

Human Rights' Dialogue in ASEM;
Do NGOs Have a Role to Play?

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Introduction¹

The 2006 summit of ASEM (Asia-Europe Meeting) in Helsinki celebrated the second five-yearly anniversary of the ASEM process, providing a good opportunity for evaluation of the past ten years. A Declaration was accepted, which stated the leaders' thoughts about the dialogue's future. Focal points were defined, as were the most important stakeholders. The summit would have been very different if Myanmar's military leaders had not decided to abandon ASEAN's presidency in 2005.² Myanmar's presidency of ASEAN (the Association of South-East Asian Nations) would have had consequences for international discussion fora such as the Asian Regional Forum (ARF) and ASEM. With its decision, Myanmar's military government prevented a diplomatic row and rapid deterioration of relations between the (South-) East Asian nations and their European and American counterparts. The Americans had threatened to boycott the next meeting of ARF if Myanmar presided over ASEAN. Several member states of the European Union declared themselves to be against Myanmar's participation in the ASEM

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- 1) This paper builds on a study on human right's protection in South-East Asia, the ASEM dialogue and the role of NGOs, which was performed at the International Institute for Applied Systems Analysis (IIASA) in summer 2005 as part of the Young Scientist Programme.
 - 2) This decision was taken on 26 July 2005, the official reason being that the junta would be too busy implementing its road map to democratic reform. Unofficially, it was thought that international pressure on Myanmar had become too strong for it not to withdraw from the presidency.

summits. This issue had disturbed relations between both continents from the moment of Myanmar's adoption into ASEAN in 1997. The matter is, however, not permanently resolved by the above-described decision.

Myanmar's political situation disturbs relations between the Asian and European sides in the ASEM dialogue because, generally speaking, both sides respond to human rights' violations very differently. In the case of Myanmar, while the European Union has laid sanctions upon Myanmar's military government, the South-East Asian nations instead use the policy of constructive engagement. This difference in approach seems to be illustrative of the differences in protecting their citizens' human rights. Linked to this difference is the possibility of civil society actors, especially non-governmental organizations (NGOs), to influence national and international policies on human rights. The question that arises here is what actually is the specific role of states and non-state actors, especially NGOs, in human rights' protection in South-East Asia, looking at the inclusion of the matter in the ASEM dialogue. Has the fact that the European states try to put the issue of human rights on the agenda improved the situation in the region of their South-East Asian counterparts? And what role do non-state actors play in improving the level of human rights' protection through the multilateral forum?

In order to answer these questions, the role of human rights in the various ASEM summits is reviewed, showing the differences of expectation in the ASEM process of the European and East Asian states. This discussion is followed by the differences of approach towards human rights in Europe and East Asia, which are a basis for the lack of human rights' discussions in the ASEM summits. The role of human rights' NGOs in South-East Asia is then analysed, followed by their role in the ASEM dialogue. Also regarding the role that these non-governmental organizations can play, there is quite a difference in approach between both regions. Finally, the case of Myanmar's participation in ASEM is described, looking at the opinion of states and the possible influence of NGOs in the matter.

The Role of Human Rights in the ASEM Summits

Differing Views on Human Rights between Europe and Asia: The Asian Values' Debate

Human rights have always played a rather peculiar role in the ASEM dialogue. There is a difference in the interpretation of human rights' values, which can be traced back to the distinctive views on regional cooperation, state sovereignty and the realization of national society. Compared to the EU, ASEAN is clearly the opposite of a formalized and institutionalized model of cooperation. ASEAN was established in 1967 as a careful attempt to maintain friendly relations among the states in the region rather than to come to far-going regional cooperation.³ The association is based on the Bangkok Declaration, which is hardly more than a non-binding statement of principles. It mainly focuses on unity in the South-East Asian region, which means that all states in the region should have the possibility to become a member of the Association, which could then serve regional stability and friendly relations. The focus on friendly relations between its member states also resulted in the application of the principle of non-interference in internal matters of state. All possible conflicts are dealt with in a careful, friendly way, trying to maintain the dialogue instead of putting political or economic pressure on a non-

3) C.P.F. Luhulima, 'ASEAN Institutional Structure and Decision-Making', *The Indonesian Quarterly*, vol. XXX, no. 4, 2002, p. 396.

cooperative state. This approach is the so-called 'Asian way'. Japan, China and the Republic of Korea share the importance attached to the principle.

Another reason for the creation of ASEAN was to face the dangers coming from communist China and Russia on the one hand and the growing economic importance of Japan on the other.⁴ The end of the Cold War changed this world order rapidly. Western states, like the EU member states, tried to increase their influence in other parts of the world, which had formerly been out of their reach because of the bipolar power structure. Because of the disappearance of the ideological conflict between the two superpowers, there was more room to link political to economic interests. The European states tried to increase their influence in Asia in order to counterbalance the growing domination of the US.

As far as economic issues were concerned, the Asian states were willing to start a dialogue or some form of cooperation with their European counterparts. This led to the creation of the Asia-Europe Meeting. The ASEM process is a dialogue forum in which the EU and the European Commission, and the ASEAN member states, Japan, China and the Republic of Korea participate. The process is made up of three 'pillars', containing cooperation on political and cultural issues besides the economic dialogue. The process is composed of summits, which are attended by heads of state and government, ministerial meetings on foreign affairs, economics, finance and other issues, and of senior official meetings (SOM). The summits are held biennially, and since its establishment in 1996 there have been six summits: the first in Bangkok in 1996; then the London summit in 1998; the third summit in 2000 in Seoul; the 2002 Copenhagen summit; the fifth summit in Hanoi in 2004; and, finally, the sixth summit in Helsinki in September 2006.

The political dialogue, or more specifically the discussion of human rights' issues, was mostly avoided by the summits. The argument used by several South-East Asian leaders was that the European states did not accept that the Asian states had their own approach to dealing with the changes in international society, especially regarding democracy and human rights.⁵ This touches upon the more general debate within human rights' theory on the universal application versus cultural relativism of rights. Some Asian leaders countered the European pressure on universal working of human rights, arguing that the 'Western' notion is individually based, while Asian society uses the community as the starting point, to which the individual is subordinated. Former Prime Minister of Malaysia Mahathir bin Mohamad stated publicly that his government would choose the party and country above

4) D. Vlasblom, 'Zelfs de zeep heeft twee maten: ASEAN zoekt evenwicht tussen integratie en niet-inmenging', *Volkskrant*, 8 October 2004.

5) A.J. Langlois, *The Politics of Justice and Human Rights: South-East Asia and Universalist Theory* (Cambridge: Cambridge University Press, 2001), p. 12.

democracy.⁶ As a result, interests of the state or the community are chosen over the democratic rights of the people. Democracy could easily lead to chaos, which would destabilize the community as a whole. Power was therefore solidly vested in the central government, leaving little room for individual freedoms and civil society actors to promote them. Singapore is another example of such a centralized state.⁷

It is true that leaders such as Mahathir have misused the argument of 'Asian values' to maintain their political power. However, a shift is visible: his successor's election in 2003 was widely regarded as an approval of his more moderate vision on Islam, state and society.⁸ In Indonesia the first democratic elections took place in 2004 and started a process that is very carefully moving Indonesia away from its authoritarian past. The Asian focus on the community as a whole can be viewed from the ratification pattern of South-East Asian states of the relevant UN human rights' treaties: all ASEAN member states are parties to the UN conventions on women's and children's rights, while the more individually based instruments have not, or have only recently, been signed.⁹ Looking at the ratification pattern of the last five years, however, the ten ASEAN members have acceded nineteen times in total to the various human rights' treaties and their optional protocols.¹⁰ From this number, the conclusion can be drawn that the South-East Asian nations have become more aware of the importance of ratifying the UN human rights' treaties. And at least they now have to report on the progress made regarding the specific human rights' situation in their country.

