



FACULTAD DE HISTORIA,
GEOGRAFÍA Y CIENCIA POLÍTICA
PROGRAMA DE ESTUDIOS ASIÁTICOS

Documentos de Trabajo en Estudios Asiáticos No. 4
Diciembre 2010



Rhetoric or substance:
The attitude of East Asian states towards human rights treaties, and
the possible development of a regional human rights mechanism

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Documentos de Trabajo en Estudios Asiáticos

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Introduction

The first article of the Universal Declaration of Human Rights holds that “all human beings are born free and equal in dignity and rights”(UNDHR 1948). However, the concept of human rights, as envisaged by this document and subsequent United Nations human rights treaties, continues to evolve from its origins in a relatively modern movement which developed after the Second World War in Europe. What might be described as the human rights movement still struggles to gain acceptance beyond the borders of its origins, as there is no universal consensus on what constitutes human rights. The final frontier in the campaign for universal human rights is the Asian region, the only region without a human rights mechanism. This region is the subject of this study.

An exploration of “attitudes of Asian states”¹ towards human rights treaties requires some examination of the values and socio-political environments likely to inform those attitudes. While public comments by the leaders of those states on the relevance and potential application of international and/or regional human rights mechanisms to their states are reasonably clear (and often direct), the sustainability of these evident attitudes is less clear, especially as East Asian states continue to grow economically, enhance their engagements with globalised economies and information networks and increasingly have to navigate Western concepts – including the formal and informal rights frameworks which are intermingled with terms and processes for transnational trade and finance.

I have focused particularly on China as the central State in the Asian region, with peripheral focus on other states in North and South-East Asia. As the major geo-political power in the region, China exerts considerable, and growing, economic and political influence regionally and internationally; and in terms of human rights issues, China has an enduring and high international profile. Moreover, many of the other adjacent states such as the Koreas, Vietnam, Mongolia and Singapore, have related cultural backgrounds. However, it is important not to over-simplify culture and history in the Asian region, which exhibits considerable diversity in cultural, historical, linguistic and religious traditions both between and frequently within states.

¹ In this study, “Asian states” refers to sixteen states in North and South-East Asia; namely, the People’s Republic of China (China), Mongolia, Japan, the Republic of Korea (South Korea), the Democratic People’s Republic of Korea (North Korea), Vietnam, Thailand, the Lao People’s Democratic Republic (Laos), Cambodia, Myanmar, Singapore, Malaysia, Brunei Darussalam, the Philippines, Indonesia and Timor Leste.

There will also be a strong focus on the states in South-East Asia, in particular the members of the Association of South-East Asian Nations (ASEAN),² as this organisation shows the greatest promise of developing a human rights mechanism.

In this essay I will explore the ratification and implementation of human rights treaties in the Asian region, and develop the proposition that there remain significant barriers to the development of a regional body for human rights in this region. In Part I, I will outline the cultural relativist debate. Part II contains an analysis of the application of human rights treaties in the Asian region. Part III will consider the possibility of a human rights mechanism in the Asian region.

² The eight member states of ASEAN are Myanmar, Thailand, Cambodia, Laos, the Philippines, Singapore, Indonesia, Brunei Darussalam and Malaysia.

PART I Cultural Relativism?

Are human rights universal, or are they only relevant to Western traditions? This issue has been raised by debates over the existence of ‘Asian values’, as distinct from ‘Western’ human rights ideals. The cultural relativist debate is a protracted one, and I do not intend to undertake an in-depth analysis here (see, for instance, Avonius and Kingsbury 2008); my intention is to highlight the main arguments raised in the ‘Asian values’ debate.

The human rights paradigm developed in the West following the end of the Second World War. It has since been associated with Western, liberal democracy systems, which have extended their scope to champion human rights ideals in the developing world. The emphasis in the West has been on civil and political freedoms, as encompassed in the International Covenant on Civil and Political Rights (ICCPR), despite the United Nations declaring both the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR), with its emphasis on basic needs such as food and housing, to be equal. The pressure from the West to enforce civil and political rights is met with resistance from China, among other states in the East Asian region. China’s claim is that the international human rights regime is not compatible with so-called Asian values, in which the rights of the community are valued over the individual (Man Yee 2008: 26).

