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Canada and the ASEAN Intergovernmental Commission on Human Rights: A Chance to Re-Engage

Executive Summary

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At this month's meetings of the Association of South-east Asian Nations' Regional Forum and Foreign Ministers in Hanoi, Canada finally acceded to ASEAN's Treaty of Amity and Cooperation (TAC), which outlines the regional grouping's key principles. The decision comes five years after Australia and more than a year after the United States signed on to the treaty. Ottawa has a history of fruitful bilateral and multilateral partnerships in the region, but in recent years the Canada-ASEAN relationship has lagged. The decision to finally accede to the TAC, along with last November's announcement of an ASEAN Network linking Canadian missions in the region and the decision to accredit the Ambassador to Indonesia concurrently to ASEAN could signal that Canada is ready to reverse years of half-hearted engagement in the region.

Canada has become increasingly marginalized in Asia Pacific affairs. However, the creation of the ASEAN Intergovernmental Commission on Human Rights (AICHR) provides Ottawa with a timely and unique opportunity to revitalize its relationships in Southeast Asia. The nascent AICHR, the first regional inter-governmental human rights body in Asia, holds the promise of further institutionalizing internationally

accepted human rights norms in a region in which several governments have disturbing human rights records. Despite its potential, the Commission has been dogged by concerns that it is a toothless tiger. For the Commission to evolve into a more promising instrument to protect and promote human rights in ASEAN, it will require significant international support.

By asserting a willingness to provide meaningful assistance to the Commission in areas such as capacity building and guidelines to implement recommendations, Canada could both aid in the development of this critical addition to the human rights regime, as well as realize real strategic advantages in its political relationship with ASEAN. Solid bilateral and multilateral relationships in Southeast Asia do not need to come at the expense of the human rights regime, and the protection and promotion of human rights need not be sacrificed to Canada's other foreign policy priorities. Encouraging the evolution of the international consensus on human rights standards, providing increased policy options for future engagement in the region, and enhancing Canada's Asia-Pacific presence and diplomatic capital are among the gains such a partnership could yield.



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Introduction

In October 2009, after years of internal debate, the Association of Southeast Asian Nations finally inaugurated its Intergovernmental Commission on Human Rights (AICHR). Since then, representatives from the ten ASEAN countries¹ have gathered twice to develop the Commission's rules of procedure, work plan and agenda for programming. The Commission's purpose includes a commitment to promote and protect the human rights and fundamental freedoms of the people of ASEAN; promote regional stability, harmony, friendship and cooperation; and promote human rights in a regional context. In a region in which human rights standards have typically been contentious, the establishment of the AICHR is a welcome step toward strengthening the international consensus on human rights.

The inauguration of the AICHR presents Canada with a unique opportunity to revitalize its relationship with Southeast Asia and assert its interest in establishing a strong relationship with Asia as a whole at a time when Canada is finding itself increasingly marginalized in Asia Pacific affairs. Although the Canada-ASEAN relationship has lagged, Canada once played an important role in the region. It has demonstrated a willingness to devote resources to the development of the human rights regime there and to the evolution of Asia's human rights instrument. By employing an interests-based approach to the inclusion of human rights in foreign policy, this paper will outline some of the strategic advantages of Canadian support for the AICHR and suggest means of assisting the evolution of the Commission.

In April 2010, the Asia Pacific Foundation of Canada hosted a high-level panel examining Canada's future engagement with Asia. One of the key themes that emerged was "whither Canada" – where is Canada on the mental maps of Asia? Despite the laments of academics and experts, Canada is simply not on the radar of Asian governments. There is a distinct trend

toward Asia-only institutions in the region and Canada stands to lose out on an opportunity. ASEAN+3, the East Asia Summit, the increasing prominence of the Shanghai Cooperation Organization (SCO), former Japanese Prime Minister Hatoyama's call for an East Asian Community, and former Australian Prime Minister Rudd's call for an Asia-Pacific Community are compelling concepts and groupings that leave out Canada. This trend has been going on for most of the past decade and continues to be a concern for Canada as "parts of Asia are . . . creating institutional arrangements in which Canadian interests and roles are becoming increasingly marginal."²

Not only is Canadian influence declining, so too is Canada's relative market in Asia. Canada's market share in Asia in 2008 was a dismal 1%; even worse was its share in Southeast Asia at 0.6%.³ As Paul Evans points out in a recent paper on the subject, the World Bank is now predicting that in the next five years, more than 50% of the world's economic growth will be in Asia, with much of that stemming from ASEAN countries.⁴ Yet, at the most recent round of discussions for the free trade Trans-Pacific Partnership, Canada was specifically asked not to pursue membership.⁵ Ottawa has legitimate and important interests in the region but is struggling to catch up after years of assuming that Asia matters little to Canada's welfare.

