

**Emergence and Advancement of Human Rights Concerns in
ASEAN**

by

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Abbreviations

ACS	ASEAN Community Council
ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
AEC	ASEAN Economic Community
AFM	ASEAN Foreign Ministers
AFMM	ASEAN Foreign Minister Meeting
AFTA	ASEAN Free Trade Area
AHRB	ASEAN Human Rights Body
AHRD	ASEAN Human Rights Declaration
AICHR	ASEAN Intergovernmental Commission on Human Rights
AMM	ASEAN Ministerial Meeting
AMMSWD	ASEAN Minister Meeting on Social Welfare and Development
APSC	ASEAN Political-Security Community
ASC	ASEAN Standing Committee
ASCC	ASEAN Socio-Cultural Community

ASEAN	Association of Southeast Asian Nations
CAT	Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment
CAT-OP	Optional Protocol to the Convention Against Torture
CCPR-OP2-DP	Second Optional Protocol to International Covenant on Civil and Political Rights
CED	Convention for Protection of All Forms of Discrimination Against Women
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Woman
CLMV	Cambodia, Myanmar, Laos and Vietnam
CRC	Convention on the Rights of the Child
CRC-OP-AC	Optional Protocol to the Convention on the Right of the Child on the involvement of Children in Armed Conflict
CRC-OP-SC	Optional Protocol to the Convention on the Right of the Child on the Sale of Children, Child Prostitution and Child Pornography
CRPD	Convention on the Rights of Person with Disabilities
CSOs	Civil Society Organizations
DAC	Declaration of ASEAN Concord

EC	European Community
ECtHR	European Court of Human Rights
FIDH	Fédération internationale des droits de l'homme
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMW	International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
JIM	Jakarta Informal Meeting
Lao PDR	Lao People's Democratic Republic
SEATO	Southeast Asian Treaty Organization
SLOM	Senior Labor Officials Meeting
TAC	Treaty of Amity and Cooperation in Southeast Asia
TOR	Terms of Reference
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly

UNSC	United Nations Security Council
UNSG	United Nations Secretary-General
UNTAC	United Nations Transitional Authority in Cambodia
VCP	Vietnam Communist Party
VDPA	Vienna Declaration and Programme of Action
ZOPFAN	Zone of Peace, Freedom and Neutrality

Abstract

ASEAN just reached its 51th anniversary on 8 August 2018. ASEAN is relatively young, with an even shorter history affirmative to human rights protection compared with other regions. Human rights rarely appear in ASEAN documents, which are dominated by references to peace and stability. However, the solution of the Cambodian problem was an important link to human rights considerations within ASEAN. Human rights appeared in some documents of the United Nations, which were drafted with the involvement of ASEAN members. In addition, cooperation between ASEAN and the European Community in solving the Cambodian problem also foregrounded human rights in ASEAN-EC documents. This could be claimed as the emergence of human rights concerns in ASEAN.

To emphasize the advancement of human rights in ASEAN, it was necessary to look at the impact of the Paris Peace Agreement and the World Conference on Human Rights in 1993 which influenced ASEAN human rights concerns. It could be argued that international cooperation has a vast impact on ASEAN human rights concerns, particularly with the United Nations and the European Union. In addition, ASEAN membership is one of the issues that related to peace, stability and human rights. The cooperation between ASEAN and Vietnam was a catalyst for closer relations among ASEAN members. The key event was the admission of Vietnam and Cambodia to ASEAN, which brought the framework of PPA to ASEAN.

In addition, ASEAN cooperation created Joint Communiqués, Declarations and ASEAN documents such as ASEAN Action Plans, the ASEAN Charter, ASEAN Blueprints, ASEAN Declaration and ASEAN Human Rights Body which refer to the development of human rights in ASEAN. ASEAN Action Plans emphasize the establishment of the ASEAN Vision as long-term goals for ASEAN, including human rights protection and promotion in

order to promote and protect all human rights and fundamental freedoms of all peoples in accordance with the United Nations Charter, the Universal Declaration of Human Rights and the Vienna Declaration and Program of Action.

Key Words: Advancement, ASEAN, Emergence, Human Rights Concerns

General Introduction

1. Background

Human rights are a significant issue at the international, regional and national level. At the international level, after World War II, the project for an international bill of human rights began with the Charter of the United Nations in 1945, which determined to reaffirm faith in “fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”.¹ Following the Universal Declaration on Human Rights in 1948, core human rights conventions and their optional protocols became the main instruments on human rights at the international level.

At the regional level, some regions also have a specific charter, convention and declaration which depends on the appropriate conditions of each region. The most experienced regions on human rights protection are the European and the American continent. The European human rights system started with the Council of Europe in 1949 and the first convention on human rights was called, “the European Convention for the Protection of Human Rights and Fundamental Freedoms”.² This convention has set up two human rights institutions for the Council of Europe: the European Commission of Human Rights in 1954 and the European Court of Human Rights (ECtHR) in 1959.³ The Committee of Ministers of the Council of Europe supervised this system. The European Convention for the Protection of Human Rights and Fundamental Freedoms was amended by Protocol No. 11 in 1994 so that

¹ The Charter of the United Nations, Article 1, para. 3, (1945), 2.

² Convention for the Protection of Human Rights and Fundamental Freedoms, As Amended by Protocols No.11 and No.14,” in Dinah L. Shelton and Paolo G. Carozza, *Regional Protection of Human Rights: Basic Documents*, Second Edition (Oxford University Press, 2013), 9.

³ *Ibid.*, 9-32.

all state parties must recognize the compulsory jurisdiction of the ECtHR and permit individuals direct access to it in all cases.⁴

The American human rights system started similarly to the European one in that it is also based on a series of human rights instruments, namely the American Convention on Human Rights as the founding treaty, the American Declaration of the Rights and Duties of Man, and other instruments.⁵ The Resolution of the Organization of American States (OAS) formed the Inter-American Commission on Human Rights.⁶ It was not founded by a treaty. It was listed in the OAS Charter later as a principal organ of the organization in the Third Special Inter-American Conference in 1967 at Buenos Aires.⁷

The Association of Southeast Asian Nations (ASEAN) was established during the Cold War by five countries, namely Indonesia, Malaysia, the Philippines, Singapore and Thailand.⁸ At this time, these countries were facing internal and external threats. For bringing outstanding colonial era conflicts under control, these countries signed the Bangkok/ASEAN Declaration on 8 August 1967 for establishing ASEAN.⁹ Southeast Asia is not only a young

⁴ “Convention for the Protection of Human Rights and Fundamental Freedoms, As Amended by Protocols No.11 and No.14,” in Dinah L. Shelton and Paolo G. Carozza, *Regional Protection of Human Rights: Basic Documents*, Second Edition (Oxford University Press, 2013), 9.

⁵ “American Declaration of the Rights and Duties of Man 1948,” in Dinah L. Shelton and Paolo G. Carozza, *Regional Protection of Human Rights: Basic Documents*, Second Edition (Oxford University Press, 2013), 231–55.

⁶ Hao Duy Phan, *A Selective Approach to Establishing a Human Rights Mechanism in Southeast Asia: The Case for a Southeast Asian Court of Human Rights* (Martinus Nijhoff Publishers, 2012), 165–66.

⁷ *Ibid.*, 166.

⁸ Thanat Khoman, “ASEAN Conception and Evolution,” *The ASEAN Reader, Institute of Southeast Asian Studies*, 1992.

⁹ FORUM-ASIA, “Timeline,” online, accessed September 11, 2014, <http://humanrightsinasean.info/asean-background/timeline.html>.

sub-region, but also the youngest in terms of human rights protection if compared with other regions.

Many scholars claim that ASEAN human rights regime was initiated by the ASEAN Charter¹⁰ in 2008 which calls for human rights promotion and protection by “ASEAN Human Rights Body”.¹¹ ASEAN is equipped with a machinery to improve human rights. There is another group of scholars that has identified the term human rights in ASEAN as originating from the Vienna Declaration and Program of Action in 1993.¹²

This dissertation, however, will argue that the concerns for human rights in ASEAN emerged much earlier than 2008 and even before 1993. In doing so, this study will affirm that ASEAN concerns on human rights stemmed from a hope for regional peace and stability by solving the Cambodian problem. Besides this study, there has been no comprehensive research that could identify the origin of the human rights concerns in ASEAN before the World Conference on Human Rights in 1993. Further, this dissertation analyzes cooperation as a key for human rights protection. Cooperation will be examined with view to the impacts of the World Conference on Human Rights in Vienna, in the Second Workshop on Human Rights which took place in Indonesia and the Bangkok Declaration which was adopted by the Asian ministers to reaffirm the governments’ commitment to the principles of the United Nations Charter and the Universal Declaration on Human Rights.¹³ Furthermore, the impact

¹⁰ Victor Beyer, *Assessing an ASEAN Human Rights Regime: A New Dawn for Human Rights in Southeast Asia?* (LAP LAMBERT Academic Publishing GmbH & Co.KG, 2011), 4.

¹¹ “ASEAN Charter,” in Dinah L. Shelton and Paolo G. Carozza, *Regional Protection of Human Rights: Basic Documents*, Second Edition (Oxford University Press, 2013), 560.

¹² Tae-Ung Baik, *Emerging Regional Human Rights Systems in Asia* (Cambridge University Press, 2012), 142.

¹³ Report of the Regional Meeting for Asia of the World Conference on Human Rights’

of ASEAN-EU cooperation on ASEAN human rights concerns is another key to develop human rights concerns within ASEAN.

This dissertation will further examine the circumstances surrounding the extension of ASEAN membership as well as ASEAN Action Plans, the ASEAN Charter, ASEAN Blueprints, and the ASEAN Human Rights Body. The ASEAN Declaration and the ratification of the international convention on human rights evidence the development of ASEAN human rights. Ultimately, the purpose of this dissertation is to focus on the emergence and the advancement of human rights concerns in ASEAN. The emergence of human rights concerns in ASEAN will be examined through the conflict of Cambodia. The advancement of human rights concerns in ASEAN will be demonstrated through the international cooperation and reconfirmed by the circumstances surrounding the extension of ASEAN membership, ASEAN's attitude on the human rights treaties and ASEAN documents on human rights.

2. Methodology

This dissertation aims to identify the emergence and advancement of human rights concerns in ASEAN. Using primary and secondary resources, the thesis explores two important points:

- The emergence of human rights in ASEAN; and
- The advancement of human rights concerns in ASEAN through Specific cooperation and attitude of ASEAN and ASEAN's documents.

A/conf.157/asrm/8 a/conf.157/pc/59 (Bangkok, 29 March - 2 April 1993).

To be more concrete, this dissertation examines UN documents on the Cambodian problem and ASEAN documents issued by the ASEAN Secretariat from the year of establishment of ASEAN up to the present time as are deemed necessary or relevant. ASEAN documents here do not mean only documents made by ASEAN itself but also documents with dialogue partners, special meetings, and informal meetings of ASEAN with other partners. After checking the documents, this dissertation shows that the words “human rights” were rarely used in ASEAN documents during 1970s instead the word “peace” was more frequently used. The term, “human rights” could be identified in the draft resolution of General Assembly 34/22 by ASEAN and other countries, the Joint Statement on Political Issues, which reaffirms their commitment to world peace, international cooperation and understanding, economic development, social justice, and human rights.¹⁴ In addition, the author also examines other documents of ASEAN which are linked to regional peace and stability and human rights in ASEAN and related countries. To point out the advancement of human rights in ASEAN, this dissertation examines the impact of the cooperation between ASEAN and the United Nations through the World Conference on Human Rights in 1993. The impact of ASEAN and EU cooperation also implies that human rights promotion and protection in ASEAN are improving. Moreover, the advancement of human rights in ASEAN will be reconfirmed by examining ASEAN documents on human rights.

3. Literature Review

¹⁴ “Joint Statement on Political Issues Kuala Lumpur, 8 March 1980,” in *ASEAN Documents Series 1967-1988*, Third (ASEAN Secretariat, 1988), 438–40.

Many scholars claim that ASEAN has not touched upon human rights issues for a long time since the establishment of ASEAN. Many authors have dealt with the issue of human rights; however, not many focus on human rights issues in Southeast Asia. Most of them deal with the human rights issues in Southeast Asia after the Vienna Declaration and Program of Action in 1993, but not in earlier time period. Pietropaoli asserts that ASEAN had committed to promote and protect human rights and to develop a regional mechanism in 1993.¹⁵ In addition, Woon also argues that “The Foreign Ministers affirmed ASEAN’s commitment to human rights and fundamental freedoms as set out in the Vienna Declaration of 25 June 1993,” which states that, “the Twenty-sixth ASEAN Ministerial Meeting [AMM] agreed that ASEAN ‘should consider the establishment of an appropriate regional mechanism on human rights’”.¹⁶ In addition, some authors also claim that human rights issue in the Joint Communiqué of ASEAN in 1993 was the starting point of human rights in ASEAN such as Muntarbhorn who argues that “the ASEAN human rights system is not so advanced as that of other regions.”¹⁷ Moreover, Gomez and Ramcharan argue that “a nascent human rights regime is emerging in Southeast Asia, one equipped with an institutional body, namely the ASEAN Intergovernmental Commission on Human Rights (AICHR) and a normative

¹⁵ Irene Pietropaoli, “Challenges for ASEAN Human Rights Mechanism: The Case of Lao PDR from a Gender Perspective,” in Hitoshi Nasu & Ben Saul, *Human Rights in the Asia and The Pacific Region: Towards Institution Building*, (London and New York: Routledge Research in Human Rights Law, 2011), 166.

¹⁶ Water Woon, *The ASEAN Charter: A Commentary* (Singapore: NUS Press, 2016), 135.

¹⁷ Vitit Muntarbhorn, *Unity in Connectivity?: Evolving Human Rights Mechanisms in the ASEAN Region* (Martinus Nijhoff Publishers, 2013).

framework enshrined in the ASEAN Human Rights Declaration (AHRD).”¹⁸ It comprises an article on human rights in ASEAN during the time when ASEAN Charter entered into force in 2008.

The term human rights may be defined in various ways depending on each person. Human rights are rights a person has because they are human and entail an internationally recognized standard of how all humans should be treated, regardless of their situation, or where they live.¹⁹ In order to identify human rights in the first stage, studying cooperation with other partners is important. However, it comes in question in regional cooperation, as Baik argues, that in reality, regional cooperation is still heavily focused on economic and security dimensions.²⁰ How can we argue that human rights cooperation will follow the international cooperation in the area of political, economic, diplomatic and security issues? He answers this question by saying, “Interestingly, human rights issues are often avoided in some diplomatic setting, but those cooperation in other areas promote the development of human rights cooperation as well”.²¹

It is true that without the cooperation of EC and UN to deal with the Cambodian problem, human rights in ASEAN might not have been recognized and their concern might have been ignored. Without the cooperation between ASEAN and other states, Vietnam, Laos, Myanmar and Cambodia might not have been accepted for ASEAN membership after the

¹⁸ James Gomez and Robin Ramcharan, “The Protection of Human Rights in Southeast Asia: Improving the Effectiveness of Civil Society” *Asia-Pacific Journal on Human Rights and the Law* 2 (2012), 27.

¹⁹ Azmi Sharom et al., *An Introduction to Human Rights in Southeast Asia*, First Edition (CC BY-NC-SA, 2011.), 4.

²⁰ Tae-Ung Baik, *supra* note 12, at 24.

²¹ *Ibid.*

Cambodian problem. Moller claims that Myanmar's membership caused almost instant problems with association's Western dialogue partner.²² Loewen argues that the human rights and democracy debate between the EU and ASEAN fell apart due to the incompatible positions on the Asian and European sides.²³ However, Than and Gate claim that to become members of ASEAN, Vietnam, Laos, Myanmar and Cambodia showed that they would share the Association's commitment to regional peace and stability, seen as a prerequisite for economic development, which is the first national priority of all its members.²⁴

In addition, the World Conference might not have been successful without cooperation among the regions. After 1993, there are many documents of ASEAN that establish the development of ASEAN human rights promotion and protection. These documents include AICHR and Terms of Reference (TOR). Some authors criticize the TOR as a toothless mechanism that failed to provide real protection.²⁵ Basham-Jones argues that "the High Level Panel that produced the AICHR's TOR failed to make optimal use of these stakeholders' vision and work in relation to the promotion and protection of human rights in the region and the establishment of a regional intergovernmental human rights body."²⁶ However, this study will argue that AICHR is a significant organ for human rights promotion and protection in ASEAN.

²² Kay Moller, "Cambodia and Burma: The ASEAN Way Ends Here," *Asian Survey* 38, no. 12 (December 1998): 1087.

²³ Howard Loewen, "Democracy and Human Rights in the European-Asian Dialogue: A Clash of Cooperation Cultures?," *GIGA German Institute of Global and Area Studies*, no. 92 (December 2008): 17.

²⁴ Mya Than and Carolyn L. Gates, eds., *ASEAN Enlargement: Impacts and Implications* (Singapore: Institute of Southeast Asian Studies, 2001), 31.

²⁵ James Gomez and Robin Ramcharan, *supra* note 18, at 27.

²⁶ Deborah Basham-Jones, "ASEAN's Intergovernmental Commission on Human Rights: A Pale Shadow of What It Could Have Been," *Asia-Pacific Journal on Human Rights and the Law* 2 (2012): 1–26.

This paper puts forward a different point of view on human rights in ASEAN. ASEAN human rights system regimes not the Western prevalent view or the pro-Western view of Asian scholars but an Asian view to appreciate the development of human rights from zero. Human rights in ASEAN generally looks different in international human rights standards and the way that ASEAN approaches to human rights promotion and protection. Human rights in ASEAN are created from the cooperation and agreement among ASEAN members. The cooperation is not only among ASEAN but also between ASEAN and other countries and organizations which are the key for human rights promotion and protection for ASEAN. Human rights protection in ASEAN started when there was a conflict in Cambodia to keep peace and stability in Southeast Asia. From this starting point, ASEAN keeps developing human rights within their framework of cooperation and each member country also starts to improve human rights situation in each country. When the human rights emerge, the developing of human rights has to be a matter of concern. The progress of ASEAN human rights could be seen from the ASEAN cooperation, ASEAN documents and actions on human rights protection and promotion from ASEAN and ASEAN member countries.

4. Contributions and Limitations of the Study

This study presents a new finding that the literature on human rights issues in ASEAN, particularly in the recognition of ASEAN human rights before 1993, have never been pointed out. This research also fulfills the research gap in the literature on human rights in South East Asia by identifying the emergence of human rights in ASEAN through the Cambodia problem. The author claims that Cambodian problem as the origin of the concept of ASEAN human rights. In addition, this research also point out the advancement of human rights in ASEAN by looking at the cooperation between ASEAN and the United Nations, ASEAN and the

European Union. These cooperation support ASEAN to be more development of human rights promotion and protection. Furthermore, this study also identifies ASEAN member's attitude on international human rights treaties and ASEAN documents on human rights. This research also contributes to the academic society so as to increase the number of authors in particular dealing with human rights in ASEAN

However, this research has some limitation since some ASEAN documents could not be found or accessed. Some documents are only available among ASEAN members but not for public.

5. Structure of the Study

This study consists of an introduction, four main chapters, and the conclusion. Chapter 1 focuses on the Cambodian problem as the origin of the concept of ASEAN human rights. The Cambodian problem is identified in the framework of regional peace and stability as a key to human rights in ASEAN, which led to the end of the Cambodian problem by the Paris Peace Agreement in 1991. Chapter 2 and 3 identify the impact of international cooperation as the link to human rights concerns in ASEAN while Chapter 2 examines PPA influences on ASEAN Joint Communiqué 1992 and the impact of the World Conference on Human Rights to Joint Communiqué 1993 and Kuala Lumpur Declaration on Human Rights in September 1993. Chapter 3 mainly focuses on the impact of ASEAN-EU Cooperation on ASEAN human rights concerns by looking at the EU policy on human rights and how ASEAN and the EU cooperate for human rights promotion and protection. Chapter 4 focuses on ASEAN's attitude and development of human rights by looking into ASEAN membership,

ASEAN's action and ASEAN's documents to prove how ASEAN has developed human rights concerns.

Chapter 1

The Cambodian Problem as an Origin of the Human Rights Concept in ASEAN

Introduction

Southeast Asia is not only a young region but it is also the youngest in terms of human rights protection if compared to other regions. In addition, Southeast Asia used to be known as a region without a human rights system. While many authors and scholars have dealt with the issue of human rights at the international level, not many have focused on the human rights issue in Southeast Asia. Most of them deal with the human rights issue in Southeast Asia by analyzing the events occurring after the Vienna Declaration and Program of Action which was adopted in 1993, and many scholars claim that the ASEAN human rights regime was formed by the ASEAN Charter²⁷ in 2008, which calls for human rights promotion and protection with the establishment of an “ASEAN Human Rights Body”.²⁸ The reason why many authors identify 1993 as the key year for human rights may be the Vienna Declaration and Program of Action, which clearly establishes “the solemn commitment of all States to fulfill their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law”.²⁹ This declaration is commonly accepted and acknowledged by States.

²⁷ Victor Beyer, *supra* note 10, at 4.

²⁸ “ASEAN Charter” *supra* note 11, at 560.

²⁹ “Vienna Declaration and Programme of Action (1993)” in Alison Bisset, ed., *Blackstones’s International Human Rights Documents*, 9th ed. (Oxford University Press, 2014), 467.

Some authors claim that ASEAN had a commitment to promote and protect human rights and to develop a regional mechanism in 1993.³⁰ In addition, Woon also argues that, “The Foreign Ministers affirmed ASEAN’s commitment to human rights and fundamental freedoms as set out in the Vienna Declaration of 25 June 1993” which states that, “the Twenty-sixth ASEAN Ministerial Meeting (AMM) agreed that ASEAN ‘should consider the establishment of an appropriate regional mechanism on human rights’”.³¹ ASEAN did not only accept the promotion of human rights in the Vienna Declaration and Program of Action, but also issued their own Joint Communiqué in the AMM in the same year. Furthermore, Gomez and Ramcharan argue that “a nascent human rights regime is emerging in Southeast Asia, one equipped with an institutional body from 2008 through the ASEAN Charter, the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009, and a normative framework enshrined in the ASEAN Human Rights Declaration (AHRD) in 2012.”³²

This chapter will argue that the concept of human rights in ASEAN emerged much earlier than 2008 and even before 1993, and considers the Cambodian problem as an origin of human rights in ASEAN. Some people might question why it would be the Cambodian problem. Why did ASEAN integrate this issue into its agenda? Does ASEAN have its own principle of non-interference in the internal affairs of its members which might conflict with human rights protection? The answer to these questions can be found in the following chapters. This dissertation will examine, first, the human rights concerns with regards to the situation of Cambodia, because at that time, the first mentioning of human rights appeared in

³⁰ Irene Pietropaoli, *supra* note 15, at 166.

³¹ Walter Woon, *supra* note 16, at 135.

³² James Gomez and Robin Ramcharan, *supra* note 18, at 27.

an ASEAN document. Secondly, it will investigate ASEAN's changing attitude towards Vietnam's reaction, which finally brought human rights concerns into the Paris Peace Conference and the Agreement in 1991.

1.1 Human Rights Concerns about the Situation of Cambodia

ASEAN's support in an attempt to solve the conflicts in Cambodia in cooperation with other communities was the starting point of devoting attention to human rights concerns in Southeast Asia. Human rights were not directly mentioned in any ASEAN document, such as the Bangkok Declaration in 1967, unlike peace and stability which were clearly promoted. Some scholars claim that human rights were not the first issue of the regional agenda but security and economic development.³³ ASEAN did not recognize human rights at that time. In 1971, ASEAN declared a Zone of Peace, Freedom and Neutrality (ZOPFAN).³⁴ At that time, Cambodia and Vietnam were not yet members of ASEAN, but both countries attended the Fourth ASEAN Ministerial Meeting and accepted the ASEAN ideals of peace, social justice and economic well-being through regional cooperative action, the spirit of an equal partnership, understanding and goodwill.³⁵ This cooperation showed that both Cambodia and Vietnam intended to be a part of ASEAN in the future. In addition, ASEAN adopted the Treaty of Amity and Cooperation in Southeast Asia in 1976 with the purpose of promoting

³³ Bilahari Kausikan, "Asia's Different Standard" in Philip Alson, ed., *The International Library of Essays in Law & Legal Theory: Human Rights Law*, (Dartmouth, 1996), 203.

³⁴ "Zone of Peace, Freedom and Neutrality Declaration (Kuala Lumpur Declaration), Kuala Lumpur, 27 November 1971" in *ASEAN Documents Series 1967-1988*, 3rd ed. (ASEAN Secretariat, 1988), 35.

³⁵ "Joint Communiqué of the Fourth ASEAN Ministerial Meeting, Manila, 12-13 March 1971" in *ASEAN Documents Series 1967-1988*, 3rd ed. (ASEAN Secretariat, 1988), 71.

perpetual peace, everlasting amity and cooperation.³⁶ This treaty establishes its own principles which frees ASEAN from external interference, and sets up the principle of non-interference in the internal affairs of one another. This treaty also reconfirms the accession of other States in Southeast Asia to ASEAN³⁷, which was stipulated in the 1967 Bangkok Declaration. This means that ASEAN would accept new members having territory in Southeast Asia. Cambodia and Vietnam would be qualified if they wished to be a part of ASEAN and accept the aims, principles and purposes of ASEAN. Therefore, the Cambodian problem became one of the issues that ASEAN had to be concerned about in terms of peace and stability among its members.

1.1.1 The Cambodian Problem

The Cambodian holocaust committed by the Khmer Rouge caused the death of innocent people, and massive human rights violations.³⁸ Some countries claimed that it amounted to genocide, which was a severe blow to human rights as an international crime under international law, opposed to the object and purpose of the United Nations, and condemned by the civilized world.³⁹ Even though initially almost all Cambodians welcomed the Vietnamese entering Cambodia in the end of 1978, it did not mean that they preferred to be

³⁶ .“Treaty of Amity and Cooperation in Southeast Asia, Bali, 24 February 1976” in *ASEAN Documents Series 1967-1985* (Jakarta: ASEAN Secretary, 1985), 39.

³⁷ *Ibid.*

³⁸ Mari Katayanagi, *Human Rights Functions of United Nations Peacekeeping Operations*, (Martinus Nijhoff Publishers, 2002), 101.

³⁹ “Vienna Declaration and Programme of Action (1993)” in Alison Bisset, ed., *supra* note 29, at 7.

invaded in order to be rescued from the Khmer Rouge regime led by Pol Pot.⁴⁰ In a viewpoint, the intervention of Vietnamese troops brought the end to the Pol Pot regime.⁴¹ Katayanagi says that “the Pol Pot regime ended by the intervention of Vietnamese troops”.⁴² The conflict in Cambodia was viewed by Vietnam as having originated in a domestic power struggle among rival Cambodian factions. However, ASEAN was concerned that the situation of Cambodia during this time was terrible and the central issue of this conflict was the Vietnamese invasion and occupation of Cambodia rather than a domestic power struggle among the Cambodian factions.⁴³ This shows that there were two periods to be distinguished in the Cambodian problem. The first period was the situation before Vietnamese intervention into the internal conflict and genocide and the second period was after the intervention by Vietnam.

ASEAN ignored the Cambodian issue in the first period but focused more on it during the second period because their principles, which were designed to prevent intervention by one country in the affairs of another within the region, were violated by the Vietnamese intervention in Cambodia.⁴⁴ ASEAN was concerned that the declaration of the ZOPFAN was ruined by the invasion of Cambodia by Vietnam.⁴⁵ Furthermore, the Declaration on Principles

⁴⁰ David P. Chandler, *A History of Cambodia*, 2nd ed. (Westview Press, 1992), 229.

⁴¹ Lucy Keller, “UNTAC in Cambodia - from Occupation, Civil War and Genocide to Peace” *Max Planck Yearbook of United Nations Law* 9 (2005), 129.

⁴² Mari Katayanagi, *supra* note 35, at 101.

⁴³ Amitav Acharya, Pierre Lizee, and Sorpong Peou, eds., *Cambodia - The 1989 Paris Peace Conference: Background Analysis and Documents* (Center for International and Strategic Studies, York University, 1991), xxvi.

⁴⁴ *Ibid.*

⁴⁵ The United Nations General Assembly, *Official Records of the General Assembly*, Thirty-Fourth Session, Plenary Meetings, vol.2, 1979, 62nd Plenary Meeting, 1193.

of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations states that, “No State or group of States has the right to intervene directly, or indirectly, for any reason whatsoever in the international external affairs of any other State”.⁴⁶ Therefore, many countries considered the action of Vietnam a violation of international law. In addition, the experience of the Nazi Holocaust served as an example that made ASEAN concerned about peace and stability in Southeast Asia. Peace and stability had been two of the main purposes of ASEAN since its establishment as clearly stated in the Bangkok Declaration. Therefore, ASEAN had to take action to solve this problem for peace and stability in Southeast Asia.

