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

Tan Hsien-Li

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THE ASEAN INTERGOVERNMENTAL COMMISSION ON HUMAN RIGHTS

This assessment of the progress in Southeast Asia on human rights begins in the wake of the 'Asian values' debate and culminates in the formal regional institutionalisation of the Association of Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights (AICHR). The book examines the arduous negotiation of AICHR, the evolving relationship between ASEAN states and the international human rights system, and the historical and experiential reasons for hesitancy. The book concludes with a discussion of how the evolving right to development impacts upon AICHR and international human rights in general, and how their preference for economic, social, and development rights can help ASEAN states shape the debate.

TAN HSIEN-LI is Research Fellow and Executive Director of the 'ASEAN Integration through Law' project at the Centre for International Law, National University of Singapore, which investigates the role of law and the rule of law in Asian legal integration.

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For my parents

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PREFACE

This book is the culmination of four years of work, during which time the institutional structures for human rights in the Association of Southeast Asian Nations (ASEAN) region changed dramatically, and for the better, I believe, despite what critics might say.

While it is true that the ASEAN Intergovernmental Commission on Human Rights (AICHR) is not yet a fully fledged commission that promotes and protects human rights according to international standards in this region, I believe that this will change in time. ASEAN peoples are becoming more aware of human rights, and civil societies are now more dynamic and vibrant. Even within the ASEAN states themselves, slowly but surely, government officials are becoming less wary and more accepting of and familiar with human rights and its modalities. I believe that in time to come, with generational and internal transformation, human rights will one day take root as part of ASEAN's identity. It will doubtlessly be a long process with many obstacles along the way but it will come about.

Through the course of my research into the evolution of human rights in the ASEAN region and my participation in the Track 2 and 3 processes on the subject matter, I have discovered much in which to keep faith. This is primarily the many human rights proponents comprising civil society actors, academics, and state officials who have worked and are still working tirelessly to bring about a comprehensive human rights system in the ASEAN region, both within their national societies as well as in ASEAN as a whole.

While there is undoubtedly much to do before human rights takes root in ASEAN – and critics are quite justified in pointing out the longstanding human rights violations, which continue to go unaddressed in the region – for ASEAN to progress this far to explicitly incorporate human rights officially into the ASEAN Charter of 2007, and to set substantive goals for human rights cooperation, is already

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a remarkable achievement, especially in light of the ‘Asian values’ debacle and that the topic of human rights is especially sensitive, if not taboo.

For a long time, therefore, human rights institutionalisation in ASEAN did not seem possible. Even when state–civil society engagement on human rights began in the 1990s, the setting up of a regional mechanism to promote and protect human rights appeared to be several generations away in the future. However, the ASEAN Charter’s provision for the setting up of an ASEAN human rights body in Article 14 was a welcome surprise. It gave the necessary boost to human rights, making it a legitimate issue for discussion at the official regional level, and it set in motion the oft-conflicted process of establishing the first human rights mechanism in Asia, the ASEAN Intergovernmental Commission on Human Rights, in 2009.

The journey of ASEAN and human rights has been extremely fatiguing and disappointing at times, but as we enter the inaugural phase of AICHR’s operation, it also holds much hope and promise, in which I and my colleagues working on human rights in the region keep faith. My work on human rights in ASEAN would not be possible without the support of mentors and colleagues whom I have met over the years – many of whom have preferred to remain anonymous – in the Working Group for an ASEAN Human Rights Mechanism; the Singapore Working Group for an ASEAN Human Rights Mechanism (MARUAH); ASEAN-ISIS (a grouping of institutes of strategic and international studies); Suara Rakyat Malaysia (SUARAM); Forum-Asia; the National Human Rights Commissions of Indonesia, Malaysia, the Philippines, and Thailand; and, last but not least, the officials of ASEAN member states.

In writing this book, I owe a debt of gratitude to Simon Tay for introducing me to the ASEAN processes and stakeholder groups without which I would not have been able to begin my project; Yeo Lay Hwee for providing the opportunity to work in-depth on specific Southeast Asian issues and enabling me to understand ASEAN more deeply; Marzuki Darusman, Braema Mathi, Carlos Medina, Vitit Muntarbhorn, Sriprapha Petcharamesree, and Arpee Santiago who, through their long experience in working on human rights in ASEAN have encouraged and inspired me to keep forging ahead; and Andrew Byrnes, Jean d’Aspremont, Andrea Durbach, Michael Ewing-Chow, Thio Li-ann, Hitoshi Nasu, Dianne Otto, Catherine Renshaw, and Kevin Tan, who provided insightful comments, challenged me to think more broadly and deeply and, most excitingly, whose words and works have sparked off new ideas for the next stage of my research on international law, human rights, and

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ASEAN. I would like to thank especially Simon Chesterman for his generous mentorship and guidance of my work as the Asian Society of International Law Research Fellow at the National University of Singapore. Professor Chesterman has taught me much in terms of scholarship and work ethic, and above all has shown me what it means to be a truly sterling scholar.

Finally, I must thank all of my friends and family whose good cheer, encouragement and belief in me kept me going. It is to my parents that I dedicate this book, for their patience and unflinching support of my endeavours even while they could not quite understand my work, especially in the earlier years when international law and human rights had not yet become familiar issues in the ASEAN region.

Tan Hsien-Li

Feast of St Francisco de Capillas