

## Singapore | 20 Dec 2012

---

### **Achievements of the 21st ASEAN Summit**

*By Tommy Koh [Guest Writer]*

The 21<sup>st</sup> ASEAN Summit was held in Phnom Penh, from 17 to 20 November 2012. I have not come across any balanced assessment of the achievements and shortcomings of the Summit. Several reports in the popular media have focused on one or two issues, such as, the disagreement over the sentence in the Chairman's closing statement that there was an ASEAN consensus not to internationalise the South China Sea issue. In this essay, I wish to summarise what I consider to have been the most important achievements of the Summit as well as to indicate what ASEAN's main challenges are.

#### ASEAN HUMAN RIGHTS DECLARATION

First, I would highlight the adoption of the ASEAN Human Rights Declaration. I consider the establishment of the ASEAN Inter-Governmental Commission on Human Rights, the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children and the adoption of the ASEAN Human Rights Declaration as miraculous achievements. None of these developments could have been foreseen five years ago. Even in 2007, when I was a member of the group drafting the ASEAN Charter, I wondered if we would ever arrive at a consensus to establish an ASEAN Inter-Governmental Commission of Human Rights.

The ASEAN Human Rights Declaration has been criticised and compared unfavourably with the Universal Declaration of Human Rights (UDHR). I beg to disagree. I recall that in 1998, on the occasion of the 50<sup>th</sup> anniversary of the UDHR, a group of elder statesmen

belonging to the InterAction Council, led by the former German Chancellor, Dr Helmut Schmidt, submitted a draft Declaration of Human Responsibilities, to the UN for its consideration. Dr Schmidt had said: "No democracy and no open society will last without the twin principles of rights and responsibilities or, in other words, of rights and duties." The Western countries successfully blocked the draft from being considered by the UN, fearing that it would undermine the UDHR.

I like the ASEAN Human Rights Declaration precisely because rights are accompanied by responsibilities. For example, paragraph 6 states: "The enjoyment of human rights and fundamental freedoms must be balanced with the performance of corresponding duties as every person has responsibilities to all other individuals, the community and the society where one lives."

I like paragraph 8, which states: "The human rights and fundamental freedoms of every person shall be exercised with due regard to the human rights and fundamental freedoms of others."

I also like paragraph 22, which states: "Every person has the right to freedom of thought, conscience and religion. All forms of intolerance, discrimination and incitement of hatred based on religion and beliefs shall be eliminated."

## ASEAN INSTITUTE FOR PEACE AND RECONCILIATION

Second, the ASEAN Institute for Peace and Reconciliation (AIPR) was launched. The AIPR is championed by Indonesia and inspired by the Geneva-based Centre for Humanitarian Dialogue (CHD). The CHD has an excellent record of using quiet diplomacy to help parties to both intra-State and inter-State conflicts to negotiate and reconcile. Recently, the CHD played a vital but low-profile role in helping to broker the peace agreement between the Government of the Philippines and the MILF.

The AIPR could play a similar useful role provided that the ASEAN governments are willing to use its good offices, in such situations as the Southern Thailand and the Rakhine State in Myanmar. Since Indonesia is the champion of the AIPR, it should consider setting a good example by asking it to use its good offices to help bring about better mutual understanding and reconciliation between Jakarta and the indigenous people in the restive province of Papua.

## MEETING THE 31 DECEMBER 2015 DEADLINE

Third, the ASEAN Leaders reaffirmed their commitment to meet the deadline of 31 December 2015 for the transition to the ASEAN Community, comprising the Political-Security Community, the Socio-Cultural Community and the Economic Community. Concerning the state of progress towards the economic community, as of August 2012, 74.5% of the measures in the ASEAN Economic Blueprint have been implemented. This

leaves 25.5% of the measures to be implemented in the next three years. Is this achievable? The remaining measures include some very difficult issues and there are strong vested interests involved. However, if there is political will on the part of all 10 ASEAN countries, the target date can still be met.

## LAUNCHING RCEP

Fourth, the Leaders of the 10 ASEAN countries and those of the following six countries, namely China, Japan, South Korea, India, Australia and New Zealand, agreed to launch negotiations for a new free trade agreement, to be known as the Regional Comprehensive Economic Partnership (RCEP). Since ASEAN has already concluded free trade agreements with each of the six partner countries, negotiating the RCEP should not pose any insoluble obstacles. When completed, the RCEP will be one of the largest free trade areas in the world.