The Asian region is not without its own traditions in which the individual is endowed with rights, dignity or responsibility. Man Yee Karen Lee has asserted that the Confucian and Islamic traditions have ideas relating to human dignity akin to the human rights ideals advocated in the West:

“The moral imperatives contained in the thoughts of Confucius and Mencius...mirror the central theme of Art 1 of the UDHR: “All human beings are born free and equal in dignity and rights.”...Indeed... Peng-Chun Chang, one of the six Asian members of the Committee on Social, Cultural and Humanitarian Affairs which reviewed the near-final draft of the UDHR, was a Confucian philosopher and educator. He was reported to have influenced the formulation of Art 1 by supporting the injection of the idea of *ren* into its wording” (Man Yee 2008: 20).

Another key tenet of those who champion Asian values is the concept of state sovereignty, the non-interference of the international community in the internal affairs of a state. This was articulated officially in the 1993 Bangkok Declaration on human rights in the Asian region, which put forward an alternative to the global human rights regime, “reaffirming the principles of respect for national sovereignty, territorial integrity and non-

interference in the internal affairs of States” (Bangkok Declaration 1993). China’s policy towards human rights has a particular emphasis on the principle of state sovereignty, displaying a strong hostility towards outside interference. State sovereignty is considered the foundation and basic guarantee on human rights in China, a view which developed as a result of foreign incursions into China during the 19th and 20th centuries. China’s response to criticism from the UN Human Rights Commission highlights what they consider to be hypocrisy in the approach of the Western-led human rights campaign (Steiner, Alston and Goodman 2007: 79-792). It is noteworthy, however, that China has not offered any defence for its own conduct in the field of human rights, simply taking the position that it is not answerable to anyone in this regard. Other key defenders of the concept of Asian values include the former prime minister of Singapore, Lee Kuan Yew (see Zakaria 1994: 109), and the former prime minister of Malaysia, Mahathir Mohamad. Mahathir has said of Western democracies that:

“They still consider their values and political and economic systems better than any others. It would not be so bad if it stopped at that; it seems, however, that they will not be satisfied until they have forced other countries to adopt their ways as well. Everyone must be democratic, but only according to the Western concept of democracy; no one can violate human rights, again according to their self-righteous interpretation of human rights. Westerners cannot seem to understand diversity, or that even in their own civilization values differed over time” (Mahathir and Ishihara, 1995: 75).

Sovereignty may be a necessary condition for the internal development of a human rights regime, but it alone does not guarantee against human rights violations. An article in a Chinese academic journal asserts that the general consensus amongst Chinese government and domestic scholars is that human rights have borders – and that, should sovereignty be imposed upon, there could be no real protection of the rights of individuals in the state. However, the author also admits that, while states are the greatest protectors of human rights, they could also be the greatest abusers of them (Zhou 2005: 27). Jack Donnelly shares this view, stating that “sovereignty is typically that mantle behind which rights-abusive regimes hide when faced with international human rights criticism” (Donnelly 2005: 70).

In this context, I observe that many of the more prominent, powerful and vocal supporters of Asian values are leaders of States the governance of which are autocratic in nature and who are often most strident when drawing on those values to justify media and political controls. These leaders may purport to uphold Asian values and to speak on behalf of their communities while simultaneously enforcing mechanisms which prevent dissident or alternative views in their communities being aired.

Another important consideration in the cultural relativist debate within Asia is the variations between cultures and traditions in the East Asian region, in which a wide range of political and religious views are to be found. For example, there is a world of difference between the autocratic atheist regime in China, and the sprawling Muslim democratic state of Indonesia. It would be difficult to argue, for instance, that the 'Asian values' of a Tokyo businessman and a Vietnamese farmer coincide. The Asian region is home to half the world's population, containing considerable ethnic, linguistic and religious diversity; in fact, the "temptation to see Asia as a single unit reveals a distinctly Eurocentric perspective" (Man Yee 2008:13).

Andrew Nathan asserts that human rights principles are universal in nature, as "they have sprung up virtually everywhere because of their widespread applicability to the modern conditions" (Li 2006: 99). He claims that China would have invented human rights had the idea not first emerged elsewhere, due to conditions related to the rise of the modern state (Li 2006: 99). Indeed, there is at least consensus in the Asian region on what constitutes 'fundamental' universal human rights, at least in official rhetoric.

