASEAN' as it suggested 'the region was only making an empty boast in claiming to be modernising as a human rights caring community', showed the author would like a stronger stance from the governments towards the implementation of the declaration.<sup>217</sup>

To sum up, only eight were either factual or balanced, which suggests a strong opinion on the AHRD. Twelve articles of the thirteen critical articles aligned with strong universalism and the one which did not show signs strong universalism, did not show signs of any concept of Duquette as it was too factual. All were written by journalists of the *Bangkok Post*, as they were news articles, editorials and spectrum articles, which suggested this was the opinion of the *Bangkok Post*. This is further emphasised by the fact that most critical articles were written after the content of the draft became

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<sup>210</sup> Ashayagachat, "Get Airing"; Ashayagachat, "Fail to Delay"; Dursin, "Rights Body Lacks Teeth"; *Bangkok Post*, "ASEAN Fails on Human Rights"; Ashayagachat, "NGOs against HR Draft"; Ashayagachat, "Civil Society Groups Reject"; *Bangkok Post*, "Yangon Abuse" and *Bangkok Post*, "Lack of Commitment."

<sup>211</sup> *Bangkok Post*, "ASEAN Fails on Human Rights."

<sup>212</sup> Ibid.

<sup>213</sup> For LGBT see: Ashayagachat, "Fail to Delay" and Dursin, "Rights Body Lacks Teeth."

For public morality and national security see: Ashayagachat, "Cambodia Obstruction" and *Bangkok Post*, "ASEAN Fails on Human Rights."

For both see: Ashayagachat, "Civil society Groups Reject" and Ashayagachat, "NGOs against HR Draft."

<sup>214</sup> Ashayagachat, "Civil Society Groups Reject"; Ashayagachat, "NGOs against HR Draft"; *Bangkok Post*, "Lack of Commitment" and Ashayagachat, "Lao Case."

<sup>215</sup> Thornton, "The ugly face"; *Bangkok Post*, "Lack of commitment" Ashayagachat, "Lao case" and Ashayagachat, "Groups slam ASEAN watchdog."

<sup>216</sup> *Bangkok Post*, "Lack of commitment."

<sup>217</sup> *Bangkok Post*, "Lack of commitment."

more widespread in Thailand and reached a peak in October and November just before the AHRD's adoption. It is not unfounded to assume that the newspaper wanted it to be revised.

### *3.3 Conclusion*

Thailand, regardless of its many coups and changing political arena, did sign seven human rights conventions. The country stood with Indonesia for a liberal document during the drafting process of the AHRD, but the articles from the *Bangkok Post* show a willingness to go further than adopted the declaration in November 2012. Although the first articles from 2012 were balanced or positive about the AHRD, after June the critical articles dominated. From September onwards, the criticism became rather detailed, with a specific focus on LGBT and the public morality and national security clause. In total, 6 of the 25 articles were unclear, but from the remaining articles, 13 showed signs of strong universalism, 4 showed moderate universalism and 2 articles showed weak universalism. No articles showed any signs of cultural relativism and as weak universalism was only advocated in opinion articles written by (former) government officials, it could thus be concluded that strong universalism was the newspapers focus.

## 4. Human rights portrayed in the *Phnom Penh Post*

Cambodia is one of the weakest states in Southeast Asia in the sense that sovereignty and legitimacy have been continuously contested in its history even after the UN-sponsored elections in 1993.<sup>218</sup>

Cambodia is much smaller in terms of territory and population than the other two, with its surface area covering 181.000 km<sup>2</sup> and its inhabitants reaching 12,15 million in 2000 and 14,31 in 2010.<sup>219</sup> The country's history is more turbulent, as the communist Khmer Rouge regime between 1975 and 1979 led to the deaths of more than a million Cambodians. After Vietnam invaded the country, but could not end the warfare, the United Nations interfered and encouraged warring parties to sign the 1991 Paris Accords, which led to parliamentary elections in 1993.<sup>220</sup> Although the human rights situation improved over the years, Cambodia joined the lead of Vietnam and Laos which sought a more 'conservative' AHRD, limiting the application of universal standards.<sup>221</sup> So, in order to analyse the articles on AHRD from the *Phnom Penh Post*, this chapter first provides background information.

### 4.1 Human rights landscape

When Cambodia became independent in 1953, prince Norodon Sihanouk ruled the country as a monarchy, until a right-wing coup led by Lon Nol removed him in 1970. The deposed king gave his support to the left-wing Khmer Rouge, who won the civil war in 1975 and abolished all urban life. When the Vietnamese invaded in 1978 and installed a new communist puppet regime under the Cambodian people's party (CPP), the Khmer Rouge fled to Thailand.<sup>222</sup> Warfare continued until 1991, when the Paris Peace Accords ended the conflict and Cambodia made a formal commitment to the protection and promotion of human rights. The country had already ratified one human rights convention, but the Accords led to the ratification of five other human rights conventions in 1992.<sup>223</sup> The CRPD and ICPED would follow in 2007 and 2013, which meant only ICPMW was missing.<sup>224</sup>

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<sup>218</sup> Christie and Roy, *The Politics of Human Rights in East Asia*, 199.

<sup>219</sup> World Bank, "World Development Indicators Database: Cambodia," accessed January 7, 2019, [https://databank.worldbank.org/data/views/reports/reportwidget.aspx?Report\\_Name=CountryProfile&Id=b450fd57&tbar=y&dd=y&inf=n&zm=n&country=KHM](https://databank.worldbank.org/data/views/reports/reportwidget.aspx?Report_Name=CountryProfile&Id=b450fd57&tbar=y&dd=y&inf=n&zm=n&country=KHM).

<sup>220</sup> Christie and Roy, *The Politics of Human Rights in East Asia*, 202–5.

<sup>221</sup> Clarke, "The evolving ASEAN Human Rights System," 19.

<sup>222</sup> Romano and Bromley, *Journalism and Democracy in Asia*, 42.

<sup>223</sup> These were the ICCPR, the ICESCR, the CAT, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC). See: Bünte and Dressel, *Politics and Constitutions in Southeast Asia*, 167.