The Role of Human Rights in the ASEM Dialogue

Even though the ASEAN countries are discussing new forms of regional cooperation, with a charter as its legal basis, and some degree of democratic reform is taking place, there is still a strong emphasis on the maintenance of friendly relations, avoiding any controversies in the official meetings. This

6) Mahathir bin Mohamad is considered to be the spokesperson of the 'Asian values'. See also Langlois, *The Politics of Justice and Human Rights*, p. 13.

7) G. Koh and O. Giok Ling, 'Relationship between State and Civil Society in Singapore: Clarifying the Concepts, Assessing the Ground', in: L. Hock Guan (ed.), *Civil Society in South-East Asia* (Copenhagen: NIAS Press, 2004), p. 168.

8) Abdullah bin Haji Ahmad Badawi was elected as Prime Minister of Malaysia on 31 October 2003. Some of his main action points are the reduction of corruption and the promotion of Islam as a possibility for economic and technological development instead of as a stumbling block.

9) Office of the United Nations High Commissioner for Human Rights, *Status of Ratifications of the Principal International Human Rights' Treaties*, 16 June 2006, at <http://www.ohchr.org/english/bodies/docs/RatificationStatus.pdf>.

10) *Status of Ratifications of the Principal International Human Rights' Treaties*.

approach is reflected in their position on the possibility of having a human rights' dialogue within the ASEM Process.

The first ASEM summit was used to improve dialogue between both continents, to share concerns and aspirations and to come up with a common vision of the future.¹¹ Another important goal was to intensify trade and investment, following from the section on 'reinforcing economic cooperation'.¹² Since the framework for future cooperation had to be created, most states felt that controversial issues such as human rights had to be avoided. This avoidance not only came from the Asian side; it suited most European countries as well.¹³ Economic interests in the growing East Asian region could be satisfied without upsetting the relationship in the first minute. In the Chairman's statement, no clear mention was made of the term 'human rights', except when the respect for the Universal Declaration of Human Rights was mentioned. Only once was 'fundamental rights' used as a general term, together with principles like 'mutual respect, equality, [...] non-intervention [...] in each other's internal affairs'.

Direct insertion of human rights in the final Chairman's statement could lead to public criticism on a state's human rights' record. This was clearly not in accordance with the Asian perspective of the non-intervention principle, and therefore the term 'human rights' was avoided. Another delicate issue was avoided through the successful mediation of the Thai host government: former Indonesian President Suharto threatened to leave the summit if Portugal brought up the issue of East Timor. Thailand managed to use its influence on both countries to avoid further strong words.¹⁴ Because of these kinds of outflanking movements, in which informal bilateral meetings were used to settle issues instead of the official sessions, the first summit could be considered a success. Both continents were brought together, creating a spirit and will for future cooperation.

This variation of official multilateral and unofficial bilateral diplomacy was also an important formula for the success of future summits. Controversial issues had to be avoided if possible, and if they had to be discussed, then outside the official summit room. This way, the possibility of parallel, informal sessions in which issues such as the rule of law and human rights could be discussed was created. In order to optimize these sessions, instruments like the Asia-Europe Foundation (ASEF), the Asia-Europe Vision Group and the Council for Asia-Europe Cooperation (CAEC) were established. ASEF organized informal sessions on human rights' issues, which were held annually, alternating in Europe and Asia. The proposal for these

11) Chairman's Statement of the Asia-Europe Meeting, *ASEM Summit I: Possible Intentions at its Creation: Towards a Common Vision for Asia and Europe*, Bangkok, 2 March 1996.

12) *ASEM Summit I*.

13) H. Loewen, 'Demokratie und Menschenrechte im Europa-Asien-Dialog', *Asien*, vol. 95, April 2005, p. 69.

14) Loewen, 'Demokratie und Menschenrechte im Europa-Asien-Dialog', pp. 69-70.

informal sessions was drafted by Sweden with co-sponsoring from France. Even though it was not an official ASEM initiative, it attracted participation of all ASEM member states, together with NGOs and academics.¹⁵ All sessions, hosted so far by Sweden, Indonesia, France and China, consist of workshops on human rights' issues. During the first session in Lund in 1997, emphasis was placed on the cultural implementation of human rights, despite their universal character. The differences in implementation were also stressed in the second session, which was held in Beijing in 1999. Recognition of the differences in cultural interpretations of human rights is of importance, because this is the issue that hinders the human rights' dialogue on the state level.

This recognition works both ways: the Europeans have to accept that the East Asian states are organized differently, approaching individuals and their rights differently. They have to acknowledge the changes in Asian societies that are occurring slowly: new leaders, some of whom have been elected democratically for the first time, more ratifications of human rights' treaties within the UN, and further institutionalization of regional cooperation. The importance of the latter process, in particular, should not be disregarded. An 'Eminent Persons Group' of respected personalities is now working on the draft of a legally binding ASEAN Charter, which is supposed to be completed and ratified at the fortieth anniversary of ASEAN in August 2007.^{16 17} The draft charter specifically states that it will promote democratic institutions, human rights, transparency and good governance.¹⁸ Although still in general terms, if the stated intentions are realized and the charter actually contains articles on human rights' protection, it will be a significant step towards the regional human rights' treaty that the member states have been working upon for quite some time.¹⁹

On the other hand, the Asian states should accept the European focus on political, and thus human rights', issues in formal meetings and their emphasis on the rights of the individual. The fact that, for instance, the political situation in Myanmar is discussed in a forum like the ASEM dialogue does not automatically result in criticism on the South-East Asian policy of constructive engagement. It seems that the South-East Asian states mistrust Western 'good intentions' as being based on the experiences of

15) ASEM Research Platform, *Informal ASEM Symposium on Human Rights and the Rule of Law*, at <http://www.ias.nl/asem/index.html>.

16) S. Eysink, 'Human Rights between Europe and South-East Asia', *IIAS Newsletter*, summer 2006, pp. 8-9. Also see J. Wanadi, 'The ASEAN Charter: Its Importance and Content', *The Jakarta Post*, 18 April 2006.

17) Xinhua, 'ASEAN Charter to be Completed at its 40th Anniversary: Indonesian FM', *English People's Daily Online*, 9 August 2006.

18) *Kuala Lumpur Declaration on the Establishment of the ASEAN Charter*, Kuala Lumpur, 12 December 2005, para. 4.

19) See *Conclusions and Recommendations of the Workshop for the Establishment of an ASEAN Human Rights Mechanism*, Kuala Lumpur, 20-22 June 1997.

colonial times. The clash over Myanmar's participation in the ASEM dialogue is a good example of this. New members to the European Union were automatically allowed to join the fifth ASEM summit, while the participation of Vietnam, Laos and Myanmar, which acceded to ASEAN as early as 1997, was once again put on hold because of the political situation in Myanmar. In Asian circles, this was explained as another example of European misinterpretation of its superiority, which would not improve the situation in the South-East Asian country in any way.²⁰

Despite the fact that the parallel sessions on human rights have been held for several years now, they have been kept informal and the initiatives have not managed to penetrate into the 'decision-making' processes of the official summits. Human rights hardly appear in the Chairman's statements. What was meant as a means to take the pressure off controversial issues by discussing the matters outside the official forum, together with participants other than state officials, and what eventually should have led to incorporation of the controversial matters in the official dialogue, has so far not worked out this way. It seems that the informal sessions have been used as an excuse not to deal with the controversial matters on an official level.

