

# ASEAN Consensus: The Intangible Heritage of Southeast Asian Diplomacy

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Consensus is the language of Association of Southeast Asian Nations (ASEAN)<sup>1</sup> diplomacy. It is the spirit that embraces us in word and deed in our quest for a certain world order and a future identity. To prophesy and wish its end means abandoning our faith in the infinite sense of the possible and surrendering the power and the freedom to speak with one voice in the concert of peoples and nations from all ages and in the remembrance of all time. Consensus is our legacy.

But such confidence in our past and future state of affairs and the singular pursuit of harmony within has somehow been shaken by a logic of discord, one that extends from the utility of consensus in window-dressing the pursuit of national interest, to the facile application of the rule of the lowest common denominator, and the 'collective muteness' that it cloaks in the face of humanitarian crises. These charges are not to be dismissed lightly if we are to clear what we think is a quite unfair mockery of consensus.

It is in the light of this present situation that we might also ask ourselves the following questions: If consensus is common enough a practice in international affairs, why should it exert a force on all our undertakings and yet is neither seen nor heard nor felt in the enterprise of other regions? If there is good enough reason to doubt its efficacy, why has there been no reason good enough to make replacements worth the while? Why does it endure – and where from does our sentimental duty overflow? Surely there is a truth

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<sup>1</sup> The Association of Southeast Asian Nations (ASEAN) was established on 8 August 1967 in Bangkok by the five original member countries: Indonesia, Malaysia, the Philippines, Singapore, and Thailand. Brunei Darussalam joined on 8 January 1984, Viet Nam on 28 July 1995, the Lao PDR and Myanmar on 23 July 1997, and Cambodia on 30 April 1999. 'ASEAN Diplomacy', to be distinguished from Southeast Asian international politics, is, therefore, used as shorthand for what has evolved over various stages, beginning officially from 'ASEAN 5' to 'ASEAN 10' at the present time.

that reaches beyond these two sets of opposing logical views, between the importance of being earnest and humbug, one to which we can all bear witness as the wellspring of this legacy.

Our present task advances from the assumption that the project of building an ASEAN Community is a common desire, but it also contemplates on how much of our freedom and history as an association of nations is shared in the imagination of a political community. In this regard, the ambition of our essay is to ground consensus in our unique historical experience, understand and establish its place in the language of diplomacy, and claim that vital role we can play in international relations.<sup>2</sup> We engage in a ritual of ruthless purification in order to distil the essential forces and energies that have led ASEAN into existence – midway into a century – and those that will carry it on into the far horizon. This ‘gap’ between past and future – where we stand and make a fight – Hannah Arendt reveals, is no mere interval outside of the continuum of time – it is in Augustinian terms, ‘the beginning of a beginning’ – where the boundless trajectories of past and future clash and result in a diagonal force immeasurable for our mortal state. We must purge our memory of the non-essentials, so that, heeding Platonic advertency, we can dwell in the cave and turn away from the shadows of darkness, confusion, and deception, seek out the light, and discover the clear sky of eternal ideas.

## First Encounter: Our Concept of Diplomacy

To know and understand a concept we must walk along the river of its evolution. Our concept of consensus is no less intimately connected with our concept of diplomacy than the corresponding and very different concepts that stand at the beginning of our history. They can be seen in their full significance only if the common spring of their force is discovered. Our story as ASEAN begins in 1967, but the story of modern diplomacy reaches further back by at least 5 centuries. It was coeval with the European

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<sup>2</sup> Rosario Manalo and I hold and share a common view on the potential of consensus in contributing to world order notwithstanding its unique affinity with the history of ASEAN. Her work and our own experience together in negotiating the first Asian regional human rights declaration have had a profound impact on the reflections contained in these pages, but whatever shortcomings may be found – be they errors of fact or interpretation – are mine alone. Earlier versions of this essay were presented at the *Oxford Southeast Asia Symposium* (20–24 March 2015, Kuala Lumpur), *ASEAN at 50: Retrospective and Perspective on the Making Substance, Significance and Future of ASEAN Technical Workshop* (21–22 July 2016, Bangkok), and the *ASEAN High-Level Policy Symposia Series* (25–26 May and 18 June 2017, Iloilo City). I would like to thank Jörn Dosch, Stuart McAnulla, Jim Martin, Michael O’Flaherty, Jürgen Rüländ, Kelly Gerard, Anthony Langlois, Aileen Baviera, Ponciano Intal, Tomasito Talledo, Lilia Casanova, Kiko Benitez, Alfredo Pascual, Joefer Santarita, Deepak Nair, Alice Ba, Jürgen Haacke, Surin Pitsuwan, and my colleagues and friends at the University of the Philippines Visayas for their comments and insights. It is to Hannah Arendt, however, and her exercises in political thought collected in the volume *Between Past and Future* of 1954 that I owe great intellectual debt. She is everywhere present in many a turn of phrase; I have found in her what she found in Augustine, ‘an old friend’. To them this essay is dedicated.

voyages of discovery in the Far East and their domination of nearly all of mainland and maritime Southeast Asia. To be sure, there were exchanges much earlier on between kingdoms and states from opposite sides of the vast Eurasian continent, but it was not until the beginning of the modern era, when the Portuguese and the Spanish, the Dutch, the British, and the French took possession of their colonies in the East, that a system of formal diplomacy and international law would evolve, come to our shores, and remain dominant in the world until the end of the 19th century.

Over this period, diplomatic relations in the modern international system went through various stages of institutionalisation:<sup>3</sup> the emergence of resident embassies in Italy in the 15th century extending to northern Europe in the 16th; the legal recognition of the extraterritoriality of ambassadors by foreign services in the period of Louis XIV; the consolidation of the *corps diplomatiques* in the 18th century; the agreement of the European powers at the Congress of Vienna in 1815 on a system of determining precedence amongst diplomatic missions consistent with the doctrine of the equality of states; the incorporation of Turkey, China, Japan, Korea, and Siam into the European diplomatic mechanism during the late 19th century; and the 1961 Vienna Convention, which codified traditional state-to-state diplomatic practice, and secured the consent of the new states that came out of the collapse of European empires. Diplomacy acquired the sheen of a common aristocratic circle instructed and disciplined in the negotiation of affairs between the political units of the day – *civitates, principes, regni, gentes, respublicae*.

We now know, however, that this conception of diplomacy is bound up to a particular idea of international society, one that had its most ‘visible expression’ when vestiges of Western Christendom gave way to institutions of European international society, namely: the balance of power, international law, war, the concert of Great powers, and itself, diplomacy.<sup>4</sup> We have inherited this tradition of thought from the English School of International Relations, which has characteristically established these institutions as a ‘settled pattern of behaviour’. The classic definition belongs to Hedley Bull in his masterwork, *The Anarchical Society*, in which he writes that institutions are ‘set(s) of habits and practices shaped towards the realisation of common goals... They are an expression of an element of collaboration amongst states in discharging their political functions – and at the same time a means of sustaining of this collaboration’ (Bull, 1977: 74). A set of institutions, therefore, if we are to take this canon of reason, embodies not only a distinct set of social choices, but also one that is specific to those for whom the set of choices are able to find and share common goals.

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<sup>3</sup> The classic formulation on the English School of International Relations comes from Hedley Bull’s (1977), *The Anarchical Society*. I have borrowed extensively from his work in terms of the evolution and stages of European diplomacy (see pages 13–14, 29, and chapters 1, 2, 3, 4, and 7).

<sup>4</sup> For a useful analysis of recent debates and a survey of the institutions of international society, see Wilson (2012).

We tend to think that concepts have an independent immanent meaning in themselves, but Kierkegaard reminds us that, ‘concepts, like individuals, have their histories, and are just as incapable of withstanding the ravages of time as are individuals.’ In this light, it is important to observe how decisively the **origins** of ASEAN diplomacy would differ from European diplomacy as it arose from the Renaissance. Modern diplomacy was adapted to its environment.<sup>5</sup> It was born out of the medieval system of rule, which was ‘legitimated by common bodies of law, religion, and custom expressing inclusive natural rights’ – and it ripened, as it were, in the modern system of territorial rule, which in turn, came on the back of the notion of firm boundary lines that had taken hold in Europe by the 13th century.<sup>6</sup>

The fundamental change, which was the shift from ‘frontiers’ and large zones of transitions to fixed territorial borders, was one fundamental divide between European international society and the international system to be found in Southeast Asia. To be sure, the notion of frontiers was not unfamiliar between courts of the Khmer Kingdom at Angkor in Cambodia and the great maritime empire of Srivijaya, most importantly in southern Sumatra of present-day Indonesia. And yet, as the experience between the British and the Burmans shows in the management of the areas of Assam, Manipur, and Arakan (north-eastern India or northwest of modern Myanmar), ‘spheres of influence’ captures, for lack of a better term, what was effectively a ‘clash’ between two views.<sup>7</sup> The British and the Burmans were at variance on how and where to draw the line of responsibility between ‘states’ or such political units in Southeast Asia: between the custom of exercising authority if not ownership over ‘uncertain and porous’ zones and that over clearly delineated borders that required the maintenance of strict territorial control.

## Building the Nation-State

As far as one can see, it was in this ‘first contact’, that the ‘origins’ of European and ASEAN diplomacy – in the sense of a beginning from which all other beginnings recede into the vanishing edge of the horizon – are intimately connected. Both institutions were bound up in the genesis of the state in its unique modern form. When the Europeans

<sup>5</sup> If the term ‘modern’ denotes the age of change and discovery that includes the Renaissance, the Enlightenment, and the turn of the 20th century, then I think it is slippery to call diplomacy which evolved during this period in any way strictly ‘European’ because it would otherwise leave out both the ideas and material resources of non-European states from which diplomacy began to actually constitute the modern international system. I use the terms ‘European’ and ‘modern’ or its combination to denote its ‘origins’ rather than its ends, no less than its ‘otherness’ rather than its exceptional character because these innovations were inspired by a unique time and place.

<sup>6</sup> John Ruggie’s article illuminates our understanding of systemic changes in world politics in a singular manner.

<sup>7</sup> My first general introduction to Southeast Asia has been through the work of two authors whose views continue to shape my historical ideas of the region; see Osborne (2013) and Tarling (1998).

began to advance, Southeast Asia was a complex of kingdoms, principalities, and sultanates that mystically comprised a ‘settled, single world’ of rulers and peasants. Milton Osborne conveys to us that the nature of European power and influence in the region was ‘highly varied’ and its force ‘very uneven’, except in one significant deed: the establishment of international boundaries in Southeast Asia.

