

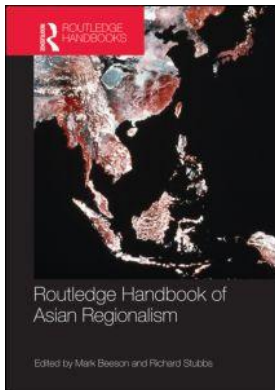
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Asian regionalism and human rights

The case of the ASEAN Intergovernmental Commission on Human Rights

Anthony J. Langlois

Introduction

Asia has long been the only region without an institutionalized human rights framework.¹ Yet it is difficult to envisage the form that a human rights mechanism might take for the whole of such a heterogeneous region. For a subregion such as that already institutionalized by ASEAN, however, the latent possibility for such a mechanism has been the focus of human rights proponents for several decades – a focus that has very recently, in 2009, resulted in an ASEAN human rights body (AHRB): the ASEAN Intergovernmental Commission on Human Rights (the AICHR).

What might this development mean? How should we best interpret it? And what should we expect from AICHR? In the limited space available here I will first set out how the AICHR came to be; I will then argue that the expectations for its performance can be usefully aligned with a range of views about the nature of ASEAN and Southeast Asian regionalism more generally. Regional analysts who look at economic integration, security cooperation and democratization/liberalization fall broadly into optimistic or pessimistic postures – boosters or sceptics. Examining the various arguments within these broader debates provides a useful and theoretically informed basis for making judgements about the role we should expect the AICHR to play, as it takes its position in the increasing pantheon of ASEAN institutions.

ASEAN and the AICHR

Regional human rights arrangements have been promoted by the United Nations in general since the 1970s, and in the 1980s the UN made specific calls upon states in the Asian region to take up this challenge (Phan 2008: 2; see also Kabir 2001; Mohamad 2002). It was not until the 1993 Vienna World Conference on Human Rights that the foreign ministers of ASEAN responded to this challenge, and ventured that ‘ASEAN should also consider the establishment of an appropriate regional mechanism on human rights’ (Phan 2008: 3). As Hao Duy Phan says, ‘[t]his may be considered the official start of ... ASEAN’s process toward a regional human rights body’ (Phan 2008). Later that year, further impetus was added to this momentum by the statement of the ASEAN Inter-Parliamentary Organization (Assembly, since 2007) that ‘it is...the task and responsibility of member states to establish an appropriate regional mechanism on human rights’ (Muntarbhorn 2003).

Following these developments was the creation of the ‘Working Group’ for an ASEAN Human Rights Mechanism (Santiago 2009). The Working Group was established under the auspices of the Human Rights Committee of LAWASIA; it included a range of participants who came together from the national working groups of ASEAN member states (starting with Indonesia, Malaysia, the Philippines and Thailand and subsequently being joined by Cambodia and Singapore). These members were drawn from civil society and the academy, as well as from national parliaments and governments in the region. From 1996 the Working Group met annually with the foreign ministers of ASEAN states, and since 1998 its work was mentioned in the foreign ministers’ annual communiqué (Muntarbhorn 2003).

In 2000 the Working Group put a proposal to ASEAN for the creation of a human rights mechanism. The draft agreement for the establishment of the ASEAN Human Rights Commission was supported by the following argument from the Working Group:

The issue is most pertinent at a time when there is already much monitoring of human rights developments in ASEAN from organizations outside the ASEAN region, including the United Nations. The lack of an ASEAN mechanism implies that while the region is exposed to monitoring from sources outside the region, there are few opportunities for the region to take stock of human rights developments in the region from the standpoint of ASEAN. The establishment of an ASEAN human rights mechanism with governmental support should help to redress this situation so that the ASEAN perspective is better understood by outsiders. This should complement international human rights standards in the region.

(Muntarbhorn 2003)

As Muntarbhorn put it at the time, the ‘prolonged silence’ from ASEAN about these advances from the Working Group implied that the organization was not yet willing to countenance a human rights commission. The Working Group thus took another tack, using a methodology ‘with multi-track, multi-sectoral strategies pursued through interim arrangements and alternative courses of action’ (Muntarbhorn 2003).

