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Democratization, regional integration, and human rights: the case of the ASEAN intergovernmental commission on human rights

Yongwook Ryu and Maria Ortuoste

Abstract The establishment of the Association of Southeast Asian Nations' (ASEAN) Intergovernmental Commission on Human Rights (AICHR) is extremely puzzling, because many ASEAN members have never been strong supporters of human rights, nor have they been advocates for intervening in the name of human rights. Why did ASEAN members, then, agree to establish the AICHR? We argue that the AICHR is the result of two factors: democratization in key regional countries and the intensifying effort of regional integration in the form of the ASEAN Community project. The former factor engendered key agents for pro-human rights initiatives and set the direction of human rights development within ASEAN. The latter factor weakened the old norms of the ASEAN Way and engendered new regional norms such as good governance and accountability, which were conducive to the development of human rights. It also provided persuasive power based on a shared sense of collective purpose in eliciting agreement from the authoritarian members for the AICHR. We support our argument with the analysis of all ASEAN vision statements and its ministerial meeting statements from 1967 to 2010 as well as our own interviews. The analysis shows that the emergence of new regional norms was closely associated with the development of the ASEAN Community project, and this normative change resulted in a different view of human rights, whose promotion would positively

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affect regional integration and stability. Our argument suggests a different perspective of a regional human rights mechanism essentially as a regional body reflecting regional norms and values.

Keywords AICHR; human rights; Southeast Asia; regional norms; democratization; ASEAN Community.

Introduction

Sovereign states have increasingly allowed the international community to review and judge their internal human rights practices. A significant development in this regard is the establishment of regional human rights mechanisms (RHRMs) such as the European Court of Human Rights, the Inter-American Commission on Human Rights and its Court of Human Rights, and the African Commission on Human Rights. The most recent addition is the Association of Southeast Asian Nations' (ASEAN) Intergovernmental Commission on Human Rights (AICHR) established in 2009.

The creation of the AICHR is puzzling and is arguably a least likely case for the emergence of an RHRM. The member states of ASEAN have never been strong supporters of human rights, nor have they been advocates for intervening in the name of human rights. In the 1990s, most ASEAN members opposed the universal application of human rights in the name of 'Asian values', and some policymakers even believed that the suppression of domestic dissent provided socio-political stability necessary for economic development. Furthermore, ASEAN's origin and its modus operandi known as the 'ASEAN Way' cherishing norms of state sovereignty and non-interference blocked any meaningful development of human rights. Key ASEAN documents from 1967 to 1992 do not even mention the term 'human rights.'¹ Why, then, did the ASEAN members agree to establish the first RHRM in Asia?

Existing theories do not adequately explain the establishment of the AICHR because they do not distinguish RHRMs from national or global mechanisms. With their focus on the domestic and international levels, these theories fail to address why countries would choose to create *regional* mechanisms rather than build national human rights bodies or join existing global human rights institutions. We contend that regional-level factors are critical to understanding the establishment of RHRMs, and argue that the AICHR is the result of both a domestic factor – democratization in key regional countries – and a regional factor – the intensifying effort of regional integration in the form of the ASEAN Community, ASEAN's most ambitious regionalist project to date that was conceived in the late 1990s and accelerated throughout the 2000s. The domestic factor engendered key agents for pro-human rights initiatives and set the direction of human rights development within ASEAN, while the regional factor engendered new regional norms such as good governance and

accountability, norms that were conducive to the development of human rights and were more acceptable to authoritarian members of ASEAN such as Myanmar. The regional factor also provided persuasive power based on the shared purpose of advancing the ASEAN Community.

Not only does our argument offer a different perspective of an RHRM essentially as a regional body reflecting the regional conceptualization of its norms and values, but it also accords with the reality of increasing regionalization in today's world. This is particularly true for ASEAN. Almost all major decisions in ASEAN are made at the regional level by the foreign ministers in their ASEAN Ministerial Meetings (AMMs) or by the national leaders in their annual summits. More than 900 ASEAN meetings take place annually at various levels of official interaction and cover a wide range of issues from political and security to economic and socio-cultural matters. Hence without sufficient attention to what goes on at the regional level, no analysis of ASEAN affairs would be satisfactory.

This paper begins with a brief historical survey of the development of the AICHR. We then discuss why existing theories and the regional-level theory based on strategic calculations do not adequately explain the AICHR. The following section presents our argument that the regional integration effort, coupled with democratization in several regional countries, resulted in the establishment of the AICHR. We conclude with a discussion of the future of human rights in ASEAN.

The AICHR: history and institutional features

Adhering to the Westphalian norms of non-interference and state sovereignty, ASEAN members initially agreed not to interfere in each other's domestic affairs in an effort to stabilize their tumultuous interstate relations. The members were to determine their own state-society relations as each saw fit without the fear of external criticism or intervention. As a result, human rights received virtually no attention within ASEAN until the early 1990s.

By the 1990s, however ASEAN could no longer avoid the issue of human rights due to internal and external events. Internally, the 1991 Dili massacre in Indonesia highlighted the problematic nature of human rights practices in the region and led ASEAN dialogue partners to criticize ASEAN's silence on the matter. Outside the region, enhanced global attention to human rights through the convening of the Vienna Conference on Human Rights in 1993 put further pressure on ASEAN members to take human rights seriously. This led ASEAN to develop a coherent position on human rights, a position popularly known as the 'Asian values'.

