

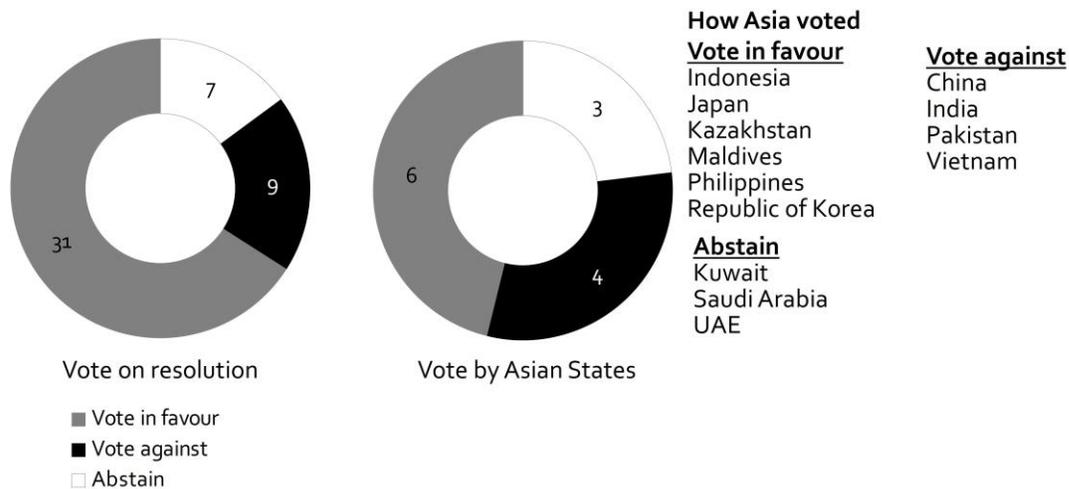
Asian State positions at the Human Rights Council on relevant thematic issues

RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION

Resolution on the Promotion and Protection of Human Rights in the Context of Peaceful Protests

Resolution 25/38 on the promotion and protection of human rights in the context peaceful protests was adopted by a vote of 31 in favour, 9 against and 7 abstentions. Indonesia, Japan, Kazakhstan, Maldives, Philippines, and Republic of Korea from the Asian group voted in favour while China, India, Pakistan, and Vietnam voted against the resolution. From the Asian group, Kuwait, Saudi Arabia and UAE abstained in the vote.

A/HRC/RES/25/38 The promotion and protection of human rights in the context of peaceful protests



The resolution, tabled by Switzerland, Costa Rica and Turkey, sought to underline the obligations of States to create a safe and enabling environment for protestors exercising their right to peaceful assembly. In this context it also urged States to ensure that domestic legislation relating to protests is in conformity with international human rights standards. The resolution calls upon States to

- promote a safe and enabling environment for individuals and groups to exercise their rights to freedom of peaceful assembly, of expression and of association;
- facilitate peaceful protests by providing protestors with access to public space and protecting them, without discrimination against any forms of threats and harassment;
- pay particular attention to the safety and protection of women human rights defenders, as well as journalists and media workers covering peaceful protests;
- avoid using force during peaceful protests;
- ensure that their domestic legislation and procedures are consistent with the international obligations and commitments in relation to the use of force;
- investigate any significant injury committed during protests;
- ensure adequate training of officials exercising law enforcement duties, and, where applicable, promote adequate training for private personnel acting on behalf of a State;

The resolution requests the High Commissioner for Human Rights to prepare guidelines for facilitating and protecting peaceful protests based on good practices.

China, India and Vietnam from Asian Group spoke to explain their vote against the resolution. While China and Vietnam said the resolution was not balanced or objective. India said as a democratic country with respect for rule of law, its constitution guarantees right to freedom of assembly and speech, but reasonable restrictions should be imposed on their enjoyment.

The adoption of the resolution was far from smooth. A like-minded group of states led by South Africa and composed of **Algeria, Bahrain, Belarus, China, Cuba, Egypt, Ethiopia, India, Russia, Saudi Arabia, UAE and Venezuela**, called for a vote based on four amendments that they proposed. All four resolutions were rejected by vote. Not only cross-regional but also regional differences arose when it came to the voting. In Asia, while China, India and Vietnam supported the amendments to weaken the text of the resolution, Maldives stated that the amendments are inconsistent with existing international human rights law, open to subjective interpretation and undermine the protection of the human rights of protesters. Votes by Japan and the Republic of Korea on the resolution also seem to reflect this position.

