

## **Regional Mechanism in the ASEAN Region for Strengthening Human Rights Promotion and Protection: An Analysis**

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### **1. Introduction**

The concept of human rights is not new. Rather, the development on the protection of human rights at global, regional and national level is quite newer than the concept. The Universal Declaration of Human Rights (UDHR) is contemporary consensus of international recognized human rights, it is not directly legally binding treaty and are the minimum standards. Its provisions are further elaborated by various human rights instruments.<sup>1</sup> Notwithstanding the expansion and evolution of the human rights treaties and their monitoring bodies and reforms in the Charter bodies in the United Nations, gross human rights violations remain rampant in different parts of the world. Apparently, international human rights mechanism under United Nations alone is not enough to promote and protect human rights in the world. Regional human rights mechanisms have proven to be more effective and useful in promoting and protecting human rights than the global human rights mechanisms available at the UN level, because they are not only complementary to the UN system, but can also reflect regional particularities.<sup>2</sup> Regional human rights mechanisms have been in operation in Europe, the Americas and Africa. These

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regional human rights regimes are based on regional human rights treaties.<sup>3</sup>

The Association of South East Asian Nations (hereafter ASEAN)<sup>4</sup> is one of the most widely recognized forums for cooperation within the region. In the ASEAN region, where there are serious, ongoing human rights violations, a human rights body is no less essential to guarantee the implementation of the human rights commitments in the ASEAN Charter.<sup>5</sup> With the absence of regional human rights mechanism in Asia, 1993 Bangkok Declaration on Human Rights (Bangkok Declaration) and Vienna Declaration and Programme of Action (Vienna Declaration) raised the concern of setting up a regional human rights mechanism in Asia. Just one month after the adoption of Vienna Declaration, in the 26th Ministerial Meeting of Association of Southeast Asian Nations (ASEAN) in 1993 initially gave green light for such arrangement.<sup>6</sup> In December 2007, the establishment of regional human rights mechanism is ultimately promised by the adoption of ASEAN Charter which is legally-binding to the member states.

This paper is going to argue is it necessary to create a human rights commission in the ASEAN region and examine to what extent international human rights mechanism alone is adequate in promoting and protecting human rights in the region. It will also highlight challenges and prospects of establishing regional human rights mechanism in the ASEAN region.

## **2. Human Rights Situation in the ASEAN Region**

As a matter of fact, the occurrence of a wide range of human rights violations seems to be a continuous feature of the political reality across the ASEAN region in the past as well as today.<sup>7</sup> In Thailand, the military-installed Government's human rights record worsened with regard to extra judicial killings and arbitrary arrests.<sup>8</sup> The judiciary suffers from frequent instances of corruption and at times security forces infringed on citizen's privacy rights.

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Trafficking in women and children, coerced prostitution and forced child labour are also serious problem in Thailand.<sup>9</sup> In Cambodia human rights violations are continuing in the form of illegal confiscation of farmers' land, forced evictions of urban poor, and attacks on rights defenders. More than halfway through its three-year mandate, the Khmer Rouge Tribunal faced serious allegations of corruption and government interference<sup>10</sup>. Myanmar is cited as one of the worst violators of human rights on a global scale.<sup>11</sup> The Government restricted freedom of religion, freedom of speech, press, assembly, association and movement. The government does not permit domestic human rights organizations to function independently. Ethnic armed groups also may have committed human rights abuses, including killing, rape, forced labour and conscription of child soldiers, although on a lesser scale than the government.<sup>12</sup> The Indonesian government's human rights record remained poor. Security force members murdered, tortured, beat and arbitrarily detained civilians. Terrorists, civilians and armed groups also committed human rights abuses and government was in some cases unable or unwilling to prevent these abuses.<sup>13</sup> In Malaysia human rights violation included restrictions on the freedom of the press, freedom of association, and freedom of assembly. The country has a source and destination for trafficking in women and girls for the purpose of prostitution.<sup>14</sup> Historically, the Filipino people have experienced violations of human rights from the colonial Spanish regime, when there was economic and class discrimination.<sup>15</sup> The security services were responsible for arbitrary and unlawful and extrajudicial killings, disappearances, torture and arbitrary arrests and detention. Child prostitution is also a serious problem in Indonesia.<sup>16</sup> The government of Singapore continued to rely on preventive detention to deal with espionage, terrorism, organized crime and narcotics. The government continued to restrict significantly freedom of speech and freedom of press.<sup>17</sup> In Laos, the government infringed citizens' privacy

