



The Human Rights Body: A Test for Democracy Building in ASEAN

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Abstract¹

No one can deny that human rights issues and the establishment of an Association of South East Asian Nations (ASEAN) human rights mechanism are still very challenging matters for ASEAN. Through the prism of the setting up of an ASEAN Human Rights Body, this paper: (a) examines whether human rights have really emerged as an important concern for the organization; (b) assesses whether ASEAN has been taking any positive steps to become a people-centred organization; (c) asks which path of development ASEAN should take in order to establish a credible human rights mechanism acceptable to both its members and its partners; and (d) explores how Europe could contribute to the process of building an ASEAN Human Rights Body. The paper concludes by analysing how the establishment of an ASEAN Human Rights body contributes to the advent of a democratic ASEAN community based on human rights.

Summary of Recommendations

If the European Union (EU) is to contribute to human rights and democracy in ASEAN, it needs to: ensure that the basic values of the EU, such as human rights, democracy and the rule of law, are not sacrificed for economic imperatives; speak with one voice; maintain consistency in its relations with ASEAN and not allow each member state to make bilateral agreements with ASEAN or any ASEAN member state. The EU has the most advanced, and by far the most effective, regional human rights mechanism. Because ASEAN is now in the process of establishing one of its own, the EU can inspire ASEAN in its efforts to maintain its relevance to the ASEAN people and the international community. The EU must: strengthen the 'track two' dialogue between ASEAN and the EU, focusing more on issues deemed to be 'too sensitive' to include on the normal agenda; identify some commonalities and common priorities with ASEAN, such as trafficking in persons, migration/migrant workers, violence against women and children and the environment; make a greater contribution to capacity building

¹ This paper was completed by February 2009; it does not cover developments from February up to the date of publishing.

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on a longer term basis; pay greater attention to improving judiciaries and empowering civil society; and support the movement towards the establishment of an ASEAN Human Rights Body. It is also important for the EU to contribute to the development of an ASEAN normative human rights framework, such as an instrument on the protection of the rights of migrant workers. Finally, since corporations and business communities have great influence in ASEAN, these non-state actors have a large role to play. Integrating

corporate social responsibility into human rights and economic and trade relations between the two regions is one way to engage with ASEAN.

1. Introduction

The Association of South East Asian Nations (ASEAN) was established as a political and economic entity in 1967. Its seven objectives are set out in the ASEAN Declaration of 1967 (Bangkok Declaration). Among them are: (a) to accelerate economic growth, social progress and cultural development; and (b) to promote regional peace and stability through abiding respect for justice and the rule of law in the relationship between countries of the region and adherence to the principles of the United Nations Charter. Although the term ‘human rights’ is not explicitly used in the Declaration, by affirming adherence to the principles of the UN Charter,² the five founding members³ of ASEAN accepted its purposes and principles.

However, ASEAN members still guard against certain human rights concepts, in spite of the fact that there has been a marked change in ASEAN’s position on human rights. In July 1993, a separate section on human rights was incorporated into an ASEAN Joint Communiqué for the first time. The Joint Communiqué of the 26th ASEAN ministerial meeting (AMM) ‘...agreed that ASEAN should consider the establishment of an appropriate regional mechanism on human rights’ (ASEAN 1993, paragraphs 16–18). It was only in 2007, however, that ASEAN finally moved from considering to committing to the establishment of an ASEAN Human Rights Body by including it in article 14 of the ASEAN Charter, now ratified by all 10 ASEAN member states, which entered into force in December 2008.

No one can deny that human rights issues and the establishment of an ASEAN human rights mechanism are still very challenging matters for ASEAN. Generally speaking, ASEAN has been making slow progress in the field of human rights. The establishment of an ASEAN human rights mechanism was provided for by the Charter, but exactly what kind of human rights body ASEAN would be comfortable with was a crucial question both for ASEAN and its people.

Through the prism of the setting up of an ASEAN Human Rights Body, this paper aims to: (a) examine whether human rights have really emerged as an important concern

² Article 1, paragraph 3, of the Charter stipulates that ‘to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without discrimination as to race, sex, language, or religion’.

³ Indonesia, Malaysia, the Philippines, Singapore and Thailand.

for the organization; (b) assess whether ASEAN has been taking any positive steps to become a people-centred organization; (c) ask which path of development ASEAN should take in order to establish a credible human rights mechanism acceptable to both its members and its partners; and (d) explore how Europe could contribute to the process of building an ASEAN Human Rights Body. The paper concludes by analysing how the establishment of an ASEAN Human Rights Body contributes to the advent of an ASEAN democratic community based on human rights.

