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## **The Cambodia Problem as an Origin of the Human Rights Concept in ASEAN**

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### Abstract

Southeast Asia is the youngest region in the term of human rights protection compared to all other regions. In the past, Southeast Asia used to be known as a region without a human right protection system. Many scholars claim that human right in Southeast Asia did not exist until the establishment of the ASEAN Charter. Some authors argue that human rights issue was dealt with in Southeast Asia after the Vienna Declaration and Programme of Action was adopted in 1993 and many scholars claim that the ASEAN human rights regime was formed by the ASEAN Charter in 2008. However, this article will verify that the concept of human rights in ASEAN emerged much earlier than 2008 and even before 1993 and identify Cambodia problem as an origin of human rights concept in ASEAN. This paper will examine human rights concerns in ‘the Situation of Kampuchea’, because on that occasion human rights appeared for the first time in the ASEAN document. Furthermore, ASEAN’s changing attitude towards Vietnam reaction finally brought human rights concerns into the Paris Peace Conference in 1989 and the Paris Peace Agreement in 1991.

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## Introduction

Southeast Asia is not only a young region but also the youngest in terms of human rights protection if compared to other regions. In addition, Southeast Asia used to be known as a region without human right system. Even many authors and scholars deal with the issue of human rights at the international level but not many focus on human rights issue in Southeast Asia. Most of them deal with the human rights issue in Southeast Asia by analyzing the events occurring after the Vienna Declaration and Programme of Action was adopted in 1993, and many scholars claim that the ASEAN human rights regime was formed by the ASEAN Charter<sup>1</sup> in 2008, which calls for human rights promotion and protection with the establishment of “ASEAN Human Rights Body”.<sup>2</sup> The reason that many authors identify 1993 as the key year for human rights may be the Vienna Declaration and Programme of Action, which clearly establishes that “[T]he solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law”.<sup>3</sup> This declaration is commonly accepted and acknowledged by States.

Pietropaoli asserts that ASEAN had a commitment to promote and protect human rights and to develop a regional mechanism in 1993.<sup>4</sup> In addition, Woon also argues that “The Foreign Ministers affirmed ASEAN’s commitment to human rights and fundamental freedoms as set out in the Vienna Declaration of 25 June 1993” which states that “the Twenty-sixth ASEAN Ministerial Meeting (AMM) agreed that ASEAN ‘should consider the establishment of an appropriate regional mechanism on human rights’”.<sup>5</sup> ASEAN did not only accept the promotion of human rights in the Vienna Declaration and Programme of Action but also issued their own Joint Communiqué in

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<sup>1</sup> Wictor Beyer, *Assessing an ASEAN Human Rights Regime: A New Dawn for Human Rights in Southeast Asia?* (LAP LAMBERT Academic Publishing GmbH & Co.KG, 2011), 4.

<sup>2</sup> “ASEAN Charter” in Dinah L. Shelton and Paoplo G. Carozza, ed., *Regional Protection of Human Rights: Basic Documents*, 2<sup>nd</sup> ed. (Oxford University Press, 2013), 560.

<sup>3</sup> “Vienna Declaration and Programme of Action (1993)” in Alison Bisset, ed., *Blackstones’s International Human Rights Documents*, 9th ed. (Oxford University Press, 2014), 467.

<sup>4</sup> Irene Pietropaoli, “Challenges for ASEAN Human Rights Mechanism: The Case of Lao PDR from a Gender Perspective” in Hitoshi Nasu & Ben Saul, *Human Rights in the Asia and The Pacific Region: Towards Institution Building*, (London and New York: Routledge Research in Human Rights Law, 2011), 166.

<sup>5</sup> Walter Woon, *The ASEAN Charter: A Commentary* (Singapore: NUS Press, 2016), 135.

the AMM in the same year. Furthermore, Gomez and Ramcharan argue that a nascent human rights regime is emerging in Southeast Asia, one equipped with an institutional body from 2008 through the ASEAN Charter, the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009, and a normative framework enshrined in the ASEAN Human Rights Declaration (AHRD) in 2012.<sup>6</sup>

However, this paper will argue that the concept of human rights in ASEAN emerged much earlier than 2008 and even before 1993, and considers Cambodia problem as an origin of human rights in ASEAN. Some people might ask why it would be Cambodia problem. Why did ASEAN integrate this issue into its agenda? Does ASEAN have its own principle of non-interference in the internal affairs of its members which might struggle human rights protection? The answer to these questions will be found out in the following sections. Therefore, this paper will examine, first, human rights concerns about the situation of Cambodia, because at that time, the first mention of human rights appeared in an ASEAN document. Secondly, it will investigate ASEAN's changing attitude towards Vietnam's reaction, which finally brought human rights concerns into the Paris Peace Conference and the Agreement in 1991.

## **I. Human Rights Concerns about the Situation of Cambodia**

ASEAN's support in an attempt to solve the problem of conflicts in Cambodia in cooperation with other communities was the starting point of human rights concern in Southeast Asia. Even though human rights were not directly mentioned in any ASEAN document, such as the Bangkok Declaration in 1967, peace and stability were clearly promoted. Some scholars claim that human rights were not the first issue of the regional agenda but security and economic development.<sup>7</sup> ASEAN did not recognise human rights at that time. In 1971, ASEAN declared a Zone of Peace, Freedom and Neutrality (ZOPFAN).<sup>8</sup> At that time, Cambodia and Vietnam were not yet members of ASEAN, but both countries attended the Fourth ASEAN Ministerial Meeting and accepted the

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<sup>6</sup> James Gomez and Robin Ramcharan, "The Protection of Human Rights in Southeast Asia: Improving the Effectiveness of Civil Society" *Asia-Pacific Journal on Human Rights and the Law* 2 (2012), 27.

<sup>7</sup> Bilahari Kausikan, "Asia's Different Standard" in Philip Alson, ed., *The International Library of Essays in Law & Legal Theory: Human Rights Law*, vol. 11 (Dartmouth, 1996), 203.

<sup>8</sup> "Zone of Peace, Freedom and Neutrality Declaration (Kuala Lumpur Declaration), Kuala Lumpur, 27 November 1971" in *ASEAN Documents Series 1967-1988*, 3<sup>rd</sup> ed. (ASEAN Secretariat, 1988), 35.

