Beyond Naypyidaw: Burma and the ASEAN Way to Human Rights

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Executive Summary

At the 2009 ASEAN Summit in Thailand, the member states met to discuss a draft of the terms of reference for a Human Rights Body to be established under the mandate of the new ASEAN Charter. Given ASEAN’s past reluctance to make progress on the issue of human rights, many questions have been raised over such a body’s likely power and relevance. This paper examines ASEAN’s ‘consensus’ on human rights, its previous experience with regional declarations, and the events that have motivated ASEAN’s new direction on human rights. It argues that ASEAN has succumbed to internal and external pressures in forging this new direction – regional democratization and the growth of civil society, and the international pressure that has been placed on ASEAN over Burma. The paper will suggest that the strong tensions that continue to exist between, and among, the pressures for change cannot be resolved so long as members are divided over their respect for democracy and human rights.

ASEAN’s reluctance to promote a unified human rights policy may be traced to its foundation principles of consensus and non-interference in the domestic politics of member states. Some consensus over human rights was reached in the 1990s, though this was more a reactionary stand taken to the Western human rights policy during the 1980s and 1990s which manifested itself in the popular Asian values rhetoric of the time. The ASEAN governments’ position was consolidated as a result of a series of regional human rights conferences, some of them sponsored by the United Nations, and resulted in their adoption of the Bangkok Declaration of Asian States – the Human Rights Body set up under the ASEAN Charter may be viewed as a direct descendant of the Bangkok Declaration. Yet almost one quarter of the Bangkok Declaration was a direct attack by the Asian states upon the human rights policy of the West. Indeed, at the time the evidence pointed to an inescapable conclusion that a regional mechanism for the protection of human rights in ASEAN was neither feasible nor desirable. It would be a far better use of time and resources to encourage the ratification by member states of international human rights covenants – without reservations – and to encourage campaigns on the part of local NGOs for such ratification by their own governments.

Since joining the organization in 1997, Burma’s presence has consistently tarnished ASEAN’s credibility and questioned its relevance. While other member states have from time to time attracted criticism from the international community over internal matters and human rights concerns, for various reasons Burma has been subject to intense scrutiny sustained by an army of activists, politicians, and NGOs. The Burmese generals’ actions, of course, have only intensified such criticism. Yet ASEAN’s founding principles became the source of its own embarrassment over Burma. Facing intense international pressure over the past decade – including from Western dialogue partners – the organization has had to contend with a recalcitrant member state claiming virtual immunity from potential ASEAN criticism on the grounds that it is a member of an organization that does not interfere in the domestic politics of its members. For much of the past decade, Burma has forced ASEAN to adopt damage control positions, limiting the extent to which the organization’s reputation could be tarnished. To be sure, ASEAN has made pronouncements and recommendations, sometimes even strongly worded criticism in order to deflect international pressure from itself. Yet these have proven to be more reactionary in nature rather than a sign of the development of any positive policies towards promoting democratic principles within member states or protecting human rights.

Restoring its own credibility must figure highly in explaining ASEAN’s recent turn towards discussing liberal ideas like democracy and human rights. Yet this would be insufficient in explaining ASEAN’s change in attitude from the 1990s. The Asian financial crisis led to a
transformative change within some of the ASEAN member states themselves. Regional democratization following the crisis of the late 1990s has led civil society groups to assume an increasingly visible and influential role in domestic politics, where they have strongly promoted a regional commitment to democracy and human rights. The structural setting for policy making in the region has also changed and political liberalization has had an impact on regional political agendas, with democratic norms diffusing from domestic to regional political spheres. Indeed, groups from outside the executive branch have forced their governments to pay more attention to issues such as human security and human rights. In turn, ASEAN’s engagement in a discourse on liberal norms and values has not resulted in an explicit strategy of democracy promotion, but it has begun to rethink its refusal to deal with issues that touch on domestic political orders. ASEAN has also been forced to rethink its traditional position because of Burma. Therefore, through international pressure exerted over Burma as well as domestic pressure from civil society that has diffused into domestic and regional politics, democracy and human rights have been forced onto ASEAN’s political agenda.

The democratization of civil society throughout the region and criticism from some groups over ASEAN’s elitism, lack of openness, and ignorance of non-traditional security issues led to increased efforts of regional cooperation on such matters, including the proposal of an ASEAN Community in the Bali Declaration of ASEAN Concorde II of 2003. The idea of an ASEAN Charter emanated from these discussions and came to fruition with its signing in 2007, and ratification in 2008. The Human Rights Body to be created by the charter, however, would have its content, provisions, and decision-making power grounded in the traditional ASEAN Way – consensus. The Charter process illustrated that its members remained deeply concerned with issues of their own state sovereignty, and the Charter’s provisions reaffirmed that respect for state sovereignty and non-interference in the internal affairs of member states remained guiding principles, and that decision making in ASEAN is based on consultation and consensus.

