



Royal University of Law and Economics

Final Report on

**The Strength and Weakness of Practicing
the Non-interference Principle
in ASEAN**

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ABSTRACT

The strengths and Weaknesses of Practicing the Non-Interference Principle in ASEAN

Iev Khunnyreach & Nheob Veleang

Under the Supervision of Advisor Ly Mouy

We consider the principle of Non-interference implemented by the Association of Southeast Asian Nations (ASEAN), have given further rational lead to the membership states in practicing their domestic policy, however the principle also caused ASEAN to gain more criticism due to its unsolved crisis in the member of the organization. The principal was accused of the disputed settlement operation. For these reasons, we would like to get to the bottom of the principle of non-interference in ASEAN over its implementation in the context of political, economic, security, and diplomatic. The main purpose of this study is to examine the principle for the citizens of the Association of Southeast Asian Nations to expand their knowledge in its strengths and weaknesses. We believe the principle of Non-interference makes the countries in ASEAN respect strictly about the territorial integrity of other nations, and use this doctrine as a tool to avoid the engagement in any matter that provides no interest to their countries. In our conclusion, we would provide some analysis and more recommendations. We hope this paper work can help people to understand about the non-interference principle more clearly.

We strongly believe that this dissertation will be used as an educational section for this generation and further generation. We two are the citizens of a country in ASEAN, we have to make clear about the pros and cons in implementing the principle of non-interference in ASEAN. We hope we can distribute our research throughout this report to all of the readers.

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Principle In ASEAN

1. INTRODUCTION

1.1. Background

Association of Southeast Asia Nation (ASEAN) was founded during the Cold War in 1967 at Bangkok, Thailand, with the signing of the ASEAN Declaration (Bangkok Declaration) by the five original member countries Indonesia, Malaysia, Philippine, Singapore, Thailand. Before the establishment of ASEAN, there was another organization called Association of Southeast Asia (ASA), which had been formed by the Thailand, Philippines and the Federation of Malaya (now part of Malaysia) in 1961. However, by then it seems not a successful initiative. The establishment of this regional organization (ASEAN) is not for the military alliances, but those countries in Southeast Asia established the organization for setting up a normative framework based on the principle of non-interference in order to ward off unwelcome foreign intervention in the members-states' domestic affairs and to guarantee the sovereignty independence of the member-states. This regional organization was also created to block the spreading of ideologies in Southeast Asia from the three major powers: United States, China, and Soviet Union, especially in Indochina. They also wanted to prevent the intra-regional confrontation between Malaysia and Indonesia; Malaysia and Singapore; Malaysia and Philippine. They also want to create a community that is filled with freedom and neutrality. Brunei Darussalam then joined on 7 January 1984, Vietnam on 28 July 1995, Lao PDR and Myanmar on 23 July 1997, and Cambodia on 30 April 1999, making up the ten Member States of ASEAN, and one observer, Papua New Guinea.



Figure 1 34th ASEAN Summit

On 8 August 1967, five Foreign Minister of the founding states: Adam Malik of Indonesia, Narciso R. Ramos of the Philippines, Tun Abdul Razak of Malaysia, S. Rajaratnam of Singapore, and Thanat Khoman of Thailand get together in the main hall of the Department of Foreign Affairs building in Bangkok to signed ASEAN Declaration. The intention of the ASEAN Declaration was about economic, social, cultural, technical, educational cooperation and other fields, and set out the promotion of regional peace and stability through respect for justice and the rule of law and adherence to the principles of the United Nations Charter.



Figure 2 Five (5) Founders of ASEAN

Thailand is the first country to bring about the reconciliation of certain disputes over Indonesia, the Philippines, and Malaysia for the moment of regional cooperation. Thanat Khoman of Thailand was former foreign minister from 1959 to 1971. At one banquet, he encouraged the three disputants to solve the crisis and he then propounded the idea of creating one regional organization to enhance cooperation.

Adam Malik, a former foreign minister of Indonesia agreed with Thanat Khoman without hesitation but asked for time to talk with his government and also to normalize relations with Malaysia after the confrontation was over. Meanwhile, the Thai Foreign Office had already prepared a draft charter for a new institution. Within a few months, Thanat Khoman, therefore invited the former members of the Association for Southeast Asia (ASA), Malaysia and the Philippines, and Indonesia, a key member, to a meeting in Bangkok. In addition, Singapore sent S. Rajaratnam, then Foreign Minister, to see about joining the new set-up. Although the new organization was planned to comprise only the ASA members plus Indonesia, Singapore's request was favorably considered."

In early August 1967, the five Foreign Ministers of Thailand, Indonesia, Malaysia, Philippines, and Singapore spent four days in the distance of a beach resort in Bang Saen. There, they negotiated over the document in a decidedly informal manner. Yet it was not an easy process: each official from respective states put into the deliberations on the historical, religion, political perspective that had less resemblance.

With the heavy-duty negotiations and Bang Saen talk, they signed the ASEAN Declaration, also known as the Bangkok Declaration on 8 August 1967.

ASEAN declared themselves as "the collective will of Southeast Asia Nation to cohere in friendship and cooperation and, through joint efforts and sacrifices, secure for their peoples and for posterity the blessings of peace, freedom, and prosperity.

As describe in the five articles long of the Bangkok Declaration, the aims and purposes of ASEAN was to accelerate the economic growth, social progress and cultural development in the region through joint endeavors in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of Southeast Asian Nations; second, it is to promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter; third is to promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural, technical, scientific and administrative fields; forth, it is to provide assistance to each other in the form of training and research facilities in the educational, professional, technical and administrative spheres; next, it is to collaborate more effectively for the greater utilization of their agriculture and industries, the expansion of their trade, including the study of the problems of international commodity trade, the improvement of their transportation and communications facilities and the raising of the living standards of their peoples; sixth, for promoting Southeast Asian studies; and lastly to maintain close and beneficial cooperation with existing international and regional organizations with similar aims and purposes, and explore all avenues for even closer cooperation among themselves.

In pursuance of their relations with one another, the ASEAN Member States and others partner have to adopted the following fundamental principles, as contained in the Treaty of Amity and Cooperation in Southeast Asia (TAC) of 1976:

1. Mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations;
2. The right of every State to lead its national existence free from external interference, subversion or coercion;

3. Non-interference in the internal affairs of one another;
4. Settlement of differences or disputes by peaceful manner;
5. Renunciation of the threat or use of force; and
6. Effective cooperation among themselves.

1.2. Statement of Problem

Principle of Non-Interference has both advantages and disadvantages regarding the political, security, economic, and the internal stability of member states. Hence, this research paper will examine more detail in the context of the problem related to the implementation of the non-interference principle and the benefit of enforcing this principle.

This research paper will further illustrate How much do the countries in this regional organization gain and lose by applying this fundamental principle of ASEAN.

1.3. Research Objectives

ASEAN has been known as one of the most developing organizations in Southeast Asia and throughout the world. The more it will be developed, the more it will face many challenges and issues. Moreover, its prestigious reputation is because of ASEAN's ways, ASEAN's motto (one identity, one vision, one community), ASEAN's pillars (political-security, economic and socio-cultural community) and its principles. The principle of not involving the member states' internal affair or so called "the principle of non-interference) has also been playing a significant role in developing ASEAN's reputation. However, this principle is also considered as the most challenging issue which can cause negative impact to the region's reputation, especially their member states. The purpose of this research paper is to figure out the pros and cons of the principle of non-interference implementation in ASEAN community since there are many doubts whether it's really important in developing ASEAN from both national and international communities. In addition, the paper will further evaluate how the global community analyzes

this concept. Besides that, there will be some possible solutions and recommendations on this principle in order to contribute to ASEAN's development to the next level.

1.4. Research Questions

There are many fundamental principles of ASEAN community that have been implemented since its establishment including, sovereignty, mutual respect for independence, equality, territorial integrity, national identity of all nations and non-interference in the internal affairs of others. Somehow, among those principles, the principle of non-interference seems to be dominant throughout the international community. Therefore, this research paper is going to figure out its characteristics and features in ASEAN region. This paper mainly discusses on one crucial question: "What are the strengths and weaknesses of ASEAN's non-interference principle?"

At the same time, the papers will further figure out some of the supplementary questions:

Should the principle of Non-interference remain in the Charter?

- How many legal instruments are related to this principle?
- How does the international community connect to this principle?
- What is the recommendation for improving the non-interference principle?

1.5. Scope and Limitation

The research paper will be covering the overview of ASEAN by providing a summary of its establishment, community, as well as its legal instruments. Since the paper only focuses on the principle of non-interference, there will be no further discussion on other irrelevant principles of ASEAN. The background of the non-interference principle will be also included in this paper. Moreover, in this thesis, there will be the main discussion on strength and weakness of the principle of non-interference by analysing each section and providing a case

study or example of how the member states involved with this principle in order to facilitate the study to be more precise. Then it will further evaluate the reaction and connection of the international organization, committee and ASEAN member states to the principle of non-interference. Most importantly, this paper will be going to analyse each member state's engagement so that it will give more perspectives on the implementation of this principle. Furthermore, the information in this research paper is based on both primary and secondary sources.

1.6. Research Methodology

In order to enhance relevant contents and information in this research discussion, the paper has used different types of sources and research methodology. Most of the information and evidence is based on the internet and online platforms. The information in the paper has basically been cited from previous reports from some scholars and experts specifically on ASEAN and the principle of non-interference. Most importantly, to get valid and reliable information, the contents of this principle' instrument and policies are cited from the official website of ASEAN organization. Some well-known news websites and TV channels such as BBC, The Diplomat, and CNN also have played a part in researching this topic, especially the updated information of the case studies or examples that will be included in the next chapter. Moreover, the paper also gets different insights from local news websites such as VOA, Khmer Time, and Cambodia Daily. Furthermore, it gets some relevant information from international organizations' official websites including UN, UN Human Right Watch and EU. Finally, written books about similar topics also contributed to writing this paper.

1.7. Structure of Research

The research paper has been divided into five main chapters. Chapter I is an introduction about the background of ASEAN and the process of doing this research including its

methodology, objectives, scope and limitation, and references from previous study about similar topics in literature reviews. Chapter II is going to discuss the background information of the principle of non-interference, as well as its policy, implementations and limitations, historical developments, legal instruments from different declarations, agreements and summits. Chapter III is going to list down the strength of this principle and some historical events or case study if possible. Chapter IV is going to talk about its weakness, as well as some examples for each point. However, Chapter III and IV are linked with each other because it talks about pros and cons of the principle so these two chapters will consist of opposite information especially, in political, economic and security sectors. Chapter V is going to analyze and compare between this principal's strength and weakness to see whether ASEAN should remain this principle in the future and to measure whether this principle plays a major role in the development of this organization. Lastly, the chapter is going to conclude the essential information in this paper and there will be some proposal recommendations and possible solutions for ASEAN in using the principle of non-interference for better purposes in solving the dispute or issues among the member states in the future.

1.8. Literature Review

Mrs. Sanae Suzuki is a researcher at Institute of Developing Economies, Japan External Trade Organization (IDE-JETRO). She has been working on international relations in Southeast Asia, in particular, the role of Association of Southeast Asian Nations (ASEAN) in this region. She wrote about Why is ASEAN not intrusive? Non-interference meets state strength. In her article, she wrote about ASEAN as a non-intrusive regional organization that the principle of non-interference was given precedence over democracy and human rights. The article also argued that ASEAN remains the Non-interference principle because its member states have accepted domestic problems should be managed domestically, since ASEAN members shall have the capacity to handle the situation by themselves. However, she asserted the ASEAN practice of inconsistency with non-traditional security. This article aims to explain why ASEAN, as a collective sovereign state, continues to uphold its noninterference principle. ASEAN has kept the principle of noninterference because all member states share a belief that each country has enough strength to cope with its domestic affairs without ASEAN intervention.

According to Lee Jones, a lecturer in International Politics at Queen Mary University of London, also conducted a research topic " ASEAN's unchanged melody? The theory and practice of non-interference in Southeast Asia". In his research paper, the principle of non-interference has been criticized as it has never been absolute but rather upheld with the interest of dominant social forces. It also has been criticized for slowing the progress of ASEAN on some issues, such as the economic crisis, regional issues, transnational security threat and problematic countries, like Myanmar. Besides that, he also published a written book under the topic "The Social Foundation of ASEAN and Non-interference". In his book, it was mentioned that ASEAN as a successful regional organization is basically based on the principle of non-

interference. The claim that non-interference successfully created a stable international order is undermined by the fact of continued interventionist practices by ASEAN states throughout the Cold War. He also claimed that intra-ASEAN interventions were reoriented to help defeat insurgencies and other challenges, while extra ASEAN interventions continued against radical forces seen as linked to these ‘internal’ rebellions.

Last but not least, Tram Anh Nguyen, also wrote a similar topic which is “Norm or Necessity? The Non-interference principle” about ASEAN. His paper includes literature review about the principle, assessing the principle of non-interference, the principle upheld, and exceptional cases that ASEAN had violated the principle. The paper focused on evaluation of the importance of the non-interference principle in ASEAN and the members’ steadfast adherence to it.

Moreover, in this paper interference is identified as ASEAN's deliberate attempts to influence the outcome of a conflict in a country without the consent of its government. The paper also stated the cons of this principle by saying that it does not actually impact ASEAN’s decision making about whether to interfere in internal conflicts. However, the principle was retained primarily because it gives the member states confidence in their immunity to external intervention.

