



CULTURES & CIVILISATIONS DIALOGUE



ASEF “Talks on the Hill”

Cross-Examining Justice:
Cultural, Religious and Social conceptions of Justice in
Asia & Europe

Final Report

This is the report of the **fourth Talks on the Hill meeting** organised under the Cultures & Civilisations Dialogue programme developed by the Intellectual Exchange department of the Asia Europe Foundation. This meeting was entitled “**Cross-Examining Justice: Cultural, Religious and Social Conceptions of Justice in Asia & Europe,**” and began with a reception on the evening of the 17th of October, and ended in the late afternoon on the 19th.

This broad topic of justice was discussed through the three **lenses of culture, religion and society**. In line with the theme of the discussion, a case study was discussed on the topic of **capital punishment**, mainly because of the high pertinence of this issue to people in both regions as well as the fact that it remains at the core of any moral, ethical, religious and/or practical debate on the topic of Justice.

The 4th Asia Europe Meeting (ASEM) Summit in Copenhagen (2002) stressed the need to promote “unity in diversity” among the various cultures represented among the 25 ASEM countries. ASEF was asked to accompany this initiative through its own “Civil Society” architecture. The Cultures & Civilisations Dialogue Programme was established with this realisation, and primarily to promote understanding between the two regions of Asia and Europe, and also facilitate leaders of civil society meeting, interacting and engaging with one another and with audiences in the opposite regions. Within this programme, ASEF initiated the “Talks on the Hill” series to allow for frank and open discussion on issues of pertinence to the two regions in a small closed-door setting.

Process

This “Talks on the Hill” brought together 15 distinguished personalities from research, legal, academic and activist backgrounds to engage in this unique endeavour for a cross-disciplinary brainstorming exchange. The focus of the meeting was on encouraging free debate on this topic with a very high level of engagement by all the participants. The “Talks on the Hill” meeting series was devised to promote the sharing of knowledge on such controversial and often divisive issues. Although these sessions may not necessarily result in consensus and recommendations, the intensity and depth of the debates do result in concrete learning and understanding for those involved.

In keeping with the ground rules of the meeting, this report does not quote nor attribute remarks, comments or ideas to specific individuals. In order to facilitate dialogue and communication, the meeting itself, and this report tries to avoid the use of any “jargon” or acronyms.

Session 1

In the opening session, participants were asked to speak about their ideas concerning the agenda that was proposed as well as to elaborate on their personal ideas on the concept of justice.

All the participants agreed with the general rationale of the agenda, but several commented that the agenda focused too much on **criminal justice** and further said that an important aspect to consider in addition to this would be **social justice** as individuals engage with social justice most often in their daily lives. Criminal justice (*as it is presented in the agenda*) also examined the topic from the point of view of the state instead of the citizen. It is important to keep in mind the conceptions of justice by citizens instead of the state.

There were also proposals **to bring into the discussion the topics of human rights and terrorism** – these being highly pertinent and topical, and closely linked with the idea of justice. Specifically, the request was to *discuss aspects of justice pertaining to civilians and civil society in the tension between counter terrorism policy and human rights*. In relation to terrorism, it was felt that in addressing questions and notions of justice (social), one would therefore be able to address root causes.

A sub-section of the agenda sought to deal with the concepts of “Victor’s Justice” and “Justice of the Elite.” Practically however, these issues were not discussed during the meeting, as other issues as presented below cropped up, and were thought to be of higher priority for the purposes of this discussion.

In addition, it was thought to be important to discuss this topic through the lens of **gender**. However, again time did not allow for the participants to delve enough into this topic.

Overall, it was felt that it is important to address concrete problems within their social and cultural frameworks instead of dealing with abstract notions.

Cultural Conceptions of Justice in Asia and Europe

Following from the presentations of the various religious, philosophical and political conceptions of justice as presented in the briefing paper, the participants delved deeper into their understandings of justice. The discussion turned to analysing the differences in interpretations of justice between Asia and Europe. Some suggested that the characterising aspect of understanding justice in Europe was a focus on the individual as opposed to the Asian tendency to strive for overall harmony in society. In illustrating this, an Asian participant referred to an East Asian Scholar who expresses justice as a **beautiful combination of truth, goodness and beauty**. European conceptions of justice instead were expressed as **“Truth in Action.”**

Some other participants pointed out though, that in Ancient Greece (pre-Socratic) there were similarities with this Asian interpretation in that the **goal of scholarship was to combine beauty and goodness in order to attain truth.**

Linked to the Asian conception of justice, some participants spoke about the **Universal Declaration on Human Responsibilities** that was put forth in 1997 by InterAction Council (see *Annex 1*) as a complement to the Universal Declaration on Human Rights. This declaration was closer in line with Asian perspectives on justice – essentially, the balance between rights and duties – although this proposal was never adopted, some of the participants expressed clear support for it.

