Why is ASEAN not intrusive? Non-interference meets state strength

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ABSTRACT

Background: ASEAN is characterized as a non-intrusive regional organization. It has been argued that noninterference principle was prioritized over democracy and human rights because of undemocratic regimes in some member states and the success of its “ASEAN Way” of diplomacy. Purpose: This article demonstrates that such arguments, although dominant in the literature, struggle to explain the ASEAN experience. It will argue that, fundamentally, ASEAN remains non-intrusive because its member states share an understanding that domestic issues should be managed domestically, since the members have sufficient capability to do so. This common understanding enables each of them to avoid relying on ASEAN institutions. Main Argument: Taking non-traditional security issues as cases, this article argues that the noninterference principle has been maintained via this shared understanding. This argument might seem to be inconsistent with the moments when member states sometimes advocate for an intrusive ASEAN. It is not. Rather, such requests are made when doing so is in line with the states’ own interests, but such advocacy does not lead to changes in the basic ASEAN approach because the members retain their shared understanding that domestic issues should be managed domestically. Conclusion: Members facing a domestic challenge with potential spillover effects persuade the organization that they have enough state strength to manage the challenge internally. All members are ready to be persuaded from their shared understanding that they can rely on state strength to solve domestic issues. To date, however, members have successfully convinced one another that domestic capabilities are sufficient to address the issues under discussion.

KEYWORDS

ASEAN; regional organizations; intrusiveness; noninterference; state strength

1. Introduction

Noninterference has been a cardinal principle in ASEAN since its founding in 1967, and the principle has remained embedded in its institutions even after the 2003 Declaration of ASEAN Concord II and the 2008 ASEAN Charter incorporated democracy and human rights as principles that ASEAN should support. This article aims to explain why ASEAN, as a collective action among sovereign member states, continues to maintain its non-interference principle. ASEAN has established institutions that are in a position to
challenge the noninterference principle, and discussions of conditions within its member states have sometimes occurred during ASEAN meetings. On these occasions, the representatives of one or another member state, sometimes a democratic regime and sometimes not, can be relied upon to insist that ASEAN has no business intruding in the domestic affairs of its member states, and to charge that by setting up new institutions or strengthening existing ones to make them capable of such intrusions, ASEAN would be contravening its founding principle. Overall, ASEAN remains non-intrusive.

In this article, “intrusive” regional organizations have institutions that, by design, interfere with issues that are the jurisdiction of domestic politics. In other words, they are empowered to undermine sovereignty and state autonomy as they pursue broader goals. Regional organizations elsewhere have interfered in a wide range of domestic affairs, from economic to social, and political and security issues. ASEAN itself became economically intrusive when it established a mechanism to monitor its member states’ economic policies. Member states were willing to tolerate this level of intrusion because the payoff – securing their economic survival – was also a domestic priority.

This article analyzes non-intrusiveness of ASEAN mainly in the security field, with particular attention to non-traditional security issues that relate for example to the environment, transnational crime, refugees or natural disasters. Most of these issues also 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.

In practice, however, such support is rarely seen. ASEAN member states prefer to manage even these issues without ASEAN interference. These issues have different dynamics from economic fields in that they concern domestic conduct and governance. This article analyzes the non-intrusiveness of ASEAN as an organization; it does not seek to explain the behavior or political strategies of individual member state, including member-state use of non-ASEAN platforms to condemn the domestic political behavior of fellow members.

It is not controversial to describe ASEAN as non-intrusive. This empirical fact is largely accepted by all scholarly communities. The question of interest to many is: will ASEAN remain non-intrusive? In order to engage in such a predictive exercise, one must ask why ASEAN is non-intrusive. This is the question engaged in the present article, and by doing so this article is joining a wide-ranging debate. Some argue that the influence of ASEAN’s nondemocratic members has secured the retention of its noninterference principle, despite its recent steps in the direction of prioritizing the promotion of democracy and human rights.1 In this view, the ASEAN Intergovernmental Commission on Human Rights (AICHR), established in 2009, has not been given a mandate for protecting human rights because some undemocratic member states have successfully limited its ability to function as intended.2 Others with constructivist viewpoints suggest that the principle is retained because it is effective. They argue that the ASEAN Way, “the principle of non-interference and search for accommodation and consensus,”3 is embedded in all ASEAN institutions, including

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1Kuhonta, “Walking a Tightrope”; Dosch, “ASEAN’s Reluctant Liberal Turn”; and Gerard, “ASEAN and Civil Society Activities.”
2Although non-democratic members attempted to limit the role of the AICHR, they agreed to its establishment because they have incentives to maintain the reputation and legitimacy of ASEAN in the international community. For discussion on this, see Munro, “The Relationship Between the Origins”; and Ryu and Ortuoste, “Democratization, Regional Integration.”
3Khong and Nesadurai, “Hanging Together,” 33–34.
AICHR, and that this approach to diplomatic conflict management is well-received among its member states. ASEAN’s engagement with Myanmar is offered as a case in point.\(^4\)

Khong and Nesadurai argue that the resilience of the noninterference principle varies by cooperation area. They explain that after establishing the ASEAN Free Trade Area (AFTA), ASEAN institutions in economic cooperation have become more intrusive because member states need intrusive institutions to maintain their economic growth. ASEAN economic integration has been deepened to include not only mutual reductions of tariffs but also liberalization in investment and services. Decisions to move toward deeper integration reflect the expectation member state governments that economic integration will bring more economic prosperity. Shared economic rationality enables them to agree to narrow the scope of economic sovereignty, despite this deviation from the noninterference principle.