A series of workshops were then held, in Indonesia in 2001, Manila in 2002 (along with the ASEAN-ISIS colloquium on Human Rights), Bangkok in 2003, Jakarta in 2004 and Malaysia in 2006. At these meetings the fundamental objective of a human rights commission was maintained, but the focus of action was on a range of intermediate and pragmatic efforts, from the establishment of national working groups in all ASEAN countries through to issues such as human rights education and capacity building. The Malaysia workshop was held following a proposal from Malaysia that a human rights mechanism should be established, to be joined only by those who were ready for it. This proposal was endorsed by Indonesia, but was rejected by other ASEAN states, who took the view that a human rights mechanism should be joined by all simultaneously (Phan 2008: 8). The status quo – the ‘prolonged silence’ – remained the order of the day.

Change came in the form of the decision of the 11th ASEAN Summit held in Kuala Lumpur in December 2005 to draft a Charter for ASEAN as a whole. This development has its roots in the 2003 Bali Concord II, at which the ASEAN leaders ‘declared their intention to turn the organization into a cohesive, rules based EU-style “community”’ (Munro 2009: 4). As Munro continues:

The subsequent 2004 ‘Vientiane Action Program’ (VAP) set out a broad framework for how an ASEAN community might look. Although the VAP does not explicitly endorse or even mention a pan-ASEAN human rights mechanism, it does very briefly propose a ‘network of cooperation among existing human rights mechanisms, ... an ASEAN instrument on the

protection and promotion of the rights of migrant workers, ... [and] an ASEAN commission on the promotion and protection of the rights of women and children’.

(Munro 2009: 4)

The route to the creation of the ASEAN Charter was decisively influenced by the Eminent Persons Group (EPG), a collection of senior statesmen from the ASEAN region who would voice guidance on the drafting of the ASEAN Charter. In the EPG’s 2006 report, the senior statesmen collectively said that an ASEAN human rights mechanism was a ‘worthy idea [and] should be pursued further, especially in clarifying how such a regional mechanism can contribute to ensuring the respect for and protection of [the] human rights of every individual in every Member State.’ (Durbach *et al.* 2009: 223)

Munro comments that this was the most decisive move in the establishment of an AHRB – that while it does not ‘read like an overwhelming endorsement’, it nonetheless had the effect of placing the creation of a human rights body at the centre of all subsequent discussions about the continuing evolution of the ASEAN Community (Munro 2009: 5).

The EPG report on the prospect of an ASEAN Charter was followed by the creation of the High Level Task Force (HLTF) to do the work of drafting the ASEAN Charter. This was no straightforward task: the idea of consensus is famously at the heart of ASEAN decision-making (‘the ASEAN Way’), and on the matter of the AHRB, as on a range of other issues, there was much diversity of opinion at the discussions of the HLTF – to the point where the matter had to be referred to the ASEAN foreign ministers themselves on several occasions (Morada 2009: 199; Munro 2009: 5). However, in January 2007, the Cebu Declaration on the Blueprint of the ASEAN Charter endorsed the recommendations of the EPG that there be an ASEAN human rights body. However, the debate continued throughout 2007 as to what form such a body should take, and how it should be articulated within the ASEAN Charter. There was in particular a strong divide between the views of the foreign ministers of Malaysia, Indonesia, Singapore and Thailand, and those of Myanmar, Laos, Cambodia and Vietnam. In the end, the latter group were persuaded by the former to accept ‘a short provision’ for the creation of the human rights body within the ASEAN Charter, a provision that was adopted when the ASEAN Charter itself was adopted at the 13th ASEAN Summit in November 2007 in Singapore (Phan 2008).

Article 14 of the ASEAN Charter thus reads:

1. In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body.
2. This ASEAN human rights body shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting.

A milestone of no small significance was clearly achieved with the promulgation of this article, but as was also immediately obvious, the significance and meaning of this development entirely depended on what would follow from the second clause of this article: the nature of the ‘terms of reference’ (TOR) to be established by the ASEAN foreign ministers meeting.

For this purpose, a second round of negotiations ensued under the auspices of a ‘High Level Panel’ (HLP), created in July 2008. This panel was also made up of government-appointed personnel. The purpose of the HLP was ‘to determine the form, functions and scope of the AHRB’ (Munro 2009: 6); its key task was to draft the TOR for the human rights body. The HLP met with the Working Group; in ASEAN states with the requisite degree of political freedom they met with national human rights institutions and with civil society organizations (CSOs) – prime

among them being the Solidarity for Asian People's Advocacy Taskforce and the Southeast Asia Women's Caucus on ASEAN (Ginbar 2010: 509).

