

INTRODUCTION

ESCALATING HUMAN RIGHTS TO THE MAINSTREAM

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“I don't believe in people just hoping. We work for what we want. I always say that one has no right to hope without endeavor, so we work to try and bring about the situation that is necessary for the country, and we are confident that we will get to the negotiation table at one time or another.”

— Aung San Suu Kyi, *Burmese Freedom and Democracy Leader & Nobel Peace Prize Winner*

Long before human rights and fundamental freedoms were fully acknowledged by the Association of Southeast Asian Nations (ASEAN), activists, scholars and ordinary citizens in some Southeast Asian countries have gone out to the streets, written books and mobilized public support in the name of human rights, peace, justice and democracy. Ever since the period of decolonization, clamors for genuine political participation, rights to quality education, freedom from torture, abolition of death penalty, and eradication of poverty—to name a few— have been mainly initiated and pursued by people from the ground. Many have been silenced but many more are still out there, determined to fight injustice and violations against their fellow men and women.

This human rights series is a concrete testament to the unwavering commitment and passion of Southeast Asians in amplifying the voices of the unheard and uncovering truths behind the dynamic human rights context within the Region. The papers chosen for this series are classified into different levels of human rights protection or the lack of it as observed in the themes discussed by their respective authors: philosophical (Malaysia, Singapore), ASEAN mechanisms (decision-making and legitimacy of an ASEAN body), legal mechanisms (The Philippines, Malaysia), and brute force (Burma).

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The philosophical discussion about the human rights is represented by Yvonne Tew's "Renegotiating Rights Perspectives in Malaysia and Singapore" that juxtaposes the Western and non-Western models of human rights and then reassesses these models amid the contemporary developments at global and national levels. The regional commitment to human rights at ASEAN level is critically dissected by two different papers written by Ian Niccolo V. Tobia and Catherine Renshaw for the ASEAN mechanisms. The legal mechanisms for human rights protection are found by Ma. Zaida Fresnido in the Malaysian and the Philippines efforts to combat human trafficking. Theoben Orosa Brute force as the lack of human rights protection—and therefore campaigns for it—is rampant in Myanmar (Burma). Thus Angguntari C. Sari exposes the usual pattern of desecuritization approach as it is stubbornly utilized by the regime in Burma even under the duress of the Nargis Cyclone in 2008.

Yvonne Tew's paper argues for a synthesis for development for different model of rights protection based on the external and internal approaches, i.e., Western and Asian "values," to human rights regime in neighboring Malaysia and Singapore. To get out of this impasse, Tew observes and reassesses first the shifts in the contending discourses of both perspectives for the last two decades since the 1990s. The author sets her argument by identifying the highlighting themes on the tension between the so-called Western and Asian perspectives in terms of three dichotomies in the debate: universalism versus relativism, individualism versus communitarianism, and civil-political versus economic-social rights. One of the author's grudges against the "Asian [cultural-relativism] perspective" tone is the chronic fact that that state's political power influences the conception and protection of the rights more than culture. Against the communitarianism, the author comments that although apparently prioritizing the community over the individuals but this prioritizing is not always necessarily taking place for community and political stability. Then finally the author reassesses these conflicting themes between the so-called Western and Asian perspectives through a movement away from the "Asian values" approach after the financial crises in 1997. After examining the internal framework through which the political actors and legal adjudicators in Malaysia and Singapore operate since 1969, the author still believes that the rhetoric of relativism remains an influential internal framework used by powerful executives in both countries.

To conclude, Tew advances three main observations. First, she proposes building of a set of cross-cultural theories of human rights as already pioneered by An-Naim (in 'Human Rights, Southern Voices,' 2009), Deng (in 'Human Rights, Southern Voices,' 2009), and Yasuaki (in 'The East Asian Challenge for Human Rights,' 1999) that is realistic in recognizing that rights require political legitimacy to be accepted in different cultural contexts. Second, she warns us to be skeptical of framing tensions between supposed competing interests, and that we should move beyond such dichotomies definitively. Thus the suggestion that an individual's autonomy has always to be balanced against the society's need for protection against the harms of such

liberties requires further scrutiny. Third, she suggests strongly a thesis that an approach based on deliberative and cross-cultural models of human rights needs to be constructed in a manner that is specifically sensitive to the local context for which it is meant to apply, in this case, in Malaysia and Singapore. This is to ensure that this model is uniquely tailored to the specific circumstances that Asian governments claim pose different challenges from Western states, such as multiculturalism, religion, colonial history, and economic development.

