

FINDING HUMAN RIGHTS CONSENSUS: INDONESIA AS CONSTRUCTIVE FORCE IN AICHR

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Abstrak

Menemukan konsensus selama ini dianggap sebagai halangan pengambilan tindakan di ASEAN, termasuk di Komisi Hak Asasi Manusia ASEAN: the AICHR (ASEAN Intergovernmental Commission on Human Rights). Meskipun studi-studi terdahulu terpusat pada keterbatasan konsensus dalam pengambilan keputusan di ASEAN, ada kekosongan penelitian tentang tekanan kinerja kelembagaan yang sifatnya antar-pemerintahan dan dampaknya pada keberagaman mandate di antara para wakil negara di AICHR ketika mengupayakan konsensus. Setidaknya ada empat macam pendekatan yang telah digunakan oleh wakil-wakil negara di AICHR untuk mencapai consensus meskipun pandangan konstruktivis dan pragmatis berbenturan, tetapi jelaslah bahwa tantangan ASEAN lebih pada lintas sektor daripada internal AICHR, sehingga evaluasi proses membangun consensus di ASEAN membutuhkan kajian arah kinerja ASEAN secara umum sebagai institusi.

Kata Kunci: Hak asasi manusia, konsensus, ASEAN, AICHR, Constructivist, Pragmatist

Abstract

Finding consensus has been argued as a stumbling block for actions in ASEAN, including in ASEAN's Human Rights Body: the AICHR (ASEAN Intergovernmental Commission on Human Rights). While past studies discussed the limits of consensus making in ASEAN, there is lacunae of research on the institutional performance pressure to get things done in an intergovernmental setting and the impacts of diverse mandates among AICHR Representatives to finding human rights consensus. There are at least four types of approaches that has been employed by AICHR Representatives to find consensus where the constructivist and pragmatist collided, but it becomes clear that the challenge is cross-sectoral rather than merely internal AICHR, which makes it imperative to assess the direction for ASEAN's institutional performance when evaluating consensus building.

Keywords: *Human Rights, Consensus, ASEAN, AICHR, Constructivist, Pragmatist*

INTRODUCTION

ASEAN is moving beyond its 50 year-establishment and the commitment on decision-making mechanism remains the same. ASEAN holds the principle of respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States, where aggression and threat or the use of force shall be renounced. ASEAN member states hold on to peaceful settlement of disputes and commit to non-interference in the internal affairs of ASEAN Member States. When urgent matters occur, consultation is the first resort of solution. These are among the principles of the ASEAN Charter, the foundation that governs and binds ASEAN Member States as one legal personality and one Community since 15 December 2008.

The commitment to strive for consensus has been highly criticized as inefficient and ineffective for many years. ASEAN is called a talk-shop due to lengthy process of getting things moving ahead. Leaders may declare commitment on certain matter, but it may lead to years of vacuum in follow-up programs or activities that change how people live together as a region.

Against such critique the ASEAN leaders issued the Kuala Lumpur Declaration on People-Oriented, People-Centered ASEAN on April 2015. The Declaration highlighted the commitment to engage stakeholders including with civil society organizations, business leaders including small and medium enterprises, and ASEAN peoples in the programs and activities that ASEAN develops. The Declaration mentioned “human rights, the AICHR and other Sectoral Bodies related to human rights” in its political-security part of the commitment to continue having meaningful and constructive engagement with relevant stakeholders. Indeed, human rights are among the issue that has been seen a must-do to touch the lives of people.

Annual Joint Communiques of ASEAN Foreign Ministers always include a section about AICHR and Human Rights. The one issued in 2017 when the Philippines was ASEAN and AICHR Chair was a note of

“satisfaction with the work of the AICHR in mainstreaming the rights of persons with disabilities, including the cross-pillar collaboration between AICHR, Senior Official Meeting on Social Welfare and Development (SOMSWD) and ASEAN Commission on the Promotion and Protection of the Women and Children (ACWC), ... acknowledged AICHR efforts in promoting corporate social responsibility (CSR) and human rights, in strengthening judicial co-operation in the region, in implementing human rights instruments, as well as in implementing human rights-based approach to combat trafficking in persons, among others.”

Such declaration and statement suggest that there are demands to work and to get things done under the consensus building mechanism, even if it is tough. We are familiar with the term the “ASEAN Way” which loosely means an approach to find common understanding among ASEAN Member States, as an organization, while respecting the social cultural norms of Southeast Asian nations. Some views the ASEAN Way skeptically as a reason for some Member States to maintain status quo (Manuhutu, 2016), but others suggest the value of doing it for the sake of institutional building in the diverse political and socioeconomic backgrounds of ASEAN Member States (Masilamani & Peterson, 2014). Quite often we hear that the exercise of consensus building is part of constructive engagement, a way to make others change their views on certain matters of concern in voluntary manner. Yet skepticism looms high as to how this method may handle critical urgent matters emerging in the world that affect the region or within the region.

