

European Model: An Inspiration For ASEAN

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Abstract

The reminiscences of the colonial period still constrict Asian development, claimed by the region. In Europe, the human rights mechanism is the reason behind its intricate unity. ASEAN, an established organization since 1967 could realize a regional human rights mechanism in Asia, similar to the European model. Though the basically prevailing common law systems are a product of European influence, it could be efficiently utilized for a human rights mechanism, as it would not require familiarization. The equation of a Human rights mechanism and sustained regional prosperity in all its forms is inarguable. Henceforth, such a body could democratically determine regional development with the institutionalization of Commission of Human Rights, Court for Civil and Political Rights, Charter for ECSR and other Special Committees.

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“Today, ASEAN is not only a well-functioning indispensable reality in the region; it is a real force to be reckoned with far beyond the region. It is also a trusted partner of the United Nations in the field of development.” Kofi Annan, Secretary-General of the United Nations 16 February 2000 ¹

INTRODUCTION

The concept of Human Rights is a crystallization of values that are the common heritage of mankind. They are neither ephemeral, nor alterable with time, place and circumstances. They are not products of philosophical whim or political fashion. They have their origin in the fact of the human condition, and because of this origin, they are fundamental and inalienable ².

For long, the people of Asia suffered from gross violation of their rights and freedoms, especially during the colonial period. The death, injuries and detention of pro-democracy demonstrations in Tiananmen Square in 1989;³ the estimated 5000-7000 girls a year trafficked from Nepal to India,⁴ and the recent ethnically motivated killing in East Timor⁵ are tragic reminders of the clear need for multilateral resolutions to the myriad problems occurring across Asia. The administration of justice is therefore an institution or instrument developed by human beings for protection of its rights, and to provide safeguards for the dignified life and prompt and convincing remedy wherever and whenever her/his rights and dignity are violated. Hence, large numbers of people of Asia today realize that peace and dignity are possible only when the equal and inalienable rights of all of persons and groups are recognized and protected. The quest for justice has been one of several important inspirations for human being to desire and defend an organized structure of the society. Likewise this quest continues in Asia.

¹ See Full text <http://www.aseansec.org/64>

² P.N. Bhagawati, CJ *In Keynote address for Regional Judicial Colloquium on “Gender Equality and the Judiciary”* held at Georgetown, Guyana.14-17 April, 1997.Cited from Kristine Adams and Andrew Byrnes(ed),”Using International Human Rights Standards to Promote the Human Rights of Women and Girl Child at the National Level (1997)

³ Jennifer Morris, Human rights Violations During the Tiananmen Square Massacre and the Precedents Obliging United States Response, 12 CARDOZO L.REV.1375, 1377-78(1991).

⁴ UNICEF (2003)

⁵ Ian Timberlake, *A blessing for the East Timor massacre dead*, AGENCE FRANCE; PRESS, Feb.7, 2000,available at 2000 WL2728212.

Three regions (the Americas, Europe and Africa) have established regional covenants for the protection of human rights with supporting machinery in the form of multilateral Commission and/or Courts ⁶. Asia is the last major region to remain without a regional human rights enforcement mechanism. The Asian Human Rights Charter therefore is a significant step towards moving Asia into level with the international community.

In this paper, I try to discuss about the model and importance of ASEAN Regional Human Rights Charter.

ESTABLISHMENT OF ASEAN

ASEAN was established on 8 August 1967 in Bangkok by the five member countries namely Indonesia, Malaysia, Philippines, Singapore and Thailand. Brunei Darussalam joined 8 January 1984, Vietnam on 28 July 1995, Lao People Democratic Republic and Myanmar on 23 July 1997 and Cambodia on 30 April 1999.

The original purposes of ASEAN were laid down in the 1967 Bangkok Declaration and in that conference they made it more inclusive adding with economic growth, social progress, cultural development and promotion of regional peace and stability, coupled with respect for justice and the rule of law. Before 1990, ASEAN were involved in political matter of the states. After the 1991 Cambodian Peace accord and comfortable settlement, ASEAN Countries came to more close, and then after Vietnam, Lao and Cambodia became the member of ASEAN.

