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## **Transnational Social Movements in ASEAN Policy Advocacy**

*The Case of Regional Migrants' Rights Policy*

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## Acronyms

|                   |   |
|-------------------|---|
| <b>ABAC</b>       | ASEAN Business Advisory Council                                   |
| <b>ACMW</b>       | ASEAN Committee on Migrant Workers                                |
| <b>ACSC</b>       | ASEAN Civil Society Conference                                    |
| <b>ADWA</b>       | Asian Migrant Domestic Workers' Alliance                          |
| <b>AFML</b>       | ASEAN Forum on Migrant Labour                                     |
| <b>AFTA</b>       | ASEAN Free Trade Area   |
| <b>AHRD</b>       | ASEAN Human Rights Declaration                                    |
| <b>AICHR</b>      | ASEAN Intergovernmental Commission of Human Rights                |
| <b>AIDS</b>       | Acquired immunodeficiency syndrome                                |
| <b>AIPO</b>       | ASEAN Inter-Parliamentary Organization                            |
| <b>AMS</b>        | ASEAN Member States   |
| <b>ARF</b>        | ASEAN Regional Forum  |
| <b>ARIC</b>       | Asian Regional Integration Center                                 |
| <b>ASEAN</b>      | Association of Southeast Asian Nations                            |
| <b>ASEAN-ISIS</b> | ASEAN Institutes of Strategic and International Studies           |
| <b>CARAM-Asia</b> | Coordination of Action Research on AIDS and Mobility              |
| <b>CSO</b>        | Civil society organization  |
| <b>FTA</b>        | Free trade agreements   |
| <b>GFMD</b>       | Forum on Migration  |
| <b>HIV</b>        | Human immunodeficiency virus                                      |
| <b>ILC</b>        | International Labour Conference                                   |
| <b>ILO</b>        | International Labour Organization                                 |
| <b>IOM</b>        | International Organization for Migration                          |
| <b>Lao PDR</b>    | Lao People's Democratic Republic                                  |
| <b>MFA</b>        | Migrant Forum in Asia   |
| <b>MRI</b>        | Migrants Rights International                                     |
| <b>NGO</b>        | Non-governmental organization                                     |
| <b>OHCHR</b>      | Office of the High Commissioner for Human Rights                  |
| <b>PGA</b>        | People's Global Action on Migration, Development and Human Rights |
| <b>SAPA</b>       | Solidarity for Asian People's Advocacy                            |
| <b>TF-AMW</b>     | Task Force on ASEAN Migrant Workers                               |
| <b>TSM</b>        | Transnational social movement                                     |
| <b>UNESCO</b>     | United Nations Educational, Cultural and Scientific Organization  |
| <b>VAP</b>        | Vientiane Action Plan   |
| <b>WG-AHRM</b>    | Working Group for an ASEAN Human Rights Mechanism                 |
| <b>WTO</b>        | World Trade Organization  |

## **Abstract**

Various processes have swept over Southeast Asia in the last four decades, producing pressures not only in the economic but also in the political and social milieus. When these processes congealed, transnational social movements (TSMs), which earlier had not paid much attention to the Association of Southeast Asian Nations (ASEAN), began to give it more serious attention. This paper examines two TSMs, Migrant Forum in Asia, which already engages in international processes while also focusing on ASEAN, and the Task Force on ASEAN Migrant Workers, which was formed to respond specifically to newly opened regional spaces. The paper looks at how the TSMs respond to the emerging political opportunity structure and explores the dynamics of “going regional” from different approaches and its potential and actual impacts on shaping policy in ASEAN.

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## Introduction

At its twelfth summit in Cebu in January 2007, the Association of Southeast Asian Nations (ASEAN) signed the Declaration on the Protection and Promotion of the Rights of Migrant Workers. This was affirmed both in the 2009–2015 Roadmap for an ASEAN Community and with the establishment of the ASEAN Committee on Migrant Workers (ACMW) to develop an instrument for its implementation. All this forms part of the ASEAN community-building process, predated by fast-tracked regional agreements and the drafting of the ASEAN Charter as a response to even broader processes of globalization and fledgling democratization that have swept the region since the mid-1980s.

Increased institutionalization raised the prospects for developing regional policy, but the high emphasis it places on sovereignty, non-interference and consensus still weighs ASEAN down. As a result, ASEAN remains state-centric and lacks resonance with the region's citizens. While comprehensive regional rules on trade and economic liberalization have been signed, progress has been slow in areas such as human rights, labour and migration that ASEAN Member States (AMS) consider to be sensitive but about which there is strong public feeling.

Avenues for participation in ASEAN opened up gradually with the development of different tracks of diplomacy. Growing focus on universal norms (for example, the Vienna Conference on Human Rights in 1994) resulted in increasing demand for the adoption of these norms in the region. In 1995, for instance, the Working Group for an ASEAN Human Rights Mechanism (WG-AHRM), composed of eminent persons, academics and human rights non-governmental organizations (NGOs), closely engaged with Ministries of Foreign Affairs and started the campaign for the establishment of a regional human rights mechanism.<sup>1</sup> The campaign penetrated multiple levels of ASEAN processes and developed champions in the more open AMS (like in the Philippines and in Thailand), and met definite success when the ASEAN Charter included in its mandate the establishment of an ASEAN Human Rights Body.<sup>2</sup> Yet three years later, the ASEAN Human Rights Declaration (AHRD) was criticized for being “a declaration of government powers”, where “the enjoyment of rights is made subject to national laws, instead of requiring that the laws be consistent with the rights” (Civil Society Submission to ASEAN, 2012), and hence diluting international standards.

The issue of whether increased formalization in ASEAN processes strengthens or waters down international norms will continue to be debated and will span other areas of potential regional social policy. An equally important question is how non-state actors respond to these changes and whether they are able to carve bigger spaces and affect policy more substantially.

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<sup>1</sup> For more information about the Working Group for an ASEAN Human Rights Mechanism, see the WG-AHRM website: <http://aseanhrmech.org/index.html>.

<sup>2</sup> For more information about the ASEAN Intergovernmental Commission of Human Rights (AICHR), see the AICHR website: <http://aichr.org/> and the ASEAN website: <http://www.asean.org/communities/asean-political-security-community/category/asean-intergovernmental-commission-on-human-rights-aichr>.