2. HISTORICAL DEVELOPMENT OF PRINCIPLES

2.1. Briefly introduction

Association of South-east Asian Nations, also known as ASEAN is an intergovernmental organization,¹ located in the South-east Asian peninsula which is a community promoting economic, intergovernmental and facilitates trading, education, political, security, military, environment, and socio-cultural cooperation. ASEAN under the name of a regional institute of ten members and two observers (Papua New Guinea, East Timor).²

The main principle of ASEAN as embedded in the Treaty of Amity and Cooperation (TAC). The Treaty of Amity and Cooperation (TAC) was created in 1976 to establish a code of conduct to govern inter- State relations in Southeast Asia.³ TAC allows all the parties to the treaties to ratify in order to join codified as following: 1, Mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations; 2, right of every State to lead its national existence free from external interference, subversion or coercion; 3, Non-interference in the internal affairs of one another; 4, Settlement of differences or disputes by peaceful manner; 5, Renunciation of the threat or use of force; and 6, Effective cooperation among themselves.⁴ For fear of encountering the historical pattern of disharmony and Cold War rivalries in Southeast Asian, ASEAN countries could see no way by which they could attain regional stability and socio-economic development if the region remained in political turmoil.⁵

1 ASEAN.org, "About ASEAN: Establishment", for further info, <https://asean.org/asean/about-asean/> (Last visited 27 May 2021)

2 Luke Hunt, "Papua New Guinea, Timor-Leste Prepare for Strategic Elections", published on November 14, 2016, <https://thediplomat.com/2016/11/papua-new-guinea-timor-leste-prepare-for-strategic-elections/>, (last visited 27 May 2021)

3 Daniel Seah, "TAC: The Issue of Non-Intervention and Its Accessions by USA and Australia", December 01, 2021, <https://academic.oup.com/chinesejil/article-abstract/11/4/785/464882?redirectedFrom=PDF> (last visited 27 May 2021)

4 Ayman Falak, "More Countries Join ASEAN's Treaty of Amity and Cooperation", <https://www.aseanbriefing.com/news/more-countries-join-aseans-treaty-of-amity-and-cooperation/> (Last visited 7 June 2021)

5 Lee Jone, "After the Cold-War: Capital, Crisis, Conflict", https://link.springer.com/chapter/10.1057/9780230356276_6 (Last visited 7 June 2021)

ASEAN's principle of **non-interference** is the core principle of conducting the foreign affairs of its diplomacy that all the member states shall abide by. Non-interference principium is a behavioral norm which makes ASEAN unique in conducting regional interaction. In its charter, signed in 2007, non-interference was retained as ASEAN's bedrock principle.⁶

Since Non-Interference is a cardinal principle of ASEAN, this non-intrusive concept was supported by several legal instruments adopted by ASEAN organizations.⁷

2.2. Historical Development of Principle of Non-interference in ASEAN

2.2.1. Definitions

The principle of non-interference had emerged with ASEAN since its establishment because of its essentials. Even though this principle was only adopted under ASEAN organization, its definitions have been defined by a variety of other international organizations and educational sectors.

❖ ASEAN

The definitions of the word “non-interference” had never been defined precisely by ASEAN organization.⁸ As claimed by E-International Relations, which is the world's leading international relations with daily publication and unique content aims at academic study, ASEAN has never provided what it means by “interference”, but according to the regional practice in the mid-1990s, it was defined as a continuum of involvement in the domestic affairs of states which ranged from political commentary to military intervention. Therefore, there was an interpretation of “non-interference” under ASEAN as the prevention of any acts by either

6 Mieke Molthof, “ASEAN and the Principle of Non-Interference”, February 8, 2012, <https://www.e-ir.info/2012/02/08/asean-and-the-principle-of-non-interference/> (Last visited 7 June 2021)

7 Sanae Suzuki, “Why is ASEAN not intrusive? Non-interference meets state strength”, <https://www.tandfonline.com/doi/full/10.1080/24761028.2019.1681652> (Last visited 7 June 2021)

8 Eric Corthay, “The ASEAN Doctrine of Non-Interference in Light of the Fundamental Principle of Non-Intervention”, http://webcache.googleusercontent.com/search?q=cache:IOOeumP8PA4J:blog.hawaii.edu/aplpj/files/2016/09/APLPJ_17.2_Corthay_Final (Last visited 7 June 2021)

ASEAN member states or other countries that shall give many obstacles to the domestic governance in any of the member states (Rubland,2011).⁹ In addition, **Inquiries Journal**, defined “interference” as the attempt to get an interest during the conflict in a country without the approval from the government (Nguyen, 2016).¹⁰

❖ **United Nation (UN)**

Other internal organizations also provide definitions to the principle of non-interference differently. For instance, according to the **United Nations (UN)**, they use different terminology by replacing the word “non-interference” to “non-intervention”. In **article 2.4 of the UN Charter**, the word “non-intervention” means the prohibition of the threat or use of force against the territorial integrity or political independence of any state. Furthermore, the principle of non-intervention in the internal affairs of states also states that a State should not intervene or interfere by using dictatorship in other States.¹¹

The United Nation charter that entered into force on 24 October 1945 also inserted the **non-interference** concept in its document.¹² It was pronounced in article 2 point (4) of the Charter “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations” the objective of this part is for:

(a) the proscribe of the threat or use of force in international relations;

(b) the importance of good-neighborliness and obey the principle non-intrusive into states in the internal affairs of others;

9 Mieke Molthof, *supra* note 6, (Page 2/7), (Last visited 27 May 2021)

10 Tram Anh Nguyen, “Norm or Necessity? The Principle of Non-Interference in ASEAN”, 2016, <https://www.inquiriesjournal.com/articles/1318/norm-or-necessity-the-non-interference-principle-in-asean>, (Last visited 27 May 2021)

11 “Article 2(4) of UN Charter”, page 22, for further information, https://legal.un.org/repertory/art2/english/rep_supp7_vol1_art2_4.pdf (Last visited 7 June 2021)

12 “Everything You always Wanted to Know about UN”, page 8/70 2010, https://www.uni-siegen.de/mun-siegen/siegmun/everything_un.pdf (Last visited 9 June 2021)

(c) Prevent any of support by States to armed groups in order to destabilizing national and regional peace and security; and

(d) Calling on parties to withdraw all military forces from a disputed area or occupied territories.¹³

❖ **Well-Known Dictionaries**

According to a well-known dictionary that has been used by many educators, the **OXFORD** dictionary, “non-interference” is defined as failure or refusal to intervene without invitation or necessity, especially in political matters.¹⁴ For example, the ASEAN traditionally exercises non-interference in the internal political issues of its own members. Besides that, according to the **MERRIAM-WEBSTER** dictionary, “non-interference” means the lack of interference in internal affairs.¹⁵

“Foreign Interference in Democracies” meeting is a meeting that was conducted by the EU in September 2020 in order to adopt policies in response to foreign interference from some democratic states.¹⁶ The word “**interference**” has defined by many states in European Union, and the United States as well. They defined the interference from any countries as hostile actions taken by foreign governments or actors designed to spread discord, manipulate public discourse, discredit the electoral system, bias the development of policy, or disrupt markets for the purpose of undermining the interests of the United States and its allies¹⁷. For Australia's Department of Home AFFAIR (DHA), defined interferences as activities going beyond routine

13 “Part III, Purpose and Principles of the Charter of the UN”, 2019, https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/22nd_supp_part_iii_advance_0.pdf (Last visited 9 June 2021)

14 OXFORD LEXICO, <https://www.lexico.com/en/definition/noninterference> (Last visited 9 June 2021)

15 MERRIAM WEBSTERS, <https://www.merriam-webster.com/dictionary/noninterference> (Last visited 9 June 2021)

16 European Parliament, for further information,

[https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI\(2020\)652082](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2020)652082) (Last visited 9 June 2021)

17 European Parliament, “Foreign Interference in Democracies”, September, 2020,

[https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652082/EPRS_BRI\(2020\)652082_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652082/EPRS_BRI(2020)652082_EN.pdf) (Last visited 9 June 2021)

diplomatic influence practiced by governments, that may take place in isolation or alongside espionage activities, and that are: carried out by, or on behalf of a foreign actor; coercive, corrupting, deceptive and clandestine; and contrary to Australia's sovereignty, values and national interests.¹⁸ The Government of Canada marked interference tactics, as an act of cyber-attacks, information operations, malign financial influence, the subversion of political and social organizations, and strategic economic coercion. The EU parliament also stated that other forms of foreign interference from external forces posed serious risks for European sovereignty and a serious threat to the stability and security.

2.2.2. The development of the principle of Non-interference adopted by ASEAN

In ASEAN, the principle of Non-interference first emerged in the Bangkok declaration (1967).¹⁹ Non-interference has been a core principle in ASEAN since its founding in 1967, and the principle has remained effective in its institutions even after the creation of Treaty of Amity and cooperation, next the 2003 Declaration of ASEAN Concord II and the 2008 ASEAN Charter.²⁰ The protection against external invasion free from engagement from other states in domestic affairs, especially from the neighbors and great power countries, is the intention of this institute to guarantee the independence and sovereignty of the member-states as most countries in the organization experienced colonization.²¹ Founded during the Cold War, ASEAN's primary aim was to prevent the region's involvement in the great power rivalry between Eastern and Western.²² As authors Aggarwal and Chow in 2010, they published the book name *The perils of consensus: How ASEAN's meta-regime undermines economic and*

18 Ibid, Page 3

19 ASEAN.org, "About ASEAN: The founding of ASEAN", <https://asean.org/asean/about-asean/history/> (Last visited 6 June 2021)

20 ASEAN.org, "The ASEAN Charter", <https://asean.org/storage/images/archive/publications/ASEAN-Charter.pdf> (Last visited 6 June 2021)

21 Supra note 6, (Last visited 6 June 2021)

22 Ibid

environmental cooperation which has explained that the sovereignty norm was reinforced by a decision-making approach based on consultation and consensus, and a focus on the peaceful resolution of inter-state disputes. Thus, Southeast Asian regionalism served to prevent foreign interference and enable the member-states to focus primarily on internal affairs. ASEAN was not designed to develop into a supranational institutional body, but rather as a forum for constructive dialogue among its member-states.²³

After the informalities Bang Saen declaration was done, most member states representative have reveal about the Non-interference principal notion that put forward as following:

According to Tun Abdul Razak, the Deputy Prime Minister of Malaysia, he presented in the event of the declaration of Bangkok in 1967 that the countries in Southeast Asian should be willing to take responsibility for whatever happens to them.²⁴ In his speech, he laid out a vision of an ASEAN that would include all the countries of Southeast Asian. He stressed that the countries of the region should recognize that unless they assumed their common responsibility to shape their own destiny and to prevent external intervention and interference, Southeast Asian would remain fraught with danger and tension. And unless they took decisive and collective action to prevent the eruption of intra-regional conflicts, the nations of Southeast Asian would remain susceptible to manipulation, one against another.²⁵

“The goal of ASEAN, then, is to create, not to destroy.”²⁶ This was the speech from Foreign Minister of Thailand, Thanat Khoman, stressed when it was his turn to speak. He

23 Aggarwal and Chow, “The perils of consensus: How ASEAN's meta-regime undermines economic and environmental cooperation”, 8 June 2010, <https://www.tandfonline.com/doi/full/10.1080/09692290903192962?scroll=top&needAccess=true> (Last visited 6 June 2021)

24 Supra note 20

25 Ibid

26 Cambridge core, “Mapping ASEAN Integration “, January 2017, Cambridge University Press, <https://www.cambridge.org/core/books/asean-champions/mapping-asean-integration> (Last visited 6 June 2021)

mentioned during the time when the Vietnam conflict was furious and American forces seemed forever entrenched in Indochina.²⁷ He said “I had foreseen their eventual withdrawal from the area and had accordingly applied to adjust Thailand’s foreign policy to a reality that would only become apparent more than half a decade later”. He continued “I must have had that in mind when, on that occasion, Southeast Asia had no choice but to adjust to the exigencies of the time, to move toward closer cooperation and even integration.”²⁸ Elaborating on ASEAN objectives, the spoke of building a new society that will be responsive to the needs of our time and efficiently equipped to bring about, for the enjoyment and the material as well as spiritual advancement of our peoples, conditions of stability and progress. Particularly what millions of men and women in our part of the world want is to erase the old and obsolete concept of domination and subjection of the past and replace it with the new spirit of give and take, of equality and partnership. More than anything else, they want to be master of their own house and to enjoy the inherent right to decide their own destiny ... He added that was by no means the end to intra-ASEAN disputes, for soon the Philippines and Malaysia would have a falling out on the issue of sovereignty over Sabah. Many disputes between ASEAN countries persist to this day. But all Member Countries are deeply committed to resolving their differences through peaceful means and in the spirit of mutual accommodation. Every dispute would have its proper season but it would not be allowed to get in the way of the task at hand. And at that time, the essential task was to lay the framework of regional dialogue and cooperation.²⁹

In 1997 during ASEAN financial crisis, Singapore's former Foreign Minister, Shunmugam Jayakumar argued to the outside membership countries for criticize the principle of non-interference in ASEAN is not effective that by raising up the principle had been the key

²⁷ Ibid

²⁸ “ASEAN”, 26 February 2014, <http://lovenongbat.blogspot.com/> (Last visited 6 June 2021)

²⁹ Supra note 19

factor to the member countries domestic affairs and it is the reason why there were no military conflict had broken out between any two member states since 1967.³⁰

In Kuala Lumpur declaration on 27 November 1971, the Five Foreign Ministers of the founding countries signed the treaty of Zone of Peace, Freedom and Neutrality (ZOPFAN).³¹ This declaration was a statement of politics intended to be made by building national and regional resilience in ASEAN. The declaration of Zone of Peace, Freedom and Neutrality (ZOPFAN) inspired all members of ASEAN to endeavor to secure the recognition of and respect for Southeast Asia as a Zone of Peace, Freedom and Neutrality, free from any manner of interference by outside Powers.” Furthermore, ZOPFAN called on all countries in Southeast Asia to build concrete efforts together to expand the areas of cooperation which would contribute to their strength, solidarity and closer relationship.³²

2.2.3. The Important of the Principle to ASEAN and Its Members

ASEAN and its members have viewed the principle of non-interference as a “sacrosanct” principle since it was first established.³³ In ASEAN historical events, the practice of non-interference from 1967 to 1997 had never been absolute at that time, in ASEAN region, because they had been maintaining consensus in discussions and decision making.³⁴ It means

30 Tram-Anh Nguyen, “Norm or Necessity? The Non-Interference Principle in ASEAN”, 2016, Vol. 9 No. 1, <https://humanrightsinasean.info/news/norm-or-necessity-the-non-interference-principle-in-asean/> (Last visited 6 June 2021)

31 “SOUTHEAST ASIAN NUCLEAR-WEAPON-FREE-ZONE (SEANWFZ) TREATY (BANGKOK TREATY)”, October 30, 2020, <https://www.nti.org/learn/treaties-and-regimes/southeast-asian-nuclear-weapon-free-zone-seanwfz-treaty-bangkok-treaty/> (Last visited 6 June 2021)

32 “ASEAN Political – Security Community: Joint Press Statement Special ASEAN Foreign Ministers Meeting To Issue The Declaration Of Zone Of Peace, Freedom And Neutrality Kuala Lumpur, 25-26 November 1971”, https://asean.org/?static_post=joint-press-statement-special-asean-foreign-ministers-meeting-to-issue-the-declaration-of-zone-of-peace-freedom-and-neutrality-kuala-lumpur-25-26-november-1971 (Last visited 6 June 2021)