Given the long gestation of the AHRB, the final stage in its creation displayed much alacrity. Against the scepticism of even ardent enthusiasts (Petcharamee 2009: 11), the HLP took their draft TOR to the ASEAN foreign ministers meeting in July 2009, at which time they were approved. Only three months later, in October 2009 at the 15th ASEAN Summit, the Cha-am Hua Hin Declaration formally launched the long-awaited AHRB, which was called into being as the ASEAN Intergovernmental Commission on Human Rights (AICHR).

The TOR for the AICHR set up a very specific kind of institution, one that might be seen as a characteristically ASEAN combination of international human rights norms and the 'ASEAN Way'. The 'Purposes' section of the TOR state clearly that the promotion and protection of the human rights and fundamental freedoms of the peoples of ASEAN is the overriding rationale for the institution. It should be noted, however, that considerations such as stability and harmony, friendship and cooperation between member states, respect for different historical, cultural and religious backgrounds are noted and endorsed *before* one arrives at any mention of the Universal Declaration of Human Rights.

The 'Principles' section of the TOR gives pride of place to the following principles: '(a) respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States; (b) non-interference in the internal affairs of ASEAN Member States; (c) respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion...' The principles conclude by enjoining: 'Pursuance of a constructive and non-confrontational approach and cooperation to enhance promotion and protection of human rights'; and: 'Adoption of an evolutionary approach that would contribute to the development of human rights norms and standards in ASEAN' (ASEAN Morada 2009; Secretariat 2009).

ASEAN's civil society organizations, which have long campaigned for greater respect and protection for human rights, are concerned that the AICHR is designed to *promote* human rights, rather than *protect* human rights. The SAPA Taskforce, for example, ran a campaign for a human rights body 'with teeth' (SAPA Task Force on ASEAN and Human Rights undated), and the concern is that AICHR does not satisfy this criterion. In particular, for example, there is no extant mechanism for individuals or groups to make a petition to AICHR and no power for the AICHR to sanction member states; nor is there a mechanism for advising member states on rights-related issues.

With respect to the pessimism of civil society organizations about these concerns, Ginbar offers the following analysis:

This, it is submitted, is staring too hard at the empty half of the glass. There is an explicit 'purpose' of human rights protection and a mandate for the AICHR to 'develop strategies' for such protection. To these must be added other provisions, for instance '[t]o obtain information from ASEAN Member States on the promotion and protection of human rights'. These provisions may be skeletal, but legally there is nothing in the language used therein to stop the AICHR, if it so chooses, from covering them with flesh and skin, for instance by investigating human right violations, or at least requesting information from member states in response to complaints of such violations... Significantly, the TOR also tasks the AICHR with drafting 'an ASEAN Human Rights Declaration', envisaging a legally binding regional human rights system further down the road.

(Ginbar 2010: 515)

As Santiago comments, 'the AICHR is a consultative body that will adopt an evolutionary approach in fulfilling its mandate and functions of promoting and protecting human rights in

the ASEAN region' (Santiago 2009). Moreover, the TOR for AICHR are to be revised every five years, thus leaving the door open for significant development of its capacities if the politics of the time are propitious.

It is not possible, at this early stage of AICHR's existence, to say much more than this by way of evaluation. That task must await the passage of time. Instead I will consider how we might think about the significance of this development for the region, and in particular, I wish to explore the way in which these developments might feed into the debates among International Relations (IR) theorists regarding the nature of the ASEAN region.

The AICHR and ASEAN regionalism

Most literature on the AICHR to date has been produced by human rights proponents, civil society organizations, international lawyers and journalists – and for most of these the principle point of interest is what the AICHR will mean for human rights protection – hence the great concern over whether the AICHR will be an institution 'with teeth', or not. The development of the AICHR, however, should also be read through the debates within international relations on ASEAN regionalism; these debates in turn provide a range of frameworks for thinking about what might reasonably be expected of, or desired from, the AICHR.

What is meant by ASEAN regionalism, as with regionalism in general (see Fawn 2009) and (Lake 2009), is a keenly debated topic. The debate broadly falls into three areas of discussion: economic integration, security and democratization. In each of these three areas there is a divide between those who talk up the achievements and future prospects of ASEAN regionalism – and with it often East Asian regionalism more generally, and those who for a variety of reasons argue that such positive outcomes as do exist are incorrectly attributed to ASEAN's internal dynamics and norms.

