Chapter 2

ASEAN's Approach Towards Human Rights
The universality of human rights has been contested by cultural relativists through the instrument of ‘Asian Way’ to cause the deterioration of human rights in Southeast Asian countries. Based on the notion of ‘Asian Values’ that exclusively contrasts the value systems that are prevailing in other parts of world, it has gradually evolved as a non-coherent ideology. With an inherent inconsistency towards western political and value systems, the proponent of Asian way has established certain principles under the regional organisation called ASEAN. What earlier called by the denomination of ‘Asian Way’ or ‘Asian Values’ is now defended under the rubric of ‘ASEAN Way’.

ASEAN as a regional institution was established with the prime concern to foster order, stability and security of the Southeast Asian countries (Aims and Purposes, ASEAN Declaration, www.aseansec.org). It has functioned to cartel common interests of the member States on various issue of consideration. Hence it worked as a catalyst in cultivating the bond of togetherness among the countries to assert themselves as ‘Asians’ (Leifer 1989). Nevertheless history has also contributed in formulating the ingredients that work as a glue to amalgamate them in a common framework of ideology. It is through norms, values, and culture which has played a prominent role in constituting the feeling of Asianess among them (Oakman 2000).

The theoretical construct of ASEAN Way is the by product of those norms, values and culture which were allegedly professed by the regional countries. It is the denomination bestowed on the policies which are distinctly pursued to overcome regional conflicts and problems (UNISCI Discussion Papers, No.16, 2008). Though claimed for harnessing democratic ethos on the regional issues, it contrarily evolved with negative contentions. The concept of ASEAN Way was manipulated to restrict the democratic functioning of the ASEAN (Ramcharan 2000), while limiting its arena of functioning as an independent organisation. And is employed to justify the authoritarian repressive political regimes under the facade of democratic rule, as claimed by many, the ‘illiberal democracy’ in Southeast Asia (Zakaria 1997).

So, the ASEAN Way has its impact on all those policies which are claimed under this principle. ASEAN’s approach towards human rights in the Southeast Asian countries
is distinctly affected by this new doctrine. Also the policies that are initiated under ASEAN were understood through the prism of the prevailing political regimes of ‘soft authoritarian’, ‘semi democratic’, ‘guided democratic’, ‘communitarian democratic’ (Mutalib 2000: 315) or in other words the ‘illiberal democratic’ regimes.

The dynamics of ASEAN’s policy reflects the objective scenario of circumstances which it faced while dealing the Southeast Asian countries. Hence it owes to these illiberal democratic regimes which at times, have swayed the ASEAN like institution in harnessing the conditions for survival of human rights.

But the internal contradictions in Southeast Asia and external compulsion from international agencies have facilitated the conditions where human rights can flourish. It is not the worth of ASEAN that come into question, rather the states itself. Hence the significance of ASEAN is, in its adjustment and survival with divergent policies of the Asian countries that at times restrict it to function properly.

**Evolution of ‘ASEAN Way’: The Traditional Security Paradigm**

History of colonial exploitation in Southeast Asia, as in other parts of the world has different repercussions though adversely affecting the futuristic prospects for development (Sardesai 1989). While destroying the entire fabric of existing societies it has uprooted the basic norms that establish harmony and cohesion. Thus the bonds that hold people together were spoiled and it result into a turmoil and suspicion which has insulated the region from developing the feelings of oneness (Solidum 1974).

This state of chaos was further induced by the cold war conflict that brought the arena of tension to the Southeast Asian region. Western bloc forged the alliance of SEATO (Southeast Asia Treaty Organisation) and ANZUS (Australia, New Zealand and United States) to have its area of domination extended to the region. Nevertheless it was targeted against the Communist ideology that was excelling swiftly and engulfing many of the countries. It was ‘domino effect’ as criticised by the West that had spelled the communist influence in the entire region (Huxley 1996). So the period beginning from the end of Second World War was the one that embark an entire new chapter of conflicts,
tension, disorder and suspicions. Hence it was futile to expect any regional sentiments that bound all the countries of the region.

So the period preceding immediately the evolution of ASEAN was one of instability and turbulence. In the 1960s, the outlook for regional security and stability in Southeast Asia was particularly grim. The region was portrayed variously as a 'region of revolt', the 'Balkans of the East', or a 'region of dominoes' (Acharya 2001:4). The weak socio-political cohesion of the region's new nation states, the legitimacy problems of several of the region's postcolonial governments, interstate territorial disputes, intra-regional ideological polarisation and intervention by external powers were marked features of the geopolitical landscape of Southeast Asia. These conflicts posed a threat not only to the survival of some of the region's new States, but also to the prospects for regional order as a whole (Simon & Ellings 1996).

Cold war Southeast Asia was polarised as a result of efforts by the revolutionary communist governments in Indochina to export their revolution to the neighbouring States. Vietnam’s invasion of Cambodia in 1978 rekindled intra-regional tensions (Shawcross 2002:48) and set the stage for renewed great power intervention and rivalry in the region. While the Sabah dispute between the Philippines and Malaysia and the Indonesia-Singapore Konfrontasi (meaning confrontation) were the defining features of its regional security environment in the early postcolonial period, Vietnam’s invasion of Cambodia and the ASEAN-Indochina polarisation marked the high point of the second Cold War in Southeast Asia (Huxley 1996).

Against this background, the establishment of ASEAN in August 1967 did not inspire much hope for peace and stability in the region. Indeed, the very survival of ASEAN was placed in doubt as interstate disputes escalated. But ASEAN survived. What is more, by the early 1990s its members could claim their grouping to be one of the most successful experiments in regional cooperation in the developing world (Document by ASEAN Secretariat 2007, www.aseansec. org). At the heart of this claim was ASEAN's role in moderating intra-regional conflicts and significantly reducing the likelihood of war.
This radical transformation was expedited by the instrument of ‘ASEAN Way’. It has also contributed to the foundation of regional sentiments in the region (Nesadurai 2009). Since cultural and political homogeneity could not serve as an adequate basis for regionalism, the latter had to be constructed through interaction. Such interactions could only be purposeful if they were consistent and rule based, employing those rules which would ensure peaceful conduct among members States. To this end, ASEAN’s founders over a period of a decade from its inception adopted and specified a set of norms for intra-regional relations. A Malaysian scholar, Noordin Sopiee, would later describe them as the “ground rules of inter-State relations within the ASEAN community with regard to conflict and its termination” (Sopiee 1986:229).

The important question about norms is not only what they are but also where do they come from. Regional institutions, including those which exhibit the characteristics of a security community (Acharya 2001), may learn their norms from global organisations, or other regional groups. Their norms also derive from the local, social, cultural and political milieu. ASEAN’s norms came from a mix of these two sources.

The first categories of norms are enshrined in a variety of documents. Primary of them is the Treaty of Amity and Cooperation signed at Bali in 1976, which outlined same basic principles (Alder & Barnett 1998:209). These are; first, the ‘mutual respect for the independence, sovereignty, territorial integrity of all nations’. Second, ‘the right of every state to lead its national existence free from external interference, subversion and coercion’. Third, the ‘non-interference in internal affairs of one another’. Fourth, ‘settlement of differences and disputes by peaceful means’. And finally, ‘renunciation of the threat of use of force’. These basic principles have contributed in constructing the traditional security paradigm. This is to foster the traditional concept of state’s physical security and at the same time harnessing the conditions for the survival of human rights.

In general, ASEAN’s norms and principles are divided into four categories: those dealing with the non use of force and the pacific settlement of disputes, those concerning regional autonomy and collective self-reliance; the doctrine of non-interference in the
internal affairs of States; and, last but not the least, the rejection of an ASEAN military pact and the preference for bilateral defence cooperation.

**Non-use of force and pacific settlement of disputes**

The first set of norms to emerge in ASEAN was an agreement among its members to refrain from the use of force to resolve interstate disputes. As Chatichai Choonhavan, Thailand’s Foreign Minister, stated in 1973, “the immediate task of ASEAN...is to attempt to create a favourable condition in the region whereby political differences and security problems among Southeast Asian nations can be resolved peacefully” (ASEAN 2nd edition, ASEAN Secretariat 1975, www.aseansec.org). The founding Bangkok Declaration of 1967 outlining the aims of ASEAN stressed the promotion of regional peace and stability through abiding respect for justice and rule of the law in the relationship among countries in the region and adherence to the principles of the United Nations Charter (Document of Bangkok Declaration 1967, www.aseansec.org). The 1971 Kuala Lumpur Declaration specifically mentioned several principles of the UN Charter as the source of these ASEAN norms, among them ‘abstention from the threat or use of force’, and ‘peaceful settlement of international disputes’ (Document of Kuala Lumpur Declaration 1971, www.aseansec.org) are the major ones.

The establishment of ASEAN was the product of a desire by its five original members to create a mechanism for war prevention and conflict management. The need for such a mechanism was made salient by the fact that ASEAN’s predecessor has foundered on the reef of intra-regional mistrust and animosity (Sandhu1992:38). An earlier attempt at a regional association in Southeast Asia, the Association for Southeast Asia (ASA), had been made in 1961, but it had collapsed over the Philippines claim to the former British colony of North Borneo (Sabah), which had opted to join the Malaysian federation (Samad & Bakar 2007). ASA was followed MAPHILINDO, an acronym for a loose confederation of three independent States of Malay stock (Indonesia, Malay and Philippines) but without displaying an institutional form. Its demise was ensured by Indonesia’s challenge to the legitimacy of newly independent Malaysia through a coercive diplomacy known as Konfrontasi (Mackie 1974:272).
The members of the newly formed ASEAN were involved in a number of serious disputes among themselves. War-like tensions obtained between Singapore and Malaysia, and Singapore and Indonesia, reflecting a general distrust of Chinese-dominated Singapore by its Malay-Muslim neighbours (Chua 1996).

The idea of ASEAN itself was conceived in the course of intra-regional negotiations leading to the end of confrontation between Indonesia and Malaysia. President Sukarno’s Kronfrontasi had been a prime example of the use of force, however limited, by a post-colonial State in Southeast Asia against a neighbour. In wrecking the prospects for MAPHILINDO, Kronfrontasi had underscored the importance of regionalism by demonstrating the high costs of the use of force to settle intra-regional conflicts (Samad & Bakar 2007). After fundamental political change, Indonesia’s decision to renounce Kronfrontasi served as a model for its neighbours and raised the possibility of regional order based on the non-use of force in inter-state relations. While interest in regionalism among the five member states of ASEAN was a result of varied geographical consideration, all recognised ASEAN’s value as a framework through which to prevent a return to a Kronfrontasi-like situation. As a regional forum under Indonesia’s putative leadership, ASEAN would first and foremost constrain Indonesia’s possible return to belligerence. As Djiwandono attributed that, “Indonesia’s membership within ASEAN would reduce the possibility of threat to their security posed by their giant neighbour...Indonesia would appear to be placed in what amounts to a ‘hostage’ position, albeit in a golden cage. For the new leadership in Jakarta...it is within ASEAN that Indonesia might be provided with an opportunity to realise its ambitions, if any, to occupy a position of primacy or primus inter pares without recourse to a policy of confrontation” (Djiwandono 1983:20).

ASEAN’s emergence also served to dampen the prospect of force being used against its smallest constituent, Singapore. Singapore, acutely conscious of its vulnerabilities as a ‘Chinese island in a sea of Malays’ (Acharya 2001:49), could use its participation in ASEAN to gain acceptance as part of Southeast Asia and play a bigger role by being able to influence other like-minded countries on issues of mutual interest. Subsequently, another small state, Brunei, would see the usefulness of ASEAN in a
similar light. ASEAN membership helped to reduce Brunei's sense of vulnerability against its bigger neighbour, Malaysia. The ASEAN norms of non-interference would lessen the possibility of Kuala Lumpur sponsoring subversion against the monarchy in Brunei which, unlike Sabah and Sarawak, had refused to join the Malaysian federation.

While the experience of Konfrontasi accounted for the emergence of the principle of non-use of force, its first major test was the Sabah dispute between Malaysia and the Philippines, between April 1968 and December 1969, relations between Malaysia and the Philippines worsened considerably over the latter's claim to Sabah, a state within the Malaysian federation (Anwar 1994). Although the dispute states back to 1961, the immediate spark for the bilateral crisis was a report appearing in the Manila press in March 1968 and a secret army was being trained on the island of Corregidor in preparation for an impending invasion of Sabah. While the government of the Philippines denied any involvement in such a plan, its reaction to the so-called 'Corregidor affair' (Leifer 1995) demonstrated a renewed pursuit of its claim on Sabah. The affair not only plunged Manila's relationship with Kuala Lumpur into a crisis, but also threatened the very survival of ASEAN barely six months after its creation in August 1967 (Greg 1998).

At first, other ASEAN members carefully avoided voicing any views publicly on the dispute that might be construed by the disputants as an indication of partiality. Their neutrality deprived Manila of the kind of international diplomatic support it needed to pursue its claim effectively. It might also have discouraged further action by President Marcos in escalating the dispute. Although Thailand and Indonesia proffered their good offices in urging the two sides to reach a negotiated settlement, both shied away from directly mediating in the dispute (International Institute for Sustainable Development Report 2007). Initially, the rest of the ASEAN members tried to keep the Sabah issue separate from ASEAN, hoping that this would limit the dispute's damaging effects on the fledgling organisation. But as bilateral talks between Malaysia and the Philippines in June 1968 failed, followed by a suspension of diplomatic relations and Malaysia's refusal to take part in any further ASEAN meetings where the Philippines might raise the Sabah issue, the linkage between ASEAN and the Sabah dispute could no longer be avoided.
In a bid to contain the crisis, ASEAN’s meeting of foreign ministers in Jakarta in August and in Bangkok in December 1968 persuaded the two sides to minimize their public airing of the dispute and accept a ‘cooling-off period’ (Acharya 2001:50). Statements by Thailand and Indonesia urged restraint on both sides for the sake of ASEAN. Until their suspension, various ASEAN ad hoc and standing committees provided crucial channels of communication between the two sides when no others existed. In March 1969, Manila agreed not to raise the Sabah issue at future ASEAN meetings, thereby indicating a new flexibility. It was an ASEAN committee meeting in Indonesia in May 1969 which brought the two countries together for the first time in eight months with the exception of an ad hoc foreign ministers meeting in December 1968 (Joint Communique of the Second ASEAN Ministerial Meeting, Jakarta, 6-7 August 1968, http://www.aseansec.org/3691.htm). The softening of Manila’s stand was due partly to the ASEAN factor, since the prior suspension of all ASEAN meetings had deprived Manila of a major channel to pursue its claim and threatened its relations with other ASEAN members - Indonesia, Thailand, and Singapore (Anwar 1994:62).

At as ASEAN foreign ministers meeting in December 1969, Malaysia and the Philippines agreed to resume diplomatic relations, thereby effectively putting the issue on the back-burner. This episode gave ASEAN a new confidence and sense of purpose. The avoidance of any further escalation of the Sabah dispute was all the more significant because it took place at a time when the degree of economic interdependence within the region was not significant enough to serve as a constraint on interstate tensions. In the words of the joint communique of the December meeting, the resumption of diplomatic ties was possible because of the great value Malaysia and the Philippines placed on ASEAN (Joint Communique of the Third ASEAN Ministerial Meeting Cameron Highlands, 16-17 December 1969, www.aseansec.org).

