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ASEAN Paradigm Shift from a State to People-Oriented Organization: A Neo-Communitarian Perspective

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Abstract

This paper attempts to examine the paradigm shift in ASEAN from a state-based to a people-based organization. We argue that by adopting a people-based organization, ASEAN now enters an era of Neo-Communitarianism replacing the Old Communitarianism of the old generation of ASEAN. By using communitarian perspectives, we look at the continuities and changes in ASEAN with regard to how it deals with issues involving their members. Three important issues namely the debates on intervention principle; the adoption of the three pillars of the ASEAN Community; and the inclusion of human rights are seen as the signposts where ASEAN departs from their Old to a Neo-Communitarianism. Although there have been a lot of challenges to the realization of the people-based organization, we see that the dynamics of debates and the active participation of the community in the debates show good prospects for the new paradigm to realize. In this paper, we use debate on the formation of ASEAN Intergovernmental Commission on Human Rights (ICHR), to show the involvements of people in setting the agendas for the future ASEAN.

Introduction

After the end of the Cold War, ASEAN has taken some significant steps to maintain its relevance as a regional organization. The most significant step was to change the paradigm of the organization from a state-based to a people-based organization. It set up the three pillars of the ASEAN Community, covering political-security, economy, and social and cultural communities. Although many of the steps were still initial steps

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and many people wonder whether they are just other ASEAN empty promises, we believe that the steps can be seen as significant departures since the main challenges to this organization are to maintain its relevance after the end of Communist threats, the common enemy during the Cold War.

The ASEAN paradigm shift is also to counter criticisms from outside and within ASEAN, especially on its state-centric and lack of commitment on human rights. ASEAN agrees to make an overall review of its organization and procedural framework. Although it tries to protect its communitarian identity, it identifies several proposals to strengthen the organization, such as the need for greater self-reliance, the need for a coordinated and well-planned strategy on both national and regional levels, for more effective cooperation, and for national resilience for each member to enable it to face present changes and challenges for the future with greater self-confidence.

This paper attempts to see further to what extent ASEAN has departed from its traditional state-based approach. Especially we want to see whether ASEAN is still stuck with the Old Communitarian approach based on 'ASEAN Way' principles or has been more open and sensitive to people needs. We do not expect to see that the new people-centered ASEAN will change dramatically into a new one, but what we want to argue is that there have been changes in the ASEAN approach to its societies. This paper is divided into three sections. First, we locate the debates on the changes in ASEAN in communitarian perspectives. Second, we attempt to use some cases to explain the paradigm debates. Third, we also elaborate how the new people-based organization in ASEAN operates by specific reference to the ASEAN Human Rights Commission (AHRC).

ASEAN in communitarian perspectives

One way to understand ASEAN is by using the communitarian perspective. From this perspective, the emphasis is on communal values and the common good. This is in line with John Dewey (1927/1954: chapter 5) who argued that the attainment of the common good (or public good) is the result of citizens participating in a community. It is most important to note that this participation is grounded in and through the act of communication. It is by sharing signs, symbols, and acts of togetherness that human beings both assert and achieve their humanity. Dewey wrote:

> To learn to be a human is to develop through the give-and-take of communication an effective sense of being an individually distinctive member of a community ... one who understands its beliefs, desires and methods, and who contributes to a further conversion of organic powers into human resources and values ... The nature of the only possible solution (lies in) the perfecting of the means and ways of communication of meanings so that genuinely shared interests in the consequences of interdependent activities may inform desire and effort and thereby direct action. (Dewey, 1927/1954: 154–5)

In terms of the common good, it is only through democracy understood as an experiment in self-government that the public can find its voice and thereby gain

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recognition. This idea of active experimentation makes it necessary to lay down certain conditions for communal life. From the standpoint of the individual, it consists of having a responsible share according to capacity in forming and directing the activities of groups to which one belongs and in participating according to need in the values which the group sustains.

From the standpoint of the groups, it demands liberation of the potentialities of members of a group in harmony with the interests and goods which are common (Dewey, 1927/1954: 147). Dewey allowed for no privileged hiding places in this search for the common good. The private and the public spheres constitute different dimensions of human experience, but they are not opposed. In seeking their harmonious relations, according to Joseph Grange, we have to establish what is best and most unique about ourselves (Sani, 2010). Thereby we abide in the highest good. The argument put forth by communitarians is that a state is a political being that thrives in stable regional and international associations and communities.