right and restricted freedom of speech, the press, assembly and association.<sup>18</sup> Citizen did not exercise freedom of speech, freedom of press, freedom of association and assembly in Brunei. Discrimination against women is also serious problem in Brunei.<sup>19</sup> Thus, considering the prevalence as well as the severity of human rights violations across the ASEAN States, the factual status quo is more than deficient. Most of the states in the ASEAN region are not willing to protect their citizens' rights. Rather, most of the times the 'government' plays an important role to violate his citizens' rights. This leads to the assumption that the framework for the protection of human rights in the region is in need of an appropriate instrument for its improvement.

### **3. Suitability and Promises of an ASEAN Human Rights Commission as Instrument to Improve the Human Rights Situation**

After having outlined the deficiency of the factual human rights situation in the ASEAN region, this part will provide for a cursory look at the general suitability and promises of an ASEAN regional human rights mechanism. To facilitate the establishment of the ASEAN human rights mechanism, the Working Group for an ASEAN Human Rights Mechanism (Working Group) was established in 1995 which is comprised of representatives of government institutions, parliamentary human rights committees, the academe, and NGOs.<sup>20</sup> The Working Group expresses that the regional human rights mechanism can effectively address the human rights violations in the regional, ensure international human rights standards are observed and implemented, and promote human rights to ASEAN people.<sup>21</sup>

Opposition to the establishment of regional human rights bodies has formerly been based on the arguments that human rights were global in nature and hence should be defined in global instruments and implemented in global bodies; that regional human rights

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bodies would duplicate the work of the UN bodies and foster inconsistencies and; that regional systems might deflect attention from the two International Covenants and delay their ratification.<sup>22</sup> Today, the reliance on regional systems is commonly accepted and the aforementioned concerns have been successfully dispelled on basis of functional reasoning. As long as the normative content of both global and regional instruments is similarly kept at the level of the UDHR and the global instruments set the minimum normative standard, then the regional instruments can add or refine some rights and take into account regional particularities without threatening the concept of universality. Alongside these negative preconditions, the major advantages of regional human rights systems can generally be seen in their ability to consider the existence of geographic, historical and cultural bonds and particularities among the region.<sup>23</sup> Furthermore, an additional and paramount benefit derives from the interrelatedness of and cross references between both systems, which create a system of complementarity that can be worth more than just the sum of its parts.<sup>24</sup>

According to these general considerations, an ASEAN Human Rights Commission can be considered as being a suitable instrument, as regional systems are categorically an enriching complement in the protection of human rights. Specifically, it might help to ensure that all ASEAN States observe and implement universal human rights standards by providing for assistance in addressing human rights concerns in their respective areas of jurisdiction; foster a common understanding of universal human rights issues and perspectives among ASEAN people and; constitute a common platform where ASEAN States can articulate their human rights-related concerns and form a regional coherent stance in human-rights related issues.

#### **4. Justification of the Establishment of a Human Rights Commission in the ASEAN Region**

This part will examine two of the currently existing approaches to the protection of human rights in the ASEAN region and will evaluate whether they render the establishment of an ASEAN Human Rights Commission dispensable.

