Peace Making Efforts among ASEAN Nations

by Emeritus Profesor Dr Surin Pitsuwan (Transcribed by Tawfique Al-Mubarak from a public lecture at IAIS Malaysia on April 14th 2014)

Assalamu 'Alaikum wr. wb. Bismillahir Rahmanir Rahim.

Dear Professor Director, Excellencies, Ladies and Gentlemen,

I am grateful for this opportunity to share with you some thoughts on the topic of the role of ASEAN nations in promoting peace and regional cooperation in Southeast Asia and the wider region of East Asia. I will be discussing concerns over non-interference, the situations in East Timor, Myanmar and Rohingyas, and also matters over Malacca Straits, and ASEAN's relations with China, and South China Sea issues during my tenure of office as Secretary-General of ASEAN.

I have been appointed as a Visiting Professor of the University of Malaya since the middle of last year (2013), but have not been able to fulfil my obligations due to other pressing responsibilities and engagements around the world. This morning my wife asked me "how many people would make up the audience you will be speaking to today?" I said, "I don't know." She responded, "Usually your audience is around twenty thousand!" She was referring to the political campaigns. Pak Syed Hamid Albar here (former Foreign Minister of Malaysia) knows well what political campaigns and academic exercises of this nature have in common and what makes them different.

When I was asked the first time I went into to politics in 1989, "So, what is the reason for leaving the classroom for politics?" I said, "I am still essentially a teacher, only the classroom is getting bigger, noisier, and more difficult to manage." So, in that Aristotelian mould of teaching – meaning trying to inform, trying to change and trying to transform the thinking and thought habits and behaviours of the young – a politician also has to be a good teacher. It is difficult and very challenging, but that is part of the profession. A good politician must also be a true teacher.

This morning, you would like to hear more about how ASEAN is involved and engaged in the area of peace and reconciliation; and the record for that is rather mixed. For a long time now ASEAN has been very reluctant and very shy about getting involved in conflict situations particularly among its own

member states. This is due to the fact that we emerged out of the geo-political background of the 1960s, at a time when all these countries were different. There were five of us originally, who got together in Bangkok on the 8th of August, 1967 against the background of the problems across the Mekong River, the drama of the Indo-China ideological war. And one of those five was Tun Abdul Razak, whose name I am now carrying as a fellow at the Oxford University's Centre for Islamic Studies (OXCIS). With that background, ASEAN was very much committed to promoting a better understanding among themselves. and promoting South East Asian studies. This is a very humble background, knowing that the diversity between us would make it extremely difficult for us to engage in issues of mediation and peaceful resolution of conflicts. So, the beginning was very humble. Let us promote better understanding among ourselves, our people, and let us create a sense of new identity among ourselves, and – according to the language of the 1967 Declaration – "secure for their peoples and for posterity the blessings of peace, freedom and prosperity." This was very vague, but quite inspiring. However, at that time, the region had gone through many issues of tension and conflict. We realised that without giving some effort to the areas of mediation, peace, and reconciliation, the region would not be able to evolve into a more integrated region, which would be the basis for effective engagement and competition with the rest of the global community. By the time the 1980s came along, China was growing fast, India was opening up, and ASEAN was forced to think about forming a formal community. So, the first concord for ASEAN, the Bali Concord of 1976, was to promote cooperation and amity amongst ourselves. The second concord in 2003 was about the 'ASEAN community', of which the fruit was the Founding Document at the end of 2007 - the ASEAN Charter - which for the first time legally bound all members to become one integrated community by the year 2015. And then, another Bali Concord was declared in 2011, known as the "Bali Concord 3." That was to discuss how to evolve the ASEAN Community into an effective regional structure of cooperation to engage with the rest of the world. So it was called the "ASEAN Community in the Community of Nations." Essentially, this new vision points to the ASEAN Community being integrated seamlessly, cooperating effectively and competing successfully with the rest of the global community.