<sup>224</sup> Bünte and Dressel, *Politics and Constitutions in Southeast Asia*, 167.

The Accords also installed The United Nations Transitional Authority in Cambodia (UNTAC), which would oversee to the implementation of the accord until the elections in 1993.<sup>225</sup>

These elections brought a coalition government, which included the CCP. It adopted a constitution which installed a constitutional monarchy that included rule of law, respect for human rights, independence of the judiciary, separation of powers, and democratic governance.<sup>226</sup> In 1991, only four newspapers existed, all owned by the state, while in 1998, more than 200 print publications were registered with the ministry of information.<sup>227</sup> Unfortunately, another coup took place in 1997, in which the CCP seized power. The party held new parliamentary elections in 1998 and won, under the restrictive conditions, most seats. Violence and voter intimidation would also feature in the following elections.<sup>228</sup> Nevertheless, the CCP continued on the path of the 1991 Accords and tried to institutionalise justice further, by founding a human rights committee, signing the Rome statute of the ICC and collaborating with the UN to prosecute Khmer Rouge leaders through a hybrid criminal court.<sup>229</sup>

Some remarks must be made. Firstly, although Cambodia ratified eight conventions and made no reservations, it did not yet hand in all required reports. For example, from 2012 the reports for the Convention of the Elimination of Racial Discrimination (CERD) and ICESCR were still not submitted in 2014.<sup>230</sup> Secondly, the actual process of implementing human rights faced several challenges. While socio-cultural rights have been generally protected, ‘socio economic rights have often been abused, and political rights and civil liberties have been threatened’, as Peou pointed out.<sup>231</sup> At first, political violence was one of the main human rights violations, but as the opposition weakened, the CCP focussed on media control and the use of legal measures to stifle freedom of expression, strike and demonstration. For example, the government sued several opponents for defamation and the laws on press freedom and freedom of assembly have either been amended to include the possibility of prosecution in the case of national security or political stability.<sup>232</sup> The fact that the judiciary, which

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<sup>225</sup> Sorpong Peou, “The Challenge for Human Rights in Cambodia,” in Davis; Galligan, *Human Rights in Asia*, 123–24.

<sup>226</sup> Surya P. Subedi, “The UN Human Rights Mandate in Cambodia: The Challenge of a Country in Transition and the Experience of the Special Rapporteur for the Country,” *The International Journal of Human Rights* 15, no. 2 (2011): 250, accessed December 28, 2018, doi:10.1080/13642987.2011.537469.

<sup>227</sup> Romano and Bromley, *Journalism and Democracy in Asia*, 42.

<sup>228</sup> Arch Puddington et al., eds., *Freedom in the World 2012: The Annual Survey of Political Rights and Civil Liberties* (New York: Rowman & Littlefield, 2013), accessed December 28, 2018, 128.

<sup>229</sup> Sorpong Peou, “The Challenge for Human Rights in Cambodia,” in Davis; Galligan, *Human Rights in Asia*, 124.

<sup>230</sup> Davies, “States of Compliance?,” 424.

<sup>231</sup> Sorpong Peou, “The Challenge for Human Rights in Cambodia,” in Davis; Galligan, *Human Rights in Asia*, 123.

<sup>232</sup> Sorpong Peou, “The Challenge for Human Rights in Cambodia,” in Davis; Galligan, *Human Rights in Asia*, 123, 126, 129.

had to be rebuilt after the Khmer Rouge murdered the educated elite, consisted of inadequately trained and often corrupted jurists, also did not help human rights.<sup>233</sup>

In conclusion, Cambodia seemed to be committed to human rights from 1991 onwards and its overall human rights situations had improved noticeably. However, the coup in 1997 led to a one-party system, which influenced the judiciary and tried to stifle dissident voices. It is thus not surprising that the Cambodian government joined Laos and Vietnam in search of a more conservative AHRD. Now it remains the question what the *Phnom Penh Post* had to say about the document.

#### 4.2 Analysing the *Phnom Penh Post*

First published in July 1992, the *Phnom Penh Post* claims to be ‘the oldest existing independent newspaper in any language in Cambodia’.<sup>234</sup> Its American founders tried to establish a newspaper known for ‘telling the truth while maintaining a sympathetic ear to this country’s plight and its tragic history’.<sup>235</sup> This did not mean that foreign personnel dominated the paper, as the staff list on the website now showed a majority of Cambodians. The newspaper is committed to ‘delivering intelligent, in-depth, and independent coverage of Cambodian affairs’ to their readers.<sup>236</sup> These readers are, as the newspaper claims, ‘the most highly educated in the country and demand access to the highest quality information possible’.<sup>237</sup> At first, an issue was only published every two weeks, but in 2008, in the wake of the new elections, the *Phnom Penh Post* went daily. A year later a Khmer-language edition was added to bring the local readers ‘a level of editorial quality and independence missing from much of the market at the time’.<sup>238</sup> According to the Media Ownership Monitor, the English *Phnom Penh Post* is believed to circulate 21570 copies a day, and the Khmer 29754 copies a day.<sup>239</sup> The information is probably from around 2017-2018, as the website is updated regularly.

Moving on to analyse the 21 articles that mention the AHRD in the *Phnom Penh Post*, it is important to note that these included 17 news articles, 2 opinion articles, 1 published letter and 1 spectrum article. The articles showed a similar pattern to the *Bangkok Post* and *Jakarta Post*. First, articles

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<sup>233</sup> Subedi, “The UN Human Rights Mandate in Cambodia,” 254.

<sup>234</sup> “About the Phnom Penh Post,” *Phnom Penh Post*, June 8, 2013, accessed January 4, 2019, <https://www.phnompenhpost.com/about-us>.

<sup>235</sup> Luke Hunt, “Michael Hayes, an Unlikely Publisher with an Enduring Legacy,” *Phnom Penh Post*, July 10, 2017, accessed January 4, 2019, <https://www.phnompenhpost.com/supplements/michael-hayes-unlikely-publisher-enduring-legacy>.

<sup>236</sup> Stuart White, “We Lead Where It Matters,” *Phnom Penh Post*, July 7, 2017, accessed January 4, 2019, <https://www.phnompenhpost.com/supplements/we-lead-where-it-matters>.