## MEETING OF CHINA, JAPAN AND SOUTH KOREA

Fifth, the annual ASEAN Summit often offers itself as a convenient platform for the dialogue partners to hold their separate meetings. The trade ministers of China, Japan and South Korea met in Phnom Penh to reaffirm their earlier decision to launch negotiations for a trilateral free trade agreement among them. This was a silver lining in the dark cloud which has hovered over those three countries in recent months, as a result of their disputes over Dokdo/Takeshima and Senkaku/Diaoyu. Let us hope that a free trade agreement among them will lead to an improvement in their political relations.

## ASEAN'S CHALLENGES

ASEAN confronts many challenges. I would enumerate the following as amongst the most important:

- i The imperative for ASEAN to stay united and to remain neutral in the intensifying competition between China and the US;
- ii The wise management of the disputes between China and the four ASEAN claimant countries in the South China Sea;
- iii The central role which ASEAN plays in the various regional organisations and forums;

- iv Closing the development gap within the ASEAN family; and
- v Strengthening the ASEAN Secretariat by providing it with more adequate funds and manpower.

## SURIN PITSUWAN

I would like to conclude by paying a tribute to Dr Surin Pitsuwan, who will complete his five-year term as Secretary-General on 31 December 2012. For the past five years, he has worked tirelessly on behalf of ASEAN. He has been our eloquent spokesman to the world. He has acted swiftly in response to humanitarian emergencies, such as the Cyclone Nargis in Myanmar. We owe him our gratitude and our best wishes for success in his future endeavours.

\* \* \* \* \*

**Tommy Koh** is the Chairman of the Centre for International Law, National University of Singapore, and Ambassador-at-large at Singapore's Ministry of Foreign Affairs.

---

**ISEAS Perspective** is published electronically by the Institute of Southeast Asian Studies, Singapore.

© Copyright is held by the author or authors of each article.

ISEAS accepts no responsibility for facts presented and views expressed. Responsibility rests exclusively with the individual author or authors. No part of this publication may be reproduced in any form without permission. Comments are welcomed and may be sent to the author(s).

Editor: Ooi Kee Beng

Institute of Southeast Asian Studies  
30, Heng Mui Keng Terrace  
Pasir Panjang,  
Singapore 119614  
Main Tel: (65) 6778 0955  
Main Fax: (65) 6778 1735

Homepage: [www.iseas.edu.sg](http://www.iseas.edu.sg)

# APPENDIX

## ASEAN HUMAN RIGHTS DECLARATION

WE, the Heads of State/Government of the Member States of the Association of Southeast Asian Nations (hereinafter referred to as "ASEAN"), namely Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, on the occasion of the 21<sup>st</sup> ASEAN Summit in Phnom Penh, Cambodia.

REAFFIRMING our adherence to the purposes and principles of ASEAN as enshrined in the ASEAN Charter, in particular the respect for and promotion and protection of human rights and fundamental freedoms, as well as the principles of democracy, the rule of law and good governance;

REAFFIRMING FURTHER our commitment to the Universal Declaration of Human Rights, the Charter of the United Nations, the Vienna Declaration and Programme of Action, and other international human rights instruments to which ASEAN Member States are parties;

REAFFIRMING ALSO the importance of ASEAN's efforts in promoting human rights, including the Declaration of the Advancement of Women in the ASEAN Region and the Declaration on the Elimination of Violence against Women in the ASEAN Region;

CONVINCED that this Declaration will help establish a framework for human rights cooperation in the region and contribute to the ASEAN community building process;

HEREBY DECLARE AS FOLLOWS:

### **GENERAL PRINCIPLES**

1. All persons are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of humanity.
2. Every person is entitled to the rights and freedoms set forth herein, without distinction of any kind, such as race, gender, age, language, religion, political or other opinion, national or social origin, economic status, birth, disability or other status.

3. Every person has the right of recognition everywhere as a person before the law. Every person is equal before the law. Every person is entitled without discrimination to equal protection of the law.

4. The rights of women, children, the elderly, persons with disabilities, migrant workers, and vulnerable and marginalised groups are an inalienable, integral and indivisible part of human rights and fundamental freedoms.

5. Every person has the right to an effective and enforceable remedy, to be determined by a court or other competent authorities, for acts violating the rights granted to that person by the constitution or by law.