This paper explores these questions and looks at the efficacy of regional advocacy. It starts with a political opportunity framework in the discussion of transnational activism, where it is argued that transnational social movements (TSMs) and civil society organizations (CSOs) make use of changing contexts to further or fine-tune their advocacy. The following section discusses the contexts that frame changes in political opportunities in ASEAN—namely, globalization, the shifting process of democratization, and regional integration. The next section elaborates why intra-ASEAN migration is an area of contention in regional policy. The paper then proceeds to look at two TSMs operating in ASEAN, the Migrant Forum in Asia (MFA) and the Task Force on ASEAN Migrant Workers (TF-AMW). It examines their operations, how they respond to opportunities and the emphases they place on different forms of collective action. It then offers a preliminary assessment of the impact of TSMs in regional policy.

### **Political Opportunity and Spaces for Regional Advocacy**

For an initial look at the advocacy of TSMs/CSOs at the level of ASEAN, this paper uses the framework of political opportunity structure (Tarrow 1998) in examining the factors to which non-state actors respond, and which allow contentious politics to emerge. Political opportunity structure is defined as “consistent—but not necessarily formal, permanent or national—dimensions of the political environment that either encourage or discourage people from using collective action” (Tarrow 1998:20–21, also cited in Tarrow 2005:23). It spans various dimensions that include increasing access, shifting alignments, divided elites, influential allies, and repression and facilitation (Tarrow 1998). Political and process changes—whether positive or negative, liberal or restrictive—can stir peoples’ responses. When sustained, discrete actions as a result of contentious politics can be converted into a social movement (Tarrow 1998).

The commonality of issues, in this case labour migration, also provides impetus for political action (Chavez 2006). The scale of intra-regional migration, and the breadth and seriousness of the problems covered by migrants’ rights advocacy, necessarily require a transnational perspective. Here an important dimension is the identification of many regional TSMs with the alternative globalization movement, characterized by a pragmatic antagonism against the neoliberal economic and political system, non-hierarchical and informal cooperation and alliances, participation in popular international mobilization, and persuasive and non-violent means (Ghimire 2011:figure 1).

Often, a conflict arises when global (or universal) sensibilities combine with regional values, demonstrated, for instance, by the ASEAN member states’ hesitance to sign international commitments and their insistence on “Asian values”. Acharya (2004) argues that the manner by which transnational norms can be diffused through localization in ASEAN affects its acceptability. Between security norms and humanitarian (human rights) norms, ASEAN has been able to localize security norms better, through the adoption of “flexible engagement” which took into account the importance of power arrangements. This can be seen to punctuate the preference for dialogue as a mechanism, as opposed to binding regional social policy. However, increased integration puts the AMS in similar situations or “regional boats” that warrant regional actions and decisions (Hurrell 2007). The challenge for ASEAN in the area of migration policy, then, is two-



fold: aligning itself with international norms, and banding together to resolve common regional concerns. How it responds to these challenges affects the shape of TMS advocacy.

In the process of negotiating context changes, various spaces are created for TSM/CSO engagement of official fora. Gerard (2014), analysing the modes of political participation of CSOs in intergovernmental bodies, identifies two types of spaces: *sanctioned channels* or those which are officially allowed following formal rules and accreditation processes; and *created* or *independent spaces*, or those where activities take place outside these formal processes, in parallel to and/or as protests against them. The structure of these two spaces determines the contribution that CSOs can make. This also helps highlight the fact that CSOs and TSMs do not merely react to structures or spaces opened up, but have in themselves an inherent power to push open new spaces.

While scholars tend to be tentative (ASEAN as “open but...only ajar”, Collins 2008:328), or negative (terms of engagement as largely dictated by ASEAN, Gerard 2014) about ASEAN, the political opportunity structure may yet provide TSMs/CSOs a crucial opening for what Acharya (2003) calls participatory regionalism or what TSMs/CSOs themselves call alternative regionalism (SAPA n.d.).

## **Globalization, Democratization and ASEAN Regional Integration**

ASEAN was formed in 1967, but for the first two decades it had been largely confined to official processes dominated by the Ministries of Foreign Affairs of AMS and focused on political security issues. Beginning in the mid-1980s, and more pronounced by the early 1990s, two global processes have swept the region that prompted it to highlight other, especially the economic, dimensions of regional integration. These processes affected the way ASEAN engaged with various stakeholders in the regional integration process.

The first was the end of the Cold War and the wave of democratization that came to the region. When ASEAN was formed in 1967, all the heads of state of the AMS were either strongmen or military leaders. It was also no secret that one of its primary objectives was to stymie the spread of communism in Southeast Asia. The end of the Cold War changed the dynamics in the region, which would in time see the “dreaded” communists undergoing processes of transition and opening up, eventually joining ASEAN.

Coinciding with the events surrounding the fall of the Berlin Wall were indigenous processes of democratization in the AMS. Starting in the second half of the 1980s, and within a period of less than two decades, five major events signalled significant transformations. In 1986, a People Power Revolution in the Philippines expelled Ferdinand Marcos, a dictator of more than 20 years. Thailand, after decades blighted by a series of military rules, defeated a coup in 1992, and underwent a process that eventually led to the drafting of its People’s Constitution in 1997. After a gruesome genocide in the hands of the Khmer Rouge, the United Nations helped Cambodia towards transition in 1993. In the following decade the region lost two other strongmen: Suharto fell in 1998 after ruling Indonesia for 31 years, and, Mahathir stepped down from power in 2003 after 22 years as Prime Minister of Malaysia. Future AMS Viet Nam and Lao People’s

Democratic Republic (Lao PDR) embarked on partial democratization through opening up economically, with the *Doi Moi* in 1989 and the New Economic Mechanism in 1990, respectively (Leung 2006). After more than 20 years since the military junta revoked the results of the elections in which the opposition won, Myanmar saw the opposition participating marginally in the 2010 elections.

