



Engagement with regional multilateral organisations

Case study: ASEAN Perspective

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Executive Summary

This deliverable of Work Package No 5 assesses the engagement of the EU with the Association of Southeast Asian Nations (ASEAN). Through a series of joint agreements, with the most recent being the Bandar Seri Begawan Plan of Action to Strengthen the ASEAN-EU Enhanced Partnership (2013-2017), the EU and its Member States on the one hand and the ASEAN on the other hand have committed themselves to cooperate *inter alia* on human rights, including through extending support to the ASEAN Intergovernmental Commission on Human Rights (AICHR).

The deliverable consists of six chapters.

The first chapter sets out the aims, conceptual framework, methodology and structure of the report.

The second chapter explores the place of human rights and multilateralism in the EU, with a focus on the EU treaties, the EU Human Rights Guidelines and the EU Strategic Framework and Action Plan on Human Rights and Democracy.

The third chapter discusses the institutional framework related to promotion and protection of human rights in ASEAN and also identifies the major EU human rights stakeholders relevant to cooperation with ASEAN in this area.

The fourth chapter considers substantive goals and objectives in relation to the EU's human rights policy towards South-East Asia as well as goals and objectives enshrined in international agreements between the EU and South-East Asian states. The chapter further discusses the Bandar Seri Begawan Plan of Action roadmap and action plans, sub-regional cooperation strategies and EU Member States' initiatives in relation to human rights.

The fifth chapter studies the tools and methods employed by the EU at ASEAN. Particular attention is given to the human rights dialogue between the EU and ASEAN. The chapter also considers other initiatives and elements of the EU's activities towards ASEAN and its Member States.

The report illustrates how the relationship between the EU and ASEAN has developed in the recent 25 years from a purely economic engagement to a much broader scope of interaction, which includes the protection and promotion of human rights. Major challenges remain in making this engagement more efficient, which is affected i.a. by differences in the approaches to human rights, the nascent status of ASEAN's human rights mechanisms, as well as the influence of, both, trade and security aspects of the relationship. Coordination also appears to be an issue due to the numerous actors involved in EU-ASEAN relations, including the Member States of both organisations. An important policy question remains how to reconcile the human rights needs with interests in other areas of cooperation.

List of abbreviations

ACC	ASEAN Coordinating Council
ACMW	ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers
ACP	African, Caribbean and Pacific Group of States
ACTIP	ASEAN Convention on Trafficking in Persons
ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
AEC	ASEAN Economic Community
AFTA	ASEAN Free Trade Area
AHRD	ASEAN Human Rights Declaration
AICHR	ASEAN Intergovernmental Commission on Human Rights
AMS	ASEAN Member States
AMU	Adam Mickiewicz University
AP	Action Plan
APEC	Asia-Pacific Economic Cooperation
APSC	ASEAN Political-Security Community
Art	Article
ASA	Association of Southeast Asia
ASCC	ASEAN Socio-Cultural Community
ASEAN	Association of Southeast Asian Nations
CEPT	Common Effective Preferential Tariff
CFSP	Common Foreign and Security Policy
Ch	Chapter
CJEU	Court of Justice of the European Union
COHOM	Council Working Party on Human Rights
COASI	Council Working Party for Asia and Pacific
COREPER	Permanent Representatives Committee
CPR	Committee of Permanent Representatives
CSDP	Common Security and Defence Policy
CSO	Civil Society Organisation
DAC	Development Assistance Committee (OECD)
DFID	Department for International Development (UK)
DG	Directorate General
DROI	Subcommittee on Human Rights of the European Parliament
EBA	Everything but Arms
ECHO	EU Humanitarian Aid and Civil Protection Department
ECJ	European Court of Justice
EDF	European Development Fund
EEAS	European External Action Service
EEC	European Economic Community
EIDHR	European Instrument for Democracy and Human Rights
ENP	European Neighbourhood Policy
EOM	Election Observation Mission
EP	European Parliament
EPA	Economic Partnership Agreement
EU	European Union
EUSR	EU Special Representative for Human Rights

FTA	Free Trade Agreement
GGs	KU Leuven Centre for Global Governance Studies
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GNI	Gross National Income
GSP	Generalised Scheme of Preferences
HPA	Hanoi Plan of Action
HR/VP	High Representative for Foreign Affairs and Security Policy
HRD	Human Rights Defenders
IO	Intergovernmental organisation
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex persons
MDGs	Millennium Development Goals
PCA	Partnership and Cooperation Agreement
PIF	Pacific Islands Forum
PSC	Political and Security Committee
SAARC	South Asian Association for Regional Cooperation
SEATO	Southeast Asia Treaty Organisation
SOMTC	Senior Officials' Meeting on Transnational Crime
TAC	Treaty of Amity and Cooperation in Southeast Asia
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
ToR	Terms of Reference
UN	United Nations
US	United States
VDPA	Vienna Declaration and Programme of Action
VPA	Vientiane Plan of Action
ZOPFAN	Zone of Peace, Freedom and Neutrality

Table of Contents

Acknowledgements.....	i
Executive Summary.....	ii
List of abbreviations.....	iii
Tables and Figures	vii
Authors.....	viii
I. Introduction	1
A. Aim	1
B. Conceptual Framework, including coherence, consistency, effectiveness	3
C. Methodology.....	4
D. Structure	5
II. The place of human rights and multilateralism in the European Union’s external policies.....	6
A. European Union Treaties	6
1. General principles of EU external action	6
2. Principles in the matters of Common Foreign and Security Policy (CFSP)	6
B. EU Guidelines on Human Rights	7
C. EU Strategic Framework and Action Plan on Human Rights and Democracy.....	7
D. Multilateralism.....	8
III. Human rights institutional framework of ASEAN and the EU	10
A. Mapping ASEAN.....	10
1. From 1967 to 2007.....	11
2. Realizing the goal: gearing towards the ASEAN Community	14
3. Human Rights development in ASEAN.....	17
4. AICHR – the first human rights institution in ASEAN	19
5. Declaring human rights – launching the AHRD.....	22
B. Major EU human rights stakeholders involved directly or indirectly in cooperation with the ASEAN	23
IV. Substantive goals and objectives	27
A. EU human rights policy	27
6. EU Human Rights Guidelines	27
B. Agreements, strategies and action plans.....	28
V. Tools/methods employed by the EU at the ASEAN	31
1. Political dialogue	31
2. Economic Incentives	34

3. Restrictive measures vs. cooperation	38
VI. Conclusions	39
Bibliography	41
A. Legal and policy instruments	41
1. International treaties and agreements	41
2. Other documents issued by international organisations.....	41
3. EU treaties, legislation and policy.....	42
B. Literature	44
1. Books.....	44
2. Book chapters	44
3. Journal articles	45
4. Policy reports and papers	46
C. Other sources.....	47
1. Internet websites	47
2. Statements, newspaper articles and press releases.....	48

Tables and Figures

Tables:

Table 1: Key instruments in the first 40 years of ASEAN (1967-2007).....	14
Table 2: The structure of ASEAN and its key decision-making bodies.....	16
Table 3: EU Human Rights Dialogues and PCA vis-à-vis ASEAN	34
Table 4: EU's trade and economic agreements with ASEAN Member States	36

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I. Introduction

‘The EU has a strategic interest in strengthening its relationship with the Association of South-East Asian Nations (ASEAN). A strong, cohesive and self-confident ASEAN proceeding with its own integration is good for regional stability, prosperity and security and creates new opportunities for cooperation on regional and global challenges.’¹

A. Aim

The aim of this study is to critically map and provide an assessment of the EU’s intricate and long-established cooperation with the Association of Southeast Asian Nations (ASEAN) in the area of human rights.

The Vienna Declaration and Programme of Action adopted at the II World Conference on Human Rights in 1993 states that

Regional arrangements play a fundamental role in promoting and protecting human rights. They should reinforce universal human rights standards, as contained in international human rights instruments, and their protection. The World Conference on Human Rights endorses efforts under way to strengthen these arrangements and to increase their effectiveness, while at the same time stressing the importance of cooperation with the United Nations human rights activities.²

This assessment of the role of such regional arrangements (systems of protection) has been regularly reiterated in the relevant resolutions of the UN General Assembly, Commission on Human Rights and subsequently Human Rights Council.

The Office of the High Commissioner for Human Rights also underlines that regional human rights systems:

- assist ‘national governments with the implementation of their international human rights obligations; for example, assisting with the implementation of the recommendations of treaty bodies, special procedures and the Universal Periodic Review’;
- provide ‘people with more accessible mechanisms for the protection of their human rights, once national remedies have been exhausted’;
- help ‘to raise peoples’ awareness of their human rights, placing them in a more localized context and reflecting their particular human rights concerns’;
- provide ‘regional input to the development of international human rights standards and the improvement of international human rights mechanisms’;

¹ European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, Joint Communication to The European Parliament and The Council. ‘The EU and ASEAN: a partnership with a strategic purpose’, 18 May 2015 JOIN(2015) 22 final.

² Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, para 37.

- help 'national governments to better address regional human rights concerns that cross national borders; for example, human rights concerns related to migration, transnational crime and environmental disasters'.³

According to Article 21(1) TEU, the EU is committed to 'develop relations and partnerships with (...) regional organisations which share [its] principles'. A study for the European Parliament on the regional human rights mechanisms states that '[r]egional human rights protection mechanisms constitute important pillars of the international system for the promotion and protection of human rights'.⁴ Indeed, considerable attention is paid to these mechanisms at the international level. They are considered as the most desirable complementary mechanisms to the universal system working under the auspices of the United Nations. From the local perspective, however, they are perceived as the primary supra-state source of protection, in particular if they offer effective judicial safeguards as it is the case in Europe, Latin America and Africa.

The 2012 EU Strategic Framework on Human Rights and Democracy and the current EU Action Plan for 2015-2019 commit the EU to strengthening cooperation with regional human rights and democracy mechanisms. To that end, the EU should in particular pursue synergies and common initiatives on key thematic issues and at important multilateral events, as well as promote peer-to-peer capacity building initiatives between regional human rights and democracy support mechanisms. Furthermore, the EU should engage systematically with the regional organisations, including ASEAN, on best practices for human rights and the strengthening of democracy. References to regional systems are made throughout the Plan of Action under various thematic activities.

EU engagement with ASEAN is relatively new in comparison with other regional organisations,⁵ having been initiated in late 1970s and solidified in 1980 with the *Cooperation Agreement between the Member Countries of ASEAN and the European Community*.⁶ Over the next 36 years, the relationship between both organisations has altered considerably, gradually moving towards covering not only economic and trade relations, but also political, security and sociocultural issues, including human rights.⁷

Another difference to the regional engagements of the EU with European organizations, the Organization of American States and the African Union is that one cannot describe the engagement with ASEAN as 'two unions, one vision'. The 'vision' of both sides of this relationship is in many respects starkly different, what one can refer to – and what has in fact been explicitly highlighted in the *2007 Nuremberg Declaration on an EU-ASEAN Enhanced Partnership* – as converging interests between both organisations.⁸ Although cooperation has increasingly involved human rights, democracy, the

³ OHCHR, Regional Office for South-East Asia, 'An Overview of Regional Human Rights Systems', <<http://bangkok.ohchr.org/programme/regional-systems.aspx>>.

⁴ European Parliament, Directorate-General for External Policies. 'The Role of Regional Human Rights Mechanisms', (2010) 1.

⁵ Cooperation of the EU with European, African, and Inter-American American organisations is presented in similar reports prepared under the FP7-FRAME project.

⁶ Cooperation Agreement between Member Countries of ASEAN and European Community, 7 March 1980.

⁷ Laura Allison, *The EU, ASEAN and Interregionalism* (Palgrave Macmillan 2015) 44-45.

⁸ Council of the European Union, 'Nuremberg Declaration on an EU-ASEAN Enhanced Partnership', Doc No 7588/07, 15 March 2007.

rule of law, social equality and justice, the diverging perceptions of these concepts have not been fully reconciled.

ASEAN, comprising ten states (Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam) is the main regional organisation in South-East Asia. At a total population of ca. 558m people it is comparable in size to the EU, which currently has a total population of ca. 500m. However, both, the character of the organisations and the level and scope of integration of their Member States are markedly different. ASEAN remains largely an organisation dedicated to facilitating dialogue and cooperation between its Member States, primarily in the field of economic growth. Initially, the European Communities (predecessors to the EU) had similar objectives. Over the years, the EU has undergone an unprecedented evolution towards an integrated intergovernmentally-driven politico-economic union, with an ever-expanding portfolio of internal and external policies which have grown to include protection and promotion of human rights, democracy and the rule of law. Nevertheless, the memory of the beginnings should help to better understand the ASEAN partners. The technical capabilities and resources available to both organisations are strikingly different as well. The budget of the ASEAN Secretariat, which is the primary permanent structure of ASEAN, is currently set at USD 15m, while the EU's total budget for the year 2016 is set at EUR 155b and encompasses a wide array of bodies, institutions, agencies and mechanisms.

This report assesses the EU's engagement with ASEAN in the context of the latter's efforts to develop a regional framework for human rights promotion and protection, including through financial contributions and other forms of assistance.

In addition to agreements and policies of the EU as such, the actions of the EU institutions (e.g. the Council, the Human Rights Working Group of the Council (COHOM), the EU Commission, the European External Action Service (EEAS) and the European Parliament) as well as policies and actions of individual EU Member States towards ASEAN and its Member States will be considered.

B. Conceptual Framework, including coherence, consistency, effectiveness

The report is primarily dedicated to the relationship between the EU and the human rights architecture of ASEAN. However, taken into account the rather low level of ASEAN integration and formal human rights commitments, the institutional relationship between the two organisations is strongly influenced by EU bilateral relations with ASEAN Member States. Therefore, the latter aspect is taken into account, as appropriate, in various parts of this report.

The clarification of the concepts of 'coherence', 'consistency' and 'effectiveness' of EU human rights policies has been elaborated in greater details in the 'Report on the analysis and critical assessment of EU engagement in UN bodies'.⁹ The findings contained therein are *mutatis mutandis* applicable to EU cooperation with regional systems of human rights protection.

