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Citation: Wolman, A. (2010). Subregionalism and transgovernmentalism in the emerging regional architecture for Asian human rights governance. HUFS Global Law Review, 2(1), pp. 107-133.

This is the accepted version of the paper.

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Subregionalism and transgovernmentalism in the emerging regional architecture for Asian human rights governance

I. Introduction

For decades, the Asia-Pacific region was seen as lacking any type of regional human rights system.[1] This is no longer an accurate description. This paper will outline an emerging architecture of human rights governance that has arisen in this broad region, based on two levels or organizations. Firstly, a number of continent-wide trans-governmental networks of sub-state actors are dealing exclusively or partially with Asian human rights issues in cooperative and sometimes innovative ways. Secondly, and more recently, a growing patchwork of weak sub-regional organizations are beginning to develop certain traditional human rights competencies by, for example, adopting treaties, establishing human rights commissions, and requiring member reports. This is leading to an Asia-specific bi-level architecture of regional human rights governance. The long-term implications of this architecture are as yet unclear, as the system is still quite young, dependent on uncertain political backing, and not precisely analogous to other regional frameworks . However, this article will argue that the preliminary indications are that the two institutional levels – transgovernmental and subregional – are likely to interact in a complementary and even synergistic manner, as would be predicted by the theoretical models of Anne-Marie Slaughter and Kal Raustiala.[2]

II. Historical Context

One of the most important human rights developments of the post-World War II era has been the establishment of independent regional human rights commissions and courts in Europe,[3] the Americas,[4] and Africa.[5] These regional bodies have been promoted as "necessary intermediar[ies] between state domestic institutions which violate or fail to enforce human rights

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[1] *See, e.g.*, Jon Van Dyke et al., *Emerging Legal Regimes in the Pacific*, 82 AM. SOC'Y INT'L L. PROC. 351, 363 (1988) ("the only part of the world (aside from Eastern Europe) that remains without a regional human rights charter and organization is the Asia-Pacific Region"; Katarina Tomasevski, *Globalizing What: Education as a Human Right or a Traded Service*, 12 IND. J. GLOBAL LEGAL STUD. 1, 43 (2005) (noting the "absence of an Asian set of human rights standards or a regional human rights organization"); Dinah Shelton, *International Human Rights Law: Principled, Double, or Absent Standards*, 25 LAW & INEQ. 467, 471-72 ("neither Asia nor the Middle East has any regional [human rights] system in place. These regions remain dependent on the work of the U.N. to promote and protect human rights.")

[2] See, Kal Raustiala, *The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law*, 43 VA. J. INT'L L. 1 (2002); ANNE-MARIE SLAUGHTER, A NEW WORLD ORDER (2003).

[3] The European Commission of Human Rights was established in 1954 and the European Court of Human Rights was established in 1959. The European Commission of Human Rights was abolished with the entry into force of Protocol 11 in 1998.

[4] The Inter-American Commission on Human Rights was established in 1959 and the Inter-American Court of Human Rights was established in 1959.

[5] The African Commission on Human and Peoples' Rights was established in 1987 and the African Court on Human and Peoples' Rights was established in 2006.

and the global human rights system which alone cannot provide redress to all individual victims of human rights violations."[6] No such courts exist in the Asia-Pacific region, and, at least until 2009, no such Commissions existed either. Many reasons have been given for this absence. One scholar has stressed Asia's high level of diversity, sovereignty concerns, the legacy of Confucianism, and the presence of abusive regimes in the region.[7] Others have stressed that the "absence of a regional political umbrella organization in Asia like the Council of Europe, the Organization of African Unity or the Organization of American States" complicates the process of setting up a continent-wide human rights mechanism in Asia.[8]

The failure to establish a regional human rights regime was not, however, due to lack of effort on the part of the United Nations and Asian civil society organizations. For decades, civil society organizations, academics, lawyers, and parliamentarian have advocated for an Asian regional human rights body.[9] For example, In December 1983 a group called the Regional Council of Human Rights in Asia adopted a Declaration of the Basic Duties of ASEAN Peoples and Governments. Then, in March 1998, a civil society organization called the Asian Human Rights Commission issued a draft Asian Human Rights Charter aimed at establishing a regional mechanism.[10] While the draft Asian Human Rights Charter received considerable attention in advocacy circles, none of the proposals achieved any traction on the governmental level.[11]

The United Nations has also attempted to encourage regional cooperation and regional integration over the past two decades. In 1990, the U.N. Centre for Human Rights convened a workshop for the Asia Pacific Region on Human Rights, with the objective of exploring the possible development of a regional human rights arrangement for the Asia-Pacific.[12] This workshop was repeated in 1993 in Jakarta, and evolved into a semi-annual event organized by the United Nations Office of the High Commissioner of Human Rights ("OHCHR").[13] Most recently, the 15th Workshop took place in Bangkok, in 2010. Although these workshops were the sites of discussion on many human rights issues relevant in the region, one of the main objectives, at least on the part of OHCHR, was facilitating the establishment of a regional human rights mechanism in the Asia-Pacific.[14]

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[6] George William Mugwanya, *Realizing Universal Human Rights Norms Through Regional Human Rights Mechanisms: Reinvigorating the African System*, 10 IND. INT'L & COMP. L. REV. 35, 41 (1999).

[7] Jon Van Dyke *et al., supra* n. 1 at 366-67.

[8] Christine M. Cerna, East Asian Approaches to Human Rights, 82 ASIL Proc. 70, 157 (1995).

[9] *See, generally*, Dinah Pokempner, *Human Rights and Non-Governmental Organizations: Asia's Activists and the Future of Human Rights*, 66 FORDHAM L. REV. 677 (1997); Ralph Wilde, *NGO Proposals for an Asia-Pacific Human Rights System*, 1 YALE H.R. & DEV. L.J. 137 (1998); BRIAN BURDEKIN, NATIONAL HUMAN RIGHTS INSTITUTIONS IN THE ASIA-PACIFIC REGION, 95 (2007).

[10] African Human Rights Commission, Asian Human Rights Charter - A Peoples' Charter (Mar. 30, 1998), available at http://material.ahrchk.net/charter/mainfile.php/eng_charter/

[11] Sidney Jones, *Regional Institutions for Protecting Human Rights in Asia*, in John Yukio Gotanda , *Regional Institutions in East Asia and the Pacific: Is the Time Ripe*, 89 AM. SOC'Y INT'L L. PROC. 471, 479 (1995).

[12] Sou Chiam, *Asia's Experience in the Quest for a Regional Human Rights Mechanism*, 40 VICT. U. WELLINGTON L. REV. 127, 128-29 (2009); News Release, OHCHR, Human Rights Meeting in the Asia-Pacific Region (Apr. 27, 2010), available at http://www.ohchr.org/EN/NewsEvents/Pages/HRmeetingAsia-Pacificregion.aspx.

[13] Chiam, *supra* n. 12, at 128-37.