Section 2 examines how ASEAN perceives human rights in its own region. Section 3 provides brief background on people's initiatives for the establishment of an ASEAN mechanism on the promotion and protection of human rights and how far we have come. Section 4 deals with the nexus between human rights and democracy and how the establishment of an ASEAN Human Rights Body would enhance the building of an integrated and democratic community. Section 5 examines human rights issues in the relationship between ASEAN and the European Union (EU) and explores possible areas of cooperation and roles to be played by the EU. Section 6 draws some conclusions.

2. ASEAN Perceptions of Human Rights

According to Tommy Koh '[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.'⁴ It was recognizing thus far that 'much of ASEAN's credibility and attraction to the outside world was built on the economic success of many of its members. ...ASEAN's other strong points were the stability in the region and a good measure of cohesion among its members (Tay and Estanislao 2000: 14). These comments are still relevant today and most understand that such success and cohesion are based on at least two pillars, which include the written norms of non-interference and the principle of consensus. These founding principles were stated in the 1976 Treaty of Amity and Cooperation in South East Asia and are clearly repeated in the ASEAN Charter. Three of the principles stipulated in article 2, paragraph 2, emphasize: respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN member state; non-interference in their national affairs; and respect for the right of every member state to lead its national existence free from external interference, subversion and coercion. ASEAN has long emphasized that the promotion and protection of human rights by the international community must recognize national sovereignty, national borders and non-interference in another state's affairs. ASEAN views human rights as an internal affair.

Nevertheless, events since the early 1990s, especially since the advent of ASEAN 10, have provided difficulties for ASEAN in dealing with new challenges. Tommy Koh has frankly observed that the ASEAN 10 are divided into three groups on the issue of human rights: Indonesia, Malaysia, the Philippines and Thailand have national Human Rights Institutions and 'champion' human rights; Cambodia, Lao People's Democratic Republic (Lao), Myanmar and Vietnam are 'not enthusiastic'; and Brunei and Singapore are not in either camp but try to bridge the gap between the two (Koh 2007). It is hard to imagine how these differences could be bridged by those countries,

⁴ Prof. Tommy Koh is Ambassador-at-Large and Director of the Institute of Policy Studies, Ministry of Foreign Affairs, Singapore. He gave a talk at the Seventh Workshop on an ASEAN Human Rights Mechanism, 12-13 June 2008 in Singapore.

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Including human rights clauses in the Charter does not help ASEAN to develop a human rights discourse or to change its perception of human rights. ASEAN governments perceive that human rights are not universal. While ASEAN leaders accept the concept of the universality of human rights they argue that there are differences between international human rights standards and practices in the region.

Some ASEAN governments are not comfortable with the concept of the indivisibility of human rights. Many prefer advocating for economic, social and cultural rights rather than political and civil rights. In ASEAN the typical sequence of development is first economic take-off and then political freedoms.

Singapore in particular, which promote 'Asian values'. This observation is confirmed by Tommy Koh's advocacy of a 'human rights definition in an ASEAN context' (Koh 2007).

Including human rights clauses in the Charter does not help ASEAN to develop a human rights discourse or to change its perception of human rights. Koh reminds us of the perceptions of ASEAN governments, which are reflected in official documents such as AMM Joint Communiqués. First, ASEAN governments perceive that human rights are not universal. While ASEAN leaders accept the concept

of the universality of human rights they argue that there are differences between international human rights standards and practices in the region. For ASEAN, human rights are shaped by each society's specific history, traditions, cultures and religions. All these elements form the basis for social values (Carolina G. Hernandez, quoted in Sutthisunsanee 2006). This idea is reflected in the joint communiqué of the 25th AMM in 1992: 'basic human rights, while universal in character, are governed by the distinct culture and history of, and socio-economic conditions in each country, and that their expression and application in the national context are within the competence and responsibility of each country' (ASEAN 1992, paragraph 18). This discourse was repeated by Singapore's foreign minister at the 1993 World Conference on Human Rights in Vienna when he emphasized that 'universal recognition of the idea of human rights can be harmful if universalism is used to deny or mask the reality of diversity' (cited in Sen 1997: 9). The same was reiterated by Prime Minister Hun Sen in 2006 when

he said that 'there is no such universality and international standard. Each country has its own standard'⁵

Second, one category of rights is prioritized over another. Some ASEAN governments are not comfortable with the concept of the indivisibility of human rights. Many prefer advocating for economic, social and cultural rights rather than political and civil rights. ASEAN claims that political rights and civil liberties could be a hindrance to economic development and social or public order. There has always been a trade-off in which economic, social and cultural rights have been given priority over political and civil rights. Leaders of ASEAN seem to agree with Jieng Zemin, the then Chinese leader, who said that 'rights of the survival of China's population are more important than political rights' (Bauer and Bell 1999: 75). They are reluctant to admit that violations of one set of rights will impact on others. Examples demonstrate that violations of economic, social and cultural rights are often the result of the political system. In ASEAN the typical sequence of development is first economic take-off and then political freedoms.

