

From 1993 To 2023: 30 Years Of Human Rights Process In The Association Of Southeast Asian Nations (ASEAN)

William J. Jones¹, Douglas Rhein²

Abstract

ASEAN first incorporated the human rights into official regional discourse in 1993. It was only in 2007 with the ASEAN Charter did ASEAN determine that a regional human rights body would be established in the last region of the world where a regional mechanism was not present. With the establishment of the ASEAN Intergovernmental Commission on Human Rights in 2009, ASEAN official became a 'normal' regional organization by incorporating a human rights mechanism into its regional integration project. This article will trace the contours of human rights institutionalism in ASEAN and pinpoint the major juncture points and reasons for progress. This will provide insights into the nature of ASEAN regionalism, identify primary trigger factors for integrative projects and point and analytical arrow towards the possible evolution of AICHR in being a human rights mechanism which engages in protection activities or not.

Keywords: ASEAN, AICHR, Human Rights ASEAN, ASEAN Human Rights, ASEAN Intergovernmental Commission on Human Rights.

Literature and Situating the Study

There is a wide body of literature concerning general factors and trends of ASEAN regionalism but a far smaller body when it comes to addressing major contributory factors that led to the formalization of human rights in ASEAN. Some begin with the unit of analysis of the national level arguing that the processes of liberalization were a strong contributing factor for the establishment of AICHR. Acharya (2003; 2010) argues that the process of liberalization seen through democratization in ASEAN states during the post-cold war era provided enhanced prospects for civil participation. This argument rests on the understanding that groups and individuals can inject norms and practices of liberalism into the ASEAN regional architecture that will engender greater participation through national governments at the regional level. Ryu and Ortuoste (2014) argue that democratization of some ASEAN member states helped the region get to a 'tipping point' through liberal norm diffusion of ASEAN member states, namely Indonesia, Thailand, Malaysia and the Philippines. Hsien-Li (2011) in the broadest study of AICHR argues that there are 3 primary forces responsible for AICHR's establishment. The first is democratization in line with the previous authors. Second, is the increased advocacy and space provided through civil society organizations in the democratizing member states. Civil society in this sense is found in NGO networks and organizations but the primary role played by the Working Group for an ASEAN Human Rights Mechanism and the Institutes for Security and International Studies university network. This Track 2 and 2½ approach is argued to be

¹Mahidol University International College, Thailand.

²Mahidol University International College, Thailand.

effective because the Working Group was comprised of former senior state officials, former politicians and senior academics. The same is nearly true for ASEAN ISIS. The reason for these organizations success in pushing the human rights agenda is the soft and inclusive approach in their advocacy which did not name and shame or go beyond what was politically feasible with regard to the sensibilities of the member states and elites.

Katsumata (2009) and Manea (2008, 2009) argue that mimicking and emulating Western norms was the primary reason for the establishment of AICHR. This argument rests on the notion that there is a very weak commitment and lack of consensus around human rights in ASEAN and that regional elites are performing what external partners would expect. Davies (2021) and Poole (2015) take a similar approach but argue that the addition of AICHR to ASEAN's agenda was largely ritualistic and done to legitimize the larger ASEAN integration project centered on economic affairs. This puts forth the notion that regional organizations react to external norms of legitimacy in their regional integration without the internal normative wish or want. Henry (2007) and Jones and Jenne (2015) argue that ASEAN member states are small, weak states in the international arena and establishing AICHR as a means to placate and forestall interference in domestic affairs by more powerful countries. This leads from the previous argument by centering the argument as a protective measure.

The literature while piecemeal and important does not take into consideration a broader approach and identify regional triggers for the normative and substantive shift in ASEAN vis-à-vis human rights. This study aims to draw on previous research and offer an international relations perspective which takes into account the time period of the 1990s as well as previous perspectives to argue that human rights institutionalism in ASEAN is reflective of broader trends in ASEAN integration. Namely, integration moves forward due to external factors and crisis and ASEAN being comprised of small states is highly sensitive to external pressure. This pressure and sensitivity caused ASEAN elites to respond to human rights in a substantive and performative manner that is partly indicative of previous research. The important take away from this paper is that external shocks and the broader environment outside of ASEAN dictates regionalism and human rights institutionalism in ASEAN.

Origins of Human Rights Discourse in ASEAN Regionalism

Among scholars and practitioners, the general starting point for a substantive inquiry into the evolution of human rights in Southeast Asia, namely its regional organization of ASEAN begins in 1993 with the Joint Communique of the 26th ASEAN Ministerial Meeting. However, Muntarbhorn tracks ASEAN level human rights engagement to 1988 and ASEAN's adoption of the Declaration of the Advancement of Women in the ASEAN Region. The 1988 Declaration pledges members states collectively or individually to:

1. promote participation of women whenever possible in all fields
2. enable women as active agents in promoting regional understanding and cooperation
3. integration of women's issues and concerns in national plans
4. promotion of women in nongovernmental women organizations and forums (ASEAN, 1988)

The importance of the Declaration can be seen through the understanding among the 6 ASEAN member states of the time, a general consensus and position towards the promotion of women's rights on a universal basis. This was followed up by the establishment an ASEAN subcommittee on Women which worked towards various promotional activities to safeguard women and implement CEDAW (Muntarbhorn, 2003, p. 166)