However, ASEAN's interest in human rights during this period did not go beyond justifying its hitherto problematic human rights practices. The Asian values argument was not so much a development in the cause of

human rights as an effort to legitimize ASEAN's traditional approach to human rights. Emphasizing respect for national community and stability, which, in turn, helped them achieve economic prosperity (Vatikiotis 1996: 115), ASEAN members argued for the conditional application of human rights with due regard for the historical and cultural backdrops of each country. Economic rights through development should precede the promotion of political and civil rights (AIPO 1993; ASEAN 1993). Hence the 'expression and application [of human rights] in the national context are within the competence and responsibility of each country' (ASEAN 1992) and this application should balance rights with obligations. Thus, despite internal and external pressures, the Asian values argument made clear that a regional mechanism could not be created even though the ASEAN foreign ministers in 1993 declared that they would 'consider the establishment of an appropriate regional mechanism on human rights' (ASEAN 1993). As the Working Group for an ASEAN Human Rights Mechanism² (hereafter the Working Group) candidly opined a decade later, the proposal for a regional human rights commission had been premature (Working Group 2003).

Nevertheless, political compromises were made, and incremental steps were taken, toward the establishment of the AICHR since the 2000s. The first significant step was the 2004 Vientiane Action Programme, which set forth guiding principles conducive to the introduction of human rights topics. One of these principles was the 'common adherence to norms of good conduct in a democratic, tolerant, participatory and open community.' The ASEAN members also decided to cooperate on the 'least controversial' of human rights issues, adopting instruments for the rights of migrant workers and of women and children under an ASEAN Political Security Community (*The Jakarta Post*, 19 December 2006). The subsequent Kuala Lumpur Declaration stated that ASEAN would promote 'democracy, human rights and obligations,' a goal echoed by the ASEAN foreign ministers in 2006, who noted that 'the National Human Rights Commissions of Indonesia, Malaysia, the Philippines and Thailand are prepared to collaborate with the Working Group and other civil society organizations, with the view to facilitating the establishment of an ASEAN Human Rights Mechanism' (ASEAN 2006).

The creation of the AICHR, however, was not inevitable. Democratic countries like the Philippines wanted the ASEAN Charter to include human rights principles and a provision on an RHRM. According to observers and key participants, authoritarian states such as Myanmar opposed these proposals (*The Jakarta Post*, 15 June 2007). The reason for this disagreement, according to Singaporean Foreign Minister George Yeo, was the 'differing histories, cultures and heritages' of the ASEAN members (Channel News Asia, 9 April 2007). This was confirmed by Rosario Manalo, chair of the High Level Task Force drafting the ASEAN Charter, who said that this lack of consensus led members to a

compromise: an enabling rather than binding provision that may lead towards the creation of an ASEAN human rights commission/center (Yancha 2007). Thus, although the ASEAN Charter explicitly stated that one of ASEAN's goals is to 'strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms,' its Article 14 was unclear about the institutional form and mandate that mechanism would assume, merely calling it 'an ASEAN human rights body.'

The negotiations over the terms of reference (TORs) of the human rights body showed similar internal cleavages. The democratic states wanted to emulate other regional mechanisms which were independent and able to investigate human rights violations in member countries, while the authoritarian governments opposed any move that could potentially infringe on sovereignty. Thus, while the goal of the AICHR was a departure from the Asian values stance, seeking to 'uphold international human rights standards as prescribed by the Universal Declaration of Human Rights... and international human rights instruments to which ASEAN Member States are parties,' the form, mandate and powers of the AICHR were heavily circumscribed.

First, while the mechanism was called a commission following international practice, the word 'inter-governmental' was inserted at the insistence of authoritarian members so that the new institution would generate an innocuous image without any hint of infringement on state sovereignty.³

Second, the distinction between the democratic and authoritarian member states carried over into the appointments of national representatives to the Commission. While democratic countries appointed either human rights activists or academics, the authoritarian members appointed government officials either from the foreign ministry or prime minister's office,⁴ thereby maintaining a close oversight of discussions and proceedings within AICHR.

Third, the TORs retained sovereignty and non-interference as the body's key principles, thereby limiting the possibility of conducting independent investigations. The Commission is to promote human rights 'within the regional context, bearing in mind national and regional particularities... and taking into account the balance between rights and responsibilities' (Article 1.4), and merely complement national and international efforts that promote human rights. Article 4 enumerates the AICHR's functions which focus on: promoting rather than protecting human rights; advising and consulting rather than issuing binding decisions; obtaining information on human rights practices rather than investigating human rights violations. In addition, the independence and power of the Commission is also restricted by the lack of funding and the direct oversight of the AICHR by the ASEAN foreign ministers.

The recent adoption of the ASEAN Human Rights Declaration (AHRD) in November 2012 appears to confirm the fear of many human

rights organizations that the AICHR would propose ‘watered-down’ rights. Even though the Declaration recognized the universality and indivisibility of basic rights, there are several provisions which would allow governments to legitimately restrict these rights based on cultural or historical grounds, or on the ‘requirements of national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society’ (ASEAN 2012).

