

SOVEREIGNTY VS. HUMAN RIGHTS IN THE ASEAN INTERGOVERNMENTAL COMMISSION ON HUMAN RIGHTS

WILLIAM J. JONES

Mahidol University International College
william.jon@mahidol.edu

Abstract - *The Association of Southeast Asian Nations (ASEAN) established the first regional human rights mechanism in the last region of the world to not have a mechanism in 2007 with the signing of the ASEAN Charter. The ASEAN Intergovernmental Commission on Human Rights (AICHR) was formally established in 2009. The first order of business for the newly established commission was to draft a human rights declaration for the region and its member states. Since AICHR's establishment practitioners, scholars and commentators have not been impressed with the commission's work. In the 15 years since being established AICHR has not moved past promotional activities towards protection of human rights. This paper seeks to explore the intersection between human rights and state sovereignty in ASEAN.*

Keywords: ASEAN; ASEAN Human Rights; Human Rights and Sovereignty; State Sovereignty

INTRODUCTION


In 2007, ASEAN established the ASEAN Intergovernmental Commission on Human Rights marking an important milestone in long fight for a regional human rights mechanism (ASEAN, 2007). There was considerable contestation over establishing a commission with AICHR being the most contentious issue in the negotiations around the ASEAN Charter (Bwa, 2009). Nevertheless, with the signing and coming into force of the ASEAN Charter, human rights advocates saw hope that the commission would become a marker of change in the region for human rights defenders, advocates and citizens writ large.

During the ASEAN Charter negotiations the issue of human rights was so contentious as to make agreeing on an operational framework impossible if leaders wanted to complete the Charter drafting process. ASEAN leaders deferred to Senior Officials within government ministries to negotiate the Terms of Reference (ToR) which would guide AICHR's operation. AICHR's ToR were finally agreed to in 2009 and AICHR became an operational institution within the ASEAN organizational framework (ASEAN, 2009). The first AICHR commission was tasked with drafting a human rights declaration which was completed for Foreign Ministers to adopt on November 18 2012 (ASEAN, 2012).

Critics have argued that AICHR as constituted by the ToR is not a fully independent human rights commission and does not reach international standards of independence as per the Paris Principles (cite). Furthermore, critics levelled allegations that the ASEAN Human Rights Declaration did not reach international standards of human rights protection (Global Alliance of National Human Rights Institutions, 2002). Whilst, these criticisms are well founded, regional elites and ASEAN practitioners cautioned against over expectations. Chalermpananupap has argued that advocates and critics expected too much and that creating a commission that would openly challenge member states was simply not within the bounds of regional realities (Chalermpananupap, 2009a; 2009b). Tommy Koh, a seasoned Singaporean ambassador provided a more nuanced view stating that AICHR has a tongue, and a tongue has its uses (Koh, 2009).

In this paper the author argues that structural and legal limitations to AICHR protecting human rights find their origins in the intersection of human rights and state sovereignty. ASEAN as an intergovernmental organization comprised of politically, economically and developmentally diverse states prioritize state sovereignty above other principles, human rights being one such principle. As such there is little hope for protection of human rights coming from AICHR. Rather, AICHR can be understood as a tepid first step into human rights institutionalism in ASEAN. Only after all ASEAN member states and elites are comfortable and not fearful that AICHR will not encroach on state sovereignty will AICHR evolve into an effective mechanism for the protection of human rights.

The paper will analyze the Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights in order to identify the legal and structural limitations which inhibit AICHR's protective capability. The paper will also advance two arguments; the first is that at the intersection of protecting people's rights and state power, ASEAN leaders chose and will continue to choose protecting state power. Second, the sequencing of AICHR establishment and AHRD drafting clearly indicates that human rights is a political rather than developmental or civic issue area without a clear foundation or universally accepted normative origin. The implications of these two arguments is that regardless of microprocesses




of incremental promotion of AICHR as a whole or individual representatives in aggregate AICHR will not in the near or medium term begin to protect human rights in ASEAN. This argument adds onto the previous claim of deep contestation over ideas and efficacy of human rights as a whole.

