

Navigating Human Rights in a ‘Post-Human Rights’ Era: Mapping the Terrain through the lens of ASEAN States

Rhona Smith* and Sean Molloy**¹

International human rights law and mechanisms tasked with promoting state compliance with it are being increasingly challenged. Opposition is originating from, amongst others, countries that have historically supported the global rights project. These new trends and sites of contestation bolster opposition from other countries and regions that have consistently diverged from international human rights norms. Examining the relationship between the United Nations human rights system and states of the Association of South East Asian Nations in this broader context of opposition to human rights, this paper argues that existing theories on why states do, or ought to, comply with international human rights law are often inadequate to either explain or inspire state adherence to human rights norms. What is required, this paper will argue, is not another theory but rather more targeted and incremental efforts to address the gap between rhetoric and compliance.

Keywords: ASEAN states, Human Rights, Post-Human Rights Era, United Nations, Treaties

Across the globe, governments are manifesting an aversion to globalisation and multilateralism and in their place promoting nationalism, state sovereignty and non-interference in domestic affairs. Human rights have also come under attack, frequently presented in disparaging terms as constituting liberal ideals, promoted by ‘globalists’, and used to safeguard the rights of ‘others’, such as terrorists or migrants.² Some now speak of a ‘post-human rights era’, a term coined to capture a growing discontent with the global rights project.³ As opposition ebbs and flows, questions arise regarding the place of contemporary and future human rights. In particular, uncertainty surrounds the approaches that those mechanisms tasked with promoting state adherence to international human rights norms adopt in contexts where the very ideas that they attempt to advance are

¹ * Professor of International Human Rights Law, Newcastle Law School; Lecturer, Northumbria Law School (previously Research Associate, Newcastle University Law School, Newcastle University).

² See, for example, Philip Alston, ‘The Populist Challenge to Human Rights’ (2017) 9 JHRP 1 and Mahmood Monshipouri (ed) *Why Human Rights Still Matter in Contemporary Global Affairs* (Routledge 2020), including Mahmood Monshipouri ‘Why human rights still matter in contemporary global affairs’, chapter 1, which traces challenges to contemporary human rights.

³ See, for example, Ingrid B. Wuerth, ‘International Law in the Post-Human Rights Era’ (2017) 96 *Tex. L. Rev.*; Surya P. Subedi, *The Effectiveness of the UN Human Rights System: Reform and The Judicialisation Of Human Rights* (Routledge 2017); Rosa Freedman, *Failing To Protect: The UN And The Politicisation Of Human Rights* (OUP 2015); Stephen Hopgood, *The Endtimes of Human Rights* (Cornell University Press 2013); Eric Posner, *The Twilight Of Human Rights Law* (OUP 2014); Laurence R. Helfer, ‘Overlegalizing Human Rights: International Relations Theory and the Commonwealth Caribbean Backlash Against Human Rights Regimes’ (2002) 102 *COLUM. L. REV.* 1832; Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Harvard University Press 2018).

viewed with suspicion.⁴ For those countries traditionally opposed to or sceptical of the global rights project, this emerging push back arguably galvanises and bolsters pre-existing concerns.

This paper grapples with the implications of this global pushback in a region in which some States historically have shown reluctance to embrace the global rights project. To do so, this paper examines the relationship between the Association of South East Asian Nations (ASEAN) states and the United Nations (UN) human rights machinery. Many ASEAN states have exhibited reluctance to engage with the global rights project. This aversion presents itself in varying levels of ratification of international human rights treaties and reservations.⁵ ASEAN states have limited their engagement with UN treaty bodies, with few committing to the individual complaints mechanisms as well as many submitting (or failing to submit) overdue periodic reports. There is also a degree of suspicion, at times even outright opposition, directed towards the Human Rights Council's (HRC) Special Procedures.

Section 1 draws on these issues to map evidence of resistance to international human rights monitoring. Section 2 then considers reasons for this. Emerging from periods of colonialism and conflict, ASEAN states have sought to promote a particular approach to human rights, one that champions 'Asian' over claimed 'universal' values, protects national sovereignty and, with that, the supremacy of national law. Against this backdrop, there is a useful body of literature that attempts to understand how states, including those that have opposed the global rights project, nevertheless adhere to international human rights standards. From fields such as law, sociology, history and international relations, explanations rooted in realism, institutionalism, liberalism and acculturation, amongst others, have sought to examine how a range of actors incentivise, coerce, shame and persuade states to adhere to international human rights norms. This paper seeks to examine these theories in Section 3 demonstrating that ASEAN's approach to universal human rights is increasingly strengthened by the adoption of similar push back by other states in the post-human rights era, including some that previously challenged the region's approach to human rights. This renders existing theoretical arguments ill-adept at explaining or inspiring compliance in the current context. In response, Section 4 offers several specific recommendations to help address the growing scepticism of the global rights project and attempts to undermine the very idea of international human rights law and its mechanisms.

1. ASEAN and human rights systems

⁴ See 'The Populist Challenge to Human Rights' (n 2).

⁵ For a discussion of this, see also Catherine Renshaw, *Human Rights and Participatory Politics in Southeast Asia* (University of Pennsylvania Press, 2019).

This section examines ASEAN member states' interaction with the international human rights system. After briefly introducing the ASEAN approach to human rights, it demonstrates that the region has an at times precarious relationship with the UN system of human rights protection. This discussion enables an exploration as to why ASEAN countries seem reluctant to fully commit to international human rights and monitoring mechanisms.

(a) The Origins of the ASEAN Human Rights System

ASEAN was formed on 8 August 1967 with five-member states – Indonesia, Malaysia, the Philippines, Singapore, and Thailand. It was born out of dispute resolution negotiations between Indonesia, the Philippines and Malaysia, brokered by Thailand.⁶ Forty years after the 1967 Bangkok Declaration establishing ASEAN, the now ten member states adopted the 2007 ASEAN Charter as the legal and institutional framework for the organisation.⁷ This bound members to an ambitious programme of integration, including the establishment of the ASEAN Community in 2015, plans for a single market and production base, as well as greater political, security, economic, education and socio-cultural cooperation.⁸ The ASEAN community consists of three communities: the ASEAN Political–Security Community, the ASEAN Economic Community, and the ASEAN Socio-Cultural Community.

While neither human rights and democracy nor good governance were mentioned in the 1967 Bangkok Declaration that established ASEAN,⁹ human rights' increased prevalence internationally influenced the region and, unsurprisingly, rights are prominent in the 2007 ASEAN Charter.¹⁰ Article 1 proclaims the purposes of the organisation as enhancing peace, security and stability, alleviating poverty, strengthening democracy, good governance and the rule of law, promoting and protecting human rights, transboundary cooperation, combatting drugs and transboundary challenges.¹¹ It also adds an unequivocal human rights dimension to the work and focus of the organisation – Article 2(2)(i) of the General Principles binding member states notes 'respect for fundamental freedoms,

⁶ see Alison Broinowski, *Understanding ASEAN* (Macmillan 1982). From the 1960s till the end of the 1980s, the Indochina war was raging in South-east Asia, positioning the early members of ASEAN against the later members of ASEAN, namely Cambodia, Lao PDR and Vietnam. Viet Nam's civil war and transnational conflicts, for example, spilled over into Cambodia and Lao PDR, which were also heavily bombed by the United States of America. Even until the 1990s, several of these countries were sworn enemies, engaged in wars against one another. See also for an excellent discussion on the development of human rights in the region, Catherine Renshaw, *Human Rights and Participatory Politics in Southeast Asia* (University of Pennsylvania Press, 2019).

⁷ Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam. Papua New Guinea and Timor L'Este are candidate/ observer states. See Daniel Seah 'The ASEAN Charter' (2008) 58 *ICLQ* 197.

⁸ Article 1(2), (5)+(10) ASEAN Charter 2007.

⁹ Viti Muntarhorn, *Enlarging the Space for the People: Whither Human Rights and Governance in ASEAN?* (2017) 4 *ASEAN@50* 228

¹⁰ Gerard Clarke, 'The Evolving ASEAN Human Rights System: The ASEAN Human Rights Declaration of 2012' (2012), 11 *Nw.J. Int'l Hum. Rts.* 1.

¹¹ ASEAN Charter, Article 1.

the promotion and protection of human rights and the promotion of social justice'.¹² An ASEAN Intergovernmental Commission on Human Rights (AICHR) was inaugurated in 2009¹³ with its purpose, inter alia, to, 'uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and international human rights instruments to which ASEAN Member States are parties.'¹⁴ In addition, ASEAN has also created entities working directly on human rights issues such as women and children, and migrant workers.¹⁵

As part of the AICHR's work and one of its most notable achievements to date, the working group drafted the ASEAN Human Rights Declaration (AHRD), adopted in 2012.¹⁶ The Declaration covers a broad range of rights and freedoms, many of which mirror, or are similar, to those found in international human rights standards. As examples, Articles 10 and 26 of the AHRD provide that ASEAN Member States affirm all of the civil and political rights and all of the economic, social and cultural rights in the Universal Declaration of Human Rights (UDHR), as well as the specific rights listed in the ASEAN Human Rights Declaration. Articles 3 and 5 of the Declaration, concerning the right to recognition before the law and the right to an enforceable remedy, are identical to Articles 6 and 8 of the UDHR. Rights not included in the UDHR were added, including 'the right to a safe, clean and sustainable environment'¹⁷ and the 'right to development ... so as to meet equitably the developmental and environmental needs of present and future generations'.¹⁸

Many commentators view the ASEAN human rights system as deeply flawed, with a number of areas reflecting an ASEAN specific rather than universal and international approach to human rights.¹⁹ Certainly its styling on the more general aspirational UDHR raises issues of enforceability. China too has advocated the development of human rights, predicated on non-interference and sovereignty,

¹² Article 2(2)(i) of the ASEAN Charter 2007. For an overview of the subsequent development, see generally, Yuval Ginbar 'Human Rights in ASEAN – setting sail or treading water?' (2010) 10 Hum. Rights Law Rev. 504.

¹³ See for an early appraisal, Hsien-Li Tan, *The ASEAN Intergovernmental Commission on Human Rights: Institutionalising human rights in south east Asia*, (CUP 2011); Yung-Ming Yen, 'The Formation of the ASEAN Intergovernmental Commission on Human Rights: A Protracted Journey' (2011) 10 J. Hum. Rights 393.

¹⁴ Terms of reference, available online http://aichr.org/?dl_name=TOR-of-AICHR.pdf, para 1.6.

¹⁵ Respectively, the ASEAN Commission on the Rights of Women and Children's with a recent emphasis on countering violence against women and children, and the ASEAN Committee on the Rights of Migrant Workers', comprising representatives on labour ministries.

¹⁶ For commentary on the declaration, see, for example, Catherine Renshaw, 'The ASEAN human rights declaration 2012' (2013) 13 Hum. Rights Law Rev. 557; Anthony Langlois, 'Human Rights, "Orientation," and ASEAN' (2014) 13 J. Hum. Rights 307.

¹⁷ Article 28f.

¹⁸ Article 35.

¹⁹ See Gerard Clarke, 'The Evolving ASEAN Human Rights System: The ASEAN Human Rights Declaration of 2012' (2012) 11 Nw.J. INT'L HUM. RTs.; Hsien-Li Tan, *The ASEAN Intergovernmental Commission on Human Rights: Institutionalising human rights in south east Asia* (Cambridge University Press 2011); Hien Bul, 'The ASEAN Human Rights System: A Critical Analysis' (2016) 11 Asian J. Comp. Law 111.

undermining the concept of universalism, human rights with 'Chinese characteristics'.²⁰ China's support for many ASEAN states, notable in public statements during universal periodic review and interactive dialogues with special procedures, reiterates its emphasis on advancing human rights in light of national conditions and needs.²¹

(b) ASEAN states and international human rights obligations

International human rights instruments serve as legal sources for international human rights law and the protection of human rights in general.²² There are nine core treaties- the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of all forms of Racial Discrimination (ICERD), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW),²³ the Migrant Workers' Convention (CMW),²⁴ the UN Convention on the Rights of the Child (CRC),²⁵ the Convention Against Torture and other cruel, inhuman and degrading treatment or punishment (CAT),²⁶ the Convention on Enforced Disappearances (CED²⁷) and the Convention on the Rights of Persons with Disabilities (CRPD).²⁸ These are augmented by optional protocols offering additional rights²⁹ and/or monitoring mechanisms.³⁰

All ASEAN states are party to two or more of the core UN international human rights treaties, as Table 1 lists. In some cases, high levels of ratification exist. Cambodia, Indonesia and the Philippines have each ratified 8 of the core 9 human rights treaties: the Philippines and Indonesia have not yet ratified the CED; Cambodia has not yet ratified the CMW. Taking a regional overview, all ASEAN states have ratified the CRC, CEDAW and the CRPD. At the other end of the spectrum, Brunei

²⁰ See, for example Bjorn Ahl, 'Statements of the Chinese Government before Human Rights treaty Bodies: Doctrine and Practice of Treaty Implementation' (2010) 12 Aust. J. Asian Law 82; Bjorn Ahl, 'Exploring Ways of Implementing Human rights treaties in China' 28 (2010) NQHR 361; Phil Chan, 'Human Rights and Democracy with Chinese Characteristics?' (2013) 13 Hum. Rights Law Rev. 645; Ann Kent, *China, the United Nations, and Human Rights: The Limits of Compliance* (Penn Uni Press 1999); Randall Peerenboom, 'Assessing Human Rights in China: Why the Double Standard' (2005) 38 Cornell Int. Law J. 71.

²¹ For example, the comments made by Mr Chen Cheng on behalf of PR China at the 35th Meeting, 39th Regular Session Human Rights Council 26 Sep 2018 - Interactive dialogue with Special Rapporteur on the situation of human rights in Cambodia. This references the need for Cambodia to choose its own path of development in accordance with national conditions. China is one of Cambodia's chosen development partners.

²² OHCHR The Core International Human Rights Instruments and their monitoring bodies.

²³ UNTS vol 1249.

²⁴ UNTS vol 2220.

²⁵ UNTS vol 1577.

²⁶ UNTS vol 1465.

²⁷ UNTS vol 2716.

²⁸ UNTS vol 2515.

²⁹ For example, Optional Protocols to the International Covenant on Civil and Political Rights and to the Convention on the Rights of the Child add rights/protection.

³⁰ Optional Protocols to the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of Discrimination Against Women, the Convention on the Rights of Persons with Disabilities, and the third to the Convention on the Rights of the Child add individual communication procedures. That to the Convention against Torture establishes a system of sub-committee visits to places of detention in contracting states.

Darussalam and Malaysia have only ratified those 3 core treaties. Other regional states have not ratified the ICCPR (Myanmar, Singapore), ICESCR (Singapore) and CAT (Singapore). Lao, Thailand and VietNam have each ratified seven, Myanmar and Singapore four, core treaties. Only Cambodia has ratified CED.

Notwithstanding levels of ratification, ASEAN states also issue a relatively high number of reservations to these treaties.³¹ 4 out of the 6 ASEAN states that have ratified that ICCPR have included reservations (Indonesia, Lao, Thailand and VietNam), while 5 out of the 10 ASEAN states have entered reservations to CEDAW (Brunei; Indonesia; Myanmar; Thailand; VietNam). 4 out of 7 states that have ratified the ICESCR (Indonesia, Myanmar, Thailand and VietNam) and CERD (Indonesia, Singapore, Thailand and VietNam) have included reservations while all 10 ASEAN states have submitted reservations to the CRC-OP-AC.

