

The Significance of an Evolving Relationship: ASEAN States and the Global Human Rights Mechanisms

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ABSTRACT

This article analyses the changing nature and level of engagement between ASEAN States and the global human rights mechanisms especially the Universal Periodic Review mechanism. The relationship is significant for several reasons. It provides valuable insights into how these States approach the interpretation and application of human rights as well as the extent to which they are willing to open up to external scrutiny of their domestic human rights record. It calls into question claims that there is a collective approach to human rights within ASEAN, specifically one that embodies Asian Values or Asia's Different Standard on human rights. As this study shows, the approach of ASEAN States is far more complex, heterogeneous and dynamic than such claims would suggest. Above all, by analysing the relationship between ASEAN States and the global human rights mechanisms, it is possible to place recent human rights developments in ASEAN within their broader normative and institutional context.

KEYWORDS: ASEAN States, Asian values, Universal Periodic Review, United Nations human rights treaty body system, special procedures

1. INTRODUCTION

Any discussion of human rights within the Association of Southeast Asian Nations (ASEAN) invariably brings to mind the Bangkok Declaration of 1993.¹ Formulated in the lead up to the UN World Conference on Human Rights, it asserted what became

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¹ See *Final Declaration of the Regional Meeting for Asia for the World Conference on Human Rights* ('Bangkok Declaration'), adopted by the Ministers and Representatives of Asian States Meeting at Bangkok from 29 March to 2 April 1993, pursuant to General Assembly resolution 46/116 of 17 December 1991 in the context of preparations for the World Conference on Human Rights, available at: www.hurights.or.jp/archives/other_documents/section1/1993/04/final-declaration-of-the-regional-meeting-for-asia-of-the-world-conference-on-human-rights.html [last accessed 19 February 2015].

known as Asian Values or 'Asia's Different Standard' on human rights.² Although the Declaration itself was not an ASEAN document,³ the prominent role played by several ASEAN States in its drafting and in expounding the Asian Values it purported to represent⁴ meant that it has come to be associated closely with ASEAN. At its core, the Declaration stressed the significance of 'national and regional particularities and various historical, cultural and religious backgrounds' in the interpretation and application of human rights.⁵ Aligned to this normative framework was a robust rejection of external criticism of these States' domestic human rights records particularly in the field of civil and political rights.⁶ Today, some claim that the collective views on human rights expressed in the Bangkok Declaration continue to 'remain valid and relevant' within ASEAN.⁷ This assumes that at the time it was adopted the Bangkok Declaration embodied a collective approach to human rights within the region; an assumption that is far from being universally held. More than that, it suggests that this approach has not evolved in the intervening 20 years despite significant political, economic and social developments within ASEAN states.

The current approach of ASEAN States to human rights is clearly important, not only in terms of assessing the continuing relevance of the Asian Values debate⁸ in Southeast Asia but also in evaluating the risks and opportunities associated with recent human rights developments within ASEAN. The most important of these is the adoption of the ASEAN Human Rights Declaration (AHRD) in 2012⁹ and the establishment of the ASEAN Intergovernmental Commission on Human Rights

² See Kausikan, 'Asia's Different Standard' (1993) 92 *Foreign Policy* 24.

³ The Declaration was adopted by Bahrain, Bangladesh, Bhutan, Brunei Darussalam, China, Cyprus, the Democratic People's Republic of Korea, Fiji, India, Indonesia, Iran, Iraq, Japan, Kiribati, Kuwait, the Lao People's Democratic Republic, Malaysia, the Maldives, Mongolia, Myanmar, Nepal, Oman, Pakistan, Papua New Guinea, the Philippines, the Republic of Korea, Samoa, Singapore, the Solomon Islands, Sri Lanka, the Syrian Arab Republic, Thailand, the United Arab Emirates and Viet Nam. At the time, ASEAN was composed of Brunei, Indonesia, Malaysia, the Philippines, Singapore and Thailand.

⁴ Singapore was prominent in articulating the case for Asian Values but support for these values was also evident in the speeches given at the Vienna Conference by Malaysia, Indonesia and Thailand: see Brems, *Human Rights: Universality and Diversity* (2001) at 35-49, 55-78; Cerna, 'Introductory Note to the Terms of Reference for the Establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR)' (2009) 48 *International Legal Materials* 1161; Englehart, 'Rights and Culture in the Asian Values Argument: The Rise and Fall of Confucian Ethics in Singapore' (2000) 22 *Human Rights Quarterly* 548 at 549.

⁵ Operative para 8 Bangkok Declaration.

⁶ *Ibid.* at preambular paras 6, 8, 9, 10 and 11 and operative paras 3, 5, 9 and 25.

⁷ See Chalermpanupap, Special Assistant to the Secretary-General of ASEAN, '10 Facts about ASEAN Human Rights Cooperation', undated, available at: www.asean.org/communities/asean-political-security-community/category/asean-intergovernmental-commission-on-human-rights-aichr [last accessed 19 February 2015].

⁸ See, for example, Peerenboom, 'Beyond Universalism and Relativism: The Evolving Debates about "Values in Asia"' (2003-2004) 14 *Indian International and Comparative Law Review* 1; Ghai, 'Human Rights and Governance: The Asia Debate' (1994) 15 *Australian Yearbook of International Law* 1; Muntarbhorn, 'Asia, Human Rights and the New Millennium: Time for a Regional Human Rights Charter?' (1998) 8 *Transnational Law and Contemporary Problems* 407; Englehart, *supra* n 4; Kausikan, 'An Asian Approach to Human Rights' (1995) 89 *Proceedings of the American Society of International Law* 146; Brems, *supra* n 4 at 33-90; Desierto, 'Universalizing Core Human Rights in the "New" ASEAN: A Reassessment of Culture and Development Justifications Against the Global Rejection of Impunity' (2009) *Gottingen Journal of International Law* 77 at 93-107; Hom, 'Commentary: Re-positioning human rights discourse on "Asian" perspectives' (1996) 3 *Buffalo Journal of International Law* 209.

⁹ The ASEAN Human Rights Declaration was adopted by the Heads of State/Government of the Member States of ASEAN at the 21st ASEAN Summit in Phnom Penh, Cambodia, on 19 November 2012. It is available at: www.asean.org/news/asean-statement-communicues/item/asean-human-rights-declaration [last accessed 19 February 2015].

(AICHR) in 2009.¹⁰ Although both have been welcomed as significant milestones in the development of a regional human rights system, the former has been criticised for falling below international standards while the latter has been criticised for its limited mandate and consequent inability to operate as a genuine enforcement mechanism in the region.¹¹ Central to any assessment of whether these normative and institutional developments represent a real breakthrough in the emergence of an effective regional human rights system or an attempt to limit the application of global human rights norms within Southeast Asia is an understanding of the approach of ASEAN States to human rights today.

The relationship between ASEAN States and the global human rights mechanisms provides valuable insights into how these States approach fundamental issues concerning the interpretation and implementation of human rights. It also provides useful insights into their willingness to undertake a range of international human rights commitments that can go some way towards addressing the normative and institutional shortcomings of the current human rights architecture within ASEAN. The present article analyses this relationship, focussing primarily though not exclusively on the engagement of ASEAN States with the system of Universal Periodic Review (UPR). It begins with a brief overview of ASEAN to identify some of the key human rights issues that arise at the regional level and against which one can assess the significance of developments at the global level. It then proceeds to undertake a detailed analysis of the nature and level of engagement between ASEAN States and Universal Periodic Review, focussing on the dialogue it engendered on core human rights issues between ASEAN and non-ASEAN States as well as the significance of the human rights commitments undertaken by ASEAN States at the conclusion of the review.

Throughout, the emphasis is on procedural issues rather than issues of substantive law for a number of reasons. Any willingness on the part of ASEAN States to open up to greater external scrutiny marks a significant departure from one of the central features of the Asian Values debate, namely, the principle of national sovereignty over human rights and hostility to external intervention in what was deemed to be a State's internal affairs. Aside from this, Asian Values was never about rejecting particular human rights but about general approaches to the interpretation and implementation of these rights.¹² External scrutiny can help ensure that the approach of ASEAN States to the interpretation and implementation of human rights remains within the permissible limits laid down in international human rights law. In this respect, procedural issues are closely intertwined with issues of substantive law. More generally, the actual process of engagement between ASEAN States and the global human rights mechanisms is significant in terms of helping to generate a more meaningful dialogue and a genuine consensus on global human rights standards.

2. ASEAN AND HUMAN RIGHTS: A BRIEF OVERVIEW

¹⁰ See, further, www.asean.org/communities/asean-political-security-community/category/asean-intergovernmental-commission-on-human-rights-aicHR [last accessed 19 February 2015].

¹¹ See further, *infra* at 7-8.

¹² Brems, *supra* n 4 at 87.

ASEAN was established in 1967 with several strategic and diplomatic objectives the most important of which was the need to maintain peace and stability in the region.¹³ Originally composed of Indonesia, the Philippines, Malaysia, Thailand and Singapore, its membership has expanded over the years to include Brunei, Cambodia, Laos, Myanmar and Viet Nam. One of the distinguishing features of the Organisation is the remarkable diversity of its members in terms of culture, political systems, size, language, religion and stages of economic development. A second feature is the emphasis on non-intervention, voluntarism and consensus or what has become known as the 'ASEAN Way' in terms of how the Organisation operates.¹⁴ Taken in combination, these features help to explain the slow pace of development within ASEAN especially in the area of human rights.¹⁵

However, recent institutional developments¹⁶ are giving a greater impetus to the emergence of a regional human rights system within ASEAN. As the Organisation moves towards the creation of an ASEAN Community in 2015, it is envisaged that human rights will be part of one of the three pillars on which this Community will be based.¹⁷ Aligned to these developments is the adoption of the ASEAN Human Rights Declaration (AHRD). It has attracted considerable controversy.¹⁸ Aside from criticism about the lack of transparency and consultation during its drafting,¹⁹ most of the criticism has been directed at the actual content of the Declaration. Concerns have been raised about the omission of important human rights such as the right to freedom of association and the incomplete descriptions of several rights it does contain.²⁰ It has also been criticised for weakening guarantees against abuse due to the wide range of grounds on which human rights can be restricted as well as the omission of any reference to the test of necessity or principle of proportionality in assessing the validity of restrictions.²¹ Although attempts to include explicit references to Asian Values or the Bangkok Declaration were unsuccessful,²² the fact that the AHRD does refer to the importance of national and regional contexts in the interpretation and application of rights and to a balance

¹³ Beeson, *Institutions of the Asia-Pacific: ASEAN, APEC and Beyond* (2009) at 18-19.

¹⁴ *Ibid.* at 22, 26 and 35; Cerna, *supra* n 4.

¹⁵ See further, Aguirre and Pietropaoli, 'Human Rights Protection the ASEAN Way: Non-Intervention and the Newest Regional Human Rights System' (2012) 1 *International Human Rights Law Review* 276.

¹⁶ For a brief overview, see Desierto, *supra* n 8 at 87-93; Beeson, *supra* n 13 at 25-7, 32-6; Ramcharan, 'ASEAN's Human Rights Commission: Policy considerations for enhancing its capacity to protect human rights' (2010) *UCL Human Rights Review* 199 at 207-10.

¹⁷ Beeson, *supra* n 13 at 32-5.

¹⁸ For an overview of the different assessments of the AHRD, see Clarke, 'The Evolving ASEAN Human Rights System: The ASEAN Human Rights Declaration of 2012' (2012) 11 *Northwestern Journal of International Human Rights* 1; Doyle, 'The ASEAN Human Rights Declaration and the implications of recent South East Asian initiatives in human rights institution-building and standard-setting' (2014) 63 *International and Comparative Law Quarterly* 67; Renshaw, 'The ASEAN Human Rights Declaration 2012' (2013) 13 *Human Rights Law Review* 557.

¹⁹ See, 'Joint Submission to the ASEAN Intergovernmental Commission on Human Rights on the ASEAN Human Rights Declaration by Civil Society Organizations and people's movements participating in the Fifth Regional Consultation on ASEAN and Human Rights', 22 June 2012, available at: www.fidh.org/en/asia/ASEAN,240/Joint-submission-to-the-ASEAN [last accessed 19 February 2015].

