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The Interaction between State and Non-State Actors: The Role of Human Rights within the ASEM Dialogue

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Approved by

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Abstract

What role do state and non-state actors play in the in the negotiation process on the protection of human rights in the Southeast Asian region? Is there an interaction between both types of players or is the ASEM Dialogue still dominated by state parties? And does the discussion of human rights within the ASEM Dialogue actually lead to more protection of these rights within the region of Southeast Asia?

These are the research questions I have tried to answer in this paper on the ASEM Dialogue as an example of multilateral, international negotiation. Human rights are a controversial issue and have caused a sometimes troublesome relation between the European and East Asia continents. The case of Burma/Myanmar is a clear example in which both sides were, more or less, clear opponents. The reason for this is that the East Asian states have tried to keep the issue of human rights off the official ASEM agenda, while the European states were in favour of dealing with the issue in the Summits. Non-state actors, like non-governmental organisations have held parallel sessions on general issues on the ASEM agenda, but have also organised specific meetings on human rights issues. Asian states have tried to prevent these parallel sessions from taking place, and have limited the possible role of non-governmental organisations in general, using a similar argument as for preventing the human rights dialogue. Despite these restraints, a slow increase in the role that NGOs can play in the region is occurring. The ASEM Summit can function as a legitimization for these non-state actors to increase their influence. And the European states should use this trend to get the issue of human rights discussed during the Summits, by letting the NGOs lobby for it. Through this interaction with European states, NGOs can increase their effectiveness and hopefully increase the level of human rights protection.

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About the Authors

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The Interaction between State and Non-state Actors

The Role of Human Rights within the ASEM Dialogue

Simone Eysink

Introduction

On 26 July 2005, the Burmese military junta decided to abandon the option to become the president of the Association of Southeast Asian Nations (ASEAN) in 2006, which would have consequences for the presiding and hosting of international discussion fora like the Asian Regional Forum (ARF) and the Asian Europe Meeting (ASEM). With this decision, it prevented a diplomatic disturbance from exploding and destroying the relation between the (South) East Asian nations and their European and American counterparts. The Americans stated that they would boycott the next meeting of ARF if Burma/Myanmar would preside ASEAN. Moreover, several member states of the European Union declared themselves to be against the participation of Burma/Myanmar in the Summits of ASEM, which are an example of the process of multilateral negotiation attended by the heads of state and government of the participating states from Europe and East Asia. This issue was disturbing the relation between both continents from the moment the Southeast Asian country was adopted in the association of ASEAN in 1997. This matter is not permanently resolved by the above described decision of Burma/Myanmar, though.

The issue that was at stake here is the regime of the military junta of Burma/Myanmar, which seized power through a violent coupe, and which is known for the violation of fundamental human rights. The junta is ruling since 1988, restricting various civil and

political rights, controlling public and private life of the population entirely, resulting in the economic and political exhaustion of the country. The issue of the violent regime of Burma/Myanmar and the problems involving its participation in the ASEM Dialogue is just an example case of the troublesome relation between the member states of the European Union and the countries in East Asia regarding the controversial issue of human rights. Apparently, both regions have a different understanding of the issue, the contents, the consequences and the realization. This has lead to a difficult relation in the past, especially at the negotiation table. The Asian states often try to keep the Dialogue focused on economic and more non-controversial political issues, while their European counterparts have tried to insert the issue of human rights. The reason for the latter to do so is that most European states consider the level of human rights protection, which is a universal obligation according to them, to be somewhat diminutive in the region of Southeast Asia.[1] But has the fact that the European states try to put the issue of human rights on the agenda of the dialogue increased the level of protection in the region of their Southeast Asian counterparts? And what role do non-state actors play in improving the level of human rights protection through multilateral negotiations? In other words: what role do state and non-state actors play in the negotiation process on the protection of human rights in the Southeast Asian region, in particular regarding the example case of Burma/Myanmar?

In order to answer this question, the process of multilateral negotiations and the interaction between state and non-state actors in this matter will be analyzed, applying this theoretical literature to the ASEM Dialogue in general and to the issue of human rights in specific. Then, the third chapter continues with a discussion of the role of non-state actors, especially non-governmental organizations, in the protection of human rights in general, and applied to the region of Southeast Asia. Finally, the analysis of multilateral negotiations, the role of states and NGOs in human rights protection and the functioning of the ASEM Dialogue regarding human rights is applied to the matter of participation of Burma/Myanmar, followed by several concluding remarks.

[1] The reason why the focal area is limited to Southeast Asia is the fact that this region is easy to define, because of the functioning of ASEAN in this part of the Asian continent. Besides, the member states of

1. Multilateral negotiations: the role of state and non-state actors

A. The complex process of international multilateral negotiations

The traditional vision on the international negotiation process is one of a collection of various situations in which sovereign parties come together to come to a desirable solution.[2] The process of the negotiation, and its complexity, is coloured by the amount of parties participating in the finding of a solution. Before considering the amount of parties in the process though, it is important to define the concept of "party". According to Larry Crump and Ian Glendon in their article on the complexity of multiparty negotiation, a *party* is a participant in a conflict, who has the authority to take a decision or decisions and who is able to communicate such decisions.[3] Both aspects are intertwined and are important to distinct a party from for instance an agent or a negotiator. The latter are instruments through which the negotiation process can take place, but who are not a participant in a conflict and who are, in their own capacity, not able to take decisions.

Coming to the issue of the amount of parties to an international negotiation process, there is an important distinction to make between multilateral and bilateral processes. The term *multilateral* refers to a negotiation to which three or more sides are connected, while *bilateral* refers to a two-sided structure. Fen Osler Hampson compared multilateral negotiations is his book with "coalition-building enterprises involving

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ASEAN form an important part of the Asian part of the ASEM Dialogue, and they established a form of multilateral negotiation with their EU counterparts as early as 1972.

[2] V. A. Kremenyuk, *The emerging system of international negotiation,* in: V.A. Kremenyuk (ed.), Intrenational Negotiation; Analysis, approaches, issues, San Fransisco: John Wiley and Sons, 2002, p.22

[3] L. Crump, A.I. Glendon, *Towards a Paradigm of Multiparty Negotiation,* in: International Negotiation, volume 8, issue 2, September 2003, p.198

states, non-state actors, and international organizations".[4] This definition shows already that there are different kinds of parties and these parties have a certain relation to each other. In the case of multilateral negotiations, as compared to the bilateral type, the relations are rather complex. Besides the primary parties involved, there can be third parties, not directly participating in the conflict but with a certain interest in the issues at stake. In the traditional view of multilateral negotiations, state parties are the main actors, since they have the decision power and are the ones presenting the outcome to their rank and file. This narrow view, however, is no longer valid in the rapidly globalizing world. One of the main characteristics of globalization is that states have become interdependent and in order to structure this interdependency, international organizations are created. Besides these international organizations, multinational corporations, interests groups, academics, parliamentarians, etc. play a growing role in influencing policy and thus the international negotiation processes.[5] These other, non-state actors can become a third party in such a process, influencing the outcome by forming coalitions with the state parties involved. Or they become even a primary party, when they have a clear interest in the issue at stake. Since the end of the Second World War, the amount of these non-state actors has grown rapidly. There are permanent international institutions that deal with international issues of various nature such as the United Nations. Besides, there are permanent international negotiation fora that deal with specific international topics, such as the World Trade Organization (WTO) or the North Atlantic Treaty Organisation (NATO). Besides, there are regional organisations, dealing with issues concerning the specific region, such as the Association of Southeast Asian Nations (ASEAN) or the European Union (EU).

There is almost a direct relation between the amount of parties in a negotiation process, both state and non-state, and the possibility of reaching an agreement. The conclusion that the higher the amount of parties, the lower the possibility that an actual agreement will be reached is valid as long as the large amount of parties also results in a large amount of different interests. Besides, there is a difference in bargaining power between

[4] Fen Osler Hampson, M. Hart, *Multilateral negotiations; Lessons from arms control, trade, and the environment*, Baltimore: The Johns Hopkins University Press, 1995, p.24

the parties: large states for instance have more bargaining power than small states and state parties usually have more influence than interest groups. This power difference is cause for the complexity of multilateral negotiations as well. The complexity is fuelled by the difficulties in communication between the parties involved. The more parties are participating in the process, the more difficult it will be to interpret the verbal and non-verbal forms of communication. This latter aspect is strongly influenced by cultural differences between parties though. The more parties there are to a negotiation process, the more these cultural differences could stand in the way of reaching an agreement. These differences in culture can thus refer to the differences in behaviour during the negotiation process, but also to the differences in position on certain issues, which brings us back to the issue of heterogeneity of the interests in multilateral negotiation processes. In the case of the negotiation between the European Union member states and their Asian counterparts in the ASEM Dialogue, the issue of human rights clearly shows this difference of opinion caused by varying cultural interpretations of the issue. While the European states tend to put emphasis on the protection of the rights of the individual, for instance, the Asian states rather think of the rights of the community as a whole. The justification for this position is that Asian culture is more collectively based, while the Western cultures are more focussed on the individual. The issue of cultural values in international negotiations is certainly interesting, but goes at this point beyond the scope of this paper. The question that also arises here, and which will be dealt with later on, is how far this cultural interpretation of human rights is legitimate, in the light of the agreed universality of the rights posed. In this case, it is hard to find a bridge for this cultural difference.

One way of structuring the complexity of multilateral negotiations is through coalition building. A coalition can be defined as "the unification of the power or resources (or both) of two or more parties so that they stand a better chance of obtaining a desired outcome or of controlling others not included in the coalition."[6] Coalitions are an interesting option for parties that have a weak bargaining power. For them, the costs of

[5] G. Sjöstedt, *Empowerment of developing countries in international talks; A strategy to make global regimes more effective,* in: PIN Points, Network Newsletter, volume 24, 2005, p.10
[6] Fen Osler Hampson, M. Hart, 1995, p.29

forming a coalition are lower than maintaining its individual membership to the negotiation. A coalition is only effective if it increases each member's share of the negotiated outcome.[7] In order to form a coalition, a process of hard bargaining must be followed in order to reach a common position, which might lead to a rather inflexible disposition of the coalition in the general negotiation. This stubbornness may also be caused by fixed ideologies and principles that are the basis of the coalition.[8] Reluctance to leave these principles causes the inflexibility and can lead to less possibility to reach an agreement, which is actually the opposite of the desired result.

Coalitions do not have to be fixed indefinitely though. It is possible that within an already established coalition, parties cooperate on some issues, but disagree on some other. But even within a single party, it is possible that there is an internal dispute. This was the case for instance in the position of the U.S. government regarding the treatment of, again, Burma/Myanmar. As for its policy on the sanctions imposed on the country, the Bush administration was quite clear. However, when it came to the diplomatic pressure to be used to persuade the military junta in Rangoon to start the diplomatic process of reform, the government in Washington had more trouble in defining its position.[9] Taking this a step further, single entities can develop into a bilateral negotiation or even a multilateral negotiation, in the worst case scenario.[10] This scenario, however, will not occur in the case of states so quickly.

In order for coalitions to be effective and for managing and structuring the complexity of the multilateral negotiation processes the role of the leaders in the negotiation process is crucial. Since after the Second World War, more international actors have entered the

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[7] Idem.
[8] One result of this stubbornness could be the fact that all parties remain in war with each other. The stubbornness itself is a result of too much back-wards looking to find solution. In order to break this spiral, a mediator could provide the parties with new, forward-looking insights. See also I. W. Zartman, *Looking forward and looking backward on negotiation theory*, in: I.W. Zartman, V. Kremenyuk (eds.), *Peace versus justice; Negotiating forward- and backward-looking outcomes*, Lanham: Rowman& Littlefield Publishers Inc., 2005, p.295
[9] T. Malinowski, *Human rights and U.S. strategy in Burma; Testimony by Tom Malinowski, Washington Advocacy Director*, on: Human Rights Watch, Human Rights news, http://hrw.org/english/docs/2004/03/25/usint8228.htm
[10] L. Crump, A.I. Glendon, 2003, p.201

battlefield, and the interests at stake have become more intertwined, the negotiation processes have become less effective. The agreements are often criticized for their weakness and their time consuming nature.[11] This was certainly the case in the solution chosen in the case of the participation of Burma/Myanmar to the Fifth ASEM Summit, as will be described later as an example case. Strong leadership is crucial for reaching the desired outcome in such complex situations. The leadership of The Netherlands as the Presidency of the EU at that moment played an important role, but was not powerful enough to reach one common view amongst the European states, which resulted in a rather weak compromise on the issue of the participation of Burma/Myanmar with the Asian states. While the relationship between leadership and managing the complexity of the multilateral negotiation process is still an area open for study, it is clear that leadership in this respect requires certain qualifications for the complexity to be brought back to manageable proportions. Some important functions of leadership in a negotiation process are: agenda setting; creating awareness for the issues at stake; creating solutions for (deadlocked) situations; and making deals.[12] These functions require, besides the skills to create these solutions and to negotiate deals, communicative skills as well. Solutions cannot be found unless the interests and differences are well communicated. Then, the solution has to be explained to the parties involved. The same goes for the creation of deals. The whole negotiation process is about active communication, both verbal and non-verbal. Leadership requires a good eye for both.

B. The ability of non-state actors to influence the outcome of the negotiations

As has been said above, the arena of international negotiation processes has been broadened beyond the scope of state parties to include non-state actors such as civil society: non-governmental organisations (NGOs)[13], individual parliamentarians,

[11] V.A, Kremenyuk, 2002, p.28
[12] Fen Osler Hampson, M. Hart, 1995, p.43
[13] Non-governmental organizations can be defined as "non-profit making, non-violent organizations, which do not represent governments or states". See: C. Albin, *Can NGOs enhance the effectiveness of international negotiation?,* in: International Negotiation, volume 4, issue 3, March 1999, p.373

multinationals, etc. Civil society is a rather broad term, used freely by many, but explained by only a few. Michael Walzer defined the term in his book on global civil society as "the space of uncoerced human association and also the set of relational networks – formed for the sake of family, faith, interest, and ideology – that fill this space.[14] This form of human association is often regarded as a counter weight of the state, since in the former association – a state is a form of association as well, if you regard the philosophical theories of Hobbes and Rousseau for instance – lacks the element of coercion. In civil society, according to the definition of Walzer, people are related to each other on the basis of free will.[15] According to him, this is the preferred way to lead a good life: in freedom, committed to the common cause and involved in decision-making, which argumentation goes back to the Greeks.[16] This concept of civil society and good life can be criticized by the argument that this is a rather individualistic, Western ideology, despite the element of commitment to the common cause. The individual is the centre and starting point of the theory. In Asian and African societies, however, individuals are subordinated to the community, which changes the concept of the good life as well: a person leads a good life when he or she sacrifices him or herself for the sake of the community. In this view, the community is the starting point. In these societies, the state is more paternalistically oriented, at least in the case of several of the Southeast Asian states.[17] One element that is valid, despite the differing views on the fulfillment of the state and despite the different theories and definitions of the concept of civil society,[18] is the fact that the existence of civil society, as counterweight for the government, with its added values and ideologies, is fundamental for the good functioning of the state, also in respect of the protection of human rights. The main aim of civil society is to try to influence and improve society as a whole, and

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[14] M. Walzer, *The concept of civil society*, in: M. Walzer (ed.), *Towards a global civil society*, Providence: Berghahn Books, 1995, p.7

[15] But it can be argued that a state is an association based on free will as well. Individuals seek the protection of statehood, since their autonomy will be in danger if there is no such protective sovereign power. Yet, once the state is established the individual is not as free as it is in civil society.

