

Cambridge University Press

978-1-107-00449-8 - The ASEAN Intergovernmental Commission on Human Rights:  
Institutionalising Human Rights in Southeast Asia

Tan Hsien-Li

Excerpt

[More information](#)

## Charting the human rights institutionalisation process in Southeast Asia

### Whither a regional or sub-regional human rights system for Asia?

For years, it was widely deemed a disappointment to the universality of human rights that Asia did not have a regional human rights mechanism,<sup>1</sup> unlike the Americas, Europe, and Africa, notwithstanding the varying standards of efficacy these bodies possess.<sup>2</sup> As such, there were unabated calls to correct this anomaly. This was most volubly witnessed in the 'Asian values' debate of the 1990s.<sup>3</sup>

Realistically speaking, however, an Asia that spans from the Middle East to Japan is geographically, politically, and culturally too diverse for human rights to be managed effectively by a single overarching mechanism. Enthusiasm for Asia to have a system of human rights protection must recognise the disparate political structures that range from communism like in China and Vietnam; the 'semi-authoritarianism' of Singapore and Malaysia; to full democracies such as India, the Philippines, South Korea, and Japan. Even while universal human rights must take centre stage,

<sup>1</sup> Virginia A. Leary, 'The Asian Region and the International Human Rights Movement', in Claude E. Welch and Virginia A. Leary (eds.), *Asian Perspectives on Human Rights* (Boulder, San Francisco, Oxford: Westview Press, 1990), 13, at 13–14.

<sup>2</sup> It is recognised that there exist counter-arguments to the school of thought which holds regional human rights bodies as 'satellites' of the United Nations (UN) system. Critics of the latter school hold that regionalism, and the opportunity for cultural adaptation and justification, can lead to a dilution of the universal values of human rights. I would generally agree with Christoph Schreuer that although variations do exist among the regional systems, 'the basic unity of human rights as a universal set of standards has prevailed over cultural relativism and regional fragmentation'. See Christoph Schreuer, 'Regionalism v. Universalism', 6(3) *European Journal of International Law* (1995) 477, at 485.

<sup>3</sup> See, for instance, Ralph Wilde, 'NGO Proposals for an Asia-Pacific Human Rights System', 1 *Yale Human Rights and Development Law Journal* (1998) 137. This has also been noted by Vitit Muntarbhorn, *Regional Protection of Human Rights in Asia*, Lecture at the International Institute of Human Rights, Strasbourg, France, July 1997, at [www.hurights.or.jp/asia-pacific/no\\_10/no10\\_protection.htm](http://www.hurights.or.jp/asia-pacific/no_10/no10_protection.htm).

Cambridge University Press

978-1-107-00449-8 - The ASEAN Intergovernmental Commission on Human Rights:  
Institutionalising Human Rights in Southeast Asia

Tan Hsien-Li

Excerpt

[More information](#)

distinct cultural traditions, social practices, and environments result in particular needs for each Asian country. A ‘margin of appreciation’ – to borrow the term from the Europeans – should, as far as possible and without making a travesty of human rights, be respected so as to encourage enculturation and ownership of the system.

Local and regional ownership of a system adhering to international human rights standards in Asia is especially important to deflect misguided notions on cultural particularism – as evidenced in the cacophony of Asian voices stressing each state’s individual priorities in the Regional Meeting for Asia of the World Conference on Human Rights held in Bangkok (‘Bangkok Conference’) in 1993. This meeting was intended to coalesce the regional perspectives on human rights so that they could be tabled at the subsequent World Conference on Human Rights held later that year in Vienna (‘Vienna Conference’) to re-affirm the universality of international human rights. However, the wide range of opinions pertaining to the different socio-political contexts of the participating states at the Bangkok Conference made it extremely difficult to agree on the terms of the Final Declaration of the Conference (‘Bangkok Declaration’). Moreover, the Asian states’ rigid stance on cultural relativism, trenchant opposition to ‘ideological imperialism’ in the international human rights project, the insistence on the right to development, and the pre-eminence of socio-economic priorities caused anxiety among the international community that the Bangkok Declaration would ‘hijack’ the Vienna Conference’s aim of concluding universal principles of human rights for the world community.<sup>4</sup>