Returning to the formal sessions, the second and third summits were occupied with the international developments of that moment: in 1998, the Asian region was forcefully hit by a financial crisis, which seemed to wipe out completely the spirit for future cooperation. The Asian countries were disappointed by the lack of interest shown by their European counterparts in donating money or providing technical assistance to deal with this crisis. The Europeans, on the other hand, believed that this was not the right policy, since the East Asian states had more or less themselves to blame for the crisis, because of bad policy and lack of mutual cooperation.²¹ Besides, the European countries had other things on their mind: the crisis in the Balkans was erupting into a regional conflict, with great flows of refugees and a developing humanitarian crisis. Because of the absence of a human rights' discussion in the second summit, nothing on this subject was inserted in the official closing document.²² The same goes for the bilateral talks between the European Commission and China, where no mention was made of human rights, but

20) A Special Representative of the European Union was sent to the region immediately before the fifth summit was to be held in Hanoi, Vietnam. The Special Representative tried to create understanding for the European position, which was not willing to allow Myanmar's military government at the table, among representatives from Japan, China, Thailand and Vietnam. All four states recalled to the Representative that this was not a matter for the Europeans to decide, but it was rather an internal matter for Myanmar itself. This was concluded from an interview with an official of the Netherlands Ministry of Foreign Affairs, who wishes to remain anonymous, The Hague, 4 May 2005.

21) Y. Huang and B. Yeung, 'ASEAN's Institutions Still in Poor Shape', *Financial Times*, 2 September 2000.

22) Chairman's Statement of the Asia-Europe Meeting, *ASEM Summit II*, London, April 1998, at <http://www.asem5.gov.vn>.

focus was placed on the further development of economic relations between the two parties, coloured by the fact that China was almost the only East Asian nation not to be hit by the financial crisis.²³ It seemed that the European parties had more interest in reserving a piece of the Chinese economic cake than in mentioning the more unpopular issues at stake.

As for civil society participation in ASEM, an important decision was taken at the second summit with the creation of the Asia-Europe People's Forum (AEPF), which consists of civil society actors that are interested in Asia-European cooperation, but that are not accepted as official participants in the process.²⁴ The aim of this umbrella organization is threefold: to strengthen networking between and across Asia and Europe; to analyse common interests; and to provide an opportunity for critical opinions on the official process to be expressed.²⁵ Especially the latter function could be valuable for the discussion of human rights' issues. The sessions organized by AEPF run parallel to the official summits and are open for all non-state actors with an interest in the ASEM dialogue. These sessions could also be used to shed critical light on the human rights' situation of a certain country or on a certain theme. This was done, for instance, at the parallel session of the AEPF to the fifth summit held in November 2004 in Hanoi, Vietnam, in which the poverty and human rights' policy of Vietnam was discussed.²⁶ It was probably the reason why the Vietnamese government did everything in its power to try and prevent this parallel session from taking place.

The third summit was coloured by a more positive development: the historical approach between both countries on the Korean peninsula. Other issues on the political agenda were the situation in the Balkans, East Timor, and problems in the South China Sea. For the first time, democratization and human rights were directly mentioned. It seemed that the Asian partners were more willing to discuss the issue than they had been before.²⁷ The reason for this shift is unclear. One explanation could be that the Asian states responded to the pressure from the European states to discuss the matter of human rights. Another reason could be that events on the Korean peninsula positively effect political dialogue on all matters. Whatever the reason for the openness of the Asian states, the fact is that the issue of human rights was even adopted in the Chairman's statement: 'Leaders committed themselves to promote and protect all human rights, including the right to development, and fundamental freedoms, bearing in mind their *universal, indivisible and*

23) European Commission, *The EU's Relation with Asia: North East Asia*, at http://europe.eu.int/comm/external_relations/asia/reg/nea.htm.

24) S. Bersick, 'A Functional Analysis of Multilateral Regimes: The Role of Civil Society in the Asia-Europe Meeting — The ASEM Process', *Dialogue and Cooperation*, vol. 3, 2003, p. 57.

25) Bersick, 'A Functional Analysis of Multilateral Regimes'.

26) S. Kuankachorn, *ASEM V: Getting a Value out of the ASEM Peoples Forum V*, at <http://www.ased.org>, 4 November 2004.

27) M. Reiterer, 'ASEM — The Third Summit in Seoul 2000: A Roadmap to Consolidate the Partnership between Asia and Europe', *European Foreign Affairs Review*, vol. 6, 2001, p. 13.

interdependent character as expressed at the World Conference on Human Rights in Vienna.’ [emphasis added].²⁸ Democracy and human rights were in a similar way inserted in the basic agreement, the so-called Asia-Europe Cooperation Framework (AECF) 2000.²⁹ There were some Asian states, however, that feared critical interference in their internal affairs. Therefore, in paragraph 12 of the Cooperation Framework, mention was made of the importance of issues of common interest, ‘not excluding any issue beforehand but exercising wisdom and judiciousness in selecting the topics for discussion’. The dialogue had to be based on mutual respect and non-intervention in the internal affairs of each state, whether direct or indirect. The mentioning of the non-interference principle was mostly supported by China, Malaysia and Singapore.³⁰

The third summit in Seoul was generally characterized by reform and changes, the AECF being one example of possible reform. Another is the suggestions made in a paper produced by the Commission called ‘VADEMECUM — Modalities for Future ASEM Dialogue — Taking the Process Forward’, in which greater informality and interactivity were suggested.³¹ Suggestions for these improvements were more time between the official sessions, in the form of cocktails, coffee breaks and lunches. Such informal sessions could be a way to improve discussion about the more delicate issues.

The political dialogue of the fourth summit was fully occupied by the terrorist attacks of 11 September 2001, which had such a dramatic impact on the entire international order that a discussion on human rights in East Asia was not an option. Much focus in the political discussion was on the invasion in Afghanistan and, more generally, the fight against terrorism. The cultural dialogue was also coloured by the terrorist attacks, aiming to bridge the growing gap between the Islamic and non-Islamic world.³²

The fifth summit was dominated by the question of enlargement: the European Union had then just acquired ten new member states, which would automatically take part in ASEM. ASEAN, meanwhile, wanted to allow the participation of its three most recently accessed member states — Laos Cambodia and Myanmar — to the official dialogue as well. The participation of Myanmar caused much discussion and controversy between both continents, since most European states were still strongly against participation

28) Chairman’s Statement of the Asia-Europe Meeting, *ASEM Summit III*, Seoul, October 2000, point 8.

29) *The Asia-Europe Cooperation Framework (AECF)*, 2000, at http://europe.eu.int/ns/asem_proces, point 5.

30) Loewen, ‘Demokratie und Menschenrechte im Europa-Asien-Dialog’, p. 74.

31) Directorate General for External Relations, *Vademecum — Modalities for Future ASEM Dialogue: Taking the Process Forwards* (Brussels: European Commission, 18 July 2001).

32) M. Reiterer, ‘The Asia Europe Meeting (ASEM): The Importance of the Fourth ASEM Summit in the Light of 11 September’, *European Foreign Affairs Review*, vol. 7, 2002, p. 143.

by Myanmar's military government.³³ The participation of Myanmar in the fifth ASEM summit is closely linked with the possibility of having a human rights' dialogue in the ASEM process. This case will therefore be discussed in a separate paragraph below as an example.