But this phenomenon was symptomatic of a broader and more profound shift in the emerging global international system. John Ruggie reveals in his epochal study of rule that the modern state is peculiar from previous ‘spatial extensions’ in that it has ‘differentiated its subject collectivity into territorially defined, fixed, and mutually exclusive enclaves of legitimate dominion’ (Ruggie, 1993: 151).<sup>8</sup> The equally or perhaps more crucial insight that Ruggie explores is the fact that in the rise of the modern from the medieval system, the ‘**mental equipment** that people drew upon in imagining and symbolizing forms of political community **itself underwent fundamental change**’ (Ruggie, 1993: 157). In the realm of visual representation, the single-point perspective was invented. Precision and perspective as they appeared from a single subjectivity became prized – and sovereignty, in this regard, was merely the ‘doctrinal counterpart’ of its application to the spatial organisation of politics.

It would take another 400 years, from the 16th century on, to measure and appreciate the full implications of this epistemic change in the organisation of the system of states. In 1976, during the 1st ASEAN Summit, the high contracting parties, Indonesia, Malaysia, the Philippines, Singapore, and Thailand and their respective heads of government, committed the organisation to the Treaty of Amity and Cooperation, which enshrined the ‘mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations’.<sup>9</sup> This treaty lays down the bedrock of the ‘ASEAN Way’ of managing international politics not only in the region but also with countries and other regional blocs who would become ‘dialogue partners’.

## Recognising Equality

The second original preoccupation was the recognition of the equality of states, which was coupled with the concept of sovereignty. The articulation of European international society in the 18th and 19th century included basic features without which it could not have been plausible: the idea that all members possess the same basic rights, that the obligations they undertake are reciprocal, that the rules and institutions derive from the consent of its members, and the idea that ‘political entities such as Oriental kingdoms, Islamic emirates and African chieftaincies should be excluded from membership’

<sup>8</sup> See Ruggie (1993).

<sup>9</sup> Available at: <http://cil.nus.edu.sg/2009/cil-documents-database/>

(Bull, 1977: 34).<sup>10</sup> This last was particularly problematic because in hindsight equality was distinguished selectively and realised accordingly on the argument that some civilizational cultures were superior.

The dark side of white supremacy was to rule with coercion and the imposition of unequal status most notably amongst its colonies but no less with other kingdoms such as China and Japan, which similarly elaborated moral standards for international order and legitimacy, separating the ‘barbarians’ from the ‘civilized’. This warrior culture gave way to more egalitarian notions of sovereignty, initially upon the revolutions of the 18th and 19th century and in the early course of the 20th century under the waves of decolonisation and nationalist independence movements. It finally relented to the establishment of international organisations such as the United Nations in San Francisco in 1945. This last, however, is a living testimony to the fact that inequality amongst states persists to this day. The right of the veto is a privilege extended permanently only to great powers.

## Pursuing Peace

Finally, it is the political experience of war that defines the third common origin, which is nothing less than the pursuit of peace as the ‘grand object of diplomacy’. The manner in which it is best served, however, is born out of the contradictory experience between the ‘colonizer’ and the ‘colonized’. Garrett Mattingly in his commanding study, *Renaissance Diplomacy*, writes, ‘the new Italian institution of permanent was drawn into the service of the rising nation-states, and served like the standing army of which it was the counterpart, at once to nourish their growth and to foster their idolatry. It still serves them and must go on doing so as long as nation-states survive’ (Mattingly, 1965: 10). If the Europeans had by the eighteenth century perfected sovereignty through war, Southeast Asia became the experiment, the periphery from which the nation-state would claim its sustenance.

For European international society, war was an adjunct of diplomacy and vice-versa, for the countries of Southeast Asia who were eventually to become the members of ASEAN war would not be, however, a matter of course. The causes and consequences of the historical conflict between Europe and the West in general and Southeast Asia need not detain us here but we think it is otherwise crucial to note that its full implications would be seen and felt not only at the time but also well into the beginning

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<sup>10</sup> See Bull (1977); Donnelly (1998); Buzan and Little (2000). Chapters 9, 14, and 15 in Buzan and Little provide the context of the expansion of European international society with focus on interaction capacities and processes with war and diplomacy as the main vehicles of European conquest.

of the 21st century. The paradox is that, for those who brought it, the institution and practice of diplomacy was one of many, and for those who borrowed it, it was the first and last to none.

In 1975, the speech of President Soeharto of Indonesia at the first ASEAN Parliamentary Meeting in Jakarta, had already set the height and tenor of their meeting in the succeeding year: 'Without trying to cast the blame on foreign powers, who for many centuries had completely dominated the fate of our peoples, we cannot, however, just ignore that (sic) fact that the past long period of colonisation had induced the emergence of differences of what actually represent their national interests, in both the political and economic fields. Obviously such differences could not be removed overnight, regardless of our strong determination. Some of these differences might well be preserved in the form of their own national identity. Equally of great importance, however, would be our own desire and will to cultivate harmoniously that particular identity within this vast and beautiful garden that is ASEAN' (ASEAN, 1975).

The right of every state to lead its national existence free from external interference, subversion, or coercion, the principle of non-interference in the internal affairs between members, the settling of disputes by peaceful means, and the principle of non-confrontation and cooperation were embedded with territorial integrity, sovereignty, equality, and independence in the ASEAN Way. They became for the Southeast Asian bloc the doctrinal counterparts of the non-aligned movement in the Third World, which emanated from the Bandung Conference of 1955, fundamentally creating a neutral space that would be outside the guarantee and assurance of the superpowers who were locked in the Cold War (Stubbs, 2008). The first Bali Concord in 1975, therefore, adopted as the framework for political cooperation not only the Treaty of Amity and Cooperation (TAC) but also the Zone of Peace, Freedom and Neutrality (ZOPFAN). It comes as no surprise, therefore, that almost 40 years later the 2012 ASEAN Human Rights Declaration would historically hallow out an article on the 'right to peace'.

The point of our context is to discover our original encounter with modern diplomacy and the intimate connections from which the first principles of our own diplomacy arose. When the 'first ASEAN ambassadors' signed the Bangkok Declaration in 1967, the terms of diplomacy had hitherto been set: the definition and protection of borders, the establishment of sovereign equality and the exercise of freedom, and the avoidance of war at all cost. Diplomacy would now serve European international society no less than the new and free ASEAN, but as fate would have it, the former in the capacity of a master and the other as an apprentice. European modern diplomacy was mature, sophisticated, and complete. But it was also at this very moment that the table would be turned and ASEAN in quite a singular manner would respond to the interplay of these

three considerations: if modern diplomacy was adapted to the requirements of European international society, **consensus was invented** to adapt modern diplomacy irreversibly to the requirements of a new ASEAN order. To this we now turn.

## Negotiating the Human Right to Life: A Ringside Account<sup>11</sup>

Diplomacy is negotiation. Negotiation is consensus. The 10 ASEAN member countries have pivoted around its practice, defining an **ASEAN Way** – the peculiar manner in which they have hitherto invested in the idea of community and steadied the teetering contours of their territorial borders no less than their national identities. To understand consensus we have to look at its practice. One of the most curious cases is the expansion of the international human rights regime. This choice is deliberate in so far as the authors have in their respective capacities first as individuals and then as colleagues worked on human rights in the circle of ASEAN. More importantly, however, three points deserve consideration. In the pageant of history, ASEAN diplomacy runs its own course and one way to situate it in the broader perspective of international politics is how the international human rights regime charts ASEAN (and vice-versa) onto the world map post-1945, lending it the power to shape a social order not of its making. Secondly, Vitit Muntarbhorn in his contribution to this volume argues that human rights and good governance, even if nominally, have been ‘legitimized’. Finally, what we have before us is an emerging regional human rights system, which may perhaps pose the most sustained challenge yet to the norms of sovereignty and non-interference (Clarke, 2012; Villanueva, 2012). The individual in turn is mapped onto the political landscape of ASEAN.

Human rights became part of the global normative agenda with the signing of the Universal Declaration of Human Rights in 1948: ‘Every human being is 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 brotherhood’.<sup>12</sup> To this day, however, its advocates continue to wrestle with the fundamental components in international relations: the individual, the community, and the goods that we seek to distribute amongst ourselves. We consider the individual because we seek to protect, preserve, and enhance human dignity; we consider the community because as individuals we are natural social beings, requiring and desiring to develop our potential in the company of like creatures and looking to achieve such ends on the basis of common values, dreams, and practical choices; and finally we consider the goods and natural resources which make up the

<sup>11</sup> This is based on the observer account of Kevin H.R. Villanueva (2014).

<sup>12</sup> Available at: <http://www.un.org/en/documents/udhr/index.shtml> or [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/217\(III\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/217(III))

necessary requirements of our daily existence within and between the communities that we choose to create and develop. On the one hand, ‘human rights’ has become a norm through which we can universally debate the meaning of human dignity that is essential to all. On the other hand, the international human rights regime – the set of international laws, international conventions, treaties, and declarations – which demand reciprocal duties have, however, been challenged with regard to its purported universality.

In 2012, we crisscrossed mainland and maritime Southeast Asia, meeting officially with the Representatives of the ASEAN Intergovernmental Commission on Human Rights (hereafter AICHR or the ‘Commission’) and their respective delegations for two or three days, culminating in the adoption and signing of the ASEAN Human Rights Declaration (hereafter AHRD or the ‘Declaration’) – the first text of its kind to emerge from the entire region and Asia for that matter. How did the negotiations proceed? One of the first human rights provisions that incited extended deliberations was the right to life. We shall take this provision as a case in point. It was contested in the course of the negotiations not least because initial formulations, especially in the Basic Draft, held explicit provisions on the death penalty. The succeeding discussions on this provision, however, were also emblematic of the normative tensions that were generated between national and regional discourses – in particular, the principle of national sovereignty. The phrase ‘in accordance with national law’, which figures for the first time in the provision on the right to life, is hence nearly omnipresent in the Declaration. When and wherefore this phrase had to be worked into a particular article was a prickly and intractable issue in the history of the AHRD. In the final document it appears unequivocally in at least seven rights provisions.<sup>13</sup> The set of contestations around the ‘right to life’ as well as those around the insertion of ‘in accordance with national law’ as a limiting or qualifying clause manifest the possibilities of various interpretations on the expansion of these norms. What follows is a ringside account: 10 official meetings in three phases and the 21st ASEAN Summit under the chairmanship of Cambodia.

