#### NORM ENTREPRENEURSHIP

The Working Group for an ASEAN Human Rights Mechanism

Working to establish and develop credible and effective human rights mechanisms in Southeast Asia since 1995





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FNF has close ties to Germany's Free Democratic Party (FDP). FNF was founded in 1958 by Germany's President Theodor Heuss and is funded by Germany's Federal Ministry for Economic Cooperation and Development. Our headquarter is in Potsdam, Germany, just outside Berlin. FNF advises decision makers, facilitates dialogue, holds conferences, funds publications, and invites people from around the world to attend seminars and other events in Germany.

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to learn more, please visit: https://www.freiheit.org/southeast-and-east-asia

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#### **Foreword Constructive Partnership:**

#### The Working Group and the Friedrich Naumann Foundation for Freedom

It all started back in the early 1990s a time when a wave of peaceful revolutions swept away socialist dictatorships in Eastern Europe and dictatorships of various hues in Asia, from the Marcos regime in the Philippines to the Ershad dictatorship in Bangladesh. It was during this time of new initiatives for global cooperation on democracy and human rights, when a group of eminent legal luminaries and human rights activists from Southeast Asia associated with LAWASIA went on a study tour to Brussels organised by the Friedrich Naumann Foundation to get a closer look at the human rights instruments of the European Union. The trip contributed to their ongoing conversation about the potential of using regional human rights instruments in other parts of the world. Partly as a result, the group decided that the time was ripe to attempt a concerted initiative in their own regional context to entrench human rights institutionally in Southeast Asia, using the framework of the Association of South-East Asian Nations (ASEAN). This initiative led to the formation of the Working Group (WG) for an ASEAN Human Rights Mechanism, supported by national Working Groups. The Friedrich Naumann Foundation decided to support the new initiative in a constructive partnership that has lasted to this day.

Of course, this did not happen in a vacuum. By that time, the ASEAN had made significant progress towards closer political and economic cooperation. Its members, especially its most influential one, Indonesia, tacitly understood that in order to preserve their space for autonomous international action they needed to cooperate more closely. The strengthening of ASEAN, which started in the 1960s, offered the opportunity to carve out a joint political space in the face of both a triumphant USA that had seen off the threat of the Soviet Union as well as a steadily rising China. Such a deepened cooperation could not just be restricted to economic matters and political summits. In addition, the ASEAN increasingly saw the need to engage more fully with the democratic trends around the world. As a result, at the 1993 ASEAN Foreign Ministers' Meeting in Singapore, it was "agree[d] that the ASEAN should also consider the establishment of an appropriate regional mechanism on human rights". The Working Group was formed in response to this new development at the ASEAN level. One could say it decided to take the ASEAN at its word.

Why would a German liberal foundation support a civil society initiative on human rights half a world away? The Friedrich Naumann Foundation is able to work internationally because of the way Germany allocates its international development assistance, a significant part of which goes to German civil society organisations enjoying a very high degree of autonomy in their international cooperation, largely with civil society. The idea is that international cooperation and government bureaucracies alone cannot achieve development, and civil society needs to be part of development, and supporting civil society development should best be done through civil society partnerships.

One rationale for international cooperation is, of course, economic. However, economics is not a zero-sum game; one can see how closer global economic integration has halved extreme poverty in the last 20 years. Contrary to what some believe, economic development works best when it is ...

complemented by a strong system of rule of law with independent courts, an accountable state, and the robust protection of human rights, including property rights. The second rationale is peaceful coexistence. Countries with rule of law and strong human rights protections tend to have significantly fewer external and internal conflicts. The reason is that due to the relative openness of their political discourse, such countries are usually able to understand each other better and hence manage conflicts more easily. They also tend to be ready to cooperate in international efforts to construct a more rule-bound international order, from the law of the sea, World Trade Organization, to the International Criminal Court. The Charter of the United Nations contains a strong commitment to human rights that sets the standard for all member states. A weakening of this type of international order can currently be observed, and the consequences are baleful. Powerful states again pursue narrow self-interests—as defined by their (often autocratic) leaders—at the expense of weaker neighbours, putting both global peace and prosperity at risk.

There is, of course, also a humanitarian impulse for international cooperation. As the world gets smaller and exchange of all types, from commercial to cultural and political, intensifies, the circle of people about whose well-being one cares tends to enlarge. This extends to one's sense of justice. Human rights should not just be enjoyed by a lucky few who are fortunate enough to be born in societies that protect them but enjoyed by all humanity in principle. This idea is enshrined in the founding Declaration of the United Nations, but it has been present for centuries in some form in most of the great religions of the world. As such, it is a promise, and a task, for everyone. In Germany, this aspect has probably played a somewhat greater role than in other countries due to the country's horrible past. The crimes committed by Nazi Germany pose a historical burden, and in an effort to chart a new course, the country has committed itself to supporting peace and human rights protection as a matter of national policy.

The Friedrich Naumann Foundation for Freedom (FNF) is a product of this policy. It is part of a system of political foundations who are publicly financed to first and foremost, contribute to civic education in Germany to safeguard its democracy, and, since the 1960s, to support development work around the world, especially in areas of civic education, institution-building, and policy reform dialogue. Its partners are mainly organisations from civil society such as human rights organisations or citizen's initiatives, academe and think tanks, business associations, as well as government institutions.



As an organisation that also embraces the idea of European integration, supporting regional initiatives is also a natural element of its work. Germany sees regional integration in Europe as not just important in economic terms through the creation of a single market that enhances competitiveness, trade, and ultimately prosperity, but also as an effective way to end the centuries of violent conflict that has characterised European history. Regional integration offers formal and informal mechanisms to resolve conflicts and create trust among the political elite necessary for this. The current Brexit drama clearly illustrates both the degree of integration that has been achieved which is both difficult and painful to dissolve, as well as the peace-building role it has played in places such as Northern Ireland, where Brexit raises serious fears of a return of the violence that bedevilled the area for so long. The process of European integration has also been aided and strengthened by an ever-growing web of civil society initiatives with a European agenda.

**From** the point of view of the FNF, its partnership with WG thus rests on several strong pillars that have remained relevant over the years. These include the commitment to support the promotion and protection of human rights worldwide, the strengthening of democratic societies through the creation of effective and autonomous institutions realising the rule of law, supporting the role of civil society in policy reform processes and initiatives aimed at strengthening regional integration in other parts of the world. It is this strong overlap of both the political philosophy and the practical objectives between the two organisations that has made this one of the most enduring and successful partnerships of the FNF.

The use of the word "partnership" has become practically obligatory in international cooperation. In the case of FNF and WG, it actually has significant substance. Many international cooperation programmes come in the form of projects with a limited duration, after which the problem is supposedly solved. While this works well in technical fields, it has rather limited value for institutional reform processes. The WG always had a very clear and measurable set of objectives—the creation of an effective Human Rights Mechanism in the ASEAN, which included strengthening the national human rights systems and institutions of the member states. This objective required a process of political dialogue, stretching to years and decades, and while much has been achieved, it is by no means complete. Over the years, many organisations have supported the WG, often with significantly larger resources than those available from the FNF. However, the FNF has always made it clear that its priorities are the shared principles. objectives, and some measurable progress, not a specific timetable. It has been willing and able to react flexibly and fast to political opportunities requiring a change of plans, the cancelling of one activity and the organisation of another or the production of a different research paper—a flexibility that big government organisations usually find impossible to offer. One element is the administrative flexibility required for it, which FNF as a decentralised civil society organisation has, while the other is mental flexibility. Big organisations, especially governmental ones, also like to feel in control. Allowing local partners to deviate from defined programmes implies a loss of control and an element of uncertainty, ultimately a degree of ceding power to local partners.

This was, and is, much easier for the FNF, where the decision-makers live in the region and have always maintained close personal contact with the leadership of the WG. This has created the trust needed for the type of flexible and agile partnership that can react quickly to new opportunities or

crises. Over the years, the WG leadership has often commented that it values the partnership with the FNF for exactly these two aspects; a willingness to work on a long-term basis and the flexibility to help at short notice—"a partner of last resort", as one member of the WG once put it.

#### One can often underestimate

how long some reform processes take and how contingent they are. This is especially true of institutional reform processes at the regional level. Multiplicators and decision-makers have to be convinced, alliances have to be built, and the political climate has to be right. The first step in this is being taken seriously as a dialogue partner. This is the first big hurdle for many civil society activists. They usually focus on raising an issue, protesting injustices, giving unrepresented people a voice and formulating demands, often in the context of protest activities. Being driven by a sense of urgency and moral outrage, they are usually unwilling to consider the real political difficulties and the interests of bureaucrats and decision-makers. Sometimes they also fail to bring enough detailed expertise to the table to chart a viable path to reform. All this makes it easy for decision-makers to largely ignore the activists or pay lip service to demands if they become a topic in the media while not actually changing anything of substance. The reality of politics, especially in democratic systems, is that political change requires, in Max Weber's words, the "strong and slow drilling of hard boards with both passion and a sense of perspective". Change processes are ultimately the result of patient deliberation and negotiation. Passion is needed to stay the course, but so is a sense of perspective. One needs to be able to see the valid point of the other side, accept that there are limitations, search for common ground and what is possible, rather than dealing in moral absolutes and pushing demands that are all-encompassing but unrealistic. This is an insight that the FNF and the WG have both internalised. This is why the WG has focused on bringing together people who command respect in their societies and especially in the legal and political field, including former UN Rapporteurs, eminent political leaders, and distinguished academics. While some may see this as an elitist approach, to be taken seriously by the governments of the ASEAN, it is probably an indispensable precondition. The second, most crucial element is that the WG started to patiently construct bridges of dialogue to make itself known and build trust. Identifying key people in the relevant ministries and patiently talking to them, inviting them to workshops, and patiently making the case for a stronger human rights commitment in the ASEAN while not indulging in public grandstanding or attacks on governments. The WG has always stressed that it does not demand anything

that is not in conformity with the UN Charter that all ASEAN members states have signed up to, and the involvement of foreign partners like the FNF should be seen in this context of a shared global commitment. Ultimately this constructive approach has borne fruit. A key ally turned out to be Indonesia—its foreign ministry was the first to organise a formal joint event with the Working Group and henceforth continued to support the work of the WG and argue for its inclusion in ASEAN-level interactions. Other countries like the Philippines and Thailand followed suit, with the WG eventually becoming a regular official dialogue partner at the ASEAN level.



The Friedrich Naumann Foundation for Freedom Headquarters in Potsdam, Germany.



**The FNF helped** in this process, not just by providing resources, but also through organising trips to study regional human rights mechanisms in other continents, especially Europe, and providing the members of the Working Group opportunities to participate in international conferences and

seminars as well as helping in the organisational and strategic development of the WG. As an organisation that works worldwide, the FNF brought specific experience in political reform dialogue and the organisational development of civil society initiatives to the table. This, in turn, helped the WG make the case for regional HR institutions more effectively.