Despite these limitations, the establishment of the AICHR is a significant development for the promotion of human rights in Southeast Asia. It is the first RHRM in Asia, and its existence is guaranteed by the ASEAN Charter (Tan 2011: 4). Furthermore, as the history of other RHRMs such as the African and Inter-American Commissions illustrates, human rights institutions could take a long time to evolve and become meaningful actors from their inauspicious beginnings (Renshaw 2010). Democracy and human rights have now become a key part of ASEAN’s official regional discourse, the issues that were only tacitly considered previously (Caballero-Anthony 2010: 143). The AICHR and the AHRD should be understood not as the end of ASEAN’s journey towards human rights, but as another stage in its effort to promote and protect human rights. As one of the key policy makers closely involved in the process opined, the creation of AICHR is one of the most important and surprising developments in ASEAN’s history.⁵

Theories of the emergence of RHRMs

What are the critical factors for the creation of RHRMs? As shown in Table 1, theories of RHRMs can be categorized according to their level of analysis and whether they focus on material/strategic or ideational factors (Donnelly 1998; Ignatieff and Gutmann 2001; Koo and Ramirez 2009; Powell and Staton 2009; Simmons 2009). Table 1 presents the typology of the theories of RHRMs. We contend that existing explanations at the international and domestic levels do not adequately explain the creation of

Table 1 A typology of the theories of RHRMs

Level of analysis	Rationalist approach with material/strategic factors	Non-rationalist approach with ideational factors
International	Great power pressure	Transnational socialization
Regional	Prevention of external intervention; ensuring foreign aid	Regional norms and values
Domestic	Delegation of authority/ democratic lock-in	Externalization of democratic identity

the AICHR. Regional factors are critical to understanding the emergence of RHRMs, which are essentially regional bodies reflecting regional norms and values. Existing explanations are inadequate in explaining why states would establish a *regional* human rights body rather than a national commission or sign on to existing global regimes, especially when national and global regimes are better established and often more effective in protecting and promoting human rights. Below we explain how several existing theories and the regional strategic calculation theory have limited utility in accounting for the AICHR.

International great power pressure

Realist theories of international politics usually discount human rights and related institutions as epiphenomena of power (Mearsheimer 2001; Morgenthau 1978). When explaining RHRMs, they stress the role of the international distribution of power. Great powers pressure weaker nations to accept international human rights obligations and establish RHRMs. To spread their own ideologies and political agenda, they may use their preponderant bargaining position or a combination of material incentives and sanctions against a weaker power (Hathaway 2007).

Perhaps the best-known example of great power pressure is the European Union (EU). Article 11 of the EU Treaty states that a key goal of their common foreign and security policy is ‘to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.’ Since 1992, EU treaties with other countries have emphasized the centrality of human rights and democracy (Hornig 2003; King 1999). External aid has often been tied to human rights conditions, such that assistance is usually suspended in light of gross violations of human rights. Another democratic great power active in promoting human rights is the United States. Not only has the USA imposed a democratic constitution on the countries that it has occupied such as Japan (Dower 1999) and Iraq, but it has also linked the grant of its ‘most favored nations’ status to human rights records in the case of China (Bachman et al. 1994). Donnelly also argues that the United States used its hegemonic power to ensure the creation and operation of the Inter-American Convention on Human Rights (1998).

Yet great power pressure had little effect on the creation of the AICHR. Not only is it difficult to understand why great powers would consider setting up an RHRM as an effective means of putting pressure on individual ASEAN member states and improving their human rights records, but up until the early 1990s, the great powers were little concerned with the region’s human rights problems due to its strategic importance. The end of the Cold War opened up the space for promotion of human rights in international affairs and altered how the great powers approached the region’s

human rights problems. The 1991 Dili massacre provoked much international (Western) criticism. The Netherlands and Canada suspended aid to Indonesia under the Intergovernmental Group on Indonesia arrangement, and the European Community refused to negotiate a new economic treaty with ASEAN. In October 1992, the vice president of the EU Commission warned in Kuala Lumpur that ‘failure to respect human rights would have a “severe impact” on the EU’s relations with developing countries, including ASEAN’ (quoted in Acharya 2001: 110). However, international sanctions did little to change Indonesia’s or ASEAN’s position on the incident. In fact, ASEAN defended Indonesia’s actions and later articulated the Asian values stance. Indonesia also formed a new assistance group – the Consultative Group on Indonesia – to replace the Intergovernmental Group on Indonesia (Weatherbee 2005: 242).

Human rights violations in Myanmar also drew much international criticism. The EU suspended its aid to Myanmar under the General Systems of Preferences scheme, and postponed or cancelled ASEAN-EU ministerial meetings because of Myanmar’s suppression of the pro-democracy movement led by Aung San Suu Kyi (Moeller 2007). While it was reported that ASEAN did not grant observer status to Myanmar before 1997 in deference to the objections of the USA and the EU, such pressure did not affect ASEAN’s long-standing policy of constructive engagement with Myanmar. As Manea (2008) argued, the EU’s attempt to exert influence over ASEAN through the ASEAN-EU dialogue on human rights led to greater tensions between the two regional groupings and only hardened ASEAN’s previous stance on human rights. One could even question whether great power pressure was significant enough in the first place. Based on interviews with EU officials, Katsumata (2009) argues that EU representatives do not put much pressure on ASEAN as a whole when it comes to human rights.

Transnational socialization

In contrast to realist theories, structural ideational theories emphasize the persuasive power of transnational norms, ideas and beliefs to alter actor identities (Kratochwil 1989; Wendt 1999). The most prominent ideational explanation for the establishment of regional human rights regimes relies on the persuasive power of democratic and liberal norms. Governments create and accept human rights regimes not because they are compelled by great powers or use human rights regimes as a means to some other material end, but because they are socialized by transnational actors into pro-human rights values and beliefs, a process that involves the transformation of their identities (Finnemore and Sikkink 1998; Keck and Sikkink 1998).