<sup>237</sup> *Phnom Penh Post*, “About the Phnom Penh Post.”

<sup>238</sup> White, “We lead where it matters.”

<sup>239</sup> Media Ownership Monitor Cambodia, “New Players: Phnom Penh Post (English),” Media Ownership Monitor Cambodia, accessed January 4, 2019, <https://cambodia.mom-rsf.org/en/media/detail/outlet/the-phnom-penh-post-english/>.

discussed general hopes and fears for the declaration, while later more detailed comments were written. The turning point here was in July 2012, when one article mentions a statement by women’s groups expressing their concern about a public morality clause. These groups got their information from a civil society consultation with the AICHR about the AHRD earlier in July.<sup>240</sup> After the declaration, only the first two focus on the AHRD specifically, while the three articles later focus on other subjects, while also mentioning the AHRD in passing.

Following the steps from the methodology, all articles could be identified as taking either a positive, balanced, critical or factual tone towards the AHRD and its drafting process. From their arguments, several forms described by Duquette could be found, which are summarized in Table 2 and will be further explained below. One factual article shall be left out as it contained too little information to identify any form of universalism or cultural relativism.<sup>241</sup>

Form of Duquette ↓ / Tone of the article →	Positive	Balanced	Critical	Factual	Total of articles
Strong universalism	1	1	13	0	15
Moderate universalism	1	0	1	0	2
Weak universalism	0	0	0	0	0
Weak cultural relativism	0	0	0	0	0
Unclear	1	1	1	1	4
Total of articles	3	2	15	1	21

#### 4.2.1 Positive

Three articles could be defined as positive, two opinion articles written by a Thai civil society activist and a British government official in April and July 2012 and a letter to the editor written by a Cambodian government official from December 2012.<sup>242</sup> These were positive, because several sentences showed either approval or hope regarding the AHRD. For example, the British government official approved of ASEAN’s commitment to ‘democracy, the rule of law and human rights’ and

<sup>240</sup> David Boyle and Cheang Sokha, “Women’s Rights Groups Troubled by AHRD Draft,” *Phnom Penh Post*, July 17, 2012, Factiva.

<sup>241</sup> Cheang Sokha and Shane Worrel, “South China Sea Surfaces,” *Phnom Penh Post*, April 3, 2012, Factiva.

<sup>242</sup> Ou Vriak, “Comment: An ASEAN for the People,” *Phnom Penh Post*, April 4, 2012, Factiva; Jeremy Browne, “UK’s Focus on Our Region,” *Phnom Penh Post*, July 3, 2012, Factiva and Kuoy Kong, “Errors and Bias Distort Analysis,” *Phnom Penh Post*, December 19, 2012, Factiva.

argued that AICHR ‘has an opportunity to embed these values even more firmly in ASEAN’s work through the Human Rights Declaration’.<sup>243</sup>

Regarding universalism or cultural relativism, nothing could be distinguished from the letter to the editor, as it focussed on discrediting an earlier article by the Post which criticized Cambodia’s chairmanship of ASEAN.<sup>244</sup> However, signs of **strong universalism** were visible in the opinion article from the Thai civil society activist. As the author gave his recommendations to uphold three principles, human rights, democracy and transparency and accountability, he emphasised that ‘a declaration that honours international human-rights principles and covenants is only a halfway house’ and that ‘human rights are too important to leave to the whim of governments’.<sup>245</sup> This in combination with the mentioning of human rights over sovereignty, suggested the author is committed to the international standards and disliked limitations on human rights, which suggested strong universalism.

**Moderate universalism** could be detected from the opinion article of the British government official, as it mentioned both ASEAN’s commitment to democracy, accountability and human rights and the importance for governments to answer to their people. This suggested people’s rights should not be left to the whims of the government, but no clear mentioning of limits nor any clear sympathy for the regional context, points towards moderate universalism.

To sum up, both strong universalism and moderate universalism could be detected from the positive articles, which were all written by outsiders. It is also interesting to note that the only positive article after the AHRD’s adoption, was a letter to the editor by a government official and thus not something the *Phnom Penh Post* would have initiated.

#### 4.2.2 Balanced

Only two articles, both news articles from June and July, could be categorised as balanced as they contained positive and critical remarks about the AHRD. This balance is visible in the mentioning of both government argumentation and civil society criticism in both articles.<sup>246</sup> For example, one article mentioned ‘groups were worried that the declaration will be undermined by the national, regional, cultural and historical context of the 10 nations’, while also adding the government’s reply that ‘the

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<sup>243</sup> Browne, “UK’s Focus.”

<sup>244</sup> Kong, “Errors and Bias.”

<sup>245</sup> Vriak, “Comment.”

<sup>246</sup> Chhay Channyda, “NGOs Don’t Need to See Rights Doc Draft: Official,” *Phnom Penh Post*, June 14, 2012, Factiva and Bridget Di Certo and Cheang Sokha, “NGOs Feel Ignored by ASEAN Rights Council,” *Phnom Penh Post*, July 9, 2012, Factiva.

first draft [of the declaration] is already a very good text. We still have time, that is why ASEAN foreign ministers requested AICHR to continue to improve [the draft].<sup>247</sup>

Moving on to identifying cultural relativism or universalism, no clear alignment to either universalism or cultural relativism could be identified from one article, as the focus was on the drafting process and not on human rights.<sup>248</sup> **Strong universalism** could be detected from the other article, as the mentioned civil society criticism showed fear that the declaration would be undermined by regional, cultural or historical limitations on human rights. Civil society also argued that ‘sexual orientation and gender identity discrimination and enforced disappearances’ were examples of the declarations’ ‘controversial abuses’, which suggested a willingness to go further than the international human rights standards.<sup>249</sup> Although the article also mentioned the governments opinion that ‘the first draft is already a very good text’, no reasons to support this statement were given. Strong universalism is thus visible in civil society criticism, but as the article is balanced, it is not clear whether the author and the newspaper agrees.

To conclude, only a few articles were balanced, and these were all from halfway 2012, long before the AHRD’s adoption, which suggests that any information on the AHRD was rather positively or negatively framed and became more polarized later. Although one article showed signs of strong universalism, it is not clear whether the author agrees, which makes it difficult to conclude to which the balanced articles leaned.

