

‘A tongue but no teeth?’: The emergence of a regional human rights mechanism in the Asia Pacific region

ANDREA DURBACH,* CATHERINE RENSHAW** AND ANDREW BYRNES***

Abstract

In November 2007, the Association of South East Asian Nations (‘ASEAN’) leaders undertook to establish an ASEAN Human Rights Body (‘AHRB’). While ASEAN Member States have been divided over the new mechanism’s structure and function, the High Level Panel charged with its implementation is evidently working towards December 2009 as the date for the AHRB’s establishment. This development takes place in the light of the creation of close to 20 national human rights commissions in the Asia Pacific region in the last few decades. In many cases, the Asia Pacific Forum of National Human Rights Institutions (‘APF’), a network of national human rights institutions (‘NHRIs’), has facilitated their establishment and development. With reference to the origins and work of other regional human rights mechanisms, this paper explores the rationale for and efforts towards establishment of a regional human rights commission in the Asia Pacific; the extent to which the emergence of NHRIs has contributed to the AHRB initiative and how NHRIs might influence its form and operations; and the historical and prospective role of regional networks such as the APF in contributing to human rights protection in the region and in relation to any ASEAN subregional human rights mechanism.

1. Introduction

Sixty years ago there were no regional human rights courts, most countries lacked

* Andrea Durbach, Associate Professor, Director, Australian Human Rights Centre, Faculty of Law, University of New South Wales.

** Catherine Renshaw, Research Fellow, Australian Human Rights Centre, Faculty of Law, University of New South Wales.

*** Andrew Byrnes, Professor and Chairperson, Australian Human Rights Centre, Faculty of Law, University of New South Wales. The research on which this paper is based forms part of a Linkage project funded by the Australian Research Council and the Asia Pacific Forum of National Human Rights Institutions (LPO776639 ‘Building Human Rights in the Region through Horizontal Trans-national Networks: the role of the Asia Pacific Forum of National Human Rights Institutions’).

1 *Universal Declaration of Human Rights*, GA Res 217A (III), UN Doc A/810 at 71 (1948).

bills of rights and even the term human rights was rarely heard in the courts ... Regional human rights courts have also been established in the Americas and in Africa ... A third regional human rights court was established in 2006 when the 11 judges of the newly constituted African Court on Human and Peoples' Rights were sworn in ... It is, ironically, Asia, the world's most populous region, that has remained largely impervious to the regional penetration of the *Universal Declaration of Human Rights*,¹ despite the urging of independent lawyers and civil society. There is no immediate prospect of the creation of an Asian convention on human rights, which leaves lawyers without effective remedies for clients living in Burma and China.²

In November 2007, leaders of the ten Association of South East Asian Nations ('ASEAN') Member States signed the *Charter of the Association of South East Asian Nations* ('ASEAN Charter'),³ designed 'to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and freedoms'.⁴ Article 14 of the *ASEAN Charter* committed members to establishing an ASEAN Human Rights Body ('AHRB'), the detailed structure and functions of which were to be determined. While moves towards the establishment of a subregional mechanism hover between resistance and cautious endorsement by ASEAN Member States, arguments about values and sovereignty, freedom and social cohesion, good (often requiring interventionist) governance and individual rights have continued to stymie any comprehensive moves towards implementation of a regional body since the inception of the proposal 15 years ago.⁵ At the same time, there has been significant growth in the number of national human rights institutions ('NHRIs') across the region.

Positioned between the proposed AHRB and established NHRIs in the region is the Asia Pacific Forum of National Human Rights Institutions ('APF'), a network of NHRIs that has had a significant role in the dissemination of international human rights principles and practice in the Asia Pacific and beyond. Established in 1996 as an informal regional forum of human rights institutions created in accordance with the *Paris Principles*,⁶ the APF has evolved into a key agent of human rights promotion and protection in the region. The APF's primary roles are to support the establishment of NHRIs in accordance with minimum criteria contained in the *Paris Principles* and to strengthen the capacity of existing national institutions.

2 Geraldine van Bueren, *Why a Supermodel Is Still Such a Potent Symbol of Human Dignity and Liberation* (2008) *Times Online* <<http://business.timesonline.co.uk/tol/business/law/article3648391.ece>> accessed 1 April 2008.

3 The *Charter of the Association of South East Asian Nations* opened for signature 20 November 2007 and entered into force 15 December 2008.

4 ASEAN, 'ASEAN Leaders Sign ASEAN Charter' (Press Release, 2007).

5 See chronology of the proposal's evolution under 'The Rise of the Regional Human Rights Mechanism' in Section Three below.

6 *Principles Relating to the Status of National Institutions* ('Paris Principles'), GA Res 48/134, UN GAOR, UN Doc A/RES/48/134 (1993). Andrew Byrnes, Andrea Durbach and Catherine Renshaw, 'Joining the Club: the Asia Pacific Forum of National Human Rights Institutions, the *Paris Principles*, and the Advancement of Human Rights Protection in the Region' (2008) 14 *Australian Journal of Human Rights* 63.

This paper considers first, the rationale for and efforts toward the creation of a subregional human rights body, in the light of the evolution of the ASEAN human rights mechanism — the only ongoing initiative for the development of a human rights body in the Asia Pacific region, and second, the continuing and potential contributions of NHRIs and networks of NHRIs should a subregional mechanism eventually be established. Section Two of the paper provides the institutional background to the discussion, sketching the current status of the ASEAN Charter initiative and placing this in the context of other developments at the national and regional levels. In Section Three, we provide an overview of the existing regional mechanisms and the social and political circumstances behind their development. Section Four of the paper traces the history of efforts to develop a subregional human rights mechanism within ASEAN and analyses the reasons for the slow progress of the discussions. Section Five contrasts the thus far inclusive discussions about regional and subregional mechanisms with the development of regional networks of NHRIs (in particular the APF) and their significant contributions to human rights protection in the region. Finally, Section Six argues that, whatever the outcome of the ASEAN process, the establishment of relevant and effective NHRIs and the existence of well-resourced and legitimate regional networks, such as the APF, will continue to be critical to the strengthening and broadening of a human rights culture in the region, and that a subregional body is likely to play a supplementary, though potentially important, role.

2. The ASEAN Charter Commitment and Other Regional and National Developments in Human Rights Institutions

Following the adoption of the ASEAN Charter, with its commitment to the establishment of a subregional mechanism, at a meeting in Manila in early 2008, Human Rights Commissioners from four ASEAN countries — Indonesia, Malaysia, the Philippines and Thailand — suggested that the proposed regional mechanism be a Commission, with the possibility that it might evolve into a human rights court. Despite the stated intention of the ASEAN Charter to establish a regional human rights body, no *regional* (particularly in light of reluctance among ASEAN Member States to adopt universal human rights norms) human rights convention or charter, standard, or set of principles has been developed, against which the proposed new body will assess and determine compliance.⁷

7 The Asian Human Rights Commission and other groups initiated a major consultation process in 1994 to form the basis for an Asian Human Rights Charter. Over 100 Asian NGOs were consulted and provided information for use by a drafting committee consisting of six persons. After three further consultations, a first draft was finalised and submitted to Asian human rights NGOs, community organisations, and concerned persons and groups. The final document was completed in 1997. The Asian Human Rights People's Charter, *Our Common Humanity*, was launched by NGOs in Kwangju, South Korea on 17 May, 1998. It called for the adoption by governments of a regional convention on human rights. Two further drafts of the Charter were submitted for consultation, the most recent, drafted by the Association of Asian Parliaments for Peace, appears to have been rejected at a meeting of Asia-Pacific NGOs held in Cambodia in 2000. See 'Selected Human Rights Documents' (2000) 1 *Asia Pacific Journal on Human Rights and the Law* 126.

Soon after the adoption of the ASEAN Charter, doubts about its likely substance and capacity to enforce human rights started to emerge, a primary criticism levelled at those who promoted the body being that they 'were more into rhetoric than real action'.⁸ In response to the impending establishment of an AHRB, Singapore's Foreign Minister, George Yeo, offered perhaps the most acute assessment: 'I'm not sure if it will have teeth, but it will certainly have a tongue. It will certainly have moral influence if nothing else'.⁹

Some months earlier, Singapore's Second Minister for Foreign Affairs, Raymond Lim, told his Parliament that Singapore, as the ASEAN Chair, would work with all the Member States to ensure that the regional body established was 'practical, meaningful and has everyone's support'.¹⁰ He added that the proposed ASEAN Human Rights Commission's powers will 'more likely be consultative rather than prescriptive', cautioning that the development of any such regional body required consideration and perhaps accommodation of the 'history, the realities and culture of all the ten ASEAN Member States'.¹¹ While the Foreign Minister doubted that the establishment of the regional body would have any direct implications for Singapore's domestic laws and foreign policy, he was nevertheless encouraged by its potential to 'raise ASEAN's international standing'.¹²

The ongoing ambivalence around the creation of an ASEAN human rights body is well illustrated by Minister Lim's acknowledgment that the process will require the critical accommodation of the 'history, the realities and the culture of all ten ASEAN Member States'.¹³ These considerations echo the *Bangkok Declaration on Human Rights* ('*Bangkok Declaration*'),¹⁴ which emanated from the United Nations Regional Meeting for Asia of the World Conference on Human Rights, held in Bangkok in April 1993. While recognising that human rights were 'universal in nature', the *Bangkok Declaration* added the proviso that rights be considered 'in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional

8 Sinapan Samydorai, President of the Think Centre, quoted in Wayne Arnold, *Historic ASEAN Charter Reveals Divisions* (2007) *International Herald Tribune* <<http://www.iht.com/articles/2007/11/20/asia/asean.php>> accessed 3 May 2009.

9 Quoted in *Myanmar Crisis to Dominate ASEAN Summit, but Free Trade, Climate also High on Agenda* (2007) *International Herald Tribune* <<http://www.iht.com/articles/ap/2007/11/18/asia/AS-GEN-ASEAN.php>> accessed 3 May 2009.