In its development, we may differentiate two kinds of communitarianism namely Old and Neo-Communitarianism. There are not many differences between these two types. The differences are only in their emphasis. Old Communitarians are intolerant toward liberal values where they argue the opposite. For instance, Old Communitarians favor community over the individual, responsibility/duty over rights, consensus based on elite deliberation, state-oriented decision-making, and discourage civil society involvement. In ASEAN, the Old Communitarian arguments are embedded closely with the arguments of Asian values propagated by the generation of ASEAN leaders such as Lee Kuan Yew of Singapore, Mahathir Mohamad of Malaysia, and the late Suharto of Indonesia.

In contrast, Neo-Communitarians are more flexible in their arguments and willing to blend liberal arguments together. Therefore, it seems that Neo-Communitarians are arguing slightly differently to Old Communitarians and embrace approaches especially that balance community with the individual, balance responsibility/duty with rights, incline toward consensus based on public deliberation, support people-oriented decision-making, and encourage civil society involvement.

However, to argue about Old and Neo-Communitarians from foreign policy's perspective, the communitarian approach must draw on a triple test (Etzioni, 2006):

1. Does a policy represent a convergence of interests of the nations involved and affected?
2. Is it legitimate according to the values of those involved and affected, and, if it is not, can they be persuaded to accept a change in their values?
3. And does the policy contribute to building community or undermine its evolution?

To form a regional community, Nikolas Gvosdev argues that shared interests must serve shared values and build community (Etzioni and Mitchell, 2005: 22–3). Neo-Communitarians define it as a foreign policy strategy where regional community will come about through the voluntary coordination of the activities of nation-states to

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combat transnational threats. Neo-Communitarians encourage transnational moral dialogue which can enable people of different nations to come to shared moral understandings on issues ranging from global warming to humanitarian intervention. At the same time, Neo-Communitarians favor a shift from state-centric to people-centric. Thus, the communitarian position is more tolerant of limits to individual rights where those limits reflect culture, and more concerned with sovereignty of states except where intervention is inspired by demands for national self-determination in the face of genocide or in response to previous intervention. Regarding international relations, Michael Walzer draws on the just-war and international-law traditions, and cautions against interventions except under specific circumstances (Etzioni and Mitchell, 2005: 22–3).

ASEAN leaders, in particular, like to speak in the communitarian spirit for their organization. They place emphasis on the responsibility of individuals or in this case every member of ASEAN to build consensus to solve the problems that they face. They also avoid confronting one another openly, and prefer to sit down and have dialog behind closed doors to solve their differences. In building consensus and agreement, they use consultation to make sure that every member agrees.

Since the beginning, ASEAN has come to an agreement for some initial and important conditions for this organization to survive. This agreement came out from conversations, interactions, and experiences of relations among countries in Southeast Asia. To build stable relations in Southeast Asia, ASEAN for example promotes a concept commonly known as the 'ASEAN Way'. This concept was at first introduced in response to not only the ideological conflict between Western Liberalism and Eastern Communism during the Cold War, but also to maintain and protect ASEAN identity. This concept was accepted and imbedded in ASEAN principles in guiding the relations between the ASEAN states. A collaborative approach emphasizes three fundamental standards:

1. non-interference or non-intervention in other member states' domestic affairs, as underscored in the United Nations Charter, Article 2(7);
2. consensus building and cooperative programs rather than legally binding treaties (but in an exceptional situation, a binding agreement may be possible);
3. preference for national implementation of programs rather than reliance on a strong region-wide bureaucracy.

The emphasis on consensus is also reflected in ASEAN methods for dispute resolution. In the Pacific region, due to the influence of the British Commonwealth, most disagreements are settled with formal judicial methods (Cameron and Ramsay, 1996). Disagreements between the nations of ASEAN, on the other hand, are generally settled through conciliation and consultation, which is seen as a way to minimize tensions and avoid unnecessary conflicts (Narine, 1999).