## First Phase: Laying the Groundwork

**Meeting 1: Siem Reap, 8–9 January.**<sup>14</sup> The first ‘official’ meeting for the ASEAN Human Rights Declaration kicks off. But for all intents and purposes, the agenda focused on the administration of the drafting process. The Representatives first sat down to propose

<sup>13</sup> See Articles 11 (life), 16 (seek asylum from persecution), 18 (nationality), 19 (marry and found a family), 20.2 and 20.3 (protection against *ex post facto* law), 25.1 and 25.2 (political participation), and 27.2 (free trade unions) of the AHRD provided in Appendix A. The law is invoked in several other instances, appearing a total of 23 times, but not entirely in the interest of ‘limiting’ a right.

<sup>14</sup> The official press releases for all 10 official meetings may be viewed at: <http://aichr.org/press-release/press-release-of-the-first-meeting-of-asean-intergovernmental-commission-on-human-rights-on-the-asean-human-rights-declaration-siem-reap-cambodia/#more-435>

a calendar of meetings for the specific design of negotiating the list of human rights provisions that would comprise the Declaration. The draft would have to be ready by the 21st ASEAN Summit in November 2012. Precise dates and venues were tabled, but they had yet to be confirmed. Second, it was agreed that Representatives unable to be present in any of the meetings should appoint alternates to whom the Representatives must themselves give full mandate. Finally, the **Drafting Group** presented their report and the '**Basic Draft**'. Between July 2011 and January 2012, the 10 Representatives sent their delegates, some of whom were also their special assistants and advisers, coming from the various national ministries and national organisations, to meet monthly, to investigate the legal framework for an ASEAN human rights regime and to come up with a working text. This was called the Drafting Group, and the Basic Draft, which was the end product of their deliberations, was meant to be the initial basis for the official negotiations. This marked the transition between the first and the second stage of the 'two-tier approach' in the drafting process.

**Meeting 2: Jakarta, 17–19 February.** Chet Chealy, member of the Cambodian Human Rights Committee, presides over the meeting and stands in as the alternate of Om Yentieng, the Official Representative of Cambodia to the AICHR, almost permanently until November 2012. The AICHR Representatives (hereafter 'Representatives') had now before them the Basic Draft: a 19-page document that was marked heavily by brackets and footnotes, manifesting the approbations and discontents of the country delegations. Side by side was the '**Zero Draft**', which was prepared by the ASEAN Secretariat to provide the Drafting Group with a basis to jumpstart its own negotiations. It was fourteen pages long. The Representatives had also given the ASEAN Secretariat the mandate to assemble a draft with provisions culled from the various national constitutions, international human rights agreements, international protocols, and regional declarations. Beginning the negotiations – where from, what, and how – like in all things was to prove difficult especially because neither of the two drafts eventually found favour amongst all the Representatives.

In the Jakarta meetings, the substantive negotiations began and the groundwork was laid. The structure of the Declaration was adopted. The discussions of the ASEAN foreign ministers in their Siem Reap ASEAN Foreign Ministers Meeting (AMM)<sup>15</sup> Retreat (11 January 2012) became the backbone of the negotiations: they reminded the Representatives that the Declaration was to be a 'political document' and should be 'comprehensive but succinct'. Exploratory discussions on the universality of human

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<sup>15</sup> This is also called the ASEAN Foreign Ministers' Meeting held annually with 'retreats' and 'informal meetings' that take place in between. See the official press release of the January 2012 AMM Retreat at: <http://www.asean.org/images/archive/120111-AMM-Retreat.pdf>

rights, gender, non-discrimination, and a limitation clause were brought to bear. The Representatives agreed that the AHRD must not dilute the UDHR 1948, it must ‘add value’ and must be ‘commensurate with the idea that human rights is progressive and not retrogressive’.

**Meeting 3: Jakarta, 12–13 March.** This was going to be the first time the AICHR Representatives were going to sit down around the table – **in complete attendance** – and in this sense serious preparatory work began. The modality of meeting in small caucus groups, first, and then in plenary, was upheld. The Commission was a gathering of individuals who had, at least at one stage of their careers, either been engaged in the international affairs of the 10 ASEAN member states or committed to the cause of human rights. They were seasoned diplomats, international lawyers, state ministers, academics, and human rights advocates.<sup>16</sup>

<sup>16</sup> Representatives to the ASEAN Intergovernmental Commission on Human Rights (2012):

- Brunei Darussalam: **Pehin Dato Dr Awang Hj. Ahmad bin Hj. Jumat** (‘Dato Pehin’). His previous post was Minister of Culture, Youth and Sports; and before that he was the Minister of Industry and Primary Resources.
- Cambodia: **Om Yenteng** (‘Senior Minister Om Yenteng’), He was also Senior Minister and President of the Cambodian Human Rights Committee.  
**Chet Chealy** (‘Mr Chealy’), Alternate Representative. He chaired six out of the 10 official meetings. He was also Member of the Cambodian Human Rights Committee.
- Indonesia: **Rafendi Djamin** (‘Pak Rafendi’). He was also Coordinator for the Coalition of Indonesian non-governmental organisations for International Human Rights Advocacy.
- Laos PDR: **Bounkeut Sangsomsak**. His last post was Vice Chairman of the Commission on Foreign Relations of the National Assembly.  
**Phoukong Sisoulath** (‘Phoukong’), Alternate Representative. He was the Project Manager for the Department of Treaties and Law in the Ministry of Foreign Affairs. He sat in the place of Bounkeut Sangsomsak for the entire duration of the negotiations.
- Malaysia: **Dato’ Sri Dr Muhammad Shafee Abdullah** (‘Dato Shafee’). He was also Ad Hoc Legal Adviser to the Malaysian Government and to the Ruling Party (UMNO) and Advocate and Solicitor of Malaya, Messrs Shafee and Co.
- Myanmar: **Amb. Kyaw Tint Swe** (‘Ambassador Swe’). He was also Vice Chair of the Myanmar National Human Rights Commission. Prior to the post of Representative, he served as the Permanent Representative of the Permanent Mission of the Union of Myanmar to the United Nations.
- Philippines: **Amb. Rosario Gonzales Manalo** (‘Ambassador Manalo’). She was the Senior Foreign Service Adviser to the Secretary of Foreign Affairs of the Philippines. She was also Philippine Representative to the Asia-Europe Foundation Board of Governors and former Chairperson of the High Level Task Force for the drafting of the ASEAN Charter.
- Singapore: **Richard Magnus** (‘Mr Magnus’). He was a retired Senior District Judge and was also sitting on numerous national advisory committees and chairing the board of various national institutions in Singapore (e.g. Casino Regulatory and Public Guardian).
- Thailand: **Dr Sriprapha Petcharamee** (‘Dr Sriprapha’). She was also full-time faculty at the Human Rights Study Program and former Director of the Office of Human Rights Studies and Social Development, both at Mahidol University, Thailand.
- Viet Nam: **Amb. Nguyen Duy Hung** (‘Ambassador Hung’). He was also Director General of the Institute for Foreign Policies and Strategic Studies at the Diplomatic Academy of Vietnam.

The next 10 months were going to see the 10 state representatives complete a unique moment: the first human rights declaration by national governments ever to come out of Asia. In this regard, they agreed to hold two separate regional consultations, first, between the Commission and the ASEAN Sectoral Bodies,<sup>17</sup> and second, between the Commission and regional and national civil society organisations (CSOs).

The Second Progress Report of the AICHR on the drafting of the AHRD was prepared for the ‘interface meeting’ with the ASEAN Foreign Ministers Meeting to take place on 2 April 2012, at the 20th ASEAN Summit in Phnom Penh. Seventeen substantive articles were identified under the category of civil and political rights.

The high point of the negotiations on the right to life came in Jakarta on 12 and 13 March 2012. Prior to that, on 11 March, the negotiations were aligned in two ways. Firstly, the Representatives kept on returning to discussions on procedural issues. The urgency in negotiating an early draft compelled the group to maximise time. They hence implemented the proposal from the previous meetings to form smaller groups and discuss in caucus the different sets of rights under the stewardship of the Representatives who held the related expertise. The groups were meant to be ‘open-ended’ so that any member state wishing to make any sort of contribution would be free to join any of the groups at any time without encumbrances. The other strand of the debates spun around substantive issues (i.e. the content, meaning, as well as the order or sequence of rights) that would underpin a ‘bill of rights’. The Representatives echoed repeatedly the ‘guidelines’ from the last foreign ministers’ AMM Retreat in Siem Reap to be ‘comprehensive and succinct’. Ambassador Manalo from the Philippines insisted that this was a ‘declaration’ and anything more specific and elaborate in the way of the law was the reserve of a convention under the norms of international law. The inevitability of designing and articulating ASEAN human rights covenants soon after the release of the Declaration began to be implicit in the exchanges of the Representatives. They had to constantly remind themselves, however, that these two projects were to be taken on separately.

Most of the day was dedicated to clarifying, defining, qualifying, and selecting words that were most appropriate to the historical and geopolitical context of ASEAN. The Philippines consistently pointed out that the AHRD was an ASEAN project and, as such, the principles set out were not only inter-governmental but also ‘people-oriented’. Thailand and Indonesia were clearly sympathetic to civil society even if in varying

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<sup>17</sup> They are also called the ASEAN Sectoral Ministerial Bodies, which represent the various national organs of the member states administering the public services of the state (e.g. education, health, security, etc.); see list in Annex 1 of the ASEAN Charter.

degrees, with the latter perhaps being more radical in its vision and thus overly idealistic in proposing the terms of engagement with civil society organisations; Myanmar, Viet Nam, and the Lao PDR, in close agreement with the Philippines and Thailand, tried to navigate towards a compromise in the discussions of each individual right; Singapore and Malaysia, whose representatives were seasoned and knowledgeable practitioners of international law, in turn brought caution and care to the words and phrases that may be turned towards tangential legal interpretations; and finally, Brunei Darussalam, whose delegation was most conscious of its national mandate to abide dogmatically by the rules, was determined to meet and deliver results in the most efficient and timely manner. These were the general tendencies in the positions of the Representatives **at this stage** of the negotiations. But their views actually carried more nuances, which made the outcome of each of the deliberations less predictable than could otherwise be imagined. Everyone was extremely aware that controversy or divergent views would naturally arise when discussing certain rights and their substantive content.

On the morning of the 12th before the caucus discussions could even begin Malaysia, which joined the group on civil and political rights, came up with its own draft that it claimed to be a ‘realignment’ of the list of rights based on the Basic Draft and the subsequent discussions of its national delegation. Malaysia had neatly put the amended versions in boxes and retained the original text of the Basic Draft. Interestingly, at this stage of the negotiations, the Zero Draft prepared by the Secretariat was the closest and most straightforward version to Article 3 of the UDHR 1948: ‘Everyone had the right to life, liberty and security of person’. The Secretariat had annotated its formulation on the right to life by citing eight of the 10 national constitutions, five international documents, and four regional instruments. It was in the Basic Draft, however, that the death penalty was stated explicitly, previous reservations from member states notwithstanding (see Table 1 below).

