

Important but De-centred: ASEAN's Role in the Southeast Asian Human Rights Space

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Abstract

In this article, I argue that to capture ASEAN's importance in the promotion and protection of human rights requires embedding the analysis of what ASEAN says and does into an awareness of the broader human rights space of which it is a part. The Southeast Asian human rights space has four dimensions: ASEAN, domestic institutions, civil society, and the global United Nations system, all of which are increasingly linked together in a complex whole. Revealing this human rights space suggests three conclusions. First, ASEAN is important as an educator, enabler, standard setter, and mobiliser of human rights, often despite its flawed institutional design. This importance is the product of its own activities and how it is used by other actors. Second, ASEAN member states engage with each other on questions of human rights broadly, and not only through ASEAN, which illustrates the limits and resilience of the 'ASEAN Way' as a set of procedural norms. Third, ASEAN, despite its growing importance to human rights promotion, has become increasingly de-centred in that field, with serious consequences for its own security agenda.

KEYWORDS: ASEAN, human rights, regionalism, socialisation, centrality

INTRODUCTION

FEW OBSERVERS, CORRECTLY, HAVE anything positive to say about the Association of Southeast Asian Nations' (ASEAN) commitment to human rights. ASEAN's key human rights institutions, the ASEAN Intergovernmental Commission on Human Rights (AICHR) and its companion ASEAN Intergovernmental Commission on Women and Children (ACWC), are hamstrung by restrictive Terms of Reference (ToR) that align them with ASEAN's non-interventionist standards. This does not mean that such bodies are completely useless, but it does limit their utility. Upon its release in 2012, the ASEAN Human Rights Declaration (AHRD) was widely criticised for numerous shortcomings: relativism, member states' ability to define when human rights can be curtailed and ASEAN's traditional aims of state security and non-intervention (Article 40) over the promotion of the values outlined in the preceding 39 Articles (see Nuland 2012; Human Rights Watch 2012).

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In this article, I do not contest that ASEAN's human rights commitments are weak, but I do argue that if we wish to understand the value of its human rights institutions and commitments, we must not only undertake an *internal* analysis of what ASEAN is and does but we must also situate ASEAN *externally* within what I term the Southeast Asian human rights space. The human rights space is not a geographically defined region so much as it is the sum of political interaction on the question of the status, promotion, and protection of human rights within Southeast Asian states, and it includes domestic institutions, civil society actors, and global processes. This human rights space is complex, not only because there are four dimensions of activity – the domestic, civil society, the regional, and the global – but also because these levels are often intertwined with each other.

Realising the Southeast Asian human rights space sheds new light on the value of ASEAN's institutions and commitments. ASEAN is significant in four ways: as an educator, enabler, standard setter, and mobiliser. This significance is not always the product of ASEAN activism. Instead, it is often passive in the sense that ASEAN is leveraged by other actors to facilitate human rights promotion activities; ASEAN's positioning at the regional level makes it particularly valuable in this regard. However, the argument about the importance of ASEAN is not an argument for its centrality. Indeed, the presence and complexity of the Southeast Asian human rights space suggest that ASEAN is increasingly *de-centred*, by which I mean the realisation of its commitments to human rights depends largely on outside actors. Given ASEAN's concern with centrality, and the link between the realisation of human rights and the maintenance of international peace and security made by ASEAN elites themselves, this de-centring suggests a new and worrying trend in ASEAN's approach to its most central, long-standing commitments.

ASEAN AND ITS DISCONTENTS

Any analysis of contemporary ASEAN starts with the ASEAN Charter of 2007. The Charter's preamble calls on members to adhere “to the principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms” (ASEAN 2007: Preamble). Article 1, which defines the purposes of ASEAN, permits its activities in the realm of human rights and democracy, and notes that ASEAN should “strengthen democracy, enhance good governance and the rule of law and ... promote and protect human rights and fundamental freedoms” (ASEAN 2007: Article 1(7)). ASEAN is empowered in areas of poverty alleviation (Article 1(6)), sustainable development (Article 1(9)), and nebulous activities in relation to “well-being and livelihood” by facilitating “equitable access to opportunities for human development, welfare and justice” (Article 1(11)). Similar commitments are found in

Article 2, which deals with the principles of ASEAN and its members. Article 2(h) stipulates adherence to principles of democracy, and Article 2(j) calls for respect of fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice.

These commitments, however, are weakened by other parts of the Charter, where member states are reminded of their sovereign rights in the conduct of their internal politics in their own fashion. As such, the Preamble also indicates the necessity of respect for “the fundamental importance of sovereignty, equality, territorial integrity, non-interference, consensus and unity in diversity” (ASEAN 2007: Preamble). The commitment to sovereign equality is framed as being of “fundamental importance” and appears before the paragraph which talks about democracy, good governance, and human rights, suggesting the dominance of the former over the latter. This dominance continues throughout the remainder of the Charter. Article 2(a) calls for “respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States” (ASEAN 2007: Article 2(a)) whilst Article 2(e) insists on “non-interference in the internal affairs of ASEAN Member States” and Article 2(f) outlines the right of members to “lead [their] national existence free from external interference, subversion and coercion” (ASEAN 2007: Article 2(e)(f)).

