

ASEAN Human Rights: Prospects for Convergence*

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Madam Director General Atchara Suyanan of the Ministry of Foreign Affairs, Distinguished Delegates, Friends, Ladies and Gentlemen

The 3rd Workshop on the ASEAN Mechanism on Human Rights is coming to its closing session. May I first of all, on behalf of the Thai NHRC, express our appreciation for your valuable participation in the past two long days of discussions. I myself have learned a good deal. After all the presentations and instructive dialogues together with questions and clarifications, I wish to speak my part that hopefully is of something positive to furthering our common cause here.

In retrospect

When the NHRC of Thailand joined in the 2nd Workshop on ASEAN Human Rights Regional Mechanism in Manila last year, as a new comer, what immediately came to mind was the dialogue of peace and transformation in the Asia-Pacific region some twenty years ago, where I also took part. A substantial part of dialogue focused specifically on Southeast Asia with a view to overcoming all the politico-military discrepancies and contradictions, as well as promoting cohesiveness and solidarity, within the region. The impressive record of the Southeast Asian peoples' resourcefulness and resilience was well taken note of in their long history of struggles for freedom and progress. It remained the question of how all these potential endogenous qualities could be mobilized with a collective sense of positive and creative regionalism. This was not only to serve as countervailing force vis-à-vis the untoward intrusion of external powers, but also positively to collaborate in the common task of socio-economic reconstruction. And along with that, re-conceptualizing the norms and practices of human rights and freedom in the global framework of peace, security, and justice. Then, thanks to the foresight of the leaders of the time, the non-military ASEAN of 1967 made the great and positive departure from the SEATO era of bipolar confrontation, thus paving the path for reconciliation and mutual trust.¹ But, as we all know, it was only after the collapse of the Berlin Wall and the Soviet Empire in early 1990 that the way was open for effective rapprochement among the Southeast Asian neighbors, and thus spontaneous entrance into the open arms of ASEAN.

My point of recalling our recent past is certainly not to revive all those previous nightmares of falling prey to the international politics of great powers' rivalries and domination. That should absolutely be things of the past, with ASEAN as institutional framework for creative and forward looking in the current world of rapid and radical change. With a certain looking back, I believe, it would greatly help put our common task here in proper perspective. At this point, it is obvious that, in terms of both time and space, the dialogues on an ASEAN human rights mechanism that have persistently and progressively been

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going on ever since the 1997 ASEAN Vision 2000, are quite achievements in themselves. That is, against the background of diversity and discrepancies that we are living with. For all this bold and continuing endeavour, and on behalf of the NHRC of Thailand, I should like to express our heart-felt gratitude and deep appreciation. Thanks also to all the initiatives taken in earnest response to the 1993 Vienna Declaration and Programme of Action, as kindly described in Prof. Vitit Muntarbhorn's concept paper on Roadmap for an ASEAN Human Rights Mechanism, prepared particularly for this 3rd Workshop. With his clear mind, I must say, the paper greatly helps clarify to a new comer like myself as to the relevant issues involved in international dealing. It is indeed encouraging to learn that the whole idea draws approval right from the beginning at least on principle from all the parties concerned: governmental, academic, and civil society. If I am not mistaken, it is also embraced in the current Thai foreign policy with emphasis on elevating ASEAN onto "a higher plane of regionalism", along with "citizen-centred policy" and "mutual trust and understanding, mutual benefits, cooperation and partnership not just between the relevant governments but, equally important, between respective peoples of those countries", to quote Foreign Minister Dr. Surakiart Sathirathai's own words.² I do not know if this is in exact consonance with the former ASEAN Foreign Ministers did resolve to do in 1993, following the Vienna Declaration and Programme of Action. Hopefully, all this could be construed in a positive and creative manner towards the ultimate purpose of human rights protection and promotion. It is our job to pursue the matter further.

Towards people-to-people mutual learning

In the same vein and in spite of initial achievements, it is also important to bear in mind that the task of establishing a human rights regional mechanism is no simple matter. Saying this is not to minimize or dismiss the significance of the constructive steps and process already taken up. In fact, similar line of thought seems to be implied in Prof. Vitit's concept paper. I simply try to draw attention to it and further elaborate the point for the benefit of making our task concretely meaningful to the people we always refer to. In short, we need to help instill a keen sense of belonging into the society at large.