The substantial variation in commitment to democracy and human rights among ASEAN’s member states means that regional progress on human rights will continue to remain haphazard. The region’s preoccupation with maintaining state sovereignty will continue to trump global norms such as human rights. There is little evidence to suggest that beyond creating new opportunities for civil society groups to air their grievances, when it comes to thrashing out binding resolutions ASEAN has transformed from its state-centric approach to become a people-centred organization. Although political liberalization may have resulted in the regional democratization of foreign-policy making, this has yet to translate into an institutionalized regional approach to democracy or human rights promotion. Apart from a general agreement over the promotion of education in human rights, the ASEAN Way to human rights may for the time being only permit democratic political rhetoric on the matter.
1. Introduction

At the 14th ASEAN (Association of Southeast Asian Nations) Summit held in Hua Hin, Thailand in March 2009, the foreign ministers of member states met to discuss a draft of the terms of reference for the new Human Rights Body to be established under the mandate of the recently signed ASEAN Charter. That the delegates would be discussing the promotion of human rights, let alone the establishment of a Human Rights Body, was a remarkable development in ASEAN’s brief history which now spans over four decades. Given ASEAN’s past reluctance to make progress on the issue of human rights, many questions have been raised over such a body’s likely power and relevance. This paper will examine ASEAN’s ‘consensus’ on human rights, its previous experience with regional declarations, and the events that have motivated ASEAN’s new direction on human rights. It will be argued that ASEAN has succumbed to internal and external pressures in forging this new direction – the regional democratization and growth of civil society on the one hand, and the international impact that one of its member states in particular, Burma, has had on the organization’s credibility on the other. The paper will examine the process and content of the new Charter and its proposed Human Rights Body, and suggest that the strong tensions that continue to exist between, and among, the pressures for change cannot be resolved so long as members are divided over their respect for democracy and human rights.

ASEAN’s traditional reluctance to promote a unified human rights policy among its member states may be traced not only to the operational limitations of ASEAN itself, but also to the region’s reaction to Western human rights policy during the 1980s and 1990s. While the former concerns ASEAN’s foundation principles of consensus and non-interference in the domestic politics of member states, the latter manifested itself in the popular Asian values rhetoric. This rhetoric was reasserted by ASEAN, and particularly by the three countries which at that time aggressively resisted the human rights and democracy discourse emerging from the West – Singapore, Indonesia, and Malaysia, for a number of reasons. It arose in response to the determined promotion by the West, especially the United States, of its own values following the demise of the Soviet Union which left a ‘crusading void’. It also reflected the growing confidence among Southeast Asian countries, buoyed by substantial economic successes, which led leaders to justify their policy of putting economic development first and giving priority to order, stability, and what they called ‘good government’. Further, the democratic and human rights campaign from the West revived and released a deeply felt Asian bitterness about colonialism and colonialist assumptions on human rights that was not fully appreciated in the West – at the time, the Malaysian Prime Minister Dr Mahathir Mohamed called for a Europe Watch, an America Watch, and an Australia Watch if there was to be an Asia Watch. In addition, there was a widespread suspicion that the West had a hidden agenda to maintain hegemony by slowing down Asian prosperity and crippling its competitiveness by ‘changing the rules’ to invoke a new kind of protectionism with human rights and democracy as the standard bearers, succeeding the old banners of colonialism and Christianity. Finally, there was a feeling that the Western model being promoted by the US was flawed, as evidenced by widespread dismay at the social decay in the West, and was therefore undesirable for Asia.

While Western critics argued that the sheer diversity of cultures, religions, traditions and histories, made the idea of having one uniform set of Asian values absurd, many ASEAN leaders saw the growing prominence of rights and freedoms in the West, and the tendency towards a limited role for government, at least partly responsible for its social decay. Malaysia’s then deputy prime minister, Anwar Ibrahim, admitted that traditionally in Asia, there had only been the concept of duties and responsibilities – the concept of rights was imported from the West – and that the ASEAN states emphasized a balance between rights and duties, although in reality the balance remained tilted.

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towards duties in most of these states. Western notions of civil and political human rights, as understood by civil liberties movements in the US, emphasized the individual’s rights vis-à-vis the State. Such notions of individualism and resistance to authority apparently challenged the traditional roles played in Asian societies. Nevertheless, the consensual position reached among ASEAN members over human rights should be examined since the current proposal for a Human Rights Body traces its authority to a Charter that reinforces the organization’s commitment to consensual decision making.
2. ASEAN’S ‘Consensus’ on Human Rights

In the 1990s, ASEAN reached a consensus and adopted a uniform policy on human rights, though it was never a positive policy but a reactionary one. Some observers believe that, ironically, the ASEAN governments’ position was consolidated as a result of a series of regional human rights conferences, some of them sponsored by the United Nations, held in preparation for the 1993 world conference in Vienna. Robinson claims that most Southeast Asian governments argued against any enhancement of the power of UN human rights institutions, and that during the world conference on Human Rights in Vienna, they explicitly rejected the proposal for the creation of a UN High Commissioner for Human Rights to coordinate, and give additional political weight to, the UN’s various human rights bodies. They also criticized international human rights organizations such as Amnesty International and Human Rights Watch-Asia for similar reasons. Furthermore, it was not just the opportunity to get together that led to such unity; they shared a common interest in collectively rejecting the practice of trade sanctions and aid conditionality in general. In 1994, the US Assistant Secretary of State, Winston Lord, warned that the aggressive tone and threats of Washington was driving Asian countries into a common front against the United States. If there was some consistency, in the positions of ASEAN governments on human rights, therefore, it was to criticize Western policy and limit the influence of the United Nations. The latter is also illustrated by the numerous reservations that some ASEAN states – particularly Singapore, Malaysia, Thailand and Brunei – still hold on various UN treaties to which they are signatories, the effect of which is to allow these states a fall-back whenever they do not wish to comply with an obligation to amend laws or practices that are incompatible with their own.

