A Thesis Submitted for the Degree of PhD at the University of Warwick

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INTERPRETING GLOBAL NORMS IN SOUTHEAST ASIA: THE CASE OF THE ASEAN INTERGOVERNMENTAL COMMISSION ON HUMAN RIGHTS (AICHR)

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A thesis submitted in partial fulfilment of the requirements for the degree of Doctor of Philosophy in Politics and International Studies

Department of Politics and International Studies
University of Warwick

January 2020
Keywords

Global Norms, Human Rights, Norm Interpreter, Norm Promoter, Norm Translation, Multitrack Diplomacy, Regionalism, Southeast Asia
Abstract

This thesis develops a micro-level analysis, with a sociologically informed International Relations (IR) perspective, in order to contribute to understandings of how human rights institution building on a regional basis takes shape within a hostile context in which human rights norms are not widely endorsed. Specifically, it examines the key role of the ‘Norm Interpreter’ in the establishment of a regional human rights body in Southeast Asia – The ASEAN Intergovernmental Commission on Human Rights (AICHR). It presents the term ‘Norm Interpreter’ as a new concept, which brings together literatures on Interpretive Communities, Norm Promoter, and Norm Translation. I position Norm Interpreters as a community of key individuals at the centre of a norm interpretation, translation and transmission process, who are central players in rendering global norms on human rights acceptable. In the ASEAN context this process is of particular interest because of the value incompatibility between global norms and existing, strongly adhered-to, local norms best understood as the ‘ASEAN Way’ and ‘Asian Values’. Within this framework, this thesis undertakes a microscopic reading analysis of the behaviour of the three subgroups of Norm Interpreters i.e. the Political Community, the Policy Network, and the Advocacy Coalition. It is argued that the dynamics of the social practice – ascertained by tracing interactions between the three subgroups – played a substantial, yet generally academically unexplored, role in the process.

The thesis thus questions certain core ideas related to traditional approaches on Southeast Asian regionalism, including state-centrism, functionalism, materialism, as well as the commonly accepted notion of multitrack diplomacy. It is mainly challenged in accordance with Social Constructivism’s Practice Theory and New Regionalism Approach. This thesis identifies a variety of modes for influencing regional policy-making mechanisms by taking into account what are understood as the immaterial elements of interactor relations between subgroups of Norm Interpreters. This is an approach that meshes with a range of academic literatures such as the Veto Player Model, Policy Change Model, and Activist-Lobbyist Model. My analysis of the norm interpretation process confirms the dominant influence of local norms, not merely as factors hindering the adoption of global norms in the region, but, more importantly, as a fundamental medium of interaction between the actors involved. As is known, this intermingling served to enforce the creation of a regional rights body in ASEAN which carries more rights-promotional mandates and is extremely limited when it comes to mandates for rights-protection. The position this thesis takes is that the strategic role of Norm Interpreters made possible the establishment of a human rights body even within an unfavourable regional environment. This further conceptually reinforces the bigger picture: that Southeast Asia is willing to progress, not only process, with its regionalism.

Highlighting the behaviour of actor, this thesis is a study of sociological regionalism, taking the case of regionalisation of global norms on human rights. At the same time, this thesis presents an empirical examination of the role of a community of key individuals in the regional policy-making mechanism in Southeast Asia.
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<th>Full Form</th>
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<tbody>
<tr>
<td>AHRB</td>
<td>ASEAN Human Rights Body</td>
</tr>
<tr>
<td>AHRD</td>
<td>ASEAN Human Rights Declaration</td>
</tr>
<tr>
<td>AICHR</td>
<td>ASEAN Intergovernmental Commission on Human Rights</td>
</tr>
<tr>
<td>AICOHR</td>
<td>ASEAN-ISIS Colloquium on Human Rights</td>
</tr>
<tr>
<td>APA</td>
<td>ASEAN People’s Assembly</td>
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<td>ASC Plan</td>
<td>ASEAN Security Community Action Plan</td>
</tr>
<tr>
<td>ASEAN</td>
<td>The Association of Southeast Asian Nations</td>
</tr>
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<td>ASEAN ISIS</td>
<td>ASEAN Institutes of Security and International Studies</td>
</tr>
<tr>
<td>CLMV</td>
<td>Cambodia, Laos, Myanmar, and Vietnam</td>
</tr>
<tr>
<td>CLMV+M</td>
<td>Cambodia, Laos, Myanmar, Vietnam, and Malaysia</td>
</tr>
<tr>
<td>CSO</td>
<td>Civil Society Organisation</td>
</tr>
<tr>
<td>EPG</td>
<td>Eminent Persons Group</td>
</tr>
<tr>
<td>HLP</td>
<td>High-Level Panel</td>
</tr>
<tr>
<td>HLTF</td>
<td>High-Level Task Force</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social, and Cultural Rights</td>
</tr>
<tr>
<td>LoA</td>
<td>Logic of Appropriateness</td>
</tr>
<tr>
<td>LoC</td>
<td>Logic of Consequences</td>
</tr>
<tr>
<td>LoP</td>
<td>Logic of Practicality</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Governmental Organisation</td>
</tr>
<tr>
<td>NHRI</td>
<td>National Human Rights Institution</td>
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<tr>
<td>PT</td>
<td>Practice Theory</td>
</tr>
<tr>
<td>SAPA</td>
<td>Solidarity for Asia People’s Advocacy</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
</tr>
<tr>
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<tr>
<td>SAPA-TFAHR</td>
<td>Solidarity for Asian People’s Advocacy – Task Force on ASEAN and Human Rights</td>
</tr>
<tr>
<td>T1D</td>
<td>Track-1 Diplomacy</td>
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<td>T2D</td>
<td>Track-2 Diplomacy</td>
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<tr>
<td>T3D</td>
<td>Track-3 Diplomacy</td>
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<tr>
<td>ToR</td>
<td>Terms of Reference</td>
</tr>
<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>VAP</td>
<td>ASEAN’s Vientiane Action Programme</td>
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<tr>
<td>VP</td>
<td>Veto Player</td>
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<tr>
<td>WG</td>
<td>The Working Group for an ASEAN Human Rights Mechanism</td>
</tr>
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Glossary of Key Terms

Bangkok Declaration  The Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights

Draft Agreement  The Draft Agreement for the Establishment of the ASEAN Human Rights Commission for ASEAN’s Consideration

Member-States  The 10 ASEAN member: Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Viet Nam

The Bill  The International Bill of Human Rights

The Charter  The ASEAN Charter

The Coalition  The Advocacy Coalition

The Community  The Political Community

The Network  The Policy Network

The Task Force  The Solidarity for Asian People’s Advocacy Task Force on ASEAN and Human Rights
Declaration

This thesis is submitted to the University of Warwick in support of my application for the degree of Doctor of Philosophy in Politics and International Studies. It is my own work, and has not been submitted in any previous application for any degree. Some materials from Chapter 2 were used for an article, The Impact of Regional Norms on the Process of Establishment of ASEAN Human Right Mechanism (AICHR): Indonesia & Malaysia Position, submitted to Pertanika Journal of Social Sciences & Humanities (JSSH), and still under review.

Signature:

Dwi Ardhanariswari Sundrijo

Date: ________________________________
Acknowledgements

Foremost, I thank the Almighty God for giving me the strength and patience to undertake this PhD.

This thesis has transformed from a dream to reality with the incredible support of many individuals. Firstly, I would like to express my utmost thanks to my supervisors: Dr. Lena Rethel, and most importantly, Professor Juanita Elias for their time, unlimited patience and critical – sometimes painful but indeed most needed – feedback on my various drafts. They succeeded in keeping me on track while pushing me to ensure that I did the best I could under varying circumstances.

I wish to extend my profound gratitude to the Indonesia Endowment Fund for Education (LPDP) for providing full funding for my PhD studies. I am also thankful to the Department of International Relations, Universitas Indonesia, for granting me leave from work to focus on my studies.

This research has been aided immensely by the many interviewees who were willing to participate enthusiastically. Their stories helped me interpret the ‘behind the scenes’ processes of the AICHR establishment. Special acknowledgment goes particularly to Dr. Rizal Sukma and Rafendi Djamin – two of the key norm interpreters featured in this research. I thank them for their constant availability and willingness to answer even the toughest questions.

My group of friends and colleagues at the ASEAN Secretariat, Ministry of Foreign Affairs Republic of Indonesia, the Working Group Secretariat, the Jakarta Post, CSIS Jakarta, ISDS Philippines, ISEAS Singapore, the Habibie Centre, and the Human Rights Working Group (HRWG), have also contributed significantly in this research. I thank them for their valuable support throughout this process. Their willingness to assist me with documents and other official and unofficial material, some of them from personal archives, proves that it is always the small pieces that make the big picture.

The community of Wolfson Research Exchange based at Warwick Library Level 3x were also a constant source of support. For the past four years people came and went, but the feeling as one ‘PhD Warrior’ community never changed. Their constant availability
provided me with the sense of security and optimism even in the worst of times. They are always there to share laughs and tears, happy and sad news, and most importantly good food; they have been basically my second home and family since the beginning of my journey, up until I reached the finish line – for which I can’t never thank them enough.

For Mihai Balanescu who provided valuable guidance in our Thesis Writing Group. To Andi, Kim, Muna, Naili, Nigel, Wangi, Sarah and Mark, for their constant friendship and unfailing support in so many different ways. Thank you all.

Last but by no means least, my family has been the biggest source of my strength. To my sister Astri and my brother Ari, thank you for always being just a phone call away during the ups and downs. My mom has been my inspiration, now and always. I’m grateful for her endless love, encouragement, and prayers. My late dad always made me believe that the sky was the limit. Ten years ago he had known that I can do it. And as always, he was right. You are truly missed, dad.

Finally, for Aradi and Alica – the reasons behind my everything. Thank you for your unbelievable resilience. Thank you for sharing this PhD journey with me, for living every single minute of it. This past four years have been truly amazing. This thesis is dedicated to you both.
Regionalisation of Global Norms on Human Rights in Southeast Asia: Issues and Problems

Regionalisms are, after all, about social practice; nothing more, nothing less.¹

1.1 Overview

This thesis develops a constructivist and sociologically informed International Relations (IR) perspective, with the aim of contributing to understandings of how a regional human rights body can emerge within an environment where global norms on human rights are not widely endorsed. Specifically, it examines the role of a group of key individuals, conceptualised here as ‘Norm Interpreters.’ The purpose of this group is to ‘interpret’ the meaning and application of global norms on human rights in such a way that they come to be accepted in the region, as proved by the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR), a Southeast Asian regional human rights body inaugurated in Bangkok during October of 2009.

The research presented in this thesis covers the period from the post-1993 Joint Communiqué of the 26th ASEAN Ministerial Meeting (AMM)², up to the adoption of the AICHR Terms of Reference (ToR); however, emphasis was particularly given to the period of the ToR drafting process, existing from July 2008 to February 2009.³

¹ Quoted from Bøås, Marchand, and Shaw (2003:9). Other takes it more as a ‘political project’ – see, for example Zorob and Loewen (2018:3), and Solidum (2003:11).
² The Communiqué is the first ASEAN official document with the term of ‘human rights’ in it. It includes the commitment of the member-states to “… actively participate and contribute to the application, promotion and protection of human rights” as well as to establish “… an appropriate regional mechanism on human rights.” Read: https://cil.nus.edu.sg/databasecil/1993-joint-communique-of-the-26th-asean-ministerial-meeting/.
³ This time frame started when ASEAN first agreed to create a regional human rights body and decided to establish the HLP to draft the ToR for the body (July 2008). It ends when Kasit Piromya, the Foreign Minister of Thailand, served as chairman for the ASEAN Foreign Ministers Meeting with the HLP and approved the ToR draft (27th February 2009). The ToR, however, remained a confidential document until July 2009, when it was adopted during the ASEAN Foreign Ministers Meeting in Phuket. At this point, it was made public. AICHR itself was inaugurated in October of 2009 during the ASEAN Summit in Bangkok.
This topic has been selected because it enables me to develop a novel take on Southeast Asian regionalism, which is often missing from studies on the emergence of ASEAN. First, this research draws attention to the role of a group of key individuals – the Norm Interpreters – who are not usually acknowledged in discussions of the politics of regional institution building in ASEAN (in both the constructivist and the more realist-oriented literatures that dominate the field). Norm Interpreters in this research consist of three subgroups; these are referred to in this thesis as the Political Community, the Policy Network, and the Advocacy Coalition. They serve as interlocutors between global norms (in this case, global human rights norms embedded in the International Bill of Human Rights, or the Bill) and local states and societies level priorities (the local norms, best understood as the ‘ASEAN Way’ and ‘Asian Values’). They consist mainly of key diplomatic actors, members of think tanks, and civil society leaders. As a group, they include those who occupy elite positions within the state (the policy makers), alongside those more embedded in activist struggles and agendas. It is argued that the unique dynamics of their social practices (ascertained by tracing interactions between the three subgroups) played a substantial, yet academically unexplored, role in the process through which AICHR was established.

Norm Interpreter, as a category, is distinct from the various other labels found in the literature for understanding key norm-promoting actors, such as the Norm Entrepreneur and the Norm Protagonist. It is also distinct from other existing categories by explaining the norm translation processes, such as processes associated with Norm Propagation and Norm Subsidiarity. This distinction is mainly because, as a new concept, Norm Interpreter is constructed inductively, based on empirical research of how Southeast Asian actors regionalise the global human rights norms – especially while under the strong influence and constraints of local norms. Compared to other concepts, the Norm Interpreter then represents the complicatedness of the actual norm interpretation processes. It involves multiple actors with different professional backgrounds, characters, and interests. It includes different approaches

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4 The existing concepts will all be discussed in Chapter 3.
5 These will also be discussed in Chapter 3.
6 Discussed in depth within the empirical chapters 4, 5, and 6.
that are translated into different action strategies. It deals with multiple, influential factors, such as (but not limited to) ASEAN’s policy-making mechanisms and member-states’ domestic politics. The dynamic is conceptualised here as the ‘Bowtie Model of Southeast Asian Norm Interpretation’ (elaborated on in Chapter 3).

Second, examining the behaviour of these Norm Interpreters enables a shift in focus – away from the macro and system level approach commonly taken in the wider literature to explain processes of regionalism\(^7\), and towards the application of a more microscopic reading approach, which focusses on the actions and interactions among actors during the process. Third, a focus on the ‘how’ behind the establishment process of AICHR allows me to go beyond the ‘what’ approach in the study of Southeast Asian regionalism. As such, I seek to broaden the range of factors usually taken into account within dominant explanations of policy-making in the region. This means that I focus my attention not only on the traditionally important factors of national political interests, but, more crucially, also on the normative or immaterial factors, such as the incompatibility between local norms’ and global norms’ inherent values. This research identifies the normative factors as a key challenge to the institutionalisation process of AICHR. The Norm Interpreters’ role is to acknowledge this incompatibility and then to bridge crucial points across this gap, so that global norms on human rights can begin (and continue) to be accepted in the region – despite their initial incompatibility with local norms. In this sense, the formation of AICHR reflects the successes of Norm Interpreters in pursuing this ambition.

This research examines how Norm Interpreters accomplish their goals, which further determines the direction of contemporary ASEAN regionalism (discussed further in the following subchapter). My personal experience in observing the AICHR establishment process from the side-lines led me to scrutinize this topic in more detail.\(^8\)

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\(^7\) While this research sees regionalism as processes, some see it as identical to ‘regional organisation’ (defined as a middle-level institution (between national and international government) established to provide a ‘more effective management structures’ to deal with ‘phenomena and processes transcending the borders of national communities.’ (Fioramonti 2012:3)); some take it as different from ‘regionalisation’ (read, for example, Klecha-Tylec (2017:9-10), Beeson (2014:5), Emmerson (2009:12), and Dent (2016:8-10)).

\(^8\) Since 2008, I was involved in various national and regional seminars, discussions, working groups, workshops, and trainings on ASEAN regionalism related issues, organized by different governmental institutions and civil society organizations, as well as universities and research centres, as participant, observer, or resource person/facilitator.
My experience suggests that, throughout the process, the dynamics of interactor relations in the region are more complex than what have been presented in academic publications so far.

This thesis thus questions certain core ideas related to traditional approaches in Southeast Asian regionalism, including state-centrism, functionalism, and materialism, as well as the commonly accepted notion of multitrack diplomacy. This thesis challenges the idea of state-centrism by showing that, in the case of AICHR’s establishment, first, member-states are not the only actors involved in the regional policy-making processes. Second, in some cases, states’ position toward issues and their decision of how to react (such as developing unique policies) is significantly influenced by the perspective of non-state actors on those issues. Third, the top-down official mechanism policy-making processes is not immune from the influence of bottom-up and horizontal informal dialogue mechanisms, which channel direct/indirect pressures and lobbyist/activists initiatives from non-state actors. Fourth, interactor relations between the state and non-state actors in this research shows that state actors are not necessarily the dominant players in the arrangements. In some cases, both parties are equal, while in other – very rare – cases, non-states actors lead the initiatives and define the negotiations’ result.

It is important to note, however, that by highlighting the significant contributions of non-state actors as ‘the initiator of change’

9 This is while acknowledging that Constructivism has emerged as one of the dominant approaches to studying Southeast Asian regionalism (as elaborated further in this chapter).

10 This term was used by Wendt (1999) when debating the role of non-state actors in a state-centric international system. He argues that “… it makes no more sense to criticize a theory of international politics as "state-centric" than it does to criticize a theory of forests for being "tree-centric"." (p.9)
By taking into account what are understood as the immaterial elements of interactor relations between subgroups of Norm Interpreters, this thesis identifies a variety of modes for influencing regional policy-making mechanisms. This includes the actors’ professional and/or practical experience, networks, expertise, and negotiation skills. I also apply an inductive approach in examining how these elements contributed to the dynamics of regional policy-making and, as a result, this thesis engages with a range of academic literatures, such as the Veto Player Model (Tsebelis 1995, 2002), Policy Change Model (Compston 2009), and Activist-Lobbyist Model (Rietig 2011).

My analysis of the norm interpretation process confirms the dominant influence of local norms; they are not merely factors hindering the adoption of global norms in the region, but, more importantly, they are a fundamental medium of interaction between the actors involved. Thus I argue that it is this intermingling that served to enforce the creation of a regional rights body in ASEAN, which carries more rights-promotional mandates and is extremely limited when it comes to mandates for rights-protection. The position this thesis takes is that the strategic role of Norm Interpreters made the establishment of a human rights body possible, even within a ‘hostile’ regional environment. Conceptually, this further reinforces the bigger picture: that Southeast Asia is willing to progress, not only process, with its regionalism.

This thesis is, thus, a study of regionalism, taking on the case of regionalising global norms on human rights. At the same time, this thesis presents an empirical examination of the role of a community of key individuals in the regional policy-making mechanism in Southeast Asia. This thesis is motivated by an aspiration to understand what happens when a group of both state and non-state actors get involved in the regional policy-making process, specifically on human rights-related issues. As such, it serves to answer one primary research question: in what way does the behaviour of Norm Interpreters during the establishment of AICHR influence the policy-making process, and how does it define the final output? I argue that the answer to this question may also directly reflect the answer to a broader question regarding the process of ASEAN regionalism: how does ASEAN manage to progress with its regionalism, despite fundamental political, economic, and socio-cultural differences among its ten member-states?
For the purpose of giving a contextual and conceptual overview of the research, this chapter will be divided into six parts. Following this introduction, I will provide a very brief overview of processes in ASEAN regionalism: (1) focussing on the non-traditional aspect of it, (2) the challenges that it faced in regionalising the value of the global norms on human rights, and (3) identifying the possible arena for individual actors to contribute to the process. This discussion then leads to the next subchapter, where I explain how the research topic matters. Here, I will provide some related conceptual definitions and identify the area of study on ASEAN regionalism, wherein the topic can be situated.

The next part will focus on problem-analysis and justification, wherein I will link this research to a wider existing academic debate on three areas: the study of regionalism, the regional studies of ASEAN and Southeast Asia, and the study of regionalising global norms. Here, I will briefly answer some underlying questions: first, on the topic in general: Why study ASEAN regionalism and focus on the institutionalisation process of a regional human rights body as a case study? Second, on the unit of analysis: what are Norm Interpreters, who are they, why are their interactions essential in the AICHR process, and in what way are they representative of ASEAN regionalism in general? Third, on the method: What is microscopic reading and how is this the best method to answer the research question?

The fourth part of this chapter is a discussion on methodology, where I explain how I approached the topic and answered the research questions. The discussion in this section provides a methodological umbrella for the chosen sociological, microscopic reading method mentioned earlier. It includes an explanation about the interpretive research approach, as well as the single-case study and process-tracing research method applied in this research.

Following this, the fifth part will identify contributions of this research, empirically, methodologically, conceptually, and theoretically. The final part of this chapter will be a brief presentation of the outline of this thesis.
1.2 The Context: ASEAN Regionalism

The Association of Southeast Asian Nations (ASEAN) is known for its own distinctive mode of processing regionalism. In their 1994 publication, Dosch and Mols even presented the region as the ‘most outstanding example’ (p.212) for regional institution outside of Europe. During the initial era of its establishment, in the late 1960s and early 1970s, ASEAN – ‘a highly heterogeneous group of political units’, which is ‘historically and geographically not a natural entity’ – was brought together through ‘the combination of environmental circumstances and [the] personalities of the leaders’ (Blomqvist 1993:56). These include a fear of communist expansion, luck that geopolitical alliances were augmented through strong regional leadership\(^{11}\), and close ties between the region’s leaders (including on the golf course\(^{12}\)). Such personal dynamics certainly worked to smooth out what were inherently ‘messy’ multilateral negotiations (Mahbubani 2017\(^{13}\)). Accordingly, ASEAN regional governance is widely characterised as having been established through a ‘remarkable network of interactions’ between its leaders (Barter and Boralessa 2018, Singh 2017, Wanandi 1998).

\(^{11}\) ASEAN was basically established by a group of ‘five wise men’ – namely, Narciso Ramos of the Philippines, Adam Malik of Indonesia, Tharat Khoman of Thailand, Tun Abdul Razak of Malaysia, and S. Rajaratnam of Singapore, who were then the foreign ministers of their respective countries (GGDP 2007). Following this, the direction of ASEAN regionalism was basically decided by ‘the club of strong leaders’, whose members are President Ferdinand Marcos of the Philippines, Prime Minister Mahathir Mohamed of Malaysia, President Suharto of Indonesia, Prime Minister Lee Kuan Yew of Singapore, and, joining later, Prime Minister Hassanal Bolkiah of Brunei Darussalam. San (2000) names this ‘a neighbourhood watch group’. Neighbourhoods consist of people who know each other well, know their own ‘problems, strengths, resources, and needs,’ and have the power ‘to protect each other’s safety’ – only, within the context of ASEAN, ‘…the residents and police are the same state actors’ (p.280).

\(^{12}\) In his personal notes, Mahbubani – a retired Singaporean diplomat - reflects to the era of the 1990s, when he was part of ASEAN’s Senior Officials. He comments on how, after a golf game, agreements between the senior officials could be reached very quickly. As he said, “… the camaraderie produced by golf did the trick” (Mahbubani 2017). In the same notes, Mahbubani also shared a ‘behind the scenes’ story on the making of the ASEAN Charter. (For more stories behind the making of the Charter, read Koh, Manalo, and Woon (2009))

‘One recent miracle [that] ASEAN achieved was the conclusion of the ASEAN Charter [with]in about a year in 2007. This achievement should be recorded in the Guinness Book of Records. […]How was [an] agreement reached so quickly? Former deputy Prime Minister S. Jayakumar was a member of the Eminent Persons Group [EPG] that was set up to begin discussions of the charter… [He said:] “It helped that Ramos, Ali Alatas, Musa, Jock Seng and I had also been longtime golf buddies!”’ (Mahbubani 2017).

Here, Jayakumar talked about Fidel Ramos of the Philippines, Ali Alatas of Indonesia, Musa Hitam of Malaysia, and Lim Jock Seng of Brunei – who were all senior diplomats representing their respective countries in the EPG.

Over time, processes of ASEAN regionalism have become more formal and institutionalised. Still, it remains the case that ASEAN has not adopted a path towards regional integration – at least, not one marked by the rational adoption of legal and formal rules and practices in order to deal with the antagonistic relationships between regional partners. Rather, the dynamics of ASEAN regionalism, today, are characterised by a mixture of what might be termed ‘traditional’ and ‘rational’ approaches, pursuing this via the medium of multitrack diplomacy, dialogue forums, and deliberation. To arrive at this finding, this thesis examines the construction of regionalism in Southeast Asia by taking a case study of the establishment process of AICHR. This is the first officially established regional ‘authority’ in Southeast Asia that dealt with the issue of human rights.

Back in 2007, during the drafting of the ASEAN Charter, the decision by the ASEAN leaders to establish a regional human rights mechanism was a surprise for many (read, for example, Renshaw (2010)). Then, if not still now, ASEAN member-states’ perceptions of human rights were still clearly divided. As Petcharamesree (2013) argued, it was hard to imagine how the differences could possibly be bridged. This is partly because of member-states’ diversity in historical and socio-cultural backgrounds, as well as in the levels of political freedom and economic development present in each (discussed further in Chapter 6).

In any case, ASEAN member-states were particularly uncomfortable with the universalist approach found in the International Bill of Human Rights – the key statement of global norms on human rights (see discussion in Chapter 2), which appears to emphasize civil and political rights ‘… at the expense of rights to development and basic needs’ (Mohamad 2002:233). At the same time, ASEAN remains faithful to certain local norms (which, in this thesis, are discussed in relation to both ‘the ASEAN Way’ and notions of ‘Asian Values’). In particular, the willingness to establish a body appeared to be significantly at odds with the local norm of non-interference; specifically, non-interference in the affairs of other member-states, which was a central component of the ASEAN Way (discussed in Chapter 2). Therefore, it seemed to be reasonable yet unacceptable (particularly to human rights defenders) that, by 2007, Southeast Asia (as part of the Asia continent at large) was
the only region in the world which did not have its own institutionalised human rights mechanism (see, among other, Langlois (2012)).

In addition to these regional dynamics, the idea of establishing a regional human rights body is, according to Moravcsik (2000), problematic in and of itself. In short, Moravcsik argues that no sovereign state would want to agree to establish such a watchdog institution. He puzzles, cynically: why would states favour constructing a regional authority to adjudicate and enforce human rights on them? This argument might stem from two observations (Munro 2011): first, the violation of human rights is broadly a domestic issue. It is about the ‘relationship between a state and its citizens’; it may not affect the relationship between states, and thus is ‘an unlikely subject of interstate collaboration’ (p.1186). Second, whereas effective regional human rights regimes can impose significant ‘sovereignty costs’ on a state through external scrutiny and monitoring, these institutions offer no obvious material benefits to the states involved.[…] Such institutions invite the intrusion of the international community into the domestic arena and in particular into the relationship between the state and its citizens. In return, participant states ‘receive only promises from other nations to refrain from harming their own citizens. (Munro 2011:1186).

This tension fittingly applies to ASEAN. From this perspective, ASEAN’s aversion to creating a regional human rights body could be seen as an inevitable response. So, what factors served to shift ASEAN’s position and agree to establish a body that would potentially scrutinise state actions? What motivated their altered standpoint towards the idea? It is this question that prompts my interest in the topic. Like authors such as Moravcsik and Munro, I am interested in questioning the rationale of AICHR; however, unlike them, I do not simply ask ‘why’ (that is, the reasons behind the idea of AICHR’s establishment). Instead, as mentioned earlier, the central issue that motivates my research project is the ‘how’ (i.e. the process that ASEAN went through in establishing AICHR). As a consequence, in my thesis I favour the ‘thick description’
of a more sociologically informed approach over the parsimonious explanation a more positivist account would undertake.

Such an approach enables me to raise the following question: If Southeast Asia was still uncomfortable with the values inherent in global norms on human rights, and if, theoretically, human rights were not an issue for regional cooperation, how was it that the three subgroups of Norm Interpreters were able to successfully challenge this anti-human-rights consensus and enable the creation of a space and opportunity for AICHR, inaugurated in Bangkok in 2009?

AICHR’s Terms of Reference show that AICHR carries more rights-promotional mandates and very limited rights-protection (as discussed in Chapter 2). This of course, is illustrative of the way in which ASEAN member-states are still unprepared to acquiesce to the potentially powerful role of regional human rights watchdog. This then leads to a key finding in this research: that it is possible to establish a human rights body within a ‘hostile’ regional environment. However, for that to occur, norm interpretation processes must allow for a wider acknowledgement of the significance of existing local norms. This research argues that local norms significantly influence the dynamics of interactor relations within the Norm Interpreters’ three subgroups. This, in a way, leads to the establishment of an institution that may not accurately reflect the priorities of those who had originally pushed for an ‘ideal’ body.

1.3 Explaining the Research Question: How It Matters

As noted above, this thesis discusses the construction of regionalism in Southeast Asia by examining the behaviour – the action and interaction – of the Norm Interpreters. They are a community consisting of three subgroups of individual actors, involved in the region’s highly political policy-making process throughout, mainly, the eight-month period of establishing AICHR. Here, the behaviour of the actors will be loosely identified without deductively referring to any particular theory.14

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14 This is not to say that there is no attempt to theorise the behaviour of actors in the study of IR. Some ‘sociological’ IR theories, for example, propose approaches in identifying the behaviour of actors. The norm-oriented theories, which assume that actors comply with normative rules, categorise actor behaviour into four
In this research, the behaviour of the three subgroups of Norm Interpreters is categorised based on the dynamic relationships among the subgroups – specifically, within the framework of the norm interpretation process. Based on that, I identify two different dynamics: *first*, action, which is loosely defined as the process of working to achieve the goal conducted by individual members of any group; and, *second*, interaction, which is the two-or-three-way communication and reciprocal action between and among members of each subgroup, as well as among individuals across the three subgroups. These dynamics define the different strategies they applied for norm interpretation.

As mentioned above, the Norm Interpreters consist of three subgroups: the Political Community (the state actors), the Policy Network (the non-state actors who act on behalf of think tanks), and the Advocacy Coalition (the representatives of the people and/or more activist-oriented groups). As I will argue, the behaviour of these actors – not only state actors, but also the equally significant non-states actors – substantially influenced the dynamics of ASEAN regionalism. Through an appreciation of the multifaceted nature of influence and bargaining that takes shape within the process of realigning ‘acceptable’ norms, this research seeks to contribute to the debate on the practice of multitrack diplomacy. That is a concept very often referred to when examining the contribution of different actor groups in Southeast Asian regionalism – and, to be more precise, within the context of ASEAN.

‘Multitrack diplomacy’ was first introduced by Louise Diamond and John McDonald. It is a systemic approach explaining diplomatic efforts undertaken by various actors in the area of conflict resolution (read McDonald (1991, 2002, 2003),

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11 This approach of categorizing individual actors’ behaviour was also used by Eadie (1973), who later conceptualised ‘action’, and ‘interaction’ (as well as ‘transaction’) as ‘philosophical perspectives on communication research’.

12 Many argue that Southeast Asia, the region, and ASEAN, as its regional organization, are not necessarily the same thing. One of the key differences is: Southeast Asia as a region includes East Timor, while, up to now, this country is still not a member of ASEAN. ASEAN is the institutional core of most cooperation initiatives in Southeast Asia (excluding East Timor) (see, among others, Ba (2009)). In this research, unless for a reason particularly mentioned, the term ‘ASEAN’ and ‘Southeast Asia’ will be used interchangeably, and East Timor will not be included anywhere in this research.

and Notter & Diamond (1996)). Apart from Track-1 (official diplomacy conducted by the government), this concept also acknowledges the equally important role of the unofficial ‘non-governmental action,’ as carried out by other groups of non-state actors.

However, as discussed further below, researchers on ASEAN regionalism tend to adopt the concept with some modifications; specifically, with attention given only to Track-1 (official diplomacy by the government), Track-2 (understood in ASEAN as semi-official diplomacy conducted by the think tanks), and Track-3 (unofficial diplomacy by the civil society leaders). Each of these three tracks will be referred to in the three empirical chapters (Chapters 4, 5, and 6) of this thesis.

Apart from contributing to the debate on multitrack diplomacy and taking a case study of the institutionalisation process of AICHR, this thesis also modestly contributes to the academic debate on the regionalisation (or localisation) process of global norms – in particular, global norms on human rights, as defined by the United Nations’ International Bill of Human Rights (the Bill, discussed in Chapter 2).

This thesis applies the sociological approach of ‘microscopic reading’ (see the following subchapter) to highlight a key finding: as ASEAN proceeded with its regionalism, the close assessment of action and interaction between and within the three groups of Norm Interpreters led to a more positive and optimistic view on the process. Based on this assessment, I argue against commonly held perceptions, instead suggesting that ASEAN was (and is) both ‘progressing’ and ‘processing’ its regionalism. Such a perspective is contrasted by a growing critical view that Southeast Asian regionalism is doing the institutional bare-minimum, so as to maintain the appearance of regional integration but without giving it substance (i.e. it is processing, but not progressing).18 Such a perspective is based on the view that ASEAN …

remains an essentially intergovernmental one, dealing primarily with trade and economic issues and dominated by member state bureaucracies, rather than one that possesses the institutional infrastructure to develop into a

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18 For academic argument on this matter, read, among others, Jones & Smith (2007a, b) and Beeson (2009)
"mature" … community or establish a common identity[.] … [F]ollowing this intergovernmental practice, ASEAN states pursue bilateral or trilateral arrangements rather than building a supranational practice. (Jones and Smith 2007:149).

A similar view on this matter defines progress as a destination. Elms (2016) for example, argues that, at least in the area of regional trade, ASEAN deliberately prefers process over progress. As such, there is little that ASEAN has done to lockdown ‘at least a handful of concrete deliverables’ (Elms 2016) In contrast to this growing, critical consensus, I argue that the establishment of AICHR – and the way it is established through the work of Norm Interpreters – demonstrates ASEAN’s willingness to progress with its regionalism.

Furthermore, through its focus on two key regional norms (the ASEAN Way and Asian Values), this thesis provides a distinctive take on how these local norms have been understood within studies on ASEAN regionalism. In many existing accounts, these local norms are generally assumed to be factors hindering the application of global human rights norms in the region. However, I argue that these local norms can also function as a medium of interaction between and among ASEAN’s policy influencers and decision makers. They should not be merely characterised as a burden placed on those seeking to promote regional agendas (as proposed, for example, by Gerard (2013, 2014a, 2015, 2018) and discussed in more detail in the following subchapter).

In terms of its substance, Asian Values is widely accepted as representing the character and identity of the people of Asia, including Southeast Asia. However, in terms of the packaging, there is still no agreement of how to label it exactly (read, for example, Jayasuriya (1998) and Kim (2010)). In this research, since it contains inherent norm-type qualities (discussed further in Chapter 2), Asian Values is considered a set of norms. As Fukuyama (1992) famously argued, Asian Values are something that reflects the ‘traditional features’ of the cultures within Asian societies, which have been integrated into the people’s modern life (p.238). Although the existence of Asian

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19 Read, particularly, literatures on the Asian Values, e.g. Freeman (1996, 1999), Jayasuriya (1998), and Zakaria (2002).
Values can and has been widely challenged (read, for example, Jayasuriya (1998), Jones (2010), and Zakaria (2002)), these norms nonetheless remain powerful within the region and retain a central place in discussions on the suitability of human rights within the Southeast Asian context (see Beng-Huat (1999), Timmermann (2012), Lawson (1998), and Peletz (2009)).

While Asian Values can be regarded as a set of ideals that influence the policy-making process in a broad sense, the ASEAN Way is a more overtly articulated set of norms, widely acknowledged in the policy-oriented and academic literatures on ASEAN. The ASEAN Way serves as a preferred mechanism governing interactions between ASEAN member-states and has effectively defined the process of regional integration. It is essentially a code of conduct (Morada 2016), which includes a procedural set of rules (Yukawa 2018, Koga 2009) that allow member-states to arrive at certain agreements in their effort to manage regional disputes (Nishikawa 2007, Koga 2009).

I argue that Asian Values and norms associated with the ASEAN Way both work effectively to facilitate the process of regionalisation in an area known for its extreme levels of diversity. After all, Southeast Asia is a region of unity-in-diversity; the ten member-states are not only highly pluralistic (while still, somehow, sharing certain common traits such as) in their socio-cultural and religious characteristics, but they are also diverse in their political systems and levels of economic development (read Acharya (2000), Natalegawa (2017), and Jönsson (2010)).

In terms of an analytical approach, I argue that, in most cases, social constructivism provides the most appropriate paradigmatic basis to analyse ASEAN regionalism. Specifically, this is because it enables the application of non-traditional approaches that acknowledge the significance of norms, ideas, and values. However, one of its basic assumptions concerns the mutually constitutive nature of agent and structure (which suggests that agency influences structures and structures influence agency20). This does not fittingly apply in the AICHR case. This research found it was somewhat impossible to separate agent (which is the ability of the Norm Interpreter to act) from the structure (which is the immaterial and ideational elements of the regional system).

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20 Read, for example, Wendt (1987), Hopf (1998), and Zehfuss (2002)
This research further suggests that the structure\textsuperscript{21} is inherent in the character of the agency. Hence, this research seeks to go further and propose that agent and structure are not necessarily two separate entities external to each other. Rather, it is possible for the two elements to merge; in this case, for the structure to reside inside the actor and be a part of the actor’s behaviour.\textsuperscript{22} Refusing to differentiate the two, as an idea, has previously been suggested by advocates of the Practice Theory, especially in the study of IR (see, for example, Bueger and Gadinger (2015), Pouliot (2008, 2012) and Reckwitz (2002)). Back in 1992, Wendt argued that ‘[p]ractice is the core of constructivist resolutions of the agent-structure problem’ (1992:413). This statement was later understood by practice theorists as Wendt invoking ‘practice’ as ‘…an intermediary between agents and structures.’ (Bueger and Gadinger (2015): 451).

More about the theory will be discussed as part of the following two subchapters, concerning Problem Analysis & Justification, as well as Methodology.

In assessing the behaviour of regional actors in their attempt to establish AICHR, the emphasis of this thesis is not primarily on the national interest of individual ASEAN member-states (even in regard to their interests on the issue of human rights). For this reason, an elaborate description on the interests of each ten member-states is not provided in this thesis, nor is their view, policy, or practice of human rights.\textsuperscript{23}

This is certainly not to deny the significance of member-states’ domestic politics and ideology, especially as they influence regional policy debates and decision-making contexts. This thesis, in fact, relies on a great number of such accounts to examine the bargaining and veto-power-dominated interactions among individual state actors,

\textsuperscript{21} In this research, structure is identified as the local values (discussed earlier in this chapter) and the system of multitrack diplomacy (discussed in Chapter 3).

\textsuperscript{22} The relation between ‘agent’ and ‘structure’ is also central in Institutionalism, particularly Historical Institutionalism (in tandem Sociological Institutionalism). Similar to this research, Historical Institutionalism also sees that policy choice situations are influenced by variables of individuals (the agent), as well as context and rules (the structure). Like this research, this approach also relies on inductive method following the logic of appropriateness (as suggest by Constructivism – see Chapter 2). Although also takes individuals’ preferences and rationality as an essential ‘micro fundament’ to political and institutional life, unlike this research, historical institutionalism put rules (structures) in the central of analysis. It takes structure as given and that agent (with their appropriate rationality) responds to it. Hence, unlike proposed by this research, historical institutionalism takes agent and structure as two separate variables. For more on this approach, read for example, Thelen (1999), Steinmo (2008), and Bell (2017).

\textsuperscript{23} Some literatures on ASEAN member-states and the issue of human rights at the national level are, for example Radtke (2014) on Myanmar.
particularly within the Political Community (discussed in Chapter 6). However, member-states’ domestic politics and ideology are mainly instruments to arrive at a certain agreed level of regionalism. Therefore, the focus of this analysis is not on the individual states’ interests or how the actors defended their stake. Instead, it focusses on how the accommodation of various, differing interests allows norms interpretation to take place – which further led to the establishment of AICHR.

Furthermore, it is not the intention of this thesis to criticise ASEAN’s policy-making mechanism. Rather, the aim is to provide a reasonably holistic picture of ASEAN as a regional organisation, which relies not only on the modern formal-rational-official governance (Best 2011), but, more importantly, on some non-legalistic bargaining procedures, as defined by the ASEAN Way discussed above (see further, Chapter 3).

Considering the highly diverse nature of Southeast Asia, this thesis regards the distinctive regional governance mechanism as a strength for ASEAN, rather than a weakness to overcome. This argument is not necessarily unique; previous studies have arrived at a similar conclusion. Acharya & Johnston (2007), for example, have argued that the regionalism of Southeast Asia is ‘more efficacious’ because of a lack of ‘legalisation and institutionalisation’ (p.11). Likewise, Emmerson (2009) underlines that ASEAN regionalism is ‘deepened and strengthened’ by some unofficial processes, such as ‘commitments, proposals, and actions by regional NGOs’ (p.13).

Finally, it is equally important to note that this thesis is not focussing on the value of human rights. This is a thesis on regionalism – Southeast Asian regionalism, to be precise – and it is centred on the behaviour of a group of agents of change, who significantly influenced the institutionalisation process of a regional human rights body. Hence, the focus is on the dynamics of the regional policy-making mechanisms, not on the debate around the value of the norm. This research considers the value of the norm to be self-evident. For this reason, any elaboration on the Bill (see Chapter 2) as a perceived global human rights norm in this research will not focus on its

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substance, but more on criticizing its claim of universality. This is equally true for discussions on Asian Values and the ASEAN Way (in chapter 2) as local norms; I will primarily focus on illustrating the local character of the two norms.

With that said, although this is not a thesis on human rights, the discussion on human rights norms in Chapter 2 is still essential for showing the incompatibility of the inherent values in global and local norms. For global norms to be accepted at the local/regional level (in the form of establishing a regional human rights body), a norm interpretation process is required, especially when the value and practice of local norms tends to be considered paramount. Therefore, in this research, the significance of Norm Interpreters is rationalised by the norms’ incompatibility.

1.4 Problem Analysis & Justification

This thesis analyses the process – or, rather as this research argues, the progress - of ASEAN regionalism. It focuses on examining the behaviour of policy influencers and decision makers in the regional policy-making dynamics. The study is conducted inductively through the application of sociological microanalysis approaches. While the idea of regionalism in Southeast Asia has become an area of considerable debate, the study of policy-making mechanisms in the regionalism process has been less well researched. In particular, a close examination of the interactor relations during the process has been lacking. Attention has been given to the role of different groups of actors in ASEAN regionalism, but very little focuses on the interactions between them and how these interactive dynamics affected the regional policy-making process.

Similar to this thesis, most research into ASEAN regionalism utilises the concept of multitrack diplomacy to explain the involvement of non-state actors in the policy-making process. Research on the role of Track-2 – particularly think tanks such as ASEAN-ISIS (see Stone & Nesadurai (1999); Stone (1999)) – has dominated the study in this area (see Chandra (2006), Kraft (2000), Jones (2008), Evans (2006), Tan (2011b)). The authors of these studies generally agree that Track-2 is the ‘main engine’ of ASEAN regionalism – an idea that, to some extent, this research shares (see empirical elaboration on this matter in Chapter 4).
Additional research (e.g., Collins (2008, 2013a, b) and Gerard (2013, 2014b, 2015)) pays attention to the potential contribution of civil society organisations (CSOs) – Track-3 in multitrack diplomacy – to the process. Collins (2008) argues that the well-known slogan of ‘people-oriented ASEAN’ should ideally allow for the wider participation of civil society organisations in the regional policy-making process. However, he and Gerard both agree that there is still no significant change in ASEAN’s behaviour on this matter; the boundaries and limits for participating and contributing are still rather strict. This research argues that this is not exactly the case; this research found that the contribution of the Track-3 Advocacy Coalition during the AICHR establishment process was substantial. As lobbyists and activists, they applied strategies that use more informal channel and networks to influence the policy dynamics (see Chapter 5 for empirical discussion on this matter).

Furthermore, Gerard consistently blames these undesirable circumstances on the existence of Asian Values and the ASEAN Way (2013, 2014a, 2015, 2018). This is a perspective that I seek to challenge in my thesis via a fine-grained analysis of how Norm Interpreters sought to work within, around, and against the normative constraints imposed by Asian Values and the ASEAN Way. Moreover, this research considers local norms more as a medium of interaction between actors, rather than a variable that controls the actors’ behaviour or limits actors’ participation in the process of ASEAN regionalism.

Approaching ASEAN regionalism in such a partial way (focusing only on certain actors, such as think tanks or CSOs), I argue that the existing literature primarily talks about the action of the actors, and not the interaction between them. This, I contend, is one of the flaws of multitrack diplomacy as a concept in the regional policy-making process. Indeed, when assessing the behaviour of Track-2, for example, some authors also mention Track-1 (the state actors, including the ASEAN Secretariat) or Track-3 (the people, including CSOs), and vice versa. However, this is often to only acknowledge the presence of the other group, without further examining how the different tracks affect and/or influence each other, such as if they coordinate their work or operate independently, are harmonious or in conflictual relationships, and so forth.
By focussing solely on the action of the actors, without giving equally proper attention to the interaction between groups, very few of these existing projects are successful in explaining how ASEAN progresses with its regionalism. That is one gap this research aims to fill. In this thesis, I argue the interaction between groups is equally crucial to the action of the actors in defining the course of regionalism.

To fill the gap left by the concept of multitrack diplomacy identified above, I loosely borrow the concept of the Interpretative Community from the study of Law, introduced by Johnstone (2005). Interpretative community describes a group of professional interpreters who share an interest on a certain field of practice and are engaged in a persuasive activity, both against each other (horizontally and vertically), as well as against the higher (external) authority. The members are identified as either part of the inner circle or the outer circle. At the inner circle are those directly or indirectly responsible for the formulation, negotiation, and implementation of the norms, while the outer circle contains professionals whose activities are associated with practices related to the norms.

The two layers of circle mapping for actors (as suggested by Johnstone), I argue, works well as a framework to examine the interactions between the three groups involved in the establishment of AICHR. Johnstone’s interpretative community consists of four groups of actors: The Political Community and the Cultural Community exist at the inner circle, while the Policy Network and the Advocacy Coalition are at the outer circle. For empirical reasons, as elaborated on in Chapter 3, all groups but one (the Cultural Community) will be adopted as the three main units of analysis in this research, altogether conceptualised as Norm Interpreters.

Norm Interpreters are a community of actors (consisting of three subgroups) who act and interact closely to interpret the value and practice of global norms on human rights. The ultimate goal is for these to be accepted in Southeast Asia. They work at the regional level to influence the policy-making processes that take place in both national (within the member-states) and regional (within ASEAN as the umbrella regional

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25 For more on this concept, read, for example, Stone (2011, 2013). He also refers to Johnstone, but names the term slightly differently (‘Interpretive Community’) and uses the term to primarily explain the role of policy research institutes in Southeast Asian regional policy-making.
institution of Southeast Asia) levels. In this case, they function with a particular aim
to establish the regional human rights body (AICHR).

More generally, this thesis can also be considered part of ongoing conversations about
the study of IR in regard to non-state actors (individuals and/or a group of individuals)
and their increasingly challenging role as agents of change in international affairs (see,
for example, Florini (1999)). In the study of IR, individual actors working on the
promotion of global norms are commonly known as Norm Promoter (Finnemore and
Sikkink 1998:898-9). By suggesting a need for the new concept of Norm Interpreters,
this thesis certainly does not deny the importance of many existing concepts and rich
explorations on the role of Norm Promoter. Elaboration on related sub-concepts such
as the Transnational Advocacy Network (Risse 1999), the Norm Protagonist (Sikkink
2014), Norm Empowerment (Checkel 1997), and Horizontal Norm Reproduction
(Florini 1996), as discussed further in Chapter 3, are particularly useful for
understanding the intermediary work that global/regional/local actors complete in
promoting global norms, as well as the challenges they face from existing local norms.

A well-quoted concept in this regard, Norm Entrepreneur²⁶ (Finnemore and Sikkink
1998) is of great importance for understanding the model of Norm Interpreters as
introduced in this thesis. Both concepts highlight the importance of non-state actors in
the regional promotion of human rights norms. However, as elaborated in Chapter 3,
both are different in character, mission, political strategies, tools, and sources of
support. Above all, unlike the Norm Entrepreneur, who works to effectively promote
external norms within a local/regional context, a group of Norm Interpreters works
primarily to interpret global norms in ways that make them more compatible with pre-
existing local norms. For this reason, I have sought to develop my own conception of
these actors, rather than merely adopting existing concepts.

²⁶ In the spectrum of the typology of roles, while at one end is the norm entrepreneurs as actors who promote
global norms, at the other end is the norm antipreneurs which is defined as actors “… who defend, the
entrenched normative status quo against challengers.” (Bloomfield 2016:321). This concept is not discussed in
this chapter as it doesn’t fit the general character of the actor in this research, which behaved more as norm
taker than norm rejecter.
In this research, identifying the actor’s character is less important than the actors’ behaviour, i.e. the process of deliberating on global norms, which, in the study of IR, is generally known as ‘norm translation’. As discussed in Chapter 3, various sub-concepts have also been developed in relation to this, such as norm vernacularisation (Merry 2006) – which, influenced by an anthropological approach, highlights the existence of ‘meanings, signs, and practices of local places’, and norm propagation (Dubash 2009) – which focusses on the importance of formal procedures and mechanisms in the translation process. The other well-accepted concepts on this matter are Acharya’s norm localisation (2004) and norm subsidiarity (2011). Unlike the previous two conceptualisations, which focus on factors external to the actors, Acharya’s concepts centre on internal factors – i.e. actors’ motivation (whereby norm subsidiarity is seen as a ‘weapon of the weak’ (2011:118)) and actors’ various possible means for handling the norms transmission process.

These existing sub-concepts provide a useful list of possible intervening mechanisms on the process of norms translation. However, this approach is primarily materialistic in orientation and, as argued by Wolf (2012), tells us little about the real bottom-up process of norms reconstruction itself or the interactions between and across groups of actors that can drive normative change. The three empirical chapters of this thesis show that such interactions might include elements such as direct-indirect influences (Chapter 4, on the Policy Network), activist-lobbyists pressures (Chapter 5, on the Advocacy Coalition), as well as transactional veto power relations (Chapter 6, on the Political Community). Furthermore, the chapters also show the different actions they take to influence different stages of the policy-making process. These include, among others: shaping of public opinion, creation of venues for participation, and policy recommendation.

The method of microscopic reading (Knorr-Cetina 1981), which allows us to examine the construction of macro-structure from a micro-sociological perspective, aids me in this matter (discussed further in the following methodology subchapter). Applying this approach means decomposing the commonly taken-for-granted process of regionalism (see further discussion below), in an attempt to understand which particular element
involved in the process most influences the establishment of the regional entity, and how.  

Similar decomposing efforts aimed at unpicking the webs of interactions between a varieties of actors can also be found in a range of more critical studies of Southeast Asia, which all share the pessimistic tone about the weak character of ASEAN regionalism. A project on ‘regional governance’, for example, highlights the element of functional coordination, cooperation, and partnership among a group of governments, market forces, and civil society in the region (see, e.g. Hamilton-Hart (2012)). It arrives at the conclusion that ASEAN (as part of the East Asia) is an emerging regional governance in a context lacking a strong regional government. That is a conclusion shared by He (2017), who similarly argues that ASEAN has deliberately chosen to develop weak regionalism. A recent journal publication on ‘transnational governance’ questions ‘who governs and how’, highlighting the cross-border network as a means for non-state actors to play substantial governance roles in the region. It concludes that this is designed to fill the gaps created by ineffective regional intergovernmental institutions (Breslin and Nesadurai 2018).

The above studies decompose ASEAN regionalism in a similar manner to this research, but their chosen unit of analysis is less micro. They are also more functional in their approach to analysing the behaviour of the actor. Their pessimistic sentiment about the conduct of ASEAN regionalism is contradictory to the findings of this research, which, as mentioned earlier, is more optimistic in its view towards ASEAN regionalism and considers ASEAN to be progressing well – as is, at the very least, proven by the establishment of AICHR.

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27 Analysing regionalism as a process means questioning the process of ‘becoming’ in order to get understanding on through which regionalism is ‘coming into existence and being consolidated’ (Söderbaum 2012:18) , as well as how it operates (Kaye 2001:2) .

28 Published in the Journal of Contemporary Asia’s 2018 special issue on Non-State Actors and Transnational Governance in Southeast Asia.
Interestingly, this more optimistic tone is shared by studies on ASEAN regionalism that apply a comparable level of microscopic reading and immaterial approach to their research. Taking historical institutionalism as a methodology, Stubbs (2008) argues that the process of ASEAN regionalism – which is highly influenced by local norms, has created a new ‘ASEAN paradigm’ (p.451), which might be applicable in other regions. This ASEAN model is considered as powerful enough to provide a significant challenge to the dominant western-liberal paradigm on regional order. Another study, conducted by Ba (2009), focusses on social contexts, social dynamics, and social processes, also arrives at a similar tone of optimism on the ability of ASEAN to maintain its regional cooperation. Ba argues that ASEAN regionalism is in fact developed through talking.

ASEAN’s talk shop has produced new social norms, a new culture of regional dialogue as well as new social and institutional practices that stress respect (manifested most notably in a consensus-based regionalism), and non-confrontational, inclusive engagement … [Hence] ASEAN regionalism is best understood as an ongoing search for consensus and a series of dialogues, debates, and exchanges about both the material and social foundations of regional order. (p.5, 21).

Applying microscopic reading in the study of actors’ roles as agents of change in the process of regionalism allows this research to contribute to the discourse of two contemporary IR theoretical approaches. These are, firstly, Practice Theory, developed initially in the writings of Iver Neumann in 2002 and further expanded by Vincent Pouliot (2008), and, secondly, the New Regionalism Approach (NRA), pioneered by Björn Hettne and Fredrik Söderbaum in the 1990s. Importantly, it should be noted that both approaches share a common grounding in social constructivist IR theory.

- **Practice Theory**

Practice Theory (PT) looks broadly at how actors (practitioners) perform their practical activities (practices) in renewing and reproducing social order and change (Bueger &
Gadinger 2015). It is at this point that the approach offered by PT seems to fit with the intention of this research. PT establishes ‘practice’ as distinct from both behaviour and action; actions are a specific type of behaviour, and practices are a particular, socially meaningful type of action (Adler & Pouliot 2011, Pouliot 2016). Practice is, in effect, an account of the everyday method of performing tasks by actors (Pouliot 2014, 2016, Schindler & Wille 2015). Practice theorists argue that by taking practices as the core unit of analysis, PT allows researchers to ‘describe the whole of human action’ (Reckwitz 2002:249) and to better understand the dynamics of order and change (Bueger & Gadinger 2015:449). This research ethos is broadly compatible with the aims and objectives of this research project.

A practice-based approach offers a new way of understanding reality – away from the traditional, rational-interest-based approach, as well as the normative, judgement-based models. It is distinct on five accounts (summarised from Adler & Pouliot (2011:6-7), Bueger & Gardinger (2014:19, 2015:453), and Nicolini (2012:3-6)). First, and fundamentally, PT emphasizes process and evolution; it never views the world as static and fixed. Second, PT tends to focus on ‘knowledge from within’; it sees a close link between knowledge and action (practical knowledge); it perceives knowing as an interaction between ‘knowing and doing’. Third, PT sees the acts of knowing and the creation of knowledge through learning as a fundamentally collective process. Practice is always a ‘collective accomplishment’. Fourth, PT recognises not only the ideational, but also the materiality of practice. It indicates that elements such as bodily movement, language, speech, artefacts, technologies, and discourse can also be carriers of practices. Fifth, PT argues that the social reality we experience is constantly being produced in practice.

Situating the study of AICHR’s establishment process within this practice-based theoretical framework shows how this research generally conforms to all five accounts. First, it focusses on process (in this case, that of norm translation). Second, this research is centred on the production of practical knowledge (a process of understanding, reconstructing, and conceptualising the actors’ behaviour). Third, it

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29 This understanding is not adopted in this research. Here, the term ‘behaviour’ is used interchangeably with ‘interactor relations’, while the term ‘practice’ is not particularly used.
portrays actors’ collective effort (in terms of how a group of individuals sought to pursue a common agenda despite the significant obstacles).

Fourth, this research emphasises the significance of immaterial elements (specifically, values, norms, beliefs, perceptions, individual preferences, and perspectives of reality). However, it also acknowledges the importance of certain materials aspects (such as negotiation skills, educational backgrounds, professional qualifications, and, most importantly, personal networks). Lastly, fifth, it confirms the importance of a performative element in the process of norm interpretation. This research finds that the interactor relations among the three Norm Interpreter subgroups produced a new regional social reality - i.e. the region’s acceptance of global norms on human rights (although this is only at a minimum level – as discussed in the three empirical chapters).

However, in going beyond the five underlying assumptions of what is considered ‘practice’, it is shown that the interactor relations which occurred during the AICHR establishment process did not entirely fit with PT theoretical insights. A Bordieuan approach to understanding social practice underpins much of the writings regarding PT’s main proponents (including Adler and Pouliot (among others, 2011a, b)). Bourdieu’s critical approach takes practice as organized and patterned (Pouliot 2014). It exhibits certain regularities (routines) over time and space (Adler & Pouliot 2011). It is structured by power and domination (Bueger & Gardinger 2015). Furthermore, this approach suggests stability, regularity, repetition and reproduction as the norm of practice (Bueger & Gardinger 2015).

The above characters are why the idea of ‘practice’ cannot accurately describe the interactor relations identified in this research. The empirical findings from my field research show that the actions and interactions between and among Norm Interpreters cannot be necessarily considered routine, everyday practices, nor be classified as ‘the infrastructure of repeated interactional patterns’ (Pouliot 2016:50). Instead, they are mostly situational (in response to various unexpected crisis situations), which rely more on reflectivity and creativity than on structure and habit.
In this case, the behaviour of the Norm Interpreter better fits with the Aristotelian pragmatist approach to practice (or, as Aristotle called it: *praxis*). This approach is discussed in literatures on Practice Theory, but functions as a theoretical ‘straw man’ in order to strengthen the critical insights of the Bourdieuan approach (read, among others: Bueger & Gadinger (2014, 2015), Epstein (2012), Pouliot (2012), Reckwitz (2002)). When compared to Bourdieuan, the Aristotelian approach slightly devalues the centrality of ‘practicality’, and suggests the idea of ‘reason’ to be a decisive factor for praxis. According to Brown (2012),

> actors may seem to be acting on the basis of habit, but this habitual knowledge is developed consciously through processes of reasoning … [Therefore] to focus on ‘practices’ is, at its most basic, to study what people do and why they do it (p. 441-2, emphasis added).

As opposed to Bourdieuan practical knowledge, Aristotelian, pragmatist PT highlights the importance of ‘practical reasoning’ adopted by actors. This might particularly involve actors’ ‘judgement and reflection’ (Frost & Lechner 2015:338) in interpreting situations or controversies (Blokker 2011).

In this research, it is argued that the practical reasoning behind the interactor relations was mainly that of normative judgement. This refers to actors’ understanding of the value of global norms on human rights, the value of local norms, the incompatibility of the two values, and an understanding of the need to bridge the gap. This norm-driven behaviour is the output of actors’ logic of appropriateness (LoA, discussed in Chapter 2). That is another point where this research does not necessarily fit with the mainstream Practice Theory (which proposes the centrality of logic of practicality\(^30\) (LoP)) to explain practices taken by actors (Pouliot (2008)). As opposed to LoA, LoP sees practice as not based on a "should", but, instead, on a "could" (p.277). Practices are the result of what is perceived to be a thoughtless, inarticulate, self-evident

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\(^{30}\) Pouliot introduced this sense of practicality because, as he argues, “… in social and political life, many practices do not primarily derive from instrumental rationality (logic of consequences), norm-following (logic of appropriateness), or communicative action (logic of arguing).” (2008:257)
(common-sensical), automatic, and practical unconscious knowledge; it is simply ‘what actors do’ (p.269-72).

This sense of practicality is not generally apparent in the interactor relations found in this research. Indeed, some actions and interactions – particularly those regarding the behaviour of members in the Advocacy Coalition – were influenced more by practical spontaneity and intuition, than by (though not lacking completely) normative appropriateness. However, such character is not primary, and is certainly not identified in the behaviour of the other two Norm Interpreter subgroups. Hence, I argue that the logic of practicality is not found to be influential in this research.

