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## Abuse of Human Rights in Myanmar: An Urgent Appeal to Reinterpret the ASEAN Non-Interference Principle

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### ABSTRACT

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Myanmar highlights the international community's worry over ASEAN's failure to protect the human rights of the country's citizens. Numerous stakeholders, including scholars and observers, consider the non-interference principle as the bedrock for interstate relations in the region to be the greatest barrier to ASEAN's intervention in Myanmar. Using the method of doctrinal research, this article investigates the junction of the concept of non-interference as the spirit of state sovereignty and the principle of human rights in the context of Myanmar. This article claims that the reason why human rights cannot be enforced in ASEAN, as in the case of Myanmar, is because ASEAN adheres to the principle of non-interference in the traditional expression of state sovereignty, thereby making the state the dominant actor and denying the existence of people. This article proposes that ASEAN shift its understanding of state sovereignty from the traditional to the human rights perspective, which has become a universal view that places humans as the ultimate sovereigns of a country.

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### 1. Introduction

ASEAN is being harshly criticized by the international community for its inability to address the Junta's persistent violations of human rights in the Myanmar ([Amnesty International, 2022a](#); [Pearson, 2022](#)). The entire existence of military rule in Myanmar's past is viewed as the primary cause of the country's citizens' perilous human rights situation. Since its inception in 1948, Myanmar has been ruled by an anti-democratic and anti-human rights military regime, as proven by the government's frequent breaches of human rights against its people ([Arendshorst, 2009](#)). It is caught in a downward spiral of violence characterized by more ruthless persecution of individuals who are actually or seemingly opposed to military rule, violent resistance to the coup, and many ongoing non-international armed conflicts ([Human Rights Council, 2022](#)).



The Junta's persistent violations of the people of Myanmar's human rights garner huge international attention. Multiple initiatives, ranging from moral appeals to military embargos, have been made to halt the Junta's grave human rights violations against Myanmar's inhabitants ([The Irrawaddy, 2022](#)). Even with these efforts, the human catastrophe in the country still needs to be resolved. Similarly, the ASEAN, as a regional organization of governments, is incapable of preventing the Junta from violating the human rights of its citizens ([Ebbighausen, 2021](#); [Al Mukarramah, 2021](#)).

The most recent examples of human rights violations are the grave violations against the Rohingya ethnic minority, the overthrow of the elected government in 2021, and the incarceration of the democratic figure Aung San Sui, which was followed by various oppressive acts against her supporters ([Human Right Watch, 2021](#)). All the human rights violations documented thus far in Myanmar indicate that the Junta routinely violates numerous human rights rules, including the United Nations Human Rights Charter and related accords, as well as the ASEAN Charter, to which Myanmar is a signatory ([Arendshorst, 2009](#)). Therefore, this ambiguity about human rights constitutes Myanmar as an illiberal democracy. In illiberal regimes, human rights accords are typically signed in response to international pressure rather than a genuine commitment to the moral significance of the documents ([Davies, 2013](#)).

Myanmar's deteriorating human rights situation is an impetus for ASEAN to awaken its slumbering diplomacy. Scholars and observers have conducted in-depth analyses of the ASEAN non-interference principle, which they view as a significant obstacle to this regional organization's ability to intervene significantly in Myanmar's human rights issue ([Shalihah & Fitri, 2020](#); [Steinmüller, 2022](#)). For observers to believe there has been criticism of ASEAN's indecisive measures following the military takeover and ensuing crackdown, ASEAN prefers to "wait and see if the military can stop the movement, and then return to regular operations" ([Hui Ying Lee, 2021](#)). As an authoritative entity tasked with advancing human rights in the ASEAN region, the ASEAN Intergovernmental Commission on Human Rights (AICHR) is obligated to adhere to its conduct standards. However, the AICHR is not considered independent due to its near-total dependence on ASEAN ([Rachminawati & Azmin Mokhtar, 2019](#)). Hence, the AICHR is powerless to address Myanmar's infringement of various human rights obligations. It is due to the "ASEAN Way," which refers to operational procedures and norms that inform member states about intergovernmental relations in the ASEAN governments ([Arendshorst, 2009](#)). ASEAN's constitutive norms include regulative norms like state sovereignty and independence, no external interference or subversion (TAC Article 10), non-interference in internal affairs, and peaceful resolution of disputes (TAC Articles 2, 11, 13), and procedural norms like consultation and consensus in decision-making. This means that any problem, decision, or initiative can be vetoed by a member state.

