CHAPTER FOUR

HUMAN RIGHTS INITIATIVES WITHIN ASIA
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4.1 Introductory

The culture in Asia is exceptionally rich and diverse. In the words of an author, ‘like the ancient Greek city states no two neighbouring countries in South Asian region are without striking differences in their cultures’.\(^1\) However, this does not mean that the countries of this region have no common features. South Asia has a lot in common, for example common culture, common religions, common geographical features and resources and above all a common land mass or the territory. Almost all the countries of South Asia have common boundaries, however, the region is yet to realise the positive use of these common features as the common borders are used to promote proxy wars, cross border terrorism, drug and human trafficking etc. However, on a positive note, all these problems which emerged out of common features of these Asian countries have further added to the common concerns for the region. Since one country’s problems are connected to another’s; there can be a regional solution to these problems.

Out of many common concerns of the region this study focuses on the problem of violation and indifference towards human rights in the absence of human rights regime in the region. Human rights regimes have expanded in almost all the regions. Asia is perhaps the only region left without any comprehensive human rights mechanism for the region. The territorially vast extent, the large variety of political, economic and social systems, diverse cultures and a different Asian approach to human rights are some of the factors behind the absence of a human rights system of Asia.

It is important to mention here that despite grim situation of human rights certain initiatives have been taken within Asia, at sub-regional levels, to strengthen the

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region’s understanding of human rights issues. By way of these efforts the Asian sub-regions have also contributed to some unique features of the human rights systems.

This chapter is devoted to the above mentioned sub-Asian efforts to foster the growth of human rights and to draw a connection between these efforts and South Asia; the most important part of this study. While dealing with this chapter I realised that the growth of Asian initiatives of regionalism and efforts of Asian regional organisations could not escape the impact of western regional trends, the reasons for which I have discussed at various points in this study.

4.2 Development of Regionalism in Asia

Since this study is Politico-Legal in nature it is important to understand the political dynamics of regionalism before we can discuss the region’s contribution to the human rights law and human rights implementation. Regionalism as a theory developed in two phases. In the first phase, which lasted from the Second World War to the 1980’s, the supranational regional organisations emerged, for example, in Europe. By the very nature of these organisations they were designed to curtail the sovereign powers of the member states.\(^2\) The European regionalism began in this first phase, therefore, the nature of the European organisations is supranational in character and its decisions have binding effect on the members, for example the EEC, the EU etc. which were discussed in details earlier in this study.

In the second phase of regionalism, which is also called ‘the new regionalism’, the focus was more on respecting sovereignty and stressing consensus among the member States. Hence, the nature of the new regional organisations which emerged during this period was non-supranational and the decisions of these organizations were not binding upon its members. Reason why the sovereign status was given paramount importance in the second phase was that the most of the countries involved in the emergence of ‘new regionanism’ had colonial history. It is the second phase of regionalism which primarily is related to the features of Asian regionalism.

Although the Asian region is criticized of having no regionalism, yet the fervour for regionalism can be traced back to 1947 when at New Delhi the Indian Council of World Affairs organized the Asian Relations Conference from 23 March-2 April 1947 to explore Asian regionalism. The conference concluded without any concrete results due to confrontation between Indian and Chinese claims to lead the region. In the year 1949 another similar meeting was planned to be held in China which never took place due to civil turmoil in the country. On 20 January 1948 a Conference on Indonesia was held in New Delhi to express concern over Dutch invasion of Indonesia. One of the conclusions of this conference was to institutionalize Asian cooperation.

In May 1950 Philippines took charge of promoting Asianism. For this purpose Bagiuo Conference was held on 28 May 1950 and India, Pakistan, Australia, Indonesia, Thailand and Ceylon attended it. In this conference the effects of cold war could be seen clearly and it concluded with no outcome.

Keeping the belief in regional cooperation another conference was held at Colombo, Sri Lanka in April 1954. This conference was attended by Burma, Ceylon, India, Indonesia and Pakistan, which later became popular by the name of the ‘Colombo Powers’. Several contentious bilateral issues along with international matters of concern were discussed in this conference. The major contribution of this conference was that it could identify the convergence in the

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4 S. Gupta, *India and Regional Integration in Asia*, Asia Publishing House, Bombay, 1964, p. 34.
6 In 1957 the Asian Relations Organisations was dissolved. For further details, see: Kishore C. Dash, 2008, p. 80.
7 S. Gutpa, 1964, p. 40.

While the Asian region was going through a wave of regionalism, the human rights concern of the region was also being expressed by some of the Asian political leaders like Lee Kuan Yew of Singapore, Mahathir Mohammad of Malaysia and a handful social thinkers like Thakashi Umehara of Japan and academicians like Francis Fukuyama.

In addition to the above mentioned efforts the United Nations also showed its interest in promoting regional mechanisms for human rights in Asia.\footnote{Hidetoshi Hashimoto, The Prospects for a Regional Human Rights Mechanism in East Asia, Routledge, New York, 2004, pp. 112-119.} In the following paragraphs I have discussed some of the steps taken in this direction for Asia.

4.2.1 The United Nations' Initiatives to Set up Regional Human Rights Mechanisms in Asia

A seminar on National, Local and Regional Arrangements for the Promotion and Protection of Human Rights in the Asian Region was organized by the UN and was held in Colombo, Sri Lanka in 1982. Representatives of nineteen countries, regional organizations, NGOs and UN agencies attended this seminar. The next in the series was the 1990 Manila Workshop, the First Asia-Pacific Human Rights Workshop which was organized by the UN Center for Human Rights, held in Manila in May 1990. The Workshop was attended by representatives of twenty
three countries including China, Japan and Mongolia.

