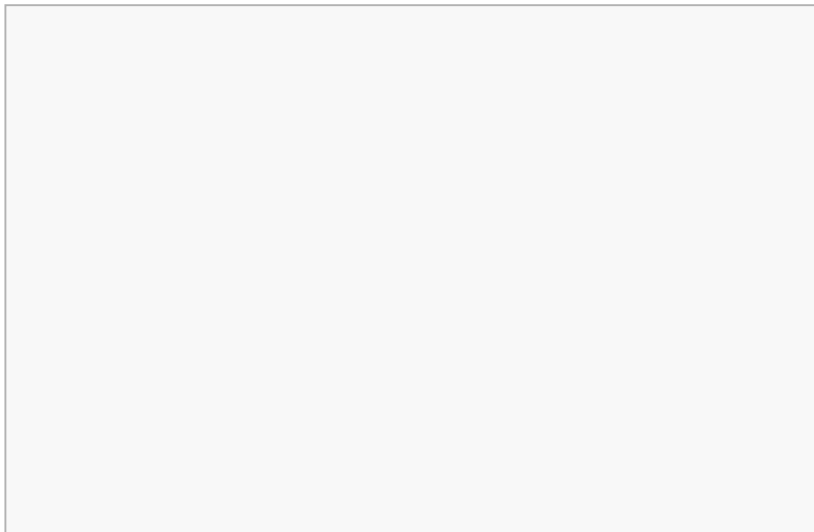


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Herman Joseph S. Kraft



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Human Rights in Southeast Asia: The Search for Regional Norms

The aftermath of the financial crisis of 1997 saw the redoubling of efforts by both non-government and government actors in Southeast Asia to open the way for human rights to become a central concern of ASEAN.¹ These have created openings for initiatives that have led to incremental progress at the domestic level and opened space for the issue to be accommodated at the regional level. In spite of keen anticipation from different sectors in the region, these initiatives have not gone very far in pushing ASEAN in that direction. A regional human rights mechanism still eludes establishment in Southeast Asia, a number of ASEAN states invite international opprobrium with the poor human rights conduct of state agents towards their citizens, and, *collectively*, the ASEAN states assert the primacy of ASEAN norms by way of explanation. In particular, the principle of non-interference is invoked as a rationale for the absence of a regional human rights charter. In view of the growing international importance of human rights norms and the material backing provided in their support by

the highly industrialized economies of Western Europe, Canada, and the United States, why has the protection and enhancement of human rights not become a regional code of conduct in Southeast Asia? Reflecting on the insistent appeal to ASEAN norms to justify this state of affairs, how is the adoption of such a human rights mechanism contrary to these norms? In spite of international and, in a number of cases in the region, domestic political pressure for change, why do ASEAN norms continue to persist?

This paper analyzes the normative structures that inform the human rights position of the ASEAN states as a collective body, how this normative structure affects intra-ASEAN interaction, the involvement of transnational non-government networks in seeking to change this normative structure, and the effectiveness of their efforts. It basically argues that the inability or unwillingness of the ASEAN states to adopt a regional human rights code for countries in the region is not fundamentally due to an ideological or political dispute with the idea of

human rights. The ASEAN states in fact have divergent positions on this particular issue. Rather it is about how the adoption of such a mechanism is seen by officials of the ASEAN member-states to be incompatible with existing and long-standing ASEAN norms on inter-state relations in the region.

Human Rights in Southeast Asia: In search of a regional standard

Human rights is, simply stated, about the lives of human individuals—the choices they must have and be free to make, the kind of existence they must enjoy, their development and growth, and, ultimately, their security. The protection of these rights, therefore, should be a primary concern of states. Different societies in different eras have recognized some variation of this theme. Since 1945, however, steps have been taken and advances made, largely through the mechanism of international law, to promote the widespread acceptance and legal institutionalization of human rights norms and the protection of human rights. The most important development along these lines was the Universal Declaration on Human Rights of 1947. Since then, further developments that advance the promotion of international human rights norms have included the adoption of human rights mechanisms by major regional organizations with the idea that these norms are supposed to act as standards of behavior for their member-states. The European Council has the most highly institutionalized set of instruments with the European Convention on Human Rights and Fundamental Freedoms as its basic document. The Organization of American States (OAS) has had the American Convention on Human Rights since 1969. Though not as effective as the European mechanism, this convention has nonetheless contributed to positive changes in many Latin American countries. The African (Banjul) Charter on Human Rights of the Organization of African Unity came into force in 1986. Its effectiveness at this point is less important than the fact it was adopted, which

in itself is an impressive accomplishment. As one observer pointed out, it is a “milestone in a continent where under-development and undemocratic government are endemic, and progress on human rights an urgent and pressing need” (Mullerson 1997: 142).

It is easy to be cynical about these regional human rights instruments and point out that their existence neither prevented people from getting massacred in Rwanda in 1995, nor deterred the military junta in Chile from illegally imprisoning, torturing, and even killing thousands of people suspected of being communists when it seized power in 1973. They form, however, part of the formal instruments which hold the governments of these countries accountable to the international community at large for these gross violations of human rights. Over the long term, these instruments are supposed to morally impel states to take human rights and the concerns associated with their violation with great seriousness. It is against this backdrop of changing international norms that the case of Asia has gained notoriety. It remains the only major geographic area without a human rights mechanism serving as a structure for the observance of human rights norms by the governments of countries in the region. It is arguable that the geographic breadth of Asia, and the diversity of cultures and conditions of the people living here preclude the institutionalization of such a mechanism. Yet, even states within a sub-region of this large continent with a relatively high degree of organization and experience in inter-state cooperation continue to resist the establishment of a regional human rights mechanism. Here, the case of Southeast Asia, through the instrumentality of the Association of Southeast Asian Nations (ASEAN), stands out.

Before 1997, ASEAN was commonly considered to be one of the more successful (if not the most successful) regional organizations constituted by developing states. It was established in 1967 with the explicit purpose of cooperating in order to “secure for

their peoples and for posterity the blessings of peace, freedom and prosperity" (ASEAN Declaration 1967). Interestingly, the attainment of these lofty goals was not the measure against which the success of ASEAN was determined. First and foremost, this has been seen in terms of the very fact of its continued existence over a long period of time. With a troubled genesis from the short-lived Association of Southeast Asia (ASA) and the Maphilindo (Malaya-Philippines-Indonesia), ASEAN had not been given much of a chance to last by observers and analysts far beyond its inception. Aside from longevity, however, the largely successful execution of the development projects of its members, and, most of all, its effectiveness as an association in conflict management and community building turned ASEAN into the envy of other regional groupings of developing states. The forum it provided for the discussion of socio-economic and, since 1994, political-security issues in the Asia Pacific region has gained for it a place in the international community that is out of proportion to the stature of any of its individual members. This international standing was affirmed by its dialogue partners when they accepted its lead role in agenda building in the ASEAN Regional Forum (ARF), and when the ASEAN model was adopted as the ARF's working framework. That ASEAN's dialogue partners apparently considered these arrangements as temporary and, in spite of which, ASEAN continued to hold on to the "driver's seat" in the ARF later became a source of awkward tension within the security grouping (Leifer 1996: 21–30). The fact that ASEAN, however, was given recognition through the acceptance by its partners of its leading role in the ARF still reflected back to the respect that ASEAN as a collective group had achieved in the international system.² Even as a number of its member-states were still recovering from the deleterious effects of the Asian financial crisis, ASEAN's achievements were enough for the Secretary General of the United Nations, Kofi Annan, to claim that "ASEAN is . . . a well-

functioning, indispensable reality in the region [and] a real force to be reckoned with far beyond the region" (February 16, 2000).

Yet, the kudos even in the aftermath of the financial crisis could not mask the clear attenuation of ASEAN's position in the international community since 1997. The crisis had affected the region's economy and socio-political stability at a time when it was in the process of incorporating new members. Enlargement added to the variety of concerns and issues that ASEAN as a regional entity had to address, and to the voices that needed to be heard. Differences in levels of socio-economic development between the newly-incorporated members and the other member-states effectively made ASEAN a two-tiered association divided along the lines of new and old members—a division that continues to have an effect on intra-ASEAN relations and decision-making processes. The confluence of the effects of enlargement with the effects of the financial crisis placed ASEAN in a difficult position. Caught in a situation where its member-countries were principally concerned with the effects of the crisis domestically, the effectiveness of ASEAN as a regional, much less an international, player had come under question. Its importance as a regional association became increasingly contingent on the implementation of deep-seated structural reforms. Such reforms, however, would have had serious effects on the very nature of the association itself. Nonetheless, at its 30th year, analysts and observers pointed out that the continued existence of ASEAN had reached a point where a review along these lines and the implication of reform in determining the long-term direction that it should take was opportune (See Dosch and Mols 1998: 169–172; and Snitwongse 1998: 185).

In this context of historical necessity and the apparent opportunities present, the continued absence of an ASEAN regional mechanism on human rights seems glaring especially when compared to those developments in other regional groupings noted earlier.

Domestic Political Change and Human Rights

Even as it seems to have lost much of the significance it played in the human rights debate in Southeast Asia, it is not possible to avoid discussing the idea of “Asian values” in a paper that looks into human rights in the region. Its ideational repercussions are at least partially responsible for the discussions around “ASEAN norms.” In much the same way that the “Asian values” argument was challenged by the proponents of the adoption of international human rights norms in Southeast Asia, the appeal to and actual practice of non-interference by the ASEAN states has been questioned in the context of its application to human rights in the region. Despite the political diversity of its members, the muting of any discussion on human rights issues (especially those that concerned the countries within the association) that is a result of an averred adherence to non-interference in effect implied acceptance of the claims made previously by the advocates of the Asian values discourse. Even when the financial crisis opened up space for a more critical perspective of the role that ASEAN’s inaction and disinterest plays in the perpetuation of human rights abuses in the region, and even as there have been developments that indicate a trend towards norm change in ASEAN itself, there has been very little change in ASEAN diplomacy in the area of human rights.