The ASEAN states discovered in the 1980s and 1990s that, backed by their economic successes, their voice was more powerful in the United Nations when they took a united stand. A series of unified positions on human rights followed in the 1990s which, though lacking uniformity and resolution concerning positive statements of human rights policy, illustrated the united stand among ASEAN to resist human rights pressures from the West. The Jakarta Message of 1992 reinstated the ASEAN view on the complexity of the human rights problem in Southeast Asia due to the diversity of histories, cultures, value systems, geography, and phases of development. It proceeded to claim that ‘any attempt to use human rights as a condition for socio-economic assistance, thus sidelining the relevance of economic, social, and cultural human rights, must be rejected. No country should use its power to dictate its concept of human rights or to impose conditionality on others’. ASEAN also adopted a similar unified position on human rights at the Second UN Asia-Pacific Conference on Human Rights in Jakarta in January 1993, in the Bangkok Declaration in March 1993, at the Non-Aligned Movement meetings in 1993 and 1995, and regularly at ASEAN ministerial meetings.

The 1993 Bangkok Declaration of Asian States, along with the unofficial Non-Government Organization’s (NGOs) own Bangkok Declaration, were delivered at regional meetings in preparation for the 1993 United Nations World Conference on Human Rights in Vienna. The declaration was signed by 40 Asian countries, including all the ASEAN states (as well as the states which later joined ASEAN – Vietnam, Burma, and Cambodia) and China, but excluded Japan under pressure from the US. The Bangkok Declaration was particularly illuminating because it forged a compromise on the issue of the universality as opposed to relativity of human rights. Although accepting that rights were ‘universal in nature’, the declaration added that they must be considered ‘in the context of national and regional particularities, and various cultural, historical, and
religious backgrounds, and with the understanding that norms and values change over
time'.

The declaration stressed that economic, social, and cultural rights should be given equal
emphasis to civil and political rights, and it further recognized the Right to Development
as a ‘universal and integral part of fundamental human rights’. While stating that
economic and social progress facilitates the growth of democracy and human rights, the
delegates also agreed to uphold the principle of sovereignty and urged the promotion of
human rights by cooperation and consensus, not by confrontation and conditionality.
Furthermore, the signatories agreed that ‘human rights should not be applied as a
pretext for commercial, political or other pressure’. There was also some consensus
among the ASEAN member states’ NGOs which was expressed in the Bangkok NGO
Declaration issued at the same time as the Bangkok Declaration. While it allowed some
room for the influence of culture and religion, it supported ‘universality’ more strongly
than the ASEAN governments, adding that those cultural practices which derogate from
‘universally accepted’ human rights must not be tolerated.

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than the ASEAN governments, adding that those cultural practices which derogate from
‘universally accepted’ human rights must not be tolerated. The NGO Declaration also
went much further than the ASEAN governments in advocating the rights of groups,
especially minorities and indigenous peoples, and endorsing the right of self-
determination.

ASEAN gave its official approval to the Bangkok Declaration at the 26th ASEAN
Ministerial Meeting in July 1993 in Singapore, and agreed to ‘coordinate a common
approach on human rights and actively participate and contribute to the application,
promotion, and protection of human rights’. With this in mind, the Human Rights Body
set up under the ASEAN Charter may be viewed as a direct descendant of the Bangkok
Declaration. The Bangkok Declaration was soon followed by the Vienna Declaration on
Human Rights at the UN World Conference in June 1993, during which disagreement
prevailed over the ‘universality’ principle. Although the Vienna Declaration reaffirmed the
1948 Universal Declaration of Human Rights, it was plagued with ambiguity, vague
principles, and compromises which merely illustrated the gulf that existed between East
and West over each sides’ understanding of human rights. While all states agreed to the
existence of a core group of rights as ‘non-derogable’, the ASEAN states affirmed the
concept of ‘universality’ but held reservations about particularities that came directly
from the language of the Bangkok Declaration.

There is theoretically nothing wrong with the idea of having an alternative regional
mechanism for ensuring the protection of human rights. Indeed, at the time the Asian
states may have claimed that their Bangkok Declaration merely represented an
alternative rule of action to the Universal Declaration of 1948. This last point was made
clear by Thailand’s then Prime Minister, Chuan Leekpai, during his opening address to the
Bangkok regional meeting in 1993 where he claimed that

it is natural that approaches to the implementation of fundamental human
rights vary because of differences in socio-economic, historical, cultural
backgrounds and conditions. The promotion of universality of human rights
would be more effective if there is a clear understanding and recognition of
such differences. Changes to human rights must emerge primarily from within
and not imposed from the outside. Human rights should also evolve at their
own pace if they are to be peaceful and sustainable.

The assertion that it is natural for approaches to the implementation of fundamental
human rights vary in accordance with socioeconomic, historical, and cultural
backgrounds would seem to be compatible with the flexible nature of natural law. But
permitting excessive flexibility that could create fundamental differences between the
Universal Declaration and the Bangkok Declaration – differences that cannot be
adequately explained (or permitted) by natural law on the grounds of economic and
cultural differences between the East and the West – might suggest that the mutability
of the rules of action becomes an excuse for hidden political agendas. Although the
Bangkok Declaration opens with a reaffirmation by the Asian states of their commitment
to the principles contained in the Universal Declaration, throughout much of the remainder of the Bangkok Declaration one discovers Articles which seem to have been generated more from matters of regional political concern. Article 8 attempts to justify their particular significance by declaring that the Asian states:

Recognize that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds.