Now in Jakarta, the general feeling within the group was that the death penalty would intuitively go against the notion of the right to life. But member states cautioned each other on the fact that the Declaration could not contravene existing national and international laws. Cambodia and the Philippines had abolished the death penalty for all crimes (abolitionist states); Brunei, Lao PDR, and Myanmar had abolished it in practice (abolitionist de facto)<sup>18</sup> and the rest of the member states had so far retained it (retentionist states).

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<sup>18</sup> *De facto* is used in the manner that human rights observers (such as Amnesty International and Death Penalty Worldwide) denote the term to refer to countries who have not held executions in the last 10 years. See Center for International Human Rights at Northwestern University School of Law and World Coalition Against the Death Penalty (2012).

As the negotiations proceeded in caucus, the first caveats came from Malaysia and Singapore who favoured employing both words – ‘serious’ and ‘heinous’ – to denote crimes because each of these had contested meanings in international law and are, in certain cases, exclusive of each other. Richard Magnus of Singapore then came up and broached the idea of perusing the European Convention on Human Rights 1950 (hereafter ECHR 1950) as an alternative formulation. Thailand, meanwhile, also suggested reviewing the ECHR 1950 and argued that the language in Article 2 contemplates death penalty but evades its direct expression. Ambassador Manalo from the Philippines then motioned to change ‘death penalty’ to ‘capital punishment’, possibly to soften the nakedness of the word ‘death’. Dato Shafee of Malaysia, reasoned that in actual fact in Malaysia there is a movement to abolish the death penalty, but 60% of the population were actually against its abolition. The caucus subsequently agreed to delete the following two of the existing three sub-articles:

~~Death penalty~~ Capital punishment may be imposed ~~only shall be limited~~ for the most serious or heinous crimes. ~~Capital Punishment~~ Death penalty shall not be imposed prescribed (sic) for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

Member States shall endeavour to review from time to time the need for capital punishment as a penal measure with a view of its abolishment (sic) in the future (see Table 1 below).<sup>19</sup>

Dr Sriprapha of Thailand pressed for a fresh proposal by recommending that a single sentence capture the essence of the entire provision: ‘Everyone has a right to life’ – full stop. After all, she reasoned, Article 3 of the UDHR 1948 does not suggest the death penalty in any way; it would only be contemplated in the International Covenant on Civil and Political Rights 1966. Ambassador Manalo, positioning the Philippines on the side of Thailand, argued out: ‘if you get into the details then we are confusing what is a declaration – a political aspiration – with the specificities that ought to go into a convention’. This was in order to make the Declaration comprehensive and succinct.

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

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<sup>19</sup> The strikethroughs refer to deletions.

A debate on the meaning of ‘life’ arose. The word and notion of ‘life’ was defined by Thailand as *contra* to death or the failure of the biological capacity to live. Singapore and Malaysia motioned to define life in ‘broader’ terms, however, so that imprisonment, Mr Magnus and Dato Shafee agreed, constituted the deprivation of life; the years spent in prison comprised an equivalent number of years of effective living outside penitentiary confinement. Dato Shafee argued that the understanding and interpretation of rights allow for a ‘margin of appreciation’. These contestations led to a pithier final version by the end of the caucus session that included the inherent right to life as it is ‘protected by law’ in the ‘broadest sense’.

On the following day, the 13th, Ambassador Manalo made a final appeal to pare the phrase down to the single sentence – once again – for the sake of making it ‘comprehensive and succinct’. Dato Shafee intervened, however, encapsulating the meaning of the existing phraseology: ‘the present article embodies three concepts: first, life is inherent; secondly, because it is inherent then the law must protect it as part of the duty of the state; and finally, one may be deprived of life only in ways and means permitted by the law’. This instance of elocution somewhat reflected, amongst others, the vestiges of the British proclivity of the interlocutors to draw precision on the legal consequences of the article in contrast to the ‘declaratory’ formulation of the article – **everyone has an inherent right to life**. Towards the end, Ambassador Hung of Viet Nam introduced a gender-sensitive modification, so that the final text includes both possessive pronouns – ‘his or her life’. The final formulation contemplates accordingly national laws for which death penalty still holds but avoids its explicit reference, possibly in the ‘hope’ of keeping or abetting death penalty in a future time.

**Meeting 4: Jakarta, 9–11 April.** The AICHR Representatives had emerged with renewed energy from their interface meeting with the ASEAN foreign ministers. On top of the enthusiasm, their report was also accepted with a sense of urgency because it was now clearer than ever that a clean draft would have to be presented in the next Foreign Ministers Meeting (the AMM on 8 July 2012) and adopted by the heads of state in November 2012. The discussions in Phnom Penh were to have a considerable influence on the present proceedings. The mandate that the Declaration was meant to be a ‘political document’ was constantly reiterated. The views were divided between those who favoured revisiting the UDHR 1948, reaffirming its principles and subsequently elaborating an additional list of ‘new’ rights or ‘added value’ rights, and those who believed that the structure of the AHRD – as it stood in working texts of the last two previous meetings – was already good and workable. Modifications would have to be made but they would mostly have to be on the length and style of declaratory phrases and sentences. The Commission eventually deliberated on this potentially divisive issue in a morning ‘retreat’ on the second day. But as the meeting advanced, the strength of

**Table 1: The Evolution of the Article on the Right to Life**

Draft Timeline/Dates	The Right to Life
Universal Declaration of ‘Human Rights 1948’	‘Everyone has the right to life, liberty and security of person.’ (Article 3)
Zero Draft	Every person has an inherent right to life. This right shall be protected by law. No one may be arbitrarily deprived of this right.
	No limitations or derogations are permitted in regard to those rights guaranteed absolutely in international law, in particular the right to life, freedom from slavery, prohibition of torture, prohibition of imprisonment for non-fulfilment of contractual obligation, no retroactive criminal law, recognition as a person before the law, freedom of thought, conscience and religion or beliefs.
Basic Draft	<ol style="list-style-type: none"> <li>1. Everyone has an inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of this right.</li> <li>2. [Death penalty shall be reserved for the most serious crimes, which are determined by national law of each ASEAN Member State but shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.]</li> </ol>
Caucus Version	<p>Title: ‘<u>Right to Life</u>’</p> <ol style="list-style-type: none"> <li>1. <u>Every person</u> has an inherent right to life which shall be protected by law. <u>(sic) and deprivation of such right must be in accordance with established law and must not be arbitrary.</u> No one shall be arbitrarily deprived of this right. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. Such penalty shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.</li> <li>2. <del>Death penalty</del> Capital punishment may be imposed only <del>shall be limited</del> for the most serious <u>or heinous crimes</u>. Capital Punishment <del>Death penalty</del> shall not be imposed <del>prescribed</del> for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.</li> <li>3. Member States shall endeavour to review from time to time the need for capital punishment as a penal measure with a view of its abolishment (sic) in the future.</li> </ol>
AICHR Plenary Version, Jakarta	‘Every person has an inherent right to life which shall be protected by law. No person shall be deprived of his or her life save in accordance with law.’
Night Draft–Bangkok Draft–Yangon Draft–Kuala Lumpur Draft–Manila Draft	‘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.’

Notes: The Caucus and Plenary Versions are ‘end versions’; the articles actually went through several versions before the end version in caucus (12 March 2012) and in plenary (13 March 2012). The ‘Basic Draft’ is a formulation of the article resulting from the discussions of the Drafting Group. Discussion results on the Basic Draft are marked with strikethrough lines (for deletion) and brackets (for further consultation with the AICHR). Malaysian suggestions are underlined. This version was the basis of the negotiations of the AICHR in caucus. The resulting ‘caucus version’ was the basis of the negotiations of the AICHR. The ‘plenary version’ was carried over as the ‘Jakarta working text’ in the succeeding meetings in March and April until the Bangkok Draft was adopted as the first in the series of four working drafts (Bangkok–Yangon–Kuala Lumpur–Manila).

the majority and the practices in the negotiations since January gave weight to the latter proposition. Various Representatives consequently pressed their case on provisions for special protections for groups, the right to development and the need for international cooperation in the promotion and protection of human rights. Economic rights were grouped together with social and cultural rights because they were ‘interrelated’. This generation of rights went through collective scrutiny with relatively few dissents.

## Second Phase: The First Working Drafts

**Meeting 5: Bangkok, 6–8 May.** Senior Minister Om Yentien from Cambodia returns to preside over the meetings. Three full days are dedicated entirely to the draft (6–8 May); a day is then spent for the regular meeting (9 May) and the last day for the First Regional Consultation (10 May). The Bangkok meeting will probably come down in the history of the draft of the AHRD as one of its most decisive moments for three reasons. Firstly, the Representatives had to agree on how to undertake the consultation with ASEAN Sectoral Bodies, including specialised bodies. These included, for example, the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) and the ASEAN Committee on Women (ACW). The actual draft could not be made available, so another document that would most accurately present the advances in the drafting process had to be drawn up. In the meantime, the Representatives were also under the pressure of the next deadline set by the ministers – the July 45th ASEAN Ministers’ Meeting in Phnom Penh. Secondly, the AICHR had to wrestle with what had now become an unmanageable 16-page ‘working text’, carried over from the Jakarta meetings. Achieving a balance between brevity and succinctness was a priority. And thirdly, the Representatives would have to negotiate, possibly for the last time, on the substantive content of the Declaration, especially on the list of civil and political rights, under all these extenuating conditions, because it was always nearly impossible to amend an article that had already secured consensus. A retreat (their second one to date) was convened: it was agreed that drafting must only be done in plenary and that the ‘ground rule’ (established previously in Jakarta) to respect unanimity in the discussion of each provision must be respected and observed. A ‘Night Draft’ under the lead of Singapore and in consultation with Cambodia, Myanmar, the Philippines, and Thailand took shape on the evening of the 6th. Negotiations resumed, in plenary, the following morning. By the meeting’s end, it was eponymously called the ‘**Bangkok Draft**’ (8 May), which became the **first of a series of working drafts** of the Commission.