After this effort a workshop was organized at Jakarta in 1993. This workshop was primarily organised to discuss regional arrangements for the promotion and protection of human rights. The Workshop was attended by representatives of twenty eight States. The majority of the delegates expressed willingness to work towards the development of a human rights system at the regional or sub-regional level. There were further endeavors made by the UN in this regard.

In 1994 another Workshop was organised at Seoul in July 1994. The representatives of twenty nine countries in the region participated in the workshop, including China, Japan, Mongolia, and the Republic of Korea. As an addition to the series of these workshops the Fourth Workshop was held in Kathmandu in February 1996. The objective of the workshop was the establishment of an effective regional human rights mechanism. The representatives of thirty states and nine NGOs in the region attended. Next in the series was the Amman Workshop\textsuperscript{14} held in Jordan in January 1997. The workshop was attended by representatives of thirty one countries. This Workshop reaffirmed the aspiration for the establishment of regional arrangements in the Asia-Pacific region adopted at the Kathmandu workshop held in 1996 and reiterated that any such arrangement must emerge from the needs and priorities set by governments of the region.

The 1998 Teheran Workshop was held in Tehran in February 1998.\textsuperscript{15} The workshop was attended by representatives of thirty six countries. The 1999 New Delhi Workshop\textsuperscript{16} was the seventh in the series and was held in New Delhi in February 1999. The workshop reaffirmed the universality, indivisibility, interdependence, and inter-relatedness of all human rights and recognized that democracy, development and respect for human rights and fundamental freedom are interdependent and mutually reinforcing. The workshop was devoted to


enhancing regional cooperation and to promoting universal respect for human rights by step-by-step and building-blocks approach.

The 2000 Tokyo workshop recognized the important role played by national human rights institutions in the promotion and protection of human rights. The Workshop urged that human rights education programmes include all human rights, civil, cultural, economic, political, and social and the right to development.\(^{17}\) Ninth Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia-Pacific Region\(^{18}\) also known as the 2001 Bangkok Workshop was focused on realization of Economic, Social and cultural rights in the Asia-Pacific region. The workshop also emphasized the importance of Human Rights Teaching in this region.

In the next year, that is, in 2002, a sub-regional Workshop for Pacific Island States on Human Rights Education and the Administration of Justice was organized at Nadi.\(^{19}\) The workshop strongly encouraged the States of the region to consider ratifying all of the international human rights instruments, including the Covenant on the Elimination of All forms of Racial Discrimination, 1965, the International Covenant on Civil and Political Rights, 1966, the International Covenant on Economic, Social and Cultural Rights, 1966, the Convention on the Elimination of Discrimination Against Women, 1979, and the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, 1984, and, where necessary, to enact appropriate implementing legislation.

In 2004 the Doha Workshop came up as the Twelfth Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia-Pacific Region.\(^{20}\) It was attended by representatives from thirty five countries. In this workshop the initiatives taken by SAARC and ASEAN were acknowledged.

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\(^{19}\) Held at Nadi, Fiji, 25-27 June 2002.

\(^{20}\) Held at Doha, Qatar on 2-4 March 2004.
and appreciated.

It will not be wrong to state here that due to all the efforts mentioned above the region of Asia had awakened to the new demand of the international community, that is, to have a regional system for human rights. For this purpose the regional organization named the Association of South East Asian States (ASEAN) made some path breaking efforts to promote human rights in the region. I will discuss the sub regional initiatives taken in the South East Asian region under the ASEAN but before that a brief introduction of this regional organization is very important which I am discussing in the following paragraphs.

4.3 Evolution of Association of South East Asian Nations (ASEAN)

It was apprehended that South East Asia might follow the communist ideology due to the presence and influence of USSR and China. Therefore, Europe took keen interest in the developments of the region. In 1954, in order to enhance regional cooperation in European style an Asian version of the OECD was proposed. In the same year the South East Asia Collective Defense Treaty was adopted in Manila in September. The above mentioned factors were some of the reasons the Southeast Asia was the first part of Asia to get involved in regional activities in general and also regional human rights activities in particular. Before discussing the human rights initiatives of ASEAN I will discuss the organization of the ASEAN.

On a cursory look one can observe several similarities between the South Asian and the South East Asian regions. The South East Asia was also a colonial region as was South Asia. After attaining independence the new States were very different in their social, political and economic status and also were in conflict with each other especially the bigger States like Indonesia and Malaysia.

In 1955, Indonesia and China initiated the slogan of spirit of Bandung in 1955 at

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21 ibid., pp. 77.


Asia Pacific Conference at Bandung. After that in 1959, a proposal for South East Asian Friendship and Economic Treaty was presented. As a consequence in 1961 three States agreed to have an Association of South East Asia (ASA) to promote cultural and economic co-operation.\footnote{ASA proposed a plan of MaPhilIndo in 1963, named by taking the initials of the names of the member states of Malaysia, Philippines and Indonesia. However, both the plans were aborted. Also, see: Jeus-Uwe Wunderlich, 2007, p. 79.}