Measured in average Polity score, this meant the “slow but steady growth in the level of democracy among Southeast Asian states”. Though the average score is still way below “the widely recognized threshold of liberal democracy, 80 percent”, it grew significantly from less than 25 percent to over 50 percent between 1976 and 2008 (Yung-min Yen 2011:405-406).<sup>3</sup>

The wave of democratization that swept the sub-region has had a positive impact on regional cooperation. ASEAN scholar Acharya (2003) argues that while democratization disrupted national processes, whatever displacement the transition caused was blunted by the challenge to traditional power that paved the way for more transparency and rules-based interaction in ASEAN. Elite-centric governance and the strict interpretation of non-interference are increasingly challenged. Pressure and scrutiny from outside the region has grown, and citizens have come to demand more openness from governments and the ASEAN as well as participated in platforms that address regional issues.

Certainly, ASEAN’s march towards democratization is halting, and with debatable stability. Despite some clear gains, it still hosts one of the world’s longest-serving leaders (indicating weak political transition), and persistent military rule. There have been disturbing reversals in earlier democratic turns (political upheavals in Thailand deteriorated into a military coup in May 2014, for instance), and many undemocratic practices are deeply entrenched (for example, forced disappearances). Further, while cross-border conflicts have been contained, internal conflicts in some AMS have worsened over time.

ASEAN today is politically diverse. It spans fledgling democracies (Indonesia, Philippines), centralized socialist regimes (Lao PDR, Viet Nam), a monarchic sultanate (Brunei), military rules (Myanmar, Thailand), and various shades of state control (Cambodia, Malaysia, Singapore), but the region arguably enjoys relatively more democratic space now, over 40 years after the founding of ASEAN. This democratic advance changed the way citizens participate in national and regional processes.

In the early decades of ASEAN, various social movements participated nationally in terms of protest and/or insurrection. At the level of ASEAN, though, social movements have been largely out of the picture. This changed with the development of different tracks of diplomacy within ASEAN. The official track (Track 1) is complemented by policy track (Track 2) that involves public intellectuals, academics and other select non-state actors like the business sector. Track 2 is represented by the ASEAN Inter-Parliamentary Organization (AIPO), the ASEAN Institutes of Strategic and International Studies (ASEAN-ISIS), the

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<sup>3</sup> The Polity Index (Polity IV, p4) measures competitiveness and regulation of participation, competitiveness of executive recruitment, openness of executive recruitment, and constraints on the executive (Munck and Verkuilen 2002:table 3). Munck and Verkuilen’s study pointed to the limitations of democracy indices, including Polity, owing to the use of narrow attributes and inappropriate aggregation procedures (table 4).

ASEAN University Network, and the ASEAN Business Advisory Council (ABAC). The most recent and yet to be fully developed is a people's track (Track 3) that facilitates interfaces between ASEAN and affected citizens and advocates. The ASEAN Civil Society Conference (ACSC), initiated by the Malaysian Government in 2005 and claimed since by civil society, provides an example of limited opportunity for such interfaces (Chavez 2007; Chandra and Chavez 2008).

The development of CSOs helped evolve the terms of engagement with governments and built the capacity to engage extra-national institutions. Here, the Philippines has been asked to lead for having "the largest, best organized, and most politically active (civil society) in the developing world" (Clarke 1998:136).

The other process ASEAN had to contend with is globalization, with the increasing integration within regions in the Northern countries. By the late 1980s, it was evident that there had been a push for more openness in the global economy. This reached its peak with the establishment of the World Trade Organization (WTO), after several rounds of negotiations on the liberalization of global trade. Existing AMS (plus Myanmar which would join ASEAN two years after) were among the original members of the WTO. Future members Cambodia, Lao PDR and Viet Nam transitioned into market economies, even as political openness lagged behind. Indeed, their membership in ASEAN was seen as crucial to their re-introduction to international diplomacy as well as to their readiness for engaging with global economic rules. Within years of their membership to ASEAN (5 for Cambodia, 15 for Lao PDR and 11 years for Viet Nam), these countries also acceded to the WTO.

Around the same time, growing economic integration among regions in the North—exemplified by the signing of the Treaty of the European Union in 1992 and the rolling out of the North American Free Trade Agreement in 1994—was evident. This alerted the ASEAN to sort out its faltering economic arrangement, and established the ASEAN Free Trade Area (AFTA) (Chavez 1997, 2006). Thus began ASEAN's foray into regional integration on the basis of economic openness, using the region as a stepping board to attract foreign investments.

AFTA was accelerated, and many other investments and services agreements followed. ASEAN also signed or is now negotiating at least eight other regional free trade agreements (FTAs). An FTA with Australia and New Zealand, and comprehensive economic cooperation agreements with China, India, Japan and the Republic of Korea are in place; while negotiations have been launched for an FTA with the European Union, and proposals are being consulted on agreements with Pakistan and East Asia (Asian Regional Integration Center/ARIC). At the same time, AMS have been signing and negotiating other FTAs and economic partnerships outside of the ASEAN framework. As of March 2013, a total of 196 free trade agreements are in effect, proposed or negotiated in ASEAN (Chavez 2013a).

While this does not necessarily imply a positive expansion of people's spaces in ASEAN, it compels ASEAN to engage more actors beyond the politicians and bureaucrats—with the business community, for instance. This is the reason for the different tracks of diplomacy described above. And where spaces are limited or intentionally restricted,

ASEAN as a group and AMS individually have to contend with protests and/or critical public opinion.

The processes of democratization and globalization resulted in increased compulsion towards regional integration in ASEAN, which in turn pried open some more spaces for people's participation. The current preoccupation is the ASEAN Economic Community, with goals for, among others, a single market and production base, free flow of goods, services and investments, and increased infrastructure and communications connectivity in the region. It is supposed to be accompanied by the equally important ASEAN Political-Security Community and the ASEAN Socio-Cultural Community, completing the three pillars of the ASEAN Community targeted for rollout by the end of 2015. The ultimate objective is to have greater economic integration and heightened harmonization in the social and political spheres in ASEAN.

Quite significantly, ASEAN's ambitions have been steered by the AMS, with little input from citizens. In fact, a 2012 survey points to low awareness and understanding of ASEAN by regional citizens. While there is a high familiarity (81 percent) with the ASEAN name, three in four (76 percent) respondents lack a basic understanding of what ASEAN is about (ASEAN Secretariat 2013).