**Meeting 6: Yangon, 3–6 June.** The Representatives had agreed that in Yangon they would primarily focus on a ‘cosmetic revision’ of the draft. But the meeting brought to bear some of the thorniest issues. With the Bangkok ASEAN Sectoral Bodies’

Consultation just past and the Kuala Lumpur Civil Society Organisations' Consultation imminent, Yangon became arguably the most thorough 'in-house' inquiry into the list of human rights as well as the substantive content of its provisions. The Philippines submitted suggestions in order to refine the language whilst Malaysia argued formidably for what was yet the most comprehensive attempt to come up with just one provision for the entire Declaration establishing limits on the bill of rights – 'a general limitations article'. The Philippine proposal became the negotiation template; the deliberations were paced, paragraph-by-paragraph. The Malaysian proposal, meanwhile, was turned down in favour of built-in limitations in the individual articles (as it had been done in the Bangkok Draft). This would have been an opportunity to make the draft much tighter and more coherent in form and in substance. But the move came too late. The hard won agreements on how and in which article to apply the limiting clause, 'in accordance with national laws' and its many variations, were at risk and the Representatives were no longer disposed to renegotiate in this regard. The negotiation of the '**Yangon Draft**' (6 June) formed part of the first crescendo of the AICHR deliberations. What was put on the negotiating table – some of them for the last time – were the provisions on regional particularities, gender, the right to development and sustainable environment, the right to education, and a closing paragraph for the Declaration. The right to peace was born.

**Meeting 7: Kuala Lumpur, 23 June.** The '**Kuala Lumpur Draft**' (23 June) was to be the first in which the rights of specific groups in ASEAN were to be either gradually incorporated or reinforced in the Declaration not only by the AICHR Representatives but also, more significantly, by national, regional, and international civil society organisations. Kuala Lumpur was set to be the venue of the Second Regional Consultation (22 June); it was the first official encounter between civil society advocates and the 10 AICHR Representatives. The 36 attending CSOs were represented by a total of 53 delegates. Nearly all delegates had lobbied forcefully for the equality of rights and non-discrimination by focusing on the groups that were somehow left outside the purview of human rights protections: minorities and indigenous peoples, HIV victims, women and children, and migrants and undocumented workers. The notions of public morality, national security, and just requirement, and the right of self-determination were also closely examined. Some member states had carried out national consultations running up to the regional consultations so the charge that civil society was not consulted **at all** by the Commission was only partly accurate – the real issue that civil society had with the Representatives was that it was not consulted in the way it believed it ought to have been consulted. Even non-governmental organisations as critical as Solidarity for Asian People's Advocacy (SAPA) acknowledge the significance of this aperture in the history of the AICHR (ASEAN, 2013). This would have been the highpoint of the dialogues with civil society. Later on, however, during the 45th ASEAN Foreign Ministers Meeting (AMM) on 8 July 2012 in Phnom Penh, the foreign ministers

were to give the instructions for pushing the same initiatives: to increase consultations with all stakeholders in order to refine and improve the text of the Declaration.

Civil Society Organisations put up a clear stand against the use of the phrase ‘in accordance with law’ during the 2nd Regional Consultation (or the first regional consultation on the AHRD **with CSOs**) in Kuala Lumpur on 22 June. Two days earlier, between the 20th and the 21st, the 5th Regional Consultation on ASEAN and Human Rights, which was a separate gathering of concerned CSOs in the region, had taken place. As a result of this meeting, the delegates drew up a ‘Joint Submission’ (hereafter the ‘Kuala Lumpur Joint Submission’) (Asian Forum for Human Rights and Development, 2012) that was presented to the AICHR. The Kuala Lumpur Joint Submission was a list of their ‘general’ as well as ‘specific’ recommendations on civil and political, and social, economic, and cultural rights; they had, interestingly, devoted a whole section of their proposal to the rights of specific groups.<sup>20</sup> The Representatives now in turn carefully reviewed the Kuala Lumpur Joint Submission during and after the 2nd Regional Consultation.

Both national and regional CSOs attended the consultation; the 10 countries were represented by 39 ‘national’ CSOs while a total of 14 CSOs were supposed to be operating across the region. During the consultation, the national CSOs were requested to group according to their member states and present their recommendations together. The handful of regional CSOs, in the meantime, conveyed their recommendations individually. All of the inputs were eventually collated by the Secretariat into one matrix document called, ‘Paragraphs Inputs from the National and Regional CSOs’. The Kuala Lumpur Joint Submission was distinct, however, in that it had not only sparked everyone’s attention first, but was also a negotiated text of what was in itself already a large and periodic assembly of CSOs within the region. A hardcopy was distributed during the meeting; the Joint Submission was a clear and systematic document and had somehow provided a template for the matrix that was soon after prepared by the Secretariat for the rest of the CSO inputs.

Finally and most relevant to this account is the fact that the first provision on the list of the ‘suggested language’ under civil and political rights was on the right to life. It was phrased in two basic sentences: ‘Everyone has an inherent right to life. No one shall be deprived of this right’ (Asian Forum for Human Rights and Development, 2012: 6).

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<sup>20</sup> The Kuala Lumpur Joint Submission was prepared specifically for the regional consultation (see Asian Forum for Human Rights and Development, 2012).

This, the CSOs in the Kuala Lumpur Joint Submission claimed, ‘represents a progressive reading of the current state of international human rights law’ (Asian Forum for Human Rights and Development, 2012: 6). The article, however, as it was then worded in the AICHR’s Yangon Draft, remained unchanged.

### Third Phase: Engaging ASEAN and Civil Society

Forty-fifth ASEAN Ministerial Meeting, Phnom Penh, 8 July 2012: The ‘**First AHRD Draft**’ had been submitted to the ASEAN foreign ministers but deeper tensions in the drafting of the Declaration were about to come to a head in the face-to-face meeting between the Representatives and the ASEAN Foreign Ministers at the 45th AMM. This was the ‘Kuala Lumpur Draft’, and in this sense, therefore, a composite of the Jakarta working texts and the Bangkok, Yangon, and Kuala Lumpur working drafts. It was called the ‘AHRD’ draft so that it would not only be not privileging any one country but also because this would be the first draft presented collectively by the AICHR. The AICHR had also wanted to win its mandate anew; the foreign ministers, several of the Representatives argued, were not to duplicate the very work that had been purposely delegated to the AICHR. On the other hand, some member states wanted to turn over a significant if not a considerable part of the drafting process to the Senior Officials Meeting (SOM),<sup>21</sup> which would push the Declaration towards the exigencies of the state rather than the people. This fact was symptomatic of more profound divisions in the work ethic and ideologies of the member states: some were working bottom-up whilst others were following orders from top-down. We convoyed to the Phnom Penh Peace Palace. The meeting with the 10 ASEAN foreign ministers started at 14:30 p.m. and ended at 15:30 p.m.; exactly one hour had passed. Upon the assurance of the Indonesian Foreign Minister, Marty Natalegawa, the drafting of the Declaration would continue under the stewardship of the AICHR – the ‘kitchen’, it was said, ‘remains with AICHR’.

**Meeting 8: Bengar Sari Begawan, 26 August.** The Third Regional Consultation (25 August) in Brunei was meant to placate the tensions between the AICHR and the ASEAN Sectoral Bodies since the First Regional Consultation in Bangkok. This was not simply going to be a face-saving measure. The mandate to hold more consultations with the sectoral bodies of ASEAN and the civil society organisations of the region had come from the foreign ministers in the last AMM in Phnom Penh. Notwithstanding the low number of delegates who showed up in Bengar Sari Begawan, noteworthy

<sup>21</sup> The Senior Officials’ Meeting is usually composed of high-ranking officials from the ministries of foreign affairs of the member states e.g. representatives and permanent ambassadors to ASEAN; they coordinate with ASEAN National Secretariats and other ASEAN Sectoral Bodies.

contributions were brought to the floor. The lobby to give special protections for women and children, and the disabled and the elderly, and the campaigns for the Responsibility to Protect (R2P) persisted. There was a proposal to modify the preamble, but the Kuala Lumpur Draft virtually remained untouched. The eventuality of specific human rights conventions in the foreseeable future became clear. The meeting was thus going to be a 'freer' attempt to forge what could be thought of also as a 'civil society' or 'people's version' of the draft, evolving in two stages. The first stage was going to be a consultation with practitioners within ASEAN who were dealing with specific sectors and industries that had either an impact on or were contingent to human rights issues. Meanwhile, the second stage was to take place in Manila when the AICHR would meet with national and regional CSOs for the second time after Kuala Lumpur.

**Meeting 9: Manila, 13–14 September.** The circumstances in which the Manila meeting unfolded were not dissimilar to those in Brunei: how far, if possible, was the AICHR willing to sacrifice the hard-won formulations to accommodate the reasonable suggestions of civil society organisations – especially in light of the fact that each of the Representatives wanted nothing less than a good Declaration? On account of this dilemma the deliberations in Brunei and Manila will probably comprise the second crescendo in the drafting history of the Declaration. The Representatives were going to hold the Fourth Regional Consultation on 12 September. Eight joint submissions in hardcopy and a matrix prepared by the Secretariat, collating all CSO recommendations, were distributed so that the articles may once again be examined against other possible formulations. An attempt to curb the repetition of the phrase 'in accordance with national law' was made to no avail. The rights to peace and development were hailed as they were cautiously disputed along with special protections for women and children. Nearly all the articles were put under scrutiny, including the now well-beaten phrase 'regional particularities' and 'public morality'. A meeting with three regional experts on the last day (14 September) provided the platform from which to measure how far above or below the international human rights standard the Declaration stood. This was going to be the last genuine shot both by the Representatives and civil society advocates who were present to make substantial changes to the draft before the Informal ASEAN Foreign Ministers Meeting (IAMM) on 27 September. It was expected that the foreign ministers, who met on the sidelines of the 67th Session of the United Nations General Assembly, would make the decision to either return or accept the draft and pass it on to the ASEAN heads of state for final deliberation. The '**Manila Draft**' bore 'twins': first, the 'highlighted version' kept two issues hanging in the balance: the inclusion of two ASEAN declarations on women and the adoption of the Vienna Declaration and Programme of Action paragraph on 'regional particularities'; and second, the 'clean version' (15 September) was sent to the ministers on the 18th of September.

The final set of deliberations on the right to life took place in Manila on 13 September, a day after the culmination of the 4th Regional Consultation (or the second and final regional consultation with CSOs). Three of the eight sets of submissions – by Civil Society Forum, Women’s Caucus, and Philwomen – targeted each of the individual formulations in what was by then already the Kuala Lumpur Draft with specific proposals for a change in language – including the right to life. Philippine Women on ASEAN (Philwomen) lobbied to replace the phrase ‘in accordance with law’ with the following formulation:

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 generally accepted international human rights standards (Philippine Women on ASEAN, 2012: 3).<sup>22</sup>

Women’s Caucus, on the other hand, lobbied for the adoption of a single sentence, ‘Everyone has the right to life’, because, they reasoned, ‘the right to life is inherent’; and ‘not all ASEAN states subscribe to the death penalty’ (Philwomen on ASEAN & Human Rights Working Group, 2012: 4–5).