ASEAN ideals of peace, social justice and economic well-being through regional cooperative action, the spirit of an equal partnership, understanding and goodwill.<sup>9</sup> This cooperation showed that both Cambodia and Vietnam intended to be a part of ASEAN in the future. In addition, ASEAN issued the Treaty of Amity and Cooperation in Southeast Asia in 1976 with the purpose of promoting perpetual peace, everlasting amity and cooperation.<sup>10</sup> This treaty establishes its own principles which free ASEAN from external interference and set up the principle of non-interference in the internal affairs of one another. This treaty also reconfirms the accession of other States in Southeast Asia to ASEAN<sup>11</sup> which was stipulated in the 1967 Bangkok Declaration. This meant that ASEAN would accept new members having territory in Southeast Asia. Cambodia and Vietnam would qualify if they wished to be a part of ASEAN and accept aims, principles and purposes of ASEAN. Therefore, Cambodia problem would be one of the issues that ASEAN had to be worried when it would violate peace and stability in Southeast Asia.

### **1. The Cambodia Problem**

The Cambodian holocaust committed by the Khmer Rouge caused the deaths of innocent people, and massive human rights violations took place.<sup>12</sup> Some countries claimed that it amounted to genocide, which was a severe blow to human rights as an international crime under international law, opposed to the object and purpose of the United Nations, and condemned by the civilized world.<sup>13</sup> Even though initially almost all Cambodians welcomed the Vietnamese entering Cambodia, it did not mean that they preferred to be invaded in order to be rescued from the Khmer Rouge regime led by Pol Pot.<sup>14</sup> In some viewpoint, the intervention of Vietnamese troops brought the end to the Pol Pot regime.<sup>15</sup> Katayanagi says that “The Pol Pot regime ended by the intervention of

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<sup>9</sup> “Joint Communiqué of the Fourth ASEAN Ministerial Meeting, Manila, 12-13 March 1971” in *ASEAN Documents Series 1967-1988*, 3<sup>rd</sup> ed. (ASEAN Secretariat, 1988), 71.

<sup>10</sup> “Treaty of Amity and Cooperation in Southeast Asia, Bali, 24 February 1976” in *ASEAN Documents Series 1967-1985* (Jakarta: ASEAN Secretary, 1985), 39.

<sup>11</sup> *Ibid.*

<sup>12</sup> Mari Katayanagi, *Human Rights Functions of United Nations Peacekeeping Operations*, (Martinus Nijhoff Publishers, 2002), 101.

<sup>13</sup> “Vienna Declaration and Programme of Action (1993)” in Alison Bisset, ed., *supra* note 3, at 7.

<sup>14</sup> David P. Chandler, *A History of Cambodia*, 2nd ed. (Westview Press, 1992), 229.

<sup>15</sup> Lucy Keller, “UNTAC in Cambodia - from Occupation, Civil War and Genocide to Peace” *Max Planck Yearbook of United Nations Law* 9 (2005), 129.

Vietnamese troops”.<sup>16</sup> The conflict in Cambodia was viewed by Vietnam as having originated in a domestic power struggle among rival Cambodian factions. However, ASEAN was concerned that the situation of Cambodia during this time was terrible and the central issue of this conflict was the Vietnamese invasion and occupation of Cambodia rather than a domestic power struggle among the Cambodia factions.<sup>17</sup> It showed that there were two periods to be noticed in the Cambodia problem. The first period was the situation before Vietnamese intervention into the internal conflict and genocide and the second period was after the intervention by Vietnam.

ASEAN ignored the first period during that time but focused more on the second period because their principles designed to prevent intervention by one country in the affairs of another within the region was violated by the Vietnamese intervention in Cambodia.<sup>18</sup> ASEAN was concerned that the declaration of the ZOPFAN was ruined by the invasion of Cambodia by Vietnam.<sup>19</sup> Furthermore, the Declaration on Principles of the International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations states that “No State or group of States has the rights to intervene directly, or indirectly, for any reason whatsoever in the international external affairs of any other State”.<sup>20</sup> Therefore, many countries were concerned that the action of Vietnam was a violation of international law. In addition, the experience of the Nazi Holocaust served as an example that made ASEAN concerned about peace and stability in Southeast Asia. Peace and stability had been two of the main purposes of ASEAN since its establishment which were clearly stated in the Bangkok Declaration. Therefore, ASEAN had to take actions to solve this problem.

## **2. ASEAN Recognition of Human Rights in United Nations Cooperation**

In this situation, ASEAN tried to help Cambodia to solve the problem. At first, it could be considered as a factor to contribute to the peace and security within Southeast Asia, since the Cambodian problem had a negative effect on this. ASEAN claimed that

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<sup>16</sup> Mari Katayanagi, *supra* note 12, at 101.

<sup>17</sup> Amitav Acharya, Pierre Lizée, and Sorpong Peou, eds., *Cambodia - The 1989 Paris Peace Conference: Background Analysis and Documents* (Center for International and Strategic Studies, York University, 1991), xxvi.

<sup>18</sup> *Ibid.*

<sup>19</sup> The United Nations, *Official Records of the General Assembly*, Thirty-Fourth Session, Plenary Meetings, vol.2, 1979, 62nd Plenary Meeting, 1193.

<sup>20</sup> The General Assembly, *Resolution 2625 (XXV)*, (1970), <http://www.un-documents.net/a25r2625.htm>.

the intervention of Vietnam in Cambodia was a violation of the Declaration of the ZOPFAN,<sup>21</sup> and included in its annual agenda the issues of solving this situation and keeping regional peace and stability in Southeast Asia. In addition, a representative of ASEAN, the Indonesian Minister of Foreign Affairs as the Chairman of ASEAN Standing Committee, wrote a letter to the President of the United Nations Security Council (UNSC) to transmit the text of a statement by ASEAN to be circulated as a document of the UNSC.<sup>22</sup> This action aimed to make other countries aware of the Cambodia situation and peace and stability in Southeast Asia.

The statement issued in Jakarta on 9 January 1979 underlined the important points: “ASEAN deeply deplored the current escalation and enlargement of the armed conflict between two Indochinese States”, and expressed “grave concern over the implications of this development and its impact on the peace, security and stability in Southeast Asia”.<sup>23</sup> ASEAN reaffirmed that peace and stability were essential for the national development of the respective countries in the region of Southeast Asia. ASEAN was convinced that for the sake of peace and stability and development in Southeast Asia, the countries concerned should respect more fully the principles of the United Nations Charter and be mindful of the solemn pledge enunciated by the countries in the region.<sup>24</sup> In addition, ASEAN encouraged the UNSC to not only discuss the Vietnam-Cambodia conflict but also take necessary actions to restore peace and stability in Indochina.<sup>25</sup>

A statement was issued in advance of the meeting of the ASEAN Foreign Ministers (AFM) scheduled to be held in Bangkok 12-13 January 1979, which would give further consideration to the Cambodian problem.<sup>26</sup> At the Special Meeting of the AFM, they issued a Joint Statement which supported the previous statement on 9 January and the stated:

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<sup>21</sup> The United Nations, *supra* note 19, at 1193.