The problem of non-interference was still there; the culture of reluctance to go into the issue of mediation between states was very strong. Again, because of the diversity in our current governance structure and our backgrounds, all forms of government are present in ASEAN – an absolute (although benevolent) monarchy, two communist countries, maybe one or two strong "one-party states," and definitely a few "noisy democracies," like Thailand, Indonesia, and

108 SURIN PITSUWAN

the Philippines. This also includes the norms, governance, religions, history, and languages – all these are diverse. There is no one common standard for any member state to come into ASEAN, unlike the European Union. In Europe you have to be a liberal, open democracy; you have to have an open economy, and you have to have certain measures of economic performance; but in ASEAN, there is nothing as such! As long as you are in South East Asia, you are fine and eligible. In fact, one time Sri Lanka wanted to join and there was a joke among us: "So, what do you have in common with us?" Their response? "Well, we wear sarong too!" There is no common standard for us to come into the organisation, so we have to deal with this problem of diversity. So, we have to be reluctant on the issues of trying to get involved in inter-state conflicts. In fact there is an incident which is quite interesting and a bit humorous too. Two Theravada Buddhist states – the Kingdoms of Thailand and Cambodia – fought over a Hindu ruin (Phra Vihear) and both of them were expecting two Muslims to help - Pak Marty Natalegawa of Indonesia and myself! The fact of the matter is that we did help contain it, but we could not solve it all together; the issue was more political, extremely nationalistic, and more emotional than legal.

So, when there were changes of government, things transpired. However, what Pak Marty and I did could not be revealed on international TV. And it was for the first time that the inter-state conflict of ASEAN went to the UN all the way to the Security Council – partly because Pak Marty, the Chair of the ASEAN Foreign Ministers in 2011, served as the Permanent Representative of Indonesia at the UN; and the Chair of the Council at that particular time was his colleague – a lady from Brazil. Connections help. So, it was quite a personal journey trying to make some sense out of this intense conflict between two member states of ASEAN. Thankfully we had the prior experience of mediating between ourselves. It went to the World Court as well to re-examine the judgement of 1962 on the same case of Phra Vihear. When the Court stated, not literally here that, "Yes, the ruin belongs to Cambodia," it did not mention anything about the land surrounding the temple. So, the Thais said, "We will draw a line around the temple, concede to Cambodia the land that the Temple sits on, but not the land in its vicinity." And that was the decision lived by for decades until the issue flared up again in 2008. It was also the first case that went to the World Court; the first case for which the foreign ministers of ASEAN were called to Jakarta to talk exclusively about a dispute between two member states. This had never happened before. You can see the evolution now; it was the first incident that went to the UN, and the first incident that the UN and the World Court said "look ASEAN, you are mature now! You have your own mechanisms, the ASEAN Charter and other instruments; you have your own political and security community; go back and use those instruments which you have created in ASEAN."

So, in a way, the conflicts between us somehow led the world to push responsibility back in our direction. As such, we have travelled a long way from the mode of tremendous reluctance in the beginning – because of our diverse backgrounds towards a greater willingness to engage in disputes or conflicts between ourselves. So, ASEAN is transforming through these series of engagements which we were forced by international and global opinion to take action on through a dedicated position and resolution.

Pak Syed Hamid, Sir, as former FM of Malaysia at that time, remembers the issue of East Timor very well. He was FM in Malaysia and I was FM of Thailand; and it so happened that the years 1999-2000 happened to be those when Thailand was in charge as Chair. In August of 1999, East Timor blew up in crisis, and the whole world was feeling partly guilty about it, that things had gone wrong for so long since the late seventies, which led to a lot of violence, violation of human rights, and suppression on the part of Indonesia. However, ASEAN was silent, and in any case would not want to get involved in the "internal affairs of Indonesia." Then there was a referendum at the end of August 1999 when Thailand had just assumed the chairmanship from Singapore the previous July. That was when I took the position that the ASEAN Chair would have an "enhanced mandate" in coordinating among ourselves and with our Dialogue Partners, and I took the role and mandate very seriously, trying to enhance the Chair's position. It was in my estimation from consultations with colleagues, including Pak Syed Hamid, that if ASEAN didn't do anything this time we were going to become irrelevant. However, we had to make sure that Indonesia asked for our assistance. We had to make sure that Pak Habibi invited us in, rather than ASEAN marching in uninvited. Along with this, the whole world was putting pressure on ASEAN, so it was a stressful situation. I am trying to give you this picture, because I am trying to present to you all the evolution of ASEAN in the area of peace and reconciliation. Even though we were reluctant, we were forced into these situations, because we had told the world we are mature enough; we had told the world that we have the instruments; we had told the world that we are capable, but we were reluctant, we were restrained by our own principle of non-interference. So, the East Timor conflict is very illustrative for mapping the ASEAN journey to the present period. It transpired that before President Bill Clinton of the U.S. left Washington to go to Auckland, New Zealand for the APEC Summit that time in September 1999; he made a very strong appeal to the world and to Indonesia that, "You had better allow international forces to go into East Timor and help you restore law and order." UN Secretary-General Kofi Annan did the same thing from New York. Australian Prime Minister John Howard called the Chairman of ASEAN from Canberra - because you know that Australia would not want to go into East Timor alone, knowing that the