The apparent lack of response from ASEAN to human rights abuses in Myanmar was partly due to the organization's strict adherence to the policy of non-interference in the country's domestic affairs ([Corthay, 2016](#); [Pratomo, 2009](#)). The concept of non-interference applies to the notion that a country's sovereignty is legitimated by international law. As though sovereignty and human rights are usually regarded as fundamentally opposed: the rights of states versus the rights of individuals; (1648, the Treaty of Westphalia) versus (1948 the Universal Declaration of Human Rights). Under the sovereignty doctrine, states are entitled to non-interference in their internal affairs ([Delbruck, 1982](#)). Although, according to Jack Donnelly (2004), human rights have modestly transformed rather than weakened or eroded sovereignty. Human rights have reshaped sovereignty, leaving states no less independent than long before. Contemporary human rights restrictions on states' freedom of action are entirely consistent with "absolute" "Westphalian" sovereignty. This protectorate exemplifies the collision between human rights and state sovereignty, which is constrained by the principle of



non-interference within the state members' relationship (Ayoob, 2002; Delbruck, 1982; Henkin, 1995; Peters, 2009; Walling, 2015).

This article will examine the challenges of implementing the ASEAN principle of non-interference regarding human rights issues in Myanmar. Why does ASEAN interpret this notion so narrowly, and to what extent may human rights be used as a reason to break the principle of non-interference in the cause of rescuing humanity, which in this case is the Myanmar civilian population? The structure of this article is as follows. After describing the methodology followed in this article, the second section examines the origin of the idea of sovereignty and its development in modern international law. The article will next explore the article's core issue, the ASEAN non-interference principle vs human rights in the case of Myanmar. Last is the conclusion.

## 2. Research Methods

This study employs the doctrinal research method since it is a problem-solving framework that includes contextual reading, locating ASEAN primary documents, assessing the legal void, reviewing all subject matter within the context, modifications or improvements, gathering new information, and analyzing ideas pertaining primarily to the non-interference principle are the primary objectives (Anwarul, 2008). This paper examines the implementation ramifications of the ASEAN non-interference and sovereignty principles in this context. This doctrinal process is recognized as the synthesis of ASEAN's rules, principles, norms, and values that justifies any portion of the law and is presumed to be part of general law. This doctrinal study proposes identical remedies to most human rights-related concerns in Myanmar that ASEAN cannot resolve owing to the non-interference main blockage. In addition, a comparative analysis with a broader level of abstraction will be undertaken on the legal issue. Moreover, to establish theories to explain the context of the repercussions of human rights and improve the interpretation of the law, the non-interference principle applies in this context (Bhat, 2020; Van Hoecke, 2016).

## 3. Sovereignty Concept and Its Transformation

This section investigates the theoretical discourse on sovereignty and its evolution since its inception. The following debate will center on the connection between human rights and the concept of sovereignty. After their investigation, it is anticipated that the link between these two essential notions will become crystal evident, whether they support or contradict one another.

### 3.1. The Origin Concept of Sovereignty

Jean Bodin first advanced the definition of sovereignty with the word "*souveraineté*," having the sense of establishing a legal basis. Bodin explained this perspective, giving the term its usual meaning of "absolute and everlasting power existing in a nation." He concluded that sovereignty is complete and total control of a country (Huijibers, 1996). Sovereignty is also one of the fundamental foundations of international law, particularly. This principle is integrated into international accords, such as the 1933 Montevideo Convention on State Obligations, and subsequently reaffirmed in documents for instance the Second Charter of the United Nations in 1959 (Schwarzenberger & Brown, 1976).

In 1945, the United Nations Charter enshrined the concept of state sovereignty equality. The Preamble equates to trust in universal human rights, the dignity and value of the human person, the equality of men and women, and the rights of great and small nations. Article 1 (2) notes that a primary objective is to cultivate friendly relations between nations based on



equality of rights and peoples' self-determination. Article 2 (1) establishes the United Nations based on members' sovereign equality. States may join, and the General Assembly shall be composed of all United Nations representatives, each of whom shall have one vote (Article 4, paragraph 1).

According to the Montevideo Convention, the concept of sovereignty means that the state has authority over the subjects present in it, which is demonstrated by the government's intervention ([Harris, 1983](#)). The term is widely used to refer to a situation where the country has complete control over all activities and can retain all aspects of its domestic law and order. It is then commonly translated as "the sovereignty concept," which only applies to maintaining domestic order and exercising complete control over all activities. This definition has taken on several new and complicated aspects in its evolution. This new definition incorporates several fundamental principles: countries are legally equal; each country's sovereignty is intrinsic or bestowed upon it; territories are inviolable; countries have free choice in legal, economic, and cultural systems; each country has a legally valid duty to comply with all of its international obligations, and it has the right to shape its political, social, cultural, and economic structure as it sees fit ([Franck, 2000](#)). These meanings show that a state's sovereignty can be delineated into absolute and formal concepts. In addition, a state's right to apply those powers in its territories is called "sovereignty." The second idea states that no higher power exists over the state ([Krasner, 1988](#); [Schrijver, 2000](#)). Thus, it is not surprising that the word "sovereignty" also denotes the arbitrariness of local rulers. This sovereignty, however, does not apply in the sense of foreign affairs. The following evidence demonstrates that this concept has changed significantly over time. Dixon and McCorquie (2003) say that sovereignty is a nebulous concept. Thus, Eunomia Philip Allot (2001) concludes that sovereignty is a theory rather than a factor that is only real when the government decides it.