10 Quoted in *Human Rights Body 'Consultative'* (2007) *The Straits Times* <http://www.yawningbread.org/arch_2007/yax-787.htm> accessed 3 May 2009.

11 *Ibid.*

12 *Ibid.*

13 Working Group for an ASEAN Human Rights Mechanism, *Proposed Elements for the Terms of Reference of an ASEAN Human Rights Body* (2008), Working Group for an ASEAN Human Rights Mechanism <<http://aseanhrmech.org/downloads/WGsubmissiontoHLP.pdf>> accessed 3 May 2009.

14 *Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights* ('*Bangkok Declaration*'), Bangkok, 29 March–2 April 1993. See UNGA, *Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights* ('*The Bangkok Declaration*'), United Nations High Commissioner for Human Rights, <<http://www.unhchr.ch/html/menu5/wcbang.htm>> accessed 9 May 2009.

peculiarities and various cultural, historical, and religious backgrounds'.¹⁵ Additionally, the *Bangkok Declaration* endorsed the principle of sovereignty and 'urged the promotion of human rights by cooperation and consensus, not confrontation and conditionality'.¹⁶

At the third workshop for an ASEAN Regional Mechanism on Human Rights, held in Bangkok in May 2003, Professor Vitit Muntarbhorn, a prominent Thai international human rights lawyer and co-chairperson of the Working Group for an ASEAN Regional Human Rights Mechanism, declared that in the 10 years since the *Bangkok Declaration*, in which ASEAN Foreign Ministers called for consideration (by Member States) of the establishment of an appropriate regional mechanism on human rights, not only had no mechanism been created but 'ASEAN Governments [had] not yet put forward ideas on the shape and substance of such [a] mechanism'. Professor Muntarbhorn said '[i]t [was] thus high time to move from mere intention to more concretization'.¹⁷ Although the ASEAN Charter and subsequent discussions stimulated by its adoption have given renewed momentum to the process, which has now been underway for the last 15 years (at least), it remains unclear whether any meaningful mechanism will be adopted and, if so, when this might occur (see the discussion in Section Four below).

A. The Growth of National Human Rights Institutions in the Region

Yet, over the last 20 years, and in parallel with ASEAN and other regional discussions about the establishment of regional or subregional mechanisms, there have been two other important institutional developments in human rights protection: the proliferation of NHRIs in the region and the emergence of regional networks of NHRIs (for example, the APF within the Asia Pacific). Each of these developments has implications for the nature and role of any regional or subregional mechanism that might eventually be established.

Of the ASEAN Member States, the Philippines (1987), Indonesia (1993), Malaysia (2000) and Thailand (2001) have national human rights institutions. In a keynote address to a 2006 conference in Cambodia on establishing NHRIs, the Prime Minister of Cambodia made a commitment to establish a national Human Rights Commission.¹⁸ Although similar commitments have not yet been made by the governments of Lao PDR, Myanmar, Singapore or Vietnam, these nations were represented at the Regional Workshop on the Establishment of National Human

15 The *Bangkok Declaration*, above n 14. See Diane K Mauzy, 'The Human Rights and 'Asian Values' Debate in South East Asia: Trying to clarify the key issues' (1997) 10 *The Pacific Review* 210 at 221.

16 *Ibid.*

17 Vitit Muntarbhorn, 'A Roadmap for an ASEAN Human Rights Mechanism', (paper presented at the Third Workshop for an ASEAN Regional Mechanism on Human Rights, Bangkok, 28–9 May 2003) Friedrich Naumann Foundation for Liberty <<http://www.fnf.org.ph/liberallibrary/roadmap-for-asean-human-rights.htm>> accessed 3 May 2009.

18 Conference on the Establishment of a National Human Rights Institution in Cambodia, Siem Reap, Kingdom of Cambodia, 25–7 September 2006. See *Cambodia*, Asia Pacific Forum of National Human Rights Institutions ('APF') <<http://www.asiapacificforum.net/services/capacity-building/nhri-development/cambodia/?searchterm=Cambodia>> accessed 3 May 2009.

Rights Institutions in Asia, held in Manila in October 2007.¹⁹ In May 2004, the National Parliament of Timor-Leste (not yet a member of ASEAN but located within South-East Asia), established the Timor-Leste Provedor (the Office of the Ombudsman for Human Rights and Justice), an independent national human rights institution that addresses matters of human rights, good governance and anti-corruption.

Of the East Asian states (sometimes referred to as ‘North-East Asia’ and including China and North Korea), South Korea (2001) and Mongolia (2001) have Human Rights Commissions. In 2002, the Japanese legislature, the Diet, commenced debate on the Human Rights Protection Bill, which proposed the establishment of a national Human Rights Commission. Sustained objections to the Bill precipitated its demise but it was revived in 2005, only to lapse when the Diet was dissolved.²⁰ Similarly, proposals for the establishment of a national Human Rights Commission in Taiwan have been shelved with the disbanding, in 2005, of the Human Rights Consultative Group that had drafted a statute for the creation of a human rights institution.²¹ Within South Asia, India (1993), Nepal (2000), Sri Lanka (1997), Afghanistan (2002), the Republic of the Maldives (2006) and Bangladesh (2008) have established national Human Rights Commissions. In December 2008, the government of Pakistan introduced legislation proposing the creation of an NHRI.²² In West Asia, the Palestinian Territories established an independent Human Rights Commission in 1993, with Qatar and Jordan following suit in 2002.

In the Pacific, of the Pacific Island Forum²³ Member States, Fiji (1999), New Zealand (1993) and Australia (1986) have established Human Rights Commissions and Papua New Guinea has developed an options paper outlining a proposal for the establishment of a Commission.²⁴ In addition, the Solomon

19 The Workshop was organised by the United Nations Office of the High Commissioner for Human Rights and the Commission on Human Rights of the Philippines.

20 Ian Neary, ‘Human Rights Governance in East Asia — Towards a Regional Structure?’ (paper presented at the Annual Meeting of the International Studies Association 48th Annual Convention, Chicago, 28 February 2007) at 12–13. We are grateful to the author for providing us with a copy of this paper.

21 *Id* at 14–15.

22 The Human Rights Commission of Pakistan was established in 1986 as an independent and voluntary non-governmental organisation (‘NGO’). Its mission includes promoting the ratification and implementation by Pakistan of international treaties, increasing public awareness of human rights norms and assisting victims of human rights violations. See *About HRCP*, Human Rights Commission of Pakistan <http://www.hrcp-web.org/hrcpDetail_abtHrcp.cfm?catId=222&catName=About%20HRCP> accessed 3 May; The International News, *APF Consultations on Pakistan NHRI Bill* (2008) APF <<http://www.asiapacificforum.net/news/apf-consultations-on-pakistan-nhri-bill.html>> accessed 3 May 2009.

23 The Pacific Island Forum is comprised of Vanuatu, Papua New Guinea, Samoa, New Zealand, Fiji, Tonga, Nauru, Solomon Islands, Australia, Cook Islands, Tuvalu, Kiribati, Palau, Niue, Republic of the Marshall Islands and the Federated States of Micronesia.

24 See Marianas Variety, *PNG Set to Establish Human Rights Commission* (2007) APF <<http://www.asiapacificforum.net/news/png-set-to-establish-human-rights-commission.html/?searchterm=Papua%20New%20Guinea>> accessed 3 May 2009.

Islands has committed to the development of an NHRI.²⁵ At a symposium held in Samoa in April 2008, which considered strategies for human rights protection in the Pacific, the Attorney-General of Samoa ‘indicated his willingness to explore the establishment of a NHRI’.²⁶

Many of the NHRIs mentioned above have sought membership of the APF,²⁷ with the forum frequently playing a significant role in their establishment and ongoing development. The increasing emergence of national Commissions in the Asia Pacific region, as opposed to the slow evolution of a regional human rights mechanism, perhaps indicates a capacity for NHRIs to accommodate and fashion domestic considerations and cultures within a broadly accepted international human rights framework. The difficulty of creating a single regional human rights mechanism across such an expansive and varied geographical, political and cultural region may be the primary reason why only one subregional human rights proposal has endured within the Asia Pacific. This difficulty may also explain why the subregional initiative is struggling to mediate the divergent histories, interests and positions within the smaller community of ASEAN Member States.

B. Regional NHRI Networks: the APF

The other significant development has been the founding and growth of the APF. Membership of the APF is open to NHRIs from countries in the Asia Pacific region (which is broadly understood to extend well beyond ASEAN and other subregional groupings). In 2006,²⁸ Professor Muntarbhorn noted that:

the APF and its network of national human rights institutions are the closest that the Asia Pacific region has come to a regional arrangement or machinery for the promotion and protection of human rights.²⁹

25 See *Establishing National Institutions: Asian Nations Meet*, APF <<http://www.asiapacificforum.net/news/establishing-national-institutions-asian-nations-meet.html?searchterm=Solomon+Islands>> accessed 3 May 2009.

26 The symposium ‘Strategies for the Future: Protecting Rights in the Pacific’ and the comments of the Samoan Attorney-General are referred to in *Call for Pacific Human Rights Mechanism*, APF <<http://www.asiapacificforum.net/news/call-for-pacific-human-rights-mechanism.html>> accessed 3 May 2009.

27 Current Members of the APF are: Australia (NHRI established 1986, APF founding member); New Zealand (NHRI established 1993, APF founding member); India (NHRI established 1993, APF founding member); Indonesia (NHRI established 1993, APF founding member); Philippines (NHRI established 1987, APF founding member); Sri Lanka (NHRI established 1997, admitted to APF 1997); Nepal (NHRI established 2000, admitted to APF 2000); Mongolia (NHRI established 2000, admitted to APF 2001); South Korea (NHRI established 2001, admitted to APF 2002); Thailand (NHRI established 2001, admitted to APF 2002); Malaysia (NHRI established 2000, admitted to APF 2002); Jordan (NHRI established 2002, admitted as an Associate Member 2004 and a Full Member in 2007); Afghanistan (NHRI established in 2002, admitted as an Associate Member in 2004 and a Full Member in 2005); Timor Leste (NHRI established 2004, admitted as an Associate Member in 2005 and a Full Member in 2007). Currently, the Palestinian Territories, Qatar and the Maldives are Associate Members.