ASEAN did not and could not resolve the Sabah dispute, which continues to elude a decisive settlement. Neither did ASEAN play the role of conflict mediator in a formal and legalistic sense. But ASEAN members, through direct and indirect measures of restraint, pressure, diplomacy, communication and trade-offs, did succeed in preventing any further escalation of the crisis, which might have led to armed hostilities.
and destroyed the organization. Thus, the Sabah dispute is an important milestone in ASEAN's early approach to conflict avoidance and was indicative of what was to be known later as the ASEAN way of conflict management (Dupont 1996).

The need for the pacific settlement of disputes was held in such importance by ASEAN's founders that they were willing to create formal mechanism to support this principle within the ASEAN institutional framework despite their known aversion to institutional legalism. Thus, the Treaty of Amity and Cooperation signed in 1976 provided (under Chapter 4, Articles 13 to 17) for an official dispute-settlement mechanism, called a High Council, consisting of ministerial-level representatives from each member's State (Document of Treaty of Amity and Cooperation in Southeast Asia, Indonesia, 24 February 1976, http://www.aseansec.org/1217.htm). This Council, as a continuing body, was supposed to take cognizance of the existence of disputes and situations likely to disturb regional peace and harmony and in the event no solution is reached through direct negotiations, to recommend to the parties in dispute appropriate means of settlement such as good offices, mediation, inquiry or conciliation. Although this mechanism has never been invoked, this very fact has been cited by ASEAN leaders as indicating an enduring commitment to the non-use of force in intra-regional relations as well as a sign of the grouping’s success in intra-mural conflict avoidance and management.

*Regional autonomy or regional solutions to regional problems*

One of the major points of contention and constraints on regionalism in Southeast Asia since the Second World War had to do with the dependence of the regional countries on extra-regional powers for protection against internal as well as external threats. The strong security links of Thailand and the Philippines with the USA, and those of Malaysia and Singapore with Britain made security through regional cooperation less urgent (Tarling 2010). The membership of the Philippines and Thailand in the Southeast Asia Treaty Organization (SEATO) also created a schism in the strategic perspectives between these two states and Indonesia. The latter was a strong advocate of non-
alignment and even with the advent of a pro-western regime, opposed any security role for outside powers in the region.

Against this backdrop, the emergence of the principle of regional autonomy was bound to be controversial. Yet, the need for greater self-reliance in managing the region's security problems emerged as a key ASEAN norm. Adam Malik, Foreign Minister of Indonesia, explained this norm most forcefully in 1974 as, “Regional problems, i.e. those having a direct bearing upon the region concerned, should be accepted as being of primary concern to that region itself. Mutual consultations and cooperation among the countries of the region in facing these problems may...lead to the point where the views of the region are accorded the primacy they deserve in the search for solution” (Malik 1975:160).

ASEAN's formation was aided substantially by a common concern among its founding members about the changing role of external powers in the region. Despite their dependence on external security guarantees, all ASEAN members saw dangers in Great Power rivalry in Southeast Asia as its principal manifestation underwent a process of change towards the end of the 1960s, with the Sino-Soviet rift and a new competition for regional influence assuming prominence over traditional cold war patterns. The prospect of China emerging as the dominant force in the region and, as Prime Minister Lee Kuan Yew of Singapore was to put it later, the related prospect of Southeast Asia becoming “to her what the Caribbean is to America or Eastern Europe to the USSR” (Straits Times, 11 May 1975) had already constituted one aspect of ASEAN members collective apprehensions regarding the role of great powers in the region. Sino-Soviet competition, featuring a Soviet quest for regional influence through establishing links in Indochina, its proposal for an ‘Asian Collective Security Arrangement’ (Horelick 1974:269-85) and Chinese warnings concerning Soviet ‘hegemonism’ (Solomon 1986) made the ASEAN countries appreciate the need for a united response to the new form of Great Power rivalry (Oakman 2000). At the same time, the relaxation of tensions between the USA and the Soviet Union on the one hand and the USA and China on the other aroused a different kind of concern, that such Great Power compromises would leave the security interests of the ASEAN countries either ignored or undermined. Malaysia’s Prime
Minister Hussein Onn was to put it succinctly on the eve of the Bali summit when he noted that, "the big powers can create tension in any area...especially, when they try to settle their differences and impose their ideologies forcefully in other countries...there is a Malay saying that when two elephants fight the mouse deer wedged in between will suffer" (Straits Times, 7 February 1976)).

In this context, the usefulness of regionalism lay in its potential to enhance the bargaining power of small and weak states in their dealings with the Great rowers. Regionalism might not enable the ASEAN states to prevent the Great Powers from interfering in the affairs of the region, but it could, as Lee Kuan Yew pointed out, help them to "have their interests taken into consideration when the great powers make their compromises" (Sunday Times, Singapore, 18 March 1978). Adam Malik echoed the sentiment that, "Southeast Asia is one region in which the presence and interests of most major powers converge, politically as well as physically. The frequency and intensity of policy interactions among them, as well as their dominant influence on the countries in the region, cannot but have a direct bearing on political realities. In the face of this, the smaller nations of the region have no hope of ever making any impact on this pattern of dominant influence of the big powers, unless they act collectively and until they develop the capacity to forge among themselves an area of internal cohesion, stability and common purpose. Thus regional cooperation within ASEAN also came to represent the conscious effort by its member countries to try to re-assert their position and contribute their own concepts and goals within the on-going process of stabilization of a new power equilibrium in the region" ((Malik 1975:162).

ASEAN's norm of regional autonomy was also influenced by Britain's initial announcement in 1967 of its decision to withdraw its forces from 'east of Suez' by the mid-1970s (Pickering 1998) and that by President Nixon in 1969 of a new US doctrine ruling out future US military involvement in a land war in Asia (U.S. Army Military History Institute Report, 2007). He urged US Asian allies to accept the primary responsibility for their own conventional defence with only indirect US assistance. One immediate impact of the Nixon doctrine was to stimulate further Thailand's efforts to steer a more independent course in foreign policy and move towards regionalism. A
similar motive lay behind the interest of the Philippines in ASEAN at a time when Manila was keen to shed its image as a client of the USA and to assert its Asian identity. Subsequent US withdrawal from Vietnam was a blow to the credibility of Western security guarantees that had already been undermined by the announcement of Britain military withdrawal from the region. Reliance on Britain and other commonwealth partners (Australia and New Zealand) for protection against both internal as well as external threats suffered when Britain's withdrawal was announced at a time when the development of the region's indigenous defence capabilities was still at a rudimentary stage (Pickering 1998). Although the impact of that withdrawal was mitigated somewhat by the creation of Five Power Defence Arrangement (FPDA) in 1971 involving Britain, Australia, New Zealand, Singapore and Malaysia, the latter was only a consultative arrangement backed by a small defence force (RSIS, Report No. 195, 20 April 2010).

Against this backdrop, Singapore's Foreign Minister, S, Rajaratnam, observed that, “The British to withdraw from the region in the seventies brings...to an end nearly two centuries of dominant European influence in the region. The seventies will also see the withdrawal of direct American influence in Southeast Asian affairs. For the first time in centuries, Southeast Asia will be on its own. It must fill what some people call the power vacuum itself or resign itself to the dismal prospect of the vacuum being filled from the outside...We can and should fill it ourselves, not necessarily militarily, but by strengthening our social, economic and political foundations through cooperation and collective effort” (Statement at Second ASEAN Ministerial Meeting, Jakarta, 6 August 1968, www.aseansec.org).

In developing a norm of regional autonomy, the ASEAN members shared two major beliefs concerning the perils of dependence on Great Power security guarantees (Goh 2007). The first was that while such guarantees might be useful against a threat of outright aggression, they could not address likely scenarios of revolutionary social challenge. Adam Malik drew attention to this danger when he warned that, “military alliances or foreign military presence does not enhance a nation's capacity to cope with the problem of insurgency. The price for such commitments is too high, whereas the negative ramifications for the nation are too great” (Malik 1970:74). Mohamad Ghazali
Shafie, a top Malaysian official who later became the country foreign minister, wrote in 1975 that, "External support for internal insurgencies or for governments combating insurgencies, have the effect of raising the level of violence and complicating both conflict management and the peaceful resolution of conflicts through political means. Internal stability cannot after all imposed from the outside" (Shafie 1975: 23).

Second, to seek the help of external powers in situations of domestic instability could undermine the legitimacy of the threatened regime; after all the most important and painful lesson of the Vietnam War was that relying on external barking in domestic upheavals could "easily serve to insulate it (the threatened regime) from political and economic realities and render it insensitive to the social forces with which in the long run it must come to terms if it is to survive on its own" (Kahan 1973:77).

The ASEAN members heightened fear of Great Power rivalry and declining faith in external security guarantees lay behind the proposal for creating a Zone of Peace, Freedom and Neutrality (ZOPFAN) in Southeast Asia. This initiative followed discussions among the region’s elite about the possible ‘neutralisation’ of Southeast Asia, which had been advocated by Malaysia (Malaysian Foreign Affairs Ministry, 1971). Malaysia’s proposal was inspired by both external and domestic concerns, including the May 1969 race riots, which had exposed the acute tensions between the Chinese and Malay communities. The riots had increased the ruling Malay elite's perception of the threat from China. They feared that Beijing might seek to exploit the pro-China loyalties of Malaysia's Chinese, a fear aggravated by its assumption of China's seat in the UN. In one respect, Malaysia's neutralisation proposal sought to limit China's influence in the region (Haake 2003: 55).

A strict neutralisation approach was deemed unfeasible by other ASEAN members for two reasons. First, neutralisation under international law would require formal guarantees from the great powers. This precondition provoked serious reservations on the part of Indonesia, which saw it providing the latter with an undue say and influence over regional security. For Jakarta, neutralisation under international law meant in effect conceding ‘policing rights’ to the USA, the Soviet Union and China.
Indonesia pushed for a different approach, one that expressed the right of the regional countries to have the exclusive responsibility for managing regional order (Leifer 1995:260). A second and more implicitly acknowledged, obstacle to neutralisation was the fact that in order to be credible, it would have to involve strict legalistic prohibitions against foreign military bases and the existing alliance relationships of ASEAN members. Under the neutralisation framework originally envisaged by Malaysia (Ministry of Foreign Affairs, Malaysia, http://www.malaysia.gov.my/EN/Main/MsianGov/Pages/AboutMsianGov.aspx), the regional countries were required to abstain from military alliances with the Great Powers and prevent the establishment of foreign military bases on their soil, while the Great Powers were asked to ‘refrain from forging alliances with the neutralised States, stationing armed forces on their territory, and using their presence to subvert or interfere in any other way with other countries’ (Sopiee 1975:144). But while ASEAN countries were keen to espouse the principle of regional autonomy, they were pragmatic enough to realize that complete self-reliance was not feasible under the present circumstances. ASEAN members such as Thailand, the Philippines and Singapore saw their security links with Western powers as a vital ingredient of national security and regional order.

The language of the ZOPFAN Declaration which emerged on 27 November 1971 from a meeting of ASEAN foreign ministers in Kuala Lumpur was a classic example of the emerging ASEAN Way of compromise, consensus building, ambiguity, avoidance of strict reciprocity, and rejection of legally binding obligations. The declaration was far more soft and open-ended than the abortive neutralisation framework. It referred to neutralisation as a ‘desirable objective’ (Document on Zone of Peace, Freedom and Neutrality Declaration Malaysia, 27 November 1971, http://www.aseansec.org/1215.htm). But instead of laying down specific legalistic measures and going by Indonesia’s preferred approach it restated the principle in the 1967 Bangkok Declaration that ‘the countries of Southeast Asia share a primary responsibility for strengthening the economic and social stability of the region and ensuring their peaceful and progressive national development’. It also restated the Bangkok Declaration’s call for ensuring the region’s stability and security from external interference in any form or manifestation. Unlike the original neutralisation proposal, the ZOPFAN Declaration did not explicitly
deal with foreign military bases or alliances, although these were generally understood to
be temporary and only with the expressed agreement of the countries involved, a
formulation already laid out in the Bangkok Declaration (Document of Bangkok
Nonetheless, the ZOPFAN ideal contained within it all the principal security
considerations and objectives which underpinned the origin and evolution of
ASEAN, including the norms of non-interference, non-use of force and regional autonomy.
It reflected Malaysia's and Thailand's disenchantment wide external security guarantees as
well as Indonesian convictions regarding the dangers of being engulfed by the
machinations of the Great Powers. At the same time, it contained enough ambiguity to
allow for the continuation of the existing security relationships between the ASEAN
members and external powers.

The tension between the ASEAN members' aspirations for regional security
autonomy and the continued dependence of several of them on external security
guarantees has remained the principal stumbling block in the way of realizing ZOPFAN
(IIS Strategic Dossier, www.iiss.org/EasySiteWeb/GatewayLink.aspx?allId=32466). This
contradiction was reflected in intra-mural disagreements within ASEAN with Singapore
and Thailand stressing the need for external security linkages as opposed to the pro-
autonomy views of Malaysia and Indonesia. It was compounded by differing threat
perceptions among ASEAN members. The ability of China to pose a long-term security
threat to Southeast Asia was a prospect that was viewed more seriously by Indonesia and
Malaysia than by other ASEAN partners (IDSS Report No. 44, March 2003). Malaysia
moved quickly to normalize its ties with the China in 1974 partly in order to demonstrate
its commitment to ZOPFAN, since the China was to be one of the external guarantors
under the original neutralisation proposal. Indonesia, however, remained concerned that
such a move would encourage Chinese subversion in the region (Leifer 1974:311).
Thailand and Singapore, for their part, were less optimistic about Vietnam's postwar
intentions towards its ASEAN neighbours than Indonesia. Another major area of
disagreement was the need for Western security guarantees. Here too the views of
Thailand, Singapore and the Philippines regarding the need for a US presence in the
region was at variance with the professed principles and objectives of the Bangkok and
Kuala Lumpur Declarations, which were strongly espoused by Indonesia and Malaysia. Singapore, reflecting its support for a strong US presence in the region, warned that the ZOPFAN concept made the continuation of US presence all the more necessary since there was no certainty that all the other Great Powers would abide by the restraints required on their geopolitical behaviour by the concept. As Lee Kuan Yew put it as, “in the event of one or more great power not respecting, it may be useful that there would be some (US) naval and air base facilities so that some balance can be maintained” (Straits Times, 6 February 1976).