The first critical paper on ASEAN mechanisms is by Ian Niccolo Tobia. His paper exposes the absence of both parity and rational, fair, and sensible consensus in the ASEAN's decision-making procedures. The paper authored by Catherine Renshaw examines the legitimacy of the ASEAN Inter-governmental Commission for Human Rights (AICHR) through the looking glass of the idea of 'the region' in international human rights law regime, the legitimacy of 'soft law', and the legitimacy of international institutions vis-à-vis the democratic credentials of the member states.

Tobia proposes a political decision-making procedure to supplement the strict application of the ASEAN decision-making modality, the Consensus Rule, to the human rights agenda. The Consensus Rule requires no active unanimity; rather it is based on the absence of open objections from any member state before a proposal can be collectively applied. The paper argues that ASEAN diplomatic conduct shows the persistent dominance of a conservative status quo discourse of non-interference in domestic human rights affair. Furthermore, the consensus obtained under these circumstances of hegemony is likely to be confounded with agreements unfairly skewed in favor of the dominant discourse despite collegiality, mutuality, and consensus. The steps utilized to launch this argument is first to reorganize the decision-making modality of ASEAN in liberal theory, which requires parity between and individuality of diverse political participants and the adherence to a rational consensus. Second, the paper mobilizes the theory of Agonistic Pluralism to explain a lack of correspondence between the circumstance of the human rights debate and the ASEAN's decision-making modality, thus exposing impossibility of obtaining a rational consensus. Third, the paper conceives the ASEAN human rights debate as a hegemonic/counter-hegemonic mobilization that shows a vertical dimension the negotiation landscape of the regional human rights agenda.

The paper proposes that rather than attempting to depoliticize the negotiation of the human rights agenda, ASEAN should preserve a measured level of already-existent politicization as to avoid confounded outcomes that plague the consensus-based decision-making modality. For this purpose, however, ASEAN should first acknowledge the possibility of irresolvable human rights issues to which no rational consensus exists. Then ASEAN should resolve such issues through a political decision-making procedure such a voting, which mobilizes the inherent politicization of ASEAN over human rights. With a similarly high level of critical stance, Renshaw offers some

answers for the anxieties around the legitimacy of the ASEAN Intergovernmental Commission on Human Rights (AICHR).

Renshaw considers this anxiety around three central ideas, i.e., the idea of *region* in international human rights law, the *legitimacy* of “soft law” in international human rights law, and the legitimacy of international institutions as a consequence of the *democratic credentials* of their member states. Confronting the idea of ASEAN’s human rights body (ASEAN Intergovernmental Commission on Human Rights) against the evolution of regional systems for the promotion and protection of human rights by A.H. Robertson’s “Human Rights in the World (1992) (a state will submit itself to a system of international control if it has confidence in the system), Renshaw claims that such ASEAN’s body confounds this evolution. The reasons are the low levels of ratification of international human rights conventions and the extensive reservations to the treaties which are ratified. The ‘soft laws’ with lack of enforcement provisions have been taken by ASEAN for some reasons. Some historical facts supplied by Renshaw lead to an arguably a few positive results from pressuring states to accept regimes of rules with binding jurisdiction; therefore ASEAN’s approach to build capacity and consensus about human rights before creating judicial bodies with powers of coercion can be argued as legitimate in a politically and economically diverse and rapidly changing region. For the issue of democratic credential of the member states, Renshaw exposes two major implications to the legitimacy of the AICHR for the absence of electorally accountable systems of government in ASEAN. First, the absence of democracy indicates a disjuncture between the state’s interests and people’s interests. Second, the internal political structure of states is relevant to the issue of compliance. Democracy improves the chance of states being pressured to comply with international norms through domestic political demands. The overall answer to the question on the legitimacy of AICHR is therefore “remain complicated and highly qualified one”.