As previously stated, sovereignty prohibits one nation from interfering in the domestic affairs of another. This notion is known as the principle of *par-in-parem non-habet imperium*, which means that the equation has no control over others. The principle of non-intervention is recognized in Article 2 (7) of the United Nations Charter, which expressly acknowledges the presence of domestic jurisdiction ([Byers & Chesterman, 2000](#)). However, this traditional concept of sovereignty has recently undergone a significant change due to a contemporary trend supporting the sovereignty of the people over that of the state. For example, according to Sally Morphet (2000), establishing UNOCA (United Nations Regional Office for Central Africa) with a mandate to evaluate and verify regional peace treaties extends to election supervision. In addition, the Second World War transformed sovereignty from a necessity to a choice. According to Louis Henkin (1995), the international community started a gradual transition from state to human values around the mid-century. The system of states was a "liberal" system of separate, "impermeable," "monolithic" states before World War II. Its central tenet, and primary meaning, was that states should leave each other alone.

Meanwhile, during the UN Charter's drafting, Australia, as part of a group of countries that wanted human rights to be more strictly governed in the Charter, argued that human rights should become a U.N. concern because it could affect nations' friendly relations. Allan Rosas (1995) states that this is since the Universal Declaration tackles problems between the state and its citizens (vertical approach) rather than inter-state ties. For this reason, then ASEAN member countries strictly adhere to this principle. However, its member countries eventually started to abandon it at this point ([Ramcharan, 2000](#)). They reasoned that non-interference is often criticized for impeding ASEAN's ability to act decisively in economic crises, problematic members such as Myanmar, and transnational security threats ([Lee Jones, 2010](#)).





## 3.2. The Transformation of the Sovereignty Concept

The strengthening of the international community's awareness and concern for human values has led to the evolution of the conception of state sovereignty. The former U.N. Secretary-General, Boutros-Boutros Ghali, emphasized that the view of sovereignty as absolute and exclusive has been completed because this view does not correspond to reality ([Boutros-Ghali et al., 1993](#)). A contemporary view of authoritative sovereignty can be found in the International Commission on Intervention and State Sovereignty (ICISS) report. This report was written by a Commission established by the Canadian government, with Prime Minister Jean Chrétien as its leading promoter. This distress was resolved in response to Kofi Annan's challenge to the international community to build a new global consensus to face increasingly severe humanitarian problems. Gareth Evans and Mohammed Shannon co-chair the Commission. The members represent various groups and have multiple nationalities ([International Commission on Intervention and State Sovereignty, 2001](#)).

In its report, the Commission stated an obligation within sovereignty: to protect every human being in its territory. When a country fails to fulfill its obligations, the obligation turns on the shoulders of the international community to intervene. The basis for the argument is found in international law, for example, Article 24 of the UN Charter. Furthermore, the obligation to protect has three aspects. First, preventive obligations, where the obligation of the state to prevent various human tragedies caused by humans. Second is the obligation to react, namely the obligation of the state to respond with various appropriate actions to safeguard human rights to remain upright in its territory. Finally, the state should rebuild the object that has been destroyed caused by the military intervention ([International Commission on Intervention and State Sovereignty, 2001](#)).

David Held (2003) stated that the liquid view of sovereignty above is "liberal international sovereignty." This view aims to limit public power at the international level and transform the notion of legitimacy of political power, which relies solely on power, to be replaced by a fundamental value-based, especially humanity. For the most part, it aims to protect the target country's people from government-perpetuated injustices against their human rights. Human beings have rights because they are human ([Ayoob, 2002](#); [Reisman, 1990](#)).

The transformation of sovereignty from absolute to relative or humanitarian is marked by several facts in the development of international law. For example, the formation of humanitarian law aims to reduce inhumanity due to war ([Hansen & Stepputat, 2006](#)). These efforts were preceded by the Paris Declaration of 1856 and a series of Geneva Conventions. Then the establishment of an International Tribunal aimed at trying individuals involved in World War II crimes, such as Nuremberg and Tokyo, followed by the formation of the International Criminal Tribunal for the former Yugoslavia in 1993 and the International Criminal Tribunal for Rwanda in 1994 by the Security Council furthermore, as the peak achievement is the establishment of a Permanent International Criminal Court (ICC). Additionally, international human rights law is the most widely acknowledged criterion for preventing human rights violations by an abusive power ([Pratiwi et al., 2022](#)). In the meantime, Christian Reus-Smith (2001) opposes the notion of shifting sovereignty away from this conventional pattern and towards a human rights approach. However, sovereignty and human rights constitute two normative components of a single. Since human rights increasingly offer the justification for sovereign power, there is a growing consensus that sovereignty must be based on human rights.