In the 1990s, the enhanced interaction between international actors, regional governments and human rights NGOs provided ample

opportunity for transnational socialization. Indeed, the 1990s was the decade of human rights awareness and education throughout the world with the launch of the 1993 UN Conference for Human Rights in Vienna and the UN Decade for Human Rights Education (HRE) from 1995 to 2004. A record number of international human rights treaties were signed and ratified during this period, as a result of increased interaction between international and regional actors (Mihir 2009). These efforts elevated democratic norms to the status of what may be called a hegemonic ideology in a Gramscian sense, and permitted international actors to educate regional counterparts with new beliefs and values based on democratic ideals. In these ideational theories, international actors are active norm educators, while regional actors are passive norm-takers.

Although it is difficult to precisely assess the effect of transnational socialization due to the unavailability of the minutes of the UN-sponsored human rights workshops, the available evidence suggests that the interactions with the international community did not have a significant degree of socializing effect on the regional states during the 1990s. The outcome of the interaction was not the adoption of the Western liberal view of human rights; rather, most regional governments resisted the liberal view and propounded their own interpretation of human rights in the form of Asian values. During this period, Malaysia and Indonesia attempted to limit the power of the UN Office of the High Commissioner for Human Rights (OHCHR) to investigate human rights issues and to make binding recommendations (Weatherbee 2005: 225). While one could argue that the international human rights dialogue of the early 1990s nudged ASEAN to consider the creation of a regional human rights body, the members themselves did not display a whole-hearted commitment to the endeavor. By relegating the process to the unofficial 'track-two' process, the ASEAN members would be able to reject any proposal as they saw fit.

Even when the OHCHR held various regional workshops on human rights where most ASEAN members participated, the influence of transnational actors was limited. For example, in track-two discussions on an ASEAN regional mechanism at the First Workshop for an ASEAN Human Rights Mechanism in 2001, the participants adopted a 'building blocks' approach as suggested in the OHCHR's regional meeting held in Tehran in 1998.⁶ But in the same 2001 workshop, the participants also stated that regional arrangements must address the needs and priorities 'set by Governments in the region, with roles, functions, tasks, outcomes and achievements determined by consensus' (Working Group 2001: 3). Indeed, both the ASEAN Charter and the AICHR's TORs make it clear that despite the association's commitment to the promotion and protection of human rights, it would not wholly subscribe to the Western liberal conceptualization of human rights. They emphasized the need to take into account national and regional peculiarities as well as regional stability and harmony when promoting human rights.

Democratic lock-in

Liberal theory of International Relations sees domestic politics as the primary driver of interstate outcomes (Moravcsik 1995). This explanation essentially takes a strategic view of actors, who use regional human rights regimes as a means to attain domestic political goals. Andrew Moravcsik offers the clearest formulation of this liberal theory. Writing about Europe, he argues that 'human rights norms are expressions of the self-interest of democratic governments in "locking in" democratic rule through the enforcement of human rights' (Moravcsik 2000: 228). He argues that governments will support a regional mechanism if the sovereignty costs are outweighed by reduced political uncertainty. The theory predicts that newly democratized governments will have the strongest preference for RHRMs especially if there are factors which threaten to rollback democracy (Moravcsik 2000: 229).

In the case of AICHR, democratized countries strongly supported the creation of the mechanism, which appears consistent with Moravcsik's thesis. But a closer examination of these countries' positions reveals that the democratic lock-in argument is not satisfactory. Theoretically, it is questionable why countries would set up an RHRM when existing international human rights institutions can ensure democratic lock-in. Empirically, ASEAN itself has been a weak organization for the promotion and protection of human rights (Munro 2009: 18–22). The AICHR is an even weaker institution, and hence cannot positively affect the domestic political development of its member states. If the member states wanted to strengthen their domestic democratic reforms through the AICHR, they should have created an independent and more powerful institution unconstrained by consensus decision-making. In addition, the Commission has to respect the sovereignty of each member state and the principle of non-interference in internal affairs. Article 2.3 of AICHR's TOR clearly states, 'the primary responsibility to promote and protect human rights and fundamental freedoms rests with each Member State' (ASEAN 2009).

Indeed, none of the democratized countries in the region linked the creation of the AICHR to ensuring their own democratic political development. There is virtually no mention of domestic political reform in their negotiations, and the current ASEAN provisions stressing the need for the rule of law and good governance target non-democratic members who need to reform 'bad practices' that negatively affect regional stability and prosperity. The purpose is not to ensure the democratic political development of the democratized member states.

Strategic calculations at the regional level

Regional factors are neglected variables for explaining the RHRM. One possible regional-level explanation could be the strategic calculation of the

regional grouping. There are at least two strategic reasons for establishing an RHRM. The first is economic. Democratic great powers often link their foreign economic aid to developing nations' human rights records. Such linkage politics would generate strategic incentives for developing nations to maintain satisfactory human rights records, or at least a perception that they are making efforts to improve human rights, in order to satisfy donor nations and guarantee the continuation of external foreign aid and other economic benefits. The creation of an RHRM could be an effective means to achieve this purpose.

A second strategic motivation for creating an RHRM is to prevent external humanitarian intervention and international criticism of regional human rights situation, which would be a destabilizing force for developing nations. Great powers could decide to intervene militarily in case of gross human rights violations, and regional powers might like to prevent such external intervention. For instance, writing about Article 4(h) of the Constitutive Act of the African Union, which confers the Union the right of humanitarian intervention in a member state in cases of gross violations of human rights such as war crimes, genocide and crimes against humanity,⁷ Alex Bellamy (2006) argues that the African nations codified the interventionist clause in order to foreclose the possibility of intervention by non-African actors. Thus the fear of external intervention and criticism would generate a strategic incentive for developing nations to create its own RHRM as a way to prevent, lessen or counter external intervention in their region and international criticism of their human rights practices.