Human rights, after all, are basically concerned with people as truly stake holders. Not only that, however. They are also closely related to the problem of social transformation. That is why the whole thing must needs be seen as a process. The truth is human rights are not something to come by or bestowed upon as free gifts. Historically, as we learn from the exemplary West itself, they always started out as moral claims by people in particular socio-economic contexts. There followed the struggles with of course either success or failure, depending on the circumstances involved. The same is true with the celebrated civil and political liberties that were achieved in the historical West and gained worldwide acclaims. In a most significant sense, of course, they represent a certain universal value. That is only part of the whole story, nonetheless. For there are bound to be many others forthcoming as human societies keep undergoing changes, as we all are witnessing today. It all means that, as far as human rights are concerned, what is popularly called universal is unfortunately something imposed and therefore tends to become static or even prohibitive.³ Universality of human rights is clearly a dynamic phenomenon and keeps on proliferating, especially with regard to economic, social, and cultural matters, according to the dynamics of social change. Indeed, it is the essence of human and societal values. Unfortunately, they all are being dismissed as out of bound of legitimate human rights in the Western world where the property rights are being

cherished above everything else. What Prof. Vitit terms “value-added” makes a lot of sense here, not just for some specific focus points as suggested, but also in broader perspective for the whole task of human rights protection and promotion for the Southeast Asian peoples who have been undergoing enormous changes forced upon them. Now that they have gone through the historical struggles for freedom and self-determination, a new dimension of human rights is naturally bound to arise. All of which brings us to the substantive part of our mission while in the process of the current dialogues and consultations on institutional framework.

All this is of course well in line with what Prof. Vitit suggests in the very last paragraph of his paper, i.e., “Support other activities ...e.g. formation and networking More human rights education and capacity building, and the fostering of good practices in implementing human rights standards regionally, nationally and locally, with strong civil society participation and people-to-people cooperation”. The point is that all these things can very well proceed right away, pending the realization of the planned regional mechanism. As a matter of fact, currently quite a few of action and participatory researches have been going on and geared to that effect. Academics and NGOs are increasingly aware of the need to collaborate with one another for the common purpose: people’s empowerment. All this is a promising trend. Only that it still very much remains isolated and lacking of coordinated resources to cope with the problems. So something badly needs to be done about it. That would help lay a sort of infra-structural groundwork for the forthcoming institution. In the process, human rights culture and capability would gradually be developed. The point is that no institution can ever exist in a vacuum, or worse still, just do for its own sake. It certainly is not the case with human rights and dignity at stake that we have been talking about all along. For, as the Thai NHRC’s own experiences can tell, effective human rights protection and promotion depends in the final analysis on the society’s capacity to defend itself. And this, I am sure, is true of all the others. Otherwise, human rights institutions, so-called, would end up turning into an exclusive politics of elitism that serves no useful and positive purpose in terms of human progress.

So I would urge this forum, if I may, that this vital part of the concept paper be put on the agenda of action. To get the ball rolling, the national human rights commissions, academic communities, and civil society groups are to be mobilized into networking. Mind you, this is not just for the purpose of facilitating contacts or exchange of ideas and experiences for their own sake, but for real, concrete and relevant action. One would rather not to go into lists of activities involved here. But, to serve as the basis for *human rights capacity building*, a certain common groundwork could very well be looked into here, taking into account the perceived common needs of the Southeast Asian peoples.

First and foremost, promote freedom of thought and expression. This may sound commonplace enough! And of course we can take it for granted for the middle classes and those in the modern sector. But, believe me, it is so vitally important in the context of our Southeast Asia where traditional authoritarianism prevails, especially among poor and marginalized people in both urban and rural areas. More often than not, they have been deprived of appropriate means of livelihood and self-development, as a result of the so-called economic development in which Western-styled industrialization takes the topmost priority. All this is well known and comes to be recognized by the international economic and financial institutions like the World Bank and the IMF. There is so much talk about poverty eradication and sustainable development lately, whatever that means. But that is about all. From the standpoint of establishments, the solution could at best be seen in the manner of welfare, or

lately “social safety net” in the World Bank’s jargon with holier-than-thou posture. All of which is in defense of status quo.

In truth, poverty and marginalization is one fundamental problem of deprivation, that is, deprivation of the people’s rights to access to resources. P.M. Thaksin Shinawatra of Thailand for once did indeed talk about something like “transforming *rights* into capital”, to the delight of listeners like myself. But the phrase somehow is being shifted to “transforming *assets* into capital” in the fashion of modern business ideology in the age of globalization. To take on an optimistic note, nonetheless, the two could be coordinated, thus enlarging the scope for public policy manoeuvre and performance. It significantly means that what is called public policy should not be left to mere one-sided top-down affairs. Meanwhile, it is patently lacking active and positive contribution from the bottom-up. It is symptomatic of under-developed state of the body politic, no matter how much you gain in terms of the growth of GDP. Such is precisely the current state of our peoples in this part of the world, in actual fact the world over as people are perforce to come under development and globalization syndrome. Saying all this need not be anti-development and globalization, as too often falsely claimed. Only that democracy and development must go hand in hand to make human progress. It is certainly not the question of either one or another. And here human rights have a vital contribution to make. So why be so afraid and unnecessarily suspicious of human freedom and progress?