On the one hand, the broad scope of the ASEAN agreements, and the pace by which they are negotiated and signed, raise concerns among regional citizens. Differential levels of development, the high levels of inequality in ASEAN, and the absence of consultation with and consent from affected citizens are prime reasons for this concern. On the other hand, the entry of new members (Cambodia, Lao PDR, Myanmar, and Viet Nam)—known to be less democratic than some of the original members—is seen as a setback to the spaces opened up, as the new members bring with them more restrictive practices (for example, the ways that they relate with social movements). However, it is precisely because of these two concerns that ASEAN has been getting more attention. Civil society groups and social movements have been clamouring for an ASEAN community that is “people-centred and people-empowered” and that promotes “the interest of peoples and communities via active citizenship, cooperation and democratic participation” (SAPA n.d.). These groups have been actively involved in the ASEAN Charter building process in 2006–2007 and pushed for the opening up of additional avenues for people's participation.

As discussed earlier, Track 3 is evolving in ASEAN. However, ASEAN is set on dictating the terms of people's engagement. Many spaces that were opened up, including the interface with the leaders during the ASEAN Summit, tend to be symbolic and rarely result in the inclusion of civil society and social movement recommendations in the official agenda. The entry into force of the ASEAN Charter in 2007 added substance to the “people-oriented” ASEAN. The Charter provides the principles as well as the mechanisms through which people participation could be possible, including the ASEAN Intergovernmental Commission of Human Rights (AICHR), the ASEAN Committee on Women and Children, the ASEAN Committee of Permanent Representatives, and the three Community Councils that were set up. The blueprints for the three communities also mandate the creation of “greater public awareness of the various initiatives, outcomes and issues” to “enable all stakeholders to be involved in the process” (ASEAN Secretariat 2009:19, 40).

## Intra-ASEAN Labour Migration and Regional Migrants' Rights Policy

ASEAN is not only characterized by political diversity, but also by wide disparities in terms of economic and social development. Unemployment can be as low as 1.4 percent in Thailand and as high as 9.8 percent in Indonesia; and income inequality is huge, with Singapore enjoying a per capita income more than 30 times that of Myanmar (Chavez 2011).

This wide economic and social disparity within ASEAN (also called the development gap), together with various internal conflicts in AMS, has encouraged tremendous growth in labour migration, especially intra-ASEAN migration, since the mid-1990s. Table 1 shows intra-ASEAN migration flows and their shares in total migration flows. While the numbers and percentages vary across countries, intra-ASEAN out-migration amounts to more than 4 million people, with 60 percent of total in-migration accounted for by migrants from within the region. Singapore and Malaysia together receive almost three-quarters of all intra-ASEAN migrants.

**Table 1: Intra-ASEAN Migration Flows**

|              | Intra-ASEAN       |                  |                           | Total migration   |                  |                           | Share of intra-ASEAN to total migration (%) |                  |
|--------------|-------------------|------------------|---------------------------|-------------------|------------------|---------------------------|---|------------------|
|              | Outward migration | Inward migration | Ratio of outbound/inbound | Outward migration | Inward migration | Ratio of outbound/inbound | Outward migration                           | Inward migration |
| Brunei       | 9,313             | 120,578          | 0.08                      | 24,343            | 148,123          | 0.16                      | 38.26                                       | 81.40            |
| Cambodia     | 53,722            | 320,573          | 0.17                      | 350,485           | 335,829          | 1.04                      | 15.33                                       | 95.46            |
| Indonesia    | 1,518,687         | 158,485          | 9.58                      | 2,504,297         | 397,124          | 6.31                      | 60.64                                       | 39.91            |
| Lao PDR      | 82,788            | 10,134           | 8.17                      | 366,663           | 18,916           | 19.38                     | 22.58                                       | 53.58            |
| Malaysia     | 1,195,566         | 1,882,987        | 0.63                      | 1,481,202         | 2,357,603        | 0.63                      | 80.72                                       | 79.87            |
| Myanmar      | 321,100           | 814              | 394.47                    | 514,667           | 98,008           | 5.25                      | 62.39                                       | 0.83             |
| Philippines  | 335,407           | 9,096            | 36.87                     | 4,275,612         | 435,423          | 9.82                      | 7.84  | 2.09             |
| Singapore    | 122,254           | 1,162,960        | 0.11                      | 297,234           | 1,966,865        | 0.15                      | 41.13                                       | 59.13            |
| Thailand     | 262,721           | 448,218          | 0.59                      | 811,123           | 1,157,263        | 0.70                      | 32.39                                       | 38.73            |
| Viet Nam     | 221,956           | 21,511           | 10.32                     | 2,226,401         | 69,307           | 32.12                     | 9.97  | 31.04            |
| <b>TOTAL</b> | <b>4,123,514</b>  | <b>4,135,356</b> | <b>1.00</b>               | <b>12,852,027</b> | <b>6,984,461</b> | <b>1.84</b>               | <b>32.08</b>                                | <b>59.21</b>     |

Source: Pasadilla 2011:7.

Two in three (67 percent) foreign workers in Malaysia are from ASEAN, the biggest group (51 percent or more than half the total) being from Indonesia. Thailand gets migrant flows from its neighbours in the Mekong–Cambodia, Lao PDR and Myanmar. The Philippines is the biggest labour-exporting state in ASEAN but contributes only 2 percent of intra-ASEAN flows, preferring outside destinations like North America (for permanent migrants) and the Middle East (for temporary migrants). Filipino migrant workers who stay in ASEAN go to Malaysia and Singapore. In contrast, more than 95 percent of Cambodian migrants move mainly within ASEAN (Pasadilla 2011 pp. 5-6).

The importance of regional migration for ASEAN cannot be overemphasized. It helps ease labour shortage in richer receiving countries while providing much-needed foreign exchange remittances to sending countries, demonstrating clear mutual benefit for both sides. Malaysia and Thailand, for instance, rely on migrant labour for their plantations and fisheries sectors, while most of the migrant workers Singapore receives are in

domestic work (Chavez and Bello 2010). Migration also facilitates the exchange of knowledge about specific countries within the region. Migrant workers from sending (like Indonesia and the Philippines and the Mekong countries of Cambodia, Lao PDR and Myanmar) and citizens from receiving (like Brunei, Malaysia, Singapore and Thailand) countries learn about each other from their interaction in the labour market. However, a significant portion of intra-ASEAN labour migrants are semi-skilled or low-skilled, have lower education, and are undocumented or with irregular status (Chavez 2007). Often knowledge about them is amplified by negative news (for example, crackdowns on irregular migrants were used to appease restive labour in Malaysia in the aftermath of the Asian financial crisis), and the response of groups that come to the aid of distressed migrants.