With this in mind, the Bangkok Declaration stressed the need to democratize the United Nations system and ensure a non-confrontational approach in addressing and realizing all aspects of human rights; it discouraged the use of human rights as a conditionality for development assistance; it emphasized the principles for respect of national sovereignty and non-interference in the internal affairs of states, and the non-use of human rights as an instrument for political pressure; it reiterated that all countries have the right to determine their political and economic systems, and control their resources; and it stressed the objectivity of human rights and the need to avoid the application of double standards in the implementation of human rights and its politicization. Almost one quarter of the Bangkok Declaration, therefore, was a direct attack by the Asian states upon the human rights policy of the West. Indeed, one could easily read the Declaration as a document produced by a group of Asian states with a political agenda in mind, taking advantage of the opportunity of a United Nations regional meeting to reach a consensus and respond to accusations of human rights violations from the West.

On the other hand, Article 1 of the Bangkok Declaration reaffirmed the principles contained in the Universal Declaration. Furthermore, the preambles to both declarations emphasize the States’ need to educate the public on a common standard of achievement in human rights in order to overcome the lack of public awareness, although the Universal Declaration does go further in stressing that such education should promote the effective recognition and observance of human rights among the peoples of member states and the territories under their jurisdiction. Article 27 of the Bangkok Declaration however, reiterated the need to explore ways to generate international cooperation and financial support for education and training in the field of human rights at the national level and for the establishment of national infrastructures to promote and protect human rights if requested by states. Since both declarations at least appeared to acknowledge the importance of education as a cultural means of enforcing a common standard of achievement in human rights, education that is guided by a common standard at least provides the opportunity for prudence to emerge in actions concerning human rights. Education then becomes a cultural substitute for the lack of legal enforcement of human rights by the international community. In this sense, education in human rights may be more compatible with natural law than any attempt to codify the principles of human rights into declarations which inevitably reduce the flexibility of natural law. Education may overcome the basic problem in formulating and setting down universal ideas of human rights into rules and positive rights, an exercise whose very nature is likely to be plagued with cultural discrepancies and disputes over their interpretation. At the very minimum, we could assimilate the Universal and Bangkok Declarations on the grounds that they promote, through education, an understanding of human rights.

Many observers, however, believed that all the evidence pointed to an inescapable conclusion that a regional mechanism for the protection of human rights in ASEAN was neither feasible nor desirable. It would be a far better use of time and resources to encourage ratification of the international covenants – without reservations – and to encourage campaigns on the part of local NGOs for such ratification by their own governments. Indeed, if a regional charter could ever be hammered out, it would inevitably represent a weakening of current international standards rather than an affirmation of them. Discussions in ASEAN on setting up a human rights cell within the
ASEAN Secretariat represented more of a way to join ranks against Western pressure than as a serious tool for protecting internationally recognized rights.\textsuperscript{38}

Although much has occurred since the days of an apparent ASEAN unity being grounded in anti-Western rhetoric over human rights, whether the organization has progressed beyond the scope of the Bangkok Declaration has yet to be seen. ASEAN has suffered a number of set-backs since the mid-1990s, not least of which was the crisis in globalization that knocked the stuffing out of much of the previous Asian values rhetoric – the Asian financial crisis. This crisis, as well as the slow recovery experienced in most economies across the region, however, provides an inadequate explanation for ASEAN’s recent change of tack with respect to the protection and promotion of human rights. Indeed, the past several years has proved to be a difficult and sometimes embarrassing time for the ASEAN Secretariat, due largely to the presence of one its members.
3. ASEAN and International Pressure over Burma

Burma's (Myanmar) admission into the ASEAN fold in 1997 was justified on a number of grounds by the member states, the most salient being that through its own principle of ‘constructive engagement’ it could influence the political liberalization of the country while at the same time lessen the impact of China’s influence over Burma. In addition, most of the founding ASEAN members states had their own reasons for engaging with Burma and all were aware of Burma's abundant natural resources. Constructive engagement would provide an alternative to Western sanctions even though the theoretical justification for the policy would wane over time, and practical considerations would make it less attractive for each state involved. In seeking admission, Burma attended a series of meetings at the invitation of Thailand in 1994 and Rangoon agreed to sign the Treaty of Amity and Cooperation (TAC). Upon releasing Aung San Suu Kyi from house arrest in 1995, Burma gained official observer status. Burma joined the ASEAN Regional Forum in 1996 and was finally admitted at the invitation of Malaysia in 1997. For the Burmese generals, the political legitimacy it gained from joining the regional organization was an attractive incentive that came with reasonable expectations – ASEAN’s non-interference principle enshrined in the TAC. However, since Burma’s internal policies did produce cross-border implications – particularly refugees, illegal immigrants, drugs, and the possible spread of HIV/AIDS – a regional debate quickly emerged over how ASEAN could maintain its principle of non-interference in the case of Burma.

A number of positions developed over time, including Anwar Ibrahim’s concept of ‘constructive intervention’, and the then Thai Foreign Minister, Surin Pitsuwan, called on ASEAN to adopt ‘flexible engagement’ towards Burma – meaning that member states could discuss and comment on another member state’s domestic policies if they had cross-border implications. The latter proposal was rejected by Indonesia, Malaysia and Singapore on the grounds of vagueness and that it invited ASEAN intervention in the domestic politics of any member state.39 As an alternative, the idea of ‘enhanced interaction’ became attractive as it allowed individual member states to comment on another member state but denied ASEAN the possibility of doing so.40 Although the concept allowed some initiatives to be undertaken in the wake of the Asian financial crisis, such as the exchange of economic information, its meaning for states like Burma remained unclear. Specifically, if ASEAN intervention was not to become legitimate then any criticism coming from the organization could legally be ignored. Indeed, these considerations may have been addressed by the ASEAN Secretariat in designing the new ASEAN Charter which creates a legal entity, albeit one that is restrained by its founding principles.