A part from its work at the ASEAN level, the FNF also collaborated with the national Working Groups making up the membership of the WG. This has been most intensive in the Philippines, where the national Working Group managed to incorporate a broad section of civil society as well as parliamentarians and parts of the government such as the Commission for Human Rights and the Ministry for External Affairs. The FNF also helped the WG in its outreach to national governments, especially in the context of arguing for the creation of a national Human Rights Commissions—a natural and necessary corollary to a regional Human Rights mechanism.

For a partnership to merit its name, it has to be a two-way relationship. So it is in this case. The WG has helped the FNF over the years in many different forms, such as helping to explain to the German tax-paying public why such international engagement is useful and worthwhile, helping the FNF to build stronger ties with the international human rights communities, assisting in international conferences and events of the FNF as resource persons, and teaching the FNF about the political and cultural realities of the ASEAN and how to work

most effectively in this context. It has been a long joint journey of almost three decades, and much remains to be done. In between, there have been times when both the WG and FNF have asked themselves whether it is still worth the effort, given the political realities of the ASEAN, which has a great variety of political systems and hence different degrees of appreciation for human rights among its members. It was not a process that could be mapped out in advance—although the objectives and basic approach were clear, it was unclear what would actually work—the political process in the ASEAN is too complex and too much is far beyond anyone's control. However, enough milestones were achieved to demonstrate that the work was on the right track as evidenced by the first workshop organized with the Foreign Ministry of Indonesia, regular interaction at meetings with ASEAN Senior Officials, and the inclusion of a reference to the WG in all communiqués of the ASEAN Ministerial Meetings from 1998 onwards. The WG also played an important role in the creation of a platform for the ASEAN National Human Rights Commissions in 2001 and was involved in the drafting of the new ASEAN Charter that came into force in 2008 which explicitly mentioned the WG as an entity associated with the ASEAN. Furthermore, upon the establishment of the ASEAN Intergovernmental Commission for Human Rights (AICHR), Thailand appointed a member of the WG, Dr Sriprapha Petcharamesree, as its Representative. The challenge now is to help AICHR realise its full potential and continue the dialogue with the ASEAN on this—a work with less spectacular milestones, but important nevertheless. This journey also helped to deepen the mutual understanding and strengthen the bonds of friendship between the WG and FNF. Although programmes, projects, and processes can be analysed, their success ultimately depends on the quality of the human interaction they allow. Change happens when people build trust, exchange ideas, and start to work together. It is well-documented that the most effective way to change someone's mind about an issue is personal interaction in the context of trust. It is also well established that people come up with better solutions if there is a diversity of knowledge and experience in the group. Creating an atmosphere of trust and shared commitment where people help each other to come up with better ideas and solutions is the ultimate point of an international partnership such as that between the FNF and WG. Creating a constructive dialogue that seeks to patiently convince decision-makers of the need to build new institutional arrangements for the protection and promotion of human rights is the ultimate point of this work. The peaceful development of the ASEAN region and the quality of life of its people can be a source of strength for all.

#### Siegfried Herzog

Head of Regional Offices Southeast and East Asia (2014 - 2018)



#### **Abbreviations**

AHRD ASEAN Human Rights Declaration

AICHR ASEAN Intergovernmental Commission on Human Rights

AMM ASEAN Ministerial Meeting

**ASEAN** Association of Southeast Asian Nations

ASEAN-ISIS ASEAN Institutes of Strategic and International Studies

**CSCAP** Council for Security Cooperation in the Asia Pacific

ICRC International Committee of the Red Cross

**LICADHO** The Cambodian League for the Promotion and Defense

of Human Rights

**SOM** Senior Officials' Meeting

**ToR** Terms of Reference

WG Working Group





# 01

# FINNEMORE AND SIKKINK'S STAGE OF NORM LIFE CYCLE

#### **Chapter 1**

#### Norm Entrepreneurship as a Concept and the Working Group:

The argument has four stages. The first section discusses the brief theoretical background on norm diffusion to help non-academic audiences to become familiar with general debates on norms. The argument in this study also builds on these debates, so the brief discussion helps locate the work of WG within a theoretical academic background. The second section investigates the norm entrepreneur concept, laying the groundwork for the final sections where WG is discussed from the norm entrepreneur perspective. Since the current literature on politics and international relations from the norm entrepreneur perspective has not yet been fully developed to explain the work of the WG, this chapter contributes to the theoretical knowledge on the topic.

#### **Engaging and Enriching Theoretical Understanding**

#### Introduction

The Working Group (WG) for an ASEAN Human Rights Mechanismhas made an immense contribution, with many lessons being learnt from the stories of its unique constructive and consultative approaches. The WG's long-term, persistent engagement with the ASEAN member states and actions as a pro bono entity reveal its ideational commitment, which deserves respect and admiration. Nevertheless, documenting its successes, of which there are plenty, is no simple task since they need to be framed and put into perspective. It can be argued that the most impactful way to relay the success stories of the group, yet the most challenging, is to engage with existing academic debates and draw appropriate frameworks from the rich theoretical foundations on norms to explain the contributions made by the WG, and lay the foundation for other chapters.

Therefore, the purpose of this chapter is to construct a theoretical framework to understand the contributions of the WG. The best way to do this is to treat the WG as a "norm or moral entrepreneurs". The "norm entrepreneur" perspective is explored in this chapter, along with other relevant explanations, to locate the concept according to the theoretical foundations upon which it is based.

#### Theoretical Background on Norm Diffusion

The end of the Cold War offered the potential for wide-ranging studies on political and international relations disciplines once dominated by realist/rationalist debates focusing on material interests, power, cooperation, and survival. These disciplines have since been significantly expanded to cover other issues and perspectives, with greater attention being paid to normative and ideational phenomena. Studies on norms have sprung up like never before, becoming one of the most popular research topics in recent decades.

Many, if not most, norm research in previous decades have been influenced by constructivist scholarship. This is not a surprise, since for constructivists, "international structure is determined by the international distribution of ideas". Shared ideas and beliefs on appropriate behaviour tend to relate to the world structure, order, and stability. In the words of Finnemore and Sikkink, "in an ideational international structure, idea shifts and norm shifts are the main vehicles for system transformation".

Among the constructivist contributions to norm research in the last few decades, two waves of scholarship can be summarised. The norm entrepreneur concept, used in this study to examine the WG, is taken and adapted from the theoretical foundations from both waves, as discussed in the following paragraphs.

The main features of the "first wave" scholarship include the focus on moral cosmopolitanism, transnational agents, and moral proselytism and pressure. Firstly, "moral cosmopolitanism" refers to the type of norms being propagated. These norms have "universal" appeal and can therefore attract support more easily. They include a campaign to end slavery, foot-binding and female genital circumcision, a campaign against land mines, a ban on chemical weapons, intervention against genocide, among others. Secondly, transnational agents, acting as norm or moral entrepreneurs, are propagating these norms. The roles of local agents, such as the WG, does not receive much attention here. Lastly, the literature focuses on the processes of moral proselytism and pressure while appearing to ignore the existing local norms. In other words, it focuses on conversion rather than contestation. Consequently, "it sets up an implicit dichotomy between good global/universal norms and bad regional/local norms". Resistance to the cosmopolitan norms becomes immoral action. Two seminal works reflecting these thoughts include *International Norm Dynamics and Political Change* by Finnemore and Sikkink, and *The Power of Human Rights*, edited by Risse, Ropp, and Sikkink.



**Second wave** of norm scholarship addresses the critical flaws in the previous scholarship, focusing instead on the role of domestic structures and local norm entrepreneurs. Put another way, the role of domestic variables in conditioning the norm diffusion process is given much more attention. One notable example is the work of Jeffrey Checkel, who uses the term "cultural match" to explain the more favourable circumstances of the norm diffusion process. In his words, the diffusion is "more rapid when a cultural match exists between a systemic norm and target country; in other words, when it resonates with historically constructed domestic norms". <sup>10</sup> Moreover, it is simply impossible to conduct this research without engaging the work of Amitav Acharya, one of the best-known scholars on this wave and a leading ASEAN expert. Acharya's work, particularly on the "localisation" concept, is discussed at length in the following paragraphs, incorporating some of his suggestions to explain the WG. However, generally speaking, the perspectives of both scholarship waves are incorporated to develop the most appropriate explanation for the role of the WG as a norm entrepreneur in the next sections.

<sup>&</sup>lt;sup>1</sup> Wendt, Alexander. "Anarchy is what States Make of it: The Social Construction of Power Politics." International Organization, Vol. 46, No. 2 (Spring, 1992): 391–425.

<sup>&</sup>lt;sup>2</sup> Finnemore, Martha, and Sikkink, Kathryn. "International Norm Dynamics and Political Change." International Organization 52, no. 4 (1998): 894.

<sup>&</sup>lt;sup>3</sup> Ibid

<sup>&</sup>lt;sup>4</sup> See, for example, Klotz, Audie. Norms in International Relations: The Struggle Against Apartheid. Ithaca: Cornell University Press, 1995; Klotz, Audie. "Norms Reconstituting Interests: Global Racial Equality and the U.S. Sanctions Against South Africa." International Organiza tion 3, no. 49 (1995): 451–478; Price, Richard. The Chemical Weapons Taboo. Ithaca: Cornell University Press, 1997.

<sup>&</sup>lt;sup>5</sup> Acharya, Amitav. Whose ideas matter?: agency and power in Asian regionalism. Ithaca: Cornell University Press, 2009: 10.

<sup>&</sup>lt;sup>6</sup> Ibid., 11.

<sup>&</sup>lt;sup>7</sup> Ibid., 10.

 $<sup>^{\</sup>rm 8}$  Finnemore, Martha, and Kathryn Sikkink. "International Norm Dynamics and Political Change."

<sup>9</sup> Risse, Thomas, Stephen C. Ropp, and Kathryn Sikkink (eds.). The Power of Human Rights. Cambridge: Cambridge University Press, 1999.

<sup>10</sup> Checkel, Jeffrey. "Norms, Institutions, and National Identity in Contemporary Europe." ARENA Working Papers (Oslo: Advanced Research on Europeanization of the Nation-State, University of Oslo) 98, no. 16 (1998): 6.