[16] Idem., p.9

[17] S. Eysink, *ASEAN en mensenrechten; Feit of fictie?*, in: Internationale Spectator, volume 59, July-August 2005, p.436

[18] The philosopher Talcott Parsons, for instance, who based this theory of civil society and the state on the theories of Georg Wilhelm Friedrich Hegel, distinguishes the societal community from the economy, the polity and the cultural sphere. He puts emphasis on social integration, solidarity and the community. The philosopher Antonio Gramsci, however, like many other neo-Marxist writers, does not make the

doing so by not being part of the governmental or business sector.[19] The fact that in Burma/Myanmar civil society has a difficulty to express its critical voice, because of heavy suppression by Burmese laws, is one of the signs that democracy is not exactly flourishing and human rights are violated by the military regime. The country lacks a counterweight to the government.[20] From the inside of the country, there is no critical view on the actions of the Rangoon regime, simply because these critical voices are suppressed, because civil society is suppressed.

As regards to human rights protection, especially NGOs, as an important part of civil society, can make an important contribution, and therefore focus will be on their role in the negotiation process.[21] In international negotiations, the role of NGOs has grown rapidly. According to some traditionalists, as was described before, state parties should and still do dominate the international negotiation arena and should continue to do so. NGOs are regarded by some of them as "narrowly based interest groups".[22] These ideas, however, do no longer correspond with reality. In the United Nations, for instance, their importance was recognized by the former Secretary General Boutros Boutros-Ghali, referring to the organisations as "full participants" in the international arena.[23] NGOs have been admitted to the forum of UN organs like ECOSOC, because by the public expression of their views, based on the high level of technical knowledge, they added to the effectiveness and democratic level of the negotiations and decision making processes of those bodies. Besides, their participation could increase the public awareness of and support for the entire UN system. On a regional level, within the

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distinction between civil society and economy. See for these and other theories on civil society J.L. Cohen, A. Arato, *Civil society and political theory*, Cambridge: The MIT Press, 1992

[19] L. Jorgensen, *What are NGOs doing in civil society?*, in: A. Clayton (ed.), *NGOs, civil society and the state: building democracy in transitional societies*, Oxford: INTRAC, 1996, p.36

[20] These Burmese laws forbid the people from forming independent organizations or even from holding meeting of more than five people. Communities and individuals are not allowed to organize actions to deal with the poor economic situation caused by the policy of the regime. There is no freedom of the press and there are no government agencies that can respond to the humanitarian needs of the people. See: T. Malinowski, 2004, http://hrw.org/english/docs/2004/03/25/usint8228.htm

[21] L. Jorgensen, in: A. Clayton (ed.), 1996, p.36

[22] C. Albin, in: International Negotiation, March 1999, p.372

[23] Idem., p.371

European Union, actors such as interest groups, researchers, and other non-state actors fulfil a crucial role in problem solving as well.[24]

These arguments in favour of NGO participation in negotiation processes are not only valid for the United Nations or EU system. These functions fulfilled by NGOs could be fulfilled in other fora, such as the ASEM Dialogue as well. One main difference in this regard is, however, that within the UN system NGOs are officially recognized by the Charter and by several ECOSOC Resolutions, providing them with consultative status.[25] This status includes official representation of the NGOs at the fora, the possibility to hand in written statements and the option to place items on the agenda. In the case of ASEM, NGOs are, however, not recognized as official participants. While NGOs also fulfil their role in the EU, Asian countries tend to be more hesitant when it comes to NGO participation. Vietnam, for instance, forcefully tried to prevent the parallel NGO forum to the Fifth ASEM Summit in Hanoi of 2004 to take place. The same was done by the Thai government when hosting the first Summit in 1996. The role of NGOs in the ASEAN region and with respect to the ASEM process will elaborated upon later.

Effectiveness of NGOs

ASEM is not the only forum, however, that does not officially recognize the status and participation of the NGOs. Their participation, besides in the well developed or structured organisations or fora like the United Nations, the EU or the WTO, remains unofficial, ad hoc or subjected to the interests of the state parties involved. The question that arises here, is what the effectiveness of NGO participation can be in these circumstances. Two important factors that influence the effectiveness of the NGOs is their size and their recognition by state actors. Taking the example of the International Committee of the Red Cross (ICRC), this organisation is recognized as an important

[24] C. Jonsson, B. Bjurulf, O. Elgstrom, A. Sannerstedt, M. Stromvik, *Negotiations in networks in the European Union*, in: International Negotiation, volume 3, issue 3, March 1998, p.322, 323
[25] Resp. article 71 of the UN Charter and ECOSOC Resolutions 3 (II) of June 1946, 1099 (XL) of March 1966, 1296 (XLIV) of May 1968

player in the field of humanitarian law making. Considering for instance the development process of the Convention banning anti-personnel landmines, the ICRC was the initiator and played an important part in the final realisation.[26] Besides, the ICRC played a crucial role in the "failure" of the negotiation process on the creation of the UN Development Relief Organisation UNDRO in the 1970s. Since the Red Cross had serious objections against the creation of such a coordinating body, it used its influencing power to affect the Soviet Union and France, who were finally more strongly opposed to UNDRO's creation. The result was that UNDRO was established but with a weak mandate.[27]

A result of the widespread recognition of ICRC's international status is that it also enjoys a large amount of public funding. Most of these funding come from state parties. This does not mean, however, that this automatically affects its independency. ICRC, as such a big player in the international arena is able to maintain its critical view on states' policies towards humanitarian issues. For smaller organisations, however, this could be difficult. Therefore, these NGOs could decide not to accept any financial means provided by states, in order to maintain their independence, and thus their freedom of action.[28] This is also true for organisations that have a rather confrontational way of action towards criticizing state policies. A good example is Greenpeace in its campaign against for instance ocean dumping. Despite the fact that it is a large environmental organisation, it is still struggling with its resources and the fact that it cannot be represented everywhere at any time.[29]

Besides the factors that are closely related to the NGOs themselves, there are other, more external factors that can influence their effectiveness as well. One of these is the overlap between the agendas of the states and the NGOs. In general, the bigger the

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[26] N. Short, *The role of NGOs in the Ottawa process to ban landmines*, in: International Negotiation, volume 4, issue 3, March 1999
[27] R. Kent, *The United Nations: a suitable place for disasters?*, in: P. Taylor en A. Groom (eds), *International Institutions at Work*, London: Pinter, 1987, p.135
[28] C. Albin, in: International Negotiation, March 1999, p.376
[29] R. Parmentier, *Greenpeace and the dumping of waste at sea: a case of non-state actors' intervention in international affairs*, in: International Negotiation, volume 4, issue 3, March 1999, p.449

overlap, the more interests the state parties have in involving the organisations in the process and the more willing they are to regulate the NGO participation better. It is usually the middle sized states that can benefit from the input and influence of NGOs by forming coalitions with them for instance. In the case of the creation of the International Criminal Court the NGOs were used by these states in favour of the creation of the Court as instruments to keep the process under international attention and to maintain public support for the idea.[30] The coalition that was eventually formed between the states in favour of the creation of the Court and the NGOs was strong enough to overrule the influence of for instance a Super Power like the United States. This had much to do with the seize and diversity of the coalition: these two factors showed the broad public basis for the establishment of the judicial body.[31]

The involvement of NGOs grows also in negotiations on rather complex, technical issues, in which the state parties can use the knowledge of the particular organisations to ground their positions and arguments. This could be the case in for example legal issues, in which the International Commission of Jurists could play a role.

Functions of NGOs

Discussing the factors that influence the effectiveness of NGO participation in international negotiations is closely linked to the different functions that NGOs can fulfil in these processes. Cecilia Albin recognizes in her article in International Negotiation seven main activities that the organisations can perform, both formally and informally: definition of problems and the setting of goals and agendas; norm and principle enforcement; provision of expertise and information; public advocacy and mobilization; lobbying; direct participation in the establishment of agreements; compliance related activities such as monitoring and assistance.[32]

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[30] Fen Osler Hampson, H. Reid, *Coalition diversity and normative legitimacy in human security negotiations*, in: International Negotiations, volume 8, issue 1, March 2003, p.25
[31] Idem., p.11
[32] C. Albin, in: International Negotiation, March 1999, p.378

The function of agenda and goal setting could be considered as one of the main tasks of NGOs, and one of the most powerful ones. The way the goals and agenda are set has consequences for the final outcome of the negotiation. As has been said above, in the case of the creation of the International Criminal Court, the NGOs were used by states as instruments to keep the issue on the international agenda. However, NGOs can use their own influence to make sure that a certain topic is discussed in the relevant international forum, and that thereby the political atmosphere for action in that particular field is created. The ICRC, for instance, took the initiative to come to a treaty on the ban on landmines. Besides, Amnesty International undertook a two year campaign against torture in the early 1970s, which eventually lead to attention of the United Nations on the matter. This resulted in the adoption of a Declaration against Torture, the appointment of a UN Special Rapporteur on Torture, and finally, the adoption of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment in February 1985.[33]

But NGOs did not only play a role in the agenda setting of the issue of torture. They participated heavily in the standard setting procedure as well, as was also the case in the drafting of the Convention to ban anti-personnel mines and even in drafting of the Universal Declaration on Human Rights.[34] Especially the role of Amnesty International in the process of international human rights norm setting is considered to be crucial. Lobbying is in principle the most effective means for NGOs to provide their input in the standard setting phase. The lobbying process starts with providing a legal or technical study on the matter to the state parties involved. Through these studies, which involve the NGOs' own interpretation of the material, and which can include possible suggestions for improvements, the state parties can be influenced already. However, in order to achieve significant political change as well, it is important that the public is

[33] N.S. Rodley, *Human rights NGOs and obligations (present staus and perspectives),* in: Th.C. van Boven, C. Flinterman, F. Grunfeld, R. Hut (eds.), *The legitimacy of the United Nations: Towards and enhanced legal status of non-state actors,* SIM Special 19, Utrecht: Studie- en Infomatiecentrum Mensenrechten, October 1995, p.41

[34] W. Korey, *NGOs and the Universal Declaration of Human Rights; "A curious grapevine"*, New York: Palgrave, 2001, p.2

well informed and demands this change.[35] This is especially the case for NGOs working in the field of development aid, environmental issues, etc, and not so much for NGOs working in the field of legal standard setting. But these latter organisations could be a link in the chain to eventually mobilize the public. This mobilization is essential for the NGO strategy of so-called "naming and shaming": especially in the areas of environmental, humanitarian and human rights issues, non-state actors can use the reputation of the state as a means to put pressure on it. This was the case with the adoption of the Rome Statute for the establishment of the ICC.[36] The strategy is not effective without the involvement of the public and it is not effective without the independence of the organisations.

Once agreements have been reached, either in the form of norm setting or otherwise, NGOs can play a role in enforcement and monitoring of the norms. In the area of human rights protection, there are several NGOs that monitor the states' compliance with the UN treaties on the protection of human rights, through fact-finding missions, shadow reports, statements, etc.[37] Publicity is an important factor in this regard, as is maintaining the dialogue with the states involved.

NGO participation and the effectiveness of this participation is growing. It is widely agreed that states are no longer the only actors in the international arena. Non-state actors, together forming civil society as a counterweight for the government's power, have been able to successfully set the international agenda's on various issues. The problems they are facing, however, in the execution of their tasks is that the effectiveness of their participation and their ability to influence state policies are still dependent on the states' willingness to allow them to be present at the official and unofficial negotiation meetings. Overlap in interests increases the chance that they will be able to attend, which could be difficult for the more controversial, confronting

[35] J. Clark, *Policy influence, lobbying and advocacy*, in: M. Edwards, D. Hulme, *Making a difference, NGOs and development in a changing world*, London: Earthscan, 1992, p.194
[36] Fen Osler Hampson, H. Reid, in: International Negotiation, March 2003, p.33
[37] A good example of an NGO undertaking these activities is the International Commission of Jurists, which has sections in several countries, monitoring that particular government's appliance with the rules set in the treaties.

organisations. But these latter organisations have an important monitoring role to fulfil as well.

Another problematic factor could be the lack of funding, and thus staff, to function on a national or international level in stead of only in the local field. Therefore, the most effective NGOs are usually the well-funded and well-connected ones, which have usually gained an official status. This leaves a whole arena of local, unrecognized NGOs aside, which are of crucial importance for the people living in these local areas. However, some NGOs consciously chose not to give up their unofficial status, fearing this will be harmful for their independence.

In this sense coalition building is the key word for increasing the influence of NGOs. Entering into a coalition with states, which are usually middle-size in terms of power, can actually be a very powerful strategy for gain the desired result, of which the negotiations for the creation of the International Criminal Court remains the best example. Large and diverse coalitions can increase the effectiveness of the naming and shaming strategy, since state parties tend to be very sensitive towards public opinion. For them it is better to be on the "good" side, meaning the side with the growing international support than in the situation of further isolation. This sensitivity can be used by NGOs with support of other states to put further pressure on unwilling or uncooperative states.

Finally, another reason why NGO participation in negotiations on issues like human rights and environmental issues is of crucial importance is that NGOs and other non-state actors have the ability to make parties aware of these issue underlying the negotiation. What was most striking about studying the negotiation process for the establishment of the UN Disaster Relief Organisation in the 1970s, was that none of the state parties ever mentioned the casualties and other humanitarian crises that could be prevented by the creation of that particular body. The only interest they had was consolidating influence and power at the lowest financial cost. It is up to the NGOs and other non-state parties to make their governmental counterparts aware of the fact that

there are other, more fundamental issues, like the lives of millions of people or their fundamental rights at stake.

Whether human rights have reached the official agenda of the ASEM Dialogue will be discussed in the next chapter.

2. The ASEM Dialogue on Human Rights

A. The ASEM Dialogue in general

Structure of ASEM

The Asia-Europe Meeting (ASEM) was created in 1996, with its main purpose to develop and fortify the relation between Europe and the region of East Asia. The relation between the two continents was not new though. Before ASEM was materialized, ASEAN-EU Ministerial Meetings were taking place as early as 1978.[38] Institutionalization of this cooperation took place by the conclusion of the so-called Cooperation Agreement between the European Economic Community and the member states of ASEAN. The Agreement provided for the bi-annual occurrence of the dialogue, with ministers of foreign affairs and the economy and with the President of the EU.[39] As for the economic cooperation, the ASEAN-EU meetings were considered to be rather successful, since the cooperation in this field increased considerably since the establishment of the dialogue. However, in other fields, such as politics and culture, the cooperation was lacking behind. Especially from the European side, there was a wish to fortify the cooperation in political areas, since it wished to increase its influence in the Asian region to level up to the Americans, who institutionalized their influence in the region through the Asia-Pacific Cooperation (APEC). This resulted in the adoption

[38] Y. Seung-yoon, *The future of regional cooperation in Asia: ASEAN's policy toward ASEM,* in: East Asian Review, volume 13, no.4, Winter 2001, p.82

of a report on a new strategy towards Asia by the European Commission.[40] However, the actual initiative to establish a new form of dialogue between the two regions was taken by the government of Singapore. Only after Singapore's diplomats discussed the issue with their French counterparts, the other possible participating countries, like the member states of ASEAN were informed.[41]

The format chosen for the dialogue was an informal one, without any institutionalisation or secretariat.[42] The idea was based on two fundamental principles: the principle of multilateralism; and the principle of regionalism. The inter-relation between the two principles is important; the dialogue has a multilateral nature in that all member states are in the process as single entities, as opposed to the ASEAN-EU Dialogue, which takes place between two organisations. In the ASEM Process, the member states of ASEAN take part, except for Burma/Myanmar (at least not on a presidential level), the twenty-five member states of the European Union, China, Japan, the Republic of Korea and the European Union. However, each member state is classified according to region, which forms, more or less, a coalition. Each region appoints an ASEM Coordinator, for assistance in the smooth coordination of the ASEM process.[43] There are four Coordinators in total: one for the North-East Asian region, one for the South-East Asian region, the EU Presidency and the European Commission. As far as the European member states are concerned, they are already used to the regional structure, while for the East Asian states, especially the North-East Asian states, they have not been organized in a regional body before. The ASEM Dialogue forced them to coordinate their interests and to formulate their common interests. As for the Southeast Asian member states, they had organized themselves already in the 1960s, by establishing ASEAN in 1967.