Against such a background, therefore, even if an overarching Asian human rights mechanism is possible in the future, present circumstances do not permit such a structure, let alone the ambitious plan of having an institution that spans the Asia Pacific or even on a smaller scale focusing only on East Asia. The continent of Asia does not possess a regional

<sup>4</sup> Copies of statements by representatives of Asia governments at the Vienna World Conference on Human Rights are with the author. For instance, the then Indonesian foreign minister, Ali Alatas, had declared on 14 June 1993:

We . . . voice our concern at . . . international media reports that tend to give the impression that the success of the Conference is being threatened by a clash of values between the developed countries of the North and the developing countries of the South . . . This depiction is not only erroneous but also unwarranted and therefore counterproductive.

Cambridge University Press

978-1-107-00449-8 - The ASEAN Intergovernmental Commission on Human Rights: Institutionalising Human Rights in Southeast Asia

Tan Hsien-Li

Excerpt

[More information](#)

political organisation like the African Union or Organisation of American States that can help to spearhead human rights efforts. The states also do not share a common objective borne out of catastrophic experiences to sustain the institution of an independent human rights mechanism as seen in the establishment of the European Commission and Court of Human Rights after the Second World War. It is thus unsurprising that proposals for a pan-Asian human rights institution did not progress past the 1980s and 1990s.<sup>5</sup>

If human rights mechanisms are to be successfully established in Asia, it is my opinion that sub-regions need to be clearly defined within the larger Asian environment such that sub-regional human rights systems can be built first.<sup>6</sup> While some may think that this is an inefficient method of institutionalising human rights and unfair for the Asian peoples who fall outside the ambit of protection and that Asia should follow the prototype of a continent-based human rights system,<sup>7</sup> I believe that the benefits arising from such smaller groupings are likely to outweigh such disadvantages.<sup>8</sup> Sub-regional systems can count on some shared history, closer intra-state relations, and a smaller

<sup>5</sup> Since 1982, the UN has organised workshops on regional human rights arrangements in the Asian and Pacific region with the aim of establishing a regional mechanism. See *Regional Arrangements for the Promotion and Protection of Human Rights in the Asian and Pacific Region*, at [www.unhchr.ch/html/menu6/apw.htm](http://www.unhchr.ch/html/menu6/apw.htm). On the non-governmental level, the Asian Human Rights Commission convened a conference to declare an *Asian Human Rights Charter – A People's Charter* to further the movement towards a state-sponsored human rights charter for the whole continent, at [www.ahrchk.net/charter/mainfile.php/declaration](http://www.ahrchk.net/charter/mainfile.php/declaration). The Law Association for Asia and the Western Pacific (Lawasia) also organised the *Seminar on National, Local and Regional Arrangements for the Promotion and Protection of Human Rights in the Asian Region* in Colombo, 21 June – 2 July 1982, to discuss the need for a regional human rights structure. See Lawasia, *Human Rights in the Asian Region: Recent Trends in Human Rights*, Vol. II (Sydney: Lawasia, 1982); and Wilde, *supra* note 3. Not much has resulted from these initiatives.

<sup>6</sup> The prospect of an East Asian mechanism was considered initially. However, given the nature of East Asia relations, there has not been much enthusiasm for a system solely limited to this sub-region as the mechanism would be most likely hit many political hurdles. For an overview of East Asian human rights, see Hidetoshi Hashimoto, *The Prospects for a Regional Human Rights Mechanism in East Asia* (New York: Routledge, 2004).

<sup>7</sup> This of course does not discount the protections afforded at the domestic level by constitutions, and where applicable, the upholding of international human rights law in national courts.

