

THE MAKING OF THE ASEAN INTERGOVERNMENTAL COMMISSION ON HUMAN  
RIGHTS (AICHR): A CASE STUDY IN THE DIFFUSION  
OF HUMAN RIGHTS NORM

By

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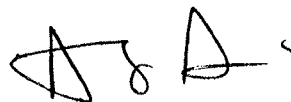
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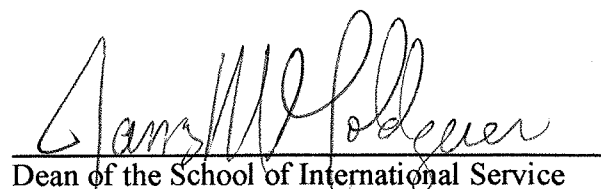
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ABSTRACT

This thesis examines the diffusion of human rights norm in ASEAN and specifically analyzes why ASEAN member countries decided to create the AICHR. While ASEAN is known to be reluctant in discussing the human rights issue owing to its adherence of the “ASEAN Way,” throughout decades it has been shifting its human rights policy. The thesis explores the elements of internal and external pressures that acted as catalysts of the changing nature of ASEAN in viewing human rights issue. It argues that external or Western pressure was only one, however not always the main factor behind the move towards an ASEAN human rights mechanism. The study claims that the evolution of ASEAN human rights policy and the decision of establishing the AICHR are mostly influenced by internal pressures, with national and regional actors, both state and non-state as the main agents in the process.

While many shows disappointment on the AICHR’s commitments and efficacies in promoting and protecting human rights, this thesis believes that the transformation is on-going and a comprehensive human rights system is feasible in the foreseeable future. Obviously, the AICHR will not cure all human rights ills overnight. Therefore, it is important to always focus on finding the best approach for AICHR to improve its task and be bold in carrying its mandates.

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I owe my deepest debt to my parents and brothers, whose constant love and support are blessings I shall always treasure. I dedicate this thesis to my husband, Simon, and our future child, who have suffered long throughout the process of this work, but have hung in there nonetheless. When my energy would waver, they never stopped believing that I could do this. I am forever grateful.

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## LIST OF ABBREVIATIONS

AEC	ASEAN Economic Community
AHRD	ASEAN Human Rights Declaration
AICHR	ASEAN Intergovernmental Commission on Human Rights
AICOHR	ASEAN-ISIS Colloquium on Human Rights
AIJI	Asian International Justice Initiative
AIPA	ASEAN Inter-Parliamentary Assembly
AIPO	ASEAN Inter-Parliamentary Organization
AMDA	Anglo-Malayan Defense Agreement
AMM	ASEAN Ministerial Meeting
ANNI	Asian NGO Network on Human Rights Institutions
ASC	ASEAN Security Community
ASCC	ASEAN Socio-Cultural Community
ASEAN	Association of South East Asian Nations
ASEAN- ISIS	ASEAN Institute of Strategic and International Studies
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CHRP	Commission of Human Rights of the Philippines

CRC	Convention on the Rights of the Child
CSO	Civil Society Organization
EPG	Eminent Persons Group
HPA	Hanoi Plan of Action
HRRCA	Human Rights Resource Center for ASEAN
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
INGO	International Non-Governmental Organization
KOMNAS HAM	The Indonesian Human Rights National Commission
NGO	Non-Governmental Organization
NHRCT	National Human Rights Commission of Thailand
NHRI	National Human Rights Institution
SAPA	Solidarity for Asian People's Advocacy
SAPA TF-AHR	SAPA Task Force on ASEAN and Human Rights
SLORC	State Law and Order Restoration Council
SOM	ASEAN Senior Officials Meeting
SPDC	State Peace and Development Council
SUHAKAM	The Human Rights Commission of Malaysia
TAC	Treaty of Amity and Cooperation



UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly
VAP	Vientiane Action Program
ZOPFAN	Zone of Peace, Freedom and Neutrality

## CHAPTER 1

### INTRODUCTION

#### Statement of the Problem and Research Questions

The Association of South East Asian Nations (ASEAN) has experienced evolutionary process in its journey towards the establishment of a human rights mechanism in the region. Obviously, it has been a long and slow journey. Many would argue that human rights issue has its own difficulty and it is still a very challenging matter for ASEAN. In its 1967 Bangkok Declaration, ASEAN clearly stated its original aims and purposes that included the acceleration of economic growth, social and cultural development, and the promotion of regional peace and stability, also respect for justice and the rule of law. However, the terminology of “human rights” was not documented in the Declaration as one of its objectives. The ASEAN member states have been well known to cautiously isolate the concept of human rights. Political leaders of countries such as Malaysia, Indonesia and Singapore have been far from reticent in their advocacy of certain values and in their claim that those values are human rights as understood through their Asian cultural heritage.<sup>1</sup>

Intriguingly, at the 1993 ASEAN Ministerial Meeting (AMM) in Singapore, the ASEAN member states articulated the need of an ASEAN human rights body and welcomed the Vienna Declaration achieved during the World Conference on Human Rights in Vienna, on June 25, 1993. This is the first breakthrough within ASEAN concerning human rights issue. It is fair to

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<sup>1</sup> Anthony J. Langlois, *The Politics of Justice and Human Rights: Southeast Asia and Universalist Theory* (Cambridge: Cambridge University Press, 2001), 2.

say that the outcome of the World Conference in Vienna influenced the ASEAN member countries' decision on the inclusion of human rights in the Joint Communiqué of the 26<sup>th</sup> AMM in Singapore. However, it is imperative to recognize major political changes at the national level, such as the fall of the authoritarian Marcos regime in 1986 following the People Power Revolution, and the mass public protests in Thailand in May 1992 that resulted with democratic reforms.<sup>2</sup> The changes in these countries, especially the Philippines, should also be considered as one of the key catalysts that pushed for the initiative in 1993. In the Joint Communiqué, 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."<sup>3</sup>

On March 29- April 2, 1993, several months before the 1993 AMM and as one of the preparatory processes for the World Conference on Human Rights in Vienna, Asian state representatives met in Bangkok to agree on the Asian's region stance for human rights, known as "The Bangkok Declaration." The Founding Fathers of ASEAN (Indonesia, Malaysia, Philippines, Singapore, Thailand) and Brunei Darussalam participated, with then future ASEAN member states: Lao People's Democratic Republic, Myanmar, and Vietnam. The aspirations and commitments of the Asian region have created intense debate vis-à-vis the "Asian Values"

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<sup>2</sup> The Official Website of Office of the High Commissioner for Human Rights (OHCHR), "ASEAN and Human Rights: the Basics," available from <http://www.ohchr.org> (accessed September 21, 2011).

<sup>3</sup> The Official Website of ASEAN, "Joint Communiqué of the 26<sup>th</sup> ASEAN Ministerial Meeting," Singapore, 23-24 July 1993, paragraph 17, available from <http://www.asean.org/3666.htm> (accessed September 21, 2011).

formulated in the Bangkok Declaration, which emphasized national sovereignty, territorial integrity, and the principle of non-interference in the internal affairs of states. In addition, while recognizing the universality of human rights, Asian leaders believe that human rights must also be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural, and religious background.<sup>4</sup>

The year 1998 saw another milestone of establishing ASEAN human rights mechanism. The Hanoi Plan of Action (HPA) with its ASEAN Vision 2020 that targeted the economic recovery and social impact of the financial crisis has led to a discussion on combating human trafficking and violence against women and children. The HPA implemented the Plan of Action on ASEAN Rural Development and Poverty Eradication and the ASEAN Plan of Action on Social Safety Nets to protect the most vulnerable sectors in the society.<sup>5</sup> ASEAN acknowledged that the economic growth and development have to be corresponded by progress in democracy and human rights, thus recognizing the need to promote and protect all human rights.<sup>6</sup>

Throughout the period of 1993 and 1998, several members of ASEAN are seen to be the main initiators in pushing the inclusion of human rights within ASEAN agenda. Officials from the Philippines, Thailand, and (since 1998) Indonesia have been active in pushing for change on

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<sup>4</sup> The Bangkok Declaration, paragraph 8, available from <http://daccess-ods.un.org/TMP/1536484.html> (accessed September 21, 2011).

<sup>5</sup> The Official Website of ASEAN, “Hanoi Plan of Action,” available from <http://www.aseansec.org/687.htm> (accessed October 8, 2011).

<sup>6</sup> Paragraph 4.8 of the “Hanoi Plan of Action,” as described in Chapter 3 of the thesis.

the matter of human rights in ASEAN even as the others have been passive at best, and obstructionist at worst.<sup>7</sup> Similar to the Philippines and Thailand, Indonesia's domestic change after the fall of Soeharto in 1998 has resulted in major democratic transformation in the country, which led to the re-thinking of human rights issue among its high officials. Subsequently, Indonesia has been considered as one of the strongest ASEAN members that consistently seeks better prospect for human rights mechanism in the region.

As a follow-up to the six-year framework of the HPA (1998-2004), the real turning point for human rights in ASEAN was indicated in the Vientiane Action Program (VAP) in November 2004. Previously, in 2003, the ASEAN Leaders signed the Bali Concord II and agreed to establish the three pillars of ASEAN, namely: the ASEAN Security Community (ASC), the ASEAN Economic Community (AEC), and the ASEAN Socio-Cultural Community (ASCC). The VAP pronounced that human rights were to be firmly placed within the political development segment of the ASC.<sup>8</sup> This is truly a profound promotion of the human rights issue within ASEAN.

In 2007, article 14 of the proposed ASEAN Charter mandates the establishment of an

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<sup>7</sup> Herman Joseph S. Kraft, "Human Rights in Southeast Asia: The Search for Regional Norms," *East-West Center Washington Working Paper*, No. 4, July 2005, 4, available from [www.eastwestcenter.org/download/3146/32084/EWCWwp004.pdf](http://www.eastwestcenter.org/download/3146/32084/EWCWwp004.pdf) (accessed November 5, 2011).

<sup>8</sup> See Hsien-Li, "The ASEAN Intergovernmental Commission," 154. When Bali Concord II was revealed, no human rights theme was mentioned. Hence, it was widely assumed that if human rights agenda were ever to arise, it would most likely emerge from the third pillar or the ASCC. However, as the three pillars were tasked to arise more or less unilaterally, one could be sure that the establishment of the ASC and the AEC would precede any priority of ASCC, and human rights would be a low priority in ASEAN. Further details on the VAP will be discussed in Chapter 3.

ASEAN Human Rights Body. The ASEAN Charter was another big step for the ASEAN Member States in committing themselves to a regional mechanism on human rights. All 10 ASEAN Member States ratified the ASEAN Charter in 2008, and during the 2009 ASEAN Summit in Thailand, the ASEAN Intergovernmental Commission on Human Rights (AICHR) was launched with its completed Terms of Reference (TOR). Aside from being in line with the ASEAN Charter, the TOR of AICHR also shows clear continuity with the 1993 Bangkok Declaration. The TOR embodies the notion of universality of human rights, and at the same time maintaining the “ASEAN Way” of non-interference in the internal affairs of member states, and the need to promote human rights within the regional context with a respect for historical, cultural, and religious differences.<sup>9</sup> The TOR adds the importance of a constructive and non-confrontational approach to enhance promotion and protection of human rights. It is then clear that the universality of human rights for ASEAN entails respect for diverse ASEAN backgrounds and the ASEAN values of non-interference.

Throughout these particular periods, there has been ongoing debate about the ASEAN mechanism of human rights, especially with a discernible change in ASEAN’s point of view on the issue and the unique way of ASEAN approaches the universal values of human rights while maintaining its “ASEAN Way.” Human rights norm within ASEAN, undoubtedly, is still very perplexing for and within the ASEAN Member States and most scholars; and the AICHR is the subject of intense scrutiny which in some way interesting for different parts of civil society.

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<sup>9</sup> The Official Website of ASEAN, “ASEAN Intergovernmental Commission on Human Rights (Terms of Reference),” available from <http://www.aseansec.org/22769.htm> (accessed November 6, 2011).

Among the ten Member States, Indonesia, the Philippines, Thailand, and Malaysia have been eager to thrust the human rights agenda and have their own National Human Rights Institutions (NHRIs). The NHRIs of the Philippines, Indonesia, Thailand, and Malaysia were established respectively in 1987, 1993, 1997, and 2000. Although the national commissions' capacity and independence from their governments were still debatable, the very fact of establishing them reveals a significant trend happening within ASEAN. Indonesian, Malaysian, Thai and Filipino HR commissions made efforts to conduct meetings for accelerating their agenda and creating a lobby within ASEAN.<sup>10</sup> In addition, local civil society groups from these countries have also been active and critical in mitigating the wariness ASEAN has towards human rights.

This study will examine why ASEAN has finally decided to form the AICHR, and assess the diffusion of human rights norm within ASEAN that also means the evolution of ASEAN's human rights policy, starting from the period of ASEAN's inception until the AICHR was formed. This thesis aims at to ascertaining the impact of internal and external pressures on the overall ASEAN's human rights practices, and in particular on the establishment of AICHR. It will then analyze which pressure has made the most impact for the diffusion of ASEAN human rights norm that consequently led to the creation of AICHR. In other words, which theory is most applicable to the nature of AICHR's conception?

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<sup>10</sup> Le Thu Huong, "Many Faces and One Identity?: ASEAN in the Case of Human Rights Regime," *Asia Pacific Journal of Social Sciences*, Special Issue No. 1 (December 2010), 59.

Many people assumed that ASEAN was forced to form the AICHR mainly due to the external pressure or the Western, based on the discussion of the “Boomerang Effect” by Margaret E. Keck and Kathryn Sikkink in *Activists Beyond Borders: Advocacy Networks in International Politics* (1998) and later expanded into the “Spiral Model” by Thomas Risse and Kathryn Sikkink. The “boomerang” pattern and the “spiral model” could both be thought of as models of the interaction between domestic opportunity structures and international opportunity structures,<sup>11</sup> or that when communication between domestic actors and the state are blocked, these actors can search out international partners who will pressure the state from the outside.<sup>12</sup> Both models suggest that it is blockage in the domestic society that sends domestic social movement actors into the transnational arena,<sup>13</sup> which consequently involves the international non-governmental organizations (INGOs) and Western states. For example, the involvement of the INGOs and the United States in persuading Marcos for political reforms in the Philippines, and how the U.S and the European Union criticized the Indonesian government on the issue of human rights in East Timor.<sup>14</sup> These boomerang and spiral models use an adversarial relationship

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<sup>11</sup> Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, New York: Cornell University Press, 1998).

<sup>12</sup> See also Thomas Risse and Kathryn Sikkink, “The Socialization of International Human Rights Norms into Domestic Practices: Introduction,” in *The Power of Human Rights: International Norms and Domestic Change*, ed. Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (United Kingdom: Cambridge University Press, 1999), 18.

<sup>13</sup> Sanjeev Khagram, James V. Riker, and Kathryn Sikkink, “From Santiago to Seattle: Transnational Advocacy Groups Restructuring World Politics,” in *Restructuring World Politics: Transnational Social Movements, Networks, and Norms* (University of Minnesota Press, 2002), 19.

<sup>14</sup> See Anja Jetschke, “Linking the Unlinkable? International Norms and Nationalism in Indonesia and the Philippines,” in *The Power of Human Rights: International Norms and Domestic Change*, ed. Thomas



dialogue. This thesis will test the two theories in relation to the motives of ASEAN creating the AICHR, and examine if the boomerang and spiral theories are essentially relevant to the nature of the establishment of AICHR.

Based on the notion of “localization” by Amitav Acharya in “How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism” (2004), this research will then pose another question on how internal pressures such as the major Asian financial crisis in 1997, political transformation in each member state, the increasing role of local civil societies, and other domestic changes and events, influence and transform human rights norm in ASEAN. Ultimately, the key aspect of localization is the agency role of local actors.<sup>15</sup> Hence, the study will attempt to demonstrate that the national and regional actors, both state and non-state, were also considered as the key agents behind the move towards an ASEAN human rights mechanism. Additionally, the research argues that foreign pressure may have been one of the central factors, however it was not always the main reason for ASEAN in re-thinking its policy of human rights in the region.

In order to obtain outcomes as accurate as possible, this study will have to first consider the human rights discourse and later examine the historical background and nature of the AICHR, its constraints, and implications.

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Risse, Stephen C. Ropp and Kathryn Sikkink (United Kingdom: Cambridge University Press, 1999), 153 & 157.

<sup>15</sup> Amitav Acharya, *Whose Ideas Matter?: Agency and Power in Asian Regionalism* (New York: Cornell University Press, 2009), 15.

### Human Rights Discourse: Universalism versus Asian Values on Human Rights

On December 10, 1948, the United Nations General Assembly (UNGA) adopted the Universal Declaration of Human Rights (UDHR). Drafted by delegates from all regions of the world with different legal, political, and cultural background, the UDHR is a revolutionary document in the history of human rights. It sets out, for the first time, fundamental human rights to be universally protected.<sup>16</sup> It also represents the universal recognition that basic rights and fundamental freedoms are inherent to all human beings, inalienable and equally applicable to everyone, and that every one of us is born free and equal in dignity and rights.<sup>17</sup> This means that no matter what our nationality, religion, language, gender, and ethnicity, the UDHR confirms the commitment of the international community to upholding dignity and justice.

Many have argued that the immediate cause of the human rights revival and the creation of the UDHR was the growing knowledge of Nazi atrocities in the Second World War.<sup>18</sup> The UDHR was intended to prevent a repetition of the Holocaust that the Nazis had committed. In addition to the Holocaust and after defeating the Nazi, there was a consensus within the Allied states concerning the significance of safeguarding human rights worldwide. This is particularly shown in the Preamble of the Declaration that “disregard and contempt for human rights have

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<sup>16</sup> The Official Website of Office of the High Commissioner for Human Rights (OHCHR), available from <http://www.ohchr.org/EN/UDHR/Pages/Introduction.aspx> (accessed September 21, 2011).

<sup>17</sup> The Official Website of the United Nations, “The Foundations of International Human Rights Law,” available from [http://www.un.org/en/documents/udhr/hr\\_law.shtml](http://www.un.org/en/documents/udhr/hr_law.shtml) (accessed September 21, 2011).

<sup>18</sup> Michael Freeman, *Human Rights: An Interdisciplinary Approach* (Malden: Blackwell Publishers Inc, 2002), 33.

resulted in barbarous acts which have outraged the conscience of mankind.”<sup>19</sup> Most of the Declaration’s articles were also intended to avoid the horrible past made by the Nazi, such as Article 16 that stated: men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family; and that they are entitled to equal rights as to marriage, during marriage and at its dissolution. Moreover, marriage shall be entered into only with the free and full consent of the intending spouses. The article was a result against Nazi racial marriage laws and its family policy, in which expressed a liberal perspective of marriage. Essentially, the design of the Preamble and most of the articles of the Declaration projected the experience of the Second World War and the long-term damages, which served as a dreadful memory in the history of human rights regime.

With the end of the World War II as well as the creation of the United Nations, the world leaders decided to complement the UN Charter with a guideline to guarantee the rights of all individuals. The core principles of human rights set out in the UDHR, such as universality, interdependence and indivisibility, equality and non-discrimination, and that human rights simultaneously entail both rights and obligations from duty bearers and rights owners, have been reiterated in numerous international human rights conventions, declarations, and resolutions.<sup>20</sup> The UDHR was developed in greater feature with two major international human rights treaties adopted in 1966: the International Covenant on Civil and Political Rights (ICCPR) and the

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<sup>19</sup> The Official Website of the United Nations, “Full Text of the Universal Declaration of Human Rights,” available from <http://www.un.org/en/documents/udhr/index.shtml> (accessed September 21, 2011).

<sup>20</sup> Ibid., “The Foundations of International Human Rights.”

International Covenant on Economic, Social and Cultural Rights (ICESCR). The UDHR, ICCPR and ICESCR are collectively recognized as the International Bill of Rights.

The collapse of the Berlin Wall in late 1989 and the end of the Cold War opened a more serious discussion on human rights issue. On the normative plane, the West has regarded the end of the Cold War as the triumph of the “free market,” “democracy,” and “human rights,” of which these ideas have come to be strongly asserted by Western powers in the 1990s.<sup>21</sup> Additionally, the issue of human rights became high on agenda of the United Nations, and after the Cold War the Security Council was more willing to invoke Chapter VII of the UN Charter on “Action with respect to threats to the peace, breaches of the peace, and acts of aggression,” to safeguard human rights.

The notion of universality on human rights is being increasingly recognized on practical grounds. However, the concept poses an important challenge “to the rationale underlying state sovereignty, by which states are autonomous both in exercising jurisdiction within their territorial boundaries and pursuing their national interest in conducting external affairs.”<sup>22</sup> Consequently, the line between individual human rights and sovereignty is currently contested. Hedley Bull in *The Anarchical Society* recognizes the dilemma between human rights and national sovereignty:

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<sup>21</sup> Onuma Yasuaki, “Toward an Intercivilizational Approach to Human Rights,” in *The East Asian Challenge for Human Rights*, ed. Joanne R. Bauer and Daniel A. Bell (New York: Cambridge University Press, 1999), 104.

<sup>22</sup> Philip J. Eldridge, *The Politics of Human Rights in Southeast Asia* (New York: Routledge, 2002), 16.

Carried to its logical extreme, the doctrine of human rights and duties under international law is subversive of the whole principle that mankind should be organized as a society of sovereign states. For, if the rights of each man can be asserted on the world political stage over and against the claims of his state, and his duties proclaimed irrespective of his position as a servant or a citizen of that state, then the position of the state as a body sovereign over its citizens, and entitled to command their obedience, has been subject to challenge, and the structure of the society of sovereign states has been placed in jeopardy. The way is left open for the subversion of the society of sovereign states on behalf of the alternative organizing principle of a cosmopolitan community. (Bull 2002, 146)

The human rights regime has changed the institution of state sovereignty by reducing the exclusive jurisdiction of the state and increasing state's accountability to other states.<sup>23</sup>

In contrast, different perspective perceives sovereignty as a standard ground for rejecting international human rights standards,<sup>24</sup> and this is when the discussion of "Asian values" mostly occurs. Many have assumed that the Asian values is primarily a rebuttal to the charges brought against Asia by Western demand for human rights implementation, and the principle of state sovereignty has been abused for this reason.<sup>25</sup> Since the 1980s, claims to universal human rights have been countered by what has been termed the "Asian values" paradigm specifically and, somewhat separately, a post-structural analysis that has favored relativism over universal

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<sup>23</sup> Anne L. Clunan, "Redefining Sovereignty: Humanitarianism's Challenge to Sovereign Immunity," in *Negotiating Sovereignty and Human Rights: Actors and Issues in Contemporary Human Rights Politics*, ed. Noha Shawki and Michaelene Cox (England: Ashgate Publishing Limited, 2009), 9.