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[39] Idem.
[40] European Commission, *Toward a new Asia strategy: communication from the Commission to Council*, COM (1994), p.314
[41] Y. Seung-yoon, in: East Asian Review, Winter 2001, p.83
[42] At the Fifth ASEM Summit of November 2004, a suggestion was made to establish a virtual secretariat to integrate the ASEM activities in the future, especially evolving out of the Taskforce on Closer Economic Partnership. This Taskforce was established during the Fourth ASEM Summit in Copenhagen of 2002. See also: *ASEM Task Force for closer economic partnership between Asia and Europe*, Interim Report for ASEM, Foreign Ministers, Finance Ministers, Economic Ministers, July 2003, www.dtn.moc.go.th

Since its establishment, there have been five Summits: the first one to be held in Bangkok in 1996, then the London Summit in 1998, the Third Summit in 2000 in Seoul, than the 2002 Copenhagen Summit and finally the Hanoi Summit in 2004. The bi-annual Summits are the highest level policy outline of the ASEM Process: it is where the Heads of State and Government and the European Commission come together to set out the direction of the Dialogue and formulate the areas of attention between both continents. The Ministerial Meetings are of a more coordinating and preparatory nature. During these meetings, the ministers in question coordinate and prepare the Summits. There are annual meetings between the ministers of foreign, of economic affairs and of finance, whereas ministers of other areas meet whenever necessary.

Below the Ministerial Meetings, there is the level of meetings of high-ranking civil servants, the so-called Senior Official Meeting (SOM). These senior officials, discuss matters of technical cooperation, and they prepare the Foreign Ministerial Meetings and the Summits.[44]

Differences in interests

Studying the two continents between which the Dialogue takes place, there are two main regional organisations involved: the Association of Southeast Asian Nations (ASEAN) and the European Union (EU). There are considerable differences between both organisations, which have an effect on the functioning of the Dialogue between the two continents as well. ASEAN was set up mainly for the purpose of developing or at least structuring economic cooperation between the then five initiators: Indonesia, Malaysia, the Philippines, Singapore and Thailand. The basis for the cooperation was the Bangkok Declaration, which was called merely an intention statement, without a

[43] This coordination takes the form of organizing ad hoc meetings on specific issues and following up and reporting on initiatives taken during these ad hoc meeting. See also: S. Bersick, in: P. Scannell, B. Brennan (eds.), September 2002, p.3

legally binding nature. It lays down rather informal principles and norms that are the basis of the regional cooperation between the member states. One of the main features of the cooperation between the states in the Southeast Asian region is the so-called Asian Way: the ASEAN states are obliged to respect each others' sovereignty, independence, territorial integrity and national identity.[45] The leading principle in this respect is the principle of non-interference in the national interests in another state. Therefore, an intergovernmental based cooperation format is chosen, leaving a lot of room for the national power of the member states.

Compared to ASEAN, the European Union has the character of a more supranational body: its establishment and mandate is laid down in a set of detailed treaties, assigning rather far-going powers to the organs of the Union. Therefore, its cooperation has a far more supranational character. Exactly this difference in nature is one of the main reasons why the ASEM Dialogue is, on the one hand so unique, but on the other hand so complicated to manage. The differences in structure between the two organisations cause a difference in expectation between their member states on the "mandate" and the effectiveness of the ASEM Dialogue as well. While both sides shared the interests of developing economic cooperation from the beginning of the process, both sides had other differing ideas about the Dialogue as well. From the Asian side, the ASEM Process is used as a means to improve bilateral cooperation with the EU, and to improve the mutual relation between the East Asian states in general. Especially the fact that China takes part in the Dialogue was considered by the other Asian states as a crucial element in strengthening their position towards their European counterparts.[46] Most Asian states were used to dealing with important matters in informal bilateral discussions, instead of during the plenary meeting itself. This approach towards the process has made the Dialogue less of a traditional international negotiation forum. It is the whole process around the plenary meeting that plays an equally important role.

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[44] SOM Rome 13-14 November 2003, *Recommendations for ASEM working Methods,* www.aseminfoboard.org/content/documents, 2003, p.1-3

[45] H. Loewen, *Demokratie und Menschenrechte im Europa-Asien-Dialog; Zusammenpral von Kooperationskulturen?,* in: Asien, volume 95, April 2005, p.60

[46] S. Bersick, *China and ASEM: strengthening multilateralism through inter-regionalism,* in: W. Stokhof, P. van de Velde, Yeo Lay Hwee (eds.), *The Eurasian space,* ISEAS Publications, 2004, p.147

From the European side, the main goal for developing cooperation with the East-Asian region was to further strengthen the common approach of the EU on that region. The Asian approach was thus focused on cooperation on a bilateral basis, established through an inter-regional dialogue forum, while the Europeans were interested in a form of cooperation that would actually lead to the development of both regions. In reaching this development, the European states were more willing to hand over some of their sovereignty than their Asian counterparts. Especially the government of the Peoples' Republic of China has never been eager to give up its sovereignty on any matter.[47]

Despite lack of interest of the Beijing government in the first years of the ASEM Process, China is now one of the main participants in the dialogue. This shift in interest was caused by the financial crisis at the end of the 1990s. Before the crisis China was rather inward-looking, while the crisis made clear that more regional and interregional cooperation was necessary to prevent crises like these to take place in the future, despite the fact that China was the only country in the East Asian region that was not hit badly by the economic recession. The fact that the United States does not participate in the Dialogue, which provides a good opportunity for East Asia and Europe to develop common interests and positions and to form a counterweight to the American unilateral exercise of power, is one of the main advantages of the Dialogue for the Chinese government.[48] The main reasons for China to participate in the Dialogue, however, is for strengthening of national interests, and not so much for the development of the region, unless it can benefit from it itself. This can be concluded from the fact that China was very eager to leave the conflict involving the South China Sea out of the Dialogue, since this would harm its economic interests. This resulted in a growing role of China in the Dialogue, in the form of fulfilment of the role of Regional Coordinator, hosting several ministerial and senior officials meetings and acting as co-sponsor in the initiatives for the Fourth Summit in Copenhagen.[49] This is contrasted by the declining

[47] K. Win, *Big Brother Beijing blocks Yangon reform,* in: Speaking Freely, Asia Times online, 12 May 2004, www.atimes.com/atimes/Southeast_Asia
[48] S. Bersick, in: W. Stokhof, P. van de Velde, Yeo Lay Hwee (eds.), 2004, p.141
[49] Idem., p.142

interest in the ASEM Process of another major player in the East Asian region, Japan. Especially in the economic field Japan preferred bilateral cooperation, since this is easier to implement and therefore suits Japanese interests better.[50] However, in the Burma/Myanmar case, Japan played an important role in the formulation of a solution. Besides, the growing importance of China in the East Asian region and the deteriorating relation between both countries might possibly lead to a growing Japanese interest in the Dialogue. And especially this rivalry is the main reason for the interest of the Republic of Korea in the process. The Seoul government would like to use the ASEM Dialogue as an instrument to control the rivalry and to eventually develop stronger cooperation in the Northeast Asian region as counterweight for the alliance of ASEAN.

It could be concluded that the interest that the Northeast Asian states have in ASEM are of a mainly security nature: ASEM could be used as a means to maintain regional stability. Looking at the Burma/Myanmar case, one could come to the same conclusion. Japan was an active negotiator in the process, looking for a solution, which would be satisfactory for all parties. China, however, supports the Rangoon government, in order to, amongst others, prevent a civil war and by this way maintain the stability at its borders as well.[51] In general, regional and international cooperation have gained importance after the terrorist attacks of the 11th of September. Therefore, at the Sixth Foreign Ministers Meeting held in Ireland in April 2004, the Ministers once again emphasized the importance of the United Nations in this respect.[52] Emphasis on the role of the United Nations was one of the starting principles of the ASEM Dialogue though, formulated by the Singapore government in its initiative for the interregional forum in the 1990s.[53] The United Nations were considered to be the main body dealing with security issues, important for the maintenance of international and regional stability. However, on security issues, this organisation is strongly influenced by the United States as a Permanent Member of the Security Council. In order to counterweight this country, in security but also in economic matters, a new forum had to be created

[50] S. Berisck, P. Scannell, B. Brennan (eds.), September 2002, p.4
[51] K. Win, in: Speaking Freely, Asia Times online, 12 May 2004, www.atimes.com/atimes/Southeast_Asia
[52] ASEM Declaration on Multilateralism, Sixth ASEM Foreign Ministers' Meeting, Ireland, April 2004
[53] S. Berisck, P. Scannell, B. Brennan (eds.), September 2002, p.5

strengthening the European interests in the East Asian region, according to the Singapore government. ASEM could be used as a means to increase European trade investments in the region and a way to persuade the European Union to open up its market to products from Southeast Asia, by reducing its tariffs. Especially Thailand, the Philippines and Vietnam have a high interest in this matter.[54]

Concluding, the Asian states are interested in developing ASEM into an effective negotiation forum for mainly two reasons: economic, meaning to attract European investment in the region and to increase Asian access to European markets; and political, to counterbalance the American hegemony and to increase regional stability in Asia.

As for the European Union member states the main interest in creating the ASEM forum, was to have a piece of the Asian prosperity.[55] The Americans fortified their influence in the region already through the Asia-Pacific Economic Cooperation (APEC), which made the Europeans fear they were lacking behind. The French government was co-initiator of the Dialogue, most probably having a high interest in counterbalancing the American world power. As regards the issue of security is concerned, the conclusion can be drawn that despite the good intentions to counterbalance the US, the latter remains the only true global power, making East Asia and Europe depending on it. There is not much ASEM can do about that, not even if it would function more effectively than it has done so far.

Both Germany and Sweden have formulated a focussed policy on Asia, putting emphasis on human rights, democratisation and the rule of law, besides stimulating economic relations and cooperating on security matters.[56] Both the strategies chosen by

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[54] S. Berisck, P. Scannell, B. Brennan (eds.), September 2002, p.5-6
[55] C.M. Dent, *The Asia-Europe Meeting and inter-regionalism; Towards a theory of multilateral utility,* in: Asian Survey, volume XLIV, no.2, March/April 2004, p.214
[56] Deutsches Auswärtiges Amt, *Aufgaben der deutschen Aussenpolitik; Ostasien am Beginn des 21. Jahrhunderts,* Berlin, May 2002, p.5-6 and Swedish Ministry of Foreign Affairs, *Our Future with Asia; proposal for a Swedish Asia Strategy,* Stockholm, 1999, p.13-14

these countries are rather politically driven. There is a high complexity of European interests in the region, and securing stability and peace by maintaining good relation with the Republic of China is one of the most important ones. In this web of interests, when it comes to trade relations, the European Union member states are more able to formulate a common policy then when it comes to more politically related issues. There are several states, for instance, such as Greece that have shown no interest in participating in the East Asian region, while besides Germany and Sweden, the United Kingdom and France have shown great interest, which appear to be more national than European oriented. These European Union member states have been rather reluctant to give up their sovereignty when it comes to foreign policy, and, as the case of Burma/Myanmar will show as well, economic interests remain high in the hierarchical ranking at the cost of human rights for instance. It is true that each member state of the European Union can take up any topic it so desires, without repeating EU's common position. This, however, will not do the wish to speak with one voice any good. However, it is not possible otherwise, since many EU member states have bilateral relations with their Asian counterparts as well. This complexity clearly shows the difficult position the European Union as an organisation with supranational elements has.

This difficulty is also reflected in the fulfilment of the functions of the regional Coordinators. As compared to Asia, in Europe they are not a representative of a sub-region. There is the EU Presidency, for which, due to its system of rotation, it is hard to maintain continuity in its coordinating functions. Therefore, the European Commission is the best alternative as the regional Coordinator, but it is not a state actor. In 2001, it formulated a policy for cooperation with Asia under the title "Towards a New Asia Strategy", which document is a first effort to take an integrated and balanced view of the cooperation with the Asian continent. The strategy of the European Commission focuses on six objectives, ranging from contributing to peace and security in the region to promoting development in countries with less welfare opportunities and strengthening the awareness of Europe in Asia. The Commission encourages the

evolution of the political dialogue in fora like ASEM and ASEAN Regional Forum (ARF).

Regarding Southeast Asia, the Commission adopted a new partnership strategy in 2003, focussing on strengthening the role of ASEAN in the region.[57] Compared to this relation, the cooperation between the European states and the region of North East Asia stands out more meagre. Regional cooperation efforts with North East Asia have been limited for a long time, due to the heritage of the Second World War and especially the Cold War. The European Commission has recently shown more interest in the creation of the free trade areas between for instance Japan, South Korea and Singapore.[58] The European Commission's policy on China is mainly focussed on engaging it further into world affairs, both on political and economic fronts. Involving China in the ASEM Dialogue is one step in that direction.

The European Commission has thus a rather extraordinary position in the ASEM Dialogue as the only non-state actor. While the European member states seem to attached much importance to its participation, their Asian counterparts are more sceptical. Malaysian diplomats have called the Commission's role "redundant", since all other actors in ASEM are "statist".[59] This once again shows the difficulties the ASEM Dialogue faces: the fundamental difference in opinion between both continents on the realization of regional cooperation. Another cultural difference in opinion is on the issue of human rights. The role these values have played so far in the ASEM Dialogue will be discussed in the next paragraph.