Beyond the Charter, we can distinguish between ASEAN institutions – those bodies tasked with promoting human rights – and ASEAN commitments – the declaratory framework of human rights that gives meaning and substance to the term. ASEAN has two key institutions, the AICHR and the ACWC. The ToR tasks the AICHR with promoting and protecting human rights and fundamental freedoms (ASEAN 2009a: ToR 1.1) but, as in the Charter, it also contains strong restatements of the sovereign rights of member states. ToR 1.4 outlines the need to “bear ... in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds”, whilst ToR 2, which outlines the guiding principles for the AICHR, first requires the institution to respect the complete freedom of member states from external interference (ASEAN 2009a: ToR 2.1a, b, c) and, second, promote the human rights that exist in its name (ASEAN 2009a: ToR 2.1d, e, f). Beyond the opening clauses, the ToR explicitly frames the AICHR as a “consultative body” (ASEAN 2009a: ToR 4). The ACWC is governed by almost identical principles (see ASEAN 2009b).

The AHRD provides the declaratory substance of what ASEAN understands the term ‘human rights’ to mean. The baseline of the AHRD was the 1948 Universal Declaration of Human Rights (Renshaw 2013: 559). This is significant given that it excludes the more detailed 1966 twin covenants on civil and political, and economic, cultural, and social rights from serving as that baseline in favour of a less specific set of standards. The AHRD is a strange mix of standards because it is more advanced than the domestic positions taken by some member states, and it contains regressive language that problematises the role of ASEAN in the

protection of the standards that it enumerates. The Declaration includes commitments to civil and political, and economic, cultural, and social rights that together provide an overview of a substantive range of human rights. Focusing on the civil and political dimension, the Declaration talks about personal liberty (12), freedom from servitude (13) and torture (14), as well as freedom of thought, conscience, religion, opinion, and expression (22, 23 and 24). Democratic values are enshrined, with the declaration noting that every person has the right to democratically elected representatives and to vote in “periodic and genuine elections” (25). These appear impressive and go beyond the domestic circumstances of some members. However, as with all such declarations, the devil is in the detail. With regard to democratic commitments, the Declaration does not specify what any of its commitments actually mean, allowing for a wide variety of political systems to operate within the regional understanding of democracy. For example, legislatures comprised of either completely elected representatives or possessing a large number of non-elected positions are equally valid, despite one clearly being democratically deficient.

This lack of specificity is a serious weakness of the Declaration, and is matched by repeated efforts to reinforce the primacy of national law over international standards. General Principle 6 talks about the responsibility of persons to “other individuals, the community and the society where one lives”. General Principle 7 emphasises the universality of human rights, but also notes that “the realisation of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds”. This clause, reminiscent of the language that surrounded the Bangkok Declaration in 1993 that launched the so-called ‘Asian values’ debate (Bell 2000; Englehart 2000), suggests a more relative position on human rights and democracy – that local peculiarities should at the very least condition the reception of human rights standards and, at the most severe, trump them entirely. General Principle 8 continues in this vein, with a commitment that the exercise of human rights can be limited “to meet the just requirements of national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society”. There are no details about what distinguishes a legitimate from an illegitimate invocation of public morality, which leaves the door open to a range of activities that could be considered to be flagrant violations of rights and yet meet the requirements of the Declaration.

ASEAN’s engagement with gender issues predates that with broader human rights, and its declaratory framework can be dated to 1988, with the Declaration of the Advancement of Women in the ASEAN Region, and then more substantively with the 2003 Declaration on the Elimination of Violence Against Women. The 1988 Declaration requires members to “promote and implement the equitable and effective participation of women” in “various levels of the political, economic, social and cultural life” (ASEAN 1988: Article 1). The Declaration also

calls for the enabling of women as “active agents and beneficiaries” of development, while suggesting the need to integrate gender perspectives into the various national plans in member states (ASEAN 1988: Articles 2 and 3). The 2004 Declaration on the Elimination of Violence Against Women in the ASEAN Region, which expands ASEAN’s earlier commitments but does not replace them, frames violence against women as “an obstacle to the achievement of equality, development and peace” (ASEAN 2004: Preamble). The 2004 Declaration lists eight specific goals, including information sharing, gender mainstreaming, coordinating domestic policy alignment, and strengthening cooperation to share best practices (ASEAN 2004). Whilst ASEAN’s engagement with gender issues is often thought to have occurred in advance of its engagement with wider human rights (Davies 2016; Davies *et al.* 2014; Linton 2008), its declaratory structure shares many of the weaknesses of the AHRD.

It is not hard to find critics of the above story of ASEAN’s human rights institutionalisation. Criticism emerges from the literature that addresses why ASEAN adopted human rights and the literature that focuses on the contemporary value of that commitment.