1.1.2. ASEAN Recognition of Human Rights in United Nations Cooperation

In this situation, ASEAN tried to help Cambodia to solve the problem. At first, it could be considered as a factor contributing to peace and security within Southeast Asia, since the Cambodian problem had a negative effect on peace and security within Southeast Asia. ASEAN claimed that the intervention of Vietnam in Cambodia was a violation of the principles enshrined in the Declaration of the ZOPFAN,⁴⁷ and included in its annual agenda the issues of solving this situation and keeping regional peace and stability in Southeast Asia. In addition, a representative of ASEAN, the Indonesian Minister of Foreign Affairs as the Chairman of ASEAN Standing Committee, wrote a letter to the President of the United Nations Security Council (UNSC) to transmit the text of a statement by ASEAN to be

⁴⁶ The General Assembly, *Resolution 2625 (XXV)*, (1970), <http://www.un-documents.net/a25r2625.htm>.

⁴⁷ The United Nations General Assembly, *supra* note 45, at 1193.

circulated as a document of the UNSC.⁴⁸ This action aimed to make other countries aware of the Cambodian situation and peace and stability in Southeast Asia.

The statement was issued in Jakarta on 9 January 1979 and underlined the following important points: “ASEAN deeply deplored the current escalation and enlargement of the armed conflict between two Indochinese States”, and expressed “grave concern over the implications of this development and its impact on the peace, security and stability in Southeast Asia”.⁴⁹ ASEAN reaffirmed that “peace and stability were essential for the national development of the respective countries in the region of Southeast Asia. ASEAN was convinced that for the sake of peace and stability and development in Southeast Asia, the countries concerned should respect more fully the principles of the United Nations Charter and be mindful of the solemn pledge enunciated by the countries in the region.”⁵⁰ In addition, ASEAN encouraged the UNSC not only to discuss the Vietnam-Cambodia conflict, but also to take necessary actions to restore peace and stability in Indochina.⁵¹

A statement was issued in advance of the meeting of the ASEAN Foreign Ministers (AFM) scheduled to be held in Bangkok 12-13 January 1979, which would give further

⁴⁸ The United Nations Security Council, *Letter Dated 9 January 1979 from the Charge D’Affaires A.I. of the Permanent Mission of Indonesia to the United Nations Addressed to the President of the Security Council*, S/13014, Annex, January 9, 1979, 1.

⁴⁹ *Ibid.*

⁵⁰ “Statement by the Indonesian Foreign Minister as Chairman of the ASEAN Standing Committee on the Escalation of the Armed Conflict between Vietnam and Kampuchea, Jakarta, 9 January 1979” in *ASEAN Documents Series 1967-1988*, 3rd ed. (ASEAN Secretariat, 1988), 587.

⁵¹ *Ibid.*

consideration to the Cambodian problem.⁵² At the Special Meeting of the AFM, they issued a Joint Statement which supported the previous statement on 9 January and stated:⁵³

The ASEAN Foreign Ministers strongly deplored the armed intervention against the independence, sovereignty, and territorial integrity of Kampuchea; they affirmed the right of the Kampuchea people to determine their future by themselves, free from interference or influence from outside powers in the exercise of their right of self-determination; the ASEAN Foreign Ministers called for the immediate and total withdrawal of the foreign forces from Kampuchea territory [and] welcomed the decision of the United Nations Security Council to consider without delay the situation in Indo-China, and strongly urged the Council to take the necessary and appropriate measures to restore peace, security and stability in the area.

This statement was accepted among ASEAN members, and ASEAN encouraged other countries to also accept their proposal. ASEAN wrote another letter to the United Nations Secretary-General (UNSG) to transmit the Joint Statement to be circulated as a document of the UNSC⁵⁴ to make other countries aware of the situation and for the sake of peace and stability in Southeast Asia. One month and one week later, the permanent representative of Indonesia, in the capacity as Chairman of the ASEAN Standing Committee (ASC), made another statement on the latest developments in Indochina in order to avoid further disruption of peace and stability in the Southeast Asian region by urgently appealing to the parties to the conflict to cease all hostilities, and urged that all foreign forces be withdrawn from all the areas of conflict in Indochina. Furthermore, ASEAN appealed to powers outside the region to exercise utmost restraint and refrain from any acts which might lead to a further escalation

⁵² The United Nations Security Council, *supra* note 48, at 1.

⁵³ The United Nations Security Council, *Letter Dated 12 January 1979 from the Permanent Representative of Indonesia to the United Nations Addressed to the President of the Secretary-General, S/13025, Annex, January 12, 1979, 2.*

⁵⁴ *Ibid.*

and widening of the conflict.⁵⁵ This statement also requested the UNSG to transmit the Joint Statement for circulation as a document of the UNSC.⁵⁶ Besides these three statements by the Chairman of the ASC, ASEAN made another effort to solve the Cambodian problem in the Joint Communiqué of the Twelfth AMM in Bali, Indonesia on 28-30 June 1979 by referring to the important issues which the AMM had to address; specifically the situation in Indochina, such as the realization of ZOPFAN and the refugee problem.⁵⁷ However, the UNSC could not make much progress on these issues since there was opposition from some permanent members of the Council.

Up to August 1979, the situation in Indochina or the Cambodian problem remained unresolved and became worse. However, ASEAN did not cease in searching for a solution to this problem. At that time, ASEAN did not only send the letter dated 17 August 1979 to the UNSG to be transmitted as a UN document as before, but also requested the inclusion of a supplementary item in the agenda of the thirty-fourth session of the United Nations General Assembly (UNGA),⁵⁸ which would take place from 15 October to 23 November 1979.⁵⁹ The UNGA accepted the request of ASEAN and included the situation of Cambodia on their

⁵⁵ The United Nations Security Council, *Statement by H.E. Dr. Mochtar Kusumaatmadja, Minister for Foreign Affairs of the Republic of Indonesia, in the Capacity as Chairman of the ASEAN Standing Committee, on the Latest Development in Indo-China*, S/13016, Annex, 1979, 2.

⁵⁶ The United Nations Security Council, *Letter Dated 20 January 1979 from the Permanent Representative of Indonesia to the United Nations Addressed to the President of the Security General*, S/13016, February 20, 1979, 1.

⁵⁷ “Joint Communiqué of the Twelfth ASEAN Ministerial Meeting, Bali, Indonesia, 28-30 June 1979” in *ASEAN Documents Series 1967-1988*, 3rd ed. (ASEAN Secretariat, 1988), 86–88.

⁵⁸ The United Nations General Assembly, *Official Records of the General Assembly, Thirty-Fourth Session, Vol.2, “Agenda Item 123: The Situation in Kampuchea”* (New York: United Nations, 1979), 1.

⁵⁹ The United Nations General Assembly, *Official Records of the General Assembly*, *supra* note 45, at cover.

agenda. Before it took place, Cambodian factions and Vietnam sent some letters to the UNSG to provide information about the situation. After that, Thailand did the same, since they have a border with Cambodia and faced the problem of refugees. In total, the Cambodian factions sent 26 letters to the UNSG, Vietnam sent 16, and Thailand sent four.⁶⁰ Their letters were written from their own points of view. The thirty-fourth session of the UNGA started on October 15, 1979.

The situation in Cambodia was adopted as Agenda Item 123 for the 62nd to 67th meetings from Monday 12 to Wednesday 14 of November 1979.⁶¹ These meetings had six draft resolutions proposed by the two main groups and India. The main proponent of the first group was Vietnam and the second group was ASEAN. The first draft resolution of Vietnam was drafted on 25 October 1979, which included seven paragraphs of preamble and three paragraphs of main text. The most important point of this draft was about the genocide, which had threatened peace and stability in Southeast Asia. However, this group ignored the fact that Vietnam invaded Cambodia. It was true that Vietnam tried to ignore the argument of other countries about its invasion. On the other hand, the second group⁶² drafted a resolution on 5 November 1979, which included nine paragraphs of preamble and 13 main paragraphs. The most significant points could be found in the first paragraph, which noted with great concern that, “the armed conflict in Kampuchea has escalated and is seriously threatening the peace

⁶⁰ The United Nations General Assembly, *Official Records of the General Assembly*, *supra* note 58, at 5–7.

⁶¹ The United Nations General Assembly, *Official Records of the General Assembly*, *supra* note 45, at xvi.

⁶² This resolution was drafted by Australia, Bangladesh, Belgium, Canada, Colombia, Comoros, Fiji, the Federal Republic of Germany, Honduras, Indonesia, Japan, Luxembourg, Malaysia, Mauritania, New Zealand, Pakistan, Papua New Guinea, Philippines, Samoa, Senegal, Singapore, Somalia, Thailand, Upper Volta and Zaire.

and stability of Southeast Asia”.⁶³ At this stage, it could be said that it was not only ASEAN that was concerned about peace and stability in Southeast Asia, but also the international community.

Furthermore, paragraph five of the main text, “[c]alls upon all parties to the conflict to observe fully the fundamental principles of human rights”.⁶⁴ This was the first time that ASEAN, as the main author of this draft, touched upon the human rights issue related to the situation of Cambodia. However, there was a doubt as to whether ASEAN was the actor eager to put the human rights issue in the draft, or whether it was simply agreed with other Western or European countries on this issue. Regardless this doubt, ASEAN accepted human rights in the draft, although it might have done so unwillingly. In addition, some parts of this draft were edited later. It finally included nine paragraphs of preamble and fourteen main paragraphs, and the concern about human rights was retained.⁶⁵ It restated that this group unanimously accepted the human rights issue.⁶⁶ It could be said, therefore, that it was on this draft that ASEAN expressed for the first time openly its concern for human rights.

The UNGA decided to pass Resolution 34/22 on the situation in Cambodia at the 67th plenary meeting on 14 November 1979, adopting the draft resolution of the ASEAN members and 27 countries (the second group). Some people might wonder why the UNGA agreed to adopt the draft resolution proposed by ASEAN and other countries but not Vietnam’s draft. The President of the UNGA, Salim Ahmed Salim, agreed that the draft resolution of the

⁶³ The United Nations, *Official Records of the General Assembly*, *supra* note 45, at 3.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*, 4.

⁶⁶ Besides these two groups of countries, India also drafted a resolution on Kampuchea on 12 November 1979, but withdrew this draft resolution at the 67th plenary meeting.

second group was practical and reaffirmed the basic principles for ensuring peaceful relations between States, because it was constructive and it actively sought to restore peace and stability in Cambodia.⁶⁷ Furthermore, it sought to ensure that the Cambodian people themselves determine their own future and destiny.⁶⁸ This resolution had nine paragraphs in the preamble and fourteen points⁶⁹ in the main text, which described many aspects of the Cambodian problem. The most important point for this analysis was paragraph five of the main text, which called upon, “all parties to the conflict to observe fully the fundamental principles of human rights” and also to, “explore the possibility of holding an international conference on Kampuchea as one of the means for implementing the present resolution”.⁷⁰ It is important to note that it was not only the international community which was concerned about the protection of human rights, but also ASEAN countries who were part of drafting the resolution. Therefore, it could be said that this initial stage of dealing with human rights issues regarding the Cambodian problem constituted the first expression of ASEAN’s concept of human rights during that time.

⁶⁷ The United Nations, *Official Records of the General Assembly*, *supra* note 45, at 1194.

⁶⁸ *Ibid.*

⁶⁹ The 14 points are: (1) humanitarian relief, (2) resettlement of Kampuchean displaced persons, (3) coordination of assistance and distribution, (4) facilitation of the humanitarian relief efforts, (5) calling upon all parties to the conflict to observe fully the fundamental principles of human rights, (6) cessation of all hostilities forthwith, (7) immediate withdrawal of all foreign forces and refraining from all acts or threats of aggression and all forms of interference in the internal affairs of States in South-East Asia, (8) settlement of the disputes by peaceful means, (9) refraining from any interference, (10) enabling Cambodian people to choose democratically their own government, (11) contribution to a peaceful solution of the problem, (12) exploring the possibility of holding an international conference, (13) submission of a report on the situation at the earliest appropriate opportunity, (14) decision to include in the provisional agenda of its thirty-fifth session the item entitled “The situation in Kampuchea”.

⁷⁰ The General Assembly, Resolution 34/22 “*The Situation of Kampuchea*”, 61st Plenary Meeting, (1979).

1.1.3. ASEAN Recognition of Human Rights in European Community Cooperation

ASEAN has not only cooperated with the UN but also with other countries or groups of countries. However, the most important dialogue between ASEAN and other countries about the Cambodian problem was the cooperation of ASEAN with the European Community (EC). This cooperation can be identified as a significant point in promoting human rights within ASEAN since human rights were first referred to in a document produced by ASEAN within the framework of cooperation with the EC to address the Cambodian problem in 1980. The Joint Statement on Political Issues between the Foreign Ministers of ASEAN and EC member-states in Kuala Lumpur on 8 March 1980 stated that:

They reaffirmed their commitment to the world peace, international cooperation and understanding, economic development, social justice and human rights. They further emphasized the need for all states to observe strictly the following principles: respect for sovereignty, territorial integrity, and independence of states, non-resort to force or threat of the use of force and non-interference in the internal affairs of the other states. They agreed that these principles are of vital importance to inter-state relations.⁷¹

This is the first time that the term “human rights” appeared in an ASEAN document after having shared the human rights concerns in the draft resolution of the UNGA. This is a signal that human rights were starting to be more recognized by ASEAN as an important issue in cooperation with both the UN and EC. Furthermore, the Philippines as the Chairman of the ASC issued an important statement on 9 July 1980 which reaffirmed its commitment to the international community action in accordance with the purposes and principles of the UN

⁷¹ “Joint Statement on Political Issues Kuala Lumpur, 8 March 1980” in *ASEAN Documents Series 1967-1988*, 3rd ed. (ASEAN Secretariat, 1988), 438.

Charter and UNGA Resolution 34/22 on the situation in Kampuchea, the ASEAN Joint Statement on the Cambodian conflict, and the ASEAN-EC Joint Statement on political issues.⁷² This meant that ASEAN's concern about human rights had gradually increased. Human rights concerns from a broader prospect of the UN drafted resolution to the ASEAN-EC Joint Statement were narrowed down to the ASEAN commitment in the ASC statement.

In addition, the UN was further concerned about the situation in Cambodia and the UNGA was motivated to issue Resolution 35/6 on 22 October 1980, which created a framework for the International Conference on Cambodia. Under this resolution, there were two phrases that focused on the human rights issue. The first phrase was, “[m]easures by the United Nations to ensure law and order and the observance of the fundamental principles of human rights in Kampuchea” and the second was the paragraph, “[r]eiterates its appeal to all parties to the conflict to observe fully the fundamental principles of human rights”.⁷³ These not only focused on human rights issues in Cambodia but also reaffirmed that ASEAN increasingly recognized human rights concerns, which had already been initially expressed in Resolution 34/22 and the ASEAN-EC joint document, and the subsequent statement by the ASC. This could be seen as the second stage of attention to human rights concerns within ASEAN.

⁷² “Statement by the Philippine Foreign Minister as Chairman of the ASEAN Standing Committee and on Behalf of the ASEAN Committee and on Behalf of the ASEAN Foreign Ministers, New York, 9 January 1979,” in *ASEAN Documents Series 1967-1988*, Third (ASEAN Secretariat, 1988), 590. “Statement by the Philippine Foreign Minister as Chairman of the ASEAN Standing Committee and on Behalf of the ASEAN Committee and on Behalf of the ASEAN Foreign Ministers, New York, 9 July 1980” in *ASEAN Documents Series 1967-1988*, 3rd ed. (ASEAN Secretariat, 1988), 590.

⁷³ The United Nations General Assembly, *Resolution 35/6, "The Situation in Kampuchea"*, 1980, <http://www.un.org/documents/ga/res/35/a35r6e.pdf>.

1.2 Human Rights Concerns in the Paris Peace Conference in 1989 and the Agreement in 1991

The cooperation between ASEAN and the EC continued to play a significant role in solving the Cambodian problem. In July 1981, the International Conference on Cambodia was held by the UNGA in New York, wherein the great majority of the international community participated, numbering 93 Members States.⁷⁴ Unfortunately, the Cambodian problem remained unsolved because Vietnam did not join the conference,⁷⁵ although the Foreign Ministers of ASEAN and the EC expressed their hope that Vietnam would join the conference to make a peaceful resolution to the Cambodian problem and to re-establish the peace and stability in Southeast Asia.⁷⁶ The ASEAN and EC Ministers undertook their commitment to the resolutions of the UNGA on the situation in Cambodia in 1984 which called for the total withdrawal of all foreign troops from Kampuchea.⁷⁷ However, the Ministers regretted Vietnam's refusal to acknowledge these resolutions as a basis for a comprehensive political solution to the Kampuchea problem. In this situation, the Ministers of ASEAN and the EC understood that the main issue was Vietnam. Therefore, they terminated assistance to

⁷⁴ The United Nations, *The United Nations and Cambodia, 1991-1995*, vol.2, (The United Nations, 1995), 6.

⁷⁵ "Statement by the Indonesian Foreign Minister as Chairman of the ASEAN Standing Committee on the Escalation of the Armed Conflict between Vietnam and Kampuchea, Jakarta, 9 January 1979" in *ASEAN Documents Series 1967-1988*, 3rd ed. (ASEAN Secretariat, 1988), 587.

⁷⁶ "Statement by the Indonesian Foreign Minister as Chairman of the ASEAN Standing Committee on the Escalation of the Armed Conflict between Vietnam and Kampuchea, Jakarta, 9 January 1979," 441.

⁷⁷ "Joint Press Release of the Fifth ASEAN-EC Ministerial Meeting, Dublin, 15-16 October 1984" in *ASEAN Documents Series 1967-1988*, 3rd ed. (ASEAN Secretariat, 1988), 451.

Vietnam, as it was supporting and expanding the occupation of Cambodia.⁷⁸ The problem was unresolved since there was no cooperation from Vietnam.

1.2.1. ASEAN's Changing Attitude Towards Vietnam's Reaction

Up to 1986, Vietnam continued to reject the proposal to resolve the Cambodian problem and also refused the proposal of the Coalition of Democratic Kampuchea, under Prince Sihanouk, on constructive elements for a peaceful settlement and principles approved by ASEAN and the UN.⁷⁹ In December of the same year, the Vietnamese government adopted a new policy called *Doi Moi* or Renovation in the Sixth National Party Congress.⁸⁰ It was clear that this new policy could not be accomplished without a comprehensive settlement of the Cambodian problem⁸¹, since *Doi Moi* clearly identified the shifting from a centrally planned economy to a market oriented which hoping to end isolationism.⁸² In 1987, Vietnam made a decision to withdraw from Cambodia and reduce its large standing army to set in motion a strategic readjustment in its national security policy, which was adopted in Resolution No.2 of the Politburo of the Vietnam Communist Party (VCP).⁸³ The domestic policy of Vietnam directly affected the Cambodian problem. If there had been no new policy, Vietnam might

⁷⁸ "Joint Press Release of the Fifth ASEAN-EC Ministerial Meeting, Dublin, 15-16 October 1984," 452.

⁷⁹ "Joint Declaration of the Sixth ASEAN-EC Ministerial Meeting Jakarta, 20-21 October 1986" in *ASEAN Documents Series 1967-1988*, 3rd ed. (ASEAN Secretariat, 1988), 459.

⁸⁰ Carlyle A. Thayer, "Vietnam and ASEAN" (Conference on Vietnam in 2001: Prospects for Economic and Social Progress, Washington, D.C.: Asia-Pacific Center for Security Studies, 2000), 1.

⁸¹ *Ibid.*

⁸² Donald B. Freeman, "Doi Moi Policy and the Small-Enterprise Boom In Ho Chi Minh City, Vietnam," *The American Geographical Society Of New York* 86, no. 2 (1996): 178.

⁸³ Carlyle A. Thayer, *supra* note 80, at 2.

have continued to refuse to withdraw its troops from Cambodia and it would have been harder to solve the Cambodian problem in a peaceful way.

In August 1987, the cooperation between ASEAN and Vietnam started, particularly between Vietnam and Indonesia as a representative of ASEAN, with the leaders' meeting in Ho Chi Minh City. This meeting regarding the Cambodian issue resulted in a joint communiqué wherein Vietnam promised a two-phased troop withdrawal to be completed in 1990 should a political solution be found.⁸⁴ On the other hand, ASEAN also cooperated with Cambodia in the process of dialogues among the four Cambodian fractions at the first face-to-face talks in July 1988.⁸⁵ Without discussions between the main fractions and ASEAN, the problem would hardly have been solved. ASEAN played a significant role in solving the Cambodian problem being a respectable partner. Under these circumstances, the Secretary General of the VCP, Nguyen Van Linh, told the Philippine Foreign Minister who was visiting Vietnam, Raul Manglapus, that, "Vietnam was eager to join ASEAN" in late 1988.⁸⁶ To prove its eagerness, Vietnam implemented the first phase by withdrawing 50,000 troops from Cambodia and removing all remaining troops from the Thai-Cambodian border.⁸⁷

In January 1990, the Prime Minister of Thailand, Chatchai Chunhawan, officially declared his support for the incorporation of Indochina into ASEAN in response to Vietnam's gesture of goodwill.⁸⁸ He also announced that, "Bangkok wishes to turn Indochina from

⁸⁴ Nguyen Huu Quyet, *Vietnam's ASEAN Strategic Objectives Since the 1986: Doi Moi Reform* (National Graduate Institute for Policy Studies, 2013), 27.

⁸⁵ The United Nations General Assembly, *supra* note 74, at 6.

⁸⁶ Carlyle A. Thayer, *supra* note 80, at 2.

⁸⁷ Nguyen Huu Quyet, *supra* note 84, at 28.

⁸⁸ Carlyle A. Thayer, *supra* note 80, at 2.

battlefields into marketplaces”.⁸⁹ Both these actions were turning the Cambodian problem to a positive side. At the same time, the Prime Minister of Malaysia, Mahathir, indicated that “ASEAN could accept Vietnam as a member of the grouping in the future should it subscribe to the ideals of ASEAN”.⁹⁰ To become a part of ASEAN was one of the targets of Vietnam’s new policy, and ASEAN agreed to increase their membership, since it was one of their declared points from the Bangkok Declaration and the Treaty of Amity and Cooperation in Southeast Asia. One condition was that Vietnam had to cooperate in solving the Cambodian problem.

ASEAN made great efforts to solve the situation in Cambodia and to keep the peace project for the region also with external actors. The Foreign Ministers of the member states of ASEAN and the EC met in London where they reaffirmed “their commitment made earlier at Kuala Lumpur to the world peace, human rights, international cooperation and understanding, economic development, and social justice, and the principles of the UN Charter.”⁹¹ The Ministers of ASEAN and the EC supported the UN as a universal forum for the protection of international peace and security and for international cooperation and reconfirmed their commitment to uphold the principles enshrined in the UN Charter.⁹² Their grave concern was that in many parts of the world, fundamental principles such as the non-use of force against the territorial integrity of the states and respect for human rights were currently being violated. Therefore, they insisted that the international community should work actively with the UN

⁸⁹ Nguyen Huu Quyet, *supra* note 84, at 28.

⁹⁰ Carlyle A. Thayer, *supra* note 80, at 2.

⁹¹ “Joint Statement of the Foreign Ministers of the Members States of the European Community and ASEAN, London, 13-14 October 1981” in *ASEAN Documents Series 1967-1988*, 3rd ed. (ASEAN Secretariat, 1988), 441.

⁹² “Joint Press Release of the Fifth ASEAN-EC Ministerial Meeting, Dublin, 15-16 October 1984” in *ASEAN Documents Series 1967-1988*, 3rd ed. (ASEAN Secretariat, 1988), 451.

and the UNSG to find a resolution for these issues.⁹³ Many of the statements of the participants clearly endorsed the commitment to solve the Cambodian problem and prevent the return of the Pol Pot regime in the future.

ASEAN and the EC have put great efforts into the Paris Peace Agreement on Cambodia, and finally the Paris Peace Conference was held from 30 July to 30 August 1989 after the Jakarta Informal Meeting (JIM) I and II organized by ASEAN in an effort to solve the Cambodian problem proved to be unsuccessful. However, JIM I and II paved the ground for solving the Cambodian problem. In November 1990, the President of Indonesia, Suharto, became the first ASEAN head of state to officially visit Vietnam, considering the possibility of Vietnam becoming the next member of ASEAN. The wish of Vietnam for accession to ASEAN due to the new policy, and the effort of ASEAN in solving the Cambodian problem and in building peace and stability in ASEAN were the conditions which led Vietnam to accept and to proceed with the Peace Agreement.

1.2.2 Human Rights Concerns in the Paris Peace Conference in 1989

The Paris Peace Conference was co-chaired by Ali Alatas, the Minister for Foreign Affairs of the Republic of Indonesia and Roland Dumas, the Minister for Foreign Affairs of the French Republic.⁹⁴ The conference started with an opening address by each fraction and other related parties. At this stage, each party had their own viewpoints and they expressed whatever issues they wished to address. This dissertation, however, will highlight only the

⁹³ *Ibid.*

⁹⁴ The United Nation General Assembly, *The Situation in Cambodia*, Forty-Sixth Session, A/46/608-S/23177, Agenda Item 24 (1991), 2.

concern on human rights, genocide, and peace and stability in the negotiation on the UN resolution.

The Cambodian faction leader, Khieu Samphan, remarked that fundamental human rights were one of the important issues of concern in his address.⁹⁵ Besides, the President of the Council of Ministers, Hun Sen, was concerned about the availability of any measure that would likely prevent the return of the genocidal regime of Pol Pot or prevent a civil war caused by the latter.⁹⁶ In addition, the Vice President of the Council of Ministers of Lao PDR, Phoun Sipaseuth, also stated that, “it is necessary that the international community takes concrete measures to prevent the return to power of the genocide Pol Pot group”.⁹⁷ It could be said that many leaders were worried about peace, stability and human rights, and tried to prevent the return of genocide and human rights violations to the Cambodian people. At this stage, some leaders recognized that the resolution of the Cambodian question could greatly contribute to the building of Southeast Asia as a zone of peace, neutrality, friendship and cooperation, and that it should be resolved through political means and not by force of arms.⁹⁸

⁹⁵ “Address by H.E. Mr. Khieu Samphan to the Paris International Conference on Cambodia, 31 July 1989” in Amitav Acharya, Pierre Lizee, and Sorpong Peou, eds., *supra* note 43, at 22.

⁹⁶ “Intervention De S. Exc. M. Hun Sen, President du Conseil des Ministres, Ministre des Affaires Etrangères et Chef de la Delegation de l’Etat Du Cambodge a la Conference Internationale sur le Cambodge, Paris 30 Juillet 1989” in Amitav Acharya, Pierre Lizee, and Sorpong Peou, eds., *supra* note 43, at 37.

⁹⁷ “Intervention De S. Exc. Phoun Sipaseuth, Vice-President du Conseil des Ministres, Ministre des Affaires Etrangères, Chef de la Delegation de la Republique Democratique Populaire Lao, a la Conference Internationale sur la Cambodge Tenue a Paris, le 30 Juillet 1989” in Amitav Acharya, Pierre Lizee, and Sorpong Peou, eds., *supra* note 43, at 42.

⁹⁸ “Statement by H. E. Mr. Ali Alatas, Minister for Foreign Affairs of Indonesia, and Co-Chairman of the International Conference on Cambodia, Paris 30th July 1989” in Amitav Acharya, Pierre Lizee, and Sorpong Peou, eds., *supra* note 43, at 52.

Prince Mohamed Bolkiah, the Minister of Foreign Affairs of Brunei Darussalam, argued that “the theme of the discussion must be not less than the term of a comprehensive and durable settlement of the Cambodia problem as defined by the UNGA resolution on this issue”.⁹⁹ The Foreign Minister of China, Qian Qichen, stated that “they were at the Paris International Conference on Cambodia seeking a comprehensive, just and reasonable political settlement of the Cambodia question, but asked how to attain such a settlement at this stage”. His idea on this issue was that the international community has to put forward a variety of propositions and proposals.¹⁰⁰ In addition, China pointed out the important role of the UN and its UNSG, since the UN was the most capable, experienced and authoritative in the area of international supervision.¹⁰¹

The declaration on the permanent neutrality of the state of Cambodia stated that the international community invited all parties to respect five principles to bring about conditions whereby a “political solution to the Cambodian question” and the “edification of Southeast Asia in a zone of peace, neutrality, friendship and cooperation” could be implemented.¹⁰² These principles were very important for making all parties respect human rights. The first principle was to, “respect the independence, sovereignty and territorial integrity of all countries”; the second principle was to, “refrain from interfering in the national affairs of each

⁹⁹ “Statement by His Royal Highness Prince Mohamed Bolkiah, Minister for Foreign Affairs of Brunei Darussalam, at the International Conference on Kampuchea, 30th July 1989, Paris” in Amitav Acharya, Pierre Lizee, and Sorpong Peou, eds., *supra* note 43, at 72.

¹⁰⁰ Amitav Acharya, Pierre Lizee, and Sorpong Peou, *supra* note 43, at 74.

¹⁰¹ “Statement by Foreign Minister Qian Qichen at the Paris International Conference on Cambodia, 31 July 1989” in Amitav Acharya, Pierre Lizee, and Sorpong Peou, eds., *supra* note 43, at 75.