Table 1 Timeline of Human Rights Institutionalism in ASEAN

Year	Key ASEAN Document	Outcome
1988	Declaration of the Advancement of Women in the ASEAN Region	Consensus on promoting women's rights
1993	Joint Communiqué 26th ASEAN Ministerial Meeting	First official ASEAN recognition of a discourse on human rights
2003	Bali Concord II	Blueprint for 3 pillar ASEAN Community
2004	Vientiane Action Plan	Calls for creating a human rights mechanisms
2005	Kuala Lumpur Declaration on the Establishment of the ASEAN Charter	Eminent Persons Group
2006	Joint Communiqué 39 th ASEAN Ministerial Meeting	High Level Task Force
2007	12 th ASEAN Summit	Declaration on the Protection and Promotion of the Rights of Migrant Workers, Establishment of ACMW
2007	13 th ASEAN Summit	Signing of ASEAN Charter
2008	Joint Communiqué 41 st ASEAN Ministerial Meeting	Terms of Reference of High Level Task Force
2009	Joint Communiqué 42 nd ASEAN Ministerial Meeting	Terms of Reference of ASEAN Intergovernmental Commission on Human Rights (AICHR), ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)
2009	15 th ASEAN Summit	Establishment of AICHR with mandate to draft human rights declaration
2012	21 st ASEAN Summit	ASEAN Declaration on Human Rights

ASEAN's approach to human rights was guarded to say the least with the 24th Ministerial Meeting taking a negative view of the human rights linkages from external entities. In the 1991 Communiqué Foreign Ministers noted "efforts to make environmental concerns and human rights considerations new conditionality in development assistance and noted with concern its tendentious application on inter-state relations". They further noted that "while human rights is universal in character, implementation in the national context should remain within the competence and responsibility of each country, having regarded the complex variety of economic, social and cultural realities. They emphasized that the international application of human rights should neither be narrow and selective nor violate the sovereignty of nations" (ASEAN 1991).

This was further underscored the by subsequent 1992 Communiqué which was far briefer in with relation to human rights. The Foreign Ministers stated the "environmental and human rights concerns should not be made as conditionality in economic and development cooperation. They noted that basic human rights while universal in character, are governed by the distinct culture and history and socioeconomic conditions in each country. Their expression and application in the national context are within the competence and responsibility of each country" (ASEAN 1992).

The 1991 and 1992 ASEAN Ministerial Meetings lay bare the restrictive view towards human rights within the region. ASEAN Foreign Ministers played rhetorical verbiage to the universality of human rights while linking this to ‘national context’ and developmental status, governance system and cultural variation while underpinning the aforementioned to national sovereignty, a core ASEAN principle. Furthermore, an external component of resistance is referenced to linking human rights to development assistance and conditionality by external actors. The resistance to issue area linkage is interesting as it posits a sensitivity ASEAN states to an asymmetrical relationship to the developed world. This asymmetrical relationship is one of the needs of ASEAN states for markets and development assistance but having these needs linked to sovereignty sensitive issues such as human rights which are unsettled ASEAN norms. The cross-cutting norms of development in ASEAN seen as a settled norm of aspirational quality coming into contact with the unsettled contested norm of human rights among post-colonial states is a point of resisted contact. However, aside from resistance to human rights norms is the importance of the 1991 and subsequent 1992 Communique that human rights entered the elite ASEAN lexicon for the first time (Petcharamesree 2013).

The 1993 Consensus: Vienna, Bangkok and ASEAN

In the run up to the World Conference on Human Rights in Vienna the preparatory conference held in Bangkok produced the Bangkok Declaration of the Regional Meeting for Asia of the World Conference on Human Rights. The conference declaration is notable for a couple salient points that will be a reoccurring theme later in the discussion. The Bangkok Declaration noted the universality and indivisibility to human rights as a matter of international cooperation and referencing the encouragement to ratify the ICCPR and ICESR. It went on to contextualize human rights within the noteworthy nomenclature that universal interdependence and indivisibility of rights must be ‘addressed in an integrated and balanced manner’, ‘discourage any attempt to use human rights as a conditionality for extending development assistance’. Most importantly for this reference is the notion that human rights being a “dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds” (United Nations, 1993a). This line of government thought contrasted strongly with the Bangkok NGO Declaration which called for the establishment of a regional mechanism and noted in contradistinction that “as human are of universal concern and are universal in value, the advocacy of human rights cannot be considered to be an encroachment upon national sovereignty” (United Nations, 1993b). The ASEAN Inter-Parliamentary Organization (AIPO) 14th AIPO General Assembly Kuala Lumpur reiterated the Bangkok NGO Declaration stated that ASEAN member states “responsibility of member states to establish an appropriate regional mechanism on human rights” (AIPO, 1993)

These actions were provided further international support in 1993 with the World Conference on Human Rights in Vienna which produced the Vienna Declaration and Programme of Action. The 1993 VDPA underscored the universality and indivisibility of human rights within the framework of the UDHR. More presciently the VDPA also noted the importance that regional and sub-regional organizations play in the promotion and protection of human rights and called on international community to establish such organizations where none were present (Chung and Emran, 2017; Muntarbhorn, 2003, United Nations, 1993c)