Existing research highlights the differences between policy and practice, arguing that human rights treaties are, at times, ineffectual as drivers of changes to domestic practice.³² Of course, states accept international human rights treaty obligations for a variety of reasons and ratification does not necessarily indicate government support for the terms of the treaty or a commitment to implementation of those terms at the national level.³³ Drawing from the field of sociology and insights from institutionalist theory, this is often explained as 'decoupling', which refers to the divergences between state commitments under treaty ratification and the actual practices of states domestically.³⁴ Commitment and compliance sit on the continuum not only in legal terms (*uberrimae fidei* and *pacta sunt servanda*) but also in human rights terms. Commitment to human rights is a promise to respect human rights and freedoms. Thereafter, moving to full compliance, states will actively promote and protect human rights in laws and policies in further steps to fully realise their paper commitments.³⁵ Human rights rhetorical treaty commitments thus become a positive reality.³⁶

³¹ See Vienna Convention on the Law of Treaties 1969, UN Doc. A/Conf.39/27; 1155 UNTS 331; 8 ILM 679 (1969); 63 AJIL 875 (1969) On reservations see Eric Neumayer, 'Qualified Ratification: Explaining Reservations to International Human Rights Treaties' (2007) 36 J. Leg. Stud. 397; Ineta Ziemele and Lāsma Liede, 'Reservations to Human Rights Treaties: From Draft Guideline 3.1.12 to Guideline 3.1.5.6' (2013) 24 EJIL 1135.

³² Emilie M. Hafner-Burton and Kiyoteru Tsutsui, 'Human Rights in a Globalizing World: The Paradox of Empty Promises', (2005) 110 Am. J. Sociol. 1373; 'Do Human Rights Treaties Make a Difference?' (n 3); Eric Neumayer, 'Do International Human Rights Treaties Improve Respect for Human Rights?' (2005) 49 Int. J. Confl. Res. 925.

³³ Oona Hathaway, 'Do Human Rights Treaties Make a Difference?' (2002) 111 YALE L.J. 1935.

³⁴ See Samantha Besson 'Human rights and democracy in a global context: decoupling and recoupling' (2011) 4 Ethics & Global Politics 19.

³⁵ For a simple iteration of these obligations, see OHCHR, 'International Human Rights Law' available www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx

³⁶ Mary Robinson, 'From Rhetoric to Reality: Making Human Rights Work' 25 October 2002, LSE, available www.lse.ac.uk/humanRights/aboutUs/articlesAndTranscripts/Mary_Robinson.pdf; Geoffrey Robinson, 'Human Rights in Southeast Asia: Rhetoric and Reality' in David Wurfel and Bruce Burton (ed), *Southeast Asia in the New World Order* (Springer 1996); Stephen Marks 'The Human Right to Development: Between Rhetoric and Reality' (2004) 17 Harv. Hum. Rts. J. 137; Debra DeLaet, 'Lost in legation: the gap between rhetoric and reality in international human rights law governing women's rights' (2018) 8 Global Discourse 387.

One of the central indicators of adherence to international human rights treaties is how human rights are protected within a state.

Differences between ratification and compliance are not hard to find in ASEAN states. By way of examples, in Myanmar, human rights defenders are under constant threat due to the country's corrupt judiciary practices and weak rule of law;³⁷ Indonesia has been criticised as Indonesian President Joko "Jokowi" Widodo '...failed to translate his rhetorical support for human rights into meaningful policies during his first term in office.'³⁸ Cambodia held a general election in July 2018 amid condemnation over the ruling Cambodian People's Party's detention of opposition leaders and the dissolution of the country's main opposition party, the Cambodia National Rescue Party, by court order in 2017;³⁹ Brunei Darussalam was criticised in 2019 for introducing the final phase of restrictive Islamic laws;⁴⁰ and the Philippines continue to be criticised for their crackdown on drugs and repeated claims of extra-judicial killings.⁴¹ Davies has analysed the fulfilment of core human rights treaties within ASEAN states following the adoption of the ASEAN Declaration, concluding that the 'gulf between ratified standards and actual compliance, whilst varying amongst ASEAN members, is ubiquitous'.⁴²

While some ASEAN states clearly subscribe to international human rights treaties in principle, differences in practice, coupled with extensive use of reservations and reluctance of some states to ratify all core international human rights treaties, undermines ASEAN engagement with international system.⁴³ The ambivalent engagement of ASEAN states is further demonstrated by their reluctance to accept or comply with many aspects of UN human rights machinery.

(i) ASEAN states' engagement with UN treaty bodies

³⁷ According to Human Rights Watch, in May 2018 "a human rights defender from the Ayeyarwady Region was sentenced to three months in prison for broadcasting a video of a satirical play about armed conflict on Facebook". See HRW, HRW World Report 2019', 417.

³⁸ *Ibid.*, 219.

³⁹ For example, see the Addendum to the 2018 annual report of the Special Rapporteur on the situation of human rights in Cambodia A/HRC/39/73/Add.1.

⁴⁰ For example, the UN High Commissioner Michelle Bachelet urged Brunei to stop entry into force of "draconian" new penal code on 1 April 2019. Statement available at

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24432>

⁴¹ 41st session of the Human Rights Council, Opening statement by UN High Commissioner for Human Rights Michelle Bachelet

24 June 2019, available <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24724&LangID=E>

⁴² Mathew Davies 'States of Compliance?: Global Human Rights Treaties and ASEAN Member States' (2014) 13 J. Hum. Rights 414, 429.

⁴³ This is not limited to international human rights law. ASEAN states have by far the lowest rate of acceptance of the compulsory jurisdiction of the International Court of Justice (ICJ) and of membership of the International Criminal Court (ICC)... or to have joined the World Trade Organization (WTO). Although all have signed the Geneva Conventions, less than three quarters have signed the First Additional Protocol, and only two thirds have signed the Second Additional Protocol (for other regions, the figures are 86 per cent or higher for both). See Simon Chesterman, 'Asia's Ambivalence about International Law and Institutions: Past, Present and Futures', 27 EJIL 945, 959.

At present, there are ten treaty bodies of which nine monitor the implementation of the core international human rights treaties and one, the Subcommittee on the Prevention of Torture (SPT), executes the Optional Protocol to the Convention against Torture.⁴⁴ Treaty Bodies' methods of work include three main components: periodic review of states' compliance; general comments; and individual communication mechanisms. Through General Comments,⁴⁵ treaty bodies can elaborate on the specific content of a particular treaty to which they are attached, helping to develop the conceptual and practical parameters of the substance of a right or processes necessary to give effect to a right. They are intended to guide the interpretation and application of treaties, by explaining the approach and understanding of the committee to the rights and freedoms. However, in practice, general comments are given little consideration by the courts and tribunals of ASEAN countries.⁴⁶ For this reason, the discussion below focuses primarily on concluding observations and individual communications.

Concluding Observations

The primary mandate of all the committees, except the Subcommittee on Prevention of Torture, is to review the reports submitted periodically by State parties in accordance with the treaties' provisions, evaluating the extent to which accepted human rights obligations are realized within each territory.⁴⁷ Each State party is under an obligation to submit regular reports to the relevant treaty body on how the rights are being implemented. Before the session at which it will formally consider a report, committee secretariat and members draw up a list of key issues, which is submitted to the State party. This list of issues also enables the committee to begin the process of questioning the State party in more detail on specific issues raised by the report which are of concern to members.

To assist with this task, the committee may peruse information submitted by non-governmental organisations.⁴⁸ Each state report is considered in a meeting between the state's delegation and the committee. Concluding observations of the committee are then published – these indicate areas of

⁴⁴ Christof Heyns and Frans Viljoen, *The Impact of the United Nations Human Rights Treaties on the Domestic Level* (Kluwer Law International, 2002); Erik Mose and Torkel Opsahl 'The Optional Protocol to the International Covenant on Civil and Political Rights' (1981) 21 Santa Clara Law Rev. 271; Dominick McGoldrick, *The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights* (2nd ed) (Clarendon Press, 1994); Philip Alston and James Crawford (ed), *The Future of UN Human Rights Treaty Monitoring* (CUP 2000).

⁴⁵ It is noted that the Committee of the Elimination of Discrimination Against Women (CEDAW) issues General Recommendations not General Comments.

⁴⁶ International Federation for Human Rights, *Demystifying Human Rights Protection in Asia*, 17 November 2015.

⁴⁷ At present (November 2017), the Rapporteur for the Committee on the Elimination of all forms of Discrimination Against Women is from the Philippines (Rosario Manalo), and a member of the Committee on the Rights of Persons with Disabilities is from Thailand (Monthian Buntan).

⁴⁸ Such shadow reports are increasingly common.

good practice in the state and areas in which improvement could be made.⁴⁹ The State then works on implementing recommendations and commitments. After a specified interval,⁵⁰ the state submits the next report as the cycle/spiral of review continues *ad infinitum*. Concluding observations represent the views of independent experts and have considerable value not least as barometers of compliance and indications of problems. They are, in theory, particularly useful at identifying areas of lagging state performance in respect of the various individual treaties.⁵¹ The issuance of concluding observations, according to Flaherty, ‘provides an opportunity for the delivery of an authoritative overview of the state of human rights in a country and for the delivery of forms of advice which can stimulate systemic improvements.’⁵²

Nevertheless, the reporting system is beset by challenges, most prominently the lack of conformity to the indicative timescale. Many states submit late compounding the delay caused by the backlog of reports awaiting consideration by each committee. Whilst in some ways the system is a victim of its own success, it means that although the reviews are generally thorough and increasingly comprehensive, they are somewhat irregular.⁵³ For example, the UN Committee on CRC operates on a cycle of five year reviews.⁵⁴ Brunei Darussalam, to choose a random example from ASEAN, was last considered by the Committee in 2016.⁵⁵ This was its combined second and third reports due on 25 January 2008 and submitted on 12 November 2013. Its fourth to sixth combined report is due June 2021. Similar positions are reflected across the other high contracting parties.⁵⁶ The position is markedly worse with CERD, a treaty that imposes the shortest periodicity of reports – two years.⁵⁷ Looking at the record of the Philippines, which ratified the treaty in the early years, the country is now in its twenty-second reporting cycle and increasingly tardy in submitting reports with its last

⁴⁹ See generally Michael O’Flaherty, ‘The Concluding Observations of United Nations Human Rights Treaty Bodies’ (2006) 6 Hum. Rts. L. Rev. 27.

⁵⁰ Varies from two years for ICERD to four or five years for other treaties. The treaty itself often specifies the periodicity, though each committee normally intimates the date of the next review in the concluding observations of the review at hand.

⁵¹ For instance, the Committee on Economic, Social and Cultural Rights has previously has drawn attention to Indonesia’s ‘laws and by-laws which discriminate against women and marginalized individuals and groups such as sex workers, and lesbian, gay, bisexual and transgender persons’ and its ‘definition of persons with disabilities in Law No. 4 of 1997 [which] does not follow a human rights approach and that the Law does not stipulate the obligation to provide reasonable accommodation’, Concluding observations on the initial report of Indonesia E/C.12/IDN/CO/1, para 6. Indonesia’s second report was due May 2019.

⁵² ‘The Concluding Observations of United Nations Human Rights Treaty Bodies’ (n 49), 27.

⁵³ For reporting compliance overview, see

https://www.ohchr.org/Documents/Issues/HRIndicators/Reporting_Compliance.pdf

⁵⁴ UN Convention on the Rights of the Child, Article 44(1)(b) on the periodicity of state report, the first people submitted within two years of the entry into force of the Convention.

⁵⁵ Committee on the Rights of the Child, *Concluding Observations on Brunei Darussalam*, UN Doc. CRC/C/BRN/CO/2-3.

⁵⁶ For example Indonesia submitted its initial report, due 4 October 1992, on 17 November 1992; its second report due 4 October 1997 was submitted 5 February 2002; and its third and fourth combined report was due 4 October 2007, yet submitted 22 October 2010. This last report was considered in June 2014, UN Committee on the Rights of the Child, *Concluding Observations on Indonesia’s combined third and fourth periodic reports*, UN Doc CRC/C/IDN/CO/3-4.

⁵⁷ Article 9(1)(b) International Convention on the Elimination of all forms of Racial Discrimination. Its combined fifth and sixth report, due October 2019, has yet to be submitted.

concluding observations issued eight years ago.⁵⁸ Of course, the growth in high contracting states to the treaty was not matched by additional funding and support for the committees. 2019 brought the threat, since abated, of reduced numbers of meetings of treaty bodies due to the OHCHR funding crisis⁵⁹ whilst 2020 brought the necessary move online of treaty work pursuant to the Covid19 crisis. 2019 also heralded the introduction of a fixed schedule of regular periodic reviews for the Human Rights Committee (reviewing ICCPR).⁶⁰

It is axiomatic that the backlog in considering reports, combined with tardiness in submission, decreases the effectiveness of the review process and the timeliness of any identified problem areas.⁶¹ For ASEAN (and other) states, scepticism over the effectiveness of the process can prevail with echoes of the consensus conciliatory approach of ASEAN as an organisation. After all, the strongest critics of ASEAN states' human rights performance in the region are NGOs,⁶² INGOs⁶³ and the ASEAN MPs interest grouping,⁶⁴ rather than ASEAN institutions.

Individual Communications

Each core treaty now also offers an option for States to recognize the competence of the committee to receive individual communications, enabling individuals to submit complaints to any treaty body alleging violations of the treaty by the state concerned. The basic concept of complaint mechanisms under the human rights treaties is that anyone may bring a non-vexatious complaint against a State party alleging a violation of treaty rights following completion of any viable and appropriate domestic appeal process. Currently, eight of the human rights treaty bodies (CCPR, CERD, CAT,

⁵⁸ Its first report was due 4 January 1970, and submitted 24 March 1970; its second 4 January 1972, submitted 10 February 1972; its third 4 January 1974, submitted 25 February 1974; its fourth due 4 January 1976, submitted 23 July 1976; its fifth due 4 January 1978, submitted 23 January 1978. Then the schedule goes a little awry. Its seventh report was due 4 January 1980, but submitted more than two years late, on 29 January 1982; its combined 8-10th report was due 2 January 1984, though submitted 12 July 1985. A combined 9-14th report was scheduled for submission on 2 January 1990, yet only submitted 21 February 1997 and the 15-20th was due 4 January 2006, but submitted 30 June 2008, with concluding observations in 2009. This is the latest concluding observations on the Philippines, not especially satisfactory when the reporting cycle is biennial as this is now 2020. The combined 21-22 periodic report, scheduled for 4 January 2012 is not yet submitted so will no doubt be combined with additional by now overdue reports. Information from the treaty body database - https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx .

⁵⁹ For the statement of the ten chairs of the treaty bodies, see

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24621&LangID=E>

⁶⁰ On predictable review cycle, see <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/PredictableReviewCycle.aspx>

⁶¹ The treaty bodies now use a 'list of issues' stage in the reporting cycle to afford states the chance of responding to specific questions shortly before appearing in dialogue with the committee – this can be used to obtain more up-to-date information or data and to clarify new laws and policies.

⁶² NGOs and civil society organisations vary from state to state.

⁶³ Some monitor ASEAN states from one or more jurisdiction in the region; others are based overseas; others have offices in several states. Specific human rights INGOs include Human Rights Watch and FIDH (International Federation for Human Rights).

⁶⁴ ASEAN Parliamentarians for Human Rights (APHR), formed in 2013, regularly speak out on human rights issues – see generally, <https://aseanmp.org/homepage>.

CEDAW, CRPD, CED, CESC and CRC) may, under certain conditions, receive and consider individual complaints or communications from individuals.⁶⁵

Notwithstanding the potential for treaty bodies to hold states accountable for human rights conflagrations, ASEAN states acceptance of the individual communications process has been limited.⁶⁶ Table 2 demonstrates those ASEAN states that accept the competence of treaty bodies to hear individual complaints. The Philippines, Thailand and Cambodia each accept individual communications in respect of CEDAW; Thailand also accepts individual communications under the third protocol to CRC; and the Philippines accepts individual communications in respect of ICCPR. Within the region, the Philippines has received most communications to date through the UN treaty processes. A series of communications concerning the Philippines have been brought before the Human Rights Committee: most concern fair trial rights and investigations into deaths implicating the state.⁶⁷ Overall, however, the communication procedures have not been well used by victims of human rights violations in the Philippines, Cambodia or Thailand. This can be due, in part, to a lack of awareness amongst potential authors of communications as well as to approaches to courts and quasi-judicial dispute resolution mechanisms. In the region, recourse to non-judicial, often informal, mechanisms for dispute resolution is common. However, southeast Asia is not too dissimilar in this respect to the practice of other states where, even when accepted, recourse to individual communications is at best sporadic.