Admittedly, I am somewhat long-winded here. I need to, I am afraid. It is just to make a point to demonstrate how so closely inter-related it is between civil and political rights on one hand, and on the other hand economic, social, and cultural rights. Indeed, it is characteristic of tropical resource-based societies of Southeast Asia, where community way of life together with open access to resources is the norm. We have already learned of the adverse lessons of the enclosure movements in the midst of Industrial Revolution in eighteenth century England. Similar things are happening in our tropical resource-based Southeast Asia. Hence marginalization and deprivation among local communities and peoples. Unfortunately, this is not sufficiently understood, among academics and even human rights defenders alike. For we tend to follow the norms and standards that have already been set from afar as if ready-made formula. That is not so in real life, I am afraid. As already mentioned, human rights start out as moral claims of particular groups of people in particular historical contexts. This is the crux of the whole matter. Freedom of thought and expression is not just for the sake of exercising the rights according to the set standards, but essentially to articulate newly-created moral claims that might even contradict the existing ones. It would open up the new dimensions of human rights in the world of rapid and radical change. What recently emerges as community rights is the notable case in point. It has now come to be recognized in the current Thai Constitution, for example, as a result of the effective and sustainable practices of community forestry in a good number of cases around the country.⁴ Naturally, it met, and still does, with stiff obstruction both from within the government bureaucracy, good old-time academics, and vested business interests. And right now a draft organic law on community forestry still gets suspended in the Parliament. At the global level, a UN Draft Declaration on the Rights of Indigenous Peoples (DDRIP) has now been completed and come up for review and endorsement.⁵ Of course, legal recognition, national or international declaration, convention, etc., are just the beginning and still have a long way to go, as far as human rights protection and promotion is concerned. But they objectively reflect the people’s aspirations and claims that need be seriously taken into account in society and international community.

All this community talk is in obvious contradiction with the traditional individualism of the historical West, where it is strictly in individual capacity that counts as legitimate human rights. But then that tradition is of itself in contradiction with reality of life right from its inception. That is, reality of social life and co-existence with freedom, justice and peace. After all, human rights and dignity are not something incidental, but inherent in human nature itself. That is to say, people just cannot be expected to tolerate oppression and exploitation forever, but may oppose and fight to get their legitimate rights and place in society. And community is an integral part of human livelihood and identity no matter in what form: family, group, association, locality, nation, and what not. It is even more so in the case of resource-based communities and networks which are characteristic in our Southeast Asia. That is why the power- that- be must needs learn how to accommodate moral claims and demands for change. It does not at all mean that individualism as the milestone of human rights is without its validity. But it is just one side of the coin, and, more often than not, puts creative social life and relationships in jeopardy, as we are all witnessing today.

Looking ahead

What I have said all along is certainly not entirely my own creation. In fact, if you may recall, it principally follows the spirit of what my Thai colleagues and myself have learned as a new comer from both the 2nd workshop in Manila and the Strasbourg meeting last year. This 3rd Workshop, I am happy to say, seems to reassure me of what I grasp from the previous dialogues. I am deeply thankful for all the valuable contributions in this forum. In this concluding presentation, I simply try to recollect and elaborate more from our Thai experiences and lessons. The major part of which is not far apart from those of our Southeast Asian neighbours. Hopefully, again, it could help clarify our position in response to Tan Sri Dato Harun has just raised the doubt as to “who we are and in what direction to go”.

To begin with, on the point of unity in diversity, repeatedly cited in Prof. Vitit’s presentation. So, to the phrase “human rights variations” as raised by our Working Group’s Co-Chairperson, Mr. Marzuki Darusman, as well as Dr. Hafid Abbas’s concern about the region’s vast diversifying elements, I would beg to draw your attention to our common ground in both geographical and historical terms. One does not have to elaborate on this point of reality among knowledgeable friends here. All this clearly constitutes quite a natural basis upon which unity, and for that matter cooperation and even regional institution, whatever to be called, could be created. Too often, we keep referring to “political will”. That is just the jargon of the old-fashioned kind of elitist politics. Of course, it still counts a great deal. But then shall we allow the dialogues of human rights and dignity to go down into the state of stagnation just for reason of outdated conservatism? Or worse still, with what is lately emerging in the form of neo-conservatives’ conspiracy bent on the unilateral and preemptive politico-military solution to the 9/11 incident and perceived terrorism.⁶ On our part as human defenders and promoters, be that as it may, shall we think of human rights merely as something antagonistic to the power-that-be? I strongly believe that, with positive thinking, we can do a lot of service not only to the people we naturally have in mind, but significantly also to contribute to the governments themselves in the most crucial task of conflict management and social transformation in an orderly manner. True human rights look to social order and security. What is really in need is the human vision and mutual understanding. And that would greatly save our own societies from unnecessary chaos and enormous losses. As I have pointed out, we all share a good deal of common ground that also includes both physically in terms of

resource base of bio-diversity, and culturally with regard to local traditional knowledge and community way of life that makes sustainable development possible and feasible. In short, we are having a sort of comparative advantage, to use the economist's jargon, as the basis upon which to work on the creativity of human rights and dignity. So you can see, this is well in line with what Marzuki Darusman raises the point about making the process of institution building - ASEAN Human Rights Mechanism – “more relevant to the grassroots peoples and communities, so that they can enjoy the full range of human rights and dignity”. This is certainly not an empty ideal. But then it bears upon all of us to work it out in the process of our dialogue and related action.