- **New Regionalism Approach**

Apart from Practice Theory, by focussing on the micro aspect of the study of regionalism, this research falls largely in line with the New Regionalism Approach (NRA). The NRA is a theoretical approach on regionalism, characterised by its reflective and process-oriented method. The previous (and arguably more established) methods are\(^3\) Functionalism (proposed by Mitrany (1975)), Neofunctionalism (Haas 1958), and Transactionalism (Deutsch 1968). Compared to the other three, the NRA’s assumptions better fit the intention of this research, in at least three ways.

*First*, methodologically, the NRA offers an open-ended framework that allows observers to investigate regionalism from various differing, as well as ‘comparative’ (Söderbaum 2007:325), perspectives – such as, in this research, a microscopic reading on interactor relations. Unlike Functionalism and Neofunctionalism, which see regional integration as the ‘natural product’ (Palmujoki 2001:4), or ‘organic’ process (Dosenrode 2012:18), or ‘logical response’ (Eilstrup-Sangiovanni 2006b:90) of functional economic cooperation, the NRA portrays regionalism as a ‘multifaceted and comprehensive’ phenomenon (Acharya and Johnston 2007:9-10) which comprises ‘multidimensional processes’ (Schulz, Söderbaum, and Öjendal 2001:14) such as

\(^3\) For a discussion of these approaches, see Eilstrup-Sangiovanni (2006a)
perceiving, interpreting, and reinterpreting the idea of a region and region building (Hettne and Söderbaum 2000, Söderbaum 2003, 2012).

Second, ontologically, the NRA serves the needs of this research because it allows actors other than states to be considered as the main unit of analysis. This contrasts other traditional approaches, which place only states in the centre of attention. Therefore, they are trapped in an order that is imagined as a Westphalian order – particularly, the order of European societies as prerequisites for an integration (Breslin, Higgot, and Rosamond 2002).

Third, epistemologically, the NRA should be applicable to portray Southeast Asia because the approach is more ‘global and pluralistic’ (Söderbaum 2003:4). The NRA allows us to understand each regionalism not as ‘idiosyncrasy’, but rather as ‘a manifestation of the global phenomenon that varies in terms of its main actors, main purposes, or main counterparts’ (Engel et al. 2017:9). This is unlike Functionalism and Neofunctionalism, which are highly considered ‘Eurocentric and narrow’ in focus (specific to economic arrangements and security alliances) (Söderbaum 2003:4).

The NRA also offers a fresh view on the pluralism of state and non-state actors in a political process (Klecha-Tylec 2017), as well as the ‘multiple and co-existent levels and forms of regional co-operation’ (Dent 2016:14). These two basic assumptions are necessary to support this research but were not considered as important by the other approaches.

Another NRA’s value, the one on social interaction between people, is also at the centre of Transactionalism. Transactionalism further believes that regional integration is about developing security communities among people. Here, a formal body – such as regional institution – is not necessarily required (Deutsch et al. 1969). To some extent, this research agrees with transactionalists that a community is ‘a state of affairs’ (Deutsch 1968:192), but disagrees with their unenthusiastic view of the importance of regional institutions.

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32 More on Constructivist idea on regionalism as social processes, read, for example Johnston (2001), Barnett (1995), He (2017), Schulz, Söderbaum, and Öjendal (2001), and Mittelman (1996).
For contextualizing my case study, two of the NRA’s constructivist assumptions on regionalism are significantly helpful. The *first* and highly important assumption is that it perceives regional fora as a social arena, which allows a dynamic, interactive setting for social exchanges and interactions between actors (Barnett 1995). The *second* and equally important assumption is on the production and reproduction of ideas, identities, and interests among the actors throughout the process of regionalism.

Because of these two underlying assumptions, many would argue that Constructivism has raised a fundamental challenge to the ‘rational’ way positivist studies of IR perceive inter-state relations, including regionalism. It provides a more holistic explanation of what regionalism is, how it transpires, and why. Constructivism has indeed dominated the study of ASEAN regionalism (see, for example, Davies (2013a) and Acharya (2009)). This approach serves to break the ‘all or nothing’ thinking that has long-since characterised the study of the region (Davies 2013a).

Tarling (2006), for example, argues that Constructivism allows researchers to perform historical analyses of *human beings* (actors/agencies) and their collective perception and actions. Based on this, Tarling arrives at an interesting conclusion that ASEAN regionalism has developed upon the basis of ‘decolonisation and the creation of nation-states’ (p.213). Similarly, applying Constructivism in his research, Davies (2014) proposes that beyond ‘the centrality of rational choice’ (which involves ‘material’ rewards and punishments), regionalism could be understood as the socialisation of ideas, which include ‘discursive engagement’ – specifically, when regional organisations become the ‘site of discussions’ between actors (p.3,4). Applying this approach, Davies explains the failure of ASEAN in its efforts to encourage Myanmar, one of its member-states, to comply with at least the minimum human rights standards.

The application of a similar constructivist approach helps Katsumata (2003) to conclude that ASEAN regionalism – particularly in its response to imposed global norms on the region – relies on the interaction among member-states *over time*. Drawing up a model called the *Language Pendulum*, which explains the power of

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33 Constructivism also widely applied in other areas of ASEAN related studies (apart from on regionalism), read, for example, Busse (1999), Eaton & Stubbs (2006), Haacke (2003), Rosyidin (2017), Driver (2018), and Rum (2016).
language and discourse in international politics, Villanueva (2014)\textsuperscript{34} highlights the centrality of an ‘ASEAN Consensus’ on regional negotiations during the drafting of the ASEAN Human Rights Declaration in 2012. Unfortunately, according to Tan (2006), by focussing only on states as primary actors in the region, Constructivism fails to ‘deliver on its promise’ (p.254) of deconstructing ASEAN security integration and taking us beyond the shortcomings of rationalism. This is one defect of constructivism that the NRA tries to address.

Applying the NRA allows me to challenge the approach to study of regionalism, which has mainly taken the ASEAN regionalism process for granted, as discussed below. I argue that research in this area – without enough sensitivity for the value of immaterial, social, historical, and ideational elements – risks seeing the process mainly as a given, and fails to go beyond the logic of state-interests.

The ASEAN regionalism process, for example, is commonly viewed as highly state-centric. Some argue that, first, member-states are more interested in pursuing bilateral or trilateral arrangements than building a supranational governance; second, member-states want ASEAN to remain essentially intergovernmental, rather than developed into a ‘mature’ community (with an established common identity); and third, the regional negotiation processes are conducted in a highly bureaucratic manner (see, for example, Jones and Smith (2007:184)).\textsuperscript{35} This research aims to question this view of state-centrism by showing that, although the willingness to reject a beyond-intergovernmental, supranational institution was initially dominant, it was not left unchallenged and undebated by critical non-state actors and, in some rare cases, even by fellow member-states. As shown in the empirical chapters, the challenges occurred through processes which were formal, official, and bureaucratic in approach, combined with actions that were bottom-up, informal, and unofficial in nature. The establishment of AICHR generally proves that, in 2009, ASEAN member-states

\textsuperscript{34} During the writing of this thesis, Villanueva PhD Thesis on this matter is still under embargo. The information quoted here is mostly based on my personal conversation with him.

\textsuperscript{35} Although it is known to have more than a thousand of meeting annually, it has only a few legal treaties, as well as ‘explicit rules, specific assignments of roles of individuals and groups, and the capacity for [collective] action’ (read, for example, Keohane (1988)). ASEAN relies more on declarations, statements, and action plans which reflect regional willingness to promote solidarity, and friendship, but very little about formality.
officially agreed to ‘being ruled’ by a regional (supra-state) governance. However, this was only at a minimum level.

Related to this, ASEAN regionalism is also commonly perceived as representing the interests of its stronger member-states, wherein ‘powerful states [do] what they will, and less powerful states [do] what they must’ (Beeson 2009:337). Under these circumstances, the weaker states are left voiceless and regionalism is, therefore, ‘what stronger states make of it’ (Jones and Smith 2007:184). This view is rather contradictory to the findings of this research, which instead shows how the interests of the (considered) weaker member-states ‘held too much sway and influence in watering down’ (Morada 2009:188) the direction of AICHR’s establishment process.

The most commonly held view on ASEAN regionalism is that it functions more as ‘a spaghetti bowl’ (see, for example, Sbragia (2008:37)). Its main aims are to respond to the demand of global finance governance, the pressure of economic interdependence (see, among others, Harris (2002, 2000)), economic crises, or to balance economic growth with ‘maximising the wealth of particular groups’ (the domestic business class in particular)’ (Nesadurai 2003:16). Again, this research challenges this functionally-oriented findings.

Many studies around ASEAN and its slow progress in establishing a regional human rights mechanism, and, later, around AICHR itself, are in support of one or more of the three mainstream assumptions discussed above. Although they appear to take constructivism as the main approach (see earlier discussions), elaboration on how and why ASEAN agreed to have AICHR is mainly state-centric. This demands that only member-states be placed as the focus of the study, with ASEAN being viewed as a functional ‘spaghetti bowl’ institution. Such studies then arrive at a relatively similar conclusion – i.e. that AICHR was the output of member-states’ rational behaviour. However, some try to soften the tone by arguing that the rationality was in accordance

36 The term used by Morada (2009) to describe the decisive influence of the ASEAN’s new (considerably weaker) member-states during the drafting process of the ASEAN Charter, as they insisted on preserving the ASEAN Way.
with constructivism’s logic of appropriateness, rather than realism’s logic of consequence (see Chapter 2).

Some studies have argued that AICHR was established not only because of ASEAN’s need to respond to inter-member-states dynamics, but, more importantly, because ASEAN was concerned of its position in global power relations. Because having a regional human rights body was a standard practice of regionalism, ASEAN did not want to be the last significant regional grouping without it (Munro 2011). AICHR, then, was mainly influenced by ‘the realpolitik’ of the international system on the behaviour and preference of ASEAN member-states (Tan 2011b). AICHR was needed to ‘strategically … secure political ends, notably the legitimacy of ASEAN in the eyes of both its citizens and external actors’, as well as to solve certain pre-existing issues triggered by the 1997 financial crises (Davies 2013a:208). As such, by applying the sociological approach on institutional isomorphism, Katsumata (2009) argues that to enhance its legitimacy …

ASEAN members have ‘mimetically’ been adopting the norm of human rights which is championed by the advanced industrialised democracies, motivated by their desire to be identified as advanced and legitimate. (p.625).

Other studies highlight the drawbacks of this. Placing effort on entertaining the external pressure, while, at the same time, facing internal challenges, had left AICHR to become an institution with ‘a tongue but no teeth’ (Durbach, Renshaw, and Byrnes 2009:211). The combined factors, which are ‘… acknowledging international and civil society sentiment, the imperatives of domestic economic growth and national stability … [as well as] a 'state-centric resistance' to interference in domestic affairs

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37 The authors use this term in reference to the statement of Singapore's Foreign Minister, George Yeo, during the establishment process of AICHR. He said, as quoted from the article, ‘I'm not sure if it will have teeth, but it will certainly have a tongue. It will certainly have moral influence if nothing else’ (Durbach, Renshaw, and Byrnes 2009, p.214). I assume the foreign minister’s statement was in reference to the demand put forth by the local and regional civil society organizations for ASEAN to establish a human rights commission ‘with teeth’ (see Chapter 5).
…’ (p.224) created an AICHR with more consultative than prescriptive rights protection.

Back in 2002, Acharya had identified this issue. He argued that ASEAN regionalism was ‘increasingly being challenged and conditioned by the sovereignty-modifying effects of globalisation and … “humanitarian intervention”’ (Acharya 2002:20). However, in relation to human rights protection, he argues that ASEAN regionalism is still strongly defined by the ‘long-standing commitment’ to non-interference (Acharya 2002:27). This was clearly seen during the ASEAN’s attempt to construct ‘One Southeast Asia’ by enlarging its membership to include Cambodia, Laos, Myanmar, and Vietnam. In this, the commitment to respect human rights and democracy was deliberately left off the table, while, as he noted, the agreement was required to market capitalism (2002). This decision caused a stream of international protests, but ASEAN remains firm in its decision.

Acharya later concludes, rather contradictory to the authors discussed earlier that ‘… neither power politics nor functional imperative adequately explains the institutional trajectory and outcomes of [ASEAN] regionalism.’ (2009:7). This research is in agreement with Acharya. Chapter 4, 5, and 6 – examining the actors’ behaviour – show that, although power politics do exist and, to some extent, influence the relationship between the Policy Network and the Advocacy Coalition, with the Political Community, it is certainly not the defining factor in AICHR’s establishment. This thesis provides evidence that AICHR was not a product of simple power politics and functionalism, but is an outcome of a rigorous interaction among Norm Interpreters, who incorporated the interests of the region’s state actors and its people.

Despite attempts to explain why ASEAN agreed to establish AICHR, very few studies have sought to assess the establishment process of this institution. The studies have mainly focussed on the role of non-state actors, particularly the Working Group (the WG). In this research, the Working Group is identified as one of two entities in the Policy Network (Track-2). Similar to most studies on the role of non-state actors in ASEAN (as discussed earlier), in the study of AICHR, other groups of actors are largely addressed indirectly, if at all.
For example, by discussing the WG’s methods of approaching ASEAN leaders, Davies (2013b), Phan (2008), and Tan (2011a,b) conclude that the WG played a crucial role in the steps leading to AICHR’s inauguration. Davies and Phan further argue that this contribution can be recognised since 2004, three years prior to AICHR’s conception, when ASEAN first included the term ‘human rights’ in its official document (discussed further in Chapter 2). In their elaboration on the role of the actor, these three authors tend to describe the WG’s actions in chronological order – an approach this thesis deliberately avoids, as it will distract from examining their negotiation strategy.

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The purpose of this thesis is, first and foremost, to examine the behaviour of Norm Interpreters and how this behaviour contributes to the process of regionalism, particularly of Southeast Asia. Situating this topic within the chosen case study, my core argument is that the action and interaction among individual Norm Interpreters is a vital, yet thoroughly understudied, aspect of how the ASEAN regional human rights body came to be defined and institutionalised. The final form of AICHR inaugurated in October 2009 came to fruition as a result of this interactor relation – which are the focus of study in this thesis.

During the course of this thesis, I have engaged concepts from the disciplines of Politics, Sociology, Law, Communications, Philosophy, ASEAN Studies, and, mainly the study of International Relations, as well as related empirical studies, concepts, and approaches discussed briefly in the subsection above. By examining the behaviour of a specifically defined group of actors, using a microscopic reading-sociological approach, this thesis will contribute to the macro-level study of regionalism (in Southeast Asia), particularly on the aspect of policy-making mechanisms.

The following subchapter provides a more detailed overview of the methods and methodology I applied in this research project.
1.5 Methodology of the Thesis

Jorgensen-Dahl (1982) suggests two ways for approaching the issue of ASEAN regionalism. It is either by …

... start[ing] with specific generalisations and hypotheses taken from the wider body of already accumulated knowledge about regional cooperation, organisation, and integration and proceed to test them within the context of Southeast Asia … [or by examining] … the conditions and processes in Southeast Asia and relat[ing] the results to relevant elements [in] the wider body of theoretical understandings’ (p.xiv).

This thesis follows the second path, for two reasons. First, following the chosen New Regionalism Approach (discussed above), I seek to avoid situating my research within a fixed, pre-determined framework (although having a working hypothesis is acceptable). Second, and most importantly, in relation to the character of the chosen case study – which is relatively specific and the period (eight months) relatively short – this is an approach that enabled me to develop original research claims without being strictly guided by certain theoretical hypotheses.

To assess the role of Norm Interpreters in AICHR’s establishment process, this research is composed of and divided into three parts: the context of the norm interpretation process, the process itself, and the output of the process. Relations between the three parts are represented in the model of analysis below.

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38 The first part of the title of Checkel’s (2005) article.
First, regarding the context, this research is developed based on an assumption of incompatibility between the values of the global norms being imposed to the region and the existing local/regional norms. In this research, local norms are identified as a variable that serves to challenge the regionalisation process, which further leads to complications in the whole endeavour. This challenging context highlights the significance of this research when questioning the role and contribution of the Norm Interpreters in AICHR’s institutionalisation process.

Second, the process elaborates on the actions and interactions between actors and across groups of actors as intermediary agencies. The assessed behaviour took place mainly within the time frame of July 2008 (when ASEAN first officially agreed to create a regional human rights body and mandated the High-Level Panel (HLP) to draft the Terms of Reference (ToR) for the body), and February 2009 (when the ASEAN Foreign Ministers endorsed the proposed ToR during the 42nd ASEAN Ministerial Meeting in Thailand). The actors’ actions and interactions during the process will be examined, following the research methodology explained in this subchapter.

The third part is the output, which is the AICHR that was inaugurated in October 2009. Comparing AICHR’s Terms of Reference to those of other regional human rights bodies (see Chapter 2), it is clear that AICHR is still far from ideal – or ‘toothless’ (to borrow the term used by the Advocacy Coalition, which represents their dissatisfaction
toward the new institution, see Chapter 5). This output is, for some, certainly disappointing. Existing literature mostly agrees in placing blame on the ASEAN Way and Asian Values, as they are the influential regional norms that presumably caused this rejection of global norms.

Although I cannot disagree entirely with this perspective, this research portrays the outcome in a rather different light. As one observer has argued, ‘[h]alf a loaf is better than no loaf’. That is to say, ASEAN reaching an agreement to establish a regional human rights body in 2009 should be recognised as an achievement in and of itself. It was the result of a series of negotiations and bargaining processes, established by the actions and interactions among the three subgroups of the Norm Interpreters. Hence in spite of the widespread, and often justifiable, criticisms made of AICHR from a range of academic and non-academic commentators, the establishment of AICHR nonetheless constitutes a worthy topic of study, demonstrating as it does the relationship between actor behaviour and normative transformation(s). In other words, the rather undesirable output does not diminish the significance of this research.

1.5.1 Research Paradigmatic Approach

To assess the behaviour of the Norm Interpreters, this research applied an interpretive research approach. This approach acknowledges the influence of subjective meanings (to include all sorts of beliefs and attitudes, orientations or resentments towards certain policy and/or theory, etc.) in actors’ decision-making behaviour (Neufeld 1993). In defining an actor’s decision, however, more important than subjective meanings is the intersubjective meanings, defined as a ‘context-specific’ bundles of ideas, norms, and practices which are the ‘common property’ of the society (Neufeld 1993:46, also see Hall (2015)).

39 ‘[W]hile the rest insist to have the whole loaf, otherwise it is no loaf at all’ – quoting Yuyun Wahyuningrum, the Jakarta Post, 6 February 2018.
This ‘web of meaning’ is ‘embedded in and instantiated through social practices which are part of the public realm’ (Neufeld 1993:47). This includes society’s shared and agreed properties, such as languages, symbols, institutions, modes of social relations, mutual actions, etc. According to the interpretive approach, to explain and assess an individual’s behaviour means interpreting ‘the meanings that behaviour has for actors and those with whom they interact’ in order to espouse ‘alternative norms and practices to those currently in operation, which some actors develop and utilise to contest the agreed norms and practices that make up social institutions’ (Hall 2015:35).

Applying this approach here is appropriate, because it rationalises the researcher’s attempt to elaborate on the Norm Interpreters’ characters, to assess the context (the decision-making culture in ASEAN and within the network of individuals in the region), and to examine how the two interrelate and influence the Norm Interpreters’ behaviour in reinterpreting the global norms on human rights, so as to be accepted in the region, as proven by the establishment of AICHR.

To serve this need, as highlighted by interpretive methods, interviews might be the primary method of gathering data. Through this method, the researcher can best investigate participants’ interpretations on the assessed issues, which might include actions and events, opinions and aspirations, as well as the role of other participants (Walsham 1995). With the data gathered from interviews, as well as substantial supporting data and information gathered from secondary resources (see the discussion on the congruence method below), I drew certain generalisations. Interpretive methods allow four types of inductive generalisations: the development of concepts, the generation of theory, the drawing of specific implications, and the contribution of rich insight (Walsham 1995).

Considering the nature of this topic, my research’s output will be on the third generalisation, and will provide ‘a good description of a “generative mechanism” in the case study which was investigated, and it may prove a useful insight for related work in other organisations and contexts’ (Walsham 1995:80). When applied to
assessing other, similar contexts, my generalisation may be unable to suggest future predictions; however, it will be sufficiently justified indicating solid tendencies.40

1.5.2 Research Method

To put this interpretive approach into practice – specifically, constructing the relations between concepts in the box indicating the process (the big square box in the middle, in Figure 1.1, p.34), this research will apply a single-case study method with a process-tracing approach.

Case study methodology is ubiquitous in research (Bennet and Elman (2007)). A case can be understood as ‘a specific phenomenon (a unit) that is spatially and temporally delimited and provides single or multiple (within-case) observations’ (Ulriksen and Dadalauri 2016:225). A case-study approach is used to investigate a particular ‘contemporary phenomenon’ (Yin 2018:13) or ‘well-defined aspect of a historical happening’ selected by the researcher, and not the historical happening itself (Bennett 2008), so as to explain how causes interact in the context of one particular case or a few cases to produce an outcome (Bennett and Elman 2006). A single-case study is a research strategy that involves analysing just one ‘deviant or outlier’ case when the case is ‘unusually revelatory, or when it is extremely exemplary, or when it offers opportunities for unusual research access’ (Mariotto, Zanni, and de Moraes 2014:361). Research on this particular case ‘can help inductively identify variables and hypotheses that have been left out of existing theories.’ (Bennett 2008:30).

To assess a single-case study, there are three possible methods: a process-tracing method, congruence testing, and counterfactual analysis (Bennett 2008). To assess the behaviour of Norm Interpreters in the institutionalisation process of AICHR, this research applies a combination of the first two methods. The process-tracing method is a ‘systematic examination of evidence’ (Ulriksen and Dadalauri 2016:224) to better understand processes that link different relevant factors to the outcome (Beach and

40 In practice, as suggested by Walsham, my generalization will use verbs such as ‘can’ rather than ‘will’ (Walsham 1995:80).
It is ‘the use of evidence within a case’ (Bennett and Checkel 2014:4) which ‘… provides the how-we-come-to-know nuts and bolts for mechanism-based accounts of social change … [and] directs one to trace the process in a very specific, theoretically informed way’ (Checkel 2005:5). It is claimed to be ‘the only observational means of moving beyond co-variation alone as a source of causal inference’ (George and Bennett 2005). The aim is to draw out the processes, rather than identifying values of certain variables (Gerring 2007) ‘to establish which of several possible explanations is consistent with an uninterrupted chain of evidence from hypothesised cause to observed effect’ (Bennett 2008:22).

More specifically, theory-building process-tracing (TBPT) is an effort ‘… to build a theoretical explanation from the empirical evidence of a particular case, inferring that a more general causal mechanism exists from the “facts” of the case.’ (Beach and Pedersen 2011:2-3). Furthermore, TBPT involves ‘… attempts to identify the intervening causal process – the causal chain and causal mechanism – between an independent variable (or variables) and the outcome of the dependent variable’ (p.4). TBPT serves the needs of this research, as it can be used in a situation ‘… when we know that a correlation exists between X and Y, but we are in the dark regarding potential mechanisms linking the two …’ (an ‘X-Y Centric’ model) (p.11).

This research has identified the key concepts for both the X and Y (see Chapter 2) and constructed a proposition that the X is being reinterpreted in such a way to allow the creation of the Y. This research attempts to investigate ‘the empirical material’, so as to identify the potential interpretation mechanism transpiring between them, particularly by examining the behaviour of the actors.
One variant of theory-building-process-tracing that is deemed to be relevant to the focus of this research is ‘practice-tracing’ (Pouliot 2014). Practice-tracing is a distinct methodology for Practice Theory (discussed in subchapter 1.4 above). The aim is to identify ‘an appropriate conceptualization’ of actor behaviour (practice) by recognizing, interpreting, and reconstructing the identified moments, so as to ‘turn[…] implicit knowledge into explicit’ (Bueger (2014): 391). This suggests three methods of data collection (Pouliot 2012, 2014, Bueger 2014, Bueger & Gadinger 2014).

Those are, first, ‘seeing, observing and learning practices’ through participant observation. This is the most preferred and primary method of practice-tracing, as it allows for direct access to ‘the body movements and actions that perpetuate a practice’. For various reasons, this method is acknowledged as often not applicable. Second, ‘talking about practices’ through expert interviews. This method is considered an alternative for participant observation. Third, ‘reading practices’ through textual analysis. This is the least-preferred method because, although documents can provide hints and clues about practices and their implicit meaning, they are still unable to

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41 Practice-tracing is somewhat applicable in this research, because it takes paradigmatic approaches that are similarly applied in this research: it focusses on the reconstruction micro-processes (Pouliot & Cornut 2015) through a bottom-up, inductive, and interpretative method, in an attempt to construct analytical generalisation (Pouliot 2014)

42 This method is also known as praxiography: the common task of describing praxis (practice) mentioned earlier in subchapter 1.4. Read Bueger (2014) and Bueger & Gadinger (2014).

43 According to Nicolini (2009), since practice is a ‘complex affair’, “… its multifaceted and complex nature … can never be captured by a single method or reproduced through one single style of writing.” (p.196)
provide the practical sense of ‘sayings and doings’ (Bueger 2014:389) required by practice-tracing.

Mainly for historical reasons (the AICHR establishment process took place in a distant past), participant observation was not a viable research method for this project. This leaves only two possible methods of data gathering: expert interviews and textual analysis. Unfortunately, the conduct of my field research showed that expert interviews are equally problematic. During the interviews, I heard first-hand stories and learned about first-hand insights and perspectives regarding events during the process. However, I found this method also failed to provide me with sufficient empirical evidence (implicit knowledge) concerning the detailed practices that occurred, which I required to carefully reconstruct the norm interpretation process. This is mostly the result of two interrelated factors: cultural appropriateness and human limitation.

Regarding the first factor, within a Southeast Asian cultural context, individual actors are generally uncomfortable critically examining other actors’ behaviour openly (especially their colleagues). They are even more uncomfortable discussing their own contribution to the process. The second (and perhaps most important) factor is related to the limit of actors’ memory and their ability to recall details on exact events that transpired more than five years ago.

Under these circumstances, I have relied more heavily on secondary resources. This situation is not ideal, as text can never represent the level of practicality that is expected by practice-tracing. Unfortunately, practice-tracing offers no solution for this situation. Indeed, while I certainly acknowledge the methodological strengths of practice-tracing in analysing how policy actors shape and constrain specific events, it is important to also acknowledge the significant limitations of such an approach in reproducing practical knowledge and reconstructing occurrences that transpired in a (distant) past.44 With these concerns in mind (and in addition to the criticisms of PT

44 In his book, published in 2010, Pouliot applied Practice Theory to trace diplomatic practices and interpret the context, so as to explain how and why recurring symbolic power politics gripped NATO-Russia relations in the post-Cold War era. In this, he concludes ‘it is not only who we are that drives what we do; it is also what we do that determines who we are.’ (p.5). Unable to conduct participatory observation, Pouliot reconstructed the flow of practices through interviews and document analysis. According to Schindler and Wille (2015), although
offered in section 1.4 above), I have limited the extent to which my thesis engages with the practice theory. Whilst clearly recognising certain commonalities between my project and the work of PT scholars, I also acknowledge that there are certain limitations regarding the extent to which my project is fully compatible.

To fill the gap, as suggested by process-tracing, this research applies a method of congruence analysis. Congruence analysis allows the researcher to apply general knowledge and/or existing concepts/theories to explain what transpires between X and Y; it also allows the application of ‘logical inference’ in order to predict what should and should not happen. Combining the congruence analysis and process-tracing method maximises the use of direct evidence, while paying close attention to any information that would support or discredit a ‘proximate cause’. (Drezner 1999:253).

In doing so, this research borrows a methodological approach from the field of Sociology, known as microscopic reading (see, for example, Bøås, Marchand, and Shaw (2003)). This approach is useful for constructivist observers who believe that a process is determined primarily by the agency and less by structure (Hveem 2003, 2006), and therefore deliberately disregard the study of, for example, the historical structures and the orders’ construction, instead employing a micro-oriented analysis to the study. Microscopic readings allows us ‘to capture emergent patterns, differential meanings and strategies’ (Long 1992), to go deeper into the empirical level for ‘a glimpse of the reality about which we speak’ (Knorr-Cetina 1981:41-42).

Pouliot offers an insightful historical narrative of transformations in the relations between NATO and Russia, his theoretical conceptualizations “… fail to grasp how precisely change happened in practice.” (p.332). This is because, as they further argue, making the past present can be ‘a contentious process’ (p.346), and the relationship between past and present ‘is contested’ (p.350). This is one of the limitations of the Practice Theory.

This approach is not favored by Practice Theory because investigating practices “… demands a method that reads the social world through real human beings, interpreting their ‘doings’ not in reference to abstract criteria, but in reference to the local criteria of the social environment in which they are positioned.” (Mattern 2011:82).

This method of analysis is commonly applied to testing competing theories, as it is good to provide some ‘empirical evidence’ to explain the ‘relevance or relative strength’ of one theory compared to another theory (Blatter and Haverland 2012). It also allows researcher to analyse which of the theories best predicts ‘the variance on the dependent variable given the variance on the independent variable’ (George and Bennett 2005).
This actor-oriented approach suggests that rather than viewing actors’ intervention on a process as merely the implementation of an action plan, it should be visualised as ‘an ongoing transformational process in which different actors’ interests and struggles are located’ (Long 1992:5). It is argued that focusing on the role of the actor in regionalism means understanding the process by which knowledge is negotiated and jointly created ‘through various types of social encounter’, as well as understanding the dynamics of the power relations involved in the process (Long 1992:9). To be even more microscopic, to thoroughly study regionalism from below, the status of agency should not only be given to elite actors and the more official aspects of this; it should also be given to non-elite individuals and their more informal activities.

To better contextualize the data gathered from this approach and to draw a theoretical explanation on the strategy of action and interaction among actors, this research, again, borrows some middle-ranged and detailed theories – this time, from Political Science. These are: Compston’s (2009) Policy Change Theory (to analyse the behaviour of the Policy Network, see Chapter 4), Rietig’s (2011, 2016) Activists-Lobbyists Model (for the Advocacy Coalition, see Chapter 5), and Tsebelis’ (1995, 2002) theory of Veto Players (for the Political Community, see Chapter 6). The act of loosely picking these concepts is justified by the ‘combinatorial logic of analytic eclecticism’ introduced by Sil and Katzenstein (2010:415). This pragmatist approach appropriately fits studies, such as the one presented here, which are …

in the search for middle-range theoretical arguments that potentially speak to concrete issues of policy and practice … [which is not] designed to test theories or fill in gaps within research traditions … [but rather tries to] incorporate more of the complexity and messiness of particular real-world situations. (p.412).

47 To conceptualise this particular group of non-state actors, Bøås, Marchand, and Shaw (2003) use the term of ‘ordinary people’ (p.208) without further clarification of who exactly they refer to by applying this term. Because of the ambiguity of its reference, this concept will not be adopted in this thesis. Instead, as found in this chapter, this thesis will interchangeably use terms such as ‘non-elite’ and/or ‘non-state’ actors/individuals.
1.6 Research Significance and Contribution

To reiterate what has been discussed above, the overall purpose of this thesis is, first and foremost, to produce an analytical narrative about the significant role of a group of key individuals in the process of regionalism, particularly in the case of regionalising global norms on human rights in Southeast Asia. Important outputs of the study are the introduction of the new concepts of Norm Interpreters as well as Norm Interpretation. These concepts are then drawn upon in ways that enable me to develop a Bowtie Model of Southeast Asian Norm Interpretation (a concept that is developed further in chapter 3).

Leading to that output, this thesis provides a number of contributions, which can be divided into four categories: empirically, methodologically, conceptually, and theoretically.

First, empirically, I believe this thesis provides a comprehensive analysis of the behaviour of a group of influential agents of change (identified here as Norm Interpreters) in the ASEAN regional policy-making process. To do so, I draw on original interview data and various primary and secondary publications, both academic (such as journal articles and books) and non-academic (such as newsletters, minutes of meetings, conference proceedings, training handbooks, speeches, etc.). This thesis stresses and emphasises the role of individual actors, and determines the different way to which the different groups of actor contributed to the unique areas of regional mechanism. In addition to the commonly assumed negotiation and bargaining approaches, this thesis also identifies the effects of unofficial, informal, and bottom-up approaches to the aforementioned process.

Drawing from the empirical findings, this thesis thus challenges the traditional approach of IR theory on the study of regionalism, arguing that the traditional approach fails to capture the detailed process of regionalism, particularly – as taken in this research – from a perspective that highlights the significant contribution of the role of ‘individual’ in the process. The traditional approach’s failure leads to one-sided claims about the process of ASEAN regionalism, among others being: that ASEAN is only processing and not progressing in its regionalism, and that ASEAN regionalism is a
highly formal, top-down process. This research finds these two claims as not necessarily accurate. The application of a microscopic reading approach enables this research to explore the minutiae that would be rendered invisible if the research focussed primarily on dominant factors in the study of IR, such as national interests, regional security, and state sovereignty. Hence, this thesis also contributes to the growing importance of (considered) less mainstream IR concepts, such as, ‘new regionalism’, ‘norm promotion’ and ‘norm translation’, ‘communicative action’, and ‘intermediary agencies’ as discussed earlier in this chapter.

Second, methodologically, this thesis supports the application of a sociological, microscopic approach in the IR study of macro-regional systems. The approach is very powerful in displaying that state actor (commonly taken as the key unit of analysis in the traditional study of IR) is not unitary, even within the context of regionalism, wherein the decision-making process is usually assumed as solely state-centric.

By ‘decomposing’ the state, this approach appropriately supports the theory-building process-tracing method applied in this research. It accomplishes this by providing ample evidence to develop a comprehensive picture on what transpired in the three different tracks of diplomacy during the interpretation process of global norms on human rights – thus resulting in the agreed Terms of Reference for AICHR. The application of this microscopic approach allows a series of different norm interpretation processes to be identified (which include bottom-up, top-down, as well as horizontal). This thesis centres on a specific and well-defined case study and appraises events that took place within a specific timespan. This degree of focus enables me to thoroughly research a topic that nonetheless speaks to wider, more ‘global’ research themes.

Third, conceptually, this thesis contributes to the improvement of conceptual definitions in Johnstone’s interpretative community – by elaborating in-depth on some possible actions and interactions that can be taken by members of the Political Community, the Policy Network, and the Advocacy Coalition in their effort to interpret global human rights norms. This is obviously applicable within the context of ASEAN regionalism, which involved local values, such as Asian Values and the ASEAN Way.
This thesis also contributes to a critical understanding of the commonly-used concept of multitrack diplomacy, which, as proven here, offers a useful description of actors’ grouping, but lacks sufficient tools to analyse the role and contribution of actors in ASEAN regionalism.

Fourth, theoretically, this thesis modestly attempts to demonstrate how, presently, the New Regional Approach strengthens Constructivism as a dominant approach in the study of ASEAN regionalism. The NRA highlights the ‘agent’s’ centrality within constructivism’s agent-structure binary. This thesis shows that the in-depth, bottom-up study of both the state actors’ and non-state actors’ behaviour, as suggested by the NRA, allows us to have a considerably more realistic picture of what truly took place. Within this framework, this thesis also contributes to the development of theory that suggests the addition of microscopic reading as a research methodology – as well as some cross-paradigmatic, middle-ranged, and detailed theories as frameworks – can help conceptualise the behaviour of actors in question.

1.7 Thesis Outline

This thesis analyses the behaviour of what I call Norm Interpreters, in their attempt to regionalise global human rights norms. It seeks to address the question: what steps are taken by Norm Interpreters to interpret the global norms on human rights (the International Bill of Human Rights) to be accepted in Southeast Asia, despite the existence of two very strong local norms (Asian Values and the ASEAN Way), whose internal values are incompatible with global norms? To elaborate on this topic, this thesis contains seven chapters.

Following this introduction chapter, Chapter 2 and Chapter 3 are conceptual chapters, which discuss the two most important factors of these topics: norms and actors. Chapter 4, 5, and 6 serve as the empirical chapters and true heart of this thesis, in which the norm interpretation process (the action and interaction among the Norm Interpreters) is elaborated on in great detail and the research questions are answered. The last chapter (Chapter 7) is a final conclusion which provides a summary of key findings and future directions of research.
In Chapter 2, three norms will be discussed: the global norms on human rights (the Bill), the Southeast Asia local norms (Asian Values and the ASEAN Way), as well as the new, interpreted Southeast Asian local norms on human rights (the AICHR Terms of Reference). This discussion depicts how the values of global and local norms are incompatible, as well as how their incompatibilities generate challenges for Norm Interpreters in the downloading process (the creation of AICHR). To provide context for the discussion on norms in the study of IR, at the beginning of Chapter 2, I provide a brief summary of how the concept of ‘norms’ is perceived in the study.

Chapter 3 provides a conceptual framework for understanding the importance of actors in the norm regionalisation/localisation process – in general, as well as in this particular research. The discussion is a combination of (1) literature reviews on the norm promoter and norm translation concepts in the study of IR, and (2) the particular characters and behaviours of Norm Interpreters in this research – which was concluded based on the microscopic reading analysis. This chapter will show the highly distinct nature of the three Norm Interpreter subgroups (namely, the Political Community, the Policy Network, and the Advocacy Coalition). The unique character of these groups lead them to behave differently in their norm interpretation strategies, which I explain by borrowing concepts from Political Science (the Veto Player Model for the Political Community, the Policy Change Model for the Policy Network and the Activist-Lobbyist Model for the Advocacy Coalition). The three strategies, when combined, make a grand strategy of norm interpretation, which I name a Bowtie Model of Southeast Asian Norm Interpretation.

Following the development of the conceptual framework of norms and actors in chapter 2 and 3, discussion of the findings of the research itself is presented in Chapter 4, 5, and 6 of this thesis. These three chapters contain in-depth evaluations on the research findings, specifically identifying actions within the individual Norm Interpreters groups and the interactions between them. Chapter 4 examines the Policy Network, Chapter 5 the Advocacy Coalition, and Chapter 6 the Political Community. Following the description of their behaviour is a conceptual analysis of their behaviour, then theoretical construction on their strategies in influencing the final output of the AICHR process.
The last chapter, Chapter 7, is a concluding chapter in which I highlight the key findings and contributions of this research, identify a critical assessment of the research process, and suggested possible areas and topics for further research.
Chapter 2:
The Norms: Global, Local, and the Newly In-Between

Where do correct ideas come from?  
Do they drop from the skies? No.  
Are they innate in the mind? No.  
They come from social practice and from it alone.  

- Mao Tse-tung

2.1 Introduction

As discussed in Chapter 1, my research concerns the process of interpreting global norms on human rights in Southeast Asia, which were reflected in the institutionalisation of the ASEAN Intergovernmental Commission on Human Rights (AICHR). Before elaborating on the process itself in the next chapters, this chapter is dedicated to a discussion of the three different norms I have identified as the key focus of this research. Those are: first, global norms on human rights (that are globally promoted and imposed on the region), second, Southeast Asia local norms (which exist locally where the global norms are being imposed and whose inherent value incompatibility with global human rights norms serve as the input of the interpretation process), and, third, the new, institutionalised, regional human rights norms (in the form of AICHR and which are the output of the interpretation process).

In this chapter, I argue that, because of the input (the perceived incompatibility), the global norms could not be instantly accepted in the region. Therefore, a process of bridging, or norm interpretation, is required and an examination of the Norm Interpreters’ behaviour as agents of change is essential. The examined behaviour of the actor then defines the final characteristics of the process’ output (that is, the establishment of AICHR).

48 Quoted from Jones and Smith (2007a:165)
To provide a conceptual context for elaborating on the norms’ incompatibility, following this introduction, I will first provide an initial conceptual discussion concerning why it is that the regionalisation of global norms is never a straightforward process.

To begin with, I will briefly summarise how global norms are understood in the study of IR, particularly from the perspective of Social Constructivism. Constructivism is referred to with the intention of showing how, in IR, the understanding of norms has now transformed from the initially-perceived state-centric concept of explaining states’ policies in relation to their national interests, to a concept that is widely used to support humanity and human interest. The following discussions (regarding the logic of appropriateness, as well as differences between conventional and critical constructivism in their understanding on norms production) provide conceptual insights into what might inspire Norm Interpreters’ behaviour. This discussion highlights the importance of the actors’ behaviour as agents of change in the normative bridging process. It further signifies the relevance of examining the characters that define these actors’ behaviour.

This research suggests that understandings of global norms on human rights derive in large part from the United Nations’ International Bill of Human Rights (hereafter, ‘the Bill’), the first universal, legally-binding collection of norms on human rights. This is not to suggest that there is a clear consensus on what global human rights norms ‘are’, nor does it suggest that the UN’s approach to human rights constitutes ‘settled’ norms (as discussed below). Rather, it is an acknowledgement of how notions of ‘global’ human rights in the ASEAN context are frequently conflated with the Bill.

Thus, I concern myself in this chapter with two primary questions: First, how exactly can the Bill be considered a ‘global’ norm? Second, how, as a perceived global norm, might the Bill be inherently incompatible with local and regional norms? In an attempt to systematically explain these questions, attention will be given to the substance of the Bill more to show how, when compared to the value of the local norms discussed

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49 Social Constructivism is epistemologically about the social construction of knowledge, and ontologically about the construction of social reality (Guzzini 2000:147).
in the following subchapter, the global norms’ values are not necessarily compatible with local norms – at least as it concerns the two dominant local normative frameworks within the Southeast Asian region.

The next part of the chapter therefore discusses these two long-established Southeast Asian local norms, which are the ASEAN Way and Asian Values. These two norms are highly influential in the region, to the degree that they have become the major and most dominant principle of interaction among member-states. Following a brief description on the two traditional norms’ background, the discussion then focuses on key features in the norms, showing how their inherent values are different or, in some cases, even contradictory to global norms.

The last part of the chapter concerns AICHR – the first legitimate human rights mechanism and the newly-established norm on regional human rights in Southeast Asia. I argue that AICHR is the output of an interpretation process that resulted in the (perceived) universal human rights norms (as represented in the Bill) coming to ‘fit’ with the values promoted by Asian Values and the ASEAN Way. This subchapter elaborates on the substance of AICHR’s Terms of Reference, which define the unique characteristics of AICHR.

2.2 Regionalisation of Global Norm: the Context

2.2.1 Social Constructivism and the Study of Norms

Approaches to the study of norms and the regionalisation of global norms (as part of a wider debate on norms contestation\(^{50}\) in IR) have been informed by debates over the limits of Social Constructivist frameworks (Krook and True 2012) – particularly, the more conventional strands of it (discussed later in this subchapter). Social constructivist approaches tend to perceive social norms as an ‘appropriate behaviour for actors with a given identity’ (Finnemore and Sikkink 1998:891). They define

norms as anything that is “… intersubjectively shared, collectively legitimated and/or institutionalized.” (Park and Vetterlein 2010:14). It can take the form of shared moral, common interests, and agreed-on behaviour, as well as communal beliefs, including laws and customs (Kowert and Legro 1996). Norms can also be about ‘habit’ – a routine of ‘unintentional, unconscious, involuntary, and effortless’ behaviour that is widely accepted without ‘control processes’ (Hopf 2010). It includes …

implicit rules and patterns that govern the behavio[u]r of state and non-state actors as well as in the moral principles embraced by individual … religious beliefs, humanitarian sentiments, faith in universalism, compassion, conscience, paternalism, fear, prejudice, and the compulsion to proselytize (Nadelmann 1990:480).

This intersubjective character of norms explains the fundamental question Acharya raised in his article: ‘why do some transnational ideas and norms find greater acceptance in a particular locale than in others?’ (Acharya 2004:204). Different identities hold different norms, and take norms held by different identities differently.

According to Constructivist, norms express the sense of appropriateness (or ‘oughtness’) (see among others Checkel (1997), Fearon and Wendt (2013), Finnemore and Sikkink (1998), Florini (1996), Held (2010a,b), Hoffmann (2017), Hurd (2008), March and Olsen (1989, 2004), and Schindler (2014)). Instead of rationally calculating what is best for improving utility (maximizing the optimal degree – following realists’ logic of consequences), actors will behave in accordance with the norms – not because they are pressured to do so or see it as beneficial, but because they are motivated by the impression that it is the right or legitimate course of action, as reflected in the idea of ‘preference for a norm’51 (Fearon and Wendt 2002:61). Actors make decisions based on reasoning: ‘[it is] what actors like [us] should do … in specific situations given who [we] are …’ (Hoffmann 2017:9). Hence, norms not only constitute actors’ interests and identities; they ‘… create expectations as well as prescribe what

51 The authors further argue that for Constructivist, the idea of a ‘preference for a norm’ might refer “… simply to a ‘taste’, like for chocolate, and as such does not capture their interest in the perceived normative or obligatory force of norms” (Fearon and Wendt 2002:61)
appropriate behaviour ought to be.” (Björkdahl 2002). Actors’ ‘obligatory action’ is defined by four steps: to understand what kind of situation they are facing, to define who they are under those circumstances, to identify how appropriate different actions are for them in this situation, and then to perform whichever actions they think are most appropriate (March and Olsen 1989:23).

2.2.2 On Global Norms

In the study of IR, ‘norms’ as a key concept emerged in the aftermath of the Cold War (Epstein 2012). Norms in IR have generally been understood as globally shared expectations or standards of appropriate behaviour, applicable to wider (state and non-state) actors in the international system (see, among others, Cortell and Davis Jr. (2000), Schindler (2014), True and Mintrom (2001), Park (2006), Björkdahl (2002), Blakeley and Raphael (2013), Khagram, Riker, and Sikkink (2002)). Norms constitute actors’ interests and identities, with the ability to shape actor behaviour through processes of ‘repletion, practice, and consolidation’ (Blakeley and Raphael (2013)). Therefore, norms regulate actors’ behaviour by “… enabling certain actions in accordance with the norm, and in prohibiting other actions that may violate or juxtapose that norm.” (Panke and Petersohn 2012:721)

‘Global Norms’, as a term, has been used extensively in public discourse. As noted above, it is used to describe a number of unwritten, yet widely agreed-upon, practices and behaviours. Yet, it has also been expanded to define some fairly well-institutionalised policy agendas. For example, it has been used to describe global policy produced by global institutions, such as the United Nations’ Millennium Development Goals (MDGs) (Coate and Fomerand 2006). Global norms are generally understood as being transnational/transboundary in nature and as functioning in ways that are more akin to ‘soft power’ (Sikkink 2002).52 Moreover, according to Florini

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52 Although widely associated with the ‘Constructivist Turn’ in IR, the study of global norms is central in one way or another to most IR scholarship. For example, for Realists (particularly Morgenthau) norms are a manifestation of a state’s highly political interest, derived from a state’s ‘will to power’, and is applied to differentiate friends from enemies (Giesen and van der Pijl 2006:2); neo-liberal institutionalists perceive norms in relations to international regimes, on the issue of national security (Haas 1980, Keohane and Nye 1977),
global norms never exist in a vacuum (they are ultimately rooted in a particular world view or set of globally agreed standards/domestic practices). Thus, it should also be noted that global norms are not something that exist externally, ‘out there’ and ready to be adopted. Many of them begin as domestic norms and always emerge ‘in a highly contested normative space where they must compete with other norms and perceptions of interest.’ (Finnemore and Sikkink 1998:897). They can be produced by different actors, and take on different forms so long as it includes globally accepted ideas and knowledge; they can become “… entrenched within domestic and international systems” (Blakeley and Raphael 2013).

Martinsson (2011) identified four models of global norm production. First, that of legal norm setting – where international organizations and governments develop norms through ‘conventions, declarations, treaties, and so forth’. Second, through multi-stakeholder initiatives – where different actors develop norms through a process that is ‘inclusive and deliberative’. Third, through global policy networks – where different actors, together, campaign around new issues and ideas, and advocate for them to be adopted as a policy and/or a project for international cooperation. Lastly, fourth, through transnational advocacy coalitions (composed by individuals, civil society organizations, or a group of civil society organizations) – where non-state actors create and strengthen certain norms transnationally, as well as monitor the implementation (Keck and Sikkink 1998). As the output of the interactor relations between the three Norm Interpreters subgroups, I argue that AICHR’s establishment (or the production of AICHR’s ToR as the new regional human rights norms in Southeast Asia) is reflective of Martinsson’s second model of norm production.

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political economy (Krasner 1982, 2009), as well as to the consistency in states’ decision for cooperation (Puchala and Hopkins 1982).

van Ham (2010) conceptualised the internationalisation (or rather, globalisation) process of these domestic norms as norms uploading; the process is often dominated by powerful states who are keenly uploading their norms, values, and ‘regulatory systems’ to the global level (p.30), while the less powerful states tend to engage in ‘fence sitting’, waiting to see what the hegemons have to offer (p.28). More relevant to this thesis, other actors who might also take part in the norms uploading processes are independent individuals, known as ‘meaning managers’ or ‘meaning architects’ (Lessig 1995:897), work as agents who actively identify, translate, or reproduce, and promote the social meaning of the norms to be transformed (Lessig 1995, Florini 1996).
Taking norm production from this perspective, this research then leans toward the ‘conventional’, rather than the ‘critical’ variants of social constructivism.⁵⁴ While conventionalists see norms as standards of behaviour (Wiener 2014), critical scholarship views norms as ‘what actors make of them’⁵⁵ (Wiener and Puetter 2009:4). Table 2.1 below shows the distinction in their views of norms production.

### Table 2.1. View on Norms Production: Conventional & Critical Constructivism⁵⁶

<table>
<thead>
<tr>
<th></th>
<th>Conventional</th>
<th>Critical</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Fundamental:</strong></td>
<td>Norms regulate behaviour</td>
<td>Norms are a product of behaviour (actor interaction)</td>
</tr>
<tr>
<td><strong>Assumption:</strong></td>
<td><em>stable structural quality of norms</em> within a community of a given identity</td>
<td><em>flexible</em> quality of norms: norms as carriers of meaning-in-use, which is re-/enacted through social practice.</td>
</tr>
<tr>
<td><strong>Focus:</strong></td>
<td><em>on reaction to norms</em></td>
<td><em>on relation to norms</em></td>
</tr>
<tr>
<td></td>
<td><em>The structuring power of norms and their influence on state behaviour in world politics.</em></td>
<td><em>The meaning of norms as constituted by and constitutive of specific use, situated within a specific context.</em></td>
</tr>
<tr>
<td><strong>Approach:</strong></td>
<td>Work with a ‘community ontology’: believes in minimal foundationalism, accepts that a contingent universalism is possible and may be necessary.</td>
<td>work with a ‘diversity ontology’: rejects either the possibility or the desirability of a minimal or contingent foundationalism</td>
</tr>
<tr>
<td><strong>Process:</strong></td>
<td>Conceptual interpretation</td>
<td>Contextual interpretation</td>
</tr>
</tbody>
</table>

Therefore, a more conventional approach to norms emergence and norms diffusion typically focuses on how global norms are localised through processes of, among others, vernacularization (Merry 1996), propagation (Dubash 2009), empowerment...

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⁵⁴ These variants share theoretical fundamentals: both aim to discover and reveal how the world is, in fact, the product of social construction; both believe in intersubjective reality and meanings; both agree on the importance of ‘context’; both accept the nexus between power and knowledge; both accept the mutual constitution of agent and structure (Hopf 1998). The term ‘conventional’ and ‘critical’ represents the different orientation of the two strands towards critical theory: conventional constructivist is considered as creating ‘theoretical and epistemological distance between itself and its origins in critical theory’, while critical constructivism follows critical theory ‘all the way [down] the postmodern critical path’ (Hynek and Teti 2010:179-80, Hopf 1998:181). On the differences between the two variants, also read Adler (2013), Wiener (2009, 2014).

⁵⁵ The authors use this expression in direct comparison to Wendt (1992)’s argument, that anarchy is what states make of it.

(Checkel 1997), and subsidiarity (Acharya 2001) – as discussed in Chapter 3. In the case of this research, it is how norms come to be regionalised through process of interpretation. Meanwhile, for scholars of critical constructivism, norms are rather “… beliefs or practices that states draw upon [through interaction] to understand the world they inhabit and how to engage in it.” (Collins 2019:6). In assessing norm production, conventional constructivism tends to be rather positivist by regarding norms as ‘fixed’, while critical constructivism is more critical by perceiving norms as fluid, depending on context, time, and space.

Adopting a more conventional constructivist approach, this research takes the incompatibility of values between global norms and local norms as a ‘given’. Hence, a series of interpretation processes are necessary for global norms to be accepted in the region. Unlike the position taken by critical constructivist, this research does not see norm interpretation as a ‘voluntary’ process, taking shape within the ‘culturally structured’ minds of individual actors. Rather, norm interpretation is presented as a ‘strategic processes’. That is, it is established (and motivated by a logic of appropriateness) in order to bridge an incompatibility gap.

Nonetheless, in a similar vein to the critical constructivist approach, I also recognise how actors renegotiate norms through communicative narrative strategies, such as dialogue and discussion. However, the settings are different. In the critical approach, it is a diversified ontology, which focuses on individuals’ experiences and strategies in seeking to establish or achieve an advantageous position within it (Bueger and Gadinger 2015:455). In contrast, for the conventional approach – as adopted in this research – the setting is in the social context of the community.

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57 According to Panke and Petershon (2016), if the norm is rooted in an international organization or regime (such as the global human rights norms that is embedded in the International Bill of Human Rights, discussed in this chapter), it is more likely to be challenged through re-negotiations. If not, it will likely be challenged through norm violations (p.5).
2.2.3 Understanding the Challenges

It is generally accepted that global norms, when deemed appropriate, are globally relevant and, therefore, should be globally accepted. However, this is a careless oversimplification, for at least three inter-related reasons. First, as Constructivists see it, actors can be motivated by normative commitments, but these commitments always take shape within a specific context. Hence, they are informed by ‘the realization that those commitments are not universal’ (Barkin 2010:143). Second, a discussion of international norms generally neglects the existence of norms rooted in ‘other types of social entities’, such as regional, national, and subnational ones, that further ‘ignore significant sub-systemic social understandings that can contradict and overwhelm international prescription.’ (Legro 1997:31-32). Third, universalism fails to respond to the relativist challenge that takes ‘all moral values, including human rights, [as] relative to the cultural context in which they arise’ (Donoho 1991).

This then creates a greater dilemma in accepting the universalism of global norms. On one hand, when following the sense of appropriateness from a morality-based perspective (discussed above), certain norms (particularly human rights) should be perceived as universal in nature. On the other hand, in certain regions, there exist similar local/regional norms (for example, notions of a ‘right’ to development), the values of which are incompatible – if not contradictory – to the global norms, but are still nonetheless appropriate. Under these circumstances, it is almost certain that the global norms will be rejected in that particular region. This rejection, then, follows an argument of contested logic, which suggests that ‘norms may achieve a degree of appropriateness reflected by changing state behaviour, yet, since they are contested, their role in the conduct of the behaviour becomes contextual and depends on cultural validation’ (Tabak 2016:198).

58 Apart from the logic of appropriateness and the logic of contest mentioned in this paragraph, there are two other types of action logic that define actors’ decision towards a norm. Those are: logic of consequentialism (suggested by realists and liberalists), where acceptance or adoption of norms is determined by calculating consequences, and logic of arguing (proposed by critical constructivists), which views norms as ‘argumentative constructs’ that both give meaning and provide guidance to actor’s behaviour (Tabak 2016). It is the task for the reviewer to determine in which ‘empirical settings’ the actors’ actions are best explained (Schindler 2014).
The argument for contextualising norms can also be associated with the intersubjective nature of said norms. Global norms require a certain element of context to fuel their applicability. As such, their degree of applicability varies from region to region, depending on (among other things) the norms’ level of compatibility with the existing character and identity of the local context.

As argued by Wiener, applying global norms is relatively easy within the Western-developed world. It shares a similar level of civilisation and modernity and, therefore, shares certain modern common values (Wiener 2007). For ‘the outsider’ – or, states and societies that are not part of the Western grouping – ‘perfect matches are rare’ (Klingler-Vidra and Schleifer 2014:271).

Some examples of norm incompatibilities found in the wider literature are: the global norms on human rights versus the Middle Eastern and North African regional human rights schemes (Hosseinioun 2014); global norms on interventionism (especially humanitarian intervention) versus East Asia’s regional norms on non-interferences and territorial integrity (Dunn, Nyers, and Stubbs 2010); global norms on domestic democracy versus Latin America’s regional norms on state sovereignty (Hawkins and Shaw 2008); and global human rights norms against the Pacific Islands’ (particularly Hawai’i’s) regional norms on indigenous rights (Merry 1996).

Another explanation for norms’ perceived incompatibility – leading to regional rejection of the global norms – is the postcolonial view, which identifies global norms as ‘the global extension of a European order’ (Acharya 2011:99). This perspective sees global norms as a set of (Western) standards for civilisation; for example, on the protection of human rights, adoption of democratic values in politics, and application of formal domestic law and order – which specifies ‘us’ and ‘them’ by the rules of inclusion and exclusion. Only those perceived as meeting the standards could be recognised as ‘us’ and the rest would be ‘them’ – therefore, considered as uncivilised.

Within this context, as highlighted by Acharya (2011), ‘all colonies were excluded’ from the civilisation (p.99). This pessimistic view of the word then creates an ‘acute

59 Prantl & Nakano discussed a similar issue, but focussed only on China and Japan (2011).
schizophrenia’ (p.99) in former colonies. The ‘third world’ tends to see global norms as an international order that will restore them under the West’s domination. Therefore, they aim to safeguard their interests, which are unrepresented during the global norm-making process, mainly to protect their identity as independent global entities equal to the ‘civilised’ West. This action of resistance is crucial to challenging what Acharya (2011) labelled as ‘great power hypocrisy’ (p.100,108), which is when the ‘civilised West’ intentionally violates the norms that they promote, and the higher authority (the international regime) who is responsible for protecting the norms does not appear willing or capable of doing anything (Acharya 2011).

Nonetheless, as this thesis shows, the gap between the argument of universalism and the contested reality of contextualism leaves a strategic space for agents of change to play a crucial bridging role in between the two norms. Their task is to reinterpret the global norms, so they are more compatible with local norms and, therefore, acceptable in the region.

2.3 The Global Norms on Human Rights

This thesis argues that the establishment of ASEAN’s human rights body (AICHR) was, in principle, about regionalising – or downloading – the values inherent in the International Bill of Human Rights, which served as the perceived global norm on human rights. This process is framed as the appropriate course of action for at least two reasons. First, as promoted by international human rights advocates, the Bill carries ‘some values [that] are so fundamental to human existence that they should be universally applicable’ (Donoho 1991:345); second, ‘the measuring stick for human rights performance … around the world has been the human rights standards adopted by the United Nations’ (Gaer 2003:339), in which ‘… the international moral code is embodied …’ (Thakur 1994:147).

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60 Acharya borrows this term from Mohammed Ayoob’s 1989 article, entitled ‘The Third World in the System of States: Acute Schizophrenia or Growing Pains?’
Built upon the provisions of the UN Charter, the Bill’s objective is to provide ‘the legal framework for ensuring the dignity of the human person’ (Mavrommatis 2004:73), and to secure ‘the physical and spiritual existence of the human being on earth’ (Sinha 1989:23). It is perceived to ‘embody a set of underlying values and principles that are widely regarded as a common heritage of all nations and cultures.’ (Ulrich 2011:357).

The Bill consists of three documents. At the core is the widely known Universal Declaration of Human Rights (UDHR) adopted in 1948, as well as its two supporting documents: the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), both adopted in 1966. These three documents were all drafted by the United Nations Commission on Human Rights (UN-CHR), whose mandate is to be the UN’s principal mechanism and international forum concerning the promotion and protection of human rights.

Adoption of the key document, the UDHR, in December 1948 confirmed the establishment of human rights as applicable global norms, ‘reaching beyond the borders of state sovereignty.’ (Papisca 2011:88). Particularly relevant to this research is highlighting the importance of groups of individuals and NGOs in the uploading

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61 The UN has two sets of human rights bodies: the charter-based bodies and the treaty-based bodies (Rodley 2004), and the UN-CHR was a charter-based body. Apart from the UDHR, ICESCR, and ICCPR, discussed in this chapter, the UN-CHR also drafted most of the international instruments on human rights playing a central role in human rights protection today, such the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), The Convention on the Rights of Persons with Disabilities, and The Convention on the Rights of Migrant Workers and their Families (Gaer 2003, Heyns and Viljoen 2001).