This regional-level explanation, however, fails to account for the AICHR. The key hypothesis of this explanation is that countries dependent upon foreign aid or with human rights problems would be in favor of creating a regional mechanism in order to secure external economic benefits or safeguard themselves against international criticism and intervention. But the negotiation process of the AICHR unequivocally reveals the opposite: the member states with problematic human rights records vehemently resisted the creation of the AICHR. Myanmar is the single most vocal opponent of the AICHR, with support from the other Indochinese countries, Laos, Vietnam, and Cambodia. In 2008 when the process of drafting the ASEAN Charter was in full swing, Myanmar, Vietnam and Laos all attempted to remove any reference to human rights from the Charter.

In addition, unlike other parts of the world such as Africa, Southeast Asia has never experienced international humanitarian intervention by an external power. Instead, the region has been rather successful in convincing the international community that ASEAN's policy of constructive engagement is the best way to deal with human rights problems. The UN's approach to Myanmar is a case in point. Rather than imposing sanctions or intervening militarily, the UN sought to engage Myanmar through ASEAN on the issue of human rights. Thus it is doubtful that the regional

countries were concerned with external humanitarian intervention when they created the AICHR.

Democratization, the ASEAN community, and the AICHR

We argue that the most convincing explanation for the creation of AICHR rests on two factors: democratization in key regional countries and ASEAN's intensifying effort at regional integration in the form of the ASEAN Community. The former engendered agents for pro-human rights initiatives and set the direction of human rights development within ASEAN, while the latter led to the official articulation and endorsement of new regional norms such as good governance and accountability, norms that generated less resistance from the authoritarian member states but which were still conducive to the development of human rights. It also weakened the old norms of the ASEAN Way and provided persuasive power in eliciting agreement from the authoritarian member states.

Democratization and the externalization of democratic identity

This explanation sees foreign policy as the result of democratic governments responding to the domestic values and the demands of their respective civil societies, including human rights ideals (Caballero-Anthony 2010; Risse-Kappen 1996; Tan 2011). Hence, democratic nations often seek to externalize their democratic norms and ideals and establish human rights bodies beyond their borders. The wave of democratization that began in the mid-1970s (Huntington 1991) and peaked in the 1990s (Simmons 2009: 24–26) is therefore a crucial factor in spreading human rights norms and institutions. Jorn Dosch (2008), for example, argues that the participation of civil society organizations in foreign policy-making led democratic governments to support the creation of the AICHR.

Table 2 shows the positions taken by the ASEAN member states on the establishment of AICHR at critical junctures. The three democratic member states in ASEAN, namely, the Philippines, Thailand and Indonesia, were unrelenting supporters of creating the AICHR. At the 1993 Vienna Conference, the Philippines deviated from the Asian values position stating that human rights should not be promoted sequentially because these rights are indivisible and interrelated. It even espoused a new human rights arrangement for Asia. After becoming democratic, Thailand also adopted a pro-human rights policy first by signing all six major international human rights conventions, and later by supporting the creation of an RHRM. Although Thailand became more reticent in support of democratic and human rights values in ASEAN after the 2006 military coup, Thai Prime Minister Surayud Chulanont affirmed its support for a human rights commission.⁸

Table 2 Evolution of the stances on AICHR by ASEAN states

ASEAN member state	1990s	early-2000s	mid-2000s	late-2000s
Philippines	Pro-democracy and human rights	pro-AICHR		Support
Indonesia	Asian values			
Thailand				
Malaysia		Support for national human rights institutions	Pro-AICHR	
Singapore		Reluctant	Reluctant but some support	
Myanmar		Oppose		Reluctantly acquiesce
Cambodia	Reluctantly agree			
Laos				
Vietnam				
Brunei				

The democratization of Indonesia was most critical in this regard because of its status as ASEAN's 'informal' leader. Without its support, it would have been virtually impossible to establish the AICHR. In the early 1990s, when it was still a non-democratic nation, Indonesia was a strong advocate of the Asian values. But by the 2000s, after the fall of the New Order regime, it became the critical member state within ASEAN that asserted that creating an RHRM would be vital for ASEAN's future. The change of regime in Indonesia led to the demilitarization of its foreign policy and opened the door for various societal actors to influence foreign policy (Dosch 2007: 35–66). The newly elected president, Susilo Bambang Yudhoyono, articulated very strong support for the AICHR, which was echoed by its foreign ministers (*The Jakarta Post*, 19 December 2006). Indonesia was so insistent on ASEAN promoting human rights and democracy that it signed the ASEAN Charter on the condition that such activities will be implemented by the organization (Tan 2011: 157).

As seen in Table 2, these positions remained relatively stable during the negotiations over the ASEAN Charter and the AICHR's TORs. It was reported that the Indonesian government had become quite exasperated with the 'watered-down' provisions on human rights, and because of these compromises, Indonesia was the last member to sign the Charter with the understanding that human rights and democratic institutions will be

strengthened in ASEAN (Tan 2011: 168–69). By externalizing their democratic values, the three democratic states acted as the key agents for human rights promotion and set the direction of human rights development within ASEAN towards a more liberal interpretation, thereby departing from the previous ‘Asian values’ stance.

