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ASEAN'S HUMAN RIGHTS AGENDA:
Modest Beginning, Reasonable Prospects – and How the West Can Help

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G | M | F The German Marshall Fund
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STRENGTHENING TRANSATLANTIC COOPERATION



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The views of the author do not necessarily reflect those of the German Marshall Fund of the United States.

Until very recently, members of the Association of Southeast Asian Nations (ASEAN) have been resistant to any idea that regional cooperation should include an agenda to promote and protect human rights. For more than three decades, ASEAN governments maintained that each member state was free to pursue its own human rights policy, without any interference from outside. That position came to an end only in 2003 after Indonesia — which began its transition to democracy in 1998 — proposed that ASEAN should cooperate to promote and protect human rights. ASEAN, for the first time, agreed to include a human rights agenda in its official area of cooperation.

In November 2007, a more significant step was taken when ASEAN adopted the ASEAN Charter, which obliges its members “to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms...”¹ In line with this objective, the ASEAN Charter stipulates that “ASEAN shall establish an ASEAN human rights body,”² which, at the ASEAN Summit in October 2009, finally gave birth to the establishment of the ASEAN Inter-Governmental Commission on Human Rights (AICHR).

This brief paper discusses three main questions. First, how did that change of attitude come about? Second, does such a change suggest a greater adoption of liberal values by ASEAN so that a closer convergence with its Western partners becomes more likely? Third, what can ASEAN’s partners in the West do in order to assist the Association to implement its commitment to better promote and protect human rights?

A Change of Attitude: From the “Asian Values” Debate to ASEAN’s Own Human Rights Body

ASEAN was never opposed to human rights *per se*. While recognizing the universality of human rights, ASEAN leaders argued that human rights standards set by the West were not appropriate for Asian societies, and that their implementation should be carried out within the context of cultural and historical differences among states.³ Since ASEAN’s establishment in August 1968, however, the question of human rights did not disturb the relationship between the Association and its Western partners. Despite the poor human rights records of many Southeast Asian states, the United States and members of the European Union tended to pursue a foreign policy defined by overriding security and economic interests and anti-communist concerns.

However, as human rights began to assume a higher priority in the foreign policy of Western states immediately after the end of the Cold War, the issue became a subject of debate between the two sides. Persistent pressures from the West for ASEAN to pay greater attention to human rights began to irritate Southeast Asian officials.

Indeed, for most of the 1990s, authoritarian regimes within ASEAN — especially Indonesia, Singapore, Malaysia, and Myanmar — made great efforts to shield themselves from scrutiny and criticism by the international community over their human rights records. More importantly, some ASEAN countries began to launch a counter-discourse on the subject. The ensuing debate over so-called “Asian values” during the 1990s constituted a significant part of that effort.

Does such a change [of attitudes about human rights] suggest a greater adoption of liberal values by ASEAN so that a closer convergence with its Western partners becomes more likely?

¹ *The ASEAN Charter*, Article 1 (7) (Jakarta: ASEAN Secretariat, 2007), p. 4.

² *Ibid*, Article 14 (1), p. 19.

³ Geoffrey Robinson, “Human Rights in Southeast Asia: Rhetoric and Reality,” in David Wurfel and Bruce Burton, eds., *Southeast Asia in the New World Order: The Political Economy of a Dynamic Region* (London: Macmillan Press, 1996), p. 87.

The sanctity of the noninterference principle was then invoked to justify ASEAN's not-so-benign position on the value of human rights.

As a collective entity, ASEAN always presented a common position in resisting external pressure, arguing that human rights “should be addressed in a balanced and integrated manner, and protected and promoted with due regard for specific cultural, social, economic, and political circumstances,” and that there should be “a balance between the rights of the individual and those of the community.”⁴ In other words, in an apparent rejection of the liberal notion of human rights, ASEAN governments prioritized community rights over those of the individual.

The sanctity of the noninterference principle was then invoked to justify ASEAN's not-so-benign position on the value of human rights.⁵ With Thailand as an exception, all ASEAN countries are post-colonial states with national psyches strongly shaped by the memory of bitter struggles for independence. These countries entered the post-independence era confronting desperate poverty, weak social cohesion, and internal strife. They prioritized the overriding challenge of state-building by focusing on promoting economic development, ensuring political stability, and maintaining regime security.