Contextualising Justice

One participant expressed a view that persons and individuals do not exist, and that all justice should be seen in the context of communities. An Asian participant concurred in that justice is context specific and differs from place to place.

At a more abstract level, dealing with the ideas of justice, it was felt that two characteristics justice should have is that it had to be both **dynamic** and **universal**. By dynamic it was meant that justice had to move with the times accepting and appreciating that norms of justice change with societal change and progress, while by universal it was meant that it should be applicable across the board and transplantable to most situations. With regards to how justice is **practiced** it was felt that ideally it should be **dynamic** in nature. With regards to what justice **should be** it was argued that it should be **universal**.

This discussion was seen as particularly important in the context of the Islamisation of the law in a few countries in Asia – where there was felt to be increased need for the universality of Justice that transcend religion and state boundaries. This was especially true in situations where different states in a federal country for instance have different points of reference in administering justice.

For Justice in Asia – Don't start with the Law

Moving on to the actual practice of law and justice, some Asian participants expressed a view that in Asia the law does not work while in Europe it does. By this, it was explained that while treaties and other internationally binding laws may exist legally or in theory, this does not translate into them being practiced with national laws.

An important point that was raised was in relation to **judicial independence and trust in the justice system**. One European participant offered the view that the difference really lay in the perception of the authenticity of judicial independence, as in his view, the system was corrupt in almost all countries – whether Asian or European.

The Death Penalty – An Irrational Debate

A quick survey was taken of the group to assess their positions on the topic of capital punishment. Most of the participants supported the abolishment of the death penalty with a few exceptions among the Asian participants. The following were some of the main points put forward **in support of its abolishment**:

1. State as killer – The death penalty is cruel and unusual punishment, and the state cannot violate the right to life,
2. The deterrence argument that is often put forward in support of capital punishment has been proved by studies to be inconclusive,

Box 1.

Public opinion vs public outcry

A case that was discussed somewhat at length in relation to this topic was the Marc Dutroux case in Belgium. The group noted that due to the extreme barbaric nature of this case, which included child-murder, kidnapping and rape there was an outcry from a sizeable percentage of the population demanding the reinstatement of the death penalty.

On hindsight however, some participants were of the opinion that the public reaction to a particularly heinous crime may have been an outcry against the particular crime but not necessarily indicative that public opinion supports the death penalty.

3. Margin of error – Capital punishment was seen to be too harsh and final a punishment given that in any case there is always the possibility of errors being made in relation to the accused,
4. Insufficient knowledge about the psychology of murderers.

In favour of the death penalty, some felt that it was a just punishment especially in cases of certain types of murder. It was also felt by one participant that while the eventual abolishment of this punishment would be desirable, some countries were not yet prepared for that step.

An Irrational Argument -

Overall, it was felt that the death penalty argument can be quite rational, however, at the end of the day, one must realise that the final argument *pro* or *contra* the death penalty is always the fruit of a political and moral choice. As such, the choice has necessarily an irrational aspect.

In the discourse between Asia and Europe, and in relation to the fact that all the European Union countries have abolished capital punishment but it remains in place at least in theory in all Asian ASEM countries with the exception of Cambodia, it was suggested that Europeans broaching the subject to their Asian counterparts can be met with hostility and seen as missionaries.

A Pragmatic Approach to Capital Punishment -

From the point of view of the abolitionists, a pragmatic approach to dealing with this situation would be to work on **reducing the number of crimes where the death penalty may be implemented** first with a view towards its eventual de facto abolishment.

Models of Judicial Systems

The discussion started off by noting that many countries in Asia have adopted legal systems and influences of European countries depending largely on their history under colonisation – although not always. In particular, the influences were German, English and French.

Several participants from Asia commented on possible problems arising from the **hybridity** that has resulted from the combination of European legal systems and Asian influences. Exacerbating this was the process of solving these issues in the post-war era.

A European participant took the opportunity to ask his Asian colleagues **if the notion that the prevailing Asian culture causes a reluctance to take issues to court is true:**

One Asian participant offered that this was to some extent the case in his country with the explanation of an overarching attempt to keep harmony in society and deference and respect especially to individuals who were older or higher up in the hierarchy. Other participants from Asia agreed and the conversation turned to **Alternative Dispute Resolution**, which is particularly popular in Asia for those reasons. Alternative Dispute Resolution consists broadly of a variety of approaches to early intervention and dispute resolution. Many of these approaches include the use of a neutral individual such as a mediator who can assist disputing parties in resolving their disagreements. This mechanism increases the parties' opportunities to resolve disputes prior to or during the use of formal administrative procedures and litigation.