33 Supra note 10

34 Parliament of Australia, “ASEAN s regional cooperation and multilateral relations: recent developments and Australia s interests”, 9 October 2008, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp0809/09rp12 (Last visited 7 June 2021)

that during that time, ASEAN didn't dare to interfere with internal affairs of the member states under any circumstances. In addition, as Tram-Anh Nguyen stated in her article "Norm or Necessity? The Principle of Non-Interference in ASEAN 2016" that regime security is predominant to the organization.³⁵ Therefore, ASEAN countries stick to the non-interference principle because it can protect member states within the regime. Moreover, ASEAN's attachment to this principle is because it's also directly related to the government's concerns about regime security and stability.³⁶

Furthermore, since ASEAN organization consists of a variety of different perspectives from each member state regarding political sectors, the principle of non-interference has given confidence and credibility, especially to each member states to process their internal affairs without any concerns from external intervention. This is also the cause that leads ASEAN to bond with this principle primarily.³⁷

According to Mieke Molthof, an author of E-International Relations, there are two political reasons that make ASEAN attached to this principle. The first factor that benefits from the principle is the ruling state-sovereignty, the Southeast Asian perceive sovereignty as a key element to ensure regional and domestic stability.³⁸ The Southeast Asian states have encountered their historical experience from Colonial dominate, Cold War, proxy war and frequent attempts by People Liberation of China to export communism all reinforced internal conflict and led the Southeast Asian to perceive sovereignty as a key element in ensuring regional as well as domestic stability. The second factor is assigned to preserve the internal

35 Supra note 10

36 Lee Jones, "The Pacific Review, Vol. 23 No. 4 September 2010: 479–502: ASEAN's unchanged melody? The theory and practice of 'non-interference' in Southeast Asia", https://www.researchgate.net/publication/248990162_ASEAN's_unchanged_melody_The_theory_and_practice_of_'non-interference'_in_Southeast_Asia (Last visited 7 June 2021)

37 Leng Thearith, "ASEAN SECURITY AND ITS RELEVENCY", June 2009, PhnomPenh, Cambodia, <https://cicp.org.kh/wp-content/uploads/2021/02/cicp-e-book-no-1.pdf> (Last visited 7 June 2021)

38 Supra note 6, The Significance and Meaning of ASEAN's Principle of Non-interference (Last visited 7 June 2021)

security matters considered to be of fundamental importance. This Non-interference principle has helped to maintain the fragility of member states political and social orders.³⁹

This doctrine served as an instrument to prevent foreign intrusiveness and enabled the member-states to focus primarily only on their internal affairs. when ASEAN conducted the principle of Non-interference, this gave the institute significantly contributed to regional stability.⁴⁰ The ten members have been discouraged from engaging in one another's domestic affairs, or even from supporting political revolts in neighboring states.⁴¹ With this principle, all member states share a belief that each has enough state strength to cope with its domestic affairs on their own, without ASEAN intervention.⁴² This state strength enables member states to use their sovereign right to solve domestic crises without relying on or being compelled.⁴³

This special political style is proudly known as the "ASEAN way." It is characterized by an informal and personal approach that aims at conflict prevention and is often not carried out in public. It is also important not to embarrass members or to drive them into a corner.⁴⁴ This "ASEAN Way" refers to a method or approach to solving issues that respect Southeast Asia's cultural norms. It is used as a working process that seems informal and personal. It is a useful approach to have a quiet diplomacy that allows ASEAN leaders to communicate without bringing the discussions into the public view.⁴⁵

39 Ibid

40 Supra note 8

41 ERIA, "Building ASEAN Community: Political–Security and Socio-cultural Reflections", 2017, https://www.eria.org/ASEAN_at_50_Vol_4_Full_Report.pdf (Last visited 10 June 2021)

42 Ibid

43 Ibid

44 DW Made for Mind, "ASEAN Way: Where is it Leading?", <https://www.dw.com/en/the-asean-way-where-is-it-leading/a-39998187> (Last visited 28 May 2021)

45 Nazir Razak, Chairman, CIMB Group Holdings, "The ASEAN Way: What is it, How must it change for the future?", 10 September, 2018, <https://europeansting.com/2018/09/10/the-asean-way-what-it-is-how-it-must-change-for-the-future/> (Last visited 28 May 2021)

2.3. Legal Instruments

2.3.1. ASEAN CHARTER

ASEAN Charter was adopted at the 13th ASEAN summit in November, 2007 and established 55 articles including, ASEAN's principle and policy.⁴⁶ The charter shall serve as a legal and institutional framework for ASEAN in the years ahead as it was expressed in the Kuala Lumpur Declaration 11th summit on the proposing of Establishment of the ASEAN Charter on 12 December 2005, and the 12th ASEAN Summit held in January 2007, the Cebu Declaration on the Blueprint of the ASEAN Charter in Philippines on 13 January 2007.⁴⁷

Prior to the Bangkok Declaration established by the five founding fathers, they did assert the intention of the Principle of Non-interference since 8 August 1967. In its declaration was wrote as following:

“CONSIDERING that the countries of Southeast Asia share a primary responsibility for strengthening the economic and social stability of the region and ensuring their peaceful and progressive national development, and that they are determined to ensure their stability and security from external interference in any form or manifestation in order to preserve their national identities in accordance with the ideals and aspirations of their peoples;”

“AFFIRMING that all foreign bases are temporary and remain only with the expressed concurrence of the countries concerned and are not intended to be used directly or indirectly subvert the national independence and freedom of States in the area or prejudice the orderly processes of their national development; to subvert the national independence and freedom of States in the area or prejudice the orderly processes of their national development.”⁴⁸

46 “ASEAN Charter”, for further information, <https://maruah.org/asean-charter/> (Last visited 10 June 2021)

47 “ASEAN Charter”, for further information, https://en.wikipedia.org/wiki/ASEAN_Charter (Last visited 10 June 2021)

48 “ASEAN Bangkok Declaration (1976)”, for further information, <https://asean.org/the-asean-declaration-bangkok-declaration-bangkok-8-august-1967/> (Last visited 10 June 2021)

Based on article 2 of ASEAN Charter, that has derived from the Treaty of Amity and Cooperation (TAC) 1976, there are some statements that reinforce the principle of Non-interference: In the pursuit of the purpose of this Charter “ASEAN and its member states shall act in accordance with the following principle: (a) respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN member states”.⁴⁹ This provides that all the member states must value the self-government and sovereignty of the other states. Even though the ASEAN community consists of diversity of culture, territory and social norms, all the members need to understand and respect the identity of other states. “(c), renunciation of aggression and of the threat or use of force or other actions in any manner inconsistent with international law”⁵⁰. This statement states that any other forces from external nations that can be a threat to the internal affairs of other states must be forbidden in this principle. “(e) non-interference in the internal affairs of ASEAN member states”.⁵¹ This provision stated precisely about the non-interference doctrine as the intervention from the other states is prohibited. In addition, another content of article 2 in ASEAN Charter also supplies the assessment of this principle as it mentioned that, “(f) respect for the right of every member state to lead its national existence free from external interference, subversion and coercion”.⁵² Lastly, according to statement (k) in article 2 of ASEAN Charter also mentioned that “abstention from participation in any policy or activity, including the use of its territory, pursued by any ASEAN member states or non-ASEAN State or any non-State actor, which threatens the sovereignty, territorial integrity or political and economic stability of ASEAN member

49 ASEAN.org, “The ASEAN Charter”, for further information,
<https://asean.org/storage/images/archive/publications/ASEAN-Charter.pdf> (Last visited 10 June 2021)

50 Ibid

51 Ibid

52 “Charter of the ASEAN Association of Southeast Asia Nation”, for further information,
[file:///C:/Users/User/Downloads/charter-eng%20\(1\).pdf](file:///C:/Users/User/Downloads/charter-eng%20(1).pdf) (Last visited 10 June 2021)

states.”⁵³ Most articles of ASEAN Charter prove Non-interference Principle is the core fundamental purpose in maintaining cooperation, resilience among member states.

2.3.2. Treaty of Amity and Cooperation (TAC)

As the contents mentioned in article 2 of ASEAN Charter in 2007 have originally derived from the article 2 of Treaty of Amity and Cooperation, which was established in 1976, both articles have exactly the same conviction in accordance with the principle of non-interference. According to the article 2 of TAC, in their relations with one another, the High Contracting Parties shall be guided by the following fundamental principles: (a) mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations; (b) the right of every states to lead its national existence free from external interference, subversion or coercive; (c) non-interference in the international affairs of one another; and (e) renunciation of the threat or uses of forces.⁵⁴

Moreover, article 10 of TAC stated that “Each High Contracting Party shall not in any manner or form participate in any activity which shall constitute a threat to the political and economic stability, sovereignty, or territorial integrity of another High Contracting Party”.⁵⁵ According to this article the Member States are discouraged to interfere with other state parties that may threaten the domestic politics, economy, and their territorial integrity which would undermine the stability in the sovereign states.

In line with article 11 also mentioned that the High Contracting Parties shall endeavor to strengthen their respective national resilience in their political, economic, socio-cultural as well as security fields in conformity with their respective ideals and aspirations, free from external interference as well as internal subversive activities in order to preserve their respective

⁵³ Ibid

⁵⁴ ASEAN.org, “Treaty of Amity and Cooperation in Southeast Asia Indonesia, 24 February 1976”, for further information <https://asean.org/treaty-amity-cooperation-southeast-asia-indonesia-24-february-1976/>

⁵⁵ Ibid

national identities.⁵⁶ It implies that the High Contracting Parties are encouraged to mind their own domestic crises such as security, politic, economic, socio-cultural respectively without engaging in other home affairs and prohibit any activity that would spoil the value of national identities.

2.3.3. Kuala Lumpur Declaration

The Kuala Lumpur Declaration on the Establishment of the ASEAN Charter was approved in December, 2005 at the 11th ASEAN Summit by the head of states and government of the member states.⁵⁷ In the proportion to the Fourth Statement of Kuala Lumpur Declaration, there are some substances that are relevant to the principle of non-interference. It was provided that the ASEAN Charter will reaffirm principles, goals and ideals contained in ASEAN's milestone agreements, in particular the ASEAN Declaration (1967), the Treaty of Amity and Cooperation in Southeast Asia (1976), the Treaty on Southeast Asia Nuclear Weapon Free Zone (1995), the ASEAN Vision 2020 (1997), and the Declaration of ASEAN Concord II (2003) as well as the principles of inter-state relations in accordance with the UN Charter and established international law that promote and protect ASEAN community interests as well as inter-state relations and the national interests of the individual ASEAN Member Countries.⁵⁸ The relevant substances to the principle of non-interference are: decision making on the basis of equality, mutual respect and consensus; mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations; renunciation of the use of force and threat to use of force, non-aggression and exclusive reliance on peaceful means for the settlement of differences or disputes; as well as the right of every state to lead its national existence free from

⁵⁶ Ibid

⁵⁷ "Kuala Lumpur Declaration on the Establishment of the ASEAN Charter", for further information, <https://asean.org/asean/asean-charter/kuala-lumpur-declaration/> (Last visited 10 June 2021)

⁵⁸ "Report of the Eminent Persons Group of ASEAN Charter", December, 2006, <https://www.asean.org/storage/images/archive/19247.pdf> (Last visited 10 June 2021)

external interference, subversion or coercion and non-interference in the internal affairs of one another.⁵⁹

2.3.4. The Declaration of ASEAN Concord

This declaration held at Bali, Indonesia, 24 February 1976: also stated that All Member states shall strenuously develop an awareness of regional identity and exert all efforts to create a strong ASEAN community, respected by all and respecting all nations on the basis of mutually advantageous relationships, and in accordance with the principles of self-determination, sovereign equality and non-interference in the internal affairs of nations.⁶⁰

Consistent with the purpose and principles of ASEAN basic instruments to maintain and enhance peace, security, political stability as well as further strengthening peace-oriented values, ASEAN resolves to respect the principles of the independence, sovereignty, equality, territorial integrity, non-interference, and national identity of all nations at the global level.⁶¹

8. Member states shall vigorously develop an awareness of regional identity and exert all efforts to create a strong ASEAN community, respected by all and respecting all nations on the basis of mutually advantageous relationships, and in accordance with the principles of self-determination, sovereign equality and non-interference in the internal affairs of nations.⁶²

2.3.5. Declaration of ASEAN Concord II (Bali Concord II)

Done on the 7th October 2003 signed by the ten members state for the deepening of regional economic integration and the imminent accession to the Treaty of Amity and Cooperation (TAC) by States Outside Southeast Asia;⁶³

⁵⁹ Ibid

⁶⁰ ASEAN.org “The Declaration of ASEAN Concord, Bali, Indonesia, 24 February 1976”, for further information, https://asean.org/?static_post=declaration-of-asean-concord-indonesia-24-february-1976 (Last visited 10 June 2021)

⁶¹ Supra note 52

⁶² Ibid

⁶³ ASEAN.org, “Declaration of ASEAN Concord II (Bali Concord II)”, for further information, https://asean.org/?static_post=declaration-of-asean-concord-ii-bali-concord-ii (Last visited 10 June 2021)

CONFIRMING further that ASEAN Member Countries share primary responsibility for strengthening the economic and social stability in the region and ensuring their peaceful and progressive national development, and that they are determined to ensure their stability and security from **external interference** in any form or manner in order to preserve their national interest in accordance with the ideals and aspirations of their peoples;⁶⁴

REAFFIRMING the fundamental importance of adhering to the principle of non-interference and consensus in ASEAN cooperation;⁶⁵

2.3.6. Declaration of ASEAN Concord III (ASEAN Community in a global community of Nations)

In this declaration made on 7th November 2011 after the ASEAN Charter entered into force having said that the ASEAN community shall commit to abide by the fundamental principle described in ASEAN Charter and the relevant declaration signed by the high contracting parties. ⁶⁶

Political-Security Cooperation

1. Peace, Security and Stability

“Consistent with the purposes and principles of ASEAN basic instruments to maintain and enhance peace, security and stability, as well as to further strengthen peace-oriented values, ASEAN resolves at the global level to:

A, Respect the principle of the independence, sovereignty, equality, territorial integrity, non-interference, and national identity of all nations. ⁶⁷

⁶⁴ Ibid

⁶⁵ Ibid

⁶⁶ “Declaration of ASEAN Concord III (ASEAN Community in a global community of Nations)”, for further information, <https://www.asean.org/wp-content/uploads/archive/documents/19th%20summit/Bali%20Concord%20III.pdf> (Last visited 10 June 2021)