28 Refer also to comments made at the 13th Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia Pacific Region, Beijing, 29 August–2 September 2005.

While debate about the form, structure, functions and reach of an ASEAN human rights body enters its 15th year of deliberation, the APF has, in a comparatively short period of time, conducted its primary function of strengthening and establishing national human rights institutions to good effect, developing ‘a reputation as the pre-eminent regional human rights forum’.³⁰ The contribution of the APF to enhancing the capacity and supporting the work of NHRIs in the protection of human rights, and how those efforts relate to the possible role of a regional or subregional mechanism, is explored in Part 4 below.

3. *The Rise of the Regional Human Rights Mechanism*

The importance of a regional mechanism lies in the fact that it is designed to articulate a common approach to a complex problem, an approach that will assist States, from a position of shared regional values, to address shortcomings in their national frameworks so as to allow individuals the means to enjoy their rights in full, and to obtain effective redress when those rights are denied.³¹

The establishment of a subregional human rights institution in South-East Asia would parallel the evolution of regional human rights mechanisms that exist in Africa, the Americas and Europe. These regional bodies coexist with — and, in most instances, predate — the establishment of national human rights institutions.

The rationale for the development of regional human rights institutions with powers ranging from advisory to investigation and enforcement — their creation often triggered by shared histories of subjugation and the aftermath of war — is that the cultural, political, economic and legal commonalities frequently endemic to geographic regions permit a relatively high degree of consensus regarding the content of rights, the process for their protection, and the framework for sanction and redress.³² Although they reflect the ‘needs, priorities and conditions’ of a particular region, regional mechanisms, rather than being seen as detracting from the universal application of human rights, can be ‘complementary to the United Nations system’³³ by disseminating and enforcing international human rights standards and principles at a regional level.

29 Cited in United Nations Commission on Human Rights, *Effective Functioning of Human Rights Mechanisms: National Institutions and Regional Arrangements* E/CN.4/2005/107 (2005), Relief Web <[http://www.reliefweb.int/rw/lib.nsf/db900sid/LHON-6AJCLE/\\$file/Human_Rights_ECOSOC_Jan_2005.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/LHON-6AJCLE/$file/Human_Rights_ECOSOC_Jan_2005.pdf?openelement)> accessed 9 May 2009.

30 Muntarbhorn, above n 17 at 5.

31 Louise Arbour (UN High Commissioner for Human Rights) (Speech delivered at the 13th UN Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia Pacific Region, Beijing, 29 August–2 September 2005). See also Nobuki Fujimoto, *13th Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia-Pacific Region* (2005) Hurights Osaka <<http://www.hurights.or.jp/asia-pacific/041/03.htm>> accessed 3 May 2009.

32 Burns Weston, Robin Lukes and Kelly Hnatt, ‘Regional and Human Rights Regimes: A Comparison and Appraisal’ (1987) 20 *Vanderbilt Journal of Transnational Law* 585 at 589.

33 Hidetoshi Hashimoto, *The Prospects for a Regional Human Rights Mechanism in East Asia* (2004) at 1.

The oldest and most advanced regional human rights grouping, the Council of Europe, was established in 1949. Its system for the protection of human rights includes, at its centre, the European Convention on Human Rights (and its additional Protocols), the European Social Charter³⁴ and other instruments. The European Commission of Human Rights (now defunct) and the European Court of Human Rights were established pursuant to the entry into force in 1953 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* ('*European Convention*').³⁵ The *European Convention* had its origins in the 1948 Congress of Europe, which agreed to consider a proposal for a European Charter of Rights.³⁶ The *European Convention* created a common philosophical framework to consolidate unity among European democracies³⁷ emerging from the horrors of World War II, and to enforce certain rights of the *Universal Declaration of Human Rights* as a 'safeguard against the revival of aggressive and repressive dictatorships'.³⁸

The *American Declaration of the Rights and Duties of Man*, an instrument similar to, yet slightly predating, the *Universal Declaration of Human Rights*, was adopted by the Ninth International Conference of American States (the precursor to the Organisation of the American States ('OAS')) in Bogota in 1948. In 1959, the Inter-American Commission on Human Rights was created under the auspices of the OAS, and in 1969, the *American Convention on Human Rights* ('*American Convention*') was adopted by the OAS for implementation by the Inter-American Commission. The *American Convention* entered into force in 1978, and like the *European Convention*, it provided for supervision of its implementation by a Commission (already in existence and located in Washington) and an Inter-American Court of Human Rights (established in 1979 and situated in San José, Costa Rica). The Inter-American system of human rights protection grew out of a sustained period of economic crisis and political turmoil, triggered by the repressive reign of dictatorial and military regimes across Latin America and the Caribbean, many of which maintained power into the 1980s.³⁹

The Organisation of African Unity ('OAU') adopted the *African Charter on Human and Peoples' Rights* ('*African Charter*') in 1981, following histories of colonisation and apartheid, in recognition of the right to self-determination⁴⁰ and

34 The *European Social Charter* opened for signature 18 October 1961 and entered into force 26 February 1965 and *Revised European Social Charter* opened for signature 3 May 1996 and entered into force 1 July 1999.

35 The *Convention for the Protection of Human Rights and Fundamental Freedoms* opened for signature 4 November 1950 and entered into force 3 September 1953. See Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms* ('*European Convention on Human Rights*') (1950).

36 Weston, Lukes and Hnatt, above n 32 at 591.

37 Hashimoto, above n 33 at 89.

38 Weston, Lukes and Hnatt, above n 32 at 592.

39 Lidiana Rios, 'Effectiveness of the Inter-American Commission on Human Rights: A case study of Nicaragua, 1978–92' (2005) 25 *Honours College Thesis* at 5–8 <http://digitalcommons.pace.edu/honorscollege_theses/25> accessed 3 May 2009.

40 Rachel Murray, *Human Rights in Africa: from the OAU to the African Union* (2004) at 17–20.

the ‘relationship between human rights and development’,⁴¹ and prompting by the UN to create regional human rights mechanisms, as well as ‘NGO lobbying and a recognition by some African leaders themselves that human rights in another State were also their concern’.⁴² The *African Charter*, which came into force in 1986, provided for the establishment of the African Commission on Human and Peoples’ Rights, based in Banjul, Gambia. In 1998, by way of a Protocol to the Charter, the OAU Assembly of Heads of State and Government approved the establishment of an African Court on Human and Peoples’ Rights.

The 1967 Arab-Israeli conflict provided the impetus for the League of Arab States (‘Arab League’), a regional organisation of Arab countries largely corresponding to those comprising West Asia,⁴³ to agree to establish a Permanent Commission of Human Rights. The Commission’s primary role is the promotion of human rights among League Member States. In 1994, the Arab League adopted the *Arab Charter of Human Rights* (‘Arab Charter’), which failed to secure ratification by any of the League Member States. A revised *Arab Charter*, reflecting greater compliance with international human rights principles and standards, was adopted in 2004. The revised Charter, which took effect from March 2008, established, in arts 45 and 48, an expert Arab Human Rights Committee to consider reports submitted by Member States on their progress in implementing *Arab Charter* provisions.⁴⁴

Despite a few unsuccessful attempts since 1982 to create a human rights mechanism for the Pacific,⁴⁵ the idea was revived at a human rights symposium in Samoa in 2008.⁴⁶ Following calls from symposium delegates that Pacific Island governments implement commitments to good governance agreed to in the *Pacific Plan for Strengthening Regional Cooperation and Integration* (2006), a working group was mandated to draft a proposal for a regional mechanism, to be considered

41 Id at 25–6, 47.

42 Id at 22.

43 The Members of the League are Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates and Yemen.

44 See *Arab Charter on Human Rights* (2004) University of Minnesota Human Rights Library <<http://www1.umn.edu/humanrts/instree/loas2005.html>> accessed 3 May 2009.

45 The first proposal to set up a human rights mechanism for the Pacific emerged from a United Nations seminar held in Colombo in 1982 on National, Local and Regional Arrangements for the Promotion and Protection of Human Rights in the Asia-Pacific Region. The idea was further explored at a LAWASIA meeting in 1985 in Fiji, at which a Pacific Charter of Human Rights was drafted. In 2007, at a meeting in Auckland to discuss the Pacific Plan and the domestic application of human rights conventions and standards, members of Parliament from 11 Pacific Island countries requested the Pacific Regional Rights Resource Team (‘RRRT’) to ‘take a lead role in setting up or exploring the possibility of setting up a Pacific Island Regional Human Rights Commission’. See Pacific Regional Rights Resource Team, *Submission to the Parliament of Australia Joint Standing Committee on Foreign Affairs, Defence and Trade, Inquiry into Human Rights Mechanisms and the Asia Pacific* (2008) Parliament of Australia <http://www.aph.gov.au/house/committee/jfadt/asia_pacific_hr/subs/Sub%2013.pdf> accessed 3 May 2009.

46 The symposium, titled *Strategies for the Future: Protecting Rights in the Pacific*, was held in Apia, Samoa from 27–9 April 2008.

at the Pacific Island leaders meeting scheduled for August 2009. In contrast to the ASEAN initiative, the Pacific region offers positive prospects for the development of a viable regional mechanism. There is a significant degree of political, economic and cultural commonality across Pacific countries and territories. Perhaps more importantly, most of the Pacific countries (excluding Australia and New Zealand) do not have the populations or resources sufficient to sustain *Paris Principles*-compliant national human rights commissions, with the exception of Papua New Guinea, the Solomon Islands and, possibly, Samoa.⁴⁷ National offices of a regional mechanism may be a more affordable and accessible alternative to the establishment of national commissions.