63 More than 250 delegates and advisors representing all the 58 UN member-states were involved in the uploading process (Waltz 2001). The Declaration was adopted by member-states’ votes. It was 48 to none, with eight abstentions and two absent states. The abstained states were the USSR and members of its bloc (Belorussia, Czechoslovakia, Poland, Ukraine, and Yugoslavia), as well as Saudi Arabia and South Africa. The absent states were Yemen and Honduras. The Honduran Government proclaimed, afterwards, that it would have voted favourably. For discussion on the UDHR uploading process; read Korey (2001), Monteiro (2014), Morsink (1999), Ramesh (2016), and Waltz (2001).

64 It is important to highlight here that, out of the 48 countries who adopt the Declaration in December of 1948, only were three Southeast Asian states. Those were Myanmar (in 1948, it was known as Burma), the Philippines, and Thailand (in 1948, it was registered as Siam). Although some had their independence from colonialism, the other seven countries of Southeast Asia (as we know now) were not yet members of the UN, therefore were not involved in any of the UN’s programmes. This issue of representativeness might, or might not, be one of the reasons of why the region rejected the implementation of global norms on human rights at the first place. As this issue is not at the core of this research, it will not be further addressed in this thesis.
process of UDHR, alongside state actors as the main norm makers. This is to support the main argument developed in this research: the significant contribution of non-state actors in the process of AICHR’s establishment. The role of the two groups of individual actors (the Drafting Committee\(^\text{65}\) and the ‘Philosophers’\(^\text{66}\)) was particularly crucial in shaping UDHR’s foundation – specifically, in ensuring it stood more for the interest of the people. They were the principle actors, who first brought intellectual, humanitarian, and philosophical nuance to UDHR, which ensured that the norms not only represented states’ high-political-related interests. The NGOs’ contribution,\(^\text{67}\) although never officially acknowledged, was widely recognized as valuable in the debate on the Declaration’s definitive provisions, especially regarding issues of marriage, family, and children (Waltz (2001)). Another vital contribution of the NGOs was their strong and consistent demand for the establishment of two covenants, which would serve as the implementation mechanism of UDHR. In the end, together, UDHR and its two covenants made the Bill as the global human rights norms that we know today.

\(^{65}\) Initially, the Drafting Committee consisted of only three individuals - i.e. Eleanor Roosevelt as the representative of the U.S., Peng-Chun Chang of China, and Charles Habib Malik of Lebanon. This triumvirate were seen as representing the West, the East, and the crossroads of many cultures (Glendon 2002). Later, it was enlarged to include five other additional members – specifically, representatives from Australia (Colonel William Hodgson), Chile (Hernán Santa Cruz), France (René Cassin), the USSR (Alexander E. Bogomolov, soon replaced by Alexei Pavlov), and the UK (Charles Dukes (Lord Dukeston), later replaced by Geoffrey Wilson). This enlargement was argued to make the drafting process more inclusive. Their presence and activism in the process was unique: although they held no official leadership position in the government, they attended the forum as part of the official delegation representing their respective countries (the member-states of the UN-HRC). However, as history shows, throughout the drafting process, they hardly represented the interest of their own state. Instead, they stood for human interest, value, and the morality of common people, even – particularly as the case of Alexei Pavlov – against the will of the country they represented. For further details on this, see http://research.un.org/en/undhr/draftingcommittee

\(^{66}\) This independent unit was established by the UN’s Educational, Scientific and Cultural Organization (UNESCO), to support the work of the Drafting Committee. The unit was officially named the Committee on the Theoretical Bases of Human Rights, also known as Committee on the Philosophic Principles of Human Rights, but widely regarded as the Philosophy Group (Monteiro 2014). The group composed of (non-state-related) individuals who were leading thinkers with various philosophical backgrounds, such as Cambridge political historian E. H. Carr; University of Chicago philosopher Richard McKeon; the French Neo-Thomist Jacques Maritain; an American poet, playwright, lawyer, and statesman Archibald MacLeish; as well as representatives of different religious beliefs, including Confucian, Hindu, Islam, and others (Monteiro 2014, Glendon 2002). They were tasked with addressing “pre-emptive questions” about “… the feasibility of tabulating a set of rights with claims to being universal …” (Goodale 2018)

Acknowledgement of the Bill’s universal nature, in fact, does not guarantee the voluntary, universal acceptance or adoption of the norms. Today, the ICCPR is ratified by 87% (172 out of 197) of the UN’s member-states. Among the 19 states that show ‘no action’ are some members of ASEAN (Brunei Darussalam, Malaysia, and Myanmar). The ICESCR is only ratified by 169 countries (86%), with, again, Malaysia and Myanmar existing among those who show no action. The fact that the Bill is deemed universally legal but not universally accepted leaves a gap for further studies to examine the reasons behind local/regional acceptance or rejection, as well as the role of agencies in and the impact of existing local and/or regional norms and values on the entire process (see, for example, Checkel (1997), Florini (1996), Finnemore and Sikkink (1998), Acharya (2011, 2014b)).

2.3.1 Contested Substance

Altogether, the Bill covers no less than 111 points on human rights principles, which include 30 points from the UDHR, 31 points from the ICESCR, and 53 from the ICCPR, as summarised in Figure 2.1 below.

The points cover six different values of rights, which are: integrity of the person, personal relationships, social assertion, economic well-being, political assertion, and conflict resolution (Sinha 1989). Despite all the moral, legal, and formal claim of its universality, the Bill has been heavily criticised as being predominantly individualist and legalist in its fundamental values (Legro 1997). Referring to the Weiss et.al (2010) three categories of clustered rights, the Bill represents only the first and second generation of rights, as discussed below.

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While the first generation includes individual civil and political rights that are well-established in the British, French, and American revolutionary declarations of the 17th and 18th centuries (Glendon 2002), the second generation covers the socioeconomic rights found in late 19th and early 20th century constitutions, established, for example, in Sweden, Norway, the Soviet Union, and several Latin American countries (Glendon 2002). However, the Bill does not contain the third generation of rights, the ‘solidarity rights’, which include collective rights of peace, development, and a healthy environment that influence the ‘collections of persons’ rather than ‘individuals’ – values considered as essential in the non-Western society (Weiss et al. 2010:163).

Therefore, the Bill has been characterised as applying a ‘single-catalogue’ approach and fails to accommodate ‘the civilizational pluralism’ of the world (Sinha 1989:26). According to Sinha, although Western norms, values, and even lifestyles have been adopted in every corner of the world, it is still in varying degrees; there still exist different value systems held by various peoples across the world. Unfortunately, the Bill fails to reflect this pluralism. For example, on articles related to conflict resolution, the Bill’s provided means for resolving conflicts and disputes rely on law and court systems, but say nothing to consider other means practiced in non-Western

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70 This includes, for example, the Confucian tradition followed in China which adopts ‘appeal[ing] to conscience’ rather than pursuing rights in courts of law as their conflict resolution approach. Furthermore, the Hindu follow ‘joint-family’ units rather than individual units as their fundamental structure of social order. Additionally, there are the Muslim countries whose people, generally, live their life following the Islamic concept of personal morals and societal order; as well as the 80-90% of African people who continue to live according to their ‘ancient custom and traditional procedures (Sinha 1989:26).
civilisations, such as in China, where conciliation is preferred over recourse of law, or in Japan, where law is deemed appropriate only for ‘depersonalized matters’ (Sinha 1989:30).

This Western-centrism is particularly reflected in the UDHR when referring to the uploading process of these norms – which, according to Florini (1996), happened ‘in a very noisy environment filled with confounding factors’ (p.374). Since the very beginning of the process, debates have been centred on two fundamental values: the principle of equality among human beings, and the principle of self-determination of peoples. Within this context, debate has been particularly polarised: first, over the contending ideas of ‘human rights’ and ‘national sovereignty’, related to the issue of international intervention; and second, around the dispute over ‘individual liberty’ vs. ‘communal needs’, which then led to debates on whether or not economic, social, and cultural interests should be granted a status equal to the traditional liberal values on civic-political rights (of free speech, religion, press, association, etc.) (Farer 1992: 229).

The adopted version of the norms shows that the UDHR failed in many respects to promote the interests and values of the non-Western world. It fails, for example, to acknowledge communal needs as well as economic, social, and cultural interests with equal (or greater) weight as individual liberty and civic-political rights. Such outcome broadly reflects the dominant Western understandings and practices of human rights – values that were challenged considerably in many other regions, including in the Southeast Asian context. These issues will be explored in more detail below, within the discussion on incompatibilities and outputs throughout the emergence of AICHR.

2.4 Local Norms of Southeast Asia: the ASEAN Way and Asian Values

As mentioned at the beginning of this chapter, of all the possible reasons for rejection, this research argues that the main challenge to regionalising global norms on human rights in Southeast Asia came from two existing regional norms, known widely as the ASEAN Way and Asian Values. The following two subchapters discuss each of the
norms and describe how they were incompatible with the UDHR as the global norm on human rights.

2.4.1 The ASEAN Way

As stated in the introduction to this thesis, one of Southeast Asia’s most widely held regional norms is the ASEAN Way, argued to be ‘the single most important principle underpinning ASEAN regionalism’ (Acharya 2014a:57). It is considered ‘a symbol of solidarity’ (Yukawa 2009:55) and a unique method of conflict prevention and conflict resolution (Sharpe 2003). It works as ‘principles of interstate conduct’ (Jones 2012:3) and serves as a mechanism of dispute management (Nishikawa 2007), which enables the member-states to ‘negotiate and arrive at a common position on issues, even if based only on the least common denominator.’ (Morada 2016:117).

Analysis of the ASEAN Way has also been central to the flourishing of constructivist scholarship on Southeast Asian regionalism. According to Acharya (1998), its strong influence in the region is made possible by four interrelated underpinnings: (1) close interpersonal ties among ASEAN’s founders, (2) cultural similarities, (3) the principles of inter-state relations adopted by the member-states, and (4) the process of ‘interaction and socialisation’ among member-states since 1967.

The ASEAN Way is perceived as ‘a web of norms’ that form ‘a regional identity’ into which ‘member-states have been “socialised” so as to transform their interests, identities, and behaviour.’ (Jones 2010:480). Referring to Martinsson’s four methods of norm production (2011), the ASEAN Way can be considered as collective norms that are institutionalised through procedures, formal rules, law, other formal documents, or by ‘being prominent in (the) public discourse of a system.’ (Jepperson, Wendt, and Katzenstein 1996:54). As collective norms, the ASEAN Way has a regulative effect; it (1) functions as a standard of behaviour for public action and (2) controls the behaviour of actors (Katzenstein 1996), particularly as related to the principles of collective decision-making and non-intervention.
The cornerstone of the ASEAN Way is the norm of non-interference. This norm is restated in every significant ASEAN document, from the 1976 Treaty of Amity and Cooperation, to the 2007 ASEAN Charter. Interference is used interchangeably with the term of ‘intervention’ and ‘involvement’. This generally refers to activities deliberately taken by a state, an intra-state group, or an international entity, which meddle in the internal affairs of another sovereign state (Jones 2010). It includes a broad range of activities, from more aggressive, highly political actions – such as military intervention – to some low-level political activism – such as campaigns from anti/pro-government forces, propaganda, economic sanctions/aid, and even a ‘mere commentary’ on the domestic issues. Adopting the norm of non-interference proves that ASEAN member-states remain extremely cautious in ‘guarding their sovereignty’ (see, for example, Morada (2016)) and prioritising their domestic stability (Dunn, Nyers, and Stubbs 2010), not allowing any external involvement in their internal affairs or ‘upon the sensitive issue of [their] national sovereignty’ (Dosch 2007:164).

As summarised in Figure 2.2 below, the norm of non-interference is deemed essential in protecting two elements of regional highly political interests. These are, first, the sovereign rights of each member-state, and, second, the territorial integrity of the Southeast Asian region (Jones 2012, Simon 2008, Stubbs 2009). This norm is reflected in the daily practice of inter-regional relations among member-states and eventually came to define the character of regionalism in Southeast Asia. That further characterises the distinct nature of ASEAN conduct in regionalism when compared to the global (Western) way.

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72 To describe this distinction, Narramore (1998) refers to the term of Occidentalism vs. Orientalism.
At a practical level, the ASEAN Way imposes a non-confrontational, behavioural code of conduct. It implies conduct that avoids talking about contentious issues (Stubbs 2009), while possessing a tendency to …

[shelve] bilateral disputes, restrain in commenting upon developments in other member states, a decline in the more raucous elements of diplomatic conduct, some occasional disparaging remarks notwithstanding … [a] much greater attention to the exercise of restraint and respect for national sensitivities or the idiosyncratic sensitivities of leaders … a conscious attempt to address perceptions of threat and override the moral grammar of social conflicts. (Haacke 2005:49-50).

This code of conduct also serves to discourage inter-state relations from tending towards controversy, instead looking to common interest and allowing for the development of multilateral cooperation (Almonte 1997).

The ASEAN Way also enforces a non-legalistic bargaining procedure. It is informal, in the sense that, in prefer very practical sense it fosters ‘sports shirt diplomacy’ over ‘business shirt diplomacy’; diplomatic actors prefer discussions at dinner or on the golf
course over sitting down in a meeting room (Capie and Evans 2003:46). They would rather go with *pragmatism* – which implies searching for a practical, minimum solution that all parties can live with (Stubbs 2009) – and prefer to ‘agree to disagree without being disagreeable’ (Capie and Evans 2003:48). Under these circumstances, collective goals are achieved relying on a process of consultation and consensus building; here, not everyone is happy, but none will go against it, if they are convinced that their national interests are secure (Acharya 2014a). The bargaining procedure is conducted in a discreet manner, marked by a commitment to tolerance and mutual respect (Haacke 2005, Bellamy 2009, Acharya 1997, Yukawa 2009, Stubbs 2009).

This practice of interaction contributes to the character of Southeast Asian regionalism, which is often referred to as ‘soft regionalism’ (Acharya 2000:128, Narramore 1998:77). It highlights immaterial elements of regionalism, such as interpersonal approaches, intramural mechanisms, constructive engagement, non-binding cooperation, and quiet diplomacy (Acharya 1997, 2000, Haacke 1999, 2005, Munro 2009). This approach for regionalism is regarded as distinctive, particularly when compared to more conventional global governance methods, which promote institution-building regionalism with excessively legalistic and structured-formalistic approaches, as well as adversarial engagement with sanctions in multilateral settings (Beeson 2014, Acharya 1997, 2000, Narramore 1998).

This research acknowledges criticisms addressed at the understandings of the ASEAN Way. There is a growing critical perspective that challenges the centrality of the ASEAN Way in ASEAN regionalism. Critics argue that late-or-non-compliance with the norms is common (Henry 2007), and there is a gap between a need to uphold the norms and a need to maintain a comprehensive, practical policy-making process (Nishikawa 2007). Some also argue that the evolution of ASEAN regionalism

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73 The idea of consultation and consensus originated from the traditional negotiation practice of Javanese Culture (one of the major ethnic groups in Indonesia), a bargaining process that takes place between ‘friends and brothers’ as opposed to between ‘opponents’. Consultation (in Javanese: *masyarawarah*) is a process of consultation which is based on ‘equality, tolerance, and understanding with overtones of kinship and common interests’ (Acharya 2014a:66), while consensus (in Javanese: *mufakat*) refers to the agreement that arrives through debate and deliberation ‘wherein negotiators do not try to coerce others into consent but rather seek to find a compromise that all can agree on.’ (Bellamy 2009:164)
increasingly follows the European model,\textsuperscript{74} which proves a tendency in the region to be more ‘modern’ in its regionalism approach (Henry 2007).

The norms are also criticised as unable to respond to modern transnational challenges, such as terrorism (Simon 2008) and environmental issues (Elliot 2009), as well as other regional issues, such as humanitarian crises (Jones 2012). The most brutal criticisms suggest that the ASEAN Way ‘has never been absolute, but has rather been upheld or ignored in line with the interests of the region’s dominant social forces’ (Jones 2010:480); while others argue that it no longer exists and has proven to be simply a myth (read, for example, Nischalke (2000)). Evidence also shows that some ASEAN member-states suggested replacing the soft regionalism approach with alternatives, such as \textit{Flexible Engagement} suggested by Thailand or \textit{Constructive Intervention} encouraged by Malaysia (Haacke 1999).

As shown in the three empirical chapters (particularly Chapter 6 on the Political Community), this research finds that, to a certain degree, the ASEAN Way retains its relevance. It still operates as one of the most influential factors in determining how member-states and other non-state regional actors interact with each other. Furthermore, it is crucial in how the actors negotiate bilateral and regional issues, as well as highly substantial issues such as the adoption of global norms on human rights.

\subsection*{2.4.2 Asian Values}

Malaysian Prime Minister Mahathir Mohamad once pointed out, ‘\textit{What, we are asked, are Asian Values?}’. This is certainly a rhetorical question. As explained by PM Mahathir himself, Asian Values is ‘a rejection of [W]estern history’, ‘a challenge to neo-imperialism of the [W]est’, as well as ‘a debate on the future shape of civil society’ (quoted from Harper 1997:509). Apart from this heavily politicised conceptualisation, Asian Values is also portrayed as an ideology “… of a range of regimes which combine an organic-statist variant of political conservatism with market economies.” (Robinson

\textsuperscript{74} For example, the establishment of ASEAN Community Councils with the three pillars (ASEAN Political-Security Community (APSC), ASEAN Economic Community (AEC), and ASEAN Socio-Cultural Community (ASCC)).
1996: 313). As a political ideology, it is considered as on the same level as liberalism, conservatism, social democracy, and soft authoritarianism (Öjendal and Antlöv 1998:537). Relating it to periods of both the economic miracle and crisis of East and Southeast Asia, Asian Values is perceived as a doctrine of developmentalism, stressing that ‘until prosperity is achieved, democracy remains an unaffordable luxury.’ (Thompson 2001:155). From a historical perspective, it is considered as a set of distinctive Asian philosophical norms (Jenco 2013). Meanwhile, from the perspective of decolonization, it is seen as “… the antidote to all that was wrong with Westernization … a political action through the manipulation of certain normative norms.” (Visone 2017:4). As part of political discourses, Asian Values is perceived … as a set of core values peculiar, or peculiarly dear, to Asian societies – in contradistinction to [what] "[W]estern values" … held for politics, government and the socio-economic development (Teik 1999:182).

After conducting an empirical validation, using statistical analysis on the four dimensions of Asian Values (familism, communalism, authority orientations, and work ethic – discussed more below), Kim (2010) concludes that Asian Values can be anything from cultural orientations, to beliefs, norms, or even attitudes that are “… unique to the Asian region [and] form the base of their political, economic, and cultural institutions and processes.” (p.318).

From that broad spectrum of studies offering different perspectives on this matter, I can conclude that, substantively, Asian Values is a general understanding of Asia’s particularity – especially in contrast to the dominant Western/liberal understandings of how a system of states and societies should ideally function. Nonetheless, since its qualities meet the characteristics of norms provided by Social Constructivism discussed earlier, in this research, I am going to treat Asian Values as a ‘norm’.

Unlike the ASEAN Way which contains mechanistic norms that regulate member-states actions and interactions in the region, Asian Values are primarily about day-to-

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75 Its traditional features represent the presumably ‘non-modern cultural system of the societies’ (to use the term proposed by Fukuyama in his polemical book, The End of History (1992)).
day norms. Similar to the International Bill of Human Rights as the global norms on human rights, Asian Values is a multifaceted norm. It contains a range of different individual norm areas. It is not institutionalized, but it is ‘intersubjectively shared’ and ‘collectively legitimated’ (referring to constructivism’s characterisation of norms as suggested by Park and Vetterlein (2010), discussed earlier in subchapter 2.2.1).

As shown widely in literature on this matter, in Southeast Asia, Asian Values has long become a political commodity; the idea of culture has emerged not only ‘as the context within which political relations and diplomacy between countries are shaped, but [also] as a weapon to be used within the context of political relations and diplomacy’ (Lawson 1998:243). It has also undoubtedly contributed to the development of Southeast Asia’s normative, regionally shared identity (Baba 2016)

Asian Values were highly debated academically in the region during the late 1980s and early 1990s. However, prior to this, the origins of the discussion on Asian Values can be traced back to the ‘national independence struggles and the post-colonial transition in the region … particularly in relation to questions of national self-determination’ (Eldridge 1996:300). That is when many newly-independent countries realised that the political systems inherited from colonialism were no longer appropriate in their post-colonial situation. The origin of this dissatisfaction was the classic north-south conflict over priorities towards different kinds of rights as discussed previously. It is within this larger context that the discourse concerning Asian Values initially emerged as a political commodity in the 1980s. It was triggered by elites in Southeast Asia in response to the (arguably universal) ideas of democracy and human rights being imposed on the region (Timmermann 2012).

The debate on Asian Values was first initiated by Malaysia’s (then and current) prime minister, Mahathir Mohamad, who was well-known for his ‘vociferous anti-West rhetoric’ (Bae 2015:711). He openly highlighted, among other things, the West’s moral decay and how that impacted not only the social, but also the political system (Timmermann 2012). In 1983, PM Mahathir pointedly argued that the idea of democracy and universal human rights values were a tool Western government used to subvert Asian countries. The prime minister once warned the region,
Before, it was the communists who stirred up rebellion everywhere … now we have the liberal democrats doing exactly the same in the same manner, complete with supplies of arms. Whether it is a communist or a liberal insurrection, the people suffer not one bit less. (Mahathir Mohamad, quoted from Jones (2010:489)).

He argued that ASEAN needed to develop its own ‘culture of discipline’ (Jayasuriya 1998), hence the launching of the ‘Look East’ campaign, which advocated for the return of ‘Malay-Islamic culture’ and broadly covered the concept of Asian Values (Jayasuriya 1998:81)

Like PM Mahathir, Singapore’s first Prime Minister, Lee Kuan Yew, was an equally strong adherent of Asian Values. He intensely argued that Western values were never relevant to the region, citing the differences in its cultural and socioeconomic context. Sharing PM Mahathir’s sentiment, PM Lee was also convinced that the larger crisis of moral values experienced by the West was caused by ‘an obsession with individual rights’ (Hoon 2004:155). As such, Lee argued that societies should not be centred on the individual, but rather on the family (Hoon 2004). However, unlike PM Mahathir, who then championed a Malay-Islamic culture, PM Lee instead promoted Confucian values: harmony, stability, discipline, the primacy of family and community over the individual; the value of emphasising education, thrift, and a disciplined work ethic; and reliance on the mechanism of strong state and strong family as a fundamental unit of society (Barr 2000).

Do Asian Values really exist in Asian society? Or is it just a constructed political commodity serving the region’s interests?

Regardless of its post-colonial disposition, as mentioned earlier, Asian Values does serve as a set of ‘common norms’; it is a shared or widely held value across actors who are members of Southeast Asia’s social society. This is typical of norms with a

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76 Since his thought on this was so comprehensive, his followers created the ‘Singapore School’ of Asian Values to include people such as Goh Chok Tong and Lee Hsieng Loong (two Singapore Prime Ministers succeeding Lee), as well as prominent academics and activists such as Kishore Mahbubani, Tommy Koh and Bilahari Kausikan. For a critical examination on Lee Kuan Yew’s thought on Asian Values, read Barr (2000).

77 Read more: http://opinion.inquirer.net/108572/asian-values#ixzz5J41PYc6l.
constitutive effect, meaning they specify what actions will cause other, relevant people to ‘recognize and validate a particular identity’ and respond to it appropriately (Katzenstein 1996). Asian Values holds an assumption about the character of Southeast Asia’s people. According to Fukuyama, Asian Values represent the ‘traditional features’ of the cultures within Asian societies that ‘have been integrated into the people’s modern life.’ (Fukuyama 1992). Research shows that Asian people, in general (also including East and South Asians), shared a considerable number of values and important commonalities (in descending order: orderly society, harmony, and accountability of public officials78) (Mauzy 1997:215).

As the identity of the people in Southeast Asia, the origins of Asian Values can be found in religious and philosophical texts, as well as in traditions. It was influenced by the region’s historical experience (including colonialism), developments in society, and geographical and climatic conditions (Cauquelin, Lim, and Mayer-König 2000).79 As Freeman argues, notions of Asian Values are rooted in a ‘cultural relativism’ and, therefore, ‘had no application to universalism.’ (1999:105). There are at least two widely held justifications for this relativist argument. First, there is no ‘objective position’ from which one can assess the ‘relative worth’ (Beeson 2014: 115) of different cultural and social systems. Second, different societies have different histories, hence different values; there are no solitary values that can equally represent the character of all cultures at all times (Beeson 2014).

Asian Values can be viewed then as incompatible with Western values in at least five different respects, as summarised in Table 2.2 on the next page.80 At the very basis of these differences are different social ethos. Asian Values cherishes collective interest and communitarianism, meaning that ‘Asia’ is understood as placing the interest of

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78 Coming from the same research, this is opposed to the Americans, who value freedom of expression, personal freedom, and rights of the individual (Mauzy 1997:215). For other research on the similar topic, read Freeman (1996).

79 Some argue that Asian Values are the norms of the Asian region at large (including South Asia and, particularly, East Asia, not only Southeast Asia). However, based on their ‘cultural complexity’ and the ‘rich and varied history’, the ten countries of SEA have acquired their own identity that sets them apart from their Northern and Southern neighbours (King 2007:18).

‘[the] nation before the community[,] and society above self’ (Meijknecht and de Vries 2010:85), where ‘familial duties and community obligation play a central role in social life’ (Jayasuriya 1998:77). This ethos is argued to be different from that of the West, which favours individualism and liberalism. Asian Values are also considered as divergent from the neoliberal political economic principles that have been championed in Western development interventions in the Global South. For example, in terms of principles of good governance, transparency, partnership, stake-holder engagement, and capacity-building (Jones 2012) – jargon that has frequently seeped into understandings of global human rights norms.

Table 2.2. The Incompatibility of the Inherent Values

<table>
<thead>
<tr>
<th>Principle Ideas</th>
<th>Asian Values</th>
<th>View of Global Norms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social Ethos</td>
<td>Collective interest and Communitarianism</td>
<td>Individualism, Liberalism, and Human Rights</td>
</tr>
<tr>
<td>Democracy</td>
<td>Consensus, Harmony, and Unity</td>
<td>Dissensus, Conflict, and Disunity</td>
</tr>
<tr>
<td>Priority of Rights</td>
<td>Social, Cultural, and Economic Right</td>
<td>Political and Civil Rights</td>
</tr>
<tr>
<td>State and Society Relations</td>
<td>Organic Statism</td>
<td>Separation</td>
</tr>
<tr>
<td>Religion and Secular Life Relations</td>
<td>No Distinction</td>
<td>Separation</td>
</tr>
</tbody>
</table>

This research does not seek to endorse the view that Asian Values are highly influential and dominant in day-to-day societal practice in Southeast Asia. Nor does this research endorse the idea that PM Mahathir and PM Lee were correct in their political assessment of the West. Rather, the term is deployed here to indicate the endurance of arguments relating to cultural relativism, and how states/societal actors resist and challenge global norms. By providing this comparison, this research further acknowledges the limits of the Asian Values’ perspective, in a way that, presently,

81 Referring to Wiener (2007), as discussed earlier, global norms are constructed based on values relatively identical to the Western civilization. This research assumes global norms are equal to Western norms.
seems to allow no space for local cultural change. As discussed here, Asian Values can also be seen as a rather flexible concept, used primarily to define – positively or negatively – the ‘us’ in opposition to the ‘them’, which refers to the West. Therefore, it is constantly used to critique anything perceived as ‘Western’.

2.4.3 ASEAN Leaders’ Perspective of Human Rights

There is no Asian conception of human rights

The regional norms of Asian Values and the ASEAN Way have driven ASEAN to adopt two distinct views on human rights: that they are an internal affair, and that human rights are not universal. Influenced by Asian Values, the dominant perspective amongst ASEAN senior officials is that human rights are shaped by a society’s basis of social values, which include ‘specific history, traditions, cultures, and religions’. Therefore, specific cultural, social, economic, and political circumstances must be protected and promoted (Ginbar 2010, Petcharamesree 2013). Moreover, following the ASEAN Way, ASEAN has taken the position that…

the protection and promotion of human rights in the international community should take cognizance of the principles of respect for national sovereignty, territorial integrity and non-interference in the internal affairs of states … and that freedom, progress and national stability are promoted by a balance between the rights of the individual and those of the community. (Ginbar 2010:506).

This relativist perspective is reflected in, among other things, the statement of Indonesian then-Foreign Minister Ali Alatas, during the 1993 Vienna Conference on Human Rights. Here, he argued that the developing world ‘[does] not and cannot hold to an individualistic approach towards human rights for we cannot disregard the interests of our societies and nations’ (cited in Kraft (2001:36)). The same tone of

82 Quoted from Freeman (1996) p.364.
rejection towards universalism was reflected in comments from the Singaporean Foreign Minister at the same event, when he said: ‘Universal recognition of the idea of human rights can be harmful if universalism is used to deny or mask the reality of diversity” (cited in Petcharamesree (2013:56)). This approach explains why, until 1993, human rights had never become a significant concern in ASEAN:

ASEAN never questioned the genocide in Cambodia in the 1970s; the Indonesia Military's long occupation of East Timor; the violation of the right to liberty in Malaysia and Singapore; and martial law in the Philippines and other areas in Indonesia and Thailand in the past. The regional grouping is also powerless against the Myanmar's brutal regime. (Azhar 2009:6).

The earliest ASEAN regional statement mentioning the term ‘human rights’ was the 1992 Joint Communiqué of the 25th ASEAN Ministerial Meeting in Manila. In the document, ASEAN leaders maintained the domestic nature of human rights, in that they should not be made ‘conditional’ in economic and developmental cooperation and that…

basic human rights, while universal in character, are governed by the distinct culture and history of, and socioeconomic conditions in[,] each country and that their expression and application in the national context are within the competence and responsibility of each country.83

On this basis, a year later, the ASEAN leaders fully endorsed the Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights (known more commonly as the Bangkok Declaration).84 Out of the 30 points, ASEAN particularly highlighted five of them:85

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84 This declaration is the output of the 1993 meeting of Ministers and Representatives of Asian States in preparation for the United Nations World Conference on Human Rights in Vienna.
85 As quoted from faculty.washington.edu/swhiting/pols469/Bangkok_Declaration.doc
Point 5 – Emphasize the principles of respect for national sovereignty and territorial integrity as well as non-interference in the internal affairs of States, and the non-use of human rights as an instrument of political pressure;

Point 8 – Recognize that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds;

Point 9 – Recognize further that States have the primary responsibility for the promotion and protection of human rights through appropriate infrastructure and mechanisms, and also recognize that remedies must be sought and provided primarily through such mechanisms and procedures;

Point 24 – Welcome the important role played by national institutions in the genuine and constructive promotion of human rights, and believe that the conceptualization and eventual establishment of such institutions are best left for the States to decide; and

Point 26 – Reiterate the need to explore the possibilities of establishing regional arrangements for the promotion and protection of human rights in Asia.

The endorsement of these five specific points represents the distinct nature of ASEAN leaders’ views on human rights, not least in terms of how the ‘centrality of the state’ is crucial in Southeast Asia’s approach to human rights issues (Nesadurai 2009). This, I argue, is essentially the local norms on human rights that challenged the Bill’s regionalisation process fifteen years later – because of which, a bridging process (norm interpretation) was required. In later chapters of the thesis I seek to provide a conceptual framework for understanding this bridging process (Chapter 3), and then, an empirical account of how this was operationalised (Chapters 4-6). Before turning to this analysis however, it is first necessary to provide an account of the output of the
bridging process itself, which was the newly interpreted norm: the AICHR’s Terms of Reference (ToR).

2.5 The Interpreted Norms: Southeast Asia Regional Norms on Human Rights (the AICHR)

“ASEAN should proceed, with caution ...”

H.E. Raymond Lim

Since the Bill’s values were inherently incompatible with Asian Values and the ASEAN Way, a further, substantial gap was created between the global endorsement and regional perception of human rights. As such, the mission to establish AICHR as ASEAN’s core human rights mechanism – the principle body for ensuring the rights of all individuals within the ASEAN region – seemed to be ‘too hard to accomplish’. The three empirical chapters (4, 5, and 6) elaborate in detail on how the three subgroups of Norm Interpreters, as the agents of change in this research, processed and interpreted the norms, attempting to bridge the incompatibilities. The final output is undoubtedly a compromised one: a mixture of values between the global and local norms (Langlois 2012); a combination of ‘norm acceptance, conformity, and self-interest’ (Munro 2009:25).

As reflected in its Terms of Reference (the ToR – see Appendix 4 of this thesis), AICHR’s key approach to human rights is promotion first, protection later. Thus, it is fair to conclude that the intense eight-month norm interpretation process was less than successful in accommodating global values to local norms. This ‘far from ideal’ view is confirmed through a scorecards analysis conducted by the human rights NGO Forum Asia, published in the Human Rights in ASEAN Online Platform, as shown in

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86 Second Minister for Foreign Affairs of Singapore, Mr. Raymond Lim, on the appointment of HLP to draft AICHR ToR, quoted from his Keynote Address at the 7th ASEAN Regional Mechanism on Human Rights Workshop, June of 2008 (Lim 2008).

87 A phrase used by the author of an article published in the Jakarta Post on 21 December 2009, to describe AICHR establishment process (Hermawan 2009b).

88 This approach is highlighted by Amb. Rosario G. Manalo (the representative of the Philippines in the institutionalisation process of AICHR), who clearly said that, for AICHR, ‘promotion is desirable and protection is impossible’ – as quoted from Human Rights Herald, July 2009.
the Table 2.3 below.\textsuperscript{89} The low overall rating showcases AICHR’s soft approach to human rights, was similarly reflected in its ToR (ASEAN Secretariat 2009) – see Appendix 4.

**Table 2.3. AICHR Human Rights Scorecard\textsuperscript{90}**

<table>
<thead>
<tr>
<th>Commission Mandate and Powers</th>
<th>AICHR</th>
<th>AFRIAN</th>
<th>INTER-AMERICAN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mandate from Binding Human Rights Treaty</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Power to Receive Individual Complaints</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Power to Receive State Complaints</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Power to Hold Hearings to Respond to Complaints</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Power to Negotiate Settlement of Disputes/ Complaints between parties</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Power to Make Recommendations and Proposals to Member States</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Power to Report Publicly on Specific Human Rights Situations in Member States</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Power to Request Information from Member States</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Power to Undertake Country Visits</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Special Procedures (Special Rapporteurs)</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Power to Report on General Human Rights themes</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Advisory Function to Member States</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Urgent Action Mechanism</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Public Information/ Education Function</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>State Parties Must Submit Reports on Treaty/ Declaration Obligations</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Independence and Plurality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Own Secretariat</td>
</tr>
<tr>
<td>Own Premises</td>
</tr>
<tr>
<td>Commissioners by Democratic Appointment</td>
</tr>
<tr>
<td>Commissioners Serve in Personal Capacity</td>
</tr>
<tr>
<td>All Commissioners have Human Rights Expertise</td>
</tr>
<tr>
<td>Ensure a Balance of Nationalities within Commission</td>
</tr>
<tr>
<td>Commission Members have Diplomatic Immunities and Privileges</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Transparency/ Accountability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Institutionalized Forums for Engagement with Civil Society Organizations</td>
</tr>
<tr>
<td>Sessions/ Decisions can be Public</td>
</tr>
<tr>
<td>Public Annual Activity Report</td>
</tr>
</tbody>
</table>

Overall Score: 27% 100% 100%

\textsuperscript{89} Quoting the website: ‘This SCORECARD considers the mandate, powers, institutional structure and resources required for a regional human rights commission to function effectively. The indicators against which the Commissions are scored are adapted from the 1993 UN Principles Relating to the Status of National (Human Rights) Institutions (the Paris Principles), and a Non-Paper, “Principles for Regional Human Rights Mechanisms” developed by the Office of the High Commissioner for Human Rights (OHCHR).’ See: https://humanrightsinasean.info/asean-intergovernmental-commission-human-rights/score-card.html

\textsuperscript{90} Read https://humanrightsinasean.info/asean-intergovernmental-commission-human-rights/score-card.html
Of the seven-page document that made up the ToR (see Appendix 4), three specific points have been heavily criticised by observers. They are perceived as entertaining the values of local norms, hence outlawing the adoption of the value of global human rights norms in the ToR. The three concerned points are on the principle (point 2.1. Respect for Principles of ASEAN, p.4-5); the nature of the body (point 3, p.6); and the mandates (point 4, p.6).

The seven sub-points on principle are most problematic, as they exclusively contain the key values of the local norms, including norms of non-interference, ‘respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States’ (p.4), ‘respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion’ (p.4), as well as ‘respect for different cultures, languages and religions of the peoples of ASEAN, while emphasising their common values in the spirit of unity in diversity’ (p.5). It has also included a statement of ‘adherence to the rule of law, good governance, the principles of democracy, and constitutional government’ (p.5), as well as ‘respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice’ (p.5). However, these two sub-points are of little worth as, first, they are mentioned after the highlighting of local norms’ importance (Langlois 2012), and, second, there are no other points in the ToR to support their applicability. The second most criticised point, concerns the nature of the body itself. AICHR is said to be ‘an intergovernmental body and an integral part of the ASEAN organisational structure … a consultative body’ (ASEAN Secretariat 2009:2). I would argue, as an ‘intergovernmental body’, AICHR must be consistently accountable to the ASEAN governments; therefore, it is not an independent body. Likewise, as a ‘consultative body’, the decision-making process within AICHR must follow ASEAN’s key policy-making mechanism, namely consultation and consensus approaches.

As a consequence, AICHR would need to adopt a non-confrontational and ‘evolutionary approach’ in fulfilling its mandate (Santiago 2009:9) – specifically, taking a step-by-step approach to, as ASEAN argued, ‘cross the river by feeling the stones beneath our feet’ (Muntarbhorn 2008). Considering the different perspectives
on human rights among the ten member-states, these two heavily state-centric objectives – as is popularly viewed – took AICHR nowhere close to an ideal regional mechanism for human protection, at least – as shown in the scorecard table – compared to the Inter-American bodies and, to some extent, the African body.

The third element in AICHR’s ToR, widely scrutinised by most regional human rights defenders (Wanandi 2009), is the fourteen points concerning the mandate of the body, shown below (cited in ASEAN Secretariat 2009:6-7)

- To develop strategies for the promotion and protection of human rights and fundamental freedoms to complement the building of the ASEAN Community;
- To develop an ASEAN Human Rights Declaration with a view to establishing a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights;
- To enhance public awareness of human rights among the peoples of ASEAN through education, research and dissemination of information;
- To promote capacity building for the effective implementation of international human rights treaty obligations undertaken by ASEAN member-states;
- To encourage ASEAN member-states to consider acceding to and ratifying international human rights instruments;
- To promote the full implementation of ASEAN instruments related to human rights;
- To provide advisory services and technical assistance on human rights matters to ASEAN sectoral bodies upon request;
- To engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including civil society organisations and other stakeholders, as provided for in Chapter V of the ASEAN Charter;
- To consult, as may be appropriate, with other national, regional and international institutions and entities concerned with the promotion and protection of human rights;
- To obtain information from ASEAN member-states on the promotion and protection of human rights;
- To develop common approaches and positions on human rights matters of interest to ASEAN;
- To prepare studies on thematic issues of human rights in ASEAN;
- To submit an annual report on its activities, or other reports if deemed necessary, to the ASEAN Foreign Ministers Meeting; and
- To perform any other tasks as may be assigned to it by the ASEAN Foreign Ministers Meeting.

The list of mandates confirms that member-states expected AICHR to focus mainly on promotional aspects and less, if at all, on the protection of human rights. It does not include ‘the powers of investigation, monitoring or enforcement, or any rights catalogue’ (Wahyuningrum 2014:14). Therefore, it may be unable to take on the necessary role when confronted with human rights violations in the region (Cumaraswamy 2010).

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For human rights defenders, the quality of this regional human rights body is disappointing; AICHR is viewed as weak and ‘toothless’. 91 For them, a regional human rights mechanism that falls short of internationally recognised standards is worse than lacking a mechanism altogether (Petcharamesree 2013). However, from a more optimistic view, the establishment of AICHR is still an achievement in and of itself. As argued by the ASEAN leaders, quoting Thai Prime Minister Abhisit Vejjajiva, ‘It’s better to make a start than [to] leave this hanging with no purpose at all.’ (cited in Hermawan (2009a:12)).

Furthermore, for those who consider the dynamics of ASEAN regionalism, the conduct of ASEAN governance, and the character of ASEAN society, this output is viewed as ‘realistic’: AICHR’s final form is reasonable, given the existing domestic and regional contexts. In response to the ‘toothless’ discourse, for example, Mr. Termsak Chalermpalanupap, a researcher on the issue of human rights, who served as a Special Assistant to the Secretary-General of ASEAN during the period of AICHR’s establishment, argues that AICHR …

91 ‘Toothless’ is the term used by the Advocacy Coalition to describe the powerless AICHR – see Chapter 5.
this far if its Member States want[ed] to bite one another with sharp teeth just to get things done their own way. (2009:5).

In terms of its substance, the ToR is also considered to open creative opportunities for selective human rights protection with greater proactivity. It is said that ‘what is not prohibited ... is not forbidden’. The signing of the Hua Hin Declaration in February 2009 (discussed further in Chapter 6) to support the ToR also opened up possibilities for improving AICHR, as the ToR would need to be reviewed every five years to strengthen its mandate and functions, further ‘develop[ing] mechanisms on both the protection and promotion of human rights’. It is expected that, with this, AICHR is a work-in-progress and will evolve through time.

2.6 Conclusion

This chapter discusses three different norms within this research: the global norms on human rights (the International Bill of Human Rights), the Southeast Asia local norms (Asian Values and the ASEAN Way) and their interpretation of human rights, as well as the newly interpreted Southeast Asia norms on human rights (as reflected in the AICHR Terms of Reference). This chapter shows how the Bill is a ‘single-catalogue’ that promotes the West’s values and interests, while failing to accommodate ‘the civilizational pluralism’ of the world.

This chapter also discusses how Asian Values and the ASEAN Way created a regional perception that human rights, as a concept, are not universal (relative to the context) and, instead, are part of the internal affairs of each member-state. This proves fundamental obstacles to the downloading process of global norms within the region, as first, the Bill’s inherent values are broadly incompatible with these local beliefs, and second, having a ‘watchdog’ regional body in the practice of human rights certainly contradicts the local belief that human rights are a domestic issue. This further confirms the challenges faced by the three Norm Interpreter subgroups as the

93 Read https://www.asean.org/storage/images/archive/15thsummit/Declaration-Education.pdf - Point 7
agents of change in this thesis – specifically, in their goal of interpreting and integrating the values of global norms into the region.

Regarding the newly interpreted norms (embodied as AICHR), this chapter argues that, despite its apparent weaknesses, AICHR’s establishment should still be celebrated as a success. AICHR does illustrate how ASEAN has progressed its regionalism. Moreover, ASEAN has moved from insisting that human rights is a domestic issue – and, therefore, refusing to intervene – to agreeing to a regional human rights mechanism that naturally carries an intervention mandate, no matter how soft it is (limited to human rights promotion).

This leads, then, to a further question: how exactly did the Norm Interpreters facilitate this progress? It is a focus on this particular question that is the subject of the conceptual and empirical chapters that follow.
Chapter 3: The Norm Interpreters: Character and Behaviour

‘[O]nly by paying attention to the most trivial data, ... can we construct models that are empirically substantiated and amenable to formalization.’
- Pierre Bourdieu\textsuperscript{94}

3.1 Introduction

To highlight the significance of the case study discussed in this thesis, in Chapter 2, I discussed the Bill as the global norm for human rights on one hand, with Asian Values and the ASEAN Way as the local norms of Southeast Asia on the other. Concluding, I showed the inherently incompatible values of the two norms.

As discussed in Chapter 1, because of the incompatibility, a bridging process was required for global norms to be accepted at the regional/local level. With focus on the behaviour of the Norm Interpreters as agents of change, this thesis examines the process which involved interpreting the global human rights norms to be more compatible with the norms of Asian Values and the ASEAN Way. The result was formalised by the establishment of AICHR (the Southeast Asia’s regional human rights body).

Missing from studies on the regionalisation of global norms (especially those which took place in Southeast Asia) is a thorough, conceptual, and practical analysis of the behaviour of local/regional actors in enabling global norms to become acceptable, and then, finally, institutionalised. No existing academic studies explore the deeper levels required to explain how the behaviour of the actor influenced the process towards the acceptance of the norms. This is a gap this thesis attempts to fill, by proposing a new concept of Norm Interpreter. The term ‘interpreter’ is used here to label the general character and interactor relations among members of the subgroup, as well as among

\textsuperscript{94} Quoted from Adler and Pouliot (2011b:50)
the three subgroups. As conceptualised in this chapter and elaborated on in the empirical chapters, each of the three subgroups are different in both their professional characters and the strategies applied during the AICHR establishment process. The combination of their distinct characters and their distinct strategies as a group is what I designate as ‘interpreters’. This term, in this context, differs from its linguistic definition. Likewise, the interactor relations identified in this research do not literally regard translating what a person says into another language. Rather, the term should be understood metaphorically, as representing a set of systematic behaviour performed by a group of actors in their effort to make (‘interpret’) the global norms on human rights acceptable in the region.

I will argue that the behaviour of the three subgroups are distinct from each other, according to the different subgroups’ professional background – be it that of government officials, members of think tanks, or representatives of civil society organisations. This research identifies the different strategies employed by each of the subgroups in their effort to reinterpret global norms. This includes the transactional veto mechanism strategy applied by the Political Community, the direct/indirect influence strategy by the Policy Network, and the activists/lobbyists’ pressure strategy by the Advocacy Coalition. These three different, yet intermingled, strategies have contributed equally and significantly to the overall process of norm interpretation. Collectively, they constitute what I have conceptualised here as the Bowtie Model of Southeast Asian Norm Interpretation (discussed in more depth below), which serves to define the final form of AICHR established in 2009. This chapter summarises the three strategies and the outcome model.

As mentioned at the beginning of Chapter 1, the concept of Norm Interpreter was developed based on the findings of an inductive and interpretative research process, specifically regarding the establishment process of AICHR. This is the key point that differentiates this concept from other concepts related to norm promoter and norm translation also discussed in this chapter. The norm interpreter concept essentially portrays the complexity of the actual regionalisation process of global human rights

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95 According to Merriam-Webster Dictionary, interpreter (in·ter·pret·er | \in-ˈtər-prətər\, noun) is one that interprets: such as one who translates orally for parties conversing in different languages.
norms, which took shape in a ‘hostile’ environment, where the significant influence of two ASEAN regional norms led to the initial rejection of the global human rights norms.

Regarding the actors’ characters, the Norm Interpreter concept also enables me to present the variety of actors directly involved in the dynamics. The term cannot be easily simplified and seen as comparable to other existing terms for norm promoters. It is, for example, not similar to Finnemore and Sikkink’s Norm Entrepreneur, which describes the role of norm promoter at a domestic level (1998). Nor is it comparable to Sikkink’s Norm Protagonists, which depicts how norm promoters work in supporting domestic opposition groups (2014). The discussion in this chapter outlines the impossibility of fitting the Norm Interpreters’ character into one of the existing categories, since it concerns normative actors in International Relations.

As for the actors’ behaviour, Norm Interpreters are identified in this study as engaged in multidimensional strategies and operating within and across multiple levels of analysis. Indeed, it is the unique environment of ASEAN regionalism which both facilitates and limits the actors’ behaviour, which further distinguishes the concept of Norm Interpreter from the existing categories. This is apart from, to some extent, Acharya’s Norm Subsidiarity (2011) and Norm Localisation (2004), which are developed with the context of Southeast Asia in mind. Dubash (2009)’s concept of Norm Propagation, for example, requires the existence of a democratic system for norm institutionalisation to occur – which, arguably, is not found in ASEAN. Checkel’s concept of Norm Empowerment argues that the norm translation process is about the debate regarding the interests of the elite against those of the society (1997) – which may also occur in ASEAN, but was not found as central in the AICHR establishment process. Risse and Sikkink’s Spiral Model identified the step-by-step procedure of norm translation (2009) that is also not easily identified during AICHR’s establishment.

As this chapter will argue, however, some of the existing literature on how norms are adopted and spread, and the role that specific actors take in such processes, is directly relevant to the subject of this thesis. Specifically, elements of Merry’s work on Norm
Vernacularization (1996) and Acharya’s understanding of Norm Localisation (2004) helped inspire the conceptualisation of Norm Interpretation adopted in this thesis; for example, the concept of a complex transmission process, which creates harmony between global norms and local norms (discussed below). However, as the three empirical chapters show, there are many more interesting details found during the research process, which one or both Norm Vernacularization and Norm Localisation are unable to appropriately accommodate. Therefore, to reconstruct the reality of Southeast Asia norm regionalisation to the furthest possible extent, I suggest the new concept of Norm Interpretation.

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This chapter discusses existing conceptual frameworks, within which the Norm Interpreters’ different characters and behaviours in the process of norm interpretation can be understood. This examination is grouped into two sections: the character and the behaviour of the actor. I will first elaborate on different concepts regarding the importance of actors as agents of change, specifically in the regionalisation process of global norms on human rights. In the study of IR, these actors are commonly known as ‘Norm Promoters’. For reasons discussed above, I propose a new Norm Promoter concept: that of Norm Interpreters. As discussed briefly in Chapter 1, this concept is developed in close reference to Johnstone’s concept of interpretative community and the concept of multitrack diplomacy as it is understood in the ASEAN context. In this chapter, the Norm Interpreters concept will be discussed in depth, including its three subgroups: the Political Community, the Policy Network, and the Advocacy Coalition.

This research found that the behaviour of the actors in regionalising the norms – the process commonly known as Norm Translation (discuss below) – carries greater weight than their character. Concepts related to this matter will be discussed in the third part of this chapter. I will discuss how norm interpretation differs from other concepts of norm translation. I will also discuss how some political concepts, i.e. the Veto Player Model, the Policy Change Model, and the Activists-Lobbyists Model, help to situate this new concept in a broader context of policy-making in the study of IR and regional politics. The conceptualisation of the Bowtie Model of Southeast Asian
Norm Interpretation to describe the behaviour of Norm Interpreters is the key contributions of this research.

![Diagram](image)

**Figure 3.1. Norm Interpreters & the Norm Interpretation**

This chapter concludes by highlighting the above key concepts that will be discussed further in the following three empirical chapters.

### 3.2 The Character of Norm Interpreters

Because of the assumed incompatibility, for global norms to be accepted in a non-Western region, they need to undergo a bridging process. This is true for almost every region (as discussed in Chapter 2), thus rationalising the significance of actors who conduct the process. As such, this research broadly analyses the behaviour (actions and interactions) among the group of Norm Interpreters in their process of regionalising global norms on human rights in Southeast Asia. The term Norm Interpreter is an addition to the existing variants of Norm Promoter, a concept in the
study of IR, which represents an actor who becomes involved in the promotion of norms in global politics.96

3.2.1 Norm Promoter

In the study of IR, the Norm Promoter is understood as an actor who performs a dual role: (1) making certain alterations to the norms themselves and (2) seeking to adjust local policy-making processes to ensure that local sites are, therefore, more receptive to global norms (see Acharya (2004, 2011), Dubash (2009), and Levitt & Merry (2009)). Such actors can be transnational/global (beyond state) actors, domestic (within the state) actors, or a combination of both. The new proposed concept, that of the Norm Interpreters, are identified in this thesis as a group of Southeast Asian individual actors tasked with interpreting the global human rights norms and attempting to influence regional policy-making process in ways that serve to institutionalise norms at a regional level.

The main type of beyond-the-state Norm Promoters are social movements, identified as intermediaries in helping to negotiate the ‘language’ of global norms used by international institutions with the ‘cultural terms’ acceptable to the local community (Sikkink 2014:390). One example of such movements is the Transnational Advocacy Networks (TAN), which is composed of …

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96 This topic about Norm Promoters in the study of IR is discussed not only as part of the debate on global norms, but also as part of the wider debate on the role of individuals in world affairs. Some classic IR theorists argue that individuals are the fundament of the world affairs (as quoted from Bloom 1990, Donnelly 2000, Fritsch 2010) and that individuals are both capable and play a significant role in making normative change in the international system (Holmes and Traven 2015). Considered as units of analysis in the study of IR, the discussion of individuals’ role in world affairs can be grouped into three roles: as a formal leader (Kegley Jr. and Raymon 2006, Cox 1969), as a diplomat (Fröhlich 2014, Faizullaev 2014), and as the ‘citizen diplomat’ (Sharp 2001, Ross 2011, 2012a, b, 2013).
relevant actors working internationally on an issue who are bound together by shared ... values, a common discourse, and dense exchanges of information and services ... including international non-governmental organisations (INGOs), churches, trade unions, individuals working in IO or national governments (Risse 1999:537).

This international actor is defined by Sikkink (2014) as a Norm Protagonist, whose presence is significant in promoting global norms while, at the same time, advocating the rise of local democratic movements through the empowerment of local Norm Promoters. A Norm Protagonist’s key characteristic is that they systematically operate to support opposition groups in promoting global norms (especially the norms on human rights) in norm-violating states.

At the domestic level, the Norm Entrepreneur (Finnemore and Sikkink 1998) is one concept of Norm Promoter that is widely referred to in the study of regionalising global norms. While Norm Protagonists aim to change only the state’s behaviour, Norm Entrepreneurs wish to alter both the state and the people’s perception and behaviour towards certain norms. Their goals are to establish ‘standards for the appropriate behaviour of states’ (p.893) by reconstructing decision makers’ understanding of norms violation, with the aim of gaining a government’s ‘normative commitment’ (p.914) and persuading them to ‘embrace’ new (external) norms as part of formal government policy. They also wish to reconstruct the people’s ‘cognitive frames’ (p.897), so that, in the long-term, the new norms will be adopted as part of their daily behaviour.

The actions of the Norm Entrepreneurs, labelled as norm building, are provoked by undesirable issues or events (for example, human rights violations) which are against the Norm Entrepreneurs’ strong beliefs of appropriate community behaviour. To create a new norm, their strategy is to frame the case specifically to attract the attention of decision makers. This framing process may include the use of certain language to allow for reinterpretation, relabelling, and/or projecting the dramatic effects of the cases, largely focussing on the inappropriate nature of the existing values/behaviours. Therefore, new, more appropriate norms should be urgently adopted. For that purpose,
the Norm Entrepreneurs may deliberately involve some *inappropriate acts* as part of their strategy. Norm Entrepreneurs, in these scenarios …

chained themselves to fences, went on hunger strikes, broke windows of a government building, and refused to pay taxes as ways of protesting their exclusion from political participation. (Finnemore and Sikkink 1998:897).

Although the context and goals are relatively similar, the concept of Norm Entrepreneurs cannot accurately explain the behaviour of the Norm Promoters in this research. They are different in their principles with the use of violent action, a level of acknowledgement of the existing local norms, and the character of their rational approach – as discussed below. Therefore, this research proposes a new typology of regional Norm Promoter, which, in some arguments explained below, is conceptualised as a Norm Interpreters.

### 3.2.2 Norm Interpreters

The category of Norm Interpreters proposed in this research constitutes part of the research’s contributions and will be further justified and refined throughout the course of this thesis. At the end of the thesis, the actors’ characterisation will be presented in detail. However, it is worth reiterating my argument that the Norm Interpreters is understood in this thesis as the likely key factor that enabled the interpretation of global norms on human rights in the Southeast Asian region.

This working hypothesis is based partially on an understanding of the traditional background of the Norm Interpreters’ individual members, but mainly on an understanding of the actors’ interactional character in the region. This includes the nature of interaction among key individuals, the nature of non-state activism, and the nature of negotiation and policy-making processes, particularly within the context of regional/local cultural constraints (as discussed in Chapter 2).  

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77 As mentioned earlier, study on the role of individual actors as agents of change in Southeast Asia is unprecedented. Therefore, nearly no literature is available to help justify the character of Norm Interpreters in this research. Literature on non-state actors in Southeast Asia are mostly related to three areas of study, *first*, a
Within IR work on global norms, the substantial impact of traditional background (taken from their place of origin; where they grew up) on people’s ideas and decision-making processes has been discussed by Acharya in a recent article (2016). He assesses four non-Western individuals (Mahbub ul Haq, Amartya Sen, Francis Deng, and Wangari Maathai) and their individual ideas on Human Development, Responsible Sovereignty (the root of the idea Responsibility to Protect – R2P), and Sustainable Development. These ideas were adopted by the United Nations and have been widely accepted as global norms. According to Acharya, despite their Western postgraduate educational background and their once official attachment to the UN, the inspiration and source of ideas and innovations for these four individuals were mainly their upbringing, early education, and situation at home – even when sitting in Western locations (Acharya 2016). Emphasising the dominant influence of ‘local ideas’ over ‘modern values’ that came later in life, when discussing the role of ‘norm takers’, Acharya argues that …

[individuals’] pre-existing local ideas and norms do not entirely disappear because of some “civilizing” impact of foreign norms, but are enmeshed into a broader hybrid normative matrix. They adapt and create norms in accordance with or to give expression to their own beliefs, values, and aspirations. (2014b:655).

Acharya’s recent work is important for drawing attention to the role of individuals in a region’s normative transformation. However, this idea cannot be used to explain the behaviour of Norm Interpreters in this study, because of two key differences. First, the actors in this research work on existing global norms; they are not introducing their own ideas. Second, in the case discussed here, local wisdom significantly influenced the process of norms socialisation (also, later, the output of the process). This differs
from Acharya’s case, whereby local wisdom served to influence the very nature of the norms themselves.

However, the basic idea of the actors’ cultural origin (and ethics) influencing their behaviour works similarly in both studies. Particularly in this study, I argue that this variable leads the actor to undertaking the process of interpreting norms, instead of other possible approaches – for example, creating a new norm, as proposed by the Norm Entrepreneur model (Finnemore and Sikkink 1998).

There is one essential difference between the Norm Entrepreneur and the Norm Interpreter: the level at which they operate. While the Norm Entrepreneur operates at the domestic level, the Norm Interpreters are a group of local actors operating at the regional (Southeast Asian) level. As unintended consequences, there are four other key differences between the two models, summarised in Table 3.1 presented on the next page.

First, the Norm Entrepreneur does not consider adjusting local norms (the existing norms shared by people of the area) so much as replacing them. Meanwhile, the Norm Interpreters acknowledges the centrality of local/regional norms. They are aware of the potential incompatibility in values between the local and global norms and, therefore, develop certain strategies to bridge the two. Second, unlike the Norm Entrepreneur, who solely advocates global norms, the actors in this research try to interpret the global norms to harmonize with the values of local norms. Third, unlike the Norm Entrepreneur, whose activism is largely an immediate response to inappropriate events (for example, a violation of human rights), the actors in this research work based on their understanding of the appropriate value of global norms (discussed in Chapter 2) and their vision to reconstruct policy makers’ perception on the idea of human rights. Fourth, while the Norm Entrepreneur may apply a violence-based persuasion in promoting the new norms’, the actors in this research use only constructive, communicative actions to translate what appear to be incompatible ideas and to influence the policy-making process. In this research, communicative action includes a series of open dialogue, in which every party involved can articulate their ideas and interests, referring to their own traditional circumstances (Sundrijo 2001).
Table 3.1. Norm Entrepreneurs & Norm Interpreters: Character Comparison

<table>
<thead>
<tr>
<th></th>
<th>Norm Entrepreneurs98</th>
<th>Norm Interpreters</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Characters</strong></td>
<td>Very sophisticated in their means-ends calculations of how to achieve their goals.</td>
<td>Rational (both instrumental and value-driven rationality), perceptive, interpretative, communal.</td>
</tr>
<tr>
<td><strong>Missions</strong></td>
<td>Attempt to convince a critical mass of states (norm leaders) to embrace new norms.</td>
<td>Attempt to persuade the authority to adopt the main idea of global norms on human rights.</td>
</tr>
<tr>
<td></td>
<td>‘Strategic social construction’ – seek to change the utility functions of other players to reflect a new normative commitment.</td>
<td>Regional acceptance – the idea of human rights to be institutionalised as part of the broader ASEAN regional governance.</td>
</tr>
<tr>
<td><strong>Political Strategies</strong></td>
<td>Construction of cognitive frames based on rationality and appropriateness.</td>
<td>Reconstruction cognitive frames of the policy maker through the process of interpretation, which might include a certain degree of rationality and appropriateness.</td>
</tr>
<tr>
<td><strong>Tools to send messages</strong></td>
<td>Be explicitly ‘inappropriate’ (in order to challenge the existing logics on appropriateness).</td>
<td>Dialogue – follow the existing mechanisms, to keep a modest level of appropriateness.</td>
</tr>
</tbody>
</table>
| **Support**             | - Institutions: NGO, IO.  
                        - Network: to provide information, access to important audiences (media and decision makers).  
                        - State actors: to endorse and help socialise the norms. | - Formal Platform: Multitrack diplomacy.  
                        - Vertical network.  
                        - Horizontal network.  
                        - State actors.  
                        - Local, national, and regional community. |

Other than the differences, Norm Entrepreneurs and Norm Interpreters share certain similarities. Both actors are motivated by ideational commitments and – to some extent – altruism, and are supported by a formal platform (such as an NGO), an official/personal network, and certain proximity to policy makers. Both actors base their actions on rational consideration; however, in addition to rationality, Norm Interpreters are also more perceptive, interpretative, and communal – referring to Asian Values and the ASEAN Way, as discussed in Chapter 2.