METHOD AND REVIEW OF LITERATURE

The primary method of analysis which will be used in this analysis is a legal analysis based on the Terms of Reference of AICHR. The purpose of this analysis is to identify legal and therefore structural impediments that do not allow for AICHR to be a protective regional human rights body. A structural analysis will follow the legal analysis to identify characteristics that accentuate statism and put to the forefront ASEAN member states fears of sovereignty erosion, into an issue area, human rights which member states consider to be part of domestic affairs. This analysis will be strengthened by reference to ASEAN's principle norms of conduct and decision-making which are present and reinforce the statist argument that ASEAN states fear encroachment on state power from human rights. In this sense the way in which AICHR is structured in its legal documents shields member states from human rights criticism while allowing some degree of monitored and policed behavior of AICHR in order to ensure that the mechanism does not threaten state sovereignty.

In general the literature surrounding both AICHR's Terms of Reference (ToR) and the ASEAN Human Rights Declaration (AHRD) are largely critical. Informed commentary point to contradictions in ASEAN's rhetoric and institutional realities of ASEAN as an organization. Bangun argues that with the weak regime design it is largely up to ASEAN member states to implement, promote and protect human rights with AICHR largely being an issue based promotional body. Wahyuningrum analyzes AICHR's ToR, structure and funding. The author finds that the ToR are a constraining force on the activities of AICHR in terms of its activities and interinstitutional cooperation. This is constraint is enhanced by the lack of funding of only \$20,000 per member state and a lack of dedicated staff to support representatives activities and initiatives and engagement of CSOs. Furthermore, the 'independence' of national representatives is seen as being largely based on member state as only three allow for an inclusive form of appointment (Wahyuningrum, 2014). More recently the same author considers AICHR's mandate from the perspective of ASEAN norms and the different positions ASEAN states have towards human rights writ large and how this effected both the ToR for AICHR. The author argues that there are varied understandings of different human rights among ASEAN member states and varied degrees of norm localization that effected the ToR. Specifically, the limitations that are applied to the overall regional framework and ability of AICHR to act within its mandate. This is reflective of 3 primary forces. First, ASEAN's constitutive norms of sovereignty and non-interference. Second, varied notions of universality of human rights. Last, primacy of national interests and interpretations of human rights. The author locates these in the different versions of AICHR ToR, tracing the variations and norm driven behavior of member states towards using ASEAN as a shield from external interference, controlling strictly AICHR funding, challenges to universalism by reference to regional particularities and positions towards certain rights (Wahyuningrum, 2021). Bui voices similar sentiments by considering structural deficiencies, namely, lack of independence of AICHR in terms of being separate from member states. This is seen through funding, ASEAN Chair being AICHR Chair, lack of CSO input and engagement. Last is the bifurcated notion of human rights being understood through regional particularities. This line of thought stems from the Asian Values narrative and bifurcation of human rights leading to a lack of universality. The author takes the line of argument that a regional court of human rights is needed for any meaningful protection of human rights and to allow AICHR to move beyond promotion and promotional activities (Bui, 2016). Phan argues that the ToR which subsumes AICHR to member state wishes and a lack of independence to the AHRD and the tense meetings that led to a compromised document. It is evident that there is cooperation taking place in AICHR seen through AICHR activities such as heavy promotion activities to mainstream human rights, horizontal meetings with external institutions and more engagement with CSOs (Phan, 2019). Gauthier notes similarly that AICHR representatives are not independent of their national governments yet argues that some connection between human rights in ASEAN at the rhetorical level combined with nascent notions of global citizenship bode well for the regional human rights mechanism (Gauthier, 2013).

With regard to AICHR's ToR the scholarly literature points towards a lack of independence of representatives, a restrictive mandate, rotating chair system of 1 year, lack of CSO input into the ToR and engagement with AICHR which lead AICHR to be a purely promotive body. These viewpoints echo a structural argument without highlighting the primary locus of contention which this author argues is state sovereignty which will be elaborated on shortly.