<sup>24</sup> Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca and London: Cornell University Press, 2003), 108.

<sup>25</sup> See Inoue Tatsuo, "Liberal Democracy and Asian Orientalism," in *The East Asian Challenge for Human Rights*, ed. Joanne R. Bauer and Daniel A. Bell (New York: Cambridge University Press, 1999), 30.

assumptions.<sup>26</sup> Jack Donnelly (2003) argues that Asian leaders and (often politically well-connected) intellectuals assert their claims of legitimate, culturally based differences that justified substantial deviations from standard international interpretations of human rights norms.<sup>27</sup> Mahathir Mohamad, then Malaysia's Prime Minister, stated in 1994 that:

The West tells us that democratic freedom and human rights are fundamental to the achievement of economic and social development... [however] the norms and precepts for the observation of human rights vary from society to society... Nobody can claim to have a monopoly of wisdom to determine what is right and proper for all countries and peoples. It would be condescending, to say the least, and suspect for the West to preach human rights to us in the East.<sup>28</sup>

Similarly, Lee Kuan Yew, former Prime Minister and Senior Minister of Singapore, claimed that while the liberal intellectual tradition suggested that "human beings had arrived at this perfect state where everybody would be better off if they were allowed to do their own thing and flourish," the concept for him "has not worked out, and I doubt if it will."<sup>29</sup> Moreover, Lee Kuan Yew argued that there is fundamental difference between Western concepts of society and East Asian concepts. The Asian discourse on human rights and the discussion of the Asian values have increasingly developed since the 1993 Bangkok Declaration on Human Rights, when Asian

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<sup>26</sup> Damien Kingsbury, "Universalism and Exceptionalism in 'Asia,'" in *Human Rights in Asia: A Reassessment of the Asian Values Debate*, ed. Leena Avonius and Damien Kingsbury (New York: Palgrave Macmillan, 2008), 22.

<sup>27</sup> Donnelly, 107.

<sup>28</sup> New Straits Times, Kuala Lumpur, 2 July 1991, p. 1, quoted in Kenneth Christie and Denny Roy, *The Politics of Human Rights in East Asia*, (Sterling, VA: Pluto Press, 2001), 1.

<sup>29</sup> Fareed Zakaria, "Culture is Destiny- A Conversation with Lee Kuan Yew," *Foreign Affairs*, Volume 73, Issue 2 (New York: Council on Foreign Relations NY, 1994).

representatives accepted the universality of human rights while at the same time inserted the principle of non-interference and emphasized respect for sovereignty.<sup>30</sup>

Most Asian countries saw the drafters of the UDHR, which played leading roles in deciding the whole document of the declaration, came from colonial empires or the Western states. Accordingly, for Asian leaders, the notion of universality proposed by the declaration was the concept created by Western countries that also required other states to consent with. Thus, Asian officials raised the question as to the applicability of the universality of human rights to their countries. Besides challenging the notion of universalism, Asian values also confronting the Western-style of civil and political freedoms. There seems to be a certain Western bias in its emphasis on civil and political rather than economic, social and cultural rights.<sup>31</sup> While regularly criticized civil and political rights, Asian leaders emphasized on economic, social and cultural rights. On the contrary, many Western (especially Anglo-American) conservatives and philosophers- but, significantly, only the government of the United States- disparaged most economic and social rights.<sup>32</sup> This is particularly true for the United States, which has not yet ratified the ICESCR. While the Western dominant conception of human rights is committed to civil and political rights, economic and social rights are not perceived within the range of state responsibility, therefore, should not be part of binding treaties. This is where we can observe the

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<sup>30</sup> Chapter 3 discusses more about the 1993 Bangkok Declaration.

<sup>31</sup> See Freeman, 36.

<sup>32</sup> Donnelly, 27.

Asian countries that emphasize the “freedom from want” and the Western states that highlight “freedom from fear.”

This research does not argue- based on the Asian Values and universalism debate- that the UDHR model is inappropriate or irrelevant for Asian countries. The study supports the argument that as the principle of human rights is understood to be universal, thus, the human rights regime alters state sovereignty by decreasing the legitimate capacity of states’ sovereignty, and apparently will always pose a task to traditional notion of the 1648 Westphalian sovereignty. At the same time, the Asian values will always find their own way to incorporate the values to the discussion of human rights within the region. It is important for us not to be imprisoned with an either-or choice between Asian values and universal human rights. For the purpose of the thesis, it is imperative “to recognize both the universality of human rights and their particularity and thus accept a certain limited relativity, especially with respect to forms of implementation.”<sup>33</sup>

#### Statement of the Probable Value and Importance of the Study

The discourse of ASEAN’s human rights norm exhibits and embodies complexities that generate debates, some of which are the assessment of the “Asian Values.” The controversy lies within the development of ASEAN’s notion of human rights that involved its strict adherence to sovereignty, the non-interference principle, and diverse Southeast Asian cultural and historical background. According to many scholars, these values continue to conflict with human rights.

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<sup>33</sup> Donnelly, 98.



While observers and human rights activists called the AICHR “toothless,”<sup>34</sup> and although the terms of reference for the commission currently outlines a primarily advisory rather than any enforcement role, the very existence of the body has the potential to act as a trigger to further discussion on human rights issues in member states and open avenues for further action.<sup>35</sup> By heavily focusing on the idea of the commission as an incompetent body without any independent enforcement powers, most observers undermine the essential process of the ASEAN human rights norm diffusion. According to Termsak Chalermpananupap, the Director for Political and Security Cooperation of ASEAN Secretariat, whining about AICHR’s lack of teeth “is to bark up the wrong tree,” and that the body was never meant to be an independent watchdog, as its critics have wished it were.<sup>36</sup> Chalermpananupap added: “No ‘biting is ever required. ASEAN would not have come this far if its member states wanted to bite one another with sharp teeth just to get things done their own way.”<sup>37</sup>

This thesis supports the ASEAN Member States’ initiative in implementing a human rights commission as a significant step toward promoting and protecting human rights of the

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<sup>34</sup> Thomas Fuller, “ASEAN Inaugurates Human Rights Commission,” *New York Times*, 23 October 2009, available from <http://www.nytimes.com/2009/10/24/world/asia/24asean.html> (accessed September 22, 2011). Italic added.

<sup>35</sup> Michelle Staggs Kelsall, “The New ASEAN Intergovernmental Commission on Human Rights: Toothless Tiger or Tentative First Step?” *Asia Pacific Issues- Analysis from the East-West Center*, No. 90 (September 2009): 1.

<sup>36</sup> Ary Hermawan, “AICHR: ASEAN’s Journey to Human Rights,” *Jakarta Post: Special Report*, 11 January 2010, available from <http://www.thejakartapost.com/news/2010/01/11/aicr-asean%E2%80%99s-journey-human-rights.html> (accessed 23 September 2011).

<sup>37</sup> Ibid.

peoples of ASEAN, although the road ahead is long and bumpy. While many shows discontent on the AICHR's commitments and efficacies in promoting and protecting human rights compare to the international standards, as expressed in the UDHR, this study believes that the transformation is on-going and a comprehensive human rights system in the region is feasible in the foreseeable future. ASEAN peoples are becoming more aware of human rights, and civil societies are more dynamic and vibrant.<sup>38</sup> Even within the ASEAN states themselves, slowly but surely, government officials are becoming less wary and more accepting of and familiar with human rights and its modalities.<sup>39</sup>

Considering the historical background of ASEAN, having the ten Member States agree on sensitive agenda like human rights not to mention decided to create a human rights commission is remarkable and worth noting. This research is expected to contribute to the development of AICHR, especially in providing suggestions and ideas for AICHR to expand its role and advance its efficacy. Furthermore, this thesis expects to add and enrich the current discussion on norm diffusion of human rights in ASEAN. The theoretical contribution of this study will ensure its relevance to readers with a specific interest in ASEAN human rights.

### Theoretical Framework

While the "ASEAN Way," marked by the 1976 Treaty of Amity and Cooperation (TAC) continues to govern inter-state cooperation in Southeast Asia, some fundamental differences

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<sup>38</sup> Tan Hsien-Li, preface to *The ASEAN Intergovernmental Commission on Human Rights: Institutionalising Human Rights in Southeast Asia*, by Tan Hsien-Li (New York: Cambridge University Press, 2011), xi.

<sup>39</sup> Ibid.

have emerged among them over the 2008 ASEAN Charter. And while ASEAN members had adhered to the principle of non-interference for an extensive time, they have engaged with human rights issues and put it on the agenda of ASEAN. Both the creation of the AICHR and the diffusion of ASEAN's human rights norm need to be understood from different approaches, which derive from the existing International Relations literature.

That being said, an eclectic perspective will be conducted in this research in order to enhance a dialogue on ASEAN human rights norm analysis. It will apply the theory of Realism, Neo-Liberalism, and Constructivism. Eclecticism would help and create its own challenges in dealing with this subject, thus generate more questions that will deepen the debates of ASEAN human rights norm diffusion and the AICHR.

Based on the idea of realism, the ASEAN countries have been adopting the new norm because of the pressure from major powers or the Western.<sup>40</sup> The realists view that material powers are central to international cooperation,<sup>41</sup> and that the ASEAN countries had accepted the human rights norm only because they needed international recognition and support from the Western. Thus, for a realist, the decision to establish the AICHR is simply an image of rational choice. Realism argues that the ASEAN countries also decided to commit to human rights and other issues such as democracy, good governance, and rule of law in order to appease the

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<sup>40</sup> Stephen D. Krasner, "Sovereignty, Regimes, and Human Rights," in *Regime Theory and International Relations*, ed. Volker Rittberger and Peter Mayer (Oxford: Oxford University Press, 1993), 139-167.

<sup>41</sup> Hiro Katsumata, "Mimetic Adoption and Norm Diffusion: ASEAN Security Community, Free Trade and Human Rights" (paper presented at the annual meeting of the American Political Science Association, Toronto, 5 September 2009).

Western and as an attempt to mitigate the pressure of international condemnation on the poor human rights records in the region (e.g. East Timor, Myanmar). This view will be one of the foundations of this research's description on factors that are considered as external pressures, to be discussed in Chapter 2. And as briefly mentioned before, as part of examining the external or the Western pressures, this study will also analyze the "Boomerang Effect" by Margaret E. Keck and Kathryn Sikkink together with the "Spiral Model" by Thomas Risse and Kathryn Sikkink, which explain a situation when domestic actors search out international partners who will then put pressure on the state from the outside and force the target state to socialize the human rights norm. Although Sikkink and colleagues employ a constructivist perspective, this thesis, however, argues that the explanation of the Spiral and Boomerang theories that focuses on the pressure from outside falls into the category of the external pressure.

The next approach is constructed from the neoliberal view that is closely connected with the emergence of the modern liberal state and with a much higher level of material welfare. The post-Cold War period and the 1997 Asian financial crisis created new transnational challenges and demanded an effective regional response, generating the need for ASEAN leaders to adopt new norms (i.e. human rights norm) to solve those emerging problems.<sup>42</sup> Moreover, ASEAN wishes to address the growing challenges and continue to be relevant in the coming decades and remain the driving force in regional cooperation.<sup>43</sup> From the neoliberal approach, ASEAN's

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<sup>42</sup> See also Katsumata, "Mimetic Adoption."

<sup>43</sup> The Official Website of ASEAN, "Report of the Eminent Persons Group (EPG) on the ASEAN Charter," available from <http://www.aseansec.org/20144.htm> (accessed October 16, 2011).

engagement in human rights would be understandable. As modernity and the need to responding to future transnational issues are becoming more imperative, neoliberalism explains that the ASEAN member countries need to develop its agenda on human rights in response to an increasingly globalized world and to take benefits from it.

Constructivism, with its central focus on explaining how differences in historical experience and cultural context have defined norms, ideas and identity between countries and regions, has brought greater sophistication and clarity to the study of Southeast Asian security.<sup>44</sup> Constructivists assert that the quality among states is based on whether norms, ideas, and identities are shared and how they change over time. Many have argued that constructivism has a better way to explain about ASEAN or Asian regionalism because it deeply considers its unique norms and identity. For constructivists, regional diplomacy in Southeast Asia has been influenced by a normative shift at the global level that concerns the relationship between the principle of non-interference and the norms of human rights.<sup>45</sup> Constructivism allows for outside or ‘universal’ norms to be modified or reinterpreted (and sometimes their meaning and scope either expanded or constricted) at the recipient’s end through a process of localization, or to evolve from local discourses practice.<sup>46</sup>

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<sup>44</sup> Pek Koon Heng, “A Constructivist Perspective of the Regional Order in Southeast Asia: Norms Transformation in ASEAN and the ASEAN Charter,” *Tamkang Journal of International Affairs*, Volume XII, Number II (October 2009), 9.

<sup>45</sup> Hiro Katsumata, “Why Is ASEAN Diplomacy Changing? From ‘Non-Interference’ to ‘Open and Frank Discussions,’” *Asian Survey*, Vol. 44, No. 2 (University of California Press: Mar.- Apr., 2004), 247.

<sup>46</sup> Amitav Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order* (New York: Routledge, 2009), 27.

This research will apply the concept of localization to help understanding the influence of internal pressure towards the development of ASEAN human rights norm and AICHR's formation. Amitav Acharya defines localization as the active construction (through discourse, framing, grafting, and cultural selection) of foreign ideas by local actors, which results in the former developing significant congruence with local beliefs and practices.<sup>47</sup> In this case, localization explains several factors behind the need for an ASEAN human rights norm. John Ikenberry argues that a radical economic and/ or political crisis, such as depression and war, are critical catalysts and these challenges call into question existing rules of the game and the repertoires of state action.<sup>48</sup> Another catalyst is changes in the domestic political discourse that often mediate the impact of international norms on policy choice.<sup>49</sup> For example, newly democratic regimes may seek to import ideas about human rights promotion and assistance as the basis of their foreign policy because such ideas would legitimize their authority and new

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<sup>47</sup> Amitav Acharya, "How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in ASEAN Regionalism," *International Organization*, Vol. 58, No. 2 (The MIT Press, Spring, 2004), 245.

<sup>48</sup> G. John Ikenberry, "Conclusion: An Institutional Approach to American Foreign Economic Policy," in *The State and American Foreign Economic Policy*, ed., G. John Ikenberry, David A. Lake, and Michael Mastanduno (New York: Cornell University Press, 1988), 233-234.

<sup>49</sup> Andrew P. Cortell and James W. Davis, Jr, "Understanding the Domestic Impact of International Norms: A Research Agenda," *International Studies Review*, 2 (1) (2000), 86.

identity.<sup>50</sup> Finally, dramatic change in the distribution of power and shift of interests of the great powers could change the dominant norms.<sup>51</sup>

### Methodology

This thesis adopts a qualitative methodology and uses both primary and secondary sources of reference. The study will be based mainly on scholarly studies on ASEAN human rights discourse, journal articles on AICHR, and various related articles from newspapers and magazines. ASEAN Charter, the Cha-Am Hua Hin Declaration on the Intergovernmental Commission on Human Rights Declaration and the AICHR Terms of Reference are another important documents used for this study other than ASEAN meetings and reports associated to the topic.

Empirical data is used to observe the process of human rights norm diffusion in ASEAN from its establishment in 1967 until the creation of AICHR. The data will then explain how internal and external pressures contribute to the making of the AICHR. This research uses credible authoritative sources and applies various approaches such as content analysis and analytical orientation to examine the complexity of ASEAN's human rights norm diffusion that led to the establishment of the AICHR.

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<sup>50</sup> Acharya, "How Ideas Spread," 247.

<sup>51</sup> Audie Klotz, *Norms in International Relations: The Struggle Against Apartheid* (Ithaca, New York: Cornell University Press, 1995), 23-24.

### Literature Review

The review of the literature includes the history of ASEAN as a regional intergovernmental organization with its “ASEAN Way” of conducting business that had limited ASEAN’s agenda on human rights. It also contains an analysis of various studies by ASEAN scholars on IR theories to determine the relationship between internal and external pressures with the creation of the AICHR. Consequently, the analyses of various literatures provide data to support the most persuasive pressures or factors of why ASEAN decided to create AICHR.

There is a reasonably well-developed empirical literature examining ASEAN’s evolution and how it has been softening its non-interference principle to adapt with a growing salience of human rights agenda. Although there is still only a little published research focusing systematically on both ASEAN’s human rights norm diffusion and the AICHR, this research finds all existing related literatures to be valuable in constructing the way and providing fact and evidence to answer the main questions tested in the study.

Among many others, Amitav Acharya,<sup>52</sup> Hiro Katsumata,<sup>53</sup> Simon S.C. Tay, Jesus P. Estanislao, and Hadi Soesastro,<sup>54</sup> set out both general and/ or specific context for changes in ASEAN and the perspectives on ASEAN norm diffusion that involve the issue of human rights.

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<sup>52</sup> Acharya, “Constructing a Security Community”; Acharya, “Whose Ideas Matter”; Acharya, “How Ideas Spread.”

<sup>53</sup> Hiro Katsumata, “ASEAN and Human Rights: Resisting Western Pressure or Emulating the West?,” *The Pacific Review*, Vol. 22 No. 5 (Routledge, December 2009), 619–637; Katsumata, “Mimetic Adoption,” 557-576.

<sup>54</sup> Simon S.C. Tay, Jesus P. Estanislao, and Hadi Soesastro, ed., *Reinventing ASEAN* (Singapore: Institute of Southeast Asian Studies, 2001).



The recent publication by Tan Hsien-Li<sup>55</sup> focuses on the AICHR and the process of institutionalization of human rights in Southeast Asia. Other scholars assist with their overall view on possibilities and challenges of ASEAN debate and the paradox created by the “ASEAN Way,” such as Alice Ba,<sup>56</sup> and Mely Caballero-Anthony.<sup>57</sup>

This study also uses several studies on human rights situation in selected ASEAN member countries (Indonesia, Thailand, the Philippines, Malaysia). Chapter 4 examines the role of the national human rights institutions and local civil society groups and NGOs, mostly in these particular countries. The publications by the Philip J. Eldridge,<sup>58</sup> and Anja Jetschke<sup>59</sup> are among those who have contributed to and touched upon the issue of human rights in these selected ASEAN member states.

Finally, to specifically examine various internal and external pressures in Chapter 2, this thesis will mainly use the works by Amitav Acharya, *Whose Ideas Matter?: Agency and Power in Asian Regionalism* (2009), *Activists Beyond Borders: Advocacy Networks in International Politics* (1998) by Margaret E. Keck and Kathryn Sikkink, and *The Power of Human Rights:*

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<sup>55</sup> Hsien-Li, “The ASEAN Intergovernmental Commission.”

<sup>56</sup> Alice Ba, *[Re] Negotiating East and Southeast Asia: Region, Regionalism, and the Association of Southeast Asian Nations* (California: Stanford University Press, 2009). Alice Ba, “Regional Security in East Asia: ASEAN’s Value Added and Limitations,” *Journal of Current Southeast Asian Affairs*, 29, 3 (GIGA German Institute of Global and Area Studies, Institute of Asian Studies and Hamburg University Press, 2010), 115-130.

<sup>57</sup> Mely Caballero-Anthony, *Regional Security in Southeast Asia: Beyond the ASEAN Way* (Singapore: Institute of Southeast Asian Studies, 2005).

<sup>58</sup> Eldridge.

<sup>59</sup> Anja Jetschke, *Human Rights and State Security: Indonesia and the Philippines* (Philadelphia: University of Pennsylvania Press, 2011).

*International Norms and Domestic Change* (1999) edited by Thomas Risse, Stephen C. Ropp and Kathryn Sikkink.

## CHAPTER 2

### THEORIES OF HUMAN RIGHTS NORM DIFFUSION AND THE ASEAN INTERGOVERNMENTAL COMMISSION ON HUMAN RIGHTS (AICHR)

From its emergence as a newly discussed issue in the 1990s, the human rights norm within ASEAN has been widely reformed and translated into the evolutionary process of an ASEAN human rights mechanism. Chapter 3 will explain how the human rights norm has critically evolved in the region and after certain periods led to the creation of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009. This development was noteworthy for ASEAN that mostly comfortable with its “ASEAN Way,” which highlighted the non-interference principle and respect for sovereignty and territorial integrity.

This Chapter examines the factors that motivate the ASEAN member states to pursue a more liberal agenda of human rights, and eventually “relaxed” their strict position of viewing the traditional principles. The study will specifically address the internal and external pressures that stand behind the establishment of the AICHR. In doing so, the “Boomerang Effect” and “Spiral Model” will be tested to explain the external pressures. Meanwhile, the notion of localization is examined in order to explain various internal pressures that have influenced the ASEAN member states to embed human rights norm in the ASEAN agenda through the creation of the AICHR. The Chapter will highlight that the external pressure was only one, but not always the main factor behind the effort towards an ASEAN human rights mechanism. Within the context of ASEAN, national and regional actors, both state and non-state, were the leading agents in bringing the human rights system in the region.

External Pressure: Testing the “Boomerang Effect”  
and the “Spiral Model”

As stated in the beginning of this thesis, from a realist perspective, the decision to establish the AICHR is an illustration of rational choice and that ASEAN states appeased the international community by articulating a commitment to democracy, good governance, rule of law, human rights and fundamental freedoms, but designed an institution which lacks the power to challenge deep-seated norms which the Association wishes to preserve (sovereignty, non-intervention).<sup>60</sup> Many argued that it was just another agreement reached in order to pacify the human rights pressure from the Western countries. Moreover, ASEAN, worried about its international image, wishes to design a progressive assessment on human rights mechanism for the region. Human rights violations, for example, in East Timor and Myanmar increased ASEAN's concerns when international community condemned and put pressure on ASEAN. Other arguments assert that ASEAN States have been driven to adopt human rights policies by pressure from great powers (the United States and the European Union), whose material capabilities (economic power and trade capabilities) have provided incentives for the spread of human rights norms.<sup>61</sup>

Another explanation of external pressure derives from the concept of “Boomerang Effect” by Keck-Sikkink and the “Spiral Model” developed by Risse and Sikkink. According to

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<sup>60</sup> Cathrerine Renshaw, “Understanding the New ASEAN Intergovernmental Commission on Human Rights: The Limits and Potential of Theory,” *University of New South Wales Faculty of Law Research Series*, Paper 53 (Berkeley Electronic Press, 2010), available from <http://law.bepress.com/unswwps/flrps10/art53> (accessed November 6, 2011), 15.

<sup>61</sup> Ibid.