These intra-mural obstacles to ZOPFAN came to be obscured by the outbreak of the Cambodia conflict in December 1978 and the accompanying revival of Great Power rivalry (Sino-Soviet) in Southeast Asia. For a long time, ASEAN was able to hold to the convenient position that the realisation of ZOPFAN had to awake the resolution of the Cambodia conflict. In this context, ASEAN shifted its attention to a more specific aspect of ZOPFAN, a proposal for establishing a nuclear-weapon-free zone in Southeast Asia (Joint Communique of the twenty-seventh ASEAN ministerial meeting, Bangkok, 22-23 July 1994, http://www.aseansec.org/ 2086.htm). The SEANWFZ idea had been mounted in the ZOPFAN Declaration of 1971, but it was not seriously pursued until the 1980s. Since the realisation of SEANWFZ did not depend upon the settlement of the Cambodia conflict, it was viewed by ASEAN as a step towards ZOPFAN. But some of the problems encountered in the realisation of ZOPFAN, especially intra-ASEAN differences, manifested themselves with regard to the nuclear-weapon-free zone proposal. Moreover, the latter was much more strongly resisted by the USA. The USA argued that a regional nuclear-weapon-free zone covering only the ASEAN States (since Vietnam was unlikely to embrace such an idea) would impose a one-sided restriction on US military deployments in the region, undermining its nuclear deterrence posture without imposing similar constraints on the Soviet Union which would be free to extend its nuclear umbrella to its regional ally, Vietnam. The US objection, in turn, caused greater ambivalence in the attitude of Thailand, the Philippines and Singapore towards the proposal (Sandhu 1992:399). While the former two states remained tied to the US defence umbrella through bilateral security treaties, Singapore’s strong belief in the US role as a regional balancer conflicted with Indonesia and Malaysia’s preference for an
autonomous and non-aligned regional security framework (Joint Communique of the Twenty-Sixth ASEAN Ministerial Meeting Singapore, 23-24 July 1993, http://www.aseansec.org/2009.htm). In the end, the SEANWFZ proposal remained ill-defined until 1995 (Singh, 1992), with few specifics as to the area to be covered by the proposed zone, the kind of nuclear activities to be prohibited by it, its impact on security arrangements between ASEAN members and external powers, and problems of verification and compliance. Furthermore, intra-mural differences within ASEAN as well as the adverse US reaction meant that for ASEAN the political costs of SEANWFZ would outweigh its potential benefits for regional security (ISIS Research Notes, 1987). As a result, the realisation of the nuclear-free-zone concept had to await the end of the Cold War and was not concluded in treaty form until December 1995 (Singh, 1992). At the same time, ZOPFAN was further undermined by ASEAN's post-Cold War pursuit of a regional security framework which would engage, rather than exclude, the outside powers.

The doctrine of non-interference

Arguably the single most important principle underpinning ASEAN regionalism is the doctrine of non-interference in the internal affairs of member States. The salience of the doctrine of non-interference in Southeast Asia has long predated ASEAN. As a well-established principle of the modern Westphalian State system, it was firmly enshrined in the charter of the UN (Document on Charter of UN, Article 2.4, www.un.org) as well as the founding documents of numerous regional organizations, such as the African Union (AU), the Organisation of American States (OAS), and the Arab League. In Southeast Asia, it was a key principle reaffirmed all the Bandung Asian-African Conference in 1955. The doctrine was incorporated in all the major political statements of ASEAN, from the very outset. The founding Bangkok Declaration of 1967 called upon Southeast Asian States to ensure their stability and security from external interference in any form or manifestation (ASEAN Document Series 1967-1988, ASEAN Secretariat 1988, www.aseansec.org). This injunction was intended to apply not only interference by the extra regional powers, including the major powers such as the USA, Soviet Union and China, but also by Southeast Asian countries in the affairs of their own
neighbours. The Kuala Lumpur Declaration on the ZOPFAN of 1971, while providing a framework for ASEAN's relations with extra-regional powers, also committed ASEAN’s members to the worthy aims and objectives of the United Nations, including respect for the sovereignty and territorial integrity of all States and non-interference in the affairs of States (Zone of Peace, Freedom and Neutrality Declaration, Malaysia, 27 November 1971, http://www.aseansec.org/1215.htm). It also recognised the right of every state, large or small, to lead its existence free from outside interference in its internal affairs as this inference will adversely affect its freedom, independence, and integrity. Article 2 of the Treaty of Amity and Cooperation, adopted by ASEAN at its Bali summit in 1976, also contained a statement of the principle of non-interference in the internal affairs of one another (Document of Treaty of Amity and Cooperation in Southeast Asia, Indonesia, 24 February 1976, http://www.aseansec.org/1217.htm). The Declaration of ASEAN Concord, also adopted at Bali, stipulated that, “member states shall vigorously develop...a strong ASEAN Community...in accordance with the principles of self-determination, sovereign equality, and non-interference in the internal affairs of nations” (Declaration of ASEAN Concord, Indonesia, 24 February 1976, http://www.aseansec.org/1216.htm).

The ASEAN states as a group of newly independent (with the exception of Thailand, which was never a colony) developing countries should make non-interference the central tenet of intra-regional relations was hardly surprising. The sources and exceptional salience of this principle have to be understood, however, in the context of the grouping's search for internal stability and regime security. The norms of non-use of force and regional autonomy reflected ASEAN's concern for security against interstate disputes and extra-regional threats, but the doctrine of non-interference can only be understood in the context of the domestic security concerns of the ASEAN States. As new political entities with weak State structures (e.g, lack of a close congruence between ethnic groups and territorial boundaries) and an equally problematic lack of strong regime legitimacy, the primary sources of threat to the national security of the ASEAN States were not external, but internal (ISEAS, Report No. 5, 2000, Singapore). The domestic conflicts of the ASEAN States were aggravated by foreign factors, including interference from close neighbours, but the domestic sources of instability had a spillover effect,
causing friction in interstate relations. No framework for regional security cooperation could be meaningful for ASEAN unless it countered the internal enemy and enhanced regime security. Regional order could not be maintained without an agreement on the fundamental importance of regime security anchored in the principle of non-interference.

ASEAN's doctrine of non-interference was, in important part, an expression of a collective commitment to the survival of its non-communist regimes against the threat of communist subversion (Anthony 2005). This emphasis on internal stability was best illustrated in Indonesia's concepts of 'national resilience' and 'regional resilience', phrases that were to become rallying slogans for all ASEAN countries (Speech by Mr. S. Pushpanathan, Deputy Secretary-General of ASEAN at the National Resilience Institute of Republic of Indonesia). According to the Indonesian view, domestic stability within the individual ASEAN States was an indispensable prerequisite for regional security and regional collaboration. The concept of national resilience emphasizes the non-military, internal dimensions of security. As writes Irvine that, "It is an inward-looking concept, based on the proposition that national security lies not in military alliances or under the military umbrella of any great power, but in self-reliance deriving from domestic factors such as economic and social development, political stability and a sense of nationalism" (Irvine 1982:40).

The emphasis on national security and nationalism might seem to go against the spirit of regionalism. The Indonesian view conveys the opposite intent; as Jusuf Wanandi, an Indonesian scholar, has put it, "if each member nation can accomplish an overall national development and overcome internal threats, regional resilience will automatically result much in the same way as a chain derives its overall strength from the strength of its constituent parts" (Research Papers and Policy Studies No. 11, University of California, 1984:305).

The doctrine of non-interference in the context of ASEAN has not meant indifference to each other's domestic needs or strict impartiality in their domestic power struggles. It has meant that ASEAN members have been, willing to provide assistance to help each other to counter threats to domestic stability such as communist insurgency.
Thailand, in an apparent willingness compromise its sovereignty, has even been willing to grant Malaysia the right to engage in cross-border military incursions in 'hot pursuit' of communist guerrillas (Suryanarayan & Sudhamani 1981). While Thailand provided sanctuary to rebels fighting non-ASEAN members such as Burma, Cambodia and Laos, it was less tolerant of insurgencies against ASEAN member Malaysia.

**Non Military pacts and preference for bilateral defence cooperation**

ASEAN's founders were opposed to any form of multilateral military cooperation within their institutional framework. In view of Vietnam's propaganda offensive which dubbed the grouping as the 'new SEATO' (Acharya 2001:61), military cooperation among the ASEAN countries would have been an act of provocation. The US debacle in Indochina and the USA's call to ASEAN members to assume the primary burden of their own defence through regional cooperation did not alter ASEAN's position on this issue. For example, in the course of preparations for the first ASEAN summit in 1976, an Indonesian study paper had suggested the formation of a 'Joint Council' for defence cooperation and the holding of joint military exercises among the ASEAN States (Frost 1980:10). After this idea had been discarded by the leaders at the summit, the Prime Minister of Malaysia, Hussein Onn, stated that, "It is obvious that the ASEAN members do not wish to change the character of ASEAN from a socio-economic organisation into a security alliance as this would only create misunderstanding in the region and undermine the positive achievements of ASEAN in promoting peace and stability through cooperation in the socio-economic and related fields" (New Straits Times, 1 April 1976).

While rejecting formal multilateral defence cooperation, the ASEAN leaders did, within the framework of the Declaration of ASEAN Concord signed at the Bali summit, express their approval for the continuation of cooperation on non-ASEAN basis member States in security matters in accordance with their mutual needs and interests. This constituted an endorsement if bilateral border security arrangements and intelligence sharing that had already developed among ASEAN States on a bilateral basis. For ASEAN members, bilateralism offered several advantages over a formal multilateral alliance system.
Security cooperation between Malaysia and Thailand to suppress communist insurgency along their common border had been in train since the 1950s. A similar agreement to control border movement was signed between Indonesia and the Philippines in 1964 (Acharya 2001:62). After the end of hostilities between Indonesia and Malaysia, the two countries entered into active cooperation involving their land, air and naval forces to curb communist insurgency as well as piracy and smuggling along their common border (Sunardi 1995). These bilateral security arrangements expanded in scope following the establishment of ASEAN. A new security agreement between Malaysia and Thailand, signed in 1970, provided for combined operation as well as 'hot pursuit' of insurgents into each other's territory (Centre for International and Strategic Studies, Occasional Paper Number 14, May 1990). Similar joint operations against communist insurgents were carried out by Indonesia and Malaysia in 1971 (International Crises Group, Asia Report No.140, 23 October 2007). Although ASEAN States deliberated over the need for a multi-lateral security arrangement against communist subversion (such a move was proposed by President Marcos of the Philippines), bilateral and multilateral intelligence exchanges on the activities of communist and other political opposition groups had become a regular practice by the time of the Bali Summit in 1976. The general nervousness felt by ASEAN regimes about their own domestic position in the aftermath of the communist takeover in South Vietnam led to the expansion of such bilateral ties, but not to multilateral defence links.

Moreover, ASEAN's rejection of a military pact was maintained in response to the emergence of a strong Soviet-Vietnamese security partnership and a Soviet naval presence in the region in the early 1980s (Hoang 1996). Alarmed by the Soviet move, Lee Kuan Yew called for multilateral military exercises among the ASEAN members (Richardson 1982:55). Thailand opposed the move (Bangkok Post, 11 September 1982). Indonesia also rejected the Lee proposal while reiterating its view that existing bilateral linkages among ASEAN States were sufficient to deal with the emerging security threats and any multilateral exercises, which would be provocative to the other side (New Straits Times, 17 September 1982).
The conscious decision by ASEAN's founders that it should not deal with military issues and that security cooperation should be undertaken only on a bilateral basis had a major impact on ASEAN's ability to manage intra-mural conflict. Many of the intra-ASEAN bilateral security agreements were geared to managing border security problems. As Mohamad Ghazali Shafie put it, the ASEAN countries were wise to create "mechanisms or apparatus...to resolve border problems locally and not at the capitals which would turn a pimple into a boil due to undue publicity" (ASEAN Roundtable 1997, Institute of Southeast Asian Studies, ASEAN Secretariat, www.aseansec.org). In this sense, bilateral security cooperation in ASEAN served as basic building block of multilateralism.

The norms of interstate relations described above, though of central importance to the political and security role of ASEAN, are by themselves hardly unique. The doctrines of non-interference, non-intervention and pacific settlement of disputes are cardinal principles of the westphalian international system, and are well enshrined in the charter of the UN and other regional organisations. But what made ASEAN really distinctive were the norms which came to be known as the ASEAN Way.

The ASEAN Way is a term favoured by ASEAN’s leaders themselves to describe the process of intra-mural interaction and to distinguish it from other, especially Western, multilateral settings. But there is no official definition of the term. It is a loosely used concept whose meaning remains vague and contested (Acharya 2001:63).

The ASEAN way is usually described as a decision making process that features a high degree of consultation and consensus. It is a claim about the process of regional interactions and cooperation based on discreteness, informality, consensus building and non-confrontational bargaining styles which are often contrasted with the adversarial posturing, majority vote and other legalistic decision-making procedures in Western multilateral negotiations

Estrella Solidum, a Philippine scholar who is perhaps the first academic seriously to investigate the term, asserted that the ASEAN Way consists of cultural elements which are found to be congruent with some values of each of the member states
In reality, however, the cultural underpinnings of the ASEAN Way of managing disputes and advancing security cooperation could be overstated. Several elements of the ASEAN Way are hardly different from the ordinary qualities of pragmatism and flexibility that are found in national decision-making styles in other cultural settings. Moreover, and so called cultural underpinnings of the ASEAN Way are not fixed or static, but have been subject to continuous adjustment in response to national, regional and global developments. Hence it worked as a tool under the hands of authoritarian regimes to justify their repressive rule.

It can also be construed as the policy for fostering those security aspects which come under traditional security paradigm. Generally pursued with the purpose of maintaining order, stability and peace in the region, it particularly aimed at state’s survival. And this prime motive left other areas of security, particularly the human security in a grim. Human rights issues are the worst hit in this era. In the name of state security and the principle of ASEAN Way the repressive governments in Southeast Asia indulge themselves in day to day practice of human rights infringement. Either on ethnic community, refugees to the common people and of them, the vulnerable section of women and children was all subjected to the harsh measures. This is all done in under the argument of ASEAN Way. So they justified their political regimes under the facade of democracy which were contrasted by many as illiberal (Zakaria 1997).

Hence the traditional security dimension which induces the Southeast Asian countries to construct ASEAN-type institution and further the ASEAN Way was all to justify the authoritarian repressive regimes which didn’t have any room for human rights flourishing. So the ASEAN’s policy toward human rights in the period of ASEAN Way or non-intervention era was negative one. It could only claim to have harnessed the principles of ASEAN Way which if not fostered, can escalate into major conflicts while threatening the human survival and human rights thereto. Hence it prevented the outcomes of conflicts which might subdue the human rights of vast community that reside in these countries. On the contrary it does not initiate any policy that exclusively aimed at broadening human rights. Rather the principle has made ASEAN the culprit of
human right violations. On three major aspects of non intervention policy as followed by ASEAN, has made it the mute spectator of human rights violation.

First, is policy of refraining from criticising the actions of a member government towards its own people, including violation of human rights, and from making the domestic political system of states and the political styles of governments a basis for deciding their membership in ASEAN. While following this principle ASEAN refused to address the genocidal acts of the Pol Pot regime during 1975-1978, even when Cambodia was not a member of its organization (Alagappa 1991:13). Similarly, the response it has addressed towards the ‘People's Power’ revolution in the Philippines in 1986, when it ignored the revolt against Marcos regime (Boudreau 1999). And last but not the least is its role in Thai military's crackdown on pro-democracy demonstrators in May 1992 (Kurlantzick 2003), the decision to admit Vietnam in July 1995 despite its communist political system and the approval of Myanmar's entry into the organization in July 1997 despite international concerns about the legitimacy of the regime.