## 1.1 Norm Entrepreneurship as a Concept

#### What are norm entrepreneurs?

#### What do they do?

**Scholars** in international relations and related disciplines are generally defined as norm entrepreneurs, and other similar terms, with minor variations. For example, Ethan Nadelmann defines the term "transnational moral entrepreneurs" as actors who legitimise or de-legitimise behaviour and thus change norms or engage in moral proselytism.11 Howard Becker's concept of moral entrepreneurship refers to those who "operate with an absolute ethic" in seeking to create new rules to do away with the perceived greater evil. 12 Jeffrey Checkel's notion of "norm-maker" refers to the agents behind norm diffusion. 13 Lawrence Lessig, a legal theorist, employs the terms "meaning managers" or "meaning architects" to describe the same kind of agency in the process of creating norms and larger contexts of social meaning<sup>14</sup> Despite the variations in definition, the salient trait of norm entrepreneurs is clearly their strong commitment to promoting a particular idea. In this study, norm entrepreneurs are defined as actors in the promotion of norms. Norm entrepreneurs are also agents of "social change with an ability to shape the collective behaviour of others".15 They are "agenda-setters introducing new ideas into the international debate"16 and putting their efforts into

changing the constraints, recognising opportunities for social interaction, or creating opportunities for change by presenting ideas on the political agenda as the perfect solution to a problem.<sup>17</sup>

The identity of norm entrepreneurs is also crucial to norm diffusion strategies and the arenas favoured for norm entrepreneurial activities. Several different types of actors can be norm entrepreneurs and need not be nation-states. Norm entrepreneurs can be activists, international organisations, or epistemic communities, among others. As such, what kind of characteristics should influential norm entrepreneurs have? In the case of states, they should be viewed as being good international citizens who conform to the liberal values and world order, such as a belief in the principles of international law, multilateralism, and international cooperation.

For non-state actors, the best place to start investigating this puzzle is the aforementioned International Norm Dynamics and Political Change, by Finnemore and Sikkink—probably the most referenced work on

<sup>&</sup>lt;sup>11</sup> Nadelmann, Ethan. "Global Prohibition Regimes: The Evolution of Norms in International Society." International Organization 44, no. 4 (1990): 482.

<sup>&</sup>lt;sup>12</sup> Becker, Howard. Outsiders; studies in the sociology of deviance. London: Free Press of Glencoe, 1963.

<sup>&</sup>lt;sup>13</sup> Checkel, Jeffrey. "Norms, Institutions, and National Identity in Contemporary Europe."

<sup>&</sup>lt;sup>14</sup> Lessig, Lawrence. "The Regulation of Social Meaning." University of Chicago Law Review 62, no. 3 (1995).

<sup>15</sup> Björkdahl, Annika. From Idea to Norm: Promoting Conflict Prevention. Lund: Department of Political Science, Lund University, 2002: 45.

<sup>16</sup> Ibid

<sup>&</sup>lt;sup>17</sup> Kingdon, John W. Agendas, Alternatives and Public Policies, 2nd ed. New York: Longman, 1995: 8.

the study of norms in the field of politics. Altruism, empathy, and ideational commitment are essential factors. <sup>18</sup> Empathy exists when an actor can participate in another's feelings or ideas. That feeling can create empathetic interdependence, where an actor "is interested in the welfare of others for its own sake, even if this has no effect on their own material well-being or security". <sup>19</sup> Meanwhile, altruism is defined as a "willingness to do things that bring advantages to others, even if it results in disadvantage for oneself", <sup>20</sup> or "disinterested and selfless concern for the well-being of others". <sup>21</sup> Kristen Monroe argues that the essence of altruism is a "shared perception of common humanity. . . a very simple but deeply felt recognition that we all share certain characteristics and are entitled to certain rights, merely by virtue of our common humanity". <sup>22</sup> Concerning the last element, ideational commitment, following Finnemore and Sikkink, "is the main motivation when entrepreneurs promote norms or ideas because they believe in the ideals and values embodied in the norms, even though the pursuit of the norms may have no effect on their well-being". <sup>23</sup>

Finnemore and Sikkink also argue that "the characteristic mechanism of the first stage, norm emergence, is persuasion by norm entrepreneurs, in an attempt to convince a critical mass of states (norm leaders) to embrace new norms". This fits with the strategy of the WG, which employs persuasion as a dominant mechanism in convincing ASEAN member states to accept human rights. The following table by Finnemore and Sikkink summarises their thoughts well, demonstrating that norm entrepreneurs are key actors in the first stage of norm emergence.

		2	3
Stage of Norms	Norm emergence	Norm cascade	Internalisation
Actors	Norm entrepreneurs with organisation platforms	States, international organisations, networks	Law, professions, bureaucracy
Motives	Altruism, empathy, ideational commitment	Legitimacy, reputation, esteem	Conformity
Dominant Mechanisms	Persuasion	Socialisation, institutionalisation, demonstration	Habit, institutionalisation

Table 1: Finnemore and Sikkink's stage of Norm Life Cycle

<sup>&</sup>lt;sup>18</sup> Finnemore, Martha, and Sikkink, Kathryn. "International Norm Dynamics and Political Change": 898.

<sup>&</sup>lt;sup>19</sup> Keohane, Robert. After Hegemony: Cooperation and Discord in the World Political Economy. Princeton: Princeton University Press, 1984: 123.

<sup>&</sup>lt;sup>20</sup> Altruism. https://dictionary.cambridge.org/dictionary/english/altruism (accessed 25 June 2020).

<sup>&</sup>lt;sup>21</sup> Altruism. https://www.lexico.com/definition/altruism (accessed 25 June 2020).

<sup>&</sup>lt;sup>22</sup> Monroe, Kristin. The Heart of Altruism: Perceptions of a Common Humanity. Princeton: Princeton University Press, 1996: 206.

<sup>&</sup>lt;sup>23</sup> Finnemore, Martha, and Sikkink, Kathryn. "International Norm Dynamics and Political Change": 898.

### 1.2 Working Group as a Norm Entrepreneur

**The** WG a norm entrepreneur? It can be argued that it certainly is. It is persistently active in the promotion of norms. It has the ability to bring about change in the collective behaviour of others. It is an agenda-setter, introducing ideas into the regional debate and putting its efforts into changing the constraints, recognising opportunities for social interaction or creating opportunities for change by presenting its ideas on the political agenda as a perfect solution to the problem. These points are elaborated upon in the next chapter.

What other characteristics should norm entrepreneurs possess? Following the motives of norm entrepreneurs defined by Finnemore and Sikkink, the WG members possess empathy, altruism, and ideational commitment. This is clearly supported by several interviews conducted by the author with well-known people in the ASEAN, including high-ranking ones. This fact is indeed well-recognised among the people working in the ASEAN field. According to Ambassador Rosalio Manalo, a former Filipino Undersecretary of Foreign Affairs (Deputy Foreign Minister), Chair of the High-Level Task Force who drafted the new ASEAN Charter, and the first Filipino Representative to the ASEAN Intergovernmental Commission on Human Rights (AICHR), this is a trait she likes the most about the WG. Members of the WG do their work out of sheer passion, altruism, and ideational commitment, with no self-interest motives involved.<sup>24</sup> Yuyun Wahyunigram, the Indonesian Representative to the AICHR stated that she looks up to many WG members, considering them role models, and admiring their ideational commitment.<sup>25</sup> This is hardly surprising since Yuyun was also mentored by Dr Sriprapha Petcharamesree, the current Co-Chair of the WG.

Some explanations concerning the second stage of the norm "life cycle", namely the norm cascade, are worth mentioning here. Traditionally, the actors for this stage include states, international organisations, and networks. However, the actors here also include "the network of norm entrepreneurs", which can very well explain the WG. It can be contended that the WG members are norm entrepreneurs (collectively as a group) or as a network of entrepreneurs. After all, the name "the Working Group" is ambiguous and has a loose meaning (by design). The two terms may not be identical, but the minor variation here is insignificant for the purposes of this study.

Finnemore and Sikkink argue, "The primary mechanism for promoting norm cascades is an active process of international socialisation intended to induce norm breakers to become norm followers". This socialisation mechanism may include emulation, praise, ridicule, peer pressure, and sanction, among others. The networks of norm entrepreneurs also act as agents of socialisation to make the targeted actors adopt new policies and by monitoring compliance with international standards. Just as the International Committee of the Red Cross (ICRC) did not disappear with the signing of the First Geneva Convention, the WG did not disappear after the AICHR was established. Instead, "the ICRC became its chief socialising agent, helping states to teach the new rules of war to their soldiers, collecting information about violations, and publicising them to pressure violators to conform". Similarly, the WG socialise

<sup>&</sup>lt;sup>24</sup> Rosalio Manalo. Interview by author. Manila, 17 December 2019.

<sup>&</sup>lt;sup>25</sup> Yuyun Wahyuningram. Interview by author. Bangkok, 30 November 2019

<sup>&</sup>lt;sup>26</sup> Finnemore, Martha, and Sikkink, Kathryn. "International Norm Dynamics and Political Change": 902.

<sup>&</sup>lt;sup>27</sup> Ibid

#### Working Group: Beyond Traditional Norm Entrepreneurs



As an influential norm entrepreneur, it can be argued that the WG also possesses many other notable traits that drive its success. These traits cannot be explained by the current dominant literature on norms. Theoretically speaking, the variations from dominant theories are the more interesting.

#### **International/Local Norm Entrepreneurs**

The norm "life cycle" concept, as well as most of the work from the first wave of norm research, focuses on international norm entrepreneurs and downplays the role of local ones. At the same time, the scholarship from the second wave, which pays much attention to the local agency, cannot fully explain the WG's contributions either.

The WG's objectives are both national and regional. Its ultimate goal, which is to have an effective ASEAN Human Rights Mechanism, is regional. The WG should be considered as a local norm entrepreneur rather than an international one. Its constituent is clearly the ASEAN. The WG members are also nationals of ASEAN member states. In the process of promoting the norm, they carefully choose a strategy compatible with the ASEAN context. At times, they also frame human rights issues to appeal to ASEAN leaders. They would not do the same (or carry such influence) had they considered the ASEAN in an international context.

This focus on international norm entrepreneurs is the main reason why the norm "life cycle" has limited explanatory power when it comes to the contributions of the WG. The crucial influence of the WG exposes the weakness of the first wave literature, which underestimates the role of the local agency, as well as the mutually constitutive relationship it posits between international and local norms.

By the same token, the norms projecting from the second wave give much attention to local actors and cannot explain the WG very well either. Therefore, it is necessary to investigate the "localisation" concept of Amitav Acharya, the leading ASEAN expert. The literature explains the norm diffusion

process by focusing on domestic political structures and agents who condition normative change. It "explains how international norms are taken up by local actors, translated in relation to pre-existing cultural norms, and institutionalised in a new form, often amplifying prior norms".<sup>28</sup> These processes are called "localisation", defined as "the active construction (through discourse, framing, grafting, and cultural selection) of foreign ideas by local actors, which results in the former developing significant congruence with local beliefs and practices".<sup>29</sup>

Christian Reus-Smit, a leading international relations scholar, gives a helpful summary on Acharya's concept: "challenging moral cosmopolitan approaches to norm diffusion, which privilege the international and transnational teaching of universal norms, and approaches that emphasise the 'fit' between international and domestic norms, ignoring local 'matchmaking'. Acharya shows how 'local actors borrow and frame external norms in ways that establish their values to the local audience', how norms 'may be reconstructed to fit with local beliefs and practices even as local beliefs and practices may be adjusted in

<sup>&</sup>lt;sup>28</sup> Reus-Smit, Christian. On Cultural Diversity: International Theory in a World of Difference. Cambridge: Cambridge University Press, 2018: 139.