Keck and Sikkink, when channels between the state and its domestic actors are blocked, the boomerang pattern of influence characteristic of transnational networks may occur: domestic NGOs bypass their state and directly search out international allies to try to bring pressure on their states from outside.<sup>62</sup> Besides the central role of international and domestic NGOs, they also emphasize on pressure and enforce existing international norms and rules. The bulk of what networks do might be termed persuasion or socialization, but neither process is devoid of conflict; Persuasion and socialization often involve not just reasoning with opponents, but also bringing pressure, arm-twisting, encouraging sanctions, and shaming.<sup>63</sup>

The Boomerang theory later expanded by Risse and Sikkink with the five-phase “spiral model” of human rights change that explains the variation in the extent to which states have internalized the norm, which specifies the causal mechanisms in each phase of the process. Risse- Sikkink argue that the diffusion of international norms in the human rights area crucially depends on the establishment and the sustainability of networks among domestic and transnational actors who manage to link up with international regimes, to alert Western public opinion and Western governments.<sup>64</sup>

Similar to Keck and Sikkink, Risse-Sikkink believes that the process by which international norms are internalized and implemented domestically can be understood as a process of socialization. There are three types of causal mechanisms which are necessary for the

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<sup>62</sup> Keck and Sikkink, 12.

<sup>63</sup> Ibid., 16.

<sup>64</sup> Ibid., 5.

enduring internalization of norms: 1) processes of instrumental adaptation and strategic bargaining; 2) processes of moral-consciousness raising, “shaming”, argumentation, dialogue, and persuasion; 3) processes of institutionalization and habitualization.<sup>65</sup>

Risse-Sikkink explains that in the area of human rights, persuasion and socialization often involve processes such as shaming and denunciations, not aimed at producing changing minds with logic, but on changing minds by isolating or embarrassing the target. The idea of isolating and/ or embarrassing a state, however, will not fit the values perceived by ASEAN. The issue of human rights or the establishment of the AICHR for ASEAN is not about condemnation, but about awareness,<sup>66</sup> and the member countries seek not to embarrass their counterparts as later explains in Chapter 3. Thus, when one of the socialization processes contains “shaming,” it might be problematic to ensure further development of human rights norm diffusion within ASEAN. This will also apply to the socialization process of the boomerang theory, which contains arm-twisting, sanctions, and shaming. In short, it is fair to claim that both theories of boomerang pattern and spiral model are exercising an adversarial relationship in the process of human rights norm diffusion.

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<sup>65</sup> Ibid.

<sup>66</sup> The Official Website of ASEAN, “Remarks by H.E. Abhisit Vejjajiva, Prime Minister of the Kingdom of Thailand, on the Occasion of the Inaugural Ceremony of the ASEAN Intergovernmental Commission on Human Rights (AICHR),” Cha-Am Hua Hin, Thailand, 23 October 2009, available from <http://www.aseansec.org/22769.htm> (accessed November 6, 2011).

The following part<sup>67</sup> will briefly describe the five-phase of the spiral model as proposed by Risse and Sikkink: 1) repression and activation of network, 2) denial, 3) tactical concessions, 4) prescriptive status, 5) rule-consistent behavior. Phase 1 explains the repressive situation in the state where domestic opposition is too oppressed. When the transnational network succeeds in gathering information on the repression in the “target state,” provided by domestic opponents, then the process will move to Phase 2. Phase 2 puts the norm-violating state on the international agenda of human rights network and serves to raise the level of international attention toward the “target state.” This process of lobbying usually involves moral persuasion and shaming. The denial phase means that the state refuses to accept the validity of international human rights norms and opposes the suggestion that its national practices in human rights are subject to international jurisdiction. Phase 3 describes a situation where state seeks to pacify international criticism by temporarily making some improvement, although stable human rights condition is not expected. If transnational network succeeds in forcing the state to make tactical concessions, the focus will shift to domestic level, and if the cycle is not delayed, the domestic oppositions will likely to gain strength. However, this phase can temporarily break the upward spiral process if a government insists to repress the activists. Phase 4 of prescriptive status refers to the validity claims of the norm are no longer controversial, even the state continues violating the rules. Finally, Phase 5 suggests that governments might accept the validity of human rights norms, but still continue with their decreased gross violations of human rights.

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<sup>67</sup> Risse and Sikkink, 22-35.

Anja Jetschke (1999) tries to explain the changes in human rights practices in the Philippines and Indonesia by evaluating the processes of the spiral model by Risse and Sikkink.<sup>68</sup> Jetschke believes that the spiral model can be applied to the Philippines as well as to Indonesia, and that transnational human rights networks induced changes in human rights practices in both countries. However, this thesis argues that it is likely more problematic to explain ASEAN and its member states with the spiral theory. Within the context of understanding the purposes behind the ASEAN states decided to create a human rights body in the region, the spiral model fails to explain how ASEAN could include both universal values of human rights and the ASEAN values in the TOR of AICHR. This is probably because the socialization process in the spiral model considers international human rights norms to be adapted entirely within the state. It is significant to note that ASEAN states might recognize the validity of human rights norm (as in Phase 4 and 5), however, they also emphasized the importance of regional particularities and mutual respect for different historical, cultural and religious backgrounds, with the traditional principles of ASEAN as guidance for the AICHR in performing its mandates. This situation displays that ASEAN is likely to accept the validity of the “ASEAN human rights norms” instead of the wholesale status of international human rights norms.

#### Internal Pressure: The Notion of Localization

The year of 1997 saw the changing dynamics in the member countries of ASEAN when financial crisis severely hit the region, in particular with regard to domestic political changes.

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<sup>68</sup> Anja Jetschke, “Linking the Unlinkable? International Norms and Nationalism in Indonesia and the Philippines,” in *The Power of Human Rights: International Norms and Domestic Change*, ed. Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (United Kingdom: Cambridge University Press, 1999), 134-171.



This period has been considered as one of the main motivations towards the rethinking of human rights issue in ASEAN. Moreover, the aftermath of financial crisis of 1997 saw the redoubling of efforts by both non-government and government actors in Southeast Asia to open the way for human rights to become a central concern of ASEAN.<sup>69</sup>

The political ramification of the economic crisis was then followed by the democratic transitions in some of the ASEAN members, especially Indonesia, Thailand, the Philippines and Malaysia. Mely Caballero-Anthony explains that Indonesia experienced major political transition after the downfall of Soeharto in 1998, Malaysia's long-serving leader Mahathir Mohamad who stepped down after twenty-two years in power, and the Philippines and Thailand "people-power" revolutions that induced change in political leadership.<sup>70</sup>

The research argues that the dynamics of Asian economic crisis, domestic political changes in ASEAN member states, and shift of interests of the more influential members of ASEAN are categorized as the internal pressures that require the reform of human rights norm in ASEAN. This guides the discussion to the concept of localization used by Amitav Acharya in "How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in ASEAN Regionalism" (2004). As briefly mentioned in Chapter 1, localization is the active construction through discourse, framing, grafting, and cultural selection of foreign ideas by local

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<sup>69</sup> Kraft, 1.

<sup>70</sup> Caballero-Anthony, 3.

actors, which results in the former developing significant congruence with local beliefs and practices.<sup>71</sup>

Within the ASEAN human rights context, localization describes a process of idea transmission in which the ASEAN member countries used foreign ideas on universal values of human rights and fitted them into indigenous traditions and practices of the “ASEAN Way.” In this case, the TOR of AICHR shows how ASEAN used the concept of universality of human rights while also emphasized on ASEAN’s historical, cultural and religious backgrounds. In short, the human rights norm has been localized by ASEAN to suit its local values.

Member countries of ASEAN that hold the unique set of norms and practices like the “ASEAN Way” are unlikely to adopt a foreign norm wholesale and are likely to have developed a habit of localizing foreign ideas.<sup>72</sup> In constructivist perspectives on socialization, norm diffusion is viewed as the result of adaptive behavior in which local practices are made consistent with an external idea.<sup>73</sup> This is certainly not the case of localization, where external ideas are simultaneously adapted to meet local practices.<sup>74</sup> Therefore, it differentiates localization from the concept of adaptation. In addition, adaptation is considered to some extent forced on the target audience, while localization is voluntary.<sup>75</sup> At this certain stage, even the

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<sup>71</sup> Acharya, “How Ideas Spread,” 245.

<sup>72</sup> Ibid., 249.

<sup>73</sup> Ibid., 251.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

more liberal members (Indonesia, the Philippines, Thailand, Malaysia) prefer the step-by-step and constructive approach, in order to create a comfortable setting for other members in discussing the ASEAN human rights mechanism. Norm diffusion strategies that accommodate local sensitivities and contexts are more likely to succeed than those seeking to dismiss or supplant the latter.<sup>76</sup>

The first internal pressure discussed in this research is the changes in domestic politics of the ASEAN member states. Andrew P. Cortell and James W. Davis, Jr argue that domestic political changes have important effects on the international norms,<sup>77</sup> hence, explains the motivation of the older ASEAN members that were dealing with political transformations to demonstrate the significant concept of regional human rights mechanism. Specifically, Amitav Acharya (2004) describes that newly democratic regimes may seek to import ideas about human rights promotion and assistance as the basis of their foreign policy because such ideas would legitimize their authority and new identity. For instance, after the fall of Suharto, Indonesia's successive governments of Jusuf Habibie, Abdurrahman Wahid, Megawati Sukarnoputri and Susilo Bambang Yudhoyono, tried to implement various policies to bring about the reform, especially in the field of human rights.<sup>78</sup> While much remains to be done, Indonesia has proved to be a forerunner on regional efforts towards the building of an ASEAN human rights

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<sup>76</sup> Acharya, "Whose Ideas Matter," 15.

<sup>77</sup> Cortell and Davis, Jr.

<sup>78</sup> Hsien-Li, "The ASEAN Intergovernmental Commission," 84.

mechanism culminating in the launch of AICHR.<sup>79</sup> Meanwhile, Thailand's evolution of democratic politics and its 1997 constitution that sets out principles of transparency and accountability has resulted to a greater diffusion of citizen participation.<sup>80</sup> Moreover, there are apparently high levels of elite consensus favoring in Thailand,<sup>81</sup> which stemmed the new thinking of human rights. Similarly in the Philippines, which experienced the longest democracy among all Southeast Asian states,<sup>82</sup> the concern of human rights issue has also grown significantly.

For Herman Joseph S. Kraft, the governments and officials of societies in ASEAN with formally liberal democratic institutions,<sup>83</sup> have indeed been the most receptive to the idea of a regional human rights mechanism and the most supportive of human rights practices in the region.<sup>84</sup> Kraft adds, in fact, officials from Indonesia and the Philippines have been very active in cooperating with non-government networks on the issue of human rights in the region.

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<sup>79</sup> Ibid.,” 77.

<sup>80</sup> Eldridge, 54, 56.

<sup>81</sup> Ibid., 58.

<sup>82</sup> Hsien-Li, “The ASEAN Intergovernmental Commission,” 91.

<sup>83</sup> The literature on democracy of Southeast Asia indicates many disagreements about how democratic the countries really are. See William Case, *Politics in Southeast Asia: Democracy or Less* (Richmond, Curzon, 2002).

<sup>84</sup> See Kraft.

In understanding the second cause of norm change, the study borrows the observation by Audie Klotz that a systemic change or changes in great powers' interests<sup>85</sup> can serve as a catalyst. In the ASEAN context, the great powers are played by the more liberal member states of ASEAN with their transitions to democracy and rising interests on human rights. The shifts made by these member states consequently refocused their perspectives and interests on human rights. Indonesia, the Philippines, Thailand and Malaysia, possess a great influence towards the remaining member states. In particular, Indonesia has been argued to carry the mantle of leadership in ASEAN since the organization was established in 1967.<sup>86</sup> Chapter 3 will describe that during the ASEAN Ministerial Meeting in 2007, Indonesia and its colleagues had to convince Myanmar, Laos, Cambodia and Vietnam to consent on the idea of making an ASEAN human rights body. The issue was later resolved with a consensus on the inclusion of establishing human rights body in the ASEAN Charter. The shift of interests on human rights by the more influential member states of ASEAN has acted as a pressure and internal force in demanding a reform of human rights norm in ASEAN.

The final catalyst is the major Asian financial crisis in 1997. G. John Ikenberry claims that crises such as depression and war are critical facilitators of norm change that they call into question existing rules of the game and the repertoires of state action.<sup>87</sup> Ikenberry adds that these extraordinary challenges prompt policy change and a radically changed economic environment

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<sup>85</sup> Klotz, 23.

<sup>86</sup> Caballero-Anthony, 3.

<sup>87</sup> Ikenberry, 233-234.

activated more societal groups and intensified political pressure on the state. With the crisis, ASEAN member states recognized that the world was becoming increasingly interdependent and globalized and argued that a stronger approach was needed to handle the escalation of the crisis.<sup>88</sup> Also, the crisis has in some way muted the voices of the Asian values and brought more active discussion on the economic and social safety of the people. The Asian crisis produced an environment of prioritizing dialogues on poverty, social justice, economic issues and the welfare of the ASEAN people. It was then developed to a more open dialogue among the members, particularly concerning the human rights issue. It is understandable why the ASEAN countries began in the late 1990s to move toward promoting frank discussion and modifying the interpretation of the non-interference principle, since the crisis needed efficient responses that also required collective endeavors, which often involved discussion of each country's domestic issues.<sup>89</sup>

Clearly, the role of local actors is key in the concept of localization. These actors can be individuals, regionally based epistemic communities, or nongovernmental organizations (NGOs), whose primary commitment is to localize a normative order and whose main task is to legitimize and enhance that order by building congruence with outside ideas.<sup>90</sup> These actors are usually physically present within the region and be either from the government, or part of the wider local

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<sup>88</sup> Li-ann Thio, "Implementing Human Rights in ASEAN Countries: Promises to Keep and Miles to Go before I Sleep," *Yale Human Rights and Development Law Journal* 2, no. 1 (1999): 53.

<sup>89</sup> Hiro Katsumata, "Why Is ASEAN Diplomacy Changing?" 241.

<sup>90</sup> Acharya, "How Ideas Spread," 249.

policymaking elite with reasonably direct access to policymakers, or part of an active civil society group.<sup>91</sup> This study observes that while the role of human rights Civil Society Organizations (CSOs) in the region, as Chapter 4 will explain, aim for ASEAN member countries to fully adapt with the universal principle of human rights, the CSOs like Forum-Asia and SAPA also recognized something distinctive about Southeast Asia. The sense of local ownership of these regional CSOs has resulted in their willingness to work with local governments regarding the issue of human rights in ASEAN. Similarly, when the coalition of NGOs in the Working Group of an ASEAN Human Rights Mechanism- as will mostly be observed in Chapter 3- changed its strategy to a more constructive and step-by-step approach in order to better engage with ASEAN bureaucracies, the Working Group recognized that the universal values of human rights was also the rights that Southeast Asia should enjoy and they could only take what acceptable to ASEAN for the time being.

The previous catalysts or internal pressures have consequently made increasing demands from the CSOs for the state to be more responsive and transparent concerning human rights, in line with the international human rights values. In addition, the internal pressures, especially domestic political changes, resulted in the creation of the National Human Rights Institutions (NHRIs) by Indonesia, Malaysia, the Philippines, and Thailand. The research argues that the role of both the four NHRIs and human rights CSOs in the region serves as another level of internal

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<sup>91</sup> Ibid.

pressure that allows ASEAN to better enhanced its performance regarding human rights in the region.<sup>92</sup>

As localization is seldom a final act or terminal condition, but a dynamic and continuous process,<sup>93</sup> so is the diffusion of ASEAN human rights norm. Despite various concerns and debates, the human rights norm within ASEAN has been evolving, and we may expect a continuous development of the practice of AICHR.

### Conclusion

For boomerang and spiral theories, international NGOs and domestic NGOs are key components of any transnational advocacy network. After domestic NGOs request their international partners for assistance, the process will continue by lobbying international community or Western countries to support these advocacy networks and consequently put pressures from the outside to the “target state.” The evolutionary process of human rights norm in ASEAN recognizes the role of NGOs in supporting the ASEAN human rights mechanism. However, in this case, NGOs are not solely the main actors shaping the issue of human rights in ASEAN. Initially, before the increase participation of NGOs, the domestic political changes, major crisis, and shift of interests are crucial in opening the leeway of discussion in human rights. The thesis argues that the pressure from the outside or Western powers to ASEAN

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<sup>92</sup> Liberal institutionalists would point out, for example, that strongest support for the establishment of an independent regional human rights body came from those ASEAN states which have already established national human rights institutions (NHRIs), independent, state-based bodies with a mandate to promote and protect international human rights. For liberal scholars, this suggests that the experience of these new democracies in engaging with autonomous domestic human rights bodies (albeit ones within the state), prepared them for the idea of a regional body for human rights oversight. See Renshaw, 16-17.

<sup>93</sup> Acharya, “Whose Ideas Matter,” 21.



member states is not as forceful as the internal pressure, which originates from ASEAN itself or each member state.

Localization of human rights norm reshapes both existing beliefs and practices and foreign ideas in ASEAN's local context. Since localization is progressive, not regressive or static,<sup>94</sup> the localization process of human rights norm within ASEAN also represents progress, with an incremental and gradual movement. This means that with localization, the situation of human rights mechanism in ASEAN should be better than the past.

It was observed that the process of adaptation in socialization, which was used to discuss the external pressure, was mostly applied in an "adversarial relationship." Meanwhile, the notion of localization and the nature of the internal pressures are "voluntary." The adversarial relationship in the boomerang and spiral model, hence, is not suitable for the nature of ASEAN.

This thesis supports the argument of ASEAN member countries are likely to have developed a localization process of the international ideas of human rights, knowing the fact that ASEAN holds the values and principles of the "ASEAN way." For ASEAN member states, currently, it is unlikely for them to adopt an international norm of human rights wholesale. The process of localizing foreign norms may continue to an incremental shift toward norm displacement, however, this comes at the very long end of localization.<sup>95</sup>

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<sup>94</sup> Acharya, "How Ideas Spread," 252.

<sup>95</sup> Ibid., 253.

## CHAPTER 3

### THE EVOLUTION OF ASEAN'S HUMAN RIGHTS POLICY

With a view to providing a foundation for further dialogue on ASEAN human rights mechanism and analyzing the purpose of why ASEAN members decided to establish the AICHR, this Chapter observes the evolution of ASEAN human rights norm in the region as one of ASEAN's historic moments. It begins with describing and examining the period when ASEAN was formed, as an introductory unit to advance analysis for the next period. It will highlight the period of 1993 to 1998, 1999 to 2005, and the period of 2006 until the creation of the AICHR in 2009.

#### The Period of ASEAN's Establishment (1967)

The Southeast Asian politics experienced major and significant changes between 1965 and 1967 when various events in the region generated new thinking about regional organization by some of the elites. These events were Sukarno's ouster in Indonesia, the election of a new president in the Philippines, a problematic U.S. war in Vietnam, and confirmation that the United Kingdom would be withdrawing from Southeast Asia.<sup>96</sup> With the Anglo-Malayan Defense Agreement (AMDA) in 1957, the United Kingdom was trying to guard its colonies or former colonies by providing military assistance, especially to Malaysia and Singapore, and countering communist threats in Southeast Asia. However, with Britain's internal economic crisis after the war and domestic tension concerning its military presence abroad, the United Kingdom decided to decrease its military commitment to Southeast Asia. The United Kingdom's influence in

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<sup>96</sup> Ba, 48.

Southeast Asia was gradually shrinking, and later announced its withdrawal from Southeast Asia in 1967. Meanwhile, the United States military escalation in Vietnam in 1964-1965 and the fact that Southeast Asia's noncommunist states all faced communist insurgencies and divisions at home have intensified the fear of being "another Vietnam."<sup>97</sup> Additionally, the election of Ferdinand Marcos in the Philippines added to the historic opportunity for change that existed in Southeast Asia between 1965 and 1967.<sup>98</sup> However, the most critical part for the redirection or change in the pattern of Southeast Asia's interstate relations was the regime change in Indonesia- given that Sukarno had been so associated with the radicalization of Indonesian policy toward its neighbors, his removal was essential for the change in the region.<sup>99</sup>

In short, the events mentioned above led to the establishment of ASEAN on 8 August 1967 by the Founding Fathers of ASEAN, namely Indonesia, Malaysia, the Philippines, Singapore and Thailand. Consequently, Brunei Darussalam (1984), Viet Nam (1995), Lao PDR and Myanmar (1997) and Cambodia (1999) joined the association.

ASEAN's Bangkok Declaration of 1967 describes the association's official aims and purposes for the promotion of regional peace and stability, the acceleration of economic growth, social and cultural cooperation. However, it was political and security considerations that were the driving force behind ASEAN's creation. There were political concerns among members to unite the region and prevent another domination by foreign powers. Moreover, it was considered

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<sup>97</sup> Ibid., 50.

<sup>98</sup> Ibid., 49.

<sup>99</sup> Ibid., 53.

significant for ASEAN member states to coordinate and communicate their political positions to counter communist insurgencies. Therefore, it is understandable that ASEAN was formed in the midst of the Vietnam War in 1967. The outcome of ASEAN's inaugural meeting confirmed the understanding among members to establish and respect the principle of non-interference in each other's internal affairs and consensus building as fundamental norms and principles of ASEAN.

The lessons learned from conflicts within the region and inter-territorial disputes, including Indonesia's confrontation against Malaysia and Singapore, were considered critical to the region's future security and stability. Moreover, aside from Thailand, the founding member countries of ASEAN were all new established sovereign states after experiencing long period of colonial rules. Hence, it is significant for ASEAN member countries to be able to determine their own actions and rules without external interference.

Clearly, throughout this period, ASEAN did not have the issue of human rights in their agendas. It is fair to say that ASEAN has avoided the terminology of human rights. The 1971 Kuala Lumpur Declaration or the Zone of Peace, Freedom and Neutrality Declaration (ZOPFAN) was produced as another commitment to a Southeast Asia "free from any form or manner of interference by outside powers." ZOPFAN mandates were inspired by several principles and objectives of the United Nations Charter, in particular by the principles of respect for the sovereignty and territorial integrity of all states, abstention from threat or use of force, peaceful settlement of international disputes, equal rights and self-determination.<sup>100</sup> At the first

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<sup>100</sup> The Official Website of ASEAN, "Zone of Peace, Freedom and Neutrality Declaration," Malaysia, 27 November 1971, available from <http://www.aseansec.org/1215.htm> (accessed September 30, 2011). The ZOPFAN was also reiterated ASEAN members' commitment to the principle in the Bangkok Declaration

ASEAN Summit in Bali in February 1976, the ASEAN member countries signed the Treaty of Amity and Cooperation (TAC) in Southeast Asia that raised the provisions of ZOPFAN to the level of a treaty to which other Southeast Asian countries could comply and with which the non-regional countries could associate themselves.<sup>101</sup> Overall, both ZOPFAN and the TAC are milestones in ASEAN regionalism and considered as a process of solidarity and unity in facing the evolving challenges. As mentioned earlier, the issue of human rights was evidently not considered as one of the challenges.

