

**RESPONSE OF ASEAN TO HUMAN RIGHTS VIOLATIONS
IN SOUTHEAST ASIA:
CASE STUDIES OF CAMBODIA AND EAST TIMOR**



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Thesis


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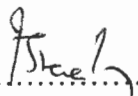
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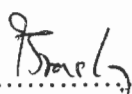
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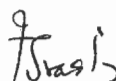
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Sunsanee Sutthisunsanee

RESPONSE OF ASEAN TO HUMAN RIGHTS VIOLATIONS IN SOUTHEAST ASIA: CASE STUDIES OF CAMBODIA AND EAST TIMOR

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ABSTRACT

The purpose of this research was to examine whether ASEAN collectively responds to human rights violations within the region, and why. Analysis was made focusing on two case studies – the 1997 July coup in Cambodia which was a result of the political conflict between co-prime ministers Prince Ranariddh and Hun Sen; and the 1999 East Timor crisis which was perpetrated by Indonesia, a founding member of ASEAN.

The research found that both cases which drew international attention were recognized as ‘serious violations of human rights’ by the United Nations. Particularly, the violations in East Timor were held to constitute crimes against humanity. ASEAN displayed double standards in its selective response to the two situations. It took collective action in Cambodia but responded only individually in the case of East Timor, without any consideration to the gravity of the human rights violations. The pressure from the international community, particularly donor countries which threatened to suspend military or financial aid, and contribute troops to UN peacekeeping forces, became a determinant factor influencing ASEAN’s response to these situations.

The research concluded that ASEAN has been reluctant to respond collectively to human rights violations within the region, because of the principle of non interference and respect for state sovereignty. In this way, in ASEAN functioning, respect for human rights are considered to be a by-product of political and economic stability and national interest rather than one of the fundamental principles of co-operation. Thus ASEAN’s approach to human rights has not been effective and adequate, and reflects the necessity to create common norms, standards and human rights mechanisms to deal with human rights concerns in the region.

KEY WORDS: ASEAN/ COLLECTIVE RESPONSE/ HUMAN RIGHTS VIOLATIONS/ CAMBODIA/ EAST TIMOR

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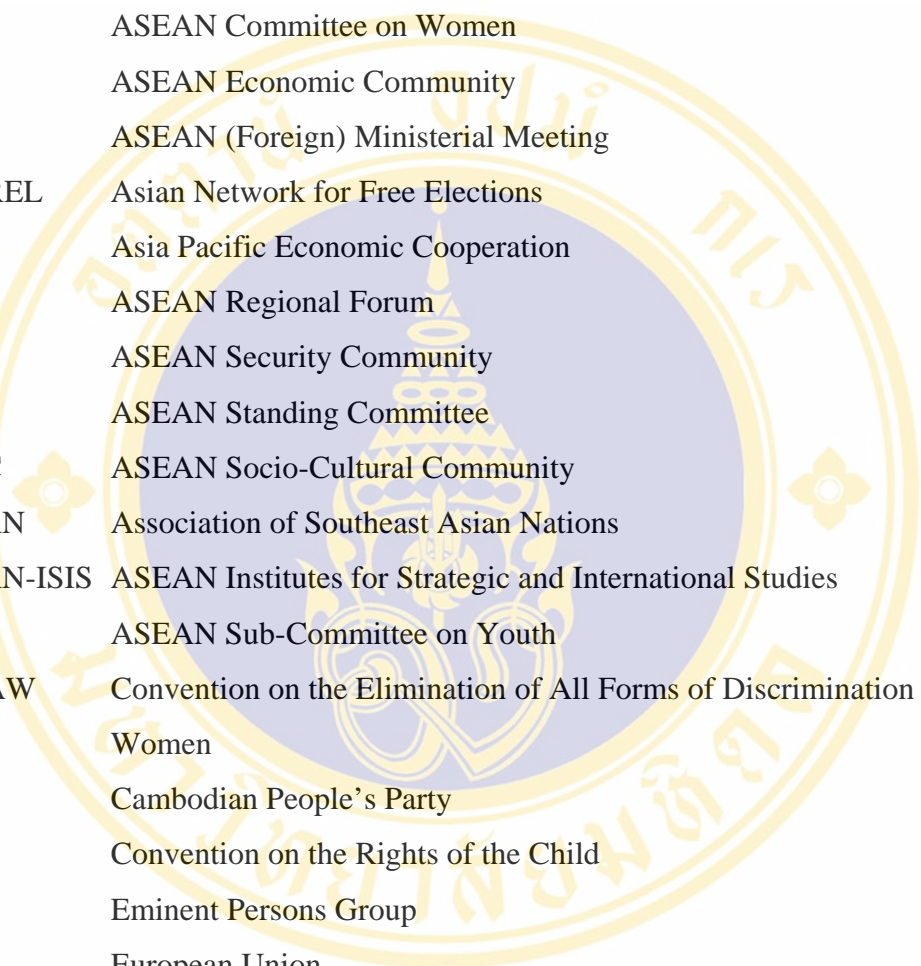
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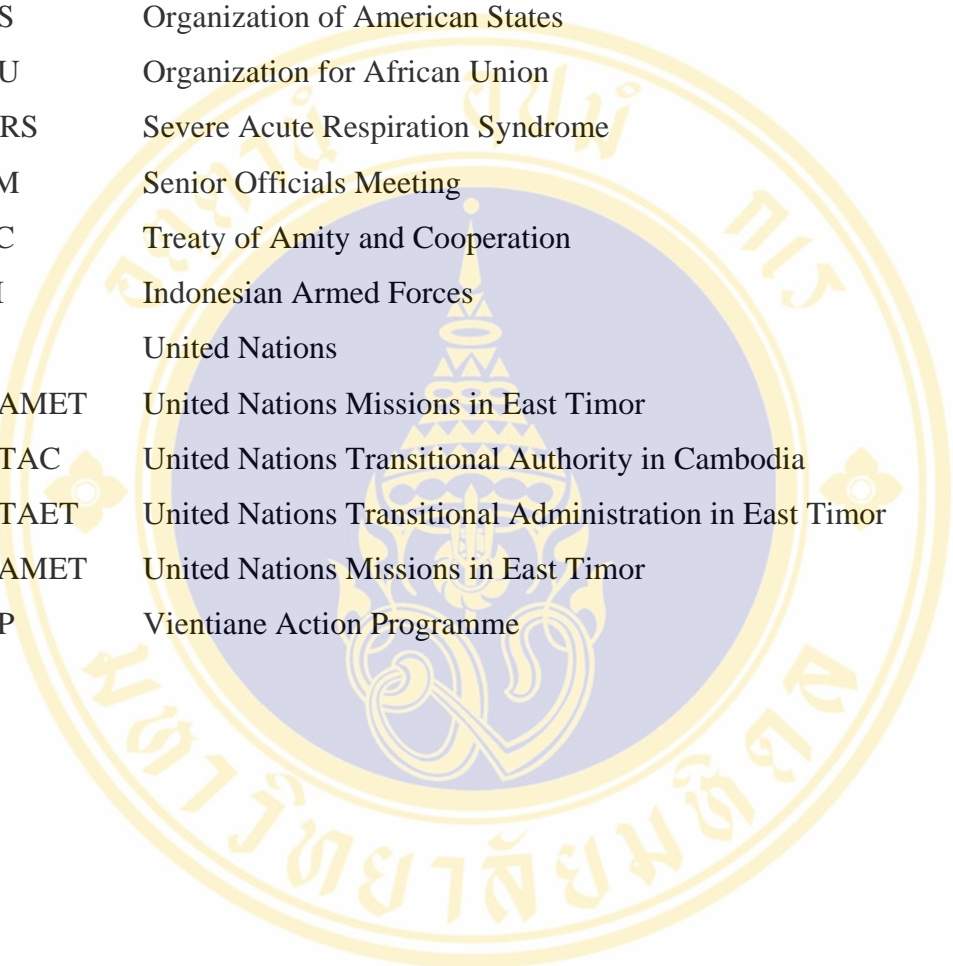
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LIST OF ABBREVIATIONS



ACW	ASEAN Committee on Women
AEC	ASEAN Economic Community
AMM	ASEAN (Foreign) Ministerial Meeting
ANFREL	Asian Network for Free Elections
APEC	Asia Pacific Economic Cooperation
ARF	ASEAN Regional Forum
ASC	ASEAN Security Community
ASC	ASEAN Standing Committee
ASCC	ASEAN Socio-Cultural Community
ASEAN	Association of Southeast Asian Nations
ASEAN-ISIS	ASEAN Institutes for Strategic and International Studies
ASY	ASEAN Sub-Committee on Youth
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CPP	Cambodian People's Party
CRC	Convention on the Rights of the Child
EPG	Eminent Persons Group
EU	European Union
FRETLIN	Revolutionary Front for an Independent East Timor
FUNCINPEC	Front for an Independent, Neutral, Peaceful and Cooperative Cambodia
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
HPA	Hanoi Plan of Action
ICI	International Commission of Inquiry on East Timor
INTERFET	International Force for East Timor
KNP	Khmer Nation Party
KPP-HAM	Indonesian Commission of Inquiry into Human Rights Violations in East Timor

LIST OF ABBREVIATIONS (cont.)

MOU	Memorandum of Understanding
NHRI	National Human Rights Institutions
OAS	Organization of American States
OAU	Organization for African Union
SARS	Severe Acute Respiration Syndrome
SOM	Senior Officials Meeting
TAC	Treaty of Amity and Cooperation
TNI	Indonesian Armed Forces
UN	United Nations
UNAMET	United Nations Missions in East Timor
UNTAC	United Nations Transitional Authority in Cambodia
UNTAET	United Nations Transitional Administration in East Timor
UNAMET	United Nations Missions in East Timor
VAP	Vientiane Action Programme

CHAPTER 1

INTRODUCTION

The Association of Southeast Asian Nations or ASEAN was established as a regional organization on 8 August 1967 in Bangkok by five countries, namely, Indonesia, Malaysia, Philippines, Singapore, and Thailand. Subsequently Brunei Darussalam joined on 8 January 1984, Vietnam on 28 July 1995, Laos and Burma (which subsequently changed its name to Myanmar) on 23 July 1997, and Cambodia on 30 April 1999, fulfilling the vision of ASEAN to unite all nations of Southeast Asia. As stated in the ASEAN Declaration (also known as ‘the Bangkok Declaration’), the document establishing ASEAN, the main purpose of the Association was to focus on economical and political stability.

The ASEAN members clearly differ in many respects, such as political ideologies, government systems, levels of economic development, sizes of population, historical and cultural affinities, race, religion, language, world views and external relations. But the fundamental principles of ASEAN, such as respect for the independence, sovereignty, and territorial integrity of each member state, and non-interference in the internal affairs of one another, are considered to be the indispensable “glue” binding these countries together in “unity in diversities”¹. These principles were laid down in the Treaty of Amity and Cooperation in Southeast Asia (TAC) as a legally binding code of conduct for guiding inter-state relations.

The words “human rights” do not appear in either of the core documents. However the concern for human rights issues is reflected in their commitment to adhere to the spirit and principle of the United Nations Charter. The

¹ Ong Keng Yong, *The Future of ASEAN*, (Singapore: Singapore Institute of International Affairs, 22 March 2003), [online]; available from: <http://www.aseansec.org>. Accessed 13 October 2004. (Ong Keng Yong serves as a Secretary-General of ASEAN since 2003)

ASEAN Declaration clearly states that the aims and purpose of the Association shall be:

“2. To promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter”.

Subsequently, it has also been stated in the preamble to TAC that it will strive:

*“to enhance peace, friendship and mutual cooperation on matters affecting Southeast Asia consistent with the spirit and principles of the Charter of the United Nations, the Ten Principles adopted by the Asian-African Conference in Bandung on 25 April 1955, the Declaration of the Association of Southeast Asian Nations signed in Bangkok on 8 August 1967, and the Declaration signed in Kuala Lumpur on 27 November 1971”.*²

Thus, it can be interpreted that human rights principles are indirectly integrated into the guiding codes of ASEAN. Although it is not as visible as in other aspects of ASEAN codes, all ASEAN countries are bound to follow the human rights principle in international relations and domestic affairs as applicable under the UN Charter. Furthermore, the ASEAN member countries also adopted the Universal Declaration on Human Rights (UDHR) and the Vienna Declaration and Programme Plan of Action, both of which are recognized as landmark documents on international human rights norms and standards. However, the honoring and implementation of human rights by all ASEAN members as well as ASEAN as an organization remains a different question.

In reality, human rights violations have been occurring in this region most of the time, in varied scope, type and seriousness. Since the late 1990s ASEAN

² See detail in the Treaty of Amity and Cooperation in Southeast Asia (TAC) adopted by ASEAN members in 1976.

violations of human rights have occurred not only within nation states but also between states. Such rights violations have also grown in magnitude and gravity. ASEAN has been confronted with the challenge of how to deal with such situations in the region. In some cases ASEAN has taken the initiative and responded to the human rights situation, playing a pro-active role in settling disputes by peaceful and cooperative means. On the other hand, though some situations have drawn international concerns, ASEAN has maintained silence on the issues.

Though in general ASEAN has accepted the universality of the basic principles of human rights, it has expressed some reservations in the form of “Asian values”. In addition ASEAN also adheres to the traditional norms of non-interference and the ASEAN approach of consultation and consensus on decision making. In this sense, human rights are commonly understood to be a matter of internal affairs of the ASEAN countries. Therefore, there is an unwillingness to discuss and a reluctance to take collective action on issues of human rights in the region. There has been concern and criticism that ASEAN’s principles of consensus and non-interference, and its selective application, are the key obstacles to upholding basic human rights standards.

Human rights abuses in Cambodia, Burma and East Timor and ASEAN’s response to it are illustrative of this point. To explain, ASEAN demonstrated a collective political will and moral responsibility over the Cambodia problem during 1980s and also during the July 1997 coup – a conflict between Hun Sen and Prince Ranariddh. Similarly, ASEAN adopted the policy of “constructive engagement” with respect to Burma, a country which had a poor human rights record, till its admission as a member country in 1997. However, it is to be questioned why ASEAN member countries maintained silence during the genocide perpetrated by the Khmer Rouge and also at the time of Indonesian intervention in East Timor, resulting in the Dili massacre in 1991, and the crisis in 1999. Although later ASEAN member countries contributed their assistance based on individual capacity to the 1999 East Timor crisis, ASEAN’s reactions as a collective have been questionable.

Therefore, the practices of the ASEAN member states in the promotion and protection of human rights vary considerably. For this purpose ASEAN's practice in responding to human rights violations is sought to be explored through the case studies of human rights violations in Cambodia and East Timor. These two case studies have been selected because; 1) they involve human rights violations occurring in the Southeast Asian region; 2) both cases have been recognized as 'serious violations of human rights' by the United Nations; 3) both cases have been settled, after which the process of democratization resumed; 4) the cases occurred in the period of the late 1990s when issues of human rights and democracy had become major components of foreign policy; 5) despite all these similarities Cambodia and East Timor had a different position with regard to ASEAN.

Though there are a number of other relevant cases such as the genocide in Cambodia or human rights violations in Burma, they are not included in this study because; first, numerous studies have already been done on them and second, the situation in Burma is still continuing and is uncertain and unpredictable in nature.

ASEAN's approach in dealing with human rights violations has been based on various factors such as – the range of political and economical implications of such actions on the individual member states, as well as multilateral or collective co-operation. Internal conflicts and human rights violations have become concerns for ASEAN only when they had threatened regional stability. This is one of the main barriers faced by ASEAN in developing a collective stance on human rights issues. Thus, it is important to examine whether ASEAN as a regional organization has responded to human rights violations within the region. The in-depth study of Cambodia and East Timor is significant in the sense of suggesting that ASEAN should recognize the advantageous and disadvantageous policies in its mechanisms to promote and protect human rights in the region. There is an assumption that Human rights have not been considered a priority issue in ASEAN's policy. It is considered rather to be a by-product of political and economic stability and national interest. Thus, ASEAN is always reluctant to respond collectively to human rights violations within the region.

1.1 The Objectives of this Research

- 1) To examine whether ASEAN collectively responds to human rights violations within the region, and why.
- 2) To identify the determinant factors that influenced ASEAN in its response to human rights violations in the case of Cambodia and East Timor.
- 3) To examine what kind of mechanism(s) ASEAN used in dealing with human rights violations in the above two cases, and how.

1.2 Research Questions

The study will address the following questions in order to achieve the above-stated objective.

- Whether ASEAN reacts at all to human rights violations within the region? If yes, what are its responses?
- What are the determinant factors that influence ASEAN in its response to human rights violations?
- What kind of mechanism(s) does ASEAN use in dealing with human rights violations and how?

1.3 Scope of Study and Methodology

The research is based on examination of ASEAN's approach in responding to human rights violations, especially in relation to the selected case studies. As a qualitative research, the research consists of:

1.3.1 Document research

The research was based on data from ASEAN official documents both legal and non-legal on human rights: treaties, declarations, joint communiqués, policy statements, speeches and articles including thesis, books, articles, journals, academic papers, human rights reports relevant to events in Cambodia and East Timor. The research in this category shows a number of established policies on human rights and also provides outcomes of implementation after policy announcement.

1.3.2 Case study

The specific cases of human rights violations in Cambodia and East Timor are selected as following: One is the July coup 1997 in Cambodia, which involved a political conflict between co-prime ministers Prince Ranariddh and Hun Sen; another is the 1999 East Timor crisis during its progress towards independence - the period of referendum and its aftermath. It is important to note that at the time of these violations, Cambodia was not a member state, while Indonesia, a founding member of ASEAN, committed violations in East Timor. ASEAN's approaches to the violations in these two cases were different. The UN has recognized human rights violations in both cases as 'serious violations of human rights'. It also considered the human rights violations in East Timor as crimes against humanity. Both cases will demonstrate how ASEAN responds to human rights violations within the region and whether the fact of being a member of ASEAN has any influence on the decision of ASEAN.

1.3.3 Interviews

Throughout the research, main focus is on ASEAN's policy and response to human rights. This led to interviews with ASEAN officials from the Ministry of Foreign Affairs, the main sector involved in decision making and implementation of policies; and human rights activists who were working in this area during the regional workshop organized by ASEAN foreign ministry, national human rights institute and civil society; and the meeting of civil society - in order to understand different opinions and a balance of views towards ASEAN and human rights violations.

1.4 Limitations of the Research

Since human rights are a sensitive issue in ASEAN, the interviewees, ASEAN officials, did not allow recording of the interviews and did not want their names or position to be mentioned. In such cases the research describes them as 'anonymous sources'.

1.5 Structure of the Research

Chapter one introduces the research project, overview concept of non-interference principle. Chapter two provides basic background on ASEAN, its policy as reflected in both legal and non-legal binding documents and discourse on human rights including cooperation and exit mechanisms and how it has worked. Chapter three discusses two cases of human rights violations in Cambodia and East Timor and examines/analyses the response of ASEAN, the policy and exit mechanism(s) that ASEAN uses in dealing with human rights violations in each case, and how. The chapter looks into determinant factors that influence the reaction of ASEAN. Chapter four gives an analysis of development of ASEAN's response to human rights violations in the region and challenging policy on human rights including a step forward for establishment ASEAN human rights mechanism. The conclusion will analyse whether ASEAN reacts collectively to human rights violations within the region including possibility for creating human rights culture and standard in ASEAN in order to promote and protect human rights and enable it to respond collectively to human rights violations within the region.

1.6 Concept of Non- Interference

Sovereignty and non-interference originated under the Westphalia concept, the principle of sovereign equality of states is enshrined in Article 2 (1) of the UN Charter, where it recognizes that all states are equally sovereign under international law with respect to the exercise of exclusive and total jurisdiction within territorial borders. In the era of decolonization, the sovereign equality of states and the correlative norm of non-intervention or non-interference received its most emphatic affirmation from the newly independent states.

There is a corresponding obligation on every state to respect the sovereignty of another, in the form of the norm of non-intervention, enshrined in Article 2(7) of the UN Charter, which state:

“Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction

of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.”

The principle is also enshrined in the founding documents of numerous regional organizations such as the Organization for African Union (OAU), the Organization of American States (OAS), and the Arab League. In Southeast Asia, it was a key principle reaffirmed at the Bandung Asian-African Conference in 1955 and the Treaty of Amity and Cooperation in Southeast Asia (TAC) of the Association of Southeast Asian Nations, so called ASEAN. The principle is a corollary to the principle of sovereignty. It was therefore an attractive principle to postcolonial Third World countries, which were opposed to interference of superpowers in their internal affairs.

Subsequently, Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States 1981³ states that the principle of non-intervention and non-interference in the internal and external affairs of States, includes a number of rights and duties mentioned in section I (b) such as:

“the state has the free right, to determine its own political, economic, cultural and social system, to develop its international relations and to exercise permanent sovereignty over its natural resources, in accordance with the will of its people, without any coercion or interference, subversion, coercion or threat in any form whatsoever.”

The declaration in section II(1) lays down that ‘States have a duty to refrain from the exploitation and the distortion of human rights issues to interference in the internal affairs of States, exerting pressure on other States or create distrust and disorder within and among States or groups of States’; including (o) ‘to refrain from

³ United Nations General Assembly, *Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States*, 9 December 1981, A/RES/36/103, Annex [online]; available from: <http://www.un.org/documents/ga/res/36/a36r103.htm>. Accessed 3 March 2005

any economic, political or military activity in the territory of another State without its consent’.

In addition, section III (c) has given discretion to the States in taking action on human rights violations by stating:

“The right and duty of States to observe, promote and defend all human rights and fundamental freedoms within their own national territories and to work for the elimination of massive and flagrant violations of the rights of nations and peoples, and in particular, for the elimination of apartheid and all forms of racism and racial discrimination.”

The reason is clear. National sovereignty and the principle of non-interference are concepts that protect the small and the weak from domination by the powerful. On the other hand, most governments strictly adhere to this principle in order to avoid criticism of human rights situations within their countries.

Non-interference in a more complex age

After the end of Cold War, the international order has undergone major changes in the past decade. Foreign policy priorities have been redefined and issues such as human rights, democracy and the environment have considerably affected the non-interference doctrine. Moreover, globalization and concern over issues such as trafficking in persons, migrant workers, refugee flows, and HIV/AIDs including transnational crime has continued to gather momentum, which constantly pressurizes states to increase inter-state cooperation.⁴ In particular increasing economic competition sometimes makes demands on countries to accept human rights and democratic norms.

As result, maintenance of strict sovereignty is becoming increasingly difficult and the norm of non-interference or non-intervention in internal affairs has

⁴ John Funston, *ASEAN and the Principle of Non-Intervention-Practice and Prospects* (Singapore: Institute of Southeast Asian Studies, 2000)

lost ground. Such activities as mentioned above that would have been considered as interference are now widely acknowledged, if not accepted, as part of day-to-day politics. The World Conference on Human Rights 1993 in Vienna, also reaffirmed the principle that domestic human rights issues were a legitimate concern of all nations.

Furthermore, the report of the International Commission on Intervention and State Sovereignty (ICISS) 2001, defines intervention⁵ as “the actions by a state or an international organization in the affairs of another state. Moreover, the intervention could be civilian or military and in general terms be aimed at saving or protecting human life”.⁶ For the actual meaning, intervention can be derived from the context in which it occurs, and actions do not amount to intervention if they are based on a genuine request from, or with the unqualified consent of, the target state. Likewise, forms of interference that fall short of coercion in the internal affairs of a state also do not amount to intervention⁷. Indeed, interference and intervention have various forms, ranging from diplomatic means to military intervention.

Nevertheless, the debate on the distinction between interference and intervention was addressed during the Third ASEAN-UN conference on Conflict Prevention, Conflict Resolution & Peace Building in Southeast Asia 2003 which stated that ‘interference’ deals with violations of rule of law and state sovereignty, while ‘intervention’ seemed to connote more positive references couched in justifiable humanitarian considerations.⁸

⁵ In the WordNet Dictionary denotes both terms to be meaning “a policy of intervening in the affairs of other countries”. For Webster’s 1913 dictionary, the term interference (as a noun in patent law) means the act or state of interfering, or of claiming of right the same as intervention, while intervention (as a noun) denotes that “Any interference that may affect the interests of others; especially, of one or more states with the affairs of another”.

⁶ Tudor Hera and Ken Berry, *Report of the Roundtable Consultation with Civil Society* (Paris: International Commission on Intervention and State Sovereignty, 23 May 2001), 1. [online]; available from <http://www.gc.cuny.edu/icissresearch/Reports/Paris.RT.report.civil.society.session.FINAL.html>. Accessed 3 March 2005.

⁷ International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect: Research, Bibliography, Background - Supplementary Volume to the Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Centre, December 2001), 16.

⁸ *The Proceeding of the Third ASEAN-UN Conference on Conflict Prevention, Conflict Resolution & Peace Building in Southeast Asia: ASEAN-UN Experiences in Anticipating & Mediating Conflicts*. (Singapore, 18-19 February 2003), 3 [online]; available from http://www.aseansec.org/un_singapore.html. Accessed 3 March 2005.

