

CHAPTER TWO

LITERATURE REVIEW

A. Association of Southeast Asian Nations (ASEAN)

Association of Southeast Asian Nations (ASEAN) was established by Indonesia, Malaysia, Singapore, Thailand and Philippines, in 1967. The aim is to promote regional security and economic development.¹ ASEAN was not intended to form into a supranational institutional body, but rather as a forum for constructive dialogue among its member-states. In 1999, ten countries located in Southeast Asia had joined the association, as Brunei, Vietnam, Laos, Myanmar and Cambodia were included in addition to the founding member-states.²

In the creation and survival of ASEAN, External threats played a prominent role since the founding states wanted to minimize influence and domination by western and eastern major powers which are most notably the United States and China. Chinese-supported communist rebellions and the

¹ Margaret P. Karns and Karen A. Mingst, 2004, *International Organizations: the Politics and Process of Global Governance*, Boulder and London, Lynne Rienner Publishers, p. 191

² Mieke Molthof, "ASEAN and the Principle of Non-Interference", available at <http://www.e-ir.info/2012/02/08/asean-and-the-principle-of-non-interference/>, accessed on 10 November 2017 at 2:32 p.m.

separatist movement were also the concerns of the states in the establishment of the association but deliberately chose not to create a military alliance. The founders of ASEAN were aware of the close historical, cultural, and economic circumstances that split them but also recognized the benefit of general discussion, consultation and cohesion.³

As it contained in the [Treaty of Amity and Cooperation in Southeast Asia \(TAC\)](#) of 1976, the ASEAN Member States have adopted the following fundamental principles in their relations with one to another:

1. Mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations;
2. The right of every State to lead its national existence free from external interference, subversion or coercion;
3. Non-interference in the internal affairs of one another;
4. Settlement of differences or disputes by peaceful manner;
5. Renunciation of the threat or use of force; and
6. Effective cooperation among themselves.⁴

Even though there are six fundamental principles of the TAC that the Association agreed, the non-intervention is the core principle of ASEAN in

³ *Ibid*

⁴ ASEAN, "The Overview of ASEAN", available at <http://asean.org/asean/about-asean/overview/>, accessed on 8 November 2017 at 1:55 p.m.

the internal affairs of the other member. This principle does not necessarily mean no involvement in each other's relations, but it does mean refraining from open criticism and providing no support to the opposition movements.⁵

B. Non-Interference Principle

The principle of non-interference in international law is the prohibition of the threat or use of force against the territorial integrity or political independence of any state. We can find the principle in the Article of the United Nations Charter stated that:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manners inconsistent with the Purposes of the United Nations.⁶

The exact definition of the principle of non-interference or non-intervention is still unclear among the international scholars. It is because of thought that the principle as an international legal norm whose violation is often alleged and which is proclaimed under entirely different circumstances. They defined the intervention as the interference by a State in the domestic or foreign affairs of another State. The prohibition is only applied when it happens in fields of State affairs which are exclusively the responsibility of

⁵ Margaret and Karen, *Op cit*

⁶ Article 2(4) of the UN Charter

inner State actors, occurs through coercive or authoritarian means, and intends to force a specific conduct of consequence on a sovereign State.⁷

According to Jamnejad and Wood who quoted Oppenheim's book, the principle of non-intervention in the internal affairs of States also reflects that a State should not otherwise intervene in an authoritarian way in the domestic affairs of other States. The International Court of Justice (ICJ) referred in the Nicaragua case that prohibits the element of coercion and intervention.⁸ The ICJ judgment stated that:

“the principle forbids all States or groups of states to intervene directly or indirectly in internal or external affairs or other states. A prohibited intervention must accordingly be one bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely.”⁹

There is a close relationship between the principle of non-intervention and the rules of international law on the use of force. Many writings on non-intervention, particularly in earlier times, dealt solely with the law on the use of force. The latter may propose a broader prohibition, though in most contexts the two terms seem to be utilized conversely.¹⁰

⁷ Philip Kunig, “Prohibition of Intervention”, Oxford Public International Law, Max Planck Encyclopedia of Public International Law, available at <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1434?prd=EPIL>, accessed on 11 November 2017 at 2:46 p.m.

⁸ Maziar Jamnejad and Michael Wood, “The Principle of Non-Intervention”, *Leiden Journal of International Law*, Vol 22, Issue 02, 2009, p. 348

⁹ Marcelo Kohen, 2012, “The Principle of Non Intervention 25 Years after the Nicaragua Judgment”, *Leiden Journal of International Law*, p. 160, taken at http://graduateinstitute.ch/files/live/sites/iheid/files/sites/international_law/shared/international_law/Pr_of_Kohen_website/Publications%201/82%20-%20LJL_Kohen_Nicaragua_Non_Intervention.pdf, downloaded on 3 April 2018 at 10:45 a.m.