John Ravenhill, for example, argues that most scholars of ASEAN fall into one of two camps: the boosters or the sceptics. He further argues that these two camps broadly map on to the division between constructivist and realist scholars, where differences in epistemology, ontology and methodology are of great significance. Crucially, for Ravenhill, 'ASEAN boosters... make a virtue out of what sceptics see as near fatal flaws in ASEAN's institutional design – agreements that are not enforced, and regional institutions that lack any authority...' (Ravenhill 2009: 221). The 'ASEAN Way' – ASEAN's well-known decision-making process based around consultation, consensus, informality, discreteness and a non-confrontational bargaining style (Acharya 2001: 64) – is the key referent here (See also Kivimaki 2008: 435).

Sobering lessons from ASEAN economic integration

Ravenhill's test for the boosters, and the ASEAN Way in general, is the realm of economic integration. He argues:

the area of economic cooperation provides measures by which ASEAN's performance can be judged, not just in relation to the goals that members have set for themselves but also in comparison with the achievements of other regional institutions, and affords an opportunity to assess the effectiveness of ASEAN's institutional design.

(Ravenhill 2008; Ravenhill 2009: 225)

The results of such evaluations have been relatively dismal. The institutionalization of economic cooperation has been 'painfully slow'; functional cooperation – such as on environmental issues – has

been ‘equally disappointing’. The upshot of the ASEAN Way for regional institutional design was a no-sanctions regime for the breaking of what were already lowest common denominator agreements.

It is at this point where the history of the AICHR, as outlined above, and Ravenhill’s concerns with economic integration and institutional design come together. The move towards an ASEAN Charter, and the appointment of the EPG, were as much as anything else responses to the institutional failures of ASEAN. The EPG report argued that ASEAN’s ‘problem is one of ensuring compliance and effective implementation. ASEAN must have a culture of commitment to honour and implement decisions, agreements and timelines’ (CITE). But as Ravenhill (2008) observes, by the time the EPG’s recommendations were translated into the ASEAN Charter, they were significantly watered down, and included ‘ASEAN minus x’ procedures that enable states to opt out of economic commitments.

As we have seen, a similar watering-down effect transpired between the expectations of many (especially CSOs) that AICHR would have strong enforcement powers, and the final TOR, which mainly provides for promotion and education about human rights. Comments that Ravenhill makes about economic integration may be thought apposite in the human rights context:

no economic integration agreement will be effective if members can choose to ignore their commitments and suffer no consequences from their failure to comply with agreements they have voluntarily joined. An enormous distance has still to be traveled before ASEAN will have a set of agreements that are sufficiently specific that they could conceivably be legally enforceable – let alone mechanisms to provide this enforcement.

(Ravenhill 2009: 228)

On the face of it, this would appear to be a damning critique – and one that could only have the effect of lowering one’s expectations of what might emerge out of the new AICHR. Civil society organizations, on this account, are quite right to be severely disappointed and to renew their campaign ‘for teeth’.

An alternative way of interpreting this situation arises out of following through on the promise which is held out by various strands of constructivist scholarship on ASEAN regionalism.

Hope from the security debate?

ASEAN’s 1967 Declaration specified economic growth and regional peace and stability as its two main goals. While economic integration may be a long way off (and not, anyway, the same thing as economic growth (Kivimaki 2008: 434)), ASEAN’s performance on security has been much lauded in recent literature – particularly from those on the constructivist side of the boosters/sceptics divide. Eaton and Stubbs helpfully clarify the key points of difference between the recently dominant constructivists and the realists and neorealists in their debates over ASEAN (Emmerson 2005; Eaton and Stubbs 2006). The first part of their analysis is taken up by looking at the different accounts of ASEAN’s power, with respect to its internal and external dimensions. The internal discussions turn on whether one views the ASEAN Way in the positive light in which it is portrayed by constructivists – the informal consensus-building strategy – or whether it is seen to give rise to an ineffectual and perverse style of institutional design. The external discussion is a discussion of ‘whether or not ASEAN actually matters to regional economic and security relations’ (Eaton and Stubbs 2006: 137). On the one hand, analysis such as that of Smith and Jones argues that ASEAN is all about making process, not progress; that the rhetoric and activity of ASEAN hides the

continuation of traditional interstate relations (Jones and Smith 2007; Smith 2007). On the other hand, constructivists argue that the internal processes of ASEAN *have* enabled the organization to progress politically sensitive multilateral agreements without them being routed by the incapacity or unwillingness of particular members (Stubbs 2000; Katsumata 2006).