Human rights issues emerge from problems created by the rise of the modern state, such as economic and political inequalities and the tensions that these bring. The modern state itself can be a chief perpetrator of human rights violations, especially when their institutions remain rigid and inflexible in reaction against fluid, modernising social conditions. The cultural relativist debate will endure, but the chief objective here is to determine the genuine will of the people within states and beyond, be it as individuals or communities. Political freedoms, particularly democratic principles, should contribute to this goal. The words of the late party chief Zhao Ziyang, purged from the Chinese Communist Party following his disagreement regarding the imposition of martial law in Tiananmen Square in 1989, are pertinent here:

"If a country wishes to modernise, not only should it implement a market economy, it must also adopt a parliamentary democracy as its political system. Otherwise, this nation will not be able to have a market economy that is healthy and modern, nor can it become a modern society with a rule of law. Instead it will run into the situations that have occurred in so many developing countries, including China: commercialisation of power, rampant corruption, a society polarised between rich and poor" (Zhao 2009: 270).

PART II Asian States and Human Rights Treaties

There are many limitations in the ratification and implementation of human rights treaties in the Asian region. This is due in part to cultural beliefs and traditions, but in many ways is also related to the lack of political will on behalf of the states to implement and comply with international human rights law. States, in this context, are ultimately responsible for the implementation of human rights within their borders, as international human rights monitoring is restricted in its jurisdiction:

“Implementation therefore relies very much on the conventions accepted by states, on publicity of abuses through the UN resolutions, reports, and investigative missions, on systematic review and assessments of individual members’ performance in relation to treaty obligations, and on different forms of international persuasion or shaming. Above all, it relies on states’ political will to comply” (Kent 1999: 10).

Ann Kent has discussed the five stages of international and domestic compliance to human rights treaties. They are: 1) the accession to treaties; 2) procedural compliance with reporting; 3) substantive compliance with the requests from the relevant UN body; 4) implementation of domestic law in accordance with international standards; and 5) compliance at the level of domestic practice (Kent 1999: 7).

In Part II I will consider each of the core UN human rights treaties in terms of their legal application and effectiveness in Asian states. I will look at the issue of signature and ratification of human rights treaties in the region, then proceed to give examples of effectiveness in terms of the reporting mechanisms where appropriate.

International Convention on the Elimination of All Forms of Racial Discrimination (CERD):

Eleven of the sixteen Asian states are parties to CERD, the first of the multilateral human rights treaties. North Korea, Myanmar, Brunei Darussalam, Singapore and Malaysia are yet to sign or ratify.

China ratified CERD on the 29th of December, 1981. In its most recent report to the UN Committee on the Elimination of Racial Discrimination, China quoted its state Constitution, which reads that “all ethnic groups in the People’s Republic of China are equal” (UN CERD: 2009). Also, in its recent Universal Periodic Review to the Human Rights Council, China stated that “China safeguards the right of ethnic minorities to use

and develop their own spoken and written languages, endeavours to protect their cultures and respects their customs, habits and religious beliefs” (Human Rights Council 2009: 17). However, the CERD Committee had numerous concerns regarding the treatment of ethnic minorities in China in its subsequent observations, including comments regarding the disproportionate use of force against and detentions of Tibetans and Uighurs in the 2008 riots; high rates of unemployment amongst racial minorities and greater obstacles to health care and services; concern that Chinese Mandarin is becoming the sole language of tuition in minority areas, and barriers to the enjoyment of the right to freedom of religion (UN CERD: 2009). Religion in particular can be a central tenet of identity for ethnic minorities, most notably for the Muslim Uyghurs in Xinjiang and the Tibetan Buddhists in the Tibetan Autonomous Region and surrounding areas.

International Covenant on Civil and Political Rights (ICCPR):

The ICCPR is considered – along with the ICESCR (below) – to form a part of the International Bill of Rights for States, both being integral to the realisation of universal human rights. The ICCPR deals with those civil and political freedoms such as freedom of religion, speech and assembly, due process and the right to life.

In the East Asian region, ten of the sixteen states under study are parties to the ICCPR. The states of Myanmar, Singapore, Malaysia and Brunei Darussalam are neither parties nor signatories. China has signed the ICCPR, but is yet to ratify it. In 1997, North Korea took the unprecedented step of requesting a withdrawal from the ICCPR, but was refused on the grounds that the Covenant was not a treaty which permitted withdrawal (Evatt 1999: 215). Only the Philippines and the Republic of Korea have made a declaration recognising the competence of the Human Rights Committee in accordance with article 41 of the Covenant.