<sup>8</sup> Gains in sub-regional initiatives have been recognised in the *Conclusions of the 11th Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia-Pacific Region*, Pakistan, 25–7 February 2003, at [www.unhchr.ch/html/menu6/islamabad.htm](http://www.unhchr.ch/html/menu6/islamabad.htm), at para. 16.

Cambridge University Press

978-1-107-00449-8 - The ASEAN Intergovernmental Commission on Human Rights:  
Institutionalising Human Rights in Southeast Asia

Tan Hsien-Li

Excerpt

[More information](#)

geographical area which would facilitate the system's manageability. Also, as will be seen in this book, the political will that is so essential for the successful institutionalisation of human rights protection worldwide is especially necessary in Asia. Asia is made up of states which remain very protective of their sovereignty and it would be much less complicated to facilitate confidence, trust, and state 'buy-in' on the smaller sub-regional scale.

This proposition has already proven true in Asia. While variations of human rights initiatives continue to be mooted for Asia, the Association of Southeast Asian Nations (ASEAN) has pulled away from the fold to establish the ASEAN Intergovernmental Commission on Human Rights (AICHR) on 23 October 2009, subsequent to the pronouncement of Article 14 of the Charter of the Association of Southeast Asian Nations ('ASEAN Charter') that ASEAN should establish a regional human rights body.<sup>9</sup> In view of all the above, I have chosen to study the human rights institutionalisation process for Southeast Asia under the auspices of its regional organisation.<sup>10</sup>

To have all the ten ASEAN member states explicitly promise in the Charter to promote and protect human rights through a regional mechanism is of seminal importance not least because it was the first statement of positive action for the establishment of such a system (as compared to the vague promises of the years prior); also, this statement was *legally binding* upon ASEAN by virtue of it being enshrined in the Charter.<sup>11</sup> One cannot overlook the importance of this as ASEAN seldom makes binding agreements and when it does, they usually pertain to economic matters.<sup>12</sup> With respect to the Charter, however, ASEAN states intend that it be a binding regional pact that serves 'as a legal and institutional framework of ASEAN to support the realisation of its goals

<sup>9</sup> *Charter of the Association of Southeast Asian Nations*, 20 November 2007 (entered into force 9 December 2008). Article 14(1) states: 'In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body'.

<sup>10</sup> For convenience, I shall use 'Southeast Asia' and the 'ASEAN region' as synonymous, even though Timor Leste is considered a part of Southeast Asia but is not a member of ASEAN.

<sup>11</sup> This will be discussed in Chapter 4.

<sup>12</sup> ASEAN has traditionally eschewed overt legalism in favour of diplomacy – except for the areas of economic cooperation and dispute settlement – and these tend to be in the form of agreements, declarations, memoranda of understanding (MOU), policies and frameworks and roadmaps. The two key regional security treaties remain the *Treaty of Amity and Cooperation in Southeast Asia (TAC)*, signed on 24 February 1976, and the *Treaty on the Southeast Asia Nuclear Weapon-Free Zone (SEANWFZ)*, signed on 15 December 1995.

Cambridge University Press

978-1-107-00449-8 - The ASEAN Intergovernmental Commission on Human Rights:  
Institutionalising Human Rights in Southeast Asia

Tan Hsien-Li

Excerpt

[More information](#)

and objectives' through the codification of 'all ASEAN norms, rules, and values' – and this includes the promotion and protection of human rights.<sup>13</sup> Thus the Charter is the first step by which human rights are codified within the ASEAN operative rules. It would follow that the promotion and protection of human rights would henceforth have higher priority and more credence than its pre-Charter status.