In this sense, it seems that interference is consistent with political or foreign policy objectives. While intervention, even involving use of force (military intervention) is more positive when seen as being based on a good intention for humanitarian objectives. Although there are still different points of view, some may see that use of force is always negative. Thus the interpretation depends on how sensitive is the state situation.

Furthermore, the problem is that the term ‘intervention’ and ‘humanitarian intervention’ are often used to refer to armed intervention which can lead to confusion. Therefore, several scholars opposed the idea of using the term “humanitarian” for any type of intervention where force, military or otherwise, was used. They argued that the term should only apply to purely relief operations, since its use only led to a skewed perception by the local population of the true nature of an intervention.

Obviously, any action without consent of state - whether the use of military or non-military measures; such as political and economic sanctions or arms embargoes constitutes interference or intervention. Thus, it is the right and duty of every state to respect the sovereignty of another.

However, it should be borne in mind that a state also has duties to respect the rights and will of its people. Thus, where the people of a nation state are suffering from serious harm because of internal war, insurgency, repression or state failure whether unwilling or unable to address such violations, this principle essentially means involving the internal affairs of other countries in order to promote and protect human rights. Internationally terms of interference and intervention can be used interchangeably.

The concept of non-interference has been strictly applied by ASEAN members and it has impacted on the association’s responses up to the present. The following charter will be a study on discourse on human rights -- including whether or not ASEAN has a cooperative human rights policy and how it has worked.

CHAPTER 2

HUMAN RIGHTS IN THE FRAMEWORK OF ASEAN COOPERATION-

The Southeast Asian region has more than 520 million people, about half the population of China or India and a combined gross domestic product, about the same as China's. It straddles the sea lanes between East Asia and Europe and the Middle East. It is a region of great diversity - in size, levels of development, natural and human resources, historical experience and conflict, cultures, languages, religions, races, economic and social institutions, political systems, and values and traditions.

During the Cold War, one could see all types of imperialism from the Great Powers; the ideological armed conflicts in Indochina as well as failure of former regional associations such as the Association of Southeast Asia (ASA) and MAPHILINDO.⁹ These circumstances, combined with the abysmal economic and social conditions of most countries of Southeast Asia, also led to many insurgencies and other threats to internal security.

In 1967 the Association of Southeast Asian Nations, known as ASEAN, was established for the purpose of furthering regional cooperation in economic, social, cultural, technical, scientific and administrative matters. The founding members of ASEAN attempted to seek channels of regional cooperation that would boost economic development benefiting all the parties concerned and increase

⁹ The Association of Southeast Asia (ASA) was established in 1961 by Malaysia, the Philippines and Thailand. It aims to promote regional cooperation and economic, social and cultural progress. ASA were end by dispute arose between the Philippines and Malaysia over Sabah issue, as result diplomatic relations between two countries were suspended. Subsequence, MAPHILINDO was set up in 1963 by Indonesia, the Philippines and Malaysia which had the same goals as ASA in order to combine their efforts in the common struggle against colonialism and imperialism in all form. Similar with ASA, MAPHILINDO were end by conflict between Indonesia and Malaysia, when Indonesia adopted the policy confrontation to crush Malaysia. See details in Vinita Sukrasep, *ASEAN in International Relations* (Bangkok: Aksornsiam Press, 1989), 15-18.

their bargaining power in the arena of international politics¹⁰. Thus, in order to counter any interference from outside countries, it was felt that collective action was more effective than individual countries acting alone (the Great Powers). In this sense, the Association's basic motivations for getting together were political and economic and security concerns, both internal and external.

As stipulated in the ASEAN Declaration 1967, also known as the Bangkok Declaration, the primary purpose of ASEAN was to be an association of all states of Southeast Asia cooperating voluntarily to ensure peace and economic, social and cultural development. The Declaration made clear that:

"the Association is open for participation to all States in Southeast Asian region subscribing to the [ASEAN] aims, principles and purposes."

It continues:

"the Association represents the collective will of the nations of Southeast Asia to bind themselves together in friendship and cooperation and, through joint efforts and sacrifices, secure for their peoples and for posterity the blessings of peace, freedom and prosperity."¹¹

Thirty-nine years have passed since its establishment. In the beginning it seemed to be an impossible dream that ten countries in Southeast Asia comprising Indonesia, Malaysia, Philippines, Singapore, and Thailand (five founding members joined on 8 August 1967), Brunei Darussalam (8 January 1984), Vietnam (on 28 July 1995), Laos and Burma (23 July 1997), and Cambodia (30 April 1999) would unite under one ASEAN flag and "ASEAN 10" would be realized. Obviously, it is a region of great diversity. However ASEAN has managed to turned this diversity to its advantage though mutual respect and advancing its common interest in strengthening

¹⁰ Vinita Sukrasep, *op.cit.*, 3

¹¹ See details in ASEAN Declaration 1967

peace and stability in this region.¹² ASEAN member countries have strictly adhered to the legal framework of the Treaty of Amity and Cooperation in Southeast Asia (TAC), a binding code of conduct with regard to inter-state relations. It enshrines the six fundamental principles: (a) mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations; (b) the right of every state to lead its national existence free from external interference, subversion or coercion; (c) non-interference in the internal affairs of one another; (d) settlement of differences or disputes by peaceful means; (e) renunciation of the threat or use of force; and (f) effective cooperation among themselves. These principles have been applied through the ASEAN way of consultation and consensus which will be elaborated further.

2.1 The Development of ASEAN Cooperation

Various scholars have different perceptions with regard to the evolution of ASEAN, depending upon their angle of view, such as the area of cooperation; timing whether by decade or quarter-century; machinery of ASEAN.¹³ Over time ASEAN has undergone changes in its approaches and institutions which are still changing. These changes have been accelerated because of the many challenges that it has had to face, and because of the changes in its goals and aspirations.

Therefore, this study will be examining the development of ASEAN cooperation. According to aims and purpose of the ASEAN Declaration, ASEAN has divided its cooperation into three areas namely, political; economic and social or functional cooperation.

¹² Rodolfo C. Severino, 'Welcoming to the Kingdom of Cambodia as the Tenth Member State of ASEAN' (statement presented at ASEAN Secretariat, 30 April 1999).

¹³ E.g. Narisa Wutthipanyalers, *Mechanisms for Human Rights Protection in ASEAN* (ML Thesis, Ramkhamhaeng University, 2002); Rodolfo C. Severino, 'The Three Ages of ASEAN' (paper presented at the ARCO Forum of Public Affairs, Kennedy School of Government, Harvard University, Cambridge, Massachusetts, 3 October 2002); Simon SC Tay, *Institutions and Processes: Dilemmas and Possibilities*, in *a New ASEAN in a New Millennium*, eds. Simon Sc Tay, Jesus Estanislao, and Hadi Soesastro (Jakarta: Centre for Strategic and International Studies, 2000), 155-186; Surachai Sirikrai, '30 Years of ASEAN's Political and Security Cooperation' (paper presented at seminar on the 30th Years of ASEAN: a Step Forward, Chulalongkorn University, Bangkok, 5 August 1997); Rittipong Pongmanee, *ASEAN and the Problems of Illegal Migrant Workers from Burma in Thailand* (MA. Thesis, Chulalongkorn University, 1999)

a. Political Cooperation:

At the early stage of its establishment, ASEAN cooperation emphasized political stability as seen from the fact that ASEAN spent most of its time in dealing with bilateral conflicts such as the dispute between Malaysia and the Philippines over the Sabah issue. Meanwhile, important changes in the international political climate from bipolarity to multipolarity influenced the ASEAN countries to express a political will that Southeast Asia would be a Zone of Peace, Freedom and Neutrality (ZOPFAN) as shown in the declaration of ZOPFAN in 1971. ASEAN's first political co-operative was to exclude superpowers from the region.¹⁴

The most important chapters in the history of ASEAN diplomacy took place during 1980s, when ASEAN was successful in settling the Cambodia conflict, involving intervention from the Vietnamese. ASEAN played an active role in the efforts to find a peaceful solution to the Cambodia crisis with support from the great powers and a majority in the United Nations. It used various channels - individual and collective or formal and informal, to achieve these objectives.¹⁵

As part of an increasingly interdependent world, the ASEAN leaders declared at the 1992 Summit, that ASEAN should intensify its external dialogues in political and security matters as a means of building cooperative ties with states in the Asia-Pacific region.¹⁶ In doing so, a number of ASEAN political accords were signed. Some of the major ones are as follows: the ASEAN Declaration on South China Sea 1992; Treaty on Southeast Asia Nuclear Weapon-Free Zone (SEANWFZ) was adopted as a key component of ZOPFAN aimed to contribute towards general and

¹⁴ Muthlah Alagappa, The US and ASEAN approach to security in Southeast Asia, in *The ASEAN Reader* (Singapore: Institute of Asian Studies, 1992), 398; quoted in Savitri Chairapal, *ASEAN Political Cooperation in the Post-Cold War Era* (MA. Thesis, Chulalongkorn University, 1996), 36.

¹⁵ ASEAN member states have united their efforts through various means, for example, as a formal channel through the United Nations. On the other hand they had an informal channel following the ASEAN way – a back door diplomacy with China and the Soviet Union. See Savitri Chairapal, *op.cit*, Abstract.

¹⁶ Vitthaya Vejajiva, Can ASEAN Adapt or Strengthen its Integration Using the Experiences of the EU?, in *Strengthening ASEAN Integration: Lessons from the EU's Rule of Law* (Bangkok: Chulalongkorn University Printing House, 2001), 137-145.

complete nuclear disarmament and the promotion of international peace and security¹⁷; ASEAN Regional Forum (ARF) was established by ASEAN and its dialogue partners in 1994 aiming at relaxation of tensions in the region through multilateral consultations.

In the early 21st century, new security concerns were raised by the September 11, 2001 terrorist attacks in the United States. After the attacks, ASEAN recognized that terrorism continued to threaten world peace and stability and had become important security issues. As a result, ASEAN and its dialogue partners, seeking cooperation in order to deal with such threats, adopted the Declaration on Terrorism and established the Southeast Asia Regional Centre for Counter Terrorism and endorsed the ASEAN Work Programme to Combat Transnational Crime.

It is obvious that the terms of political cooperation were clearly for the pursuit of peace, security and stability in the region.

b. Economic Cooperation

As mentioned above, due to political disputes and conflict among member states, political cooperation was the first priority of ASEAN at the first stage of establishment, meaning founding member were left with a lack of political will in furthering economic co-operation. The terms of economic cooperation were later improved through the ASEAN Industrial project (AIP)-1976; ASEAN Preferential Trading Arrangement (ASEAN PTA)-1977; ASEAN Complementation Scheme (AIC-1981); and ASEAN Industrial Joint Venture (AIJV-1983). However, their progress has been unsatisfactory as the ASEAN member countries are similar in terms of economic structure and resources, enhancing competition between each other.¹⁸

Over the years poverty has become an important concern in the international world. The countries of Southeast Asia recognized they had to plug into the globalizing world economy. ASEAN made speedy progress on economic

¹⁷ *ASEAN Overview*, [online]; available from <http://www.aseansec.org>. Accessed 13 October 2004.

¹⁸ Rittipong Pongmanee, *op.cit.*, 49.

development and investment. The Framework Agreement on Enhancing Economic Cooperation was adopted in 1992, included the launching of a scheme toward an ASEAN Free Trade Area or AFTA in order to increase the ASEAN region's competitive advantage as a single production unit. The elimination of tariff and non-tariff barriers among the member countries was expected to promote greater economic efficiency, productivity and competitiveness. Subsequently a number of measures were created such as ASEAN Industrial Cooperation (AICO); ASEAN Investment Area (AIA); and Initiative for ASEAN Integration (IAI) in order to narrow the gap between old and new members. A regional financial surveillance system was also adopted as a response to the "Asian Financial and Economic Crisis" in 1997.

Today, ASEAN economic cooperation covers the following areas: trade, investment, industry, services, finance, agriculture, forestry, energy, transportation and communication, intellectual property, small and medium enterprises, and tourism. However, with regard to economic cooperation, ASEAN members prefer bilateral agreements between individual and western countries than among themselves or between ASEAN as an association and dialogue partners.

c. Functional Cooperation

Functional cooperation was formed in 1976 as a subordinate area of concern it included any cooperation or concern that did not result in benefit to or direct impact on one member country, and which does not fall under the criteria of political and economic cooperation.¹⁹ Some examples of main areas are cooperation in the fields of social and human development, which covers the integration of women, youth and elderly persons in the development process; science and technology; culture and information. As a result of the impact of international political and economic change, ASEAN has expanded this cooperation in various areas of concern, such as drugs, environment, and poverty eradication including the ASEAN University Network. Afterwards, the 5th Summit in Bangkok 1995, recognized such cooperation in the same plane with political and economical cooperation.²⁰

¹⁹ Ibid., 67.

²⁰ Ibid., 69.

At the same period of financial crisis, ASEAN also faced social and environment problems such as the haze which spread over Sumatra and Kalimantan in Indonesia, Singapore and parts of Malaysia, drug-trafficking, the trafficking in people, migration, the epidemic diseases of HIV/AIDS, SARS, piracy and transnational crime, recently bird flu and devastation caused by the tsunami. Thus, some measure was created in order to respond to those problems, for example reviewing the Regional Haze Action Plan; ASEAN Declaration on HIV/AIDS and the Work Plan on HIV/AIDS II (2002-2005); Special ASEAN-China Meeting on SARS and so on.

In this regard, ASEAN's cooperation has been developed and ASEAN has collective action in dealing with common concern issues like social and economic development and security, thus there are numerous of work plan and agreement as mentioned above. In fact, ASEAN has been cooperating on human rights since the first decade of establishing the association, but it preferred avoiding the term "human rights". Therefore, it can be seen that the terms of cooperation do not directly mention human rights or identify it as one area of concern. However, concern for human rights issues is reflected in functional cooperation through specific groups such as the integration of women and youth in the development process, or the integration of the population with rural development policies. Indeed, political and economic cooperation can have an indirect influence upon human rights. For instance the role of ASEAN in settlement of Cambodia conflict also directly impacted on human rights, because resolving conflict means saving lives and mitigating sufferings. Empowerment of ASEAN societies can be considered as promoting the socio-economic rights of the individuals within member states.²¹

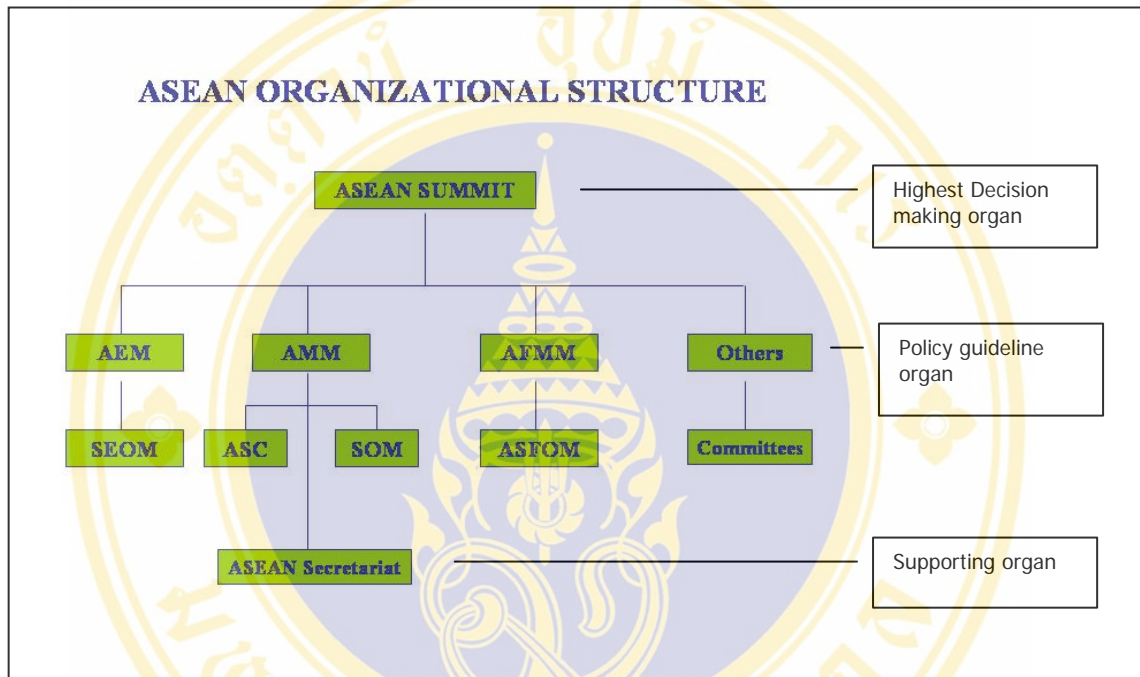
Organization Structure

The ASEAN Declaration provided for the mechanisms to carry out its aims and purposes. These mechanisms were later modified to meet the demands of the

²¹ Dino Patti Djalal, 'ASEAN Intra-Human Rights and Mechanism: Context, Issues and Prospects' (paper presented at the Sixth ASEAN-ISIS Colloquium on Human Rights; Session Five, the EDSA Shangri-la Hotel, Manila 12-14 February 1999), 1.

increased work of ASEAN.²² As the association for regional cooperation, it does not have a regional council of ministers with law-making powers nor does it have a mechanism for enforcement or a judicial system. ASEAN has three main mechanisms:

Figure 1: ASEAN Organizational Structure



Note: source from www.aseansec.org

- AEM : ASEAN Economic Ministers
- AMM : ASEAN Ministerial Meeting
- AFMM : ASEAN Finance Ministers Meeting
- SEOM : Senior Economic Officials Meeting
- ASC : ASEAN Standing Committee
- SOM : Senior Officials Meeting
- ASFOM : ASEAN Senior Finance Officials Meeting

²² The structure of ASEAN from 1967, until the first summit meeting 1976, consisted mainly of four working units which were the machinery implementing ASEAN activities in first ten years: (1) Annual Meeting of Foreign Ministers, it used to be the supreme decision-making body for ASEAN (2) Standing Committee, is set up to carry out the day to day work of the Association and to follow up the projects agreed upon in Annual Meetings of the Foreign Ministers. (3) Permanent and Ad-hoc Committees of specialists and official on specific subjects which provide regular forums for specialists on specific issues. (4) The National Secretariat.

1. Highest decision-making organ: Meeting of the ASEAN leaders who lay down the directions and initiatives the ASEAN would take, held twice a year and is called 'the ASEAN Summit' and 'Informal Summit.'

2. Policy guideline organ: At the ministerial level, the foreign ministry is the most important organ that lays down policy guidelines, coordinates activities and reviews decisions and proposals of other bodies. A meeting of delegates from the foreign ministries, also known as the ASEAN Ministerial Meeting (AMM) is held annually based on an alphabetical rotation system. Besides that, ministerial meetings of several other sectors are held, for example, agriculture and forestry, economics, energy, environment, finance, information, investment, labour, law, social welfare, transnational crime, transportation, tourism, youth, the AIA Council and, the AFTA Council. There are 29 committees of senior officials and 122 technical working groups to support these ministerial bodies.

3. Supporting organ: The ASEAN Secretariat is the regional supporting body working side by side with similar bodies at the national level - ASEAN Secretariat at Ministry of Foreign Affairs of member countries. However, over the years ASEAN has undergone changes in its approaches and institutions which have increased its level of activities. At the same time the ASEAN Secretariat is able to offer only minimal administrative support. Thus, many scholars have urged for the reformation of institutions, increase in the role of secretary-general in order to represent ASEAN's voice, and to deal with new challenges, particularly the issue of human rights.

Responsible for ASEAN political cooperation including human rights, the Senior Officials Meeting (SOM) of the Ministry of Foreign Affairs was formally institutionalised as part of the ASEAN machinery. SOM consists of heads of the Foreign Ministries of the ASEAN Member Countries, meets annually and when necessary, and reports directly to the AMM in order to process the further discussion and review decisions. If the issue was agreeable among them (at foreign minister level), they would express their concern through joint statements on political issues or

joint communiqués or joint declarations. For example the Joint Statement on Political Issue in Kuala Lumpur on 8 March 1980, reaffirmed commitment to world peace, international cooperation and understanding, economic development, social justice and human rights.²³ Joint Declaration of 10th ASEAN-EC Ministerial Meeting in Manila on 29-30 October 1992, paragraph 36 expressed grave concern over the tragic situation in former Yugoslavia and condemned such massive violation of human rights.²⁴ In 1993 Joint Communiqué of the 26th ASEAN [Foreign] Ministerial Meeting in Singapore stated: “... agreed that ASEAN should also consider establishing of an appropriate regional mechanism on human right”²⁵ which will be elaborate further.

2.2 ASEAN’s Position on Human Rights

Human Rights Discourse in ASEAN

The issue of human rights and democracy had become major components of foreign policy by the end of the Cold War. Thus, in this global concern for human rights, ASEAN found itself aligned against the west, because of its belief in “Asian values” which emphasized community values rather than individualism of the west, as scholars attempt to examined.²⁶ ASEAN’s reflection on human rights can be broadly summarized under three main issues:

1. Universality of human rights: While ASEAN accepts the concept of universality of human rights it argues that there is substantial difference between the

²³ Joint Statement on Political Issue in Kuala Lumpur, 8 March 1980, Kuala Lumpur, Malaysia, paragraph 1. See details in Working Group for an ASEAN Human Rights Mechanism, *ASEAN and Human Rights: A Compilation of ASEAN Statement on Human Rights* (Makati City : Working Group for an ASEAN Human Rights Mechanism, 2003), 2. (Working Group for an ASEAN Human Rights Mechanism hereinafter referred to as ‘the Working Group’)

²⁴ Joint Declaration of 10th ASEAN-EC Ministerial Meeting, 29-30 October 1992, Manila, Philippines, paragraph 36. See details in the Working Group, *op.cit.*, 4.

²⁵ Joint Communiqué of the 26th ASEAN [Foreign] Ministerial Meeting, 23-24 July 1993, Singapore. See details in the Working Group, *op.cit.*, 5.

²⁶ E.g. Carolina G. Hernandez, ‘Current Human Rights Policy and Practice in the ASEAN Region’ (paper presented at the Workshop for an ASEAN Regional Mechanism on Human Rights, Jakarta, 5-6 July 2001), 2-4; Vitit Muntarbhorn, Asian Perspective on Human Rights: Perceptions, Programmes and Practices, in *Dimensions of Human Rights in the Asia-Pacific Region* (Bangkok: Office of the National Human Rights Commission of Thailand, 2002), 1-32.

international human rights norms and the customs and practices within the region. ASEAN believes that human rights are shaped by each society's specific set of experiences, particularly religion and culture that exert a powerful influence in shaping social values.²⁷ As the ASEAN Foreign Ministers noted in their Joint Communiqué of the 25th AMM in 1992 paragraph 18:

*“... basic human rights, while universal in character, are governed by the distinct culture and history of, and socioeconomic conditions in each country and that their expression and application in the national context are within the competence and responsibility of each country.”*²⁸

Then, at the 1993 World Conference on Human Rights, the foreign minister of Singapore warned “universal recognition of the idea of human rights can be harmful if universalism is used to deny or mask the reality of diversity.”²⁹ Beside that, ASEAN has emphasized that promotion and protection of human rights by the international community should recognize national sovereignty, national borders, and non-interference in another state's domestic affairs. ASEAN, therefore, views human rights as internal affairs, while the international perspective would view them as international concerns of the world.

2. Indivisibility of human rights: Some ASEAN governments are uncomfortable with or do not accept the indivisibility of human rights. In particular, they prefer to advocate economic, social and cultural rights instead of civil and political rights, essentially meaning that “rice” comes before “rights”.³⁰ Furthermore, Singapore Prime Minister Lee Kuan Yew defended authoritarian arrangements on the ground of their alleged effectiveness in promoting economic success.³¹ Therefore,

²⁷ Carolina G. Hernandez, *op.cit.*, 2

²⁸ Joint Communiqué of the 25th ASEAN Ministerial Meeting, 21-22 July 1992, Manila, Philippines, paragraph 18. see detail in the Working Group, *op.cit.*, 4..

²⁹ Amartya Sen, *Human Rights and Asian Values: What Lee Kuan Yew and Le Peng don't understand about Asia* (n.p., ca 1997), 1.

³⁰ Vitit Muntarbhorn, *op.cit.*, 5.

³¹ Amartya Sen, *op.cit.*, 2.

ASEAN claims that human rights in the area of political and civil liberties are less appropriate in Asia than the west, thus there is a need for prioritizing rights.

In this regard, some scholars have observed that if the level of economic development corresponds to the full implementation of human rights, then it is questionable why Brunei, Malaysia, and Singapore, who have achieved success in the area of economic development, continue to put constraints on their citizens' full civil and political rights.³² It should be borne in mind that there are many cases that have demonstrated that violation of social and cultural rights are often the result of political systems which give secondary importance to human rights and thus one set of rights cannot be used to bargain for another.³³

3. Rights and duties: In ASEAN there has been more concern with order and discipline, advocating more the duties and responsibilities a citizen ought to perform as a member of society, rather than his or her rights. Many ASEAN governments believe individual rights must give way to the demands of national security and economic growth. They believe that human duties or responsibilities towards the state and towards other humans come before the need to respect individual human rights.³⁴ Therefore freedom, progress and national stability ought to be promoted by a balance between the rights of the individual and those of the community.