China has signed but not ratified the ICCPR, and according to the principle of *pacta sunt servanda*, is not bound by that which it has not officially consented to. However, China is a party to the Vienna Convention on the Law of Treaties, and is legally bound to refrain from acts defeating the object and purpose of the ICCPR according to article 18 of that treaty. In the following passages I will discuss examples of derogations China has made from the ICCPR, in particular from articles 7 (referring to the right not to be subjected to torture or cruel, inhuman or degrading punishment) and 14 (the right to a fair trial, including the presumption of innocence).

The preliminary question is whether or not these articles are integral to the object and purpose of the treaty. Article 4 of the ICCPR states that no derogations shall be made

from, *inter alia*, article 7, even in the event of a public emergency; this could be considered evidence that this article is central to the object and purpose of the treaty, violating the physical integrity of the person. This principle is further elaborated in the Convention Against Torture and other Cruel, Inhuman or Degrading Punishment, signed and ratified by China, which will be discussed below. The Preamble of the ICCPR states that “the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights”. The object and purpose of the ICCPR is therefore the protection of civil and political freedoms, which requires a transparent and impartial criminal justice system; the right to a fair trial could be said to be central to this principle.

Some of the major issues concerning China’s judicial system, running contrary to the ICCPR, are the lack of a presumption of innocence – fundamental to upholding the ideal of a fair trial – the use of torture in criminal and political investigations, an excessive use of judicially sanctioned death penalty, and a lack of judicial independence (Wan 2007: 743). Civil and political rights were up until recently at particular risk during the “strike hard” campaigns (no longer enforced), in which officials attempted to crack down on crime through swift and brutal punishments (Ip, Liu and Ling 2007: 32).

The work of defence lawyers in China is also severely restricted. Lawyers do not have the right to demand materials from government agencies and departments, unlike the prosecution; disclosure remains discretionary. Additionally, lawyers risk court detention for defending their client too “vigorously” (Zhou 2005:179, Wan 2007: 747).

Freedom of religious expression is also a contested issue in China, as discussed above in regard to CERD. Article 18 of the ICCPR stipulates that freedom of religion should only be limited as prescribed by law, and “necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.” The Chinese Constitution allows for freedom of religion, but this “freedom” is subject to severe controls, especially in the areas of Tibet and Xinjiang (Human Rights Watch and Human Rights in China 2005:17).

The issues highlighted above relating to China are similar to those raised by the Human Rights Committee in regard to Vietnam. Regarding article 14, the Committee was “concerned that the judicial system remains weak owing to the scarcity of qualified, professionally trained lawyers, lack of resources for the judiciary and its susceptibility to political pressure. The Committee is also concerned that the Supreme People’s Court is not independent of government influence” (UN Human Rights Committee 2002). The Committee also expressed concern about a possible violation of article 18 of the Covenant, stating that they had received information “that certain religious practices are repressed or strongly discouraged in Vietnam” (UN Human Rights Committee 2002).

The Committee noted that state reporting on this matter had been insufficient. Issues such as freedom of expression and association were also raised in the report.

In regard to Thailand's compliance with the ICCPR, the Committee raised its concerns over certain incidents involving serious human rights violations committed by organs of the state. They mentioned in particular the instances of killings and ill-treatment during the Tak Bai incident of October 2004, the Krue Se mosque incident on 28 April 2004, and the killings which resulted from the "war on drugs" beginning in February 2003 (UN Human Rights Committee 2005: 2).

International Covenant on Economic, Social and Cultural Rights (ICESCR):

The ICESCR encompasses economic, social and cultural rights such as the right to adequate health, education and social security, and labour rights.

Of the sixteen states in the region, twelve are state parties to the ICESCR; this figure includes China, which has not ratified the ICCPR. Myanmar, Singapore, Brunei Darussalam and Malaysia are not parties.

The Committee on Economic, Social and Cultural Rights commended the Philippines for having ratified all core UN human rights treaties, whilst expressing regret as to the 11-year delay in the report. In its Concluding Observations, the Committee applauded the Philippines for its adoption of a number of legislative measures in keeping with the provisions of the Covenant. The Committee went on to highlight a number of issues relating to compliance with the ICESCR. These included the low level of national spending on social services (article 2, para. 1), the low levels of minimum wages (articles 7 and 11), and the continued high level of trafficking in women and children (article 10) (UN Committee on Economic, Social and Cultural Rights 2008).