Dilemma remains on reconciling the need for strong and effective regional institutions on the one hand and the overriding concerns over maintaining national autonomy on the other (Sukma, 2014). Issues attracting international attention such as the Asian Financial Crisis of 1998, the South China Sea conflict, or the political and humanitarian crisis in Myanmar are among the dilemmatic ones. Malaysian Prime Minister Mahathir Mohamad who observed the Asian Financial Crisis raised the view of “ASEAN in disarray as its members are at odds with one another” while

Singaporean Prime Minister Goh Chok Tong once lamenting ASEAN as “ineffective to some Dialogue Partners” (Funston, 1999).

ASEAN consensus may promise many things, but we should fairly evaluate it against the intent of Member States to get things done. It is fair to say that it will be naïve to assume that ASEAN Member States are intentionally going at odds with one another or create deadlocks. This is because every Member State must pay an equal sum of contribution every year to the ASEAN Fund, and for human rights to the AICHR Fund. This is on top of the regular commitment to send (and finance the travelling of) officials and government representatives to ASEAN and AICHR meetings. In addition, for every activity and programs on human rights, there will always be some ASEAN Dialogue Partners who chipped in the contribution. Outputs of activities, therefore, are part of the demand on ASEAN’s performance.

Against such backdrop, this paper discusses the practices of finding consensus between 2016 and 2018 in AICHR, the ASEAN’s Charter Body of Human Rights, an overarching human rights body whose mandate is to mainstream human rights principles and practices across the three pillars of ASEAN Community. The data and description of process is based on my experience and observation as Indonesian Representative to the AICHR during that period, plus some interviews of AICHR Representatives who would rather remain anonymous.

Consensus in the study of management and corporate organization is understood as rational and comprehensive decision-making process. It is used to develop general level of agreement “on the fundamental priorities of an organization” for the sake of effective decision implementation (Floyd & Woolridge, 1992). In the context of intergovernmental format of cooperation, consensus is formed among members with common interest who shared an understanding on some issues and have a commitment to tackle those issues together. For clarity, consensus in this paper means a process to agree on certain theme or to work together through consultation, exploration, and negotiations.

Consensus is different from unanimity. The parties participating in finding consensus does not have to agree on everything nor to declare their understanding on matter under discussion in order for a consensus to happen. During deliberation, participating members usually assess the interest of self and other members before coming to a position to give consent (or not) to the matter under question. When the time is come to decide, members may openly say “yes” or remain quiet because they have no objections to the matter being decided.

Consensus involves initiation of issues for others to agree as important to decide together for a common direction. The initiator will usually explain why the matter is important, the things to consider, and the stakes at hand. A successful consensus usually involves the following:

- a. Invoking an issue in ways that is well understood by the participating decision-makers as timely and beneficial to respond,
- b. Forming “coalition” of common interest through informal lobbying prior to matters being decided,
- c. Posing questions that lead the participating decision-makers to change their mind on certain standpoint,
- d. Involving stakeholders or network of experts in certain hierarchical levels to convince the participating decision-makers that time is ripe to resort to certain action or to develop certain program.

In an organization, consensus is either incremental or drastic. Either way may imply making strategic decision, although the drastic ones will usually have greater implication to the strategic direction of the organization. Therefore, usually in a corporation, consensus as decision-making mechanism is not conducted at all levels of management. Individuals who recognize the problem take steps to develop a wider awareness, members of the top management choose issues, sense needs and plant the seeds of agreement in the organization to amplify understanding, while others may be engaged in networking of individuals at numerous hierarchical levels (Woolridge & Floyd, 1989).

In Southeast Asia, consensus is among the traditional practice to make decisions. Consensus help manages personal relations with the chiefs of the many political centers spread across the region; a way to averse the use of force in getting compliance. For this reason, consensus is connoted as an act of communitarianism and a reflection of communal politics, an act to test tolerance levels among reasonable people in that those fails to agree will be betoken as either unreasonable or ill will or impatience (Goodin, 2001).

In ASEAN, all Organs, Bodies and Partners are bound by The Rules of Procedure and Criteria for Engagement for Entities Associated with ASEAN, which is the rules based on Article 1 and 2 of the ASEAN Charter on the purposes and principles of ASEAN. The essence of this rule is to make sure that everyone is engaged, valued and respected and when moving forward it will be at a pace comfortable to all. The rules put forward the following purposes and principles in any of its line of engagements:

- a. Mutual respect, mutual tolerance, mutual awareness and mutual understanding of each other's roles, strength and constraints;
- b. Transparency, sincerity and non-confrontational;
- c. Constructive and meaningful dialogue, positive thinking, and goodwill in cooperation;
- d. Rules-based, and proceeding at a pace comfortable to all parties concerned; and
- e. Working collaboratively towards the common interest of the ASEAN Community and its people.