Three explanations – realist, acculturalist, and constructivist – have been suggested about why ASEAN has adopted a human rights agenda (Davies 2014: 114; Munro 2010). It is important to include consideration of motive when assessing the nature of the academic response to ASEAN’s human rights commitments because motives reveal the assumptions that scholars are making about how genuine that institutionalisation has been. Realists emphasise the significance of power and selfish state interests (Acharya and Stubbs 2006; Peou 2002: 120). Whilst realists talk little about human rights specifically, their perspective suggests that ASEAN’s commitment is intentionally weak in order to protect the integrity of member states. Acculturalist accounts focus on the desire of regional elites to mimic the institutional forms of other regional organisations in pursuit of legitimacy (Davies 2013; Katsumata 2009). Both realist and acculturalist accounts are sceptical of member states’ engagement with human rights. Neither offer much room for that motivation to be genuine in terms of resting on the conversion of politicians to the moral value of those standards, and the acculturalist account has made the most headway. Only constructivist frameworks make room for actors to be motivated by moral preferences (Acharya 2001, 2004). Constructivist accounts of the adoption of human rights suggest a stronger, and perhaps more agreeable, reason for institutionalising human rights within ASEAN than either the realist or acculturalist accounts. A constructivist-inspired account emphasises the transformative power of human rights as expressions of morally desirable values reshape the interests and identities of those who believe in them. However, there is little work that argues that ASEAN’s engagement is due to moral preference change (although, see Ryu and Ortuoste 2014 who argue that shifting regional standards are a result of community-building exercises). The reason for this can be found in the overwhelming evidence that ASEAN’s

approach is hamstrung by sovereignty and non-intervention, and by the equally strong evidence that domestic enjoyment of human rights lags very far behind regional commitments. Were regional elites truly converted to moral preferences, it would be impossible to explain why they have maintained and further entrenched rival commitments to the freedom of the state to subvert or escape any regional obligation.

The general air of scepticism surrounding why ASEAN has adopted rights institutionalisation is matched by the assessment of the contemporary value of that system. Central to this is the ongoing concern with the dissonance between the rhetoric and practice of ASEAN in the field of human rights and democracy (Jetschke and Rüländ 2009: 180). The sense that ASEAN's institutionalisation of human rights ultimately prioritises sovereignty over human rights is widespread and emerges from those who study human rights/democracy (Kuhonta 2006: 340) and those who consider the ability and interest of ASEAN to promote related concepts such as the Responsibility to Protect (Bellamy and Drummond 2011; Capie 2012). Kraft (2012: 36) is critical of the ToR of the AICHR, arguing that the AICHR is the key element in ASEAN's commitments and that it is perhaps fatally weakened by the non-interventionist stance to which it is tied, whilst Ginbar (2010: 516) represents many when she describes ASEAN's approach as fundamentally flawed (see also Narine 2012: 367).

Yet despite this consensus, we have good reason to doubt the finality, if not the accuracy, of these assessments. These works, especially those that assess ASEAN, probe whether ASEAN is able to live up to its own commitments. Whilst this is certainly a valid and interesting question, it is not the only way to assess the importance of ASEAN as it assumes that ASEAN only has value as an *active* promoter of its standards. It is not the case, however, that ASEAN is the only promoter of human rights in the states of Southeast Asia, and often this human rights promotion activity draws on ASEAN passively. Thus, to assess ASEAN's importance in promoting human rights in Southeast Asia, we must ask not what ASEAN can do in this field, but more broadly, what ASEAN represents to the diverse range of actors and processes that make up the Southeast Asian human rights space.

BEYOND ASEAN: HUMAN RIGHTS PROMOTION EFFORTS ACROSS THE SOUTHEAST ASIAN HUMAN RIGHTS SPACE

My intention in this section is to populate the human rights space in Southeast Asia by identifying the domestic, regional, and global dimensions of this space and outlining the key actors and processes within them. Although limitations of space allow only for broad brushstrokes, my contention is that there are conversations about the status of human rights in Southeast Asia that are wider than

those that occur only within ASEAN. For each of the domestic, civil society, and global dimensions, it is important to consider the activities that occur only at that level and also the inter-penetration of actors and processes across and between them.

The domestic political realms of all ten ASEAN members are defined by constitutions, laws, and judicial procedures that seek to protect and promote human rights, albeit in a wide variety of ways. Here I focus on a single domestic institution, national human rights institutions (NHRIs). NHRIs emerged out of the post-Cold War period through United Nations (UN) sponsored meetings in Paris (which led to the 'Paris Principles' being established in 1991) and the Vienna Declaration and Work Plan of 1993, which "designated a key role for NHRIs in monitoring standards" (Eldridge 2002: 212; see also Kim 2013). NHRIs serve a particular function inasmuch as they are formally established by national governments, often through constitutional commitments or national legislation, but are intended to operate independently of, and so be critical of, governments. The NHRI of Indonesia (Komnas HAM), Malaysia (SUHAKAM), the Philippines (CHRP), and Thailand (NHRCT) meet the so-called Category A accreditation that came out of the Paris Principles and recognise the independence of these NHRIs from national government. Myanmar's NHRI (MNHRC) has a Category B accreditation, which means it is only partially free from national government.

