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ADVANCING ASEAN HUMAN RIGHTS NORMS THROUGH EXTERNAL RELATIONS: CAPACITY, ADVANTAGES, AND THE POTENTIAL FOR EXTERNAL INTERFERENCE

I Made Budi Arsika*

Abstract

The gradual development of human rights norms in ASEAN has been discussed until recently. As before the human rights provisions were formally enshrined in the ASEAN Charter, many experts have shared their views on how such norms should ideally be formulated and how to use the institutional approach in the promotion and protection of human rights in Southeast Asia region. This paper mainly discusses about the role of ASEAN's external relations to advance the ASEAN human rights norms. On the more specific topic, this paper analyzes ASEAN's capacity to bring human rights agenda in its external relations and also analyzes the advantages that can be gained from such activities. Based on the assumption that cooperation naturally opens the room for external influences, this paper also studies whether ASEAN's external relations on human rights issues are potential for external interference.

Keywords: Human Rights, ASEAN, regional

I. INTRODUCTION

The current development of human rights norms and institution in Southeast Asia is really a positive progress. It is commonly known that historically the establishment of the Association of Southeast Asian Nations (ASEAN) was not particularly aimed at the protection of human rights to the peoples in its region.

The creation of the ASEAN Charter was very meaningful to the development of human rights norms since that document formally inserted the human rights provisions. The promotion and the protection of human rights were enshrined as ASEAN's purpose and principle, and, fascinatingly, the new ASEAN Human Rights Body was also established.

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The ASEAN Charter is indeed not a final goal, because there are still many efforts should be executed to more develop human rights norms. In this regards, the universal human rights norms and the existing national human rights norms in its members have to be enriched by the creation of a regional human rights norms to be applied exclusively in Southeast Asia. Although the gradual development of regional human rights norms in this region invites some pessimistic views, the successful experiences from any other regions actually can be used as positive motivation.

The process of creating norms is primarily organized through internal mechanisms. However, considering that ASEAN's external relations presently plays significant role to attain ASEAN interests, it could also be expected as a means to advance ASEAN human rights norms. The long-time experiences of ASEAN's external relations will be valuable to bring the human rights issue into formal agendas of ASEAN cooperation with its external partners.

It is commonly realized that the nature of external relations is opening the formal relation between the actors to seek the potential cooperation for their mutual benefits. For the sceptic commentator, the unclear limitation of the conduct of external relations is really potential for external interference and also could threaten the state's sovereignty. Hence, it is actually still become a basic question whether the external relations can substantially give advantages to advance ASEAN human rights norms.

II. THE SIGNIFICANCE OF REGIONAL HUMAN RIGHTS NORMS

Primarily since the Post-Second World War, the global advocacy of human rights has brought tremendous impacts to the international community. After the Charter of the United Nations (UN Charter) has been made,¹ the establishment of Universal Declaration of Human Rights (UDHR) in 1948 subsequently was the paramount of the development

¹ There are some provision on UN Charter that regulates human rights matter, for instance; Preamble, par 2, Art. 1 (3), Art. 13 (1) (b), Art 55 (c), Art. 62 (2), Art. 68, Art. 76 (c).

of international human rights law. Since then, it inspired several multi-lateral human rights treaties such as the two international covenants in 1966. The birth of many new states after the colonialism era has also linked with the trend of human rights development.

Interestingly, the regionalism trend responded the global development of human rights by arranging regional standard-setting on that concern. Again, it can be argued that the UDHR has encouraged the regional communities to pay their more attention on human rights issues since this document recognized that everyone is entitled to all the rights and freedoms without distinction of national origin or under any other limitation of sovereignty,² which implicitly means that regional communities/organizations have chance to regulate the matter of human rights. This is actually in line with Martin Dixon's argument that views if, then, the universal protection of a significant number of human rights is unattainable, perhaps the best way forward is to focus on establishing effective regional machinery.³

Another important declaration, The UN Vienna Declaration and Programme of Action (VDPA, 1993) determines that the effort to promote and to protect human rights must taking into consideration the significance of national and regional particularities and various historical, cultural and religious backgrounds.⁴ Taking into account that regional arrangements play a fundamental role in promoting and protecting human rights, it reiterates the need to consider the possibility of establishing regional and sub regional arrangements for the promotion and protection of human rights where they do not already exist.⁵

The establishment of Human Rights Council has also considered this matter. In the United Nations General Assembly Resolution A/60/251 it states that the Human Rights Council shall work in close cooperation in the field of human rights with regional organization, as well with the

² Art 2 of the Universal Declaration of Human Rights 1948.

³ See Martin Dixon, *Textbook on International Law*, 6th Edition, Oxford University Press, New York, 2007, p. 358.

⁴ Vienna Declaration and Programme of Action, 1993, par I.5.

⁵ *Ibid* par I.37. Beside mentioned above, there are several paragraphs in this Declaration relate to human rights at regional level. See par I.18, par I.23, par II.A.2, par III.B.3.43, par III.C.76, par III.D.80, par III.E.85, par III.E.92, par III.E.98, and par III.F.100 of the Vienna Declaration and Programme of Action, 1993.

Governments, National Human Rights Institutions and Civil Society.⁶

III. THE GRADUAL DEVELOPMENT OF REGIONAL HUMAN RIGHTS NORMS IN SOUTHEAST ASIA

Southeast Asia is perhaps too late to start the regional human rights standard-setting. The grave violations of human rights occurred when Southeast Asian countries were strongly respecting the non-interference principle. That situation seems like each country observes the catastrophic breach of human rights happened in its neighbours as like watching the 'bloody aquarium' without doing anything.

The birth of ASEAN in 1967 was not specifically intended to advocate the rights of Southeast Asian peoples. One of the leading perceptions at that time was viewing human rights as sensitive issue which potentially emasculate the regional stability. Hence, ASEAN was not so eager to deliberate seriously such issue in its internal agenda.

The year of 1993 has become a historical momentum for human rights in Southeast Asia after the Joint Communiqué of the 26th ASEAN Ministerial Meeting in Singapore was launched. In that document, the ASEAN 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 rights⁷ and also consider the establishment of an appropriate regional mechanism on human rights.⁸

There were actually some doubts about ASEAN's commitment to promote human rights when ASEAN decided to accept new members which had problems with human rights issues, e.g. Vietnam (1995), Laos and Myanmar⁹ (1997) and Cambodia (1999). The critical question was how ASEAN can make regional arrangement concerning human

⁶ Art 5 (h) of the UNGA Resolution A/60/251.

⁷ Joint Communiqué of the 26th ASEAN Ministerial Meeting, 1993, par 17.