Against this backdrop we can now assess how consensus is made on human rights issues. The consideration for having an AICHR brewed since 1993 in Vienna when the World Conference on Human Rights iterated the need for considering the establishment of regional and sub-regional arrangements for the promotion and protection of human rights. To follow, ASEAN 26th Ministerial Meeting stated that ASEAN should "also consider the establishment of an appropriate regional mechanism on human rights" especially after having various meetings with non-governmental organizations which highlighted the various right needing observance by

ASEAN member states, also advocacy, support for training, planning and awareness raising (Jones, 2015).

It was noted that the creation of ASEAN Human Rights mechanism could deflect foreign pressures on ASEAN internal affairs and it has diplomatic significance to create better image about the region. Indeed, it is fair to say that internally within ASEAN there is a desire to “proof to the world” that ASEAN too can work meaningfully on human rights matter. The desire to catch up is not questionable. An AICHR Representative whose country was part of ASEAN Enlargement said:

“I remember twenty years ago when I served as an Ambassador; it was very hard for me to say that we in Southeast Asia don’t have any human rights mechanism. I came home glad and happy that in 2009 we finally have AICHR. For a country like us, we are grateful to be able to say that we too can talk about human rights...” (Personal communication, November 26, 2017).

Another AICHR Representative whose country was part of ASEAN Six said:

“Speaking about human rights, people in other countries especially from the West, often think that we don’t know how to do it, but we care about our communities. Even when we adopt Syariah Law, we think about how the law can give better protection for women and children after a divorce, at least in our context, the husband therefore cannot just dump her and the children, he must support them financially...” (Personal communication, November 27, 2017).

And indeed, there were hope that the AICHR can facilitate the broader practice of mainstreaming of human rights principles across ASEAN Members’ programs, activities and cross-border cooperation. The civil society organizations hope that AICHR could address past abuses of human rights and receive reports for getting remedy when allegations on human rights violation was found. The intergovernmental setting of AICHR began with an approach to encourage and support one another in improving human rights promotion and protection at home. Partly this was among the

reason why AICHR was known as “a Commission Shrouded in Secrecy” (Forum Asia, 2012).

Indonesia is a Member State who has been all along been aiming high for AICHR performance. The Indonesians who were involved in the negotiation to establish AICHR said that the birth of AICHR was tough and they were grateful it was finally born despite the limitations. The views from the Indonesian government is that as long as the Commission is there, commitments on human rights could be promoted gradually, and as long as the mandate is not reduced or curbed, the promotion and protection of human rights will be materialized to the highest expectation of those who fought for the birth of AICHR.

Coming to AICHR as a Representative in 2016, my learning period was short. The pressure was for the AICHR to deliver more tangible results, thanks to the tagline “Turning Vision into Reality” by Lao PDR as the ASEAN Chair. In the Joint Communique of the 49th ASEAN Foreign Ministers Meeting in 2016, AICHR Representatives were “encouraged to engage more on human rights challenges in the region in accordance with the principles of the ASEAN Charter, the ASEAN Human Rights Declaration (AHRD) and the Phnom Penh Statement on the Adoption of the AHRD, as well as the Terms of Reference (TOR) of the AICHR. Further, the statement specifically encouraged the AICHR to enhance public awareness of human rights among the peoples of ASEAN, including by uploading appropriate information on its work and activities on its Website, strengthening dialogue and consultation with other ASEAN Bodies and entities associated with ASEAN including CSOs and other stakeholders. The excitement of ASEAN going 50 in 2017 was in the air, ensuring that AICHR shows its presence to the public.

ANALYSIS

Institutional Performance for AICHR

AICHR was established in 2009 following the stipulation in ASEAN Charter, Article 14, that ASEAN will have a Human Rights Body. AICHR according to its TOR has 10 Representatives, one per Member State with a

mandate of 3 year per term and can be re-appointed for one additional term. These Representatives are selected in different ways in every Member State. In Indonesia, the Representative is selected through an open process where the Ministry of Foreign Affairs invite civil society activists and non-governmental actors to run as candidate and serve on voluntary basis. A candidate must submit a written statement of purpose, biography and letters of support from at least 3 civil society organizations. The candidates are interviewed by a panel of experts comprising of individuals from Ministry of Foreign Affairs, Ministry of Law and Human Rights, and representatives from civil society groups and journalists. It is the commitment of Indonesian government to work with civil society figures, thus recruiting them as the Indonesian Representative to the AICHR.