²⁰ U.S. Department of State, 'ASEAN Declaration on Human Rights', 20 November 2012, available at: www.state.gov/r/pa/prs/ps/2012/11/200915.htm.

²¹ *Ibid.*

²² Petchamesree, 'The ASEAN Human Rights Regime: Between Asian Values and Cultural Relativism'. Conference on 'Beyond cultural relativism: The evolving human rights mechanism of the Association of Southeast Asian Nations (ASEAN) in context'. Swansea University, 21 March 2014.

between the enjoyment of rights and the performance of duties has led some to argue that the Declaration represents a revival of Asian Values or a cultural relativist approach.²³ Ultimately, the AHRD can be seen as the product of the cleavages that currently exist within ASEAN on human rights issues²⁴ and the enduring commitment of its Member States to the principles of consensus and voluntarism.

In addition to the AHRD, three human rights mechanisms have been established within ASEAN in recent years. They are the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers,²⁵ the ASEAN Commission on the Promotion and the Protection of the Rights of Women and Children²⁶ and the ASEAN Intergovernmental Commission on Human Rights (AICHR).²⁷ Of these, AICHR is the most important as 'the overarching human rights institution in ASEAN with overall responsibility for the promotion and protection of human rights in ASEAN'.²⁸ Nevertheless, it has been subject to considerable criticism due to its mandate, composition and manner of working.²⁹ Although AICHR's Terms of Reference stipulate that one of its purposes is 'to promote and protect' human rights, it is clear from its mandate that the emphasis is very much on promotional activities.³⁰ AICHR cannot deal with individual human rights cases, undertake on-site visits or require the submission of individual State reports.³¹ As such, it is severely limited in its ability to undertake an effective monitoring and protection role within the region. In addition to this, it is composed of State representatives³² rather than independent experts and must respect the principle of non-interference in the internal affairs of ASEAN States when performing its functions.³³ Provision is made for AICHR's Terms of Reference to be reviewed within five years³⁴ and a review is currently underway. It is open to question whether it will result in any substantial augmentation of AICHR's mandate or powers. In addition to the existing human rights mechanisms, proposals have been made for the establishment of a regional peer review mechanism or a regional Special

²³ U.S. Department of State, supra n 20.

²⁴ Note the differences of opinion between Thailand and Malaysia concerning the prohibition of discrimination on grounds of sexual orientation during the drafting of the AHRD: *Working Draft of the AHRD as of 8 January at 0400hrs* at 3. Copy on file with the author. It is also interesting to note that references were made to the test of necessity and the right to freedom of association in Articles 30 and 48 of the Draft.

²⁵ See Ramcharan, supra n 16 at 223-5.

²⁶ See Aguirre and Pietropaoli, supra n 15 at 289-91.

²⁷ See Phan, 'The Evolution Towards an ASEAN Human Rights Body' ((2008) 1 *Asia-Pacific Journal on Human Rights and the Law* 1; Durbach, Renshaw and Byrnes, "'A tongue but no teeth': The emergence of a regional human rights mechanism in the Asia Pacific region' (2009) 31 *Sydney Law Review* 211.

²⁸ Article 6(8) ASEAN Intergovernmental Commission on Human Rights: Terms of Reference 2009, 48 *International Legal Materials* 1165.

²⁹ See Baik, *Emerging Regional Human Rights Systems in Asia* (2012) at 204-6; Naldi, 'The ASEAN Intergovernmental Commission on Human Rights: A "Damp Squib"?' (2010) 22 *Sri Lanka Journal of International Law* 1.

³⁰ AICHR Terms of Reference, supra n 28 at Articles 1, 4.

³¹ *Ibid.* at Article 4. The Philippines, Thailand and Indonesia were in favour of giving it broad powers to conduct on-site investigations of human rights abuses and to conduct periodic reviews of the human rights record of ASEAN States but these proposals were unsuccessful: see Cerna, supra 4 at 1162.

³² AICHR Terms of Reference, supra n 28 at Article 5.

³³ *Ibid.* at Article 2.

³⁴ *Ibid.* at Article 9.

Rapporteur. However, they have all been rejected by several ASEAN States as ‘too intrusive’.³⁵

This brief overview highlights some of key issues concerning human rights in ASEAN. Normatively, there are gaps in its existing human rights architecture, for example, concerning the right to freedom of association. The extent to which ASEAN States are willing to accept international human rights treaties which embody these rights can go some way to filling these gaps. Aside from this, greater acceptance of international treaties can help to ensure that restrictions on human rights remain within permissible limits by stipulating that restrictions must be prescribed by law, are non-discriminatory and are necessary to achieve a legitimate aim. In this way, it can guard against any weakening of the safeguards against abuse and help to address one of the principal concerns with the AHRD. Institutionally, the willingness of ASEAN States to open up to external scrutiny from intergovernmental mechanisms or independent experts at the global level can go some way to addressing the limitations on the ability of the existing ASEAN human rights mechanisms to protect rights at the regional level.

3. ASEAN STATES AND THE UNIVERSAL PERIODIC REVIEW MECHANISM

One of the most significant developments within the UN Charter-based system³⁶ was the establishment in 2006 of Universal Periodic Review by virtue of which each UN Member State has its human rights record reviewed by the UN Human Rights Council every four and a half years. All ASEAN States have participated in this process and some³⁷ have already undergone a second cycle of review. There are two aspects to this UPR process that merit consideration in the present context.³⁸ The first relates to the dialogue that takes place between the State subject to review and the other UN Member States during the review process. The second is the level of acceptance of the recommendations made by individual States during UPR and the subsequent implementation of these recommendations. It is useful to begin by examining the dialogue during the UPR process with a view to ascertaining the approach of ASEAN States to human rights norms and assessing the nature and extent of any divergence between ASEAN and non-ASEAN States concerning the interpretation and application of these norms. Attention then focuses on the extent to which ASEAN States accepted the human rights recommendations made to them during UPR, the type of recommendations they accepted and the potential

³⁵ Petcharamesree, supra n 22.

³⁶ This is the human rights system derived from the UN Charter which applies to all UN Member States, see: www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx [last accessed 19 February 2015].

³⁷ Brunei, Cambodia, Indonesia, Malaysia, the Philippines, and Viet Nam.

³⁸ For information about how the process operates and to view the relevant documentation for each State, see: www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx [last accessed 19 February 2015]. The review is based on three sets of documents (the National Report, the Compilation of UN Information and the Summary of Stakeholders Information). It entails an interactive dialogue in a Working Group of the Council which comprises all of its members and during the course of which non-member States may also participate. During the course of the dialogue, States can make recommendations to the State under review which the latter is free to accept or reject. The Report of the Working Group on the Universal Periodic Review for the State concerned is then adopted by the Council in plenary session during the course of which civil society and other stakeholders can participate.

significance of these recommendations in terms of the interpretation and implementation of human rights within Southeast Asia.

B. The UPR Dialogue: Contestation or Convergence on Human Rights Norms?

It is clear from the various exchanges that took place during the UPR dialogue that there are numerous differences of opinion between ASEAN States and other States on core human rights issues. While this might be seen as evidence of Asia's Different Standard on human rights, on closer analysis the situation is more complex. If one looks at the nature of these differences it is possible to delineate them into three distinct categories. The first category relates to matters that are either not regulated by international human rights law or are still in the process of being regulated although not to the point where it is possible to refer to the existence of any legally binding obligations. The second category relates more to evidential matters, in particular, whether the circumstances on the ground indicate that human rights are being violated. The final category relates to a genuine contestation over the content of human rights norms. It follows that not every difference of opinion reflects a conflict concerning the universality of rights or a reassertion of Asian Values.

The first category includes disagreements concerning the abolition of the death penalty. During the course of the UPR dialogue, several ASEAN States were called upon to abolish or establish a moratorium on the death penalty.³⁹ Some rejected these calls citing the deterrent value of the death penalty within their particular criminal justice systems.⁴⁰ Attempts to categorize these differences as

³⁹ *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam*, 4 January 2010, A/HRC/13/14 at paras 34, 47, 48 and 50 ('First UPR: WGP Report on Brunei'); *Report of the Working Group on the Universal Periodic Review: Malaysia*, 5 October 2009, A/HRC/11/30 at paras 21, 76, 83 and 88 ('First UPR: WGP Report on Malaysia'); *Report of the Working Group on the Universal Periodic Review: Malaysia*, 4 December 2013, A/HRC/25/10 at paras 18, 22, 42 and 49 ('Second UPR: WGP Report on Malaysia'); *Report of the Working Group on the Universal Periodic Review: Myanmar*, 24 March 2011, A/HRC/17/9 at 20 ('First UPR: WGP Report on Myanmar'); *Report of the Working Group on the Universal Periodic Review: Singapore*, 11 July 2011, A/HRC/18/11 at paras 72 and 75 ('First UPR: WGP Report on Singapore'); *Report of the Working Group on the Universal Periodic Review: Viet Nam*, 5 October 2009, A/HRC/12/11 at paras 59, 63 and 83 ('First UPR: WGP Report on Viet Nam'); *Report of the Working Group on the Universal Periodic Review: Thailand*, 8 December 2011, A/HRC/19/8 at paras 80, 28 and 37 ('First UPR: WGP Report on Thailand'); *Report of the Working Group on the Universal Periodic Review: Lao People's Democratic Republic Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 14 September 2010, A/HRC/15/5/Add.1 at para 18 ('First UPR: WGP Report on Laos: Addendum').

⁴⁰ *First UPR: WGP Report on Laos: Addendum*, *ibid.* at para 18; *First UPR: WGP Report on Malaysia*, *ibid.* at para 55; *Report of the Working Group on the Universal Periodic Review: Viet Nam: Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 16 September 2009, A/HRC/12/11/Add.1 at para 20 ('First UPR: WGP Report on Viet Nam: Addendum'); *First UPR: WGP Report on Singapore*, *ibid.* at para 87. The recommendations were also rejected by Brunei: *First UPR: WGP Report on Brunei*, *ibid.* at para 18; *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam: Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 10 September 2014, A/HRC/27/11/Add.1 at 10 ('Second UPR: WGP Report on Brunei: Addendum'); *Report of the Working Group on the Universal Periodic Review: Indonesia: Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 5 September 2012, A/HRC/21/7/Add.1 at para 6 ('Second UPR: WGP Report on Indonesia: Addendum'); *Report of the Working Group on the Universal Periodic Review: Thailand: Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by*

instances of cultural relativism would be misplaced. As Viet Nam pointed out,⁴¹ there is currently no obligation under general international human rights law to abolish the death penalty. Provided the death penalty is not imposed in an arbitrary manner and is reserved for the most serious offences,⁴² its imposition is compatible with global human rights standards. Viewed from this perspective, the position of these ASEAN States does not represent any challenge to the universality of human rights as no universal right currently exists in this area. Indeed, it is a position shared by non-ASEAN States such as the United States.⁴³

At the same time, one has to acknowledge that the trend in State practice is towards the abolition of the death penalty and international human rights law may evolve in the future to reflect this trend. It is clear that not every ASEAN State is opposed to the abolition of the death penalty per se. Instead, opposition tends to be to calls for its immediate abolition. Malaysia and Thailand, for example, stated that they were willing to keep the issue open in the light of changing public opinion and to continue engaging and consulting with the public on the matter.⁴⁴ While the value of these general and indeterminate commitments may be open to question, there has been some progress in terms of restricting the number of offences to which the death penalty applies. Viet Nam, for example, has reduced the number of offences to which it applies and committed itself to further reductions by 2016.⁴⁵ Other States such as Laos and Malaysia have indicated their willingness to review the offences to which the penalty applies so as to 'be in line with' international human rights standards.⁴⁶ Significantly, both Viet Nam and Malaysia have discontinued the

the State under review, 6 March 2012, A/HRC/19/8/Add.1 at para 10 ('*First UPR: WGP Report on Thailand: Addendum*').

⁴¹ *First UPR: WGP Report on Viet Nam: Addendum*, *ibid.* at para 20. See also, *Report of the Working Group on the Universal Periodic Review: Myanmar: Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 27 May 2011, A/HRC/17/9/Add.1 at para 9 ('*First UPR: WGP Report on Myanmar: Addendum*'); *First UPR: WGP Report on Singapore*, *ibid.* at para 87; *Report of the Working Group on the Universal Periodic Review: Malaysia: Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 4 March 2014, A/HRC/25/10/Add.1 at 5 ('*Second UPR: WGP Report on Malaysia: Addendum*'); *Second UPR: WGP Report on Brunei: Addendum*, *ibid.* at 3.