6. The enjoyment of human rights and fundamental freedoms must be balanced with the performance of corresponding duties as every person has responsibilities to all other individuals, the community and the society where one lives. It is ultimately the primary responsibility of all ASEAN Member States to promote and protect all human rights and fundamental freedoms.

7. All human rights are universal, indivisible, interdependent and interrelated. All human rights and fundamental freedoms in this Declaration must be treated in a fair and equal manner, on the same footing and with the same emphasis. At the same time, the realisation of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds.

8. The human rights and fundamental freedoms of every person shall be exercised with due regard to the human rights and fundamental freedoms of others. The exercise of human rights and fundamental freedoms shall be subject only to such limitations as are determined 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.

9. In the realisation of the human rights and freedoms contained in this Declaration, the principles of impartiality, objectivity, non-selectivity, non-discrimination, non-confrontation and avoidance of double standards and politicisation, should always be upheld. The process of such realisation shall take into account peoples' participation, inclusivity and the need for accountability.

## **CIVIL AND POLITICAL RIGHTS**

10. ASEAN Member States affirm all the civil and political rights in the Universal Declaration of Human Rights. Specifically, ASEAN Member States affirm the following rights and fundamental freedoms:

11. Every person has an inherent right to life which shall be protected by law. No person shall be deprived of life save in accordance with law.

12. Every person has the right to personal liberty and security. No person shall be subject to arbitrary arrest, search, detention, abduction or any other form of deprivation of liberty.

13. No person shall be held in servitude or slavery in any of its forms, or be subject to human smuggling or trafficking in persons, including for the purpose of trafficking in human organs.

14. No person shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

15. Every person has the right to freedom of movement and residence within the borders of each State. Every person has the right to leave any country including his or her own, and to return to his or her country.

16. Every person has the right to seek and receive asylum in another State in accordance with the laws of such State and applicable international agreements.

17. Every person has the right to own, use, dispose of and give that person's lawfully acquired possessions alone or in association with others. No person shall be arbitrarily deprived of such property.

18. Every person has the right to a nationality as prescribed by law. No person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality.

19. The family as the natural and fundamental unit of society is entitled to protection by society and each ASEAN Member State. Men and women of full age have the right to marry on the basis of their free and full consent, to found a family and to dissolve a marriage, as prescribed by law.

20. (1) Every person charged with a criminal offence shall be presumed innocent until proved guilty according to law in a fair and public trial, by a competent, independent and impartial tribunal, at which the accused is guaranteed the right to defence.

(2) No person shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed and no person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed.

(3) No person shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure of each ASEAN Member State.

21. Every person has the right to be free from arbitrary interference with his or her privacy, family, home or correspondence including personal data, or to attacks upon that person's honour and reputation. Every person has the right to the protection of the law against such interference or attacks.

22. Every person has the right to freedom of thought, conscience and religion. All forms of intolerance, discrimination and incitement of hatred based on religion and beliefs shall be eliminated.

23. Every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person's choice.

24. Every person has the right to freedom of peaceful assembly.

25. (1) Every person who is a citizen of his or her country has the right to participate in the government of his or her country, either directly or indirectly through democratically elected representatives, in accordance with national law.

(2) Every citizen has the right to vote in periodic and genuine elections, which should be by universal and equal suffrage and by secret ballot, guaranteeing the free expression of the will of the electors, in accordance with national law.

### ***ECONOMIC, SOCIAL AND CULTURAL RIGHTS***

26. ASEAN Member States affirm all the economic, social and cultural rights in the Universal Declaration of Human Rights. Specifically, ASEAN Member States affirm the following:

27. (1) Every person has the right to work, to the free choice of employment, to enjoy just, decent and favourable conditions of work and to have access to assistance schemes for the unemployed.

(2) Every person has the right to form trade unions and join the trade union of his or her choice for the protection of his or her interests, in accordance with national laws and regulations.

(3) No child or any young person shall be subjected to economic and social exploitation. Those who employ children and young people in work harmful to their morals or health, dangerous to life, or likely to hamper their normal development, including their education should be punished by law. ASEAN Member States should also set age limits below which the paid employment of child labour should be prohibited and punished by law.