The literature surrounding the ToR is varied but important for a number of respects. First, they all point to a conjuncture period in ASEAN during the late 2000's which was the culminating point of over 25 years of human rights pressure and advocacy coming from outside and inside the region. Second, the issue area of human rights was and continues to be a highly contested area of policy with regard to all ASEAN member states. Third, there are competing forces within and between member states with regard to the issue of human rights with respect to the degree which human rights are either a national or shared regional or regional issue area to be monitored and enforced. Last, human rights in ASEAN reflect not only contestation of power and sovereignty but also normative understanding between the member states. This is the point of entry of the paper to analyze both documents and arrive at a conclusion that both legal documents reflect ASEAN principles and norms but also structurally impede the protective capability of AICHR which make it a largely statist institution.

THE ASEAN INTERGOVERNMENTAL COMMISSION ON HUMAN RIGHTS TERMS OF REFERENCE

This portion will analyze in detail AICHR's ToR to identify the contradictions of purpose in the ToR and AICHR. The author will argue that the ToR itself can be understood as a document which conditions AICHR performance in its totality and structurally limits AICHR functions and capabilities. Lastly, it will be proven that even though the ToR has included legally mandated revision on a 5 year basis there not only has not been a revision going into the ToR's third cycle but there is not likely to be one. The reason for this can be found in the skepticism towards human rights by many ASEAN member states and the perception of human rights as being a threat to state sovereignty and political power in member states. The following will be a section by section analysis of AICHR's ToR which will demonstrate that ASEAN leaders agreed upon a legal and operational framework for AICHR which intentionally limits AICHR's mandate. AICHR's limited mandate reduces its capacity to small scale promotional activities, thematic studies, workshops and small scale awareness campaigns. More importantly, the reason for this lies in the contestation and disagreement over the idea of human rights as an issue area to be protected and establishing a body which would challenge member state power.

PURPOSES AND PRINCIPLES OF THE ASEAN INTERGOVERNMENTAL COMMISSION ON HUMAN RIGHTS

The purposes of AICHR are listed in Article 1 as promoting and protecting human rights (ASEAN, 2012 Article 1.1), upholding rights to peace (Article 1.2), enhancing regional cooperation with a view to complementing national and international efforts on human rights (Article 1.5). The last point is of slight interest as the notion of enhancing intimates capacity which is dependent on resources (human and monetary) which AICHR severely lacks [this point will be elaborated on later].

A few ToR articles demand more elaboration and contextualization with regard to the general argument. Article 1.3 states that AICHR is to contribute to the realization of ASEAN Charter purposes. Reflecting on the ASEAN Charter, the only possible purposes which are viable are in Articles 1.7 and 1.13. Article 1.7 states that a purpose of ASEAN is to "strengthen democracy, enhance good governance and the rule of law and to promote and protect human rights and fundamental freedoms" (ASEAN, 2007 Article 1.7). However, the same article has a self-limiting formulation immediately following which from all of the aforementioned liberal qualities within the context of "with due regard to the rights and responsibilities of the Member States of ASEAN" (Ibid). Rights and responsibilities of member states are embodied in Article 2 of the Charter. Namely, respect for sovereignty (Article 2.a), peaceful settlement of disputes (Article 2.e), non-interference in internal affairs (Article 2.f) and abstaining from using territory of an ASEAN member state to undermine another member state (Article 2.k). Article 1.4 lists promotion of "human rights within the regional context, bearing in mind national and regional particularities...taking into account the balance between rights and responsibilities (ASEAN, 2012 Article 1.4). Lastly, Article 1.6 states that AICHR is to "uphold international human rights standards of the UDHR, VDPA and international human rights instruments to which ASEAN Member States are parties (Ibid Article 1.6).

Principles of AICHR are no different from ASEAN principles which date to the ASEAN's first legal document the Treaty of Amity and Cooperation which has in Article 2 sovereignty and territorial integrity (Article 2.a), no external interference (Article 2.b), non-interference in internal affairs (Article 2.c) and settlement of disputes by peaceful means (Article 2.d) (ASEAN, 1976b). These baseline ASEAN principles are echoed in the ASEAN Charter in Articles 2.a, 2.c, 2.d, 2.e. These principles are fundamental as they guide AICHR's primary purposes of promoting and protecting human rights but are first in a hierarchy of norms and embedded in organizational principles. Second, is the notion of national and regional particularities with which human rights are to be understood. Human rights in ASEAN are not observed, legally enforceable nor recognized via international law on an equal basis by ASEAN member states. The



