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ASEAN and Human Rights

**The prospects of implementing a regional mechanism for the promotion
and protection of human rights in Southeast Asia**

Heu Yee Leung

Global interactions increasingly rely on law to govern them. Today, numerous rules dominate the interactions between states and non-state parties. International courts and dispute settlement mechanisms are in place to ensure compliance with commonly agreed norms.

International Law, however, is complex and often lacks universal acceptance. Worse, its influence is disproportionately strong on the poorest countries and countries in crisis. It is in situations of poverty and conflict where international law has the most impact - for better or worse. International legal structures can provide security, stability and access to economic support, but they can just as easily prevent timely and adequate assistance. Development and humanitarian actors must increasingly be aware of their potential as well as their pitfalls.

Good Governance is easily prescribed, but must become a mindset of all involved to make the system work. Less and least developed countries are often governed by constitutions that are complex and inaccessible for their citizens. Without acceptance by their subjects, they weaken and cease to safeguard the nation state against failure. Development assistance must provide more than just models and institutions to move these countries forward.

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Introduction

The end of the Second World War brought a normative shift in international relations as new emphasis was placed on the issue of human rights. In response, the European, American and eventually African human rights regimes were established under the European (1960) and American (1968) conventions and the African Charter (1981) respectively. Notably half a century on, a substantial part of the globe remains untouched by this trend, namely the region of Asia and the Pacific.

The Association of Southeast Asian Nations (ASEAN) is one institution from which a Southeast Asian human rights mechanism could realistically be expected to emerge. It is not only one of the most widely recognized forums for cooperation within the region but, since its inception in 1967, the association has shown the ability to expand in terms of membership as well as areas of activity. More recently, it has been proposed that events of the late 1990s could prove to be important catalysts for further change, with the financial crisis and smoke haze disaster signaling a new role for ASEAN.¹ However, while the association has evolved considerably, the effect and substance of these changes remains questionable. As international pressure for the adaptation of domestic policies to give greater attention to human rights mounts², it will be interesting to see how ASEAN, as possibly the single most important institution of Southeast Asia, will respond. Moreover as the region becomes more open, both internally through democratization and externally through greater involvement in the global economy, the way in which member states confront calls for greater respect for human rights will come into focus.

This essay investigates the prospects of building a Southeast Asian human rights mechanism, specifically through ASEAN. It will begin by looking at the history and tradition of human rights in the region. Then it will discuss the origins and development of regionalism in Southeast Asia, highlighting the successes and failures of ASEAN as well as how it differs from other regional arrangements. Finally, this paper will draw attention to the implications of these features on the possibility of establishing an ASEAN based mechanism for the promotion and protection of human rights, arguing that while such a project is not impossible it is unlikely to be realised in the near future. Furthermore, it is far from obvious to what extent such expansion would be desirable both for the stability of the association as well as the achievement of human rights objectives.

¹ M.C. Abad, Jr., 'The Association of Southeast Asian Nations: challenges and responses', in Wesley, p.55-57

² In September 1991, the EC Commission warned that failure to respect human rights would have a severe impact on EC relations with developing countries including ASEAN, see Acharya (1993), p.28

Human Rights in Southeast Asia

“We have to remember that human rights has a long history in the West and has developed because tyranny, sacrifice, and ‘blood and tears’ have been endured before the concept was perfected after World War II.”

(J. Wanandi)³

Southeast Asia remains one of the few regions of the world without a human rights mechanism of its own even though it has been responsible for its own fair share of violations. On the contrary, the holding of political prisoners continues today in Burma, the repression of refugees and migrant workers remains a problem in Thailand and disappearances are frequently reported across the region.⁴ Perhaps understandably, given the region’s history of foreign interventions and experiences under colonialism, leaders in Southeast Asia have generally taken a defensive approach in discussions relating to human rights. Supporting other leaders of the developing world, they have typically been critical of, for example, external insistence that insufficient attention is persistently given to such problems and suggestions of how they should be dealt with. Actually, the arguments put forward by many developing countries and leaders in Southeast Asia have not been so much opposed to the idea of human rights per se, but more specifically the way in which they have been constructed.