#### The Period of 1993-1998

The member countries of ASEAN have been practicing the “ASEAN Way” for decades, which encourages Southeast Asian countries to seek an informal approach to cooperation with its unique principles of dialogue, consensus-building, and non-interference in each other’s internal affairs. ZOPFAN and the TAC strongly valued these principles because the “comfort level” of members is an important precondition for ASEAN’s diplomacy, and members have been pursuing dialogue without criticizing each other in public.<sup>102</sup> When Malaysian TV reported

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which established ASEAN in 1967, "that the countries of South East Asia share a primary responsibility for strengthening the economic and social stability of the region and ensuring their peaceful and progressive national development, and that they are determined to ensure stability 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."

<sup>101</sup> Ibid., “Treaty of Amity and Cooperation in Southeast Asia,” Indonesia, 24 February 1976, available from <http://www.asean.org/1217.htm> (accessed September 29, 2011). The treaty enshrines the following principles: mutual respect for one another’s sovereignty; noninterference in internal affairs; the peaceful settlement of intraregional disputes; and effective cooperation. It also provides for a code of conduct for the peaceful settlement of disputes. And it mandates the establishment of a high council made up of ministerial representatives from the parties as a dispute-settlement mechanism.

<sup>102</sup> Hiro Katsumata, “Why Is ASEAN Diplomacy Changing?” 238.

graphic scenes of the 1991 massacre in East Timor, Prime Minister Mahathir sent his personal envoy (the Information Minister) to Jakarta to extend apologies. There were, for example, no open criticisms of military coups in Thailand, or the use of detention without trial in Malaysia and Singapore under the Internal Security Act (ISA).<sup>103</sup> Such events have also proven that ASEAN member countries convey their expressions of concern privately to ‘save faces’. Overall, the ASEAN Member States have been well known to cautiously safeguard the contentious concept of human rights.

In contrast to that, on 29 March – 2 April 1993, the six members countries of ASEAN (Indonesia, Malaysia, the Philippines, Thailand, Singapore and Brunei Darussalam) participated at the Regional Meeting for Asia of the World Conference on Human Rights held in Bangkok (Bangkok Conference). The purpose of this meeting was to unite the regional perspectives on human rights for the World Conference on Human Rights in Vienna in June 1993 to endorse the universality of international human rights. However, the wide range of opinions pertaining to the different socio-political contexts of the participating states at the Bangkok Conference made it extremely difficult to agree on the terms of the Final Declaration of the Conference (‘Bangkok Declaration’).<sup>104</sup> Moreover, the Asian States’ rigid stance on cultural relativism, trenchant opposition to ‘ideological imperialism’ in the international human rights project, the insistence on the right to development, and the pre-eminence of socio-economic priorities caused anxiety

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<sup>103</sup> Internal Security Act (ISA) in Malaysia and Singapore is controversial, especially for civil society organizations in both countries that believe the ISA restricts civil liberties.

<sup>104</sup> Hsien-Li, “The ASEAN Intergovernmental Commission,” 2.

among the international community that the Bangkok Declaration would ‘hijack’ the Vienna Conference’s aim of concluding universal principles of human rights for the world community.<sup>105</sup> In the end, the Asian Leaders agreed to adopt the 1993 Bangkok Declaration, with the insertion of the following controversial statements:

Emphasize the principles of respect for national sovereignty and territorial integrity as well as non-interference in the internal affairs of States, and the non-use of human rights as an instrument of political pressure. (Bangkok Declaration, paragraph 5, 1993)

Recognize that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds. (Bangkok Declaration, paragraph 8, 1993)

It is, without doubt, that all states are willing to accept the universal values of human rights, with a precondition of taking into account the diversity of regional cultures and beliefs.

ASEAN then articulated its commitment to respect for human rights and fundamental freedoms in the Joint Communiqué at the 26<sup>th</sup> ASEAN Ministerial Meeting (AMM) in July 1993 in Singapore. The six Member States represented by their Foreign Ministers announced a collective view on human rights:

... 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. (Joint Communiqué of the 26<sup>th</sup> AMM, paragraph 16, 1993)

The six Foreign Ministers then formulated the second view, which was equally significant:

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

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<sup>105</sup> Ibid.

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. (Joint Communiqué of the 26<sup>th</sup> AMM, paragraph 17, 1993)

Additionally, they expressed their final agreement on human rights in paragraph 18 of the Joint Communiqué to “consider the establishment of an appropriate regional mechanism on human rights.”

These shared agreements and visions are considered to be a historical breakthrough in setting ASEAN’s developmental features of human rights, which allow the elites to revisit the concepts and ‘myths’ that surround regional human rights. Despite the inclusion of the principle of non-interference and respect for national sovereignty, which for many could erode the universality of human rights, the agreement may also be considered as an official start for ASEAN towards the formation of a regional human rights body.

In the same year in 1993, the ASEAN parliamentarians supported the ASEAN Inter-Parliamentary Organization (AIPO)<sup>106</sup> Declaration on Human Rights stated that “it is likewise

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<sup>106</sup> The ASEAN parliamentarians formed AIPO on 2<sup>nd</sup> September 1977. The establishment of AIPO was at the initiative of Indonesia. In the early 1970’s, encouraged by the progress being made by ASEAN, the Indonesian House of Representatives came up with the idea of setting up an organization consisting the parliaments of the then five ASEAN member countries of Indonesia, Malaysia, the Philippines, Singapore and Thailand. In 2007, AIPO transformed itself from an organization into an assembly and changed its name to the ASEAN Inter-Parliamentary Assembly or AIPA. *See generally* online at <http://aipo.org/> (accessed October 7, 2011).



the task and responsibility of member States to establish an appropriate regional mechanism on human rights”.<sup>107</sup>

This study believes that it is significant to also note a year before the 1993 remarkable achievements that the ASEAN-ISIS (ASEAN Institute of Strategic and International Studies), an association of non-governmental organizations submitted memoranda on human rights in July 1992.<sup>108</sup> In the memorandum titled “The Environment and Human Rights in International Relations: An Agenda for ASEAN’s Policy Approaches and Responses,” ASEAN-ISIS attempted to work towards a consensus position within the network while also suggesting ASEAN to seriously examine the need for a regional mechanism on human rights. ASEAN-ISIS is currently continuing to work on the most pertinent human rights issues facing the region each year through its annual Colloquium on Human Rights (AICOHR). The network of ASEAN-ISIS has contributed significantly to the emergence of an important regional and international political process- that of track two-diplomacy. This track two approach has also generated new

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<sup>107</sup> Working Group for an ASEAN Human Rights Mechanism, “Roadmap for an ASEAN Human Rights Mechanism,” available from <http://www.aseanhrmech.org/resolutions/roadmap-for-an-aseanhrmech.html> (accessed October 7, 2011).

<sup>108</sup> ASEAN-ISIS was formed in 1988, with its founding membership comprises of the Centre for Strategic and International Studies (CSIS) of Indonesia, the Institute of Strategic and International Studies (ISIS) of Malaysia, the Institute of Strategic and Development Studies (ISDS) of the Philippines, the Singapore Institute of International Affairs (SIIA), and the Institute of Security and International Studies (ISIS) of Thailand. Its purpose is to encourage cooperation and coordination of activities among policy-oriented, ASEAN scholars and analysts, and to promote policy-oriented of, and exchanges of information and viewpoints on, various strategic and international issues affecting Southeast Asia’s and ASEAN’s peace, security and well-being. ASEAN-ISIS also succeeded in obtaining recognition from the ASEAN member states as a valuable mechanism for policy making by institutionalizing the meeting between the Heads of ASEAN-ISIS and the ASEAN Senior Officials since the ASEAN Senior Official Meeting (SOM) in Singapore in 1993.

perspectives on human rights issue within the region of Southeast Asia generally, and specifically within ASEAN-ISIS members' local communities (citizens and governments).

After the 1993 period, members of civil society started to discuss the steps towards a regional human rights mechanism and then formed themselves into a Working Group for an ASEAN Human Rights Mechanism to help suggest the form and content of an appropriate regional mechanism.<sup>109</sup> This coalition of national working groups from ASEAN states follows a step-by-step, constructive and consultative approach when it engages governments and other key players in the region.<sup>110</sup> The process started gradually and this regional working group began to interact with state representatives, reminding them of their promise made in Singapore and following the Vienna Declaration.<sup>111</sup> Throughout this period, there was no response from ASEAN and member countries did not share the active effort made by this group of civil society.

According to Termsak Chalermpananupap, then Special Assistant to the Secretary General of ASEAN, the process to consider the establishment of “an appropriate regional

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<sup>109</sup> Vitit Muntarbhorn, “A Roadmap for an ASEAN Human Rights Mechanism” (paper prepared for the third workshop for an ASEAN Regional Mechanism on Human Rights, Bangkok, Thailand, May 28-29 2003), available from <http://www.fnf.org.ph/liberallibrary/roadmap-for-asean-human-rights.htm> (accessed October 7, 2011). The Working Group now has national working group in six ASEAN countries (Indonesia, Malaysia, Cambodia, Singapore, Thailand, and the Philippines), composed primarily of members of civil society, while the other four ASEAN countries have national focal points. The said Working Group has been meeting annually since 1996 with the ASEAN Foreign Ministers and its work has been referred to in the annual communiqué issued by the Ministers since 1998.

<sup>110</sup> Working Group for an ASEAN Human Rights Mechanism, “Roadmap for an ASEAN Human Rights.”

<sup>111</sup> Christian Bothe, “Institutionalizing Human Rights in South-East Asia: The Birth of ASEAN’s Intergovernmental Commission on Human Rights- An Interview with Param Cumaraswamy” (South-East Asian Studies-SEAS, 2009), available from <http://univie.academia.edu/ChristianBothe/Papers/1159259/> (accessed October 7, 2011).

mechanism on human rights” slowed down after 1995 partly because of increased political diversity following the arrival of four new members: Viet Nam, Laos, Myanmar and Cambodia, making it more difficult for members to agree on how to cooperate on human rights.<sup>112</sup> When ‘less liberal’ states join, ASEAN prefers to follow its ‘save face’ policy and avoid embarrassment among neighbors. Even with the most evident of human rights violations, as was shown with the case of Myanmar. The people of Myanmar has suffered under the rule of the military junta that in the denial of human rights and democracy. Thousands of civilians died in a bloody massacre in 1988 when the people struggled to secure human rights and protested for decades of economic damage and political repression under the military regime. In 1997, the military junta called the State Law and Order Restoration Council (SLORC) changed its name to the State Peace and Development Council (SPDC). However, the SPDC maintained its autocratic and oppressive policies. Then, also in 1997, Myanmar was admitted into ASEAN, and ASEAN’s policy towards Myanmar was the “constructive engagement,” which explicitly entails the policy of non-interference. In addition to the admission of ASEAN’s new members, the 1997 financial crisis and its severe impacts to the region have required the ASEAN members to focus more on their domestic problems.<sup>113</sup>

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<sup>112</sup> Termsak Chalermpananupap, “Promoting and Protecting Human Rights in ASEAN,” in the Official Website of ASEAN, available from <http://www.aseansec.org/22769.htm> (accessed September 29, 2011). *See also* Termsak Chalermpananupap, “10 Facts about ASEAN Human Rights Cooperation,” in the Official Website of ASEAN, available from <http://www.aseansec.org/22769.htm>.

<sup>113</sup> The thesis does not intend to look into origin and impact of the Asian financial crisis, however, for a better discussion, see Shaun Narine, *Explaining ASEAN: Regionalism in Southeast Asia* (Colorado: Lynne Rienner Publishers, 2002), 139-192.

With its consistent effort and determination, the Working Group that was established in 1996 finally achieved the awaited feedback at the 31<sup>st</sup> AMM in July 1998 in Manila. The ASEAN Ministers noted and applauded the Working Group's initiatives on human rights in the Joint Communiqué, as particularly stated in paragraph 28, and hoped for further dialogues held between the Working Group and ASEAN officials. Additionally, the following paragraph of the Joint Communiqué mentioned that the ASEAN Ministers recognized the importance of international conventions and declarations relating to the promotion of human rights. At every AMM afterwards, ASEAN Ministers have recognized the need for a regional mechanism on human rights and the importance of continuing dialogues between the Working Group and ASEAN officials. They also noted the establishment of national mechanism on human rights in some ASEAN countries.

Another important milestone in 1998 can be found in the Hanoi Plan of Action (HPA) as the first plan of action that pursued the realization of the goals of the ASEAN Vision 2020.<sup>114</sup> In the HPA (paragraph 4.8), ASEAN pledges to:

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 Charter of the United Nations, the Universal Declaration of Human Rights and the Vienna Declaration and Program of Action. (Hanoi Plan of Action, 1998)

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<sup>114</sup> The Second ASEAN Informal Summit, held in Kuala Lumpur on 15 December 1997, adopted the ASEAN Vision 2020 which sets out a broad vision for ASEAN in the year 2020: an 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. The HPA has a six-year timeframe covering the period from 1999 to 2004. The progress of its implementation shall be reviewed every three years to coincide with the ASEAN Summit Meetings. *See generally* in the Official Website of ASEAN, available from <http://www.aseansec.org/687.htm> (accessed October 8, 2011).

Besides enhancing the exchange of information amongst ASEAN countries, the HPA also recognizes the need of the full implementation of two core UN human rights treaties in the region; namely the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and other international instruments concerning women and children. The discussion of paragraph 4 in the HPA about these particular topics was essentially constructed to address the social impact of the financial and economic crisis.<sup>115</sup>

This particular periods witness some of the ASEAN member countries' democratic transitions and the growth of civil society especially the 1990s democratic movement in the Philippines, Thailand, and Indonesia.<sup>116</sup>

Regarding the “ASEAN Way” mentioned earlier, in July 1998, after constantly praising the non-interference principle, one of the founding members questioned the effectiveness of this principle. Surin Pitsuwan, the then Foreign Minister of Thailand, proposed “flexible engagement” as a new policy framework for ASEAN to move beyond its long-standing principle of non-interference. At that time, the new Thai government believed that its ASEAN colleagues needed more “openness” and needed to take a more pro-active concern in dealing with one another, especially when domestic issues posed a threat to regional stability. This is particularly true to the fact that Thailand was facing an increasing numbers of refugees from Myanmar as an implication of human rights violations by the military junta. Human rights violations have been

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<sup>115</sup> The exact title of paragraph 4 was “Promote Social Development and Address the Social Impact of the Financial and Economic Crisis.”

<sup>116</sup> Discussed in Chapter 2 and 4.

so severe that in the 1990s more than 100,000 Karen, Karenni, Shan and Mon refugees flooded into Thailand.<sup>117</sup> The Thai regime was very concerned with the flood of people across their borders, and expected ASEAN to be able to address the issue by proposing the new concept of “flexible engagement.” Surin Pitsuwan also believes that accepting and espousing a more favorable attitude toward human rights norms would help support his country’s pleas for international assistance.<sup>118</sup> Surin Pitsuwan argues that the new norm would help promote the efficiency, relevance, and prestige of ASEAN at a time of growing regional crisis.

During that time, Indonesia might be the strongest opponent for any approaches or policies that related with adjustment of the non-interference doctrine. Indonesia, along with other Member States, except the Philippines, opposed this proposal. Indonesia quickly responded through its then Foreign Minister, Ali Alatas, who stated:

The principle of non-interference is a very basic principle... [W]e can talk about certain problems like transnational crimes, but if you start talking [about] how a country must run affairs like... democratizing, or... human rights, then you are getting into trouble.<sup>119</sup>

Indonesia was very clear with its opposition to Surin’s “flexible engagement.” Subsequently, as a compromise to Surin Pitsuwan’s proposal, Ali Alatas put forth the term “enhanced cooperation,”<sup>120</sup> which was adopted as a new ASEAN’s policy instruments.

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<sup>117</sup> Christie and Roy, 95.

<sup>118</sup> Acharya, “Whose Ideas Matter,” 129.

<sup>119</sup> Stephen Powell, “ASEAN Debate on Democracy, Hour Hots Up,” *Reuters*, 26 July 1998.

<sup>120</sup> Erik Martinez Kuhonta, “Walking a Tightrope: Democracy versus Sovereignty in ASEAN’s Illiberal Peace,” *The Pacific Review*, Vol. 19, No. 3 (Routledge: Sept., 2006), 348.

However, in 2001, Ali Alatas indicated a different attitude towards the principle of non-interference stated that: “on such issue, we should be more flexible and agree that we should not stand on the strict non-interference principle.”<sup>121</sup> Indonesia’s democratic transformation, new leadership, and the beginning of recovery process from the crisis mostly influenced the change of this approach. Indonesia was also more willing to play a bigger role within ASEAN. Then, the new Indonesian government saw the need to build a new source of legitimacy to promote and protect human rights in the region. Ali Alatas later reaffirmed his support for this matter in the AFP article “ASEAN Must Reinvent Itself: Loosen Non-Interference Policy,” in January 2004.

#### The Period of 1999-2005

The sustained contribution of the Working Group for an ASEAN Human Rights Mechanism produced substantive results in 2001. The pace for reform quickened and more concrete proposals were tabled that year onwards when the four national human rights commissions in ASEAN – Indonesia, Malaysia, the Philippines, and Thailand – cooperated with their foreign ministries and the Working Group hosted the annual conferences to discuss the ways in which an ASEAN human rights mechanism could be set up.<sup>122</sup> Previously, in 2000, the

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<sup>121</sup> Ali Alatas, “ASEAN Plus Three: Equals Peace and Prosperity” (paper presented at the 2001 Regional Outlook Forum organized by Institute of Southeast Asian Studies-ISEAS, Singapore, January 5, 2001).

<sup>122</sup> Hsien-Li, “The ASEAN Intergovernmental Commission,” 168.

Working Group submitted a Draft Agreement for the establishment of the ASEAN Human Rights Commission to ASEAN senior officials.<sup>123</sup>

The First Workshop for an ASEAN Regional Mechanism on Human Rights was held in Jakarta in July 2001, organized and co-hosted by the Department of Foreign Affairs of the Republic of Indonesia, the Indonesian National Human Rights Commission (KOMNAS HAM) and the Working Group for an ASEAN Human Rights Mechanism.<sup>124</sup> Participants of the Workshop were consisted of National Human Rights Commission, NGOs, scholars, and government officials. The informal nature of the Workshop has provided frank and friendly atmosphere and encouraged participants to enthusiastically taking part in the exchange of views and discussions.<sup>125</sup>

The Workshop proposed a number of ambitious options for an ASEAN mechanism on human rights, namely:

- i. Establishment of an ASEAN Human Rights Commission;
- ii. Establishment of an ASEAN Human Rights Commission and an ASEAN Human Rights Court;
- iii. Establishment of an ASEAN Human Rights Court;

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<sup>123</sup> Working Group for an ASEAN Human Rights Mechanism, "The Promise of an ASEAN Human Rights Mechanism," available from <http://www.aseanhrmech.org/aboutus.html> (accessed October 7, 2011).

<sup>124</sup> Ibid., "1<sup>st</sup> Workshop for an ASEAN Human Rights Mechanism," available from <http://www.aseanhrmech.org/conferences/1st-workshop-for-asean-human-rights.html> (accessed October 7, 2011).

<sup>125</sup> Ibid.



- iv. Establishment of an ASEAN Human Rights Commission and an ASEAN Human Rights Committee of Ministers or Assembly of Head of Governments;
- v. Establishment of an ASEAN Human Rights Commission, an ASEAN Human Rights Court and an ASEAN Human Rights Committee of Ministers or Assembly of Head of Governments;
- vi. Establishment of National Human Rights Commissions and Concretization of their network;
- vii. Promotion of regional human rights activities.<sup>126</sup>

The results of the Jakarta Workshop were proven to be “too strong” for ASEAN’s conventional position on human rights. Therefore, at the second Workshop in June 2002 in Manila, the Philippines, the Working Group followed a more step-by-step approach. The Manila Workshop then recognized that it could take time to establish an ASEAN Human Rights Commission with an appropriate mechanism for ASEAN in the short or medium term, and suggested that the process should be continued with a step-by-step approach. It was also suggested that a multi-track approach be pursued through interim arrangements and alternative courses of action, all of which should lead towards the eventual establishment of an ASEAN human rights mechanism.<sup>127</sup> At the same time with the Workshop, the 9<sup>th</sup> ASEAN-ISIS colloquium on human rights was also held in Manila.

A month after the Manila Workshop, the ministers made a statement in the Joint Communiqué of the 35<sup>th</sup> AMM in Bandar Seri Begawan and recalled the decision “to consider

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<sup>126</sup> Ibid.

<sup>127</sup> Ibid., “Summary of Proceedings- Second Workshop for an ASEAN Regional Mechanism on Human Rights,” Manila, 14-15 June 2002, available from <http://www.aseanhrmech.org/conferences/index.html> (accessed October 9, 2011).

the establishment of an appropriate mechanism on human rights,” while also noted the 9<sup>th</sup> ASEAN-ISIS colloquium on human rights.<sup>128</sup> This was another official acknowledgment by ASEAN about the significance of exchanging views, continuing dialogue, and realizing the idea of an ASEAN human rights mechanism.

In Phnom Penh, June 2003, at the ASEAN Senior Officials Meeting (SOM), the Working Group submitted the Plan of Action (POA) of an ASEAN Human Rights Mechanism. This POA is a product of the third Workshop in Thailand. The working Group agreed to follow-up on its existing efforts, and a confidence building measure and a step-by-step process will be continuously undertaken while making references to expressed initiatives in previous joint communiqués.<sup>129</sup>

The 2004 Workshop (the Fourth Workshop) was convened in Indonesia in June 2004. In this Workshop, the participants delivered the importance to respect for regional human rights as an important element of the ASEAN Security Community (ASC).<sup>130</sup> Marty Natalegawa, then Director General for ASEAN Affairs for the Department of Foreign Affairs, Indonesia, stressed the ASEAN region’s need for an ASEAN Security Community and the necessity of promoting

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<sup>128</sup> The Official Website of ASEAN, “Joint Communiqué of the 35<sup>th</sup> ASEAN Foreign Ministers Meeting” Bandar Seri Begawan, 29-30 July 2002, paragraph 32, available from <http://www.aseansec.org/4070.htm> (accessed October 9, 2011).

<sup>129</sup> Working Group for an ASEAN Human Rights Mechanism, “Working Group Submits POA to ASEAN,” available from <http://www.aseanhrmech.org/conferences/working-group-submits-poa-to-asean.html> (accessed October 9, 2011).