Of course, ASEAN's advancement in regional human rights institutionalisation does not materialise solely and unilaterally from the ASEAN Charter. It builds upon a decade and a half of annual declarations and action plans that were part of the overall plan to build a cohesive ASEAN Community based on the three main pillars comprising a Political-Security Community, an Economic Community, and a Socio-Cultural Community.<sup>14</sup> It is hoped that ASEAN's human rights institutionalisation process flourishes and eventually leads to the full functioning of the AICHR, a body of human rights norms (hard law and soft law inclusive) in line with international standards, and a court to adjudicate on rights disputes. For now, the exact scope of the AICHR's work is still being mapped out. It is uncertain what the full extent of AICHR's powers exercised and its level of interaction with civil society and national human rights institutions will be as it proceeds into its first phase of operation.

### The framework of human rights in ASEAN

It is important to note that the sea-change in ASEAN's attitude towards human rights has only gained pace at the turn of the twenty-first century. Hence, there is little, if any, recent analysis of regional human rights movements and the number of critical studies on this topic is few and far between.<sup>15</sup> In large part, this is understandable as Southeast Asia does not lend itself easily to scrutiny. Not only is information difficult to obtain due to official restrictions or otherwise, the language and technological barriers within the region are also obstacles. For instance,

<sup>13</sup> *Kuala Lumpur Declaration on the Establishment of the ASEAN Charter*, 12 December 2005.

<sup>14</sup> See *ASEAN Community*, at [www.aseansec.org/about\\_ASEAN.html](http://www.aseansec.org/about_ASEAN.html).

<sup>15</sup> For more recent analyses, see Maznah Mohamed, 'Towards a Human Rights Regime in Southeast Asia: Charting the Course of State Commitment', 24(2) *Contemporary South-east Asia* (2002) 230; Thio Li-ann, 'Implementing Human Rights in ASEAN Countries: Promises to Keep and Miles to Go Before I Sleep', 2 *Yale Human Rights and Development Law Journal* (1999) 1; Philip J. Eldridge, *The Politics of Human Rights in Southeast Asia* (London: Routledge, 2002).

Cambridge University Press

978-1-107-00449-8 - The ASEAN Intergovernmental Commission on Human Rights:  
Institutionalising Human Rights in Southeast Asia

Tan Hsien-Li

Excerpt

[More information](#)

regional human rights websites – whether the states’ or civil society groups’ – can be notoriously difficult to access due to technological problems. Scholars may be further deterred by the reticence shown by the states towards moving the human rights process forward.

As little has been documented about ASEAN and its human rights institutionalisation process, this book seeks to synthesise the Southeast Asian progression on human rights beginning in the wake of the ‘Asian values’ debate and culminating in the formal regional institutionalisation within ASEAN as the AICHR. It should be noted that the book focuses on substantive issues of international human rights law and emerging norms rather than being a strictly theoretical discussion of human rights in the ASEAN region. This is meant to aid interested readers in forming nuanced perspectives beyond the dated ‘Asian values’ debate and also to alert them of the superficiality of seeing human rights only within the context of the ASEAN Charter. This is deliberate as existing international legal theories do not explain the Southeast Asian situation very well. I believe that human rights theories in relation to the ASEAN and human rights will arise only after AICHR’s establishment, especially with the advent of specific norms which the ASEAN states wish to promulgate through its ASEAN Declaration on Human Rights. This would mirror the experience of the international human rights system, where as Louis Henkin noted, theoretical and philosophical justification was largely a ‘post-establishment’ venture.<sup>16</sup>

Nonetheless, I would like to posit three main propositions as lenses through which to view the region. They, to my mind, are hallmarks of ASEAN’s interaction with human rights without which one cannot truly understand the emerging human rights framework of ASEAN. These are, namely, (1) ‘Asian values’ – the need to accept the justifiable demands of cultural particularities with respect to human rights and discount those which are merely excuses for continued violations; (2) the predominance of state sovereignty; and (3) the transformative power of regional and domestic rights movements.

This exposition will thus leave aside the circuitous arguments of the ‘Asian values’ debate to concentrate on actual measures that have been taken to improve the receptivity of human rights in the ASEAN region. This is especially important, I feel, as although the ‘Asian values’ debate of the 1990s was promptly quashed by the Asian financial crisis in 1997

<sup>16</sup> Louis Henkin, *The Age of Rights* (New York, Oxford: Columbia University Press, 1990), at 6.