Third, in most ASEAN countries there has been more

⁵ Statement by Prime Minister Hun Sen during the meeting with the Working Group, 26 September 2006, Siem Reap, Cambodia.

concern with order and discipline, and more concern with duties than with rights. A citizen has responsibilities towards his or her society. Many ASEAN governments believe that individual rights must give way to the demands of national security and economic growth. They believe that duties or responsibilities to the state and to other citizens come before the need to respect individual human rights (Vitiv Muntarbhorn cited in Sutthisunsanee 2006). In this regard, the former Prime Minister of Singapore, Lee Kuan Yew, said in 1993 that ‘the society has always been more important than the individual. I think that is what saved Asia from greater misery’ (Vatikiotis 1996: 96).

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Fourth, as is noted above, since its inception the working principles within ASEAN have been based on non-intervention and freedom ‘from external interference in any form or manifestation in order to preserve their national identities’. These principles have been confirmed and reconfirmed throughout the history of ASEAN. Article 2 of the Treaty of Amity and Cooperation in South East Asia provides guiding principles for ASEAN members in their relations with one another that they all adhere to: (a) mutual respect for the independence, sovereignty, equality, territorial integrity and national identities of all nations; (b) the right of every state to lead its national existence free from external interference, subversion and coercion; and (c) non-interference in the internal affairs of one another.

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The former Thai Minister of Foreign Affairs, Surin Pitsuwan, who is now the ASEAN Secretary General, and Anwar Ibrahim, the former deputy Prime Minister of Malaysia, have proposed the concepts of constructive engagement and flexible engagement, respectively. Surin said in 1998 that ‘it is time that ASEAN’s cherished principle of non-intervention is modified to allow it to play a constructive role in preventing or resolving domestic issues with regional implications ... when a matter of domestic concern poses a threat to regional stability, a dose of peer pressure or friendly advice at the right time can be helpful’ (Sutthisunsanee 2006). Other ASEAN member states have rejected these ideas. In his paper presented in 1999 to the Asia-Pacific Roundtable, Termsak Chalermphanupap points out that the ‘ASEAN way will continue to adapt to the changing situation, but its key principles, specifically of non-intervention, will not change’. For him, ‘there is no valid reason to change something that has worked successfully for over three decades in ASEAN’ (Sutthisunsanee 2006).⁶

There has been little observable change in stance in the period since 1999. Prime Minister Hun Sen affirmed this not only in the debate on universality and particularity but also on the non-interference principle by saying that ‘Many Asian countries advocate state sovereignty and non-interference in internal affairs. No state can dictate and make judgments on others about human rights. Foreign policies should not be linked to human rights’.⁷ All these principles are enshrined in the ASEAN Charter. A reconciliation between the principle of human rights and that of non-interference is

⁶ Mr. Termsak from Thailand has been special assistant to the ASEAN Secretary General and works full time at the ASEAN secretariat.

⁷ Statement by Prime Minister Hun Sen.

not foreseeable in the near future. When Myanmar was hit by Cyclone Nargis in May 2008, ASEAN was torn between the principle of human rights and the principle of non-interference.

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Resistance to the universal concept of human rights, a trade-off between two categories of rights as well as rights and duties, and the strict principle of non-interference in internal affairs have prevented ASEAN from setting out any clear human rights policies or including any human rights

elements on their cooperation agenda. Until recently, ASEAN was more at ease with using other terms for human rights in official texts. ASEAN vision 2020 confirms this observation.⁸ However, this document, in essence, includes all categories of human rights, be they political, civil, economic, social or cultural, as well as the right to development.