North Korea's human rights violations were highlighted by the ICESCR Committee in their Concluding Observations of the state report in 2003, although mention was made of the North Korea's willingness to continue to cooperate with the Committee. The issues they raised were varied and of a grave nature, and included: concern for the attitudes and practices which negatively affect women; concern over the system of compulsory state-allocated employment; and the high rate of children under five who are malnourished and the high incidence of poverty-related disease. The Committee did however commend North Korea for its implementation of a free, universal 11-year education system (UN Committee on Economic, Social and Cultural Rights 2003).

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

All of the Asian states under consideration are parties to CEDAW. However, the four states of Brunei Darussalam, Singapore, Thailand and Malaysia have entered substantial reservations. Some of these include reservations to articles that the CEDAW Committee considers central to the object and purpose of the treaty, articles 2 (on policy measures) and 16 (on marriage and family life). Both Brunei Darussalam and Malaysia made general reservations to the treaty, stating that they would only follow the provisions of the treaty to the extent that they were in keeping with Islamic Shariah Law; consequently, for instance, Malaysia did not consider itself bound by articles 2 (f), 5 (a), 7 (b), 9 and 16 of CEDAW. Many European nations objected to the reservations made by these countries, particularly those made by Brunei Darussalam and Malaysia, on the basis that they were vague and imprecise, and “incompatible with the object and purpose of the treaty” (Linton 2008: 464-467).

Upon questioning by the CEDAW Committee in regard to its reservations, Malaysia was forthcoming in providing answers, and stated that they were undertaking a review of its internal laws in this regard. Malaysia explained in detail the laws governed by Shariah which affected women, stating that the Shariah:

“...not only accords recognition to women but also guarantees their rights. With the advent of Islam, women’s status is alleviated from the position of women during the pagan era, where women were considered as lesser beings compared to men and were continuously oppressed by society” (UN Committee on the Elimination of Discrimination against Women 2006: 3).

Singapore entered a large number of reservations, including to articles 2 and 16, on the basis that Singapore was a “multi-racial and multi-religious society” and in order for these minorities to maintain their laws, Singapore would only be bound by these two articles so long as they did not comply with internal religious or personal laws. This was in reference to Singapore’s Muslim minority. It could be said, then, that the only point of division amongst the ASEAN states in terms of how they view the rights stipulated in CEDAW is related to Islamic law; however Indonesia, the largest Muslim nation in the world, did not enter any such reservations of this kind.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

The Convention against Torture contains the fewest number of state parties in the Asian region. North Korea, Myanmar, Singapore, Brunei Darussalam, Malaysia, Vietnam and Laos are yet to sign or ratify. China is a party, but it does not recognise the competence of the Committee Against Torture; Indonesia only recognises the Committee so long as it acts “in strict compliance with the principles of the sovereignty and territorial integrity of States” (UN Convention Against Torture 1984). China, Indonesia and Thailand do not allow for arbitration between states, as stipulated in article 30, paragraph 1 of the Convention.

Although China has ratified CAT, the use of torture to intimidate or extract a confession from a defendant in that state is routine, despite the existence of a prohibition on torture to extract confessions in the Criminal Procedural Law (UN Committee Against Torture 2008; Leng 2005: 51; Ip, Liu and Ling 2007: 30-31). This is a particularly disturbing issue when it comes to those convictions for which the penalty is death. The number of executions in China is classified as a state secret, but the numbers estimated to be by far the highest in the world.³ In 1996, Hujileitu, an 18-year-old from Inner Mongolia, was executed on charges of murder; in 2005, the Xinhua News Agency reported that the real killer had confessed. Hujileitu’s family claimed that he had been tortured into confessing to the crime (Ip, Liu and Ling 2007: 26). After the disappearance of his wife, She Xianglin was convicted of her murder and sentenced to 15 years in prison, and only released after she unexpectedly reappeared in 2005. His conviction was attained through torture (Leng 2005: 51).

The CAT Committee has encountered difficulty in reporting on the implementation of the Convention in Asian states. For instance, Cambodia’s initial report was nine years late, and the Committee noted that it contained a “paucity of information on the practical enjoyment in Cambodia of the rights enshrined in the Convention”. The conclusions and recommendations of the Committee included, *inter alia*, concerns about the “numerous, ongoing and consistent allegations of acts of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement personnel in police stations and prisons”, and the “ineffective functioning of the criminal justice system, particularly the lack of independence of the judiciary as well as its inefficiency” (UN Committee Against Torture 2004).