It is within the international, regional and national context of the 1993 Vienna World Conference that ASEAN member states made an about-face concerning human rights and for the first time addressed human rights separately as a stand-alone issue. The Foreign Ministers noted that human rights should be “balanced and integrated manner and protected and

promoted with due regard for specific cultural, social, economic and political circumstances...human rights should not be politicized". Further, human rights must be understood and balanced with "respect for national sovereignty, territorial integrity and non-interference in the internal affairs of states and rights of the individual and those of the community". Most strikingly, this is the first reference to and political commitment made that "ASEAN should also consider the establishment of an appropriate regional mechanism on human rights" (ASEAN, 1993; Chalermphanupap, 2008; Ciorciari, 2012 p. 699). This inflection point is colloquially referred to as the '1993 consensus' and puts forth the dialectical and often contradictory relationship that ASEAN continues to have with human rights discourse and substantive engagement. Namely, the rhetorical commitment to human rights as a universal notion imported internationally but normatively regionally grounded. The notion of need to balance universality with diversity and particularity and balance individual and communitarian rights within the context of universal particularity (Davies, 2014; Feraru, 2022, p. 7-8; Ginbar, 2010; Kraft, 2005; Langlois 2012; Mohamad, 2002, p. 236; Wahyuningrum, 2021). The ASEAN decision to suddenly embrace human rights officially into regional discourse deserves some explanation. There are two primary reasons for ASEAN's hesitant embrace of human rights norms into ASEAN officialdom; the changed external context of international relations and the internal need for a new mission for ASEAN.

Why 1993?

Beeson has argued that a primary motivating factor for ASEAN regionalism and the history of Southeast Asia are profoundly shaped by forces external to the region (Beeson, 2009 p. 334). External forces have shaped ASEAN integration from its formation up to present and impact the breadth and depth of member state engagement with regionalism. In the formative period this was due to the twin factors of the Cold War and the end of Konfrontasi with the purposes as Adam Malik stated to "consciously or unconsciously, considerations of national and regional security" (Acharya, 2013 p. 156) or with less security overtones Thanat Kohman ASEAN was a "collective political defense" (Ibid) and broadly Lee Kwan Yew's view that ASEAN's purpose was formed for "political objectives, stability, and security" (Tarling, 2006 p. 134). External pressure as a motivator for ASEAN regionalism can be witnessed in the fact that after its inaugural meeting in 1967 to form the organization it existed as a "a club of foreign ministers" not meeting formally again until February 1976 in Bali after the fall of Saigon to Vietnamese Communist/Nationalist forces (Fifield, 1979 p. 1200). The power of external forces is also the reason for the shift in human rights engagement in ASEAN. In the first instance with the end of the Cold War and need continue to wield some degree of international political influence as in the Vietnam War era there was a need to reinvent a *raison d'être* for ASEAN and shield it from Western pressure for democratic reforms and human rights (Eng, 2000; Mohamad, 2002 p. 246; Narine 2012a; Narine, 2012b p. 158; Peterson, 2011 p. 182; Thio, 1999 p. 5; Yen, 2011 p. 397). The second reason for ASEAN's human rights shift in the external force of the 1993 Vienna World Conference on Human Rights and the stimulating factor to push for regional human rights institutions that was reinforced by NGO and civil society mobilization in the region. Following the 1993 Vienna and Bangkok human rights conferences the 14th General Assembly of the ASEAN Inter-Parliamentary Organization (AIPO) issued the statement that "it is likewise the task and responsibility of member states to establish an appropriate regional mechanism on human rights" (AIPO, 1993). It is this dual pressure from the international level seeping into civil society within the region that is offered as a major causal factor in generating the needed force for the creation of the Working Group for a Human Rights Mechanism in 1995 that pressured and persuaded ASEAN leaders and elites to eventually establish AICHR (Langlois, 2012 p. 216; Mohamad, 2002 p. 237; Muntarhorn, 2003 p. 160; Muntarhorn, 2012 p. 7; Phan, 2008 p. 3).

1993 External Pressure of the Unipolar Moment

This portion will identify two primary reasons for AICHR's establishment; an internal and an external reason. It should be noted that ASEAN is composed of small and medium sized states of varying levels of development with only Indonesia being a large state and Singapore the only high-income country in ASEAN. Furthermore, the nature of ASEAN trade has always been one predicated on the importance of extra-ASEAN trade rather than intra-ASEAN trade with only Lao PDR having a majority of its trade within ASEAN (ASEAN, 2021). This is fundamentally important as ASEAN states economic, hence political orientation is one of dependence on larger and more powerful external actors, historically North America, Europe and Japan and now China. The second, internal reason for AICHR's establishment is the perceived need by ASEAN elites 'to keep ASEAN relevant' to external partners. This internal-external dynamic is a feature of ASEAN regionalism with nearly every major regional integrative framework being determined or stimulated by forces external to the region.

The establishment of AICHR was the end product of nearly two decades of contested ideational conflicts within ASEAN to somehow create a regional human rights body that would be credible in the eyes of external partners and acceptable to ASEAN member states.