Finally, following through on their proposal, the Kuala Lumpur Joint Submission, the drafters of the Joint Submission of the Civil Society Forum on the ASEAN Human Rights Declaration (hereafter the ‘Manila Joint Submission’) (Asian Forum for Human Rights and Development, 2012), pressed for a more radical overhaul:

Every person has an inherent right to life which shall be protected by law, including through the abolition of the death penalty  
~~No person shall be deprived of life save in accordance with law~~  
(Asian Forum for Human Rights and Development, 2012: 10).<sup>23</sup>

The Manila Joint Submission was the result of the Civil Society Forum on ASEAN Human Rights amongst 54 civil society organisations, which was held just before the regional consultation from 10–11 September. The practice of the CSOs was to usually pair suggested amendments with a rationale or an underlying principle, which came in the form of an international declaration or convention. This time the Manila Joint Submission had expanded its argument for this clarion call to abolish death penalty by including citations of specific international human rights instruments:

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<sup>22</sup> The amendment was underlined and the phrases for deletion were rendered with strikethroughs.

<sup>23</sup> The amendment was underlined and the phrases for deletion were rendered with strikethroughs.

This represents a progressive reading of the current state of international human rights law and standards as reflected for instance by the UN General Assembly resolutions calling for the abolition of the death penalty. See e.g. 65th session of the UN General Assembly, UNGA Res. 65/206 (2010); 2nd Optional Protocol to the ICCPR (Asian Forum for Human Rights and Development, 2012: 10).

The Secretariat had not only provided all the Representatives with a hard copy of all the eight submissions but had also collated once again all the inputs in a single matrix document. **All** of the articles with the corresponding inputs went through the scrutiny of the Commission. The right to life, by virtue of its place in the sequence of the draft was amongst the first to be examined. All the countries made their last principled stand. Dr Sriprapha of Thailand reiterated for the group and for the record that she was not comfortable with the paragraph because it fell below the standard of the UDHR 1948. Ambassador Manalo, in the same vein, argued that invoking national law would kill the spirit of human rights. Ambassador Swe tried to push for the single sentence – everyone has an inherent right to life. But for some of the Representatives the existing article already represented a consensus – a good compromise at the very least – and there was no room for manoeuvre at this stage.

Dato Shafee, hoping to strike perhaps an even better compromise, proposed the reconsideration of a general limitations clause. Singapore reasoned toward its preference to treat each right on a case-to-case basis. In the meantime, Thailand argued that Article 7 of the AHRD on the universality of rights will have already called the attention of the reader to the ‘different political, economic, legal, social, cultural, historical and religious background’ that must be borne in mind in the interpretation of the provisions. Pak Rafendi of Indonesia, shared the concerns of his colleagues, and called for the significant reduction of the number and frequency in which limitations appear. Ambassador Swe, therefore, finally appealed that the matter be deferred to the human rights experts with whom they were to have a final consultation on the following morning. However, the question of whether to include or delete various references to national law, during and after the experts’ consultation, fell in the shadow of the more general negotiations on the Declaration. Article 11 had taken its final form way back in Jakarta.

Informal ASEAN Ministerial Meeting, New York, 27 September 2012: The ‘Second AHRD Draft’<sup>24</sup> was now in the hands of the ASEAN foreign ministers.

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<sup>24</sup> This was now the ‘Manila Draft’ but effectively the composite of the First AHRD Draft and the revisions in the Brunei and Manila meeting.

**Meeting 10: Siem Reap, 23–24 September.** Everyone had fought obstinately for every word and every turn of phrase. The foreign ministers were gathering in New York on Thursday the 27th. There was still that tiny possibility that the odds may turn against the ASEAN Human Rights Declaration. But it was difficult to see how anyone would be able to sustain another round of negotiations. In many ways, Siem Reap was the quiet after the storm. The Siem Reap meeting, however, is key in understanding ‘woman power’, what it meant to dialogue with stakeholders and ultimately the dynamics of negotiation in ASEAN: the two regional declarations on women, which would have been left in limbo, were fiercely contested.

**21st ASEAN Summit, Phnom Penh, 18 November 2012:** All 10 ASEAN Heads of State gathered for the summit. On the 17th, the night before the signing, the fate of the Declaration suddenly hung in the balance. The following morning, at the foreign ministers’ meeting, the Philippine Secretary of Foreign Affairs, Alberto del Rosario, was anguishing to endorse a human rights declaration that might be found to fall below the standards set by the UDHR 1948. But then all those gathered eventually concurred to a key paragraph in the document, which was meant to be read always alongside the Declaration, the Phnom Penh Statement:

We ... do hereby... reaffirm our commitment to ensure that the implementation of the AHRD be in accordance with our commitment to the Charter of the United Nations, the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and other international human rights instruments to which ASEAN Member States are parties, as well as to relevant ASEAN declarations and instruments pertaining to human rights (Phnom Penh Statement, Par. 3)

## Inventing Consensus

Since ASEAN members have set consensus to work, and have operated intimately with the institutions of what was first and foremost a European society, but which has developed into a full grown global international society, the term ‘consensus’ has been clouded by controversy and confusion. The time is ripe to recall what it is in essence. Tan Shri Ghazalie Shafie, who was then designated with the credential as the special envoy of the Malaysian Deputy Prime Minister to find ways and means of ending *konfrontasi* with Indonesia, writes: ‘In order that words did not become enshrined and ossified in written agreement, Moertopo and I strongly suggested that a regional organisation should be established but it should not be a creature of formal treaty,

rather a solemn declaration built on the *spirit of togetherness*. And we proposed that the regional organisation should be established only after the brotherly relationship between Indonesia and Malaysia had been resumed, so that Indonesia and Malaysia would together serve as the mainstay of ASEAN' (Shafie, 1992: 30).

Scholars and diplomats have invoked on an infinite number of occasions this 'spirit of togetherness' and have made clear and repeated references to its cultural-anthropological origin and expressions in the Malay values of village life, somewhere between *mufakat* (consensus) and *musyawarah* (consultation). Before a proposal is formally presented, controversial issues have to be swept 'under the carpet'; otherwise without compromise the issues would be adjourned (Collins, 2014). On the island of Panay in the Philippines, there is the equivalent practice of *sinapulay* or *pagtarabuay*, which are notions that differentiate the act of conferring or consulting amongst the village elder-arbiters (*magurang-manughusay*) and the parties in conflict, with the act of the agreement itself or *consensus-building*, called *paghirisugot*. Alicia Magos writes that these indigenous practices or traditional approaches (*dinuma-an nga paagi*) were fundamentally 'relational' and sustained the equilibrium of the village community (Magos, 2016).

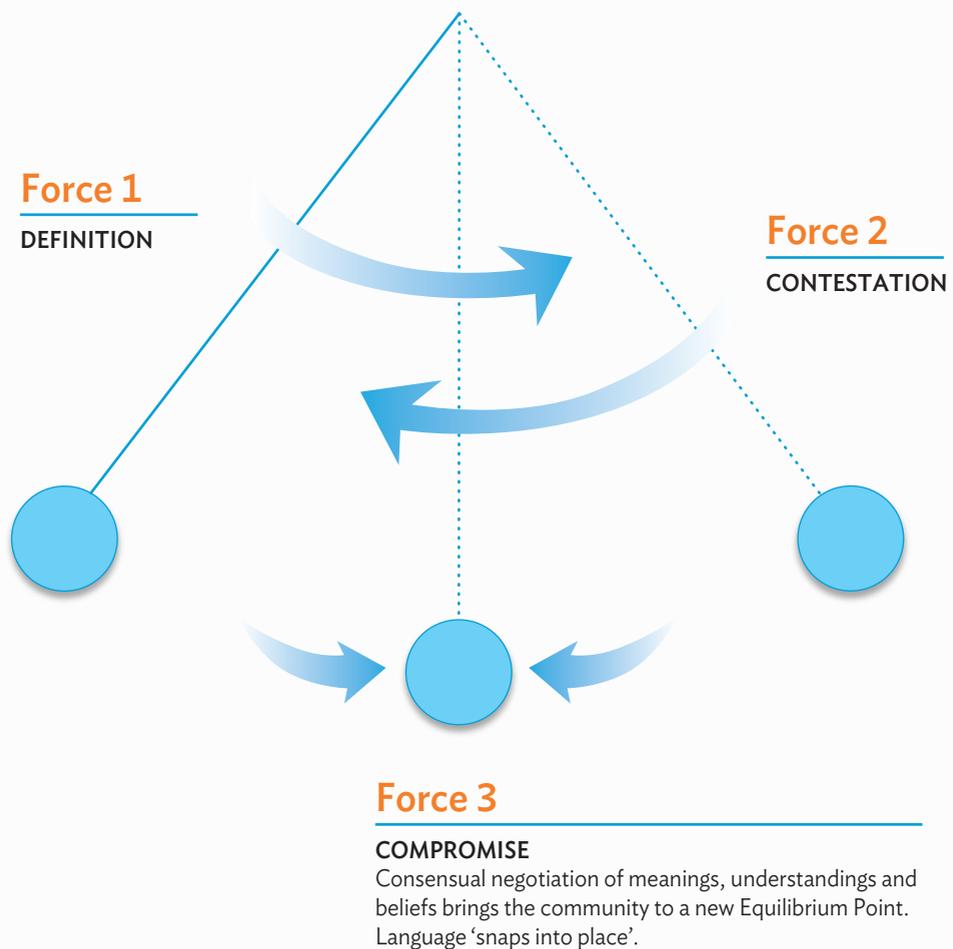
It is generally agreed that consensus is a process, and it is evident from our initial reflections on the international human rights regime that it would have to operate on at least two levels: the first being the selection of what counts amongst the variety of interests, preferences, and outcomes as 'controversial'; and the second being the negotiation of what counts amongst these as 'admissible', or as is the term of use and currency within ASEAN, 'comfortable'. There is a necessary inner activity, however, to which these two movements inevitably retreat, which is the constant cycle of introspection on how any given issue would count before, during and after it is expressed in word and deed.

