

Linking Regional Security and Human Rights in ASEAN

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Summary

Institutional strengthening of ASEAN has been the driver for the creation of a human rights architecture in the region. The nascent regional human rights commission and the process of drafting a regional human rights declaration have created tensions with ASEAN's older practices related to security and non-interference. This policy brief offers recommendations to partners and donors as well as ASEAN institutions and member-states that participate in regional governance. Institutional strengthening should be supported, especially in ASEAN's engagement with regional forums and civil society.

Introduction

The Association of Southeast Asian Nations (ASEAN) was originally concerned with protecting the sovereignty and security of its member-states, with human rights playing a secondary role. Of major concern at the formation of ASEAN in 1967 was the Vietnam War; ASEAN later took a strong stance in opposition to Vietnam's invasion of Cambodia. Security discourses thus elevated the Westphalian concepts of non-interference and sovereignty to the regional level, while human rights concerns were largely left to the discretion of member-states. In the last decade, ASEAN has taken notable steps towards institutionalizing and promoting human rights norms among member-states and at organizational levels.¹ The signing of the ASEAN Charter and creation of the ASEAN Intergovernmental Commission on Human Rights (AICHR) mark the first steps towards institutionalizing human rights norms at the regional level.

Linking Regional Security and Human Rights

In theory...

The regional security architecture in South East Asia is currently composed of a bundle of overlapping forums and meetings. Informal arrangements centre on ASEAN, but include states beyond the organization. The East Asia Summit (EAS) involves the 10 ASEAN members as well as Australia, China, India, Japan, New Zealand, South Korea, Russia and the USA (thereby including all of the Asia-Pacific's major powers). A wider grouping is the ASEAN Regional Forum (ARF), composed of those eighteen countries as well as Bangladesh, Canada, the EU, Mongolia, North Korea, Pakistan, Sri Lanka and Timor-Leste, with Papua New Guinea as an observer-state.

¹ 'Architecture' here refers to a combination of treaties, institutions and mechanisms.

An institution that could deal explicitly with security is also being set up. An ASEAN Institute for Peace and Reconciliation (AIPR) was formally proposed with a view to being established at the 2012 ASEAN Summit. AIPR is conceived as a network of think-tanks or second-track institutions across the Southeast Asia region that will allow a process where any conflict can be responded to through non-state mechanisms.² However, its scope and functions are yet to be established, and agreement on the terms of reference has been slow.

ASEAN's human rights architecture centres on AICHR, established in 2009 and tasked with protecting and promoting human rights. Consisting of ten nationally-appointed commissioners, with its Chairperson appointed from the nation that holds the ASEAN Chair, AICHR is tightly connected to the member-states. Its tasks include the promotion and protection of human rights, developing an ASEAN Human Rights Declaration, raising public awareness, capacity building for the implementation of human rights obligations, encouraging ASEAN member-states to accede and ratify international human rights instruments, providing advisory services and technical assistance to ASEAN sectoral bodies, engaging civil society, consulting national and international human rights bodies, developing common approaches and positions on human rights, and preparing studies on thematic issues of human rights. On paper, the development of AICHR constitutes a significant shift the 'Asian values' debate, wherein human rights were framed in relativistic terms.

... and in practice

In ASEAN's responses to conflict situations involving widespread human rights violations, tensions have been evident between considerations of regional stability and regime security on the one hand and human rights on the other.

Political diversity among member-states has led to an 'ASEAN way' of lowest-common denominator approaches and legislating behind their capacity to implement regional agreements. In recent years, ASEAN has been developing into a more robust regional institution, where the emergence of a human rights architecture reflects ASEAN's need to assert primacy on all aspects of regional relations. The developing 'ASEAN Community' plan that has spurred new institutional structures, like AICHR, are in their early stages, still largely guided by old institutional practices of closed-door negotiation, and traditional concepts of security and non-interference. These regional security arrangements rarely discuss human rights issues, but they have been used occasionally by Western states to

raise concerns over the situations in member-states, particularly Myanmar and North Korea.

AICHR is currently in the process of developing a human rights declaration to serve as the 'framework for human rights cooperation' in ASEAN.³ The drafting process has been criticized for being conducted in a closed manner. A draft, leaked in early 2012, showed a considerable section on limitations of rights as well as insertions or alternate proposals from various ASEAN countries. Following the leak, civil society groups became increasingly vocal in their condemnation of the process, concerned that it would undermine regional conceptions of human rights. A joint statement by civil society groups in the region called for the draft to be made public.⁴ While ASEAN officials have stated that some form of consultations will take place, they have not agreed on the format.