It is ironic that ASEAN’s founding principles became the source of its own embarrassment over Burma. Facing intense international pressure over the past decade – including from Western dialogue partners – the organization has had to contend with a recalcitrant member state claiming virtual immunity from potential ASEAN criticism on the grounds that it is a member of an organization that does not interfere in the domestic politics of its own members. That is not to say that at times ASEAN has felt obliged to strongly rebuke Burma’s policies, the most obvious being in 2007 when all ASEAN states expressed their revulsion over Burma’s crackdown on the demonstrating monks. But since even this criticism contravened ASEAN’s non-interference principles, it indicates that the organization would be prepared to go to such lengths if its own credibility and relevance was being questioned. And indeed this is what Burma’s presence has forced ASEAN to do in recent years.
More than any other member state, Burma has consistently tarnished ASEAN’s credibility on a number of fronts since joining the organization. While other member states have from time to time attracted criticism from the international community over internal matters and human rights concerns (e.g., the Thaksin Shinawatra government’s handling of Muslim separatists in Southern Thailand), for various reasons Burma has been subject to intense scrutiny sustained by an army of activists and the occasional politicians (and their wives) whose mission it has been to democratize the golden land. The Burmese generals’ actions, of course, have only intensified such criticism. The arrest and continued detention of Aung San Suu Kyi, as well as many numbers of her National League for Democracy (NLD) party, since 2003 has caused worldwide criticism especially from the UN, the EU, Japan and the US, as well as the extension of Western sanctions. It forced ASEAN to make an unprecedented statement demanding her release as well as repeated calls for her release since 2003, all of which have been ignored by the Burmese generals who have been able to seek the occasional support from other member states. Indeed, it was the Thaksin government that eventually proposed a suggested roadmap for democracy in Burma; this roadmap was converted by the Burmese into their own roadmap for ‘disciplined democracy’ and at the time of writing the generals had completed four of the seven steps involved, the next being the holding of a ‘free and fair election’ for the People’s Assemblies. ASEAN has occasionally also raised its concerns over Burma’s progress on its roadmap to democracy.

With the prospect of Burma’s turn to chair ASEAN looming in 2006, Singapore, Malaysia and Indonesia raised concerns over Burma’s chairmanship given its lack of democratic progress which had become an embarrassment for ASEAN since it had justified constructive engagement with Burma on these grounds. Although ASEAN noted that Burma’s chair could severely affect the organization’s credibility – the EU and the US as dialogue partners had already threatened to boycott its meetings and Burma had also denied access to the UN’s special envoy, Razali Ismail – it insisted that it would not force Burma to relinquish its chair. Instead, Burma relinquished its chair voluntarily in 2005 and the generals decided to focus their attention on moving to their new capital in Naypyidaw. While ASEAN was clearly relieved that the next year’s Summit would be held in Cebu and not Rangoon, Burma was clearly disappointed and delayed, then cut short a visiting delegation later that year on the grounds that Burma was too busy working on its new capital.

Burma spent much of 2006 seeking the support of China and Russia to prevent other states from having Burma placed on the UN Security Council’s agenda. This support, it seems, required that Burma at least entertain the UN’s new special envoy, Ibrahim Gambari, on his numerous subsequent visits to the country. Among his assigned tasks, Gambari was to raise human rights concerns and the prospects for restoring democracy. The extent to which the generals are at all concerned with human rights issues therefore is very much a conditional one. China’s continued support at the UN requires that the generals appear to cooperate with the UN’s envoys. This cooperation was complicated in 2006 by the introduction of new guidelines for all UN, NGO and INGO activities inside Burma. Clearly worried about foreigners having access to politically sensitive areas, the guidelines were designed to place foreign workers under the direct supervision of the state, and they would later act as an impediment to the early access of foreign aid workers following Cyclone Nargis. The cooperation was further complicated the following year when Burma continued to draw attention to itself, and on a scale that dwarfed the events of 2003 or any other since its admission to ASEAN.

Unprecedented worldwide attention and criticism from foreign governments, parliaments, human rights organizations, and a media armed with internet and satellite coverage followed the mass demonstrations and subsequent crackdowns of September 2007, forcing ASEAN once again into damage control. The Security Council, with China’s and Russia’s approval, would issue a statement urging the Burmese government to address the human rights, humanitarian, and economic concerns of its people. The ASEAN Chair, on behalf of the ASEAN foreign ministers gathering at the UN in late September, would also eventually issue a statement expressing ASEAN’s ‘revulsion’ over
the violent suppression of the demonstrations, but only after similar statements had already been issued by the UN, EU and other international organizations. The ASEAN Chair also noted the serious impact that the crackdown on demonstrators would have on ASEAN's reputation and credibility. Indeed, strong words may have been needed to deflect the outrage of democratic governments outside Southeast Asia – both at the Burmese junta and at ASEAN for tolerating such tyranny.