In Thailand, Philippines and Malaysia, they too may appoint their AICHR Representative from civil society figures, but their process is not open. In other countries, the AICHR Representatives are either active diplomats who are assigned part-time to do AICHR works or retired Ambassadors. In most countries, the AICHR Representatives are “attached administratively” to the Ministry of Foreign Affairs. Except in Cambodia where the Representative reports and “must get approval” from 3 agencies: the Council of Ministers, the National Human Rights Committee and the Ministry of Foreign Affairs, in Brunei Darussalam where the Representative reports to His Majesty Sultan and the Foreign Minister, or in Thailand where the Representative works with Ministry of Justice. They work on voluntary basis with limited staff support (except in Singapore).

According to AICHR TOR, Representatives meet at least two times a year. But in practice, at least since 2016, the Representatives meet 4-5 times a year: in January/February in the country of the Chair, in April/May in the ASEAN Secretariat in Jakarta, in July/August during the ASEAN Ministerial Meeting in the country of the Chair, in July or October for a Special Meeting, and in November to pass on the torch to the next Chair. The Chairmanship of AICHR follows the rotation of ASEAN Chairmanship. The workplan of AICHR is decided every five-years but priority programs

(and budgets) are decided on annual basis, although insertion of programs are also possible whenever seen as necessary and feasible.

The first 5 years of AIHCR was appropriately known as an institution-building stage where activities are geared to building common perspective and approach to translating the AICHR mandates and functions as outlined in its Terms of Reference. In these early years, the AICHR have adopted several documents on this matter: Guidelines on Operations (GO), Terms of Reference of the Drafting Group of the ASEAN Human Rights Declaration, Rules of Procedure for the AICHR Fund, AICHR Workplan (2013-2014), AICHR Workplan (2016-2020), and Guidelines on the AICHR Relations with Civil Society Organizations. These documents were not accessible to the public in AICHR early years but since 2016 some are open for public.

Of course, discussing human rights violation could be sensitive, but it does not necessarily prevent AICHR Representatives from exploring that avenue. Indonesia has always been on the forefront to raise issues for common discussion in AICHR. Between 2013-2016, there are activities that are encouraging (Wahyuningrum, 2014). AICHR Representative from Indonesia, inspired a retreat to discuss the case of Sombath Somphone of Lao PDR who has been missing since December 2012 and the Rohingya crisis in Myanmar, organized the first Human Rights Dialogue in 2013 where the model of United Nations Periodic Review was used to trigger discussion, using the example of Indonesia to encourage other countries to do the same. Thailand was the one following suit, organizing similar activity. There was also a national level forum that was intended as annual called Jakarta Human Rights Dialogue in 2012, again also followed by Thailand's Bangkok Human Rights Dialogue, where all elements of human rights promotion and protection including civil society organizations are engaged.

AICHR in practice is quite open for various initiatives from ASEAN Member States but in those early years most of the Member States chose to observe and respond, not to initiate or organize programs or activities. The above-mentioned activities were not always decided with consensus from the 10 Member States because the challenge for consensus then was to

convince others that an agenda is worth considering. Some support staff who assisted AICHR in those days said that a debate for agreeing on an agenda could last up to three hours. The AICHR Representatives of the day are indeed mostly strong orators. The birth of the ASEAN Human Rights Declaration, therefore, was really tough. What item to include as human rights agenda of ASEAN and the precise wording of how ASEAN will work together on it, as one may imagine, took a lengthy process.

The short-cut in those days were to lobby like-minded countries to follow implementing a model of program or activities that a country tries to introduce in AICHR. Indonesia was leading here. Indonesia opened itself to scrutiny and observations from all Members, using cases of human rights violations or allegations on human rights violation to trigger dialogue on ways to move forward together in the ASEAN context. In other instances, Indonesia organized activity at the national level and then invited the AICHR Representatives to attend, thus avoiding consensus from getting in the way of introducing an issue or model of dialogue on human rights matters.

What has been lacking, therefore, during those early years, were getting consensus on programmatic approach to activities. Work Plans may be made but the realization is minimal. AICHR Fund was minimally used. Program activities and concept notes may be made but the implementation is also minimal, less than 30%. Again, Indonesia and Thailand were two countries who are most active in exploring the uncharted territories of organizing activities, working with Ministries and Dialogue Partners to get things done.

When the new batch of AICHR Representatives came into office in 2016, 8 new Representatives were new. Malaysian Representative was not appointed yet until April 2018, thus for a while Malaysia was represented by its Permanent Representative to ASEAN. A Retreat between all the older batch of AICHR Representatives (batch 2009-2012 and 2013-2015) and the new ones were held. The Chair of that time, Lao PDR, host the one-day Retreat for AICHR Representatives. The key message of that meeting was

that AICHR needs to deliver programs and activities because the Foreign Ministers questioned the very low utility rate of AICHR Fund.