The sixth summit, which was held in Helsinki in Finland, focused on the tenth anniversary of ASEM. Myanmar's political situation was discussed, and leaders expressed their concern about the lack of political reform.³⁴ Enlargement of ASEM was decided upon, by welcoming Romania and Bulgaria as new member states to be. On the Asian side, Mongolia, Pakistan, India and the ASEAN secretariat were accepted as new participants to the seventh summit, which is to be held in China in 2008. In this respect, no mention was made of the issue of Myanmar.

In the Declaration on the future of ASEM, which was adopted in Helsinki, the future focal areas were defined: from strengthening multilateralism and addressing global threats, to human resource development and sustainable development.³⁵ Human rights, as such, were not specifically mentioned, and reluctance to mention the issue was a disappointment for those in favour of encouraging its protection within the ASEM dialogue. It means that the parallel informal human rights' meetings that are organized by the Asia-Europe Foundation have still not been very influential. ASEM maintains a state-to-state affair, focusing on those areas that are of interest to all parties, mostly in the area of economics and culture. In the Chairman's statement of the summit, human rights were mentioned not as an individual issue but rather in the context of the political situation in Afghanistan, the development of the rule of law in Iraq, in the fight against terrorism and regarding the protection of the rights of all workers.³⁶

At the highest level, ASEM's goals and objectives continue to be stated in general terms and further institutionalization does not seem to be on the agenda. The 2006 summit praised the informal character of the dialogue and a *virtual* secretariat will be set up to coordinate information flows between the members.³⁷

33) Note that this situation was already an issue of controversy at the second summit in 1998, when Myanmar had become a member of ASEAN one year before. The issue arose again at the fifth summit because of EU enlargement.

34) *Chairman's Statement of the Sixth Asia-Europe Meeting*, Helsinki, 10 and 11 September 2006, para. 5.

35) *Helsinki Declaration on the Future of ASEM*, Helsinki, 10-11 September 2006, para. 4.

36) *Chairman's Statement*, 10-11 September 2006, respectively paras 7, 11, 14 and 23.

37) Annexe to the *Helsinki Declaration on the Future of ASEM: ASEM Working Methods and Institutional Mechanisms*, Helsinki, 10-11 September 2006, para. I.2.

The Role of Non-Governmental Organizations in Human Rights' Protection in South-East Asia

Before going into the topic of the role of NGOs in Asia, the term 'civil society' has to be defined. For example, one definition used is: 'The space of uncoerced human association and also the set of relational networks — formed for the sake of family, faith, interest, and ideology — that fill this space'.³⁸ Even though this definition is only one of many and the term remains unsettled, the element of counterweight against the state is a hallmark of the concept. But how far does the Asian notion of civil society differ from the European idea?³⁹

Divergent concepts of civil society in Asia and Europe are closely related to the discussion of the different interpretations of human rights. Some scholars argue that the concept of civil society is still at a developing stage, while others even deny that such a concept exists at all in Asia.⁴⁰ As for the element of distinction between private and public spheres, a problem arises in the case of Asia: no clear line can be drawn between these sectors. The room left for the emergence of a distinct private sector is limited, because of organization of the states. The history of the past century has an important role in this respect, as much has to do with the colonial rule by European powers until the 1960s and 1970s. Colonial rulers took over many positions in administration and government, which first led to the decline of the various indigenous forms and structures of politics and later to the incorporation of businesses and other private organizations.⁴¹ The European leaders limited political participation, fearing the decline of their authority. The room that was left for civil initiative was filled with the emergence of religious groups, demanding their right as colonial subjects to form voluntary organizations.⁴²

This changed after independence, as totalitarian states were the most common feature in South-East Asia from the 1970s onwards. Here is where a second problem arises in applying the definition above to the South-East Asian situation. The state is placed *above* society in most South-East Asian states, and therefore the role of buffer against too much state power is hard to maintain. As in the human rights' discussion, leaders like Mahathir of Malaysia or Suharto in Indonesia argued that forces counterbalancing the power of the government were dangerous to the stability of the state and

38) M. Walzer, 'The Concept of Civil Society', in: M. Walzer (ed.), *Towards a Global Civil Society* (Providence RI: Berghahn Books, 1995), p. 7.

39) The differences between Asia and Europe are chosen, since these are relevant for analysis here and for finally answering the central question.

40) D.C. Schak and W. Hudson, 'Civil Society in Asia', in: D.C. Schak and W. Hudson (eds), *Civil Society in Asia* (Hampshire: Ashgate, 2003), p. 1.

41) L. Hock Guan, 'Introduction: Civil Society in South-East Asia', in: L. Hock Guan, *Civil Society in South-East Asia* (Singapore: Institute of South-East Asian Studies, 2004), p. 10.

42) Hock Guan, 'Introduction', p. 11.

should therefore be hindered. This focus on stability and security resulted in the creation of the regional association of ASEAN, dealing with all uncertain external factors of the Cold War, the fall of the Soviet Union as a superpower, and the changing nature of conflicts. This argument was used for a long time to restrict human rights and to narrow down the possibilities for civil society actors to work on political reform.

Another argument used for greater state control over public and also private life was economic: a strong state was necessary to reach the economic development desired, of which Singapore is a clear example. In order to make an economy competitive, the rights of the individual citizens had to be sacrificed for the common good. Therefore, the state had to be placed above society to be free from any societal interference or criticism that might disturb the path towards economic success.⁴³ However, with the growth of economic prosperity, citizens' demands for rights' protection usually expand as well. This is the case in countries like Thailand, Malaysia and Indonesia, as well as Singapore, which are, more or less, in the process of democratic transition.⁴⁴ More social movements emerge, but still under state control. This is certainly the case for states like Laos and Vietnam, which are ruled by the centralized Communist Party. The room for manoeuvre for non-state actors is growing, but it cannot be compared to the influence that NGOs have in the West. In Asia the state decides what kind of information NGOs can publish, who the staff members are and how the organization operates in general.⁴⁵ As long as the organization operates according to the rules of procedure described by the state, there is silent approval of NGO investigations in, for instance, issues such as corruption.⁴⁶ The case in Myanmar is worse, of course, since the government demands full control over 'private' organizations.⁴⁷

The communist states like Laos and Vietnam, and the exceptional case of Myanmar, are more 'extreme' than the situation in the other South-East Asian countries, but in all of them there is the element of centralization, to various degrees. But, as is the case with human rights' issues, which are affected by the careful development towards more commitment to regional cooperation, the room for civil society is growing as well. This shift starts in countries with newly elected leaders, such as Indonesia. Here, where there is the movement of 'Reformasi', which symbolizes the political reform that Indonesia is going through, a growing role is played by civil society actors like

43) D.A. Bell, *East Meets West: Human Rights and Democracy in East Asia* (Princeton NJ: Princeton University Press, 2000), p. 239.

44) Hock Guan, 'Introduction', pp. 11-12.

45) Bell, *East Meets West*, p. 281.

46) Hock Guan, 'Introduction', p. 147.

47) D.I. Steinberg, 'A Void in Myanmar: Civil Society in Burma', in: Burma Centrum Netherlands/Transnational Institute, *Strengthening Civil Society in Burma: Possibilities and Dilemmas for International NGOs* (Chiang Mai: Silkworm Books, 1999), p. 12.