However, all the above principles seem to be out of date given the changing context of international relations, in particular the end of the Cold War and the growing demand for more people participation and democratization in Southeast Asia. We can

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see that the above principles become awkward and receive criticisms from within and outside ASEAN. They are based on some Old Communitarian principles such as the priority of community over the individual, the importance of state sovereignty and security, the marginalization of civil society and the reluctance to accept any kind of intervention from other members of ASEAN. We witness many criticisms to this state-based paradigm of ASEAN and on ASEAN non-intervention principles for a long time. We also see that many people now want to get involved in ASEAN and ask what ASEAN can give to the people. In other words, they demand for a people-based organization.

Paradigm debates in ASEAN: from Old to Neo-Communitarianism

The challenges to the ASEAN Old Communitarianism happen in some areas. In this paper, however, focus is given only on three cases, namely the debates over the principle of non-intervention and the 'ASEAN Way', the debates over the concepts and the formation of the ASEAN Community, and the debates over the ASEAN Charter, including particularly the inclusion of human rights principles in the Charter.

First, we elaborate on the principle of non-intervention and the concept of 'ASEAN Way'. Since the end of 1990s, there were demands to transform this concept especially since the end of Cold War when the liberal West declared triumphalism after the communist East collapsed. The critics also argued that the 'ASEAN Way' emphasizes too much on consensus and quiet diplomacy as opposed to institutionalized rules and direct criticism of individual member states (Haacke, 2003: 59; Eldridge, 2002: 60). ASEAN regimes have refrained from engaging with fellow governments over claims of human rights abuses (Verma, 2002: 114) – the 'ASEAN Way' of privileging sovereignty, non-interference, and consensus to the benefit of regimes that are less transparent or accountable but seemingly more effective.

In 1997, a coup in Cambodia caused the association to delay plans to admit that country's membership. This issue questioned ASEAN's commitment to the non-interference approach. The issue was security, not democracy and this gave an opportunity for some liberal supporters among the ASEAN leadership to propose changes to the 'ASEAN Way' concept. For instance, Malaysia's deputy prime minister, Anwar Ibrahim, used the occasion to suggest that ASEAN consider undertaking 'constructive interventions' to prevent future state failure in Southeast Asia, including helping countries at risk to improve their election procedures and reform their administrations while strengthening civil society and the rule of law (Emmerson, 2008: 77–8).

Meanwhile, in 1998, Thai foreign minister, Surin Pitsuwan, went further by proposing that ASEAN adopt a policy of 'flexible engagement' that would modify the principle of non-interference to allow the association 'to play a constructive role in preventing or resolving domestic issues with regional implications'. That said, it was still security and not democracy that he had in mind: 'When a matter of domestic concern poses a threat to regional stability, a dose of peer pressure or friendly advice at the right time can be helpful' (Emmerson, 2008: 77–8).

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In response, Malaysia's foreign minister Abdullah Badawi bluntly rejected 'flexible engagement' and reaffirmed non-interference. This was later followed by some officials from Brunei, Burma, Laos, and Singapore. At their 1998 annual meeting, the ASEAN foreign ministers completed the watering-down of Anwar's originally intrusive language to a euphemism – 'enhanced interaction' – bland enough not to jeopardize the 'ASEAN Way' (Emmerson, 2008: 77–8). At the time these events unfolded, Thailand and the Philippines were the only free countries in Southeast Asia, while Malaysia was partly free (Emmerson, 2008: 77–8). It is not coincidental that the two most democratic governments in the region, those of Thailand and the Philippines, should have constituted a vanguard urging ASEAN to revise, however modestly, the principle of non-interference. Leaders of polities that allow for criticism of their own rulers are, other things being equal, less likely to feel threatened by criticism from other regimes (Emmerson, 2008: 77–8). This also shows that there was an attempt to transform ASEAN as an organization and liberalize the 'ASEAN Way' and communitarian values embraced by ASEAN society. It was not a surprise when two most liberal states in Southeast Asia supported this transformation. This agenda is continuing and became stronger when Surin was appointed Secretary-General of ASEAN in 2008.

Before his appointment, in June 2007, Surin said that ASEAN needed 'a lot of rethinking, retooling and readjusting', in part because of 'fierce' foreign pressure – a likely reference to Western impatience over Burma (Emmerson, 2008: 77–8). On 1 January 2008, he began a five-year term as Secretary-General of ASEAN. Six months later, the extent to which he would rethink, retool, and readjust the organization was still unclear, especially given his limited capacity, as a manager with ten avowedly sovereign bosses looking over his shoulder, to reform the association.