3. Towards an ASEAN Human Rights Mechanism

Asia is the only region in the world without an intergovernmental human rights regime. For decades, the issue of the establishment of a regional or sub-regional human rights mechanism has been under discussion. It was at the World Conference on Human Rights in 1993 that the impetus for its development was spelled out. The Vienna

Declaration and Plan of Action reiterated ‘the need to consider the possibility of establishing regional and sub-regional arrangements for the promotion and protection of human rights where they do not already exist’. A lot of effort has been made particularly by civil society. However, the path towards any regional/sub regional human rights

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machinery has not been an easy one. Asia is vast and diverse and contains countries with different political regimes, ranging from functioning democracies, such as India, to large socialist states (China and Vietnam), and from moderate regimes such as Lao to the most orthodox authoritarian regime, such as North Korea. Asian countries share neither a political history nor common values. The so-called Asian values advocated by some Asian leaders are not conducive to the promotion and protection of human rights. These contrasting configurations suggest different perceptions of human rights. Any attempt to find a unified approach to human rights and a single regional human rights system would be in vain.

If a region-wide human rights mechanism seems idealistic or impossible for the time being, a sub-regional human rights system is more realistic. With this idea in mind, in 1996 the Working Group for an ASEAN Human Rights Mechanism, a small group of former politicians, lawyers, academics, government officers and human rights activists, was formed as a loosely structured entity to work on a voluntary basis. Applying confidence-building, step-by-step and building-block approaches the Working Group has, since 1996, been engaging with ASEAN officials and ASEAN member state governments. Since 1997 it has met annually with ASEAN during the AMM. In 2000, the Working Group submitted a ‘Draft Agreement for the Establishment of the ASEAN Human Rights Commission’ to the AMM for consideration. Moreover, since 2001 the Working Group has organized seven annual workshops on an ASEAN regional

⁸ ASEAN Vision 2020 adopted in Kuala Lumpur in 1997.

mechanism on human rights together with an ASEAN government and its National Human Rights Commission (where applicable). Since 1998, the Working Group has been formally recognized by ASEAN and the result of the annual dialogue has been included in the AMM Joint Communiqué. The Working Group is the only human rights organization identified in the ASEAN Charter as a stakeholder. In recent years more human rights groups have been active in pushing ASEAN to set up a regional human rights mechanism.

The inclusion of the ASEAN Human Rights Body in article 14 of the ASEAN Charter is not a ‘miracle’ as it was termed by Tommy Koh (Koh 2007), but the fruit of more than a decade of engagement between civil society and ASEAN. It is, however, an act of compromise in the sense that it is still a ‘body’ without any specific name. The term ‘Commission’ was proposed but then dropped during the Charter’s drafting process because of resistance from some members.

The preamble of the ASEAN Charter is definitely different from the preamble of the Treaty of European Union (Maastricht Treaty 1992), which confirms its attachment to the principles of democracy, human rights and fundamental freedoms, liberty, and the rule of law before resolving to strengthening economic ties within the European Union.

The ASEAN Charter balances ‘adhering to the principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms’ and the purposes of ASEAN to ‘strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms’, with due regard to the rights and responsibilities of the member States of ASEAN.⁹ Moreover, after emphasizing the traditional principles of non-interference (Article 2), the ASEAN Charter stipulates that the member states shall adhere to ‘the rule of law, good governance, the principles of democracy and *constitutional government*’. The next two sub-paragraphs reiterate ‘respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice’ and ‘upholding the United Nations Charter and international law, including international humanitarian law, subscribed to by ASEAN member states’. Two questions arise: first, whether and how ASEAN would respond to an unconstitutional change of government in its member countries; and, second, the Charter specifies international humanitarian law but does but not explicitly mention international human rights law.

The Charter does not provide for any sanctions in the case of violations of its provisions. Article 20, paragraph 4, only stipulates that ‘in the case of a serious breach of the Charter or non-compliance, the matter shall be referred to the ASEAN Summit for decision’. Since the mode of decision-making in ASEAN is based on consultation and consensus (as is specified in the same article 20) it is unlikely that any member will be sanctioned. Or, if the ASEAN Summit reaches any consensus it could only be based on the ‘lowest common denominator’.

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⁹ Emphasis added.

The path towards the establishment of an ASEAN human rights mechanism has been long and difficult. In 1993, ASEAN 'agreed to consider the establishment of an appropriate regional mechanism on human rights'. The statement was made in response to the Vienna Declaration and Plan of Action of 1993. Only in 1998 when ASEAN recognized the Working Group for an ASEAN Human Rights Mechanism and its work did ASEAN again mention the setting up of an ASEAN human rights mechanism. This coincided with the commemoration of 50th anniversary of the Universal Declaration on Human Rights. Year after year, ASEAN has been reminded that it is time to take further steps towards the setting up of a regional human rights machinery rather than repeating it in Joint Communiqués.