<sup>130</sup> The Bali Concord II, October 2003, mapped out the creation of three pillars for an ASEAN Community: an ASEAN Security Community (ASC), and ASEAN Economic Community (AEC) and an ASEAN Socio-Cultural Community (ASCC), to give a coherent construction to the ASEAN Vision 2020.

and protecting human rights as two concerns that are intertwined and inseparable.<sup>131</sup> The Secretary General of ASEAN, Ong Keng Yong, explained that the promotion of human rights is not purely a political or security issue, and that ASEAN sees human rights as a multifaceted and complex issue comprising of five interrelated groups of rights, namely civil, political, economic, social and cultural rights.<sup>132</sup> What was notable in the 2004 Workshop was that in paragraph 29 of the Summary of Proceedings, the participants put their long-term recommendations to the governments to consider drafting of an ASEAN charter, which contains provisions on the rights and obligations of people.

In 2004, ASEAN needed a successor action plan for the Hanoi Plan of Action (HPA) to continue with the goal of implementing the ASEAN Vision 2020 and guide further progress towards this goal. In Vientiane, Laos, in November 2004 at the 10<sup>th</sup> ASEAN Summit, the Heads of States and Governments of ASEAN adopted the Vientiane Action Program (VAP) with its implementation period of 2004-2010. The VAP was considered as major turning point towards the establishment of regional human rights mechanism. As briefly mentioned in Chapter 1, the ASEAN leaders in the previous year (2003) have agreed to establish the three communities of ASEAN (Security, Economic, and Socio-Cultural) stated in the Bali Concord II. The declaration of Bali Concord II elaborated the themes of ASEAN Vision 2020 and set concrete milestones to

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<sup>131</sup> Working Group for an ASEAN Human Rights Mechanism, “Summary of Proceedings- Fourth Workshop for an ASEAN Regional Mechanism on Human Rights,” Jakarta, 17-18 June 2004, available from <http://www.aseanhrmech.org/conferences/fourth-workshop-on-human-rights.html> (accessed October 9, 2011).

<sup>132</sup> Ibid.

aim for a comprehensive ASEAN Community, founded in the three pillars. However, the theme of human rights was not included in any of the pillars. Based on the three pillars, the VAP later announced the importance of human rights by placing the issue within the political development section of the ASC. This is specifically shown in Article 1.1.ii, which stated that one of the strategies for political development was to “promote human rights and obligations.”

The VAP elaborated the program areas and measures of promoting human rights as follows:

1.1.4.1 Completion of a stock-taking of existing human rights mechanism and equivalent bodies, including sectoral bodies promoting the rights of women and children;

1.1.4.2 Formulation and adoption of MOU to establish network among existing human rights mechanisms;

1.1.4.3 Formulation of work program of the network;

1.1.4.4 Promote education and public awareness on human rights;

1.1.4.5 Establish a network of cooperation among existing human rights mechanisms;

1.1.4.6 Elaboration of an ASEAN instrument on the protection and promotion of the rights of migrant workers;

1.1.4.7 Establishment of an ASEAN commission on the promotion and protection of the rights of women and children. (Vientiane Action Program, Annex I, 2004)

The VAP was also an instrument to unify and cross-link the strategies and goals of the three pillars of the ASEAN Community.<sup>133</sup> One of the strategies for political development in the VAP is to promote human rights and obligations. As follow-up of the VAP, the Working Group

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<sup>133</sup> The Official Website of ASEAN, “Vientiane Action Program 2004-2010,” available from <http://www.aseansec.org/20136.htm> (accessed October 13, 2011).

for an ASEAN Human Rights Mechanism engaged the ASEAN Senior Officials on the implementation of the VAP at a meeting in Vientiane, in July 2005.<sup>134</sup> The Working Group questioned about the progress of the implementation of the VAP and the actual timeline for its implementation.

ASEAN officials commend the effort and gave the Working Group the opportunity to provide its expertise and services toward the implementation of the VAP's human rights provision, in particular, the establishment of an ASEAN Commission Promoting and Protecting the Rights of Women and Children, elaboration of an instrument that promotes the rights of migrant workers, the promotion of education, and public awareness on human rights, and networking among existing national human rights institutions.<sup>135</sup> The Working Group then started convening workshops, roundtables, and meetings about migrant workers' rights, women and children's rights, education on human rights, and networking among local human rights institutions. In December 2005 in Bali, these concerns and issues were discussed at the Roundtable Discussion on the ASEAN Human Rights mechanism, co-organized and co-hosted by the Indonesian Department of Foreign Affairs and the Working Group.

The proponents of regional human rights mechanism observe momentous statements on human rights at the 11<sup>th</sup> ASEAN Summit in Malaysia, December 2005. Among others, the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter declares that the ASEAN

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<sup>134</sup> Working Group for an ASEAN Human Rights Mechanism, "Working Group and ASEAN to Work Together to Promote Human Rights," available <http://www.aseanhrmech.org/news/work-together-to-promote-human-rights.html> (accessed October 13, 2011).

<sup>135</sup> Ibid.

Charter will reaffirm principles, goals and ideals, which includes ‘Promotion of democracy, human rights and obligations, transparency and good governance and strengthening democratic institutions.’<sup>136</sup> ASEAN also agrees to establish an Eminent Persons Group (EPG) with the mandate to examine and provide practical recommendations for the ASEAN Charter.

#### The Period of 2006- the Establishment of AICHR (2009)

The human rights mechanism became a major topic of discussion within the Eminent Persons Group (EPG) members when they began drafting the ASEAN Charter. The EPG report displayed significant emphasis on human rights along with its recommendation for ASEAN member states to improve the “ASEAN Way” and “calibrate their traditional approach of non-interference in areas where the common interest dictates closer cooperation.”<sup>137</sup> The EPG report also reminded ASEAN on its well-being and future that are more intertwined owing to various crises such as the Asian financial crisis, the SARS epidemic and the Asian tsunami disaster in 2004. Among the ten members of the EPG, the EPG Chair Musa Hitam (Malaysia), Ali Alatas (Indonesia), Fidel Ramos (the Philippines), and S. Jayakumar (Singapore) were the most articulate and expressive members who “wanted a Charter that would fundamentally change the constitutive norms of absolute sovereignty and non-interference that underpin the ASEAN Way through a strengthening of democratic values; respect for human rights, fundamental freedoms and rule of law; rejection of unconstitutional and undemocratic changes of government; and

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<sup>136</sup> The Official Website of ASEAN, “Kuala Lumpur Declaration on the Establishment of the ASEAN Charter,” Kuala Lumpur, 12 December 2005, available from <http://www.asean.org/18030.htm> (accessed October 13, 2011).

<sup>137</sup> Ibid., “Report of the Eminent Persons Group (EPG).”

modification of the consensus-based decision-making process.”<sup>138</sup> These actors also sought for a charter that “can be thought of as a coming-of-age, conferring legal personality on ASEAN and binding member states to an agreed set of objectives,”<sup>139</sup> so that it could be registered with the Secretariat of the United Nations.<sup>140</sup>

In December 2006, the EPG recognized the establishment of an ASEAN human rights mechanism as a worthy idea that should be pursued and placed it in the report of the EPG on the ASEAN Charter, which was submitted to the ASEAN Summit in Manila. Paragraph 47 of the report states that the EPG believes that ASEAN should continue to develop democracy, promote good governance and uphold human rights and the rule of law. In addition, the EPG discussed the possibility of setting up of an ASEAN human rights mechanism, and noted that this worthy idea should be pursued further, especially in clarifying how such a regional mechanism can contribute to ensuring the respect for and protection of human rights of every individual in every Member State.<sup>141</sup> The report was also incorporated the notion of respect for and protection and promotion of human rights and fundamental freedoms as one of the principles to be integrated in the ASEAN Charter. This includes self-determination and the right to development, without distinction as to race, creed, gender, or ethnicity.

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<sup>138</sup> Heng, 18.

<sup>139</sup> Kelsall, 3.

<sup>140</sup> Pursuant to Article 102, Paragraph 1 of the UN Charter.

<sup>141</sup> The Official Website of ASEAN, “Report of the Eminent Persons Group (EPG).”

The decision by ASEAN Leaders to create an Eminent Persons Group (EPG) in order to provide bold and visionary ideas for inclusion in the ASEAN Charter was another opportunity for human rights advocates in the region to work with the EPG and express their visions to the group. The Working Group identifies the potential of the ASEAN Charter as a window of opportunity for human rights concerns and the important role of the EPG for the ASEAN Charter to reflect the visionary intent of the Kuala Lumpur Declaration.<sup>142</sup>

The 12<sup>th</sup> ASEAN Summit in Cebu, Philippines, in January 2007 was hailed as a success when ASEAN Leaders endorsed the Report of the EPG on the ASEAN Charter<sup>143</sup> and that the High Level Task Force (HLTF)<sup>144</sup> should commence the drafting of the ASEAN Charter based on directions at the previous summits, together with the EPG recommendations. During its mission, the HLTF believes it is imperative to continue its consultations and dialogues with relevant groups such as civil society and the National Human Rights Institutions to assist the HLTF draft the relevant provisions and the terms of reference. In June 2007, in Bali, Indonesia, at a meeting with the HLTF, the National Human Rights Institutions of Indonesia, Malaysia,

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<sup>142</sup> Working Group for an ASEAN Human Rights Mechanism, “Summary of Proceedings- Fifth Workshop on an ASEAN Regional Mechanism on Human Rights,” Kuala Lumpur, Malaysia, 29-30 June 2006, available from <http://www.aseanhrmech.org/conferences/index.html> (accessed October 16, 2011).

<sup>143</sup> Officially written in the “Cebu Declaration on the Blueprint of the ASEAN Charter,” 13 January 2007.

<sup>144</sup> The High Level Task Force (HLTF) was established to carry out the drafting of the ASEAN Charter based on the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter and the recommendations of the EPG.



Thailand, and the Philippines submitted to the HLTF a position paper on the possible human rights aspects of the ASEAN Charter.<sup>145</sup>

However, as widely known, the drafting of the ASEAN Charter was filled with tension. At the 40<sup>th</sup> AMM in Manila, August 2007, the six older members of ASEAN (Indonesia, Malaysia, Singapore, Thailand, the Philippines, Brunei Darussalam) had to persuade Myanmar, Laos, Cambodia, and Vietnam to accept the deal in principle.<sup>146</sup> Myanmar had opposed the idea, while the three others had asked for more time.<sup>147</sup> Fortunately, the differences were essentially cleared, although the proposed term of “human rights commission” was being diluted to merely a “human rights body” in the final document of the charter. The Chairman of the 40<sup>th</sup> AMM, the Philippines Foreign Affairs Secretary, in his statement announced that among the issues on which there was consensus among the ASEAN Foreign Ministers is the inclusion of a provision in the ASEAN Charter that mandates the creation of a human rights body.<sup>148</sup> He added that the Ministers have instructed the HLTF to include the provision in the draft Charter.

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<sup>145</sup> Working Group for an ASEAN Human Rights Mechanism, “HLTF Consults with ASEAN National Human Rights Institutions and the Working Group,” available from <http://www.aseanhrmech.org/news/hltf-consults-national-human-rights.html> (accessed October 16, 2011).

<sup>146</sup> Manny Mogato, “Myanmar Withdraws Objections to SE Asia Rights Body,” *Reuters*, 30 July 2007, available from <http://www.reuters.com/article/2007/07/30/us-asean-idUSSP28331120070730> (accessed November 5, 2011).

<sup>147</sup> *Ibid.*

<sup>148</sup> The Official Website of ASEAN, “Statement by His Excellency Alberto G. Romulo Philippines Foreign Affairs Secretary and Chairman of the 40<sup>th</sup> ASEAN Ministerial Meeting,” available from <http://www.asean.org/22099.htm> (accessed November 5, 2011).

In November 2007, at the 13<sup>th</sup> ASEAN Summit in Singapore, the ASEAN Charter was signed and Article 14 of the Charter stated that ASEAN should establish an ASEAN human rights body and the body should operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting. At the ASEAN Foreign Ministers' Retreat in Singapore in February 2008, the Ministers agreed to establish a High Level Panel (HLP) on drafting the terms of reference of the ASEAN human rights body. The ASEAN Charter entered into force on December 15, 2008, following its ratification by all ASEAN member countries. In the year between the signing and full ratification of the Charter, ASEAN went on to bear with further embarrassment of Myanmar's lack of commitment to democracy and the dreadful approach taken by the military regime, which ASEAN was unable to do much about. Indonesia and the Philippines stridently persisted in wanting to boycott the ratification of the ASEAN Charter until democracy and human rights were adequately safeguarded, though both states finally ratified the Charter,<sup>149</sup> since they saw that the cause would be overly risky if they could not have the other members on board.

Following the formal endorsement of the ASEAN Charter by all member states, the charter with its legal entity seeks to establish an ASEAN Community with the three ASEAN pillars of Security, Economic, and Socio-Cultural.<sup>150</sup> With the ASEAN Charter and its legal

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<sup>149</sup> Tan Hsien-Li, "The ASEAN Human Rights Body: Incorporating Forgotten Promises for Policy Coherence and Efficacy" *Singapore Year Book of International Law and Contributors*, vol.12 (2008), 240.

<sup>150</sup> ASEAN Charter, Preamble.

personality, the member countries would be more obliged to respond to the obligations and commitments they have signed on under the treaty.

At the 7<sup>th</sup> Workshop on the ASEAN Regional Mechanism on Human Rights in Singapore, June 2008, the Second Minister for Foreign Affairs of Singapore, Raymond Lim, delivered his keynote address before the participants and noted that the task of the HLP will start an important ASEAN process, and suggested three broad criteria to move forward.<sup>151</sup> First, any new ASEAN institution must have the support of all ten-member states, thus, it must recognize the complex history of the region and the diversity of political systems in ASEAN, with policies that respect ASEAN's established traditions and procedures. Second, Lim stated that advancing the human rights agenda within ASEAN would best be achieved through an evolutionary approach. Lim added, while universality is an ideal that we must aspire to, the interpretation of most rights is still essentially contested concepts. However, ASEAN has clearly moved ahead and the perceptions and policies towards human rights will continue to develop over time. Lim argued that too much ambition could as easily scuttle the development as too little. Finally, Lim suggested that ASEAN member countries must not set artificial deadlines for the creation of a new institution or create an institution simply to be able to say that they have established one. ASEAN needed to ensure that the ASEAN human rights body is credible and meaningful to its members with a realistic time frame. This research believes that Lim's statements were relatively strong and cautious, in order to adapt with both the condition within ASEAN at that time and

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<sup>151</sup> Raymond Lim, "Keynote Address by Second Minister for Foreign Affairs of Singapore at the 7<sup>th</sup> Workshop on the ASEAN Regional Mechanism on Human Rights," Singapore, 12 June 2008, available from <http://asc.iseas.edu.sg/papers-and-staments> (accessed November 5, 2011).

civil society proponents on human rights, who have been enthusiastically thrust their visions and arguments for regional human rights mechanism.

The HLP submitted the Terms of Reference for the ASEAN human rights body to ASEAN Foreign Ministers at the 43rd AMM in Phuket, Thailand, July 2009. The ministers commended the HLP for completing its task and endorsed the Terms of Reference, and agreed to name the body the ASEAN Intergovernmental Commission on Human Rights.<sup>152</sup> The ministers then recommended to the ASEAN Leaders to launch the ASEAN Intergovernmental Commission on Human Rights (AICHR) at the 15<sup>th</sup> ASEAN Summit in October 2009.

The inauguration of the AICHR in Cha-Am Hua Hin, Thailand, on 23 October 2009, marks another significant milestone in the evolution of ASEAN. Despite an immediate concerns by the public on the effectiveness of the commission, having the Heads of State and Government of ASEAN adopted the Cha-am Hua Hin Declaration was undeniably a significant achievement for the proponents of human rights in the region who have been rigorously working for their goal of having a human rights body for ASEAN people. The Declaration also welcomes the representatives to the AICHR, appointed by ASEAN Member States.

### Conclusion

Almost every ASEAN's scholars acknowledge that ASEAN Member States adhere just about faithfully to the "ASEAN Way," and that for decades they have been practicing the principle of non-interference in the internal affairs of other Member States. With this close guard

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<sup>152</sup> The Official Website of ASEAN, "Joint Communiqué of the 42<sup>nd</sup> ASEAN Foreign Ministers Meeting: Acting Together to Cope with Global Challenges," Phuket, Thailand, 20 July 2009, available from <http://www.asean.org/22660.htm> (accessed November 5, 2011).

over sovereignty, it is no surprise that the numerous calls for an establishment of a regional system of human rights fell on deaf ears for many years even though its members were members of various major human rights.<sup>153</sup> The agenda of human rights was largely nonexistent in ASEAN diplomacy until the 1990s, when ASEAN Member States have started to address this sensitive issue, particularly with the region's human rights civil societies and advocates. This Chapter supports the way of the Working Group for an ASEAN Human Rights Mechanism in engaging ASEAN, through softening its approach and particularly following the step-by-step method. ASEAN tends to prefer the approach, and the effort by the Working Group consequently led both parties to equal "comfort zones" in discussing human rights issue. Moreover, by promoting a less adversarial form of an ASEAN Human Rights Commission has enabled the group to influence ASEAN human rights initiatives to a large extent.<sup>154</sup>

The official milestone for ASEAN's human rights mechanism originated in 1993 at the Bangkok Conference and subsequently the 1993 ASEAN Ministerial Meeting. The breakthrough was likely due to the initiative proposed by the Philippines and Thailand as countries that experienced domestic change and democratic movement in 1986 and 1992, respectively. Especially the Philippines that inspired by its People Power's movement, the downfall of Marcos and its democratic re-birth in general. In this regard, ASEAN recognized its commitment to respect for human rights and fundamental freedoms as set out in the Vienna Declaration, and agreed to also consider the establishment of a regional mechanism on human rights. In addition,

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<sup>153</sup> Hsien-Li, "The ASEAN Intergovernmental Commission," 17.

<sup>154</sup> Ibid., 175.

the ASEAN Charter with its Article 14 signals progressive codification of ASEAN human rights norm. Nevertheless, it was certainly not an easy task for ASEAN to execute. It took more than fifteen years of intense discussion, debate, and negotiation after ASEAN Member States decided to establish the AICHR. This development suggests that, similar to other norms, both ASEAN non-interference principle and human rights norms have evolved over time. It also indicates the fact that ASEAN has moved to another level where its members are ready to examine and discuss sensitive or uncomfortable issues as human rights. The way it perceives human rights as a universal value, while bearing in mind national and regional cultural and religious backgrounds, has proven ASEAN's ability to adopt international norm while at the same time sustaining its local values.

It must be well noted that not only because of the political changes or democratic transitions that encourage the new thinking of human rights in most of ASEAN Leaders, however it was also the rise of National Human Rights Institutions and the active involvement of regional civil society that contribute to the diffusion of ASEAN human rights norm. Many of the initiatives for the change of human rights norm in the region has been provided by the advocacy of these groups who have developed a strong sense of commitment to human rights. They have also performed as crucial actors in the adoption of human rights norm. These factors have had significant impact on the process of creating a regional human rights body or the AICHR.

Clearly, efforts to promote human rights cannot be exempt from the domestic political system or development process of democracy in Member States, especially for Indonesia, Thailand, the Philippines, and Malaysia. Their democratic transitions along with the Asian

financial crisis in 1997, and other significant events remind these members that their well being and future are now more intertwined, which increase the need to improve and move beyond the “ASEAN Way.”<sup>155</sup> As a result, these countries have been the most receptive and supportive of the changes of human rights norm within the region.<sup>156</sup>

The Chapter clearly demonstrated how internal pressure and local actors, both governments and CSOs, played a key role in the process of moving towards an appropriate ASEAN human rights mechanism.

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<sup>155</sup> The Official Website of ASEAN, “Report of the Eminent Persons Group (EPG).”

<sup>156</sup> See also Kraft.

## CHAPTER 4

### THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS (NHRIs) and HUMAN RIGHTS CIVIL SOCIETY ORGANIZATIONS (CSOs)

In recent decades there has been a worldwide increase in the creation and/ or consolidation of what are commonly known as National Human Rights Institutions (NHRIs), who can play a crucial role in promoting and protecting human rights in a wide variety of ways.<sup>157</sup> Currently, there are four existing NHRIs in ASEAN (Indonesia, Malaysia, the Philippines, Thailand). They play an important role in leveraging support among ASEAN governments to put the human rights provisions in the various declarations into concrete action.<sup>158</sup>

In the ASEAN context, Non-governmental Organizations (NGOs) have been primarily responsible for lobbying for an ASEAN human rights mechanism, as part of the push for political liberalization and respect for human rights.<sup>159</sup> Sign of increasing involvement between Civil Society Organizations (CSOs) and ASEAN were seen during the drafting process of the ASEAN Charter and the TOR of AICHR.

This research examines the engagement of four NHRIs and CSOs in the region (Forum Asia, SAPA) with ASEAN, and it argues that NHRIs and CSOs have been making significant contributions and they will remain as major actors with their active roles in developing and strengthening the human rights mechanism in ASEAN. This study also suggests that NHRIs and

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<sup>157</sup> Anne Smith, “The Unique Position of National Human Rights Institutions: A Mixed Blessing?” *Human Rights Quarterly*, 28 (The Johns Hopkins University Press, 2006), 905.

<sup>158</sup> The ASEAN NHRI Forum, available from <http://www.aseannhriforum.org/en/about-us.html> (accessed February 10, 2012).

<sup>159</sup> Thio, 73.



CSOs should maintain close contact with each other and that they can be an ideal partners to approach the ASEAN members for a better AICHR in the future. For the purpose of this study, the term ‘CSOs’ will be synonymously used with ‘NGOs.’

National Human Rights Institutions (NHRIs): Indonesia, Malaysia,  
the Philippines, and Thailand

NHRIs status is established by constitutional, legislative or other statutory authority, which define the institutions’ precise functions and power that later determine the effective levels of independence of the NHRIs.<sup>160</sup> The ASEAN representatives who participated at the 1993 Bangkok Conference and the World Conference of Human Rights in Vienna agreed to encourage governments to create and strengthen the NHRI. Paragraph 24 of the Bangkok Declaration states that the participants:

Welcome the important role played by national institutions in the genuine and constructive promotion of human rights, and believe that the conceptualization and eventual establishment of such institutions are best left for the states to decide.<sup>161</sup>

Along the same lines, the Vienna Declaration and Program of Action reaffirms:

The important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights... and encourages the establishment and strengthening of national institutions, having regard to the "Principles relating to the status of national institutions" and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level.<sup>162</sup>

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<sup>160</sup> Eldridge, 84.

<sup>161</sup> The Bangkok Declaration, paragraph 24, available from <http://daccess-ods.un.org/TMP/1536484.html> (accessed February 10, 2012).