Of course, we all share the concern of the current dilemma the whole world is facing. That is to say, the global impact of the 9/11 and the war on terrorism. On top of our immediate concern with the increasingly precarious state of human rights, this inevitably brings us to further issue in regard to the working status and future of the United Nations, the cornerstone of international human rights standards ever since after the World War II holocaust. There is little we can do about it. It may not be direct concern on our part, of course. But if we can possibly ever think of doing something at all, I should like, if I may, to add a little short note here. One just cannot help it, in view of the worldwide importance of the UN in the field of human and social development. To my mind, it should somehow stop dealing with the issue of war and peace that is by nature far beyond its control. It is next to impossible in the face of the newly-emerged doctrine of military unilateralism. It should instead concentrate on the task of creative development to promote people's capacity building that we have been concerned with all along. To be able to fulfill the mission, the UN also needs to find ways and means to undergo democratic reforms. Could we contribute something to this effect, at least in ideas if not in action, as citizens of the UN's member states? Indeed, at this most critical moment in history, the world is really in bad and urgent need of constructive ideas and public opinion vis-à-vis a new form of arbitrariness and totalitarianism. For under such a fluid and ambivalent state of affairs, there is hardly, if at all, a place for human rights and dignity. And for that matter, for all of us gathering here.

One more word of reminder about Prof. Vitit's concept paper. Whatever strengths and weaknesses, at the very least it manages to lay a groundwork for positive line of thinking and action above and beyond the negative politics of human rights that, more often than not, stands in the way of creative thinking and forward-looking dialogues. I hope you agree with me that this is the key to making our progress possible in the long run. I for one do not believe it is beyond the capacity of the intellectual forum such as this one to cope with the task at hand.

Finally, after all the fruitful and tireless dialogues in this 3rd Workshop, and on behalf of the Thai NHRC, I wish to express our sincere thanks to our two co-hosts: the Ministry of Foreign Affairs and the Regional Working Group on an ASEAN Human Rights Mechanism. It is indeed a privilege for us, the NHRC of Thailand, to be part of the mission. I also wish to extend our gratitude to all invited speakers and resource persons, especially Prof. Vitit Muntabhorn for his most valuable contributions, and the very hard-working Secretariat Team for making this Workshop possible amidst many uncertainties. Last but not least, I wish to thank all of you, distinguished participants, for your great spirit of co-operation.

Now I wish to declare the Workshop close.

¹ Saneh Chamarik, “Towards Positive Regionalism in Southeast Asia”, paper delivered at the conference on Peace and Transformation in the Asia-Pacific Region, Yokohama, Kanagawa, Japan, 26-29 March, 1984.

² Foreign Minister Dr. Surakiart Sathirathai’s speech at the Foreign Correspondent Club of Thailand (FCCT), *The Nation*, 20 May, 2003.

³ In the classic statement by Jeremy Bentham, founder of Utilitarianism of 19th century England:

*Right ... is the child of law; from real laws come real rights;
from imaginary laws, from laws of nature, fancied and invented
by poets, rhetoricians, and dealers in moral and intellectual poisons,
come imaginary rights, a bastard brood of monsters.*

Cited in “The Politics of Human Rights”, *The Economist*, August 18-24, 2001, p.9.

⁴ Constitution of Thailand B.E. 2540 (1997):

Article 46: “Persons so assembling as to be a traditional community shall have the right to conserve or restore their customs, local knowledge, arts or good culture of their community and of the nation and participate in the management, maintenance, preservation and utilization of natural resources and the environment in a balanced and sustainable fashion, as provided by law.”

⁵ Darrell A. Posey, *Traditional Resource Rights: International Instruments for Protection and Compensation for Indigenous Peoples and Local Communities*, IUCN – The World Conservation Union, 1996, p. 28.

⁶ Joshua Muravchik, “The neoconservatives unmasked”, *International Herald Tribune*, May 7, 2003, p. 8.

R. C. Longworth, “Pushing democracy down world’s throat”, *Bangkok Post*, April 28, 2003, p. 7.

Bill Clinton, “Agree with us or go to hell, that’s not the way...”, *Agence France- Presse*, as reproduced in *The Nation*, April 17, 2003, p.14A.

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