In Southeast Asia particularly, Canada has lost much of its voice and influence. Even after Australia, the United States, and 14 other non-ASEAN countries signed the Treaty of Amity and Cooperation (TAC) outlining ASEAN's fundamental principles, Canada held out against signing. The TAC has "become something of a touchstone for ASEAN members in terms of . . . how they treat their friends and neighbours."⁶ Furthermore, as Amitav Acharya pointed out recently, Canada was not even invited to join the new ASEAN Defence Ministers Meeting plus eight forum.⁷ The November 2009 announcement of an ASEAN Network linking

Canadian missions in the region and the decision to accredit the Ambassador to Indonesia concurrently to ASEAN were positive signs. Finally signing the TAC seems to signal even greater commitment to engagement. The AICHR could be a first step toward reversing this attitude, particularly as Canada has a history of human rights engagement in the region and stands to gain important strategic advantages.

Background and Context

The ASEAN region is a diverse area with 580 million people and a total GDP of nearly \$1.6 trillion. Its members are dedicated to developing an ASEAN community based on shared interests, as outlined in the 2008 ASEAN Charter. As a group, it is staunchly committed to values of non-interference and respect for member-state sovereignty, equality among its members, territorial integrity, freedom from external interference and non-violent cooperation. Despite this history, by adopting the terms of reference for the AICHR, ASEAN's members have indicated a willingness to sacrifice some of their sovereignty to the principles and norms of the international human rights regime. The nature of ASEAN and the often dismal human rights records of its member nations mean that the AICHR presents a groundbreaking case study in the evolution of regional human rights mechanisms.



Sripapha Petcharamesree, representative of Thailand on the ASEAN Intergovernmental Commission on Human Rights.

Prior to the establishment of the AICHR, Asia was the only region in the world without any dedicated inter-governmental human rights body. Although discussions of regional human rights mechanisms in Asia began in the 1980s, the catalyst for change was the 1993 World Conference on Human Rights in Vienna. Asian representatives at the Regional Meeting for Asia of the World Conference on Human Rights, “reiterate[d] the need to explore the possibilities of establishing regional arrangements for the promotion and protection of human rights in Asia.”⁸ Thus began 15 years of negotiation before a Commission was agreed to and included in article 14 of the 2008 ASEAN Charter. In October 2009, after nearly two decades of debate, the Commission was formally inaugurated.

The Charter and the AICHR are part of an overall attempt by ASEAN to provide more formalized, rules-based structure to the organization in an effort to increase its international influence. ASEAN is committed to acting as a single community in the hope of further pooling its weight.⁹ The shift toward a shared concept of human rights was part of this impetus for a single community and represented a significant change in ASEAN's thinking. The Commission's mandate includes commitments to develop strategies for the promotion and protection of human rights and fundamental freedoms; to cooperate as a community; to enhance public awareness of human rights; to encourage accession to international and regional human rights instruments, and to prepare studies, some of which will be made public. Representatives from the ten ASEAN states will sit for terms of three years, renewable once, and will be chaired by the representative from the state holding the chair of ASEAN. The Commission will hold at least two meetings per year and is required to submit an annual report to the ASEAN Foreign Ministers' Meeting.

There has been much debate over whether the AICHR will have the ‘teeth’ to stimulate meaningful human rights progress in the region. Concerns related to transparency, independence and efficacy have led civil

society groups to doubt the Commission's utility¹⁰ and have dogged the Commission since its inception. At the first AICHR meeting in Jakarta, representatives decided that the Commission would not hear individual human rights complaints, but will instead focus on more general thematic complaints. Additionally, decisions made at the Commission will be consensus-based and the terms of reference include a careful and emphatic articulation of the group's commitment to ASEAN's principles of sovereignty, non-interference, equality between states and independence. ASEAN members are likely to be hard-pressed to let go of the old way of thinking about human rights as a source of division, rather than of shared interests. The Commission is meant to be an advisory or consultative group, with little, if any power to enforce change.

Under the ASEAN policy of 'constructive engagement,' ASEAN members claim to use peer pressure to provide incentive for change. If the Commission hopes to be credible down the road, avenues to ensure compliance will need to be developed as the Commission evolves.¹¹ Suggestions of a possible court have been well-received, but most commentators are not optimistic about the prospect of such an instrument to react to gross violations of human rights.¹² Each state government appoints its representative, leading to questions of independence, accountability and transparency. Only one of the appointees – Thailand's – has a his-



Aung San Suu Kyi - the challenge for the AICHR.

tory of human rights advocacy. With the exception of Indonesia, which appointed an academic, the others are politicians, lawyers or diplomats. These issues are clearly problematic in an association that contains one of the world's worst human rights abusers in the Burmese junta, and where state-sanctioned or state-perpetrated human rights violations are well-documented. Several commentators, including high-profile Canadians, major media outlets such as the Wall Street Journal and international NGOs such as Amnesty International have noted that it is regrettable that the Commission has thus ceded its obligation to protect, as well as promote, human rights.¹³