NGOs and activists.⁴⁸ Another example is the case of the Philippines, where the space for popular involvement in civil society organizations expanded greatly after the 1986 revolution, which ended twenty years of Marcos rule.⁴⁹ NGOs adopt all kinds of non-economic concerns, such as health care and literacy. There is thus a growing sector of citizen participation, especially in the field of citizens' social needs. When it comes to politically sensitive issues such as human rights, the development is more careful, however, as will be shown by the report of the International Federation for Human Rights below. The growing civil society movement can, however, evolve into a strong check and balance on the government: the civil society dynamism can surge so high that it can bring about major political change, or at least call for it, as happened against Philippine President Gloria Macapagal Arroyo in July 2005.⁵⁰

South-East Asia has developed more heterogeneously regarding the role of the government and the possibility of the effective existence of NGOs than their more homogenous European counterparts. In Indonesia under the somewhat liberal regime of President Sukarno, NGOs could emerge, of which especially the rural ones were abandoned under the later President Suharto. In Malaysia, as in Thailand, the state was involved in so many aspects of life, that a proliferation of NGOs to fill up some of that space was very hard. It was especially during the 1980s and 1990s with economic prosperity that NGO proliferation bloomed, especially in the area of development aid.⁵¹ International and national NGOs worked together to gain funds and to transfer aid to the areas in most economic need as well as they could. Ties with the state were important to have a chance of political influence.⁵² NGOs can have influence, as long as the information spread uses delicate formulations. Every action or publication is censored by the government.

48) M.L. Weiss and S. Hassan, 'From Moral Communities to NGOs', in: M.L. Weiss and S. Hassan (eds), *Social Movement in Malaysia: From Moral Communities to NGOs* (London: Routledge Curzon, 2003), p. 12.

49) The increase in NGOs is visible in other countries in the South-East Asian region as well. Indonesia, Thailand, Vietnam, Cambodia and Singapore all show an increase in the number of non-government-related organizations that are active in non-economic fields such as human rights and environmental issues. See also I.R. Serrano, 'Civil Society in the Philippines: Struggling for Sustainability', in: Schak and Hudson (eds), *Civil Society in Asia*, p. 111.

50) Associated Press, *Philippines' President Won't Resign*, 8 July 2005, Manila, at <http://www.cbs.com/stories/2005>.

51) G. Clarke, *The Politics of NGOs in South-East Asia: Participation and Protest in the Philippines* (London: Routledge, 1998), p. 32.

52) This is not the case in the Philippines, however, where the civil society organizations act independently from the state actors, without directly forming coalitions with officials. Therefore, because of all these different political situations, it is important to keep in mind that there is not one model for the realization of the functioning of civil society and especially NGOs in the South-East Asian region.

Too-clear influence by non-state actors such as NGOs is forcefully repressed and leads 'only' to international indignation. More subtle lobbying, building coalitions with opposing political parties and taking careful steps are more effective ways to cultivate the change that comes from within.

So there is NGO activity visible in the region and this activity seems to be growing. Especially in the areas of religion, development aid, education and health care, NGOs are active. When human rights are involved, however, the picture is less roseate. The International Federation for Human Rights published a report in March 2005 on the situation of human rights' defenders in 2004, and the situation of human rights' NGOs in the Philippines, for instance, does not at all give rise to a positive view. Important proponents of the abolition of the death penalty were harassed and even executed, as were other representatives of human rights' NGOs. The report concludes that these extra-judicial killings created a climate of fear, in which the freedom of expression and democracy were undermined.⁵³ Looking at some other countries in the region, such as Vietnam, Laos and Cambodia, the situation is even more worrying: besides executions and the disappearance of representatives of human rights' NGOs, the freedoms of expression, association, and assembly are restricted, and economic, social and cultural rights are not observed.⁵⁴ On Vietnam, the report states that 'the communist authorities continued to blatantly stifle all form of criticism and dissent, as they increased the repression against all divergent opinions, thus increasingly restricting the freedoms of opinion and expression guaranteed by the 1992 Constitution'.⁵⁵ Similar information is provided by the Asian Human Rights Council NGO on a daily basis. Asian NGOs thus seem to have difficulties in raising critical issues with their governments.

Where claims on human rights were repressed in the name of cultural relativism and economic development in the past, the argument has, since the terrorist attacks of 11 September 2001 and the Bali bombings, shifted towards the justification of the fight against terrorism. In the name of protection of internal and regional stability and security, freedom of expression and assembly are restricted and opposing 'elements' are removed from society. This observation can also be found in several Amnesty International reports.⁵⁶ The rise of the internet, which is used by many NGOs to spread information on human rights' violations, has resulted in further restrictions by, for

53) International Federation for Human Rights (IFHR), *The Situation of Human Rights' Defenders*, 31 March 2005, at <http://www.fidh.org/IMG/pdf/Asia.pdf>, pp. 218 and 270-274.

54) IFHR, *The Situation of Human Rights' Defenders*, pp. 218-231.

55) IFHR, *The Situation of Human Rights' Defenders*, p. 277.

56) For instance, the report on *Torture and Secret Detention: Testimony of the 'Disappeared' in the 'War on Terror'*, 4 August 2005, AMR 51/108/2005; *Socialist Republic of Vietnam Appeal for Cyber Dissident* — Nguyen Vu Binh, 1 June 2005, ASA 41/019/2005, both at <http://www.amnesty.org>.

instance, the Vietnamese state in the freedom of expression and association, which hampers the work of human rights' NGOs.

When it comes to general NGO participation in internal politics, changes are visible. But when it comes to controversial issues such as human rights, there is still a long road ahead before these actors can truly perform an officially recognized role. This much is clear from the report of the International Federation for Human Rights. However, the fact that the number of NGOs working in social and cultural fields has increased noticeably in most countries in South-East Asia since the 1980s could have a spillover effect on NGOs working in other fields. New political leaders such as Sasilo Bambang Yudhoyono in Indonesia could contribute to this change.⁵⁷ His government is continuing to improve its performance in the four key areas of trust, corruption, management and democracy. Even support among the Indonesian people seems to be growing, which is quite an achievement considering the natural disasters with which Indonesia has had to cope during the last two years.⁵⁸

The Role of Non-Governmental Organizations in the ASEM Dialogue

The reluctance of the Asian states to give room to NGOs is not only present in the region of South-East Asia, but also within the ASEM dialogue. The dialogue was set up as a more top-down process, while the NGOs want to reach more human rights' protection by using a bottom-up approach.⁵⁹ Most European states emphasized the importance of improving people-to-people contacts between both regions, which included the involvement of NGOs and other civil society actors as well. Some Asian states, however, successfully lobbied to replace the term 'civil society' by 'all sectors of society' in the Chairman's statement of the second summit.⁶⁰

57) The question here is whether 'SBY', as the new president of Indonesia is called, has the power yet to make a change. In the investigation into the death of a human rights' activist, it is clear that the president has not been able to have power over the Indonesian secret service. The service is still immune and above the law. The trial of the suspect of the murder of Munir is considered to be the first test of SBY's human rights' policy. See also M. Maas, 'Moord op Munir komt voor de rechter', *Volkskrant*, 30 July 2005.

58) An Indonesian poll has shown that support for SBY's government has grown by 2 per cent since 2005 (39 per cent in 2005 up to 41 per cent in 2006); *The Jakarta Post*, 15 September 2006.

59) S. Bersick, 'The Democratization of Inter- and Trans-Regional Dialogues: The Role of Civil Society, NGO and Parliaments', in: J. Rüländ, G. Schubert, G. Schucher and C. Storz (eds), *Asian-European Relations: Building Blocks for Global Governance* (London: Routledge, 2005), p. 2.

