

Call to ASEAN jurists

Responsibility and community are the two faces of a same coin; if ASEAN wills to become a community it should adopt the Universal declaration of human responsibility

Résumé :

This documents, written as a contribution to the preparation of the 2013 ASEAN assembly target the role of ASEAN jurists in introducing the principle of responsibility in the ASEAN discussions. It underlines the fact that being a community and acknowledging the mutual responsibilities is the same

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ASEAN is facing two challenges : first to become more than an association between states, a human community ; second to be an international actor which voice could be heard at the global level aside « big powers », such as US, China, European Union or even India. Both challenges relate to the capacity of ASEAN first to adopt an ASEAN declaration of human responsibilities, second to promote at the global level an Universal declaration of human responsibilities. Let us comment these two points.

ASEAN has not been created by countries sharing the same history, the same religion or even linked by previous economic relations. Its purpose was merely defensive: this is enough to build a coalition , not to create a community. Considering the diversity of peoples and religions among ASEAN members and inside each of them you cannot expect to found a community out of same faith. However, there is one distinctive feature of any community, at any time: the feeling of mutual responsibilities. A community exists in so far as each of its member feel to be accountable of his deeds towards each of the others. It is close to a principle of responsibility: I have to consider the impact of my actions on the other members if I want them to consider the impact of their actions on me. Whether these rules be written or embodied in the tradition, the “laws of the community” reflects this responsibility. The jurisdictions are here to measure the respective negative impacts and impose the reparation in case of a prejudice. The very notion of outlaw is that you are fired from the community and cease to be under the protection of its rules and jurisdictions. For the same reason the foreigner is the one who is not considered as equal, and there is no jurisdiction to refer to in case of a prejudice.

Therefore, if ASEAN wants to become a community it has to extend the concept of responsibility at its regional level. This mean the endorsement of an ASEAN Charter of rights and responsibilities., completing the ASEAN Charter. Should new jurisdictions be created to reflect this extension of the rule of law, such as a regional court of justice or a regional court of rights and responsibilities, or does the equivalent result be reached through extended competences of national jurisdiction? Even if the creation of a new institution is a strong symbol, both can be considered. The European experience is a good showcase of the way a regional law can be created through a steady confrontation of different national juridical traditions, such as Roman law and Common law. It is a powerful tool of integration, although at the time it was created the reference was only human rights;

even now it is the missing link as “responsibility is the hidden face of rights”, as the famous Belgian jurist François Ost puts it. We can see that nowadays with the difficulty to address irresponsible behaviors in the fields of finance or technologies. By being the first region of the world to draft and adopt a Charter of human rights and responsibilities, ASEAN would pave the way.

At a global level, ASEAN members are among the states most threatened by climate change. But there is a complete lack of accountability of individuals, companies and nations towards each other as far as the global impact of their ways of life is concerned. This is a perfect illustration of the present state of the world: global interdependencies but no global community. Since the eve of the twenty first century, as it has been stated by the vibrant speech of the Philippine representative at the last CoP of the Kyoto protocol on climate change, the international community has been unable to take any serious measure to curb the present trends and to assume the co-responsibility to prevent many countries from irreversible damages. Which court should they turn to? Whom to blame and to suit? Who is guilty for this silent crime against humanity? Neither individuals nor companies or states leaders are held accountable for what is the direct and indirect consequences of their action or inaction. Humanity has never assumed the fact that growing global interdependencies should be translated in the fundamental rules of the international community and in international law. We cannot rely anymore on a conception of sovereignty which dates back to the seventeenth century and on a definition of responsibility even more ancient. This is the message that ASEAN could pass to the so called International community: call for the adoption of an Universal declaration of human responsibilities. It would complement the UDHR adopted in 1948. The historical evidence is that such a declaration is not a miraculous drug but, over the years has a transformative impact on international, regional and national laws and jurisdictions, then on individual and collective behaviors. At a moment when one talks of G8, G20 or even G2 (USA and China) to describe the hegemony of the “big players” on the world affair, such a diplomatic common initiative from ASEAN members would shed light on its growing international significance.