¹⁰² “Intervention De S. Exc. Phoun Sipaseuth, Vice-President Du Conseil Des Ministres, Ministre Des Affaires Eterangeres, Chef De La Delegation De La Republique Democratique Populaire Lao, a la Conference Internationale sur la Cambodge Tenue a Paris, le 30 Juillet 1989” in Amitav Acharya, Pierre Lizee, and Sorpong Peou, eds., *supra* note 43, at 41-42.

other, not using the threat of force and strength in its relations”; the third principle was to, “refrain from interfering into or participating in military alliances with countries in the region and outside the region to oppose each other and oppose the countries outside the region, and from using the territory of the country or the territory of the third country against others”. The fourth was to, “resolve incidents and international disputes by peaceful means”; and the fifth was to, “promote effective cooperation on the basis of equality and mutual benefit”.¹⁰³ If these principles could be implemented, the problem of Cambodia would be solved and regional peace and stability should be maintained.

Furthermore, the UNSG stated that all parties accepted the principal objectives of a comprehensive solution and the conference would be called upon to discuss the establishment of an International Control Mechanism (ICM).¹⁰⁴ The conference desired to press for the adoption of appropriate measures to ensure the respect for human rights and prevent a return to the universally condemned policies and practices of the period 1975-1978, in which the Cambodian parties should solemnly pledge to respect the fundamental human rights enshrined in the relevant international conventions and to incorporate those rights in the constitution of the future state.¹⁰⁵ During this time, it seemed that all participants to the conference were concerned about human rights.

After receiving the statement of each party, the conference continued by making the rules of procedure and organization of the work. The conference was organized into an Ad

¹⁰³ Amitav Acharya, Pierre Lizee, and Sorpong Peou, *supra* note 43, at 41.

¹⁰⁴ “Statement of the [U.N.] Secretary-General at the Opening of the International Conference on Peace in Cambodia, Paris, 30 July 1989” in Amitav Acharya, Pierre Lizee, and Sorpong Peou, eds., *supra* note 41, at 110.

¹⁰⁵ Amitav Acharya, Pierre Lizee, and Sorpong Peou, *supra* note 43, at 111.

Hoc Committee, a Coordination Committee and three Working Committees.¹⁰⁶ Among the three Working Committees, the First Committee, chaired by Canada and India, dealt with modalities of a cease-fire and the mandate. The Second Committee dealt with the question of international guarantees to prevent the recurrence of genocide policies and practices. This committee was chaired by Lao PDR and Malaysia. The Third Committee dealt with the repatriation of refugees and displaced persons and reconstruction of Cambodia. This committee was chaired by Australia and Japan.¹⁰⁷ These three Working Committees were chaired by the participants of this conference. However, the Ad Hoc Committee included four Cambodian parties and was chaired by the Co-Chairs of the conference (Indonesia and France). The Coordination Committee was established to be responsible for coordinating the work of the four committees. The Committee Chairs included Indonesia and Malaysia as the representatives of ASEAN. This arrangement was vital for ASEAN as both countries were the representatives of the association.

Among the discussions by these committees, this chapter will identify some specific points related to human rights, particularly from the Second Committee, since the chairs of this committee were a member and a future member of ASEAN. This committee's perspective was to guarantee respect for fundamental human rights, the full enjoyment by the Cambodian people of the rights and freedoms stipulated in the Universal Declaration of Human Rights and other relevant international instruments pertaining to human rights, to prevent the recurrence of genocidal policy and practices incompatible with these rights,¹⁰⁸ and

¹⁰⁶ The United Nations General Assembly, *supra* note 94, at 3–4.

¹⁰⁷ “Organization of the Work: Text Adopted by the Conference at Its 4th Plenary Meeting, on 1 August 1989” CPC/89/4, in Amitav Acharya, Pierre Lizée, and Sorpong Peou, eds., *supra* note 43, at 129–30.

¹⁰⁸ Amitav Acharya, Pierre Lizée, and Sorpong Peou, eds., *supra* note 43, at 186.

to promote peace, security, stability and cooperation in South-East Asia.¹⁰⁹ This perspective was also endorsed by the five permanent members of the UNSC in their statement in March 1990 and readdressed in a letter dated 29 May 1990 from them to the UNSG.¹¹⁰

These clearly recognized that all levels of human rights protection, prevention of a return to genocide, peace and stability were the primary concerns for them as well as ASEAN. In addition, the documents of the Coordination Committee also highlighted that the primary objective of the reconstruction of Cambodia should be the advancement of the Cambodian nation and people, without discrimination or prejudice, and with full respect for fundamental human rights for all.¹¹¹ Hun Sen proposed an additional statement saying that there must be full respect for fundamental human rights, in particular those of the repatriated refugees and displaced persons, in recognition of their entitlement to live in peace and security, free from intimidation and coercion and free from a return to genocidal policies and practices.¹¹² By one of the leading fractions in Cambodia, human rights protection was thus recognized and claimed.

Furthermore, Indonesia played significant roles in resolving the Cambodian problem as the Chair of the Jakarta Informal Meeting in 1988 and as a Co-Chair of this Conference in 1989 and as a representative of ASEAN. Indonesia put in strenuous efforts and raised many important issues, particularly regarding the prevention of the recurrence of genocidal policies

¹⁰⁹ *Ibid.*, 193.

¹¹⁰ *Ibid.*, 495–97.

¹¹¹ “Letter Dated 25 August 1989 from the Rapporteur of the Third Committee to the Co-Chairman of the Co-Ordination Committee” CPC/89/CC/3, in Amitav Acharya, Pierre Lizée, and Sorpong Peou, eds., *supra* note 43, at 370.

¹¹² “Letter Dated 25 August 1989 from the Rapporteur of the Third Committee to the Co-Chairman of the Co-Ordination Committee,” 375.

and practices of the Pol Pot regime and the establishment of peace and stability in Southeast Asia. As pointed out above, ASEAN initially only considered the second period of the Cambodian conflict, but now its concern was wider and covered both genocide and human right protection. Mindful that the Treaty of Amity and Cooperation in Southeast Asia was concluded in Bali in 1976 and opened up accession for all states in Southeast Asia, participants agreed that an undertaking by all Southeast Asian countries to become party to this treaty would manifest in a concrete way their common desire to achieve that goal.¹¹³ As the Co-chair of the Ad Hoc Committee (Indonesia) and as Chairs of the Second Committee (Malaysia and Lao PDR) on prevention of the genocide recurrence, ASEAN members understandably had more awareness of the human rights issue.

On 20 September 1990, the UNSC issued Resolution 668 (1990) to frame a comprehensive political settlement of the Cambodian conflict and to take note with appreciation of the effort of ASEAN and other countries involved in promoting the search for a comprehensive political settlement.¹¹⁴ This conference was the way to solve the Cambodian problem and was accepted by the hostile parties and the participants. Moreover, on 23 February 1991 a Permanent Interdepartmental Committee on Human Rights in Indonesia was formed by decree of the Minister of Foreign Affairs, and Indonesia became a member of the United Nations Commission on Human Rights in the same year.¹¹⁵ Two years later, the

¹¹³ “Communications Circulated to the Participants at the Request of the Indonesian Delegation, Issued 29 July 1989” CPC/89/COM/2 in Amitav Acharya, Pierre Lizée, and Sorpong Peou, eds., *supra* note 43, at 427–28.

¹¹⁴ The United Nation Security Council, Resolution 668 (1990), 28, <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/575/18/IMG/NR057518.pdf?OpenElement>.

¹¹⁵ *Report of the Special Rapporteur, Mr. P. Kooijmans, pursuant to Commission on Human Rights Resolution 1991/38*, “Question of the Human Rights of All Persons Subjected to Any Form of Detention or

Indonesia National Human Rights Commission (INHRC or Komnas HAM) was established based on the Presidential Decree No. 50/1993 which developed from the Permanent Interdepartmental Committee on Human Rights.¹¹⁶ INHRC has its principal functions to protect and promote human rights. This showed that Indonesia as the Co-Chair of the Paris Peace Conference really embraced human rights concerns in its actions.

1.2.3 Human Rights Concerns in the Paris Peace Agreement of 1991

Finally, the Paris Peace Agreement was successfully concluded on 23 October 1991 as an agreement for the comprehensive political settlement of the Cambodian conflict. It was signed by Cambodia and 18 other countries, including all members of ASEAN, in the presence of the UNSG. This agreement consists of four parts: the Final Act of the Paris Conference on Cambodia, the Agreement on a Comprehensive Political Settlement of the Cambodian Conflict, the Agreement Concerning the Sovereignty, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia, and the Declaration on Rehabilitation and Reconstruction of Cambodia.¹¹⁷ These agreements took more than a decade of negotiations, with ASEAN, the EC and the UNSG closely involved from the beginning. Without their efforts, the Cambodian problem might not have been resolved.

The agreements were in accord on many important points, but the most important point from a human rights perspective was prescribed in Part III: Human Rights of the Agreement

Imprisonment, in Particular Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”, UN Doc. E/CN.4/1993/26, (Commission on Human Rights, Forty-Eight Session, January 8, 1992), 4–5.

¹¹⁶ The ASEAN NHRI Forum, *Komisi Nasional Hak Asasi Manusia Indonesia: Komnas HAM Indonesia*, 2013, <http://seanf.asia/index.php/about-us/indonesia>.

¹¹⁷ The United Nations General Assembly, *supra* note 94, at 2, 8, 48, 55.

on a Comprehensive Political Settlement of the Cambodian Conflict, which states that, “[a]ll persons in Cambodia shall enjoy the rights and freedoms provided by the Universal Declaration of Human Rights and other relevant international instruments relating to human rights” and “[e]nsure the observance of the rights of man and fundamental freedoms in Cambodia; support the right of all Cambodian citizens to undertake activities to promote and protect the human rights and fundamental freedoms; make effective measures to ensure that the policies and practices of the past shall never be allowed to return.”¹¹⁸ With regards to the adherence to the relevant international instruments relating to human rights, it was stated that “the other signatories to this agreement undertake to promote and encourage the respect of the rights of man and fundamental freedoms in Cambodia as enshrined in the relevant international instruments and relevant resolutions of the General Assembly of the United Nations to, inter alia, prevent the recurrence of human rights violations.”¹¹⁹ This Agreement used the words “for all Cambodian citizens” or “in Cambodia” but general ideas and concepts about genocide and human rights were accepted in the international community and particularly by the 18 other signatory countries in the presence of the UNSG including the ASEAN Members.

In addition, this agreement had five annexes. Annex 1, on “the United Nations Transitional Authority in Cambodia (UNTAC) Mandate”, Section E, Human Rights, provided in accordance with Article 16 that UNTAC will make provision for “the development and implementation of a program of human rights education to promote respect for and understanding of human rights, general human rights oversight during the transitional period, and the investigation of human rights complaints, and, where appropriate, corrective

¹¹⁸ *Ibid.*, 14.

¹¹⁹ “The 1991 Paris Peace Agreement,” 1991.

action.”¹²⁰ Moreover, the Agreement Concerning the Sovereignty, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia was based on the concept that a comprehensive political settlement for Cambodia was essential for the long-term objective of maintaining peace and security in Southeast Asia and promoting respect for human rights and fundamental freedoms in conformity with the Charter of the United Nations and other relevant international instruments. Article 3 of this Agreement stipulates that:

1. All persons in Cambodia shall enjoy the rights and freedoms embodied in the Universal Declaration of Human Rights and other relevant international human rights instrument.
2. To this end,
 - a. Cambodia undertakes:
 - To ensure respect for and observance of human rights and fundamental freedoms in Cambodia;
 - To support the right of all Cambodian citizens to undertake activities to promote and protect the human rights and fundamental freedoms;
 - To take effective measures to ensure that the policies and practices of the past shall never be allowed to return;
 - To adhere to the relevant international instruments relating to human rights;
 - b. The other signatories to this agreement undertake to promote and encourage the respect of the rights of man and fundamental freedoms in Cambodia as embodied in the relevant international instruments in order, in particular to prevent the recurrence of human rights abuses.
3. The United Nations Commission on Human Rights should continue to monitor closely the human rights situation in Cambodia, including, if necessary, by the appointment of a Special Rapporteur who would report his findings annually to the Commission and to the General Assembly.

¹²⁰ *Ibid.*, 27.

As a result, the Paris Peace Agreement provided many bases for solving the Cambodian problem. However, one of the most significant points for ASEAN in this chapter is the human rights issue, which is clearly stated above. All members of ASEAN dealt with the human rights issue in solving the Cambodian problem, both in cooperation with the UN, the EC and the Paris Peace Conference and the Agreement. These experiences impelled ASEAN to give attention to human rights, since they were a part of this cooperation, a factor for making peace, a pillar of maintaining stability, and an element for the prevention of genocide. Human rights at this stage may have directly focused on Cambodia in particular, but in general terms, human rights protection covered wider aspects and ASEAN members had to accept this. Therefore, the concern about human rights in ASEAN gradually evolved in the process of solving the Cambodian problem. From the beginning, many parts of this paper focused on peace and stability because human rights were a tool for peace during this time. Also, peace and stability could mean the protection of human rights, and peace cannot be achieved without human rights protection.

Conclusion

The Cambodian problem can be regarded as a significant turning point for ASEAN, and it can be concluded that from this problem, the concept of human rights emerged within ASEAN. Human rights concerns first appeared in the draft resolution of the UNGA in 1979 through ASEAN with other countries as an initial stage of human rights in ASEAN related to the Cambodian problem and as an original conception of human rights in ASEAN. Without the drafting process of the GA resolution, ASEAN might not have integrated human rights into its concerns. In addition, the Joint Statement of ASEAN-EC on the political issue in 1980,

which is the second stage of human rights appearing in ASEAN through the Cambodia problem, developed from the initial stage. This stage was the most significant, since it was the stage where human rights were recognized in the documents of ASEAN, which meant that the intention of ASEAN with regards to human rights was stronger than at the initial stage. In the Paris Peace Conference in 1989 and the Paris Peace Agreement in 1991, ASEAN reached the third stage of human rights concerns because of the Cambodian problem. This stage was also important since ASEAN also signed the Paris Peace Agreement. ASEAN accepted the terms and conditions of the agreements. Therefore, as the Cambodian problem was an origin of the concept of human rights in ASEAN, there were three distinct stages of development of ASEAN's concern for human rights.

In addition, this also proves that human rights concerns in ASEAN emerged much earlier than 2008, as some scholars used to claim, and even before 1993, as other authors referred to based on the Vienna Declaration and Program of Action. It was a result of solving the Cambodian problem which introduced the human rights concept into ASEAN. However, human rights concerns might not have been identified or recognized by ASEAN without the cooperation with the UN and the EC in resolving the problem of Cambodia. Likewise, ASEAN would not have been successful in solving the Cambodian problem without the diverse support and cooperation of Vietnam. Furthermore, it could be said that the ASEAN principle of non-interference, which had been strictly observed but was disregarded in the invasion of Cambodia by Vietnam, shook the peace and stability of Southeast Asia and made ASEAN become involved in the Cambodian problem and assist in resolving the issue.

One important point here was that ASEAN accepted to integrate the human rights issues in their discourse even though the association was concerned that human rights were a

domestic matter which should not involve external interference. ASEAN changed its view because peace and stability in Southeast Asia were the most important for ASEAN. At the time of the situation of Cambodia, no one observed that the Joint Statement of ASEAN-EC on Political Issue would become an important point of human rights concern in ASEAN and it would become a significant issue. Also, no one anticipated that the Paris Peace Agreement would be an important document for ASEAN. However, looking back at these documents at this moment, they are very essential to ASEAN in terms of human rights and it was the concern for the Cambodian people that led the group there. However, the Cambodian people are now a greater concern for ASEAN since Cambodia became a member in 1999. The human rights issues as outlined in the Paris Peace Agreement should also be implemented by all members of ASEAN. Moreover, it should be noted that ASEAN broke their principles of non-interference in Cambodia affairs for solving peace and stabilities and saving Cambodian people from genocide. Human right used to be a tool for peace and stability; however, after Cambodia accede to ASEAN human right could be regard as a goal for ASEAN. It could be maintained that Cambodia's human rights should be equal with ASEAN human rights and it could be concluded that the Cambodian problem is an origin of the human rights concept in ASEAN.

Chapter 2

Impact of the United Nations Cooperation on ASEAN Human Rights Concerns

Introduction

ASEAN was established with cooperation as one of its aims and purposes. The cooperation between ASEAN and other countries emphasized in the previous chapter brought about the emergence of human rights in ASEAN and terminated the Cambodian problem with the Paris Peace Agreement. The cooperation in the case of the Cambodian problem was a tool for peace and stability from which the solution to impede genocide and human rights violations emerged. The cooperation between ASEAN on the one hand and the European Community and the United Nations on the other hand highlighted human rights concerns in ASEAN. However, after the resolution of the Cambodian problem, not only did ASEAN have a good relationship with Cambodia, but also with other signatory states of the Paris Peace Agreement (PPA). After having concluded the PPA, it was the first time for ASEAN to issue a single document which included human rights issues in the Joint Communiqué from the ASEAN Ministerial Meeting (AMM) in 1992. In addition, the World Conference on Human Rights also created a closer relationship among States who participated in the Conference. All this had a big impact on ASEAN human rights concerns. The impact commenced with the preparation of a draft of the Bangkok Declaration for the World Conference for Asia and the Workshop on Human Rights in Indonesia resulting in the Vienna Declaration. These declarations had a direct influence on the ASEAN adoption of the Joint Communiqué of the AMM in 1993 and the Kuala Lumpur Declaration on Human Rights. Therefore, this chapter

will examine how human rights concerns were emphasized in ASEAN single documents and during the process of the World Conference on Human Rights, what the impacts are of the World Conference on Human Rights on ASEAN human rights, and what the results are on ASEAN human rights after the World Conference on human rights was concluded.

2.1 Comparison of ASEAN Single Documents on Human Rights

ASEAN has issued many types of documents such as declarations, protocols, treaties, press releases and joint press communiqués. At the time of establishment of ASEAN, human rights issues were not included in these documents. What was often seen was the phrase “peace and stability”. In the history of ASEAN, some authors claim that human rights have not been a central issue of cooperation.¹²¹ However, ASEAN’s attitude on human rights concerns have changed due to the Paris Peace Agreement. The cooperation of ASEAN with other States in solving the Cambodian problem brought human rights to ASEAN’s attention. Human rights became one of the issues that ASEAN raised in the Joint Communiqué of the ASEAN Ministerial Meeting. The first single document that raised human rights concerns was the Joint Communiqué of the Twenty-Fifth ASEAN Ministerial Meeting in 1992. This Joint Communiqué was further developed in 1993 when AMM issued the Joint Communiqué of the Twenty-Sixth ASEAN Ministerial Meeting. These two documents had commonalities and differences. Why did ASEAN develop its concern on human rights and how did ASEAN change its perspective on human rights between 1992 and 1993?

¹²¹ Tae-Ung Baik, *supra* note 12, at 142.

2.1.1 The Joint Communiqué of the ASEAN Ministerial Meeting in 1992

AMM was held annually from 1967 to 1991; however, the AMM did not put the issue of human rights in their documents. The year 1992 was distinct because ASEAN concerns had changed. PPA included human rights issue influenced ASEAN viewpoints which was reflected in the Joint Communiqué of the Twenty-Sixth AMM in 1993. AMM held after the PPA issued the Joint Communiqué in 1992 wherein the Philippines emphasized several important issues related to ASEAN and the international community. However, the most important issue that could be observed here was the human rights concerns. As analyzed in the previous chapter, human rights issues were rarely put in the documents of ASEAN. Human rights issues used to be considered as domestic issues of the individual States within ASEAN. However, after the PPA was signed by 19 States including all ASEAN members in 1991, ASEAN included human rights issues in the Joint Communiqué of 1992 by stating that:

“The Foreign Minister maintained that environmental and human rights concerns should not be made as conditionalities in economic and development cooperation. They noted that basic human rights, while universal in character, are governed by the distinct culture and history of, and socio-economic conditions in each country and that their expression and application in the national context are within the competence and responsibility of each country”.¹²²

This is the paragraph of the first single document of ASEAN that emphasized human rights concerns. Even though human rights concerns start from different form of perspectives, the discussion on human rights in the Ministerial Meeting showed that human rights issue became a regional problem and be one of ASEAN’s issues since ASEAN involved human rights in its discussion.

¹²² ASEAN Foreign Ministers, “Joint Communiqué of the 25th ASEAN Ministerial Meeting, Manila, Philippines, 22 July 1992,” 1982, 8.

2.1.2 The Joint Communiqué of the ASEAN Ministerial Meeting in July 1993

After the Joint Communiqué in 1992 had discussed human rights issues and included them in an ASEAN document, in 1993, the AMM included human rights concerns in the Joint Communiqué. This Joint Communiqué contained three main paragraphs on human rights, from paragraph 16 to 18 which state that:

The Foreign Ministers welcomed the international consensus achieved during the World Conference on Human Rights in Vienna, 14-25 June 1993, and reaffirmed ASEAN's commitment to and respect for human rights and fundamental freedoms as set out in the Vienna Declaration of 25 June 1993. They stressed that human rights are interrelated and indivisible comprising civil, political, economic, social and cultural rights. These rights are of equal importance. They should be addressed in a balanced and integrated manner and protected and promoted with due regard for specific cultural, social, economic and political circumstances. They emphasized that the promotion and protection of human rights should not be politicized.

The Foreign Ministers agreed that ASEAN should coordinate a common approach on human rights and actively participate and contribute to the application, promotion and protection of human rights. They noted that the UN Charter had placed the questions of universal observation and promotion of human rights within the context of international cooperation. They stressed that development is an inalienable right and that the use of human rights as a conditionality for economic cooperation and development assistance is detrimental to international cooperation and could undermine an international consensus on human rights. They emphasized that the protection and promotion of human rights in the international community should take cognizance of the principles of respect for national sovereignty, territorial integrity and non-interference in the internal affairs of states. They were convinced that freedom, progress and national stability are promoted by a balance between the rights of the individual and those of the community, through which many individual rights are realized, as provided for in the Universal Declaration of Human Rights.

The Foreign Ministers reviewed with satisfaction the consideration and continuing progress of ASEAN in freeing its peoples from fear and want, enabling them to live in dignity. They stressed that the violations of basic human rights must be redressed and should not be tolerated under any pretext. They further stressed the importance of strengthening international cooperation on all aspects of human

rights and that all governments should uphold humane standards and respect human dignity. In this regard and in support of the Vienna Declaration and Program of Action of 25 June 1993, they agreed that ASEAN should also consider the establishment of an appropriate regional mechanism on human rights.¹²³

Comparing this Joint Communiqué to the Joint Communiqué in 1992, it can be argued that ASEAN developed its concerns on human rights and somehow acknowledged human rights at the same level as that of the international community, despite the fact that the Joint Communiqué in 1992 emphasized that “human rights concerns should not be made as conditionalities in economic and development cooperation”.¹²⁴ This idea still existed in the Joint Communiqué of 1993 which stated that, “development is an inalienable right and that the use of human rights as a conditionality for economic cooperation and development assistance is detrimental to international cooperation and could undermine an international consensus on human rights”.¹²⁵ This was the single point that drew criticism from some writers.

However, the significant point in the 1993 Joint Communiqué is that, “ASEAN’s commitment to and respect for human rights and fundamental freedoms as set out in the Vienna Declaration of 25 June 1993”.¹²⁶ It further states that, “the importance of strengthening international cooperation on all aspects of human rights and that all governments should uphold humane standards and respect human dignity. In this regard and in support of the Vienna Declaration and Program of Action of 25 June 1993, they agreed that

¹²³ ASEAN Documents Series 1992-1994, Supplementary (Jakarta: ASEAN Secretary, 1994), 13.

¹²⁴ ASEAN Foreign Ministers, “Joint Communiqué of the 25th ASEAN Ministerial Meeting, Manila, Philippines, 22 July 1992,” 1982, 1–9.

¹²⁵ ASEAN Foreign Ministers, “Joint Communiqué of the 26th ASEAN Ministerial Meeting, Singapore, 24 July 1993,” 1993, 1–7.

¹²⁶ *Ibid.*

ASEAN should also consider the establishment of an appropriate regional mechanism on human rights”.¹²⁷ These ideas were added to the 1992 document, which showed that ASEAN had changed its perspective on human rights and has increased human rights concerns in ASEAN.

2.2 Process of the World Conference on Human Rights in 1993

The United Nations General Assembly (UNGA) decided to convene a World Conference in Resolution 45/155 of 18 December 1990. This resolution included six main objectives:¹²⁸

- “(a) To review and assess the progress that has been made in the field of human rights since the adoption of the Universal Declaration of Human Rights and to identify obstacles to further progress in the area, and way in which they can be overcome;
- (b) To examine the relation between development and the enjoyment by every one of economic, social and cultural rights as well as civil and political rights, recognizing the importance of creating the conditions whereby everyone may enjoy these rights as set out in the International Conventions on Human Rights;
- (c) To examine ways and means to improve the implementation of existing human rights standards and instruments;
- (d) To evaluate the effectiveness of the methods and mechanisms used by the United Nations in the field of human rights;
- (e) To formulate concrete recommendations for improving the effectiveness of United Nations activities and mechanisms in the field of human rights and fundamental freedoms;

¹²⁷ *Ibid.*

¹²⁸ “Report of the World Conference on Human Rights: Report of the Secretary-General, UN Doc. A/CONF.157/24 (Part I)” (1993), 4.

(f) To make recommendations for ensuring the necessary financial and other resources for United Nations activities in the promotion and protection of human rights and fundamental freedoms”.

These objectives are key to review, examine and evaluate human rights and formulate ideas for the World Conference. Besides these important objectives, the resolution created a Preparatory Committee for the World Conference on Human Rights.¹²⁹ It was very significant and was open to all state members of the United Nations (UN) or members of the specialized agencies. The Preparatory Committee held four sessions: the first session was held in 1991, the second and third session in 1992 and the fourth session in 1993. Based on Resolution 45/155, each region had to hold regional meetings. The African states meeting was held at Tunis from 2 to 6 November 1992,¹³⁰ the American and Caribbean meeting at San Jose from 18 to 22 January 1993,¹³¹ and the Asia and the Pacific meeting in Bangkok from 29 March to 2 April 1993.¹³² Each regional meeting produced a declaration for its region; i.e. “the San Jose Declaration” for the Latin American and Caribbean States, “the Tunis Declaration” for the African States and “the Bangkok Declaration” for Asia. These three regional meetings were held under the same guidelines and conditions which could be adapted to the situation depending on each region. In general, the contents of the meetings were the same.

For years, ASEAN’s focal point had been the economic development of the association more than other issues. However, after the end of the Cambodian problem, human rights became a more important issue for ASEAN and other related partners. The Chair of the

¹²⁹ *Ibid.*

¹³⁰ “UN Doc. A/CONF.157/AFRM/14 - A/CONF.157/PC/57” (1992), i.

¹³¹ “UN Doc. A/CONF.157/LACRM/15 - A/CONF.157/PC/58” (1993), 1.

¹³² “UN Doc. A/CONF.157/ASRM/8 - A/CONF.157/PC/59” (1993), 1.

Asian regional meeting was an ASEAN founding member namely Thailand. In addition, the Bangkok Declaration is a significant document dealing with human rights issues in cooperation with the ASEAN member countries who participated in this meeting.

2.2.1 Workshop on Human Rights Issue in Jakarta

According to the Report of the Secretary-General,¹³³ the First Asia-Pacific Workshop on Human Rights was organized by the UN in Manila in 1990 with the aim of establishing a regional human rights institution. In view of this purpose, the preparatory meeting considered issues related to the objectives of the World Conference of particular importance to the region from a regional perspective. The Asian regional meeting organized the Second Asia-Pacific Workshop on Human Rights Issues in Jakarta during 26-28 January 1993.¹³⁴ This workshop benefited not only the World Conference but also directly benefitted Asia-Pacific countries, in particular ASEAN. This Workshop included five main topics: (1) international norms and standards in the field of human rights; (2) national implementation of international human rights standards; (3) national institutions for protection and promotion of human rights; (4) the possibility of promoting regional human rights arrangements and the promotion of intra-regional and interregional cooperation; (5) the World Conference on Human Rights.¹³⁵ From these topics, it could be said that the objectives of this workshop were not only to prepare for the World Conference, but also to increase awareness about international human rights standards and procedures and the role of States in implementing human rights norms in

¹³³ E/CN.4/2002/WP3

¹³⁴ “Second Regional Workshop for the Asia-Pacific on Human Rights Issues, Jakarta, Indonesia, 26-28 January 1993, UN Doc. A/CONF.157/ASRM/3,” (1993), 1.

¹³⁵ *Ibid.*, 3.

ASEAN, establishing a national institution in individual countries for promoting and protecting human rights. It also promoted intra-regional and international cooperation in the field of human rights for ASEAN and others.