60) Chairman's Statement of the Asia-Europe Meeting, *ASEM Summit II*, London, April 1998, at <http://www.asem5.gov.vn>.

As noted above, the Asia-Europe Cooperation Framework was set up to formulate the principles and objectives and to develop mechanisms for ASEM's future. This Framework set out its vision on the future of ASEM in a document, stating that 'think tanks, research groups, universities and all sectors of society generally, [...] promoting the human dimension in the ASEM process'.⁶¹ The role for these society actors is thus focused mainly in the social and cultural fields. In the eighth paragraph, however, a special role is placed on business and private sectors, the peoples of the two regions, scientific think tanks and research groups of both regions in promoting dialogue and cooperation between these actors. This paragraph states that 'The Summit confirmed that the ASEM process should [...] go beyond governments...'.⁶² The previously instituted Asia-Europe Foundation (ASEF) was an example of involving people and civil society in the process by promoting exchanges on a people-to-people basis. ASEF wanted to have NGO cooperation at the centre of its attention. The effectiveness of this approach is questioned by some NGOs, however, of which the Asia-Europe People's Forum (AEPF) is the most important.⁶³ In the role of facilitating civil society discussion and participation, the AEPF as an umbrella organization is more active in this field than ASEF. This once again leads to the question of the seriousness of states' intentions in allowing NGO participation on controversial matters in the official dialogue. ASEF's success lies more in the field of dialogues over cultural issues, such as religion and art.⁶⁴ Another setback for civil society participation was the failed lobby on the establishment of the Asia-Europe Social Forum, which was meant as the social fourth pillar of ASEM. Trade unions, together with AEPF, lobbied heavily for its establishment, but no agreement on the matter was reached at the official level at the third summit in Seoul.⁶⁵

The official agenda during summits is kept narrow, dealing mostly with trade issues and investment liberalization in, for instance, the World Trade Organization. Not many of the official meetings seem to touch on the proposals made by NGOs. On the other hand, civil society is mentioned in a separate paragraph in the *2006 Helsinki Declaration*, since paragraph III of the Annex to the Declaration states that 'A closer involvement of parliaments, academia and civil society in the broad sense will furthermore greatly contribute to a stronger feeling of ownership and enhance the visibility and awareness of ASEM among the wider public'. The paragraph goes on by stating that 'the different stakeholders of civil society can play an important

61) Asia-Europe Cooperation Framework (AECF), *Asia-Europe Cooperation Framework 2000*, para. 11, at <http://www.apiicc.org/database/Asia-Europe>.

62) S. Bersick, *Lecture on the Future of the ASEM Dialogue*, course in strategic planning and foreign policy for senior diplomats from Indonesia, 6 June 2005.

63) Bersick, 'The Democratization of Inter- and Trans-Regional Dialogues', p. 4.

64) Bersick, *Lecture on the Future of the ASEM Dialogue*.

65) Bersick, *Lecture on the Future of the ASEM Dialogue*.

part in developing the outreach'. The fact that their role is specifically mentioned as important for the creation of public awareness and visibility of ASEM means that the role for civil society remains officially recognized. Its role as a public information source is emphasized. This is one of the tasks of civil society that is crucial for achieving social development and change. On the other hand, one can argue that the role of civil society is still limited to creating awareness among the people about ASEM and not so much as a stakeholder that is allowed to co-decide at the negotiation table. Only time can tell how this phrase will be explained.

The question arises of why at this moment civil society actors do not get heard in the ASEM process. Is it only because some states are unwilling to allow them to participate in the official summits? Also, what about the inequality between the participating NGOs from the East Asian and European sides, which has something to do with the aspect of legitimacy? Who do these NGOs represent? While European NGOs, as they tend to be called, are often long-established and quite influential, most Asian organizations are still newly formed and less powerful because of the limited space allowed to them. As much as official state relations are based upon a utopian suggestion of equality, equality between the different NGOs is wishful thinking as well. Most civil society representation within ASEM seems to come from European organizations.⁶⁶ Some Asian NGOs have tried to gain influence through their relations with Europe, as networking functions as one of the important added values of the dialogue.

One important decision that the NGOs have to take before actually trying to contribute on the substantial level is on the definition of civil society. As noted above, this concept is interpreted differently in both regions, which has led to the fragmentation of NGO input. Defining this concept is the essence of NGO influence. However, finding this definition is easier said than done, since even on an academic level there is no such thing as one definition of civil society. However, consensus has to be reached about the core elements of civil society in the context of ASEM. Once there is more unity, the NGO lobby is likely to have more influence, also in respect of the principle of legitimacy.⁶⁷

The ASEM process has reached a decisive moment in its history with the celebration of its tenth anniversary. This is a moment for civil society to reflect on ASEM's influence and to answer some of the most difficult, but crucial questions of its existence. Reaching development from the grass roots up is a good ideal. The grass roots' level first has to be defined, however, to speed up the process.

66) J. Gilson (ed.), *Asia Meets Europe: Inter-Regionalism and the Asia-Europe Meeting* (London: Edward Elgar, 2002).

67) Fen Olser Hampson and H. Reid, 'Coalition Diversity and Normative Legitimacy in Human Security Negotiations', *International Negotiations*, vol. 8, no. 1, March 2003, p. 25.

The Case of Myanmar's Participation in the Fifth ASEM Summit

The Issue at Stake

The issue of Myanmar's participation in the ASEM summits shows the length of the road ahead. This test case is still one bridge too far for ASEM. The participation of Myanmar will be used here as an example case to explain the differences of opinion between the European and East Asian regions and within each region itself. One could argue that the political situation in Myanmar is too extreme and isolated to serve as a good example for the position of human rights in the ASEM process. However, this case is chosen because it clearly shows the strong differences between both regions and almost led to the postponement of the fifth ASEM summit. In this sense, it is the most recent 'clash' between Europe and East Asia on matters of democratization and human rights.

The clash between Europe and Asia immediately before the fifth ASEM summit, which was held in Hanoi, Vietnam, in November 2004, was not the first time that Myanmar's participation negatively influenced relations between the Asians and Europeans. Myanmar's current military regime has governed with strong force since the military coup in 1988. Most of public and private life is fully controlled by the military junta, and there was no sign that an independent civil society would be allowed to emerge. The international media paid more attention to the situation in Myanmar after the coup, because there was now a clear victim of the regime, who personalized

the abstract accusations of human rights' abuses: Aung San Suu Kyi. She is the General Secretary of the National League for Democracy (NLD) and received a Nobel Peace Prize for her attempts to drive the military regime towards democratization. Suu Kyi was arrested after the student protests in 1988, which were bloodily knocked down by the junta, and since 1989 she has been under house arrest, seriously limiting her fundamental human rights and freedoms.⁶⁸ Although the NLD won the 1990 general election decisively, the outcome was ignored by the military leaders, who remained in power.⁶⁹ Another reason for more external criticism of Myanmar was the fact that the world order was changing rapidly in those days. The massacre at Tiananmen Square in Beijing, China, by Chinese government forces in 1989 was forcefully condemned by the international community, which also backfired at the events in 1988 in Myanmar.