<sup>&</sup>lt;sup>29</sup> Acharya, Amitav. "How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism." International Organization 58, no. 2 (2004): 245.

accordance with the external norm', and how 'new instruments and practices are developed from the syncretic normative framework in which local influences remain highly visible'". 30

The work of Acharya aids the understanding of the WG, albeit only to a limited extent. His focus on local agency, instead of international norm entrepreneurs, fits nicely with this study's focus on the WG. Acharya's work is different from most of the research on the first wave of norm diffusion scholarship, which focuses on international agents and treats the domestic actors as being resistant to change. Acharya is right in arguing that norm research tends to dichotomise between "good" global norms vs "bad" local beliefs, ending with a victory for the good guys (the success of norm diffusion).<sup>31</sup> In reality, many local norms are themselves part of the legitimate normative order, indeed conditioning the acceptance of foreign norms.<sup>32</sup>

Nevertheless, when applying the whole concept to the case of the WG, this view has serious deficiencies. The local entrepreneurs and in this case, the WG, do not actively reconstruct the norms to make a better fit with prior local norms. When it seems a wise strategy, the WG frames the issue to fit with the local beliefs, but that is indeed a rare occasion, and done with totally different ends in mind. Mathew Davies adopts Acharya's "localisation" concept to explain the WG. He was right when he said the WG frames human rights by associating them with existing norms like security and regional cooperation to appeal to the ASEAN elite. 33 Ray Paolo Santiago confirmed this view in a discussion with the author, when he explained that this happened when the WG successfully framed the human rights issue at the ASEAN Political-Security Community—a significant and almost unimaginable breakthrough. Unfortunately, Davies fails to grasp the underlying rationale behind Acharya's concept, which it can be argued, is definitely incapable of explaining the WG. The WG does not want the existing local norms to amplify its influence by enhancing its legitimacy and, in turn, authority. It is not about making the "existing norm hierarchy to receive wider external recognition through its association with the foreign norm". 34 As explained earlier, the WG does its work out of an ideational commitment, namely to the universal human rights norm.

Other notable concepts from the second wave literature cannot satisfactorily explain local norm entrepreneurs like the WG and their contributions either. It is not the purpose of the WG to make a cultural fit between the regional human rights norm and existing norms (it is only used as a strategy and then only rarely), which is the main idea of the concept in this wave. The WG believes in the primacy, sanctity, and universality of human rights. These include, for example, Johnston's "adaptation" concept (a tactical and short-run policy of accommodation) to make a fit with local culture, 35 Checkel's idea of cultural match, 36 Aggarwal's notion of "nested institutions", 37 or Price's norm "grafting" concept. 38 The WG as a local norm entrepreneur performs differently, but with a crucial role, based on the understanding of traditional norm research.

<sup>30</sup> Ibid., 251.

<sup>&</sup>lt;sup>31</sup> Ibid., 242.

<sup>&</sup>lt;sup>32</sup> Ibid., 239.

<sup>33</sup> Davies, Mathew. "Explaining the Vientiane Action Programme: ASEAN and the institutionalisation of human rights." The Pacific Review 26, no. 4 (2013): 397.

<sup>&</sup>lt;sup>34</sup> Acharya, Amitav. "How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism": 251.

<sup>35</sup> Johnston, Alastair Iain. "Learning Versus Adaptation: Explaining Change in Chinese Arms Control Policy in the 1980s and 1990s." The China Journal, no. 35 (1996): 27–61.

#### 1.3 Norm Emergence/ Norm Cascade

**The** role of the WG as a norm entrepreneur in the norm emergence phase of the norm "life cycle" theory varies from the traditional sense. At the same time, some of its traits extend beyond this phase.

On the norm "life cycle" concept, norm entrepreneurs can already be observed to play a critical role in the norm "life cycle". The influence of norms is summarised as a three-stage process: norm emergence, norm cascade, and internalisation. A tipping point or threshold divides the first two stages and refers to the point at which a critical mass of states adopts the norms.<sup>39</sup> It can also be argued that "change at each stage...is characterised by different actors, motives, and mechanisms of influence". 40 The Finnemore and Sikkink's table summarises this point already. The WG plays a crucial role in this emergence phase, by actively and persistently pushing the regional human rights norm from the onset directly with ASEAN member states for over 25 years. It calls attention to the norms and frames them by using language that names, interprets, and dramatises. The WG uses persuasion as a dominant mechanism in convincing ASEAN member states by stubbornly reminding them of what they are pledged to do. Nonetheless, the role of WG varies from the norm "life cycle" theory because it is not responsible for the true origins of regional human rights norms in general or the ASEAN. For example, its role is different from that of Henry Dunant, who started the norm in the laws of war, whereby medical personnel and those wounded in war are treated as neutrals and noncombatants. This norm can be clearly traced to this one man. It is also quite different from the role of norm entrepreneurs such as Elizabeth Stanton and Susan Anthony in the US, and Millicent Garrett Fawcett and Emmeline Pankhurst in England, who started the norm of the international campaign for women's suffrage. Indeed, the WG always refers to the 1993 Joint Communiqué of the 26th AMM, one month after the Vienna World Conference, as the start of its initiative. This is where the ASEAN made a remarkable direct statement on human rights for the first time. According to Sriprapha, "for the first time in ASEAN history, a separate section on human rights was incorporated in their Joint Communiqué".41The 1993 Joint Communiqué of the 26th AMM contained three elaborate paragraphs, namely: "(The Foreign Ministers) in support of the Vienna Declaration and Programme of Action (of the World Conference on Human Rights) agreed that the ASEAN should also consider the establishment of an appropriate regional mechanism on human rights". 42 The WG was then formed from the members of civil society after such statements were issued by the ASEAN. The WG is not exactly the usual norm entrepreneur in the norm emergence phase described in the "life cycle".

<sup>&</sup>lt;sup>36</sup> Checkel, Jeffrey. "Norms, Institutions, and National Identity in Contemporary Europe."

<sup>&</sup>lt;sup>37</sup> Aggarwal, Vinod. "Analyzing Institutional Transformation in the Asia-Pacific." In Asia- Pacific Crossroads: Regime Creation and the Future of APEC, by Vinod Aggarwal and Charles Morrison (eds). London: MacMillan, 1998.

<sup>38</sup> Price, Richard. The Chemical Weapons Taboo. 1997

<sup>&</sup>lt;sup>39</sup> Finnemore, Martha, and Sikkink, Kathryn. "International Norm Dynamics and Political Change": 895.

<sup>40</sup> Ibid

<sup>&</sup>lt;sup>41</sup> Petcharamesree, Sriprapha. "The ASEAN Human Rights Architecture: Its Development and Challenges." The Equal Rights Review 11 (2013): 48.

<sup>&</sup>lt;sup>42</sup> The ASEAN Secretariat. AICHR What You Need to Know. Jakarta: The ASEAN Secretariat, 2012: 6–7.

At the same time, some of the WG's traits extend beyond this norm emergence stage. The key to its success also includes legitimacy, reputation, and esteem, both as a group and in an individual capacity. These are supposed to be the motives of states, international organisations, and networks (including the networks of norm entrepreneurs) in the second stage of norm cascade. For the WG, legitimacy, reputation, and esteem must be perceived as existing traits, contributing to its success, rather than motives for choosing to perform such roles.

The WG as a group and several of its members are known to possess these qualities. Firstly, as a group, members are regarded to have a high reputation for integrity and esteem in the eyes of the ASEAN elite, international organiations, and civil society. From the countless internal meetings, the author has been privileged to attend for almost a decade, it is abundantly clear that the WG is not motivated to enhance its reputation, esteem, or legitimacy. Any recognition the WG might receive is never in its calculation. For example, when the WG was the only human rights organisation listed as an entity associated with the ASEAN in the Charter,44 such uninvited recognition came as a complete surprise to them. The same can be said for the perception that the WG has exclusive ties with AMM, SOM, or AICHR. Pursuing change via dialogues with the ASEAN elite is in the WG's strategy and it just so happens that it is able to do so, like no other civil society organisation. In fact, the WG has even tried to help other CSOs have similar dialogues whenever the opportunity allows. It is not wrong to say that the main reason the WG can perform these duties is because it is held in high esteem by the ASEAN elite. Also, it is fair to conclude that the quest for a reputation is not what makes the WG do such a thing, but the other way around. The WG uses its reputation both as a group and through the individual capacity of members (sacrificing their own political capital) to make these dialogues happen to further the causes they believe in.

Secondly, several members of the group are accepted as truly knowledgeable in the field of human rights and regarded as people of integrity and high stature in their own right, even before joining the WG. Their prestige continues to grow over the years as they engage with human rights issues in their individual capacities, but these should be perceived as the by-product of their valuable contributions rather than motives. Such contributions can be supported by the records evidencing that individual WG members have done much more behind the scenes without asking for credit or recognition. Furthermore, it cannot be stressed enough that these people perform their work in several capacities, most of which are considered more prestigious than their roles in the WG, from the conventional standard. It is illogical to think their motives with the WG are for reputation or esteem. If anything, as mentioned above, individual members use their existing reputation and esteem to advance the ideals they believe in.

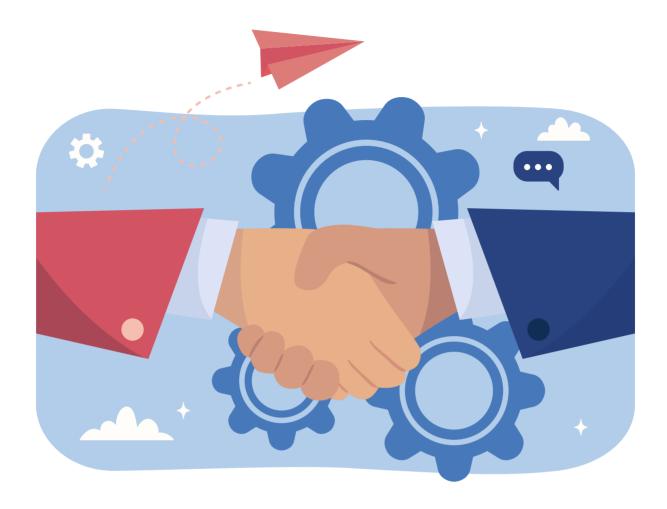
Some examples of members who are regarded with high integrity and legitimacy are given here. Prof. Vitit Muntarbhorn was the first UN Independent Expert on violence and discrimination based on sexual orientation and gender identity. He served on many United Nations bodies, including the role of the UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (DPRK) and Special Rapporteur of the UN Commission on Human Rights on the Sale of Children, Child Prostitution and Child Pornography. He was the Chair of the International Commission of Inquiry on the Ivory Coast and a Commissioner on the Independent International Commission of Inquiry on Syria.45 Dato' Param Cumaraswamy, the current Co-Chairperson of the WG, was the UN Special Rapporteur on the Independence of Judges and Lawyers from 1994-2003.46

<sup>&</sup>lt;sup>43</sup> Finnemore, Martha, and Kathryn Sikkink, "International Norm Dynamics and Political Change": 902.