Important in the discussion related to human rights is the contradiction which lies at the heart of the human rights project; sovereignty and protection of peoples from the state. This was apparent with the first official reference to human rights in ASEAN's decision making with the 26th ASEAN Ministerial Meeting. ASEAN ministers committed that "ASEAN should also consider the establishment of an appropriate regional mechanism on human rights" but noted 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. They emphasized that the promotion and protection of human rights should not be politicized" (ASEAN, 1993).

With this in mind it is fundamental to understand the context of the period of time. With the end of the Cold War in 1991 and entrance into the "unipolar" moment the West led by the United States and its allies in Western Europe exercised heretofore unseen power and influence in all spectrums of interstate relations (Krauthammer, 1990). This conjuncture point of history was immensely profound for ASEAN states for two primary reasons; it ushered in the Unipolar moment whereby American and European interests became primary global interests. Western countries, in particular, and their political elites for the first time engaged in an ideological foreign policy with the thought that "liberals want to spread liberal democracy not just to protect the rights of individuals but also because they believe it is an excellent strategy for causing peace (Mearsheimer, 2018 p. 132). It is taken for granted and argued by Ikenberry and Mastanduno who see American hegemony as a given in the post-Cold war world and hegemony as being central in terms of organizing world and regional order. They argue that American hegemony provides a reference point for organizing economic and political activity along liberal lines that will create stability and hierarchy (Ikenberry and Mastanduno, 2003 p. 8). Johnston views the end of the Cold War period with regard to ASEAN as a point of inflection whereby ASEAN states would become socialized to hegemonic norms which emanated from the West that would counter realist notions of power, replaced with values of liberalism (Johnston, 2003 p. 107-122). The contextual framework of the hegemonic western values is cap stoned by Fukuyama who argued that liberal values would now become universal values with liberal democracy and capitalism spreading worldwide (Fukuyama, 1992 p. 39-51)

This is important in two respects; the pressure that Western states put on ASEAN governments in the conduct of their economic, aid and political-security relations (Ba, 2009b p. 90; Piromya, 2023). Pressuring Southeast Asian governments was seen on the policy angle and also the international rhetorical with Western governments openly pressuring and condemning ASEAN governments over their human rights records (Acharya, 2013 p. 220). The emphasis on human rights discourse in the conduct of foreign relations was such that “issues of human rights and democracy have become an obsession with the US media, Congress and the administration” (Richardson, 1993 p. 22).

Western pressure on human rights was not just on macro level relations but also specific to ASEAN countries in the case of Myanmar beginning in 1991 (Ba, 2009b p. 116; Beeson, 2008 p. 25; Yen, 2011 p. 402). The Myanmar issue impacted bilateral ASEAN/European Union relations strongly, to the extent the EU threatening to boycott ASEM meetings if Myanmar were allowed to Chair ASEAN (Collins, 2000 p. 124; Keva, 2008; Murray, 2008; Robles Jr., 2006). The split between ASEAN members regarding the Chairing of ASEAN by Myanmar is instructive as it echoes the ASEAN split on human rights and AICHR in general. Cambodia, Laos and Vietnam were against having Myanmar give up Chairing ASEAN whilst the Philippines, Indonesia and Thailand were for Myanmar giving up the Chair and Malaysia and Singapore occupying the center ‘practical standpoint’ (Kraft, 2005 p. 19). The Myanmar issue grew to an intense level with threats from the Bush Administration of forceful humanitarian intervention. In the aftermath of Cyclone Nargis in 2008 America “threatening intervention, the US puts pressure on Beijing, New Delhi and Bangkok to, in turn, pressure the Burmese generals to open their country to a full-fledged foreign relief effort” (Barber, 2009 p. 27; Kaplan, 2008; Selth, 2008).

The calls for humanitarian intervention were echoed by French Foreign Minister Bernard Kouchner opening calling and lobbying in the UNSC for intervention under the Responsibility to Protect doctrine (Asia Pacific Centre for the Responsibility to Protect, 2008; Roberts, 2010 p. 190; Roberts, 2012 p. 142). Political pressure was not limited to only Myanmar but also against erstwhile American allies Indonesia over the crisis in East Timor (Berlie, 2017 p. 83; Collins, 2000 p. 94) and the Philippines during the Duterte Presidency (Heydarian, 2020; Spinwall, 2020). This sentiment of fear of external intervention into regional and national affairs is articulated clearly by Former Thai Foreign Minister Kasit Piromya “there was no intention to seek out ‘crime and punishment’. ‘We [ASEAN] deal with it through good offices first [when problems crop up] and then arbitration. We do it in a civilised way – working together from inside out and not waiting for outsiders to punish us” (FPB Contributor, 2009; Sani and Hara, 2013 p. 389). This is put succinctly by Thanh who saw need for “common understanding was agreed that ASEAN needs to establish its own standards for human rights protection and promotion, and that human rights should not be left as an excuse for outsiders to intervene into ASEAN’s own affairs” (Thanh, 2009 p. 103).

1994: One Step Forward, Two Steps Back

After the consensus year of 1993 when ASEAN members reluctantly accepted human rights into official regional discourse human rights disappeared from ASEAN political officialdom. The period between 1994-1997 saw human rights loose traction at the ASEAN level due to ASEANs focus on trade related issues and the high point of the ‘Asian Values’ debate surrounding human rights universality (Yen, 2011 p. 398). There were no references to human rights in ASEAN Ministerial Communiques between 1994 and 1995 (ASEAN 1994, ASEAN 1995). The 1996 Communique referenced the 5th ASEAN Summit awareness of the need to functionally elevate cooperation for “shared prosperity through human development, technological competitiveness and social cohesiveness (ASEAN 1996).