According to Donald K. Emmerson (2008: 77–8), Secretary-General Surin may not be able to reform ASEAN. Malaysia may never be upgraded from partly free to free. Anwar may never become its prime minister; and, even if he does, he may decide not to rock ASEAN's boat with controversy over democratization. But Emmerson's larger points remain: the balance of democracy versus autocracy across the membership of the association will affect the extent to which regionalism in Southeast Asia opposes, ignores, or favors democratization. Yet, the actual dynamics of regionalisation have influenced democratization. If it does occur, it will likely have more to do with opportunities seized than with structural forces inexorably making themselves felt.

Despite the fact that the strong criticisms toward the non-intervention principle have not been fully successful, there is enough proof to suggest that ASEAN has actually implemented a kind of selective intervention to another member's domestic issues. Apart from open statements made to criticize other leaders, ASEAN members continue to find ground for intervention in non-sensitive issues, such as development and environmental issues. They also build mutual-help strategies to overcome natural disasters and other crises.

Secondly, a transformation from Old to Neo-Communitarianism can be seen in the formation and debate on the three pillars of the ASEAN Community.

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Neo-Communitarianism is reflected in the adoption of both the 'Declaration of ASEAN Concord II (Bali Concord II)' and the 'Cebu Declaration on the Acceleration of the Establishment of an ASEAN Community by 2015' by ASEAN Heads of States indicate that the member states acknowledge that an integrated, stable, knowledgeable, and caring community will help ASEAN nations to strengthen their economic competitiveness and attractiveness to investors, in particular during economic downturns. The three pillars of the ASEAN Community, namely the ASEAN Political-Security Community (APSC), the ASEAN Economic Community (AEC) and the ASEAN Socio-Cultural Community (ASCC), are the most crucial areas deemed necessary for the progress and evolution of ASEAN and its peoples. The ASEAN charter is *One Vision, One Identity, One Community* (Chiam, 2009).

ASEAN Political-Security Community (APSC), draws towards a rules-based community of shared values and norms: a cohesive, peaceful, stable and resilient region with shared responsibility for comprehensive security, including a dynamic and outward-looking region in an increasingly integrated and interdependent world (Chiam, 2009). It seeks to mainly achieve enhancement in political stability, democracy, and good governance through creating a just, democratic, and harmonious environment.

The realization of the ASEAN Community is certainly still a long way. However, this at least shows that ASEAN has departed from the strict understanding of non-intervention principle, since the realization of the community requires some if not much intervention. The realization needs intervention to balance, for example, the economy gap between the rich and poor ASEAN countries. The ASEAN Economic Community (AEC) Blueprint states the importance of creating 'a region of equitable economic development' which includes human resource development, information and communication technologies, capacity building, poverty reduction, and improvement in quality of life (Chiam, 2009). It was previously claimed that economic rights can be more important than political rights, and that it is necessary to focus on economic development. At the current level of development in Southeast Asia, it is maintained that people's economic well-being must assume primary importance and this justifies the 'economics first' argument.

The ASEAN Socio-Cultural Community (ASCC) is adopted to realize a people-oriented, socially responsible ASEAN community with the view of achieving solidarity, unity, and a common identity, as well as building a sharing and caring society (Chiam, 2009). The characteristics envisaged in the ASCC Blueprint are human development, social welfare and protection, social justice and rights, ensuring environmental sustainability, building the ASEAN identity and narrowing the development gap. In here, we can see that there is transformation from a more state-centric ASEAN to a more people-centric.

Thirdly, the departure of ASEAN from Old to Neo-Communitarianism can be seen from the adoption of the human rights principle into the ASEAN Charter. Under the new ASEAN Blueprint, the ASEAN Human Rights Body is established and provided

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for in Article 14 of the ASEAN Charter. Article 14 (1) states: '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.' The mandate of the AHRB shall, therefore, include both promotion and protection of not only human rights but also fundamental freedoms.

For ASEAN to pass the test of democracy building through the process of the establishment of an ASEAN human rights body will require: (a) effective participation of civil society in the process of establishing the body and in its functioning; (b) the process of its establishment and its functioning to be transparent and inclusive; and (c) the body to be independent and impartial in order for it to be able to hold the government accountable. It should also be equipped with monitoring powers. In sum, the legitimacy of ASEAN and of an ASEAN human rights body needs to be assessed against normative democratic principles. As Eriksen and Fossum (2007: 3) put it, 'democratic legitimacy requires public justification of the results to those who are affected by them'. Justification demands participation, accountability, and responsibility (Petcharamesree, 2009:1–16).