This task was only possible if regional states — plagued by conflicts among themselves — strictly adhered to the principle of noninterference in the conduct of inter-state relations. They believed that economic development could only be carried out through the preservation of political stability and the absence of external interference. With this logic, the elevation of human rights over other concerns could potentially undermine both internal political order and regional stability.

⁴ Joint Communiqué of the Twenty-Six ASEAN Ministerial Meeting, Singapore, 23-24 July 1993, at <http://www.aseansec.org/2009.htm>

⁵ Sriprapha Petcharamee, *The Human Rights Body: A Test for Democracy Building in ASEAN* (Stockholm: International IDEA, 2009), p. 8.

However, as a result, ASEAN's position on this issue began to weaken to four significant developments dating to the early 1980s. First, as these countries developed economically, the logic of sidelining human rights for the sake of development became tenuous. ASEAN governments began to face greater demands from within their own societies — especially from nongovernmental organizations (NGOs) — to improve human rights conditions. Second, as a wave of democratization broke over Southeast Asia, starting with Thailand and the Philippines in early 1980s, government officials in these countries began to voice more sympathetic views of human rights.⁶

Third, ASEAN was also increasingly wary of the growing irrelevance of borders. As the flow of information and people intensified, and the challenge of trans-national problems (such as pollution, trans-national crime, and infectious diseases) became more salient, it became difficult to maintain a strict internal-external divide. Finally, as the region's most important power, Indonesia, became a democracy in 1998, those who wanted human rights to be incorporated into ASEAN's agenda found its strongest champion in the region. Indeed, Indonesia played a central role in securing ASEAN's agreement to include a commitment to uphold human rights into the ASEAN Charter and the creation of the ASEAN Inter-Governmental Commission on Human Rights.

Embracing Liberal Values? The Limits of the Human Rights Agenda in ASEAN

As ASEAN has now formally adopted a workplan on human rights and established its own human rights body, does that mean the Association is now on the way to adopt and emulate the liberal values of the West? This question has become a central theme in contemporary scholarly debate on the

⁶ Thailand and the Philippines were indeed the main sources of inspiration for pro-democracy forces across the region.

nature of ASEAN's embrace of human rights.⁷ The majority view, however, contends that ASEAN is nowhere near the point of embracing human rights values and legal protections as currently understood and practiced in the West. Sceptics have expressed doubt that ASEAN's commitment to human rights would be fully implemented by member states. Indeed, there are at least three constraints on realizing a more ambitious human rights agenda in Southeast Asia.

First is the enduring tension between the objective of promoting and protecting human rights, on one hand, and the entrenched principle of noninterference on the other. Successfully enforcing a regional human rights agenda requires active peer pressure by ASEAN governments on nonpracticing member states. That would clearly contradict ASEAN's historical principle of strict noninterference in the internal affairs of a member state. Criticism by ASEAN leaders of human rights practices in fellow member states is deemed to breach the principle of noninterference.

Second, ASEAN's cooperation is still seriously hampered by institutional defects. The most serious is the absence of a mechanism to enforce compliance and impose sanctions. The commitment by ASEAN states to promote and protect human rights as mandated by the ASEAN Charter is not enforceable. The Charter itself, echoing the earlier language of the "Asian values" debate, stipulates that such an agenda should be undertaken "with due regard to the rights and responsibilities of the Member States of ASEAN."⁸ Moreover, most ASEAN agreements, including on human rights, are not legally binding. Despite

its 2007 Charter, ASEAN remains an inter-governmental association, not a supra-national organization. Member states are not obliged to pursue and implement any regional agreement that does not tangibly advance narrowly-defined national interests.

Third, political reality in contemporary Southeast Asia also continues to serve as a great barrier to the advancement of a regional human rights agenda. Among ASEAN countries, differences become the rule rather than the exception. Politically, there exists "a fault-line between members who adopt a more open political system and a more closed one."⁹ On human rights, as Tommy Koh of Singapore admitted, "(there was) no issue that took up more of our time, (no issue) as controversial and which divided the ASEAN family so deeply as human rights."¹⁰ Indeed, the AICHR itself is still an incomplete and ongoing project. ASEAN member states remain deeply divided regarding its functions and power. In the meantime, the AICHR has only been given a consultative role in the promotion of human rights, not in the area of protection. Its workplan is only confined to the promotion of four rights: women's rights, children's rights, the rights of the disabled, and migrant workers' rights.