¹⁰ Maziar Jamnejad and Michael Wood, *Op cit*, p. 349

The principle of non-interference is the core foundation of ASEAN member-states upon their relations to each other.¹¹ The principle was first issued in the foundation document of ASEAN, the 1967 Bangkok Declaration. The document implied that the member-states should prevent external interference in order to guarantee the steadiness domestically and regionally.¹²

C. Human Rights

1. Definition of Human Rights

Human rights are the rights of all human beings in full equality. We entitled because we are merely human beings. They originate from the inherent dignity of the human person without observing the race, color, sex or inter distinction and may not be withdrawn or denied by the governments, people or individuals.¹³

The general idea of human rights giving practical effect to respect the dignity of all individual human beings. Particularly the States and Government respected in their laws, policies, and practices must ensure the dignity of the individual.¹⁴

¹¹ Bambang Cipto, *Op cit*, p. 31

¹² Richard Stubbs, 2008, "The ASEAN Alternative, Ideas, Institutions and the Challenge to 'Global' Governance", *The Pacific Review*, Vol. **21**, No. 4, p. 456, DOI: 10.1080/09512740802294713, Routledge Taylor & Francis Group

¹³ Mashood A. Baderin, 2003, *International Human Rights and Islamic Law*, New York, Oxford University Press, p. 16

¹⁴ Howard Davis, 2009, *Human Rights Law Directions*, New York, Oxford University Press, p. 4

By an explanation in Articles of the United Nations Declaration of Human Rights, UDHR also stated all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.¹⁵ The Declaration also stated that everyone is entitled to all rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, gender, language, belief, political view or another opinion, national or social origin, property, birth or another status. Furthermore, no distinction shall be made by the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”¹⁶

Another international human rights treaty that adopted by the UN is International Covenant on Economic, Social and Cultural Rights (ICESCR). Aside of the guarantee of the people without discrimination on their race, gender, language, belief, political view, nationality or other status, this Covenant also guaranteed the prohibition of Economic, Social and Cultural rights discrimination on other ground such as disability, sexual orientation, marital status or socio-economic status.¹⁷

¹⁵ Article 1 of UDHR

¹⁶ Article 2 of UDHR

¹⁷ Yordan Gunawan and Yovi Cajapa Endyka, *Op cit*, p. 202.

In short, human rights are inherent to all human beings. We obtain the Human Rights because merely we are human beings regardless the physical, political and belief distinction that we have since we are in the womb and States obliged to promote the human rights and ensure every individual can enjoy their rights.

2. Violation of Human Rights Definition

There is presently close all-inclusive accord that all people are qualified for certain essential rights under any conditions. These incorporate certain common freedoms and political rights, the most principal of which is the privilege of life and physical wellbeing. Human rights are the verbalization of the requirement for equity, resilience, common regard, and human respect in the majority of our action. Talking about rights enables us to express that all people are a piece of the extent of ethical quality and equity.¹⁸

In International law, there is a terminology called *jus cogens* which is customary peremptory norms that prohibits genocide, torture or cruel, inhuman, or treatment which degrading, forced disappearance of persons, and slavery or slave trade.¹⁹ These prohibitions that

¹⁸ Michelle Maiese, 2003, “Human Rights Violations”, available at http://www.beyondintractability.org/essay/human_rights_violations%20, accessed on 9 November 2017 at 3:44 p.m.

¹⁹ Jordan J. Paust, 2014, *Human Rights Module on Crimes Against Humanity, Genocide, other Crimes Against Human Rights, and War Crimes*, Durham, Carolina Academic Press, p. 5

contained in *jus cogens* is that also could be classified as crimes against humanity.

Crimes against humanity have not yet been classified in a devoted settlement of international law, not at all like genocide and atrocities or war crimes, despite the fact that there are endeavors to do as such. In spite of this, the prohibition of crimes against humanity, like the restriction of genocide, has been viewed as an authoritative standard of international law, from which no discrediting is allowed and which applies to all States.²⁰

According to Article 7 (1) of the [Rome Statute](#), crimes against humanity do not need to be linked to an armed conflict and can also occur in peace time, similar to the crime of genocide. That same Article also defines the offense that contains the physical elements such as:

- a. Murder;
- b. Extermination;
- c. Enslavement;
- d. Deportation or forcible transfer of population;
- e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

²⁰ United Nations, Crimes against Humanity, available at <http://www.un.org/en/genocideprevention/crimes-against-humanity.html>, accessed on 9 November 2017 at 4:58 p.m.

- f. Torture;
- g. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- h. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- i. Enforced disappearance of persons;
- j. The crime of apartheid;
- k. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.²¹

²¹ Article 7 of 1982 Rome Statute of the International Criminal Court