AICHR Fund and its utility rate is one key performance indicator for AICHR. By 2015, every year all ASEAN Member States contribute an amount of approximately 20,000 USD per country; the number may be increased up to 5% as approved by the Foreign Ministers in the ASEAN Foreign Ministers Meeting. The amount may not be large, totaling on average 200,000 USD per year but it is a resource to tap to organize program or activity. Usually, the initiator of program becomes the lead country and others may decide to co-organize it or just participate in it, and the organizing Member will propose how much money will be taken from the AICHR Fund and who (which Dialogue Partners) will co-sponsor the rest. The initiator and co-organizer are responsible for finding the co-sponsor and for the financial accountability of organizing the program or activity.

Starting in 2016, the ASEAN Secretariat became more diligent and consistent in tracing the budget spending of AICHR program and activities. They tracked financial accountability of AICHR Representatives who have requested AICHR Fund, ensuring financial report and remaining fund are submitted according to standards. In the past such process was rather loose, but not anymore.

This marks stronger monitoring on AICHR performance. In a series of AICHR meetings between 2016 and 2018 there were discussion on Guideline on Budget Standardization (where a range of budget cost is determined for every budget item allowed for spending using AICHR Fund) and Guideline on Streamlining the Work of AICHR Representatives (on time allocation for AICHR meetings, procedure for sharing concept notes with relevant ASEAN Sectoral Bodies, the role of AICHR Assistants and also the highly debated item on funding source of AICHR activities, the number of AICHR activities per year, correspondence with External Parties and responding to request for meeting). A program that is approved by consensus but not delivered within certain time will need another round of consensus before it can qualify getting AICHR Fund.

In 2018, the ASEAN Secretariat through its Deputy Secretary General also circulated letters to AICHR calling for regular update on the Monitoring Matrix of ASEAN Political-Security Community (APSC) Blueprint 2025, providing more qualitative assessments of and recommendations on the implementation of the action lines, particularly the impacts of the implementation on the ground. A call to AICHR is also made to take the lead in implementing the remaining unaddressed action lines of the APSC Blueprint 2025 and take lead as the primary agency for each cross-pillar issue which involves the APSC.

Against this background we can see that AICHR Representatives do not just handle substantive issues of human rights, they also deal with operational and technical logistical matters pertaining to implementation of Priority Programs. With AICHR Representatives mostly working on voluntary basis, part-time commitment and limited support staff, the institutional performance pressure to AICHR have created at least two different tendencies for consensus among the AICHR Representatives: those who are driven by the substantive issues, which we can call as *the constructivist*, and those who are driven by the operational, technical logistical matters, which are *the pragmatist*.

Countries driven by the substantive issues are consequently passionate about making others see an issue from a new perspective and bring others together to share similar views, thus *a constructivist*. In International Relations, a constructivist goes beyond the material reality by including the effect of ideas and belief on world politics; seeing reality as under construction where prospect for change is possible (Theys, 2017: 37). Change, in the view of constructivist, depends on how others value ideas and beliefs, therefore a constructivist sees social norm as central to making an idea acceptable to others in certain social contexts (Theys, 2017: 38). In the practical sense, a constructivist is driven by desire to introduce and to convince others on the importance or urgency of certain issues and matters that are normally still beyond the radar of interest of most other countries, highlighting the need for common understanding and joint action on the

matter. The constructivist in the AICHR context are the member states who are interested to advance human rights by leading various programs and activities that would nurture the sense of support to human rights causes.

The constructivist in AICHR looks for issues, programs and activities that can bind all ASEAN Member State together. These Representatives pride themselves as lead on issues, introducing news ways of looking at things, developing guidelines or plans of actions, even better they seek ways to implement activities that lead to solving certain problems. Their unique feature, which is associated with how the government works with them, is their willingness to invest time and attention to get buy-ins from other Member States, Dialogue Partners, stakeholders and organize the program or activities. Some even at the very detailed level. They don't see it as a waste of time when exploring where other country stand on the issue, and then propose a common denominator that would be acceptable to all Member States. Indonesian Representatives count as the constructivist, at least by far. They inspired discussions on sensitive matters by opening access to Indonesian stakeholders, from the issues of past violations on human rights (under the first and second term of AICHR) to urgent cross-border challenge such as human trafficking, migration, Rakhine state, freedom of expression, anti-torture, and more.

Contrast this with *the pragmatist* who have less flexibility to explore ways to find common denominator, have less experience on human rights issues or ways to deal with human rights stakeholders, or willingness to invest time and attention to explore other ways to promote and protect human rights. The pragmatist is usually bound by rigid time-line or output indicators from their governments, needing approval with rigid reporting mechanism for every consensus-making opportunities. In such circumstance, the pragmatist would rather bandwagon with the constructivist, or monitor the activities of the constructivist to deliver reporting to the ASEAN authorities, which in the context of improving ASEAN performance indicator also has values.