Although ASA could not be launched, however, it is considered a step towards establishment of the ASEAN. By the mid 1960's, the leadership in South-east Asia began to change\footnote{The 1965 US sponsored military coup in Jakarta removed Sukarno from power. Sukarno's successor Suharto, adopted a different foreign policy and ended the confrontation with Malaysia. In 1965, President Marcos was elected president in Philippines. His administration turned down the tensions with Malaysia over Manila's Sabah claim. In a way, the administrative and personality changes in Indonesia and the Philippines helped to ameliorate the major disputes among the non-communist countries in South-east Asia by 1966 and prepared the ground for major intra-regional cooperation. For further details, see: Jens-Uwe Wunderlich, 2007, p. 80} which proved to be favourable for regional integration. On 8 August 1967 the foreign ministers from Indonesia, Malaysia, Singapore, The Philippines and Thailand issued the Bangkok Declaration\footnote{Available at: http://www.asean sec.org/1212.htm. Visited on 3 September 2010.} which was the ultimate step to create the ASEAN. With the creation of ASEAN, Asia added a new feature to its dynamics of regionalism.\footnote{Kishan S. Rana, Asian Diplomacy The Foreign Ministers of China, India, Japan, Singapore and Thailand, Oxford University Press, New Delhi, 2007, p 111. Also, see: Alex Warligh-Lack, “Studying Regionalisation Comparatively: A Conceptual Framework”, Andrew F. Cooper, Christopher W. Hughes and Philippe De Lombaerde, (eds.) Regionalisation and Global Governance: The Taming of Globalisation? Routedge, London, 2008, pp. 43-60, at p. 45.}

ASEAN has developed a well organized and well established regional body by 2011. It has a successful regional body of the South East Asian region. In this study the structure of ASEAN is also of inspiration for its human rights initiatives. The organization of ASEAN is discussed in the following part of this chapter.

ASEAN has its headquarters in Jakarta, Indonesia. The Heads of Government of Member Nations of ASEAN is the highest decision making authority. ASEAN Ministerial Meeting, AMM is the highest policy making body and consists of
foreign ministers of all the member States.\textsuperscript{28} The ASEAN Economic Meeting (AEM) consists of the economic ministers. Both the above mentioned organs of the ASEAN report to the Heads of Government Summits.\textsuperscript{29} One of the core principles of the ASEAN is non-intervention. This principle was highlighted during all the conferences held for Asian regionalism.

In addition to the principle of non-interference the ASEAN also has adopted a new strategy to avoid hurdles in regional growth. This strategy or principle is known as ‘the ASEAN Way’. According to the ‘ASEAN Way’\textsuperscript{30} the decisions are based on consensus and not on majority vote. Despite that this is a break away from the Asian regional features, it is a method of avoiding conflict and saves efforts of conflict resolution for ASEAN\textsuperscript{31}.

In 1994, the ASEAN Regional Forum was established. The ARF is important for the study in two ways, firstly that it highlights ASEAN’s growth and second for APF’s human rights initiatives. ASEAN has grown in all respects including human rights which I will discuss after a short introduction to a different tier of the Pyramidal model of International Human rights Regime on which this study relies a lot.

**4.3.1 ASEAN’s Human Rights Mechanism**

ASEAN’s efforts towards human rights got momentum after landmark World Conference on Human Rights, held in Vienna, Austria in June 1993, especially

\begin{itemize}
  \item The key characteristics of the “ASEAN Way” may be summarised as: 1) Non-interference in the domestic affairs of member states; 2) Decision by consensus; 3) Avoidance of building institutions or developing legally binding instruments which are rigid and restrict the freedom of member states to act according to their perceived national interest; 4) A preference for informality, leading to non-binding declarations and plans of action. For more details, see: Amitav Acharya, *Constructing a Security Community in Southeast Asia*, Routledge, Abingdon, 2009.
\end{itemize}
the Vienna Declaration and Programme of Action\textsuperscript{32} which was adopted after the conference. As mentioned earlier in this work, the Vienna Declaration highlighted the need for regional arrangements for the promoting and protection of human rights and reiterated “the need to consider the possibility of establishing regional and sub-regional arrangements for the promotion and protection of human rights where they do not already exist.” Taking serious note of these ASEAN in the twenty sixth Ministerial Meeting in July 1993, declared in a Joint Communiqué and declared that “in support of the Vienna Declaration and Programme of Action…ASEAN should also consider the establishment of an appropriate regional mechanism on human rights.”\textsuperscript{33}

The idea of promotion of human rights within ASEAN could find roots gradually but swiftly in 1997 to mark the thirty years of the establishment of ASEAN, ASEAN vision 2020 was declared in which the organisation reiterated its commitment towards human respect and care for the community.\textsuperscript{34} In order to implement the plans mentioned in the ASEAN vision 2020 in 1998 - The Hanoi Plan of Action (1999-2004) was adopted. In this plan also there was focus on human rights related information to be shared by the ASEAN countries so that a commonality could be developed on this matter. Also, it was decided to work for the implementation of the UN Conventions, that is, the Convention on the Rights of the Child and the Convention on the Elimination of all Forms of Discrimination against Women.\textsuperscript{35}

In 2003 ASEAN took yet another step towards human rights initiatives in the form of the Declaration of ASEAN Concord II or the Bali Concord and established an ASEAN Socio-Cultural Community (ASCC).\textsuperscript{36} In the very next year in 2004, the Vientiane Action Programme (2004-2010) was adopted wherein there was a proposal to have a commission for the protection of the rights of the


\textsuperscript{34} Available at: http://www.aseansec.org/1814.htm. Visited on 11 August 2010.

\textsuperscript{35} The full text can be found at: http://www.aseansec.org/687.htm. Visited on 10 August 2010.

\textsuperscript{36} Available at: http://www.aseansec.org/15159.htm. Visited on 11 August 2010.
migrants and a separate commission for the rights of women and children.\textsuperscript{37} Another important contribution of this Program was that it emphasised the need for ASEAN Charter for the first time at such a platform.