#### 4.2.3 Critical

The overwhelming number of articles were critical, a total of fifteen. All were written by journalists of the *Phnom Penh Post* from January 2012 to June 2013, although the peak was in November 2012 leading up to the AHRD’s adoption. All were news articles, except one as it could be categorised as a spectrum article due to its length and clear opinion.<sup>250</sup>

These articles were critical, because more critical than positive sentences on either the declaration itself or its drafting process could be identified. Some were entirely critical, mentioning civil society criticism on the drafting process, the controversial clauses or arguing for its postponement or delay.<sup>251</sup> This is, for example, visible in a news article which noted that human rights groups called

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<sup>247</sup> Di Certo and Sokha, “NGOs Feel Ignored.”

<sup>248</sup> Channyda, “See Rights Doc Draft”

<sup>249</sup> Di Certo and Sokha, “NGOs Feel Ignored.”

<sup>250</sup> Shane Worrel, “South China Sea Row Was Elephant in Room for Kingdom’s Year in the Chair,” *Phnom Penh Post*, December 28, 2012, Factiva.

<sup>251</sup> “Opposition Mounts to Rights Draft,” *Phnom Penh Post*, November 6, 2012, Factiva; David Boyle, “Concerns with ASEAN Declaration of Rights,” *Phnom Penh Post*, March 7, 2012; Factiva, Boyle and Sokha, “Women’s Rights Groups

upon the government ‘to press for substantive changes to a highly criticised draft’ and that these groups ‘were pushing for a delay’.<sup>252</sup> A few articles did note some positive or hopeful remarks about the declaration or mention the government’s arguments in favour of the declaration, but remained overall critical or worried.<sup>253</sup> For example, one article mentioned first that ‘new language was unlikely to have a real impact on the declaration, given that three of the document’s general principles would have an extremely limiting effect on human rights protection’. It then listed more positive comments from a government official, including that ‘It would be kind and wise for all of us to read the document before we jump to certain conclusions.’ The article ended with a negative comment from a civil society activist, who argued that ‘the brutal reality is that some ASEAN members are simply not prepared to accept universal standards of human rights’.<sup>254</sup> Other articles were also critical, but less clearly.<sup>255</sup> For example, the only spectrum article focussed on Cambodia’s position within the South China Sea dispute, and mentioned the AHRD only to show ‘agreement rather than disagreement’ was making headlines.<sup>256</sup> It also noted society’s criticism and argued that ‘the timing couldn’t have been more trenchant’, with the US president visiting the Cambodian regime ‘amid a storm of criticism directed at Hun Sen’s government for rights abuses’, which suggested the author was rather critical of the declaration.<sup>257</sup>

Regarding identifying universalism or cultural relativism, one article contained too little information to identify any of Duquette’s concepts.<sup>258</sup> From the remaining articles, a large amount – thirteen – contained signs of **strong universalism**. Most articles could be identified quickly, as they contained both a commitment to a universal human rights standard, and showed a fear of limitations on these rights. For example, a short news article mentioned criticism by a human rights group which stated that the AHRD ‘falls short of current human rights standards’, suggesting that there is a universal human right standard to which they are committed. The article also noted that ‘particular concern’ was

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Troubled”; Thik Kaliyann and Bridget Di Certo, “Human Rights Vision in Bullet Points,” *Phnom Penh Post*, September 5, 2012, Factiva; Stuart White, “US Critiques ASEAN Human Rights Declaration,” *Phnom Penh Post*, November 26, 2012, Factiva; Abby Seiff, “Rights Group Urge Changes to ASEAN Human Rights Declaration,” *Phnom Penh Post*, September 28, 2012, Factiva; Shane Worrel, “Window Closing on ASEAN Human Rights Declaration,” *Phnom Penh Post*, October 22, 2012, Factiva and Justine Drennan, “Prepping for Life with Rights Doc,” *Phnom Penh Post*, October 24, 2012, Factiva.  
<sup>252</sup> Seiff, “Rights Group Urge Changes.”

<sup>253</sup> Bridget Di Certo, “Transparency Key to ASEAN Human Rights Declaration,” *Phnom Penh Post*, May 15, 2012, Factiva; Claire Knox, “Civil Society Decries ASEAN Draft Clause,” *Phnom Penh Post*, September 18, 2012, Factiva; Cheang Sokha, “Rights Doc a Go, Says Minister,” *Phnom Penh Post*, November 16, 2012, Factiva and Stuart White, “ASEAN Signs Off on Human Rights Declaration,” *Phnom Penh Post*, November 19, 2012, Factiva.

<sup>254</sup> White, “ASEAN Signs Off.”

<sup>255</sup> Kristin Lynch, “Push for LGBT Rights in the Declaration,” *Phnom Penh Post*, January 17, 2012, Factiva; Worrel, “Elephant in Room” and Kevin Ponniah, “Free-Speech Activists Call for Reform,” *Phnom Penh Post*, June 20, 2013, Factiva.

<sup>256</sup> Worrel, “Elephant in Room.”

<sup>257</sup> Ibid.

<sup>258</sup> Boyle, “Concerns with ASEAN.”

aimed at ‘the General Principles in the Declaration’ as rights were ‘subjected to “national and regional contexts” and to considerations of “different cultural and religious and historical background”’.<sup>259</sup> The entire article focussed on criticism which showed a fear of limitations and an alignment to universal human rights standards, all signs of strong universalism. Other articles show similar arguments. Interestingly, several articles focussed on the so called ‘public morality’ clause in the declaration.<sup>260</sup> This would leave, according to one news article, ‘interpretation of the term up to individual states, which could use it to infringe on the rights of women following dominant political and religious cultures’.<sup>261</sup>