The absence of change, however, does not mean a complete lack of initiative in the direction of change. Officials from the Philippines, Thailand, and (since 1998) Indonesia have been active in pushing for change on the matter of human rights in ASEAN even as the others have been passive at best, and obstructionist at worst. This discrepancy in attitudes and policies is generally explained in terms of the adherence of the former’s policymakers to liberal democratic values (Katsumata 2004: 250; Haacke 1999: 588; Eng 1999: 61–63; and Acharya 1999: 429–31).

The behavior of those ASEAN governments and officials which have been obstructionist regarding human rights in the region has been pointed to as an affirmation of what critics of Asian values have been arguing, i.e. that it is merely a justification for authoritarian rule and the legitimization of regimes in power in the member-states of ASEAN.³ There is no doubt that the political leaders of some of the ASEAN member-states have rejected and continue to reject human rights norms as a matter of political survival. This argument, however, ignores the diversity of interests regarding human rights represented by the ASEAN states. Why would the government of a formal liberal democracy like the Philippines support authoritarian norms in the region? Due to the backlash against the excesses of the martial law regime under President Ferdinand Marcos, the Philippine government and the most vocal segments of Philippine society have since 1986 been critical of authoritarian norms. The Philippine government never openly challenged the institution of these norms in neighboring countries in a formal forum, whether it is ASEAN or anywhere else. The case of the Philippines illustrates the apparent discrepancy in the behavior of its state elites at the domestic and international levels (where there is strong support for human rights, as evidenced by the number of conventions it has signed onto and the laws that have been legislated to back these commitments), and their apparent passivity at the regional level—a clear case of the dog that did not bark. It was not until 1997 that the Philippines took a more active role in pushing for norm change in ASEAN—a push initiated by Thailand that led to the debate over “flexible engagement.” A common argument takes the line that the transformation of the domestic political structures of authoritarian states in the region is a precondition to the emergence of a human rights-based set of norms in ASEAN (Katsumata 2004: 250; Moravcsik 2000: 225–26). Explaining it simply in terms of domestic political change, however, raises the question

of what is the “tipping point” for change at the regional level to take place. By 2000, the Philippines shared liberal democratic political values with Thailand, and increasingly with Indonesia. What will it then take for change to take place? Is it a matter of a “critical number” of ASEAN member-states embracing human rights as a norm? In which case, what is that “critical number?” Or is it a case of a “critical state” or “critical states” acting in such a way as to enlist broad support for normative change within the region (Payne, 2001: 40)?

Indonesia, the Philippines, and Thailand as a bloc could have broken away from the rest of ASEAN when it came to calling their neighbors to task over abuses of human rights committed in those countries. Their governments, however, have chosen to abide by the ASEAN position on questions of human rights. Another side to this argument is the false assumption that democratic change will lead to norm change. There is no linear causality to this as shown by domestic developments in Thailand where the government led by Prime Minister Thaksin Shinawatra has, in spite of Thailand’s formal liberal democratic ideals, become among the strongest supporter of norm maintenance in ASEAN—a great change from the time when the government of Prime Minister Chuan Leekpai and Foreign Minister Surin Pitsuwan led the charge on “flexible engagement.” Focusing on the issue of domestic political change also ignores the clear support given by the governments of Malaysia and Singapore, among the strongest and most consistent supporters of the ASEAN norms argument, for specific human rights provisions. This has been particularly evident in the case of refugee rights. Malaysia, Singapore, and even Thailand are not signatories to the 1951 UN Convention on Refugees and its 1967 protocol. At the height of the regional crisis involving Vietnamese refugees, they provided facilities for education in accordance with the provisions of those international instruments⁴ (Muntarbhorn 1987: 118). Domestic political conditions are not an insignificant factor in the

issue of human rights in ASEAN, but they do not sufficiently account for the current developments in this area (or the lack of them) in Southeast Asia. Regional norms have also had, and continue to have, an impact on the discourse on human rights in Southeast Asia and the subsequent debate it generated both within and outside the region.

ASEAN officials have claimed in the aftermath of the debate over “flexible engagement” that its rejection reaffirmed the time-tested principles of the association (*New Straits Times* July 26, 1998: 2). Over time, ideas, principles and institutions eventually become “embedded” within the association and create difficulties for rival sets of institutions and principles to emerge (Ikenberry 1998/99: 77). The case of ASEAN seems to indicate that levels or degrees of institutionalization in associations need not be strong in order to persist, bind members of a collective community together, and minimize and contain the advantages of power.⁵

Many of the initiatives for change in the region has involved the sponsorship or advocacy by either individuals or groups who have developed for some reason a strong sense of commitment to human rights and who act as entrepreneurs in the advancement of these issues and the adoption of norms that would advance these issues. Norm entrepreneurs are defined by Finnemore and Sikkink as “agents having strong notions about appropriate or desirable behavior in their community” (1999: 256). They have a critical role in calling attention to issues that require the adoption of new norms. They accomplish this by using language that seeks to “frame” the issue and the norms that have to be adopted in a way that has strong resonance with a broader public. In the ASEAN context, this is the role played by regional networks of activists and human rights crusaders. More often than not these are seen as secondary actors supporting the efforts of transnational norm entrepreneurs that are usually identified as being based in Western Europe or North America. These

regional networks, however, have had an existence separate from and even independent of the latter. They may receive funding from European and North American governments and foundations, but to reduce their role to that of an auxiliary diminishes the impact of the work that they have done. They put non-observant states in the spotlight of international public opinion, and empower, legitimize, and even mobilize domestic opposition to and international support against norm-violating states, and in doing so create simultaneous pressure on these states to change (Risse and Sikink 1998: 5). Non-government networks involved in norm entrepreneurship have little capability to “coerce” states into adopting new norms; they have to engage the officials of these states and be able to “persuade” them regarding the correctness of their position and of the need to adopt these new norms. In other words, the principal mode by which norm entrepreneurs seek to influence change in existing normative structures is by “persuading” those in positions of power and authority (whether individual persons or institutions) to adopt new norms to replace existing ones. Rodger Payne argues that ultimately, norm-adoption and -change is all about “persuasion.” Eventually, the absence of change is fundamentally a failure in the process of persuading the necessary persons or institutions on the reasons or imperatives for change. In the case of human rights in ASEAN, norm persistence can be seen as a matter of state officials acting as norm-takers or -receptors obstructing change or as a failure on the part of those that seek to “persuade” regional norm-takers to adopt alternative norms.

Amitav Acharya argues that norm persistence reflects a fundamental incompatibility between transnational norms and the “ASEAN way.” New norms to be accepted must be “grafted” onto existing norms (2004: 265). In the case of human rights, the absence of such “receptor” norms makes international human rights norms unacceptable to or difficult to accommodate by the principal

agents of norm acceptance and change, ASEAN states and officials.

Acharya’s explanation of the issue deals more directly with the question of why the adoption of human rights norms remains beyond ASEAN. He points out, however, that the lack of fit between an international norm, and existing regional or national norms is not static “but a dynamic act of congruence-building through framing, grafting, localization, and legitimation” (2004: 269). Acharya looks at this in terms of how transnational norms are “localized” and ultimately are internalized. He points out that in this process it is the local actors who have the principal role of “norm-takers.” This is much more dynamic than the image of simply being “norm-recipients.” Thus, Acharya argues that the role played by officials from the ASEAN states as well as officials involved in ASEAN itself is critical because of their position as determinants of which norms ASEAN should adopt. His focus here is primarily on the agency of the officials involved in adopting these norms. Norm-takers, however, are rarely engaged in a quest for new norms which only emphasizes the critical importance of the role played by norm entrepreneurs in the region in pushing norm change. Using Acharya’s formulation, the case of human rights in Southeast Asia is at least partially a matter of the difficulties faced by advocates of change to “frame” transnational norms in ways that would “persuade” regional norm-takers and make them more receptive to international human rights norms.

The question of framing which Acharya emphasizes presents the process of persuasion as a matter of merit, i.e. the argument made on behalf of norm adoption is considered by norm takers are “persuasive” because it favors or builds on already existing preferences. Alastair Iain Johnston, however, points to two other reasons (all three not being mutually exclusive) that could create the social environment conducive to persuasion. (2003: 116–17). The second offers the argument that someone is persuaded by virtue of her/his

relationship to the persuader, i.e. the agency of actors who are “liked” are more welcome and therefore have higher chances of being convincing than those that are “disliked.” Thus, the tendency of certain NGO sectors to promote their cause in an openly confrontational manner and which presents governments in a bad light works against them in ways that may have little to do with the “merit” of their cause. How norm entrepreneurs know and are known to norm-takers matters.

The third factor involves personal characteristics of the persuadee that makes her/him more or less susceptible to the message being transmitted by norm entrepreneurs. These characteristics range from cognitive processing abilities to the strength or degree of commitment to prior existing attitudes. This also has to do with the relationship that those referred to by Acharya as being norm-takers have with a principal audience, e.g. being seen by a domestic public as being consistent to values that they may give importance to.