Accordingly, coherent/consistent EU policymaking is defined as 'policymaking that seeks to achieve common, identifiable goals that are devised and implemented in an environment of collaboration,

⁹ Grażyna Baranowska, Anna-Luise Chané, David D'Hollander, Agata Hauser, Jakub Jaraczewski, Zdzisław Kędzia, Mariusz Lewicki and Anna Połczyńska 'Report on the analysis and critical assessment of EU engagement in UN bodies', FRAME Deliverable 5.1, 2014, ch I.B.1.

coordination and cooperative planning among and within the EU Institutions, among the EU Institutions and Member States, as well as among EU Member States.¹⁰ Three dimensions of coherence/consistency need to be distinguished:¹¹

- **‘Internal-external’ dimension:** captures ‘the degree to which the EU applies internally what it promotes externally.’ It includes the conduct of both the EU institutions and individual Member States.
- **‘External-external’ dimension:** refers to the degree of uniformity in which the EU articulates and follows its policies in relation to non-EU partners.
- **‘Internal-internal’ dimension:** ‘captures the degree to which all representatives of EU institutions and EU Member States convey a uniform message about a particular country-specific or thematic human rights issue in the entirety of EU external action.’¹²

Lack of coherence/consistency may undermine credibility of the EU as a human rights actor with all the consequences in terms of authority and effectiveness of action and impair the EU’s ability to achieve its goals.

The concept of ‘effectiveness’ refers in this report to the EU’s ability to attain its policy goals in cooperation with ASEAN. It should help assessing the EU’s action vis-à-vis ASEAN, as well as the impact of actions undertaken jointly by the EU and ASEAN in Member States or third countries.

Since the EU Action Plan for 2015-2019 places great emphasis on the regional systems, it can play an important role in ensuring EU coherence/consistence and effectiveness.

C. Methodology

The research for this report is based on the analysis of primary and secondary sources.

Primary sources analysed for this report include official documents from the EU and ASEAN.

EU documents were collected using the Official Journal of the EU,¹³ the EUR-Lex database,¹⁴ the public register of the Council of the European Union¹⁵ and the conclusions database on the website of the European Council.¹⁶ The methods of analysis range from keyword searches to textual and legal analyses, depending on the type of document and the research context. Documents of the ASEAN

¹⁰ Id. I.B.1. and referred to there: ‘Coherence (and consistency)’ FRAME Internal Fact Sheet, 2014, 1; see also Tamara Lewis, Wolfgang Benedek and Anna Müller-Funk, ‘Report on coherence of human rights policymaking in EU Institutions and other EU agencies and bodies’, FRAME Deliverable 8.1, 2014, <www.fp7-frame.eu/wp-content/materiale/reports/06-Deliverable-8.1.pdf>.

¹¹ Based on keynote lecture by EU Special Representative for Human Rights, Stavros Lambrinidis, Interparliamentary Committee Meeting with EU National Parliaments, European Parliament Subcommittee on Human Rights, 25 September 2013.

¹² Grażyna Baranowska, Anna-Luise Chané, David D’Hollander, Agata Hauser, Jakub Jaraczewski, Zdzisław Kędzia, Mariusz Lewicki and Anna Połczyńska ‘Report on the analysis and critical assessment of EU engagement in UN bodies’, FRAME Deliverable 5.1, 2014, p 4.

¹³ See <<http://eur-lex.europa.eu/oj/direct-access.html>>.

¹⁴ See <<http://eur-lex.europa.eu/>>.

¹⁵ See <<http://register.consilium.europa.eu/content/int?lang=EN&typ=SMPL>>.

¹⁶ See <<http://www.european-council.europa.eu/council-meetings/conclusions>>.

were collected on its websites. It should be noted that the ASEAN does not maintain comprehensive databases similar to those of the EU and the UN.

Secondary sources used for this report include published academic articles and books, working papers and policy reports. They were collected through keyword searches in various databases and library catalogues.

Interviews were conducted in person or by phone with high-level ASEAN officials.

D. Structure

Following this introductory chapter, this report provides a brief overview of the place of human rights and multilateralism in the EU (chapter II). Thereafter the relevant normative and institutional framework of the ASEAN is mapped followed by an overview of the major EU human rights stakeholders in relation to Southeast Asia (chapter III). Chapter IV deals with the substantive goals and objectives of the EU's human rights policy in relation to ASEAN and includes analysis of the EU's own policies, and joint agreements, strategies and action plans. Chapter V considers the tools and methods used by the EU with a focus on the EU-ASEAN human rights dialogue. Chapter VI considers the EU's financial contribution to ASEAN in relation to human rights. The final chapter presents the conclusions of the research.

II. The place of human rights and multilateralism in the European Union's external policies

This chapter tackles the place of human rights and multilateralism in EU external policy. It presents in a nutshell the relevant treaty provisions, EU strategic documents and other acts related to human rights.

A. European Union Treaties

1. General principles of EU external action

The Lisbon Treaty has significantly strengthened the place of human rights in the EU, not only internally (the binding force of the Charter of Fundamental Rights), but also externally, by putting human rights in a central place amongst the principles of EU external action.¹⁷ Article 3(5) TEU states that 'in its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the *protection of human rights, in particular the rights of the child*, as well as to the strict observance and the development of international law, including *respect for the principles of the United Nations Charter*' (emphasis added). Moreover, Article 21 TEU marks a general commitment of the EU to universal and indivisible human rights in EU external relations.¹⁸ However, it does not set out any specific priorities or objectives in this field. Therefore, according to Article 22(1) TEU, the European Council is tasked with the identification of the EU's strategic interests and objectives on the basis of the general principles and objectives set out in Article 21.

2. Principles in the matters of Common Foreign and Security Policy (CFSP)

The specific principles of the CFSP are set out in Article 24(2) and (3) TEU, but human rights are not mentioned in these provisions. However, according to Article 23 TEU, all EU's actions in the field of CFSP are to be guided by principles and objectives set out in Article 21 TEU, mentioned above.

¹⁷ For a comparison of the internal/external provisions related to human rights: Grainne de Búrca, 'The Road Not Taken: The European Union as a Global Human Rights Actor' (2011) 105 *American International Law Journal* 682-685.

¹⁸ '[T]he Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law (emphasis added)'. Article 21 (2) TEU enumerates the general aims of the Union's cooperation in the fields of international relations. According to this provision, the Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to, *inter alia*, 'safeguard its values, fundamental interests, security, independence and integrity (21 (2)(a) TEU), consolidate and support democracy, the rule of law, human rights (emphasis added) and the principles of international law' (21 (2)(b) TEU) and 'preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders' (21 (2)(c) TEU). According to art 21 (3) of the TEU the principles and objectives mentioned above, including human rights, must be respected and pursued by the EU in the development and implementation of: 'the different areas of the Union's external action' covered by this Title (General provisions on the Union's external action and specific provisions on the Common Foreign and Security Policy) and by Part Five of the Treaty on the Functioning of the European Union (The Union's external action) the external aspects of its other policies.'

B. EU Guidelines on Human Rights

The general commitment of the EU to the cause of human rights is specified in a series of Human Rights Guidelines adopted by the Council. To date, 11 thematic guidelines have been adopted.¹⁹ They can be seen as a list of the EU's top priorities in the field of human rights. The operational guidelines provide for specific actions to be taken by the EU in relation to the issue in question. These actions include political dialogue, demarches, monitoring and reporting.

C. EU Strategic Framework and Action Plan on Human Rights and Democracy²⁰

In 2012 the Council of the European Union adopted the EU Strategic Framework and Action Plan on Human Rights and Democracy.²¹ These two documents 'set out the EU's vision for its global human rights policy in the years ahead and establish a detailed list of actions that the EU will implement in order to promote these goals in practice'²² and therefore are essential for establishing the place of human rights in the EU's external relations.²³ In particular, the document states that the EU will work in partnership with regional and other organisations such as ASEAN with a view to encouraging the consolidation of regional human rights mechanisms.

The EU Strategic Framework on Human Rights and Democracy sets out principles and defines the EU's objectives and priorities in the field of human rights. The Strategic Framework states that '[t]he European Union is founded on a shared determination to promote peace and stability and to build a world founded on respect for human rights, democracy and the rule of law. These principles underpin all aspects of the internal and external policies of the European Union'. The document also reaffirms the commitment to the promotion and protection of all human rights (civil and political, or economic, social and cultural).²⁴

The idea of human rights permeating all areas of the EU's actions was further specified in the context of external relations by the Strategic Framework, which states that the EU will promote human rights in all areas of its external actions (including trade, investment, technology, internet, energy etc.) and will place human rights at the centre of its relations with all third countries, including its strategic partners.

The Action Plan on Human Rights and Democracy was adopted for the purpose of implementing the Strategic Framework. It builds on 'the existing body of EU policy on human rights and democracy in

¹⁹ See discussion below.

²⁰ For an extensive analysis of priorities identified by the Strategic Framework/Action Plan, see: Cristina Churruga Muguruza, Felipe Gómez Isa, Daniel García San José, Pablo Antonio Fernández Sánchez, Carmen Márquez Carrasco, Ester Muñoz Nogal, María Nagore Casas and Alexandra Timmer, 'Report mapping legal and policy instruments of the EU for human rights and democracy support', FRAME Deliverable 12.1, <<http://www.fp7-frame.eu/wp-content/materiale/reports/05-Deliverable-12.1.pdf>>.

²¹ Council of the European Union, 'EU Strategic Framework and Action Plan on Human Rights and Democracy', Doc No 11855/12, 25 June 2012.

²² EU Annual Report on Human Rights and Democracy in the World in 2012 (Thematic Reports), Doc No 9431/13, 13 May 2013, 9.

²³ EU Annual Report on Human Rights and Democracy in the World in 2013, Doc No 11107/14, 23 June 2014, 13.

²⁴ In this regard, the Strategic Framework specifically refers to European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, Joint Communication to the European Parliament and the Council 'Human Rights and Democracy at the Heart of EU External Action – Towards a More Effective Approach', 12 December 2011, COM(2011) 886 final.

external action, notably EU guidelines, toolkits and other agreed positions and the various financial instruments, in particular the European Instrument for Democracy and Human Rights'.²⁵

The initial Action Plan was envisioned to cover the years 2012-2015. Towards the end of its duration, the EU initiated an internal review of implementation of the AP towards formulating a new iteration. The FP7-FRAME project also contributed a review of the Action Plan as part of one of FRAME Policy Briefs.²⁶ In 2015 the Council of the EU has adopted a new Action Plan, covering the years 2015-2019, which operationalises the Strategic Framework while continuing some elements of the previous AP, expanding others and abandoning some.²⁷ The 2015 Action Plan continues to highlight the goal of systematic engagement of the EU with regional organisations, among them ASEAN, on best practices for human rights and strengthening of democracy.²⁸

D. Multilateralism²⁹

Having itself been called the 'world's most successful case of multilateralism',³⁰ the EU has embraced the concept of multilateralism from the very beginning.³¹ Nevertheless, it was only in 2003, that 'effective multilateralism' was for the first time recognized as one of the fundamental principles of EU external action. The 2003 European Security Strategy (ESS) recognized that '[i]n a world of global threats, global markets and global media, our security and prosperity increasingly depend on an effective multilateral system' and it committed the EU to the 'development of a stronger international society, well-functioning international institutions and a rule-based international order'.³² It also explicitly recognized the 'important contribution' of the ASEAN 'to a more orderly world'.³³ The 2008 Report on the implementation of the ESS not only reaffirmed the Union's commitment to effective multilateralism in its external action but also expressed the leadership ambitions of the EU, stating that 'Europe must lead a renewal of the multilateral order'.³⁴

It was through the Treaty of Lisbon that this policy commitment was enshrined in EU primary law and thus considerably strengthened. Article 21(1) TEU provides that the EU is obliged to pursue multilateral solutions in its relations with the wider world. In particular, it is to 'develop relations and build partnerships with [...] international, regional or global organisations', as long as they share certain principles, including human rights, democracy and the rule of law. It shall 'promote an

²⁵ Unlike the Strategic Framework, the Action Plan has a deadline: it covers the period until 31 December 2014.

²⁶ 'The Post-2014 EU Action Plan on Human Rights and Democracy. A Policy Brief.', FRAME Policy Brief <http://www.fp7-frame.eu/wp-content/materiale/policy_brief/02-FRAME%20Policy%20Brief%20No%202%20--Post%202014%20SFAP%20Policy%20Brief.pdf>.

²⁷ Council of the European Union, 'EU Action Plan on Human Rights and Democracy', Doc No 10897/15 20 July 2015.

²⁸ Op. cit. p. 29.

²⁹ This section is based on the more detailed analysis in FRAME, 'Report on the analysis and critical assessment of EU engagement in UN bodies', Deliverable 5.1, November 2014, ch II.A.

³⁰ Katie Verlin Laatikainen, Karen E. Smith, *The European Union at the United Nations: Intersecting Multilateralisms* (Palgrave Macmillan 2006) 2.

³¹ Jan Wouters, Sijbren de Jong and Philip De Man, 'The EU's Commitment to Effective Multilateralism in the Field of Security: Theory and Practice' (2010) 29 Yearbook of European Law 164, 170.

³² European Council, European Security Strategy: A Secure Europe in a Better World, 12 December 2003.

³³ Ibid.

³⁴ European Council 'Report on the Implementation of the European Security Strategy – Providing Security in a Changing World', Doc No S407/08, 11 December 2008.

international system based on stronger multilateral cooperation and good global governance’ (Article 21 (2) (h) TEU).

Despite the widespread use of the concept of ‘effective multilateralism’ throughout EU policy documents, its exact scope and content have remained vague and attracted considerable scholarly attention.³⁵ In general, the EU appears to pursue a three-fold interest through its engagement with other multilateral actors:

1. Ensure that multilateral targets and instruments have the impact they deserve;
2. Achieve greater efficiency and impact through cooperation;
3. Promote EU values and interests effectively.³⁶

This approach was reflected for example in the 2012 EU Strategic Framework and the Action Plan on Human Rights and Democracy. The Strategic Framework provided that the Union ‘will work in partnership with regional and other organisations such as [...] the ASEAN [...] with a view to encouraging the consolidation of regional human rights mechanisms’.³⁷ In the same vein the Action Plan committed the European External Action Service (EEAS) and the EU Member States to ‘intensify dialogue with other regional organisations and support and engage with emerging regional organisations and mechanisms for the promotion of universal human rights standards’.³⁸ More specifically the Action Plan also contained obligations for the EU institutions and Member States to promote the ratification and implementation of regional human rights instruments (action no 4 (a)) and to ‘promote improved access by human rights defenders to the UN and regional human rights protection mechanisms, and address the issue of reprisals against defenders engaging with those mechanisms’ (action no 18 (b)).