Despite this laundry list of challenges, the overarching reason for the international community, including Canada, to support the AICHR is the opportunity it will provide to encourage and strengthen the current regional consensus on human rights. It is important to remember that this is likely to be a long process; for instance, from its founding in 1959, it took 30 years for the Inter-American Commission on Human Rights to develop legally binding mechanisms. Considering the deference given to the maxim of non-interference and ASEAN's general silence on gross human rights violations in Southeast Asia, even the present flawed agreement is a remarkable achievement. At the very least, this mechanism will provide a dedicated forum for dialogue on human rights. It will support the work of those ASEAN states that already have national human rights mechanisms (Indonesia, Malaysia, the Philippines and Thailand), and help to fill the gaps where they are deficient or absent. As the Chair of the Singapore Institute of International Affairs wrote, "Creative thinking is needed to find ways so that a foundation can be agreed for all, while allowing some to go further and faster."¹⁴

In a September 2009 bulletin, the East-West Center noted that the AICHR could become a catalyst for human rights reform in Southeast Asia.¹⁵ It could also lead to greater internalization of human rights norms and standards. Ideally, the Commission will become

a launch pad for human rights advocacy and developing networks of human rights defenders. Although the decision to focus on human rights promotion at the expense of human rights protection is disappointing, there is the potential for the Commission to evolve into a robust instrument in the international human rights regime. This is not to say that the patience of the international community ought to be infinite. The goodwill generated by the recent progress will likely run dry if ASEAN does not attempt to address the transparency, accountability, and efficacy challenges it is currently facing.

The Commission will also fill a void in the regional human rights infrastructure. Prior to the establishment of the Commission, Asia lacked any intergovernmental human rights mechanism. Functional human rights instruments exist in Europe, the Americas and Africa and are critical elements of international human rights system. Regional systems buttress the work of international organizations mandated to protect human rights by “help[ing] to localise human rights norms and standards, reflecting the particular human rights concerns of the region.”¹⁶ Where national instruments to protect and promote human rights fall short, regional mechanisms can provide recourse to victims. Moreover, national governments might be more willing to respond to regional, rather than international demands for change.

Canada and the AICHR

Although it may be hard to see where Canada fits in with this new mechanism, historically Canada-ASEAN relations have been fruitful. Canada has been one of ASEAN’s Dialogue Partners since 1977, along with nine other countries, and is a member of the ASEAN Regional Forum (ARF), the region’s security dialogue mechanism. Canada played an important role in the development of the Forum and was largely responsible for the initial development of the ideas of cooperative security that are widely applied in the region.¹⁷ Senior officials often meet and Post-Ministerial Conferences are held regularly. Canadian exports to ASEAN top \$4.7 billion and Canada imports \$9.8 billion from the region. The relationship is guided by the “Joint Cooperation Work Plan,” under which the two have agreed to work together on issues of counter-terrorism, health security, inter-faith dialogue, disaster management, cooperation in multilateral fora and trade and investment facilitation.

Canada has already demonstrated an interest in providing some level of support to the AICHR. Although it is difficult to identify specific amounts, Canada has provided official development assistance indirectly to the AICHR via two Canadian International Development Agency (CIDA) projects.¹⁸ Among other human rights-related projects, CIDA provided funding to the ASEAN Institute of Strategic and International Studies,



Canadian Minister of Foreign Affairs, Lawrence Cannon, at the ASEAN Post Ministerial Conference and the ASEAN Regional Forum held in Hanoi on July 22 and 23, 2010.

some of which was allocated to their annual human rights colloquium. Bilaterally, Canada has provided support to strengthening national human rights initiatives, such as the Indonesia-Canada Bilateral Dialogue on Human Rights. Canada also has a history of providing direct support to individual NGOs such as the Cambodian League for the Promotion and Defence of Human Rights (known by its French acronym LICADHO), which among other programs, holds public sessions throughout Cambodia in order to better inform Cambodians of their legally-held human rights.

Canadian Engagement with the AICHR

According to the APFC's 2010 National Opinion Poll, 62% of Canadians feel that promoting human rights in Asia should be a major priority for the Government of Canada.¹⁹ The question is what should motivate the inclusion of human rights in foreign policy. Human rights foreign policy is meant to: "induce change in countries where rights are severely violated, to expand international concern about rights, and to contribute to an international capacity to act effectively to support human rights."²⁰ Its inclusion in policy is typically considered in two frameworks: a state's values or a state's interests.