##### **4.1 Universal Human Rights Treaties**

On the one hand, it could be argued that the current and future participation of ASEAN States in universal human rights treaties provides for a sufficient basis for the protection of human rights in the region and hence renders an ASEAN Human Rights Commission dispensable. But, in fact, the level of participation in international human rights instruments by the ASEAN states is undesirable (Table 1). Among ten ASEAN states, just half of them have ratified the ICESCR and ICCPR, and only three have ratified CAT. Theoretically, human rights are universal and every human being is entitled to enjoy human rights. In reality, human rights can be realized at national level and under the scrutiny of treaty bodies only when the states ratified the international human rights instruments and showed commitment to translate the provisions into domestic law and measures. In other words, most of the ASEAN states can escape from obligations and monitoring of the various treaty bodies as they are not party of those instruments.

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*Table 1: Status of Ratification among ASEAN States<sup>25</sup>*

	ICESCR	ICCPR	CERD	CEDAW	CAT	CRC	CMW
Brunei				2007		1996	
Cambodia	1992	1992	1983	1992	1992	1992	
Indonesia			1999	1984	1998	1990	
Laos	2000	s:2000	1974	1981		1991	
Malaysia				1995		1995	
Myanmar (Burma)				1997		1991	
Philippines	1976	1987	1969	1981	1987	1990	2003
Singapore				1995		1995	
Thailand	1999	1997	2003	1985		1992	
Vietnam	1982	1982	1982	1982		1990	

s: signatory

Nevertheless, for those states which have ratified the international human rights instruments, the treaty-bodies monitor the compliance of the provisions mainly by examining the country periodic reports and delivering concluding observations and recommendations. Yet, treaty bodies have no means to enforce their recommendations.<sup>26</sup> Thus, the compliance to the recommendations of the treaty-bodies rests on commitment of the states concerned to improve human rights.

Another limitation of international system for human rights protection is the issue of reservation. With the hope to maximize participation in international human rights treaties, reservations which exempt states from part of the obligations are tolerated, even when those reservations infringed the objects and purpose of the conventions.<sup>27</sup> Despite all of ASEAN states have ratified CEDAW and CRC, Brunei, Singapore, Malaysia and Thailand have entered

reservations to the two conventions are considered as incompatible with objects and purpose of the conventions.<sup>28</sup> On the contrary, it does not imply that states like Cambodia, Laos, Vietnam and Burma without reservation to the two conventions have better protection to women and children rights.<sup>29</sup>

Apart from the treaty-bodies, Charter-bodies are also mechanisms to protect human rights in Asia, regardless the status of ratification. Unlike treaty-bodies whose members are independent experts, members of the Human Rights Council are representatives of governments. In the past experiences, impartiality of Charter-bodies members is in questioned. There are tendencies that many countries apply double standards in human rights violations by political allies.<sup>30</sup> Effectiveness of the special procedures with country mandate is not that promising in Cambodia and Burma. In the recent reports of the two special rapporteurs, they deplored the incorporation of the governments in Cambodia and Burma. In his report in 2008, Special Rapporteur Yash Ghai criticizes the Cambodian government has no incentives for reform.<sup>31</sup> Special Rapporteur on the situation of human rights in Myanmar (Burma) Tomás Ojea Quintana shares the same bitter experience and states there is no improvement in human rights in his last visit to Burma.<sup>32</sup> Under the existing international human rights mechanism, both treaty and Charter bodies, can put the human rights situations in ASEAN states under international spotlight. However, more efforts need to be mobilized to attain substantive changes. Hence, human rights mechanism in ASEAN can assist ASEAN to address to human rights violations in the region.