It stated that, “We recognise the need to strengthen ASEAN and shall work towards the development of an ASEAN Charter.” This was followed in December 2005 by the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter, where the representatives of ASEAN’s member States committed themselves to establishing a Charter “to serve as a legal and institutional framework of ASEAN to support the realisation of its goals and objectives.”\textsuperscript{38}

While ASEAN was getting closer to adopt a mechanism for human rights it was being felt even stronger to have a Charter of the ASEAN. Following reasons were put forward in favour of having an ASEAN Charter:

An ASEAN Charter would give ASEAN a legal personality under international law and help to turn it into more of a rules based organisation, thus assisting with the implementation of its commitments to reform. It would clarify the functions and areas of competence of key ASEAN bodies and their relationship with one another in the overall ASEAN structure, as envisioned in the ASEAN Vision 2020, making it easier to locate who was responsible for implementing particular decisions and making it possible to hold these persons/bodies to account. Furthermore, a Charter would enable ASEAN to assert itself more effectively in the pursuit of its agenda outside of the region, for instance easing the legal process in the making of free trade agreements and enabling ASEAN to acquire the appropriate status for participation in international intergovernmental meetings.\textsuperscript{39}

For the most important job of drafting a Charter an Eminent Persons Group (EPG) was formed which in its report in 2006 recommended that the founding principles and objectives of ASEAN be updated to include “respect for human rights and fundamental freedoms.”\textsuperscript{40}

\textsuperscript{37} Available at: http://www.aseansec.org/VAP-10th%20ASEAN%20Summit.pdf. Visited on 11 August 2010.


\textsuperscript{39} For more details, see: Simon Chesterman, “Does ASEAN Exist? The Association of Southeast Asian as an International Legal Person, Singapore Year Book of International Law and Contributors, 2008, pp. 199-211.

The same report was upheld at the 12th ASEAN Summit in Cebu, Philippines in January 2007 with “The Cebu Declaration on the Blueprint of the ASEAN Charter”, and a High Level Task Force was set up to begin drafting the Charter. It was planned to present the final Charter for signature at the 13th ASEAN Summit to be held in Singapore in November 2007.

The ASEAN Charter was signed by the leaders of all member states at the 13th ASEAN Summit on 20 November 2007, coinciding with the 40th anniversary of ASEAN and entered into force on 15 December 2008 following its ratification by all ASEAN member States. This document of ASEAN also had several human rights provisions which made it even easier to move forward with the plans of regional human rights mechanism.

4.3.2 The ASEAN Charter and Human Rights

Articles 1 and 2 of the ASEAN Charter established the promotion and protection of human rights as a fundamental principle and underlying purpose of ASEAN, opening the way for serious human rights violations to be considered as a serious breach of the Charter. Article 14 of the Charter also committed members to the establishment of a regional human rights “body”.

“ADHERING to the principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms;” (in the Preamble)

“To strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN;” (Article 1: Purposes)

“2 (i) respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice;” (Article 2: Principles) and

“1. In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body.

“This ASEAN human rights body shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting.” (Article 14)

Article 14 of the ASEAN Charter just refers to “an ASEAN human rights body” and provides for the following provisions:

- Like all other ASEAN organs or bodies, the AHRB shall operate through
consultation and consensus, with firm respect for sovereign equality of all Member States.

- Being an inter-governmental organization, ASEAN has only States (and their Governments) as its Members.

- Article 14 (1) states: “In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body.” The mandate of the AHRB shall, therefore, include both promotion and protection of not only human rights but also fundamental freedoms.

In addition to the establishment of AHRB the ASEAN has taken certain other steps to promote human rights in the region. For example, in 2004 Declaration on the Elimination of Violence Against Women in the ASEAN Region was adopted by the ASEAN. There is also an ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of Rights of Migrant Workers is working towards the development of an ASEAN instrument on the protection and promotion of the rights of migrant workers.41

The ASEAN Inter-governmental Commission on Human Rights (AICHR) was launched in October 2009, in accordance with Article 14 of the ASEAN Charter. It is formed of ten government representatives, one from each member state. It works under Terms of Reference agreed by ASEAN’s member states, which describe AICHR’s key purpose as “To promote and protect human rights and fundamental freedoms of the peoples of ASEAN."

4.4 The Asia Pacific Forum (APF)

This Forum is very important factor for this study since it brings together the States of South East and South Asia for the cause of human rights. Through APF, Asia has made a unique contribution to the dynamism of human rights monitoring. Under ASEAN regionalization of National human rights Institutions

has been done, which is not a novel idea in the world however, in Asia it is.\textsuperscript{42} Under this endeavour the APF has made a platform for the regional NHRIs to come together to share problems and solutions to the human rights related problems which they face in their respective country and try to build a regional approach towards human rights. With this a two way effect is seen in the region, firstly it puts off the veil from the inside stories of human rights violations of a country which builds a peer pressure on the violator country. Secondly, such a regional platform helps in consolidation of regional unity and a common sense of human rights.

4.4.1 Regionalisation of National Human Rights Institutions in the Asia Pacific

The Asia Pacific Forum has been recognized at several platforms for its exemplary initiatives towards regionalization of NHRIs of the region.\textsuperscript{43} Since its inception in the year 1996, the APF has developed as a key human rights institution that mirrors the emerging regional consciousness. The number and diversity of its member institutions has grown continuously. The inaugural workshop of the APF adopted the Larrakia Declaration\textsuperscript{44}, which set out some of the basic principles to facilitate the strengthening of regional human rights commissions. Two key elements of this Declaration were: (i) a commitment to the Paris Principles; and (ii) a commitment to the universality and indivisibility of human rights.