In addition to the individual complaints process, it is also worth noting that some treaty bodies can be recognised as competent to visit accepting states for the purpose of investigating the human rights situation. These can be conducted under CAT,⁶⁸ CED,⁶⁹ CEDAW-OP,⁷⁰ CESC-OP,⁷¹ CRC-OP-IC,⁷² and CRPD-OP.⁷³ Some ASEAN member states submit to additional monitoring systems under the UN treaties as Table 3 notes: inquiries/investigations. There have been visits and reports under these procedures⁷⁴ but their impact is difficult to extrapolate as the reports are not necessarily made

⁶⁵ The procedure for the Convention on Migrant Workers has not yet secured sufficient ratifications to enter into force.

⁶⁶ For an overview of global acceptance of individual communications, see https://www.ohchr.org/Documents/Issues/HRIndicators/IndividualCommunications_map.pdf

⁶⁷ See Human Rights Committee opinions on communications recorded in UN Docs CCPR/C/99/D/1559/2007; CCPR/C/98/D/1619/2007; CCPR/C/94/D/1560/2007; CCPR/C/92/D/1466/2006; for full list, see http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=En&CountryID=137.

⁶⁸ Art.20, Inquiry procedure under the Convention against Torture.

⁶⁹ Art.33, Inquiry procedure under the International Convention for the Protection of All Persons from Enforced Disappearance.

⁷⁰ Art. 8-9, Inquiry procedure under the Optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

⁷¹ Art.11, Inquiry procedure under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

⁷² Art.13, Inquiry procedure under the Optional Protocol to the Convention on the Rights of the Child/

⁷³ Art.6-7, Inquiry procedure under the Convention on the Rights of Persons with Disabilities.

⁷⁴ see <http://www.ohchr.org> under countries for the relevant documentation.

public.⁷⁵ As developed below, whereas these mechanisms adopt a distinctly confrontational approach whereby states are held accountable by treaty bodies, ASEAN promotes a distinctively non-confrontational approach. As with the UN Special Procedures (discussed below), this approach appears to set ASEAN states on a collision course with those mechanisms, which, by their nature, seek to ensure that states comply with international standards, shining a spotlight on those that do not.

(ii) ASEAN states' engagement with UN Special Procedures

The Special Procedures of the Human Rights Council are independent human rights experts appointed by the HRC with mandates to report, monitor and advise on human rights from a thematic or country-specific perspective.⁷⁶ The Human Rights Council reviews country-specific mandates annually⁷⁷ and thematic mandates every three years.⁷⁸ Generally, in the process of carrying out their mandates, special procedures may, amongst other things, undertake in-person country visits to assess human rights violations, make recommendations to States for preventing, ending, or remedying violations, and raise awareness of human rights issues.

Historically, ASEAN states have been reluctant to recognise or engage with Special Procedures, partly owing to the criticisms levelled towards the Human Rights Council's predecessor- the UN Commission on Human Rights. The Commission was considered too heavily exposed to political influence.⁷⁹ Many developed countries criticized it because human rights-violating countries could secure election to it and thus block condemnation of violations in their own countries and elsewhere.⁸⁰ There were accusations of double standards and unprofessionalism,⁸¹ with the Commission on Human Rights described by some as 'a club where friendships easily overlooked wrongdoing'.⁸²

⁷⁵ Cambodia has hosted two visits by the Sub-Committee on the Prevention of Torture (2-11 December 2009 and 9-13 December 2015), neither of which have been made public; the Philippines visit of 25 May-3 June 2015 also remains confidential. In contrast, the CEDAW inquiry on the Philippines is public – UN Doc CEDAW/C/OP.8/PHL/1.

⁷⁶ See Aoife Nolan, Rosa Freedman, and Thérèse Murphy (eds.), *The United Nations Special Procedures System* (Brill, Nijhoff 2017).

⁷⁷ Note that Cambodia has agreed to a series of biennial renewals of its country rapporteur.

⁷⁸ Note that Cambodia has supported the pen holder state Japan in adopting a biennial renewals of its technical assistance and capacity building mandate.

⁷⁹ Kofi Annan, In Larger Freedom – Towards Development, Security and Human Rights for All (March 21, 2005), A/59/2005; Martin Edwards et al., 'Sins of Commission? Understanding Membership Patterns on the United Nations Human Rights Commission' (2008) 61 Political Research Quarterly 390.

⁸⁰ Karen E. Smith 'The European Union at the Human Rights Council: speaking with one voice but having little influence' (2010) 17 J. Eur. Public Policy 224.

⁸¹ Philip Alston, 'Reconceiving the UN Human Rights Regime: Challenges Confronting the New UN Human Rights Council' (2006) 7 Melb. J. Int. Law 185, at 187.

⁸² Ladan Rahmani-Ocora 'Giving the Emperor Real Clothes: The UN Human Rights Council' (2006) 12 Global Governance 15 2006, 16.

In 2012, the relationship between ASEAN and special procedures fractured when a group of special rapporteurs sent an open letter criticising the ASEAN Declaration on Human Rights for failing to comply with international human rights standards.⁸³ In recent years, however, the number of visits of special procedures to South East Asia has increased as well as continuing visits to the region of the Special Rapporteurs with country mandates (Cambodia and Burma/Myanmar). When Myanmar has denied access to its country mandate holder, information gathering has taken place in neighbouring states in the region.⁸⁴ Myanmar did not accept the Fact Finding Mission established by the Council either.⁸⁵ Nevertheless, ASEAN states can be hesitant to accept visits by holders of deemed “protection” mandates, such as the Special Rapporteur on torture, the Special Rapporteur on extrajudicial killings, the Special Rapporteur on contemporary forms of slavery, or the Working Group on enforced or involuntary disappearances and the Working Group on arbitrary detention. Special procedure visits that are accepted by ASEAN states are usually those related to economic, social and cultural rights, or to the right to development. Countries such as Singapore and Brunei Darussalam systematically decline to accept visits by special procedures.⁸⁶ ASEAN states are sometimes co-sponsors of thematic resolutions (including those establishing or renewing special procedure mandates), but rarely exercise a leadership role.

A Precarious Relationship with the UN?

Thus, there are varying levels of South East Asian states engagement with the international human rights system and it is acknowledged that these issues are not ASEAN specific but characterise the approaches from countries around the world. In some cases, ratification levels are high but often accompanied by reservations limiting the application of the relevant treaties. As alluded to above, neither ratification nor a lack of reservations necessarily entails compliance with international human rights standards. To promote compliance, the international system has developed a range of mechanisms, some of which have been discussed above. However, as with ratification, there are differences in respects of how ASEAN member states engage. A lack of acceptance of individual complaints process, coupled with a relatively limited engagement with the reporting and hesitancy to support the work of special procedures, demonstrates ASEAN reticence.

⁸³ UN experts raise concerns over ‘landmark’ Southeast Asian human rights declaration, <https://news.un.org/en/story/2012/11/425852>.

⁸⁴ Myanmar has not engaged with the Special Rapporteur since 2017; see <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22553> ; see also report of the Special Rapporteur A/72/382.

⁸⁵ Established by resolution A/HRC/34/22; Final report A/HRC/39/64 at para 3 regretted the lack of cooperation from the government including no entry to the country.

⁸⁶ For the list of countries extending standing invitations to special procedures, see https://spinternet.ohchr.org/_layouts/15/SpecialProceduresInternet/StandingInvitations.aspx .

2. Examining ASEAN ‘Push back’ against universal human rights

In this section, we consider some of the reasons for opposition to, and only partial engagement with, the international rights regime, particularly from ASEAN states.⁸⁷ It is important to note that this lack of engagement cannot necessarily be attributed solely to ASEAN countries’ action or inaction. In particular, the backlogs of treaty bodies are due to limitations of the system itself, despite numerous discussions, reports and attempts at reform.⁸⁸ Moreover, it is also recognised that different member states in the region engage differently with the system, exemplified by the differing levels of ratification.

We recognise that as Madsen, Cebulak and Wiebusch suggest, a valid distinction can be made between push back in the sense of trying to nudge the direction of an institution and push back in the sense of a ‘backlash’ challenging the authority of an international (human rights) body.⁸⁹ We suggest that the relative lack of engagement amongst ASEAN nations is a result of tensions that exist between ASEAN, ASEAN states and the international system as each purport to understand human rights. The discussion focuses on ASEAN particularism, the principle of non-interference promoted by the region, and of the prevalence of national law. We suggest further that these principles, which are deeply embedded in the regional framework, help to explain ASEAN state’s reluctance to fully engage with the international human rights system. After identifying these areas of opposition, we map various theories which purport to explain how, notwithstanding these areas of push back, states can and are compelled to comply with international human rights law. Importantly, we consider these theories not only in light of ASEAN push back but also in the broader context of opposition to rights within which the relationship between ASEAN and the UN must be situated. Examining both together helps to elucidate the extent of the push back against contemporary international human rights law and the likelihood of continuing opposition to the global rights regime.

(i) ASEAN Particularism

Despite the examples of universal rights included in the ASEAN Charter and ADHR, the region’s states advocate particularism or cultural relativism in the form of deference given to national and

⁸⁷ See, for a useful discussion, Alison Duxbury and Hsien-Li Tan, *Can ASEAN Take Human Rights Seriously?* (Cambridge University Press, 2019).

⁸⁸ Philip Alston (ed), *The United Nations and Human Rights: A Critical Appraisal* (Clarendon Press 1992); Navanethem Pillay June 2012, ‘Strengthening the United Nations human rights treaty body system: A report by the United Nations High Commissioner for Human Rights’ (OHCHR 2012); Michael O’Flaherty, ‘Reform of the UN Human Rights Treaty Body System: Locating the Dublin Statement’, in Geoff Gilbert et al. (ed) *The Delivery of Human Rights: Essays in Honour of Professor Nigel Rodley* (Routledge 2011).

⁸⁹ Mikael Rask Madsen, Pola Cebulak & Micha Wiebusch, ‘Backlash against international courts: explaining the forms and patterns of resistance to international courts’, (2018) 14 *International Journal of Law in Context* 197.

regional particularities. Inherent in this approach is an attempt to differentiate the region from the 'West' and the application of universal rights and values in context.⁹⁰ The ADHR reflects these sentiments. For instance, article 7 of the ADHR starts with a traditional restatement of the universality of human rights: 'All human rights are universal, indivisible, interdependent and interrelated.'⁹¹ However, further on in the same article comes the provision stating that 'at the same time, the realization of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds.'⁹² This reflects the decision of Asian governments gathered to pass the Bangkok Declaration of 1993, which in the era of the Vienna World Conference on human rights, sought to dilute universality by reference to national and regional influences:⁹³ While human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds.⁹⁴ Malaysia and Singapore spearheaded the focus on Asian values in the 1990s, seeking to emphasise commonalities in the region.⁹⁵ For Ramshaw then, Article 7 of the AHRD is best read as a middle path between the 1967 ASEAN Bangkok and 1993 UN Vienna Declarations.⁹⁶

Social harmony, collective socio-economic prosperity in a then booming southeast Asia and an emphasis on communitarianism and respect for authority characterised the conceptualisation in the Declaration. The insertion of the aforementioned caveat on ASEAN particularism is directly related to the region's history. An outcome of its periods of colonialism and imperialism has been the promotion of Asian Values rather than those of Western or Eurocentric ideals. Central to the Asian Values concept is the deconstruction of Universalist Western Values by creating a hierarchy of and prioritizing rights (namely economic over political and social) behind a façade built around cultural relativism.⁹⁷ According to Uyen Le, Asian values were consolidated in this declaration reformulating

⁹⁰ For example, during the 1993 World Conference on Human Rights, Indonesian Prime Minister Ali Atalas argued that '(...) Indonesian culture was not as individualistic as the West's and that this had consequences for human rights, democracy and societal organisation'. See Anthony J. Langlois, *The Politics of Justice and Human Rights* (CUP 2014), 19. Similarly, Prime Minister Lee Kuan Yew of Singapore stated in an interview that Asian societies were 'unlike' Western ones, that these societies 'believe that the individual exists in the context of his family', and that '[t]he ruler or the government does not try to provide for a person what the family best provides' Fareed Zakaria and Lee K. Yew, 'Culture Is Destiny: A Conversation with Lee Kuan Yew' (1994) 73 *Foreign Affairs* 113.

⁹¹ Art. 7 ADHR.

⁹² *Ibid.*

⁹³ See Vitit Muntarbhorn 'Rule of Law and aspects of human rights in Thailand: from conceptualization to implementation' in Randall Peerenboom (ed) *Asian Discourses of Rule of Law* (Routledge 2004), 346.

⁹⁴ See Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights (Bangkok Declaration), UN Doc. A/CONF.157/PC/59 (1993), para. 8.

⁹⁵ Prime Minister Mahathir Mohamad of Malaysia and Prime Minister Lee Kuan Yew of Singapore.

⁹⁶ 'The ASEAN human rights declaration 2012' (n 16), 569.

⁹⁷ William J. Jones, 'Universalizing Human Rights The ASEAN Way' (2014) 3 *Int'l J. of Soc. Sci.* 72, 76.

human rights 'to privilege the state over the individual' and emphasised 'the need for respect for national sovereignty and territorial integrity'.⁹⁸

Following the 1997 Asian financial crisis, the concept almost disappeared from discussions. The Asian values argument has been reinvigorated in recent years, for instance through the return to power of Mahathir Mohammed in Malaysia in 2018. He was a leading proponent in the 1990s.⁹⁹ Cultural exceptionalism was the term frequently considered in human rights, especially 'American Exceptionalism' much discussed this century after the USA invaded Iraq in 2003.¹⁰⁰ As noted above, China has also advocated an approach to human rights taking cognisance of the path of development of each state, and recognising discrete approaches, rather than a universalist approach.¹⁰¹

Particularism is also advocated when accounting for differences that exist within the region. A favourite phrase in the region is 'unity in diversity' implying a variety of cultures, religions and polities in the region under one umbrella. The mantra reflects the fact that within ASEAN, there are notable differences and that 'human rights are shaped by each society's specific history, traditions, cultures and religions'.¹⁰² Politically, for instance, ASEAN states range across military rule (Thailand), socialist one party rule (Viet Nam), constitutional monarchy (Cambodia), absolute monarchy (Brunei Darussalam), populist rule (the Philippines) and emergent democracies (Myanmar); dominant religions include Buddhism (Cambodia, Lao PDR, Myanmar, Thailand), Islam (Brunei Darussalam, Indonesia, Malaysia) and Christianity (the Philippines); ethnicities are even more diverse though it is also noted that several minorities and indigenous peoples live across border areas. The region includes the most populous Muslim state in the world - Indonesia - and the three countries in the world with the largest percentage of the population identifying as Buddhist – Myanmar, Cambodia and Thailand. Renshaw traces the evolution of ASEAN as a geographical entity, examining positively the success of maintaining the organisation despite the vastly different political positions, religious backgrounds and histories.¹⁰³

⁹⁸ Uyen P. Le, 'A Culture of Human Rights in East Asia: Deconstructing 'Asian Values' Claims' (2012) 18 U.C. Davis J. Int'l L. & Pol'y 469 (2012). 477–78; Randall Peerenboom, 'Beyond Universalism and Relativism: The Evolving Debates about "Values in Asia"' (2003) 14 *Ind. Int'l & Comp. L. Rev.* 1-85 (2003).