The human rights body later named the ASEAN Intergovernmental Commission on Human Rights (ICHR) has the potential to issue statements and findings that may prove to be important catalysts for reform. While the dialogue-based, evolutionary approach adopted in the terms of reference (TOR) will likely limit the role of the ICHR to having only persuasive (rather than binding) authority on ASEAN governments, it has the potential to trigger further discussion on human rights issues, as well as open avenues for further action. The key will be to ensure that the ICHR does not obfuscate or diminish the positions of reform-minded individuals but, rather, strengthens them.

To take a recent example, ASEAN Secretary-General, Surin Pitsuwan, made statements on behalf of the association in July 2009, criticizing the Burmese government's actions against pro-democracy freedom fighter Aung San Suu Kyii. At the time, Daw Suu Kyii faced trial for allegedly violating the terms of her house arrest by allowing an American to stay in her house after he swam across a lake to her home. Pitsuwan's stance was unusually strong for ASEAN, and he has since been criticized in some circles for his remarks. The question then becomes this: would statements like Surin's be permissible if an ICHR representative from the government being criticized was given overall authority to coordinate ASEAN's approach to human rights issues? (Kelsall, 2009: 6).

Although many critics are concerned about the role played by the ASCC, Chiam Heng Keng (2009: 5–6) explains that a major human rights element in the ASCC Blueprint is the enhancement of 'the well-being and livelihood of the peoples of ASEAN by providing them with equitable access to human development opportunities by promoting and investing in education and lifelong learning, human resource training and capacity building'. This equitable access to human development is in accordance with the Declaration of the Right to Development adopted by the UN General Assembly on 4 December 1986, while the right to education is enunciated in several human rights

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declarations and instruments including the Universal Declaration of Human Rights (Article 26), the International Convention on Economic, Social and Cultural Rights (Article 13), the Convention on the Rights of the Child (Article 28), and the Convention on the Elimination of All Forms of Discrimination Against Women (Article 10).

Chiam said that there are three strategic objectives have been identified to achieve this characteristic of the ASCC Blueprint, namely advancing and prioritizing education, investing in human resource development, and promotion of decent work. As regard to social welfare and protection, the ASCC Blueprint envisions addressing fully socioeconomic disparities and poverty by alleviating poverty and eradicating extreme poverty and hunger. This Blueprint also calls for access to primary healthcare for vulnerable groups/ people at risk. This Blueprint specifically emphasizes the promotion and protection of the rights and welfare of the disadvantaged, vulnerable, and marginalized groups, such as women, children, the elderly, persons with disabilities, and migrant workers.

The implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers is set forth as a strategic objective of the ASCC Blueprint to achieve this particular goal. Promoting corporate social responsibility to ensure sustainable socioeconomic development in ASEAN member states, and fostering the sustainability of water resources to ensure equitable accessibility and the sufficiency water of acceptable quality are also aspects of human rights incorporated in the Blueprint. Moreover, there is definitely encouragement by ASEAN states to engage civil society in ASEAN decision-making. Human rights are now becoming an important agenda for ASEAN states to practice. Therefore, ASCC can be a starting point to transform the 'ASEAN Way' and the ASEAN Community as a whole, and the Neo-Communitarian approach is beginning to be applied through this pillar as well in acceptance of people participation.

Toward a people-based organization: ASEAN Intergovernmental Commission on Human Rights (ICHR)

It is worth mentioning here how a people-based organization is starting to take place in ASEAN with specific reference to the formation of the ASEAN Human Rights Commission (AHRC), later becoming the ASEAN Intergovernmental Commission on Human Rights (ICHR). From a Neo-Communitarian perspective, this can be seen as the involvement of more individuals and civil society groups in the ASEAN decision-making process. It also shows how individuals across states have been given the right to protect themselves from the state's abuse of power. Although there have been many disagreements on ICHR and problems in its implementation, ASEAN has started functioning to balance individual and community or state rights.