The international community continues to make strides in the administration of justice. Hence, there are those of mixed quality and those of foreign quality. Consider the courts that have been formed in Timor-Leste and Sierra Leone. Since they are made up of foreign and



local judges, the two courts are described as hybrids. Finally, the Vienna Declaration and the 1993 Action Program declared that the international community's concern for human rights should not be interpreted as "undue interference" with a country's domestic problems under international law. In other terms, both internal and external factors, such as the right to self-determination, democracy, human rights, environmental concerns, transnational organizations, cybercrime, and cyberspace, question "effective power" (Litfin, 1997). These developments jeopardized the state's authority (Krasner, 2001).

## 4. The Principle of Non-Interference Vs. Human Rights

### 4.1. Crisis of Human Rights in Myanmar

As we have seen, the concept of sovereignty has shifted from a focus on the state to a focus on humanity; nonetheless, the traditional idea of sovereignty continues in some countries. Myanmar's human rights situation illustrates the primacy of sovereignty above human rights in the context of ASEAN. Two human crises have occurred in Myanmar recently, prompting international concern. One was the denial of Rohingya human rights by the Myanmar military, which led to their expulsion from their homeland. The international community and non-governmental organisations determined that the severity of the Rohingya's breaches of human rights constituted a crime against humanity. In addition, several nations urged the government of Myanmar to take decisive action in response to the humanitarian crisis and to grant Rohingya people full citizenship. Nevertheless, the Myanmar government has declined to do so. Not to assume that ASEAN and its member states have taken no action in response to the Rohingya crisis (William Jones, 2017; Shalihah and Fiqri, 2020; Tobing, 2018).

Amid the unresolved Rohingya human rights violations, a new human rights crisis erupted in Myanmar in February 2021 following the military's ouster of the elected civilian administration. As a result, the Myanmar government demanded that the junta restore the country's stolen democracy. However, the junta's use of coercion and repression in response to protesters demands has had a negative impact on the human rights of the Myanmar people. In its 2021 report on Burmese human rights, the United States Department of State compiled a lengthy list of the junta's human rights violations against the country's citizens, making it nearly devoid of human rights violations (United States Department of State, 2021). The international community no longer observes Myanmar in the hope that human rights violations can be addressed in any way. Amnesty International, on the other hand, specifically urged ASEAN to stop the junta's coercion of protesters; however, the call went unheeded (Amnesty International, 2022b). Despite not addressing ASEAN as an institution, Amnesty International encouraged the organization's members to end the junta's human rights abuses. ASEAN Member States should develop a more detailed plan to hold Myanmar's military accountable for human rights violations and address urgent needs, such as committing to non-refoulement of refugees fleeing violence, facilitating urgently required humanitarian aid, and joining calls for a global arms embargo. If consensus cannot be found inside the group, ASEAN member states should pursue these objectives bilaterally (Amnesty International, 2022a).

Since ASEAN is officially powerless to prevent human rights violations in Myanmar, leaders of ASEAN member states have condemned, albeit in an unusual manner. Cambodia's government, in its capacity as ASEAN Chair, issued a statement expressing "great concern and profound sadness" over the death of Ko Jimmy and three other opposition activists, despite a personal request by Prime Minister Hun Sen to rethink the sentencing. The Indonesian president, Joko Widodo, expressed his "disappointment" at the absence of significant progress in implementing the April 2021 Five-Point Consensus to deal with the Myanmar crisis.



Malaysian Foreign Minister Saifuddin Abdullah referred to the executions as a crime against humanity and stated, "the junta is mocking the Five-Point Consensus" (Pearson, 2022).

In response to the human rights crisis in Myanmar, the AICHR confined its moral appeal to the Myanmar junta, much like several ASEAN leaders. On August 8, 2021, the AICHR hosted its annual meeting with ASEAN foreign ministers (AMM). At the Interface, the AICHR delivered the AICHR Annual Report 2021, highlighting the organization's major accomplishments and achievements over the reporting year. The Interface voiced its worry over the situation in Myanmar and urged the country to immediately cease all violence and begin paving the way for negotiations in good faith, to establish a lasting and peaceful solution, and to work towards reconciliation and restored stability (ASEAN Intergovernmental Commission on Human Rights, 2022).