⁸ *Ibid*, par 18.

⁹ The acceptance for Myanmar as a member of ASEAN in 1997 is an example how controversial it was. At that time, ASEAN apparently had a preference to achieve regional unity rather than considered international pressure not to accept Myanmar as a new member of ASEAN.

rights if some member states have no serious willingness to overcome their domestic human rights problems.

While some Joint Communiqués of the ASEAN Ministerial Meetings described how the human rights gradually appear as an important issue in ASEAN,¹⁰ the Vientiane Action Program (2004) brought human rights issues into the real program of actions. It mentions that one of the strategies for ASEAN political development is promote human rights and obligations.¹¹

In January 2007, a step forward has been made by ASEAN through ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. It also subsequently established ASEAN Commission on Migrant Workers (ACMW) as a formal institution which responsible to that concern.

When ASEAN Charter was finally enacted, it was actually not so surprising to realize that this legal instrument mentions explicitly that one of ASEAN purpose is to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN.¹² Moreover, Article 2 (2) (i), highlighted the respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice as ASEAN principle. The ASEAN Human Rights Body (AHRB)¹³ perhaps the most progressive development. As after it was introduced, the ASEAN Intergovernmental Commission on Human Rights (AICHR) subsequently established as a manifest of AHRB.

Furthermore, in 2010 the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) was formally inaugurated. Interestingly, the Terms of Reference (ToR) of both ACWC and AICHR recognizes the gradual development of human

¹⁰ See Joint Communiqué of the 26th ASEAN Ministerial Meeting, Singapore, 23-24 July 1993, par 16, 17, and 18; Joint Communiqué of the Thirty-First ASEAN Ministerial Meeting Manila, Philippines, 24-25 July 1998, par 19, 28, and 29; Joint Communiqué of the 34th ASEAN Ministerial Meeting Hanoi, 23-24 July 2001, par 30; and Joint Communiqué of the 36th ASEAN Ministerial Meeting Phnom Penh, 16-17 June 2003, par 33 and 36;.

¹¹ Art II.1.1 (ii) of the ASEAN Vientiane Action Program, 2004.

¹² See Art 1 (7) of the ASEAN Charter

¹³ Art. 14 of the ASEAN Charter

rights norms in Southeast Asia by adopting an evolutionary approach to the development of human rights norms and standards in ASEAN.¹⁴

In analyzing this topic, it is important to quote the view of Rodolfo C. Severino, the former ASEAN Secretary General. He mentions, “The diversity in ASEAN, Cultures, languages, religions, races, etc is certainly greater than that of Europe or Latin America. ASEAN therefore must carefully nurture its cohesion. Its institutions and processes must be allowed to evolve slowly. The pace of that evolution cannot be forced.”¹⁵

The gradual development of human rights in Southeast Asia region is a real situation. However, at least, the current achievements as aforementioned clarify the perception that views human rights as an abstract concept in Asia.¹⁶

IV. OBSERVING THE DEVELOPMENT OF HUMAN RIGHTS NORMS IN OTHER REGIONS

A comparative lesson on the development of regional human rights outside the region of Southeast Asia is an interesting topic. ASEAN, for instance, could learn from the Europe as the most progressive region which successfully enacted many regional human rights instruments. The Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 was a basic treaty besides any other legal instruments such as European Social Charter (1961, revised 1996), European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987), European Charter for Regional or Minority Languages (1992), Framework Convention for the Protection of National Minorities (1995), Council of Europe Convention on Action Against Trafficking in Human Beings (2005). More specific, ASEAN could also learn from the European Union (EU) as one of human rights

¹⁴ ToR of AICHR, par 2.5 and ToR of ACWC, par 3.8.

¹⁵ Rodolfo C. Severino, *ASEAN Rises to the Challenge*, ASEAN Secretariat, Jakarta, 1999, p. 90

¹⁶ See the analysis by Stan Stesser in Mark Hong, “*Afterword: Southeast Asia in a New Era*”, in Rodolfo C Severino, Elspeth Thomson, and Mark Hong (Eds), *Southeast Asia in a New Era: Ten Countries, One Region in ASEAN*, ISEAS Publishing, Singapore, 2010, p.271.

promoters. In 2000, EU has shown its serious concern to the human rights issues by recognizing the rights, freedoms and principles of the People on Charter of Fundamental Rights of the European Union. The Guidelines Human Rights and International Humanitarian Law made by Council of European Union is also another good example. Those Guidelines are used as practical tools to help EU representations in the field better advance the EU policy.¹⁷

America and Africa also have willingness to develop their own regional human rights norms. The region of America has indicated its effort to promote and protect Human Rights, although they still focus on Civil and Political Rights.¹⁸ In another side, Africa's historical backgrounds which coloured by phenomena of colonialism, apartheid, crimes against humanity, genocide, civil war, and poverty, were used to formulate the magnificent ideas of human rights, such as rights to a general satisfactory environment favorable to their development,¹⁹ rights to sustainable development,²⁰ and human duties.²¹ In the context of regional organization, The African Union (AU) enshrined human rights as its objective and principle in its Constitutive Act.²²

While there is no regional instrument yet in Asia that has come into being,²³ some Arab countries declared its concern to the human rights in particular characteristic. Moreover it rejects all forms of racism and Zionism and introduces the usage Islamic Shariah in human rights mat-

¹⁷ See Javier Solana, *Preface of the Brochure of EU Council Guidelines Human Rights and International Humanitarian Law*, General Secretariat of EU Council, Brussel, 2009, par. 2

¹⁸ It doesn't mean, however, that America Region has not paid its attention to the Economic, Social, and Culture Rights. See Chapter III of Part I of the American Convention on Human Rights (1969) and Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Culture Rights (Protocol San Salvador', 1988).

¹⁹ Art 24 of the African Charter on Human and Peoples' Rights (1981).

²⁰ Art 19 of the Protocol on the Rights of Women in Africa (2003).

²¹ Chapter II of the Part I of the African Charter on Human and Peoples' Rights (1981).

²² See Art. 3 (e) and (h) and also Art. 4 (m) of the Constitutive Act of African Union, 2000.