Regarding the formation of the ICHR, both the government and non-government organizations (NGOs) seem to agree that the body should be an independent body which does not necessarily copy or contradict other similar bodies in the world. The role of an ASEAN human rights body should cover the right to advise

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ASEAN member countries and conduct investigations upon complaints; public education on human rights; further communication between, the ASEAN human rights body, NGOs, National Human Rights Institutions (NHRIs) and other stakeholders; clarification of the definition of migrant workers; and some other human rights related issues.

However, there are disagreements on the authority of the body, including rights and responsibilities, and on whether it will have power over ASEAN member states. The governments of ASEAN states definitely want to limit the power of the body, but NGOs such as the Singaporean-based human rights NGO, MARUAH (Working Group for an ASEAN Human Rights Mechanism, Singapore), proposed a strong body which should have three components: a human rights commission, a human rights court, and a human rights convention. In its report, it stated:

> The commission would be responsible for promoting human rights (including conducting human rights education), undertaking investigations and monitoring compliance with human rights norms. The court would be the forum for adjudicating on whether human rights norms have been contravened. The human rights court would also include a prosecutor's office, to bring charges against suspected human rights offenders. The convention would enshrine a common basis of human rights norms applicable to the ASEAN member states that the commission and court would refer to. (MARUAH, 2009)

All of these issues are debated within ASEAN meetings. Decisions are always made in consensus so they take long time and are uncertain. They also consider the need and situation of every member state. The ICHR will definitely be set up carefully, considering the fact that the ten ASEAN member states are a diverse group with different histories and positions on human rights. The political situation in one country, such as Myanmar, influences the decisions made. The government will use the non-intervention principle to prevent any strong proposal that will allow ICHR to investigate a violation of human rights cases in any one country.

The ASEAN leaders are also reluctant to change their approach on human rights by following Western standards on human rights. ASEAN leaders have been trained to set up their own communitarian agendas and positions during ASEAN meetings on human rights issues. The ASEAN mutual understanding with regard to the human rights remains the same: they do not reject universal principles of human rights; it is the application that matters much and needs to be adjusted to their local ASEAN conditions. This, for example, is reflected in the statement of Tommy Koh (2008), former Singapore ambassador, who said that Singapore subscribes to the principles contained in the Universal Declaration of Human Rights, what mattered was the implementation. The implementation of the human rights depends upon the history, culture, and value context. Freedom, according to him, should be balanced with responsibility. Another ASEAN leader also supports the importance of the local context. As former Malaysian foreign minister, Rais Yatim, said, Malaysia wanted to propagate the inclusion

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of 'Asian values' into the ASEAN human rights body instead of transporting the Western interpretation as a whole. This was reported to include values, such as caring and respect for the elders and our way of *musyawarah* (consultation) (*Straits Times*, 2008).

In terms of implementation of human rights, the ASEAN states prefer persuasion instead of blaming another country. They treat the members as a family and the approach will be evolutionary. This can be seen in Koh's statement: 'It (ASEAN-author) will set a broad direction and the ASEAN Human Rights Body will make progress, in an evolutionary manner, and by learning from practice. The ASEAN Human Rights Body will also have to take into account the diversity of the ASEAN family' (Koh, 2008). In discussion to form the human rights mechanism, for example, Thailand's foreign minister said that 'there was no intention to seek out "crime and punishment"'. 'We [ASEAN] deal with it through good offices first [when problems crop up] and then arbitration. We do it in a civilized way – working together from inside out and not waiting for outsiders to punish us'. (Spears, 2009)

In this localization process, we can see a long and tried discussion to achieve consensus. There has been impatience among human rights activists toward this process. For example, in responding to this situation, some other states go even further to criticize Myanmar of violation of human rights. The former foreign minister of Malaysia, Rais Yatim, was quoted as saying that:

> At the end of the day, we must be seen not to be allergic or not supportive of human rights . . . for any reason, the human rights provision is not in the charter, then people will think ASEAN is not pro-human rights and that is nonsense. . . We are for human rights, we are for civil liberties, we want to see democracy, we want to see rule of law, we want to see good governance. (Plantilla, 2007)

ASEAN Secretary-General Surin Pitsuwan, went further by arguing directly against the 'Asian values' concept and for the adoption of a universal definition of human rights. He said that ASEAN has to 'look back at our roots, in the documents of our civilizations, to see if we really have different definitions of human rights'. In this way, he believed that historically there has always been a similar definition of the worth of human beings and human rights in all ASEAN. His statement also counters the argument of an 'ASEAN Way' that sees human rights as a foreign concept (Lawansiri, 2008).