<sup>162</sup> Vienna Declaration and Program of Action, paragraph I. 36, available from <http://www.unhcr.ch/huridocda/huridoca.nsf/%28symbol%29/a.conf.157.23.en> (accessed February 10, 2012).

The TOR of AICHR then confirms the significance of national institutions related with human rights as indicated in Article 4.9:

To consult, as may be appropriate, with other national, regional and international institutions and entities concerned with the promotion and protection of human rights.<sup>163</sup>

It must be noted that before the above agreements on NHRIs, the United Nations in 1991, at a meeting in Paris with representatives of NHRIs from around the world, set out the standard guidelines required by NHRIs to be considered credible and to operate effectively, namely the Paris Principles.<sup>164</sup>

In May 1987, the Philippines celebrated the formation of the Commission of Human Rights of the Philippines (CHRP), after the adoption of the Philippines Constitution of the creation of an independent office of human rights body.<sup>165</sup> It makes the Philippines as the first country in Asia to create a national human rights commission. Section 18 of Article XIII in its Constitution declares the commission powers and functions to “investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights,” and to “provide appropriate legal measures for the protection of human rights” by using “its operational guidelines and rules of procedure, and cite contempt for violations thereof in accordance with the Rules of Court.”<sup>166</sup> The commission can also “recommend to the Congress

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<sup>163</sup> The Official Website of ASEAN, “ASEAN Intergovernmental Commission on Human Rights,” Article 4.9.

<sup>164</sup> See “The Paris Principle” adopted by UN General Assembly in 1993, available from <http://www2.ohchr.org/english/law/parisprinciples.htm> (accessed February 10, 2012).

<sup>165</sup> The ASEAN NHRI Forum, “Philippines,” available from <http://www.aseannhriforum.org/en/about-us/philippines.html> (accessed February 10, 2012). See also CHRP Website: <http://www.chr.gov.ph>.

<sup>166</sup> Commission of Human Rights of the Philippines, available from [http://www.chr.gov.ph/MAIN%20PAGES/about%20us/01consti\\_creation.htm](http://www.chr.gov.ph/MAIN%20PAGES/about%20us/01consti_creation.htm) (accessed February 10, 2012).

effective measure to promote human rights and to provide for compensation to victims of violations of human rights, or their families,” as well as to “monitor the Philippine Government’s compliance with international treaty of human rights.”<sup>167</sup> Clearly, the power granted by the Constitution includes protection of human rights and that the CHRP’s ability to investigate human rights violations on its own initiative or complaints by other parties is one of its key powers.

The Indonesian Human Rights National Commission (Komnas HAM) was established in June 1993 based on the Presidential Decree No. 50 on the Indonesia Human Rights National Commission.<sup>168</sup> Komnas HAM was established against the background of the UN’s 1993 global review of human rights,<sup>169</sup> which resulted in the World Conference on Human Rights in Vienna in 1993. Later, the legal status of Komnas HAM was subsequently strengthened through the Act no. 39 Year 1999 on Human Rights, which defined Komnas HAM is an “independent institutions, of an equal level to other state institutions and which holds the functions of carrying out research and study, education, monitoring and mediation of human rights.”<sup>170</sup> With stronger legal bases, Komnas HAM should optimally perform its functions in order to accomplish its aims stated in the Act No.39/1999: a) to develop conditions conducive to the implementation of human rights in accordance with Pancasila, the 1945 Constitution, the United Nations Charter and the Declaration of Human Rights; and b) to enhance the protection and upholding of human

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<sup>167</sup> Ibid.

<sup>168</sup> The ASEAN NHRI Forum, “Indonesia,” available from <http://www.aseannhriforum.org/en/about-us/indonesia.html> (accessed February 10, 2012). See also Komnas HAM Website: <http://www.komnasham.go.id>.

<sup>169</sup> Eldridge, 145.

<sup>170</sup> The ASEAN NHRI Forum, “Indonesia.”

rights for the personal development of Indonesian as human beings and their ability to participate in various aspects of life.<sup>171</sup> Komnas HAM power has also increased with the enactment of the Act No. 26 Year 2000 of Human Rights Court, which appointed Komnas HAM as the only institution to have the mandate to carry out inquiries of gross human rights violations that also consist of genocide and crimes against humanity.<sup>172</sup> The period of membership of 2007-2012 set out the Sub-Commission for Komnas HAM based on the 1945 Constitution, namely: Sub-Commission for Research and Study, Education and Public Awareness on Human Rights, Monitoring, and Mediation. Significantly, the Monitoring Sub-Commission has received many complaints by letter and in person since it provides individuals or group with a forum to ventilate their grievances.<sup>173</sup> The commission operates in an overwhelmingly difficult context, but has substantially reversed initial negative expectations.<sup>174</sup>

Thailand's 1997 Constitution established the National Human Rights Commission of Thailand (NHRCT) with a specific mandate to promote and protect the rights for all citizens as set out in the Constitution and in accordance with the country's international human rights.<sup>175</sup> However, the commission did not start functioning until July 2001, after the enactment of the National Human Rights Commission Act in 1999.<sup>176</sup> The NHRCT is mainly a response to

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<sup>171</sup> Ibid.

<sup>172</sup> Ibid.

<sup>173</sup> Thio, 64.

<sup>174</sup> Eldridge, 147.

<sup>175</sup> Office of the National Human Rights Commission of Thailand, available from <http://www.nhrc.or.th/aboutus.php> (accessed February 10, 2012).

<sup>176</sup> Ibid.

domestic crisis of the 1992 pro-democracy protests. The Act's mandate in constraining the power of NHRCT to investigate has created complex debate about the credibility of the commission.

The Human Rights Commission of Malaysia (SUHAKAM) was established by Parliament under the Human Rights Commission of Malaysia Act 1999, Act 597, with the inaugural meeting in April 2000.<sup>177</sup> The impetus for Malaysia to finally consider the setting up of a national human rights institution came from the 1993 World Conference on Human Rights in Vienna where governments, including Malaysia, agreed that human rights are universal and indivisible, and they recognized the importance of setting up national human rights institutions.<sup>178</sup> The functions of SUHAKAM are “to promote awareness of and provide education relating to human rights,” “to advise and assist Government in formulating legislation and procedures and recommend the necessary measures to be taken,” “to recommend to the Government with regard to subscription or accession of treaties and other international instruments in the field of human rights,” as well as “to inquire into complaints regarding infringements of human rights.”<sup>179</sup> Meanwhile, the Act provides SUHAKAM with powers mainly to conduct research, advise the Government regarding complaints against them, and to study and verify any infringements of human rights. In comparison to previous NHRIs, and by considering its functions and powers, SUHAKAM is arguably has not achieved its independent status.

This thesis claims that despite many complexities and challenges in performing their missions, the four NHRIs have been contributing to the development of human rights promotion

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<sup>177</sup> The Official Portal of Human Rights Commission of Malaysia, available from <http://www.suhakam.org.my/info/profil> (accessed February 12, 2012).

<sup>178</sup> Ibid.

<sup>179</sup> Ibid.

and protection in the region, especially to the process of engaging ASEAN and their governments for the human rights mechanism, consequently the creation of AICHR. The study supports the idea of “NHRIs can act as a bridge by providing the practical link between the governing and the governed,<sup>180</sup> and that “promoting human rights by creating genuinely independent national bodies to document human rights violations would be less threatening to territorial sovereignty.”<sup>181</sup>

The Working Group for an ASEAN Human Rights Mechanism commends the four NHRIs on their active involvement and efforts to establish a human rights mechanism since 2001.<sup>182</sup> Realizing the need to build closer cooperation between them, the four NHRIs or “ASEAN Four” signed a Declaration of Cooperation in Bali, Indonesia in June 2007, and formally pledged to have a regional strategy for the protection and promotion of human rights in the region. They agreed on five thematic issues as their common concerns, namely:

- i. The implementation of economic, social, and cultural rights and right to development;
- ii. Enhancement of human rights education;
- iii. Human rights aspects of trafficking in persons especially women and children;
- iv. Protection of the human rights of migrants and migrant workers;
- v. The suppression of terrorism while respecting human rights.<sup>183</sup>

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<sup>180</sup> Smith, 909.

<sup>181</sup> Thio, 61.

<sup>182</sup> Working Group for an ASEAN Human Rights Mechanism, “National Human Rights Commission in ASEAN Pledge Support for ASEAN Human Rights Body,” available from <http://www.aseanhrmech.org/news/national-human-rights-commission-pledge.html> (accessed February 12, 2011).

<sup>183</sup> The ASEAN NHRI Forum, “Declaration of Cooperation,” available from <http://www.aseannhriforum.org/en/home/declarations.html> (accessed February 10, 2012)

The representatives of the four NHRIs declare in the Declaration: “the four NHRIs shall do whatever possibly to carry out jointly; either on bilateral or multilateral basis,” and that the “regional strategies for the promotion and protection of human rights shall be gradually developed within and among them.” In addition, the ASEAN Four decided to “advise their respective governments to take the necessary steps to establish an appropriate ASEAN human rights mechanism and/ or any organ in the ASEAN Charter.”

The ASEAN Four has been contributing to the ASEAN human rights mechanism, among others, by voicing its concerns and submitting a position paper on human rights aspects of the ASEAN Charter at the 3<sup>rd</sup> Consultation Meeting in Bali, Indonesia in June 2007. They called on the High Level Task Force (HLTF) on the Drafting of the ASEAN Charter to include the principles of respect for human rights and fundamental freedoms, provision of the importance of NHRIs in ASEAN, and the establishment of an ASEAN human rights mechanism.<sup>184</sup> The Four NHRIs have also submitted their vision of an ASEAN human rights body with a position paper on the TOR of the ASEAN human rights body in 2008, which later reaffirmed it by the second position paper in 2009, both at the consultation meeting with the High Level Panel (HLP).

In August 2009 at the 3<sup>rd</sup> Consultation Meeting with the HLP, the four NHRIs submitted its position paper concerning the political declaration of the AICHR. They “hope that over time the AICHR becomes an effective, credible, and accessible regional human rights commission,” and by reviewing the TOR of AICHR, they “see the needs for the AICHR to be further vested

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<sup>184</sup> See “Position Paper of the NHRIs on Human Rights Aspects of the ASEAN Charter,” available from <http://www.aseannhrforum.org/en/home/joint-statements.html?start=4> (accessed February 12, 2012).

with the necessary independence, effective protection mandate and powers.”<sup>185</sup> The NHRIs also see the need for an engagement between the AICHR, and AICHR with CSOs, thus, proposed the AICHR to institutionalize regular meetings among them. Currently, there has been ongoing work of AICHR to relate with CSOs.<sup>186</sup>

This thesis also considers one of the ASEAN Four’s main contributions when the NHRIs issued a Joint Statement in response to the human rights situation in Myanmar in 2007. They “express grave concerns over the precarious human rights situation in Myanmar,” and “condemn the use of violence and disproportionate force, including lethal weapons, against unarmed peaceful demonstrators, including Buddhist monks,” therefore strongly “urge all parties in Myanmar to exercise restraints and to strictly abide by peaceful means in the resolution of their issues, particularly for the government of Myanmar to absolutely refrain from the further use of disproportionate force and firearms against the demonstrators.”<sup>187</sup> Additionally, they urged the ASEAN governments to take urgent action and decided to pursue the issue with their respective governments. It is clear that by using the language of condemning and urging the government of Myanmar to take immediate action, the NHRIs show their impartial and neutral assessment towards one of the ASEAN member states.

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<sup>185</sup> The ASEAN NHRI Forum, “Position Paper Concerning the Political Declaration on the ASEAN Intergovernmental Commission on Human Rights (AICHR),” available from <http://www.aseannhriforum.org/en/home/joint-statements.html> (accessed February 12, 2012).

<sup>186</sup> At the Eight Meeting of the AICHR and the 3<sup>rd</sup> Meeting on the AHRD in March 2012, the AICHR had a discussion on the guidelines for engagement with stakeholders, including CSOs.

<sup>187</sup> The ASEAN NHRI Forum, “Joint Statement by the NHRIs in Association with the Provador of Timor Leste on Human Rights Situation in Myanmar,” available from <http://www.aseannhriforum.org/en/home/joint-statements.html?start=3> (accessed February 12, 2012).



In short, the works of the NHRIs, especially as a coalition of the ASEAN Four, have increasingly improved. In the future, it is important to encourage other ASEAN countries to set up their own NHRIs and improve the awareness and culture of human rights within the region.

The Role of Human Rights Civil Society Organizations (CSOs): Asian Forum  
for Human Rights and Development (Forum-Asia) and  
Solidarity for Asian People's Advocacy (SAPA)

Similar to the NHRIs, both the 1993 Bangkok Declaration and the Vienna Declaration and Program of Action also stated the importance of NGOs in the promotion of human rights and appreciate their contributions to increasing public awareness of human rights issue, thus, the cooperation and dialogue between governments and NGOs needs to be continued.<sup>188</sup> Within the ASEAN context, the TOR of AICHR supports this view, with article 4.8 stating the importance “to engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including civil society organizations...”

Chapter 3 of this thesis has mostly described the role of the Working Group for an ASEAN Human Rights Mechanism, which was formed by NGOs representatives, academe, and parliamentarians. The Working Group was the first human rights NGO from within the ASEAN region that proactively worked towards the establishment of an ASEAN human rights mechanism,<sup>189</sup> and although the process was particularly slow, the Working Group has given substantial influence in shaping the ASEAN vision of human rights.

This part will specifically address the role of Asian Forum for Human Rights and Development (Forum-Asia) and the Solidarity for Asian People's Advocacy (SAPA) in engaging

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<sup>188</sup> See “Bangkok Declaration,” paragraph 25 and “Vienna Declaration,” paragraph 38.

<sup>189</sup> Hsien-Li, “The ASEAN Intergovernmental Commission,” 167.

ASEAN to be more active and effective towards the growth of human rights in ASEAN. And by simultaneously examine Forum-Asia and SAPA, the study will indicate that both NGOs have been working together at various events and addressing similar concerns of ASEAN human rights mechanism.

Forum-Asia, founded in 1991 in Manila, is a membership based regional human rights organizations committed to the promotion and protection of all human rights including the right to development.<sup>190</sup> With its regional Secretariat based in Bangkok, Forum-Asia currently has 46 member organizations across Asia. It has an ASEAN Advocacy Program that aims to enhance the independence and effectiveness of the ASEAN human rights mechanisms through increased public participation.<sup>191</sup> The program objectives are:

- i. To enhance the effectiveness of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC);
- ii. To ensure that the ASEAN Human Rights Declaration is in compliance to international human rights law and standard;
- iii. To increase public awareness on the AICHR and ACWC;
- iv. To strengthen CSO engagement with ASEAN and ASEAN Human Rights Mechanism.<sup>192</sup>

Following its general commitment and objectives to enhance the effectiveness of human rights mechanism, Forum-Asia organized the 1<sup>st</sup> Regional Consultation on Cooperation between NHRIs and NGOs in Asia, held in Bangkok, in December 2006, which resulted with the

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<sup>190</sup> Asian Forum for Human Rights and Development (Forum-Asia), available from <http://www.forum-asia.org> (accessed February 25, 2011).

<sup>191</sup> Ibid., available from [http://www.forum-asia.org/?page\\_id=7536](http://www.forum-asia.org/?page_id=7536).

<sup>192</sup> Ibid.

establishment of the Asian NGO Network on Human Rights Institutions (ANNI).<sup>193</sup> ANNI is a network of Asian human rights NGOs and human rights defenders engaging with NHRIs in Asia, which aims to help establish and develop accountable, independent, effective, and transparent national human rights institutions in Asia.<sup>194</sup> Forum-Asia is the designated secretariat of ANNI.

SAPA was formally established at its first regional consultation in Bangkok, Thailand, in February 2006, and attended by more than 50 participants representing about 30 CSOs from the Asian region.<sup>195</sup> SAPA was born out of common concerns about how to enhance the effectiveness and impact of civil society advocacy by improving communication, cooperation and coordination among NGOs operating regionally, and currently, there are more than 100 CSOs as members of SAPA who share the common concerns.<sup>196</sup>

During the first meeting in 2006, the members decided to form the SAPA Working Group on ASEAN, with an initial motivation to engage with ASEAN on the Charter drafting process.<sup>197</sup> SAPA WG on ASEAN made three formal submissions to the Eminent Persons Group (EPG): on the Political Security Pillar (at the EPG consultation, Bali, April 2006), on the Economic Pillar (at the EPG consultation, Singapore, June 2006), and on the Socio-Cultural Pillar and Institutional Mechanism (at the meeting with Special Adviser to EPG Member for the

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<sup>193</sup> ANNI: Asian NGO Network on NHRIs, available from <http://nhriwatch.wordpress.com/2011/04/25/50/> (accessed February 25, 2012).

<sup>194</sup> Ibid.

<sup>195</sup> People's Agenda for Alternative Regionalism, available from [http://www.alternative-regionalisms.org/?page\\_id=57](http://www.alternative-regionalisms.org/?page_id=57) (accessed February 25, 2012).

<sup>196</sup> Ibid.

<sup>197</sup> The Official Website of Office of the High Commissioner for Human Rights (OHCHR), "ASEAN and Human Rights."

Philippines, Manila, November 2006).<sup>198</sup> The SAPA Working Group on ASEAN also made submissions to the High Level Task Force (HLTF) drafting the ASEAN Charter.

Along the same lines, Forum-Asia has also been voicing its concern on human rights to the HLTF, and that “it is vital that the wording in the Charter lays the foundations for the creation of a regional body that has the ability to improve the human rights situation on the ground in Southeast Asia.”<sup>199</sup> The Director for the ASEAN Socio-Cultural Community, MC Abad Jr., at the 3<sup>rd</sup> ASEAN Civil Society Conference in November 2007, “stressed the important role of civil society in ASEAN community building and called on civil society to invest in the process of building a regional governance institution that is inclusive, resilient and enlightened.”<sup>200</sup>

In order to bring further focus to its work on human rights, SAPA formed the Task Force on ASEAN and Human Rights (TF-AHR) under the SAPA Working Group on ASEAN, at the First Regional Consultation on ASEAN and Human Rights in Kuala Lumpur, in August 2007.<sup>201</sup> Since its establishment, SAPA TF-AHR has been actively initiated consultation processes and

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<sup>198</sup> Southeast Asian Committee for Advocacy (SEACA), “SAPA WG on ASEAN’s Analysis of the ASEAN Charter,” available from [http://seaca.net/viewArticle.php?aID=1029&sKey=&uID=&uType=&user\\_id=112](http://seaca.net/viewArticle.php?aID=1029&sKey=&uID=&uType=&user_id=112) (accessed February 25, 2012).

<sup>199</sup> See Forum-Asia’s letter to the HLTF, in Alliance for Reform and Democracy in Asia (ARDA), “Forum-Asia Urges High Level Task Force to Set ASEAN on a New Path,” available from [http://www.asiademocracy.org/content\\_view.php?section\\_id=1&content\\_id=740](http://www.asiademocracy.org/content_view.php?section_id=1&content_id=740) (accessed February 25, 2012).

<sup>200</sup> Southeast Asian Committee for Advocacy (SEACA), “Civil Society Role is Key in Transforming ASEAN,” available from [http://seaca.net/viewArticle.php?aID=1017&sKey=&uID=&uType=&user\\_id=112](http://seaca.net/viewArticle.php?aID=1017&sKey=&uID=&uType=&user_id=112) (accessed February 25, 2012).

<sup>201</sup> The Official Website of Office of the High Commissioner for Human Rights (OHCHR), “ASEAN and Human Rights.”

submissions in the process of developing an ASEAN human rights mechanism. In addition, SAPA TF-AHR and Forum-Asia have been creating joint cooperation to influence ASEAN members, especially the High Level Panel (HLP) drafting the TOR of AICHR, by submitting their concerns and recommendations to better improve the human rights mechanism within the region.<sup>202</sup> The SAPA TF-AHR organized the 2<sup>nd</sup> Regional Consultation on ASEAN and Human Rights in Jakarta, in August 2008, participated by more than 60 CSOs representatives in the ASEAN region. The discussion was brought to the HLP to ensure their concerns on human rights in the region were incorporated in the TOR of AICHR. The SAPA TF-AHR had its first interface meeting with the HLP in September 2008, in Manila at a consultation meeting to discuss the establishment of the ASEAN human rights body.<sup>203</sup>

The 3<sup>rd</sup> consultation on ASEAN and Human Rights was held in Kuala Lumpur, in September 2010, as a continuous initiative of Forum-Asia and the TF-AHR to provide space and platform for civil society to reflect the past engagements with ASEAN, the challenges ahead and to devise new strategies and action plan for the strengthening of the ASEAN human rights mechanism in 2011.<sup>204</sup> The Consultation Meeting resulted with a submission to the AICHR concerning the status of AICHR's Rules of Procedure, its work plan and the drafting process of

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<sup>202</sup> See also "Open Letter SAPA TF-AHR and Forum-Asia to the HLP," on 22 June 2009, signed by Yap Swee Keng (Executive Director, Forum- Asia) and Rafendi Djamin (Convenor, SAPA TF- AHR).

<sup>203</sup> Asian Forum for Human Rights and Development (Forum-Asia), "SAPA Task Force on ASEAN and Human Rights meet High Level Panel in Manila," available from <http://www.forum-asia.org/?p=6415> (accessed February 25, 2011).

<sup>204</sup> 3<sup>rd</sup> Regional Consultation Meeting on ASEAN and Human Rights, Kuala Lumpur, 17-18 September 2010, available from [http://www.seapsc.org/index.php?option=com\\_content&view=article&id=185%3A3rd-regionalconsultation-on-asean-and-human-rights&catid=51&Itemid=243&tmpl=component&type=raw](http://www.seapsc.org/index.php?option=com_content&view=article&id=185%3A3rd-regionalconsultation-on-asean-and-human-rights&catid=51&Itemid=243&tmpl=component&type=raw) (accessed February 25, 2012).

the ASEAN Human Rights Declaration.<sup>205</sup> These issues are addressed in Chapter 5, both as AICHR's challenges and opportunities.

Prior to the 3<sup>rd</sup> Consultation Meeting, Forum-Asia and SAPA TF-AHR organized the "Regional Consultation on the Rule of Procedure of the AICHR" in Bangkok, and submitted the result of the meeting as a proposal for the Rules of Procedure (RoP) to the AICHR for consideration in drafting its official RoP.<sup>206</sup> The proposal emphasized the importance of civil society participation in the AICHR and the commission's independence, effectiveness, as well as transparency.