\textsuperscript{43} Seoul Guidelines on the Cooperation of NHRIs for the Promotion and Protection of Human Rights of Migrants in Asia, National Human Rights Commission of Korea, Seoul, Korea, 2008, p. 3, reaffirmed that NHRIs in the Asia-Pacific region should continuously play an active role in protecting and promoting human rights in the region, with special efforts to advocate for a human rights approach to migration and migration management, and to promote the establishment of NHRIs in countries where they are not yet established.

\textsuperscript{44} For further details, see: http://www.Asia pacific forum.net/about/annual-meetings/1st-australia-1996. Visited on 23 February 2009.
The Larrakia Declaration also set out an agreed basis on which regional human rights commissions would cooperate to “promote the observances of human rights within the Asia-Pacific region.” In its capacity as a catalyst for regional cooperation, the APF provided its support to the newly established national institutions, for example, of Fiji, Mongolia and Nepal in particular, and to members and other participants in the region including members of the civil society in general, to share experiences; to make recommendations; and to work out collective strategies to enhance individual capacities as human rights activists both at the domestic as well as at the regional level. The APF is an independent, non-political and non-profit organization with three main objectives:

(i) Strengthening the capacity of individual APF member institutions to enable them to more effectively undertake their national mandates;

(ii) Assisting governments and non-governmental organizations to establish national institutions in compliance with the Paris Principles; and

(iii) Promoting regional co-operation on human rights issues'.

The objectives of the Forum, as set out in the Larrakia Declaration.  

The APF has 14 full members, that is, those NHRI's that are fully compliant with the Paris Principles or ICC 'A' classified, with one 'candidate' institution (Timor-Leste). As already mentioned above, the Asia is the only region without a regional inter-governmental human rights mechanism, which adds to the importance of the APF. The establishment and strengthening of National Human Rights Institutions in compliance with the Paris Principles is one of the priorities of Asia Pacific Regional Framework. The role of APF is very crucial for the establishment of a regional human rights culture within the ASEAN and some of the South Asian Association for Regional Cooperation (SAARC) countries. Four of

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46 The 14 full NHRI members or 'Forum Councilors' as in 2007 are: Afghanistan, Australia, Fiji, India, Indonesia, Malaysia, Mongolia, Nepal, New Zealand, Philippines, Republic of Korea, Sri Lanka, Jordan and Thailand.
the ASEAN Countries' and four of the SAARC countries' NHRIs have joined the APF. Figure 1 shows the overlapping memberships of ASEAN, SAARC and APF.

In March 2001, the Asia Pacific Forum along with the Commonwealth Secretariat framed the Best Practice Guidelines on NHRIs based on the Paris Principles and inspired to expand the scope of these Principles. These guidelines include:

**The Mode of Establishment of NHRIs:** The mode should be legal and transparent.

**Composition of NHRIs:** Moral Character and Competence must be ensured.

**Mandate and Powers:** Must work on domestic application of international norms.

**Accountability and Relationship with Other Institutions:** It must be answerable to people and must monitor other administrative bodies.

**Accessibility:** It must be within reach of every individual.

**Significant Issues:** It must address the issues of immediate National as well as International Human Rights Concern.

The APF offers a wide range of services and support for its members, governments of the region and civil society organizations. The APF provides specialist advice to governments and civil society on how to establish independent national human rights institutions, keeping in mind the ‘Paris Principles’. The decision-making body of the APF is the Forum Council, which consists of senior representatives from each full member institution. The APF Secretariat is the implementation body for decisions of the Forum Council and looks after the routine operations of the APF.

The Advisory Council of Jurists (ACJ) prepares independent legal advice for the APF on crucial human rights issues facing the region. This body of APF consists

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48 *id.*

49 For further details, see: www. Asia pacific forum.net/ services. Visited on 23 February 2009.

50 For further details, see: F:\ ASEAN \ NHRI \ About the Asia Pacific Forum - Asia Pacific Forum.htm. Visited on 23 February 2009.
of eminent jurists from all over the region. Since 1998, it has made recommendations to the APF member institutions on a broad range of human rights issues, including the death penalty, torture, trafficking, anti-terrorism, education and the environment.\textsuperscript{51}

The Human Rights Commission of the Philippines will host a week-long APF Sub-Regional Training Programme on the International Human Rights System in April 2009 in Manila in the Philippines.\textsuperscript{52}

The APF is also actively involved in promotion of human rights in other regions as well. In their Program of Action adopted in Doha on 4 March 2004, member States of the Asia-Pacific Framework on Regional Cooperation for the Promotion and Protection of Human Rights decided, \textit{inter alia}, to support the regional initiatives to strengthen the role of National Human Rights Institutions, strengthen national capacities for human rights education, underlying the benefits of human and cultural diversity and religious tolerance and combating discrimination.

The first regional conference was organized in Cairo in Egypt, on 6-8 March 2005. The APF also coordinates activities on a sub-regional basis, for instance, in the Pacific and in the Middle East, to strengthen human rights protection systems. Increasingly APF members are also developing their own sub-regional partnerships, sharing expertise and providing mutual assistance as they respond to the human right issues in the part of the Asia Pacific they represent.\textsuperscript{53} Latest such workshop was held in April 2010 which was fifteenth in the series. In this workshop delegates from government, NHRI and civil society from more than 30 countries participated.\textsuperscript{54} APF launches several programs to strengthen the NHRI in the region, for example, in 2011 the APF held training sessions in Afghanistan, Mongolia and Palestine.\textsuperscript{55}

4.5 Future Prospects of the Sub-Regional Approach towards National

\textsuperscript{51} For further details, see: www. Asia pacific forum. net / acj. Visited on 23 February 2009.


\textsuperscript{53} Available at: http: // www. Asia pacific forum. net / about / the-region. Visited on 4 March 2009.