98 Summarised from Finnemore and Sikkink (1998).
To outline the distinct character of the actors in this research, the term Norm Interpreters are understood as an intermediary agent of change, who works on the regionalisation process of global norms (on human rights) by interpreting the value of the imposed external norms, aiming to enhance its compatibility with the value of long-held local norms.

### 3.2.3 The Actor

To conceptually identify the Norm Interpreters, this research adopts (with some adjustments) Johnstone’s concept of interpretative communities – specifically, their three (out of four) subgroups (the Political Community, the Policy Network, and the Advocacy Coalition). Further, to help situate the three subgroups into the context of Southeast Asia, this research adopts (also with adjustments) Diamond’s ideas of multitrack diplomacy, since they are widely referred to in the broader study of ASEAN regionalism. The identification of Norm Interpreters is summarised in Figure 3.2 below.

![Figure 3.2. Two-Layered Diagram of Southeast Asia Norm Interpreters](image)

Johnstone’s model of interpretative community involves a group of professional interpreters whose members work on a similar field of practice and are engaged in a persuasive activity, against each other (horizontally and vertically), and against the
higher (external) authority (Johnstone 2005). The actors are categorised into two different layers of a concentric circle; the inner or the outer circle. The inner circle is the area …

[which consists of] all individuals directly or indirectly responsible for the formulation, negotiation, and implementation of a particular legal norm … primarily … a network of government and intergovernmental officials who, through the process of creating and living by rules, come to share assumptions and expectations, and develop a body of consensual knowledge. (Johnstone 2005:190).

The outer circle consists of those who ‘engaged in professional activities associated with the practice or issue area regulated by the norm’ (p.190). This includes individuals considered as knowledgeable and/or expert in the issue, as well as those with practical experience related to the issue; whose involvement in the matter is not based on ‘a set of abstract rules’, but through ‘the acquisition of ‘know-how’’ (p.191). Their values might differ from those at the inner circle, but their perspective on the issues are commonly shared and, therefore, widely accepted. With these distinct characters, individuals in the outer circle may or may not be involved directly or indirectly in the legal/formal process of norm establishment.

Within these inner and outer clusters, Johnstone further names two groups in each circle: the Political Community and the Cultural Community in the inner circle, with the Policy Network and the Advocacy Coalition in the outer circle. No further elaboration is found in Johnstone’s book about these four groups of the interpretative community. Considering the context of this research, I adopt only three of the four groups: the Political Community, the Policy Network, and the Advocacy Coalition; therefore, the Cultural Community will not be further discussed. As explained further below, the Political Community is broadly a subgroup consisting of state actors, while the Policy Network and Advocacy Coalition are groups of non-state actors.

Within the contemporary study of IR, the analysis of the role and status of non-state actors in an official policy-making process is not unique – but it remains unusual. This
reflects, in part, the problem that such actors cannot be easily incorporated into classic state-centric interactor relation concepts such as bilateralism and multilateralism which can only explain the relationships between state actors. As an alternative, Wiseman (2004) develops a new concept of Polytalism, which broadly defines …

the conduct of relations between official entities (such as a state, several states acting together, or a state-based international organisation) and at least one unofficial, non-state entity in which there is a reasonable expectation of systematic relationships, involving some form of reporting, communication, negotiation, and representation, but not involving mutual recognition as sovereign, equivalent entities. (Wiseman 2004:41).

Another, more widely acknowledged concept recognising the involvement of non-state actor in policy-making mechanism is multitrack diplomacy, first introduced in 1991 by John W. McDonald. His model concerning nine tracks of diplomacy is a broad expansion to the classic diplomacy concept, which only consists of two tracks: Track-1 Diplomacy by state actors, and Track-2 Diplomacy by actors other than the state.

![Figure 3.3. The Nine Tracks of Multitrack Diplomacy](image)

99 In his other article, when discussing polytalism, Wiseman also proposes two concepts related to the idea of norm Interpreters in this research. Those are, ‘norm enablers’ which refers to ‘the advisors, agents, and organizations that enable celebrity activists to conduct their own form of public diplomacy’, and ‘norm torchbearers’ referring to ‘individuals or groups prepared to keep an idea’s flame alight during long periods of international inattention’ (Wiseman 2010:1-2).

100 For details on this concept, read McDonald (1991, 2002, Notter and Diamond 1996).

101 [https://www.beyondintractability.org/essay/multitrack-diplomacy](https://www.beyondintractability.org/essay/multitrack-diplomacy)
As mentioned in Chapter 1, experts on ASEAN tend to adopt Track-2 and Track-3 Diplomacy in the region with some modifications, rather than following Diamond’s conception.¹⁰² This research will adopt the ASEAN approach of Track-1, Track-2, and Track-3 to better develop the character of the Norm Interpreters’ three subgroups (the Political Community, the Policy Network, and the Advocacy Coalition as T1, T2, and T3, respectively), as shown in the discussion below and further in the empirical Chapters 4, 5, and 6.

**The Political Community**

Following Johnstone’s implied understanding, this research freely defines the Political Community as a group of officials that includes bureaucrats (diplomats), who are the representative of their respective state and whose responsibility is norm interpretation through a policy-making process. In an earlier article, Johnstone (1991) labels this community as a ‘narrow interpretative community’ (p.385), as opposed to ‘broader interpretative community’ (p.389), which, in his later publication, refers to the Policy Network and Advocacy Coalition (2005).

Within this community, officials from each participating state develop ‘some sort of relationship’ to generate a shared ‘body of knowledge’ (p.386); they learn about the others interests, values and assumptions, as well as their perspectives on the various components of the relationship’ (p.386). Furthermore, the parties’ willingness to argue with one another during the negotiation shows their continuing commitment to the community. The debate will naturally be ‘constrained’, since the parties are forced to justify their positions without referring primarily to their own national self-interest – so as to ensure that their arguments are persuasive to others and can be accepted (p.387).

Johnstone’s concept is ontologically different from the growing contemporary discourse on the Political Community, which is linked primarily to ideas of globalisation, global governance, cosmopolitanism, and multiculturalism (see, for

¹⁰² Read, for example, Kraft (2000, 2002), and Stone and Nesadurai (1999).
example, Archibugi, Held, and Köhler (1998)). Instead, it is essentially in line with the classical Aristotelian concept of the Political Community as elaborated by Riesbeck (2016). Accordingly, the Political Community is presented as a ‘mode of authority … aiming at nothing short of the good life as a whole for their citizens’ (Riesbeck 2016:2). This involves …

social individuals who become who they are by participation in forms of community directed toward their mutual good … [and by] participation in structures of common deliberation within, beneath, or even wholly apart from the state. (p.3).

Further argument on the Political Community that may support Johnstone’s idea, particularly in the case of regional institution investigations in this research, is provided by Baker & Bartelson (2009). They argue that the community is a ‘political authority evaporating to levels above that of the state’ (p.1), in which they incorporate the ideas of ‘cultural diversity’ (p.2), ‘pluralistic structure of the international system’ (p.2), and ‘corresponding democratic community (of all mankind)’ (p.1).

Johnstone’s characterisation of the Political Community is similar to the regionally accepted concept of ASEAN’s Track-1 Diplomacy (T1D), which represents official and formal diplomatic channels for dialogue and exchanges amongst government officials (Kraft 2000, 2002, Chandra 2006). It is an official negotiation process (Kaye 2007, Scholte 2002) transpiring mainly in the form of formal government-to-government communication and interaction practice (Chataway 1998, Chandra 2006). This exclusive governmental diplomacy is the primary effort for resolving inter-state bilateral or multilateral issues (Stone 2011).

In this research, I adopt the general idea of Political Community and Track-1 Diplomacy to characterize the organization and operations of the High Level Panel (HLP). The HLP is a group of diplomats, who are the official representatives of the ten ASEAN member-states, especially assigned to work together under the mandate of the ASEAN Charter to establish AICHR. Among the Norm Interpreters subgroups, the HLP was the sole policy-maker that held the final decision making power of
whether to establish AICHR within a certain time frame, and if it was to be established, what kind of human rights body it would represent.

Within this framework, the HLP was the group whose behavior and perception towards the global norms on human rights needed to be altered (or, in some very specific cases, strengthened), thus making it the target of both the Policy Network and the Advocacy Coalition. However, this research finds that this targeting was not only an external pressure, but also internal, among the ten HLP members. This will be thoroughly detailed in Chapter 6.

The Policy Network

According to Börzel (1997), who puts forward a variant of the Policy Network concept and its applications in contemporary social sciences, this group is broadly about interest intermediation between the state and societal interests. It is ‘a mode of governance that incorporates actors from both inside and outside government’ (Stone 2004:13). It is characterised by (1) ‘a set of relatively stable relationships which are of [a] non-hierarchical and interdependent nature’ (Börzel 1998:254), (2) both formal and informal relationships between actors who share common interests towards certain policies (Scholte, O’ Brien, and Williams 1998), and (3) a shared understanding that ‘co-operation is the best way to achieve common goals’ (Börzel 1998:254).

As implied in the name, the Policy Network is integrated into the policy-making process. Assessing its behaviour will help identify who creates the policies and why these policies ‘have the content they do’ (Skogstad 2005:2). This group is rich with intellectual resources. It facilitates the decision-making, influences (without necessarily determining) the policy outcomes, and supports the policy implementation. This group is, therefore, widely known as think tanks. According to Stone, think tanks act as policy entrepreneurs – firstly, by promoting ideas and pushing them higher on public agendas, and, secondly, by ‘softening up’ actors in the political and policy system to new ideas (Stone 2004:14).
In the study of policy-making within ASEAN, the Policy Network is comparable to Track-2 Diplomacy (T2D). T2D involves an unofficial and non-structured interaction of non-state opinion-makers ‘who shape and influence foreign policy and/or actually facilitate the conduct of foreign policy by government officials through various consultations and cooperative activities, networking and policy advocacy’ (Makito 1999:183). Carolina Hernandez defines T2D as ‘the generation and conduct of foreign policy by non-state actors, including government officials in their private capacity’ (quoted from Makito (1999:183))

The work of T2D mainly relies on un-or-semi-official and informal approaches; they maintain their interaction with the government outside ‘the official negotiation process’ (Kaye 2007:5) and other formal governmental power structures (McDonald 1991, 2002). This non-structured interaction includes various consultations, cooperative activities, networking, and policy advocacy (Makito 1999). It usually takes place within an off-the-record setting (Stone 2011) or under Chatham House rules103, so as to provide anonymity to speakers and encourage the open sharing of information. This method of communication is ideal for supporting a situation where governments are uncertain of how to discuss sensitive topic, and …

where governments wish to express intentions or to suggest methods of resolving a diplomatic situation, but do not wish to express a formal position … [It] also provides windows of opportunity for non-state actors … to independently influence government by providing analysis or evaluations. (Stone 2011:244)

Related to the unofficial and informal nature of their dialogue channels, a key characteristic of Track-2 Diplomacy is the pivotal role of the individual. Just as in Policy Networks, interpersonal relations are a crucial element when compared to, for example, structural relations (Marsh and Rhodes 1992).

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103 The Chatham House Rule reads as follows: ‘When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.’ The rule originated at Chatham House in June of 1927. It is now used throughout the world as an aid to free discussion. For more on the rule, read https://www.chathamhouse.org/about/chatham-house-rule.
Members of the Networks/T2D, to the same extent, share certain individual qualities (Evans 2006). *First*, they are intellectual. They have strong knowledge of both external ideas and the local situation, and can thus reinterpret the external to fit the local. They are ‘policy-aware advocates, researchers and other specialists who analyse problems and propose solutions’ (Stone 2004:14) *Second*, they are entrepreneurial. They can combine ‘friendship with common political cause and collective agenda’ to maintain ‘cordial and constructive’ personal relations for decades (Evans 2006:103).

*Third*, they are pragmatic and patriotic. They are aware of their national governments’ official positions on the discussed issue, and are thus capable of reinterpreting and redefining it. *Fourth*, they are idealistic and cosmopolitan. They look beyond national interests and national values, and are open to universal trends and ideas. With these four characteristics, the contributions of the Networks to ASEAN regionalism are very apparent – to a degree where Evans argues that without them, ‘[ASEAN] regional affairs would be less interesting, less creative, and less humane…’ (Evans 2006:104).

As discussed later in Chapter 4, the Policy Network/T2D concept helps better characterized the two non-governmental intermediary groupings involved in AICHR’s establishment process. Those are: the ASEAN-ISIS Colloquium on Human Rights (AICOHR) and the Working Group for an ASEAN Human Rights Mechanism (the WG). Both AICOHR and the WG were established in 1996 as a response to the 1993 ASEAN Foreign Ministers Joint Communique, which included a statement that ‘ASEAN should also consider the establishment of an appropriate regional mechanism on human rights’¹⁰⁴.

AICOHR is, as an initiative of ASEAN-ISIS (ASEAN Institutes of Security and International Studies), the most established network of think tanks and independent individuals in Southeast Asia, dedicated to the study of socio-political, security, and economic developments in the region. AICOHR’s long-term goals are to develop an understanding on the notion of human rights in Southeast Asia and to establish a

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regiona
human rights body – a follow-through on the recommendation previou
submitted by ASEAN-ISIS to ASEAN.

Unlike AICOHR, which appears to be established institutionally, the WG is only a
network, consisting of individuals that engage civil society and (primarily) the
government to collaborate on the issue of human rights. The WG never officially
considered itself a think tank, but it nonetheless served as one of ASEAN’s official
dialogue partners on the issue of establishing a human rights mechanism in the region.
This status is acknowledged in the ASEAN Charter, where the WG is officially
recognised in Annex II as one of the “entities associated with ASEAN” (under the
category of ‘Other Stakeholders’).105

This research found that members of the WG and AICOHR – either individually or
together in partnership (and, in some cases, also in cooperation with the Advocacy
Coalition), systematically fed the HLP with an interpretation of the global norms on
human rights. Simultaneously, they pressured the HLP to produce the most feasibly
credible form of a regional human rights body. As discussed in Chapter 4, their efforts
were not always successful; however, their contribution to the decision-making
process in the HLP, both directly and indirectly, was nonetheless substantial.

The Advocacy Coalition

As one of the most influential approaches to public policy (Cairney 2016), the concept
of ‘Advocacy Coalition’ was first introduced by Paul Sabatier in the early 1980s as
part of his project to understand the process of policy-making, as well as the role of
‘ideas’ and ‘technical information’ within it (Sabatier 1998:99, Jenkins-Smith et al.
2014:184).

This concept is applied to describe a group of people who share and are organized
around a particular ‘belief system’ (basic values) (Sabatier 1988:139, 1998:115) of
how the world operates, how it should operate, and how to bridge the gap in between,

105 Page 3 Annex II of the ASEAN Charter, as available from https://asean.org/storage/2012/05/The-ASEAN-
Charter-26th-Reprint.pdf
while ‘seek[ing] to translate [those] beliefs into public policies’ (Sabatier 1988:141). This group includes a wider range of participants that collaborate on the promotion of their shared beliefs, interests, and ideas through a broader set of processes, such as analytical debate and argumentation (Fischer 2003). The ideal result is presenting ‘technical substantiation’ for their positions (Sabatier 1988:152).

The Advocacy Coalition recognises the importance of groupings such as the Political Community and the Policy Networks as creators of public policy, but they challenge the idea that policy is controlled by a small number of groups, even when they consist of government actors (Cairney 2012). When involved in the policy-making process, the Coalition also facilitated the integration of national political interests with the influence of traditional concerns (beliefs, values, and ideas – dimensions commonly neglected in mainstream policy-making mechanisms), while further allowing for the adoption of select legal-formal procedures in the process (Stone and Nesadurai 1999, Sabatier 1988).

Unfortunately, this framework offers no method of understanding the policy processes. 106 Focussing heavily on the character of the actor, Sabatier does not elaborate regarding the strategy’s influence on governmental decisions. He only mentions the use of ‘guidance instruments’ (which include ‘changes in rules, budgets, personnel, or information’) as part of their effort to change policy makers’ behaviour (Sabatier 1998:104), as well as two ideas of ‘intervening steps’, referring to ‘mobilization by minority coalitions to exploit the event, for instance, by pursuing public narratives to attract attention to favoured courses of action’, as well as ‘engag[ing] in framing contests’ Jenkins-Smith et al. 2014:202).

Presently, no effort has been allocated to thoroughly discussing what exactly the Advocacy Coalition does to influence the policy-making process. This research fills that gap by constructing (based on empirical findings) the model of activist-lobbyists

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106 When Sabatier submitted the initial manuscript as the lead article to Policy Sciences, it was rejected in 1984 with a ‘scathing blind review’ (quoted from Jenkins-Smith et al. 2014, notes no.2): ‘[T]his paper has little to recommend it. The conceptual framework is a conceptual mishmash that makes no obvious contributions to our ability to do policy analysis, to design institutions to use policy analysis, or to understand policy processes. The author never explains the potential value of a conceptual framework such as he attempts to develop. The unit of analysis is incoherent. The hypotheses offered are banal and/or non-operational’.
pressures as the strategy applied by the Coalition within their roles as a Norm Interpreters subgroup – specifically, with their aim to change the behaviour of policy makers. This will be further discussed in the third part of this chapter.

In the context of Southeast Asia, the Advocacy Coalition framework is comparable to Track-3 Diplomacy (T3D). The two ideas are similar in their fundamental respects; namely, both focus on the role of non-state actors in influencing formal policy-making processes, and both recognise the importance of shared values, ideas, and beliefs as the main driving elements for the actor’s behaviour. However, unlike the Advocacy Coalition, which recognises the involvement of actors from various backgrounds in the same policy subsystem (including government officials, so long as they share values and beliefs,), T3D is a venue in which people to people diplomacy is undertaken by both individuals and private organizations (Yamamoto 1995). Within this framework, government officials (T1D) are then considered as out-of-circle elements.

T3D involves movement-based civil society organisations (CSOs) and the related network; their activities represent the interests of communities, especially those marginalised from ‘the centre of power by a dominant discourse’ (Kraft 2002:53). The goal of the activisms is primarily to disseminate knowledge, to raise consciousness over issues, and to question conventional practices and beliefs. Because of this, according to Kraft (2002), their direct involvement on formal policy-making, ‘by their own choice’, is limited (p.50)

Since their members primarily come from movement-based organisations, including NGO personnel as well as journalists, T3D actors possess greater freedom to ‘speak their mind’; their approach is more adversarial, which includes, when necessary, opposing mainstream government policies (Kraft 2000:352). Their goals are normative in a sense that ‘[t]hey are less concerned with making new contributions to expertise and knowledge through research and analysis, than they are with raising consciousness over issues’ (Kraft 2002:49-50). Related to this, Keck and Sikkink argue that T3D policy advocacy is not necessarily linked to a ‘rationalist understanding’ of the state’s interests (Keck and Sikkink 1998:8-9).
The concepts of the Track-3/Advocacy Coalition help explain the character and behaviour of the Asian People’s Advocacy Task Force on ASEAN and Human Rights (SAPA-TFAHR, hereafter ‘the Task Force’) in this research. This group is the main regional coalition of civil society organisations involved in the AICHR institutionalisation process. The Task Force, established in August of 2008, is a mechanism developed by SAPA (the Solidarity for Asia People’s Advocacy, a network of Asian national and regional NGOs and people’s organisations, operating at regional (and international) levels). There is no fixed record of the Task Force’s members; different documents mention different numbers, with 60 at the least, and 100 at the most.

As described in Chapter 5, with their own less formal, bottom-up, sporadic but well-organised approaches, the Task Force influences the HLP policy-making mechanism by applying two different strategies: as activists and as lobbyists. As part of their actions, they work together with AICOHR and the WG – with some reservations. Although the Task Force itself is not entirely satisfied with the final output of the process, this research prefers to highlight the success of their movement by identifying concrete contributions from the Task Force in changing policy makers, including the HLP members’, perception and behaviour towards the idea of the establishment of AICHR. This is discussed in Chapter 5.

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By discussing concepts relevant to the Norm Interpreters’ character, this subchapter shows that, when studying regionalism in IR, there is a growing academic interest in centring the role of individuals – particularly as agents of change. Drawing a link between the existing concepts helps to provide a framework for mapping the character of the actor, based mainly on their strategic position against the policy-making mechanism. This is true whether they are think-tanks (who feed the policy makers with ideal policy substance), civil society organisations (who position themselves as watchdogs on the policy-making process), or a group of government representatives (the policy makers themselves, who hold responsibility for the final output of the process).
I argue that the characters of each group significantly define the strategy taken to reinterpret the global norms on human rights in Southeast Asia, which led to the establishment of the region’s human rights body in 2009. The subchapter below discusses these strategies.

### 3.3 The Behaviour of Norm Interpreters

Beyond discussing the actors’ character, it is crucial to analyse the actors’ behaviour – namely, the tangible process of regionalising the global norms themselves. The general term for describing this process is *Norm Translation* (see, for example, Johnson and Hagström (2005), and Tabak (2016)). There are various models of norm translation – some focussing on the mechanism (the step-by-step process), some on the context and conditions for the translation process to happen, and some on the key actors behind the process. None of the existing models provide a framework of analysis that well acknowledge the range of evidences found in this research, as well as able to explain the possible causal relations exist between them.

Therefore, this thesis proposes a new model of norm translation, conceptualised as Norm Interpretation, which is constructed based on the identification of the empirical actions and interactions among the three Norm Interpreter subgroups in the research. This subchapter will discuss the distinct nature of this concept. It will also depict how applying a sociologically informed microscopic reading approach to analyse individual interactor relations may provide non-traditional explanation of processes happen at the macro-level IR system of regionalism (in Southeast Asia).

#### 3.3.1 Norm Translation

Research shows that the process of norm regionalisation varies, depending on the character of both the norm recipient and the norm promoters (as discussed above). From the perspective of a norm recipient, this research argues that, in Southeast Asia, the regionalisation of global norms on human rights was highly influenced by a the
specific and somewhat unique characteristics of ASEAN itself. Namely: (1) economic, social and political diversity; (2) relatively recent nature of the institution building process; (3) steadfast commitment to two specific local norms (Asian values and ASEAN Way) during a period of increased pressure on states and regional organisations to better adhere to global human rights norms.

The process of norm translation rests upon an underlying assumption, specifically that ‘norms … [are] not set in stone; they can be reframed, reinterpreted, and modified in order to increase their fit with a particular local environment’ (Klingler-Vidra and Schleifer 2014:271). Broadly, this is a process of transitioning global (Western) ideas into local contexts (Acharya and Buzan 2007). It generally involves three steps, as identified by Zimmermann (2016:106), namely: translation into discourse, then into law, and, finally, into implementation, with a variation in responses, as shown below:

![Figure 3.4. Three Steps of Norm Translations](source: Zimmermann (2016:106))

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107 For reference on some and/or all of the points in this part, see, among others, Allison and Taylor (2016); Jayasuriya (1998); Chua (1998); King (2007); Bogart (2000); Dosch (2007, 2008); Morada (2016); Munro (2009).
Various models of norms translation are distinguished by combinations of these three steps. An early-developed model is the anthropological approach of ‘Norm Vernacularisation’, through which ‘global [norms] become localized, no longer simply a global imposition but something which is infused with the meanings, signs, and practices of local places’ (Merry 1996:80). This involves bridging (1) the discourses promoted by international institutions with (2) the long-established discourses hold by the locals, so that the former resonates with the later (Levitt and Merry 2009). The actors in this process, who help diffuse the global norms into local settings, are individuals who ‘have one foot in the transnational community and one at home’ (Merry 2006:42).

Another model is Norm Propagation, which allies the government, civil society, and private sectors together for global normative deliberation (Dubash 2009). This process, which allows for both the emergence and the propagation of the norms, requires a formal system of representation, as well as democratic procedures and the establishment of mechanisms for norm institutionalisation. Unlike Dubash, who highlights the importance of formal procedure and mechanisms, Checkel (1997) argues that norm translation is broadly centralised on the interests of two local actor groups, defined as society and elite. The two groups bring external norms to the ‘domestic political attention or debate’ (p.476) and further change the domestic discourse and/or government behaviour.

Societal actors, involved in a process called Societal Pressure Dynamic, can successfully pressure the government to adopt certain external values, because the government must give certain concessions to their people (the society) to secure their political survival. Meanwhile, elites learn about the norms’ appropriateness through their active interaction with the global world, which further drives them to adopt the new values in their governance. This process is known as the Elite Learning Dynamic (Checkel 1997). These two interrelated processes for ensuring the global norms are accepted at the domestic level are called Norm Empowerment (Checkel 1997).
Checkel’s Elite Learning Dynamic concept is similar to Florini’s Horizontal Norm Reproduction (1996), which involves a process of emulation. A state’s behavioural change occurs when …

actors see others behaving in a certain way and copy those behaviours …

[When] a state following norms x sees another state behaving in accordance with norm y, … [the state then] replaces x with y … (Florini 1996:378).

Because the norms are perceived as appropriate, Florini argues that this mechanism allows the norms to spread rapidly, ‘replacing well-entrenched standards seemingly in the blink of an eye’ (Florini 1996).

The norm translation model that best accommodates the role of the Transnational Advocacy Networks (TAN, mentioned in the previous subchapter), is that of the Spiral Model (Risse 1999, Keck and Sikkink 1999, Risse and Sikkink 1999). This model identifies a cycle of five different situations faced by TANs before they successfully compel a government to fully adopt certain global norms (Risse 1999). These are: repression, denial, tactical concessions, prescriptive status, and, finally, rule-consistent behaviour – a situation where the norms have been fully institutionalised at the domestic level and the norm promotion process is considered successful.

Throughout the cycle, the actors are empowered by a ‘communicative behaviour’, which is a ‘persuasive processes’ that includes ‘argumentative rationality’ and ‘rhetorical action’ (Risse 1999:531). I argue that this ‘power of better argument’ (p.541) strategy is also applied by the actors studied in this research. I further argue that when Norm Interpreters develop their argument, they are influenced not only by aspects of instrumental rationality (referring to Risse above), but, more importantly, by their sense of communality and an understanding of local values (value-driven rationality).

However, the Spiral Model cannot appropriately describe the behaviour of Norm Interpreters in this research, for two reasons. First, in their efforts for norm acceptance, the Norm Interpreters did not undergo the phases of repression and denial. In the case of AICHR, I argue that the first phase of repression occurred pre-1993 (before ASEAN
first considered establishing a regional human rights body). The second phase of denial happened between 1993 and 2007, when ASEAN seemed unsure of the idea, but finally arrived at an agreement to establish the body, thus assigning the HLP to draft the ToR. As stated in Chapter 1 (p.1), the discussion in this thesis spans a period from post-1993, up to the adoption of the AICHR Terms of Reference (ToR), with emphasis particularly given to the ToR drafting process, existing from July 2008 to February 2009. Thus, the first two stages of the Spiral Model occurred before the Norm Interpreter’s time.

Second, although the Norm Interpreters did endure situations similar to tactical concessions, prescriptive status, and rule-consistent behaviour, unlike the model’s suggestion, the three situations cannot be considered ‘phases’ (or stages). In this research, one situation was not a consequence of (or result of) the previous situation. For example, Cambodia’s statement of willingness to establish a National Human Rights Institution (NHRI) can be seen as ‘tactical concession’. However, as found in this research, after the statement, there was no indication that Cambodia’s behaviour grew closer to the ‘prescriptive statuses’ before signing to the ‘rule-consistent behaviour’ as suggested by the model. As proven, the statement was unrelated to Cambodia’s position on the establishment of AICHR; before and after the statement, they consistently opposed having an ideal AICHR.

Similar is true of the ‘prescriptive status’ phase. Referring to the data provided by the United Nations Human Rights Office of the High Commissioner, during the period of AICHR’s establishment process (2007 to 2009), certain ASEAN member-states ratified one or more of the 18 International Human Rights Treaties (Cambodia: 1, Lao: 3, Indonesia: 2, Philippines: 2, Singapore: 1, and Thailand: 4). This research found no indication linking this action of ratification to the dynamics of member-states’ behaviour and/or perception towards the concept of establishing AICHR.

Lastly, regarding the phase of ‘rule-consistent behaviour’: The Spiral Model suggests this stage is the final (ideal) output of the long, five-phase process of norm adoption. However, unlike what is suggested, I argue that the establishment of the compromised

AICHR was not an indication of member-states’ further ‘rule-consistent behaviour’ towards implementing human rights norms in the region. It also does not guarantee member-states’ sustained compliance with international human rights as suggested by the model.

Acharya’s two models of norm translation, Norm Subsidiarity and Norm Localization\textsuperscript{109}, are highly relevant to this research, primarily because these models were developed based on the study of Southeast Asia’s history of regionalism, which broadly proves that ASEAN member-states have never been passive recipients of external norms.\textsuperscript{110} Both models highlight the role of local actors as norm promoters, but with slightly different translation approaches. In norm subsidiarity, the actors tend to be norm makers, while in norm localisation, the actors tend to be norm takers.

Norm subsidiarity\textsuperscript{111} is defined as ‘a process whereby local actors create rules with a view to preserving their autonomy from dominance, neglect, violation, or abuse by more powerful central actors’ (Acharya 2011:97). The process is first, outward looking. This mainly concerns local actors' fear of being dominated by external powers, which influences how the former defines their relationship with the latter. The second concerns rejection. Local actors do not want to adopt global norms, in any way. The third may involve the process of universalising. In their resistance toward the foreign value they reject, local actors tend to construct new norms to amplify certain global norms. They then try to export or universalise these new norms.

Finally, the fourth concerns the action of the peripheral. The process of a subsidiary may be found only among those who are concerned that their autonomy is challenged by the powerful (‘parochial’ (Acharya 2011:98)) global actors. As Acharya concludes,

\textsuperscript{109} In 2013, Acharya introduced new concept of Norm Circulation, which he himself viewed as ‘… an alternative framework … a combination of my prior concepts of localization and subsidiarity.” (Acharya 2013:469). This concept is not included in this thesis as it explains the next step of norm translation, in which “… the less powerful actors feel marginalised in the norm creation process or feel betrayed by the abuse of the norm by the more powerful actors in the implementation stage.” (Ibid).

\textsuperscript{110} In the article, Acharya used the term ‘external values’, ‘external norms’, ‘foreign norms’, ‘global norms’, and ‘transnational norms’ interchangeably to describe one similar unit of analysis, which is referred to as ‘global norms’ in this research.

\textsuperscript{111} Acharya uses the term ‘subsidiarity’ referring Anne-Marie Slaughter’s book titled ‘A New World Order’, in which she defines the general notion of subsidiarity as ‘… a principle of locating governance at the lowest possible level – that closest to the individuals and groups affected by the rules and decisions adopted and enforced’. Essentially, it gives encouragement and authorization to local autonomy. This definition is provided by Anne-Marie Slaughter (2004) as quoted by Acharya (2011:97).
norms subsidiarity is comparable to ‘weapons of the weak’.\textsuperscript{112} It helps local actors, particularly the peripheral Third World actors, to strengthen their bargaining position in world affairs against the ‘civilised’ West who define the global norms.

Acharya’s second model – which, to a certain degree, inspired the construction of norm interpretation proposed by this research – is norm localisation, which is defined as ‘a process of idea transmission in which [a region] borrowed foreign ideas … and fitted them into indigenous traditions and practices’ (2004:244). It is a complex transmission process by which local actors construct harmony between global and local norms. The process occurs through various means of communication, such as (1) 	extit{discourse}; (2) 	extit{framing} (reinterpreting the external norms with certain language to make it similar to local norms), which is considered ‘a highly strategic process’ (Krook and True 2012:110); (3) 	extit{grafting} (representing the transnational norms in a way that associates it with a pre-existing norm in the shared area of issue); and (4) 	extit{cultural activities}. The output of this complex process is ensuring that foreign norms significantly resemble local beliefs and practices.

\begin{figure}
\centering
\includegraphics[width=\textwidth]{Figure3.5.png}
\caption{The Process of Norm Localisation}
\label{fig:process}
\end{figure}

\begin{itemize}
\item Independent variable
\item Transnational (global) norms
\item Intervening variable
\item Local agents (cognitive priors)
\item Dependent variable
\item Resistance/Rejection
\item Localization
\item Norm Displacement
\end{itemize}

\textit{Figure 3.5. The Process of Norm Localisation}
\textit{(source: Acharya (2011:98))}

\textsuperscript{112} The idea of ‘weapons of the weak’ was first conceptualised by James Scott (1985). However, when using this term, Acharya doesn’t seem to refer particularly to Scott’s concept.
Acharya identifies three elements that are crucial for norm localisation (2004). **First**, the idea of local initiative. This is the idea that localisation is a bottom-up rather than top-down process; it is not a process forced from the outside, nor from above. This argument refers to ASEAN historiography, showing how the acceptance of Indian and Chinese values in the region was ‘neither through conquest … nor commerce … but through indigenous initiative and adaptation’ (p.245).

**Second**, the idea of recipient-adjustments, which concerns the process of making foreign norms more congruent with local ones. Acharya identifies two rationales behind local actors' willingness to undertake the adjustment process, which are: (1) to strengthen (instead of replacing) existing institutions with wider legitimacy; and (2) to ensure that there is no risk of the new global norms harming the existing social order or increasing the risk of social and political instability. Prior to being localised, local actors will omit the potentially harmful elements of the emerging external norms through a rational approach. The **third** element is the idea of effect, in which Acharya argues that to adopt global norms appropriately, it is important to also increase the image (profile and prestige) of local actors, as well as the local norms themselves.

Although frequently referred to in the study of regionalising global norms, this concept is also widely criticised. Some critiques focus on the lack of elaboration on a systematic norm-construction process from below (Wolf 2012), as well as on external factors that facilitate the process (Shawki 2011). The concept is also criticised as being too state-centric and focusing only on actors in regional organisations (Zimmermann 2016). However, the main critique regards the proposed framing process, which is seen as simply …

about presentation, discussing a problem or issue in a particular way to get target audiences to believe newly proposed ideas “coincide with already accepted ideas and practices” … [that] despite its interest in discourse and contestation, it mirrors the approach taken by first wave and cosmopolitan norm theorists in assuming that norms are essentially exported with a fixed content that can subsequently be pruned or reconstructed by local actors to become more acceptable. (Capie 2012:90).
This shows that, rather than reinterpreting the meaning of the content to make it compatible with local norms, norm localisation only selects and constructs some ideas from the global norm that can be made compatible with local norms (Aharoni 2014).

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The above overview of various concepts of norm translation show how authors have paid careful attention to the mechanisms and procedure of the process – whether it is a bottom-up or a top-down, or a linear or circular process; whether it is centred on the state or the non-state actors, and based on the principles of norm taking or norm rejection. This research applies a rather different approach, going beyond a focus on mechanisms and procedures. As mentioned earlier, applying the microscopic reading approach enables this research to focus more on the agents, and less on the structure; it allows the research to elaborate in greater detail the actions and interactions between different groups of Norm Interpreters.

3.3.2 Norm Interpretations

Referring to Johnson & Hagström’s model (2005), the norm translation process in Southeast Asia might occur simultaneously at numerous levels of norm production. These are: in the interactions between individuals at domestic levels, within the institutional framework at national/regional levels, and under the influence of various local economic, political, and socio-cultural structures. The norm interpretation process assessed in this research transpires at the second level/site, which is within the context of both national and regional ‘authoritative decision-making’. This portrays the dynamic actions and interactions of the actor in their effort to regionalise the global norms on human rights.

This process involves the bridging of discourses promoted by international institutions and the long-established discourses held by the locals, so as to make the former resonant with the later (Levitt and Merry 2009). The actors in this process help to diffuse the global norms into local settings.
Considering the various approaches for norm translation, as discussed earlier, within their limitations, I argue that some elements of Merry’s norm vernacularisation and Acharya’s norm localisation can be used to explain the process of norm translation in this research. Similar to norm vernacularisation, AICHR’s institutionalisation is broadly a process to bridge discourses promoted by global regimes, as well as those held by the locals. In addition, similar to the actor tasked with norm vernacularisation, the actor in this research – to varying degrees – values the promotion of global norms as equally important to preserving the local norms – hence, they undertake the bridging process. This shows, as suggested by norm localisation, that the Norm Interpreters are more norm takers, than norm rejecters; they make key adjustments to the external norms and apply certain communication strategies to ensure external norms’ certain level of applicability in the region.

My research will, therefore, focus on the process of norm localisation – or more contextually: norm regionalisation – by examining the actions and reactions that transpired among the three Norm Interpreter subgroups in the establishment of AICHR. However, unlike norm localisation, which aims to strengthen the existing institution, in this research, the expected output of the process is the establishment of a new regional institution to support the practice of human rights in the region.

Furthermore, unlike norm localisation, norm interpretation does not adopt the grafting process and does not consider the importance of ‘effect’. Chapters 4, 5, and 6 of this research will thoroughly develop how the actors accomplish their goals in interpreting the norms. The result will ideally fill the present gap of study on norm translation.

3.3.3 The Strategy

Referring (with some adjustments) to Acharya’s norm localisation and Merry’s norm vernacularisation, this research provides a basis for identifying significant variables related to the action and interaction of (the strategies applied by) the three Norm Interpreter subgroups. These references also help to build a working framework for conceptualising the strategies of each subgroup in interpreting global norms.
The strategies were constructed through the application of inductive reasoning to examine the empirical evidences found throughout the research process. Thus, the interpretive process leads this research towards three different models of policy-making strategies, namely: Tsebelis’ *Veto Player Model* (1995, 2002) which fits the behaviour of the Political Community, Compston’s *Policy Change Model* (2009) for the Policy Network, and Rietig’s *Activists-Lobbyists Model* (2011, 2016) for the Advocacy Coalition. The combination of these three strategies results in the Bowtie Model of Southeast Asian Norm Interpretation, as shown below.

![Figure 3.6. The Bowtie Model of Southeast Asian Norm Interpretation](image)

Unlike Acharya’s model, which depicts a linear, top-down, vertical process of norm localisation, this Bowtie Model represents a largely horizontal process, in which the actions and interactions of the actors transition reciprocally both ways. As discussed further in the empirical chapter, in line with conventional constructivism (see Chapter 2), this model represents the influence of ‘societal norms’ in the process. However, unlike what is suggested by Müller (2004), in situations of dense norms and institutions identified during AICHR’s establishment process, the norm interpretation strategies do not have to necessarily follow ‘the normative prescriptions and the procedures of the given situations’ (p.412). While remaining motivated by a logic of appropriateness, it is indeed still possible for the actors to venture beyond the normative and be creative in designing their norm interpretation strategy. Such processes of ‘constrained creativity’ are most evident in Chapter 5, where I discuss the Advocacy Coalition’s attempt at influencing the ToR drafting process through various means, including the
organization of a public awareness campaign, using a jargon of ‘We want an ASEAN Human Rights Commission with Teeth!’

The Bowtie Models depicts the different strategies applied by both the Policy Network and the Advocacy Coalition in their intention to influence the Political Community’s behaviour as the policy makers, as well as how the two groups’ works intermingled. The shaded area in the middle represents the working arena of the Political Community (the inner circle), which received substantial influence from the Policy Network, as well as pressure from the Advocacy Coalition. However, there are still areas within, where the Political Community held their authority as sole decision makers in the process.

This model also shows the centrality of the Political Community (the state-actors) as the policy makers – while also acknowledging the essential, equally important contributions of both the Policy Network and the Advocacy Coalition (the non-state actors) in the processes. As discussed in Chapter 4, the role of the Policy Network is particularly crucial in two ways. Specifically: to open the door for accepting global norms on human rights in the region, and to set-up conditions that encouraged ASEAN to agree on AICHR’s establishment. The role of the Advocacy Coalition is apparent, particularly in the adjustment of the ToR’s narrative. This served to make the established body appear slightly more powerful than initial projections from the Political Community (discussed in Chapter 5). The main contribution of the Political Community itself surrounds the adoption of the ToR (discussed in Chapter 6) and the inclusion of the Hua-Hin Declaration as an integral part of the ToR, which secured the possible, future empowerment of AICHR. This model is distinctive to Southeast Asia because of the underlying, assumed basis on which the interactor relations (actions and interactions) operate – namely, the local norms of Asian Values and the ASEAN Way.

**The Political Community’s Veto Player Model**

Unfortunately, no literature can be found discussing how practically officials (or, in this research, a member of the Political Community) interacts, or how decisions are made within the Track-1 framework (T1D). Referring to the character of the Political
Community, I argue that Tsebelis’ Veto Player Theory (discussed below) provides the most accurate approach in explaining the T1D process during the institutionalisation of AICHR.

As discussed in earlier chapters, ASEAN’s policy-making process is heavily influenced by local norms; i.e. the ASEAN Way and Asian Values. In particular, ASEAN’s normative method of conflict management, following the principles of informality, non-interference, *musyarawah* (consultation), and *mufakat* (consensus-building), have been identified as central to understanding ASEAN’s primary ‘values’ (read, for example Bellamy (2009), Collins (2013a), Acharya (2014a)). Under these guiding principles, agreement from all parties is required to develop a new policy, thus giving each member-state implicit ‘veto’ power. As such, if even one out of ten member-states disagrees with the proposed policy, ASEAN will uphold the status quo – and halt advancement on that policy.

The very fact that the ASEAN’s regional human rights body was successfully established (with some reservations) shows that unusual diplomatic dynamics occurred throughout the eight-month-long institutionalisation process (specifically, the exchange of ideas, as well as adjustments and accommodations for various different morals and values). The Veto Player Model provides a material explanation of how, within the context of identity differences, a shared and mutually agreed-upon level of appropriateness was reached. Although this is an approach that is broadly positivist in nature, this model is still, I would argue, compatible with a constructivist line of analysis. Not least because of the way in which it puts ideas and social interaction at the centre of the analysis. This model recognises that to precisely analyse the nature of a specific international system within particular historical periods, it is necessary to incorporate a focus on ideas and social interaction, especially those which influenced the formation of actors’ interests (Jackson and Sørensen 2016, Schulz, Söderbaum, and Öjendal 2001, Best and Gheciu 2014).  

[^113]: Also read, for example, Schulz, Söderbaum, and Öjendal (2001), Best and Gheciu (2014).
The theory of Veto Players primarily focuses on the behaviour of actors with veto powers (hereafter referred to as VP), and the impact this has on the possible output of any bargaining situation, including interaction between them. Introduced by George Tsebelis (1995, 2002), VP theory has been applied to a range of studies of comparative politics and political economy (Munger 2001, Ganghof 2017, Hallerberg 2010). Tsebelis broadly argues that every political system must have a configuration of Veto Players, which he defines as an individual or collective actor whose assent is necessary to change the status quo. This theory proposes a simple game in which every actor has a value of 0 or 1, representing their two options: to stay with, or move from, the status quo.

The relations among Veto Players are generally conflictual, as there exists unique ideological distances with a ‘certain level of cohesion’ (2002:2) among them. These particular characteristics define the possible set of negotiation outcomes; the hypothesis is, the bigger the ‘ideological distances’ and the thicker the internal cohesion of each party, the smaller the possibility for change. This possible set of outcomes (that can defeat the status quo) is known as the winset of the status quo. In the case of the Political Community, this small winset defined the outcome of the negotiation process – namely, the establishment of AICHR (which carries more rights-promotional mandates and very limited rights-protection).

**Figure 3.7. Winset & Pareto Set of a System with Three Veto Players**  
*(source: Tsebelis (2002:5))*
In two ways, this model fits the HLP’s character as the Political Community group in this research. First, because of the local norms (the ASEAN Way), with their principle of taking consensus in the bargaining process, each member of the HLP is essentially a veto player. Decisions can only be achieved with the support of all members. If even one member refuses to agree, no decision can be made. Within this context, the Veto Player model (which was initially developed to explain domestic politics) is deemed appropriate for explaining Southeast Asia regional policy-making dynamics. This unique context also differentiates the Political Community’s character from the other Norm Interpreter subgroups (the Policy Network and the Advocacy Coalition). Specifically, the action of the Political Community is defined by the action of its individual members, while, for the Network and the Coalition, it is considered a collective action of the group.

Second, the ten members had different interests, ideas, and their own expectations toward the regional human rights body; significant ideological distances existed among them. The combination of these two variables is enough to create the winset and pareto set of Tsebelis’ model. As shown in Chapter 6, this model provides a satisfactory explanation on how the HLP reached their decision to establish ‘the negotiated’ AICHR in 2009, whose mandate focused primarily on the promotion, and less on protection, of human rights.

**The Policy Network’s Policy Change Model**

When assessing the behaviour of the Policy Network in this research, as discussed in Chapter 4, I identified two different approaches applied by the actors in their effort to influence the policy-making process and the policy outcome related to AICHR’s establishment: the direct approach and the indirect approach. While the direct approach allows the actors to interact directly with the policy maker (in this case, the Political Community), the indirect approach requires the actors to communicate their ideas through intermediary actors (such as civil society and the national level authority), with the hope of their messages eventually reaching the policy maker.
These parallel direct-indirect approaches towards policy makers are also recognised by Compston (2009) when theorising the Policy Network’s behaviour.\textsuperscript{114} Compston’s policy change is seen as ‘a function of changes in the pre-existing policy preferences of relevant public actors’ (p.47). He develops this model based on a view that relations between the Policy Network (considered private actors) and policy makers (considered public actors) regarding changes in public policy involves certain determining factors: resources, preferences, strategies, solutions to perceived problems, as well as rules and norms (as shown below in Figure 3.8). These four factors, when combined, result in the alteration of a policy or the creation of a new one.

\begin{figure}[h]
\centering
\includegraphics[width=0.5\textwidth]{Figure3-8.png}
\caption{Policy Network Model of Policy Change (source: Compston (2009:50))}
\end{figure}

\textsuperscript{114} Compston uses the term of ‘policy network’ in his book without particularly referring to Johnstone’s concept with the same ‘policy network’ title. However, the understanding of both terms is similar, which refers to ‘the set of political actors … who are involved in, or take an interest in, the making of public policy, and/or the relations between these actors’ (Compston 2009:7).
Compston uses the term ‘direct influence’ to describe a process directly targeting ‘changes in the resources, preferences, and strategies … as well as changes in formal and informal rules and norms’ of the public actor as a policy maker (p.37); while, ‘indirect influence’ refers to a process in which members of the Policy Network ‘influence each other’ through ‘possible causal pathways’ (p.47) to eventually make changes in the policy.

In the context of this model, resource interdependencies and resource exchange are the essence of any interaction between policy networks and policy makers. Different resources owned by different parties (either the Policy Network or the policy makers), which are desired by another party (it is ‘tradable’ (p.13)) can be transferred in ‘some relevant sense’ (p.19). The conduct of the exchange is influenced, directly or indirectly, by the above-mentioned resources, preferences, strategies, perceived problems and solutions, as well as rules and norms. Preferences can …

(vary according to circumstances), determined by obvious interests and organizational missions; commitment to another-regarding cause (such as tackling world poverty), as well as other values (normative role orientations, such as personal values, partisanship, and ideology). (p.14-15).

This model suggests that ‘identified problems are not objective descriptions of events and conditions, but rather perceptions of these’ and the possible solutions should then be constructed based on certain ‘cognitive frames’ used by relevant actors (p.16). The strategy is a plan of action designed to maximise the chance of ‘realising their policy preferences’. The plan might consist of some decisions on (1) how to deliver the available resources and (2) how to communicate their policy preferences, as well as perceived problems and solutions. This can be in a more persuasive method of communication, such as in the exchange of information, arguments, and bargaining, along with more conflictual approaches, such as the ‘making of threats and promises’ (p.16, 40).
The final Policy Change factor, *rules and norms*, are less attached to the individual; instead, it is primarily related to the context in which the resource exchange takes place. Assuming that the exchange transpires on ‘a continuing basis’, it is, therefore, necessary to establish ‘mutually recognised procedures’ that facilitate the interaction between the two parties. This might include, among others, ‘establishing and sustaining norms of honesty and reciprocity as well as routines and procedures’ (p.16, 42).

This later triggers both parties to engage in ‘resource exchange’ throughout the policy-making process (p.11). Both parties are assumed to be equal in terms of the resources they own and are, therefore, (within the context of policy change) mutually dependent. The Policy Network requires policy makers to adopt and legally authorise certain policies that have they promoted, while policy makers need the expertise of the Policy Network ‘to ensure that the policy is technically and politically as well designed as possible’ (p.13).

Although the author himself never acknowledges the constructivist nature of this model, it nonetheless highlights the centrality of the processes, the intersubjective nature of reality (see the discussion on perceived problems and solutions below), and the importance of human ideas and thought. This is sufficient indication that Policy Change Theory is deeply compatible with constructivism.

In this research, a similar pattern of resource interdependency and resource exchange is also found between the two Norm Interpreter subgroups (the Policy Network and the Political Community, which are the policy makers), but with a slightly different emphasis. As discussed in Chapter 4, there is an unbalanced interdependency between the two parties; the Policy Network is in a position to place strategic demand on the Political Community (to adopt the global norms on human rights in the region), while the Political Community is in the more powerful position of holding no moral obligation to even respond to the demand.

Referring to this theory, the goal of the Policy Network’s activism is to change (or install new) public policy. Public policy is understood as ‘policy decisions that do not require legislative approval, contracts, and grants’, which consist of policy instruments
and their settings (referring to ‘levels or degree[s] of stringency’) (p.19). Policy changes mean changes in either or both policy instruments and their settings, which are made possible by changes ‘in the content of the official decisions’ that deal with these elements. Therefore, for policy change to occur, changes must happen in ‘the pre-existing preferences of the relevant public actor(s), and/or the amendments made in the course of resource exchange’ (p.19). To ensure this, the Policy Network must …

work to provide a logically coherent and empirically plausible account of what causes changes in the pre-existing policy preferences of relevant public actors and/or in the nature of resource exchange over public policy. (Compston 2009:19).

In this sense, Stone (2004) labels the Policy Network as ‘policy entrepreneurs’ (p.14). Focussing on the role of the actor, this theory suggests the Policy Network’s method of promoting policy change heavily depends on the attributes of the individuals – i.e. the resources they have, their preference and strategy, how they perceive the problems and possible solutions, as well as the rules and norms that exist around them (Compston 2009:13-16). The same set of attributes also influences policy makers’ preferences – i.e. changes in one or more of these attributes will alter their pre-existing policy preferences and further change the policy they are responsible for producing.

For the Policy Network to define the best strategy for targeting policy change, it is important to understand not only their own set of attributes (to know their strengths), but also the policy makers’ attributes (as the means to change their policy preferences). This is found as partially accurate in this research – in a sense that both AICOHR and the WG as the two Policy Network here was required to follow the rules of the game, as set out by the policy makers, before they were able to put forward a more acceptable ideas on the establishment of AICHR. Chapter 4 details this process.
**The Advocacy Coalition’s Activists-Lobbyists Model**

As was true for the Political Community and the Policy Network, no literature provides a thorough explanation on the exact conduct of the Advocacy Coalition negotiations, nor their actions in influencing the policy-making process. Without expanding on the ‘who’ or ‘how’, in his study on the role of Track-3 Diplomacy in the case of human rights in Southeast Asia, Kraft (2002) argues that, within the Track-3 mechanism, actors ‘have a freer hand in what issues to look at, and how they can look at these issues’ (p.61). Therefore, actors can offer alternative views on issues with a goal to ‘seek to influence the perception that government officials have of issues and the priorities that these should have in their hierarchy of policies’ (p.61). Regarding the involvement of non-state actors in international decision-making, a slightly more practical explanation is provided by Betsill and Corell (2008b) who argue that, during the process, the actors might …

engage directly in one of the most traditional diplomatic activities, perform many of the same functions as state delegates: represent the interests of their constituencies, [and] engage in information exchange[,] they negotiate, and they provide policy advice … (p.3)

With such opportunities, the actors may focus on influencing both the outcome of the negotiations (such as the text of an agreement) and the process itself (Betsill and Corell 2008a), i.e. the setting of the agenda (Uhlin 2010).

As discussed in Chapter 5, in my field research, I identified two different categories of behaviour in the Advocacy Coalition: as activists and as lobbyists. Although seemingly rather contradictory in their approaches, these two roles are in fact complementary. As demonstrated in this research, the Advocacy Coalition, as activists, create an environment which then generates external pressure on policy makers. Meanwhile, as lobbyists, they place pressure directly on policy makers from within their decision-making mechanism. Activists …
are typically challengers to policies and practices, trying to achieve a social goal, not to obtain power themselves … [Their activism] goes beyond conventional politics [to include passing laws and lobbying politicians], typically being more energetic, passionate, innovative, and committed. (Martin 2007:20)

On the other hand, lobbying involves direct interaction between non-state actors and government officials (Bouwen and Mccown 2007). It is an ‘access political strategy’, through which non-state actors can transmit ‘complex technical information’ to the policy maker in order to influence, then shape, their decisions.115 As found in this research, to perform their work, lobbyists rely on their personal networking access – without which, the possibility of influence is limited, because, as some say, ‘you can only cook up deals once you are in the kitchen’.116

This dichotomy of activists-lobbyists action and interaction is also seen in Rietig’s research on two different methods for non-state actors to influence international negotiations (2011, 2016). She argues that, since the actors are outside of the negotiation, they have no access to engage in the actual policy-making process itself. Hence, the Advocacy Coalition can serve as activists and/or lobbyists during the negotiation, but can never become negotiators.

According to Rietig (2011), as activists, the actors’ central strategy is to make as much ‘noise’ as possible. To do so, they must develop ‘a space of communication’ in which ideas from below can be transported ‘up’ to the policy makers (Castells 2008:78,91), using various channels. As lobbyists, the Advocacy Coalition’s actors are occasionally granted accesses to enter the ‘negotiation setting’. However, even with this privilege, they are still not considered part of the official delegation; they remains outsiders.

Rietig and Betsill & Corell’s concepts, when combined, provide a sufficient framework for explaining the Task Force’s behaviour as the Track-3 Advocacy Coalition in this research, as well as to further examine the (in)effectiveness of their

115 http://www.lobbyingtransparency.org/open-up-lobbying-1/#lobbying – as per 16 June 2018, 2.20pm
116 Ibid.
activists-lobbyists strategy. This framework is also appropriate for identifying the elements of weakness and strength in their actions and interactions with both the Political Community and the Policy Network, as well as to further justify why they considered themselves rather unsuccessful in pressuring the Political Community to produce an ideal regional human rights body. This will be thoroughly discussed in Chapter 5.

3.4 Conclusion

In this chapter, I have provided a broad conceptual framework for understanding the character and behaviour of the three Norm Interpreter subgroups as the key units of analysis in this research. This chapter has sought to establish the concept of Norm Interpreters as a new variant of the larger concept of Norm Promoter – which refers to actors tasked with the promotion of global norms – in the study of IR. It has also depicted how the ideas of norm interpretation differs from other existing concepts related to norm translation, explaining the mechanism of regionalising global norms in the study.

This chapter has further elaborated on the character of each Norm Interpreter subgroup (the Political Community, the Policy Network, and the Advocacy Coalition) and showed how the three groups, to some extent, fit into the concept of multitrack diplomacy widely referred to in the study of ASEAN regionalism, particularly Track-1, Track-2, and Track-3. The three subgroups broadly represent the government actors (the HLP, as the policy makers in this study), the think tanks (AICOHR and the WG, as the intellectuals behind the process), and the network of civil society leaders (the Task Force, as the watchdog of the process).

The last portion of the chapter has elaborated the Bowtie Model of Southeast Asian Norm Interpretation, which is central to understanding the interpretation process of global norms on human rights in the region. This model is a combination of the three different strategies applied by each of the subgroups discussed above, in their effort to interpret global norms on human rights as acceptable in the region. These strategies led to AICHR’s establishment in 2009, which, although far from ideal, is considered
an achievement in and of itself. This chapter, however, has also hinted at conceptual/theoretical explanations as to why the interpretation strategies failed to produce an ‘ideal’ regional human rights body – one that serves the values of the International Bill of Human Rights as the perceived global human rights norms.
Chapter 4: 
Policy Network: The Outer Circle with an Insider Status

‘Quis custodiet ipsos custodes?’
‘Who shall guard the guardians?’

4.1 Introduction

This chapter is the first of three empirical chapters. It discusses the Policy Network (henceforth: the Network), one of three Norm Interpreter subgroups. This chapter elaborates on the behaviour of two ASEAN Policy Network institutions. Two influential think tanks are the focus of this chapter: the ASEAN-ISIS Colloquium on Human Rights (AICOHR) and the Working Group for an ASEAN Human Rights Mechanism (the WG). An analysis is provided of their efforts to reinterpret global norms on human rights by promoting the establishment of a regional human rights body, later known as the ASEAN Intergovernmental Commission on Human Rights (AICHR).

In Acharya’s study of regional actors’ role in localising external norms, non-state actors, such as the Policy Network in this research, are seen as consciously reconstructing external norms to better fit with existing local norms (Acharya 2004). As conceptually discussed in Chapter 3, these actors engage in formal policy-making processes, to the degree that their behaviour influences (although not necessarily determines) the output, leading to the formation of official policies (Skogstad 2005).

In addition, the Network (or Track-2 in the context of Southeast Asia multitrack diplomacy) also plays a role as intermediator, bridging the interests of the state (the

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117 Quoted from Weiss, Forsythe, Coate, & Pease (2010:172)
118 In this chapter, the term ‘the Network’ (a short form of ‘Policy Network’) will be used to represent the WG or AICOHR, or both.
119 In this research, the Policy Network (the Network) and Track-2 Diplomacy (T2D) are used interchangeably. While in general, I will use the term ‘the Network’, I still use ‘T2D’ mainly when I need to refer to certain references that particularly use this term. The same goes for the Advocacy Coalition (the Coalition) and
Track-1 Political Community, discussed in Chapter 6) with society (or more specifically, the Track-3 Advocacy Coalition, discussed in the following Chapter 5) (Börzel 1997).

In this research, these two roles are clearly evident. First, as think tanks, AICOHR and the WG were successful in mainstreaming human rights issues in ASEAN, which paved the way for AICHR’s institutionalisation – despite the existence of Asian Values and the ASEAN Way as hindering factors. Second, to reach this point, before and during the policy-making process, AICOHR and the WG were also successful in maintaining a ‘complex’ bridging system which, referring to Job (2003) includes … informal networking activities, unofficial channels of communication and people-to-people diplomacy, across national and regional levels, including official and nongovernmental diplomacy … [leading to the] changing [of] norms, identities, and institutions. (Job 2003:246).

In addition, the Network also established and maintained formal networking and official channels of communication with ASEAN. Since 1988, AICOHR (as part of ASEAN-ISIS) has been registered with the ASEAN Secretariat, while the WG, since 1998, has been officially acknowledged by ASEAN as their ‘dialogue partner’ for the institutionalisation of AICHR. Furthermore, one significant, official acknowledgment attributed to the Network was asserted by the ASEAN Foreign Ministers, during the 35th Ministerial Meeting in Brunei Darussalam in 2002:

We recalled the decision made by the 26th ASEAN Ministerial meeting to consider the establishment of an appropriate mechanism on human rights. In this regard, we noted the First and Second Workshops on the ASEAN Regional Mechanism on Human Rights hosted respectively by Indonesia from 5-6 July 2001 and the Philippines from 13-15 June 2002. We also noted the 9th ASEAN-International Institutes of Security and International

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1 Track-3 Diplomacy (T3D) in Chapter 5, as well as the Political Community (the Community) and Track-1 Diplomacy (T1D) in Chapter 6.