The dynamic between persuader and persuadee or that between norm-entrepreneur and norm-taker is central to the issue of why ASEAN norms persist. It is in this dynamic that the importance of domestic political structures comes into play. Earlier in this section of the paper, it was argued that the linear causality implied in the democratization argument (i.e. human rights norms will only be accepted as part of a regional code of conduct by ASEAN when the association’s member-states become liberal democracies) does not sufficiently bear out the reasons for norm persistence in the association. The governments and officials of societies in ASEAN with formally liberal democratic institutions, however, have indeed been the most receptive to the idea of a regional human rights mechanism and the most supportive of human rights practices in the region. In fact, officials from Indonesia and the Philippines have been very active in cooperating with non-government networks on the issue of

human rights in the region. At the same time, however, it has already been noted that liberal democratic Thailand has moved from being at the vanguard of pushing for norm change in ASEAN to being one of the most important supporters of norm maintenance under the government of Prime Minister Thaksin. It is undeniable, however, that the greatest resistance to norm change particularly as it applies to human rights in the region has been registered by non-democratic societies. The governments of Laos, Myanmar, and Vietnam have been particularly obstructionist as far as human rights in the region are concerned.⁶ Cambodia, Malaysia, and Singapore have been inconsistent on human rights issues with Cambodia showing a marked tendency to be more supportive, and Malaysia and Singapore being identified more with the obstructionist camp. Within the ASEAN Secretariat itself, there have been individuals who have consistently supported the work of human rights advocates as well as those that have been lukewarm to it. The emergence of human rights as a regional norm that ASEAN will support has depended and will continue to depend significantly on how these norms are transmitted to ASEAN officials and officials of its member states, and who transmits them.

What are ASEAN Norms?

Ever since the establishment of ASEAN in 1967, its member-states have embraced a number of principles that have defined the parameters of their interaction with one another. These are presented in the different declarations that come out of the annual ministerial meetings but were eventually encapsulated in the Treaty of Amity and Cooperation in Southeast Asia (TACSEA). Signed at the First ASEAN Summit on February 24, 1976, the TACSEA declared that in their relations with one another, the signatories should be guided by the following fundamental principles:

1. Mutual respect for the independence, sovereignty, equality, territorial

integrity, and national identity of all nations;

2. The right of every State to lead its national existence free from external interference, subversion, or coercion;

3. Non-interference in the internal affairs of one another;

4. Settlement of differences or disputes by peaceful manner;

5. Renunciation of the threat or use of force; and

6. Effective cooperation among themselves.

These are by no means unique to ASEAN as they have their origins in long-standing principles and practices of inter-state relations in the international system. From the list presented above, the first three aptly relate to what one analyst has described as “[a]rguably the single most important principle underpinning ASEAN regionalism”: the principle of non-interference (Acharya 2001: 57). Yet, the doctrine of non-interference goes hand-in-hand with the principle of sovereignty, a central tenet of the modern state system ever since its inception in the aftermath of the Treaty of Westphalia in 1648. When he was in office as the ASEAN Secretary-General, Rodolfo C. Severino, Jr. emphasized the fact that there was nothing peculiar about the ASEAN states’ continued adherence to the norm of non-interference since this was just a matter of conforming with international norms and practices (Interview June 26, 2000). The significance of non-interference to ASEAN, however, goes beyond the close adherence to a norm that has been part of international practice for centuries. As noted earlier, the origins of ASEAN had not been greeted with much optimism by international observers and analysts. The fragility of the association’s survival was constantly under threat from existing socio-economic and political issues both within and between the ASEAN states. Indonesia,

Malaysia, and Singapore were just emerging from the experience with *konfrontasi*, and the Philippines and Malaysia were locked in a dispute over Northern Borneo. Given the circumstances of ASEAN’s birth, fairly consistent adherence to the principle of non-interference contributed in no small way to the eventual emergence of ASEAN as a successful regional association (Funston 2000: 7). Since then, it has become one of the most important norms adopted and internalized by the ASEAN states, and has become central to the very nature of how inter- and intra-ASEAN relations are conducted.

The ASEAN states have also developed over time procedural mechanisms that complement the behavioral norms on how they conduct their relationship with one another. Collectively referred to as the “ASEAN way,” this involves processes of dialogue and consultation that “generated shared common interests and values that came to be placed alongside one’s national imperatives” (Snitwongse 1998: 185). Tobias Nischalke, while not a great admirer of ASEAN mechanisms, has pointed to the “ASEAN Way” as a set of norms that are uniquely ASEAN and which can be considered as “identity markers” in analyzing the sense of community of the members of the association (Nischalke 2002: 93). Using as a basis the principles of *musyawarah* (consultation) and *mufakat* (consensus) associated with village decision-making processes in Indonesia and, to a lesser extent, Malaysia and the Philippines, the “ASEAN Way” is characterized by informality and the accommodation of differing perspectives prior to the making of a final decision (See Thambipillai and Saravannamuttu 1985). Hiro Katsumata has challenged what has become a “common-sense” acceptance of the association of the “ASEAN Way” with traditional village culture (2003: 109). He argued that the logic of having the international domain of politics in ASEAN influenced by this village culture should also apply to the domestic realm—a realm he describes to be highly formalized

and affected by Western norms of centralized power. Further, he notes that the diversity of indigenous cultures within the ASEAN states begs the question of why Javanese traditions should have a privileged position within the association (2003: 109). On the first point, studies on different aspects of domestic politics in Southeast Asian have shown that the veneration of formal laws and institutions, certainly influenced by the colonial experiences of many states in ASEAN, to a large extent simply screens traditional political mores and their operation at the level of national politics.⁷ The question of the diversity of indigenous cultures in Southeast Asia and the outright privileging of Malay village culture over these, however, poses a more serious question. The origin of ASEAN norms, however, should perhaps not be seen as *sui generis* but rather should be contemplated in terms of its historical antecedents. Maphilindo, one of the precursor organizations of ASEAN, had adopted similar norms (Acharya 2000: 83). Although the quick collapse of relations among its constituent states led to these norms not being tested to their full potential, they were eventually carried over to ASEAN. Regardless of origins, however, their practice over time legitimized their constitutive status within ASEAN. Nischalke makes the cogent observation that the increasing consistency in norm-compliance that can be seen among the ASEAN states since 1992 has served to “underpin the status quo in the region” and “provided the foundation for community action” (Nischalke 2002: 112).

The observation made by Nischalke, however, regarding the “increasing consistency in norm-compliance” brings forward another issue. At a roundtable discussion in Singapore in 2004, Severino, the former Secretary-General of ASEAN pointed out that ASEAN does not have norms. This was evident in the way that membership in ASEAN does not have any requirements beyond a “geographic footprint,” as well as in the way that the ASEAN states have not come

up with common sets of rules on how they will treat their own citizens. In the aftermath of ASEAN expansion in 1997 and 1998 which led to the inclusion of Cambodia, Laos, and Myanmar, the resulting diversity of economic, political, and social conditions that characterize the member-states of the association lead to very little consensus over the directions that ASEAN will take in the future. Are ASEAN norms really “norms?”

Severino’s statement places norms in the context of clearly enunciated rule-based standards of conduct similar to the European Union model. The claim made by Severino regarding ASEAN gives emphasis to the regulatory aspect of norms. It implies, however, a narrow notion of norms based on the centrality of formal instruments that *explicitly* bind signatories to a set of behavior. Norms, however, are not always based on such formal statements and understanding of expectations. In fact, norms can shape patterns of cooperation and conflict in ways that are not determined by evident relations of power or material calculations of risk and benefits (Kowert and Legro 1996: 455). The case of ASEAN is less about the absence of norms as it is of having general norms that cover expectations on broad sets of disparate issues. The problem lies more in the degree to which these expectations are inter-subjectively determined, and are commonly and clearly understood and shared as they apply to specific issues (Wendt 1995: 73; Klotz 1995: 14). The central norm, for instance, of non-interference has arguably been selectively appealed and adhered to (Funston 2000: 15–17; Kraft 2000). That these norms are “ASEAN norms,” however, has been part of the ASEAN discourse on broad expectations about the behavior of its member-states—one that is related to ASEAN’s self-identification.

Even as “ASEAN norms” can be clearly traced to international (norms prescribed in the UN Charter, for example, as well as those part of international practices) and traditional cultural norms, their evolution also has a political context to it. The centrality of non-

interference and its other behavioral norms to ASEAN reflect the stress on nation-building and state-formation in post-colonial Southeast Asia, which in turn emphasized domestic threats to the well-being of the state. The same emphasis was the reason behind the same significance given to non-interference at the Bandung Conference in 1955 involving 29 non-aligned states which paved the way for the establishment of the Non-Aligned Movement. The concern of the ASEAN states over domestic political stability and development and the resulting importance given to the principle of non-interference was a concern shared by all post-colonial states. Mohammed Ayoob compared this situation to the process of state-making in Europe between the 14th and 19th centuries, albeit concentrated within a much shorter time frame (1995: 28–32). The historic time period, however, within which the process of state-making in Europe took place had a social context different from that facing the developing states of the post-colonial era. It was insulated from the political complications resulting from popular demand for greater political participation and social justice. The consolidation of state power was characterized by violence, coercion, and political repression. This comparison paves the way for Ayoob's argument that the use of violence by regimes in power to impose order is not necessarily morally indefensible. Given the numerous cases of "failed states," he points out that political repression may be a necessary condition to guarantee the survival of states (1995: 85–86).