[14] *Id*. (2009) (citing Mary Robinson and Louise Arbour).

In recent years, it has become increasingly clear that little real progress has been made toward achieving the long-held dream of a continent-wide Asian Human Rights Mechanism. In 2007, Louise Arbour, the U.N. High Commissioner for Human Rights, noted that "we may wish to re-orient our strategy and seek to work more at the subregional level in pursuit of our overall goal of a regional framework".[15] It is around this time that the United Nations and civil society organizations, started to shift their attention to the subregional organizations, and transgovernmental networks, where institutions capable of true regional cooperation were beginning to emerge.[16] I will review the emergence of these two levels of regional human rights institutions in the following sections.

III. Transgovernmental Networks

Transgovernmental networks refers to "sets of direct interactions among sub-units of different governments that are not controlled or closely guided by the policies of the cabinets or chief executives of those governments".[17] While much of the research into transgovernmental networks has focused on networks of regulators dealing with subject areas such as antitrust, securities regulation, and the environment, such networks have in fact been noted in a wide variety of subject areas, involving every branch of government, including the judiciary.[18] These networks can exist informally, through conferences or list-serves, but this article will concentrate on examining more formal institutions.

Proponents of transgovernmental networks claim that this type of governance has several advantages over traditional forms of international organization, including increased flexibility and adaptability, a greater openness to innovation and experimentation, and a lesser reliance on "the time-consuming formality of traditional international organizations."[19] According to some scholars, their growing importance in international governance constitutes a "new world order" that will in time replace the current reliance on State-based international organizations.[20] Transgovernmental networks, in general, have received considerable academic attention in recent years, and scholars such as Jose Alvarez have highlighted the importance of such networks for Asian regional integration in a number of different issue areas, such as finance and the environment.[21]

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[15] UN OHCHR, Summary of Recommendations Made and Progress Achieved under the Framework on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia-Pacific Region (2010), available at http://bangkok.ohchr.org/news/events/asia-pacific-regional-framework-workshop-2010/files/summary_recommendations_progress.pdf (quoting Louise Arbour at 29).

[16] For example, the U.N. OHCHR opened up a new sub-regional offices in Fiji and is in the process of opening up subregional offices in South Asia and Qatar to supplement existing offices in Bangkok and Beirut. OHCHR Asia-Pacific Region, at http://www.ohchr.org/EN/Countries/AsiaRegion/Pages/AsiaRegionIndex.aspx.

[17] Robert O. Keohane & Joseph S. Nye, Transgovernmental Relations and International Organizations, 27 World Pol. 43, 43 (1974).

[18] Melissa A. Waters, *Mediating Norms and Identity: The Role of Transnational Judicial Dialogue in Creating and Enforcing International Law*, 93 GEO. L. J. 487, 498 (2005).

[19] Raustiala, *supra* n. 2 at 24.

[20] Anne-Marie Slaughter, *The Real New World Order*, Foreign Affairs, Sept.- Oct. 1997; Scott H. Jacobs, Regulatory Co-operation for an Interdependent World: Issues for Government, in Regulatory Co-operation for an Interdependent World 15 (1994).

[21] José E Alvarez, *Institutionalised Legalisation and the Asia-Pacific "Region",* 5 N.Z. J. PUB. & INT'L L. 9 (2007).

A. The Asia-Pacific Forum for National Human Rights Institutions

By far the most important regional transgovernmental network for addressing Asian human rights issues is the Asia Pacific Forum for National Human Rights Institutions (APF).[22] The APF acts as a regional network of National Human Rights Institutions (NHRIs)[23] in the Asia-Pacific region, and has fifteen full members ranging geographically from the Palestinian Territories to Timor Leste.[24] NHRIs must comply with the Paris Principles, a set of U.N. minimum standards for human rights institutions, in order to become full members of the APF, and they risk expulsion from the group if they later fail to comply with the Paris Principles.[25]

As laid out in the organization's charter, the APF's activities include responding with personnel and support to requests for assistance in establishing NHRIs in the region; responding to requests from other NHRIs to requests from other NHRIs to investigate human rights violations of their nationals present in a country that has a member NHRI; and expanding support, co-ordination, and activity of member NHRIs through information and expertise exchanges, training and development programs, development of joint positions on issues of common concern, and convening periodic regional meetings and specialist regional seminars.[26] The APF secretariat has also organized staff exchanges and has established an Advisory Council of Jurists, which is a body made up of one eminent lawyer from each APF member state that prepares advice and opinions on human rights law and practices.[27]

Recently researchers have begun to look in greater depth at how NHRI networks such as the APF can contribute to human rights improvements. Shawki proposes that NHRI networks can be potentially influential actors because they are "more likely than other actors to be able to mitigate nation-states' overwhelming concern with issues of sovereignty" and "can mediate between an international human rights regime that has universal claims and national cultural and social idiosyncracies that are sometimes perceived to be incompatible with universal

[22] Prior to the establishment of the ASEAN Human Rights Commission and the Arab Human Rights Committee, the APF was considered, in the words of Vitit Muntarbhorn, to be the "closest that the Asia-Pacific region has come to a regional arrangement or machinery for the promotion and protection of human rights". Vitit Muntarbhorn, *In Search of the Rights Track: Evolving a Regional Framework for the Promotion and Protection of Human Rights in the Asia Pacific Region*, 1(10) THAILAND L. J. 1, 7 (2007).

[23] NHRIs are independent administrative organizations established by governments to protect and promote human rights. Although the specific mandates of Asian NHRIs vary widely, in general their functions include receiving and investigating complaints of discrimination or human rights abuses; reviewing national laws, policies and programs to ensure consistency with human rights standards; monitoring the government's compliance with domestic laws and international human rights standards, and raising community awareness and understanding of human rights issues. Asia Pacific Forum, What is an NHRI?, at http://www.asiapacificforum.net/members/what-is-an-nhri. They have traditionally been viewed as particularly important institutions in the Asia-Pacific region precisely because of the lack of a regional human rights mechanism. Burdekin, *supra* n. 9 at 4-5.

[24] As of May 2010, the full members of the APF include Afghanistan, Australia, India, Indonesia, Jordan, Malaysia, Mongolia, Nepal, New Zealand, Palestinian Territories, Philippines, Qatar, Republic of Korea, Thailand, and Timore Leste. See http://www.asiapacificforum.net/members/apf-member-categories/full-members,

[25] Burdekin, *supra* n. 9 at 99.

[26] *Id*. at 98 (citing Larrakia Declaration).

[27] *Id*. at 100-01.

principles."[28] According to Sou Chiam's study, the APF has a positive effect by providing technical assistance to strengthen existing NHRIs; giving assistance to governments and civil society organizations as they work towards establishing new NHRIS, and helping to develop regional cooperation on human rights.[29] Byrnes *et al*., concentrate their analysis on the beneficial ways in which the prospect of network membership can influence NHRIs (and States) to adopt best practices.[30]

While the APF is clearly the most important of the regional transgovernmental networks working on Asian human rights, there are a number of other regional transgovernmental bodies worth mentioning whose mandates include human rights issues. These bodies can be divided into parliamentary networks and judicial networks.