The above survey shows the variety of political and social developments that have led (or may be leading, in the case of the Pacific) to the emergence of regional human rights mechanisms. It also illustrates that there is a range of functions that are performed by the various regional bodies. Under all of the regional systems, some provision is made to consider complaints of violations of the rights guaranteed in the regional conventions, by one or more bodies. In the case of the organs established under the *European Convention* (the European Court of Human Rights and the former European Commission on Human Rights), their function was to deal with complaints alleging violations of the Convention lodged by eligible individuals, organisations or States. The same is broadly true of the current monitoring body established under the *European Social Charter* (the European Committee of Social Rights), which has the power to consider collective complaints alleging violations of the Charter (as well as reviewing regular State reports and adopting conclusions). The Inter-American Commission on Human Rights has the power to consider individual and group communications, while the African Commission on Human and Peoples' Rights also has the competence to consider communications alleging violations. The Inter-American Court of Human Rights and the African Court of Human Rights have purely judicial functions, with the power to make binding decisions in contentious cases and also to issue advisory opinions. A number of the bodies also have broader powers. For example, the Inter-American Commission has the power to undertake country and thematic studies and to institute special thematic mechanisms. Similarly, one of the major roles of the African Commission is the review of State reports, as well as promotional work.

It is not, however, a major role of these bodies to support the development of the capacity of NHRIs in the way that regional networks of these institutions have done, to varying degrees. Accordingly, it is important to identify the functions that a regional mechanism might play that are distinct from national institutions and regional networks. In the next section, we examine the history of the debate over an ASEAN human rights mechanism and the types of functions that might be conferred on it. In Part 5 we contrast that with the functions performed by the regional network of NHRIs, the APF, as part of our exploration of the continuing

47 The Fiji Human Rights Commission, established in 1999, is currently the only NHRI in the Pacific.

relevance of a regional network of this sort if a regional mechanism is established within ASEAN.

4. *Regional Human Rights Mechanisms in Asia: the ASEAN Debate*

Asia is regularly singled out as the only region in the world without an inter-governmental regional mechanism for the protection of human rights. The absence of such a mechanism, however, has not been for want of initiative, most prominently within ASEAN. Debate and discussion about the viability of, and necessity for, such a mechanism within ASEAN has been described as ‘a long and winding road’,⁴⁸ characterised by regional meetings and deliberations over a sustained period of time with little progress in between. The call for the establishment of regional mechanisms came in June 1993 at the United Nations World Conference on Human Rights. The *Vienna Declaration and Programme of Action*, which emerged from the Conference, called for the establishment of ‘regional and subregional arrangements for the promotion and protection of human rights where they do not already exist’.⁴⁹ In support of the *Vienna Declaration and Programme of Action*, a meeting of ASEAN Foreign Ministers in Singapore in 1993 agreed that ASEAN should consider the establishment of a human rights mechanism appropriate to the region.⁵⁰ In the same year, a similar agreement was reflected in the *Declaration of Human Rights*, issued by the ASEAN Inter-Parliamentary Organisation, which stated that it was the ‘task and responsibility of Member States to establish an appropriate regional mechanism on human rights’.⁵¹

In 1994, at a Colloquium on Human Rights in Manila, the role of national institutions and non-governmental organisations (‘NGOs’) in developing such a mechanism was emphasised, and a year later in Manila, the Human Rights Committee of LAWASIA established the Working Group for an ASEAN Human Rights Mechanism (‘Working Group’)⁵² to develop recommendations regarding the structure, form and content of the proposed body and the necessary steps for its implementation.⁵³ The Working Group is a coalition of national working groups from ASEAN Member States, composed of representatives of government institutions, parliamentary human rights committees, the academy, and NGOs. The

48 Muntarbhorn, above n 17.

49 *Vienna Declaration and Programme of Action* UN Doc A/CONF.157/23 (1993).

50 See Working Group for an ASEAN Human Rights Mechanism, *About Us* (2007) Working Group for an ASEAN Human Rights Mechanism <<http://www.aseanhrmech.org/aboutus.html>> accessed 6 October 2008.

51 *Ibid.*

52 The ASEAN Members with established Human Rights Commissions — Indonesia, Malaysia, the Philippines and Thailand (the ‘ASEAN Four’) — lead the Working Group and the initiative to establish a regional human rights body. Myanmar, Laos, Cambodia and Vietnam remain unenthusiastic, with Singapore and Brunei adopting a neutral stance. See Working Group for an ASEAN Human Rights Mechanism, above n 50.

53 Muntarbhorn, above n 17.

formation of the Working Group and the importance of its continued dialogue with ASEAN were acknowledged by Foreign Ministers at the 31st ASEAN Ministerial Meeting in 1998. At the 33rd Ministerial Meeting in Thailand in July 2000, the Working Group submitted a Draft Agreement for the Establishment of the ASEAN Human Rights Commission. This document contained the proposed mandate, structure, powers and functions of a Commission for consideration by ASEAN governments. Since 2001, the Working Group, an ASEAN host State and its NHRI (if in existence) have convened an annual workshop to develop 'building blocks'⁵⁴ for the realisation of an ASEAN Human Rights Mechanism. These meetings, the most recent of which was held in Manila in September 2008,⁵⁵ bring together representatives of governments, NHRIs and civil society organisations to discuss and formulate steps towards the establishment of a human rights mechanism, such as the creation of interim mechanisms concerning women and children⁵⁶ and migrant workers.

The Eminent Persons Group ('EPG'), comprising former Heads of State and Ministers, noted in its report on the ASEAN Charter (published in December 2006) that the possible establishment of an ASEAN human rights mechanism was a

worthy idea [and] should be pursued further, especially in clarifying how such a regional mechanism can contribute to ensuring the respect for and protection of [the] human rights of every individual in every Member State.⁵⁷

The report recommended that consultative procedures or 'channels' for regular consultation with civil society and parliamentarians from ASEAN Member States should be established for this purpose. The EPG further indicated that the ASEAN Charter should contain a provision to establish an ASEAN human rights mechanism as an organ of ASEAN.⁵⁸ A few months later, a meeting of ASEAN Foreign Ministers resolved for the drafters of the ASEAN Charter (the High Level Task Force) to include 'an enabling provision'⁵⁹ for the creation of a human rights mechanism. In November 2007, ASEAN Member States signed the *ASEAN Charter*, art 14 of which commits Members to establishing an ASEAN Human Rights Body ('AHRB'). Despite the recommendations of the EPG, the *ASEAN Charter* failed to clarify the structure or precise role of a regional human rights body, neglected to establish consultative mechanisms for this purpose, and made no reference to the guiding principles, convention or treaty that will inform the powers and functions of a regional body.⁶⁰

54 Ibid.

55 Working Group meetings have been held in Jakarta (2001); Manila (2002); Bangkok (2003); Jakarta (2004); Kuala Lumpur (2006); Manila (2007) and Singapore (2008).

56 The proposal for the establishment of an ASEAN Commission on Women and Children, a component of the Vientiane Action Programme ('VAP') on human rights and obligations, was adopted by the 10th ASEAN Summit. The Working Group has convened various workshops by way of supporting ASEAN's commitment to implement the VAP.

57 See ASEAN, *Report of the Eminent Persons Group on the ASEAN Charter* (2006) ASEAN at [47] <<http://www.aseansec.org/19247.pdf>> accessed 3 May 2009.

58 Id at [42].

59 Working Group for an ASEAN Human Rights Mechanism, above n 50.

Given the centrality of the principle of universality to the promotion and protection of human rights through the United Nations and its associated agencies, 'the wisdom of encouraging the creation of regional human rights systems was ... doubted' by some, because of concerns that regional initiatives 'might detract from the perceived universality of human rights'.⁶¹ However, AH Robertson has observed that a State 'is more likely to give greater powers to a regional organisation of restricted membership, of which the other members are its friends and neighbours, than to a world-wide organ in which it (and its allies) play a proportionally smaller part'.⁶² At first glance, the reservations expressed by ASEAN Member States to the *Universal Declaration of Human Rights*, and the *Vienna Declaration and Programme of Action* — specifically, the universal application of human rights norms, the over-emphasis on civil and political rights 'at the expense of the right to development',⁶³ and the right to individual freedom operating as a restriction on the right to govern and protect national security — would seem best accommodated within a regional human rights mechanism 'rather than a global arrangement'.⁶⁴ ASEAN's support for a regional mechanism with potential to develop a 'common approach ... based on shared regional values, to address shortcomings in ... national frameworks',⁶⁵ remains ambivalent as regional States attempt an uneasy truce between, on the one hand, acknowledging international and civil society sentiment, the imperatives of domestic economic growth and national stability, and on the other, a 'state-centric resistance'⁶⁶ to interference in domestic affairs, preferring a consultative rather than prescriptive model of rights protection.

The meeting of the Working Group in mid-June 2008 in Singapore (organised by the Singapore Institute of International Affairs) again highlighted the lack of consensus within ASEAN regarding the concrete development of a regional human rights mechanism. In his keynote address to the meeting, Singapore's Second Minister for Foreign Affairs, Raymond Lim, called for an 'evolutionary' approach to the initiative, given that rights are 'contested concepts', and warned against committing to a 'fixed deadline' in order to allow for more time to focus on creating a 'credible and meaningful body'.⁶⁷ Professor Koh, Singapore's Ambassador-at-Large, who participated in the drafting of *ASEAN Charter*, told a

60 The Asian Human Rights Charter was developed by NGOs who initiated their own response to calls for a regional mechanism, but has been largely resisted by governments in the region. However the lack of government support for the Charter led to questions about its legitimacy and representativeness. See Ralph Wilde, 'NGO Proposals for an Asia-Pacific Human Rights System' (1999) 1 *Yale Human Rights and Development Law Journal* 138.