It is important to note that this workshop was the consequence of the Commission on Human Rights Resolution 1992/40 of 28 February 1992 which requested the Secretary-General to organize, once again, a seminar to discuss human rights issues in 1992 after the first seminar on a regional arrangement for the protection and promotion of human rights was held in Indonesia in late 1991.¹³⁶ In addition, the Second Workshop on Human Rights Issues was organized by the United Nations Center for Human Rights in cooperation with the Government of Advisory Service and Technical Assistance in the Field of Human Rights and was co-chaired by Mr. Blanca, United Nations Under-Secretary-General for Human Rights and Mr. Wiryono, Director General of Political Affairs of the Indonesian Ministry of Foreign Affairs.¹³⁷ This proves that Indonesia as an original member of ASEAN would have direct influence on human rights concerns as a co-chair of this workshop because the central objectives of this workshop were to increase awareness among countries of the region about international human rights standards and to promote cooperation in the field of human rights between countries of the region. In addition, many experts and representatives participated in this workshop, including human rights experts from all member states of ASEAN, such as the Philippines and Indonesia, the representatives of Brunei Darussalam, Cambodia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Vietnam and Indonesia.¹³⁸

¹³⁶ *Ibid.*, 5.

¹³⁷ *Ibid.*, 5-6.

¹³⁸ *Ibid.*, Annex 2-3.

During the opening ceremony, the President of the Republic of Indonesia, Soeharto, expressed the hope that this workshop would serve as an effective forum of discussion to foster the understanding of basic human rights in the Asia-Pacific as well as in the respective countries which comprise this region, including all ASEAN members countries.¹³⁹ This workshop focused on each topic from the presentations of the experts and was followed by discussions. For example, topic one, which focused on international norms and standards in the field of human rights was introduced by Professor Pocar who presented the development of the international human rights machinery to oversee the implementation of the various human rights standards promulgated through the United Nations system.¹⁴⁰ After the presentation, the discussion opened with several participants addressing the panel on the issue of universality of human rights norms. The discussion focused on reconciling the concept of universality with the reality of regional variations and cultural specificities and pointed out that international human rights standards as set out in the Universal Declaration were universally applicable.¹⁴¹

This shows that international human rights standards were accepted by the participants - including ASEAN members - in this workshop. It could also be argued that ASEAN members accepted international human rights standards, learned so many ideas on human rights, and got a better understanding on human rights issues. This shows further that ASEAN members were concerned about human rights and supported the promotion and protection of human rights.

139 *Ibid.*, 5.

140 *Ibid.*, 6.

141 *Ibid.*, 7.

2.2.2 The Bangkok Declaration in March 1993

The Regional Meeting for Asia of the World Conference on Human Rights was held in Bangkok from 29 March to 2 April 1993.¹⁴² Seven meetings were held during the session. There were thirty-five representatives of States (including all ASEAN members at that time), twenty-six observer States, United Nations bodies, specialized agencies, national human rights institutions, intergovernmental organizations and non-governmental organizations. The result of this meeting was the Bangkok Declaration which contained “the aspirations and commitment of the Asian region” to human rights as follows:¹⁴³

Emphasizing the significance of the World Conference on Human Rights, which provides an invaluable opportunity to review all aspects of human rights and ensure a just and balanced approach thereto,

Welcoming the increased attention being paid to human rights in the international community,

Reaffirming their commitment to principles contained in the Charter of the United Nations and the Universal Declaration of Human Rights,

Recalling that in the Charter of the United Nations the question of universal observance and promotion of human rights and fundamental freedom has been rightly placed within the context of international cooperation,

Noting the progress made in the codification of human rights instruments, and in the establishment of international human rights mechanism, while expressing concern that these mechanisms relate mainly to one category of rights,

Emphasizing that ratification of international human rights instruments, particularly the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, by all States should be further encouraged,

¹⁴² The General Assembly Resolution 45/155 of 18 December 1990.

¹⁴³ *Ibid.*, 3–4.

Stressing the universality, objectivity and non-selectivity of all human rights and the need to avoid the application of double standards in the implementation of human rights and its politicization,

Recognizing that the promotion of human rights should be encouraged by cooperation and consensus, and not through confrontation and the imposition of incompatible values,

Reiterating the interdependence and indivisibility of economic, social, cultural, civil and political rights, and the inherent interrelationship between development democracy, universal enjoyment of all human rights, and social justice, which must be addressed in an integrated and balanced manner,

Recalling that the Declaration on the Rights to Development has recognized the rights to development as a universal and inalienable right and an integral part of fundamental human rights,

Emphasizing that endeavors to move towards the creation of uniform international human rights norms must go hand in hand with endeavors to work towards a just and fair world economic order,

Convinced that economic and social progress facilitate the growing trend towards democracy and the promotion and protection of human rights,

Stressing the importance of education and training in human rights at the national, regional and international levels and the need for international cooperation aimed at overcoming the lack of public awareness of human rights.

These statements were taken from the preamble of the Bangkok Declaration, the result of the Asia meeting reflected the universally accepted notion of human rights protection by Asian countries which include all members of ASEAN and it could be said that ASEAN members also accepted human rights protection ideas in Asia as the ideas of the statement above even though it might have been indirectly way for ASEAN human rights its self.

2.2.3 The Vienna Declaration of June 1993

The Vienna Declaration and Program of Action (VDPA) was a result of the World Conference on Human Rights which involved several steps. The World Conference was guided by a threefold requirement to which the Secretary-General referred: imperative of universality; the imperative of guarantees; and the imperative of democratization.¹⁴⁴ This Conference was attended by the representatives of more than 170 States; fifteen United Nations bodies; ten specialized agencies; two national liberation movements; eighteen intergovernmental organizations; twenty-four national institutions and six ombudspersons; eleven United Nations human rights and related bodies; nine other organizations; 248 non-governmental organizations with consultative status with the Economic and Social Council and 593 other non-governmental organizations.¹⁴⁵ Under the Chairmanship of the President of Austria, Mr. Thomas Klestil, there were more than 45 States who played roles as the Vice-Presidents of the Conference, which included the Philippines and Thailand, two original ASEAN member States.

VDPA was composed of a preamble and two parts. The first part presents the fundamental principles, standards and the most important issues of human rights; while the second part formulates a program of action to be taken by the States, the UN system, and NGOs and institutions to improve the effectiveness of human rights for individuals.¹⁴⁶ As this conference included almost all countries and related organizations, there was no doubt that all participants acknowledged the importance of human rights promotion and protection all

¹⁴⁴ *Ibid.*, 5.

¹⁴⁵ Report of the World Conference on Human Rights: Report of the Secretary-General, UN Doc. A/CONF.157/24 (Part I), 9–10.

¹⁴⁶ Alison Bisset, ed., *International Human Rights Documents*, 9th, 2014, 474.

around the world. However, they might have had some differences on focusing rights and implementing of human rights in each region in particular young regions having fewer experiences in protecting and promoting human rights.

Singapore and Indonesia used to have dissimilar perspectives on human rights in the international community. Before the World Conference on Human Rights, the Minister of Foreign Affairs of Singapore stated that “differences of opinion over human rights are inevitable in the real world of competing states and contending interests. The promotion of human rights by all countries has always been selective”.¹⁴⁷ In addition, Indonesia stated that: “implementation of human rights implies the existence of a balanced relationship between individual human rights and the obligations of individuals towards their community. Without such a balance the rights of the community as a whole can be denied”.¹⁴⁸ However, following the Second Workshop on Human Rights and after having drafted the Bangkok declaration, ASEAN countries, particularly Singapore and Indonesia, played an active role in drafting the Vienna Declaration containing broader perspectives.

For example, the second preamble affirmed that “the human being is the central subject of human rights and should be an active participant as the principal beneficiary of these rights”. Singapore proposed a compromise formula by stating instead that: “Recognizing and affirming that all human rights derive from the dignity and worth inherent in the human person, individually and collectively and that the human person is the central

¹⁴⁷ “Statement by Mr. Wong Kan Seng, Ministry for Foreign Affairs of the Republic of Singapore World Conference on Human Rights, Vienna, 16 June 1993 - The Real World of Human Rights” (Ministry of Information and the Arts, June 16, 1993), 1–2.

¹⁴⁸ “Statement by H.E. Mr. Alatas Minister for Foreign Affairs and Head of the Delegation of the Republic of Indonesia before the Second World Conference on Human Rights, Vienna, 14 June 1993,” [1992] *Australian International Law News* 5, no. 81: 90–91.

subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms,”.¹⁴⁹ This formula was accepted to replace the previous one but had two words, “individually” and “collectively” deleted, as proposed by the United Kingdom. It could be said that this was a compromise among the participants of the conference which was suggested by the United Kingdom. As the Western States used to take human rights to mean “individual rights”, while Asia considers human rights “collectively”. The drop off of these two words could mean that both Western and Asia accepted each other’s opinion. In addition, Singapore and Indonesia also had comments and made amendments to many proposals made by other countries during the Conference. These active interventions are illustrative of the thoughtfulness that ASEAN Members States had on human rights.

2.3 Consequences of Cooperation of the UN with ASEAN on Human Rights

The emerging independent concern on human rights in ASEAN started from the Paris Peace Agreement which is discernible in the Joint Communiqué 1992. However, the idea of human rights still focused on different forms. The cooperation of the United Nations with ASEAN had huge impacts on ASEAN human rights concerns. The impact started from the preparation of the World Conference on Human Rights for Asia to draft the Bangkok Declaration and the Second Asia-Pacific Workshop on Human Rights Issues. In addition, the combination of the regional declarations leading to VDPA also affected ASEAN’s viewpoint on human rights. These declarations had direct influences on ASEAN, which resulted in the Joint Communiqué of AMM in 1993.

¹⁴⁹ “UN Doc. A/CONF.157/2” (1993), 2.

2.3.1 Impact of the World Conference on the Joint Communiqué of the ASEAN Ministerial Meeting in July 1993

From the Bangkok Declaration to the Vienna Declaration, ASEAN member countries were also involved in the drafting process of these declarations. These activities drove ASEAN to consider human rights as an important issue for ASEAN. As pointed out in Chapter 1, the concept of human rights emerged in ASEAN through the process of the Cambodian conflict resolution in cooperation between ASEAN and other countries, and ASEAN gradually got concerned about the protection and promotion of human rights. After the Paris Peace Agreement, the Bangkok Declaration, the Workshops in Indonesia and the Vienna Declaration, ASEAN held the 26th Ministerial Meeting in Singapore which issued the Joint Communiqué addressing many important issues such as political and security cooperation, international and regional situation, human rights, international economic and other issues.¹⁵⁰ For political and security matters, it was concerned that political and security cooperation in Southeast Asia had been growing and the ASEAN Foreign Ministers (AFM) welcomed the United Nations resolution on the Treaty of Amity and Cooperation in Southeast Asia adopted by consensus at the 46th UNGA in 1992.¹⁵¹ However, the most important part that had to be underlined in this Joint Communiqué in 1993 was the human rights section. This was the second single document among ASEAN members that addressed human rights issues. This Joint Communiqué included three main paragraphs on human rights as stated in section 2.1.2.

¹⁵⁰ ASEAN Foreign Ministers, “Joint Communiqué of the 26th ASEAN Ministerial Meeting, Singapore, 24 July 1993,” 1993, 2.

¹⁵¹ Ibid.

Generally, the ASEAN Joint Communiqué of 1993 had developed from the Joint Communiqué of 1992 and engaged human rights concerns from the Bangkok Declaration and Vienna Declaration. The Joint Communiqué of 1993 noted that “the Foreign Ministers welcomed the international consensus achieved during the World Conference on Human Rights in Vienna, 14-25 June 1993, and reaffirmed ASEAN’s commitment to and respect for human rights and fundamental freedoms as set out in the Vienna Declaration of 25 June 1993.”¹⁵² This clearly showed the commitment of ASEAN to the Vienna Declaration and ASEAN fully pledged respect to human rights and fundamental freedoms. In addition, ASEAN stressed that “human rights are interrelated and indivisible comprising civil, political, economic, social and cultural rights.”¹⁵³ These rights are of equal importance and recognized by ASEAN following the Vienna Declaration. It could be said that this idea was directly influenced from the World Conference on Human Rights to ASEAN member States perspective.

Before the end of the World Conference on Human Rights, ASEAN member States had different perspectives on human rights particularly Indonesia and Singapore. The Indonesian Minister for Foreign Affairs, Ali Alatas, stated that “...a confrontation between the perceived universal, mostly Western, concept of human rights that stressed political and civil rights, and the purported ‘dissident’ view, particularly of Asian countries, which emphasizes the indivisibility of all categories of rights and the need to take into account the diversity of socio-economic, cultural and political realities prevailing in each country”.¹⁵⁴

¹⁵² *Ibid.*

¹⁵³ *Ibid.*

¹⁵⁴ “Statement by H.E. Mr. Alatas Minister for Foreign Affairs and Head of the Delegation of the Republic of Indonesia before the Second World Conference on Human Rights, Vienna, 14 June 1993,” 83–84.

This statement showed that political and civil rights were highly supported by the Western; however, socio-economic, cultural and political realities were a priority for Asian. These two perspectives seemed impossible to be accepted by the Western and the Asian. The World Conference on Human Rights, however, changed their viewpoints and compromised by giving these rights equal importance.

ASEAN realized that “they should be addressed in a balanced and integrated manner and protected and promoted with due regard for specific cultural, social, economic and political circumstances [and] they emphasized that the promotion and protection of human rights should not be politicized.”¹⁵⁵ Human rights promotion and protection were accepted as a political goal and should be balanced without political condition.

The ASEAN Foreign Ministers also agreed that “ASEAN should coordinate a common approach on human rights and actively participate and contribute to the application, promotion and protection of human rights.”¹⁵⁶ The idea of a common approach on human rights, however, was clearly denied by the Minister for Foreign Affairs of Singapore. Before the Vienna Declaration was accepted by consensus, he stated that “differences of opinion over human rights are inevitable in the real world of competing states and contending interests”.¹⁵⁷ His idea on human rights altered after the World Conference on Human Rights which could be seen from the Joint Communiqué of ASEAN in 1993.

In addition, ASEAN noted that “the UN Charter had placed the question of universal observation and promotion of human rights within the context of international

¹⁵⁵ ASEAN Documents Series 1992-1994, 13.

¹⁵⁶ *Ibid.*

¹⁵⁷ “Statement by Mr. Wong Kan Seng, Ministry for Foreign Affairs of the Republic of Singapore World Conference on Human Rights, Vienna, 16 June 1993 - The Real World of Human Rights,” 1.

cooperation.”¹⁵⁸ It could be said that international cooperation is very significant and useful for ASEAN. AFM was also convinced that “freedom, progress and national stability are promoted by the balance between the rights of the individual and those of the community, through which many individual rights are realized, as provided for by the Universal Declaration of Human Rights.”¹⁵⁹ It is important to note that the individual rights are to be realized and balanced to the collective rights which are a priority for some ASEAN countries.

Furthermore, AFM stressed that “violations of basic human rights must be redressed and should not be tolerated under any pretext.”¹⁶⁰ They further stressed the importance of strengthening international cooperation on all aspects of the human rights and that all governments should accept humane standards and respect human dignity.¹⁶¹ In this regard and in support of VDPA, AFM agreed that ASEAN should also consider the establishment of an appropriate regional mechanism on human rights.¹⁶² This clearly demonstrates that ASEAN supported human rights and agreed to create regional mechanism on human rights. With regard to the ideas of ASEAN on human rights in the World Conference on Human Rights, it could be concluded that ASEAN generally agreed with and accepted the Vienna Declaration. This result came from the hard work of ASEAN members dealing with the issue of human rights violation in Cambodia, experience from participation to workshops, meetings and conferences on human rights and exchanging their ideas with other parties.

¹⁵⁸ ASEAN Foreign Ministers, “Joint Communiqué of the 26th ASEAN Ministerial Meeting, Singapore, 24 July 1993,” in *ASEAN Documents Series 1992-1994*, 13.

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*

On the other hand, there are two sentences in the middle of paragraph 17 of the human rights section. The first sentence states that, “development is an inalienable right and that the use of human rights as a conditionality for economic cooperation and development assistance is detrimental to international cooperation and could undermine an international consensus on human rights.” It could be assumed that this sentence might be interpreted from Article 4 of the Bangkok Declaration which stated that: “Discourage any attempt to use human rights as a conditionality for extending development assistance.”¹⁶³ This means that human rights should not be used as a condition for economic cooperation and development assistance. Asia, including ASEAN, tried to break the link between human rights and the economic development assistance while the Western side tried to link them together. It would have been better if a State was willing to protect and promote human rights without any condition related but in fact ASEAN needs some support to move on and take an action.

The second sentence stated that: “[t]hey emphasized that the protection and promotion of human rights in the international community should take cognizance of the principles of respect for national sovereignty, territorial integrity and non-interference in the internal affairs of States.”¹⁶⁴ This sentence also might be interpreted from Article 5 of the Bangkok Declaration which stated that they: “Emphasize the principle of respect for national sovereignty and territorial integrity as well as non-interference in the internal affairs of States, and the non-use of human rights as an instrument of political pressure.”¹⁶⁵ This shows that some parts of the Bangkok Declaration were echoed in the Joint Communiqué. ASEAN stressed national sovereignty, the territorial integrity, and non-interference principles as more

¹⁶³ UN Doc. A/CONF.157/ASRM/8 - A/CONF.157/PC/59, 4.

¹⁶⁴ ASEAN Foreign Ministers, “Joint Communiqué of the 26th ASEAN Ministerial Meeting, Singapore, 24 July 1993,” 4.

¹⁶⁵ UN Doc. A/CONF.157/ASRM/8 - A/CONF.157/PC/59, 4.

important than other principles. The idea of these principles was clearly stated in Article 2 of the Treaty of Amity and Cooperation in Southeast Asia in 1976¹⁶⁶ which was known as a text expressing the “ASEAN Way”. ASEAN requires its communities to respect the concept of the “ASEAN Way” in order to maintain peace and security. However, in the case of the Cambodian problem, ASEAN broke its principle of non-interference for the purpose of keeping peace and stability in Southeast Asia. Claiming that human rights can be the tool for peace and stability, as shown in Chapter 1, however; cooperation can be seen as a tool for human rights protection and promotion in this Chapter. Human rights change to be a goal for ASEAN which ASEAN gradually changed its viewpoints on human rights concerns and became more active on human rights protection and promotion after the PPA and VDPA.

However, the Joint Communiqué of ASEAN in 1993 has been criticized by some authors because ASEAN still had a different perspective on human rights from that of the international community. There were two common points that they point out from this Joint Communiqué. The first point was the emergence of human rights in this Joint Communiqué 1993, but it could be claimed that this document was developed from the Joint Communiqué 1992 and the emergence of ASEAN human rights concern originally started from the Cambodian problem. The second point was their emphasis of the other authors on the fact that ASEAN stressed that “development was an inalienable right and that the use of human rights as a conditionality for economic cooperation and development assistance was detrimental to international cooperation and could undermine an international consensus on human rights and that they emphasized that the protection and promotion of human rights in the

¹⁶⁶ “Treaty of Amity and Cooperation in Southeast Asia, Bali, 24 February 1976,” 1985, 39. “Treaty of Amity and Cooperation in Southeast Asia, Bali, 24 February 1976,” 1985, 39. “Treaty of Amity and Cooperation in Southeast Asia, Bali, 24 February 1976,” in *ASEAN Documents Series 1967-1985* (Jakarta: ASEAN Secretary, 1985), 39

international community should take cognizance of the principles of respect for national sovereignty, territorial integrity and non-interference in the internal affairs of states.” However, this idea was already expressed in the Joint Communiqué 1992.

It could be concluded that there are big differences between the two Joint Communiqués, which shows that ASEAN has been developing and improving their concerns on human rights as particularly reflected in paragraph 16 and 18 of the 1993 Joint Communiqué. The most important point to be noted was the last sentence of paragraph 18 which states that: “ASEAN should also consider the establishment of an appropriate regional mechanism on human rights.”¹⁶⁷ This means that ASEAN accepted to create a regional mechanism on human rights, which was a new step in ASEAN concerns on human rights issues, even though Muntarbhorn claims that the words “should” and “appropriate mechanism” in the final sentence of paragraph 18 are evidently full of nuances.¹⁶⁸

2.3.2 The Kuala Lumpur Declaration on Human Rights in September 1993

Besides the Joint Communiqués of AMM in 1992 and 1993 which showed that ASEAN concerns on human rights have developed, there was one more evidence that could prove that it was not only ASEAN Ministers, but also the ASEAN Inter-Parliamentary Organization (AIPO) who were concerned with human rights. “The Kuala Lumpur Declaration on Human Rights” was approved by the 14th General Assembly of AIPO on 20-

¹⁶⁷ ASEAN Foreign Ministers, “Joint Communiqué of the 26th ASEAN Ministerial Meeting, Singapore, 24 July 1993,” 1993, 1–7.

¹⁶⁸ Vitit Muntarbhorn, *Unity in Connectivity?: Evolving Human Rights Mechanisms in the ASEAN Region* (Martinus Nijhoff Publishers, 2013), 108.

23 September 1993.¹⁶⁹ This declaration was issued after the World Conference on Human Rights and after the Joint Communiqué of 1993. This meant that the World Conference on Human Rights not only had an impact on ASEAN Ministers but also influenced the AIPO perspectives on human rights. The Kuala Lumpur Declaration on Human Rights includes a Preamble and 22 Articles on human rights issues. In the Preamble, one of the paragraphs states that: “the peoples of ASEAN reaffirm the observance of the United Nations’ Universal Declaration of Human Rights Charter, and the Vienna Declaration and Program of Action of 25 June 1993”. This proves that ASEAN accepted human rights standards and ASEAN concerns on human rights were increased day by day after the World Conference on Human Rights.

2.3.3 National Human Rights Institution

A national human rights institution was first discussed by the Economic and Social Council in 1946.¹⁷⁰ However, the Asia-Pacific region recognized national institutions for the protection and promotion of human rights in the Second Asia-Pacific Workshop on Human Rights Issue in Jakarta, Indonesia conducted as a preparation for the World Conference on Human Rights in 1993. Under this Workshop, three experts of Human Rights Commissioners of Australia, the Philippines and New Zealand presented an overview of the structure and

¹⁶⁹ Fernand de Varennes, ed., *Asia-Pacific Human Rights Documents and Resources*, vol. 1 (Martinus Nijhoff Publishers, 1998), 107.

¹⁷⁰ Centre For Human Rights, *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights*, Professional Training Series No. 4 (New York and Geneva: United Nations, 1995), 4.

functioning of the institution of each own State.¹⁷¹ Presenters examined specific issues relating to the subject of national institutions from the perspective of their own national experiences. In addition, during the discussion time, a number of delegations including Indonesia, Thailand, Sri Lanka and India informed the gathering of steps being taken in their respective countries towards the establishment of national human rights machinery.¹⁷² Moreover, all participating delegations agreed that an individual country's situation should be considered and no one model would be universally suitable. At the same time, there was widespread acknowledgement of the important role which national institutions are able to play in the promotion of human rights.

As a result, the VDPA reaffirms the important and constructive role played by national institutions for the promotion and protection of human rights. In addition, the World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the Principle relating to the status of national institutions and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level.¹⁷³ The result of the workshop and conference could be understood as the acceptance of individual states to establish national human rights institutions in its country even though some scholars claim that national human rights institution in Indonesia and the Philippines emerged due to significant international as well as domestic pressure.¹⁷⁴ Currently ASEAN has five national institutions which belong to the

¹⁷¹ *Ibid.*, 9.

¹⁷² *Ibid.*

¹⁷³ Alison Bisset, ed., "Vienna Declaration and Programme of Action (1993)," in *Blackstones's International Human Rights Documents*, 9th ed. (Oxford University Press, 2014), para 36.

¹⁷⁴ Robin Ramcharan, "ASEAN's Human Rights Commission: Policy Considerations for Enhancing Its Capacity to Protect Human Rights," *UCL Human Rights Review* 3 (2010): 202.

Philippines, Malaysia, Indonesia, Thailand, and Myanmar plus Timor-Leste as an ASEAN observation.

Conclusion

International cooperation has directly impacted ASEAN human rights concerns, particularly the World Conference on Human Rights in 1993. This conference would not have been successful without the cooperation of members States who participated in the conference both in the preparatory meeting before having the World Conference and the Vienna Conference itself. The Paris Peace Agreement was the starting point of ASEAN's human rights concerns which made ASEAN issue the first single document on human rights in 1992. In addition, the preparation on the World Conference on Human Rights was a forum for many countries to learn about human rights issues. For Asia and the Pacific region, the meeting was held in Bangkok from 29 March to 2 April 1993, which included the Workshop on Human Rights in Jakarta joined by all members of ASEAN, facilitated ASEAN to make commitments on human rights as an important issue. The result of this preparation was the Bangkok Declaration which stipulated the protection and promotion of human rights.

The World Conference on Human Rights finally concluded with the Vienna Declaration and Program of Action on 25 June 1993 which considered the promotion and protection of human rights as a matter of priority for the international community. This message was widely accepted by all countries including the ASEAN members. After the World Conference on Human Rights, it is shown that ASEAN member States were changing their perspectives on human rights. To emphasize this idea, the 26th Ministerial Meeting in Singapore issued the Joint Communiqué which included human rights for the second time as a

single document of ASEAN in 1993 and provided commitments to and respect for human rights and fundamental freedoms as set out in the Vienna Declaration. ASEAN increased their concern on human rights and announced their commitment to human rights in the Joint Communiqué 1993.

ASEAN also considered the establishment of an appropriate regional mechanism on human rights. Even though ASEAN still maintains the idea that human rights should not be a condition for economic assistance. ASEAN stressed the importance of strengthening international cooperation on all aspects of human rights. Furthermore, the Kuala Lumpur Declaration on Human Rights was another confirmation demonstrating that ASEAN had developed its perspective on human rights. The Joint Communiqué of AMM in 1993 and the Kuala Lumpur Declaration on Human Rights showed that ASEAN human rights have been more developed and gradually reach the same level of international human rights.

Chapter 3

Impact of ASEAN-EU Cooperation on ASEAN Human Rights Concerns

Introduction

ASEAN celebrated its 50th anniversary last 2017 and the 40th anniversary of the ASEAN and European Union (EU) cooperation. ASEAN and the EU had the first joint declaration on their cooperation after the Conference on International Economic Cooperation in 1977¹⁷⁵ called “Joint Declaration ASEAN-EU Ministerial Meeting in Brussels on 21 November 1978”. This declaration opened various fields of cooperation between ASEAN and the EU. The most significant issues that the Foreign Ministers of the Member States of the EU and ASEAN underlined were the devotion to the pursuance and development of relations and reaffirmation of their common will to broaden the scope of their cooperation on the basis of equality, respect and mutual benefit.¹⁷⁶ They also agreed that this cooperation should serve their people by promoting greater prosperity, social justice and human rights.¹⁷⁷ As international cooperation has a direct impact on ASEAN human rights concerns, the EU is also one of the international cooperation bodies that has much impact on ASEAN in various fields and also human rights which was partly identified in the first chapter of this dissertation. This chapter will focus on the impact of the ASEAN-EU cooperation on ASEAN human

¹⁷⁵ European Union, *40 Years of EU-ASEAN Cooperation: Key Statistic* (Luxembourg: Office for Official Publications of the European Communities, 2017), 7.

¹⁷⁶ “Joint Declaration ASEAN-EC Ministerial Meeting, Brussels, 21 November 1978,” in *ASEAN Documents Series 1967-1985* (Jakarta: ASEAN Secretary, 1985), 242.

¹⁷⁷ *Ibid.*

rights concerns by looking at the European Union Policy on Human Rights, the ASEAN-EU Relationship and the ASEAN-EU Policy Dialogues on Human Rights.

3.1 The ASEAN-EU Cooperation

The partnership between ASEAN and the EU dates back to 1972 when the EU was still known as the European Economic Community.¹⁷⁸ The EU became ASEAN's first formal dialogue partner. In 1975, the ASEAN Ministerial Meeting welcomed "the steady progress of the ASEAN economic and technical cooperation with other countries and organizations and endorsed the establishment of the ASEAN-EEC Joint Study Group which would examine further areas of cooperation between the two regional groups."¹⁷⁹ ASEAN and the EEC dialogue relations officially started in 1977 through the 10th ASEAN Foreign Ministers Meeting in Singapore. After ASEAN-EEC had delivered a Joint Declaration in 1978 and 1980, ASEAN and the EEC agreed to sign the Cooperation Agreement between the Member Countries of ASEAN and the European Economic Community in Kuala Lumpur on 7 March 1980.¹⁸⁰ This agreement emphasizes the most-favored-nation treatment and four main areas of cooperation namely Commercial Cooperation, Economic Cooperation, Development Cooperation and a Joint Cooperation Committee.¹⁸¹ The ASEAN-EU Ministerial Meeting (AEMM) is held every two years, in Southeast Asia and Europe alternatively. A Joint

¹⁷⁸ European Communities, *EU-ASEAN Relationships: A Growing Partnership*, 1998, 4.

¹⁷⁹ "Joint Communiqué of the Eighth ASEAN Ministerial Meeting, Kuala Lumpur, 13-15 May 1975," in *ASEAN Documents Series 1967-1988*, Third (ASEAN Secretariat, 1988), 76.

¹⁸⁰ European Union, *40 Years of EU-ASEAN Cooperation: Key Statistic*, 7.