1. Asian Countries came into existence from 1947 as independent countries and voted for the Universal Declaration of Human Rights 1948. It means, since 1948 and before that ASEAN Countries were always in support to World Peace.
2. In 1993 all ASEAN countries participated the Vienna World Conference on Human Rights and adopted (without any reservation

⁶ European Convention for the protection of Human Rights and Fundamental Freedom, Nov.4, 1950, 213 UN.T.S.222, Inter American Convention on Human Rights, Nov.22, 1969, O.A.S.Doc.OEA/Ser. L/V/11.23, The African Charter on Human Rights and People 'Rights, June 7, 1981, O.A.U.Doc, CAB/LEG/67/3 Rev.5

and comments), the Vienna Declaration and Programme of Action on the World Conference on Human Rights.⁷

3. ASEAN countries not only participate in UN meetings but also try to promote UN names and values in the domestic and international arena.
4. Inter-government Bangkok Declaration 1993: encouraged ratification of the ICCPR and ICESCR and Cambodia, Philippines and Vietnam have ratified both and all ASEAN Countries have already signed CRC and all most all except Brunei signed CEDAW.

In Asia, we do not have a regional human rights mechanism. Even though ASEAN Countries, from the very beginning have tried to establish a human rights regional organization, yet it is still debated within the ASEAN Countries. Apart from this the UN also has not been doing very well in human rights protection. In this context establishment of a Regional Human Organization is the demand and need of time.

ASEAN Countries are playing vital and effective roles in the world politics, because the ASEAN Countries cover about 500 million in population, 4.5 million Sq. Km. in land, combined domestic product of almost US\$700 billion and total trade of more than US\$850 billion.⁸ This data strongly presents the need of ASEAN Countries in world politics to establish a regional mechanism to protect Human rights.

Reason for a regional human rights system in Asia –pacific

Most of the people who suffer human rights abuses, do not know their rights are being violated and even if they do, they do not know where or who to turn to for help, nationally or internationally. ASEAN development ratio is full of contradictions. There is massive poverty in the mist of growing influence of price hike, which ultimately affects the poor. ASEAN states have strong knowledge that only economic development is not sufficient to make people happy and rich, for which there must be all-round development spearheaded with education and health for all.

⁷ See UN World Congress on Human Rights: The Vienna Declaration and Programme of Action, June 1993 (New York: United Nations, 1994)

⁸ See for overview on ASEAN www.aseansec.org/64

As Human rights violation surges up day-by-day, ASEAN countries are increasingly facing difficulties without a regional human rights system. UN Human Rights mechanism is not easily accessible in ASEAN countries. Therefore, ASEAN is searching for its own regional human rights system in the Asia –Pacific that would be dedicated to:

1. provide easy access to justice and protect consumer's rights, for justice is a right of the consumer
2. provide a less costly, more accessible and effective redress than existing international process and procedures
3. mitigate conflicts between state vs. state and individual vs. state
4. help overcome procedural and institutional weaknesses and shortcomings of some domestic jurisdictions and international system
5. refurbish lack of expertise and experience in human rights jurisprudence
6. implementation and enforcement of human rights norms and standards, seriously
7. conceptualize and value intellectual and religious traditions as well as public opinion of Asia and Pacific.
8. address regional human rights problems
9. its moral legitimacy being drawn up by the government, scholars, lawyers, and civil society representing the region.

WHY EUROPEAN MODEL IS APPLICABLE IN ASIA -PACIFIC REGION?

The size of Asia is itself a problem. Asia is where about 60% of the world's population lives; what can we take to be the values of so vast a region, with so much diversity? It is important to state at the outset that there are no quintessential values that separate the Asian as a group from people in the rest of the world and which fit all parts of this immensely large and heterogeneous population. The temptation to see Asia as a "unite" reveals a distinctly Eurocentric prospective⁹. Sen's perception is quite pragmatic and

⁹ Sen, Amartya "Human Rights and Asian Values", The New Republic. July 14-21, 1997.

an Asian has voiced the demand of time. Apart from this, there are so many Asian similarities we can find in European model.

HISTORICAL RELATIONS AND TIES

Before 1947 many ASEAN Countries were under the rule of Britain, Spain, Netherlands and Portugal. We can see in Philippines, majority of the people are Christians and they speak English language fluently. Myanmar, Malaysia, Indonesia, Singapore, previously were also under the British government rule and obviously many people changed their religion and converted to Christianity. And, frequent interactions with the European Communities continue. The people of these countries were familiarized with European language, custom, culture and also the judicial system in the colonial regime.

Political dialogue between EU and ASEAN firstly took place at regular Ministerial Meeting. The foreign minister of both EU and ASEAN have met for political dialogue every second year since 1978. The relation of EU and ASEAN is based on a cooperation Agreement of 1980. And in September 2001, the European Commission Europe and Asia envisaged: A strategic Framework partnership, which identifies ASEAN as a key economic and political partner of the EU and emphasizing its importance as a locomotive for overall relation between the Europe and Asia.