The 1997 Joint Communique did make reference to human rights but caveated human rights within a highly restrictive frame and identified ASEAN members clear prioritization of issues. The 1997 Joint Communique clearly articulated the position of “Foreign Ministers while recognizing the importance of trade in bringing about economic development to the ASEAN countries, maintained that human rights issues should not be made conditional to the promotion of free trade among nations” (ASEAN 1997). Foreign Ministers further noted “concern over the emerging trend of state, provincial and other local authorities in countries outside this region seeking to impose trade sanctions against other states on grounds of alleged human rights violations and non-trade related issues” (Ibid). Going so far as to state that continuing the practice of linkages between trade and human rights would “undermine the international trading system”.

The clear articulation of a resistance to human rights linkage to trade within the framework of continuing WTO evolution and the need for economic prosperity linked to external actors largely in the ‘West’ makes clear three salient points. First, the concern of ASEAN member states that their economic prosperity and development was seen as largely dependent on the developed Western core of North America and Western Europe. Second, the sensitivity of ASEAN member states to expanding linkages between trade, national prosperity and external imposition of human rights norms and practices by those same external actors. Third, the prioritization of trade related issues and economic development within a hierarchy of issue-based concerns comparatively with human rights issues.

The Asian Economic Crisis: ASEAN Credibility Shattered

The period of 1994-1997 coincides with the miraculous economic growth the ASEAN 5 as so called “Asian Tigers” where trade related issues dominated ASEAN member states agendas and is reflected in ASEAN initiatives and focus largely on AFTA and the East Asia Economic Caucus (Sarel, 1997). It is only with the onset of the East Asian economic crisis which began in July 1997 and laid waste to the Southeast Asian economies of Indonesia, Thailand and to a lesser extent Philippines and Singapore did ASEAN again return human rights into its official vernacular (IMF, 1998).

The ensuing crisis which engulfed Indonesia and Thailand caused both countries to ask for external financial support from the IMF with standby bailout loans. In total Thailand was granted \$17.2 Billion and drew \$14.1 Billion of the bailout funds while Indonesia received some \$43 Billion from IMF and other donors (IMF, 2000). This economic dislocation led to the fall of the Thai government of Chavalit Yongchaiyudh in November 1997 and Mohammad Suharto, Indonesia’s 32-year strongman the following May (Mydans, 1997, 1998a). The experience of external economic bailouts and conditional assistance was a turning point for ASEAN members not necessarily because of the call for help but the humiliation brought on by perceived condescension and superiority of Western donors. This was best encapsulated in the humiliating photos of President Suharto signing IMF bailout documents with IMF head Michel Camdessus looking over his shoulder with folded arms like a disappointed father and an unruly repentant child. This led to commentary within the region to the likes of political analyst Dewi Anwar “people weren’t talking about the contents of the agreement but about that photograph: how could our President be humiliated that way?”, Ginandjar Kartasamigta of the Golkar party stating “but if that means they can impose their will or humiliate us, we would be better off without their aid”, Didik Rachbini, an economist, questioning “is the I.M.F. a political organization able to impose its own political will?” (Mydans, 1998b).



Picture of IMF Managing Director Michel Camdessus watching Indonesian President Suharto sign IMF bailout documents January 1998 (Straits Times 2017)

The perceived humiliation of Southeast Asian states with regard to Western external intervention in ASEAN member state affairs sparked a reassessment of ASEAN and the need to reorient the organization to achieve regional autonomy. This point is central importance in the context of ASEAN as the scale with which sovereignty and governmental autonomy was undermined by the crisis and essentially exposed as a myth (Beeson, 2003 p. 367). The need to reorient and rejuvenate ASEAN regionalism coupled with exposure to external pressure of the ‘Washington Consensus’ pushed ASEAN to incorporate external human rights norms into the regional framework of altering ASEAN norms in line with regional projects of economic integration and external partnering as seen in ASEAN +3 (Beeson, 2002 p. 560; Beeson, 2005; Beeson, 2009 p. 366).

Post Asian Economic Crisis: Rejuvenating ASEAN

The reorientation of ASEAN towards greater regional initiatives and ASEAN expansion to include CMLV countries found the call pushed for strongly by Singapore to deepen economic integration and create an ASEAN Economic Community (ASEAN, 2003a). This was followed up and expanded upon at the 9th ASEAN Summit with the decision to establish an ASEAN Community along similar lines with the European Union’s pillar system and include cultural and social pillars clearly embedded in Bali Concord II (ASEAN, 2003b; Yen, 2011 p. 398). In this context the 10th ASEAN Summit yielded the Vientiane Action Programme (VAP) which committed ASEAN to include human rights into its regional integration project. Glancing at the VAP are a few interesting markers of ASEAN’s approach to human rights.