¹⁸¹ "Cooperation Agreement Between the Member Countries of ASEAN and the European Economic Community, Kuala Lumpur, 7 March 1980," in *ASEAN Documents Series 1967-1985* (Jakarta: ASEAN Secretary, 1985), 250–52.

Cooperation Committee monitors the progress of the ASEAN-EU cooperation and, since 1995, an annual meeting of ASEAN-EU Senior officials is convened.¹⁸²

The Foreign Ministers of the member States of the European Community welcomed the favorable development of ASEAN as a regional organization committed to economic growth, social progress and cultural development in 1978.¹⁸³ In addition, diplomatic and human rights issues were also targets of cooperation. Both ASEAN and the EU have changed over the years. The EU was still the World's largest trading bloc in 1990s. At the same time, ASEAN has become a more powerful player at the international stage.¹⁸⁴ It is not surprising that the relations between ASEAN and the EU have been constantly growing and developing in the fields of economy, commerce and development cooperation since the signing of the ASEAN-EC Cooperation Agreement in 1992.¹⁸⁵ ASEAN and the EU were bound together through their trade and investment ties and also a close diplomatic partnership.¹⁸⁶ The cooperation between these two regions worked on both bilateral and multilateral level.

3.2 The European Union Policy on Human Rights

In the Treaty on the European Union of 1958 (the Treaty on the Functioning of the European Union), Article 11 provides five objectives with regards to common foreign and security policy, two of which are to promote international cooperation and to develop and

¹⁸² Donald E. Weatherbee, *International Relations in Southeast Asia: The Struggle for Autonomy*, Second (Rowman & Littlefield Publishers, Inc, 2009), 114.

¹⁸³ "Joint Declaration ASEAN-EC Ministerial Meeting, Brussels, 21 November 1978," 424.

¹⁸⁴ European Communities, *supra* note 178, at 4.

¹⁸⁵ "Joint Declaration of the Tenth ASEAN-EC Ministerial Meeting, Manila, Philippines 29-30 October 1992," in *ASEAN Documents Series 1992-1994*, Supplementary (Jakarta: ASEAN Secretary, 1994), 72.

¹⁸⁶ European Communities, *supra* note 178, at 4.

consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.¹⁸⁷ European is one of the most effective regions in human rights protection and promotion. The development of human rights started with the Council of Europe in 1949 and the first convention on human rights called “the European Convention for the Protection of Human Rights and Fundamental Freedoms”.¹⁸⁸ The European Union supports international and regional human rights mechanisms and instruments which include significant pillars of the international system for the promotion and protection of human rights. It has a clear and effective mechanism on human rights protection and promotion not only internally but also externally, as it aims to provide policy on human rights and seeks to have a deeper cooperation. The European Union established a shared determination to promote peace and stability and to create a world founded on respect for human rights, democracy and the rule of law which can underpin all aspects of the internal and external policies of the European Union.¹⁸⁹ Moreover, Bartels claims that “the European Commission described the protection of human rights, together with the promotion of a pluralistic democracy and effective guarantees for the rule of law and fight against poverty”,¹⁹⁰ as being among the EU’s “essential objectives”.

¹⁸⁷ The European Parliament, *Fact Sheets on the European Union* (Luxembourg: Office for Official Publications of the European Communities, 2009), 435.

¹⁸⁸ Convention for the Protection of Human Rights and Fundamental Freedoms, As Amended by Protocols No.11 and No.14,” in Dinah L. Shelton and Paolo G. Carozza, *Regional Protection of Human Rights: Basic Documents*, Second Edition (Oxford University Press, 2013), 9.

¹⁸⁹ The General Secretariat, “EU Action Plan on Human Rights and Democracy” (Council of the European Union, December 2015), 9, https://ec.europa.eu/europeaid/action-plan-human-rights-and-democracy-2015-2019_en.

¹⁹⁰ Lorand Bartels, *Human Rights Conditionality in the EU’s International Agreement* (Oxford University Press, 2005), 1.

3.2.1 European Union's Policy on Human Rights of Third Countries

In 1992 the Maastricht Treaty was signed and entered into force in 1993. This treaty provided for development cooperation in Article 130 which stated that:¹⁹¹

1. The Community policy in the sphere of development cooperation, which shall be complementary to the policies pursued by the Member States, shall foster:
 - the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them;
 - the smooth and gradual integration of the developing countries into the world economy;
 - the campaign against poverty in the developing countries.
2. Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.
3. The Community and the Member State shall comply with the commitment and take account of the objectives they have approved in the context of the United Nations and other competent international organizations.

The development cooperation between EU and other countries is stronger and better than before. The European Union has taken part in human rights dialogues with numerous countries around the world. However, those dialogues have become an instrument of the Union's external policy.¹⁹² In 1995, it became the official EU policy to include all new trade and cooperation agreements negotiated with the third countries.¹⁹³ The Council of the

¹⁹¹ "Treaty on European Union" (Office for Official Publications of the European Communities, 1992), 60.

¹⁹² "EU Guidelines on Human Rights Dialogues with Third Countries" (An Official Website of the European Union, 2001), 2.

¹⁹³ Lorand Bartels, *supra* note 190, at 2.

European Union adopted guidelines on human rights dialogues with third countries in 2001. Different types of dialogues exist such as:¹⁹⁴

- relations with candidate countries;
- the Cotonou Agreement with the ACP States;
- relations between the EU and Latin America;
- the Barcelona process (Mediterranean countries) and the neighborhood policy (countries of the Caucasus in particular);
- political dialogues with Asian countries in the context of ASEAN and ASEM;
- relations with the Western Balkans;
- bilateral relations in the framework of association and cooperation agreements.

This shows that the EU certainly takes action in their second pillar as a part of the powers of the Union. To process these dialogues, the EU creates basic principles of integrating human rights and democratization objectives into all aspects of its external policies. In addition, the issue of human rights, democracy and the rule of law will be included in all future meetings and discussions with third countries and at all levels, whether ministerial talks, joint committee meetings or formal dialogues led by the Presidency of the Council, the Troika, heads of mission or the Commission.¹⁹⁵

Since the EU cooperates with numerous countries, the objectives of human rights dialogues will vary from one country to another and will be defined on a case-by-case basis which may include:¹⁹⁶

¹⁹⁴ “EU Guidelines on Human Rights Dialogues with Third Countries” *supra* note 180, at 2–3.

¹⁹⁵ *Ibid.*, 5.

¹⁹⁶ *Ibid.*, 6.

- a. discussing questions of mutual interest and enhancing cooperation on human rights inter alia, in multinational fora such as the United Nations;
- b. registering the concern felt by the EU at the human rights situation in the country concerned, information gathering and endeavoring to improve the human rights situation in that country.

It could be said that the cooperation between EU and other countries on human rights needs to take into account the situation of those countries or a group of countries that the EU is dealing with. This thesis will further analyze the EU political dialogues with Asian countries in the context of ASEAN and ASEM (the Asia-Europe Meeting) in the following section.

3.2.2 European Union's Policy on Human Rights of Asian Countries

The European Union has political dialogues with Asian countries in the context of ASEAN and ASEM and some individual countries. These discussions include basic principles and objectives as a part of the Third countries policy, but some specific rules should be applied since ASEAN is an association. Since 1994, the European Commission's political dialogue with the region has evolved considerably, with new Summit dialogues with the Asian partners in the ASEM. The Ministerial dialogue with ASEAN continues, and now includes active EU participation in the ASEAN Regional Forum (ARF).¹⁹⁷ ASEM is an informal process of dialogue and cooperation bringing the EU Member States and the European Commission, with ten Asian countries or under the name of ASEAN.¹⁹⁸

¹⁹⁷ European Commission, *EU Annual Report 2001 on the EC's Development Policy and the Implementation of External Assistance*, 2002, 136.

¹⁹⁸ *Ibid.*, 138.

3.3 The ASEAN-EU Relationship on Human Rights Concerns

ASEAN has maintained long cooperation with the European Community or European Union since the 1970s. As pointed out, the cooperation between ASEAN-EC was accelerated for the emergence of ASEAN human rights concern in the previous chapter. It was no surprise that ASEAN-EU would keep dealing with human rights issue. However, the author would like to underline the improvement of the cooperation between ASEAN and EU and the fact that human rights issue is one of the significant issues that they have to keep in mind and take an action. ASEAN has the EU as a good partner for cooperation since 1970s.

3.3.1 ASEAN-EU Joint Communiqués

In 1992, the Tenth ASEAN-EC Ministerial Meeting was held in Manila, under the co-chairmanship of the Philippines and the United Kingdom. The Ministers had a comprehensive and useful exchange of views on a number of political, security and economic issues of common concern. The Ministers reviewed the progress in the preparation for the World Conference on Human Rights which was held in Vienna in June 1993. In addition, the Ministers emphasized their common commitment to promotion of and respect for human rights and fundamental freedoms, development, democracy and greater social justice and agreed to continue their dialogue and cooperation on these issues.¹⁹⁹

In 1994, the 11th ASEAN-EU Ministerial Meeting was held in Germany under the chairmanship of Germany and Singapore. The Ministers discussed EU-ASEAN development cooperation, and notably the commitment of both sides to give priority to the alleviation of

¹⁹⁹ “Joint Declaration of the Tenth ASEAN-EC Ministerial Meeting, Manila, Philippines 29-30 October 1992,” in *ASEAN Documents Series 1992-1994*, Supplementary (Jakarta: ASEAN Secretary, 1994), 75.

poverty, respect for human rights, human resource development, health and family, the role of women, environment and sustainable development, taking into account the individual ASEAN country's needs.²⁰⁰ In addition, for the future direction of EU-ASEAN cooperation, the Ministers also included human rights issues in their plan, stating that, "The Ministers emphasized their common commitment for the promotion of and respect for human rights and fundamental freedoms on the basis of the Charter of the United Nations, the Universal Declaration of Human Rights, and the Vienna Declaration and Program of Action. They expressed their strong support for the successful implementation of the Vienna Declaration and Program of Action".²⁰¹

In 1997, the Joint Declaration of the 12th ASEAN-EU Ministerial Meeting was issued after the meeting. The Ministers discussed ASEAN-EU cooperation, and reaffirmed the commitment to give priority to the alleviation of poverty, respect for human rights, human resource development, health and family, the role of women, the environment and sustainable development, taking into account the individual ASEAN country's needs.²⁰² These Declarations prove that ASEAN, in cooperation with the EU, has increased their concern on human rights. Particularly, the 11th and 12th Joint Declarations show that ASEAN and the EU did not only focus on the human rights in ASEAN in general but also took into account the individual ASEAN countries to give priority to human rights and the fields that had been discussed.

²⁰⁰ "Joint Declaration of the 11th ASEAN-EC Ministerial Meeting, Karlsruhe, Germany, 22-23 September 1994," in *ASEAN Documents Series 1994-1995*, Supplementary (Jakarta: ASEAN Secretary, 1999), 177.

²⁰¹ *Ibid.*, 179.

²⁰² "Joint Declaration of the 12th ASEAN-EC Ministerial Meeting, Singapore, 13-14 February 1997," in *ASEAN Documents Series 1996-1997*, Supplementary (Jakarta: ASEAN Secretary, 1999), 263.

However, after the new members - Myanmar in particular - acceded to ASEAN in 1997, the cooperation between ASEAN and the EU became more complicated since ASEAN and the EU had a different opinion on the Myanmar situation. The EU did not agree with the admission of Myanmar to ASEAN. The EU boycotted the annual ASEAN-EU talks by saying that the EU was not ready to sit together at a table with representatives of a military dictatorship, which led to the cancelation of the ASEAN-EU Joint Committee in November 1997.²⁰³ In addition, a senior official's meeting and the Foreign Ministers' Meeting set to take place in Bangkok and Berlin was also cancelled because ASEAN-EU had no consensus about the participation of Myanmar to the meeting.²⁰⁴ At this situation, the Chinese Foreign Minister commented that "isolating and excluding Myanmar will only increase tension and aggravate confrontation and benefit no side".²⁰⁵ The tension between ASEAN and the EU came to the end when the EU declared that it was ready to let Myanmar as well as Laos and Cambodia participate in the interregional meeting, after three years of interruption.²⁰⁶ If the EU did not accept the participation of Myanmar to the meeting, ASEAN and EU cooperation might continue to be interruption since ASEAN had strong commitment on their perspective. Fortunately, the EU changed their perspective. Therefore, the next ASEAN-EU Foreign Ministers Meeting was decided to be held in 2000.

The 13th ASEAN-EU Ministerial Meeting was held in Laos on 11-12 December 2000 and issued the Vientiane Declaration. Cambodia, Laos and Myanmar participated for the first time in the ASEAN-EU Ministerial Meeting under the co-chairmanship of Laos and

²⁰³ Howard Loewen, *supra* note 23, at 16.

²⁰⁴ *Ibid.*, 17.

²⁰⁵ Kay Moller, *supra* not 22, at 1093.

²⁰⁶ Howard Loewen, *supra* note 23, at 17.

France.²⁰⁷ This meeting was to strengthen ASEAN-EU relation and to discuss wide-ranging issues encompassing international and regional politics, security and economic issues. In addition, ASEAN and the EU agreed that “we committed ourselves 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”.²⁰⁸ This meeting brought the light back to the ASEAN-EU cooperation after previous tensions. Human rights concerns in ASEAN have always been one of the important issues for EU and the ASEAN dialogue.

In 2003, ASEAN and the EU announced the Joint Declaration on Co-operation to Combat Terrorism at the 14th ASEAN-EU Ministerial Meeting. This declaration touched upon human rights issues in the second paragraph which briefly stated that “We acknowledge that the fight against terrorism must be conducted in accordance with international obligations, the UN Charter and general norms of international law, including respect for human rights and humanitarian law.”²⁰⁹ In addition, this meeting highlighted a progressive EU-ASEAN dialogue where the Minister reaffirmed the high importance they attached to the EU-ASEAN relationship, and agreed on the need to further deepen the EU-ASEAN dialogue as a fundamental building block for the strategic partnership between Europe and Asia.²¹⁰

²⁰⁷ “Vientiane Declaration The 13th ASEAN-EU Ministerial Meeting, Vientiane, Lao PDR, 11-12 December 2000,” in *ASEAN Documents Series 2000*, Supplementary (Jakarta: ASEAN Secretary, 2001), 229.

²⁰⁸ *Ibid.*, 230.

²⁰⁹ “ASEAN-EU Joint Declaration on Co-Operation to Combat Terrorism 14th ASEAN-EU Ministerial Meeting, Brussels, Belgium, 27-28 January 2003,” in *ASEAN Documents Series 2003* (Jakarta: ASEAN Secretary, 2004), 286.

²¹⁰ “Joint Co-Chairmen’s Statement of the 14th ASEAN-EU Ministerial Meeting, Brussels, Belgium, 27-28 January 2003,” in *ASEAN Documents Series 2003* (Jakarta: ASEAN Secretary, 2004), 288.

Furthermore, the Ministers reaffirmed their shared commitment to the promotion and protection of human rights, including the right to development and fundamental freedoms. The ministers agreed to develop a comprehensive agenda for the future in line with the goals and priorities of both sides. This agenda covered the area of promotion of dialogue on issues of common concern, such as democracy, good governance, human rights and rule of law. This agenda cooperation shows that the ASEAN-EU relationship moved forward and got along with each other better. The ASEAN-EU dialogue decided that the meeting would be held every two years.

In 2005, ASEAN and the EU followed the agenda of cooperation from 2003 but this year the Ministers were presented as European Commission's strategy on "A New Partnership with Southeast Asia".²¹¹ For the EU and ASEAN, the Ministers acknowledged 2007 as a landmark year since the cooperation between the EU and ASEAN reached 30 years and ASEAN became 40 years old after the establishment, and 50 years had passed since the signing of the Rome Treaty to establish the European Economic Community. They reaffirmed their commitment to the EU-ASEAN dialogues and cooperation as a cornerstone for strategic partnership between Asia and Europe. The EU and ASEAN shared fundamental objectives in their wider global agenda that they both should promote effective multilateralism as a means of tackling global challenges, support an open and fair trade system under the World Trade Organization, and seek to advance human rights and good governance.²¹² To implement these objectives, the EU and ASEAN have set up a Plan of Action in 2007 and their cooperation has really strengthened the ASEAN-EU relations. Moreover, in 2010, the ASEAN-EU

²¹¹ "Joint Co-Chairmen's Statement of the 15th ASEAN-EU Ministerial Meeting, Jakarta, Indonesia, 10 March 2005," in *ASEAN Documents Series 2005* (Jakarta: ASEAN Secretary, 2006), 219.

²¹² "Joint Co-Chairmen's Statement of the 16th ASEAN-EU Ministerial Meeting, Nuremberg, Germany 15 March 2007," in *ASEAN Documents Series 2007* (Jakarta: ASEAN Secretary, 2008), 182.

relationship aimed to bring cooperation to a higher level, through addressing regional and global challenges of shared concern over the coming five years of 2013-2017.²¹³ In particular, this Action Plan provided for the cooperation on human rights as one of the main topics to support the work of AICHR as the overarching body for the promotion and protection of human rights in ASEAN through regional dialogues, seminars, awareness raising activities, exchange of best practices and other capacity building initiatives aimed at enhancing programs as well as giving support to the ACWC.

3.3.2 ASEAN-EU Policy Dialogues on Human Rights

The ASEAN-EU policy dialogue on human rights resulted from the agreement by ASEAN and the EU Ministers at the 20th ASEAN-EU Ministerial Meeting held in Brussels on 23 July 2014. The ASEAN-EU dialogues always kept human rights issues as a priority for discussion. The ASEAN-EU policy dialogue on human rights was fruitful in their cooperation. The dialogue had already run twice, with aims to promote respect for human rights and the rule of law through exchange of good practices, information, dialogues, seminars and capacity building initiatives.²¹⁴ However, before the dialogue started, the EU and ASEAN already built on the study visits to the EU undertaken by AICHR and ACWC in 2011 and 2013 and the EU Special Representative for Human Rights visited Jakarta in 2013 and 2014.

²¹³ “Bandar Seri Begawan Plan of Action to Strengthen the ASEAN-EU Enhanced Partnership (2013-2017),” in *ASEAN Documents Series 2010* (Jakarta: ASEAN Secretary, 2011).

²¹⁴ Strategic Communications, “EU-ASEAN Policy Dialogue on Human Rights AICHR, ACWC, ACW, ACMW, ASEC Visit to Brussels 19/23 October 2015,” *European Union External Action* (blog), October 26, 2015, https://eeas.europa.eu/headquarters/headquarters-homepage/2599/eu-asean-policy-dialogue-human-rights-aichr-acwc-acw-acmw-asec-visit-brussels-1923-october-2015_en.

On 19-20 October 2015, the ASEAN and EU held the first policy dialogue on human rights as part of a one-week visit in Brussels of AICHR, ACWC, the ASEAN Committee on Women (ACW), the ASEAN Committee on the implementation of the ASEAN Declaration on the Protection and Promotion of the Migrant Workers (ACMW) and the ASEAN Secretariat (ASEC). This dialogue allowed for open and constructive exchanges on themes of common interests, including recent human rights developments in EU and ASEAN. The EU and ASEAN witnessed the merits of an encouraging dialogue and exchange of experiences between civil society organizations from the two regions. In the end, the two sides expressed their satisfaction on their mutual engagement and agreed to explore further regular dialogues on human rights cooperation. The regular dialogue was held on 29 November 2017 as the Second ASEAN-EU Policy Dialogue on Human Rights in Bohol, the Philippines. This dialogue was co-chaired by the Chair of AICHR and the EU Special Representative for Human Rights. ACWC, ACW, ACMW and ASEC also participated in this dialogue. ASEAN-EU expressed their commitment to the promotion and protection of human rights and fundamental freedoms contained in the Universal Declaration of Human Rights and the international human rights instruments to which ASEAN Member States are parties, as well as the ASEAN Human Rights Declaration and other human rights related regional instruments.²¹⁵ This is the progress of the ASEAN-EU cooperation on the human rights issue.

Furthermore, the European Union did not only cooperate with ASEAN but also with the individual States of ASEAN. The EU has spent one billion euro on development cooperation activities for the ASEAN Members States and an additional 236 million euro on humanitarian assistance, including the promotion of democracy and human rights. The EU

²¹⁵ The General Secretariat, “2nd ASEAN-EU Policy Dialogue on Human Rights, 29 November 2017, Bohol, Philippines” (Council of the European Union, November 29, 2017).

has directly focused on cooperation with the Philippines, Indonesia, Thailand, Cambodia, Lao PDR, Myanmar and Vietnam and the EU has already started their cooperation in the field of human rights during the period of 1976-1997. The EU further cooperated with other members in the field of human rights which recently organized a dialogue on human rights. The latest dialogue on human rights between the EU and Lao PDR was held on 15 March 2018 in Brussels.²¹⁶ This dialogue was the eighth session of the EU-Lao PDR Human Rights Dialogue. The most important topic for this dialogue was the ratification status of international human rights conventions wherein the EU encouraged Lao PDR to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.²¹⁷ Another significant topic was the EU and Lao PDR's agreement to strengthen their cooperation on the promotion and protection of human rights in bilateral and international fora, including through the engagement within UN human rights mechanisms.²¹⁸ In addition, the 10th EU-Cambodia Joint Committee Meeting was held in Brussels on 14 March 2018 which included human rights as one of the main topics for discussion.²¹⁹ These show that the EU cooperation with ASEAN and ASEAN members States were certainly significant in facilitating ASEAN in terms of human rights promotion and protection.

Conclusion

²¹⁶ “The EU and Lao PDR Hold Human Rights Dialogue - Joint Press Release” (Brussels: European External Action Service, March 16, 2018), 1.

²¹⁷ *Ibid.*

²¹⁸ *Ibid.*

²¹⁹ “Joint Press Release: European and Cambodia Hold 10th Joint Committee Meeting” (Brussels: European External Action Service, March 14, 2018), 1.

Europe is one of the most effective regions in human rights protection and promotion. The cooperation between ASEAN and the EU officially started in 1977 and reached its 40th anniversary in 2017. The fact that human rights issues were included from the first joint declaration between ASEAN and the EU to the latest declaration proves that the cooperation between ASEAN and the EU aims to strengthen human rights concerns within ASEAN. In addition, it could be said that the human rights system of the EU has a direct influence on ASEAN human rights concerns through the discussions between the Ministers and other levels. The development of human rights within ASEAN was identified at the first stage in Chapter 1 and developed to their single documents. This chapter also showed that ASEAN human rights concerns have gone to another stage of development, following the ASEAN-EU Action Plan that states that human rights should seek to be advanced. The significance of the ASEAN-EU cooperation clearly pointed out the movement of human rights promotion and protection in ASEAN when ASEAN and the EU agreed to open a policy dialogue on human rights in 2014. The experience that ASEAN Member States could get from participating to the policy dialogue on human rights would have a direct benefit to ASEAN human rights since ASEAN representatives who work on human rights issues in ASEAN have been strengthening their knowledge and skills in particular topics of human rights in practice. It could be concluded that the cooperation of European Union to ASEAN has directly impacted ASEAN human rights concerns.

Chapter 4

ASEAN Attitude and Development with Regards to Human Rights Concerns

Introduction

The cooperation between ASEAN and other countries emphasized in the previous chapters brought about the emergence of human rights in ASEAN and ended the Cambodian problem with the Paris Peace Agreement. ASEAN has gradually improved human rights within the region. Also, ASEAN has been progressing and developing its association in many areas such as politics, security, economic and socio-cultural cooperation, and equally human rights. The development of ASEAN was based on ASEAN principles, aims and purposes.

Human rights in the ASEAN context emerged from a draft of the UNGA resolution on Cambodia problem, the cooperation between ASEAN-EC, the Paris Peace Agreement and the cooperation with the UN. The following Chapter will deal with the development of human rights in ASEAN by examining the attitude of ASEAN members towards the core international human rights instruments and will share the progress of human rights in ASEAN. Both the attitude of ASEAN as a whole and the attitude of its individual members will be analyzed. The attitude of ASEAN member States will be demonstrated through the ratification of international human rights treaties, statistic of each country and ASEAN as whole will look at ASEAN Human Rights Declaration towards Universal Declaration on Human Rights. In addition, the progress of human rights in ASEAN will be analyzed relying upon important documents of ASEAN.

The attitude of each country is key to the implementation, promotion and protection of human rights. Different countries have different ways for promoting and protecting human

rights and different regions have different rules and regulations implementing human rights standards. ASEAN is a part of Asia. It currently has ten member countries in total,²²⁰ however, there are only five countries named as original members of ASEAN in the Bangkok Declaration.²²¹ Before having a human rights body within ASEAN, there are three main human rights systems as mentioned in the previous Chapter. During the 1990s, there were a few countries of ASEAN members which ratified the ICESCR and ICCPR²²². Currently, the majority of ASEAN members are already parties to both the ICESCR and ICCPR. Human rights issue became more and more a concern for ASEAN. Currently, more than half of ASEAN members are parties to core international treaties and all members of ASEAN are parties to CEDAW, CRC and CRPD.

To examine the attitude of ASEAN towards Universal Human Rights is challenging. This Chapter will point out the accession to ASEAN by Cambodia, Laos, Myanmar, and Vietnam (CLMV) and identify ASEAN attitudes in two ways. The first way is to observe ASEAN as an individual state member of ASEAN when ratifying core international human rights treaties and its optional protocols particularly in 1991, 2007 and 2017 and by comparing them with each other. The second way is to analyze ASEAN attitudes as a whole by referring to the ASEAN Human Rights Declaration with Universal Declaration on Human Rights. Finally, this Chapter will identify what are the important documents of ASEAN on human rights.

²²⁰ Vitit Muntarbhorn, *supra* note 17, at 1.

²²¹ “The ASEAN Declaration (Bangkok Declaration), Bangkok, 8 August 1967,” in *ASEAN Documents Series 1967-1988*, Third, 1988, 27.

²²² Vitit Muntarbhorn, *supra* note 17, at 2.

4.1 ASEAN Memberships

Before analyzing the attitude of each ASEAN member country, it is necessary to identify which countries are members of ASEAN and how ASEAN was established. The ASEAN Declaration established an Association for regional cooperation among the countries of Southeast Asia to be known as the Association for Southeast Asian Nations on 8 August 1967.²²³ At the time of forming the Association, there were only five member States but the declaration clearly asserted that: “the Association is open for participation to all States in the Southeast Asian Region subscribing to the aforementioned aims, principles and purposes.”²²⁴ In addition, not only the ASEAN Declaration but also Article 18 of the Treaty of Amity and Cooperation in Southeast Asia of 1976 restated that ASEAN is open to accession for all countries in Southeast Asia.²²⁵ From these documents it can be deduced that any state in Southeast Asia could become a member of ASEAN if they agree to the aims, principles and purposes of ASEAN.

However, 15 years after its establishment, ASEAN still had only the same five original members. One important point to be noticed is that all founders of ASEAN were non-communist countries which shared common perceptions regarding the danger of communism to their internal stability.²²⁶ This was the reason why Vietnam and Laos could not become a member at that time. However, some authors argue that Vietnam was not invited to join ASEAN from the beginning because the founders of ASEAN believed that the war in

²²³ “The ASEAN Declaration (Bangkok Declaration), Bangkok, 8 August 1967.”

²²⁴ *Ibid.*

²²⁵ “Treaty of Amity and Cooperation in Southeast Asia, Bali, 24 February 1976,” 1985, 41.

²²⁶ Dewi Fortuna Anwar, “ASEAN’s Enlargement: Political, Security, and Institutional Perspectives,” in *ASEAN Enlargement: Impacts and Implications* (Singapore: Institute of Southeast Asian Studies, 2001), 26.

Vietnam would make it impossible for Vietnam to become a member of ASEAN.²²⁷ During that time, Laos had become part of the Indochina conflict. Thus, the same reasoning with regards to the ASEAN membership applied to Laos. Equally, Brunei was not eligible for membership because Brunei was a British protectorate State during that time in the 1960s. Only Myanmar and Cambodia were invited to join ASEAN because they were not communist States. However, both of them refused the invitation because they feared offending China, which was their communist neighbor.²²⁸ For these reasons, ASEAN consisted only of 5 members in the beginning.

The invasion of Vietnam in Cambodia made the Cambodian conflict more complicated, resulting in a genocide. The Cambodian problem took more than ten years and was ended by the Paris Peace Agreements on 23 October 1991 with the assistance of ASEAN to solve the problem as examined in Chapter 1. The rapprochement between ASEAN and Indochina was gradually increased during the process of the Paris Peace Agreements. However, these countries were not members of ASEAN until the middle of 1990s. Brunei Darussalam became the first country that acceded to ASEAN on 7 January 1984 after being fully independent, and became the sixth member of ASEAN.²²⁹ Brunei became a new member of ASEAN before the Cambodian problem was solved. However, the situation changed after the Cambodian problem had ended. Cambodia, Laos, Myanmar and Vietnam (CLMV) had more interaction with ASEAN during the Cambodian problem. After that, Vietnam brought up the issue of enlargement of ASEAN. The collaboration between ASEAN and CLMV was more positive and closer than before, until the CLMV became members of

²²⁷ *Ibid.*, 27.

²²⁸ Dewi Fortuna Anwar, *supra* note 226, at 27.