³ According to Amnesty International, in 2008 over 1718 people were executed in China, over half the amount of people executed world-wide. See www.amnesty.org/en/death-penalty

Convention on the Rights of the Child (CRC)

All of the sixteen Asian states are parties to the CRC. Again, Singapore, Brunei Darussalam and Malaysia have entered significant reservations to this treaty; Brunei Darussalam and Malaysia on the basis of compliance with Islamic law and their domestic constitutions, and Singapore on the basis of their existing socio-political situation and domestic laws. Singapore's reservation was of particular note (Linton 2008: 474):

The Constitution and the laws of the Republic of Singapore provide adequate protection and fundamental rights and liberties in the best interests of the child. The accession to the Convention by the Republic of Singapore does not imply the acceptance of obligations going beyond the limits prescribed by the Constitution of the Republic of Singapore nor the acceptance of any obligation to introduce any right beyond those prescribed under the Constitution.

It can be concluded from this statement that Singapore already considered its domestic laws to be sufficient, and no further alterations were required in light of international norms. A number of European states objected to Singapore's reservations on the basis that they invoked domestic law, with Finland and Norway holding them to be incompatible with the object and purpose of the treaty. In 2003 the CRC Committee expressed concern about Singapore's reservations, and called for the withdrawal of its declarations and reservations in regard to the treaty (UN Committee on the Rights of the Child 2003).



The above analysis reveals that there remain inconsistencies in the ratification and implementation of human rights treaties in the Asian region. In the first instance, signature and ratification are not uniform across the board, with states such as Singapore and Malaysia often abstaining from becoming parties to core human rights treaties. Additionally, non-compliance with treaty obligations remains a common experience within the region. In any case, the ratification of a human rights treaty does not in itself imply improved human rights practices; Oona Hathaway has even put forward the notion that treaty ratification can be associated with a worse record of human rights (Linton 2008: 481-482). Nor is compliance with general treaty obligations necessarily related to the number of reservations entered on the treaty; for instance, "one cannot say that Myanmar and Cambodia, with no reservations to either [CEDAW or CRC], are doing better on the rights of their women and children than Singapore, with its

very significant reservations” (Linton 2008: 481). The number of reservations entered by Singapore, Malaysia, Brunei Darussalam and Thailand in regard to CEDAW and CRC illustrate that they are only willing to become parties to human rights treaties on their own terms. Nevertheless, all states in the Asian region are parties to these last two human rights treaties, demonstrating that there is at least a general acceptance of their objectives.

Hathaway suggests that the ratification of human rights treaties by democratic nations is associated with a better human rights record. Non-democratic states, protected under the umbrella of state sovereignty, can in themselves provide a significant obstacle to the realisation of human rights. This is particularly true of countries such as China, where “law has been seen and used as a new and more appropriate tool to repress dissent” (Ming 2007: 746).

PART III Towards A Regional Human Rights Mechanism?

Regional human rights bodies now exist in Europe, the Americas and Africa. These allow for inter-regional social or cultural differences, and focus on particular issues relevant to a given region. A regional human rights body in Asia is now a theoretical possibility. In this section, I will discuss the prospects for the development of such a body and the possible impediments or issues that may arise in its implementation, given some of the issues that have been raised in previous sections.

Some inroads have been made into the possibility of a human rights body in the Asian region. The Asia-Pacific Forum of National Human Rights Institutions, established in 1996, provides an example of a regional organisation working towards cooperation in the field of human rights. Member states include Indonesia, Malaysia, Mongolia, the Philippines, South Korea, Thailand and Timor Leste. The Forum incorporates an Advisory Council of Jurists which advises the APF on human rights law issues.

The greatest prospects of establishing a human rights body lie with ASEAN. In 1993, ASEAN foreign ministers responded to the Vienna Declaration and Programme of Action calling for the creation of regional or sub-regional human rights bodies. During the 13th ASEAN Summit in November of 2007, ASEAN leaders agreed to adopt the ASEAN Charter, which mandated the establishment of a human rights mechanism in the region under article 14. The Working Group for an ASEAN Human Rights mechanism was set up to achieve this goal.⁴

Suzannah Linton argues that the human rights treaties of CEDAW and CRC could be an entry point into establishing a human rights body within the states of ASEAN, as all states are parties to these treaties. “An ASEAN commission could certainly be given a lead role in the drafting and implementation of treaties that crystallise cooperation in, for example, trafficking of women and children, sex tourism, child prostitution, pornography, and adoption etc.”(Linton 2008: 493). She does however caution that such a prospect remains “aspirational” at this point in time (Linton 2008: 490).