Amendments proposed by the like-minded group and how Asian group voted on these resolutions.

- Adding a paragraph to recall the primary responsibility of the state to protect and promote human rights and reaffirm “that national legislation consistent with the Charter and other international obligations of the state in the field of human rights and fundamental freedoms is the legal framework within which protests are conducted.”

This amendment was rejected by a vote of 17 in favour, 22 against and 8 abstentions.

How did Asia vote?

China, India, Indonesia, Kazakhstan, Kuwait, Pakistan, Saudi Arabia, UAE and Vietnam voted in favour
Japan, Maldives and Republic of Korea voted against
Philippines abstained

- Adding a paragraph emphasizing that protests should not constitute threats to national security and the stability of the state.

Amendment was rejected by a vote of 19 in favour, 23 against with 5 abstentions.

How did Asia vote?

China, India, Indonesia, Kazakhstan, Kuwait, Pakistan, Saudi Arabia, UAE and Vietnam voted in favour
Japan, Maldives and Republic of Korea voted against
Philippines abstained

- Additional paragraph urging states “to ensure that organisers and leaders of protests are cognizant that they have duties and responsibilities in regard to the proper conduct of those participating in protests organised under their auspices.”

This amendment was rejected by a vote of 20 in favour, 23 against with 4 abstentions.

How did Asia vote?

China, India, Indonesia, Kazakhstan, Kuwait, Pakistan, Philippines, Saudi Arabia, UAE and Vietnam voted in favour
Japan, Maldives and Republic of Korea voted against

- Adding a reference to the Declaration on the Principles of International Law Concerning Friendly relations among states.

This amendment was rejected by a vote of 16 in favour, 22 against and 9 abstentions.

How did Asia vote?

China, India, Kazakhstan, Kuwait, Pakistan, Saudi Arabia, UAE and Vietnam voted in favour
Japan, Maldives and Republic of Korea voted against
Indonesia and Philippines abstained

The two resolutions of the Council on the topic in 2013 (A/HRC/RES/21/10) and 2012 (A/HRC/RES/19/35) were adopted by consensus of the Council and without much opposition from any state.

Resolutions on civil society space

27th regular session of the Human Rights Council adopted by consensus adopted the resolution on civil society space (A/HRC/RES/27/31). Although the resolution led by Ireland, together with Chile, Japan, Sierra Leone and Tunisia was adopted by consensus of the Council, adoption was far from smooth. Before the adoption, the Council was forced to reject a total of 10 amendments aimed at weakening the text with provisions that run counter to international human rights standards. Many of these amendments were proposed by a group of states consisting of Bahrain, China, Cuba, Egypt, **India**, Russia, South Africa, UAE and Venezuela. Most of these amendments sought to affirm the supremacy of domestic legislations and narrow the scope of the work of civil society.

All amendments proposed to the text except the proposal withdrawn by sponsors were rejected by the Council's vote. From the Asia group only Japan and Republic of Korea voted to reject all 9 amendments that required a vote while India joined China, Pakistan, Kuwait, Saudi Arabia and UAE to adopt all regressive amendments. Maldives voted in favour of two amendments proposed and voted to reject the rest of the amendments. Indonesia, unfortunately, joined the camp that voted in favour of regressive amendments except on three occasions. Philippines on the other hand did not vote in favour of any of the amendments but abstained on all votes except for two amendments that it voted to reject.

Speaking at the adoption of the final text of the resolution, India raised the same issues it raised at the adoption of the resolution on the same topic in 2013 about the ambiguity in the definition of the "civil society". India said the text is unbalanced and responds to issues in an arbitrary manner; civil society must work under national laws, and therefore caution must be exercised. According to India, the Resolution ignores the many differences within civil society and it is important to ensure accountability as national laws must not be undermined.

China and Vietnam raised similar issues concerning the definition of civil society and lack of consensus on the issue.

Indonesia, although agreed in principle to support the resolution, raised concerns about funding of civil society organisations.

In 2013, at the adoption of the resolution 24/31 on Civil society space: creating and maintaining, in law and in practice, a safe and enabling environment (adopted by consensus of the Council), India mounted a strong

opposition to the resolution. In addition to raising concern over definition of civil society, India advocated for stronger restrictions on funding of civil society including use of foreign funding.