Migrants' rights are given low priority on the regional agenda. AMS tend to focus on border control, and leave much of the regulation of migration flows, recruitment and placement to private brokers, resulting in the limited response to problems that affect the gender, ethnic and social welfare concerns of migrant workers (Kaur 2010). ASEAN has traditionally treated both labour and migration as sensitive issues. This sensitivity is reflected in the ASEAN's failure to include in the AHRD "several key basic rights and fundamental freedoms, including the right to freedom of association" (Civil Society Submission 2012). Migration, on the other hand, has been treated as a law enforcement and security problem. As such, the focus has been on the negative side of migration, specifically on undocumented migrants and trafficking, and recently, on cross-border terrorism (Chavez 2013b).

Massive migration trends, not only in ASEAN but globally, have led to conventions on the protection of migrants' rights. These conventions and the campaigns for their ratification have been steered by the International Labour Organization (ILO), and supported by other key agencies like the Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Educational, Cultural and Scientific Organization (UNESCO). These complement intergovernmental consultation processes (like those supported by the International Organization for Migration/IOM) to address migration issues.

Expectedly, AMS have poor ratification records on ILO conventions relevant to migrant workers. Only the Philippines ratified or signed C-97 (Migration for Employment), C-143 (Migrant Workers, Supplementary Provisions), and the International Convention on the Rights of Migrant Workers and Members of their Families. Cambodia, Indonesia and Sabah (Malaysia) signed or ratified only one of these, while the others have not committed to any of them. The most recent convention, C-189 (Domestic Workers), important for AMS as a big proportion of intra-ASEAN migrants are domestic workers, has only been signed by the Philippines, as of March 2015 (see table 2).

The numbers and scales of low-skilled and undocumented labour migrants indicate precarious work and substandard living conditions. In fact, in Singapore, the domestic workers and their problems are so ubiquitous that local CSOs and NGOs have taken up these concerns as local issues that require national policy response (Lyons 2009). The issue needs appropriate official regional attention, but ASEAN has maintained a narrow focus on skilled workers and professionals. It has negotiated and approved several mutual

recognition arrangements in the skilled professions like nursing and engineering. There is also an ASEAN Agreement on the Movement of Natural Persons that covers business visitors, intra-corporate transferees, contractual service suppliers, and other skilled labour. Except in the manner discussed under migration concerns, there has been little room for discussion of low-skilled and undocumented labour within ASEAN (Chavez 2013b).

**Table 2: ASEAN Member States Ratification of ILO Conventions Relevant to Migrant Workers, as of March 2015**

| State                           | C-97         | C-143         | ICRMW 1990 Convention     |                           | C-189 Domestic Workers Convention, 2011 |
|---------------------------------|--------------|---------------|---------------------------|---------------------------|---|
|                                 |              |               | Ratification or accession | Signature 1990 Convention |   |
| Brunei                          | X            | X             | X                         | X                         | X                                       |
| Cambodia                        | X            | X             | X                         | 27 Sept. 2004             | X                                       |
| Indonesia                       | X            | X             | 31 May 2012               | 22 Sept. 2004             | X                                       |
| Lao PDR                         | X            | X             | X                         | X                         | X                                       |
| Myanmar                         | X            | X             | X                         | X                         | X                                       |
| Malaysia                        | X            | X             | X                         | X                         | X                                       |
| Sabah                           | 03 Mar. 1964 | X             | X                         | X                         | X                                       |
| Philippines                     | 21 Apr. 2009 | 14 Sept. 2006 | 05 July 1995              | 15 Nov. 1993              | 05 Sept. 2012                           |
| Singapore                       | X            | X             | X                         | X                         | X                                       |
| Thailand                        | X            | X             | X                         | X                         | X                                       |
| Viet Nam                        | X            | X             | X                         | X                         | X                                       |
| Timor Leste<br>(ASEAN Observer) | X            | X             | 30 Jan. 2004 (a)          | X                         | X                                       |

**Source:** Processed from information from ILO: <http://www.ilo.org/> and <https://treaties.un.org/>

**Notes:** **C-97:** ILO Migration for Employment Convention (Revised), 1949; **C-143:** ILO Migrant Workers (Supplementary Provisions) Convention, 1975; **ICRMW:** International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990; **C-189:** ILO Convention on Decent Work for Domestic Workers

## Focus on the Region: TSMs, International Norms and the Campaign for a Regional Migrants' Rights Policy

Temporary and low-skilled migrant workers are most marginalized, and responding to their issues requires the engagement of various institutions (national, regional and international) (Piper 2010a). By most accounts, national action has been inadequate; while international organizations and processes (for example, ILO and IOM) have also largely failed (Kneebone 2010). In turn, ASEAN provides at best a slow response to this issue. All this leaves ample space for social movement intervention at all levels.

The two processes of globalization/regional integration and democratization—at once formal and informal, definite and volatile—frame the political opportunity structure for regional advocacy, and define both the limits and possibilities of engaging the regional platform. ASEAN's efforts towards institutionalization likewise formalize structures and mechanisms for direct engagement, albeit on a limited scale. The urgency of migrant work, on the other hand, provides the normative substance of regional advocacy.

A preliminary scan of two transnational social movements that actively advocate the protection of migrants' rights in ASEAN, the Migrant Forum in Asia and the Task Force on ASEAN Migrant Workers, yield interesting observations on how TSMs operate in the context of emerging opportunities. Not included in the discussions are other TSMs, such

as the Coordination of Action Research on AIDS and Mobility (CARAM-Asia), and the Mekong Migration Network, which also have a consistent presence in the region.