Although the above statements came from among the top management of ASEAN leadership, this does not lead to ASEAN emulating Western models of human rights which want to put aside a state that violates human rights principles. From the ASEAN perspective, the AHRC should go through a dialogical process, not decided by voting, which, for example, would marginalize Myanmar, the main target of human rights criticism from the West. Through this process, some real policies regarding human rights are made. ASEAN continues, for example, to discuss human rights, including a human rights mechanism. A Working Group for the AHRC was formed on 24–25 July

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1998, in the 31st ASEAN Ministerial Meeting in Manila to process the Establishment of an ASEAN Human Rights Mechanism (www.aseanhrmech.org).

The discussion to form the ICHR continues every year since 1998 in a Ministerial Meeting, in particular to monitor the progress of the Working Group's work. The Working Group organizes workshops such as on 5–6 July 2001, which involved representatives of governments, national human rights institutions, and civil society groups in ASEAN in Jakarta. In the Working Group's first workshop, participants explored recommendations for the setting-up of interim mechanisms on women and children and migrant workers in pursuing a 'building block, step-by-step process' towards the establishment of a general ASEAN regional mechanism on human rights. Subsequent workshops were held in Manila (2002), in Bangkok (2003), back in Jakarta (2004), Kuala Lumpur (2006), and back in Manila (2007). All these workshops are jointly organized by the Working Group, a host ASEAN state (through its foreign ministry), and its national human rights commission.

Together with this process, ASEAN has also adopted some documents on human rights. On 13 June 2004, it adopted the *Jakarta Declaration on the Elimination of Violence Against Women in ASEAN Region*. This was followed by the *ASEAN Declaration Against Trafficking in Persons Particularly Women and Children* (Vientiane, 29 November 2004). It also specifies human rights issues in the *Vientiane Action Programme* (VAP) (29 November 2004), and then ASEAN agreed on the *Declaration on the Protection and Promotion of the Rights of Migrant Workers* (Cebu, 13 January 2007).

The VAP is an important step in how ASEAN understands human rights and what it can do about it. On 29 November 2004, in the 10th ASEAN Summit, the heads of state adopted the above Vientiane Action Programme (VAP). There was emphasis on human rights and on human rights obligations. The VAP called for the establishment of an ASEAN Commission on Women and Children. In 2005, the ASEAN asked for the Working Group's assistance in implementing the human rights provisions of the VAP. Since then, the Working Group has convened workshops, roundtable discussions, and meetings on the VAP to support ASEAN. Under the VAP, ASEAN has identified several areas of human rights work regarding:

1. education and public awareness on human rights,
2. network of cooperation among existing human rights mechanisms,
3. an ASEAN instrument on the protection and promotion of the rights of migrant workers,
4. an ASEAN commission on the promotion and protection of the rights of women and children.

Following these agreements, ASEAN members also discussed the formation of the ASEAN human rights mechanism in the Charter. In 2005, ASEAN in its Kuala Lumpur Summit declared the *Kuala Lumpur Declaration on the Establishment of the ASEAN Charter*, including 'Promotion of democracy, human rights and obligations, transparency and good governance and strengthening democratic institutions' (Plantilla, 2007). The progress to discussed human rights in ASEAN entered an

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important point on January 2007 when the Eminent Persons Group (EPG) comprised of former heads of state and ministers, mentioned the need for a human rights mechanism as part of their recommendations for inclusion in the ASEAN Charter. They noted that 'the establishment of an ASEAN human rights mechanism is a worthy idea that should be pursued'. The ASEAN heads of state then endorsed the EPG recommendations to the high level task force (HLTF) that was tasked to draft the ASEAN Charter.

This step was then followed up by the 'ASEAN Four' or the national human rights commissions of Indonesia, Malaysia, Thailand, and the Philippines. On 28 June 2007, they formally pledged to have a regional strategy, enforcing the promotion and protection of human rights in a Declaration of Cooperation. This includes how to advise their respective governments on the steps that can be taken in establishing an ASEAN human rights mechanism. This step is considered an important step. It was supported by the Working Group of AHRC. By doing it this way, national human rights institutions (NHRIs) in ASEAN States are seen as forerunners to the intergovernmental human rights mechanism.