⁹⁹ Mahathir Mohammed, 'Human Rights Against Populism: A Progressive Response to the Politics of Duterte and Mahathir', <https://th.boell.org/en/2018/12/28/human-rights-against-populism-progressive-response-politics-duterte-and-mahathir>

¹⁰⁰ Michael Ignatieff (ed) *American Exceptionalism and Human Rights* (Princeton University Press 2005).

¹⁰¹ See also State Council, 'Seeking Happiness for People: 70 Years of Progress on Human Rights in China' available in English from http://www.china-un.ch/eng/dbtyw/rqrd_1/jzzdh/t1700406.htm

¹⁰² Sriprapha Petcharamee 'The ASEAN human rights architecture: its development and challenges' (2013) 11 *Equal Rights Rev.* 46, 55-56.

¹⁰³ Catherine Renshaw, *Human Rights and Participatory Politics in Southeast Asia* (University of Pennsylvania Press, 2019).

The specific content of reservations to international treaties helps to demonstrate their use in limiting the universal nature of rights in favour of more a context specific approach drawing on the differences highlighted above. Brunei Darussalam's reservation to the CRC, for instance, states that: 'The Government of Brunei Darussalam expresses its reservations on the provisions of the said Convention which may be contrary to the ... beliefs and principles of Islam.'¹⁰⁴ Thus, one of the reasons that ASEAN states might be reluctant to engage with the international system is that it promotes universal values, norms that run contrary to those developed out of the region's history and beliefs. These fundamental differences have also meant opposition to mechanisms such as UN treaty bodies, which necessarily seek to promote compliance with international human rights law.

(ii) Prevalence of national law

ASEAN also shows a preference for national law, subordinating international law in the process. In theory, through ratification of international human rights treaties, Governments undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties. The domestic legal system, therefore, provides the principal legal protection of human rights guaranteed under international law. This, of course, necessarily restricts the ability of governments to enact policies and laws that it sees fit and which are regarded as a direct expression of sovereignty and independence. ASEAN states nevertheless promote domestic law as superior. For instance, the AHRD contains many references to the role of national law, security, and morality in limiting the enjoyment of rights. In particular, article 8 provides that the exercise of rights shall be subjected to limitations only as determined by law, and to meet the just requirements of 'national security, public order, public health, public safety, [and] public morality.'¹⁰⁵

ASEAN states frequently invoke the primacy of their Constitution or of their national laws in cases of conflict with treaty articles, reducing to nil the effectiveness of treaties in the domestic legal order. In addition, such states as Indonesia evidence the absence of domestic legal rules specifying the way that international law, once ratified, enters into force in the Indonesian legal system.¹⁰⁶ This type of behaviour, according to the International Federation for Human Rights, is incompatible with the object and purpose of the treaties and with the logic underpinning international law and its

¹⁰⁴ Brunei Reservation to CRC (available at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-11&chapter=4&lang=en). See also in respect of the application of CEDAW, Malaysia: 'The Government of Malaysia declares that Malaysia's accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia' law.' (available at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-8&chapter=4&lang=en)

¹⁰⁵ Art 8. ADHR.

¹⁰⁶ See, for example, Simon Butt, 'The Position of International Law Within the Indonesian Legal System' *EILL* 26(1). This also raises more general issues regarding the levels of compliance with international law that exist between monist and dualist legal systems.

relationship with national law.¹⁰⁷ Once again, reservations to international treaties offer useful insights in to the ways that international law is restricted. In the case of Malaysia, its reservation to CRC notes that:

The Government of Malaysia accepts the provisions of the Convention on the Rights of the Child but expresses reservations with respect to articles 2, 7, 14, 28 paragraph 1 (a) and 37, of the Convention and declares that the said provisions shall be applicable only if they are in conformity with the Constitution, national laws and national policies of the Government of Malaysia.¹⁰⁸

Similar reservations are submitted from Singapore and Thailand. Nicholas Doyle points out that using national laws in this way would undermine a state's compliance with the obligations contained in international human rights treaties.¹⁰⁹ Yet, examples abound of this in practice: Thailand's lese majesty laws (Article 112 of the Criminal Code of Thailand) have been invoked repeatedly over recent years; in Indonesia an increasing range of laws are deployed to restrict legitimate freedom of expression. Laws are increasingly deployed to restrict the activities of human rights defenders throughout the region. Rather than partnering civil society organisations, ASEAN states have joined the global trend towards new registration and regulation laws for civil society organisations and NGOs.¹¹⁰ Singapore and Malaysia still have strong laws that limit certain freedoms, including the Internal Security Societies Act. Although Malaysia replaced this with Security Offences (Special Measures) Act 2012, the function is similar. The Act aimed to protect the state from political instability, but it can be used to detain opposition leaders criticizing the government.¹¹¹ Across the region, as the world, the SARS-CoV-2 pandemic has resulted in emergency laws being enacted and/or activated, elements of which are, or have the potential to, restrict opposition, expression and demonstrations.¹¹²

National law, when used in this way, can be seen as a way to limit the application of human rights law. International human rights law, which seeks to influence what a state can and cannot do, therefore, is viewed as an affront to national sovereignty and the right of domestic governments to enact their own laws, in line with the particularities of the country in question. The salience attached

¹⁰⁷ Demystifying Human Rights Protection in Asia (n 46), 41.

¹⁰⁸ Malaysia Reservation to CRC (available at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en)

¹⁰⁹ Nicholas Doyle 'The ASEAN Human Rights Declaration and the Implications of Recent Southeast Asian Initiatives in Human Rights Institution-Building and Standard Setting' (2014) 63 ICLQ 67, 9.

¹¹⁰ See, for instance, Cambodia, 2015 Law on Associations and Non-governmental Organisations.

¹¹¹ Abubakar Eby Hara 'The struggle to uphold a regional human rights regime: the winding role of ASEAN Intergovernmental Commission on Human Rights (AICHR)' (2019) 62 Rev. Bras. Polít. Int.

¹¹² See, for example, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 'Disease Pandemics and the freedom of opinion and expression', A/HRC/44/49.

to national law over international law is again a response to periods of the region's colonial past. As Chesterman notes, it results from 'the experience of colonialism [where] for centuries, international law helped justify foreign rule, later establishing arbitrary standards of 'civilization' that were required in order to gain meaningful independence.'¹¹³ It is an attempt to safeguard national sovereignty in the face of international norms which seeks to restrict what a particular government can and cannot do.

(iii) Sovereignty and Non-interference

A third reason that helps explain the limited engagement of ASEAN states with the international human rights system is the principle of non-intervention in domestic affairs.¹¹⁴ Non-confrontation is frequently described as the Asian approach to international relations *par excellence*. It is based on the principle of non-interference in domestic affairs, which in turn is linked to the Westphalian notion of sovereignty. The non-interference doctrine is sacred and very rarely questioned, even in cases of serious human rights violations involving foreign nationals. PR China has also proven a vocal proponent, including at the UN Security Council during discussions on responsibility to protect and humanitarian intervention.¹¹⁵

The importance attached to cooperation rather than non-interference is particularly obvious when examining the ASEAN Intergovernmental Commission on Human Rights (AICHR). As noted, the AICHR was inaugurated in 2009 with powers that include public-awareness raising of human rights; capacity building; encouragement of accession to human rights treaties; promotion of human rights implementation; provision of advisory services; preparation of research studies; promotion of common approaches; preparation and submission of annual reports to the ASEAN. However, unlike other regional mechanisms (OAS, Council of Europe, African Union), AICHR does not have the means to hold states to account. It lacks the mandate to receive complaints, address country situations, offer redress, and call for accountability. The trend of these mechanisms is to concentrate on cooperative programming on the promotion of rights pertaining to various groups, such as women, children, persons with disabilities, and victims of natural disasters. Again, the particular non-confrontational approach adopted by ASEAN emanates from its history and foundational principles

¹¹³ 'Asia's Ambivalence about International Law and Institutions: Past, Present and Futures' (n 43).

¹¹⁴ See for an excellent discussion, *Can ASEAN Take Human Rights Seriously?* (n 87), pp. 126-132; Shaun Narine, 'Asia, ASEAN and the Question of Sovereignty: The Persistence of Non-Intervention in the Asia-Pacific', in Mark Beeson and Richard Stubbs (eds.), *Routledge Handbook of Asian Regionalism* (Routledge, 2012), pp. 155-65; Mathew Davies 'The ASEAN Synthesis: Human rights, Non-Intervention, and the ASEAN Human Rights Declaration' (2013) 14 *GJIA* 51; Daniel Aguirre and Irene Pietropaoli, 'Human Rights Protection the ASEAN Way: Non-Intervention and the Newest Regional Human Rights System' (2012) 1 *Int. Hum. Rights Law Rev.* 276; Gillian Goh, 'The "ASEAN Way": Non-Intervention and ASEAN's Role in Conflict Management' (2003) 3 *SJEA*, 114.

¹¹⁵ On Syria in 2017, for example, see Security Council veto of draft resolution to impose sanctions pursuant to chemical weapon deployment, <https://www.un.org/press/en/2017/sc12737.doc.htm>.

of non-interference and respect for state sovereignty. As noted, several of the member states have experienced not only periods of colonisation, but periods of internal and cross border conflict. Some have been ruled by at times oppressive use of force. Against this backdrop, ASEAN states have sought to vehemently protect hard-won independence by promoting non-interference in internal affairs.

Across the region, a dualist approach to international law is common. Accordingly, international human rights treaties remain recognised at the international level but not necessarily enforceable directly at the national level. Some constitutions in the region, for example, that of Cambodia, do espouse an understanding of human rights drawn from the international treaties the country has accepted. Some countries are avowedly dualist in approaching international law, for example Malaysia.¹¹⁶ VietNam, in contrast, appears to follow a more monist approach.

International human rights mechanisms, which necessarily entail outside actors interfering in the domestic affairs of ASEAN states are, therefore, fundamentally anodyne to the ASEAN way.¹¹⁷ These approaches place ASEAN on a collision course with international human rights law and help to explain the lack of engagement with the UN human rights machinery discussed in the previous section. There are, in addition, other examples of ASEAN reluctance to accept international oversight. For instance, Article 29 CEDAW states that 'Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration...'. However, six states (Brunei, Indonesia, Myanmar, Singapore, Thailand and Vietnam) have submitted reservations. This is similar to reservations in respect of art 30 of CAT where 4 out of 6 (Indonesia, Lao, Thailand and Vietnam) have issued reservations. According to Davies, the 'presumptive deference towards the principle of non-intervention'¹¹⁸ is particularly important given that human rights, with their focus on the relationship between citizens and their governments, are directly related to domestic politics.¹¹⁹ Thus, when considered in light of the region's history and foundational principles, it is perhaps easier to understand the lack of engagement with such mechanisms as treaty body individual complaints mechanisms.

Summing up ASEAN Push Back

¹¹⁶ See for more analysis Jaclyn Neo, 'Incorporating Human Rights: Mitigated Dualism and Interpretation in Malaysian Courts' (2012) 18 Asian Ybk Int. L..

¹¹⁷ Examined in detail in Alison Duxbury and Hsien-Li Tan, Can ASEAN Take Human Rights Seriously? (n 87)

¹¹⁸ Mathew Davies 'An Agreement to Disagree: The ASEAN Human Rights Declaration and the Absence of Regional Identity in Southeast Asia' (2014) 33 J. Curr. Southeast Asian Aff 107, 110.

¹¹⁹ *Ibid.*, 110.

While certainly not exhaustive, the above has sought to demonstrate several reasons for the relative lack of engagement by ASEAN states with the international human rights system. It is evident that the region has adopted a particular style of human rights, one that is deeply embedded in and reflective of the underpinning tenets of ASEAN as a regional institution.¹²⁰ Principles of particularism, national law and non-interference seek to protect hard won independence and safeguard the regions values. For many, this symbiotic relationship between the foundations of ASEAN and the ASEAN system of human rights has prevented meaningful progress in the area of human rights. According to Jones:

The problem with ASEAN's structural configuration lay in its constitutive norms which at once strengthen and shield the state with regards to external actor's latent interference while preventing a disparate collection of states from enacting meaningful internal change. This proceeds due to procedural norms of decision-making which were designed for nascent newly independent states in an environment entirely dissimilar from now.¹²¹

While the particular approach to human rights in ASEAN is subject to much debate, it is nevertheless indisputable that these particularities mean that areas of divergence exist between it and the international human rights regime. When unpacked and examined from the perspective of the region's histories, it is perhaps clear that opposition is deep-rooted. But it is the depth of opposition that raises a fundamental question- how or why might states be compelled to comply with international law and therefore their international human rights obligations?

3. Theories on state compliance with international human rights norms

The above discussion has sought to demonstrate not only ASEAN opposition to international human rights mechanisms and norms, but also the reasons for the push back that exists. Central to this discussion is understanding the strength of opposition rooted as it is in the region's history. How then can this be reversed? What are the incentives, pulls and pushes, that exist to inspire compliance particularly in those contexts where the international rights regime is opposed on ideological grounds? In order to understand how best to promote compliance with international human rights law, even in those contexts opposed to the underlying principles and machinery, scholars have developed a range of theories. From fields such as law, sociology, history and international relations, explanations rooted in neorealism, institutionalism, liberalism and acculturation have sought to explain how a range of actors incentivise, coerce, shame and persuade

¹²⁰ It should, however, be noted that other regions demonstrate similarities. See, for example, Duxbury and Tan *Can ASEAN Take Human Rights Seriously?* (n 87) on African approach to non-intervention (pp 127-129).

¹²¹ 'Universalizing Human Rights The ASEAN Way' (n 97), 82.

states to adhere to international human rights norms. These theories offer potential answers for why ASEAN states, in spite of resistance, might yet comply with human rights.

However, we suggest that these theories and their efficacy in explaining and promoting compliance in ASEAN States must be understood in their broader global context. As noted, literature on the ‘post-human rights era’,¹²² also termed ‘The Endtimes of Human Rights’¹²³ or ‘twilight of human rights law’,¹²⁴ seeks to capture what some see as a crisis of the global human rights project.¹²⁵ This ‘crisis’ is multifaceted but stems, in part, from the ability of leaders to undermine the rights project by laying blame for much of the discontent felt at the foot of the rights movement. Governments are increasingly showing an aversion to globalisation and multilateralism,¹²⁶ and in their place, promoting nationalism, state sovereignty and non-interference in domestic affairs. Whereas once regarded as a normative good, some now view rights as part of a broader project of globalisation that has undermined prosperity, stifled opportunity and eroded national identity, amongst other things.

This broader context of opposition bolsters South East Asian and indeed other states’ aversion to the global rights project further entrenching, and even justifying, the ASEAN-specific approach to human rights. These theories, therefore, cannot be examined in the abstract but must instead be explored in light of the tectonic shifts that have helped undermine the international human rights movement. The discussion below considers ASEAN’s position in light of these broader and deeper shifts at the global level. Based on these limitations, we then advance a non-exhaustive number of recommendations and ideas that might be adopted in order to support future compliance with international human rights norms.

(i) ASEAN Opposition in the context of Democratic Backsliding

Much existing literature identifies the importance of civil society actors and democratic institutions in promoting compliance with international human rights law and UN mechanisms. For instance, theories on liberalism focus on the ability of domestic bodies to mobilise opposition to repressive states.¹²⁷ Some argue that ratification of international human rights treaties, as an example, occurs

¹²² ‘International Law in the Post-Human Rights Era’ (n 3).

¹²³ *The Endtimes of Human Rights* (n 3).

¹²⁴ *The Twilight of Human Rights Law* (n 3).

¹²⁵ Nick Robinson, ‘Defining Rather than Defending Our Human Rights ‘Movement’ (20 July 2017), Open Global Rights, <https://www.openglobalrights.org/defining-rather-than-defending-our-human-rights-moment/>

¹²⁶ The rise of populism relates not only to those countries currently led by populist leaders (e.g. United States, Philippines, Turkey, Poland) but also those in which populist leaders are gaining ground (e.g. Italy, Estonia, France).