⁴² See, for example, *Compilation of General Comments and General Recommendations adopted by the Human Rights Treaty Bodies. Note by the Secretariat*, 27 May 2008, HRI/GEN/1/Rev.9, Vol. I at 177-8.

⁴³ *Report of the Working group on the Universal Periodic Review: United States of America: Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 8 March 2011, A/HRC/16/11/Add.11 at para 8.

⁴⁴ *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Malaysia*, 6 August 2013, A/HRC/WG.6/17/MYS/1 at para 46 ('*Second UPR: Malaysia's National Report*'). During its second UPR, Malaysia outlined its initiatives concerning in-depth research on the death penalty: *Second UPR: WGP Report on Malaysia*, *supra* n 39 at para 67. See also, *First UPR: WGP Report on Thailand: Addendum*, *supra* n 40 at para 10. In a similar vein, Viet Nam said it would consider ratifying the Optional Protocol to the ICCPR on the abolition of the death penalty 'when conditions so allow' although it had no 'immediate plan' to abolish it: *First UPR: WGP Report on Viet Nam: Addendum*, *supra* n 40 at para 20.

⁴⁵ *Report of the Working Group on the Universal Periodic Review: Viet Nam*, 2 April 2014, A/HRC/26/6 at para 59 ('*Second UPR: WGP Report on Viet Nam*').

⁴⁶ *First UPR: WGP Report on Laos: Addendum*, *supra* n 39 at para 18. See also *Report of the Working Group on the Universal Periodic Review: Malaysia: Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 3 June 2009, A/HRC/11/30/Add.1 at 5 ('*First UPR: WGP Report on Malaysia: Addendum*').

application of the death penalty to minors.⁴⁷ At the very least, it suggests that the approach of ASEAN States in this area is capable of evolving over time.

At the same time, one has to acknowledge that there have been some regressive developments in this area. For example, Brunei's 2013 Sharia Penal Order not only extends the number of crimes to which the death penalty applies but also applies it to adultery and blasphemy which would not meet the requirements of international human rights law requiring the penalty to be imposed only for the most serious crimes.⁴⁸ While Viet Nam has reduced the number of offences to which the death penalty applies, the actual number of individuals that have been sentenced to death has increased.⁴⁹ Indonesia's recent execution of six individuals for drug trafficking has also been heavily criticised not least because it suggests that there is little prospect of its moratorium on the death penalty being reinstated.⁵⁰ All these events serve to illustrate the point that there can be setbacks and that human rights developments in ASEAN are not necessarily part of a 'linear process' of change.⁵¹

The second category of disagreements relates to the extent to which ASEAN States are respecting human rights, such as the right to freedom of expression,⁵² freedom of religion,⁵³ and freedom of association.⁵⁴ In responding to these claims, ASEAN States asserted either that any restriction on or derogation from these rights

⁴⁷ *Second UPR: WGP Report on Malaysia: Addendum*, supra n 41 at para 8; *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Viet Nam*, 8 November 2013, A/HRC/WG.6/18/VNM/1 at para 10 ('*Second UPR: Viet Nam's National Report*').

⁴⁸ See, for example, Sweden's assessment in this regard: *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam*, 7 July 2014, A/HRC/27/11 at para 103 ('*Second UPR: WGP Report on Brunei*').

⁴⁹ *Second UPR: WGP Report on Viet Nam*, supra n 45 at para 122.

⁵⁰ 'Indonesia's death penalty for drug-related convictions "deplorable", says HRW', 18 January 2015, available at: <http://www.thejakartapost.com/news/2015/01/18/indonesia-s-death-penalty-drug-related-convictions-deplorable-says-hrw.html> [last accessed 19 February 2015].

⁵¹ On the dynamics of change in the region: see, Kraft, 'The Regionalization of Human Rights Norms in Southeast Asia', Paper presented at Conference on 'Beyond cultural relativism: The evolving human rights mechanism of the Association of Southeast Asian Nations (ASEAN) in context, Swansea University, 21 March 2014.

⁵² See, for example, *First UPR: WGP Report on Brunei*, supra n 39 at paras 36, 44, 48 and 49; *Report of the Working Group on the Universal Periodic Review: Cambodia*, 4 January 2010, A/HRC/13/4 at paras 30, 35, 43 and 60 ('*First UPR: WGP Report on Cambodia*'); *Report of the Working Group on the Universal Periodic Review: Cambodia*, 27 March 2014, A/HRC/26/16 at paras 29, 30, 55 and 56 ('*Second UPR: WGP Report on Cambodia*'); *Report of the Working Group on the Universal Periodic Review: Lao People's Democratic Republic*, 15 June 2010, A/HRC/15/5 at paras 71, 82 and 86 ('*First UPR: WGP Report on Laos*'); *First UPR: WGP Report on Malaysia*, supra n 39 at paras 81 and 88; *Second UPR: WGP Report on Malaysia*, supra n 39 at paras 15, 30, 32, 54; *First UPR: WGP Report on Myanmar*, supra n 39 at paras 35, 40, 64 and 82; *First UPR: WGP Report on Thailand*, supra n 39 at paras 26, 28, 36, 37; *First UPR: WGP Report on Viet Nam*, supra n 39 at paras 35, 45, 47, 63; *Second UPR: WGP Report on Viet Nam*, supra n 45 at paras 41, 50, 70, 71; *First UPR: WGP Report on Singapore*, supra n 39 at paras 62, 75..

⁵³ See, eg, *First UPR: WGP Report on Brunei*, *ibid.* at paras 36, 53, 39; *First UPR: WGP Report on Laos: Addendum*, supra n 39 at 2-8; *First UPR: WGP Report on Malaysia*, supra n 39 at paras 34, 76; *Second UPR: WGP Report on Malaysia*, *ibid.* at 44, 59; *First UPR: WGP Report on Viet Nam*, *ibid.* at paras 66, 81, 87; *Second UPR: WGP Report on Viet Nam*, *ibid.* at para 51; *Report of the Working Group on the Universal Periodic Review: Indonesia*, 5 July 2012, A/HRC/21/7 at paras 100, 97, 69 ('*Second UPR: WGP Report on Indonesia*'); *First UPR: WGP Report on Myanmar*, *ibid.* at para 35.

⁵⁴ See, eg, *First UPR: WGP Report on Brunei*, *ibid.* at paras 36; *Second UPR: WGP Report on Viet Nam*, *ibid.* at paras 41, 70; *First UPR: WGP Report on Cambodia*, supra n 52 at paras 66-67; *Second UPR: WGP Report on Cambodia*, supra n 52 at paras 29, 30, 35, 36; *First UPR: WGP Report on Malaysia*, *ibid.* at 81; *First UPR: WGP Report on Myanmar*, *ibid.* at paras 35, 64, 82; *First UPR: Working WGP Report on Singapore*, supra n 39 at para 62.

was compatible with international human rights standards⁵⁵ or denied the factual basis for the claim.⁵⁶ ASEAN States did not contest the existence of the right but the assessment of whether a human rights violation had occurred in the light of all the relevant circumstances. Here the difference of opinion relates as much to evidential issues as to normative ones. It demonstrates the real need for an independent oversight mechanism that can review whether the interference with the right is justifiable in the light of all the facts on the ground and whether the State's approach remains within the limits laid down by international human rights standards. Against this backdrop, the willingness of ASEAN States to agree to external scrutiny of their human rights record acquires a particular significance. It can go some way to testing the validity of human rights restrictions and the legitimacy of claims made in the name of regional and national particularities.

The final category is where the dialogue demonstrated a genuine difference of opinion over the content of human rights. Malaysia and Singapore, two of the key proponents in the original Asian Values debate, were to the fore in these discussions. A particularly good illustration⁵⁷ is the discussion that took place concerning the rights of Lesbian, Gay, Bisexual and Transgender (LGBT) persons. In this area, there is a genuine difference of opinion over normative standards, notably concerning the right to respect for one's private life and the principle of non-discrimination. Recommendations to decriminalize sexual relations between same sex couples and/or to prohibit discrimination on grounds of sexual orientation were rejected by Brunei, Malaysia and Singapore.⁵⁸ In language reminiscent of the Asian Values debate, they based their rejection of these recommendations on religious beliefs, cultural traditions, national laws or conservative values within their national territory.⁵⁹ It is important to observe, however, that even where ASEAN States departed from generally accepted international standards, this departure was not shared by all ASEAN States.⁶⁰ Where ASEAN States departed from global

⁵⁵ See, eg, *First UPR: WGP Report on Laos: Addendum*, supra n 39 at paras 24-25; *First UPR: WGP Report on Cambodia*, ibid. at para 57; *Second UPR: WGP Report on Cambodia*, ibid. at paras 53, 91; *First UPR: WGP Report on Malaysia*, ibid. at paras 45, 52; *Second UPR: WGP Report on Malaysia: Addendum*, supra n 41 at 6; *Second UPR: WGP Report on Viet Nam*, ibid at para 63; *Second UPR: WGP Report on Malaysia*, supra n 39 at para 66; *First UPR: WGP Report on Brunei*, ibid. at paras 85; *Second UPR: WGP Report on Brunei: Addendum*, supra n 40 at 5; *First UPR: WGP Report on Singapore*, ibid. at paras 84-86; *First UPR: WGP Report on Thailand*, supra n 39 at para 42.

⁵⁶ See, eg, *First UPR: WGP Report on Malaysia*, ibid. at paras 46, 47; *First UPR: WGP Report on Viet Nam*, supra n 39 at paras 73, 75; *Second UPR: WGP Report on Viet Nam*, ibid at para 102; *First UPR: WGP Report on Brunei: Addendum*, ibid at 4; *Second UPR: WGP Report on Cambodia*, ibid. at paras 19, 20, 92; *First UPR: WGP Report on Laos: Addendum*, ibid. at para 26; *First UPR: WGP Report on Myanmar*, supra n 39 at paras 43, 97-98; *First UPR: WGP Report on Thailand: Addendum*, supra n 40 at para 8; *First UPR: WGP Report on Singapore*, supra n 39 at para 99.

⁵⁷ Others include corporal punishment (Singapore insisted the practice was 'within internationally accepted norms': *First UPR: WGP Report on Singapore*, ibid. at para 88). Malaysia took a similar position to Singapore on corporal punishment: *Second UPR: WGP Report on Malaysia: Addendum*, supra n 41 at para 8.

⁵⁸ See, *First UPR: WGP Report on Brunei*, supra n 39 at paras 84, 90(20); *Second UPR: WGP Report on Brunei: Addendum*, supra n 40 at para 3; *First UPR: WGP Report on Singapore*, ibid. at para 82; *First UPR: WGP Report on Malaysia*, supra n 39 at para 48.

⁵⁹ See also, *Second UPR: WGP Report on Malaysia*, supra n 39 at para 9; *Second UPR: WGP Report on Brunei: Addendum*, ibid. at para 3; *First UPR: WGP Report on Singapore*, supra n 39 at para 82.

⁶⁰ See, eg, *Report of the Working Group on the Universal Periodic Review: The Philippines*, 9 July 2012, A/HRC/21/12 at para 94 ('*Second UPR: WGP Report on the Philippines*'). See also, *Report of the Working Group on the Universal Periodic Review: Philippines: Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 19 September 2012, A/HRC/21/12/Add.1 at para 4(q) ('*Second UPR: WGP Report on the Philippines: Addendum*') where it noted

standards, they were more likely to be supported in doing so by non-ASEAN States.⁶¹ Indeed, Viet Nam in its recent UPR was commended for lifting the ban on same-sex marriage and promoting the rights of LGBT persons.⁶² At the very least, this calls into question any suggestion that there is a common approach to human rights within ASEAN States. At the same time, one cannot dismiss the significance of the approach adopted by Brunei, Singapore and Malaysia in terms of the future development of LGBT rights at an ASEAN level given the enduring importance of the 'ASEAN Way' and the resulting tendency to adopt a lowest common denominator approach to human rights within the Organisation.