But ASEAN institutions in other areas have not changed in the same way. The ASEAN Regional Forum (ARF), for example, retains the ASEAN Way because intrusive rules “do not seem necessary for meaningful security cooperation in the ARF.”\(^5\) This argument can also be applied to non-traditional security issues.\(^6\) Taking environmental cooperation as an example, Khong and Nesadurai argue that “ASEAN members seemed more anxious about the extent to which strict compliance with regional environmental commitments would undermine national competitiveness, governments’ ability to pursue rapid economic growth, and vested corporate interests than about the health effects of the haze.”\(^7\)

Existing arguments suggest that ASEAN’s noninterference principle persists because of the mixture of political regimes in ASEAN, less demand for intrusive rules, and concerns related to the loss of state autonomy. It should be asked why these arguments are dominant in scholarly discussions regarding ASEAN, or what the preconditions of existing arguments are. This article incorporates a comparative perspective: cases of other regional organizations are analyzed in order to clarify the mechanisms that have ensured the preservation of ASEAN’s noninterference principle. In the process, it will examine the relevance of four factors that have been used to explain the existence of intrusive regional organizations: democratic norms, regional power, spillover effects of conflicts, and fragile states.

The argument presented here is that ASEAN is non-intrusive because its member states share an understanding that domestic issues should be managed domestically, since they have sufficient state strength to do so. This state strength enables member states to retain their sovereign right to solve their own domestic issues without relying on – or being compelled to rely on – ASEAN for this purpose. Taking non-traditional security issues as cases, this article demonstrates the shared understanding by analyzing discussions among member states, during which each, in turn, convinces and is convinced that the state whose domestic issue is under discussion has enough state strength to contain its domestic challenges, thus demonstrating that ASEAN intervention is unnecessary. When member states advocate that ASEAN should insert itself into another member’s domestic affairs, they do so because such intervention – or, in many cases, the act of demanding ASEAN intervention – is in line with their political interests. However,

\(^4\) Acharya, *Constructing a Security Community*; and Haacke, “Enhanced Interaction’ with Myanmar.”

\(^5\) Khong and Nesadurai, “Hanging Together,” 38.

\(^6\) Caballero-Anthony, “Non-Traditional Security.”

\(^7\) Khong and Nesadurai, “Hanging Together,” 57.
these efforts have not led to changes in the basic ASEAN approach because they hold their shared understanding that domestic issues should be managed domestically.

The article is organized as follows. The first section presents an analytical scheme for intrusive regional organizations and state strength. The second section overviews ASEAN institutions that have the potential to be intrusive. The third section presents case studies that illustrate the argument: on the whole, ASEAN has been non-intrusive because all member states share a belief that each has enough state strength to cope with its domestic affairs on their own, without ASEAN intervention. Cases were selected according to three criteria. First, they involve domestic conduct and governance issues in non-traditional security. Secondly, these cases were observed after democracy and human rights became formal ASEAN principles in 2003, which formally empowered ASEAN to deal with domestic conduct in its member states. Thirdly, all cases involved sometimes heated discussions within ASEAN as to whether an intrusive or non-intrusive approach would best serve the interests of its member states. This empirical analysis helps to clarify the relationship between state strength and non-intrusiveness of ASEAN as an organization.

2. Intrusive regional organizations and state strength

The literature on the intrusiveness of regional organizations is dominated by four perspectives. The first analyzes democratic regime responses to regional institutional intrusions. Globally, some regional organizations have inserted themselves into the politics of their member states in order to restore or maintain democratic regimes. Based on this empirical referent, one might argue that regional organizations with a greater proportion of member states whose governments are democratically elected would be relatively willing to intrude into domestic politics, especially in order to promote values like human rights and accepting electoral outcomes, which often are projected as being complementary to democracy. This perspective is mainly based on analysis of regional organizations in Europe and Latin America, where most member states are democratic and most regional institutions are intrusive. Following this logic, the explanation for ASEAN non-intrusiveness is the unwillingness of some undemocratic member states. In fact, however, some of ASEAN’s undemocratic member states are among the most vocal critics of domestic affairs in other member states, and among the most passionate advocates of a more intrusive ASEAN. Thus, the phenomenon of ASEAN non-intrusiveness cannot be understood with reference to democracy.

The second perspective suggests that 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. It is well known, for example, that interventions by the Economic Community of West African States (ECOWAS) have been led by Nigeria, West Africa’s regional hegemon, which wished for an intrusive ECOWAS. Following this logic to Southeast Asia, one would expect ASEAN to be shaped by the interests of the region’s hegemon,

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8 Acharya and Johnston, Crafting Cooperation.
9 Diehl, “Patterns and Discontinuities;” and Zartman, “Regional Conflict Management in Africa.”
Indonesia. Indonesia generally leads or supports calls for a more intrusive ASEAN, and discussions regarding the ways ASEAN should engage with issues like human rights, disaster management and transnational issues are ongoing. 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.

The third perspective argues that spillover effects of domestic conflicts can trigger intrusive responses by regional organizations. Some regional organizations have established intrusive institutions to stop the spillovers from conflicts that originated in neighboring states. Conflicts with spillover effects are expected to bring about intrusive regional organizations. For example, ECOWAS institutions have intervened in order to mitigate spillover effects that arose as a result of domestic political instability in its member states. This perspective predicts that ASEAN would be non-intrusive if conflicts in Southeast Asia do not have spillover effects. But, many conflicts in Southeast Asia have had spillover effects, including but not limited to those concerning Muslim populations in southern Thailand, southern Philippines, and Myanmar. For example, ASEAN did not intrude after Myanmar’s efforts to manage issues related to Rohingyas created a spillover effect when large numbers of this community crossed the border into Thailand. Thus, ASEAN non-intrusiveness cannot be explained from this perspective.

The fourth perspective concerns state conditions: lack of state strength in member states is expected to trigger intervention by regional organizations. States lacking state strength are often called weak and fragile states. They are expected to attempt to use all imaginable resources, including regional organizations, to restore their authority. The necessity of restoring state strength is the highest priority for governments of weak and fragile states, and this priority is expected to increase the willingness of regimes in such states to support intrusive regional organizations. Fragile and weak states in Africa let regional organizations such as the ECOWAS and the African Union (AU) shift their norms from non-intervention to non-indifference. From this perspective, ASEAN would be expected to be non-intrusive as long as its member states retain state strength. This argument seems to explain ASEAN non-intrusiveness. That is, compared with African states, ASEAN members have been relatively less fragile since the late 1980s. But this correlation demands empirical analysis: is state strength meaningfully associated with non-intrusiveness of ASEAN and, if so, how?

