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AICHR in October 2015 – Change or Continuity in the Diplomatic Club?

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Naila Maier-Knapp, author of *Southeast Asia and the European Union*, explains that “because ASEAN governments have built trust towards the ASEAN Intergovernmental Commission on Human Rights’ opportunity to showcase their commitment to people-orientation, space for human rights discourse could increase in the years to come.”

The year 2015 is witnessing numerous events and publications to celebrate the beginning of the Association of Southeast Asian Nations (ASEAN) Community era. Among the three pillars of this Community, it is the ASEAN Economic Community (AEC) which has received considerable public interest. The rapid economic integration of the AEC has diverted attention from the ASEAN Political and Security Community (APSC) and the ASEAN Socio-Cultural Community and distracted from one of ASEAN’s other core commitments – that of people-orientation. This commitment is particularly linked to the other two communities and to the ASEAN Intergovernmental Commission on Human Rights (AICHR), which is considered to be the poster child of the APSC. Thus, engaging with this commitment of people-orientation is necessary for political integration to keep up with the developments of the AEC and mitigate ASEAN’s institutional deficit in that regard.

Inaugurated in 2009 on the basis of Article 14 of the ASEAN Charter, AICHR constitutes the main intergovernmental body in furthering people-orientation and promoting and protecting human rights in Southeast Asia. The central driving forces of AICHR are the ten ASEAN member state representatives, who are appointed by their respective governments through internal processes, giving due consideration, among other factors, to competency in the field of human rights. Hence, the representatives are recognized in their legal status as diplomats of their country who are mandated to determine the work, outreach and interpretation of human rights at the regional and domestic levels for a period of three years with the possibility of a subsequent one-term re-appointment.

If the proposed items in the ongoing review of the AICHR Terms of Reference (TOR) are not accepted by consensus by October 2015, current terms of the AICHR TOR set out that at least four of the current ten ASEAN member state representatives to AICHR will have to end their term this October. This reconfiguration could entail new alliances and agendas, raising questions about the extent of change, continuity and possible impact on AICHR’s – and the overall ASEAN Community’s – image and action regarding human rights and people-orientation. Will this reconfiguration lead some to continue viewing AICHR as another diplomatic club where progress is at best two steps forward and one step back? Or will the reconfiguration strengthen progressive leadership and allow representatives to better express their competency on issues of human rights?

Central to these questions is the variation in accountability of these representatives to their own governments. While personality, thematic passion, negotiation skills, chairmanship and the country team are important determinants of a representative’s influence on the direction and dynamics of AICHR, it is the legal and normative domestic contexts which so far have chiefly conditioned this Commission’s approach to human rights articulations and actions along the lines of national sovereignty and duty to the wider community. This problematic aspect was widely publicized in connection to the AICHR negotiations on the ASEAN Declaration on Human Rights, where those representatives with a duty-oriented country view on human rights opposed a more

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liberal declaration, pushed by the Thai and Indonesian representatives who are the only two of the ten AICHR ASEAN member state representatives who are indirectly rather than directly accountable to their governments.

Indeed, within official AICHR negotiations, it is clear that the majority of representatives realizes their obligation as country diplomats and avoids setting any precedents during the official negotiations which could endanger the consensus and impact domestic legalities. In order to mitigate potential stumbling blocks within the official negotiations, the consensus is prepared in the first instance by staff to the AICHR representatives and then through informal discussions among the representatives themselves. The higher the degree of confidence and familiarity among the country teams, the smoother consensus-building and decision-making becomes. Hence, the upcoming leadership change necessitates a new phase of confidence-building which could handicap AICHR's work in the first few months.

While the split between liberal and duty-oriented interpretations of human rights manifests within AICHR, it has not become this apparent among Southeast Asian representatives within other fora at the global level. Southeast Asian states are signatory to various human rights conventions and have been inspired by the international human rights agenda in their domestic agendas. Thus, this susceptibility to the global discourse, rather than to the human rights policies from within ASEAN, suggests that the international viewpoint is not consistently transferred to the regional level in the sense of attitudes and actions. Effectively, it does not signify that domestic implementations match international human rights standards, although AICHR may agree on particular matters by consensus.

This divergence in implementation of standards between the international, regional and domestic level persists in part because of a different notion of protection, originating in this conflict between civil liberties and duties. The notion of protection is furthermore associated with economic growth and thus, the creation of human rights institutions with teeth is undesirable, since possible intrusive and investigative means could impact economic attractiveness. At the same time, recent AICHR sessions have demonstrated a putative shift away from the normative maxim of non-interference; for example, at an AICHR meeting in 2013, the disappearance of Laotian human rights activist Sombath Somphone was discussed.

Although the leadership change in AICHR's sixth year points towards the continued priority of government agendas, the contemporary consolidation of APSC and the relatively sympathetic recognition of AICHR by Southeast Asian governments indicates growing space for liberal AICHR leadership personalities to express their human rights priorities and overcome the dictum of consensus. In particular, the Thai and Indonesian AICHR representatives, who are the only representatives with roots in civil society and appointed through an open selection process, may have greater opportunity to promote a comprehensive interpretation of human rights. Of course, this also depends on the incoming Indonesian AICHR representative and whether he or she continues activism within existing progressive alignments in the same enthusiastic manner as his/her predecessor.

In summary, although all AICHR representatives hold competency in human rights, the format and practices within AICHR affirm the intergovernmental nature of this grouping, offsetting the actual degree of civil society inclusion and people-orientation. At the same time, because ASEAN governments have built trust towards AICHR's opportunity to showcase their commitment to people-orientation, space for human rights discourse could increase in the years to come and allow AICHR representatives to be more expressive about their human rights competency. Thus, this possible leadership change in October 2015 is seminal for the future direction of AICHR and the image of a people-oriented ASEAN. That is, it cannot be seen separate from ASEAN's overall political integration process and image.

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