<sup>&</sup>lt;sup>44</sup> The Association of Southeast Asian Nations. The ASEAN Charter. Jakarta: The ASEAN Secretariat, 2008: 49.

<sup>&</sup>lt;sup>45</sup> "Vitit Muntarbhorn", OHCHR, July 20, 2020, https://www.ohchr.org/en/issues/sexualorientationgender/pages/vititmuntarbhorn.aspx.

<sup>&</sup>lt;sup>46</sup> "Dato Param Cumaraswamy", Human Rights Resource Centre, July 20, 2020, http://hrrca.org/dato-param-cumaraswamy/.



Dr Marzuki Darusman was a member of parliament for 20 years, a chairman of the Human Rights Commission, an attorney general, the Chairman of the UN Fact-Finding Mission to Myanmar, a member of the UN Commission of Inquiry to investigate the assassination of former Pakistani Prime Minister Benazir Bhutto, Chair of the UN Secretary General's Panel of Experts on Sri Lanka,

and the UN Special Rapporteur and Member of the UN Commission of Inquiry on Human Rights in the DPRK.<sup>47</sup> Dr Sriprapha Petcharamesree was the first Thai Representative to the ASEAN Intergovernmental Commission on Human Rights,<sup>48</sup> and the list goes on.

<sup>&</sup>lt;sup>47</sup> "Marzuki Darusman", Global Leadership Foundation, July 20, 2020, https://www.g-l-f.org/marzuki-darusman

<sup>&</sup>lt;sup>48</sup> Petcharamesree, Sriprapha. "The ASEAN Human Rights Architecture: Its Development and Challenges": 59.

#### Pressure/Persuasion

Contrary to the orthodox belief in applying pressure, the WG's approach focuses on persuasion. Pressure, naming and shaming, and similar approaches have been the dominant mechanism of civil society actors striving for change around the world. There is nothing wrong with that. Indeed, it makes sense when considering that states care about images and legitimacy, and hurting their images means hurting their power. Legitimacy is crucial in the social conception of power. If power refers to material capabilities like counting tanks and guns, then legitimacy is irrelevant. However, that is brute force. Power should be referred to as the ability to achieve what one wants, and therefore legitimacy is crucial since it is the source of morality for actions. Besides, states care about their images. As Inis Claude famously puts it, "among statesmen, the lovers of naked power are far less typical than those who aspire to clothe themselves in the mantle of legitimate authority; emperors may be nude, but they do not like to be so, to think themselves so, or to be so regarded". 49

In International Norm Dynamics and Political Change, the article argues that "it is difficult to generalise to the state level from research on esteem done at the individual level, but norm entrepreneurs frequently target individual state leaders for criticism. Because much norm advocacy involves pointing to discrepancies between words and actions and holding actors personally responsible for adverse consequences of their actions, one way to think about norm entrepreneurs is that they provide the information and publicity that provoke cognitive dissonance among norm violators".50 In another classic work, the Power of Human Rights, an important contribution of norm entrepreneurs is to apply pressure to norm-violating states. In fact, they argue that it is a necessary condition for change in the human rights area. The book contends that the advocacy networks "...put norm-violating states on the international agenda in terms of moral consciousness-raising. In doing so, they also remind liberal states of their own identity as promoters of human riahts".51

However, perhaps we underestimate other mechanisms that work very well in different circumstances. This is where the approach adopted by the WG of persuasion with constructive recommendations acts as a good example. The WG employs a strategy of revealing what it can offer, and attempts to identify the most constructive contribution, and then direct it towards the ASEAN elite.



<sup>49</sup> Claude Jr, I.L. "Collective Legitimation as a Political Function of the United Nations." International Organization 20, no. 3 (1966): 368.

<sup>&</sup>lt;sup>50</sup> Finnemore, Martha, and Sikkink, Kathryn. "International Norm Dynamics and Political Change": 904.

Fill Risse, Thomas, and Sikkink, Kathryn. "The Socialization of International Human Rights Norm into Domestic Practices: Introduction." In The Power of Human Rights: International Norms and Domestic Change, by Thomas Risse, Stephen C. Ropp, and Sikkink, Kathryn (eds.). Cambridge: Cambridge University Press, 1999: 5.

To make it clear, the WG fully realises that applying pressure is important, but also that this may not be where it can contribute most to the ASEAN and many other people have been active in performing that role already. Since a whole chapter has already been devoted to this topic, it will merely be summarised here.

A few traits that the dominant theories in politics and international relations disciplines fail to explain about the WG and its contributions are presented in this final section. Overall, this chapter frames and puts the WG into perspective and lays the foundation for other chapters.



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# CONTRIBUTIONS OF THE WORKING GROUP AS A NORM ENTREPRENEUR

The Working Group acts as a norm entrepreneur, helping to frame, legitimise, and localise human rights for a sceptical Southeast Asian audience. The way in which the Working Group is able to exert influence aids our understanding of the institutionalisation of the ASEAN. While not fundamentally questioning the role of member states in shaping the ASEAN, this narrative suggests that the ideas discussed by member states have a more diverse range of sources than has previously been thought. Specifically, ideas that exert a formative effect over the institutionalisation of rights in the ASEAN emerged from the Working Group, successfully framing human rights in a way that resonates with political leaders in some member states.

## 2.1 The ASEAN and Development of its Human Rights Mechanism

If we were to sketch a picture of the ASEAN, it would generally be very colourful, full of myriad shades and nuances. Such a colourful palette would come from the diversity between member states in terms of religion, economic development, and politics. In contrast, human rights would appear extremely monochromatic in such a picture. This is because the ASEAN has been consistently unenthusiastic in reacting to violations committed by its member states, choosing to "remain silent" and "powerless" in the face of many human rights abuses in the region.

Clearly, human rights have not been one of the ASEAN's fundamental concerns. However, over the last two decades, the Association has taken several significant steps towards creating a regional human rights system. The birth of the Charter of the Association of Southeast Asian Nations (ASEAN Charter) in 2008 and the Academy of Human Resource Development (AHRD) in 2012, as well as the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009, illustrate this movement. These events are supported by several instruments addressing the rights of women, children, and migrant workers, together with various mechanisms designed to implement them. Equipped with this arsenal of instruments and mechanisms, it is hoped that the ASEAN will be able to respond more effectively to the violation of rights committed by its member states.

However, it should be remembered that the ASEAN was established principally as a political organisation and did not set out to be an organisation focusing on human rights. Its formative instrument — the "Bangkok Declaration" 1967—did not mention the term "human rights", viewed with hesitation by various governments in the region. Many were more concerned with national security rather than the genuine implementation of human rights embodying the totality of civil, political, economic, social, and cultural freedoms. Various civil and political rights, such as freedom of expression and peaceful assembly, were viewed as a threat to the political status quo at the national level, and remnants of this mindset still prevail in the region today. It should be noted that the region is eclectic.

Indonesia is a democratic country with the world's biggest Muslim population. Despite the number of undemocratic countries in the region, liberal and conservative strands coexist, some plagued in the past by coups d'etats, and more recently, hampered by a reduction in space for civil society and the cloistered interpretation of religion. Yet, there are also burgeoning democracies in several ASEAN member states.

The impetus for the establishment of a regional human rights mechanism came in the form of the 1993 World Conference on Human Rights held in Vienna. Its Declaration and Programme of Action called for the setting up of national and regional mechanisms for human rights protection worldwide. Foreign Ministers in the ASEAN responded by issuing a statement committing to the possibility of a regional human rights mechanism.

Yet, that commitment could have remained purely rhetorical had civil society not acted to remind governments of their commitment and provided some options as to what such a mechanism could involve. The Working Group for an ASEAN Human Rights Mechanism ("Working Group"), formed in the mid-1990s, was the first in civil society to take up this challenge. It acted (and still acts) as a constant reminder of the need for a mechanism in the ASEAN to address the human rights issue, and at the turn of the millennium, proposed the idea of establishing an ASEAN Human Rights Commission. It even drafted a model agreement, suggesting basic components for a regional mechanism. However, there was no immediate response from the authorities to that proposal.

In the meantime, at the turn of the millennium, informal annual confidence-building conferences took place between civil society organisations and governments, aiming for a cooperative approach between both sectors, and the idea of a specific or sectoral commission on the rights of women and children started to emerge. Auspiciously, governments in the ASEAN took up the idea explicitly in 2004, integrating it with the women's and children's commission in a general plan of action adopted in Vientiane. This was followed by the first human rights Declaration of its kind in the region the ASEAN Declaration on the Rights of Migrant Workers in 2007. This was propelled further by the promulgation of the ASEAN Charter as a kind of Constitution for the region in 2007.



## A seminal article in the ASEAN Charter called for the establishment of a regional human rights "body" (Article 14):

- 1. In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, the ASEAN shall establish an ASEAN human rights body.
- 2. The ASEAN human rights body shall operate in accordance with the terms of reference to be determined at the ASEAN Foreign Ministers' Meeting."

The aspiration to set up a mechanism at the ASEAN level on human rights can perhaps be attributed to various factors. Firstly, the call for a more rules-based organisation. Secondly, notions such as democracy and human rights are now integrated into the ASEAN through its Charter. Thirdly, leadership from key democracies in the ASEAN, namely Indonesia, Thailand, and the Philippines, has been crucial. However, some strands in the region still claim human rights are Eurocentric. There may also be an element of self-protection in setting up a regional human rights mechanism based on this perception since it is preferable to be monitored regionally than from outside. The Foreign Ministers in the ASEAN then set up a High-Level Panel to draft the Terms of Reference (ToR) for the body.

This was finalised in 2009, and the principal human rights body—the ASEAN Intergovernmental Commission on Human Rights—was formally established in 2009 in parallel with two sectoral bodies—the ASEAN Commission on the rights of women and children and the ASEAN Committee on the rights of migrant workers.

At this juncture, it is worth noting that expectations for building a regional system in the ASEAN should be modest. On the one hand, it should not be forgotten that various regional systems can provide key lessons, such as those in Europe, the Americas, and Africa. These systems are commonly known to be based on key instruments, including treaties entrenched in a range of rights, with key institutions to protect such rights. These include the European Convention on Human Rights 1950 in Europe; the American Declaration on the Rights and Duties of Man 1948 and the American Convention on Human Rights 1989 in the Americas; and the African Charter of Human and Peoples' Rights 1986 in Africa. These are coupled with regional commissions and/or courts which can pressure states to respect human rights. Importantly, these systems provide access and redress for individuals when there are no remedies at the national level. For example, individual complainants now have direct access to the European Court of Human Rights and the Inter-American Commission and the African Commission on human rights, which can then cross refer cases to their regional human rights courts. The regional courts offer binding judgements, which can lead to compensation and other remedies.