110 SURIN PITSUWAN

Indonesian mentality was strongly against it and had a very bitter experience with past colonial interference. Four hundred years with the Dutch caused this sense of 'anti-West,' 'anti-colonialism,' and even 'anti-Caucasian,' to be very direct about it. Also, Australia could get into a quagmire if it waded into that fragile situation alone. So, they were extremely reluctant, though they were making all these calls and appeals, applying pressure on all of us. Even the European Union weighed in by way of sending Robin Cook, Foreign Secretary of the UK, to attend the APEC consultation in Auckland. So, as Chair of the ASEAN Foreign Ministers Meeting, I went to Jakarta to visit Pak Habibi after the APEC Leaders' meeting in Auckland, New Zealand. I travelled through Singapore to call upon him, but I was conducted to the Office of General Wiranto first, who was the Commander of the Indonesian Armed Forces at the time and had some involvement in East Timor. He said to me: "Come, come in large numbers! We want to see the faces of our ASEAN and Asian friends in East Timor, as many as you can bring in." That was quite a major shift for Indonesia. A huge shift! Being extremely jealous about its territorial integrity and sovereignty, and very strong in third world mentality, but for the first time asking ASEAN member states and East Asian neighbours – because Korea too came to help – to restore law and order in East Timor. When I was conducted to the Presidential Palace, Pak Habibi repeated the very same phrase as Gen. Wiranto; they probably coordinated closely about the message they wanted to convey to ASEAN and to the world. He said: "Please come, come in large numbers. And if you can, take command of that international force coming into East Timor." That phrase should be recognised; what he meant was "never Australia!" Responding to the President, I said: "Mr. President, we are never going to come in such large numbers. We do not have the technology nor the resources. We also do not have that sort of military intelligence, and in my humble opinion we cannot be the commander of the international force in East Timor." Then, Pak Habibi shot back, immediately – he must have thought about it long before - "Then, give it to one of the Nordic countries. Avoid Australia at all costs! Norway!"

But then it had to be Australia, because they were more ready; they were prepared; they very much wanted to lead that coalition in East Timor. And they did it, making ASEAN instrumental in bringing a new nation into existence. By the year 2005, East Timor was an independent state and a member of the United Nations. So, you can see the evolution of ASEAN on this issue of peace and reconciliation.

Myanmar is probably another one of our strong points. By the time of the crisis I had become the Secretary-General of ASEAN. The first six months – I came into office in January 2008, and in May 2008 – Cyclone Nargis devastated much of Myanmar. 140,000 people perished overnight! Four million more were suffering

and teetering between life and death! Not only that, but Myanmar was still under UN sanctions; isolated and pressured under the force of the Resolutions of the Security Council. It was only ASEAN which was trying to put a buffer between Myanmar and the international community. Again, we were expected – we were forced and pressured – to pry open Myanmar for humanitarian assistance from the anxious global community. And we did that. This humanitarian window helped Myanmar to rehabilitate itself with the international community – the UN even came to Yangon, while it was still under sanctions! Foreign ministers and ministers of development and international cooperation of many countries, including Mr. Ban Ki Moon of the UN, the U.S., and the European Union, came to Yangon, Myanmar. And we made it clear to Myanmar that: "The world can suspend or remove all conditions it had piled on you to help you in times of crisis, you only have to open up and engage with them". ASEAN Foreign Ministers had a meeting in Singapore prior trying to convince Myanmar to open up, and Pak Hassan Wirajuda of Indonesia gave them an ultimatum in unequivocal terms: "You have three choices: One, the UN coming in alone to you, because the world is not going to see four million people die in front of them, and you close down your borders." This was the first option, and the option afforded to them was the new concept of 'Responsibility to Protect' (R2P). If the government is not able to protect its own people from calamity, or itself is a party to genocide or crimes against humanity, then the world has a responsibility to protect those people according to the R2P concept.

