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**Reflections of ASEAN & Human Rights:
Opportunities for EU engagement**

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1. BACKGROUND TO AICHR

The ASEAN Ministerial meeting which was held on June 25, 1993 in Singapore agreed that ASEAN should consider the establishment of an appropriate regional mechanism on human rights. This was in response to the Vienna Declaration and Program of Action. Since then, there has been active work undertaken by the Working Group for an ASEAN Mechanism which was established in July 1995 by LawAsia.

By 2004 when the 10th ASEAN Summit was held in Nov 29, the heads of state adopted the Vientiane Action Programme which called for the ASEAN Human Rights Commission to be established.

By 2007 The ASEAN Eminent persons Group which formulated the ASEAN Charter also endorsed the establishment. Furthermore the four national human rights commissions of Indonesia, Thailand, Malaysia and Philippines also formally pledged for a regional mechanism through a declaration of cooperation.

The journey took ASEAN member nations sixteen years to establishment of the ASEAN Inter-government Commission on Human Rights (AICHR).

2. ESTABLISHMENT OF AICHR

Therefore Oct 23, 2009 was indeed a historical moment for ASEAN when AICHR was finally established. This is indeed a step forward for the promotion and protection of Human Rights among ASEAN members. It is hailed by some as a milestone for a region ruled by diverse governments (democracy, Indonesia; hermetic communist regime in Laos; repressive military dictatorship in Myanmar)

Ten ASEAN countries are part of AICHR. The Commissioners are HE Abdul Hamid Bakal (Brunei), HE Om Yentieng (Cambodia), HE Rafendi Djamin (Indonesia), HE Bounkeut (Laos) HE Muhammad Shafee Abdullah (Malaysia), HE Kyaw Tint Swe (Myanmar), HE Rosario Gonzalez Manalo (Philippines), HE Richard Magnus (Singapore), HE Sriprapha Petcharamesree (Thailand) & HE Do Ngoc Son (Viet Nam)

According to the terms of reference the primary objective of AICHR is the promotion and protection of human rights and fundamental freedoms of the people of ASEAN. However AICHR must respect the independence, sovereignty and non-interference policy of ASEAN.

AICHR is an inter-governmental consultative body and integral part of the ASEAN organizational structure which will meet twice a year. It is mandated to submit its annual report to the ASEAN Foreign Minister meeting. The ASEAN secretariat will provide the secretarial support. A set up grant of USD 200,000 was allocated by ASEAN member states. The commissioners are appointed by the respective governments and they will serve for a three year term and could be reappointed for only one more term.

Among its mandate and function are to develop strategies for the promotion and protection of human rights, also develop an ASEAN Human Rights Declaration and engage in consultation and dialogue with civil society and other stakeholders

3. CRITICISM OF AICHR

Thai Prime Minister Abhisit Vejjajiva acknowledged the limitations of AICHR but stressed that the new agency was still valuable in highlighting abuses and putting pressure on member countries. He recognized that this development must be viewed as an evolutionary process.

However what is important to note is that ASEAN countries have turned a blind eye towards human rights abuses due to the ASEAN agreed policy of non interference .Some have refereed the AICHR as a toothless body which no real powers nor mandate. Others questioned the motives of the establishment as an attempt to just be more attractive to potential trading partners such as United States and European Union.

NGOs such as the ASEAN People's Forum indicate that they have been shut out of the process as there has been very little consultation in the appointment of the commissioners as well as any formal mechanism for interaction and accountability

AICHR has no power to investigate human right abuses in member states. The scope is limited as there is no provision for an individual, community or community in Asean to make a petition to AICHR. There is also no advisory function to member states on human rights matters.

AICHR is not independent as the commissioners were chosen by governments without outside consultation. It is said that the process is very secretive. ASEAN NHRI Forum had recommended that AICHR should comply with the Paris principles however there is no commitment to independence or political interference from member states on the work and activity of AICHR.

4. UNRESOLVED CONFLICTS AMONG AICHR MEMBERS

Conflict between Thailand and Cambodia over border disputes near an ancient hilltop temple, Preah Vihear

Indonesia and Malaysia's unresolved disputes over territory on Borneo island. Some tensions between the countries on the handing of migrant workers as well as origins of songs, traditional dances and batik cloth printing techniques. Furthermore territorial disputes has also strained relations between the Philippines and Malaysia, Singapore and Malaysia.

Claims for rich natural resources in the South China Sea by Brunei, Malaysia, Philippines and Vietnam.

ASEAN does not have a mechanism to resolve the disputes. Most disputes are resolved through informal bilateral means. These matters unresolved will continue to be hurdles in

the realization of a more effective partnership framework bridging suspicion and fostering mutual confidence.