State strength can be measured in three dimensions:

1. Infrastructure capacity in terms of the ability of state institutions to perform essential tasks and enact policy;
2. Coercive capacity in terms of the state’s ability and willingness to employ force against challenges to its authority; and
3. National identity and social cohesion in terms of the degree to which the population identifies with the nation state and accepts its legitimate role in their lives.

Thus, state strength concerns all capabilities of the state, or the government, to cope with domestic issues, including maintaining social cohesion. Whether the state can cope with

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10Shaw, “Conflict Management in Latin America”; and Zartman, “Regional Conflict Management in Africa.”
11For an analysis of ECOWAS intervention, see Francis, Uniting Africa, chapter 6.
12For a discussion on fragile or weak states and regional organizations, see Söderbaum, “Whose Security?.” Security of the ruling is called regime security. See also Jackson, “Regime Security,” 187.
13Williams, “From Non-Intervention to Non-Indifference.”
14Jackson, “Regime Security,” 188.
domestic security issues that have spillover effects depends on the extent of, for example, diplomatic skills to negotiate and communicate changes and institutional capacity to implement them.

State strength is often enhanced by economic growth, which gives states opportunities to improve their capacities. It is argued that stagnant or receding economies increase the fragility of both governments and governing institutions. In this connection, promoting democratic regimes is important in Africa, because there is a positive association between authoritarianism and economic failure.

In the 1960s and 1970s, ASEAN member states were weak states that faced challenges from both internal and external competitors. At that time, the noninterference principle provided some protection against the latter challenge and thus enabled member states to focus on nation-building and to deal with threats of communist subversion. Since the late 1980s, ASEAN members have solidified their position with respect to potential domestic adversaries. Challenges have sometimes manifested themselves, but no ASEAN member has faced a situation where external support was needed to restore its state strength. ASEAN’s noninterference principle thus played a role as its member states, in parallel, consolidated their state strength. Adopting the developmental state model also enabled the state itself to benefit from economic development. Indonesia’s twin concepts of “national resilience” and “regional resilience” demonstrate that its development program was inspired by the idea that domestic stability would result in regional stability.

Such domestic developments enable ASEAN member states to believe in each other’s ability to handle domestic issues. A strong state has less incentive to rely on ASEAN to restore state strength and keeps it from supporting intrusive ASEAN institutions. This does not mean, however, that ASEAN member states have actually maintained their state strength all the time. In fact, the governing regimes of ASEAN member states occasionally face domestic problems with the potential to overwhelm a state, and antigovernmental movements and criticism about the quality or even absence of governance have generated concerning levels of political instability. In order to combat domestic problems, member states sometimes call for ASEAN intrusion. Singapore proposed to introduce a more intrusive ASEAN institution that would monitor transboundary haze and other air pollution, but the proposal’s main purpose was to demonstrate to Singaporeans that their government was serious about combatting the problem. In general, ASEAN intrusion is proposed in order to enhance the proposing state’s governance capabilities, international status and domestic legitimacy, all of which are expected in turn to enhance national identity and social cohesion.

However, proposals for an intrusive ASEAN have not led to changes in the organization’s nature. This article argues that this outcome is the result of a shared belief, reinforced by experience, that each member state is sufficiently strong to solve its domestic issues. In other words, ASEAN remains non-intrusive because its member states share an understanding that domestic issues should be solved on their own without any outside intervention, and that each has sufficient state strength to handle these issues.

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15 Rotberg, “The Failure and Collapse of Nation-States.”
16 Compton, “Comparative Regional Integration.”
17 Acharya, Constructing a Security Community, 57–58; and Na Thalang and Siraprapasiri, “ASEAN’s (Non-) Role in Managing,” 134–35.
This understanding or common belief has been reflected in discussions among the member states whenever the idea of an intrusive ASEAN is placed on the agenda. The desire to nudge ASEAN toward more intrusiveness is often observed when a state is forced to grapple with the spillover effects of the domestic security problems faced by other ASEAN member states. The member state whose domestic problems caused spillover effects is then faced with the challenge of demonstrating that it has what it takes to contain its problems and reduce spillover effects to an acceptable level. All parties prefer such a demonstration to an intrusive ASEAN because they share an understanding that they can rely on their state strength to handle their own domestic issues. Taking cases of non-traditional security issues, this article presents evidence that supports its claim of such a shared understanding.

3. ASEAN institutions

This section overviews ASEAN institutions that are capable of inserting themselves into political and security fields, and include informal institutions like the practice of placing domestic issues on the agenda of ASEAN meetings.

In the late 1990s, ASEAN started discussing ways of applying its noninterference principle to security management in Southeast Asia. In 1998, Thailand’s then-Foreign Minister Surin Pitsuwan advocated a form of “flexible engagement,” that would allow member states to discuss openly the domestic politics of fellow members. Although the proposal was turned down, ASEAN established relevant institutions. In 1999, Singapore invited ASEAN foreign ministers to an informal retreat, where member states chose to discuss politically sensitive issues, including the future of ASEAN and the Myanmar issue. After the first two retreats in 1999 and 2000, the practice became institutionalized. In 2000, in response to a Thai proposal, the ASEAN Troika was set up to bolster regional security cooperation in Southeast Asia. It consists of foreign ministers of the present, past and future ASEAN chairs. Although its concept paper states that the Troika shall carry out its work in accordance with consensus and noninterference, and refrain from addressing issues that constitute the internal affairs of member countries, its three-page document leaves the boundary between regional security issues and internal issues blurry. In 2001, the Rules and Procedures of the High Council of the Treaty of Amity and Cooperation in Southeast Asia was signed, thus providing a new mechanism for solving conflicts among its contracting parties, including ASEAN member states.