Canadian initiatives to support human rights internationally are justified using the language of altruism and morality. The suggestion is usually made that the protection and promotion of human rights is a fundamental Canadian value and foreign policy is meant to be an extension of a state's values. A moral impetus is therefore behind Canada's human rights policy. Human rights are considered to be mutually exclusive from other more tangible foreign policy priorities such as security and trade. Rights are considered an adjunct to these 'harder' priorities that a state includes because of a humanitarian responsibility or duty. Under this framework, Canada would support the AICHR because it has a moral obligation to protect and promote human rights internationally. Canada has a long tradition of equating human rights

with moral responsibility. As international norms surrounding human rights evolved to recognize that state sovereignty no longer trumped mass violations of human rights, Canada followed suit and began to make increasingly strong statements condemning human rights violations. Brian Mulroney's stance on Apartheid in South Africa is often cited as one of the first instances of Canada moving away from a more traditional realist stance on human rights. Throughout the 1980s and 1990s, human rights became increasingly important to the Canadian electorate and were promoted abroad as an international advancement of Canadian values abroad. The current government has also followed this tract by couching human rights in terms of Canadian values, although this has not had particularly positive effects on its key relationships in Asia. This strategy of promoting Canadian values abroad has been criticized as sanctimonious, Boy Scout imperialism and pulpit diplomacy.²¹

Moralistic pronouncements and values-based policy justifications relegate human rights to the realm of the quixotic and leave Canada without a substantive international human rights policy. Equating human rights with morality also "puts the basic concept in the realm of the controversial and intractable discourse."²² In an era of budget cuts and fiscal constraints, altruistic platitudes cannot sufficiently drive sound policy. A review of contemporary Canadian foreign policy demonstrates that equating human rights with a moral obligation simply does not sufficiently motivate substantive and long-term policy. As a result, a new approach that considers human rights to be mutually inclusive of other foreign policy priorities is required. Policy-makers must consider human rights in an interests-based framework that recognizes how a robust human rights policy can yield national interests. This goal is to present a clear link between the protection and promotion of human rights, in this case in ASEAN, and Canadian interests.

Although much of the rhetoric surrounding human rights is delivered through the lens of values, there are



The ten members of ASEAN

signs that things are beginning to change. US Secretary of State Hillary Clinton described the Obama administration's approach to human rights as "principled pragmatism".²³ Other scholars have labelled such an approach as a kind of new human rights realism or enlightened self-interest. Whatever the nomenclature, the point of such a discussion is to rethink human rights as a tool toward achieving foreign policy objectives. As scholar Julie Mertus describes, rather than thinking of human rights as the morally correct option,²⁴ human rights become the politically correct option. Human rights become mutually inclusive to more typical foreign policy priorities. Such a conception of human rights in foreign policy demands a definition of human rights that both respects the concept of universal human rights as those rights held by everyone, but also recognizes that there is room for interpretation with regard to how human rights are implemented by states. Human rights are, in theory, indivisible, universal, interrelated, and inalienable, but they can also be applied in a contextually- and culturally-sensitive manner.

Strategic Advantages

The AICHR is an ideal example of how such an interests-based approach to international human rights policy could be applied. A policy that made a substantial and long-term commitment to the Commission could yield significant strategic gains for Canada. A strong human rights infrastructure in Southeast Asia could encourage the international consensus on human rights, thereby improving the international environment in which Canada operates; provide increased policy options for future Canadian engagement in the region; and enhance Canada's Asia Pacific presence.

Despite ASEAN's commitment to sovereignty and non-interference in the external affairs of its members, the decision to develop a human rights body demonstrates that there exists some level of consensus in ASEAN on universal human rights standards. The consensus surrounding human rights, however minimal it may be, provides a basis for cooperation among states. Canada should also be encouraging ASEAN to develop its own methods of interpreting these concepts – what Amitav Acharya calls norm localization.²⁵ In this way, ASEAN's human rights mechanisms can bolster the institutionalization of human rights norms and strengthen the international consensus surrounding them.

The idea that Canada will benefit from such a rules-based system in which the behaviour of others is regulated in a social context is hardly new. International society bound by shared interests provides the necessary environment for middle power countries such as Canada to exercise its key foreign policy tools of multilateralism and internationalism most effectively. But behind the idea of supporting the consensus is the need to shore-up the norms surrounding human rights. These normative reasons that centre on strengthening and improving international society provide a basis for Canadian support for the AICHR, even in its current flawed capacity.

State perpetrated and sanctioned human rights abuses threaten the international consensus on human rights and by extension the common bonds linking international society. Human rights abuses that occur in ASEAN members make it obvious that in order for ASEAN to fulfil its self-declared human rights obligations, there is a dire need for the improvement of its human rights infrastructure. The AICHR could provide another avenue through which Canada could pursue the further institutionalization of human rights norms that support the kind of international environment in which Canada can be most effective.