As Eaton and Stubbs go on to detail, a key reason for these differences is that analysts' conceptions of power differ. The key reference here is Robert Dahl's formulation 'that power is the ability of an actor to get another to do what they otherwise would not have done or not to do what they would otherwise have done' (Eaton and Stubbs 2006: 142). The argument from here leads Eaton and Stubbs to this view: 'For neo-realists who hold to the view that the *ability to coerce is power*, one of the reasons why ASEAN is not internally powerful is because the Secretariat cannot *make* a presumably unwilling membership comply with multilateral agreements' (Eaton and Stubbs 2006: 148). The thrust of Eaton and Stubbs's argument, however, is that this is not the only way of conceptualizing power that is pertinent to the discussion.

Eaton and Stubbs defend a notion of power that is not combative, material and domination oriented. They draw on Hannah Arendt's argument that power and domination are opposed concepts. Domination may get you 'the most effective command, resulting in the most instant and perfect obedience. What can never grow out of it is power' (quoted in Eaton and Stubbs 2006: 144) Eaton and Stubbs apply this analysis to ASEAN as follows:

If Arendt's claim that coercion destroys power is taken seriously, the equation ... that teeth equals power, must be treated with scepticism. Indeed, if power lies in the degree of group cohesion rather than in the instruments of coercion (as Arendt suggests and constructivists imply) then the imposition of specific rules and practices from above without the necessary buttressing of political will from below could very well have the unintended consequence of weakening ASEAN.

(Eaton and Stubbs 2006: 149)

Rules and practices *per se* are not the problem; the issue is how they come to be implemented. The key argument here by constructivists is that rules and practices that are adopted in harmony with an identity-based politics and a political process that has broad-based legitimacy will be those that are effective in motivating, constraining and maintaining change and reform. In turn, it is argued, the ASEAN Way has been a key factor in creating such a context.

My suggestion is that this discussion with respect to security institutions has great significance for the way in which the emergence of the AICHR is conceptualized. Not only is there a great deal to be gained here with respect to the process that has led to the development of the ASEAN human rights body – a long process over two decades and more, but one that has issued in a body that has legitimacy within ASEAN and which is identified internally with the organization. One of Eaton and Stubbs's observations about the differences between neorealists and constructivists is the time frames within which they respectively work: 'neorealists measure ASEAN's worth against its present inability to coerce other regional or international actors' (Eaton and Stubbs 2006: 150) whereas constructivists are more concerned about the present leading into the long view of the future. A similar distinction might be drawn with respect to the AICHR. Many people – particularly civil society organizations – are dismayed precisely by the new institution's lack of teeth, its inability to hold member states to account, to actually investigate specific human rights abuse allegations, to advise member states, or to receive petitions. To be sure, when these issues are held up as static descriptions of the AICHR, they are justifiable criticisms – and also important ones to be made in terms of pressing for reform and future development. What needs to be said from an analytical point of view, however, and particularly one that is attendant both to the long

durée and to the political and normative goal of retaining the coherence of ASEAN, is that the overriding goal of establishing human rights as a genuine normative goal for ASEAN as a whole may be best served by precisely this kind of human rights body – i.e. one that is able to gently coax the obstinate and the unwilling and keep them in the discussion, rather than one that will alienate and disown through an accusatory and divisive human rights politics, however morally principled this may be. The balance will be hard to judge – but one way to get it right is to consider also the role to be played by partner institutions, such as national human rights commissions (Phan 2009a). Looking into the future, an interesting question is whether there is scope for regional organizations external to ASEAN but to which ASEAN members – or even ASEAN as an institution – might be a party, such as a regional human rights court (Phan 2009b).