Some of these thirteen could only be identified as strong universalism by thinking further than the text itself.<sup>262</sup> For instance, one news article discussed civil society activist criticism: ‘We do not see the declaration to be at the international standard, as claimed by the leaders of ASEAN’, which suggested that there is universal human rights standard and that she is committed to it.<sup>263</sup> Although the article mentioned the declaration was ‘too flawed’, it did not specify why.<sup>264</sup> Even so, as the article was written in November and several other articles around that time mentioned the criticism of the general principles, it would be plausible that this is the reason why it is ‘too flawed’, which makes strong universalism most likely for this article as well. Similar conclusions could be drawn from articles which did not contain a clear mentioning of a commitment of a universal standard, while they did mention a fear of limits.<sup>265</sup> One article did not mention limits nor a commitment to universal values directly, but showed a willingness to go beyond the international human rights conventions and UHRD, by mentioning civil society’s argument for the inclusion of LGBT (Lesbian, Gay, Bisexual and Transgender) rights in the declaration, which pointed towards strong universalism.<sup>266</sup>

**Moderate universalism** was also found, but only in one article. It mentioned both a fear for limitations and a hope that these will be minimal. The article stated that draft included ‘the contextualisation of rights within regional and national setting, but noted positively that it ‘also called for “no double standard and politicisation in the realisation” of human rights’.<sup>267</sup> Although no universal human rights standard is mentioned, the mentioning of the disappointment of human rights groups

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<sup>259</sup> *Phnom Penh Post*, “Opposition Mounts.”

<sup>260</sup> Boyle and Sokha, “Women’s Rights Groups Troubled”; Knox, “Civil Society Decries”; White, “ASEAN Signs Off”; Seiff, “Rights Group Urge Changes” and Worrel, “Window Closing.”

<sup>261</sup> Boyle and Sokha, “Women’s Rights Groups Troubled.”

<sup>262</sup> Sokha, “Rights Doc a Go”; Seiff, “Rights Group Urge Changes.”

<sup>263</sup> Sokha, “Rights Doc a Go.”

<sup>264</sup> *Ibid.*

<sup>265</sup> Seiff, “Rights Group Urge Changes” and Ponniah, “Call for Reform.”

<sup>266</sup> Lynch, “Push for LGBT.”

<sup>267</sup> Kaliyann and Di Certo, “Bullet Points.”

such as Amnesty international, seems to suggest the author agrees that human rights are those of the international standard.<sup>268</sup>

It can be concluded that the newspaper manifested as strong opinion on the AHRD, as only three articles were balanced or factual. The that the largest part of the critical articles leaned towards strong universalism, while only one showed signs of moderate universalism with a focus on the public morality clause. All were written by journalists of the *Phnom Penh Post*, as they were news articles and spectrum articles, which suggested this was the opinion the newspaper aligned to. This is further emphasised by the fact that most critical articles were written after the civil society consultation in July when Cambodian CSOs had more information on what the draft contained.

### 4.3 Conclusion

Cambodia's tragic history saw many human rights violations, with the ratifications of almost all international human rights conventions in 1993 the country seemed to have changed its path. The remaining human rights violations however, in relation to Cambodia's reserved position towards a liberal AHRD during the drafting process, suggested otherwise. The adopted AHRD is portrayed by ASEAN as a positive document<sup>269</sup>, but Cambodia's main independent English newspaper disagrees. At first, there were a few positive and balanced articles about the declaration, but from July onwards, all but one were critical, especially towards the public morality clause in relation to the rights of women and even the LGBT community. It is therefore not surprising that strong universalism was identified in thirteen critical articles, in one balanced and in one positive article, while moderate universalism could be detected in one critical and one positive article. No article, not even the positive ones, contained signs of weak universalism, nor any form of cultural relativism, which supports the conclusion that the *Phnom Penh Post* shows closest alignment to strong universalism.

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<sup>268</sup> Ibid.

<sup>269</sup> White, "ASEAN Signs Off."

## Conclusion

When the AHRD was unanimously adopted in November 2012 by ASEAN member states, it was seen as a landmark agreement. However, several statements of CSOs, governments and even scholars were critical of the declaration, arguing it could undermine the existing international human rights standards<sup>270</sup>. In this context the AHRD was an interesting and concrete starting point to re-examine universalism versus cultural relativism in Asia. Although some scholars tried to identify cultural relativism in the document itself, none looked towards public opinion in ASEAN member states regarding the document.<sup>271</sup> Thus, this thesis tried to answer the question: ‘To what extent do South East Asian newspapers lean towards universalism or cultural relativism in their articles on the ASEAN Human Rights Declaration in the period between the first of January 2012 to the last of December 2013?’

As explained in the first chapter, this thesis followed the workable definitions of philosopher David Duquette.<sup>272</sup> Although there are other definitions by other scholars such as Addo, Varennes and Donnelly, this one was defined on a spectrum and thus had a larger variety with subtle differences.<sup>273</sup> Duquette identified strong cultural relativism, moderate cultural relativism, weak cultural relativism, weak universalism, moderate universalism and strong universalism. The main difference here between universalism and cultural relativism was their commitment to the implementation of the UHRD and international human rights conventions. Asian values, when used by Asian leaders in the 1990s to challenge Western civil and political freedoms, could be identified as strong cultural relativism, as it emphasised non-interference and the uniqueness of Asian values which was seen as incompatible to western rights. The AHRD, adopted by Asian leaders a decade later, was accused of cultural relativism by Clarke, Fisher and Subramaniam, which was not surprising seeing the leaders history with Asian values.<sup>274</sup> This thesis pointed out that only weak cultural relativism could apply, as it did recognise

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<sup>270</sup> See for example: Asia Pacific Regional Office, “The ASEAN Declaration”; Office of the Spokesperson of the United States Department of State, “ASEAN Declaration on Human Rights” and Southwick, “Bumpy Road to the ASEAN Human Rights Declaration.”

<sup>271</sup> Clarke, “The evolving ASEAN Human Rights System,” 24; Fisher, “The Regional and National Context Under the ASEAN Human Rights Declaration and Its Implications for Minority Rights,” 6 and Subramaniam, “The ASEAN Human Rights Declaration and Indigenous Rights,” 3–6.

<sup>272</sup> Duquette, “Universalism and Relativism in Human Rights,” 55.

<sup>273</sup> Addo, “Practice of United Nations Human Rights Treaty Bodies in the Reconciliation of Cultural Diversity with Universal Respect for Human Rights,” 83, Varennes, “The Fallacies in the “Universalism Versus Cultural Relativism” Debate in Human Rights Law,” 602–3 Donnelly, *Universal Human Rights in Theory and Practice*, 89–90.