After the AICHR's first year performance, the SAPA TF-AHR in cooperation with Forum-Asia, proposed a critical performance of AICHR based on its core documents, structure, appointments process, institution building, mandate implementation, handling of cases and external relations.<sup>207</sup> This report critically examines AICHR's progress in addressing the issue of human rights in the region.

Concerning the drafting process of the ASEAN Human Rights Declaration (AHRD), Forum-Asia and SAPA TF-AHR have once again organized a meeting between human rights

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<sup>205</sup> "On the Rules of Procedure, ASEAN Declaration of Human Rights and the Work Plan of AICHR," *Asian Human Rights Defender*, Newsletter of the Asian Forum for Human Rights and Development, Vol. 6, No.2 (Forum Asia: December 2010), 44.

<sup>206</sup> "Civil Society Proposal for the AICHR Rules of Procedure," *Asian Human Rights Defender*, Newsletter of the Asian Forum for Human Rights and Development, Vol. 6, No.1 (Forum Asia: June 2010), 33.

<sup>207</sup> See Solidarity for Asian People's Advocacy Task Force on ASEAN and Human Rights (SAPA TFAHR), "Hiding Behind Its Limits: A Performance Report on the First Year of the ASEAN Intergovernmental Commission on Human Rights (AICHR), 2009-2010," available from <http://www.forum-asia.org/?p=5451> (accessed February 25, 2012).

experts to discuss a position paper on the AHRD, held in Bali, in December 2010.<sup>208</sup> The objectives of this expert meeting are “to review and finalize the position paper on ASEAN Human Rights Declaration that will comprehensively reflect the view and perspectives of civil society organizations in Southeast Asia in line with international human rights laws and standards by receiving input from human rights experts,” as well as “to strategize a campaign and advocacy plan to ensure recommendations for the civil society position paper on an ASEAN Human Rights Declaration are accepted and adopted by AICHR.”<sup>209</sup>

In November 2011, forty representatives of CSOs convened at the 4<sup>th</sup> Regional Consultation of ASEAN and Human Rights in Bali, Indonesia. At the meeting, the participants call on ASEAN leaders to put an immediate end to all human rights violations and adhere strictly to their respective obligations under international human rights law.<sup>210</sup> The participants also express concerns on various aspects of the AICHR’s work, such as the lack of transparency in the operation of AICHR, the reluctance of the AICHR to engage with CSOs and NHRIs, and the slow pace of progress of AICHR.<sup>211</sup> In their statement, the CSOs representatives reminded AICHR to take concrete steps regarding its rules of procedures, substantive issues, and the AHRD. Besides expressing concerns, the participants were also welcoming “the continuing

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<sup>208</sup> Asia Indigenous Peoples- Climate Change Monitoring and Information Network (CCMIN), “Report: Expert Meeting on the ASEAN Human Rights Declaration,” available from [http://www.ccm.in.aippnet.org/index.php?option=com\\_content&view=article&id=260:report-expert-meeting-on-the-asean-human-rights-declaration&catid=47:activities-reports-from-partners](http://www.ccm.in.aippnet.org/index.php?option=com_content&view=article&id=260:report-expert-meeting-on-the-asean-human-rights-declaration&catid=47:activities-reports-from-partners) (accessed February 25, 2012).

<sup>209</sup> Ibid.

<sup>210</sup> Asian Forum for Human Rights and Development (Forum-Asia), “Statement of the 4<sup>th</sup> Regional Consultation of ASEAN and Human Rights,” available from <http://www.forum-asia.org/?p=11769> (accessed February 25, 2011).

<sup>211</sup> Ibid.

meaningful dialogue with the four NHRIs in the region,” and welcoming “the engagement with CSOs at the national level of some of the AICHR commissioners, in particular from Indonesia and Thailand, who have held frequent and meaningful dialogue with national CSOs, including on the drafting of the AHRD.”<sup>212</sup>

Forum-Asia and SAPA, especially SAPA TF-AHR, have been really active and vocal to ensure that their common concerns regarding the AICHR and the future of ASEAN human rights mechanism are heard. This study once again claims that their roles are vital and the work of human rights CSOs in the region will need to continue, despite many challenges.

### Conclusion

The recent years have witnessed the increasing importance of NHRIs and CSOs in Southeast Asia, both in national and regional level. This Chapter shows that the role of the four NHRIs, Forum-Asia and SAPA are undeniably crucial in promoting and protecting human rights in ASEAN, especially regarding the AICHR and its upcoming tasks and responsibilities. There is a need to ensure that the AICHR, which is still at its preliminary stage, will be an effective and credible body to address the issue of human rights in the region, in particular for the benefit of the ASEAN peoples. Evidently, the AICHR representatives and the ASEAN member states cannot work alone. The involvement of the NHRIs and human rights CSOs, therefore, is particularly crucial to assist the member states in maintaining their commitments of human rights promotion and protection.

Regarding NHRIs in Indonesia, Malaysia, the Philippines, and Thailand, the research observes that there is a degree of differences between these NHRIs, especially on the level of

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<sup>212</sup> Ibid.



independence. In countries that have relaxed restrictions on civil liberties, it is more likely to have independent NHRIs (Indonesia, the Philippines, Thailand<sup>213</sup>). In Malaysia, besides the issue of independence of the commission, another issue is the degree to which its work is seriously taken by the government. The parliament of Malaysia hardly ever discusses any of the reports and recommendations submitted to it by SUHAKAM.<sup>214</sup> Many have argued that the NHRIs can only push the agenda of AICHR if they are genuinely independent and that a more distinctly separated body from the government can take a more effective role in promoting and protecting human rights. Despite the unevenness of the level of development and their impact in their respective countries, the NHRIs in Indonesia, Malaysia, the Philippines and Thailand provide a step forward in human rights advocacy in the region.<sup>215</sup>

Kofi Annan in his report “Strengthening of the United Nations: an Agenda for Further Change,” at the United Nations General Assembly on 9 September 2002, stated that: “building strong human rights institutions at the country level is what in the long run will ensure that human rights are protected and advanced in a sustained manner.” Moreover, the states which have domestic mechanisms like the NHRIs in Indonesia, Malaysia, the Philippines, and Thailand, which monitor human rights compliance, tend to have an active civil society and vocal parliament which enable the rights movement to grow.<sup>216</sup> Furthermore, the ASEAN Four “could provide a less threatening informal setting where grievances could be lodged and receive

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<sup>213</sup> Thailand’s National Human Rights Institution may arguably fall outside this criteria, however, considering its effort to assert a certain degree of independence from the ruling party, the study decided to include Thailand’s NHRI.

<sup>214</sup> Kraft, 15.

<sup>215</sup> Ibid., 14.

<sup>216</sup> Hsien-Li, “The ASEAN Intergovernmental Commission,” 18.

attention through non-adversarial means of dispute resolution”, and “the four NHRIs will hopefully inspire other ASEAN countries to adopt a similar approach.”<sup>217</sup>

Meanwhile, as a momentum for human rights CSOs grew within ASEAN, Forum-Asia and SAPA have been exploiting this opportunity by engaging ASEAN on the issues of human rights. The engagement presents significant contributions towards the enhancement of human rights mechanism in Southeast Asia. In performing their tasks, these domestic civil society agents that have accepted the Western norm of human rights, then faced with ASEAN bureaucracies, and that was when localization came in. The local CSOs are not slavishly taking on the foreign values, however at one point they understand about the universal values of human rights and the importance of these rights for ASEAN’s people to also enjoy.

Forum-Asia and SAPA have been well known to strongly voice their concerns regarding human rights issue and consistently maintain their relationship with other actors. Currently, the process of drafting the ASEAN Human Rights Declaration is one of their main missions. Again, the process cannot be left to the AICHR’s representatives or to the ASEAN members alone. Together with other human rights CSOs in the region and the NHRIs, Forum-Asia and SAPA could help outline the evolution of ASEAN human rights regime.

The thesis argues that the four NHRIs, Forum- Asia and SAPA have been building a human rights culture in the region by constantly submitting their position papers, statements, and concerns, which are also accessible to the public. Thus, they are also conducting a vital role in raising the awareness of the people and educating the society on human rights issue.

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<sup>217</sup> Thio, 71.

CHAPTER 5

THE CHARACTERISTICS AND CONSEQUENCES OF THE  
ASEAN INTERGOVERNMENTAL COMMISSION  
ON HUMAN RIGHTS (AICHR)

The ASEAN Leaders inaugurated the ASEAN Intergovernmental Commission on Human Rights (AICHR) in Thailand, October 2009, and welcomed the Terms of Reference (TOR) of the AICHR, based on article 14 of the ASEAN Charter on the establishment of an ASEAN human rights body and ASEAN's commitment to the promotion and protection of human rights and fundamental freedoms. The AICHR is a consultative body with ten appointed representatives from each Member States. As a consultative body, it means that AICHR is currently performing no investigative or judicial functions. Furthermore, decision-making in the AICHR shall be based on consultation and consensus in accordance with Article 20 of the ASEAN Charter.<sup>218</sup>

According to the TOR, the purposes of AICHR are “to promote and protect human rights and fundamental freedoms of the peoples of ASEAN,”<sup>219</sup> in order to “contribute to the realization of the purposes of ASEAN Charter to promote stability and harmony in the region,”<sup>220</sup> and that the task of this commission should be done “within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds.”<sup>221</sup> ASEAN Leaders also agreed “to uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna

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<sup>218</sup> The Official Website of ASEAN, “ASEAN Intergovernmental Commission on Human Rights,” Article 6.1.

<sup>219</sup> Ibid., Article 1.1.

<sup>220</sup> Ibid., Article 1.3.

<sup>221</sup> Ibid., Article 1.4.

Declaration and Program, of Action, and International human rights instruments to which ASEAN Member States are parties.”<sup>222</sup>

In performing its mission, the TOR describes that AICHR needs to be guided by the following seven principles (Article 2.1):

1. Respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States;
2. Non-interference in the internal affairs of ASEAN Member States;
3. Respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion;
4. Adherence to the rule of law, good governance, the principles of democracy and constitutional government;
5. Respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice;
6. Upholding the Charter of the United Nations and international law, including international humanitarian law, subscribed to by ASEAN Member States; and
7. Respect for different cultures, languages and religions of the peoples of ASEAN, while emphasizing their common values in the spirit of unity in diversity.

Article 2 also states that the members respect international human rights principles, including universality; recognize that the primary responsibility to promote and protect human rights and fundamental freedoms rests with each Member State; and that they pursue a constructive and non-confrontational approach and cooperation to enhance promotion and protection of human rights; therefore adopt an evolutionary approach that would contribute to the development of human rights norms and standards in ASEAN.<sup>223</sup> With the TOR of AICHR, the ASEAN Leaders continue the commitments they had during the 1993 Bangkok Declaration. While it is true that they recognize the universality of human rights, they still maintain the prominence of preserving ASEAN diverse backgrounds and the non-interference principle.

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<sup>222</sup> Ibid., Article 1.6.

<sup>223</sup> Ibid., Article 2.2-2.5.

In Article 4.2 of the TOR, ASEAN lists one of the commission's mandate and functions: "[t]o develop an ASEAN Human Rights Declaration with a view to establishing a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights." Currently, AICHR is in the process of drafting the ASEAN Human Rights Declaration (AHRD), as the main priority issue for AICHR.<sup>224</sup> This might be the most realistic starting point for AICHR to share information and provide more opportunity for discussion and cooperation, as the process of drafting itself would need an additional time.

At the First Meeting of the AICHR at the ASEAN Secretariat, April 2010, the Representatives had an extensive discussion on how to ensure its effective operations as the overarching human rights institution in ASEAN.<sup>225</sup> The Meeting discussed among others, the formulation of the Rules of Procedure which will lay down the operational guidelines for the conduct of AICHR's work in all aspects.<sup>226</sup> The Meeting also discussed the development of the Five-Year Work Plan to provide a comprehensive roadmap of programs and activities to be undertaken by AICHR in the next five years.<sup>227</sup>

Prime Minister of Thailand, Abhisit Vejjajiva, in his remarks at the inauguration ceremony of the AICHR, contended that the establishment of AICHR is indeed a significant

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<sup>224</sup> Rafendi Djamin, "Democracy Voices," interview by Ryota Jonen, World Movement for Democracy, 17 August 2011, available from <http://www.wmd.org/about/democracyvoices/rafendi-djamin-indonesia-human-rights-working-group> (accessed November 6, 2011).

<sup>225</sup> The Official Website of ASEAN, "Remarks by H.E. Abhisit Vejjajiva."

<sup>226</sup> Ibid., "Press Statement by the Chair of the ASEAN Intergovernmental Commission on Human Rights on the First Meeting of the ASEAN Intergovernmental Commission on Human Rights," ASEAN Secretariat, 1 April 2010, available from <http://www.aseansec.org/24445.htm> (accessed November 6, 2011).

<sup>227</sup> Ibid.

advancement for ASEAN in terms of placing human rights at the center of ASEAN's agenda.<sup>228</sup> Vejajiva realized that there are concerns that the mandate and functions of AICHR do not go far enough. He added that AICHR, however, is not an end in itself but an evolutionary process towards strengthening the human rights architecture within the region.

This Chapter aims to examine the debates on AICHR and review the commission's strengths and limits. The overall discussion in the Chapter will demonstrate that the AICHR represents a localized version of human rights, meaning, it provides a local context and various instruments and mechanisms that suit ASEAN's context and need, without departing significantly from the universal values of human rights.

### Debates on AICHR

It is easy to be cynical about the AICHR's efficacy and point out that the terms of reference for the AICHR are weak since it focuses predominantly on the promotion of human rights, leaving the commission with no powers of investigations. However, it is certainly more problematic to suggest the best way for AICHR to improve its task and be bold in carrying out its mandates. It is apparent that the TOR of AICHR is not what everybody has aspired for,<sup>229</sup> and the characteristics of AICHR have been considered as the main obstacle for the operation of the commission itself. Most civil society organizations criticize the TOR for its lack of protection mandate, and the presence of non-interference principle in Article 2. Carlos P. Medina, executive director of the Human Rights Center in Manila believes the region's human rights mechanisms

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<sup>228</sup> Ibid.

<sup>229</sup> Working Group for an ASEAN Human Rights Mechanism, "Working Group for an ASEAN Human Rights Mechanism Welcomes the Imminent Creation of the ASEAN Intergovernmental Commission on Human Rights," available from <http://www.aseanhrmech.org/news/creation-of-asean-intergovernmental-commission.htm> (accessed November 6, 2011).

don't have teeth and merely concentrated on promotion, not protection.<sup>230</sup> Medina added: "ASEAN is wary of its image, sometimes more than substance. There are many ASEAN countries focusing on the makeup. We have to unmask it."<sup>231</sup>

By contrast, Vitit Muntarbhorn, a noted law professor at Chulalongkorn University, claims that at least the issue of human rights in ASEAN is "totally legitimate today."<sup>232</sup> The Working Group for an ASEAN Human Rights Mechanism recognizes the fact that the TOR is, ultimately, a political document formed out of negotiations and compromises.<sup>233</sup> Moreover, the Working Group argues that the completion of the TOR and the establishment of the regional commission on human rights are significant hallmarks of ASEAN's move towards a more people-oriented organization. Along the same lines, Ray Paolo J. Santiago, Program Manager of the Working Group for an ASEAN Human Rights Mechanism agrees that the establishment of the AICHR is itself a step forward, and it is another opportunity for human rights promotion and protection to develop within ASEAN where all ASEAN Member States are onboard and committed to the success of a regional human rights mechanism.<sup>234</sup>

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<sup>230</sup> Pravit Rojanaphruk, "Human Rights in ASEAN Seen as a Paper Tiger," *The Nation*, 15 October 2010, available from <http://www.nationmultimedia.com/home/2010/10/15/politics/Human-rights-in-Asean-seen-as-a-paper-tiger-30140122.html> (accessed November 20, 2011).

<sup>231</sup> Ibid.

<sup>232</sup> Ibid.

<sup>233</sup> Working Group for an ASEAN Human Rights Mechanism, "Working Group for an ASEAN Human Rights Mechanism Welcomes the Imminent Creation."

<sup>234</sup> Ray Paolo J. Santiago, "Developments on the ASEAN Intergovernmental Commission on Human Rights," *Focus Asia-Pacific*, Volume 58, December 2009, available from <http://www.hurights.or.jp/archives/focus/section2/2009/12/developments-on-the-asean-intergovernmental-commission-on-human-rights.html> (accessed November 20, 2011).

Meanwhile, observing from both proponents and opponents' perspectives, David Cohen, Director of the Asian International Justice Initiative (AIJI),<sup>235</sup> argues that while many NGOs and experts have expressed skepticism about the likely effectiveness of the AICHR given the mixed human rights records of ASEAN member states, one can also argue that the present juncture presents important opportunities for genuine and gradual progress on human rights in ASEAN.<sup>236</sup> For Cohen, the current challenge is to make the AICHR effective, and the role of regional civil society initiatives is significant in supporting its mandates. Cohen explains about one of the initiatives that promise to be one of the most effective: the Human Rights Resource Center for ASEAN (HRRCA).<sup>237</sup> The HRRCA, which came into existence in February 2010, represents a cooperation of regional and international human rights experts through the engagement of the Working Group for an ASEAN Human Rights Mechanism and the AIJI. The most immediate challenge for the HRRCA will be both to engage the AICHR constructively and to define its own independent agenda to capitalize on the current momentum for regional human rights initiatives in the region, and assist ASEAN to move forward to the stage where human rights are no longer a promise.<sup>238</sup> In short, Cohen argues that while it was clear that the creation of the AICHR was to be welcomed, such an institution would also require considerable support to become effective,

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<sup>235</sup> AIJI is a partnership between the East-West Center and the War Crimes Studies Center of the University of California, Berkeley.

<sup>236</sup> David Cohen, "ASEAN's Intergovernmental Commission on Human Rights and Civil Society Initiatives in Southeast Asia," *Asia Pacific Bulletin*, Number 51 (March 2010), available from <http://www.eastwestcenter.org/publications/aseans-intergovernmental-commission-human-rights-and-civil-society-initiatives-southeast> (accessed April 6, 2012).

<sup>237</sup> Ibid.

<sup>238</sup> Ibid. The core idea of the HRRCA is to provide expert research and capacity building to advance its fundamental goals: provide training for the AICHR, governmental institutions and civil society groups; engage in research and policy studies that would help to define human rights agenda for the AICHR; contribute to building national and regional networks of human rights experts.



and that one of the main supports should originate from collaboration of regional civil society groups.

It is apparent that while several key players see the TOR as a welcome sign that human rights are now squarely part of the ASEAN agenda, there has also been some backlash from leading advocates who had hoped for a more robust and independent mechanism for achieving human rights.<sup>239</sup> This study suggests that the debate on AICHR will only advance the necessary promotion and protection of human rights if it seen as a substantial tool in analyzing challenges and opportunities of AICHR, and not to be excessively confined with the idea of negativity and hopelessness. At this point, change will not happen overnight. AICHR needs a continuous support that is highly analytical to further deepen the impact of AICHR.

#### AICHR'S Limitations & Challenges

Critics of AICHR are right to argue that the TOR of AICHR provides many obstacles. Disappointingly, the TOR for the AICHR mandate that it focus predominantly on the promotion of human rights, and limit its role to an advisory body for the ASEAN Secretariat and member states, rather than giving the commission independent enforcement powers.<sup>240</sup> Combining the concerns surrounding this lack of independence is the fact that the TOR emphasizes a consensus-based approach to any decision-making authority invested in the intergovernmental commission.<sup>241</sup> Furthermore, the TOR does not contain customary provisions on protection such as an individual complaint mechanism or powers to investigate alleged violations of human

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<sup>239</sup> Kelsall, 2.

<sup>240</sup> Ibid.

<sup>241</sup> Ibid.

rights, to respond to inquiries on matters concerning particular cases, and to take action on petitions and communications.<sup>242</sup>

It has been widely known that ASEAN has traditionally been adopted a constructive and non-confrontational approach as its method of human rights management. Article 2.4 of the TOR is clearly supporting the ASEAN's way of avoiding confrontation. It seeks not to embarrass the object of engagement through isolation or condemnation, rather, to guarantee that change is induced through peer pressure.<sup>243</sup> The case of Myanmar, for example, the proponents of this policy argue that isolating Myanmar will be ineffective, given Myanmar's self-reliant ethos and recent emergence from self-imposed isolation, a manifest indication of its non-receptivity to international pressure.<sup>244</sup> However, the opponents of this constructive engagement approach argue that it is obvious that this method has been used to allow the association and its various subcommittees to ignore pervasive human rights abuses being committed against the peoples it purports to represent.<sup>245</sup>

This brings us to the discussion following the adoption of the ASEAN Charter, with its commitment of creating a human rights body, of which the AICHR based its TOR on. As widely evidenced, the drafting of the ASEAN Charter was fraught with voluble tension, and the final document that was signed saw the proposed human rights "commission" being watered down to

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<sup>242</sup> Wigberto E. Tañada, "Operationalization of the AHRB's Promotion and Protection Functions" (presentation at the 8<sup>th</sup> Workshop on the ASEAN Regional Mechanism on Human Rights, Bangkok, Thailand, 14-15 July 2009), available from <http://www.aseanhrmech.org/news/participants-anticipates-more-engagements-with-human-rights.htm> (accessed November 26, 2011).

<sup>243</sup> Thio, 45.

<sup>244</sup> Ibid.

<sup>245</sup> Kelsall, 2.

merely an inconclusive human rights “body”.<sup>246</sup> Moreover, shortly after the adoption of the Charter, suspicions about the commission’s capability to enforce human rights started to arise, and claimed that the commission of human rights is simply rhetorical than pure action. Having said that, the obstacle and one of the TOR’s limitations is shown in Article 2.1 of the TOR related to the principles of ASEAN as embodied in Article 2 of the ASEAN Charter. The notion of non-interference in the internal affairs of ASEAN Member States and respect for sovereignty and territorial integrity of all Member states are considered to hamper the improvement of human rights in the region. When AICHR is required to build a binding obligation and responsibility to promote and protect human rights among member states, these principles mean to entirely prohibit such attempt. The most obvious difficulty would be the tension between human rights and the states’ desire to maintain the principles of strong sovereignty and non-intervention.<sup>247</sup>

Another challenge for AICHR would be to have a proper and responsive rule of procedure and credible timeframe. Compounding all this is the fact that as AICHR lacks a permanent physical locus but instead holds meeting in various ASEAN states, and that ASEAN often takes a long process to finalize substantive action, realizing the human rights protections the Charter envisions will necessitate even more consultation and confidence-building process then the realization of substantive action in the immediate future.<sup>248</sup> While its TOR defines the structure of the AICHR, the details of implementation are yet to be settled.<sup>249</sup> The need to have

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<sup>246</sup> Hsien-Li, “The ASEAN Human Rights Body,” 239.