In fact, respecting rights of individuals does not mean neglecting duties or responsibility for the good of the community; duties and responsibility go along with each other. At the same time, the state has a duty and obligation to promote and protect human dignity and human rights in order to ensure that individuals enjoy their rights and freedom.

As described above, it is obvious that Asian values are less supportive of freedom, human rights and democracy. Since ASEAN belief in "Asian values", its has emphasized national security, economic growth, good of the community rather

³² Carolina G. Hernandez, *op.cit.*, 4.

³³ Vitit Muntarbhorn, *op.cit.*, 6.

³⁴ *Ibid.*

than the good of the individual by prioritizing rights. ASEAN views human rights as the internal affairs of individual states, thus the issue of human rights was kept strictly out of ASEAN's agenda

ASEAN's Principle and Human Rights

Apart from difference in perspectives on human rights, the principles and approach of ASEAN to human rights issues also differs from the west. As mentioned earlier, the principle of non-interference in the internal affairs of another country and the ASEAN way of consensus in decision making prove to be key obstacles to promoting and protecting human rights.

For ASEAN, as Phan Van Khai, prime minister of Vietnam points out, most of ASEAN's fundamental principles are similar to those written in the UN Charter, principles that have been observed and upheld by regional and international organizations. These fundamental principles have brought countries in the region together and enable them to participate with comfort in the regional cooperation process on a basis of equality, mutual benefit, accommodation and respect. Therefore they help to keep the balance between promoting regional cooperation and national interests, thus contributing to upholding harmony and unity in diversity.³⁵ Furthermore, S.Jayakumar, Singapore's Foreign Minister state that ASEAN way represents stresses informality, organization minimalism, inclusiveness, intensive consultations leading to consensus and peaceful resolution of disputes.³⁶ It has proved to be most practical and agreeable to all in ASEAN, as dealing with the haze problem and the economic crises. Similarly, Termsak also points out that the ASEAN way will continue to adapt to the changing situation, but its key principles, specifically of non-interference – will not change. Thus, there is no valid reason to change something that has worked successfully for over three decades in ASEAN.³⁷

³⁵ Phan Van Khai, 'Balancing interests the ASEAN way', *The Nation*, 28 August 2004, 8a.

³⁶ Amitav Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order* (New York: Routledge, 2001), 63.

³⁷ Termsak Chalermpanupap, 'ASEAN-10: Meeting the Challenges' (paper presented to the Asia-Pacific Roundtable, Kuala Lumpur, 1 June 1999), paragraph 37, 39. [online]; available from <http://www.aseansec.org>. Accessed 3 March 2005.

As a combination of both norm and style, ASEAN Way can be seen as a by-product of cultural similarities among the ASEAN societies such as: sensitivity, politeness, non-confrontation and agreeability; mutual caring; quiet, private and elitist diplomacy rather than publicize through the media; solidarity; non-legalistic and concentrating on process and content.³⁸

In practice, there is a distinction between agreement and consensus. Agreement implies that all parties agree, while consensus is used for a situation where some participants are not actually in agreement but do not hold a strong view one way or the other [no objections] and who therefore are willing to 'go along with what is proposed',³⁹ which has no formal voting in a consensus. Thus, if a communiqué says that the participants had a frank and cordial discussion on the matter, it means they neither reached an agreement nor consensus⁴⁰ but they can live with the product of the discussion. It should be noted that ASEAN does not favour a legal binding document, thus most of documents in ASEAN are in the form of a statement or joint communiqué, which are non-binding texts with no attached obligations.

It has been criticized that ASEAN is a "social club" or "talk-shop." Thus the ASEAN way is another rhetorical excuse for doing nothing in particular related to human rights concerns. Indeed, principles which enshrine in TAC and the ASEAN way have both positive and negative aspects. For a positive front, principle non-use of force and peaceful settlement of disputes through dialogue and consultation. By contrast, the principle of non-interference and consensus is considered a limitation on ASEAN's ability to be more pro-active and effective in dealing with human rights violations. It is true that the ASEAN way of consensus enhances ASEAN solidarity, enabling it to move forward collectively on those issues that they agree upon. Nevertheless, there are only few issues that reach their common concern. Their consensus is based on capacity of the member state with a minimum standard of its

³⁸ Amitav Acharya, *op.cit.*, 74-75.

³⁹ National Council of the Union of Burma, *Briefing Notes on ASEAN Policy Towards Burma* (n.p., 2002), 4-5.

⁴⁰ Jamil Maidan Flores, *ASEAN: How It Works* (Jakarta: ASEAN Secretariat, 2000), 42.

interest.⁴¹ For instance, with sensitive issues like human rights, ASEAN members, if they are uncomfortable to discuss them will try their best to sweep them under the carpet which will be comfortable for all so as not to jeopardize relationships with other members and ASEAN solidarity.

As result, some ASEAN member state and scholars are leading to propose reviewing of the ASEAN way and principle of non-interference, particularly during process of admission of Burma to ASEAN. Alternative ways have been proposed such as the idea of “constructive intervention” proposed by Anwar Ibrahim and “flexible engagement” policy proposed by Surin Pitsuwan. As Surin put it,

*“it is time that ASEAN’s cherished principle of non-intervention is modified to allow it to play a constructive role in preventing or resolving domestic issues with regional implications...when a matter of domestic concern poses a threat to regional stability, a dose of peer pressure or friendly advice at the right time can be helpful.”*⁴²

It is not surprising that objections were raised by ASEAN members against these ideas, particularly by Vietnam and Burma.

Recent statements from the foreign minister of Malaysia, Syed Hamid Albar, with regard to the ongoing violence in Thailand’s Muslim-majority South, hints that it might be a good time for the regional grouping to rethink the limitation of this principle, if it is in agreement that “internal” problems have the potential to spill over into neighbouring countries.⁴³

⁴¹ Surachai Sirikrai, *op.cit.*, 6

⁴² ‘Surin Pushes ‘Peer Pressure’, *Bangkok Post*, 13 June 1998, 5; quoted in Amitav Achary, Democratization, Conflict Reduction and Regional Order: From Patrimonial to Participatory Regionalism in Southeast Asia, in *Democratization and Conflict Management/Prevention in Southeast Asia in the 21st Century*, ed. Pranee Thiparat, (Bangkok: Institute of Security and International Studies 2001), 217.

⁴³ Jeerawat Na Thalang and Don Pathan, ‘Non-interference under the Microscope’, *The Nation*, 25 July 2005.

The debate over non-interference in ASEAN remains inconclusive. Although, it is a slow process, however, the on going debate can be considered as a good development. The recent ASEAN position on Burma is a good sign, even if the ASEAN approach of step-by-step is a slow process. In this sense, the ASEAN way may be flexible to the changing situation, but its key principles of non-interference remain.

ASEAN Human Rights Policy

As mentioned earlier, originally the words “human rights” do not appear in core ASEAN documents – ASEAN Declaration 1967 and the Treaty of Amity and Cooperation (TAC) 1976. Nevertheless, like all members of the United Nations Organization (UN), the concern for human rights issues is reflected from their commitment to adhere to the spirit and principle of the UN Charter. In short, all ASEAN countries are bound to the human rights principle in international relations and domestic affairs. They have all acceded to the UN Charter as well as the Universal Declaration on Human Rights (UDHR).

As of 2006, many of the ASEAN member states have ratified the different principal international human rights instruments (see Table 1).

Table 1: ASEAN's Status of Ratifications of the International Human Rights Treaties

Country	Brunei Darussalam	Burma	Cambodia	Indonesia	Lao PDR	Malaysia	Philippines	Singapore	Thailand	Vietnam
Admitted to ASEAN	08Jan84	23Jul97	30Apr99	08Aug67	23Jul97	08Aug67	08Aug67	08Aug67	08Aug67	28Jul95
CESCR			26Aug92 a	23May06 a	07Dec00 s		03Jan76		05Dec99 a	24Dec82 a
CCPR			26Aug92 a	23May06 a	07Dec00 s		23Jan87		29Jan97 a	24Dec82 a
CCPR-OP1			27Sep04 s				22Nov89 a			
CCPR-OP2										
CERD			28Dec83	25Jul99 a	24Mar74 a		04Jan69		27Jan03 a	09Jul82 a
CEDAW	23 Jun 06 a	21Aug97 a	14Nov92	13Oct84	13Sep81	04Aug95 a	04Sep81	04Nov95 a	08Sep85 a	19Mar82
CEDAW-OP			11Nov01 s	28Feb00 s			12Feb04		22Dec00	
CAT			14Nov92 a	27Nov99			26Jun87 a			
CAT-OP										
CRC	26 Jan 96 a	14Aug91 a	14Nov92 a	05Oct90	07Jun91 a	19Mar95 a	20Sep90	04Nov95 a	26Apr92 a	02Sep90
CRC-OP-AC			16Aug04	24Sep01 s			26Sep03	07Sep00 s	27Mar06	12Feb02
CRC-OP-SC			30Jun02	24Sep01 s			28Jun02		11Feb06	18Jan02
MWC				22Sep04 s			01Jul03			

Note:⁴⁴ As of 14 July 2006

- (1) the International Covenant on Economic, Social and Cultural Rights (CESCR), which is monitored by the Committee on Economic, Social and Cultural Rights;
- (2) the International Covenant on Civil and Political Rights (CCPR), which is monitored by the Human Rights Committee;
- (3) the Optional Protocol to the International Covenant on Civil and Political Rights (CCPR-OP1), which is administered by the Human Rights Committee; and
- (4) the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty (CCPR-OP2-DP);
- (5) the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which is monitored by the Committee on the Elimination of Racial Discrimination;
- (6) the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which is monitored by the Committee on the Elimination of Discrimination against Women;
- (7) the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP);
- (8) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which is monitored by the Committee against Torture;
- (9) the Convention on the Rights of the Child (CRC), which is monitored by the Committee on the Rights of the Child;
- (10) the Optional Protocol to the Convention on the Rights of the Child (CRC-OP-AC) on the involvement of children in armed conflict;
- (11) the Optional Protocol to the Convention on the Rights of the Child (CRC-OP-SC) on the sale of children, child prostitution and child pornography.
- (12) the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC).

The dates listed refer to the date of ratification, unless followed by:

- an "a" which signifies accession,
"s", which signifies signature only.

In this regard, it is important to note that all ASEAN countries are parties to the Convention on the Rights of the Child (CRC) and the Convention on the

⁴⁴ <http://www.ohchr.org>. Accessed 5 October 2006.

Elimination of All Forms of Discrimination against Women (CEDAW). This indicates that these two sectors – children and women are priorities for ASEAN member states. Thus there may be a regional consensus on the promotion and protection of human rights. They have also adopted policy and a programme of action and cooperation in relation to these two areas.

Although, ASEAN does not have specific legal documents on human rights, human rights have been mentioned in different non-legal documents such as joint communiqués or joint declarations both among its member countries and dialogue partners. For instance in the Joint Declaration of ASEAN-EC Ministerial Meeting, ASEAN has agreed that cooperation between them will serve their people by promoting greater prosperity, and committed to international cooperation on promoting social justice and human rights since 1978⁴⁵ which reflects that in principle ASEAN has accepted cooperation in the area of human rights. Subsequently in 1990s, a number of statements reflect ASEAN's view accepting universal human rights but with the condition on state sovereignty, such as paragraph 15 of Joint Communiqué of the 24th ASEAN Ministerial Meeting states:

*“...with concern its tendentious application in inter-state relations. They agreed that while human rights is universal in character, implementation in the national context should remain within the competence and responsibility of each country, having regard for the complex variety of economic, social and cultural realities. They emphasized neither that the international application of human rights be narrow and selective nor should it violate the sovereignty of nations.”*⁴⁶

Importantly, a significant document on human rights is the joint communiqué of the 26th ASEAN Foreign Ministerial Meeting (AMM) held in Singapore on 23-24 July 1993, which reflects the position contained in three elaborate

⁴⁵ Joint Declaration of the ASEAN-EC Ministerial Meeting, 21 November 1978, Brussels, Belgium, paragraph 11. See detail in the Working Group, *op.cit.*, 2.

⁴⁶ Joint Communiqué of the 24th ASEAN Ministerial Meeting, 19-20 July 1991, Kuala Lumpur, Malaysia, paragraph 15. See detail in the Working Group, *op.cit.*, 3

paragraphs under the new section of human rights. They can be summarized that ASEAN recognized human rights are interrelated and indivisible, and its commitment to and respect for human rights and fundamental freedoms as set out in the Vienna Declaration of 25 June 1993 through strengthening international cooperation on all aspects of human rights. Significantly they agreed that ASEAN should also consider the establishment of an appropriate regional mechanism on human rights.

However, it is not easy in its implementation, as ASEAN belief remains in ASEAN values (linked with the Asian values argument). Thus it is followed by many conditions for evidence: (1) ASEAN emphasized that the promotion and protection of human rights should not be politicized and should take cognizance of the principles of respect for national sovereignty, territorial integrity and non-interference in the internal affairs of states; (2) need to a balance between the rights of the individual and those of the community; (3) objection to using human rights as a conditionality for economic cooperation and development assistance; (4) the need to redress human rights violations which should not be tolerated under any hidden motive or reason.

In this regard, Dino Patti Djala argues that demonstration by ASEAN of its commitment to the Vienna Declaration, by including a human rights section within a lengthy AMM joint communiqué, is perhaps more in accordance with the global discourse on human rights, rather than a strong affirmation of its human rights policy.⁴⁷

Furthermore, ASEAN policy statements on human rights can also be found in other documents like ASEAN Vision 2020 which aims to be “a concert of Southeast Asian Nations, outward looking, living in peace, stability and prosperity, bonded together in partnership in dynamic development and in a community of caring societies.” Towards this community of caring societies, ASEAN sees vibrant and open societies consistent with their respective national identities, where all people enjoy equitable access to opportunities for total human development regardless of gender,

⁴⁷ Dino Patti Djala, *op.cit.*

race, religion, language, or social and cultural background. ASEAN envisions Southeast Asia nations being governed with the consent and greater participation of the people, with its focus on the welfare and dignity of the human person and the good of the community.⁴⁸ In this sense, even Vision 2020 did not mention much about human rights, but it can be interpreted as an ASEAN society which respects human rights, where all people would be treated without discrimination and could enjoy their security and participation in the ASEAN community.

Under the Vision 2020, a series of road maps, the Hanoi Plan of Action (HPA), was adopted as the program for implementation during the first six years of the Vision from 1999 to 2004 which list of activities on human rights are to be achieved in a given time frame in ASEAN countries, as follows: implementation of the CEDAW and CRC; exchanges of human rights information. In this sense, human rights is slowly integrated in ASEAN cooperation.

However, Simon SC Tay and Jesus Estanislao have criticized that grand vision and these plans: for being over ambitious because of their too broad nature covering a full range of economic, social and political matters, which are considered more plan than action.⁴⁹ This criticism was supported through the report of an Assessment Study on the Progress of ASEAN Regional Integration: The Ha Noi Plan of Action toward ASEAN Vision 2020 has indicated that about two-thirds of the activities embodied in the HPA had been accomplished as of mid-2004,⁵⁰ but program on human rights has never been implemented since the outset. Beside the budget constraint, lack of strong political will of member countries' firm commitment to implement was part of that failure. As result, the HPA has failed to deal with human rights problems.

⁴⁸ see ASEAN Vision 2020.

⁴⁹ Simon SC Tay and Jesus Estanislao, *The Relevance of ASEAN: Crisis and Change*, in *A New ASEAN in a New Millennium*, eds. Simon Sc Tay, Jesus Estanislao, and Hadi Soesastro, (Jakarta: Centre for Strategic and International Studies, 2000), 3-24.

⁵⁰ *Final Report of An Assessment Study on the Progress of ASEAN Regional Integration: The Ha Noi Plan of Action Toward ASEAN Vision 2020*, by Cielito F. Habito, Fernando T. Aldaba, and Ofelia M. Templo (Ateneo Center for Economic Research and Development, October 2004), Executive summary. REPSF Project No. 03/006b [online]; available from: <http://www.aseansec.org>. Accessed 20 June 2005.

Subsequently, the Vientiane Action Programme (VAP), a second road map adopted at the Tenth ASEAN Summit in Vientiane, surprisingly integrated a human rights provision under political and security cooperation, so as to strategically promote human rights and obligations. The VAP also provided the list of activities on human rights being implemented in the period 2004-2010, regarding the existing human rights mechanism at national level; establishment of an ASEAN commission on the rights of women and children; elaboration of an instrument on the rights of migrant workers; and promotion of human rights education, which will be elaborated in Chapter 4.

One year later, ASEAN leader has adopted the Kuala Lumpur Declaration on Establishment of the ASEAN Charter at the 11th ASEAN Summit in Kuala Lumpur. Such Charter will be set up an institution framework and a legal personality for ASEAN. The Kuala Lumpur Declaration mentioned that principles of promotion of democracy, human rights and obligations, transparency and good governance and strengthening democratic institutions will be part of its charter. It is now in process of formulation being helped by an Eminent Persons Group (EPGs)⁵¹ and its recommendation will be submitted by the next summit.

In this regards, in the 21st century, ASEAN has taken steps on human rights which have developed and integrated with members' cooperation. These developments become a challenge for ASEAN in its implementation of VAP and drafting a charter. An ASEAN official who wants to remain anonymous views that VAP is still too broad, especially in areas of human rights, which remains a sensitive issue in ASEAN member countries and will make it difficult to put the plan into action.⁵² It is still questionable whether the ASEAN Charter can include a reference to the protection of human rights as well as a mechanism, and how ASEAN people will participate in its process.

⁵¹ ASEAN Eminent Persons Group (EPGs) comprises of ten experienced diplomats and scholars from each member state which was set up at ASEAN summit meeting in Kuala Lumpur in December 2005 in order to formulating and making recommendations on an ASEAN Charter.

⁵² Interview with Laos official on 20 December 2005.

Regional Mechanisms on Human Rights

At present, aside from the UN system of promoting and protecting human rights, regional human rights systems have been set up in Europe, the Americas and Africa. There are no mechanisms on human rights in the Asian region, whether under ASEAN or the South Asian Association for Regional Cooperation (SAARC).⁵³ As mentioned earlier, ASEAN first discussed the idea of the establishment of an appropriate regional mechanism on human rights in AMM in Singapore 1993. Meanwhile, in support of this initiative, the ASEAN Inter-Parliamentary organization (AIPO)⁵⁴ has adopted the Declaration on Human Rights, stating in article 21: “it is likewise the task and responsibility of member states to establish an appropriate regional mechanism on human rights.”

Seven year later, on the occasion of the 33rd AMM 2000 ASEAN received a Draft Agreement for the Establishment of the ASEAN Human Rights Commission from the civil society led by the Working Group of an ASEAN Human Rights Mechanism. ASEAN’s view was that the process of generating the Draft Agreement did not engage or involve the ASEAN governments, which was not the ASEAN way of consultation and consensus. As result, in the 34th AMM in Hanoi, ASEAN agreed that ASEAN-ISIS should also be involved in the discussions especially in the broader context of a People's ASEAN.

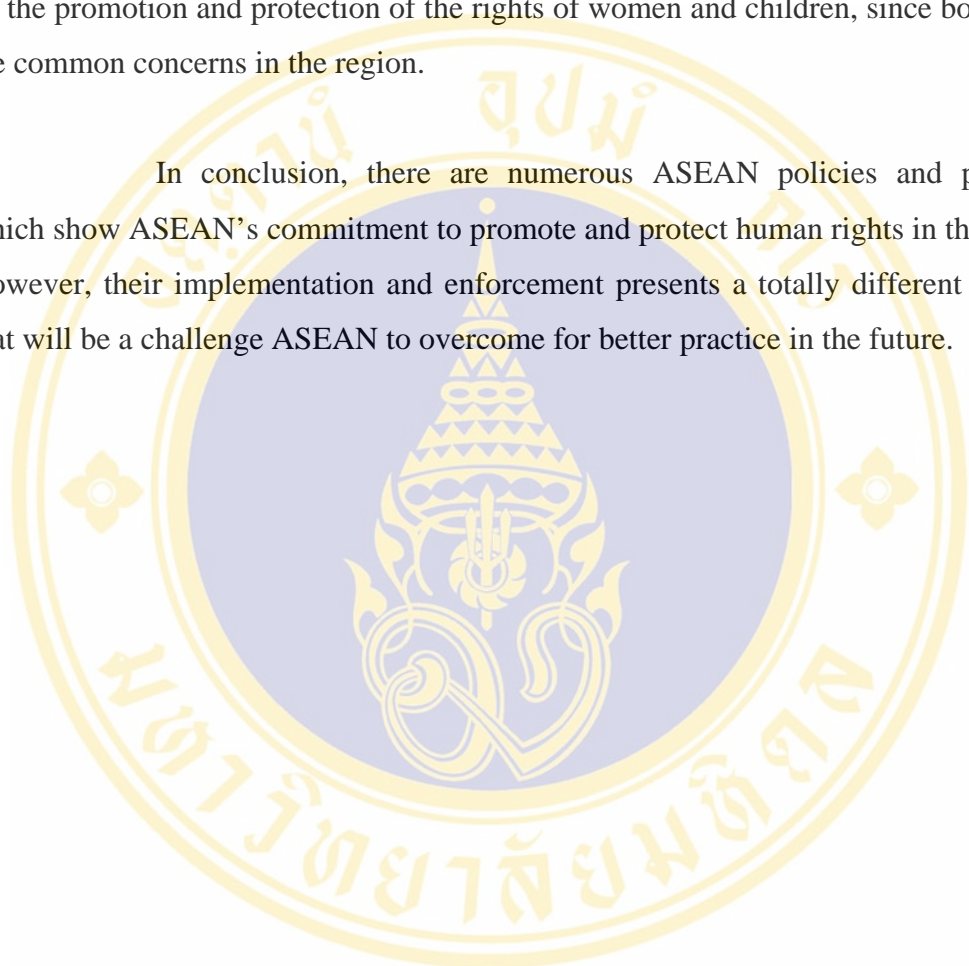
It is 13 years now, since that seminal statement and no human rights mechanism has been established, and till date, the ASEAN Government has not yet put forward ideas on the shape and substance of such a mechanism. The simple reason is that ASEAN’s view on human rights as internal affairs have proved to be roadblocks for such mechanism since the mechanism will go against the cardinal principle of non-interference. ASEAN uses the argument of Asian values and Asian diversity to justify its reluctance to go against the principle of non-interference.

⁵³ The South Asian Association for Regional Cooperation or SAARC, which comprising of seven countries namely, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.

⁵⁴ AIPO comprising 8 countries namely Cambodia, Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam

Requesting for ASEAN-ISIS participation in the establishment of the Commission is also seen as a way to buy time, and since then there have been no recommendations from ASEAN-ISIS. Though ASEAN is hesitant towards setting up a broad human rights mechanism, recently it agreed to the establishment of an ASEAN commission on the promotion and protection of the rights of women and children, since both issues are common concerns in the region.

In conclusion, there are numerous ASEAN policies and programs which show ASEAN's commitment to promote and protect human rights in the region. However, their implementation and enforcement presents a totally different question that will be a challenge ASEAN to overcome for better practice in the future.



CHAPTER 3

CASE STUDY ON ASEAN'S RESPONSE TO HUMAN RIGHTS VIOLATIONS

Since the 1990s there has been an increase in human rights violations in different countries in the Southeast Asian region, such as political conflicts in Cambodia, Malaysia and Burma; the East Timor crisis; ethnic conflicts in Philippines and violence in Southern part of Thailand. These conflicts varied from each other in terms of degrees of seriousness. ASEAN as a regional organization has a role in maintaining regional peace and stability, however, its reaction to human rights has been questionable. Therefore, this chapter will study the response of ASEAN to human rights violations through the case studies of the July 1997 coup in Cambodia and the East Timor crisis in 1999.