It is not surprising, therefore, for the pragmatist to focus on getting the procedure right, or enacting detailed procedure, including when engaging with ASEAN Sectoral Bodies and Dialogue Partners. They may see it as priority to avoid AICHR overstepping its mandate as agreed in its TOR. When working cross-sector, they would rather have “joint-collaboration” because they want to make sure everything in the concept note is agreed by other ASEAN Sectoral Bodies and not seen as AICHR overstepping other Bodies’ mandates.

I intentionally do not make exhaustive classification of where other AICHR Representatives are in this spectrum of constructivist-pragmatist, not only because it requires lengthier space for precision of measurement, subject for next paper, but also because it is more fruitful to assess how then decisions are made within such challenge of polarization.

Making Consensus Within AICHR

In my experience working as Indonesia’s Representative to the AICHR, finding consensus is a very nuanced process. It requires personal outreach to participating decision-makers; an act of managing personal relations in a group of decision-makers while at the same time an act of inspiring the group to agree on the cause, or at least convinced not to say anything against certain proposal. One cannot simply go around the room and quickly expect the Representatives to say their position out loud to the plenary. There are Member States who would always postpone decision-making for consultation with their Capital. There are Member States who would rather be quiet whenever possible. Thus, the logic is different from voting, where it is more acceptable to reveal everyone’s positions and then count who say “yea”, “nay”, or “abstain”. In finding consensus, the lead must understand the delicate situation to reveal one’s position, thus to say or not to say something during the meeting becomes critical. The choice to go informal or formal is also important in order to get the desired outcomes.

The following are four approaches that are usually used and considered when finding consensus in AICHR: procedural, sequential,

content and format, and external parties. In each approach, every member state may initiate something to provoke other member to support or to respond, even doing mix-approach to get consensus. The following table 1 describes each approach as well as the benefit and cost for doing so.

Table 1. Approaches to Finding Human Rights Consensus

Approach	Description	Benefit	Cost
Procedural	A focus to procedures in getting things done that is allowed or aligned with the AICHR TOR, how to work within the rules of ASEAN or national regulations.	It calms AICHR Representatives and ASEAN Sectoral Bodies on “respect to boundaries” given possible overlapping activities or programs.	It may tangle Members to debate technicalities or logistics not relevant to people or target groups
Sequential	A focus to sequence of event, program or activity. Central in this approach is the discussion on timing or momentum.	It opens discussion on the lacunae of activities or programs on issues of importance to the region. Sequence of program or activity, as well as timing may shed light on steps to getting to greater outcomes.	Sequencing and timing are best judged by people who have organized similar activities in similar context; accuracy of proper sequencing viz-a-viz relevance to certain context may trigger unnecessary debate on issues

			that are may be agreed as commonly important
Content and Format	A focus to substance: the depth, the relevance, the significance, and usually it entails the format of the activity/program as it will determine the form of engagement and output	It educates the Representatives on why and how a theme or topic must be handled, or the target groups needing attention. A short and long-term goal may be discussed as part of the persuasion.	Some Members who never handle or come across with the issue may be reluctant to take the off-beaten path.
External Parties	A focus to external pressures, threats, opportunities or offers of cooperation from non-ASEAN member states.	It brings up multilateral or global commitments to ASEAN Member states, broadening the support base on certain theme or topic	Some Members may argue against “being driven by external agendas” especially when they see a collision between their national priorities and the way in which ASEAN might go when responding to the external parties’ persuasion

An example of those approaches being applied in AICHR is the case of combatting trafficking in person as a trans-national crime. If observers only look from afar, it may seem that AICHR still has relatively minimum engagement. The reality is the opposite. AICHR has been active in combating trafficking in person since 2015 and the lead country has always been Indonesia.

AICHR engagement in the issue of trafficking in person begins when the AICHR learned that the SOMTC (Senior Official Meetings on Transnational Crime) finally almost conclude the development of the ASEAN Convention Against Trafficking in Person, Especially Women and Children (ACTIP) in early 2015. The making of this Convention was lengthy, at least 17 years. It began in ASEAN Informal Summit in November 1996 when the ASEAN Leaders called upon the “relevant ASEAN bodies to study the possibility of regional cooperation on criminal matters, including extradition”. In the subsequent Informal Summit in December 1997, they “resolved to take firm and stern measures to combat transnational crimes such as drug trafficking, trafficking in women and children as well as other transnational crime.” It was followed by the Philippines hosting a Meeting of the ASEAN Ministers of Home Affairs that produced a Declaration on Transnational Crime which serves as the basic framework for convening relevant bodies such as the ASEAN Senior Officials on Drug Matters (ASOD) and the ASEAN Chiefs of National Police (ASEANAPOL) and the SOMTC whose task was to meet at least once a year to assist the Ministers in developing follow-up initiatives for tackling transnational crime, including by developing the ACTIP. AICHR asked for involvement in the completion of ACTIP, ensuring the mainstreaming of human rights-based approach in the document.