The AICHR has the potential to expand Canada's and other like-minded countries' policy options when it comes to responding to threats to the international consensus on human rights. The options for response to the humanitarian disaster in Burma, for instance, are clearly currently inadequate. Canada's so-called "toughest sanctions in the world" introduced in 2007 meant little due to the minor volume of trade between the two countries. United Nations and other international sanctions have proved ineffective and ASEAN has demonstrated limited willingness to reveal cracks in its united stance by acting against Burma.²⁶ For the AICHR to ever be an effective means of responding to the State Peace and Development Council (SPDC), it will need to bolster its protection and enforcement instruments. As such, advocating – albeit delicately – for these kinds of mechanisms that will help make the AICHR a successful tool to combat human rights abuses in the region is one way for Canada and the rest of international society to indirectly affect long-term change in Burma. If the Commission proves unwilling to evolve, then Canada would likely need to revisit any decision to support it.

In a recent special APFC edition of the *International Journal*, Richard Stubbs and Mark Williams speculate on the increasing influence ASEAN will have in East Asia. They present Canadian involvement with ASEAN as a means of increasing Ottawa's credence in the region, noting that China, India and Japan are all trying to shore up their influence.²⁷ Whether one

chooses to attribute that much clout to ASEAN, it is certainly true that engaging with ASEAN on the AICHR could be a way for the federal government to demonstrate that it is serious about promoting human rights, and at the same time invigorating the Canada-ASEAN relationship. Supporting this nascent and progressive initiative could be an ideal opportunity for an injection of Canadian resources and knowledge in the region.

The political and economic strategic rationales boil down to the need to increase diplomatic capital, which becomes the most persuasive reason for Canada to make a firm commitment to the AICHR. Diplomatic capital, as a renewable but limited resource, has generally been considered one of Canada's most valuable tools as it utilizes its foreign policy instruments of multilateralism and internationalism. However, years of cutbacks at the Department of Foreign Affairs and International Trade (DFAIT) combined with a foreign policy-making centralized on the Hill rather than down the street at the Fort Pearson, have left Canada's accumulated diplomatic capital looking rather depleted.²⁸ DFAIT is trying to do more with much less, leaving holes in Ottawa's ability to influence global affairs. In a recent report, a blue-ribbon panel out of Australia's Lowy Institute of International Policy emphasized the need for Canberra to reinvigorate and reinvest in Australia's diplomatic infrastructure. The panel noted a dearth of clear and strategic policy and the need for new international networks, citing the lack of international missions, budgetary cutbacks, and an overall diplomatic deficit. Their criticisms could have easily been levelled against DFAIT.²⁹

The argument for increased diplomatic investment seems clear, but without additional resources, Canada's diplomatic corps will need to utilize and build on the international connections that already exist. Establishing mutual trust through cooperation on an issue where there is already agreement could provide a solid foundation for Canada not only to have its voice heard, but also to jump-start its diplomatic engagement and its reputation in Asia. Accrued capital paves the way

for bigger and better things when Ottawa finally realizes that it can no longer afford to leave its Asia relationship on the back burner. The AICHR provides an ideal avenue for this kind of enhanced relationship. The choice is clear: engage or be left on the sidelines.

The success of the Commission remains uncertain. Should Canada provide a firm commitment to its long-term evolution, it could help shape the emerging human rights infrastructure of the region, but years of half-hearted initiatives in the region have left Canada with little credibility. Already in 1999, Daryl Copeland noted that “uncertainties over Canada’s motives and staying power are undermining its attempts to build durable partnerships and to be accepted as a player in the region with a long-term, rather than episodic commitment.”³⁰ Investing in Asia’s human rights infrastructure through the AICHR in a meaningful and robust way, combined with the signing of the TAC, could be a turning point in the Canada-ASEAN relationship.

Next Steps

The Government of Canada can provide support to the AICHR directly or indirectly, either through its own mechanisms or through non-governmental bodies. Canada has a track record of working with some ASEAN countries on human rights issues. Using both sticks and carrots, there is a broad range of diplomatic



ASEAN leaders at the launch of the ASEAN Intergovernmental Commission on Human Rights in Thailand on October 23, 2009.

and economic activities Canada could undertake. Support for human rights initiatives generally includes assistance for the growth of democratic institutions and practices, legal and administrative training, the provision of technical assistance, and high-level discussion between officials. This translates to capacity building and is likely the most obvious form of support for policy-makers. Sweden, for instance, has actively championed using these kinds of tactics to “mainstream” human rights and further encourage the implementation of international human rights norms on the ground.

The AICHR has already announced that one of its first two studies will focus on corporate social responsibility (CSR). The other is migration. Following a long history of complaints against Canadian companies, and particularly Canadian mining companies,³¹ the Government of Canada has also indicated a renewed interest in CSR by announcing new funding and support initiatives to encourage and promote Canadian CSR internationally. Furthermore, a private member’s bill that would make certain government funding contingent on compliance with international human rights and environmental standards is being studied by the Standing Committee on Foreign Affairs and International Trade. Both Canada and the AICHR have demonstrated an interest in confronting the human rights abuses perpetrated by businesses and corporations. Mutually beneficial joint projects focused on implementing CSR in a meaningful and accountable manner could be an ideal starting point for a human rights approach to economic cooperation between Canada and the AICHR. Conceptualizing joint projects that recognize the problems of the past and use the new mechanism as a forum for improving CSR adherence in the region is one way to understand the process by which Canadian support for the AICHR would help Canada achieve its interests.