These events occurred on the eve of ASEAN's 40th anniversary celebrations and before the Singapore Summit in November where the member states were to sign on to the Charter that was to usher in a new age of regional cooperation. They proved hugely embarrassing for ASEAN and completely overshadowed the signing of the Charter. Emmerson argues that the Chair's comments had violated the foundational principles of the 'ASEAN Way' – the sovereignty of its member states had been breached, interference in their internal affairs had occurred, and consensus had been ignored (at least Burma had objected, and the likely antipathy of regimes like Laos and Vietnam was overlooked). However at the Singapore Summit, Burma would insist that Singapore's invitation to Ibrahim Gambari to brief the East Asia and ASEAN Summits on developments in Burma be overturned; since this protest was upheld, the ASEAN Way was reinvoked.

Seeking to diffuse the unrest of the previous year, in February 2008 the Burmese generals announced that a referendum on a draft of their new constitution would be held that year and that general elections would be scheduled for 2010. While the announcement was welcomed by China, Russia and India, upholding the promised referendum in May 2008 would again draw international criticism. This occurred not only because the constitution was viewed as a contrived entrenchment of military rule, but also because being unmonitored it was seen as neither free nor fair, and it also drew resources away from dealing with the destruction unleashed by Cyclone Nargis. Since the cyclone had struck the Irrawaddy Delta region only a week before the scheduled referendum, going ahead with the vote in the rest of the country was viewed by many observers as disdainful and contemptuous. This was compounded by Burma's initial refusal to accept humanitarian aid from the US, UK and France, or to grant foreign aid agencies and workers entrance to the country and allow them unfettered access to the Delta region. Indeed, it took three weeks of negotiation by ASEAN and the UN, as well as a personal visit from the Secretary General Ban Ki-moon to Naypyidaw, before the generals would grant unfettered access to foreign aid workers as well as agree to join ASEAN and the UN in a Tripartite Core Group (TCG) to coordinate the international assistance. Although ASEAN would later claim a minor victory, enhancing its status and reputation, from these negotiations at its Ministerial Meeting in Singapore that year, the international attention and criticism of Burma would only subside following the subsequent earthquakes in China.
4. Chartering a New Direction for ASEAN

There can be little doubt that the Burmese junta’s actions have impacted on ASEAN’s reputation and credibility in recent years. On the numerous occasions discussed above, ASEAN has been forced to react with pronouncements and recommendations, sometimes even strongly worded criticism in order to deflect international pressure from itself. But taken as a whole, these pronouncements have proved to be more reactionary in nature rather than a sign of the development of any positive policies towards promoting democratic principles within member states or protecting human rights. For much of the past decade, Burma has forced ASEAN to adopt damage control positions, limiting the extent to which the organization’s reputation could be tarnished by one of its members. Restoring its own credibility must therefore figure highly in any explanation of ASEAN’s recent turn towards discussing liberal ideas like democracy and human rights. Having Burma among its ranks has forced these issues onto ASEAN’s agenda. Yet this reality, of itself, would be insufficient in explaining the change in attitude from the ASEAN of the 1990s, when bold statements were made and Bangkok Declarations were signed. The Asian financial crisis may have exposed the hollowness of the Asian values rhetoric, but it also led to a transformative change within some of the ASEAN member states themselves.

Although the formal democratization of Indonesia following the financial crisis of the late 1990s may at times have proceeded at a slow pace, the blossoming of civil society organizations following the removal of Suharto has been extraordinary; Indonesia is ASEAN’s largest and therefore potentially most influential member state. Yet it is not only the new democracies that have experienced these changes. Indeed, in most regimes throughout the region civil society groups have assumed an increasingly visible and influential role in domestic politics, and particularly in Indonesia and the Philippines they have strongly promoted a regional commitment to democracy and human rights. The structural setting for policy making in the region has also changed and political liberalization has had an impact on regional political agendas, with democratic norms diffusing from domestic to regional political spheres.

Dosch argues that since the beginning of democratization, groups from outside the executive branch have forced their governments to pay more attention to issues such as human security and human rights. In regards to Burma, for example, the ASEAN Inter-Parliamentary Myanmar Caucus (a group of ASEAN legislators from Indonesia, Malaysia, Thailand, Singapore, the Philippines and Cambodia) have, since its founding in 2004, repeatedly raised Burma’s human rights violations – to ASEAN, the UN Security Council, and to national caucuses and parliamentary groups outside ASEAN. In turn, ASEAN’s engagement in a discourse on liberal norms and values has not resulted in an explicit strategy of democracy promotion, but it has begun to rethink its refusal to deal with issues that touch on domestic political orders. This assessment would support the notion that ASEAN has also been forced to rethink its traditional position because of Burma. Hence, together, through international pressure exerted over Burma as well as domestic pressure from civil society that has diffused into domestic and regional politics, democracy and human rights have been forced onto ASEAN’s political agenda.