\textsuperscript{54} Available at: http://www. Asia pacific forum. net/ working- with- others/ un/ asia- pacific- workshops. Visited on 4 March 2009.

Human Rights Institutions

While the APF has demonstrated the relevance of intensive and coordinated action among regional institutions for the promotion and protection of human rights in Asia Pacific, yet much remains to be accomplished.\(^{56}\) The efforts and endeavours of the APF are a reflection of social, economic, political, and cultural problems of the region which need to be addressed at the earliest, however, unfortunately the indifferent attitudes of the states is the biggest hurdle in the way of complete success of the steps taken by the APF.

The second problem in the way of the APF is non-binding nature of the decisions taken by it, since it is an NGO. More than anything else, the vision of APF needs to be supported by a general regional human rights mechanism in the Asia Pacific. Having said that, it is equally important to realize and appreciate the contributions made by the APF in the development of human rights culture in Asia in general and the Asia Pacific in particular. Similar steps also need to be taken in other sub-regions of Asia, and especially in South Asia where such initiatives have already started to find grounds, due to the overwhelming role played by the NGOs operating in this region.\(^{57}\)

Thus, the APF has inspired other neighbouring sub-regions to work towards the cause of human rights. The APF’s role regarding promotion, establishment and strengthening of NHRIIs has also been adopted by the SAARC. In the Regional Consultation Meeting of National Human Rights Institutions on Child Rights, held on 1 December 2008\(^ {58}\), concluded that there is need for an agreement of coordination amongst the NHRIIs of SAARC Region. It was emphasized that there should be consolidated efforts of NHRIIs of this region. This type of consultation meeting of NHRIIs has been organized for the first time in the SAARC region and it hints upon the urge of the region and the organization representing it, to bring

\(^{56}\) Available at: G:/ASEAN NHRI/ Human Rights Features (HRF) on the Asia Pacific Forum of National Institutions.htm. Visited on 3 March 2009.


application of human rights to fore front of all activities. In the August 2008 report of the Asian Centre for Human Rights (ACHR)\(^59\) it was candidly stated that the region of South Asia must go in for a regional human rights regime of its own within the framework of SAARC and the authors are of firm opinion that foundations of such a mechanism can be laid down by taking a step towards sub-regional grouping of NHRI\(s\) so that they treat the state suffering from human rights phobia from within.

Taking note of all the above mentioned suggestions and events, the first Conference of National Human Rights Institutions of South Asian Countries on “Human Rights Awareness and National Capacity Building”, organized by the National Human Rights Commission of India, was held in New Delhi from 16-18 April, 2009.\(^60\) Except Pakistan and Bhutan the NHRI\(s\) of all the SAARC members participated in the conference. The participating countries agreed on the following points:

1. To work towards national capacity building through sharing of experiences, information and best practices on Human Rights.
2. To take steps to promote human rights awareness.
3. Towards this end, hold conferences at least once in two years, apart from exchange of visits, training programmes and bilateral or regional cooperation between the NHRI\(s\).
4. To work together to identify and cooperate on capacity building for dealing with human rights issues like human rights awareness; human trafficking and migrant labour.
5. To work collectively at UN forums, including the Human Rights Council, for an independent status for NHRI\(s\), distinct from NGOs.
6. Appeal to the respective Governments to support and provide necessary wherewithal to NHRI\(s\) to ensure that they become fully compliant with Paris Principles, which includes administrative and financial autonomy. NHRI\(s\) have an advocacy role in this regard.


\(^{60}\) For further details, see: http://www.nhrc.nic.in/. Visited on 15 August 2010.
In my opinion this development is significant in the sense that there is growing consciousness on regionalisation of human rights promotion and protection among the SAARC countries which is observable at different platforms.

As recent developments in the ASEAN human rights system in November 2012 adopted the ASEAn Human Rights Declaration. The declaration has some unique features which are quoted as below:

...the ASEAN Human Rights Declaration recognises citizens’ obligations as well as rights, the importance of economic and social rights, and the diversity inherent in countries’ different backgrounds. In similar declarations, these considerations have not been acknowledged, even though they may have prevented individual states from immediately carrying out their commitments in similar regional declarations on human rights. The ASEAN declaration is upfront about the circumstances in different countries and says outright that they may stand in the way of the declaration’s provisions being fulfilled right away. These provisions also function as a warning against excessively high expectations.61

The Declaration has been contributed to by the members of the Civil Society, the United Nations Commissioner for Human Rights and by U.S.Department of State.62 The Declaration in its Article 7 gives reference to the national as well as regional contexts of rights. The Article reads as: All human rights are universal, indivisible, interdependent and interrelated. All human rights and fundamental freedoms in this declaration must be treated in a fair and equal manner, on the same footing and with the same emphasis. At the same time, the realisation of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds.

Before we proceed further I would like to discuss the emergence of South Asian regionalism which is the main basis of this study.


4.6 Evolution of South Asian Regionalism

South Asian Regional Cooperation was the first time brought into focus in 1961 at a conference of Asian Economic Planners organized by the UN Economic Commission for Asia and the Far East (ECAFE). The conference can be rated successful since it led to the establishment of Asian Institute of Economic Development and Regional Advisory group on Economic Development and Regional Advisory Group on Economic Development and Planning in Asia. Ceylon and Pakistan expressed their inhibitions for a South Asian Economic platform for their fears of dominance of India, which was similar to the inhibition in the European States while entering EEC due to fear of dominance of Germany and England.

As the efforts towards South Asian Regionalism entered 1960's it was evident that South Asia escaped the effects of the ‘old regionalism’ above which swept western countries in between 1950's and 1960's. Due to reasons like colonial subjection, India’s partition, China’s Communist regime, effect of cold war and last but not least the Bangladesh War in 1971, South Asia could not bring up any concrete plan for a regional platform.