5. AICHR COMMITMENT TO HUMAN RIGHTS TREATIES

Based on the data available in the Amnesty 2009 Report one can note the AICHR country commitment to six of the basic fundamental UN Treaties. One could easily note the political commitment of the nations.

Only three countries namely Cambodia, Philippines and Thailand have ratified all six. Indonesia and Viet Nam have ratified five, however Brunei, Malaysia, Myanmar and Singapore have only ratified two and in the case of Malaysia it is with some reservations.

By ratifying any one of these territories does not mean there is full compliance however it is the first step to be accountable to a universal set of standards and by which the nation can be benchmarked.

One can note that matters pertaining to women and children there is full consensus, However on the rights pertaining towards civil and political on the one hand and on the other the freedom from torture, there is least commitment among Asean member states. This is an area of concern as one of the benchmarks of democracy is the right to alternative views and a commitment by the state not to torture its citizens.

	C 1	C 2	C 3	C 4	C 5	C 6	C 7	C 8	C 9	C 10	Yes
HR 1		Yes					Yes		Yes	Yes	4
HR 2		Yes	Yes	Yes			Yes		Yes	Yes	6
HR 3	Yes	10									
HR 4	Yes	10									
HR 5		Yes	Yes	Yes			Yes		Yes	Yes	6
HR 6		Yes	Yes				Yes		Yes		4
Total	2	6	5	4	2	2	6	2	6	5	

C1 Brunei, C2 Cambodia, C3 Indonesia, C4 Lao, C5 Malaysia, C6 Myanmar, C7 Philippines, C8 Singapore, C9 Thailand, C10 Viet Nam

HR1 International Covenant on civil and political rights (ICCPR); HR2 International Covenant on Economic, social and cultural rights; HR3 Convention on the elimination of all forms of discrimination against women (CEDAW), HR4 Convention on the Rights of the Child (CRC), HR5 International Convention on the elimination of all forms of racial discrimination; HR6 Convention against Torture and other cruel, inhuman or degrading treatment or punishment.

6. AICHR & HUMAN RIGHTS VIOLATIONS

A major area of concern is Myanmar. In May 2009 Thailand, Philippines, Singapore and Indonesia expressed their concern over Myanmar's worsening political situation and Thailand offered to mediation role in Myanmar's national reconciliation process and a peaceful transition to democracy.

The situation of Vietnam and its violation of religious freedom as illustrated by the imprisonment of a catholic priest Fr Nguyen Van Ly for two years

There are major concerns on violations of human equal opportunities for peoples in Southern Thailand and Southern Philippines especially among the Muslim minority communities

Tremendous violations of human rights among migrant workers, refugees, victims of human trafficking especially women and children and the displacement of forest based communities and their claims to customary land rights.

AICHR does not have the mandate to undertake investigations or conduct an enquiry on any violation among member state. Nor does AICHR have the mandate to mediate among the conflicting community and state as a neutral party working from within the ASEAN mandate and as a member of the ASEAN family.

7. EU & ASEAN

The EU according to Dr George Wiessala has developed a complex set of priorities and agendas regarding human rights promotion. This has enabled EU to enhance capacity, presence and profile of this agenda in foreign policy matters. According to him some analysts pointed out the "EU human rights agenda in development policy tended to reflect euro-centric political and social concerns, rather than those of the developing world".

In this context Dr Wiessala concludes that while human rights became a catalyst in EU-Asian partnerships it however "also constituted impediments to further expansion of EU-Asia dialogue. Human Rights became, arguably, the most significant field of intellectual debate and contention within EU-Asia relations".

EU position on Myanmar- EU has taken a very strong position and has postponed number of Asia Europe Meeting (ASEM) several times. EU has called on Asean to address the violations but recognized that the major weakness is the Asean policy of constructive engagement and non interference on internal affairs of its members. EU has refused to issue EU visas for officials of the junta and has bans on official visits of EU officials to Myanmar.

EU and ASEAN are now negotiating an FTA but each ASEAN member has to sign first a bilateral treaty with the EU that covers agreements on promoting human rights and good governance, including the ratification of the 1998 Roman Statute of the International Criminal Court.

EU congratulated ASEAN for the establishment of AICHR. It recognized that this "marks a crucial step in the development of ASEAN as an organization that defends

universal human rights values. The EU called on ASEAN to adhere to the Paris principles, ensure that people with integrity and human rights expertise are appointed as well as engage with civil society.

8. ASIAN VALUES DIALOGUE

This concept was popularized in the 1990s by Singapore first Prime Minister, Lee Kwan Yew and Malaysia's fourth Prime Minister Mahathir Mohammad. This notion was founded on cultural relativism where there is a strong communitarian outlook as opposed to an individualistic approach to rights. It is also based on a strong focus on economic, social and cultural aspects as opposed to civil and political.