Furthermore, most EU Human Rights Guidelines contain references to regional multilateral organisations in line with the abovementioned goals. They commit the EU *inter alia* to raise certain human rights issues in the political dialogues with regional organisations,³⁹ to contribute to the strengthening and implementation of existing regional safeguards on the respective human rights issues,⁴⁰ to monitor and encourage regional multilateral organisations⁴¹ and to cooperate with them more generally.⁴²

³⁵See FRAME, ‘Report on the analysis and critical assessment of EU engagement in UN bodies’, Deliverable 5.1, November 2014, footnote 61 for references.

³⁶Based on Commission, ‘The European Union and the United Nations: The choice of multilateralism’ (Communication) COM(2003) 526 final.

³⁷Council of the European Union (n 33).

³⁸*ibid*, action no 36.

³⁹ EU Human Rights Guidelines on torture, children and armed conflict, LGBTI rights, violence against women, HRDs, freedom of Religion and children’s rights.

⁴⁰ EU Human Rights Guidelines on torture, death penalty, freedom of opinion and expression, violence against women, HRDs and children’s rights.

⁴¹EU Human Rights Guidelines on death penalty.

⁴² EU Human Rights Guidelines on freedom of religion and on compliance with IHL.

III. Human rights institutional framework of ASEAN and the EU

A. Mapping ASEAN

ASEAN was established on 8 August 1967 after the five founding members – Indonesia, Malaysia, Philippines, Singapore, and Thailand – signed a Bangkok Declaration, or the ASEAN Declaration. Subsequently, ASEAN gradually expanded with the inclusion of new members – Brunei Darussalam (1984), Vietnam (1995), Laos PDR and Myanmar (1997), and Cambodia (1999) – bringing up the current total number of members to ten.

Before ASEAN, nations in the Southeast Asia region had engaged in a number of international cooperation initiatives, with different sizes, intensities, and purposes. Hosted by the Indian Prime Minister Jawaharlal Nehru in 1947, five Southeast Asian nations – (then) Burma, Indonesia, (then) Malaya, the Philippines, and Thailand – participated along with the representatives of 12 other Asian and African countries in the **Asian Relations Conference** to discuss the idea of intensified cooperation. This represented the first attempt to assert the Asian unity, as it aimed ‘to bring together the leading men and women of Asia on a common platform to study the problems of common concern to the people of the continent, to focus attention on social, economic and cultural problems of the different countries of Asia, and to foster mutual contact and understanding.’⁴³ Two years later, the **New Delhi Conference** was organized at the Indian Council of World Affairs to primarily support the Indonesian Independence.⁴⁴

Preventing communism from spreading into the region was a primary purpose of establishing the US-led **Southeast Asia Treaty Organization (SEATO)** in September 1954. Although termed as ‘Southeast Asia’, only two nations from the region – the Philippines and Thailand – joined the organisation, owing to their respective ties with the United States and their stakes in the matter.⁴⁵ In response to the expansion of colonialism and neo-colonialism among newly independent nations in Asia and Africa, the **Bandung Conference** was organized on April 18 to 24, 1955 with 29 representatives from nations in African and Asia, including (then) Burma and Indonesia from the Southeast Asia region, participating. The Conference expressly opposed the colonialism and neo-colonialism, and aimed to promote African and Asian economic coalitions and decolonisation.⁴⁶

Cooperation in Southeast Asia was further intensified with the creation of the **Association of Southeast Asia (ASA)** in 1961 by (then) Malaya, the Philippines, and Thailand. The ASA was aimed at upholding ‘the ideals of peace, freedom, social justice, and economic well-being’⁴⁷ and pushing forward the economic and social progress in the region. While the ASA goals and operations were

⁴³Indian Council of World Affairs, ‘About Asian Relations Conference’ (2011) <http://icwadelhi.info/asianrelationsconference/index.php?option=com_content&view=article&id=51&Itemid=137> accessed 20 March 2016.

⁴⁴ See above.

⁴⁵ US Department of State, Office of the Historian, ‘Milestones: 1953-1960. Southeast Asia Treaty Organisation (SEATO), 1954’ <<https://history.state.gov/milestones/1953-1960/seato>> accessed 20 March 2016.

⁴⁶ Jiwon Amy Yoo, ‘Bandung Conference, 1955’ <<http://www.blackpast.org/gah/bandung-conference-1955>> accessed 20 March 2016. See also: George McTurnan Kahin, *The Asian-African Conference: Bandung, Indonesia, April, 1955* (Cornell University Press 1956); Jamie Mackie, *Bandung 1955: Non-alignment and Afro-Asian Solidarity* (Didier Millet 2005); Kweku Ampiah, *The Political and Moral Imperatives of the Bandung Conference of 1955: The Reactions of the US, UK and Japan* (Global Oriental 2007).

⁴⁷ Vincent K. Pollard, ‘ASA and ASEAN, 1961-1967: Southeast Asian Regionalism’, *Asian Survey* 10:3 (1970) 247.

largely advocated as non-political, a number of scepticisms arose, particularly on the neutrality of the former SEATO members. This and the tensions between the two members – Philippines and Malaysia (after the formation) – over the Sabah claims⁴⁸ significantly hindered the stability of the association.⁴⁹

While the previous attempts to establish various forms of cooperation were not met with their respective goals, the need to cooperate through alliance remained relevant, given the escalation of security concerns amid the outbreak of the Cold War.⁵⁰ As the domestic political structures of the Southeast Asian nations were still fragile especially in times of war and political uncertainty, the establishment of a new platform for institutional cooperation in order to strengthen the political stability in the region became necessary. Taking into account the failures from the previous attempts, five Southeast Asian nations subsequently formed a new association, and continued to carefully foster it to last until today.

1. From 1967 to 2007

The **Bangkok Declaration**, which was signed by the Foreign Ministers from five Southeast Asian nations, established ASEAN on 8 August 1967. It states an ambitious goal towards closer cooperation among the ASEAN Member States. The aims and purposes as set out in the Bangkok Declaration are as follows:

- 1) To accelerate the economic growth, social progress and cultural development in the region through joint endeavours in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of Southeast Asian Nations;
- 2) To promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter;
- 3) To promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural, technical, scientific and administrative fields;
- 4) To provide assistance to each other in the form of training and research facilities in the educational, professional, technical and administrative spheres;
- 5) To collaborate more effectively for the greater utilization of their agriculture and industries, the expansion of their trade, including the study of the problems of international commodity trade, the improvement of their transportation and communications facilities and the raising of the living standards of their peoples;
- 6) To promote Southeast Asian studies; and

⁴⁸ Sabah claim is a territorial dispute between the Philippines and Malaysia over the territory of the northern Borneo.

⁴⁹ *Supra* note 7, at 248.

⁵⁰ Mark Beeson, *Institutions of the Asia Pacific. ASEAN, APEC and beyond* (Routledge 2009) 9.

- 7) To maintain close and beneficial cooperation with existing international and regional organizations with similar aims and purposes, and explore all avenues for even closer cooperation among themselves.⁵¹

The Bangkok Declaration has served as the principle for subsequent cooperation among the ASEAN Member States. Although the steps taken are perceived as small, informal, and voluntary,⁵² ASEAN has progressively entered into a number of formal and legally binding instruments in order to foster closer cooperation in a number of aspects. During ASEAN's first decade, the most remarkable instrument was the **Zone of Peace, Freedom and Neutrality Declaration (ZOPFAN)** of 1971, where the Foreign Ministers of the original ASEAN Member States jointly signed and declared ASEAN's intent to keep the region 'free from any form or manner of interference by outside Powers' and 'broaden the areas of cooperation'.⁵³

Another important milestone for closer cooperation within ASEAN was the signing of the **Treaty of Amity and Cooperation in Southeast Asia (TAC)**. The purpose of the TAC is to promote 'perpetual peace, everlasting amity and cooperation among their peoples which would contribute to their strength, solidarity and closer relationship'.⁵⁴ The TAC is a very important instrument for ASEAN as it establishes fundamental principles governing the inter-State relations of the ASEAN Member States, including the very prominent principle of non-interference and mutual respect for the sovereignty and independence of one another. Considered as a code of conduct,⁵⁵ Article 2 of the TAC states that the High Contracting Parties to the treaty shall have their relations guided by the following fundamental principles:

- a. Mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations,
- b. The right of every State to lead its national existence free from external interference, subversion or coercion,
- c. Non-interference in the internal affairs of one another,
- d. Settlement of differences or disputes by peaceful means,
- e. Renunciation of the threat or use of force, and
- f. Effective co-operation among themselves.

Originally, the expansion of the TAC was intended to be geographically limited within the Southeast Asian region. Later it was amended by the subsequent protocols to open the TAC for accession by states outside Southeast Asia,⁵⁶ upon the consent of all Member States.⁵⁷ Accession by non-states was

⁵¹ The ASEAN Declaration, 8 August 1967 (also known as Bangkok Declaration).

⁵² ASEAN, *The Founding of ASEAN, History* <<http://www.asean.org/index.php/asean/about-asean/history>> accessed 11 January 2016.

⁵³ Zone of Peace, Freedom, and Neutrality Declaration, 27 November 1971.

⁵⁴ Treaty of Amity and Cooperation in Southeast Asia, 24 February 1976, art 1.

⁵⁵ Danial Seah, 'The Treaty of Amity and Cooperation in Southeast Asia: The Issue of Non-Intervention and its Accession by Australia and the USA', 11 Chinese Journal of International Law 4 (2012), 785-822.

⁵⁶ Treaty of Amity and Cooperation ..., Protocol I.

⁵⁷ Treaty of Amity and Cooperation ..., Protocol II.

later permitted,⁵⁸ enabling the EU to accede to the TAC. During the ASEAN Summit in 2003, the TAC was declared ‘the important component in the ASEAN Security Community’ – one of the three pillars of the ASEAN Community.⁵⁹

In addition to the political cooperation, ASEAN Member States also envision the regional economic growth through joint cooperation. On 28 January 1992, the ASEAN Member States entered into a trade bloc agreement called the **ASEAN Free Trade Area (AFTA)**⁶⁰ with a primary goal to increase ASEAN’s competitive edge as a production base to the world market and to attract more foreign direct investment to ASEAN. The AFTA was materialized through the **Common Effective Preferential Tariff (CEPT)** scheme. Unlike the EU’s common external tariff, each ASEAN Member States are to apply the CEPT only to goods originating within ASEAN, with certain exceptions applied to certain types of sensitive goods⁶¹ and conditions applied to the CLMV countries.⁶² For goods entering from outside ASEAN, each ASEAN Member States are still able to impose tariffs based on its respective national schedules.

Table 1 illustrates the key instruments in the first 40 years of ASEAN (1967-2007).

Year	Instruments
1967	<ul style="list-style-type: none"> The Bangkok Declaration
1971	<ul style="list-style-type: none"> Zone of Peace, Freedom and Neutrality Declaration (ZOPFAN)
1976	<ul style="list-style-type: none"> Treaty of Amity and Cooperation in Southeast Asia (TAC) Declaration of ASEAN Concord
1987	<ul style="list-style-type: none"> Protocol Amending the TAC
1992	<ul style="list-style-type: none"> Agreement on the Common Effective Preferential Tariff Scheme (CEPT) for the ASEAN Free Trade Area (AFTA)
1995	<ul style="list-style-type: none"> Treaty on the Southeast Asia Nuclear Weapon-Free Zone Protocol to Amend the Framework Agreement on Enhancing ASEAN Economic Cooperation
1997	<ul style="list-style-type: none"> ASEAN Vision 2020

⁵⁸ Treaty of Amity and Cooperation ..., Protocol III.

⁵⁹ Declaration of ASEAN Concord II (Bali Concord II), 7 October 2003.

⁶⁰ Framework Agreement on Enhancing ASEAN Economic Cooperation, 28 January 1992.

⁶¹ See above, art. 1.1.

⁶² CLMV countries refer to Cambodia, Laos, Myanmar, and Vietnam respectively.

1998	<ul style="list-style-type: none"> • Hanoi Plan of Action • Second Protocol Amending the TAC
2002	<ul style="list-style-type: none"> • Declaration on the Conduct of Parties in the South China Sea
2003	<ul style="list-style-type: none"> • Plan of Action of the ASEAN Security Community • Plan of Action of the ASEAN Socio-cultural Community • Declaration of ASEAN Concord II (Bali Concord II)

Table 1: Key instruments in the first 40 years of ASEAN (1967-2007)

2. Realizing the goal: gearing towards the ASEAN Community

During the first 40 years of ASEAN, the cooperation within ASEAN has been intergovernmental and guided by the principle of non-interference. Hence, the intensity of ASEAN's overall operation has been dependent upon the political will of the members at any given point in time. However, a move to transform ASEAN towards becoming a rule-based community emerged, and the Eminent Person's Group (EPG) comprising senior representatives of ASEAN Member States was commissioned to draft a constitutional document that would later become the most important document in the history of ASEAN – the ASEAN Charter.

The **ASEAN Charter** entered into force on 15 December 2008 and has since served as a firm foundation in realizing the goal towards Community building.⁶³ The ASEAN Charter provides ASEAN with the legal status and the institutional framework, as well as codifying ASEAN norms, rules, and values. For the first time, ASEAN targets are clearly set, alongside the mechanisms to ensure accountability and compliance.

As a legal document registered with the Secretariat of the United Nations pursuant to Article 102 Paragraph 1 of the Charter of the United Nations, the ASEAN Charter legally binds all Member States. It clearly states the purpose of ASEAN⁶⁴, and creates the operational structure of ASEAN.⁶⁵

a) Decision-making mechanisms in ASEAN

The ASEAN Charter establishes decision-making mechanisms, as well as new institutions, for the operation of ASEAN. The highest policy-making level is the **ASEAN Summit**, which is composed of Head of States or Government. The ASEAN Summit is held twice a year.⁶⁶ The **ASEAN Coordinating Council (ACC)**, comprising Foreign Ministers, serves as a policy-arm of the ASEAN and provides support to the leaders. The ACC Meeting is also held twice a year to enhance ASEAN's policy coherence and efficiency.⁶⁷ In addition, each Community contains its own **ASEAN Community Councils** to coordinate the work of their respective **ASEAN Sectoral Ministerial Bodies**.

⁶³ Charter of the Association of Southeast Asian Nations, 20 November 2007.

⁶⁴ Charter ..., art. 1.

⁶⁵ Charter ..., ch. IV.

⁶⁶ Charter ..., art.7.

⁶⁷ Charter ..., art.8.

To ensure effective coordination with various bodies, each ASEAN Member State appoints representatives with the rank of Ambassadors to sit as members of the **Committee of Permanent Representatives (CPR)**. The CPR serves as a central coordinating entity with the **ASEAN National Secretariats**, which are based in the Foreign Ministry of each Member States, the ASEAN Sectoral Ministerial Bodies, and external partners. The main objective of the CPR is to accelerate the decision-making process in ASEAN.