61 Weston, Lukes and Hnatt, above n 32.

62 Id at 590.

63 Maznah Mohamad, 'Towards a Human Rights Regime in Southeast Asia: Charting the Course of State Commitment' (2002) 24 *Contemporary Southeast Asia* 230 at 233.

64 Id at 236.

65 Arbour, above n 31.

66 The contestation for a human rights regime has always involved nation-states battling against their domestic civil society and an international movement pushing for a normative global order'. See Mohamad, above n 63 at 231.

journalist after the meeting that Member States remained divided on three key issues:

[whether the proposed mechanism] should have the power to investigate and monitor the human rights situation in member countries; whether it should consider not just rights but also responsibilities; and how to reconcile the principle of human rights with that of non-interference.⁶⁸

The last consideration remains a major barrier to progress in the development of the regional mechanism as its 'very existence' will be seen 'to undermine the concept of the strong, autonomous and economically-sound nation-state which South East Asian governments have traditionally promoted'.⁶⁹

5. National Human Rights Institutions and Regional Networks: Complementary Partners in the Regional Advancement of Human Rights

I believe that the existence of regional networks ... is of the utmost importance. They permit an exchange of experience and best practices among institutions that, belonging to the same region, often face similar challenges. And they also constitute safety nets that can be of support to single institutions when their independence or effectiveness is being threatened.⁷⁰

A. National Institutions

The impetus for the establishment of NHRIs can be traced to a meeting of the United Nations Economic and Social Council in 1946, which urged Member States to consider 'the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on Human Rights'.⁷¹

Recognising the critical and unique role that national institutions could play in protecting and promoting human rights, particularly via the implementation of international standards, the UN Commission on Human Rights subsequently convened a seminar of Member States to consider and draft guidelines for the structure and functions of NHRIs.⁷² The guidelines, devised at a seminar in

67 Nazry Bahrawi, *ASEAN's Human Rights Divide* (2008) Singapore News <www.ips.org.sg/Media/yr2008/Today_Asean's%20human%20rights%20divide_130608.pdf> accessed 3 May 2009.

68 Ibid.

69 Mohamad, above n 63 at 231.

70 Bertrand Ramcharan, 'Opening Remarks by the Acting UN High Commissioner for Human Rights' (Speech delivered at the General Assembly of the Network of National Institutions of the Americas, Buenos Aires, Argentina, 9–11 June 2004) NHRI Forum <<http://www.nhri.net/pdf/Network%20Americas%20NI%20-AHC%20Speech.pdf>> accessed 3 May 2009.

71 *Fact Sheet 19: National Institutions for the Promotion and Protection of Human Rights* (1993) Office of the High Commissioner for Human Rights <<http://www.unhchr.ch/html/menu6/2/fs19.htm>> accessed 15 September 2008.

72 *Paris Principles*, above n 6.

Geneva in September 1978,⁷³ were the precursor to a set of expanded principles adopted at a subsequent workshop hosted by the Commission on Human Rights in Paris in 1991. The 1980s and 1990s saw the emergence of a significant number of NHRIs,⁷⁴ and the 1991 workshop brought together existing national and regional human rights institutions to review their status and operation and explore the potential for their increased effectiveness. The *Paris Principles*, which grew out of the workshop, included minimum guidelines on competence and responsibilities, composition, guarantees of independence and pluralism, methods of operation and the status of commissions with quasi-jurisdictional competence.⁷⁵ The United Nations General Assembly endorsed the principles on 20 December 1993,⁷⁶ affirming ‘that priority should be accorded to the development of appropriate arrangements at the national level to ensure the effective implementation of international human rights standards’.⁷⁷

Some months earlier, at the World Conference on Human Rights, the *Vienna Declaration and Programme of Action* had affirmed ‘the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory role to the competent authorities, their role at remedying human rights violations, in the dissemination of information and education in human rights’.⁷⁸ The United Nations High Commissioner for Human Rights has consistently identified NHRIs as essential partners in the task of protecting and promoting human rights at the national and regional levels. At the Fifth International Workshop for National Institutions for the Promotion and Protection of Human Rights held in Rabat in 2000, the

73 See *Fact Sheet 19*, above n 71. The guidelines approved at the Seminar on National and Local Institutions for the Promotion and Protection of Human Rights, suggested that the functions of national institutions should be:

- (a) To act as a source of human rights information for the Government and people of the country;
- (b) To assist in educating public opinion and promoting awareness and respect for human rights;
- (c) To consider, deliberate upon, and make recommendations regarding any particular state of affairs that may exist nationally and that the Government may wish to refer to them;
- (d) To advise on any questions regarding human rights matters referred to them by the Government;
- (e) To study and keep under review the status of legislation, judicial decisions and administrative arrangements for the promotion of human rights, and to prepare and submit reports on these matters to the appropriate authorities;
- (f) To perform any other function which the Government may wish to assign to them in connection with the duties of that State under those international agreements in the field of human rights to which it is party.

The guidelines, which were endorsed by the Commission on Human Rights and the General Assembly, further recommended that NHRIs should:

- (a) be so designed as to reflect in their composition, wide cross-sections of the nation, thereby bringing all parts of that population into the decision-making process in regard to human rights;
- (b) function regularly, and that immediate access to them should be available to any member of the public or any public authority;
- (c) in appropriate cases, have local or regional advisory organs to assist them in discharging their functions.

participants noted ‘with satisfaction’ the significant increase in the number of NHRIs established in accordance with the *Paris Principles* since 1997, and acknowledged NHRIs efforts to ‘improve the public appreciation of the universality and indivisibility of human rights’.⁷⁹ The *Rabat Declaration* invited those States without independent NHRIs ‘to set up such bodies in conformity with the *Paris Principles*, in order to strengthen the protection of human rights and consolidate the rule of law’.⁸⁰

As at December 2008, the number of United Nations Member States in Europe is 52; of those, 20 have NHRIs with United Nations A status accreditation.⁸¹ Out of 35 United Nations Member States, the Americas have 15 accredited NHRIs; Africa, with 53 United Nations Member States, has 16 accredited NHRIs, and the Asia Pacific region has 13 accredited NHRIs out of 52 United Nations Member States.⁸²

Given the focus of this paper, it is interesting to note the significant contribution by the four ASEAN NHRIs (‘ASEAN Four’) to the protection and promotion of human rights in the region. The four institutions have established their own network and, at various consultation meetings (Thailand 2004, Malaysia 2006, Bali 2007, Philippines (Manila and Cebu) 2008), have developed working plans for regional collaboration and strategies for the promotion and protection of human rights. At the 2006 meeting, they agreed to focus their activities on five thematic areas of common interest, namely the implementation of economic, social, and cultural rights and the right to development; enhancement of human rights education; human rights aspects of trafficking (especially of women and children); protection of the human rights of migrants and migrant workers; and the suppression of terrorism while respecting human rights. In 2007, the ASEAN Four signed a Declaration of Cooperation in which they agreed to ‘do whatever possible

74 In the Asia Pacific region, Human Rights Commissions were established in Australia (1986) and the Philippines (1987).

75 *Paris Principles*, above n 6.

76 *Ibid.*

77 *Ibid.*

78 *Vienna Declaration and Programme of Action*, above n 49.

79 Fifth International Workshop for National Institutions for the Promotion and Protection of Human Rights (2000) United Nations Office of the High Commissioner for Human Rights at 1 <<http://www.unhchr.ch/html/menu2/rabatdec.htm>> accessed 3 May 2009.

80 *Ibid.*

81 In accordance with the *Paris Principles* and the ICC Sub-committee Rules of Procedure, the classifications for accreditation used by the ICC are:

(a) Compliance with the *Paris Principles*;

(b) Observer Status — not fully in compliance with the *Paris Principles* or insufficient information provided to make a determination; and

(c) Non-compliant with the *Paris Principles*.

Prior to 2008 the ICC also used a fourth category A(R) (‘Accreditation with reserve — granted where insufficient documentation is submitted to confer A status’). In 2008 the ICC discontinued use of the A(R) category for new accreditations. See *Chart of The Status of National Institutions* (2007) NHRI Forum <http://www.nhri.net/2007/List_Accredited_NIs_Dec_2007.pdf> accessed 3 May 2009.

82 See NHRI Forum at <<http://www.nhri.net>> accessed 3 May 2009.

to carry out jointly, either on a bilateral or multilateral basis, programmes and activities in areas of human rights'.⁸³ The 2008 meetings saw the group adopt the official name of the ASEAN NHRI Forum and finalise the terms of reference for the ASEAN Human Rights Commission.⁸⁴

B. Regional Networks

The need for coordination between national human rights mechanisms was recognised at the Second International Workshop on National Institutions for the Promotion and Protection of Human Rights,⁸⁵ held in Tunis in 1993. The meeting mandated that the national institutions of Tunisia, Cameroon, Canada, Mexico, the Philippines, France, Australia and New Zealand (representing North Africa), sub-Saharan Africa, North America, Latin America, Asia, Europe and Oceania, act as a Coordination Committee to maintain 'regular contacts between the national institutions and the Centre for Human Rights to (inter alia) establish and implement a joint programme of action'. The resulting International Coordinating Committee ('ICC') is responsible for accrediting applicant institutions and reviewing their compliance with the *Paris Principles* to ensure that NHRIs are and continue to be 'credible, legitimate, relevant and effective'.⁸⁶

The ICC is currently composed of representatives of national institutions from four regions: Africa, Europe, the Americas, and the Asia Pacific. Each region has its own International Coordinating Sub-Committee, namely the European Regional Group of National Institutions for the Promotion and Protection of Human Rights, the General Assembly of the Network of the National Institutions of the Americas, the Network of African Human Rights Institutions (formerly the Coordinating Committee of African National Human Rights Institutions), and the Asia Pacific Forum of National Human Rights Institutions. The ICC Coordinating Sub-Committees facilitate exchange of information between national institutions in defined regions, plan and coordinate regional NHRI activities, encourage and

83 *Declaration of Cooperation*, Bali, 28 June 2007, with parties: Komisi Nasional Hak Asasi Manusia (Komnas HAM), Human Rights Commission of Malaysia (SUHAKAM), Commission on Human Rights of the Philippines (CHRP), and the National Human Rights Commission of Thailand (Khamakarn Sit). See *Regional Cooperation between NHRIs (2007) APF* <<http://www.asiapacificforum.net/about/annual-meetings/12th-australia-2007/downloads/regional-cooperation-between-nhris/Declaration%20of%20Cooperation.pdf>> accessed 3 May 2009.