This, however, opens the way for a security rationale which could be and is actually adopted by individuals, groups, and regimes in power across the developing world to justify government policies which are in violation of human rights. Ayoob actually acknowledged this and pointed out that he was not making "an apology for authoritarian regimes that emphasize order at the expense of both justice and political participation" (1995: 86). Intended or not, however, the

argument has precisely this effect. There is a very fine line separating state survival and regime security.⁸ Even if a moral distinction between acts of state violence with the purpose of preserving the state and those intended to silence political opposition can be made, repression often washes it out. Acts of state violence have always been rationalized in terms of ending a threat to state security. In many developing countries, regimes in power have equated their survival with the security of the state. Coercion and violence were unhesitatingly utilized by regimes seeking to enforce compliance with its rule. In the case of the ASEAN states, the form and degree of state repression and coercion has varied and continues to vary from state to state. The fact of their occurrence, however, to no insignificant extent is indicative of a lack of commitment within the region to a common standard of international human rights norms.

ASEAN Norms and Human Rights

An examination of ASEAN's declared principles on human rights should draw from observers and analysts a certain degree of bewilderment. It has been a common misconception that the ASEAN states have refused to accede to the idea of the universality of international human rights norms. This is not very surprising given a number of statements made by national leaders with great international stature such as former Prime Ministers Mahathir Mohamed of Malaysia and Lee Kuan Yew of Singapore directed at precisely the question of the universality of these norms and in support of "Asian values." The defining document, however, for ASEAN regarding international human rights is the Joint Communiqué of the 26th ASEAN Ministerial Meeting held in Singapore in 1993. In it, the ASEAN Foreign Ministers presented a number of points that have been central to the debate on human rights in Southeast Asia. They explicitly "reaffirmed ASEAN's commitment to and respect for human rights and fundamental freedoms as set out in the Vienna Declaration

of 25 June 1993" (1993: Paragraph 16). Unquestioned here is the implicit acceptance of the universality of international human rights norms. The Communiqué also professed in very clear language that "violations of basic human rights must be redressed and *not be tolerated under any pretext* (author's emphasis)" (1993: Paragraph 18).

The effect of this strongly stated commitment, however, was moderated by subsequent assertions in the same document which stressed that human rights

... are interrelated and indivisible comprising civil, political, economic, social and cultural rights. These rights are of equal importance. They should be addressed in a balanced and integrated manner and protected and promoted with due regard for specific cultural, social, economic and political circumstances (author's emphasis) (July 23–24, 1993: Paragraph 16).

The importance of these assertions was further emphasized by the claim that "the protection and promotion of human rights in the international community should *take cognizance of the principles of respect for national sovereignty, territorial integrity and non-interference in the internal affairs of states* (author's emphasis)" (July 23–24, 1993: Paragraph 17). These statements seem innocuous at an initial glance but they have effectively diluted any commitment to human rights ASEAN claimed to have. Ever since the Joint Communiqué was released, the emphasis given to redressing of and non-tolerance for human rights violations in Southeast Asia (as far as ASEAN was concerned) was mostly superseded by those "principles of respect for national sovereignty, territorial integrity and non-interference in the internal affairs of states." Subsequently, the human rights debate in the region has, to a large extent, revolved around the latter.

This section of the Singapore Declaration represented the clearest statement of a collective ASEAN position on human rights. It is worded, however, in a way that juxtaposes

human rights with "ASEAN norms." Presented this way, the ASEAN member-states have not only laid out the basic issues that define the debate on human rights in the region; they have also made advocacy of human rights norms in the region subject to the limitations imposed by "ASEAN norms." The appeal to the latter has become an important part of the reason why pushing the ASEAN commitment to human rights to go beyond rhetoric has been a consistently frustrating process. Using the principle of non-interference as a justification, the ASEAN states have stated that human rights falls outside the jurisdiction of the association as a collective body. Thus, despite international clamor for ASEAN to act on the issues of East Timor independence and political repression in Myanmar, the ASEAN states chose to remain officially uninvolved. In 1997, ASEAN formally admitted Myanmar into the association again despite strong lobbying from its dialogue partners, as well as non-government groups in Southeast Asia.

The principle of non-interference, however, has been implemented in such a way that it means more than simply doing nothing to embarrass a neighbor. Governments or groups associated with the government in power have gone out of their way to stop non-government events that are seen to impinge on the internal affairs of other ASEAN members. Three conferences on East Timor that were held in Manila (1994), Bangkok (1995), and Kuala Lumpur (1996) were disrupted by the governments involved in reaction to protests from Jakarta. The Thai police forces responded to the importuning of the Thai foreign ministry and harassed participants at the International Symposium on Peaceful Settlement for East Timor held in Bangkok on March 2–3, 1998 (*Bangkok Post* March 4, 1998: 1). What was so disconcerting for human rights activists about these developments was that three of them were held in the Philippines and Thailand, countries that were supposed to have more than formally democratic governments. It

showed that ASEAN solidarity took precedence over democratic principles or human rights in Southeast Asia. Emphasis on the principle of non-interference ensured that human rights issues in the region would not be made an ASEAN concern. In fact, it seemed that it would largely be ignored.

This illustrates the dilemma that the principle of non-interference creates for ASEAN. It has become a stumbling block to ASEAN's potential for pushing social transformation in the region. In this context, non-interference has detrimentally affected its standing with its dialogue partners and in other international fora. Indonesia had been a particularly sensitive target on this issue until East Timor gained its independence in 2000. The clearest case, however, where the norm of non-interference has become a source of tension between ASEAN and its partners (and even among the ASEAN member-states themselves) has been Myanmar.

The State Peace and Development Council (SPDC), the military regime in Myanmar formerly known as the State Law and Order Restoration Council (SLORC), has been condemned internationally for its human rights record. Its policies towards ethnic minorities and, more so, its refusal to liberalize the country's political system has led a number of powerful countries to institute sanctions against Myanmar. This has, however, been rejected by the ASEAN member states as counter-productive. Sanctions would strategically only lead Myanmar to greater dependence on China. More importantly, however, acceding to the call of Western states would be tantamount to intervening in the internal politics of Myanmar, as well as consenting to interference from external powers in regional affairs. Instead, the ASEAN states adopted a policy of *constructive engagement* as a means of inducing the SPDC to reform its domestic policies.

Ironically, Myanmar has been one area where ASEAN solidarity has always been less than firm. While constructive engagement was

presented as a consensus among ASEAN's member-states, this position was never really clear from the start. Constructive engagement relied on quiet diplomacy to persuade and prod the SPDC towards political liberalization. Differences and conflicts of interests with Myanmar are discussed in a consultative manner based on agreed upon norms and rules. Part of the calculus for the admission of Myanmar into ASEAN in the face of stringent opposition from the United States and other dialogue partners was the notion that Myanmar's membership in ASEAN would give constructive engagement more clout in effecting political reform in that country. The Malaysian Foreign Minister then, Abdullah Ahmad Badawi, brushed off concerns that the human rights situation in Myanmar could worsen even after its entry into ASEAN with the "hope" that Myanmar's membership in ASEAN will make the "policy of constructive engagement . . . more effective" (Hiebert et al. 1997: 15). In fact, prior to Myanmar's entry as an observer in ASEAN, ASEAN officials believed that constructive engagement was instrumental in the decision to release opposition leader and Nobel Prize winner Aung San Suu Kyi on July 19, 1995. Eventually, ASEAN's overall record on this count will have been less than satisfactory as the SPDC rather cynically used the world's most famous political prisoner to gain some concessions from its ASEAN partners. Despite the hope voiced by Badawi, there has been little to show that membership has changed anything. From the very start, the SPDC had always refused to accept the transformative goal of constructive engagement. According to Myanmar's Foreign Minister Ohn Gyaw, constructive engagement means that "ASEAN would like to see Myanmar as an equal" (*Far Eastern Economic Review* August 15, 1996: 36). Clearly, the Myanmar government had from the beginning of its engagement with ASEAN no intention of seriously considering suggestions even from some of its ASEAN partners on the institution of democratic reforms (*The Nation* November 1, 1996: A1).

The ASEAN states have been aware of and sensitive to the suggestion that the SPDC is using its membership as a shield against criticism of its human rights record and in the process tarnish ASEAN's reputation. The determination, however, to turn ASEAN into an organization that includes all countries in the region made its member-countries less than reticent about deciding to admit Myanmar into the organization. While the question of Myanmar's membership in ASEAN has had important repercussions on ASEAN's international standing, to the point of straining its relationship with some of its most important dialogue partners, it is a fact that ASEAN as an association must deal with. The case of Myanmar illustrates the dilemma that ASEAN could and will face on issues that have to do with international opprobrium on the actions and policies of any of its members in the face of the unwillingness of ASEAN's member-countries to use their offices to actively influence this behavior by officially intervening. While ASEAN has had to face this problem with Indonesia over the issue of East Timor, ASEAN processes and "diplomatic accommodation" have been instrumental in maintaining ASEAN unity in the face of international criticism. The lack of good faith on the part of Myanmar and its unwillingness to abide by the ASEAN condition of good neighborliness by listening to quiet injunctions and suggestions from its new partners about its internal political situation makes its case different from that of Indonesia and much more difficult to manage. This is especially so in the context of the increasing expansion of non-state actors among those who claim to speak for and in behalf of the ASEAN region.