<sup>22</sup> United Nations Security Council, *Letter Dated 9 January 1979 from the Charge D’Affaires A.I. of the Permanent Mission of Indonesia to the United Nations Addressed to the President of the Security Council, S/13014*, Annex, January 9, 1979, 1.

<sup>23</sup> *Ibid.*

<sup>24</sup> “Statement by the Indonesian Foreign Minister as Chairman of the ASEAN Standing Committee on the Escalation of the Armed Conflict between Vietnam and Kampuchea, Jakarta, 9 January 1979” in *ASEAN Documents Series 1967-1988*, 3<sup>rd</sup> ed. (ASEAN Secretariat, 1988), 587.

<sup>25</sup> *Ibid.*

<sup>26</sup> United Nations Security Council, *supra* note 22, at 1.

The ASEAN Foreign Ministers strongly deplored the armed intervention against the independence, sovereignty and territorial integrity of Kampuchea; they affirmed the right of the Kampuchea people to determine their future by themselves, free from interference or influence from outside powers in the exercise of their right of self-determination; the ASEAN Foreign Ministers called for the immediate and total withdrawal of the foreign forces from Kampuchea territory [and] welcomed the decision of the United Nations Security Council to consider without delay the situation in Indo-China, and strongly urged the Council to take the necessary and appropriate measure to restore peace, security and stability in the area.<sup>27</sup>

This statement was accepted among ASEAN members, and ASEAN encouraged other countries to also accept their proposal. ASEAN wrote another letter to the United Nations Secretary-General (UNSG) of the UN to transmit the Joint Statement to be circulated as a document of the UNSC<sup>28</sup> to make other countries aware of the situation and for the sake of peace and stability in Southeast Asia. One month and one week later, the permanent representative of Indonesia, in the capacity as Chairman of the ASEAN Standing Committee (ASC), made another statement on the latest developments in Indochina in order to avoid further disruption of peace and stability in the Southeast Asia region by urgently appealing to the parties in conflict to cease all hostilities, and urged that all foreign forces be withdrawn from all the areas of conflict in Indochina. Furthermore, ASEAN appealed to powers outside the region to exercise the utmost restraint and refrain from any acts which might lead to a further escalation and widening of the conflict.<sup>29</sup> This statement also asked the UNSG to transmit the Joint Statement for circulation as a document of the UNSC.<sup>30</sup> Besides these three statements by the Chairman of the ASC, ASEAN made another effort to solve the Cambodian problem in the Joint Communiqué of the Twelfth AMM in Bali, Indonesia on 28-30 June 1979 by

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<sup>27</sup> United Nations Security Council, *Letter Dated 12 January 1979 from the Permanent Representative of Indonesia to the United Nations Addressed to the President of the Secretary-General, S/13025*, Annex, January 12, 1979, 2.

<sup>28</sup> *Ibid.*

<sup>29</sup> United Nations Security Council, *Statement by H.E. Dr. Mochtar Kusumaatmadja, Minister for Foreign Affairs of the Republic of Indonesia, in the Capacity as Chairman of the ASEAN Standing Committee, on the Latest Development in Indo-China, S/13016*, Annex, 1979, 2.

<sup>30</sup> United Nations Security Council, *Letter Dated 20 January 1979 from the Permanent Representative of Indonesia to the United Nations Addressed to the President of the Security General, S/13016*, February 20, 1979, 1.

referring to the important issues which the AMM had to address with regard to the situation in Indochina, such as the realization of ZOPFAN and the refugee problem.<sup>31</sup> However, the UNSC could not make much progress on these issues since there were some permanent members of the Council behind the problem.

Up to August 1979, the situation in Indochina or the Cambodia problem remained unsolved and became worse. However, ASEAN did not cease searching for a solution to this problem. At that time ASEAN did not only send the letter dated 17 August 1979 to the UNSG to be transmitted as a UN document as before, but also requested the inclusion of a supplementary item in the agenda of the thirty-fourth session of the United Nations General Assembly (UNGA),<sup>32</sup> which would take place from 15 October to 23 November 1979.<sup>33</sup> The UNGA accepted the request of ASEAN and included the situation in Cambodia on their agenda. Before it took place, Cambodia factions and Vietnam sent some letters to the UNSG to provide information about the situation. After that, Thailand also did the same, since that country has a border with Cambodia and faced the problem of refugees. In total, Cambodia factions sent 26 letters to the UNSG, Vietnam sent 16, and Thailand sent four.<sup>34</sup> Their letters were written from their own points of view. The Thirty-Fourth Session of the UNGA started on October 15, 1979.

The situation in Cambodia was adopted as Agenda Item 123 for the 62<sup>nd</sup> to 67<sup>th</sup> meetings from Monday 12 to Wednesday 14 of November 1979.<sup>35</sup> These meetings had six draft resolutions proposed by the two main groups and India. The main proponent of the first group was Vietnam and the second group was ASEAN. The first draft resolution of Vietnam was drafted on 25 October 1979, which included seven paragraphs of the preamble and three paragraphs of the main texts. The most important point of this draft was about the genocide, which had threatened peace and stability in Southeast Asia. This meant that Vietnam also considered that peace and stability in Southeast Asia was violated. However, this group ignored the fact that Vietnam invaded Cambodia. It was true that Vietnam tried to ignore the argument of other countries

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<sup>31</sup> "Joint Communiqué of the Twelfth ASEAN Ministerial Meeting, Bali, Indonesia, 28-30 June 1979" in *ASEAN Documents Series 1967-1988*, 3<sup>rd</sup> ed. (ASEAN Secretariat, 1988), 86-88.

<sup>32</sup> The United Nations, *Official Records of the General Assembly*, Thirty-Fourth Session, Vol.2, "Agenda Item 123: The Situation in Kampuchea" (New York: United Nations, 1979), 1.

<sup>33</sup> The United Nations, *Official Records of the General Assembly*, *supra* note 19, at cover.

<sup>34</sup> The United Nations, *Official Records of the General Assembly*, *supra* note 32, at 5-7.

<sup>35</sup> The United Nations, *Official Records of the General Assembly*, *supra* note 19, at xvi.



about its invasion. On the other hand, the second group<sup>36</sup> drafted a resolution on 5 November 1979, which included nine paragraphs of preamble and 13 main paragraphs. The most significant points were the first paragraph, which noted with great concern that “the armed conflict in Kampuchea has escalated and is seriously threatening the peace and stability of Southeast Asia”.<sup>37</sup> At this stage it could be said that it was not only ASEAN that was worried about peace and stability in Southeast Asia, but the international community also had the same concern.