120 For a complete list of entities associated with ASEAN, visit http://asean.org/?static_post=entities-associated-with-asean.
Studies (ISIS) Colloquium on Human Rights, held from 23-24 February 2002, in Manila. We deemed that these efforts could contribute in enhancing the exchange of views among different sectors in ASEAN towards the realization of the concept of an ASEAN human rights mechanism. We also acknowledge the importance of continuing dialogue with the Working Group for an ASEAN Human Rights Mechanism. (cited in Muntarbhorn 2003:1).

My field research found that, although the impact of AICOHR and the WG’s interactor relations on the establishment of AICHR was mostly apparent during its eight-month official establishment process, their activism can be traced back until as early as 1993.

Up until the establishment of AICHR in 2009, the Network had influenced the process through two different approaches: direct and indirect, with the direct one as the main approach and the indirect as the supporting (see Figure 4.1. below). The direct approach is the Network’s primary strength, which largely distinguishes their behaviour from that of the Track-3 Advocacy Coalition. Applying this direct approach, the Network employed two simultaneous strategies, which were: (1) a straightforward route by proposing key policy recommendations to ASEAN, regarding the ideal form of a human right mechanism in the region; and (2) a detour by promoting and presenting ASEAN with the idea of human rights as a security issue (the securitisation of human rights), therefore highlighting the strategic significance of a regional human rights body.

Figure 4.1. The Policy Network’s Strategy for Norm Interpretation
Parallel to their effort in directly approaching ASEAN, through the indirect approach, the Network used the power of member-states’ governments (which can be considered the national level Track-1), as well as the power of civil society (the Track-3), to influence ASEAN.\(^{121}\)

To empower the national governments, the Network focused on the internalisation of the human rights issue in the respective political systems. Among other methods (this being the most significant), the internalisation was accomplished by promoting the establishment and support of the National Human Rights Institutions (NHRI). Meanwhile, for the civil society, the Network attempted to create avenues for human rights experts, activists, and practitioners to voice their concerns directly to ASEAN.

In the order mentioned above, this chapter elaborates on each of the Network’s four strategies. It begins with a brief review of concepts related to the Policy Network as Track-2 Diplomacy in Southeast Asia (for a detailed elaboration, see Chapter 3), followed by descriptions of AICOH and the WG. After discussing the strategies, at the end of the chapter, I will assess how the Network’s behaviour resulted in AICHR becoming ‘less-powerful-then-expected’, as described in Chapter 2. In general, this chapter concludes that the Network’s persistent engagement with ASEAN has elicited certain success in mainstreaming the human rights issue within the region.

### 4.2 ASEAN’s Policy Network: An Overview

Until the end of the 1990s, the Network and their initiatives received only minimal attention from ASEAN. This has changed over the years, and their contribution to AICHR’s establishment process is considered one of the most significant achievements of Track-2 diplomacy in ASEAN.

\(^{121}\) This chapter will only discuss the relations between the Network and the governments, as well as the Network and the civil society. How governments and civil society influence ASEAN’s behaviour is elaborated on in the chapter on the Political Community and Advocacy Coalition, respectively.
According to Chandra, the opinion that ASEAN should include a non-governmental actor in its policy-making mechanism had already emerged – among prominent figures within the inner circle of ASEAN elites – as early as the 1980s (Chandra 2006, 2009). Adam Malik, former Indonesian Foreign Minister and one of the founding fathers of ASEAN, once acknowledged that ‘[t]he shaping of a future of peace, friendship and cooperation is far too important to be left to government and government officials… [As such, there is a need for] ever-expanding involvement and participation of the people’ (Chandra 2006:72). The establishment of ASEAN-ISIS in 1988 – the first institution officially serving as an ASEAN think tank – opened the door for the development of Malik’s idea.\footnote{122} ASEAN-ISIS, in fact, has become the main actor in championing the role of Track-2 Diplomacy (T2D) in the region.

Through shared friendships, most of these networks’ senior or top-level members are personally close to high-level officials in ASEAN and their respective states (Chandra 2009, Kraft 2000, Makito 1999, Stone and Nesadurai 1999). According to Marzuki Darusman (a key person in the WG), the element of personal diplomacy, established through friendship and personal trust, contributes to more than 50% of the Network’s success factors.\footnote{123} Because of this relationship quality, T2D can access high-level official information; can promptly put forth their personal (representing the organisation) opinions and convince ASEAN that their arguments are true and valid; and can become directly involved (though still informally) in ASEAN’s policy-making process. With these interpersonal dynamics, according to Manea (2009) the actors are considered as ‘belonging to ASEAN’s inner circle’ and enjoying an ‘insider status’ (p.40). Personal bonds and informal links further allowed T2D to maintain constructive relations, therefore proving the effectiveness of informal diplomacy in influencing both the policy-making process and its output (Stone 2011).

\footnote{122} Apart from ASEAN-ISIS, few other institutions are known as successful ASEAN think tanks, among them: the ASEAN Business Advisory Council (ABAC – a platform for the business community to influence ASEAN economic policy makers); the Institute for Southeast Asian Studies (ISEAS – a research institute that played an active but informal role in the formulation of ASEAN policy-making); and the Council for Security and Cooperation in the Asia-Pacific (CSCAP), which has a strong connection with the ASEAN Regional Forum (ARF). For more on the ASEAN think tanks, see Chandra (2004, 2009), Kraft (2000) and Zimmerman & Stone (2017). For more on the political and economic cooperation, see Ball (1994), as well as Ball, Milner, and Taylor (2006).

\footnote{123} From personal interview with Marzuki Darusman (Jakarta: 09 August 2017).
In its development, T2D served as the main engine of ASEAN regional cooperation and multilateral relations (Kraft 2000). It functioned both as an ‘idea generator’ and an arena to propose and discuss progressive ideas, such as introducing and promoting ‘new norms and standards’ (Harris 2000:501). T2D focuses on ‘co-operative efforts to explore new ways to resolve differences over, or discuss new approaches to, policy-relevant issues’ (Jones (2008b) quoted from Stone 2011:244); in this case, with the aim of shaping and influencing foreign policy and/or facilitating the conduct of foreign policy by government officials (Makito 1999).

As a watchdog, T2D partly mirrors and anticipates the governments’ attitude, as this can indicate what policies will be created (Evans 2006). Therefore, T2D is an integral part of the regional policy negotiation process (Ball 1994, Harris 2000). Furthermore, T2D has been successful in ‘widening ASEAN’s scope of action’ (Tan 2011b:163), as well as initiating an informal, bottom-up ASEAN regionalisation process (Chandra 2006). This was an extremely new development for ASEAN, who, by the early era of T2D, existed solely as a top-down, elitist organisation with exclusive policy-making processes.

This research argues that, in at least two respects, ASEAN Track-2 Diplomacy is different from its counterpart in Western democracies. First, ASEAN T2D possesses a closer relationship with the government than is usually seen in the West (Kraft 2000). Second, ASEAN T2D is generally smaller, composed of individuals with personal links to decision/policy makers (Zimmerman and Stone 2017). These two characteristics are highly visible in both AICOHR and the WG, and define their behaviour and strategies in achieving their goals.

T2D dialogue forums involve non-state actors such as academics; intellectuals; analysts; media, business, and civil society representatives; and other non-state actors, as well as government officials – each acting in a private capacity (Ball, Milner, and Taylor 2006). Townsend-Gault, for example, argues that this unofficial nature in dialogue channels (relying on personal capacity) offers advantages over official diplomatic processes:
track-two diplomacy … has no official standing, and participants, even though they may be government officials, do not represent the state or government, and therefore the conclusions of the meeting, if any, are not in any way binding upon governments, and nor are the proceedings of the meeting declamatory of the position of any state … This gives participants an unusual degree of freedom to speak and express their views and to debate topics which, in ordinary circumstances, would be either taboo or of such sensitivity that the approach to discussions is necessarily cautious. (quoted from Makito 1999:183).

4.3 About the AICOHR & the WG

Both institutions were established in 1996 as a response to the 1993 ASEAN Foreign Ministers Joint Communique (which included the statement that ‘ASEAN should also consider the establishment of an appropriate regional mechanism on human rights’\textsuperscript{124}). Both function as a T2D Policy Network in the establishment process of AICHR. AICOHR and the WG are distinct in the nature of their ‘parental institutions’. While AICOHR is a subunit of ASEAN-ISIS, a Southeast Asian regional think tank, the WG is established under the umbrella of LAWASIA, an Asia-Pacific organisation. Nevertheless, with official recognition from ASEAN in 2001, the WG has always been considered as a Southeast Asian body.

As mentioned in Chapter 2, during this period, ASEAN (as part of greater Asia) was the only region lacking a human rights body. Despite declaring their openness to the idea three years earlier, in 1996, ASEAN was still unsure about the kind of human rights body the region needed (or wanted) and, further, considered such a body to be contrary to governmental interests.\textsuperscript{125}


\textsuperscript{125} Statement of Carlos Medina at Session 1, 15th AICOHR Conference 2008 - quoted from an unpublished conference proceeding made available to me during the field research.
Under these circumstances, both AICOHR and the WG were created with the primary objective of establishing a human rights mechanism in Southeast Asia.

### 4.3.1 AICOHR

Initially convened in 1993, AICOHR was officially established only three years later as an initiative of ASEAN-ISIS. A network of independent individuals, ISIS is widely acknowledged as the best-established think tank in Southeast Asia, dedicated to the study of political security, economics, and socio-cultural matters in the region. The main actor behind AICOHR’s establishment was Carolina Hernandez, one of ASEAN-ISIS founders and, by 1996, the Executive Director of the Institute for Strategic and Development Studies (ISDS) in Philippines (one of ASEAN-ISIS’ five early members).

As one of three flagship projects for the think tanks, AICOHR was tasked with constructing a contextual understanding of human rights norms possible for the region, as well as to establish a regional human rights body – i.e. following-up on the recommendation previously submitted by ASEAN-ISIS to ASEAN.

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126 To learn about the role of ASEAN ISIS in ASEAN regionalism, read among others: (Soesastro, Joewono, and Hernandez 2006, Stone 2011, Katsumata 2003): ASEAN ISIS has been labelled as a club, a loose association of think tanks, a policy community, or – in more cynical views - as ‘a group of apologists for ASEAN’. This thesis perceives ASEAN-ISIS as a policy network and as Track-2 Diplomacy. In his article, Rizal Sukma gives an overview of the work of ASEAN-ISIS and describes how the network, quoting Nesadurai & Stone, plays a ‘proactive policy entrepreneurship’ role in ASEAN, as well as how they are acknowledged as bringing an influential impact to the promotion of regional security and economic cooperation (Sukma 2006:89).

127 From personal interview with Herman J Kraft (Dilliman: 02 August 2017).

128 The other four founders are: Jusuf Wanandi from Indonesia, Noordig Sopiee from Malaysia, Lau Teik Soon from Singapore, and Kusuma Shitwongsee from Thailand (Soesastro, Joewono, and Hernandez 2006)

129 When ASEAN-ISIS was officially formed and registered with the ASEAN Secretariat in 1988, it was composed of only five institutes of the original ASEAN members (CSIS Jakarta, Institute of Strategic and International Studies (ISIS) Malaysia, Institute for Strategic and Development Studies (ISDS) the Philippines, Singapore Institute of International Affairs (SIIA), and Institute of Security and International Studies (ISIS) Thailand (Katsumata 2003). In 1995, ASEAN-ISIS admitted the Institute of International Relations (IIR) of Vietnam as a new member, followed by the Cambodia Institute for Cooperation and Peace (CICP) in 1997 and the Lao Institute of Foreign Affairs (IFA) in 1999. While the individuals from Brunei Darussalam, affiliated with the Ministry of Foreign Affairs, have been participating in ASEAN-ISIS for a number of years, it was officially a member of ASEAN-ISIS in 2000, following the establishment of the Brunei Darussalam Institute of Policy and Strategic Studies (BDIPSS). However, ASEAN-ISIS is still facing a challenge to include the Myanmar Institute for Strategic and International Studies as a member (Sakonhnhinhom 2007)

130 As discussed before, by 1993, ASEAN ‘politely acknowledged’ the idea of having a regional human rights forum, but did not do anything to pursue it.
AICOHR’s main activity is the annual dialogue forum on human rights, which involves government officials, academics, members of the ASEAN-ISIS network, and select civil society representatives – who are supposedly participating as private individuals (Stone and Nesadurai 1999). The creation of this formal dialogue mechanism is an extraordinary movement, especially within the then regional circumstances. Human rights issue was still considered as a too sensitive non-traditional security matter; a threat to national sovereignty (Kraft 2006). There was still a lack of trust among the member-states, not to mention in relation to the issue of human rights (Kraft 2000, Gerard 2016).

Therefore, the main goal of organising this dialogue forum was to build confidence among the participants. It was intended to be a non-threatening forum in which states could openly discuss the matter, without feeling compelled to be defensive or aggressive about their different positions on the issue (Kraft 2006). In this forum, member-states could share their country’s interpretation of human rights, while also introducing ‘alternative’ views on the matter. By providing such a venue, AICOHR was being inclusive and, through a ‘step-by-step approach’, aiming to ‘preach to the non-converted’. 131

The first forum – held in 1993, on the meaning of human rights for the different ASEAN member-states – is considered one of the earliest regional forums in Southeast Asia where the human rights issue was discussed openly. 132 During the initial meeting, member-states primarily used this forum to challenge the assumed universal nature of the value of human rights’, arguing that the norms were constructed by the West and, therefore, were inapplicable in the region. They also brought forward the significance of Asian Values as regional norms, which supported the cultural relativism of human rights and highlighted that ‘the notion [of] human rights … [should be] shaped by a country’s experiences’ (Gerard 2016:204).

131 Statement of Rizal Sukma at Session 6, 13th AICOHR Conference 2006 – quoted from an unpublished conference proceeding made available to me during the field research.
Through a series of regular meetings, dialogues, seminars, and the like, AICOHR also played a bridging role between governments (both the ASEAN Secretariat at the regional level, as well as the government of individual member-states at the national level) and their people. AICOHR helped create an environment where Track-1 participants were willing to listen to Track-3, while Track-3 participants could understand and respect the formal governmental process arranged by Track-1. Through these channels, any concerns of the people, particularly on the issue of human rights, could be well voiced and directly heard by policy makers. However, AICOHR made it clear that these dialogue forums were not a channel in which NGOs could raise criticisms of ASEAN and its member-states (Collins 2013).

AICOHR’s effort in creating venues for multitrack dialogue brings forth two kinds of influential impact: First, the issue of human rights could now be discussed within a public forum ‘in an open and candid manner without having to worry about political repercussions’ (Kraft 2006:86); this served to refashion the idea of human rights as an acceptable ‘political discourse’ in ASEAN. Second, a relatively high degree of understanding now existed between Track-1 and Track-3, enabling the relevant actors to share a forum and discuss sensitive matters (such as human rights issues) in a more constructive manner (Collins 2013). Therefore, the ambitious aim of confidence-building measures was successful.

4.3.2 The WG

Like AICOHR, the WG is a notable network of individuals whose goal is to approach and encourage both governments and civil society (though mainly governments) to collaborate on the issue of human rights (Chandra 2006). Unlike AICOHR, which is a subunit of an established regional think tank, the Working Group was created by the Human Rights Committee of LAWASIA, an international organisation of individual ‘lawyers, judges, legal academics’ and other like-minded individuals, focussing on the interests and concerns of the legal profession in the Asia-Pacific region.¹³³

¹³³ For more information on LAWASIA, visit http://lawasia.asn.au.
The WG itself was comprised of high-profile individuals from (initially) the four ASEAN elder member-states (Indonesia, Malaysia, the Philippines, and Thailand), who were experienced in working with government institutions, parliamentary committees, human rights commissions, academics, and NGOs in various ASEAN countries. During its early years, the WG was led by three well-reputed individuals, namely: Carlos Medina (the Executive Director of the Ateneo Human Rights Centre at the Ateneo de Manila University) from the Philippines, Vitit Muntarbhorn (Professor of Law at Chulalongkorn University and UN Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea) from Thailand, and Marzuki Darusman (former Attorney-General of Indonesia and leader of the independent UN investigation into the assassination of former Pakistani Prime Minister Benazir Bhutto, as well as the UN panel on investigating the alleged war crimes committed in Sri Lanka during the civil war) (Tan 2011b).

This research finds that these three founding members were the key persons who initiated and led the group in approaching ASEAN, as well as in developing cooperation with other stakeholders. They relied on their professional experience in the field and capitalised on their personal network. With their influence and presence, the Working Group could maintain good access to ASEAN senior ministers. Since Vitit Muntarbhorn was appointed as one of Thailand’s representatives at the High-Level Panel (or HLP, an ad hoc body established by ASEAN to draft AICHR’s Terms of Reference, considered as the TID Political Community in this research), this provided the WG wider access to contribute even more directly to the ASEAN policy-making mechanism. Up until now, apart from Carlos Medina, who during this research is critically ill with cancer, these WG founding members are still actively involved in regional and global human rights activisms.

By 2001, when the group was officially recognised by ASEAN, it had six national level working groups in six ASEAN countries (Indonesia, Malaysia, Cambodia, Singapore, Thailand, and the Philippines), as well as four national focal points in the other four member-states (Myanmar, Lao, Vietnam, and Brunei Darussalam) (Muntarbhorn 2003). Following the recognition, the WG organises an annual workshop on the ASEAN Regional Human Rights Mechanism, in cooperation with
the national government holding the ASEAN chairmanship of the year, involving the national human rights commission in that respective country, if it possessed one.

Apart from individually approaching officials at the ASEAN Secretariat and its ten member-states, the annual workshop remains the main activity of the Working Group. The results of these workshops were presented at the subsequent ASEAN Ministerial Meetings. The WG also holds a series of informal meetings with ASEAN senior officials and foreign ministers at the regional level, as well as education and lobby activities at the national level (organised by the national working groups in each country) (Manea 2009).

The WG’s ‘persistent engagement and insistent persuasion’ with ASEAN and the member-states (both at the institutional level and through individual and personal engagement) facilitated the establishment of AICHR (Tan 2011a). In 2009, after the adoption of AICHR’s Terms of Reference, and upon reflection of their thirteen-year engagement with ASEAN for the establishment of a regional human rights body, the Group considered the outcome of their activities to be praiseworthy.

[Our activities] were mounted in partnership with governments; [our] meetings with senior officials were institutionalized within the agenda of ASEAN’s Ministerial Meetings; [our] submissions were sought and considered for programs of action; [our] suggestion for the national human rights institutions to band together to provide another solid level of advocacy was heeded; [our] members were included in high level governmental as well as civil society processes dealing with the establishment of the mechanism; [our] existence as an entity associated with ASEAN acknowledged in the ASEAN Charter itself. (Medina 2009:8).

Since the WG began as an NGO advocating the establishment of a regional human rights body, some argue that the Working Group should be classified more as a Track-3 initiative which later transformed into a Track-2 body (Tan 2011b). Some other,

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134 Statement of Carlos Medina at Session 5, 13th AICHR Conference 2006 - quoted from an unpublished conference proceeding made available to me during the field research.
considering the very elitist nature of its dominant approach in engaging Track-1 officials, (cynically) argue that the WG is the Track-1 itself, but, as they are non-governmental, they had better be classified as Track-1.5\textsuperscript{135} diplomacy.\textsuperscript{136} This research, for reasons discussed earlier, perceives the WG as T2D.

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The character of the WG and AICOHR as think tanks – the outsider with an insider status – creates a unique context within which different strategies were developed to influence ASEAN policy-making dynamics, particularly on the establishment of AICHR. Compared to the WG, AICOHR was more assertive in constructing public discourse. Meanwhile, the WG provided more venues for regional dialogue and debates on policy advocacy (the agenda-setting and drafting mechanism of the ToR). Generally, the approach applied by the WG was more ‘moderate’ and the language was ‘milder’ than that of AICOHR.

Despite similar level of quality of their professional background, I would argue that the WG can be considered as having more direct influence to the actual process of ToR drafting – more-so than AICOHR. This may be due to the varying levels of familiarity individual members had on the issue of human rights. The WG’s members were mostly human rights advocates and, therefore, very familiar with the issues concerned. While AICOHR’s members were mostly experts on regional security and strategic studies, not necessarily on human rights issues. It was anticipated that the WG’s contribution to the narrative of the draft would be substantially more relevant than AICOHR’s.

Although the two Networks shared a main goal – the establishment of a strong regional human rights body – the parameter of success was different. For AICOHR, success meant (1) influencing government officials to be more open and less reluctant in discussing the domestic issue of human rights, and (2) motivating activists to see the

\textsuperscript{135} The term ‘track one and a half diplomacy’ was first introduced by Paul Dibb (an Australian strategist, academic, and former defence intelligence official) to describe a meeting he organized for the ASEAN Regional Forum (AFR) in Canberra in 1994. This term basically refers to an initiative composed largely of government officials, in which the agenda is set by the government to discuss the interest of the government. For more on Dibb’s idea of geopolitics and regional diplomacy, read (Heinrichs and Tow 2016).

\textsuperscript{136} From personal interview with Herman J Kraft (Dilliman: 02 August 2017) and confirmed by Marzuki Darusman, also during personal interview (Jakarta: 09 August 2017).
benefits of opposing governments through political dialogue, rather than through political action. Meanwhile, for the WG, the indication of success was more tangible: the acceptance of their proposals on the establishment of an ASEAN human rights body; ASEAN’s acceptance of the WG’s existence as a non-ASEAN entity; and ASEAN’s willingness to engage the WG during AICHR’s establishment process.

The following discussion shows how the different indicators of success affected the different strategies that the WG and AIICOHR applied to achieve their goal.

4.4 The Approaches: Direct and the Indirect

The four strategies applied by the Network can be well-situated within the framework of Compston’s Policy Change Theory (see Chapter 3) which explain the Policy Network’s behaviour (defined as private actors who influence the process of policy-making) towards policy makers (understood as public actors who produce public policy). As discussed in Chapter 3, referring to Compston, direct influence is a process targeting changes in the factors linked to the policy maker (which will directly lead to a change in policy), while indirect influence is the process in which members of the Network influence ‘each other’ to eventually make changes in (or create a new) policy.

The following four subsections elaborate on the strategies applied by the Policy Network to directly and indirectly influence the behaviour of the Political Community (as the policy maker in this context) in creating a new regional policy to establish AICHR.

Policy Recommendations for ASEAN

Submitting recommendations for the AICHR Terms of Reference is a key strategy of the networks, particularly the Working Group, whose primary members are human rights experts and practitioners. To open a window of opportunity for the submission of these recommendations, the WG engaged ASEAN through a ‘constructive,
consultative, and step-by-step approach\textsuperscript{137}, carefully respecting ASEAN’s constitutive ‘exigencies’ and ‘modus operandi’ (Tan 2011b). They applied three-steps action, which are: taking stock, strategizing, then engaging (Medina 2009). In moving forward on the human rights agenda, the WG was particularly very careful to conduct dialogue with ASEAN on a level that all parties (both ASEAN and the national governments) were comfortable with.\textsuperscript{138}

Soon after its establishment in 1996, the WG occasionally met with ASEAN Foreign Ministers and regularly with senior officials, mainly during the annual ASEAN Ministerial Meeting. Some members of the WG were invited to the meeting in their individual capacity as think tanks. During this early engagement, the WG consistently promoted the idea of creating a regional human rights body. The output of this approach is apparent; within one year, ASEAN showed a significant change in their perception towards the ideal process of establishing a body.

Initially, during their first 1996 meeting in Jakarta, ASEAN firmly told the WG that establishing a regional human rights mechanism would never be discussed at a regional level until all ASEAN member-states were willing to establish their own (national) human rights commission (NHRI). At that time, only four (notably, the most ‘liberal’) of the ten member-states possessed an NHRI.

However, during their meeting in Kuala Lumpur the following year,\textsuperscript{139} ASEAN changed its decision; it agreed that discussions on the establishment of a regional human rights mechanism could commence at any time, without delay until all ten member-states possessed their own NHRI.\textsuperscript{140} As early as 1998, only two years after its establishment, the WG had received an acknowledgment from the ASEAN Foreign

\textsuperscript{137} From personal interview with Ray Paolo Santiago – Amb. Rosario G. Manalo’s personal assistant during AICHR establishment time, currently the Secretary-General of the Working Group and the Executive Director of the Ateneo Human Rights Center, (Makati City: 03 August 2017)

\textsuperscript{138} Statement of Carlos Medina at Session 1, 14\textsuperscript{th} AICHR Conference 2007 – quoted from an unpublished conference proceeding made available to me during the field research.

\textsuperscript{139} In this meeting, in December of 1997, ASEAN came up with a document titled ‘ASEAN Vision 2020’, in which ASEAN envisioned a Community of Caring Societies ‘conscious of its ties of history, aware of its cultural heritage and bound by a common regional identity’. This, understandably, had no mention of the idea of human rights. See https://cil.nus.edu.sg/wp-content/uploads/formidable/18/1997-ASEAN-Vision-2020-1.pdf.

\textsuperscript{140} Statement of Carlos Medina at Session 1, 15\textsuperscript{th} AICHR Conference 2008 – quoted from an unpublished conference proceeding made available to me during the field research.
Ministers, with a note on the importance of continuing dialogues between the two parties, specifically on the issue of establishing a regional human rights mechanism.\(^{141}\)

The opportunity to submit a policy recommendation arrived during their following 1999 meeting with ASEAN in Singapore. The WG was invited to explain what ‘exactly and concretely’ they meant by a regional human rights mechanism. After presenting their idea at the meeting, the WG offered to provide a document of recommendations on the establishment of the mechanism, which they passed at the next meeting in Bangkok in 2000. The working document, entitled the 'Draft Agreement for the Establishment of the ASEAN Human Rights Commission (Draft Agreement) for ASEAN’s Consideration’, includes the nature, mandate, and scope of the commission. Furthermore, in this draft, the WG proposed the commission’s ideal form, mainly imitating the European System with its European Commission of Human Rights.

As written in the draft, the WG proposed for the body to have a promotional and protection mechanism, capable of monitoring, receiving, and acting on complaints. It would be composed of independent and impartial experts. Most importantly, it would be established based on the ‘ASEAN minus X’ formula, in which approval from at least three members-states could engage its ability to act, while others could join as ‘their comfort level increase[d]’.\(^{142}\) This document was a full adoption of global norms’ values on human rights with very minimal, almost no, consideration of the ASEAN regional and local norms.

While this draft was accepted and ‘noted with appreciation’, ASEAN froze and did not actionably respond to it. However, interestingly, ASEAN later passed the draft to ASEAN-ISIS for feedback. The WG soon realised its mistake. The draft was far ‘too westernised’ and did not reflect ASEAN’s institutional norms and principles, such as non-intervention, dialogue, and consensus, as well as peaceful co-existence. The WG realised that, apparently, ASEAN was still unprepared to discuss human rights at the

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\(^{141}\) ‘Who We Are’ – the Working Group unpublished document made available to me during the field research.

\(^{142}\) Statement of Carlos Medina at Session 1, 15th AIICOHR Conference 2008 – quoted from an unpublished conference proceeding made available to me during the field research.
ideal level; the policy recommendation submitted in 2000 was too much, too soon (Tan 2011b).

Under these circumstances, the WG changed its hard approach and adopted patience, choosing a softer engagement strategy. Without discussing the draft any further, the WG continued their amicable dialogue with ASEAN consultatively, very careful of when and how they challenged boundaries. Apart from individual communication with officials, one of the many other soft approaches occurred in 2001, when the WG organised its first annual workshop. This was attended by representatives of ASEAN, its member-states, national human rights institutions, and the civil society.

The decision to approach ASEAN cautiously proved effective. Over the years, ASEAN and the WG’s relationship evolved from one marked by cynicism and suspicion of human rights development, into one characterised by partnership. The continuous dialogue further contributed to the inclusion of the term ‘human rights’ in ASEAN’s Vientiane Action Programme (adopted in 2004). Most significantly, it should be noted that certain terms used in the VAP are quoted verbatim from the proceedings of the WG workshops. For example: the ‘establishment of an ASEAN commission on the promotion and protection of the rights of women and children’ and the ‘elaboration of an ASEAN instrument on the protection and promotion of the rights of migrant workers’ (Santiago 2016:28).

After VAP, the nature of these relationships continued throughout the drafting of the ASEAN Charter (the most important document for realising ASEAN’s human rights body). The WG met several times with the Eminent Persons Group (an ASEAN body ‘created’ by AICOHR – discussed as part of the second strategy, below) and offered recommendations for key aspects of the ASEAN Charter.

The WG main intention was for the ASEAN human rights body to be included in the Charter, with details referring to the draft they proposed back in 2000. Simultaneously, during their annual conferences, AICOHR also pushed hard for the inclusion of democratic values and a human rights mechanism in the Charter. The result of this informal/unofficial yet systematic approaches includes ‘at least silent consent from
less enthusiastic delegations … [E]ven representatives from Vietnam and Laos did not object’ (Dosch 2008:535) to the idea of establishing a regional human rights body.

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Overall, the network’s strategy of directly submitting policy recommendations to ASEAN was successful; ASEAN was willing to include the idea of human rights in their official documents. Referring to the framework of Compston’s Policy Change Model, this strategy managed to impact all factors that might influence the policy maker’s decisions throughout the policy-making process, i.e. resources, preferences, understanding of perceived problems and possible solutions, as well as the rules and norms. Considering the advantages and obstacles found throughout the process, the Network’s success in applying this strategy was actually anticipated. They possessed expertise and forceful resources on the area of human rights, and were supported by the personal relationships they maintained with ASEAN high-level officers.

Unfortunately, however, the strategy only had full effect on the policy at an ideas-and-principles level; it was less impactful in regard to implementation – i.e. the practice of promotion and protection of human rights. Referring to the statement of Tan Hsien-Li during one of AICOHR’s annual conferences, the critical issue, then (by 2006), was no longer the introduction of human rights concepts to ASEAN, but more on the translating the concepts into concrete action (which was to achieve the goals specified by the 2004 VAP: to actually establish the commission and the set of instrument for regional human rights protection and promotion).

Securitisation of Human Rights Issues in ASEAN

The Network – particularly AICOHR, whose parent institution, ASEAN-ISIS, had a long history in the development of strategic and security issues in the region – considering one strategy of gaining both ASEAN and the member-states’ appropriate attention on the issue of human rights: presenting the issue as a part of

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143 Statement of Tan Hsien Li at Session 6, 13th AICOHR Conference 2006 – quoted from an unpublished conference proceeding made available to me during the field research.
national/regional security concern. Securitising\textsuperscript{144} this issue would place human rights at the core of member-states’ national interests, as well as ASEAN’s key strategic interests.

In their attempt to win ASEAN and member-states’ support for the establishment of a regional human rights body, the Network focused on shifting their perspective on the matter. Specifically: shifting the perspective of human rights from a very narrow view, i.e. limited only as a threat to collective rights (as suggested by Asian Values), to being viewed as an integral part of national security, since ‘there can be no real security for the state if its people are not secure’ (Anwar 2003:565). For this reason, AICOHR introduced to ASEAN a new discourse of ‘human security’ – a soft, non-traditional security approach, which also served as an ‘umbrella’ for other non-traditional security issues at both the national and regional level.\textsuperscript{145}

The Network believed that, as an advocacy tool, the term ‘human security’ possessed ‘greater political acceptability’ in the region – greater than ‘human rights’. It offered ‘a comfortable shelter’ for member-states that were ‘constrained’ when discussing human rights in traditional terms (Anwar 2003:565). Highlighting the security aspect would ‘gradually pave the way for a more congenial assessment of human rights … [as] human security and human rights are two sides of the same coin’ (Anwar 2003:537).

This securitisation strategy facilitated greater shifts in member-states’ perception of human rights as a norm – or, referring to Compston, it altered how they perceived the nature of problems and, hence, their solutions. This shift is noticeable in at least three ways. First, the member-states were now capable of viewing the norms as they existed, not as vis-a-vis state security (Anwar 2003). Second, member-states had greater willingness to ‘enhance regional understanding’ and to ‘generate a regional consensus’

\textsuperscript{144} In the field of IR theory, the idea of securitizing a non-security issue was first developed in the 1990s by the Copenhagen School of Barry Buzan, Ole Wæver, Jaap de Wilde and others. Read, for example, Buzan (1991), Wæver (1995), Buzan, Wæver, and Wilde (1998). This concept has been strongly linked to other post-Cold War IR concepts on security, such as ‘non-traditional security’ and ‘security complex theory’.

\textsuperscript{145} The idea of ‘human security’ in the study of IR first emerged during the mid-1990s. It has since become a milestone in the field of security studies. At the core of the concept is the ‘individual’, a referent object of security (Persaud 2019, Howard-Hassmann 2012); the main thesis is that ‘security risks should be assessed with the people-centred view in mind and with the assumption that when a human faces a threat, so does international security’ (Burgess and Gräns 2012:101).
on human rights issues (Kraft 2006:79). Third, and most importantly, by expanding the scope of their national security to include the security of the individual, member-states were made aware of how a comprehensive approach, rather than hard politics, was necessary to safeguard regional security and stability (Tan 2011b).

By early 2000, member-states had displayed greater interest in the concept of human rights. However, ASEAN, as a regional institution, still showed no interest in including the concept within their security agenda. Under these circumstances, AICOHR maximised their personal communication and dialogue forum in persuading ASEAN to adopt the term in any regional security documents possible. In 2004, the outcome of this strategy was apparent: although neither the term human rights nor human security was mentioned in the ASEAN Security Community Action Plan (ASC Plan) agreed upon in April 2004, the document adopted the term ‘comprehensive security’ (which referred to human security as the referent object of security) as the principle behind the ASEAN Security Community’s establishment.\textsuperscript{146} The term was never been used previously – including in the Bali Concord II (signed in October of 2003), the first document containing provisions on the ASEAN Security Community. As discussed earlier, in the following Vientiane Action Programme (which was adopted seven months after the ASC Plan), the notion of human rights was firmly mentioned, placed within the Political Development segment of the ASEAN Security Community.

To ensure the sustained strategy of securitising human rights, with particular focus on the drafting process of the most-anticipated ASEAN Charter, AICOHR placed greater emphasis on persuading and then supporting ASEAN to create an ad hoc body, whose main task would be to guard the substance of the Charter. The initial objective was to have a strong, influential, non-governmental body within ASEAN, which would operate in close consultation with the think tanks and representatives of wider civil society organizations during the Charter’s drafting process. The ad hoc body was expected to eventually transform into a formal ASEAN body.\textsuperscript{147}

\textsuperscript{146} For a full text of the plan, visit http://asean.org/?static_post=asean-security-community-plan-of-action.
\textsuperscript{147} Statement of Rizal Sukma at Session 6, 13\textsuperscript{th} AICOHR Conference 2006 – quoted from an unpublished conference proceeding made available to me during the field research.
This idea was discussed consistently in AICOHR annual conferences. In 2005, ASEAN embraced this idea; the body was formally established on 12 December by the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter and was called the Eminent Persons Group (EPG) on the ASEAN Charter.\textsuperscript{148}

Referring to a statement in the declaration, the EPG is a body comprised of ‘highly distinguished and well respected’\textsuperscript{149} individuals, one from each ASEAN member-state, whose mandate is to ‘examine and provide practical recommendations on the directions and nature of the ASEAN Charter’.\textsuperscript{150} Although identified as ‘prominent’ ASEAN citizens, each of the EPG’s ten members were, regrettably, strongly affiliated with their respective governments. As such, the group was viewed as representing the member-states, not so much the people – making it less non-governmental in nature than intended.\textsuperscript{151}

Regardless, both AICOHR and the WG maintained close connections with the EPG – again through personal capacities and long-time friendships established among the members. The goal of their advocacy was consistent: for the EPG to embrace the idea of human security and human rights, as well as to support the establishment of a regional human rights body (even if it was within the context of the ASEAN Security Community). The output of this strategy was seen in the EPG 2006 recommendation.


\textsuperscript{149} Term mentioned during discussion at Session 1, 15\textsuperscript{th} AICOHR Conference 2008 – quoted from an unpublished conference proceeding made available to me during the field research.

\textsuperscript{150} To put EPG within the conceptual framework of this research, this group can be considered a Political Community (the Track-I Diplomacy). However, as their existence was not directly related to the establishment of AICHR, this group will not be further discussed in this research. More about EPG, visit http://asean.org/asean/asean-charter/eminent-persons-group-epg-on-the-asean-charter-2006/.

\textsuperscript{151} Those are: Pehin Dato Lim Jock Seng (Minister of Foreign Affairs and Trade of Brunei Darussalam), Aun Porn Moniroth (Advisor to the Prime Minister and Chairman of the Supreme National Economic Council of Cambodia), Ali Alatas (former Minister for Foreign Affairs of Indonesia), Khamphan Simmalavong (former Deputy Minister of Commerce of Lao PDR), Tan Sri Musa Hitam (former Deputy Prime Minister of Malaysia), Than Nyun (former Deputy Minister of Education and Chairman of the Union Civil Service Selection and Training Board of Myanmar), Fidel V. Ramos (former President of the Philippines, former Secretary of National Defence, Chairman of the Bo’ao Forum of Asia), S. Jayakumar (Deputy Prime Minister, Coordinating Minister for National Security and Minister for Law of Singapore), Kasemsamosorn Kasemsri (former Deputy Prime Minister and Minister of Foreign Affairs of Thailand), and Nguyen Manh Cam (former Deputy Prime Minister and Minister of Foreign Affairs of Vietnam). Read https://www.asean.org/wp-content/uploads/images/archive/ACP-EPGMember.pdf

It was argued that the HLTF, whose ten members were bureaucrats and retired diplomats, were unable to ‘think out of the box’, which further created a clear ‘drawback’ for the evolution of ASEAN towards a more people-centred community. It was perceived as a ‘stumbling block’ to greater ‘participatory regionalism’ in Southeast Asia. For more on the HLTF, the drafting process of the ASEAN Charter, and how it contributed to the institutionalisation process of AICHR, read, for example, Morada (2009), Langlois (2012), Phan (2008), Jones (2008), and Munro (2009).

The ASEAN Charter (p.19), as available from [https://asean.org/storage/2012/05/The-ASEAN-Charter-26th-Reprint.pdf](https://asean.org/storage/2012/05/The-ASEAN-Charter-26th-Reprint.pdf).
Nevertheless, because of this mandate, ASEAN later created the High Level Panel (HLP – the Track-1 Political Community in this research), whose key responsibility was to draft the AICHR Terms of Reference (discussed in Chapter 6).

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The Network’s securitisation strategy, which was to reinterpret the idea of ‘human rights’ into ‘human security’, appeared successful in engaging ASEAN and influencing its policies. As mentioned earlier, referring to Compston, this occurred as a result of altering ASEAN’s perception on the nature of human rights, as well as its understanding of how to best deal with the issue. ASEAN’s agreement to place the human rights issue under the ASEAN Security Community can be viewed as a clear sign of commitment to address the matter; it was important proof of acknowledgment, considered as a ‘radical promotion’ for the issue (Tan 2011b:154).

However, in terms of promoting the norm itself, among the four strategies (one discussed earlier, plus two that will be discussed below), this strategy may be considered the least ideal. The approach undermined the fundamental idea of human rights as the norms are not only about human security. Hence, within the context of ASEAN regionalism, ideally, human rights must be integrated into all three pillars of the ASEAN Community; not only within the Political Security Community (APC), but also in the Economic (AEC) and Socio-Cultural Community (ASCC).

However, as of then (and now), ASEAN appears unwaveringly comfortable in their perception of human rights as part of ‘human security’. Hence, they defined their commitment on this matter under the ASC, and the Network preferred to cease further intervention; the greatest aim was to secure a comfort level for ASEAN, so as to boost their willingness to continue the dialogue on AICHR’s establishment.155

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155 Statement of a colloquium participant (anonym) at Session 1, 14th AICOHRI Conference 2007 – quoted from an unpublished conference proceeding made available to me during the field research.
Internalising Human Rights Issues at the Member-States Level

Apart from the two direct strategies discussed above, the Network applied two other strategies with an indirect approach. The first strategy targeted the member-states (national level Track-1). The aim was to internalise the idea of human rights, lessening government officials’ wariness of the issue, and making apparent the urgency of dealing with human rights issues, as it was transpiring in their ‘own backyard’. The end objective was to change the member-states’ perception towards the issue and then alter the related national policies, including their standpoint towards the establishment of a regional human rights body. The national governments’ change in behaviour was expected to further alter the dynamics of policy-making processes at ASEAN (particularly in the HLP) during the drafting of AICHR’s term of reference.

To achieve this objective, the Network applied three different methods. First, to develop the ‘habit of interaction’ among different actors involved in human rights issue at local/national levels. For this, they invited government officials from all member-states not only to attend, but also to serve as speakers and/or moderators, to actively participate and contribute in the conferences, workshops, and roundtable discussions. Among those listed as speaking at either the WG or AICOHR annual forum are Alberto G. Romula and Marilyn Alarilla from the Philippines Department of Foreign Affairs, Umar Hadi from Indonesia’s Department of Foreign Affairs, Ahmad Izlan Idris from Malaysia’s Ministry of Foreign Affairs, and HRH Norodom Sirivudh from Cambodia’s Member of Parliament (and Privy Counsellor to King Norodom Sihamoni).

Second, to engage each of the member-states’ leaders individually. For this purpose, according to Medina, ‘every opportunity for consultation was sought, every avenue for dialogue taken’ (2009:8). They met with, among others: the Malaysian Ministry of Foreign Affairs to discuss the implementation of the Vientiane Action Programme (VAP); the Indonesian Department of Foreign Affairs to follow-up on the human rights

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156 Ibid.
157 Taken from various unpublished conference proceedings and meetings made available to me during the field research.
158 Taken from various unpublished conference proceedings and meetings made available to me during the field research.
aspects of VAP; and the Thai Prime Minister, where they received full support of their effort to establish a human rights body. At one point, the Network also received the opportunity to open dialogue with the Department of Foreign Affairs of the Philippines.

*Third*, to encourage member-states to establish a National Human Rights Institution (NHRI), or, if currently established, to further strengthen and empower its role of human rights promotion and protection at the national level. In 2009 (and up to now), only four NHRI existing, namely: the National Human Rights Commission of Indonesia (KOMNAS HAM), the Human Rights Commission of Malaysia (SUHAKAM), the Commission on Human Rights of the Philippines (CHRP), and the National Human Rights Commission of Thailand (NHRCT). To empower the commissions, in 2004, the WG initiated a network for the existing NHRI, called the ASEAN National Human Rights Institutions Forum (SEANF), to ensure a continuous interaction among them, as well as to support the realisation of a human rights regional mechanism (Cumaraswamy 2010). Together with SEANF, the WG has actively pressured member-states’ governments who lacked an NHRI to establish their own. As per the end of 2007, Cambodia became the most recent ASEAN member-state to express its intention of establishing an NHRI.159

Compston’s model of Policy Change is unable to explain this strategy of approaching national level governments. Within Compston’s definition of direct and indirect approaches, this strategy cannot be categorised as a kind of direct approach (in the case of AICHR, the national government is not the policy maker), nor it is an indirect approach (as they are also not part of the Network). In this research, the national government is an entity in between Compston’s two identified group of actors: public actors (the HLP within ASEAN) and private actors (the Network); they function as an intermediary actor who might channel the Network’s ideas to the ASEAN. However, the Network’s strategy can still be identified as part of (what Compston identifies as)

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159 Statement of Mr. Ou Virak (Cambodian Centre for Human Rights) at Session 3, 14th AICHR Conference 2007 – quoted from an unpublished conference proceeding made available to me during the field research.
an attempt to change (domestic) actors’ rules and norms, and their perception of the human rights issue.

Assessing their behaviour as reflected in this particular strategy, I can argue that, the Network’s level of success (identified by changes in perception and/or policy and norms) in approaching the member-state governments, is closely defined by the level of personal closeness between individuals of both parties in any particular country (i.e. closeness between a member of the Network and a government representative of her/his respective country). The closer their personal relation, the greater the strategy’s chance of success. This explains the relative success in Indonesia, Malaysia, the Philippines, and Thailand, as well as – to a certain degree – Cambodia, but not in the other five member-states.

Creating Avenues for Civil Society Participation

The last strategy was to engage Southeast Asian civil society, working on the issue of human rights, to become involved in the process. The strategy’s aim was to, first, channel the expertise and energy of the people to fight for human rights promotion and protection in the region, mainly through formal dialogue processes; and, second, to raise a broader public awareness, both in the region as a whole and at the national level in particular.¹⁶⁰

It was essential for the Network to maintain partnerships and to consolidate their strategy with the activism of the T3D Advocacy Coalition (hereafter: the Coalition). This is because, first, the Network’s initiatives would be meaningless without implementation, and as think tanks, the Network did not have the personnel, expertise, or access to conduct the more practical implementation process; second, the Network needed support from the grassroots levels (the constituent – see Chapter 5 on a discussion on this matter); and third, the Network required that grassroots power to place pressure on the national government to fulfil their commitments and, thusly,

¹⁶⁰ Statement of a colloquium participant (anonym) at Session 1, 14th AIICOHR Conference 2007 – quoted from an unpublished conference proceeding made available to me during the field research.
implement the legislation. Furthermore, the Network required the support of the Coalition in promoting, transforming, and documenting the implementation of their work on regional policy into the ten different national languages and contexts.

Although it seemed natural for the Network to ally with the Coalition, the practice was not, in fact, so straightforward. Similar to their relations with the Track-1 Political Community, there was an initial problem with trust and misunderstanding. Local NGOs largely viewed both the WG and AICOHR as working for and/or under the government; it was commonly suspected that T2D’s effort to engage civil society was mainly to gain legitimacy that their work held public support. It is further suspected that the Network simply exploited the Coalition’s expertise and access to the people, to serve governmental interests. For this reason, civil society was initially reluctant to participate in any event organised by the Network (more on civil society activism in the AICHR establishment process will be discussed in the following Chapter 5). It took some time before, finally, civil society agreed to participate in the AICOHR and WG annual forums.

Despite this reluctance, venues were still created to encourage civil society’s broader participation in the Network’s initiatives. First, the Network – in this case, AICOHR – organised three civil society working groups: the Human Rights Scorecard, the Democracy Scorecard, and Gender Mainstreaming. Here, the expertise of the T3D was necessary to develop the proposed scorecards and to later execute them (the result of the scorecard is shown in Chapter 2). Second, under the umbrella of ASEAN-ISIS, later in 2009, AICOHR initiated the establishment of the ASEAN People’s Forum (APF). It was another annual forum designed as a platform for direct people-to-people engagement, so civil society in the region could build ‘a two-way process in

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161 Statement of Carolina Hernandez at Session 6, 13th AICOHR Conference 2006 – quoted from an unpublished conference proceeding made available to me during the field research.

162 Statement of Braema Mathiaparanam at Session 5, 13th AICOHR Conference 2006 – quoted from an unpublished conference proceeding made available to me during the field research; also statement of Carolina Hernandez at Ibid.

163 Statement from Session 5, 13th AICOHR Conference 2006 – quoted from an unpublished conference proceeding made available to me during the field research.

164 APF is a strategic platform for civil society to engage ASEAN and the member states. It is ‘… a solidarity gathering of diverse civil society organizations (CSOs) in Southeast Asia, which organizes its own parallel activities during the ASEAN Summit. It is a broad civil society movement on ASEAN issues that has a strong mandate in representing and strengthening ASEAN people’s voices.’ See http://www.acsc-apf.org/#
which domestic concerns are elevated to a higher forum while simultaneously emphasizing local impacts of regional issues on communities. 165

Referring to Compston’s Policy Change model, this strategy represents how change in preference, policy, and norms occurs through indirect approach. Although, like the national government, the Coalition is not officially part of the Network, unlike with the national government, it is still sensible to classify both entities as one, as both the Coalition and the Network represent groups of non-state (non-governmental) actors. This research proves that this strategy increases the level of trust and number of engagements between the Network and the Coalition, which further empowers both parties in their effort to establish an ASEAN human rights body. The Network receives practical and expert input from the Coalition to strengthen the substance of their policy recommendations, while the Coalition also gains wider access to engage the government (this will be discussed in detail in the Chapter 5 on Advocacy Coalition). Thus in the longer term it might be reasonable to expect that these changes of perception and behaviour in the Network will eventually influence the dynamics of policy-making at the HLP.

4.5 Policy Network’s Strategy and the Considerably Weak AICHR

This chapter examines the behaviour of the Working Group and AICOHR, two regional institutions that constitute the Policy Network grouping of Norm Interpreters. This chapter identifies four norm interpretation strategies that the Network applied to in their attempt to interpret the global norms on human rights, with the final objective of establishing an ASEAN regional human rights body.

To achieve this goal, as Track-2 Diplomacy in the region, the Network’s main strategy was to approach the policymaker (in this case, the officials and leaders of ASEAN) directly, with the aim to enhance their knowledge, change their perception on the values of human rights, and further influence their decision to finally establish the regional body. To support the direct approach, the Network also applied an

intermediate strategy to influence the policy maker’s behaviour *indirectly*, by empowering officials and leaders at member-states’ level (the national governments), as well as the people (the Track-3 Diplomacy Advocacy Coalition, discussed in Chapter 5), to pressure ASEAN into establishing the body.

Within these two approaches, the Network applied four well-rounded strategies: to provide policy recommendations, to securitise the issue of human rights, to internalise the issue, and to create venues for wider networking among actors. Referring to the framework of Compston’s Policy Change model, I argue that that the four strategies were relatively successful in facilitating changes in the public actors (ASEAN); it was also successful in expediting internal changes within the network of private actors (within AICOH, the WG, as well as the wider civil society organizations).

Apart from public and private actors, this research identified one other actor involved in the policy change process, which is not recognised in Compston’s model: the national governments, which this research then identified as intermediary actors between the public and private arena. Changes to the three actors, both directly and indirectly, were found in all influential aspects considered by the model, specifically: resources, preferences, strategies, perceived problems and solutions, as well as rules and norms.

The application of these four strategies broadly provided policy makers (ASEAN as the regional institution, and particularly the member of HLP) with three supporting elements of policy-making process: a comprehensive and ready-to-adopt policy draft, the regionally appropriate context for policy adoption, and support from stakeholders. This research argues that these strategies delivered the Network to achieve their goal – but only to certain degree.

The Network’s norm interpretation effort was successful, but not in an expected manner: the AICHR established in 2009 was still far from ideal. Despite the Network’s constant proposals, it was only mandated to *promote* human rights and held no power to execute protection. In this case, it is fair to conclude that something hindered the Network’s norm interpretation process.
This chapter identifies at least two interconnected issues, each of which are related to the Norm Interpreters’ character. As discussed in Part 4.2 of this chapter, the individual is the Network’s engine; therefore, the character, or personality, of specific individuals remain a decisive element in the process of norm interpretation. The key members of the Network discussed in this research are either human rights experts and practitioners (the WG), or political and strategic studies experts (AICOHR). They are reputable as practitioners and/or academics in their respective area, both at the national and regional level. This research proves that these individuals’ educational and professional standing and status is insufficient to support an ideal outcome in the norm interpretation process; they have at least two limitations. The first is on the scope of the members’ individual networks, and the second concerns their chosen approach to engaging the policy makers.

Regarding the first issue, this research shows that the individual networks of members from AICOHR and the WG were limited to policy makers from Indonesia, Malaysia, Thailand, the Philippines, Singapore, and, to a certain degree, Cambodia; unfortunately, their networks did not include the leaders from Brunei, Laos, Myanmar, and Vietnam (broadly speaking, the four main human rights contenders in the region, the least democratic systems). The officials from these countries, despite accepting the official invitation to attend organised dialogue forums, were unapproachable personally. No meetings took place between the Network and representatives of these four countries. Furthermore, no record shows that they actively participated in the forums they attended. Therefore, this research concludes that the process of knowledge enhancement and perception change did not occur in relation to the leaders of Brunei, Laos, Myanmar, and Vietnam – or, at least, not as rigorously as in their counterparts from the six (mainly five) other countries.

Second, as think tanks, the Network’s members generally applied a formal approach, such as through dialogue forums, working groups, institutional meetings, and the like. While their personal network provided a ‘shortcut’ in contacting policy makers,

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166 As indicated in, among other, the proceedings of AICOHR 13th, 14th, and 15th Conference, as well as the 8th Working Group Workshop on the ASEAN Regional Mechanism on Human Rights – unpublished documents made available to me during the field research.
circumventing the need for bureaucratic procedure, the nature of their engagements usually remained formal. The Network was not known for engaging policy makers through casual moments – such as through singing karaoke, playing golf, or eating durian (Barter and Boralessa 2018, Singh 2017, Wanandi 1998), approaches commonly leveraged by ASEAN leaders in-between negotiations on regional policy-making. Likewise, the Network was unfamiliar with more ‘creative methods’ of political pressure that civil society actors commonly relied on.

This research finds that the Network’s formal, ‘intellectual’ approach failed to engage the more traditionally-minded leaders – specifically, of member-states that held strongly to local norms and were, thus, unenthusiastic about a regional human rights body (i.e., Brunei Darussalam, Laos, Myanmar, and Vietnam). I argue that, in addition to their main approaches, a softer, casual, socio-cultural approach (such as engagement outside of a meeting room) would have accomplished greater impact with these countries.

Because of internal flaws within the Policy Network, related to their own character, the interpretation process of the global norms was successful in changing only some of the member-states’ perception. This failure then contributes to the domination of the ‘non-converted’ voice within the drafting process and the AICHR Terms of Reference, later resulting in a considerably weak AICHR.
Chapter 5:
Advocacy Coalition: The Barking Dogs

'Who are they? They are only a group of people who like to have money from the funding and publicity.'
- T3D from T1D perspective

'You are like broken cassettes!'
- Amb. Rosario G. Manalo

5.1 Introduction

This chapter assesses the behaviour of members from the Solidarity for Asian People’s Advocacy Task Force on ASEAN and Human Rights (SAPA-TFAHR, hereafter ‘the Task Force’), the main Advocacy Coalition institution (hereafter: the Coalition), which influenced the drafting process of AICHR’s Terms of Reference. According to Sabatier (1988, 1998), advocacy coalitions are groups of people with shared values and shared beliefs, aiming to translate their values into public policy. Advocacy coalitions synthesise the top-down and bottom-up approaches in influencing policy-making processes. This broadly allows for the integration of traditional matters (beliefs, values, and ideas – dimensions commonly neglected in a rational policy-making procedure) with political interests and policy analysis (Sabatier 1988, Stone and Nesadurai 1999).

As identified from a wider literature review on advocacy coalitions,\(^\text{169}\) this research agrees that, when compared to the Political Community and the Policy Networks, the

\(^{167}\) How members of ASEAN’s Track-1 Diplomacy perceive Track-3 Diplomacy, as according to Rafendi Djamin; quoted from a personal conversation (Jakarta: 09 August 2017).

\(^{168}\) The words of Amb. Rosario G. Manalo, as quoted by Yuyun Wahyuningsrum, who, during the period concerned in this research, was the East Asia Program Manager of FORUM-ASIA and one of the Task Force’s advocates; quoted from personal interview (Jakarta: 21 August 2017).

\(^{169}\) Some theorists use different terms to label a group of people whose character is similar to Sabatier’s ‘Advocacy Coalition’ referred widely in this thesis; among the other terms are ‘Discourse Coalition’ (Hajer, 1993), as well as the more popular ‘Track-3 Diplomacy’ that is also referred to in this thesis. The different term will be discussed in subchapter 5.2 following.
Coalition brings a distinctive, less formal approach to official policy-making in a number of ways. First, they are a group of actors who ally to promote their shared ‘social construct’ of beliefs, interests, and ideas. As such, their actions’ focus is to define a policy problem, then to construct a discourse from which the problem can be understood (Hajer 1993). Their activism is both normative (aiming to raise consciousness on issues (Kraft 2002:50)), and practical (presenting ‘technical substantiation’ for their positions on debated issues (Sabatier 1988:152). From this perspective, the Advocacy Coalition’s character is similar, but not necessarily identical, to that of Norm Entrepreneurs (Finnemore and Sikkink 1998).

Second, the Coalition is revolutionary in nature, composed by a wider range of ‘participants in a field of practice’. The group confidently (or, rather, stubbornly) places pressure on decision makers, as their …

competency or expertise [in taking action] … come[s] from training and immersion in the substantive field in which an interpretative dispute arises … [T]hey have learned its purpose and conventions not as a set of abstract rules but through the acquisition of “know-how”, a mastering of discipline, or technique. (Johnstone 2005:190).

And, third, the group works through a varied and broader set of advocacy processes, which range from analytical debate and argumentation (Fischer 2003) to more adversarial approaches (Makito 1999).

As discussed in Chapter 3, within the context of Southeast Asian multitrack diplomacy, the Advocacy Coalition can be categorized as Track-3 Diplomacy (T3D). However, contrary to popular understanding, this research finds that diplomacy conducted by T3D is not necessarily limited to civil society groups, but also influences actors from other tracks. Therefore, actions and interactions of the Advocacy Coalition are not only horizontal (consolidating issues with fellow civil society organisations, within and beyond the Coalition), but also vertical, engaging in forthright policy advocacy with governments, and think tanks.
This research finds that, when directly approaching policy makers, the Coalition’s approach is different from those of the Policy Network. While the Network tends to be more diplomatic and reflective of policy makers’ characters and policy-making procedures, the Coalition is more forthright. They ‘speak their mind’ openly and freely, and promote a strategic opposition to mainstream government practices and policies, based on norms they believe are appropriate (Kraft 2000, 2002).

In this research, I sought to map empirical evidence of the Task Force’s activities, leading up to the establishment of AICHR. Contextualizing their activism, Gerard concludes that …

[SAPA-TFAHR] has been able to present a coherent alternative regional project, articulating a concerted position for an alternative regionalism that constitutes a counter-hegemonic challenge to the dominant ASEAN framework of conservatism, illiberal political governance, and neo-liberal economics. (2016:201).

Applying a microscopic reading analysis enabled me to construct a model of the Advocacy Coalition’s strategy for intervening on ASEAN policy-making processes, specifically concerning AICHR’s establishment. This contributed to the greater picture of norm interpretation conducted by the Norm Interpreters.

As Figure 5.1 (presented on the next page) shows, in their effort to push for ASEAN’s production of an ideal regional human rights body, the Task Force played two different roles in parallel: as activists and as lobbyists. This model portrays actors’ collective effort, the importance of both material and immaterial elements, and the significance of interactor relations in the process of norm acceptance. These points are suggested by the Practice Theory as a ‘way of understanding reality’ (discussed in Chapter 1).

The level of formality in the message-delivery approach obviously differs between these two roles; however the essence is the same: a continuous and consistent pressure on policy makers to act ideally, according to the Coalition’s perspective. Uncompromising pressure (occasionally viewed as stubbornness) is, in many respects, the strategic strength of the Coalition’s engagement with policy makers (in this
research: the Political Community, which is the ASEAN’s High Level Panel (HLP); see Chapter 6). This served to maintain their distinctive nature from think tanks (the Policy Network, which is AICOHR, and the Working Group, discussed in Chapter 4).

![Diagram: The Advocacy Coalition’s Strategy for Norm Interpretation]

**Figure 5.1. The Advocacy Coalition’s Strategy for Norm Interpretation**

This is the context of the second quote at the beginning of this chapter. As the Task Force continued voicing their non-negotiable demand time and again during their interface meeting with the HLP, at one point, Amb. Rosario G. Manalo (a HLP member from the Philippines) could no longer contain her anger. She pointed to the three Task Force representatives attending the meeting and yelled: ‘You are like broken cassettes!’

This research observed that, as activists, the Task Force implemented two different strategies: a public awareness campaign and media advocacy. The goal was to shape a wider public opinion that ASEAN was failing to ‘do their homework’ in establishing the most anticipated regional human rights body; furthermore, that if ASEAN maintained its low level of enthusiasm, the established body would be powerless – or, in the Task Force’s advocacy jargon, toothless. As later explained in this chapter, the Coalition adopted that sarcastic term as the main gimmick of their campaign.

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170 From personal interview with Yuyun Wahyuningrum, the person concerned (Jakarta: 21 August 2017).
Shaping public opinion would pressure the HLP to adjust its policies in accordance with public demand. The Task Force claims that their media advocacy and street campaign was successful in this matter. Unfortunately, this research is unable to identify the level of success they achieved; neither can it measure the impact of a shaped public opinion on the policy-making process (see below section 5.4)

As lobbyists, their main goal was to shape the policy-making framework, ensuring the ASEAN human rights body would have an equally strong mandate on the promotion and protection of human rights. To achieve this goal, the Task Force undertook three different strategies: First, utilising the influence of AICOHR and the WG, who (as discussed in Chapter 4) had successfully secured formal communication channels with ASEAN and the HLP; second, lobbying individual members of the HLP; and third, directly lobbying the HLP as an institution during the assigned interface meetings.