The united voice of democratic countries, however, was not sufficient to establish the AICHR. ‘Soft authoritarian’ member states such as Singapore and Malaysia were receptive but cautious, while the Indochinese countries strongly resisted a regional human rights body from the beginning. Furthermore, the procedural constraint of decision-making by consensus meant it was necessary to gain their approval in order to establish the AICHR.⁹ It is at this point that the processes for creating an ASEAN Community would play an important part.

The ASEAN community, regional norms, and human rights

One neglected explanation of RHRMs concerns with regional norms. This explanation treats RHRMs essentially as regional bodies reflecting regional norms and values. The plausibility of this explanation is shown by existing empirical analyses on African regional affairs. Writing about Article 4(h) of the Constitutive Act of the African Union, which created the right of the Union to intervene in a member state in grave circumstances such as genocide and crimes against humanity, both Kioko (2003) and Samkange (2002) note that a normative shift had taken place on the African continent from a norm of non-intervention to a norm of non-indifference. Adebajo and Landsberg (2000: 3–4) also argue that African leaders moved towards a norm of ‘sovereignty as responsibility’ with protection of the fundamental rights of citizens. These accounts suggest that regional norms are closely associated with regional institutional change, including the promotion and protection of human rights.

A change of regional norms was a crucial factor for the establishment of the AICHR. This normative change in ASEAN stemmed from its intensifying effort at regional integration in the form of the ASEAN Community project. By making human rights as a key part of the ASEAN Community, this regionalist project not only engendered new norms relating to domestic rule such as good governance and accountability, which were conducive to the development of human rights, but also weakened old norms of the ASEAN Way. In addition, it also provided persuasive power in eliciting the agreement, or at least acquiescence, of non-democratic ASEAN members, as the AICHR was argued to be a crucial part of advancing the ASEAN Community, a purpose collectively shared by all ASEAN member states.

Although right from its inception ASEAN’s goal was to create a community of Southeast Asian nations, it had largely remained as a loose grouping than a tightly bound collectivity up until the late 1990s.

However, the ineffective dealings with regional crises in the 1990s such as the Asian financial crisis and the haze problem, coupled with the rise of China and India in regional influence, made ASEAN leaders realize that ASEAN could no longer be an important actor with its loose institutional arrangements. Since the late 1990s, regional integration has been an explicit goal of ASEAN. In 1997, ASEAN leaders declared that ASEAN would become 'a concert of Southeast Asian nations' where there is peace 'through abiding respect for justice and the rule of law and through strengthening of national and regional resilience' (ASEAN 2003). In 2003, ASEAN formally embarked on its most ambitious regionalist project in its history, namely, the ASEAN Community project with the purpose of institutionalizing cooperation in multiple fields. The 2003 Bali Concord II established the basic structure of the ASEAN Community consisting of three pillars: the ASEAN Political Security Community, ASEAN Economic Community, and ASEAN Socio-Cultural Community (ASEAN 2003).

As Figure 1 illustrates, there are three key goals of the ASEAN Political Security Community, one of which is to create a rule-based community of shared values and norms. The promotion and protection of human rights is an integral part of creating a community of shared values and norms, and the AICHR is to play an important role in attaining this goal. The 2004 Vientiane Action Programme gave substance to the Bali Concord II by proposing the governing structures, purposes and principles of ASEAN, and the 2007 ASEAN Charter formalized these rules and structures, and institutionalized the AICHR as a key aspect of the ASEAN's Political Security Community. As stated in the 2004 Vientiane Action Programme, the ASEAN member states accepted the inclusion of 'shaping and sharing of norms' as part of the process of creating the ASEAN Community, and declared that ASEAN would build 'collective responsibilities' to form 'a standard of common adherence to norms of good conduct in a democratic, tolerant, participatory, and open community' (ASEAN 2004).

These efforts at redefining regional interactions led to a transformation of ASEAN from a loose grouping based on informal modalities to a regional community based on shared values and purposes. Figure 2 shows a rapid increase in the number of ministerial meetings from the late 1990s, indicating efforts at greater policy coordination and formalization of the ASEAN interactions. The number of AMMs increased in all three pillars: political security, economic, and socio-cultural. In less than a decade from 1995 to 2005, the total number of ministerial meetings more than doubled from 10 to 21 per year. If one adds other official and technical meetings involving lower ranked bureaucrats, ASEAN meetings number more than 900 per annum today.

This integration process had a positive impact on the development of regional human rights by affecting regional norms in two ways. First, it raised greater doubts about the 'ASEAN way,' particularly the norm of

Figure 1 The AICHR and the ASEAN Community.

Sources: APSC Blueprint 2009; Vientiane Action Programme 2004; Declaration of ASEAN Concord II 2003.

non-interference. To be sure, the ASEAN Way came under pressure right after the outbreak of the Asian financial crisis in 1997. Some regional leaders such as Malaysia's deputy prime minister Anwar Ibrahim challenged the principle of non-interference by proposing a policy of 'constructive involvement.' In the end, ASEAN adopted a formula of 'enhanced interaction' under which they could discuss domestic issues only if such issues had clear regional ramifications. However, as the regional integration effort intensified, regional leaders began to make bold public statements about the domestic governance of other member states. For instance, with regard to the Cambodian coup, the ASEAN leaders recommended specific measures such as direct assistance to firm up electoral processes and increased commitment to legal and administrative reforms (Tay 2001: 253). Nowhere was this change of ASEAN practice more obvious than on the issue of Myanmar's human rights violations.