language of ‘national and regional particularities’ dates back to the Vienna World Conference of 1993 and the Bangkok Declaration which stated the same contextual understanding of human rights (United Nations General Assembly, 1993). This can be understood through the lens that human rights are not universal nor are they indivisible on a legal, hence realistic basis which are recognized and ratified by ASEAN member states. This is further echoed in Article 1.6 which references the UDHR which is not a legally enforced document and has no signatories or the VDPA which is also not a legal document. Instead these two documents, the prior is a part of international customary law and the second is an aspirational United Nation document with no legal standing or enforceability. However, the last point of Article 1.6 is most salient as it points to two fundamentally important baselines of regional reality. AICHR is prescribed to ‘uphold...international human rights instruments to which ASEAN Member States are parties’ (ASEAN, 2012). This assumes or intimates that AICHR has the legal authority to act independently and compel member states to abide by their international legal commitments. AICHR has nothing equating to this authority as posted by Article 3. Article 3 of the ToR clearly state that AICHR is an intergovernmental and consultative body (Ibid). This double formulation is important in the first instance because as an intergovernmental body AICHR via its ten representatives are subject to their own governments and secondly AICHR is only a consultative body. AICHR has no legal or organizational competency to act in any way to uphold a member state’s international legal obligation/s. In this context AICHR’s purpose is to draw attention to a member state’s obligations if AICHR can agree as a whole or an individual representative with like-minded representatives draw attention to a member state’s obligations.

STAUS, MANDATE, REPORTING AND DECISION-MAKING

As was previously mentioned AICHR’s institutional status is one of an intergovernmental body which is a direct correlate of ASEAN and all ASEAN integrative bodies (Ibid). In this context every member state is an equal and no member can impose its will on another member state. Alternatively, whilst ASEAN does not formally vote on any matter, intergovernmentalism essentially means every member has an effective veto over any and all initiatives by simply voicing its concerns and discomfort with motions, projects, ideas or initiatives. This does not imply that member states do so on a regular basis but when a member state is resistant to proposals the measures do pass or become formal agendas or integrative measures. AICHR’s mandate is clearly spelled out in the iterative language used from Articles 4.1 to 4.12. AICHR is to develop, enhance, promote, encourage, provide, engage, consult, develop, prepare everything from thematic studies, implementation of legal instruments, capacity build, public awareness and strategies for promotion and protection (Ibid Article 4). None of AICHR’s mandated areas of competence remotely come close to protective activities, with the possible exception of Article 10. Article 10 allows for AICHR to obtain information from member states on the promotion and protection of human rights (Ibid Article 10). While this sounds as a declaratory power or authority to AICHR, no member states is obligated to comply with any AICHR request. Furthermore, the language assumes that AICHR would act as a collective to obtain information from member states. In reality this is a misnomer as the member state representative of the member state in question would have to agree to any information requested from a member state. Wahyuningrum has intimated and interpreted this article to be an operative article for protective activities and noted that Indonesia had initiated dialogues on thematic issues and presented AICHR with its human rights progress since democratization (Wahyuningrum, 2021). It was further noted that this dialogue was represented at the 48th ASEAN Ministerial Meeting but never followed up on (Ibid). Implicit in this insider perspective is the willingness of a member state to submit to any degree of oversight or even the slightest monitoring of its human rights record and activities. Indonesia willingly submitted to AICHR and engaged in dialogue on a voluntary basis and this the modus operandi of the ‘operational clause’. AICHR does not have the authority to compel any member state to anything regarding human rights, any member state action must be voluntary. AICHR is mandated to report on an annual basis the sum total of its activities in an annual report. This is submitted directly to the Foreign Ministers Meeting indicating a top down approach of political control as AICHR is set with the Political-Security Community pillar of ASEAN Communities (Ibid Article 6).