Firstly, the connections made between human rights in the context of political development in the regional as well as the connection with the right to development. These can be understood in two manners, the first being human rights norms connected to political legitimacy principally to external actors and liberal ASEAN elites. Second, as ASEAN pushing the boundaries of human rights to include novel elements of development and integrating these with human rights to signal a degree of legitimacy attached to human rights. Lastly, in terms of signaling internally the VAP refers to establishing ‘instruments’, ‘commissions’ for migrant workers, women and children and expanding ‘network connections’ of human rights mechanisms.

This acceptance of human rights into an ASEAN Community is embedded within a future ASEAN Security Community (ASEAN, 2004). Two important explanations for Vientiane lay in analysis of the role of state and quasi-state actors. In terms of state actors Duy argues that Indonesia’s role as the ASEAN state which pushed the human rights agenda after Indonesia’s liberalization played a critical role as ASEAN’s largest state to keep the issue within ASEAN integration (Phan, 2008). Secondly, the role of non-state (ASEAN-ISIS) and quasi-state actors (Working Group) were very influential in normalizing, disarming and integrating human rights into the later ASEAN Charter and establishment of the AICHR. Many scholars studying this period point to dual tracks of diplomacy with ASEAN-ISIS being pressured by liberal ASEAN states of Indonesia, Philippines and Thailand for pushing the human rights narrative and the Working Group by having so many former government officials and respected regional figures as having the trust of the ASEAN elites. As such the Vientiane Action Programme with respect to human rights not only emerging but gaining significant momentum which culminated in the ASEAN Charter and eventually AICHR.

It is argued that the Working Group for a Human Rights Body was instrumental in getting human rights institutionalized in ASEAN. Success in the Working Group as a Track III actor composed of national elites that heeded the sensitivity of human rights to ASEAN member states. The Working Group chose to proceed on a gradualist and incremental pace with human rights that was palatable to member states and avoid any large and potentially radical moves that would encounter strong resistance (Muntarhorn, 2005). This gradualist approach was parallel with a linkage approach. Linkage in this sense was grafting unfamiliar human rights issues such as children and women’s rights to previously agreed upon action norms such as making ASEAN a more socially oriented organization (Collins, 2013; Davies, 2013; Dosch, 2008; Phan, 2008; Gerard, 2014).

The following year ASEAN leaders agreed to move forward with the human rights framework within the context of an ASEAN Charter. The Kuala Lumpur Declaration recognized that a future Charter would include “promotion of democracy, human rights and obligations, transparency and good governance and strengthening democratic institutions” and a commitment to establish an Eminent Persons Group to explore a Charter text and establish a High-Level Task Force to finalize a draft for Heads of State and Government (ASEAN, 2005a).

Table 2 ASEAN Eminent Persons Group

Member State	Person	Background
Brunei Darussalam	Pehin Dato Lim Jock Seng	Minister of Foreign Affairs and Trade
Cambodia	Dr. Aun Porn Moniroth	Advisor to the Prime Minister and Chairman of the Supreme National Economic Council
Indonesia	Ali Alatas	Former Minister for Foreign Affairs
Laos PDR	Mr. Khamphan Simmalavong	Former Deputy Minister
Malaysia	Tan Sri Musa Hitam (Chairman)	Former Deputy Prime Minister
Myanmar	Dr. Than Nyun	Chairman of the Civil Service Selection and Training Board
Philippines	Fidel V. Ramos	Former President

Singapore	Prof. S. Jayakumar	Deputy Prime Minister, Coordinating Minister for National Security and Minister for Law
Thailand	Mr. Kasemsamosorn Kasemsri	Former Deputy Prime Minister and Minister of Foreign Affairs
Vietnam	Mr. Nguyen Manh Cam	Former Deputy Prime Minister and Minister of Foreign Affairs

As can be understood from the above, the Eminent Persons Group (EPG) was comprised of senior statesmen who understood two primary principles; ASEAN member states wanted something presented that would push the boundaries of previous ASEAN initiatives inclusive of an understanding of ASEAN processes and sensibilities (ASEAN, 2005b). The EPG was tasked with formulating principles for drafters of an ASEAN Charter to “think out of the box and make radical recommendations on how to strengthen ASEAN and for the Charter” (Koh, 2009 p. 50). It has been noted that the issue of human rights suggested and a possible provision to be included however when “the EPG discussed the possibility of setting up of an ASEAN human rights mechanism, and noted that this worthy idea should be pursued further, especially in clarifying how such a regional mechanism can contribute to ensuring the respect for and protection of human rights of every individual in every Member States” (ASEAN, 2006; Durbach, Renshaw and Byrnes, 2011 p. 223). However, the idea was not pushed by liberal member state representatives as the issue was considered “too hot to handle” thus pushing the issue to the later established HLTP (Chalermphanupap, 2009 p. 126; Ng, 2021 p. 175).