ASEAN's democratic turn

The establishment of the AICHR is most obviously a vindication of the arguments of those who point to a democratic turn within ASEAN. Jörn Dosch, for example, argues that 'ASEAN has slowly but gradually embarked on a process of engaging in a discourse on liberal norms and values' (Dosch 2006; Dosch 2008: 529). He approvingly cites Hiro Katsumata's view that the 'pursuit of liberalism, the elements of which include the norms of human rights and democracy [are] the most urgent item of ASEAN's current agenda' (Katsumata 2007). Dosch argues that this has happened because structural changes in domestic political environments (excepting Burma) have impacted the political agenda at the regional level. The key here is the manner in which domestic democratization affects the foreign policy agenda of states, and the consequent management of regionalism. Democratization, he argues, 'increases regime accountability and, as a result, restricts the regime's leeway in determining and implementing foreign policy goals' (Dosch 2008: 531).

Dosch cites the development of the ASEAN Charter to illustrate this claim. As we saw above, the Eminent Persons Group (EPG) invited CSO input into its deliberations about the ASEAN Charter. As we also noted, Solidarity for Asian People's Advocacy (SAPA) became one of the key civil society groups to engage with the EPG invitation, contributing a major submission. According to Dosch, that engagement was taken seriously, with most of SAPA's democratic and people-oriented norms being addressed by the EPG and by the subsequent ASEAN Charter itself. Dosch is ambivalent regarding the strength of the causal relationships here, but argues that the outcome 'reflects the general setting of growing political liberalism in many places of Southeast Asia where civil-society organizations enjoy growing freedom to express their views, and governments can longer afford to ignore them' (Dosch 2008: 536).

Not everyone is persuaded by the various components of such an argument. For Hiro Katsumata, cited above by Dosch, the difficulty is one of motivations. He agrees that ASEAN members have been making progress on issues such as those to do with human rights. Indeed, he says, ASEAN member states 'seem to be overly ambitious in planning the liberal reform of their association' (Katsumata 2009: 621). The interesting question though is *why* such liberalization? His answer, not Dosch's – is that it is a consequence of growing domestic liberalization in member states. Nor is it what Katsumata takes to be the received wisdom – the conventional approach – that it is as a consequence of material pressures from Western powers (the realist view). Rather, he develops a thesis that is derived from the social or normative environment in which ASEAN operates. In this environment, he argues, liberal norms are championed by the core members of the global community, the advanced industrialized democracies. Legitimacy within this community requires adopting the norms of human rights (Katsumata 2009: 626).

One of the advantages of Katsumata's analysis is that it accounts for the gap between profession and practice – the inadequate development of the institutional platforms needed to deliver on the

rhetorically embraced norms. This discrepancy is known by sociological-institutionalists as ‘decoupling’ – a practice that unlike the political liberalization that is central to Dosch’s account is able to be practised by all ASEAN member states (see also Jetschke 2009; Jetschke and Ruland 2009). Katsumata does not wish to gainsay internal pressures, but argues that, in the limited cases where they apply, they are complimentary to external pressures. Moreover, he argues, there has been no institutionalization of an interface between civil society organizations and ASEAN at the regional level – the ASEAN People’s Assembly being the case in point (Katsumata 2009: 627; Morada 2009). Katsumata concludes that in their production of liberal and democratic rhetoric and limited institutional reform, ‘ASEAN members have mainly been driven by their external concern in the global community, united by their desire to be identified as advanced and legitimate, or to secure their identities as legitimate members of the community of modern states’ (Katsumata 2009: 627). Interpreting ASEAN’s liberalizing agenda in this manner gives much greater scope for explaining the often glaring difference between rhetoric and practice on human rights issues. But what it does not do is explain why in some cases the decoupling is more complete than in others; it does not solve the puzzle of why the gap between rhetoric and practice is more expansive in some places than others.

Lee Jones’s approach is of use here: that we should look at the social forces that underpin regimes, and the conflicts over power and interests within those regimes. That is, that we should attend to the domestic politics and internal interests of states as much as to the norms and structures of regional or international politics. Jones complains that theorists ‘...introduce domestic politics only in an ad hoc fashion, to explain events that inter-state action cannot account for...’ (Jones 2009a: 388). Against much recent theory, he argues that ‘one cannot simply assume that democratization generates a “liberal” state or permits legislators free rein. States are not units with “identities” or neutral places for legislative deliberation, but expressions of power, profoundly unequal terrains which, reflecting social inequalities, promote some interests while marginalizing others’ (Jones 2009a: 391). As he notes, echoing Bellin (2000), ‘in late developing countries, capitalists are highly “contingent democrats”’ (Jones 2009a: 390). Jones argues that in ASEAN countries democratization has gone hand in hand with elite-managed transitions from patronage systems to a new form of politics where formally democratic institutions are dominated by wealthy oligarchic elites (see also Rodan, Hewison and Robison 2006).