²³ Christian Tomuschat, *Human Rights: Between Idealism and Realism*, Second Edition, Oxford University Press, New York, 2008, p.36.

ters.²⁴ Even though the Arab League has not explicitly mentioned its concern to the human rights, some of its purpose actually related to the human right issues.²⁵

Regarding the results of the interaction of the various regional systems with one another and with the UN, Dinah Shelton describes as below:²⁶

“As the systems have evolved, the universal framework within which they began, together with their own interactions, have had surprisingly strong influence, leading to converging norms and procedures in an overarching interdependent and dynamic system. In many respects they are thinking globally and acting regionally. Each uses the jurisprudence of the other systems and amends and strengthens its procedures with reference to the experience of the others. In general, their mutual influence in highly progressive, both in normative development”

Essentially, there are several regions that could be learned by ASEAN in order to create a regional standard-setting on human rights. Europe is the most advanced region with this concern because its existing treaties are commonly used as prototype of the successful effort in achieving regional human rights norms. Beside that, the notable human rights development in Latin America and Africa should also be taken into consideration by ASEAN.

V. ADVANCING THE ASEAN HUMAN RIGHTS NORMS

Although ASEAN over the years had concluded agreements or issued declarations on specific human right issues e.g. trafficking in persons, child labour, violence against women, and the treatment of migrant workers,²⁷ it is still important to assess the chance to further develop the regional human rights norms in Southeast Asia. As previously explored, the legal bases have been already created, the human

²⁴ See Preamble, par 5, Art. 2(3), and Art. 3 (3) of the Arab Charter (2004).

²⁵ They are economic, cultural, social, health, nationality, extradition, affairs. See art II of the Pact of Arab League.

²⁶ Henry J. Steiner, Philip Alston, and Ryan Goodman, *International Human Rights in Context: Law, Politics, Morals – Text and Materials*, Third Edition, Oxford University Press, 2007, p.931.

²⁷ See Rodolfo C Severino, Elspeth Thomson, and Mark Hong (Eds), op.cit, p.248

rights institutions have been established, and the willingness of ASEAN members to develop human rights norms has also increased. Therefore, the remaining problems are how to advance the existing ASEAN human rights norms.

Generally speaking that norm consists of the substance, structure, and cultural aspects. This notion actually can be used to construct the idea of this paper. Hence, the phrase ‘advancing ASEAN human rights norms’ in this paper is intended to describe a set of comprehensive and never-ending processes to improve or modify the existing ASEAN human rights norms to achieve the highest standard of human rights in the Southeast Asia region. The advancing human rights norms primarily will be performed by capturing the added value, improving the human rights institutions, and creating conducive condition for encouraging the optimum involvement of ASEAN people in the creation, implementation, and the enforcement of human rights norms.

First, the process of capturing the added value might be done by exploring the wisdom of ASEAN members’ people in their daily life activities which contain human rights aspects, by identifying the regional similarity of human rights values amongst the ASEAN members, and by adopting the universal values of human rights. This process can be deemed as a deep discourse between the notions of universality of human rights and cultural relativism in which we can look at the academic and political debates regarding the Western value of human rights and the what so called as ‘Asian value’. It actually can be understood if ASEAN peoples seems reluctant to install the western values to their human rights norms, however, in contrast, it is also not so wise to reject those western values by totally ignoring the global human rights standards. It is arguably that the regional approach involves certain possible risk that it might serve to insulate the area from outside influences and encourage it to ignore the global standards and institutions of the United Nations system.²⁸ In this regards, ASEAN has to be more selective in indicating the proper values that visibly fit to be applied in Southeast Asia. As pointed out by Jack Donnelly, internationally recognized human rights actually leave considerable space for distinctively Asian

²⁸ See Twenty-Eight Report of the Commission to Study the Organization of Peace (1980) in J. Steiner, Philip Alston, and Ryan Goodman, *op.cit.*, p. 930-931.

implementations of these rights.²⁹

Second, the process of improving the human rights institution might be implemented by evaluating the works of existing human rights bodies, by recommending the tasks to be carried out by those bodies, and even in the future, by establishing the new enforcement institution. Currently, there are AICHR, ACWC, ACMW and several national human rights institutions in ASEAN members. Pursuant to its ToR, the AICHR is the overarching human rights institution in ASEAN with overall responsibility for the promotion and protection of human rights in ASEAN³⁰ which shall closely consult, coordinate and collaborate with such bodies in order to promote synergy and coherence.³¹ The institutional approach to engage ASEAN members in dealing with human rights issue is actually a challenge. In June 2004, for instance, Vietnam and other new members adamantly rejected proposal timetables for everything from democratic rule to the creation of national human rights commissions, in which, the concrete initiatives finally were reduced to little more than statements of principle with no timetables or deadlines established.³²

Third, the process of creating conducive condition for encouraging the optimum involvement of ASEAN people's in the creation, implementation, and the enforcement of human rights norms can be done by educating the human rights in order to raise the peoples awareness,³³ by giving appropriate access to participate in the creation or modification of ASEAN human rights laws, by giving the rights to control its implementation, and even, if ASEAN in the future create an enforcement human rights institution, by granting the rights to enforce the violation of ASEAN human rights law. It can not be denied that in the mean time, the formal inter-state dialogue in ASEAN is the leading mechanism to determine ASEAN policies. However, sometimes its decisions are only realized exclusively by their elite officials. This is actually an obstacle

²⁹ See Jack Donnelly, *Universal Human Rights in Theory and Practice*, 2d, Cornell University Press, 2003, p.119.

³⁰ ToR of the AICHR, par 6.8.

³¹ *Ibid*, par 6.9.

³² See Ronald Bruce St John, *Revolution, Reform, and Regionalism in Southeast Asia: Cambodia, Laos, and Vietnam*, Routledge, 2008, p.187.

³³ See ASEAN Political-Security Blueprint, part A.15.vi

for ASEAN to realize ‘a people-oriented ASEAN’ in which all sectors of society are encouraged to participate in, and benefit from, the process of ASEAN integration and community building.³⁴ Considering this situation, in line with ASEAN Political-Security Blueprint,³⁵ ASEAN should invite the civil society organizations to involve in certain human rights agendas in Southeast Asia. The significant contribution of Working Group for an ASEAN Human Rights Mechanism, for instance, has continuously noted by ASEAN leaders.³⁶ The political control from ASEAN Inter-Parliamentary Assembly (AIPA) and the strategic analysis from institution such as ASEAN Institutes of Strategic and International Studies (ASEAN-ISIS) have also provided objective view for ASEAN leaders to run its human rights policies. The role of certain Non-Governmental Organizations (NGOs) which focusing its job in inquiring the human rights violations in the ground by ‘naming and shaming’ process has also needs to be taken into consideration.

VI. EXTERNAL RELATIONS AS A MEANS TO ADVANCE ASEAN HUMAN RIGHTS NORMS

The establishment of norm is usually inspired by internal demands and external influences. Regarding internal demands, the commitment of ASEAN member states to adhere to human rights principles, as enshrined in the ASEAN Charter, can be used as a strong indication to assess that human rights standard-setting in ASEAN is really a demand. The establishment of some human rights institutions is another sign of how ASEAN seriously needs to more develop human rights norms. The next question is how about the external influences? Perhaps in other sentence, the question can be formulated as, ‘does ASEAN need external influences to advance its existing human rights norm?’