Hao Duy Phan commends the efforts of ASEAN states in their lobbying for a human rights provision in the Charter. However, he recognises that the process has only just begun, and there continue to be divisions along state boundaries which hinder progress:

⁴ The Working Group’s website is <http://www.aseanhrmech.org/index.html>

“The process is not over yet. In fact, it has just started. The establishment of an ASEAN human rights body will by no means automatically follow. The powers, functions, mandate, and other design details of such body will depend on the terms of reference (TOR) that remain to be drawn up....[However] The adoption of the ASEAN Charter could be seen as a major step forward in the process of establishing a human rights body for ASEAN. This process has been a long and arduous one, requiring tenacious commitments and involving an enduring struggle. Many efforts have been made by various actors, not least by the governments and NGOs in the Philippines, Indonesia, Thailand and Malaysia, to put into the ASEAN Charter the critical provision mandating a human rights body. The fact that these four states at one point discussed the possibility of a mechanism involving only member-states who are ready for it suggests that there are certain divisions among different groups of ASEAN member-states regarding the possibility of establishing a regional human rights mechanism. This has a lot to do with national human rights practices, political liberalization, and regime security in each country. These factors have had significant impact on the process of establishing a regional human rights body. They will continue to have significant influence on ASEAN activities in general and on regional human rights cooperation in particular” (Hao Duy Phan 2008: 11-12).

Indeed, to date ASEAN’s political rhetoric has yet to translate into real progress in the field of human rights. Razeen Sally has gone so far as to describe the ASEAN Charter as “a paper tiger. It is big on principles and ambitions. Its language is lofty. It codifies existing norms. But it has no real substance” (Sally 2009).

There are significant hurdles to be overcome in the establishment of a regional human rights mechanism encompassing all of East Asia. The lack of compliance and political will amongst Asian states in the implementation of human rights treaties, even amongst sub-regions such as South-East Asia, will be a significant hurdle in the implementation of such a body. There are continuing (some growing, some reducing) geo-political rivalries and distrusts which will be formidable impediments to a regional body; for instance, the historical rivalry between China and Japan, and between North and South Korea. The contrasts in the political systems of states in the region could also be an issue, with genuine democracy yet to be implemented in states such as China, Singapore and North Korea.

Hidetoshi Hashimoto has said that a “plausible explanation” for the lack of a human rights body in the Asian region “might be that state leaders in East Asia have failed to see the need for a regional human rights organisation because of their unwillingness to tolerate human rights movements and their determination to build regimes in which basic human rights are subordinated to other goals of the state” (Hashimoto 2004: 3).

It may be that a regional body would be unable (or at least less likely than an international one) to step outside the local neighbourhood geo-political problems. Moreover, there may be insurmountable problems in choosing experts and leaders of

such a body where the constituency comprises countries for which democracy is either not strong or non-existent. It may also be that some of the key states like China would prefer to operate at a truly international level rather than have issues of importance dealt with in a lower-level regional grouping. It is also unclear as to how a transnational human rights network could be genuinely effective in a region in which principles of state sovereignty and non-interference in domestic affairs are considered paramount.

The lack of ratification of the main human rights treaties by many of the states under consideration is also a factor impeding the prospects of a regional body. China's ratification of the ICCPR would be an important pre-condition in the establishment of a regional body, as the ICCPR is considered alongside the ICESCR to be part of the UN Bill of Rights, integral to international human rights law. The sparse ratification of human rights treaties by Singapore, Brunei Darussalam and Malaysia remains an impediment to a human rights body amongst ASEAN states.

The reporting mechanism is also an inefficient system, with many states submitting their reports years late, if at all. However, this is not an issue exclusive to the Asian region, and has not prevented the development of a regional body in Africa, for instance. Also, where reports are made, they are often detailed and forthcoming, and the very fact that the states are submitting reports indicates a political will to participate, or at least appear to be participating in, the development of international human rights standards.

The establishment of a regional human rights system is a gradual process. It took many years, even decades, to create the bodies that currently exist in Europe, the Americas and Africa. The initial steps have been taken to establish a mechanism in South-East Asia, adapting to the socio-political realities of the ASEAN states. Such a body holds great promise for the human rights cause in the Asian region.

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