⁶⁷ Ibid

3. THE STRENGTH OF THE PRINCIPLE OF NON-INTERFERENCE

3.1. ASEAN's Uniqueness

The ASEAN's fundamental principle, Non-interference is interchangeable compared to the principle of non-intervention.⁶⁸ These two alike principles have been adopted by most international organizations throughout the world, especially it also embedded in the UNITED NATIONS Charter. Though, the principle has received both compliment and criticism by some scholars.⁶⁹ There might be multiple things that make ASEAN unique to the international community. The principle of non-interference is also one of the essential factors of ASEAN's uniqueness. First and foremost, if people mention the principle of non-interference, they will definitely talk about ASEAN. Among other organizations that also practice non-intervention policy, only ASEAN strictly obeys this principle even though this principle was founded long ago even before the establishment of ASEAN organization. In addition, the principle of non-interference is a component of ASEAN Way. ASEAN Way has been known as a prominent policy of ASEAN due to its uniqueness. The ASEAN Way, defined as the principles or values governing the interaction of ASEAN Members, highly emphasizes respect of sovereignty,⁷⁰ which is also a policy in the non-interference principle since this principle suggests that all the member states must respect each other's independence and sovereignty. Besides that, the values are upholding the notion of non-interference in internal affairs, consensus-building, informality, and backdoor diplomacy; a non-harsh technique applied in dispute settlement mechanisms,

68 Gisle Kvanvig, "ASEAN, SOVEREIGNTY AND HUMAN RIGHTS", <https://webcache.googleusercontent.com/search?q=cache:PCAWOK5uFWkJ:https://www.jus.uio.no/smr/english/about/programmes/vietnam/docs/asean-sovereignty-and-human-rights---gisle-kvanvig.pdf+&cd=16&hl=en&ct=clnk&gl=kh> (Last visited 26 June 2021)

69 Ibid

70 Dio Herdiawan Tobing, "The Limits and the Possibilities of ASEAN Way: The case of Rohingya as Humanitarian Issues in Southeast Asia", 2016, file:///C:/Users/User/Downloads/2331-Article%20Text-12111-2-10-20180529.pdf (Last visited 11 June 2021)

putting an emphasis in progressive changes, without harassing in public.⁷¹ What makes the principle unique in ASEAN's conduct of regional relations is not its assumption of non-interference as a behavioural norm, but rather its particular understanding and subsequent practices of this norm constantly.⁷² The non-interference norm should therefore not be regarded merely as a prototype, but also as a political tool.⁷³ All these points above can be considered as the reasons that partly play a role in ASEAN's uniqueness is the principle of non-interference.

3.2. ASEAN unity

The Non-interference principle in ASEAN does not mean non-engagement for its member states.⁷⁴ The non-interference principle has allowed the states parties to operate their domestic affairs and internal stability with undisrupted. Therefore, maintaining good cooperation with other states especially among ASEAN countries is a will for the association. The Non-interference principle promotes sharing and understanding that the domestic issues should be dealt with by solitary and try to manage domestically without reaching the spillover effects. Moreover, with this principle of non-interference, ASEAN member states shall not permit themselves to intrude in other states' political affairs or use the domestic crisis of one member to accuse. In addition, with this principle, the ten member states of ASEAN can unify as one community and be protected from external interference or threat. Without caring in the act of interference in other political policies, the ten countries then start to unify as one as it's said in the ASEAN motto, "One Vision, One Identity, One Community"⁷⁵. This principle is a notion of regional unity and cooperation, and it is the core principle to bring ASEAN together

71 Ibid

72 Kerstin Radtke, ASEAN Enlargement and Norm Change-A window of opportunity for Democracy and Human Rights Entrepreneurs? <https://journals.sagepub.com/doi/10.1177/186810341403300304> (Last visited 26 June 2021)

73 Supra note 6

74 Why is ASEAN not intrusive? Non-interference meets state strength, Sanae Suzuki, <https://www.tandfonline.com/doi/full/10.1080/24761028.2019.1681652?scroll=top&needAccess=true> (Last visited 14 June 2021)

75 "About ASEAN: ASEAN Motto", <https://asean.org/asean/about-asean/asean-motto/> (Last visited 14 June 2021)

to achieve the ASEAN integration and to become a real community as European Union (EU). ASEAN as a regional association has different characteristics, principles and mechanisms to deal with the resolution of any dispute. All ASEAN members committed to apply the available regional dispute settlement mechanisms to carry out what is known as the Treaty of Amity and Cooperation (TAC) done in 1976 as a priority without encroachment on other states.⁷⁶

Nonetheless, ASEAN has a lot more to offer to become a comprehensive, yet integrated community to handle inter and intra states conflict in the future, even without disposing of their main principle and value in the implementation.⁷⁷ Into the bargain the unification in the pluralism region is impractical without the non-interference philosophy. On the other hand, the principle has contributed to ASEAN peaceful coexistence to a new form of confrontation between two giant super power countries on the economies and military power, United States and China, in the Global trade war.⁷⁸ The non-interference principle respect mutually of members internal affairs and promotes peace living and closely connection in terms of regional conflict and stability, not only to the ten member states of ASEAN, but also to signatories' parties that acknowledged the treaty⁷⁹.

3.3. Internal Stability in Each Country

In ASEAN, the principle of non-interference is a substance to uphold the value of mutual respect of internal affairs, as well as to promote perpetual peace and everlasting amity among member states in accordance with its charter.⁸⁰ To interfere in one another internally is

76 Muhammad Fuad Othman, and Zaheruddin Othman, "The Principle of Non-Interference in ASEAN: Can Malaysia Spearhead the Eff ort towards a More Interventionist ASEAN", <https://core.ac.uk/download/pdf/12118557.pdf> (Last visited 15 June 2021)

77 Ibid

78 Mochamad Diaz Alichsan," Non-Interference Principle or Doing Nothing? Role of ASEAN in Contemporary Geopolitical Conflicts: The Case of South China Sea Dispute",

https://webcache.googleusercontent.com/searchthesis.eur.nl/pub/51325/Diaz-Mochamad-Diaz-Al-Ichsan_MA_2018_19_SJP.

79 Ibid

80 Supra note 57

not considered to be acceptable in ASEAN community, as ASEAN experienced colonization from history. The ten countries among ten, went through many kinds of war, internal division because of their own problem to be solved, but there was endless engagement from the external states. Internal stability in each country is indispensable for development and for guaranteeing and strengthening peace and social solidity. By adhering to the principle of non-interference, no threat and pressure, countries can stabilize their politics and deal with the domestic crisis slowly but surely and defend independence, sovereignty, and territorial integrity.

Besides not allowing member states to interfere into another's internal state affairs, especially into political-security issues, it has stabilized and secured the environment, civilization in the region which contributed tremendously to the efforts of national building national resilience, economic development and hegemony in the association.⁸¹ ASEAN, the principle of Non-interference served an important role in refraining from criticizing the policy of the government towards their own people, prohibiting any support to the rebel group that was willing to destabilise or overthrow the government of a neighbouring state.⁸² ASEAN sees Non-interference principle as being supportive of the diversity amid the ten member countries. Also, ASEAN member states have enjoyed relative peace and internal stability since the end of the Cold War, and the principle of non-interference is seen as being part of this formula.

Nine November 2019 the repatriation of the CNRP leaders

we have seen the norm of non-interference once again being mentioned in the context of Cambodia's evolving from the opposition party side ,Cambodian Prime Minister Samdach Techo Hun Sen leader of Cambodian People Party (CPP) directly seek for help to all the nations in the Association of Southeast Asian Nations (ASEAN) not to allow Sam Rainsy the leader of

81 Ibid

82 Ibid

former Cambodia Nation Rescue Party (CNRP) and other leader in this parties totally eighteen people to enter their countries to transit to Cambodia as it would constitute an interference in Cambodian internal affairs, and especially it would undermine the fundamental principle of ASEAN, non-interference principle. Maintaining the contention between the related parties in the discussion, preventing any spill-over and escalation of any kinds of conflict, keeping the water float under the bridge and consolidating internally of the region while interdict the common external aggressor are how the non-interference principle works out in internal stability. Cambodian government decision has been respected by the other member countries. At the end, all members in the association respect the notion of the principle, and not to interference in Cambodia's internal affair.

3.4. International Order in ASEAN Region

Not only does the principle of non-interference create internal stability in each member state, but it also generates international order in ASEAN region. According to Lee Jones, a lecturer in the School of Politics and International Relations at Queen Mary, University of London, UK, ASEAN was founded in 1967, in the wake of war between Indonesia and Malaysia, and amidst the wreckage of several failed regional cooperation initiatives. Since then, armed conflict among its member-states has been relatively minimal, leading many observers to identify ASEAN as the developing world's most successful regional organization. Its success is often attributed to the adoption of non-interference as a cardinal principle of regional order, which underpinned a sub-regional reconciliation mechanism, or even the creation of a regional identity.⁸³.

⁸³ Lee Jones, "The Social Foundation of ASEAN and Non-Interference", 2012, https://link.springer.com/chapter/10.1057/9780230356276_3 (Last visited 14 June 2021)

Confrontation between Indonesia vs Malaysia

As it was raised in a historical conflict between Indonesia and Malaysia which had happened before the foundation of ASEAN. There was a conflict between Indonesia and Malaysia due to its territory. Between 1962 and 1966 Indonesia and Malaysia fought a small, undeclared war which came to involve troops from Australia, New Zealand, and Britain. The conflict resulted from Indonesia's President Sukarno's belief that the creation of the Federation of Malaysia, which became official in September 1963, represented a British attempt to maintain colonial rule behind the cloak of independence granted to its former colonial possessions in south-east Asia. The actual war began when Indonesia launched a series of cross-border raids into Malaysian territory in early 1963.⁸⁴ This war had caused a greatest loss to both countries regarding their populations, as well as their infrastructure because of conducting hostilities and welfare. Then both countries signed a peace treaty in Bangkok (1966) in order to end this conflict.⁸⁵ Since then, it has taught all the countries in Southeast Asia to do everything in order to prevent this kind of conflict that could create sufficient disadvantages to the region. The conflict between Indonesia and Malaysia was also a reason that led to the foundation of ASEAN because the founding member states signed the Bangkok Declaration (1967), just a year after this confrontation. This declaration was the birth of ASEAN because its purpose is to promote regional peace and stability in Southeast Asian Nations.⁸⁶

Besides that, because of the adoption of the principle of non-interference in ASEAN, all member states must respect each other's internal affairs, which is also a reason that can strengthen the international order in this region. It was provided that the principle of non-

84 Australian War Memorial, "Indonesian Confrontation, 1963-66", 3 June 2021, <https://www.awm.gov.au/articles/atwar/indonesian-confrontation> (Last visited 14 June 2021)

85 Marsita Omar, "Indonesia and Malaysia Confrontation", 2008, https://eresources.nlb.gov.sg/infopedia/articles/SIP_1072_2010-03-25.html (Last visited 13 June 2021)

86 John Le Fevre, "The Bangkok Declaration and the Birth of ASEAN", 29 August, 2018, https://eresources.nlb.gov.sg/infopedia/articles/SIP_1072_2010-03-25.html (Last visited 13 June 2021)

interference plays an important role in creating regional stability as well as international order since the conflict, especially the armed conflict has been reduced between the member states.

3.5. Consensus

Consensus is the language of the Association Southeast Asian Nation (ASEAN) diplomacy.⁸⁷ Non-Interference principle can or can't be issued according to the consensus. Consensus works in a simple manner: There is none in place if any one out of the 10 ASEAN member states objects to a proposal or idea.⁸⁸ This principle discourages the member states or external nations to intrude in one's another state affair, especially the members in ASEAN have to be in consensus in order to release any resolution for other member states' incidents. This principle includes the peaceful settlement of disputes, the renunciation of the use of force, non-interference, and consensus-based decision-making. In the area of conflict management, ASEAN is known for its tendency to settle any disputes happening in the region through consensus and consultation, avoiding binding dispute settlement mechanisms, or other strong, direct and formal measures. This sociological approach to conflict management reflects the ASEAN Way. which can be defined as a set of procedural norms that guides ASEAN States conduct with each other and with external partners. This *modus operandi* has undoubtedly helped States overcome tensions.⁸⁹ The other sake of the non-interference principle to the consensus was that it has prevented the involvement of any member states in the one's controversy which will make the state's affairs from bad to worse by doing without the consensus from every single subscriber. The ASEAN Way which can be defined as the performance of the principle of non-interference and search for accommodation and consensus

87 Kevin H.R. Villanueva, Rosario G. Manalo "ASEAN Consensus: The Intangible Heritage of Southeast Asian Diplomacy", https://www.eria.org/ASEAN_at_50_4A.6_Villanueva_final.pdf (Last visited 15 June 2021)

88 NIK LUQMAN, "Is ASEAN Consensus A Blessing or Curse – or Both?", <https://www.reportingasean.net/asean-consensus-blessing-curse/>

89 Supra note 8 (Last visited 15 June 2021)

that stipulated in all ASEAN institutions, including ASEAN Intergovernmental Commission on Human Rights (AICHR), and it is used to deal with the diplomatic conflict management among member states.