A more concrete commitment on human rights and human rights mechanisms was made in the Vientiane Action Programme (VAP), adopted by the ASEAN 10 in November 2004. The VAP includes seven human rights-related elements, none of which refers to the general ASEAN human rights mechanism advocated by the Working Group. The programme areas and measures of the political development section under the ASEAN Security Community commit, however, to the establishment of a specialized human rights machinery – an ASEAN commission on the promotion and protection of the rights of women and children. This is no surprise, however, as all ASEAN member states have ratified the CRC and CEDAW,¹⁰ and the rights of women and children are considered to be a 'soft issue' and less threatening. ASEAN has adopted three more Declarations since 2004: the Declaration Against Trafficking in Persons Particularly Women and Children (2004), the Declaration on the Elimination of Violence Against Women (2004) and the Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007).

The ASEAN Human Rights Body provided for in article 14 of the ASEAN Charter has no specific time frame for its establishment. However, the Thai Foreign Ministry, one of the few strong advocates of an ASEAN human rights mechanism, has, on many occasions, proposed that the ASEAN Human Rights Body be set up by 2009. The proposed time frame seems to be rather ambitious and might not be shared by all the other member states

Some progress has been made. A High-level Panel (HLP) composed of representatives from the 10 ASEAN member states was set up by the AMM in Singapore in July 2008. The HLP was tasked with drafting the terms of reference of the ASEAN Human Rights Body. The first draft is to be submitted during the 14th ASEAN Summit in Thailand and the final draft should be ready by the 2009 AMM. Differences among the members of the HLP emerged as soon as negotiations began. There are difficult questions for HLP to tackle:

1. Should the body be equipped with monitoring and/or investigative powers? If not, how can the body fulfil its protective functions?
2. How to reconcile the principle of non-interference in internal affairs with that of the protection of rights?
3. How to balance the rights of individuals with the rights of the state, or rights and duties as well as individual rights and societal rights?
4. How do ASEAN human rights differ from universal standards?

¹⁰ Brunei Darussalam ratified CEDAW in 2006.

5. Should all member states be taken on board or should the formula of ‘ASEAN minus X’ be applied? According to the ASEAN Charter the latter formula is explicitly limited to economic matters (ASEAN Charter, article 21, paragraph 2).

So far it has only been agreed that: (a) the ASEAN Human Rights Body shall be an intergovernmental organization; (b) it will not work with an accusatory approach, meaning no naming and shaming; (c) there will be one member from each ASEAN state, but it is still undecided whether that the person will act in a personal capacity or represent the government; (d) the body will uphold ASEAN traditional principles; (e) the body will take into consideration the different histories and circumstances of member states; and (f) it will represent ASEAN in international forums. In a statement Raymond Lim, Singapore’s Second Minister for Foreign Affairs, proposed three broad criteria for establishing an ASEAN Human Rights Body. It ‘must recognize the political history and policy of established ASEAN tradition; can only be achieved with an evolutionary approach; and no artificial deadlines should be set just for the sake of setting them.’¹¹ In fact, the timeframe proposed by the Thai Foreign Ministry was regarded as an ‘artificial one’ and not as an example of the ‘evolutionary approach’ mentioned above. Thus it could take years for the ASEAN Human Rights Body to be established.

4. Human Rights and Democracy: Missing Link or Missing Values in ASEAN

Democracy and human rights are both contested concepts. Neither has a single definition – both are complex and depend on different interpretations in different societies. The inclusion of terms like democracy, respect for and protection of human rights and fundamental freedoms, the rule of law and justice in the preamble, purposes and principles of the ASEAN Charter is not a guarantee of their implementation. It remains to be seen whether ASEAN is serious about its new ‘values’.

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David Beetham asserts that ‘democracy and human rights occupy different areas of the political sphere: the one a matter of the organization of government, the other a question of individual rights and their defense’ (Beetham 1999: 89–90).

He argues that since the collapse of communist regimes in Eastern Europe, human rights and democracy have become a universal aspiration. Robert Dahl affirms that ‘Democracy guarantees its citizens a number of fundamental rights that nondemocratic systems do not, and cannot, grant’ (Dahl 2000: 48). He further insists that ‘Institutions that provide for and protect basic democratic rights and opportunities are necessary to democracy: not simply as a logically necessary condition but as an empirically necessary condition in order for democracy to exist’ (Dahl 2000: 49).