Second, is the policy of criticising the actions of states which were deemed to have breached the non-interference principle. The main example of the second aspect can be found in its response to Vietnam's invasion of Cambodia in December 1978. ASEAN criticised the invasion as a serious violation of the doctrine. The invasion was especially galling to ASEAN which has earlier made conciliatory gestures towards Vietnam. It had tried to secure an acceptance of ASEAN's norms, only to be rebuffed by Hanoi. ASEAN foreign ministers urged all countries in the region to respect each other's independence sovereignty, territorial integrity and political system and to refrain from interfering in each other's internal affairs and from carrying out subversive activities, directly or indirectly, against each other. What was significant about the statement was its explicit mention of the object to be protected, i.e. the political system of another country, in addition to its national sovereignty and territorial integrity, as well as the identification of the type of activity that it considered as interference, namely subversive activities, directly or indirectly (Acharya 2001:59). It has discarded the notion on human security, particularly the human right which under international law justifies intervention.
Humanitarian intervention for the sake of human survival was made secondary to the prime concern of state survival.

The third obligation imposed by ASEAN's non-interference policy on its members was the denial of sanctuary and support to rebels fighting the central authority of a member state. The origin of this policy was rooted in a concern that the transboundary movement of insurgents could become a major source of interstate tension, as reflected in the strained relations between Malaysia and Thailand over the activities of the Communist Party of Malaya (CPM) and Muslim separatists in southern Thailand. While ethnic separatists and rebel groups from Myanmar, Laos and Cambodia have found sanctuary in Thai territory (with varying degrees of knowledge and connivance of the authorities in Bangkok), Thailand proved to be less tolerant of insurgencies against fellow ASEAN members, such as Malaysia, notwithstanding past Malaysian allegations regarding an allegedly soft attitude by the Thai authorities toward CPM holdouts in southern Thailand (International Crises Group, Asia Report No.140, 23 October 2007). This compelled Thailand and other countries of the region that accounts a large number of such refugee populations in their frontiers to forceful evictions. Human rights are violated on large scale when these people were subjected to repression while ASEAN stand their only as a mute spectator.

So, the traditional security paradigm which was initiated by ASEAN, through the doctrine of ASEAN Way has proven futile in encouraging human rights practice in Southeast Asia. Rather the practice of human rights violation has become a daily event for the regimes. Together certain factors have contributed in provided legitimacy and courage for the regimes to sustain the international environment where democracy was the norm of governance. It is distinctly interesting that the political regimes in Southeast Asia have survived even when they had discarded democracy and human rights. ASEAN Way was one factor, and the rest are those which helped it to survive as illiberal democracies. This can be summarised by the fact that illiberal democratic regimes started mushrooming in the region by the mid of 1990s (Zakaria 1997).
Illiberal Democracy

The doctrine of ASEAN Way has proven successful in evolving some basic principles that govern regional politics of Southeast Asia. While restricting ASEAN’s role as an independent entity, it has hampered the democratic prospects in the region. This has further resulted in the evolution of political regimes in Southeast Asia which has abandon democracy as the rule of societal governance. As Singapore’s former Prime Minister Lee Kuan Yew, argue that, “I do not believe that democracy necessarily leads to development. I believe that what a country needs to develop is discipline more than democracy. Democracy leads to undisciplined and disorderly conditions which are inimical to development” (FEER 10 December 1992:29).

So what came in existence were the political regimes that are entirely different from those which prevail in Western countries. Hence they brought an alternative to the western claim of universal application of democratic regimes. It was what feared by Francis Fukuyama that, “The most significant challenge being posed to the liberal universalism of the American and French revolutions today is not coming from the communist world...but from those societies in Asia which combine liberal economies with...paternalistic authoritarianism” (Fukuyama 1992: 241).

What makes the Asian alternatives particularly interesting in this context is the ability of the states to rule with public consent. In a number of reasonably fair elections, the electorates have supported parties who have an outspoken goal to restrain democracy. In the Southeast Asian context, Malaysia and Singapore are the prime examples of this kind of democracy while Philippines and Thailand are more open societies and Indonesia, Vietnam, Brunei, Cambodia Myanmar and Laos are substantially more authoritarian countries (Freedom Review 1996).

It seems as if a different concept is needed in order to cope with restrained democracies, separating them both from more democratic varieties and more authoritarian ones. It is sometimes suggested that restrained democracies can be referred to as illiberal democracies (Bell & Jayasuria 1995). They are illiberal because they limit the activities of civil societies, while at the same time being democratic in the sense that
they provide political rights which enable people to have a choice in determining the nature of the system and its leaders (Engberg 2001: 65).

There are a number of reasons why illiberal democracies should be high on the agenda of the political analysts. First, Asian experiences may have an impact on our understanding of democracy and democratisation. For instance, European ideas on the historical role of social classes for the development of democracy seem to have little relevance in the Asian context. Perhaps the pace and mode of modernisation in Asia tends to produce its own logic of political development (Engberg 2001: 66).

Second, in trying to outline the underpinnings of Asian alternatives to democracy, the tendency of East and Southeast Asian countries to become role models for other ‘emerging economies’ should be emphasised (Engberg 2001: 67). Sustained growth figures of five to ten percent annually create some argumentative leverage, particularly since the economic miracle of East Asia tend to reduce income inequality, improve the conditions for women, make people live longer, enhance education, and generally increase the standard of living (World Bank Report 1995). Despite the fact that these empirical findings are mostly related to economic activities, it has become commonplace for Asian political leaders also to stress the (positive) role of Asian political systems when miracle affairs are discussed. It is no surprise that many political leaders from developing countries study the development of East and Southeast Asia when new strategies for economic growth, political stability and social security are called for (Asian Development Bank Report, April 2009).

Third, illiberalism could be regarded as a solution, not only to economic growth, but also for ruling elites having problems with their own political legitimacy. The performance oriented nature of illiberal politics could be attractive to political systems where other sources of legitimacy have failed (Laothamatas 1997). Thus the attractiveness of illiberalism goes beyond economic measures. Illiberalism could become a stable authoritarian variety of democracy, much the same as there are different forms of democracy among liberal democratic countries. If there is something robust about illiberal democracy, then conventional theories on democratisation will have to be
modified. Illiberalism, in that case, is not a stage in a development sequence, but rather a distinct form of political organisation (Engberg 2001: 67).

The rationale behind the illiberal practice of restraining civil society reflects a feature within liberal democracy itself—democracy may coexist with different degrees of liberalism and vice versa (Zakaria 1997). In the real world this means that a particular country may develop a very impressive system of free and fair elections, thus demonstrating then existence of political rights and, at the same time, limit a number of civil liberties concerned with the rule of law and the freedom of speech, assembly, religion and property. Furthermore, a political system may very well allow considerable civil liberties and at the same time restrict democratic processes. Then first case illustrates a growing number of countries in the developing world—these are the illiberal political systems. The second example reflects European experiences, where for instance property rights and the rule of law were introduced much earlier than universal adult suffrage (http://en.wikipedia.org/wiki/Universal_suffrage).

Using a broader category of countries, Zakaria demonstrate that since 1990s, the proportion of illiberal countries among those involved in democratisation tends to increase (Skene 2003: 189). Also, there are very few cases of illiberal democracies becoming liberal (Geddes & Zaller 1989).

In the parliamentary arena, control is achieved first and foremost through the development of dominant party systems. These are not coalitions in a regular sense, but systems of authority that penetrate almost all aspects of society. Malaysia, Singapore and Indonesia all have dominant party systems (Thant & Tang 1996). In a dominant party system, party membership or active party support is a necessary condition for employment, government aid, business contracts, licences, credits, educational opportunities, and access to governmental channels. Individuals, groups, and local communities who do not support the dominant party in elections face severe difficulties. Individuals may lose their jobs, housing facilities or career opportunities. Communities who vote for the opposition might find government support for local communications and education reduced or withdrawn.
Paternalistic leadership and respect for authority become important features in illiberal democracies because societal control creates patterns of dependencies of a top-down nature. Therefore, in a dominant party system the relationship between the electorates and its representatives will be more of a patron-client type than a citizen-government relationship (Thompson 2004). Despite the fact that opposition parties sometimes get enough electoral support to acquire parliamentary seats, politics in illiberal, democracies is more about controlling the electorate than the government.

Legal fine tuning is another control mechanism at the disposal of illiberal governments. It refers to a practice whereby the rule by law replaces the rule of law as a judicial principle (Katzenstein 1996). In real terms, it means that the government can outlaw any kind of behaviour it dislikes. People are regarded as managerial problems and as such they can be manipulated in a number of ways. If co-optation, rewards or coercion does not work, then laws may be promulgated to deal with the problems. The intellectual heritage of this principle comes from the colonial powers, who gave themselves arbitrary power to suppress dissent through a variety of colonial emergency laws (Tremewan 1996). In the modern world of Southeast Asia this tradition of administrative lawmaking has survived. Thus, in Singapore the Societies Act defines all action outside approved political parties as illegal and subversive. All associations of more than ten people must register and provide information about the aims, constitutional and personnel of the organisation. If the registrar should find the association to be undesirable or contrary to the national interest, it will, according to the Societies Act, be rejected (Government of Singapore, Societies Act, Chapter 311, http://statutes.agc.gov.sg/).

In Malaysia the Sedition Act regulates what can be discussed regarding ethnic affairs. The Official Secret Act prescribes what governmental information can be made official. In Malaysia the Internal Security Act provide the Minister of Home Affairs with the power to detain without trial anyone considered to be likely to act in any manner prejudicial to the security of Malaysia (Islamic Human Rights Commission, July 2007). Typically, laws of this nature are open ended, which makes them work as pre-emptive legislation. Given the fact that judges and politicians can interpret the laws in an arbitrary
way, potential dissidents may find it too costly to protest against government policies (Crouch 1992).

Societal control can also be very material in character. The Singaporean State owns seventy-five percent of the land, provides almost all infrastructure, housing, health and facilities for education. It controls wages and labour unions and regulates the supply of labour. It dominates the domestic financial market and runs state corporations and joint ventures (Tremewan 1996). A state with this kind of position will have a unique opportunity to create patterns of dependencies, where ordinary citizens will find it extremely difficult to find other sources of material and social security than those provided by the government. In Malaysia the dominant party, UMNO, has been instrumental in creating a new Malay middle class through a policy of affirmative action, whereby Malays are given precedence in business, education and administration over the economically dominant ethnic Chinese population (Sudha 1997). The purpose of the policy is to satisfy Malay demands for more power and wealth, thereby trying to defuse conflicts based on ethnic inequality.

In order to implement the program a massive re-allocation of resources was conducted. First, the government forced established Chinese and foreign enterprises to restructure in such a way that at least 30 percent of the shares would be owned by Malays—either government agencies acting on behalf of the Malay community or private Malay businessmen (Crouch 1992). Second, the Malay-dominated government launched a huge program for the establishment of large state-owned corporations in heavy industry, energy, transportation and agriculture (Gomez & Jomo 1997). These economic transformations, combined with other measures of societal control, have undoubtedly been instrumental in creating a Malay middle class that perhaps is more a product of public policies than of modernisation itself.

A popular strategy by governments trying to control civil society is to use pre-emptive and co-optative strategies. The strategy is to control the agenda and the activity of potentially problematic groups by inviting them to an orderly form of interest intermediation. If there are no consumer’s organisations, no associations for foreign
workers, or no women's groups, the government may allow budgetary means for such organisations to develop. Or, the government can establish new public offices with the purpose to represent under-represented segments of the population.

In illiberal democracies, pre-emptive and co-optative strategies flourish. In the case of Singapore, this is evident in the construction of parapolitical institutions such as Community Centres, Citizen's Consultative Committees and Town Council. In all these cases the government is providing both the rules and aims of the organisation and the candidates for leading positions. The general purpose of parapolitical institutions seems to be twofold: 'to disseminate information to the people about government policies and to provide feedback on local opinions by means of which the government is able to assess local support' (Hill & Fee 1995).

For as long as Malaysia and Singapore have been independent states, the dominant parties have had an overwhelming support from a majority of the electorate. In Singapore, the People's Action Party (PAP) has ruled since 1965 with very few incidents of opposition politics (Charter for election, PAP, Party Documents, 1996, Singapore). But the massive support for the PAP should not be regarded as representing total electoral homogeneity. By looking into results in different constituencies it became clear that class, religion and ethnicity play a role in Singaporean politics (Chua 1996). The inability of those cleavages to become important political forces does say something important about the strength of illiberal politics.

How is the electoral arena to be evaluated in illiberal political systems? On the one hand, the restrictions imposed by illiberal practice makes the democratic content of the elections highly questionable. On the other hand, electoral processes, the nature of opposition politics, the growth of Non-Governmental Organisations (NGOs), incidents of cultural resistance, the sometimes critical roles of the mass media and the voices of independent intellectuals, make the political climate much more interesting in illiberal democracies compared with more authoritarian regimes.

Typically, an authoritarian state would deny any accusation of human rights violations and would put much effort into proving that violations were not taking place.
Not so with illiberal democracies. Knowing that they have substantial popular support for their views on rights and duties, illiberal elites are launching a counter-offensive that sometimes is labelled the ‘Asian Way’ (Engberg 2001:74). It culminates many times to the extent that they raise their concern against democracy while justifying their regimes. Malaysian Prime Minister Mahathir Mohammad asserted that, “Let us not be slave of Democracy...if by practising certain aspects of democracy we run risk of causing chaos in our party and country, we have to choose our party and country above democracy” (Christie 1993:215).

Quite explicitly, the national interest as defined by states elites is elevated over democratic rights for the people. Mahathir protests that he does not advocate authoritarian rule, merely democracy as it was practised by the Western democrats during their democratic infancy. His argument is that in democratic infancy the development of political stability is the overriding concern, not democracy for its own sake: “The democratic system is not divine law. It is concocted by very human and fallible people. We cannot be accused of heresy if we disagree and reject some of the interpretations of the new prophets. There is however, little consistent promise of democracy once infancy is over; once we are politically stable then only we can focus seriously on economic growth and the welfare of our people” (Mahathir bin Mohammad Speech at Summit level meeting on ‘Cooperation for Development’, ASEAN Secretariat, 1999, www.aseansec.org). Hence the prime motive of Malaysia was to establish political peace and stability before other area of development.

In this way the non-democratic regimes excuse their human rights violations for the establishment of order, stability and peace. A step further they became extremely ardent in the early 1990s when they had achieved economic development. The miraculous economic success tends them to not only discard the democratic ethos but also got assertive to criticise them. For many Asian leaders and policy makers, economic rights are the most fundamental of rights, while political and civil rights are viewed as a luxury to be considered only once everyone is fed (Apodaca 2002:887). But the confidence came down as Asian Financial Crises hit the economies of these countries.
Asian Financial Crises and the Collapse of 'ASEAN Way'

The illiberal democratic regimes of Southeast Asia have achieved an enormous economic progress by the early 1990s. This economic surge has contested the decades old classical hypothesis of Seymour Martin Lipset that "democracy is related to the state of economic development. The more well-to-do a nation, greater the chances that it will sustain democracy" (Lipset 1960:31). While discarding the democratic way of governance, these countries survived with outstanding economic advancement. This they owed to the paternalistic governments which espoused ASEAN Way as the foundation of State’s ruling.