The SOMTC preferred that AICHR be involved when ACTIP is already issued. Immediately after ACTIP was issued, the AICHR, led by Indonesia, convened the first meeting between AICHR and SOMTC on the importance of two-pronged approach in combating trafficking in person: law enforcement

(which SOMTC has been focusing) and human rights (which AICHR can help strengthen). The meeting was held in Yogyakarta, November 2015. The output of that meeting was an agreement to meet regularly between the AICHR and SOMTC to combat trafficking in person collaboratively. Since then AICHR has been invited to the activities organized by SOMTC which primarily focus on implementing ACTIP's Plan of Action (called APA). In 2016, the SOMTC developed a matrix of to-do-list and the list of ASEAN Bodies to work on the issue.

AICHR Indonesia saw the need to continue pushing for the incorporation of human rights-based approach to combat trafficking in person. The basis of the argument was the magnitude of the problem. As the lead, the Representative of Indonesia to the AICHR argued that when the victims are many and the location of the crime is spread across the region, it is only pertinent to consider ways to identify protection against trafficking in persons by looking from the eyes of the vulnerable people; seeing what they see and why the luring of the recruiters are so tempting, noting the appealing ways to fool victims into the web of crime. This is "human rights-based approach". After all, victims are *supply* for this web of crime and there must be a high *demand* for a crime to grow so big and lucrative.

Aware that the momentum is there, which is that ACTIP needs ratification from at least 6 ASEAN member states to be in force, AICHR Indonesia raised in AICHR meeting the need to encourage ASEAN Member States to ratify ACTIP. The proposal was to organize the first meeting between AICHR and SOMTC, attended by relevant sectoral bodies and civil society groups to highlight the importance of human rights-based approach to combat trafficking in person. Consensus building was raised by using content and format approach.

The response from some member states was procedural, namely to getting the SOMTC to approve on the concept note of the program before the program can be called an AICHR-SOMTC meeting. The concern was to win support from the SOMTC as early as possible. For the same reason AICHR urged Indonesia to postpone inviting civil society groups during the meeting

but did not reject that civil society groups and media be invited to a press-conference that follows the opening remarks. The AICHR-SOMTC meeting was held in Jakarta in August 2016 and was a great success. On top of these two bodies, the ACWC (ASEAN Commission on Promotion and Protection of the Rights of Women and Children) approached AICHR Indonesia so that their plan to launch the Guidelines on Handling Victims of Trafficking in Person be held back-to-back with the AICHR-SOMTC meeting to ensure optimum attendance of officials. Being held in Jakarta, participation of public during the opening and press-conference was high and beyond expectation. The push to encourage ASEAN member states to ratify ACTIP was also effective. By March 2017, 6 member-states ratified ACTIP, making the Convention in force and by September 2017 the ratification party to ACTIP became 9 members (the only exception is Brunei Darussalam).

Aware of the importance to maintain the momentum, AICHR Indonesia call for another consensus on following up the First 2016 AICHR-SOMTC meeting with the Second AICHR-SOMTC meeting in 2017. The proposed agenda was the instruments to implementing ACTIP. Again, the content approach was employed to get buy-ins. Unlike the year before, however, consensus was harder to get. There was a member state using procedural approach to ensure that AICHR is not contesting SOMTC mandate. Instrument of human rights was seen as national domain, which one argued will be best addressed by the SOMTC. AICHR Indonesia argued that procedurally this is a follow-up to the previous meeting, based on the outcomes that were already identified by both the AICHR and SOMTC during the First Meeting. Another member state used sequence approach to endorse AICHR Indonesia's plan but at the end there was no agreement to handle the procedural approach other than seeking for SOMTC's approval on the concept note. Consensus was gained in AICHR but apparently not in the SOMTC. Last minute, just a month before the program was held, when all partners and speakers were already confirmed, the SOMTC issued a letter saying that they are not ready to have another meeting with AICHR.

In absence of SOMTC consensus, AICHR Indonesia circulated a letter to all AICHR Representatives seeking consensus on changing the format of the program to an AICHR-led Cross-Sectoral Meeting on Instruments to Implement Human Rights-based Approach to Combat Trafficking in Person. Consensus was obtained *ad referendum* and AICHR Indonesia still invited all SOMTC Representatives to the meeting. The outcome was also beyond expectation. There were 5 SOMTC Representatives attending the meeting (despite the expectation of only having two) and the diversity of ASEAN Bodies and civil society groups attending were higher than before. A public dialog back-to-back to the meeting held in cooperation with Gadjah Mada University also engaged broader audience (and mass media) on the topic.