18Oishi and Ghani, “Developing a Way to Influence,” 96–98. The recent retreats were held on February 21 2017, Boracay, the Philippines; February 6 2018, Singapore; and January 17–18, 2019 at Chiang Mai, Thailand. For statements of these meetings, see Press Statement by the Chairman of the ASEAN Foreign Ministers’ Retreat, Singapore, February 6 2018. https://asean.org/wp-content/uploads/2018/02/Press-Statement-by-the-Chairman-of-the-ASEAN-Foreign-Ministers-Retreat-clean.pdf (accessed October 5 2019); Press Statement by the Chairman of the ASEAN Foreign Ministers’ Retreat, Chiang Mai, 17-January 18 2019 https://www.asean2019.go.th/wp-content/uploads/2019/01/791cb177724cf127e28716e6f9aab77-1.pdf (accessed October 5 2019); and Press Release by the Chairman of the ASEAN Foreign Ministers’ Retreat, Boracay, February 21 2017. https://asean.org/press-release-by-the-chairman-of-the-asean-foreign-ministers-retreat-amm-retreat/ (accessed October 5 2019).

19ASEAN Secretariat, Handbook of ASEAN, 90–93.

20Ibid., 95–102. The Treaty of Amity and Cooperation (TAC) was signed by ASEAN member states in 1976. Since 2000, non-ASEAN member states have signed the TAC to underscore their friendly relationship with ASEAN. China and India signed it in 2003, followed by other countries including Japan, the US and Russia. It implies that ASEAN signed rules and procedures of the TAC High Council in 2001, considering utilizing its mechanism for conflicts with non-ASEAN members.
Declaration of ASEAN Concord II, agreed in 2003, explicitly maintains the noninterference principle even as it introduces democracy and human rights as ASEAN principles, even though these are widely understood to be domestic issues. Further, the 2008 ASEAN Charter provides for a human rights institution, which led to the establishment of the AICHR. As is well known, the main mandate of the AICHR is to promote and not merely protect human rights. Although agreeing that ASEAN has not yet moved toward prioritizing democracy and human rights, Collins argues that the AICHR could become an agent for compliance on human rights protection.²¹ In fact, the AICHR became an instrument for some member states who advocated that it should monitor alleged human rights violations in member states.

Many of the efforts to make ASEAN more intrusive have been led by Indonesia. It proposed both the introduction of democracy and human rights and the creation of a peacekeeping force in 2003.²² The latter proposal was rejected by other member states, but Indonesia’s proposed ASEAN Peacekeeping Centers Network was established in 2011 as a regional arrangement for maintaining peace and stability in the region by promoting cooperation among defense and armed forces within its member states through sharing experiences, expertise and other related capacities in peacekeeping.²³ Although it is not designed to be a regional peacekeeping force and in any event is still in a nascent state, it has the potential to become an intrusive institution.

In 2010, ASEAN developed its dispute settlement mechanism. The 2010 Protocol to the ASEAN Charter on Dispute Settlement Mechanisms gives the ASEAN chair or the ASEAN Secretary-General roles of good offices, mediation or conciliation.²⁴ As described in the following section, Indonesia, as the ASEAN chair, attempted to play a mediation role during a territorial dispute between Cambodia and Thailand.

As a practice, ASEAN’s official agenda has included domestic issues, starting with the Myanmar democratization issue in 2003. Since that year, when at least 70 people associated with Myanmar’s National League for Democracy were killed in Depayin township, 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.²⁵ In 2005, in response to criticism from outside countries, ASEAN member states asked Myanmar not to chair the 2006 AMM and other ASEAN meetings. This “ASEAN intervention” did not rise to the level of imposing a 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 their revulsion 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 restraint and seek a political solution.²⁶ As described later, ASEAN statements on domestic issues have since been released not only toward Myanmar but also toward Thailand.

²¹ Collins, “From Commitment to Compliance.”
²² Jakarta Post, June 16; 18, 2003.
²³ Na Thalang and Siraprapasiri, “ASEAN’s (Non-) Role in Managing,” 134–37.
²⁴ ASEAN, Protocol to the ASEAN Charter.
²⁵ As for the AMM joint communiques, see https://asean.org/asean-political-security-community/asean-foreign-ministers-meeting-amm/.
²⁶ Oishi and Ghani, “Developing a Way to Influence,” 101–3.
ASEAN also institutionalized cooperation concerning domestic conduct or governance issues in non-traditional security areas. In 1997–1998, haze from fires that originated in Indonesia became a high-alert issue in Singapore and Malaysia as well as Indonesia itself. ASEAN member states agreed to deal with the issue, which led to the signing of the ASEAN Agreement on Transboundary Haze Pollution (AATHP) in 2002 to prevent, monitor, and mitigate fires in order to control transboundary haze pollution through concerted national, regional and international cooperation. This is one of ASEAN’s first attempts to incorporate legal language in its description of member state obligations regarding domestic conduct. Although its Article 3 articulates the sovereign right of member states to exploit their own resources pursuant to their own environmental and developmental policies, its potentially binding authority made Jakarta hesitate to ratify it. The Conference of the Parties (COP) to AATHP was established in 2003, and relevant mechanisms were set up to put pressure on Indonesia for ratification. One of the mechanisms, the ASEAN Sub-Regional Haze Monitoring System, was established at the ASEAN summit in October 2013, and Indonesia ratified the AATHP one year later.

Institutions in this area of cooperation could be intrusive in nature since they might demand changes in domestic policies and conduct. This is also true of natural disaster management. After the December 2004 earthquake/tsunami disaster, ASEAN member states signed the ASEAN Agreement on Disaster Management and Emergency Response (AADMER) in 2005. The ASEAN Coordinating Center for Humanitarian Assistance on Disaster Management (AHA Center) was established in 2011 and became a focal point among international organizations, external countries, and member states facing a disaster management crisis. The AHA Center played roles in 2013, following Typhoon Haiyan in the Philippines, and flooding in Laos and an earthquake in Indonesia in 2018.

4. Non-intrusive ASEAN and state strength

Although many ASEAN institutions are now capable of being used as intrusive institutions, they remain basically non-intrusive. This section shows that there is a shared understanding among ASEAN member states that they can or should rely on their state strength to handle domestic issues. This understanding has been reflected in the discussions among the member states. First, member states advocate for strengthening existing ASEAN institutions or establishing new ones to be intrusive. Secondly, member states causing problems resist this advocacy by demonstrating that their governments are endowed with sufficient state strength to contain conflicts or solve problems without ASEAN’s help. Finally, all members accept the veracity and relevance of such demonstrations. Cases are selected to demonstrate that ASEAN remains non-intrusive in regard both to domestic conduct and to governance in non-traditional security issues.