This brief overview of the dialogue during the first cycle of UPR suggests that care needs to be taken in evaluating the significance of disagreements between ASEAN and non-ASEAN States over human rights. Not every difference of opinion is a challenge to the universality of human rights or a reflection of a distinctly Asian approach to human rights. Clearly, there are still areas where there are important and deeply entrenched differences of opinion about particular human rights norms. It is significant, though, to observe the true magnitude of these differences of opinion and the fact that they are not always demarcated along ASEAN/non-ASEAN State lines.

While the UPR process is still in its early stages, initial assessments are cautiously positive.⁶³ In the present context, one important aspect of the process is that it may go some way to addressing the concerns raised by one proponent of Asia's Different Standard about the Vienna Conference in 1993. On that occasion, he argued that there was no real dialogue between Asian States and the West and no attempt to forge a meeting of minds between Asian and Western perceptions of human rights.⁶⁴ By offering all States the opportunity to engage in an open-ended and constructive dialogue on human rights, engagement with the UPR process can help to create an environment where it may become possible to forge such a meeting of minds. In this regard, it is important to note Malaysia's comment that following its first UPR 'the government recognized that the development of civil and political rights in the country should keep pace with the significant progress made in economic, social and cultural rights' and pointed to the 'significant measures' it had subsequently taken to enhance the exercise and enjoyment of civil and political rights in its country.⁶⁵ While this is undoubtedly a positive development, its

that an Anti-Discrimination Bill that includes provisions addressing discrimination faced by LGBT individuals is pending in Congress.

⁶¹ See, eg, the recommendations from Oman, Iran, Syria and Bangladesh to Brunei to strengthen or foster human rights in accordance with 'its values and customs': *First UPR: WGP Report on Brunei*, supra n 39 at 15. See also, the recommendations from Kuwait, Iran, Oman and Morocco to Malaysia to continue to promote human rights in accordance with national values and 'religious and cultural specificities': *First UPR: WGP Report on Malaysia*, supra n 39 at paras 74, 65, 31, 42.

⁶² *Second UPR: WGP Report on Viet Nam*, supra n 45 at paras 90, 51, 106.

⁶³ See, eg, *Outcome of the Retreat of Algiers on the review of the work and functioning of the Human Rights Council*, 19-21 February 2010 at 18-23; *Summary Report, Open-ended seminar on the Review of the Human Rights Council, Montreux*, 20 April 2010 at 7-9; available at:

www.ohchr.org/Documents/HRBodies/HRCouncil/Seminaire_Alger.pdf and www2.ohchr.org/english/bodies/hrcouncil/docs/RapportMontreuxFinal.pdf.

⁶⁴ See, Kausikan, supra n 2 at 32.

⁶⁵ *Second UPR: Malaysia's National Report*, supra n 44 at paras 89, 10. These measures included the annulment of three Emergency Proclamations, repealing the Internal Security Act 1960, repealing the Banishment Act 1959 and repealing the Restricted Residence Act 1933. Malaysia also stated that it had taken a number of measures since the first UPR which have addressed partially or in full a number of recommendations on civil and political

significance is tempered by recent setbacks to the right to freedom of expression in Malaysia.⁶⁶ It serves to reinforce the point that developments within the region are not linear and that they can be dictated by a range of factors not least the need to keep internal political constituencies on side. At the same time, engagement with the process of UPR can at least help to keep open channels of communication and to exert some pressure, however limited, to ensure greater convergence with global human rights standards.

The UPR dialogue can also serve a useful purpose in terms of tracking the current state of play concerning human rights within States not least because of the range and quality of information inputted into the process by UN bodies, civil society and a broad cross section of States. What emerges from the UPR of ASEAN States is that while there are some positive trends there is also evidence of stalling and regression in relation to certain categories of rights. A recent example illustrates the point. During Brunei's second UPR, concerns were raised about how the introduction of the Sharia Penal Code would impact the rights of women, freedom of religion, the right to life, freedom of expression, the right to equality of LGBT persons and the prohibition of torture, inhuman and degrading treatment and punishment.⁶⁷ While the recommendations issued at the conclusion of the UPR did not call for the wholesale abolition of the Code, they did call for the repeal of some of its sections or its postponement pending a review to ensure its compliance with international human rights standards.⁶⁸ Nevertheless, all the recommendations were rejected. In language reminiscent of the Asian Values debate, Brunei simply referred to the fact that the recommendations were contrary to its constitution, the official religion and/or its national legislation.⁶⁹ It deflected queries and criticisms by reiterating its focus on 'the welfare of its people in addressing some of the core basic issues of human rights in terms of the rights to education, health, food and shelter'.⁷⁰ Omitting any reference to the importance of civil and political rights, Brunei referred to these four rights as the 'four basic pillars of human rights'.⁷¹ It serves as a reminder, if one was needed, that the Asian Values debate retains some salience within a number of ASEAN States. In light of the emphasis on consensus within ASEAN, this must be factored into any assessment of the operation of its existing human rights system as well as the prospects for its further development.

(c) The UPR Recommendations: A Catalyst for Greater Convergence and Engagement with Global Human Rights Standards and Mechanisms?

rights that it had not accepted at that time. See also, its most recent UPR where it began by 'reaffirming the value of the UPR process to Malaysia and its appreciation for the opportunity to engage in discussion and dialogue on developments in the human rights situation of the country': *Second UPR: WGP Report on Malaysia*, supra n 39 at para 5. It 'reaffirmed its commitment' to a legal transformation agenda including the removal of legislative and other impediments to the enjoyment of 'the full range of human rights': *ibid.* at para 64.

⁶⁶ Pak, 'What is Malaysia's sedition law?', 27 November 2014, available at: www.bbc.com/news/world-asia-29373164 [last accessed 29 January 2015].

⁶⁷ *Second UPR: WGP Report on Brunei*, supra n 48 at paras 33, 34, 50,103.

⁶⁸ *Ibid.* at para 113.

⁶⁹ *Second UPR: WGP Report on Brunei: Addendum*, supra n 40 at para 3.

⁷⁰ *Second UPR: WGP Report on Brunei*, supra n 48 at 105.

⁷¹ *Ibid.*

Of course it is possible to argue that the UPR dialogue, however constructive in tone, is simply political rhetoric if it is not translated into practice on the ground. For this reason, it is important to examine the outcome of the UPR process. At the conclusion of this process, the State under review has the freedom to accept or reject any recommendations made to it by States during the dialogue. Reviewing the responses of ASEAN States to recommendations made during the first cycle of UPR reveals that the level of acceptance of these recommendations ranged from 37% through to 100%. Specifically, individual acceptance rates⁷² were 37% (Brunei),⁷³ 39% (Myanmar),⁷⁴ 60% (Malaysia),⁷⁵ 65% (Philippines),⁷⁶ 75% (Singapore),⁷⁷ 78% (Viet Nam),⁷⁸ 78% (Thailand),⁷⁹ 80% (Laos),⁸⁰ 86% (Indonesia)⁸¹ and 100% (Cambodia).⁸² This suggests a relatively positive level of engagement with the process by the majority of ASEAN States. It is also interesting to note that several ASEAN States have been commended during their second UPR for the positive measures they have taken to implement these recommendations.⁸³ It highlights the fact that a human rights mechanism that is composed of representatives of Member States may have some capacity, however limited, to deliver tangible human rights outcomes. This is a factor that is occasionally overlooked in discussions about the composition of AICHR and in various proposals for further institutional developments within ASEAN.

⁷² This is based on the recommendations listed in the UPR Working Group's Reports.

⁷³ *First UPR: WGP Report on Brunei*, supra n 39 at paras 89-91; *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam: Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 19 March 2010, A/HRC/13/14/Add.1 at 2-5 ('*First UPR: WGP Report on Brunei: Addendum*').

⁷⁴ *First UPR: WGP Report on Myanmar*, supra n 39 at paras 104-107.

⁷⁵ *First UPR: WGP Report on Malaysia*, supra n 39 at para 104; *First UPR: WGP Report on Malaysia: Addendum*, supra n 46 at 2-8.

⁷⁶ *Report of the Working Group on the Universal Periodic Review: Philippines: Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 25 August 2008, A/HRC/8/28/Add.1 at 2-3 ('*First UPR: WGP Report on the Philippines: Addendum*').

⁷⁷ *Report of the Working Group on the Universal Periodic Review: Singapore: Addendum*, 11 July 2011, A/HRC/18/11/Add.1 at paras 2-14 ('*First UPR: WGP Report on Singapore: Addendum*').

⁷⁸ *Second UPR: WGP Report on Viet Nam*, supra n 45 at para 6.

⁷⁹ *First UPR: WGP Report on Thailand: Addendum*, supra n 40 at paras 1-22.

⁸⁰ *First UPR: WGP Report on Laos*, supra n 52 at paras 96-99. The recommendations were accepted completely or in part.

⁸¹ *Report of the Working Group on the Universal Periodic Review: Indonesia*, 14 May 2008, A/HRC/8/23 at paras 76-80 ('*First UPR: WGP Report on Indonesia*').

⁸² *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Cambodia*, 21 November 2013, A/HRC/WG.6/18/KHM/1 at para 1 ('*Second UPR: Cambodia's National Report*'). During its subsequent review, it accepted 80%, rejected 2% and noted the remaining recommendations: *Report of the Working Group on the Universal Periodic Review: Cambodia: Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 25 June 2014, A/HRC/26/16/Add.1 at 2 ('*Second UPR: WGP Report on Cambodia: Addendum*').

⁸³ For example, Malaysia was commended for the action it had taken by Germany, Lebanon, Afghanistan and Bolivia: *Second UPR: WGP Report on Malaysia*, supra n 39 at paras 92, 107, 39, 52. Brunei was also commended for the progress it had made in relation to the first UPR recommendations by Timor-Leste, Bhutan, Uzbekistan, Venezuela, Azerbaijan, Romania, Malaysia, State of Palestine, Viet Nam, Belarus, the Philippines and Burkina Faso: *Second UPR: WGP Report on Brunei*, supra n 48 at paras 28, 36-38, 49, 51, 53, 78, 89, 93, 101. Indonesia was commended for the implementation of some of the first UPR recommendations by Mexico: *Second UPR: WGP Report on Indonesia*, supra n 53 at para 93.

It is not enough to focus on the number of recommendations accepted, however. This is true where, as in the case of Singapore, some of the recommendations accepted simply exhort the State concerned to continue its existing efforts to enhance particular rights.⁸⁴ It is difficult to attach too much significance to the level of acceptance of these types of recommendations given that they entail little if any cost for the State concerned. More important are those recommendations that require the State to take tangible and quantifiable action to protect and promote human rights. For the most part, these recommendations can be organised thematically. They relate, inter alia, to increased ratification of the core UN human rights treaties, removal of reservations to existing treaty commitments, greater State engagement with the UN Human Rights Treaty Body System, improved fact-finding, and enhanced national and regional human rights mechanisms.

(i) *UPR recommendations to ratify core human rights treaties: The prospects for greater convergence on human rights norms*

Ratification of the core UN human rights treaties can go some way towards addressing concerns about the normative and institutional gaps that currently exist within ASEAN's human rights architecture. Among ASEAN States at present, there is considerable variation in the level of ratifications of the core treaties.⁸⁵ They range from Brunei which has ratified only two⁸⁶ through to Cambodia which has ratified all but one of the treaties.⁸⁷ A considerable number of recommendations made to ASEAN States during the UPR process encouraged them to ratify the human rights treaties that they had not yet ratified.⁸⁸ These recommendations elicited a range of responses. All the ASEAN States indicated a willingness to 'consider' ratification of some of these treaties.⁸⁹ Brunei, for example, stated that it was reviewing its position

⁸⁴ See, eg, *First UPR: WGP Report on Singapore*, supra n 39 at para 94.

⁸⁵ For ratifications, reservations and interpretive declarations to the core human rights treaties, see, <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>. The core UN human rights treaties are the International Covenant on Civil and Political Rights 1966, 999 UNTS 171 (ICCPR); the International Covenant on Economic, Social and Cultural Rights 1966, 993 UNTS 3 (ICESCR); the International Convention on the Elimination of All Forms of Racial Discrimination 1966, 660 UNTS 195 (CERD); the Convention on the Elimination of All Forms of Discrimination against Women 1979, 1249 UNTS 13 (CEDAW); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, 1465 UNTS 85 (CAT); the Convention on the Rights of the Child 1989, 1577 UNTS 3 (CRC); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990, 2220 UNTS 3 (CRMW); the Convention on the Rights of Persons with Disabilities 2006, 2515 UNTS 3 (CRPD); the Convention for the Protection of All Persons from Enforced Disappearances 2006, 2715 UNTS (CED).