The **ASEAN Secretariat** provides administrative support for the coordination of ASEAN organs, as well as ensuring more effective implementation of ASEAN projects and activities. It is headed by the **Secretary-General of ASEAN** who is appointed by the ASEAN Summit for a non-renewable 5-year term. The nationality of the Secretary-General is based on alphabetical rotation.⁶⁸

Institution	Year	Key Responsibilities
ASEAN Summit	1976	<ul style="list-style-type: none"> Responsible for all initiatives and directions of ASEAN
ASEAN Coordinating Council	2008	<ul style="list-style-type: none"> Coordinating three Community Councils to enhance policy coherence
ASEAN Community Council	2008	<ul style="list-style-type: none"> Relevant ASEAN sectorial ministerial bodies of the political-security, economic, and socio-cultural Communities
ASEAN Sectoral Ministerial Bodies	2008	<ul style="list-style-type: none"> Responsible for specific issues within the purview of their respective Communities⁶⁹
Committee of Permanent Representatives	2009	<ul style="list-style-type: none"> Coordinates with the ASEAN Secretary-General to accelerate decision-making
ASEAN Secretariats	1976	<ul style="list-style-type: none"> Responsible for enhancing coordination and implementation of policies, projects and activities of ASEAN

⁶⁸ Charter ..., art.11.

⁶⁹ Following are examples of ASEAN Sectoral Ministerial Bodies under their respective Communities.

- 1) Under the ASEAN Political-Security Community, such as
 - a. ASEAN Foreign Ministers Meeting (AMM)
 - b. ASEAN Defense Ministers Meeting (ADMM)
 - c. ASEAN Law Ministers Meeting (ALAWMM)
- 2) Under the ASEAN Economic Community, such as
 - a. ASEAN Free Trade Area Council (AFTA)
 - b. ASEAN Investment Area Council (AIA)
 - c. ASEAN Ministers on Energy Meeting (AMEM)
- 3) Under the ASEAN Socio-Cultural Community, such as
 - a. ASEAN Ministers Responsible for Information (AMRI)
 - b. ASEAN Health Ministers Meeting (AHMM)
 - c. ASEAN Labor Ministers Meeting (ALMM)

National Secretariats		<ul style="list-style-type: none"> Set up within the Foreign Ministries of the Member States aiming at implementing ASEAN-related activities at the national level
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Table 2: The structure of ASEAN and its key decision-making bodies.

b) Building the Communities – the three pillars

Fostering a closer cooperation among the ASEAN Member States has been a priority since the inception of ASEAN. With this vision, ASEAN has set to establish the **ASEAN Community** by the end of 2015, after adopting a **Roadmap for an ASEAN Community 2015**.⁷⁰ From the Roadmap, the ASEAN Community will consist of three Community Pillars and each has its respective blueprints. The three Community Pillars are the ASEAN Political-Security Community (APSC), the ASEAN Economic Community (AEC), and the ASEAN Socio-Cultural Community (ASCC).

The **ASEAN Political-Security Community (APSC)** has its foundation on what ASEAN has pledged to achieve since its inception. Guided by the ASEAN Charter, the APSC Blueprint aims to elevate the already existing political and security cooperation in ASEAN⁷¹ to ‘a higher plane’⁷², and that peoples and the ASEAN Member States will ‘live in peace with one another and with the world at large in a just, democratic and harmonious environment.’⁷³ The APSC Blueprint also envisages that the APSC will have the following characteristics: a rule-based Community of shared values and norms; a cohesive, peaceful, stable and resilient region with shared responsibility for comprehensive security; and a dynamic and outward-looking region in an increasingly integrated and interdependent world.⁷⁴

The **ASEAN Economic Community (AEC)** is developed to strengthen ASEAN’s existing economic cooperation, but with new initiatives and timeline clearly indicated. The AEC Blueprint establishes ASEAN as ‘a single market and production base’ in order to make ASEAN more dynamic and competitive, facilitates economic movement within ASEAN, and strengthens the institutional mechanisms in order to realize the end goal.⁷⁵ The AEC Blueprint also lists a number of areas of cooperation. For instance, the AEC envisages more cooperation on human resources development, trade financing measures, recognition of professional qualifications, and closer consultation on macroeconomic and financial policies. Once established, ASEAN will become a region with free movement of goods, services, investment, skilled labour, and freer flow of capital.

The **ASEAN Socio-Cultural Community** directs at another important aspect of regional cooperation – the peoples. The ASCC Blueprint envisages a Community that is ‘people-oriented and socially responsible with a view to achieving enduring solidarity and unity among the peoples and Member States of ASEAN’.⁷⁶ While respecting differences in culture, languages, and religions of the peoples of ASEAN, the ASCC advocates for the emphasis of common values and the spirit of unity.⁷⁷ To achieve the end goal, the ASCC envisages the following six characteristics: (a) Human Development; (b) Social

⁷⁰ Cha-am Hua Hin Declaration on the Roadmap for the ASEAN Community, 1 March 2009.

⁷¹ Such as ZOPFAN and TAC.

⁷² ASEAN Political-Security Community Blueprint, June 2009, art.6.

⁷³ Ibid., art.6.

⁷⁴ Ibid., art.10.

⁷⁵ ASEAN Economic Community Blueprint, January 2008, art.6.

⁷⁶ ASEAN Socio-Cultural Community Blueprint 2025, March 2009., art.4.

⁷⁷ Ibid., art.7.

Welfare and Protection; (c) Social Justice and Rights; (d) Ensuring Environmental Sustainability; (e) Building the ASEAN Identity; and (f) Narrowing the Development Gap.⁷⁸

At the time of writing, only the AEC has achieved the goal and officially entered into effect from January 1st, 2016. In efforts to further realizing the ASEAN vision towards building the ASEAN Community, the ASEAN Leaders adopted the ASEAN Community Vision 2025 at the 27th ASEAN Summit in Kuala Lumpur. Collectively referred to as ‘the ASEAN 2025: Forging Ahead Together’⁷⁹, the documents contain the Blueprint 2025 for all three Communities.

In relation to human rights, the Blueprints 2025 reiterate that the ASEAN peoples shall ‘enjoy human rights and fundamental freedoms, higher quality of life and the benefits of community building.’⁸⁰ The ASEAN Intergovernmental Commission on Human Rights (AICHR) is set to be in operation under the APSC when the latter takes effect.

3. Human Rights development in ASEAN

Human rights have been embedded in ASEAN since its inception, although the term was officially stated until subsequent agendas. The Bangkok Declaration includes several references to human rights, including in the form of economic growth and stability, as well as social progress and cultural development. Subsequent cooperations also contain indications of having human rights consideration consolidated in the instruments. For instance, the TAC requires the High Contracting Parties to collaborate for the acceleration of the economic growth⁸¹ and intensify economic cooperation in order to achieve social justice and to raise the standards of living of the peoples of the region.⁸²

a) Early references to human rights

References to human rights have been in connection with the economic aspect of ASEAN cooperation. The first time representatives from the ASEAN Member States officially participated in an event where the words ‘human rights’ were clearly used was the 1993 United Nations World Conference on Human Rights in Vienna, when. The result of the World Conference – the **Vienna Declaration and Programme of Action (VDPA)**⁸³ – emphasizes the universality of human rights, with particular reference to the existing international human rights instruments such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.⁸⁴

For the first time, the term ‘human rights’ was officially used in the **Joint Communiqué of the ASEAN Foreign Ministers at the 26th AMM on 23-24 July 1993**.⁸⁵ The document contained a specific reference to the VDPA and its content. It reaffirmed ‘ASEAN’s commitment to and respect for human rights and fundamental freedoms as set out in the Vienna Declaration of 25 June 1993’,⁸⁶ and illustrated ASEAN’s will to ‘coordinate a common approach on human rights and actively participate and contribute to the

⁷⁸ Ibid., art.9.

⁷⁹ ASEAN 2025: Forging Ahead Together, November 2015.

⁸⁰ ASEAN Community Vision 2025, 22 November 2015.

⁸¹ Ibid., art.6.

⁸² Ibid., art.7.

⁸³ Vienna Declaration and Programme of Action, 25 June 1993.

⁸⁴ Ibid, preamble.

⁸⁵ Joint Communiqué of the ASEAN Foreign Ministers at the 26th AMM, 23-24 June 1993.

⁸⁶ Ibid, art.16.

application, promotion and protection of human rights.⁸⁷ In addition, ASEAN opened a possibility of developing a regional human rights regime.⁸⁸ However, the principles enshrined in the Bangkok Declaration continued to influence the early development of human rights in ASEAN. Here, the document still emphasized that there be ‘a balance between the rights of the individual and those of the community’, and that the protection and promotion of human rights ‘should take cognizance of the principles of respect for national sovereignty, territorial integrity and non-interference in the internal affairs of states’.⁸⁹

As a result of the adoption of the ASEAN Vision 2020⁹⁰, the **Hanoi Action Plan (HPA)** of 1997 was drawn up.⁹¹ The HPA expressly states that ASEAN commits itself 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’.⁹² Similar texts were reiterated six years later at the adoption of the **Vientiane Action Plan (VAP)** of 2004, where the ASEAN Member States agree to ‘promote human rights and obligations’.⁹³

b) ASEAN Charter, the APSC and human rights

The adoption of the ASEAN Charter in 2007 introduced a number of developments with regards to human rights.⁹⁴ First, the promotion and protection of human rights are included as one of the purposes of ASEAN, where ASEAN must ‘strengthen democracy, enhance good governance and the rule of law, and promote and protect human rights and fundamental freedoms’.⁹⁵ Second, Article 14 of the ASEAN Charter states that in order to be ‘in conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body’.⁹⁶ Then, with the establishment of the APSC in March 2009 by virtue of the ASEAN Charter, the APSC Blueprint contains an **Action Programme** titled ‘Section A.1.5 – Promotion and Protection of Human Rights’.⁹⁷ Section A.1.5 imposes the following actions:

- i. Establish an ASEAN human rights body through the completion of its Terms of Reference (ToR) by 2009 and encourage cooperation between it and existing human rights mechanisms, as well as with other relevant international organizations;
- ii. Complete a stock-take of existing human rights mechanisms and equivalent bodies, including sectoral bodies promoting the rights of women and children by 2009;
- iii. Cooperate closely with efforts of the sectoral bodies in the development of an ASEAN instrument on the protection and promotion of the rights of migrant workers;
- iv. Strengthen interaction between the network of existing human rights mechanisms as

⁸⁷ *Ibid.*, art.17.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*, see also Bangkok Declaration.

⁹⁰ ASEAN Vision 2020, 15 December 1997.

⁹¹ The Hanoi Plan of Action, 15 December 1997.

⁹² *Ibid.*, section IV, para. 4.8.

⁹³ Vientiane Action Programme, 29 November 2004.

⁹⁴ Vitit Muntarbhorn *Unity in Connectivity? Evolving Human Rights Mechanisms in the ASEAN Region* (Brill Nijhoff 2013); Vitit Muntarbhorn ‘Briefing Paper. Development of the ASEAN Human Rights Mechanism’ (European Parliament 2012).

⁹⁵ Charter of the Association of Southeast Asian Nations, 20 November 2007., art.1.7.

⁹⁶ *Ibid.*, art.14.

⁹⁷ ASEAN Political-Security Community Blueprint, June 2009, art.A.1.5.

- well as other civil society organizations, with relevant ASEAN sectoral bodies;
- v. Enhance/conduct exchange of information in the field of human rights among ASEAN countries in order to promote and protect human rights and fundamental freedoms of peoples in accordance with the ASEAN Charter and the Charter of the United Nations, and the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action;
- vi. Promote education and public awareness on human rights; and
- vii. Cooperate closely with efforts of the sectoral bodies in the establishment of an ASEAN commission on the promotion and protection of the rights of women and children.

4. **AICHR – the first human rights institution in ASEAN**

To realize ASEAN's commitment to the promotion and protection of human rights pursuant to the Action Programme, an initiative to establish ASEAN's first human rights institution took place immediately in early 2009, to be named the ASEAN Intergovernmental Commission on Human Rights (AICHR). From the adoption of the Action Programme in March 2009, the High Level Panel on an ASEAN Human Rights Body began drafting the Terms of Reference (ToR) of the AICHR. Once finished, it was quickly adopted by the ASEAN Minister Meeting in July 2009. The inauguration of the AICHR took place later in October 2009 at the 15th ASEAN Summit, where ten AICHR Representatives were appointed.

a) Operational structure

The AICHR is an intergovernmental organisation and serves as an overarching body over all human rights-related institutions in ASEAN. As an overarching body, the AICHR has an overall responsibility to promote and protect human rights and fundamental freedoms of the peoples of ASEAN,⁹⁸ and to uphold the right of the peoples of ASEAN to live in peace, dignity and prosperity.⁹⁹

The members of the AICHR are called 'Representatives'. They are appointed by and represent the ASEAN Member States with full mandate and with accountability and answerability to their respective governments.¹⁰⁰ They serve a three-year term with a possibility to renew only once to serve a consecutive term.¹⁰¹ However, the appointing Government may decide to replace its Representative at any time.¹⁰² The appointment of the Representatives takes into consideration the gender quality, integrity and competence in the field of human rights.¹⁰³ The Chair of the AICHR Representatives is the Representative from the ASEAN member state that concurrently hold the Chairmanship of the ASEAN.¹⁰⁴

The decision-making at the AICHR follows a consensus and consultative approach, in accordance with Article 20 of the ASEAN Charter.¹⁰⁵ As a consultative body¹⁰⁶, the AICHR operates by engaging in

⁹⁸ ASEAN Intergovernmental Commission on Human Rights (Terms of Reference), 23 October 2009, art. 1.1.

⁹⁹ ToR art. 1.2.

¹⁰⁰ ToR art. 5.2.

¹⁰¹ ToR art. 5.5.

¹⁰² ToR art. 5.6.

¹⁰³ ToR art. 5.3.

¹⁰⁴ ToR art. 5.9.

¹⁰⁵ ToR art. 6.1.