Furthermore, paragraph five of the main text “[c]alls upon all parties to the conflict to observe fully the fundamental principles of human rights”.<sup>38</sup> This was the first time that ASEAN, as the main author of this draft, touched upon the human rights issue relating to the situation of Cambodia. However, there was a doubt whether ASEAN was the actor eager to put the human rights issue in the draft, or whether it simply agreed with other Western or European countries on this issue. Regardless of the doubt, ASEAN accepted human rights in the draft, though it might have done so unwillingly. In addition, some parts of this draft were edited later. It finally included nine paragraphs of preamble and fourteen main paragraphs, and the concern about human rights was retained.<sup>39</sup> It restated that this group unanimously accepted the human rights issue.<sup>40</sup> Therefore, it could be said that the human rights concern in this draft was expressed for the first time by ASEAN.

The UNGA decided to pass the Resolution 34/22 on the situation in Cambodia at the 67<sup>th</sup> plenary meeting on 14 November 1979, adopting the draft resolution of the ASEAN members and 27 countries (the second group). Some people might wonder why the UNGA agreed to adopt the draft resolution proposed by ASEAN and other countries but not the Vietnam’s draft. The President of the UNGA, Salim Ahmed Salim, agreed that the draft resolution of the second group was practical and reaffirmed the basic principles for ensuring peaceful relations between States, because it was constructive and it sought actively to restore peace and stability to Cambodia and to

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<sup>36</sup> This resolution was drafted by Australia, Bangladesh, Belgium, Canada, Colombia, Comoros, Fiji, the Federal Republic of Germany, Honduras, Indonesia, Japan, Luxembourg, Malaysia, Mauritania, New Zealand, Pakistan, Papua New Guinea, Philippines, Samoa, Senegal, Singapore, Somalia, Thailand, Upper Volta and Zaire.

<sup>37</sup> The United Nations, *Official Records of the General Assembly*, *supra* note 19, at 3.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*, 4.

<sup>40</sup> Besides these two groups of countries, India also drafted a resolution on Kampuchea on 12 November 1979, but withdrew this draft resolution at the 67<sup>th</sup> plenary meeting.

ensure that the Cambodia people themselves determine their own future and destiny.<sup>41</sup> These reasons made the UNGA accept the draft of the second group. This resolution had nine paragraphs in the preamble and fourteen points<sup>42</sup> in the main text, which described many aspects on Cambodia problem, but the most important for this analysis was paragraph five of the main text, which called upon “all parties to the conflict to observe fully the fundamental principles of human rights” and also to “explore the possibility of holding an international conference on Kampuchea as one of the means for implementing the present resolution”.<sup>43</sup> It is important to note that it was not only the international community which was concerned about the protection of human rights, but ASEAN countries also accepted this concern and drafted the resolution. Therefore, it could be said that this initial stage of dealing with human rights issues regarding the Cambodia problem constituted an original concept of human rights in ASEAN.

### **3. ASEAN Recognition of Human Rights in European Community Cooperation**

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

They reaffirmed their commitment to the world peace, international cooperation and understanding, economic development, social justice and

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<sup>41</sup> The United Nations, *Official Records of the General Assembly*, *supra* note 32, at 1194.

<sup>42</sup> The 14 points are: (1) humanitarian relief, (2) resettlement of Kampuchean displaced persons, (3) coordination of assistance and distribution, (4) facilitation of the humanitarian relief efforts, (5) calling upon all parties to the conflict to observe fully the fundamental principles of human rights, (6) cessation of all hostilities forthwith, (7) immediate withdrawal of all foreign forces and refraining from all acts or threats of aggression and all forms of interference in the internal affairs of States in South-East Asia, (8) settlement of the disputes by peaceful means, (9) refraining from any interference, (10) enabling Cambodian people to choose democratically their own government, (11) contribution to a peaceful solution of the problem, (12) exploring the possibility of holding an international conference, (13) submission of a report on the situation at the earliest appropriate opportunity, (14) decision to include in the provisional agenda of its thirty-fifth session the item entitled “The situation in Kampuchea”.

<sup>43</sup> The General Assembly, *Resolution 34/22 "The Situation of Kampuchea"*, 61st Plenary Meeting, (1979).

human rights. They further emphasized the need for all states to observe strictly the following principles: respect for sovereignty, territorial integrity, and independence of states, non-resort to force or threat of the use of force and non-interference in the internal affairs of the other states. They agreed that these principles are of vital importance to inter-state relations.<sup>44</sup>

This is the first time that human rights appeared in an ASEAN document after sharing the human rights concern in the draft resolution of the UNGA. This is a signal that human rights were starting to be more recognised by ASEAN as an important issue in cooperation with both the UN and EC. Furthermore, the Philippines as the Chairman of the ASC issued an important statement on 9 July 1980 which reaffirmed its commitment to the international community action in accordance with the purposes and principles of the UN Charter and UNGA Resolution 34/22 on the situation in Kampuchea, the ASEAN Joint Statement on the Cambodia conflict, and the ASEAN-EC Joint Statement on political issues.<sup>45</sup> It meant that ASEAN's concern about human rights had gradually increased. Human rights concern from a boarder aspect of the UN drafted resolution to the ASEAN-EC Joint Statement narrowed down to the ASEAN's commitment in the ASC statement.

In addition, the UN was further concerned about the situation in Cambodia and the UNGA was motivated to issue Resolution 35/6 on 22 October 1980, which decided a framework for the International Conference on Cambodia. Under this resolution, there were two points that focused on the human rights issue. The first point was “[m]easures by the United Nations to ensure law and order and the observance of the fundamental principles of human rights in Kampuchea” and the second was the paragraph which “[r]eiterates its appeal to all parties to the conflict to observe fully the fundamental principles of human rights”.<sup>46</sup> These two points not only focused on Cambodia's human rights but also reaffirmed that ASEAN increasingly recognized human rights concerns,

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<sup>44</sup> “Joint Statement on Political Issues Kuala Lumpur, 8 March 1980” in *ASEAN Documents Series 1967-1988*, 3<sup>rd</sup> ed. (ASEAN Secretariat, 1988), 438.

<sup>45</sup> “Statement by the Philippine Foreign Minister as Chairman of the ASEAN Standing Committee and on Behalf of the ASEAN Committee and on Behalf of the ASEAN Foreign Ministers, New York, 9 July 1980” in *ASEAN Documents Series 1967-1988*, 3<sup>rd</sup> ed. (ASEAN Secretariat, 1988), 590.