Conflicts in Myanmar and southern Thailand illustrate ASEAN's inclination to keep management of conflicts at the regional level. This is complicated by the specific features of the organization. The emphasis on non-interference obstructs ASEAN and member-states from responding to regional crises, both politically and on human rights grounds. This leaves much initiative to external actors (the UN system, traditional powers) as there is no continent-level institution that could intervene within ASEAN states. In addition, member-states are few and, though politically diverse, are committed to maintaining ASEAN's centrality – and its institutional norms – at the centre of their foreign policies.


Myanmar

ASEAN's engagement with Myanmar has proven a difficult and, in many ways, formative experience for the regional organization and its members. While ASEAN never had stipulated rules on the nature of the political systems of its members, the junta's political suppression and pressure from Western states led several members to voice concerns about Myanmar. After the 2011 general elections, a rapid set of changes followed, with a national human rights commission established and a loosening of the censorship laws. The National League for Democracy was permitted to register and won decisively in the April 2012 by-elections. ASEAN has taken credit for opening up the country through continued engagement and by exposing Myanmar's diplomats to the rapid economic development of the rest of the region. However, had it not been for external pressure, ASEAN's response would more likely have followed a policy of non-interference. Nevertheless, the key driving force in breaking the political deadlock appears to be the detente between Aung San Suu Kyi and Thein Sein. Neither ASEAN nor Western

2 Alexandra, L. A. (2011) "Bringing peace and reconciliation to ASEAN, 31 May". *The Jakarta Post*. Jakarta.

3 AICHR. (2009) *Terms of Reference*. Article 4.2.

4 Forum Asia. (2012) *Joint Statement on Calling AICHR to release ASEAN Human Rights Declaration* – 8 April 2012.



methods of pressure, ineffectual as both were for decades, should be overlaid in terms of their contribution to resolving the crisis.

Southern Thailand

Conflict in southern Thailand has old roots, but several modern dimensions. The conflict has been interpreted along various lines such as self-determination, ethnic discrimination, religious extremism or jihad, and wars on terror or drugs. This mix of competing and sometimes incommensurable narratives has hindered clarity in policy responses. The strength of separatist impulses has waned, but violence continues. Thailand has consistently maintained that the conflict is an internal matter. The case of southern Thailand illustrates the position ASEAN takes in the absence of pressure – its preferred default posture of deferring internal issues to the member-state, regardless of that state’s role in exacerbating conflict. Human rights considerations have scarcely figured in ASEAN’s assessment of the conflict and allegations of abuses to date. The lack of systematic engagement by ASEAN towards the southern Thai conflict contributes to the organization’s limited impact.

Observations and Recommendations

ASEAN stands at an interregnum as its new institutions and legal personality develop against the backdrop of a more globally open world. ASEAN’s current emphasis is to maintain its own centrality at the heart of Asian geopolitics, and it requires normative frameworks to operate as the primary actor in this environment.⁵ However, analysis of ASEAN responses – or lack of such – to regional conflict involving human rights violations reveals tensions between the stated aspirations of member-states and organizational practices. Several observations can be offered in this regard:

First, while current debate over human rights and security is bringing an institutional rethink,⁶ the development of legislation and enforcement mechanisms at the regional level is sluggish. The new institutional structures are in their early stages, still largely guided by old institutional practices. It is not only on the matter of human rights that the pace of reforms is slow. Today’s regional security architecture consists of several overlapping forums and meetings, like the EAS, the ARF, APEC, and other regional groupings. While the emphasis on slow process and consensus is unlikely to change, an evolutionary legislative development may open for member-states to explore ways to

link the evolving human rights and security architectures of the region. As the case study of Myanmar illustrates, it is clear that ASEAN’s stance on ‘non-interference’ is more fluid in practice than in rhetoric.⁷

- In the continuing development of the ASEAN Community, member-states should give greater consideration to the inter-linkages between the nascent regional human rights and security architectures.
- Donors and partners could provide support specifically to initiatives to develop firmer linkages and to outline clearer roles and responsibilities in decision-making processes where human rights and security considerations coalesce. These initiatives could be proposed by the ASEAN Secretariat or AICHR.

Second, external pressure on ASEAN members seems to have an effect on regional responses to conflict situations, but not necessarily towards greater attention to human rights. Relatively successful cases such as Aceh and Myanmar can be contrasted with unsuccessful efforts such as in southern Thailand, southern Philippines or Papua. Interactions in the ASEAN-EU free trade negotiations and the perceived inaction over Myanmar’s Cyclone Nargis seem to have contributed to ASEAN increasing its pressure on Myanmar. Other regional forums provide more neutral settings where states under scrutiny are able to rebuff criticisms, often through reformulations of ‘Asian values’ or by referring to the specificities of their national contexts.