<sup>247</sup> Hsien-Li, “The ASEAN Intergovernmental Commission,” 141.

<sup>248</sup> Ibid., 143.

<sup>249</sup> Santiago.

the TOR being transformed into real action and actual implementation is rapidly increasing, and a rule of procedure with realistic timeframe might aid this challenge.

Finally, this study would also like to address the topic of AICHR representatives, which according to Article 5.2 of the TOR, a Representative to the AICHR is appointed by each ASEAN Member State and shall be accountable to the appointing government. Instead of being accountable to both the people of ASEAN and the appointing government, the representative was only tasked to be responsible for her or his government. This certainly limits the representative's mandate, and creates another debate. In addition, the appointing government may decide, at its discretion, to replace its representative.<sup>250</sup> There is no clear explanation on how and when the appointing government can replace its representative. The selection process of AICHR representatives was, to a large extent, neither consultative nor transparent; however, the exceptions were Indonesia and Thailand who appointed experienced civil society leaders, Rafendi Djamin and Sriprapha Petcharamesree respectively, to AICHR.<sup>251</sup>

Generally, this research argues that these limitations should not be seen as the enemy or the end for human rights mechanism in the region, however, they should be treated as challenges and opportunities for AICHR and its stakeholders to work harder and jointly formulate strategies for the exchange of information and best practices to better promote and protect human rights.

#### AICHR's Consequences

The establishment of AICHR and endorsement of the TOR have set the tone of human rights issue within the region for both optimistic and less confident groups. Despite the early

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<sup>250</sup> The Official Website of ASEAN, "ASEAN Intergovernmental Commission on Human Rights," Article 5.6.

<sup>251</sup> Hsien-Li, "The ASEAN Intergovernmental Commission," 160.

debates and concerns, we cannot ignore the fact that AICHR has provided an invaluable opportunity for government officials, National Human Rights Institutions, the academe, and civil society to engage more in dialogue on the development of an ASEAN human rights regime for the promotion and protection of human rights and fundamental freedoms in the region.<sup>252</sup> Moreover, the number of meetings defined by the TOR will create opportunity to carry out AICHR's own meetings in more than one ASEAN country where the chance to meet stakeholders other than government institutions can be optimized, thus, enhancing the network of possible cooperation.

And while the dialogue-based, evolutionary approach adopted in the TOR will likely limit the role of the AICHR to having only persuasive (rather than binding) authority on ASEAN governments, it has the potential to trigger further discussion on human rights issues, as well as open avenues for further action.<sup>253</sup> This approach will serve the purpose of promoting ASEAN as a people-oriented community; also operate as capacity building and raising awareness about human rights for the ASEAN peoples. Human rights of the people is central to the process of the ASEAN community building, therefore, AICHR would also contribute to the mainstreaming of human rights in all three pillars of the ASEAN Community.<sup>254</sup> It is then fair to say that AICHR acts as the catalyst and facilitator for all parties to discuss about human rights issue in ASEAN.

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<sup>252</sup> Working Group for an ASEAN Human Rights Mechanism, "Summary of Proceedings- Eight Workshop on the ASEAN Regional Mechanism on Human Rights," Bangkok, Thailand, 14-15 July 2009, available from <http://www.aseanhrmech.org/news/participants-anticipates-more-engagements-with-human-rights.htm> (accessed November 26, 2011).

<sup>253</sup> Kelsall, 6.

<sup>254</sup> Working Group for an ASEAN Human Rights Mechanism, "Summary of Proceedings- 5<sup>th</sup> Roundtable Discussion on Human Rights in ASEAN: Towards an ASEAN Human Rights System: Role of Institutions and Related Activities," 15-16 December 2009, Bangkok, Thailand, available from

Le Thu Huong in “Many Faces and One Identity: ASEAN in the Case of Human Rights Regime,” acknowledges that:

By creating the AICHR, the ASEAN members get one more joint project to work on, another goal to cooperate with. This is very important in the process of building a Community and the feeling of togetherness. The human rights issue is not an easy one; the member states will strongly disagree about the very essence of how human rights should be complied with. However, the negotiation process is indeed the interaction. The human communication factor is essential in nurturing a sense of community expressed by having a common target. For this reason, the AICHR plays the role of the new glue bringing all the ten members together around one table of dialogue over an issue that so evidently divides them.<sup>255</sup>

Usana Berananda from Thailand’s Foreign Ministry at the 8<sup>th</sup> Workshop of the Working Group agrees that while the TOR may not be a perfect document, it still provides a decent platform to start with and will hopefully increase the “comfort level” of all ASEAN member-states to be able to accept a more enhanced role of the ASEAN human rights body in the future.<sup>256</sup> Clearly, the comfort level of member states with diverse records on human rights is significantly important to ensure long-lasting cooperation within ASEAN human rights agenda. And while there is also a discrepancy between the promotion and protection functions, the TOR provides openings for forward-looking strategies.

Article 4.2 of the TOR supports the forward-looking policies with the drafting of an ASEAN Human Rights Declaration (AHRD). In fact, this should be given priority, as this may

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<http://www.aseanhrmech.org/news/5th-roundtable-on-human-rights-in-asean.htm> (accessed November 26, 2011).

<sup>255</sup> Huong, 61.

<sup>256</sup> Working Group for an ASEAN Human Rights Mechanism, “Summary of Proceedings- Eight Workshop.”

be a perfect opportunity to demonstrate the evolution of the AICHR into something more concrete and meaningful to the ASEAN peoples.<sup>257</sup>

Overall, the establishment of AICHR has basically shown that ASEAN is currently more open and unguarded in discussing the issue of human rights. As an illustration, when funding for human rights programs has always been difficult, yet ASEAN now seems to be willing to allow some flexibility regarding external funding as explained in Article 8.6 of the TOR. The creation of AICHR and the adoption of its TOR also display the importance role of local actors (governments and CSOs) in localizing the Western idea of human rights, which fits ASEAN's need and situation for the time being. This study believes that while AICHR may focus initially on promotion of human rights; however, gradually it will proceed to protection level. The key will be to ensure that the process is not done overconfidently, and follow the evolutionary and constructive approach.

### Conclusion

Some observers have argued that at the early stage of the AICHR's development, the goal should be to use parameters set for discussing human rights reform to their full advantage, rather than to condemn those parameters and jeopardize future discussion and progress.<sup>258</sup> As emphasized by Abhisit Vejjajiva, Prime Minister of Thailand, at the inaugural ceremony of the AICHR, ASEAN follows a constructive approach and that the issue of human rights is not about condemnation, but about awareness, empowerment and improvement.

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<sup>257</sup> Ibid., "Summary of Proceedings- 5<sup>th</sup> Roundtable Discussion."

<sup>258</sup> Kelsall, 7.

However, this approach along with other ASEAN principles have drawn pessimistic conclusions from many critics, starting from its ‘consultative’ nature of the body, emphasis on non-intervention and preservation of sovereignty, its primarily ‘educative’ and ‘promotional’ functions, the lack of enforcement powers, triggers for sanctions, and system of reprisals.<sup>259</sup>

Meanwhile the ASEAN Leaders have been responding with the view that the AICHR is an evolutionary and credible body, civil societies in the region have been opposing that the AICHR needs to be independent and effective.

This research argues that although the AICHR does not have investigative power and only functions as an advisory services, it actually shows how the commission differs from other Western or universal bodies. As mentioned before, both national and regional actors (state and non-state) in ASEAN have found their way in localizing the Western norm of human rights into the nature of ASEAN that suits the association’s various local background and context. Hence, it may be argued that what were considered as AICHR’s limitations might even be strengthening the norm of human rights in ASEAN and the AICHR itself, which ensure the continuous work and existence of the commission. If the less liberal member states in ASEAN were to be forced to accept the wholesale values of universalism, it is highly unlikely to establish the AICHR and enhance the dialogue of human rights mechanism in the region. In this context, without departing significantly from universal human rights, ASEAN identified its general needs and localized the foreign version of human rights.

In the future, the awareness of ASEAN people on human rights will also depend on how well this commission and its representatives ‘promote’ themselves along with their mandates.

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<sup>259</sup> Renshaw.



This study highlights the importance of AICHR's representatives in performing the purposes and functions of the commission. It is imperative to have representatives with the capacity to act objectively and open-mindedly. The personal expertise and commitment on human rights of the representatives will strongly related to how the issue of human rights will be strengthened.

The establishment of AICHR along with its challenges and significances leaves room for an opportunity to thrust for higher standards on Southeast Asia human rights issue. The AICHR has chosen to set its priority on raising awareness and drafting an ASEAN Human Rights Declaration (AHRD). The drafting of an AHRD is another perfect opportunity to push for the concrete evolution of the AICHR into something that will be more meaningful to the ASEAN peoples. It should also progressively open the door to more effective implementation of human rights in the region in a comprehensive manner, such as through human rights responsive laws, policies, practices, mechanisms and resources.<sup>260</sup> Such establishment will be an important step in moving towards a credible human rights agenda within the region. While this establishment will not cure all human rights ills in the region, it is an important step in a right direction.<sup>261</sup>

Achieving the stated purposes of AICHR, including the promotion and protection of human rights in the region, will inevitably come slowly. The current focus needs to be ensuring how the TOR can be wisely implemented and maximizing the functions of AICHR before its first five-years term ends in 2014.

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<sup>260</sup> Ibid.

<sup>261</sup> Tañada.

## CHAPTER 6

### CONCLUSION

The preceding five chapters in this thesis examined the evolution process of human rights norm within the region of Southeast Asia, most particularly the making of the ASEAN Intergovernmental Commission on Human Rights (AICHR). The aim of the study has been to assess the diffusion of human rights norm in ASEAN and analyze why ASEAN member countries has finally decided to create the AICHR. The analysis on internal and external pressures, which acted as the catalysts of the changing nature of ASEAN in viewing human rights, complemented the overall research.

The unique interaction between ASEAN and human rights has been creating constant debate about the ASEAN mechanism of human rights, and the decision to establish the AICHR has encouraged numerous analyses and critiques. Criticism of the Terms of Reference (TOR) of AICHR is focusing on the absence of a strong protection mandate, the lack of independence of the Representatives, and the inclusion of the non-interference principle. This research, however, argues that ASEAN has been progressing on its commitment of human rights and the AICHR has the potential to provide future discussions and cooperation. Additionally, the AICHR has its leeway in obtaining information and data on human rights situation of ASEAN Member States. Vitit Muntarbhorn, the Alternate Member of Thailand to the High Level Panel (HLP) on ASEAN human rights body reiterates that while the TOR may not be a perfect document, what it does not prohibit is not forbidden; thus, there are openings for protection

activities.<sup>262</sup> It should not be forgotten that the term “ASEAN values” was rejected in the drafting of the terms of reference of the AICHR.<sup>263</sup>

From being perceived as a ‘Western’ concept that was unwelcome on the ASEAN agenda, human rights have gone through a long and difficult process to be recognized as universal and placed alongside ASEAN’s professed priorities of regional political development and democracy as well as actually being worked into policy.<sup>264</sup> Between the governments and civil society groups in ASEAN, however, there is a different rate of acceptance for the universal value of human rights, which civil society agents have been more willing to accept than the ASEAN member states. Similarly, there is also a distinctive level of recognition and perception within the governments of ASEAN themselves- member countries with the authoritarian system are considered to be less accepting than other members. Therefore, these actors have resulted in localizing Western norm to suit the needs of ASEAN.

#### Which Theory is Valid for the Establishment of AICHR?

By drawing on an eclectic approach of International Relations theories, this thesis argues that the influence of the internal pressures has stronger elements in shaping the idea of creating a

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<sup>262</sup> Working Group for an ASEAN Human Rights Mechanism, “Participants at the 8<sup>th</sup> Workshop Anticipates More Engagements with the Human Rights Body,” available from <http://www.aseanhrmech.org/news/participants-anticipates-more-engagements-with-human-rights.htm> (accessed March 4, 2012).

<sup>263</sup> Vitit Muntarbhorn, “Towards an ASEAN Declaration of Human Rights,” *Bangkok Post*, 20 January 2012, available from <http://www.bangkokpost.com/opinion/opinion/275923/towards-an-asean-declaration-of-human-rights> (accessed February 25, 2012).

<sup>264</sup> Hsien-Li, “The ASEAN Intergovernmental Commission,” 176.

human rights body in ASEAN, than the explanations provide by the external pressures. The study views that the processes of socialization in the “Boomerang Pattern” and the “Spiral Model” undermine the decision of ASEAN to establish the AICHR while maintain its traditional principles or the “ASEAN way.” These theories accept implicitly that when the international human rights norms internalize within a “target state”, the state will then exclusively accept the legitimacy and universality of human rights norms. However, in the case of ASEAN, it is apparent that the member states are willing to accept the universal values of human rights, with a precondition of taking into account the diverse backgrounds of histories, cultures, and religions. Without separating significantly from the universal values of human rights, various evidences have shown that the AICHR represents the characteristics of localization by accepting the Western ideas of human rights and fitted them into local traditions and practices of ASEAN. For example, Hassan Wirajuda, then Indonesian Foreign Minister, at the Fourth Workshop of the Working Group for an ASEAN Human Rights Mechanism in 2004, stated that:

[...] I believe that greater respect for, and better protection of, human rights would contribute significantly to the development of ASEAN as a true community of nations... We do have our shared political commitments. Not only because human rights is a universal values that cannot be ignored. But also because it is our own people whose rights must be protected... Hence, there should be no argument against the fact that human rights as a universal values are by no means alien to us in Southeast Asia... The question is how we translate our shared commitments into concerted efforts to establish common norms and values as well as effective institutions and mechanisms. It won't be an easy ride for all of us. For it will mean relinquishing a certain degree of national sovereignty. For it will mean adjusting national standards to common regional standards.<sup>265</sup>

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<sup>265</sup> N. Hassan Wirajuda, “Keynote Speech by H.E. Dr. N. Hassan Wirajuda, Minister for Foreign Affairs Republic of Indonesia, at the Fourth Workshop on the ASEAN Regional Mechanism on Human Rights,” Jakarta, 17 June 2004, available from <http://www.kbri-canberra.org.au/speeches/2004/040617menlu.htm> (accessed April 12, 2012).

Wirajuda began his keynote speech by linking the importance of an ASEAN human rights mechanism to the development of ASEAN community, which could be translated as an expression of human rights discourse according to the Asian values. He continued by creating links between universal human rights as Western values with the ASEAN national pride, rights, and independence. A certain degree of state sovereignty and the principle of non-interference, according to Wirajuda, would have to be surrendered in order to accomplish ASEAN's commitment on human rights. The speech displayed that not only are universal human rights portrayed as compatible with Southeast Asian values, but they are also seen as inherent in regional self-understanding, national pride and individual altruism.<sup>266</sup> Wirajuda added that "the reality is: we have to take human rights promotion more vigorously," and that "it is not all because of external pressures."<sup>267</sup> For Wirajuda, it is because ASEAN needs to protect its own peoples' rights and dignity.

In addition, with its evolutionary or "everyday" form of progressive norm diffusion, localization characteristic that presents in the AICHR should provide better understanding of human rights issue than the earlier period of ASEAN. Regarding the issue, the notion of localization provides a more accepted and detailed explanation of why ASEAN created the AICHR.

While the boomerang and spiral theories emphasize on the importance of the external pressure in order to assist the process of norm changes, this research believes that it is significant

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<sup>266</sup> Claire Sutherland, "ASEAN Discourse: The Rhetoric of Human Rights and Asian Values," *Borderlands e-journal*, Vol. 5, No.2 (2006).

<sup>267</sup> Wirajuda.

to first take into consideration the internal catalysts from the ASEAN member countries. Moreover, in previous cases, the participation of domestic NGOs usually begin to escalate when there are domestic political changes that make the NGOs more accessible for information and communication. Further, the spiral model actually argues that if the domestic NGOs fail to acquire information about human rights condition in the country in the first phase, the five phase of spiral model will not succeed. In short, the concept developed by Risse-Kappen depends on domestic political structure, which was initially categorized as one of the internal pressures. This supports the argument of the thesis that internal pressure and the theory that stands behind them are more applicable in explaining the evolutionary process of human rights norm in ASEAN, thus, explains the motives of why ASEAN has finally agreed to create the AICHR.

As a result, the study claims that the diffusion of human rights norm in ASEAN and the decision of establishing the AICHR are mostly influenced by internal pressures, coming from ASEAN and its member states, and that the discussion of human rights in ASEAN should not be based simply on foreign or Western pressure.

#### Looking Towards the Future of AICHR: Some Recommendations

This thesis claims that the involvement of the “ASEAN Way” in ASEAN human rights agenda does not entirely provide unconstructive effect towards the development of the issue. Considering the fact that regional tensions and conflicts have never heightened into a widespread-armed battle since ASEAN’s inception, the characteristics of “ASEAN Way” may also serve the AICHR well. Human rights cooperation requires full participation of all member states of ASEAN, therefore it is not desirable to applying the approach of “ASEAN minus X.”

For the moment, the concept of localizing the human rights values may be sufficient for ASEAN, until all member states are ready for norm displacement, which most likely occur over the long term.

As widely known, there was resistance to the idea of ASEAN human rights mechanism from the ASEAN member states, however, it has gradually transformed. Indonesia, the Philippines, Malaysia and Thailand have been eager to push the agenda whereas the other members, including Myanmar in the forefront, have been on the opposite extreme.<sup>268</sup> However, during the period of 1990s, it was not only these new ASEAN's members who were hesitant about the idea of an ASEAN human rights body. Indonesia before the end of Suharto's regime, for example, has been arguing that if a country interferes with other country's human rights affairs, then it means trouble for the region. Currently, Indonesia has been one of the region's most outspoken members concerning human rights.

Indonesia, Malaysia, Thailand, and the Philippines would need to take the role of norm-entrepreneurs and make the human rights and democratization agenda attractive enough for the norm-takers, meaning especially for CLMV. AICHR would likely take more incisive action when chaired by Indonesia, the Philippines, and Thailand, but be more subdued when other members chair.<sup>269</sup> The burden falls on the more human-rights-progressive Member-States to push the other Member-States to allow the AICHR to progress if they want ASEAN to be truly

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<sup>268</sup> Huong, 59.

<sup>269</sup> Hsien-Li, "The ASEAN Intergovernmental Commission," 160.

credible and responsive to the times.<sup>270</sup> The four member countries with the NHRIs should set the standard and example for other six members (Singapore, Cambodia, Laos, Myanmar, Vietnam, Brunei Darussalam) to set up NHRIs in their countries. The research argues that while the four ASEAN members can also motivate the rest of the members to form NHRIs, the principal impetus must certainly come from within the states and their domestic actors. Many observers have associated the establishment of NHRI with the global wave of democratization in a country, in order to facilitate the country's transition from conflict to a more democratic regime.<sup>271</sup> Adding to that, besides the importance role of the government officials, the role of local civil society agents in pushing the initiative to create NHRIs is also significant. It is argued that there is a lack of concerted efforts by civil society actors in the six countries to promote the creation of NHRIs.<sup>272</sup> Without the above-mentioned factors, it is fairly problematic and challenging to have NHRIs in the six member countries. However, it is promising to note that Cambodia is preparing to establish an NHRI,<sup>273</sup> and Vietnam with its assurance that it will eventually create its own NHRI.<sup>274</sup> If human rights and democracy are seen as intrinsic to the

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<sup>270</sup> Santiago.

<sup>271</sup> See Smith, 909.

<sup>272</sup> Ou Virak, "Ou Virak Interview Part III," interview by Matt McDonell, Harvard Law School Human Rights Journal, February 17, 2012, available from <http://harvardhrj.com/2012/02/ou-virak-interview-part-iii/> (accessed April 7, 2012).

<sup>273</sup> Working Group for an ASEAN Human Rights Mechanism, "A National Human Rights Institution for Cambodia," available from [www.aseanhrmech.org/news/national-human-rights-insitution-for-cambodia.html](http://www.aseanhrmech.org/news/national-human-rights-insitution-for-cambodia.html) (accessed April 7, 2012).

<sup>274</sup> Ibid., "First Deputy Minister of Foreign Affairs Le Cong Phung: Viet Nam Won't Be Last in ASEAN to Set Up a National Human Rights Commission," available from



safeguarding of regional peace and security, we might expect greater commitment to these principles over time as AICHR develops and human rights consciousness grows within ASEAN.<sup>275</sup>

Obviously, the establishment of AICHR provides opportunities for future development of ASEAN human rights agenda. After the formation of AICHR, Chapter 5 described the rise of other resources in promoting and protecting human rights in Southeast Asia, with the creation of the Human Rights Resource Center for ASEAN (HRRCA) in Jakarta. The center is designed to complement the work of the AICHR by focusing on awareness raising, research, capacity building and training on issues of human rights, the rule of law and other relevant areas in the ASEAN region.<sup>276</sup> The HRRCA, which consists of academic and civil society expertise, demonstrates constructive impact of having created the AICHR, by strengthening the cooperation and relationship between domestic key actors in the region.

The future of the ASEAN human rights agenda especially the AICHR has a long way to go. Certainly, the road will not be smooth. This study believes that we need to be cautiously optimistic concerning the AICHR and concentrated our efforts on how to participate and provide better contributions to further implementations of human rights within the region. Moreover, the role of the AICHR representatives needs to increase. The four National Human Rights

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<http://www.aseanhrmech.org/news/vietnam-wont-be-last-to-set-up-commission.html> (accessed April 7, 2012).

<sup>275</sup> Hsien-Li, “The ASEAN Intergovernmental Commission,” 176.

<sup>276</sup> Human Rights Resource Centre, “About HRRCA,” available from <http://hrrca.org/about-hrrc> (accessed April 7, 2012). Currently, the HRRCA is supported by the United States Agency for International Development and Canadian International Development Agency.

Institutions (NHRI) and human rights civil society organizations (CSOs) in the region can help to ensure and monitor the independence of the representatives in performing their mandates. Additionally, it is important for the AICHR and these actors to jointly formulate strategies of human rights education for the people of ASEAN. Most importantly, as the AICHR is in the process of discussing the ASEAN Human Rights Declaration (AHRD), all actors need to also ensure that the outcome of the declaration will enhance the AICHR's efficacy and effectiveness.

There is no turning back; hence, all parties need to move forward and not to be trapped in a never-ending debate about the ineffectiveness of AICHR. By focusing only from this perspective, most society overlooks the deeper problem of finding a better way in shaping an ASEAN human rights agenda that will truly create a meaningful commission for the people of ASEAN. Unquestionably, the AICHR is not the only silver bullet for human rights agenda in Southeast Asia, and it is impossible to demand the AICHR for an overnight change of ASEAN human rights mechanism.

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