[57] European Commission, *A new Partnership with South East Asia*, COM(2003) 399/4
[58] European Commission, *The EU's relations with Asia; North East Asia*, http://europa.eu.int/comm/external_relations/asia/reg/nea.htm

B. The role of human rights in the ASEM Summits

Differing views on human rights between Europe and Asia; the Asian Values Debate

Human rights have always played a rather peculiar role in the ASEM Dialogue. There is a difference in the interpretation of human rights values, which can be traced back on the distinctive views on regional cooperation, state sovereignty and the realization of national society. Looking at the fulfilment of regional cooperation in both continents, the European Union was established not long after the Second World War, and the idea of cooperation evolved to an organisation with supranational powers. Compared to this concept, ASEAN is clearly the opposite of this formalised and institutionalised European model of cooperation. The Association of Southeast Asian Nation (ASEAN) was established in 1967 as a careful attempt to rather maintain friendly relations between the states in the region than to come to far-going regional cooperation.[60] The association is based on the Bangkok Declaration, which is hardly more than a non-binding statement of principles. It mainly focuses on the unity in the Southeast Asian region, which means that all states in this area should have the possibility to become member of the association, which could then again serve the regional stability and friendly relations. The focus on friendly relations between its member states also resulted in the application of the principle of non-interference in internal matters of states. All possible conflicts are dealt with in a careful, friendly way, trying to maintain the dialogue instead of putting political or economic pressure on a non-cooperative state. This approach is the so-called Asian Way. Japan, China and the Republic of Korea share the importance attached to the principle.

The principle of non-interference in internal matters of other states resulted in a more or less stable situation in the region during the Cold War. Another reason for the creation of ASEAN was to face the dangers coming from Communistic China and Russia on the

[59] S. Berisck, P. Scannell, B. Brennan (eds.), September 2002, p.8
[60] C.P.F. Luhulima, *ASEAN institutional structure and decision making,* The Indonesian Quarterly, volume XXX, no.4, 2002, p.396

one hand and the growing, especially economic, importance of Japan on the other.[61] This changed rapidly after the end of the Cold War. "Western" states, like the EU member states, tried to increase their influence in other parts of the world, which were formerly out of reach for them because of the bipolar power structure. Due to the disappearance of the ideological conflict between the two Superpowers, there was more room to link political to economic interests. The European states tried to increase their sphere of influence in the Asian continent in order to counterbalance the growing domination of the US, as has been said before.

As far as economic issues were concerned, the Asian states were willing to start a dialogue or some form of cooperation. This is how ASEM was created. However, the political dialogue, or, more specifically the human rights dialogue was avoided. One main argument from the Asian side for that was the fact that the Europeans tried to use the human rights debate as a means to preserve their dominant position in a new global order. The argument used by several Southeast Asian leaders was that the European states did not accept the fact that the Asian had their own approach to deal with the changes in the international society, especially regarding democracy and human rights.[62] One important argument used by the Asian leaders to counter the European pressure on universalist working of human rights, is the fact that the "Western" notion of the rights is individually based, while Asian society uses the community as the starting point, to which the individual is subordinated. The former Prime Minister of Malaysia Mahathir bin Mohamad stated publicly that his government would chose the party and country above democracy.[63] As a result, interests of the state or the community are chosen over the democratic rights of the people. Democracy could easily lead to chaos, which would destabilize the community as a whole. With his successor, more chance of movement in the direction of democracy is possible, since his election in 2003 was widely regarded

[61] D. Vlasblom, *Zelfs de zeep heft twee maten; ASEAN zoekt evenwicht tussen integratie en niet-inmenging,* in: Volkskrant, 8 October 2004
[62] A.J. Langlois, *The politics of justice and human rights; Southeast Asia and universalist theory,* Cambridge University Press, 2001, p. 12
[63] Mahathir bin Mohamad is considered to be the spokesperson of the "Asian values". See also: A.J. Langlois, 2001, p.13

as an approval of his more moderate vision on Islam, state and society.[64] The ideas of Mahathir on the issue of human rights and cultural interpretation were shared by several political leaders in the Southeast Asian region though. The surrender of human rights protection was considered to be necessary in order to come to economic development. The argument used by for instance Singapore's government was that full human rights protection was only possible in a perfect state where everybody is allowed and capable of doing his own thing. This has not worked out this way, and Lee Kuan Yew, Singapore's elder statesman, doubt whether it will ever do so. Most recently, the government has relaxed some of its conservative positions on the fulfilment of society. Whether this is enough or not, and whether this has an effect on their views on human rights and their universal working will remain to be seen. The fact that still only half of the member states of ASEAN are party to the main human rights treaties in the United Nations human rights system is not a telling sign.[65]

This emphasis on the so-called "Asian values"-debate touches upon the more general debate within human rights theory on the universal application versus cultural relativism of human rights. It goes outside the scope of this paper to describe this debate now, but it is related to an important reason why the human rights debate in ASEM is going as rigid as it does: the European side is pressuring the universal working of human rights, the way they are laid down in the various UN and regional human rights treaties. Most Asian counterparts, however, despite the fact that they officially acknowledge the universal working of the rights, hide behind the above mentioned arguments mainly based on the idea that their culture does not totally accept the universal notion as proclaimed by mainly the Western states. Their fear of Western domination, resulting in the loss of sovereignty and power is an important basis for that.

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

[65] Studying the ratifications of the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights, only 5 of the 10 ASEAN states have signed and ratified these treaties. In total, 150 resp. 153 states are party to these treaties. Concluding, the ASEAN states that have not ratified them are amongst a small minority of states that have not done so.

What will be analyzed now is what role human rights have played so far in the ASEM Dialogue and what its effect was on the relation between the various member states. This will be of importance for the study of the case of the participation of Burma/Myanmar as well, since this case clearly shows the different sensitivities among the member states to the ASEM Dialogue as related to the issue of human rights protection.

The role of human rights in the ASEM Dialogue

The position of the ASEAN countries on regional cooperation without clear institutionalized restrains, with strong emphasis on the maintenance of friendly relations amongst the member states and on the prevention of regional conflicts, and thus avoiding any controversies in the official meetings, is reflected in their position on the possibility of having a human rights dialogue within the ASEM Process. Studying the negotiation process of the first Summit, including the final adopted Chairman's Statement, it becomes clear that this meeting was used to improve dialogue between both continents, to share concerns and aspirations and to come up with a common vision of the future.[66] Another important goal of the first Summit was to intensify trade and investment, following from the section on "reinforcing economic cooperation".[67] Since this was the first Summit, in which the framework for future cooperation had to be created, most state parties felt that controversial issues like human rights had to be avoided. This avoidance did not only come from the Asian side, but it suited most European countries as well.[68] This way, the economic interests in the growing East Asian region could be satisfied, without upsetting the relation at the first minute. In the Chairman's Statement, no clear mention was made to the term "human rights", except when the respect for the Universal Declaration of Human Rights was mentioned. Rather was the term "fundamental rights" used, mentioned together with principles like "mutual respect, equality, (…) non-intervention (…) in each other's internal affairs".

[66] Chairman's Statement of the Asia-Europe Meeting, *ASEM Summit I: Possible Intentions at its Creation; Towards a Common Vision for Asia and Europe*, Bangkok, 2 March 1996
[67] Idem.
[68] H. Loewen,, in: Asien, volume 95, April 2005, p.69

From the European side, there was some intention expressed during the unofficial meetings, to insert human rights matters in the final Chairman's statement. However, this would mean that, since it is then an official position of all states, the violating state in question could be criticized for its human rights policy. This was clearly not in accordance with the Asian perspective of the non-intervention principle, and therefore, the term "human rights" was avoided.[69] Another delicate issue was avoided, through strong mediation of the Thai host government, to result into a clash: the former Indonesian President Suharto threatened to leave the Summit if Portugal would bring up the issue of East Timor. Thailand used its influence to negotiate bilaterally with both countries to avoid further strong words between both countries.[70] Because of these kind of outflanking movements, in which bilateral negotiations are used to settle issues rather than negotiations during the official sessions, the first Summit can be considered a success, being able to bring both continents together and to create a spirit and will for future cooperation.

These outflanking movements were considered to be important for the success of the future Summits as well, since controversial issues had to be avoided if possible. Therefore, the possibility of parallel, informal sessions in which issues like the rule of law and human rights could be discussed was created. In this respect, actors like the Asia-Europe Foundation, the Asia-Europe Vision Group and the Council for Asia-Europe Cooperation (CAEC) were established. The -Europe Foundation organised informal session on human rights issues, held annually alternating in Europe and Asia. The proposal for these informal sessions was drafted by Sweden with cosponsoring of France. Even though it was not an official ASEM initiative, it attracted participation of all ASEM member states, together with NGOs and academics.[71] All sessions, being hosted so far by Sweden, Indonesia, France and China, consist of workshops on human rights issues. During the first session in Lund in 1997, emphasis was put on the cultural implementation of human rights, despite their universal working. During the second session, held in Beijing in 1999, once again the difference in Asian and European values

[69] H. Loewen,, in: Asien, volume 95, April 2005, p.69
[70] Idem., p.70

was stressed. The recognition of the differences in cultural interpretation of human rights is very important, since this is the issue that hinders the human rights dialogue on the state level. The recognition of the difference can only create mutual understanding and respect. However, the recognition of cultural differences should not be used as a shield for a fair and open dialogue on the matter. It seems that the Asian participation in these informal sessions has been coloured by the principle of non-interference and the notion of Asian values as well, especially when China hosted the second informal meeting in 1997. Despite the fact that these parallel sessions have been held for several years now, and besides the point that it is a positive sign that Asian states have been willing to cooperate in the sessions and even host them, they have been kept informal and the initiatives have not managed to penetrate into the "decision-making" processes of the official Summits. What was meant as a means to take the pressure of the controversial issues by discussing the matters outside the official forum, together with other participants than state officials, and what eventually should have lead to incorporation of the controversial matters in the official dialogue has not worked out this way yet. It seems like the informal sessions have so far been used as an excuse not to deal with the controversial matters on the official level. Besides the fact that the informal seminars have an added value concerning the creation of mutual respect and understanding on the issue of human rights, more should be done.

Returning to the formal sessions, the Second and Third Summits were occupied with the developments in the international relations of that moment: in 1998, the Asian region was forcefully hit by a financial crisis, which seemed to completely wipe out the spirit for future cooperation, which had made the first gathering such a success. The Asian countries were disappointed by the lack of interest shown by their European counterparts in donating money of providing technical assistance to deal with this crisis, while the Europeans believed this was not the right policy, since the East Asian states had more or less themselves to blame for the crisis they were in, because of bad policy and lack of mutual cooperation.[72] Besides, the European countries had other things on

[71] ASEM Research Platform, *Informal ASEM Symposium on human rights and the rule of law*, www.iias.nl/asem/index.html
[72] Y. Huang, B. Yeung, *ASEAN's institutions still in poor shape*, in: Financial Times, 2 September 2000

their mind: the crisis on the Balkans was erupting into a regional conflict, with great flows of refugees and a developing humanitarian crisis. This resulted in the fact that neither human rights were discussed in the official second Summit, not were they inserted in the official closing document.[73] Even in the bilateral talks between the European Commission and China, no mention was made of its dubious human rights policy, but focus was put on the further development of economic relations between the two parties, coloured by the fact that China was almost the only East Asian nation not hit by the financial crisis. In that sense the European parties had more interest in reserving a piece of the Chinese economic cake than in mentioning the more unpopular issues at stake.

At the second Summit, the Asia-Europe People's Forum (AEPF) was established, consisting of those civil society actors interested in Asia-European cooperation, but which were not accepted as official participants in the process.[74] The aim of this umbrella organisation is threefold: to strengthen networking between and across Asia and Europe; to analyse common interests; and to provide an opportunity for critical opinions on the official process to be expressed.[75] Especially the latter function could have great value for the discussion of human rights issues. The parallel sessions, organised to the official Summits and open for all non-state actors with an interest in the ASEM Dialogue, could be used to shed a critical light on the human rights situation of a certain country or on a certain theme. This was done so for instance at the parallel session of the AEPF to the fifth Summit held in November 2004 in Hanoi, Vietnam, in which the poverty and human rights policy of the host country was being discussed.[76] That was probably the reason why the Vietnamese government did everything in its power to prevent this parallel session from taking place.

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[73] Chairman's Statement of the Asia-Europe Meeting, *ASEM Summit II*, London, April 1998, www.asem5.gov.vn
[74] S. Bersick, *A functional analysis of multilateral regimes: the role of civil society in the Asia-Europe Meeting - the ASEM Process*, in: Dialogue and Cooperation, volume 3, 2003, p.57
[75] Idem.
[76] S. Kuankachorn, *ASEM V; Getting a value out of the ASEM Peoples Forum V*, www.ased.org, 4 November 2004

The Third Summit was coloured by a more positive development: the historical approach between both countries on the Korean peninsula. Other issues on the political agenda were the situation on the Balkans, East Timor, problems in the South China Sea and, for the first time, democratisation and human rights. It seemed that the Asian partners were more willing to discuss the issue than they had been so far.[77] The reason for this shift is unclear. One explanation could be that the Asian states had bended for the "pressure" by the European states to discuss the matter of human rights. Another reason could be that the events on the Korean peninsula positively effect the political dialogue on all matters. What the reason for the openness of the Asian states may be, the fact is that the issue of human rights was even adopted in the Chairman's Statement: "Leaders committed themselves to promote and protect all human rights, including the right to development, and fundamental freedoms, bearing in mind their *universal, indivisible and interdependent* character as expressed at the World Conference on Human Rights in Vienna." [emphasis added].[78] Democracy and human rights were in a similar way inserted in the basic agreement, the so-called Asia-Europe Cooperation Framework (AECF) 2000.[79] There were some Asian states, however, that feared interference in their internal affairs and far-going criticism from the European side. Therefore, in paragraph 12 of the Cooperation Framework, mention was made of the importance of issues of common interest, "not excluding any issue beforehand but exercising wisdom and judiciousness in selecting the topics for discussion." The dialogue had to be based on mutual respect and non-intervention in the internal affairs of each state, whether direct or indirect. The mentioning of the non-interference principle was mostly supported by China, Malaysia and Singapore.[80]

Looking at the change in interest in the human rights dialogue, the Third Summit in Seoul was characterized by reform and changes in general. The AECF is one example of the possible reform, as was a paper produced by the Commission called "VADEMECUM – Modalities for Future ASEM Dialogue – Taking the Process

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[77] M. Reiterer, *ASEM – The Third Summit in Seoul 2000: A Roadmap to Consolidate the Partnership between Asia and Europe,* in: European Foreign Affairs Review, volume 6, 2001, p.13
[78] Chairman's Statement of the Asia-Europe Meeting, *ASEM Summit III,* Seoul, October 2000, point 8
[79] *The Asia-Europe Cooperation Framework (AECF),* 2000, http://europe.eu.int/ns/asem_proces, point 5
[80] H. Loewen,, in: Asien, volume 95, April 2005, p.74

Forward", in which greater informality and interactivity were suggested. Suggestions for these improvements were to have more time between the official sessions, in the form of cocktails, coffee breaks and lunches. These informal sessions could be a way to improve discussion about the more delicate issues, such as human rights. This did not encourage the human rights discussion at the Fourth Summit though, since the political dialogue of the Fourth Summit was fully occupied by the event of the terrorist attacks of 11 September 2001. This event had such a dramatic impact on the entire international order that a discussion on human rights in East Asia was not an option. Much focus in the political dialogue was on the war against Afghanistan and, more in general, the fight against terrorism. The cultural dialogue was also coloured by the terrorist attacks, aiming to bridge the growing gap between the Islamic and non-Islamic world.[81]

The Fifth Summit was dominated by the question of enlargement: the European Union had than just acquired ten new member states and ASEAN wanted to allow the participation of its three most recently accessed member states, Laos Cambodia and Burma/Myanmar, to the official dialogue as well. The participation of the latter caused a lot of discussion and controversy between both continents, as has briefly been described earlier. Despite the fact that the participation of Burma/Myanmar in the Fifth ASEM Summit is closely linked with the possibility to have a human rights dialogue in the ASEM Process, it will be discussed in the fourth chapter on the description and implications of the Burma/Myanmar.