In the run up to the 1993 World Conference on Human Rights in Vienna, the ‘Western’ and ‘developing world’ camps conflicted on four fundamental points.⁵ Firstly, many developing nations contested the notion of universal human rights. While some agreed that rights such as freedom from slavery, freedom of thought and freedom of religion might be more or less absolute, they argued that it did not follow that all human rights were equally non-derogable. On the contrary, they claimed that political rights for example were often relative and more dependent on history, social or cultural values or stage of development. Secondly, many developing nations pointed out Western tendencies to emphasise civil and political rights over social, economic and cultural ones; such categorizations, they suggested, did not necessarily resonate with societies in the developing world. What is the point, many asked, of having the right to freedom of association, if one did not even have basic necessities of life such as food, health or shelter? *“You cannot eat human rights and you cannot eat democracy.”*⁶ Thirdly, subscribers to the ‘Asian values’ debate argued that human rights, as conceived, attached too much importance to individual rights as opposed to community or societal rights and responsibilities. Lastly, developing and Asian nations alike challenged Western leaders for applying double standards. They criticized the increasing use of sanctions as a means of enforcing human rights because not only did they violate principles of non-intervention and state sovereignty as protected by international law but, often causing more harm than good, affronted the very idea of human rights. If ‘the West’ was truly

³ J. Wanandi, Ch.21: Confrontation on Human Rights, in Nagara and Balakrishnan, p.332

⁴ See country reports available at www.hrw.org

⁵ J. Wanandi, *ibid*, p.329-331

⁶ Phrase coined by Argentinean President Alfonsin, June 1998

committed to improving human rights globally some claimed, they had yet to show this eagerness by helping the developing world economically.

While there is not enough space in such a piece to explore the debates surrounding the concept of human rights, it is worth noting that differences do exist in how they are viewed internationally both in terms of their substance and consequences, as highlighted above. Furthermore, within each of these debates, there are noticeable disagreements and numerous interpretations; nowhere is this more apparent than in Southeast Asia.⁷ Suffice it to say that so-called ‘conventional’ notions of human rights are not as firmly established in Southeast Asia as one would expect. As at 2002, only Cambodia, the Philippines, Thailand and Vietnam were all parties to both the International Convention on Civil and Political Rights (ICCPR) and the International Convention on Economics, Social and Cultural Rights (ICESCR).⁸

In 1993, Acharya predicted that human rights would become an increasingly prominent dimension of ASEAN, especially as the organization tried to define itself in the post Cold War era. Yet at least until the late 1990s, there seemed to be little evidence to support such a claim.

The Association of Southeast Asian Nations

“For turbulence, turmoil and troubles come fast and thick and if one tinkers with this mixture, believing it to be non-explosive because nothing has gone wrong for so long.”

(Lee Kwan Yew, Prime Minister of Singapore)⁹

The Association of Southeast Asian Nations (ASEAN) was established in 1967, comprised of Indonesia, Malaysia, the Philippines, Singapore and Thailand. Its original intention, as stated in the preamble of the Bangkok declaration, was to “*establish a firm foundation for common action to promote regional cooperation in Southeast Asia in the spirit of equality and partnership and thereby contribute towards peace, progress and prosperity in the region.*” Its primary objectives included, among others, the acceleration of economic growth, social progress and cultural development, the promotion of regional peace and stability, and collaboration and mutual assistance on matters of common concern (which did not include human rights). Thus it was not envisioned that the association would become a supranational institution nor was it intended to be a stepping stone towards integration. In brief, it was established as an association which would encourage and facilitate understanding and cooperation on the basis of mutual benefit.

It should not be taken for granted that the founding of ASEAN was, at that time, seen as a breakthrough. While there had been earlier attempts towards regional cooperation through, for example, the American led South East Asian Treaty Organization (SEATO) in 1954, the Association of Southeast Asia (1961) and MAPHILINDO (1963), none were successful. As Stremlau explains, at least in the

⁷ see Langlois, Ch.1: the Asian Values Discourse, p.12-24

⁸ For further information on ratifications by ASEAN countries to major human rights conventions and covenants, see Mohamad, p.234-235

⁹ Prime Minister of Singapore, Lee Kwan Yew as quoted by Antolik, p.160

beginning, ASEAN was not based on beliefs in commonality but on shared grievances and affinities. The fall of colonialism had left states with tasks of nation-building as well as economic, social and political consolidation. Additionally, with borders which had been drawn without serious consideration of historical, cultural, economic and social realities, they were also physically very fragile. Sources of instability thus came from both internal and external forces. As the Cold War intensified, these challenges adopted new dimensions; internally, states faced threats of communist subversion and ethnic separatism while externally, they faced the danger of becoming engulfed in the ever pressing great power rivalry. International conflicts quickly spilled over, such as in Indochina, further heightening regional anxieties. Against such a backdrop, it is logical that non-interference and non-intervention later became the twin pillars of ASEAN. Similarly, with economic self-sufficiency seen as crucial for the survival of these new states, it is understandable that significant emphasis was placed on socio-economic development.