Figure 2 The annual number of various ASEAN ministerial meetings.

For a long period, following the ‘ASEAN way,’ ASEAN had discussed the issue privately with Myanmar leaders during informal retreats of ASEAN ministers and shied away from public criticism. However, beginning in the early 2000s, ASEAN ministers openly discussed the Myanmar problem in their annual meetings, and every AMM joint communiqué contained a passage on Myanmar’s domestic situation since 2003. Furthermore, they began to publicly criticize Myanmar’s junta government for its handling of democratic protesters, with an increasing degree of harshness over time. In 2008 ASEAN made specific demands, urging the junta government to ‘take bolder steps towards a peaceful transition to democracy in the near future’ and to ‘release all political detainees, including Aung San Suu Kyi’ (2008 AMM). The ASEAN Inter-Parliamentary Myanmar Caucus, a group of legislators from six ASEAN countries, also urged ASEAN to suspend Myanmar’s membership. In its 2012 statement, it argued, ‘oppression in Myanmar will be an obstacle to efforts by ASEAN to build an ASEAN Community by 2015.’ Those outside the official ASEAN processes even called for suspension of Myanmar’s membership of ASEAN (Desker 2007).

Second, the integration process provided an opportunity to articulate new norms such as good governance, accountability and the rule of law – previously taboo issues because they impinge on domestic practices. Using the method of cognitive mapping, we trace the evolution of ASEAN’s norms

and its vision and objectives of regional integration, and its fundamental objective of regional peace and prosperity through regional cooperation. Cognitive maps are useful in uncovering and analyzing the perceptual structure of decision makers (Axelrod 1976). Directions of arrows suggest the direction of causal influence, with + and – signs denoting a positive and negative effect, respectively. We analyze all AMM statements and vision statements from 1967 to 2010. Figure 3 presents the cognitive maps of ASEAN in three periods of ASEAN’s human rights developments.

ASEAN’s thinking has become more complicated over time, reflecting deepening regional integration. From 1967 to 1979, ASEAN’s cognitive

Figure 3 ASEAN’s norms, vision, and objectives.

Figure 3 (Continued)

map is relatively simple. In addition to national and regional resilience, the norms of non-interference and state sovereignty were thought to positively contribute to the development and strengthening of ASEAN, which in turn positively influences regional cooperation and security.

By 1990–1997, the addition of new members confirmed the notion of cultural relativism. While retaining the norms of non-interference and state sovereignty, diversity among the member states was thought to be a positive factor for ASEAN's development and for regional cooperation and stability. In this period, human rights were seen as hindering regional cooperation and stability when they were conditioned on economic aid and trade. This period led to a negative result for human rights promotion as ASEAN merely sought to justify their current problematic human rights practices.

Since 1998 the most important development has been the ASEAN Community initiative integrating the ASEAN members more tightly based on the official motto of 'one vision, one identity, and one community.' What is most relevant for our purpose is the appearance of new regional norms

such as good governance and accountability that are conducive to the promotion of human rights. Although the norms of non-interference and state sovereignty were still maintained, the explicit connection is now made between the advancement of the ASEAN Community and the promotion of human rights. This was particularly true of leaders of democratic countries. For example, Indonesian president Yudhoyono stated that having shared regional values is important in the creation of the ASEAN Charter which, in turn, would speed up integration and strengthen ASEAN's international credentials (Yudhoyono 2005, 2007, 2008). These new norms are perceived as contributing to the consolidation of the ASEAN Community by enhancing regional solidarity and harmony as well as by building collective responsibilities and common standards for acceptable governance in both domestic and regional politics.

The new norms such as good governance and accountability were also more acceptable to the non-democratic member states, because they were regarded not as promoting a particular form of political regime but rather as promoting governance practices. In other words, as far as ASEAN is concerned, these norms were more about the substance rather than form of government. Thus, ASEAN is still not interested in promoting democracy as an acceptable form of government and would be content with non-democratic political regime type, so long as domestic governance is satisfactory and does not create problems of regional ramifications.

Lastly, the ASEAN Community project was also important in eliciting the agreement, or at least acquiescence, of non-democratic ASEAN members, as the AICHR was argued to be a crucial part of advancing the ASEAN political community, a purpose collectively shared by all ASEAN member states.¹⁰ In addition, all member states desired ASEAN to be, and be seen by others, as an effective regional organization working together in creating a regional community. In short, the community-building process provided persuasive power to establish the AICHR.

While some scholars like Katsumata (2009) view that ASEAN's need for legitimacy and relevance led to the 'mimetic adoption' of Western human rights institutions, such interpretation is inadequate. As discussed in the first section, the adoption of the AICHR was subject to political negotiation and bargaining between the member states, who tweaked proposed institutional features and proposed compromises. The members did not passively copy Western models as suggested by the mimetic adoption argument; rather they localized norms (Acharya 2001) to fit the local context, and adopted new norms such as good governance and accountability, which were more acceptable to non-democratic members of ASEAN. Indeed, the current provisions and status of the AICHR reflects well the internal divisions within ASEAN as well as the tension within ASEAN between the old norms of the ASEAN Way and the new norms of democratic ideals and good governance.

Conclusions

The process of regional integration, coupled with democratization in several regional countries, has resulted in the creation of the AICHR. Democratization in several regional countries engendered key agents for the pro-human rights initiatives within ASEAN as well as set the direction of regional human rights development. The intensifying regional integration effort, on the other hand, weakened old regional norms, especially the norm of non-interference, and introduced new norms such as good governance and accountability, which created a favorable context within which human rights issues and institutions could be discussed and developed. The cognitive maps clearly show the evolution of regional norms in favor of human rights with the development of the ASEAN Community. The process of regional integration was a critical factor in compelling the regional countries to agree on developing shared norms and values, including human rights principles and institutions.