The ASEAN process has generally required that any policy implemented in the name of ASEAN must either contribute or at least be neutral to the perceived national interests of the individual ASEAN member-states. It must in no way detract from or threaten it (Kurus 1995: 405; Irvine 1982: 50). While the greater regional interest is to keep

ASEAN together, this does not mean sacrificing the fundamental interests of each member country. On the other hand, it is a matter of principle in ASEAN that a lack of unanimity should not become an impediment to progress in whatever collective undertaking the members of the organization become involved in; the absence of unanimity should not be an obstacle to achieving consensus. As stated by Foreign Minister S. Jayakumar of Singapore: "[w]hen the vital interests of any one ASEAN state [are] not threatened by any ASEAN initiative, it allows the other members to proceed with it" (Hoang 1998: 78). Consensus is therefore expressed not so much in terms of agreement, but more in terms of not disagreeing. This provides ASEAN decision-making with the flexibility needed to accommodate diverse political, economic, social and cultural concerns. Yet, these processes have become difficult to maintain at different levels, particularly with the entry of new members. At one level, consensus-building and the principles around which ASEAN's identity has been built have to operate within a different geopolitical context. At another level, a nascent regional civil society is creating pressures for democratization. In the wake of the financial crisis, these norms have come under great stress from both within and outside ASEAN. ASEAN's dialogue partners from the West had from the start been uneasy with the "ASEAN Way" of conducting business. They found it even less acceptable after the crisis. More importantly, the principle of non-interference is under attack from within ASEAN societies itself as NGOs organize transnationally to challenge the claims made by the ASEAN states regarding their sole jurisdiction over human rights in the region. The relevance of ASEAN itself to Southeast Asia is under continuing stress to ground itself anew in norms that must address human rights and democratization in the region.

Human Rights in Southeast Asia: How much has changed?

The previous sections show that the complexity of the issue of human rights in Southeast Asia revolves around largely ideational concerns. These concerns, however, have translated into very real debates over specific issues and policies at both the national and regional levels, debates that have multifaceted involvements by both state actors and transnational non-government networks. The efforts of officials from Indonesia, the Philippines and Thailand, and transnational networks involving non-government organizations have led to changes across the region that open up possibilities for human rights. Change across the region is evident, and these can be seen in both domestic and regional politics. Developments since the end of the financial crisis have been significant, but their impact on the establishment of an ASEAN human-rights instrument realistically remains a long-term prospect.

The most favorable view of developments on human rights in the region has given some significance to the emergence of what Eldridge refers to as “piecemeal institutionalization of international human rights law” (Eldridge 2002: 2). This can be seen first and foremost in the ratification of UN human rights instruments and their adoption in domestic legal structures. Another clear area of advancement which has prospectively long-term consequence even for ASEAN is the establishment of national human rights commissions or their equivalent in a number of ASEAN countries. Prior to 1997, only Indonesia and the Philippines had established national commissions that were intended to act as checks to state excesses that could and did lead to human rights violations. Both have functions that are approximately similar—they are fundamentally fact-finding, educational, and recommendatory bodies without any real power or capacity to make arrests and prosecute cases. These are left to other agencies of government. The most important feature that impact on both their effectiveness

and credibility as institutions is their status as autonomous bodies. The Philippine Commission on Human Rights is a constitutional commission that politically makes it independent of the administration in power. The Indonesian *Komisi Nasional Hak Asasi Manusia* (KOMNAS HAM) was established in response to domestic and international criticism of the killing of a number of people attending the funeral of an East Timor independence activist by the Indonesian military in Dili, East Timor. The members of the Commission were appointed by President Suharto and as such were not expected to exercise that much independence. Marzuki Darusman, the person tasked to head the commission, was a well-known human rights advocate prior to his appointment to KOMNAS HAM. He made it a point to make sure that the institution gained the confidence of the populace and, eventually, the human rights community through its independent stance. In the meantime, non-government organizations and private individuals became increasingly active in promoting democratization and human rights in Indonesia. Marzuki’s leadership in KOMNAS HAM, the commitment of the other members of the Commission, and the unofficial oversight provided by the growing civil society in Indonesia combined to establish and ensure the credibility of the body. It presented reports that were critical of the military’s action in Aceh and East Timor in general, and in Dili in particular. The killings, rape, and destruction that followed the 1998 referendum on East Timor autonomy was investigated by the Commission and found the military culpable of systematic involvement.

The Thai and Malaysian parliaments eventually decided to constitute similar bodies in 1999 with fundamentally the same kind of function as the National Commissions in Indonesia and the Philippines. The Human Rights Commission of Malaysia (SUHAKAM) convened its first meeting in 2000 and the National Human Rights Commission (NHRC) of Thailand came into being in 2001. The

establishment of SUHAKAM in particular came as a great surprise to human rights advocates in Malaysia. Neither, however, has attained the respected stature of the commissions in Indonesia and the Philippines. While both have tried to assert a certain degree of independence from the ruling party, they have been subject to criticism from pro-government officials who seem to deem it unpatriotic whenever they release reports that are critical of government policy (Asia-Pacific Human Rights Network 2002 and 2003). A more serious issue faced by both bodies is the degree to which their work is seriously taken by their governments. In Malaysia, the parliament hardly ever discusses any of the reports submitted to it by SUHAKAM, much less considers any of its recommendations. In Thailand, the NHRC raised concerns about the conduct of a government campaign against drugs, which Prime Minister Thaksin simply brushed off and ignored.

Cambodia does not have a national commission on human rights but it has had a National Human Rights Committee signed into being by the co-Prime Ministers in 1999. The fact, however, that the committee was led by two of the top advisers of Hun Sen, and that this was the fourth time since July 1997 that Hun Sen had pledged to set up such a commission, did not inspire confidence that it was a serious effort (Human Rights Watch 1999). Even upon its establishment, the work it did was largely perfunctory. The Committee published the results of only a few of its investigations of the human rights abuses that had been reported by the UNCHR in previous years. It is also charged with improving the administration of justice and drafting a law to establish an independent permanent national human rights commission.

Despite the unevenness of the level of development and their impact in their respective countries, the human rights commissions and institutions in Cambodia, Indonesia, Malaysia, the Philippines, and Thailand provide a step forward in human rights advocacy in the region. More

importantly, these countries constitute a core around which human rights as a regional concern could be advanced. It is not likely that the Cambodian and Malaysian governments are going to align themselves with any initiative that advocates advancing human rights as a regional concern. The fact, however, that national human rights institutions have been established in these countries means that their respective governments must at some point pay heed to human rights concerns that take place within their boundaries.

While the developments at the national level give some examples of advancements of human rights in the region, it is at the regional level itself that the most important strides have been made. Developments at this level have even been shown to be indicative of the extent to which "ASEAN diplomacy has been changing" (Katsumata 2004: 238). It is at this level that the impact of individual persons (especially government officials), governments, and particularly non-governmental networks working for norm change has been most fully felt. An episode which posed a direct challenge to existing ASEAN norms took place at 31st ASEAN Ministers Meeting (AMM) held in Manila on July 23–31, 1998. The centrality of the principle of non-interference to ASEAN, especially as it pertains to human rights, has engendered a continuing debate over the need to reconsider the way it has been understood within ASEAN. The Thai Foreign Minister at that time, Surin Pitsuwan, submitted a proposal for a review of the principle of non-interference as an ASEAN norm. He argued that ASEAN member-states should be allowed to discuss each other's domestic affairs openly if these have an impact outside their borders. This proposal, which became known as "flexible engagement," was strongly supported by the Philippines and by regional human rights networks such as the Forum for Human Rights in Asia (Forum Asia) and the Alternative Southeast Asian Network on Burma (AltSEAN). Even as Surin insisted that

the adoption of this proposed approach to inter-state relations in ASEAN was not mutually exclusive with the continued operation of the principle of non-interference, the ASEAN Foreign Ministers eventually rejected it. This seemed to confirm the inherent conservatism of ASEAN's "habit of mind."

The ASEAN states, however, adopted what was widely seen as a less intrusive norm referred to as "enhanced interaction." There is, however, in practice very little difference between "flexible engagement" and "enhanced interaction" (Haacke 1999: 598). This might suggest that there is a trend towards increasing openness within ASEAN. Certainly, ASEAN has since then introduced a number of diplomatic instruments that taken altogether might indicate an incremental modification of the "ASEAN Way." These include the Foreign Ministers' Retreat, the introduction of the ASEAN Surveillance Process (ASP), the institutionalization of the ASEAN Troika, and the agreement on the rules of procedure for the ASEAN High Council (See Haacke 2003: 62–80). Overall, these developments represent changes that begin to operationalize the idea of a more open ASEAN promised in the ASEAN Vision 2020.

A positive consequence of the financial crisis was the emergence of declared aspirations that speak to the need for the eventual adoption of human rights norms in ASEAN. On December 15, 1997, the heads of state and government of ASEAN reaffirmed their commitment to the aims laid out in the ASEAN Declaration of 1967 and set forth a set of objectives that ASEAN was supposed to attain by the year 2020. In a document entitled ASEAN Vision 2020, they resolved that ASEAN would become a community of "vibrant and open" societies wherein basic needs and wants will no longer be a problem, where "civil society is empowered," and where governments will "govern with the consent and greater participation of the people with its focus on welfare and dignity of the

human person and the good of the community" (ASEAN Secretariat 2003: 76–77). The language in this document was negotiated for six months with the idea of "open" societies being opposed by the officials from most of the ASEAN states. It was the government of Thailand, again with the support of the Philippines, which continued to insist on it until it was eventually accepted. The fact that it was a vision statement rather than a declaration of principles made the language more acceptable to those governments that had initially opposed it.