But the dream was shattered very recently as the Asian Financial Crises engulfed all the economic success to a sham. There were various internal and external reasons for the crises. In the first instance these countries were too successful in their economic growth: they became victims of their own success and this led investors to underestimate some of the weaknesses in their economies. The financial sector could not keep pace with the demands being placed on it. The result was that their economies overheated, they maintained pegged exchange rate mechanisms for too long, had weak management, poor control of risk and weak enforcement of prudential rules and supervision (Christie & Roy 2001:22). Moreover, according to an IMF report, they had real data problems, including lack of transparency, creating uncertainty, and problems of governance and political uncertainties created a risk of confidence (IMF Annual Report 1998). Externally, international investors underestimated risks and large capital flows to these countries were driven by this underestimation. In short, the Asian system displayed all the characteristics of an economic nervous breakdown (Christie & Roy 2001:23).

In essence, the story of the Asian economies collapse is that in late 1997 a localised currency crisis in Thailand rapidly and unexpectedly spread throughout Southeast Asia and then on to Korea and even Japan. This caused a massive withdrawal of capital from the region, a major loss of confidence in most of its economies, and a collapse in foreign exchange and equity markets as a consequence. In countries like Korea, Malaysia, and especially Thailand and Indonesia, economic collapse was followed
by political instability, as a number of countries in the region rapidly descended into a negative downward spiral in which declining confidence undermined local currencies, creating further problems for domestic banks, companies and ultimately households (Krugman 1999:94). Although the IMF was quickly called in to try and restore stability, a number of influential observers have argued that its actions actually made things worse rather than better (International Herald Tribune, 4 November 1997), and that its heavy handed intervention fuelled a sense of resentment about the region’s vulnerable position in the international system (Higgott 2000).

By the end of 1990s, ASEAN’s image had suffered a major setback. To be sure, ASEAN was never short of critics. But many of them seized on the Asian economic crises to highlight the shortcomings of the organisation. They pointed to the persistence of intra-ASEAN disputes and ASEAN’s failure to develop concrete institutional mechanisms and procedures for conflict resolution. They also cited the continuing differences and disagreements among its members over how to deal with non-members and external powers. ASEAN’s tendency to deal with intra-mural conflicts by ‘sweeping them under the carpet’, rather than resolving them, and its slow pace and modest record in developing economic cooperation, could be cited as further testimony to the limitations of the ASEAN Way.

Moreover, in the late 1990s, ASEAN had been criticised for not dealing effectively with human rights issues, or transnational problems such as the forest fires in Indonesia that have caused severe air pollution among neighbouring States (Environment Impact Assessment Report, ISEAS, Singapore, 1998). In the wake of the Asian economic crises, ASEAN’s critics have also highlighted its inability to provide a united front in dealing with the challenges of globalisation. Intra-ASEAN differences over long-standing norms such as non-interference, evident in the wake of the expansion of its membership to include all ten countries of Southeast Asia, have aggravated perceptions of ASEAN’s weakness. Finally, the ASEAN led ARF was seen as little more than a talk-shop, much like ASEAN itself. The ASEAN Way of soft institutionalism and dialogue process seemed ineffective in laying the foundations of Asia Pacific regional order.
Hence ASEAN Way started losing its charm and within month it has completely vanished from the debate.

Since Asian Financial Crises jolted the 'ASEAN Way' and its corresponding tenet the 'Asian values' to evade from Southeast Asian arena, new avenues started evolving from the region. Two contrasting developments have come in forefront. While most Pacific Asian authoritarian regimes have emerged stronger after the Asian Financial Crises, the region's new democracies (Indonesia, the Philippines, and Thailand) have been politically unstable and slower to recover economically (Thompson 2004:1081).

Vietnam escaped the worst effects of the financial meltdown and remains stable Market-Leninist dictatorship. International finance is again effusive. The World Bank has held up China as a model, both for its rapid growth and poverty elimination efforts (World Bank's Chief Representative Report 2003). A 1999 World Bank survey which pointed to a sharp decrease in poverty in Vietnam in the mid 1990s made the country the international financial community's latest 'poster child', which other developing countries should imitate (http://www.usaid.gov/pubs/bj2001/ane/vn/). Singapore is still the richest non-oil producing country in the world that is not a democracy. Foreign investors crave it as a safe haven, free from democratic excesses. In Malaysia the post-Mahathir era has been made safe for continued pseudo-democratic rule. A smooth political succession has been completed while capital controls have been lifted and foreign investors have begun to return, contributing to rapid economic recovery (Thompson 2004:1080). Hence, economically viable regimes started strengthening their holds and the prospects for democracy seem elusive and bleak. Instead of wrecking the authoritarian regimes Asian Financial Crisis only strengthen it.

Burma has failed to become stable capitalist dictatorships. In Burma the ham-fisted military regime was silly enough to arrest the Nobel Peace Prize winner Aung San Suu Kyi after massacring 100 or so of her followers in May 2003, causing predictable international outrage. There was even regional condemnation of the junta, as the once cosy club of autocrats, the Association of Southeast Asian Nations (ASEAN) briefly criticised the Burmese junta (BBC News, UK edition, 20 July 2003). Yet the regime's
well proven willingness to shoot protestors make it unlikely that its rule be seriously challenged in the near future, despite the country’s disappointing performance since capitalist development began in 1988 (Thompson 2004:1081). So, Vietnam, Singapore and Malaysia rested on their economic might and Myanmar on its autocratic rule has subdued all prospects for regime change.

Nevertheless, those infant democracies (Indonesia, the Philippines, and Thailand) which find themselves ruined by the Asian Financial Crisis were the next to emerge as a viable source of new diplomacy under ASEAN framework called ‘flexible engagement’.

From ‘Non-Intervention’ to ‘Flexible Engagement’

Globalisation has radically transformed the dimensions of international relations and politics in tandem. It worked as a catalyst for evolving new politics and making the old ones to redundant. Southeast Asia like any other regions in the world was moulded by the dynamic of globalisation. Other factors also contribute in diversification of the politics in the region. Particularly, the Asian Financial Crisis which has rooted out the concept of ASEAN Way and made many of its crucial principles superfluous. The most important principle on which the doctrine of ASEAN Way was founded has started witnessing challenges. The principle of non-intervention as espoused by the doctrine has now proven non-efficacious.

There are at least four reasons why the principle of non-intervention in ASEAN’s code of conduct should be re-examined. The first has to do with the concept of security as understood in ASEAN. Security has been seen as comprehensive, where military or defence from external aggression is only one dimension. Its other dimensions are economic, political, social, cultural etc. These dimensions are seen as interconnected, where the economic affects the political, the military, the social, and the other dimensions, and vice versa. Security also operates on many levels, from the domestic to the regional and the international. These levels are also interconnected. Thus, the call of ASEAN has always been for the promotion of national resilience by each member in order that regional security and stability might be achieved.
Given this meaning of security as understood in ASEAN, it would be very
difficult indeed to build an artificial dividing line between the various dimensions of
security and the levels in which they operate. Thus, one's economic problems that
undermine political stability and social cohesion are likely to spill beyond the national
border and affect its neighbours. Illicit activities conducted across border also create
immense problems. These can take the form of economic or political refugees, the
contagious effect of financial crises, environmental pollution, drug trafficking, and others
that can create comprehensive security problems for its neighbours (Hernandez

The second reason for a re-examination of the principle of non-intervention is
timely has to do with globalisation. This process had made national borders even more
permeable than ever before, societies more sensitive to external developments, and more
vulnerable to decisions made elsewhere. The permeability of national borders has led to
the thinking that the national state is on the retreat. Hence, globalisation pushes states to
become even more concerned about the domestic problems of their neighbours that
impact beyond the national borders and undermine the well being of others (Capie
2003). Political cooperation in ASEAN is being shaped by globalisation through the increasing
concern about the impact of domestic events on the neighbours. Hence, there arises the
need for 'enhanced interaction', 'flexible engagement', 'constructive intervention', or
'constructive involvement'. Neither non-intervention nor constructive engagement
appears to be sufficient to cushion the impact of globalisation in one country upon
another, as the Asian financial meltdown suggests (Hernandez 1998:167).

The third reason for re-examination of the non-intervention principle is related to,
but different from globalisation. ASEAN was established years ago for the purpose of
building a community of peace and prosperity in Southeast Asia through various forms of
co-operation. This condition was thought not only to enable the region to insulate itself
from being drawn into superpower competition, but also to allow its members to
concentrate their limited resources to the task of economic development and nation
building. They needed a temporal space within which they hoped to manage, if not
resolve the many challenges of economic development and nation building. Most of them
succeeded in achieving these tasks, although their achievements are at risk of being unravelled due to the unforeseen impacts of economic success and the un-sustainability of certain forms of political governance amidst rapid economic growth (Economic Survey of Economies in Southeast Asia, ISEAS, Singapore, 2000).

The region and the world in 1967 were markedly different from today. The external and domestic imperatives that shaped the form and structure of ASEAN co-operation have since undergone fundamental changes. In order to remain relevant and effective, it is time that ASEAN members undertake a re-examination or re-interpretation of the basic principles that underpinned co-operation in the past and have served them so well and so successfully in the past. Other international institutions and mechanisms are also under pressure to transform themselves to suit the demands of a changed and rapidly changing world. If ASEAN remains the same, it is likely to find itself increasingly irrelevant by its members and its external partners. Such an eventuality is not in the collective and individual interest of its members, small and medium sized states that except for Indonesia cannot have an influential role and a forceful voice in regional and international affairs without being part of a multilateral mechanism such as ASEAN. This also contrary to the history of ASEAN which, despite its tendency 'to make haste slowly' (Irvine 1982) was able to undertake incremental changes to suit new situations. Witness the institutionalisation of the regular summit of heads of state, their informal summits between the formal ones, the establishment of the ASEAN Secretariat, and the evolution of the Secretary General from head of this secretariat into the Secretary General of the Association with a ministerial rank (Interesting Changes to the ASEAN Institutional Framework, http://www.aseansec.org/21087.htm). Witness the transformation of ASEAN from a small and closely-knit group of non-communist states into almost a Southeast Asia wide grouping of both non-communist and communist states, and the transformation of the dialogue relations from like minded to unlike minded states in the few short years of the 1990s. Witness the leadership ASEAN took in providing the Asia pacific region with a transitional political security dialogue mechanism to include all the relevant actors in the region's security environment because the ASEAN Post-Ministerial Conference was no longer seen as adequate to meet the changing times. ASEAN has changed and will change for as long it remains important to its individual members.
The fourth and final reason why it is timely to re-examine the non-intervention principle is to make ASEAN more honest and credible. ASEAN’s ability to continue playing an important regional role is a function of both its cohesion and its credibility. Its cohesion is being tested by the multifarious challenges posed to it by the aped of its enlargement, both internal and external. It took 17 years (from 1967 to 1984) for ASEAN to grow from original five members to six, another 12 years (from 1984 to 1996) to grow to seven, but only a year to grow to nine (Buszynski 1997:557). But for the coup in Cambodia, ASEAN would have been ten countries by then 1997. Similarly, ASEAN dialogue partners grew rapidly during the last four years, compared to the first twenty years of its external relations. The rapid expansion of the last few years meant that the socialisation process into the ASEAN Way would be hastened for the few members, not to mention the increased diversity of an enlarged ASEAN in terms of levels of socio-economic development, political ideology and regimes, history of external relations especially with the great powers in the region, perceptions of external security, and others. These diversities would make for greater difficulty in promoting ASEAN cohesion and in developing a coherent policy vis-a-vis its key dialogue partners, such as the European Union, the United States, Japan, and of late, China (Buszynski 1997).

There can also be a negative impact of the crises on the new members’ expectations of ASEAN. They appear to be more dependent in their economic relations with the old members, especially in trade and investments, who now, due to the economic crises are no longer in a position as they were prior to July 1997 to make real contributions to the new members socio-economic development goals. The latter may look elsewhere, outside of ASEAN, as old members become increasingly pulled towards an inward-looking policy of putting priority in their recovery from the crises and in its consequent impacts on other dimensions of domestic life, including pressures for social and political change. Elsewhere could mean going to China, whose perceived dominant influence over Myanmar, was a major strategic consideration for the latter’s precipitate admission into ASEAN in July 1997 (RSIS Report No. 76, 4 June 1993). Then, an overriding concern that drove some ASEAN members towards this policy of enlargement would not be averted.
Thus, because ASEAN cohesion may no longer be taken as a given in the face of its enlargement and its reduced capacity and influence due to the crises, its credibility becomes even more important. ASEAN cannot be credible if it is not honest. And ASEAN cannot be honest if it does not acknowledge that it and its members have intervened in the domestic affairs of their neighbours in the past. Cambodia is a prime example of this intervention. Some of the more self-confident and influential leaders in ASEAN have also intervened in the domestic affairs, including political, of their less wealthy and less powerful neighbours, by providing unsolicited advice on their neighbour’s political system. The Philippines has also sought the constructive intervention of Indonesia in the resolution of Muslim separatism in Southern Philippines (ICG Report on Philippines 2008). This history of ASEAN involvement in the domestic affairs of other countries shows that the principle of non-intervention has not been all that sacrosanct in ASEAN behaviour. By embracing ‘flexible engagement’ approach, ASEAN can be more honest, and therefore, more credible (Hernandez 1998:170).

A key fallout of economic crises was the proposals for reforming ASEAN and to make it more responsive to transnational challenges. Leading the reformist camp was Surin Pitsuwan, who became the foreign minister of a new Thai government in 1997. At a time when ASEAN’s critics were blaming the currency crisis on its lack of a financial surveillance system (The Economist 28 February 1998), Pitsuwan urged ASEAN to look beyond its “cherished principle of non-intervention...to allow it to play a constructive role in preventing or resolving domestic issues with regional implications” (Agence France Presse, 13 June 1998).

According to an official Thai document: “All the ASEAN members have the responsibility of upholding the principle of non interference in the domestic affairs of one another. But this commitment cannot and should not be absolute. It must be subjected to reality tests and accordingly it must be flexible. The reality is that, as the region becomes more interdependent, the dividing line between domestic affairs on the one hand external or transnational issues on the other is less clear. Many ‘domestic’ affairs have obvious external or transnational dimensions, adversely affecting neighbors, the region and the region’s relations with others. In such cases, the affected countries should be able to
express their opinions and concerns in an open, frank and constructive manner, which is not, and should not be, considered ‘interference’ in fellow-members domestic affairs” (Ministry of Foreign Affairs, Thailand 1998).

Pitsuwan’s ideas, known as ‘Flexible Engagement’, became a focal point of debate in Southeast Asian regional dialogues. Although ostensibly geared to an economic crisis, Pitsuwan’s real aim was to promote greater political openness and transparency in ASEAN, both at domestic and regional levels. Among the ideational underpinnings of flexible engagement were emerging post-Westphalia concepts of collective action, including the norm of humanitarian intervention and the advocacy of human rights and democratization by the international community (Interview of Surin Pituwan by Amitav Acharya, 10 May 2002, Thailand, Acharya 2001).