The concepts of democracy and human rights outlined by Beetham and Dahl are two sides of the same coin. However, the democracy of Western scholars is understood differently in ASEAN. For some countries promoting human rights and political

¹¹ Raymond Lim, Singapore’s Second Minister for Foreign Affairs, Statement delivered during the opening of the 7th Workshop on the ASEAN Human Rights Mechanism, 12–13 June, 2008, Singapore.

pluralism is considered to be destabilizing. According to the former Malaysian Prime Minister, Mahathir Mohamad, 'when devotion to democracy results in a stagnant economy, high unemployment and denial of the right to work and work hard; when democracy protects fascists and neo-Nazis; when the individual activist takes precedence over the silent masses then it is time to question whether we have correctly interpreted democracy' (Vatikiotis 1996: 89). This statement was echoed by Singapore's former Prime Minister, Lee Kuan Yew, who asserted that 'the liberal democracy practiced in the Philippines was an obstacle to economic progress, which required collective discipline and firm central control' (Vatikiotis 1996: 103). The views expressed by the two former Prime Ministers are still shared by a number of ASEAN leaders who believe that democracy may undermine the political stability required for economic development. In most if not all ASEAN member states, press freedoms, the political and civil rights of individuals, and freedom of expression and assembly in particular, are curtailed if not suppressed. Moreover, democracy as perceived in ASEAN is different from universally acceptable forms. Former Thai Deputy Prime Minister Amnuay Viravan has argued that 'the region's "unique culture" should be considered "a soil in which the seeds of democracy and civic society must be planted"'. This implies that the values of democracy 'are, like plants, dependent on the environment in which they are planted' (Vatikiotis 1996: 115). In ASEAN, different forms have reflected different concepts of democracy, ranging from 'democratic centralism' in Vietnam to 'guided democracy' under Suharto in Indonesia, to 'Asian democracy' in Singapore, 'semi-democracy' in Thailand and 'liberal democracy' in the Philippines. It is interesting to see that none of these countries hesitates to adopt the 'mantra of democracy' and to indigenize it according to their political and societal context, as it is seen fit by their elites.

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The differences in the political systems of governments and the concepts of democracy reflect the policies and practices in the field of human rights in ASEAN countries. The elements of democracy and human rights of each individual country can be assessed by examining their national constitution as it contains basic ideas and aspirations and shows how each country approaches human rights. Close examination of these national constitutions reveals that the rights and freedoms of the people are recognized quite well in all ASEAN states. However, including such concepts in the constitution does not mean that human rights provisions will be properly respected in practice. They are, most of the time, subjected to restrictions, which mean that the enjoyment and exercise of rights and freedoms are automatically hindered. In ASEAN, it seems that

human rights and democracy are in place on the outside but function differently within. Democracy and human rights in ASEAN, in essence, are the missing issue from the regional discussion agenda.

In ASEAN, it seems that human rights and democracy are in place on the outside but function differently within. Democracy and human rights in ASEAN, in essence, are the missing issue from the regional discussion agenda.

Moving ahead for ASEAN will not be without challenges. One of the challenges ASEAN will have to face is how to make the organization accountable to its own people. ASEAN has hardly been monitored, assessed or evaluated by

its people. This is why many of the commitments and agreements made and adopted by ASEAN leaders remain dead letters. The establishment of an ASEAN Human Rights Body as provided for by the ASEAN Charter is one of the best ways to test democracy

building in the region. Democracy requires that those affected by any actions of commission or omission should be allowed to participate, and that those who have committed transgressions should be held accountable to the citizens for their acts. One of the most important functions of human rights machinery is to hold human rights violators accountable not only at the national but also at the regional level.

For ASEAN to pass the test of democracy building through the process of the establishment of an ASEAN Human Rights Body will require: (a) effective participation of civil society in the process of establishing the body and in its functioning; (b) the process of its establishment and its functioning to be transparent and inclusive; and (c) the body to be independent and impartial, in order for it to be able to hold the government accountable. It should also be equipped with monitoring powers. In sum, the legitimacy of ASEAN and of an ASEAN Human Rights Body needs to be assessed against normative democratic principles. As Eriksen and Fossum put it, 'democratic legitimacy requires public justification of the results to those who are affected by them (Eriksen and Fossum 2007:3). Justification demands participation, accountability and responsibility.