ASEAN is often said to be a product of specific historical circumstances and the result of initiatives by the individual states and their leaders. As such, its organization and internal dynamics differ from other regional associations. Firstly, in terms of its overarching structure, ASEAN is a very loose association and organisationally minimalistic. It is not, in comparison to the European Union (EU) for example, dominated by highly developed institutions having instead only small a secretariat and a very nominal budget.¹⁰ Secondly, it is not based on a series of legalistic treaties but instead “*generalised aspirations and expressions of intent*”¹¹ and this is reflected in the vague language of documents such as the Bangkok Declaration. Taking a ‘soft law’ approach, the association is consequently not based on the idea of a legal community but of a social community.¹² Recognising that in some cases regional solutions can prove more effective than national ones, ASEAN is said to have a distinctly corporate culture, favouring pragmatism to formalism. Thirdly, the association is characterised by informality, consultation and consensus-building. Interpersonal contact, primarily between elites, is a dominant feature of cooperation, as is non-confrontation as opposed to open criticism, unlike other regional institutions. “*We have made progress in an ASEAN manner, not through rules and regulations but through Musyawarah and consensus.*”¹³ The ‘ASEAN Way’, as it is called, thus starts with general consensus from which members engage in discussion and consultation to reach a unanimous decision. Finally, and perhaps as a reflection of the above, symbolism remains an important part of regionalism in Southeast Asia. Whether because or in spite of the great diversity within the region, in terms of political setup, levels of economic development as well as social composition, the image of a united Southeast Asia has been a constant feature of ASEAN. In sum, as Antolik describes, ASEAN is based on three principles: the cultural imperative of face-saving, displayed through the creation of and adherence to behavioural expectations rather than naming and shaming; respect, built through regular sessions, communications and consultations which also prevent distancing; and responsibility,

¹⁰ The annual budget of the ASEAN secretariat is on average US\$ 6million, see <<http://www.aseansec.org/10056.htm>>

¹¹ A.J. Harding, ‘Legal Aspects of Regional Integration: the EU and ASEAN Compared’, in Petchsiri

¹² Davidson, Ch.2: Organisational Structure and Legal Personality, p.29

¹³ Prime Minister of Singapore, Lee Kuan Yew as quoted by Davidson, p.41

through the realization that domestic policies can impact upon other members and growing interdependence within the region.

Intra-regional trade has indeed risen since the establishment of ASEAN.¹⁴ While perhaps not as successfully as the EU, ASEAN has also shown the ability to both widen and deepen institutionally. In terms of membership, it has grown from its original five to include Brunei Darussalam (1984), Vietnam (1995), Laos (1997), Myanmar (1997) and Cambodia (1998). It has also been able to recruit dialogue partners such as the European Union, the United States, Australia, China and the UNDP, to name but a few. In this way, it has allowed the small states of Southeast Asia to enhance their position in the international arena. Furthermore, while originally it consisted only of meetings of Foreign Ministers, it has now become a forum for ministers in various fields, ranging from economics and trade to tourism and culture and information.¹⁵

Born out of the Cold War, ASEAN has served, like the EU, to neutralise intra-regional tensions and prevent the emergence of a single regional hegemonic power while allowing the region as a whole to distance itself from foreign interference. In so doing, it has enabled the maintenance of good relations between its members and the coordination of foreign policies at least in some degree even in the most difficult circumstances, for example in controversies over the admission of Myanmar and Cambodia. By defining mutual benefits and creating opportunities for cooperation, as well as reinforcing regional norms, ASEAN has also assisted the resolution of local disputes. As Joseph Nye sums up, the association has served essentially as a means of conflict-management, effectively a non-aggression treaty “*reinforced continually by public evidences of good faith and by interlinking bilateral promises*”.¹⁶