The facts pertaining to ASEAN's position on the human rights situation in Myanmar reflect the organization's inability to take strict action against the junta. People can wonder why ASEAN is a regional organisation in which Myanmar, a member, cannot intervene to end the human tragedy in a member state. In contrast, the organisation, and its individual member states, as well as the special human rights body AICHR, confined their statements to a moral plea rather than a forceful policy.

#### 4.2. Inadequate ASEAN Response to Myanmar's Human Rights Crisis

As the human rights crisis in Myanmar has become a global concern, strong criticisms have been directed towards ASEAN as a regional organization for launching a systematic lobbying campaign to deal with the issue. On April 24, 2021, the ASEAN Leaders' Meeting was organised in the ASEAN Secretariat in Jakarta, Republic of Indonesia, to convey the Association's official effort to address the humanitarian crisis. The leaders proposed that the Myanmar junta implement the following five points of consensus (ASEAN Secretariat, 2021):

First, there must be an immediate halt to violence in Myanmar, and all parties must display the utmost caution.

Second, all parties involved must engage in a constructive discourse to seek a peaceful resolution in the best interests of the people.

Third, a special envoy of the ASEAN Chair shall, with the aid of the ASEAN Secretary-General, facilitate the mediation of the dialogue process.

Fourth, ASEAN will give humanitarian aid via the AHA Centre.

Fifth, the special envoy and accompanying delegation will travel to Myanmar to meet with all relevant parties.

Before addressing the five points of agreement, ASEAN reaffirmed its core value of putting people first and fulfilling their desire to live in a region of sustainable peace, security, and stability, sustained economic growth, and shared prosperity and social progress. Regarding this, ASEAN reiterated its commitment to the aims and principles of the ASEAN Charter, including adherence to the rule of law, good governance, democratic and constitutional principles, respect for fundamental freedoms, and promotion and preservation of human rights (ASEAN Secretariat, 2021). However, less than a year after ratifying the ASEAN Charter, the Myanmar regime rejected the treaty. Instead of immediately ending violence as demanded, the junta has proceeded to conduct atrocities throughout the country, including additional executions, bombings, mass arbitrary arrests, and continuing violence. The junta has also rejected ASEAN's request for a constructive engagement between all parties involved to find a peaceful resolution. In contrast, the leader of the junta, Min Aung Hlaing, has ruled out dialogue with regime opponents (Nadi, 2022). Considering the Myanmar junta's resistance to





all Charter-aligned and ASEAN-proposed actions, this association is unable to impose more stringent rules based on the association mechanism provided in the Charter due to the non-interference principle.

In addition to the non-interference principle, additional factors contributed to the failure to implement the five consensus in Myanmar. To begin with, the lack of credibility of the ASEAN representative leader to mediate between the warring parties in Myanmar, as well as the absence of Myanmar people's aspirations within the consensus, causes the human rights situation to deteriorate with no apparent solution in sight ([Chen Chen Lee, 2021](#)). The non-interference principle, as the fundamental principle in ASEAN engagement, is a crucial aspect in determining the consensus, which tends to be weak or sounds like moral advice rather than a forceful proposal to the junta. Consensus sided with the junta, allowing it to be considered when its strategy of resolving the situation has been executed successfully.

The historical context of the Association's founding could aid comprehension of the origins of this principle. Since it was first formed on August 8, 1967, ASEAN has not changed much in the context of institutional democratization. The initial idea that underlies this organization's formation was to build regional stability after experiencing many turbulent wars over territorial power. In addition, there has been little progress in several economic, cultural, and social cooperation areas. Efforts to improve the status of the ASEAN organization to a more formal direction were carried out by forming the ASEAN Charter, which was signed at the 13th ASEAN Summit on November 20, 2007, in Singapore by 10 Heads of State / Government of ASEAN member countries. This Charter came into effect or entered into force on December 15, 2008, 30 days after being ratified by 10 ASEAN member countries. The ASEAN Charter aims to transform ASEAN from a loose political association into an international organization with a robust legal basis (legal personality), clear rules, and an effective and efficient organizational structure ([Lee Jones, 2010](#)).

However, the traditional interpretation of its non-interference principle impedes ASEAN's development into a more modern organization of states. The principle of non-interference establishes three critical codes of conduct for intra-ASEAN relations. To begin, it discourages member states from criticizing or interfering in the internal affairs of other members. Second, it commits members to refuse refuge and assistance to organizations attempting to undermine or overthrow member state governments. Third, the theory, especially in the 1960s and 1970s, prevented members from providing external forces with any assistance considered subversive to other members ([Katanyuu, 2006](#)).