However, this reason to have delayed regional approach in South Asia was destined to be the first one to set it in pace, since President Ziaur Rahman of Bangladesh made first move towards a South Asian Regional Cooperation.

President Rahman discussed his views or South Asian Regional Cooperation with

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68 The efforts of President Ziaur were not inspired by regional cooperation only it was a part of strategy to keep out of India's influence since the civilian regime overturned by military general President Ziaur was supported by India. Secondly, he expected that he despite being a military leader would be able to rise to be known as a South Asian leader as Gandhi, Nehru, Jinnah and Sukarno. For further details, see: M.S. Huq, “Problems and Promises”, Pran Chopra, et.al., (eds.) Future of South Asia, MacMillan, Delhi, 1986, pp. 273-280, at p. 276.
Indian Prime Minister Morarji Desai, in 1977.\textsuperscript{69} Similar ideas were expressed by King Birendra of Nepal in his address to Colombo Plan Consultative Committee held at Kathmandu. The King and the President met in 1978 and their ideas on regional cooperation got further strengthened. President Rahman took this idea in the Commonwealth Summit in and the Non-Aligned Summit at Havana, Cuba in 1979.\textsuperscript{70} He submitted a draft proposal for South Asian Regional Cooperation on 2 May 1980.\textsuperscript{71}

The first draft on South Asian Regional Cooperation's (SARC) was prepared by Bangladesh. However, it was worked upon by the seven South Asian States in consultation at the UN head quarters at New York from August to September 1980.\textsuperscript{72} The focus at this stage was to keep the objectives of the proposed organization as ‘non-political’ and ‘non-controversial’.\textsuperscript{73} From 21-23 April 1981 the Foreign Secretaries of seven countries discussed the draft paper prepared by Bangladesh. During this meeting five core areas of cooperation were identified; agriculture, rural development, telecommunication, metrology and health and population. To address these areas an Integrated Program of Action (IPA) was decided to be launched under a Committee under the chairmanship of Sri Lanka.

In the second meeting of Foreign Secretaries from 2-4 November 1981, some more areas of cooperation were identified, namely, transport, postal services and science and technology. In the next meeting at Islamabad, Pakistan from 7-8 August 1982 sports, arts and culture were added in the list of areas of cooperation.

At the fourth meeting from 28-30 March 1983 at Dhaka the IPA prepared by the committee of the whole was approved.\textsuperscript{74} The next level of meetings began from here on, the foreign ministers' meetings 1-3 August 1983 was held at New Delhi and the IPA was launched and a Declaration on Regional Cooperation was


\textsuperscript{71} \textit{id}.

\textsuperscript{72} S.D. Muni and Muni, 1984, p. 34.

\textsuperscript{73} Kishore C. Dash, 2008, p. 88.

\textsuperscript{74} S.D. Muni and Muni, 1984, p. 37.
adopted, known as the Delhi Declaration. This marked the formal origin of South Asian Regional Cooperation (SARC). There were other meetings held at Male from 10-11 July 1984, in these meetings it was decided to hold the first Summit of SARC at Dhaka, Bangladesh. On the basis of the deliberations held during the meetings at Thimpu from 13-14 May 1985 and at Dhaka from 5 December, 1985 the name of SARC was changed to SAARC by adding the word ‘Association’. The first Summit of SAARC was held on 7-8 December 1985 at Dhaka, Bangladesh. The SAARC Charter was launched in this Summit. The objectives of the Charter were included in Article 1 which read:

“To promote the welfare of the peoples of South Asia and to improve their quality of life; to accelerate economic growth, social progress and cultural development in the region and to provide all individuals the opportunity to live in dignity and to realize their full potentials; to promote and strengthen collective self-reliance among the countries of South Asia; to contribute to mutual trust, understanding and appreciation of one another’s problems; to promote active collaboration and mutual assistance in the economic, social, cultural, technical and scientific fields; to strengthen cooperation with other developing countries; to strengthen cooperation among themselves in international forums on matters of common interests; and to cooperate with international and regional organization with similar aims and purposes."

The word ‘peoples’ in this article highlights the similarity between the regional preferences of South Asia and Africa. Since the world ‘peoples’ has been included in the name of the African Charter on human rights. Article 2 stressed on the principles which includes sovereign equality, territorial integrity, political independence, non interference in the internal affairs of other States and mutual benefit. All these aspects hint upon the complexity of the political boundaries and the inhibitions of smaller States.

The highest organ of SAARC is the Heads of State or Government Meetings, also known as the Summit Meeting, is an annual affair. However, SAARC has conducted seventeen Summits since 1985. The eighteenth Summit is to be

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76 Article 1 of the SAARC’s Charter. See: Kishpore C. Dash, 2008 at p. 89.

77 Colombo refused to host the Fifth Summit in 1989 due to New Delhi’s Failure to completely withdraw IPKF. After the forces were withdrawn fully in 1990 the Colombo agreed to host the Summit. However, the 1990 Summit which was to be the Sixth one was already declared in
hosted by Nepal in 2013 which would probably be rescheduled to the later half of the 2013. SAARC also holds Ministerial Meetings on important areas of regional cooperation and are of equal importance of that of the Summits. See the Chart 1. The organization of SAARC was also mentioned in the charter. Article provided for council of Ministers which was similar committee of ministers of the CoE, however, in SAARC's Council of Ministers the foreign ministers of states party were the member unlike the COE's Committee of Ministers where representatives of the states are members. Para 2 of Article 4 provides that this council shall meet twice a year with the provision for an extraordinary session.