An analysis of the mandate of AICHR demonstrates with great clarity there exists tension and contestation over the meaning of the idea of human rights writ large but an also over depth of human rights institutionalism. Depth in sense refers to the degree with which member states are willing to transfer authority over human rights to any institution outside of a state’s control. This is laid bear with the principle of Article 2.3 which clearly states that the “primary responsibility to promote and protect human rights and fundamental freedoms rests with each Member State” (ASEAN, 2009). This places AICHR

not just a consultative body but a secondary body of questionable remit. In addition AICHR is disposed to a 'constructive and non-confrontational approach' with development of AICHR to be one of an 'evolutionary approach to the development of human rights norms and standards in ASEAN (Ibid Articles 2.4, 2.5). Taken together AICHR is a secondary body to which limited if any value addition in human rights is to take place on a non-confrontational basis (no matter what human rights issues arise) and that the current plain of human rights is one of fractious diversity with little to no commonality of understanding nor purpose. To be more generous of Article 2.5 would be to interpret an evolutionary approach to norm development to be norms found in the ASEAN Human Rights Declaration which will be elaborated on below.

PERSPECTIVES ON AICHR'S TERMS OF REFERENCE

From the above analysis it can be clearly understood that AICHR's ToR have significant limitations embedded within the text. The ToR clearly structure AICHR to be 'supervised' human rights institution within the principles of ASEAN as an organization. The consultation and consensus decision making process does not allow for state veto but as a cultural understanding national representatives understand and do not press issues that are considered sensitive or elicit pushback from other representatives. However, practitioners have noted two interesting trends within the ToR. Chalermphanupap has argued that to expect a strong and critical body would be to relieve oneself from regional realities and that a cautious 'evolutionary' approach is appropriate for the ASEAN context (Chalermphanupap, 2009b). This perspective is echoed by Muntarbhorn who also sees AICHR through an evolutionary lens but takes the legal aspect further by arguing that what isn't prohibited in the ToR is 'legally' acceptable (Muntarbhorn, 2013). The view of an evolutionary, wait and see, cautious approach is indeed rooted in regional realities. However, the legal view that what isn't prohibited, is allowed is detached from AICHR's structural realities. For AICHR to act as a single institutional entity, consensus must be achieved. Otherwise, individual representatives are on their own to speak and/or advocate for particular issues. This has indeed been engaged in, but it is on an individual basis, hence does not carry the collective weight of collective institutional force. Doyle has succinctly noted that there is no judicial body even considered within the text and instead falls back to an interpretation that AICHR is a weak promotional body with consultative status with regard to sensitive political issues (Doyle, 2013).

Since, AICHR's establishment the region has seen three large crisis's. These crisis are the 2014 military coup in Thailand, 2017 ethnic cleansing and alleged genocide of Rohingya in Myanmar and the 2021 military coup in Myanmar and political violence which continues to present. At no point in these crisis did AICHR issue a single statement as an institutional entity. AICHR did not respond to the 2014 coup in Thailand, nor did it react in any way with regard to the subsequent deterioration of human rights in Thailand during the five year junta government. In fact Thailand's representative Dr. Seree Nonthasoot did not raise concerns as "we all know that AICHR has a tacit agreement not to discuss such an issue" as it would only backfire (Ashayagachat, 2014). The ethnic cleansing in Myanmar by the military elicited no response from AICHR as a collective but two representatives from Indonesia and Malaysia did voice concern and call for an end to the violence (Septiari, 2018). Whilst, the 2021 coup in Myanmar and subsequent mass violence by the military received a strong response by former AICHR representatives and current representatives from Indonesia, Malaysia, Singapore and Thailand (SOC DEM ASIA, 2021; Department of Foreign Affairs, 2022). The last two examples of human rights advocacy are of interest. The first as it involves former AICHR representatives from Indonesia, Malaysia, Thailand, Philippines and Singapore. This statement is from former representatives and outspoken advocates but they do not carry the weight of current representatives or AICHR as a whole. The second is more instructive of AICHR capacity as the statement was issued by current representatives but again this was in the context of individual representatives, not AICHR as a collective body. This points towards AICHR as a statist institution with national representatives that sometimes represent their government and are fully not independent. Secondly and more to the point of this text is the fissure point between protecting human rights against the state and state action and state sovereignty. Given that AICHR is an intergovernmental institution, in order for AICHR to speak with one voice and have a strong basis of legitimacy and force of word it would have to have consensus of all members. Most importantly, the member state representative of the state committing human rights abuses.