²²⁹ ASEAN Secretary, "Overview," 2014, online, <http://www.asean.org/asean/about-asean/overview>.

ASEAN in 1990s, starting with Vietnam followed by Laos, Myanmar and Cambodia. ASEAN intra-cooperation means cooperation among ASEAN member countries, no matter with original countries or new members in the Association.

4.1.1 The Accession of Vietnam to ASEAN

During the Cambodian conflict, Vietnam did not cooperate with other countries that disliked Vietnam's actions. The Vietnamese aggression brought the economic difficulties and political isolation to Vietnam itself. Vietnam could not trade with other countries and there were no diplomatic relations with many countries. To solve this situation, the Vietnamese Government had to change its policies. By the end of 1986, the Vietnamese Government adopted a new policy called Doi Moi or Renovation in the Sixth National Party Congress.²³⁰ The Resolution of the Sixth Congress clearly stated that: "Vietnam wished and is ready to negotiate with the regional states to resolve the existing issues in Southeast Asia and to establish relations on the basis of peaceful co-existence, to build Southeast Asia into a region of peace, stability and cooperation".²³¹ Furthermore, the Vietnamese leaders affirmed that peace and development reflect the common desire for the Southeast Asian region and Vietnam was willing to be a part to forge cooperation and development with ASEAN.²³² Vietnam considered joining ASEAN the highest priority. The 1987 Politburo Resolution No.2 and 1988 Politburo No.13 stressed that: "Vietnam's wishes to forge a new development with the regional countries and other Asia-Pacific countries, improve relations with socialist

²³⁰ Carlyle A. Thayer, *supra* note 80, at 1.

²³¹ "The Sixth VCP National Congress Documents" (Hanoi: Su That Publishing House, 1987), 108.

²³² Nguyen Huu Quyet, *supra* note 84, at 27.

countries, and strive for one Southeast Asian region for peace, stability, and cooperation.”²³³ These new policies were noteworthy not only for Vietnam but also for the cooperation between Vietnam and other States, particularly ASEAN member countries.

Once again, the cooperation was repeatedly concerned with peace and stability. From 27 to 29 July 1987, the Minister for Foreign Affairs of Indonesia officially visited the Socialist Republic of Vietnam. To conclude his visit, they issued a Joint Press Communiqué which included many important issues. The talk between the Minister for Foreign Affairs of Indonesia and the Vice-Chairman of the Council of the Ministers and Ministers of Foreign Affairs of Vietnam was held in an atmosphere of good relationship and cooperation and the consolidation of peace in Southeast Asia, and the search for a political solution to the Cambodian problem.²³⁴ Both sides agreed to reconvene the working groups, a bilateral forum between Indonesia and Vietnam, to discuss the problem of Cambodia and other related problems of Southeast Asia.²³⁵ In August, Vietnam as a representative of the Indochinese countries (Laos, Vietnam and Cambodia) met with Indonesia as a representative of ASEAN in Ho Chi Minh City to consult on the Cambodian issue. This cooperation successfully resulted in a joint communiqué on the settlement of the Cambodian problem in which Vietnam announced a two-phased troop withdrawal if a political solution could be found.²³⁶

The withdrawal of the troops from Cambodia meant that Vietnam recognized the principles of the regional status quo. It was also a signal of good cooperation with other countries as it was the first step of the new policy of the Vietnamese Government to be

233 *Ibid.*

234 “UN Doc. A/42/432-S/19010” (1987), 2.

235 UN Doc. A/42/432-S/19010, 2.

236 Nguyen Huu Quyet, *supra* note 81, at 27.

implemented.²³⁷ The Foreign Minister Nguyen Co Thach told his ASEAN counterparts that: “Vietnam wishes to join ASEAN”.²³⁸ It could be said that the resolution of the Cambodian problem facilitated Vietnam to join ASEAN because Vietnam realized that having a relationship with other countries was better than being isolated. On the other hand, ASEAN welcomed Vietnam’s new policy with priority devoted to relationships with its neighbors and encouraged Vietnam to get further integrated into the region. It showed that there was a significant development in the relationship between Vietnam and ASEAN, but somehow ASEAN members had not yet reached a consensus on accepting Vietnam as a new member of ASEAN.²³⁹ Therefore, it could be said that while it would take some time for all members to accept the accession of Vietnam, their cooperation gradually improved.

At this stage, however, the process of Vietnam’s accession to ASEAN had begun since Vietnam was ready to pursue its good intentions and the Malaysian Prime Minister Mahathir indicated that: “ASEAN could accept Vietnam as a member of the group in the future, should it subscribe to the idea of ASEAN”.²⁴⁰ In 1991, the Deputy Foreign Minister, Vu Khoan, asserted that: “with the comprehensive political settlement of the Cambodian issue, the key obstacles to Vietnam-ASEAN relations over the last 10 years have been eliminated. The relationship between Vietnam and ASEAN member states could thus rapidly develop bilaterally and multilaterally”.²⁴¹ It showed that the end of the Cambodian problem generated a condition for entry of Vietnam to ASEAN membership. On 24 October 1991, a day after

²³⁷ *Ibid.*

²³⁸ *Ibid.*, 28.

²³⁹ Hoang Anh Tuan, “Why Hasn’t Vietnam Gained ASEAN Membership?,” *Contemporary Southeast Asia* 15, no. 3 (December 1993): 287.

²⁴⁰ Carlyle A. Thayer, *supra* note 80, at 2.

²⁴¹ Nguyen Huu Quyet, *supra* note 84, at 30.

Vietnam signed the Paris Peace Agreement, the Vietnamese government delegations visited ASEAN countries. The Vietnam-ASEAN relationship became closer and better, which was confirmed by many agreements between them such as agreements on economic and trade cooperation, investment projects and aviation cooperation.²⁴² These agreements demonstrated that not only would Vietnam like to become a part of ASEAN, but also that ASEAN welcomed Vietnam as a new partner and future member of ASEAN.

As for the Vietnam-ASEAN relations, some scholars claim that Vietnam would benefit in joining ASEAN economically and politically²⁴³ but some argue that the real motives behind Vietnam's intention to join ASEAN were not only economic and political but also for security purposes.²⁴⁴ Acharya contends that Vietnam decided to join ASEAN because of the attraction of foreign investment, development and maintenance of friendly relations with other countries in the region, and to boost Vietnam's domestic reform process.²⁴⁵ However, one more factor that drove Vietnam to decide to join ASEAN was to break out of the international isolation with other countries. In addition, in the report of the Seventh Party Congress, Vietnam committed itself to: "the diversification and multi-lateralization of economic relations with all countries and economic organization on the principles of respecting each other's independence and sovereignty, and pursuing equality and mutual

242 *Ibid.*

243 Hoang Anh Tuan, *supra* note 239, at 283.

244 Nguyen Huu Quyet, *supra* note 84, at 32.

245 Amitav Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order* (London and New York: Routledge, 2001), 110.

benefit”.²⁴⁶ It showed that Vietnam understood the significance of the cooperation with other countries in various fields.

Based on these reasons and good cooperation, Vietnam acceded to TAC on 22 July 1992 and became an observer of ASEAN in the same year. Before accession to the TAC, on 15 April 1992, Vietnam amended its Constitution. The Constitution of 1992 is the first constitution that included the term “human rights” in its Article 50, Chapter 5.²⁴⁷ It could be said that this was the first time the Vietnamese Government accepted to include human rights issues in their legal system which previously had been rejected.²⁴⁸ This positive change towards human rights concerns by the Vietnamese Government was a result of the Paris Peace Agreement to which Vietnam had been one of the parties in 1991, along with 18 other States. Vietnam was an observer of ASEAN for three years and, after 1993, Vietnam came to be accepted as a member of ASEAN.²⁴⁹ During this time, Vietnam cooperated with ASEAN in many fields and their relationship continuously improved. Finally, on 28 July 1995, the Minister of Foreign Affairs of the Socialist Republic of Vietnam solemnly accepted the conditions of membership. Thus, the ASEAN Foreign Ministers and the Minister of Foreign Affairs of the Socialist Republic of Vietnam agreed and declared:²⁵⁰

²⁴⁶ Liang Fook Lye and Wilhelm Hofmelster, *Political Parties, Party Systems and Democratization in East Asia* (World Scientific Publishing Co. Pte. Ltd, 2011), 72.

²⁴⁷ National Assembly, “1992 Constitution of the Socialist Republic of the Vietnam” (1992), 10, [http://www.vietnamlaws.com/freelaws/Constitution92\(aa01\).pdf](http://www.vietnamlaws.com/freelaws/Constitution92(aa01).pdf).

²⁴⁸ Hao Duy Phan, “A Review of the Legal Framework for Human Rights Protection in Viet Nam,” *Asia-Pacific Journal on Human Rights and the Law* 2 (2007): 21.

²⁴⁹ Frank Frost, “Vietnam’s Membership of ASEAN: Issues and Implication,” *Parliamentary Research Service*, August 31, 1995.

²⁵⁰ ASEAN Leaders, Declaration on the Admission of the Socialist Republic of Vietnam Into the Association of Southeast Asian Nations, 2.

1. The Socialist Republic of Vietnam becomes the seventh Member State of ASEAN.
2. The Socialist Republic of Vietnam solemnly agrees to subscribe or accede, as the case may be, to all the Declarations, Treaties and Agreement of ASEAN.

This means that Vietnam became a full member of ASEAN from the date of signing the Declaration of Accession. The entry of Vietnam to ASEAN brought a significant change to the Southeast Asian region because ASEAN would not call itself an association of anti-communist any more but rather, ASEAN as one. After the end of the Cambodian problem, not only Vietnam, but also other countries like Laos, Cambodia and Myanmar showed the attention of being willing to join ASEAN.

4.1.2. The Accession of Cambodia, Laos and Myanmar to ASEAN

Cambodia, Laos and Myanmar shared many significant events in the process of becoming ASEAN members. These three countries almost became ASEAN members at the same time but unfortunately, some circumstances happened during the final step of acceptance to the membership of ASEAN. These circumstances made ASEAN decide to postpone ASEAN membership of one of them.

Laos is a small country in South-East Asia which is officially known as the Lao People's Democratic Republic after becoming independent on 2 December 1975. In view of developing the country in the 1990s, Laos opened itself to cooperation with other countries. However, at the time of the Cambodian problem, Laos was involved in the process of the conflict solution until the end of the conflict. In addition, Laos was one of the 19 States which

signed the Paris Peace Agreement in 1991. After the PPA was signed, ASEAN developed itself to cooperate with other countries including Laos. Laos acceded to the TAC on 29 June 1992, almost a month before Vietnam acceded to the TAC. However, Laos and Vietnam became an observer of ASEAN at the same time after submission of their respective instruments of accession to the TAC, after which the ASEAN Foreign Ministers approved the applications of Laos and Vietnam for Observer Status at the Twenty-Fifth ASEAN Ministerial Meeting in Manila, the Philippines on 22 July 1992.²⁵¹ However, Laos did not become a member of ASEAN in the same year than Vietnam namely 1995.

Besides Vietnam, Cambodia was a main Party to the Paris Peace Agreement. Cambodia had been caught in conflicts for many years and, finally, the conflicts were solved in 1991 by the PPA as the result of the hard work of ASEAN, with interaction of the EU, the UN, and cooperation of Vietnam. The PPA formed a starting point of the new Cambodia. Cambodia had many internal issues to deal with. Fortunately, every issue was settled through peaceful means in accordance with the PPA. In 1993, Cambodia was under the rule of a coalition government between two governments by the Prince Ranariddh and the Cambodia People's Party led by Hun Sen after the elections supervised by the UN.²⁵² Cambodia was not only building its internal organs but also cooperated with other international organizations and other States. To be a member of ASEAN was also a significant issue for Cambodia. However, the process of Cambodia's' membership to ASEAN was unique due to internal conflicts within the Cambodian government.

²⁵¹ ASEAN Documents Series 1992-1994, 7. ASEAN Documents Series 1992-1994, Supplementary (Jakarta: ASEAN Secretary, 1994), 8.

²⁵² Amitav Acharya, *supra* note 245, at 115.

Cambodia acceded to TAC on 23 January 1995 with the desire to strengthen friendly relationship, good neighborliness, and active multiform cooperation with all countries in Southeast Asia, with a view to securing durable peace, stability and prosperity in the region.²⁵³ After that, Cambodia was granted an observer status to ASEAN on 30 July 1995 when the 28th AMM was held in Brunei.²⁵⁴ At this time, all States in Southeast Asia agreed that ASEAN had important role in maintaining peace, stability and prosperity in this region as well as cooperation in the wider Asia-Pacific.²⁵⁵ In addition, Myanmar acceded to the TAC as the last country among the CLMV on 27 July 1995 and was granted an observer status in ASEAN at the 29th AMM in 1996.²⁵⁶ At the Fifth ASEAN Summit held in Bangkok on 14-15 December 1995, the ASEAN leaders had a meeting with the leaders of Cambodia, Laos and Myanmar, pursuant to the Summit's theme: 'ASEAN Towards One Southeast Asia'.²⁵⁷ At this Summit, the AFM accepted the formal application of Cambodia and Laos to become members of ASEAN in 1997 for celebrating the 30th Anniversaries of ASEAN with the theme of 'One Southeast Asia'.²⁵⁸ This progressive cooperation accelerated the ASEAN vision of all Southeast Asian States living in harmony under a single roof came closer to realization.²⁵⁹

253 Minister of Foreign Affairs and International Cooperation of the Kingdom of Cambodia, "Instrument of Accession to the Treaty of Amity and Cooperation in Southeast Asia," January 23, 1995.

254 ASEAN Foreign Ministers, "Joint Communiqué of the 28th ASEAN Ministerial Meeting, Bandar Seri Begawan, Brunei Darussalam, 30 July 1995," 1995, 2.

255 *Ibid.*, 2.

256 *ASEAN Documents Series 1996-1997*, Supplementary (Jakarta: ASEAN Secretary, 1999), 23.

257 ASEAN Foreign Ministers, "Joint Communiqué of the 29th ASEAN Ministerial Meeting, Jakarta, Indonesia, 20 July 1996," 1996, 2.

258 *Ibid.*

259 *Ibid.*

Everything seemed to be smooth with the admission of Laos, Myanmar and Cambodia to ASEAN, but the admission of Myanmar and Cambodia caused some problems. Myanmar's admission was placed under pressure from the West because of Myanmar's human rights record. On 22 April 1997, President Clinton approved U.S sanctions against Myanmar because of human rights abuses by the Myanmar military government.²⁶⁰ In addition, Peter Baker claimed that the EU suspended favorable trading benefits for Myanmar because of its pattern of forced labor, and last week (early April) the United Nations Human Rights Commission in Geneva unanimously condemned the government for continued violations.²⁶¹ By having these sanctions, the U.S. expected that ASEAN would back off its plans to improve their ties to Myanmar which was scheduled to accept Myanmar to ASEAN in July. Furthermore, Jendrzeczyk, the Washington director of Human Rights Watch in Asia, said: "It has a potential ripple effect because it will impact other countries".²⁶² However, the sanctions of the U.S. to ban new investments to Myanmar was not effective to some states of the U.S. and some big companies. Some local U.S. jurisdictions moved on their own. For example, the state of Massachusetts and the city of San Francisco enacted laws penalizing multinational companies doing business in Myanmar by making them ineligible for government contracts.²⁶³ Another example, when officials spoke about the imminent sanctions to Myanmar, a Unocal (big company name) spokesmen denied any connection and said the company was opposed to the sanctions. Unocal signed a deal to expand its exploration and

²⁶⁰ Steven Erlanger, "Clinton Approves New U.S Sanctions Against Burmese," *The New York Times*, April 22, 1997.

²⁶¹ Peter Baker, "U.S to Impose Sanctions on Burma for Repression," *The Washington Post*, April 22, 1997.

²⁶² *Ibid.*

²⁶³ *Ibid.*

development rights. Unocal kept running its business.²⁶⁴ The administration had been trying to persuade Japan and the Southeast Asian Countries to get involved in sanctioning, but with little success. The Japanese Prime Minister, Ryutaro Hashimoto, met with the U.S. President Clinton in Washington, and the Japanese had been pressing the U.S. not to go ahead with the sanctions since Japan had been trying to promote a dialogue with Myanmar.²⁶⁵ ASEAN also warned against unilateral sanctions.

On 1 June 1997, the Malaysia Newspaper “New Straits Times” issued an article entitled: “ASEAN ‘yes’ to Cambodia, Laos and Myanmar”. This article reported that “[ASEAN] today agreed to admit Cambodia, Laos and Myanmar as members, realizing a 30-year dream of its founding father for an ASEAN 10. The three countries will be officially admitted as members at the ASEAN Ministerial Meeting here beginning July 14”.²⁶⁶ The ASEAN Secretary-General (ASG), Datuk Ajit Singh, said he had visited the three countries many times and was satisfied with their developments for becoming ASEAN members.²⁶⁷ He emphasized that: “on whether the situation in Myanmar was considered before the decision to admit it into ASEAN was made, he was sure that all members of ASEAN were aware of the situation”.²⁶⁸ For Cambodia’s admission, ASG had met with Prime Minister Hun Sen and the Prince Norodom Ranariddh and saw no reason to deny Cambodia to the admission of ASEAN,

²⁶⁴ Steven Erlanger, *supra* note 260.

²⁶⁵ *Ibid.*

²⁶⁶ Abdullah Ashraf, Singh Sarban, and Cheah Chor Sooi, “ASEAN ‘Yes’ to Cambodia, Laos and Myanmar,” *The News Straits Times Press (M) Berhad*, June 1, 1997.

²⁶⁷ *Ibid.*

²⁶⁸ *Ibid.*

even though there were two Prime Ministers.²⁶⁹ This showed that ASEAN respected the rights of sovereign states by not interfering in domestic problems.

Laos and Myanmar became members of ASEAN but Cambodia was rejected at a last-minute bid to be allowed into the Association. Myanmar became a member of ASEAN on 23 July 1997. This event surprised many countries which accepted the U.S. sanctions to Myanmar. The admission of Myanmar to ASEAN was also criticized by Western countries which stated that ASEAN did not consider the sanctions of the U.S. to Myanmar but accepted Myanmar as a new member. The membership of Myanmar caused almost instant problems with the ASEAN's Western dialogue partners.²⁷⁰ However, ASEAN had a different point of view on this issue. ASEAN contemplated that the internal conflicts of Myanmar were domestic issues in which ASEAN would not interfere as was clearly stated in their principles. In addition, Weatherbee claimed that ASEAN did not interfere in the domestic affairs of other nations and that Myanmar's internal politics were not relevant to the question of ASEAN membership.²⁷¹ The ASG insisted that this decision was best for ASEAN and the region. He states that: "Anything can happen anywhere but I believe that if Myanmar was a member, we would be able to deal with it more effectively".²⁷² ASEAN had several reasons for accepting Myanmar as a member of ASEAN such as the geographic proximity, cultural similarities and a comparable security situation.²⁷³ ASEAN believed that if Myanmar became a member of

²⁶⁹ *Ibid.*

²⁷⁰ Kay Moller, *supra* note 22, at 1087.

²⁷¹ Donald E. Weatherbee, *supra* note 182, at 94.

²⁷² Abdullah Ashraf, Singh Sarban, and Cheah Chor Sooi, *supra* note 266.

²⁷³ Christopher Roberts, *ASEAN's Myanmar Crisis: Challenges to the Pursuit of a Security Community* (Singapore: Institute of Southeast Asian Studies, 2010), 112.

ASEAN, it would be better placed to improve behavior than if it remained in isolation.²⁷⁴ ASEAN's policy of construction engagement would be more effective and it would be more positive than to delay the admission of Myanmar.

Myanmar was a very locked country and not open to other assistance when they faced problems. It could be seen when Myanmar faced Cyclone Nargis on 3 May 2008 but refused to get any assistance from outsiders like International Organizations or Western countries.²⁷⁵ Even though, the Nargis caused the death of about 1400.000 citizens and the cyclone left 1.5 to 2 million people hugely affected.²⁷⁶ Three days later, the Myanmar Government realized the scale of the unfolding humanitarian disaster and reluctantly asked for international assistance. However, the authorities refused to grant visas to international staff and to allow the entrance of foreign humanitarian aid.²⁷⁷ In fact, the Myanmar Government was willing to grant limited access only to organizations from neighboring States and other Southeast Asian institutions.²⁷⁸ This issue constitutes the proof that ASEAN made a wise decision to accept Myanmar as a member of ASEAN. If not, ASEAN could not help many affected people of the crisis.

On the other hand, the Cambodian case was different. Cambodia should have become a member of ASEAN at the same time with Laos and Myanmar in time of the celebration of the 30th Anniversary of ASEAN focusing on the theme, 'One Southeast Asia'. Unfortunately, the conflict between Hun Sen and Ranarridh escalated in early July 1997. The ASEAN

²⁷⁴ Steven Erlanger, *supra* note 260.

²⁷⁵ Julian Junk, "Testing Boundaries: Cyclone Nargis in Myanmar and the Scope of R2P," *Global Society*, 30, no. 1 (2016): 78.

²⁷⁶ *Ibid.*, 80.

²⁷⁷ *Ibid.*, 81.

²⁷⁸ *Ibid.*

leaders, particularly Indonesia spoke at the eve of AFM on 31 May 1997 to consider the admission of new members, stating that the internal turmoil in Cambodia was no barrier to its entry into ASEAN.²⁷⁹ The ASEAN leaders said so because ASEAN considered its principle of non-interference. However, the coup of Hun Sen was a continuing threat and killed many ordinary people and made the situation worse. People were worried that the genocide might return. Therefore, on 8 July 1997 Indonesia being cautious on whether or not the conflict was entirely Cambodia's own internal affair suggested to convene a special AFM to discuss this issue.²⁸⁰

The Special Meeting of the AFM was held on 10 July 1997, just about two weeks before the 30th AMM was set up. This meeting agreed that: "While reaffirming the commitment to the principle of non-interference in the internal affairs of other states, they decided that, in light of the unfortunate circumstances which have resulted from the use of force, the wisest course of action is to delay the admission of Cambodia into ASEAN until a later date."²⁸¹ Even though the ASG confirmed to admit Cambodia to ASEAN earlier but the circumstance that happened in Cambodia changed ASEAN's decision during the AFM Special Meeting. The Cambodian Foreign Minister, Ung Huot, had appealed for Cambodia's admission hours before the ceremony started but the Chair of the AMM, the Malaysian Foreign Minister Ahmed Badawi, stated that: "it is with disappointment and regret that we view the course of events in Cambodia in the last couple of weeks".²⁸² The decision could not

²⁷⁹ Amitav Acharya, *supra* note 245, at 116.

²⁸⁰ *Ibid.*

²⁸¹ "ASEAN Statement on Cambodia Membership: Statement Issued at the Conclusion of the Special Meeting of ASEAN Foreign Ministers, Kuala Lumpur, 10 July 1997.," 1997.

²⁸² "Myanmar and Laos Join ASEAN Officially," *China Daily*, July 24, 1997, North America edition.

be changed after the AFM Special Meeting agreed that the situation was to be considered as a breach of the Paris Peace Agreement.

The reason that made ASEAN postpone the admission of Cambodia to ASEAN could be that ASEAN would like to show their concern on the Paris Peace Agreement according to Article 15, para. 2.b of the Agreement on the Political Settlement of the Cambodian Conflict which states that: “the other Signatories to this Agreement undertake to promote and encourage respect for, and observance of human rights and fundamental freedoms in Cambodia as embodied in the relevant international instruments and the relevant resolutions of the United Nations General Assembly, in order, in particular, to prevent the recurrence of human rights abuses”.²⁸³ In addition, Moller Claims that: “overruling Vietnam and Malaysia, the member States decided to delay Phnom Penh’s membership indefinitely and take human rights into consideration when reviewing this decision.”²⁸⁴ It is certain that ASEAN was concerned about human rights violations. It might also be said that human rights protection must be one of the conditions for admission of Cambodia to ASEAN. Even though human rights were not written as a criteria for admission, they were considered when the abuse of human rights occurred. The ASEAN membership of Cambodia was postponed because of human rights violations due to its internal conflict. However, Lao PDR and Myanmar were warmly welcomed into ASEAN as members by the Foreign Ministers on the 30th AMM on 23 July 1997.²⁸⁵ It might be observed that ASEAN had double standards in term of human rights as a condition for admission into ASEAN of Cambodia and Myanmar. Myanmar was an

²⁸³ United Nations Security Council, “Letter Dated 30 October 1991 from the Permanent Representative of Indonesia to the United Nations Addressed to the President of the Secretary-General,” October 30, 1991, 15.

²⁸⁴ Kay Moller, *supra* note 22, at 1098.

²⁸⁵ ASEAN Foreign Ministers, “Joint Communiqué of the 30th ASEAN Ministerial Meeting, Subang Jaya, Malaysia, 25 July 1997,” 1997, 2.

exceptional case since it closed itself from the international community. If ASEAN did not try to cooperate with Myanmar, Myanmar would be isolated easily since Myanmar does not like to open their country to others. It would be said that the better approach of ASEAN towards Myanmar should have been closer cooperation and acceptance as a member of ASEAN. However, Cambodia was different. Cambodia was a party of the PPA and under the cooperation of UN to observe the situation of Cambodia. Therefore, ASEAN was not worried that Cambodia would be isolated or not accessible to ASEAN. However, the refusal of Cambodia to ASEAN reconfirmed the readiness of Cambodia on human rights protection.

The Cambodian circumstances took some time to be solved and, again, it was through the cooperation by ASEAN and UN agencies. Lee Jones argues that ASEAN's approach to the Cambodian circumstances was the second time that ASEAN had ever intervened in the internal affairs of another country.²⁸⁶ Even though ASEAN has non-interference as the main principle, ASEAN has taken some action to stop the violation of human rights and does not allow anything to threaten peace and stability in Southeast Asia. After the situation in Cambodia became peaceful, the Special Ceremony for the Admission of Cambodia into ASEAN was held on 30 April 1999 in Hanoi, Vietnam.²⁸⁷ Cambodia's membership was an important milestone in the struggle to define a regional identity for Southeast Asia and, from then on, ASEAN's vision of 'One Southeast Asia' was successful. The accession of new members to ASEAN was clearly under the normative framework of cooperation, but quite unique for each country. However, without good cooperation, ASEAN would have only the

²⁸⁶ Lee Jones, "ASEAN Intervention in Cambodia: From Cold War to Conditionality," *The Pacific Review* 20, no. 4 (December 2007): 524.

²⁸⁷ Singapore Government, "Statement of the Minister for Foreign Affairs of the Republic of Singapore, Professor S Jayakumar, at the Special Ceremony for the Admission of the Kingdom of Cambodia into the Association of Southeast Asian Nations (ASEAN)" (Hanoi, Vietnam, 1999), 1.

founding States at its inception time. Good cooperation brought friendship and unity to ASEAN.

4.2 Attitude of ASEAN States Towards the Core International Human Rights Instruments

There are two ways to observe ASEAN's attitude towards the core international human rights instruments. The first way is to analyze the ratification of international treaties on human rights by ASEAN individual States and to compare them in remarkable year. The second way is to observe how the ASEAN Declaration on Human rights was drafted and to compare it with the Universal Declaration on human rights.

4.2.1 Ratification of International Treaties on Human Rights by ASEAN Individual States

The ratification of international treaties on human rights could not be made by ASEAN as a whole but only by the individual ASEAN Member States. The ASEAN Members are diverse in many aspects including the ratification process of international treaties on human rights. To observe the advancement of ASEAN, it is also necessary to recognize how the ASEAN individual members deal with human rights issue in their domestic space. This section will make a comparative study based on four important years for each of the Member States of ASEAN which ratified the core human rights treaties and its optional protocols. These data were collected from the UN Treaty Database of the United Nations Human Rights Office of the High Commissioner for Human Rights. Previously Muntarhorn has analyzed data on ASEAN as a membership of human rights treaties in 2010. However, the year 2010 is regarded less important for this analysis. The importance years for

this paper are the years 1991, 1993, 2007 and 2018. These four years recording will be analyzed and compared between the year 1991 and 1993, the year 1993 and 2007, and between the year 2007 and 2018 to find out how improvement of ASEAN members attitude in concern about human rights promotion and protection. The international human rights means those enshrined in the core international human rights treaties, which include nine treaties and four optional protocols. ASEAN consists of 10 countries as Member States since 1999. Each State has a different record as the parties to universal human rights Instruments. The data also includes the ratification of Timor Leste which is an observer country of ASEAN.