The EPG report and recommendation was presented and endorsed by ASEAN leaders in January 2007 and with it the establishment of the High Level Task Force (HLTF) to draft the ASEAN Charter in preparation of the ASEAN Summit in 2007 (ASEAN, 2007a). The HLTF was tasked with drafting a document that would enshrine ASEAN principles, make ASEAN more legally based but also arrived at “consensus among the ASEAN Foreign Ministers is the inclusion of a provision in the ASEAN Charter that mandates the creation of a human rights body” (ASEAN, 2007b; Hernandez, 2008 p. 117). In that context over the 9 months of drafting the HLTF held consultations with civil society organizations and national human rights institutions of four ASEAN member states (Ginbar, 2010 p. 509). The HLTF although tasked with formulating a provision for a human rights body was unable to find consensus or a formulation that was acceptable to all and as such referred the issue to the ASEAN Foreign Ministers. The HLTF did agree to a few principles that would guide discussions at the HLTF and later Foreign Ministers in drafting the Terms of Reference at the 7th HLTF Meeting. These principles were that a future human rights body:

1. It would be inter-governmental in composition;
2. It would not be a finger-pointing body;
3. It would define human rights in an ASEAN context;
4. It represents ASEAN’s views at international forums;
5. It should have consultative status (Koh, 2009 p. 57).

It should be noted that there are a couple salient points that will be a recurring theme throughout this research; the internally contested nature of human rights and sensitivity to sovereignty erosion. First, is the internal split between ASEAN member states with regard to acceptance of and willingness to push boundaries with regard to human rights. The commonly referred to groups are the ‘liberal’ group of Indonesia, Thailand and the Philippines as being supportive of a stronger mandate, the ‘authoritarian’ group of Cambodia, Myanmar, Laos and

Vietnam as being highly skeptical and resistant to any strong protections mandate and a middle group of pragmatists that included Brunei, Malaysia and Singapore (Ibid p. 58; Ng, 2021 p. 179). The former group led by Thailand pushed strongly for inclusion of a human rights body into the Charter, arguing that ASEAN integration improve the quality of life for ASEAN peoples (Ng, 2021 p. 179; Pibulsonggram, 2009 p. 86). Indonesia’s position was for a grounding in principles of democracy, human rights, good governance and rule of law (Djani, 2009 p. 141; Ng, 2021 p. 179, whilst Malaysia was positioned on the liberal side due it having a national human rights institution (Ng, 2021 p. 179).

CMLV countries were adamant that any human rights body would not be established against their interests (Ibid). Tensions ran high with many threats of walkouts and the Philippines representative nearly walking into the wrong bathroom (Koh, 2009 p. 63). It was only with intervention from ASEAN Foreign Ministers that the deadlock was broken in a closed-door session with only the HLTP Chair present that:

When the meeting was over, the Secretary-General provided the HLTF with a summary of the Ministers’ decisions. The decision of the Ministers to establish an ASEAN human rights body was greeted by some of my colleagues with disbelief. I remember that my colleague from Vietnam demanded to see his minister. Ong Keng Yong had the unpleasant duty of informing us that our ministers did not want to see any of us! (Koh, 2017)

There were a couple of primary reasons for resistance from CMLV countries that explain their position. The Lao PDR representative noted that there was not disagreement over the protection of human rights per say but rather different views on the concept of human rights (Sangsomak, 2009 p. 164). Furthermore, the fear of losing sovereignty and need to find a common standard within ASEAN so that external parties would not use human rights as an excuse for interfering in ASEAN member states internal affairs (Djani, 2009 p. 140; Thanh, 2009 p. 103).

The matter of a human rights body was thus shunted to the 40th ASEAN Ministerial Meeting where Foreign Ministers of the ‘liberal’ and ‘pragmatic’ group managed to convince CMLV countries to accept in principle a provision for regional human rights body (Phan, 2008 p. 10). With the contentious negotiations complete it was at the 40th ASEAN Foreign Ministers Meeting that the introduction of what would be Article 14.1 into the ASEAN Charter the provision that “ASEAN shall establish an ASEAN Human Rights Body” (ASEAN, 2007c; ASEAN, 2007d; ASEAN, 2007e; Phan, 2019 p. 917).

Table 3 ASEAN High Level Task Force Group

Member State	Person	Background
Brunei Darussalam	Pengiran Dato Osman Patra	Permanent Secretary ASEAN SOM Leader Ministry of Foreign Affairs and Trade
Cambodia	Dr Kao Kim Hourn	Secretary of State ASEAN SOM Leader Ministry of Foreign Affairs and International Cooperation

Indonesia	Mr. Dian Triansyah Djani	Director-General, ASEAN-Indonesia Department of Foreign Affairs
Laos PDR	Mr. Bounkeut Sangsomak	Deputy Minister ASEAN SOM Leader Ministry of Foreign Affairs
Malaysia	Tan Sri Ahmad Fuzi Haji Abdul Razak	Ambassador-at-Large Ministry of Foreign Affairs
Myanmar	U Aung Bwa	Director-General, ASEAN-Myanmar Ministry of Foreign Affairs
Philippines	Rosario G Manalo	Special Envoy for the Drafting of the ASEAN Charter
Singapore	Tommy Koh	Ambassador-at-Large Ministry of Foreign Affairs
Thailand	Mr. Sihasak Phuangkitkeow	Deputy Permanent Secretary Ministry of Foreign Affairs
	Mr. Pradap Pibulsonggram	Deputy Permanent Secretary Ministry of Foreign Affairs
Vietnam	Mr. Nguyen Trung Thanh	Assistant Minister ASEAN SOM Leader Ministry for Foreign Affairs
	Mr. Pham Quang Vinh	ASEAN SOM Leader Ministry for Foreign Affairs