#### **4.2 ASEAN Commission on the Promotion and Protection of the Rights of Women and Children**

In June 2004, ASEAN adopted a Declaration on the Elimination of Violence Against Women in the ASEAN Region which includes a commitment to adopting an integrated and holistic approach to

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eliminate violence against women and to take necessary measures to eliminate all forms of discrimination against women.<sup>33</sup> After that, under the Vientiane Action Plan (VAP) ASEAN leaders agree to establishment of an ASEAN Commission on the Promotion and Protection of the Right of Women and Children.<sup>34</sup>

On the other hand it could be argued, that the establishment of a comprehensive ASEAN Human Rights Commission is dispensable with regard to the current and independent establishment of an ASEAN Commission on the Promotion and Protection of the Rights of Women and Children.<sup>35</sup> The idea of the establishment of the latter Commission as a theme-specific committee with a limited mandate in an area with an assumedly broad conformity of values and beliefs across all ASEAN States is to pursue an evolutionary approach towards the regional protection of human rights. As it is the underlying assumption of such a gradual or “building block”<sup>36</sup> approach, that all ASEAN States share common values in these specific areas, there is theoretically no risk of impairing the aforementioned cardinal principle of non-interference – a fact, which is supposed to encourage broad engagement in such a Commission. According to Thio, the narrowing of the focus on commonly shared beliefs makes “monitoring schemes with reporting obligations more palatable to ASEAN governments” and provides for a starting basis from which the monitoring might be extended “to the entire scope of human rights – civil and political as well as economic, social, and cultural – on a basis of genuine indivisibility.”<sup>37</sup> Hence, as this approach puts the stress on the actual feasibility of a regional human rights mechanism while leaving the door partly open for further broadening and deepening, it is not meant to be a substitute for a comprehensive Commission but a mere starting point. Whereas the considerations by Thio appear reasonable and tempting in theory, their practicability within the ASEAN raises two concerns. First, it

is not clear how such a theme-specific cooperation should be able to overcome the very same problems as described above in context with the participation of ASEAN States in universal human rights treaties. The utterly non-uniform practice of ratifying treaties and their optional protocols as well as the very broad and intangible reservations entered by several states hardly allow the assumption of a common legal standard.<sup>38</sup> Thus, an ASEAN Commission on the Promotion and Protection of the Rights of Women and Children would have to face the same problem of defining such a commonly accepted standard. If this standard is not to be at the level of a least common denominator residing below international, i.e. universal, standards, then at least the most reluctant ASEAN States would equally have to accept compromises. Otherwise, a thoroughly appealing approach would bear the risk to degenerate into mere window-dressing and end up as a pretext to further postpone real advancement. The truth is that a region-wide uprating of human rights standards to an international level inevitably presupposes the willingness to accept some externally set standards. From this point of view, a factual improvement cannot be expected under the participation of states categorically unwilling to compromise, which basically burdens this approach with the same problems as the participation in universal human rights treaties.

The second, interrelated concern in pursuing this approach within the ASEAN is the danger of marginalising the protection of such human rights that are outside the Commission's official scope. As long as the theoretically envisaged extension does not factually encroach on other rights, these areas will be left without a regional human rights mechanism – and as ASEAN's 41 years of history prove, evolution can take a long time.

In sum, an ASEAN Commission on the Promotion and Protection of the Rights of Women and Children only deserves approbation if it sets up universal standards and leaves ajar the door for further

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development and is in no case to be seen as a substitute but at most as a starting point for the evolvement of a comprehensive human rights commission.

### **5. Challenges of the Establishment of Human Rights Commission in the ASEAN Region**

ASEAN is a remarkably diverse and heterogeneous in terms of government, social and economic system. Brunei has an absolute monarchy, Vietnam and Laos have post-socialist authoritarian regimes, Singapore and Malaysia have one party authoritarian regimes with the façade of parliamentary democracy, Thailand and Philippines have elected representatives democratic system, Myanmar is a military dictatorship which appears fascist in nature, Indonesia's system seems in a state of transition from authoritarianism to a more representative form of regime and Cambodia continues to defy definition- it is a mixed bag, difficult to define and impossible to quantify.<sup>39</sup> ASEAN covers an immensely complex and diverse number of states, communities, religion, languages and cultures. It is not a culturally homogeneous region like Europe or America where inter-governmental human rights organizations have been developed. The economic development of the countries of the region varies widely. There is a good cultural diversity among the member nations of ASEAN which is another obstacle to form a uniform human rights standard for ASEAN.<sup>40</sup>