The democratization of civil society throughout the region and criticism from some groups over ASEAN’s lack of openness and ignorance of non-traditional security issues led to increased efforts of regional cooperation on such matters, including the proposal of an ASEAN Community in the Bali Declaration of ASEAN Concorde II of 2003. The idea of an ASEAN Charter emanated from these discussions and began to gain momentum at the Kuala Lumpur Summit in 2005. In addition, the idea of a people-centred ASEAN had
been proffered to respond to criticisms that ASEAN was an elite state-centric organization that took little notice of community demands and domestic concerns over issues of human security. ASEAN appointed an Eminent Persons Group (EPG) with a wide mandate to make recommendations for a proposed Charter. They produced some bold recommendations, including the provision for a regional human rights mechanism, the possibility of reverting to majority-rule decision making if consensus could not be reached, and the suspension of rights and privileges for failure to comply with a dispute settlement mechanism. The EPG report also acknowledged that ASEAN needed to shed its image of being an elitist organization comprised of diplomats and government officials, and become more people-centred – having recourse to civil society and human rights groups. The report was duly submitted by the EPG to the Cebu Summit in early 2007; then duly watered down over the year by a ten-member High Level Task Force comprised of former diplomats and government officials charged with drafting the Charter.

With Thailand under military rule throughout 2007, Indonesia and the Philippines took the lead in promoting a regional commitment to democracy and human rights. Burma, Vietnam and Laos wished to remove any reference to human rights from the Charter. Manilla and Jakarta, however, pressed for its admission and reached a compromise whereby the majority-rule decision making proposal would be dropped in return for the creation of a human rights body, the latter being less potentially damaging. This of course meant that the content, provisions, and the decision-making power of any human rights body emanating from the Charter would be grounded in the traditional ASEAN Way – consensus. In addition, since the HLTF had not been obliged to take on suggestions from civil society groups, nor even to release its draft before submission, ASEAN’s hope to shake off its elitist organization image surely failed. Whether or not ASEAN wished to create a more people-oriented organization, the Charter process clearly illustrated that its members remained deeply concerned with issues of their own state sovereignty. The Charter was approved by ASEAN’s heads of state at the Singapore Summit in late 2007, then ratified over the following year by the ten member states, only two of which engaged in parliamentary debate for approval.

Although the ASEAN Charter includes some groundbreaking provisions – such as including among the purposes of ASEAN the strengthening of democracy, good governance, the rule of law, and the promotion of human rights – it also clearly reaffirms that respect for state sovereignty and non-interference in the internal affairs of member states remain guiding principles, and that decision making in ASEAN is based on consultation and consensus. Furthermore, in language reminiscent of the Bangkok Declaration, while the Charter declares that the promotion of human rights is among ASEAN’s purposes, it qualifies this by adding ‘with due regard to the rights and responsibilities of member states’. The Charter goes on to create an ASEAN Human Rights Body (HRB) in conformity to the purposes and principles discussed above, yet fails to create a dispute settlement body, preferring instead to refer serious breaches to the ASEAN Summit where decisions will continue to be made, at least for now and in the foreseeable future, on a consensual basis.

The Human Rights Body is to operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting. A High Level Panel (HLP) was set up to draft the terms of reference for the HRB and delivered its first draft to the foreign ministers meeting at the Summit in Cha-am, Thailand, in March 2009. True to form on such things, the content of the draft was withheld from the public and, at the time of writing, the official version had not been released by ASEAN. In addition, at the foreign minister’s meeting, Burma and Cambodia blocked civil society representatives from their own countries from attending the meeting. Bangkok said that it wished the draft to be finalized during its tenure as Chair (2009) and that the HRB will begin operating in the same year. The matter was, it seemed, to be of some urgency because the next ASEAN chair, Vietnam, would not carry the same motivations towards making human rights progress in Burma.
Until the official terms of reference become available, it is difficult to comment on its content and possible implications. Yet it would be an extraordinary development if ASEAN were to advance the powers of the HRB beyond the limitations that it has already imposed in its now signed and ratified Charter. The implications of a HRB for Burma will remain questionable. Given their fickle treatment of UN envoys in recent years, the prospects of any ASEAN-led human rights envoys achieving meaningful results would appear to be slim at best. In a meeting of the HLP last year, Burma’s foreign minister, Nyan Win, indicated that Burma would oppose any effort to give a HRB the power to monitor or investigate human rights violations, and that the HRB should uphold ASEAN’s policy of non-interference. Burma would prefer that the HRB only served as a ‘consultative mechanism’ and not ‘shame or blame’ any ASEAN nation. The same, of course, might readily be said of other ASEAN nations. Yet granting access to HRB personnel, even with limited powers, may be the trade-off Burma must make to at least appear to be willing to cooperate with ASEAN and, in turn, allow ASEAN to show the world that it is taking human rights seriously. The extension, at the Hua Hin Summit, of ASEAN’s humanitarian taskforce and the TCG in Burma through to 2010 also provides an implicit witness through which shame may be empowered, even if actions are not to be outwardly spoken of.

If the powers of the HRB are watered down to a ‘consultative level’ forum, as has been suggested, then it will be up to the new democracies to press for future change. Indonesia’s foreign minister Hassan Wirajuda, for example, has claimed that there should be more provisions to protect human rights and that the body should have ‘monitoring, dissemination and education, and advisory services functions’. In addition, he believed there should be a shift in the way ASEAN perceives the principle of non-interference in domestic affairs, and that gross violations of human rights are not a domestic problem. In an attempt to silence the early critics, however, ASEAN’s new Secretary General, Surin Pitsuwan (the architect of ‘flexible engagement’), believes that the scope and power of the HRB could always evolve and that some members should not be too ambitious for the time being. Yet given the uneven voting record of ASEAN member states at the UN, along with their own diverse and often conflicting motivations towards Burmese democratization regionally (not to mention the complete lack of reference to Aung San Suu Kyi at the Hua Hin Summit), for the time being it would be hard to remain anything but sceptical. A resolution adopted by the UN General Assembly in late 2007, for example, strongly condemned Burma’s human rights violations and called on Burma to stop politically motivated arrests and free all political prisoners, including Aung San Suu Kyi. This was the 18th resolution since 1992 that had been passed by the General Assembly against the regime and it was not supported by any ASEAN country. In addition, most ASEAN countries have not signed and ratified the core UN human rights conventions including, among others, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture, the Convention on the Elimination of All Forms of Racial Discrimination, and the Convention against Enforced Disappearances. Other treaties have been signed by member states that have included such extensive reservations as to make them meaningless.
5. Conclusion