Since the end of the Cold War, regional initiatives have expanded. In 1992, a Common Effective Preferential Tariff was set up and the process of establishing an ASEAN Free Trade Area (AFTA) began. In the same year, organizational changes led to the breaking down of traditional aversions to regularizing meetings, facilitating greater multilateral cooperation. Moves have also been made, through Track 2 initiatives, to encourage the involvement of non-governmental organizations and greater attention has been given to the need for collaboration and cooperation in finding coordinated solutions to trans-boundary problems. While the smoke haze disasters might not have led to any significant or immediate regional responses, the drawing up of an ASEAN Regional Haze Action Plan alone was in itself no small feat requiring, at least on paper, changes in the Indonesia’s national policies.¹⁷ Similarly, the Asian financial crisis brought new impetus to attempts to strengthen economic cooperation leading to the establishment of a peer review process which would institute measures to bring about greater transparency and accountability to the financial and economic systems of member countries.

The most radical suggestion however has probably come with the reaction of some members to the problems in East Timor which, in August 1999, left 75% of its population displaced. Indeed, no unified position has been reached on the issue but it has become evident that the internal conflicts of member countries can no longer be treated

¹⁴ Between 1967 and 1970 intra-ASEAN trade made up only 12-15% of total trade of member countries. By 1993-96 this had risen to 20 and 25% respectively. See M.C. Abad, Jr. (2000).

¹⁵ As at 2003, ASEAN areas of cooperation engaged 20 different kinds of ministerial meetings, 29 committees and 122 technical working groups, see M.C. Abad Jr., *ibid*, in Wesley, p.43

¹⁶ Antolik, p.6

¹⁷ M.C. Abad Jr., *ibid*, in Wesley, p.40-59

with ambivalence. Hence, “*the mechanisms and willingness must be found to allow members to address issues that could blow up in their faces.*”¹⁸ Accordingly, leaders such as Anwar Ibrahim and Surin Pitsuwan have boldly suggested modifications to long cherished ideas of non-interference in favour of approaches based on constructive intervention and flexible engagement. Others have suggested the possibility of ASEAN participation in multinational forces, such as those that intervened in East Timor under the auspices of the United Nations (UN), through ad hoc arrangements and ‘coalitions of the willing’¹⁹.

Given that major political and security issues such as the Vietnam War, the occupation of Cambodia by Vietnam and then subsequently the Cambodian peace process, occupied two thirds of the association’s existence one could argue that it is not surprising that the development of ASEAN has been limited in some areas. It has nonetheless come a long way even if it has not all been able to meet all expectations. Testament to the significant shift that has taken place, some leaders have even remarked that a ‘regional consciousness’²⁰ has emerged. Few would have predicted the developments described above in the late 1960s. Furthermore, suggestions that ASEAN could become “*more than just a regional intergovernmental organization but a habit of mind, among its citizens... an entente of a special kind which transcends boundaries, governments and people,*”²¹ would have been considered a fantasy. In particular, suggestions of cooperation in regional peacekeeping operations would have been unimaginable even at the end of the Cold War. Instead, increasing dialogue in political and security matters has been the outcome of gradual efforts in confidence building, conflict resolution and preventative diplomacy.

Nonetheless, the success of ASEAN has been relatively limited and restricted to certain fields. Economically as well as politically, it has not been able to achieve the same levels of integration and cooperation as for example the EU, which is notably only 10 years older. Moreover, it has been criticised on a number of occasions for its inability to respond effectively to regional problems such as the financial crisis, the smoke haze disaster or troubles in Indonesia. It goes without saying that on the human rights front there seems always to be more talk than action. While it is undeniable that ASEAN has had some successes, the crucial question remains whether they have been substantial enough. In other words, does the association now, in contrast to half a century ago, enjoy the level of cohesion and sense of collective will necessary to tackle the problem of human rights?