<sup>46</sup> The United Nations General Assembly, *Resolution 35/6, "The Situation in Kampuchea"*, 1980, <http://www.un.org/documents/ga/res/35/a35r6e.pdf>.

which had already been initially expressed in Resolution 34/22 and the ASEAN-EC joint document, and the subsequent statement by the ASC. This could be seen as the second stage of human rights concern in ASEAN.

## **II . Human Rights Concerns in the Paris Peace Conference in 1989 and the Agreement in 1991**

The cooperation between ASEAN and the EC continued to play a significant role in solving the Cambodia problem. In July 1981, the International Conference on Cambodia was held by the UNGA in New York, in which the great majority of the international community participated, numbering 93 Members States.<sup>47</sup> Unfortunately, the Cambodia problem went unsolved because Vietnam did not join the conference,<sup>48</sup> although the Foreign Ministers of ASEAN and the EC expressed their hope that Vietnam would join the conference to make a peaceful resolution to the Cambodia problem and to re-establish the peace and stability in Southeast Asia.<sup>49</sup> The ASEAN and EC Ministers undertook their commitment to the resolutions of the UNGA on the situation in Cambodia in 1984 which called for the total withdrawal of all foreign troops from Kampuchea.<sup>50</sup> However, the Ministers regretted the Vietnam's refusal to acknowledge these resolutions as a basis for a comprehensive political solution to the Kampuchea problem. In this situation, the Ministers of ASEAN and the EC understood that the main issue was Vietnam. Therefore, they terminated assistance to Vietnam, as it was supporting and expanding the occupation of Cambodia.<sup>51</sup> The problem was unsolved since there was no cooperation from Vietnam.

### **1. ASEAN's Changing Attitude Towards Vietnam Reaction**

Up to 1986, Vietnam continued to reject the proposal to resolve the Cambodia problem and also refused the proposal of the Coalition of Democratic Kampuchea,

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<sup>47</sup> The United Nations, *The United Nations and Cambodia, 1991-1995*, vol.2, (The United Nations, 1995), 6.

<sup>48</sup> "Statement by the Indonesian Foreign Minister as Chairman of the ASEAN Standing Committee on the Escalation of the Armed Conflict between Vietnam and Kampuchea, Jakarta, 9 January 1979" in *ASEAN Documents Series 1967-1988*, 3<sup>rd</sup> ed. (ASEAN Secretariat, 1988), 587.

<sup>49</sup> *Ibid.*

<sup>50</sup> "Joint Press Release of the Fifth ASEAN-EC Ministerial Meeting, Dublin, 15-16 October 1984" in *ASEAN Documents Series 1967-1988*, 3<sup>rd</sup> ed. (ASEAN Secretariat, 1988), 451.

<sup>51</sup> *Ibid.*, 452.

under Prince Sihanouk, on constructive elements for a peaceful settlement and principles approved by ASEAN and the UN.<sup>52</sup> In December of the same year, the Vietnamese government adopted a new policy called Doi Moi or Renovation in the Sixth National Party Congress.<sup>53</sup> It was clear that this new policy could not be accomplished without a comprehensive settlement of the Cambodia problem.<sup>54</sup> In 1987, Vietnam made a decision to withdraw from Cambodia and reduce its large standing army to set in motion a strategic readjustment in its national security policy, which was adopted in Resolution No.2 of the Politburo of the Vietnam Communist Party (VCP).<sup>55</sup> Domestic policy in Vietnam directly affected the Cambodia problem. If there had been no new policy, Vietnam might have continued to refuse to withdraw its troops from Cambodia and it would have been harder to solve the Cambodia problem in a peaceful way.

In August 1987, the cooperation between ASEAN and Vietnam started, particularly between Vietnam and Indonesia as a representative of ASEAN, with the leaders meeting in Ho Chi Minh City. This meeting regarding the Cambodian issue resulted in a joint communiqué in which Vietnam promised a two phased troop withdrawal to be completed in 1990 should a political solution be found.<sup>56</sup> On the other hand, ASEAN also cooperated with Cambodia in the process of dialogues among the four Cambodian factions at the first face-to-face talks in July 1988.<sup>57</sup> Without discussions between the main factors and ASEAN, the problem would hardly have been solved. ASEAN played a significant role in the Cambodia problem as a good partner. In these circumstances, the Secretary General of the VCP, Nguyen Van Linh, told the Philippine Foreign Minister, Raul Manglapus, who was visiting Vietnam, that “Vietnam was eager to join ASEAN” in late 1988.<sup>58</sup> To prove its eagerness, Vietnam implemented

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<sup>52</sup> “Joint Declaration of the Sixth ASEAN-EC Ministerial Meeting Jakarta, 20-21 October 1986” in *ASEAN Documents Series 1967-1988*, 3<sup>rd</sup> ed. (ASEAN Secretariat, 1988), 459.

<sup>53</sup> Carlyle A. Thayer, “Vietnam and ASEAN” (Conference on Vietnam in 2001: Prospects for Economic and Social Progress, Washington, D.C.: Asia-Pacific Center for Security Studies, 2000), 1.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

<sup>56</sup> Nguyen Huu Quyet, *Vietnam’s ASEAN Strategic Objectives Since the 1986: Doi Moi Reform* (National Graduate Institute for Policy Studies, 2013), 27.

<sup>57</sup> The United Nations, *supra* note 47, at 6.

<sup>58</sup> Carlyle A. Thayer, *supra* note 53, at 2.

the first-phase by the withdrawal of 50,000 troops from Cambodia and removed all remaining troops from the Thai-Cambodian border.<sup>59</sup>

In January 1990, the Prime Minister of Thailand, Chatchai Chunhawan, officially stated his support for the incorporation of Indochina into ASEAN in response to Vietnam's gesture of goodwill.<sup>60</sup> He also announced "Bangkok wishes to turn Indochina from battlefields into marketplaces".<sup>61</sup> Both these actions were turning the Cambodia problem to the positive side. At the same time, the Prime Minister of Malaysia, Mahathir, indicated that "ASEAN could accept Vietnam as a member of the grouping in the future should it subscribe to the ideas of ASEAN".<sup>62</sup> To become a part of ASEAN was one of the targets of Vietnam's new policy, and ASEAN agreed to increase their membership since it was one of their declared points from the Bangkok Declaration and the Treaty of Amity and Cooperation in Southeast Asia. One condition was that Vietnam had to cooperate in solving the Cambodia problem.