How are we to distinguish ASEAN consensus with traditional diplomacy where and when 'if an agreement cannot be reached, peace is best served by keeping open the hope of agreement in the future'? Surely, there is more at stake in consensus than the similarity of purpose in keeping such relations between states open as they are in the horizon. Consensus is a process in the sense that we assume certain movements, linear or otherwise, so that – finite or otherwise and at given intervals – we may be able to identify and agree on a 'beginning' and an 'end'. Scholars have been surprisingly silent and the literature scant, if there has been any at all, on how consensus is *arranged*. The point of our context is to ask: is there an aggregate practice on the level of the region that reflects these national traditions but that has also acquired, as it were, a life of its own?

## The Pendulum Model

'Kevin's pendulum' has been established as the discursive style and process – the model – that guides the movement of the forces that operate when consensus is taken to task. The model has primarily been applied to the negotiation of the international human rights regime, in general, and the drafting of the ASEAN Human Rights Declaration of 2012, in particular. It, hence, provides 'a model of consensus' not in the sense of causes and consequences but in terms of the process and the conditions through which a notion, an idea, and more specifically a text is agreed upon under certain conditions.

**Figure 1: Building Asean Consensus: The Three Forces of Kevin's Pendulum©**



The image comprises three ‘transactions’ that move in the direction of the three forces of the pendulum.<sup>25</sup> **Definition** is the first type of transaction. It is the elemental transaction in human affairs when actors describe the text of a notion, a concept, a phenomenon, an event or simply a fact. It is a representation of an ‘idea’. Definition, which is equivalent to ‘inertia’, is the force that makes the pendulum swing outwards in a given direction. **Contestation** is the second type of transaction. It is a consequence of a conflict or a contradiction in view and representation; it is a ‘struggle to win’ between at least two definitions. Contestation, which is equivalent to ‘gravity’, is the force that draws the pendulum back from the direction that definition takes it to. **Conciliation** or compromise is the third type of transaction. This consists in accommodating the irreconcilable difference of views that emerge from logic, fact, and belief. Actors agree on a **new definition** – a text is either reproduced or replaced. Conciliation, which is equivalent to ‘wind resistance’ or ‘friction’, is the force that causes the pendulum to swing, back and forth, in shorter and shorter arcs. It is essentially the force that will eventually stop a pendulum from swinging and for language to ‘snap into place’.<sup>26</sup>

The great advantage of this model is that it illustrates the eternal forces at work, moving at each level or activity in the practice of consensus. In our understanding consensus is above all a dialogue, an activity of speech without which the world of ideas and beliefs would fall outside the realm of human affairs. On this perspective the values of the community of speakers – ‘the interlocutors’ – become inseparable from the conditions in the sense that a constellation can only be seen amongst the stars. The terms of a **dialogue**, the conditions under which a social system that aspires to such an activity make claims to a multitude of values. As far as we can see, the highest of them are three: plurality, freedom and equality, and community. Plurality guarantees the peaceful co-existence of distinct bodies of law, religion, and custom. Freedom, the space to participate in a dialogue – where all parties are equal sovereigns with no access to a vote

<sup>25</sup> This model on ASEAN consensus was established and developed by Kevin H.R. Villanueva (see Villanueva, 2014).

<sup>26</sup> Note the application of the pendulum model on the negotiation of the article on right to life based the drafting process of the AHRD 2012 below. See also Table 1 provided above.

Definition	The notion of life in opposition to ‘death’ or the failure of the biological capacity to live.	Everyone has an inherent right to life.
Contestation	Life is ‘broader’; imprisonment curtails life; the years spent in prison comprise an equivalent number of years of effective living outside of penitentiary confinement.	Every <u>person</u> has an inherent right to life which shall be protected by law... <del>Death penalty</del> Capital punishment may be imposed only <del>shall be limited</del> <u>limited</u> for the most serious <u>or heinous crimes</u> .
Conciliation or compromise	<ol style="list-style-type: none"> <li>1. Life is inherent</li> <li>2. It is must hence be protected by law and it is the duty of the state</li> <li>3. One may be deprived of life in ways and means permitted by the law</li> </ol>	‘Every person has an inherent right to life which shall be protected by law. No person shall be deprived of his or her life save in accordance with law.’

but to a voice – bestows power and authority on the community *in toto* – and not in the majority or in a minority of powerful states. And finally, the condition of a community of speakers assures that the project of ASEAN is able to break out in ever-expanding circles between states and peoples who are the ‘roots of our society’. In the light of these requirements it comes as no surprise that the language of consensus is, therefore, quintessentially ASEAN.

## The Lowest or the Highest Common Denominator?

The challenge is that we take advantage of this invention. But given the widespread critique that consensus is no more than the lowest common denominator, the promise of future common solutions is lost in the impasse of competing interests between individual states. For what else is the lowest common denominator if not the single or set of individual traits, attributes, beliefs, or interests of one state in search of itself in all? Indeed, is it possible that such demands can ever be present or found in all, including the manner and intent that it wishes to be expressed as **common** to all? This habit of likening consensus with the lowest common denominator to our minds perplexes the point in a variety of ways.

The heart of diplomacy is negotiation. The idea to ‘come to the table’, as it were, is an openness to pursue the intuition that if we share ‘certain common interests and common values’ then we can discover common solutions to the problems that affect us all. When we begin to think of this task in terms of the lowest common denominator, however, we inadvertently narrow in on individual political units, in this case, one member state of ASEAN, and as a consequence reduce decisively the room for manoeuvre of each member state to the **lowest** common denominator that belongs to the state in question. Should we not perhaps then be content with a mere cursory look over our parts and settle on our lowest common values instead of the collective possibilities of community? In this regard, the question we bring to the table is: on what else is there to **negotiate**?

The second demands that we engage in an experiment. Let us try to call the lowest common denominator what it actually is – and that is the **highest** common denominator. The ‘lowest’ common denominator between the numbers four, eight, and twelve – is understood not to be two but four. It therefore becomes evident that there exists a **margin** of possibilities for each member state. Moreover, no matter how wide or slim the margin may be, it is **invisible**. The nature and history of diplomatic negotiation has not changed in this regard. ‘Written instructions’ in medieval diplomacy were of two kinds: one ‘exhibited’ or handed over as ‘a token of confidence’ and the other to be ‘closely guarded and never alluded to, but to furnish the real guidance’. We can of course theoretically think of a case where the ‘lowest equals highest’, say between the numbers

two, four, six, and eight – but alas the contours of political preferences are incomparable to the elegance of numerical abstractions. What these forerunning insights imply is that the finality of any one outcome is inescapably beyond the reach of certainty.

The point we wish to make here is that to treat consensus as if it were the lowest common denominator is to confound what it essentially is – a process – for what it is not – a product. Consensus is the negotiation and the achievement of the collective possibility. They do not enjoy equal status; indeed, one can also get to the lowest common denominator through the process of majoritarian decision-making no more than through practice and rule of unanimity. How is consensus in turn to be further distinguished from either of these two? Quite plainly, it is the absence of the vote. If the vote and its corresponding procedures in international organisations have traditionally represented the consent of the sovereign state and its unshakable centrality, consensus reiterates the ‘spirit of togetherness’ and establishes power and authority on the community. What in the end is consensus? The ASEAN proposition of this notion has been to agree upon everything **as well as** everything that is to be agreed upon. We are led to move between the two kinds or levels of agreement touched upon above. The more general notions of consensus in the management of international affairs, including the principle of unanimity and the rule of majority have tended to fall under the first kind. It is no longer unusual, however, to say that we shall agree to disagree, but it is certainly not the spirit that diplomats bring to the negotiating table.

Consensus is hence a process and we can only make sense of it in the realm of human affairs. In so far as it is caught in the realm of human affairs, it is bound by the necessity of time and to this we now briefly turn. There is the outstanding part of the image of the pendulum heretofore unnoticed which determines the speed of one full swing. It is the string from which the bob hangs. The longer the pendulum, the slower the swing; conversely, the shorter the pendulum, the faster it swings. It is said that this represents an absolute principle that will always work no matter the type of design. The length of the pendulum relates to the distribution of time in consensus. It is a difficult concept to grasp but the image of the pendulum cannot do without it.

Our elemental notions of time are based on the rhythms of the human body and the movement and the properties of the Earth. Time is the interplay between sleep and nourishment, between night and day, and the seasons that intervene in cycles, which themselves change. Given these most basic human needs and functions, it is already evident that we agree on the activities but ‘disagree’ on the exact time for their exercise. Locating time, therefore, is a physical, mental, and ecological set of intuitions inherent in humanity. Such intuitions are perceived from the perspective of the individual on one end and the community on the other.

In the pendulum model, therefore, instead of defining what it is, the view is to define what it does. Just as the physical forces behind its motion parallel the dialogue of consensus, K.H.R. Villanueva finds that the function of time in real dialogue works on the same mechanics behind the pendulum: all forces being equal, the longer the bob, the longer the oscillation periods are between the poles of social creativity. Hence, presumably 'longer' dialogue performances, 'deeper' introspections and so on. This somehow obscures, however, the fact that there are some ASEAN norms that are negotiated over a relatively short time. Put another way, time does not cause agreement. What time does is that it constitutes the conditions under which the movements of a dialogue can actually take place. Without time, there can be no dialogue, no word, and no deed. Consensus is predicated on interaction – that is, the dialectical movement between performances, between strategies, and within the utterance of the word.

Time comprises the **terms** of dialogue, not its effects. The phrase 'let's talk' is perhaps the most apt metaphor in relating time to the value of consensus. 'Let's talk' is the proposition. It is to meet, to encounter, and to get to know but it does not come with the imperative to agree. To talk is to engage discursively where language can either be the means or the end, or indeed both, where a 'meeting of the minds' is desired, at least, to some degree. Time contextualises and the creation of language in time is both active and passive. It is this quality that allows for the consequent effective distribution of ideas and consensus to take place.

## The Golden Rule

In this regard, it is time to take up the last charge, hitherto dormant, that consensus is 'outmoded'; that the context in which it was invented no longer holds; and that it has become a 'veto' in place of its affirmative role and function in building confidence and trust within the ASEAN to which it has been a midwife. The fundamental problem with these critiques is that they fail to appreciate the adaptive power of consensus **to place actors in the dynamics of domestic and international political games and help us explain and understand the selection, spread and retention of preferences, interests, beliefs and values within and between all levels in the international system.** This is the **creative capacity** of the consensus principle that factors into expectations and outcomes variables of change **in context.**

The second is the **intersubjective capacity** of consensus-seeking to generate meaningful relations and social perceptions which in turn become the basis upon which norms evolve either into greater sophistication or give way to new ones. These two types of outcomes relate to the **productive capacity** of consensus that enables the intangible

political space within which new actors and new forms of accountability may be created, contested and defined.