B. Parliamentary Networks

There is a long history of regional parliamentary networks around the world, dating back to the establishment of the Parliamentary Assembly of the Council of Europe, in 1949.[31] The first parliamentary network to emerge in Asia is the Asia Pacific Parliamentary Forum (APPF), which has been meeting on an annual basis since 1991.[32] While it is an independent organization, the APPF to a large extent acts as the legislative arm of the Asia-Pacific Economic Cooperation Forum (APEC).[33] Its membership is thus centered on the Pacific Rim, and includes legislators from the United States and Latin America, as well as Oceania, Northeast and Southeast Asia.[34]

More recently, the Association of Asian Parliaments for Peace was founded in 1999 with the objective of promoting "unity toward the single purpose of peace and a concrete framework for regional cooperation to strengthen human rights protection and democracy."[35] In 2001, the organization adopted a draft Asian Human Rights Charter at its third annual conference in Phnom Penh. The draft received some international support, but was criticized as weak by human rights groups, and did not receive traction at the international level.[36]

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[28] Noha Shawki, *A New Actor in Human Rights Politics? Transgovernmental Networks of National Human Rights Institutions*, in Noha Shawki & Michaelene Cox, ed., NEGOTIATING SOVEREIGNTY AND HUMAN RIGHTS: ACTORS AND ISSUES IN CONTEMPORARY HUMAN RIGHTS POLITICS 52-3 (2009).

[29] Chiam, *supra* n. 12 at 141.

[30] Andrew Byrnes, Andrea Durbach & Catherine Renshaw, *Joining the club: the Asia Pacific Forum of National Human Rights Institutions, the Paris Principles, and the advancement of human rights* , 14(1) AUSTRALIAN J. OF HUM. RTS. 63, 92 (2008) ("APF, as a network of entities committed to the same broad goals, reinforces those shared network goals and values through its practice relating to membership, upgraded membership and review of membership").

[31] Parliamentary Assembly of the Council of Europe, PACE Historical Overview, at http://assembly.coe.int/Main.asp?Link=/AboutUs/APCE_history.htm.

[32] Brief History of the APPF, http://www.appf.org.pe/.

[33] Asia Pacific Parliamentary Forum, What is the APPF, at http://www.appf.org.pe/.

[34] Asia Pacific Parliamentary Forum, APPF Member Countries, http://www.appf.org.pe/

[35] Asian Parliamentary Assembly, About the APA, available at http://www.asianparl.net/about.html.

[36] The Proposed Asian Human Rights Charter: No Rights at the End of this Tunnel, Human Rights Features, HRF/27/00, available at http://www.hrdc.net/sahrdc/hrfeatures/HRF27.htm.

In 2006, the Association of Asian Parliaments for Peace changed its name to the Asian Parliamentary Assembly (APA) and expanded its mandate.[37] The APA currently has members who are parliamentarians from 41 countries across Asia (including the Middle East). Each Member Parliament is allotted a certain number of seats based on that country's population, making up a current total of 206 seats.[38] The organization's secretariat is based in Tehran.[39]

Since that time, however, there has been less of an emphasis on human rights. In 2006, the organization passed twin resolutions on the human rights of women[40] and children.[41] The APA's 2007 Tehran Declaration, however, discussed various areas of cooperation including political issues, economic issues and sustainable development, peace and security, energy, and social and cultural issues, without mentioning human rights.[42] More recently, the human rights-related requests have centered on non-member countries. For example, the December 2009 Bandung Declaration encouraged APA member states to "maintain their commitments to the promotion and protection of the fundamental human rights of the people of Asia and call upon military authority in Myanmar to embark on the implementation of the road map to democracy in Myanmar."[43] Meanwhile, a separate resolution condemned Israel for its human rights violations in the West Bank and Gaza[44] and issued a report on achieving equity in health care in Asia.[45] According to Moshir Vaviri, Advisor to the Secretary General of the APA, the organization is planning on increasing its work in the human rights area, and is particularly heavily involved in addressing Israeli human rights violations in the Gaza Strip, due to the APA's large number of Arab members.[46]

C. Judicial Networks

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[37] Asian Parliamentary Assembly, About the APA, available at http://www.asianparl.net/about.html.

[38] *Id.*

[39] *Id.*

[40] Asian Parliamentary Assembly, Human Rights, Women and Youth: Resolution on Women, APA 2006//W-HR/Doc.1/Rev.1 (2006), available at http://www.asianparl.net/docs/Resolutions/2006/Human%20Rights,%20Women%20and%20Youth%20Resolution_women_.pdf.

[41] Asian Parliamentary Assembly, Human Rights, Women and Youth: Resolution on Children and Youth, APA 2006//W-HR/Doc.2/Rev.1 (2006), available at http://www.asianparl.net/docs/Resolutions/2006/Human%20Rights,%20Women%20and%20Youth%20Resolution_children_.pdf

[42] Asian Parliamentary Assembly, Tehran Declaration, APA/2007/11 (Nov. 20, 2007), available at http://www.asianparl.net/docs/Plenary/2007/Tehran_Declaration-v.2.pdf.

[43] Asian Parliamentary Assembly, Bandung Declaration on the Roles of Asian Parliaments in Strengthening Democracy Towards Prosperity, Peace, and Justice in Asia, APA/Declaration/2009 (Dec. 10, 2009), available at http://www.tbmm.gov.tr/ul_kom/apa/belge/BANDUNG_DECLARATION.pdf

[44] Resolution on Violations of International Humanitarian Law in the Palestine and the War Crimes Committed by the Zionist Regime in Gaza, APA/Res/2009/02 (Dec. 10, 2009).

[45] The Report of the APA Secretary General on Achieving Health Equity in Asia, *SG/Rep/2010/02 (Mar. 7, 2010).*

[46] Telephone interview by Annie Han with Moshiri Vaviri, Advisor to Secretary General, Asian Parliamentary Assembly (May 5, 2010) (on file with the author).