ASEAN Vision 2020 clearly expresses sentiments that open the way for the entry of human rights into the fore of official concerns of the ASEAN states at the regional level. This was followed by the practice of including a paragraph affirming this apparent concern and awareness of human rights in the Joint Communiqués that come out of the ASEAN Ministerial Meetings from 1998 onward (See Annual Joint Communiqués of the 31st to the 36th ASEAN Ministerial Meetings). On October 7, 2003, the Second Bali Concord further committed ASEAN to the establishment of an ASEAN Security Community that "envisaged to bring ASEAN's political and security cooperation to a higher plane to ensure that countries in the region live at peace with one another and with the world at large in a *just, democratic and harmonious* environment" (ASEAN 2003). The initiative on the ASEAN Security Community was made by the Indonesian Foreign Ministry with the assistance of the Centre for Strategic and International Studies (CSIS) in Jakarta. The original draft was written by Rizal Sukma, the Director for Studies of the CSIS, and contained language that was even more outspoken in its advocacy for democratization and human rights and when presented to the other ASEAN states, caught everyone by surprise. Some of the issues that became sticking points were "the promotion of democracy and human rights, a commitment to free and regular elections, the untrammled flow of information and the building of open, tolerant

and transparent societies" (*Far Eastern Economic Review* 2004). The final draft that was eventually endorsed at the ASEAN Summit in Vientiane in 2004 retained the commitment to the promotion of democracy and human rights. The draft took a year to negotiate with Indonesian and the Philippine officials together with some officials at the ASEAN Secretariat itself working hard to keep the original language in the document.

The development of these documents as well as the new diplomatic mechanisms adopted by ASEAN since 1997 present clear evidence of change taking place at the level of ASEAN even as domestic political structures in the ASEAN states, except for Indonesia, remain largely as they were before the financial crisis. The efforts of government officials from Indonesia, the Philippines and, before the accession of the Thaksin government, Thailand have been critical in pushing the boundaries on the issue of a regional standard on human rights for ASEAN. Increasingly, however, the growing involvement of extensive networks of non-government groups intent on pushing human rights as well as economic issues to the forefront of ASEAN concerns is becoming effective. These groups are particularly strong in Indonesia, the Philippines, and Thailand, but their activities cover issues involving the whole of Southeast Asia. Martha Finnemore has emphasized how states are interlinked with transnational networks and social relationships that help mold the perceptions and self-identification that determine their interests and policies (1996: 2). Non-government organizations and civil society groups were very active in challenging the Asian values discourse, though they had largely been marginalized in the way that human rights issues have been addressed within ASEAN. Most were critical of the authoritarian implications of the Asian values argument and tried to push for change in ASEAN itself.

The extent to which non-government networks have been working hard to open up

the political boundaries in the ASEAN states was clear during the discussions on "flexible engagement." Human rights groups from the Indonesia, the Philippines and Thailand converged in Manila and threw their support behind efforts to open up ASEAN. These groups coalesced around human rights concerns principally but not exclusively in East Timor and Myanmar. They were particularly vocal about their support for the proposed policy of flexible engagement, saying that it would help in arresting the widespread cases of human rights abuses in the region (*Philippine Daily Inquirer* July 24, 1998: 1). At that time, this was especially important in the context of government crackdowns in connection with the public unrest due to the effects of the financial crisis.

The influence of non-government groups on ASEAN's decision-making processes has been increasing. More importantly, the relationship between the ASEAN states and non-state actors has progressed from the confrontation over East Timor evident in the series of conferences established under the ambit of the Asia-Pacific Conference on East Timor, or APCET, which were held in Manila (1995), Kuala Lumpur (1996), and Bangkok (1998). Increasingly, non-government human rights networks and advocates across Southeast Asia have been working with sympathetic officials from among the ASEAN member states and from within ASEAN itself in order to bring human rights norms at the fore of ASEAN concerns. Non-government groups have in fact been responsible for the most important initiative on human rights in the region. In 1996, The ASEAN Troika met with a group of human rights advocates that proposed the establishment of a Regional Working Group for an ASEAN Human Rights Mechanism (RWG). They themselves had already constituted such a working group and wanted the imprimatur of ASEAN to give legitimacy to their work. Their basic proposition was that the 1993 Joint Communiqué committed ASEAN to the establishment of a regional human rights

mechanism. The lack of any progress on this front had prompted them to take the initiative and push for the establishment of a working group. Discussions with the ASEAN Troika (composed of the Foreign Ministers of Brunei, Indonesia, and Malaysia) proved to be positive and the group's efforts were given official sanction. Foreign Minister Ali Alatas of Indonesia, however, suggested that their efforts be focused first on the establishment of working groups in the different ASEAN states. By 2003, working groups had been set in Cambodia, Indonesia, Malaysia, the Philippines, Singapore, and Thailand. Each national working group was composed of representatives of the government, parliamentary human rights committees, academics, and non-government organizations. Every year, their representatives have discussions with ASEAN Senior Officials as part of the ASEAN Ministerial Meeting's agenda.

At their meeting with the ASEAN senior officials in 2004, the RWG presented a draft document on the establishment of a regional human rights commission. At that meeting it was clear that the representatives of the ASEAN member-states, except for those of Indonesia and the Philippines, were not quite prepared to accept the institutionalization of any regional mechanism, much less a regional human rights commission. Instead, it was proposed that a regional network of Human Rights Commissions be initiated as a starting point. The result of the meeting was very disappointing to the members of the RWG, but at the same time the idea had not been shot down outright. The suggestion to start with a regional network of Human Rights Commissions is a variation of the ASEAN formula of 10-X (which is basically the establishment of "coalitions of the willing" within ASEAN). It does provide a clear starting point from which to build towards a region-wide network.

Even as the RWG is working closely with ASEAN to try to build human rights into the ASEAN agenda, other networks have been

busy organizing the ASEAN People's Assembly (APA). The concept was first broached to ASEAN by the heads of institutes of the ASEAN Institutes of Strategic and International Studies (ASEAN-ISIS) in 1998. Lack of support for it from within the association kept the idea in hibernation for a few years. Finally, ASEAN-ISIS went ahead even without official support from ASEAN, and the first meeting was held in Batam, Indonesia on November 24–26, 2000. The second and third meetings were held in Bali and Metro Manila, respectively. The APA is a very large network with between 200 and 300 people attending the meetings. NGOs welcomed it because it provided a forum where they could deal directly with ASEAN officials (if they attended) and discuss with them the issues that concerned these groups. During the Second APA meeting held in Bali, different working groups were constituted to further move APA beyond just becoming another talk shop. One of these working groups was tasked with drafting a human rights scorecard for the region. This signified an acknowledgment on the part of the different groups involved in APA that it was necessary to coordinate their efforts and establish clear-cut guidelines on what it was they were advocating. This promised that their future campaigns would be more focused and deliberate in their advocacy, and better supported by data. All in all, it signified a more conscious desire to become more involved in agenda-setting in ASEAN itself.

Persistence amidst change

There is much to celebrate in the developments in ASEAN as far as human rights is concerned. To be able to claim, however, that this is reflective of a transformation of the ASEAN states' commitment to ASEAN's constitutive norms, including the "ASEAN way," underestimates the amount of struggle that needs to be undertaken before a regional code of conduct on human rights can be established. Real norm change at its most basic involves

changing the way people think about existing conditions and the norms that inform those conditions. It is not easy to determine the extent to which developments at both the national and regional levels described in the previous section reflect a genuine acceptance of the international norms formulated in the new instruments and institutions that have been established and how much of it involves cynical calculations of drawing attention away from more grievous sins is hard to determine. This is particularly true regarding developments at the domestic level (Eldridge 2002: 2). One could point for instance to the case of Cambodia which, next to the Philippines, has ratified, acceded to, or signed the largest number of UN international human rights instruments among the ASEAN states, most of these after 1992. Observance of the state's responsibility to ensure and protect these rights have been sorely wanting not only due to lack of capacity but also from lack of willingness on the part of the ruling party to do so. Divisions within the Cambodian state's ruling elite clearly suggests that acceding to these international instruments were at least part of the political calculations of Hun Sen to present a favorable face to the international community. In other cases, such as that of Laos and Vietnam, the reservations made even in the course of signing or acceding to a covenant limited the effect of the commitment that was made with the ratification or accession to the covenant.

The effect of the absence of a regional standard and the problems that this brings to ASEAN is most strongly evident with the issue of Myanmar. On October 19, 2004, Myanmar's Prime Minister, General Khin Nyunt, was ousted and placed under house arrest. Subsequent reports from the SPDC stated that he had to "retire for health reasons" (*The Straits Times Interactive* October 20, 2004). In his stead, Lt. General Soe Win became Prime Minister. Overall, however, it signaled the victory of "hardliners" in the SPDC over the "moderates." Early in 2004, Myanmar had announced the adoption of a

roadmap that would guide the country's progress from authoritarianism to democracy. Australia had become very much involved in this process. The leadership change, however, prompted concern from its ASEAN partners. Malaysia's Prime Minister Badawi hoped "that the road map to democracy will not be affected with the change of the prime ministership" (*Philippine Daily Inquirer* October 21, 2004). The issue of Myanmar has always been an awkward one for the other members of ASEAN. It has always been a source of conflict with the association's dialogue partners. The prospect of Myanmar taking over the chair of ASEAN in 2006 brought this conflict to a head with a number of ASEAN dialogue partners threatening to boycott the ASEAN meetings during the period when Myanmar sat on the chair. In a reversal of roles, Malaysia and Singapore actually suggested that Myanmar step down from taking over the chair in 2006 while Thailand rejected the notion with Prime Minister Thaksin declaring his preparedness to walk out of ASEAN if the issue of Myanmar was raised. The Cambodian, Laotian, and Vietnamese governments also refused to consider asking Myanmar to skip its first opportunity to chair ASEAN. The latter three governments were concerned that they were similarly vulnerable to the kind of international pressure that Myanmar's military junta was being subjected to. The Malaysian and Singaporean governments were largely considering the situation from a practical standpoint—the embarrassment and problems that a boycott by the major dialogue partners of ASEAN would cause to the association. The Philippines and Indonesia were in favor of having Myanmar miss out its turn at the chair with the former actually saying that it was prepared to take over the chair in the event that Myanmar did step down. This position was strongly influenced by ASEAN-ISIS personalities who tried to convince their governments into asking Myanmar not to take up the chair. At the Fourth APA Meeting held in Manila in May

2005, civil society groups across Southeast Asia made their support for Myanmar being disallowed from taking over the chair of ASEAN well known. The issue remains unresolved although the ASEAN states have agreed that it was up to the Myanmar government to make the decision on whether or not it would take up the chair of ASEAN in 2006 (*The Philippine Star* May 16, 2005: 3).