On the other hand, the ASEAN approach is very much step-by-step and non-confrontational. Moreover, unlike the EU, the ASEAN itself is not a supra-national organisation with the power to legislate regionally to have a binding force and direct effect at the local level. Indeed, policymakers are still circumspect about any movement towards supra-national institutions and the possible impingement on national sovereignty. This implies that any steps to implement a regional human rights system in the ASEAN is likely to be gradual.

### 2.2 The Working group as a Norm Entrepreneur

It should be remembered that norms do not appear out of thin air: they are actively built by agents with strong notions about appropriate or desirable community behaviour. Norm entrepreneurs are critical for norm emergence because they call attention to issues or even "create" issues by using language that names, interprets, and dramatises them. Social movement theorists refer to this reinterpretation or renaming process as "framing". The construction of cognitive frames is an essential component of the norm entrepreneurs' political strategies, since when successful, the new frames resonate with broader public understandings and adopted as new ways of discussing and understanding issues. In constructing their frames, norm entrepreneurs face firmly embedded alternative norms and frames that create alternative perceptions of both appropriateness and interest. The fact remains that standards of appropriateness are precisely the issues being contested. Given the costs of inappropriate action and many of the persuasive tools used, one has to wonder what could possibly motivate norm entrepreneurs. Obviously, the answer varies with the norm and entrepreneur, but for many of the social norms of interest to political scientists, it is very difficult to explain the motivations of norm entrepreneurs without reference to empathy, altruism, and ideational commitment. Empathy exists when actors have the capacity to participate in another's feelings or ideas. Such empathy may lead to empathetic interdependence, where actors "are interested in the welfare of others for its own sake. even if this has no effect on their own material well-being or security". Altruism exists when actors actually take "action designed to benefit another even at the risk of significant harm to the actor's own well-being". Kristen Monroe argues that the essence or "heart" of altruism is a "shared perception of common humanity. . .

a very simple but deeply felt recognition that we all share certain characteristics and are entitled to certain rights, merely by virtue of our common humanity". Ideational commitment is the main motivation when entrepreneurs promote norms or ideas because they believe in the ideals and values embodied in the norms, even though the pursuit of them may have no effect on their well-being. Of course, many norm entrepreneurs do not so much act against their interests as in accordance with a redefined understanding of such interests.

The activities of the Working Group are best understood through the prism of norm entrepreneurship. Acharya notes that norm entrepreneurs help "institutionalise a new norm by associating it with a pre-existing norm in the same issue area" The Working Group associated human rights with existing approaches to security and regional cooperation, presenting the issue in a way that ASEAN member states would find more digestible. To assist in this process, the Working Group "localised" human rights. Acharya talks of localisation as a concept "which may be initially feared and resisted simply because of its alien quality" is reinterpreted and adopted provided it "could be used to enhance the legitimacy and authority of [existing] institutions and practices". The supposed radicalism associated with rights was defused by the incremental and open-ended discussions sponsored by the Working Group. Rights were given twin roles, such as legitimating the ASEAN through engagement with global standards and facilitators of the regional reform process. The Working Group showed that talking about rights did not contradict the procedural nature of the ASEAN Way but rather reinforced the viability of that approach to governance by illustrating its ability to cover previously contentious issues.



The Working Group therefore framed human rights as being congruent with existing ASEAN practices as part of the localisation process. Frames "help name, interpret and dramatise issues" and are deployed to "persuade targeted states . . . to embrace the normative idea they support". However, the Working Group's approach to framing is different to mainstream understanding. Given the peculiarly interstate nature of the ASEAN, the Working Group was less concerned with reaching out to "domestic populations of important states"; often assumed to be important for successful framing, than they were in dealing directly with the ASEAN elite. Indeed, such outreach to the broader population would have been detrimental to the Working Group's ability to appear non-threatening to the ASEAN elite. Indeed, such outreach to the broader population would have been detrimental to the Working Group's ability to appear non-threatening to the ASEAN elite.

The Working Group positioned itself as a coordinating body for wider civil society pressure, and engagement with the National Human Rights Instruments of Indonesia, Malaysia, the Philippines, Cambodia, and Thailand, but never presented its activities as a radical "call to arms". The Working Group cooperated with key interested parties at an elite level, in particular, domestic politicians from the more democratically minded ASEAN member states. Joshua W. Busby understands this relationship when he argues that outcomes are explicable in reference to the interaction of framing a debate and how that framing resonates with gatekeepers (politicians with the particular ability to make that change happen). Given that the ASEAN, even today, remains relatively well insulated from mass domestic political pressure, this strategy was a wise one, helping to target key gatekeepers while not discouraging them by a dangerously radical appeal to the masses.

# 2.3 The Unique Norm Entrepreneur: Strengths of the Working Group

#### **Elite Membership**

It should be understood that the Working Group has always been an elite movement, imbued with an aura of legitimacy that other civil society actors could never be able to emulate. Upon its establishment, the Working Group was led by the Chairwoman of the Philippines Human Rights Commission, the Vice-chair of the Indonesian National Commission on Human Rights, and the Vice-chair of the Thai Parliament's Standing Committee on Human Rights. The Chair of the Working Group in 2001, Markuzi Darusman, was a former Attorney General of Indonesia. The elite politicians in the Working Group were well versed in national and regional politics and could be trusted. Darusman remained active in Indonesian politics, becoming a leading figure in the Golkar Party in 2008, pushing for Indonesian ratification of the ASEAN Charter. Moreover, he was appointed United Nations Special Rapporteur on Human Rights in North Korea and a former Chairperson of the **United Nations Independent International** Fact-Finding Mission on Myanmar. As a further example, in 2010, when ASEAN member states were discussing the terms of reference for the AICHR, the Thai delegate was none other than Professor Vitit Muntarbhorn, the Co-chair of the Working Group. Professor Muntarbhorn also has a long history with the United Nations. For instance, in September 2016, he was designated as the first UN Independent Expert on violence and discrimination based on sexual orientation and gender identity by the Human Rights Council. He is currently a Professor Emeritus of Law at the Chulalongkorn University in

Bangkok, having taught international law, human rights, the law of regional organisations, migration and refugee law, child rights, international humanitarian law, and European Union law. He was awarded the UNESCO Human Rights Education Prize in 2004 and formerly the United Nations Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea. Professor Muntarbhorn was also Special Rapporteur of the UN Commission on Human Rights on the Sale of Children, Child Prostitution and Child Pornography, and Chair of the International Commission of Inquiry on the Ivory Coast in 2011, as well as one of the Commissioners of the Independent International Commission of Inquiry on Syria from 2012-2016.

The current Co-Chairpersons include Dato' Param Cumaraswamy and Dr Sriprapha Petcharamesree. Dato' Param Cumaraswamy is a high-profile Malaysian lawyer from Kuala Lumpur, Chair of the Malaysian Bar Council from 1986-1988 and United Nations Special Rapporteur on the Independence of Judges and Lawyers by the UN Commission on Human Rights from 1994–2003, winning the 2005 Gruber Prize for Justice. Dr Petcharamesree is a tireless advocate for human rights and peace. She has been instrumental in building one of Asia's leading human rights and peace institutes at the Mahidol University in Bangkok, Thailand. From 2009-2012, she served as Thailand's first Representative to the ASEAN Intergovernmental Commission on Human Rights (AICHR). During her tenure, she contributed to the further establishment of AICHR itself as well as the drafting of the ASEAN Declaration on Human Rights (AHRD). Dr Petcharamesree was also Thailand Representative in the drafting of the ToR for the AICHR. Other members include Kek Galabru, head of the Cambodian Working Group and Wigberto Tanada, head of the Philippine Working Group. Dr Galabru was an essential mediator in the negotiations between Hun Sen, President of the Cambodian Council of Ministers, and Prince Sihanouk of the opposition, leading to the peace accord ending the civil war in 1991 and elections held under the auspices of the United Nations. Dr Galabru founded the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), one of the leading human rights organisations in the country. Wigberto "Bobby" Tanada was a Filipino politician, member of the Liberal Party, and former member of the Senate of the Philippines (1987–1995) and Philippine House of Representatives representing the Quezon's 4th District (1995-2001).

## 2.4 Step-by-Step Constructive Approach

If it was the elite who provided the Working Group with access, then it was careful strategic choices on the use of such access that guaranteed the continued ability to talk to leaders and officials in the ASEAN. Several solid examples are detailed in the following paragraphs.

The First Workshop with AMM, held in Jakarta during July 2001, was co-chaired by the Working Group and the Indonesian Foreign Ministry, bringing together representatives from governments, national Human Rights Commissions, NGOs, and academics from across the region, as well as observers from the ASEAN Secretariat. The Working Group outlined some extraordinarily bold options for the ASEAN to consider, and in retrospect, made a strategic error, albeit one quickly learnt from. The recommendations included courts, commissions and/or committees of ministry, and state heads. However, such boldness was atypical of the approach adopted by the Working Group. Indeed, before 2001 the Working Group had been much more cautious in their proposals. It forwarded a brief paper outlining what a human rights mechanism within the ASEAN could look like at the 1998 AMM in Manila. The proposal very modestly called for greater coordination of human rights activities within the ASEAN, harmonisation of policies to promote human rights, a network on national human rights institutions and "examine the possibility" of creating a regional mechanism. From 2001, a return to the caution displayed previously marks a clear step away from the ambitious and clearly stated goals of the First Workshop. The Second Workshop, held in Manila on 14 and 15 June 2002, called for a step-by-step approach, relying on multi-track discussions, which would ultimately, in some unspecified timeframe and form, lead to the "eventual establishment of an ASEAN Human

Rights Mechanism". To avoid any sense of dangerously isolating states in Indochina who could be less enthused with human rights as an ASEAN goal, the Working Group explicitly noted that the involvement of all ASEAN member states, without exception, was of "vital importance". Gone was the 2001 list of concrete proposals, some of which looked suspiciously supra-national in nature, being replaced with both a commitment to, and call for, discussion between stakeholders and a gradualist approach, focusing on "interim measures" and the "eventual creation" of some sort of mechanism. The Working Group approach was process rather than outcome oriented, emphasising small stepping-stones and multiple interim measures, leading towards a yet undefined outcome.