Judicial networks are a more recent development internationally[47] that are now in the process of being established on a regional level in Asia. For example, the Asia Pacific Judicial Reform Forum (APJRF) was established in 2005 as a network of superior courts and justice sector agencies that have joined together to "contribute to judicial reform in the region".[48] The APJRF currently includes representatives of 49 countries, including the Pacific Islands, but not the Middle East.[49] The APJRF's first project involved the drafting and publication of a judicial reform handbook.[50] One of the APJRF's stated functions is "supporting partnerships with organisations and institutions supporting human rights-based justice reforms."[51]

In addition, judicial officials are currently working on drafting the statue that will establish a body tentatively titled Association of Asian Constitutional Courts ("AACC"), which is expected to go into operation in 2011 and will address issues such as constitutional review of statutes and separation of powers issues.[52] While human right issues will not be the main focus of the AACC, such issues are expected to be addressed given the close relationship between human rights law and constitutional jurisprudence. This association will formalize and provide institutional backing for a series of annual conferences of Asian constitutional court judges that took place between 2003 and 2007.[53] Currently, membership is anticipated to include eleven constitutional courts, including the Republic of Korea, Mongolia, Thailand, the Philippines, Indonesia, Malaysia and Uzbekistan.[54]

IV. Subregional Organizations

The emergence of regional transgovernmental organizations with human rights competencies was for many years not mirrored by similar developments at the inter-State level. Despite the work of civil society organizations and the United Nations, an Asian Human Rights Commission seems no closer to fruition now than it did three decades ago. Subregional organizations such as ASEAN and SAARC generally avoided giving anything more than lip service to human rights, for various reasons no doubt centered on sovereignty concerns and an unwillingness to alienate member governments that regularly engaged in gross human rights violations. Over the last few years, however, this reluctance to address human rights at the international level appears to have diminished, and we are now witnessing the emergence of

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[47] *See, generally*, Waters, *supra* n. 18 at 498 .

[48] Asia Pacific Judicial Reform Forum, About the APJRF, available at http://www.apjrf.com/about.html.

[49] Asia Pacific Judicial Reform Forum, APJRF Member Countries, available at http://www.apjrf.com/about.html.

[50] Asia Pacific Judicial Reform Forum, APJRF Projects, available at http://www.apjrf.com/projects.html. The handbook's objectives are to "[p]romote standards of justice established in international instruments; [d]escribe our actual experiences of common challenges; [c]reate a practical tool for exchanging learning and use by each other; [e]mpower and enable reform actors throughout the justice system, [and c]ontribute to developing a shared vision across the region. " Id.

[51] Asia Pacific Judicial Reform Forum, About the APJRF, available at http://www.apjrf.com/about.html.

[52] E-mail interview by Annie Han with Shin Seung Hoon, Deputy Director, Constitutional Court of Korea (May 6, 2010) (on file with the author).

[53] Lee Ho-Joon, Asia to get constitutional court group next year, Korea Herald, Apr. 5, 2010, available at http://www.koreaherald.com/national/Detail.jsp?newsMLId=20100405000607.

[54] *Id.*

human rights competencies within the ASEAN, Arab League, SAARC, and Pacific Islands Forum. This section will summarize these developments.

A. ASEAN

ASEAN is a regional organization consisting of the ten nations located in Southeast Asia (Cambodia, Indonesia, Brunei, Singapore, Myanmar, Thailand, Laos, Malaysia, Vietnam, and the Philippines).[55] During the first thirty years of its existence, human rights did not figure prominently on the ASEAN agenda, as international human rights advocacy was seen as threatening the organization's sacred principle of non-intervention in internal affairs.[56] This gradually began to change in 1993, when the ASEAN foreign ministers issued a declaration during the 26th ASEAN Ministerial Meeting in Singapore that "ASEAN should coordinate a common approach on human rights and actively participate and contribute to the application, promotion and protection of human rights"[57] and that "ASEAN should also consider the establishment of an appropriate regional mechanism on human rights."[58]

Concrete progress on human rights cooperation was slow in coming, however, although the organization did issue a few declarations in support of human rights, including the Jakarta Declaration on the Elimination of Violence Against Women in ASEAN Region (2004), the ASEAN Declaration Against Trafficking in Persons particularly Women and Children (2004), and the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007).[59] Finally, in 2007, ASEAN's commitment to establishing a human rights body was memorialized, with the adoption of the ASEAN Charter, a document that has since been ratified by all ASEAN member-states. The Charter, at Article 14, commits the ASEAN nations to establish an ASEAN human rights body in "conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms".[60] This led to the establishment in October 2009 of the ASEAN Inter-Governmental Commission on Human Rights (AICHR).[61]

According to the AICHR's Terms of Reference, the new body will be composed of one representative from each of the ASEAN member states, who will be accountable to their home governments.[62] The Commission's mandates and functions are largely promotional, including the development of an ASEAN Human Rights Declaration; enhancing human rights awareness through education, research, and information dissemination; engaging in dialogue with other

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[55] ASEAN Member Countries, at http://www.aseansec.org/74.htm.

[56] Li-Ann Thio, *Implementing Human Rights in ASEAN Countries: Promises to Keep and Miles to go Before I Sleep*, 2 YALE HUM. RTS. & DEV. L. J. 1 (1999).

[57] Joint Communique of the Twenty-Sixth ASEAN Ministerial Meeting (Singapore, 23-24 July 1993), at http://www.aseansec.org/2009.htm.

[58] *Id.*

[59] Chiam, *supra* n. 12 at 132.

[60] *Id.*

[61] Press Statement by Dr. Sriprapha Petcharamesree, Chair of the AICHR, on the Introductory Meeting of the AICHR, http://www.aseanhrmech.org/news/press-statement-by-dr-sriprapha-petcharamesree.htm.

[62] Terms of Reference of ASEAN Intergovernmental Commission on Human Rights at 5.1-5.2, available at http://www.aseansec.org/publications/TOR-of-AICHR.pdf.

ASEAN bodies, promoting capacity building, treaty ratification, and full implementation of ASEAN human rights instruments. [63] The Commission is designed to be evolutionary,[64] however, which implies that over time its competencies could possibly expand to include the investigation of individual complaints or other duties.

AICHR's priorities for the coming year include: raising awareness of AICHR, starting to draft an ASEAN Declaration on Human Rights, and undertaking studies of corporate social responsibility and migration.[65] While the AICHR has been welcomed by human rights organizations, it has also been widely criticized for the weakness of its mandate, lack of independence, and its focus on promotion rather than protection of human rights.[66]

B. League of Arab States

The League of Arab States (Arab League) is an intergovernmental organization currently consisting of 22 member states, of which ten are located in Africa, and twelve in the Middle East.[67] The Arab League first waded into the human rights arena with the adoption of the Arab Human Rights Charter in 1994.[68] Reaction to the Charter was unenthusiastic: human rights organizations both within and outside the region criticized the document for not meeting international standards, and it was never ratified by any States.[69]

Over the course of 2002-2004, the Charter was redrafted to help bring it into line with international human rights standards, at the request of Arab League Secretary General Amr Mousa. The revised Charter contains 53 clauses protecting civil and political rights as well as economic and social rights, the right to self-determination, the right to a healthy environment, and the right to development.[70] To a considerable extent, the revised Charter borrows language from existing international human rights treaties, such as the International Covenant on Civil and Political Rights, however unlike the European, American and African mechanisms, it does not provide for an individual complaint procedure. The Charter does provide for an Arab Human Rights Committee, though, whose main task is to focus on monitoring the Charter's

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[63] *Id*.