27ASEAN, ASEAN Agreement on Transboundary.
28See note 7 above.
29ASEAN, Chairman’s Statement of the 23rd.
30ASEAN, ASEAN Agreement on Disaster Management.
31For more information on institutions on disaster management, see Kamolvej, “Institutionalization of Disaster Management.”
4.1. Haze and Indonesia

Haze pollution had been problematic since the late 1990s and reached alarming levels in 1997. After resisting ASEAN involvement, Indonesia finally agreed to sign the AATHP in 2002. While Indonesia continued to resist ratifying the AATHP, it came into force in November 2003, after six other countries did so, and the COP to the AATHP was established shortly thereafter.

In October 2006, when the haze reached a record level, Indonesian President Yudhoyono offered an apology for the haze and promised ratification of the AATHP. One month later, the ASEAN Ministerial Meeting on Environment established a Sub-Regional Ministerial Steering Committee on Transboundary Haze Pollution. Some in Indonesia started arguing that the AATHP was unfair since it singled out only haze, despite the existence of other transboundary environmental issues that were not addressed by any ASEAN institutions. In March 2008, Indonesia’s parliament unanimously rejected ratification of the AATHP.

In October 2013, the ASEAN summit approved the establishment of an ASEAN Sub-Regional Haze Monitoring System proposed by Singapore. However, operationalization of the system was hindered because land use and concession maps had not been provided by the countries concerned. Singapore criticized Indonesia of not sharing concession maps and initiated coercive measures against companies causing the haze. Not only Indonesia but also Malaysia had been reluctant to cooperate to combat the haze, because Malaysian companies contributed to the problem.

Responding to this criticism and related actions, Indonesia ratified the AATHP in September 2014 and declared its intention to create concessions maps. Further, an Indonesian district court sentenced the manager of a Malaysian-owned plantation to one year in jail and fined him two billion rupiah for neglecting to prevent forest fires on an estate in Riau, Indonesia. At the same time, Indonesia and Malaysia were working on a bilateral pact to better tackle the annual transboundary haze. An Indonesian official confirmed that Indonesia and Malaysia were exchanging information and experiences and, importantly, establishing joint research focusing on fire prevention, not just combating a blaze.

The ASEAN haze monitoring system is potentially intrusive. Singapore, a highly affected country, advocated for such an intrusive institution. However, cooperation moved slowly, due to Indonesia’s domestic opposition. Malaysia, which was also affected by airborne haze from Indonesia, took a somewhat ambiguous position since its companies operated in the areas and cased some of the haze. Malaysia and Indonesia responded to criticism from Singapore. But rather than support Singapore’s advocacy for an intrusive ASEAN, they sought to persuade member states that they had sufficient capabilities to manage the problem, mainly by implementing coercive domestic policies. Other members were persuaded by Indonesia and Malaysia, and even Singapore agreed to rely on Indonesia’s state
strength to improve some situations. At the ministerial meetings on haze in 2014, ASEAN members including Singapore appreciated Indonesia’s continued efforts, and bilateral collaboration between Indonesia and Malaysia, and Indonesia and Singapore, to address transboundary haze issues were recognized as the appropriate venues to be used as the countries took the actions needed to operationalize the haze monitoring system.\(^{40}\)

### 4.2. Transnational issues and Thailand

Thai advocacy in favor of abandoning ASEAN’s noninterference principle vanished when Thaksin Shinawatra became its prime minister. In October 2004, the Tak Bai incident in southern Thailand, during which at least 85 unarmed Muslim protestors died at the hands of the Thai government, captured the attention of other ASEAN members. Since many victims were Malays in origin and had retained contact with extended family in northern parts of Malaysia, this issue had spillover effects. Despite criticism from its fellow members, Thaksin rejected any discussion on this issue at the ASEAN level.\(^{41}\) Malaysia and Indonesia planned to raise the issue at the ASEAN summit in late 2004,\(^{42}\) but Thaksin warned that “if this issue is raised during the meeting, I’ll walk out immediately and fly back to Bangkok.”\(^{43}\) At the summit, Malaysian and Indonesian leaders did not single out the Tak Bai massacre, raising instead the broader issue of violence in southern Thailand.

Seeking to soothe feelings while simultaneously excluding the possibility of ASEAN intrusiveness, Thaksin initiated a trilateral meeting with leaders of Malaysia and Indonesia,\(^{44}\) which led to the creation of an independent panel to investigate the situation. Abdullah Ahmad Badawi, the Malaysian leader, said he was confident the Thai leader could solve the problem, and ASEAN members eventually left containment of the problem to the Thai government.\(^{45}\) This exchange implies that the member states share an understanding that domestic issues should be solved by their own states, with their state strength.

A similar Thai response was observed in the aftermath of the 2014 coup d'etat. ASEAN released statements that urged Thailand to improve its situation in December 2013.\(^{46}\) In early 2014, Indonesia contacted Myanmar, the ASEAN chair at the time, to discuss ways that proactive ASEAN policy might improve Thailand’s unstable domestic situation.\(^{47}\) Thailand rejected ASEAN intervention, however, and Myanmar accepted a Thai request not to involve ASEAN institutions.\(^{48}\) Myanmar had its own domestic political issues and regarded Indonesia’s advocacy contrary to those interests.

Domestic political conflict in Thailand that had its origins in the Thaksin era escalated in the form of renewing a territorial dispute with Cambodia.\(^{49}\) After the Preah Vihear

\(^{40}\)See note 35 above.

\(^{41}\)Khong and Nesadurai, “Hanging Together,” 46–47.

\(^{42}\)The Nation, November 27; 29, 2004.

\(^{43}\)The Nation, November 26 2004.

\(^{44}\)The New Straits Times, November 29 2004.

\(^{45}\)Bangkok Post, November 30 2004.