ASEAN's consensus in the Non-interference concept has been accredited for keeping ASEAN members unable to take a failure measure in the region, in spite of the vast diversity among Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Singapore, Thailand, Philippines and Vietnam.⁹⁰ As nation states that gained independence after freeing themselves from colonialism from the meddling of the super power countries, ASEAN association embraced the non-interference principle to guard against infringements of national sovereignty posture. In this sense, the value that ASEAN sticks to the consensus method has been indispensable to its existence amid its correlation in diversity.⁹¹ ASEAN members attach to consensus because it prevents the tyranny of bigger states from taking place. The process of reaching consensus involves intensive dialogue, reasoning on matters of common interest, and mutual accommodation. Most importantly, the voices of smaller member states carry the same weight as the bigger members among the 10 countries.⁹²

Consensus Regards Flexible Engagement Approach

During the 1998 ministerial meeting in Manila Philippines, the former Thailand minister of ministry of foreign affairs Surin Pitsuwan, suggested an “flexible engagement approach” to all members in the Association. Under the flexible engagement approach, member-states are allowed to open discussion about members-state's domestic affairs with cross-border effects.⁹³ In the pursuance of the non-interference principle, the suggestion for flexible engagement by Thai's foreign minister was turned down due to the fact that the consensus cannot reach, most

90 Supra note 56

91 Ibid

92 Ibid

93 Supra note 6

nations in ASEAN didn't satisfy. This approach was perceived by most of the member-states as an approach that would undermine national sovereignty and would also put regional stability at risk.⁹⁴ Following rejection of the flexible engagement policy, ASEAN had come up with the "enhanced interaction" approach after lengthy discussions.⁹⁵ Under "enhanced interaction", approach member-states are individually allowed to comment on the domestic affairs of neighbouring states when these have regional fallout or created the spill effect, but it reaffirmed the non-interference principle.⁹⁶ Yet, this new policy still constituted a change to the manner in which the non-interference principle originally has been applied.⁹⁷

3.6. Political Strength

With the non-interference principle the member states of the ASEAN were banned from providing any kind of subsidy such as fund, aid, assistance, ... to the revolution of one's another. No other state, principally the countries of Southeast Asia, has the right to interference, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any member state. As well as, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are counted to the violation of its charter and also the international law.⁹⁸ The non-interference has given a broad interpretation and function as an arrangement for the prevention of any acts by ASEAN member-states that would possibly undermine the authority of the governance political elite and upset domestic governance in any of the member-states. Particularly, the principle is important attached to state-sovereignty by the Southeast Asian

94 Ibid

95 Taku Yukawa, "ASEAN Norms—Argument Yielding to Change",

https://www2.jiia.or.jp/en/pdf/digital_library/world/170327_yukawa.pdf (Last visited 24 June 2021)

96 LEE LEVITER, "THE ASEAN CHARTER: ASEAN FAILURE OR MEMBER FAILURE?", <https://nyujilp.org/wp-content/uploads/2013/02/43.1-Leviter.pdf> (Last visited 24 June 2021)

97 Ibid

98 "THE PRINCIPLE OF NON-INTERVENTION IN CONTEMPORARY INTERNATIONAL LAW",

<http://www.aalep.eu/principle-non-intervention-contemporary-international-law>

states like their precedent events, Colonization from the western, Cold War experiences between the United and Soviet Union and frequent attempts by China to export communism to Indochina. After a few past incidents, Southeast Asian began to think of the value of sovereignty as a key element in ensuring regional as well as domestic political stability. The principle has reflected the principle of State sovereignty, which states in the region have the chance to decide their political choice and foreign policy freely.⁹⁹ Without the role of the principle the countries would face the fragility of the social and political order. The non-interference principle has nevertheless had a profound effect on ASEAN's conduct of regional affairs, as state autonomy and internal stability have generally been given priority over effective governance of the Southeast Asian region as a whole.¹⁰⁰ Indeed, throughout the years, ASEAN's political practices have obeyed the principle to suppress the engagement in member-states internal affairs. Its decision-making approach appears to have been greatly influenced by a common concern for preventing outside interference in domestic matters.¹⁰¹ The principle of non-interference is the international code that is also the elemental morals and value to stand firmly protecting and promoting their nations at any costs and under all circumstances. With the Principle of Non-interference in ASEAN Charter, the member can conduct all kinds of political activities freely with no fear of obstruction. "No State can use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from its advantages of any kind."¹⁰² Former ASEAN Secretary-General Rodolfo Severino explained that ASEAN needs the principle of Non-interference due to the complex mixture of races, tribes, religions and

99 Ibid

100 Supra note 6

101 Ibid

102 "Declaration on Principle of International law friendly relation and co-operation among states in accordance with the charter of the United Nations", <https://www.un.org/ruleoflaw/files/3dda1f104.pdf> (Last visited 21 June 2021)

cultures transcending boundaries, and a sensitivity of certain aspects of history.¹⁰³ Otherwise, Southeast Asian countries are very likely to cause incendiary political internal affairs by neighbours or external states. The principle also refrained from criticizing the actions of a member government towards its own people, including violations of human rights, and from making the domestic political systems of States and the political styles of governments.¹⁰⁴

3.7. Economic Strength

As mentioned above, strengthening economic cooperation within all the member states is one of the ASEAN's objectives and goals. There is no doubt that the economic sector has been improved throughout the region since the establishment of ASEAN organization. ASEAN is a region of different markets, varying economic developments, and diverse cultures, making it one of the most competitive regions in the world today. Diversity leads investors to a wide range of opportunities and an expansive list of possibilities.¹⁰⁵ ASEAN has signed many agreements with Asian nations. One of them is ASEAN Free Trade Area (AFTA). AFTA was signed on 28 January 1992 in Singapore.¹⁰⁶ The purpose of AFTA agreements is to create a single market and international production base, attract foreign direct investment (FDI), and expand intra-ASEAN trade investment. Its objective is to strengthen and deepen economic integration in ASEAN region. Because of this agreement, ASEAN has leveled up its economy into an exclusive international market and trade. For example, ASEAN also has free-trade agreements with non-ASEAN member states such China, Australia, India, Japan, Korea and

103 Supra note 8

104 Ibid

105 Invest in ASEAN, "Diverse ASEAN", <http://investasean.asean.org/index.php/page/view/about-the-asean-region> (Last visited 18 June 2021)

106 United Nation, "Associations of Southeast Asian Nation Free Trade Area", <https://www.unescwa.org/association-southeast-asian-nations-free-trade-area> (Last visited 23 June 2021)

New Zealand.¹⁰⁷ One of the exclusive economic partnerships of ASEAN's agreement is ASEAN-China Free Trade Agreement which partly plays a major role in economic integration and development of ASEAN.

However, without the principle of non-interference, AFTA wouldn't have become where it was as nowadays. As it was stated in the non-interference policy, no State or group of States has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law. Therefore, the principle of non-interference has created a balance of each member state to participate in regional market and trade equally without any bias whether the member states are rich or poor countries. The principle of non-interference can bring out an equality for all the member states in trade and cooperation in the economic sector with one another. Even though there are two member states who are alliances, one of them doesn't have the right to interfere in the other state's internal affairs, for example, in the economic sector, State A doesn't have the right to pressure State B to do trade with State A only. State B has the right to do trade with any member states as they want based on national interests. Therefore, with the principle of non-interference, ASEAN member states have the right to cooperate and collaborate in regional economic integration equally and exclusively, especially in ASEAN Free-Trade Area.

3.8. Diplomatic Strength

ASEAN with the core principle of non-interference serves as a diplomatic channel for every member. Being the ASEAN members, they have their external relations open far and

107 Sharad Raghavan, "ASEAN Members Countries for RCEP India Offer Concession", 07 Nov, 2018, <https://www.thehindu.com/business/Economy/asean-member-countries-of-rcep-offer-india-concession/article25439321.ece> (Last visited 23 June 2021)

wide because ASEAN itself has got so many countries like European Unions, United States, People Republic of China, Japan, Republic of Korea, India, Africa, South America, and Canada too. ASEAN is a big diplomatic outreach to partners, ASEAN plus one, ASEAN plus three, ASEAN and Eurasia, ASEAN and UN. With this benefit, Countries in the Southeast Asian performed well in its coordinating role for ASEAN. ASEAN's continued adherence to non-interference norms, or also perceived as the quiet diplomacy,¹⁰⁸ in order to maintain their diplomatic strength. Quiet diplomacy means that the governments of each member state or the policymaker are able to consult each other respectfully, make compromises, and reach consensus on a regular basis, without involvement from the irrelevant parties, it can be bilateral or multilateral. The benefits of diplomacy in the implementation of the non-interference norm are to allow leaders to discuss and negotiate sensitive matters away from the media spotlight.¹⁰⁹ Non-interference derived from the concept of sovereignty, through non-interference in the internal affairs of other member states, the countries can avoid further aggravating internal tensions to prevent disputes from escalating into wider inter-state conflicts. This is logical, particularly in the Southeast Asian region, because of the multitude of volatile and explosive ethnic, racial, and religious differences.¹¹⁰ The non-interference principle is requisite for diplomatic needs in resolving all disputes between members peacefully, preventing such disputes from escalating into armed confrontation, or to minimize the impact of such conflicts on the region, providing support for external security, and providing support for members to become effective peacebuilders in the world. The principle of non-interference with diplomacy

108 Logan Masilamani and Jimmy Peterson, "The ASEAN Way: The Structural Underpinnings of Constructive Engagement", October 15, 2014, <https://www.foreignpolicyjournal.com/2014/10/15/the-asean-way-the-structural-underpinnings-of-constructive-engagement/> (Last visited 22 June 2021)

109 Dylan M. H. Loh, "The Disturbance and Endurance of Norms in ASEAN", <https://www.internationalaffairs.org.au/australianoutlook/the-disturbance-and-endurance-of-norms-in-asean/> (Last visited 22 June 2021)

110 Supra note 38

allows ASEAN leaders to communicate without bringing the discussions into the public view¹¹¹, and members avoid embarrassment that may lead to further conflict. it above all prioritizes a consensus-based, non-conflictual way of addressing problems.¹¹² ASEAN proved its relevance in resolving these security issues of the members. Pertaining to the territorial dispute between the Philippines and Malaysia, ASEAN successfully prevented the dispute from escalating into an armed confrontation between the two members in a peaceful settlement of international territorial and maritime disputes between states, parties involved have a lot of options including negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means depending on the dispute using its engagement diplomacy. Even, ASEAN has many engagements in ASEAN plus events with states, such as Japan, Korea, China, America, ... all the same, they cannot persuade ASEAN as a whole with their influences. Each country in ASEAN plus can only motivate individual countries in ASEAN. To recap, ASEAN remains strong to uphold the non-interference in diplomatic relations.

3.9. Security Strength

Perceived as the Southeast Asian states are diverse with regard to size, economic development, ethnicity, socio-cultural heritage and history.¹¹³ The five founding fathers of the association enshrined the Non-interference principle encouraging members in ASEAN to maintain the norm via shared understanding that domestic crises should be solved domestically. They acknowledge this decision on the principle was also mostly due to their concerns about regime security and internal stability under threat of communist and superpower states subversion. After the Cold War ended, ASEAN significantly became the founding blocs for countries for their much-needed security in the Asia-Pacific region. ASEAN has created the

111 Ibid

112 Ibid

113 Supra note 10

ASEAN Regional Forum (ARF) ¹¹⁴In 1994, it was an important platform for security dialogue in the Indo-Pacific. The **ASEAN Regional Forum (ARF)** provides a channel for member state's foreign ministers, including from some of the world's biggest rivals such as India and Pakistan, Japan and China, and the US and China, to be able to discuss regional security challenges. ASEAN has reduced security competition among its members and contributed to a more stable order in Southeast Asia.

The principle of non-interference is like a binding norm or mechanism on the states member and likely to perform in the security field in order to make the security stable in every regime of the states. Security strength is the core power to build state strength, that's why ASEAN upholds the principle of Non-interference as fundamentally. This doctrine allows the government to have less concern about the state autonomy over the intrusion from any other states, mainly neighboring states to their security affairs. All ten crews in the Association of Southeast Asian Nations care more about the interference from external to their security in the regime. They want to promote the security, prosperity and values of their constituents by advocating to all members to obey the principle of Non-interference. The ASEAN Leaders have also agreed to establish the ASEAN Political-Security Community (APSC). The ASEAN Political-Security (APSC) shall aim to ensure that countries in the region live at peace with one another and with the world in a just, democratic and harmonious environment. In this regard, all members and partners in ASEAN are deeply concerned about global peace, stability and security towards the evolution of multipolar world arising from competition for interest and the adjustment of balancing global power as well as other hostilities that are causing uncertainty and numbers of possible chaos to the normalization of social-security in region. ASEAN as a

114 ASEAN.org, "ASEAN Political- Security Community", <https://asean.org/asean-political-security-community/> , (Last Visited 28 June 2021)

regional organization codified the Non-interference principle for building and keeping peace for security, because peace and security in a country and region are the essential foundation of development. Hence, it is the highest priority of every nation to build and keep peace and security. Peace cannot be achieved on its own. We all have heard or known about most states in ASEAN have been through limitless suffering as a result of armed conflicts and untraditional threats such as terrorism. As the principle of non-interference, member can deal with the domestic anti-government movement without engagement from other states, because the revolution in one's regime is much more defenseless than the military confrontation¹¹⁵ that would pose a threat to national security. When there was interference from foreign country, the matter would accelerate and depreciate hard to put in order, then it would emerge as a new era of cold war.

In particular, the principle of non-interference played a crucial role in shaping the interaction and compromising among ASEAN member countries. As non-interference has become part of the ASEAN identity, ASEAN has adhered to it fairly consistently, even though it inhibited the organization from reacting effectively to regional security dilemmas. So, with the principle of non-interference, states cooperate more on economic sectors over anything else in the region. As ASEAN reiterated that every state, regardless of its size, has the right “to lead its national existence free from outside interference in its internal affairs”.¹¹⁶ Over the last two decades, ASEAN reached to the good security region with the respecting of non-interference principle, they almost never lead to the last long severe armed conflict. They instead seek for the negotiation, consultation, good office, ... with each other.

115 Taku Yukawa, “Analyzing the institution and normative architecture of ASEAN: Reconsidering the concept of the ASEAN WAY”, file:///C:/Users/user/Downloads/ioc162007%20(2).pdf (Last visited 29 June 2021)

116 Nguyen Duc Tuyen, “THE FUTURE EVOLVEMENT OF THE Principle of Non-interference?”, <http://webcache.googleusercontent.com/search?q=cache:8h-S6T9vPj4J:aef.org.kh/th8aef/speakers/S4-Nguyen%2520Duc%2520Tuyen.doc+&cd=2&hl=en&ct=clnk&gl=kh> ,

4. THE WEAKNESS OF THE PRINCIPLE OF NON-INTERFERENCE

4.1. Political Challenges

The Principle of Non-interference performed poorly in the related to the political area. Yet, the principle causes states to mind their sovereignty, and their differentiation of political policy first. The non-interference doctrine leads to the political disparities between its ten countries through addressing their government interests as priority. The implementation of the Non-interference principle provokes a lack of homogeneity between member states' political configurations.¹¹⁷ The norm does not light a fire under the political discussions, which make little progress, and any progress that has been made has been done solely in democratic member states in the absence of ASEAN driven initiatives and instead through internal political developments.¹¹⁸ The doctrine of non-interference in internal affairs has not been clear in a profound political rupture that had been created. If any member state objects or didn't satisfy, a proposal cannot move forward. This structure has proved to be a hindrance to action on important regional priorities in the past, present, and even in the further future, if the association is unwilling to redefine the principle of non-interference clearly. We can see ASEAN's political practices have shown a rigid reluctance to interfere in member-states internal affairs. Its decision-making approach appears to have been greatly influenced by a common concern for preventing outside interference in domestic matters. This restraint on ASEAN's conduct is reflected in its practices with regard to the repressive situation in Myanmar. Although ASEAN has exerted criticism, not only individually but also collectively, still a lack of political will and capacity to enforce have frequently hampered a successful response by the ASEAN member-states to the case in Myanmar, so that the association failed to deal with the situation.