What does all this mean for the future of human rights in Southeast Asia? Our analysis suggests two important factors: (1) consolidation and spread of democratization in the region and (2) continuing development of the ASEAN Community. We have seen ups and downs in terms of democratization in the region, a trend that is likely to continue in the future. On the one hand, the reversal of democratization in Thailand shows the tenuous foundations for democracy in the region, and many ASEAN members still doubt if a democratic form of government is really necessary for political stability and economic development. On other hand, Myanmar has shown a positive development recently, with Aung San Suu Kyi's election into the national legislature. Further development in regional democratization would likely lead to a strengthening of the AICHR and improvement of human rights.

As for regional integration, there is a greater sense of shared purpose among ASEAN members on this issue. All 10 ASEAN members are committed to the regional grouping, and see it as the best means to secure their economic development and regional peace. In addition, the legalization and institutionalization of the regional structures and rules through the ASEAN Charter have also created a firmer basis for closer regional interactions, which is likely to have a positive influence on the regional integration process in Southeast Asia. Schemes such as the Master Plan of Connectivity seek to further integrate ASEAN members through building up an infrastructure linking them, and will likely have a positive influence on the expansion and consolidation of the ASEAN Community, thereby leading to consolidation of pro-human rights norms such as good governance and accountability.

Our conclusions have important policy implications. While democratization is an important pillar of human rights in the region, any external pressure on ASEAN members to democratize would likely backfire, however,

leading ASEAN members to collectively resist such pressure, as was the case in the 1990s, especially during the 'Asian values' debate. A better policy is to quietly assist ASEAN members in developing civil society and NGOs as well as support ASEAN with its effort to deepen regional integration and advance the ASEAN community. Doing so would likely lead to the consolidation of pro-human rights regional norms, and would increase peer pressure of democratic ASEAN members on other ASEAN members.

Few expect that the journey ahead will be a smooth ride. The implementation of specific projects will often be unsatisfactory, and harmonizing domestic practices with recently adopted regional norms could be painstakingly slow. Moreover, the fiasco during the 2012 ASEAN meetings in Cambodia shows the potential for internal cleavage within ASEAN in the face of a rising China, what some observers regard as a sign of a weakening ASEAN. While the AICHR is still limited in its capacity, however, one must not dismiss it as nothing more than a lip service to human rights, as it could develop into an effective human rights body by accretion. The historical experience of other RHRMs demonstrates that the gradual evolution of human rights institutions is the norm, not an exception. ASEAN's journey toward the promotion and protection of human rights has just begun.

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Notes

1. These key documents are as follows: the Bangkok Declaration (ASEAN 1967), the Declaration of ASEAN Concord (ASEAN 1976a), the Treaty of Amity and Cooperation in Southeast Asia (ASEAN 1976b), all the annual joint communiqués of the ASEAN foreign ministers (known as the ASEAN Ministerial Meeting), and statements from the leaders' meetings, the annual reports of the ASEAN Secretariat, and ASEAN's joint statements with its extra-regional dialogue partners from 1967 to 1992. See ASEAN (1967, 1976a, 1976b, 1967–2011).
2. The Working Group for an ASEAN Human Rights Mechanism (or the Working Group) was formed in 1995 by the non-governmental organization LawAsia in response to the ASEAN ministers' decision in 1993 to consider the establishment of a regional human rights mechanism. It is important to note that the Working Group was not established under the auspices of ASEAN or of ASEAN's primary track-two forum (the ASEAN-ISIS). The Working Group is comprised of other national working groups, which are, in turn,

- composed of representatives from government institutions, parliaments as well as from the academia and NGOs. For more details, see the Working Group's website at <http://www.aseanhrmech.org/aboutus.html>.
3. Interview with former Secretary-General of ASEAN Ong Keng Yong, February 2011.
 4. For the details of the backgrounds of the first representatives of the AICHR see 'The ASEAN Intergovernmental Commission on Human Right' by Centre for Non-Traditional Security Studies, RSIS. The article is available at www.rsis.edu.sg/nts/resources/special-edition/AICHR-281009.pdf.
 5. Interview with former Secretary-General of ASEAN Ong Keng Yong, February 2011.
 6. The text can be accessed at http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-1998-44.doc, 15 August 2012.
 7. Although Article 4(h) does not explicitly mention human rights, it is obviously related to human rights. The Constitutive Act does contain other clauses with the phrase human rights, most notably Article 4(m), which states that the Union shall function in accordance with 'respect for democratic principles, human rights, the rule of law and good governance.' The Constitutive Act of the African Union is available at http://www.au2002.gov.za/docs/key_oau/au_act.htm.
 8. 'That gov't will fully support the creation of an ASEAN Human Rights Commission – Thai PM vows,' 29 May 2007; accessed at <http://www.aseanhrmech.org/news/thai-supports-creation-asean-human-rights.html>.
 9. This consensus approach to decision-making can be somewhat relaxed at times, in order to facilitate progress. The so-called 'minus X' approach states that some countries can go ahead and start a policy or process and opponents can come on board at a later time as they see appropriate. This approach is often adopted by ASEAN, especially regarding economic issues.
 10. Interview with former Secretary-General of ASEAN Rodolfo Severino, February 2011.

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