⁸⁶ CEDAW and the CRC. All data concerning ratifications, etc are correct as at 24 November 2014.

⁸⁷ ICCPR, ICESCR, CAT, CEDAW, CRC, CERD, CRPD and CED.

⁸⁸ See, *First UPR: WGP Report on Brunei*, supra n 39 at paras 46, 64, 67; *First UPR: WGP Report on Cambodia*, supra n 52 at para 82; *First UPR: WGP Report on Indonesia*, supra n 81 at paras 41, 52, 71; *First UPR: WGP Report on Myanmar*, supra n 39 at para 104; *First UPR: WGP Report on Malaysia*, supra n 39 at paras 24, 64, 67, 70, 80-81; *Report of the Working Group on the Universal Periodic Review: The Philippines*, 23 May 2008, A/HRC/8/28 at paras 20, 46 ('*First UPR: WGP Report on the Philippines*'); *First UPR: WGP Report on Singapore*, supra n 39 at paras 65, 68, 94; *First UPR: WGP Report on Thailand*, supra n 39 at para 89; *First UPR: WGP Report on Viet Nam*, supra n 39 at paras 82-84, 89, 56.

⁸⁹ See, *First UPR: WGP Report on Brunei*, *ibid.* at para 89; *First UPR: WGP Report on Malaysia*, *ibid.* at paras 95, 104; *Second UPR: WGP Report on Indonesia*, supra n 53 at para 108; *First UPR: WGP Report on Laos*, supra n 52 at para 96; *First UPR: WGP Report on Myanmar*, *ibid.* at paras 103(f), 104; *First UPR: WGP Report on the Philippines: Addendum*, supra n 76 at paras 2, 3; *First UPR: WGP Report on Singapore*, *ibid.* at para 92;

in relation to the Convention on the Rights of Persons with Disabilities (CRPD), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and one of the Optional Protocols to the Convention on the Rights of the Child (CRC),⁹⁰ while Malaysia stated that it was progressively studying proposals to ratify the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).⁹¹ They did not support specific recommendations calling for 'early' ratification of these instruments, however.⁹² Other States, such as Indonesia, Thailand and Laos, refused to give their support to recommendations calling for the ratification of specific treaties.⁹³ In these instances, it was explained by the need for the treaties in question to 'be discussed by stakeholders' at the national level,⁹⁴ by the fact that treaty ratification raised major issues concerning the domestic legislative framework that needed to be resolved first,⁹⁵ or because they were generally not ready to do so at that point in time due to resources and capacity to implement the obligations fully.⁹⁶ It follows that while ASEAN States may be willing to consider further ratifications, they are equally keen to retain control over whether and when they do so. Nevertheless, one cannot discount completely the potential significance of these responses. By indicating a commitment to consider further ratifications, they at least leave themselves open to being held to account for this commitment in subsequent UPR cycles and this is what has happened in practice. While their hesitancy in committing to early ratification may be interpreted as a lack of commitment to global standards, arguably the situation is not so clear cut. In some instances, it can be explained by the difficulty in ratifying treaties due to domestic constitutional principles or internal political constituencies; difficulties that are not unique to ASEAN States.⁹⁷

While agreeing to consider ratification may represent some progress, the crucial question is whether these commitments have been translated into practical action. There are some positive developments in this respect. Cambodia, for example, subsequently ratified the International Convention for the Protection of all Persons from Enforced Disappearance (CED), the CRPD and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and is currently examining ratification of Optional Protocols to the CRPD,

First UPR: WGP Report on Viet Nam, *ibid.* at para 99; *First UPR: WGP Report on Thailand: Addendum*, *supra* n 40 at para 4; *Second UPR: WGP Report on Cambodia*, *supra* n 52 at 14.

⁹⁰ *First UPR: WGP Report on Brunei: Addendum*, *supra* n 40 at 2.

⁹¹ *First UPR: WGP Report on Malaysia: Addendum*, *supra* n 46 at para 1.

⁹² See, eg, Brunei which supported recommendations calling on it to 'consider acceding to' the core international human rights treaties to which it was not a party but did not support recommendations calling on it to 'take early action' to become a party to specific treaties such as the ICCPR and the ICESCR: *First UPR: WGP Report on Brunei*, *supra* n 39 at paras 89-90.

⁹³ *First UPR: WGP Report on Laos: Addendum*, *supra* n 39 at paras 19-21, concerning the Optional Protocols to CAT, CEDAW, and CRPD; *First UPR: WGP Report on Thailand: Addendum*, *supra* n 40 at paras 5, 6 concerning the CRMW, the Optional Protocols to the ICCPR, the ICESCR, and the CAT; Indonesia stated that it was unable to support recommendations to ratify the Optional Protocol to CRPD and the acceptance of the right of individual petition under the CRC: *Second UPR: WGP Report on Indonesia: Addendum*, *supra* n 40 at para 6.

⁹⁴ See, eg, *First UPR: WGP Report on Laos: Addendum*, *ibid.* at para 20. See also, *Second UPR: WGP Report on Indonesia: Addendum*, *ibid.* at para 6.

⁹⁵ See, eg, *First UPR: WGP Report on Malaysia: Addendum*, *supra* n 46 at para 1; *First UPR: WGP Report on Thailand: Addendum*, *supra* n 40 at para 5.

⁹⁶ See, eg, *First UPR: WGP Report on Myanmar: Addendum*, *supra* n 41 at para 3.

⁹⁷ Note, eg, the difficulties often encountered by the United States in ratifying international treaties.

the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁹⁸ Indonesia, for its part, ratified the CRPD, the International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families (CRMW) and two Optional Protocols to the CRC while indicating its commitment to ratify the CED, the Optional Protocol to the CAT and the Optional Protocol to CEDAW.⁹⁹ In total, there have been 16 ratifications of the core international human rights treaties and Optional Protocols in the aftermath of the first UPR cycle. They relate to the CAT,¹⁰⁰ the Optional Protocol to the CAT,¹⁰¹ the CED,¹⁰² the CRPD,¹⁰³ the Optional Protocols to the CRC,¹⁰⁴ the Optional Protocol to CEDAW,¹⁰⁵ and the CRMW.¹⁰⁶ In addition to this, Brunei recently stated that it would be ratifying the CRPD 'in the near future',¹⁰⁷ Indonesia and Thailand have signed though not yet ratified the CED¹⁰⁸ while Viet Nam has signed though not yet ratified the CAT.¹⁰⁹ ASEAN States have also indicated that they are studying the prospects of or are moving towards ratifying the ICCPR,¹¹⁰ ICESCR,¹¹¹ the CED,¹¹² the CERD,¹¹³

⁹⁸ *Second UPR: Cambodia's National Report*, supra n 82 at paras 5-6.

⁹⁹ *Second UPR: WGP Report on Indonesia*, supra n 53 at paras 9-11, 108. Since then, it has ratified the two optional protocols to the CRC: see, the list of Ratifications, Reservations and Declarations to the UN human rights treaties, available at: <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>.

¹⁰⁰ Laos ratified the CAT on 26 September 2012.

¹⁰¹ Philippines ratified the OP-CAT on 17 April 2012.

¹⁰² Cambodia ratified the CED on 27 June 2013.

¹⁰³ Cambodia, Indonesia, Malaysia, Myanmar and Singapore ratified the CRPD on 20 December 2012, 30 November 2011, 19 July 2010, 7 December 2011 and 18 July 2013 respectively.

¹⁰⁴ Indonesia and Malaysia ratified the Optional Protocol on the Rights of the Child in Armed Conflict (OP-CRC-AC) on 24 September 2012 and 12 April 2012 respectively. Indonesia, Malaysia and Myanmar ratified the Optional Protocol on the Rights of the Child, on Sale of Children, on Child Prostitution and Child Pornography on 24 September 2012, 12 April 2012 and 16 January 2012 respectively. Thailand ratified the Optional Protocol allowing the right of individual petition on 25 September 2012.

¹⁰⁵ Cambodia ratified the Optional Protocol on 13 October 2010.

¹⁰⁶ Indonesia ratified it on 31 May 2012.

¹⁰⁷ *Second UPR: WGP Report on Brunei*, supra n 48 at para 22.

¹⁰⁸ Indonesia and Thailand signed it on 27 September 2010 and 9 January 2012 respectively.

¹⁰⁹ Viet Nam signed it on 7 November 2013.

¹¹⁰ *First UPR: WGP Report on Malaysia: Addendum*, supra n 46 at para 1.

¹¹¹ Malaysia noted that its Interagency Standing Committee on Human Rights was expected to conclude its work by the end of 2013 and submit its recommendations concerning accession to the ICESCR: *Second UPR: Malaysia's National Report*, supra n 44 at para 43.

¹¹² *Second UPR: WGP Report on the Philippines*, supra n 60 at para 4. The bill is pending in Congress. Once it is enacted, the Philippines stated that it will study the possibility of ratifying the CED. See also, *First UPR: WGP Report on Thailand: Addendum*, supra n 40 at para 4; *Second UPR: Viet Nam's National Report*, supra n 47 at para 19.

¹¹³ Singapore stated it would consider acceding to CERD although it has not done so to date: *First UPR: WGP Report on Singapore: Addendum*, supra n 77 at para 3. Malaysia stated that it had initiated several preliminary studies on accession to the CERD: *Second UPR: Malaysia's National Report*, supra n 44 at para 44.

CAT,¹¹⁴ the CRMW,¹¹⁵ the CRPD,¹¹⁶ the first two Optional Protocols to the CRC¹¹⁷ and the Optional Protocol to the CRPD.¹¹⁸

While one cannot attribute these ratifications solely to the UPR mechanism, the process nevertheless can encourage or support pressures at the national level for the State to undertake a greater range of human rights obligations. This is not unique to ASEAN States. Indeed, one of the trends identified by the then UN High Commissioner for Human Rights in relation to the first cycle of UPR is that it contributed to a substantial increase in the number of ratifications of the core UN human rights treaties.¹¹⁹ In the present context, this is significant as an expansion of the human rights treaty commitments of the ASEAN States can help to generate a consensus on a wide range of human rights that are not formulated in abstract terms but in legally binding, relatively detailed terms and which establish clear requirements to be met when State wish to impose limitations on or to derogate from certain rights. Not only this, but ratification brings with it increased accountability in terms of the need for the State to report to the relevant treaty body, which is composed of independent experts, on how it is complying with its human rights obligations. When assessing the normative and institutional gaps concerning the protection of human rights within ASEAN, it is necessary to do so against the backdrop of the full range of human rights commitments undertaken by the ASEAN States including under these core UN human rights treaties.

(ii) *UPR recommendations to withdraw reservations to core human rights treaties: The evolution of Asia's Different Standard?*

While the increased ratification of human rights treaties represents a positive development, it can be undermined by the State making reservations at the time of ratifying the treaty. These reservations can operate to limit the application of the treaty at the national level. Several preliminary observations can be made about the reservations made by ASEAN States. In general, there are two broad categories of reservation made by ASEAN States.¹²⁰ The first relates to the settlement of inter-State disputes concerning the treaties. Several ASEAN States have entered reservations precluding these disputes being referred to the International Court of

¹¹⁴ *First UPR: WGP Report on Malaysia: Addendum*, supra n 46 at para 1. Viet Nam recently indicated its commitment to ratify the CAT: *Second UPR: WGP Report on Viet Nam*, supra n 45 at para 14.

¹¹⁵ *Second UPR: Viet Nam's National Report*, supra n 47 at para 19.

¹¹⁶ Viet Nam recently indicated its commitment to ratifying the CRPD: *Second UPR: WGP Report on Viet Nam*, supra n 45 at para 14.

¹¹⁷ Brunei stated that it was amending domestic legislation to enable it to ratify the OP-CRC-AC: *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Brunei Darussalam*, 30 January 2014, A/HRC/WG.6/19/BRN/1 at para 13 ('*Second UPR: Brunei's National Report*'). Singapore confirmed its intention to consider other instruments including OP-CRC-CP: *First UPR: WGP Report on Singapore*, supra n 39 at para 92.