ASEAN made great efforts to solve the situation in Cambodia and keep the peace project for the region and also with external actors. The Foreign Ministers of the member states of ASEAN and of the EC met in London where they reaffirmed their commitment made earlier at Kuala Lumpur to the world peace, human rights, international cooperation and understanding, economic development, and social justice, and the principles of the UN Charter.<sup>63</sup> The Ministers of ASEAN and the EC supported the UN as a universal forum for the protection of international peace and security and for international cooperation and reconfirmed their commitment to uphold the principles enshrined in the UN Charter.<sup>64</sup> Their grave concern was that in many parts of the world fundamental principles such as the non-use of force against the territorial integrity of the states and respect for human rights were currently being violated. Therefore, they insisted that the international community should work actively with the UN and the UNSG for resolution of these issues.<sup>65</sup> Many of the statements of the participants clearly

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<sup>59</sup> Nguyen Huu Quyet, *supra* note 56, at 28.

<sup>60</sup> Carlyle A. Thayer, *supra* note 53, at 2.

<sup>61</sup> Nguyen Huu Quyet, *supra* note 56, at 28.

<sup>62</sup> Carlyle A. Thayer, *supra* note 53, at 2.

<sup>63</sup> "Joint Statement of the Foreign Ministers of the Members States of the European Community and ASEAN, London, 13-14 October 1981" in *ASEAN Documents Series 1967-1988*, 3<sup>rd</sup> ed. (ASEAN Secretariat, 1988), 441.

<sup>64</sup> "Joint Press Release of the Fifth ASEAN-EC Ministerial Meeting, Dublin, 15-16 October 1984" in *ASEAN Documents Series 1967-1988*, 3<sup>rd</sup> ed. (ASEAN Secretariat, 1988), 451.

<sup>65</sup> *Ibid.*

endorsed the commitment to solve the Cambodia problem and prevent the returning of the Pol Pot regime in the future.

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

## **2. Human Rights Concerns in the Paris Peace Conference in 1989**

The Paris Peace Conference was co-chaired by Mr. Ali Alatas, the Minister for Foreign Affairs of the Republic of Indonesia and Mr Roland Dumas, the Minister for Foreign Affairs of the French Republic.<sup>66</sup> The conference started with an opening address by each faction and other related parties. At this stage each party had their own viewpoints which expressed whatever issues they wished, but this paper will highlight only the concern about human rights, genocide, peace, stability and support of the UN resolution. The Cambodia faction leader, Khieu Samphan, remarked that fundamental human rights were one of the important issues of concern in his address.<sup>67</sup> Besides, the President of the Council of Ministers, Hun Sen, was concerned about the availability of any measure that would likely prevent the return of the genocidal regime of Pol Pot or prevent a civil war caused by the latter.<sup>68</sup> In addition, the Vice President of the Council of Ministers of Lao PDR, Phoun Sipaseuth, also stated “it is necessary that the international community take concrete measures to prevent the return to power of the

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<sup>66</sup> The United Nation General Assembly, *The Situation in Cambodia*, Forty-Sixth Session, A/46/608-S/23177, Agenda Item 24 (1991), 2.

<sup>67</sup> “Address by H.E. Mr. Khieu Samphan to the Paris International Conference on Cambodia, 31 July 1989” in Amitav Acharya, Pierre Lizée, and Sorpong Peou, eds., *supra* note 17, at 22.

<sup>68</sup> “Intervention De S. Exc. M. Hun Sen, President du Conseil des Ministres, Ministre des Affaires Etrangères et Chef de la Délégation de l’Etat Du Cambodge a la Conférence Internationale sur le Cambodge, Paris 30 Juillet 1989” in Amitav Acharya, Pierre Lizée, and Sorpong Peou, eds., *supra* note 17, at 37.

genocide Pol Pot group”.<sup>69</sup> It could be said that many leaders were worried about the peace, stability and human rights, and tried to prevent the return of genocide and human rights violation to the Cambodian people. At this stage, some leaders recognized that the solution of the Cambodian question could greatly contribute to the building of Southeast Asia as a zone of peace, neutrality, friendship and cooperation, and that it should be resolved through political means and thus not by force of arms.<sup>70</sup>

Prince Mohamed Bolkiah, the Minister of Foreign Affairs of Brunei Darussalam, argued that the theme of the discussion must be not less than the term of a comprehensive and durable settlement of the Cambodia problem as defined by the UNGA resolution on this issue.<sup>71</sup> The Foreign Minister of China, Qian Qichen, stated that they were at the Paris International Conference on Cambodia for seeking a comprehensive, just and reasonable political settlement of the Cambodia question, but asked how to attain such a settlement at this stage. His idea on this issue was that the international community had to put forward a variety of propositions and proposals.<sup>72</sup> In addition, China pointed out the important role of the UN and its UNSG, since the UN was the most capable, experienced and authoritative in the area of international supervision.<sup>73</sup>

The declaration on the permanent neutrality of the state of Cambodia stated that the international community invited all parties to respect five principles to bring about conditions whereby a “political solution to the Cambodian question” and the “edification of Southeast Asia in a zone of peace, neutrality, friendship and cooperation” could be implemented.<sup>74</sup> These principles were very important for making all parties

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<sup>69</sup> “Intervention De S. Exc. Phoun Sipaseuth, Vice-President du Conseil des Ministres, Ministre des Affaires Etrangères, Chef de la Delegation de la Republique Democratique Populaire Lao, a la Conference Internationale sur la Cambodge Tenue a Paris, le 30 Juillet 1989” in Amitav Acharya, Pierre Lizée, and Sorpong Peou, eds., *supra* note 17, at 42.

<sup>70</sup> “Statement by H. E. Mr. Ali Alatas, Minister for Foreign Affairs of Indonesia, and Co-Chairman of the International Conference on Cambodia, Paris 30th July 1989” in Amitav Acharya, Pierre Lizée, and Sorpong Peou, eds., *supra* note 17, at 52.

<sup>71</sup> “Statement by His Royal Highness Prince Mohamed Bolkiah, Minister for Foreign Affairs of Brunei Darussalam, at the International Conference on Kampuchea, 30th July 1989, Paris” in Amitav Acharya, Pierre Lizée, and Sorpong Peou, eds., *supra* note 17, at 72.

<sup>72</sup> *Ibid.*, 74.

<sup>73</sup> “Statement by Foreign Minister Qian Qichen at the Paris International Conference on Cambodia, 31 July 1989” in Amitav Acharya, Pierre Lizée, and Sorpong Peou, eds., *supra* note 17, at 75.