Cambridge University Press

978-1-107-00449-8 - The ASEAN Intergovernmental Commission on Human Rights: Institutionalising Human Rights in Southeast Asia

Tan Hsien-Li

Excerpt

[More information](#)

and examined thoroughly by many academics,<sup>17</sup> concepts of ‘universalism versus particularism’, ‘Asian or Confucian notions of rights and duties’, ‘cultural differences’, ‘communitarianism versus individualism’, and ‘socio-economic and development rights preceding civil-political liberties’ unfortunately continue to pervade many discussions on human rights in Asia and, in particular, Southeast Asia.<sup>18</sup> Furthermore, Southeast Asia has often been subsumed under East Asia in the debate such that over-generalisation has often happened.<sup>19</sup> This has resulted in the overlooking of the crucial details particular to Southeast Asia, not to mention the diverse backgrounds of its component states, including the obvious fact that societies such as Malaysia, Indonesia, and the Philippines are distinctly non-Confucian, while even for Singapore it remains an artificial construct.

Although much has since been written to unveil these common misconceptions,<sup>20</sup> they unfortunately continue to plague scholarship

<sup>17</sup> This is a selection of the voluminous literature on the said debate. For an overview, see for example, Victor Mallet, *The Trouble with Tigers: The Rise and Fall of South-East Asia* (London: HarperCollins Publishers, 1999); Michael Jacobsen and Ole Bruun (eds.), *Human Rights and Asian Values: Contesting National Identities and Cultural Representations in Asia* (Surrey: Curzon, 2000); Lucian W. Pye, “Asian Values”: From Dynamos to Dominoes?, in Samuel P. Huntington and Lawrence E. Harrison (eds.), *Culture Matters: How Values Shape Human Progress* (New York: Basic Books, 2000), 244; Joanne R. Bauer and Daniel A. Bell (eds.), *The East Asian Challenge for Human Rights* (Cambridge and New York: Cambridge University Press, 1999); Onuma Yasuaki, ‘In Quest of Intercivilizational Human Rights: “Universal” vs. “Relative” Human Rights Viewed from an Asian Perspective’, Asia Foundation’s Center for Asian Pacific Affairs, Occasional Paper 2, March 1996; Yash Ghai, ‘Asian Perspectives on Human Rights’, 23(3) *Human Rights Quarterly* (1993) 342; Daniel A. Bell, ‘The East Asian Challenge to Human Rights: Reflections on an East West Dialogue’, 18 *Human Rights Quarterly* (1996) 641; and Dato’ Param Kumaraswamy, ‘The Universal Declaration of Human Rights: Is it Universal?’, 18 *Human Rights Law Journal* (1997) 476.

<sup>18</sup> ‘Asian values’ are often tabled at the conferences I have attended on human rights – the ASEAN-ISIS Colloquium on Human Rights (AICOHR) 2005 and 2006. Moreover, politicians have not appeared to change their minds about democracy and human rights in relation to Asian societies. See for instance, ‘Prosperity, Democracy Linked? History Says No’, *Straits Times*, 27 August 2004.

<sup>19</sup> See for instance, Mahathir Mohamad (Hashim Makaruddin, ed.), *Democracy, Human Rights, EAEC and Asian Values: Selected Speeches* (Selangor: Pelanduk Publications for the Prime Minister’s Office of Malaysia, 1995, 2000, in press); Fareed Zakaria, *Culture Is Destiny: A Conversation with Lee Kuan Yew*, 73(2) *Foreign Affairs* (March/April 1994) 109; and Bilahari Kausikan, *An East Asian Approach to Human Rights*, 2(2) *Buffalo Journal of International Law* (1995–6) 263.