Although the ASEAN member states have undergone significant changes since the 1990s when a common position on human rights first began to emerge, ASEAN’s commitment to achieving a common standard in human rights appears to be just as elusive. While the bold anti-Western human rights pronouncements of the 1990s were to a significant degree silenced by the financial crisis and subsequent spread of democratization, the principles embodied in the Bangkok Declaration still resonate throughout ASEAN’s new Charter and its treatment of human rights therein. Because ASEAN has traditionally avoided any attempts to institutionalize human rights, that the organization began to reconsider human rights at all, and that it was eventually forced to place them on its political agenda, was not a conscious voluntary commitment to global norms on ASEAN’s part. Instead, it came about as a consequence of domestic as well as international pressures – the growth of civil society groups in the region, and the acute international criticism, embarrassment and loss of credibility caused by the actions of one of its members.

The fundamental problem encountered in codifying universal principles of natural law into human rights declarations, let alone into declarations which allow for regional particularities, is that at their best they can promote the education of a common standard of achievement in human rights, and at their worst, they can permit the application of double standards and the tolerance of human rights violators like Burma. Compromises certainly need to be made, and universal principles can still be applied through Asian practices without losing their universal nature. But declarations comprised of accusations and defensive pronouncements reached by a consensus of anti-Western opinion – or Human Rights Bodies that draw inspiration from such declarations and whose powers are restricted by political compromise – are not an adequate replacement for a universal statement.

Because education in common human rights standards at least allows for the possibility of their achievement through actions requiring prudence, both the Universal and Bangkok Declarations acknowledged that a just standard in upholding human rights may be possible. The Human Rights Body to be set up under the authority of the ASEAN Charter will also recognize this possibility if it takes seriously a commitment to educate member states on human rights. However, since the character of a regime is, to a very large degree, moulded by its rulers, the promotion of an education towards a common standard in human rights should only be viewed as a first step, albeit partial and conventional, towards improving regimes in the region. And in Burma’s case, this must also include education for the Tatmadaw – an omission that seriously flawed the Australian government’s attempts in this area. In lieu of this current deficiency, and indeed any evidence that Burma intends to take human rights seriously, ASEAN’s commitment to extend its humanitarian taskforce and TCG in Burma should be regarded as a good thing – if only because its presence, along with the UN, may encourage the Tatmadaw to reconsider any future acts of mass public violence.

The wide degree of variance in commitment to democracy and human rights among ASEAN’s member states suggests that regional progress on human rights will continue to remain haphazard. The region’s preoccupation with maintaining state sovereignty will continue to trump global norms such as human rights. The ASEAN Charter, along with its associated HRB, may indeed be an example of ASEAN’s partial response to globalization – i.e. most of the member states have adopted policies to enhance their global economic competitiveness, yet they are less committed to making changes in their socio-political realms. There is little evidence to suggest that beyond creating new opportunities for civil society groups to air their grievances, when it comes to thrashing out binding resolutions ASEAN has transformed from its state-centric approach to
become a people-centred organization. This reality continues to exist despite the extraordinary growth of domestic non-state organizations. Hence, although political liberalization may have resulted in the regional democratization of foreign-policy making, this has yet to translate into an institutionalized regional approach to democracy or human rights promotion beyond political rhetoric. Indeed, along with general agreement over the promotion of education in human rights, democratic political rhetoric on human rights that pleases the international community as well as regional civil society may be all that is attainable for the time being as we await the evolution of human rights in ASEAN.
Notes

4 E. Jones, ‘Asia’s Fate, A Response to the Singapore School’, The National Interest (Spring 1994), p. 22. Mahathir’s then former deputy prime minister, Anwar Ibrahim, also claimed that ‘... to allow ourselves to be lectured and hectored on freedom and human rights after 100 years of struggle to regain our liberty and human dignity, by those who participated in our subjugation, is to willingly suffer impudence’. Far Eastern Economic Review, 2 June 1994, p. 20.
19 Bangkok Declaration.
20 Ibid.
21 Ibid.
22 Ibid.
24 Ibid.
26 Ibid.
28 Bangkok Declaration, Article 1.
29 Ibid., Article 8.
30 Ibid., Article 3.
31 Ibid., Article 4.
32 Ibid., Article 5.
33 Ibid., Article 6.
34 Ibid., Article 7.
36 Bangkok Declaration, Article 27.
38 Ibid., p. 272.
40 Ibid., pp. 189–90.
42 ‘Implementing the seven-point Road Map for the future nation’, New Light of Myanmar, 28 December 2005, Rangoon.
46 Ibid., pp. 72–4.
52 Ibid., Article 2.
53 Ibid., Article 20.
54 Ibid., Article 1.
55 Ibid., Article 14.
56 Ibid.
61 Ibid.
66 J. Dosch, ‘The Thorny road to democracy promotion’, p. 543.