HUMAN RIGHTS DEFENDERS

Resolution on the mandate of the Special Rapporteur on the situation of human rights defenders

The Council, by consensus, decided to extend the mandate of the Special Rapporteur on the situation of human rights defenders.

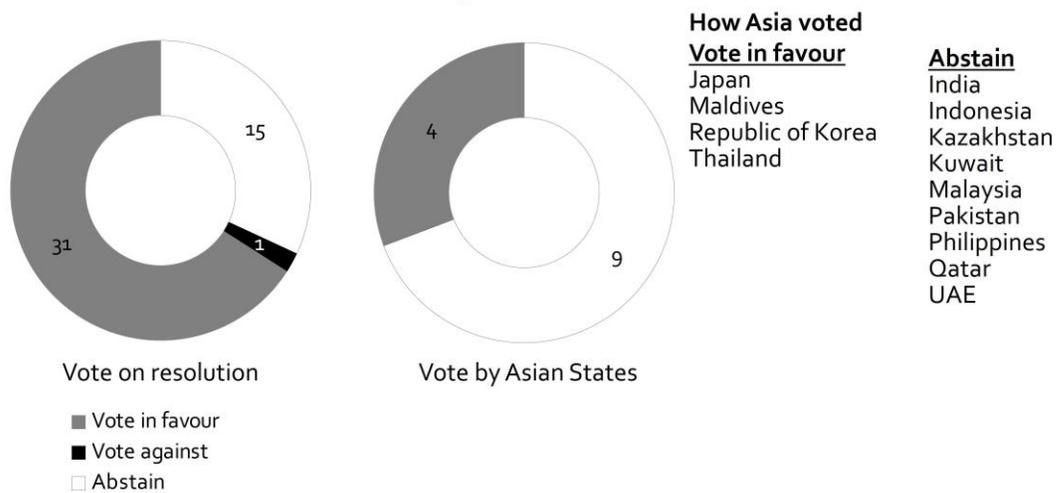
Before the resolution was adopted, the Council, acting by vote, rejected four problematic amendments proposed by Russia to the text of the resolution. These amendments were designed to dilute the language of the resolution and weaken the responsibilities placed on states to cooperate with the Special Rapporteur, and to affirm the supremacy of domestic law over international human rights standards as the legal and juridical framework within which freedoms should be implemented, and propose restrictions on the activities of the HRDs.

China, India, Kuwait, Pakistan, Saudi Arabia, UAE and Vietnam from the Asian group voted in favour all four Russian amendments while Japan, Maldives and Republic of Korea voted against all four votes. Indonesia and Kazakhstan abstained in all four votes and Philippines voted for three and abstained in one.

Reprisals against human rights defenders – Resolution 24/24 on cooperation with the United Nations, its representatives and mechanisms in the field of human rights

24th session of the Human Rights Council September 2013 adopted the resolution 24/24 on cooperation with the United Nations, its representatives and mechanisms in the field of human rights (or the reprisals resolution) by a recorded vote of 31 in favour, 1 against with 15 abstentions. 9 Asian States were among the 15 states that abstained in the vote. 4 States that voted in favour of the resolution were Japan, the Maldives, Republic of Korea and Thailand.

A/HRC/RES/24/24 Cooperation with the United Nations, its representatives and mechanisms in the field of human rights



Resolution 24/24 aims to address the increasing “reports of intimidation and reprisals against individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights.” This highly contested text seeks to reaffirm the right of everyone “to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights” and recognizes the acts of intimidation and reprisal “carried out or tolerated by the State undermine and often violate human rights.” It further calls on States to investigate and “take all appropriate measures to prevent the occurrence of intimidation or reprisals, including, where necessary, by adopting and consequently implementing specific legislation and policies and by issuing appropriate guidance to national authorities in order to effectively protect those who seek to cooperate, cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights from any act of intimidation or reprisal.” Number of States, at the draft stage of the text sought to make reference to the obligations and responsibilities of individuals and civil society organizations that make submissions to or communicate with UN human rights mechanisms in the resolution. They argued that civil society organizations or individuals who cooperate are politically motivated to undermine the State or the government.