<sup>274</sup> Clarke, “The evolving ASEAN Human Rights System,” 24; Fisher, “The Regional and National Context Under the ASEAN Human Rights Declaration and Its Implications for Minority Rights,” 6 and Subramaniam, “The ASEAN Human Rights Declaration and Indigenous Rights,” 3–6.

almost all rights from the UDHR and conventions, but left plenty of room for possible alterations. In order to analyse how public opinion in South East Asian countries reacted to this weak cultural relativist AHRD and if their arguments leaned towards cultural relativism or universalism, the chapter introduced selection criteria. These aimed for the largest number of articles from free independent media, based on the assumption that countries with a strong opinion during the drafting process would have an interested media and their availability in Factiva. This resulted in a total of 86 relevant articles from the *Jakarta Post* in Indonesia, the *Bangkok Post* in Thailand and the *Phnom Penh Post* in Cambodia between the first of January 2012 and the end of December 2013.

These articles have been analysed in the second, third and fourth chapter, which also provided background information on the discussed countries. The detailed conclusions of each chapter provide room to combine the results to answer the research question in this conclusion. Thailand and Indonesia championed universal human rights in the drafting of the AHRD, while Cambodia joined Laos and Vietnam in arguing for a more conservative document.<sup>275</sup> ASEAN settled for adopted version in November 2012, which was weak cultural relativist, but their main English newspapers did not support this. Most articles in each newspaper was critical, namely 23 of the 40 in the *Jakarta Post*, 13 of the 25 in the *Bangkok Post* and 15 of the 21 in the *Phnom Penh Post*. Although all three newspapers had a different starting point from when the critical articles became more detailed, the majority were written between those moments and the adoption of the declaration. For Indonesia, this was June 2012, when a leaked draft made criticism more detailed, especially towards the clauses on public morality and national laws and the missing rights of minorities such as LGBTIQ. In Thailand's case, this was after a civil society consultation in September 2012, when criticism became focussed on missing rights for LGBT and the public morality and national security clause. The moment for Cambodia came after a civil society consultation in July, when criticism concentrated on the public morality clause in relation to the rights of women and even LGBT.

Most articles showed signs of strong universalism, namely 23 in the *Jakarta Post*, 13 in the *Bangkok Post* and 15 in the *Phnom Penh Post*. This might suggest that all critical articles contained only strong universalism, but this was not the case. In the *Jakarta Post*, three positive and one balanced article showed also signs of strong universalism, while some critical articles showed signs of moderate universalism. The same happened in the *Bangkok Post*, where one balanced article contained strong universalism and *Phnom Penh Post*, where one positive and one balanced article showed strong

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<sup>275</sup> Clarke, "The evolving ASEAN Human Rights System," 19.

universalism. Although no form of cultural relativism was found in all three newspapers, weak universalism did occur four times in the *Jakarta Post* and two times the *Bangkok Post*. However, these were mostly positive opinion articles written by (former) government officials, not the newspaper journalists themselves, which suggested the newspapers only allowed room for other thoughts but did not necessarily agree with it. Also, from all fifteen positive articles together, more often strong or moderate universalism, namely nine times, was found than weak universalism, only five times. This supports the conclusion that all newspapers leaned more towards universalism and strong universalism specifically, as the articles showed hope for a stronger declaration with as few limitations as possible on human rights. The researched newspapers did not show any signs of the strong form of cultural relativism which could be found in the Asian leaders' version of Asian values and the weak form of cultural relativism identified in the AHRD. This is in line with Gomez and Ramcharan's research, as they concluded that civil society was critical during the drafting process and leaned towards universalism.<sup>276</sup> It is thus plausible to conclude that cultural relativism, and thus the once fiercely proclaimed Asian values by ASEAN leaders, are retreating or have been for a while among the educated middle and upper classes in Indonesia, Thailand and Cambodia.

Even so, it is important to remark, that this thesis does not try to generalize this conclusion to public opinion in South East Asia as a whole. Firstly, the research included only three ASEAN countries. The selection criteria did not include countries which did not take a strong position on the AHRD or countries with unfree press. This resulted in Indonesia, Thailand and Cambodia which all ratified quite a few human rights conventions, while some countries which did not took a rather strong opinion such as Brunei, Malaysia and Singapore, ratified only two or three.<sup>277</sup> Secondly, English newspapers have been researched, which reach only the educated middle and upper classes. Further research thus needs to be done on more countries in South East Asia, also including more newspapers in national languages to come to a broader conclusion. Surveys would also be valuable, especially in countries with state controlled media, as there is still debate on the influence of media on public opinion.<sup>278</sup> Nevertheless, this thesis provides a valuable starting point as it moves beyond the existing literature on the AHRD by combining the observations from secondary sources on the AHRD from foreign organisations such as Human Rights Watch and scholars such as Doyle, Fisher, Renshaw and

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<sup>276</sup> Gomez and Ramcharan, "The Protection Of Human Rights In Southeast Asia," 1-3, 30.

<sup>277</sup> Davies, "States of Compliance?" 419.

<sup>278</sup> Erickson, "Mass Media, Crime, Law and Justice," 219-23, Gamson, *Talking Politics*, 6-7, Glynn et al., *Public Opinion*, 82 and Kull, Ramsay and Lewis, "Misperceptions, the Media, and the Iraq War," 591-96.

Southwick with public opinion observations from the region itself.<sup>279</sup> This public opinion might not incorporate the entire region, nor include all classes, but these newspapers are read by the middle and upper classes. Knowing their opinion is valuable, as they include political elites and opinion makers. These people have something to lose by voicing their opinion and are, at the same time, in a position to influence the government and the rest of society.

Looking back on the critical article of Reuters on the ASEAN leaders who skirted around the subject of mass exodus of Rohingya Muslims from Myanmar during an EAS in November 2017, the *Jakarta Post*, the *Bangkok Post* and the *Phnom Penh Post* would most likely disapprove as well. They, and the educated classes who read them, probably agreed with the disappointed human rights groups, who hoped for a tough stand on the humanitarian crisis.