¹²⁷ Andrew Moravcsik, ‘Liberal Theories of International Law’ in Jeffrey L. Dunoff and Mark A. Pollack (ed), *International Law and International Relations: The State of the Art* (CUP 2013).

more readily in democratic states because such states are more responsive to domestic groups.¹²⁸ Democratic indicators such as elections, civil society, National Human Rights Institutions (NHRIs) and press freedom motivate leaders to respect the human rights of the populace, although this may be offset during periods of perceived threat.¹²⁹ Others look at relationship between domestic and international civil society actors. As an example, the theory of transnational human rights advocacy networks (TANs) predicts that international human rights regimes can improve actual performance where such networks are strong.¹³⁰ This theory draws on the role of domestic civil society actors but also explores the influence of international actors such as international NGOs (INGOs). These 'networks' are said to consist of international human rights INGOs such as Amnesty International or Human Rights Watch,¹³¹ together with domestic NGOs and other civil society groups, parties, or the media committed to human rights. The effectiveness of such approaches lies in their ability to exert pressure on governments to comply with international standards.

As developed above, the reality is that in several South East Asian states, the civil society space is shrinking. Treaty bodies and special procedures, as well as the Universal Periodic Review, have drawn attention to the shrinking civil society space in numerous reports.¹³² In terms of NHRIs, Indonesia, Malaysia and the Philippines have national human rights institutions with 'A' accreditation, Myanmar and Thailand have a 'B' graded institution.¹³³ Other states do not have a Paris Principles compliant institution. Moreover, the space for democratic contestation is often restricted, again using law as a tool. For example, Cambodia has introduced new and amended existing political laws; new provisions were applied by the Supreme Court in 2017 to dissolve the then principal opposition party in November 2017 (prior to the 2018 general National Assembly election in July 2018) on grounds of planning a 'colour revolution' to overthrow the ruling party. In Thailand, following the 2014 coup and military rule, elections were held in 2019 with rules limiting political activities in place until close to election day and with laws limiting the power of large political parties. In other instances in the region, civil society groups that demonstrate opposition to the government of the day have been banned or significantly impeded, challenging in an era of widespread corruption charges. Malaysia's former Prime Minister, for example, is implicated in the 1MDB scandal, a contributing factor in him losing the 2018 election. The ongoing 'war on drugs' in

¹²⁸ *Ibid.*

¹²⁹ Ann-Marie Clark, 'Laws, talk, and human rights: The impact of treaty ratification, UN criticism, and democratic change on torture' (2017) 17 J. Hum. Rights 1, 1.

¹³⁰ Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, (ed.) *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press 1999); 'Human Rights in a Globalizing World: The Paradox of Empty Promises' (n 32).

¹³¹ It is noted that these particular INGOs are not especially welcome in several ASEAN states.

¹³² See, for example, Report of the Special Rapporteur on the situation of human rights in Cambodia A/HRC/42/60, 27 August 2019, para. 53.

¹³³ List available from <http://www.ohchr.org/Documents/Countries/NHRI/ChartStatusNHRIs.pdf>.

the Philippines continues to be challenging; with an OHCHR report thereon presented to the June 2020 Human Rights Council.¹³⁴ Beyond the region, changes in political representation are apparent including, in 2018, PR China's National People's Congress approved the removal of the two-term limit on its presidents; Xi Jinping could theoretically remain in power for as long as he wishes.

These occurrences are not necessarily novel for the region. The difficulty is that whereas in the past, reducing the civil society space and rolling back on democratic freedoms were met with a degree of push back from the international community, today, countries that were once part of this push back are now adopting the same approaches. For instance, a number of countries have invoked disparaging terms to describe civil society organisations. The former British Prime Minister Theresa May has previously denounced 'activist left wing human rights lawyers' who dare to challenge British forces on alleged torture in Iraq.¹³⁵ The same observation holds without difficulty with respect to Poland, Hungary, and other countries of Eastern Europe.¹³⁶ For instance, Viktor Orbán's "State of the Nation" called on Hungarians to 'reject the fake civil society activists - fattened on their money - who want to tell us how to live and with whom, how to speak, and how to raise our children'.¹³⁷

Various leaders have also sought to utilise national law to recapture aspects of sovereignty that are perceived as being lost to the international sphere. Under a range of names - democratic backsliding, constitutional rot, democratic decay - scholars have noted the practice of leaders utilising the national legal space to undermine rights.¹³⁸ Through incremental constitutional and legislative changes, domestic actors rescind the sovereign space of the legal process to draw back on liberal ideas that have permeated the domestic legal arena, justifying their actions by stoking and playing on fears. In much the same way that ASEAN countries seek to limit or manipulate the judiciary, other countries increasingly adopt similar strategies.

Thus, despite the importance attached to civil society and domestic institutions in promoting compliance with international human rights law under various theories, a number of ASEAN countries are actively seeking to limit the space for doing so. They are not alone and other states, paradoxically previously part of the push back against ASEAN states, are adopting similar

¹³⁴ Report of the High Commissioner, submitted pursuant to Human Rights Council resolution 41/2 (2019), A/HRC/44/22.

¹³⁵ Samuel Osborne, Theresa May speech: Tory conference erupts in applause as PM attacks 'activist left wing human rights lawyers' (5 October 2016) *The Independent*.

¹³⁶ Jacques Rupnik 'La démocratie illibérale en Europe centrale', *Esprit*, 2017, cited in Laurence Burgogues-Larsen, 'Populism and Human Rights: From Disenchantment to Democratic Riposte' (2019), *iCourts Working Paper Series*, No. 156 at 15 note 53.

¹³⁷ See <http://abouthungary.hu/speeches-and-remarks/prime-minister-viktor-orbans-state-of-the-nation-address/>

¹³⁸ See Tom Gerald Daly 'Democratic Decay: Conceptualising an Emerging Research Field' (2019) 11 *HJRL* 9.

approaches. This brings us on to a much broader issues of states pushing compliance with human rights on ASEAN states.

(ii) Increasing Push Back against Multilateralism

Other research focuses on the pulls and pushes for state compliance that emerge from multilateralism. Institutionalism maintains the realist view that states are generally self-interested and that the international realm is archaic.¹³⁹ However, this school of thought contends that meaningful and lasting forms of cooperation are possible under the condition of anarchy.¹⁴⁰ Institutional Liberalism provides one basis for political authority, conceived as a 'fusion of power and legitimate social purpose'.¹⁴¹ According to Zacher and Matthew, international cooperation is key to maximising benefits and minimising damage of interdependence between states, cooperation being crucial for realising human rights and freedoms.¹⁴²

Approached from a regime theory perspective, which Neumeyer notes can be understood as a refinement of institutionalism, international treaties are thought to create binding obligations on the ratifying parties, which countries aspire to honour.¹⁴³ Parties to international treaties generally aspire to comply in the spirit of *pacta sunt servanda*, where 'compliance is the normal organizational presumption'.¹⁴⁴ As Hathaway acknowledges, treaties are generally complied with because of the 'rational utility-maximizing activity of states pursuing their selfinterest' and so regimes encourage participation with a focus on longer rather than immediate goals.¹⁴⁵

For scholars of liberal institutionalism, state interests can be best pursued through cooperation in international organisations. The more that a state or region is embedded within the institution, the greater the pull to comply with their norms. In this way, states comply with institutional norms because they determine that doing so will be in their material interests. Perhaps it is telling that half

¹³⁹ Robert O. Keohane, 'Twenty Years of Institutional Liberalism' (2012) 26 *International Relations* 125; Robert O. Keohane, *Power and Governance in a Partially Globalized World* (Routledge 2002).

¹⁴⁰ Arthur A. Stein, 'Neoliberal Institutionalism' in Christian Reus-Smit and Duncan Snidal (ed.) *The Oxford Handbook of International Relations* (OUP 2008).

¹⁴¹ John R. Ruggie, 'International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order' (1982) 36 *International Organization* 379, 382.

¹⁴² Mark Zacher and Richard Matthews 'Liberal International Theory: Common Threads, Divergent Strands', in Charles W., Kegley Jr. (ed) *Controversies in International Relations Theory: Realism and the Neoliberal Challenge* (Red Globe Press, 1995), 118.

¹⁴³ Eric Neumayer 'Do International Human Rights Treaties Improve Respect for Human Rights?' (n32)

¹⁴⁴ Abram Chayes and Antonia H. Hayes 'On Compliance' (1993) 47 *International Organization* 175, 179 cited in Eric Neumayer 'Do International Human Rights Treaties Improve Respect for Human Rights?' (n 32), 928.

¹⁴⁵ Do Human Rights Treaties Make a Difference?' (n 3), 1948.

of ASEAN member states have not yet been candidates for Human Rights Council membership – Brunei Darussalam, Cambodia, Lao PDR, Myanmar and Singapore.¹⁴⁶

As has been discussed above, ASEAN state's engagement with UN mechanisms has been inconsistent and at times, overtly confrontational. In mapping ASEAN reluctance according to its history, the salience attached to regionalism and regional institutions over international multilateral organisations like the UN demonstrates the strength of push back that exists in the region. The result is the partial acceptance of treaties and the variations in deference offered to UN mechanisms. Such aversion is, however, not new. What is new is the broader push back against collective action that undermines arguments based on multilateralism and its supposed benefits more generally. The US, for instance, has been at the forefront of efforts to undermine the UN human rights machinery. Invoking the much-versed mantra of 'Make America Great', bilateralism is winning the day over multilateralism. President Trump directly attacked the Human Rights Council: 'We get nothing out of the United Nations. They don't respect us, they don't do what we want, and yet we fund them disproportionately ...'.¹⁴⁷ Rhetoric was followed in reality when the US withdrew from the Council in June 2018, its ambassador calling the organisation 'a protector of human rights abusers and a cesspool of political bias'.¹⁴⁸ Israel was a point of contention for the USA and has itself withdrawn from some Council processes, notably the working group of the second cycle of universal periodic review.¹⁴⁹ PR China has sought to undermine the UN claiming criticisms of its human rights record is 'politically driven'. It has blocked critical nongovernmental organizations and activists from attending UN forums while letting representatives of government-sponsored groups participate in them and speak widely. Moreover, these efforts to counter multilateralism are arguably supported by similar trends in regard to other multilateral fora. In the UK, governments have regularly threatened to repeal the Human Rights Act and with it the possibility of direct consideration of core human rights in national courts. Others, such as Russia and Poland, have ignored European Court of Human Rights judgements. In 2020 Poland indicated its intention to withdraw from the Council of Europe's Convention on preventing and combating violence against women and domestic violence.¹⁵⁰ Former President of Venezuela, Hugo Chavez, opted not to recognise the Inter-American Court of Human

¹⁴⁶ For full list 2006-2019, see www.ohchr.org/EN/HRBodies/HRC/Pages/Membership.aspx, Indonesia is reelected for 2020 so no change.

¹⁴⁷ New York Times. 2016. Transcript: Donald Trump Expounds on His Foreign Policy Views. 26 March. <http://www.nytimes.com/2016/03/27/us/politics/donald-trump-transcript.html>.

¹⁴⁸ See the warning statement in 2017 including Ambassador Haley in Geneva - <https://geneva.usmission.gov/2017/06/06/ambassador-nikki-haley-address-to-the-u-n-human-rights-council/> and then the withdrawal statement by Ambassador Haley and Secretary of State Mike Pompeo joint statement/announcement, available on video at <https://edition.cnn.com/2018/06/19/politics/haley-pompeo-human-rights-bias/index.html>

¹⁴⁹ See Human Rights Council organisational decision A/HRC/OM/7/1 . After frenetic diplomatic negotiations, Israel participated in a rescheduled working group and has maintained compliance with its commitments thereafter.

¹⁵⁰ For a July 2020 news report thereon, see for example <https://www.reuters.com/article/us-poland-eu-idUSKCN24Q0DG> .

Rights.¹⁵¹ Across Africa too, there is evidence of push back against the regional human rights mechanisms.¹⁵² Institutional arguments assume countries interpret inclusion in institutions will bring about benefits. Yet, in the current context, it seems less likely those institutionalism arguments hold the same sway as they once did.

Thus, despite the importance attached to institutionalism as a viable factor in influencing state compliance with international human rights law and mechanisms, today ASEAN-specific opposition is strengthened by a wider trend away for multilateral co-operation. As part of this trend, institutionalism is arguably losing its force in promoting compliance.

(iii) ASEAN Opposition in a Context of Changing Power

Others focus more on the role of states in promoting compliance. In the context of ASEAN, irrespective of the strength of opposition, Western states, espousing the merits of international human rights standards, can find ways to promote compliance in the region. For example, realism in international relations posits that states are unitary, self-interested actors, operating in an anarchic global society.¹⁵³ Scholars from the realist school of thought argue that states comply with international human rights law if it is in their self-interests to do so. This is often approached from the perspective of looking at the ways in which powerful states coerce weaker states to ratify treaties, often in the form of economic incentives. According to Avdeyeva, for instance, under the logic of coercion, states change the behaviour of other states not by altering their normative positions, but by changing their cost-benefit calculations.¹⁵⁴ In this vein, Hathaway introduces the concept of 'collateral consequences', which she suggests arise when domestic and transnational actors premise their actions toward a state on the state's decision to accept or reject international legal rules.¹⁵⁵ Magesan argues that there are significant economic returns to treaty ratification. Countries that participate in HRTs receive more foreign aid than those that do not,¹⁵⁶ while Peeremboom has analysed the financial drivers in human rights performance.¹⁵⁷ Posner, for his part,

¹⁵¹ On more widespread push back against the institutions, see Ximena Soley and Silvia Steininger, 'Parting ways or lashing back? Withdrawals, backlash and the Inter-American Court of Human Rights', (2018) 14 *International Journal of Law in Context* 237.

¹⁵² See Tom Daly and Micha Wiebusch, "The African Court on Human and Peoples' Rights: Mapping Resistance against a Young Court" (2018) 14 *International Journal of Law in Context* 294.

¹⁵³ Jack Donnelly, 'The Ethics of Realism', in Christian Reus-Smit and Duncan Snidal (ed.) *The Oxford Handbook of International Relations* (Oxford University Press 2008).

¹⁵⁴ Olga Avdeyeva, 'When Do States Comply with International Treaties? Policies on Violence against Women in Post-Communist Countries' (2007) 51 *ISQ* 877, 879.

¹⁵⁵ Oona A. Hathaway, 'Why Do Countries Commit to Human Rights' (2007) 51 *Int. J. Confl. Res.* 588.

¹⁵⁶ Arvind Magesan, 'Human Rights Treaty Ratification of Aid Receiving Countries' (2013) 45 *World Development* 175.

¹⁵⁷ Randall Peeremboom 'Show me the money: the dominance of wealth in determining human rights performance in Asia' (2004) 15 *DJICIL* 75.

advances the claim that developing nations ratify due to pressure from the West.¹⁵⁸ In these examples, powerful, often Western states, seek to incentivise less powerful states to comply with international human rights standards.