<sup>74</sup> “Intervention De S. Exc. Phoun Sipaseuth, Vice-President Du Conseil Des Ministres, Ministre Des Affaires Etrangères, Chef De La Delegation De La Republique Democratique Populaire Lao, a la Conference Internationale sur la Cambodge Tenue a Paris, le 30 Juillet 1989” in Amitav Acharya, Pierre Lizée, and Sorpong Peou, eds., *supra* note 17, at 41-42.



respect human rights. The first principle was to “respect the independence, sovereignty and territorial integrity of all countries”; the second principle was to “refrain from interfering in the national affairs of each other, not using the threat of force and strength in its relations”; the third principle was to “refrain from interfering into or participating in military alliances with countries in the region and outside the region to oppose to each other and oppose the countries outside the region, and from using the territory of the country or the territory of the third country against others”. The fourth was to “resolve incidents and international disputes by peaceful means”; and the fifth was to “promote effective cooperation on the basis of equality and mutual benefit”.<sup>75</sup> If these principles could be implemented, the problem of Cambodia would be solved and regional peace and stability should be maintained.

Furthermore, the UNSG stated that all parties accepted the principal objectives of a comprehensive solution and the conference would be called upon to discuss the establishment of an International Control Mechanism (ICM).<sup>76</sup> The conference desired to press for the adoption of appropriate measures to ensure the respect for human rights and prevent a return to the universally condemned policies and practices of the period 1975-1978, in which the Cambodia parties should solemnly pledge to respect the fundamental human rights enshrined in the relevant international conventions and to incorporate those rights in the constitution of the future state.<sup>77</sup> During this time, it seemed that all participants in the conference were concerned about human rights, but the implementation of human rights protection should be particularly for Cambodians and within Cambodia.

After getting the statement of each party, the conference continued by making the rules of procedure and organization of work. The conference was organized into an Ad Hoc Committee, a Coordination Committee and three Working Committees.<sup>78</sup> Among the three Working Committees, the First Committee, chaired by Canada and India, dealt with modalities of a cease-fire and the mandate. The Second Committee dealt with the question of international guarantees to prevent the recurrence of genocide policies and

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<sup>75</sup> *Ibid.*, 41.

<sup>76</sup> “Statement of the [U.N.] Secretary-General at the Opening of the International Conference on Peace in Cambodia, Paris, 30 July 1989” in Amitav Acharya, Pierre Lizée, and Sorpong Peou, eds., *supra* note 17, at 110.

<sup>77</sup> *Ibid.*, 111.

<sup>78</sup> The United Nations General Assembly, *supra* note 66, at 3–4.

practices. This committee was chaired by Lao PDR and Malaysia. The Third Committee dealt with the repatriation of refugees and displaced persons and reconstruction of Cambodia. This committee was chaired by Australia and Japan.<sup>79</sup> These three Working Committees were chaired by the participants of this conference. However, the Ad Hoc Committee included four Cambodian parties and was chaired by the Co-Chairs of the conference (Indonesia and France). The Coordination Committee was established to be responsible for coordinating the work of the four committees. The Committee Chairs included Indonesia and Malaysia as the representatives of ASEAN which was vital for ASEAN as both countries were the representatives of the association.

Among the discussions by these committees, this paper will identify some specific points related to human rights, particularly from the Second Committee, since the chairs of this committee were a member and a future member of ASEAN. This committee's perspective was to guarantee respect for fundamental human rights, the full enjoyment by the Cambodian people of the rights and freedoms stipulated in the Universal Declaration of Human Rights and other relevant international instruments pertaining to human rights, to prevent the recurrence of genocidal policy and practices incompatible with these rights,<sup>80</sup> and to promote peace, security, stability and cooperation in South-East Asia.<sup>81</sup> This perspective also was endorsed by the five permanent members of the UNSC in their statement in March 1990 and readdressed in a letter dated 29 May 1990 from them to the UNSG.<sup>82</sup> These clearly recognised that all levels of human rights protection, prevention of a return to genocide, and peace and stability were the primary concerns for them as well as ASEAN. In addition, the documents of the Coordination Committee also highlighted that the primary objective of the reconstruction of Cambodia should be the advancement of the Cambodian nation and people, without discrimination or prejudice, and with full respect for fundamental human rights for all.<sup>83</sup> Hun Sen proposed an additional statement saying that there must be full respect for fundamental human rights, in particular those of the repatriated refugees and displaced

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<sup>79</sup> "Organization of the Work: Text Adopted by the Conference at Its 4th Plenary Meeting, on 1 August 1989" CPC/89/4, in Amitav Acharya, Pierre Lizée, and Sorpong Peou, eds., *supra* note 17, at 129–30.

<sup>80</sup> Amitav Acharya, Pierre Lizée, and Sorpong Peou, eds., *supra* note 17, at 186.

<sup>81</sup> *Ibid.*, 193.

<sup>82</sup> *Ibid.*, 495–97.

<sup>83</sup> "Letter Dated 25 August 1989 from the Rapporteur of the Third Committee to the Co-Chairman of the Co-Ordination Committee" CPC/89/CC/3, in Amitav Acharya, Pierre Lizée, and Sorpong Peou, eds., *supra* note 17, at 370.

persons, in recognition of their entitlement to live in peace and security, free from intimidation and coercion and free from a return to genocidal policies and practices.<sup>84</sup> By one of the leading factions in Cambodia, human rights protection was thus recognised and claimed for.

Furthermore, Indonesia played the significant roles in solving the Cambodia problem as the Chair of the Jakarta Informal Meeting in 1988 and as a Co-Chair of this Conference in 1989 and as a representative of ASEAN. Indonesia put in strenuous efforts and raised many important issues, particularly regarding the prevention of the recurrence of genocidal policies and practices of the Pol Pot regime and the establishment of peace and stability in Southeast Asia. As pointed out above, ASEAN initially only considered the second period of Cambodian conflict, but now its concern was wider and covered both genocide and human right protection. Mindful that the Treaty of Amity and Cooperation in Southeast Asia was concluded at Bali in 1976 and opened for accession by all states in Southeast Asia, participants agreed that an undertaking by all Southeast Asian countries to become party to this treaty would manifest in a concrete way their common desire to achieve that goal.<sup>85</sup> As the Co-chair of the Ad Hoc Committee (Indonesia) and as Chairs of the Second Committee (Malaysia and Lao PDR) on prevention of the genocide recurrence, ASEAN members understandably had more awareness of the human rights issue. On 20 September 1990, the UNSC issued Resolution 668 (1990) to frame a comprehensive political settlement of the Cambodia conflict and take note with appreciation of the effort of ASEAN and other countries involved in promoting the search for a comprehensive political settlement.<sup>86</sup> This conference was the way to solve Cambodia problem and was accepted by the hostile parties and the participants. Moreover, on 23 February 1991 a Permanent Interdepartmental Committee on Human Rights in Indonesia was formed by decree of the Minister of Foreign Affairs, and Indonesia became a member of the United Nations Commission on Human Rights in the same year.<sup>87</sup> Two years later, the

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<sup>84</sup> *Ibid.*, 375.