¹¹⁸ *Second UPR: WGP Report on the Philippines: Addendum*, supra n 60 at para 4.

¹¹⁹ Report of the UN High Commissioner for Human Rights, *Strengthening the United Nations Human Rights Treaty Body System*, June 2012, at 17, available at: <http://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBStrengthening.aspx>.

¹²⁰ For a complete list of reservations and objections to reservations, see: <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>.

Justice without the consent of the States concerned.¹²¹ It demonstrates a reluctance on the part of ASEAN States to submit to compulsory judicial settlement of disputes including those relating to human rights. These reservations are relatively uncontentious and elicited no objections from the other State parties. Nevertheless, it is important to bear them in mind when considering the prospects for further development of ASEAN's human rights system. At the very least, it calls into question the viability of establishing a regional human rights court for the foreseeable future.

The second type of reservation by ASEAN States was far more contentious. These reservations purport to limit the application of the human rights treaty by stipulating that the rights contained therein are to be exercised in line with national laws, prevailing practices, customs, religion and/or policies within the State.¹²² The reservations made by Brunei, Malaysia and Singapore to CEDAW are a good illustration of this type of reservation.¹²³ Essentially, these reservations stipulate either that the State is not bound by certain Articles in the Convention or that it is bound only insofar as the Convention does not conflict with Sharia or other religious laws. This can be viewed as a very concrete illustration of cultural relativism albeit it is not one applicable to all ASEAN States and is certainly not confined to ASEAN States. These reservations have elicited a considerable number of objections from other States.¹²⁴

Against this backdrop, the second set of UPR recommendations is significant. These recommendations call on Brunei, Laos, Malaysia, Singapore, Indonesia and Thailand to withdraw their reservations to human rights treaties or at least to keep them under review. In response, Brunei stated that it had held several discussions at the national level about its reservations to the CRC and CEDAW and that a detailed study was underway in relation to the CRC reservations.¹²⁵ It subsequently reported that it was withdrawing some of its reservations to the CRC.¹²⁶ While this was a promising development, the prospects for further withdrawals are remote given Brunei's recent statement that it intends to retain its

¹²¹ Indonesia, Laos and Thailand in relation to CAT. Indonesia, Myanmar, Singapore, Thailand and Viet Nam in relation to CEDAW. Indonesia, Thailand and Viet Nam in relation to CERD.

¹²² Laos made a reservation concerning the right to freedom of association under the ICCPR which was objected to by Finland, Ireland and the Netherlands on the ground that the reservation was incompatible with the object and purpose of the ICCPR. It also made a reservation to the CAT stipulating that the definition of torture is in accordance with national law which elicited objections from Austria, Czech Republic, Finland, Germany, Greece, Ireland, Italy, Latvia, Netherlands, Portugal, Sweden and the United Kingdom. Thailand also refers to the concept of torture being defined in line with its penal code but talks about bringing its code more into line with CAT. Notwithstanding this, its reservation was formally objected to by Sweden. Brunei, Indonesia, Malaysia, Myanmar, Singapore and Thailand also made reservations/interpretive declarations to the CRC to the effect that the rights are to be exercised in line with national laws, prevailing practices, customs, religion and/or policies in the States concerned. They elicited formal objections from Germany, Ireland, Portugal, Belgium, Finland, Italy, Netherlands, Norway, Sweden, Austria, and Denmark. Malaysia entered a reservation to the CRPD which was objected to by Austria, Germany, Hungary, Portugal, Slovakia, Singapore, Belgium and Sweden. Thailand's reservation to the CRPD to the effect that Article 18 was to be applied in line with national laws and practices elicited objections from the Czech Republic, Portugal, Spain and Sweden.

¹²³ See, supra n 120.

¹²⁴ Austria, Belgium, Canada, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Netherlands, Norway, Poland, Portugal, Romania., Slovakia, Spain, Sweden and the United Kingdom all entered formal objections to Brunei's reservation to CEDAW. Supra n 120.

¹²⁵ *First UPR: WGP Report on Brunei: Addendum*, supra n 73 at 2.

¹²⁶ *Second UPR: Brunei National Report*, supra n 117 at para 14.

remaining and arguably most wide-ranging reservations.¹²⁷ Malaysia, Laos and Singapore all undertook to review their reservations.¹²⁸ Indonesia and Thailand went further with the former agreeing to remove all its reservations to the CRC¹²⁹ while the latter made a voluntary pledge at the conclusion of its UPR to withdraw its reservation to Article 16 of CEDAW and to Article 18 of the CRPD as well as its interpretative declarations to Articles 6 and 9 of the ICCPR.¹³⁰

Parallel to the UPR process, these States are coming under sustained pressure from the UN Human Rights Treaty Monitoring Bodies (TMBs)¹³¹ to withdraw these reservations.¹³² The TMBs are fairly pragmatic in the sense that they appreciate the domestic constraints on States concerning the removal of these reservations. In the case of Singapore, for example, one TMB recognised that the pluralistic nature of its society and its history ‘call for sensitivity to cultural and religious values of different communities’.¹³³ The TMBs accept the need for popular support for law reform albeit they are not prepared to let the States stand by and wait until such time as this support materialises. For this reason, they have called on States including Malaysia to generate support for law reform through discussions and collaboration with religious and community leaders, civil society organizations and women’s NGOs.¹³⁴ As is evident from recommendations to Singapore, whatever law reform process is undertaken it must be inclusive and allow for the effective participation of all the relevant stakeholders.¹³⁵ In addition to this, the TMBs have called on Singapore and Malaysia to ‘study reforms in other countries with similar legal traditions’ with a view to ensuring that religious laws are compatible with global human rights standards.¹³⁶ Singapore subsequently reported that it had implemented this recommendation by undertaking studies on comparative jurisprudence and

¹²⁷ *Second UPR: WGP Report on Brunei: Addendum*, supra n 40 at 3.

¹²⁸ *First UPR: WGP Report on Malaysia*, supra n 39 at para 59 (Malaysia noted that a technical committee was in the process of recommending to the Government to withdraw its reservations to Articles 1 and 13 of the CRC). It also stated that it ‘is progressively reviewing the reservations to CEDAW with a view to lifting them, taking into consideration the constitutional provisions, laws and national interests’: *First UPR: WGP Report on Malaysia: Addendum*, supra n 46 at para 1. *First UPR: WGP Report on Laos*, supra n 52 at para 96. *First UPR: WGP Report on Singapore: Addendum*, supra n 77 at para 3

¹²⁹ *First UPR: WGP Report on Indonesia*, supra n 81 at para 76.

¹³⁰ *First UPR: WGP Report on Thailand*, supra n 39 at para 92.

¹³¹ The TMBs are the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of All Forms of Discrimination against Women, the Committee Against Torture, the Committee on the Rights of the Child, the Committee on Migrant Workers, the Committee on the Rights of Persons with Disabilities, and the Committee on Enforced Disappearance which monitor and promote compliance with the ICCPR, the ICESCR, CERD, CEDAW, CAT, CRC, CRMW, CRPD, and CED respectively.

¹³² See, Committee on the Elimination of Racial Discrimination, Concluding observations regarding Thailand, 15 November 2012, CERD/C/THA/CO/1-3 at para 7. See also, Committee on the Elimination of All Forms of Discrimination Against Women, Concluding observations regarding Singapore, 16 January 2012, CEDAW/C/SGP/CO/4/Rev.1 at para 14.

¹³³ See, Committee on the Elimination of All Forms of Discrimination Against Women, Concluding observations regarding Singapore, 2001, A/56/38(Supp) at para 74.

¹³⁴ See, eg, Committee on the Elimination of Discrimination Against Women, Concluding observations regarding Malaysia, 31 May 2006, CEDAW/C/MYS/CO/2 at para 14.

¹³⁵ See, eg, Committee on the Elimination of Discrimination Against Women, Concluding observations regarding Singapore, supra n 132 at para 16.

¹³⁶ See, eg, Committee on the Elimination of Discrimination Against Women, Concluding observations regarding Singapore, supra n 133 at para 74; Committee on the Elimination of Discrimination Against Women, Concluding observations regarding Malaysia, supra n 134 at para 14.

legislation of other countries particularly on gender and family law in Islam.¹³⁷ Malaysia, for its part, referred to the establishment of an inter-agency committee to coordinate implementation of the recommendations of CEDAW, policy and legislative amendments as well as awareness raising programmes.¹³⁸ It seems that this combined pressure from the TMBs and the UPR process has had some effect.

During the second cycle of UPR, Malaysia stated that it had progressively reviewed its position in accordance with Syariah and its Constitution resulting in its withdrawal of several reservations to CEDAW and the CRC.¹³⁹ Singapore has partially withdrawn some of its reservations to CEDAW and is on record as stating that it is considering reviewing its position in relation to its other reservations to the Convention.¹⁴⁰ While some reservations have been withdrawn, many important reservations remain. Notwithstanding this, these developments¹⁴¹ merit reflection for several reasons. They demonstrate how an evolving relationship with global human rights mechanisms can at least support developments at the national level to remove impediments to the recognition and application of human rights. The interaction of ASEAN States with these global mechanisms combined with a myriad of factors on the ground will undoubtedly dictate the pace of any further withdrawals. However, the very fact that some reservations have been withdrawn demonstrates that religious and cultural traditions are not set in stone.

- (iii) *UPR recommendations to increase State engagement with the UN Human Rights Treaty Bodies: Enhancing the prospects for greater convergence on the interpretation of global standards and greater external scrutiny of domestic human rights records?*

When a State ratifies a core UN human rights treaty, it agrees to engage in good faith with the monitoring system established under that treaty. Central to this monitoring system is the obligation on the State to submit reports at regular intervals to the relevant Treaty Monitoring Body (TMB)¹⁴² explaining how it is complying with its treaty obligations. It must also engage in a constructive dialogue with the TMB,

¹³⁷ *First UPR: WGP Report on Singapore*, supra n 39 at para 48.

¹³⁸ *Second UPR: Malaysia's National Report*, supra n 44 at paras 53-59.

¹³⁹ *Ibid.* at paras 39, 42. However, it recently stated that it had no plans to lift remaining reservations to the CRC, CEDAW and CRPD: *Second UPR: WGP Report on Malaysia: Addendum*, supra n 41 at para 10.

¹⁴⁰ *Supra* n 132 at para 6.

¹⁴¹ Note Indonesia's agreement to remove all its reservations to the CRC: *First UPR: WGP Report on Indonesia*, supra n 81 at para 76, and the removal of reservations by Viet Nam to the OP-CRC-AC: *Compilation prepared by the OHCHR in accordance with paragraph 15(b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Viet Nam*, 7 November 2013, A/HRC/WG.6/18/VNM/2 at 2 (*'Second UPR: OHCHR documents regarding Viet Nam'*). Viet Nam has also accepted recommendations to remove its reservations to CERD: *Report of the Working Group of the Universal Periodic Review: Viet Nam: Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 20 June 2014, A/HRC/26/6/Add.1 at 3 (*'Second UPR: WGP Report on Viet Nam: Addendum'*).

¹⁴² That is, the TMB established under the treaty to which the State is a party. Where the State has ratified several treaties it must submit reports to each of the TMBs established under these treaties.

following which the body issues its Concluding Observations and Recommendations to the States on the protection of rights within its jurisdiction. The nature and level of engagement between ASEAN States and the TMBs is significant for several reasons. The TMBs are composed of independent experts and can assist with rendering the State accountable for the way in which it interprets and applies human rights.¹⁴³ The extent to which ASEAN States are willing to engage constructively with the TMBs can be a barometer of the extent to which they are willing to depart from the principle of national sovereignty over human rights issues. It can also provide useful insights into the relative value of legally binding obligations monitored by independent experts compared to soft law obligations monitored by State representatives in terms of delivering tangible human rights outcomes within ASEAN.