The function of these NHRIs varies slightly (for a comprehensive analysis, see Muntarhorn 2013: Chapter 2) but each is united around the process of monitoring, investigating, and promoting human rights awareness and protection within each state. Individuals often have the right to make direct petitions to these bodies to report human rights violations. NHRIs have focused in recent years on particular areas of activity. Malaysia's SUHAKAM outlines eight areas of primary concern: health in prison, deaths in police custody, indigenous peoples, persons with disabilities, older people, business and human rights, human trafficking, and education about human rights. The Thai Commission has a broader mandate, including sub-commissions on children, women, the elderly/disabled/LGBT/health, community, ethnic/indigenous groups, civil rights, political rights, judicial process, economic/cultural/social rights, and then a final focus on human rights in Thailand's southern border provinces.

It is in the work conducted within these issue areas where NHRIs provide the most benefit. To take a single example, in January 2016, Indonesia's Komnas HAM finalised its national action plan on business and human rights. The action plan fills a crucial gap in Indonesia because, whilst the national government has issued general action plans on human rights, it has not engaged substantively with the relationship between business and human rights, and yet the majority of reports Komnas HAM has received relate to business and human rights violations, especially regarding agriculture (Jong 2016). The action plan was not immediately adopted into national law. Instead, KOMNAS HAM has

commenced engagement with a range of national ministries seeking to promote its plan and find an institutional home for it within the national government. There are two issues here worth considering when identifying the presence and complexity of the human rights space. First, the alignment between the focus on business and human rights, and the AICHR's focus on corporate social responsibility indicates, at the very least, parallel engagements on the issue from within and above the national state level. Second is the fact that KOMNAS HAM Chairman Nur Kholis specifically referenced how the Indonesian work plan drew on the 2011 United Nations Guiding Principles on Business and Human Rights for Sustainable Development (Jong 2016), clearly linking together global and national target setting.

Despite being national institutions, NHRIs also possess a regional dimension. Members of the Southeast Asian NHRI Forum, which was created in 2004, agreed in 2007 to cooperate on common concerns in five areas: combatting terrorism, protecting migrant workers, promoting economic/cultural/social rights, encouraging anti-trafficking, and facilitating human rights education. In each of these areas, there has been movement towards the preparation of joint position papers on certain standards, as, for example, the 2010 paper on migrant workers (see SEANF: 2010). The forum holds preparatory and annual meetings and seeks to promote the sharing of best practice between NHRIs.

Beyond having formal state institutions, Southeast Asia is now home to a wide array of civil society organisations (CSOs) interested in human rights, operating at the national, regional, and transregional levels. The breadth of civil society was hinted at when the AHRD was released to the public in 2012. A statement prepared by Human Rights Watch (2012) that rejected the Declaration as dangerously flawed was endorsed by 54 national, regional, and global civil society actors. A similarly scathing assessment was reached by the 62 civil society actors who agreed to a joint statement that noted "the Declaration as it stands now unquestionably fails to meet existing international human rights standards" (FIDH 2012).

Although the scope for civil society engagement in the human rights situation within ASEAN members varies widely depending on the degree to which national governments endorse or reject the democratic principles that allow for a flourishing of non-governmental space (Gerard 2013: 422), CSOs are active across all ten members. At the regional level, the ASEAN Civil Society Conference/ASEAN People's Forum holds annual forums alongside ASEAN Summits and regional consultation exercises, the most recent of which (31 March and 1 April 2016) included a session on how civil society can engage stakeholders. This was attended by senior bureaucrats, including Jakkrit Srivali, the Director General of ASEAN in the Thai Ministry of Foreign Affairs. Organised by the Solidarity for Asian People's Advocacy (a collection of national and regional NGOs), the ASEAN Civil Society Conference has become framed as the "authentic voice" of regional civil society efforts to

articulate shared interests and as a preferred mechanism to coalesce around in order to engage ASEAN and others about human rights issues (see Gerard 2013: 417–22).

Civil society-led bodies at the regional level operate in the spaces permitted to them by ASEAN, especially in the human rights realm. Gerard (2014: 283) has further noted that ASEAN's engagement with civil society actors tends towards the reinforcement and legitimation of ASEAN's own approach and policies, as opposed to permitting the contestation and renegotiation of those policies by CSOs. This control can be seen in the guidelines governing CSOs who wish to enter into a 'consultative relationship' with the AICHR. CSOs are required to commit to upholding the ASEAN Charter and the AHRD, and to comply with national laws and regulations in the countries in which they are acting (ASEAN 2015c). The Charter and Declaration commit to state freedoms, but it is national laws that often are the cause of the human rights violations that CSOs seek to address. These are restrictive requirements, and deliberations at the nineteenth AICHR meeting resulted in only five CSOs being granted consultative status.