\(^{46}\)ASEAN, Statement on Current Developments; and ASEAN, ASEAN Foreign Ministers’ Statement.

\(^{47}\)BBC Monitoring Asia Pacific, May 25 2014.

\(^{48}\)Bangkok Post, June 13 2014.

\(^{49}\)The then-prime minister, Samak Sundaravej, loyal to Thaksin Shinawatra, acquiesced to Cambodia’s application of Preah Vihear as a UNESCO World Heritage site. The Thai opposition party, anti-Thaksin camp, then accused him of forfeiting Thai dignity and sovereignty in exchange for Cambodian business concessions. Wagener, “Lessons from Preah Vihear”; and Ciorciari, Thailand and Cambodia.
temple was registered as a UNESCO World Heritage Site, both Thailand and Cambodia insisted the area surrounding the temple was its own territory. Both Thailand and Cambodia sent their troops to the border and exchanged fire that wounded several soldiers on both sides. In 2008, Cambodia sought UN mediation, but hesitated to rely on ASEAN. However, Vietnam, a nonpermanent UNSC member at the time, convinced the UNSC that this issue should be sorted out bilaterally under ASEAN auspices. In 2010, Cambodia asked the then-chair of ASEAN, Vietnam, as well as the UN to mediate the conflict. Vietnam expressed its willingness to mediate, but Thailand rejected all mediation.

In 2011, Indonesia became the ASEAN chair and sought to use its influence as ASEAN chair to mediate the conflict. After the UN Security Council released a statement requesting Thailand and Cambodia to accept ASEAN as a mediator, Indonesia warned that continued Thai rejection of ASEAN mediation might lead the conflict to become internationalized, which would invite UN intervention. Finally Thailand accepted the ASEAN chair’s good offices as a mediation forum and Indonesia, as the chair, led discussions that ended with the disputants agreeing, at an informal ASEAN foreign ministers meeting, to receive observers from Indonesia in the border area.

However, the agreement was not realized after Thailand reversed its position and rejected the deployment of Indonesian observers on its territory. Indonesia’s attempt to resolve this conflict was nonetheless institutionalized in the 2010 Protocol to the ASEAN Charter on Dispute Settlement Mechanisms, which gives the ASEAN chair a mediation role. The ASEAN institution played this role, but had not been empowered to enforce implementation of the agreement on sending observers. It is also noted that other member states did not actively support Indonesia’s effort to insert ASEAN into this conflict. At the meeting where Thailand and Cambodia agreed to receive the Indonesian observers, only Singapore supported Indonesia. Malaysia, Vietnam and the Philippines did not even send their foreign ministers to this meeting.

In early 2011, Indonesia asked Cambodia and Thailand to solve the issue bilaterally before asking for help regionally and globally. While engaging with this issue as a chair, Indonesia observed that Thailand and Cambodia maintained their bilateral channels at the level of foreign and defense ministers as well as at the military level. Cambodia and Thailand showed fellow members, including Indonesia, that they had sufficient diplomatic skills and institutional capacities to manage the problem on their own, while engaging with ASEAN-led diplomatic efforts. Thailand’s rejection of the Indonesian observers suggests that Thailand was confident that a bilateral solution would best serve its interests, and therefore ASEAN intervention had little to offer. At the summit in late 2011, without mentioning the agreement on sending of Indonesian observers, ASEAN members welcomed the increasingly encouraging conditions and called on both

50 International Crisis Group, “Waging Peace,” 5–8.
51 Singhaputargun, “The Thailand-Cambodia Preah Vihear,” 122–124.
52 The Nation, April 15 2010; Bangkok Post, August 16; 18; 20, 2010.
53 Straits Times, February 9 2011.
54ASEAN, Statement by the Chairman.
55 Singhaputargun, “The Thailand-Cambodia Preah Vihear,” 129.
56 Jakarta Post, February 22 2011.
57 See note 53 above.
58 Singhaputargun, “The Thailand-Cambodia Preah Vihear,” 125–27.
countries to continue to resolve differences peacefully through the fullest utilization of their existing bilateral mechanism, together with the appropriate engagement of the current chair of ASEAN.\textsuperscript{59} Thus, the member states agreed not to go for an intrusive ASEAN, but to appreciate efforts of Thailand and Cambodia to sort out this problem bilaterally.

4.3. Disaster and refugees in Myanmar

As mentioned earlier, ASEAN released a strongly critical statement about the Myanmar government’s repression of an uprising in 2007. This suppression created a spillover effect as refugees flowed into Thailand.\textsuperscript{60} The Myanmar government agreed to receive Ibrahim Gambari, a Special Advisor to the UN Secretary-General, who had been sent to investigate the situation, and the visit also was supported by ASEAN.\textsuperscript{61} Singapore, as the ASEAN chair, insisted that ASEAN should make more efforts to collaborate with the UN.\textsuperscript{62} Indonesia, on the other hand, supported Myanmar’s stance, arguing that Myanmar should continue cooperating with the UN and make its own efforts to transition to democracy, learning from recent Indonesian experience.\textsuperscript{63} Thus, Singapore’s subsequent proposal to invite Gambari to the East Asia Summit in November 2007 was rejected not only by Myanmar but also by other member states sympathetic with Myanmar.\textsuperscript{64} Although Singapore attempted to make ASEAN more intrusive, it had to accept that other member states preferred to support Myanmar, which claimed to be capable of dealing with its domestic turmoil on its own. This is consistent with a shared understanding of relying on state strength.

Myanmar was not always averse to ASEAN involvement. It accepted ASEAN assistance and engagement when Cyclone Nargis hit the country in 2008. Although it is humanitarian assistance in nature, disaster management is also closely associated with governance and internal security, because plausibly equivalent distribution options could yield very different political results. Citizens might misinterpret why one community rather than another was the first to receive relief supplies, and the government might be concerned about what relief providers might see as they did their humanitarian work. Thus, the Myanmar government responded carefully to offers of assistance from the international community.