DISCONNECTION BETWEEN ESTABLISHING A HUMAN RIGHTS BODY AND A HUMAN RIGHTS DECLARATION

This portion will be focus on the sequence of establishing AICHR and the drafting of the ASEAN Human Rights Declaration. The purpose of this brief analysis is to shine light on the disconnect that exists only within ASEAN as a regional organization. All other regional organizations of note which have a credible regional human rights body have first drafted and agreed upon a document which embodies their normative beliefs which are then formed into a legally binding text. After the drafting, signing and ratification of a regional human rights document have other regional organizations established the representative human rights body.

An interesting perspective which has not been studied is the sequence of the establishment of AICHR and the ASEAN Human Rights Declaration. The fact that AICHR was established prior to ASEAN having a regional human rights document which articulated its norms and understandings towards human rights is not only a curious oddity but an important one from the perspective of the intersection of politics, sovereignty, human rights and norms. All other major regional organizations/conglomerations, Organisation of African Unity/African Union, Association of American States and Europe through the Council of Europe all agreed to the draft and final ratification of their respective human rights treaties/declarations prior to the establishment of a regional body. The Organization of American States has two human rights documents, the American Declaration of the Rights of Man and the American Convention on Human Rights. It can be argued that the prior is not a binding treaty, which is technically true but the ADRDM stands as a part of customary law and is the normative foundation to the later American Convention on Human Rights.

ASEAN is the only regional organization that sequenced its human rights declaration after its human rights organization. The importance of this is both political and normative. On the first point of being political, the fact that ASEAN could not or would not agree to a human rights declaration is one based in history. The decision to establish a human rights mechanism was made during the negotiations of the ASEAN Charter and the issue of human rights was so contentious that agreement could not be had on a declaration prior to the political need of having a Charter. However, this begs the question of why not have a declaration before an organization. The answer to this is that there is no normative agreement among ASEAN members as to human rights in its totality. But a decision had to be made to establish a human rights organization. Hence as was politically expedient, ASEAN established AICHR with a mandate to draft a declaration. Regional expert Arpee Santiago, Deputy Secretary-General of the Working Group for an ASEAN Human Rights Declaration has noted that this stems from ASEAN leaders not having a normative basis of human rights understanding and hence leaders left it to their appointed representatives to trash out (Interview with Ray Paolo J. Santiago, 2024). The final document could then be negotiated among Foreign Ministers which agreed to the first draft without any comment or issues being raised. In essence, the Foreign Ministers gained legitimacy by having AICHR do the heavy lifting of drafting a human rights declaration at an arms distance from the political leadership (Interview with Kasit Piromya, 2023). As such the regional human rights declaration can be viewed as a purely political document embodying the political software the Foreign Ministers provided to the 1st AICHR.

Table 1: Comparative of regional organizations establishing a human rights body and human rights declaration

Regional Human Rights Document	Year	Regional Human Rights Body	Year
European Convention on Human Rights	1950	European Commission on Human Rights	1954
African Charter on Human and Peoples' Rights	1981	African Commission on Human and Peoples' Rights	1987
American Declaration of the Rights and Duties of Man	1948	Inter-American Commission on Human Rights	1959
American Convention on Human Rights	1969		
ASEAN Human Rights Declaration	2012	ASEAN Intergovernmental Commission on Human Rights	2009

Adapted from regional organizations websites

It can be understood from the sequencing above that first there was no consensus among ASEAN leaders as to what they can fully agree upon regarding human rights. Secondly, the human rights declaration is purely political, but also sheds its political veneer due it being drafted by the AICHR and not ASEAN Foreign Ministers.

CONCLUSION

This paper has argued that human rights stands at the intersection point between the articulation and execution of state power over citizens and people writ large. Human rights as a concept and set of principles acts as barrier of moral, ethical and legal qualities that by their very nature serve to constrain state power, hence elite power of national leaders and state agents. It is at this intersection that ASEAN leaders choose state sovereignty and power over protection of people and human rights. This understanding was articulated during the ASEAN Charter negotiations over the establishment of AICHR. ASEAN leaders view AICHR through the prism of “establishment of a body that serves to protect and promote human rights in ASEAN. A common understanding was agreed that ASEAN needs to establish its own standards for human rights protection and promotion, and that human rights should not be left as an excuse for outsiders to intervene into ASEAN’s own affairs” (Thanh, 2009 p. 102). Until a common normative sensitivity towards human rights can be established regional leaders will continue to view human rights and by extension AICHR through the same skeptical prism. Put simply, in the case of ASEAN and AICHR at the conjuncture point of protecting people from state abuse and atrocities (as is the case in Myanmar currently), ASEAN and AICHR will always choose state sovereignty.