Since the initial consent to consider the establishment of regional human rights mechanism in 1993, ASEAN Charter delivered promise for such arrangement in 2006 ultimately. Article 1(7) of the Charter underlines one of the purposes to establish ASEAN is to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights. Article 2(2)(i) also affirm the respect for promotion and protection of human rights as one of the principles of ASEAN. Article 14 further determines the establishment of ASEAN human rights body. However, can human

rights commitment trumps ASEAN way, which emphasizes non-interference with domestic affairs of ASEAN member states and that decision making in ASEAN should be made through consultation and consensus, remained the concerns in setting up a regional human rights mechanism which can effectively operated. In addition, “Asian Values” and “development first” arguments also pose challenges to the forthcoming mechanism.<sup>41</sup> The former UN Secretary-General Kofi Annan gave an impressive response to the Asian values,

*“It was never the people who complained of the universality of human rights, nor did the people consider human rights as a Western or Northern imposition. It was often their leaders who did so.”<sup>42</sup>*

Yash Ghai also points out it is contradictory to claim Asian valued harmony over human rights as traditional common culture on one hand, and use suppressive means and legislation to silent people at the same time.<sup>43</sup> Obviously, Asian values are not addressing cultural particularities, but rather serving as a pretext for non-compliance with universal standards indeed.

Since the establishment of the ASEAN in 1967, “non-intervention in domestic affairs” has been one of the key principles in the organization. Whatever the discourse on human rights, ASEAN still tends to treat the issue of human rights as one of the internal affairs rather than the international jurisdiction. Hence, the non-interference argument emerging consistently from ASEAN, i.e. it views the international advocacy of human rights as interfering in the internal affairs of the region.<sup>44</sup> Article 2(c) of the 1976 Treaty of Amity and Cooperation in Southeast Asia enshrines the fundamental principle of nonintervention in the internal affairs of another state. According to this article, ‘in their relations with another, the high contracting parties shall be guided by the fundamental principal of non-interference’. This may be in line with Article 10 of the Treaty of Amity and Cooperation in

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Southeast Asia (1976), which provides that '[e]ach High Contracting Party shall not in any manner or form participate in any activity which shall constitute a threat to the political and economic stability, sovereignty or territorial integrity of another High Contracting Party.<sup>45</sup> This treaty is a strong safe guard for the state parties who are not interested to establish a regional human rights mechanism.

On the top of non-intervention and Asian values, it is argued that human rights are denied by abject poverty. Thus the right to development deserves a higher priority.<sup>46</sup> Out of 10 members states in ASEAN, Burma, Cambodia and Laos are designated as least developed countries by the UN, while only Singapore and Brunei are considered as developed countries. Article 19 of the Bangkok Declaration also highlights that poverty hinders human rights development. These arguments are always used by political leaders to delay the development of human rights under the accusation that much emphasis on human rights will obstruct economic growth without specifying what are the threats human rights pose to economy. It is prevalent that poor people cannot share benefits from economic development and are deprived of political and economic rights at the same time. On the contrary, human rights can reinforce economic development by opening rooms for citizens to monitor government policies.<sup>47</sup> The argument of non-intervention, Asian values and development first reflected lack of political will of ASEAN leaders. Therefore, it is essential to have external mechanisms to motivate or pressure the ASEAN to take a more progressive approach to address human rights issues in the region.