Traditionally, the nature and level of engagement of some ASEAN States with the UN Human Rights Treaty Body System has been unsatisfactory with significant delays in the submission of State reports. In the case of the Philippines, for example, there were extensive delays in the submission of its reports under the ICESCR, CERD and the CAT.¹⁴⁴ In addition to this, the quality of the dialogue between some ASEAN States and the TMBs has been undermined by the presence of members of the States' permanent Geneva delegations at the dialogue rather than representatives from the relevant ministries with the requisite knowledge and expertise to conduct a meaningful dialogue about human rights. More importantly, there has been a failure on the part of States to implement fully or at all the recommendations made by the TMBs at the conclusion of the process.¹⁴⁵ It reveals a relatively uneven level of engagement and indeed actual disengagement on the part of some ASEAN States with this particular human rights mechanism. This undermines the extent to which these States can be held accountable for their actions in the human rights field and insulates them from pressures, however limited, that could be exerted at the global level to stimulate change. It also cautions against focussing simply on the number of treaty ratifications by ASEAN States. Cambodia is a case in point. Although it has ratified all but one of the core international human rights treaties, in 2011 the Special Rapporteur on Cambodia observed that 'many of the commitments undertaken by the government have not been more than paper exercises'.¹⁴⁶

For this reason, the third set of UPR recommendations is important as they call on States to enhance their engagement with the TMBs.¹⁴⁷ In particular, they call on States to submit overdue reports to the relevant treaty bodies,¹⁴⁸ thereby

¹⁴³ See, eg, Human Rights Committee, Concluding observations regarding Indonesia, 21 August 2013, CCPR/C/IDN/CO/1 at para 25, where it stated that, notwithstanding the decision of the Indonesian constitutional court upholding the State's blasphemy law, the law was not compatible with the ICCPR.

¹⁴⁴ There were delays of more than 10 years in the submission of its reports under the ICESCR, CERD and CAT.

¹⁴⁵ See, eg, Committee on the Rights of the Child, Concluding observations regarding the Philippines, 22 October 2009, CRC/C/PHL/CO/3-4 at para 9.

¹⁴⁶ Report of the Special Rapporteur on the situation of human rights in Cambodia, 2 August 2011, A/HRC/18/46 at para 63.

¹⁴⁷ See, eg, *First UPR: WGP Report on Myanmar*, supra n 39 at para 104; *First UPR: WGP Report on the Philippines*, supra n 88 at para 42; *First UPR: WGP Report on Singapore: Addendum*, supra n 77 at para 5; *Second UPR: WGP Report on Brunei*, supra n 48 at para 82; *First UPR: WGP Report on Cambodia*, supra n 52 at 14.

¹⁴⁸ See, eg, *First UPR: WGP Report on Laos*, supra n 52 at para 96; *First UPR: WGP Report on Viet Nam*, supra n 39 at para 56.

facilitating a resumption of dialogue between these States and the TMBs, and to implement the recommendations made by these bodies.¹⁴⁹ It is still early days but there is evidence that some progress is being made. To date, Cambodia,¹⁵⁰ Laos, the Philippines,¹⁵¹ Malaysia,¹⁵² Brunei¹⁵³ and Viet Nam¹⁵⁴ have all submitted long overdue reports to the TMBs. There has also been a discernible shift, however gradual, in the approach adopted by States to the dialogue. By 2012, the TMBs were commending Cambodia,¹⁵⁵ Laos,¹⁵⁶ Singapore,¹⁵⁷ Thailand¹⁵⁸ and Viet Nam¹⁵⁹ for sending high level delegations to the dialogue and engaging in an ‘open and frank’,¹⁶⁰ and ‘constructive’¹⁶¹ dialogue with them. This is significant as the dialogue offers the possibility of encouraging greater convergence on the interpretation and application of rights between the global human rights mechanism and ASEAN States. At the same time, one has to bear in mind that it is not a uniform picture. While Myanmar accepted recommendations during the UPR process to ensure the effective implementation of the Convention on the Rights of the Child in 2011,¹⁶² the following year the Committee on the Rights of the Child noted that most of its previous recommendations were insufficiently addressed or not addressed at all.¹⁶³

These developments demonstrate the evolving nature of the relationship between ASEAN States and the TMBs. Although it is still early days, there is evidence of greater and more constructive engagement between some ASEAN States and the TMBs. It signals a greater willingness to open up to external scrutiny including by States which traditionally played a prominent role in propounding Asian Values. More generally, these developments show that binding legal obligations did not prevent the disengagement of ASEAN States with the TMBs for substantial periods of time. As such, they sound a note of caution. Binding legal obligations and human rights mechanisms composed of independent experts do not always

¹⁴⁹ See, eg, *First UPR: WGP Report on Malaysia*, supra n 39 at paras 75, 84; *First UPR: WGP Report on Singapore: Addendum*, supra n 77 at para 5.

¹⁵⁰ *Second UPR: Cambodia’s National Report*, supra n 82 at para 12.

¹⁵¹ *Compilation prepared by the OHCHR in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21*, 30 March 2012, A/HRC/WG.6/13/PHL/2 at 4.

¹⁵² *Second UPR: Malaysia’s National Report*, supra n 44 at para 41.

¹⁵³ *Second UPR: WGP Report on Brunei*, supra n 48 at para 22.

¹⁵⁴ *Second UPR: WGP Report on Viet Nam*, supra n 45 at para 15.

¹⁵⁵ See, eg, Committee on the Elimination of All Forms of Discrimination Against Women, Concluding observations regarding Cambodia, 29 October 2013, CEDAW/C/KHM/CO/4-5 at para 3.

¹⁵⁶ See, eg, Committee on the Rights of the Child, Concluding observations regarding Lao People’s Democratic Republic, 8 April 2011, CRC/C/LAO/CO/2 at para 2.

¹⁵⁷ See, Committee on the Elimination of All Forms of Discrimination Against Women, Concluding observations regarding Singapore, supra n 132 at para 3.

¹⁵⁸ See, Committee on the Elimination of Racial Discrimination, Concluding observations regarding Thailand, supra n 132 at para 3.

¹⁵⁹ See, eg, Committee on the Rights of the Child, Concluding observations regarding Viet Nam, 22 August 2012, CERD/C/VNM/CO/3-4 at para 2.

¹⁶⁰ See, Committee on the Elimination of Racial Discrimination, Concluding observations regarding Thailand, supra n 132 at para 3.

¹⁶¹ See, eg, Committee on the Rights of the Child, Concluding observations regarding Lao People’s Democratic Republic, supra n 156 at para 2; Committee on the Elimination of All Forms of Discrimination Against Women, Concluding observations regarding Singapore, supra n 132 at para 3; Concluding observations regarding Cambodia, supra n 155 at para 2; Committee on the Elimination of Racial Discrimination, Concluding observations regarding Vietnam, 16 April 2012, CERD/C.VNM/CO/10-14 at para 3.

¹⁶² *First UPR: WGP Report on Myanmar*, supra n 39 at para 104.

¹⁶³ Committee on the Rights of the Child, Concluding observations regarding Myanmar, 14 March 2012, CRC/C/MMR/CO/3-4 at para 7.

guarantee compliance with human rights standards. Indeed, in relation to this third category of UPR recommendations, it could be said that an essentially consensual mechanism composed of State representatives demonstrated a somewhat greater capacity to deliver concrete human rights outcomes.

(iv) *UPR recommendations concerning Special Procedures:
Enhancing the prospects of fact-finding with a view to clarifying
the interpretation and implementation of human rights in a
national context*

Aside from recommendations relating to the core human rights treaties, there were also recommendations relating to the system of Special Procedures which operate within the UN Charter-based System. Widely regarded as one of the more effective global human rights mechanisms, these Special Procedures comprise independent Special Rapporteurs, Working Groups and Independent Experts who undertake in-country fact finding visits, raise individual cases with States, convene expert consultations, contribute to the development of international standards, raise public awareness about these standards and report to the UN Human Rights Council.¹⁶⁴ The nature and level of engagement between ASEAN States and the Special Procedures is significant for a number of reasons. On site fact-finding visits can provide valuable independent data concerning the human rights situation on the ground, test the validity of claims made in the name of national and regional particularities and, more generally, assist in rendering States accountable for any human rights violations. Their ability to receive individual communications is also important given that AICHR currently has no mandate to do so and, in this respect, can go some way towards addressing one particular gap in the ASEAN human rights architecture. Aside from this, the recommendations made by Special Procedures can, if implemented in good faith, help to enhance the level of rights protection within ASEAN States.

Recommendations were made to ASEAN States to enhance their engagement with Special Procedures,¹⁶⁵ specifically, to consider inviting them to undertake in-country fact-finding visits or to issue a standing invitation to them to undertake such visits.¹⁶⁶ These recommendations were generally supported by ASEAN States¹⁶⁷ although important variations appear in terms of the nature and extent of their willingness to do so. While no ASEAN State rejected outright such

¹⁶⁴ See further, the documents available at: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>.

¹⁶⁵ See, eg, *First UPR: WGP Report on Myanmar*, supra n 39 at 15; *Second UPR: WGP Report on Brunei*, supra n 48 at 81; *First UPR: WGP Report on Viet Nam*, supra n 39 at paras 51, 55, 64, 83.

¹⁶⁶ See, eg, *First UPR: WGP Report on Singapore: Addendum*, supra n 77 at para 6; *First UPR: WGP Report on Cambodia*, supra n 52 at 14-15; *First UPR: WGP Report on Indonesia*, supra n 81 at para 63; *First UPR: WGP Report on Laos*, supra n 52 at para 96; *First UPR: WGP Report on Malaysia*, supra n 39 at paras 75, 89; *First UPR: WGP Report on the Philippines*, supra n 88 at paras 20, 33; *First UPR: WGP Report on Viet Nam*, *ibid.* at paras 35, 47, 59, 61; *First UPR: WGP Report on Thailand*, supra n 39 at para 38.

¹⁶⁷ *First UPR: WGP Report on Brunei*, supra n 39 at para 82; *Second UPR: Cambodia's National Report*, supra n 82 at para 14; *First UPR: WGP Report on Laos*, *ibid.* at para 96; *First UPR: WGP Report on Malaysia*, *ibid.* at para 11; *First UPR: WGP Report on Myanmar*, supra n 39 at para 104; *First UPR: WGP Report on the Philippines*, supra n 88 at para 58; *First UPR: WGP Report on Singapore: Addendum*, supra n 77 at para 6; *First UPR: WGP Report on Viet Nam*, supra n 39 at para 99; *First UPR: WGP Report on Thailand*, *ibid.* at para 88.

recommendations, several were more willing to accept some Special Procedures rather than others.¹⁶⁸ A second feature of the responses of ASEAN States was that they tended to prefer issuing ad hoc¹⁶⁹ rather than standing invitations to the Special Procedures.¹⁷⁰ Thailand, alone, was willing to issue a standing invitation to the Special Procedures to conduct in-country visits.¹⁷¹

It seems that these recommendations have had some impact. Viet Nam, for example, during its second UPR stated that it had accepted visits from five Special Rapporteurs,¹⁷² had a further one scheduled¹⁷³ and had extended invitations to three others.¹⁷⁴ Viet Nam's experience is not unique. Following the first cycle of UPR, Indonesia issued invitations to the Special Rapporteurs on Freedom of Expression, Health, and Adequate Housing to conduct in-country visits¹⁷⁵ while Malaysia had a visit by the Working Group on Arbitrary Detention and had agreed to visits by the Special Rapporteur on the Right to Food and the Special Rapporteur on the Highest Attainable Standard of Mental and Physical Health.¹⁷⁶ These responses indicate a certain willingness on the part of some ASEAN States to undertake greater engagement with this global human rights mechanism including in the area of civil and political rights.¹⁷⁷ It is questionable whether all the ASEAN States will take a similar approach. To date, Brunei has not received any visit by a Special Procedure nor has it agreed to any¹⁷⁸ although it is on record as welcoming requests for such visits.¹⁷⁹ Clearly, there is a potential opening here that could be exploited by the

¹⁶⁸ Singapore refused to support recommendations to accept visits by the Special Rapporteurs on Human Rights Defenders and on Extrajudicial Executions: *First UPR: WGP Report on Singapore*, supra n 39 at para 97. Myanmar did not support recommendations to issue invitations to the Special Rapporteurs on the Rights of Displaced Persons, on the Right to Food, on Freedom of Religion and Belief, on Extrajudicial, Summary or Arbitrary Executions, on the Independence of Judges and Lawyers, and on the Rights to Freedom of Peaceful Assembly and Association: *First UPR: WGP Report on Myanmar*, ibid. at para 107.