3.1 Human Rights Violations in Cambodia and East Timor - A Background

3.1.1 The 1997 July coup in Cambodia

Cambodia, (originally called 'Democratic Kampuchea') has had a long history of political instability and human rights violations. Human rights atrocities have included genocide during the Khmer Rouge era, where more than one million people were killed in a brutal manner. The intervention of Vietnam in Cambodia at the end of 1978,⁵⁵ helped to bring the situation to the attention of the international community, including ASEAN. The situation in Cambodia was considered to be a breach of international order, peace and stability. Eventually, the conflict was settled and the Paris Peace agreement was signed by all factions including a number of states that participated as members of this agreement. The Paris Peace agreement, apart from setting up the framework of national reconciliation, also helped promote democracy,

⁵⁵ As result of genocide, Vietnam claimed that their intervention was aimed to protect the people of Cambodia from the Khmer Rouge's massacre, but in fact their intention was to occupy Cambodia; saving lives of Cambodian people was the priority rather a by product of intervention. See detail in Vinita Sukrasep, *op.cit.*, 67.

human rights and peace in Cambodia. The national elections were conducted in 1993 and were authorized by the United Nations Transitional Authority in Cambodia (UNTAC). Prince Norodom Ranariddh, president of the United National Front for an Independent, Neutral, Peaceful and Cooperative Cambodia (hereinafter referred to as FUNCINPEC) won the election by popular vote of 58 seats while Mr. Hun Sen of the Cambodian People's Party (hereinafter referred to as CPP) lost having won only 51 seats. Consequently the CPP organized open protests against the results of the elections. To maintain peace and stability His Majesty King Norodom Sihanouk forced his son, Prince Ranariddh, to share power with Hun Sen, under the framework of a two heads government.⁵⁶

However, with regard to power sharing formula, each party wanted political reconciliation on its own terms, causing an inability of each party to trust each other. As a result, the coalition government became weakened and conflicts arose between the coalition partners. The political tensions between Cambodia's two Prime Ministers increased in 1996. Each party had spent more than a year building up their own private armies, police forces, and bodyguard units. Both factions of the coalition government had begun taken action to undermine press freedom and freedom of association.⁵⁷

A series of crises took place in early 1997, tension continued to escalate and armed clashes between two factions erupted in Battambang province in February, according to Human Rights Watch report, resulting in twenty soldiers being killed during the armed clashes.⁵⁸ Following a grenade attack on a peaceful demonstration in front of the National Assembly on March 30. Led by Sam Rainsy, president of Khmer Nation Party (KNP), it was calling for reform of Cambodia's judicial system. Sixteen people were killed and over a hundred injured.⁵⁹ The fighting continued and was having a deep impact on the lives of innocent people. On June 17, several hours of

⁵⁶ Son Soubert, 'Hun Sen Crushed Democracy in Cambodia', *FDL-AP Quarterly* 3, no.3, (fall 1997), 15

⁵⁷ Human Rights Watch, *Human Rights Watch World Report 1998* [online]; available from: <http://www.hrw.org>. Accessed 2 June 2005

⁵⁸ Ibid.

⁵⁹ Amnesty International. *Amnesty International Year Report 1998* [online]; available from : <http://www.amnesty.org/ailib/aireport/ar98/asa23.htm>. Accessed 2 May 2005

fighting broke out in Phnom Penh between Ranariddh's personal security unit and National Police troops under the CPP, killing several people.⁶⁰

On July 5, Hun Sen forces launched a violent attack against Prince Ranariddh in the capital, while Prince Ranariddh was out of the country. According to Human Rights Watch and Amnesty International, on July 5-6, the capital city was pounded by mortars, tank blasts, and automatic weapon fire. The airport and military bases of FUNCINPEC came under control of Hun Sen's forces. There were many cases of ransacking and looting of businesses, factories, and private homes including the national headquarters of the Khmer Nation Party (KNP).

As result of the two days of fighting, at least sixty-five people died, and more than 200 were wounded in Phnom Penh. In addition, more than 500 FUNCINPEC soldiers were immediately detained in the aftermath of the fighting, and hundreds detained without charge or trial, while some (at least thirty) were tortured in custody. With overcrowding of detention, prison conditions amounted to cruel, inhuman or degrading treatment.⁶¹ In addition, dozens of other FUNCINPEC officers disappeared and remain unaccounted for and more than 1,000 Cambodians including opposition members of parliament, political workers, labor union activists, and journalists fled to the Thai border to escape factional fighting. During this coup and its aftermath, press freedom was also severely restricted and suspended publication of newspapers and magazines, particular those not closely connected with CPP.

During this period, the UN expressed grave concern over the judicial system in Cambodia which was not able to deal effectively with violence against journalists and torture committed by the military. Thomas Hammarberg, UN Special Representative for Human Rights in Cambodia, made several visits to Cambodia and denounced Hun Sen's military takeover as a "violent coup d'état", and called for an impartial investigation into violence surrounding the coup and asked the government to reveal the location of all detention centers, prisons, and cremation sites.⁶² Once

⁶⁰ Human Rights Watch , *op.cit.*

⁶¹ Amnesty International, *op.cit.*

⁶² Human Rights Watch , *op.cit.*

more a Cambodia question was included in the UN agenda and the UN agreed to continue its consideration of the situation of serious human rights violations in Cambodia and not fill Cambodia's seat at the next General Assembly. Apart from that, the international community, including regional human rights organizations and academic groups, condemned the atrocities committed by the two factions and sent various fact-finding missions to Cambodia.

In this situation both parties in the conflict claimed legitimacy for the use of violence. Second Prime Minister Hun Sen claimed that the July offensive launched by CPP against the FUNCINPEC was necessary to 'save Cambodia' from Prince Ranariddh's attempts to create a war as evidenced by his acts of smuggling arms into Cambodia, rallying with Khmer Rouge forces and mobilizing troops within the country.⁶³ In contrast, Prince Ranariddh argued that he had no choice but to procure weapons in order to protect himself from CPP forces.⁶⁴ It was obvious that both factions were using all kinds of violence in order to maintain their power. There is a need to examine the cause of the tensions and conflict. One reason could be the decision to set up the cabinet of the coalition government according to King Sihanouk's formula of a two headed government, and not by a process of elections. In this sense, the coalition was formed because it had little choice but to work together. Thus the parties were not really ready to compromise with regard to power-sharing and thus the formula did not work out. Moreover, UNTAC failed to disarm the four factions which signed the Paris Peace Agreement,⁶⁵ as a result Khmer Rouge forces had the ability to provide support to Prince Ranariddh in this fight for power.

After the coup, Hun Sen made an effort to consolidate his power in various ways - through action in the courts and in the National Assembly. Prince Ranariddh was charged with three crimes: illegal weapons importing; unauthorized negotiations with the Khmer Rouge; and unauthorized troop movements within the

⁶³ Asian Forum for Human Rights and Development, *Report of a Mission: Cambodia Human Rights and Democracy in Crisis*, (Bangkok: Asian Forum for Human Rights and Development, 1997), 27.

⁶⁴ Human Rights Watch, *op.cit.*

⁶⁵ Frederick Z. Brown and David G. Timberman, eds. Introduction: Peace, Development, and Democracy in Cambodia – Shattered Hopes, in *Cambodia and the International Community: The Quest for Peace, Development, and Democracy* (New York: Asia Society, 1998), 13-31.

country.⁶⁶ Subsequently, Ung Huot, Foreign Minister and a member of FUNCINPEC was appointed as the new first prime minister, replacing Prince Ranariddh who was exiled from the country. In addition, the Council of Minister approved a draft election law with measures to block electoral participation of exiled politicians.⁶⁷

A climate of fear throughout the country prevailed before, during and after the coup, affecting direct or indirectly the lives of the Cambodian people, whether opposition politicians or innocent people. It should be noted that serious human rights violations committed in July 1997 symbolized the resumption of civil war, thwarting the country's development, constraining its full participation in regional affairs, and posing a threat to the stability and security of the Asia-Pacific region. In the aftermath, EU, US, Australia and Japan - as part of the Friends of Cambodia group - announced their withdrawal of development assistance, and suspended financial and military aid to Cambodia. Subsequently, the World Bank and the Asian Development Bank also announced an indefinite suspension of their aid programs to Cambodia. In particular Japan, the largest aid donor of Cambodia, which also had a key role, not only suspended aid but also came up with a Four Pillars peace plan⁶⁸ for Cambodia as conditions for resuming aid. This plan was accepted by all - both Cambodian factions and the group.

With the assistance and support from the international community including donors, the political conflict was finally settled. The government troops and forces loyal to Prince Ranariddh declared a ceasefire in February 1998, exiled politicians return home to participate in the July elections.⁶⁹ Eventually, CPP won the election in July by popular vote. Hun Sen declared victory and became the Prime

⁶⁶ Asian Forum for Human Rights and Development, *op.cit.*, 8.

⁶⁷ Human Rights Watch, *op.cit.*

⁶⁸ The four points of the Japanese proposal were: (1) Prince Ranariddh's royalist forces severing military cooperation with the Khmer Rouge; (2) a cease-fire and the integration of the prince's forces into the Royal Cambodian Armed Forces without allowing them to retain any semi-autonomous zones; (3) an expedited trial in absentia of Prince Ranariddh and in the event of conviction by the Cambodian court a pardon by the king based upon a petition by a member of the prince's family, and (4) a guarantee by Second Prime Minister Samdech Hun Sen of the safe return of Prince Ranariddh and his participation in the 1998 elections; quote in Kao Kim Hourn, Cambodia in ASEAN: Lessons Learned and Continuing Challenges, in *Cambodia's Future in ASEAN : Dynamo or Dynamite?*. eds. Hourn, Kao Kim and Jeffrey A. Kaplan. (Phnom Penh: Cambodian Institute for Cooperation and Peace, 1998), 169-170.

⁶⁹ Amnesty International. *Amnesty International Year Report 1999*. [online]; available from : <http://www.amnesty.org/ailib/aireport/ar99/asa23.htm>. Accessed 26 January 2004.

Minister of Cambodia. Subsequent, Cambodia formally joined the association, and made the dream of Asean-10 a reality.

How did ASEAN respond to the July Coup?

The events in Cambodia occurred during its process of admission to the Association. Nevertheless, ASEAN in the light of its aspiration to enlarge the association to 'ASEAN 10', ASEAN agreed to admit Cambodia, Laos and Myanmar simultaneously in July at the 30th AMM.⁷⁰ Concerns were raised about the question of political instability and the deadlock between the Coalition Government in Cambodia, but Mahathir Mohamad, Prime Minister of Malaysia argued that other ASEAN countries had been admitted to the group before their democratic and human rights records were up to par, therefore the human rights situation in Cambodia should not be the deciding factor regarding its admission to ASEAN.⁷¹ This reflected Mahathir's support for Cambodia's admission to the association. ASEAN delegations visited Phnom Penh and expressed ASEAN's concern over the political developments in Cambodia during their meetings with the First and Second Prime Ministers of Cambodia in mid June.⁷² The purpose of the meeting was not to advocate for human rights protection, but to make sure that the situation would not get out of control just before the scheduled admission of the remaining three countries into ASEAN. As Kao Kim Horn noted, ASEAN countries made clear that their desire for a secure and prosperous Cambodia was an important part of their plan to develop a united Southeast Asia.⁷³

When fighting broke out again in July 5-6, most ASEAN member countries condemned the fighting in the capital and called for an immediate negotiation among the Cambodian parties, while Singapore, Thailand, the Philippines

⁷⁰ Kao Kim Hourn, *op.cit.*, 172.

⁷¹ David Shaftel, 'Associating with Cambodia: How ASEAN's 10th Country Joined the Club,' *Cambodia Daily* [online]; available from <http://www.camnet.com.kh/cambodia.daily/asean/15.htm> Accessed on 5 May 2006.

⁷² The delegations comprised Malaysian Foreign Minister Abdullah Ahmad Badawi, Chairman of the Standing Committee, and ASEAN Secretary-General Ajit Singh

⁷³ Kao Kim Hourn, Cambodia and the International Community: The Road Ahead, in *Cambodia and International Community: The Quest for Peace, and Development, and Democracy*, eds. Frederick Z. Brown and David G. Timberman (New York: Asia Society, 1998), 191.

and other countries evacuated their citizens.⁷⁴ In response to the events, ASEAN quickly arranged a special meeting on the Cambodian issue in Kuala Lumpur on July 10, and decided to postpone Cambodia's entry into the regional grouping until the situation settled down.⁷⁵ There are some reasons behind why ASEAN members acted in concert over this conflict; one, as a regional organization it has the mandate to maintain international peace and security by peaceful means; and another, because of its responsibilities as a party to the 1991 Paris Peace Agreements⁷⁶. In this sense, ASEAN members have a continuing obligation to ensure that the Paris Agreements remain the framework for Cambodia's political future. Thus, some Cambodian scholars did not see ASEAN's actions as a violation of its principle of non-interference in the internal affairs of another.

ASEAN adopted a policy of Constructive Engagement as a policy tool in dealing with Cambodia and aimed at re-establishing political order and democracy on the basis of the 1991 Paris Agreement and 1993 Cambodian Constitution. It should be noted that the term Constructive Engagement or Constructive Intervention proposed by Anwar means "...ASEAN must now move from being a largely reactive organization to one that is proactive. We need to 'intervene' before simmering problems erupt into full-blown crises..."⁷⁷

In doing so, the ASEAN Troika was formed which has significantly contributed to a policy of constructive engagement and the peace process in Cambodia. On 19 July, the ASEAN Troika comprising Indonesian Foreign Minister Ali Alatas, the Philippines Secretary of Foreign Affairs Domingo L Siazon, and Thailand Foreign Affairs Prachuab Chaiyasan went on its first mission to Cambodia to meet with Second Prime Minister and other Cambodian leaders, followed by a second mission several weeks later to help mediate a solution. The ASEAN Troika also tried

⁷⁴ Kao Kim Hourn, Cambodia in ASEAN: Lessons Learned and Continuing Challenges, *op.cit.*, 168.

⁷⁵ See Joint Statement of the Special Meeting of the ASEAN Foreign Minister on Cambodia, 10 July 1997 in Kuala Lumpur.

⁷⁶ According to article 29 of Paris Agreement state that "... in the event of a violation or threat of violation of this Agreement, will immediately undertake appropriate consultations, including with members of the Paris Conference on Cambodia, with a view to taking appropriate steps to ensure respect for these commitments."

⁷⁷ Anwar Ibrahim, 'Crisis Prevention', *Newsweek*, July 21, 1997 quoted in *Asean's Non-Interference Policy: Principles under pressure?*, Kao Kim Hourn, (London: ASEAN Academic Press, 2000), 52.

to explore ways and means to help resolve the political difficulties in Cambodia including cooperation with the “Friends of Cambodia” group, an informal group of states having interest in the Cambodia situation⁷⁸ and the representatives of the UN in order to continue pursuing diplomatic negotiations. Many consultations were organized throughout 1998 for these purposes.

Furthermore, at the ASEAN Foreign Ministers Meeting on 24 July, ASEAN reiterated that it would remain engaged with Cambodia and had offered its good offices to Cambodia.⁷⁹ One month later, the Special ASEAN Foreign Ministers Meeting on Cambodia was conducted which emphasized the need to hold free and fair election.⁸⁰ It is interesting that at the beginning, ASEAN's offer to mediate the conflict was rejected by Second Prime Minister Hun Sen. It may have been because of the composition of the ASEAN Troika, only Indonesia, the Philippines and Thailand,⁸¹ which reflected the interests of only those countries, rather than representing the interest of the ASEAN. The Cambodian government in Phnom Penh also perceived the role of ASEAN Troika as not partial because it seemed that ASEAN did not listen to the view of Phnom Penh government.⁸² As a result, Hun Sen came up with a strong argument on Cambodian sovereignty and non-interference doctrine and emphasised that the problem was internal in nature and Cambodia would not tolerate external interference. Thus, if Cambodia saw ASEAN to be interfering in internal affairs, then it might withdraw Cambodia's application to join the Association.⁸³ In addition, Hun Sen also questioned the policy of constructive

⁷⁸ The “Friends of Cambodia” group is consisted of the United State, the European Union, Japan, Australia, New Zealand, Canada, China and Russia.

⁷⁹ See Joint Communiqué of the 30th ASEAN Foreign Ministers Meeting, 24 - 25 July 1997, Subang Jaya, Malaysia

⁸⁰ See Joint Press Statement of the Special ASEAN Foreign Ministers Meeting, 11 August 1997, Singapore.

⁸¹ According to, Kao Kim Hourn there are a few theories of that Indonesia, the Philippines and Thailand are members of the ASEAN Troika is because: Indonesia, as the big brother country in the region, had been significantly involved in the Cambodian peace process during the 1980s and the early 1990s; while the Philippines is currently the Chairman of the ASEAN Standing Committee. Lastly, Thailand is a neighbouring country to Cambodia, therefore Thailand security would have been most effected by this political conflict, as evidenced by the number of refugees that fled to Thai territory. See Kao Kim Hourn, Cambodia in ASEAN: Lessons Learned and Continuing Challenges *op.cit.*, 168-169.

⁸² *Ibid.*, 168

⁸³ Asian Forum for Human Rights and Development, *op.cit.*, 26.

engagement: why Burma could be a member and Cambodia could not.⁸⁴ It can be seen that ASEAN has selectively practiced the principle of non-interference and constructive engagement approach in Southeast Asia. However, Hun Sen finally welcomed the group to play a role in order to help implement the Four Pillars peace plan for resuming aid from Japan.

Table 2: Summary ASEAN’s approach in solving the Cambodia conflict

The methods of ASEAN in solving the Cambodia conflict through diplomacy channels such provide a good office – arrange many consultation meeting for settle the dispute	
1.	ASEAN adopted ‘ Constructive Engagement ’ as a policy tool aimed at re-establishing political order and democracy on the basis of the 1991 Paris Agreement and 1993 Cambodian Constitution.
2.	The ASEAN Foreign Ministers had arranged a special meetings on Cambodia, and issued a number of statements, for example: <ul style="list-style-type: none"> • Joint Statement of the Special Meeting of the ASEAN Foreign Minister on Cambodia, 10 July 1997 in Kuala Lumpur. • Joint Communiqué of the 30th ASEAN Foreign Ministers Meeting 24 - 25 July 1997 in Subang Jaya, Malaysia • Joint Press Statement of the Special ASEAN Foreign Ministers Meeting, Singapore, 11 August 1997.
3.	ASEAN formed ASEAN Troika , an ad-hoc body, had mission to Cambodia; arranged meetings among themselves and with the Friends of Cambodia group, and the representative of the UN Secretary-General in Cambodia, and issued a number of press statements, for example: <ul style="list-style-type: none"> • ASEAN Troika Press Statement, 15 February 1998, Manila • ASEAN Troika Statement, 6 March 1998, Manila • ASEAN Troika Statement, 19 April 1998, Bangkok

3.1.2 The 1999 East Timor crisis

East Timor is situated about 800 kilometers north of Darwin, Australia and south of the Sunda Islands of Indonesia. For over four hundred years, East Timor was a colonial outpost of the Portuguese. After one of the East Timorese political parties, Revolutionary Front for an Independent East Timor (FRETILIN) declared independence on 28 November 1975, Indonesia intervened in East Timor on the grounds that other East Timorese political parties had appealed to it and proclaimed

⁸⁴ Ibid. 39

East Timor as its twenty-seventh province. The United Nations General Assembly and Security Council passed a total of ten resolutions on East Timor from 1975 to 1982, calling for the withdrawal of Indonesian troops, and affirmed the right of the East Timorese people to self-determination. However ASEAN strongly supported Indonesia and rejected the UN resolutions. From July 1983, East Timor came under the formula of the UN “tripartite dialogue” conducted between Portugal and Indonesia. In the Santa Cruz massacre, Indonesian troops opened fire on a peaceful demonstration in November 1991 and brought back the international focus on the question of self – determination of East Timorese people. As result, many civil movements around the world sought to regionalize the East Timor question and a series of regional conferences was organized throughout 1998.

Surprisingly, after the resignation of Indonesia's long serving president Suharto in May 1998, President B.J. Habibie became the new President and committed himself to reforms and promotion and protection of human rights. Thus an official statement was introduced in January 1999 stating that the East Timorese people would be allowed to decide their future status with regard to autonomy, or independence. In fact, there were several some reasons which influenced such a decision; the impact of the economic meltdown and forest fire crisis were still affecting, Indonesia and after a cost calculation, President B.J. Habibie announced that “From January 1, 2000, the East Timor question should be resolved. We don't want to be burdened. We will concentrate on the other 26 provinces.”⁸⁵

Subsequently the May 5 agreement, a historic agreement on the question of East Timor (hereinafter referred to as ‘New York Agreement’) was signed by Indonesia, Portugal and the United Nations in New York agreeing to a consultation process for the East Timorese people to accept or reject the Indonesian offer of autonomy.⁸⁶ It also emphasized that the responsibility for ensuring a secure

⁸⁵ *Report to the East Timor Truth Commission on International Actors*, by Geoffrey C. Gunn and Reyko Huang as presented to Commission for Reception, Truth and Reconciliation –CAVR (as it is commonly known by its Portuguese acronym), 37 [online]; available from <http://www.geoffreygunn.com> accessed 27 January 2006

⁸⁶ Indeed, New York Agreement contain six preconditions for implementing the consultation process as following: bringing armed civilian groups under strict control; the prompt arrest and prosecution of

environment devoid of violence or other forms of intimidation would rest with the appropriate Indonesian authorities.⁸⁷

However, in late 1998 and early 1999, new militia groups were established in East Timor by the Indonesian authorities as a spontaneous reaction against the activities of supporters of independence.⁸⁸ The militia had begun to intimidate people, often in the form of burning houses, destruction of property, beatings, harassment and in some instances sexual abuse. Two of the worst atrocities included the Liquica Church incident on 6 April 1999, when more than fifty were killed, and the incident at the house of independence leader Manuel Carrascalao in Dili on 17 April 1999, when at least twelve were killed.⁸⁹ It seemed that the militia was using violence to hamper the prospects for a referendum.

Prior to the referendum, pro-independence rallies ended by members of the militia setting up roadblocks throughout the capital and in raids, killings and burning property throughout thirteen districts. The atmospheres of intimidation and terror was raised by militia group members openly carrying guns, machetes increased in the towns with most people seeking refuge in the safe areas including fleeing to the mountains. Such actions clearly violated the New York Agreement, particularly in relation to the failure of the police to intervene and restore law and order.

On 30 August 1999, the popular consultation was finally held as authorized by the United Nations Missions in East Timor (UNAMET), after being postponed twice on security grounds. According to Asian Network for Free Elections (ANFREL), a record of the highest voter turnout in the world with over 98 per cent

those who incite or threaten to use violence; a ban on rallies by armed groups; ensuring the freedom of association and expression of all political forces and tendencies; the redeployment of the Indonesian military forces; the immediate institution of a process of laying down of arms by all armed groups to be completed well in advance of the holding of the ballot.

⁸⁷ United Nations Office of the High Commissioner for Human Rights. *Report of the International Commission of Inquiry on East Timor*. (paper presented to UN Secretary General, January 2000). paragraph 10.

⁸⁸ *Ibid.* paragraph 9.

⁸⁹ BD: War Crimes & Crimes Against Humanity (East Timor), (n.d.) [online]; available from www.pcug.org.au/~wildwood/crimes.htm. accessed 24 January 2006.

voter turnout was reached.⁹⁰ This demonstrated the desire or will of East Timor people to decide their future status regarding autonomy, or independence, unaffected by the climate of intimidation and violence. Meanwhile, acts of intimidation and violence continued in every part of East Timor, even local staffs of UNAMET were targeted.

The people of East Timor reaffirmed their freedom and right to self-determination though the referendum, overwhelmingly choosing independence. As soon as the outcome was announced by the United Nations on 4 September, militias, assisted by Indonesian troops, began an operation where they killed, robbed, tortured and raped the Timorese people, burning down people's houses in most towns. During this time, apart from the East Timor people, international observers, journalists and local staff of UNAMET were also targeted.

The violence escalated and spread throughout East Timor leading to condemnation from the international community. Estimates concluded that at least 1,000 people were killed, many more were injured and around 80 per cent of the infrastructure destroyed in the first nine months of 1999. In the worsening human rights situation, women were targeted for sexual abuse in a cruel and systematic way that included stripping and sexual slavery. Moreover, there was systematic planning by the Indonesian Armed Forces (TNI) for forced deportation and displacement of people by sea and by road. The records showed that up to 75 per cent of the population was displaced and around 250,000 forcibly evacuated to Indonesian West Timor, including a systematic attempt to destroy evidence, removal of bodies from the site of killings, for example, from the massacre site in Suai church to West Timor.⁹¹ This evidence clearly demonstrated a pattern of serious violations of fundamental human rights which was constituted as a crime against humanity, stated in the report of the International Commission of Inquiry on East Timor (ICI) and Indonesian Commission of Inquiry into Human Rights Violations in East Timor (KPP-HAM).

⁹⁰ Asian Network for Free Election (ANFREL) is a regional organization, aims to contribute to the democratization process by building capacities through training and supporting actual monitoring of elections by local groups, lobbying and disseminating election-related information. ANFREL has sent international observers to monitor the 'popular consultation'.

⁹¹ BD: War Crimes & Crimes Against Humanity (East Timor), *op.cit.*

Even the introduction of martial law by Indonesia on 7 September was not adequate to tackle the grave humanitarian crisis in East Timor. Concerned about the tragic events, some donor countries like the United State and European Union suspended military cooperation assistance and reviewed their economic assistance to Indonesia. Moreover, Australia offered its troops for a UN peacekeeping force to stop the violence in East Timor. As result of pressure from the US, during an APEC meeting in Auckland on 11-12 September, the Habibie government was forced to accept an international force. In response to the pressure, Indonesia stated its desire for substantial ASEAN participation in a multinational force, upon Indonesia's invitation.⁹²

This grave violation in East Timor was accorded the topmost priority at the UN Security Council and many mechanisms were established to address it, such as; with the consent of Indonesia, an International Force for East Timor (INTERFET) under Australian leadership in order to restore peace and security in East Timor. This was later replaced by the United Nations Transitional Administration in East Timor (UNTAET) headed by Philippines and Thai officers, which mandated for the administration of East Timor during a transition toward independence.