Blurring the lines between CSOs and government, members of some ASEAN parliaments came together in 2013 to create the ASEAN Parliamentarians for Human Rights (APHR), with the clear desire to enable legislators to coordinate their activities and to pressure their respective governments for greater engagement with the issues at the regional level. The APHR released an open letter on the occasion of the US-ASEAN summit calling on US President Barack Obama to prioritise human rights in his conversations with ASEAN leaders (APHR 2016). The APHR has also released a report on the Rohingya, their mistreatment by the Myanmar government, and the inadequacy of ASEAN's response (APHR 2015). This report goes further than ASEAN member states or ASEAN itself in laying the blame on the "failure" of Myanmar (APHR 2015: 4) and in clearly outlining the serious and sustained human rights violations that the government has either directly caused or permissively allowed others to perpetrate (APHR 2015: 9, 10). The paper made suggestions about what ASEAN should do to pressure Myanmar to change its behaviour and to improve its own ability to respond to such events in the future (APHR 2015: 5, 15–16).

Finally, whilst only four (or five, depending on how one views Myanmar) ASEAN members have NHRIs, and their engagement with transnational civil society varies, all ten members are active participants, if sometimes reluctant ones, in the UN-led global human rights system. The study of how ASEAN members relate to the various UN human rights treaties has considerable pedigree (see Davies 2014; Linton 2008). However, here I want to focus on the role of the UN Human Rights Council's Universal Periodic Review (UPR). The UPR is held every five years and focuses on the relationship between the commitments that the state under review has ratified and the enjoyment of those rights "on the

ground” (Gaer 2007; Redondo 2008). All ASEAN members have been reviewed at least once, with the second review cycle nearing completion.

In terms of the Southeast Asian human rights space, there are two relevant dimensions to this review. The first is the role of civil society actors within the UPR. Whilst civil society actors are not allowed to make formal recommendations or comments on the state under review directly (i.e. statements to which the state under review must respond), they are allowed to make submissions to the review process that reflect their understanding of the situation on the ground. These submissions can be made individually or collectively by domestic, regional, and global civil society actors, and provide an important avenue for the public dissemination of information about real world enjoyment of human rights outside the rosy prognostications of national governments.

The 2014 submission from CSOs about the Lao People’s Democratic Republic (PDR) illustrates the complex interactions that the UPR process has fostered. From the domestic constituency, the Lao Women’s Union, based in Vientiane, called on Lao PDR to more fully embrace gender mainstreaming in light of the government’s existing commitments to the advancement of women (UN 2014: C.1. 7–8). A coalition of nine health and disability advocacy groups came together in “joint submission 3” to make a series of reports and recommendations for the rights of people with disabilities to access health, development, and education (UN 2014: C.8. 40–46). Regionally, the APHR called for the ratification of various international human rights treaties, including the Convention for the Protection of All Persons from Enforced Disappearance that Laos had signed in 2008, as well as the Rome Statute of the International Criminal Court (UN 2014: A.1.2.). The APHR noted that civil society leader Sombath Somphone has been missing since late 2012 and that Laos had rejected external help and had not engaged in any substantive investigation into the disappearance (UN 2014: C. 2. 14). Global civil society also engaged in the process, with Human Rights Watch making a range of comments and suggestions on Laos’s judicial and penal systems (UN 2014: C. 2. 17–18).

The second important dimension of the UPR is the direct engagement of ASEAN members with each other outside of ASEAN. UN members are allowed to comment and ask questions of the state being reviewed to consider specific recommendations (which, in turn, the state under review can accept, think about, or reject). Here, we see a surprising contention between ASEAN members. Indonesia pushed Myanmar to “continue efforts to promote tolerance, harmony and respect of human rights among all communities in Myanmar, including through possible review of legal frameworks, human rights education and interfaith dialogues and cooperation involved all segments in society” (UN 2015: 143.94). It is difficult to read this statement as anything other than a reference to the status of the Rohingya and the need to revise national legislation to address the issue. Meanwhile, Malaysia requested that Myanmar “undertake concrete and positive steps to put an end to all acts of discrimination, violence and

other human rights violations against Rohingyas” (UN 2015: 145.49). Here discussions at the UN between ASEAN members far outpaced the discussions those same states were having within ASEAN. Unsurprisingly, Myanmar accepted the Indonesian suggestion but did not accept Malaysia’s advice, illustrating its sensitivity to an explicit, as opposed to an implicit, reference to the Rohingya.

The presence and interpenetration of the domestic, civil society, and global dimensions reveals that the human rights space is complex. I use the word complex intentionally, to invoke the work of those who have studied “regime complexity” in international politics, defined as “the presence of nested, partially overlapping and parallel international regimes that are not hierarchically ordered” (Alter and Meunier 2009: 19). Behind this definition lies Stephen D. Krasner’s (1982: 185) classification of a regime as “principles, norms, rules and decision-making procedures around which actor expectations converge in a given issue area”. The Southeast Asian human rights space is a complex regime, where there are not only multiple, formal state creations (NHRIs, ASEAN, and the UN), but also an increasingly dense set of civil society actors converging around them who often move across the national, regional, and global dimensions of advocacy. The result of this complexity has been to open up multiple forums in which human rights promotion activities take place that are relevant for the human rights situation in Southeast Asia, with not all of them under the control of Southeast Asian states. As shown above, the tenor of these discussions, especially when they occur beyond Southeast Asia itself, can differ significantly from our assumptions about how ASEAN members relate to one another within the region. Alongside these formal contacts, an increasingly wider range of informal contacts have arisen, seen most clearly in the civil society networks that have grown up around ASEAN with the aim of pressuring that organisation whilst also undertaking their own activities.