Both MFA and TF-AMW recognize the opportunities opened up in ASEAN, but the trajectories of their approach are different. Before training its sights on ASEAN, the MFA already had two decades of experience campaigning at the global and pan-Asian level. ASEAN is seen as one of the many platforms to engage to exhaust all possible avenues for migrant rights. It follows a global advocacy, and aims to have universal norms adapted in ASEAN. The TF-AMW, on the other hand, was formed by various national and regional groups to specifically engage the ASEAN Committee on Migrant Workers and the drafting of a regional instrument for the protection of migrant workers. It therefore aims to protect and institutionalize a fledgling space and to infuse much-needed dynamism into a unique process. Compared to MFA, TF-AMW has a looser network structure. Many of its members are also part of the MFA, but also include a few others that are not with MFA.

### ***Bringing international norms into the region: The Migrant Forum in Asia<sup>4</sup>***

First conceived in 1990 in a meeting of migrant workers' advocates in Hong Kong, the MFA was formalized four years later in Taiwan. It is guided by the belief that migrants' rights are human rights, and organizes around a five-point strategic agenda: to fight and address the violation of migrants' human rights; to educate and organize migrants to challenge globalization; to create alternative sustainable economic models, processes and practices for migrants; to broaden and strengthen alliances and solidarity with groups working for migrants' rights; and to build and strengthen popular movements and promote political momentum to promote a migrant agenda (see MFA website).

MFA is a pan-Asian regional network of NGOs, associations and trade unions of migrant workers, and individual advocates. It has 47 member organizations in 17 countries in East (Hong Kong, Japan, Mongolia, the Republic of Korea and Taiwan Province of China), Southeast (Cambodia, Indonesia, Malaysia, Myanmar, the Philippines, Singapore and Thailand), South (Bangladesh, India, Nepal and Sri Lanka) and West Asia (Israel). Membership is open to Asia-based groups working on migrants' issues that adhere to the MFA principles. Individuals are accepted as non-voting members, while migrant-oriented groups outside of Asia may be considered as working partners. According to MFA, its "members and partners are also coalitions and networks, bringing MFA membership in Asia close to 200, and growing each year" (interview with MFA, 2 October 2013).

The MFA has a simple and decentralized structure. The General Forum, the highest decision and policy-making body, convenes at least once every two years. An Executive Committee, composed of two representatives elected from each sub-region, a representative from regional organizations and a representative from the Secretariat, oversees the operation of the Secretariat. The Secretariat is based in Manila and is supported by a Supervisory Group (comprising representatives of Philippine-based member organizations). Handling specific issues and concerns are Task Forces: on health, West Asia networking, advocacy and capacity building, among others (see MFA website).

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<sup>4</sup> Information on MFA, its activities and statements can be found on its website: <http://www.mfasia.org/>.



MFA serves as a facilitator and a node for regional communication and coordination for various migrant advocacies and actions. Its listed international campaigns can be grouped into three categories: direct engagement in official processes (the International Labour Conference/ILC and the Global Forum on Migration/GFMD); paralleling of official processes (the People's Global Action on Migration, Development and Human Rights/PGA vis à vis GFMD); and ratification campaigns (conventions on migrant workers and domestic workers<sup>5</sup> and related international conventions on human and labour rights).

MFA sends delegations and participates in official formal processes (such as the ILC) and informal ones (like the GFMD). In 2010, it sent a 25-person delegation to the 99th Session of the ILC that discussed Decent Work for Domestic Workers. MFA members joined working group meetings and some even acted as advisers to their countries' official delegations. MFA reacted quickly to the UN High Level Dialogue on Migration and Development in 2006 that created the GFMD<sup>6</sup> in 2007 as an international platform for dialogue and cooperation held annually. MFA rejected the migration and development framework that offered migration as a development tool to be enhanced (and is therefore concerned with the facilitation of migration flows and remittances). Instead MFA, with its international umbrella network Migrants Rights International (MRI), established the People's Global Action on Migration, Development and Human Rights (PGA), which is the largest parallel event to the official GFMD. Through the PGA, MFA channels its criticism of the GFMD migration and development framework and refocuses it using a rights-based approach (Piper 2010b).

MFA is central to two ratification campaigns. In 2010 it became a member of the International Steering Committee of the Global Campaign for Ratification of the Migrants Rights Convention. The campaign is an alliance of intergovernmental agencies, and international human rights, migrant, labour, church and women's organizations. The Steering Committee also counts as members the ILO, UNHCHR, UNESCO, IOM, Amnesty International, Migrants Rights International, Public Services International, World Council of Churches, and others. Recently, MFA has taken up the ratification campaign for the ILO Convention on Decent Work for Domestic Workers (C-189), subsumed in the broader International Campaign for the Recognition of Domestic Work as Work, which advocates for the recognition of the status and rights of domestic workers, the enactment of local and national laws covering them, the removal of discrimination against migrant domestic workers, and the protection of the rights of domestic workers. Under this umbrella, MFA has launched the "Equal Pay for Equal Work" and the "Regional Campaign for the Recognition and Protection of Migrant Domestic Workers" campaigns, and facilitated the formation of the Asian Migrant Domestic Workers' Alliance (ADWA) where MFA serves as one of the regional advisers (see MFA website).

MFA maintains a wide network of diverse but interrelated alliances on issues of education (with the Asia-South Pacific Bureau on Adult Education for HIV/AIDS education, Diplomacy Training Program for human rights education), trade and development (with

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<sup>5</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Convention concerning Decent Work for Domestic Workers.

<sup>6</sup> More information on the GFMD is available in the website: <http://www.gfmd.org/en/>.

Jubilee South—Asia Pacific Movement on Debt and Development, Transnational Institute for Grassroots Research and Action for financial justice for migrants), health (with UN Regional Task Force on Mobility and HIV/AIDS Vulnerability Reduction), and rights (with Migrants Rights International). These networks have a pan-Asian or global reach.

MFA as a movement operates at the international level, and initial indications point to it being relatively secure in that position. It is the go-to movement for the Asian perspective on migration. Its long experience in international campaigning and its vast network of membership as well as alliances place it at a critical position of influence. Complementing the global face of MFA are individual member organizations that target national institutions, because ratification is by the state, and laws are national or local. What then is the additionality of MFA's focus on ASEAN?

The broad regional processes that swept ASEAN were not unnoticed by MFA. The group believes that “globalization and its neo-liberal policies have led to the lowering of labor cost by any means, uneven development, as well as social inequalities”. It identifies three challenges in the region: the lack of rights protection; market competition over rights of migrant workers; and the challenge of bilateral labour agreements that tend to focus on immediate specific needs but do not address root causes of problems, reinforcing the “race to the bottom approach taken by sending and receiving countries” (interview with MFA, 2 October 2013; interview with Marizen Santos, 4 October 2013).