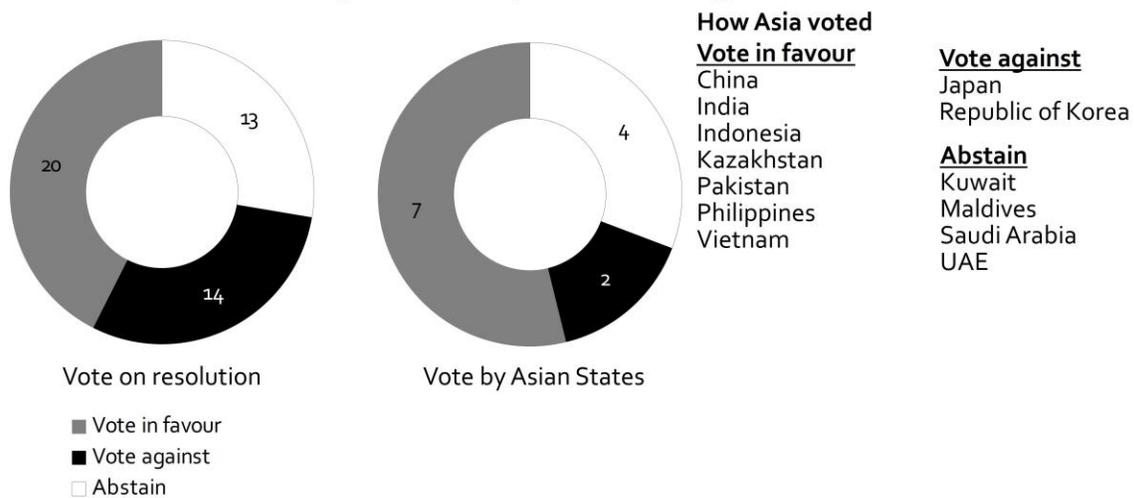
The most contested provisions in the resolution 24/24 was the operative paragraph 7 of the resolution which requests the UN Secretary-General to appoint “a [UN]-wide senior focal point” within the existing UN structures “with the overall objective of supporting and promoting cooperation with the United Nations in the field of human rights, including cooperation with civil society.” Vocal objections to this provision culminated in Gabon, on behalf of the African Group, submitting a motion to the UN General Assembly to defer consideration and action on the Human Rights Council resolution 24/24. This motion was adopted by the General Assembly on 18 December 2013, deferring consideration and action on resolution 24/24, by a recorded vote of 94 in favour to 71 against, with 23 abstentions. Majority of Asian states in the UN General

Assembly voted in favour of this resolution¹. This is the first time a decision by the Human Rights Council was overturned or deferred by the General Assembly, and the States opposed the General Assembly decision to defer the action on 24/24 are concerned that the decision would affect the more than 100 resolutions adopted annually by the Council and “undermine the [UN] human rights institutional architecture.”²

BUSINESS AND HUMAN RIGHTS

At the 26th regular session, Human Rights Council adopted the resolution 26/9 on the elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights (A/HRC/RES/26/9). The resolution was adopted by a vote of 20 in favour, with 14

A/HRC/RES/26/9 Elaboration of international legally binding instrument on TNCs and Other Business Enterprises with respect to human rights



1

UN General Assembly (18 December 2013), General Assembly adopts 68 resolutions, 7 decisions as it takes action on reports of its Third Committee: ‘Country-Specific’ texts draw strong opposition from Member States concerned (UN Doc. No. GA/11475), available online <http://www.un.org/News/Press/docs/2013/ga11475.doc.htm>

2

Ibid.

against and 13 abstentions.

Despite tremendous opposition from WEOG countries, Asian states supported the Ecuador and South Africa-led initiative. With the adoption of the resolution, the Council decided to establish an open-ended intergovernmental working group to elaborate an international legally binding instrument as part of international human rights law to regulate activities of transnational corporations.

Speaking to explain its vote, India acknowledged the impact of the Working group on transnational corporations and other business enterprises and UN guiding principles on business and human rights. However India noted that the impact of the Working Group and the Guiding Principles has been limited for the victims whose human rights have been violated by business operations of transnational corporations.

26th session of the Council also saw the extension of the mandate of the Working Group on the issue of human rights and transnational corporations and other business enterprises for further three years. Resolution was adopted by consensus of the Council.