WHAT ROLE DOES ASEAN PLAY IN THE SOUTHEAST ASIAN HUMAN RIGHTS SPACE?

ASEAN plays four key roles – as educator, enabler, external standard setter, and mobiliser – in the human rights space as I have described it, although only the first of those roles is the product of ASEAN’s activities in pursuit of human rights.

ASEAN is a human rights educator even if its institutionalisation of human rights is weak. The schedule for the second half of 2016 includes a regional forum on media and human rights, a regional dialogue on mainstreaming the rights of persons with disabilities, a youth debate on human rights, training programmes, and a seminar on promoting corporate social responsibility. Mandate 4.3 of the AICHR, promoting human rights awareness across ASEAN through education and dissemination, has been the busiest area of activity of the AICHR. The 2016–2020 work plan details twelve activities to promote this

mandate, including workshops, training programmes, roadshows, and direct dissemination (ASEAN 2015b). Mandate 4.3, however, only refers to the education of the citizens and subjects of ASEAN member states, which is a rather narrow understanding of education. Many of the other activities of the AICHR are aimed at the education of ASEAN and national governments as political institutions about the meaning and role of human rights. Mandate 4.10 enables the AICHR to share information between member states on human rights promotion and protection. Mandate 4.12, the preparation of thematic studies, allows for developing insight into particular areas and then sharing that information through workshops and publications.

In and of itself, human rights education is not a panacea for the ills of the region, but it is an important step. Enhancing awareness of human rights amongst the people of the region, and governments and ASEAN, serves two purposes. Greater information sharing raises citizen and stakeholder expectations of their national governments, with the hope being that human rights can be mainstreamed pre-emptively into future planning activities to create policies, institutions, and practices that are more sensitive to human rights than otherwise would be the case. This is not spectacular, but a slow and subtle awareness building of what human rights are and what should be done to promote them, which is of long-term, positive benefit. There is alignment between this type of educational activity and the focus of many of the NHRIs, although it is the AICHR that is the more ambitious. The recent AICHR work plan specifies studies on migration, human trafficking, juvenile justice, rights to information in criminal justice, health, education, life, peace, legal aid, and freedom of religion, which reinforces the possibility of information-sharing efforts from above and below national government.

Although ASEAN's role as an enabler is often overlooked and is only nascent, it offers intriguing possibilities looking forward. One of the tasks of the ACWC is to "assist, upon request by ASEAN member states, in preparing for CEDAW and CRC Reports, the Human Rights Councils Universal Periodic Review and reports for other Treaty Bodies, with specific reference to the rights of women and children in ASEAN" (ASEAN 2009b: Article 5.6). This is the first linkage between ASEAN and the formal review processes of another organisation and directly ties together, in a valuable way, the regional and global dimensions. The UPR and related treaty body reviews are thought to be less effective because of the inability of those states under review to adequately understand their domestic situations and to prepare the necessary reports required for the reviews to work effectively. The more treaties that a state signs, the more reviews for which it must prepare. The density of these reporting requirements has led to a situation within the UN where "on-time" report submissions have fallen to just 16 per cent (Pillay 2012: 9), which suggests that the problem is widespread. Having more support in the preparation of these documents enables the UPR to be more detailed and, over time, better able to improve the situation of

human rights enjoyment on the ground. Mirroring the assistance in reporting to the UN that the ACWC can offer is its mandate to assist in the other direction, in “implementing the Concluding Observations of CEDAW and CRC and other Treaty Bodies related to the rights of women and children” (ASEAN 2009b: Article 5.7). Beyond the ACWC, Mandate 4.4 of the AICHR aims to promote capacity building for the implementation of human rights treaty obligations undertaken by ASEAN members. Whilst little substantive activity has occurred in this area, the current work plan of the AICHR does include some preliminary activities (workshops, training courses, best practice sharing) that may lay the groundwork for more active assistance of member states.

Despite widespread dismissal and the weaknesses I have described, ASEAN is important as a standard setter for Southeast Asia. For all its flaws, the AHRD is the only Declaration on the meaning of human rights in ASEAN’s history, and so it stands as a commitment to human rights that can be drawn upon by others to pressure ASEAN members to ‘live up’ to what they have already agreed. On 17 December 2015, the European Parliament called on Malaysia to address a wide range of human rights concerns, most notably via the repeal of the Sedition Act, and referenced Malaysia’s agreement to the AHRD as a reason why these changes should occur (European Parliament 2015).