¹⁸ Thai Foreign Minister, acting as Chairman of the ASEAN standing Committee Sept 1999, as quoted in Wesley, p.45

¹⁹ M.C. Abad Jr., *ibid*, in Wesley, p.56-59

²⁰ Foreign Minister Dhanabalan of Singapore at the Sixteenth ASEAN Ministerial Meeting, as quoted by Antolik, p.3

²¹ Ghazalie Shalie of Malaysia, Speech Jan 12 1983 to, as quoted in Antolik, p.4

ASEAN and Human Rights: building bloc or stumbling bloc?²²

“Today, ASEAN is not only a well-functioning, indispensable reality in the region. It is a real force to be reckoned with far beyond the region. It is also a trusted partner of the United Nations in the field of development...”

(Kofi Annan, Secretary General of the United Nations)²³

As early as the 1960s, the UN General Assembly began encouraging the development of regional human rights mechanisms. Regional approaches, it was argued, benefited from a number of factors.²⁴ Firstly, geographic, cultural and historical bonds would make agreement on the scope of state obligations as well as the substance of rights to be protected easier. Secondly, some suggested that recommendations originating within the region would be likely to meet less resistance than global ones. Regional initiatives might be able to avoid, for instance, claims of Western imperialism and perhaps even counterbalance foreign pressures. Thirdly, publicity about human rights violations would tend to be wider and more effective if coming from the regional level. Lastly, regional arrangements would generally be more flexible because of the combination of the above factors. The Asian and Pacific countries however, generally argued their region was too heterogeneous for such a creation. On the contrary, it was suggested, cultural, political and economic differences made cooperation on issues of human rights and regional initiatives more difficult. In other words, geographical proximity did not necessarily mean unity of views and approaches. Thus they contested the very assumptions which favoured regional approaches to human rights.

It is evident that since 1967, as evidenced above, ASEAN has gone a long way in moving away from this position. While it is understandable that one would look to ASEAN, being one of the most established institutions in the region, for the implementation of a Southeast Asian human rights mechanism, it should be remembered that until the late 1980s ASEAN was still very much divided. Thus, another logical question would be whether or not ASEAN is the appropriate vehicle for such changes at all. Is the development of a Southeast Asian human rights mechanism within the capacity of ASEAN? Any speculations on the future of the association and its possibilities should, as Abad writes, not underestimate the importance of the basic principles on which it is based. *“While change is imperative, [principles of non-interference and respect for mutual sovereignty] must be taken into account as they underpin the entire interstate system.”*²⁵

As Wesley explains, organizational change will either be demand-driven, supply-driven, or indeed a combination of both. In other words, it will be a result of either crisis, changes in regional, global or institutional policy, internal reviews and criticisms or

²² Phrase used by Robert L. Lawrence in J. Frieden and D. Lake, *International Political Economy*, (1995)

²³ Kofi Annan, Secretary General of the United Nations, 16 February 2000, as quoted at <http://www.aseansec.org/64.htm>

²⁴ Twenty Eighth Report of the Commission to Study the Organisation of Peace, Steiner and Alston, p.783-786

²⁵ M.C. Abad Jr., *ibid*, in Wesley, p.40-59

innovations by competitor organizations.²⁶ To this, a forceful argument in favour of an ASEAN human rights regime has been that based on the notion that the locus of threats has changed. No longer are states able to be so selective in where they decide to cooperate, as the smoke haze and financial crisis have shown. National security, used habitually to justify the adherence to principles of sovereignty and non-interference, is no longer isolated from issues of human security and regional instabilities. Political repression, the AIDS crisis, piracy and narcotics, as well as issues of weapons proliferation and terrorism, can no longer be considered the problems of individual states in an era of globalisation. In this context, “*change remains a constant issue for regional organization, challenging them to remain effective and relevant to the inevitably changing conditions around them.*”²⁷ Still, while this is a convincing argument, particular changes are far from inevitable. As it has already been observed in the case of terrorism, the members of ASEAN may take different approaches to any given problem, each with different implications for human rights. Differences in views on the value of human rights, especially in relation to state security, have become increasingly evident post 9/11. In Singapore for example, we have seen stronger application of the National Security Act and in Malaysia counter-terrorist measures have resulted in the cracking down on suspected terrorists. Moreover, it is worth noting that changes will always come more easily if they affect members in broadly the same way. For instance, if an ASEAN peacekeeping force was established it would be interesting to see how a problem such as East Timor, involving one of largest and most influential members of the association, would or could be dealt with. It is clear that ASEAN, in the face of new challenges, will not be able to stand still but the question remains in which direction will it move?