The commission, a new partnership with South East Asia, present in July 2003 reforms the importance of EC-ASEAN partnership. Today, in all over Europe there is handsome presence of ASEAN with regard to many European Organizations providing technical and financial support.

SIMILAR-DIFFERENT CULTURE

ASEAN is very much rich in varieties of culture. ASEAN Countries are heterogenic in social composition, because it is multi-ethnic along with indigenous & tribal groups with a wide expanse of various languages spoken. The ASEAN culture and traditions stress the importance of common cultural identities. Cultural identities help individual and communities to cope with the press of social change. In this continent people frequently speak their mother tongue along with English. Europe characterizes a similar context and so is so congruent in ideal of different culture.

SIMILAR DIFFERENT LEVEL OF DEVELOPMENT

Globalization, the development in technology and increase in trade and economic relations, and movement of people have increased our exchange and interdependence. We are more connected economically and ASEAN Countries are making progress. Some are well developed while others are developed and some are developing. In Europe, not all countries are at the same level.

However, most European states have multi-party governments similar to the ASEAN Countries. In Europe, there is Constitutional Monarchy, Presidential system and Prime Ministerial system. In ASEAN, Philippines have presidential system with a parliament. Singapore has Prime Ministerial system, Thailand and Cambodia both have ceremonial monarchy, and Malaysia has constitutional Monarchy. Laos and Indonesia have Parliamentary supremacy whereas Vietnam has a single party socialistic communist system. On the other hand Brunei has absolute monarchy.

There is much dissimilarity among the states but one thing is very much common with ASEAN and European that is multi-party democracy. ASEAN Countries have strongly believed in democracy and they are securing their future only in democratic systems. If we think about human rights, rule of law and transparency, and good governance then we have to think about a strong human rights mechanism regionally similar.

COUNCIL OF EUROPE AND ASEAN

Council of Europe is an umbrella organization of European countries. Although various organizations and institutions including the European Community (European Union) and the other Organization for Security and Cooperation in Europe (OSCE) nowadays deal with human rights in Europe. But, what is commonly referred to the European system or human rights protection is still the system created within and operated by the Council of Europe. The Council, founded in 1949 was the first European organization to be established after Second World War. Its philosophical and political roots go back to the fight and resistance against Nazism and Fascism. They were determined to build a new United Europe on solid foundations, on a set of strong shared values and principles, those of pluralist democracy, the rule of law and human rights.

Similarly, ASEAN was established on 8 August 1967 in Bangkok by the five member states on terms of economic growth, social progress, cultural development and promotion of regional peace and stability along with respect for Justice and Rule of Law. So many Organizations are working for the protection and promotion of human rights in ASEAN Countries but Regional Human Rights concept was propounded by ASEAN. Therefore the establishment procedure and philosophy of both organizations resemble.

The European system of human rights often sets an example of the strongest and most comprehensive of any human right system, whether international or regional. The European system may be primarily traced to the European Convention for the protection of Human Rights and Fundamental Freedoms (ECHR) signed in 1950 and entered into force in 1953. Under the European Council, some 41 states have ratified the ECHR and the ECHR was the first comprehensive human rights treaty in the world.

ASEAN is also the first Regional Organization in Asia and the Charter was ratified by five member states in 8th August 1967.

Many European countries have ratified ICCPR and ICESCR also domesticated them in their systems. ASEAN countries also have common and civil law. Both legal systems originated in Europe. Likewise European, many ASEAN member states are involved in UN Treaties. Thailand ratified ICCPR in 29th January 1997 and signed II Protocol in 20 September 2006, Indonesia accepted ICCPR in 23rd 2006, Laos signed ICCPR in 7th December 2000, Philippines has ratified almost all human rights treaties, Cambodia is also a party of ICCPR and so many human rights treaties. Likewise so many ASEAN countries established the National Human Rights Council.

SIMILAR STRUCTURE AND ROLE:

In the light of the institutional integrity bestowed upon them by the member states both will be able to play the role of the guardian of the process. The primary requisite is political recognition. Both are political bodies and are also recognized by the region. These organizations are political bodies therefore are suitable and reliable. Complexity in life has begun to soar as expectations of people are climbing higher by the day.

When we talk about all round development, it means not only economic development but also social, cultural, political and establishment of democratic values and ideals because human rights are neither created nor granted by states through treaties. State only recognize, guarantee or protect human rights of their inhabitants through treaties. Human rights are inherent in every human person as natural rights that are not simply rights created by state.