5. Relationships between the European Union and ASEAN under the New ASEAN Personality

The European Union is founded on the principles of liberty, democracy and respect for human rights and fundamental freedoms, and the rule of law, and these 'principles are common to the member states'.¹² Respect for human rights, democracy and the rule of law are conditions for EU membership and the EU also imposes sanctions on member states that do not follow these principles and rules. Moreover, in its external relations with third countries, international and regional organizations, the EU is guided by the same principles and values. The EU became the first dialogue partner with ASEAN in 1977 and the first ASEAN-EU Ministerial Meetings were held in 1978. These meetings were organized regularly until 1997 but irregularly after the admission of Myanmar to ASEAN. Apart from ASEAN-EU Ministerial Meetings, other channels for cooperation and dialogue between ASEAN and EU were established, including ASEAN-EU Ministerial Meetings.

Most EU member states have adopted a policy of conditionality that links aid with human rights, democratization, a market economy and arms reductions (Ruland 1997: 7). EU demands during the ASEAN-EU Ministerial Meetings in Manila (1991) and Luxembourg (1992) for human rights and democracy clauses to be included in the updated cooperation agreement were concrete responses to incidents in Dili and Myanmar. ASEAN countered this EU universalism with cultural relativism in 1993; and since then Asian values have been propagated by ASEAN leaders.

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¹² As stated in the Treaty of European Union of 1992 and all other treaties including the proposed Lisbon treaty.

Issues related to Myanmar have caused tension between ASEAN and the EU. The EU has been imposing sanctions on Myanmar for violations of human rights and the democratic values traditionally upheld by the EU. Negotiations between the EU and ASEAN on a free trade agreement have made little progress. The problems between the two regions involve EU concerns over violations of human rights in Myanmar as well as the demand for the release of the pro-democracy leader, Aung San Suu Kyi. The EU has expressed its discontent by not fully attending meetings with ASEAN.

So far, ASEAN has carried on a successful diplomacy with the EU. For example, although some EU member states have commented on the human rights situation in some ASEAN countries, at the inaugural Asia-Europe Meeting (ASEM) summit in 1996 in Bangkok human rights and democracy were excluded from the agenda. Major agenda items focused on ways to promote economic ties between Europe and Asia. ASEAN has been clear that any relationships should be based on equal partnership, mutual respect and mutual benefits, reflecting basic principles of sovereignty, unity and non-interference (Yang 2001: 85). The EU gradually returned to more pragmatic policies. Although human rights issues and democracy did not entirely disappear from the EU's policy agenda, they were downsized as criteria for shaping relations with ASEAN (Ruland 1997: 7). As Jurgen Ruland rightly puts it, 'Europe-Asia policies have been on a zig-zag course between realpolitik and moralism and between principles and opportunism' (Ruland 1997).

Any EU-ASEAN relationships should be based on equal partnership, mutual respect and mutual benefits, reflecting basic principles of sovereignty, unity and non-interference.

ASEAN may in future be driven by political and economic imperatives for regional integration. The principles and objectives set out by ASEAN in its Charter indicate that the region is, perhaps, moving towards the same process as the EU did. In this process the EU has a lot to offer ASEAN in terms of the promotion and protection of human rights and democracy. However, if the EU is to contribute to human rights and democracy in ASEAN, it needs to:

1. ensure that the basic values of the EU, such as human rights, democracy and the rule of law, are not sacrificed for economic imperatives;
2. speak with the same voice – large EU powers are dependent on exports and global economic competitiveness and prefer a more pragmatic policy while smaller member states are more likely to continue operating a moral stance (Ruland 1997);
3. maintain consistency in EU relations with ASEAN and not allow each member state to make bilateral agreements with ASEAN or any ASEAN member state frustrated by the slow progress of trade negotiations. This means keeping multilateralism firm.

In the ASEAN regional integration process the EU has a lot to offer. However, if the EU is to contribute to human rights and democracy in ASEAN, it needs to: ensure that the basic values of the EU, such as human rights, democracy and the rule of law, are not sacrificed for economic imperatives; speak with the same voice; and maintain consistency in EU relations with ASEAN.

In addition, as the EU has the most advanced and by far the most effective regional human rights mechanism and ASEAN is now in the process of establishing one of its own, the EU can inspire ASEAN in its efforts to maintain its relevance to the ASEAN people and the international community. The following activities and approaches are recommended:

1. Strengthen the 'track two' dialogue between ASEAN and the EU, focusing more on issues deemed to be 'too sensitive' to include on the normal agenda;
2. Make a greater contribution to capacity building on a longer term basis. ASEAN is being encouraged to consider the establishment of an ASEAN Center for Human Rights and Peace Studies. Any contribution to this initiative would not only help raise public awareness about human rights and democracy but also improve the monitoring capacity of any home-grown institution;
3. Identify some commonalities and common priorities with ASEAN, such as trafficking in persons, migration/migrant workers, violence against women and children and the environment;
4. Pay greater attention to improving judiciaries and empowering civil society;
5. Support the movement towards the establishment of an ASEAN Human Rights Body while recognizing the importance of regional specialized arrangements such as an ASEAN Commission on the promotion and protection of the rights of women and children. It is also important for the EU to contribute to the development of an ASEAN normative human rights framework, such as an instrument on the protection of the rights of migrant workers.