¹⁰⁶ ToR art. 3.

various dialogues and consultations with entities both within ASEAN and with other external entities and stakeholders whose operations relate to the promotion and protection of human rights. Two regular meetings a year, with each does not exceed five days, are required.¹⁰⁷ In addition, the AICHR is required to submit an annual report and other appropriate reports to the ASEAN Foreign Ministers Meeting for its consideration.¹⁰⁸ The ASEAN Secretary-General may bring relevant issues to the attention of the AICHR, and is required to inform the ASEAN Foreign Ministers in so doing.¹⁰⁹

b) Mandate and activities

The AICHR operates under the 14 mandates listed in the ToR. The 14 mandates are as follow:

- i. To develop strategies for the promotion and protection of human rights and fundamental freedoms to complement the building of the ASEAN Community;
- ii. To develop an ASEAN Human Rights Declaration with a view to establishing a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights;
- iii. To enhance public awareness of human rights among the peoples of ASEAN through education, research and dissemination of information;
- iv. To promote capacity building for the effective implementation of international human rights treaty obligations undertaken by ASEAN Member States;
- v. To encourage ASEAN Member States to consider acceding to and ratifying international human rights instruments;
- vi. To promote the full implementation of ASEAN instruments related to human rights;
- vii. To provide advisory services and technical assistance on human rights matters to ASEAN sectoral bodies upon request;
- viii. To engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including civil society organizations and other stakeholders, as provided for in Chapter V of the ASEAN Charter;
- ix. To consult, as may be appropriate, with other national, regional and international institutions and entities concerned with the promotion and protection of human rights;
- x. To obtain information from ASEAN Member States on the promotion and protection of human rights;
- xi. To develop common approaches and positions on human rights matters of interest to ASEAN;
- xii. To prepare studies on thematic issues of human rights in ASEAN;
- xiii. To submit an annual report on its activities, or other reports if deemed necessary, to the ASEAN Foreign Ministers Meeting; and
- xiv. To perform any other tasks as may be assigned to it by the ASEAN Foreign Ministers Meeting.

To date, the AICHR has performed a number of activities under its mandate. The list of activities can be found in organisation's Five-Year Work Plans of 2010-2015 and of 2016-2020. According to the Five-Year Work Plan of 2016-2020, the AICHR is tasked to continue developing strategies for the

¹⁰⁷ ToR art. 6.2.

¹⁰⁸ ToR art. 6.6.

¹⁰⁹ Charter of the Association of Southeast Asian Nations, 20 November 2007, art.11.2(a) and (b).

promotion and protection of human rights and fundamental freedoms to complement the building of the ASEAN Community.¹¹⁰ To strengthen the understanding of human rights, the AICHR shall conduct studies on thematic issues of human rights that are prevalent in ASEAN, such as migration and human trafficking,¹¹¹ while continuing to enhance public awareness of human rights through education, research and dissemination of information.¹¹²

In addition to the internal enhancement, the AICHR Representatives also seek consultation and input from external entities, including the European External Action Service (EEAS) of the European Union and the Organisation for Security and Cooperation in Europe (OSCE)¹¹³, in order to strengthen its operational effectiveness.

On 19-20 October 2015, the EU and ASEAN held the first policy dialogue on human rights. The key objective of the meeting was to promote exchange of good practices, information, dialogues, seminars and capacity building initiatives. Specific themes of common interests were brought to the table, highlighting the recent human rights developments in the EU and the ASEAN. For instance, some of the themes included the rights of migrants, the rights of women, children, persons with disabilities and older persons, interaction with civil society, corporate social responsibility, economic, social and cultural rights, and the right to development. The results of the meeting are satisfactory and will lead towards future collaboration between the EU and the ASEAN. Potential areas for bilateral and multilateral cooperation that are already on the table include the corporate social responsibility and human rights, the strengthening accessibility for persons with disabilities, child protection systems, gender mainstreaming, the promotion of economic rights of women, the prevention of violence against women and children, and trafficking in persons. Exchange of knowledge and expertise on human rights between the EU and the ASEAN marks the first step towards greater cooperation where the EU can contribute in the promotion of human rights in within ASEAN area.

The current focus of the AICHR's activities has been on the dissemination of knowledge, through a number of workshops jointly organized with its partners. For instance, the AICHR cooperates with the Senior Officials Meeting on Transnational Crime (SOMTC) to organize the first joint workshop on 'Human Rights-based Approach to Combat Trafficking in Persons, Especially Women and Children' in a timely manner, as ASEAN is in the final stage to adopt the ASEAN Convention on Trafficking in Persons, Especially Women and Children (ACTIP).¹¹⁴ Additionally, the AICHR organized a workshop on the Implementation of Human Rights Obligations Relating to the Environment and Climate Change in Mandalay, Myanmar in September 2015, with the objective to further integrate Human Rights-based approach with environmental policy-making and protection.¹¹⁵

¹¹⁰ ToR, Mandate 4.1.

¹¹¹ ToR, Mandate 4.12.

¹¹² ToR, Mandate 4.3.

¹¹³ ASEAN Secretariat, 'AICHR. What You Need to Know' (ASEAN 2014) 13.

¹¹⁴ SOMTC Joint Workshop on Human Rights-based Approach to Combat Trafficking in Persons, Especially Women and Children (Dec. 2, 2015), <<http://aichr.org/report/press-release-aichr-somtc-joint-workshop-on-human-rights-based-approach-to-combat-trafficking-in-persons-especially-women-and-children-5-6-november-2015-yogyakarta-indonesia/>>.

¹¹⁵ AICHR Workshop on the Implementation of Human Rights Obligations Relating to the Environment and Climate Change (Dec. 2, 2015), <<http://aichr.org/press-release/press-release-aichr-workshop-on-the-implementation-of-human-rights-obligations-relating-to-the-environment-and-climate-change-26-27-september-2015-mandalay-myanmar/#sthash.zBfPHhp6.dpuf>> accessed 20 March 2016.

Realizing the importance of empowering the future generations of ASEAN, the AICHR consistently organizes workshops targeting participation by youths from the ASEAN Member States. Recently, the AICHR organized the 'Regional Workshop on the Role of Youth in Promoting Human Rights in ASEAN: Making Rights a Reality' on 30-31 October 2015 in Kuala Lumpur, Malaysia.¹¹⁶ In addition, the AICHR acknowledges that another important stakeholder who plays a vital role in the promotion and protection of human rights is journalist. The AICHR consistently conducts a series of training called 'Training of Trainers for Journalists in ASEAN Member States' with the ultimate goal to equip journalists with 'better understanding on human rights'.¹¹⁷ Not only are they trained to be more knowledgeable on human rights when reporting news, the journalists are also reminded that they are in fact right bearers with their freedom of expression enshrined under international law.¹¹⁸

Inevitably, the operation of the AICHR requires positive cooperation by the ASEAN Member States. Hence, the APSC Blueprint 2025 urges the ASEAN Member States to support the AICHR in the discharge of its mandate in accordance with its Terms of Reference (ToR)¹¹⁹, as well as for the Member States to encourage interaction and consultation, where appropriate, between AICHR and concerned entities such as relevant ASEAN Sectoral Bodies.¹²⁰ Also important is for the Member States to provide information on the promotion and protection of human rights¹²¹ and to conduct collaborative research on thematic human rights issues.¹²²

5. Declaring human rights – launching the AHRD

The AICHR has been mandated to develop an 'ASEAN Human Rights Declaration with a view to establishing a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights'.¹²³ The ASEAN Human Rights Declaration (AHRD) was finally adopted on 18 November 2012 through the adoption of the Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration.¹²⁴ The AHRD reflects ASEAN's commitment to a number of international instruments relating relevant for human rights, such as the Charter of the United Nations, the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, as well as other instruments to which ASEAN Member States are parties. It is then the task of the AICHR to disseminate the AHRD to the peoples of ASEAN in order to raise their awareness and strengthen their human rights knowledge.

The AHRD is the AICHR's first attempt to set human rights standards for ASEAN. While it does not establish directly enforceable rights for the ASEAN people, it reflects the consensual agreement of the

¹¹⁶ AICHR Regional Workshop on the Role of Youth in Promoting Human Rights in ASEAN: Making Rights a Reality (Dec. 2, 2015), <<http://aichr.org/press-release/press-release-aichr-regional-workshop-on-the-role-of-youth-in-promoting-human-rights-in-asean-making-rights-a-reality-30-31-october-2015-kuala-lumpur-malaysia/#sthash.HDdLKdSV.dpuf>> accessed 20 March 2016.

¹¹⁷ Training of Trainers for Journalists in ASEAN Member States (Dec. 2, 2015), <<http://aichr.org/press-release/press-release-training-of-trainers-for-journalists-in-asean-member-states-25-29-july-2015-bangkok-thailand/#sthash.c2HRU5C6.dpuf>> accessed 20 March 2016.

¹¹⁸ *Ibid.*

¹¹⁹ ASEAN Political-Security Community Blueprint 2025, art.A.2.5.iv.

¹²⁰ *Ibid.*, art.A.2.5.viii.

¹²¹ *Ibid.*, art.A.2.5.x.

¹²² *Ibid.*, art.A.2.5.ix.

¹²³ ToR, Mandate 4.2; Vitit Muntarbhorn, 'Towards an ASEAN Declaration of Human Rights', Bangkok Post 20 January 2012.

¹²⁴ ASEAN Human Rights Declaration, Nov. 18, 2012.

ASEAN Member States on the content of rights and fundamental freedoms. This is a revolutionary step in the Asian context. The provisions of the Declaration are to be interpreted in a manner consistent with the existing human rights obligations of ASEAN Member States.

The AHRD is divided into six parts:

- 1) General Principles;
- 2) Civil and Political Rights;
- 3) Economic, Social and Cultural Rights;
- 4) Right to Development;
- 5) Right to Peace;
- 6) Cooperation in the Promotion and Protection of Human Rights.

While affirming the human rights that the ASEAN Member States are legally obligated to under international human rights law, the AHRD highlights the importance of certain rights, such as the rights of vulnerable and marginalized groups, and the rights to an adequate standard of living with an explicit addition of the element 'adequate and affordable' housing and food. The AHRD also reinstates the UDHR right to property and protection against arbitrary deprivation of property, which are absent in the ICCPR and ICESCR. Furthermore, the AHRD integrates certain elements of the ICCPR, such as the prohibition of double-jeopardy, and ICESCR, such as the special protection of motherhood and progressive realization of social, economic and cultural rights, into its text, despite the fact that only six ASEAN Member States are party to the Covenants.

The ASEAN human rights community has welcomed the adoption of the AHRD, as a breakthrough in developing a regional system of protection. However, there are also criticisms on certain aspects of the AHRD. One of such points concerns the possible mischaracterization of international human rights law that could potentially lead to an inconsistency of international human rights obligations of the ASEAN Member States. Another notable concern is the general limitation clause. While certain human rights are considered non-derogable by the ICCPR and the customary international law, the AHRD theoretically permits the limitation of such rights provided that the limitation is done 'by law solely for the purpose of securing due recognition for the human rights and fundamental freedoms of others, and to meet the just requirements of national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society.' In addition, certain human rights, which some ASEAN Member States are under international obligation to implement, are omitted in the AHRD, such as the right to self-determination, the right to freedom from forced labor, and the right to freedom of association.

B. Major EU human rights stakeholders involved directly or indirectly in cooperation with the ASEAN

The following section will map the major stakeholders in the EU which are involved directly or indirectly in theory or practice in the cooperation with the ASEAN.¹²⁵

¹²⁵ For more detailed information on the various EU actors discussed in this chapter see Grażyna Baranowska, Anna-Luise Chané, David D'Hollander, Agata Hauser, Jakub Jaraczewski, Zdzisław Kędzia, Mariusz Lewicki and Anna Połczyńska 'Report on the analysis and critical assessment of EU engagement in UN bodies', FRAME Deliverable 5.1, 2014., ch III.B.

The **European Council** functions as the primary agenda setter and strategic body of the EU. According to Article 26(1) TEU it shall 'identify the Union's strategic interests, determine the objectives [...] and define general guidelines', and thus set the general political directions and priorities of EU foreign policy. So far, the European Council has only rarely addressed human rights issues.¹²⁶

The **Council of the European Union** is mandated with policy-making, coordinating and legislative functions.¹²⁷ It meets in 10 different formations, depending on the policy area at hand. The Foreign Affairs Council (FAC) configuration 'shall elaborate the Union's external action on the basis of strategic guidelines laid down by the European Council and ensure that the Union's action is consistent'.¹²⁸ It is instrumental for the adoption of decisions concerning the EU's human rights priorities and strategies in its cooperation with the ASEAN.¹²⁹ Most notably, the FAC adopted the EU Strategic Framework and Action Plans on Human Rights and Democracy.¹³⁰ Furthermore, since 2008, the FAC has adopted a set of eleven Human Rights Guidelines, which stipulate the Union's priorities and strategies on a variety of human rights issues. The majority of these Guidelines contain explicit guidelines for EU cooperation with regional organisations in general.¹³¹ The FAC often discusses issues related to Southeast Asia and adopts regular conclusions on EU-ASEAN relations.¹³² The Council is supported by a Secretariat, the Permanent Representatives Committee ('COREPER'), the Political and Security Committee ('PSC') and more than 150 specialised committees and working parties.

COREPER is tasked with preparing the work of the Council, carrying out the tasks assigned to it by the latter¹³³ and 'ensur[ing] consistency of the European Union's policies and actions'.¹³⁴ In its COREPER II formation (comprising the Permanent Representatives of the EU Member States) it is responsible for examining all draft proposals before placing them on the agenda of the Council.

The **Political and Security Committee** is a permanent Council committee whose mandate includes monitoring the international situation within the area of the CFSP, contributing to policy making by delivering opinions to the Foreign Affairs Council, and monitoring the implementation of agreed policies.¹³⁵ It plays an important role in the policy development process of the EU as it discusses and endorses at ambassadorial level proposals originating from the working groups before forwarding them to the COREPER.

The **Council Working Party on Human Rights** (COHOM) is the key actor in defining the EU's human rights policy. It drafts EU strategic human rights documents and ensures outreach to internal and external stakeholders during the preparatory stages. As such it was for example responsible for

¹²⁶ See above, ch III.B.1.

¹²⁷ TEU art 16(1).

¹²⁸ TEU art 16(6).

¹²⁹ See also *infra*, ch IV.A.

¹³⁰ Council of the European Union (n 32).

¹³¹ See *infra*, ch IV.A.

¹³² Council of the European Union, 'Council conclusions on EU-ASEAN relations', Doc No 487/15, 22.6.2015.

¹³³ TFEU art 240(1).

¹³⁴ Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure [2009] OJ L325/35, art 19(1).

¹³⁵ TEU art 38.

drafting the EU Strategic Framework and Action Plan and most of the Union's human rights guidelines.¹³⁶ In addition to thematic working parties the Council also has geographic working parties.