Table 1: ASEAN Member States Ratified the Core Human Rights Instruments in 1991

ASEAN Member States ratified Universal Human Right Treaties											
Treaty Name	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Mynmar	Philippines	Singapore	Thailand	Vietname	No.
	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	
CAT							18 Jun 1986 (a)				1
ICCPR							23 Oct 1986 ®			24 Sep 1982(a)	2
CEDAW			13 Sep 1984 ®	14 Aug 1981®			05 Aug 1981 ®		09 Aug1985 (a)	17 Feb 1982 ®	5
ICERD		28 Nov 1983 ®		22 Feb 1974(a)			15 Sep 1967 ®			09 Jun 1982(a)	4
ICESCR							7 Jun 1974 ®			24 Sep 1982(a)	2
CRC			05 Sep 1990 ®	08May 1991(a)		15 Jul 1991 (a)	21 Aug 1990 ®			28 Feb 1990 ®	5
Total R/A	0	1	2	3	0	1	6	0	1	5	

Source: Office of UN Hight Commisioner for Human Rights, 1991

Convention against Torture and Other Cruel Inhuman or Degradng Treatment or Punishment (CAT)

International Covenant on Civil and Political Rights (ICCPR)

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

International Covenant on Economic, Social and Cultural Rights (ICESCR)

Table 2: ASEAN Member States Ratified the Core Human Rights Instruments in 1993

ASEAN Member States ratified Universal Human Right Treaties											
Treaty Name	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	No.
	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	
CAT		15 Oct 1992 (a)					18 Jun 1986 (a)				2
ICCPR		26 May 1992 ®					23 Oct 1986 ®			24 Sep 1982(a)	3
CEDAW		15 Oct 1992 ®	13 Sep 1984 ®	14 Aug 1981®			05 Aug 1981 ®		09 Aug 1985 (a)	17 Feb 1982 ®	6
ICERD		28 Nov 1983 ®		22 Feb 1974(a)			15 Sep 1967 ®			09 Jun 1982(a)	4
ICESCR		26 May 1992 ®					7 Jun 1974 ®			24 Sep 1982(a)	3
CRC		15 Oct 1992 (a)	05 Sep 1990 ®	08May 1991(a)		15 Jul 1991 (a)	21 Aug 1990 ®		27 Mar 1992 (a)	28 Feb 1990 ®	7
Total R/A	0	6	2	3	0	1	6	0	2	5	

Source: Office of UN High Commissioner for Human Rights, 1993

Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)

International Covenant on Civil and Political Rights (ICCPR)

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

International Covenant on Economic, Social and Cultural Rights (ICESCR)

Convention on the Rights of the Child (CRC)

Table 3: ASEAN Member States Ratified the Core Human Rights Instruments in 2007

ASEAN Member States Ratified the Core International Human Right Instruments												Extra	
Treaty Name	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	No.	Timor Leste	Total
	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date		S/R/A Date	No.
CAT		15 Oct 1992 (a)	28 Oct 1998 ®				18 Jun 1986 (a)		02 Oct 2007 (a)		4	16 Apr 2003 (a)	5
ICCPR		26 May 1992 ®	23 Feb 2006(a)				23 Oct 1986 ®		29 Oct 1996 (a)	24 Sep 1982(a)	5	18 Sep 2003 (a)	6
CED													
CEDAW	24May 2006(a)	15 Oct 1992 ®	13 Sep 1984 ®	14 Aug 1981®	05 Jul 1995 (a)	22 Jul 1997 (a)	05 Aug 1981 ®	05 Oct 1995(a)	09 Aug1985 (a)	17 Feb 1982 ®	10	16 Apr 2003 (a)	11
ICERD		28 Nov 1983 ®	25 Jun 1999 (a)	22 Feb 1974(a)			15 Sep 1967 ®		28 Jan 2003 (a)	09 Jun 1982(a)	6	16 Apr 2003 (a)	7
ICESCR		26 May 1992 ®	23 Feb 2006(a)	13 Feb 2007 ®			7 Jun 1974 ®		05 Sep 1999 (a)	24 Sep 1982(a)	6	16 Apr 2003 (a)	7
ICMW		(s) 2004-09-27					05 Jul 1995 ®				1	30 Jan 2004 (a)	2
CRC	27 Dec 1995 (a)	15 Oct 1992 (a)	05 Sep 1990 ®	08May 1991(a)	17 Feb 1995(a)	15 Jul 1991 (a)	21 Aug 1990 ®	05 Oct 1995(a)	27 Mar1992 (a)	28 Feb 1990 ®	10	16 Apr 2003 (a)	11
CRPD	(s) 2007 Dec18										0		0
Total R/A	2	6	6	4	2	2	7	2	6	5		7	
CRC-OP-AC		16 Jul 2004 ®		20 Sep 2006(a)			26 Aug 2003 ®		27 Feb 2006 (a)	20 Dec 2001 ®	6	02 Aug 2004 (a)	7
CRC-OP-SC	21 Nov 2006(a)	30 May 2002 ®		20 Sep 2006(a)			28 May 2002 ®		11 Jan 2006 (a)	20 Dec 2001 ®	7	16 Apr 2003 (a)	8
CAT-OP		30 Mar 2007 ®									1	(s) 2005-09-17	1
CCPR-OP2-DP							20 Nov 2007 ®				1	18 Sep 2003 (a)	2

Source: Office of UN High Commmissioner for Human Rights, 2007

Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)

International Covenant on Civil and Political Rights (ICCPR)

Convention for the Protection of All Persons from Enforced Disappearance (CED), sign 2007, entry into force 2010

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

International Covenant on Economic, Social and Cultural Rights (ICESCR)

International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICMW), sign 1990, entry into force 2003

Convention on the Rights of the Child (CRC)

Convention on the Rights of Persons with Disabilities (CRPD)

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC-OP-AC), entry into force 2002

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC-OP-SC), 2002

Optional Protocol of the Convention against Torture (CAT-OP)

Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty (CCPR-OP2-DP)

(s) = sign

(a) = accession

® = ratification

By SISOUK B.

Table 4: ASEAN Member States Ratified the Core Human Rights Instruments in 2018

Treaty Name	ASEAN Member States Ratified the Core International Human Right Instruments										No.	Extra	Total No.
	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam		Timor Leste	
	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date	S/R/A Date		S/R/A Date	
CAT	(s) 2015 Sep 22	15 Oct 1992 (a)	28 Oct 1998 ®	26 Sep 2012 ®			18 Jun 1986 (a)		02 Oct 2007 (a)	05 Feb 2015 ®	6	16 Apr 2003 (a)	7
ICCPR		26 May 1992 ®	23 Feb 2006(a)	25 Sep 2009 ®			23 Oct 1986 ®		29 Oct 1996 (a)	24 Sep 1982(a)	6	18 Sep 2003 (a)	7
CED		27 Jun 2013 (a)	(s) 2010-09-27	(s) 2008-09-29					(s) 2012-01-09		1		1
CEDAW	24May 2006(a)	15 Oct 1992 ®	13 Sep 1984 ®	14 Aug 1981®	05 Jul 1995 (a)	22 Jul 1997 (a)	05 Aug 1981 ®	05 Oct 1995(a)	09 Aug 1985 (a)	17 Feb 1982 ®	10	16 Apr 2003 (a)	11
ICERD		28 Nov 1983 ®	25 Jun 1999 (a)	22 Feb 1974(a)			15 Sep 1967 ®	27 Nov 2017 ®	28 Jan 2003 (a)	09 Jun 1982(a)	7	16 Apr 2003 (a)	8
ICESCR		26 May 1992 ®	23 Feb 2006(a)	13 Feb 2007 ®		06 Oct 2017 ®	7 Jun 1974 ®		05 Sep 1999 (a)	24 Sep 1982(a)	7	16 Apr 2003 (a)	8
ICMW		(s) 2004-09-27	31 May 2012®				05 Jul 1995 ®				2	30 Jan 2004 (a)	3
CRC	27 Dec 1995 (a)	15 Oct 1992 (a)	05 Sep 1990 ®	08May 1991(a)	17 Feb 1995(a)	15 Jul 1991 (a)	21 Aug 1990 ®	05 Oct 1995(a)	27 Mar1992 (a)	28 Feb 1990 ®	10	16 Apr 2003 (a)	11
CRPD	11 Apr 2016 ®	20 Dec 2012 (a)	30 Nov 2011 ®	25 Sep 2009 ®	19 Jul 2010 ®	07Dec 2011(a)	15 Apr 2008 ®	18 Jul 2013®	29 Jul 2008 ®	05 Feb 2015 ®	10		10
T R/A 1991	0	1	2	3	0	1	6	0	1	5			
T R/A 1993	0	6	2	3	0	1	6	0	2	5			
TR/A 2007	2	6	6	4	2	2	7	2	6	5			7
T R/A 2018	3	8	8	7	3	4	8	4	7	7			7
CRC-OP-AC	17May 2016 (a)	16 Jul 2004 ®	24 Sep/2012 ®	20 Sep 2006(a)	12 Apr 2012(a)		26 Aug 2003 ®	11 Dec 2008®	27 Feb 2006 (a)	20 Dec 2001 ®	8	02 Aug 2004 (a)	9
CRC-OP-SC	21 Nov 2006(a)	30 May 2002 ®	25 Sep/2012 ®	20 Sep 2006(a)	12 Apr 2012(a)	16 Jan 2012 (a)	28 May 2002 ®		11 Jan 2006 (a)	20 Dec 2001 ®	9	16 Apr 2003 (a)	10
CAT-OP		30 Mar 2007 ®					17 Apr 2012(a)				2	(s) 2005-09-16	2
CCPR-OP2-DP							20 Nov 2007 ®				1	18 Sep 2003 (a)	2

Source: Office of UN High Commissioner for Human Rights, 2018

Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)

(s) = sign

International Covenant on Civil and Political Rights (ICCPR)

Convention for the Protection of All Persons from Enforced Disappearance (CED), sign 2007, entry into force 2010

(a) = accession

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

® = ratification

International Covenant on Economic, Social and Cultural Rights (ICESCR)

International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICMW), sign 1990, entry into force 2003

TR/A = Total Ratification/
Accession

Convention on the Rights of the Child (CRC)

Convention on the Rights of Persons with Disabilities (CRPD)

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC-OP-AC), entry into force 2002

4.2.1.1 Comparison of the Ratification Record Between Year 1991 and 1993

In 1991, ASEAN consisted of six members namely: Brunei, Indonesia, Malaysia, the Philippines, Singapore, and Thailand. In Table 1 their name is in blue. During this time, there were six core international human rights treaties, namely the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), the International Convention on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child (CRC). Among these treaties, the Philippines ratified all of them. The reason that the Philippines ratified all these treaties can be based on the domestic legal foundation such as in the Philippines Constitution of 1987 which clearly states in Article 2, Section 2 that: “The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations”.²⁸⁸ This Article identifies the acceptance of the Philippines government to principles of international law which could be said that human rights treaties also a part of international law.

In addition, as the Chairman of ASEAN, the Philippines used to announce the protection of human rights in accordance with the purposes and principles of the UN Charter and the GA Resolution 34/22.²⁸⁹ This shows that the Philippines had much concern on human rights promotion and protection and the Philippines has an ability to implement these treaties

²⁸⁸ “The 1987 Constitution of the Republic of the Philippines” (1987), Article 2.

²⁸⁹ “Statement by the Philippine Foreign Minister as Chairman of the ASEAN Standing Committee and on Behalf of the ASEAN Committee and on Behalf of the ASEAN Foreign Ministers, New York, 9 January 1979,” 590.

as observe it behavior in the current situation. Furthermore, Indonesia ratified the CEDAW in 1984 and the CRC in 1990. Thailand ratified the CEDAW one year later than Indonesia. Vietnam is one of the countries that has a good record of ratification. In 1982 Vietnam acceded to four treaties and in 1990 Vietnam also ratified the CRC, which shows that among six treaties, it was only the CAT that Vietnam did not yet ratify.

However, there are some countries that have not ratified any international human rights treaties in 1991 namely, Brunei, Malaysia, and Singapore. These three countries have not even signed any human rights treaties at that time. As mentioned earlier, ASEAN was the youngest sub-region in terms of human rights protection; it was common that members of ASEAN would have a low record on ratification of human rights treaties in 1991.

Cambodia could be called as a special country since Cambodia had a history of a long internal conflict. However, during the time of conflict, Cambodia ratified the ICERD in 1983. Cambodia suddenly ratified all treaties in 1992 (please see Figure 1) after the Cambodian problem was solved at the end of 1991. Cambodia ratified the ICCPR and the ICESCR on 26 May 1992. The CAT, CEDAW, and CRC were also ratified on 15 October of the same year. This is a significant point to be noticed for a better attitude of Cambodia after having solved its conflict. It showed that Cambodia was extremely concern about human rights since there were severe violations in Cambodia as clearly explained in Chapter 1. In addition, Thailand also ratified the CRC on 27 March 1992. The changing attitude of Cambodia and Thailand showed the concern of both countries with regards to human rights protection. However, Brunei, Malaysia, and Singapore still kept the same record in the year 1991.

4.2.1.2 Comparison of the Ratification between Year 1993 and 2007

The 1990s constituted a transition period for ASEAN since the number of ASEAN members increased from six to ten. From 1993 to 2007, there were developments on the ratification numbers of ASEAN members. In addition, the number of the core human rights treaties also increased from six to nine and four optional protocols were added; please see Figure 1. The old members namely Singapore, Malaysia, and Brunei which never ratified any treaty on human rights had changed their attitudes and started to be concerned about human rights treaties in 1995. Three of them ratified the CRC in 1995 and Singapore and Malaysia also ratified the CEDAW in the same year. Only Brunei solely ratified the CEDAW in 2006 but it also signed the CRPD in 2007. In addition, the attitude of Indonesia and Thailand had changed positively. Both of them used to have ratified only two treaties in 1993 but increased to six treaties in 2007. The Philippines was a country that had a good record from the beginning and still kept their good performance by having ratified seven treaties and three optional protocols, which is considered as the best record in ASEAN during that year.

Cambodia signed the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICMW) in 2004 and ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict (CRC-OP-AC) in 2004, the Optional Protocol to the Convention on the Right of the Child on the Sale of Children, Child Prostitution and Child Pornography (CRC-OP-SC) in 2002, and the Optional Protocol to the Convention Against Torture (CAT-OP) in 2007. New members of ASEAN such as Lao PDR and Vietnam also ratified some treaties and optional protocols. Lao PDR acceded to the CRC-OP-AC and the CAT-OP at the same date namely 20 September 2006 and ratified the ICESCR in 2007. Thailand acceded to the CRC-OP-AC and the CRC-OP-SC in 2006 and to the CAT in 2007. Indonesia also acceded to the

ICCPR and ICESCR in 2006. It could be said that the positive changing attitudes of ASEAN members could be a good signal for ASEAN in preparation to adopt an ASEAN Charter which put human rights in some articles.

4.2.1.3 Comparison of the Ratification Between Year 2007 and 2018

ASEAN has changed significantly since its establishment. Last year 2017 marked the 50th Anniversary of ASEAN. Since the ASEAN Charter came into force in 2008, this year is the 10th year anniversaries. ASEAN have more developed on human rights promotion and protection (see Table 4). The records show that the ratification of international human rights treaties are increasing considerably between 2007 and 2018. For instance, all members of ASEAN ratified the CEDAW, CRC and CRPD which Brunei recently ratified CRPD in 2016. Brunei not only ratified CRPD in 2016 but also ratified CRC-OP-AC in the same year. This could be a great effort of Brunei for human rights promotion and protection.

ICERD and ICESCR were ratified by seven ASEAN members. The latest country that ratified ICERD was Singapore on 27 November 2017 and Myanmar ratified ICESCR on 6 October 2017. In addition, Brunei, Myanmar and Singapore are more concerns on human rights promotion and protection which could be identified by recently ratification of human rights treaties of these countries. Besides, 60 per cent of the ASEAN members have ratified the CAT and ICCPR.

For the optional protocols, nine members have ratified the CRC-OP-AC, except Myanmar. The CRC-OP-SC was also ratified by nine members, except Singapore. This shows that the CRC-OP-AC and CRC-OP-SC have been accepted by almost all members of ASEAN.

Specially, Cambodia, Indonesia, and the Philippines have ratified 8 out of 9 international human rights treaties. These three countries have the highest ratification statistics. It could be noticed that Cambodia has taken a greater interested in human rights issues since the conflict. Lao PDR, Thailand, and Vietnam have ratified 7 out of 9 treaties. These attitudes show that the major ASEAN members have progressively developed their views about human rights by ratified of human rights treaties.

4.2.2 The ASEAN Declaration on Human Rights

As a result of the work of the AICHR in drafting the ASEAN Human Rights Declaration (AHRD), the AHRD was adopted by the Heads of State or the Government of ASEAN Member States at Phnom Penh, Cambodia on 18 November 2012 as one of the outcomes of the 21st ASEAN Summit. It took a long time to obtain a human rights instrument since ASEAN was established, compared with other regions that had human rights instrument already such as Africa which has the Charter on Human and Peoples' Rights, the Americas which have the American Convention on Human Rights and Europe which has the European Convention on Human Rights.²⁹⁰ Thus, presently, ASEAN has the ASEAN Declaration on Human Rights as an instrument. The AHRD follows the same way as the American Declaration on the Rights and Duties of Man which preceded the American Convention on Human Rights, and the Universal Declaration of Human Rights which preceded the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). The ADHR is an acceptance of

²⁹⁰ Paula Gerber, "ASEAN Human Rights Declaration: A Step Forward or a Slide Backwards?," The Conversation Academic rigour, Journal flair, online, accessed January 26, 2015, <http://theconversation.com/asean-human-rights-declaration-a-step-forward-or-a-slide-backwards-10895>.

the significance of political and civil rights for ASEAN even though not all ASEAN Member States ratified the ICCPR.

Article 4.2 of the Terms of Reference of the AICHR states that “the AICHR is mandated to develop an ASEAN Human Rights Declaration with a view to establish a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights.”²⁹¹ With the AHRD, the ASEAN Heads of Member States reaffirmed further commitment to the UDHR, the Charter of the United Nations, the Vienna Declaration of Human Rights and Program of Action, and other international human rights instruments to which ASEAN member states are parties.²⁹² The adoption of the AHRD is reiterated in the Phnom Penh Statement.²⁹³ It is an important effort of ASEAN in promoting human rights in Southeast Asia. The AHRD is a new ASEAN instrument following the ASEAN Charter and the Human Rights Body. The AHRD enshrines in particular the respect for, promotion and protection of human rights and fundamental freedoms in ASEAN for ASEAN peoples.²⁹⁴

Comparing the texts of the AHRD and the UDHR, there are some similarities and some differences. The first difference is the format. The AHRD lists six main points which include General Principles, Civil and Political Rights, Economic, Social and Cultural Rights, the Right to Development, the Right to Peace, and Cooperation in Promotion and Protection of

²⁹¹ ASEAN Secretariat, *AICHR ASEAN Intergovernmental Commission on Human Rights What You Need to Know*, 19.

²⁹² ASEAN Secretariat, “ASEAN Human Rights Declaration” (2012), Preamble.

²⁹³ ASEAN Secretariat, “ASEAN Human Rights Declaration and the Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration (AHRD)” (2013), 13.

²⁹⁴ *Ibid.*, 2.

Human Rights.²⁹⁵ The UDHR on the other hands starts with the Preamble and then proceeds Article by Article.²⁹⁶ Furthermore, in the General Principles of the AHRD, it seems to be correct that there is a limited number of rights including only nine articles as some civil society organizations state, but it is also true that there are other rights added in the next parts.

However, both declarations have similarities. For instance, Article 1 of the AHRD replicated Article 1 of the UDHR except for changes in two words. First, the phrase ‘all human beings’ is changed to ‘all persons’ and another word ‘brotherhood’ in the UDHR has been changed to ‘humanity’ in the AHRD.²⁹⁷ A closer look at the meaning of the words ‘brotherhood’ and ‘humanity’ would lead one to conclude that they are slightly different, since ‘brotherhood’ means the feeling that men should treat one another like brothers or the relationship between brothers; however, ‘humanity’ means all living human inhabitants of the earth or human beings collectively.²⁹⁸ It might have been the intention of the AHRD to make this Article clearer as to cover all persons, without discriminating on gender. However, it does not mean that the UDHR does not cover human rights for women, since it was issued long time ago and at that time the issue of gender was not seriously discussed.

Another similarity can be found in Article 2 of the AHRD which covers the first paragraph of Article 2 of the UDHR. Article 3 of the AHRD replicates Article 6 and some parts of Article 7 of the UDHR, which concerns the right of recognition and equality. Article 5 of the AHRD also replicates Article 8 of the UDHR related to the right of an effective and

²⁹⁵ ASEAN Secretariat, *supra* note 315.

²⁹⁶ “The Universal Declaration of Human Rights,” (1948).

²⁹⁷ Catherine Shanahan Renshaw, “The ASEAN Human Rights Declaration 2012,” *Human Rights Law Review* 13, no. 3 (2013): 562.

²⁹⁸ ABC LiveBook Dictionary and Oxford Dictionary.

enforceable remedy.²⁹⁹

Under the Civil and Political Rights part of the AHRD, there are 15 articles, among which 13 articles which are similar to the articles in the UDHR. Article 12 of the AHRD is a combination of Article 3 and Article 9 of the UDHR, but does not cover the right to life which is stated in Article 3 of the UDHR. The reason why the AHRD does not cover the right to life is probably the fact that many members of ASEAN still keep the death penalty in their domestic system. In addition, Article 13 of the AHRD is similar to Article 8.1 and 8.2 of the ICCPR concerning the issues of servitude and slavery. Article 14 of the AHRD is also a part of Article 7 of ICCPR which states that: “No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment”.³⁰⁰ Article 20.1 and 20.2 of the AHRD replicate Article 11.1 and 11.2 of the UDHR while Article 20.3 replicates Article 14.7 of the ICCPR.

Under the Economic, Social and Cultural Rights of the AHRD from Articles 26 to 34, there are five articles which are similar to the UDHR. Article 26 of AHRD just affirms for ASEAN Member States all the economic, social and cultural rights in the UDHR.³⁰¹ Articles 34 and 35 of the AHRD, meanwhile, are special for ASEAN Member States. Article 34 emphasizes that: “ASEAN Member States should take steps, individually and through regional and international assistance and cooperation, especially economic and technical, to maximum of its available resources, with a view to achieving progressively the full realization

²⁹⁹ Catherine Shanahan Renshaw, *supra* note 310, at 560.

³⁰⁰ ASEAN Secretariat, ASEAN Human Rights Declaration and the Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration (AHRD), Article 14.

³⁰¹ *Ibid.*, Article 26.

of economic, social and cultural rights recognized”.³⁰²

The AHRD includes rights which are not enshrined in the UDHR such as the right to development,³⁰³ the right to peace,³⁰⁴ the right to health, the right to access to medical facilities, the right to have treatment, care and support for people suffering from communicable diseases, including HIV/AIDS.³⁰⁵ However, as a whole, in the UDHR, there are only five Articles that are not included in the AHRD. Those Articles are Article 10, 17, 24, 28 and 29. Why are these Articles not included in the AHRD and what are they about?

Article 10 of the UDHR stipulates that: “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”.³⁰⁶ This Article relates criminal proceedings over which ASEAN does not have any specific rule, and each individual State of ASEAN has its own juridical system. Therefore, it is better that ASEAN should not provide this provision in the AHRD. This issue should be dealt with by domestic law where the problems can occur.

Article 17 of the UDHR mainly focuses on the right to own property, whether alone or in association with others, and provides that no one shall be arbitrarily deprived of his property. This article concerns property and arbitrariness in property exploitation. It is also better that ASEAN should not include this article in the AHRD because ASEAN respects the

³⁰² *Ibid.*, Article 33.

³⁰³ *ASEAN Declaration on Human Rights*, in Dinah L. Shelton and Paolo G. Carozza, at Article 35-37.

³⁰⁴ *Ibid.*, Article 38.

³⁰⁵ *Ibid.*, Article 29 (1), (2).

³⁰⁶ “Universal Declaration of Human Rights (1948),” in *In Alison Bisset, Blackstones’s International Human Rights Documents*, 9th ed. (Oxford University Press, 2014), 11.

legal system of each country, which refers to different kinds of legal systems in ASEAN member States.

Article 24 of the UDHR stipulates that: “Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay”³⁰⁷ and Article 28 of the UDHR stipulates that: “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized”.³⁰⁸ These Articles are also directly connected to labor law and the social welfare law of each State, over which all ASEAN members may have different rules and policies for these laws. It is more appropriate to let each country deal with these issues when there are problems.

Article 29 of the UDHR is the last Article that is not included in the AHRD providing that:³⁰⁹

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

This Article includes two main issues, duties and rights which concern freedoms. Both of them are related to constitutional law of each country. In ASEAN, it is not possible to create a common standard for Member States which have different legal and political systems.

307 “Universal Declaration of Human Rights (1948),” 12.

308 *Ibid.*, 13.

309 *Ibid.*

In addition, in the UDHR, all Articles contain the common word, “everyone”, but in the AHRD “every person” is used. The changing of this word was not critical for other members or civil societies organizations, but it was jointly suggested by representatives of Thailand, the Philippines and Indonesia.³¹⁰ It means that every country accepted this idea.

The AHRD was established particularly for ASEAN Member States. Therefore, it will only fit ASEAN but may have some different articles from the UDHR. If the AHRD would be the same as the UDHR, it would mean that ASEAN does not need to have an AHRD but could only have the UDHR. However, having an AHRD is another step of ASEAN in the promotion and protection of human rights in ASEAN under the framework of ASEAN human rights.

4.3 The Development of ASEAN Human Rights in ASEAN Documents

ASEAN human rights slowly developed from the cooperation of international agreements, declarations and cooperation. However, after ASEAN became ASEAN-10, ASEAN has put more effort in building the association to be formalized and by adding human rights promotion and protection in their documents and actions.

4.3.1 Human Rights in ASEAN Joint Communiqués and Action Plans

An ASEAN Joint Communiqué is always issued by the AMM but the most significant one is the Joint Communiqué of 1993, which reaffirmed ASEAN’s commitment to respect for human rights and fundamental freedoms, as set out in the Vienna Declaration of 25 June 1993. It also declared that ASEAN should consider the establishment of an appropriate regional

³¹⁰ Catherine Renshaw, “Human Rights and Regionalism in Southeast Asia” (University of Sydney, 2014), 310.

mechanism on human rights.³¹¹ From this commitment, ASEAN developed their working plan through ASEAN Action Plans. This is one of the important documents of ASEAN not only in general terms, but also for human rights issues. The ASEAN Action Plan includes two action plans called the Hanoi Plan of Action (HAP) and the Vientiane Action Programme (VAP). It started from HAP in 1997, which established the ASEAN Vision 2020 as long-term goals for ASEAN, including human rights protection and promotion. The HAP had a time limit and ended in 2004; however, the VAP was drawn up to replace the HAP in 2004.

In 1997, the Second ASEAN Informal Summit was held in Kuala Lumpur which adopted the ASEAN Vision 2020 with a broad vision for ASEAN in the year 2020.³¹² To make this long-term vision work, the HPA was the first plan of action to implement and realize the goals of this vision. Under the HPA, Section IV, paragraph 4.8, ASEAN committed itself to: “enhance the exchange of information in the field of human rights among ASEAN countries in order to promote and protect all human rights and fundamental freedoms of all peoples in accordance with the Charter of the United Nations, the Universal Declaration of Human Rights and the Vienna Declaration and Program of Action”.³¹³ This message reconfirmed the commitment of ASEAN in the field of human rights protection and promotion in Southeast Asia, in accordance with the international human rights instruments.

However, the HPA had only a six-year timeframe ending in 2004. Before the ending of this timeframe, the ASEAN Leaders in the 9th ASEAN Summit in 2003 were gratified to

³¹¹ ASEAN Foreign Ministers, “Joint Communiqué of the 26th ASEAN Ministerial Meeting, Singapore, 24 July 1993,” 1993, 1–7.

³¹² ASEAN Secretariat, *AICHR ASEAN Intergovernmental Commission on Human Rights What You Need to Know*, 2nd ed. (Jakarta: Public Outreach and Civil Society Division, 2014), 7.

³¹³ ASEAN Secretariat, “Declaration of ASEAN Concord II (Bali Concord II),” *Association of Southeast Asian Nations*, 2014, Section IV, paragraph 4.8.

“note the development and progress of ASEAN since the inception of the Declaration of ASEAN Concord in 1976.”³¹⁴ The ASEAN Leaders signed the Declaration of ASEAN Concord II in 2003 and established an ASEAN Community with support of three pillars: economic cooperation, socio-cultural cooperation, and political and security cooperation.³¹⁵ These three pillars became the key of development for the ASEAN Community. The framework of these three pillars was set to achieve the ASEAN Community through the ASEAN Security Community, ASEAN Economic Community and ASEAN Socio-Culture Community.³¹⁶

To support the ASEAN Vision 2020, ASEAN set up the Vientiane Action Programme (VAP) 2004-2010 which fixed a broad framework to see how the ASEAN community might look in the future.³¹⁷ At the 10th ASEAN Summit in Lao PDR in 2004, the VAP 2004-2010 was adopted to replace the Hanoi Plan of Action. The VAP has four Annexes: Annex 1. ASEAN Security Community; Annex 2. ASEAN Economic Community, Annex 3. ASEAN Socio-Culture Community; and Annex 4. Narrowing the Development Gap.³¹⁸ The VAP briefly established a network of cooperation among existing human rights mechanisms and promotion of human rights under the ASEAN Security Community. Under the Vientiane

³¹⁴ “Press Statement by the Chairperson of the 9th ASEAN Summit and the 7th ASEAN + 3 Summit, Bali, Indonesia, 7 October 2003” (Indonesia, 2003), 1–2.