Two year later, an Indonesian human rights court for East Timor was established in order to bring those who committed violence to justice. However its jurisdiction was limited to crimes committed after the August 1999 vote. As result, high-ranking officers, such as Indonesia's General Wiranto, who was identified by Indonesia's KPP-HAM report as being responsible for the violence, were not included in the list of suspects. In this regard, questions were raised with regard to Indonesia's unwillingness to administer credible justice in relation to gross violation of human rights in East Timor.

As part of the transition process, the East Timor's Constituent Assembly and Presidential Election were arranged by UNTAET in 2001 and 2002,

⁹² Rodolfo C. Severino, 'Sovereignty, Intervention and the ASEAN Way' (paper presented at the ASEAN Scholars' Roundtable, Singapore, 3 July 2000), 5

respectively. Eventually, East Timor announced its formal independence as “Timor-Leste” on 20 May 2002. There is no doubt that the United Nations has played an important role in order to settle the tragic crisis. It is interesting to examine to what extent, ASEAN contributed to the peacemaking and reconciliation efforts.

How ASEAN responded to the crisis?

As mentioned earlier, ASEAN [founding] members had strongly supported Indonesian intervention in East Timor as against General Assembly Resolution 3845 (XXX), respecting the self-determination of the East Timor people. Since then, ASEAN has continued to adhere to the view that the East Timor issue was a domestic Indonesian problem. Indeed, the primary documents of ASEAN recognize the concept of self-determination such as the Declaration of Zone of Peace Freedom and Neutrality 1971; Declaration of ASEAN Concord 24 Feb 1976.

However, in the Joint Communiqué of the 9th ASEAN Foreign Ministerial Meeting in 1976, [issued after Indonesia occupied that country], the first statement mentioned the East Timor question. Their statement was not clear whether it accepted rights to self-determination for the East Timor people, where paragraph 23 stated:

“The Meeting reaffirmed the view that the future of East Timor remains, in the final analysis, in the hands of the people of East Timor. The Meeting expressed the view that the solution of the East Timor question would contribute positively to the maintenance of peace and stability in the Southeast Asian region.”⁹³

To ASEAN, ‘in the hands of the people of East Timor’ could be interpreted as meaning East Timorese political parties/groups who wanted to be part of Indonesia, rather than the people of East Timor as a whole. Since then, no statement with respect to the East Timor issue has been issued by ASEAN. Even after the Santa Cruz massacre 1991, which was condemned and criticized by the international

⁹³ Joint Communiqué of the 9th ASEAN Foreign Ministerial Meeting , 24-26 June 1976, Manila, Philippines, paragraph 23.

community, ASEAN remained silent. Furthermore, ASEAN member countries banned a series of regional conferences planned by civil society groups and non-governmental organization during the period of 1994 to 1998. Such omissions and actions clearly demonstrated ASEAN's iron-clad principle of non-interference in domestic affairs.

Since, the tragic crisis spread in 1999, the East Timor issue was never discussed in ASEAN, which led to criticism and questions were raised on ASEAN's ability to provide timely response to the bloodshed in East Timor. As a response to the criticism, ASEAN argued that the East Timor case was an international problem and therefore only UN had the legitimacy and capacity to undertake peacekeeping operations and mobilize the massive resources necessary for it. The Singapore Prime Minister Goh Chok Tong said that: East Timor "was not a problem created by ASEAN... It was and is an international problem. It remains an issue with the United Nations."⁹⁴ ASEAN's initiatives as described by Rodolfo, were to have consultations, arrive at a consensus, and let individual members decide what specific contributions to make to the UN effort. Moreover, its initiatives were carried out within the UN framework and with consent of Indonesia.⁹⁵

However, ASEAN's position about participation in East Timor created differences between old and new members of ASEAN. The four founding members – Thailand, the Philippines, Malaysia, Singapore as well as Brunei contributed either military or humanitarian aid. Especially, Thailand as ASEAN's chair proposed the idea of 'flexible engagement'. The Philippines also had a significant role in the multinational forces - as the head commander of the peacekeeping force during UNTAET while Thailand participated as deputy commander. However other new ASEAN members — Burma, Cambodia, Laos and Vietnam did not contribute any troops at all as they were concerned that such action might set a precedent for intervention in the region. For instance, Vietnam did not allow Thai transport planes, en route to Timor, to fly over Vietnamese airspace at night. In addition, the Burmese

⁹⁴ 'E. Timor Is Not ASEAN Problem: S'pore PM', *Xinhua News Agency*, 3 November 1999, p. 1008307h0181. quoted in Derek McDougall, *Regional Institutions and Security: Implications of The 1999 East Timor Crisis*, in *Non-Traditional Security Issues in Southeast Asia*, eds. Andrew T.H.Tan and J.D.Kenenth Boutin (n.p., 2001), 177

⁹⁵ Rodolfo C. Severino, 'Sovereignty, Intervention and the ASEAN Way,' *op.cit.*

junta stated “the decision of some ASEAN countries to be involved in peacekeeping operations in East Timor is not a coordinated ASEAN position and accordingly we would not like to comment on it.”⁹⁶ Such a statement demonstrated the ASEAN way of consensus on East Timor where some are not actually in agreement but can ‘live with it’.

Subsequently the human rights situation in East Timor improved. At the 33rd AMM 2000 in Bangkok, ASEAN Foreign Ministers issued a statement commending Indonesia for all its efforts in resolving the East Timor issue and reaffirmed their support for the process of reconciliation, rehabilitation and reconstruction and encouraged the international community to remain engaged with East Timor.⁹⁷ This was a second joint communiqué which referred to the East Timor issue, after ASEAN kept a long-silence for more than 24 years. Interestingly, the statement did not mention human rights violations in East Timor nor did it condemn the persecutors who committed the violence, but praised Indonesia instead. It is clear that even with Indonesia's consent, ASEAN was unable to take collective action to resolving the crisis in East Timor because it was afraid of violating the principle of non-interference.

Table 3: Summary ASEAN's approach in solving the East Timor Crisis

The methods of ASEAN in solving the East Timor Crisis
1. ASEAN kept silence - since, the tragic crisis spread over in 1999, the East Timor issue was never discussed.
2. ASEAN took consultation, after Indonesia's consent, and arrived at consensus allowing individual response . <ul style="list-style-type: none"> • Thailand, the Philippines, Malaysia, Singapore as well as Brunei contributed either military or humanitarian aid. • Burma, Cambodia, Laos and Vietnam did not contribute any troops at all.
3. The ASEAN Foreign Ministers had a meeting in 2000, after human rights situation in East Timor improved. <ul style="list-style-type: none"> • Joint Communiqué of the 33rd ASEAN Foreign Ministers Meeting, 24-25 July 2000 in Bangkok, Thailand which called on the international community to help East Timor achieve peace, stability and prosperity during its transition to full independence.

⁹⁶ ‘ASEAN's chance for renewal’, *Irrawaddy*, 1 October 1999 [online]; available from www.irrawaddy.org/aviewer.asp?a=1654&z=108 Accessed 24 January 2006

⁹⁷ Joint Communiqué of the 33rd ASEAN Ministerial Meeting, 24-25 July 2000, Bangkok, Thailand. paragraph 21.

3.2 Elements of Serious Human rights violations in Cambodia and East Timor

The interesting question about human rights violations is the distinction between of 'serious', 'gross', 'massive' violations of human rights. As Stanislave Chernichenko in his expanded working paper on - Recognition of Gross and Massive Violations of Human Rights Perpetrated on the Orders of Governments or Sanctioned by Them as an International Crime - finds that not a single resolution by an international organization, or a single decision by an international conference, offers any criterion for the delineation of human rights violations.⁹⁸ For instance, in the UN documents such as the Proclamation of Teheran; Economic and Social Council resolution 1503; Vienna Declaration and Programme of Action, use different terms interchangeably, with no clear pattern. There are no clear guidelines as to whether there is a difference between 'gross', 'massive' or 'serious', violations of human rights. In addition, regional organs like the African Commission also use these terms in different occasions.⁹⁹ As result, it can be see that these terms are used interchangeably.

Nevertheless, there are three criteria for the classification of serious or massive human rights violations which were identified by UN Resolution 1503 procedure and many scholars.¹⁰⁰ The situation of serious human rights comprised: element of time means the frequency of their occurrence or continuity of violations; element of quality means various types of rights being violated, the character of the violation and the status of the victims of the violation including purpose and planning; lastly element of quantity which means the size or scope of the population affected. Thus, there is no doubt that the evidence gathered clearly demonstrates a pattern of

⁹⁸ United Nations Economic and Social Council, *The Expanded Working Paper on Recognition of Gross and Massive Violations of Human Rights Perpetrated on the Orders of Governments or Sanctioned by Them as an International Crime* (submitted by Stanislave Chernichenko at the Forty--ninth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities). E/CN.4/Sub.2/1997/29, 28 May 1997.

⁹⁹ Rachel Murray, 'Serious or Massive Violations under the African Charter on Human and Peoples' Rights: A Comparison with the Inter-American and European Mechanism', *Netherlands Quarterly of Human Rights*, Vol.17/2, 1999, 109-133.

¹⁰⁰ Odinkalu, *Article 58 of the African Charter on Human and Peoples' Rights. A Legal Analysis and Proposals for Implementation* (London: Interights, March 1996), 8; M. Tardu, 'United Nations Response to Gross Violations of Human Rights: The 1503 Procedure', *Santa Clara Law Review*, Vol. 20, 1980, 559-601, 582-584; Medina Quiroga, *The Battle of Human Rights. Gross, Systematic Violations and the Inter-American System* (Dordrecht: Martinus Nijhoff, 1998), 11 quoted in Rachel Murray, *op.cit.*, 111.

serious violations of fundamental human rights in the case of Cambodia and East Timor.

Table 4: Elements of Serious or Massive Human Rights Violations

Elements/crisis	July Coup 1997	East Timor Crisis 1999
Time -continuous of violations	Continuously since the end of 1996 throughout 1997	Continuously since the end of 1998 throughout the 'popular consultation' and its aftermath.
Quality • types of rights being violated	right to life, liberty and security of the person; freedom of expression and assembly	rights to life; freedom from torture, cruel, inhuman or degrading treatment or punishment; freedom of assembly, association, opinion and expression; freedom from arbitrary arrest and exile; freedom of movement and residence; right to own property; violence against women
• the character of the violation	murder; torture; arrest or intimidation; detention without charge or trial; disappearance; restriction on freedom of expression and assembly.	murder; torture; rape, sexual harassment; burning property; widespread and systematic plan – movement and evacuation การอพยพ โยกย้าย of people
• the status of the victims of the violation	political activists; journalists; innocent people	pro-independence groups; civilian population; including international observer, journalist and UN staff member.
• purpose and planning	Since 1996, began building up their own private armies, police forces, and bodyguard units	Since late 1998 to early 1999, militia groups were established in East Timor; systematic forced deportation and displacement of people to West Timor. (the movement and evacuation of people to West Timor)
Quantity - the size or scope of the population affected.	<ul style="list-style-type: none"> • 100s of people were killed and more than 1,000 unaccounted for; • unaccounted for disappearance cases • more than 1,000 Cambodians flee to Thailand. 	<ul style="list-style-type: none"> • at least 1,000 people were killed and many more were injured • up to 75 per cent of the population displaced • around 250,000 forcibly evacuated to West Timor • around 80% the infrastructure destroyed

It is clear that violation of human rights in both cases arose because of conflict which led to further violence from the other side and contributed to the conflict spiraling out of control. The situation of coup d'état and crime against humanity were identified as collective violence which involved government officials who intentionally used acts of force officially or tacitly in order to cause physical or

psychological harm whether directly or indirectly. Both opposition groups and civil populations were attacked and were affected. The evidence showed that there is a broad range of violation of international human rights law, not only with respect to political rights but also economic, social and cultural rights. The civilian population in general also suffered a lot of harm because of the insecurity and violence in the society.

The government of Cambodia and Indonesia have obligations under international agreements (whether Paris peace agreement and New York agreement, respectively) and international human rights law, but they failed to respect and protect human rights and fundamental freedoms of the people. Thus, in a situation where a population is suffering from serious harm because of internal war, insurgency, repression, the responsibility to protect not only lies with the individual state but there is also an international responsibility to protect people at grave risk. Furthermore, response to human rights violations should not be limited and restricted by questions regarding the types of rights that are violated or the frequency of their occurrence or the magnitude of gravity or seriousness (whether minor or massive violations). These factors may be taken into account while formulating a rights based approach to the crisis, but should not be deciding factors with respect to whether there should be intervention or not.

3.3 Comparative Analysis of ASEAN's response in the two cases.

According to Article 52, Chapter VIII of the UN Charter, states should make every effort to achieve a pacific settlement of local disputes through regional arrangements, or by such regional agencies, before referring them to the Security Council in order to maintain international peace and security as appropriate for regional action. It is clear that the UN, as well as regional institutions, has legitimacy to protect against human rights violations. Furthermore, the World Conference on Human Rights 1993 in Vienna, reaffirmed the principle that domestic human rights issues were a legitimate concern of all nations. As a result, ASEAN as a regional organization has a primary role to take measures in solving conflict in the region.

Thus, this section will analyze ASEAN's response to the Cambodian conflict by comparing it with its response to the East Timor crisis.

As mentioned earlier, both cases have been recognized as 'serious violations of human rights' by the United Nations, and became international issues. Despite this similarity, ASEAN's response to human rights violations in the July coup in Cambodia and the East Timor crisis had a different approach, based on various factors, as follows:

a. Mechanism to deal with human rights violations

It has been shown that at the time Cambodia technically was not a member of ASEAN, nevertheless ASEAN took a collective response to the July coup in order to resolve the conflict in Cambodia, without consent from the government of Cambodia, by claiming its commitment as signatory to the Paris Peace agreement justified the reaction. ASEAN's approach to human rights, the ASEAN way -- through diplomacy channels such as adoption of a constructive engagement policy to provide good offices - arranged many consultation meetings and fact finding to settle the conflict. There are two main mechanisms dealing with this conflict: ASEAN Foreign Ministers and the ASEAN Troika. ASEAN actively engaged Cambodia to ensure that the peace process moved forward, so that Cambodia may be admitted as a member of the association.

By contrast, ASEAN's response was totally different in the case of East Timor where violations were being committed by Indonesia, a founding member of ASEAN. ASEAN's approach was based on individual capacity. All the efforts in Cambodia's July coup were ignored in the case of East Timor, despite the fact that ASEAN recognized that these measures would not be considered as interference in the internal affairs of other country.

Table 5: Comparison Response of ASEAN in Cambodia and East Timor

Events	Member status of ASEAN	Nature of Violence	ASEAN Solution	ASEAN Policy	ASEAN Mechanism	Political will - Diplomatic channel
Cambodia the 1997 July coup	Non-member	<ul style="list-style-type: none"> ▪ Internal affairs ▪ Serious violation of human rights 	Collective action	Constructive engagement	ASEAN Troika	ASEAN Foreign Ministers' Meetings
East Timor Crisis 1999	Member as part of Indonesia	<ul style="list-style-type: none"> ▪ Internal affairs of Indonesia ▪ Serious violation of human rights ▪ Constituted as crime against humanity 	Individual capacity	None	None	None

It may be argued that the original idea of constructive engagement was proposed as a policy of proactive involvement and assistance to Southeast Asia's weaker nations [like Cambodia] with a view to preventing their internal collapse,¹⁰¹ which not cover all ASEAN nations. Meanwhile the ASEAN Troika was in the process of drafting a Terms of Reference regarding the question of composition to settle Cambodia's conflict. However, even though the ASEAN Troika existed; it would be problematic in addressing issues that constituted the internal affairs of ASEAN member countries. Especially, at that time the ASEAN Troika -- under the authority of Singapore as chairman of the ASEAN Standing Committee -- might not have been willing to take a lead role in requesting collective action, because Singapore was in favour of 'Asian values' and had political ties with Indonesia, on the grounds of national interest over air space. It should be noted that Singapore abstained from

¹⁰¹ M. Rajaretnam, Principle in Crisis: The Need for New Directions, in *ASEAN's Non-Interference Policy: Principles under Pressure?*, Kao Kim Hourn (London: ASEAN Academic Press Ltd., 2000), 46-47.

the vote on East Timor in 1975 and 1976; subsequently they was against following other resolutions.¹⁰²

However, the purpose of both a constructive engagement policy and the ASEAN Troika was aimed at enabling ASEAN to take proactive action to prevent havoc, especial in times of internal collapse. Thus it should cover all member countries; no matter whether old or new members, rich or poor countries. Basically as Indonesia was part of the ASEAN family, they should have been able to talk to each other easily in order to stop violations, but in reality it did not seem to be the case.

Nevertheless, ASEAN did react to East Timor once the tragic crisis spread in 1999. ASEAN kept silence until getting Indonesia's consent, then the ASEAN way of back door approach consultation arrived at a consensus to let individual members decide their contribution, nevertheless not all members contributed to UN efforts. The East Timor issue was never discussed at the ASEAN Foreign Ministers level until after the human rights situation in East Timor improved, when it called on the international community to help East Timor achieve peace, stability and prosperity during its transition to full independence. In this sense, there was a lack of leadership on the part of ASEAN in its response to East Timor which presented a strong case of gross violation of international human rights law and international crime. As result, the only solution had to come from the outside. As Carlos Medina, a human rights activist state said, it was basically a UN action and there was no action taken by ASEAN as a regional organization.¹⁰³

It is questionable, regarding the consent of Indonesia, that since the beginning of the Indonesian intervention in East Timor, the UN never recognized Indonesia's occupation of East Timor. Therefore the requirement for Indonesia's consent had no meaning at all, and there was no rational reason as to why there was a need to wait for the consent of Indonesia before intervening. Indeed, intervention

¹⁰² *Report to the East Timor Truth Commission on International Actors, op.cit.*, 100.

¹⁰³ Interview with Carlos Medina on 28 July 2005 at Mahidol University, Thailand. Carlos Medina is a Secretary General of Regional Working Group for an ASEAN Human Rights Mechanism.

should have been taken since the beginning, to protect people and prevent gross loss of human life.

So, what was the rationale behind ASEAN countries waiting for Indonesia's consent and ignoring response to gross human rights violations in their own backyard? The simple reason appears to be that they have strong respect for the principle of sovereignty and non-interference in Indonesia affairs. As mentioned earlier, ASEAN viewed East Timor as the 27th province of Indonesia and every member country had to respect Indonesian sovereignty and not interfere in its internal affairs. Importantly, Indonesia is a significant country in the region in terms of its size, population, link to the Muslim world (Islam world) and economy since it is a major shipping route and it guards the Straits of Malacca. As a result, Indonesia is considered as a powerful ASEAN member who always wielded strong influence in ASEAN decision making since the establishment of the association.

Thus, to take a further step, all members had to carefully calculate their national interest and consider whether it was better to avoid any move that might set a precedent for interference that might disturb their relationship and embarrass Indonesia, which in turn could jeopardize ASEAN solidarity. Thus, some member states were strictly for the principle of non-interference. In particular, the position of Vietnam changed completely after joining ASEAN. Vietnam was originally against Indonesia occupying East Timor, as evident from Vietnam's vote in favor of the General Assembly resolution 3845 (1975). Also on 27 January 1976, Ton Tuc Thang, President of Vietnam wrote to Fretilin President Xavier do Amaral that the people and government of Vietnam "resolutely supports the struggle for independence and freedom carried out by the people of East Timor," and its right to self-determination "against Indonesia's armed aggression".¹⁰⁴ But after admission to ASEAN, Vietnam contributed neither assistance nor allowed Thai transports planes, en route to Timor, to fly over their country at night. It is perhaps Vietnam's view that contributing troops is considered as interference and against the norms of TAC. This reflects how the principle of non-interference is effective among its member states, or in other words

¹⁰⁴ *Report to the East Timor Truth Commission on International Actors, op.cit.*, 28-29.

how ASEAN's non-interference has allowed problems within the region to escalate. As a result ASEAN was unable to undertake timely action to avert the violations of the militia groups.

b. What has justified ASEAN's decision to taken action?

One objective of ASEAN is to maintain regional peace and stability and promote ASEAN concerns. While ASEAN has an obligation to the Paris Peace agreement, ASEAN views that where force is used for an unconstitutional change of government,¹⁰⁵ like the July coup, ASEAN cannot ignore it. It had a direct impact on the refugee problem in Thailand, and some parts of ASEAN members Vietnam and Laos, and is likely to disturb regional peace and stability. However, Carlyle Thayer argued that the internal situation in Cambodia did not and does not represent a direct threat to regional stability and invited ASEAN intervention. The threat to regional stability could have affected several countries but the evidence shows that it directly affected mainly Thailand, and to some extent Vietnam or Laos.¹⁰⁶

In contrast, ASEAN's view of what happened in East Timor was not a threat to regional peace and stability. ASEAN attempted to argue that the East Timor issue was not a regional problem but an international problem and thus should be taken care of by international mechanisms. It is true that what happened in East Timor did not impact on other ASEAN member countries. However, it is should be borne in mind that the Joint Communiqué of the 9th ASEAN [Foreign] Ministerial Meeting in 1976 indicated that the East Timor question would contribute to the region's peace and stability. In this sense, what happened in East Timor should be considered as part of the region's concerns which required a regional solution.

¹⁰⁵ Statement of Singapore's Foreign Minister, S. Jayakumar cited in *Straits Times*, 25 July 1997, 29. see details in Amitave Acharya, *Extending ASEAN Norms: benefits and burdens of ASEAN-Ten*, in *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order*, (New York: Routledge, 2001), 116.

¹⁰⁶ Carlyle A. Thayer, 'Cambodia and Regional Stability: ASEAN and Constructive Engagement', *CICP Distinguished Lecture Series Report*, Issue No. 14, (Phnom Penh: Cambodia Institute for Cooperation and Peace, 1998), 3-5.

Obviously, what constituted a threat to regional peace and stability is uncertain, dependant on ASEAN's interpretation which changes from time to time and case to case. In principle, the issue of regional peace and stability should not be interpreted only with regard to territory or state stability but should also cover political, economic, social and human security. Human rights violations in one country may not have a direct affect on all or others, but it had an indirect impact on ASEAN as a whole, with its links to economic and financial aid and cooperation.

c. Factors influencing ASEAN's response

There are two main factors that influence ASEAN's decision to react to human rights violations, as follows:

Internal factors: The political will of ASEAN members is also considered a key factor influencing the success or failure of an ASEAN commitment to human rights and democracy. For instance during 1997-1998, the young ASEAN leaders, like Anwar Ibrahim at Malaysia's Ministry of Foreign Affairs, and Thailand's Surin Pitsuwan, had proposed the concept of constructive engagement (intervention); flexible engagement and the ASEAN Troika in dealing with internal conflict including reviewing the long standing principle of non-interference. As a result, the July coup in Cambodia was settled through their proposals. Subsequently, in the East Timor case, President B.J. Habibie came in and showed willingness to let East Timor go if its people chose independence after years under Suharto's dictatorship, but unfortunately it did not go beyond the fundament principles of TAC, or followed ASEAN's collective action.

External factors: The pressure from the international community, particular donor countries, was considered a major factor influence on ASEAN reaction to human rights in internal affairs of other states. It is clear in the case of East Timor. Since the beginning, ASEAN as a group had kept silence on what happened in East Timor, until Australia's promise of troops. As a result, ASEAN had to act fast to maintain any influence in INTERFET. That is one reason for ASEAN consensus for individual response; they wanted the assurance that Australian forces would not be

given a dominant role in a peacekeeping operation. As Mahathir Mohamad, a former Malaysian Prime Minister made a clear in a statement that people in the region felt “threatened” by “too much participation on the part of big Western countries.”¹⁰⁷ Similarly, in the event of a July coup, it was known that the government of Cambodia had a close relationship with China, thus ASEAN had to take action in order to prevent outsiders from becoming further involved in internal affairs of Cambodia. In addition, donor countries like United States, European Union and Japan suspended either military cooperation assistance or economic assistance to Cambodia and Indonesia as a policy tool dealing with human rights in other state affairs.

Thus, even though not all ASEAN member countries agreed with the ASEAN solution to take action in both cases, but it was more acceptable than Western interference. In this sense, they have the same motivation to prevent increased external interference or intervention, especially among its member countries. As Mazuki Darusman a member of Commission for Defense and Foreign Affairs of Indonesia points out, that in avoiding interference, a state must be alert and quick to respond to these matters.¹⁰⁸

In brief, response by ASEAN to the July coup in Cambodia and the East Timor crisis was aimed to prevent external interference and restore political stability, rather than considerations of human rights per se. Human rights are considered rather to be a by-product of political and economic stability and national interest. In addition, they have also demonstrated and reflects the following: 1) ASEAN has been reluctant to respond collectively to human rights violations in its member states due to respect for state sovereignty and the principle of non-interference; 2) ASEAN appears to have displayed double standards in its selective response to human rights violations within the region; no matter the gravity of those human rights violations; 3) ASEAN can intervene in what is considered an internal conflict, particular in a non-member state rather than a member state. Lastly 4) the ASEAN way or approach and its existing mechanism, whether ASEAN foreign

¹⁰⁷ Derek McDougall, *op.cit.* 177.