84 See Commission on Human Rights of the Philippines, 'ASEAN Human Rights Commissions Convene in Manila' (Press Release, 25 January 2008); *Terms of Reference of the ASEAN Human Rights Commission (2008) Working Group for an ASEAN Human Rights Mechanism* <http://www.aseanhrmech.org/downloads/TOR_ASEANHRbody.pdf> accessed 3 May 2009.

85 The Workshop was organised by the United Nations Centre for Human Rights in cooperation with the Tunisian Higher Committee on Human Rights and Fundamental Freedoms.

86 *Guidelines for Accreditation and Re-accreditation of NHRIs to the International Coordinating Committee of National Human Rights Institutions*, adopted by the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights ('ICC') at its 20th session in Geneva, 14–18 April 2008. See *Guidelines for Accreditation and Re-Accreditation of National Human Rights Institutions to the International Coordinating Committee of National Human Rights Institutions (2008) NHRI Forum* <http://nhri.net/2008/Guidelines_for_accreditation_application_April_2008_En.pdf> accessed 20 June 2008.

advise national governments on the establishment of new NHRIs in conformity with the *Paris Principles*, and represent regional national institutions at international and other fora.

The creation of regional networks for the protection and promotion of human rights, particularly via their strengthening and establishment of regional NHRIs, offers a contrasting approach to the traditional, top-down dissemination of international human rights principles to national (domestic) systems of government. Regional networks of NHRIs, such as the Asia Pacific Forum of National Human Rights Institutions, not only provide the opportunity for the sharing of best practices,⁸⁷ and consequently enhance NHRI performance and compliance with international standards, but also incrementally initiate and build transnational human rights programs of collaboration via their various activities with human rights commissions, national governments and NGOs. This ‘transnational horizontal network’⁸⁸ executes an effective form of ‘human rights diplomacy’⁸⁹ and may arguably present an interim alternative and/or aid to the development of a regional human rights body.

C. The Asia Pacific Forum of National Human Rights Institutions: ‘A Partnership for Human Rights in Our Region’

In the early 1990s, only five countries within the Asia Pacific region — Australia, India, Indonesia, New Zealand and the Philippines — had established NHRIs which conformed to the *Paris Principles* requirements of independence, pluralism and a broad mandate for the protection and promotion of human rights. In July 1996, four NHRI representatives from these nations⁹⁰ met in Darwin, Australia for the first meeting of the APF. The meeting, sponsored by the United Nations Office of the High Commissioner for Human Rights, was also attended by representatives of eight States where the establishment of NHRIs was in train (Pakistan, Sri Lanka, Nepal, Mongolia, Thailand, Papua New Guinea, Solomon Islands and Fiji), and by representatives of several NGOs.⁹¹ The meeting gave rise to the *Larrakia Declaration*, which set out foundational principles for the nascent human rights organisation. The *Larrakia Declaration* endorsed the need for regional cooperation to ensure effective human rights promotion and protection, and the establishment of effective and credible national human rights institutions (compliant with the *Paris Principles*) to work with NGOs and governments (where possible) to effect successful implementation of human rights principles.⁹²

87 See Gauthier de Beco, ‘Networks of European Human Rights Institutions’ (2008) 14 *European Law Journal* 860.

88 Anne-Marie Slaughter, *A New World Order* (2004) at 19, 239.

89 Hashimoto, above n 33 at 89.

90 The Commission on Human Rights of the Philippines was invited and accepted an invitation to attend, but was ultimately unable to do so.

91 At the first meeting, representatives of attending NHRIs discussed matters of common interest to national human rights institutions in the region, including their independence, their functions and powers, their investigation and conciliation processes, community education and media relations.

By 2002, APF's work was defined by three core activities: strengthening the capacity of individual APF member institutions to enable them to undertake their national mandates; assisting governments and NGOs to establish national institutions in compliance with the minimum criteria contained in the *Paris Principles*; and promoting regional cooperation on human rights issues. In addition to facilitating information exchange among Member Institutions, forging links between NHRI staff in different countries and disseminating technological expertise, the APF's Advisory Council of Jurists ('ACJ'),⁹³ created in 1998, considers specific human rights situations or questions. The Council's reports and recommendations — on issues such as trafficking, the death penalty, torture and the right to education — are considered and, where possible or applicable, implemented by APF Member NHRIs and utilised by NGOs. The reports of the ACJ, often devised in collaboration with international experts, academics and practitioners, seek to contribute to the development of regional jurisprudence on international human rights law.

Once established, NHRIs may apply to the APF for membership.⁹⁴ Similarly to the criteria for ICC Members, the APF Constitution establishes three membership categories — Full Members, Candidate Members and Associate Members — based on the applying institution's degree of compliance with the *Paris Principles*. Full Members are NHRIs that comply with the *Paris Principles*. Candidate Members do not fully comply with the *Paris Principles* but might comply within a reasonable period of time. Admission as a Candidate Member requires the institution to take active steps to meet the *Paris Principles*, sufficient to become a Full Member of the APF. As of February 2009, there were no candidate members of the APF. Associate Members do not comply with the *Paris Principles* and are unlikely to do so within a reasonable period. Associate Member Institutions must, however, possess a broad human rights mandate. Currently, the Palestinian Independent Commission for Citizens' Rights, the National Human Rights Committee of Qatar and the Human Rights Commission of the Maldives are Associate Members of the APF. The APF Forum Council determines membership applications. Member Institutions, which pay an annual fee based on their membership category, participate in the Forum Council and at APF annual meetings. Since its inception in 1996, the APF Secretariat⁹⁵ has been located in Sydney and is funded by Member Institutions and donors.

92 *Larrakia Declaration*, adopted in the APF First Regional Workshop, Darwin, Australia, 8-10 July 1996. See *Larrakia Declaration: Conclusions, Recommendations and Decisions* (1994) APF <www.asiapacificforum.net/about/annual-meetings/1st-australia-1996/downloads/larakia.pdf> accessed 3 May 2009.

93 The ACJ comprises former judges, and human rights and international law academics and practitioners, nominated by APF member institutions.

94 The APF was incorporated under Australian law in 2002 as an independent, non-profit organisation. The Forum Council is the decision-making body of the APF. Established by the APF Constitution, the Forum Council is comprised of one voting councillor nominated by each Full Member.

95 *About the Asia Pacific Forum* (2009) APF <<http://www.asiapacificforum.net>> accessed 20 June 2008.

The APF describes its role as ‘opening up important new avenues for strengthening human rights observance and advancing human rights protection for the peoples of the region in a constructive and cooperative environment’.⁹⁶ It pursues this role by assisting governments and civil society in the establishment and strengthening of NHRIs via a number of core activities.

(i) *Information Dissemination*

The APF website, Annual Reports, newsletters⁹⁷ and discussion papers provide Members with information about best practice and operational efficiencies. Their comprehensive profiles of member NHRIs are instructive both for NHRIs keen to enhance their operations and governments considering the establishment of NHRIs. The information provided by the APF illustrates the value of NHRIs to political and administrative decision-makers, civil society and national institutions, which have access to the APF collection of legislation, casework, procedures and outcomes of relevance to national institutions both within and outside the region.⁹⁸

(ii) *Technical Expertise and Capacity Building*

The APF has developed an extensive technical assistance program,⁹⁹ which seeks to enhance the skills and knowledge of NHRI staff and develop and improve NHRI structures and procedures in accordance with the *Paris Principles*. Additionally, APF provides governments in the region with assistance and information to facilitate the development of national institutions.¹⁰⁰ Following a formal request for assistance, the APF conducts an extensive ‘needs assessment mission’, consulting with relevant members of government, civil society, United Nations officials and international NGOs.¹⁰¹ It reviews and coordinates available expertise in the region or internationally and plans a programme of assistance, which might include securing funding for specific projects.

In developing and exchanging information and expertise between Member Institutions, governments and NGOs in countries potentially hosting an NHRI, the

96 APF also produces a regular newsletter, the Forum Bulletin, which keeps APF members, governments and NGOs informed of important policy, legal, administrative and training developments in the region.

97 *About the Asia Pacific Forum*, above n 95.

98 *Ibid.*

99 For example, APF has provided advice and assistance in relation to the establishment of NHRIs to the governments of Samoa, Bangladesh, Papua New Guinea, East Timor and Afghanistan.

100 For example, in 1998, the Forum Secretariat conducted needs assessment missions to Indonesia, Mongolia and Fiji.

101 In 1998, at the request of the government of Bangladesh, who indicated a keenness to establish a National Human Rights Commission, the APF facilitated a visit by a senior Bangladeshi delegation to the Human Rights Commissions of Australia and New Zealand. Officers from the Human Rights Project team of the Bangladesh Department of Law, Justice and Parliamentary Affairs undertook a 3-month human rights training internship in the Australian Commission. This was combined with an academic coursework programme designed by the APF in consultation with the University of Sydney. In 1997, the APF organised a similar study tour in New Zealand for a group of experts from the Vietnamese Prime Minister’s Research Group.

APF brings players in the region together, many of whom might not otherwise meet.¹⁰² The establishment of APF-sponsored specialist networks, such as the Investigators Network and a Senior Executive Officers (SEO) Network, and thematic networks, such as the Trafficking Network and IDP Focal Point Network, enhance and strengthen the operational and substantive functioning of NHRIs.