Ma. Zaida Fresnido’s “A Comparative Analysis of the Philippine and Malaysian Legal Systems against Trafficking in Persons” is showcased for the second theme on human rights legal mechanisms. She tackles the controversial and prevalent issue of human trafficking in the Philippines (a sending country) and Malaysia (a receiving country). The author mainly uses international standards on human trafficking as tools to evaluate the legal instruments enforced by the two States in combating human trafficking.

Fresnido’s initial approach is to illustrate the complexities of international legal instruments which aim at mandating States to completely address the causes and eradicate all cases of human trafficking. The UN Convention on Transnational Crimes and the Palermo Protocol provide specific provisions for States to criminalize proponents of this modern day form of slavery. She also includes the Three “P” model promoted by the U.S. State in combating this transnational crime as the international benchmark. Amidst being State Parties to these instruments, the Philippines and

Malaysia still record numerous cases of human trafficking that continue to victimize massive numbers of men and women. She continues the discussion by presenting existing policies and legislation being implemented in both countries. She mentions that inconsistencies in legal provisions and enforcement could have led to the prevalence of this crime. To fully assess the performance of both States, Fresnido uses the UN Tool Kit to Combat Trafficking in Persons with emphasis on the mandates to Protect, Promote and Prosecute. It is revealed that, based on this UN standard, both States have to greatly improve on their protective and prosecution measures.

Fresnido's analysis centers on the practice of 'legal transplanting' to combat human trafficking. The author mentions there may have been loopholes in adapting to the US-inspired blueprint of purging this transnational crime. It indeed rejects realities which are endemic to certain countries. She further stresses that all efforts to solve root causes, such as racism, sexism, and poverty, which can only be fully defined and articulated by the State, must first be exhausted. At the end of the day, Fresnido urges States to be fully aware that while abiding by international standards, they must also be keen on local issues and practices which catalyze and perpetuate this modern day form of slavery.

This series then shifts to the theme of human rights and brute force. The debate on human security takes center stage in Angguntari Sari's "Human Security and Myanmar's Response to Cyclone Nargis: More Continuity than Change". The author primarily stresses on ASEAN's stance on the need for measures to enforce human security to be more "people-centered". Sari points out the failure of the Myanmar government to effectively apply this principle in the midst of a destructive natural disaster with massive human casualties.

Discussion on the preservation of State power matter as opposed to the protection and promotion of human rights and freedoms is thoroughly articulated. Myanmar has declared that that human security is ranked low in its priorities. In this spirit, the paper adopts The Copenhagen School's framework of Securitization and desecuritization. In light of threats to development, 'securitization' implies that a state has the right to enforce extraordinary measures to purge existing and possible dangers to the national spirit, economy, human rights or state sovereignty. 'Desecuritization', on the other hand, is taking place when the State resists the acknowledgement of such threats, which eventually leading to the non-enforcement of emergency mechanisms. The wrath brought about by Cyclone Nargis in Myanmar led to the deaths of thousands and destruction of public and private infrastructure. Massive international aid was brought to the table but Myanmar's military regime prevented humanitarian support to enter the country. Amidst international pressure to enforce the Right to Protect, the Government was stubborn with its desecuritization stance—leaving millions traumatized, distraught and dying without adequate assistance. Sari provides two assumptions to this position, i.e., (1) Myanmar was greatly suspicious of international

intentions, and (2) it was more concerned with pursuing the national referendum which greatly would greatly affect the Military junta's hold to power.

The paper ends with an analysis of the Myanmar situation four years after Cyclone Nargis. Sari illustrates that the regime is still powerful and that its people are still suffering from the consequences of desecuritization. It can indeed provide a clear picture of how priority towards the preservation of State sovereignty painfully purges the rights and freedoms of its people to enjoy basic quality of life.

The mission of exposing human rights facts won't stop with this series. It is hoped that seasoned and emerging scholars would continue to contribute to this emerging discourse. In this age when anyone can easily construct and deconstruct the truth, it is important for activists, academics and ordinary citizens to consistently be vigilant, active and committed in unveiling the multifaceted human rights experience in Southeast Asia.

In pursuit of human rights, no one should be barred from hoping; no one should cease from learning; no one should stop understanding; and definitely, no one should be left behind.