Ideally, a norm is the manifestation of the ‘genuine’ living law. It means, ASEAN human rights norms should become a mirror of how human rights are respected by the peoples in the Southeast Asia. The

³⁴ See Art 1 (13) of the ASEAN Charter

³⁵ ASEAN Political-Security Blueprint, part A.15.iv

³⁶ See Joint Communiqué of the 41st ASEAN Ministerial Meeting, Singapore, 21 July 2008, par 10 and Joint Communiqué of the 38th ASEAN Ministerial Meeting, Vientiane, 26 July 2005, par 11.

fact shows that currently Southeast Asian peoples have different experiences regarding human rights. Since there is no specific human rights treaty exists in Southeast Asia, the situation can be analogized as a mosaic where each partial human rights norm has contribution to any other norms. In this concern, the external relations appear as one possibly tool to advance the ASEAN human rights norms.

In discussing ASEAN's external relations, we should observe several legal instruments that serve as legal basis to ASEAN in conducting its external relations. The Treaty of Amity and Cooperation in Southeast Asia, for example, mentioned that the Parties to the treaty shall continue to explore all avenues for close and beneficial cooperation with other States as well as international and regional organisations outside the region.³⁷ In the Declaration of ASEAN Concord, it determines that States shall vigorously develop an awareness of regional identity and exert all efforts to create a strong ASEAN community, respected by all and respecting all nations on the basis of mutually advantageous relationships.³⁸ In the ASEAN Charter, there are several basic articles regulate the issue of ASEAN's external relations. In the Article 1 (15), it is mentioned that one of ASEAN purposes is "to maintain the centrality and proactive role of ASEAN as the primary driving force in its relations and cooperation with its external partners in a regional architecture that is open, transparent and inclusive". Another regulation can also be seen in the Article 2 (2) (m) which states that "ASEAN and its Member States shall act in accordance with the principle of the centrality of ASEAN in external political, economic, social and cultural relations while remaining actively engaged, outward-looking, inclusive and non-discriminatory".

Chapter XII of the ASEAN Charter is the main part which determines the legal basis for external relations in detail. This chapter regulates some matters, such as the Conduct of External Relations,³⁹ Dialogue Coordinator,⁴⁰ ASEAN Committees in Third Countries and

³⁷ Art. 6 of the The Treaty of Amity and Cooperation in Southeast Asia

³⁸ Art. 8 the Declaration of ASEAN Concord

³⁹ Art. 41 of the ASEAN Charter

⁴⁰ *Ibid*, Art. 42

International Organisations,⁴¹ Status of External Parties,⁴² Relations with the United Nations System and Other International Organisations and Institutions,⁴³ and Accreditation of Non-ASEAN Member States to ASEAN.⁴⁴

Article 41 (1) of the ASEAN Charter seems relevant to be cited. It mentions that “ASEAN shall develop friendly relations and mutually beneficial dialogue, cooperation and partnerships with countries and sub-regional, regional and international organisations and institutions”.⁴⁵ This provision should be checked with the reality, because in discussing ASEAN’s external relations, the highlight usually will be addressed to the ASEAN Dialogue Partners, ASEAN Regional Forum, ASEAN+3, and East Asia Summit.⁴⁶ If look at the “external relations” part in the official website of ASEAN, it displays several titles; Australia, Canada, China, EU, India, Japan, RoK, New Zealand, Russia, United States, UNDP, Pakistan, ASEAN + 3, East Asia Summit, Ambassadors to ASEAN, ASEAN Dialogue Coordinator, International/Regional Organisations.⁴⁷

There are many areas of cooperation that possible to be developed by ASEAN through foreign relations. In practice, economic cooperation seems the most intensive one. For instance, in the trade sector, ASEAN member states have commitment to adopt common approaches and actions in dealing with regional groupings and individual economic powers.⁴⁸

In terms of how serious the human rights agenda would be taken into the priority of ASEAN’s external relations, it will depend on the agreement between ASEAN and the other parties. Each state or international organization naturally has different way to carry out its human rights diplomacy, in which, predominantly is determined by the diverse of aims, principles, and focuses area of activities, and interests among

⁴¹ *Ibid*, Art. 43

⁴² *Ibid*, Art. 44

⁴³ *Ibid*, Art. 45

⁴⁴ *Ibid*, Art. 46

⁴⁵ *Ibid*, Art. 41 (1)

⁴⁶ See Rodolfo C Severino, Elspeth Thomson, and Mark Hong (Eds), *op.cit*, p. 263.

⁴⁷ <http://www.asean.org/20164.htm>

⁴⁸ See Programme of Action of the Declaration of ASEAN Concord, Part B.3 (iv)

international organizations. Moreover, they have a distinct of spirits, approaches, and targets of achievement.

One challenge that could be faced is the cohesiveness among ASEAN members to perform ASEAN's external relations. Pursuant to Article 41 (4) of the ASEAN Charter, it mentions that "In the conduct of external relations of ASEAN, Member States shall, on the basis of unity and solidarity, coordinate and endeavour to develop common positions and pursue joint actions". The different national interests are actually potential for the conduct of unilateral maneuver by ASEAN's individual members to keep secure their own human rights agendas. Therefore, ASEAN should maximize the role of dialogue coordinator, as stipulated in the Article 42 of the ASEAN Charter, to prevent the contra-productive movement as well to ensure the resilience of Southeast Asia region. Again, the experience of the EU in this regard is necessary to be noted. As analyzed by Professor Neil Nugent, a key reason why the EU is often able to exert a significant policy influence is that it is usually well prepared for negotiation with the third parties and usually agreed before external negotiations begin.⁴⁹

The following paragraphs will explore the practice of ASEAN's external relations with its partners in the issue of human rights, by using the example of ASEAN cooperation with the European Union and the United States of America. The exploration will be also connected with the context of advancing the ASEAN human rights norms through external relations.

A. ASEAN'S EXTERNAL RELATIONS WITH THE EUROPEAN UNION ON HUMAN RIGHTS ISSUES

The role of European Union (EU) in the global discussion on human rights issues cannot be disregarded. Human rights are at the centre of the EU's external action, in which the central importance attached to human rights in the EU's external action entails that human rights are to be integrated in all aspects of the Union's work in the area including

⁴⁹ See Neil Nugent, *The Government and Politics of the European Union*, Fifth Edition, Palgrave Macmillan, 2003, p.438.

its bilateral relations.⁵⁰ Piet Eeckhout states that human rights policy is increasingly present throughout EU's external relation and policies⁵¹. He analyzes that developing and expanding such a human rights policy, and making the central component of external action is arguably the most ambitious and noble target that EU can set itself for its relation with the rest of the world.