Article 5 mentions the standing committee which was to be comprised of foreign secretaries. The frequency of its official meetings was kept open and it was to submit provide reports to the council and the period of reports was also not mentioned. There was a provision for the Technical Committees in Article 6 of the Charter and were to submit reports to the standing committee. The methods to

favour of Maldives. After intervention the decision was made in favour of Maldives. The Sixth Summit which was scheduled from 7-9 November 1991 was also postponed since the King of Bhutan was unable to attend the Summit due to unrest in the country. Every country except for India agreed to have a representative of the King to carry on with the Summit. India argued that it will be overruling the SAARC’s Charter. From 1999 to 2002, no SAARC annual Summits were held because of India's period was driven primarily by three issues. First, there was a strong official opposition in New Delhi to the Indian Prime Minister's sharing of a platform with General Musharaf, who came to power through a military coup. Second, Prime Minister Vajpayee was deeply disappointed with the failure of his peace initiative at the Agra summit in July 2001, where, despite India's opposition, President Musharraf sought to focus on the resolution of Kashmir issue. Third, Prime Minister Vajpayee, responding to domestic pressure, took a strong stand against Pakistan's alleged involvement in a terrorist attack on Indian Parliament in December 2001. Although India later agreed to attend the summit meeting in Kathmandu in 2002 - where the “famous handshake” between President Musharraf and Prime Minister Vajpayee was widely perceived as a peace overture between the two countries - it refused to attend the summit in 2003 scheduled to be held at Islamabad.


be used by these committees were: meetings of heads of national technical agencies, meetings of experts in specific fields, contact amongst recognized centres of excellence in the region, as per Para 5 of Article 6 of the new SAARC Integrated Program of Action (SIPA), the number of Technical Committees was reduced to thirteen in order to bring clarity and to reduce complexities. The Standing Committee also could set up Action Committees for the execution of projects involving more than two but not all member States as mentioned in Article of the Charter. Article 8 provided for a secretarial without giving any further details. SAARC secretariat was established in 1986.

During the second Summit of SAARC at Bangalore, the Foreign Ministers signed a Memorandum of Understanding (MoU) for the establishment of Secretariat. The Secretariat was inaugurated at Kathmandu, Nepal on 16 January 1987. As per the SAARC Charter it comprised of the Secretary General, one Director from each Member State and General Staff. The Council of Ministers was to appoint the Secretary General out of the nominations of member countries, which is a method similar to the other regional organizations, discussed in the previous chapter.

Unanimity in decisions is a peculiar feature of Asian regionalism which is also seen in SAARC. Article 10 of the Charter provided that all decisions were to be taken unanimously. It is one of the reasons this organization could not progress up to its potential. Standing Committee is assisted by a programming committee which mats prior to the standing committee session. It has been also assigned to consider the reports of the SAARC Regional Centres, Recommendations of the Technical Committees and submit it comments to the Standing Committee. This procedure is similar to the process of the original ECHR wherein the Commission was to submit its reports to the Committee of Ministers of the CoE. Also, the recommendations of the Technical Committees were similar to the

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81 SAARC Agricultural Information Centre (SAIC), Dhaka, SAARC Meteorological Research Centre (SMRC), Dhaka, SAARC Tuberculosis Centre (STC), Kathmandu, SAARC Documentation Centre (SDC), New Delhi, SAARC Human Resources Development Centre (SHRDC), Islamabad, SAARC Coastal Zone Management Centre, Maldives, SAARC Information Centre, Nepal, SAARC Energy Centre, Pakistan, SAARC Disaster Management Centre, India, SAARC Cultural Centre, Sri Lanka, SAARC Forestry Centre, Bhutan. See: Kishore C.Dash, 2008, p. 101.
recommendations procedures adopted by the CoE for human rights implementation. However the major difference is that the Technical Committee of the SAARC is not involved in human rights monitoring as such.

Looking at SAARC in retrospect, it is noticeable that the association has passed through two distinct phases. The first phase was the preparatory phase, based on a gradual and step by step approach to initiating regional cooperation, mostly in non-controversial and peripheral areas such as Confidence Building Measures. These measures were majorly used to build and enhance trust between India and Pakistan, the two major countries of South Asia. It was done in order to further strengthen the regional approach.82 The Integrated Programme of Action (IPA) is an example of such an approach. It was during this phase that the minimum necessary institutional mechanisms were put in place to put the organisation in operation that too for a limited number of activities under the SAARC framework. In second half of its evolution, SAARC moved into the expansionary phase, when regional cooperation was expanded both in the social and core economic sectors. As a consequence, a disjunction developed between the decisions taken by the association and their implementation.

4.7 Conclusion

Before I discuss the role of SAARC in the promotion of the region’s human rights concerns it is important to have an understanding of the conditions of South Asia and its eight countries, which together constitute SAARC. In the next chapter I am going to discuss the region of South Asia and its human rights concerns. After having done that I will mention the steps taken by SAARC to address those concerns in the same chapter.

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FIGURE 1:
OVERLAPPING NATURE OF THE MEMBERSHIP OF APF

ASEAN MEMBERS
- Brunei Darussalam
- Cambodia
- Laos
- Myanmar
- Singapore
- Vietnam
- Indonesia
- Malaysia
- Philippines
- Thailand
- Australia
- Jordan
- Korea
- Mongolia
- Nepal
- New Zealand
- Palestine
- Qatar
- Timor Leste

APF MEMBERS
- Afghanistan
- India
- Maldives
- Nepal
- Sri Lanka
- Bangladesh
- Bhutan
- Pakistan

SAARC MEMBERS