[81] M. Reiterer, *The Asia Europe Meeting (ASEM): The Importance of the Fourth ASEM Summit in the*

3. The role of non-governmental organisations (NGOs) in human rights protection

A. The role of non-governmental organisations on human rights protection in general

Mandate and legitimacy

As has been described in the first chapter, non-governmental organisations nowadays form an important part of international negotiation fora. There are various types of NGOs, varying from those that support the common good, such as environmental and human rights issues to those that are created for the protection of the interests of their own members, such as employers organisations of companies. All these organisations fall in the definition of non-governmental organisations, as " non-profit making, non-violent organisations, which do not represent governments or states", as was used in chapter one. There are more definitions used to describe the term, and it is not clear which one is all inclusive, if one is at all. A fact is, that the term is taken up in article 71 of the Charter of the United Nations, without a clear definition. This article refers to the ability of the Economic and Social Council to provide national and international organisations with consultative status. There are, however, little points of reference in this provision as to what constitutes an NGO. In 1986 an European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations ("European Convention" or "Convention") was adopted, stating that international NGOs should have a non-profit-making aim of international utility, being established by an instrument of international law or party to the Convention, with activities in two or more states, having their statutory office on the territory of a party to the Convention.[82] The disadvantage of this definition is that it only applies to international NGOs, while especially in the field of human rights, local or national NGOs are of crucial importance for the improvement of human rights protection. Their interaction with international

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Light of 11 September, in: European Foreign Affairs Review, volume 7, 2002, p. 143

[82] Article 1, European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisation, 24 April 1986

human rights NGOs will described later in general and with a specific reference to the region of Southeast Asia.

Yet another flaw of the definition would be that it is narrowed down to those organisations with an aim of international utility. The issue of human rights falls within this definition, but the question arises whether the employers' organisation of a certain company should be in- or excluded from the definition. Finally, the definition used in the European Convention includes those organisations founded by state parties to the Convention. There is a danger to this element of the definition, because of the existence of so-called "GONGOs", QUANGO's" or "DONGO's". These are organisations that appear to be non-governmental, but in practice have strong ties with the government of the state by which it was established.[83] Therefore, an NGO should on paper and in practice not be a representative of a state, nor should it have the purpose of making profits. For the purpose of this study, an organisation can be qualified as a human rights NGO when it is primarily concerned with the promotion and protection of human rights and when it uses international and national human rights standards to reach this aim.[84]

This leads us to the question of the mandate of the NGOs. Is this mandate general and universal or is it limited, either subject- or geographically-based? And if this mandate is limited to the territory of a certain state, does it have international legal personality? Do NGOs have this status at all, whether broad and general or limited regionally? If the organisations are granted this personality, this would have consequences for their performance under international law, such as to the ability to make treaties or to bring claims of breaches of international law before the respective instances. Especially in human rights protection the latter privilege would be a great loop forward. This would mean that NGOs could file complaints to, for instance, the European Court of Human Rights in case of violation of human rights in general, without experiencing a direct

[83] P. Baehr, M. Kamminga, *Een gedragscode voor mensenrechten-NGOs?*, in: C. Flinterman, W. van Genugten (eds.), *Niet-statelijke actoren en de rechten van de mens; gevestigde waarden, nieuwe wegen,* Den Haag: Boom Juridische Uitgevers, 2003, p. 68

[84] C.E. Schwitter Marsiaj, *The role of international NGOs in the global governance of human rights*, in: Schweizer Studien zum Internationalen Recht, Band/volume 121, Basel: Schulthess Juridische Medien AG, 2004, p.13

negative effect of the violation in question. As will be described latter in the part on the functions of human rights NGOs, this is not the case.

Traditionally international law only grants international legal personality to states. However, as can be concluded from the analysis in chapter one on the role of NGOs in international negotiations, this is no longer the situation the international community is in. NGOs play a growing role and a suitable response has to be found to deal with these developments. The recognition of NGOs by the Economic and Social Council of the United Nations, as supported by article 71 of the UN Charter is a step in this direction. However, fact remains that NGOs can only appear on the international plane when they are being invited by states, through a treaty or by an international governmental organisation like the UN or the Council of Europe. The observer and consultative status are the only formalized expression of granting them international legal personality. Studying the ASEM Dialogue, no such recognition has been granted to them. Even worse, NGOs have a hard time having their parallel sessions not hindered by some state parties to the Dialogue.

The issue of international legal personality is also important for the question of legitimacy of NGOs.[85] On behalf of whom do they raise issues of human rights violations? By whom can they be held accountable for their policies and actions? According to Peter Baehr and Menno Kamminga in their study on a code of conduct for Human Rights NGOs, legitimacy is derived from international law and generated by the veracity of the information provision, tangible support and general goodwill.[86] Studying the statute of Amnesty International, as both professors have done in their analysis, all conditions are met. There is a direct reference to the Universal Declaration of Human Rights and other international human rights standards. The statute is available on the internet, accessible to all, as opposed to Human Rights Watch, which is comparable to

[85] The term legitimacy can be defined as "the particular status with which an organization is imbued and perceived at any given time that enables it to operate with the general consent of peoples, governments, and non-state groups around the world". See also, P. Baehr, M. Kamminga, in: C. Flinterman, W. van Genugten (eds.), 2003, p.70

[86] Idem, p.70

Amnesty when it comes to seize and influence. Does this make Human Rights Watch less legitimate as an organisation? After all it is harder to monitor its activities on compliance with its mission statement. The International Commission of Jurists refers in its Statute to the international human rights standards, which are "universal, interdependent and indivisible", but without specializing which standards it refers to. In the first article the organisation's legal status is provided for as a non-profit and non-political association, which is close to the general definition of an NGO. The Statute of Amnesty, however, refers to it as a global community of human rights defenders, with human rights groups associated to it, and open for individual membership, as clearly defined in article 15 of the Statute. Studying the founding documents of smaller or non-Western human rights NGOs, like for instance Imparsial in Indonesia, or the Asia Foundation, reference is made to international human rights standards.

However, despite the fact that the organisations themselves make clear reference to international law, this does not change their status under international law. The reference of NGOs to the international human rights standards provides a justification and basis for their activities, but it would be an unjustifiable extension of their power to derive their status from these references. The fact remains that the only mention to the status of non-governmental organisations is made in the UN Chapter and the ECOSOC Resolutions based thereon and in the Council of Europe system in the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations and the Resolutions of the Committee of Ministers.[87] The set of laws that regulates the existence of NGOs are still national though. The recognition of NGOs as regulated in the above mentioned European Convention only extends this recognition of NGOs in state parties to those NGOs already recognized in another state party.[88] In many occasions, the national laws of states are not sufficiently equipped to deal with international NGOs, while it is their duty to provide the opportunity to form organisations with supporting laws, under the right to assembly, as adopted in many treaties. There is a discrepancy between the international tasks that

[87] Relevant in respect are Committee of Ministers Resolution 62 of 24 September 1954, Resolution 141 of 28 October 1960, Resolution 35 of 1972 and Resolution 93 of 18 October 1993.

most human rights NGOs have set for themselves and the struggle with the national laws, which sometimes limit their ability to perform these tasks. However, the fact remains that, as was the conclusion on the NGO participation at the international negotiation table as well, that states are still the dominant actor in international law. The ability of NGOs under international law to perform their tasks is still dependent on the states' willingness to allow them to enter the international arena.

This conclusion, however, does not answer the question of legitimacy entirely. In the case of the ASEM Dialogue, for instance, one often heard complaint is that those NGOs being able to influence policy are mostly based in Europe, having their voice heard on the level of the European Union. In what way does this represent the Asian people? What is their legitimacy concerning ASEM, if they claim to be restricted to this forum, if they only represent one side of the dialogue? What can the Asian members of NGOs do in order to get their voice heard and to have a "vote" in the decisions on policies of the (human rights) NGOs working in the field of ASEM? One argument refuting the democratic deficit of human rights NGOs, is that NGOs legitimate themselves by demanding their place in the international arena. NGOs, especially the ones working in the field of human rights, represent values and norms, instead of people. They are not like a state, of which there is no turning away from. If one does not like the policies or aims of an NGO, it can ignore it, or resign its membership, if the organisation has any. The demand for democratic legitimacy originates from the idea to view the recent world order trough the eyes of states, not allowing for any other entities, with other structures and missions to be present. Does this mean that NGOs do not have to answer for their behaviour at all? NGOs do have to apply the norms and values laid down by national and international law just as much as any other entity within the national legal order of states. Besides, those NGOs that do have members often also have an executive board, which has to justify their actions to their rank and file. For those NGOs which do not have that, support is voluntary based. Therefore, the demand for democratic justification ends here. Once they are officially granted with international legal status, which would also be the time to set up some kind of international code of conduct, which is absent so

[88] N.S. Rodley, *Human rights NGOs: rights and obligations (present status and perspectives),* in: SIM

far, there are clear obligations that can be monitored. As long as this is not the case, national law provides NGOs their legal status and the criticism of democratic deficit is not valid here.

This general counter argument on democratic deficit, however, does not justify the fact that the Asian NGOs have trouble effectively participating in the ASEM Dialogue. Their exact role will be analyzed in the example case of Burma/Myanmar, as will be described in the fourth chapter.

Functions

In the analysis on NGO participation in international negotiations, seven main tasks or activities of these organisations were distilled. The question that arises here, is whether these activities of NGOs in general also apply to human rights organisations, or whether these specific organisations have a specific list of activities. An important activity of human rights NGOs is the documentation and publication of human rights violations. The collection of information and, thereby, exposing human rights violations is considered to be one of the core activities of human rights NGOs. While information in itself is not enough to stop or prevent human rights violations, it is a prerequisite for effective action. What is important for states, but even more so for international organisations, is in order to develop an effective policy knowledge of the circumstances is of crucial value. International organisations, and especially human rights NGOs, have a reputation of collecting valuable information. Amnesty International and Human Rights Watch have an important function in this, for instance on the issue of torture in the 1970s and 1980s, in which Amnesty provided states and the United Nations with information on cruel practices in various states. This eventually led to the adoption of the UN Convention Against Torture.[89] Another example are the so-called "Human

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Special 19, 1997, p.46

[89] A.R. Korula, *The regimes against torture,* in: B.I. Spector, I.W. Zartman (eds), *Getting it done; Post-agreement negotiation and international regimes,* Washington D.C.: United States Institute of Peace Press, 2003, p.239

Dimension Implementation Meetings" of the Organisation for Security and Cooperation in Europe (OSCE), which is a platform for interaction between NGOs and representatives of member states on various human rights issues. Besides these meetings for exchange of general information, seminars are held on specific topics related to human rights, in which NGOs perform an important information providing role.[90]

NGOs can be called the main providers of information on human rights standards. Therefore, they are responsible for providing states, international organisations and the public reliable and well-documented information. Dependable and complete information is not only important for the effectively functioning of human rights mechanisms, but it is also a moment on which human rights NGOs can be monitored. Referring back at the issue of legitimacy, the reputation of NGOs are dependent on the reliability of their work, and thus of their collected information. The right balance has to be struck between providing information in a timely manner, so sometimes this has to be done without precisely verifying the information, and providing the correct and dependable information. The provision of information is a powerful tool in the hands of NGOs: they are usually the first to put an issue on the international radar. If a certain region does not get NGO attention the governments of states will most certainly not pay attention to the particular situation. This is part of the naming and shaming tactic: if a certain issue is brought under international attention, most states cannot afford to ignore it. On the other hand, if NGOs ignore a situation, states will most likely not take the situation up either. This is the so-called Chad Rule.[91] In the selection of information NGOs can be biased as well. Formulating a certain situation in a negative way can be a justification for the existence of the NGO in question. A study performed by Fred Grünfeld on the information provision of NGOs compared to states shows that regarding civil and political rights the chosen NGOs, in this case Amnesty International and Human Rights Watch provide in most cases more information than states like The

[90] S.C. van Bijsterveld, *Tussen burger en internationale organisatie: NGOs als vehikel voor veranderende internationale constitutionele verhoudingen,* in: C. Flinterman, W. van Genugten (eds.), 2003, p.84

[91] This name refers to the human rights situation in Chad, in which the former colonial power France did everything in its power to prevent the human rights situation to attract international media attention. See also F. Grunfeld, A. Smeulders, *NGOs als informatieverschaffers in vergelijking met statelijke actoren,* in: C. Flinterman, W. van Genugten (eds.), 2003, p.93

Netherlands and Norway, but when it comes to economic, social and cultural rights, the information provision of these organisations lacks somewhat behind. The only positive exception is the United States of America, which government has a constitutional obligation to report extensively on the human rights situation in those countries with which the countries has ties.[92] The question arises about the representation of this research. One important conclusion that can be drawn here, and which is likely to be valid in general for the functioning of human rights NGOs in the provision of information, is the fact that states have to consider human rights against other interests. Therefore, in bilateral negotiations or relations, a critical position on human rights can be harmful for interests of the critical state in question. If criticism has to be ventilated, it should be done so in a multilateral context. Regarding the situation of the human rights violations in Burma/Myanmar the European coalition of Great Britain, Denmark and The Netherlands uses the European Union to put pressure on the country in question. One consideration might be that this organisation as a whole is more effective in putting pressure than a single country. But maintaining good relations with the Republic of China, which supports the Burmese government, might have a lot to do with it as well.

Closely connected with the collection and publication of information are the other activities of human rights NGOs: education, advocacy, standard-setting and assistance with monitoring. Regarding the educational function of NGOs, the target groups define the format of the activities. The general public can be reached through information bulletins, public campaigns and advertisement in for instance the media. Through public education a basis can be created for action against a certain state. The use of internet is important in this regard.

But governments can be educated, for instance through the discussion fora used in the Organization for Security and Cooperation in Europe, as described above. Besides, international NGOs can educate national NGOs trough trainings and specialist

[92] F. Grunfeld, A. Smeulders, in: C. Flinterman, W. van Genugten (eds.), 2003, p. 93-119

workshops, for instance in the new member states of the Council of Europe.[93] The main aim of education is to create awareness among the public, the states or in international organisations, which hopefully will result in a better defence of the public of their own rights and in a demand for changes in other countries for more protection.

This latter aspect is what human rights advocacy is about as well: through exposure of human rights violations, NGOs try to create support of the public and supportive government to force for more protection measures in a certain state or area. Through effective negotiation NGOs have to reach the more influential states or form a large coalition with smaller states in order to influence international policy as effectively as possible. The larger the coalition is, the larger the basis will be, which is positive for the legitimacy of the action undertaken by the NGO in question. Human rights advocacy is the heart of policy influence, and is closely connected with the provision of information and with the agenda setting activities of NGOs.