More generally, it is the actual presence of standards, not their definitive status, that is important within ASEAN and the human rights space. The AHRD is situated within a long-term pattern of institutionalisation in ASEAN, where human rights and democracy have been agreed upon over a long, open-ended period of discussions, agreements, declarations, and roadmaps, which have laid the stage for subsequent discussion. The presence of the AHRD and ASEAN’s institutions legitimates human rights within the regional space in a way that no other actors can because they are shared across the ten members. This legitimation has two consequences: first, it opens the door to ongoing efforts to refine and enhance these commitments, and second, it renders member states unable to control the conversations that take place. The ASEAN of 20 years ago was openly hostile to human rights, offering nothing but a closed door to the national, civil society, and global processes that sought to engage with the region on this issue. Because it has committed to human rights rhetorically, today’s ASEAN is now embedded in a wider range of processes and engagements beyond its ability to control, and which expose it and its members to a wider set of pressures to engage meaningfully with human rights.

Finally, ASEAN is also a mobiliser for action. ASEAN is not actively seeking to promote the engagement of actors in human rights given its own restrictive approach to the issue. However, the very presence of ASEAN at the regional level creates the opportunity for interested parties to seek to engage with it in activities that simply would not happen if ASEAN were absent or silent on human rights issues. The 2010 SEANF paper on migrant workers was almost completely comprised of detailed recommendations to ASEAN institutions,

the AICHR, and the ASEAN Committee on Migrant Workers about how ASEAN should work towards better protection and promotion of the human rights of migrant workers across the region.

This discussion about education, enabler, standard setting, and mobiliser suggests that there is something particularly valuable about having commitments and institutions at a regional level. Regions are often associated with positive trends in human rights promotion and democratisation because they can serve as the most appropriate level at which to reconcile the need for governance with the need for agreement (Hurrell 2007: 131). Regions are important because they reveal state commitments (or, perhaps more accurately, can be read by others as revealing state commitments) that may lie beyond the national government, but are not so remote as to lose any practical significance. In this sense, it does not matter whether ASEAN members morally agree with human rights institutionalisation. It is important that through a process of concession and consensus, some commitments are made, even if for strategic and selfish reasons, as these commitments in turn create new opportunities to pressure states (Risse and Sikink 1999). ASEAN's human rights institutionalisation has filled, however imperfectly, this previously missing level. By legitimating the discussion of human rights regionally and developing standards and institutional mechanisms, ASEAN can now serve as a central nodal point in a diffuse and overlapping system of human rights promotion.

We can go beyond remarking on the presence of such commitments towards a consideration of their function in terms of the types of pressure to spread human rights that they promote. Absent from the human rights space is any ability for ASEAN, or anything else, to compel members to change their human rights practices, and we can use this absence to note that socialisation via conditionality, the practice of attaching material and/or social costs and benefits to incentivise behavioural change is not occurring in Southeast Asia (Checkel 2005; Schimmelfennig and Sedelmeier 2005). Instead, what we see is a more diffuse system of information sharing, education, standard setting, and efforts to engage collegially if critically about improving human rights practice in the absence of any compulsion to do so. More compelling are models of change, such as Keck and Sikink's (1988) boomerang account, which emphasise the importance of CSOs, or the more expansive spiral model (Risse *et al.* 1999) of human rights socialisation which understands that even repressive states are exposed to competing pressures to change their behaviour.

ASSESSING ASEAN AT 50 THROUGH THE HUMAN RIGHTS SPACE

Understanding the dimensions of the Southeast Asian human rights space and its interrelationship provides a new perspective on the nature and significance of ASEAN at its 50th anniversary. The multi-dimensionality of the human rights

space in Southeast Asia has resulted in two developments that help us assess ASEAN: first, it suggests new limits to, and simultaneously the resilience of, the diplomatic norms packaged together as the 'ASEAN Way', and second, it suggests the de-centring of ASEAN in the human rights space even as its institutions, processes, and commitments have gained importance.

This complex human rights space, when read as a whole, suggests the limits and strengths of ASEAN's particular diplomatic environment. For all its supposed significance and apparent importance, the 'ASEAN Way' does not mean that criticism does not flow between states, even on the most contentious issues of human rights and domestic violations. The role of APHR members' willingness for national legislatures, albeit not always in government at the time, to engage in criticism of fellow ASEAN members must be considered. Perhaps more surprisingly, representatives of ASEAN member national governments have engaged in fairly obvious criticism of Myanmar's domestic human rights practices at the UN level, which they have been less specific about within the ASEAN context. ASEAN has never made any pronouncements about the Rohingya and no ASEAN representatives attended the mid-2015 Special Meeting on Irregular Migration in the Indian Ocean conference called by Thailand. Two conclusions can be made here. First, the 'ASEAN Way' is bound narrowly to the interaction of states within ASEAN itself and does not serve as a general guide for its members across the totality of their relationships. Whilst there has long been scepticism regarding the true adherence to the 'ASEAN Way' (Nischalke 2000; Jones 2010, 2011), to find its limits so clearly in the human rights field is significant. Second, however, the very existence of these sorts of pressures, yet with little sign of sustained turbulence within ASEAN, suggests the resilience of its core procedural norms.