SIMILAR CORE VALUES

European Council– Greater Unity between member States for the purpose of safeguarding and realizing the ideas and principles which are their common heritage and facilitating their economic and social progress.

ASEAN-Vibrant and open ASEAN Societies consistent with their respective national identities, where all people enjoy equal access to opportunities for total human development regardless of gender, sex, race, religion, language or social and cultural background. Comparatively, both have same destination to protect the rights of individuals. Protection of rights should be the main agenda of all states.

WHY INTER-AMERICAN AND AFRICAN MODEL ARE NOT APPLICABLE IN ASIA PACIFIC?

The Commission on Human Rights was created as an “autonomous entity” of the OAS under a Statute adopted by the OAS Council. The OAS Charter adopted in 2nd May, 1948 in the form of a non-binding resolution and the African Charter on Human and People Rights was adopted in 1981 by the organization of African Unity (now the African Union) and entered into force in 1986. The African human rights system differs in a number of respects from the two other regional systems; European and American and it is very ambitious. African Charter does not establish a human rights court; therefore it is not applicable in this complex and intensive era. Apart from this ASEAN are not very much familiar with the system, culture, tradition and also judicial system of Africans and Americans. When we compare the judicial system of ASEAN, it is very much similar to the common law system. And European is much similar to ASEAN in this respect and has a strong execution mechanism; however weak regional mechanisms are in execution. A Committee of Ministers looks after the execution system of

European Courts. Therefore, today European Courts are more reliable rather than ICJ for the human society as a whole.

MAIN OBJECTIVES- ASEAN HUMAN RIGHTS CHARTER

1. Promotion of community interest for the benefit of all ASEAN Member Countries
2. Maintaining primary driving force of ASEAN
3. Narrowing the development gaps among Member Countries
4. Adherence to a set of common socio-cultural and political community values and shared norms as contained in the various ASEAN documents
5. Continuing to foster a community caring society and promote a common regional identity
6. Effective implementations as well as compliance with ASEAN's agreements
7. Strengthening of democratic institutions by promoting obligations of human rights, transparency and good governance
8. Decision making on the basis of equality, mutual respect and consensus
9. Commitment to strengthen ASEAN's competitiveness, to deepen and broaden ASEAN's internal economic integration and linkage with world economy
10. Promotion of regional solidarity and cooperation; Mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations
11. Renunciations of nuclear weapons and other weapons of mass destruction and avoidance of any arms race
12. Renunciation of the use of force and the threat to use force; no aggression, exclusive reliance on peaceful means for the settlement of differences or disputes
13. Enhancing beneficial relations between ASEAN and its friends and partners
14. Upholding non-discrimination of any ASEAN Member Country in ASEAN's external relations and cooperative activities

15. Observance of principles of international law concerning friendly relations and cooperation among states and
16. The right of every state to lead its national existence free from external interference, subjection or coercion in the internal affairs of one another.

For the implementation of above objectives of ASEAN, Human Rights Charter these are my recommendations:

- Codification of human rights standard: a series of consultation, participation and validation among stakeholders must be undertaken
- Establishment and strengthening of independent institutions
- At least four types of institutions should be envisioned – Commission of human rights, Court for Civil and Political Rights, Charter for ECSR and other Special Committees
- Development of individual complaint mechanism and
- Specialized Committees should enhance protection.

CONCLUSION

Pertinent questions of today's civilized world are that, are we free, free in all its meaning? Developed and modern as we assert to be, we cannot easily answer these questions. Our world is threatened by inferno, a crisis of faith clung to the future. We divide in the name of religion, perception and philosophy. The virtue of humanity after all lost to values which divide than unite us. Does diversity amongst us signify we would be happier in war than in peace?

The birth of ASEAN in this region moistens dessert soil, for harmonious future to sprout out everywhere. The ASEAN Vision 2020, adopted by the ASEAN Leaders on the 30th Anniversary of ASEAN, agreed on a shared vision of ASEAN as a congregation of Southeast Asian nations, outward looking, living in peace, stability and prosperity, bonded together in partnership in dynamic development and as a community of caring societies.

European human rights system evolved in a context in which Europe and especially the state of the European Union had sought “ever closer

integration”, not only in terms of trade and economic development but also in question of culture, politics and social security policy. In this regard the human rights system in Europe is intricately tying the Unity of Europe and the achievements of the European system are considerable. Thus the core value of ASEAN will be to tie up Asia into a single whole, keeping human rights as universal, regardless of their nationality.