The **Council Asia-Oceania Working Party** (COASI) is responsible for the management of EU external policy towards the entirety of Asia, including its 27 countries, the ASEAN and other sub-regional organisations.

The **EU High Representative for Foreign Affairs and Security Policy/Vice President of the Commission** (HR/VP) conducts and contributes to the development of the Union's CFSP.¹³⁷ She chairs the Foreign Affairs Council,¹³⁸ represents the Union externally for matters relating to the CFSP,¹³⁹ and organises the coordination of EU Member States' positions in international organisations and conferences.¹⁴⁰ Among others, The HR/VP meets with the representatives of ASEAN and its Members States and delivers statements relating to Southeast Asian matters. For example, the HR/VP gave statements on the general elections in Myanmar.¹⁴¹

The **European External Action Service** (EEAS) is responsible for supporting the HR/VP in fulfilling her mandate,¹⁴² and for assisting 'the President of the European Council, the President of the Commission, and the Commission in the exercise of their respective functions in the area of external relations'.¹⁴³ The EEAS Directorate for Asia and Pacific is responsible for the EU's relations with the Southeast Asian countries. The EEAS moved towards establishing EU presence on the ground at ASEAN in September 2014¹⁴⁴, with the **EU Mission to the ASEAN** opened in August 2015 and the EU Ambassador assuming his post in September 2015.¹⁴⁵ The Mission is located in Jakarta and coordinates the EU's cooperation activities with ASEAN. The EU Ambassador to ASEAN represents the EU in all relevant negotiations, coordinates with EU Member States and carries out public diplomacy efforts in relation to EU support for ASEAN integration.

The **EU Special Representative for Human Rights** (EUSR) has been appointed on 25 July 2012 in order to contribute to enhancing the visibility and effectiveness of the Union's human rights policy.¹⁴⁶ His

¹³⁶ Note for example that the EU Guidelines on promoting compliance with International Humanitarian Law (IHL) were updated by the Council Working Party on Public International Law (COJUR).

¹³⁷ TEU art 18(2).

¹³⁸ TEU art 18(3), 27(1).

¹³⁹ TEU art 15(6), 27(2).

¹⁴⁰ TEU art 34(1).

¹⁴¹ Statement by High Representative/Vice-President Federica Mogherini on the general elections in Myanmar, 9 November 2015, 151109_01_en <http://eeas.europa.eu/statements-eeas/2015/151109_01_en.htm> accessed 22 March 2016.

¹⁴² TEU art 27(3); Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service [2010] OJ L201/30, art 2(1).

¹⁴³ *ibid* art 2(2).

¹⁴⁴ EEAS, Press Release, EU to appoint dedicated Ambassador to ASEAN, Brussels 24 September 2014, 140924/01 <http://eeas.europa.eu/statements/docs/2014/140924_01_en.pdf>.

¹⁴⁵ Mission of the EU to ASEAN, EU Mission to ASEAN officially inaugurated (26/01/2016), <http://eeas.europa.eu/delegations/asean/press_corner/all_news/news/2016/20160126_01_en.htm> accessed 22 March 2016.

¹⁴⁶ Council Decision 2012/440/CFSP of 25 July 2012 appointing the European Union Special Representative for Human Rights [2012] OJ L200/21; his mandate has been most recently renewed through Council Decision (CFSP) 2015/260 of 17 February 2015 extending the mandate of the European Union Special Representative for Human Rights [2015] OJ L43/29. For more information on the EUSR see also Dominik Tolsdorf, 'EU Special

tasks include improving the coherence and mainstreaming of human rights in EU external action, as well as ‘enhanc[ing] dialogue with governments in third countries and international and regional organisations on human rights’.¹⁴⁷ In line with his mandate, he has met with ASEAN representatives or participated in ASEAN events.¹⁴⁸

As the Union’s executive body, the **European Commission** ensures and oversees the application of EU primary and secondary law.¹⁴⁹ It actively engages in mainstreaming human rights across all policy areas¹⁵⁰ and represents the Union externally in all areas that do not fall under the CFSP.¹⁵¹

The **European Parliament** is considered to play ‘a leading role in the promotion of human rights, in particular through its resolutions’.¹⁵² As the Council has stated in the Strategic Framework, the European Parliament’s ‘democratic mandate gives it particular authority and expertise in the field of human rights’. It has repeatedly adopted resolutions dealing with the human rights situation in ASEAN¹⁵³ and on relations between the EU and ASEAN.¹⁵⁴ In addition, the Parliament’s **Subcommittee on Human Rights** (DROI) has on several occasions discussed issues of relevance for the ASEAN.

Additionally, **the EU Member States** often create specialized cells within the structure of their Ministries of Foreign Affairs for cooperation with Southeast states and ASEAN.¹⁵⁵

The strategy development process of EU external human rights activity spans four consecutive stages. In a first step, COHOM is responsible for drafting the policy document and gathering internal and external input. Internally, COHOM cooperates inter alia with other Council working parties (including COASI), the EEAS, the European Commission, the European Parliament, the Special Representative for Human Rights and with EU delegations. Externally, COHOM reaches out to other international organisations, HRDs and civil society. The draft proposal is then sent to the PSC for discussion and endorsement at ambassadorial level. Subsequently the draft proposal is forwarded to the Permanent

Representatives: An Intergovernmental Tool in the Post-Lisbon Foreign Policy System?’ (2013) 10 European Foreign Affairs Review 471; Jan Wouters, Laura Beke, Anna-Luise Chané, David D’Hollander and Kolja Raube, ‘A comparative study of the EU and US approaches to human rights in external relations’ (n 20) 65 et seq.

¹⁴⁷ Council Decision 2012/440/CFSP (n 93) art 3(c).

¹⁴⁸ The ASEAN Intergovernmental Commission on Human Rights Meets with the European Union Special Representative for Human Rights <<http://www.asean.org/the-asean-intergovernmental-commission-on-human-rights-meets-with-the-european-union-special-representative-for-human-rights/>> accessed 21 February 2016.

¹⁴⁹ TEU art 17(1), 27(2).

¹⁵⁰ For a detailed analysis of the human rights policy of the various Commission DGs, see Monika Mayrhofer, Katharina Häusler, Renata Bregaglio, Carmela Chavez, Tingting Dai, Felipe Gómez Isa, Venkatachala Hegde, Jakub Jaraczewski, Magnus Killander, Karin Lukas, María Nagore, Bright Nkrumah, Lingying Yin, FRAME Deliverable 4.2, 2015.

¹⁵¹ TEU art 17(1).

¹⁵² Council of the European Union, ‘EU Strategic Framework and Action Plan on Human Rights and Democracy’, Doc No 11855/12, 25 June 2012, 9.

¹⁵³ European Parliament resolution of 17 December 2015 on Malaysia (2015/3018(RSP)).

¹⁵⁴ For example: European Parliament resolution of 15 January 2014 on the future of EU-ASEAN relations (2013/2148(INI)).

¹⁵⁵ Department of Asia and Pacific of Polish Ministry of Foreign Affairs <http://www.msz.gov.pl/pl/ministerstwo/ministerstwo_organizacja/komorki/departament_azji_i_pacyfiku_> accessed 10 February 2016.

Representatives Committee (COREPER II) for inclusion in the agenda of the Foreign Affairs Council (FAC), by which it is finally adopted.

IV. Substantive goals and objectives

A. EU human rights policy

The EU's 2012 Strategic Framework and Action Plan on Human Rights and Democracy included ASEAN as one of those regional organisations with which the EU seeks to 'work in partnership' and 'intensify dialogue [...] for the promotion of universal human rights standards'.¹⁵⁶

Apart from this general commitment, the EU has adopted additional policy documents which specify its concrete goals and objectives with regard to cooperation with ASEAN. Among them are the EU's Human Rights Guidelines as well as a number of agreements, strategies and action plans adopted by the EU or jointly by the EU and the ASEAN.

6. EU Human Rights Guidelines¹⁵⁷

Since 2008, the EU has adopted a set of eleven Guidelines, addressing children's rights (2008) and children in armed conflict (2008), human rights defenders (2008), violence against women and girls and discrimination against them (2008), human rights dialogues (2009), compliance with international humanitarian law (2009), torture and other cruel, inhuman or degrading treatment or punishment (2012), the issue of the death penalty (2013), freedom of religion or belief (2013), Lesbian, gay, bisexual, transgender and intersex (LGBTI) rights (2013) and most recently freedom of expression online and offline (2014). The majority of these guidelines contain explicit priorities for EU cooperation with regional organisations in general.

This engagement takes a number of forms. Most prominent is the commitment of the EU to raise particular human rights issues in the political dialogues with regional organisations.¹⁵⁸ The EU Guidelines on Torture, for example, provide that the 'human rights component of the political dialogue between the EU and [...] regional organisations shall include the issue of torture and other ill-treatment'. Similar provisions can be found in the EU Human Rights Guidelines on children's rights, children and armed conflict, LGBTI rights, violence against women, human rights defenders (HRDs) and freedom of religion or belief.

¹⁵⁶ Council of the European Union, 'EU Strategic Framework and Action Plan on Human Rights and Democracy', Doc No 11855/12, 25 June 2012.

¹⁵⁷ This section corresponds to Filip Balcerzak, Anna-Luise Chané, Chiara Marinelli, Amilcar Romero, Elizabeth Salmón, 'Report on the EU's engagement with regional multilateral organisations – Case study: Inter-American perspective', FRAME Deliverable 5.6, 2015.

¹⁵⁸ Guidelines to EU Policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment (2012); EU Guidelines for the Promotion and Protection of the Rights of the Child (2008); EU Guidelines on Children and Armed Conflict (2008); Guidelines to promote and protect the enjoyment of all Human Rights by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons (2013); EU guidelines on violence against women and girls and combating all forms of discrimination against them (2008); EU Guidelines on the promotion and protection of freedom of religion or belief (2013); all available at <http://eeas.europa.eu/human_rights/guidelines/index_en.htm>.

Several guidelines commit the EU to contribute to the strengthening and implementation of existing regional human rights safeguards and to promote the creation of those safeguards wherever they do not yet exist. Respective provisions can be found in the EU Human Rights Guidelines on torture, death penalty, freedom of opinion and expression, violence against women, HRDs and children's rights.¹⁵⁹ A number of human rights guidelines explicitly refer to ASEAN instruments and institutions. The Guidelines on Freedom of Expression for example commit the EU to 'encourage partner countries to ratify and implement relevant [...] regional human rights instruments' and to cooperate closely with special rapporteurs from regional organisations. Regional organisations are also considered as a source of information in the guidelines on LGBTI rights and on children's rights. Finally, guidelines call upon the EU to cooperate with regional organisations to promote certain human rights issues, for example, through joint statements.¹⁶⁰

The strategy development process of EU external human rights activity spans four consecutive stages.¹⁶¹ In a first step, COHOM is responsible for drafting the policy document and gathering internal and external input. Internally, COHOM cooperates *inter alia* with other Council working parties (including COASI), the EEAS, the European Commission, the European Parliament, the Special Representative for Human Rights and with EU delegations. Externally, COHOM reaches out to other international organisations, HRDs and civil society. The draft proposal is then sent to the PSC for discussion and endorsement at ambassadorial level. Subsequently the draft proposal is forwarded to the Permanent Representatives Committee (COREPER II) for inclusion in the agenda of the Foreign Affairs Council (FAC), by which it is finally adopted.

B. Agreements, strategies and action plans

EU-ASEAN relations were established back in 1977. In these almost 40 years human rights issues have frequently been rather an obstacle to than a driving force of these relations. When Myanmar joined the organisation in 1997, the relationship became even more difficult due to EU opposition to the incumbent military regime. In the last five years, however, EU-ASEAN relations have gathered speed. ASEAN pursues further integration and geostrategic environments are shifting, which includes reforms in Myanmar. Due to their shared status as regional organizations, EU and ASEAN have branded themselves 'natural partners'. This however remains a stretch and the status quo of the relationship is better described as follows: 'The relationship is warm enough, but on both sides there is a feeling that something is missing, that the relationship should be made more effective, and that there is a potential that should be better explored.'¹⁶²

¹⁵⁹ Guidelines to EU Policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment (2012); EU Guidelines on Death Penalty (2013); EU Human Rights Guidelines on Freedom of Expression Online and Offline (2014); EU guidelines on violence against women and girls and combating all forms of discrimination against them (2008); European Union Guidelines on Human Rights Defenders (2008); EU Guidelines for the Promotion and Protection of the Rights of the Child (2008); all available at <http://eeas.europa.eu/human_rights/guidelines/index_en.htm>.

¹⁶⁰ EU Guidelines on the promotion and protection of freedom of religion or belief (2013); EU Guidelines on promoting compliance with International Humanitarian Law (2009); all available at <http://eeas.europa.eu/human_rights/guidelines/index_en.htm>.

¹⁶¹ This paragraph is a brief summary of FRAME, 'Report on the analysis and critical assessment of EU engagement in UN bodies', Deliverable 5.1, November 2014, ch IV.B.

¹⁶² Jan Willem Blankert, '2012: ASEAN and the EU: Natural Partners' in Daniel Novotny, Clara Portela (eds) *EU-ASEAN Relations in the 21st Century: Strategic Partnership in the Making* (Houndsmills 2012) 143.

Both sides have documented their willingness to do so in several key documents. The ‘Bandar Seri Begawan Plan of Action to Strengthen the ASEAN-EU Enhanced Partnership (2013-2017)’ is of central importance as it maps out the way forward for the two partners. With regard to human rights, it suggest to: ‘Support the work of the ASEAN Intergovernmental Commission on Human Rights (AICHR), as the overarching body for the promotion and protection of human rights in ASEAN through regional dialogues, seminars, awareness raising activities, exchange of best practices and other capacity building initiatives aimed at enhancing the promotion and protection of human rights through technical cooperation programmes as well as giving support to the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC).’¹⁶³

The EU’s unilateral answer to the jointly negotiated way forward followed in May 2015 in the form of the Joint Communication of the High Representative of the European Union for Foreign Affairs and Security Policy and the European Commission ‘The EU and ASEAN: a partnership with a strategic purpose’.¹⁶⁴ The Council has adopted the joint communication with only very few changes in its Council Conclusions in June 2016.¹⁶⁵ On human rights, the joint communication states the following objectives:

‘As part of the effort to build a more mature and more political partnership, the EU is also keen to work constructively with ASEAN to promote and protect international human rights standards. In this context, a key EU priority is the abolition of the death penalty in the ASEAN region. The EU therefore welcomed the creation of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009 and the adoption of the ASEAN Human Rights Declaration in 2012. Specific initiatives in this area will include:

- supporting the ASEAN human rights mechanism, hosting visits by the AICHR (such as that in 2011; another is planned for the second part of 2015) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), which visited Europe in 2013, and arranging visits by the EU Special Representative for Human Rights (following up those in May 2013 and November 2014);
- stepping up the dialogue and cooperation with the AICHR (as the overarching human rights mechanism in ASEAN) on issues such as the rights of migrants and victims of trafficking, business and human rights/corporate social responsibility, torture, women’s and children’s rights, gender equality and the fight against discriminations;
- placing greater emphasis on minority rights and the death penalty as crucial areas for the policy dialogue with ASEAN; this will include a transparent and systematic process of consultation and dialogue with civil society and other stakeholders; and
- supporting civil society organisations and non-state actors in the ASEAN region, including through specific programmes such as the European Instrument for Democracy and Human Rights (EIDHR).’¹⁶⁶

¹⁶³ Bandar Seri Begawan Plan of Action to Strengthen the ASEAN-EU Enhanced Partnership (2013-2017), 28 April 2012.