MFA acknowledges the challenge of engaging the 10 AMS individually, and recognizes that to engage them collectively as ASEAN (even though individual MFA members are involved in national ratification and related campaigns) is another strategy for advocacy for the rights of all migrant workers and members of their families in the region. To do this, it engages through two civil society platforms and two processes (one civil society with opportunity for official interface, the other official). The civil society platforms are: the Task Force on ASEAN Migrant Workers (more on this below); and the Solidarity for Asian People's Advocacy/SAPA<sup>7</sup> (a network that advances people-to-people regionalism and regional alternatives), where it sits as a member of the Regional Steering Committee, is a member of different working groups including the working group on ASEAN, and is the convener of the working group on migration and labour. The processes are the ASEAN Civil Society Conference, a civil society event co-organized by SAPA as a parallel to the ASEAN Summit where speeches, testimonies and recommendations of people affected by ASEAN projects are highlighted; and the ASEAN Forum on Migrant Labour (AFML) (more on this below).<sup>8</sup>

Recognizing the need for national champions in the ratification campaign, in the enactment of laws for the protection of migrants and the push for a regional migrants' rights instrument, the MFA facilitates the Asian Parliamentarians Caucus for Migrants' Rights.<sup>9</sup> The Caucus has the following objectives: (i) to promote the cause of migrant workers in national parliaments; (ii) to collectively engage at the regional and international levels in the development of agreements and legislation; and (iii) to consider national, economic and human security in the management of migration issues. Since its

<sup>7</sup> SAPA is a pan-Asian movement but it is most active in ASEAN work.

<sup>8</sup> Interview with MFA, 2 October 2013; interview with Marizen Santos, 4 October 2013; MFA website.

<sup>9</sup> Information on the Parliamentarians Caucus can be found on its website: <http://asianparliamentarians.mfasia.org/>.

first meeting in 2007, the Caucus has been meeting yearly in parallel to the ASEAN Inter-Parliamentary Assembly.<sup>10</sup>

In sum, MFA has three contributions to ASEAN-focused advocacy: one, it brings into the regional advocacy its long history of international campaigning, and links its national members and international partners to regional groups; two, it contributes to the campaign for a regional instrument for the protection of migrants' rights, in the process addressing the lack of protection in many AMS; and three, it is able to reach and develop new constituencies, including national champions that help to shift the balance of advocacy both nationally and regionally.

### ***Banding together for regional advocacy: The Task Force on ASEAN Migrant Workers***<sup>11</sup>

TF-AMW also rejects the migration and development framework, is against the commodification of migrant workers, and supports a rights-based approach to the protection and promotion of the rights of migrant workers. It can be said that the TF-AMW is a project of national and regional groups that seek to intervene in official ASEAN processes. The TF cites the 2004 Vientiane Action Plan (VAP) which called for the elaboration of an instrument for the protection of migrant workers' rights and the commitment of AMS to respect and recognize such rights, and for the signing of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, which was the key impetus for its formation. Its main task is to facilitate and promote its members' engagement in and of ASEAN bodies (interview with MFA, 2 October 2013).

Almost two years after the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers was signed, the ASEAN Committee on Migrant Workers was convened in September 2008. Its work plan recommended the organization of the ASEAN Forum on Migrant Labour, which was integrated in the ASEAN Socio-Cultural Community Blueprint adopted in March 2009. The AFML has since been held yearly as a "platform for discussion and the exchange of views and ideas among stakeholders on labour migration issues" (ASEAN Secretariat 2010a). Since 2007, TF-AMW has dedicated itself to tracking the implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers and the ACMW, and refining the civil society recommendations. The TF-AMW has a regular seat in the AFML and has been officially recognized as articulating the views of civil society on migrants' rights in ASEAN (see TF-AMW website).

TF-AMW facilitates civil society participation in AFML (interview with MFA, 2 October 2013). In 2007–2008, TF-AMW held eight national and seven regional consultations to develop the Civil Society Proposal: ASEAN Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers, which was formally proposed to the ASEAN Senior Labour Officials Meeting in Vientiane in May 2009. The civil society proposal, together with the documentations of the eight national consultations and letters/statements made to ASEAN officials and national governments, was published as a resource book in December of the same year. As an indication that the process and TF-

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<sup>10</sup> In 2011, the Caucus decided to engage beyond ASEAN and invited Parliamentarians from South Asia.

<sup>11</sup> Information on the TF-AMW, its activities and statements can be found on its website: <http://www.workersconnection.org/>.

AMW's role are officially acknowledged, a senior ASEAN official wrote the introduction to the book. From then on TF-AMW took charge of mobilizing and preparing civil society input relating to the AFML, the ACMW and other processes affecting migrants' rights (see TF-AMW website).

TF-AMW has a convenor based in Singapore and a Project Finance and Administration Support desk based in Bangkok (at the regional human rights coalition FORUM Asia). There are focal points in all the ASEAN member countries except for Brunei and Myanmar. Burmese migrants based in Thailand are also represented by a focal point (see TF-AMW website).

### **Shared and complementary approaches to ASEAN advocacy**

Although the initial approach differed for these two TSMs, there are many similarities between them: there are overlaps in their structures, forms of advocacy, the spaces they occupy and the platforms they engage with. They also subscribe to a broader narrative for change that goes beyond just migrants' rights or migration and development, and straddles broad rights-based advocacies, as well as the push for alternative regionalism. Both declare themselves to be anti-neoliberal.

In terms of forms and platforms of engagement, both MFA and TF-AMW make formal submissions to ASEAN bodies and develop these submissions through member and open national/regional consultations. They also write letters and petitions, and do media work. They share the AFML platform, with the MFA covered under the TF-AMW umbrella.

There is significant overlapping of membership between MFA and TF-AMW, and both operate within the same networks. This implies that they tap the same membership structures in their campaigns. In-country MFA member organizations and TF-AMW focal points (sometimes they are the same) help organize national and regional consultations, and are the ones mobilized for lobby work and other actions.