28. Every person has the right to an adequate standard of living for himself or herself and his or her family including:

- a. The right to adequate and affordable food, freedom from hunger and access to safe and nutritious food;
- b. The right to clothing;
- c. The right to adequate and affordable housing;
- d. The right to medical care and necessary social services;
- e. The right to safe drinking water and sanitation;
- f. The right to a safe, clean and sustainable environment.

29. (1) Every person has the right to the enjoyment of the highest attainable standard of physical, mental and reproductive health, to basic and affordable health-care services, and to have access to medical facilities.

(2) The ASEAN Member States shall create a positive environment in overcoming stigma, silence, denial and discrimination in the prevention, treatment, care and support of people suffering from communicable diseases, including HIV/AIDS.

30. (1) Every person shall have the right to social security, including social insurance where available, which assists him or her to secure the means for a dignified and decent existence.

(2) Special protection should be accorded to mothers during a reasonable period as determined by national laws and regulations before and after childbirth. During such period, working mothers should be accorded paid leave or leave with adequate social security benefits.

(3) Motherhood and childhood are entitled to special care and assistance. Every child, whether born in or out of wedlock, shall enjoy the same social protection.

31. (1) Every person has the right to education.

(2) Primary education shall be compulsory and made available free to all. Secondary education in its different forms shall be available and accessible to all through every appropriate means. Technical and vocational education shall be made generally available. Higher education shall be equally accessible to all on the basis of merit.

(3) Education shall be directed to the full development of the human personality and the sense of his or her dignity. Education shall strengthen the respect for human rights and fundamental freedoms in ASEAN Member States. Furthermore, education shall enable all persons to participate effectively in their respective societies, promote understanding, tolerance and friendship among all nations, racial and religious groups, and enhance the activities of ASEAN for the maintenance of peace.

32. Every person has the right, individually or in association with others, to freely take part in cultural life, to enjoy the arts and the benefits of scientific progress and its applications and to benefit from the protection of the moral and material interests resulting from any scientific, literary or appropriate artistic production of which one is the author.

33. ASEAN Member States should take steps, individually and through regional and international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of economic, social and cultural rights recognised in this Declaration.

34. ASEAN Member States may determine the extent to which they would guarantee the economic and social rights found in this Declaration to non-nationals, with due regard to human rights and the organisation and resources of their respective national economies.

### ***RIGHT TO DEVELOPMENT***

35. The right to development is an inalienable human right by virtue of which every human person and the peoples of ASEAN are entitled to participate in, contribute to, enjoy and benefit equitably and sustainably from economic, social, cultural and political development. The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations. While development facilitates and is necessary for the enjoyment of all human rights, the lack of development may not be invoked to justify the violations of internationally recognised human rights.

36. ASEAN Member States should adopt meaningful people-oriented and gender responsive development programmes aimed at poverty alleviation, the creation of conditions including the protection and sustainability of the environment for the peoples of ASEAN to enjoy all human rights recognised in this Declaration on an equitable basis, and the progressive narrowing of the development gap within ASEAN.

37. ASEAN Member States recognise that the implementation of the right to development requires effective development policies at the national level as well as equitable economic relations, international cooperation and a favourable international economic environment. ASEAN Member States should mainstream the multidimensional aspects of the right to development into the relevant areas of ASEAN community building and beyond, and shall work with the international community to promote equitable and sustainable development, fair trade practices and effective international cooperation.

### **RIGHT TO PEACE**

38. Every person and the peoples of ASEAN have the right to enjoy peace within an ASEAN framework of security and stability, neutrality and freedom, such that the rights set forth in this Declaration can be fully realised. To this end, ASEAN Member States should continue to enhance friendship and cooperation in the furtherance of peace, harmony and stability in the region.

### **COOPERATION IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS**

39. ASEAN Member States share a common interest in and commitment to the promotion and protection of human rights and fundamental freedoms which shall be achieved through, inter alia, cooperation with one another as well as with relevant national, regional and international institutions/organisations, in accordance with the ASEAN Charter.

40. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to perform any act aimed at undermining the purposes and principles of ASEAN, or at the destruction of any of the rights and fundamental freedoms set forth in this Declaration and international human rights instruments to which ASEAN Member States are parties.

*Adopted by the Heads of State/Government of ASEAN Member States at Phnom Penh, Cambodia, this Eighteenth Day of November in the Year Two Thousand and Twelve, in one single original copy in the English Language.*