Since pressure created by the Task Force as lobbyists is more directly targeted than pressure created as activists, the impact is more measurable. Following the establishment of AICHR, the Task Force was disappointed with the output of the HLP (what they saw as the ‘toothless AICHR’), which indicated that their advocacy was unsuccessful in achieving its ultimate goal. However, there were indications that the HLP, indeed, listened and considered some of their inputs. Accordingly, their work was not entirely fruitless.

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Before elaborating on each of the strategies, this chapter will first discuss the Advocacy Coalition’s key concepts and development, and show how it fits within the framework of Track-3 Diplomacy in Southeast Asia. To follow is a description of the Task Force and how their activism contributes to the process of ASEAN regionalism.

After elaborating on the two activist-lobbyists approaches and the five strategies, the chapter will conclude with an assessment of the Coalition’s behaviour, and to what extent it resulted in the final, ‘toothless’ nature of AICHR. In general, this research concludes that the Coalition’s adversarial engagement with ASEAN has created a certain degree of success in mainstreaming human rights regionalism among the people. However, this success is far less apparent within the government.
5.2 ASEAN’s Advocacy Coalition: An Overview

Sabatier’s concept of the Advocacy Coalition provides a framework for analysing the involvement of ‘the people’ in a policy-making mechanism. An underlying assumption within this framework is that change in the world is driven by people, not by systems (Jenkins-Smith et al. 2014). Focusing on the common people’s role, this approach offers distinct perspectives on policy-making mechanisms. It presents policy-making as a complex system of bottom up and top down decision making between a wide range of actors ‘from a variety of positions (elected and agency officials, interest group leaders, and researchers)’ (Sabatier 1988:139).

People in this model are assumed to have four interrelated characters, which contribute to how they behave in a bargaining situation. First, they ‘weigh losses more heavily than gains … remember defeats more than victories … view opponents as more powerful than they probably are’ (Sabatier 1998:109). Second, perceptions of the world are ‘strongly filtered’ by their ‘pre-existing normative and other beliefs’ (Sabatier 1998:109). Third, related to that, this framework assumes that people are influential because of their ability to articulate their perception of the world (and not because of power they can exercise); in contrast, a coalition of many people gains its power from their shared ideas and ability to translate them into policy decisions (Cairney 2016). Fourth, despite the fact that the model rests upon an underlying methodological individualism, it nonetheless, assumes that people’s behaviour is dependent on context, rather than just ideas; it is shaped by various contextual factors, such as the character of institutions, the degree of a conflict, and the threats posed by opponents (Jenkins-Smith et al. 2014), as well as – as this research confirmed – the local values.

Whilst acknowledging the complex interests and agendas at work within decision making, the model highlights how people involved in this complex system share certain goals and beliefs, as well as ‘a common understanding of the policy problem, and the proper means of addressing it.’ (Sabatier 1998:115). Thus people engage in the policy-making process to translate their beliefs into public policy (Sabatier 1988). To achieve this goal, they become involved in the process through various means.
The end result is ‘one or more governmental programs, which in turn produce policy outputs at the operational level.’ (Sabatier 1998:104).

In the study of ASEAN Regionalism, the main characteristics of Sabatier’s Advocacy Coalition are found in the regional, national, as well as local level of non-governmental organisations (NGOs) and/or Civil Society Organisations (CSOs) – terms commonly used interchangeably. Their involvement in the process of ASEAN regionalism is usually linked to the jargon of ‘ASEAN Community’. For example, Makito (1999) perceives NGOs (together with think tanks) as the most crucial non-state actors in the establishment of Southeast Asian regional community. She argues, NGOs in the region are …

... typically composed of dedicated individuals with professional knowledge and expertise in their various fields, [and] can be versatile and capable of delivering almost anything governments normally deliver … [I]n line with their characteristics, activities, modes of conduct, and missions, they are capable of nurturing a sense of community across national boundaries in a variety of ways. (1999:178).

The NGOs promote a perception of shared destiny and common interests. They are naturally issue-oriented; their work is triggered by democratization from below, which regionally links people’s movements and other voluntary organisations (Makito 1999). Highlighting the long-established role of NGOs in the region, Kraft further argues that …

... even before track two diplomacy was conceptualized, nongovernment groups had been organizing domestically and internationally around issues that the public would otherwise have ignored or remained completely ignorant of. (2002:52).

Certainly the organisation of civil society in such a manner may well have existed in the region long before ASEAN-ISIS (the first ASEAN think tank, which created the T2D venue – as discussed in Chapter 4) was officially established in 1988 and then...
registered with the ASEAN Secretariat. However, as this research finds, T3D only became involved in the ASEAN policy-making mechanism in 2000. This was made possible by a facilitation forum, organised by ASEAN-ISIS through its ASEAN People Assembly (APA) initiative. Until then, civil society involvement in ASEAN was almost non-existent – partly due to the people’s lack of interest in ASEAN regionalism, but mainly because the door for participation was tightly closed (see, among others, Collins (2008, 2013a, b) and Gerard (2013, 2014b, 2015))

The door began to open when, in 1997, ASEAN leaders considered developing an ASEAN Community. Such a vision was explicitly mentioned in a document entitled: ‘The ASEAN Vision 2020’ in which the notion of a ‘community of caring societies’ was first officially conceived. In one of the nine points under this section, the leaders “… envision our nations being governed with the consent and greater participation of the people…”

This evolutionary idea of transitioning from a state-centric organisation to a people-centred community was implied in every ASEAN document that followed, including the 1998 Hanoi Plan of Action (in the Introduction, p.2), the 2003 Bali Concord II (particularly in part on declaration, p.2), and the 2004 Vientiane Action Programme (mentioned 20 times in various different parts). It was acknowledged in those documents that, to achieve the goal of being one ASEAN community, a broader, open-minded, deeper interaction among member-states was necessary, as well as the involvement of non-state actors in ASEAN formal processes.

Immediately after the release of ASEAN Vision 2020 in 1997, ASEAN-ISIS proposed the idea of creating the ASEAN People’s Assembly (APA). This would be the first forum in which ASEAN would sit face to face with representatives of its people. After three years, the idea was finally approved in 2000.

Opening ASEAN to the people was an unappealing idea to many of the ASEAN member-states (specifically Cambodia, Laos PDR, Myanmar, Singapore, and Vietnam). This resulted in the three-year gap, between the first submission of the

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171 ASEAN Vision 2020, as available from https://asean.org/?static_post=asean-vision-2020
proposal and the approval (Collins 2008). Furthermore, in 1998 and 1999, these five countries rejected the ASEAN Foundation’s request to allocate funding to the organisation of APA (the ASEAN Foundation budget needed to be approved by all member-states).

Simultaneously, ASEAN-ISIS failed to gain funding from other subsidy agencies, who doubted the APA’s feasibility and the willingness of ASEAN leaders to participate in the forum. Hence, the ASEAN Foundation was the only avenue from which to receive grants. Even when final approval was granted in 2000, the organisation of APA was still challenged by Singapore – the then-ASEAN Chairmanship, tasked with hosting APA parallel to the ASEAN Summit. Relatively last-minute, Singapore cancelled their decision to host APA due to, what was described as, ‘certain political reasons’ (Caballero-Anthony 2005:243). The venue was then moved to Batam, a small island in Indonesia with proximity to Singapore. This shows how, until the year 2000, most of the ASEAN members were still extremely wary about accommodating non-state actors in their official mechanisms.

Regardless of its difficult history, APA served as the first venue in ASEAN that brought together representatives of the people, national and regional governments, and regional think tanks. The goal of this initiative was …

   to push the transformation of ASEAN into a more people-centred organisation that is responsive to the voices, visions and values of peoples and communities in Southeast Asia … [To make ASEAN] relevant to the ordinary citizens of each of the member states – as it has become relevant to many members of the elite communities – if a genuine Southeast Asian Community is to be built. (Morada 2007:2).

It was mainly through APA that CSOs were first aware of the opportunity available for them to be involved in the ASEAN policy-making mechanism, to voice the interest of the people.\footnote{From personal interview with Yuyun Wahyuningrum (Jakarta: 21 August 2017)}
However, quickly learning of the situation, CSOs identified some drawbacks related to the organisation of APA: ASEAN ISIS exclusively decided the assembly’s list of participants, and directed the dialogue process. Instead of bridging ASEAN and the people, as representatives of CSOs argued, ISIS was generally perceived to act more as a barrier between civil society and its direct communication with ASEAN (Collins 2008). For these reasons, and the growing confidence among CSOs that they could engage ASEAN directly without ISIS, APA became more and more unpopular.

Against this background, in 2005, the CSOs decided to establish a more effective, bottom-up, regional platform for civil society to gather and structure their collective views on regional issues. This platform, called the ASEAN Civil Society Conference (ACSC), gained recognition from ASEAN – to the extent that ASEAN agreed to present the output of the annual conference at their Summit.\footnote{Similar to their general pathway of engagement with ASEAN regionalism, CSOs’ involvement in human rights, particularly on the establishment of a regional human rights body, was initially made possible by T2D. CSOs were invited to participate in the dialogue forums organised by both AICOHR and the Working Group (see Chapter 4). From these forums, the ASEAN officials, as well as T2D members themselves, bettered their understanding of civil society organisations and their intention to play a direct role in policy.}

In the AICOHR 2006 conference, Ambassador Asda Jayanama from Thailand acknowledged the existence of ‘track three groups’ and their engagement in the regional process of human rights promotion and ‘implementation’.\footnote{However, as he argued, this group still had much to develop, including organization of their grassroots movement and networking role. A similar tone of scepticism about the potential of...} However, as he argued, this group still had much to develop, including organization of their grassroots movement and networking role.\footnote{A similar tone of scepticism about the potential of ASEAN, Civil Society, and Human Rights: Knowing the Basics’, from Module 1: Understanding ASEAN – A Human Rights Advocacy (p.130), from ‘Rights Now’ – a training on ASEAN Human Rights Mechanisms, organised by Asia Forum for Human Rights and Development, 2010 – \textit{an unpublished Training Manual} made available to me during the field research.}
T3D also came from ASEAN-ISIS, highlighting the ‘lack of interaction’ among NGOs in the region, on both the national and regional levels.  

Explaining the early stage of CSOs’ engagement in the ASEAN regionalisation process, during the 2007 AICOHR conference, Rafendi Djamin (one of CSOs representatives, attending the conference as Coordinator of Human Rights Working Group based in Indonesia) noted that …

it was only in recent years that most civil society organizations became largely interested in the establishment of an ASEAN human rights mechanism. Initially, engagement between governments and CSOs was very limited … [However] at present … [CSOs are] actively involved in the discussions regarding the setting up of a regional human rights mechanism in Southeast Asia’.  

These illustrations clearly show how, in the case of AICHR’s establishment, unlike what is argued by Kraft, T2D helps to facilitate T3D’s larger participation and more significant contribution.

I argue in this research that the T3D Advocacy Coalition introduces a new channel of regional diplomacy, through which sensitive issues that policy makers have limited interests in can be promoted. Through the channel, global human rights norms that are considered to threaten the security and sovereignty of the state, can be advocated in some non-traditional ways.

5.2.1 The Advocacy Coalition’s Place in the Wider Context of IR Studies

The T3D Advocacy Coalition’s involvement in the regional policy-making mechanism is best situated within a wider debate on the role of transboundary civil society activism in democratising international institutions. In this research, that refers to the role of the

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176 Statement of Rizal Sukma, at Session 6, 13th AICOHR Conference 2006 – quoted from an unpublished conference proceeding made available to me during the field research.

177 Statement of Rafendi Djamin, at Session 1, 14th AICOHR Conference 2007 – quoted from an unpublished conference proceeding made available to me during the field research.
Within this framework is the concept of ‘transnational advocacy networks’ (Keck and Sikkink 1999, Risse 1999, Risse and Sikkink 1999), discussed in Chapter 3. This network advocates policy changes across/beyond national borders to promote ‘causes, principled ideas, and norms’ (Keck and Sikkink 1998:8-9). It includes activists whose goal is ‘to change the behaviour of states and of international organisations – to pressure target actors to adopt new policies, and to monitor compliance with international standards’ (p.2).

To highlight the transboundary nature of their activism, Kaldor (2003) labels this group of people as a _Global Civil Society (GCS)_ , which is ‘a platform inhabited by activists … where they argue about, campaign for (or against), negotiate about, or lobby for the arrangements that shape global developments’ (p.590). They uphold values ‘that are universally recognized but politically manipulated in their own interest by political agencies, including governments’ (Castells 2008:84). Related to regional and international institutions, the role of the GCS is crucial in answering to _democratic deficits_ (Scholte 2001) and promoting the legitimacy of global governance institutions (Scholte 2004, Gemmill and Bamidele-Izu 2002). Other experts in the field also argue that the GCS helps to improve the effectiveness of global governance as a system (Scholte, O’ Brien, and Williams 1998), particularly in formulating applicable and appropriate policies (Bernauer and Betzold 2012).

This research found a similar trend. Parallel to their effort of pushing ASEAN to establish a credible and realistic regional human rights body, the Coalition also insisted on ASEAN becoming more rational, democratic, inclusive, and transparent in their policy-making mechanism. They persistently demanded that ASEAN put aside the region’s three constitutive norms (non-interference, consensus decision-making, and informality) (Collins 2013). Although ultimately, this research found they were largely unsuccessful in ‘modernising’ ASEAN.
The AICHR establishment process shows that, gradually, ASEAN became more open and willing to listen to civil society. ASEAN was also increasingly prepared to address the people and their representatives in face-to-face setting and to take their inputs. However, when it came to the final, formal, written decision, ASEAN would return to its traditional policy-making approach.

Although disappointing, this finding is not a surprise. Other researchers likewise assumed it would be challenging for civil society to successfully reform a global governance mechanism. A parallel example here is that of GCS engagement with the International Monetary Fund (IMF) system, in which civil society pressure ultimately failed to compel the IMF to be more inclusive (read Scholte (2012), also Uhlin (2010) on GCS engagement with the Asian Development Bank).

5.3 About SAPA TFAHR

As mentioned above, SAPA-TFAHR is the only regional advocacy coalition that worked to influence the ASEAN human rights body (AICHR) establishment process. The Task Force is a network of civil society organisations under the SAPA Working Group on ASEAN, while SAPA (the Solidarity for Asia People’s Advocacy) itself is a network of Asian national and regional NGOs and people’s organisations, operating at regional (and international) levels.¹⁷⁸

SAPA was established in February of 2006 in Bangkok, through the efforts of several regional NGOs, including Development of Human Resources in Rural Asia (AsiaDHRRA), Focus on the Global South (FOCUS), the Asian Forum for Human Rights and Development (FORUM ASIA), and the Southeast Asia Committee for Advocacy (SEACA). SAPA’s central aims are to provide an open platform for ‘communication, cooperation, and coordination’, specifically in advocacy and lobbying among non-governmental organisations that operate regionally (Nesadurai

Furthermore, they aim to enhance cooperation among its members and partners, increasing the impact and effectiveness of advocacy work.\(^{179}\)


Under the SAPA Working Group on ASEAN, the Task Force was established in August 2008, during the first Regional Consultation on ASEAN and Human Rights, as organised by FORUM-ASIA in Kuala Lumpur.\(^{180}\) This was just prior to the launching of the ASEAN Charter in December 2008\(^{181}\), whose Article 14 declared that ASEAN would establish an ASEAN human rights body. The Task Force was established aiming to develop a credible, accountable, independent, and effective ASEAN human rights mechanism. In addition to this key target, the Task Force also set two interrelated goals, which were …

… to bring ASEAN to implement human rights commitments it has made at both the regional and international level; … to pressure ASEAN to address human rights issues which are currently kept off of its agenda (such as refugees/non-citizens/stateless persons, ethnic minorities, internal conflicts, the human rights side of trade and finance, and greater involvement in helping to bring about democratisation and the promotion and protection of human rights in Burma).\(^{182}\)


\(^{180}\) Briefing Paper for the Second Regional Consultation on ASEAN and Human Rights on the ASEAN Human Rights Mechanism(s), 2008 – an unpublished document made available to me during the field research.

\(^{181}\) ASEAN Charter was signed and adopted by the ASEAN leaders at the 13th ASEAN Summit in November 2007, but only become effective and being launched in December 2008, after it had been ratified by all ten member-states. The last to ratify were Indonesia, the Philippines, and Thailand (read: Koh et.al (2009)).

\(^{182}\) Briefing Paper for the Second Regional Consultation on ASEAN and Human Rights on the ASEAN Human Rights Mechanism(s), 2008 – an unpublished document made available to me during the field research, p.131.
To achieve these goals, the Task Force focussed their activism on broadening the involvement of civil society in various ASEAN processes, as well as engaging and lobbying the policy makers at ASEAN.\(^{183}\)

In relation to AICHR’s establishment, the Task Force’s main concern was to ensure the body had a clear and strong mandate, and further to press forward on human rights reform in member-states with poor human rights records. They were concerned that ASEAN’s insistence on maintaining ‘ASEAN [Asian] Values, standards, and history’ would lead to the promotion of a discourse of cultural relativism, which would undermine ‘the principles of universality and interdependence [in] human rights norms and standards’.\(^{184}\) As voiced on two different occasions by Watshlah Naidu, a rights activist from Malaysia, the Task Force demanded that …

while recognising the cultural and religious diversity and pluralism of ASEAN, [the body] must work to ensure that states uphold their legal obligation under international human rights law to eliminate cultural and religious norms that perpetuate human rights violations.\(^{185}\)

[The body must] promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities, to the extent that this does not conflict with international human rights standards.\(^{186}\)

Related to this, the Task Force practically demanded that the HLP delete the clause on the principle of non-interference from the Terms of Reference draft, as it was ‘out of place as a purpose of the body’ (Budianto 2009a:11). Referring to the statement of one

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\(^{184}\) Forum Asia E-Newsletter, 2\(^{nd}\) April, 2009.

\(^{185}\) Statement of Watshlah Naidu, a rights activist from Malaysia, quoted from *Ibid.*

\(^{186}\) Brief Report on National/Thematic Consultations, SAPA Task Force on ASEAN Human Rights, 18\(^{th}\) March, 2009 – an unpublished document made available to me during the course of the fieldwork.
Task Force member from Burma, this norm might still be applied in the internal affairs of ASEAN member-states …

but not in the case of gross human rights violations such as genocide, war crimes, ethnic cleansing and crimes against humanity, as defined in the UN human rights treaties … [Furthermore, it] should not go against the implementation of the promotion, protection and fulfilment of human rights … especially in Burma.\(^{187}\)

Apart from concerns related to the norm of non-interference, the Task Force also demanded that the HLP explicitly expand the body’s mandate to include the active protection of human rights in the region, ensure the independence of the body, and guarantee that the ultimate composition of the body was created transparently and with civil society participation.\(^{188}\) To enforce these demands, they placed constant pressure on the HLP and applied two strategies, as will be discussed below.

5.4 The Approaches: as Activists and as Lobbyists

As mentioned earlier, when developing the concept of an Advocacy Coalition, Sabatier fails to thoroughly elaborate on the strategy applied by the network to influence government policy-making. Discussing the concept of T3D, Kraft also heavily focusses on the actors’ character, while failing to offer sufficient explanation of the activity of the diplomacy itself. He only argues that since civil society ‘[h]as a freer hand in what issues to look at, and how they can look at these issues’, they have alternative views on issues and ‘seek to influence the perception that government officials have of issues and the priorities that these should have in their hierarchy of policies’ (2002:61).

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\(^{187}\) Brief Report on National/Thematic Consultations (p.6), SAPA Task Force on ASEAN Human Rights, 18\(^{th}\) March, 2009 – an unpublished document made available to be during fieldwork.

\(^{188}\) Human Rights Herald, July 2009, p.2. See also, Forum Asia E-Newsletter, 17 July 2009
A good discussion of various strategies available to networks of civil society actors is found in the broader literature on Global Civil Society (Scholte 2001, Gemmill and Bamidele-Izu 2002, Bernauer and Betzold 2012, Scholte, O’ Brien, and Williams 1998, Castells 2008). The strategies can be grouped into four categories. Those are: strategy one, public education, which serves to raise public awareness and understanding of specific issues; strategy two, voicing the needs and interest of the people, especially the marginalised (mainly the poor, as highlighted by Scholte (2001)); strategy three, stimulating debate on policies, which serves to challenge policy makers to better justify their policies’ positive impact on the public; and strategy four, creating ‘democratizing effects’, which encourage the less democratic actors to openly consider the idea.

According to Keck & Sikkink (1998), to support these strategies of socialisation, persuasion, and pressure, a coalition of civil society relies on their internal resources. There are four tactic typologies: first, information politics, which refers to the coalition’s ability ‘to quickly and credibly generate politically usable information and move it to where it will have the most impact’; second, symbolic politics, related to the coalition’s ability ‘to call upon symbols, actions, or stories that make sense of a situation for an audience that is frequently far away’; third, leverage politics, referring to their ability ‘to call upon powerful actors’ to influence a difficult situation in which members are ‘unlikely to have influence’; and fourth, accountability politics, which signifies their ‘watchdog’ capacity to hold powerful decision makers to their ‘previously stated policies or principles’ (p.16-25).

Furthermore, highlighted by the authors, at the core of these four typologies is information exchange and the ability of actors ‘to mobilize information strategically’ to gain wider attention and create new public concern, while, at the same time, also ‘to persuade, pressure, and gain leverage’ over the ‘more powerful’ policy makers (Keck & Sikkink 1998:2).

This research finds that, in their effort to push the HLP to establish an accountable AICHR, the Task Force applied two approaches, which are a combination of the four strategies and the four-typology tactics discussed above.
First, as activists, the Task Force needed to shape public opinion. To this end, they applied strategy one of public education, which focussed on raising public awareness about the flaws in the AICHR’s establishment process. To boost public education, the Task Force employed two of the tactics highlighted by Keck and Sikkink (1998): information politics and symbolic politics.

Second, as lobbyists, they sought to shape policy-making frameworks. They applied strategy two by voicing the demand of the people to have a credible and effective regional human rights commission, and applied strategy three by partaking in forums to question policy makers about the rationale of their decisions. To support these strategies, they used the tactics of accountability politics and leverage politics. The following subchapter elaborates these two approaches in detail.

In this research, strategy four – on creating democratising effects – is not identified as the Task Force’s intended strategy. Rather, it was an involuntary impact, resulting from the intervention of the Coalition (and Policy Network) on the HLP process as a whole. This was exacerbated by the impact of the Task Force’s horizontal activations against fellow civil society organisations from the less democratic member-states. Directly or indirectly, this helped empower their democratisation movements.

Applying these two approaches, the Task Force’ activism included organising activities such as: consolidating national/regional civil society organisations, coordinating mainstream media (mainly the national newspaper), consulting AICOHR and the Working Group (the T2D Policy Network), as well as directly lobbying the HLP (the T1D Political Community).

The parallel activists-lobbyists approaches of the non-state actors is also mentioned by Rietig on her research, concerning environmental NGO’s two different methods of influencing international climate change negotiations (2011, 2016). She argues that, since they are naturally activists, non-governmental actors are ‘an outsider’, who cannot partake in the actual policy-making negotiations. When they act as lobbyists, although they may have access to the ‘negotiation setting’, they still are not part of the official delegation. Therefore, in relation to the T3D Advocacy Coalition, as discussed
earlier, the objective of their activism (in this particular setting) is to put public pressure on the policy makers (Rietig 2011).

5.4.1 As Activists: Shaping Public Opinion

The Advocacy Coalition is something of a unique set of actors. They possess the ability to mobilise information and public opinion strategically ‘to help create new issues and categories, and to persuade, and pressurize … powerful organisations and governments’ (Keck and Sikkink 1999:89). As activists, the Task Force’s key goal was to consolidate the noise, transform it into a powerful message, and to achieve change by pressuring policy makers to act based on their demands – namely, to create a credible and effective ASEAN regional human rights body. The work of Rietig (2011) usefully unpacks how activists’ influence negotiation processes at the international level in ways that strongly parallel my own research findings.

First, the demonstrations must be peaceful to be framed positively. Peacefulness grants protesters legitimacy and protects them from being branded as criminals. Second, demonstrations must receive high media attention and be covered favourably. Third, [the actors] must have clear, simple messages and demands. Fourth, to be taken seriously by politicians and governments, they need to mobilize a critical mass of people who represent the majority of voters. (Rietig 2011:12-13).

As shown by Figure 5.2 on the next page, each indicator has a minimum and maximum value, ranging from 0 to 5. For peaceful, the spectrum goes from violent to peaceful; for media coverage, it is from low to high; for message, it varies from clear to diffuse; and, for mobilisation, it ranges from minority to majority.

This research finds that, to achieve their goals, the Task Force created three different arenas for a ‘space of communication’: consolidation forum for ideas to emerge, along with public awareness campaigns and media advocacy to channel the emerging ideas to the HLP. Figure 5.2 provides a useful heuristic devise for thinking about the many ways in which civil society networks seek to influence multilateral organisations. It is
a model that I return to in later stages of this chapter as I proceed to provide an account of the tactics employed by the Task Force.

![Figure 5.2. Level of Influence Indicator for Non-State Activists on Negotiation at an International Scale (source: Rietig (2011:14))](image)

**Consolidation Forum**

During the one-year ToR drafting process, the Task Force organised two different consolidation forums: a national consultation and a thematic workshop. The organisation of the forums, as well as various sporadic dialogue events throughout the region, was intended to promote ample public debate on the establishment of ‘AHRB’ (ASEAN Human Rights Body, later known as AICHR). To support this activism, the Task Force established an ASEAN People’s Centre, a secretariat based in Jakarta, to serve as a resource centre and advocacy hub for the civil society.\(^{189}\)

Altogether, there were 16 national consultations (NCs) organised by the Task Force’s national focal point, placed in all ASEAN member-states except Brunei Darussalam. In Laos and Vietnam, where the Task Force had no focal point, the NCs were organised by one local NGO in Vientiane and Hanoi, respectively. The aim of the NCs was to educate local and national civil society organisations – as well as ASEAN people at large – about the proposed establishment of a regional human rights body, as well as the processes it was undergoing and the ToR draft’s problematic content. Furthermore, the NCs’ aimed to gather a multitude of comments and input to improve the substantive quality of the draft.

The Task Force managed to obtain four versions of the draft produced by the HLP (one version produced from the 19 November meeting, then from the 13 December, the 15 January, and, finally, the 13 February version). However, this was through unofficial channels. As leaked documents, they were considered confidential and, therefore, needed to be distributed and discussed secretly during the NCs.

The series of NC meetings produced three policy recommendation papers to be submitted to the HLP in their following meeting (called the ‘Interface Meeting’, as will be discussed in the next section). Apart from official submissions, the output of the NCs’ was also presented to the media through different press conferences, events, and e-mailing lists.

To support national consultations, the Task Force also organised regional thematic workshops as an effort to reach vulnerable groups. The six different workshops were on gender, rights of people with disabilities, rights of indigenous people, refugee issues, and rights of the child. In the workshop, representatives of organisations both state and non-state worked on the related issues gathered, discussing key points of concern on the ToR from the perspective of their interests.

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191 From personal interview with Yuyun Wahyuningrum (Jakarta: 21 August 2017)

**Public Awareness Campaign**

A public campaign is recognised as one of five arenas where civil society can impact the legitimacy of global governance institutions (Gemmill and Bamidele-Izu 2002). It is also a strategy of ‘outsider’ actors (who are not included within the policy-making forum, as will be discussed further below) to influence public policy-making (Betsill and Corell 2008).

In early 2009, the Task Force began their wide public advocacy campaign to pressure the HLP. The central message was clear and well known: ‘We want an ASEAN Human Rights Commission with Teeth!: Accountable, Independent and Effective’.¹⁹³ This message was published in many different campaign materials, such as posters, stickers, T-shirts, and postcards. These were then distributed region-wide during any civil society forum – locally, nationally, and regionally. This includes the ASEAN People’s Forum and SAPA General Forum, both held in Bangkok in 2009. Below are the key images used in the Task Force campaign materials:

![Figure 5.3. The Task Force’s Public Campaign Materials](image)

In addition, the Task Force also produced and distributed educational and communication materials (such as Frequently Asked Questions (FAQ), primers, and media briefers) about the ASEAN human rights body and the people’s involvement in the process. To support this street-level campaign, the Task Force further organised mobilisation activisms, such as open letters, regular press conferences, and petitions. The petitions (see Figure 5.4 below), focussed on how the ToR lacked the very essence of human rights protection mechanisms, were directed to the ASEAN Foreign Ministers. The final number of the signatories is unknown. Additionally, the Task Force’s method of delivering the petition to Foreign Ministers, and their subsequent responses, is not found anywhere in their documentation.

![Figure 5.4. ASEAN People’s Petition on the ASEAN Human Rights Body](image)

The Task Force deployed another public campaign, systematically organised to attract the attention of ASEAN. Hundreds of postcards were sent to Mr. Termsak Chalermpalanupap, a Special Assistant to the Secretary-General of ASEAN, who served the HLP as a resource person of the ASEAN Secretariat. Mr. Chalermpalanupap

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194 Ibid., p.13.
had consistently criticised the Task Force’s campaign, specifically their demands for the ASEAN human rights body to have ‘teeth’. In one of his manuscripts, distributed within the network, he highlights that ‘like all other ASEAN organs or bodies, the [ASEAN human rights body] shall operate through consultation and consensus, with firm respect for sovereign equality of all Member States.’ (Chalermpalanupap 2009a:4). Hence, as he firmly concluded, AICHR was never intended as an ‘independent watchdog’ with teeth.

In addition, during one of the Task Force meetings with ASEAN, Mr. Chalermpalanupap particularly said that by spreading the ‘toothless’ message, civil society was acting in an ‘uncivilised’ manner. In response to this statement, the Task Force organised a ‘postcard movement’, encouraging as many people as possible to write to Mr. Chalermpalanupap as proof that ASEAN people are civilised. Although Mr. Chalermpalanupap received the message behind the movement, it did not change his mind: the people’s idea of an AICHR with teeth was ‘bark[ing] up the wrong tree’.

Media Advocacy

The Task Force applied one last strategy of indirectly pressuring the HLP into change. This was media advocacy, or engaging mass media to cover their activism. According to Rietig (2016), as activists, non-state actors use the media to shape public opinion, ‘as well as [to] illustrate in mass demonstrations that a perceived majority of the population is deeply concerned about an issue and demands appropriate government action’ (p.274). The media is considered a ‘hospitable venue’ where activists can actively frame their concerned issues in ‘innovative ways’, such as redefining people’s identities and interests on the related matters (Keck and Sikkink 1998:17).

From personal interview with Yuyun Wahyuningrum (Jakarta: 21 August 2017).

The term Chalermpalanupap used in his article, to highlight that the demand of the civil society organizations is out of context (2009a:4).
During their period of activism, the Task Force undertook, in total, 274 media blitzes. They maintained strong relationships with editors and reporters of regional desks from the Jakarta Post, Bangkok Post, Press Service International, Southeast Asia Press Alliance (SIPA), the Nations, and Rappler.\textsuperscript{198} According to Meidyatama Suryadiningrat, the then-ASEAN editor of the Jakarta Post, the distance between himself and the Task Force was only ‘a phone call away’. Because of their shared understanding of the issues – in his own words: ‘We are a community of the like-minded’\textsuperscript{199} – Suryadiningrat was happy to supportively frame the issues related to the Task Force’s goal. Among his series of influential columns at the Jakarta Post was one entitled ‘ASEAN 9, Human Rights 1’, published on 24 July 2009, four days after the adoption of the ToR by the ASEAN Foreign Minister Meeting. The column broadly discussed how human rights norms lost out against the nine ASEAN member-states, with only Indonesia fighting in its favour (see Chapter 6). In his column, he realistically admitted that, for ASEAN, it was better to have any type of human rights mechanism than none at all, and he agreed that ‘half a loaf is better than having no bread at all’ (Suryadiningrat 2009).

Apart from close networking with mainstream mass media, the Task Force media advocacy tactic also benefitted from an ASEAN Secretariat project for media empowerment, supported by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), a German development agency based in Bonn. It was a training tool for young reporters throughout the region, with the aim to increase coverage on ASEAN-related issues in local and online media. Approaching the ASEAN Foreign Minister Meeting (FMM) in July 2009, wherein the final ToR would be adopted, the Task Force lobbied H.E Surin Pitsuwan (the then-Secretary-General of ASEAN). They insisted that the training, which was also scheduled in July, be held in Phuket, Thailand, in the same location as the FMM. The lobby was successful.

\textsuperscript{198} From personal interview with Herjuno Kinasih, the then-office-manager of ASEAN People’s Center

\textsuperscript{199} From personal interview with Meidyatama Suryadiningrat (Jakarta: 09 August 2017), currently the President Director of the Antara News Agency.
In addition, the Task Force was awarded a session in the training, wherein they could ‘update’ the participants about the latest development of the body’s institutionalisation process, including their concerns about it becoming ‘toothless’. As a result of this activism, during the event’s official press conference (in addition to journalists officially invited to cover the event), there were 30 young reporters from all ten ASEAN member-states, each prepared to write and publish news from the perspective advocated by the Task Force. According to their record, the ToR adoption announcement had approximately 177 media coverage points regionally.

**The Output of the Activist’s Activism**

The Task Force claims that their activism was successful. The primary message of their campaign – ‘We want an ASEAN Human Rights Commission with Teeth!: Accountable, Independent and Effective’ – was widely adopted by the ASEAN people, mainstream media, bloggers, politicians, officials from ASEAN, and some member-states, as well as by certain HLP members and even Foreign Ministers. I agree with this self-claim, that the Task Force was successful in shaping public opinion to follow their campaign’s direction. However, their message’s acceptance does not necessarily indicate they were successful in influencing the HLP’s policy-making process.

I loosely apply Rietig’s four indicators to assess the Task Force’s influence on the HLP policy-making negotiation. The impact appears more or less as represented in Figure 5.5 on the following page.

In order to do this I loosely coded the qualitative findings into a Likert Scale\(^{201}\) of 1-5, where 1 indicates minimum value and 5 indicates maximum. Here, I assumed a maximum score for two indicators on ‘peaceful protest’ and ‘clear message’. This research shows that there is no single element of the Task Force’s activism that can brand them as ‘criminals’; the two worst labels attached were ‘broken cassettes’ and ‘uncivilised’, which have no unlawful implication. As discussed above, I also conclude

\(^{200}\) From personal interview with Rafendi Djamin (Jakarta: 09 August 2017) and Yuyun Wahyuningrum (Jakarta: 21 August 2017).

\(^{201}\) On Likert Scale, read for example Mohn (2019).
that the Task Force’s campaigning message is very simple, clear, and easily digested by all – not only by decision makers (the target of the campaign), but, more importantly, by the people (the main runners of the campaign).

Figure 5.5. Application of Rietig’s Indicator to assess the influence of SAPA-TFAHR’s Activism on HLP

For the other two indicators, I assigned two points for the element of media coverage. I argue that gaining only 274 reports in total during the eight months (from July 2008 to February 2009) of the campaign is not a good result; on average, it means there were less than three news broadcasts on AICHR’s establishment published per month in each member-state country. This minimum media coverage at a national and regional level was acknowledged by the Task Force itself as one weakness of their campaign.202

A further baseline score (1) was assigned to the mobilisation of the majority of voters. Evidence found in this research strongly indicates that the Task Force’s activism was centralised primarily at the capital city of each member-state. Therefore, I can assume the campaign had a very little effect on voters living outside of the ten cities. The

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202 From a personal interview with Yuyun Wahyuningrum (Jakarta: 21 August 2017)
failure to reach wider groups and people in their campaign was also acknowledged by the Task Force as a limitation in their activism.

Translating the image into numbers, the area around the blue dots in Figure 5.5 above shows four scores’ combined output, valued only about 42% of the maximum possible score. If 100% is the maximum influence that activists can have on a negotiation process, and 0% is the minimum, 42% falls just below middle-range and can safely indicate a ‘lesser’ quality of influence.

This research shows that this simple calculation does not accurately represent reality. No evidence was found that indicated the Task Force’s activism had relatively significant influence on the HLP negotiation process. This research qualitatively concludes that their influence was arguably poor (to use the same Likert Scale as shown above). Hence, Rietig’s model is unable to explain the impact of the Task Force’s behaviour as activists.

5.4.2 As Lobbyists: Shaping Policy Framework

As mentioned earlier, this research proves that both Sabatier’s concept on advocacy coalition and Kraft’s concept on Track-3 Diplomacy cannot fully describe the behaviour of non-state actors in Southeast Asia, particularly in their direct advocacy activism towards policy makers. From this viewpoint, the Task Force’s lobbying strategy on T1D (with the aim to shape policy framework) can be considered atypical activism, applied by a group of non-state actors.

When defining the impact of the Coalition’s lobbying on the negotiation process, there are three indicators to observe. These are: their contribution in framing the issue concerned, their influence during the setting of the agenda (whether they are successful in adding or deleting topics), and their success in shifting the opinion of the leaders – and, therefore, the position of key states in the negotiation (Rietig 2011). Evidence can be drawn by assessing their actions, methods of transmitting knowledge and

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203 On a five-point Likert Scale on Level of Quality, where 1 is poor, 2 is Fair, 3 is Good, 4 is Very Good, and 5 is Excellent.
information to negotiators, the appropriate responses they received, and the consistency of those responses with their goals (Betsill and Corell 2001).

In pressuring the HLP, the Task Force leveraged two parallel approaches: indirect action (through the think tanks) and direct action (both through official, person-to-person meetings with individual HLP members and through formal, institution-to-institution meetings with the HLP and ASEAN regional body).

**Going through the T2D Forums**

The Task Force’s indirect lobbying effort (utilising think tanks) is a strategy recognised by Keck & Sikkink. According to them,

> to influence discourse, procedures, and policy … [non-state actors] may engage and become part of larger policy communities [where] group actors work on an issue from a variety of institutional and value perspectives. (1998:3)

As discussed in Chapter 4 on the Policy Network, the Task Force actively participated in various regional forums organised by both AICOHR and the Working Group, in which representatives of the ten ASEAN member-states were also present. During AICOHR’s 15th Annual Conference in Manila in May of 2008, Chalida Tajaroensuk (Executive Director of People's Empowerment Foundation (PEF), Thailand), represented the Task Force. She highlighted five main points desired by the people from the formation of a human rights body:

> first, independent representatives instead of state representatives must participate and sit in the body; second, in its pursuit of creating a sense of belongingness and unity in the ASEAN region and not solely among individual states, the body must be true in its prime mission to promote and protect human rights, human security, peace building, economic

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204 Statement of Chalida Tajaroensuk, at Session 4, 15th AICOHR Conference 2008 - quoted from an unpublished conference proceeding made available to me during fieldwork.
development, and the environment; third, the body must be the first to instil respect for international human rights norms, respect for culture and religion, and respect for the moral of every human being; fourth, the ASEAN Human Rights court is the legitimate institution in receiving claims of human rights violations; and fifth, much attention must be given on how the body’s structure and participation from various groups such as people’s organisations, NGOs, academe, media, sub-committees, and working groups must be implemented.

She also emphasised the importance of the body ‘perform[ing] as an apt human rights mechanism for ASEAN people’. In her words, this could only be accomplished through ‘the empowerment and mobilisation of the people at the grassroots, a majority but least heard voice’. 205

Compared to the Policy Network’s statements on the same issues (discussed in Chapter 4), when voicing the common people’s interest, Tajaroensuk’s statement is distinct in at least three respects. First, it clearly demands that the body exist as the people’s body, not an inter-governmental type of body as suggested by the Working Group; second, it demands the body pay equal respect to all aspects of human rights, as recognised by the International Bill of Human Rights (discussed in Chapter 2), rather than placing the body within the political development segment of the ASEAN Security community, as suggested by AICOHR; and third, it boldly demands that the body work for the sake of human rights – an idea never proposed by the Network, since they understood how, in ASEAN, the protection of human rights was perceived as a threat to national interests by some, if not all, member-states. This forthright, non-accommodative approach towards local norms, I argued, is the reason why Tajaroensuk’s proposal did not gain further attention from either AICOHR or the WG, not to mention the HLP.

205 Ibid. – It is my intention to present the full quote of her statement, rather than to rewrite it, to give some sense of the distinctive, chosen words used by the people at T3D in addressing the issue, compared to the more formal ones used by T2D, not to mention T1D.
Apart from the AICOHR annual conference, the Task Force advocated their ideas during their participation in the WG annual workshop. One month after the AICOHR conference discussed above, during the WG 7th Workshop (in June 2008 in Singapore), Tajaroensuk repeated the Task Force’s three demands. Specifically, that the regional human rights body should be easily accessed by individuals, that it should be an independent body recognised by government, and that a human rights council and court should be established within the body (Working Group 2016).

Again, as noted from the proceedings of the workshop, this idea received no enthusiastic response. Even worse, that session concluded, by floor agreement and contrary to Tajaroensuk’s demand, that members of the ASEAN human rights body should be appointed by the government, although the appointment process should include a consultation with civil society.

During the following workshop held in Bangkok in July 2009, Rafendi Djamin, the co-convenor of the Task Force, focussed his advocacy on the membership of the soon-to-be-established. He highlighted certain individual qualities required in a prospective convenor of the body; he also proposed a mechanism for an ideal selection process (Working Group 2016). Compared to the tactic employed in the previous year’s workshop, this diplomatic approach (suggesting less normative and more practical ideas) received better responses. Participants followed it by discussing the suggestions, such as the operational definition of ‘independence’ as the key requirement under which the ten AICHR convenors should work, and the systematic action required for a national and regional selection process.

It is worth noting that this discussion took place in a session chaired by a representative of Vietnam’s government, one member-state that was openly against having a ‘powerful’ regional human rights body (see Chapter 6) – and a primary target of the Task Force’s advocacy. As discussed in the next section, the Task Force had no access

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206 In the agreed-upon AICHR ToR, there are only two articles discussing membership (see Appendix 4): article 5.1 stated: ‘The AICHR shall consist of the Member States of ASEAN’, and article 5.2 stated: ‘Each ASEAN Member State shall appoint a Representative to the AICHR who shall be accountable to the appointing Government’. It mentioned nothing about the selection process and the required qualification of the representative; the appointment of the representatives is the discretion of individual member-states. Depending on member-states’ preference, this somehow allows the involvement of non-governmental representatives in AICHR.
to directly approach Vietnam’s government and its representative at the HLP. As such, the Task Force’s strategy of approaching the HLP through AICOHR and the WG can be considered useful and successful.

The two think tanks provided a forum for the Task Force to share a room with and deliver their messages directly to the representatives of ASEAN member-states; under these circumstances, at least, the Task Force knew their ideas reached the targeted policy maker. However, since there is no open and official acknowledgement by member-states found, this research is unable to identify which of the Task Force’s ideas, if any, were actually adopted by AICOHR and the WG in their policy recommendation to ASEAN.

**Reaching the HLP**

The Task Force’s next two approaches in pressuring policy makers directly (both individual members of the HLP and the HLP as institution itself) proves that the Kraft (2002) argument (discussed at the beginning of this chapter) – that T3D involvement on policy-making is, ‘by their own choice’, limited (Kraft 2002:50) – was not applicable in this case.

On the contrary, the use of these two approaches as alternate pressure mechanisms for policy makers confirms the other strength of civil society: to bring new ideas, norms, and discourses into policy debates (Keck & Sikkink 1999). Furthermore, civil society could provide government officials with crucial information and testimonies on real problems, as well as the real needs of real people (Bernauer and Betzold 2012), so as to empower them to form justifiable policies.

In their book on NGO Diplomats, Betsill & Corell argue that, in their involvement in international decision-making, NGOs …

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207 As discussed in Chapter 5, this is indeed one of the roles of T2D to bridge T1D and T3D.
engages directly in one of the most traditional diplomatic activities [and] perform many of the same functions as state delegates: represent the interests of their constituencies, engage in information exchange, negotiate, and provide policy advice. (2008b:205).

With such opportunities, civil society may focus on both the outcome of the negotiations, such as the text of an agreement, and the process of the negotiations (Betsill and Corell 2008), such as the setting of the agenda (Uhlin (2010)).

To influence the outcome and process of the HLP negotiation, two methods were applied by the Task Force: to meet and talk, and to propose a policy recommendation in written form (referring to the Task Force’s own term: ‘the submission’). Between July 2008 (directly after the HLP’s appointment was confirmed) and July 2009 (when the AICHR’s ToR was officially adopted during the 42nd ASEAN Foreign Minister Meeting in Phuket), the Task Force managed to submit three documents, secure eight dialogue meetings with five members of the HLP, and engage in three interface meetings with the HLP.

The Task Force submitted the first and third recommendations to the HLP during their shared interface meetings. Meanwhile, the second document was submitted over email to the HLP Chairperson (Mr. Sihasak Phuangketkeow) on 7 November 2008, and was handed in to the HLP Indonesian representative (Mr. Rachmat Budiman) a couple of days later, just prior to the HLP 5th meeting in Bali. The three submissions contained ‘key points of concern’ and ‘proposed heads of discussion’ for the establishment of the regional human rights body. As the documents resulted from the national and/or regional consultation meetings that preceded it, they were endorsed by hundreds of participating civil society organisations (as discussed in the above section). The Task


Force claims that their ‘very comprehensive’ submissions were ‘well received’ by the HLP.210

The ‘meet and talk’ advocacy approach was employed against individual members of the HLP during various formal and informal occasions, including the forums organised by the T2D discussed above. The formal occasions – labelled as dialogue meetings – were intentionally arranged between the Task Force’s national focal point and the HLP representative from their respective country. This dialogue meeting was nonetheless highly characterised by a personal approach (relying on personal networking and personal character), typically within a less formal environment – and, therefore, left unrecorded. Documentation from the meeting, if any, heavily relied on memory.

Collins (2019a) considers the act of arranging meetings at the national focal point level, and only with each respective HLP representative, as a ‘targeted advocacy’ (p.372). This is the most effective advocacy approach, for two reasons. First, trust from the official is easier to gain, hence ‘resistance is likely to be less’ (Collins 2019a:372); second, talk of normative ideas can be made relevant by referring to local examples and by discussing it with local language and terms.211 The impact of language differences to civil society advocacy in ASEAN has been discussed by Rizal Sukma in one of AICOHR’s conferences.212,213 At that time, Sukma identified this as a challenge in the coalition-building process, as well as in maintaining the dynamics among civil society – which some NGO representatives, participating in the forum, disagreed with.

Although different in context, the Task Force’s experiences confirm that Sukma’s concerns were sensible. After a Network-organised forum, Chalida Tajaroenisuk, the Task Force member from Thailand, was given an impromptu opportunity for a short


211 From a personal interview with Yuyun Wahyuningrum (Jakarta: 21 August 2017).

212 Each of the ten ASEAN member-states have their own national language, and although English is a commonly used language in regional settings, it is not very widely used at the national level. It is not unusual that members of the civil society organization speak rather limited English – which can hinder the progress of the regional advocacy movement and regional coordination at large.

213 Session 6, 13th AICOHR Conference 2006 – an unpublished conference proceeding made available to me during fieldwork.
question-and-answer session with a HLP representative of her government. Yuyun Wahyuningrum, also a member of SAPA-TFAHR, from Indonesia, attended the meeting with her. Although the officer was aware of Yuyun’s presence, during the conversation, he deliberately ignored Yuyun and discussed the matter eye-to-eye with Chalida in Thai language – which removed any chance for Yuyun to understand their discussion. The Thai government was, apparently, more comfortable talking in-person with Chalida.214 This is one of many occasions which show that, in some instances, national level advocacy activism (even when concerning regional issues) may work more effectively than regional approaches.

Even so, to be granted a national dialogue meeting was still a challenge. Throughout the advocacy period, only eight meetings took place, and with only five of the ten HLP members. One meeting occurred with Cambodia’s representative (the Cambodian Human Rights and Development Association (ADHOC) met with Mr. Om Yentieng), three occurred with Indonesia’s (Human Rights Working Group (HRWG) and Kalyanamitra met with Mrs. Wiwiek Firman or Mr. Rachmat Budiman), two occurred with Malaysia’s (Suara Rakyat Malaysia (SUARAM) met with Tan Sri Ahmad Fuzi Abdul Razak), one occurred with the Philippines’ (the Task Force Detainees of the Philippines (TFDP) and the Philippine Alliance of Human Rights Advocates (PAHRA) met with Mrs. Marilyn J. Alarilla, the assistant of Amb. Rosario G. Manalo), and one occurred with Thailand’s (between People's Empowerment and Mr. Sihasak Phuangketkeow, who was also the HLP’s chairperson).215

During that period, the Task Force failed in their effort to arrange a meeting with three HLP members: Dato Shofry Abdul Ghafor (a HLP representative from Brunei Darussalam), Mr. U Myat Ko (from Myanmar), and Mr. Bilahari Kausikan (from Singapore). No effort was made to approach Mr. Bounkeut Sangsomsak (from Laos PDR) and Mr. Pham Quang Vinh (from Vietnam), as the Task Force had no national focal point in these two countries.

214 From a personal interview with Yuyun Wahyuningrum (Jakarta: 21 August 2017).
Among eight successfully held, the meeting with Cambodia’s representative can be viewed as exceptional, considering the background of the two parties. Mr. Om Yentieng was known for his reputation of being ‘unfriendly to media and NGOs.’

His attitude was evident, for example, when he attacked the report of Yash Gai (the Special Representative of the UN Secretary General) on the human rights situation in Cambodia, and accused it of being ‘exaggerated and sensational’. Across the table, Thun Saray, the Director of ADHOC, was a former political prisoner who, since 1991, radically advocated for the protection of basic rights, freedom, and liberty in Cambodia. Unfortunately, there is no record found regarding the quality or outcome of this meeting.

Other dialogue meetings took place in Indonesia, Malaysia, the Philippines, and Thailand. They were more anticipated, primarily because of the Task Force’s reputation as lobbyists in the given countries. Max de Mesa (from TFDP, Philippines), Chalida Tajaroensuk (People’s Empowerment, Thailand), Rafendi Djamin (HRWG, Indonesia), as well as Watshlah Naidu (Suaram, Malaysia) were all known for their lobbying skills, wide networks, and access to their respective governments.

However, the Task Force’s lobbying activism mainly benefitted from Rafendi Djamin’s (as well as Yuyun Wahyuningrum’s) very close, coordinative effort with Mr. Rachmat Budiman (Indonesia’s alternate HLP representative). The Task Force consistently advocated their messages through Mr. Budiman, who then delivered them to the HLP negotiation forums.

216 Forum Asia E-Newsletter, 1 August 2008.
217 Ibid.
218 Read https://humanrightsinasean.info/content/cambodian-human-rights-and-development-association-adhoc.html
219 In May of 2016, Thun Saray was forced to leave Cambodia following ‘direct threats’ from the Anti-Corruption Unit (ACU) to arrest him if he continued to oppose the criminal charges against five Cambodian human rights activists. Interestingly enough, at that time, the head of the ACU was Mr. Om Yentieng (read, for example https://www.phnompenhpost.com/national/fear-arrest-drove-adhoc-chief-abroad).

For his work in defending human rights in Cambodia, in December of 2016, Thun Saray was awarded the Franco-German Council of Ministers annual Prize for Human Rights and the Rule of Law, at a ceremony in Berlin – quoted from https://www.cambodiadaily.com/news/adhoc-president-wins-human-rights-award-exile-121463/

220 From personal interview with Rachmat Budiman (Jakarta: 08 August 2017), Rafendi Djamin (Jakarta: 09 August 2017), and Yuyun Wahyuningrum (Jakarta: 21 August 2017).
Communication was so intense (representatives of the Indonesian government even attended the SAPA-TFAHR 2nd regional consultation\textsuperscript{221}) that the Task Force was confidently assured of the Indonesian government sharing their views on AICHR’s ideal form. Under these circumstances, referring to Rietig, the Task Force adjusted their role from lobbyist to advisor, as the government official needed their expertise and technical input as part of their capacity-building goals (Rietig 2016). How Mr. Budiman communicated these ideas during the HLP meetings, and the outcome of his diplomatic efforts, will be discussed in Chapter 6 on the Political Community.

Apart from pressure the Task Force placed on the HLP through the Indonesian government, this research found no other evidence indicating further impact from this particular approach on the AICHR establishment process.

The third approach of the Task Force lobbying activism was to meet and communicate directly with the HLP. This ‘interface meeting’ became an alternative approach, as the Task Force won ‘space, recognition, and secured interaction’ with the HLP to discuss the ToR.\textsuperscript{222} Throughout the drafting process, three interface meetings took place: in Manila in September 2008 (following the 3\textsuperscript{rd} HLP meeting), in Kuala Lumpur in March 2009 (during the 9\textsuperscript{th} HLP meeting), and in Jakarta in August 2009.

To gain the HLP’s full attention regarding their intention to meet, the Task Force employed a top-down order strategy, taking full advantage of the good relationship maintained between their Thai national focal point and the Thai government, which was the ASEAN chair at the time. They addressed the meeting request letter to H.E. Abhisit Vejjajiva (Prime Minister of Thailand and the ASEAN Chair) and had the Prime Minister’s office deliver the letter to the HLP. Included in the letter was a set of recommendations, which the Task Force demanded the HLP give attention to.

\textsuperscript{221} Forum Asia E-Newsletter, 8\textsuperscript{th} August, 2008
Figure 5.6. The Top Down Strategy - Example Heading of SAPA-TFAHR’s Meeting Request Letter with the HLP via Thai’s PM Office

The Task Force’s achievement in strategically arranging the interface meetings did not necessarily guarantee the success of a formal negotiation process within the meeting. Reflecting the same kinds of findings found in the work of Kraft (2002), Keck & Sikkink (1998), and Nesadurai (2012), there was an unbridgeable gap between the Advocacy Coalition and policy makers (the Political Community representing official government) in terms of their differing perspectives on the issue concerned. Therefore, there was a gap regarding what set of policy to produce.

This gap was also found in the three interface meetings between the Task Force and the HLP. According to Manja Bayang (coordinator of Indigenous Peoples Human Rights Monitor and a Task Force’s representative who attended the second meeting), during the dialogue with the HLP, there were notions, hopes, serious concerns, and frustration. It is frustrating that the dialogue which was supposed to evolve around the draft [of the regional human rights body’s] ToR was not meaningful because the civil society was denied any copy of the ToR before the dialogue. There were serious differences on the panel members’ perception of the basic principles of human rights, particularly on...
the principle of self-determination which they wrongfully equate to cessation.\textsuperscript{223}

The unbridgeable gap between the Coalition’s ‘idealist belief’ and the policy makers’ ‘rationalist understanding’ based on member-state interests is, hence, identified as the main weakness of the Advocacy Coalition’s activism. The Policy Network intended to fill this gap (see Chapter 4).

\textbf{The Output of the Lobbyist’s Activism}

In order to understand the NGO’s level of influence in negotiations such as those outlined above, it is useful to draw upon Betsill and Corell’s work in this area. In their work, the influence of NGOs (rated as either ‘weak’, ‘moderate’ or ‘high’) can be assessed in terms of actors’ ability to exert influence (see Figure 5.7 and 5.8 on the following page). Their research suggests that influence can be developed during the negotiation process via strategies of issue and agenda setting. They may also seek to influence negotiation outcomes by raising concerns related to both procedural and substantive.

Referring to this model, I would argue that the influence of the Task Force’s lobbying activism was moderate on the AICHR ToR drafting process at the HLP. It is possible to see that there is some substance to the claims of the Task Force that it was successful in influencing the setting of certain ASEAN’s agenda, norms, and standards, as well as in framing the issues, priorities, and processes in ‘building the constituency’ of ASEAN.\textsuperscript{224} The Advocacy was considered to have pushed ‘modification and additional weight to the ToR’, as there were certain improvements in the final version of the ToR, when compared to previous drafts (Wahyuningrum, 2009). Some of the Task Force’s demands were accommodated in the AICHR Terms of Reference – although unfortunately, with weakening adjustments.\textsuperscript{225}

\textsuperscript{223} Forum Asia E-Newsletter Asia, 2 April 2009.
\textsuperscript{224} \textit{Ibid.}, p.13.
\textsuperscript{225} From a personal interview with Yuyun Wahyuningrum (Jakarta: 21 August 2017).
<table>
<thead>
<tr>
<th>Influence indicator</th>
<th>Evidence</th>
<th>NGO influence? (yes/no)</th>
</tr>
</thead>
</table>
| Issue framing        | • How was the issue understood prior to the start of the negotiations?  
                       • Was there a shift in how the issue was understood once the negotiations were underway?  
                       • What were the terms of debate for specific agenda items? | • What did NGOs do to bring about this understanding? |
| Agenda setting       | • How did the issue first come to the attention of the international community?  
                       • What specific items were placed on or taken off the negotiating agenda? | • What did NGOs do to shape the agenda? |
| Positions of key actors | • What was the initial position of key actors?  
                        • Did key actors change their position during the negotiations? | • What did NGOs do to shape the position of key actors? |
| Final agreement/procedural issues | • Does the agreement create new institutions to facilitate NGO participation in future decision making processes?  
                       • Does the agreement acknowledge the role of NGOs in implementation? | • What did NGOs do to promote these procedural changes? |
| Final agreement/substantive issues | • Does the agreement reflect the NGO position about what should be done on the issue? | • What did NGOs do to promote these substantive issues? |

**Figure 5.7. Indicators of NGO Influence**  
*(source: Betsill & Corell (2008a:34-35))*

<table>
<thead>
<tr>
<th>Description</th>
<th>Low</th>
<th>Moderate</th>
<th>High</th>
</tr>
</thead>
</table>
| Participation in negotiations without effect on either process or outcome. | • NGOs participate and have some success in shaping the negotiating process but not the outcome. | • NGOs participate in the negotiations and have some success in shaping the negotiating process.  
                       • NGOs’ effects of participation can be linked to outcome. |
| Evidence | • NGOs engage in activities aimed at influencing the negotiations.  
                       • NGOs do not score a yes on any of the influence indicators. | • NGOs engage in activities aimed at influencing the negotiations.  
                       • NGOs score a yes on some or all of the process indicators.  
                       • NGOs score a no on all of the outcome indicators. | • NGOs engage in activities aimed at influencing the negotiations.  
                       • NGOs score a yes on some or all of the process indicators.  
                       • NGOs score a yes on one or both of the outcome indicators. |

**Figure 5.8. Determining Levels of NGO Influence**  
*(source: Betsill & Corell (2008a:38))
For example, the demand for the body to possess a mandate for human rights investigation and monitoring was adopted in the ToR but the statement was adjusted to become the body’s right to ‘obtain information from ASEAN Member States on the promotion and protection of human rights’ (point 4.10, see Appendix 4). On the Advocacy’s demand for a mandate on the protection and implementation of human rights, the final statement at the ToR was softened to ‘provid[ing] advisory services and technical assistance on human rights matters to ASEAN sectoral bodies upon request’ (point 4.7, emphasis added, refer to Appendix 4).

In terms of influence on negotiating process, the Task Force was only unsuccessful in changing the position of the negotiators (the ten HLP members) towards the basic idea of establishing (or not establishing) a regional human rights body. By the end of the negotiation process, the ten negotiators essentially still held their original position as when first appointed as members of the HLP (discussed in Chapter 6); those in favour of the idea held it even stronger, and those against it were further opposed. A similar situation was found in Rietig’s research; as she argues, once the government had decided their position in a negotiation, it could not change ‘for imminent negotiations’, regardless of how hard other party, including NGOs, tried to lobby them (2016:283).

The Task Force was even less successful when it came to influencing negotiating outcomes. Their activism received official acknowledgement from the HLP members, the Foreign Ministers, the ASEAN Secretariat, and the ASEAN leaders (Wahyuningrum 2009) – but this was not mentioned or reflected anywhere in the ToR. The ToR also did not mention including civil society in the future implementation process, not even for consultation.