If the bounded nature of the 'ASEAN Way' is interesting but not in itself remarkable, the question of ASEAN centrality in human rights promotion suggests more novel conclusions. ASEAN has become de-centred in the human rights space because it is no longer in control of the realisation of its aims and commitments concerning human rights – indeed it does not possess, in and of itself, the ability to realise its declaratory commitments. This should not be surprising given that the strongly consensual approach to regional reform has led to weak regional institutionalisation, falling short of the interests of many member states let alone the wider population of actors that have an interest in human rights in Southeast Asia. It would be easy to dismiss ASEAN's weak response to human rights as having little significance for ASEAN's central aspirations, but to do so would be to ignore its preoccupation with centrality more generally and the link between human rights and ASEAN's security goals that ASEAN has made repeatedly. ASEAN centrality is a refrain that runs throughout ASEAN's engagement with its various partners through bodies such as the East Asia Forum, ASEAN + 3, and the ASEAN Regional Forum, and was powerfully restated in *ASEAN 2025: Forging Ahead Together* (ASEAN 2015a). As

Caballero-Anthony (2014) has argued, centrality is a way for ASEAN to develop leadership despite its weak capabilities (see also Katsumata 2014).

ASEAN's de-centring in the realm of human rights, even if understandable, is not only atypical but also dangerous because it reveals very real limits to the ability of ASEAN to realise 'traditional security' goals. Since 2004 and the Vientiane Action Programme, the promotion and protection of human rights have been linked to the security aims of ASEAN, rather than being a socio-cultural pillar – this is why the political-security community exists in the ASEAN Charter (ASEAN 2007: Article 9.1), and the link between traditional security and human security concerns has been widely made in academic discussion. De-centring has occurred alongside the growing importance of ASEAN's commitments and processes because that importance is more often the product of how others use ASEAN as a point of reference/pressure/opportunity in pursuit of their own goals than of ASEAN's own proactive activities. The de-centring of ASEAN in the realm of human rights may, therefore, be good for the promotion and protection of those rights, but it represents a distinctly different approach to that adopted in the traditional security realm and places the burden of realising both ASEAN's traditional and more novel aims increasingly on the shoulders of those working beyond the regional organisation itself.

CONCLUSIONS

I have argued that any analysis of ASEAN's ability to promote and protect human rights must focus not only on its internal processes and institutions, but also on the way in which those processes and institutions intersect with, assist, amplify, and alter the activities of a wider range of actors. The regional level that ASEAN represents is intertwined with civil society (of the domestic, regional, and global varieties), and global actors and activities in a complex and multi-dimensional human rights space. ASEAN plays an important role in this space as an educator, enabler, standard setter, and mobiliser. This importance as a tool for others outweighs the direct benefits of ASEAN's proactive engagement with human rights. The results of this complexity has been to illustrate the strengths and limits of ASEAN's diplomatic environment and to reveal the de-centring of ASEAN within this realm of activity, but also in terms of the realisation of its own aspirational commitments, not only narrowly in the field of human rights but more broadly in the realm of security.

The realisation of the human rights space and the role of ASEAN within it suggest revised conclusions on how we assess the importance of ASEAN in the realm of human rights. The conclusions of people such as Rafendi Djamin, the former Indonesian representative to the AICHR and now Director of Amnesty International Southeast Asia and the Pacific Regional Office, on ASEAN's commitments to human rights are shown to be plausible. Djamin has spoken openly

about the limitations of the AHRD, noting that the AHRD contained “clauses and terms ... which we [sic] could be seen as lower than international human rights standards” (Djamin 2012). However, Djamin also rejected the claim that these flaws meant that the document (or through that, ASEAN’s commitment to human rights and democracy) was pointless. Assessments of the point of ASEAN’s commitments and what value they possess must be made in light of the wider constituency of actors who are working towards those or similar goals. As such, the importance of ASEAN is less a product of what ASEAN can, or more often cannot, achieve by itself, and more to do with the way that ASEAN offers opportunities to those interested in achieving goals to network with each other and ultimately pressure the domestic practices of its member states.

More generally, this article has rejected the conflation of Southeast Asia with ASEAN. ASEAN is one part of a much wider array of actors and processes working alongside each other. I have specifically ‘de-localised’ the Southeast Asian human rights space in order to capture the way in which ASEAN members interact and engage with civil society on human rights questions at the global level, which, in turn, suggests that perhaps even the label. ‘Southeast Asia’ is inappropriate when seeking to capture all of the political interactions that shape outcomes in that region. This should not be surprising: human rights are simultaneously global and highly politicised, with the result that many across the world have a considerable stake in their realisation. The weakness of ASEAN’s institutions and declarations is, in this reading, a spur for greater external advocacy and engagement, not less. The complex and multi-dimensional situation in Southeast Asia is not fundamentally different to that found in other regions where similar complex networks exist. So much analysis of ASEAN rests on assertions of how different it is as an association of states, but in this one way, perhaps, it is far more typical than many assume it to be.

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