The ASEAN Charter and Article 14: A Human Rights Body is Born

With the signing of the ASEAN Charter on November 20, 2007 at the 13th ASEAN Summit the formalization of ASEAN as a regional organization with legal personality was achieved after 40 years of informal and non-legalistic processes. The ASEAN Charter not only provided a formal legal status to ASEAN but a commitment in writing for the establishment of a regional human rights body (ASEAN, 2007f; ASEAN, 2007g). It is instructive to have a look at Article 2 of the ASEAN Charter where human rights are mentioned. Article 2 of the ASEAN Charter states that;

ASEAN and its Member States shall act in accordance with the following Principles:

- a. respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States;
- b. shared commitment and collective responsibility in enhancing regional peace, security and prosperity;
- c. renunciation of aggression and of the threat or use of force or other actions in any manner inconsistent with international law;
- d. reliance on peaceful settlement of disputes;
- e. non-interference in the internal affairs of ASEAN Member States;
- f. respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion;
- g. enhanced consultations on matters seriously affecting the common interest of ASEAN;
- h. adherence to the rule of law, good governance, the principles of democracy and constitutional government;

- i. respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice; (ASEAN, 2007c).

It is interesting that in terms of organizational principles ASEAN member states ranked in priority ASEAN Way fundamentals of state sovereignty, non-interference in internal affairs and peaceful dispute settlement far in advance of human rights. Human rights ranked 9th in the organizational principles hierarchy and is linked to ‘global legitimate’ norms of rule of law, good governance, democracy and constitutional government (Wu, 2016 p. 284). This duality is the central feature of human rights institutionalism in ASEAN. ASEAN is a statist organization largely elite led and strictly intergovernmental in its structures. Yet, the need to incorporate liberal dimensions into the regional integration project is needed to ‘mimic’ or demonstrate a seriousness to ‘legitimate’ external norms. The contestation of norms is present and its effect is to often lead to lowest common denominator outcomes, especially in the context of human rights.

Furthermore, it should be noted that within the negotiations of the final draft of the ASEAN Charter there was still considerable disagreement about what form and functions the human rights body should have. With the lack of consensus on how much protection enabling powers the body should have within its mandate ASEAN leaders tasked Foreign Ministers to draft a comprehensive Terms of Reference that would inform the structure and operations of the future regional human rights body (Patra, 2009 p. 13; Poole, 2015 p. 359).

Takeaways from ASEAN’s Human Rights Processes

Firstly, human rights in and among ASEAN member states is a highly contested issue area. ‘Liberal’ ASEAN states of Indonesia, Malaysia and Philippines are more supportive a broader and deeper human rights agenda. ‘Authoritarian’ states of Cambodia, Myanmar, Laos and Vietnam are far more skeptical of human rights being incorporated into the regional portfolio but grudgingly agree to an extent. This leads to fractious and very slow regional process as ASEAN has enlarged to incorporate states it was previously at odds with during the Cold War. Second, is the degree to which external factors and forces play with regard to human rights in the region. ASEAN pushes forward with its integrative processes almost exclusively triggered by external forces and actors. The end of the Cold War and spreading liberalism was the trigger for the 1993 human rights turn. The Asian Economic Crisis was the trigger for moves towards the ASEAN Charter which incorporated human rights into ASEAN’s institutional framework. Major external partners of ASEAN member states namely, the United States and European Union having incorporated human rights and other facets of liberalism such as democracy into their foreign policies made ignoring human rights an impossibility for ASEAN. This helps shed light on the possible future direction of human rights regionalism in ASEAN. The human rights body AICHR will progress very slowly as human rights is seen as a security issue in ASEAN. With the rise of China and growing importance of China in the region, the pressure on human rights institutionalism will sway. Increasing competition between China and the West will likely lead to a downgrading of importance put on human rights by Western countries in their competition for influence. This is already evidenced by Western policy towards Myanmar. Last, any performative progress of human rights in ASEAN will have to come from within its member states and be acceptable to regional elites, as this is the nature of ASEAN as a regional organization.

Conclusion

This paper has traced the slow evolution of human rights from discourse to legal reality which began embryonically in 1988 and found its first official expression in ASEAN in 1993. The

slow commitment from Vientiane to 13th ASEAN Summit demonstrated a few central characteristics of ASEAN regionalism and integration that are recurring themes; the need to maintain some relevance and utility for ASEAN member states to the wider world, pressure and fear of pressure by external actors on human rights grounds, lack of common understanding and acceptance of human rights and the centrality that sovereignty and non-interference hold for ASEAN member states. This is a constant and applies from the most authoritarian to most liberal ASEAN member state and helps in beginning to explain why the pace of human rights evolution in ASEAN is so slow but also why later structures of AICHR take the form they do and function as they do. This track record of development of human rights in ASEAN points towards two very important future predications. Without an external force or primer the ASEAN Intergovernmental Commission on Human Rights will not progress from promotion to protection human rights in the region. Furthermore, with the decline of the ‘West’ and Western political power centers and the ascendancy of China whose foreign policies do not hinge human rights and democracy linkages the impetus for expanding ‘liberalism’ will largely be an internal matter for ASEAN member states to work out. This does not bode well for human rights advocates and defenders in and outside of the region but the historical track record lays a path of analysis for future ASEAN member state behavior.

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