The above process shows that ASEAN has developed its own perspective and mechanism about important human rights issues that should be addressed and implemented. This is a reflection of ASEAN views that human rights should be implemented comprehensively, encompassing all dimensions of human life. Among the important ASEAN agendas of human rights as mentioned above is to start functional cooperation to promote and protect the rights of women, children, and migrant workers. ASEAN in other ways has developed 'its own modality of regional cooperation on human rights, which will take into account its political, economic and social diversity' (Chalermpalanupap, 2008). The ASEAN leaders tasked the Secretary-General of ASEAN to submit an annual report on the progress of implementation of their Declaration.

Subsequently, the ASEAN Committee on the Implementation of the Cebu Declaration was established in July 2008, during the 41st ASEAN Ministerial Meeting (AMM) in Singapore. The Committee is composed of one senior representative from each of the ten ASEAN Member States, as well as a representative from the ASEAN Secretariat. The Committee reports to the ASEAN Senior Labour Officials Meeting (SLOM). One important task of the Committee is to develop an ASEAN legal instrument for the protection and promotion of the rights of migrant workers. Within ASEAN, the Philippines is so far the only country that has ratified the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

The ASEAN Committee on Women (ACW) and the ASEAN Senior Officials Meeting on Social Welfare and Development (SOMSWD) are undertaking ground work for establishing the ASEAN commission on the promotion and protection of the rights of women and children. A multidisciplinary working group was established to start drafting the Terms of Reference (TOR) for the proposed commission in the first quarter of 2009. Cooperation on the promotion and protection of the rights

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of women and children in ASEAN has the advantage of the shared platform of the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC) to which all the ten ASEAN Member States are parties to.

While these developments clearly show confidence among the old members of ASEAN to set up their agendas of human rights in a charter, younger members of ASEAN which joined ASEAN later on try to slow down this process. These younger members still face human rights problems in these countries. In particular, Myanmar military regime disregards human rights issues by arresting many opposition leaders, including their main leader Aung San Syu Ki. Myanmar and Indochina states attempt to maintain the ASEAN principles of non-intervention in the strict sense. Currently, these states attempt to slow down the process to form a human rights mechanism that may interfere with domestic problems of their states.

But despite the differences in dealing with human rights issues between the above two camps, the ASEAN human rights discourses clearly informed the policies and actions taken by ASEAN with regards to human rights. Through a localization process, ASEAN was able then to set up their own agenda, pace and steps to implement human rights without feeling their policies were part of the Western agendas. In the 7th meeting in Singapore, the ASEAN Task Force reached a consensus on several points about the human rights commission. It agreed ICHR would be an inter-governmental organization staffed by government representatives, and it would not be accusatory in nature. It should also define human rights in the ASEAN context and express these views on ASEAN's behalf at international forums. Surin Pitsuwan, a former Thai foreign minister and currently ASEAN Secretary-General, said more work needed to be done to back the assumption that ASEAN's definition on human rights should differ from universal standards. With these developments, the possibility of having a regional human rights mechanism is on the way. There is a confidence that their approach on human rights is better than those of the Western approach. Part of this confidence came from the economic success, social order, and political stability in some main ASEAN states such as Singapore, Malaysia, and Thailand.

Conclusion

It is clear that ASEAN has set up and attempted to materialize its people-based paradigm in its organization. From the above three issues, it seems to be still difficult to expect a strong and functioning new people-based organization in the near future. Different political situations within ASEAN states may hinder the formation of an organization that can implement the blue print of an ASEAN community, such as a human rights principle. Some members may still use ASEAN norms of non-intervention to prevent intervention on sensitive issues such as human rights.

However, this should not prevent us from seeing the progress that has taken place within ASEAN in dealing with economic, political, social, and human rights issues. In line with Neo-Communitarian perspectives, ASEAN has been more open to

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people participation, more tolerant to differences and criticisms, and more sensitive to human rights aspirations particularly on social and economic rights. Non-intervention principles, for example, cannot be defined strictly as they were in the past. Some ASEAN members are now more open to foreign help and intervention from other members, particularly related to their social, environmental, and economic issues impacting on members of the organization. As discussed on ASEAN Summit in Bali on November 2011, cooperation to help member states experiencing environmental and social economic problems will be strengthened. It is certainly difficult to hope for a quick change to the old paradigm, but the changes themselves are underway.

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