The concept was still emerging at that time, working its way into the new language of diplomacy. Pak Hassan told the Foreign Minister of Myanmar: "You and the UN alone, because the world is not going to tolerate four million people dying in front of them, unlike Rwanda, unlike Kosovo. This time, the world is not going to let you continue with that."

The second choice would be: "You and whatever coalition you would build to help you, which you would lead yourself." And finally, the third choice: "You and ASEAN working together with the international community". It was not a conflict reconciliation, but rather it was a rehabilitation of a member of ASEAN which had strayed outside the framework of international law and order. After four or five decades, we successfully brought Myanmar back into the community of nations.

With all these transformations of the ASEAN mentality and mindset from the beginning up to, let's say, Aceh recently, and Myanmar – ASEAN is launching next year in Malaysia – I hope you are all are aware of that, Malaysia is going to take over the Chair after Myanmar at the end of this year; 2015 will be under Malaysia. As such, Malaysia is planning a big celebration at the end of next year, when ASEAN+6 leaders will be in Kuala Lumpur. And this time it could be

112 SURIN PITSUWAN

ASEAN+8, adding President Barack Obama of the U.S. and President Vladimir Putin of Russia. The latter are both members of the EAS (East Asia Summit), who will converge at the end of next year in Kuala Lumpur. So we will have the celebration next year of the ASEAN Community coming into being; and the organisation has to think systematically and formally about handling the issues of peace and reconciliation among between us. This is why the ASEAN Institute for Peace and Reconciliation (AIPR) was established in Jakarta. The challenges before us will be in translating the challenges we have accumulated as a body and as individual member states. Malaysia has had a collection of experiences mediating; such as the one in the Southern Philippines, which was recently formalised. Malaysia is also mediating the problem in Southern Thailand. Malaysia was not invited to mediate the problems in Aceh, because they are too close [personal] to the issue.

From 2003 to 2005, I was with the Opposition in Thailand, and I was asked to be part of the Acehnese settlement efforts, in Geneva, up in the Swiss Alps. The Versailles was representing Jakarta, and of course the exiled Acehnese from all over the world, particularly Sweden, were in Geneva. The first sentence that came out from the representative of Jakarta was: "You must first relinquish your claim and aspirations for independence before we can even begin to sit down and talk things over." I remember the Acehnese responding, right in front of us: "If we relinquish that, we have nothing to talk about!" Pak Syed Hamid, you were not involved in that. For some reasons, there was a belief that there are too many Acehnese in Kuala Lumpur and in the government here too. You were put aside, I was invited in, being a Muslim and former Foreign Minister of Thailand. We together, collectively, could very well pull our experiences and resources in this tradition of peace and reconciliation into something more formal in a newly established entity called the ASEAN Institute for Peace and Reconciliation in Jakarta. It is certainly about time that we should have this formal mechanism among ourselves, because we have a lot of challenges, inside and outside of ASEAN, between ASEAN, and in our engagement with the rest of the world. We also have enough issues on which to help each other and to come together, or maybe to contain or put down the 'sanctity' of the issue of non-interference. In the process of integration, your problem today is my problem tomorrow. You cannot have a community and integration saying that, "Your problems will remain yours; they are not going to spill over to me the next day." Absolutely not! Integration is integration; good and bad are going to be shared. So the downside of integration is the downside of the Community at large. We must collectively guard against this.

