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## **Human Rights: ASEAN's Changing Perspectives**

*By Barry Desker*

### **SYNOPSIS**

*ASEAN's changing perspectives on human rights saw the latest shift taking place in the recent ASEAN foreign ministers virtual meeting hosted by Vietnam, on the back of concerns over the plight of the Rohingya refugees.*

### **COMMENTARY**

ASEAN'S VIEW on human rights is changing – as seen in the last ASEAN Foreign Ministers Meeting hosted virtually by Vietnam from 9-12 September 2020. This could be detected in the paragraphs of the joint communique discussing the crisis in Rakhine state in Myanmar.

Human rights as an issue has drawn ASEAN attention especially since 2017 when 700,000 Muslim Rohingya fled from Myanmar's Rakhine state to Bangladesh after a brutal Myanmar military crackdown against the Rohingya allegedly following attacks by Rohingya insurgents. It represents the clearest case of a violation of human rights by an ASEAN country today.

### **ASEAN's Evolving Position on Human Rights**

While the foreign ministers did not explicitly refer to the expulsion of the Rohingya population, they stressed the importance of "Myanmar's commitment to ensure safety and security for all communities in Rakhine State as effectively as possible and facilitate the voluntary return of displaced persons in a safe, secure, and dignified manner". Indonesian foreign minister Retno Marsudi went further to urge Myanmar to resolve the root of the issue – the need for the safe, voluntary, dignified and sustainable repatriation of Rohingya refugees to the Rakhine state in Myanmar.

In its early years, ASEAN emphasised the sovereignty of states and voiced its commitment for non-intervention and non-interference in the internal affairs of states. ASEAN's approach shifted with the adoption of the ASEAN Charter in Singapore in November 2007 which explicitly called on member states to act in "respect for fundamental freedom, the promotion and protection of human rights, and the promotion of social justice".

This led to the establishment of the ASEAN Inter-Governmental Commission on Human Rights (AICHR) in Thailand in October 2009 and adoption of the ASEAN Human Rights Declaration in Cambodia in November 2012. The Declaration, however, did not satisfy some Western observers who felt that it fell short of existing human rights standards.

Notwithstanding the ASEAN consensus on the inter-governmental nature of the Commission, Thailand, Malaysia, and Indonesia appointed civil society activists and non-governmental organisation (NGO) leaders as their representatives. These representatives pushed for responses to voices from civil society, the participation of NGOs in AICHR meetings and outreach by AICHR to the global human rights community.

On the other hand, there was strong resistance from Myanmar, Laos, Vietnam, and Cambodia to moving from the *promotion* of human rights to *active protection* of human rights. While off the record exchanges occurred on issues such as the disappearance of prominent Laotian activist Sombath Somphone and the massive refugee crisis arising from the eviction of Rohingya from Rakhine in Myanmar, the affected states blocked formal discussions on such issues.

### **Progress, Limits and Prospects**

Nevertheless, ASEAN moved beyond looking at human rights only through a foreign ministry lens. Dialogues have occurred on issues including the rights of women, children and persons with disabilities, trafficking in persons, the right to education, corporate social responsibility, and environmental protection.

This led several Singapore civil society organisations to participate in AICHR events. The Singapore Council of Women's Organisations (SCWO), MARUAH (Working Group for an ASEAN Human Rights Mechanism) and MINDS (Movement for the Intellectually Disabled of Singapore) have so far been accredited by AICHR.

The establishment of AICHR led to pressures to ratify or accede to the nine core UN Human Rights Instruments as the accession record of member states is discussed at AICHR meetings.

Singapore is party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

It is ironic that Singapore has yet to accede to the International Covenant on Economic, Social and Cultural Rights (ICESCR) – a product of the Cold War that is

long over. Early accession to ICESCR would reflect Singapore's emphasis on the need for a balanced approach to human rights which weighed individual rights against social obligations and the interests of the community.

Singapore activists have drawn attention to Malaysia's handling of human rights issues, which they viewed positively. Despite Malaysia taking a high profile, especially on the rights of Palestinians and Rohingya refugees, it has moved even more slowly on accession to UN Human Rights Conventions.

With at least 2.2 million documented foreign workers and another 3-4 million undocumented illegal workers, Malaysia, like Singapore, is unlikely to accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW). This was an issue raised within the AICHR by the representatives of Indonesia and the Philippines, which are Malaysia's leading sources of migrant workers.

### **More To Go**

A second example is Malaysia's lack of action on the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Although accession to ICERD was a campaign pledge of the Pakatan Harapan coalition, domestic pressure from Malays concerned that accession would undermine Malay special rights resulted in the cabinet reversing its position. The current Perikatan Nasional coalition is even more unlikely to change this decision.

Cambodia has acceded to all the nine core instruments except for the ICRMW. However, it continues to be in the news for forced disappearances, arbitrary arrests and detention, allegations of torture and as a haven for child prostitution and child pornography. While Thailand has played an active role in widening and deepening coverage of human rights issues in AICHR, severe penalties for *lèse majesté* offences and disappearances of junta critics remain the practice in Bangkok.

The same is true of Indonesia, which has witnessed a decline in the protection of religious minorities including Shia, Ahmadiyya and Christians in the post-Suharto era as well as the torture, extra-judicial killings and forced disappearances of West Papuan dissidents. Similarly, while the Philippines has been a leading voice on civil and political rights issues in AICHR and the UN, there has been a sharp upward trend in summary executions of alleged drug dealers and criminals in the country.

### **Human Rights in Pandemic Era**

The debate within ASEAN on human rights issues was also influenced by developments in the international geopolitical environment. With the fall of the Berlin Wall in 1989 and the collapse of the Soviet Union, Western values were in the ascendancy resulting in a culture-bound definition of human rights, which highlighted the personal rights and interests of the individual. This explained the criticisms of Western human rights groups of AICHR processes and ASEAN's commitment to universal human rights.

At the same time, the 1980s and 1990s was also the era which witnessed the dramatic

economic emergence of China, India, and states in East Asia. China's focus is on the broader interests of Chinese society through economic development, social cohesion, and political stability. The current generation of Chinese nationals appear strongly supportive of their political leadership and its efforts to shape the domestic and global environment.

In this context, the current COVID-19 pandemic has raised pertinent questions about the balance between *individual rights and community interests*. Governments have been forced to restrict the activities of their citizens and to utilise technology for contact tracing. They have also imposed travel restrictions, required the use of masks in public places and placed limits on personal freedom through lockdowns.

The US faced major difficulties in imposing these restrictions resulting in it having the worst pandemic outbreak globally. China, by contrast, which was the original source of the COVID-19 pandemic, effectively managed the outbreak by taking decisive action, after initially failing to control its spread.

These developments will influence states in the East Asian region. The communitarian instincts of governments in East Asia will lead to a growing questioning of the current dominant international perspectives in the field of human rights. The measured approach taken by AICHR is likely to be closer to the new norm in the years ahead as the global balance shifts away from US unipolar dominance.

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