More broadly, the AICHR will also likely require assistance adapting its recommendations to the local level. Implementation of human rights standards has been identified as one the greatest challenges of human

rights work. The onus remains on states to advance human rights norms. ASEAN's governments have demonstrated that they have the necessary political will to develop promotional human rights mechanisms but "promotional regimes require a relatively low-level of commitment. The move to an implementation or enforcement regime requires a major qualitative increase in the commitment of states . . ." ³² As such, one of the key methods of support for the AICHR could be legal and technical assistance to aid in the application of the Commission's recommendations to the national and local level within the ten ASEAN states.

Building the institutional capacity of the Commission to download its regional human rights framework to individual states and local authorities is likely to be the most efficient and effective means for Canada to support the AICHR. Building on the work that has already been done, mainly through Track-2 initiatives, and working with those states most likely to achieve their own agreed-upon goals, could also have the effect of strengthening the internal human rights consensus in the region. There is also the potential for spillover effects as human rights norms become more internalized and entrenched in specific states. The economic and political disparity between the ASEAN states will inevitably lead to inconsistencies in implementation, but this still represents the best means for Canada to support this nascent regional human rights mechanism.

If requested, the Government of Canada could provide effective support to the AICHR by helping to develop guidelines for implementation at all levels of government. Canada could use the work that has been done by other like-minded countries such as Sweden, which in 2009 hosted a conference on implementing human rights where it developed concrete recommendations. It could build from the Office of the High Commissioner for Human Rights' "Handbook on National Human Rights Plans of Action" and previously released guidelines such as the United Kingdom's 2006 handbook on implementing the 1998 Human Rights

Act called "Human Rights: Human Lives – A Handbook for Public Authorities." It could also benefit from the experience of other regional systems such as the African Commission on Human Rights and People's Rights, which develops principles and rules to be used as a basis for national legislation. Such guidelines are only one suggested area for an application of Canadian resources and knowledge to the AICHR.

Any form of Canadian support for the AICHR would have to include partnerships with civil society groups. Although the current government does not have a positive track record with advocacy groups, recognizing their potential contribution to advancing human rights norms is critical for successful cooperation. NGOs could help develop politically sensitive monitoring mechanisms leading to progress reports and allowing complaints to be addressed. Track-2 or 'Track-1.5' conferences and associations that bring together NGOs, academics, policy-makers, other experts, and sometimes government officials will provide the best opportunity to encourage the kind of people-to-people connections that form the foundation of any good relationship.

Facilitating the work of local experts and civil society groups to translate the regional recommendation for a domestic audience will be essential. The push for this human rights mechanism is coming from inside the region from groups such as the Working Group for an ASEAN Human Rights Mechanism and the Solidarity for Asian People's Advocacy Task Force on ASEAN and Human Rights and they will continue to be the most important driver. They are also the point of contact for spreading local awareness of human rights and maintaining external pressure for change. Organizations such as the Human Rights Resource Centre for ASEAN, which will undertake research and training on universal human rights, represent one of the best means of making the AICHR an effective mechanism for the protection and promotion of human rights in Southeast Asia. ³³

In the spirit of former Australian Prime Minister

Rudd's Joint Committee on Foreign Affairs and Trade that investigated international human rights mechanisms in the Asia Pacific, the Senate Standing Committee on International Human Rights could be revived to explore others means to encourage the evolution and transparency of the AICHR. The Senate committee, the House Committee on Foreign Affairs and International Development, or its Sub-Committee on International Human Rights could also invite experts from the region to share their knowledge and begin dialogue on the kind of support that might most benefit members of the ASEAN human rights community. Intergovernmental conferences could further inform best practice and provide a basis for cooperation.

Beyond these multilateral initiatives, a strategic policy shift is likely to be the best way that Canada can support the AICHR. Ottawa acknowledges that human rights should be integrated into Canada's engagement with Asia, but does not seem to recognize that human rights and Canadian interests do not need to be mutually exclusive. Solid bilateral and multilateral relationships in Asia do not need to come at the expense of the human rights regime, and the protection and promotion of human rights need not be forfeited to Canada's other interests. The broad policy implications of this argument translate to considering the protection and

promotion of human rights as mutually inclusive to more traditional elements of national interest such as security and trade. Under this framework, human rights are no longer relegated to the bottom of Canada's list of foreign policy priorities or are couched in the rhetoric of values. Such an approach has the potential to entrench human rights norms within foreign policy.