On this account, the success or failure of a liberal turn in Southeast Asia has many more variables than first appear in constructivist or democratic peace accounts (see also L. Jones 2009b). Jones demonstrates his point by examining the ASEAN Inter-Parliamentary Myanmar Caucus as an example where socio-economic interests and preferences appear to trump constructivist or democratic peace-type explanations at every turn. Jones concludes:

The political space open to liberal legislators in ASEAN states is constrained by the socio-economic power of illiberal oligarchs, but it varies significantly depending on how politically coherent these oligarchies are. In Indonesia and the Philippines, relative oligarchic incoherence creates a political fluidity not found elsewhere in ASEAN. Malaysian and Thai liberals must depend on fractures within the oligarchic elite to exert leverage, while in Singapore and Cambodia, coherent, entrenched oligarchic rule offers little opportunity for ‘participatory’ policy-making by liberals. However, the available space also depends on the relationship between the specific campaign issue and oligarchic economic interests: their absence creates ‘safe’ issues for liberal agitation while their presence constrains political space.

(L. Jones 2009a: 402)

It is Jones’s salutary reminder of the importance of domestic politics that helps us to make the most out of what these accounts of ASEAN’s democratic turn, or liberalizing moment, might provide

in the way of valuable insights on how to interpret the creation of the AICHR, and what we might expect of its performance over coming years. While it is true that all ASEAN states were eventually persuaded to support, first, the insertion of a ‘human rights body’ clause into the ASEAN Charter, and then the creation of the AICHR, it is doubtful as to whether this support can be attributed to dynamics that operate purely at a regional or systemic level. The difficulty with Dosch’s thesis is that it cannot be substantiated evidentially across the whole of ASEAN: indeed, it seems strongest with respect to Indonesia and the Philippines, and weak or absent elsewhere. There is a similar problem with Katsumata’s account, but in a different way. His theory does perhaps account for Dosch’s weak or absent cases, but it makes less sense of those cases where practice (whatever weakness it may have) may be fairly said to count as a genuine attempt to follow through with a democratic and human rights-respecting politics.

Conclusion

Against ASEAN’s sceptics, the AICHR has arrived; against its boosters, it appears to be a human rights body without teeth – or, at least, one with little bite. If ASEAN cannot ensure commitment and compliance in areas such as economic reform, how can we expect it to do so with respect to human rights standards?

In the time frame of the present and immediate future, this sceptical interpretation of the AICHR’s expected achievements and its limited power is the most salient – and it is the one that is taken up most strongly by CSOs for whom the focus of attention is political action in the present.

The meaning and interpretation of the emergence of the AICHR – and what we should reasonably expect from it – can however be set in a more optimistic frame, one derived from a longer-term horizon and a constructivist rendering of ASEAN’s regional development since its foundation in 1967. On this account, the AICHR’s power rests not on its capacity to coerce states or other institutions into human rights-respecting modes of behaviour, but in its capacity to suffuse the prevailing politics of the region with human rights-respecting norms from the bottom up, which are then increasingly observed, as it were, from the inside out (albeit off a very low base). Their free adoption over time speaks to their internal legitimacy, which cannot be achieved by external coercion.

The present form of the AICHR is a result of political bargaining by interests within the relevant ASEAN counsels; so too, the key questions about the unfolding development of the AICHR and the way in which its deliberations are received and engaged with by states and parties within states is going to be a question of interests and constituencies. It is in the interaction between the AICHR at the regional level as an ASEAN institution, and the domestic political factors that shape the character of the regimes of ASEAN’s member states where the most salient observations on the future of the AICHR will have to be taken, over the coming years. It is at this level where commitment and compliance are played out – whether to the institutions of economic integration or to the newly developing institutions of a ‘people-centred’ ASEAN – a security community in which *human* security might yet become the primary currency.

Note

- 1 This chapter was written while the author was a Senior Visiting Fellow at the Centre for International Studies at the London School of Economics and Political Science in 2010; the author would like to thank the members of the Centre for their generous hospitality.