



Asia Pacific Bulletin

Number 40 | July 20, 2009

The ASEAN Inter-Governmental Commission on Human Rights and Beyond

BY HAO DUY PHAN

Hao Duy Phan, visiting fellow at the East-West Center in Washington, explains that “Given the region’s complex diversity and ASEAN’s way of making decisions by consensus, the establishment of AICHR represents a triumph of intent, but does not yet demonstrate follow-through.”

More than forty years after its foundation, the Association of Southeast Asian Nations (ASEAN) is on the verge of establishing a human rights body. On July 20, 2009, the ASEAN Ministerial Meeting adopted the Terms of Reference for the ASEAN Inter-Governmental Commission on Human Rights (AICHR). ASEAN member states will appoint representatives and officially launch the mechanism at the upcoming 15th ASEAN Summit in Phuket, Thailand in October 2009. While proponents hail AICHR, there are questions whether the body will be adequate and effective in responding to major human rights problems in the region.

The establishment of AICHR is not only an important first step forward for promoting universal human rights and creating a human rights system in Southeast Asia, it is also a significant development in ASEAN history with implications for regional politics. By creating AICHR, ASEAN is translating its rhetoric of moving from being state-centric to more people-oriented into action, albeit at a very initial stage. Moreover, by this action, ASEAN has continued expanding its traditional scope of cooperation on political and economic issues to encompass human rights, which has long been viewed as too sensitive a topic for regional, concerted action. It suggests that under the ASEAN framework, human rights protection can no longer be considered a solely domestic affair, but is instead a transnational issue to be promoted and protected by an institutionalized regional body. This new development may also have a positive demonstration effect for other regional organizations in Asia and elsewhere.

While there is reason to be upbeat about the establishment of AICHR, excessive optimism over the contributions it could make should be tempered. Like other institutions, AICHR is embedded in a regional context that is diverse in terms of political regimes, economic development, culture, and religions. Discussions of human rights issues among member nations have been contentious and have rarely resulted in action. After more than forty years, human rights cooperation within ASEAN is still at its very initial stage. ASEAN has been able to produce only five declarations on human rights. These declarations are not legally binding, and do not ensure that concrete steps be taken. Further, they exist without monitoring and reporting procedures. Given the region’s complex diversity and ASEAN’s way of making decisions by consensus, the establishment of AICHR represents a triumph of intent, but does not yet demonstrate follow-through.

AICHR is envisioned to merely serve as a consultative inter-governmental body with no authority to issue binding decisions, consider cases, or conduct investigative visits. Its decisions are to be made by consensus and its representatives accountable to the appointing governments. It is authorized to develop strategies, raise awareness, promote

“In order to enhance human rights cooperation, ASEAN needs to reconsider its rigid application of the non-interference principle and the ‘ASEAN Way,’ including its consensus rule.”

capacity building, develop common positions, provide advisory services, draft documents, prepare studies, and facilitate dialogue and consultation between members. While all of these tasks are important, especially in terms of raising awareness, it remains unclear how the body will deal with the possible conflict between ASEAN’s traditionally rigid application of the principle of non-interference and the universal substance of human rights.

However, ASEAN’s history of cooperation suggests that when consensus cannot be reached, some members can proceed as a subgroup, allowing others to join later. In May 2002, Indonesia, the Philippines, and Malaysia signed an Agreement on Exchange and Establishment of Communication Procedures through which they committed to sharing airline passenger lists and fingerprint databases and strengthening border controls. Cambodia and Thailand later acceded to the Agreement. ASEAN itself was created with five nations although it was envisaged to eventually include all regional countries. A strong and independent human rights mechanism for all ASEAN members is not possible at this time, but the idea of such a mechanism for a selective number of countries is worth exploring. Among ASEAN members, some are more supportive of a stronger human rights mechanism while others remain reluctant. Realistically, the former group of countries does not have to wait until the latter is ready. In addition to AICHR, they could go ahead to establish a stronger body and help the others to join later. For example, to properly implement human rights obligations, these countries could establish an independent judicial body which can consider and issue binding decisions on various human rights issues.

In order to enhance human rights cooperation, ASEAN needs to reconsider its rigid application of the non-interference principle and the “ASEAN Way,” including its consensus rule. The non-interference principle and the “ASEAN Way” were relevant to regional cooperation in the past, especially in terms of building mutual confidence. However, emerging challenges of the new security environment such as natural disasters, poverty, epidemic diseases, transnational crimes, and human rights violations have highlighted the need to adjust these principles accordingly so that the organization can better deal with new challenges in a more globalized and interdependent world. To be sure, ASEAN is not the only organization upholding the principle of non-interference. The difference is that within ASEAN, the principle is interpreted and applied quite rigidly, especially when it comes to human rights. Human rights have long been seen as domestic issues and therefore subject to the principle of non-interference. This is an important reason why pushing human rights under ASEAN has been a very difficult process.

U.S. human rights policy has focused on the human rights records of individual countries in the context of bilateral relationships instead of adopting a comprehensive approach to institutionalizing and advancing human rights at the regional level. In many cases, for international human rights norms to be effective, they need to be localized through a local mechanism that understands regional conditions and fits regional particularities. If ASEAN cannot establish a strong and effective human rights mechanism, the United States should encourage an outside-the-box approach to creating such a mechanism, initially only for interested countries in Southeast Asia. Experiences from other regions indicate that without taking the regional approach into consideration, human rights issues may not be substantively and sustainably addressed. That too may be the case with Southeast Asia.

The East-West Center is an internationally recognized education and research organization established by the United States Congress in 1960 to strengthen understanding and relations between the U.S. and countries of the Asia Pacific region.

The Asia Pacific Bulletin is produced by the East-West Center in Washington. The views expressed in this publication are those of the authors and do not necessarily reflect the policy or position of the East-West Center.

EastWestCenter.org/apb