In 2005, the eleventh ASEAN Summit marked a change in the conventional approach to relations between ASEAN members by relaxing the principle of non-interference. According to Rukuun Katanyuu (2006), this transition was precipitated by expanding economic and security cooperation. When combined with the exigencies of individual ASEAN members, foreign catalysts force ASEAN to continue to nudge Myanmar's junta toward democratic reform and political engagement with opposition and ethnic groups. According to Taku Yukawa (2018), these elements contribute to ASEAN's conservative attitude on the non-interference principle as the foundation of the organization's mutual ties.

ASEAN does not need to hesitate or feel uneasy when confronted with the issue of protecting human rights when adhering to the concept of non-interference or state sovereignty. Anne Peters (2009) suggests that conflicts between state sovereignty and human rights should not be settled on an equal footing but should be resolved based on a presumption in favor of humanity. A humanized state sovereignty entails transparency for the state's enforcement of fundamental human rights. Additionally, the humanization of sovereignty





implies a rethinking of humanitarian interference. Concerning sovereignty, non-intervention is an essential aspect of the international legal order and must be adhered to as a general law.

According to Koffi Annan (1999), state sovereignty is being redefined in its most fundamental sense, owing in no small part to globalization and powers of international cooperation. States are often regarded as instruments in the hands of their populations rather than the other way around. Simultaneously, a resurgent and widespread recognition of individual rights has bolstered individual sovereignty—the fundamental freedom of everyone as enshrined in the United Nations Charter and subsequent international treaties. Additionally, Annan argues that in today's globalized world, the national interest as the essential pillar of the sovereignty notion must be expanded to encompass the common good and values, i.e., humanity. As a result, according to Annan (1999), the collective interest is the national interest. That is, supporting national sovereignty at the expense of humanity is contrary to collective interest.

Indeed, ASEAN now has no justification for failing to openly implement a legal transition relating to the principle of non-interference. This principle is attributable to the mandate of the seventh ASEAN Summit in 2005, which compelled ASEAN to redefine the principle of non-interference to safeguard the ASEAN region's economic stability, security, and human rights. Another possibility is that when ASEAN ratified its Charter in 2008, the group already had a sizable U.N. membership. As a result, ASEAN is bound by U.N. legal products. For example, the United Nations Charter emphasizes that the [principle of non-interference] can be waived to maintain peace. This principle is expressed in the UN Charter's Article 2 provisions (7) (Corthay, 2016).

The 60th Anniversary World Summit of the United Nations in 2005 established the Right to Protect (RP) as the most recent international brand norm. Former UN Secretary-General Kofi Annan noted that R2P "presents a profound and troubling challenge to those leaders who desire to treat their people with impunity." R2P is advantageous in three ways. First, the concept of R2P, sovereignty, no longer provides a privilege for any government because the approach bears the 'responsibility to protect,' which places the utmost importance on people's protection, requiring states to open and grant much more fluidity on their normally stricter and more traditional standing of sovereignty, should 'intervention' be deemed necessary. Second, R2P is notably distinct from humanitarian intervention. The first highlights the question "who should intervene?" whereas the second concentrates on the victims. Thirdly, moving the emphasis of R2P from "intervention" to "protection" of civilians may hinder our participation in the debate over the politics of the intervention (Rosyidin, 2020). Alex J. Bellamy and Catherine Drummond (2011) maintain that the responsibility to protect (R2P) includes each state's obligation to safeguard its populations against genocide, war crimes, ethnic cleansing, and crimes against humanity, the international community's obligation to assist states in this effort, and the international community's obligation to take prompt and decisive action in situ.

In July 2009, the United Nations General Assembly assembled to discuss the R2P report, giving Southeast Asian states the opportunity to express their views on R2P. Six members of ASEAN participated in the discussion: Singapore, Malaysia, Indonesia, the Philippines, Vietnam, and Myanmar. At this debate, representatives from all six ASEAN countries acknowledged the region's implementation of R2P under certain conditions, including: R2P must not contradict the non-interference principle, must be applied only to the four specified crimes and their prevention and not to other non-traditional security issues such as AIDS and natural disasters, must be consistent with international law and the UN Charter, and must be applied equally and fairly in a non-selective manner (Bellamy & Drummond, 2011). All these R2P implementation constraints demonstrate ASEAN's devotion to its concept of non-



interference. To achieve a balance between the R2P or human rights approach and the region principle, experts offer a vernacularization method for implementing the R2P, or human rights approach principles into their legal system. Vernacularization is projected to result in ASEAN member nations rejecting human rights language outright, while others imbued the word with their own meaning, giving a diversity of hybridized visions of human rights that sometimes supported, as opposed to a challenge, the concept ([Doffegnies & Wells, 2022](#)). Daniel Huizenga's (2021) research in Africa demonstrates the efficacy of the vernacularization process in promoting the development of local norms based on international human rights norms. Similarly, international norms regarding human trafficking and women's human rights have become vernacularized into anti-prostitution policies in South Korea and Sealing Cheng (2011) has extensively studied how such universal concepts facilitate the re-articulation of authentic national culture and Korean womanhood.