[64] Press Statement by Dr. Sriprapha Petcharamesree, *supra* n. 61.

[65] Asia Pacific Forum, ASEAN Rights Body Sets Out Priority Areas, at http://www.asiapacificforum.net/news/asean-rights-body-sets-out-priority-areas.html.

[66] *See, e.g*., Amnesty International, *ASEAN's new body must protect and promote human rights*, (July 21, 2009), available at: http://www.unhcr.org/refworld/docid/4a6823f1a.html; Asian Forum for Human Rights and Development, *Independence and Protection Mandates Crucial to Ensure Credibility of ASEAN Human Rights Body* (Oct. 9, 2009), available at http://www.forum-asia.org/index.php?option=com_content&task=view&id=2343&Itemid=32.

[67] These include Bahrain, Iraq, Jordan, Kuwait, Lebanon, Oman, The Palestinian Authority, Qatar, Saudi Arabia, Syria, the United Arab Emirates, and Yemen. Mervat Rishmawi, *The Arab Charter on Human Rights and the League of Arab States: An Update*, 10 HUM. RTS. L. REV. 169 ,172 (2010).

[68] Mervat Rishmawi, *The Revised Arab Charter on Human Rights: A Step Forward*?, 5 HUM. RTS. L. REV. 361, 361 (2005).

[69] *Id*. at 361-62.

[70] *Id*. at 364-75.

implementation by States parties through consideration of national reports and the issuance of comments and recommendations.[71]

The 2004 Arab Human Rights Charter was praised by regional human rights groups as an advancement for Arab countries, and an improvement over the 1994 draft.[72] Nevertheless, there have been objections to the Charter in some quarters.[73] The perhaps inevitable reference to Zionism as an impediment to human dignity has received particular criticism.[74] The revised Charter entered into force in March 2008, after receiving the requisite seven ratifications. As of October 2009, the Charter had received 10 ratifications: Algeria, Bahrain, Jordan, Libya, Palestine, Qatar, Saudi Arabia, Syria, the United Arab Emirates and Yemen.[75]

In line with the Charter's provisions, the Arab Human Rights Committee was established in March 2009, and has met periodically since then. It is made up of seven experts elected by secret ballot from nominees proposed by each State party.[76] Although some Committee members hold government positions, they have repeatedly affirmed their independence as committee members.[77] So far, the Committee has promulgated State Reporting Guidelines for initial reports, which are still confidential but are reported to be based on the guidelines of UN treaty monitoring bodies.[78] The Arab Human Rights Committee has also demonstrated its willingness to engage in a discourse with civil society organizations to discuss the Committee's work.[79] While it is evidently too early to know whether the Committee will play a productive role in improving human rights conditions in Arab states, international NGOs and United Nations representatives have so far shown a willingness to work with the Committee to strengthen its influence.[80]

C. South Asian Association for Regional Cooperation

The South Asian Association for Regional Cooperation (SAARC) was established in 1985 with an original membership of Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan,

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[71] Rishmawi (2010), *supra* n. 67 at 174.

[72] *See* Cairo Institute for Human Rights Studies, CIHRS Calls the League of Arab States to Adopt the UN Draft Arab Charter for Human Rights Without Any Amendments, at http://www.cihrs.org/english/newssystem/details.aspx?id=393.

[73] *See, e.g.*, John Robson, The UN enables Hatemongers, Ottawa Citizen (Feb, 1, 2008).

[74] *Id*.

[75] Rishmawi (2010), *supra* n. 67 at 172.

[76] *Id*.

[77] *Id*. at 173.

[78] *Id*. at 174.

[79] *See* International Federation for Human Rights, Human Rights Organizations and Arab Human Rights Committee Engage in Constructive Dialogue, http://www.fidh.org/Human-Rights-organizations-and-Arab-Human-Rights.

[80] Rishmawi (2005), *supra* n. 68 at 363; Louise Arbour, Statement by the U.N. High Commissioner for Human Rights on the Entry into Force of the Arab Charter of Human Rights, available at http://www.unhchr.ch/huricane/huricane.nsf/view01/6C211162E43235FAC12573E00056E19D?opendocument.

and Sri Lanka.[81] In 2007, Afghanistan joined SAARC, bringing the number of members to eight.[82] In general, SAARC has been criticized for being little more than a "talking shop" which has achieved relatively little.[83] This is perhaps inevitable, given the political obstacles to regional cooperation in a part of the world where there are so many serious inter-state tensions (most importantly between India and Pakistan). According to one analyst, SAARC's continued existence can be "seen as no mean achievement given the acrimony between the states of this region."[84]

Unlike the previously discussed subregional organizations, SAARC is often thought to have entirely resisted developing a human rights competency, even at the symbolic level.[85] However, while it is true that SAARC has resisted calls to deal with issue of civil and political rights, it has established a social dimension that covers many issues traditionally thought of as economic and social rights. Over the years, SAARC has adopted a number of conventions involving social issues, including some with human rights dimensions, such as child welfare[86] and human trafficking.[87] These conventions have by and large not espoused a rights-based approach, however. Rather, they have largely focused on regionalizing particular issues and encouraging cooperation between Member States.

In 2004, SAARC members adopted and signed a Social Charter in order to accelerate social development in the region.[88] The Social Charter contains twelve articles that promote a broad array of social and economic causes.[89] These include poverty alleviation; health; education, human resource development; youth mobilization; promotion of the status of women; promotion of the rights and well-being of the child; population stabilization, and drug de-addiction, rehabilitation, and reintegration.[90] The Charter is not a conventional rights treaty along the lines of the European Social Charter, although it clearly draws inspiration from human rights treaties such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights. Rather, it commits States to address domestically certain social policy issues, and to cooperate regionally on other social policy issues. For

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[81] Afghanistan to be new SAARC member, Times of India (Nov. 13, 2005), available at http://timesofindia.indiatimes.com/world/rest-of-world/Afghanistan-to-be-new-SAARC-member/articleshow/1293872.cms.

[82] *Id.*

[83] Will SAARC be more than a talking shop?, The Statesman, Apr. 24, 2010, available at http://www.thestatesman.net/index.php?id=326198&option=com_content&catid=39.

[84] CK Lal, The necessary manufacture of South Asia, Himal South Asia 2006, available at http://www.himalmag.com/2003/january/asia_special_2.htm.

[85] *See, e.g.*, Asia Pacific Human Rights Network, SAARC's Benchmarks: Human Rights is Still a No-go Area, HRF/162/07 (Mar. 31, 2007), available at http://www.hrdc.net/sahrdc/hrfeatures/HRF162.htm.

[86] SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia (signed in Kathmandu on 5 Jan 2002), available at http://www.saarc-sec.org/userfiles/conv-children.pdf.

[87] SAARC Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution. (signed in Kathmandu on 5 Jan 2002), available at http://www.saarc-sec.org/userfiles/conv-traffiking.pdf.