Alternatively, more powerful states and other actors can also seek to promote compliance with international human rights law through other means. 'Naming and shaming', for instance, is the idea that states can be 'persuaded' to comply with international human rights law by highlighting failures to do so in the past. The strategy of naming and shaming countries into compliance with international human rights obligations is designed to 'shine a spotlight on bad behavior [in order to] help sway abusers to reform'.¹⁵⁹ Much extant work expects the policy to reduce repression because shamed states seek to get out of the unfriendly spotlight¹⁶⁰ or are persuaded to adopt new norms respecting human rights.¹⁶¹ The central tenet of this model, according to Krommendijk, is that states are committed to maintaining their reputation for abiding by their international law obligations, because this ensures that other states will cooperate and enter into agreements with them in future.¹⁶² In practice it is a combination of leaders not wanting to 'lose face' internationally and wishing to posit their state as a global player/leader on the international stage.¹⁶³ This resonates strongly within ASEAN, indeed elsewhere in Asia, as it is linked to long established practices of diplomacy and business with respect, hierarchy and honour deeply embedded.¹⁶⁴ Different stakeholders and mechanisms can both directly and indirectly involve themselves in 'naming and shaming.' UN mechanisms, such as treaty bodies, special procedures and inquiry procedures, can be seen to directly name and shame countries. In addition, while a range of actors feed into the functioning of UN mechanisms, civil society organisations and even citizens can also use the work of treaty bodies as the basis for further shining a spotlight on apparent state failings. Goodhart examines this regime concept of human right, concluding that 'as the inter-state consensus on human rights unravels, the enforcement capacity of the Regime [including the UN mechanisms] ... atrophies'.¹⁶⁵

¹⁵⁸ Eric A. Posner, 'Human Welfare, Not Human Rights' (2008) 108 Colum. L. Rev. 1758, 1679.

¹⁵⁹ Emilie M. Hafner-Burton, 'Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem' (2008) 62 Int'l Org. 689, 690.

¹⁶⁰ *The Endtimes of Human Rights* (n 3).

¹⁶¹ *The Power of Human Rights: International Norms and Domestic Change* (n 130).

¹⁶² Jasper Krommendijk 'The domestic effectiveness of international human rights monitoring in established democracies. The case of the UN human rights treaty bodies' (2015) 10 Rev Int. Organ. 489.

¹⁶³ International relations draws on concepts espoused by Confucius and Dao/Tao as well as more recent expositions of sociologists including Goffman (see Erving Goffman, *The Presentation of Self in Everyday Life* (Vintage Books 1956).

¹⁶⁴ See, for example, Deepak Nair 'Saving face in diplomacy: A political sociology of face-to-face interaction in the Association of Southeast Asian Nations' (2019) 25 EJIR 672.

¹⁶⁵ Michael Goodhart, 'How do human rights matter?' in Mahmood Monshipouri (ed) *Why Human Rights Still Matter in Contemporary Affairs* (n2) at p29.

Yet, in these theories, there is a distinct direction of travel, the existence of which is necessary for realism-based arguments to hold: powerful states seek to influence less developed states to adhere to those standards that the former seeks to advance on the latter. There is an assumption, however, that more powerful states prescribe to a set of norms and advance these ideas on a less powerful state through incentives of coercion. The reality is that superpowers are increasingly demonstrating a lack of regard for human rights. Again, the US offers a useful example. Rather than championing human rights, under President Trump there has been a systematic undermining of the rights of migrants, women, children and certain sections of the armed forces. Such dynamics raise questions about who the shamers or persuaders are. Echoes of the post-colonial critique are reflected – Makau Mutua and his ‘Savages, Victims, Saviors’ metaphor.¹⁶⁶ As Rodríguez-Garavito and Gomez highlight:

In a multipolar world, the old ‘boomerang’ approach of appealing to Washington, London, or Geneva so that global north governments would pressure their global south counterparts to comply with international human rights standards [is] already losing its effectiveness. With populist leaders stoking nationalism and violating the basic rights of vulnerable groups, such as religious and racial minorities, both in the global north and global south, the limited effectiveness and legitimacy of naming and shaming strategies focused on the traditional centres of power have been further eroded.¹⁶⁷

In the post-human rights era, in other words, it is no longer to be assumed that Western states are in fact liberal, nor that they will endeavour to promote rights on other states. This undermines arguments that depart from a position which relies on this assumption.

Moreover, other, less liberal, states are emerging as important international players, often guided by different normative agendas. China stands out as an important example. It has sought to downplay individual rights, emphasizing state-led development, national sovereignty, and non-intervention at the council. China’s first penned resolution, in 2017, for example, highlighted development while neglecting individual rights.¹⁶⁸ Theories that seek to argue that powerful actors can incentivise, persuade or create a context where compliance is legitimate presuppose the existence of actors that advance international human rights norms. This is often not the case. Scholars have focused on the emerging global political marketplace of change. Here, according to Carothers and Samet-Marram,

¹⁶⁶ See Makau Mutua *Savages, Victims and Saviors: The Metaphor of Human Rights* (2001) 42 Harv. Int'l L.J.201

¹⁶⁷ César Rodríguez-Garavito and Krizna Gomez, ‘Populism and human rights: a new playbook’ (28 June 2018) Open Global rights, <https://www.openglobalrights.org/illiberal-democracies-and-human-rights-a-new-playbook/>.

¹⁶⁸ Resolution A/HRC/RES/35/21 The contribution of development to all human rights (<https://www.right-docs.org/doc/a-hrc-res-35-21/>).

the efforts of western democracies to ‘affect the course of political change’ around the world are less dominant than hitherto was the case.¹⁶⁹

In his paper on human rights and populism, Philip Alston captures this changing landscape in foreboding a coalition of the willing. He notes that ‘[T]he coalition will consist of governments of many different stripes which are keen to challenge and dilute existing human rights standards and especially to undermine existing institutional arrangements which threaten to constrain them in any way’.¹⁷⁰ Theories such as realism and naming and shaming have sought to capture, quite rightly, a particular state in international affairs where human rights were largely uncontested as a valid moral framework. Today, however, tectonic shifts now undermine their relevance in a world of changing power where it is not as clear which states are persuading, incentivising, or coercing, nevermind what norms they are seeking to espouse.

Thus, while in the past ASEAN opposition was met with a degree of resistance from other states, particularly those that utilised their relative economic and political influence to advance rights, in the post-human rights era, this strategy seems less likely. Rather, today, those powerful nations once responsible for promoting rights appear to be less willing to do so, leaving space for other, less liberal countries to promote their own agendas.

(iv) ‘Glocal’ Challenges to the Persuasion of Norms and their Legitimacy

Other theories focus less on coercion, domestic institutions, and/or international multilateral institutions and instead direct attention towards the altering of beliefs. According to norm-based approaches such as constructivism, countries support or oppose treaties on substantive grounds, and will only join those treaties that affirm their normative, cultural, or ideological commitments. Consider the view of Finnemore: ‘[s]ocially constructed rules, principles, norms or behaviour, and shared beliefs may provide states, individuals, and other actors with an understanding of what is important or valuable and what are effective and/or legitimate means of obtaining those valued goods.’¹⁷¹ Given the salience attached to treaty content, norm-based approaches to treaty membership place less emphasis on formal enforcement measures.¹⁷² Genuine treaty commitments, Cole notes, render provisions designed to enforce, coerce, or evade compliance unnecessary because ‘true believers’ comply even in the absence of such measures.¹⁷³ However, a common

¹⁶⁹ Thomas Carothers and Oren Samet-Marram, ‘The New Global Political Marketplace of Political Change’ (2015) Carnegie Endowment for International Peace, Research paper.

¹⁷⁰ The Populist Challenge to Human Rights’ (n 2), 3.

¹⁷¹ Martha Finnemore, *National Interests in International Society* (Cornell University Press 1996), 2.

¹⁷² ‘On Compliance’ (n 144), 204.

¹⁷³ Wade M. Cole, ‘Hard and Soft Commitments to Human Rights Treaties, 1966–2000’ (2009) 24 *Sociological Forum* 563, 571.

perspective on values and norms amongst states is not presumed. Instead, constructivists highlight the importance of persuading states to accept the normative content of human rights treaties. Persuasion can be described as a process of social learning, in which 'actors are being convinced of the appropriateness and validity of new norms'¹⁷⁴ or as 'the active, often strategic, inculcation of norms'.¹⁷⁵ In contrast to realist perspectives, which look to forms of coercion to impose a specific viewpoint on another state, constructivists are more concerned with facilitating a genuine change of perspective. The touchstone of this approach, as per Jinks and Goodman,¹⁷⁶ is that actors are consciously convinced of the truth, validity, or appropriateness of a norm, belief, or practice. This poses some challenges when viewed in the context of ASEAN. As Davies comments, in line with constructivist arguments, 'actors are convinced to adopt new standards because those new standards are thought to hold superior moral weight to the ones they are replacing'.¹⁷⁷

In the context of ASEAN, we have examined how states, as a result of their histories, promote particularism and prioritise national and regional context over the universal and global. Universalism runs contrary to these ideas and international human rights norms are perceived as an imposed Western idea. Given this deep-rooted stance on particularism, it is arguably unlikely that ASEAN states can be convinced of the appropriateness and validity of new norms'.¹⁷⁸ Rather, what has emerged in the context of ASEAN is human rights with Asian characteristics. Moreover and as demonstrated above, with such states as the US drawing back on the salience attached to rights, it is less clear who these persuaders are.

In response, others focus less on the act of persuasion and more on the sense of legitimacy that is gained by adhering to international standards. A growing interdisciplinary field introduces a mechanism of social influence known as acculturation, which has been described as 'a process whereby actors respond to social and cultural pressures of a surrounding environment to formally assimilate other actors in a group'.¹⁷⁹ At the core of acculturation is the contention that states, through interactions with other states and existing as members of a global society, come to the realisation of what is and is not acceptable behaviour. For some, governments might imitate the behaviour of other governments in order to deal with uncertainty in their environment. Even

¹⁷⁴ 'When Do States Comply with International Treaties? Policies on Violence against Women in Post-Communist Countries' (n 154), 880.

¹⁷⁵ Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change' (1998) 52 *Int'l Org.* 887.

¹⁷⁶ Darren Jinks and Ryan Goodman 'How to Influence States: Socialization and International Human Rights Law' (2004) 54 *Duke Law J.* 621, 635.

¹⁷⁷ 'An Agreement to Disagree: The ASEAN Human Rights Declaration and the Absence of Regional Identity in Southeast Asia' (n 110).

¹⁷⁸ 'When Do States Comply with International Treaties? Policies on Violence against Women in Post-Communist Countries' (n 154), 880.

¹⁷⁹ *Ibid.*, 881.

without military or material pressures, governments might adopt a certain policy if they see that it works for other governments.¹⁸⁰ For others, such as Simmons, compliance by a particular country is often associated with ratification by other countries within that country's region.¹⁸¹ Certainly when reviewing international documentation on ASEAN states, there is some evidence of commonality. AICHR's workplans could be viewed as fitting this theory, based as they are on areas of agreed common interest amongst the states.

For the most part, the literature on acculturation centres on the issues of legitimacy and reputation. According to Jasper Krommendijk, states are committed to maintaining their reputation for abiding by their international law obligations and this ensures that other states will cooperate and enter into agreements with them in future.¹⁸² Wotipka and Tsutsui's core argument is that if governments experience an acculturation process through which they recognize the legitimacy gain that treaty ratification produces, then we can better understand why so many of them ratify HRTs despite the sovereignty cost.¹⁸³ They argue that the growing prominence of global human rights norms, which had become strong by the 1960s and have grown even stronger since, has had the effect of socializing states into ratifying international HRTs.¹⁸⁴ The central component of these theories is that state determine that complying with international human rights law increases a state's legitimacy. This then connects to other theories such as those of realism noted above.

However, legitimacy is related to acceptance and acceptance presupposes a degree of consensus. For instance, drawing on insights from the institutionalist approach in sociology, Hafner-Burton and Tsutsui argue that states follow 'global scripts' in their search for legitimacy in international society and adopt globally legitimated policies and political structures somewhat independent of local environments.¹⁸⁵ They continue that human rights ideas are certainly part of the 'global script' in the contemporary world, and ratification of HRTs increases the legitimacy of the state, thus leading to an isomorphic outcome: ratification by an overwhelming majority of the nation-states in the world. For Hill Jr then, the concept of legitimacy is intimately connected to the norm cascade process: when a sufficient number of states have adopted an international norm a kind of peer pressure emerges

¹⁸⁰ Christine Min Wotipka and Kiyoteru Tsutsui 'Global Human Rights and State Sovereignty: State Ratification of International Human Rights Treaties, 1965–2001' (2008) 23 *Sociological Forum* 724.

¹⁸¹ Beth A. Simmons, *Mobilizing Human Rights: International Law in Domestic Politics* (Cambridge University Press, 2009), 88.

¹⁸² 'The domestic effectiveness of international human rights monitoring in established democracies. The case of the UN human rights treaty bodies' (n 162).

¹⁸³ Global Human Rights and State Sovereignty: State Ratification of International Human Rights Treaties, 1965–2001' (n 163).

¹⁸⁴ *Ibid.*

¹⁸⁵ 'Human Rights in a Globalizing World: The Paradox of Empty Promises' (n 3), 121.

that can coerce other states into adopting the norm, resulting in a “norm cascade”.¹⁸⁶ Nielsen and Simmons suggest that in a global macrosociological context, treaty ratification may be viewed as one instantiation of a diffusing ‘logic of appropriateness’ that encourages governments to present themselves to the broader international community and to their own citizens as actors that affirm the basic rights of individuals.¹⁸⁷

But are these same arguments likely to hold in the current context where, for various reasons, human rights norms are increasingly presented as illegitimate? In other words, while theories on persuasion and acculturation presuppose an environment where countries assume complying with rights raises legitimacy, without the same consensus on the legitimacy that arises from adhering to international human rights law, is this really the case? The point is that constructivist arguments largely take as given the fact that human rights are perceived as legitimate and promoted by all states. The era of discontent with the global human rights project challenges that with the new coalitions of willing states opposed to rights are emerging.

This question of legitimacy is equally true when we look from the bottom up. Theories on liberalism, for example, not only presuppose the existence of civil society. They also take as given that human rights are generally supported. According to Hill Jr, states that fail to abide by prevalent international norms risk losing the support of their citizenry, since citizens in modern states are likely to evaluate the performance of their government relative to the performance of other governments.¹⁸⁸ He continues that, disturbed by the fact that their state is failing to provide a level of rights protection commensurate with that of other states, citizens will be less likely to comply with their government’s directives hence the government’s position in power will be weakened.¹⁸⁹ Yet, populist leaders have shown themselves particularly skilled at attacking all aspects of the global, including human rights, and this is appearing to provide the basis for pushing back against the very idea of rights in some societies. Fagan focuses on the persistent labelling of human rights and their defenders as ‘enemies of the people’ and the trend towards ‘right-wing political opportunists’ portraying as undemocratic support of rights of others, be they minorities or foreigners.¹⁹⁰ ‘Claiming to speak for “the people,” [populist leaders] treat rights as an impediment to their conception of the majority will, a needless obstacle to defending the nation from perceived threats and evils...’¹⁹¹ Kenneth Roth advances that

¹⁸⁶ Daniel W. Hill Jr. ‘Estimating the Effects of Human Rights Treaties on State Behavior’ (2010) 72 *The Journal of Politics* 1161, 1164.

¹⁸⁷ Richard A. Nielsen and Beth A. Simmons ‘Rewards for Ratification: Payoffs for Participating in the International Human Rights Regime?’ (2015) 59 *ISQ* 197, 198.

¹⁸⁸ ‘Estimating the Effects of Human Rights Treaties on State Behavior’ (n 186), 1164.

¹⁸⁹ *Ibid.*

¹⁹⁰ Andrew Fagan, ‘The Human (Rights) Face of Populism’ (4 September 2018) Fabien Society, <https://fabians.org.uk/the-human-rights-face-of-populism/>

¹⁹¹ Kenneth Roth, ‘The Dangerous Rise of Populism - Global Attacks on Human Rights Values’ (2017) 70 *J. Int. Aff.* 79.

‘a growing number of people have come to see rights not as protecting them from the state but as undermining governmental efforts to defend them.’¹⁹²

Opposition to the content of rights is, therefore, glocal in nature: it is global in emerging from states that are increasingly pushing back against the global rights regime, and at the same time local, with populations influenced by the rhetoric of elites who seek to perpetuate and manifest this sense of discontent.