(iii) *Strengthening and Establishing NHRIs*

The APF Secretariat exercises broad hospitality in relation to its annual meetings, extending invitations beyond its Members. Government representatives of States without NHRIs, considering their establishment, or who have NHRIs that do not comply with the *Paris Principles*, commonly attend the APF annual meeting as observers.¹⁰³ At annual meetings, while NHRIs are given prominence, States with NHRIs that do not currently conform to the *Paris Principles*, or those in the process of establishing NHRIs, report on progress made since the last meeting.

The APF has developed a set of 'Best Practice Principles' outlining the necessary steps for establishing a national institution. Governments frequently submit draft enabling legislation to the APF for comment to ensure that a proposed national institution conforms to the *Paris Principles*.¹⁰⁴ The Secretariat also provides advice to NHRIs seeking membership of the APF, recommending adjustments to their legislative basis, structure or mandate prior to their formal application.

A more recent APF initiative has been the establishment of a training program aimed at supporting newly appointed NHRI Commissioners. A 2–3 day pilot program of 'Commissioner high-level dialogue' was held with the Philippines Commission on Human Rights in November 2008. Conducted in-country, the program explored the role of Commissioners (their engagement with civil society, government, international bodies and specific communities), the application of the *Paris Principles* and international human rights law to the governance and work of NHRIs, and NHRI engagement within the United Nations system.¹⁰⁵

(iv) *International and Regional Impact*

In recognition of its international impact and standing, the APF Secretariat and Forum representatives are regularly invited to participate in regional and international workshops and meetings, including presenting reports on the APF and NHRIs to the United Nations Human Rights Council (and formerly, the Commission on Human Rights), meetings and conferences of the International

102 Together with domestic and international NGOs, representatives of the United Nations, academics and government officials.

103 In 2002, the APF Secretariat provided detailed legislative and legal advice to the recently elected Constituent Assembly, NGOs, representatives of the East Timor Administration and the United Nations Transitional Administration in East Timor on the possible mandate, role and functions of a prospective NHRI.

104 *Interview with Pip Dargan, Deputy Director of the APF Secretariat, regarding the proposed program* (August 2008).

105 See *Annual Meetings* (2009) APF <<http://www.asiapacificforum.net/about/annual-meetings>> accessed 3 May 2009.

Coordinating Committee of National Human Rights Institutions, ad hoc United Nations Committees, and the annual United Nations Regional Workshop on Cooperation for the Promotion and Protection of Human Rights in the Asia Pacific Region. In the lead-up to the United Nations General Assembly Ad Hoc Committee's consideration of proposals for the Convention on the Rights of Persons with Disabilities, the APF coordinated responses from Member NHRIs and provided significant support to the NHRI delegation that participated in the Convention negotiations. Subsequent to the adoption of the Convention, the APF and a major international disability advocacy organisation, Disability Rights Promotion International ('DRPI'), have collaborated to create a database of disability rights cases decided by NHRIs, to promote awareness about the rights of people with disabilities, the application of the Convention, and national legislative provisions which might follow its ratification by individual States. The ICC endorsed the APF-DRPI proposal and created a steering group for the project, with Members from the South African Human Rights Commission, the Mexican Human Rights Commission and the Irish Human Rights Commission, representing the regions of Africa, America and Europe respectively.

(v) *Working with Civil Society*

The annual meeting of the APF, one of the largest regular human rights events in the region, brings together APF members and other NHRIs, United Nations agencies, national governments, NGOs and donors 'in a cooperative setting to discuss and share expertise on the pressing human rights issues in the region'.¹⁰⁶ In recent years, the APF has set aside the day before its annual meeting to host a meeting of international and domestic NGOs, which prepare and present their own reports about the effectiveness of individual NHRIs. A network of NGOs based in the Asia Pacific, the Asian NGOs Network on National Human Rights Institutions (ANNI), has evolved to coordinate NGO submissions, develop strategies for influencing NHRIs and share information about developing effective NGO-NHRI relationships. ANNI's members consist of human rights organisations and human rights defenders in 14 countries across Asia.

Despite the hold and prominence of the 'Asian values' perspective, the work of the APF since its inception in 1996 has undoubtedly influenced the pace and nature of the reception of international human rights principles, norms and procedures across the Asia Pacific region. In a number of submissions to the Australian Parliamentary *Inquiry into Human Rights Mechanisms and the Asia Pacific* announced in September 2008,¹⁰⁷ organisations and academics cautiously supported the establishment of a regional human rights mechanism in the Asia

106 Joint Standing Committee on Foreign Affairs, Defence and Trade, *Inquiry into Human Rights Mechanisms and the Asia Pacific* (2008) Parliament of Australia <http://www.aph.gov.au/house/committee/jfadt/asia_pacific_hr/index.htm> accessed 3 May 2009.

107 The Submission of the Australian Council of Trade Unions ('ACTU') sets out the key criteria for an independent, credible and effective regional mechanism. See *Submission by the Australian Council of Trade Unions to the Inquiry into Human Rights Mechanisms and the Asia Pacific* (2008) Parliament of Australia at 8-9 <http://www.aph.gov.au/house/committee/jfadt/asia_pacific_hr/subs/Sub%2016.pdf> accessed 3 May 2009.

Pacific region. However, the majority of submissions argued that any support provided by the Australian government for the development of a regional (or subregional) mechanism¹⁰⁸ must be accompanied by support for regional human rights NGOs and networks,¹⁰⁹ ratification by Asia Pacific governments of human rights treaties and instruments¹¹⁰ and the establishment and strengthening of NHRIs in the region,¹¹¹ potentially via existing structures such as the APF.¹¹²

6. *The Relationship between an ASEAN Mechanism and the APF*

Building strong human rights institutions at the national level is what will, in the long run, ensure that human rights are protected and advanced in a sustained manner [in Africa].¹¹³

The Working Group for an ASEAN Human Rights Mechanism has suggested three key reasons for the establishment of a regional human rights mechanism. It would ensure adherence by ASEAN Member States to international human rights standards, provide ‘a common platform’ for ASEAN Member States to articulate and discuss human rights-related concerns, and facilitate regional co-operation and a collective stand on human rights violations.¹¹⁴ Additionally, the Working Group has argued that such a mechanism could assist ASEAN Member States to address specific human rights concerns in their respective jurisdictions, ensure

108 *Submission by World Vision Australia to the Inquiry into Human Rights Mechanisms and the Asia Pacific* (2008) Parliament of Australia at 6 <http://www.aph.gov.au/house/committee/jfadt/asia_pacific_hr/subs/Sub%207.pdf> accessed 3 May 2009.

109 *Submission by the Centre for International Governance and Justice, Australian National University to the Inquiry into Human Rights Mechanisms and the Asia Pacific* (2008) Parliament of Australia at 3 <http://www.aph.gov.au/house/committee/jfadt/asia_pacific_hr/subs/Sub%203.pdf> accessed 3 May 2009.

110 *Submission by the Sydney Centre for International Law to the Inquiry into Human Rights Mechanisms and the Asia Pacific* (2008) Parliament of Australia at 2, 11 <http://www.aph.gov.au/house/committee/jfadt/asia_pacific_hr/subs/Sub%205.pdf> accessed 3 May 2009.

111 *Submission by the Human Rights Law Resource Centre to the Inquiry into Human Rights Mechanisms and the Asia Pacific* (2008) Parliament of Australia at 31-32 <http://www.aph.gov.au/house/committee/jfadt/asia_pacific_hr/subs/Sub%2015.pdf> accessed 3 May 2009; *Submission by the Australian Council for International Development to the Inquiry into Human Rights Mechanisms and the Asia Pacific* (2008) Parliament of Australia at 5 <http://www.aph.gov.au/house/committee/jfadt/asia_pacific_hr/subs/Sub%209.pdf> accessed 3 May 2009; *Submission by the Centre for International Governance and Justice, Australian National University to the Inquiry into Human Rights Mechanisms and the Asia Pacific* (2008) Parliament of Australia at 4, 5 <http://www.aph.gov.au/house/committee/jfadt/asia_pacific_hr/subs/Sub%203.pdf> accessed 3 May 2009.

112 UNGA, *Strengthening of the United Nations: an Agenda for Further Change*, UN Doc A/57/387. See UNGA, *Strengthening of the United Nations: an Agenda for Further Change - Report of the Secretary-General* (2002) United Nations at 50 <<http://daccessdds.un.org/doc/UNDOC/GEN/N02/583/26/PDF/N0258326.pdf?OpenElement>> accessed 10 May 2009.

113 *Strengthening the United Nations: An agenda for further change*, Report of the United Nations Secretary-General, UN Doc A/57/387, para 50.

implementation and observance of international human rights laws endorsed by ASEAN, and engender a common understanding of universal human rights issues and perspectives in civil society.¹¹⁵

While the proposal teeters towards some sort of in-principle acceptance by the majority of ASEAN Member States, concrete moves towards discussion of structure and function appear to provoke division. The recommendations of the 7th Workshop on the ASEAN Regional Human Rights Mechanism were perhaps the most promising steps towards the mechanism's establishment, with the meeting recommending, inter alia, the convening of a High Level Panel to draft the terms of reference for the proposed ASEAN human rights body for implementation by December 2009.¹¹⁶ The meeting also highlighted the need for consultation with NHRIs in the development of the AHRB,¹¹⁷ and a framework for more formal dialogue between ASEAN and ASEAN NHRIs. Further, the meeting encouraged those ASEAN Member States without NHRIs to establish national institutions to promote and protect human rights. At the first meeting of the High Level Panel (HLP), during the 41st ASEAN Ministerial Meeting in Singapore in July 2008, the Inaugural Chair of the HLP, Bilahari Kausikan, said that the aim of the Panel was 'to achieve a result that is realistic, balanced and credible, and which would be in the best collective interest of ASEAN'.¹¹⁸

Despite positive indications, Workshop Co-Chair Simon Tay, Chairman of the Singapore Institute of International Affairs, highlighted (after the meeting) the major points of contention within ASEAN, which continue to undermine moves towards the establishment of the AHRB. These included:

- whether the AHRB should comprise governmental officials who 'may play it safe rather than jeopardise friendly relations' or independent experts who may be more critical of human rights violations;

114 Working Group for an ASEAN Human Rights Mechanism, above n 50.

115 *Summary of Proceedings presented at the 7th Workshop on the ASEAN Regional Mechanism on Human Rights, Singapore, 12–13 June 2008* (2008) Singapore Institute of International Affairs <http://www.siaonline.org/files/7th_WS_Summary_Proceedings.final.pdf> accessed 3 May 2009.