Based on the consensus underlined by the AADMER, ASEAN was ready to assist, but Myanmar initially declined to accept any disaster relief assistance from the international community. Through its Secretary-General, Surin Pitsuwan, ASEAN played a crucial bridging role between Myanmar and external parties, including the UN.\textsuperscript{65} Myanmar accepted this ASEAN-led assistance mechanism. ASEAN assistance was provided in close collaboration with the Myanmar government. Overall implementation was guided by the Trilateral Core Group (TCG), chaired by the Myanmar government and consisting of representatives from ASEAN and the UN.\textsuperscript{66} In other words, the Myanmar government

\textsuperscript{59}ASEAN, Chair’s Statement of the 19th.
\textsuperscript{60}Jakarta Post, October 8 2007.
\textsuperscript{61}ASEAN, Statement by ASEAN Chair.
\textsuperscript{62}Jakarta Post, October 4 2007.
\textsuperscript{63}New Straits Times, October 19 2007.
\textsuperscript{64}Jakarta Post, November 20 2007; and New Straits Times, November 20 2007.
\textsuperscript{65}Oishi and Ghani, “Developing a Way to Influence,” 104–05.
\textsuperscript{66}ASEAN Secretariat, Compassion in Action.
was in charge of ASEAN assistance. It implies that Myanmar accepted relief assistance from ASEAN, the UN and individual countries through this ASEAN-led mechanism because it considered ASEAN engagement as securing its interests and valuing its state strength. Establishment of the TCG demonstrates that Myanmar’s state strength limits ASEAN intrusiveness.

The problem of Rohingya people has been on the ASEAN agenda repeatedly. It has several aspects. First, they have been discriminated against for decades and, more recently, compelled by direct Myanmar government action to leave the country. Second, because of their non-citizen status in Myanmar, Rohingya people are especially vulnerable at home and thus seek opportunities elsewhere, which makes them targets for human traffickers. In both aspects, they flowed into neighboring countries, which is the very definition of a spillover effect.

The international community has condemned Myanmar’s treatment of Rohingya people as a human rights violation, yet ASEAN member states have deliberately avoided describing the problem in this way. In May 2015, the Thai government imprisoned the leaders of human trafficking agencies that had taken some Rohingya people as illegal migrant workers, but was not sensitive to the humanitarian needs of the now-abandoned illegal immigrants. Many of these Rohingya people moved to Malaysia and Indonesia, because they expected better treatment in these Muslim countries.67 Thus, population movement became a regional problem.

Malaysia, as the ASEAN chair, initiated a meeting with Indonesia and Thailand. At this meeting, the three member states agreed to deal with this issue as human trafficking, a transnational crime.68 At the July 2015 Emergency ASEAN Ministerial Meeting on Transnational Crime Concerning Irregular Movement of Persons in the Southeast Asia Region in Kuala Lumpur, ASEAN member states agreed to combat transnational crime.69 The official statement never mentions the Rohingya people, partly because member states witnessed Myanmar’s willingness and efforts to solve the issue. After a trilateral meeting that included Malaysia, Indonesia and Thailand, the Myanmar government agreed to send a consular representative to shelters in Aceh, Indonesia, take preventive measures for future cases of irregular migration, and ensure that the rebuilding of the Rakhine state (where the Rohingya people reside) would be inclusive and without discrimination.70 In other words, Myanmar presented its will and state strength to deal with issues by conducting actions that other ASEAN members respected as appropriate.

Aung San Suu Kyi became State Counselor in April 2016 and obtained de-facto leadership, although military political institutions were still influential. The State Counselor initiated the establishment of the Advisory Commission on Rakhine State headed by Kofi Annan in September 2016,71 thus showing the international community her willingness to solve issues involving the Rohingya people. Nevertheless, in October 2016, the Myanmar military attacked the Rohingya, justifying this action by pointing to prior attacks by militants against government border guards in Rakhine State. One UNHCR official reportedly called the military action “ethnic cleansing.”

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67 Straits Times, May 18 2015.
68 Bangkok Post, May 20 2015. Thailand proposed to take this issue as human trafficking. The Nation, May 16 2015.
69 ASEAN, Chairman Statement, Emergency.
70 Jakarta Post, May 22 2015.
71 http://www.rakhinecommission.org/.
Malaysia’s Prime Minister, Najib Razak, condemned the violence and described the military operations as “genocide.” He attended a major rally in solidarity with the Rohingya in Kuala Lumpur and proposed the sending of an ASEAN fact-finding mission to Rakhine state. As a Muslim-majority state whose regime constantly needs to protect the Muslim and its values, these Malaysian actions are understandable. Myanmar rejected the Malaysian proposal. Instead, at Malaysia’s request, Aung San Suu Kyi called an informal meeting with ASEAN foreign ministers in Yangon in December 2016 to discuss the situation. As Myanmar held this meeting in response to Malaysia’s request and showed its will to cope with the issue, Malaysia retracted its proposal. At this meeting, ASEAN member states collectively agreed to give humanitarian assistance to Myanmar and carefully avoided any suggestion that human rights may have been violated. The assistance was to be distributed via existing mechanisms, including the AHA Center. Myanmar accepted ASEAN assistance partly because of its successful experience in the aftermath of Cyclone Nargis.

In August 2017, a massive outflow of Rohingya refugees was reported after attacks by the Myanmar military, which again justified its action on the basis of attacks by the Arakan Rohingya Salvation Army against government facilities earlier in the month. In September 2017, an independent fact-finding mission on Myanmar, established by the UN Human Rights Council, released a report with concrete recommendations including the investigation and prosecution of senior Myanmar military generals in an international criminal tribunal for genocide, crimes against humanity and war crimes. The report acknowledges that Myanmar did not allow the mission to enter the country to conduct its investigation.

On the other hand, ASEAN continued to use the AHA Center to provide relief services, under the supervision of the Myanmar government and in cooperation with its domestic organizations like the National Disaster Management Organization in Yangon. At the ASEAN summit in November 2017, the chairman’s statement welcomed the launch of a Myanmar government-led mechanism in cooperation with the Red Cross Movement, and urged Myanmar to continue to implement the recommendations of the final report of the Advisory Commission on Rakhine State. This was repeated at the following year’s ASEAN summit, adding that ASEAN leaders welcomed the establishment of an Advisory Board for the implementation of the recommendations of the final report of the Advisory Commission on Rakhine State, led by Surakiart Sathirathai, former Deputy Prime Minister and Minister of Foreign Affairs of Thailand. ASEAN thus signaled that ASEAN member states relied on Myanmar’s state strength to cope with the issue.