### **Conclusion**

As has been shown, the human rights situation in the ASEAN region is deficient, a regional mechanism is basically a suitable instrument for its factual improvement and the alternatives both

suffer from considerable insufficiencies or risks. Thus, the initial question has to be answered in the affirmative. But letting it go at this assessment would hardly be more insightful than the commonplace that the best possible and most comprehensive protection also is the most necessary one. Again, this definitely holds true from a purely idealistic point of view, but it seems not to be very helpful as it comes to the factual protection of human rights. The protection of human rights is not improved in mere theories about ideal conceptions, but through practically feasible approximations towards a comparatively better factual status. But as this feasibility is not God-given or an inalterable reality, but solely defined by the willingness of the respective states to abstain from specific competences for the sake of normative values, it is still justified to conclude with three normative suggestions for a future ASEAN Human Rights Commission.

First, any further step towards an ASEAN Human Rights Commission should avoid the risk of becoming a mere window-dressing pretext for further stagnation and should hence be able to carry out significant monitoring, investigative as well as recommendatory work and should allow individuals and states to report alleged human rights abuses to an independent forum.<sup>48</sup> Therefore, the ASEAN States would have to abstain from the sacrosanct principle of non-interference and allow for external accountability of intraregional human rights abuses. As the traditional ASEAN way of avoiding confrontation and employing quiet diplomacy instead has proven unsuitable as regards the improvement of human rights situations,<sup>49</sup> there is little that can reasonably be objected to its abandonment. The ASEAN States have to accept, that the absolute version of the principle of non-interference is incompatible with the very concept of human rights. If some states stubbornly perpetuate their unwillingness to relativise their adherence to this principle, the more progressive states should (at least transitionally) consider a separate

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advancement. In the end, a strong commission with few members might be of more value than a weak commission comprising all ASEAN Member States.

Second, any regional efforts should be complemented by human rights promotion on the domestic level and by a more serious participation in the United Nations human rights regime.<sup>50</sup>

Third and finally, reluctant or hesitating states should reconsider and downgrade their fears of losing sovereignty by accepting external monitoring and instead pay more regard to the economic and political gains they can obtain from a politically strong ASEAN. The discrepancy between the repeatedly emphasised and most recently yet enhanced importance of the protection of human rights as one of ASEAN's goals on the one hand, and the reluctance of some Member States to accept external accountability on the other hand, bears the risk that the entire human rights avowals of the Association are perceived as a farce and might question the overall seriousness of the Member States' commitment and therewith ASEAN's prospect to eventually become a politically integrated entity. As the experience of the European Union shows, common fundamental rights as a standard also for Member State actions, ensures not only the protection of individuals vis-à-vis public authorities, but can furthermore be a crucial element within the emergence, consolidation and constitutionalisation of a coherent and internationally reputable political entity.

### **Notes and References**

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<sup>1</sup> For example, the International Covenant on Civil and Political Rights (ICCPR) 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, the Convention on the Elimination of Racial Discrimination (CERD) 1966, the Convention Against Torture (CAT) 1984, the Convention on

the Rights of Child (CRC) 1989, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1981, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) 1990, and the Convention on the Rights of Persons with Disabilities (CRPD) 2006 etc.

<sup>2</sup> Jean-Bernard Marie, 'National System for the Protection of Human Rights' in Janusz Symonides (ed.), *Human Rights: International Protection, Monitoring, Enforcement*, Ashgate, Hants, 2003, p. 274.

<sup>3</sup> For example, the European Convention on Human Rights (1950), the Inter American Convention on Human Rights (1969) and the African Charter on Human and People's Rights (1986).

<sup>4</sup> ASEAN was established on 8 August 1967 in Bangkok by the five original member countries: Indonesia, Malaysia, Philippines, Singapore and Thailand. Brunei joined on 8 January 1984, Vietnam on 28 July, Lao PDR and Myanmar on 23 July 1997 and Cambodia on 30 April 1999.

available at: < <http://www.asean.org/64.htm> > (accessed on 15.10.2008)

<sup>5</sup> According to Article 14(1) of the ASEAN Charter, "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."

available at <<http://www.aseansec.org/ASEAN-Charter.pdf>> (accessed on 15.10.2008)

<sup>6</sup> 'Joint Communique of the Twenty-sixth Asean Ministerial Meeting', Association of Southeast Asian Nations,

<[http://www.aseanhrmech.org/downloads/1993\\_Joint\\_Communique.pdf](http://www.aseanhrmech.org/downloads/1993_Joint_Communique.pdf)>, July 1993, paras. 16-18, (accessed on 11 October 2008).