³¹⁵ ASEAN Secretariat, “Declaration of ASEAN Concord II (Bali Concord II),” Article 1.

³¹⁶ “Press Statement by the Chairperson of the 9th ASEAN Summit and the 7th ASEAN + 3 Summit, Bali, Indonesia, 7 October 2003,” 3.

³¹⁷ James Munro, “Why States Create International Human Rights Mechanisms: The ASEAN Intergovernmental Commission on Human Rights and Democratic Lock-in Theory,” *Asia-Pacific Journal on Human Rights and the Law* 10, no. 1 (2009): 4.

³¹⁸ ASEAN Leaders, “Vientiane Action Programme 2004-2010” (2004), 2.

Action Programme Annex 1, Measure 1.1.4 was mainly focused on promoting human rights, with the following planned actions:³¹⁹

1. Completion of a stock taking of existing human rights mechanism and equivalent bodies, including sectoral bodies promoting the rights of women and children;
2. Formulation and adoption of an MOU to establish a network among existing human rights mechanisms;
3. Formulation of a work programme of network;
4. Promotion of education and public awareness on human rights;
5. Establishment of a network of cooperation among existing human rights mechanism;
6. Elaboration of an ASEAN instrument on the protection and promotion of the rights of migrant workers; and
7. Establishment of an ASEAN Commission on the Promotion and Protection of the Rights of Women and Children [ACWC].

Promoting human rights was a priority issue for the ASEAN Security Community since it was set up in the political development which was the first program area and measure of the VAP.³²⁰ ASEAN mainly focused on the promotion rather than the protection of human rights. However, promotion was a foundation of the protection issue.

4.3.2 Human Rights in the ASEAN Charter and Blueprints

ASEAN developed itself and adopted the ASEAN Charter in 2008. The ASEAN Charter provides for human rights in the preamble, stipulating that: “adhering to the principle of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms”.³²¹ Not only does it focus on human rights but it also touches upon democracy, good governance, and the rule of law. ASEAN has also put human rights as the main purpose of ASEAN in Article 1(7) which stipulates that: “To strengthen

³¹⁹ *Ibid.*, Annex 1.

³²⁰ *Ibid.*, 25.

³²¹ ASEAN Secretariat, “The ASEAN Charter,” 2008, 2.

democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN”.³²² This shows that human rights fully became an ASEAN concern. Human rights became a significant issue for ASEAN.

Furthermore, Article 2(2)(i) emphasizes: “respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice”.³²³ This points out that human rights have become a principle of ASEAN from then on. Moreover, Article 14 establishes an ASEAN Human Rights Body and includes two paragraphs:

1. In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body.
2. This ASEAN human rights body shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers meeting.

This demonstrates that ASEAN has to establish an ASEAN Human Rights Body for promoting and protecting human rights in the Southeast Asian Region. This was another turning point of ASEAN which was ready for planning to establish a human rights body in ASEAN.

ASEAN has attempted to play a role in promoting human rights through three pillars which were issued in the Declaration of ASEAN Concord II.³²⁴ They were set to develop and achieve the ASEAN Community in 2003. To make ASEAN stronger, the ASEAN Charter created the ASEAN Community Councils in 2008 and the Roadmap for an ASEAN Community 2009-2015 was set up. The ASEAN Blueprints consist of the ASEAN Economic

³²² *Ibid.*, 4.

³²³ *Ibid.*, 7.

³²⁴ Naparat Kranrattanasuit, *ASEAN and Human Trafficking: Case Studies of Cambodia, Thailand and Vietnam* (Koninklijke Brill NV, Leiden, The Netherlands, 2014), 9.

Community Blueprint (AEC Blueprint), the ASEAN Political-Security Community Blueprint (APSC Blueprint), and the ASEAN Socio-Cultural Community Blueprint (ASCC Blueprint). The AEC Blueprint was adopted at the 13th ASEAN Summit on 20 November 2007 in Singapore, but agreed to develop an ASCC and APSC Blueprint to ensure that concrete action is undertaken to promote the establishment of the ASEAN Community. The APSC Blueprint and ASCC Blueprint were adopted at 14th ASEAN Summit on 1 March 2009 in Thailand. This showed that the AEC Blueprint was a priority for ASEAN but the most important blueprints for this paper are the APSC and the ASCC since both include human rights actions.

4.3.2.1 The ASEAN Socio-Cultural Community Blueprint

The ASCC Blueprint is one of the important documents for ASEAN human rights, as its primary goal is to contribute to realize an ASEAN Community that is people-centered and socially responsible, with a view to achieving enduring solidarity and unity among the nations and peoples of ASEAN, by forging a common identity and building a caring and sharing society. The ASCC is characterized by a culture of regional resilience, adherence to agreed principles, a spirit of cooperation, collective responsibility, to promote human and social development, respect for fundamental freedoms, gender equality, the promotion and protection of human rights and the promotion of social justice.³²⁵ The ASCC envisages the following characteristics: Human Development, Social Welfare and Protection, Social Justice and Rights, Ensuring Environmental Sustainability, Building the ASEAN Identity, and Narrowing the Development Gap. Under these characteristics, the human rights issue was emphasized under Social Justice and Rights. ASEAN is committed to promoting social justice and mainstreaming people's rights into its policies and all spheres of life, including the rights

³²⁵ ASEAN Secretariat, "ASEAN Socio-Cultural Community Blueprint," 2009, 67.

and welfare of the disadvantaged, vulnerable and marginalized groups such as women, children, the elderly, persons with disabilities and migrant workers.³²⁶

To promote and protect the rights and welfare of women, children, the elderly, and persons with disabilities, the ASCC sets up the strategic objective to safeguard the interests and rights, provides equal opportunities, and raises the quality of life and standard of living for women, children, the elderly, and persons with disabilities. These objectives will be supported by fifteen actions; such as, to work towards the establishment of an ASEAN commission on the promotion and protection of rights of women and children; continue to implement the Work Plan to Operationalize the Declaration on the Elimination of Violence Against Women in the ASEAN Region; and implement programs on child survival, development and protection consistent with the Convention on the Rights of the Child. In addition, to protect and promote the rights of migrant workers, the ASCC also created the strategic objective to ensure fair and comprehensive migration policies and adequate protection for all migrant workers in accordance with the laws, regulations and policies of the respective ASEAN Member States, as well as to implement the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.³²⁷

To make all of this happen, it needs actions to operationalize the ASEAN Community on the implementation of ASEAN Declaration on the Protection and Promotion of Rights of Migrant Workers under the auspices of the Senior Labor Officials Meeting (SLOM) to implement the provisions of the Declaration and work towards the development of an ASEAN instrument on the protection and promotion of the rights of migrant workers; institutionalize and convene on a regular basis the ASEAN Forum on Migrant Labor as a

³²⁶ *Ibid.*, 78.

³²⁷ *Ibid.*, 79.

platform for broad-based discussion on migrant labor under the auspices of the Committee, which reports to SLOM; intensify the efforts to protect the fundamental human rights, promote welfare and uphold human dignity of migrant workers by facilitating the exercise of consular functions to consular or diplomatic authorities of states of origin when a migrant worker is arrested in accordance with the Vienna Convention on Consular Relations; and promote capacity building by sharing information and best practices, as well as opportunities and challenges in relation to the protection and promotion of migrant workers' rights and welfare. The actions for these human rights protection and promotion were taken by the ASCC. It proved that gradually ASEAN has put more effort on human rights.

4.3.2.2 The ASEAN Political-Security Community Blueprint

Besides the ASCC Blueprint, the APSC Blueprint also highlights the protection and promotion of human rights. As a characteristic element of the APSC, the APSC shall promote political development in adherence with the principles of democracy, the rule of law and good governance, respect for, and promotion and protection of human rights and fundamental freedoms as inscribed in the ASEAN Charter.³²⁸ ASEAN's cooperation in political development aims to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to rights and responsibilities of the members States of ASEAN. To promote and protect human rights, the APSC needs actions to:³²⁹

³²⁸ ASEAN Secretariat, "ASEAN Political-Security Community Blueprint," 2009, 5.

³²⁹ *Ibid.*, 8–9.

- Establish an ASEAN human rights body through the completion of its Terms of Reference (TOR) by 2009 and encourage cooperation between it and existing human rights mechanisms, as well as with other relevant international organizations;
- Complete a stock-take of existing human rights mechanisms and equivalent bodies, including sectoral bodies promoting the rights of women and children by 2009; cooperate closely with efforts of the sectoral bodies in the development of an ASEAN instrument on the protection and promotion of the rights of migrant workers;
- Strengthen interaction between the networks of existing human rights mechanisms as well as other civil society organizations, with relevant ASEAN sectoral bodies;
- Enhance conduct exchange of information in the field of human rights among ASEAN countries in order to promote and protect human rights and fundamental freedoms of peoples in accordance with the ASEAN Charter and the Charter of the United Nations, and the Universal Declaration of Human Rights and the Vienna Declaration and Program of Action;
- Promote education and public awareness on human rights; and
- Cooperate closely with efforts of the sectoral bodies in the establishment of an ASEAN commission on the promotion and protection of the rights of women and children.

These actions confirm that ASEAN human rights promotion and protection were not only a plan but they were put into action. How the ASEAN human rights body was established through the completion of its Terms of Reference and the work it has done will be examined in the next section.

4.3.3 The ASEAN Human Rights Body

To implement Article 14 of the ASEAN Charter and to fulfill the actions of the APSC to promote and protect human rights in ASEAN, the ASEAN human rights body was created in the name of the ASEAN Intergovernmental Commission on Human Rights (AICHR). The AICHR was inaugurated at the 15th ASEAN Summit in Cha-am Hua Hin, Thailand on 23

October 2009.³³⁰ The AICHR consists of 10 members who are representatives of each country member. The Ten AICHR representatives were appointed for a term of three years which is renewable once.³³¹ The ASEAN Leaders stated that the AICHR was a part of the intergovernmental cooperation on human rights.³³² The creation of the AICHR demonstrated ASEAN's commitment to pursue the promotion and protection of human rights and fundamental freedoms. The AICHR is the overarching body for handling human rights matters and cooperation with external partners, stakeholders and other ASEAN Bodies.³³³ The AICHR's decision making is based on consultation and consensus,³³⁴ referring to Article 20 of the ASEAN Charter on Consultation and Consensus.

The AICHR engages in dialogues and consultation with entities associated with ASEAN, and also consults with other national, regional and international institutions and entities concerned with the promotion and protection of human rights.³³⁵ There are two regular meetings a year and an additional meeting can be called when necessary.³³⁶ The first regular meeting of the AICHR was held in Jakarta, Indonesia from 28 March to 1 April 2010³³⁷ and the 20th regular meeting was chaired by a representative of Lao PDR and was

330 ASEAN Secretariat, *supra* note 330, at 10.

331 The High Level Panel on an ASEAN Human Rights Body, "Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights," 2009, Article 5.

332 ASEAN Secretariat, *supra* note 330, at 10.

333 *Ibid.*, 1.

334 *Ibid.*, 10.

335 The High Level Panel on an ASEAN Human Rights Body *supra* note 331, at Article 6.

336 ASEAN Secretariat, *supra* note 330, at 10.

337 AICHR, "Press Statement by the Chair of the ASEAN Intergovernmental Commission on the Human Rights," 2010, online, <http://aichr.org/2010/04/>.

held from 4 to 5 February 2016.³³⁸ Besides the regular meetings, the AICHR also conducted a Workshop on Transition between the AICHR Representatives 2013-2015 and the AICHR Representatives 2016-2018 which aimed to have a good transition for work that was already done by the former representatives to new representatives. The AICHR was established through the completion of a TOR with the following purposes:³³⁹

- To promote and protect human rights and fundamental freedoms of the peoples of ASEAN;
- To uphold the right of the peoples of ASEAN to live in peace, dignity and prosperity;
- To contribute to the realization of the purposes of ASEAN as set out in the ASEAN Charter in order to promote stability and harmony in the region, friendship and cooperation among ASEAN Members States, as well as the well-being, livelihood welfare and participation of ASEAN peoples in the ASEAN Community building process;
- To promote human rights within the regional context bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities;
- To enhance regional cooperation with a view to complementing national and international efforts on the promotion and protection of human rights; and
- To uphold international human rights standards as prescribed by the UDHR, the VDPA, and international human rights instruments to which ASEAN Member States are parties.

For making the framework and basis of the operationalization, the AICHR produced many founding documents as the result of meetings and consultations such as:

- AICHR Five Year Working Plan 2010-2015 and its indicative budget on the First Meeting between 28 March to 1 April 2010 in Jakarta, Indonesia;
- AICHR Priority Programs/Activities with its respective annual budget;
- Guidelines on the Operations of the AICHR adopted in the Fourth AICHR Meeting in Indonesia 2011;

³³⁸ AICHR, "Press Release Archive - AICHR," online, accessed March 4, 2016, <http://aichr.org/category/press-release/>.

³³⁹ The High Level Panel on an ASEAN Human Rights Body *supra* note 331, at 3–4.

- Rules of Procedure of the AICHR Fund;
- Guidelines on Budget Standardization;
- Guidelines on the AICHR Website's Editorial Board.

The AICHR Work Plan 2010-2015 has as an objective to give reality to the Terms of Reference and aims at realizing the aspiration of the people of ASEAN on human rights, strengthening the AICHR, promoting awareness on human rights in ASEAN, enhancing cooperation with external partners, implementing AICHR's overarching mandate on human rights and finally contributing to the successful building of an ASEAN Community by 2015.³⁴⁰ The Work Plan and all activities of the AICHR must be in accordance with the principles, mandate, functions and modalities under the TOR which lists the fourteen mandates.³⁴¹

In implementing the mandate after adoption, in the first year, in four areas strategies were developed for the promotion and protection of human rights and fundamental freedoms to complement the building of the ASEAN Community; to develop an ASEAN Human Rights Declaration with a view to establishing a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights; to provide advisory services and technical assistance on human rights matters to ASEAN Sectoral Bodies upon request; and to prepare studies on thematic issues of human rights in ASEAN.³⁴²

Each year, the AICHR will specify the priority programs and activities based on the Work Plan and in response to emerging exigencies on human rights in the region. The

³⁴⁰ ASEAN Foreign Ministers, "Five-Year Work Plan of the ASEAN Intergovernmental Commission on Human Rights (2010-2015)," 2009, 1.

³⁴¹ *Ibid.*, 1-5.

³⁴² SAPA-TFAHR Secretariat, "Hiding Behind Its Limits: A Performance Report on the First Year of the ASEAN Intergovernmental Commission on Human Rights (AICHR)" (Asian Forum for Human Rights and Development, October 27, 2010), 8.

activities of the AICHR in the short and medium term are as follows:³⁴³

- Undertake the required assessments for capacity building;
- Complete a stocking of existing human rights instruments acceded and ratified by ASEAN Member States;
- Conduct workshops on various themes related to human rights;
- Conduct training on human rights for specific target groups such as government officials, law enforcement officers, and teachers;
- Strengthen the ASEAN Secretariat's support for the AICHR;
- Disseminate information relating to the work of the AICHR including publications in both English and national languages;
- Share best practices of effective implementation of international human rights treaty obligations among ASEAN Member States;
- Coordinate with relevant ASEAN Sectoral Bodies to ensure the effective implementation of ASEAN instruments related to Human rights;
- Identify the current and potential human rights matters of interest to ASEAN; and
- Prepare studies on thematic issues of human rights in ASEAN.

To implement these activities and work plan work properly, the AICHR has organized many workshops, trainings, seminars and meetings. The latest meeting of the AICHR was held in Bohol, the Philippines as the 25th Meeting of the AICHR. Moreover, the AICHR also works with National Human Rights institutions in the Philippines, Indonesia, Thailand, Malaysia and Myanmar, and their regional networks, and the Southeast Asian National Human Rights Institutions Forum.³⁴⁴

The currently most important action of the AICHR is the dialogue with the EU under the name of "ASEAN-EU Policy Dialogues on Human Rights" which started in 2014. This proves that ASEAN has accepted human rights as one of the international issues unlike previous perspectives which often said that human rights issues should remain a domestic

³⁴³ ASEAN Secretariat, *AICHR ASEAN Intergovernmental Commission on Human Rights What You Need to Know*, 17–18.

³⁴⁴ Gerard Clarke, "The Evolving ASEAN Human Rights System: The ASEAN Human Rights Declaration of 2012," *Northwestern Journal of International Human Rights* 11, no. 1 (Fall 2012): 13.

competence. Now, human rights reflect a subject open to discussion.

On the other hand, another commission was established under the Roadmap for the ASEAN Community (2009-2015), in April 2010, the ASEAN Commission on the Protection and Promotion of the Rights of Women and Children (ACWC) was established as a sectorial body under the ASEAN Social-Cultural Community (ASCC).³⁴⁵ The ACWC is an intergovernmental body and an integral part of the ASEAN organizational structure.³⁴⁶ The establishment of the ACWC is mandated to help ASEAN to undertake Universal Periodic Reviews of the CEDAW and CRC.³⁴⁷ The ACWC is an important measure to ensure equitable development for women and children.³⁴⁸ This was a consequence that all ASEAN Member States ratified the CEDAW and CRC. The ACWC's purposes are to promote, protect and fulfil the rights of women and children in ASEAN to live in peace, equality, justice, dignity and prosperity and uphold human rights as prescribed by the UDHR, the Vienna Declaration and Programme of Action, the CEDAW and CRC.³⁴⁹ Each ASEAN Member State appointed its representative to the AICHR but chose two representatives of its own countries to the ACWC. One representative responds for issues with regards to women's rights, and the other responds for issues with regards to children's rights.³⁵⁰ The First Chair and Vice Chair of the ACWC were elected by the appointed representatives. The subsequent Chair and Vice Chair shall be rotated among ASEAN Member States on an alphabetical basis,

³⁴⁵ ASEAN Foreign Ministers, "ASEAN Human Rights Timeline," online, accessed May 12, 2015, <http://humanrightsinasean.info/asean-background/asean-and-human-rights.html>.

³⁴⁶ ASEAN Secretariat, "Term of Reference ASEAN Commission on the Promotion and Protection of the Rights of Women and Children" (2010), 4.

³⁴⁷ *Ibid.*, 6.

³⁴⁸ *Ibid.*, 1.1.4.

³⁴⁹ *Ibid.*, 2–3.

³⁵⁰ *Ibid.*, 6.2.

on which the first Chair was Cambodia with a term of three years as specified in the TOR from 2010-2013, and the Second Chair was Brunei taking the role during 2013-2016.

These two commissions have some aspects in common and similarities, such as the decision making which is based on consensus and consultation, the terms of work, and the responsibility for annual reporting. However, the AICHR and ACWC do not have a specific mandate to receive and investigate complaints of human rights violations. The AICHR falls under the mandate of the ASEAN Political-Security Community while the ACWC falls under the responsibility of the ASEAN Social-Cultural Community. The Annual Report of the AICHR has to be submitted to the ASEAN Foreign Minister Meeting (AFMM), while the Annual Report of the ACWC has to be submitted to the ASEAN Minister Meeting on Social Welfare and Development (AMMSWD).

To avoid the overlapping of the AICHR and ACWC and for the purpose of working in alignment, the AICHR and the ACWC Representatives met with each other for the first time at the Seventh AICHR Meeting in Bali in 2011, to discuss the alignment of the AICHR and ACWC in which the ACWC acknowledged the mandate of the AICHR as the overarching body on human rights in ASEAN, with overall responsibility for the promotion and protection of human rights in ASEAN. The AICHR and ACWC representatives exchanged views on the status of their Commissions based on the ASEAN Charter and their respective TORs. The meeting recognized the mandate of each Commission as stipulated in their respective TORs, and will explore cooperation in accordance with the work plans of the two Commissions, for better coordination and collaboration. Both the AICHR and ACWC agreed that this meeting was the first of many between the two bodies.

The AICHR held a consultation meeting with the ACWC on 25 April 2014 at the ASEAN Secretariat to foster greater engagement and functional cooperation. This was the second meeting between the AICHR and ACWC as the two human rights mechanisms in ASEAN. The consultation meeting was co-chaired by H.E. U Kyaw Tint Swe, the Chair of AICHR and H.E. Datin Paduka Intan Md. Kassim, the Chair of ACWC. The AICHR and ACWC discussed the implementation of the AHRD and the Declaration on the Elimination of Violence Against Women and Elimination of Violence Against Children in ASEAN. The AICHR and ACWC also exchanged views on possible areas and mechanisms for cross sectoral cooperation and coordination.

As a result of their discussion, the AICHR and ACWC decided on Joint collaboration of their work plans, programs, projects and activities corresponding to the commitments in both Declarations. The AICHR and ACWC have identified four priority areas of cooperation: trafficking in persons especially women and children, disability, education, gender, peace and security. The AICHR and ACWC agreed about their functional cooperation and better coordination to move forward towards a. strategic partnership, including joint activities and the sharing of information on human rights.

The Consultation Meeting was concluded with a discussion between the AICHR and the ACWC with the Regional Program Manager of the UN Women to explore the possibility and modalities of support from the UN Women on the identified functional cooperation programs, projects and activities. The Consultation Meeting is the first step for the two bodies to foster better cohesion and to work together for the promotion and protection of the human rights and fundamental freedoms of the people of ASEAN. Future meetings of the two bodies will be scheduled at a mutually convenient time.

Conclusion

The progress of human rights in ASEAN has been developed and continues to be developed both by individual States of ASEAN and ASEAN as a group. Each State of ASEAN has improved its record of ratification international treaties on human rights. Even though some States still have a low record of ratification, some of them already created a National Institution on Human rights such as Malaysia and Myanmar. In addition, the cooperation among ASEAN Member States made ASEAN a stronger association and became ASEAN-10 in 1999. ASEAN human rights emerged from the framework of the PPA after Cambodia became a member of ASEAN. At the same time, during the admission of Laos and Myanmar, ASEAN started to have an Action Plan in 1997 for the first time, and developed from the Hanoi Action Plan. ASEAN committed itself to enhance exchange information in the field of human rights among ASEAN countries in order to promote and protect all human rights and fundamental freedoms of all peoples, in accordance with the Charter of the United Nations, the UDHR and the VDPA. Before the end of the HAP, the Declaration of ASEAN Concord II established an ASEAN Community in 2003 supported by three pillars: economic cooperation, socio-cultural cooperation, and political and security cooperation. The Vientiane Action Program was adopted in 2004 to replace the HAP. These two Action Plans prove that ASEAN's concern for human rights is growing gradually.

The turning point of ASEAN legal documents came when the ASEAN Charter was adopted in 2007 and entered into force in 2008. This Charter acknowledges the significance of human rights promotion and protection. It also created an important human rights body in

its Article 14 of the TOR. The Charter has created the ASEAN Community Council to make a long-term vision become reality. The APSC Blueprint and ASCC Blueprint were adopted at the 14th ASEAN Summit on 1 March 2009 in Thailand. These two blueprints are important since both include ASEAN's actions for human rights promotion and protection. In addition, the AICHR was created as the main organ to promote and protect human rights in ASEAN. The AICHR comes up with TOR which determines the work of AICHR and creates the role of AICHR. ASEAN implements their action plans, and human rights promotion and protection are among their action plans. Moreover, the increasing rate of ratification of international human rights treaties by ASEAN Member States is evidence to show that human rights became an important issue for ASEAN Member States, and ASEAN's human rights concerns in a continue arc.

Conclusion of Dissertation

Human rights used to rarely appear in ASEAN documents since the date of its establishment; but now, human rights are an important concern in ASEAN. The Cambodia problem was the key to identifying human rights concern in ASEAN. This concern would not be forwarded without the cooperation of ASEAN and other partners like the United Nations and the European Community or Union. The first human rights term appeared in the draft resolution of the UN on the Cambodia problem, where ASEAN members were involved in the drafting process. While it was not yet strong, it reached an initial stage of recognition through, for example, the ASEAN-EC Joint Statement on Political Issue in 1980 that reaffirmed a commitment to world peace, human rights, international cooperation and understanding, economic development, and social justice.³⁵¹ This is the second stage of human rights appearing in ASEAN through the Cambodia problem, developed from the initial stage. This second stage was the most significant, since it was the stage where human rights were recognized in the documents of ASEAN, which meant that the intention of ASEAN with regard to human rights was stronger than at the initial stage. In the Paris Peace Conference in 1989 and the Paris Peace Agreement in 1991, ASEAN reached the third stage of human rights concerns because of the Cambodia problem. This stage was also important since ASEAN also signed the Paris Peace Agreement. ASEAN accepted the terms and conditions of the agreements. After the Cambodia problem ended, ASEAN issued the Joint Communiqué in 1992 with emphasized human rights concerns in this document.

The advancement of human rights in ASEAN was considered by cooperation and ASEAN attitude and action. The first cooperation was the international cooperation by the

³⁵¹ "Joint Statement on Political Issues Kuala Lumpur, 8 March 1980," in *ASEAN Documents Series 1967-1988*, Third (ASEAN Secretariat, 1988), 438–40.

United Nations like the World Conference on Human Rights in Vienna which was influential on developing human rights concern in ASEAN. After the success of the Vienna Declaration, ASEAN produced many important human rights documents, together with the establishment and strengthening of national human rights institution in each individual States. Even though all Member States had not established national human rights institution yet, this idea was accepted among members.

The second cooperation was the cooperation between ASEAN and the EU. This cooperation had been developing day by day. The ASEAN-EU Declarations are the source of human rights concern in ASEAN. These documents reflect ASEAN concern on human rights. The most important part of the advancement of human rights concern in ASEAN is the cooperation between ASEAN and the EU. The ASEAN-EU Joint Statement in 1980 expressed human rights concern in ASEAN, the ASEAN-EU cooperation, and the ASEAN-EU Policy Dialogue on Human Rights develops human rights concern in ASEAN. This dialogue brings human rights issue to discuss openly as international issue between ASEAN and the EU. It clearly shows that ASEAN concerns on human rights were fully realized and developed.

The third cooperation was the cooperation between ASEAN and CLMV which should be noted as a part of the development of human rights concern by ASEAN attitude. Even though human rights may not be a condition for all of them to enter ASEAN, they have to deal with the human rights issue as in the Cambodia and Myanmar cases. Human rights circumstances in Myanmar caused tension to the ASEAN-EU relationship after Myanmar became a member of ASEAN. The ASEAN-EU talks were cancelled in 1997 and the meeting was prolonged for three year. This made both sides realize that human rights issue was one of significant issues that they should concern for having a good cooperation.

ASEAN postponed the admission of Cambodia to ASEAN because ASEAN contemplated that human rights violation in Cambodia disqualified it for ASEAN memberships. Human rights became one of the criteria for entering ASEAN in the Cambodian case. Eventually, Cambodia was able to become a member of ASEAN in 1999 and became the tenth member of ASEAN. Human rights may not have been considered as criterion for admission to would-be members of ASEAN before Cambodia. However, the situation of Cambodia shows that human rights protection is significant for ASEAN memberships in Cambodian case. The most important issue after Cambodia became a member of ASEAN was the impact of PPA on ASEAN. Human rights concern in PPA by Cambodia should also apply to whole ASEAN member States. It could be said that human rights could become one of the criteria for entering ASEAN from now on to avoid the criticism and tension, as in the case of Myanmar.

ASEAN's attitude showing by each individual countries on the ratification of the core international human rights instrument proved the action of ASEAN members on their action to promote and protect human rights within their nation. In addition, the willing and agreement on ASEAN Declaration on Human Rights of all ASEAN members also certified that ASEAN was ready to move forward for human rights promotion and protection. Hanoi and Vientiane Action Plans proved that ASEAN's concern for human rights was growing gradually. The ASEAN Charter acknowledges the significance of human rights promotion and protection, as it creates ASEAN human rights bodies, which are AICHR and ACWC. The ASEAN Blueprints are other important documents, since they include ASEAN's actions for human rights promotion and protection. The ASEAN Declaration on Human Rights is the latest single document of ASEAN on human rights. It could be claimed that it is the most significant document for ASEAN. Even though there might be criticism that the ASEAN

Declaration on Human Rights are not the same as the Universal Declaration of Human Rights, it should be accepted that if everything is the same, then it is of no meaning for ASEAN to issue the ASEAN Declaration. However, it was necessary to acknowledge that ASEAN needs a framework on human rights for ASEAN itself. The reality is that each region has its own specific concerns but the important issue is that AHRD proves the acceptance of ICCPR. Moreover, the increasing number of ratification of the core international human rights instruments and its optional protocol by ASEAN also prove that ASEAN has been progressing on human rights concerns. More than half of ASEAN Member States ratified seven and eight of human rights treaties. This shows that not only ASEAN as a whole advances human rights concern but also individual Member States of ASEAN pay more attention to human rights promotion and protection. Therefore, it could be concluded that the Cambodia Problem promoted an emergence of ASEAN human rights concern through three stages of development on human rights. The cooperation is the advancement of ASEAN human rights which the UN and EU cooperation with ASEAN is the key of the advancement of ASEAN human rights together with the ASEAN's attitude that could reconfirmed as another part of advancement of ASEAN human rights.

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