In Southeast Asia, the humanitarian intervention norm had attracted no insider advocacy, only suspicion and rejection. Malaysia’s Foreign Minister Syed Hamid Albar found it disquietening (Speech given at Bar Council Auditorium, Kuala Lumpur, Malaysia, 28 October 1999, http://domino.kln.gov.my/kln/stateman.nsf). He urged the region “to be wary all the time of new concepts and new philosophies that will compromise sovereignty in the name of humanitarian intervention” (Agence France Presse, 7 October 1999). The norm’s clash with existing ASEAN policy frameworks was most the case of the Burmese military regime. Western governments—the United States, Canada, Australia, and the EU, pushed for sanctions against Burma, with the EU threatening to block economic cooperation with ASEAN, if it offered concessions to Burma. In contrast, ASEAN pursued a policy of ‘constructive engagement’ towards the regime, displaying greater deference to its non-interference norm than to the promotion of human rights and democracy.

Support for a diluted form of regional intervention came only from two individual leaders. Before Pitsuwan, Anwar Ibrahim, then Deputy Prime Minister of Malaysia, had proposed the idea of “constructive intervention” as a compromise between humanitarian intervention and “constructive engagement” (Acharya 1997). In July 1997, he urged ASEAN to assist its weaker members in avoiding internal collapse. But unlike
the standard formulation of humanitarian intervention, his policy implied supportive assistance, rather than coercive interference (Asian Wall Street Journal, 30 September 1997:10). Constructive intervention would take the form of direct assistance to firm up electoral processes, an increased commitment to legal and administrative reforms, the development of human capital, and the general strengthening of civil society and the rule of law in the target country (Newsweek, 21 July 1997:29).

Because of opposition from fellow ASEAN members, Ibrahim’s proposal was never officially tabled. Against this backdrop, Pitsuwan, who was clearly influenced by Ibrahim’s idea (Capie & Evans 2002), felt the need to reframe and “prune” the idea further to make it more palatable to his ASEAN colleagues. He made no mention of coercive interference or sanction based regional interactions. Flexible engagement was called for because “ASEAN needed to put its house in order” (Interview of Surin Pitsuwan by Amitav Acharya, 30 January 2001, Thailand, Acharya 2001) and, as the Foreign Minister of the Philippines Domingo Siazon put it, “build more solid ground for regional action” (Speech delivered to the 31st ASEAN Ministerial Meeting, 24 July 1998, Manila, Philippines, www.aseansec.org/3923.htm). Pitsuwan stressed the potential utility of flexible engagement in making ASEAN more transparent and interdependent, which might make it more effective in addressing a range of current transnational issues, including financial crises as well as challenges related to drugs, environment, and migrants (Japan Economic Newswire, 26 June 1998).

Though diluted, flexible engagement nonetheless was the most significant challenge to ASEAN’s non-interference norm. Regional crisis and domestic change were important catalysts behind Pitsuwan’s initiative. Pitsuwan viewed the former as “a clear and present danger” to ASEAN (Ministry of Foreign Affairs, Thailand 1998). His new Thai government was keen to prove its democratic credentials to the international based support for Burma’s repressive regime, and the lack of transparency and accountability in ASEAN member states generally (Statement by Pitsuwan, Minister of Foreign Affairs, Thailand, at the 31st ASEAN Ministerial Meeting, 24 July 1998, Manila, Philippines, http://www.aseansec.org/4519.htm).
But Pitsuwan’s intrusive regionalism was not backed by any prior regional tradition. ASEAN was founded as a grouping of illiberal regimes with no record of collectively promoting human rights and democratic governance. The campaign by human rights activists against Burma failed because advocacy of human rights and democratic governance had no place in ASEAN, which did not specify a democratic political system as a criterion for membership. Moreover, while ASEAN’s ZOPFAN norm had already been discredited internally, non-interference was still enjoying a robust legitimacy. As Singapore’s Foreign Minister S. Jayakumar put it, “ASEAN countries consistent adherence to this principle of non-interference had been the key reason why no military conflict had broken out between any two member countries since the founding of ASEAN” (The Straits Times 23 July 1998).

Regional diplomacy in Southeast Asia has been influenced by a normative shift at the global level that concerns the relationship between the principle of non-interference and the norms of human rights and democracy (Katsumata 2004:246). In today’s global arena, the dividing line between domestic and international issues is gradually blurring, and many domestic issues are beginning to have external dimensions. Such issues concern the norms of human rights and democracy. In this situation, strict application of the principle of non-interference is beginning to seem irrelevant. The principle is now being interpreted in a more flexible way. That is to say, the importance of the principle of non-interference is decreasing, while that of the norms of human rights and democracy is on the increase (Katsumata 2004:247).

The recent change in ASEAN’s diplomacy is the member countries’ attempt to deal efficiently with new challenges. These include environmental issues, the pollution haze problem, economic disruption, illegal migration, terrorism, drugs, and transnational crime. While traditional issues such as national security (defined mainly in militaristic terms) may be addressed individually by each member, these non-traditional issues require a multilateral response achieved through policy coordination. An inadequate response by one member can cause damage to neighboring countries or to the whole Southeast Asian region. This is why frank discussions among the ASEAN members have
become necessary. Members have begun to have open the frank discussions in order to deal with these new challenges efficiently (Katsumata 2004).

This radical transformation of ASEAN policy started lately in 1990s when member countries faced two major non-traditional challenges. One was the financial crisis that erupted in 1997, which caused damage to most Southeast Asian countries. The other challenge is the environmental problem caused by the Indonesian pollution haze in 1997 which affected Singapore, Malaysia, Brunei, and the southern part of the Philippines. The burning of forests by Indonesian industries to create plantations severely damaged the well-being of people in neighboring countries (Cotton 1997).

For proponents of this explanation, it is understandable why the ASEAN countries began in the late 1990s to move toward promoting frank discussion and modifying the interpretation of the non-interference principle. Efficient responses to these challenges required collective endeavors which often involved discussions of each country's domestic issues. Simon Tay and Jesus Estanislao argue that in ASEAN, "The strict adherence to the principle of non-interference...has been softened and dented, and that in a number of areas, there has been some evolution...toward reforms" (Tay & Estanislao 2001:11). Their focus is on the recent economic and environmental crises: "In response to the economic crisis...the ASEAN countries began a process to exchange financial information and review as well as comment on such information...with increasing levels of frankness...There have also been changes to the ASEAN Way of doing things in response to the environmental crisis caused by the Indonesian fires and haze...The meetings of senior environmental officials have become the occasion for a more open and frank discussion" (Fires and Haze in Southeast Asia, Japan Center for International Exchange, Tokyo, 2002).

Herman Kraft emphasizes the transboundary implications of the environmental and economic issues in his discussion of the Thai proposal for flexibility. The haze issue could not be considered as a purely internal matter for Indonesia, considering its transboundary effects. For Kraft, similarly with the haze case, the financial crisis "showed the importance of reconsidering non-intervention on issues that have
transboundary implications" (Working Paper No. 344, Strategic and Defence Studies, Australian National University, Canberra, 2000).

Furthermore, it is notable that many scholars advocate modifying the interpretation of the principle of non-interference, while stressing the need for ASEAN to deal with its new challenges. Tay and Estanislao argue that exceptions must be found with regard to the principles of the ASEAN Way (Tay & Estanislao 2001:19). Jusuf Wanandi notes that the principle of non-intervention is now ‘passe’ as “Many of the old principles on which ASEAN has functioned for the last thirty years are no longer adequate... For example, the informal style of co-operation... has proved inadequate... Domestic problems such as the financial crisis, drug-trafficking, environmental hazards, migration problems, transnational crimes... are regional problems. They call for regional... co-operation and solutions” (Wanandi 2001).

The diversification on the policy can be analyzed by the responses that the countries displayed on the policy of flexible engagement.

Thailand has advocated changes in ASEAN's diplomacy. It was one of the countries that suffered badly as a result of the financial crisis (International Banking, Finance and Economic Law Series Set, February 2000). Thus, Bangkok felt the need for ASEAN members to discuss frankly each other's domestic matters, including economic policies. In addition, Thailand faces the problem of illegal immigrants from Myanmar. When Bangkok put forward its proposal for flexible engagement, it was said that Thailand had been pushing an agenda of greater openness partly because it had to deal with this problem (Powell 1998). Moreover, Thailand shares a border with Cambodia, which is one of the most unstable countries in Southeast Asia. Thailand's security can easily be affected by domestic problems in Cambodia. Therefore, frank discussions of each country's domestic issues within ASEAN are valuable for Bangkok. To be sure, many other ASEAN members are facing similar problems. However, since Thailand shares land borders with four countries, it is understandable that the government is particularly concerned about the domestic situations of its neighbors (Brief Notes, UNHCR, 23 May 2006).
The Philippines support for a flexible interpretation of the non-interference principle is understandable too. This is because the Manila government views its republic as a "western democratic" country respecting human rights (Interview by Hiro Katsumata to Minister, Philippine Foreign Ministry, May 2002). Manila has always been concerned about ASEAN's international image. Thus, it supported the Thai proposal because ASEAN's failure to address human rights issues would have damaged the association's international reputation.

While Thailand has advocated changes, many other ASEAN members have been rather reluctant to modify the interpretation of the non-interference principle of the ASEAN Way. Among the original ASEAN members, Indonesia and Malaysia are strong supporters of the strict application of the ASEAN Way (Katsumata 2004:242).

Their reluctance to promote frank discussions can be understood by referring to the domestic concerns. If a country has domestic issues the government does not want to expose to international criticism, it becomes reluctant to promote frank discussions and collective endeavors. Other countries' interference might restrict domestic policy options to deal with such issues, including questions of nation building, human rights, and democracy (Katsumata 2004:243). The new ASEAN members in the 1990s have been strong supporters of strict adherence to the ASEAN Way, as they are also burdened with many domestic issues associated with human rights and democracy. The ASEAN countries, particularly those considered authoritarian, are concerned about the security of their regime; therefore, they are opposed to a flexible interpretation of the ASEAN Way (Thompson 2004).

Also, the policy makers in these countries are not strong supporters of liberal values, they do not hesitate to express their disagreement with a plan to promote a flexible interpretation of the non-interference principle. They say that discussions of the issues of human rights and democracy are undesirable and premature. When Bangkok put forward its proposal, then Indonesian Foreign Minister Ali Alatas expressed his disagreement that, "The principle of non-interference is a very basic principle...We can talk about certain problems like transnational crimes, but if you start talking about how a
country must run affairs like...democratising, or...human rights, then you are getting into trouble" (Powell 1998a). Similarly, the former Malaysian Foreign Minister Abdullah Ahmad Badawi maintained that an attempt to abandon the "time-honoured principle of non-interference would set ASEAN on the path towards eventual disintegration" (Powell 1998c).

But the international and regional forces compel ASEAN to diversify its policy framework in a new paradigm. So, the Asian Financial Crisis though succeeded in diluting the ASEAN Way debate from the Southeast Asian arena but has failed to root out the illiberal political regimes which entrenched deeply therein. While ASEAN at its worth has transformed the policy of non-intervention to frank discussions the prospects of human rights flourishment has started visualizing in the region. And ASEAN initiated its burden on non-traditional security issues particularly the human rights.

**ASEAN’s Approach towards Human Rights: A Non-Traditional Security Paradigm**

The advent of Globalisation in international scenario at the early 1990s has moulded the dynamics of future outcome of politics both at global and regional levels. Southeast Asia has also witnessed these changes in the basic laws of governance. What earlier concerned states, with traditional form of security were now advanced towards non-traditional security aspects. Particularly the human rights issues which were denied and discarded by the various political regimes at different arguments were now taken into consideration. Here ASEAN’s credibility comes into focus. ASEAN since its inception has initiated the endeavour to foster human rights at its best. This it does by promulgating various laws and declaration from time to time. And the members of the organisation affirm their worth to implement them in their countries. But not a single state is interested in implementing them, as they become dead letter immediately after their erection in the famous summit level meetings and conferences.

This can be further be emphasized by an example like the one of labour rights. ASEAN at it best has convened the conference, the First Meeting of the ASEAN Labour Ministers in early by 1975. Continued from that period, it has regularly called on the meetings of the ministers, as the last one held in 2008 (Joint Communique of the
Twentieth ASEAN Labour Ministers Meeting, Bangkok, 8 May 2008, http://www.aseansec.org/21545.htm). But it brought nothing else then a talk-shop ritual performed regularly, while most of the countries are strictly having no labour laws and those which have, are only to support the government and there is nothing for the labour. This could be proved by the evidences of potering which are daily practised forcefully by the military junta in Myanmar.

Similarly, the case of drugs proliferation is immense in the region and ASEAN failed to contain them. With the instruments like, ASEAN Senior Official on Drug Matters (ASOD), the ASEAN Ministerial Meetings on Transnational Crimes (AMMTC), with the loudly defended Sien Reap Declaration (2005), and the Bangkok Political Declaration in Pursuit of a Drug Free ASEAN 2015 (2000), ASEAN failed to give a dent to the rising problem of the region, described usually by the denomination of ‘Golden Triangle’ (www.aseansec.org/12698.htm).

Contrarily, the Summit Conferences, held regularly by ASEAN have some viability in fostering the human rights and other agendas. It owes to the Summit conferences only that once the area of armed hostilities, the Pacific, has been declared the Nuclear Weapon Free Zone by the Community, under Bangkok Treaty (1995). Under the same spirit ASEAN has been in the process to establish the newly created ASEAN Intergovernmental Commission on Human Rights (AICHR), to a worthy institution. ASEAN Charter is one of the steps in this phenomenon.

Initially it was the six ASEAN member states (Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, and Thailand) which took an active part in the Regional Meeting for Asia of the World Conference on Human Rights, held in Bangkok from 29 March-2 April 1993, as well as in the World Conference on Human Rights in Vienna, 14-25 June 1993 (Vienna Declaration, 1993, http://www.ohchr.org/EN/ABOUTUS/Pages/ViennaWC.aspx). Subsequently, in the Joint Communiqué at the 26th ASEAN Ministerial Meeting (AMM) in Singapore, 23-24 July 1993, Foreign Ministers of these six ASEAN Member States announced the collective view about human rights and came out with a declaration which affirmed their common efforts on one platform
The Foreign Ministers reviewed with satisfaction the considerable and continuing progress of ASEAN in freeing its peoples from fear and want, enabling them to live in dignity. And stressed that the violations of basic human rights must be redressed and should not be tolerated under any pretext. They further stressed the importance of strengthening international cooperation on all aspects of human rights and that all governments should uphold humane standards and respect human dignity. In this regard and in support of the Vienna Declaration and Programme of Action of 25 June 1993, they agreed that ASEAN should also consider the establishment of an appropriate regional mechanism on human rights.

The process to consider the establishment of “an appropriate regional mechanism on human rights” slowed down after 1995 partly because of increased political diversity following the arrival of four new members: Viet Nam joined ASEAN in 1995; Laos and Myanmar in 1997; and Cambodia in 1999. Moreover, the Asian financial crisis, which broke out first in Thailand in July 1997, created new and serious challenges, forcing ASEAN to concentrate on addressing new and more urgent priorities. One of them was how to narrow the development gaps within the ASEAN membership.

ASEAN’s strategic response to new challenges in the 21st century was to embark on community-building in 2003. ASEAN adopted in 2004 the Vientiane Action Programme (VAP), which was the first 7-year master plan for building the ASEAN Community on three pillars: political-security, economic, and socio-cultural. In this program ASEAN was expected as a vehicle to building an ASEAN community through realizing comprehensive integration (Vientiane Action Programme, 2004, http://www.aseanbiodiversity.org/index.php?option=com_content&view=article&id=8&Itemid=101).