Additionally, vernacularization subtly transforms the concept of intervention into interference. Political discussions among E.U. leaders have made a clear distinction between intervention principles and meddling. By adopting a Western perspective, a view was added that involvement was forbidden, but interference was not. The E.U. then refers to the Helsinki Principles while facilitating the rapprochement between Russia and the West in the late 1980s and early 1990s. This time demonstrates that international standards and law are most successful when the political will exists to agree on their interpretation. Russia and the West established an agreement on problems to allow a degree of interventionism in the affairs of the other in the spirit of achieving consensus ([Raynova, 2017](#)).

Given these facts, ASEAN no longer needs to take the lead in preserving peace and protecting human rights among its members. Myanmar has consistently shown that it needs to make a deliberate effort to uphold and protect the human rights of its people. Furthermore, the international community would not turn a blind eye to human rights abuses in ASEAN, even though ASEAN has not taken serious steps to strengthen human rights conditions in its member countries institutionally. The inability of ASEAN to resolve the Myanmar human rights issue due to the principle of non-interference demonstrates that the principle is at the heart of the issue. Dio Herdiawan Tobing (2018) insisted that the principles heavily emphasize the traditional concept of the sovereignty of its member states, which gives the impression that ASEAN is incapable of reconciling the ASEAN Way with humanitarianism.

In actuality, the concept of sovereignty as the foundation of non-interference has shifted from a state-centric perspective to a focus on human values. As W. Michael Reisman ([Reisman 1990](#)) said, while the venerable word "sovereignty" is still used in international legal practice, its current international law counterpart is somewhat different. International law continues to uphold the sovereignty, but—unsurprisingly—it is the sovereignty of the citizens, not the ruler. Even the investigation of international human rights without the sovereign's approval could constitute a breach of sovereignty by its "invasion" of the sovereign's domain reserve under the old definition. Jeremy A. Rabkin (2005) adds, "this international action is the product of a global rule that the United Nations has legalized." The global government movement may side with domestics who fail to preserve the peace. Numerous historical examples have been developed in this sense, such as in Africa, Asia, and the Middle East, where international powers participated multilaterally under the auspices of the United Nations. Recent global economic developments have also contributed to a shift in the push for sovereignty away from the traditional state-centric view and toward a human rights-based as well as economic perspective ([Ulum, 2022](#)).



## 5. Calls for the Ability of an Outsider to Manage Occurrences

The previous review of scholars' and practitioners' viewpoints on the most current intersection of state sovereignty and human rights has proved conclusively that they complement rather than contradict one another. To date, however, the ASEAN principle of non-interference is tightly upheld since the ASEAN member states have become polarized, with most "undemocratic" governments favoring adherence to the principle. The ASEAN and most of its member states remain silent in response to the violations of Rohingya human rights and the subsequent repression of Myanmar citizens who demand the return of the stolen 2021 election results by the junta ([William Jones, 2017](#); [Khin, 2017](#); [Kipgen, 2017](#); [Selth, 2018](#); [Tobing, 2018](#)). Subsequently, the occurrences in Myanmar extend a conundrum for the Association of Southeast Asian Nations, which is debating whether to adhere to its principle of non-interference in the internal affairs of members ([Lee Jones, 2010](#); [Ramcharan, 2000](#)).

The crisis appears to have no end in sight, posing numerous challenges for ASEAN. In addition, according to Rodion Ebbighousen (2021), ASEAN's diplomacy and reputation are put to the test. First, the diplomatic heft of the partnership is in jeopardy. As evidenced by the United States' statement that the leader of the country is unwilling to share a table with Myanmar at the 2022 East Asia Summit or ASEAN summit in Phnom Penh, Kingdom of Cambodia. Second, the alliance's reputation has taken a hit. Images of widespread mass protests by the military administration, as well as demonstrators being murdered and injured, are circulating throughout the world. This occurrence also damages the reputation of ASEAN. The group is already accused of not taking seriously its human rights treaty. A fragmentation of Myanmar, which cannot be ruled out, would undermine the entire region's stability. People have begun to flee to countries such as India and Thailand. Hence, according to Elaine Pearson (2022), ASEAN members must adopt more stringent restrictions.