<sup>20</sup> Simon S. C. Tay, ‘Human Rights, Culture, and the Singapore Example’, 41 *McGill Law Journal* (1996) 743; Jack Donnelly, ‘Human Rights and Asian Values: A Defense of “Western” Universalism’, in Bauer and Bell (eds.), *supra* note 17, 60; Amartya Sen,



Cambridge University Press

978-1-107-00449-8 - The ASEAN Intergovernmental Commission on Human Rights: Institutionalising Human Rights in Southeast Asia

Tan Hsien-Li

Excerpt

[More information](#)

on human rights in Southeast Asia.<sup>21</sup> While this is slowly changing, the ‘Asian values’ blinkers must be cast off in examining the present case of human rights in Southeast Asia as that episode was unfortunately more political wrangling than a real debate on human rights.<sup>22</sup> To enable reasonable cultural practices to be respected at the same time that human rights are upheld, it is inevitable that the AICHR, ASEAN states and domestic courts begin to work out the solutions wherever there is a culture–rights juxtaposition.

In the course of my investigations, I have realised that the post-‘Asian values’ progress in ASEAN regional human rights is largely due to the combined efforts of states, civil society comprising non-governmental organisations (NGOs) – both local and international – grass-roots organisations, international organisations like the UN, and a politically aware and active citizenry. The increasing democratisation (albeit still in its primitive stages) of Southeast Asian societies and the onset of new and more ‘liberal’ leadership (though this remains contentious given the ASEAN states’ predilection for authoritarianism) have enabled a more conducive atmosphere for human rights discussion and empowerment to flourish. This has been seen in the thawing state–civil society engagement over the years. For instance, an NGO, the Working Group for an ASEAN Human Rights Mechanism (‘Working Group’) has persuaded ASEAN officials to take a more amenable stance through diplomatic persistence. In its turn, ASEAN has named the Working Group as a key partner in facilitating human rights in the region.

Going on to the substantive aspects of establishing a regional system, several components must be present if an ASEAN human rights body is to materialise. First, a steady and persistent effort in engaging and encouraging ASEAN officials to undertake the regional institutionalisation of human rights is needed. As will be seen in the following

‘Human Rights and Economic Achievements’, in Bauer and Bell (eds.), *supra* note 17, 88; Onuma Yasuaki, ‘Toward an Intercivilizational Approach to Human Rights’, in Bauer and Bell (eds.), *supra* note 17, 102; and William Theodore de Bary, *Asian Values and Human Rights: A Confucian Communitarian Perspective* (Cambridge: Harvard University Press, 1998), at 3–5.

<sup>21</sup> For an excellent analysis, see Randall Peerenboom, ‘Beyond Universalism and Relativism: The Evolving Debates about “Values” in Asia’, 14 *Indiana International and Comparative Law Review* (2003) 1.

<sup>22</sup> However, the concepts raised during the 1990s furore are not in themselves wrong as difficulties such as cultural relativism do in fact exist. Hence, it would be necessary to sift out the salient from the misleading, and take it into consideration with respect to the establishment of AICHR.



Cambridge University Press

978-1-107-00449-8 - The ASEAN Intergovernmental Commission on Human Rights:  
Institutionalising Human Rights in Southeast Asia

Tan Hsien-Li

Excerpt

[More information](#)

chapters, previous attempts to convince the ASEAN states to institute a formal human rights regime in the region through philosophical justification or international legalisms have not borne fruit. Declarations of the universality of human rights based on humankind's inherent dignity and shared brotherhood, and the parallels drawn with various religions to show the roots of inalienable human rights during the 'Asian values' debate, did little to convince Asian states, including the ASEAN region.<sup>23</sup> Even if these theories were indubitable, truth often does not prevail over realism or 'hard cases' in international politics. Given the continuing emphasis on sovereignty, ASEAN states cannot and will not be made to do anything against their will. Moreover, even if all the states accept that human rights emanate from human nature, the liberal conceptualisation of human rights and democracy in the international sphere are not ideals that Southeast Asian societies are naturally familiar with or whose governments are anxious to promote wholesale.