Cooperation on human rights appeared as part of political development in the ASEAN Political-Security Community. Measures to be undertaken included: establishing a network of cooperation among existing national human rights mechanisms (in
Indonesia, Malaysia, the Philippines and Thailand) (Carolyn 2004); promoting education and public awareness on human rights; elaborating on an ASEAN instrument for the protection and promotion of the rights of migrant workers; and establishing an ASEAN commission on the promotion and protection of the rights of women and children.

It is now commonly accepted in ASEAN that human rights are comprehensive, indivisible and cross-cutting in nature; they encompass all dimensions of human life. Therefore, they should be addressed holistically, but not selectively. With this idea in mind, in 1996 the Working Group for an ASEAN Human Rights Mechanism, a small group of former politicians, lawyers, academics, government officers and human rights activists, was formed as a loosely structured entity to work on a voluntary basis. Applying confidence-building, step-by-step and building-block approaches the Working Group has, since 1996, been engaging with ASEAN officials and ASEAN member state governments.

Since 1997 it has met annually with ASEAN during the Annual Ministerial Meetings (AMM). In 2000, the Working Group submitted a ‘Draft Agreement for the Establishment of the ASEAN Human Rights Commission’ to the AMM for consideration (ASEAN Human Rights Commission, http://www.aseanhrmech.org/downloads/draft-agreement.pdf). Moreover, since 2001 the Working Group has organized seven annual workshops on an ASEAN regional mechanism on human rights together with an ASEAN government and it’s National Human Rights Commission. Since 1998, the Working Group has been formally recognized by ASEAN and the result of the annual dialogue has been included in the AMM Joint Communiqué. The Working Group is the only human rights organization identified in the ASEAN Charter as a stakeholder.

In ASEAN, promotion and protection of human rights has already been undertaken through functional cooperation to promote and protect the rights of women, children, and migrant workers. At the 12th ASEAN Summit in Cebu, the Philippines, in January 2007, the Heads of State/Government of the ten ASEAN Member States signed the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (www.aseansec.org/19264.htm). The ASEAN Leaders tasked the Secretary-
General of ASEAN to submit an annual report on the progress of implementation of their Declaration.

Subsequently, the ASEAN Committee on the Implementation of the Cebu Declaration was established in July 2007, during the 41st AMM in Singapore. The Committee is composed of one senior representative from each of the ten ASEAN Member States, as well as a representative from the ASEAN Secretariat. The Committee reports to the ASEAN Senior Labour Officials Meeting (SLOM). One important task of the Committee is to develop an ASEAN legal instrument for the protection and promotion of the rights of migrant workers. Within ASEAN, the Philippines so far is the only country that has ratified the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Hence, ASEAN has moved towards establishing human rights in the region with both caution and determination.

**Evolution of the ASEAN Charter**

In November 2007, the Heads of State and Government of the member states signed the ASEAN Charter, which entered into force on 14 December 2008 (ASEAN Charter, 2008, http://www.aseansec.org/22072.htm). By introducing a Charter, the Association has been given a more formal framework.

The idea of an ASEAN Charter was proposed by Malaysia in 2004 (Caballero-Anthony 2008), and the decision to draw up a Charter was formally adopted later at the 11th ASEAN Summit in 2005. The Malaysian concept paper ‘Review of ASEAN Institutional Framework: Proposals for Change’ has argued that in order to successfully transform ASEAN into an ASEAN Community, it would have to be prepared for profound changes which would also affect its institutional framework (Thomas 2008:55). One of the suggestions, therefore, was to review and revise ASEAN’s current institutional framework, working methods, and rules—hence the need to draft a Charter.

In 2005, ASEAN invited a ten-person Eminent Persons Group (EPG) with a representative from each of the ASEAN states with a representative to advice on the
policies and institutions to be taken into account in the reorganisation of its socio-political regional architecture (Singh 2008:72). In 2006, during the Cebu Summit, EPG presented a document known as the ‘Blueprint for an ASEAN Charter’ (Asciutti 2010: 47). EPG’s idea was to provide ASEAN with a constitutional document, containing rules, statements on sovereignty, rights and obligations, powers in legislative, executive and judicial processes, in order to foster the ASEAN integration process. While the ‘ASEAN Way’ was not going to be completely discarded, the intent was to supplement the ASEAN way with a culture of adherence to rules which were going to be legally binding by the merits of the Charter.

Between the ASEAN Summits in January and November 2007, a High Level Task Force (HLTF) was assigned to prepare the draft of the Charter, which was to be approved by the leaders in time for ASEAN’s 40th anniversary celebrations in Singapore (Narine 2009). The members of the HLTF were apparently told by the ASEAN Senior Officials that the draft Charter must be ‘practical and doable’ (Than 2008). As a result, the ASEAN Charter was drafted in a way that the Association would have maintained its own brand of regionalism, involving loose cooperation among the States concerned on the basis of consensus and dialogue: the ‘ASEAN Way’. Finally, in November 2007, while celebrating the 40th anniversary of ASEAN, the Association’s members signed the ASEAN Charter and later ratified the Charter, which entered into force on 14th December 2008.

The ASEAN Charter

The ASEAN Charter was adopted by ASEAN leaders on 20 November 2007. A media release from the ASEAN Secretariat noted that ‘for the first time after 40 years of the regional organisation, ASEAN member states have codified organic Southeast Asian diplomacy, and listed key principles and purposes of ASEAN’ (Media Release, Singapore, 20 November 2007, http://www.aseansec.org/21085.htm). With 13 Chapters, 55 Articles, and 4 annexes, the new Charter has essentially laid out the legal and institutional framework of ASEAN.
The former ASEAN Secretary-General, Mr. Ong Keng Yong, once declared that “the Charter will serve the organisation well in three interrelated ways; first, to formally accord ASEAN legal personality, second, to establish greater institutional accountability and compliance system and third, to reinforce the perception of ASEAN as a serious regional player in the future of the Asia-Pacific region” (Media Release, Singapore, 23 November 2007, http://www.aseansec.org/21085.htm). By concluding the ASEAN Charter a legally binding agreement ASEAN’s leaders have indeed signalled their commitment to a catalogue of legal obligations and rights.

It is possible to explain the reasons behind the ASEAN member states’ commitment to the Charter through four arguments, namely functional cooperation, regional identity, geopolitical weight and internal governance. According to the first argument, the deepening of regional cooperation is functional to the capacities of states to manage an increasingly interdependent regional economy and the related political forces. The second argument sees the ASEAN member states’ commitment as a reflection and amplifier of an original regional identity or consciousness. If the latter is backed by the Asian values discourse, ASEAN identity could take the form of the common ASEAN aspirations, distinctive norms and political and economic system in the face of outside pressures. The geopolitical argument interprets states’ commitment on the Charter as a collective call to action for a stronger ASEAN, able to establish relations with third parties on an equal footing. Finally, a common framework for incorporating ASEAN decisions at national level, if accomplished, will be a significant step towards legalizing and deepening the cooperation of ASEAN member states and the Association’s internal governance (Asciutti 2010: 57).

While the adoption of a Charter is certainly a watershed in ASEAN’s history, many observers have questioned how much has actually been achieved with the formal adoption of the Charter. In this sense, the ASEAN Charter can be labelled as a ‘rule guardian’ (Stubb 2008: 451-468), in the sense that it protects the rules and goals that ASEAN took on board a long time ago. The Charter has been carefully drafted to preserve the sovereignty of each member state as the ultimate source of authority that enacts and enforces laws within their territorially defined units. Besides, the Charter
constitutes the tool to resolve the tension between the need for a greater commitment to make ASEAN effective and the member states’ lack of willingness or ability to delegate authority and give ASEAN more discretion. At the same time, the Charter can also be seen as a means to strengthen these issues to avoid marginalization in the region and the world.

The analysis continues with the examination of the ASEAN Charter’s key provisions, which might be the vehicle for responding to new global concerns, as well as strengthening intra-regional collaboration.

**Principles and Objectives**

The Charter defines the purposes and principles of the Association with regard to political-security affairs, economic integration and socio-cultural matters (Article 1 & Article 2 of ASEAN Charter, www.aseansec.org). The stability and the consistency of these principles have allowed member states to agree upon the ASEAN Charter. ASEAN and its member states shall act in accordance with the following principles (Article 2 of ASEAN Charter):

- Respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States;
- Shared commitment and collective responsibility in enhancing regional peace, security and prosperity;
- Renunciation of aggression and of the threat or use of force or other actions in any manner inconsistent with international law;
- Reliance on peaceful settlement of disputes;
- Non-interference in the internal affairs of ASEAN Member States;
- Respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion;
• Enhanced consultations on matters seriously affecting the common interest of ASEAN;

• Adherence to the rule of law, good governance, the principles of democracy and constitutional government;

• Respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice;

• Upholding the United Nations Charter and international law, including international humanitarian law, subscribed to by ASEAN Member States;

• Abstention from participation in any policy or activity, including the use of its territory, pursued by any ASEAN Member State or non-ASEAN state or any non-state player, which threatens the sovereignty, territorial integrity or political and economic stability of ASEAN Member States;

• Respect for the different cultures, languages and religions of the peoples of ASEAN, while emphasizing their common values in the spirit of unity in diversity;

• Centrality of ASEAN in external political, economic, social and cultural relations while remaining actively engaged, outward-looking, inclusive and non-discriminatory; and

• Adherence to multilateral trade rules and ASEAN’s rule-based regimes for effective implementation of economic commitments and progressive reduction towards elimination of all barriers to regional economic integration, in a market-driven economy.

**Legal entity**

The Charter expressly establishes legal personality for ASEAN as an international organisation and makes ASEAN a subject of international law (Article 3 of ASEAN Charter, www.aseansec.org). This is the most significant achievement of the Charter. For one thing, the Charter would grant ASEAN status under international law and would,
therefore, allow ASEAN to enter into transactions in its own right. Similarly, with this legal personality, domestic laws of ASEAN member states would have to recognize ASEAN’s new status and would allow ASEAN to take advantage of certain privileges under domestic systems and law, for example sue in national courts, purchase property, enjoy tax benefits, and enter into a headquarters agreement with a host country (The New York Times, 20 November 2007). More significantly, having a charter would be useful in providing a legal framework for incorporating ASEAN decisions, treaties and conventions into the national legislation of member countries.

An international organisation’s legal personality indicates that it is a valid subject of international law and is capable of assuming its rights and obligations. Legal personality might also help to strengthen the external perception of ASEAN as a political player on the international plane even though the precise nature of its legal character might still be unclear (http://www.carnegieendowment.org/events/?fa=eventDetail&id=1233).

However, it is the constituent instrument, i.e. the Charter, on which its legal competence to conclude treaties with either states or other international organisations rests, that is critical. There is some force in the observation that international personality is not so much a status as a capacity: what you claim matters less than what you do (or cannot do) at international level. In its conduct of external relations, the Association’s procedures for concluding such (international) agreements shall be prescribed by the ASEAN Coordinating Council in consultation with the ASEAN Community Councils.

**Organs**

The ASEAN Charter also defines the institutional structure of the Association: the policy-making body (ASEAN Summit, Article 7; ASEAN Coordinating Council, Article 8, The ASEAN Charter, www.aseansec.org); organs for implementation and monitoring of implementation of rules and decisions (ASEAN Community Council, Article 9; ASEAN Secretary-General, Article 11, The ASEAN Charter, www.aseansec.org); mechanism for interpreting and enforcing ASEAN rules and decisions (quasi-judicial mechanism, Article 24 – 25, The ASEAN Charter).
The Charter under Article 7 states that the ASEAN Summit shall be the Association’s supreme policymaking body and will comprise its heads of state or government. ASEAN’s leaders are empowered to deliberate, provide policy guidance and make decisions on key issues.

Crucially, the Summit is the final arbiter on matters related to the failure to reach a consensus and settlement of disputes between member States. Article 7(3) (a) stipulates that Summit meetings shall be held twice annually (The ASEAN Charter). Since establishment in 1967, ASEAN Summits have only been held in 1976, 1977 and 1987. Thereafter ASEAN leaders experimented with a system of ‘formal’ and ‘informal’ meetings and it was not until the 7th ASEAN Summit in 2001 that this tenuous distinction was abandoned. Noteworthy, too, is the facilitative role of the ASEAN Coordinating Council (comprising ASEAN foreign ministers) under Article 8. Some of the responsibilities of this Council, which must meet at least twice a year, include undertaking ‘other tasks’ or ‘such functions as may be assigned by the ASEAN Summit’ and coordination with the ASEAN Community Councils ‘to enhance policy coherence, efficiency and cooperation among them’.

In relation to the ASEAN Community Council, Article 9(1) states that it shall comprise the ASEAN Political-Security Community Council, ASEAN Economic Community Council and ASEAN Socio-Cultural Community Council. These councils will meet at least twice a year and are tasked (among other things) to ensure implementation of relevant decisions by the ASEAN Summit, as well as coordinate work of different sectors under their purview and issues which cut across other Community Councils. Finally, it is also significant that each Member State must now appoint a Permanent Representative (with the rank of Ambassador) to be based in the Association’s Headquarter Jakarta. This Committee of Permanent Representatives will serve as a vital interface between the various national ASEAN secretariats, the Community Council and the Coordinating Council.

The ASEAN Secretary-General (Article 11, The ASEAN Charter) is the highest representative of ASEAN, representing the views of the Association. The Secretary-
General is responsible for facilitating and monitoring the progress of the implementation of ASEAN agreements and decisions, as well as granting the respect of the Charter. The Secretary-General is chosen among nationals of the ASEAN member states based on alphabetical rotation with due consideration to integrity, capability and professional experience, and gender equality. The mandate lasts for a non-renewable term of five years. The Secretary-General is also the Chief Administrative Officer of ASEAN (The ASEAN Charter, www.aseansec.org).

**Decision-making: importance of consensus**

As for the decision making-process, a choice between intergovernmental and supranational decision making needed to be made. ASEAN chose to continue to be based on consultation and consensus, as established in Article 20 of the Charter. The persistence of the sovereignty rule is pivotal for ASEAN’s intergovernmental type of regionalism, and it is explained by members’ attitudes toward social trust, more than by attitudes toward institutionalisation and governance. Hence, the ASEAN Charter will not transform ASEAN into an institution with hierarchical bureaucratic organizations (Asciutti 2010: 47) providing strong socializing effects; rather the Charter will maintain the network governance of ASEAN, meant as an informal way of cooperation providing information and coordinating players’ behaviours and lower transaction costs.

**Human Rights**

Since ASEAN has never had a human rights body, the adoption of the ASEAN Charter could be viewed as a major step forward in the process of establishing a human rights mechanism in Southeast Asia. The Charter makes references to the imperatives of fundamental rights as legal principles. Pursuant to Article 2 (2)(i), Member States shall respect ‘fundamental freedoms, the promotion and protection of human rights and the promotion of social justice’ (The ASEAN Charter). Under ‘Purposes’ in Article 1(7), ASEAN seeks (among other things) to ‘promote human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN’ (The ASEAN Charter). These ‘rights and responsibilities’ must surely include sovereignty in both its internal and external aspects (Tay 2010). Members, as sovereign states, remain
the ultimate source of authority within their territorially defined units to promulgate and enforce laws. Whereas internally it is now common for this authority to be subjected to its Constitution as the supreme law of the state (Tiwari 2010), from an external standpoint the ultimate authority must be exercised in a way that is consistent with its international legal obligations. This would now include the ASEAN Charter. Moreover, Article 14 of the ASEAN Charter envisages an ASEAN Human Rights Body. This body will operate in accordance with the terms of reference to be adopted by the ASEAN Ministerial Meeting.