¹⁶⁹ See, eg, *First UPR: WGP Report on Brunei*, supra n 39 at para 82; *Second UPR: Cambodia's National Report*, supra n 82 at para 14; *Second UPR: WGP Report on the Philippines: Addendum*, supra n 60 at para 4(h); *First UPR: WGP Report on Singapore: Addendum*, supra n 77 at para 6; *First UPR: WGP Report on Viet Nam: Addendum*, supra n 40 at para 19; *First UPR: WGP Report on Malaysia*, supra n 39 at para 11.

¹⁷⁰ Indonesia explicitly rejected the recommendation to issue standing invitations to Special Rapporteurs as did Laos, Malaysia, Myanmar, Singapore and Viet Nam: see, *First UPR: WGP Report on Indonesia*, supra n 81 at para 59; *First UPR: WGP Report on Laos: Addendum*, supra n 39 at para 23; *Second UPR: WGP Report on Malaysia: Addendum*, supra n 41 at para 8; *First UPR: WGP Report on Myanmar*, supra n 39 at 22; *Second UPR: WGP Report on Viet Nam: Addendum*, supra n 141 at 8; *First UPR: WGP Report on Singapore*, supra n 39 at para 97.

¹⁷¹ *First UPR: WGP Report on Thailand*, supra n 39 at para 94.

¹⁷² The Special Rapporteurs on Minority Issues, Extreme Poverty, Impacts of Foreign Debt on Human Rights, the Right to Health Care, and Cultural Rights: *Second UPR: WGP Report on Viet Nam*, supra n 45 at para 16.

¹⁷³ Ibid. (the Special Rapporteur on Freedom of Religion or Belief in 2014).

¹⁷⁴ Ibid.

¹⁷⁵ *Second UPR: WGP Report on Indonesia*, supra n 53 at para 14.

¹⁷⁶ *Second UPR: Malaysia's National Report*, supra n 44 at paras 144, 145. See also, the Philippines which issued an invitation to the Special Rapporteur on the Human Rights of Internally Displaced Persons: *Second UPR: WGP Report on the Philippines*, supra n 60 at para 90.

¹⁷⁷ See, eg, the statement by Laos that it 'was considering implementing the recommendations made by the Special Rapporteur on Freedom of Religion or Belief during her visit' to the country: *First UPR: WGP Report on Laos*, supra n 52 at para 58.

¹⁷⁸ *Compilation prepared by the OHCHR in accordance with paragraph 15(b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Brunei Darussalam*, 12 February 2014, A/HRC/WG.6/19/BRN/2 at 4 ('*Second UPR: OHCHR Compilation: Brunei*').

¹⁷⁹ *First UPR: WGP Report on Brunei: Addendum*, supra n 73 at 3; *Second UPR: WGP Report on Brunei: Addendum*, supra n 40 at 10.

Special Procedures. At the very least, by requesting invitations, the Special Procedures could test the good faith of States such as Brunei.

Overall, there is evidence of a greater willingness on the part of some ASEAN States to open up to the level of independent, external review offered by the Special Procedures. The fact that this is happening at the global rather than the regional level perhaps is not surprising. The enduring significance of the 'ASEAN Way' of doing things means that a regional system of Special Procedures is unlikely to be established until such time as all ASEAN States agree to it. Given that some of these States currently regard regional Special Procedures as too intrusive suggests that it may be some time before any such system is established. In the meantime, the engagement of some ASEAN States with the global mechanism may at least have some 'demonstration effect' in the sense of potentially allaying the concerns of other ASEAN States about the adoption of a similar mechanism at the regional level.

- (v) *UPR recommendations concerning national and regional human rights mechanisms: Enhancing the implementation of human rights on the ground and testing the true significance of national and regional particularities*

Recommendations were also directed towards strengthening the human rights infrastructure at the national and regional levels.¹⁸⁰ These recommendations were generally supported by the ASEAN States.¹⁸¹ However, there was a certain resistance by Brunei, Laos, Singapore and Viet Nam to any attempt to stipulate the form that such infrastructure should take. In particular, they were not prepared to support recommendations to establish a National Human Rights Institution (NHRI) in line with the Paris Principles on the basis that other types of mechanisms could equally ensure the protection of human rights.¹⁸² Other ASEAN States were more willing to support these recommendations with Cambodia stating that it was working to expedite the establishment of a NHRI,¹⁸³ while Indonesia, Malaysia, Myanmar and the Philippines stated that they were strengthening their NHRI¹⁸⁴ or ensuring that they were in line with international standards.¹⁸⁵ To the extent that these commitments are translated into practice, these NHRIs can assist in ensuring that

¹⁸⁰ See, eg, *First UPR: WGP Group Report on Cambodia*, supra n 52 at paras 19, 82; *First UPR: WGP Report on Viet Nam*, supra n 39 at para 56.

¹⁸¹ See, eg, *First UPR: WGP Report on Brunei*, supra n 39 at para 89; *Second UPR: WGP Report on Indonesia*, supra n 53 at para 108; *First UPR: WGP Report on the Philippines*, supra n 88 at 15; *First UPR: WGP Report on Thailand*, supra n 39 at para 88; *Second UPR: WGP Report on Cambodia*, supra n 52 at para 93; *First UPR: WGP Report on Malaysia: Addendum*, supra n 46 at para 7; *First UPR: WGP Report on Myanmar: Addendum*, supra n 41 at para 5; *First UPR: WGP Report on Viet Nam*, *ibid.* at paras 44, 55, 56, 90.

¹⁸² *First UPR: WGP Report on Brunei: Addendum*, supra n 73 at 3; *Second UPR: WGP Report on Brunei: Addendum*, supra n 40 at 8; *First UPR: WGP Report on Singapore*, supra n 39 at para 89; *First UPR: WGP Report on Viet Nam: Addendum*, supra n 40 at paras 17, 18; *Second UPR: WGP Report on Viet Nam: Addendum*, supra n 141 at 8; *First UPR: WGP Report on Laos*, supra n 52 at para 99.

¹⁸³ *Second UPR: Cambodia's National Report*, supra n 82 at paras 9-11.

¹⁸⁴ *Second UPR: WGP Report on Indonesia*, supra n 53 at para 108; *First UPR: WGP Report on Malaysia: Addendum*, supra n 46 at para 7; *First UPR: WGP Report on Myanmar: Addendum*, supra n 41 at para 5; *Second UPR: WGP Report on the Philippines*, supra n 60 at para 129.

¹⁸⁵ *Second UPR: Malaysia's National Report*, supra n 44 at para 85.

any claims about the relevance of national or regional particularities are genuine and that their impact on the interpretation and application of human rights remain within the limits established by international human rights law.

Other recommendations were directed to regional human rights mechanisms. For example, Laos, Myanmar, the Philippines and Thailand all accepted recommendations to enhance and strengthen the work of the ASEAN Intergovernmental Commission on Human Rights (AICHR).¹⁸⁶ It demonstrates the potential for developments within one human rights regime to encourage or provide support for developments within other human rights regimes, in this instance at the national and regional levels. This is not confined to the UPR process. Some of the recommendations emanating from the UN Human Rights Treaty Body System also call on ASEAN States to cooperate with ASEAN human rights mechanisms in the implementation of human rights within the region.¹⁸⁷ It demonstrates the potential for positive engagement between these global human rights mechanisms and those currently emerging at the regional level within ASEAN.

4. CONCLUSION

The changing nature and level of engagement between ASEAN States and the global human rights mechanisms is significant for several reasons. It provides valuable insights into how these States deal with fundamental issues concerning the interpretation and implementation of global human rights norms. It challenges the validity of claims that there is a uniform approach to human rights in the region, specifically one that embodies Asian Values or Asia's Different Standard on human rights. It helps to contextualise recent human rights developments within ASEAN and in doing so helps to facilitate a more measured assessment of the risks and opportunities associated with them. More generally, it cautions against broad generalizations about human rights in the region.

At the outset, it is worth recalling that ASEAN States never refuted the concept of universality in its entirety. Instead, some argued that the 'hard core of rights that are truly universal is smaller than many in the West are wont to pretend'.¹⁸⁸ For this reason, the increasing ratification of the core UN human rights treaties by ASEAN States is significant. At the very least, it suggests that this hard core of rights is increasing in number and is set to increase further. Several ASEAN States are currently taking action at the national level to facilitate further ratifications of these human rights treaties. The fact that there have been 16 ratifications of core

¹⁸⁶ *First UPR: WGP Report on Laos*, supra n 52 at para 96; *First UPR: WGP Report on Myanmar*, supra n 39 at 17; *First UPR: WGP Report on Thailand*, supra n 39 at para 88; *Second UPR: WGP Report on the Philippines*, supra n 60 at 21.

¹⁸⁷ See, eg, the recommendations from the Committee on the Rights of the Child to Viet Nam, Thailand, Laos, Singapore, Myanmar: Concluding observations regarding Viet Nam, supra n 159 at para 81; Concluding observations regarding Thailand, 17 February 2012, CRC/C/THA/CO/3-4 at para 87; Concluding observations regarding the Lao People's Democratic Republic, supra n 156 at para 77; Concluding observations regarding Singapore, 4 May 2011, CRC/SGP/CO/2-3 at para 73; Concluding observations regarding Myanmar, supra n 163 at para 100.

¹⁸⁸ Kausikan, supra n 2 at 34.

human rights treaties in the short period of time since the first UPR process was undertaken merits reflection. It demonstrates how global human rights mechanisms can help reinforce or support developments at the national level resulting in the ratification of a wider range of international human rights treaties. It also demonstrates that the approach of ASEAN States is capable of evolving over time.

The relationship between the ASEAN States and the global human rights mechanisms also casts some light on the true magnitude of the differences of opinion between ASEAN and non-ASEAN States on human rights norms. It is all too easy to portray controversies over human rights as further illustrations of Asian Values or a distinctly cultural relativist approach to human rights. Experience within the global human rights mechanisms, specifically the UPR process, suggests the need for careful calibration of these controversies. As discussions concerning the death penalty demonstrate, not every difference of opinion represents a challenge to the universality of human rights, particularly where no universal right currently exists. The UPR dialogue also demonstrates the need to consider not only the magnitude of the genuine differences that exist over normative issues but also the extent to which these differences are demarcated along ASEAN/non-ASEAN State lines.

It must also be acknowledged that some of the controversies concerning human rights in ASEAN States stem from differences of opinion concerning the human rights situation on the ground and/or the extent to which the State's restrictions on rights are permissible. It demonstrates the nexus between procedural and substantive issues. Controversies surrounding the interpretation and application of human rights can be mitigated to a certain extent by the existence of effective oversight mechanisms that can ensure that any restrictions on human rights remain within the limits prescribed by international human rights law. At present, there is some resistance within ASEAN to the creation of such mechanisms at the regional level. As previously noted, proposals for a peer review mechanism or a Special Rapporteur for the region have been rejected as too intrusive. For this reason, the level of engagement between the ASEAN States and the Charter-based System, specifically UPR and the Special Procedures, takes on an added significance. It can help to mitigate the effects of some of the institutional gaps that currently exist at the regional level to protect human rights. Of course, one should not overstate the significance of these global mechanisms. At the very least, however, one should bear in mind that the human rights mechanisms currently being developed within ASEAN do not exist in isolation. Their work in promoting human rights operates in tandem with these global human rights mechanisms as well as with national human rights mechanisms.

To conclude, the approach of ASEAN States to human rights is one that eschews broad generalisations. It cannot be captured accurately by references to Asian Values or Asia's Different Standard on human rights. As their engagement with the global human rights mechanisms demonstrates, the approach of ASEAN States is far more complex, heterogeneous and dynamic than such terms would suggest. This merits reflection especially when considering the risks and opportunities associated with present and future human rights initiatives within ASEAN. What also merits reflection is that such initiatives should not be viewed as though they exist in a vacuum. They will always operate in conjunction with the complete range of human rights obligations undertaken by ASEAN States and the various mechanisms that exist to monitor and promote compliance with these

obligations. Consequently, human rights developments within the region must be viewed in context. As the nature and level of engagement between ASEAN States and the global human rights mechanisms demonstrate, it is important to recognize that this context is one that includes a not insignificant global dimension.

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