¹⁰⁸ Interview with Mazuki Darusman on 25 July 2005 in Vientiane, Laos PDR. Mazuki Darusman is also a former Attorney General of Indonesia.

minister and ASEAN Troika, have some limitations and are inadequate in preventing human rights violations.



CHAPTER 4

DYNAMISM OF ASEAN RESPONSE TO HUMAN RIGHTS VIOLATIONS IN SOUTHEAST ASIA

It is almost 40 years since the establishment of ASEAN. In these years ASEAN has faced many challenges, particularly in the area of human rights violations and in the context of internal conflicts occurring in the region. The practice of ASEAN in dealing with human rights in the past has been a questionable issue as it has demonstrated double standards in its selective response to these regional human rights violations. Also there is no mechanism in ASEAN for dealing with human rights issues.

4.1 Development of ASEAN's Response to Human Rights Violations

In the late 1990s, ASEAN demonstrated its willingness to express concern, individually or collectively, over internal developments in one country which were likely to spill beyond the national borders, such as economic upheavals, environmental disasters, or political change. However, ASEAN's response to human rights violations has come only after a change in international politics and as a response to pressure from powerful countries and the international community. At the same time, ASEAN has preferred methods of demonstrating concern as the preferred ASEAN way, through friendly negotiation in the nature of quiet advice and mutual assistance, rather than public posturing or any action that can be interpreted as interfering in internal matters of other state. The role of ASEAN in responding to human rights violations can be divided into 3 categories:

- Where the internal issues involved raise concerns on humanitarian grounds, particular beyond its region and member states.

Since the 1980s, a number of communiqués of ASEAN Ministerial Meetings have touched on human rights abuses outside the region. These

communiqués have condemned the apartheid policy in South Africa, human rights abuses in Palestine, Bosnia, and Vietnam's intervention in Cambodia. It is interesting that while ASEAN has condemned and reiterated its commitment to work for the total elimination of actions which constitute a crime against humanity, like the apartheid system there is no ASEAN action in responding to the crimes against humanity in East Timor committed by Indonesian military, or genocide committed by the Khmer Rouge.

Indeed, if ASEAN leaders accept a concept of the right to intervene or responsibility to protect and have felt free to intervene in the affairs of non-ASEAN countries, then they should have applied the same standards to violations happening in their member states, which apparently is not the case. It shows that ASEAN adopts one standard for itself and another for outsiders.¹⁰⁹

- Where the United Nations and/or international agreements are involved in the region.

ASEAN made clear that in the case of the July coup of 1997 in Cambodia; the Paris Accords provided a basis for ASEAN involvement in Cambodian affairs. In the East Timor Crisis, the UN authorized an international peacekeeping force with consent of the Indonesian government. Individual members of ASEAN contributed support under the UN framework. ASEAN has not been consistent in its approach; there was no collective action at all. In this sense, ASEAN action is based on political consideration rather than human rights concerns.

- Where domestic issues in one country spill over and are likely impact on other states and regional peace and stability.

Sometimes issues are related to human rights, but are not termed as 'human rights' per se. In such cases ASEAN countries have not felt constrained in holding back, transnational issues of narcotics, migrant workers, trafficking, financial crisis and the haze problem caused by massive forest fires in Indonesia. It is clear such cases have a direct impact on the neighbouring countries as well as regional

¹⁰⁹ John Huston, *op.cit.*, 8

stability. Even if some governments have denied their responsibility for such causes, ASEAN has managed to reach either bilateral or multilateral agreements through the traditional 'ASEAN way' of solving differences amongst them.

As mentioned above, ASEAN has taken steps, as Carlos Medina states that ASEAN has been acting human rights but not using human rights language.¹¹⁰ Whether it likes it or not, ASEAN has practiced interference or intervention in the internal affairs of others. However, it will always be difficult for ASEAN to set aside its founding principles, much more so when it comes to human rights.¹¹¹ Nevertheless, it is a good starting point for taking further steps for the next period.

The Challenge in the 21st Century

In this century, ASEAN has made serious attempts to respond to domestic affairs as shown in the ASEAN Foreign Ministers' Retreats meeting 2001. This meeting stressed the importance of engaging in frank and open discussions as well as enhancing mutual trust and confidence with a view to further strengthening cooperation among ASEAN Member Countries in order to seek avenues to address the challenges facing ASEAN, in particular the global economic outlook, the impact of globalization and the region's political and economic situation that could undermine ASEAN's development and progress. They renewed their commitment to further deepen cooperation and play a more important role in enhancing regional security.¹¹²

Subsequently ASEAN members have expressed their concern in public either individually or collectively and provided cooperation with each other, which has come as a surprise to the world community. For example, Indonesia and Philippines had allowed ASEAN member states to observe their ceasefire in Aceh and peace talks in the Southern Philippines between government and rebel forces. In 2004, at the 37th

¹¹⁰ Interview with Carlos, *op.cit.*

¹¹¹ Johannes L. Ignacio and Medelina K.Hendytio, 'Working Paper- the Civil Society Initiative to Establish an ASEAN Human Rights Mechanism: An Assessment', (n.d., n.p.), 28

¹¹² See Joint Communiqué of the 34th ASEAN Ministerial Meeting, 23-24 July 2001, Hanoi, paragraph 7, 8 referring to the result of the ASEAN Ministerial Retreat Meetings on 30 April 2001 in Yangon, Myanmar.

ASEAN Ministerial Meeting, they had expressed collective concerns on the election process in Malaysia, Indonesia and the Philippines.¹¹³ At the meantime, Malaysian foreign minister Syed Hamid Albar, expressed his concern for the ongoing violence in Thailand's Muslim-majority South, which has caused tensions between Thailand and Malaysia, saying that "*We are all connected. It's important for us to understand the situation [in the neighbouring countries], that this did not translate into interference.*"¹¹⁴ One more time, the idea of a reviewing principle of non-interference had been raised in relation to such a statement.

It is demonstrated how member states have taken a role in their own capacity in internal conflict, and more or less such practices have compromised the principle of non-interference and the ASEAN Way.

The Best Illustration Case: Burma

ASEAN has been a loyal defender of Burma, both before and after the country joined it in 1997. In pursuance of the constructive engagement approach, ASEAN has tried to push Burma towards democratization and national reconciliation with economic-led engagement and ignored the poor human rights situation in that country. However, ASEAN's position has been developing and changing in recent times, numerous comments have been expressed, formally and individually, which is a positive sign by ASEAN in general.

Since 2001 the issue of political developments in Burma has been put on the ASEAN agenda. At the 36th ASEAN Ministerial Meeting on 17 June 2003, it urged Burma to resume its efforts for national reconciliation and dialogue among all parties concerned, leading to a peaceful transition to democracy and looked forward to the early lifting of restrictions placed on Daw Aung San Suu Kyi and the NLD members reaffirmed their continued support for the UN efforts through the UNSG Special Representative Tan Sri Razali Ismail.¹¹⁵

¹¹³ Joint Communiqué of the 37th ASEAN Ministerial Meeting, 29-30 June 2004, Jakarta. Paragraph 14

¹¹⁴ Jeerawat Na Thalang and Don Pathan, *op.cit.*

¹¹⁵ Joint Communiqué of the 36th ASEAN Ministerial Meeting, 16-17 June 2003, Phnom Penh, Paragraph 18.

Apparently, in the absence of any Burmese government move towards democracy and release of Suu Kyi, such actions place ASEAN in a negative light in the eyes of the international community and have been embarrassing the association and other members. Thus, another time a plan of for the ASEAN Troika to visit Burma was proposed by Ali Alatas in order to assist reconciliation and democratization reforms in Burma, but it was again rejected. Similarly the Thai proposal was rejected in 2000. Burma Foreign Minister Win Aung, defended this idea by referring to the principle of non-interference, and emphasized that in *“internal matters which are very complicated, the homegrown process is best...I think it’s better not to complicate matters.”*¹¹⁶

Burma failed to keep its promise of tangible results both on implementing the seven point road map to democracy and release of Aung San Suu Kyi. It decided to extend the house arrest of Suu Kyi for another six months and relocate its capital from Rangoon to Pyinmana without informing the group. The situation in Burma became a big concern for the group when it attracted a lot of international criticism. As result, ASEAN made the surprising move of pressuring Burma to speed up its political progress on national reconciliation – individually and collectively, started by Mahathir who earlier strongly supported Burma, warned Burma of possible expulsion from ASEAN.¹¹⁷

Other ASEAN leaders followed by expressing careful messages that they are not comfortable with a Burmese chair of the ASEAN Standing Committee because ASEAN needs a chair that is capable of forging ahead with the complex agenda of this region, such as issues of transnational crime, drug trafficking, mass migration and epidemics diseases of HIV/AIDS that affect this region and need to be addressed adequately. Meanwhile, ASEAN has stated that Burma can take up the chair whenever it is ready.¹¹⁸ Eventually, Burma has moved quickly by announcing its

¹¹⁶, ‘Indonesia to decide if ASEAN will send mission to Myanmar’, *AFP*, 3 July 2003.

¹¹⁷ Zaid Ibrahim, ‘Time for ASEAN to stop dithering’, *The Nation*, 13 July 2005 p.10a

¹¹⁸ *Ibid.*

willingness to withdraw from its responsibility of being the host for the time being in order to focus on the process of national reconciliation and democratization. In this sense, the reason given by ASEAN was more related to qualification of the chair position rather than a focus on human rights concerns, and in the mean time it's helping the Burmese Government to save face.

Subsequently, the Burmese government did not provide any clarification regarding the administrative relocation and extension of Suu Kyi's house arrest at a bilateral meeting with Malaysian Foreign Minister Syed Hamid Albar, held before the 11th Summit in 2005.¹¹⁹ As result, ASEAN leaders expressed disappointment and strongly criticized Burma in public Syed Hamid pointed out that, "We need to help, but you must give us the ability to help you."¹²⁰ Indonesian Foreign Minister Hasan Wirayuda said that the extension of house arrest of Suu Kyi for another six months was "a slap on the face for ASEAN",¹²¹ while Singaporean Foreign Minister George Yeo said ASEAN had embarrassed the group, as they could not tell anything to the world about Burma's decision to move its capital to Pyinmana.¹²² ASEAN's views their credibility suffered because of Burma.

After the 2005 Summit, ASEAN leaders have put collective pressure on Burma and it was agreed that an ASEAN delegation would visit Rangoon instead of the ASEAN Troika. ASEAN tried to convince the Burmese government that in line with the spirit of the grouping's friendship and neighborliness, this visit would be a chance to see if any progress had been made by Rangoon and was not to be considered as interference in Burma's affairs, a formulation which was then accepted by the junta. The idea of an ASEAN delegation was more acceptable than the ASEAN Troika, as some member's (in particular new members) viewed the Troika to be political in nature and thus could be prone to interfering in internal affairs.

¹¹⁹ Marisa Chimprabha, 'Rangoon faces rear pressure from ASEAN', *The Nation*, 12 December 2005

¹²⁰ Kavi Chongkittavorn, 'The ASEAN way vs the Burmese way', *The Nation*, 19 December 2005

¹²¹ Kavi Chongkittavorn, 'Be more open, ASEAN tells Burma', *The Nation*, 25 December 2005

¹²² Ibid.

Recently, regard for Burma has postponed the visit of a Malaysia-led delegation to evaluate the current situation. Singapore's Foreign Minister George Yeo warned that ASEAN might have to downgrade its relations with Burma because progress in ASEAN should not be delayed by Burma's domestic development, thus the regime should consult the grouping on the democratization process.¹²³

It was the first time that ASEAN had been so aggressive towards a member. ASEAN made efforts - whether be it the ASEAN way of quiet diplomacy, criticism and pressure through media or initiate fact finding measures. It is clear that this time ASEAN's reaction was much stronger and clearer, compared to its soft language of the past. Especially when compared to the fact that former ASEAN leaders did not favor intervention in the affairs of other states, even if they violated human rights. This was demonstrated when on being asked if a member country would intervene in another country controlled by someone like Pol Pot, or a Saddam, the Malaysian Prime Minister Mahathir Mohamad replied, "There will be ways of intervening that don't amount to actually interfering with their administration. Similarly Singapore's Prime Minister Goh Chok Tong said that, "The principle idea is not to comment or interfere in someone else's domestic affairs."¹²⁴ Subsequently Indonesian President Megawati Sukarnoputri pointed out that even an action to stop violence had to be done with due respect to the individual sovereignty of each member.¹²⁵ Thus the political will of ASEAN members is considered as the key factor that would influence ASEAN to move forward its commitment to human rights and democracy.

There have been signs of recognition that human rights and democratization are regional concerns. The practices of frank and open discussion, including fact finding, considered as positive steps which have involved interference

¹²³ Kavi Chongkittavorn, 'Kingdom has lost its voice and influence on Burma', *The Nations*, 6 March 2006.

¹²⁴ Sorpong Peou and others, *International Assistance for Institution Building in Post-Conflict Cambodia* (Netherlands Institute of International Relations, May 2004), 58.

¹²⁵ 'Please go to visit Bali', *The Cambodia Daily*. [online]; available from www.camnet.com.kh/cambodia.daily/asean/14.htm. Accessed 24 January 2006.

in the internal affairs of another state. The reaction of ASEAN member countries is ongoing change and has become more proactive in sensitive issues of human rights and democracy. As Mazuki Darusman point out, this is a sign of an ASEAN shift to functioning sovereignty rather than territory.¹²⁶ In general, ASEAN seems ready to make an exception to its non-interference principle and ASEAN way of sensitivity, politeness, quiet and private diplomacy and has become more outspoken over a period of time.

However, in reality the principle of non interference remains a priority particularly when there is a possibility of intervention from western countries, such as when the US made efforts to refer Burma to the UN Security Council. ASEAN members were reluctant to continue pressure on Burma and objected to this idea by insisting that they still had a role to play. These reflect that pressure from the international community, in particular Western countries, and are like two sides of coin; one is pushing ASEAN to speed up its reaction on human rights; another side is strengthens ASEAN solidarity in sticking together in order to ward off interference from outsiders.

It remains a question whether or not response of ASEAN to human rights violations has changed. It depends on interpretation.

An ASEAN official, who wants to remain anonymous, argues in an interview that there has never been any response to human rights violations in the region. Thus, when ASEAN has expressed concern over human rights, it is rather more about an expression of political will with respect to political concerns.¹²⁷ Similarly, Dato Param Cumaraswamy, a former UN Special Rapporteur on the Independence of Judges and Lawyers,¹²⁸ and Carols Medina also argue that expressing concern on human rights issues at the Summit or AMM is a different thing. It is broadly speaking or discussion on a case to case basis not general human rights violations, thus it should not be considered as a response to human rights.

¹²⁶ Interview with Mazuki, *op.cit.*.

¹²⁷ Interview with Laos official, *op.ci.t*

¹²⁸ Interview with Dato Param Cumaraswamy on 24 July 2005 in Vientiane, Laos PDR. Dato Param is also a chairperson, Malaysian Working Group for an ASEAN Human Rights Mechanism.

In addition, ASEAN has avoided mentioning the words “human rights” or “human rights violations”, preferring to use “conflict” or “political developments” instead. Human rights remains a sensitive issue and ASEAN is always reluctant to address it because of its strict adherence to the principle of non-interference which has been reaffirmed in numerous agreements. In this sense, response to human rights is considered a by product of political and economic cooperation and national interest.

However, in the international arena, response to human rights violations can be in various forms whether by military or non-military intervention. Various types of diplomatic means ranges from expression of concern, condemnation, political and economic sanctions, arms or economic embargoes, to international criminal prosecution. Considering that ASEAN’s expression of concern by the ASEAN foreign minister, or fact finding by Troika, it can also be said that ASEAN has responded to human rights violations, a soft approach as mentioned in TAC.

In this sense, ASEAN’s response to human rights has never changed until now. The only change recently is stronger criticism or condemnation in public, which ASEAN way adapts to the changing situation, while there is some concern on overlapping between condemnation and interference as another ASEAN official, who wants to remain anonymous stated during interview in 2005.¹²⁹ Although, there have been some positive developments, such as the changing of ASEAN leadership appearing more open to human rights, but this remains to be proven. As long as ASEAN has no culture addressing human rights violation issues, ASEAN will not be able to move forward to promote and protect human rights. Thus, to what extent ASEAN could operate in response collectively and effectively to human rights, remains to be seen.

4.2 ASEAN Policy on Human Rights: A New Challenge

As mentioned earlier in Chapter 2, ASEAN’s concern for human rights issues was reaffirmed by its leaders in 1997, by the adoption of the ASEAN Vision

¹²⁹ Interview with Burmese official on 21 December 2005 in Bangkok.

2020, Hanoi Plan of Action (HPA) 1998, and a series of programs for implementing its Vision in order to achieve greater cohesion and be better able to respond to the new challenges.

Subsequently the Vientiane Action Programme (VAP), a significant document was adopted which contains human rights provisions under the heading of political and security cooperation, reflecting development of an ASEAN human rights policy. The VAP also enumerates a list of envisaged activities which can be divided in three categories, as follows:

1. Legal - initiatives to develop an ASEAN Charter in order to shape and share norms; the formulation and adoption of an MOU to establish networking among existing human rights mechanisms
2. Mechanisms- Establishment of an ASEAN commission on the promotion and protection of the rights of women and children; establishment of a network of cooperation among existing human rights mechanisms. It also includes completion of stock-taking of existing human rights mechanisms and equivalent bodies including sectoral bodies promoting the rights of women and children.
3. Thematic issue - Elaboration of an ASEAN instrument on the protection and promotion of the rights of migrant workers; promote education and public awareness on human rights.

All these developments are a good sign for promotion and protection of human rights which ASEAN has started from an issue of common concern for its members and has adopted a step-by-step approach and initiated confident building measures. However, there are some concerns with regard to its implementation as follows:

1. Non-Legal binding and enforcement. ASEAN Action Programme does not have the legal standing for enforcement and thus its members have no obligations. Its implementation is dependant on voluntary commitment by each country. At the same time some member states of ASEAN are unwilling to discuss and

take steps on the issue, as programs on human rights were never implemented during the period of the Hanoi Plan of Action.

2. Lack of time frame and other stakeholders. The human rights program does not have a clear time frame as compared to the economic program. As ASEAN official reported on first year implementation of VAP at the meeting with the Working Group on the occasion of the 38th AMM 2005 in Vientiane. In terms of percentages, results show that 55% involved the ASEAN Socio-Cultural Community (ASCC), 22% the ASEAN Economic Community (AEC), 9% of activities related to Narrowing the Development Gap (9%) and only 4% of the ASEAN Security Community (ASC) had been implemented. These figures demonstrate the way in which ASEAN prioritizes its cooperation. Cooperation under the ASEAN Security Community, particularly with respect to human rights issues has always been given lower priority. The mention of human rights issues in VAP is a promising development but it does not guarantee that there will be changes in implementation. Setting of a time frame and identification of other stakeholders are some measures to ensure implementation and monitoring of its progress.

3. Thematic programs – the issue of migrant workers and human rights education.

- *Migrant workers.* ASEAN recognizes the issue of migrant labor to be a common concern and there are existing models of bilateral agreement; for example the Thai-Lao agreement on migrant workers. However this is still a complicated and sensitive area which involves many other issues such that of refugees, and ethnic minorities, which now affect the internal affairs of most ASEAN countries. These are some of the challenges that ASEAN will have to deal with.

- *Promote education and public awareness on human rights.* Some ASEAN members have existing human rights education programs, such as Thailand and the Philippines. Nevertheless, the promotion of education and public awareness on human rights is a huge task which involves not only formal and informal education but also all other sectors. Initiatives on human rights education also needs to have an integrated approach that encompasses all human rights. Hence, the foundational

question is “how” to make education accessible to all as part of a life-long, on-going learning process, education which has daily-life application? In doing so, some kind of mechanism - ‘focal point’ or ‘center’ or ‘institution’, has to be set up to serve as a coordinating and supporting unit, as well as to function as a resource centre in promoting further development of human rights education in the region. Such a mechanism will help to ensure that human rights education shall initiate positive and constructive changes both in attitude and practice and work towards ‘promoting a human rights culture.’ In the end it will also help to reduce human rights violations. Thus, since these are issues of common concern, it is not difficult to implement them, but at the same time it is also not easy. Both require time and efforts in implementation and will reflect the seriousness of ASEAN determination in carrying them out.

Furthermore, ASEAN has adopted the Kuala Lumpur Declaration on Establishment of the ASEAN Charter (hereafter referred to as the Kuala Lumpur Declaration). Among the motives for having a Charter was the creation of an international legal personality for ASEAN and to provide the legal framework for incorporating ASEAN decisions, treaties and conventions into the national legislation of member countries, as hinted by Malaysian Prime Minister Abdullah Badawi.¹³⁰ It should be noted that ASEAN was established under the ‘ASEAN Declaration.’ a founding document without legal binding and does not have legal standing under international law, providing a broader term of aims and purposes and its machinery. Thirty years later, membership of ASEAN has expanded and new areas of cooperation have been incorporated. Meanwhile, ASEAN faces many criticisms on its ability and credibility in dealing with conflict in member states, resulting in the reviewing of its principles and institutions from time to time. Therefore, there was need to bring changes.

In terms of human rights, the Kuala Lumpur Declaration did mention the ‘promotion of democracy, human rights and obligations, transparency and good governance and strengthening democratic institutions’ as one of the principles of the

¹³⁰ Amitav Acharya, ‘Challenges for an ASEAN Charter’, *Straits Times*, 24 October 2005 [online]; available from <http://taiwansecurity.org/ST/2005/ST-241005.htm> accessed 5 May 2006.

charter. On the other hand, it has reaffirmed its respect for each other's sovereignty and principles of non-interference in the internal affairs of one another, including the ASEAN way of decision making on the basis of equality, mutual respect and consensus. Therefore, ASEAN does face an important challenge in order to develop binding regional provisions covering sensitive issue areas such as human rights or democracy promotion. It would be interesting to see how ASEAN Charter overcomes these challenges to meet the expectation of being an effective and efficient institutional framework for ASEAN' as stated in the 37th ASEAN Ministerial Meeting.¹³¹

Nevertheless, it should bear in mind that a legal institutional framework does not ensure greater effectiveness of international organizations or in ensuring success towards containing regional conflicts or human rights. It rather depends on what sort of issue areas it has designed to cover that will have a binding effect,¹³² as well as the political will to implement the decisions with regard to human rights violations.

4.3 ASEAN Human Rights Mechanism: A Step Forwards

Cooperation between ASEAN and Civil Society

The historic 1993 Joint Communiqué of AMM, mentioned the idea of establishment of an appropriate regional mechanism on human rights, however it was never made part of the ASEAN agenda. Until 1996, there have been regular annual meetings between the ASEAN Foreign Ministers and a civil society group called a 'Working Group for an ASEAN Human Rights Mechanism' (hereafter referred to as 'the Working Group'). This issue was bring human rights back to the ASEAN agenda and its work has been referred to in the annual communiqué issued by the Minister since 1998, that ASEAN has recognized the importance of continuing these dialogues.

¹³¹ See Joint Communiqué of the 37th ASEAN Ministerial Meeting, 29-30 June 2004, Jakarta. Paragraph 6.

¹³² Amitav Acharya, 'Challenges for an ASEAN Charter', *op.cit.*

After five years of confidence building measures, the meeting was constructive, following the step-by-step approach. A series of workshops on the ASEAN Regional Mechanism on Human Rights, has been convened annually since 2001 by the ASEAN Foreign Ministry, the Working Group and National Human Rights Institutions.¹³³ The proceedings of the workshops have been regularly reported to the ASEAN Ministers Meetings (AMM) who in turn have mentioned them in their joint communiqué.

As a starting point, the first regional workshop on ASEAN Human Rights Mechanism was held in Jakarta 2001, to discuss a number of options for an ASEAN human rights mechanism, such as the establishment of an ASEAN Human Rights Commission, and/or an ASEAN Human Rights Court and/or an ASEAN Human Rights Committee of Ministers, or an Assembly of Heads of Government. It came up with a clear strategy (action plan) and a set of practical guidelines for working towards the realization of an ASEAN human rights mechanism. Moreover, the workshop encouraged the setting up of national focal points to serve as a mechanism for regional consultations in the promotion and protection of human rights. Since then there have been continuing efforts for the establishment of an ASEAN Commission for the Promotion and Protection the Rights of Children and Women; setting up a Joint Working Group; Eminent Persons Group; a regional human rights information center; and national focal points. As a result, the workshops have proven to be a useful forum for continuous dialogue on human rights mechanism as observed by Ali Alatas.¹³⁴

The cooperation between ASEAN and civil society has continued and developed, particularly with the old members of ASEAN, whose initiative was to establish a regional mechanism (the seminal statement) and has an existing national

¹³³ The first regional workshop on ASEAN Human Rights Mechanism was held in Jakarta 2001; the second workshop was convened in Manila 2002; the third Workshop was held in Bangkok 2003; the fourth Workshop was conducted in Jakarta 2004 and recently, the fifth workshop held in Kuala Lumpur 2006.