- The AICHR should work to raise awareness of its role and mandate among member-states, and strengthen the understanding of its mechanisms and procedures for decision-making.

Third, the apparent lack of systematic consideration of security or human rights issues in regional forums may mean that certain situations get overlooked, notably conflicts like those in southern Thailand, Laos, Vietnam and Cambodia. This plays into claims that Western pressure is selective and that ‘human rights is an easy, cheap, and popular way to exercise influence or maintain the illusion of involvement.’⁸ Currently, regional structures do not sufficiently recognize the capacity of wide-spread human rights violations to destabilize and undermine communities.

- Member-states should continue to pursue the development of AICHR and AIPR, ensure their independence, and enable them to address conflict situations i.e. through investigating allegations of human rights violations. The Paris Principles of

5 Pitsuwan. (2011) “The ASEAN Heart of Asia”. *Project Syndicate*, 13 Jun 2011, available at <http://www.project-syndicate.org/commentary/the-asean-heart-of-asia> (last accessed 29 March 2011).

6 See for example Desker and Ng. (2011) “Responsibility to Protect: Tensions between Sovereignty and Security”. *RSIS Commentaries* 142.

7 Jones. (2010) “ASEAN’s unchanged melody? The theory and practice of ‘non-interference in Southeast Asia’”. *The Pacific Review* 23 (4). p. 479-502.

8 Kausikan. (1993) “Asia’s Different Standard”. *Foreign Policy* (92): 24-41. p. 26-27.

fer one model for systematic approaches to human rights issues.⁹

- Donors and partners could support key drivers of institutional reform among the member-states, like Indonesia, the Philippines and Thailand, in developing mechanisms such as AIPR.

Fourth, the fact that AICHR is tightly connected to ASEAN and to its individual member-states gives important political buy-in, but also weakens the agency of AICHR. There is still scope for formalizing limitations on the human rights norms being established in the region. Indications can be found in the lack of transparency surrounding the draft ASEAN human rights declaration, and the alleged inclusion of a section on the limitation of human rights. Simultaneously, the ostensibly liberal-democratic states have been at the forefront of pushing for greater emphasis on rights-based approaches in policy, despite acknowledged problems within their own borders. A key driver within ASEAN will be Indonesia, looking to re-establish a global footprint, and democratic or liberalizing ASEAN states like the Philippines and Thailand can be assertive allies.

- Member-states which are supportive of a more independent role for AICHR should work to bring up and promote the work of the Commission in ASEAN meetings and summits.
- Partners and donors could provide technical support to member-states willing to work towards greater recognition of the work of AICHR and offer technical assistance to the more progressive members of the Commission.

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Fifth, the lack of inclusiveness in the development of ASEAN's human rights architecture threatens to

9 OHCHR (1993) Principles Relating to the Status of National Institutions, Paris: Office of the High Commissioner for Human Rights.

weaken the legitimacy of the resulting instruments or declarations. ASEAN's regional diplomacy has always been inclusive, but it has not extended this principle of inclusiveness to its own civil society. On the other hand, ASEAN is a region of vast political and cultural diversity, and instituting such changes or recognizing the value of these norms is difficult. As ASEAN lacked official consultations with a cross-section of civil society organizations in the region until recently, there is a significant risk that its human rights declaration will be rejected by the region's civil society organizations. That AICHR commenced civil society consultations as of May 2012 offers a positive indication, however. If momentum can be sustained, it can provide a possibility for changing perceptions about ASEAN's openness towards engaging with civil society.

- AICHR and member-states should broaden consultations on the ASEAN human rights declaration to civil society groups.
- Donors and partners could contribute to raise the concerns of regional civil society groups in bilateral and multilateral forums where they have access.

The tensions that arise when balancing human rights and security concerns in response to crises situations are not unique to ASEAN. Such tensions are a regular – albeit not necessarily inevitable – consequence of weighing concerns for stability against the rights of individuals. The nature of conflict in Southeast Asia is less acute, more structural in nature and more subdued than in, for example, Africa. This contributes to heighten the threshold for external pressure and interference in ASEAN's responses to specific conflict situations. In the development of stronger human rights architecture, old practices continue to create tensions and slow down processes, but the rise of democratic member-states – Indonesia in particular – may create promising dynamics in the future.



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