“[Regional organizations] have no power and personality beyond the collective will of governments and no capacity to grow apart from the ability of governments to learn.”

(E. Haas, R. Butterworth, J. Nye)²⁸

The capacity of ASEAN to change in any given direction cannot be simply wished into existence, nor is it self-driven; nowhere is this truer than in the context of Southeast Asian regionalism. Notably, a number of internal factors will continue to make it difficult for ASEAN to develop a regional human rights mechanism.

Firstly, as mentioned, despite the successes of the association, the region is exceptionally diverse in many respects. Differences in culture, religion, historical experience and social structures should not be underestimated. After all, what is Southeast Asia? The geographical delimitation of the area described by such a phrase seems rather arbitrary, if not at the very least political rather than based on any single cultural, ethnic, or customary community. While the Philippines for example is predominantly Roman Catholic, a considerable proportion of the populations of Malaysia and Indonesia are Muslim while in Thailand, Buddhism is the dominant religion.²⁹

²⁶ It has been suggested, for example, that the AFTA was established in reaction to the rising prominence of competing regional economic arrangements in the Asia-Pacific region.

²⁷ Wesley, p.233

²⁸ E. Haas, R. Butterworth, J. Nye, Conflict Management by International Organisations, as quoted by Antolik, p.215

²⁹ see <<http://www.cia.gov/cia/publications/factbook/>> for country profiles.

Economically, in terms of levels of development, Singapore stands at one end of the spectrum while Vietnam and Cambodia stand very much at the other.³⁰ In the context of human rights, this makes arguments of ‘situational uniqueness’ for example, that the right to development should take precedence over other rights, more justifiable. The security environments of ASEAN members, both internally and externally, also differ considerably. Such differences will complicate efforts towards cooperation as well as, more importantly, negotiations on human rights standards. Concerns over sources of political and social instability remain a problem in a number of member states, making cooperation between governments particularly problematic and tenuous. Similarly, while few states in Southeast Asia would qualify as democratic by any Western standards, levels of transparency and activity of civil society groups also vary throughout the region. For example in Singapore, notions of ‘social engineering’ are particularly strong, as are beliefs in ‘rule by law’ as opposed to ‘rule of law’. Moreover, many members of ASEAN remain suspicious of Western motivations. Such differences in views, of the basis and motivations behind putting human rights on the agenda, will make changes particularly sensitive. Finally, the inclusion of new members will only increase diversity within the association, potentially stretching the abilities of ASEAN to come to a consensus on how human rights should be implemented.

Secondly, it is questionable whether given the ‘corporate culture’ of ASEAN, the setting up of a regional human rights mechanism is at all possible. In other words, the need to reach consensus, especially in light of differences highlighted above, could prove problematic. While in the past, individual countries have criticized other members for their policies or practices, they have generally been met with displeasure. In this way, the spirit of non-confrontation which dominates ASEAN may actually prove to hinder cooperation in this area, especially if members cannot see how they may benefit from any such developments.

Thirdly, structurally ASEAN may face further restrictions. For one, the loose organization could hinder the development of a human rights mechanism which would rely on a legalistic and strong system. In addition, the budgetary limitations of the association could prove to be a further barrier towards greater cooperation simply because the resources do not exist to fund such a programme. At it stands, all members contribute equally to the annual budget of the secretariat based on calculations of the ability of the least developed members to pay. Should this change? If so, what advantages would the more affluent states in the region have of contributing more? Without answers to these questions, it is difficult to envisage reforms in this area. Likewise, without clear benefits to members of establishing regional mechanisms for human rights, any progress is likely to be slow and fragile.

As Acharya notes, appeals to Asia-Pacific multilateralism should be seen as a double-edged instrument, presenting members with opportunities to extend norms and principles to a wider setting but at the same time, being more complex, requiring capabilities and resources that may be beyond those that ASEAN institutions can provide. That is not to say that the project is impossible, only that it is important to recognize the difficulties involved in order for realistic and constructive attempts to be made. Stretching the association too far and too soon, or in the wrong directions, could threaten the very grounds on which it is built and in the long term be even more detrimental to the

³⁰ *ibid*

region as a whole. Conversely, “if ASEAN mechanically moves always at a pace comfortable to its slowest member..... it runs the risk of becoming an unnecessary drag for some of its member nations that have more dynamic political and economic systems. It thus risks alienating its own people, retaining only the form of conference diplomacy without constituency.”³¹ The key is striking a balance between the two.