Why would this matter? The emphasis on gradualism and consultation served to differentiate the Working Group from other Track III actors actively criticising the ASEAN for not doing more to engage with rights issues, either generally or in relation to Myanmar, while simultaneously appealing to the existing procedural norms governing intra-ASEAN discussion. The Working Group never once faulted the ASEAN or compared it negatively with experiences from other regional organisations. The tone was measured and constantly focused on where lessons could be learnt. Procedural inclusivity, soft discussion, and non-critical approaches are, of course, the norms characterising ASEAN governance more generally. This suggests that the ASEAN Way, as a set of practices, continued to operate even when the issues being discussed were highly innovative in the ASEAN context. Moreover, it appears that the ASEAN Way was elastic enough to expand and include non-state parties in discussions such as the Working Group. By avoiding any clearly preferred endpoint, promoting no single understanding of what human rights may in fact be, and including the ASEAN and regional elite as far as possible, the Working Group was able to talk about rights in a way that those ingrained in the ASEAN could respond to. Rodolfo Severino Jr, Secretary General of the ASEAN from 1998-2002, made precisely this point when he called on the Working Group to engage in discussion with ASEAN member states. Under this approach, the Working Group engaged in clear issue linkage strategies to illustrate the positive relationship between human rights and existing ASEAN agreements. At the 2002 Second Workshop, it was suggested that a regional human rights mechanism of some sort was "an instrument for the implementation of ASEAN Vision 2020", linking human rights back to the original push towards a more socially-minded regional organisation. This strategy was repeated in the presentation made to the Third Workshop, held in Bangkok on 28 and 29 May 2003, by Working Group Co-Chair Vitit Muntarbhorn, who noted that Vision 2020 "reinforce[d] the call for more human rights promotion and protection in the ASEAN".

However, the 2002 Workshop was clear that human rights were potentially important for more than just ASEAN cultural-social cooperation but a vital pre-requisite for rebasing security and political cooperation.

The Working Group noted that human rights were "integral" to all the goals of Vision 2020 and a "focal point" for harmonising ASEAN collective action. This linkage is even more clearly shown when at the Fourth Workshop (Jakarta 17–18 June 2004) delegates linked human rights and the (by then) signed Bali II agreements of the previous year, noting clearly that "the Security Community provides an important conceptual framework for the realisation of an ASEAN Human Rights Mechanism".

To strengthen the link further between the ASEAN and human rights, the Working Group repeatedly referred backwards to the only ASEAN public agreement prior to the Asian Financial Crisis. In 1993, the ASEAN Ministerial Meeting, following the Vienna World Conference on Human Rights, indicated that the ASEAN would respect human rights, coordinate a common approach to the issue and most importantly, "consider the establishment of an appropriate regional mechanism on human rights". While at the time, this commitment had been little more than a rhetorical flourish, it came to hold increasing significance during the early 2000s. The ASEAN had already publicly agreed to think about a human rights mechanism. The Working Group was not the originator of these ideas, although at least it was able to sell itself as such, but simply drawing reference to those existing agreements (on paper at least) that ASEAN member states themselves had penned. This strategy defused the potential radicalism associated with human rights by linking the goals the ASEAN had already committed itself to and human rights as a way to achieve those goals. By 2003, the ASEAN had clearly indicated the need for a wider discussion of topics to include the more socially-minded aspect of regional integration, without committing itself to human rights as part of the follow through on how that socially-minded aspect was going to operate. The Working Group, through the workshop process, provided answers at a time when the ASEAN was asking questions. The link between ASEAN reform and human rights, as well as the more specific recognition of human rights as a crucial part of the security community, first emerged within the workshops organised by the Working Group.



## 2.5 Empathy, Altruism, and Ideational Commitment: Pro Bono Work and the Persistence of the Working Group

In contrast to almost all advocates for human rights in the ASEAN, the Working Group has operated on a pro bono basis, with the exception of one secretariat staff member (for most of the time) engaged in administration. However, they have persistently worked on the issues for 25 years. Surely, this has many drawbacks in itself, but at the same time, several advantages. Ambassador Rosario Manalo stated that this is precisely the reason why she likes being involved with the Working Group. "Because they are smart and have no self-interest to gain from their work." It is based purely on altruism.

The history of the Working Group enhances the mimetic adoption approach of Katsumata by suggesting that the ideas driving the institutionalisation of rights did not merely emerge through interstate negotiations and from ASEAN member states looking towards Europe for inspiration. The role of the Working Group as a norm entrepreneur indicates that a non-state actor was crucial in inserting an idea into the formative period of ASEAN discussion over how to, and what to, institutionalise. At that time, mimicry was not simply a blind adoption of European forms but rather a creative process of reinterpretation and localisation where states and the Working Group interacted to create new institutional possibilities. Understanding the role of the Working Group gives nuance to the thinking on the role of Indonesia within the institutionalisation process. As Indonesia moved decisively towards democracy, the new government saw the chance to seize the leadership of the ASEAN and demonstrate its democratic credentials to both domestic and international audiences. To Indonesia, refocusing the ASEAN into being concerned with "caring societies" and then human rights, played to both domestic and international audiences as well as offering solutions to the ASEAN's problems. Juergen Ruland identified the Indonesian parliament as especially important "in persuading the [Indonesian] government to elevate democracy and human rights to core norms. . .in its interactions with other ASEAN members". Ruland also identified "epistemic communities" as joining in with that push, and the Working Group can be conceptualised as one such community. Indeed, given the crossover between the national elite, Working Group membership, and Indonesia's co-chairing of the Workshop in 2001 and 2004, it could be argued that the Working Group was, at least in part, a constituent element of Indonesia's push for regional reform.

In turn, this indicates that the appraisal of ASEAN institutionalisation requires a broader ambit of potential inquiry than many assume to be the case. Helen Nesadurai has spoken of the "regional national nexus" when explaining ASEAN reforms. Similarly, Richard Stubbs investigated how ideas of neutrality, sovereignty, peaceful dispute settlement, informality, and a concern for domestic and regional stability, shaped ASEAN growth. Rather than a regional national nexus emerging, the area of human rights reveals a more complicated picture, where regional and national level actors were engaged and encouraged to adopt key ideas through adroit civil society action. The ASEAN may remain a two-level game, but the rules are considerably more complex than previously posited.

These discussions contribute to the enduring debate on how the ASEAN can be understood and the reforms characterising its recent history. While the actions of the Working Group say little about whether or not the ASEAN is powerful, they indicate that ideas and the entrepreneurs promoting them are crucial in explaining its development. Purely materialist (and in terms of the ASEAN, they are often labelled neorealist) understanding of the ASEAN would fail to grasp the reasoning and nature of the reforms surrounding its successes. Therefore, mimetic adoption as a causal argument, augmented with an understanding of the Working Group role as a norm entrepreneur framing and localising human rights to key ASEAN gatekeepers, gives succour, but not direct support, to wider arguments about appraising the nature of the ASEAN. In 2005, Acharya noted that the regionalism displayed by the ASEAN was "primarily a normative" one. The story of the emergence of rights within the ASEAN is confirmation of that belief, albeit a surprising one. What has not been revealed, however, at least without further study, is whether this narrative is sufficient grounds to suggest that the story of the Working Group can power a constructivist account of the ASEAN, something many assume a focus on normative standards automatically requires.

## 2.6 Perspectives On The Successes Of The Human Rights Mechanism In ASEAN.

**Contributions of the Working Group from the Norm Entrepreneur Perspective** 

**Mimetic adoption** indicates that the norm of human rights is adopted strategically and for reasons clearly amenable to cost/benefit analysis (enhanced legitimacy being the most obvious). At this juncture, it would be very hard to provide arguments that certain member states signing up to the ASEAN Charter and AICHR have in any way internalised the norms of human rights, even in the vague and generalised sense the ASEAN speaks of them. The Working Group's activities speak not only to the institutionalisation of the ASEAN but also the question of how other actors might influence it in the future. Does the success of the Working Group serve as a template for others similarly interested in influencing regional reform? The answer depends on how the Working Group is viewed. The Working Group describes itself as belonging to Track III, something with which Tan agrees when she labels it a "Track III organisation". However, is this actually true? There is certainly no evidence of the "broad participation" characterising other Track III actors, such as the ASEAN Peoples Assembly. The Working Group describes itself as a "coalition of national Working Groups from ASEAN member states, comprising representatives of government institutions, parliamentary human rights committees, the academe, and NGOs". This is incredibly close to the definition of Track II given by Ball, Milner, and Taylor as the "unofficial activities, involving academics, think tank researchers, journalists, and former officials, as well as current officials participating in their private capacities".





The contribution of Track II actors to Southeast Asia and Asia-Pacific security concerns is an area of lively study. The ASEAN-ISIS and CSCAP networks are often identified as crucial players in security cooperation. Tan gets to the heart of the matter when she suggests that the Working Group has been transformed into an "implicit Track II body". The clear focus on elite membership, close consultation, and an aversion to public naming and shaming has made the Working Group the most elite of all Track III actors and explains its unique ability to exert influence over the ASEAN. Viewed as a Track III body, the ability of the Working Group to act as a template is problematic. The Working Group was effective because it could "get on the inside" of the process of ASEAN reform, embedding itself in the practices of the ASEAN Way in order to legitimate itself and its suggestions.

The use of non-confrontational and open-ended discussion is a strategy potentially replicable by other Track III bodies interested in influencing the ASEAN. However, the Working Group was able to adopt this strategy due to being cushioned by its elite membership from pressure to be more critical of the ASEAN. Consider the situation with the drafting of the ASEAN Human Rights Declaration. Regional civil society actors have strongly criticised the ASEAN over their exclusion from consultation during the drafting process, issuing strongly worded joint statements indicating that the AICHR will fail if it does not listen to them.

Yet it is hard to see how such civil society groups would be viable if they did not directly pressure the ASEAN over such concerns given the demands of their members. Whether the strategic choices of the Working Group can be emulated is a separate issue to the obstacle posed by the circumstances of its influence. The Working Group was able to take advantage of a unique moment of destabilisation when the effects of the financial crisis provoked unprecedented questioning on the very rationale of the ASEAN. This moment of existential introspection was the permissive condition that allowed the ASEAN to listen to the Working Group because at least it forced some regional politicians to look for innovative solutions to emerging problems. When viewing the Working Group as an elite Track II actor, as opposed to a civil society organisation, the events surrounding the successes take on a different hue. Much has been written about Track II organisations and their influence on regional institutions and the agendas they adopt. Analysis of the Working Group and its successes suggests that Capie's assertion that there is little contrasting evidence to suggest that Track II actors affect institutional redesign or "think the unthinkable" insofar as the emergence of human rights in the ASEAN is concerned. Given the political sensitivity of rights, finding that an ersatz Track II body exercised such influence is significant. While there is no automatic reason to think Track II actors can successfully influence the ASEAN, they and the scholars studying them should be mindful that elite membership, if leveraged adroitly via a sound strategy of engagement, may well impact debates even in unexpected locations. The Working Group's approach to facilitating the emergence of human rights onto the ASEAN agenda holds little comfort for those who favour a more forceful regional commitment to rights, or indeed democracy.