[88] SAARC Social Charter (2004), available at http://www.saarc-sec.org/main.php?t=2.8.4.

[89] *Id.*

[90] *Id.*

example, the Charter states that Members "re-affirm that they will strive to protect and promote the health of the population in the region".[91] According to Article X of the Social Charter, implementation "shall be facilitated by a National Coordination Committee or any appropriate national mechanism as may be decided in each country" and reviewed by appropriate SAARC bodies.[92] In addition, Member States are required to "formulate a national plan of action or modify the existing one, if any, in order to operationalise the provisions of the Social Charter."[93]

There were mixed opinions from civil society organizations on the helpfulness of the SAARC Social Charter. As with developments in ASEAN and the Arab League, the Social Charter was unveiled to mixed reviews. While some commentators were enthusiastic,[94] the Social Charter was criticized by civil society groups for its lack of a detailed implementation mechanism and lack of concrete obligations.[95] The South Asian Centre for Policy Studies in fact drafted a parallel document, called the Citizens' Social Charter, which provided stronger social protections but was not signed or ratified at the inter-governmental level.[96]

While SAARC has increasingly addressed social issues, they have been far more reticent in dealing with civil and political rights. There is pressure to change, however, as civil society organizations and international observers are increasingly turning their attention to SAARC, and advocating for the establishment of a SAARC human rights commission. On March 25, 2010, a group of seventy civil society organizations from across South Asia issued the Kathmandu Declaration, calling for the establishment of a regional human rights mechanism.[97] The UN OHCHR has also been working with South Asian policymakers on sub-regional human rights issues, after having opened up a South Asian regional office in 2007. This increase in advocacy activity is no doubt due in part to the recent establishment of the AIHRC. SAARC's institutional framework is modeled on that of ASEAN, so it is natural that new questions are being raised at this point about the organization's lack of a human rights competency.[98]

D. Pacific Islands

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[91] *Id.*

[92] *Id*. at Article X(1).

[93] *Id*. at Article X(2).

[94] For example, Nobel Prize winning Professor Muhammud Yunus stated that the SAARC Social Charter was a great achievement for the South Asian nations. South Asian Centre for Policy Studies, A SACEPS Dialogue on Follow up of SAARC Summit Decisions Concerning the SAARC Social Charter, at 5, available at http://www.cpd-bangladesh.org/publications/saceps/SACEPS5.pdf.

[95] *Id*. at 1 ("Though the media termed the signing a huge leap forward for the impoverished millions in South Asia, the Charter, in fact, fell short of the expectations of the people who had expected a much broader process of consultation within the region with citizens and civil society organisations in the preparation of such a historic document.")

[96] South Asian Centre for Policy Studies, Citizens' Social Charter for South Asia, available at www.saceps.org/upload_file/report_pdf/citizens.pdf.

[97] Kathmandu Declaration (Mar. 29, 2010), available at www.dpiap.org/resources/doc/Kathmandu_Declaration_10_03-29.doc.

[98] Kant Bhargava and Ananya Reed, The European Union, South Asia, and Democracy in Development, Dialogue and Partnership, International Institute for Democracy and Electoral Assistance (2009), at 7, available at http://www3.idea.int/resources/analysis/upload/Bhargava_paper1.pdf.

The Pacific Islands sub-region is the area where regional cooperation arguably makes the most sense – many Pacific Island nations are probably too small to establish NHRIs of their own, so regional cooperation may in fact be the only alternative that would promote and protect human rights outside of the U.N. system.[99] The Pacific Islands have established numerous associations for regional cooperation, most important of which for human rights purposes are the Pacific Islands Forum[100] and the Secretariat of the Pacific Community.[101]

While the existing regional organizations have not yet developed regional treaties or institutions devoted to human rights, they have begun to work towards the establishment of a regional human rights mechanism pursuant to Strategic Objectives 12.1 and 12.5 of the Pacific Plan, which lays the groundwork for future integration in the region.[102] In addition, over the past few years, the Pacific Islands Forum has begun to see human rights promotion as a key part of its mandate, and has recently appointed a Human Rights Advisor to the Secretariat[103] and "consistently called for the establishment of national human rights institutions and has developed its own action plan to address human rights issues common to its member States."[104] The Pacific Islands Forum has also taken human rights into account in its membership decisions, by suspending Fiji after a 2006 coup d'etat led to widespread human rights abuses.[105]

Besides the Pacific Islands Forum, the Secretariat of the Pacific Commission (SPC) is also assuming increasing human rights competencies. There is a group working within the SPC called the Pacific Regional Rights Resource Team that has quietly assumed many of the traditional functions of a human rights commission, such as human rights training and education and making recommendations to domestic governments as to policies that should be implemented and laws that should be changed to come into compliance to international human

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[99] *See, generally*, Burdekin, *supra* n. 9 at 96, n. 85.

[100] The Pacific Islands Forum members are Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu. Pacific Islans Forum Secretariat, Member Countries, at http://www.forumsec.org.fj/pages.cfm/about-us/member-countries/. Its goals are to "stimulate economic growth and enhance political governance and security for the region, through the provision of policy advice; and to strengthen regional cooperation and integration through coordinating, monitoring and evaluating implementation of Leaders' decisions." Pacific Islands Forum Secretariat: Mission, Goals, and Roles, at http://www.forumsec.org.fj/pages.cfm/about-us/mission-goals-roles/.

[101] The members of the Secretariat of the Pacific Community are American Samoa, Australia, Cook Islands, Federated States of Micronesia, Fiji Islands, France, French Polynesia, Guam, Kiribati, Marshall Islands, Nauru, New Caledonia, New Zealand, Niue, Northern Mariana Islands, Palau, Papua New Guinea, Pitcairn Islands, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, United States of America, Vanuatu and Wallis and Futuna. Introduction to the Secretariat of the Pacific Community, at http://www.spc.int/en/about-spc/introduction.

[102] P Imrana Jalal, *Why Do We Need a Pacific Regional Human Rights Commission?*, 40 VICT. U. WELLINGTON L. REV. 177, 182 (2009).

[103] Asia Pacific Forum, Pacific Human Rights Advisor Takes up Post, at http://www.asiapacificforum.net/news/pacific-human-rights-advisor-takes-up-post.html.

[104] UN OHCHR, *supra* n. 15 at 29.