The bottom line is that providing Canadian support for the AICHR is a means of realizing Canada's interests both at home and abroad. Encouraging the international consensus on human rights and raising Canada's diplomatic profile in the region are two of the most immediate benefits that such a partnership could yield. However, these returns will depend on the sincerity of the program; Canada cannot afford more second-rate efforts in Asia, especially in the field of human rights, where it has erred so badly in the past. Ottawa should realize that this is an ideal opportunity to shrink the gulf between Canadian rhetoric and Canadian practice in an effort to both realize international human rights standards throughout the region, and also to improve Canada's opportunities to achieve its interests. It signals a new kind of foreign policy – a Canadian human rights foreign policy for an Asia-Pacific century.

End Notes

¹ ASEAN includes Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar (referred to here as Burma), the Philippines, Singapore, Thailand, and Vietnam.

² Yuen Pau Woo, "The Emergence of the re-emergence of Asia and its implication for Canada-Asia relations," *International Journal* 58 (autumn 2003): 628.

³ Statistics calculated from <http://www.asiapacific.ca/statistics/trade/market-share/canadas-market-share-asia>.

⁴ Paul Evans, "Asian Power Shift: Ready or Not," *Canada Among Nations: As Others See Us*, eds. Fen Osler Hampson and Paul Heinbecker (Montreal & Kingston: McGill-Queen's University Press, 2009): 115.

⁵ Yuen Pau Woo, "Our optional Pacific bridge has become an imperative," *Globe and Mail*, April 14, 2010, www.globeandmail.com.

⁶ Richard Stubbs and Mark Williams, "The poor cousin? Canada-ASEAN relations," *International Journal* 64 (autumn 2009): 934.

⁷ Amitav Acharya, "China's Regional Security Doctrine: Is Canada Listening?" *Asia Pacific Foundation of Canada*, June 11, 2010, <http://www.asiapacific.ca/sites/default/files/filefield/AmitavPacificDefence.pdf>.

⁸ A/CONF.157/ASRM/8 "Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights," 7 April 1993. Note 26.

⁹ John Arendshorst, "The Dilemma of Non-Interference: Myanmar, Human Rights, and the ASEAN Charter," *Northwestern Journal of International Human Rights* 8 (Fall 2009): para 42 and Hiro Katsumata, "ASEAN and human rights: resisting Western pressure or emulating the West," *The Pacific Review* 22 (Dec. 2009): 629.

¹⁰ See, for example, Amnesty International, "ASEAN human rights commission stumbles at first hurdle," March 30, 2010, <http://www.amnesty.org/en/library/asset/IOR64/001/2010/en/3fbaf72a-9182-43dc-882b-7fd30924d712/ior640012010en.html>.

¹¹ Li-ann Thio, "Implementing Human Rights in ASEAN Countries: Promises to Keep and Miles to Go before I Sleep," *Yale Journal of Human Rights and International Development*, 2(1999): 45.

¹² Hao Duy Phan, "Institutions for the Protection of Human Rights in Southeast Asia: A Survey Report," *Contemporary Southeast Asia* 31.3 (2009): p. 481.

¹³ See, for example: "ASEAN's 'Human-Rights' Council," *The Wall Street Journal*, October 25, 2009, <http://online.wsj.com/article/SB10001424052748704335904574494771231953200.html>; "ASEAN's New Body Must Protect and Promote Human Rights," Amnesty International, July 21, 2009, <http://www.amnesty.org/en/news-and-updates/news/asean-new-body-must-protect-promote-human-rights-2009072>; and "Remarks by Chief Commissioner Jennifer Lynch, Q.C., at the NGO Meeting in Parallel to the APF 14 Conference (FORUM ASIA)," Canadian Human Rights Commission, September 25, 2009, http://www.chrc-ccdp.ca/media_room/speeches-en.asp?id=566&content_type=2.

¹⁴ Simon Tay, "Human Rights: ASEAN's Way Forward," Singapore Institute of International Affairs, June 18, 2008, <http://siaonline.org/?q=node/2081>.

¹⁵ Michelle Staggs Kelsall, "The New ASEAN Intergovernmental Commission on Human Rights: Toothless Tiger or Tentative First Step?" *Asia Pacific Issues* 90 (Sept. 2009): 6.

¹⁶ "An overview of regional human rights systems," UN Office of the High Commissioner for Human Rights, <http://bangkok.ohchr.org/programme/regional-systems.aspx>. The list of what an effective regional human rights system can achieve continues. It can "assist national governments with the implementation of their international human rights obligations; provide people with more accessible mechanisms for the protection of their rights, once other remedies have been exhausted; helps to raise people's awareness of their rights. . . ; provides regional input to the development of international human rights standards and the improvement of international human rights mechanisms; helps national governments to better address human rights concerns that cross national borders . . ."