117 Byron Nagy, "Human Rights and the 'ASEAN Way': Political Barriers to Progress", Nov 16 2016 <https://www.e-ir.info/2016/11/16/human-rights-and-the-asean-way-political-barriers-to-progress/> (Last visited 10 July 2021)

118 Ibid

Ultimately, the noninterference principle poses the greatest barrier to actions, because its organs have been followed strictly.

Myanmar Political crisis

As a practice, ASEAN's official agenda has included domestic issues, starting with the Myanmar democratization issue in 2003. Since that year, at least 70 people associated with Myanmar's National League for Democracy have been killed in Depayin township.¹¹⁹ The official statement from the ASEAN foreign ministers meeting (AMM) has expressed its concern about the slow pace of democratization in Myanmar and requested national reconciliation in political issues. In 2005, in response to criticism from outside countries, ASEAN member states asked Myanmar not to chair the 2006 AMM and other ASEAN meetings. ASEAN has interference in Myanmar internal affairs, but did not rise to the level of imposing any sanction, criticizing openly or suspending membership; it was limited to encouraging Myanmar to resign its chair. In 2007, ASEAN ministers made an unusual statement expressing to Myanmar Foreign Minister Nyan Win over reports that demonstrations by Buddhist monks in Myanmar were being suppressed by violent force, and urged Myanmar to exercise utmost settlement and seek a political solution. As described later, ASEAN statements on domestic issues have since been released not only toward Myanmar but also toward Thailand.

Once known as Burma during colonial times¹²⁰ is perhaps the most controversial member state in ASEAN today.¹²¹

Recently on the first February, 2021 in Myanmar, where the Myanmar's military known as Tatmadaw seized power in a coup against the elected government of Nobel laureate Aung San Suu Kyi, and was detained alongside some senior leaders of her National League for

¹¹⁹ Supra note 7

¹²⁰ Andrew Selth, and Adam Gallagher, "What's in a Name: Burma or Myanmar?", Thursday, June 21, 2018, <https://www.usip.org/blog/2018/06/whats-name-burma-or-myanmar> (Last visited 14 July, 2021)

¹²¹ Ibid

Democracy (NLD) party, is without a doubt a backlash and a major setback of the budding and nascent democratization process taking place in the country.¹²² This political crisis has received much condemnation internationally such from the West, as well as from some Asian countries and the United Nations (UN). The European Union (EU) has warned Myanmar's generals of possible economic ban and other forms of sanctions.¹²³

The Association of Southeast Asian Nations (ASEAN), which has Myanmar as a membership state, called for “dialogue, reconciliation and the return to normalcy” from Brunei as a chair.¹²⁴ However, some ASEAN member states like Thailand, Malaysia, and the Philippines or even Cambodia, have treated the on-going civil unrest in Myanmar as an “internal affair” and thereby regard a “hands-off policy” towards the political turmoil in the country. The “hands-off policy” or so-called “wait and see” approach, is a product and a consequence of ASEAN's principle of non-interference, – a normative framework meant to restrain, restrict and discourage ASEAN member states from meddling in each other's domestic affairs.¹²⁵ Thus far, ASEAN has historically embraced a policy of non-interference in the internal affairs of its member states.

4.2. Environmental Degradation

Even though the principle of non-interference of ASEAN is more likely to focus on economic, political, sovereignty and social sectors, it also plays some parts in environmental cooperation through the region. As well as other sectors, in environment integration, all the

122 Anna Malindog-Uy, “Myanmar Crisis: What Is ASEAN Doing?”, 10 February 2021, <https://theaseanpost.com/article/myanmar-crisis-what-asean-doing> (Last visited 14 July, 2021)

123 European Council, “Myanmar/Burma: EU imposes sanctions on 10 individuals and two military-controlled companies over the February military coup and subsequent repression”, 19 April 2021, <https://www.consilium.europa.eu/en/press/press-releases/2021/04/19/myanmar-burma-eu-imposes-sanctions-on-10-individuals-and-two-military-controlled-companies-over-the-february-military-coup-and-subsequent-repression/> (Last visited 14 July, 2021)

124 CNA, “ASEAN chair Brunei calls for 'dialogue, reconciliation and return to normalcy' in Myanmar”, 01 Feb 2021, <https://www.channelnewsasia.com/news/asia/myanmar-asean-aung-san-su-kyi-military-coup-14087150> (Last visited 14 July, 2021)

125 Supra note 136

state members do not have any right to interfere with environmental challenges of other states unless there is a whole decision, or so-called “consensus” to deal with that environmental issue. So far, ASEAN has adopted a lot of agendas over sustainable development of the environment. For example, ASEAN aims to work towards achieving sustainable development as well as promoting a clean and green environment by protecting the natural resource base for economic and social development including the sustainable management and conservation of soil, water, mineral, energy, biodiversity, forest, coastal and marine resources as well as the improvement in water and air quality.¹²⁶

However, because of the principle of non-interference, it has distracted all the member states from getting involved with other internal affairs, even in environmental governance, especially when the member states have faced natural issues. According to Biran Dorman and Tyler James Oslen, who is senior research association and PHD students of Political Science, mentioned that even when states give their best effort to abide by the principle of non-interference and thus avoid meddling in the affairs of other states while simultaneously asserting their absolute sovereignty within the bounds of their territory, this principle can never be fully realized for giving the ecological interrelations between the sovereign territories of states, actions performed on the territory of one state often have ecological consequences beyond that state’s borders.¹²⁷ This provided that regarding the policy of the non-interference principle, all the member states are aware of the domestic affairs of the other states. Therefore, there will be no exception, even in the environmental interrelations between states. As this kind

126 Simon S.C. Tay, Chen Chen Lee, and Lau Xin Yi, “ASEAN Approaches to Environmental Protection and Sustainable Development: Cooperating across Borders, Sectors, and Pillars of Regional Community”, https://asean.org/storage/j2017/09/Ch.4_ASEAN-Approaches-to-Environmental-Protection-and-Sustainable-Dev.pdf (Last visited 05 July, 2021)

127 Biran Dorman and Tyler James Oslen, “The ASEAN Way Out? Toward Cooperative Environmental Governance in Southeast Asia”, 10 August, 2019, <https://www.e-ir.info/2019/08/10/the-asean-way-out-toward-cooperative-environmental-governance-in-southeast-asia/> (Last visited 05 July 2021)

of case already happened in the past, it was doubted that the principle of non-interference is the distraction of environmental integration and cooperation in ASEAN region.

The Case of Haze Pollution in Southeast Asia (1997)

In the second half of 1997, in Southeast Asia, many areas were severely affected by a smoke-haze pollution episode caused by the emissions of an estimated 45,600 km² of vegetation that burnt on the Indonesian islands Kalimantan and Sumatra.¹²⁸ The cause of haze pollution was because of slash and burn techniques used by farmers in Indonesia. Slash and burn agriculture are the cultivation in which forests are burned and clear for planting. It is often used by tropical-forest root-crop farmers in various parts of the world and by dry-rice cultivators of the forested hill country of Southeast Asia. The ash provides some fertilization, and the plot is relatively free of weeds. After several years of cultivation, fertility declines and weeds increase.¹²⁹ Moreover, Burned land can be sold at a higher price illegally, and eventually used for activities including oil palm and pulpwood production. Burning is also cheaper and faster compared to cutting and clearing using excavators or other machines. Because of this cultivation by those farmers in Indonesia, it leads to the cause of haze pollution which is also diverse to the neighboring countries such as, Malaysia, Singapore, Philippine and Thailand.¹³⁰ The haze pollution also created severe impacts on those countries. First of all, it affects human's health outcomes associated with respiratory symptoms such as asthma, upper respiratory infection, decreased lung function and eyes and skin irritations. Besides health impacts, the economy of Indonesia, Malaysia and Singapore is also affected by the haze issue, mostly on

128 A.Heil & J. Goldammer, "Smoke-Haze Pollution: a review of the 1997 episode in Southeast Asia", August, 2001, <https://link.springer.com/article/10.1007/s101130100021> (Last visited 07 July 2021)

129 Britannica, "Slash and Burn Agriculture, <https://www.britannica.com/topic/slash-and-burn-agriculture> (Last visited 07 July 2021)

130 "Southeast Asian Haze", https://en.wikipedia.org/wiki/Southeast_Asian_haze (Last visited 07 July 2021)

transportation, tourism, constructions, and industry.¹³¹ The problem is that when the haze started to happen in Indonesia, ASEAN didn't find any solutions to deal with this issue, but once it started to spread to the neighboring countries, ASEAN finally took action on this problem through ASEAN Agreement on Transboundary Haze Pollution, Singapore's Transboundary Haze Pollution Act, and Indonesia's own law (Act no 41 of 1999 on Bans for Corporations from Using Fire to Clear Land for Palm Oil Plantations).¹³² This was also because of the policy of consensus which means that unless it doesn't affect the whole region, there will not be any decision to solve that particular issue. It was shown that haze pollution already affected many people's health, the countries' economies, as well as their natural resources. ASEAN should have taken actions on this issue before it caused severe impacts on earth. Nevertheless, the principle of non-interference also plays a part in distracting regional environmental cooperation. Moreover, in this environment of regional and national change, there were also significant debates about the ASEAN Way and whether some norms particularly in relation to the non-interference in internal affairs principle might need to be revised when internal developments in one state (such as political disorder or burning of forest areas) could clearly affect the interests of neighbors.¹³³

4.3. Economic Weakness

With the principle of non-interference, Members of the association were concerned over their domestic economic survival, and they called for ASEAN to be more engaged in the economy in order to build their respective countries for the organization's economic growth.

131 UNDRR, "Indonesia: 1997-98 Air Pollution Episode in Southeast Asia from Vegetation Fire, December 2000, https://gfmcoffn.org/country/id/id_32.html (Last visited 07 July 2021)

132 Yanuar Sumarlan, "ASEAN Smoke Haze and Hidden Solution", 29 Oct, 2018, <https://th.boell.org/en/2018/10/29/asean-smoke-haze-and-hidden-solutions> (Last visited 08 July 2021)

133 Dr Frank Frost, "ASEAN's regional cooperation and multilateral relations: recent development and Australia's interest", 9 Oct, 2008, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp0809/09rp12 (Last visited 08 July 2021)

By then the Association of Southeast Nations had created the ASEAN Free Trade Area (AFTA), this institution worked in economic cooperation. This ASEAN Free Trade Area has brought ASEAN to be more intrusive in the economic purpose. It was a bit clear that the resilience of the noninterference principle varies by cooperation area.¹³⁴ ASEAN planned to knock together economic integration, which has been deepened to include not only mutual reductions of tariffs but also liberalization in investment and services.¹³⁵ Decisions to move toward deeper integration reflect the expectation of member state governments that economic integration will bring more economic prosperity.¹³⁶ Shared economic rationality enables them to agree to narrow the scope of economic sovereignty, despite this depart from the noninterference principle.¹³⁷ Following the ASEAN Economic Community (AEC), Itself has an ambitious project to create a regional single market, and production base, competitive economic region, equitable economic development, and integration into the global economy, so far at least has few of the formal structures and mechanisms, rooted in a commitment to shared sovereignty, that have allowed the European Union to develop, but throughout the adopting the six fundamental principles, member states need to have respected mutually the sovereignty, and also the non-interference in one's internal affair that make limitation to achieve or inflexible to integrate. Due to strictly obeying the principle of non-interference, ASEAN as a regional organization promoting an economy, cannot achieve the ASEAN Economic Integration.¹³⁸ Moreover, ASEAN countries tend to have divergent interests and priorities. Each member has their own unique social, economic challenges, As a result, each seems to have no choice but focus on addressing their own domestic interest first rather than regional interests. This

¹³⁴ Supra note 7

¹³⁵ Ibid

¹³⁶ Ibid

¹³⁷ Ibid

¹³⁸ Heng kimkong, "ASEAN's Challenges and the Way Forward", <https://thediplomat.com/2020/08/aseans-challenges-and-the-way-forward/>

emphasis on domestic affairs will definitely affect the wellbeing of ASEAN as a whole. Making economic integration would lead the organization to be a supra-national and the subsequent loss of power in directing their respective national economies policy. Thus, ASEAN norms (sovereignty, non-interference and consensual decision-making process) raise authoritarianism and preserve the divisions of nation-state identities. Those norms of non-interference also provide an escape route if member states fail to agree on a common policy. As countries pursue their own economic agendas, they face difficulties in collective coordination of their economies, eventually leading to competition rather than complementarity.¹³⁹

However, ASEAN has not yet achieved its major goal of economic integration.¹⁴⁰ The establishment of the ASEAN Economic Community (AEC) in 2015 was viewed as the first step in addressing the obstacles, but it still lacks a common regulatory framework, ultimately preventing ASEAN from becoming a major economic player.¹⁴¹

Financial crisis in 1997 to 1998

ASEAN's prestige was bargained by the adverse regional impact of the Asian financial crisis from July 1997, which reduced growth rates in many members. The financial crisis that Asia experienced in 1997 and 1998 posed a more significant challenge to the normative underpinnings of the ASEAN way. The crisis handed out a serious situation ASEAN's position as the situation seemed to show that the ASEAN way was inadequate to organize a successful response. Pressures for adopting a different set of ideational principles increased. The consequences of the financial crisis drew attention to the unavoidable settings of a globalized economy and seemed to demonstrate that the cooperation model structured around a

139 BENNY TEH CHENG GUAN, "ASEAN's Regional Integration Challenge: The ASEAN Process" file:///C:/Users/user/Downloads/34-Article%20Text-71-1-10-20050830.pdf (Last visited 05 July, 2021)

140 "ASEAN 50 years on: Success or failure?", <https://www.dw.com/en/asean-50-years-on-success-or-failure/a-38043777> (last visited 5 July 2021)