Most importantly, there is nothing to suggest a shift away from intergovernmental approaches towards the workings of the ASEAN's regional order, so often identified as the biggest impediment to more robust regional oversight. Events suggest that the ASEAN Way has expanded to deal with new issues and even new actors, but it retains a commitment to non-intervention, open-ended discussion, and an absence of explicit enforcement measures. The Working Group most certainly failed to succeed, if it even tried, in developing meaningful regional oversight for rights. Indeed, had it openly endorsed such an end, it may well have not enjoyed the success it did in placing rights on the agenda. This split between reforming the goals but not the practices of the ASEAN remains a substantial hurdle for sustained rights protection in the region. The ASEAN has a history of grandiose commitments that are never fulfilled. Creating commitments, it seems, is easier than creating the political will to fulfil them. It is not, however, unremittingly bleak for those interested in the future of rights in the ASEAN. The Working Group adopted a long-term game, thinking it more important to establish the legitimacy of a rights commitment within the ASEAN rather than making that commitment effective. In 2009, Dato' Param Cumaraswamy noted in reference to the AICHR that "many would have preferred a much stronger and more balanced body", and it is true that the ToR for the AICHR are strongly wedded to non-intervention. However, Muntarbhorn reiterated that "while the ToR may not be a perfect document, what it does not prohibit is not forbidden; thus, there are openings for protection activities". Muntarbhorn should know, given that he was one of the panel members undertaking the preparatory work for the ToR. The belief that the AICHR and its ToR can be interpreted creatively and incrementally over the coming years is one shared by academics as much as by Muntarbhorn himself.

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THE SPIRIT OF VOLUNTEERISM AS THE FOUNDATION OF THE WG'S MODUS OPERANDI



### 3.1 Unpacking the Ideas of Pro Bono, Volunteering, and Professionalisation

#### Perhaps for many people,

this may come as a surprise. For 25 years, WG members have worked on a pro bono basis, with the exception of the secretariat staff. It has never gained an honorarium for contributing to meetings, flying overseas to discuss matters with ASEAN governments, or formulating proposals involving the ASEAN Secretariat. Many who know them well, already acknowledge that altruism and ideational commitment alone are enough to motivate WG members to continue to work on the issues of human rights (and also for their professional careers in most cases), despite the huge amount of time sacrificed for it. For some individuals, it also means risking the professional careers sustaining their well-being. But why does it matter that the WG operates its business on a pro bono basis? How does it fit in with the theme of the whole book? From discussions with several WG members. working on a pro bono basis is one of the essential traits and strengths they see in themselves. The author deeply values their self-assessments and believe they should be reflected in this book. At the same time, this book sets out to be a critical analysis, and that remains to be true for this chapter. The operation of members on a pro bono basis is investigated critically to see whether that contributes to the success of the WG, or whether it actually limits its potential and hinders its successes.

From the interviews with several members of the WG, it became clear that they perceived themselves not as professional NGOs when working on its behalf, for a couple of understandable reasons. First, they do not receive any financial gain. Second, they do not work full time for the WG. These two points are, of course, important and should be remembered when studying the WG. But are they sufficient to explain its distinction from a professional NGO? This issue is discussed below.

First of all, what is pro bono? Pro bono comes from the Latin phrase "pro bono publico", which means "for the public good" in English. To elaborate further, it means "professional work undertaken voluntarily and without payment".53 Although it may bear a resemblance to volunteering and carries the same spirit, "it uses the specific skills of professionals to provide services to those who are unable to afford them".54 It can therefore be seen that pro bono is different from volunteering. because it requires the specific skills of "professionals". But then what is a professional? Also, what is a volunteer? Can a professional be a volunteer? By the same token, can a volunteer be a professional? The terms "professional" and "volunteering" need to be briefly clarified in order to move forward.

<sup>52</sup> Interview with WG members

<sup>53</sup> https://amaidi.org/en/glossar/pro-bono/

<sup>54</sup> https://amaidi.org/en/glossar/pro-bono/

Volunteering "is used too broadly in denoting non-salaried service". <sup>55</sup> The term "volunteering" covers a wide diversity of activities, including formal volunteering that takes place within organisations in a structured way and informal volunteering, which refers to acts taking place outside the context of a formal organisation. <sup>56</sup> Volunteering is also defined as "time willingly given for the common good and without financial gain". <sup>57</sup>

Altruism is generally the motivation for volunteering. Looking deeper into this issue, also it can be seen that volunteering has implications for democracy and politics in general. Volunteering is part of the wider concept of civic participation where individuals connect with communities and social issues. Indeed, the proliferation of the concept and actions has been witnessed in the last few decades. The famous social theorist, Robert Putnam, among others, "has promoted volunteering as a benchmark to assess democratic participation, civic-mindedness, social capital, and levels of community trust". In this regard, pro bono work carries this same spirit of volunteering, but includes the specific skills of professionals.

Professionalism and professionalisation are important terms to discuss, not least because they areoften held in tension with volunteering, thoughdefining it is a daunting task. The understanding of professionalism and professionalisation tends to be ambiguous and multidimensional, but this study only focuses on the aspects related to the topic of interest. Apolitically and superficially speaking, "professional" can simply be defined as "relating to work that needs special training or education", "having the type of job that is respected because it involves a high level of education and training", "a person who has the type of job that needs a high level of education and training", or "a person who has a job that needs skill, education, or training".60 According to this interpretation, members of the WG definitely work as professionals on a pro bono basis, using their high-level knowledge in human rights and ASEAN matters to advance specific causes.

Nevertheless, "professional" has academic definitions which are deeper and more political. In fact, professionalisation can be regarded as a colonising logic. The essence of the terms is related to an emphasis on the achievement of outcomes, efficiency, transparency, and accountability.61 One hears of demands "to professionalise a sector". In comparing the terms, volunteering is often understood as a form of amateur, unpaid, and low status labour. 62 Moreover, professionalisation is also concerned with organisation. Much attention has been paid to issues such as bureaucratisation and rationalisation. 63 Professionalisation is also associated with specific kinds of social action. behaviour, and conduct. For example, professionalism is sometimes associated with a split between public and private codes of conduct, such as the principles of impersonality, emotional neutrality, fairness, or promptness.64

This understanding does not wholly explain the WG and definitely does not capture the essence of how it works, even misrepresenting some of the WG's modus operandi. The reference to "group" in the Working Group already suggests informality, which is also expressed in other ways. From several interviews the author conducted with members, they all considered each other as friends. Make no mistake, the WG takes their work very seriously, but the working atmosphere is really more like friends working together. In fact, according to several members, this spirit of friendship is what keeps them working together for years and enables members to overcome difficult times. The approach contradicts several principles of a professionalised organisation, such as the principle of impersonality, which is defined as the "absence of human character or the traits associated with the human character",65 and emotional neutrality.

<sup>&</sup>lt;sup>55</sup> Defining Who Is a Volunteer: Conceptual and Empirical Considerations September 1996 Nonprofit and Voluntary Sector Quarterly 25(3):364–383, no page

<sup>&</sup>lt;sup>56</sup> https://govolunteer.com.au/legal/definition-of-volunteering

<sup>57</sup> https://www.volunteeringaustralia.org/resources/definition of-volunteering/#/

<sup>58</sup> Volunteering and professionalization: Trends in tension?, 2.

<sup>&</sup>lt;sup>59</sup> Coleman, 1991; Putnam, 2000

<sup>60</sup> https://dictionary.cambridge.org/dictionary/english/professional

<sup>61</sup> Volunteer 2

<sup>62</sup> https://govolunteer.com.au/legal/definition-of-volunteering

<sup>63</sup> Volunteering 3. (Ganesh, 2005)

<sup>&</sup>lt;sup>64</sup> Cheney et al., 2010). And Fournier's (1999)

<sup>65</sup> https://www.collinsdictionary.com/dictionary/english/impersonality

When it comes to the form of a professional organisation, the WG does not fit either mode. As previously mentioned, the term Working Group already suggests informality. Moreover, the group does not really have a structure either, with the exception of a secretariat, co-chairpersons, and heads of the national WG. There are hardly any written procedures, no operating guidelines that inform how the structure can be changed, and no limit on terms or periods of people with roles, and no procedures on how new, members should be acquired, just to give a few examples. Principles such as bureaucratisation can certainly not be applied to the WG.

The most important difference, though, lies in the organisation's modus operandi. The WG does not bode well with the modus operandi of professional organisations either. It would be misleading to think that the achievement of outcome and efficiency is the focus of the WG. Its work has resulted in significant achievements, due to the careful strategies employed in each and every step. However, the WG has never confined itself to a few short-term outcomes or lose sight of the entire human rights development process. The WG is much more flexible than a professional organisation in that regard. Furthermore, efficiency is not one of the WG's strengths. Dealing with ASEAN bodies and governments for policy change, the WG has to plan its agendas well ahead of time, which includes a great deal of preparation. The ASEAN protocols are also complicated, and the work speed painfully slow. The WG has to carefully navigate in these terrains and adapt to the ASEAN. Moreover, it cannot be denied that because the WG's members operate on a part-time pro bono basis, they never have time to solely focus on WG's matters. Hence, the agendas move slowly, and efficiency is clearly not its focus. In conclusion, according to the detailed understanding of a professional organisation, the WG is not a traditional professional NGO. Applying this logic, the WG members do not exactly work on a pro bono basis, and it is more appropriate to think that the foundation of their work is in the spirit of volunteerism.





This gives us a better picture of what the WG is and reveals one significant difference from a "professional" organisation or NGO. This is quite a distinct feature of the WG that is often overlooked and has more important impacts than people may perceive. The issue will be investigated more deeply as the chapter unfolds, revealing that this difference has both merits for the WG's achievement, but also hinders its successes.

Whatever the WG pro bono entity is called, whether by the more narrow and apolitical definition or just a volunteer, its strict and political interpretation is of less importance here compared to the implications. It is of vital importance to note that the WG does not operate on the textbook professional basis, which focuses on efficiency, narrow outcomes, or the principles of impersonality and such. The WG is rather unique in the way it works to achieve its goals.

At this point, it is fair to conclude that the WG is different from most professional NGOs, in the way the members perceive themselves, but for different reasons. The fact that they do not receive any financial gain and work part time for the WG, although important in many respects, these are not the criteria considered by professional NGOs. What the members are trying to convey is that they are not actually career NGO staff or employees of the WG, who would otherwise have earned compensation and generally worked full time. Furthermore, they have high-level training, skills, and knowledge on the subject. In fact, the WG is most likely the highest in this regard among human rights NGOs at the ASEAN level. It is not a professional NGO according to the more serious definition, mainly due to the foundation of its modus operandi and organisational form. It can be argued that the WG's unique characteristics lie in its spirit of volunteerism as the foundation of its modus operandi. It represents a volunteerism of highly respectable, highly knowledgeable, and fully committed people.

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