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<sup>279</sup> Doyle, “The Asean Human Rights Declaration and the Implications of Recent Southeast Asian Initiatives in Human Rights Institution-Building and Standard-Setting,” 98; Fisher, “The Regional and National Context Under the ASEAN Human Rights Declaration and Its Implications for Minority Rights,” 6; Renshaw, “The ASEAN Human Rights Declaration 2012,” 577–79; Southwick, “Bumpy Road to the ASEAN Human Rights Declaration,” 1–2 and Subramaniam, “The ASEAN Human Rights Declaration and Indigenous Rights,” 3–6.

## Appendices

### Appendix A: A list of the nine core international human rights instruments

The United Nations Office of the High Commissioner on Human Rights states that there are nine core international human rights instruments which are legally binding<sup>280</sup>:

1. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, 21 December, 1965)
2. International Covenant on Civil and Political Rights (ICCPR, 16 December, 1966)
3. International Covenant on Economic, Social, and Cultural Rights (ICESCR, 16 December, 1966)
4. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 18 December, 1979)
5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 10 December, 1984)
6. Convention on the Rights of the Child (CRC, 20 November, 1989)
7. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPMW, 18 December, 1990)
8. International Convention for the Protection of All Persons from Enforced Disappearance (ICPED, 20 December, 2006)
9. Convention on the Rights of Persons with Disabilities (CRPD, 13 December, 2006)

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<sup>280</sup> Office of the High Commissioner for Human Rights, “The Core International Human Rights Instruments and their Monitoring Bodies,” Office of the High Commissioner for Human Rights, accessed October 11, 2018, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>.

## Appendix B: The full text of the ASEAN Human Rights Declaration

### ASEAN HUMAN RIGHTS DECLARATION

WE, the Heads of State/Government of the Member States of the Association of Southeast Asian Nations (hereinafter referred to as “ASEAN”), namely Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People’s Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, on the occasion of the 21st ASEAN Summit in Phnom Penh, Cambodia.

REAFFIRMING our adherence to the purposes and principles of ASEAN as enshrined in the ASEAN Charter, in particular the respect for and promotion and protection of human rights and fundamental freedoms, as well as the principles of democracy, the rule of law and good governance;

REAFFIRMING FURTHER our commitment to the Universal Declaration of Human Rights, the Charter of the United Nations, the Vienna Declaration and Programme of Action, and other international human rights instruments to which ASEAN Member States are parties;

REAFFIRMING ALSO the importance of ASEAN’s efforts in promoting human rights, including the Declaration of the Advancement of Women in the ASEAN Region and the Declaration on the Elimination of Violence against Women in the ASEAN Region;

CONVINCED that this Declaration will help establish a framework for human rights cooperation in the region and contribute to the ASEAN community building process;

HEREBY DECLARE AS FOLLOWS:

### GENERAL PRINCIPLES

1. All persons are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of humanity.
2. Every person is entitled to the rights and freedoms set forth herein, without distinction of any kind, such as race, gender, age, language, religion, political or other opinion, national or social origin, economic status, birth, disability or other status.
3. Every person has the right of recognition everywhere as a person before the law. Every person is equal before the law. Every person is entitled without discrimination to equal protection of the law.
4. The rights of women, children, the elderly, persons with disabilities, migrant workers, and vulnerable and marginalised groups are an inalienable, integral and indivisible part of human rights and fundamental freedoms.
5. Every person has the right to an effective and enforceable remedy, to be determined by a court or other competent authorities, for acts violating the rights granted to that person by the constitution or by law.
6. The enjoyment of human rights and fundamental freedoms must be balanced with the performance of corresponding duties as every person has responsibilities to all other individuals, the community and the society where one lives. It is ultimately the primary responsibility of all ASEAN Member States to promote and protect all human rights and fundamental freedoms.
7. All human rights are universal, indivisible, interdependent and interrelated. All human rights and fundamental freedoms in this Declaration must be treated in a fair and equal manner, on the same footing and with the same emphasis. At the same time, 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.
8. The human rights and fundamental freedoms of every person shall be exercised with due regard to the human rights and fundamental freedoms of others. The exercise of human rights and fundamental freedoms shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition for the human rights and fundamental freedoms of others, and to meet the just requirements of national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society.

9. In the realisation of the human rights and freedoms contained in this Declaration, the principles of impartiality, objectivity, non-selectivity, non-discrimination, non-confrontation and avoidance of double standards and politicisation, should always be upheld. The process of such realisation shall take into account peoples' participation, inclusivity and the need for accountability.

## CIVIL AND POLITICAL RIGHTS

10. ASEAN Member States affirm all the civil and political rights in the Universal Declaration of Human Rights. Specifically, ASEAN Member States affirm the following rights and fundamental freedoms:
11. Every person has an inherent right to life which shall be protected by law. No person shall be deprived of life save in accordance with law.
12. Every person has the right to personal liberty and security. No person shall be subject to arbitrary arrest, search, detention, abduction or any other form of deprivation of liberty.
13. No person shall be held in servitude or slavery in any of its forms, or be subject to human smuggling or trafficking in persons, including for the purpose of trafficking in human organs.
14. No person shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.
15. Every person has the right to freedom of movement and residence within the borders of each State. Every person has the right to leave any country including his or her own, and to return to his or her country.
16. Every person has the right to seek and receive asylum in another State in accordance with the laws of such State and applicable international agreements.
17. Every person has the right to own, use, dispose of and give that person's lawfully acquired possessions alone or in association with others. No person shall be arbitrarily deprived of such property.
18. Every person has the right to a nationality as prescribed by law. No person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality.
19. The family as the natural and fundamental unit of society is entitled to protection by society and each ASEAN Member State. Men and women of full age have the right to marry on the

basis of their free and full consent, to found a family and to dissolve a marriage, as prescribed by law.