141 Ibid

prioritization of national sovereignty was ineffective in coping with this interdependency.¹⁴² The 1997 Asian financial crisis plunged Southeast Asia into economic chaos, with currencies collapsing and national economies sharply contracting. Due to the financial instability, the IMF was requested to intervene.¹⁴³ The International Monetary Fund's (IMF) bailout conditions exacerbated the crisis and attacked the region's cronyism-business relations; violent social unrest erupted across the region.¹⁴⁴ The IMF implemented \$40 billion of financial bailouts and also instigated economic reforms to tackle the economic imbalances.¹⁴⁵ The 1997–1998 Asian financial crisis began in Thailand and then quickly spread to neighboring economies. It began as a currency crisis when Bangkok devalued the Thai baht from the U.S. dollar.¹⁴⁶ In the first six months, the Thai baht fell by more than 50 percent, the value of the Indonesian rupiah was down by 80 percent¹⁴⁷, the South Korean won by nearly 50 percent, and the Malaysian ringgit by 45 percent. Indonesia especially saw generations of development undone, with five million jobs lost and absolute poverty soaring to 70 percent. Collectively, the economies most affected

142 Supra note 6

143 Economicshelp.org, "Asian financial crisis 1997", <https://www.economicshelp.org/blog/glossary/financial-crisis-asia-1997/> (last visited 9 July 2021)

144 Ibid

145 Ibid

146 The Asian crisis first emerged in Thailand in 1997 as the baht came under a series of increasingly serious speculative attacks and markets lost confidence in the economy. On August 20, 1997, the IMF's Executive Board approved financial support for Thailand of up to SDR 2.9 billion, or about US\$4 billion, over a 34-month period. The total package of bilateral and multilateral assistance to Thailand came to US\$17.2 billion. Thailand drew US\$14.1 billion of that amount before announcing in September 1999 that it did not plan to draw on the remaining balances, in light of the improved economic situation. file:///C:/Users/user/Downloads/ASEANsUnchangedMelody%20(1).PDF (last visited 9 July 2021)

147 The floating of the Thai baht in July 1997 soon intensified pressures on the Indonesian rupiah. Structural weaknesses in Indonesia's financial sector and the large stock of short-term private sector external debt contributed to doubts about the government's ability to defend the currency peg. Indonesia especially saw generations of development undone, with five million jobs disappearing and absolute poverty soaring to 70 percent. On November 5, 1997, the authorities entered into a three-year stand-by arrangement with the IMF for US\$ 10 billion, which was augmented by about US\$1.4 billion in July 1998. Large amounts were also pledged by other multilateral institutions (\$8 billion) and by bilateral donors (\$18 billion--the so-called "second line of defense"). Against this background of fragile and incomplete accomplishments, the newly elected government negotiated a new three-year extended arrangement for about US\$ 5 billion with the IMF, which was approved by the Fund's Executive Board in February 2000. The IMF arrived in Indonesia with a bailout package totaling USD \$43 billion to restore market confidence in the Indonesian rupiah., file:///C:/Users/user/Downloads/ASEANsUnchangedMelody%20(1).PDF (Last visited 9 July 2021)

saw a drop in capital inflows of more than \$100 billion in the first year of the crisis.¹⁴⁸ ASEAN had drawn up elaborate schemes for cooperation in these areas, including trade, communications, education, the environment, and countering narcotics trafficking and other crimes, but concerns about preserving the non-interference principle, prevented very much headway.¹⁴⁹ The ASEAN Economic Community (AEC) — with its mandate to create a single market by breaking down the barriers to the free movement of goods, services, capital and people — is composed to further foster international business growth, both within the region and the rest of the world.¹⁵⁰

At the beginning of the crisis in 1997, there are various efforts were made to restore the economy. The ASEAN Finance Minister Meeting (AFMM) in March 1997 was first held, which agreed on the greater exchanges of macroeconomic policies. This Meeting was underwritten by the ASEAN Finance Minister, the Peer surveillance scheme, the ASEAN Surveillance Process (ASP).¹⁵¹ The ASEAN Surveillance Process (ASP) objectives included: (a) assist accordingly; (b) assess the vulnerability of ASEAN members to finance disruption and crises; (c) improve the coordination of ASEAN member's economic policies through the dissemination of sound practices that meet the international standards; and (d) promote a “peer monitoring” environment among ASEAN Member states through a review of potentially vulnerable sector.¹⁵² Conceptually, The ASEAN Surveillance Process (ASP) was composed to

148 Alice D. Ba, “Asian financial crisis: Asian history [1997–1998]”, <https://www.britannica.com/event/Asian-financial-crisis> (last visited 9 July 2021)

149 Nguyen Duc Tuyen, “THE FUTURE EVOLVEMENT OF THE Principle of Non-interference”, <http://webcache.googleusercontent.com/search?q=cache:8h-S6T9vPj4J:aef.org.kh/th8aef/speakers/S4-Nguyen%2520Duc%2520Tuyen.doc+&cd=3&hl=en&ct=clnk&gl=kh> (last visited 9 July 2021)

150 Sandra Seno-Alday, “What ASEAN Can Teach the World About Surviving a Financial Crisis” , September 28, 2015,

<https://thediplomat.com/2015/09/what-asean-can-teach-the-world-about-surviving-a-financial-crisis/> (last visited 9 July 2021)

151 Linjun WU, “East Asia and the principle of non-intervention: policies and practice”, (last visited 9 July 2021)

152 ASIA REGIONAL INTEGRATION CENTER, “ASEAN Surveillance Process (ASP)”, <https://aric.adb.org/initiative/asean-surveillance-process> (last visited 9 July 2021)

deal with conventional macroeconomics policies indicators, and also to examine the regulatory and supervisory function in the financial sectors, corporate governance issues, and various measures of external indebtedness.¹⁵³ On the fifth Asia Pacific Economic Cooperation (APEC) summit in Vancouver, Canada in November 1997. The (APEC) framework includes the following initiative: (a) a cooperative financing arrangement that would supplement IMF resources; (b) enhanced economic and technical co-operation, particularly in strengthening domestic financial systems and regulatory capacities; and, (c) a mechanism for regional surveillance to complement the IMF's global surveillance.¹⁵⁴ However, cooperative arrangements have met some resistance. There was an agreement that data only be submitted on a voluntary basis. The terms "peer review" and "peer monitoring" have been unclear. Some states fear that they might be required to reveal national secrets.¹⁵⁵ As a result, the push towards maximum transparency by the ASEAN and APEC have not reached, and economic monitoring mechanism that still lacks total transparency.¹⁵⁶ The regional surveillance mechanism is difficult to apply when state parties still act on the Principle of Non-interference in one another's affairs and the criticism of other countries economic policy is still unconventional.¹⁵⁷ The Principle of Non-interference shall push for modification in this crisis.¹⁵⁸

4.4. Human Right Violation

The formation of ASEAN was witnessed by five founding members (Thailand, Indonesia, Malaysia, Singapore and Philippines) on security cooperation, economic integration, political dimension, social and culture sectors. ASEAN has adopted many programs, protocols,

¹⁵³ Ibid

¹⁵⁴ Dick K. Nanto, "APEC and the 1997 Summit in Vancouver", December 8, 1997, <https://www.everycrsreport.com/reports/97-969.html> (last visited 9 July 2021)

¹⁵⁵ Supra note 144

¹⁵⁶ Ibid

¹⁵⁷ Ibid

¹⁵⁸ Ibid

conventions, treaties and agreements to facilitate those objectives among the member states. As well as the other sectors, Human Right regulations and activities also have been practiced by ASEAN. For instance, ASEAN established ASEAN Charter, which included the formation of the ASEAN Intergovernmental Commission on Human Right, signed ASEAN Human Right Declaration and also ratified three Human Right Treaties such as, Convention on the Right of Child (CRD), Convention on the Right of Person with Disabilities (CDRP) and Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).¹⁵⁹ However, People have witnessed the progress and improvement of ASEAN's performance on those cooperation and integration, but ASEAN only has made a little progress regarding Human Right issues in each member state. The problem of poor performance of Human Right realization is due to the principle of non-interference of ASEAN which suggests all the member states not to interfere in the domestic affairs of other states. Therefore, ASEAN has limitations in increasing Human Right awareness in internal affairs of the member states. ASEAN has been ignoring the case of Human Right violation due to the principle of non-interference. Human Rights has been questioned and violated in some of the member states of ASEAN. For example, the situation of human right violation has gotten worse in the country which consists of plenty of minority groups and religions, Myanmar (Burma).

The Case of Rohingya Crisis (Since 1950s)

The problem of Rohingya in Myanmar still remain unsolved in ASEAN, because of being considered non-citizens and stateless from Myanmar, there have been many types of human right violations including, the prosecution, arrest and detention of Rohingya residents prior to the main attack, the execution of the attack; the participant of non-Rohingya civilian

159 Baron Nagy, "Human Rights and the ASEAN Way: Political Barrier to Progress", 16 Nov, 2016, <https://www.e-ir.info/2016/11/16/human-rights-and-the-asean-way-political-barriers-to-progress/> (Last visited 12 July 2021)

vigilante groups; the purposeful destructions of homes, villages, and livelihoods and ensuing section of the Rohingya residents; and the delayed, denied and inadequate medical treatment of injuries.¹⁶⁰ Besides that, these violations also caused types of physical injuries and mechanism to the Rohingya people such as, injuries from projectiles (gunshot wounds), blunt force trauma, penetrating Trauma from knives, machete and other sharp objects; injuries secondary to explosion, such as blast trauma and hearing loss; burn injuries from fire; injuries from sexual violations; and psychological sequelae of surviving violent traumatic incidents.¹⁶¹ The final report of FFM (United Nations Fact-Finding Missions) in 2019 found that the 600,000 Rohingya were still the target of a government campaign to destroy their identity and were living under threat of genocide. The report found various infringements such as, killing, rapes and gang rape, torture and forced displacement by the military and other government authorities.¹⁶² Since the crisis happened in Myanmar until now, ASEAN hasn't done or responded to anything to solve this case yet. It was because of the principle of non-interference that ASEAN cannot invade or interfere with domestic affairs, as well as political affairs. The Association of Southeast Asian Nations (ASEAN) has failed to respond effectively to the Rohingya crisis in Myanmar thanks to a lack of leadership and the 10-member organization's inability to grasp the scale of the human rights abuses.¹⁶³ The continuing crisis has also prompted Rohingya to risk their lives crossing the ocean in an attempt to reach safety. With the COVID-19 pandemic, countries including Malaysia, the most common destination for the Rohingya have closed borders and some boats have drifted at sea for months before being able

160 BMC, "Documentation of Human Right Abuse Among Rohingya Refugees from Myanmar", 2019, <https://conflictandhealth.biomedcentral.com/articles/10.1186/s13031-019-0226-9> (Last visited 16 July 2021)

161 Ibid

162 Kenneth Roth, "Myanmar: Events of 2019", 12 Dec, 2019, <https://www.hrw.org/world-report/2020/country-chapters/myanmar-burma#> (Last visited 16 July 2021)

163 ALJAZEERA, "Myanmar's Rohingya Exposes ASEAN's Weakness: Report", 20 Oct, 2020, <https://www.aljazeera.com/news/2020/10/20/myanmars-rohingya-crisis-exposes-asean-weaknesses-report> (Last visited 19 July 2021)

to land.¹⁶⁴ For this issue, ASEAN has an obligation to serve and protect the region instead of ignoring it. The cause of not solving this issue will not only harm the region's credibility and legitimacy, but will likely cause further harm and suffering to the Rohingya and others who called Rakhine State and indeed the ASEAN region's home. There are some problems that ASEAN should address in the Rohingya crisis such as; crime against humanity must be exposed; ongoing persecution must be stopped; Rohingya in Bangladesh are still at risk and must be protected; and repatriation of the Rohingya state.¹⁶⁵

4.5. Isolate Among the Country that is Falling into Trouble

One of the principal fundamentals of ASEAN is its “non-interference” principle which plays a key role in its extensive interaction with member countries. To recap, the principle is highlighted in the ASEAN's Treaty of Amity and Cooperation Article 2, which came into force in 1976. The purpose of this principle is to ensure cooperation, coordination and correlation among member states while observing respect to each sovereign member country, while retaining domestic issues within internal state affairs to the particular state rather than bring an issue of discussion among member nations. Domestically, the issue of non-interference is a “free card” for a nation, particularly the host nation¹⁶⁶. They further argue that the ASEAN Way standardizes behavior of states through the doctrine of non-interference and threat of force in dealing with disputes, and respects sovereignty and territorial integrity of nations.¹⁶⁷ The practice of ASEAN Way in the conflicting perspective on mitigating or resolving in the Southeast Asia region is rooted on the value of non-interference principle.¹⁶⁸ Members in the

164 Ibid

165 Daniel Sullivan, “Report: 5 Key Priority to Address the Rohingya Crisis”, 22 Aug 2020, <https://www.refugeesinternational.org/reports/2018/8/22/5-key-priorities-to-address-the-rohingya-crisis> (Last visited 19 July 2021)

166 Anant Mishra, “Assessing ASEAN's “Non-interference” : A lost cause for Rohingyas?”, 09 October 2017, <http://www.indiandefencereview.com/news/Ib/> (Last visited July 19, 2021)

167 Ibid

168 Ibid

organization give their attention for most of these issues that generate transnational spillover effects, and thus are more likely to attract the interest of affected member states, and these states are more likely to support intrusive regional organizations to combat issues.¹⁶⁹ ASEAN will always practice the non-interference principle surely, when there is no pressure from the international stages.¹⁷⁰ All cases involved sometimes stormy discussions within ASEAN as to whether to engage or not engage notions would best serve the interests of its member states. The intrusiveness of a regional organization depends on the interests of the regional hegemon. If the hegemon prefers an intrusive organization, then the existing organization will evolve into his direction. If the hegemon prefers to manage its regional relations bilaterally, then the regional organization will move in the direction of non-intrusiveness. The interesting aspect, however, is the frequency with which Indonesian calls for ASEAN intrusiveness are rejected by the body as a whole. The hegemonic leadership perspective cannot explain this outcome.¹⁷¹ As we can see the crisis in Thailand and Myanmar, ASEAN seems to isolate itself and can settle the disagreement among them. ASEAN can only do nothing, remain silent and cannot issue any significant statement to those crises.

4.6. Joint Statement Cannot be Issued

ASEAN as an organization adhered to their fundamental principle strictly when there was no collective interest, and therefore they are unlikely to issue the all combine members statement in any particular matter to be settled. ASEAN members would question itself respectively, on which side are you on? ASEAN is standing between two giant economies and military power, the United States and China, in the Global trade war. With the intense movement from high political stance and military initiative from both countries, all countries

169 Ibid

170 Ibid

171 Ibid

have eyes on what ASEAN would be a regional community that lies between both great powers¹⁷². With the practice of ASEAN Ways, ASEAN is less assured that it will be regularly uneven between the two superpowers flexing their muscles in the SCS. Much criticism about ASEAN disunity about the principle of Non-interference resides in the fact that ASEAN as a whole does not stand up for one big voice in any particular disputes. Another common perception is that ASEAN is becoming more divided as China casts a larger shadow over the region.¹⁷³ ASEAN's efforts in respecting its fundamental principle of non-interference have been a failure. The absence of a full-scale gunshot in the joint action for certain regional disputes provide a negative sign toward a conflict-free solution.