MFA and TF-AMW reject the narrow conception of migration and development which sees migration as a natural phenomenon and therefore inevitable, thereby diminishing the influence of various social, economic and political factors (Piper 2010b). Both subscribe to a rights-based approach. To the extent that their memberships are also part of the SAPA, they also adhere to alternative regionalism, where regional spaces and processes are sought to be occupied for the advancement of people's demands (SAPA n.d.; interview with Ellene Sana, 15 August 2014).

There are differences, but MFA sees these as complementary. TF-AMW's mandate to focus on the official processes means that it takes charge of the unenviable task of harmonizing various TF members' inputs into a coherent unified declaration. TF-AMW also helps members to arrive at a consensus document, which means helping to negotiate the rough edges and dealing with the frustration when not all statements are included. On the other hand, because TF-AMW engages with official processes, it is not as free to use certain forms of action that MFA can deploy freely, like marches and demonstrations (interview with Marizen Santos, 4 October 2013; interview with Ellene Sana, 15 August 2014).

### ***Distinctions and dynamics of regional engagement***

Following Gerard (2014), it can be said that TF-AMW's main focus are the sanctioned spaces, while MFA gets more flexibility as ASEAN is only one of the arenas it engages.

TF-AMW members also directly engage country officials, who hold the negotiating power in ASEAN. However, as a network, its main modality of participation is the AFML, which has neither the substantive power nor the decisive space. Being an official process, AFML events are by invitation only, and one has to either go through the TF-AMW (which often has limited slots) or the AMS to be able to get in. Being informal, all AFML deliberations and discussions are exploratory, and are at best recommendatory. It is the senior officials and Ministers of Labour who have the mandate to take up issues and negotiate. AFML hews closely to the flexible arrangements favoured by ASEAN, providing a forum for discussion but is non-binding on policy. For all the energies it requires, participation in the AFML is not the most direct route to engagement.

In contrast, ASEAN engagement is just one among a diverse menu of strategies MFA employs. Its biggest strength lies in its capacity for grassroots mobilization and its commitment to develop national legislative champions, which are essential for the introduction of universal norms to both individual countries and ASEAN.

However, it would be inaccurate to suggest that TF-AMW members individually have a narrow focus. As mentioned, many of them are also members of MFA, and a few are members of CARAM-Asia and other networks. These networks are part of TF-AMW itself. Rather than reflecting the general profile of its members, the TF-AMW represents their common desire to penetrate an official, albeit informal, process in ASEAN. It produces an interesting dynamic, where members have to, for instance, calibrate the tone of their statements to fit in with what is appropriate for ASEAN, or to respond to priorities identified by the ASEAN leadership. Members use their other networks for stronger and less tempered actions.

Finally, there is merit in bringing more of ASEAN officialdom into the migrants' rights advocacy, even if it means adjusting to the language it understands. On the other hand, a push from the grassroots, with support from champions (which both MFA and TF-AMW facilitate), is also a good way of altering the negotiating dynamics in ASEAN through individual AMS. TSMs engage regional institutions like ASEAN from a particular position without official power. The salience of TSM dynamics lies in the way they are able to shift this position.

### **Impact and the Future of TSM Campaigning in ASEAN**

TSM advocacy at the regional level is important in two ways: one, it pushes ASEAN to adopt internationally recognized norms, and two, it widens the constituency in support of the adoption of such norms. How successful have TSMs been in shaping policy in ASEAN?

One difficulty in evaluating the impact of TSM advocacy is presented by binding structural and political constraints that frustrate policy reform. For instance, the

prevailing discourse in ASEAN and globally is migration and development. OHCHR, UNESCO and ILO might share the rights-based approach espoused by MFA and TF-AMW, but states and governments do not, as evidenced by their non-ratification of key ILO Conventions. A longer timeframe is therefore necessary to account for incremental changes that take years to evolve. Compare this to the WG-AHRM campaign that waited 14 years to see the creation of the AICHR. And even then, the efficacy of the AICHR will have to be judged by what it actually does. The same can be said of earlier mechanisms like the ASEAN Regional Forum (ARF), which many decry as having degenerated into mere talk shops.

Another difficulty is finding an accessible measurement of public impact. Public opinion is a close approximate but there are no polling outfits that regularly track perceptions on ASEAN issues. US-based Pew Research Center (2007) found that the biggest migrant labour-sending and labour-receiving countries in the region—Indonesia (89 percent) and Malaysia (89 percent), respectively—are among the countries that look least favourably on immigration. The mismatch between perception and appreciation of needs (actual benefits from labour migration) often leads to precarious conditions, especially for the lower-skilled migrants, migrant domestic workers and irregular migrants. Worse, it does not augur well for the acceptability of a regional instrument on migration. Yet such mismatch is not tracked and measured, and therefore a poor gauge for the acceptability of TSM advocacy.

On the other hand, acceptability of TSM advocacy can also be measured by how it is able to broaden its constituency through the recognition the advocacy gets in official forums. The measures are indirect, like having a seat on the table (the number of times the TSMs get invited to official processes) and recognition by officials (for instance, receipt and acknowledgement of submissions and recommendations), which both do not necessarily translate into policy change. The recruitment of new allies and social movement actors into the advocacy, like MFA's facilitation of the Asian Parliamentarians' Caucus on Migrants' Rights, is another possible indicator. If these two measures were used, it would appear that both MFA and TF-AMW have achieved some relative success, but there is need to probe deeper.

Scholars claim that TSMs have a poor record in defining official spaces (Collins 2008; Gerard 2014) and influencing policy (Ghimire 2011), but they facilitate the process of staking claims, which is good for active citizenship and should not be overlooked. Political and economic changes happen simultaneously at the national, regional and global levels. TSMs operating in the ASEAN setting distil issues and make them easily understandable for regional citizens and affected communities (like migrant workers). Their international and national exposure brings to the region's attention both the global norms that should be the basis of any regional response and the national specificities of the migration question. For now, the immediate imperative is making sure that basic protection and rights are accorded to migrants. As migration trends evolve, related issues of even more sensitive nature will assert themselves, including residency and citizenship rights. TSMs may be well placed to take these issues up, but it remains a question whether ASEAN will be up to par, giving all the more reason for TSMs to persist in their advocacy.

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## **ASEAN Declarations, Charters and Agreements**

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