20. (1) Every person charged with a criminal offence shall be presumed innocent until proved guilty according to law in a fair and public trial, by a competent, independent and impartial tribunal, at which the accused is guaranteed the right to defence.  
(2) No person shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed and no person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed.  
(3) No person shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure of each ASEAN Member State.
21. Every person has the right to be free from arbitrary interference with his or her privacy, family, home or correspondence including personal data, or to attacks upon that person's honour and reputation. Every person has the right to the protection of the law against such interference or attacks.
22. Every person has the right to freedom of thought, conscience and religion. All forms of intolerance, discrimination and incitement of hatred based on religion and beliefs shall be eliminated.
23. Every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person's choice.
24. Every person has the right to freedom of peaceful assembly.
25. (1) Every person who is a citizen of his or her country has the right to participate in the government of his or her country, either directly or indirectly through democratically elected representatives, in accordance with national law.  
(2) Every citizen has the right to vote in periodic and genuine elections, which should be by universal and equal suffrage and by secret ballot, guaranteeing the free expression of the will of the electors, in accordance with national law.

## ECONOMIC, SOCIAL AND CULTURAL RIGHTS

26. ASEAN Member States affirm all the economic, social and cultural rights in the Universal Declaration of Human Rights. Specifically, ASEAN Member States affirm the following:
27. (1) Every person has the right to work, to the free choice of employment, to enjoy just, decent and favourable conditions of work and to have access to assistance schemes for the unemployed.
- (2) Every person has the right to form trade unions and join the trade union of his or her choice for the protection of his or her interests, in accordance with national laws and regulations.
- (3) No child or any young person shall be subjected to economic and social exploitation. Those who employ children and young people in work harmful to their morals or health, dangerous to life, or likely to hamper their normal development, including their education should be punished by law. ASEAN Member States should also set age limits below which the paid employment of child labour should be prohibited and punished by law.
28. Every person has the right to an adequate standard of living for himself or herself and his or her family including:
- a. The right to adequate and affordable food, freedom from hunger and access to safe and nutritious food;
  - b. The right to clothing;
  - c. The right to adequate and affordable housing;
  - d. The right to medical care and necessary social services;
  - e. The right to safe drinking water and sanitation;
  - f. The right to a safe, clean and sustainable environment.
29. (1) Every person has the right to the enjoyment of the highest attainable standard of physical, mental and reproductive health, to basic and affordable health-care services, and to have access to medical facilities.
- (2) The ASEAN Member States shall create a positive environment in overcoming stigma, silence, denial and discrimination in the prevention, treatment, care and support of people suffering from communicable diseases, including HIV/AIDS.
30. (1) Every person shall have the right to social security, including social insurance where available, which assists him or her to secure the means for a dignified and decent existence.

- (2) Special protection should be accorded to mothers during a reasonable period as determined by national laws and regulations before and after childbirth. During such period, working mothers should be accorded paid leave or leave with adequate social security benefits.
- (3) Motherhood and childhood are entitled to special care and assistance. Every child, whether born in or out of wedlock, shall enjoy the same social protection.
31. (1) Every person has the right to education.
- (2) Primary education shall be compulsory and made available free to all. Secondary education in its different forms shall be available and accessible to all through every appropriate means. Technical and vocational education shall be made generally available. Higher education shall be equally accessible to all on the basis of merit.
- (3) Education shall be directed to the full development of the human personality and the sense of his or her dignity. Education shall strengthen the respect for human rights and fundamental freedoms in ASEAN Member States. Furthermore, education shall enable all persons to participate effectively in their respective societies, promote understanding, tolerance and friendship among all nations, racial and religious groups, and enhance the activities of ASEAN for the maintenance of peace.
32. Every person has the right, individually or in association with others, to freely take part in cultural life, to enjoy the arts and the benefits of scientific progress and its applications and to benefit from the protection of the moral and material interests resulting from any scientific, literary or appropriate artistic production of which one is the author.
33. ASEAN Member States should take steps, individually and through regional and international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of economic, social and cultural rights recognised in this Declaration.
34. ASEAN Member States may determine the extent to which they would guarantee the economic and social rights found in this Declaration to non-nationals, with due regard to human rights and the organisation and resources of their respective national economies.

## RIGHT TO DEVELOPMENT

35. The right to development is an inalienable human right by virtue of which every human person and the peoples of ASEAN are entitled to participate in, contribute to, enjoy and benefit

equitably and sustainably from economic, social, cultural and political development. The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations. While development facilitates and is necessary for the enjoyment of all human rights, the lack of development may not be invoked to justify the violations of internationally recognised human rights.

36. ASEAN Member States should adopt meaningful people-oriented and gender responsive development programmes aimed at poverty alleviation, the creation of conditions including the protection and sustainability of the environment for the peoples of ASEAN to enjoy all human rights recognised in this Declaration on an equitable basis, and the progressive narrowing of the development gap within ASEAN.
37. ASEAN Member States recognise that the implementation of the right to development requires effective development policies at the national level as well as equitable economic relations, international cooperation and a favourable international economic environment. ASEAN Member States should mainstream the multidimensional aspects of the right to development into the relevant areas of ASEAN community building and beyond, and shall work with the international community to promote equitable and sustainable development, fair trade practices and effective international cooperation.

## RIGHT TO PEACE

38. Every person and the peoples of ASEAN have the right to enjoy peace within an ASEAN framework of security and stability, neutrality and freedom, such that the rights set forth in this Declaration can be fully realised. To this end, ASEAN Member States should continue to enhance friendship and cooperation in the furtherance of peace, harmony and stability in the region.

## COOPERATION IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

39. ASEAN Member States share a common interest in and commitment to the promotion and protection of human rights and fundamental freedoms which shall be achieved through, inter alia, cooperation with one another as well as with relevant national, regional and international institutions/organisations, in accordance with the ASEAN Charter.

40. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to perform any act aimed at undermining the purposes and principles of ASEAN, or at the destruction of any of the rights and fundamental freedoms set forth in this Declaration and international human rights instruments to which ASEAN Member States are parties.

Adopted by the Heads of State/Government of ASEAN Member States at Phnom Penh, Cambodia, this Eighteenth Day of November in the Year Two Thousand and Twelve, in one single original copy in the English Language.

November 19th, 2012.<sup>281</sup>

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<sup>281</sup> Association of Southeast Asian Nations, “ASEAN Human Rights Declaration.”

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