However, the prime indication of failure is: the ToR does not at all reflect the Task Force’s demands for an accountable, independent and effective regional human rights body. The HLP still produced a ToR that ‘guaranteed’ a weak and powerless institution for human rights protection – or, in the Task Force’s term, ‘toothless’. From this point of view, it is fair to conclude that the Task Force’s engagement with the HLP had been relatively fruitless (Asplund 2014).
5.5 Advocacy Coalition’s Strategy and the Toothless AICHR

This chapter elaborates on the Advocacy Coalition’s behaviour as part of the ASEAN Norm Interpreters, specifically in their effort to interpret global norms on human rights to be accepted in the region of Southeast Asia. As discussed above, the norm interpretation process which occurred in the Coalition arena includes certain formal lobbying approaches as well as less formal advocacy approaches.

As has been concluded, their activism was unsuccessful; referring to the Task Force’s own words, ‘[T]he final text of the ToR is still far from what we expect it to be. Yes, we are disappointed.’ (Wahyuningrum 2009). This disappointment refers to the fact that, despite the great effort, the institutionalised regional human rights body were still heavily influenced by local values. As such, the norm interpretation failed to steer the drafting process of AICHR’s ToR in the expected direction.

Assessing the Task Force’s two approaches, this research concludes that the main flaw of their activism was an inability to sufficiently pressure the HLP – specifically, to a point where the HLP had no option but fulfil the Task Force’s demands. According to Rietig (2016), this might relate to the Task Force’s lack of bargaining power; they ‘have little to offer in return’ (p.282). Under these circumstances, the Task Force may have been successful in communicating their messages directly and indirectly to the policy makers; however, as the government ‘[saw] no reason to act on the input, and adapt their position’, the well-delivered messages were in a weak position and poorly received.

Willets (1982) identified three ‘sources of strength’ that contribute to the success of pressure placed by a group of non-state actors: (1) the intense personal commitment of the members, (2) a specialist quality of the leaders, and (3), ‘paradoxically’, the lack of a well-structured bureaucracy, which creates ‘greater speed and greater flexibility’ in responding to the emergent crisis. Although the Task Force owned these three sources of strength, unfortunately, that was insufficient in achieving the goal of their activism. Referring to the Task Force’s self-assessment, this failure includes a lack of media coverage, an insufficiently positive image of CSO engagement with ASEAN, a lack of expertise in regional human rights mechanisms, a lack of ‘more creative’
methods for engaging ASEAN, and a lack of concrete support from wider groups and people.\textsuperscript{226}

From this list, considering the nature of the HLP’s negotiation process, I argue that the last point is the most crucial. Massive domestic pressure from the people (or ‘voters’, as termed by Rietig (2011)) will reshape individual member-state’s position on issues. This certainly influences dynamics within the HLP and then defines the end product of a negotiation, as discussed in the following Chapter 6.

Chapter 6: Political Community: The Policy Makers

The burden seems too big to bear; the mission too hard to accomplish.  

6.1 Introduction

This chapter examines the process of reinterpreting global norms on human rights in ASEAN by the group of Norm Interpreters identified as the Political Community (hereafter: the Community) with a specific focus on the period in which AICHR’s Terms of Reference drafting took place, which is from July 2008 to February 2009.\textsuperscript{228} The analysis focusses on the behaviour of ASEAN’s High Level Panel (HLP). As discussed in Chapter 1, the HLP is considered to be an essential component part of the Political Community subgroup of Norm Interpreters. The term ‘Political community’ is itself derived from Johnstone’s article on interpretative communities (2005); this term is assigned to an entity whose responsibility is to make policies, consists of ‘a network of government and intergovernmental officials’ (p.190).

HLP is a high-political group consisting mainly of diplomats who officially represent their countries (the ten ASEAN member-states) and collaborate under the mandate of the ASEAN Charter, with a main goal of establishing a regional human rights body. Members of the group interact through an official negotiation channel (Kaye 2007, Scholte 2002), regionally known as ASEAN Track-1 Diplomacy (T1D) within which formal government-to-government communication occurs (Chataway 1998, Chandra 2006). Nonetheless, the HLP is itself an ad hoc unit established by the Foreign Ministers of ASEAN Countries, which reports to the ASEAN Secretariat.

\textsuperscript{227} Quoted from Hermawan (2009d:17).
\textsuperscript{228} See footnote 3, page 1.
In this chapter, I scrutinise certain significant factors that influenced the HLP members’ behaviour. Within ASEAN, member-states tend to prioritise their interests, rather than align around regional common interests. Within this traditional state-centric system, the HLP was established and HLP members ‘stand as representatives of their respective states and reflect the official positions of their governments during discussions’ (Kraft 2002:51); they are expected to behave in accordance with, and solely represent, the interests of their own country; ‘[their] official face is on whether [they] agree or not’ (Chataway 1998:274).

The focus of this chapter is on identifying and understanding the political position of member-states towards the establishment of a regional human rights body (since the assumption is that negotiators largely acted in accordance with the interests of their national governments). One exception is the case of Indonesia; in which the character of a particular negotiator (H.E. Mr. Rachmat Budiman), as well as his superior (Foreign Minister Hassan Wirajuda), had quite significant influence over the negotiation process, even if it did not alter the eventual outcome.

The discussion in this chapter is centred on two variables: First, as explained above, the political position of member-states towards the establishment of a regional human rights body, and second, the impact of the different political positions on the bargaining process, the final result of which was an institution widely perceived as unable to accomplish human rights protection (the compromised AICHR, as discussed further in this chapter).229

Questions raised in this chapter include: first, what made the individual HLP members behave as they did? And, second, how did the combination of the different behaviours lead to the creation of the AICHR we know? Of all possible influences on member-state’s political positions, this research identifies two highly relevant matters: the level of democracy and the level of progressiveness in dealing with human rights issues.

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229 Because of this output, one might see the Political Community as a type of norm antipreneurs (Bloomfield: (2016), see p.20, fn.26). As discussed in this chapter, the group’s success in drafting the ToR, and AICHR’s on-time establishment, proves that they are not necessarily antipreneur. This is despite the general sense of reluctance to establish an ideal AICHR among certain member-states. This research still perceives the Political Community as a norm promoter, although in the weakest possible sense.

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210 Chapter 6: Political Community: The Policy Makers
This research also acknowledges the element of regional norms, which significantly impacts the HLP’s the bargaining process.

Contrary to the general perception, this research finds that local norms (both Asian Values and the ASEAN Way, as discussed in Chapter 2) did not necessarily dictate nor define the behaviour of all HLP members. Rather, within the setting of highly-institutionalised negotiations, these two local norms operated as effective tools, leveraged strategically by ‘weak powers’ to manipulate the threat-potential of more powerful states, so as to ‘punch above their weight’ (Panke 2015:377) or to further discourage a rational negotiation process. Moreover, reference to these two regional norms was later used by the ASEAN leaders to rationalise the outcome of the HLP negotiation, which they knew was widely considered disappointing.

To coherently characterise the relation between members’ political positions and the bargaining process’ output, this research applies Veto Player Theory as a tool of analysis. Applying this theory justifies the unique bargaining process within the HLP which leads to a distinct finding: the ideological distance between ASEAN member-states allowed the creation of AICHR’s ‘disappointing’ form, inaugurated in October 2009.

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[230] See, among others, Hund who argues that “[t]he central ASEAN regimes and institutions are moulded in the old ASEAN Way and are therefore not capable of effectively promoting ASEAN’s new objectives of deeper economic and political integration … ASEAN is not prepared for community-building (in the sense of pooling sovereignty and devising more centralised and rules-based mechanisms and institutions)”. (Hund 2002:100)
The discussion in this chapter will be divided into four parts. The first subchapter will briefly elaborate a conceptual understanding of ASEAN’s Political Community. Unlike the extensive academic dialogue found on the Policy Network and Advocacy Coalition (along with the parallel concepts of Track-2 and Track-3 Diplomacy, respectively), there is very limited academic discussion of the Political Community. Among the few, none perfectly fit Johnstone’s 2005 concept.231

This first subchapter presents a brief description of the High Level Panel as an ad-hoc entity under ASEAN. To contextualize the discussion of this chapter, the next subchapter will be a brief summary of members’ different standpoints toward the institutionalisation of AICHR, starting from the drafting process of Article 14 of the ASEAN Charter. As mentioned earlier, this chapter will include an analysis of members’ level of democracy, and their different levels of progressiveness in responding to the universal demand of human rights promotion and protection. This chapter will allocate special attention to the case of Indonesia, who fought against the other member-states for a credible AICHR.

Understanding the character of member-states is essential for analysing the bargaining process itself, which is the focus of the next subchapter. Concepts related to negotiation at a regional level, such as deadline diplomacy (Pinfari 2011), as well as lock-in strategy in an institutionalised negotiations (Panke 2015) will be discussed to explain the unique bargaining situation that transpired within the HLP. Finally, as mentioned earlier, all arguments will be incorporated into the framework of Tsebelis’ Veto Player Theory. This will clearly display the process which led to the HLP’s decision of establishing an AICHR whose mandate concerned human rights promotion, rather than human rights protection.

The approach of the discussion presented here is different from the other two empirical chapters on the Policy Network and the Advocacy Coalition, discussed in Chapter 4 and Chapter 5. In the previous two chapters, the discussion focused on the efforts of

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231 Overall, there is very limited discussion of Track-1 Diplomacy in academic literature. Very brief descriptions on this matter are found only as part of broader discussion on either Track-2 or Track-3 Diplomacy (read, for example, Chataway (1998), Kraft (2000, 2002), Chandra (2006), and Stone (2011)). This may be because classical diplomacy at the state level is considered as static, therefore leaving no area for further debate.
two Norm Interpreter subgroups to influence the decision-making process within the Political Community. Therefore, the focus of the discussion was concerned with the Policy Network and the Advocacy Coalition’s external behaviour in engaging the other two subgroups of Norm Interpreter (mainly the Political Community), rather than on internal wrangling within the subgroups.\(^{232}\)

In contrast, the discussion in this chapter will focus on assessing the behaviour of individual members within the Political Community.\(^{233}\) Specifically, the discussion will consider behaviours and actions that took place during closed-door diplomatic forums. These forums were sites of both collaboration and conflict between actors, but they were at the same time, the sites within which policy was made. Because of this the HLP was the main target for the activism of both the Policy Network and the Advocacy Coalition seeking to influence the emerging agenda.

As shown in this chapter, the Network and the Coalition were not involved in the negotiation process whatsoever. They were involved in certain dialogue forums and consultative meetings held by the HLP.\(^{234}\) However, their contribution to the process, unfortunately, was not formally recognised or officially mentioned in any HLP official press releases (published after each monthly meeting) – let alone in the ToR. For this reason, their contribution was considered unofficial (at least from the Community’s perspective), and no discussion on the Working Group, AICOHR (recognised as the Policy Network in this research), and SAPA-TFAHR (the Advocacy Coalition) will be found in this chapter.

\(^{232}\) This is not to say that no internal wrangling exists within the Policy Network and the Advocacy Coalition. The dynamics were not discussed in this thesis, as there was no further evidence found during the field research (both from primary and secondary resources) to support this argument.

\(^{233}\) As the HLP received their mandate to draft the ToR from, and had to present the draft for approval to, the Foreign Ministers Meeting (not to mention that 8 of 10 HLP members were officers at their respective Foreign Ministry), we can easily assume the significant influence each Foreign Ministry had to their HLP representative. However, their roles are not discussed in this thesis, as there was no evidence found depicting their direct involvement in the negotiation process within the HLP. This is apart from the exceptional role of Indonesia’s Foreign Minister Hassan Wirajuda, which is discussed in this chapter (subchapter 6.4.3).

\(^{234}\) Quoted HLP Chairperson Ambassador Sihasak Phuangketkeow of Thailand, he said that the HLP ‘looks forward to the support, encouragement as well as the exchange of views from civil society representatives on this important process … The HLP [continues] to regard the civil society groups as partners who have their own convictions and aspirations’. From Human Rights Herald, July 2009, p.2.
6.2 ASEAN’s Political Community: The High Level Panel

The High Level Panel (HLP) is a unit within the ASEAN Secretariat, established during the ASEAN Foreign Ministers’ Retreat in Singapore on 20 February 2008. The HLP was created in response to Article 14 of the ASEAN Charter, which affirmed that …

In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body.

In relation to this, the HLP was established ‘to determine the form, functions, and scope of the AHRB’ (Munro 2009:6), with the key task of drafting the Terms of Reference (ToR) for the body (Langlois 2012). Commencing its work directly after the 41st ASEAN Ministerial Meeting (AMM) in July 2008, the HLP was assigned a deadline to finalise the first draft before the ASEAN Foreign Ministers Meeting (AFMM) in February 2009 in Thailand, and to present the final draft for ASEAN approval and adoption during the 42nd ASEAN Foreign Ministers Meeting in July 2009, also in Thailand.

The panel was composed of ten government-appointed personnel (one from every ASEAN member-state), primarily foreign affairs bureaucrats. A representative of the ASEAN Secretariat, Mr. Termsak Chalermpalanupap – who was, at that time, a Special Assistant to the Secretary-General of ASEAN – served as a resource person providing secretarial support. The panel was chaired by H.E. Srihasak Phuangketkeow, Thailand’s Permanent Representative to the UN in Geneva, and was assisted by Prof. Vitit Muntarbhorn of Chulalongkorn University’s Faculty of Law. Below is the list of members:

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235 Terms of Reference for the High Level Panel on an ASEAN Human Rights Body.
236 Quoted from http://aichr.org/about/
238 Quoted from http://aichr.org/about/hpl/
Table 6.1. List of Members of the High-Level Panel (the HLP)

<table>
<thead>
<tr>
<th>States</th>
<th>Representative</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brunei Darussalam</td>
<td>H.E. Dato Shofry Abdul Ghafor</td>
<td>Permanent Secretary Ministry of Foreign Affairs and Trade</td>
</tr>
<tr>
<td>Cambodia</td>
<td>H.E. Mr. Om Yentieng</td>
<td>Advisor to the Royal Government of Cambodia President of the Human Rights Committee of Cambodia</td>
</tr>
<tr>
<td>Indonesia</td>
<td>H.E. Mr. Rachmat Budiman</td>
<td>Director of Political, Security and Territorial Treaties Department of Foreign Affairs</td>
</tr>
<tr>
<td>Laos PDR</td>
<td>H.E. Mr. Bounkeut Sangsomsak</td>
<td>Deputy Foreign Minister Ministry of Foreign Affairs</td>
</tr>
<tr>
<td>Malaysia</td>
<td>H.E. Tan Sri Ahmad Fuzi Abdul Razak</td>
<td>Ambassador-at-Large Ministry of Foreign Affairs</td>
</tr>
<tr>
<td>Myanmar</td>
<td>H.E. Mr. U Myat Ko</td>
<td>Secretary of Myanmar Human Rights Group, Director-General General Administration Department Ministry of Home Affairs</td>
</tr>
<tr>
<td>The Philippines</td>
<td>H.E. Ambassador Rosario G. Manalo</td>
<td>Special Envoy Department of Foreign Affairs</td>
</tr>
<tr>
<td>Singapore</td>
<td>H.E. Mr. Bilahari Kausikan</td>
<td>Second Permanent Secretary Ministry of Foreign Affairs</td>
</tr>
<tr>
<td>Thailand</td>
<td>H.E. Mr. Sihasak Phuangketkeow</td>
<td>Permanent Secretary Ministry of Foreign Affairs</td>
</tr>
<tr>
<td>Vietnam</td>
<td>H.E. Mr. Pham Quang Vinh</td>
<td>Assistant Minister Ministry of Foreign Affairs</td>
</tr>
</tbody>
</table>

To produce the ToR first draft by February of 2009, the HLP met eight times, once every month in different ASEAN countries. Following the recommendation they received from the AFMM, and in order to prepare the final draft, in April 2009, the HLP visited the United Nations Office of the High Commissioner on Human Rights

240 Respectively: Singapore, Bangkok – Thailand, Manila – the Philippines, Singapore, Bali – Indonesia, the ASEAN Secretariat – Indonesia, Brunei Darussalam, and Luang Prabang – Laos PDR.
The Human Rights Council (OHCHR) in Geneva, Switzerland. The aim of the visit was to ‘contribute to broaden [the HLP members’] perspectives on the different human rights systems’. During sharing sessions at the office, the HLP met experts and representatives of regional human rights systems in Africa, the Americas, and Europe. During this trip, the HLP also visited the Friedrich Naumann Foundation in Strasbourg, France, where they were exposed to the different European human rights mechanisms in the Council of Europe.

The HLP released the ToR final draft to the public in July 2009. As discussed in Chapter 3, the ToR consists of nine chapters and resulted from a series of meetings that contained challenging negotiations and compromises. This was unsurprising; even during his very first press conference addressing the HLP’s establishment (in Singapore, in July 2008), Ambassador Sihasak, the Chairperson, indicated that the panel was ‘to achieve a result that is realistic, balanced and credible, and which would be in the best collective interest of ASEAN’ (Morada 2009:199, emphasis added).

This statement contains at least two implications. First, if realistic refers to ‘what is achievable given the current domestic and regional contexts and constraints’, then the HLP negotiation process was not about the adoption of ideas and values from human rights norms, but about accommodating the character of ASEAN member-states. This includes, among other factors, (1) differences in their level of democracy and (2) the practice of human rights promotion and protection in their respective countries (discussed below).

Second, if the best collective interest of ASEAN refers to the adoption of regionally shared norms (Asian Values and the ASEAN Way, as discussed in Chapter 2), then the HLP negotiation process was strictly limited – specifically, by the norm of non-interference and collective rights. These two implications, I argue, further led to the non-‘rational’ negotiation mechanism that occurred during the ToR’s eight-month drafting process.

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242 To include purposes, principles, mandates and functions, nature, composition, modalities, secretarial support and funding of the AHRB, as well as the amendment and review of the ToR – see Appendix 4.
6.3 Member-States’ Differing Perception on AICHR’s Ideal Nature

Referring to the norm of non-interference as ‘the single most important principle underpinning ASEAN regionalism’ (p.56), Acharya (2014) argues that the battleground for regionalising global norms (specifically, on human rights in ASEAN) was between the two open societies and the two least democratic systems. The former two were progressive, liberal-minded states – namely, Thailand and the Philippines – serving as ‘the strongest advocates of a more interventionist ASEAN’ (p.179). Meanwhile, the latter two were Vietnam and Myanmar, who remained ‘the most opposed to [the] rethinking of non-interference’ (p.179). Beyond this, the ‘more democratic regime’ of Indonesia strengthened ‘the hand of pro-democracy, and therefore pro-interventionist, forces within ASEAN’ (p.155).

This research finds that the dynamics in the HLP were not this apparent. Referring to Munro’s (2009) analysis on the negotiation process within the HLP (as well as within the HLTF during the drafting of Article 14 of the ASEAN Charter – see Chapter 4 for a brief discussion on the HLTF), this research identifies three different blocks, based on member-states’ interests in the ideal nature of AICHR. I label these three blocks as Liberal, Conservative, and ‘other’. Table 6.2 on the following page presents the summary (Munro 2009).

My field research also uncovers a similar pattern. One of my interview respondents identified the blocks as, first, those who ‘push to the limit’, second, those who ‘pull to the barrier’, and third, those who are ‘in between’ and appear content with either a powerful or weak AICHR.243 Of the blocking composition, two different opinions exist regarding the ten member-states’ position. First, some of my respondents identified a 4:4:2 formation,244 which includes four member-states in support of a powerful AICHR (Indonesia, Malaysia, the Philippines, and Thailand), four in favour of having just a body (Cambodia, Laos, Myanmar, and Vietnam), and two with no preference (Brunei and Singapore). This composition, as also mentioned by Munro, is a

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243 From personal interview with Ray Paolo Santiago (Makati City: 03 August 2017)
244 Ibid., supported by a statement from Herman J Kraft; also from a personal interview (Dilliman: 02 August 2017).
continuation of what transpired within the HLTF during the formulation of the Charter’s Article 14.

Table 6.2. Member-States’ Initially Differing Interests on AICHR245

<table>
<thead>
<tr>
<th></th>
<th>LIBERAL</th>
<th>CONSERVATIVE</th>
<th>OTHER</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Negotiation Phase 1</strong> (during the HLTF, before the HLP): Debating the Existence of an AHRB</td>
<td>Indonesia, Malaysia, Philippines, Singapore, Thailand</td>
<td>Cambodia, Laos, Myanmar, Vietnam</td>
<td>Brunei</td>
</tr>
<tr>
<td>Position on debated issue:</td>
<td>In favour</td>
<td>Against</td>
<td>Unidentified</td>
</tr>
</tbody>
</table>

| **Negotiations Phase 2:** The Form and Functions of the AHRB | Indonesia                                      | Cambodia, Laos, Myanmar, Vietnam, Malaysia | 1: Brunei & Singapore 2: Philippines & Thailand |
| Authority | Pushing for a body that possessed monitoring and enforcement capacities, including an individual-complaints mechanism | Pushing for an "advisory panel", focussing on promotional and educational activities | 1: No clear position 2: Deal-breaker position – “Play the role of bridge builders” |
| Membership | Pushing for members to be directly elected | Pushing for members to be government-appointed |                             |
| The body | Pushing for a strong body with a quasi-judicial character | Seeking a much less intrusive body |                             |

Even when the member-states’ composition remained the same during the HLP (4:4:2), a slight but noticeable shift of behaviour occurred within the group – specifically shown by the younger four member-states (Cambodia, Laos, Myanmar, Vietnam).

245 Summarised from Munro (2009:13-17)
During HLTF, this group is perceived as more ‘relaxed’: they showed consistent disagreement on the idea of developing a regional human rights body, as was eagerly proposed by the elder four member-states (Indonesia, Malaysia, the Philippines, and Thailand), but during the negotiation, they did not strongly challenge the idea. Instead, they employed the tactic of claiming that they were ‘not ready’ for such a body.

Nonetheless, within the HLP, when ASEAN has somewhat agreed to establish a human rights watchdog (and, therefore, ready to move forward to discuss the type of watchdog the region would need), the younger four member-states appeared to be highly aggressive in their aim to align the shape of the body with their interests. They fought for the minimum function of AICHR.

The second identified composition is primarily from Indonesia’s perspective – an obvious one-against-nine, with Indonesia fighting for an ideal AICHR, while the other the member-states pushed for a normative body. However, in light of findings from my interviews, I argue that the best composition to describe the HLP’s negotiation proceedings is 1:5:2:2. This composition includes one member (Indonesia), who pushed the negotiation to the limit; five (Cambodia, Laos, Myanmar, Vietnam, and Malaysia), who pulled it to the barrier; two (Brunei and Singapore) who were content with either outcome; and two (the Philippines and Thailand), who were willing to compromise. The argument around the behaviour of the Political Community in this chapter is developed based on this identified composition. Influential factors behind each member-state’s indicated position will be discussed in the subsequent subchapter, followed by the discussion on the impact of the compositions on the negotiation’s final output.

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246 This is apart from Myanmar, who, since HLTF, has consistently and adversely rejected the creation of the AHRB.
247 From personal interview with Ray Paolo Santiago (Makati City: 03 August 2017)
248 Ibid., also from personal interview with Rachmat Budiman (Jakarta, 08 August 2017)
249 Statement of Rachmat Budiman, Hassan Wirajuda, Rafendi Djamin, and Yuyun Wahyuningrum from various different personal interviews.
6.4 Influence Factors: Member-States’ Domestic Politics

This subchapter discusses the member-states’ varying domestic politics, which is reflected in their behaviour towards AICHR’s establishment. The debate can be situated within the broader discourses of the impact of political context on foreign policy, such as seminal works of Putnam’s Theory of Two-Level Games (Putnam 1988), as well as Graham T. Allison’s model of Bureaucratic Politics (Allison and Zelikow 1999). Of particular relevance to this research because of its Southeast Asia focus is the work of Dosch (2007), which looks at the impact of member-states’ national dynamics, such as the democratisation process, their foreign policy-making, and the regional politics, in Southeast Asia. Referring to Schneider, domestic politics provides an important context for states’ regional policy-making, such as whether or not to cooperate and comply with regional agreements. In her unpublished article, she groups the domestic elements into three categories: ideology, societal pressures, and institutions (2016).

Based on empirical evidence found during the research process, this subchapter loosely adopts Schneider’s framework and identifies two domestic factors that influenced member-states’ behaviour during the HLP process. These are: institutions (with focus on the type of governments, particularly their level of democracy) and ideology (defined as how they perceive the concept of human rights protection). These two factors were also identified by Phan (2008) as significant influences on the ASEAN Charter’s drafting process.250

Related to the first factor, as discussed in Chapter 5, civil society pressure on the HLP is likely relevant only to the case of Indonesia. Civil society pressures were also found in Thailand and the Philippines, but they proved less successful in influencing their respective state’s political position on establishing AICHR (see discussion in the chapters 4 and 5).

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250 The terms he used were ‘national human rights practices’ and ‘political liberalization’. Phan also identified a third factor, which was ‘regime security in each country’. As a conclusion of this findings, Phan suggests that ‘there are certain divisions among different groups of ASEAN member-states regarding the possibility of establishing a regional human rights mechanism.’ (Phan 2008:12)
It is also important to highlight that, although Thailand is also discussed in this subchapter, this does not necessarily explain why Thailand behaved the way they did during AICHR’s establishment process. Thailand supported the weak AICHR, but that has only, if nothing, to do with their level of democracy or their policy towards human rights protection. As the then-chairman of ASEAN, Thailand took over the HLP leadership from Singapore in July 2008. Thailand was eager for AICHR to be inaugurated within their chairmanship, which would end by December 2009. For these reasons, they were willing to compromise, and play on the role of neutral arbiter, although it means leaning more towards developing a powerless human rights body, which they – together with Indonesia, Malaysia, and the Philippines – fought for during the ASEAN Charter’s drafting process. Their main interest was to finalise the ToR immediately, have it adopted by all member-states, and inaugurate AICHR by December 2009. For Thailand, at least during this period, the quality of the newly-established body was less essential.

6.4.1 Level of Democracy

Level of democracy is a highly influential element in the HLP negotiation process, especially when this concept is situated within the context of the ‘democratic lock-in hypothesis’ (Munro 2009, Schafferer 2015:112-3). This hypothesis is derived from the ‘lock-in strategy’, which identifies strategic links between the issue discussed on the international/regional negotiation forum and other important domestic or regional policies, commitments, or norms (Panke 2015:377). Moravcsik (2000) applied this theory to explain the negotiation process during the regionalisation of human rights norms; he linked it to the participating agencies’ differing levels of democracy. His main concern was …

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251 Statement of Hassan Wirajuda, and Rafendi Djamin during various different personal interviews. Some would argue that Thailand’s compromised position can also be explained by the fact that as ASEAN Chair they were expected to find consensus and/or compromise. This might be seen as a common practice in ASEAN, but there is no official ASEAN document can justify this widely taken assumption.

252 More on this strategy will be discussed in the subchapter on the negotiation process.
unlike international institutions governing trade, monetary, environmental, or security policy, international human rights institutions are not designed primarily to regulate policy externalities arising from societal interactions across borders, but to hold governments accountable for purely internal activities. In contrast to most international regimes, moreover, human rights regimes are not generally enforced by interstate action. Although most arrangements formally empower governments to challenge one another, such challenges almost never occur. The distinctiveness of such regimes lies instead in their empowerment of individual citizens to bring suit to challenge the domestic activities of their own government. (p.217).

This further leads Moravcsik to what he conceptualises as ‘a real theoretical puzzle’, explained below:

Why would any government, democratic or dictatorial, favour establishing an effective independent international [human rights] authority, the sole purpose of which is to constrain its domestic sovereignty in such an unprecedentedly invasive and overtly non-majoritarian manner? (p.219).

To answer the question, Moravcsik offers two hypotheses: first, sovereignty costs are weighed against establishing human rights regimes, and second, greater political stability may be weighed in favour of it (p.228). Under these circumstances, it is easily assumed that powerful democracies and ‘transnationally active members of democratic civil societies’, for ‘essentially idealistic reasons’ (p.219), will persuade other governments to adopt, or, at the very least, respect human rights norms.

However, as Moravcsik argues, although established democracies may ratify major human rights conventions and covenants, during an international/regional bargaining forum, they, in fact, tend to ally themselves with ‘dictatorships and transitional regimes in opposition’ (p.219-20), so as to oppose the establishment of an international/regional human rights regime. The driving forces behind the ‘reciprocally binding human rights enforcement’ are instead the governments of ‘newly established democracies’ (p.220-1).
The democratic lock-in hypothesis helps explain this unusual pattern of behaviour in a way that the new democratic governance needs to ‘lock-in’ and consolidate democratic institutions to enhance their ‘credibility and stability’ (p.220), as well as safeguard their political status quo against nondemocratic internal and external political threats (Schafferer 2015, Moravcsik 2000). With this strategy, they can …

turn to international enforcement when an international commitment effectively enforces the policy preferences of a particular government at a particular point in time against future domestic political alternatives … “locking in” credible domestic policies through international commitment. (Moravcsik 2000:220)

As for the established democracies, during the negotiation, they have an incentive ‘to offer lukewarm support at best.’ (p.220)

This theory best reflects the negotiation process within the HLP, particularly the behaviour of Indonesia and the Philippines. During AICHR’s establishment process, the nature of democracy in the region was generally in the early stages of consolidation (Sukma 2009). Although some member-states described themselves as various kinds of ‘democracy’, for example, in Myanmar, it was ‘discipline-flourishing democracy’ and in Laos, it was ‘people’s democracy’ (Emmerson, 2009:9), among the ten, only the Philippines can be considered as an established democracy and Indonesia as the new (but somehow more stable) democracy in the region. The other eight are still non-democracies, specifically …

253 Democracy functioned fairly well in the Philippines until 1972. National elections were held regularly under the framework of the 1935 constitution, which established checks and balances among the principal branches of government. In September of 1972, Marcos – the then-president – used a provision of the 1935 constitution to declare martial law, under which he shut down Congress and most newspapers, jailed his major political opponents, assumed dictatorial powers, and ruled by presidential decree. Replacing Marcos, Corazon Aquino, the first woman president of the Philippines – whose political activist husband was jailed for seven years and then shot in the head and killed by the Marcos regime – led her country’s eventful transition from dictatorship to democracy between 1986 and 1992. In June of 1992, through a peaceful election, democracy in the Philippines was restored (from various sources).

254 Before practicing ‘liberal democracy’ in 1999, Indonesia had experienced three types of self-labelled democracy, all of which failed. First was ‘Parliamentary Democracy’ (1949-1957), then ‘Guided Democracy’ (1957-1965). The third and longest one was ‘Pancasila Democracy’ under President Suharto (1966-1998). From there, Indonesia went through a transition from an authoritarian regime to democratic government, beginning during Indonesia’s economic crises in 1997. In 1999, Indonesia had its first genuinely democratic election, which was largely free and fair (Bhakti 2004). Indonesia was still working on its consolidation of
a military junta (Myanmar), an absolute monarchy (Brunei), two ostensibly communist one-party states (Laos, Vietnam), a dominant-party parliamentary monarchy (Cambodia), a dominant party parliamentary republic (Singapore), a restored (post-coup) multiparty parliamentary monarchy (Thailand), [and] a dominant-party parliamentary federation with a rotating king (Malaysia). (Emmerson 2009:20).

Referring to the Democracy Index 2008, published by Freedom House, only one Southeast Asian state was considered free (Indonesia). The rest were partly free (Malaysia, the Philippines, Singapore, and Thailand) or not free (Brunei, Cambodia, Laos, Myanmar, and Vietnam).255 Compared to 2007, the Philippines was downgraded in their ratings from the highest ‘free electoral democracies’ to ‘partly free’, due to corruption and coercion, including massive electoral fraud and official intimidation of government opposition. Meanwhile, Thailand’s rank improved from ‘not free’ to ‘partly free’ due to elections held by the year’s end.256 Under these circumstances, since 2003, Indonesia and the Philippines existed as two ‘regional champions’ behind efforts to bring the democracy agenda to ASEAN (Sukma 2009:11).

This research shows that, during the HLP negotiation process, the Philippines – as the only established democracy in the region – unexpectedly did not endorse a strong AICHR, as reflected in the position taken by Amb. Rosario G. Manalo, the Philippines negotiator at AICHR. According to her personal assistant, who was present throughout the drafting process,257 Amb. Manalo was fully aware of the very clear, non-negotiable position of the CLMV countries – along with Malaysia (CLMV+M) – to reject AICHR.

democracy until 2004, when the country had its first direct presidential election (where 84% of Indonesians casted their vote), so can claim status as a democratic country.


256 Ibid.

257 From personal interview with Ray Paolo Santiago (Makati City: 03 August 2017)
This realisation stems from her long-term experience as a career diplomat. A natural state-actor with a very strong and dominant personality, by 2007, she was already a senior diplomat (the oldest among the ten HLP members), who had been deeply involved in ASEAN diplomacy and regionalism. With solid knowledge of situation’s atmosphere, for Amb. Manalo, the only achievable, short-term target of the HLP negotiation was simply the inauguration of AICHR, of any quality – including the worst-case scenario of a weak one. Regarding AICHR’s institutionalisation, she preferred (what she famously referred to as) a ‘step by step approach and slow by slow processes’.  

As such, the Philippines purposefully served as a ‘bridging function’ between the two extreme ends; although, in reality, this meant accommodating the CLMV+M’s interests, while providing less support for their fellow ‘ASEAN democracy fighter’, Indonesia. This is in line with Moravcsik’s argument that established democracies tend to ally with non-democracies.

This research also shows that Indonesia was at the forefront of the negotiations pushing for an ideal AICHR. Although in some cases the Philippines seemed to share the discourse and supported Indonesia in the debate, the final composition at the negotiating table was ‘one against nine’ (Munro 2009:14). Indonesia was left fighting for a progressive human rights body alone. According to Mr. Rachmat Budiman, Indonesian negotiator at the HLP, Indonesia pushed for a strong AICHR partly because Indonesia needed a regional human rights mechanism with a standard of commitment (towards both human rights promotion and protection) that was better, or similar, to its own national mechanism; on his own words, “Why should we agree to a regional mechanism that is worse than our national institution? ”.  

This statement implies that Indonesia expected an AICHR that could effectively support the policy preferences of their current government. It is again in line with Moravcsik’s hypothesis that newly-established democracies tend to encourage the enforcement of human rights multilaterally, which is when ‘the benefits of reducing

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259 From personal interview with Rachmat Budiman (Jakarta, 08 August 2017)
future political uncertainty outweigh the "sovereignty costs" of membership’ and their commitment to regional regime (2000:220). Indonesia hoped to ‘lock-in’ its credible domestic policies through a regional commitment.

6.4.2 Policy on Human Rights Issues

Risse & Sikkink (1999) identify three evolutionary options that possible ‘social action’ states have in response to external pressure to adopt universal human rights norms: instrumental adaptation, argumentative discourse, and institutionalisation.

As the first and most pragmatic option, the government adjusts their behaviour to fit with human rights norms – but simply for ‘instrumental reasons’ (2009:10,15-7). The adoption of the norm will not be followed by an intention to abide by the norm long-term. The next option is for government to argumentatively respond to the on-going criticism by seriously engaging the ‘opposition actor’ (2009:34) in a dialogue over the meaning of a certain norm. At this stage, the government is pressured to discuss the essence of the norm and to translate it into relevant political tools, such as domestic laws and practices. The last option – the institutionalisation process – marks the final stage and indicates that norm compliance has become ‘a habitual practice of actors and [will be] enforce[d] by the rule of law.’ (2009:80).

Pressure for ASEAN to create a regional human rights body came from both above (externally: the UN) and below (internally: Southeast Asian people). As mentioned in Chapter 1, at that time, Southeast Asia (as part of Asia at large) existed as the only major geographic area without a human rights mechanism (Kraft 2005, Mohamad 2002). As discussed in Chapter 5 on the Advocacy Coalition, the civil society of ASEAN was eager to possess a credible rights body. In response to this pressure, Indonesia initially promoted the third option of the three possible ‘social action’: the maximum institutionalisation of global human rights norms.

Indonesian’s intention was always clear: ‘to make sure the rights body has proper functions.’ (Budianto 2009b:11, quoting Susilo Bambang Yudhoyono, the then-Indonesia-president). At the final stage of the negotiation process, Indonesia was
forced to abandon this ideal intention (for several reasons, discussed in the subchapter below) and was make to agree to the adopt option 1 preferred by the other nine member-states: an instrumental adaptation. As argued by Risse & Sikkink above, this is a pragmatic decision, which includes only a short-term target (to establish AICHR) without a long-term commitment (to support human rights practices in the region).

This decision proves that the nine ASEAN member-states were not yet in favour of promoting or protecting human rights – including Malaysia and Singapore, but primarily the CLMV countries and Brunei Darussalam. For the Philippines and Thailand, the case was unique, the position they took was based mainly on pragmatist political consideration and less on disrespect towards human rights norms.

As a country under the rule of an absolute monarch, it was expected that Brunei would oppose the concept of regional authorities offering domestic human rights. However, this cannot be further analysed and argued, as the country primarily adopted a passive role throughout the negotiation process, and AICHR establishment process in general. There is no record found to show Brunei particular interests in this matter.

The member-states’ position on human rights practices is indicated by a record of major ratified human rights conventions and covenants. As presented in Table 6.3 on the next page, Weatherbee (2009) shows that very few major UN human rights conventions have been ratified by ASEAN member-states, with the notable exception of CEDAW and the CRC which are somehow deemed less ‘controversial’ rights instruments.

Most ASEAN member states have very patchy commitments to human rights in their national constitutions. Some states such as Brunei Darussalam having almost no constitutional commitment to the kinds of human rights provisions found in the Bill, with the Philippines were the most advanced among the ten ASEAN member-states in regards to the adoption of human rights values in their constitution. Meanwhile, Indonesia, Malaysia, and Thailand, as well as, surprisingly, Cambodia were among the moderate. The remaining members were the least enthusiastic. (Wahyuningrum 2014:7)
Table 6.3. Status of Member-States’ Commitment to Major Human Rights Convention & Covenants (Adjusted from Weatherbee (2009:248))

<table>
<thead>
<tr>
<th>Country</th>
<th>CESCR</th>
<th>CCPR</th>
<th>CERD</th>
<th>CEDAW</th>
<th>CAT</th>
<th>CRC</th>
<th>CMRW</th>
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<tbody>
<tr>
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<td>R</td>
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<tr>
<td>Cambodia</td>
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<td>R</td>
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<tr>
<td>Laos</td>
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<td>R</td>
</tr>
</tbody>
</table>

Note: A=accession, R=ratification, S=signature only, blank=no action
Source: UNHRC Treaty Body Basis.

That Malaysia also took a ‘pull to the barrier’ position, similar to the CLMVs came as surprise for many, for three reasons. First, by 2009, Malaysia was one of only four ASEAN countries to possess a national human rights commission, showing Malaysia’s open interest in human rights protection; second, most likely related to that, as discussed earlier, during the drafting process of the ASEAN Charter’s Article 14, Malaysia was one of four main campaigners for establishing a regional human rights mechanism; and third, by 2007, the civil society movement in Malaysia was relatively strong, including both the academicians involved in the think-tank organisations (such as ASEAN-ISIS and Law Asia) and the grass-root activists.

Nevertheless, for Malaysia, as well as Singapore, their (considered) ‘anti-human rights’ behaviour can be linked to the two countries’ long history as main proponents of Asian Values (Meijknecht and de Vries 2010, Dayley and Neher 2013). According to Sukma, one of Policy Network Norm Interpreters in this research, it is common that Asian Values discourse is reflected in the domestic political reality of ASEAN member-states, whose government has the tendency to be authoritarian – such as in...
the case of Malaysia and Singapore. As discussed in Chapter 2, the debate on Asian Values was first initiated by Malaysia’s PM Mahathir Muhammad to oppose the Western understanding of democracy and human rights. It was supported by Singapore’s founding father and first Prime Minister, Lee Kuan Yew (also the father of Singapore’s prime minister during the HLP negotiation). Strong adherents of Asian Values, Mahathir and Yew’s perspective on human rights’ universality was clear, as summarised by Hoon (2004) below:

Human rights are not universal and neither can they be globalized. They emerge differently according to the context of particular social, economic, cultural and political conditions … [T]he right of a nation to self-determination includes a government’s domestic jurisdiction over human rights. This implies that other nations should not interfere with the internal affairs of a state, including its human rights policy. (p.155).

Up to the existence of the HLP, Singapore was very consistent with its preference towards Asian Values and the ASEAN Way, which was reflected in how the government was run, including their policy on national human rights promotion and protection. Near the time of the AICHR negotiation, the then-Singapore-Prime-Minister Lee Hsien Loong was quoted by the Bangkok Post, stating that his government enforces human rights practice based on the fact that ‘people are fed, people are clothed, they have good schools, they have access to government service … [W]e go for the substance of human rights, rather than the form’ (Budianto 2009:11). Furthermore, Singapore’s Second Foreign Minister, Raymond Lim, explicitly stated that Singapore did not expect the existence of a regional human rights body to affect Singapore’s domestic laws or foreign policy (Munro 2009).

As for Malaysia, the government appeared to be torn in opposite directions. They claimed to accept the universality of human rights, but ‘need[ed] time to ensure national unity, development and stability’ (Eldridge 1996:311). However, it was

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260 Rizal Sukma, an expert of ASEAN Regionalism, former Director of CSIS Jakarta, and currently the Indonesian Ambassador for the UK and Republic of Ireland; quoted from personal interview (London: 25 July 2018).
obvious that Malaysia still held a distinct view of human rights, particularly on the importance of family and community rights as relative to the individual (Eldridge 1996). History further shows attempts by ‘liberal’ national leaders to make Malaysia friendlier and more open to the idea of human rights.

An unusual policy, considered as a key achievement by many, was taken by the government in 1999 with the establishment of the Human Rights Commission of Malaysia (Suruhanjaya Hak Asasi Manusia Malaysia (SUHAKAM)). Since its first meeting in 2000, SUHAKAM has provided advice and recommendations to the government on matters related to human rights promotion and awareness (but not on protection), as well as on the ratification of international human rights instruments. However, national human rights activists have been frustrated with SUHAKAM’s limited assignment of powers (compared to the other three NHRIs, discussed in Chapter 4) and strong lack of support from parliamentarians. SUHAKAM’s establishment – referring to Risse & Sikkink’s three options discussed above – was likely another reflection of a pragmatic gesture from the Malaysia government to adopt human rights norms for only instrumental reasons. Thus, this research argue that Singapore and Malaysia’s non-committed behaviour towards AICHR’s establishment might be linked to their history as champions of regional values.

For the CLMV, their rigid behaviour in rejecting a powerful AICHR can be linked to their current domestic commitment on human rights practices, as well as their history of human rights violations. With this background, these four youngest ASEAN member-states entered the negotiations with a similar mission: to disempower the body, stripping out its role and function as much as possible. Their arguments were built around the principles of ‘state sovereignty’ and ‘non-intervention’, which they placed within the context of the ASEAN Way as one of the regional norms.

261 For more information about SUHAKAM, read http://www.suhakam.org.my/
262 Statement of Tunku Datuk Nazihah, representative of SUHAKAM, at Session 4, 14th AICOHR Conference 2007 – quoted from an unpublished conference proceeding made available to me during fieldwork.
263 Ibid.
Among the four non-democratic societies, Cambodia seemed to be relatively more receptive to the idea of human rights protection. During the HLP process, Cambodia’s government displayed certain ‘interest’ in establishing their own NHRI, centred on a basic set of rights (i.e. a minimum standards principle). However, this has still not occurred, even up to now, ten years after the inauguration of AICHR. Cambodia is also a signatory to many international human rights instruments, but maintains issues with the enforcement of these documents. This might be linked to Cambodia’s governance which has continually exercised one-man-rule regimes (Sukma 2009). Because of this, according to certain Cambodian human rights activists, ‘the government’s solution [to human rights issues] is sometimes worse than the problem itself’.

Among the four countries who were against the adoption of the global human rights values, Myanmar remained at the centre of attention for human rights violations in the region. Referring to the Human Rights Watch Report 2008, under authoritarian military government, rights abuses and the denial of basic freedoms in the country were brutal, ranging from sexual violence to restriction on freedom of expression and assembly. Because of this, during the initial drafting of the ASEAN Charter (before the HLP’s founding), Myanmar was the only member-state to firmly block the proposal to create a regional human rights body, even when a compromise was offered that allowed members to delay joining the commission, as Vietnam, Laos, and Cambodia would likely do (Phan 2008). When ASEAN was finally successful in motivating Myanmar’s acceptance of Article 14, during the HLP negotiation period, Myanmar became even less cooperative and difficult to engage.

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264 Statement of Mr. Ou Virak, representative of Cambodian Center for Human Rights, during Session 3, 14th AICOHR Conference 2007 - quoted from an unpublished conference proceeding made available to me during fieldwork.

265 Ibid., for example, to address the problem of judicial corruption and the courts’ lack of independence, the Cambodian Prime Minister decided to place the courts under his control and supervision.

266 Read https://www.hrw.org/world-report/2008/country-chapters/burma


268 From panel discussion during Session 1, 13th AICOHR Conference 2006 - quoted from an unpublished conference proceeding made available to me during fieldwork.
As for Laos and Vietnam, the two ASEAN countries with single-party systems, both still face significant problems with human rights protection and promotion, mainly because ‘[t]he government still lacks the capacity to successfully implement human rights policies and initiatives, burdened by corruption and lack of accountability among local authorities’.  

Both nations view the promotion and protection of human rights as very important, but believe that ‘progress must not be pursued hastily, but with careful deliberation and adherence to the ASEAN non-interference principle – to avoid a non-functioning mechanism without the full support of member states’.  

The Vietnamese government especially prefers ‘human security’ to human rights (the approach also proposed to ASEAN by AICOHR – see Chapter 4), which links the concept of human rights to economic development.  

Referring to Dr. Ta Minh Tuan from the Institute of International Relations Vietnam,

Western conceptualization of human rights, although not alien to Vietnam, is not a popularly held one. The Vietnamese interpretation, as widely propagated, specifically deals with civil/civic rights. The promotion and protection of human rights is within the realm of government functions, and there is no open social discourse on [W]estern-style human rights since independent human rights advocacy groups do not exist.

With this domestic background, Laos and Vietnam were largely expected to pose challenges to the establishment of a powerful AICHR.

Related to member-states’ differing attitudes on the establishment of a regional human rights body, another output of domestic politics was their decision to have, or to not have, a National Human Rights Institution (NHRI). As mentioned briefly in Chapter

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269 Statement of Dr. Ta Minh Tuan (Institute of International Relations, Vietnam) at Session 5, 14th AICOHR Conference 2007 – quoted from an unpublished conference proceeding made available to me during fieldwork.

270 Statement of Mr. Bounpheng Saykanya (Institute of Foreign Affairs, Laos) at Session 5, 14th AICOHR Conference 2007 – quoted from an unpublished conference proceeding made available to me during fieldwork.

271 Asia Pacific Bulletin, August 2009, p.3.

272 Statement of Dr. Ta Minh Tuan (Institute of International Relations, Vietnam) at Session 5, 14th AICOHR Conference 2007 – quoted from an unpublished conference proceeding made available to me during fieldwork.
4, an NHRI is a national level institution established by the government as a domestic human rights protection mechanism. It should not be a legislative body, a judicial body, or an executive body; nor should it be an NGO or a UN human rights mechanism (Lee 2007). Referring to the UN Handbook, an NHRI is a state-sponsored body with a constitutional and/or legislative mandate,\textsuperscript{273} which is both an official government body and autonomous and independent. It is funded by public sources and established by law, but it does not include departments or legislative committees vested with human rights mandates (Gil 2007).

According to Kraft (2005), an NHRI is generally ‘intended to act as [a] check to state excesses that could and [do] lead to human rights violations’ (Kraft 2005:14). During the HLP period, and currently, there were only four NHRIs in the region. Apart from Malaysia’s SUHAKAM (discussed above), which was the youngest of all four, the other three include the Indonesian Komisi Nasional Hak Asasi Manusia (KOMNAS HAM) established in 1993, the Commission on Human Rights of the Philippines (CHRPR) in 1987, and the National Human Rights Commission of Thailand in 1997. As mentioned previously, for nearly ten years now, Cambodia has expressed their interest to establish their own.

\begin{figure}
\centering
\includegraphics[width=\textwidth]{figure6.2.png}
\caption{Figure 6.2. Impact of Domestic Politics on Member-States’ Commitment to AICHR}
\end{figure}

One can safely assume that the decision to establish an NHRI reflects member-states’ commitment towards implementing human rights norms at a national level. Combining this factor with the element of domestic politics (the level of democracy, discussed earlier), Figure 6.2 above provides a hypothetical explanation of why the configuration of commitment towards a reliable AICHR was considered as one-against-nine and why Indonesia alone fought for a powerful AICHR.

This figure indicates that Malaysia, the Philippines, and Thailand – as the other three countries with an NHRI – have solid potential to support AICHR, but, for different reasons, have refrained: Malaysia because of their commitment to Asian Values, the Philippines because of their status as a long-established democracy, and Thailand because of their pragmatic, short-term interest as the then-holder of the ASEAN chairmanship. The other six ASEAN member-states do not perceive the protection of human rights as important. Therefore, to possess an NHRI – and, moreover, possess AICHR as a human rights watchdog surveying their activities – is not their main interest.

6.4.3 The X Factor: Indonesia

‘At the end it was a case of one against nine’.
- source close to the HLP

Until the final hours of the HLP’s negotiations, Indonesia insisted on fighting for a credible AICHR. This makes an interesting case in and of itself. An article published at the Jakarta Post newspaper the day after AICHR’s inauguration – ironically but accurately titled ‘ASEAN 9, Human Rights 1’ – reflects Indonesia’s standpoint in the metaphorical battlefield. Although this article was written by a leading Indonesian journalist for a Jakarta-based newspaper, which might trigger the assumption of bias and subjectivity, the article depicts Indonesia as the only human rights defender left at

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274 As quoted from Hermawan (2009d:17).
the HLP – and, generally, in ASEAN at large. Referring to a statement of the then-President Yudhoyono:

A rights body is not only a campaign on behalf of ASEAN. We are very serious about its establishment, and Indonesia will make sure it sets an example for it. ASEAN is not only about pursuing prosperity, but also democracy, and that includes the rule of law, protection of human rights, and freedom of press. Indonesia will play an active role to make sure the rights body has proper functions. (quoted from Budianto 2009b:11).

Therefore, Indonesian’s goal at the HLP was clear: to establish a credible regional human rights body that functioned in three areas: capacity building, promotion, and protection of human rights in the region.275 This goal was clearly ambitious when compared to the HLP’s objective (discussed previously), which is to ‘achieve a result that is realistic, balanced and credible, and which would be in the best collective interest of ASEAN’. According to Foreign Minister Hassan Wirajuda, the human rights body must not start with a low-level mandate, or ‘it will lose credibility on the international stage.’ (quoted from Budianto 2009b:11). For this, Indonesia’s short-term goal was to develop Terms of Reference for AICHR that represented a ‘strict balance’ of the three functions, along with a clear time frame and guide on how AICHR would grow over time.276

This mission – for which Indonesia was considered as ‘too liberal’ by some – was a result of at least three interrelated factors: domestic politics, the character of its foreign policy, and the personal character of its Foreign Minister and HLP negotiator. Regarding the first factor, by 2007, Indonesia was in the middle of what is known as a ‘reformation era’.277 Triggered by the demand to end the previous president, Suharto, authoritarian regime, since 1997, civil society, democratic movements, democratisation, and liberalisation grew rapidly in the country. In 1999, the legal-

275 From personal interview with Rachmat Budiman (Jakarta, 08 August 2017)
276 From a personal interview with Minister Hassan Wirajuda (Jakarta: 11 August 2017)
277 For more about this, read: https://thediplomat.com/2018/05/indonesia-human-rights-after-20-years-of-reformasi/
formal position of the Indonesian National Human Rights Institution (NHRI), which was established during the Suharto authoritarian era via a presidential decree, was strengthened by the law. With such an advanced domestic human rights movement, Indonesia’s unwillingness to lower its regional standard is only logical – or, referring to the democratic lock-in hypothesis discussed earlier, the country naturally aimed to secure legitimacy through regional authority.

The second factor relates to the principle of Indonesian foreign policy as ‘free and active’. This principle was first mentioned in 1948 by the then-Indonesian-vice-president in his speech, titled ‘Mendayung antara Dua Karang’ (in English: ‘Rowing between Two Reefs’). Applying this principle in practice, Indonesia is expected to leverage certain levels of pragmatism in its foreign policy, including its regional affairs, depending on the context and following the demands of the times. In the case of the HLP in 2007, Indonesian’s domestic politics were in support of human rights’ value, and there was also international pressure (voiced by the UN) for ASEAN to establish its own regional human rights mechanism. As such, it was sensible for Indonesia to fight for an ideal body, pushing negotiations to the limit.

The above two factors were sufficient to place Indonesia ahead of the curve in the HLP negotiation process. However, in addition to that, perhaps the most influential factor of all was the personal character of Dr. Hassan Wirajuda, the then-Indonesian-Minister of Foreign Affairs, as well as Mr. Rachmat Budiman, whom Minister Wirajuda singlehandedly appointed as the HLP Indonesian negotiator. Minister Wirajuda was indeed the intellectual actor behind Indonesia’s ‘liberal’ position at the HLP and in its foreign policy in general.

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278 ‘The Indonesian National Commission on Human Rights (Komnas HAM), established in June 1993 through a Presidential Decree No. 50, became a focal point in pushing openness in [the] government, particularly during the turbulent times in the mid-1990s. In the process, Komnas HAM gave a voice to human rights issues in the country. By providing [the] government [with] advice on human rights issues, raising public awareness of human rights issues, and investigating cases of human rights abuses, the NCHR succeeded in gradually winning over public support for its initiatives.’ – Statement of Meidyatama Suryadiningrat (The Jakarta Post, Indonesia), at Session 3, 14th AIICOHR Conference 2007 - quoted from an unpublished conference proceeding.

279 From a personal interview with Meidyatama Suryadiningrat (Jakarta: 09 August 2017)
As a senior career diplomat, his background education, personal passion on the issue of human rights furthered him as the right person at the right time and in the right place; he was ‘born’ a human rights defender. Another exceptional characteristic of Wirajuda is his leadership style, which welcomed input and critiques. During his ministership, Wirajuda developed and maintained the so-called ‘Foreign Ministry Community’, which included representation from the Track-2 and Track-3. This community was proven as a valuable support system to the Ministry, helping to shape a foreign policy that represented state interests and the people’s interests equally. This is particularly true for Indonesian’s foreign policy on human rights related issues. It is widely known that, as the key architect of the policy, Minister Wirajuda received support from a group of human rights advocates.

Mr. Rachmat Budiman was assigned directly by Minister Wirajuda to join the HLP, replacing Mrs. Wiwiek Firman, who, according to Minister Wirajuda himself, was ‘too eager to compromise’. Mr. Budiman was among the youngest negotiators in the HLP, but was likely the most persistent of all. He understood the existing differences in ASEAN, but saw that it could not be an excuse for ASEAN to lack a credible human rights body. Mr. Budiman was also opened for input and critiques, including from the think tanks and the civil society. For him, to organise the national consultation mechanism (with the various differing non-state actors) during the HLP negotiation would – in his own word – ‘go without saying’. It turned out that the mechanism provided him with full self-confidence in the negotiation process, as he knew he would win full support from human rights defenders not only in his own country, but also from the region. His persistency in pushing the Indonesian mission, however, resulted in concerns that the negotiation would reach a deadlock, with Indonesia

280 Minister Wirajuda holds a Doctor of Juridical Science in International Law from the University of Virginia School of Law; a Master of Law (LL.M) from Harvard University School of Law; and a Master of Arts in Law and Diplomacy (MALD) from the Fletcher School of Law and Diplomacy at Tufts University.

281 From a personal interview with Meidyatama Suryadiningrat (Jakarta: 09 August 2017)

282 Ibid.

283 From a personal interview with Minister Hassan Wirajuda, supported by a statement from Rafendi Djamin and Yuyun Wahyuningrum, during several different personal conversations.

284 From personal interview with Rachmat Budiman (Jakarta, 08 August 2017)

285 As represented by various ASEAN regional human-rights related institutions, such as Asian Forum, SAPA, NHRI, and others, as discussed in Chapter 5.
refusing to adopt the Terms of Reference – a situation that Thailand, particularly, would not favour.

_Hua Hin Declaration: The Deal_

Ultimately, Indonesia was forced to concede. This was criticized greatly by many human rights supporters in the region. Bantarto Bandoro, the executive director of CSIS Jakarta, expressed his surprise at Indonesia abandoning its long-fought agenda ‘so easily’ (quoted from Hermawan 2009a:12). According to Usman Hamid from the Commission for Missing Persons and Victims of Violence (Kontras), Indonesia should have been more patient in advocating human rights in the region (Hermawan 2009a). Situating this into a diplomatic context, after AICHR’s inauguration in October 2009, the newly appointed Indonesian Foreign Minister, Dr. Marty Natalegawa, said,

> We should move step by step. Even though we have been the leader in this process since the beginning, as a leader we sometimes have to make sure our progress meets the speed of other countries in this transformation. It is useless if we are in front, but no one follows us. (quoted from Budianto 2009a:11)

However, Indonesia did achieve a victory and left its legacy, which transpired during the very last session of the ASEAN Foreign Minister Meeting scheduled before the ToR’s adoption. At that time, the panel (and particularly Thailand) was endeavoring to convince Indonesia to accept the ToR – otherwise, a final deadlock would occur. As a compromise, Minister Wirajuda, a proficient negotiator himself, presented his last bargain: he would approve the ToR, _with some notes:_ the ToR would be automatically reviewed and improved after five years. With this, Dr. Wirajuda practicised what Pinfari (2011) conceptualised as ‘deadline diplomacy’. Best utilising the time pressure …
the actors involved in a negotiation would put aside their baroque diplomatic tactics and would be forced to explore the prospects for compromise in a rational and pragmatic way … [It] is crucial for breaking deadlocks and encouraging a softer approach which involves a lower level of demands, large concessions, and less bluffing. (Pinfari 2011:684).

His tactic was proven successful, as the panel unanimously accepted his proposal. They then developed then signed a document called ‘2009 Cha-Am Hua Hin Declaration on the Intergovernmental Commission on Human Rights’ (see Appendix 5), in which the heads of state/government in the ASEAN member-states …

RECOGNISE that the TOR of the AICHR shall be reviewed every five years after its entry into force to strengthen the mandate and functions of the AICHR in order to further develop mechanisms on both the protection and promotion of human rights. (Point 7).

With this, Indonesia – or rather, Minister Wirajuda – thereby planted the seeds of a future renegotiation on the functions and powers of AICHR (Munro 2009).

6.5 The Approach: Transactional Negotiation

‘It was now, or never’
- The ASEAN Leaders

Negotiation processes within the High Level Panel were highly influenced by ASEAN’s normative mechanism of conflict management, which follows the principles of informality, non-interference, musyarakah (consultation), and mufakat (consensus building).

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287 As the main reason behind the decision to approve a human rights body with a watered-down mandate (quoted from Hermawan 2009d:17).
Under these guiding principles, where an agreement from all parties is required for ASEAN to develop a new policy, each member-state is given an implicit ‘veto’ power. As such, if even one out of ten member-states disagrees with a proposed policy, ASEAN maintains the status quo. Within the context of the HLP, ‘status quo’ refers to ASEAN remaining without a regional human rights body, while moving from status quo means ASEAN possessing the body.

6.5.1 Veto Player Analysis on AICHR

As discussed in Chapter 3, Veto Players Theory provides a satisfactory explanation of why the HLP’s bargaining process resulted in an output of an incompetent AICHR. As mentioned above, because of Asian Values and the ASEAN Way’s influence on the region’s policy-making mechanisms, each member of the HLP is considered a Veto Player. Under ASEAN’s chief norms of consensus, all ASEAN member-states must participate in the process, with no possible ‘opt-out function’ (Munro 2009:9). Furthermore, all members must agree to the existence and substance of the final output. Under these circumstances, negotiations for the drafting of AICHR’s Terms of Reference took place.

As previously mentioned, during the negotiation process, the HLP’s ten members can generally be grouped into four coalitions, based on their interests and expectations regarding the final, established AICHR (the 1:5:2:2 formation). The four groups are: Veto Player (VP) A (Indonesia alone), VP B (Malaysia, Cambodia, Laos, Myanmar, and Vietnam), VP C (Thailand and the Philippines), and VP D (Brunei and Singapore).