¹⁷ Amitav Acharya, "A New Frontier in Multilateralism: Canada and the ASEAN Regional Forum," *Canada Among Nations: Asia Pacific Face-Off*, Eds. Fen Osler Hampson, Maureen Appel Molot, and Martin Rudner (Ottawa: Carleton University Press, 1997), 241.

¹⁸ The first is a recently announced \$3 million pledge via the United Nations Development Fund for Women (UNIFEM) to the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC). Although there are overlapping aspects of the mandates of the AICHR and the ACWC, they are separate organizations and it is unclear how much of this funding will be channelled to the human rights commission. The second project includes \$250,000 for the ACWC and other initiatives in support of women and children via the Southeast Asia Regional Cooperation in Human Development (SEARCH) program. Again, it is unclear how much of this will land in the coffers of the AICHR (Interview with CIDA official).

¹⁹ Asia Pacific Foundation of Canada, 2010 National Opinion Poll: Canadian Views on Asia, April 15, 2010, <http://www.asiapacific.ca/sites/default/files/filefield/2010PollReport.pdf>.

²⁰ Robert O. Matthews and Cranford Pratt, "Conclusion: Questions and Prospects," in *Human Rights in Canadian Foreign Policy*, eds. Robert O. Matthews and Cranford Pratt (Montreal and Kingston: McGill-Queen's University Press, 1988), 305.

²¹ Kim Richard Nossal, "Right and Wrong in Foreign Policy 40 Years On: Realism and Idealism" in "Canadian Foreign Policy," *International Journal* 62 (summer 2007): 273; Robin Jeffrey Hay, "Present at the Creation? Human Security and Canadian Foreign Policy in the Twenty-First Century," in *Canada Among Nations 1999: A Big League Player?* eds. Fen Osler Hampson, Michael Hart, and Martin Rudner (Toronto: OUP, 2000), 228; Fen O. Hampson and Dean F. Oliver, "Pulpit Diplomacy: A Critical Assessment of the Axworthy Doctrine," *International Journal* 53 (autumn 1998): 379-406.

²² David Forsythe, "Review: Universal Human Rights in Theory and Practice by Jack Donnelly," *American Political Science Review* 84.4 (1990): 1443.

²³ Hillary Rodham Clinton, "Remarks on the Human Rights Agenda for the 21st Century," Georgetown University's Gaston Hall, Washington, DC, December 14, 2009.

²⁴ Julie Mertus, *Bait and Switch: Human Rights in U.S. Foreign Policy* (New York: Routledge, 2004), 229.

²⁵ Amitav Acharya, "How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism," *International Organization* 58 (spring 2004). Acharya describes norm localization as "a complex process and outcome by which norm-takers build congruence between transnational norms (including norms previously institutionalized in a region) and local beliefs and practices" (241).

²⁶ Of ASEAN's members, only Thailand, the Philippines and Indonesia have firmly spoken out against the Burmese junta, the State Peace and Development Council.

²⁷ Richard Stubbs and Mark Williams, "The poor cousin? Canada-ASEAN relations," *International Journal* 64 (autumn 2009).

²⁸ DFAIT accounts for the smallest percentage of the federal budget and has seen its budget drop by 23.8% in the past two years. Since 2006, DFAIT's budget has been cut "by nearly \$639 million from 2007 levels, while at the same time increasing the Defence Department's budget by more than \$2.4 billion," (Collins, Embassy, March 18, 2009).

²⁹ "Australia's Diplomatic Deficit: Reinvesting in our instruments of international policy," Blue Ribbon Panel Report, Lowy Institute for International Policy, March 2009.

³⁰ Daryl Copeland, "After the storm: Asia Pacific prospects and Canadian foreign policy," *International Journal* 54 (autumn 1999): 693.

³¹ For instance, in 2005, the Standing Committee on Foreign Affairs and International Trade investigated TVI Pacific for its role in human rights abuses following the deaths of 15 Canadian-employed mine workers in Mindanao (14th Report of the Standing Committee on Foreign Affairs and International Trade, 38th Parliament, 1st Session).

³² Jack Donnelly, *Universal Human Rights in Theory and Practice*, 2nd ed. (Ithaca: Cornell University Press, 2003), 152.

³³ David Cohen, "ASEAN's Intergovernmental Commission on Human Rights and Civil Society Initiatives in Southeast Asia," *Asia Pacific Bulletin* 51 (March 1, 2010). Based at the University of Indonesia, the Human Rights Resource Center of ASEAN will bring together human right experts through the Working Group and the Asian International Justice Initiative (a partnership between the East-West Center and the War Crimes Study Center of the University of California, Berkley). In its early stages, the Center will network with the University of Indonesia, Mahidol University (Thailand), Ateneo University School of Law (Philippines) and the University of Malaya (Malaysia).

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