These limits clearly point to the fact that ASEAN as a whole is not yet ready to embrace the full panoply of human rights norms. This raises the question of whether ASEAN is, in fact, on the road to launching its own, more restrictive human rights doctrine.¹¹ The current plan by the ASEAN Inter-Governmental Commission on Human Rights to draft an ASEAN Human Rights Declaration has fueled such concern.

As the region's most important power, Indonesia, became a democracy in 1998, those who wanted human rights to be incorporated into ASEAN's agenda found its strongest champion in the region.

⁷ See, for example, Yuval Ginbar, "Human Rights in ASEAN—Setting Sail or Treading Water?," *Human Rights Law Review*, vol. 10, No. 3, 2010, and Hiro Katsumata, "ASEAN and Human Rights: Resisting Western Pressure or Emulating the West?," *The Pacific Review*, Vol. 22, no. 5, 2009.

⁸ *The ASEAN Charter*, Article 1 (7).

⁹ Meidyatama Suryodiningrat, "Looking for Common Values, a Community Driven ASEAN," *The Jakarta Post*, 9 August 2004.

¹⁰ Quoted in Sriprapha Petcharamesree, *The Human Rights Body: A Test for Democracy Building in ASEAN* (Stockholm: International IDEA, 2009), p. 5.

¹¹ Ginbar, "Human Rights in ASEAN," p. 505.

Forces within ASEAN will continue to advocate change and ensure that the region ultimately subscribes to internationally recognized human right standards, no matter how difficult that process may be.

However, it is also too early to argue that ASEAN would embark upon a new project to craft its own understanding of human rights distinct from that held by the West. Change, while admittedly difficult, is not altogether impossible within ASEAN. For one, it was unimaginable even five years ago that ASEAN would actually establish a regional human rights mechanism. Moreover, democratic members of ASEAN such as Indonesia, Thailand, and the Philippines would not be interested in reviving the now-defunct “Asian values” debate. In other words, forces within ASEAN will continue to advocate change and ensure that the region ultimately subscribes to internationally recognized human right standards, no matter how difficult that process may be. The AICHR clearly can function as a useful, albeit modest, platform to start that process.

Conclusion: What the West Can Do

Despite the tension it has generated, the promotion of human rights remains as an important area for cooperation between ASEAN and its Western partners. Both sides could explore areas of cooperation in which the United States and the European Union could help ASEAN deliver on its promises to promote and protect human rights, as mandated by the ASEAN Charter. However, while the ASEAN Charter and the group’s human rights body provide a promising start for ASEAN to pursue a human rights agenda in Southeast Asia, there are limits within which this agenda can be realised. Western nations can help ASEAN strengthen its regional capacity to uphold basic human rights. But Western policies and assistance toward this end must be formulated with an understanding that change will be gradual in light of the region’s institutional and political constraints.

In the near future, two potential areas of cooperation could function as a starting point. First, the United States and the EU could

provide technical assistance to the ASEAN Inter-Governmental Commission on Human Rights, whose institutional development is a high priority. It should be noted, however, that the West needs to carry out this assistance in an incremental way and by taking a long-term approach. Such an approach would, in the interim, require the West to confine its programs to a number of specific agendas comfortable to all members of ASEAN.

Second, in parallel with the assistance to the AICHR, the United States and the EU could also support the strengthening of the regional networks of human rights NGOs. These serve multiple functions: as a sounding board, a watchdog for the AICHR, and a platform to provide objective views on human rights and governance in the region. Despite its potential, as an inter-governmental body within ASEAN, it is very likely that during its formative years the functions of ASEAN’s human rights body may struggle to conform to international standards. In that context, it is imperative that regional voices that advocate enhanced protection of human rights be strengthened. After all, it was these voices that played a central role in making ASEAN’s tentative embrace of a human rights agenda possible in the first place.

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