Since corporations and business communities have great influence in ASEAN, these non state actors have a large role to play. Integrating corporate social responsibility into human rights and economic and trade relations between the two regions is one way to engage with ASEAN.

6. Conclusions

Although the prospects for the promotion and protection of human rights and democracy in ASEAN are not bright, one should not be too pessimistic. In recent years ASEAN has become more attentive to human rights and democracy. A number of plans have been put in place, including the establishment of an ASEAN Human Rights Body and the ASEAN Community. ASEAN has also transformed from an informal to a legally based grouping 'with shared vision and common values to achieve ... democracy and justice in the region'. It is now for ASEAN to prove that it can speedily implement article 14 of the ASEAN Charter. As long as it is perceived to be intrusive, however, this may not offer any guarantee that the 'body' will be equipped with a 'soul'. The human rights mechanism will lack any relevance if ASEAN continues to be inhibited by the principle of non-interference. It may not be able to perform if state sovereignty does not carry any obligations and is not balanced by sovereignty of the people. It will only be hypocritical if ASEAN leaders allow the human rights body to exist but deprive it of the power to effectively protect its people. The human rights body must not be established only for the sake of establishing it.

References

ASEAN, *Joint Communiqué of the 25th ASEAN Ministerial Meeting*, Manila: 21–22 July 1992

- ASEAN, *Joint Communiqué of the 26th ASEAN Ministerial Meeting*, Singapore: 23–24 July 1993
- ASEAN, *Vientiane Action Programme 2004–2010*, 2004
- Beetham, David, *Democracy and Human Rights*, Cambridge: Polity Press, 1999
- Bauer, Joanne R. and Bell, Daniel A. (eds), *The East Asian Challenge for Human Rights*, Cambridge: Cambridge University Press, 1999
- Conde, Carlos H., 'ASEAN Pursues EU-Style Regional Integration', *International Herald Tribune*, 15 January 2007, available at <<http://yaleglobal.yale.edu/article>>
- Dahl, Robert A., *On Democracy*, New Haven: Yale University Press, 2000
- Eriksen, Erik O. and Fossum, John E., 'Europe in Transformation: How to Reconstitute Democracy?', RECON Online Working Paper, 1 (2007)
- Katsumara, Hiro, 'ASEAN's Human Rights Practice and Japanese Diplomacy', available at <<http://www.coe.int/t/t/dg4/nscentre/lisbonforum>>, accessed 16 January 2009
- Koh, Tommy, 'ASEAN at 40: Perception and Reality', *ISEAS Regional Outlook 2008–2009*, 26 October 2007
- Ruland, Jurgen, 'Asian Values and Liberal Democracy: A European Perspective', Paper presented at the third International Conference on Perspectives on ASEAN-EU Relations Under the New Asia-Europe Partnership organized by Chulalongkorn University Studies Programme and the Consortium of European Partner Universities, Bangkok, 13 February 1997
- Sen, Amartya, 'Human Rights and Asian Values', 16th Morgenthau Memorial Lecture on Ethics and Foreign Policy, 1997
- Stanley Foundation, 'US Human Rights Policy in Southeast Asia: New Issues for a New Era', *Policy Bulletin*, 10–11 May 2004
- Sunsanee Sutthisunsanee, 'Response of ASEAN to Human Rights Violations in Southeast Asia: Case Studies of Cambodia and East Timor', MA Thesis in Human Rights, Mahidol University, 2006 (unpublished)
- Tay, S. and Estanislao, J., 'The Relevance of ASEAN: Crisis and Change', in Tay, S., Estanislao, J. and Soesastro, H. (eds), *A New ASEAN in a New Millennium*
- Tay, S., Estanislao, J. and Soesastro, H. (eds), *A New ASEAN in a New Millennium*, CSIS: Jakarta, 2000
- Vatikiotis, Michael R. J., *Political Change in Southeast Asia: Trimming the Banyan Tree* London: Routledge, 1996
- Yang, Seung-yoon, 'The Future of Regional Cooperation in Asia : ASEAN's Policy Toward ASEM', *East Asian Review*, 13/4 (2001)

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