[105] Human Rights Watch, *Pacific Islands Forum: Press Fiji on Rights*, 3 August 2009, available at: http://www.unhcr.org/refworld/docid/4a8126e41e.html.

rights treaties.[106] The Team is engaged in the development on a Pacific human rights commission, which they expect to emerge within the next five years.[107]

E. Other Subregions

As the previous discussion shows, the patchwork of subregional organizations dealing with human rights in the Asia-Pacific is still in the process of emerging, and does not completely cover the region. Notably, both Northeast Asia and Central Asia are left outside of this emerging system. The absence of human rights cooperation in Northeast Asia is perhaps unsurprising given the historic and ideological tensions in the area, and the presence of North Korea and China, states which have been reluctant (to say the least) to internationalize human rights issues. The absence of a sub-regional human rights regime in Central Asia is a little more surprising given the cultural similarities of the countries in the region, and the fact that they actually initiated human rights cooperation (along with the rest of the former Soviet Union) as early as 1993 with the adoption of the Commonwealth of Independence States (CIS) Convention on Human Rights.[108] Over the years, however, the CIS system weakened at all levels, and its Human Rights Commission emerged stillborn. Many other sub-regional cooperation initiatives also failed, perhaps due to the autocratic nature of the domestic political systems.[109] Today, the only regional organization active on human rights issues in the area is the Organization for Security and Cooperation in Europe (OSCE).[110]

V. Transgovernmental and Subregional Institutions: Complementarity or Discord?

As shown above, it appears that there is a dual level regional human rights system emerging in the Asia-Pacific. On the one hand, broadly inclusive transgovernmental networks such as the APF are working to increase cooperation in the human rights field, and on the other hand subregional organizations are beginning to develop human rights competencies of their own. Although it remains to be seen how quickly this development will take place, how many subregional organizations will evolve a human rights competency, and how effective these organizations will be in making a difference on the ground, the architectural framework itself seems clear – at least in the short term, the prospects of a single Asia-wide human rights commission taking the place of (or supplementing) the existing organizations and networks seem slim. Thus, it is worthwhile to address the important question of how these different types of governance will interact or work together.[111]

Clearly, there is a potential for conflict or friction between the two levels of governance. As one scholar stated, international affairs is governed by an "interstate system of states and their national governments" and a "multicentric system of diverse types of other collectivities that has

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[106] Telephone interview by Annie Han with Sandra Bernklau, Regional Rights Resource Team Program/Project Manager (May 10, 2010).

[107] *Id*.

[108] *CIS Convention on Human Rights*, 17 HUM. RTS. L.J. 159, 159-61 (1996).

[109] *See, generally*, Kathleen Collins, *Economic and Security Regionalism among Patrimonial Authoritarian Regimes: The Case of Central Asia*, 61(2) EUROPE-ASIA STUDIES, 249 (2009).

[110] *See* OSCE, Office for Democratic Institutions and Human Rights, available at http://www.osce.org/odihr/.

[111] As Anne-Marie Slaughter noted, "The interesting question is how … formal unitary state reactions coexist and/or conflict with [transgovernmental networks]". Slaughter, *supra* n. 2 at 152.

lately emerged as a rival source of authority with actors that sometimes cooperate with, often compete with, and endlessly interact with the state-centric system."[112] For example, it is possible that the developing subregional organizations will compete with the existing transnational organizations for resources, authority and public attention. In fact, this dynamic was noted among different regional human rights organizations in the African context, with detrimental effects to the development of any single strong human rights voice.[113] Should subregional organizations in fact end up diminishing the resources devoted to transgovernmental networks, and the authority and attention afforded them, the end result could in fact be negative from a rights perspective, if the subregional organizations end up lacking independence and (unlike the APF) avoid vigorous criticism of member states.

Friction or conflict could also result if both levels – transgovernmental and subregional – engage in the same tasks in a repetitive or contradictory manner. There have been considerable research in recent years regarding the potential problems stemming from overlapping or parallel regulatory regimes.[114] One example in the human rights field was the overlap between the Commonwealth of Independent States Human Rights Convention and the European Convention of Human Rights. The potential conflicts were feared in the mid-nineties, and the Council of Europe released a critical report urging member states and potential members to avoid ratifying the CIS Convention.[115]

Other scholars have outlined a more complementary relationship between transgovernmental networks and international organizations. According to José Alvarez, "[t]here are signs that many of these less formal developments have now come to complement or enhance international law and more institutionalised forms of legalisation."[116] Anne-Marie Slaughter investigated the relationship between the two types of governance, and concluded that transgovernmental networks assist international mechanisms 1) by facilitating "deeper cooperation through more formal international agreements," 2) by enhancing compliance with existing treaties, and 3) by improving "the quality and depth of cooperation across nations".[117] Raustiala asserted a mutual benefit, claiming that "liberal internationalism may itself promote

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[112] J. Rosenau, 2002 *Governance in a New Global Order*, in GOVERNING GLOBALIZATION: POWER, AUTHORITY AND GLOBAL GOVERNANCE, edited by D. Held and A. McGrew, Malden MA and Cambridge: Polity Press and Blackwell Publishers, 70-86 (at 72-3). See also John von Doussa, Introductory Address at National Human Rights Institutions and the Administration of Justice Round Table Conference – Copenhagen, Denmark (2003), available at http://www.hreoc.gov.au/about/media/speeches/speeches_president/2003/copenhagan.html ("There is always a risk where bodies claiming independence operate in the same field that there will be friction and competition.")

[113] Christof Heyns, *The African Regional Human Rights System: The African Charter*, 108 PENN ST. L. REV. 679, 702 (2004).

[114] *See, e.g.*, Ken Abbott and Duncan Snidal, Nesting, Overlap and Parallelism: Governance Schemes for International Production Standards, Memo for Alter-Meunier Princeton Nesting Conference February 2006, available at http://www.princeton.edu/~smeunier/Abbott%20Snidal%20memo.pdf ("Because actors in parallel governance schemes are each trying to achieve (roughly) the same goal, many of their interrelations are mutually reinforcing. But there are also several sources of more conflictual competition among parallel schemes.")

[115] Giorgio Malinverni, Revised Opinion on the legal problems arising from the coexistence of the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States and the European Convention on Human Rights, CDL(1998)017: 1998.

[116] Alvarez, *supra* n. 21 at 25.

[117] Slaughter, *supra* n. 2 at 169.

transgovernmentalism. The presence of treaties and international organization may both spur network development by raising the incentives for regulators to cooperate and institutionally facilitate the creation of a network."[118] In the remainder of this article, I will argue that preliminary indications show that this model of complementarity proposed by Raustiala and Slaughter appears to be emerging in Asian regional human rights governance.

The first way that Slaughter (citing Raustiala) proposes that transgovernmental regimes play a beneficial role in classic inter-national relations is by promoting deeper cooperation through more formal international agreements,[119] to which I would also add that transgovernmental regimes can play an equally valuable role by promoting the strengthening of existing agreements and mechanisms that have already been established.