How many Rohingyas do you have in your country, Malaysia? Of all the ASEAN member states, Malaysia is shouldering the largest number of

Rohingyas; Thailand is probably second. However, there are more attempting to settle in Malaysia and more in transit through Thailand. So unless and until we take the issue seriously as ASEAN, the Rohingyas could be an issue of strategic instability for the entire region. People of 1.5 million – half inside, and half outside, not knowing who they are and cannot go anywhere – face so many troubles that the UN has called them "the most persecuted people in the world." ASEAN cannot be silent on that. I was also thinking, "What would happen if they become extremists and radicalised?" One of the life lines of Global Commerce. the Malacca Straits, would be under pressure. The Malacca Straits could become the Eastern waters of Somalia. I have said this to Pak Najib, in his office, and he turned and looked to his intelligence people pondering, "Have you ever thought of it?" The entire region, including China, Japan and Korea, would be under pressure, because the East-West life-line of trade and energy transport will have to come through the Malacca Straits, where seventy thousand ships pass through every year. So the issue of the Rohingyas is larger than the Rohingyas! It has strategic implications on all of us.

The other one is between us – ASEAN and China, and the South China Sea. This is a great challenge for the region. Unless and until ASEAN can put our acts together and serve as a platform of effective negotiation, this issue is going to be quite a big challenge in the future. For a long time Indonesia was instrumental in mediating, because we thought only four countries were involved from part of ASEAN – Malaysia, the Philippines, Vietnam, and Brunei – and now the Natuna waters and islands are becoming a part of the contention of the overlapping areas, and Indonesia is under pressure. Now you can see the entire region being engulfed in uncertainty. The South China Sea is of strategic importance for the region – 80-90% of the energy resources that go to China, Japan, and Korea through South East Asia, will have to be shipped through the South China Sea, which has an area of more than four million square miles. That is a huge challenge before us and we have to somehow come together to find some common resolutions; these are our common strategic and security challenges.

In the area of peace and reconciliation, we have to find out, if not a total solution, then at least a temporary containment of the problem – not to let it spill over into the larger region of Asia or East Asia, because South East Asia – the ASEAN Region – has become more important to the world than it was 10 to 15 years ago; because together we are expected to be a new train of growth, pulling the global economy out of its own deep crisis; because of the strategic importance of the region; because what Henry Kissinger once observed at the end of the last century: "East Asia in terms of technology, economy, advancement in technology, science, and innovation; East Asia is on par with twentieth century Europe. But as far as institutions and processes, and systems to manage conflicts

and problems, and flash-points inevitable among them, East Asia is still like nineteenth century Europe." And right now you can see this between Japan and China, Japan and Korea, China and India.

ASEAN must aspire to respond to the challenge that Henry Kissinger put to us three decades ago. That is, we must build a system, an institutional process, an organisation to handle the differences between ourselves and the rest around us. Failing that, we are not going to be a part of the twenty-first century or the Pacific Century that seems to be emerging, but rather under threat and in danger of being derailed because of all these problems that are now before us. As such, ASEAN is an instrument that is expected to help spearhead this effort; because the others could not do it, because they have too much historical baggage among between them, territorial or otherwise. You cannot expect the Chinese and the Japanese to spearhead a process of building up a system, a forum, an organisation to solve these problems, or to at least contain them. Neither do you expect the Japanese and the Koreans, nor do you expect the Chinese and the Indians to do it; it is only us – ASEAN.

So, Excellencies, Ladies and Gentlemen, we have to shift gears, change modes, and accept the challenge as ours. And I think we can do it. I hope next year, these issues will also be part of the consideration under the Chairmanship of Malaysia as the "midwife," the "tok bidan," bringing this baby – ASEAN – into the world.

Thank you very much. Ma'assalamah.

The Fiqh Al-Aqalliyāt (Jurisprudence of Minorities) in Light of the Higher Objectives (Maqāṣid) of Shariah

Mohammad Hashim Kamali & Ahmad Badri Abdullah*

Muslim minorities living in the West face the challenges of a secular law and culture as well as issues of identity and citizenship that have taken a turn for the worse since the aftermath of 9/11. However, compared to Muslim minorities elsewhere, those living in the West enjoy greater freedom to practice their religion. Some of the challenges they face are unprecedented and the rules of Islamic law concerning them have also remained relatively under-developed. This would explain the emergence of a new branch of Islamic jurisprudence under the rubric of the still developing *fiqh al-aqaliyyāt* (jurisprudence of minorities) in recent decades