The Importance of the International Community

“The issue of human rights, by definition, breeds confrontation. Raising the issue touches on the very foundations of a regime, on its sources and exercise of power, on its links to its citizens or subjects. It is a dangerous issue...”

(Stanley Hoffman)³²

It should be remembered that, unlike for example the European Union, ASEAN was not founded on shared political values or commitments to liberal democracy. Instead, it was established on the idea that association and cooperation would be beneficial, even if not in equal measure, to all members. This remains true today. While it seems reasonable, given recent trends and the proliferation of regional arrangements, to discuss the promotion and protection of human rights through regional mechanisms in Southeast Asia, the relative lack of attention given to questions of how desirable such an approach would actually be is surprising. In other words, would a regional mechanism for promoting, protecting and indeed enforcing human rights be more effective than say a global one, particularly in Southeast Asia and specifically through ASEAN? As Inis Claude suggests, regionalism is not a one size fits all solution but instead its suitability can depend on a number of factors, especially the nature of the problem:

“...intraregional affinities may be offset by historically rooted intraregional animosities, and geographical proximity may pose dangers which states wish to diminish by escaping into universalism, rather than collaborative possibilities which they wish to exploit in regional privacy.... Regional organization may be too small, in that it may represent a dangerous form of confinement for local rivalries ... global stretching, in short, may be no worse than regional cramping.”³³

An international mechanism could prove more effective in setting standards because it would, for better or for worse, enforce existing conceptions of human rights thereby avoid the difficulties of discussions on issues of, for example, relativism altogether. Similarly, the implementation of human rights standards would inevitably involve negotiating the current exclusiveness of national jurisdictions which might prove beyond the capacity of ASEAN. Thus, as Claude notes, while regionalism may be good for cultivating intensive cooperation among states, global organizations might be more appropriate when dealing with conflict among states; a top down approach might be more effective.

Regional approaches are not without risks and problems. For one, they could actually serve to insulate regions from outside influences and allow them to ignore global

³¹ M.C. Abad Jr., *ibid*, in Wesley,, p.59

³² Stanley Hoffman, The Hell of Good Intentions, as quoted by Sidney Jones, Ch.22: Promoting Human Rights: the Optimal Way, in Nagara and Balakrishnan, p.338

³³ Inis Claude, as quoted in Steiner and Alston, p.781-782

standards. For example, arguments that matters of national security should take precedence over civil and political rights could be abused and result in undue violations of the latter; the issue of Singapore's Internal Security Act which allows officials to detain suspects without charge is one case in point. In the same way, regional arrangements might lead to overly narrow definitions of international standards thereby adversely affecting global initiatives. Finally, in cases of violations, procedural requirements such as the exhaustion of national and regional remedies may delay international enforcement of human rights.

Apart from debates on the suitability of regional versus international approaches to human rights, even if the former scheme is adopted, internationally much can still be done to promote human rights in the region. The UN for instance should continue in its efforts to set and enforce human rights standards. International organizations, and particularly lending institutions such as the World Bank, can also play a greater role by placing more emphasis of good governance. Lastly, states can equally apply pressure on governments. The United States for example has, in the past, threatened to remove Indonesia's tariff benefits if it did not improve the conditions of workers and adhere to international workers' rights standards. Again, what would motivate members of ASEAN to give greater attention to issues of human rights? Here the international community can also play a significant role. In other words, externally derived incentives for members to take a position on human rights and push for standards of protection might prove more effective than waiting for such initiatives to develop from within.

At the National Level

"ASEAN is fully aware that this state of affairs is not irreversible. It has to be constantly nurtured."

(M.C. Abad, Jr.)³⁴

Ultimately, the success of any kind of human rights mechanism will require a combination of national, regional and international efforts. It is not enough to say that either an ASEAN or UN system will be the most appropriate because in the end the respect, promotion and protection of human rights will have to come from, and more importantly be sustained, at the national level. *"Regional mechanisms supplement but do not substitute good laws, good enforcement and strong civil society."*³⁵ What happens with ASEAN and the institutions that will emerge from discussions therein will have to reflect sentiments on the ground and within societies.