This paper as articulated the problematic nature of human rights in ASEAN and more specifically, its regional human rights mechanism, the ASEAN Intergovernmental Commission on Human Rights. It has been argued and proven that there exists an uncomfortable relationship between human rights and state sovereignty. In the case of ASEAN these two competing strands of interstate relations are incompatible. Human rights are fundamental protections from state abuse whilst state sovereignty is the fundamental building block of international and interstate relations. In ASEAN when these two competing strands of thought intersect state sovereignty will always take precedence. In this sense the structure of AICHR is one which is designed to protect states from undue interference and criticism of their actions and policies whilst clothed in a veil of human rights protective normativity. In essence a rhetoric and reality gap which is perpetual and structured to supervise a human rights mechanism that many ASEAN members view with skepticism and distrust. In this regard it is unlikely that AICHR will develop any protective mandate in the near or medium term future. Lastly, as AICHR heads into its 3rd ToR revision cycle, any progressive revision is not likely. This is evidenced by the fact that since 2019 ASEAN leaders have agreed to establish an expert panel to study and propose revisions to AICHR’s ToR. To the day of this writing all ASEAN members have not appointed representatives to the revision body (Septiari, 2019).

ACKNOWLEDGEMENTS


This research has IRB Ethics Approval from the Institute of Population and Social Research, Mahidol University

Project Number IPSR-IRB 2023-037

Approved February 23, 2023

REFERENCES

- [1] ASEAN (2009). *ASEAN Intergovernmental Commission on Human Rights (Terms of Reference)*. [online] Jakarta: ASEAN Secretariat. Available at: <https://aichr.org/wp-content/uploads/2020/02/TOR-of-AICHR.pdf> [Accessed 18 Jun. 2023].
- [2] ASEAN (2012a). *ASEAN Human Rights Declaration*. [online] ASEAN. Available at: <https://asean.org/asean-human-rights-declaration/> [Accessed 9 May 2022].
- [3] ASEAN (2012b). *AICHR: What You Need to Know*. [online] Available at: https://aichr.org/wp-content/uploads/2019/02/web_FA_AICHR_19102012_FINAL.pdf [Accessed 14 May 2022].
- [4] ASEAN (2012c). *The ASEAN Human Rights Declaration and the Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration (AHRD)*. [online] Available at: https://asean.org/wp-content/uploads/2021/01/6_AHRD_Booklet.pdf [Accessed 14 May 2022].
- [5] Ashayagachat, A. (2014). *ASEAN turns deaf ear to concerns on rights in Thailand*. Bangkok Post. [online] 14 Aug. Available at: <https://www.bangkokpost.com/opinion/opinion/427190/asean-turns-deaf-ear-to-concerns-on-rights-in-thailand> [Accessed 15 May 2024].
- [6] Bui, H. (2016). *The ASEAN Human Rights System: A Critical Analysis*. *Asian Journal of Comparative Law*, 11(1), pp.111-140. doi:<https://doi.org/10.1017/asjcl.2016.9>.
- [7] Bwa, A. (2009). *The Jewel in My Crown*. In: T. Koh, W. Woon and R.G. Manalo, eds., *The Making of the ASEAN Charter*. Singapore: World Scientific, pp.27-36.
- [8] Chalermphanupap, T. (2009a). *10 Facts about ASEAN Human Rights Cooperation*. [online] Available at: <https://asean.org/wp-content/uploads/images/archive/HLP-OtherDoc-1.pdf> [Accessed 9 May 2022].