¹³⁴ Ali Alatas, 'Pace of Progress and Development of Human Rights in ASEAN' (as opening remarks at the Fourth Workshop on the ASEAN Regional Mechanism on Human Rights, Jakarta, 17-18 June 2004), 4.

human rights institution. New member countries, who were not part of the signing of the 1993 communiqué were uncomfortable and not ready to discuss or take it forward. However, in respect to this initiative, the issue has been continuously referred to in the communiqué. As an ASEAN official who wants to remain anonymous points out, for the time being, there is no need for the establishment of such a mechanism, since ASEAN has existing organs like the summit and ASEAN foreign ministers which assist the ASEAN Standing Committee (ASC) and ASEAN Senior Officials Meeting. They meet annually and as when necessary in response to political conflict including human rights. These existing bodies were adequate in dealing with issues of common concern in the region.¹³⁵

It has been ten years since the first dialogue between ASEAN SOM and the civil society group and six years since the first Workshop in Jakarta. ASEAN has accepted some points, such as establishment of an ASEAN Commission on Women and Children Rights, and set up a national focal point in the Ministry of Foreign Affairs of member countries. The proposal for setting up a Joint Working Group to study the establishment of an ASEAN human rights mechanism is waiting for ASEAN's consideration.

Recently, ASEAN demonstrated its willingness to engage with the civil society group by requesting the Working Group's help in the implementing of the four human rights programs in the VAP. ASEAN has appointed the ASEAN Standing Committee Chair to be the focal point for human rights concerns, with support from the ASEAN Secretariat, who will keep a record of all proceedings, including correspondence to ensure consistency of programs once the chairmanship starts revolving.

However, there have been some concerns that the idea of rotating service will not facilitate a smooth transition or transfer of records; in fact it will have difficulty in the implementation of human rights-related programs under the VAP,

¹³⁵ Interview with Laos official, *op.cit.*

particularly the setting up of a human rights mechanism. There is still a need to have a permanent organ, a Human Rights Unit/Desk to advance human rights within the ASEAN Secretariat, like the ARF Unit ASEAN has set up to serve and advance the ARF process, or the legal unit on economic affairs to provide legal advice on trade disputes.

In this decade, ASEAN and the civil society groups have engaged more closely with each other. On the other hand, ASEAN is still reluctant to set up a Joint Working Group that will facilitate both sides to meet regularly and to work together towards establishment of an appropriate regional human rights mechanism. It is perhaps ASEAN needs more confident building trust, in doing so, it is better to keep some distant between them and the civil society before getting marriage. For instance, in the joint communiqué of ASEAN foreign minister note that the annual Workshop on human rights as Track II conference,¹³⁶ which is by means of think-tanks and academic institution close to ASEAN policy-makers, while Track III dialogue by means of government and civil society. Subsequent, the meeting with the Working Group considered as the sideline of the AMM.¹³⁷ Thus, position of civil societies is remaining an outsider of ASEAN, and it is non-formally recognized as partnership per se.

However, at least, the efforts of the civil society have maintained a momentum within the ASEAN. According to the ASEAN Secretariat has also felt that these efforts is significant as the only process to engage ASEAN on human rights and without these, the establishment of the human rights mechanism would have no constituency.¹³⁸

Establishment of an ASEAN Human Rights Commission: principle non-interference and ASEAN way

While, ASEAN and the civil society group has been developed, and engaged each other in the implementing of the human rights programs in the VAP.

¹³⁶ The 36th ASEAN Ministerial Meeting, 16-17 June 2003, Phnom Penh. Paragraph 36.

¹³⁷ The 38th ASEAN Ministerial Meeting, 26 July 2005, Vientiane. Paragraph 11.

¹³⁸ Johannes L. Ignacio and Medelina K.Hendytio, *op.cit.*, 17.

But in terms of human rights mechanism, there is no consensus yet in ASEAN on the Draft Agreement proposal to set up the ASEAN Human Rights Commission, particular in a draft, a Commission has investigation power and complaints measure - allowing individuals/group to petition against the government for human rights violations, ASEAN see that it will go against the cardinal principle of non-interference and ASEAN way consultation and consensus. It is no matter that such commission will advance ASEAN standpoint and will help to redress a situation from an ASEAN including would be an instrument for the implementation of ASEAN Vision 2020, human rights being an integral part of its goals.

By contrast, ASEAN has been practicing interference in internal affairs of member state for evident in Cambodia conflict and recently Burma, particular on economic matters. The Protocol on Enhanced Dispute Settlement Mechanism (DSM) provides a quasi-judicial body to enforce its decisions; complaints measure; imposition of non-compliance such as compensation and the suspension of concession; use of majority decision – rather than consensus to settle a dispute; set up a compliance unit to support this new mechanism. Including non-government experts are included in its composition of DSM panel. Furthermore, ASEAN has recognized the progress in the implementation of the “2+x” formula agreeing that more should be done for promoting economic cooperation. Normally ASEAN follows the “10-x” formula in implement all projects, where “x” stands for those members that cannot or will not participate but they will not block and allow others to proceed.

Thus, it can be argued that since Dispute Settlement Mechanism (DSM) and formula “2+X” are accepted that will not go against non-interference principle and ASEAN way consultation and consensus therefore it should be treat equally in political and human rights cooperation in order to set up ASEAN human rights mechanism. As Megawati Soekarnoputri state in 2003 that ASEAN must now use both

the leg of economic cooperation and the leg of political cooperation so that it can move forward faster and in a more balanced manner.¹³⁹

However, in the view of some ASEAN member countries, they have made big strides in a sensitive issue, the area of human rights, which needs to be adjusted, otherwise the proposal may seem too advanced. Therefore, the forwards step is to a level of engagement comfortable to all is the adopting of an ASEAN declaration on human rights, a normative framework for human rights as a common value, constructing a common legal framework for human rights in ASEAN and to create a collective sense of ownership. In support this idea, As Ali Alatas express that ASEAN could do well to draft an ASEAN Charter on Human Rights and Peoples' Obligations that could serve as the framework document which to base all ASEAN activities in the filed of human rights and fundamental freedoms.¹⁴⁰ Therefore, this document would make it easier for ASEAN to move forward to discussing an "appropriate regional mechanism on human rights."

The idea of drafting a human rights instrument is a positive development provides a legal binding text in order to facilitate enforcement. It would be in the form of "ASEAN Charter on Human Rights" or an "ASEAN Convention on Human Rights" rather than "Declaration on Human Rights". This instrument would be unique in combine all rights together like Africa Charter on Human and People's Rights which contains the rights and freedoms of individuals-similar to civil, political, economic, social and cultural rights, rights of peoples, state and people duties or separate document such as European Convention of Human Rights and the American Convention on Human Rights. However, it is importantly that instrument should contain both state and people's rights and obligations rather than focus on people's obligations.

¹³⁹ Megawati Soekarnoputri, 'ASEAN Today: Challenges and Responses' (as remarks delivered on the occasion of the 36th Anniversary of the Association of Southeast Asian Nations, 8 August 2003, Jakarta). At that time, Megawati Soekarnoputri is a President of the Republic of Indonesia.

¹⁴⁰ Ali Alatas, *op.cit.*

Establishment of an ASEAN Commission on the Promotion and Protection of the Rights of Women and Children.

It is obvious that all ASEAN countries are now parties to the CRC and CEDAW and there are various regional programmes on these two areas, since the Summit in 1977, ASEAN called for expanded cooperation in human resource development; the integration of women and youth in the development process. Furthermore, ASEAN has also adopted a number of declarations for example Declaration of the Advancement of Women in the ASEAN Region (1988); Declaration on the Elimination of Violence Against Women in the ASEAN Region (2004); Declaration on the Commitments for Children in ASEAN (2001) and Declaration of Principles to Strengthening ASEAN Collaboration on Youth (1983). Including working unit - ASEAN Committee on Women (ACW); ASEAN Sub-Committee on Youth (ASY) and a network of ASEAN desk officers on Children has been set up. Besides that there have been meetings between ASEAN Ministers of social development and related personnel on women and children.

At national level, most of national government has policy and mechanism. For instance, Myanmar National Committee for Women's Affairs (MNCWA) and National Committee on the Rights of the Child (NCRC) including Youth Sub-Committee. Interestingly, Brunei a Muslim country has established the Council of Women of Brunei Darussalam since 1984, at a time when they had not ratified CEDAW.

However, there are some observations in three areas: 1) its various declarations and programmes touch upon women's rights and children's rights to some extent, which emphasized on general social development and welfare concerns rather than rights base; 2) even if they did mention about some protection measure but there is no system of investigation or complaint procedures of breaches of women's rights and children rights; 3) there is some overlapping between the age of youth and child. According to CRC, child refers those under 18 years of age while youth usefully covers an older group. But it may differ from national context for example according

to the Child Law of Burma 1993, term of youth defined means a person who has attained the age of 16 years but not attained the age of 18 years, however in generally, the age group of youth defines to be 15-24 for the sake of the out-of-school youth project.¹⁴¹

Thus, establishment of this Commission is considered a good sign to advance the promotion and protection of rights of women and children in the region. This will be challenge for ASEAN in the formation of such mechanisms that would require according to Paris Principles such as act independently (of governments), pluralism and investigation power and complaints measure.

Existing National Human Rights Mechanisms

In ASEAN region, there are four national human rights institutions (NHRI) existing in Indonesia, Malaysia, Philippines and Thailand. However, they are different in terms of composition or method of appointment of commissioners whether through selecting process or appointed by government. Some have mandate with investigation powers issues of broad human rights in general, but some have limitation powers only with respect to gross human rights violations. It is obvious that each national institute have their own problems, however, most of them have the common problem – of independence, lack of adequate staff and resource,¹⁴² which makes implementation of human rights principles more difficult.

Since 2001, the four existing national human rights institutions have been engaged in informal networking among themselves, meets annually and developing a work plan to address issues of common concern. Subsequent, ASEAN member agree that this network should be strengthen in the formal form, in doing so, list of activities putting in VAP as to the formulation and adoption of Memorandum of Understanding to establish networks among existing human rights mechanism to pursue its goals of establishment of a network of cooperation among existing human rights mechanisms.

¹⁴¹ Information on Youth in Myanmar [online]; available from <http://www.aseanyouth.org/country/Myanmar/myanmarinfo.htm>. Accessed 5 May 2006.

¹⁴² Johannes L. Ignacio and Medelina K.Hendytio, *op.cit.*

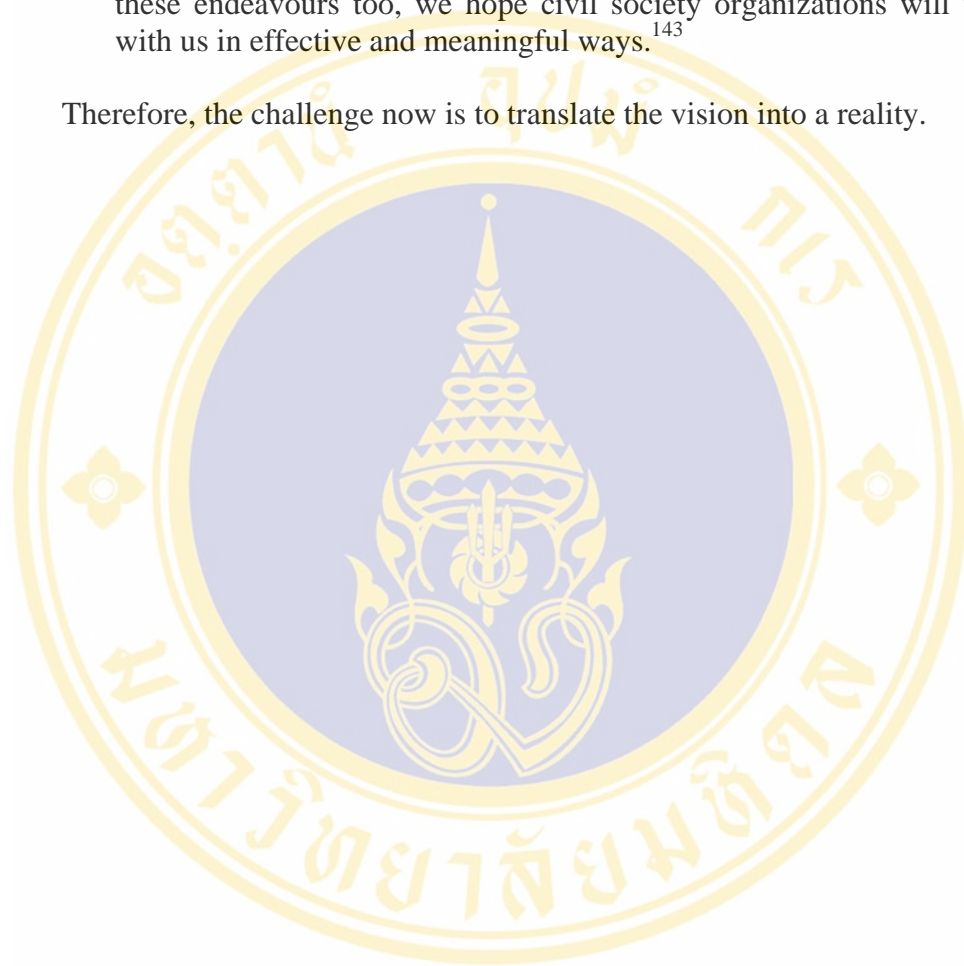
The network of existing national human rights institutions is important for ASEAN countries to share experiences, best practices and challenges in setting up national human rights institutions. In particular, it will be useful for member countries those did not have the impetus to consider setting up human rights mechanisms in their own countries. The establishment of such a mechanism in all ASEAN member states is also part of step towards the creation of an ASEAN Human Rights Mechanism. Thus, the old members of ASEAN have been put to test on their seriousness in promoting and protecting human rights; which also demonstrates the necessity for having this mechanism: indicating how they will move to the end goal of regional mechanism.

In general, it can be seen that ASEAN's position on human rights has been developing in this century in various ways: ASEAN has become outspoken in public in order to respond to human rights in member countries; the Vientiane action program is constructive - a number of human rights activities were contained in it; the cooperation between ASEAN and the civil society groups who have been engaged more closely with each other. From this development, ASEAN members have different points of view, while some are viewing the progress to be too slow, but it is too fast for some, particularly those who prefer the traditional principle of non-interference and ASEAN way of doing thing. ASEAN members still use traditional norms as the defensive tool on human rights issues. Although, sometimes it seems to be relaxing in the form of building blocks; a step-by-step approach, for example the efforts set up ASEAN Human Rights Mechanism, to quote Prof.Vitit, it has indeed been "a long and winding road"!

However, a recent statement by Syed Hamid Albar, Minister of Foreign Affairs of Malaysia, has noted that its government would not give up, thus it means there is still some light for promoting and protecting human rights in this region, as stated:

The limits of the "ASEAN way" of consultation, confidence-building and conflict resolution are being tested. It has not been easy for ASEAN leaders to address sensitive issues within and between Member States publicly. But let me tell you, we are not giving up hope and will continue to strive to coax and cajole our colleagues in a manner that respects each others' sovereignty and national integrity. In these endeavours too, we hope civil society organizations will work with us in effective and meaningful ways.¹⁴³

Therefore, the challenge now is to translate the vision into a reality.



¹⁴³ Opening Address by Dato' Seri Syed Hamid Albar, Minister of Foreign Affairs of Malaysia at the ASEAN Civil Society Conference, Uitm, Shah Alam, 7 December 2005

CHAPTER 5

ASEAN'S RESPONSE TO HUMAN RIGHTS VIOLATIONS: PAST PRACTICE AND FUTURE CHALLENGES

CONCLUSION

Though, in general, ASEAN has accepted the universality of the basic principles of human rights, it has expressed some reservations in the form of “Asian values”, preferring to advocate economic, social and cultural rights (development) rather than civil and political rights, meaning “rice” comes before “rights.” In ASEAN countries the focus has been more on duties of a good citizen rather than their rights. Importantly, ASEAN adhered to the traditional norms of non-interference and the ASEAN way approach of consultation and consensus. From this perspective, human rights are commonly understood to be a matter of internal affairs of the ASEAN countries and of the term “human rights” is preferably avoided. Therefore there is no specific legal document on human rights (like human rights charter) or mechanism in ASEAN. Indeed, there are numerous ASEAN policies and programs which show ASEAN's commitment to promoting and protecting human rights in the region, but their implementation and enforcement presents a totally different question, even the terms of cooperation do not directly mention human rights or identify it as one area of concerns.

5.1 Human Rights Violations and ASEAN's Past Response: A Summary

Human rights violations have occurred in the Southeast Asia region, no matter whether the country was democratic, socialist or ruled by a junta. Degrees of seriousness of human rights violations in the region range from internal conflict to gross human rights violations such as the Burma popular uprising, coups in Thailand, genocide in Cambodia -- but ASEAN members still do not favour interference or intervention in the affairs of other. The response of ASEAN to human rights

violations has come only after a change in international politics and as a response to pressure from powerful countries and the international community in the late of 1990s -- as demonstrated in two case studies, the events of the July coup in Cambodia and the East Timor crisis.

ASEAN's approach in the case of Cambodia and East Timor

Both cases became international issues and ASEAN's response in the two cases was totally different. ASEAN took collective action to resolve the July coup conflict in Cambodia, but an individual response in the case of East Timor. Thus, being a member or non-member is not a determinant factor of ASEAN in its response to human rights issues, but is rather influenced by pressure from the international community, particularly donor countries, by suspending either military or financial and economic aid to the particular countries. Thus, the primary ASEAN response was not on human rights violations but it rather aimed at preventing external interference and restoring political stability to the region. ASEAN's approach to human rights violations was based on the ASEAN way of consultation and consensus through quiet diplomacy. As result, ASEAN has been criticized by international community on its ability to deal with human rights violations

Does ASEAN collectively respond to human rights violations in the region?

Apart from the evidence above, it can be see that ASEAN response to human rights ranges from individual to collective action, or in other words practices interference or intervention in the internal affairs of others in three main areas: where the United Nations and/or international agreements are involved, but it is not consistent in this approach; where domestic issues in one country spill over to likely impact other states and regional peace and stability, but are not termed as human rights per se; where internal issues raise concerns on humanitarian grounds, but affect beyond the region and member states. Nevertheless, there were only two examples where ASEAN took collective action in response to human rights violations in the region, firstly in the events of Vietnam's intervention Cambodia during the 1980s, followed the July coup 1997. These demonstrated that ASEAN has double standards and selective responses to human rights violations, always reluctant to address or

respond collectively to all human rights violations in the region. This is because ASEAN has its own mind set that human rights area political problem of other states (domestic concern), and it is the responsibility of each state to solve problem on its own, without interference by outsiders. Thus, other ASEAN member states do not have a right to intervene and should not interfere, even in situation of gross human rights violations. It would seem that a concept of responsibility to protect has not been advocated and is lacking in ASEAN member states.

Human rights issues make it difficult for ASEAN to compromise or reach consensus in its actions, especially since the definition of violations of human rights has broadened to cover civil and political rights; economic, social and cultural rights; and the rights of special groups. ASEAN's member states have taken the view that responding to human rights will mean interfering in another's state affairs. Obviously, ASEAN's principles of consensus and non-interference, and its selective application, are the key obstacles to upholding basic human rights standards.

Recently, the reaction of ASEAN member countries has been ongoing and has become more proactive to issues of human rights and democracy in different member states. The best illustrated case is that of Burma, where a number of strong collective concerns about the Burma situation were issued at the ASEAN Summit and ASEAN [Foreign] Ministerial Meeting. It should not be believed that ASEAN never imposed intensive measures, such as political or economic sanctions or arms or economic embargoes, or military intervention. Response through collective concerns and collective actions are different in terms of result, because the mere expression of concerns does not necessarily influence or change a state's behaviour. Usually, ASEAN's expression of concern has not been followed by other action, unlike the US or EU which often expresses strong condemnation and then follows up with economic sanctions or arms embargoes, often making some change in a state's behaviour. Response to human rights violations should be aimed at achieving a positive change reflected in a change of behaviour in a state in order to protect human rights. However, even ASEAN's practice has been changing from quiet diplomacy to stronger criticisms or public condemnation; but this approach has not been effective and

adequate. That is why there is a need for the establishment of an ASEAN mechanism on human rights in order to deal with all human rights concerns.

Thus from the above examination, it is obvious that human rights is not a priority to ASEAN. Rather it comes after much consideration of political, economic and national interest. ASEAN has always been reluctant to address or respond collectively to all human rights violations in the region. Furthermore, ASEAN's principles of consensus and non-interference, and its selective application, are key obstacles to upholding basic human rights standards.

5.2 Shifting in Policies: ASEAN's culture and standards on human rights

It is true that ASEAN has become more open to various concerns related to human rights. This is considered a positive step where the governments and civil society engage each other and can move forward in order to ensure promotion and protection of human rights through a step by step approach. Human rights has been integrated in a plan of action and functional cooperation, for example, programmes on the advancement of women and children; human trafficking; and the epidemic diseases of HIV/AIDS. Recently, ASEAN has taken a bold step in the human rights area, both in terms of cooperation and specific mechanism as mentioned in the Vientiane Action Programme. Furthermore, ASEAN has recognised the importance of having an appropriate institutional framework of ASEAN to establish the ASEAN Charter.

However, ASEAN agreements and cooperation have been dependent on the voluntary compliance of member-states. Thus, in responding to human rights, ASEAN has appeared to be using double and selective standards because of its lack of common standard in promotion and protection of human rights in its member states. In this sense, it is important to create a culture of respect for human rights in the region because such respect can help prevent conflict and advance development. Moreover, it is a matter of fact that when and wherever there are human rights violations, peace and stability are unlikely. Thus there should be only one standard for promotion and protection of human rights in the region and all people should be treated equally.

The planned ASEAN charter aims to promote democracy, strengthen democratic institutions, human rights and obligations, transparency and good governance. Nevertheless, some norms remain weak and absent in ASEAN which should be promoted and referred to in the charter in order to realising an ASEAN community, as follows:

- **Protection of human rights.** ASEAN's practice of human rights prefers only a promotion program, while the 'protection' part -- which aims to ensure that the guaranteed rights would be protected -- was disadvantaged. Even the Kuala Lumpur Declaration on Establishment of the ASEAN Charter mentioned only the 'promotion of democracy, human rights and obligations.' Thus, this Charter should cover two parts equally. Furthermore, the Charter should provide a section on the creation of enforcement and/or monitoring mechanisms in ASEAN, in order to commonly promote and protect human rights by having a concrete organ.
- **Concept of responsibility to protect and the right to intervene.** As part of protecting human rights, ASEAN as a regional organization has legitimacy to take steps in order to respond to internal human rights violations by member states, as reaffirmed by the UN Charter and Vienna World Conference on Human Rights. In other words, the Association has the right to makes decisions to intervene in a Member State in respect of grave circumstances under international human rights law and international crimes. It is not just about 'right to intervene' but rather about responsibility to protect people at grave risk. This concept will complement ASEAN's principles of preventive diplomacy, aiming to prevent such disputes/conflicts from escalating into armed confrontation, and to prevent such disputes and conflicts from spreading. In doing so, some measures could be taken even before a crisis has actually arisen.

Indeed, ASEAN has in practice emerged from its principle of non-interference and sovereignty. For instance, ASEAN has practised condemnation and rejection of crimes against humanity – the apartheid system in South Africa; “ethnic cleansing” in Bosnia and Herzegovina; and war crimes in the former Yugoslavia. Thus, a concept of responsibility to protect could be the basis of the ASEAN principles, values and norms which should be enshrined in the charter in order to strengthen collective voices and regional commitment and standards. Furthermore, Rodolfo also points out that all of these have been applied in the African Union which called members to account for state violations of people’s rights, and this was not regarded as interference in internal affairs.¹⁴⁴ Thus, why not apply in ASEAN? It should be borne in mind that it is not about what other regions have done, and what ASEAN should do, but it is all about what ASEAN is not doing for its people.

- **Promotion of gender equality.** ASEAN has made a lot of effort in the area of women and recently, all ASEAN countries has ratified CEDAW. This concept should be promoting collaboration and enhancement of the ASEAN programme on women’s issues.
- **Establish membership, suspension and termination criteria.** ASEAN had no criteria for membership. It has only three requirements for being a member of the association: first is being a Southeast Asia country; second is acceding to the Treaty of Amity and Cooperation in Southeast Asia (TAC); and third is the need to have full diplomatic relations with all the existing ASEAN members. Unlike the EU, in order to qualify for consideration as a candidate for EU membership, a country must be a pluralistic democracy with a satisfactory good record and standard of human rights protection. However, respect for human rights, democratic principles, the rule of law and good governance are part of ASEAN principles, therefore, these could be part of the basic criteria for membership of ASEAN referred to in the charter.

¹⁴⁴ Quoted in Achara Ashayagachat, ‘Is non-interference a sacred cow?’, *Bangkok Post*, December 19, 2005, 12.

The experience of ASEAN in its admission of Burma and Cambodia to the Association proves that entry to the group before democratic and human rights records are up to par, can result in problems. As result, the criteria for membership, suspension and termination should be defined at the first stage as a benefit for all agencies – including new upcoming member states and ASEAN, as well as people in this region. When the fundamental norm is violated by member-states, they ought to be subject to suspension from the decision-making processes, then perhaps expelled as termination. As Mahathir warned Burma, it would be possible to expel Burma from ASEAN. Singapore's Foreign Minister George Yeo warned that ASEAN might have to downgrade its relations with Burma because progress in ASEAN should not be delayed by Burma's domestic development; thus the regime should consult the grouping on the democratization process.