The cooperation between ASEAN and EU is actually very interesting to be discussed, particularly in the context of sharing the values and norms and also in the concern of sharing experiences regarding human rights institutions.⁵² Basically, this cooperation recognizes the existence of universal human rights values and norms by emphasizing repeatedly their common commitment the promotion of and respect for human rights and fundamental freedoms on the basis of UN Charter, UDHR, and the VDPA.⁵³

ASEAN and EU continuously express their willingness to develop their cooperation on all areas of mutual interest and priorities of importance to both regions through consultation and dialogue on the basis of partnership, respect for the equality of civilisations, the conviction that cultural diversity is an asset, and mutual benefit and advantage.⁵⁴ Specifically in the context of human rights, both organizations agreed to strengthen mutual cooperation in promoting and protecting human rights and affirmed seek to advance human rights.⁵⁵ Even in practice,

⁵⁰ See Government Offices of Sweden Ministry for Foreign Affairs, Human Rights in the EU's External Relations. http://www.swedenabroad.com/Page_94894.aspx

⁵¹ Piet Eeckhout, *External Relations of the European Union: Legal and Constitutional Foundations*, Oxford University Press, Oxford, 2004, p.483.

⁵² .

⁵³ See Vientiane Declaration of the Thirteenth ASEAN-EU Ministerial Meeting, Vientiane, 11-12 December 2000, par 9. See also Joint Declaration The Twelfth ASEAN-EU Ministerial Meeting Singapore, 13-14 February 1997, par 5, Joint Declaration The Eleventh ASEAN-EU Ministerial Meeting Karlsruhe, 22-23 September 1994, par 4 and par 25, and Joint Declaration The Tenth ASEAN-EC Ministerial Meeting Manila, 29-30 October 1992, par 34.

⁵⁴ See Joint Co-Chairmen's Statement, 14th EU-ASEAN Ministerial Meeting, Brussels, 27-28 January 2003, par. 5, See Vientiane Declaration of the Thirteenth ASEAN-EU Ministerial Meeting, op.cit , par 3, Joint Declaration The Eleventh ASEAN-EU Ministerial Meeting Karlsruhe, 22-23 September 1994, and Joint Declaration The ASEAN-EC Ministerial Meeting Brussels, 21 November 1978, par. 11.

⁵⁵ See Joint Co-Chairmen's Statement of the 16th EU-ASEAN Ministerial Meeting

ASEAN and EU relatively often to deliberate, and finally formulate joint statements, in responding the human rights situations both inside and outside of their regions, such as situations in Afghanistan, Cambodia, Central and Eastern Europe, Myanmar, North Asia, and Vietnam.⁵⁶

Furthermore, both organizations annually create a detail list of activities, in which also sets the human rights agenda. The Phnom Penh Agenda for the Implementation of the ASEAN-EU Plan of Action (2009-2010), for instance, puts agenda to intensify dialogue between those two organizations through exchanges amongst officials, think-tanks and relevant stakeholders with the aim to promoting and protecting human rights through the ASEAN human rights body.⁵⁷ They also agreed to explore cooperation, for example co-hosting workshops and seminars on human rights education and sharing experience on promotion and protection of human rights through national and/or international mechanisms.⁵⁸

Besides discussing about value and institution topics, such cooperation also opens the possibility of peoples in both regions to have direct access to share their experiences on the implementation of human rights norms. In 1978, the Foreign Ministers of the ASEAN and European Community agreed that their cooperation should serve their people by promoting human rights.⁵⁹ The Ministers noted the continuing development of contacts between parliamentarians of the two regions including in particular the visit of a delegation from the European Parliament to Bangkok in October, 1984.⁶⁰ In 2003, both ministers agreed to develop

Nuremberg, 15 March 2007, par 4.

⁵⁶ See the 18th ASEAN-EU Ministerial Meeting Co-Chair's Statement Madrid, 26 May 2010, par 38 and Joint Declaration The Ninth ASEAN-EU Ministerial Meeting Luxembourg, 30-31 May 1991, par 4,5,7, and 10

⁵⁷ See Preamble of the Phnom Penh Agenda for the Implementation of the ASEAN-EU Plan of Action (2009-2010), par. 7.

⁵⁸ *Ibid.* See also Plan of Action for 2011-2012 (Annex 1) 18th ASEAN-EU Ministerial Meeting Co-Chair's Statement Madrid, 26 May 2010, par 3.

⁵⁹ Joint Declaration The ASEAN-EC Ministerial Meeting Brussels, 21 November 1978, par 11. See also Joint Statement on Political Issues The Foreign Ministers of ASEAN Member States and Member States of the European Community, Kuala Lumpur, 8 March 1980, par 1.

⁶⁰ Joint Declaration The Fifth ASEAN-EC Ministerial Meeting, Dublin, 15-16 October 1984, par 19.

a comprehensive and balanced agenda on the promotion of cultural cooperation and people-to-people contacts between ASEAN and the EU⁶¹

B. ASEAN'S EXTERNAL RELATIONS WITH THE UNITED STATES OF AMERICA ON HUMAN RIGHTS ISSUES

Regarding the ASEAN and the United States of America (US) cooperation on human rights issues, the focus of cooperation obviously is the enhancement of capacity of ASEAN human rights institutions. In the 1st ASEAN-US Leaders' Meeting in Singapore (2009), ASEAN and the US committed to enhancing ASEAN-US collaboration, including the area of the protection and promotion of human rights in the region.⁶² The US President also expressed US support for the establishment of the AICHR, and furthermore invited the members of the Commission to visit the US in 2010 to consult with international experts in this field.⁶³

A year after, in the 2nd ASEAN-US Leaders' Meeting in New York, both leaders agreed to strengthen their cooperation in addressing issues related to human rights.⁶⁴ That meeting also appreciated US' support for the AICHR and the offer to support the ACWC through capacity building programs.⁶⁵ In July 2011, both countries concluded a Plan of Action to Implement the ASEAN-US Enhanced Partnership for Enduring Peace and Prosperity (2011-2015) which also includes the agenda of human rights. This document supports the realization of the ASEAN Political-Security Community Blueprint by promoting human rights,⁶⁶ and more specifically supports the work of the AICHR and enhance

⁶¹ Joint Co-Chairmen's Statement of the 14th EU-ASEAN Ministerial Meeting Brussels, op.cit, par 26.