- 
- [9] Chalermpanupap, T. (2009b). In Defence of the ASEAN Charter. In: T. Koh, R.G. Manalo and W. Woon, eds., *The Making of the ASEAN Charter*. Singapore: World Scientific, pp.117-135.
- [10] Department of Foreign Affairs (2022). AICHR Philippines Joins Indonesia, Malaysia, Singapore, Thailand in Calling an End to Violence in Myanmar. [online] Republic of the Philippines. Available at: <https://dfa.gov.ph/dfa-news/dfa-releasesupdate/30924-aichr-philippines-joins-indonesia-malaysia-singapore-thailand-in-calling-an-end-to-violence-in-myanmar>.
- [11] Doyle, N. (2013). The ASEAN Human Rights Declaration and the Implications of Recent Southeast Asian Initiatives in Human Rights Institution-Building and Standard-Setting. *International and Comparative Law Quarterly*, 63(1), pp.67-101. doi:<https://doi.org/10.1017/s0020589313000390>.
- [12] Gauthier, M. (2013). The ASEAN and the Idea of a Global Citizenship. *GSTF International Journal of Law and Social Sciences*, 3(1), pp.36-41. doi:https://doi.org/10.5176/2251-2853_3.1.135.
- [13] Global Alliance of National Human Rights Institutions (2002). Paris Principles. [online] GANHRI. Available at: <https://ganhri.org/paris-principles/>.
- [14] Gomez, J. and Ramcharan, R. (2012). The Protection Of Human Rights In Southeast Asia: Improving The Effectiveness Of Civil Society. *Asia-Pacific Journal on Human Rights and the Law*, 13(2), pp.27-43. doi:<https://doi.org/10.1163/138819012x13323234710062>.
- [15] Jones, W.J. (2015). Theorising Human Rights: An Analytical Framework for ASEAN. *Journal of Alternative Perspectives in the Social Sciences*, 6(4), pp.461-492.
- [16] Muntarborn, V. (2013). *Unity in Connectivity?* Leiden: Martinus Nijhoff Publishers.
- [17] Piromya, K. (2023). Interviewed by William J. Jones 18 September, Bangkok.
- [18] Phan, H.D. (2019). Promotional versus protective design: the case of the Asean intergovernmental commission on human rights. *The International Journal of Human Rights*, 23(6), pp.915-937. doi:<https://doi.org/10.1080/13642987.2018.1562919>.
- [19] Santiago, R.P.J. (2024). Interviewed by William J. Jones 30 April, via Zoom.
- [20] Septiari, D. (2018). AICHR reps call for regional approach to Rohingya crisis. [online] *The Jakarta Post*. Available at: <https://www.thejakartapost.com/seasia/2018/04/23/aichr-reps-call-for-regional-approach-to-rohingya-crisis.html> [Accessed 15 May 2024].
- [21] Septiari, D. (2019). ASEAN to form panel to review mandate of rights body - Fri, November 1, 2019. [online] *The Jakarta Post*. Available at: <https://www.thejakartapost.com/news/2019/11/01/asean-form-panel-review-mandate-rights-body.html> [Accessed 15 May 2024].
- [22] SOC DEM ASIA (2021). OPEN STATEMENT REGARDING THE COUP, ARBITRARY ARRESTS AND DETENTIONS BY THE MILITARY IN MYANMAR. [online] SocDem Asia. Available at: <https://socdemasia.com/latest/news/open-statement-regarding-coup-arbitrary-arrests-and-detentions-military-myanmar> [Accessed 15 May 2024].
- [23] Thanh, N.T. (2009). The Making of the ASEAN Charter in My Fresh Memories. In: T. Koh, R.S. Manalo and W. Woon, eds., *The Making of the ASEAN Charter*. Singapore: World Scientific, pp.95-105.
- [24] Wahyuningrum, Y. (2014). The ASEAN Intergovernmental Commission on Human Rights: Origins, Evolution and the Way Forward. [online] Stockholm: International Institute for Democracy and Electoral Assistance (IDEA), pp.1-36. Available at: <https://www.idea.int/sites/default/files/publications/the-asean-intergovernmental-commission-on-human-rights-origins-evolution-and-the-way-forward.pdf> [Accessed 9 May 2021].
- [25] Wahyuningrum, Y. (2021). A decade of institutionalizing human rights in ASEAN: Progress and challenges. *Journal of Human Rights*, 20(2), pp.158-175. doi:<https://doi.org/10.1080/14754835.2021.1875811>.