PART I

Regionalism and Human Rights
The notion of “regional integration” has crept into the international vocabulary, particularly since the end of the Second World War, with the advent of various regional organizations seeking to ensure greater convergence between their members aimed at common/mutual benefits.\(^1\) It can vary from integration targeted to economic ends to political and security aspirations, and even human rights. This diversity has thus been linked with the rise of a varied typology of initiatives and organizations in various regions.

In Europe, this has been witnessed particularly by the economic integration brought about by the European Communities which has mutated into the European Union (EU), with even more cohesive convergence not only on economic matters, but also foreign policy, security, and law and justice cooperation. Its most recent treaty is the Lisbon Treaty which underlines various adjustments, including the integration of human rights into the EU.\(^2\)

One key feature of this rather unique process is the presence of supranational institutions and supranational laws and their binding force on the member States of the EU. Collateral to that, in Europe, there have been other forms of integration. Human rights related integration was brought about by another organisation, the Council of Europe, which gave birth to the European Convention on Human Rights in the 1950s,\(^3\) thus introducing a “parallel track” integration, beyond the economic and political dynamics propelled by the then European Communities. Interestingly, does the twain meet? This matter is currently at hand with the advocacy by the Lisbon Treaty of the need for the EU as an institution to accede to the European Convention on Human Rights, thus implying intriguingly that the latter should prevail over the former in the field of human rights.

The Asian region has been somewhat more modest in its immersion in(to) regional integration. The region does not have an equivalent of the EU, although smaller scale initiatives exist principally on economic and political convergence, for example the Association of Southeast Asian Nations (ASEAN).\(^4\) In the Asian region, there does not exist an inter-governmental human rights protection system along the lines of the

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1 For general information on integration linked with international organizations, see: http://e.wikipedia.org. For integration in South-east Asia, see: S. Siddique and S. Kumar (compilers), The 2nd ASEAN Reader (Singapore: Institute of South-east Asian Studies, 2003).
4 For background, see: The 2nd ASEAN Reader, op. cit. note 1; V. Muntarbhorn, The Challenge of Law: Legal Cooperation among ASEAN countries (Bangkok: Institute of Security and International Studies, 1997).
European Convention on Human Rights. The idea of supranational institutions and laws, whether in the economic or other fields, is looked upon with hesitation in the region—the tendency here is to work for consensus, rather than majority vote or decision-making by institutions transcending the power of the member States.

Yet, there are various entry points for promoting regional integration with a bearing on human rights if a pluralistic approach is taken, based upon the following considerations:

1. **Should there be a human rights focused regional integration initiative/system/organization at the regional level?**

This has already happened in Europe through the European Convention on Human Rights and its various Protocols. There is an intergovernmental regional human rights system which provides direct access and remedies to individuals seeking to overturn State actions in breach of human rights under the Convention. There are also inter-State actions.

As implied above, the grand question today is when the EU will accede to this Convention and what will happen if various practices of the EU are in breach of the European Convention on Human Rights. The EU also has its own Charter of Fundamental Rights which is now recognized as binding law under the Lisbon Treaty, and an intriguing issue will be to see how complementary the two instruments are—the European Convention on Human Rights and the EU’s Charter of Fundamental Rights.\(^5\)

Suffice to note that their contents are not necessarily the same. The Charter is targeted towards ensuing respect by the EU’s institutions, such as its Commission, Parliament and Council of Ministers, for the various fundamental rights listed by the Charter. The Charter also differs from international standards and the European Convention on some fronts, since some of its provisions refer to the rights of EU citizens rather than to all persons irrespective of citizenship—the latter being the position of international human rights law and the European Convention.

As for Asia, the region is probably too big to have an inter-governmental human rights protection system of a broad geographic kind—it is too heterogeneous. However, some initiatives are evident at a more modest level. First, there is a regional network of national human rights commissions here in Asia and the Pacific. Second, the United Nations (UN) provides an umbrella for regional cooperation, such as on human rights education and periodic regional meetings. Yet, initiatives at smaller scale levels can take place as seen below.

2. **If there is no such system, should human rights be promoted and protected at the regional level by an economic and/or political integration organisation? Is it realistic to promote human rights through an economic and political integration organisation?**

On the European front, the integration of some human rights elements into a regional economic entity such as the EU is already evident, as seen in its incorporation of the

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\(^5\) The idea of a Charter on fundamental rights in regard to the EU emerged in the 1990s, particularly at the time of the Nice Treaty. It is to be a key part of the Lisbon treaty mentioned above.
Charter of Fundamental Rights, its recognition of the European Convention, and future accession to the latter.