⁶² Overview of ASEAN-US Dialogue Relations, par 7. <http://www.asean.org/23222.htm>

⁶³ Joint Statement 1st ASEAN-U.S. Leaders' Meeting, Singapore, 15 November 2009, Enhanced Partnership for Enduring Peace and Prosperity, par 7. <http://www.asean.org/24020.htm>

⁶⁴ Joint Statement of the 2nd ASEAN-US Leaders' Meeting, New York, 24 September 2010, par 4.

⁶⁵ *Ibid*, par 16.

⁶⁶ Plan of Action to Implement the ASEAN-US Enhanced Partnership for Enduring Peace and Prosperity (2011-2015), endorsed at the PMC+1 Session with the United States on 22 July 2011, Part I: Political and Security Cooperation, p. 1.

capacity building for the promotion of human rights and its priority areas.⁶⁷

The ASEAN-US cooperation, quite the same with the cooperation between ASEAN-EU, actually can contribute the process of creating conducive condition for encouraging the optimum involvement of ASEAN people's in the creation, implementation, and the enforcement of human rights norms since both sides expressed the need to work closely to further build on the people-to-people linkages between ASEAN and the US.⁶⁸ Interestingly, the US also supported the Human Rights Resource Centre for ASEAN, a track 2 initiative, with a university in Jakarta as the hub of the Centre and including a network of universities throughout ASEAN.⁶⁹

In analyzing ASEAN cooperation with the EU and US, it is important to cite an article "ASEAN's Human Rights Agenda: Modest Beginning, Reasonable Prospects –and How the West Can Help" written by Rizal Sukma.⁷⁰ He argues that Western partners, primarily EU and US can help the human rights agenda in ASEAN. Furthermore he assumes that in the near future, two potential areas of cooperation could function as a starting point. First, the United States and the EU could provide technical assistance to the AICHR, whose institutional development is a high priority. *Second*, in parallel with the assistance to the AICHR, the US and the EU could also support the strengthening of the regional networks of human rights NGOs. Those two proposals seem very concrete. In the context of advancing ASEAN human rights norms, those can be fit mainly in the process of institutional improvement and the process of creating conducive condition for encouraging the optimum involvement of ASEAN people's to deal with human rights issues.

⁶⁷ *Ibid*, Section 2.2, p. 3.

⁶⁸ Preamble of the Joint Vision Statement on the ASEAN-US Enhanced Partnership, par 5. <http://www.asean.org/17871.htm>

⁶⁹ Joint Statement 1st ASEAN-U.S. Leaders' Meeting, op.cit, par 7.

⁷⁰ See this paragraph on Rizal Sukma, "ASEAN's Human Rights Agenda: Modest Beginning, Reasonable Prospects –and How the West Can Help", Asia Paper Series, The German Marshall Fund of the United States, 2011.

VII. THE CAPACITY, ADVANTAGES, AND ANXIETY OF THE POTENTIAL FOR EXTERNAL INTERFERENCE

As an inter-governmental organisation which holds legal personality,⁷¹ ASEAN has a strong position to conduct its external relations. The legal basis regulates the ASEAN's external relations has been also clearly mentioned in the ASEAN Charter. In this regards, there should be no doubt anymore about the rights and obligations of ASEAN in performing its international activities. The facts that many states and inter-governmental organizations have appointed and accredited their Ambassadors to ASEAN⁷² are the strong indicator that ASEAN actually has been widely accepted by international community.

In the context of human rights issue, ASEAN practices show that such organization actively deliberate the promotion and protection of human rights in its cooperation agenda with foreign partners. Many common declarations made between ASEAN and its partners are the indications that ASEAN has capacity to develop its human rights norms through external relation.

The role of AICHR to carry out the external relation in this particular issue essentially is very significant. It has mandate to consult, as may be appropriate, with other national, regional and international institutions and entities concerned with the promotion and protection of human rights,⁷³ and moreover, to develop common approaches and positions on human rights matters of interest to ASEAN⁷⁴

In conducting its external relations in all area of cooperation, there is perhaps nothing wrong to state that ASEAN truly calculates the advantages that can be gained. ASEAN will not let external powers easily force their interests. In the context of external relation on the human rights issues, there are at least three advantages that can be acquired by ASEAN.

First, in term of capturing the added value, ASEAN's external relations could give the objective feedback about how the notions of

⁷¹ Art. 3 of the ASEAN Charter

⁷² See Article 46 of the ASEAN Charter as a legal basis for this practice.

⁷³ ToR of AICHR, par 4.9.

⁷⁴ *Ibid*, par 4.11

universality human rights, the peculiarity, and cultural relativism are implemented by certain countries or international organizations. The sharing of experiences between ASEAN and its partners will become a bridge to understand the different perceptions, norms, institutions, and cultures with regard to human rights. Since human rights are universal value, the ASEAN's external relations should also be used to promote the peculiarity of human rights in Southeast Asia. More specific, such relation might be utilized as an instrument to clarify the mislead perception about the lack of human rights respect in Southeast Asia as well the misunderstood about 'the Asian way'

Second, ASEAN's external relations might also contribute to the institutional improvement for its human rights institutions. The comparative lessons are very useful to observe how the human rights institutions in other regions can have significant role. Hopefully, such activities could inspire ASEAN leaders to think about the effectiveness of current ASEAN human rights institutions and, even, to enhance their statuses which currently are still consultative bodies.⁷⁵

Third, in the context of the process of creating conducive condition for encouraging the optimum involvement of ASEAN people in creation, implementation, and the enforcement of human rights norms, ASEAN's external relations is very valuable to realize the idea of 'a people-oriented ASEAN', because the formal cooperation basically opens the gate of the people-to-people relations, Hence, the people awareness on human rights in other places can encourage ASEAN peoples to also have such consciousness.

As above-mentioned, Southeast Asia historically is not a sterile region that purely free from outside influences.⁷⁶ The establishment of ASEAN has also never been designed to exclude external powers from the region.⁷⁷ In the early formation of ASEAN, its member states owned perception that external interference is the main source of threat to the region by learning from the historical experiences of colonialism and

⁷⁵ See ToR of AICHR, par 3. and ToR of ACWC, spar 4.

⁷⁶ See also Robert Dayley and Clark D. Neher, *Southeast Asia in the New International Era*, Fifth Edition, Westview Press, 2010, p.3-8.