¹⁶⁴ Joint Communication to the European Parliament and the Council, Brussels, 18 May 2015, JOIN(2015) 22 final.

¹⁶⁵ Council of the European Union, ‘Council conclusions on EU-ASEAN relations’, Doc No 487/15, 22 June 2015.

¹⁶⁶ European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, Joint Communication to The European Parliament and The Council. ‘The EU and ASEAN: a partnership with a strategic purpose’, 18 May 2015 JOIN(2015) 22 final.

While these are the expressed goals for human rights engagement in ASEAN, the EU is aware that it is dealing with a region that has suffered from European colonialisation. Therefore, the EU tends to stress the similarity of EU and ASEAN as regional organisations. In the Joint Communication, this reads as follows: 'More than any other Dialogue Partner, the EU can help ASEAN to achieve its integration goals as a trusted partner, without preaching any specific model.'¹⁶⁷

It is apparent that ASEAN follows a different model of integration than the EU. As outlined in previous chapters, its Member States are not keen to see interference in their internal affairs and human rights are seen as a gateway for external actors to do just that. The former Secretary General of ASEAN Ong Keng Young explains:

Some European quarters, including members of the European Parliament and non-governmental organisations, have repeatedly criticized a number of ASEAN governments for their lack of human rights protection and political freedom. [...] Indeed, without the pro-active stance of the professional staff and officials at the European Commission in Brussels and the support of a few EU Member States with strong economic and trade interests in Southeast Asia (notably Germany), ASEAN–EU relations would not have made the kind of progress witnessed so far.¹⁶⁸

It is important to note that Commission officials do also rely on the European Parliament and European civil society when engaging ASEAN proactively. The negotiation of human rights clauses, as addressed below, is for instance eased for EEAS officials when they can say that dropping this clause guarantees that the European Parliament does not ratify an agreement. It is therefore misleading when a first look at the EU's Action Plan on Human Rights and Democracy for 2015-2019 indicates that all the heavy lifting is done by EEAS, Commission and Council. In the subsequent chapter, the Commission's failure to conduct an a priori human rights assessment for a Free Trade Agreement illustrates the importance of the watchdog function of the European Parliament.

¹⁶⁷ Ibid.

¹⁶⁸ Ken Yong Ong, 'Bringing Europe and Southeast Asia Closer Through ASEAN and the EU.' Daniel Novotny, Clara Portela (eds) *EU-ASEAN Relations in the 21st Century: Strategic Partnership in the Making* (Houndsmills 2012) 156.

V. Tools/methods employed by the EU at the ASEAN

The tools available to the EU while cooperating with partners, be it third countries or regional organisations, in the area of human rights fall into three categories: 1) political dialogue, 2) economic incentives, 3) mechanism established by the European Instrument for Democracy and Human Rights.

1. Political dialogue

a) Human rights clause in Partnership and Cooperation Agreements

Since the early 1990s the EU has included a so-called human rights clause in its international agreements, holding that the EU can take appropriate measures or even suspend an agreement when human rights violations occur. This is particularly important when included in a Partnership and Cooperation Agreement (PCA). PCAs provide the framework for all further deepened EU engagement with a third country and are therefore also seen as a precondition for concluding Free Trade Agreements (FTA). The standard human rights clause featured in PCAs holds: 'Respect for democratic principles and fundamental human rights, as laid down in the Universal Declaration of Human Rights, and for the principle of the rule of law, underpins the internal and international policies of both Parties and constitutes an essential element of this Agreement.'¹⁶⁹

Although it is often problematic to apply these clauses, since cumbersome monitoring and consultations mechanisms are required to that end, they are very difficult to negotiate and have sometimes caused negotiations to stall. The EU's credibility has also had been at stake since only 23 times 'appropriate measures' were applied in caases of human rights violations in two decades. ¹⁷⁰

The PCA with Indonesia can serve as an illustrative example in this context. It entered into force in 2014, only one year later Indonesia abandons its moratorium on the death penalty. The EU has not chosen to suspend the PCA. On the one hand, this has hurt the EU's credibility and has highlighted the difficulty of this clause.

On the other hand, not suspending the agreement has allowed the EU to keep a diplomatic crisis from escalating even further and to save a French citizen's life by using diplomatic backdoor channels. One can also note that Brazil reprimanded Indonesia publicly and sadly had no success in saving its citizen.

It is to be underlined that the actual value of the much discussed human rights clause is not that it can be easily applied. From a more constructive perspective, which often coincides with diplomats' views, change of approaches and conduct can be achieved through interaction. Therefore, the process of negotiations of the clause as such, although cumbersome, is already valuable. In diplomacy, the engagement of two partners on a topic like human rights needs mutual respect and patience. This particularly valid when the EU acts in a region that suffered under European colonialisation. It has been proven that when a PCA was finally concluded, such negotiations and the established trust could be followed up by a human rights dialogue.

¹⁶⁹ European Parliament, Directorate-General for External Policies of the Union, 'The European Parliament's Role in Relations to Human Rights in Trade and Investment Agreements.' (European Parliament 2014) 8.

¹⁷⁰ Cf. Ibid., p. 12.

b) Human Rights Dialogues

As can be seen in the table below, the EU conducts Human Rights Dialogues with five out of ten ASEAN Member States. With the exception of Myanmar, these dialogues have followed the conclusion of a PCA. Myanmar's political opening was supported by the EU's quick establishment of a Human Rights Dialogue, which was in 2014 and 2015 conducted by EU Special Representative for Human Rights Stavros Lambrinidis mission in the country. While neither the EU nor other ASEAN Member States enjoy a perfect human rights record, it is noteworthy that the topics discussed with Myanmar have been more fundamental. The ratification and implementation of international human rights agreements is high on the agenda, as is the abolition of the death penalty. In other ASEAN Member States, there is great interest in discussing trafficking and forced migration, integration of people with disabilities or rights of women and children.

It is therefore not surprising that these topics were also discussed during the first Policy Dialogue on Human Rights on 19 and 20 October 2015. In addition, the rights of older persons, interaction with civil society, corporate social responsibility as well as economic, social and cultural rights and the right to development were on the agenda. Both sides expressed the intention to continue exchanges on freedom of expression, its relation to the 'advocacy of national, racial or religious hatred and the incitement to discrimination, hostility or violence.' It was also agreed that the potential areas for bilateral and multilateral cooperation include among others: corporate social responsibility and human rights, strengthening accessibility for persons with disabilities, child protection systems, gender mainstreaming, promoting economic rights of women, violence against women and children, rights of older persons and trafficking in persons. The need for encouraging dialogue and exchange of experience between civil society organisations from the two regions was also underlined.

This dialogue was a part of a one-week visit to Brussels of the ASEAN Intergovernmental Commission on Human Rights (AICHR), the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), the ASEAN Committee on Women (ACW), the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Migrant Workers (ACMW) and the ASEAN Secretariat (ASEC). The ASEAN Delegation had also exchanges with Members of the European Parliament and Brussels-based Human Rights and Democracy NGO network, participated in a seminar on 'pan European human rights mechanisms' and related to corporate social responsibility round table hosted by The Shift and CSR Europe. The Dialogue and the visit followed on AICHR and ACWC study trips to Brussels in 2011 and 2013 and the visit of the EU Special Representative for Human Rights, Stavros Lambrinidis, to Jakarta in 2013 and 2014.¹⁷¹

At the EEAS, there is heightened awareness of the comparatively low level of integration that characterises ASEAN, which also features AICHR. Therefore, an incremental approach has been chosen, seeking to engage ASEAN on less confrontative human rights issues than for instance the abolition of the death penalty. Reportedly, the atmosphere allowed for frank discussion and ASEAN was particularly keen to discuss the trade-off between freedom of expression and religious rights with the EU. In the aftermath of Charlie Hebdo attacks, some Muslim majority states had argued their prophet should generally not feature in caricatures. Besides this contentious issue, less confrontative topics allowed the EU and ASEAN to build momentum and trust at this first human rights dialogue. The

¹⁷¹ For information on this EA – ASEAN Dialogue and the visit see EEAS, ASEAN, Joint Press Release: EU-ASEAN Policy Dialogue on Human Rights, Brussels 23 October 2015 <http://eeas.europa.eu/statements-eeas/2015/151023_03_en.htm> accessed 31 March 2016.

joint press release holds that ASEAN and the EU ‘expressed satisfaction on their mutual engagement and agreed to explore further regular dialogues on human rights issues of mutual interest.’¹⁷²

Based on the feedback from EEAS officials, several factors contributed to the success of this meeting. The smooth internal cooperation with the Commission. The topics discussed touch upon several different DGs like HOME or EMPL. Given the heavy agendas of these DGs, it is not easy for the EEAS to have Commission officials make time and attend a conference on human rights. The success in doing so guaranteed that ASEAN could engage directly with experts on the topic. A problem arises from AICHR’s structures, however. Its representatives only hold three year terms. If human rights dialogues will be conducted biannually, as envisioned now, the EU will be confronted with new AICHR representatives frequently. This lessens the opportunity of building sustainable mutual trust also through interpersonal relations. Another factor of success were the deep pockets of the EU, the senior partner in this policy area who is willing to provide the development of ASEAN human rights institutions. The EU financed the complete visit of the ASEAN delegation and even provided a per diem using the EU’s READI facility. Based on internal documents ‘The Regional EU-ASEAN Dialogue Instrument (READI) Human Rights Facility (HRF) is the only policy dialogue facility that specifically addresses the human rights cooperation, exchange of experiences, policies and good practices between the EU and ASEAN. READI HRF runs for two years from August 2015 to August 2017 with total amount of Euro 2.798.200 at its disposal.’ It is a continuation of the former 2011-2015 READI facility.

	Partnership and Cooperation Agreement	Human Rights Dialogue
Brunei	negotiations launched in 2012, stalled after introduction of Sharia law	none
Cambodia	concluded in 1997, ratified in 1999	sub-group on Human Rights at biannual Joint Committee, met first in 2007
Indonesia	concluded in 2009, ratified in 2014	annual EU-Indonesia Human Rights Dialogue launched in 2009
Laos	ratified in 1997	annual Human Rights Dialogue launched in 2010
Malaysia	concluded in 2015, to be ratified with stalled FTA	none
Myanmar	none	annual Human Rights Dialogue launched in 2014
Philippines	concluded in 2010, ratified in 2012	establishment of Working Group to be discussed in 2016

¹⁷² *Ibid.*

Singapore	concluded in 2013, not ratified given problems with FTA ratification	none
Thailand	concluded in 2013, not ratified given military coup	none
Vietnam	concluded in 2012, ratified in 2015	annual Enhanced Human Rights Dialogue launched in 2010

Table 3: EU Human Rights Dialogues and PCA vis-à-vis ASEAN

2. Economic Incentives

ASEAN has been labelled a priority in the Global Europe strategy and therefore the EU seeks deepened economic ties with the association.¹⁷³ The speed and scope of this enhanced economic interdependence are moderated by the EU's expressed willingness to use its economic leverage to incentivise human rights provision in ASEAN. This trade-off is well captured in the description of the EU as a 'conflicted trade power'.¹⁷⁴ The EU is ASEAN's second largest trading partner and the biggest provider of foreign investment.¹⁷⁵ It therefore seeks to use market access as a bargaining chip to work towards better human rights conditions within ASEAN and its Member States. This strategy is based *inter alia* on theories of European modernisation which assume that increased economic growth benefits democracy and the upholding of human rights. However, some observers remark that 'there is a pronounced decoupling of democratic and economic transformation in many of the remaining autocracies in the region. The experiences of Singapore, Malaysia, Vietnam and China show that simultaneous democratisation and introduction or deepening of market economy is not the dominant model in Asia.'¹⁷⁶

a) The Generalised Scheme of Preferences (GSP)

The Generalised Scheme of Preferences provides developing countries, as classified by the World Bank, with preferential access to the EU market. In place since 1971 it has undergone its latest reform in 2014 and features three arrangements: 'Everything but Arms' (EBA) grants least developed countries 'full duty-free and quota-free access to the EU for all their exports with the exception of arms and armaments. This makes it the most generous form of preferential treatment to LDCs globally.'¹⁷⁷ As table 4 shows, Cambodia, Laos and Myanmar benefit from this arrangement. The latter has been allowed to join the scheme only after sanctions were lifted. In ASEAN, EBA is the GSP scheme to generate most exports.¹⁷⁸ Seen globally, Cambodia exported second-most goods to the EU using EBA structures in 2014, only being preceded by Bangladesh.¹⁷⁹ On the one hand, EBA is a very

¹⁷³ European Commission, 'Global Europe competing in the world. A Contribution to the EU's Growth and Jobs Strategy', (European Commission 2006).

¹⁷⁴ Sophie Meunier, Kalypso Nicolaidis, 'The European Union as a conflicted trade power' in John Peterson, Alasdair R. Young (eds) *The European Union and the New Trade Policies* (Routledge 2007) 112-131.

¹⁷⁵ EEAS, 'The EU - ASEAN relationship in facts and figures' <http://eeas.europa.eu/factsheets/news/eu-asean-relationship_factsheet_en.htm> accessed 21 December 2015.

¹⁷⁶ Aurel Croissant, 'Can You Have One without the Other? Transformation towards Market Economy and Democracy in Asia and Oceania' 12 *Strategic Insights* 4 (2005).

¹⁷⁷ European Commission, 'Everything but Arms (EBA) – Who benefits?' (European Commission 2014).