In Asia, the matter is more open to debate. ASEAN has been referring increasingly to human rights—at least in verbal terms. Its recent Constitution (the ASEAN Charter) refers to human rights in various sections and it proposes to set up an ASEAN human rights body, although the details have yet to be worked out.\(^6\) Yet, one should not be disingenuous about the political context behind all this. While democracy is interlinked with human rights in the European context—such as the precondition that only democratic countries are allowed to join the EU—there is no such stipulation for ASEAN, and this has impact on the implementation of human rights accordingly.

One should also be humble in one’s expectations of how an economic and political integration organisation can integrate or promote human rights. Often its agenda is more economics and politics rather than human rights, and the leverage on the latter may be somewhat limited since it may not be the real priority of the organisation.

3. What should be the scale of such integration—regional or smaller (say, sub-regional)?

The European scale of integration is broad—with 27 countries as part of the EU and an even larger number as members of the European Convention on Human Rights. Developments in Asia would suggest smaller entry points. After all, ASEAN is composed of only 10 countries. From a human rights angle, the only human rights treaty of a rather broad kind is the Arab Charter on Human Rights, which relates mainly to the countries of West Asia.\(^7\) The South Asian Association for Regional Cooperation has specific treaties against human trafficking and on child welfare arrangements, while ASEAN recently adopted a declaration on the Rights of Migrant Workers. The way ahead for Asia may be to explore further the smaller scale level, given that, to date, there has been no political will (or homogeneity in the region) to opt for the big picture manifested by European human rights integration.

4. What are the rights which the integration should cover?

The easy answer for all is universal human rights standards based upon the indivisibility of civil, political, economic, social and cultural rights. However, there may be a degree of ambivalence at the regional level. In its inception, the European Convention on Human Rights was primarily targeted to incorporate political rights rather than economic, social and cultural rights; the latter were only added later. The Charter of Fundamental Rights of the European Union talks of fundamental rights, rather than human rights, implying possible variations between the two concepts.

As for the Asian region, there are rumblings that while countries accept the universality of human rights, they are also particular about their particularities, which they may wish to advocate as prevailing over international human rights standards. There is a tendency on the part of some authorities to prefer economic, social and

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6 ASEAN, The ASEAN Charter (Jakarta: ASEAN Secretariat, 2007). It became fully binding upon ratification by all ten ASEAN countries in December 2008.

cultural rights to civil and political rights. This poses difficulties for both the perception and implementation of human rights in the region, given that the region also likes to advocate broad State sovereignty as well as the principle of non-interference in the internal affairs of the State.

5. Should the regional integration aim for a soft entry point, such as human rights promotion, or a hard entry point such as human rights protection, e.g., through judicial deliberation and sanction?

The European experience has covered both options, including the possibility of claiming against States directly in the European human rights Court and the Court of the European Communities, with binding sanctions against those in breach, such as the imposition of fines. The system has also a related political sanction, which is expulsion from membership.

The softer option is currently possible in Asia, but the harder option is intractable in the eyes of policy makers fearful of accountability and impingement upon what they see as State sovereignty, which is often nothing more than preservation of the status quo and survival of the ruling elite.

6. Should the regional integration have a monitoring mechanism and, if so, in which form?

Both the EU and the European Convention have various mechanisms on the issue. Importantly, both systems have courts which are the ultimate arbiters. The former also has other mechanisms, such as its Commission, Council of Ministers, and Council, while the latter has done away with its Commission, which used to vet cases before sending them to the European Human Rights Court. There is also a political organ which supplements the European Human Rights Court in the form of a Committee/Council.

With regard to the Asian region, the Arab Charter provides for the setting up of an Arab Human Rights Committee to receive reports from States concerning their human rights implementation with the power to advise, rather than sanction. With regard to ASEAN, the terms of reference of the proposed ASEAN human rights body are now being drafted. There will definitely not be a regional court in the region in the near future; the most that will be set up will be some form of a commission or committee with the power to advise and not adjudicate.

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8 Article 14 of the ASEAN Charter states as follows:

ASEAN Human Rights Body

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.
7. **What powers should such monitoring mechanism have?**

The European institutions have a variety of powers ranging from investigation to fact finding and adjudication. The Asian perspective is nascent. The power is to monitor and recommend. Whether the Asian mechanisms will be able to investigate matters *suo motu* (on their own initiative) remains to be seen. But one thing is for sure: they will not be able to act like courts with judicial powers.