⁷⁷ See Alexandra Retno Wulan and Bantarto Bantoro (Eds), *ASEAN's Quest for A Full-Fledged Community*, Centre for Strategic and International Studies, 2007, p. 71.

of the Cold War.⁷⁸

Regarding colonialism, except Thailand, all ASEAN founders had dealt with colonialism. Indonesia was primarily colonized by the Dutch for approximately 3.5 Centuries, beside the partial experiences with Spanish, Portuguese, British, and Japanese. Malaysia and Singapore were controlled by British. The Philippines was also colonized by the Spain and the USA in the past. The other countries in Southeast Asia which have not involved in the establishment of ASEAN in 1967 also have story about the influence of Western powers. Myanmar, similar with Malaysia and Singapore, was governed by British; Cambodia, Laos, and Vietnam were occupied by France; and the East Timor was under the power of Portugal.⁷⁹

On the topic of the Cold War, Southeast Asia was the ‘battle field’ for mainly USA versus USSR. Thailand and the Philippines were involved in close relationship with the USA and 5 other countries when establishing the Southeast Asia Treaty Organization (SEATO) in 1954 by the Manila Pact. Indonesia, Malaysia, and Singapore, although have different point of view and experience with communism, were not also so welcome with the communist powers, i.e. Russia and People’s Republic of China (PRC). Contrary to those ASEAN founders, the other Southeast Asia countries such as Cambodia, Laos, and Vietnam were the fertile lands for communism in this sub-continent.⁸⁰ In the era of the post-Cold War, there was a significant change regarding the role of external powers in Southeast Asia. The disappearance of the USSR and the lower profile of the USA gave greater relative importance to the emergence of China as an important actor in Southeast Asia with a full range of national interests; economic, political, and security.⁸¹

The ASEAN Declaration (1967) implies the anxiety of ASEAN members of the potential for external interference. In the preamble of that document, the founding states considered to ensure their stability

⁷⁸ *Ibid*, p. 53.

⁷⁹ See D.R SarDesai, *Southeast Asia: Past and Present*, Sixth Edition, Westview Press, 2010, p. 122, and p.129-130.

⁸⁰ See Daljit Singh, “Southeast Asia: An Overview”, in Rodolfo C Severino, Elspeth Thomson, and Mark Hong (Eds), *op.cit*, p. 12.

⁸¹ Donald E Weatherbee, *International Relations in Asia: The Struggle for Autonomy*, Second Edition, ISEAS Publishing, Singapore, 2010, p.86.

and security from external interference in any form or manifestation in order to preserve their national identities in accordance with the ideals and aspirations of their peoples.⁸²

The Zone of Peace, Freedom and Neutrality (ZOPFAN) Declaration, 1971, is another legal instrument which demonstrating ASEAN members' reluctance to be interfered.⁸³ The Preamble of that instrument mentions that ASEAN members recognising "the right of every state to lead its national existence free from outside interference in its internal affairs as this interference will adversely affect is freedom, independence and integrity". Almost 5 years after ZOPFAN was launched, The Treaty of Amity and Cooperation in Southeast Asia, reiterated the similar norm.⁸⁴ In 1987, the Manila Declaration has made this norm more advanced. In the Art 3, it mentions, "ASEAN shall pursue regional solidarity and cooperation under all circumstances, especially whenever pressures and tensions of any kind, arising internally within the region or externally, challenge the capacities, resourcefulness, and goodwill of the ASEAN nations." When the ASEAN Charter was finally established, it frankly mentions that "ASEAN and its Member States shall act in accordance with the principle of respect for the right of every Member State to lead its national existence free from external interference".⁸⁵

Interestingly, this norm is also highly respected in the context of human rights issue in ASEAN. The ToR of AICHR, for instance, determines that "the committee shall also be guided by the principle of respect for the right of every Member State to lead its national existence free from external interference".⁸⁶

It is actually interesting to study whether the ASEAN's external relations on human rights issues are also potential for external interference. To have concrete examples, the subsequent paragraph will explore again the formal ASEAN cooperation with EU and US in the field of human rights.

⁸² Preamble of the ASEAN Declaration, Bangkok, 8 August 1967, par 5.

⁸³ See Art. 1 of the ZOPFAN Declaration

⁸⁴ See Art. 2 (b) and Art. 11 of the Treaty of Amity and Cooperation in Southeast Asia

⁸⁵ Art. 2 (2) (f) of the ASEAN Charter

⁸⁶ ToR of AICHR, par 2.1 (c)

EU principally understands about ASEAN members' reluctance to any kinds of external interferences. In the early 80-es, European Community (EC) Ministers expressed their appreciation to ASEAN members' way to solve the Kampuchean conflict by respecting the freedom from interference by outside powers.⁸⁷ When discussing EU-ASEAN development cooperation, both ministers achieved a commitment to give priority to the respect for human rights by taking into account the needs of individual ASEAN countries.⁸⁸ This commitment was very important to leave ASEAN hesitation about the applicability of human rights clause as commonly practiced by EU with its other cooperation partners.⁸⁹ Even when EU subsequently supported ACWC in achieving its mission, ASEAN welcomed that kind of supports.⁹⁰

Remarkably, both organizations agreed to strengthen mutual cooperation in promoting and protecting human rights in accordance with the spirit of the ASEAN Charter and the UN Charter.⁹¹ It means, the principle of respect the freedom of ASEAN countries from external interferences will be definitely ensured.

The ASEAN-US cooperation on human rights seems rather similar with the ASEAN-EU cooperation. The US supports to ASEAN as the driving Force in the ASEAN Regional Forum (ARF) --the premier re-

⁸⁷ See Joint Statement the Foreign Ministers of the Member States of the European Community and ASEAN London, 13-14 October 1981, par 5; Joint Declaration The Fifth ASEAN-EC Ministerial Meeting Dublin, 15-16 October 1984, par 7; and Joint Declaration The Sixth ASEAN-EC Ministerial Meeting Jakarta, 20-21 October 1986, par 2.

⁸⁸ Joint Declaration the Eleventh ASEAN-EU Ministerial Meeting Karlsruhe, op.cit, par 16.

⁸⁹ As generally understood, such clause as enshrined in Cotonou agreement determines that EU has to ensure its development cooperation partner have not dealt with human rights violations.

⁹⁰ See the 18th ASEAN-EU Ministerial Meeting op.cit, par 8.

⁹¹ Joint Co-Chairmen's Statement of the 17th ASEAN-EU Ministerial Meeting (AEMM), 27-28 May 2009, Phnom Penh, Cambodia, par 3 and par 24. See also Joint Co-Chairmen's Statement, 14th EU-ASEAN Ministerial Meeting, Brussels, 27-28 January 2003, par. 5. In this context, see Art. 2(7) of the UN Charter and the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations, Resolution 2625 (XXV), 1970.

gional political and security forum in the Asia-Pacific region--⁹² implies that US respects the role of ASEAN to lead the discussion regarding the development of human rights in Southeast Asia.