In its initial promulgation, the ASEAN Charter ushered in hopeful reforms in the ASEAN diplomatic system, transforming it from closed to more open, which is subsequently applauded by scholars ([Katsumata, 2004](#)). However, the ASEAN Charter is undermined by its members, such as Myanmar, who violate the Charter. Consequently, a rigid interpretation of the principle of non-interference, the human rights situation in Myanmar reveals the region's insufficient commitment to human rights values. This ASEAN stance is informed by most of their internal members' democratic values, which are infused with a traditional perspective. There are a few exceptions to the non-interference principle interpretation, such as in Thailand and the Philippines. Why have Thailand and the Philippines championed a liberal understanding of the non-interference principle, but other ASEAN members have been unwilling to change the ASEAN Way? According to Hiro Katsumata (2004), the policymakers of these two nations respect the liberal values of human rights and democracy. They have been profoundly influenced by the shift in global norms. Thailand and the Philippines, among ASEAN nations, have been politically distinct, though not Western. Since the end of the Cold War, they have maintained strong defense relations with the United States, but ASEAN reaffirmed its neutralist posture in 1971 by announcing its plan for the Zone of Peace, Freedom, and Neutrality. In this regard, it is not unexpected that Bangkok and Manila were more affected by the shift in global norms than the other ASEAN nations.

In contrast, some ASEAN countries are relatively quiet on the question of liberal principles and are less influenced by the worldwide shift in norms. Therefore, they are hesitant to advocate for a broad interpretation of ASEAN principles and open debates of internal issues. Since their policymakers are not staunch defenders of liberal values, Katsumata (2004) insisted, they do not hesitate to express their opposition to a proposal to promote a broad interpretation of the concept of non-interference. According to them, considerations of human rights and democracy are unnecessary and premature. As a result, despite growing





calls from some ASEAN members and other non-state actors in the region to consider relaxing the non-interference principle when it comes to humanitarian crisis issues affecting the region, it would be extremely difficult to reach a consensus within the group due to the vehement opposition of some members ([Morada, 2018](#)).

In the meantime, the ASEAN's stance on the human rights problem in Myanmar leaves scholars perplexed. John Arendshort (2009) proposes three options for respecting ASEAN's Charter based on a thorough analysis. ASEAN could continue its non-interventionist policy of "constructive engagement," it could modify the AICHR to include a court with authority to issue binding judgments for human rights violations, or it could impose sanctions on or expel Myanmar for violating the ASEAN Charter's fundamental principles. The first alternative is undesirable because it would erode ASEAN's international credibility and invalidate the Charter's human rights principles and the AICHR's authority. Furthermore, ASEAN's failure to protect the rights of the Myanmar people has pushed the organization into another crisis of public credibility. It is best to observe how the European Union evolves and be open to any critics who support its progress. Any crisis can rapidly expose the E.U.'s flaws, confirming the regional organization's dynamic development ([Bakare & Sherazi, 2019](#)). The second option is unworkable due to the diversity of ASEAN member states, which would make consensus on the court's procedures impossible. The third solution is optimal, as it would demonstrate to the world that ASEAN is a strong, modern regional organization while allowing future flexibility.

If none of these proposals are tabled, the only option to preserve the human rights of the people of Myanmar is for the UN body to "intervene" on behalf of the international community. To implement this scenario, a UN organisation sent its special rapporteur to Myanmar after the junta took power in 2021. Unfortunately, the special rapporteur was greeted unpleasantly when collecting data ([Efe News Service, 2022](#)). However, when the special rapporteur presented their report to the Geneva office for human rights, Myanmar's officials protested to the entire report, accusing it of being unbalanced and biased ([Asia News Monitor, 2022](#)). As a response, several nations, including the United States and the European Union, imposed sanctions on the junta, focusing mostly on its military industry, in the hope that the junta's weapons would not be used to kill Myanmar's citizens during their protests.

## 6. Conclusion

The cases of human rights violations committed by the Myanmar Army against its citizens demonstrate that ASEAN has been trapped in a traditional and narrow understanding of state sovereignty, which underpins the origins of the principle of non-interference. This conventional understanding has been purposefully defended by ASEAN because most of its member countries enjoy it, serving as a shield for the continuation of monarchy practice in their state system. Furthermore, most ASEAN members have strong reasons to reject any outside intervention, even based on human rights or humanity, based on the shield of the country's sovereignty. This attitude contradicts international developments that have reshaped the concept of state sovereignty. In the global world, sovereignty has evolved from absolute, which tends to position the state as the leading actor, to people's sovereignty, and now it has evolved into human sovereignty. This transformation is inextricably linked to the abuse of state rulers based on sovereignty to do whatever they want, even if it harms the rights of their citizens. Considering ASEAN's failure to address human rights violations committed by its member countries, ASEAN presents a significant challenge. Will it remain a traditional organization today, or will it adapt to the times by transforming the principle of non-interference through a human rights lens, allowing ASEAN organizations to develop at the same rate as the rest of the world?





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