5. Responding: some recommendations

The current focus of existing theories on compliance with international human rights law is to look retrospectively on what has gone before, assessing why states have been compelled to adopt treaties and enforce human rights standards and thus offer ways to ensure compliance in the future. Yet, the reality is that the current global context of opposition raises new issues, which may well undermine the efficacy of these theories. Powerful states are increasingly less likely to advocate human rights. The lack of consensus undermines persuasion and acculturation. The irrefutable supremacy of national law and sovereignty pushes back against international involvement. Discussions on ASEAN states and their relationship with UN mechanisms must, therefore, be understood in this broader context. As a case study, the region and the countries within it demonstrate the strength of the challenge faced - where once any opposition to the human rights project, particularly in what some see as its zenith, was met with resistance, increasingly the impact of that resistance is being eroded. But the real significance is to illustrate the broader challenge of human rights more generally.

So, what are the opportunities for arresting the backsliding, re-establishing the era of rights and including all states in the global project? Fagan identifies that ‘[h]ow the human rights community addresses and answers this question will [...] largely determine the fate of human rights in the proceeding decades of the twenty-first century.’¹⁹³ If the human rights community fails to critically engage with the growing domestic challenges that it confronts, ‘it is highly likely that it will experience the same fate as that which appears to await other constituents of what is cast as the liberal elite; an unedifying descent into a socially exclusive, politically unpopular credo for a diminishing number of supporters, with ever diminishing influence beyond their own social enclaves.’¹⁹⁴ César Rodríguez-Garavito and Gomez have noted this current crisis could have unexpected positive effects by pushing the human rights movement to make changes in its

¹⁹² *Ibid.*

¹⁹³ ‘The Human (Rights) Face of Populism’ (n 190).

¹⁹⁴ *Ibid.*

architecture and strategy that while imperative before, are urgent now.¹⁹⁵ This mirrors the view of Strangio that ‘With authoritarian politics on the rise, now is the time ... to adopt more pragmatic and flexible tactics for the advancement of human betterment.’¹⁹⁶ Philip Alston argues that ‘human rights proponents need to rethink many of their assumptions’, reflect broadly then re-evaluate their strategies and outreach’.¹⁹⁷

According to these views, the current era of discontent is both a challenge and an opportunity where availing of the latter requires identifying and overcoming the former: ‘Developing this selfcritical understanding will require an acknowledgement of (and subsequent engagement with) deep internal shortcomings and limitation.’¹⁹⁸ We suggest that with the shifting global context, existing theories on compliance become grand theories- abstract. The final section of this paper suggests that what is required is to focus on more specific aspects that emerge from the limitations of existing explanations. Thus, we offer a number of modest proposals not as a failsafe panacea, but as a necessary conversation starter.

(i) Focus on (re)building up civil society

Civil society organisations play a critical role in protecting and promoting rights. For instance, in regards to the development of human rights in the region, scholars such as Duxbury and Tan argue that the gradual improvements in the human rights records of ASEAN states was attributable, in part, to the push by civil society and the international community for norms of human rights and democracy to be implemented.¹⁹⁹ Nevertheless, because civil society groups are increasingly silenced or scared into some form of submission, the potential to influence the update of human rights is often significantly constrained. Building local civil society space through, for instance, technical and legal assistance is a necessary first step. When civil society is able to function and flourish, governments can be held to account and pressure to comply with international human rights norms can be exerted.

Within the UN itself, engagement with civil society has become more pronounced: shadow reports to treaty bodies are almost standard; civil society participates in the UPR at the adoption stage;²⁰⁰ and there is widespread engagement with the salient reports of special procedures. Impetus for greater prominence for civil society can also be garnered through the UN Sustainable Development

¹⁹⁵ ‘Populism and human rights: a new playbook’ (n 167).

¹⁹⁶ Sebastien Strangio, ‘Welcome to the Post-Human Rights World’ (7 March 2017) Foreign Policy, <https://foreignpolicy.com/2017/03/07/welcome-to-the-post-human-rights-world/>

¹⁹⁷ ‘The Populist Challenge to Human Rights’ (n 2).

¹⁹⁸ The Human (Rights) Face of Populism’ (n 190).

¹⁹⁹ *Can ASEAN Take Human Rights Seriously?* (n 87), 343

²⁰⁰ As provided for in Human Rights Council resolution 5/1.

Goals in pursuance of Agenda 2030. This can be useful in the South East Asian context as the SDGs are relatively non-controversial with all the region's states engaged in pursuing their localisation plans. The UN sustainable development goals are predicated on partnerships, inter-state at the international level and with a range of entities at the national level. Civil society has a strong role to play, both in terms of participation and for accountability. This entails, or should entail, engagement with civil society during the drafting of the localisation plans and their participation in the realisation of the resultant plan. Civil society are envisioned in SDG17 as being a key partner of government in the realisation of the goals. Indeed, they represent a major source of intelligence on who might be left behind during the development process, important when many countries in the region are undergoing very rapid development and change. Civil society organisations with strong grass roots networks are ideally placed to aid the government in identifying vulnerable groups and remediating the vulnerabilities. Moreover, engagement with civil society organisations can be crucial for delivering development projects at the local level. Civil society organisations also have a role to play in holding the government accountable for its progress, or lack thereof, against the SDGs.

In the UPR reports of ASEAN states, it is clear that areas regularly commented on across all or most states include judicial processes, freedom of expression, freedom of assembly and of association. However, as Ramcharan and Gomez argue, there is a gap in the protection of many of these rights in the region and the UPR cycles did little to engage with expressed civil society concerns.²⁰¹ Their stakeholder analysis on engagement of civil society found worrying gaps in the substantive areas covered across the region's reviews.²⁰² There are similar difficulties at the regional level, demonstrating the need for further efforts to facilitate cooperation with civil society actors. For instance, an in-house assessment by the ASEAN Civil Society Conference/ASEAN Peoples' Forum (ACSC/APF) concluded that in the ten years of engagement with the Association of Southeast Asian Nations (ASEAN) from 2005 to 2015, "individual ASEAN member countries have consistently resisted and vacillated with regards civil society participation and engagement."²⁰³ It should be noted that positive steps were taken with the publishing of Guidelines On The AICHR's Relations With Civil Society Organisations. Nevertheless, differences continue regarding expectations: while ASEAN often expects civil society to support ASEAN decisions, civil society organisations wish to have a larger role in consultation and decision-making processes. In addition, there may well need to be change within civil society organisations and collaboration themselves. Instead of joining the lobby to the ASEAN government, civil society organisations like Kontras, along with other human rights groups, joined

²⁰¹ James Gomez and Robin Ramcharan (ed), *The Universal Periodic Review of Southeast Asia: civil society perspectives* (Springer 2018).

²⁰² *Ibid.*

²⁰³ See, Eduardo C. Tadem, 'New Perspectives on Civil Society Engagement with ASEAN', HEINRICH-BÖLL-STIFTUNG South East Asia.

the Asian Forum for Human Rights and Development (Forum-Asia), where they fostered solidarity among NGOs to protest human rights abuses by ASEAN states. Moving forward, strengthening cooperation between civil society groups and ASEAN could be vital for progressing human rights in the region.

Domestically, a greater role for civil society and more attention to human rights is further limited by the diversity of national positions, since ASEAN governs by consensus and non-interference in the internal affairs of one another. Registration, political neutrality and a myriad of other requirements combine to restrict work at national levels. The laws are frequently applied in a restrictive rather than a positive way. Reinvigorating the protection and promotion of civil society and civil society partnerships with government will not be popular but harnessing some civil society efforts will reap dividends for states. Thus, in seeking to advance human rights more generally, targeting regressive actions on the civil space could serve as a prelude to opening up a primary channel for the advancement of rights by enabling civil society actors to promote adherence to human rights.

It should be noted that some progress is being made in this area.²⁰⁴ Nevertheless, the point remains that for the practical application of theories grounded in liberalism to ring true, more efforts, by national, regional and international actors to strengthen the capacity of civil society is one area that could counteract the growing opposition to rights.

(ii) Focus more on human rights education

Much opposition to rights is emerging as a result of populist rhetoric. As noted, populist leaders mischaracterise rights in ways that promote rights as constituting part of the problem for unemployment, the rights of migrants and terrorist. Presented as such, the same leaders are able to garner broad opposition to rights, such that any changes to law that draws rights back is welcomed. Unchallenged, this is likely to continue. There is more of a need for human rights education to explain what they are and why they are important. In particular, countering the characterisation of rights as adverse to society is central to ensuring that rights do not continue to be viewed in disparaging terms. Within the UN, this evolves around the World Programme for Human Rights Education.²⁰⁵ The first phase of the World Programme (2005–9) sought to infuse human rights in all educational processes while practising human rights within the national education systems of States, the second phase extended to government and other officials directly impacting on rights as well as other levels of education, the third phase (2015-2019) consolidated the previous phases and focused

²⁰⁴ For example, see the World Bank Governance Index for ASEAN countries, available <http://info.worldbank.org/governance/wgi/>

²⁰⁵ Proclaimed by GA Resolution 59/113 (2004).

on engaging media professionals and journalists and the fourth phase²⁰⁶ focuses on youth (2020-2024).

The primary problem with human rights education in ASEAN is the emerging politicisation of human rights. This can stigmatise human rights, limit human rights education and training (as noted above with the pressure on some civil society organisations) and even restrict engagement with international human rights in schools and universities.²⁰⁷ Human Rights language is not the preserve of those opposing government, rather it should be the language of everyone. Yet around the region, journalists are being arrested, human rights defenders threatened and many training activities monitored. Perhaps strengthening protection of freedom of assembly, expression and association could be a useful starting point for collaboration alongside reclaiming respect, promotion and protection of human rights as the primary duty of the state. This would also support the reinvigoration of civil society.

To this end, some notable developments are underway in the region. Some scholars have documented early efforts to promote human rights education in schools.²⁰⁸ In 2019, Human Rights and Peace Education Programme for Universities in ASEAN was formally acknowledged at the ASEAN Education Ministers Meeting (ASEE). Beyond this, there is a broad range of human rights organisations working throughout the region that earnestly seek to promote awareness and understanding. Nevertheless, while notable, the point remains that focusing more on the foundations of human rights education, particularly within and by ASEAN governments, could serve as a stepping stone to countering the strategies of populist leaders to mischaracterise rights in ways that increases opposition and thus undermines efforts to promote them. These steps are, in some senses, the foundations upon which liberal theories and those on transnational advocacy networks (TANs) depend.

(iii) Identify and focus on areas for collaborations

While the international system of human rights can be viewed as confrontational and as potentially at odds with the foundations of ASEAN, there are nonetheless opportunities for developing more collaborative and region-sensitive approaches. While some might regard softer approaches as a capitulation and contrary to universalism, we suggest that such opposition fails to adequately recognise the strength of opposition to rights in the region.

²⁰⁶ HRC Resolution A/HRC/39/3.

²⁰⁷ There are examples in some ASEAN states of university courses being restricted and topics censored.

²⁰⁸ Jefferson R. Plantilla, *Asia-Pacific Regional Meetings on Human Rights Education (1995-2007) Human Rights Education in Asian Schools*.

In terms of identifying areas of potential synergy and cooperation, the work plans and modalities of AICHR offer a potential way to develop further collaborative approaches to human rights issues. Where national interests coincide, progress remains possible and indeed appears supported by states. There are clearly some areas of commonality between the identified regional and international 'hot points', including between the AICHR workplan priority areas and the topics identified in the UN treaty body and universal periodic review processes. Consensus on trafficking is evident and perhaps unsurprising. Southeast Asian countries are both origin and destination countries of human trafficking. Progress has been marked with a Convention agreed and in force,²⁰⁹ supported by a Plan of Action²¹⁰ which identifies common challenges in ASEAN member states including the need to alleviate the factors making persons vulnerable to trafficking, the need for appropriate legislation and protection measures, the need to improve prosecution and investigation of traffickers and the problems caused by the lack of regional legal and other mechanisms to further cooperation.²¹¹ The factors making persons vulnerable to trafficking include government corruption, poverty, different levels of social economic development as well as inefficient law enforcement and legal systems.²¹² These are all areas which have been picked up in treaty body and UPR reviews. The plan of action proceeds to commit contracting states to a series of reforms which should address these concerns. The vehicle is the national action plans which each contracting state prepares, with Senior Officials Meeting on Transnational Crime (SOMTC) overseeing implementation.

Migration is another common theme and likely to remain so with greater economic integration in ASEAN and the planned internal visa free travel zone. A 2012 agreement sought to facilitate the movement of persons in the region.²¹³ Many ASEAN states share land borders with other ASEAN states.²¹⁴ Many areas are transboundary, and some borders are relatively porous to goods and persons, so demands regional response. For ASEAN to harness the potential of its people in a positive manner, it is essential that migration is addressed as a regional issue, and care is taken to consider the plight of the large number of undocumented migrants moving between states. This is particularly so given that the ASEAN Declaration permits states to exclude non-nationals from the protection of economic and social rights inscribed in the Declaration.²¹⁵ Thailand and Cambodia have

²⁰⁹ Rantya Yusran 'The ASEAN Convention against Trafficking in Persons: A Preliminary Assessment' (2018) 8 *Asian Journal of International Law* 258.

²¹⁰ ASEAN Plan of Action against Trafficking in Persons Especially Women and Children, online <http://asean.org/wp-content/uploads/2015/12/APA-FINAL.pdf>.

²¹¹ ASEAN Plan of Action against Trafficking in Persons Especially Women and Children, Part II Challenges, id.

²¹² Common Challenge 1 in Section II Plan of Action, id.

²¹³ ASEAN Agreement on the Movement of Natural Persons 2012, in force June 2016.

²¹⁴ The Philippines alone has no land border with ASEAN states, although some islands are in close proximity to islands of other ASEAN states. Singapore is linked by a causeway to Malaysia, though the border is technically maritime; it also has islets in close proximity to Indonesia in particular.

²¹⁵ Article 34, ASEAN Human Rights Declaration.

maintained bilateral discussions to resolve the situation of Cambodian undocumented migrants in Thailand and authorities and civil society organisations cooperate with the transfer of migrants at, for example, Poipet. Of course, in 2020, the spread of Covid19 has increased border restrictions amongst ASEAN states.²¹⁶

With region wide ratification of CRC and CEDAW, it is unsurprising that women and children have also been a focus. The AICHR workplans include a programme of activities for sharing and documenting experiences across states and potentially this can lead to more concrete assistance and pooling of resources. In 2010, ASEAN established the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC).²¹⁷ Its twenty members are split between those representing women and those representing children (each category has one member per member state). Its terms of reference are rights focussed, drawing on the UN treaties and platforms for action.²¹⁸ This clearly resonates with the work of AICHR. Moreover, the Commission appears bound to uphold the relevant UN conventions. Article 30(3) of the ASEAN Declaration provides that motherhood and childhood are entitled to special care and assistance in the context of social protection, whilst Article 27(3) proscribes the economic and social exploitation of children. To date, the commission has chosen to take on board these issues, issues which are also prominent on the international stage. It has adopted Recommendations of the Regional Workshop on Promoting the Right to a Nationality for Women and Children in the Implementation of CEDAW and CRC in ASEAN²¹⁹ and Recommendations of the Regional Workshop on Promoting the Rights of ASEAN Women and Children through Effective Implementation of the Common Issues in CEDAW and CRC Concluding Observations with Focus on Girl Child,²²⁰ the latter clearly drawing on international human rights law in a regional context. Violence against women and girl children has also been considered, a topic prominent on the international stage.²²¹ Trafficking in women and children has been a priority. The ACWC has also completed a Regional Review on Laws, Policies and Practices

²¹⁶ ASEAN 36th summit, June 2020, Hanoi, VietNam – this was held by videoconferencing with discussions including ‘green corridors’ for restriction free travel between those member states with low incidences of Covid19.