Among the four, ideological distances exist between VP A, VP B, and VP C, but are particularly significant between VP A and VP B. This distance is caused by domestic political factors, such as their level of democracy and existing policy on human rights issues (discussed earlier), as well as the character of the negotiator attached to each of the players. In the case of AICHR, the absorption rule\(^{288}\) is applied to VP D, as its core

\(^{288}\) Absorption rule: a situation where if the core of the new Veto Player is located within the pareto set of previously existing Veto Players, then its presence will have no impact on policy stability (Tsebelis 2002:28)
is located within the interest of the others. Among the four VPs, VP A, B, and C are equally influential agenda setters, while VP D offers no proposal.

Interactions between the four is based on two understandings: first, as mandated by the Charter, ASEAN has to possess a regional human rights body and the HLP’s task is to develop its Terms of Reference; second, for this to occur, despite all differences, the ten the HLP members have to agree on a final output.

In these circumstances, unlike what is suggested by VP Theory, the HLP’s bargaining process does not concern changing or maintaining the status quo (whether to create AICHR or not). Instead, it concerns how far to move away from the status quo: (1) through small steps, i.e. fulfilling the mandate to create AICHR, but with a very limited authority (nearly equal to having no AICHR), (2) through taking big step, i.e. developing a credible regional human rights body, or (3) a status in between these two extremes.

In further contrast to VP theory, the HLP’s final set of outcomes were only known after the negotiation process began. These were also different from initial predictions (referring to the drafting process of the ASEAN Charter’s Article 14), as summarised in Table 6.2 (see p.212). Hence, the HLP’s negotiation process was not endogenous.289 At the start of the process (after the Charter’s ratification), the preferences of Veto Players and the position of the status quo was predictably clear, while the identity of the agenda setter (supposedly Thailand as the HLP’s chair) seemed obvious. Initially, the outcomes of the HLP were expected to be decided by only three coalitions of member-states, with a 4:4:2 configuration: one consisting of the ASEAN ‘big four’ (Indonesia, Malaysia, the Philippines, and Thailand), who preferred a powerful AICHR; one consisting of the ASEAN ‘youngest four’ (Cambodia, Laos, Myanmar, and Vietnam), who were less enthusiastic about creating AICHR; and a final one

289 Tsebelis does not use this term, but acknowledges the importance of identifying preliminary situations – or ‘specific sequence of moves’ as he conceptualises it – to help us to restrict the set of outcomes. The term of ‘endogenous’ is used by some authors who leverage Tsebelis’ Veto Players Theory to develop their own theory related to bargaining, negotiation, and decision-making processes (Hirsch and Shotts 2015, Anesi and Duggan 2017)
consisting of unopinionated ASEAN members (Brunei and Singapore), who were content with either result.

However, based on events transpiring over the eight-month HLP negotiation process, as discussed earlier, the member-states were now grouped into four, following the 1:5:2:2 configuration. This consequently altered the set of outcomes, which further shifted the situation away from initial predictions (or expectations).

Translated into the model of Veto Player Theory (see Figure 3.7, p.116), the situation appears as follows:

![Figure 6.3. Veto Player Theory Model of the HLP](image)

This figure depicts the HLP’s four-part VP coalition: A, B, C, and D. The size of each circle indicates the number of states in the coalition; there is only one in VP-A (hence the smallest circle), five in VP-B (the biggest circle, five times bigger than VP-A’s), and two in both VP-C and D (represented by two same size circles). The area shaded in dark is the winset, composed by the intersection of the indifference curves from VP-A, VP-B, and VP-C. Meanwhile, the one in grey (composed by the core – the set of points with empty winset (Tsebelis 2002:21) – the points that represents an area of their own that cannot be defeated by other points when the rule of decision-making is applied.

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290 ‘Winset’ (in full: Winset of the Status Quo) is ‘the the set of outcomes that can defeat the status quo’ (Tsebelis 2002:21), an area that defines the set of policies that can replace the existing one. The smaller the winset the bigger the difficulty of effecting significant change in the status quo.

291 ‘Core’ is ‘the set of points with empty winset’ (Tsebelis 2002:21) – the points represents an area of their own that cannot be defeated by other points when the rule of decision-making is applied.
connection of VP-A, VP-B, VP-C, and VP-D) is the pareto set. As shown, the four VPs’ characteristics develop one point of status quo, labelled here as ‘SQ’. Remember: A, B, C, and D are all Veto Players, who each propose different policies towards the status quo. Therefore, they prefer anything inside their own circle as the status quo.

This figure also displays the significant ideological distance between VP A and VP B, as well as between VP B and VP C, with a relatively smaller distance between VP A and VP C. Meanwhile, the distance between VP D and each of the other three VPs are, more or less, the same.

If VP-A is Indonesia, as the only agency who proposed a powerful AICHR, VP-B is a coalition of Cambodia, Laos, Myanmar, Vietnam, and Malaysia (CLMV+M), who demanded an AICHR with minimal power. Likewise, VP-C is a coalition of pragmatists, consisting of the Philippines and Thailand (who initially agreed to a powerful AICHR, then changed to a more ‘realistic’ approach in agreeing to an AICHR with minimal power). VP-D is a coalition of Brunei and Singapore, who appear unopinionated, but tend to agree with CLMV+M. Figure 6.3 above shows that, in the case of AICHR’s institutionalisation process within the HLP:

- Although the winset of negotiation was relatively small (many Veto Players held significant ideological distances, each internally cohesive), there is a slight departure from the status quo, which occurred only at the last minute. As mentioned earlier, this is likely due to all member-states understanding the mandate given to them by the ASEAN Charter, and thus agreeing from the beginning to follow the mandate and produce the regional body’s Terms of Reference. The negotiation only concerned the direction in which to steer the body.

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292 The ‘Pareto Set’ (or unanimity core) is the shaded ABC (and D) triangle area. The area is shaped by lines connecting the ‘core’ of each Veto Player (in the picture, the dots of A, B, and C). Hence the pareto set is ‘the set of points that cannot be defeated …’ (Tsebelis 2002:21) within which, consequently, agreement between VPs is impossible to achieve. As the decisions must be made unanimously, the possible negotiation outcome should be located outside this area – but still within the winset.

293 The more significant the ideological distances between VPs, the smaller the winset, the bigger the pareto set, means the bigger the policy stability (status quo).
The winset of status quo was primarily defined by the character of, and the interaction between, Indonesia and the CLMV+M.

The presence of Thailand and the Philippines’ coalition did not alter the size of the winset of status quo. As such, they were willing to move from the status quo in any direction, as finally agreed by Indonesia and CLMV+M (later accepted by Brunei and Singapore, for reasons discussed in the bullet points below). It also shows how it was possible for Thailand and the Philippines to support both the points offered by Indonesia, and CLMV+M, although at the end they decided to support the later.

Thailand and the Philippines’ presence did increase the size, and change the shape, of the pareto set. As such, these two countries possess ‘cannot be defeated’ points, different from those of Indonesia and CLMV+M. These points increased the likelihood of policy stability in the negotiation process, which translates to remaining very near the current status quo (possessing a normative AICHR).

The presence of Singapore and Brunei’s coalition did not change the winset’s dimension. Their interests and ideas for possible change to the status quo (if any) were already covered by the others’.

Their presence also had no impact on the size and shape of this system’s pareto set (which is the segment of A-B-C), as their core is located in the straight line of core A and B. As such, their ‘cannot be defeated’ points (if expressed) were likely similar to, and therefore covered by, those of Indonesia and/or the CLMV+M. The absorption rule applies here, with some adjustments.

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294 According to Tsebelis, the dimension of the winset and pareto set are ‘proxies for political stability’ (1995, 2002). The winset is negatively related to stability: the smaller the winset, the bigger the chance for political stability. In contrast, the pareto set works positively to it; when the pareto set is small, the political stability is also small.

295 See footnote 287, page 240.
Since there was no change to the winset and the pareto set, this indicates that, during the negotiation, Brunei and Singapore never practiced their veto power – at least not to degree that was unacceptable to the others.

- If – as happened during the Charter’s Article 14 drafting process – Malaysia Thailand, and the Philippines remained in coalition with Indonesia, then Circle A would mirror Circle B’s size (each contain four member-states). Assuming that Brunei and Singapore maintain their position, there is a possibility for the winset of SQ to grow larger, while the pareto set’s area would be minimised. (Following the current model, it would only be in the shape of a line.) Under these circumstances, possibility for change in the status quo is be significant; not only would ASEAN have AICHR, but ASEAN would have a powerful AICHR (or at least more powerful than its current form, inaugurated in 2009).

Tsebelis’ Veto Players theory adequately explains the situation leading to the HLP’s agreement to launch an incompetent AICHR. However, the theory fails to accommodate certain details that transpired during the negotiation process, or elaborates on them in a different manner. First, VP theory does not consider, hence unable to explain three bargaining situations found during the HLP negotiations: first, when the VPs have no option but to move from the status quo; second, when the VPs have no option but to settle on a in common denominator; and third, when, to achieve that point, the negotiation process is limited by certain amount of time. To consider these three ‘independent variables’ in the theory means revising the concept of ‘winset’ (as the position of the SQ may be inside the area of winset), while also placing less emphasis on ‘policy stability’ (which is impossible).

Second, VP theory, so far, does not consider the existence of a ‘Passive Veto Player’\(^\text{296}\), like – in the HLP’s case – Brunei and Singapore, who naturally own veto power, but have no willingness to employ it. A coalition of Brunei and Singapore cannot be considered as ‘a new coalition’ added in the middle of the negotiation process;

\(^{296}\text{This term appears to be an oxymoron, as decision makers are usually labelled as a ‘Veto Player’ because they are actively advocating their proposal.}\)
therefore, they cannot be categorised as an ‘Added Veto Player’, like the theory suggests. Therefore, although Brunei and Singapore brought no change to the HLP’s winset and pareto set, the ‘absorption rule’ concept cannot accurately explain their unopinionated position within the negotiation.

Third, although not represented in the model, VP theory recognises the rule of one dominant agenda setter, which is understood as a specific Veto Player who controls the negotiation sequence (Tsebelis 2002). This particular agency’s vital role is also acknowledged in another variant of Veto Player Theory, such as in dynamic collective decision-making (Anesi and Duggan 2017), in endogenous policy development (Hirsch and Shotts 2015), and in coalitional games (Arin, Feltkamp, and Montero 2015). However, uniquely within the HLP, there was no leading agenda setter. One could easily assume that Thailand, as the panel’s chair, was the agenda setter, but they were not. This research finds that there were three agencies who equally dominated the negotiation: the Indonesian negotiator, Mr. Rachmat Budiman; the negotiator from the Philippines, Amb. Rosario G. Manalo; and, presumably, a group of negotiators from CLMV+M. This, I argue, proves that majority of VPs in the HLP equally influenced the direction of the negotiations. According to Tsebelis, ‘[When] change from the status quo is impossible, it does not make any difference who controls the agenda.’ (2002:3). This research argues even further: the many (or non-existent) leading agenda setters in AICHR’s process further explains the difficulty of ASEAN to move away from the status quo. As such, the output of the negotiation was an incompetent body, nearly equal to having no body (the status quo).

6.6 Political Community’s Strategy and the Compromised AICHR

This chapter elaborates the Political Community’s behaviour as one of the three Norm Interpreters subgroups analysed in this research, specifically in their effort to interpret

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297 The author uses the term ‘decision makers’ for ‘agenda setters’, as well as acknowledges the role of ‘entrepreneurs’ (defined as one or more policy-motivated groups on which a decision maker relies to develop new proposals) in the model.

298 In the article, they suggest the role of ‘a distinguished player’, who provides a proposal to be accepted (or rejected) by the remaining players.
global norms on human rights to be accepted in the region of Southeast Asia. This chapter depicts the norm interpretation process as conducted by the Community, broadly involving a series of internal negotiation and bargaining techniques among the ten members of the community, since each brought the interests of their respective countries to the forum. As discussed in this chapter, the community members’ different interests in adopting the (perceived as) global norms mainly results from their differing domestic politics – which, in some cases, were strongly linked to the existence of local/regional norms in the area. The theory of Veto Player Analysis fittingly explains how these differences created ideological distances, which further resulted in the failure to translate global norms on human rights to Southeast Asia.

By examining the interpretation process, this chapter confirms that the ten individual members of the Policy Community had more differences than similarities in their interests. The Community has shared one common goal – in this research, the establishment of a regional human rights mechanism – however, instead of focusing on the body’s ideal form, the community’s negotiation process centred on how to ensure that their individual vested interests remained secure under the newly-established regional ‘watchdog’ framework.

This characteristic highlights the different interpretation processes that occurred within the Political Community, as compared to those within the Policy Network and the Advocacy Coalition. This chapter further confirms that the main promoter of regionalising global norms (specifically on human rights in Southeast Asia) is not the most established liberal country in the region, nor is it the non-liberal. Rather, it is the newly-liberal country. This is, again, relates to the individual members’ long-term and short-term national interests.

It can be argued that within the Political Community (in this case), the interpretation process of global norms involved irrational rather than rational decision-making elements. These elements included factors such as constructed identities, local norms, and vested interests.
Chapter 7: Conclusion

‘[ASEAN needs to] “take the bull by the horns” ...
[I]f things need to be changed, change it ...
[S]olve it, don’t shelf it!’
- H.E. Hassan Wirajuda

7.1 Introduction

To end the study, in this chapter, I will conclude with a summary and further reflection on how the empirical findings and conceptual frameworks, guided by the research methodology, collaborate in my analysis to explain the role of the Norm Interpreters in the establishment of AICHR, and their contribution in the process of ASEAN regionalism at large.

In this thesis, the term ‘interpreter’ is not to be taken literally. The term is applied to describe the general character and interactor relations of one group of actors working on the establishment of AICHR. Related to the methodology applied in this research (the ‘X-Y Centric’ model, see Figure 1.2, p.39), ‘interpretation’ is considered as the ‘potential mechanisms’ that link the X to the Y. In this thesis, the X is the input of the research process (i.e. the incompatibility of inherent values in the global norms on human rights, and the two local norms of Southeast Asia). Meanwhile, the Y is the output of the research process, which is AICHR – the compromised ASEAN regional human rights body. Based on the empirical findings elaborated on Chapter 4, 5, and 6, in this chapter, I outline 10 processes of norm interpretation (summarised in Table 7.1). The interpretation processes enabled the acceptance of global norms on human rights in the region (albeit only in a partial and minimal manner) through the adjustment of two fundamental elements related to norms translation in the region.

299 The then-Foreign Minister of Republic of Indonesia, Dr. Hassan Wirajuda, on the many issues related to the rejection of the concept of establishing AICHR – from personal conversation.
Those are, *first*, the value of the norms – whether it is more on individual rights, or on communal/collective rights. And *second*, the policy makers’ understanding and perception of the norms.

Following this introduction, the subchapter below conceptualises the behaviour of the Norm Interpreters. In the next subchapter, I will situate this behaviour within the wider context of Southeast Asia – specifically, I ask whether the study of the AICHR establishment process contains wider lessons for studies of ASEAN regionalism. The last section of this final chapter reflects upon limitations in this study, as well as wider implications of this research for IR scholarship. Later, in my final discussion, I identify potential areas for future research.

### 7.2 The Role of Norm Interpreters in Institutionalising AICHR

It is widely assumed that, in Southeast Asia, the values of global and regional norms on human rights are inherently incompatible. Thus, the emergence of AICHR appears as an anomaly. Indeed, this assumption of incompatibility served as a central analytical challenge for this thesis. As the previous chapters have shown, groups of Norm Interpreters leveraged a range of techniques to overcome this assumed incompatibility.

As discussed in Chapter 2, this research argued that the problem of incompatibility is fundamentally rooted in the preference of the UN to adopt a single, Western-centric catalogue approach during the International Bill of Human Rights’ uploading process. This approach then led to the establishment of the (supposedly) universal norm on human rights, which was essentially individualistic and legalistic in its values, largely failing to accommodate ‘the civilizational pluralism’ (Sinha 1989) of the world. Because of this, as discussed in Chapter 2, the Bill’s downloading process – the regionalisation/localisation of global norms on human rights – had become potentially highly problematic.

This research identified five points of value incompatibilities between the Bill and the two Southeast Asia regional norms (Asian Values and the ASEAN Way). *First*, fundamentally, the two norms represent two different generations of rights. While the
Bill contains the first-generation negative rights and the second-generation positive rights, representing the ‘domination of a belief in the importance of individual rights’ (Legro 1997), the two Southeast Asia norms embrace third-generation solidarity rights, which highlight the centrality of collective rights. Second, principally, the two norms are incompatible in the contending ideas of ‘human rights’ and ‘national sovereignty’. While the Bill protects individuals’ rights, the two Southeast Asian local norms protect the rights of the state (as the highest representation of societal interests), explicitly related to national sovereignty and territorial integrity.

Third, principally, related to the above, the two norms are incompatible regarding disputes on ‘individual liberty’ and ‘communal needs’. While the Bill centralises the importance of individual ownership of traditional liberal values on civic-politic rights (free speech, religion, press, association, etc.), Asian Values highlights the economic, social, and cultural interests of societies. Fourth, at the practical level, the two norms are highly incompatible in their decision-making mechanisms and non-confrontational, behavioural code of conduct (Stubbs 2009). While the Bill implies preference towards multilateralism, adversarial posturing, legalistic mechanisms, and formalistic procedures, the ASEAN Way endorses the principle of conflict avoidance, such as ‘constructive engagement’ and ‘non-binding cooperation’ (Acharya 1997, 2000, Haacke 1999, 2005, Munro 2009). This highly subjective, informal, and pragmatist approach to conflict resolution is key to the area’s successful regionalism so far, but is not recognised by the Bill (read discussion in Chapter 2).

Lastly, at the practical level, both norms are incompatible in their definition of relations between state and society, as well as between religious and secular life. While the Bill’s inherent values imply a clear separation between each, Asian Values regards them as ‘organic statism’ (King 2007) – or, inseparable.

To establish AICHR, the Norm Interpreters were forced to address the above five points of incompatibility, to bridge the two norms. Table 7.1 below summarises the interpretation process which led to the AICHR inaugurated in 2009.
Table 7.1. Summary of Process of Interpretation

<table>
<thead>
<tr>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The Bill: Centrality of Individual Rights</td>
<td>Asian Values &amp; the ASEAN Ways: Centrality of Collective Rights</td>
<td>Securitisation of issue, internalisation of issue</td>
</tr>
<tr>
<td>Human rights</td>
<td>National sovereignty &amp; territorial integrity</td>
<td></td>
</tr>
<tr>
<td>Legalistic mechanism and formalistic procedures</td>
<td>Constructive engagement, and non-binding cooperation</td>
<td>Policy recommendation, transactional negotiation;</td>
</tr>
<tr>
<td>Individual liberty</td>
<td>Communal needs</td>
<td>Creating dialogue avenues, consolidation forum, public awareness campaign, media advocacy, engaging the AICHR &amp; the WG, lobbying the HLP.</td>
</tr>
<tr>
<td>Separation of state &amp; society; separation of religion &amp; secular life</td>
<td>One organic statist of state &amp; society, and religion &amp; secular life</td>
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</tr>
</tbody>
</table>

This research found that the interpretation process – the action and interaction among the three Norm Interpreter subgroups it identified (the political community, policy network and advocacy coalition), as distinctive. The process establishes context for the policy-making dynamics, promotes changes in policy maker’s perception, and provides options for decision to be taken; it involves negotiation and consolidation, lobbying and public pressure; it creates venues for participation, and shapes public opinion. The actors’ behaviour is largely defined by the character of their institution (whether they are government, think tanks, or civil society organisations), as well as by the professional background of the key members (whether they are government officials, academics/experts/practitioners, or activists/journalists). They push to the limit and pull back the barriers; they ‘agree to disagree without being disagreeable’, but still attempt to bridge differences and link similar minds; they place pressures,

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300 Quoted from Capie & Evans (2003)
influences, and transactional ‘musyawarah’\textsuperscript{301} (consultations) to arrive at ‘mufakat’\textsuperscript{302} (consensus). This occurs between and among the three Norm Interpreter subgroups. This clearly points to the importance of behaviour in the development of norm acceptance, as highlighted by practice theorists.

As discussed thoroughly in Chapter 3, the novel concept of Norm Interpreters is adapted from Johnstone’s concept of interpretative community (2005) – used in the study of Law to describe a group of professional interpreters with shared interest on a certain field of practice, involve in a persuasive activity, both against each other (horizontally and vertically), as well as against the external authority (Johnstone 1991). The initial characterisation of the three Norm Interpreter subgroups was also inspired by Johnstone’s work. However, in this research, their character was redefined in reference to the widely accepted concept of multitrack diplomacy (McDonald 1991, 2002, 2003).

The research presented each diplomatic track as overlapping with some specific theoretical models that help to explain the character of each set of diplomatic actors engaged in the establishment of AICHR. The first category of Norm Interpreters is \textbf{the Political Community}. This is a term used primarily to refer to the High Level Panel (HLP) – an ad hoc body established by ASEAN to draft AICHR’s Terms of Reference. Members of the HLP – ten in total – are official representatives of ASEAN’s ten member-states; therefore, they are assumed to bring the national interests of their respective countries to the HLP negotiation forums. Referring to their domestic politics, among others: levels of democracy and national policies on human rights issues (discussed in Chapter 6), this research considered the majority of HLP members as effective guardians of Asian Values and the ASEAN Way, and as actors who naturally aim to reject the application of the Bill’s values in the region. As such, most members of the Political Community tend to carry two seemingly contradictory mandates: the institutional mandate from ASEAN to establish AICHR, and the

\textsuperscript{301} Musyarawarah (Javanese) is a process of consultation, which is based on ‘equality, tolerance, and understanding with overtones of kinship and common interests’ (Acharya 2014a:66).

\textsuperscript{302} Mufakat (Javanese) refers to the agreement that arrives through debate and deliberation, ‘wherein negotiators do not try to coerce others into consent but rather seek to find a compromise that all can agree on.’ (Bellamy 2009:164).
individual mandate from their respective government to ‘delay’ – if not reject – the application of global human rights values in the region. The existence of such contradictory mandates meant that a wide range of differing interests existed within the Political Community.

In large part because of this lack of consensus, strategic openings emerged for the two other Norm Interpreter subgroups (the Policy Network and the Advocacy Coalition) seeking to influence the outcome of the process. Their aims were, broadly, to challenge the perception of norms-rejecting member states and cultivate their willingness to establish AICHR. For those HLP members, such as Mr. Rachmat Budiman from Indonesia, with potential to become norm promoters, the aim was to strengthen their perception on human rights values and broaden their knowledge on the issues, arming them to positively influence the negotiations.

Regardless, beyond interactor relations among the Community and the other two Norm Interpreter subgroups, this research found that inter-member dynamics within the HLP itself were equally essential and influential in defining the final form of AICHR. Tsebelis’ (1995, 2002) Veto Player Model was employed in the thesis as a particularly useful way of understanding the HLP’s complicated internal affairs, as well as provide a satisfying explanation on events that transpired during the ToR drafting process. This model enabled me to categorise the ten HLP members into four groups, based on their different interests on AICHR’s establishment. Their differing interests created ‘ideological distances’ among the four groups. By thoroughly considering negotiation factors, this model shows how, despite ideological distances and because of adherence to the local norms (specifically, of consultation and consensus in their policy-making process), the HLP managed to agree to establish AICHR – although with certain, weakening characteristics.

However, beyond the Veto Player model’s ability to explain, the HLP also agreed to adopt the Hua Hin Declaration. This declaration was the final effort of Indonesia, the only ASEAN member-state to fight for a credible regional human rights body, to secure the future renegotiation of AICHR’s Terms of Reference. This created the possibility of empowering the body. According to Pinfari (2011), Indonesia played
‘deadline diplomacy’, using the time pressure to encourage other parties’ willingness to compromise ‘in a rational and pragmatic way’. As discussed in Chapter 6, the final HLP meeting in Hua Hin, Thailand, in February 2009 finalised the draft of AICHR’s Terms of Reference, which included the Hua Hin Declaration as an integral component.

**The Policy Network** in this research is composed of two regional institutions: the Working Group (WG) and the ASEAN-ISIS Colloquium on Human Rights (AICOHR). While members of the WG were generally reputable law practitioners (lawyers, judges, legal academics), members of AICOHR were high-regarded experts on regional security and strategic studies. As think tanks, the members maintained a personal network and certain levels of proximity with high-level government officials on a regional and national level, including members of the HLP. Apart from strategically lobbying the Political Community, this research found that the Network also played an active role in engaging the Advocacy Coalition. Furthermore, they maintained a bridging function by providing avenues for communication and the flow of information between the Community and the Coalition.

As discussed in Chapter 4, to influence the policy-making process, the Network applied four well-rounded strategies, which provided the HLP members with necessary components for policy-making. These were a ready-to-adopt policy draft, a supportive regional context for policy adoption, and full support from the stakeholders. Referring to Compston’s (2009) model of Policy Change, the Network can be viewed as successful in influencing and changing identified elements that are essential in policy-making: resources, preferences, strategies, perceived problems and solutions, as well as rules and norms. With this, the Network was relatively effective in interpreting the Bill’s values to be accepted in Southeast Asia. However, unfortunately, this was not with an expected result; the established AICHR is still far from the Network’s ideal form. With only rights promotional power, and no rights protection, AICHR is considerably weak.
Like the Network, the Advocacy Coalition is also comprised of non-state actors. However, unlike the Network, the Coalition leverages an informal approach to influencing the policy makers’ perception and the policy-making mechanism itself. In this research, the Coalition is the Solidarity for Asian People’s Advocacy Task Force on ASEAN and Human Rights (the Task Force), a network of civil society organisations established in 2008. They aimed to pressure ASEAN to establish a human rights mechanism that was ‘credible, accountable, independent, and effective’.

Members of the Task Force were activist leaders from national and regional civil society organisations in Southeast Asia. Contrary to popular view, this research found that the Task Force was highly confident in approaching the HLP while also maintaining their insurgent, stubborn, and straight-talking approaches. Their activism were initially channelled through facilitation forums held by the WG and AICOHR; later, however, they decided to approach the HLP members directly. This research categorised their approaches into two roles: as activists and as lobbyists – both aiming to, directly and indirectly, pressure the HLP for AICHR’s establishment.

Loosely referring Rietig’s indicator (2011), the Task Force had very little success in pressuring the HLP. The impact of their activism (as activists) was rather insignificant, considering the lack of evidence found to indicate the Task Force’s campaign messages were adopted in AICHR’s Terms of Reference. As lobbyists, referring to Betsill & Corell’s method (2008), the Task Force’s success can be loosely categorised as ‘moderate’. They managed to push for modification and additional weight in the ToR, as shown by improvements in the ToR’s final version when compared to the previous drafts (as discussed in Chapter 5). Nevertheless, the established AICHR remains far from ideal. To borrow the Advocacy’s jargon, it is ‘toothless’, and for that, they acknowledged their failure to achieve their ideal goal.

With their own characteristics, strengths, and weaknesses, the three Norm Interpreter subgroups share key similarities. First, in their effort to interpret the Bill’s values, they were generally consistent in incorporating the local norms’ value. Second, they relied less on functional and material elements (such as vested interests) and more on non-rational, immaterial elements of interactor relations (including shared belief systems,
common ideas, and values). Third, they relied on key individuals’ qualities (such as personal networks, expertise, and negotiation skills), rather than on formal negotiation mechanisms or procedures. These characteristics further distinguish the Norm Interpreters concept from other existing IR concepts regarding norm promotion, including the widely acknowledged Norm Entrepreneur.

In this thesis, the application of microscopic reading allowed for a close examination of the actions and interactions between and within the three Norm Interpreters subgroups. Summarised in the Bowtie Model (see Figure 3.6, page 120), the Norm Interpreters’ actions and interactions involve three different approaches. These are direct and indirect influences (by the Network), lobbyist and activist pressure (by the Coalition), as well as transactional negotiation (by the Community). Each approach is different in nature, based on, among other elements, the character of the conducting actors (discussed in the above subchapter).

From the three approaches, this research identifies ten different activity types, summarised in Table 7.2 on the next page. The ten activities ‘bombarded’ member of the HLP (as the drafter of AICHR’s ToR) from many directions and with differing levels of intensity. Some activities directly targeted the HLP members, while others utilised different influential actors surrounding the members – be they members of think tanks, leaders of national governments, or wider members of the public (the majority of voters). As mentioned earlier, the primary aim was to influence the perception and behaviour of each ten HLP members, with the ultimate goal of encouraging them to adopt the value of the global human rights norms and establish a credible AICHR.

By examining the ten activities, two levels of impact were identified: tangible and intangible. The most impactful activities, indicated by a tangible norms translation, were those which directly targeted the member of the HLP, or ASEAN leaders in general.
The Network’s effort to submit a policy recommendation (a ready-to-adopt Terms of Reference) was initially a complete failure; although it was accepted by ASEAN, it triggered no further action. It is assumed that ASEAN found it unimpressive, since the document promoted the value of the Bill with only limited acknowledgment of local values. For example, it even proposed an ‘ASEAN minus X’ formula, which allowed ASEAN to establish the body when at least three member-states supported the idea. This policy-making mechanism entirely contradicted the ASEAN Way’s practice of consultation and consensus. After retreating and revaluing, the Network (through their dialogue and consultation forums) managed to convince ASEAN to adopt the concept of human rights in their official documents and, furthermore, agree to establish a regional human rights body. Unfortunately, that was their only achievement. Despite support from their corresponding efforts – such as the securitisation of human rights – they could only impact ASEAN’s willingness to discuss the issue (as ‘human security’,
not ‘human rights’ per se). That does not indicate success in preparing ASEAN to establish a protective mandate in AICHR, as proposed.

The Coalition’s efforts had similar results, although they were slightly more successful. Pressuring the HLP resulted in adjustments to the narrative of AICHR’s Terms of Reference. For example, as discussed in Chapter 5, this included a statement in the ToR concerning the rights of AICHR to obtain information from member-states related to the practice of human rights; this was broadly modified from the Coalition’s demand for the body to possess a mandate to conduct human rights investigations and monitoring. In addition, the ToR included a statement regarding a mandate to provide advisory services and technical assistance on the issue (but only ‘upon request’). This was softened from the Coalition’s demand for a body with mandates to protect and implement human rights.

Among the Norm Interpreters’ impactful actions and interactions, those with the most tangible influence likely occurred within the HLP itself. The action of one HLP member – Indonesian’s negotiator – included promoting both the protection and promotion of human rights, which openly confronted the nine other members’ interests. Nonetheless, this was so successful that all ten members consented to adopting the Hua Hin Declaration.

The impact of other activities was intangible – i.e. not reflected in any official documents. However, I argued that these activities (the internalisation of human rights issues; creating dialogue avenues, consolidation forums, public awareness campaigns, media advocacy; and maximising the role of think tanks) were equally essential to developing a sense of urgency for the region to possess a credible human rights body. However, referring to existing theories and concepts on actors’ possible contributions to policy-making processes, it is reasonable to believe that any systematic, interactor relations (such as those identified in this research) could affect a policy maker’s perception, or, for a human rights defender, support policy makers to continue promoting the rights (be they official leaders of the member-states, the leaders of ASEAN, or members of the HLP itself). This ‘logical inference’ was made possible
by the application of congruence analysis to support the process-tracing research method applied in this research.

- The Compromised AICHR

The Bowtie Model explained how the interpretation process resulted in the creation of a (referencing terms found in this research) toothless, considerably weak, negotiated far-from-ideal AICHR, or (considering this research’s focus on actors’ behaviour) the compromised AICHR. This is a compromise between the political pressure of the appropriateness of adopting the values of global human rights norms and the political interest to remain loyal to local values. If a spectrum of the two incompatible norms varies between 100 (full acceptance of global norms) and 0 (full rejection of global norms), loosely coding the findings of this research, it is fair to claim the pendulum swings back and forth between 10 and (at a maximum) 30.

Table 2.3 on page 81, regarding the AICHR Human Rights Scorecard, even depicts how AICHR met only 27% of the requirement for an ideal regional human rights body. This means the norm interpretation process does occur, but the output is minimal in contrast to expectations. The most literal output was the adoption of the term ‘human security’ – better accepted in the region than ‘human rights’ – in ASEAN documents. As discussed in the previous section, adjusted (more regionally acceptable) terms were adopted to softened/weakened the statements regarding AICHR’s rights protection and promotion mandate, as it written in the ToR. This, I argue, is also the outcome of the norm interpretation process.

Furthermore, ASEAN both established AICHR – with its ToR focussing on a rights promotional mandate, and accepted the Hua Hin Declaration (as an integral part of the ToR) – which secured the future empowerment of the body. This, in itself, is the outcome of a long and windy interpretation process.

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303 Against the 1993 UN Principles Relating to the Status of National (Human Rights) Institutions (the Paris Principles), and a Non-Paper, “Principles for Regional Human Rights Mechanisms” developed by the Office of the High Commissioner for Human Rights (OHCHR)
Borrowing Johnstone’s (2005) explanatory concept of the concentric circle – the outer and inner circle – of the interpretative community (p.190), I argue that the most significant norm interpretation process (in this research) occurred primarily within the inner circle. This area (which Johnstone argues is where ‘the formulation, negotiation, and implementation’ of norms occurs (p.190)) is the strategic location of the Political Community as policy makers.

![Figure 7.1. The Concentric Circle of Norms Interpretation](image)

The norm interpretation process also occurs in the outer circle – where the Policy Network and Advocacy Coalition are situated. However, as discussed earlier, the entire process did not directly impact the policy-making mechanism. Instead, at this outer circle, norms interpretation influenced the perception, knowledge, and behaviour of the actors (i.e. members of AICOHR, the WG, the Task Force, as well as national government leaders and the wider public). This process led to the development of new knowledge and understanding, which was transferred to policy makers – in this case, members of the HLP. The HLP was then expected to incorporate the new knowledge and understanding into their drafting of the ToR.

Therefore, the interpretation process of the inner circle largely defined the final shape of the new norms – or, the compromised AICHR.

### 7.3 Lessons for ASEAN Regionalism

How does this norm interpretation process explain ASEAN regionalism? Assembling the evidence into one complete picture of AICHR’s establishment, this research claims
that ASEAN regionalism is shaped by the involvement of non-state actors, the contribution of immaterial elements, as well as the interactor relations at the informal and non-official mediums. This is regardless of the above-discussed claim that AICHR’s main process of establishment occurred within the HLP, which is a regional government unit representing the interests of ASEAN’s ten member-states. This does not mean that the application of the Constructivist New Regionalism Approach and the sociological, microscopic reading method in this research failed to portray the phenomena, beyond the classic view of state-centrist ASEAN regionalism. This research confirmed otherwise.

As shown in this research, ASEAN regionalism occurred not only in the official negotiating forums. The final decision was concluded in the forum – but the surrounding processes which led to the decision cannot be disregarded. They were equally significant and influential. As a multilateral government unit, the HLP is not one unitary and rational actor.

Furthermore, despite serving as the sole policy maker, the HLP was not the only actor involved in policy design. In designing their policy, they were subject to influences and pressures, criticism and input, new knowledge and alternative perspectives from various other actors, including (and most importantly) non-state actors – both civil society leaders and members of think tanks.

This research also confirms that the regional policy-making mechanisms are largely centred on key, individual actors’ behaviour and interactor relations, which is characterised by immaterial elements. These included values, norms, beliefs, and perceptions, as well as individual preferences, perspectives of reality, negotiation skills, educational backgrounds, professional qualifications, and, most importantly, personal networks.

As shown in Chapter 4, 5, and 6, ‘the interlocking and dynamic interplay’ (Bøås, Marchand, and Shaw, 2003:206) of these elements shaped the behaviour of actors, the target of interactor relations, and the design and strategy of the ten activities (listed earlier in Table 7.2), as identified in this research. These immaterial elements perform in unique ways for different actors and in different situations; occasionally, they are
decisive, while other times (for example, in cases which include material power relations, such as political authority), they appear less impactful. Thus, this research generally confirms that ASEAN regionalism is a high-political project, which profoundly relies on low-political agencies and processes. It is an event that manifests itself in macro-level changes, but originates from micro-level actions.\textsuperscript{304}

How, then, does this norm interpretation process confirm that ASEAN is progressing with its regionalism? As argued in Chapter 1, AICHR’s establishment is an indication of progress in and of itself. This research found three justifications to support this argument. \textit{First}, with AICHR, ASEAN provided ‘concrete deliverables’.\textsuperscript{305} Specifically, ASEAN managed to transform the concept of human rights from an untouchable domestic issue to a shared regional concern (although the nature of the issue was interpreted as ‘human security’). Furthermore, AICHR’s establishment proved how ASEAN, for once, was brave enough to explicitly address their differences (to solve it, not shelve it) in an official negotiation forum – particularly in the transactional negotiation process of the HLP.

\textit{Second}, with AICHR’s establishment, ASEAN proved that Southeast Asian regionalism was not intentionally fulfilling only the ‘institutional minimum’, nor was it only occurring at the governmental level with a ‘lack of substance’.\textsuperscript{306} Instead, as discussed earlier, ASEAN regionalism is a highly substantial mechanism, which involves both state and non-state actors. It involves both top-down and bottom-up processes across the region – in formal and official policy maker negotiations, in think tanks’ dialogue forums, in media, and at the street level among the people. As further evidence, this thesis argues that, in the case of AICHR, the ‘people oriented ASEAN’ (a term widely used in post-2000 ASEAN; for example, Collins (2008, 2013a) and Gerard (2013, 2014b)) was not only jargon; it gradually became real.

\textsuperscript{304} For more on the framing of macro-level and micro level structures, read, for example, Knorr-Cetina (1981), Long (1992) and Bøås, Marchand, and Shaw (2003).

\textsuperscript{305} This is the term used by the author to indicate the progress of ASEAN regionalism, for detail, read \url{http://www.asiantradecentre.org/talkingtrade/asean-still-more-process-than-destination}

\textsuperscript{306} On argument related to the ‘lack of substance’ and ‘institutional minimum’ in ASEAN regionalism, read, for example, Jones & Smith (2007a, b) and Beeson (2009). These two terms are used to critically describe the process of ASEAN Regionalism, referring to Jones & Smith (2007), who argue that ASEAN regionalism only maintains the appearance of regional integration without giving it substance (see p.12 of this thesis). The term is not used to describe the process’ output, such as – in the case of this thesis – AICHR.
7.4 Avenues for Further Research

As AICHR approaches its 10th anniversary, it has yet to function as a credible regional human rights body. ASEAN is still unable (or unwilling) to develop a human rights mechanism relevant to the needs of its people. The Terms of Reference adopted in 2009 remain unchanged and untouched; in 2014, when the ToR was due for revisit, the member-states agreed not to conduct the review. This is certainly the Hua Hin Declaration’s failure to function.

What happened to the Norm Interpreters and the norm interpretation process? Why did they miss this opportunity to empower AICHR? Have they lost their momentum after the inauguration of AICHR in October of 2009? Does this mean ASEAN is not ready to comply with global norms on human rights? This merits further research.

Such research should focus on the voices of the ‘non-converted’ – those consistently against AICHR’s establishment. Because of limitations in time, research funding, and personal networks, in this research, the voice of the ‘non-converted’ was not appropriately represented. Their perspectives on AICHR’s establishment were identified through the opinion of third parties and were deconstructed with the help of existing academic debates, as well as generally accepted presumptions of what would be their possible behaviour under certain circumstances (based on their domestic characteristics). However, their perspectives were not based on their own words. Recovering their untold stories may lead to a more sophisticated analysis of how global norms were interpreted in the region.

Regarding the development of constructivist microscopic reading, as well as the adoption of a sociological approach in the study of IR, this research method is proved to be applicable in the study of AICHR. As such, it can be further applied to study similar cases, such as the establishment of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) in 2010, and the drafting of the ASEAN Human Rights Declaration in 2012. I believe these two case studies will confirm the

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308 The process that leads actors from commitment to compliance with global human rights norms is discussed as one of the main ideas in the edited book titled The Persistent Power of Human Rights: From Commitment to Compliance (Risse, Ropp, and Sikkink 2013), a continuation of a book titled The Power of Human Rights: International Norms and Domestic Change by same editors (1999), which the Spiral Model discussed in Chapter 3.
prerequisite of the applicability of the method, since they include a strongly justified case study (the incompatibilities of norms), a short time frame for the case (within a year), and researcher access to the primary resources. To challenge this presumption, the method can be applied to examine other regional case studies which meets only some of the applicability criteria. Like AICHR, cases such as Myanmar’s Rohingya is also strongly linked to the idea of global vs. local norms incompatibilities; however, compared to AICHR, this is an on-going case with, I imagine, a very limited access to key decision makers and first-hand documents. This will certainly challenge the applicability of the microscopic reading approach.

Furthermore, to re-test the applicability of Practice Theory in the case of regionalising global norms on human rights, I am seeking opportunities to perform a praxiographic research approach on AICHR. This may be situated during the end of AICHR’s third five-year period when, according to the Hua-Hin Declaration, member-states are due to review the existing ToR. I plan to perform ethnography of norm interpretation by conducting a participatory observation, as suggested by the PT. The aim is to identify the logic of practicality’s ability to explain the negotiation process (in comparison to the logic of appropriateness, logic of consequences, and logic of arguing, discussed in Chapter 1).

One final remark: By applying a constructivist and sociologically informed microscopic reading method to explaining regionalism (by assessing the Norm Interpreters’ role in the establishment of Southeast Asia’s regional human rights body), this thesis challenges IR’s traditional concept of functional regionalism. This thesis contributes to the development of non-mainstream features in the study of IR, specifically, particularly on the behaviour of individual actors, the importance of immaterial aspects (such as values, norms, ideas, and perceptions), as well as the equally significance of the bottom-up, unofficial, and informal approaches in the policy-making mechanism. Therefore, this research shares the claim of these microelements’ centrality in processes transpiring at the macro (regional) level. To what degree does this reflect the broader sentiment of the IR context? That remains to be seen.***
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2008. HLP 5th Meeting, November, Bali

2008. HLP 6th Meeting, December, Jakarta

2009. HLP 7th Meeting, January, Brunei Darussalam

2009. HLP 8th Meeting, February, Luang Prabang, Lao PDR


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ASEAN Intergovernmental Commision on Human Rights - [http://aichr.org](http://aichr.org)
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Friedrich Naumann Stiftung Philippines - https://philippines.fnst.org/
Human Rights in ASEAN Online Platform - https://humanrightsinasean.info
Human Rights Watch - https://www.hrw.org/
LAWASIA Association for Asia and the Pacific - http://lawasia.asn.au
Appendix 1: The Southeast Asian Norm Interpreters on the Establishment of AICHR

The Political Community

- Abisit Vejjajiva  Prime Minister of Thailand, the ASEAN Chairperson
- Hassan Wirajuda  Foreign Minister of the Republic of Indonesia
- Om Yentieng  Advisor to the Royal Government of Cambodia, President of the Human Rights Committee of Cambodia
- Rachmat Budiman  Director of Political, Security and Territorial Treaties Department of Foreign Affairs, Republic of Indonesia
- Rosario G. Manalo  Special Envoy, Department of Foreign Affairs, Philippines
- Sihasak Phuangketkeow  Permanent Secretary, Ministry of Foreign Affairs, Thailand
- Termsak Chalermpalanupap  Special Assistant to the Secretary-General of ASEAN, served the HLP as a resource person of the ASEAN Secretariat.

The Policy Network

- Braema Mathiaparanam  Working Group for An ASEAN Human Rights Mechanism, Singapore
- Carlos Madina  Ateneo Human Rights Centre at the Ateneo de Manila University, Philippines
- Carolina Hernandez  Institute for Strategic and Development Studies (ISDS), Philippines
- Jusuf Wanandi  Centre for Strategic and International Studies, Indonesia
- Marzuki Darusman  Former Attorney-General of Indonesia
- Param Cumaraswamy  LAWAsia
- Rizal Sukma  Centre for Strategic and International Studies, Indonesia
- Vitit Muntarbhorn  Chulalongkorn University, Thailand
The Advocacy Coalition

- Anelyn de Luna  
  Alternative ASEAN Network on Burma, Bangkok
- Chalida Tajaroensuk  
  Executive Director, People's Empowerment Foundation (PEF), Thailand
- Max de Mesa  
  The Task Force Detainees of the Philippines (TFDP), Manila
- Rafendi Djamin  
  Human Rights Working Group, Jakarta
- Sinapan Samydorai  
  Think Centre, Singapore
- Thun Saray  
  Cambodian Human Rights and Development Association (ADHOC), Phnom Penh
- Yap Swee Seng  
  Asian Forum for Human Rights and Development, Bangkok & Kuala Lumpur
- Yuyun Wahyuningrum  
  East Asia Program Manager, FORUM-ASIA
Appendix 2: ASEAN Global Human Rights Norm Interpretation: Historiography, from Manila to Hua-Hin

1970s UN started promoting regional human rights arrangements.

1980s UN made specific calls to the Asian region to take up the challenge.


1993 Singapore Foreign Ministers Meeting Joint Communique: ASEAN first response to consider the establishment of ASEAN Human Rights Body.

2004 Vientiane The adoption of Vientiane Action Program (VAP) which included human rights action points, under ASEAN Security Community.

2006 Manila ASEAN Eminent Person Group’s recommendation to establish an ASEAN human rights body.

2007 Jan Cebu the adoption of Cebu Declaration on the Blueprint of the ASEAN Charter: endorsed EPG’s recommendations.

Nov Singapore the adoption of the ASEAN Charter which included the recommendation for the establishment of High Level Panel (HLP) to draft the Terms of Reference (ToR) for the ASEAN human rights body.

2008 Feb Singapore ASEAN Foreign Ministers’ Retreat: the establishment of HLP.

Jul Singapore ASEAN Ministerial Meeting: mandated HLP to submit the draft of the ToR to the 2009 ASEAN Foreign Ministers Meeting.

2009 Feb Hua-Hin ASEAN Foreign Ministers Meeting: approved the draft of AICHR’s ToR and the Cha-Am Hua-Hin Declaration presented by the HLP.

Jul Phuket the adoption of the ToR.

Oct Hua-Hin Inauguration of the ASEAN Intergovernmental Commission on Human Rights (AICHR).
Appendix 3: List of Interviews

Structured Interviews:

- Alexander Chandra
  Analysis Assistant Director, the ASEAN Secretariat
- H.E. Mr. Hassan Wirajuda
  Former Minister of Foreign Affairs Republic of Indonesia
- Herman J Kraft
  Researcher, Institute for Strategic and Development Studies, Philippines
- Marzuki Darusman
  Former Attorney General of Indonesia, Lawyer and Human Rights Campaigner
- Meidyatama Suryadiningrat
  Director, National News Agency ANTARA, Jakarta
- H.E. Rachmat Budiman
  Director, Ministry of Foreign Affairs, Republic of Indonesia
- Rafendi Djamin
  Regional Director, South East Asia and Pacific of Amnesty International
- Ray Paolo J Santiago
  Executive Director, the Ateneo Human Rights Center and the Secretary-General of Working Group for an ASEAN Human Rights Mechanism
- H.E. Rizal Sukma
  Ambassador of Republic Indonesia to the United Kingdom and the Republic of Ireland
- Yuyun Wahyuningrum
  Representative of Indonesia to the ASEAN Intergovernmental Commission on Human Rights (AICHR)

Informal Conversations:

- Allan Delos Reyes
  Senior Research Assistant, the Institute for Strategic and Development Studies (ISDS Philippines)
- Carolina Hernandez
  Vice-Chair, Institute for Strategic and Development Studies, Quezon City, Philippines
- Daniel Awigra
  Program Manager ASEAN Human Rights Advocacy, the Human Rights Working Group
- H.E. Djauhari Oratmangun
  Ambassador of Republic Indonesia to the Russian Federation and Republic of Belarus
- Lina Alexandra
  Researcher, Centre for Strategic and International Studies, Jakarta
- Maria Ela Atienza
  Senior Lecturer, Department of Political Science, University of the Philippines
- Dato’ Param Cumaraswamy
  Co-Chair, Regional Working Group for an ASEAN Human Rights Mechanism
- Sinapan Samyedorai
  Task Force on ASEAN Migrant Workers
• Sriprapha Petcharamesree  Director, Institute of Human Rights and Peace Studies, Mahidol University, Thailand
• H.E. Wiwick Setyawati Firman  Ambassador of Republic Indonesia to Republic of Finland and Republic of Estonia
• (pseudonym)  ASEAN Secretariat
• (pseudonym1)  Ministry of Foreign Affairs, Republic of Indonesia
• (pseudonym2)  Ministry of Foreign Affairs, Republic of Indonesia
Appendix 4: Terms of Reference of ASEAN Intergovernmental Commission on Human Rights

Pursuant to Article 14 of the ASEAN Charter, the ASEAN Intergovernmental Commission on Human Rights (AICHR) shall operate in accordance with the following Terms of Reference (TOR):

1. PURPOSES

The purposes of the AICHR are:

1.1 To promote and protect human rights and fundamental freedoms of the peoples of ASEAN;

1.2 To uphold the right of the peoples of ASEAN to live in peace, dignity and prosperity;

1.3 To contribute to the realisation of the purposes of ASEAN as set out in the ASEAN Charter in order to promote stability and harmony in the region, friendship and cooperation among ASEAN Member States, as well as the well-being, livelihood, welfare and participation of ASEAN peoples in the ASEAN Community building process;

1.4 To promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities;

1.5 To enhance regional cooperation with a view to complementing national and international efforts on the promotion and protection of human rights; and

1.6 To uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and international human rights instruments to which ASEAN Member States are parties.

2. PRINCIPLES

The AICHR shall be guided by the following principles:

2.1 Respect for principles of ASEAN as embodied in Article 2 of the ASEAN Charter, in particular:

   a) respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States;
   b) non-interference in the internal affairs of ASEAN Member States;
   c) respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion;
   d) adherence to the rule of law, good governance, the principles of democracy and constitutional government;
   e) respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice;
   f) upholding the Charter of the United Nations and international law, including international humanitarian law, subscribed to by ASEAN Member States; and
   g) respect for different cultures, languages and religions of the peoples of ASEAN, while emphasising their common values in the spirit of unity in diversity.
2.2 Respect for international human rights principles, including universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms, as well as impartiality, objectivity, non-selectivity, non-discrimination, and avoidance of double standards and politicisation;

2.3 Recognition that the primary responsibility to promote and protect human rights and fundamental freedoms rests with each Member State;

2.4 Pursuance of a constructive and non-confrontational approach and cooperation to enhance promotion and protection of human rights; and

2.5 Adoption of an evolutionary approach that would contribute to the development of human rights norms and standards in ASEAN.

3. CONSULTATIVE INTER-GOVERNMENTAL BODY

The AICHR is an inter-governmental body and an integral part of the ASEAN organisational structure. It is a consultative body.

4. MANDATE AND FUNCTIONS

4.1. To develop strategies for the promotion and protection of human rights and fundamental freedoms to complement the building of the ASEAN Community;

4.2. To develop an ASEAN Human Rights Declaration with a view to establishing a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights;

4.3. To enhance public awareness of human rights among the peoples of ASEAN through education, research and dissemination of information;

4.4. To promote capacity building for the effective implementation of international human rights treaty obligations undertaken by ASEAN Member States;

4.5. To encourage ASEAN Member States to consider acceding to and ratifying international human rights instruments;

4.6. To promote the full implementation of ASEAN instruments related to human rights;

4.7. To provide advisory services and technical assistance on human rights matters to ASEAN sectoral bodies upon request;

4.8. To engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including civil society organisations and other stakeholders, as provided for in Chapter V of the ASEAN Charter;

4.9. To consult, as may be appropriate, with other national, regional and international institutions and entities concerned with the promotion and protection of human rights;

4.10. To obtain information from ASEAN Member States on the promotion and protection of human rights;

4.11. To develop common approaches and positions on human rights matters of interest to ASEAN;

4.12. To prepare studies on thematic issues of human rights in ASEAN;
4.13. To submit an annual report on its activities, or other reports if deemed necessary, to the ASEAN Foreign Ministers Meeting; and
4.14. To perform any other tasks as may be assigned to it by the ASEAN Foreign Ministers Meeting.

5. COMPOSITION

Membership
5.1 The AICHR shall consist of the Member States of ASEAN.
5.2 Each ASEAN Member State shall appoint a Representative to the AICHR who shall be accountable to the appointing Government.

Qualifications
5.3 When appointing their Representatives to the AICHR, Member States shall give due consideration to gender equality, integrity and competence in the field of human rights.
5.4 Member States should consult, if required by their respective internal processes, with appropriate stakeholders in the appointment of their Representatives to the AICHR.

Term of Office
5.5 Each Representative serves a term of three years and may be consecutively re-appointed for only one more term.
5.6 Notwithstanding paragraph 5.5, the appointing Government may decide, at its discretion, to replace its Representative.

Responsibility
5.7 Each Representative, in the discharge of his or her duties, shall act impartially in accordance with the ASEAN Charter and this TOR.
5.8 Representatives shall have the obligation to attend AICHR meetings. If a Representative is unable to attend a meeting due to exceptional circumstances, the Government concerned shall formally notify the Chair of the AICHR of the appointment of a temporary representative with a full mandate to represent the Member State concerned. Chair of the AICHR
5.9 The Chair of the AICHR shall be the Representative of the Member State holding the Chairmanship of ASEAN.
5.10 The Chair of the AICHR shall exercise his or her role in accordance with this TOR, which shall include:
   a) leading in the preparation of reports of the AICHR and presenting such reports to the ASEAN Foreign Ministers Meeting;
   b) coordinating with the AICHR’s Representatives in between meetings of the AICHR and with the relevant ASEAN bodies;
   c) representing the AICHR at regional and international events pertaining to the promotion and protection of human rights as entrusted by the AICHR; and
   d) undertaking other specific functions entrusted by the AICHR in accordance with this TOR.


**Immunities and Privileges**

5.11 In accordance with Article 19 of the ASEAN Charter, Representatives participating in official activities of the AICHR shall enjoy such immunities and privileges as are necessary for the exercise of their functions.

6. MODALITIES

**Decision-making**

6.1 Decision-making in the AICHR shall be based on consultation and consensus in accordance with Article 20 of the ASEAN Charter.

**Number of Meetings**

6.2 The AICHR shall convene two regular meetings per year. Each meeting shall normally be not more than five days.

6.3 Regular meetings of the AICHR shall be held alternately at the ASEAN Secretariat and the Member State holding the Chair of ASEAN.

6.4 As and when appropriate, the AICHR may hold additional meetings at the ASEAN Secretariat or at a venue to be agreed upon by the Representatives.

6.5 When necessary, the ASEAN Foreign Ministers may instruct the AICHR to meet.

**Line of Reporting**

6.6 The AICHR shall submit an annual report and other appropriate reports to the ASEAN Foreign Ministers Meeting for its consideration. Public Information

6.7 The AICHR shall keep the public periodically informed of its work and activities through appropriate public information materials produced by the AICHR.

6.8 The AICHR is the overarching human rights institution in ASEAN with overall responsibility for the promotion and protection of human rights in ASEAN.

6.9 The AICHR shall work with all ASEAN sectoral bodies dealing with human rights to expeditiously determine the modalities for their ultimate alignment with the AICHR. To this end, the AICHR shall closely consult, coordinate and collaborate with such bodies in order to promote synergy and coherence in ASEAN’s promotion and protection of human rights.

7. ROLE OF THE SECRETARY-GENERAL AND ASEAN SECRETARIAT

7.1 The Secretary-General of ASEAN may bring relevant issues to the attention of the AICHR in accordance with Article 11.2 (a) and (b) of the ASEAN Charter. In so doing, the Secretary-General of ASEAN shall concurrently inform the ASEAN Foreign Ministers of these issues.

7.2 The ASEAN Secretariat shall provide the necessary secretarial support to the AICHR to ensure its effective performance. To facilitate the Secretariat’s support to the AICHR, ASEAN Member States may, with the concurrence of the Secretary-General of ASEAN, second their officials to the ASEAN Secretariat.
8. WORK PLAN AND FUNDING

8.1 The AICHR shall prepare and submit a Work Plan of programmes and activities with indicative budget for a cycle of five years to be approved by the ASEAN Foreign Ministers Meeting, upon the recommendation of the Committee of Permanent Representatives to ASEAN.

8.2 The AICHR shall also prepare and submit an annual budget to support high priority programmes and activities, which shall be approved by the ASEAN Foreign Ministers Meeting, upon the recommendation of the Committee of Permanent Representatives to ASEAN.

8.3 The annual budget shall be funded on equal sharing basis by ASEAN Member States.

8.4 The AICHR may also receive resources from any ASEAN Member States for specific extra-budgetary programmes from the Work Plan.

8.5 The AICHR shall also establish an endowment fund which consists of voluntary contributions from ASEAN Member States and other sources.

8.6. Funding and other resources from non-ASEAN Member States shall be solely for human rights promotion, capacity building and education.

8.7 All funds used by the AICHR shall be managed and disbursed in conformity with the general financial rules of ASEAN.

8.8 Secretarial support for the AICHR shall be funded by the ASEAN Secretariat’s annual operational budget.

9. GENERAL AND FINAL PROVISIONS

9.1. This TOR shall come into force upon the approval of the ASEAN Foreign Ministers Meeting.

Amendments

9.2. Any Member State may submit a formal request for an amendment of this TOR.

9.3. The request for amendment shall be considered by the Committee of Permanent Representatives to ASEAN in consultation with the AICHR, and presented to the ASEAN Foreign Ministers Meeting for approval.

9.4. Such amendments shall enter into force upon the approval of the ASEAN Foreign Ministers Meeting.

9.5. Such amendments shall not prejudice the rights and obligations arising from or based on this TOR before or up to the date of such amendments.

Review

9.6. This TOR shall be initially reviewed five years after its entry into force. This review and subsequent reviews shall be undertaken by the ASEAN Foreign Ministers Meeting, with a view to further enhancing the promotion and protection of human rights within ASEAN.

9.7. In this connection, the AICHR shall assess its work and submit recommendations for the consideration of the ASEAN Foreign Ministers Meeting on future efforts that could be
undertaken in the promotion and protection of human rights within ASEAN consistent with the principles and purposes of the ASEAN Charter and this TOR.

**Interpretation**

9.8. Any difference concerning the interpretation of this TOR which cannot be resolved shall be referred to the ASEAN Foreign Ministers Meeting for a decision.
Appendix 5: 2009 Cha-Am Hua Hin Declaration on the Intergovernmental Commission on Human Rights

Adopted in Cha-am Hua Hin, Thailand on 23 October 2009

WE, the Heads of State/Government of the Member States of the Association of Southeast Asian Nations (ASEAN), on the occasion of the 15th ASEAN Summit in Thailand;

RECALLING Article 14 of the ASEAN Charter on the establishment of an ASEAN human rights body and ASEAN’s commitment to the promotion and protection of human rights and fundamental freedoms;

WELCOMING the entry into force of the Terms of Reference (TOR) on the basis of which the ASEAN Intergovernmental Commission on Human Rights (AICHR) shall operate;

DO HEREBY:

1. APPLAUD the inauguration of the AICHR as giving concrete expression to the implementation of Article 14 of the ASEAN Charter and ASEAN’s commitment to pursue forward-looking strategies to strengthen regional cooperation on human rights;

2. ENDORSE the implementation of the TOR of the AICHR as prepared by the High Level Panel and formally determined by the ASEAN Foreign Ministers;

3. CONGRATULATE the Representatives to the AICHR on their appointment by ASEAN Member States;

4. EMPHASISE the importance of the AICHR as a historic milestone in ASEAN community-building process, and as a vehicle for progressive social development and justice, the full realisation of human dignity and the attainment of a higher quality of life for ASEAN peoples;

5. ASSURE the AICHR of full support and provision of adequate resources by ASEAN Member States;

6. ACKNOWLEDGE the contribution of stakeholders in the promotion and protection of human rights in ASEAN, and encourage their continuing engagement and dialogue with the AICHR;

7. RECOGNISE that the TOR of the AICHR shall be reviewed every five years after its entry into force to strengthen the mandate and functions of the AICHR in order to further develop mechanisms on both the protection and promotion of human rights. This review and subsequent reviews shall be undertaken by the ASEAN Foreign Ministers Meeting;

8. EXPRESS confidence that ASEAN cooperation on human rights will continue to evolve and develop so that the AICHR will be the overarching institution responsible for the promotion and protection of human rights in ASEAN.

ADOPTED in Cha-am Hua Hin, this Twenty-Third Day of October in the Year Two Thousand and Nine.