- **Imposition of non-compliance measures.** One of the planned ASEAN charter aims is effective implementation. However, there are still no mechanisms for calling member-states to account in case of non-compliance with binding agreements. To be effective implementation, it is necessary to set up a norm and measures.

It might be too ambitious -- but there are many cases of disturbing either neighbour countries or regional peace and stability; and some of these cases remains unresolved. Therefore, there should be some measure to ensure that human rights commitments are legally binding and that non-compliance or failure to meet the minimum standards of human rights would result in punitive action. This measure should be under a framework of the UN Charter and international practices such as condemnation, political and economic sanctions, arms or economic embargoes.

- **Decision making on principle of the “coalition of the willing”.** ASEAN's way of decision making by consensus has been proven as an obstacle to moving forward on human rights. In fact, ASEAN has been practicing the

“10-x” formula as a principle of the “coalition of the willing” in implementing all projects except human rights issues. Most significantly, a new ASEAN modality has developed in economic integration -- the formula of the “2+X” principle which allows two member countries that are ready to integrate certain sectors to go ahead while the others could follow later. It has been recognized as a useful way of responding to the challenge. In this sense, the decision of ASEAN minus X or “2+X” should be introduced in areas of human rights in order to respond more effective and in a timely manner. This would allow some members to develop a program and to proceed without the participation of others at the beginning. However, it will be open to them whenever they are ready to participate.

- **Enhancement of civil society as well as NGO’s participation in the activities of the Association.** Since 1987, a number of statements show ASEAN recognized a need for wider involvement and increased participation by women and youth, as well as Non-Governmental Organizations, in this functional cooperation. Furthermore, it recalled the vision of ASEAN as a community and caring society by 2020. As for the ASEAN community, people should be able to participate in the activities of ASEAN, including in decision-making on policies that have an impact on them. ASEAN people should be recognized as stakeholders. In addition, it should be noted that this principle has also been recognized – nationally and regionally; for example, in the Thailand constitution as well as the Africa Charter.

Conclusion

The issue of creating an ASEAN human rights culture in order to promote and protect human rights; response to human rights violations; establishing of ASEAN human rights mechanisms, including participation of civil society in its process, are challenging issues in ASEAN which ASEAN has to step up to. However, there is a little light. Recently, for example, Tan Sir Musa Hitam, a chair of EPG on the ASEAN Charter said in the fifth Workshop on the ASEAN Regional Mechanism on Human Rights in Kuala Lumpur, that recent developments show human rights are

emerging as an important concern in ASEAN, and it is time to go forward rather than recount it. It has been shown there has been some development on human rights in ASEAN, but only time will prove, how much ASEAN is serious on this issue.



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APPENDIX A

ASEAN's STATEMENTS ON HUMAN RIGHTS

Vietnam War 1971
<p>Joint Declaration of the ASEAN-EC Ministerial Meeting 21 Nov. 1978, Brussels, Belgium</p> <p>Para. 11. They also agreed that this cooperation should serve their people by promotion greater prosperity, social justice and human rights.</p>
<p>Joint Statement on Political Issues 8 Mar. 1980, Kuala Lumpur</p> <p>Para. 1. They reaffirmed their commitment to world peace, international cooperation and understanding, economic development, social justice and human rights</p>
The End of Cold War 1990s
<p>Joint Declaration of the 9th ASEAN-EC Ministerial Meeting 30-31 May 1991, Luxembourg</p> <p>Para. 5 The Ministers also reviewed the positive development in Asia. They note that the dynamic economics of Asia have positively contributed to the process of enhancing regional as well as international peace and stability. They welcomed the ongoing efforts to solve the outstanding problems in North Asia. They took cognizance of the growth of democratic practices, respect for human rights, increased political and economic participation of all people which enhances the productive process and contributes to a more equitable sharing economic benefits.</p> <p>Para. 7 The Ministers were of the view that international cooperation to promote and encourage respect for human rights and fundamental freedoms for all without distinction to race, sex and religion should be enhanced.</p>
<p>Joint Communiqué of the 24th ASEAN Ministerial Meeting 19-20 Jul 1991, Kuala Lumpur</p> <p>Para. 7 Therefore, when the issue of human rights is linked to trade, investment and finance, ASEAN cannot but view it as added conditionalities and protectionism by other means.</p> <p>Para. 15 The Foreign Minister exchanged views on the issue of human rights and noted with concern its tendentious application in inter-state relations. They agreed that while human rights is universal in character, implementation in the national context should remain within the competence and responsibility of each country, having regard for the complex variety of economic, social and cultural realities. They emphasized that</p>

international application of human rights be narrow and selective nor should it violate the sovereignty of nations.

Para. 59 The Ministers noted with concern the increasing tendencies to link the issues of environmental protection and human rights to development and commercial cooperation. They stressed that these issues should not be used as conditionality for aid and development financing.

Joint Communiqué of the 25th ASEAN Ministerial Meeting

21-22 Jul 1992, Manila, Philippines

Para. 18 The Foreign Ministers 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.

Joint Declaration 10th ASEAN-EC Ministerial Meeting

29-30 Oct 1992, Manila, Philippines

Para. 34 The Ministers emphasized their common commitment, in accordance with the United Nations Charter and the Universal Declaration of Human Rights, to the 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.

World Conference on Human Rights in Vienna 1993

Joint Communiqué of the 26th ASEAN Ministerial Meeting

23-24 Jul 1993 Singapore

Para. 16. 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.

Para. 17. 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 question of universal observance 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.

Para. 18. The Foreign Ministers reviewed with satisfaction the considerable 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 Programme of Action of 25 June 1993, they agreed that ASEAN should also consider the establishment of an appropriate regional mechanism on human rights.”

Joint Declaration 11th ASEAN-EU Ministerial Meeting
22-23 Sep 1994, Karlsruhe, Germany

Para. 4. The Ministers expressed their commitment to reinvigorate and to intensify their longstanding dialogue and cooperation on issues of peace and security, the environment and sustainable development, trade and investment, human rights, based on partnership, shared responsibility and mutual benefit.

Para 16. The Ministers discussed EU-ASEAN development cooperation, and notably the commitment of both side to give priority to the alleviation of poverty, human resource development, health and family planning, the role of women, respect for human rights, environment and sustainable development, taking into account the individual ASEAN countries, needs.

Globalization – Asian Financial Crisis 1997

Joint Declaration 12th ASEAN-EU Ministerial Meeting
13-14 Feb 1997, Singapore

Para. 5 We renewed our commitment to reinvigorate and to intensify our long-standing dialogue and cooperation on issues of peace and security, the environment and sustainable development, trade and investment, human rights, based on partnership, shared responsibility and mutual benefit.

Para. 14 We discussed EU-ASEAN cooperation and reaffirmed our commitment to give priority to the alleviation of poverty, human resource development, health and family planning , the role of women, respect for human rights, environment and sustainable development, taking into account the individual ASEAN countries needs.

Joint Communiqué of the 30th ASEAN Ministerial Meeting
24-25 Jul 1997, Subang Jaya, Malaysia

Para. 35 The Foreign Ministers while recognizing the importance of trade in bringing about economic development to the ASEAN countries, maintained that human rights issues should not be made conditional to the promotion of free trade among nations. The Ministers believed that the issues should be dealt at the appropriate fora. The Foreign Minister expressed concern over the emerging trend of state, provincial and other local authorities in countries outside this region seeking to impose trade sanctions against other States on grounds of alleged human rights violations and non-trade related

issues. The Foreign Ministers noted that the International trading system would be undermined if this trend persisted. They called on all national governments to continue to adhere to WTO rules.

ASEAN Vision 2020

(adopted at the Second ASEAN Informal Summit, 14-16 December 1997, Kuala Lumpur)

That vision is of ASEAN as a concert of Southeast Asian nations, outward looking, living in peace, stability and prosperity, bonded together in partnership in dynamic development and in a community of caring societies.

A Concert of Southeast Asian Nations

...ASEAN shall have, by the year 2020, established a peaceful and stable Southeast Asia where each nation is at peace with itself and where the causes for conflict have been eliminated, through abiding respect for justice and the rule of law and through the strengthening of national and regional resilience....

We envision the Treaty of Amity and Cooperation in Southeast Asia functioning fully as a binding code of conduct for our governments and peoples, to which other states with interests in the region adhere.

A Community of Caring Societies

... We see vibrant and open ASEAN societies consistent with their respective national identities, where all people enjoy equitable access to opportunities for total human development regardless of gender, race, religion, language, or social and cultural background.

We envision a socially cohesive and caring ASEAN where hunger, malnutrition, deprivation and poverty are no longer basic problems, where strong families as the basic units of society tend to their members particularly the children, youth, women and elderly; and where the civil society is empowered and gives special attention to the disadvantaged, disabled and marginalized and where social justice and the rule of law reign.

... We envision our nations being governed with the consent and greater participation of the people with its focus on the welfare and dignity of the human person and the good of the community. ..

Hanoi Action Plan (1997-2004)

(adopted at the Sixth ASEAN Summit, 15-16 December 1998, Hanoi, Vietnam).

- IV. Promote Social Development and address the Social Impact of the Financial and Economic Crisis
- 4.1 Strive to mitigate the social impact of the regional financial and economic crisis.
 - 4.2 Implement the Plan of Action on ASEAN Rural Development and Poverty Eradication and, in view of the financial and economic crisis, implement the ASEAN Plan of Action on Social Safety Nets to ensure that measures are taken to protect the most vulnerable sectors of our societies.
 - 4.3 Use the ASEAN Foundation to support activities and social development programmes aimed at addressing issues of unequal economic development, poverty and socio-economic disparities.
 - 4.4 Implement the ASEAN Plan of Action for Children which provides for the framework for ensuring the survival, protection and development of children.
 - 4.5 Strengthen ASEAN collaboration in combating the trafficking in, and crimes of violence against, women and children.

- 4.6 Enhance the capacity of the family and community to care for the elderly and the disabled.
- 4.7 Strengthen the ASEAN Regional Aids Information and Reference Network.
- 4.8 Enhance 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 Programme of Action.
- 4.9 Work towards the full implementation of the Convention on the Rights of the Child and the Convention on the Elimination of all Forms of Discrimination against Women and other international instruments concerning women and children.
- 4.10 Strengthen regional capacity to address transnational crime.
- 4.11 Implement the ASEAN Work Programme to operationalise the ASEAN Plan of Action on Drug Abuse Control by 2004, and continue developing and implementing high-profile flagship programmes on drug abuse control, particularly those related to prevention education for youth, and treatment and rehabilitation.

The 50th anniversary of the Declaration of Human Rights 1998

Joint Communiqué of the 31st ASEAN Ministerial Meeting

23-24 July 1998, Manila, Philippines

Para.28 The Foreign Ministers recalled the decision of the 26th ASEAN Ministerial Meeting held on 23-24 July 1993 in Singapore to consider the establishment of an appropriate regional mechanism on human rights and noted the establishment of the informal non-governmental Working Group for an ASEAN Human Rights Mechanism. The Foreign Ministers noted further the dialogues held between the Working Group and ASEAN officials in Jakarta during the 29h ASEAN Ministerial Meeting and in Kuala Lumpur during the 30th ASEAN Ministerial Meeting. They recognized the importance of continuing these dialogues and took note of the proposal made by the Working Group during its latest dialogue with ASEAN held in Manila on 22 July 1998.

Para. 29 The Foreign Ministers noted that the world will celebrate in December 1998 the 50th anniversary of the Declaration of Human Rights. Considering that two-thirds of the ASEAN population consist of women and children, they recognized the importance of international conventions and declarations relating to the promotion of human rights, such as the Convention on the Rights of the Child and the UN Convention on the Elimination of all Forms of Discrimination Against Women. The Foreign Ministers took cognizance of the fact that steps are being taken to bring to fruition the creation of a community of caring societies, as enshrined in the ASEAN Vision 2020, which gives particular emphasis to children, youth, women and the elderly.

Joint Communiqué of the 32nd ASEAN Ministerial Meeting

23-24 July 1999, Singapore

Para. 50 We recalled the decision of the 26th ASEAN Ministerial Meeting held on 23–24 July 1993 in Singapore to consider the establishment of an appropriate regional mechanism on human rights and noted the establishment of the informal non-governmental Working Group for an ASEAN Human Rights Mechanism. The Working Group and ASEAN officials have met regularly since the 29th ASEAN Ministerial Meeting in Jakarta, most recently on 22 July 1999 in Singapore. We recognised the importance of continuing these dialogues.

Joint Communiqué of the 33rd ASEAN Ministerial Meeting

23-24 July 2000, Bangkok, Thailand

Para 33. In recalling the decision of the 26th ASEAN Ministerial Meeting held in Singapore on 23-24 July 1993 to consider the establishment of an appropriate regional mechanism on human rights, the Foreign Ministers noted with appreciation the consultations between the ASEAN Senior Officials and the Working Group for an ASEAN Human Rights Mechanism. They also noted the establishment of a national mechanism on human rights in some ASEAN countries.

War to Terrorism 2001**Joint Communiqué of the 34th ASEAN Ministerial Meeting**

23-24 July 2001, Hanoi, Vietnam

Para 30. We recalled the decision made by the 26th ASEAN Ministerial Meeting held in Singapore on 13-14 July 1993 to consider the establishment of an appropriate regional mechanism on human rights and noted the consultations between the ASEAN Senior Officials and the Working Group for an ASEAN Human Rights Mechanism. We acknowledged the efforts of the Working Group in realizing this objective, including the convening of a Workshop for an ASEAN Human Rights Mechanism in Jakarta, Indonesia on 5-6 July 2001. In this connection, we agreed that ASEAN-ISIS should also be involved in the discussions especially in the broader context of a People's ASEAN.

Joint Communiqué of the 35th ASEAN Ministerial Meeting

29-30 July 2002, Bandar Seri Begawan, Brunei Darussalam

Para. 32. We recalled the decision made by the 26th ASEAN Ministerial Meeting to consider the establishment of an appropriate mechanism on human rights. In this regard, we noted the First and Second Workshops on the ASEAN Regional Mechanism on Human Rights hosted respectively by Indonesia from 5-6 July 2001 and the Philippines from 13-15 June 2002. We also noted the 9th ASEAN-ISIS Colloquium on Human Rights, held from 23-24 February 2002, in Manila. We deemed that these efforts could contribute in enhancing the exchange of views among different sectors in ASEAN towards the realisation of the concept of an ASEAN human rights mechanism. We also acknowledged the importance of continuing dialogue with the Working Group for an ASEAN Human Rights Mechanism.

Joint Communiqué of the 36th ASEAN Ministerial Meeting

16-17 June 2003, Phnom Penh, Cambodia

Para. 36 We reaffirmed our commitment to the protection and promotion of human rights. In this regard, we noted the ongoing ASEAN efforts and dialogues with the non-governmental Working Group for an ASEAN Human Rights Mechanism. We took note of the meeting between the ASEAN Senior Officials and the Working Group for an ASEAN Human Rights Mechanism in Phnom Penh on 14 June 2003 and the Track II conference on human rights held in Bangkok on 28-29 May 2003. We also noted the establishment of national human rights mechanisms in some Member Countries.

Joint Communiqué of the 37th ASEAN Ministerial Meeting

29-30 June 2004, Jakarta, Indonesia

Para. 30 We reaffirmed our commitment to the protection and promotion of human rights. In this regard, we noted the ongoing ASEAN efforts and dialogues with the non-governmental Working Group for an ASEAN Human Rights Mechanism, as well efforts to enhance the exchange of views among different sectors in ASEAN towards the realization of an ASEAN human rights mechanism. We took note of the meeting between the ASEAN Senior Officials and the Working Group for an ASEAN Human Rights Mechanism in Jakarta on 28 June 2004. We noted the establishment of national human rights mechanism in some member countries. We also noted the conclusions and recommendations of the Fourth Workshop on ASEAN Regional Mechanism on Human Rights held in Jakarta on 17-18 June 2004.

Para 40. We welcomed the signing of the Declaration on the Elimination of Violence against Women in the ASEAN Region. We believed that the Declaration would further strengthen regional cooperation, collaboration and coordination for the purpose of eliminating violence against women in the region, either individually or collectively.

Vientiane Action Programme (VAP) 2004-2010

(adopted at the Tenth ASEAN Summit, 4-5 November 2004, Vientiane, Laos. P.D.R.)

...The ASEAN Security Community (ASC) embodies ASEAN's aspirations to achieve peace, stability, democracy and prosperity in the region where ASEAN Member Countries live at peace with one another and with the world at large in a just, democratic and harmonious environment.

Consistent with the ASC Plan of Action, the VAP for the ASC shall be pursued along five strategic thrusts, namely, political development, shaping and sharing of norms, conflict prevention, conflict resolution, and post-conflict peace-building, the implementation of which shall focus on actions that are conceivably achievable by 2010.

1.1 Political Development

In support of our commitment to enhance a political environment in which ASEAN Member Countries have strong adherence to peaceful ways of settling intra-regional differences and regard their individual security as fundamentally linked together and bound by geographic location, common vision and shared values, the strategies for political development are:

- i. Promote understanding and appreciation of political systems, culture and history of member countries through increasing people-to-people contacts and track-two activities;
- ii. Promote human rights and obligations;
- iii. Lay the groundwork to establish an institutional framework to facilitate the free flow of information among ASEAN Member Countries;
- iv. Establish programmes for mutual support and assistance among ASEAN member countries in the development of a strategy for strengthening the rule of law, judiciary systems and legal infrastructure, effective and efficient civil services, and good governance in public and private sectors;
- v. Increase the participation of non-governmental organisations such as the ASEAN Inter-Parliamentary Organisation (AIPO), the ASEAN People's Assembly (APA), the ASEAN Business Advisory Council (ABAC), the ASEAN Institute for Strategic and International Studies (ISIS) and the academia, especially the ASEAN University Network (AUN), in moving forward ASEAN political development

initiatives, and strengthen the role of the ASEAN Foundation; and
vi. Prevent and combat corruption.

Programme Areas and Measures on Promote human rights

1. Completion of a stock-taking of existing human rights mechanisms and equivalent bodies, including sectoral bodies promoting the rights of women and children
2. Formulation and adoption of MOU to establish network among existing human rights mechanisms
3. Formulation of work programme of the network
4. Promote education and public awareness on human rights
5. Establish a network of cooperation among existing human rights mechanisms
6. Elaboration of an ASEAN instrument on the protection and promotion of the rights of migrant workers
7. Establishment of an ASEAN commission on the promotion and protection of the rights of women and children.

Joint Communiqué of the 38th ASEAN Ministerial Meeting

26 July 2005, Vientiane, Laos P.D.R.

Para. 11 We recalled the decision by ASEAN Leaders, through the adoption of the ASC Plan of Action and the VAP, to strengthen our efforts in promoting human rights in ASEAN. We also recalled decision at the 26th AMM to consider the establishment of an appropriate mechanism on human rights. We noted the work carried out by the non-governmental Working Group for an ASEAN Human Rights Mechanism, including the meeting between the open-ended ASEAN SOM troika and the Working Group at the sideline of the 38th AMM.

Joint Communiqué of the 39th ASEAN Ministerial Meeting

25 July 2006, Kuala Lumpur, Malaysia

Para 9. We commended the EPG for its consultative and inclusive approach in engaging all pertinent stakeholders in ASEAN, including meetings with representatives of ASEAN Inter-Parliamentary Organisation (AIPO), Working Group for an ASEAN Human Rights Mechanism, ASEAN Institutes of Strategic and International Studies (ASEAN-ISIS), civil society organisations, ASEAN Chambers of Commerce and Industry (ASEAN-CCI) and the private sector. We reiterated our support for the EPG to continue to “think out of the box” and explore all bold and visionary ideas for the strengthening of ASEAN and its institutional framework. We are confident that the EPG’s report and recommendations, which would be presented for consideration by our Leaders at the 12th ASEAN Summit in Cebu, the Philippines, would enable the Leaders to decide on the drafting of the Charter. The EPG report represents a significant contribution to the building of the ASEAN Community that is more people-centred and resilient to challenges. In this context, we agreed to establish the High Level Task Force to carry out the drafting of the ASEAN Charter after the 12th ASEAN Summit, based on the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter.

Para. 22. We noted the outcome of the Fifth Workshop on an ASEAN Regional Mechanism on Human Rights held on 29-30 June 2006 in Kuala Lumpur and viewed it as an important forum for continuous dialogue on the establishment of a regional human rights mechanism in ASEAN. We also noted the work carried out by the non-governmental Working Group for an ASEAN Human Rights Mechanism, including the meeting between the open-ended ASEAN SOM Troika and the Working Group at the

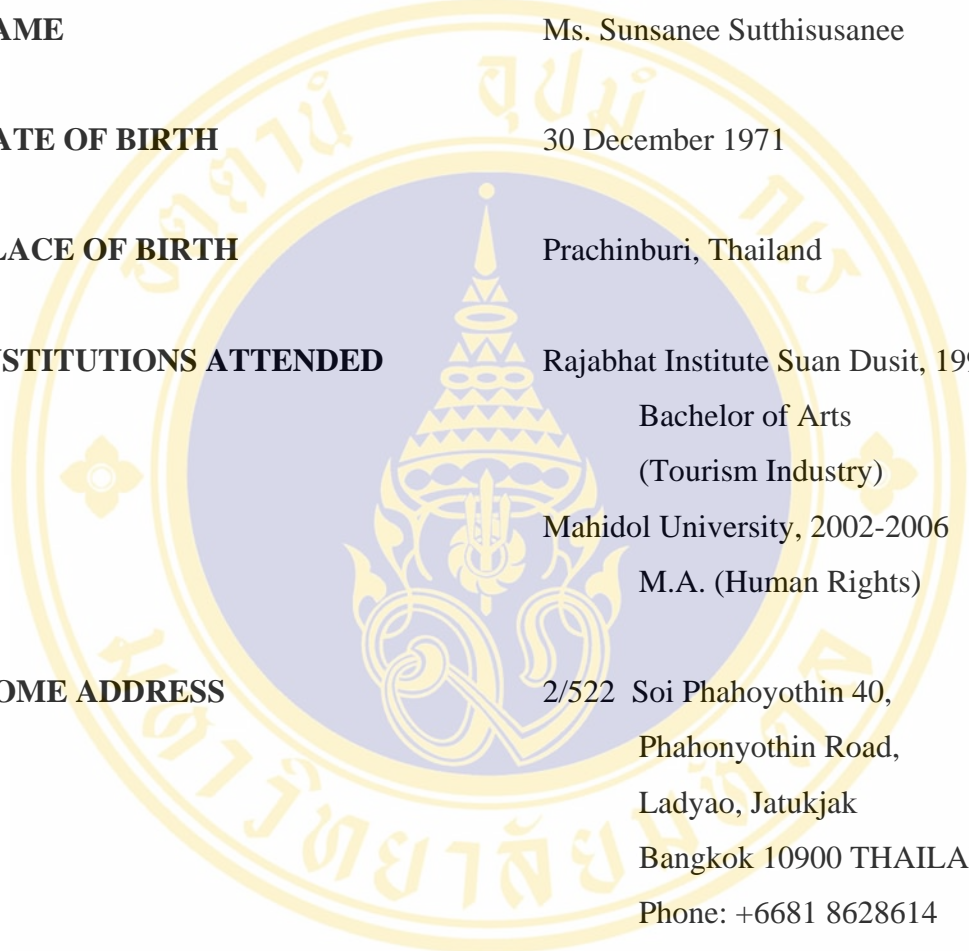
sidelines of the 39th AMM with the objective to facilitate the implementation of the activities under the promotion of human rights component of the VAP. We further noted that the National Human Rights Commissions of Indonesia, Malaysia, the Philippines and Thailand are prepared to collaborate with the Working Group and other civil society organisations, with the view to facilitating the establishment of an ASEAN Human Rights Mechanism.

Para. 23. In accordance with the Plan of Action to implement the ASEAN Security Community, the Ministers also agreed to begin discussions on the elaboration of an ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers.

Para. 49. We commended the holding of the Civil Society Conference at the sidelines of the 11th ASEAN Summit on 7-9 December 2005 in Kuala Lumpur. The involvement of civil society is a vital component of developing a people-centred ASEAN Community. In this regard, we were pleased to note that the Philippines will continue the engagement with civil society groups during its chairmanship on the regional level. An opportunity for the civil society representatives to report to the Leaders will be arranged during the 12th ASEAN Summit.

Para 66. We welcomed the operationalisation of the Declaration on the Elimination of Violence Against Women in ASEAN, which we had signed at our 37th Meeting in 2004. We congratulated the ASEAN Committee on Women (ACW) for their efforts in developing an operational work plan with focused activities to ensure that ASEAN's women are protected and empowered and in reducing women's vulnerability to exploitation and paving the way for their continued advancement. We also welcomed the partnership forged with the United Nations Development Fund for Women (UNIFEM) in support of the ACW's work.

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