However, the case of Myanmar truly can give a balance understanding. It is generally known that many states and internal organizations pressured Myanmar to overcome its human rights problems.⁹³ In 2004, when the EU and also UN, urged ASEAN to push Myanmar to make democratic reforms, the policy of non-interference in the internal affairs was used as a justification. Moreover, Cambodian Prime Minister Hun Sen later strengthened ASEAN's collective stance behind Myanmar, saying his government would not participate in an Asia-Europe forum unless the military-ruled state was also admitted.⁹⁴ In 2005, the pressure from the EU and the US to ASEAN to prevent Myanmar become ASEAN's rotating chair was the different angle to see whether the context of external interference has connection with human rights issue.⁹⁵ At that time, there was a rumour that a slight pressure has been practiced behind the scenes before the Myanmar government subsequently proclaimed it would forego its right to chair ASEAN by mentioning the domestic priority as the main reason.⁹⁶

Currently, the economic cooperation seems as the more potential for external interference compared with political or security cooperation. For example, the prevention of financial and economic crises is possible room for external interference.⁹⁷ Hence, ASEAN has to pay its serious efforts to anticipate that economic or political bargains will be

⁹² See Joint Vision Statement on the ASEAN-US Enhanced Partnership, par 4.

⁹³ See C. S. Kuppaswamy, Myanmar: Immune to Sanctions and Pressures, Paper no. 1696, 08. 02. 2006, <http://www.southasiaanalysis.org/%5Cpapers17%5Cpaper1696.html>

⁹⁴ See Ronald Bruce St John, op.cit, p.187.

⁹⁵ See ASEAN Expects Myanmar's Decision on Leadership Issue Next Month, ASEAN-MYANMAR-ONG - 06/17/2005 11:05 - AFP, <http://www.asean.org/afp/120.htm>

⁹⁶ See Joint Communique of the 38th ASEAN Ministerial Meeting, Vientiane, 26 July 2005, par 70; Peter Church (Ed), *A Short History of South-east Asia*, John Wiley and Sons (Asia) Pte Ltd, Singapore, 2009, p.120; and the Executive Summary of the A L T S E A N B U R M A, *Pressure Works: Burma Backs Off From ASEAN Chair*, BN2005/1018: 6 August 2005.

⁹⁷ See Alexandra Retno Wulan and Bantarto Bandoro (Eds), op.cit, p.38.

used as essential requirements in its human rights cooperation with any other partners.

Although the threat comes from external interference can not be totally prevented, the advancement of ASEAN human rights norms seems not so easy to be interfered by external powers, at least, based on the following arguments. **First**, ASEAN instruments repeatedly recognize the principle of respect the right of ASEAN countries to free from external interferences. **Second**, ASEAN bodies actually have ‘filter’ mechanism to prevent such interference in this context. The AICHR can be an example in this concern. According to its ToR, ASEAN members anticipate economic dependence as an instrument to erode the independent role of AICHR by assuring the AICHR of full support and provision of adequate resources from ASEAN members⁹⁸ and by restricting the flow of funds and other resources from non-ASEAN Member States to be exclusively utilized for human rights promotion, capacity building and education.⁹⁹ **Third**, historically ASEAN countries have disappointing experiences with the outside powers. Psychologically, they reject the human rights issues will become the new gate to such interference occurred again in Southeast Asia. Hence, they will be very carefully to discuss any human rights agendas with foreign partners.

VIII. CONCLUSION

In the following concluding remarks, I would select some important points and deliver some recommendations rather than sum up this paper by reiterating the matters that have been already discussed. First of all, the highlight should be given to the added values that should be inserted in the ASEAN human rights norms. In this regards, ASEAN should prudently capture the added values, otherwise, the ‘allergy’ reactions would automatically emerge and subsequently would possibly undermine the current human rights development.

Although ASEAN gradually develops the norms of human rights, the absence of regional human rights treaty in Southeast Asia is a chal-

⁹⁸ Art 5 of the Cha-Am Hua Hin Declaration on the Intergovernmental Commission on Human Rights.

⁹⁹ See ToR of AICHR, par 8.6

lenge for ASEAN. The idea to create the binding ASEAN human rights instrument has been spoken frequently. Amongst the ideas that have been launched, the ASEAN Declaration of Human Rights, as mandated to the AICHR, seems the most realistic compared to any other forms of instruments. Hopefully, after the ASEAN Declaration of Human Rights will have been inaugurated, it will become stepping stone to the more binding norms in the future.

Regarding the idea to utilize ASEAN's external relation as a means to improve the human rights institutions, ASEAN in the future should decide the form of its regional supervisory mechanism to be chosen.¹⁰⁰ Considering the gradual development of human rights in Southeast Asia, ASEAN should firstly take the model of monitoring body which is lack of judicial function.¹⁰¹ If subsequently deemed necessary, in the future ASEAN could move into a judicial body. However, it is important to emphasize that ASEAN should not instantly 'copy-paste' the model of developing norms and institutions. Beside the peculiarity reason, ASEAN should also consider insightfully the ability of its members to carry out the human rights tasks.

Another accentuation that also necessary to be discoursed is that ASEAN seems change its traditional perception that views cooperation with outside parties has really potential for external interference. ASEAN obviously believes that internal mechanisms such as performing constructive dialogue, seeking mutual understanding, and achieving a common position through consensus, could prevent such possibilities.

Realizing that the conduct of external relation is usually performed in a package of multi-sectors cooperation, it is important to ensure that the other sectors would not erode the essence of human rights cooperation. For instance, ASEAN should aware if human rights clause is used as formal requirement for economic cooperation or is used to become a pressure for political cooperation.

¹⁰⁰ See Antonio Cassese, *International Law*, Second Edition, Oxford University Press, New York, 2005, p. 389.

¹⁰¹ Hassan Wirajuda, the former Minister for Foreign Affairs of the Republic of Indonesia has ever proposed this idea, particularly the model of African Commission on Human Rights and the Rights of Peoples (ACHR). See Alexandra Retno Wulan and Bantarto Bandoro (Eds), *op.cit*, p. 47.

The challenge could also come to ASEAN if the cases of a grave violation of human rights occurred again in the Southeast Asia region and subsequently have significant impacts to the peace and security situation. Because, in such situation ASEAN has to deal with the issues like Humanitarian Intervention or Responsibility to Protect, in which the regional resilience and the non-interference principle would be examined.

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