The AHA Center remains a non-intrusive ASEAN institution and functions as a symbol that ASEAN retains an interest in the domestic conduct of its member states. It should be noted, however, that the mandate of the AHA Center is open to

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72The Conversation, January 20 2017.
73Malay Mail Online, September 26 2017, https://www.malaymail.com/news/malaysia/2017/09/26/malaysia-still-hopeful-for-asean-solution-to-rohingya-crisis-local-rep-says/1473601 (accessed October 5 2018).
74Shivakoti, “ASEAN’s Role in the Rohingya.”
75BBC Monitoring Asia Pacific, December 20 2016.
76UN Human Rights Council, Report of the Independent.
77Channel NewsAsia, December 14 2017; and AHA Center, Annual Report 2017, 24.
78ASEAN, Chairman’s Statement of the 31st. The Advisory Commission presented its report in August 2017. Advisory Commission on Rakhine State, Final Report.
79ASEAN, Chairman’s Statement of the 32nd.
interpretation. It is hard to distinguish between man-made and natural disasters, and the operation of AADMER is facing problems related to sharing information, since some members are reluctant to share sensitive information held in military and police.\textsuperscript{80} One Indonesian diplomat insisted that efforts were underway to expand the AHA Center’s portfolio to handling “man-made crises” while the AHA Center started assisting the repatriation process.\textsuperscript{81} It implies that ASEAN disaster management could come to include ASEAN action that affects the domestic conduct of its member states’ governments.

The international community views the Rohingya issue as a collection of serious human rights violations. Although ASEAN as a collectivity carefully avoided treating this issue as a human rights violation, the organization did not prevent its member states from using its stage to voice their concerns. At the AICHR meetings between 2016 and 2018, Indonesia and Malaysia continued to allege that the Myanmar government had committed human rights violations.\textsuperscript{82} It can be argued that the AICHR became an instrument for member states who advocate more generally that ASEAN should be more proactive in its efforts to protect and promote human rights in Southeast Asia.

It should be noted, however, that Indonesia and Malaysia, both Muslim-majority states, burnish their domestic reputation as global protectors of Islam; their claims against Myanmar arguably are motivated more by their domestic interests than by their fundamental interest in human rights issues. So far, related Indonesian and Malaysian opinions have never been included in the official ASEAN agenda, and the AICHR continues to be blocked from collaborating with the UN fact-finding mission.\textsuperscript{83} As seen in the communication of the member states, Myanmar successfully communicated its ability to solve its domestic issues on its own. Other member states, including even Indonesia and Malaysia, ended up acknowledging, at least tacitly, that Myanmar was capable of mitigating the spillover effects.

5. Conclusion

Compared with regional organizations in other regions, ASEAN is not intrusive. This characteristic has been explained with reference to the relatively small number of democratic states in Southeast Asia, less demand for intrusive rules in security fields, and concerns about the loss of state autonomy. This article has argued that intrusive regional organizations are ultimately explained by state conditions, which is the precondition of existing arguments about ASEAN. ASEAN is non-intrusive because member states share an understanding that domestic issues should be solved on their own, since they enjoy their state strength, whether they are democratic regimes or not. This gives them less incentive to rely on ASEAN for solving domestic conflicts, including especially conflicts that emerge as a result of government conduct. This argument is supported via empirical analysis on the interaction of ASEAN member states in non-traditional security issues that often have spillover effects on their neighbors.

\textsuperscript{80} di Floristella, “Dealing with Natural Disasters.”
\textsuperscript{81} Jakarta Post, November 17 2018.
\textsuperscript{82} Jakarta Post, December 6 2018.
\textsuperscript{83} See note 81 above.
Some member states have advocated that ASEAN should be intrusive mainly for their own interests and political agendas. Member states in question have rejected this advocacy, but been constantly asked to demonstrate their capabilities to cope, either entirely domestically or via bilateral channels, as in the Cambodia/Thailand territorial dispute and the Malaysia/Indonesia response to haze pollution. Other fellow members support the idea that each member should have the opportunity to demonstrate their capabilities, before considering a more intrusive ASEAN. With the confirmation of the shared understanding that domestic issues should be solved with each state’s domestic resources, those who advocated for an intrusive ASEAN ultimately acceded to the interests of the broader community of member states.

This argument also contributes to existing comparative analysis of intrusive regional organizations. Arguments that link intrusive regional organizations with democratic norms are relevant, as long as the analyst keeps in mind that all member states believe that each maintains its state strength. Theories related to spillover effects and regional hegemony have been shown to be inadequate to explain (non)intrusiveness of regional organizations without examining whether the member states in question were fragile or otherwise lacked state strength.

Democratic norms have not been consolidated among ASEAN member states. It can be argued that, if ASEAN member states maintain state strength, an intrusive ASEAN would be realized only after the majority become democratic states. But this outcome is far from guaranteed. This article shows, instead, that intrusive regional organizations are driven not only by democratic norms, but also, more fundamentally, by lack of state strength. As analyzed, some ASEAN member states have advocated for an intrusive ASEAN not only based on democratic values, but also on deeper interest in enhancing their domestic legitimacy. Singapore sought to further its domestic agenda by enhancing the reputation of ASEAN in the international community, and Malaysia did the same by insisting on regional coordination to protect the Muslim Rohingya. It is also interesting to note that attempts by some member states have led ASEAN institutions such as the AICHR and the AHA Center to travel some few steps down the path of intrusiveness. It shows that these ASEAN institutions can be a reference point for future debate among the member states.

This article incorporates the concept of state strength into an analysis of intrusive regional organizations. Noninterference in ASEAN has not been breached fundamentally because of a shared understanding that each member states solve its domestic issues on its own.

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