After issues have been put on the international agenda, the phase of standard setting takes off. The role NGOs can play in this phase is largely instrumental: it can provide information, knowledge and technical assistance that is necessary in the preparation of treaties. The creation of the Statute of the International Criminal Court is still one of the most successful examples of NGO participation in the drafting of the treaty. Another example is the establishment of the Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict. Already in the early phase of the preparation of the document by the established working group NGOs played a role in information exchange and technical assistance.[94] But even in the 1940s there were pioneers, not yet called human rights NGOs though, that put human rights in the journalistic and academic spotlight.[95]

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[93] C. .E. Schwitter Marsiaj, in: Schweizer Studien zum Internationalen Recht, 2004, p.23
[94] C. Breen, *The role of NGOs in the formulation of and compliance with the Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict*, in: Human Rights Quarterly, volume 25, 2003, p.457

Finally, the phase after standard-setting is the monitoring of compliance of states with the treaty agreed. This can be done so through NGO assistance to victims in an international judicial or quasi-judicial procedure. NGOs do not have party status, except before the European Court of Human Rights. This status is limited, however, to the cases in which the NGO itself is a victim of a human rights violation.[96] Other ways of NGO participation in these cases is through so-called third-party intervention, which are used to protect persons who are unrepresented, to protect the public interest or to guard the procedure before the international organ in question.[97] Furthermore, NGOs can participate in these procedures as a witness or in the function of provision of legal assistance or aid to individual victims.

Besides the quasi-judicial procedures of dealing with individual complaints, most UN human rights treaties provide for a reporting procedure, which demands a report on compliance with the provisions of the treaty on an annual or bi-annual basis or every four years. The role NGOs play in this respect is through shadow reports: reports additional to those of the states and often more critical, which can be used by the treaty body in the discussion of the country report with the representative of the government in question.[98] Organisations like the Dutch Section of the International Commission of Jurists (NJCM), Defence for Children International and Amnesty International have been active in this regard. Coalitions of NGOs, handing in one shadow report, have been formed in the past as well, and are a useful means to combine knowledge and networks. Besides the fact that shadow report are used to make state report complete, and to form a critical note to the sometimes too rose-coloured state reports, these NGO reports can serve as a catalyst for social debate, both on a national and international level.

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[95] W. Korey, *NGOs and the Universal Declaration of Human Rights; A curious grapevine*, New York: Palgrave, 1998, p.3
[96] C. .E. Schwitter Marsiaj, in: Schweizer Studien zum Internationalen Recht, 2004, p.25
[97] E. Schwitter Marsiaj, in: Schweizer Studien zum Internationalen Recht, 2004, p.25
[98] I. Boerefijn, A. van Gans, R. Oostland, *De rol van niet-gouvernementele organisaties in de toezichtsprocedures op basis van VN-mensenrechtenverdragen*, in: C. Flinterman, W. van Genugten (eds.), 2003, p.122

Interaction between national and international human rights NGOs

As with the shadow reports, which can be a combined project of several national and international human rights NGOs, these organisations can cooperate in all other fields as well. Local human rights activists, with their specific knowledge of the local situation, can complement the more generally based international organisations, which have better access to international negotiation platforms, media and policymakers, and vice versa. Besides, international NGOs often have more funding to be present at the large conferences and to have more access to the important policy-making meetings. However, also for international NGOs funding and staff remains a topic of concern.

The most important area of cooperation between local and international NGOs is in the area of information provision and publication. International NGOs often enjoy a high level of legitimacy. The reputation of large international organisations such as Human Rights Watch, Amnesty International and the International Committee of the Red Cross is very good and states rely on their reports. These reports, however, could not be composed without the help of local human rights activists, either through their assistance to the representatives of the international organisation that is sent to the field or through specific information provided by the local organisations.[99] Therefore, the organisations on both levels are interdependent: local NGOs need their international counterparts to have their voice heard in the international arena, while international organisations need the local ones to get a better understanding of the local political, cultural and social situation.

Moreover, international NGOs can help their local counterparts to gain access to international human rights systems, for instance in their assistance of victims in individual complaints procedures. Amnesty International and the International Commission, for instance, sometimes speak on behalf of national organisations at the

[99] D.A. Bell, J.H. Carens, *The ethical dilemmas of international human rights and humanitarian NGOs: reflection on a dialogue between practitioners and theorists*, in: Human Rights Quarterly, volume 26, 2004, p.303

UN or they provide the opportunity to local organisations to represent themselves.[100] This bridge function can be of great importance for NGOs willing to participate more in the ASEM Dialogue. Especially Asian NGOs complain that it is difficult for them to raise critical issues to their governments, since there is still fear among Asian governments that NGOs could challenge and threaten their power.[101] Therefore, the hope of the Asian NGOs is grounded on the cooperation with their European counterparts to get more grip on the ASEM Dialogue. What the exact influence of Asian NGOs is will be discussed in the next paragraph.

B. The role of non-governmental organisations in human rights protection in Southeast Asia

Before going into the topic of the role of NGOs in Asia, it is wise to return to the discussion of the definition of civil society as described briefly in the first chapter. In this chapter civil society, of which NGOs can be said to form a part, is regarded as a counterweight of the state, in which individual, groups and other entities participate on a basis of free will. This element of free will is considered to be crucial for a good life. This concept of a good life is rather Western based, as case was made above. The question that arises here is whether this definition of civil society can be used for studying the influence of Asian civil society on government policy. How far does Asian concept of civil society differ from the European ideas?[102]

This discussion on the differences in concepts of civil society in Asia and Europe is closely related to the discussion of the different interpretations of human rights. Some scholars argue that the concept of civil society is still in a developing stage, while others

[100] E. Schwitter Marsiaj, in: Schweizer Studien zum Internationalen Recht, 2004, p.27
[101] S. Berisck, P. Scannell, B. Brennan (eds.), September 2002, p.9

[102] The differences between Asia and Europe are chosen, since these are relevant for the analysis of the paper and for finally answering the central question.

even deny that such a concept exists at all in Asia.[103] The core elements of civil society in Europe are that it is a collection of individuals, organizations, etc. that is based on free will, independent from the states serving as a counterweight to the state. In Europe this was developed by the "bourgeoisie", mainly out of economic interests, with a clear distinction between public and private sector.[104] With the latter element a problem arises in the case of Asia: there is no clear distinction between public and private sector. There is a large so-called unofficial sector, falling in between private and public sector. Besides, the question arises whether a "bourgeoisie", as was present in Europe in the nineteenth and twentieth centuries to develop a sector that became an important check on the use of power by the state, is present in this form in Asia. Slowly, a new middle class, with an urban orientation, and well educated is emerging at least in the Southeast Asian region.[105] However, to what extent can this middle class perform the same task as the European bourgeoisie did in filling up the space left to private actors? In Southeast Asian countries, this space is rather small, due to the authoritarian nature of some of the states. As in the human rights discussion, leaders like Mahathir of Malaysia or Suharto in Indonesia always argued that forces counterbalancing the power of the government were dangerous to the stability of the state and should therefore be hindered. This emphasis on internal stability and security was a legitimate argument for a long time, since most states in Southeast Asia have been more or less stable for some decades now. This focus on stability and security resulted in the creation of the regional association of ASEAN, dealing with all uncertain external factors of the Cold War, the fall of the Soviet Union as a Super Power, and the changing nature of conflicts. This argument was valid for a long time to restrict human rights and to narrow down the possibilities for civil society actors to work on political reform. However, the financial crisis, together with the political crises of East Timor, the fall of the Suharto regime and the jailing of Anwar Ibrahim in Malaysia paved the way for political reform. Slowly, the room for civil society to manoeuvre is extending. One example in this respect is the situation in Malaysia. In this country, the movement of "Reformasi", which symbolizes the political reform it is going through, a growing role is played by civil society actors like NGOs

[103] D.C. Schak, W. Hudson, *Civil society in Asia,* in: D.C. Schak, W. Hudson (eds.), *Civil society in Asia,* Hampshire: Ashgate, 2003, p.1
[104] Idem. p.4

and activists.[106] There are a few factors that determined the influence of these actors. First of all civil society had become growingly active, also through the raise of the internet, as an important non-state controlled medium for information. The internet was used for the creation of public awareness on more critical issues like democratization and human rights. Besides, the government decided not to act to harshly to prevent the rise of the civil society actors, since this would create martyrs internally and a very bad reputation externally, as was the case with the bloody repression of student protests in Burma/Myanmar and China in the late 1980s. Finally, the political climate in the region with the financial and political crises, was ripe for change. Therefore, the role these civil society actors played was growing, but their influence was only as large since they combined forces with the political opposition.[107]

Does this situation in Malaysia serve as an example for the entire region though, especially when it comes to the role of NGOs specifically? Studying the situation in the Philippines, for example, space for popular involvement in civil society organisations expanded greatly after the revolution in 1986, which ended the twenty years of Marcos rule.[108] NGOs take up all kinds of non-economic concerns, such as health care, literacy but also human rights. There is thus a lively sector of citizen participation in for instance NGOs. This has evolved into a strong check and balance on the government: the civil society dynamism can surge so high that it can bring about regime change, or at least call for it, as has happened against President Gloria Macapagal Arrayo in July this year.[109] Here, there is no coalition building with the government, as is the case in Malaysia. If done in a balanced way, this system of checks and balances can work as a strengthening mechanism for democracy and human rights. However, in the case of the

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[105] F. Loh Kok Wah, *ASEAN NGOs in the post-Cold War world,* in: J. Lele, W. Tettey (eds.), *Asia – Who pays for growth?,* Aldershot: Dartmouth Publishing Company Limited, 1996, p.43

[106] M.L. Weiss, S. Hassan, *From moral communities to NGOs,* in: ML. Weiss, S. Hassan (eds.), *Social movement in Malaysia; from moral communities to NGOs, London:* RoutlegdeCurzon, 2003, p.12

[107] M.L. Weiss, *Civil society and political reform in Malaysia,* in: D.C. Schak, W. Hudson (eds.), 2003, p.68

[108] The increase in NGOs is visible in other countries in the Southeast Asian region as well. Indonesia, Thailand, Vietnam, Cambodia and Singapore all show a sharp increase of the amount of non-government related organizations active in non-economic fields such as human rights and environmental issues. See also I.R. Serrano, *Civil society in the Philippines: struggling for sustainability,* in: D.C. Schak, W. Hudson (eds.), 2003, p.111

Philippines, since the Marcos era, there have been so many challenges to the legitimacy of the government in power, that it has a destabilizing and disturbing effect. This resulted in the breach of the main principles of a democratic state, namely transparency, the rule of law, accountability and democratic participation.[110] Studying the situation of human rights defenders in 2004, as has been done by the International Federation for Human Rights in their report published on 31 March 2005, the situation of human rights NGOs in the Philippines does not give rise to a positive view. Important proponents of the abolition of the death penalty were harassed and even executed, as were other representatives of human rights NGOs. The report concludes that these extra-judicial killings created a climate of fear, in which the freedom of expression and democracy were undermined.[111] However, on the other hand studying the entire report, the situation in some other countries in the region of Southeast Asia, like Vietnam, Laos and Cambodia is worse: besides executions and disappearance of representatives of human rights NGOs, the freedoms of expression, association, and assembly are restricted, and economic, social and cultural rights are not lived up to.[112] On Vietnam, the report states that "the communist authorities continued to blatantly stifle all form of criticism and dissent, as they increased the repression against all divergent opinions, thus increasingly restricting the freedoms of opinion and expression guaranteed by the 1992 Constitution".[113] This complies with the conclusion drawn by Sebastian Bersick on the difficulty of Asian NGOs to raise critical issues to their governments.[114]

It is important to note, however, that each state in Southeast Asia had its own history of development, with more differences between them in the last century than is the case in the more homogenous situation of Europe. These differences in history have had a clear influence on the rise of NGOs in each state separately. In Indonesia for instance, under the somewhat liberal regime of President Sukarno NGOs could emerge, of which the

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[109] The Associated Press, *Philippines president won't resign*, 8 July 2005, Manilla, www.cbs.com/stories/2005
[110] I.R. Serrano, in: D.C. Schak, W. Hudson (eds.), 2003, p.111
[111] International Federation for Human Rights (Networking Human Rights Defenders), 31 March 2005, www.fidh.org/IMG/pdf/Asia.pdf, p.218 and 270-274
[112] Idem., p.218-231
[113] Idem., p.277
[114] S. Berisck, P. Scannell, B. Brennan (eds.), September 2002, p.9

rural ones were abandoned by the later President Suharto. In Malaysia, as in Thailand and Indonesia, the state was involved in so many aspects of life, that a proliferation of NGOs to fill up some of that space was very hard. However, in the 1970s, more urban-oriented organisations emerged, mostly concerned with consumer rights and environmental issues.[115] Human Rights in this regard remained a controversial issue. In Cambodia, however, very few organisations emerged until the 1970, when they started playing a crucial role in the channelling of international development aid to the rural areas.[116] It was especially during the 1980s and 1990s with the economic prosperity that NGO proliferation was blooming, especially in the area of development aid. International and national NGOs worked together to gain funds and to transfer the aid to the areas in most economic need as good as they could. The international non-governmental organisations were somewhat reserved in directly lobbying with the governments in question, which were still a bit suspicious towards external interference.[117] Therefore, coalitions between international and local organisations, in which the locals established and maintained the contacts with the officials, were thought to be the most effective means to influence policy. As was the case in Malaysia as well, ties with state actors were important to have a chance on political influence.[118]

When human rights were involved, however, the picture is less roseate. The described rise of non-state actors like NGOs in the 1980s and 1990s, is not so much true for those working in this field. However, once human rights NGOs are allowed to function, they were the best placed of all non-state actors to challenge the authoritarian rule that was so dominant in the 1980s and 1990s in Southeast Asia. NGOs provided an opportunity and legitimacy to the students, academics to oppose to the governments, as was the case in for instance Indonesia.[119] And exactly for this reason, these organisations were and in

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[115] G. Clarke, *The politics of NGOs in South-East Asia; Participation and protest in the Philippines*, London: Routledge, 1998, p.31
[116] G. Clarke, 1998, p.32
[117] Idem., p.34
[118] This is not the case in the Philippines, however, where the civil society organizations act independently from the state actors, without directly forming coalitions with officials. Therefore, because of all these different political situations, it is important to keep in mind that there is not one model for the realization of the functioning of civil society and especially NGOs in the Southeast Asian region.
[119] B.S. Hadiwinata, *The politics of NGOs in Indonesia,; Developing democracy and managing a movement*, London: RoutledgeCurzon, 2003, p.97

several cases still are heavily restricted by the governments in question. Where claims on human rights were repressed in the name of cultural relativism and economic development in the past, the argument has shifted, since the terrorist attacks of eleven September and the Bali bombings, more towards the justification of the fight against terrorism. In the name of protection of internal and regional stability and security the freedom of expression and assembly are restricted and opposing "elements", read: representatives of human rights NGOs, are removed from society. This observation can be concluded from several Amnesty International reports as well.[120] Especially the rise of the internet, which is used by many NGOs to spread information on human rights violations, has resulted in the further restrictions of the freedom of expression and association, which hampers the work of human rights NGOs. They try, through the provision of information to create awareness amongst the public and to enforce political reform. The niche in which these tasks have to be performed is rather small, however. The case of Malaysia shows that NGO influence can be quite effective, as long as the formulations used are delicate and aware of the internal governmental fear against too much influence and as long as the material used is backed up by political opposition for instance. Maintaining a clear division between state and non-state actors, as is done in Europe, is not an effective way to improve the human rights situation in Southeast Asia. Too clear influence by non-state actors like NGOs is forcefully repressed and leads "only" to international indignation. More subtle lobbying, building coalitions with opposing political parties, taking careful steps is a more effective way to cultivate change. One prerequisite is, of course, that there is a political opposition existent. This is rather problematic in the case of Burma/Myanmar. This case, however, is not representative or the whole of Southeast Asia, as will be described in the next chapter.