<sup>7</sup> Available at: < <http://www.amnesty.org.au/news/comments/6151> > (accessed on 11 October 2008).

<sup>8</sup> Available at <<http://hrw.org/englishwr2k8/docs/2008/01/31/thaila17628.htm> accessed on 14/10/2008> (accessed on 11 October 2008).

<sup>9</sup> James T. Lawrence(ed.), *Human Rights in Asia and the Pacific*, Nova Science Publishers, New York, 2004, pp 133-134.

<sup>10</sup> Available at:

< <http://hrw.org/englishwr2k8/docs/2008/01/31/cambod17603.htm> accessed on 14/10/2008 > (accessed on 11 October 2008).

<sup>11</sup> Kenneth Christie and Denny Roy, *The Politics of Human Rights in East Asia*, Pluto Press. London 2001, p.81.

<sup>12</sup> James T. Lawrence(ed.), see *supra* note ix, pp. 15-16.

<sup>13</sup> *Ibid.* pp.67-68.

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<sup>14</sup> *Ibid.* p.93.

<sup>15</sup> Commission on the Human Rights of the Philippines, *Source book on Human Rights*, CHRPH, Philippines 2006, p.86.

<sup>16</sup> James T. Lawrence(ed.), see *supra* note ix, pp. 115-116.

<sup>17</sup> *Ibid.* p. 127.

<sup>18</sup> *Ibid.* p. 90.

<sup>19</sup> *Ibid.* p.13.

<sup>20</sup> 'About us', *Working Group for an ASEAN Human Rights Mechanism*, Available at: <<http://www.aseanhrmech.org/aboutus.html>>, (accessed on 11 October 2008).

<sup>21</sup> *Ibid.*

<sup>22</sup> This compilation of arguments follows the '28th Report of the Commission to Study the Organization of Peace' (1980), p 15. An excerpt of the report is available in H.J. Steiner, P. Alston and R. Goodman (eds.), *International Human Rights in Context* (2007), p 931.

<sup>23</sup> *Ibid* p 931.

<sup>24</sup> For a concise description of the mutual benefit of regional and universal systems see Dinah Shelton, 'The Promise of Regional Human Rights Systems', in B. Weston and S. Marks (eds.), *The Future of International Human Rights* (1999) 351, p 356.

<sup>25</sup> Available at: < <http://www2.ohchr.org/english/bodies/ratification>> (accessed on 11 October 2008).

<sup>26</sup> Office of the United Nations High Commissioner for Human Rights, 'The United Nations Human Rights Treaty System: An introduction to the core human rights treaties and the treaty bodies', Fact Sheet No. 30, p.23.

<sup>27</sup> Suzannah Linton, 'ASEAN States, Their Reservations to Human Rights Treaties and the Proposed ASEAN Commission on Women and Children', *Human Rights Quarterly*, Vol. 30, 2008, p.486.

<sup>28</sup> *Ibid.* p.462 and 476.

<sup>29</sup> *Ibid.* p.481.

<sup>30</sup> Richard B. Bilder, 'An Overview of International Human Rights Law' in *Guide to International Practice*, Hurst Hannum (ed.), Transitional Publisher, New York, 2004, p.15.

<sup>31</sup> Report of the Special Representative of the Secretary-General for Human Rights in Cambodia, Yash Ghai, UN Doc. A/HRC/7/42, 29 February 2008, para. 99.

<sup>32</sup> Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, UN Doc. A/HRC/8/12, 3 June 2008, para. 69.