The Failed Joint communiqué over South China Sea Dispute of ASEAN's foreign ministers

In relation with the flaw of the consensus and the case of South China Sea Dispute, the all-member states failed to issue a joint statement, which was in the Forty-fifth Annual Ministerial Meeting (AMM) in July 2012 in Phnom Penh, Cambodia.¹⁷⁴ The 10-member Association of Southeast Asian Nations (ASEAN) ended a meeting without issuing a joint statement.¹⁷⁵ The fact is that Cambodia has consistently expressed its desire for the dispute to be resolved bilaterally between the claimant states and advocated a non-interference approach to the SCS issue. Each country has their respective interests in the South China Sea case, and as the countries in organization will mind their own business first that act as ASEAN Ways and

172 Considering both ambitious economic plans with the Tran Pacific Partnership (TPP) from the United States and Bridge and Road Initiative (BRI) from China.

173 SEAS-Yusof Ishak Institute, "RETHINKING ASEAN", https://webcache.googleusercontent.com/search?q=cache:R7wbUHFbAwUJ:https://www.iseas.edu.sg/wp-content/uploads/2021/03/ASEANFocus-March-2021.pdf+&cd=1&hl=en&ct=clnk&gl=kh&google_abuse=GOOGLE_ABUSE_EXEMPTION%3DID%3D571a0d7d1d19f24d:TM%3D1626964339:C%3Dr:IP%3D58.97.229.65:-S%3DEufBmpXYyX626wglxL6bJAc%3B+path%3D/%3B+domain%3Dgoogle.com%3B+expires%3DThu,+22-Jul-2021+17:32:19+GMT (Last visited July 22, 2021)

174 Ernest Z. Bower, "China Reveals Its Hand on ASEAN in Phnom Penh", July 20, 2012, <https://www.csis.org/analysis/china-reveals-its-hand-asean-phnom-penh> (Last visited July 22, 2021)

175 BBC, "Asean nations fail to reach agreement on South China Sea", 13 July 2012, <https://www.bbc.com/news/world-asia-18825148> (Last visited July 22, 2021)

purely carry through the non-interference principle that was why the Joint communique of AMM 45th and further over South China Sea are unable to be distributed.

4.7. The Failure of One Community

ASEAN's disunity in the confrontation with China, was the greater picture of ASEAN crisis as a regional organization.¹⁷⁶ The South China Sea disputes reveal a more basic dilemma, between further integration and preservation of national sovereignty. Multiple factors that prove ASEAN with the Non-interference norm make the association weak – the state level, international level, and organizational level.¹⁷⁷

State Level Factors

ASEAN is an intergovernmental organization; the most enduring problem lies at the state level. That is each and every member state of ASEAN pursues its own national interests and is reluctant to put their sovereignty at risk. The historical inter-state conflicts between ASEAN members, the existing diversity in political, economic, and social contexts, as well as variations in their cooperation with China and US, ASEAN states are unwilling to commit to a united position toward these two superpowers China and the United States.

The International Level

The major powers also play a role in preventing a united ASEAN, especially US and China. China puts economic and political influences on its allies, who are ASEAN member states and have been adhering ASEAN charter, core principle, such as Non-Interference strictly. and the United States, while actively assisting the armament to its counterparts of ASEAN member states, to oppose China rising power in the region.

176 Linh Tong, "The ASEAN Crisis, Part 2: Why Can't ASEAN Agree on the South China Sea?", December 22, 2016, <https://thediplomat.com/2016/12/the-asean-crisis-part-2-why-cant-asean-agree-on-the-south-china-sea/> (Last visited July 22, 2021)

177 Ibid

The Organizational Level

Unfortunately, there has been no leadership inside ASEAN.¹⁷⁸ In times of crises like the South China Sea dispute, there is no leader to direct ASEAN member states toward a united position.¹⁷⁹ ASEAN with its basic principles that demands respecting the fundamental importance of amity and cooperation, and the principles of sovereignty, equality, territorial integrity, non-interference, consensus and unity in diversity lead ASEAN to not become a community. Accordingly, the Non-interference principle of ASEAN is the fact that it often prevents ASEAN members from reaching a decision.

4.8. Non-interference in the Event of Violation the Charters

Through all of ASEAN's progress and development, it has adopted many principles and charter which suggested all the member states to follow those principles. However, it's such a tragedy that not all the members are willing to do so. Moreover, once they violate the charter or principle, ASEAN doesn't have the right to interfere due to the principle of non-interference. It's such a dilemma whether ASEAN has to interfere with their domestic affairs because if they do, it will violate the non-interference principle, but if they don't, all the member states will dare to violate the charter again. Because ASEAN cannot interfere in the member states' internal affairs, the number of violating the charter from the member states tends to increase, and ASEAN couldn't do anything about it.

The Case of Transnational Issues in Thailand

On October, 2004 Thai government including army and police units fired on ethnic Malay Muslim protesters in the Tak Bai district that cause seven protesters death and another 78 protesters suffocated to death. Thailand's failure to prosecute security personnel responsible

¹⁷⁸ Ibid

¹⁷⁹ Ibid

for the Tak Bai killings is a glaring injustice that brings the police, military, and courts into disrepute.¹⁸⁰ This incident happened during the era of Thaksin Shinawatra becoming the prime minister. Thai advocacy in favor of abandoning ASEAN's vanishing captured the attention of other ASEAN members. Thaksin rejected any discussion on this issue at the ASEAN level. During the ASEAN summit in late 2004, Malaysia and Indonesia planned to raise this issue, but Thaksin warned that if this issue was raised in the meeting, she would walk out immediately and fly back to Bangkok.¹⁸¹ ASEAN couldn't do anything in this case due to the non-interference principle, even though other member states tried to raise it up and solve the issue, they didn't have the capacity to do so.¹⁸² This exchange implies that the member states share an understanding that domestic issues should be solved by their own states, with their state strength. However, if the state is willing to solve this issue in their own country, it has nothing to worry about, but if the state didn't do as they said, the violation would be getting worse in their country.

5. Analysis on the Political-Security, Economic, and Diplomatic in Non-interference

Principle

5.1. Political-Security

Following Chapter 3 above about the strength of non-interference principle focusing on the political sector. The advantages of the non-interference principle allow states to focus mainly only their own political policy for the sovereignty of states. The principle warns off one's member states to interrupt other states in the political functions for whatever purposes in the internal or external affairs. The principle of Non-interference has remained strong, because

180 Human Right Watch, "Thailand: No Justice 10 Years After Tak Bai Killing", 24 Oct, 2014, <https://www.hrw.org/news/2014/10/25/thailand-no-justice-10-years-after-tak-bai-killings> (Last visited 03 Aug 2021)

181 Supra note 7 (Last visited 02 Aug 2021)

182 Ibid

it has given the government of countries to preserve their political-security to counterbalance the stability in the territory of their regimes, and respect other members' governance. One country is able to whip into shape their political strategy. Even when the member states cross their ideas or opinions on a particular subject, they choose not to interfere with one another. Instead, they chose to solve the problems in a peaceful way. To be precise, when it comes to ASEAN, people will think about regional security, peace and order because when the member states tend to have arguments or tensions with each other, war is not their priority in solving the problems. However, the political sector also has been criticized for a few points, for instance, its practice out of sorts when the interests of the disputed countries do not match the benefit for the whole organization. It means that the organization seems to favor or decide to engage in solving the issue unless that state provides them with a great deal of interest.

5.2. Economic

In addition, relating to the economic factors that have been addressed in the previous chapters, it was provided that because of the principle of non-interference, the member states seem to only focus on the economic interests of their nations rather than the community's interest as a whole. In contrast, it's normal that the states have to prioritize their own interest instead of the regional interest. Besides that, the principle of non-interference also plays an important role in improving ASEAN's economic feature by allowing the member states to choose their trading partners freely pursuant to their individual countries' tendencies. Moreover, by targeting their national interests, the states will be able to expand their market so that it will facilitate them in doing trade and economic cooperation among other member states. It also enhances the expansion of economic integrations throughout ASEAN regions and the international community because it helps minimize the economic development gap between the countries in the association.

5.3. Diplomatic

Along with the diplomatic relations in the non-interference serving an important role in foreign affairs channel, it encourages each member to conduct bilateral or multilateral rather than act as collective countries in the ASEAN as a whole. In the name of quiet diplomatic policy, ASEAN gained more advantage from consultation with each other over the negotiation on the sensitive basis to avoid from the eyes of public view, prevent aggravating internal tensions from escalating into wider inter-state conflicts. The principle covered the negotiation from the third states to interfere with the proceedings. Nevertheless, it can come into doubt when the states are not willing to bring the issue to discuss during the meeting. ASEAN and other member states also do not have any right to cross the line even if they want to resolve the problem due to the principle of non-interference.

- Based on what we have analyzed between the strength and weakness of the principle of non-interference on some major factors, it comes to a conclusion that the principle of non-interference has contributed a great deal of benefits, as well as its advantages for ASEAN organization throughout its progress. Despite some weakness of the non-interference principle, it still remains strong and unbreakable among the member states.

6. Conclusion and Recommendations

6.1. Conclusions

Taking everything into account of this research paper, including the evidence proving the strength and weakness of the non-interference principle. We can examine that the strength provided more advantage than the challenges did. To review, ASEAN was created on 8 August 1967, five Foreign Ministers of the founding states: Adam Malik of Indonesia, Narciso R. Ramos of the Philippines, Tun Abdul Razak of Malaysia, S. Rajaratnam of Singapore, and Thanat Khoman of Thailand come together in the main hall of the Department of Foreign

Affairs building in Bangkok to sign the ASEAN Declaration. The principle of Non-interference first emerged in the Bangkok declaration, and it has been a core principle in ASEAN since its founding in 1967, and has remained effective in its institutions even after the creation of Treaty of Amity and cooperation 1976.

The thesis has gone along with all the legal experts in our literature review. The definition of ASEAN principle of non-interference has never been defined by its organization. Though, the word “non-interference” has been defined by many authors, scholars, and international organizations throughout the world, such as UN, EU, ... but it is used in different terminology. In our research paper, we have stated many strengths about the principle including the strength that make ASEAN uniqueness, unity, having the stability in each country, having the international order, practice consensus, and come up with the strength of political, economic, diplomatic, and security. However, we also found out the challenges in applying the principle of non-interference, in particular the political challenges, environmental degradation, economic weakness, human right violation, isolating the state that falling into trouble, the failure of one community, joint statement cannot be issued, and the failed of the principle in the event of violation the charter. The answer to our research question: Should the principle of Non-interference remain in the Charter? is going to be “YES” ASEAN should retain the principle of Non-Interference in its practice among the member states. Overall, our paperwork mainly focuses on the pros and cons of the non-interference principle practice by the Association of Southeast Asian Nations (ASEAN), and we strongly support the ASEAN to keep the principle in place due to its advantages that have overlapped the disadvantages in daily practice for the inter-state organization.

6.2. Recommendations

Though, the principle of Non-interference in ASEAN has been discussed a lot about its practice, especially in dealing the dispute in the region. The dispute that occurred in the member states a long time ago without a solution from the ASEAN, which proves the principle needs to be modified. Furthermore, even when some members of ASEAN try to engage in the matter, there has been reluctance due to the principle that had stipulated in the Charter or the member requirement to apply Non-interference to the issue. By all of these things, it cannot be denied that the principle has its own weakness, on the other hand, there is still room to improve.

- ASEAN member states should not strictly follow the principle of Non-Interference as they have done until these days. There should be some flexibility especially when it comes to serious human rights violations. They should know when not to intervene, and when to intervene clearly. They may depart from the principle when the disputed states violate its citizens, and create a long-lasting political instability. The recommendation as follow:
- ASEAN shall find a more proper way in dealing with any member countries that violate seriously that cause mass killing, undertaking hardship to its living standard of people by conflict-free compromise and existing ASEAN mechanisms. There shall be a mechanism or regulation mentioning that the members will not interfere into any member political crisis but the members have the right to provide some needs to the citizens who are affected by the internal instability such as food, medicals etc....
- ASEAN shall not interfere in member states by using force or any sanctions, such as economic sanction. Instead, ASEAN can bring the case to discuss in the meeting, by sharing ideas, opinions, and experiences in maintaining the situation, and bring back domestic stability.

- When there is a serious conflict or argument between the member states, ASEAN shall be a part in resolving the conflict. However, it doesn't mean that ASEAN needs to interfere with their conflict directly, instead, they shall establish a good office or meditation to possibly achieve a mutual deal or so called win-win solution for both parties, but only if those involved states agreed to receive such a method from ASEAN. By doing this, ASEAN also needn't to affect the principle of non-interference.
- The words "Non-Interference" should be officially defined by ASEAN, including its exceptional categories or cases, so that it might facilitate ASEAN to decide what kind of cases or issues that they shall exclude or except from the principle of Non-interference. ASEAN shall differentiate the purpose that counts for interference, such as the way ASEAN members try to solve the crisis, make it recover to normal, provide humanitarian assistance; are not the act of interference. For instance, if the issue had happened a long time ago and is still going on in the present. Most importantly, when the issue keeps getting worse and extreme. As an ongoing issue happening in Myanmar, ASEAN shall get involved by providing humanitarian resources such as basic needs, foods, clothes, or medical supplement in order to help the life of victims there.
- ASEAN should create a new approach which allows member states to bring the case that would undermine the reputation to ASEAN, or deteriorate the stability to the region to discuss in the relative minister meeting (AMM) or put forward to ASEAN Annual Summit to provide a suitable settlement to solve as soon as possible. With this approach ASEAN shall conduct confidentiality in close door meeting, which does not permit the public and media to get in to avoid embarrassing the disputed state. This kind of close door meeting shall consist of the heads of all member states with the invitation by the annual rotating Chairman of ASEAN summit.

- Principle of non-interference shall be limited to territorial integrity and politics of the member countries. But when it comes to mass killing etc....the members shall take action by at least helping with humanitarian assistance but will not interfere into politics of the state like a kind of attack. Which means just to help people as a priority. ASEAN should behave towards humanitarian assistance with the membership states that are running in the flames

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