Much has been done, but there is still a long road ahead before these actors can truly perform an officially recognized role. This much is clear from the report of the International Federation for Human Rights. However, the fact that the amount of NGOs has increased noticeably in most countries in Southeast Asia since the 1980s is a sign

[120] For instance the report on *Torture and secret detention: Testimony of the 'disappeared' in the 'war on terror,* 4 August 2005, AMR 51/108/2005, *Socialist Republic of Viet Nam appeal for: cyber dissident – Nguyen Vu Binh,* 1 June 2005, ASA 41/019/2005, www.amnesty.org

that slow change is possible. New political leaders like Sasilo Bambang Yudhoyono in Indonesia could contribute to this change.[121] And these changes are necessary, if the region wants to be able to face the challenges it has been facing the last decade, like the terrorist attacks, the tsunami and the other earth quakes in Indonesia. These challenges can best be faced by an open, transparent, democratic society with respect for human rights. As has been said, there is still a long way to go.

4. The case of participation of Burma/Myanmar to the Fifth ASEM Summit

A. The position of the states

The European and East Asian continents committed themselves to develop their Dialogue further in the field of political, economic and cultural cooperation. The purpose of the ASEM Dialogue was to evolve mutual understanding and respect further and to maintain good relations between both parts of the world, based on the principles of equality and non-interference in internal matters. Especially the latter principle caused friction between both sides, for instance regarding the participation of Burma/Myanmar to the Dialogue. This difference of opinion lead to an almost clash right before the Fifth ASEM Summit, to be held in Hanoi Vietnam in November 2004. This was not the first time, however, that the participation of Burma/Myanmar was a topic causing controversy between the Asians and Europeans.

The current military regime has governed with strong force since the military coup in 1988. At this take-over, the shift of power was only a theoretical one, from one military regime to the other. In practice, however, both regimes were intertwined, which resulted in the fact that nothing really changed for the population. The grip of the military

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

government of the State Law and Order Restoration Council (SLORC), which assumed power of the Burma Socialist Programme Party (BSPP) ruling from 1962 till 1988, was loosened somewhat.[122] But still, most of public and private life was fully controlled by the military junta, and there was no sign that an independent civil society would be allowed to emerge. The maintenance of the government's control and the resulting restrictive laws on several freedoms, such as the freedom of expression, the freedom of the press, freedom of association, etc, was subject of more international criticism than the BSPP regime, however. The reasons for that were that the international media paid more attention to the situation in Burma/Myanmar, also because there now was a clear victim of the regime, who personalized the abstract accusations of human rights abuses: Aung San Suu Kyi. She is the general secretary of the National League for Democracy and received a Nobel Price for her attempts to drive the military regime towards democratisation. She was arrested after the student protests in 1988, which were bloodily knocked down by junta.[123] Since 1989, she is put under house arrest, seriously limiting her fundamental human rights and freedoms. Her party, the National League for Democracy (NLD) won the 1990 general election decisively, an outcome which was ignored by the military leaders, who remained in power.[124] Another reason for more external criticism on the country was the fact that the world order was changing rapidly in those days. The massacre at the Tienanmen Square in Beijing, China by the government forces in 1989 was forcefully condemned by the international community, which also backfired at the events one year earlier in Burma/Myanmar.

The European Union condemned both the bloodily knocking down of the pro-democratisation protests, as the ignorance of the election outcomes in 1990. This resulted in the political isolation of the country and economic sanctions put on the

[122] D.I. Steinberg, *A void in Myanmar: civil society in Burma,* in: Burma Center Netherlands (BCN), Transnational Institute (TNI) (eds.), *Strengthening civil society in Burma; Possibilities and dilemmas for international NGOs,* Chiang Mai: Silkworm Books, 1999, p.9
[123] H. Loewen, ASIEN, volume 95, April 2005, p.65
[124] Instead of recognizing their defeat, the military regime decided to hold a national convention to write a new constitution. The NLD of Aung San Suu Kyi decided to leave the convention in 1995. Critics of the convention state that this is used as a justification for the military junta to remain in power. The decision to hold the convention was followed by the decision to establish the so-called Union Solidarity and Development Association (USDA), an organization appearing to have characteristics of a civil society organization, but entirely controlled by the government.

country by most Western countries. The European Union imposed an arms embargo on the country as early as 1990, followed by the ending of defence cooperation in 1991 and the suspension of all bilateral aid, except for strictly humanitarian assistance and finally a visa ban on all members of the military regime, members of the government and senior military officials, etc.[125] The United Nations condemned the situation in the country through sharply formulated resolutions, of which the first one was adopted by the UN Commission of Human Rights in 1989 and after that by the UN General Assembly. These resolutions called upon the military junta to hand over power to the democratically elected government and to end the human rights violations.[126]

The ASEAN response, however, was very different: instead of the policy of isolation, sanctions, and official condemnation of the human rights situation, the member states of the Association chose the policy of "constructive engagement". This means the effort to convince the military regime to come to democratic development by persuasion and quiet diplomacy. At the annual summit of ASEAN in Vientiane in 2004, the new Prime Minister of Burma/Myanmar, Soe Win was even warmly welcomed by the other ASEAN nations, despite the unchanging situation of Aung San Suu Kyi and the lack of democratic process.[127] They still considered the matter an internal affair of the Burmese state, despite the growing humanitarian need, the internal conflict continuing for years now, and the grave violations of most civil, political, economic, social and economic rights, despite their universal character.[128] One important factor in this matter could be the position of China on the issue. China is one of the greatest supporters of the military regime, because it still keeps the country, which shares a border with the Chinese, stable. The Beijing government fears political chaos once the military regime is put out of power. And this political chaos could have a spill-over effect on the southern areas of

[125] European Commission, *The EU's relation with Burma/Myanmar*, May 2005, http://europa.eu.int/comm/external_relations/myanmar
[126] The most recent resolution of the General Assembly on this matter is the one of 23 December 2004, in which reference is made to the report of the Secretary-General and the interim-report of the Special Rapporteur of the Commission on Human Rights on the human rights situation in Myanmar. See General Assembly, Resolution 263, A/RES/59/263, 23 December 2004
[127] The Economist, *Shame on the summiteers; South-East Asia's leaders simply ignored Myanmar's crisis*, Vientiane, 2 December 2004
[128] This especially goes for the rights inserted in the Universal Declaration of Human Rights, which have become binding upon all because of their international customary law status.

China, because of the Chinese minority living in Burma/Myanmar.[129] Besides, China is a strong advocate of the non-interference principle. Finally, India has tightened relations with Burma/Myanmar, most probable because of interests in the gas reserves in the country.[130] As the arch-enemy, China cannot stay behind in this matter. Moreover, also Thailand has tightened relations with the military junta, possible also out of security considerations. The Thai border area is flooded with Burmese refugees, since military ruling and since the ethnic conflict in the border areas is continuing.[131] The more its neighbours will support it, the less likely it is that the international pressure on the Burmese military regime will gain effect.

Despite its bad human rights reputation, Burma/Myanmar was adopted in the ASEAN system in 1997, which led to a blockade in the relations of the East Asian nations with the member states of the European Union. The latter were not willing to enter into a dialogue with the military dictatorial regime. The diplomatic relations between both regions were deteriorated in such a way, that an ASEAN-EU Joint Cooperation Committee was cancelled in November 1997. The same goes for a Senior Official Meeting in Bangkok and a meeting between the Ministers of Foreign Affairs, which was planned for March 1999 in Berlin.[132] It took another three years until the next EU-ASEAN Foreign Ministers Meeting could be held in 2000 in Vientiane, Laos. However, none of the foreign ministers from the European side participated in this meeting.[133] The member states of the European Union maintained their position that Burma/Myanmar could not attend official Summits, also those of the ASEM Dialogue. This resulted almost in the annulment of the Second ASEM Summit in 1998 in London. Through mediation by the Thai government, which was the EU-coordinator of ASEAN at that moment, the member states of ASEAN decided to finally give in with the proposal that ASEAN membership did not automatically lead to ASEM membership. This was a hard compromise for the ASEAN states to swallow, since in their view the adoption of

[129] Altsean, *Political situation in Myanmar*, http://altsean.org, 30 March 2004, p.53
[130] Idem., p.38
[131] Human Rights Watch, *Thailand: End crackdown on Burmese fleeing abuses; Thai government policy puts thousands of Burmese at risk*, 25 February 2004, www.hrw.org/english/docs/2004/02/25/thaila
[132] H. Loewen, ASIEN, volume 95, April 2005, p.67
[133] Idem., p.68

Burma/Myanmar in the ASEAN and thus also the ASEM system was a legitimate consequence of the policy of constructive engagement.[134] However, the Asian states were aware of the fact that retaining to the participation of Burma/Myanmar to the ASEM Summit would seriously harm the purpose of the Dialogue. In this sense, the Asian side decided to give in and participate with only seven ASEAN member states plus China, Japan and South-Korea to the Second and the Third Summits in respectively London and Seoul. The Fourth Summit was mainly engaged with the issue of international terrorism, so there was hardly any room for discussions on human rights and participation of Burma/Myanmar, which left the matter still unresolved. The question arose again in 2004 in the period towards the Fifth Summit, to be held in Hanoi, Vietnam. The European Union was enlarged with ten new member states, which were automatically adopted into the ASEM process. This was considered offensive by the Asian side, since despite the fact that new member states to the EU have to comply with certain standards of good governance and democracy, the reputation in this respect of some of the new members can be doubted.

The question that arises here is whether the European states were one in their call to boycott the Fifth Summit if Burma/Myanmar would attend on an official level. And what exactly was the position of the Asian states in this respect? There was a delegation of three states on European side, which were rather strong in their position on the position on Burmese participation: the United Kingdom, Denmark and The Netherlands were against.[135] The Netherlands was in a difficult position in this respect, since it was the EU President in the second half that year.[136] Therefore, a Special Representative of the EU, Dutch former Foreign Minister Hans van den Broek was appointed to negotiate with the foreign ministers of Vietnam, as the host country, Japan, Thailand and China, as important neighbours. One important factor of these negotiations was that conditions are not put in a coercive way, but rather to speak of “wishes” from European side. The

[134] O. Wagener, Herausforderung für den ASEAN Way: Myanmars ASEAN-Mitgliedschaft, Stuttgard: Ibidem-Verlag, 2004, p.60

[135] This was concluded from an interview with an official of the Netherlands Ministry of Foreign Affairs, who wish to remain anonymous. The Hague, Wednesday 4 May 2005.

[136] This one of the reasons why the Netherlands government never adopted an official position on a possible boycott. The matter at that moment was still left to solved by the member states of ASEAN.

wishes as put forward by the Irish Presidency, which was the precedent of the Netherlands, were for instance the release of Aung San Suu Kyi and all other political prisoners, the re-opening of the NLD offices, the continuing of the democratisation process and the end of human rights violations in the country.[137] The EU Special Representative approached China with the request to use its important influence to quietly convince the Burmese militaries to move towards democratisation and protection of human rights.[138] Despite the fact that the appointment of a Special Representative, who would discuss the matter bilaterally and not in the official Dialogue with all states present, was appreciated by the Beijing minister of foreign affairs, he did not respond positively to the request. The position of the minister, and thus the government remained that the European Union should not interfere in an internal matter of Burma/Myanmar. Multilateral dialogue and the approach of constructive engagement were considered by Beijing to be more effective than international isolation. Therefore, Burma/Myanmar was supposed to attend to the Summit, at whatever level of representation it may decide. According to the Chinese, the European Union delegation was too focussed on the release of Aung San Suu Kyi, which was hampering the process.[139] China did, however, give some "advice" to the military government in which the concerns of the international community were filtering through. The question is what this advice exactly are. This, however, did not become clear in the interview though.

As for Vietnam, this country was in a difficult position, since it was hosting the ASEM Summit. Therefore, it had quite an interest in proceeding with the meeting. On the other hand, as a member state of ASEAN, it also had an interest in maintaining the principle of non-interference and equality. Therefore, at the ministerial meeting of the ASEAN Regional Forum, held in Jakarta in the beginning of July, the Vietnamese government proposed to the European states the solution of attendance by Burma/Myanmar at the ASEM Summit, but not on the presidential level. The Vietnamese made very clear to

[137] Idem.
[138] The use of quite diplomacy was requested, in order to prevent the loss of face of the military junta. It was considered that this would be a more effective method than to negotiate the liberalization process in an official meeting.
[139] Idem.

the European states that this was the absolute bottom line. This position was taken over by Japan in the meeting with the Special representative of the EU as well. Japan can be considered as one of Asian's most active members in finding a solution to this problem. Japan had a great interest in proceeding with the Summit as well. The official reasons for this position remain unclear. Unofficially, however, it could be concluded that Japan fears the fast political and economic rise of China. Good relations with the EU could always be helpful in countering this rising super power. Therefore, the so-called "Jakarta formula" was assented by Tokyo, also as the absolute bottom line.[140] If Burma/Myanmar could be represented by a delegation with a lower rank than minister of foreign affairs, international criticism on its policy would have no effect. International criticism on its human rights policy and its lack of democratisation could be helpful, according to Tokyo. However, it was important to keep in mind that the internal political situation in Burma/Myanmar was an issue separately from the ASEM Dialogue. Therefore, too much emphasis on the release of Aung San Suu Kyi would be counterproductive. The timing for the release was a Burmese matter.[141] These latter arguments made by the Japanese minister of foreign affairs could be interpreted as a disguised approval of the non-interference principle, as supported heavily by the Asian side. In other words, the Japanese made clear to the EU that it had to step aside. Instead of focussing on the negative aspects, Europe should focus on East Asia in an economic respect, as the most dynamic region in the world nowadays, according to the Japanese minister.

Finally, the Special Representative met the minister of foreign affairs of Thailand. The Thai position in the matter of participation of Burma/Myanmar was somewhat delicate. On the one hand, the Thai government was approaching the Burmese military junta more and more in the last year, as was described above. On the other hand, the Thai government was disappointed and worried about the unwilling position of the Burmese. In December 2003 Bangkok hosted a forum on the future of Burma/Myanmar. The conference was meant to be a meeting of like-minded nations, together with UN special

[140] This was concluded from an interview with an official of the Netherlands Ministry of Foreign Affairs, who wish to remain anonymous. The Hague, Wednesday 4 May 2005.
[141] Idem.

envoy Razali Ismail.[142] The Burmese minister of foreign affairs Win Aung outlined the roadmap of the Prime Minister Gen Khin Nyunt, which includes seven steps towards democratisation.[143] The second meeting of the Bangkok Process was scheduled for April 2004. The Burmese leadership decided not to attend this second round of talks, possibly because the hard-line top of the military regime had taken over the national reconciliation process from the more moderate Prime Minister Khin Nyunt.[144] This was not only detrimental for the states attending the process, but especially for the Thai government, initiating and hosting the meetings. On the other hand, the Thai government was rather strict in supporting the ASEAN plus three construction attending the ASEM Summit: either all new member states of the European ànd the Asian would attend or none of the new member states could participate.[145] The "Jakarta formula" was not considered a very good option by Bangkok. If this would have to be the solution than indeed, the ministers level would be the absolute bottom line.