The European Union and the United States of America condemned the bloody demolition of the pro-democratization protests and the disregarding of the election outcomes in 1990. This resulted in political isolation and economic sanctions put on Myanmar by most Western states. The United Nations condemned the situation through sharply formulated resolutions, the first of which was adopted by the UN Commission of Human Rights in 1989 and after that by the UN General Assembly. These resolutions called upon the military junta to hand over power to the democratically elected government and to end the human rights' violations.⁷⁰ Finally, the United Nations Security Council has put Myanmar on the list of countries that threaten international peace and security, despite heavy resistance from China. This decision makes possible the creation of an American draft resolution on the human rights' situation in Myanmar, which could lead to international military action. Such a resolution is, however, not yet drafted, according to the US Ambassador to the UN John Bolton.⁷¹

The Asian and ASEAN response to the situation in Myanmar, however, was very different: instead of a policy of isolation, sanctions and official condemnation of the human rights' situation, the Association's member states

68) Loewen, 'Demokratie und Menschenrechte im Europa-Asien-Dialog', p. 65.

69) Instead of recognizing their defeat, the military regime decided to hold a national convention to write a new constitution. Aung San Suu Kyi's NLD decided to leave the convention in 1995. Critics of the convention state that this is used as justification for the military junta to remain in power. The decision to hold the convention was followed by the decision to establish the so-called Union Solidarity and Development Association (USDA), an organization appearing to have the characteristics of a civil society organization, but entirely controlled by the government.

70) The most recent resolution of the UN General Assembly on this matter was on 23 December 2004, in which reference was made to the report of the Secretary-General and the interim-report of the Special Rapporteur of the Commission on Human Rights on the human rights' situation in Myanmar. See UN General Assembly, Resolution 263, A/RES/59/263, 23 December 2004.

71) *NRC Handelsblad*, 'VN:Veiligheidsraad legt druk op Birma', 16 September 2006.

chose the approach of 'constructive engagement'. Despite its bad human rights' reputation, Myanmar was adopted in the ASEAN system in 1997. ASEAN states make efforts to convince Myanmar's military regime to come to democratic development by persuasion and quiet diplomacy, instead of sanctions. The starting point is that the matter is an internal affair for Myanmar. China, as one of the greatest supporters of the military regime, is in favour of this approach. According to Beijing, Myanmar's military government still keeps the country stable. This is of great importance for China, since it shares a border with Myanmar. Finally, India, as another neighbouring country, has tightened its relations with Myanmar, most probably because of interests in Myanmar's gas reserves.⁷² As the arch-enemy, China does not want to stay behind in this matter. Thailand has also tightened its relations with the military junta, possibly also out of security considerations. The Thai border area is flooded with refugees from Myanmar, since military rule and ethnic conflicts in the border areas continue.⁷³ The more that its neighbours support Myanmar, the less likely it is that international pressure will have an effect.

The issue led to a blockade in relations between East Asian nations and member states of the European Union. Diplomatic relations between both regions deteriorated in such a way that official meetings were cancelled.⁷⁴ The member states of the European Union maintained their position that Myanmar could not attend official summits. This almost resulted in the annulment of the second ASEM summit in 1998 in London. Through mediation by the Thai government, which was ASEAN's EU coordinator at that time, the member states of ASEAN finally decided to give in to the proposal that ASEAN membership did not automatically lead to ASEM membership. This was a hard compromise for the ASEAN states to swallow, since in their view Myanmar's adoption into ASEAN and thus also the ASEM system was a legitimate consequence of the policy of constructive engagement.⁷⁵ The question arose again in 2004 in the period before the fifth summit in Hanoi, Vietnam. The European Union was enlarged by ten new member states, which were automatically adopted into the ASEM process.

72) *NRC Handelsblad*, 'VN', 16 September 2006, p. 38.

73) Human Rights Watch, *Thailand: End Crackdown on Burmese Fleeing Abuses. Thai Government Policy puts Thousands of Burmese at Risk*, 25 February 2004, at <http://www.hrw.org/english/docs/2004/02/25/thaila>.

74) For instance, an ASEAN-EU Joint Cooperation Committee was cancelled in November 1997. The same goes for a Senior Official Meeting in Bangkok and a meeting between the ministers of foreign affairs, which were planned for March 1999 in Berlin. It took another three years until the next EU-ASEAN foreign ministers' meeting could be held in 2000 in Vientiane, Laos. However, none of the foreign ministers from the European side participated in this meeting. See Alternative ASEAN Network on Burma (Altsean), *Burma Briefing Issues and Concerns* (Bangkok: Altsean, 2004), p. 15.

75) O. Wagener, *Herausforderung für den ASEAN Way: Myanmar's ASEAN-Mitgliedschaft* (Stuttgart: Ibidem-Verlag, 2004), p. 60.

The European states established a Special Representative of the EU in 2005 and formulated so-called 'wishes' to be discussed with China, Japan, Thailand and Vietnam. The response from all four states was that it is still an internal matter for Myanmar, and the ASEM dialogue was not the right forum to discuss this political situation.⁷⁶ On the other hand, there was a strong call from both sides that the summit should continue as planned. Too many other interests were at stake, such as harm to ASEM's reputation and the mutual relations. Eventually, agreement was made to follow the so-called 'Jakarta formula': Myanmar's representation in ASEM was allowed on a ministerial level instead of a presidential level. This was considered to be the best possible solution, but it is temporary. Later that year Myanmar decided to abandon the possibility of performing the presidency of ASEAN, the declared reason being that it would be too occupied with the democratic reform process, since 2006 would be a critical year for the implementation of the roadmap to democratization.^{77 78} So far, however, democratic reform has not led to visible results.

The Role of Non-State Actors in the Myanmar Case

The issue of Myanmar's participation in the fifth ASEM summit was mainly a matter between state officials. International attention rose, however, when NGOs, with the help of the international media, started to report on the matter. Among European NGOs, there is a quite some interest in working in and on the human rights and development situation in Myanmar. The spread of information is crucial in respect to international attention and pressure on the military regime. In this spread of information, globally, there are several advocacy centres: nine in European countries; the US; Canada; Japan; and Australia.⁷⁹ They try to bring about change in Myanmar through human rights' advocacy. In order to get important information, cooperation with local NGOs is sought. Under the military regime of the Burma Socialist Programme Party (BSPP), which ruled from 1962 until 1988, civil society, within the terms that we know, was nearly absent. When the State Law and Order Restoration Council (SLORC) regime came into force in 1988, economic liberalization was promoted, including the private sector. This came to an abrupt end, however, in 1990 with the general elections, which were

76) This was concluded from an interview with an official of the Netherlands Ministry of Foreign Affairs, who wishes to remain anonymous, The Hague, 4 May 2005.

77) *NRC Handelsblad*, 'Na diplomatieke druk: Birma ziet af van leiding van ASEAN', Vientiane, 26 July 2005.

78) BBC Burmese, *Foregoes ASEAN Chair: Any Closer to Change?*, BBC News, July 2005, at <http://www.bbc.co.uk/burmese/forum/story/2005/07>.