<sup>33</sup> See Declaration on the Elimination of Violence Against Women in the ASEAN Region available at: < <http://www.aseansec.org/16189.htm> accessed on 14/10/2008 > (accessed on 11 October 2008).

<sup>34</sup> As provided for under 1.1.4 of Annex 1 to the Vientiane Action Plan (VAP). The Commission's possible structure, nature, terms of reference, mandate, funding modalities, and mechanisms for consultation were discussed in detail during a Joint Roundtable Discussion from April 7-8, 2008 at the ASEAN Secretariat in Jakarta, Indonesia.

<sup>35</sup> Sriprapha Petcharamesree, 'Towards an ASEAN Commission on the Promotion and Protection of the Rights of Women and Children', presented at the 7<sup>th</sup> Workshop on the ASEAN Regional Mechanism on Human Rights, 12-13 June, 2008, OHRSD, Mahidol University, Thailand.

<sup>36</sup> As put by H.E. Hassan Wirajuda, Minister of Foreign Affairs of the Republic of Indonesia in a keynote speech delivered in the 2<sup>nd</sup> Roundtable Discussion on *Human Rights in ASEAN*, Jakarta, 18. December 2006. Furthermore, Wirajuda speaks of the possibility to establish "more Commissions, each focusing on specific human rights issues".

The speech is available at: <http://www.indonesia-ottawa.org/information/details.php?type=speech&id=130>. (accessed on 18.10.2008).

<sup>37</sup> Thio Li-ann, 'Implementing Human Rights in ASEAN Countries', Yale Human Rights and Development Law Journal, Vol.2, 1999, at 77. The same concept is also shared by Wirajuda, *supra* xxxvi.

<sup>38</sup> Suzannah Linton, see *supra* note xxvii, p. 439.

<sup>39</sup> Kenneth Christie and Denny Roy, see *supra* note xi.

<sup>40</sup> Claude E. Welch, Jr., and Virginia a. Leary, *Asian Perspective on Human Rights*, Westview Press, Oxford 1990, p.15.

<sup>41</sup> Vivit Muntabhorn, 'Human Rights and a Human Rights Mechanism for ASEAN : A Constructively Engaging Challenge?' *Dimensions of Human Rights in the Asia Pacific Region*, Office of National Human Rights Commission of Thailand, Bangkok, pp.60-64.

<sup>42</sup> Lindgre, 'The Declaration of Human Rights in Postmodernity', *Human Rights Quarterly*, Vol. 22, 2000, p.498 cited in Christian Tomuschat, *Human Rights Between Idealism and Realism*, Oxford University Press, Oxford, 2003, p. 81.

<sup>43</sup> Martin Dixon and Robert McCorquodale, *Cases and Materials in International Human Rights Law*, Oxford University Press, Oxford, 2003, p.187.

<sup>44</sup> Vivit Muntabhorn, see *supra* note xli, p.64.

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<sup>45</sup> Thio Li-ann, see *supra* note xxxvii, p.49.

<sup>46</sup> *Ibid.* p. 21.

<sup>47</sup> *Ibid.*

<sup>48</sup> Actually, 31 years of stagnation already passed since the first agreement of the ASEAN UN members to establish a regional human rights mechanism (GA res. 32/127, December 1977). The establishment of a Commission of such a design is also strongly recommended by the Working Group.

available at: < <http://www.aseanhrmech.org/aboutus.html>> (accessed on 19.10.2008).

<sup>49</sup> An explicit example is ASEAN's policy of "constructive engagement" pursued towards Myanmar, which did not lead to any progress whatsoever. For a concise description of this specific approach see Thio Li-ann, *supra* xxxvii, p.45.

<sup>50</sup> In this regard the Commission could take a promotional role as well. The goal should be to avoid the setting of double standards or duplication of efforts in implementing human rights. see Suzannah Linton, *supra* xxxviii, p. 493 and Thio Li-ann, *supra* xxxvii, at 38, who suggests an ASEAN Charter which has as its minimum content the International Bill of Rights.