116 Following the first meeting of the HLP in July 2008 in Singapore, ASEAN human rights organisations met in Jakarta in early August 2008 for a 3-day regional consultation. At the consultation, organisations discussed engagement with the HLP and ASEAN to ensure that an 'independent and effective regional human rights mechanism will be put up by the High Level Panel'. The meeting was also attended by representatives from the Indonesian Government, the ASEAN Secretariat, Office of the UN High Commissioner for Human Rights, Working Group for an ASEAN Human Rights Mechanism, and NHRIs in ASEAN. See *Human Rights Groups Gather for Strategic Planning on ASEAN Human Rights Mechanism(s)* (2008) Prachatai <<http://www.prachatai.com/english/news.php?id=736>> accessed 3 May 2009.

117 *Press Comments by the Chairman of the High Level Panel (HLP) on the Establishment of an ASEAN Human Rights Body* (2008) ASEAN <<http://www.aseansec.org/21782.htm>> accessed 3 May 2009.

118 Simon Tay, *Human Rights: ASEAN's Way Forward* (2008) Singapore Institute of International Affairs <<http://www.siaonline.org/?q=programmes/commentary/human-rights-asean's-way-forward>> accessed 3 May 2009.

- whether the AHRB should have powers to investigate complaints in countries, ‘like a regional police’, or only to promote and monitor human rights; and
- whether a willing minority of ASEAN Member States (Indonesia, Thailand, the Philippines and Malaysia) can progress the proposal in the absence of full ASEAN support.¹¹⁹

A further meeting of the HLP was held in Manila in September 2008 with the Working Group, the ASEAN Four, Solidarity for South East Asian Peoples Advocacy and the Women’s Caucus for an ASEAN Human Rights Mechanism.¹²⁰ While the Working Group has recommended different options for the proposed human rights mechanism — including ‘a declaration of principles, a Commission with monitoring, promotional, and recommendatory functions... and a court which could render binding decisions’ — it ‘strongly recommends the establishment of an intergovernmental Human Rights Commission’.¹²¹ The recent consultation in Manila supported the idea that the human rights body take the form of and function as a Commission which would ‘devise its own mechanisms and institutions for the promotion and protection of human rights’, including ‘sub-commissions, special rapporteurs and working groups’.¹²² The meeting envisaged that the Commission’s promotional role would include initiating ‘discussions on the establishment of an ASEAN Human Rights Court’.¹²³

The Working Group has also suggested that an ASEAN Commission could emerge from the ‘coordinating efforts’¹²⁴ between Human Rights Commissions established in all ASEAN countries. This would require a focus on the development of national Commissions prior to the establishment of a regional mechanism. Without undermining the need for and potential importance of an ASEAN human rights body in light of the delayed wholesale embracing of the mechanism by the majority of ASEAN Member States, it may be – in line with the observation of Professor Vitit Muntarbhorn in 2003 that the APF is ‘the closest that the Asia Pacific region has come to a regional arrangement or machinery for the promotion and protection of human rights’¹²⁵ — that the APF (as a network of national human rights mechanisms) will play an expanded regional role, given the

119 *The Working Group Meets the High Level Panel on the ASEAN Human Rights Body* (2008) Working Group for an ASEAN Human Rights Mechanism <<http://www.aseanhrmech.org/news/working-group-meets-high-level-panel.html>> accessed 6 October 2008. See also *Submission from the Second Regional Consultation on ASEAN and Human Rights to the High Level Panel on the Establishment of the ASEAN Human Rights Body* (2008) Asia Forum for Human Rights and Development <http://www.forum-asia.org/news/submission/Submission_to_HLP_on_ASEAN_human_rights_body-2008Aug7-FINAL-FORENDORS_EMENT.pdf> accessed 3 May 2009.

120 Working Group for an ASEAN Human Rights Mechanism, above n 50.

121 *Ibid.*

122 *Submission from the Second Regional Consultation on ASEAN and Human Rights to the High Level Panel on the Establishment of the ASEAN Human Rights Body*, above n 119.

123 *Ibid.*

124 United Nations Commission on Human Rights, above n 29.

125 See Working Group for an ASEAN Human Rights Mechanism, above n 13 at 5, 17–19.

correspondence of its activities with at least some of the rationale for and benefits of a regional human rights mechanism.

Despite the signing of the ASEAN Charter in November 2007 — art 14 of which commits Member States to establishing an ASEAN Human Rights Body — there is consistent recognition among the majority of ASEAN Member States that any progress towards the implementation of a regional human rights mechanism will require an ‘evolutionary approach’¹²⁶ and an accommodation of ‘the history, realities and culture of all the ten ASEAN Member States’.¹²⁷ Additionally, the majority ASEAN view, which represents a ‘staunch adherence to the principle of non-interference in the domestic affairs of another State’¹²⁸ and the ‘non-use of human rights as an instrument of political pressure’,¹²⁹ may inhibit moves towards the formation of a regional mechanism with real capacity to enforce domestic (national) compliance with international human rights principles and standards. If, ultimately, an ASEAN regional human rights mechanism ‘is more likely be consultative rather than prescriptive’, it may be that a focus on NHRIs — namely on their strengthening (with NHRI staff and stakeholders) and establishment (with governments) — and on the development of a regional human rights jurisprudence (via mechanisms such as the APF’s Advisory Council of Jurists), will allow for a more effective and sustained advancement of human rights promotion and protection throughout the region.

By ensuring compliance with the *Paris Principles* before NHRIs become Members of the APF, the establishment of APF-sponsored NHRIs goes a long way to ensuring their adherence to international human rights standards (as well as the principles of universality, indivisibility and interdependence underlying them), practices, and procedures.¹³⁰ Indeed, NHRIs may be best able to resist being captured or ‘colonised’¹³¹ by States antagonistic to the universality of human rights by maintaining full membership of the APF network. The creation of NHRIs and related activities via the APF’s collaboration with United Nations human rights bodies, national governments, academics, NGOs and practitioners via processes of consultation and cooperation has created a legitimacy and credibility for the organisation across different, and sometimes opposing, sectors. As a regional network consisting of NHRIs, as opposed to a regional institution comprising States, the APF’s activities often take it ‘closer to the ground’, allowing it to be ‘conversant with local conditions’,¹³² and well-placed to translate domestic and local concerns into ‘strategies for human rights protection’.¹³³ In her opening address to the 6th Workshop on Regional Human Rights Arrangements in the Asia Pacific Region in 1998, Mary Robinson observed that national

126 *Human Rights Body ‘Consultative’*, above n 10.

127 Sienho Yee, ‘The Role of Law in the Formation of Regional Perspectives in Human Rights and Regional Systems for the Protection of Human Rights: The European and Asian Models as Illustrations’ (2004) 8 *Singapore Year Book of International Law* 157 at 163.

128 *Ibid.*

129 See the *Paris Principles*, above n 6.

130 Neary, above n 20 at 18.

131 Li-ann Thio, ‘Implementing Human Rights in ASEAN Countries: Promises to Keep and Miles to Go Before I Sleep’ (1999) 2 *Yale Human Rights and Development Law Journal* 1 at 76.

Commissions are well positioned to ‘transform the rhetoric of international instruments into practical reality at the local level’, simultaneously respecting ‘ethnic, cultural, religious and linguistic diversities’ and implementing ‘internationally agreed human rights principles’.¹³⁴

7. Conclusion

Regional organisations such as APF have played a significant role in furthering the ‘globalisation of human rights’.¹³⁵ Despite the signing and, in some cases, ratification of human rights treaties by ASEAN Member States, as well as the in-principle support —with reservations— for a regional human rights mechanism, the signing and implementation of treaties and the creation of regional institutions ‘by themselves do not necessarily translate into better protection of human rights unless accompanied by political will’.¹³⁶ The APF’s trans-national or horizontal ‘human rights diplomacy’¹³⁷ offers a complementary process to the establishment of a regional human rights body which currently risks the prospect of emerging as a mechanism which will circumvent universal human rights principles to accommodate ‘national and regional particularities’.¹³⁸ In continuing and perhaps expanding its role, the APF, through its various core activities, can cultivate an environment which may increasingly become more amenable to the creation of a strong regional human rights institution, which does not retreat from the major international human rights treaties, offering citizens of the region a human rights body with a tongue and all of its teeth.

132 Mary Robinson, ‘Opening Address’ (Speech delivered at the 6th Workshop on Regional Human Rights Arrangements in the Asia Pacific Region, Tehran, 28 February 1998), United Nations High Commissioner for Human Rights <[http://www.unhchr.ch/hurricane/hurricane.nsf/\(Symbol\)/OHCHR.STM.98.01.En?OpenDocument](http://www.unhchr.ch/hurricane/hurricane.nsf/(Symbol)/OHCHR.STM.98.01.En?OpenDocument)> accessed 3 May 2009.

133 Ibid.

134 Hashimoto, above n 33 at 879.

135 Andreas O’Shea, ‘A Critical Reflection on the Proposed African Court on Human and Peoples’ Rights’ (2001) 2 *African Human Rights Law Journal* 285 at 314.

136 Hashimoto, above n 33.

137 *Bangkok Declaration*, above n 14.

138 *Bangkok Declaration*, above n 14.