We think the challenge is to understand both the normative and the procedural dimensions of consensus as two sides of the same coin. For consensus to be truly operative we must ask: at which levels of regional governance do we introduce mechanisms of political accountability so that outcomes arrived at by state and non-state actors are translated into measurable indicators of political change and progress amongst member states? For consensus to be truly ASEAN we must ask: in which direction is consensus leading? Is it pushing ideas of regional identity to evolve and transform or reifying national identities?

Why does ASEAN consensus in its fullest aspects indeed fall between such extremes? The unique quality inherent in our consensus is to find common ground in search of change and to present possible alternatives and scenarios through the sheer exhaustion of all that is possible under the heavens. Dialogue **is** the ‘golden rule’ that sustains the supreme values of the community. The reason one confounds the golden rule with the power of veto is because its spirit is lost in the often-overwhelming force of *raison d’état*. The spirit of the golden rule is togetherness, which is no less than the agreement binding upon all others: **ASEAN is one for all and it is all for one**. The ‘Wendtian twist’ comes in handy: Consensus is what we make of it. It is in the hand and interest of the ASEAN Community, not in any one of its single member states, that it can choose ultimately to either be greater or less than the sum of its parts.

## Epilogue

In our understanding there exists an intimate relationship between European modern diplomacy and ASEAN diplomacy so that one is somehow tempted to see the ‘origins’ of the latter in the former. Historically, however, we have also seen how consensus has been shaped by forces that have sprung from within ASEAN no less than by the historical experiences that it shares with the world outside. If this is so, is there any reason not to think that **diplomacy** itself originates from another source or that as an institution it is not unique to any one place and time? Raymond Cohen writes that diplomacy is ‘neither self evident nor serendipitous but a complex ecology of conduct produced by civilization over a long period’ (Cohen, 2001: 36). In this vein he argues that diplomacy is a ‘Great Tradition’ transmitted from the cuneiform civilizations of Babylon and Assyria to Achaemenid Persia, classical Greece, Byzantium, Venice, and Rome (Cohen, 2001).

It is not difficult to see how each civilization has reproduced as it were the repertoire of diplomatic functions echoed earlier on: representation, exchange, and reciprocity. Cohen points out how these preoccupations did not effectively take shape in illiterate communities but in those that had advanced in their forms of government, law, and letters. Moreover, what he discovers for us is the twin process of conversion and change, both of which are exemplified in the variation of rituals, customs, and practices which themselves affect the forms in the repertoire. We think he is right. But there is something perhaps even more interesting that he has his finger on – the ‘moral imperative’ of communities to engage in diplomacy.

Where does the impetus to represent, exchange, and return the **diplomatic gesture** come from? The pedigree of diplomatic ideas is discernible, but in terms of what could possibly be the core of the diplomatic impulse, the answer appears to still be up in the air. If every society and every civilization has inherited diplomacy from the beginning of history as it were, does the fact that we are able to identify in Cohen’s term ‘a primordial design’ point to what we might call a **universal** moral imperative that makes diplomatic behaviour necessary? In other words, from where does the pattern itself take its shape? And if so, who defines it? Is it any different from the moral vocabulary with which we would like to expand the borders of an ethical community? These are questions that hound us because understanding international relations goes hand in hand with understanding diplomacy. Our knowledge is that ASEAN consensus is part of the solution and not the problem. It rescues reason, sentiment, and dialogue and dignifies the community. Consensus lives on the living memory of a global village: plural in their beliefs and practices, equal in their state as sovereign nations, and one for all. It is perhaps no accident that we now live in a long era of ASEAN peace.

What will the future look like, therefore? There are at least three scenarios that we can think of; the first is for those who will want to keep consensus and the second is for those who will want to chuck it into the dustbin of memory. Those who will want to keep it will rest secure that our past is alive and well, that we will be able to look at ourselves in the mirror and recognise our faces and have the satisfaction of taking our familiar places around the table. On the other hand, those who will want to throw it away, will find themselves asking as individual states: Who shall we follow between America and China? In the meantime, if we were to keep together as a bloc, we would find ourselves asking: who will provide the blueprint of our idea and vision of community – the European Union, the Organisation of American States, the African Union, or the Arab League? What will the past look like from then on? There is a chance that everyone will be at the table except us.

A third scenario is, in contemporary usage, to innovate on institutional design – ‘to found, build on, branch out and link up’ new international institutions with consensus (Acharya, 2011). The challenge in this regard is to question the policies that we have crafted, including those upon which we have guarded silence. ASEAN is arguably going through a transition and the more obvious controversies have revolved around free trade agreements, the single market, and the intractable disputes on national territory and sovereignty. But what about our views and beliefs on migration, climate, and the environment, which are perennial as the great metaphysical questions of humanity, and which challenge us to think and live **beyond** borders?

In the frame of space and time that we have so far seen and discussed, consensus appears to be a symbol of an emerging political space. If the ‘single-point view’ of the Renaissance, and the ‘multiperspectival polity’ personified by the European Community were each its own answer to the civilizational requirement of possessing a particular perspective of the world, **what differentiates the ASEAN paradigm?** The image of the pendulum reveals that agency **swings** between the nation states and the brotherhood of peoples, no less than between the international collectivity and the individual human agents where introspection begins. Might we ask that what we have before us is itself the inner eye from which new forms of individuation – the creation of a ‘transperspectival polity’ – in the international system is gradually happening and taking hold?

There is something quite radical about taking consensus out of our garden and to look from a window where it can grow. That is, what if we put consensus out into the world? If European diplomacy has found followers in our land, why can’t ASEAN diplomacy find followers over to where we have borrowed a parcel of our politics? The question for the future is whether consensus will continue to turn around the national interest or around more progressive ideas of community and world order. The founding fathers came together to build the nation state, not to bury it. But, the lesson we must keep from ASEAN and the question we ought to recall, between past and future, is this: **why** come and hold on together if in the end we do not see our destiny as one community of peoples? ASEAN works in the name of consensus but it is we who take it where we want to go.

## References

- Acharya, A. (2011), ‘Asian Regional Institutions and the Possibilities for Socializing the Behavior of States’, ADB Working Paper Series on Regional Economic Integration, Manila: Asian Development Bank.
- Arendt, H. (1954; 2006), *Between Past and Future*. London and New York, NY: Penguin.

- Asian Forum for Human Rights and Development (2012), Joint Submission to the ASEAN Intergovernmental Commission on Human Rights on the ASEAN Human Rights Declaration by Civil Society Organisations and People's Movements Participating in the Fifth Regional Consultation on ASEAN and Human Rights, 22 June. Kuala Lumpur. <http://www.forum-asia.org/?p=14184>
- Association of Southeast Asian Nations (ASEAN) (1975), Report of the ASEAN Parliamentary Meeting. Jakarta: ASEAN.
- ASEAN (2013), Still Window-Dressing: A Performance Report on the Third Year of the ASEAN Intergovernmental Commission on Human Rights (AICHR) 2011–2012. Bangkok: Solidarity for Asian People's Advocacy Task Force on ASEAN and Human Rights (SAPA TFAHR).
- Bull, H. (1977), *The Anarchical Society: A Study of Order in World Politics*. New York, NY: Columbia University Press.
- Buzan, B. and R. Little (2000), *International Systems in World History: Remaking the Study of International Relations*. Oxford, United Kingdom: Oxford University Press.
- Center for International Human Rights at Northwestern University School of Law and World Coalition Against the Death Penalty (2012), *Death Penalty Worldwide*. Chicago, IL: Northwestern University School of Law.
- Civil Society Forum on ASEAN Human Rights Declaration (2012), Joint Submission to the ASEAN Intergovernmental Commission on Human Rights on the ASEAN Human Rights Declaration by Civil Society Organisations and People's Movements, 10–11 September, Manila.
- Clarke, G. (2012), 'The Evolving ASEAN Human Rights System: The ASEAN Human Rights Declaration of 2012', *Northwestern Journal of International Human Rights*, 11, pp. 1–27.
- Cohen, R. (2001), 'The Great Tradition: The Spread of Diplomacy in the Ancient World', *Diplomacy & Statecraft*, 12, pp. 23–38.
- Collins, A. (2014), 'Bringing Communities Back: Security Communities and ASEAN's Plural Turn', *Cooperation and Conflict*, 49(2), pp. 276–91.
- Donnelly, J. (1998), 'Human Rights: A New Standard of Civilization?', *International Affairs*, 74, pp. 1–23.
- Magos, A. (2016), 'Indigenous Political Structure: Consensus Building, Decision Making of Halawodnun: Effects on Outside Intrusion', Survey submitted to NCIP Region 6. Jaro, Iloilo City, Philippines.

- Mattingly, G. (1965), *Renaissance Diplomacy*. Harmondsworth, United Kingdom: Penguin Books in association with Jonathan Cape.
- Osborne, M.E. (2013), *Southeast Asia: An Introductory History*. Crows Nest, N.S.W., Australia: Allen & Unwin.
- Philippine Women on ASEAN (2012), *Philwomen Recommendations for the Second Regional Consultation of AICHR with Civil Society Organizations on the ASEAN Human Rights Declaration (AHRD)*. Manila: Philippine Women on ASEAN.
- Philwomen on ASEAN & Human Rights Working Group (2012), *Second Addendum to the Women's Caucus Submission on the ASEAN Human Rights Declaration (AHRD) to the ASEAN Intergovernmental Commission on Human Rights (AICHR)*. Jakarta: Philwomen on ASEAN & Human Rights Working Group.
- Ruggie, J.G. (1993), 'Territoriality and Beyond: Problematizing Modernity in International Relations', *International Organization*, 47, pp. 139–74.
- Shafie, T. S. G. (1992), Politics in Command. *Far Eastern Economic Review*. 22 October, p. 30.
- Stubbs, R. (2008), 'The ASEAN Alternative? Ideas, Institutions and the Challenge to 'Global' Governance', *The Pacific Review*, 21, pp. 451–68.
- Tarling, N. (1998), *Nations and States in Southeast Asia*. Cambridge, United Kingdom/ New York, NY: Cambridge University Press.
- Villanueva, K.H.R. (2012), 'How West Was Won: ASEAN Magna Carta', *Philippine Daily Inquirer* [Online]. Available at: <http://opinion.inquirer.net/43189/how-west-was-won-asean-magna-carta> (accessed 3 May 2014).
- Villanueva, K.H.R. (2014), 'Constructing Human Rights: Language in the ASEAN Human Rights Declaration', PhD thesis, University of Leeds.
- Wilson, P. (2012), 'The English School Meets the Chicago School: The Case for a Grounded Theory of International Institutions', *International Studies Review*, 14, pp. 567–90.