So far, the transgovernmental networks described above have both promoted new human rights commission and charters and have pressured subregional groups to strengthen the newly established ones. The Asia Pacific Forum has been the most active in each of these objectives, participating in discussions aimed at establishing human rights mechanisms in the Pacific,[120] and Arab League.[121] But they are not the only ones: the Association of Asian Parliamentarians for Peace (the predecessor group to the Asian Parliamentary Assembly) drafted its own Asian Human Rights Charter in 1999 and for a while promoted the possibility of a regional treaty. This effort was rejected by many non-governmental organizations as too weak and failing to meet international standards, but some welcomed the effort as at least spurring debate on the issue of a regional human rights mechanism.[122] Most recently the ASEAN NHRI Forum was founded as a separate transgovernmental network that in essence has acted as a pressure group first for the establishment of a strong ASEAN Commission and now to strengthen its effectiveness and preserve its independence.[123]

Second, Slaughter proposes that transgovernmental networks can assist in enhancement of compliance with existing treaties.[124] In fact, one of the most important underlying objectives of the Asia Pacific Forum is to enhance compliance with existing global human rights treaties, so it is not that big a stretch to anticipate the organization playing a similar role with regional human rights treaties, as they emerge. Generally speaking this is carried out through indirect

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[118] Raustiala, *supra* n. 2 at 87.

[119] Slaughter, *supra* n. 2 at 169.

[120] *See* News Release, Asia Pacific Forum, Call for Pacific Human Rights Mechanism (Apr. 7, 2009), available at http://www.asiapacificforum.net/news/call-for-pacific-human-rights-mechanism.html.

[121] *See* News Release, Asia Pacific Forum, Call for Arab Countries to Boost Human Rights Protections (Dec. 20, 2008), available at http://www.asiapacificforum.net/news/call-for-arab-countries-to-boost-human-rights-protection.html.

[122] Basil Fernando, The Debate for a Governments Human Rights Charter Gathers Momentum, Religious Perspectives on Human Rights (e-newsletter), Vol. 02. No. 41 (Oct. 9, 2000) available at http://www.rghr.net/mainfile.php/2000/68/#2).

[123] *See, e.g.*, ASEAN NHRI Forum, Position Paper Concerning the Political Declaration on the ASEAN Intergovernmental Commission on Human Rights, available at http://www.aseannhriforum.org/en/home/joint-statements.html (arguing that the AICHR needs to be "further vested with the necessary independence, effective protection mandate and powers." The ASEAN NHRI Forum is made up of NHRIs from the Philippines, Indonesia, Malaysia, and Thailand. ASEAN NHRI Forum, available at http://www.aseannhriforum.org/en/about-us.html.

[124] Slaughter, *supra* n. 2 at 169.

means: the Asia Pacific Forum strengthens and improves national human rights institutions, and national human rights institutions then work towards the implementation of international human rights norms at the domestic level. Other networks can also play a role. Judicial networks can be an important conduit for international human rights norms to be integrated into domestic legal systems[125] and can potentially contribute to the emergence of a regional rights jurisprudence as different judges get together to discuss common responses to emerging regional norms. Transgovernmental networks in general, can be important venues for what Goodman and Jinks call acculturation, or the "general process of adopting the beliefs and behavioral patterns of the surrounding culture"[126], which may not always be a human rights-respecting culture, but empirically seems likely to be in 21st century Asian transgovernmental networks.

Third, Slaughter outlines how transgovernmental networks can lead to improvements in the quality and depth of intergovernmental cooperation. [127] The quality of human rights-related cooperation in the Asian human rights context can be improved by the spread of best practices, for example by the Asia Pacific Forum or the Asia Pacific Judicial Reform Forum, which makes implementation of subregional policies easier and more effective. Policy and legal convergence as facilitated by transgovernmental networks can also make cooperation easier at the intergovernmental level. As similarities arise in domestic machineries, human rights programs will become easier to implement. In addition, transgovernmental networks can facilitate cooperation at levels that subregional organizations cannot reach due to their smaller geographic scope. For example, the Mongolian and Malaysian human rights commissions worked together on sex trafficking issues through the Asia Pacific Forum,[128] a type of cooperation that would be difficult to achieve otherwise as they are in different subregions. It remains to be seen whether a type of division of responsibilities will emerge, with for example, the subregional organizations using their higher public visibility to make declarations on human rights abuses while the transgovernmental networks concentrates on the more technical aspects of human rights work or for example the transgovernmental networks deal with continent wide humanr rights issues, while the subregional ones concentrate on subregion-level issues, but it is certainly plausible that a type of division of responsibilities could emerge.

Finally, it seems likely that the new subregional organizations will have a beneficial effect on the effectiveness of transgovernmental networks. This is a thesis that was most prominently proposed by Kal Raustiala. For one thing, the subregional organizations will be a source of norms and policies that can potentially assist the transgovernmental networks by regionalizing human rights norms that might otherwise seem like they are being imposed by the west (or simply acting as a regional conduit for universal norms).[129] Subregional organizations can also be a source of funding. For example, the Pacific Islands Forum Secretariat recently provided funding for a meeting of the Members of Parliament on the Pacific Plan (a subregional

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[125] *Id*. at 79.

[126] Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights Law*, 54 DUKE L. J. 621, 637 (2004).

[127] Slaughter, *supra* n. 2 at 169.

[128] E-mail from Kieren Fitzpatrick, Director, Asia Pacific Forum, to Andrew Wolman (Jul. 27, 2009) (on file with author).

[129] According to one scholar, "the messenger is as important as the message, is never truer than in the promotion of human rights in this region." P Imrana Jalal, *supra* n. 102 at 183.

transgovernmental network), and that meeting produced a resolution in favor of the establishment of a Human Rights Commission- a good example of synergism between the two systems at work.[130] Also, subregional organizations can provide additional institutional space for the transgovernmental networks to occupy.[131] For example, the Regional Consultation for Members of Parliament on Human Rights and the Pacific Plan was organized by the Pacific Regional Rights Resources Team (which operates out of the Secretariat of the Pacific Community), and funded in part by the Pacific Islands Forum.[132] Another example is the establishment of the ASEAN NHRI Forum, which has taken a leading role in asserting its institutional interests at the subregional level.[133]

VI. Conclusion

To conclude, I am not making the case that this new dual level Asian regional human rights architecture will be effective or strong by international standards. Clearly at this point it is not. It is too early to tell what the future will hold and impossible to predict the political dynamics that may or may not lead to a stronger regional human rights system. However, I am making the case that at this point a coherent architecture exists and that the two parts of the architecture have the potential to interact in mutually beneficial ways, and in fact preliminary indications are that they are interacting in mutually beneficial or complementary ways.

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[130] Pacific Islands Forum Secretariat, Human Rights, at http://www.forumsec.org.fj/pages.cfm/political-governance-security/human-rights/; Pacific Regional Rights Resource Team, Pacific Regional Consultation for Members of Parliament on the Pacific Plan, Human Rights Conventions & Standards & their Application to Domestic Law, Policy & Practice (2007) at 15-16, available at http://www.undppc.org.fj/userfiles/file/REPORT%20-%20MPs%20Human%20Rights%20Consultation%20Oct%20Nov%202007.pdf.

[131] Slaughter, *supra* n. 2 at 45-46; 108-112.

[132] Pacific Regional Rights Resource Team, *supra* n. 130.

[133] ASEAN NHRI Forum, *supra* n. 123.