¹⁷⁸ Zhou Weifeng, Ludo Cuyvers, 'The effectiveness of EU's Generalised System of Preferences: Evidence from ASEAN countries.' 11 *Journal of International Trade Law and Policies* 1 (2012) 65-81.

¹⁷⁹ European Commission, 'Report from the Commission to the European Parliament and the Council. Report on the Generalised Scheme of Preferences covering the period 2014-2015.' {SWD(2016) 8 final}, 8.

generous arrangement and in some instances it is successful in increasing towards economic prosperity of these countries and improving socio-economic human rights of citizens. In other cases, however, the scheme clearly lacks fine-tuning and therefore reinforces existing power structures in AMS. An example is the sugarcane industry of Cambodia, which has flourished under EBA, but empowered companies who reportedly make people poorer and decrease economic diversification.¹⁸⁰

Structural weaknesses like these can be encountered in the other two schemes of the GSP, too. Under the Standard GSP, which currently applies to Indonesia and Vietnam, two thirds of product categories can be exported at reduced tariff rates or tariff-free. GSP Plus puts an explicit bonus on the ratification and implementation of 'core international conventions relating to human and labour rights, environment and good governance.'¹⁸¹ It allows for the tariff-free export of two thirds of all product tariff lines. The Philippines was rewarded for its progress in human rights records by joining this scheme in 2014. 'Philippine Trade Undersecretary Adrian S. Cristobal Jr. has indicated that he believes GSP+ will help to boost the country's trade with the rest of the world and substantially reduce poverty at home. An estimated 200,000 new jobs will be created mainly in the agriculture and manufacturing sectors, most of which will be in rural areas outside the major cities.'¹⁸²

	EBA	Standard GSP	GSP Plus	FTA negotiations	remarks
Brunei	no	No	No	stalled due to lacking PCA	dropped out after reform
Cambodia	Yes	No	No	No	
Indonesia	No	Yes	No	No	
Laos	Yes	No	No	No	
Malaysia	No	No	No	launched in 2010, paused in 2013	dropped out after reform
Myanmar	Yes	No	No	No	
Philippines	No	No	Yes	to launch in 2016	
Singapore	No	No	No	finished in 2014, awaiting CJEU ruling	dropped out after reform

¹⁸⁰ Inclusive Development International, 'Cambodia Clear Sugar Campaign' <<http://www.inclusivedevelopment.net/sugar/>> accessed 20 March 2016.

¹⁸¹ European Commission, 'Generalised Scheme of Preferences (GSP)' <http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/index_en.htm> accessed 18 March 2016.

¹⁸² Dezan Shira & Associates, 'Philippines the First ASEAN Country to Join the EU's General System of Preferences Plus (GSP+)' <<http://www.aseanbriefing.com/news/2015/01/08/philippines-first-asean-country-join-eus-general-system-preferences-plus-gsp.html>> accessed 10 February 2016.

<i>Table 4: EU's trade and economic agreements with ASEAN Member States</i>					
Thailand	No	No	No	launched in 2013, stalled due to coup	dropped out after reform
Vietnam	No	Yes	no	finished in 2015, enter in force in 2018	

As table 4 indicates, some ASEAN Member States have dropped out of the GSP scheme after its reform in 2014. This happens when the World Bank classifies a country as high or upper-middle income for three consecutive years or when preferential access to the EU market is granted in a different form, e.g. a Free Trade Agreement.

b) Free Trade Agreements (FTA)

As explained above, all Free Trade Agreements are linked to a human rights clause since the early 1990s. With regard to ASEAN, the EU has attempted to stick to its proclaimed goal of promoting regional integration by launching a region-to-region FTA in 2007. Given the EU's internal proceedings, conclusion of such an FTA would have necessitated a PCA with each ASEAN Member States (AMS). Particularly because of the human rights clause, this is hard to obtain in a region featuring such a diversity of political regimes. Likely due to this political and socio-economic diversity, the negotiations proceeded very slowly. Due to this fact and a strong EU lobby advocating against the inclusion of Myanmar in an EU-ASEAN FTA, negotiations were paused in 2009. In summer 2015, Commissioner Malmström stated the EU was willing to assess possibilities for both sides to return to the negotiation table. It has not gone unnoticed that other powers have been able to conclude FTAs with ASEAN as a whole, such as with China, Japan, Australia and New Zealand.

In the meantime, the EU has turned to the bilateral path, negotiating FTAs with single AMS. Interestingly, all states who dropped from the GSP scheme after its reform had the prospect of concluding an FTA with the EU. From the six FTA concluded or being negotiated, three face obstacles due to human rights reasons. This vice versa also implies that these FTA negotiations were not able to improve the human rights situation in the respective country since its administration was not willing to make concessions: In the case of Brunei, the introduction of Sharia law in parts of the country raised deep concerns about the country's commitment to international human rights obligations and put a halt on the PCA negotiations preceding an FTA. Similarly, Thailand and the EU had already initialled a PCA and launched FTA negotiations when the EU stopped its engagement due to the military coup in 2014. The EU holds: 'Only an early and credible roadmap for a return to constitutional rule and the holding of credible and inclusive elections will allow for the EU's continued support.'¹⁸³ These two cases highlight that the EU does not engage with third countries in ASEAN when fundamental freedoms are not given.

The third case, Vietnam, provides an alarming example of problems in the EU's internal-internal coordination. One day before the EU-Vietnam FTA negotiations were set to be launched, the Council adopted the Action Plan on Human Rights and Democracy (2012-2014) which 'called on the Commission to incorporate human rights in all impact assessments relating to trade agreements.'¹⁸⁴

¹⁸³ Council of the European Union, 'Council conclusions on Thailand', 23 June 2014.

¹⁸⁴ European Ombudsman, 'Decision on the failure of European Commission to conduct a prior human rights impact assessment of the EU Vietnam free trade agreement', 3 March 2016.

As can be studied in several exchanges between the Commission and the Ombudsperson, the Commission has ignored this provision and later sought to make up for the skipped a priori human rights assessment in several ways, amongst others by publishing a human rights analysis after the conclusion of the negotiations.¹⁸⁵ This, in the eyes of many in the European Parliament, and especially in the opinion of the Ombudsperson does not fulfil the same function as an a priori assessment and the Commission's political choice therefore constitutes 'maladministration'.¹⁸⁶ It remains to be seen whether the European Parliament will give its consent to this negotiated agreements and whether the Commission will stick to the new rules when launching FTA negotiations with the Philippines later in 2016.

In the case of the two further AMS, who have embarked on the path of negotiating an FTA with the EU, non-human rights issues got in the way. The FTA with Singapore has been concluded already in 2014, but the European Court of Justice is to rule on the Commission's competencies of signing this treaty on behalf of the EUMS. Differing interpretations of this aspects of the Lisbon Treaty currently hurt the EU's institutional credibility in negotiations.

Last but not least, the FTA negotiations with Malaysia were going very slowly due to undisclosed reasons and have therefore been paused in 2013.

c) The European Instrument for Democracy and Human Rights (EIDHR)

The European Instrument for Democracy and Human Rights (EIDHR) aims at supporting human rights proponents within the ASEAN countries, it is therefore less invasive than the other three tools, but powerful nonetheless. Overall, the 2014-2020 period of the European Instrument for Democracy and Human Rights provides EUR 1,332,752,000 for the support of human rights and democracy in non-EU countries. ASEAN as a whole is not allotted a slice from this cake, but its Member States are. The Work Programme for Grants lays out which objectives are supported in which country and how civil society organisations can apply for grants to realise projects.¹⁸⁷ In the past, EIDHR has for instance financed projects for migrant women in Vietnam, against domestic violence in Cambodia or for the abolition of the death penalty in the Philippines. While engagement on the grass root level is the strength of the EIDHR, individual projects' impact assessments are hard to obtain and an appreciation of single projects in the region therefore escapes this analysis. It is however important to highlight, that EIDHR also finances election observation missions (EOMs), which ASEAN has made use of in numerous occasions. In particular, the EU has supported the democratic transition of Indonesia in EOMs in 1999, 2004, 2006 and 2007, this also included the Aceh Monitoring Mission. Cambodia, too has invited the EU to observe the country's progress in the field of free and fair elections in 2008, 2003, 2002 and 1998. Most recently, Myanmar has reached out to the EU and requested an EOM for the nation-wide elections in 2015. EU observers judged the election process positively, though not ideal. Based on this judgement the EU's other tools for human rights engagement described above are then readjusted.

¹⁸⁵ European Commission, 'EU-Vietnam Free Trade Agreement Now Available Online', 1 February 2016, <http://europa.eu/rapid/press-release_IP-16-184_en.htm> accessed 22 March 2016.

¹⁸⁶ Supra note 185.

¹⁸⁷ Delegation of the EU to Indonesia, Brunei Darussalam & ASEAN, Work Programme for Grants, <https://ec.europa.eu/europeaid/sites/devco/files/awp-2015-indonesia-deleg_en_0.pdf> accessed 22 March 2016.

3. Restrictive measures vs. cooperation

The term 'Restrictive measures' refers to a group of tools for human rights promotion which can be political or economic in nature. Frequently referred to as 'sanctions', they follow the logic of negative conditionality. The effectiveness of restrictive measures in spurring improvements in the human rights situation or even the regime type of a country is highly debated, but their imposition does send a clear and highly visible message of criticism to the state in question. While they should ideally be embedded in a comprehensive 'carrot and stick' system, in reality frequently go hand in hand with the end of political dialogue and should therefore remain an ultima ratio. In the region of ASEAN, the EU used this tool since 1988 against the state of Myanmar. The scope of restrictive measures has increased over time and 'sanctions became the main policy instrument to address human rights violations' (FN: EU ISS; p. 29), until the slow opening up of Myanmar began in 2011. Adapting to the political development, the underlying logic of the sanctions could be shifted to one of positive conditionality, rewarding steps towards a better human rights situation and democracy, for instance by reinstating the GSP scheme. Lifting the restrictive measures sanctions was in the eyes of many observers also a geopolitical choice, according to Human Rights Watch: 'European governments, in their eagerness to wrest Myanmar from China's influence have been tempted to embrace the new government before genuine reforms are adopted'.¹⁸⁸

Before restrictive measures were lifted, the EU's and ASEAN's different approaches towards Myanmar have been a significant obstacle towards deepened political engagement, including in the area of human rights. As Eriksson summarizes: 'While the EU has acted on a sanctions strategy providing for a change of government policy, ASEAN acted more on a long-term 'carrot' approach with the hope that cooperation within the organization would stimulate a change.'¹⁸⁹ This was at odds with ASEAN's traditional non-interference policy. In 1997, Myanmar joined ASEAN to the dismay of many in the EU who feared a perceived strengthening of the military junta's political legitimacy. For the overall exchange on human rights in EU-ASEAN relations, it was very important that the EU lifted its restrictive measures in 2012. While close monitoring and regular review remain in the place, an important obstacle to EU-ASEAN engagement on human rights has been removed.

¹⁸⁸ Human Rights Watch, 'World Report 2013. Events of 2012' 13.

¹⁸⁹ Mikael Eriksson, 'EU Sanctions: Three Cases of Targeted Sanctions' in Perter Wallensteen and Carina Staibano (eds) *International Sanctions: Between Wars and Words* (Routledge 2005) 112.

VI. Conclusions

The report has presented the relationship between the EU and the ASEAN, identifying the recent developments within both organisations as well as various modalities of engagement. While the economic aspects of EU-ASEAN relations reach back to the early 1980s, the human rights aspect is relatively new. This is a result of both the reorientation of the EU's external policy towards human rights and the development of a nascent human rights framework within ASEAN. Assessments of the EU's ability to promote its human rights values towards ASEAN and its Member States have often been sceptical.¹⁹⁰ Needless to say, these critiques must be considered by policymakers and implementers taking into the account the developments in the ASEAN region. The relative difficulty in projecting EU values towards ASEAN is a result of two major factors, one external and one internal. The external factor is the character of Southeast Asian regionalism, which is focused on safeguarding sovereignty, ensuring non-interference in the internal matters of other states and placing human rights firmly as a secondary area for co-operation. This contrasts with the value-driven external policy of the EU, which places emphasis on values common to its Member States, such as democracy, human rights and the rule of law. The internal factor arises from how these values of the EU clash with economic priorities in cooperation with other organisations and third countries. The FP7-FRAME research project fully tackles the topic of inclusion of human rights in EU trade policies and agreements in a separate Work Package, but it bears mentioning that the EU has so far not been able to coherently and consistently uphold its commitments to mainstreaming human rights across trade agreements.¹⁹¹

The establishment of the AICHR and the adoption of the AHRD mark an important milestone for the development of human rights in ASEAN. This is particularly evident in the case of AICHR which is by far the most advanced human rights-based mechanism within the ASEAN framework. To date, the AICHR has achieved a number of progresses as mandated in its ToR, and has shown its willingness to improve in the areas which require heightened attention, such as the dissemination of human rights knowledge to the peoples of ASEAN through various activities and initiatives. The AICHR has also engaged in collaborating with the EU and other external entities in order to obtain additional expertise and knowledge. With the commendable endeavor, it is instinctive that the human rights community in ASEAN would want to see the AICHR becoming more than just 'an intergovernmental body' with no powers of legal enforcement, which could allow it to act against human rights violations.

Today, it is still too early to envision the AICHR becoming an entity comparable to the established human rights institutional settings under the Council of Europe, the Organization of American States or the African Union. The political environment and the operational setting of the EU and ASEAN are distinctively different. What the AICHR is expected to do at this stage is to duly perform its mandate under the ToR and the Five-Year Work Plan, particularly on the conduct of thematic research and the dissemination of human rights knowledge, in order to boost credibility as a competent human rights institution. The immediate goal for now is for the ASEAN citizens to understand and be well aware of their human rights. The human rights seeds that are planted now can be harvested later, and until then one can start to visualize the AICHR to become a full-fledge human rights institution. This should

¹⁹⁰ Laura Allison, *The EU, ASEAN and Interregionalism. Regionalism Support and Norm Diffusion between the EU and ASEAN* (Palgrave MacMillan 2015) 203.

¹⁹¹ Laura Beke, David D'Hollander, Nicolas Hachez, Beatriz Pérez de las Heras, 'Report on the integration of human rights in EU development and trade policies' FP-FRAME Deliverable D9.1. (2014) 138-139.

be taken into account by the EU while formulating and implementing its policy towards ASEAN. At this point, the EU's support for the nascent human rights architecture of ASEAN remains an important postulate.

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