²¹⁷ This evolved from the ASEAN 2004 Vientiane Action Programme. For the website of the commission, see <http://www.asean.org/communities/asean-socio-cultural-community/category/acwc>. See also Suzannah Linton ‘ASEAN States: Their reservations to human rights treaties and the proposed ASEAN Commission on Women and Children’ (2008) 30 HRQ 436. For the relevance to Security Council resolution 1325, See Sara Davies, Kimberly Nackers and Sarah Teitt ‘Women, Peace and Security as an ASEAN priority’ (2014) 68 AJIA 333.

²¹⁸ Terms of Reference ASEAN Commission on the Promotion and Protection of the Rights of Women and Children 2009.

²¹⁹ ACWC-UNHCR Potential Partnership, 19 August 2013, Da Nang, VietNam.

²²⁰ 20 – 22 August 2013, Da Nang, VietNam.

²²¹ See, for example, Joint Statement of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) and the Special Representative of the UN Secretary General on Violence against Children, Manila, the Philippines, 17 January 2012 and the Malaysian Ministry of Women, Family and Community Development’s report documenting good practices in ASEAN Member states on the Elimination of Violence Against Women and Children (EVAWC), available <http://www.asean.org/images/Community/ASCC/ACWC/Good%20Practices%20-EVAWC%20Publication.pdf>.

within ASEAN relating to the Identification, Management and Treatment of Victims of Trafficking, especially Women and Children.²²²

It is clear that when there is willingness to work together towards a solution to identified problems, then progress can be made. Like international human rights generally, success depends on the willingness of states to engage in open discussions at the inter-governmental level. Thereafter, progress is dependent on the national level. Topics selected by AICHR necessarily focus on those areas in which consensus is present. For some commentators, this indicates a lack of teeth, a softness, with hard challenging issues being, in effect sidelined.

The ASEAN Human Rights Declaration preambular paragraphs assert the intention of the Heads of State/Government that the Declaration 'will help establish a framework for human rights cooperation in the region and contribute to the ASEAN community building process'. AICHR's first workplan produced steps towards this, particularly through identifying areas for thematic studies. However, studies, like action plans, mean little to those most affected by human rights infringements. There is concern in the literature over the perceived lightweight monitoring of human rights in ASEAN itself. Jetschke noted in 2009, for instance, the parallels between the planned development of ASEAN and that of the European Community/Union, critiquing the 'lightweight' institutions in ASEAN.²²³ Others, perhaps correctly, continue to lament the primary focus of promoting, rather than protecting, human rights.²²⁴

Nevertheless, there is some value in a regional overview of the current status of human rights and of national laws and policies pertaining to specific issues. One such approach, as posited by Duxbury and Tan, is to utilise the UPR process as a way of identifying pressing issues to be addressed in the region.²²⁵ Through their analysis of UPR reports, they highlight such issues as the rights of women and children, economic, social and cultural rights, and civil and political rights in particular ASEAN states. The next step of concretizing the documentation of status quo and national laws is, inevitably, sharing good practices and developing higher levels of protection. What is required within ASEAN is something more than discussion on these issues. More training (some of which has been undertaken already) and analysis of root causes of persistent and widespread violations (eg migration and trafficking) could help strengthen human rights in ASEAN. Thus, examined through the

²²² Full report available <https://acwc.asean.org/resources/activities-recommendations/regional-review-on-laws-policies-and-practices-within-asean-relating-to-the-identification-management-and-treatment-of-victims-of-trafficking-especially-women-and-children/>.

²²³ Anja Jetschke 'Institutionalizing ASEAN: celebrating Europe through network governance' (2009) 22 Camb. Rev. Int. Aff. 407. The EU of course is comparatively light in human rights monitoring when compared to the Council of Europe.

²²⁴ See, for instance, Abubakar Eby Hara, The struggle to uphold a regional human rights regime: the winding role of ASEAN Intergovernmental Commission on Human Rights (AICHR)' Rev. bras. polít. int. vol.62 no.1 Brasília 2019.

²²⁵ *Can ASEAN Take Human Rights Seriously?* (n 87) 14-63.

lens of specific issues, it is apparent that the work of ASEAN and the international human rights system can be mutually reinforcing. When framed in these cooperative terms, the two systems support rather than contradict each other in pursuance of common objectives.

(iv) Focus on being persuasive

In ways, the above all focus on changing tact from promoting confrontational approaches, whereby actors seek to coerce or persuade compliance with international human rights norms to instead adopting more targeted approaches. As Alston notes, 'we need to acknowledge the need to devote more time and effort to being persuasive and convincing, rather than simply announcing our principles as though they were self-evidently correct and applicable.'²²⁶ In South East Asia, this approach could certainly reap dividends.

As noted above, persuasion relies on achieving a change in outlook whereby one set of norms- in this case universal rights are perceived as superior to another- in ASEAN's case human rights with ASEAN characteristics. However, this is not to say that persuasion, in certain contexts, cannot be of some use. Universal periodic review within the Human Rights Council would, at first glance, appear amenable to the ASEAN emphasis on non-interference in states' internal affairs and diplomatic persuasiveness. Inherently peer focussed, positive comments characterise many interventions, especially during the interactive dialogues of the working group sessions. The Philippines and Indonesia were the first states in the region to be reviewed.²²⁷ Writing on the Indonesian experience of two cycles of review, Wahyuningrum is sceptical of the real impact on the ground of the process, considering it more a 'routine exercise'.²²⁸ Certainly, looking across the reviews in the ASEAN region, it is evident that improvements on, or changes in light of, previously accepted recommendations have not characterized the second, or indeed third, cycle. Whilst individual state presentations have highlighted improvements made, some commentators on the universal periodic review process allege it is a meaningless process²²⁹ with states supporting each other rather than engaging in more objective evaluation and rigorous analysis. Certainly, when ASEAN states contribute views on other ASEAN states, comments are generally positive and supportive.

The UPR dialogue of every ASEAN state involved comments and recommendations on women and children, most involved discussions on persons with disabilities. Admittedly, those categories are

²²⁶ Alston, *The Populist Challenge to Human Rights*' (n 2), 11.

²²⁷ First session of cycle 1.

²²⁸ Yuyun Wahyuningrum 'Indonesia and the Universal Periodic Review: negotiating rights' In Hilary Charlesworth and Emma Larking (ed.), *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (Cambridge University Press, 2014), 273.

²²⁹ Hilary Charlesworth and Emma Larking (ed.), *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (Cambridge University Press, 2014).

commented on in virtually every UPR, the ASEAN states are not unique in this respect. For persons with disabilities, many of the comments are positive, supportive of activities. Mathew Davies notes with respect to the region's initial UPR reports on women, there are two particular clusters of issues: around religion and around institutionalized patriarchy.²³⁰ The latter can certainly be addressed in part through education and awareness raising; the former can be more challenging in several countries. There is certainly scope for AICHR to raise the profile of institutionalized patriarchy in the region and work on combatting cultural norms. As for children, comments were made on a number of topics. Challenges combatting trafficking in children and the sexual and economic exploitation of children were common themes across ASEAN universal periodic review reports with many states in the second and third cycles noting the progress being made by ASEAN states. The fact that several states had ratified (or removed reservations to) the second Optional Protocol on the sale of children, child prostitution and child pornography was favourably received.²³¹ Of course, many of these issues fall within the AICHR workplans and indeed, a treaty evolved.²³² Nevertheless, some, like Dominguez-Redondo see the UPR and its cooperative approach as a useful mechanism in advancing rights in the region, particularly given its non-confrontational approach.²³³

Conclusion

This paper has sought to examine the implications of the post-human rights era on those contexts that have historically shown an aversion to the global rights project. ASEAN states, for numerous reasons, have presented a degree of opposition to international human rights law. Whereas in the past, such opposition was met with a degree of push back, in today's context, ASEAN opposition is increasingly bolstered by states presenting similar concerns and strategies. This, we suggest, raises questions regarding the ways in which scholars have suggested states are convinced to comply with international human rights treaties. These uncertainties are pertinent not just to ASEAN but to all countries where existing opposition to rights is finding support amongst countries previously supportive of rights.

Nevertheless, whilst undoubtedly this is a period of push back, of challenges to the prevailing international human rights project, there are opportunities. Opportunities to divert efforts into rebuilding human rights civil society groups, reinvigorating human rights education in the broad sense, driving through changes in areas of common interest and focussing on persuasion. The

²³⁰ 'States of Compliance?: Global Human Rights Treaties and ASEAN Member States' (n 42), 426. For further information on the most recent cycle see <https://upr-info-database.uwazi.io/>

²³¹ All ASEAN states have ratified the second optional protocol to the UN Convention on the Rights of the Child.

²³² The ASEAN Convention Against Trafficking in Persons, Especially Women and Children, adopted in 2015, entered into force on 8 March 2017.

²³³ Elvira Dominguez-Redondo, 'The Universal Periodic Review - is there life beyond naming' (2012) 4 NZ L Rev 673.

problem is multi-faceted, its underpinning reasons myriad, so a multipronged solution, drawing on strengths is called for. The suggestions advanced in this paper are merely that. They are intended to serve as the beginning of a conversation, one that examines regional opposition in light of broader and global shifts and which begins to look for response that are grounded, first and foremost, in these wider changes that are underway.

Table 1: Ratification Status

	CAT ²³⁴	CAT-OP ²³⁵	CCPR ²³⁶	CCPR-OP2-DP ²³⁷	CED ²³⁸	CEDAW ²³⁹	CERD ²⁴⁰	CESCR ²⁴¹	CMW ²⁴²	CRC ²⁴³	CRC-OP-AC ²⁴⁴	CRC-OP-SC ²⁴⁵	CRPD ²⁴⁶
Brunei Darussalam	X	X	X	X	X	24 May 2006 (a)	X	X	X	27 Dec 1995 (a)	17 May 2016 (a)	21 Nov 2006 (a)	11 Apr 2016
Cambodia	15 Oct 1992 (a)	30 Mar 2007	26 May 1992	X	27 Jun 2013 (a)	15 Oct 1992	28 Nov 1983	26 May 1992	X	15 Oct 1992 (a)	16 Jul 2004	30 May 2002	20 Dec 2012
Indonesia	28 Oct 1998	X	23 Feb 2006 (a)	X	X	13 Sep 1984	25 Jun 1999 (a)	23 Feb 2006 (a)	31 May 2012	05 Sep 1990	24 Sep 2012	24 Sep 2012	30 Nov 2011
Lao	26 Sep 2012	X	25 Sep 2009	X	X	14 Aug 1981	22 Feb 1974 (a)	13 Feb 2007	X	08 May 1991 (a)	20 Sep 2006 (a)	20 Sep 2006 (a)	25 Sep 2009
Malaysia	X	X	X	X	X	05 Jul 1995 (a)	X	X	X	17 Feb 1995 (a)	12 Apr 2012 (a)	12 Apr 2012 (a)	19 Jul 2010
Myanmar	X	X	X	X	X	22 Jul 1997 (a)	X	06 Oct 2017		15 Jul 1991 (a)	27 Sep 2019	16 Jan 2012 (a)	07 Dec 2011 (a)

²³⁴ Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment

²³⁵ Optional Protocol of the Convention against Torture

²³⁶ International Covenant on Civil and Political Rights

²³⁷ Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty

²³⁸ Convention for the Protection of All Persons from Enforced Disappearance

²³⁹ Convention on the Elimination of All Forms of Discrimination against Women

²⁴⁰ International Convention on the Elimination of All Forms of Racial Discrimination

²⁴¹ International Covenant on Economic, Social and Cultural Rights

²⁴² International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

²⁴³ Convention on the Rights of the Child

²⁴⁴ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

²⁴⁵ Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography

²⁴⁶ Convention on the Rights of Persons with Disabilities

Philippines	18 Jun 1986 (a)	17 Apr 2012 (a)	23 Oct 1986	20 Nov 2007	X	05 Aug 1981	15 Sep 1967	07 Jun 1974	05 Jul 1995	21 Aug 1990	26 Aug 2003	28 May 2002	15 Apr 2008
Singapore	X	X	X	X	X	05 Oct 1995 (a)	27 Nov 2017	X	X	05 Oct 1995 (a)	11 Dec 2008	X	18 Jul 2013
Thailand	02 Oct 2007 (a)	X	29 Oct 1996 (a)	X	X	09 Aug 1985 (a)	28 Jan 2003 (a)	05 Sep 1999 (a)	X	27 Mar 1992 (a)	27 Feb 2006 (a)	11 Jan 2006 (a)	29 Jul 2008
Vietnam	05 Feb 2015	X	24 Sep 1982 (a)	X	X	17 Feb 1982	09 Jun 1982 (a)	24 Sep 1982 (a)	X	28 Feb 1990	20 Dec 2001	20 Dec 2001	05 Feb 2015

Table 2: Acceptance of individual complaints procedures

	CAT Art.22 ²⁴⁷	CCPR-OP1 ²⁴⁸	CED, Art.31 ²⁴⁹	CEDAW-OP ²⁵⁰	CERD, Art.14 ²⁵¹	CESCR-OP ²⁵²	CMW, Art.77 ²⁵³	CRC-OP-IC ²⁵⁴	CRPD-OP ²⁵⁵
Brunei Darussalam	X	X	X	X	X	X	X	X	X
Cambodia	X	X	X	13 Oct 2010	X	X	X	X	X
Indonesia	X	X	X	X	X	X	X	X	X
Lao	X	X	X	X	X	X	X	X	X
Malaysia	X	X	X	X	X	X	X	X	X

²⁴⁷ Individual complaints procedure under the Convention against Torture

²⁴⁸ Optional Protocol to the International Covenant on Civil and Political Rights

²⁴⁹ Individual complaints procedure under the International Convention for the Protection of All Persons from Enforced Disappearance

²⁵⁰ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

²⁵¹ Individual complaints procedure under the International Convention on the Elimination of All Forms of Racial Discrimination

²⁵² Optional protocol to the International Covenant on Economic, Social and Cultural Rights

²⁵³ Individual complaints procedure under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

²⁵⁴ Optional Protocol to the Convention on the Rights of the Child

²⁵⁵ Optional protocol to the Convention on the Rights of Persons with Disabilities

Myanmar	X	X	X	X	X	X	X	X	X
Philippines	X	22 Aug 1989	X	12 Nov 2003	X	X	X	X	X
Singapore	X	X	X	X	X	X	X	X	X
Thailand	X	X	X	14 Jun 2000	X	X	X	25 Sep 2012	X
Vietnam	X	X	X	X	X	X	X	X	X

Table 3: Inquiry procedures

	CAT, Art.20 ²⁵⁶	CED, Art.33 ²⁵⁷	CEDAW-OP, Art. 8-9 ²⁵⁸	CESCR-OP, Art.11 ²⁵⁹	CRC-OP-IC, Art.13 ²⁶⁰	CRPD-OP, Art.6-7 ²⁶¹
Brunei Darussalam	NA	NA	X	NA	X	X
Cambodia	15 Oct 1992	27 Jun 2013	13 Oct 2010	X	X	X
Indonesia	28 Oct 1998	NA	X	X	X	X
Lao	26 Sep 2012	NA	X	X	X	X
Malaysia	NA	NA	X	NA	X	X
Myanmar	NA	NA	X	X	X	X
Philippines	18 Jun 1986	NA	12 Nov 2003	X	X	X
Singapore	NA	NA	X	NA	X	X
Thailand	02 Oct 2007	NA	14 Jun 2000	X	25 Sep 2012	X
Vietnam	02 May 2015	X	X	X	X	X

²⁵⁶ Inquiry procedure under the Convention against Torture

²⁵⁷ Inquiry procedure under the International Convention for the Protection of All Persons from Enforced Disappearance

²⁵⁸ Inquiry procedure under the Optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women

²⁵⁹ Inquiry procedure under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

²⁶⁰ Inquiry procedure under the Optional Protocol to the Convention on the Rights of the Child

²⁶¹ Inquiry procedure under the Convention on the Rights of Persons with Disabilities