79) M. Purcell, 'Axe-Handles or Willing Minions?: International NGOs in Burma', in: Burma Centrum Netherlands/Transnational Institute, *Strengthening Civil Society in Burma*, p. 75.

won so convincingly by the opposition. State control then tightened and the private and non-governmental organizations were reduced to those that were independent but not allowed official accreditation on the one hand, and those that were heavily controlled by the state on the other. Besides, there are up to twenty NGOs, mostly Christian and Muslim, working in the border areas on giving aid to the refugees.⁸⁰

Accreditation is a means used by the government to maintain control over international NGOs that are willing to work in Myanmar. In order for these foreign NGOs to operate within Myanmar, an agreement with the government has to be closed. Memoranda of Understanding are only obtained after a bureaucratic negotiation process with the ministry in question. The organization applying for the agreement has to be permitted residency in Myanmar.⁸¹ The residency permit is usually followed by a period of delay, in which the government screens the organization. Then, the negotiation process with the ministry takes place before the request is finally approved by the special committee.⁸² Because of this state control system, Aung San Suu Kyi called for international NGOs not to operate from within Myanmar, because they would be too dependent on the government's scrutiny, or even worse because they would be used by the government's propaganda machine and development would not reach those who need it the most. The question that makes it very difficult to stay away for many international human rights' and development NGOs is, however, what to do with the population's worsening humanitarian situation. Some NGOs have subjected themselves to the government's regime in order to stop the humanitarian crisis. Some have established ties with government-organized NGOs, the so-called GONGOs, which are most of the national NGOs in Myanmar. These bodies were set up by the government mainly for welfare purposes and their agenda is heavily influenced by the military regime.⁸³ Other international NGOs, however, have remained independent and they meet much opposition and obstruction from the military junta in the form of stealing development aid, very restrictive laws and additional conditions for their continuing functioning in Myanmar. Because of these obstructions, these international NGOs have always been reluctant to meet with Aung San Suu Kyi's National League for Democracy, despite several requests from her side to have an open dialogue on the required changes and the role of the international NGOs. According to the NLD, international NGOs should not operate from within Myanmar until the political climate has changed sufficiently to allow their independent functioning.⁸⁴ This reasoning could be

80) Clarke, *The Politics of NGOs in South-East Asia*, p. 35.

81) Purcell, 'Axe-Handles or Willing Minions?', p. 81.

82) Purcell, 'Axe-Handles or Willing Minions?'.

83) Purcell, 'Axe-Handles or Willing Minions?', p. 86.

84) Center Nederland, *Waarom economische maatregelen*, 30 June 2005, at <http://www.centrum.nl>.

rebutted by the argument that (international) NGOs probably play a crucial role in establishing this political change. Despite the fact that the best way to encourage the processes of liberalization and democratization is if they come from the inside, the situation under the strict control of the SLORC regime is not likely to change soon. Therefore, a combination between internal movement and international pressure must be used to get the process started. International and national NGOs should further combine forces to mobilize people for social change.

ASEM could be a forum where the situation in Myanmar is discussed, in an ideal situation between states and NGOs. However, on a state level there are too many other interests at stake, as was shown above. Besides, the military junta in Myanmar has often proven to be an unreliable negotiation partner, without any intention of social and political reform. Both approaches, of sanctions and constructive engagement, alone have not led to the required reform either. Change therefore has to be facilitated by the independent NGOs, through the secretive spread of information, human rights' advocacy, humanitarian aid and the creation of public awareness. Myanmar's isolation makes this very difficult. The worst barrier for social change, however, would be if the people of Myanmar became indifferent towards their political, social and especially humanitarian situation. If anything is ever going to be achieved in this regard, it is important on an international level to keep Myanmar's situation on the international agenda. ASEM, however, does not seem to be the right forum for this discussion, since even when enlargement of the process was discussed in 2006, the issue of Myanmar was kept silent. Therefore, in spite of all difficulties, national and international (human rights') NGOs have a role to play.

Conclusion

ASEM's tenth anniversary has led to an evaluation of the past decade of the ASEM process. There was much dialogue about various issues, but several topics were left aside. The case of Myanmar's participation in the ASEM dialogue raises a stark contrast between the East Asian and European attitudes towards human rights, but there are signs of change.

Nineteen ratifications of UN human rights' treaties in five years have changed ASEAN member states' poor record in this respect. New leaders such as Susilo Bambang Yudhoyono (SBY) in Indonesia and Abdullah Ahmad Badawi in Malaysia have started a democratization process that is slow, but certain. This process has to be recognized and encouraged by the European counterparts. ASEM, with its informal structure and its objective to create more mutual respect, could be a good format for the recognition and support of this process. However, the European states should acknowledge that issues such as the political situation or human rights' record of a country are regarded by their East Asian counterparts as internal matters. Even though this is an already well-known notion, some European states seem to ignore this fact. Pushing openly for reform does not always work out well in that respect. The purpose of having a case like Myanmar on the agenda should be to improve the human rights' situation, not to have it on the agenda as a goal in itself. On the other hand, respect works both ways. The Asian states should try to be more relaxed when it comes to discussing controversial matters such as human rights. When discussed, not all remarks are critical and not every discussion is an unwanted interference in internal affairs. The case of Myanmar has shown so far that the approach of constructive

engagement is not the solution to the problem either. Constructive engagement should not be a cover-up for not discussing human rights at all.

At the moment, there is still a long way to go before human rights can openly be discussed within the official ASEM dialogue. There is too much misunderstanding and mistrust between the states, which has its basis in a fundamental difference of opinion on how to build a state and the role of citizens and society. Informal discussions and careful diplomacy seem to be more effective in this regard than using the official meetings. The political situation between Europe and East Asia is so different that perhaps a good understanding of each other's position, which is fundamental before actually discussing matters such as human rights' protection, will never come. Acceptance of this fact could even be beneficial for the dialogue.

Closely connected to this difference of opinion is the role that states allow NGOs to play in the protection of the rights of citizens. While European NGOs have a longer history of policy influence, dialogue and coalition-building with the states in question, the East Asian approach is again very different, although in indirect ways, and accepting heavy state control, NGOs can deal with some issues. Hopefully, with the slow but steady democratization process, the room for manoeuvre of civil society organizations will grow. Until then, it is difficult for a truly balanced NGO participation to be reached — domination by European NGOs will remain. Therefore, clear definition of the common elements of participating NGOs from both regions and the core aim of their participation are important for influence, and have to be worked upon by the organizations first. For their role in the ASEM dialogue, room to act has been limited to unofficial meetings outside of the official procedures. And, as has been noted, not many issues on the NGO agenda have made it to the official ASEM agenda, one reason being that their role and the ASEM agenda's most important elements are still undefined. Their differences in nature and approach have to be accepted, also with regard to the principle of legitimacy. And while states aim at civil society participation in creating awareness of ASEM, the NGOs want a more fundamental input in the meetings. ASEM's parallel sessions on human rights are a good initiative, which could help the democratization process from within. However, there is a chance that states will keep using these informal meetings to keep human rights off the official agenda, arguing that these are already discussed elsewhere. The Annex to the *Helsinki Declaration on the Future of ASEM* shows that the door to civil society participation is not closed entirely. Once allowed in, it is the NGOs that will put human rights on the agenda, not states.

The role that NGOs could play in the summits could be very substantial. One reason why Myanmar's second military government has received far more international attention than its predecessor is because NGOs and the international media have given more attention to the political situation. The result is that Myanmar is now inserted in the UN Security Council's list of states that threaten international peace and security. This situation is

threatening enough for the military junta in Rangoon, which is trying to influence its neighbours to stop a Security Council resolution from being accepted. Because of the support given to Myanmar's military junta by China, Thailand and India, mostly because of economic reasons, it was hard to instigate a strong international campaign on a state level to pressure Myanmar's government for reform. But the European lack of consistency and unity, partly a result of prevailing economic interests, is also to blame for this.

This once again shows the importance of NGOs, but also their dependence on states to allow them into the official process to change a situation. Lively interaction is necessary between states and civil society in order for the NGOs to increase their influence and to come to a better human rights' situation. Even though states are the first protectors of the rights of their citizens, civil society is necessary to remind them of this task.

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