The issue of Myanmar taking up its turn at the chair of ASEAN in 2006 shows the continued divisions within ASEAN on the case of Myanmar. It also illustrates that even countries which are strongly supportive of the “ASEAN Way” could consider setting it aside for pragmatic considerations. This, however, cannot be taken in any way to signal a loosening in the position of the norm of non-interference. If anything, it shows how central it continues to be to how the ASEAN states conduct inter-state relations. It certainly cannot be taken to show that Malaysia and Singapore are reconsidering their long-standing position on the issue of non-interference. What it does affirm is the pragmatism that continues to guide the foreign policies of these countries.

In the aftermath of the September 11, 2001 attacks and the U.S.-led war on international terrorism, the human rights agenda in ASEAN has taken a back seat to the current global war on terror. Counterterrorism in Malaysia and Singapore has given the Internal Security Act (ISA), the focal point of any human rights debate in these countries, a new reason for being. The annual report of SUHAKAM for 2003 had recommended a review of the ISA, a recommendation that will not likely get many supporters in the ruling coalition in Malaysia. There have also been some suggestions in Indonesia that a law similar in scope and authority to the ISA be adopted. Similarly, the Thai NHRC had noted in its first report submitted to the parliament in August 2004 that the human rights situation in Thailand had worsened in the last three years. The report warned that “Thailand is regressing worryingly to a culture of

authoritarianism” (Quoted in *The Age* August 5, 2004). Human rights advocacy groups in the region fear that the obsession of President George W. Bush and his administration with terrorism has weakened the human rights campaign within ASEAN.

Taking into consideration the opportunities for advancing the human rights agenda in ASEAN with the adoption of the Second Bali Concord and the draft of the ASEAN Security Community, it must be noted that these make very little substantive advancement on anything that have to do with democracy and human rights in comparison with previous declarations. In this context, it remains consistent with the “ASEAN Way” of building consensus. The slow pace of development in this issue with no indication of substantive progress has led to some suggestions that other models be adopted. In the United States, for example, a proposal for the formation of a “Helsinki Commission” for Asia was given consideration in Congress. These proposals would find difficulty in being accepted by the ASEAN member-states in spite of the avowed acknowledgement of the principle of non-interference of the Helsinki Process.⁹ The process, however, requires the existence of extensive networks of institutions to support monitoring, reporting, and verification activities. The implication of acknowledging the right of states outside the region to become involved in matters that pertain to countries in Southeast Asia makes this proposal a non-starter. Further, the Helsinki Process requires institutionalized mechanisms to support it—a feature that is clearly lacking in ASEAN.

The ASEAN states clearly have to go beyond the statements in the Second Bali Concord and the proposed ASEAN Security Community if human rights norms are eventually to be given recognition within the association. What is required is the establishment of obvious markers that would pace any forward movement. It is at the level of operationalizing their aspirations that the ASEAN states need to make some progress in

terms of substantively modifying their approach towards human rights. It is also in this area that transnational human rights networks in the region have been very active. That there has been little in terms of turning these declarations and aspirations into a clear code of conduct on human rights for the ASEAN member-states is indicative of how far these efforts towards changing ASEAN's normative structures have yet to go.

What are the prospects?: Some thoughts

The debate over human rights in Southeast Asia has more than anything else become a debate over norms and normative structures in ASEAN. Even as advocates look at the process of democratization in the different ASEAN states as the proper starting point for human rights to prosper in the region, a regional approach can provide a parallel line of analysis, as well as a target for policy. ASEAN is undergoing change, some of it having implications for its constitutive normative structures. From the discussions above, the advancements in ASEAN on the human rights front could be attributed to a number of factors:

1. The active involvement of foreign affairs officials from Indonesia and the Philippines in pushing for change. The ideas behind the Second Bali Concord, the ASEAN Security Community, and the language adopted in the Vientiane Action Program were only made possible because of the strong backing given to them by these officials. Even as the initiative for change might come from non-government networks (as the conceptualization of the ASEAN Security Community showed), their acceptability to ASEAN was helped considerably by the support given by some of their own number.
2. The most successful effort by civil society groups was the initiative on a ASEAN Regional Mechanism on Human Rights pushed by the informal RWG. To a

large extent, that success was facilitated by using ASEAN's own sets of aspirations, in this case those made in the 1993 Singapore Declaration. This is illustrative of how initiatives should be framed to ensure a modicum of acceptability. In comparison, the efforts of the APCET, while relentless, proved to have achieved less because of the confrontational approach taken by participants in the APCET network.

3. Most of what are considered advancements are couched in language that did not challenge existing ASEAN norms over the immediate term. Most of those that did, e.g the initiative on flexible engagement and the proposal for the establishment of a regional commission on human rights by the RWG, were modified or rejected outright.

At the same time, however, the over-all picture shows that on the issue of human rights, ASEAN itself has progressed little since the time of the debate over Asian values. ASEAN officials continue to sidetrack the idea of establishing a human rights mechanism for the region that would set a common standard for all the ASEAN member-states. In this way, a government such as that of Myanmar can be held accountable for behavior that could be seen as detracting from the international stature of ASEAN.

This is not to say that there has been no progress at all. Even with the unevenness of capacity and capability to act that characterizes the different national human rights commissions, their institutionalization is something that countries like Cambodia and Malaysia cannot step back from. They have committed themselves to being examined on their behavior in relation to the observance of international human rights norms. Strengthening these institutions should go beyond internal capacities. Establishing a regional network of these commissions and committees will be mutually reinforcing.

The efforts of non-government actors in pushing change must be given recognition. In areas where the ASEAN states have themselves been incapable of progressing beyond rhetoric, groups such as the Regional Working Group have taken it upon themselves to challenge ASEAN on their own rhetoric and push it towards something of greater substance. The establishment of networks such as APA also furthers not only the advocacy process but also the educational process. The willingness to engage ASEAN and to become involved in its agenda is a recent development and one that needs to be reinforced.

Bringing the discussion back to the analytical issue regarding norm-change, the continuing absence of a regional human rights mechanism for ASEAN is indicative of the problems that processes of persuasion face and where the prospects for possible advancement lie. The efforts of non-government actors and officials primarily from Indonesia, the Philippines, and Thailand have led to some incremental successes. The recognition given to the RWG, the forum this recognition provides for discussing human rights at the ASEAN level (no matter how limited this may seem at this point), the establishment of national human rights commissions in a number of ASEAN member-states and the continued pronouncement of aspirations that would bring ASEAN norms in closer alignment with international human rights norms all point to some progress. The limited amount of progress, however, also indicates that real ideational change has not taken place in the region as a whole. This is primarily attributed by ASEAN officials, particularly those not from Indonesia, the Philippines, and, to a lesser extent, Thailand, to the issue of existing incompatibilities between ASEAN norms and the structural demands that come with international human rights norms. The adherence to existing norms by ASEAN ensures that any progress on the issue of a regional mechanism will be slow. The debate over the issue of non-interference

and the introduction of “enhanced interaction” only point to the difficulties of trying to “graft” new norms onto old ones.

Of equal significance is the dynamic between norm entrepreneurs and norm-takers in ASEAN. The relationship established by the RWG with the ASEAN SOM has facilitated the most important advances made on putting human rights in the ASEAN agenda. The strategy taken by the RWG, i.e. a non-confrontational approach, and its starting point from a statement included in the 1993 ASEAN Joint Communiqué made its initiatives more palatable to ASEAN officials. Similar networking with ASEAN facilitated by ASEAN-ISIS also provided the necessary bridge between ASEAN and human rights advocacy groups involved in the APA. The support given by officials from Indonesia, the Philippines, and Thailand also helped in strengthening these emerging ties.

A significant consideration is the fact that the direction of the thrust of all these initiatives is primarily towards ASEAN and not the individual ASEAN member-states. This indicates the perception among human rights advocates in the region that it is potentially more promising to direct their efforts at norm-change at the regional level and use ASEAN as the mechanism for pushing reform at the national level. This reflects on the third factor that Johnston points to regarding the disposition of the “persuadee” or the norm-taker towards the new norms that are being advocated. Domestic level reform is a much more difficult undertaking because the norms that are being challenged tend to be much more internalized by government officials. ASEAN, by virtue of its multiple membership, has supportive voices as well as dissenting ones. It also shows that human rights advocates in the region tend to think that norm change at the regional level is possible even without domestic political change. This is a difficult undertaking but there have been advances made at the regional level that have little to do with domestic political transformation. At the same time, there have

also been advances made at the domestic level that have taken place without the benefit of domestic political structural change.