Some Europeans concurred that Alternative Dispute Resolution was also becoming increasingly popular in their countries but for reasons such as cost-saving.

Related to the topic of hybridity in judicial systems was the **coexistence of different systems in one state**. In particular, some participants expressed interest in learning more about how some Asian countries were coping with having both civil law and Islamic law operating in parallel in their societies. One participant expressed a strong call for Europeans to learn more from Asia about how this works.

Interestingly, some European participants expressed an interest in learning from the Asian – as to how various judicial systems could co-exist within the one state, while one Asian participant remarked on wanting to learn from at least the perceived uniformity in European institutions and judicial philosophy as he felt that this was an important aspect to overcoming nationalism.

Box 2.

**Can Asians think of Justice?
Intellectual Imperialism by the West**

The group discussed at some length the famous legal philosopher John Rawls as one of the leaders in this field, which then prompted a European participant to express his regret that all the philosophers listed in the briefing paper had been Western. He asked if the Asians resented this and/or thought of it as a type of **'intellectual imperialism.'**

Among the various things that were discussed was the acknowledgement that it was indeed Arab scholars who brought the teachings of Aristotle and other Greek philosophers to Europe, and that in Asia equal reliance and importance was usually given to philosophers and thinkers from both sides. An opinion was offered though, that some Asians had the tendency to fight against everything that they associate with this colonizers and therefore reject everything "western."

In closing, several Asian thinkers were singled out for special mention, including, Mahatma Gandhi (India), Wu Chingshung (China), Li Hangnyong (Korea) and Amartya Sen (India).

Status of Judicial Cooperation

Following an important discussion on the major philosophies of justice in Asia & Europe (see Box 2.), the group began a session on the Status of Judicial Cooperation. Two major points were raised in this discussion – that of **Reservations in International Treaties** and the idea of **Universal Jurisdiction**.

On the topic of reservations, one school of thought was that reservations completely undermine the treaty, and in fact having reservations goes against the culture of the treaty. It is for this reason, that the Statute of the International Criminal Court does not allow reservations. In this case however, it was highlighted that some countries had found an alternative way around this – by employing **Interpretive Declarations** (*for example France has interpreted the ICC's list of war crimes as only relating to conventional weapons, not the possible use of nuclear arms*).

The second school of thought here was that employing the use of reservations remains the sovereign right of any State.

As the discussion went further into the topic of universal jurisdiction, there were again two schools of thought with regards to whether international law

should be implemented only by a permanent international instrument, such as the ICJ or by domestic courts as well. Some participants thought that there were some good aspects to this idea – mainly that if a crime is committed against "humanity," then the whole of humanity has a right, or even a duty to judge that crime.

- Arguments in favour of universal jurisdiction also observed that universal jurisdiction was a legal reality provided for by various international instruments (the 1949 Geneva Conventions on the Victims of War, the UN Drugs Conventions, the UN Torture Convention etc).
- Arguments against universal jurisdiction that were offered were that it would lead to more instability as
 1. States would be unwilling to devote the resources to any case unless they were directly involved or affected by it,
 2. Each country would apply the law differently, which would affect the coherent development of the law.

Trademarks and copyrights as barriers to trade vs. plagiarism

A participant underlines that a major factor that was indeed threatening the **integrity of various judicial systems was the globalisation** of trade and business. Following the discussion on international law and the extent to which the different judicial systems hamper international business and investment, a participant remarked that **private law actually accounts for up to 80% of international judicial cooperation**. Following this there was a short presentation by one of the participants on his ideas on this topic.

His impressions were that trademarks and patents are used brazenly as barriers to access markets, and were protected by commercial and civil law fortified by criminal law sanctions. In his view, as far as copyrights and patents go, the original artist or inventor does not mean anything.

Ultimately this represented a growing tension between personally based rights and big business commerce. Further the countries that he felt suffered the most from this were the Asian ones. Very firmly, his stated stand was that there should be a free transfer of information.

Counter to this however, was the issue of plagiarism, which was raised by another participant. Having free and open transfers of information, however ideal, would invariably result in plagiarism. Certain technologies were acknowledged to have been created to stem plagiarism, however the basic problem here is that it is not possible to litigate plagiarism.

Taking the discussion further into international trade, the participants closed with short reflections on how the various societies and countries perceived the influence of institutions like the World Trade Organisation

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