Second, even if they are becoming more congenial to the idea of human rights, ASEAN states have tended to prefer a systematic and 'step-by-step' approach with proper consultation and consensus in building the regional human rights mechanism.<sup>24</sup> It is obvious that attempting to strong-arm them into instituting such an AICHR with international standards of human rights protection by merit of their promises made in international declarations have not worked. While this does signal continuing hesitancy on the part of ASEAN states, I feel that one has to be astute in making this trenchant stand of ASEAN work in favour of universal human rights. It is, I feel, unconstructive to dismiss AICHR as without real impact. It is much better to be mindful of its shortcomings and help it to achieve its potential. The *process* of increasing and improving human rights in Southeast Asia is as important as the *goal* of establishing a regional human rights mechanism. Although the advantages of having a regional system imbued with universal norms are undeniable and should be striven towards, this must be done in manageable stages by putting the necessary infrastructure and fundamental institutions in place as AICHR begins to function.

<sup>23</sup> For a concise discussion, see Hilary Charlesworth, 'The Challenges of Human Rights Law for Religious Traditions', in Mark W. Janis and Carolyn Evans (eds.), *Religion and International Law* (The Hague: Kluwer Law International, 1999), 401.

<sup>24</sup> This has been the modality adopted by the Working Group in their interaction with ASEAN officials. See *Summary of Proceedings of the Annual Workshops on an ASEAN Regional Mechanism on Human Rights*, at [www.aseanhrmech.org/conferences/index.html](http://www.aseanhrmech.org/conferences/index.html).

Cambridge University Press

978-1-107-00449-8 - The ASEAN Intergovernmental Commission on Human Rights:  
Institutionalising Human Rights in Southeast Asia

Tan Hsien-Li

Excerpt

[More information](#)

Third, timing, sufficient resources, and a citizenry that understands how the mechanism works and governmental support are indispensable to AICHR's proper functioning. The instant establishment of a regional human rights mechanism cannot be held as an immutable good. It is impossible to set up AICHR and expect it to work merely because of its overriding merit. Arbitrary imposition of a mechanism that both states and people are unfamiliar with and do not know how to utilise will become an empty shell. It is doubtless that many things need to be changed in the ASEAN region, but that cannot be successfully achieved at the expense of the necessary period of internalisation and 'enculturalisation'. The UN and European systems of human rights took decades of progress and are still adapting, while the inter-American and African systems are similarly in the adjustment process. The same is true for AICHR.

Even today, despite the significant (if incremental) successes, it would be all too easy to write off the human rights situation as stagnant. This is because even if collective agreement has been made at the ASEAN level to improve the standing of human rights regionally, the individual states alone can portray very different attitudes. For instance, the Philippines, Indonesia and Thailand are avid supporters of the human rights movement while Singapore and Malaysia prefer a 'wait-and-see' attitude.<sup>25</sup> It is hence often good to take a practical and guarded view of such developments. Given the capricious nature of state behaviour, one cannot underestimate when the compulsion for state sovereignty will rear its head, given the entrenched preference for the 'ASEAN way', thereby negating any success on the human rights front.<sup>26</sup>

Additionally, in the evolutionary fashion of human rights, I have noticed that while ASEAN states are more accepting of international norms, the converse also holds true. While Southeast Asia no longer stridently proclaims the precedence of 'Asian values', there are fewer clamours from international quarters that civil and political rights should precede the economic, social, cultural, and developmental. Instead, the emphasis on the shared equality of the right to development and economic, social and cultural rights has come to the forefront. International human rights have thus come full circle in translating into real action what has always been professed the moment

<sup>25</sup> Per Carlos Medina during his presentation at ASEAN-ISIS Colloquium on Human Rights (AICOHR), 15 May 2006.

<sup>26</sup> The 'ASEAN way' will be further explained below.