During this Cross-Sectoral Meeting in Yogyakarta 2017, it became clear that the challenge to consensus building on combating trafficking in person is not necessarily within the AICHR but also among the ASEAN Bodies that AICHR wishes to link as partner. Chairmanship rotation in SOMTC requires different approach to dealing with other ASEAN Bodies. When one member raised an issue under one chairman, the response may not be the same under different chairmanship. The case with SOMTC showed that under Indonesia chairmanship in 2016 the agenda between AICHR and SOMTC can be aligned, but under Lao chairmanship in 2017 not. It turned out that there are new Representatives too within SOMTC and when a new Representative from Singapore questioned the basis for adopting human right-based approach, the chair chose to delay further engagement with the AICHR. Chairmanship and personnel changes have changed the dynamic of finding consensus on an issue that already have momentum and broad support. SOMTC Representatives are not appointed by Ministry of Foreign Affairs or Ministry of Justice (the typical support for AICHR), but by Ministry of Home Affairs, Ministry of Public Security, Police, and Immigration Authorities. Such diversity of line of reporting also complicates finding consensus.

Another example is the initiative from AICHR Thailand to regularize AICHR Youth Debate. The Youth Debate is a forum in which university

students are engaged to debate current issues with their peer while also doing site visit or meetings with relevant agencies whose support matters to human rights promotion and protection. The initiative easily won support within AICHR. Consensus building began using the sequence approach, highlighting the value added of such program and calling on all member states to follow-suit organizing AICHR Youth Debate as annual program. After Thailand and Malaysia, the next country agreeing to host the AICHR Youth Debate was Cambodia in 2018.

The value of AICHR Youth Debate is the diversity of issues being debated, which can be quite controversial and mind-opening, from air pollution to migrant workers and economic development. University students tend to be critical and outspoken, making the dialog on human rights robust and could be challenging. Fortunately, this activity falls mostly within the mandate of the AICHR. Although Youth is the domain of the SOMY (Senior Official Meeting on Youth), the content and format of the AICHR Youth Debate does not require engagement of SOMY, which makes procedural approach irrelevant to find consensus.

CONCLUSION

Way Forward

ASEAN is pushed to playing greater role in world politics by agreeing to have a Charter that's binding. In that role, human rights are expected to colour the ASEAN works. The elaboration above shows that there are pressures to perform better on institutional basis as an intergovernmental organization, but they also highlight the presence (and contestation) of two streams of tendencies among AICHR Representatives: between the constructivist and the pragmatist. The mandate to go cross-sectoral elevated the challenge for making consensus because when the AICHR Representatives can only secure consensus to get "approval" from Sectoral Bodies, AICHR can be stuck when the Sectoral Bodies suddenly reject cooperation or delay response for cooperation. It does help consensus when

AICHR engages in activities that target certain groups or in format that is not within the mandate of other Sectoral Bodies.

This article suggest that ASEAN do need to rethink consensus in the context of improving the institutional performance of ASEAN and ASEAN Bodies. When the ASEAN Leaders and Secretariat only push for cross-sectoral cooperation without bridging the cross-sectoral approval of joint programs, the likelihood is ASEAN Bodies working in *silo* or lengthy process of getting consent from other Bodies. Also, when the diversity of AICHR Representatives mandates given by their Capital continues, the polarization between the constructivist and the pragmatist will continue, making internal consensus challenging for those not familiar with other country's model of decision-making.

To some degree such polarization may not be so bad. After all, it is the duty of AICHR Representatives with better exposure and experience on human rights to mainstream human rights principles and practices to the other Representatives. On the other hand, consensus needs to be seen as a means to support effective implementation of ASEAN Leaders' commitments, which means that the bridge from AICHR to the ASEAN Leaders, especially the ASEAN Foreign Ministers and the other relevant ASEAN Ministerial meetings, needs to be intensified or made available. To date there is only one meeting per year between the AICHR Representatives and the ASEAN Foreign Ministers, with a duration of maximum 2 hours. The format tends to be one-way where the AICHR Chair is given time to read the statements from AICHR Representatives that has been prepared together by consensus and then the rest are the Foreign Ministers giving inputs and suggestions to the AICHR. Clearly too short of consultation between AICHR and the Foreign Ministers. Given the ego-sectoral challenge at home, especially when the issues handled by AICHR is beyond the domain of the Ministry of Foreign Affairs, the other Ministries may choose not to respond enthusiastically because the Ministers are not engaged.

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