8. **Who should have access to such monitoring mechanism, and should it be accessible to ordinary people?**

In Europe, there is access by ordinary people and States to complain against State actions under both the EU and the European Human Rights Convention. European institutions, e.g., the Commission and Parliament, can take action against each other, and individuals and States can also take them to task under the EU for various breaches.

This is a difficult area for the Asian region. Currently, beyond the national channels, there are no real channels for individuals to complain against State conduct or the conduct of institutions under the regional organizations. This is why there is resort to another level of access: the UN human rights treaties and mechanisms, many of which open the door to complaints by individuals against State conduct and at times also the conduct of institutions.  

9. **Who should be targeted for responsibility?**

In human rights terms, it is usually the State which is responsible for human rights violations through acts of commission or omission. Yet, Europe has gone further to target European institutions, such as the Commission and Council of Ministers, for responsibility under the EU. There is also an emerging question to what extent non-State actors should be subjected to human rights obligations.

In Asia, the target for responsibility in theory is the State. The discourse to date has not dealt very much with the responsibility of institutions of regional organizations for human rights or other transgressions; for example, should the Summit of Heads of Government of ASEAN be held responsible for certain negative practices if and when they take place?

10. **What remedies should be available if a human rights transgression has taken place?**

There are a variety of remedies in Europe, ranging from political pressure and reprimand to fines and other sanctions. However, in the Asian context, modulated pressure rather than sanctions would seem to be acceptable at present. None of the emerging human rights treaties and mechanisms here provide for fines and binding sanctions. This reflects the political realities of the region.

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9 The two UN-related human rights treaties to which all European countries and Asian countries are parties are the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.
Perhaps a pertinent message is that in terms of regional integration and human rights, there must always be checks and balances at different levels against abuse of power from the national to the regional and multilateral levels. If human rights protection does not work at the national level, it is important to channel it upwards to the regional level. If there is no remedy at that level, then the door is open to the multilateral level of the UN and its various mechanisms and pressures, including the use of the International Criminal Court\textsuperscript{10} and Security Council related sanctions. One should also not forget the tremendous work done by civil society, particularly non-governmental organizations, in the process of human rights promotion and protection globally.

In conclusion, while many negative situations remain concerning human rights from the angle of their implementation, regional integration—whether through specific human rights systems or infused through economic-cum-political entities—can help promote and protect human rights in a variety of fields, given the value added of each entry point. A key challenge is to ensure that no one and no entity—State or institution(s)—should have a monopoly of power.

The regional setting should not be lower than universal standards. If the region wishes to do better than the international setting, this is welcome—the universal backdrop of human rights advocates merely basic minimum standards, not maximum standards. Nevertheless, it is imperative not to lower those standards, for that would simply be a travesty of good faith—regional aberrations of a regrettable kind. If regional integration and its linkage with human rights help to elevate those universal standards, it deserves to be lauded most warmly—in the region and beyond.

Economic Rights and Regional Integration

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Abstract

This paper is confined to addressing the question of whether a relationship exists between ‘economic rights’ and ‘regional integration.’ I say “confined” because the title has several manifestations and interpretations. I categorically assert that there is not a relationship, as regional integration is governed by WTO’s Article XXIV, which is utterly silent on ‘economic rights,’ or for that matter ‘human rights.’ Human rights are the basic rights to which all humans are entitled, often held to include the right to life and liberty, freedom of thought and expression, and equality before the law. I find that the EU is the only regional integration scheme that has been endeavouring to give economic rights a legally-binding basis, but this will not happen fully even when the Lisbon Treaty has been ratified, due to the enactment not being embrace since Poland and the UK have opt-out protocols, thus rendering the term ‘regional integration’ somewhat meaningless within this context. This, however, should not distract from the fact that the EU has been able to make progress with, and achieve the promotion of, human rights in areas where single member state efforts have been to no avail—feats that would otherwise not have been possible without the creation of a single European state.

I. Introduction

‘Economic rights and regional integration,’ the topic assigned to me for these meetings, is a very wide-ranging subject. It could be about the mere existence of a relationship between ‘economic rights’ and ‘regional integration’ such that the rules of the game dictate that they should go hand in hand. The concern then would be about whether or not regional integration schemes have been complying with the legal requirements for economic rights. It could also be about whether or not existing schemes of regional integration have voluntarily been incorporating economic rights into their treaties, in which case we would be concerned with an examination of all such schemes with this perspective in mind. It could moreover be about whether or not regional integration should promote economic rights, inviting a theoretical discussion of the pros and cons. It could further be about inciting an open-ended discussion and reflections on whether

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