In this respect, Southeast Asia has perhaps been unexpectedly successful, being home to some of the most active non-governmental organizations in the world. National Human Rights Commissions in Malaysia, Thailand and the Philippines have helped increase national as well as regional awareness and understanding of human rights issues. In addition, non-governmental networks and transnational civil society groups have also

³⁴ M.C. Abad Jr., (2000)

³⁵ S. Jones, *ibid.*, in Nagara and Balakrishnan, p.348

become increasingly mobilized even within the last decade such that in 1998 they drafted an Asian Human Rights Charter.³⁶

On the national level, governmental reforms will also be necessary to establish the primacy of law. Once more, the international community can play a significant role in motivating national governments to move in this direction. Ensuring that legal systems are both impartial and incorruptible, and that judiciaries are independent, will be crucial if the establishment of human rights courts is to be even conceivable. In some countries this will prove more problematic than in others. In particular, those which continue to use traditional forms of conflict resolution, typically rooted in power structures which disadvantage the challenger³⁷, will require special attention. It goes almost without saying that in order for civil society groups to function effectively, their freedom will have to be secured. In this respect, National Human Rights Commissions have thus far had variable success.³⁸ It will have to be accepted that commissions and potential human rights courts will need to be able to investigate abuses, most critically and perhaps most contentiously by government officials and agents, without interference and intimidation. Hence, the protection and respect of human rights is not just about which political system or agencies exist but their accountability. On this account, the extent to which governments will be willing to relinquish their power and open themselves to criticism will be important.

Finally, whether human rights will assume a more prominent place in regional discussions ultimately depends on the attitudes of national governments. The notion that political and social stability are important factors in attracting foreign investment is not new; the strength of the rule of law is important has been the selling point of Hong Kong, particularly post-1997. As the international business community looks for security of investment by way of legal systems that are both impartial and incorruptible, the need to foster well established legal frameworks, consistent with those in investor countries, will grow.

Only if the above changes fall into place, can the possibility of realistic and effective mechanisms for the protection of human rights at the regional level be considered. While discussions of a Southeast Asian blueprint have been underway, significant steps have yet to be taken. The establishment of a regional commission would arguably be the greatest challenge ASEAN has yet faced, requiring at the very least agreement on a single clear statute of abuses. In addition, states would have to recognize and accept that interstate investigations will necessarily follow and that for any such commission to be effective, principles of state sovereignty and non-interference will have to be reassessed. Whether motivated internally by their publics or externally by the international community, the building of human rights institutions will ultimately require significant determination at the national level.

³⁶ For further discussion see R. Wilde

³⁷ S. Jones, *ibid*, in Nagara and Balakrishnan, p.335-348

³⁸ Li-ann Thio, paras 129-155

Conclusion

Will there ever be an ASEAN human rights regime? The answer to this question will, as has hopefully become evident from the discussion above, ultimately depend on a combination of the capacities of ASEAN, the will of national governments and the posture of the international community. Whether the association expands in any given direction will engage a number of factors, some but not all being within its control. Considering the challenges in these areas alone, as it stands, such developments are unlikely in the near future.

At the same time, it must not be forgotten that “*there is nothing preordained about the future survivability of ASEAN.*”³⁹ The effect of what appears to be a trend towards greater democratization (Philippines 1986, Thailand 1991-92, Cambodia 1993 and Indonesia 1998), as well as the entry of new members into the association and a new generation of ASEAN leaders, remains to be seen. Nevertheless, it is reasonable to expect that the future of ASEAN will depend on its ability to adapt and remain relevant at the national, regional and international levels. The salience of human rights issues will also be affected by the strength of civil society within the region. In this respect, leaders of Southeast Asia have arguably been all too quick to claim that “*attempts [to] impose the standard of one side on the other... [treads] upon the sovereignty of nations.*”⁴⁰ In a globalised and interdependent world, what is at stake is no longer simply the welfare of individual societies but the implications they have on the stability of regions as a whole. In sum, whether or not the members of ASEAN choose to address prolonged human rights abuses, which can lead to loss of legitimacy of governments, refugee flows, instability and so forth, they will not be able to avoid such problems indefinitely.

³⁹ Chin Kin Wah, p.162

⁴⁰ Malaysian Foreign Minister, Abdullah Ahmad Badawi, as quoted by Acharya (1993), p.29

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