Conclusion

The social environment in ASEAN remains imperfect for facilitating complete norm change. The fact that it is officials from those countries that are most unsympathetic to liberal democracy that remain the bulwark against norm change indicates the need for some political openness to take place at the domestic level before human rights norms will be fully accepted at the regional level. The advances made, however, at both the national and regional levels show that some change is possible—change that can provide the initial impetus for further developments. To further this initial impetus, different actors involved in advancing human rights in the region should not waver in their actions. The following recommendations are made in support of continuing the process of norm change:

1. The RWG has made the most impressive gains in advancing a human rights mechanism for ASEAN. The process is wavering at this point because of the rebuff of the proposed Regional Human Rights Commission. The RWG should continue doing what it has been doing—particularly helping in the establishment of working groups in each country in the region. In this context, those efforts should be given support, material, and moral by governments and non-government organizations outside of ASEAN in pursuit of these activities.

2. The RWG and other networks that have been involved in advocacy must strengthen their cooperative relationship with like-minded officials, particularly those from ASEAN member-states that have so far been more supportive of existing ASEAN norms. To this end, identifying who these

officials might be and cultivating them should be part of an over-all strategy.

3. The existence of national human rights commissions provides a natural network in the region within the governments of those countries that have them for promoting human rights. Unfortunately, there has been little effort in taking advantage of this natural network. The RWG has done some work to strengthen coordination between national human rights commissions. A more regular set of consultations between these institutions would provide the initial steps towards developing common standards in evaluating the work that they do and even establish best practices. The initial work of the RWG could be sustained with some cooperation from the governments of those ASEAN states that have been supportive of norm change in ASEAN.

4. Non-government networks should establish common strategies and approaches both at the national and regional levels. This is the purpose behind networks such as APA. More substantive coordination is called for if the efforts of these networks in pushing for reform are to be taken more seriously by national governments. Part of the problem has been that different groups in different countries call for different things. This is understandable given the specific issues that may be unique to the situation of different countries. Nonetheless, coordinating all these efforts at the regional level would enhance the argument for reform at the national level. Projects that help develop and enhance human rights awareness across the region but the results of which can be used at the national level would be a great contribution to this effort.

5. Strategies utilized by non-government networks should emphasize more the idea of strengthening cooperation with

governments that are sympathetic to human rights. At the same time, officials from like-minded states should perhaps increase their own efforts at coordinating strategies for promoting norm change.

6. The strategy utilized by the RWG in using the 1993 ASEAN Joint Communiqué to assert the legitimacy of their effort in the eyes of ASEAN officials provides a model for approaching norm change in ASEAN. Advocates should look at how ASEAN norms can be interpreted to help advance human rights. The new documents provide rich ground for this. Using references to democratization and human rights in ASEAN Declarations, Bali Concord II, and the ASEAN Security Community as starting points for such efforts cannot but force ASEAN to reflect on its own commitment to these declared aspirations.

The persistence of ASEAN norms constitutes the principal challenge to the adoption of international human rights norms for ASEAN itself. Even as the short-term prospects for their opening up to actual and substantive changes do not seem promising, the prognosis for change is better than it ever was. It will require, however, greater commitment and patience over the short- to medium-terms.

Endnotes

¹ Herman Joseph S. Kraft was a 2004 Southeast Asia Fellow at the East-West Center Washington, where this study was written, and is Assistant Professor, Department of Political Science, University of the Philippines. The author is grateful for the comments of Dr. Muthiah Alagappa and two anonymous reviewers who served to give more focus to the direction of this study. The author, however, is solely responsible for the claims made in this paper and for whatever errors that remain.

² As late as 2003, journal articles were recommending the adoption of mechanisms that have their origins from ASEAN for other regional organizations were still being published (See Jetly 2003: 53–76).

³ Former Thai Prime Minister Chuan Leekpai himself dismissed Asian values as “self-serving values.” (*Time Magazine* [Asia] March 30, 1998: 16).

⁴ While the underlying reason for the policy of giving support to refugees is unstated, there are probably two principal factors that influenced the policy of both Malaysia and Singapore, both of which proceed from purely practical considerations. The first has to do with making certain that refugees will not have reason to want to leave their camps and consequently creating political embarrassment to the their host countries. The second involves national pride more than anything else—neither country could criticize Vietnam for pushing out ethnic Chinese Vietnamese thus creating the Vietnamese refugee problem in Southeast Asia, and at the same time refuse to do anything for refugees that end up on their shores.

⁵ Alastair Iain Johnston noted that the argument behind the “ASEAN Way” lies in the emphasis on processes precisely because of the weak institutionalization in ASEAN (2003: 107).

⁶ Even in what are supposed to be informal Track 2 meetings, participants from the governments of Laos, Myanmar and Vietnam have asserted the fundamental truism that in the end only officials will be able to determine what norms are to be adopted and institutionalized by ASEAN as a collective.

⁷ While William Case cautions against giving too much explanatory value to culture, he does concede that domestic politics is very much influenced by it (Case 2002: 17–25. See also Vatikiotis 1996: 23–55; Alagappa 1995: 31–53; and Sachsenroder 1998: 7–31).

⁸ The conceptual difference between the two needs to be emphasized here. The state is used here in the context of a political community that has a structure of domination and coordination, a coercive apparatus and the means to administer society and extract resources from it. Regimes on the other hand refer to the formal and informal organization of the center of political power, and its relations with the rest of society (See Alagappa 1995: 26–27).

⁹ The Helsinki Process is credited with aiding in the collapse of autocratic communism through the application of a multilateral framework that involve state and non-state actors in a network of agreements that oblige states to fulfill monitoring and reporting requirements.

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APPENDIX

	ESCR	CPR	CPROP 1	CPROP 2	ERD	EDAW	EDAWOP	AT	RC	RCOPAC	RCOPSC	MWC
Brunei									Dec 27, 1995 ^a			
Cambodia	May 26, 1992 ^a	May 26, 1992 ^a			Nov 28, 1983	Oct 15, 1992 ^a	s: Nov 11, 2001	Oct 15, 1992 ^a	Oct 15, 1992 ^a	s: Jun 27, 2000	May 30, 2002	s: Sep 27, 2004
Indonesia					Jun 25, 1999 ^a	Sep 13, 1984	s: Feb 28, 2000	Oct 28, 1998	Sep 5, 1990	s: Sep 24, 2001	s: Sep 24, 2001	s: Sep 22, 2004
Laos	s: Dec 7, 2000	s: Dec 7, 2000			Feb 22, 1974 ^a	Aug 14, 1981			May 8, 1991 ^a			
Malaysia						Jul 5, 1995			Feb 17, 1995 ^a			
Myanmar						Jul 22, 1997 ^a			Jul 15, 1991 ^a			
Philippines	Jun 7, 1974	Oct 23, 1986	Aug 22, 1989 ^a		Sep 15, 1967	Aug 5, 1981	Nov 12, 2003	Jun 18, 1986 ^a	Aug 21, 1990	Aug 26, 2003	May 28, 2002	Jul 05, 1995
Singapore						Oct 5, 1995 ^a			Oct 5, 1995 ^a	s: Sep 7, 2000		
Thailand	Sep 5, 1999 ^a	Oct 29, 1996 ^a			Jan 28, 2003 ^a	Aug 9, 1985 ^a	Jun 14, 2000		Mar 27, 1992 ^a			
Vietnam	Sep 24, 1982 ^a	Sep 24, 1982 ^a			Jun 9, 1982 ^a	Feb 17, 1982			Feb 28, 1990	Dec 20, 2001	Dec 20, 2001	

Source: Office of the United Nations High Commissioner for Human Rights, URL: www.unhchr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet (Accessed on November 10, 2004).

ESCR	International Covenant on Economic, Social and Cultural Rights
CPR	International Covenant on Civil and Political Rights
CPROP1	Optional Protocol to the International Covenant on Civil and Political Rights
CPROP2	Second Optional Protocol to the International Covenant on Civil and Political Rights
ERD	International Convention on the Elimination of All Forms of Racial Discrimination
EDAW	Convention on the Elimination of All Forms of Discrimination Against Women
EDAWOP	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women
AT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
RC	Convention on the Rights of the Child
RCOPAC	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
RCOPSC	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
MWC	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

The dates listed refer to the date of ratification, unless followed by an “a” which signifies accession or preceded by an “s” which signifies signature only.

Program Information

The Southeast Asia Fellowship Program

Purpose

The Southeast Asia Fellowship Program is designed to offer young scholars from Southeast Asia the opportunity to undertake serious academic writing on the management of internal and international conflicts in the region and to contribute to the development of Southeast Asian studies in the Washington area by bringing Asian voices to bear on issues of interest to a Washington audience.

The annual fellowships are awarded to two to three scholars and will finance two to three months of fieldwork in Southeast Asia, two months of residence at the Institute of Southeast Asian Studies, Singapore, and three months of residence at the East-West Center Washington in Washington, D.C. During the period in residence, the primary goal of the fellows is to complete a monograph or article that can be published in a peer-reviewed outlet. Fellows will also give seminars sponsored by the East-West Center Washington, partake in Southeast Asia related scholarly activities organized by other institutions, and interact with scholars and policy makers in Singapore and Washington, D.C.

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Working Papers

Previous Publications

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China's Policy on Tibetan Autonomy
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