<sup>85</sup> "Communications Circulated to the Participants at the Request of the Indonesian Delegation, Issued 29 July 1989" CPC/89/COM/2 in Amitav Acharya, Pierre Lizée, and Sorpong Peou, eds., *supra* note 17, at 427–28.

<sup>86</sup> The Security Council, *Resolution 668 (1990)*, 28, <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/575/18/IMG/NR057518.pdf?OpenElement>.

<sup>87</sup> *Report of the Special Rapporteur, Mr. P. Kooijmans, pursuant to Commission on Human Rights Resolution 1991/38*, "Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment, in

Indonesia National Human Rights Commission (INHRC or Komnas HAM) was established based on the Presidential Decree No. 50/1993 which developed from the Permanent Interdepartmental Committee on Human Rights.<sup>88</sup> This showed that Indonesia as the Co-Chair of the Paris Peace Conference really took human rights concerns in its action.

### **3. Human Rights Concerns in the Paris Peace Agreement of 1991**

Finally, the Paris Peace Agreement was successfully concluded on 23 October 1991 as an agreement for the comprehensive political settlement of the Cambodia conflict. It was signed by Cambodia and 18 other countries, including ASEAN members, in the presence of the UNSG. This agreement consists of four parts: the Final Act of the Paris Conference on Cambodia, the Agreement on a Comprehensive Political Settlement of the Cambodia Conflict, the Agreement Concerning the Sovereignty, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia, and the Declaration on Rehabilitation and Reconstruction of Cambodia.<sup>89</sup> These agreements took more than a decade of negotiations, with ASEAN, the EC and the UNSG closely involved from the beginning. Without their efforts the Cambodia problem might not have been solved.

The agreements were in accord on many important points, but the most important point for human rights issue was prescribed in Part III: Human Rights of the Agreement on a Comprehensive Political Settlement of the Cambodia Conflict, which states that “[a]ll persons in Cambodia shall enjoy the rights and freedoms provided by the Universal Declaration of Human Rights and other relevant international instruments relating to human rights” and “[e]nsure the observance of the rights of man and fundamental freedoms in Cambodia; support the right of all Cambodian citizens to undertake activities to promote and protect the human rights and fundamental freedoms; make effective measures to ensure that the policies and practices of the past shall never be allowed to return.”<sup>90</sup> With regard to adherence to the relevant international

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Particular Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (Commission on Human Rights, Forty-Eight Session, January 8, 1992), 4-5.

<sup>88</sup> The ASEAN NHRI Forum, *Komisi Nasional Hak Asasi Manusia Indonesia: Komnas HAM Indonesia*, 2013, <http://seanf.asia/index.php/about-us/indonesia>.

<sup>89</sup> The United Nations General Assembly, *supra* note 66, at 2, 8, 48, 55.

<sup>90</sup> *Ibid.*, 14.

instruments relating to human rights; it was stated: “The other signatories to this agreement undertake to promote and encourage the respect of the rights of man and fundamental freedoms in Cambodia as enshrined in the relevant international instruments and relevant resolutions of the General Assembly of the United Nations to, inter alia, prevent the recurrence of human rights violations.”<sup>91</sup> This Agreement used the word “for all Cambodia citizens” or “in Cambodia” but general ideas and concepts about genocide and human rights were widely accepted in the international community and particularly by the 18 other signatory countries in the presence of the UNSG including ASEAN Members.

In addition, this agreement had five annexes. Annex 1, on the United Nations Transitional Authority in Cambodia (UNTAC) Mandate”, Section E, Human Rights, provided in accordance with Article 16 that UNTAC will make provision for “the development and implementation of a program of human rights education to promote respect for and understanding of human rights, general human rights oversight during the transitional period, and the investigation of human rights complaints, and, where appropriate, corrective action.”<sup>92</sup> Moreover, the Agreement Concerning the Sovereignty, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia was based on the concept that a comprehensive political settlement for Cambodia was essential for the long-term objective of maintaining peace and security in Southeast Asia and promoting respect for human rights and fundamental freedoms in conformity with the Charter of the United Nations and other relevant international instruments. Article 3 of this Agreement states that:

1. All persons in Cambodia shall enjoy the rights and freedoms embodied in the Universal Declaration of Human Rights and other relevant international human rights instrument.
2. To this end,
  - a. Cambodia undertakes:
    - To ensure respect for and observance of human rights and fundamental freedoms in Cambodia;

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<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*, 27.

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

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

## **Conclusion**

The Cambodia problem can be identified as a significant turning point for ASEAN, and it can be concluded that from this problem the concept of human rights emerged in ASEAN. Human rights concerns first appeared in the draft resolution of the UNGA in 1979 through ASEAN with other countries as an initial stage of human rights in ASEAN related to the Cambodia problem and as an original conception of human rights in ASEAN. Without the drafting process of the GA resolution, ASEAN might not have integrated human rights into its concerns. In addition, the Joint Statement of ASEAN-EC on the political issue in 1980, which is the second stage of human rights appearing in ASEAN through the Cambodia problem, developed from the initial stage. This stage was the most significant, since it was the stage where human rights were identified in the documents of ASEAN, which meant that the intention of ASEAN with regard to human rights was stronger than at the initial stage. In the Paris Peace Conference in 1989 and the Paris Peace Agreement in 1991, ASEAN reached the third stage of human rights concerns because of the Cambodia problem. This stage was also important since ASEAN also signed the Paris Peace Agreement. ASEAN accepted the terms and conditions of the agreements. Therefore, as the Cambodia problem was the origin of the concept of human rights in ASEAN, there were three distinct stages of development of ASEAN's concern for human rights.

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

One important point here was that ASEAN accepted to put the human rights issue in their discourse even though the association was concerned that human rights were a domestic matter which should not involve external interference. At the time of the situation of Cambodia, no one observed that the Joint Statement of ASEAN-EC on Political Issue would become an important point of human rights concern in ASEAN and it would become a significant issue. Also, no one anticipated that the Paris Peace Agreement would be an important document for ASEAN. However, looking back at these documents at this moment, they are very essential to ASEAN in terms of human rights and it was concern for Cambodia people that led the group there. However, Cambodian people are now a greater concern for ASEAN since Cambodia became a member in 1999. Therefore, the human rights issue as outlined in the Paris Peace Agreement should also be implemented by all members of ASEAN. Moreover, it should be noted that ASEAN broke their principles in term of solving the Cambodia problem. It could be maintained that Cambodia's human rights should be equal with ASEAN human rights and it could be concluded that the Cambodia problem is an origin of the human rights concept in ASEAN.