It is the academic writing of Prof Amartya Sen who provides a sound counter argument to the Asian values thesis. He noted that "the modern advocates of the authoritarian view of the Asian values base their reading on a very arbitrary interpretation and extremely narrow selections of authors and traditions" (pg 239-240).

Sen goes on to establish that there is enormous variety in Asian heritage and intellectual tradition. He reviews historical materials to establish that in addition to Confucian thought much of Asian is also influenced by Buddhist thought as found in the writing of Emperor Ashoka on egalitarian and universal tolerance. Furthermore Sen further demonstrates that the Moghul emperor Akbar displayed tremendous tolerance for political and religious thought including freedom of worship and religious practices.

The framework developed by the United Nations provides a greater integration of the human rights and human development agenda as a common vision and common purpose thereby breaking down the argument that one set of rights is more important than the other. Therefore economic, social and cultural rights are very much linked to civil and political rights.

The recent political developments in ASEAN countries like Indonesia, Thailand, Philippines and even Malaysia clearly display a clear demand for democratic space. In this context the analysis by Amnesty International is fitting namely "under increasing political and economic pressure, many people in the Asia Pacific region turned to the international human rights framework to bolster their efforts to secure greater dignity for themselves and others" (pg 29).

9. ASEAN POTENTIAL

ASEAN has come a long way and has much potential. ASEAN has ambitious target of creating a single market by 2015 among its ten members which have a combined population of nearly 600 million people, twice the population of the US.

ASEAN has more democratic members namely Indonesia, the Philippines and Thailand. Malaysia too now has a dynamic opposition although there are tremendous curtailment of human rights

ASEAN states have adopted a market oriented approach to economic development and concerns of foreign investment will demand for good governance, rule of law, human rights and democracy

10. CHALLENGES & POSSIBILITIES

What direct or indirect role could the EU play with AICHR?

EU could play a supporting role in building capacity and capability of AICHR especially in developing appropriate strategies for the promotion and protection of human rights as well as in the development of an ASEAN Human Rights Declaration.

This could be undertaken by some of the EU policy think tanks linked to political parties which could seek to work with the political leadership of ASEAN member states. In addition EU could develop some strategic partnerships with national Human Rights Institutions in ASEAN member countries such as in Indonesia, Thailand, Malaysia and Philippines

How can ASEAN learn from EU experience without mirroring exactly the “supranationalization” ideology?

EU could facilitate ASEAN member states and the think-tank groups to develop strategies on how to break away from its traditional policy of non-interference and state sovereignty. Facilitate thinking on how to retain ideals while remaining pragmatic and thereby enabling an effective human rights body.

The EU process of overcoming significant challenges regarding diversity of member states could challenge ASEAN to learn from this process. It is not to impose the EU model but to learn from the success, failures, challenges in order to foster ASEAN’s own model of a union of states.

EU could develop research capabilities and expertise in these areas through collaborative and comparative research projects.

How can EU strengthen its involvement with civil society and professional bodies?

EU and EU member states like many of the German Foundations currently fund various types of civil society action towards democracy and human rights. This capacity building, intellectual development especially of younger intellectuals is essential including enhancing the capacity of the alternative media

EU youth exchange and leadership development programmes especially in identifying bright young people from ASEAN for academic study at the post graduate levels in Europe and EU young people for study in ASEAN countries thereby grooming a younger generation of intellectuals who could occupy strategic positions in think tanks and policy institutions.

Therefore EU could review all its past efforts and enhance them from 2010

How can EU strengthen its sustainable forest management criteria's for timber and down stream products?

EU and EU member states have played a key role in the Sustainable Forest Management dialogue and the standard setting at the global level. While these have a tremendous impact on the environment and climate change through carbon credits, however my interest in this theme emerged as SFM has a component on the impact of the forest on forest based communities.

All over Asean and Asia are the flight for survival for the forest based communities who are making a claim for their customary land rights. Both states and private business is displacing these communities. There can be no effective poverty eradication as these communities are so interlinked with the land.

Therefore EU could continue to strengthen these efforts.

How can EU ensure that there is greater consistency in EU treatment of ethnic and religious minorities in Europe?

Dr Hans Maull raised this point of credibility of EU yesterday, by this he noted that EU must lead by example and the treatment of ethnic and religious minorities is of utmost importance. IN this context minority cultures, religions and languages must be appreciated, respected as part of diversity and plurality.

EU could strengthen the initiatives taken by the Government of Spain and Turkey is sponsoring the Alliance of Civilization Dialogue which is now a UN initiative. Thus far two global gathering have taken place in 2008 at Spain and 2009 in Turkey.

Therefore EU could review its role and ensure greater protection and documentation of these experiences.

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