**Evaluating the ASEAN Charter**

The ASEAN Charters lacks any explicit legally binding provision for compliance and credible dispute settlement mechanism. According to Article 24 of the Charter, ‘Dispute relating to specific ASEAN instruments shall be settled through the mechanism and procedures provided for in such instruments. Article 25 is dedicated to the establishment of a Dispute Settlement Mechanism, but it does not give any further indications on how and when to establish such a mechanism. As for unresolved disputes, they should be ‘referred to the ASEAN Summit, for its decision’ (Article 26). In the current institutional design, neither the ASEAN Secretary-General nor the ASEAN Secretariat has the mandate to authoritatively call for compliance (Chachavalpongpun 2009).

Nevertheless, the non-intervention principle retains its supremacy and is placed above the adherence to the rules of human rights. Besides, the ASEAN Charter does not explicitly refer to any universally accepted human rights standards, such as the Universal Declaration of Human Rights and other major human rights treaties that have set expectations for state behaviours on human rights (Severino 2005). Moreover, the Charter did not manifest ASEAN’s collective rejection of acts that all would find abhorrent, such as genocide, ethnic cleansing, torture, the use of rape as an instrument of state power or as a weapon of war, child labour, the use of child soldiers, and discrimination on the basis of gender, race, religion or ethnicity, though condemnations of such acts are embodied in international conventions that all ASEAN countries have
signed (Koh 2009). Indeed, placing them in the ASEAN. So, it's an institution with very marginally powers that didn't substantiate a radical transformation of Southeast Asian politics. Nevertheless the importance is in the common efforts that are laid in constructing a common treatises for the entire Southeast Asia.

**Rights of Women, Children and Migrant Workers**

Efforts in ASEAN to promote and protect the rights of women, children, and migrant workers were made long before the drafting of the ASEAN Charter and they are gaining momentum in their own separate processes. A Working Group has been set up to draft the Terms of Reference for an ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (http://www.aseansec.org/documents/TOR-ACWC.pdf). The cooperation here can be based on the 2004 Declaration on the Elimination of Violence Against Women in the ASEAN Region, as well as the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the UN Convention on the Rights of the Child, which all ASEAN Member States have ratified. In other words, ASEAN has clear firm ground for cooperation on the protection of women's rights.

During the inaugural ceremony of the ASEAN Intergovernmental Commission on Human Rights (AICHR) on 23 October 2009 at the 15th ASEAN Summit in Cha-Am Hua Hin, Thailand, Prime Minsiter Abhisit Vejjajiva, surprised everyone with the announcement that the Terms of Reference (ToR) of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) had already been completed and that this development will lead to the establishment of the ACWC by 2010 (Human Rights Herald, January 2010).

Despite being an intergovernmental and consultative body, the mandate and functions of the ACWC in the completed Terms of Reference include tasks which can potentially be optimized for effective promotion and protection of the rights of women and children in the region. These functions include:
• To promote the implementation of international instruments, ASEAN instruments and other instruments related to the rights of women and children.

• To develop policies, programs and innovative strategies to promote and protect the rights of women and children to complement the building of the ASEAN Community.

• To advocate on behalf of women and children, especially the most vulnerable and marginalized, and encourage ASEAN Member States to improve their situation.

• To encourage ASEAN Member States to undertake periodic reviews of national legislations, regulations, policies, and practices related to the rights of women and children.

• To propose and promote appropriate measures, mechanisms and strategies for the prevention and elimination of all forms of violation of the rights of women and children, including the protection of victims.

• To support the participation of women and children in dialogue and consultation processes in ASEAN, related to the promotion and protection of their rights.

The Terms of Reference expressly refers to the long-standing issue of coordination and alignment, and states that the ACWC shall coordinate with the AICHR and other relevant ASEAN sectoral bodies dealing with issues pertaining to women and children. Consultations on the ultimate alignment between the ACWC and the AICHR as the overarching human rights institution in ASEAN should be undertaken. Indeed, Vejjajiva in his speech at the inauguration of AICHR observed that the ACWC, as well as other regional mechanisms, shall be “part and parcel of the ASEAN human rights regime under the umbrella of the AICHR” (Remarks by H.E. Abhisit Vejjajiva, Prime Minister of the Kingdom of Thailand, on the Occasion of the Inaugural Ceremony of the ASEAN Intergovernmental Commission on Human Rights (AICHR), Cha-Am Hua Hin, Thailand, 23 October 2009).

The Terms of Reference also provides that the ACWC shall engage in dialogue and consultation, as may be appropriate, with other national, regional and international
institutions and entities concerning the promotion and protection of the rights of women and children. It also specifically requires that the ACWC keep the public regularly informed of its work and activities through appropriate public information materials.

Other noteworthy provisions in the Terms of Reference of the ACWC are found on the subject of representatives. In appointing such representatives, ASEAN member-states are asked to give due consideration to competence in the field of the rights of women and children, integrity and gender equality; and to conduct, in accordance with the respective internal processes, a transparent, open, participatory and inclusive selection process of their representatives to the ACWC. Finally, in the discharge of duties, each representative is mandated to act impartially in accordance with the ASEAN Charter and the Terms of Reference, and to display the highest moral character.

**Human Rights and Democracy in ASEAN**

Democracy and human rights are both contested concepts. Neither has a single definition - both are complex and depend on different interpretations in different societies. The inclusion of terms like democracy, respect for and protection of human rights and fundamental freedoms, the rule of law and justice in the preamble, purposes and principles of the ASEAN Charter is not a guarantee of their implementation. It remains to be seen whether ASEAN is serious about its new values.

David Beetham asserts that democracy and human rights occupy different areas of the political sphere, “the one a matter of the organization of government, the other a question of individual rights and their defense” (Beetham 1999: 89-90). He argues that since the collapse of communist regimes in Eastern Europe, human rights and democracy have become a universal aspiration. Robert Dahl affirms that, “democracy guarantees its citizens a number of fundamental rights that nondemocratic systems do not, and cannot, grant” (Dahl 2000: 48). He furthers insists that “Institutions that provide for and protect basic democratic rights and opportunities are necessary to democracy: not simply as a logically necessary condition but as an empirically necessary condition in order for democracy to exist” (Dahl 2000: 49).
The concepts of democracy and human rights outlined by Beetham and Dahl are two sides of the same coin. However, the democracy of Western scholars is understood differently in ASEAN. For some countries promoting human rights and political pluralism is considered to be destabilizing. According to the former Malaysian Prime Minister, Mahathir Mohamad, "when devotion to democracy results in a stagnant economy, high unemployment and denial of the right to work and work hard; when democracy protects fascists and neo-Nazis; when the individual activist takes precedence over the silent masses then it is time to question whether we have correctly interpreted democracy" (Vatikiotis 1996: 89). This statement was echoed by Singapore's former Prime Minister, Lee Kuan Yew, who asserted that "the liberal democracy practiced in the Philippines was an obstacle to economic progress, which required collective discipline and firm central control" (Vatikiotis 1996: 103). The views expressed by the two former Prime Ministers are still shared by a number of ASEAN leaders who believe that democracy may undermine the political stability required for economic development. In most if not all ASEAN member states, press freedoms, the political and civil rights of individuals, and freedom of expression and assembly in particular, are curtailed if not suppressed.

Moreover, democracy as perceived in ASEAN is different from universally acceptable forms. Former Thai Deputy Prime Minister Amnuay Viravan has argued that "the region's "unique culture" should be considered "a soil in which the seeds of democracy and civic society must be planted". This implies that the values of democracy 'are, like plants, dependent on the environment in which they are planted' (Vatikiotis 1996: 115). In ASEAN, different forms have reflected different concepts of democracy, ranging from 'democratic centralism' in Vietnam to 'guided democracy' under Suharto in Indonesia, to 'Asian democracy' in Singapore, 'semi-democracy' in Thailand and 'liberal democracy' in the Philippines. It is interesting to see that none of these countries hesitates to adopt the 'mantra of democracy' and to indigenise it according to their political and societal context, as it is seen fit by their elites.

The differences in the political systems of governments and the concepts of democracy reflect the policies and practices in the field of human rights in ASEAN
countries. The elements of democracy and human rights of each individual country can be assessed by examining their national constitution as it contains basic ideas and aspirations and shows how each country approaches human rights. Close examination of these national constitutions reveals that the rights and freedoms of the people are recognized quite well in all ASEAN states. However, including such concepts in the constitution does not mean that human rights provisions will be properly respected in practice. They are, most of the time, subjected to restrictions, which mean that the enjoyment and exercise of rights and freedoms are automatically hindered. In ASEAN, it seems that human rights and democracy are in place on the outside but function differently within. Democracy and human rights in ASEAN, in essence, are the missing issue from the regional discussion agenda.

Moving ahead for ASEAN will not be without challenges. One of the challenges ASEAN will have to face is how to make the organization accountable to its own people. ASEAN has hardly been monitored, assessed or evaluated by its people (Buszynski 1997). This is why many of the commitments and agreements made and adopted by ASEAN leaders remain dead letters. The establishment of an ASEAN Human Rights Body as provided for by the ASEAN Charter is one of the best ways to test democracy building in the region. Democracy requires that those affected by any actions of commission or omission should be allowed to participate, and that those who have committed transgressions should be held accountable to the citizens for their acts.

One of the most important functions of human rights machinery is to hold human rights violators accountable not only at the national but also at the regional level. In sum, the legitimacy of ASEAN and of an ASEAN Human Rights Body needs to be assessed against normative democratic principles. As Eriksen and Fossum put it, "democratic legitimacy requires public justification of the results to those who are affected by them" (Eriksen and Fossum 2007:3). Justification demands participation, accountability and responsibility.
ASEAN Intergovernmental Commission on Human Rights

The Association of Southeast Asian Nations (ASEAN) has reached a historic moment in its journey towards establishing a regional human rights mechanism. After fifteen years of discussion, dialogue, and debate about its utility and significance for Southeast Asia, ASEAN member states have committed themselves to establishing the Intergovernmental Commission on Human Rights (ICHR). The Secretary General of ASEAN, Surin Pitsuwan, has hailed the ICHR as “an important step in implementing the letter and spirit of the newly adopted ASEAN Charter, as well as in paving the way for the growth of democracy and human rights in the region” (ASEAN Secretariat, News Release, 20 July 2009, www.aseansec.org/4919.htm).

On October 23, 2009, in Cha-Am Hua Hin, Thailand, the Heads of States and Governments of the Association of Southeast Asian Nations (ASEAN) adopted the Cha-Am Hua Hin Declaration that formally launched the ASEAN Intergovernmental Commission on Human Rights (AICHR). “This is indeed a significant advancement for ASEAN in terms of placing human rights at the center of ASEAN’s agenda,” said Prime Minister Abhisit Vejjajiva of the Kingdom of Thailand, and that “AICHR is not an end in itself but an evolutionary process towards strengthening the human rights architecture within the region” (Human Rights Herald, January 2010).

Through the political declaration, the Heads of States and Governments of ASEAN emphasized the importance of human rights for the full realization of human dignity in the region. Representatives of ASEAN governments to the AICHR held an introductory meeting, chaired by Dr. Sriprapha Petcharamesree of Thailand, on the day after the launch (Human Rights Herald, January 2010). They also met with the High Level Panel (HLP) on the ASEAN Human Rights Body (AHRB) to discuss issues relevant to the Terms of Reference (ToR) of the AICHR, noting its evolutionary approach towards an effective and efficient Commission. They also agreed to meet in the coming months to discuss their work plan and activities.

Although he noted that the AICHR will need ample time to firm up its plans, Prime Minister Vejjajiva emphasized that the responsibility to make the Commission
credible and effective in the promotion and protection of human rights rests on everyone (Human Rights Herald, January 2010).

The AICHR was set up in compliance with Article 14 of the ASEAN Charter which states that ASEAN shall establish an ASEAN human rights body to promote and protect the human rights and fundamental freedoms of the people in the region. In July 2008, the HLP was created to draft the Terms of Reference for the establishment of a human rights body. The HLP held consultations with various stakeholders, including civil society, on what to include in the Terms of Reference. A year later, during the 42nd ASEAN Ministerial Meeting in Thailand, the foreign ministers of ASEAN adopted and approved the Terms of Reference. Three months later, in October 2009, ASEAN leaders launched the AICHR.

Yet, just how significant a step this is for the people of Southeast Asia remains open to debate. Disappointingly, the terms of reference (TOR) for the Intergovernmental Commission on Human Rights mandate that it focus predominantly on the promotion of human rights, and limits its role to an advisory body for the ASEAN Secretariat and member states, rather than giving the commission independent enforcement powers. While several key players see the TOR as a welcome sign that human rights are now squarely part of the ASEAN agenda, there has also been some backlash from leading advocates who had hoped for a more robust and independent mechanism for achieving human rights (Caballero-Anthony 2008). Compounding the concerns surrounding this lack of independence is the fact that the terms of reference emphasize a consensus-based approach to any decision-making authority invested in the intergovernmental commission. Given the gamut of the political spectrum represented by ASEAN's ten member governments, reaching agreement on how to approach any human rights issue is far from guaranteed. As one human rights advocate put it in a recent statement to the press, "I could never see how this group could ever agree on anything with teeth" (Brad Adams, Asia Director of Human Rights Watch, Financial Times, 20 July 2009). At this nascent stage in its development, and despite these early criticisms, it is worth considering some of the initial challenges the Intergovernmental Commission on Human Rights is likely to face, and how these challenges might be overcome. Member States'
obligations under the ASEAN Charter and the ICHR’s TOR also should be considered in the context of ASEAN's historical trajectory, including its promises and pitfalls that have brought these governments to the establishment of this new commission.

There are different roles and functions that the ICHR might consider, now and in the future. And while the ICHR is likely to serve primarily as an advisory, coordinating, and consultative body, it can nevertheless have an important catalytic effect on human rights advocacy and reform in Southeast Asia. As such, both civil society activists and reform-minded government ministers should apply a pragmatic approach to the ICHR, utilizing it to promote further strategic coordination on human rights issues, rather than simply mourning its various shortfalls.

So, what started aftermath of Asian Financial Crisis was the non-traditional form of security. Though Financial Crisis has subdued the authoritarian regimes but it failed to overcome the illiberal democratic ones which deeply entrenched in the political systems. Hence, it to the political regimes and not the ASEAN in fostering the human rights practice in Southeast Asia. ASEAN is that, what the regimes want it to be. The transformation of this new approach towards human rights establishment owes to the states only. Hence, international and regional dynamics are there in the way to induce the sentiments towards human rights establishment. ASEAN Charter and the ASEAN Intergovernmental Commission on Human Rights (AICHR) are perceived, as first successful steps towards the path.