It is clear from the above that the Asian states were struggling with maintaining good relations with their European counterparts on the one hand, and supporting the principle of non-interference and maintaining regional stability on the other hand. Some Asian states were more firm than others. On the European side, however, there was no full consensus on the matter either. As described, there was a coalition of Great Britain, Denmark and The Netherlands on the one hand, in favour of boycotting the Summit, and there was mainly France on the other hand, declaring to proceed with the meeting. The reasons for this French position can be sought in the area of economic interests. At least that is what the Burma Campaign UK is stating in its report on the role of the oil firm Total in Burma/Myanmar.[146] Besides, on the EU level, the boycott of investments in the Asian country was negotiated.[147] France declared to be against such sanctions.[148]

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[142] L. Jagan, The Bangkok Post, 30 April 2004, www.birmanie.ch/nouvelles/news100404.htm
[143] The Irrawaddy, *Thoughts on the Bangkok Process*, 1 March 2004, editorial, www.irrawaddy.org/aviewer.asp
[144] L. Jagan, The Bangkok Post, 30 April 2004
[145] This was concluded from an interview with an official of the Netherlands Ministry of Foreign Affairs, who wish to remain anonymous. The Hague, Wednesday 4 May 2005.
[146] B. Clavin, J. Allen, *Totalitarian oil; Total Oil: Fuelling the oppression in Burma*, London: Burma Campaign UK, February 2005, p.3
[147] Burma Center Nederland, *EU kondigt economische sancties aan tegen Burma*, 5 September 2004, www.burmacentrum.nl

Moreover, the EU was negotiating the ban on import of teak wood from Burma/Myanmar into the Union. The problem with this ban would be, however, that it is against the regulations of the World Trade Organization.

In all, the European Union member states had trouble finding consensus in the matter. France was the most prominent state against the boycott of the Summit. The Netherlands was in a difficult position, but declared itself to be against the political situation in the Asian country, while Germany and Austria were struggling with the fact that they did not want to offend the other Asian nations.[149] Eventually, the agreement was to follow the Jakarta formula and allow the Burmese minister of foreign affairs to attend the Summit. This was considered to be the best possible, but still temporary solution. The issue had to be solved, since Burma/Myanmar was supposed to be the President of ASEAN in 2006. The United States of America had, unofficially, declared not to attend the Asia Regional Forum Meeting, because of the reputation of Burma/Myanmar. Finally, on July 26, Burma/Myanmar decided to abandon the possibility of performing the Presidency of ASEAN.[150] The declared reason was that the country would be too occupied with the democratic reform process, since 2006 would be a critical year for the implementation of the roadmap to democratisation.[151] Some opponents to the military regime welcome the decision by the junta, while other critics state that this way the military regime has taken the easy way out. The government might argument that it has given in to some of the international demands already, so it does not have to do more regarding the democratisation process and the protection of human rights. Whether the Burmese government will use this decision as a first step towards a more liberal and democratic system remains to be seen. Fact is that a crisis between the EU and the USA on the one hand and the member states of ASEAN on the issue is diverted, at least for now.

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[148] This was concluded from an interview with an official of the Netherlands Ministry of Foreign Affairs, who wish to remain anonymous. The Hague, Wednesday 4 May 2005.
[149] Idem.
[150] NRC Handelsblad, *Na diplomatieke druk; Birma ziet af van leiding van ASEAN,* Vietiane, 26 July 2005

B. The role of non-state actors in the Burma case

The issue of participation of Burma/Myanmar to the Fifth ASEM Summit was mainly a matter between state officials. International NGOs with the help of the international media, however, have put the issue on the international agenda. Among European NGOs, there is a quite some interest in working in and on the human rights and development situation in the country. The spread of information is crucial in respect of international attention and pressure on the military regime. This is one of the main reasons why the current military regime is been dealt with internationally so much since its existence, while its predecessor the Burma Socialist Program Party was not under international attention so much. Globally, there are several Burma advocacy centres, which perform an important role in the spread of information: nine in European countries, the US, Canada, Japan and Australia.[152] They try to bring about change in the country through human rights advocacy. In order to get important information, cooperation with local NGOs is sought. Under the military regime of BSPP, which ruled from 1962 till 1988, civil society, within the terms as we know it, was nearly absent. When the SLORC regime came into force in 1988, economic liberalisation was promoted, including the private sector. This came to an abrupt end, however, in 1990 with the general elections, won so convincing by the opposition. From that moment, state control tightened and the private and non-governmental organisations were reduced to those, which were independent but not allowed official accreditation, and those heavily controlled by the state. Besides, there are up to roughly twenty NGOs, mostly Christian and Muslim, working in the border areas on giving aid to the refugees.[153] The accreditation is a means used by the government to maintain control over the international NGOs willing to work in Burma/Myanmar. In order for these foreign NGOs willing to operate within the country itself, an agreement with the government has to be closed. These agreements, the so-called Memorandums of Understanding, are only obtained after a bureaucratic negotiation process with the

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[151] BBC Burmese, *Burma foregoes ASEAN chair: any closer to change?,* BBC News, July 2005, www.bbc.co.uk/burmese/forum/story/2005/07

[152] M. Purcell, *Axe-handles or willing minions?: International NGOs in Burma,* in: BCN, TNI (eds.), 1999, p.75

[153] G. Clarke, 1998, p.35

ministry in question. The organisation applying for the agreement has to be permitted a residence in the country.[154] The residence permit is usually followed by a period of delay, in which the government screens the organization. Then, the negotiation process with the ministry takes place before the request is finally approved by the special committee.[155] The entire procedure is a clear example of state control. This is the reason why Aung San Suu Kyi called for the international NGOs not to operate from within Burma/Myanmar, because they would be too dependant on government's scrutiny, or even worse: they would be used by the government's propaganda machine and development would not reach those who need it the most. The question that makes it very difficult to stay away for many international human rights and development NGOs is, however, what to do with the worsening humanitarian situation the population is in. Should they just be left on their own? Some NGOs have answered this question negatively, arguing that the humanitarian crisis that is going on in the country has to be stopped. In order to do that, these NGOs have subjected themselves to the government regime. Some of these have established ties with government-organised NGOs, the so-called GONGOs, which are most of the national NGOs in Burma/Myanmar. These bodies were set up by the government mainly for welfare purposes and their agenda is heavily influenced by the military government.[156] Other international NGOs, however, have remained independent and they meet a lot of opposition and obstruction by the military junta, in the form of stealing of development aid, very restrictive laws and additional conditions for their functioning in the country. Because of these obstructions, these international NGOs have always been reluctant to meet with Aung San Suu Kyi's National League for Democracy, despite several requests from her side to have an open dialogue on the required changes and the role of the international NGOs in cranking up these changes. According to the NLD, international NGOs should not operate from within Burma/Myanmar, until the political climate has changed sufficiently to allow their independent functioning.[157] This reasoning could be rebutted by the argument that (international) NGOs probably play a crucial role in establishing this political change. Despite the fact that the best way to encourage the process of liberalisation and

[154] M. Purcell, in: BCN, TNI (eds.), 1999, p.81
[155] Idem.
[156] M. Purcell, in: BCN, TNI (eds.), 1999, p. 86
[157] Burma Center Nederland, *Waarom economische maatregelen,* 30 June 2005, www.burmacentrum.nl

democratisation is if it comes from inside, the situation under the strict control by the SLORC regime is not likely to change soon. Therefore, a combination between internal movement and international pressure must be used to get the process started. International and national NGOs should further combine forces to mobilize people for social change. The struggle of the Burmese people for more protection and respect of human rights has gained an international character already by the attention given to it by the international media in the late 1980s. Change will not be reached on a state level, where there are once again too many other interests at stake, and the Burmese military junta has often proven to be an unreliable negotiation partner, without any intention of social and political reform. Both approaches of sanctions and constructive engagement have not led to the required reform either. In that sense, Aung San Suu Kyi is right in stating that the reform has to come from within; it cannot be forced upon the Burmese from the outside. Therefore, the change has to come from the people themselves, facilitated by the independent NGOs, through the secretively spread of information, human rights advocacy, humanitarian aid and the creation of public awareness. Hopefully, the people of Burma/Myanmar have not become numb towards the political, social and especially humanitarian situation they are in, which might be the worst barrier for social change. Important on an international level is, however, to keep the situation in the Asian country on the international agenda, if anything is ever going to be achieved in this regard. And especially in this matter, national and international (human rights) NGOs can use their influence to show their importance.

5. Conclusion

The ASEM Dialogue is a multilateral forum, in which negotiations take place between more than two parties. Because of its informal structure, and the Asian interest in dealing with important matters informally and bilaterally, the Dialogue is not a traditional negotiation process, in which parties sit around the negotiation table discussing matters of concern. The Dialogue is much more a format characterized by the whole process besides the plenary discussion, in which important issues are being discussed in the coulisses. The appreciation of the Chinese government of the

appointment of the Special Representative of the EU to deal with the issue of Burma/Myanmar bilaterally is a good example of this.

Despite its informal character, this informality has not resulted in a acceptance of non-state actors in the Dialogue yet: ASEM is still fully dominated by state parties. Non-state parties, like NGOs have tried to set up parallel meetings, discussing the main themes of the official meeting. Special unofficial meetings have been held on the issue of human rights as well. These unofficial meetings have met quite some resistance of mainly the Asian states. Vietnam, as the host country, tried to prevent the parallel NGO meeting from taking place by requesting high conditions for NGOs for registration, restricting the amount of locations where the parallel meeting could take place, etc. Especially Asian NGOs have made clear that they have trouble in raising matters, which were considered to be critical to their Asian governments. Despite the fact that the situation in most Southeast Asian nations shows an increase in the amount and effectiveness of NGOs, the process of change in this regard is still very slow. Through the ASEM Dialogue, they hope to increase their influence in the Asian region, with the help of the European states and non-state actors. In this respect, the Dialogue serves as a legitimization of the will of the Asian NGOs to increase their role in national policy making. The cooperation or at least the dialogue with European counterparts is part of this legitimization. On the other hand, cooperation between Asian and European NGOs also serves the latter rather well. The reason is that international (read in this respect: European) NGOs meet criticism regarding their legitimacy, since the Asian governments argue that these organizations are mainly Western based, protecting the Western, individualistically oriented values and norms. These values and norms cannot be applied to the Asian states, which are more paternalistic and community based. Therefore, the influence of the NGOs proclaiming these values should be limited as well. Cooperation with Asian organisations, which do set more “Asian-like” norms could contradict this argumentation.

Asian leaders use the same position to invalidate the practical application of the universality of human rights. As long as the issue of human rights is considered to be an

internal matter, other states do not have to act once violations occur and they will not be criticised themselves for their policy either. Looking at the true meaning of the universality of human rights, however, as gained by those rights that were inserted in the Universal Declaration of Human Rights, this term includes the obligation upon every state to act to protect human rights everywhere for everyone. Whether a society is community or individually based is not an issue here. Several Asian states are still hiding behind this argumentation in order not to be criticised themselves on their own policy. It is advisable that Asian states recognize the importance of human rights protection, not only on paper, but in practice as well. The same goes for the existence and influence of non-state actors. Especially regarding the protection of human rights, these non-state actors have an important role to fulfil. Putting an issue on the international agenda, as has been done in the case of Burma/Myanmar after 1988, lobbying, human rights advocacy, provision of information and technical knowledge and assistance, norm setting, etc, are all functions which are valuable to increase the level of human rights protection in a certain area. NGOs should use the powerful mechanism of "naming and shaming" to pressure states to cooperate with a certain action, treaty or body. The negotiation process of the International Criminal Court has shown that NGOs can be rather successful in using the means of pressure. However, the success of NGOs in the negotiation process towards the establishment of the ICC can result in two opposing trends: either states are forced to recognize the role of NGOs on a more permanent basis, or states have learned their lesson of allowing NGOs at the official process and they will, from now on, be more reluctant in this respect. Which ever it will be, it is hard to tell at this moment. The fact is that several Asian states fear the influence of these non-state actors and, therefore, they have a policy of restricting NGO presence and influence.

In the case of Burma/Myanmar, the fact that NGOs have used the international media to put the issue of its violent regime under international attention has at least resulted in the discussion of the matter on a state level, also in the ASEM Dialogue. In the case of the military regime in the Southeast Asian country, this is the most visible and effective role that non-state actors can play: maintaining the matter on the international agenda and providing the required information, forcing other states to act or at least condemn

the regime. This has lead to a sanction regime put on the country by amongst others the European Union and the United States of America. In the country itself, where the space for non-state actors to arise is very limited, it is very hard for NGOs to further use their influence to improve the level of human rights protection. However, in Burma/Myanmar, as in other Southeast Asian countries, international NGOs cooperate with local NGOs to increase their possibility to influence the policies of the government. Moreover, coalitions with states have appeared to be influential. The ideal world order would be one, in which state and non-state actors are not opponents, but are equal to each other, cooperating on matters such as human rights. Non-state actors like NGOs have important roles to fulfil, which are complementary to those of states. Coalitions between states and NGOs fit very well in this picture. It is needless to say, however, that we are still nowhere near this situation.

A step in the direction of more equal cooperation between states and NGOs in the ASEM Dialogue would be if European states would take up this suggestion. The matter of human rights dialogue between the ASEM states initiated on a governmental level is rather stuck. On a state level, difference in interpretation of human rights norms, the principle of non-interference and the fear against Western (post-colonial) domination are causes for mistrust between both “sides”, as are differences of opinion on the realization of cooperation between both regions. Therefore, if European states want to discuss matters of human rights with their Asian counterparts, the way to do so is through the non-governmental organisations. Despite the fact that Asian states are rather reluctant to allow NGOs to attend the official negotiation process, the situation in Southeast Asia on the influence of NGOs on government policy has slowly shown a shift. Therefore, the chance that non-state actors will be accepted at the negotiation table and using their influence, which is considerable as was shown by the examples of Amnesty International and Human Rights Watch, is larger than the chance that the issue of human rights will be accepted by Asian states as an official part of the Dialogue when it is initiated by their European counterparts. Those European states wanting to discuss human rights should in this respect let the NGOs do the “dirty work” in lobbying for the issue and using their “naming and shaming” strategy to have the matter discussed. The question that arises here is whether, studying the case of

Burma/Myanmar, the discussion of human rights protection on a state level in the ASEM Dialogue will actually result in more protection as well. The Burma/Myanmar case is a traditional case of state domination and isolation, violating human rights in every possible way, being almost impervious towards international pressure and allowing hardly any possibility for improvement of the situation in the near future. The only sign that could be interpreted positively is the abandonment of the military junta of the ASEAN presidency in 2006. Does international state pressure with the assistance of international and regional NGOs finally have some grip on the Burmese militaries?

Fact remains that true change towards more human rights protection should come from the *inside*, with assistance from the *outside*, and not the other way around. Only this way, change will be sustainable. This internal process should be initiated by non-state actors and finally be taken over by official government policy. The ASEM Dialogue could set this internal process in motion, but only with the focus of European states on the Asian non-state organisations. Hopefully, the Europeans are willing to take up this role.

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